

Court File Number: CV-20-00643158-00CL

Superior Court of Justice
Commercial List

FILE/DIRECTION/ORDER

**IN THE MATTER OF THE COMPANIES' CREDITORS ARRANGEMENT ACT,
R.S.C. 1985, c. C-36, AS AMENDED**

**AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF
ROBERTS COMPANY CANADA LIMITED**

Applicant

AND

Respondent(s)

Case Management Yes No by Judge:

Counsel	Telephone No:	Email/Facsimile No:
See counsel slip (attached)		

- Order Direction for Registrar (**No formal order need be taken out**)
 Above action transferred to the Commercial List at Toronto (**No formal order need be taken out**)

- Adjourned to: _____
 Time Table approved (as follows): _____

Due to the COVID-19 crisis, I held a hearing on the above matter today by Zoom videoconference. This hearing was held in accordance with: (a) the Notice to the Profession issued by Chief Justice Morawetz on March 15, 2020 and the Update dated April 2, 2020; and (b) the "Changes to Commercial List operations in light of COVID-19" developed by the Commercial List judges in consultation with the Commercial List Users Committee. The Zoom videoconference facilities were arranged by Bennett Jones LLP to facilitate the hearing, as per the foregoing COVID-19 practice directions.

A copy of this endorsement will be placed in the court file.

Materials were sent to me by email prior to the hearing.

The applicant Roberts Company Canada Limited obtained an initial order in these CCAA proceedings on June 29, 2020. In that order, the Monitor, Richter Advisory Group Inc., was appointed, and a stay was ordered until July 9, 2020. The applicant comes back today to expand the initial order in a proposed Amended and Restated Initial Order (the "Order").

The applicant's primary secured debt obligations arise out of a loan agreement, amended several times, with Bank of America, its parent company Q.E.P. Co. Inc. and others (the "ABL Agreement"). Prior to these CCAA proceedings, the applicant entered into a Forbearance Agreement with its lenders under the ABL Agreement (the "ABL Lender"). The ABL Lender has agreed to forbear from exercising its rights and remedies against the applicant with respect to existing defaults during the forbearance period. The ABL Lender is supportive of the motion.

The only other secured creditor is an equipment leasing firm, LiftCapital Corporation. It does not oppose the relief sought.

All other parties have been served on the motion and none opposes it.

In the Order, the applicant seeks: to expand its restructuring capabilities and the Monitor's powers; to extend the stay to August 31, 2020; approval of a key employee retention plan (KERP) (and a related sealing order) and a KERP charge of \$200,000; authority, with the consent of the Monitor, and in consultation with the ABL Lender, to make payments for goods and services supplied by critical suppliers prior to the date of the initial order to a maximum amount of \$700,000; and approval of a DIP charge in favour of the ABL Lender that would rank in priority to all other claims and security interests against the applicant's property other than the Administration Charge, the Director's Charge (both granted in the initial order) and the KERP Charge.

Having reviewed the record, and heard submissions from the applicant and the Monitor, I am satisfied that the motion should be granted.

The Order includes provisions contained in the standard form template CCAA Initial Order developed by the Commercial List Users' Committee. For example, the Order includes a provision that permits the applicant to file, subject to further order of this court, a plan of compromise or arrangement, and a provision permitting the Monitor to assist in restructuring efforts. These provisions are appropriate to permit the applicant and the Monitor to take certain steps in the course of the CCAA proceedings to maximize value for the applicant's stakeholders.

The KERP should assist the applicant in retaining and incentivizing key employees. Their continued employment and their relationships with suppliers are important to the stability of the

business. The KERP payments would not be made until 30 days following December 31, 2020. The Monitor supports the KERP and the quantum of the KERP Charge sought. The KERP, the KERP Charge and the quantum of the KERP Charge are contemplated by, and in compliance with the terms and conditions of, the Forbearance Agreement. The KERP and the KERP Charge were approved by the applicant's board of directors.

It is appropriate that the confidential KERP Summary, which contains compensation information, be sealed. The KERP beneficiaries have a reasonable expectation that their personal employment information will be kept confidential.

The payment of pre-filing amounts to certain key suppliers, in consultation with the ABL Lender, and with the oversight of the Monitor, is appropriate. The supply of goods from suppliers such as Home Depot, Home Hardware and Lowe's is integral to the applicant's business and it depends on these suppliers for an uninterrupted supply of goods to permit it to manufacture its inventory and distribute its product. An interruption in the supply of goods could negatively affect the applicant's operations and cash flow to the detriment of its stakeholders.

The applicant seeks the ABL Lender DIP Charge as security for the advances made by the ABL Lender to it under the ABL Agreement following the initial order. Access to funds made available to the applicant pursuant to the ABL Agreement and the Forbearance Agreement is critical to the ongoing operations of the applicant while it pursues restructuring efforts. The granting of the DIP Charge is a term of the Forbearance Agreement and the ABL Lender expects the applicant to seek this Charge in the Order. The DIP Charge will not secure an obligation that existed prior to the granting of the initial order. The only other secured creditor, LiftCapital Corporation, has been given notice of the DIP Charge and does not oppose it. The First Report of the Monitor states that LiftCapital Corporation has registered security in Ontario against certain of the applicant's equipment and, as of the filing date, no amounts were owing by the applicant to LiftCapital Corporation. The Monitor supports the DIP Charge and will supervise the applicant's cash flows, expenses and disbursements in accordance with the Order.

The stay period expires on July 9, 2020 and should be extended to August 31, 2020. Based on the record, the applicant has acted, and continues to act in good faith and with due diligence. It has complied with all notice provisions, published a notice to creditors and the Monitor's web site is up and running. The applicant is working with the Monitor to stabilize its business and continues to engage with the ABL Lender and its various stakeholders on restructuring. The Monitor supports the extending of the stay period and there is no evidence before the court to show any material prejudice to a creditor as a result of the proposed extension of the stay period.

Order to go as signed by me. The Order is effective from today's date and it is not required that the Order be entered.



Dietrich J.
Superior Court of Justice (Toronto)
July 8, 2020

COUNSEL SLIP

(Court File No.: CV-20-00643158-00CL)

This counsel slip is in respect of the motion by Roberts Company Canada Limited for an Amended and Restated Initial Order pursuant to the *Companies' Creditors Arrangement Act*, before the Honourable Madam Justice Dietrich, heard by videoconference at 3:00 PM on July 8, 2020:

Counsel Attending the Videoconference:

Raj Sahni and *Danish Afroz* of Bennett Jones LLP, counsel to the Applicant, Roberts Company Canada Limited.

Roger Jaipargas of Borden Ladner Gervais LLP, counsel to Richter Advisory Group Inc., the Monitor of the Applicant.

Evan Cobb, *Arnold Cohen* and *Noah Schein* of Norton Rose Fulbright Canada LLP, counsel to Bank of America, N.A..

Other Attendees:

Paul Van Eyk and *Duncan Lau* of the Monitor, Richter Advisory Group Inc.

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