

Court File No.

ONTARIO
SUPERIOR COURT OF JUSTICE

B E T W E E N:

CLARKE ALAN MCLEAN

Applicant

- and -

JAMIE STUART ANDREW LAWRIE and
TARGET MECHANICAL SERVICES LTD.

Respondents

**IN THE MATTER OF AN APPLICATION UNDER
SUBSECTION 248(3) OF THE BUSINESS CORPORATIONS ACT
AND SECTION 101 OF THE COURTS OF JUSTICE ACT**

**PROPOSED LIQUIDATOR'S REPORT TO THE COURT
SUBMITTED BY BDO CANADA LIMITED,
IN ITS CAPACITY AS PROPOSED LIQUIDATOR-MANAGER OF
TARGET MECHANICAL SERVICES LTD.**

January 25, 2019

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1.0 INTRODUCTION AND PURPOSE

1.1 Introduction

- 1.1.1 Target Mechanical Services Ltd. (“**TMS**” or the “**Company**”) was incorporated in May 2007. The Company has two shareholders, Clarke McLean (“**Clarke**”) and Jamie Lawrie (“**Jamie**”) (collectively the “**Owners**”). A copy of the corporation profile report is attached as **Appendix “A”** to this report. The two shareholders are both 50% owners of the Company. TMS operates from Clarke’s principal residence in Guelph, Ontario.
- 1.1.2 The Company carries on business installing and repairing HVAC equipment and currently employs two repairmen in addition to the Owners. The Company also employs Clarke’s wife, Tammy McLean (“**Tammy**”), on an hourly basis to maintain the Company’s books and records.
- 1.1.3 Based on Clarke’s affidavit, the relationship between the Owners has deteriorated to the point at which it is harming the Company. Clarke is seeking the appointment of a liquidator in order to wind down the Company before it becomes insolvent. Accordingly, Clarke’s counsel contacted BDO Canada Limited (the “**Proposed Liquidator**”) to consent to act as liquidator of the Company to wind down the Company and liquidate the assets and pay the creditors. After payment of the Company’s liabilities and the Liquidator’s and the Liquidator’s counsel’s fees, any residual funds would be paid to the Owners in proportion to their share ownership.
- 1.1.4 The Proposed Liquidator has reviewed the proposed order appointing the Liquidator and a copy of the proposed order is attached as **Appendix “B”** to this report (the “**Appointment Order**”).

1.2 Purpose of Proposed Liquidator’s Report

- 1.2.1 This Proposed Liquidator’s Report to the Court is filed to:
- Provide the Court with the financial background of the Company;
 - Provide the Court with information on the Company’s assets and liabilities;
 - Seek the Court’s approval of a claims process for the Company’s creditors;
 - Seek the Court’s approval for the sale of the Company’s current contracts and certain assets to Clarke; and,
 - Seek the Court’s approval of the Proposed Liquidator’s wind down plan for the remaining assets.

2.0 FINANCIAL POSITION

2.1 Balance Sheet Overview

2.1.1 The following chart provides a summary of TMS's balance sheet as at April 30, 2018 (the last compiled balance sheet by the external accountant). A copy of the April 30, 2018 financial statements are attached as **Appendix "C"**.

Balance Sheet Summary			
Accounts receivable	\$291,988	Bank loan	\$120,002
Taxes receivable	2,868	Accounts payable	35,503
Fixed assets	54,584	Vehicle leases	40,277
		Amounts due to shareholders	81,446
Goodwill	15,000	Retained earnings & capital	87,212
Total	\$364,440	Total	\$364,440

2.1.2 The Company's assets primarily consist of accounts receivable and some older vehicles, leased vehicles and tools. The Company's primary liabilities relate to a secured bank loan from TD Bank listed above for \$120,002 as at April 30, 2018 (the "**Bank Loan**"), vehicle leases with Royal Bank of Canada ("**RBC**") and accounts payable to suppliers.

2.1.3 The following chart compares the operating results for the Company for the fiscal years 2016, 2017 and 2018 and the first six months of fiscal 2019:

	2016	2017	2018	6 months to Oct 31/18
Revenue	\$ 1,031,138	1,179,941	1,398,063	\$ 522,724
Cost of sales	376,920	485,708	470,814	190,238
Gross Profit	654,218	694,233	927,249	332,486
Operating expenses	654,351	706,798	872,630	336,588
Earnings/(loss) before taxes	(133)	(12,565)	54,619	(4,102)
Add back: Owner salaries	260,000	194,000	280,000	130,000
Normalized net income	\$ 259,867	\$ 181,435	\$ 334,619	125,898
Normalized net income as % of revenues	25.2%	15.4%	23.9%	24.1%
Average normalized net income	21.8%			

2.1.4 The financial results indicate that the Company operates close to break even after the payment of the Owners' salaries and that sales for fiscal 2019 are tracking lower than in fiscal 2018 and are in fact closer to the fiscal 2017 results. Accordingly, we expect there will be a small loss for fiscal 2019 after the payment of the Owner's salaries.

2.2 Loan balance

2.2.1 As at November 30, 2018, the Company had repaid the Bank Loan and had a positive bank balance of approximately \$25,000. However, cheques amounting to approximately \$18,000 had been issued to suppliers for October 2018 payables that had not as yet been cashed. Accordingly, the Company's bank balance was minimal after taking into account outstanding cheques.

2.3 Accounts Receivable

2.3.1 The Company's accounts receivable had declined to approximately \$113,000 by November 30, 2018, consisting of 37 different customers with an average account balance of approximately \$3,000. Approximately \$2,200 of the accounts have been sent to a collection agent.

2.4 Equipment

2.4.1 The Company's equipment consists of the following owned and leased vehicles:

Make	Model	Model year	VIN	Black book / estimated value	Estimated outstanding lease	Estimated equity / value
GMC	Sierra pickup	2013	3GTP2VE78DG286306	\$ 18,910	\$ 19,000	\$ -
GMC	Sierra pickup	2012	1GTR2TE02CZ111578	11,850	12,000	-
GMC	Savana van	2009	1GTGG25C491128998	2,670		2,670
GMC	Savana van	2009	1GTGG25C691138660	2,670		2,670
GMC	Savana van	2008	1GTHG35CX81169287	2,325		2,325
Chevy	Astro van	2005	1GCDM19X75B131692	1,000		1,000
				<u>\$ 39,425</u>	<u>\$ 31,000</u>	<u>\$ 8,665</u>

Note: Estimated values are prior to commission expense.

2.4.2 The Company also owns various hand tools and some office furniture and computer equipment with a net book value on April 30, 2018 of approximately \$12,000 (collectively the "Operating Assets").

2.5 Liabilities

2.5.1 The Company's accounts payable at November 30, 2018 showed a balance of approximately \$19,000 owing to suppliers (in addition to the \$18,000 in outstanding cheques discussed above). It is important to note that not all of the payables for November 2018 have been received at the date of the preparation of this report. Accordingly, outstanding payables are likely greater than indicated.

2.5.2 Tammy has stated that the equipment leases have been paid down to a total of approximately \$31,000.

3.0 VEHICLE LEASES & PROPOSED CLAIMS PROCESS

3.1 Equipment Lessors

3.1.1 The Proposed Liquidator reviewed the *Ontario Personal Property Security Act Registrations* (the “**PPSA**”) and identified that there were three parties registered; TD Bank with a general security agreement and the two RBC leases noted in Section 2.1.2. A copy of the PPSA search is attached as **Appendix “D”** to this report.

3.1.2 The Proposed Liquidator has retained Harrison Pensa LLP (“**Harrison**”) as independent counsel. Harrison will request the security documentation from the various TMS secured creditors and equipment lessors in order to provide the Proposed Liquidator with an opinion on the validity, priority and enforceability of the respective security as amongst the secured creditors and as against the unsecured creditors. If there are no issues with the two RBC leases, the Proposed Liquidator will return the leased vehicles to RBC as there does not appear to be any equity in the leased vehicles.

3.2 Employees

3.2.1 Pursuant to the Appointment Order, TMS’s employees remain employees of TMS after the appointment of a liquidator. The Appointment Order also provides a liquidator with the authority to terminate TMS’s employees as the Liquidator determines necessary. If the Court approves the proposed sale of the Company’s contracts, discussed in Section 5 below, it is the Proposed Liquidator’s intention that the Company will continue to fund payroll up to the point when the contracts are sold, after which the Proposed Liquidator would terminate the employment of the employees and the purchaser of the contracts would hire the employees and continue their employment uninterrupted.

3.3 Proposed Claims Process

3.3.1 The Proposed Liquidator proposes the following claims process (the “**Claims Process**”), which will be administered by the Proposed Liquidator:

- a) All proofs of claim must be received on or before 5:00 p.m. (Toronto time) on April 30, 2019 (the “**Claims Bar Date**”);
- b) The Proposed Liquidator shall mail proof of claim forms to all known creditors of TMS, as disclosed in TMS’s accounting records, and include with such correspondence notice of the Claims Bar Date;
- c) The Proposed Liquidator will request Canada Revenue Agency to perform an audit of TMS’ source deductions account(s) to verify if there are any funds owing for outstanding source deductions. If there is a balance owing, the outstanding balance will be paid in priority to all other claims as soon as funds are available, without further order of the Court;
- d) The Proposed Liquidator will request Canada Revenue Agency to perform an audit of TMS’ HST account(s) to verify if there are any funds owing for outstanding source deductions. If there is a balance owing, the outstanding balance will be paid in priority to all other claims, without further order of the Court;

- e) The Proposed Liquidator's counsel will review TD Bank's security and if it is found to be a valid first priority security, any amounts owing to TD Bank would be paid to TD Bank in priority to all unsecured claims as soon as funds are available, without further order of the Court;
- f) The Proposed Liquidator shall advertise the Claims Process and the Claims Bar Date in the local Guelph newspaper;
- g) The claims process prescribed by the *Bankruptcy and Insolvency Act* for a bankruptcy, including the processes and timelines for the disallowance of claims and the appeals of a disallowance, will be adopted and incorporated herein; and,
- h) Any person that does not deliver a proof of claim form on or before the Claims Bar Date, shall not be entitled to any distribution from TMS and shall be forever barred from making or enforcing a claim against TMS and its officers and directors.

4.0 OPERATIONS

- 4.1 As noted above, the Company installs and repairs HVAC systems and devices. Tammy has stated that the Company currently has four (4) quoted jobs in progress as at the date of this report and eighteen (18) maintenance contracts in progress (the "**Projects**"). A summary of the revenues, estimated costs and net profit for the Projects is attached at Appendix E to this Report which has been redacted. The summary is based on copies of the contracts Tammy was able to locate and Tammy's estimate of costs in materials and labour for the Projects. Copies of the Company's available contracts and the cost information provided by Tammy are attached at Appendix E to this report.
- 4.2 According to the information provided to the Proposed Liquidator by Tammy the total net income, prior to Owner salaries, for the Projects is approximately 19% of revenues. This is slightly less than the average net profit of 21.5%, before Owner salaries, realized by the Company over the last three fiscal years as set out in paragraph 2.1.3 of this report. Accordingly, the Proposed Liquidator's sale of the Projects, discussed in Section 5 and redacted Appendix E, takes this discrepancy into account.

5.0 PROPOSED SALES OF ASSETS

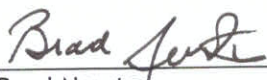
- 5.1 It would not be commercially reasonable for the Proposed Liquidator to operate the Company pending a sales process to sell the Projects and Operating Assets. Based on the information supplied by Tammy regarding the income from the Projects, a liquidator's fees to operate the Company while the Projects are completed would exceed the net profit on the Projects.
- 5.2 In order to minimize the Proposed Liquidator's fees and costs and therefore maximize the value to the creditors and the Owners, the Proposed Liquidator proposes selling the Projects and the Operating Assets to Clarke so he can complete the Projects. Based on discussions with Tammy, we understand that a sale to Clarke would also be supported by the affected customers and the employees. Clarke is also the logical purchaser for the Projects and Operating Assets as he is familiar with them and any other purchaser would have to perform due diligence in order to review the Projects and Operating Assets. A sale process could take several weeks during which time the Proposed Liquidator would be required to continue operations in order to sell the business as a going concern.
- 5.3 Details of the Proposed Liquidator's sale price for the Projects and the Operating Assets to Clarke is set out in the Appendix E to this report which has been redacted.
- 5.4 The Proposed Liquidator proposes to have an auctioneer retrieve and sell the non-leased vehicles for a standard commission and the net proceeds would be paid to the Liquidator for distribution pursuant to further Court order.
- 5.5 Lastly, the Proposed Liquidator proposes engaging Tammy, on an hourly basis at the same rate the Company is currently paying her, to assist the Proposed Liquidator with the collection of the outstanding accounts receivable since she is familiar with the customers and her rate per hour is less expensive than the Proposed Liquidator's.

6.0 RECOMMENDATIONS

- 6.1 We respectfully submit this Proposed Liquidator's Report to the Court in support of the Proposed Liquidator's motion to:
- approve the Proposed Liquidator's Report to this report, and approving and authorizing the proposed activities of the Proposed Liquidator as described herein;
 - approve the Proposed Liquidator's claims process as outlined herein; and,
 - approve the Proposed Liquidator's sale of the Projects and Operating Assets.

All of which is respectfully submitted this 25th day of January, 2019.

**BDO CANADA LIMITED
PROPOSED LIQUIDATOR OF
TARGET MECHANICAL SERVICES LTD.**

Per: 
Brad Newton
Vice President