

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

THE HONOURABLE MR.)
)
JUSTICE PENNY) TUESDAY, THE 5th
) DAY OF AUGUST, 2014

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 KK PRECISION INC.

APPROVAL AND VESTING ORDER

THIS MOTION made by the applicant, KK Precision Inc. (the "**Applicant**"), pursuant to the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the "**CCAA**"), for an order approving the transaction (the "**Transaction**") contemplated by a liquidation services agreement (the "**Liquidation Services Agreement**") between the Applicant and Infinity Asset Solutions Inc. ("**Infinity**" or the "**Liquidator**") dated July 25, 2014 appended to the affidavit of Garth Wheldon, sworn July 25, 2014 (the "**Wheldon Affidavit**"), filed, was heard this day at 330 University Avenue, Toronto, Ontario.

ON READING the Wheldon Affidavit, the first report of Richter Advisory Group Inc. (the "**Monitor**") dated June 24, 2014 (the "**First Report**"), the second report of the Monitor dated July 25, 2014 (the "**Second Report**"), the affidavit of T.J. Tersigni, sworn July 30, 2014, the supplemental affidavit of Garth Wheldon, sworn July 31, 2014 and the supplement to the Second Report of the Monitor, dated July 31, 2014 and on hearing the submissions of counsel for the Applicant, the Monitor, 2215225 Ontario Inc., no one appearing for any other person on the service list, although properly served as appears from the affidavit of Zev Smith sworn July 28, 2014, filed:

1. **THIS COURT ORDERS AND DECLARES** that the time for service of the Notice of Motion and Motion Record herein be and is hereby abridged such that this motion is properly returnable today and that all parties entitled to notice of the Motion have been duly served, and that any requirement for service of the Notice of Motion and Motion Record upon any party other than the parties served is unnecessary and hereby dispensed with and that the service of the Notice of Motion and Motion Record is hereby validated in all respects.

2. **THIS COURT ORDERS AND DECLARES** that the Transaction is hereby approved, and the execution of the Liquidation Services Agreement by the Applicant is hereby ratified and approved, with such minor amendments as the Applicant, Liquidator or Monitor may deem necessary. The Applicant is hereby authorized and directed to perform the Liquidation Services Agreement and complete the Transaction in accordance with the terms and conditions of the Liquidation Services Agreement including, taking such additional steps and execute such additional documents as may be necessary or desirable for the completion of the Transaction.

3. **THIS COURT ORDERS AND DECLARES** that the Liquidation Services Agreement is hereby approved, and the terms of the Liquidation Services Agreement and the consideration set out in the Liquidation Services Agreement are fair and commercially reasonable and were arrived at in a commercially reasonable manner.

4. **THIS COURT ORDERS** that Infinity is entitled use to the Applicant's premises and is entitled to use the name "KK Precision Inc." and similar derivations in all of its advertising and promotional activities related to the Liquidation Services Agreement.

5. **THIS COURT ORDERS AND DECLARES** that all right, title and interest of the Applicant in and to the Assets (as defined in the Liquidation Services Agreement), shall be sold by Infinity as contemplated by the Liquidation Services Agreement and, upon payment of the applicable purchase price for each of the Assets by Purchasers (as that term is defined in the Liquidation Services Agreement), they shall vest in the applicable Purchaser of such Asset(s) free and clear of and from any and all security interests (whether contractual, statutory, or otherwise), mortgages, charges, hypothecs, estates, trusts or deemed trusts (whether contractual, statutory or otherwise), liens (whether contractual, statutory or otherwise), executions, levies, claims, charges, encumbrances or any other rights, rights of use, claims, disputes and debts of

any person or entity of any kind whatsoever whether legal or equitable, of all persons or entities of any kind whatsoever (collectively, the "**Encumbrances**"), including, but not limited to, any Encumbrances held by or in favour of the parties or entities which are served or whose solicitors are served with the Notice of Motion to approve the Liquidation Services Agreement, and, for greater certainty, this Court orders that all of the Encumbrances affecting or relating to the Assets are hereby expunged and discharged as against the Assets purchased from Infinity in accordance with the Liquidation Services Agreement.

6. **THIS COURT ORDERS AND DIRECTS** that the Net Proceeds (as such term is defined in the Liquidation Services Agreement) distributed to the Applicant under the Liquidation Services Agreement after deduction of the Expense Amount (as that term is defined in the Liquidation Services Agreement) shall stand in the place and stead of the Assets and shall stand charged with all the Encumbrances as existed in respect of the Assets which were released, discharged or otherwise displaced by the sale of the Assets by Infinity and such Encumbrances on the Net Proceeds shall enjoy the same priorities as each such Encumbrance had in respect of the Assets as of the date of the Order of the Court directing the same, as if the sale of the Assets had not occurred, but the holder of any such Encumbrance shall have no further right in or against, or recourse to, the Assets.

7. **THIS COURT ORDERS AND DECLARES** that the Transaction is exempt from the application of the *Bulk Sales Act* (Ontario).

8. **THIS COURT ORDERS** that, notwithstanding:

- (a) the pendency of these proceedings;
- (b) any applications for a bankruptcy order now or hereafter issued pursuant to the *Bankruptcy and Insolvency Act* (Canada) in respect of the Applicant and any bankruptcy order issued pursuant to any such applications; and
- (c) any assignment in bankruptcy made in respect of the Applicant;

the Liquidation Services Agreement and the Transaction shall be binding on any trustee in bankruptcy that may be appointed in respect of the Applicant and shall not be void or voidable by creditors of the Applicant, nor shall it constitute nor be deemed to be a fraudulent preference, assignment, fraudulent conveyance, transfer at undervalue, or other reviewable transaction under the *Bankruptcy and Insolvency Act* (Canada) or any other applicable federal or provincial legislation, nor shall it constitute oppressive or unfairly prejudicial conduct pursuant to any applicable federal or provincial legislation.

9. **THIS COURT ORDERS** that nothing herein contained shall require the Liquidator to occupy or to take control, care, charge, possession or management (separately and/or collectively, "**Possession**") of any of the Property (as defined in the Initial Order dated May 30, 2014) that might be environmentally contaminated, might be a pollutant or a contaminant, or might cause or contribute to a spill, discharge, release or deposit of a substance contrary to any federal, provincial or other law respecting the protection, conservation, enhancement, remediation or rehabilitation of the environment or relating to the disposal of waste or other contamination including, without limitation, the *Canadian Environmental Protection Act*, the *Ontario Environmental Protection Act*, the *Ontario Water Resources Act*, or the *Ontario Occupational Health and Safety Act* and regulations thereunder (the "**Environmental Legislation**"), provided however that nothing herein shall exempt Infinity from any duty to report or make disclosure imposed by applicable Environmental Legislation. Infinity, shall not, as a result of this Order or anything done in pursuance of Infinity's duties and powers hereunder or under the Liquidation Services Agreement, be deemed in Possession of any Property within the meaning of any Environmental Legislation, unless it is actually in possession.

10. **THIS COURT ORDERS** that Infinity, shall incur no liability or obligation as a result of its appointment or carrying out the provisions of the Liquidation Services Agreement, save and except for (i) any gross negligence or wilful misconduct on its part, and (ii) any liabilities or obligations owing to the Company under the Liquidation Services Agreement, or in connection therewith.

11. **THIS COURT ORDERS** that the redaction of the sensitive commercial information in the Liquidation Services Agreement and the schedules thereto as set forth in Exhibit "A" of the Wheldon Affidavit is hereby approved *nunc pro tunc*,

12. **THIS COURT ORDERS** that the (i) summary of bids pursuant to the Solicitation Process attached as Confidential Exhibit '1' to the Wheldon Affidavit and (ii) the unredacted Liquidation Services Agreement attached as Confidential Exhibit '2' to the Wheldon Affidavit be kept sealed pending further Order of the Court or the completion of the auction process as outlined within the Liquidation Services Agreement.



ENTERED AT / INSCRIT A TORONTO
ON / BOOK NO:
LE / DANS LE REGISTRE NO.:

AUG - 5 2014



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 KK PRECISION INC.

Applicant

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

Proceeding commenced at TORONTO

APPROVAL AND VESTING ORDER
(August 5, 2014)

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Solicitors for the Applicant

Court File Number: CV-14-10593-00CL

Superior Court of Justice
Commercial List

FILE/DIRECTION/ORDER

KK Precision Inc.

Plaintiff(s)

AND

2215225 Ontario Inc.

Defendant(s)

Case Management Yes No by Judge: _____

Counsel	Telephone No:	Facsimile No:

- 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):

This is a motion to approve a sale of equipment. The sale parameters were approved by order of this court on June 25, 2014.
The equipment is on leased premises. The company has agreed to be out of the premises by the end of September, 2014.
At the time of filing for CCAA

Date

Judge's Signature

Additional Pages _____

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Judges Endorsment Continued

protection, The Company prepaid rent to the end of September and posted \$100,000 as a security deposit against clean up obligation. ~~That was~~

~~in the face of a~~

Post CCA, a new Landlord acquired the premises. Among other things, the new L was an unsuccessful bidder on the subject Equipment.

The present dispute arises because the L says the Co. cannot possibly vacate the premises leaving them in the "same state of repair and cleanliness as they were in at the commencement of" the lease.

For this reason, the L says the terms of the proposed sale do not comply with the parameters of sale approved by the Court in

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Judges Endorsment Continued

June 2014.

The problem with The L's argument is that, if I do not approve the sale, there is absolutely no way The Premises will be in the condition required under the lease.

At the moment, the evidence of The Co and The Monitor is that they have in place a process that will enable The Co. to deliver the Premises in the condition they say is required by the lease.

The new L has its doubts about this. But, if I were to accede to The L's request, and refuse to approve the sale, I would be ensuring, as an absolute certainty, that The Co. would be in breach of its obligations and could not deliver

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Judges Endorsment Continued

The Premises, unencumbered by this equipment, on October 1, 2014.

The L accepts that the proposed sale of the equipment is the best deal available.

The L's concern is that the L is being asked to shoulder the risk that the Premises are not ready in time and that the \$100,000 security deposit is insufficient to cover what it thinks are the real environmental clean-up liabilities.

In my view, the sufficiency of the \$100,000 security deposit against environmental liabilities is completely irrelevant to the present dispute.

The maximization of the value of the equipment and its timely removal from the Premises, is completely

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Judges Endorsment Continued

irrelevant to the clean-up obligation relating to possible environmental issues post-hoc.

The L's real complaint is that it has been saying all along that the G. should speed up its auction process, that the G. has suffered delays and that now the L is going to be "left out in the cold" if the G. cannot, in fact, give "clean" possession to the L on October 1, 2014.

This, it seems to me, is a different problem from the equipment sale I am being asked to approve.

There is no suggestion that there will be any contribution of the proceeds of sale (other than to cover the costs of sale). Nor

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Judges Endorsment Continued

is there any suggestion that the Co. or Monitor are being released from any obligations they may have to the L at this stage.

In the absence of any other letter deal (either in terms of value realized or timeliness) sent there, I am not prepared to refuse to approve the proposed sale.

The sale as described in the affidavit material and report of the Monitor, is approved.

There is evidence that the bids, if made public, could be adverse to the public interest in maximizing the return on sale, were this transaction not to be concluded. For this

Court File Number: _____

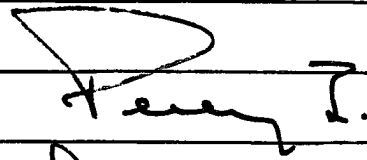
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Judges Endorsment Continued

person, I order ~~the~~ Exhibits 1 and
2 to the Affidavit of Garth
Wheldon to be sealed until the
transaction is complete.

This order is completely without
prejudice to the L's claims and
rights relating to its lease and
the Co's (or the maintainers) obligations
in that regard.
No distribution of the ^{net} proceeds of
sale ~~of the property or interest therein~~
~~of the property~~ (except as otherwise specified
in my order) shall be made without
notice to the L ~~and~~ or without
affording the L a full opportunity to
make submissions on the issue.


Perry J.

August 5, 2014