

**ONTARIO
SUPERIOR COURT OF JUSTICE -
COMMERCIAL LIST**

THE HONOURABLE MR.) THURSDAY, THE 14TH DAY
)
JUSTICE COLIN L. CAMPBELL) DAY OF APRIL, 2005
)



**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 FINCORE INDUSTRIES INC. AND
999361 ONTARIO INC.**

ORDER

THIS MOTION made by Fincore Industries Inc. ("Fincore") for an order continuing the stay of proceedings granted under the Initial Order of this Honourable Court dated September 15, 2004 and extended by further Orders of this Honourable Court dated October 12, 2004, December 14, 2004 and February 14, 2005, adding 999361 Ontario Inc. as a party to this application, and appointing BDO Dunwoody Limited ("BDO") as interim receiver (in such capacity, the "Interim Receiver") in respect of the assets, property and undertaking of Fincore and 999361 pursuant to section 47(1) of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended (the "BIA"), and this Cross-Motion made by N. Turk Investments Inc. and 48 Investments Limited (collectively, the "Landlord") to terminate the tenancy of Fincore, was heard this day at 393 University Avenue, Toronto, Ontario.

ON READING the Notice of Motion, the Affidavits of Sheldon E. Gross sworn April 13 and 14, 2005, the Fourth Report to the Court Submitted by BDO in its Capacity as Monitor dated April 13, 2005, the Amended Notice of Cross-Motion, the Affidavits of Norman Turk sworn April 12 and 14, 2005, and the Consent of BDO to act as Interim Receiver, and on hearing submissions of counsel for Fincore and 999361, BDO, and the Landlord,

SERVICE

1. **THIS COURT ORDERS** that the time for service of the Notice of Motion and the Affidavit in support of this Motion be and it is hereby abridged such that the motion is properly returnable today, and, further, that any requirement for service of the Notice of Motion and of the Motion Record upon any other interested party, is hereby dispensed with.

THE CCAA INITIAL ORDER

2. **THIS COURT ORDERS** that 999361 be and is hereby added as an applicant in this application, and that the terms of the September 15, 2004 Initial Order of this Honourable Court (the "Initial Order") apply to 999361, *mutatis mutandis*. Without limiting the generality of the foregoing:

- (a) the stay of proceedings referred to at paragraphs 7 to 13 of the Initial Order shall be deemed to apply to 999361 as well as to Fincore;
- (b) the definition of Property in paragraph 4 of the Initial Order shall be deemed to include the properties, assets and undertakings of 999361 as well as the properties, assets and undertakings of Fincore; and

- (c) the Monitor's Charge granted under paragraph 17 of the Initial Order shall be deemed to apply to the Property of 999361 as well as to the Property of Fincore, and shall be deemed to secure all fees and disbursements, including applicable goods and services taxes, of the Monitor, its counsel, and counsel for Fincore and 999361 from the date of the Initial Order.

3. **THIS COURT ORDERS** that the stay period referred to at paragraphs 7 to 13 of the September 15, 2004 Initial Order of this Honourable Court be and is hereby continued until June 15, 2005.

FOURTH REPORT OF THE MONITOR APPROVED

4. **THIS COURT ORDERS** that the conduct and activities of BDO in its capacity as Monitor, as described in the Monitor's Fourth Report to the Court dated April 12, 2005, be and are hereby approved.

APPOINTMENT OF THE INTERIM RECEIVER

5. **THIS COURT ORDERS** that pursuant to section 47(1) of BIA, BDO is hereby appointed Interim Receiver, without security, of all of the current and future property, assets and undertaking of Fincore and of 999361 of every nature including all proceeds thereof (the "Property"), with the powers and subject to the limits contained in this Order.

6. **THIS COURT ORDERS** that:

- (a) the Interim Receiver shall not take possession of or exercise control over the Property;

- (b) subject to the terms of this Order and any further order of the Court, the Property shall remain in the possession of and under the control of Fincore and 999361 and the Interim Receiver shall not interfere with Fincore and 999361 in the carrying on of their respective businesses;
- (c) subject to the terms of this Order and any further order of the Court, Fincore and 999361 are authorized to carry on business in the ordinary course; and
- (d) subject to the terms of this Order and any further order of this Court, the Interim Receiver shall undertake the marketing and sale of the Property in accordance with this Order.

INTERIM RECEIVER'S POWERS

7. **THIS COURT ORDERS** that the Interim Receiver is hereby empowered and authorized, but not obligated, to take such action as it deems necessary in furtherance of subparagraph 6(d) of this Order and, without in any way limiting the generality of the foregoing, the Interim Receiver is hereby expressly empowered and authorized to do any of the following where the Interim Receiver considers it necessary or desirable:

- (a) to market any or all of the Property, including advertising and soliciting offers in respect of the Property or any part or parts thereof and negotiating such terms and conditions of sale as the Interim Receiver in its discretion may deem appropriate;
- (b) to sell, convey, transfer, lease or assign, the Property or any part or parts thereof out of the ordinary course of business with the approval of this Court and in and in each case notice under subsection 63(4) of the Ontario *Personal Property*

Security Act (Ontario) or section 31 of the *Mortgages Act* (Ontario), as the case may be, shall not be required and in each case the Ontario *Bulk Sales Act* shall not apply;

- (c) to take such physical inventories as may be necessary or desirable;
- (d) to apply for any vesting order or other orders necessary or desirable to convey the Property or any part or parts thereof to a purchaser or purchasers thereof, free and clear of any liens or encumbrances affecting such Property;
- (e) to engage consultants, appraisers, agents, experts, auditors, accountants, managers, counsel and such other persons from time to time and on whatever basis, including on a temporary basis to assist with the exercise of the powers and duties conferred by this Order;
- (f) to execute, assign, issue and endorse documents of whatever nature in respect of any of the Property, whether in the Interim Receiver's name for any purpose pursuant to this Order;
- (g) to report to, meet with and discuss with such secured and unsecured creditors of Fincore and their advisors as the Interim Receiver deems appropriate on all matters relating to the Property and the interim receivership, and to share information, subject to such terms as to confidentiality as the Interim Receiver deems advisable;
- (h) to register a copy of this Order and any other Orders in respect of the Property against title to any of the Property;

(i) to take any steps reasonably incidental to the exercise of these powers, and in each case where the Interim Receiver takes any such actions or steps it shall be exclusively authorized and empowered to do so, to the exclusion of all other Persons, including Fincore and 999361, and without interference from any other Person.

DUTY TO PROVIDE ACCESS AND CO-OPERATION TO THE INTERIM RECEIVER

8. **THIS COURT ORDERS** that (i) Fincore and 999361, (ii) all of their current and former directors, officers, employees, agents, accountants, legal counsel and shareholders and all other persons acting on their instructions or behalf, and (iii) all other individuals, firms, corporations, governmental bodies or agencies, or other entities having notice of this Order (all of the foregoing being "Persons" and each being a "Person") shall forthwith advise the Interim Receiver of the existence of any such Property in such Person's possession or control, and shall grant to the Interim Receiver and its designees immediate and continued access to the Property for the purpose of marketing and selling the Property.

9. **THIS COURT ORDERS** that all Persons shall, if requested by the Interim Receiver, forthwith advise the Interim Receiver of the existence of any books, documents, securities, contracts, orders, corporate and accounting records, and any other papers, records and information of any kind related to the business and affairs of Fincore and 999361, and any computer programs, computer tapes, computer disks, or other data or storage media containing any such information (the foregoing, collectively, the "Records") in that Person's possession or control and shall provide to the Interim Receiver or its designees or permit the Interim Receiver or its designees to make, retain, and take away copies thereof and grant to the Interim Receiver

unfettered access to and use of accounting, computer, software and physical facilities relating thereto.

10. **THIS COURT ORDERS** that if any of the Records are stored or otherwise contained on a computer or other electronic system of information storage, whether by independent service provider or otherwise, all Persons in possession or control of such Records shall forthwith give unfettered access to the Interim Receiver or its designees for the purpose of allowing the Interim Receiver to recover and fully copy all of the information contained therein whether by way of printing the information onto paper or making copies of computer discs or such other manner of retrieving and copying the information as the Interim Receiver in its discretion deems expedient, and shall not alter, erase or destroy any Records without the prior written consent of the Interim Receiver. Further, for the purposes of this paragraph, all Persons shall provide the Interim Receiver with all such assistance in gaining immediate access to the information in the Records as the Interim Receiver may in its discretion require, including providing the Interim Receiver with instructions on the use of any computer or other system and providing the Interim Receiver with any and all access codes, account names and account numbers as may be required to gain access to the information.

NO PROCEEDINGS AGAINST THE INTERIM RECEIVER

11. **THIS COURT ORDERS** that no proceeding or enforcement process shall be brought against the Interim Receiver in any court or other tribunal (each a "Proceeding") except with the written consent of the Interim Receiver or with leave of this Court.

INTERIM RECEIVER TO HOLD FUNDS

12. **THIS COURT ORDERS** that all funds, monies, cheques, instruments, and other forms of payments received or collected by the Interim Receiver from and after the making of this Order from any source whatsoever, including without limitation the sale of all or any of the Property and the collection of any accounts receivable in whole or in part, whether in existence on the date of this Order or hereafter coming into existence, shall be deposited into one or more new accounts to be opened by the Interim Receiver (the "Post Interim Receivership Accounts") and the monies standing to the credit of such Post Interim Receivership Accounts from time to time, net of any disbursements provided for herein, shall be held in trust by the Interim Receiver to be paid by in accordance with the terms of this Order or any further order of this Court.

EMPLOYEES

13. **THIS COURT ORDERS** that all employees of Fincore or 999361, respectively, shall remain employees of Fincore or 999361, as the case may be, and nothing in this Order shall affect any of Fincore or 999361's obligations under contracts of employment, including collective agreements, binding on the employees of Fincore or 999361. The Interim Receiver shall not be liable for any employee-related liabilities, including wages, severance pay, termination pay, vacation pay, and pension or benefit amounts.

14. **THIS COURT ORDERS** that, pursuant to clause 7(3)(c) of the Canada *Personal Information Protection and Electronic Documents Act*, the Interim Receiver shall disclose personal information of identifiable individuals to prospective purchasers or bidders for the Property and to their advisors, but only to the extent desirable or required to negotiate and

attempt to complete one or more sales of the Property (each, a "Sale"). Each prospective purchaser or bidder to whom such personal information is disclosed shall maintain and protect the privacy of such information and limit the use of such information to its evaluation of the Sale, and if it does not complete a Sale, shall return all such information to the Interim Receiver, or in the alternative destroy all such information. The purchaser of any Property shall be entitled to continue to use the personal information provided to it, and related to the Property purchased, in a manner which is in all material respects identical to the prior use of such information by Fincore or 999361, and shall return all other personal information to the Interim Receiver, or ensure that all other personal information is destroyed.

LIMITATION ON ENVIRONMENTAL LIABILITIES

15. **THIS COURT ORDERS** that nothing herein contained shall require the Interim Receiver to occupy or to take control, charge, possession or management (separately and/or collectively, "Possession"), of any of the Property that may 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 the Interim Receiver from any duty to report or make disclosure imposed by applicable Environmental Legislation.

INTERIM RECEIVER'S ACCOUNTS

16. **THIS COURT ORDERS** that any expenditure or liability which shall properly be made or incurred by the Interim Receiver, including the fees of the Interim Receiver and the fees and disbursements of its legal counsel, incurred at the normal rates and charges of the Interim Receiver and its counsel, shall be allowed to it in passing its accounts. To secure the payment of such fees and disbursements, including applicable goods and services taxes, and to secure payment of the fees and disbursements of the counsel for Fincore and 999361, including applicable goods and services taxes, the Interim Receiver, its counsel, and counsel for Fincore and 999361 shall be entitled a first charge on the Property in priority to any charge, mortgage, lien, trusts, security interest or encumbrance, statutory or otherwise, in favour of any Person, on or in the Property (the "Interim Receiver's Charge").

17. **THIS COURT ORDERS** that the Interim Receiver and its legal counsel shall pass its accounts from time to time, and for this purpose the accounts of the Interim Receiver and its legal counsel are hereby referred to a judge of the Commercial List of the Ontario Superior Court of Justice.

18. **THIS COURT ORDERS** that prior to the passing of its accounts, the Interim Receiver shall be at liberty from time to time to apply reasonable amounts, out of the monies in its hands, against its fees and disbursements, including legal fees and disbursements, incurred at the normal rates and charges of the Interim Receiver, or its counsel, and such amounts shall constitute advances against its remuneration and disbursements when and as approved by this Court.

LIMITATION ON THE INTERIM RECEIVER'S LIABILITY

19. **THIS COURT ORDERS** that the Interim Receiver shall incur no liability or obligation as a result of its appointment or the fulfilment of its duties in carrying out the provisions of this Order, save and except for any gross negligence or wilful misconduct on its part. Nothing in this Order shall derogate from the protections afforded the Interim Receiver by section 14.06 of the BIA or by any other applicable legislation.

GENERAL

20. **THIS COURT ORDERS** that the Interim Receiver may from time to time to apply to this Court for advice and directions in the discharge of its powers and duties hereunder.

21. **THIS COURT ORDERS** that nothing in this Order shall prevent the Interim Receiver from acting as trustee in bankruptcy of either of Fincore or 999361.

22. **THIS COURT HEREBY REQUESTS** the aid and recognition of any court, tribunal or administrative body having jurisdiction in Canada or in the United States, or elsewhere, to give effect to this Order and to assist the Interim Receiver and its agents in carrying out the terms of this Order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and provide such assistance to the Interim Receiver, as an officer of this Court, as may be necessary or desirable to give effect to this Order and to assist the Interim Receiver and its agents in carrying out the terms of this Order.

23. **THIS COURT ORDERS** that the Interim Receiver be at liberty and is hereby authorized and empowered to apply to any court, tribunal, regulatory or administrative body wherever

located, for the recognition of this Order and for assistance in carrying out the terms of this Order.

24. **THIS COURT ORDERS** that any interested party may apply to vary or amend this Order on not less than seven (7) days notice to the Interim Receiver, Fincore and 999361, and to any other party likely to be affected by the order sought or upon such other notice, if any, as this Court may order.

25. **THIS COURT ORDERS** that the Applicants are to pay weekly in advance rent in the amount of \$17,972.03 (including GST). Payments for sums due and owing up to April 15, 2005 shall be payable as follows:

- (a) in the amount of \$35,945.26 for rent payable on April 1 and 8, by close of business on Friday April 15, 2005; and
- (b) \$17,972.03 by close of business on Monday April 18, 2005 for rent due on April 15, 2005.

The next payment shall be made on April 22, 2005 and every seven days thereafter in the said amount of \$17,972.03 weekly in advance based upon a monthly rent of \$71,890.55 including GST.

26. **THIS COURT ORDERS** that if the Applicants fail at any time hereafter to pay rent and such failure shall extend beyond the close of business on the Tuesday following the rent coming due (rent being due every Friday) the lease shall be deemed terminated without further order and with no further right to claim relief from forfeiture.

27. **THIS COURT ORDERS** that Applicants are to pay the Landlord \$1,050.00 with respect to the invoice from the fire department in final satisfaction of same.

28. **THIS COURT ORDERS** that the Interim Receiver is to offer the assets for sale on the following time line:

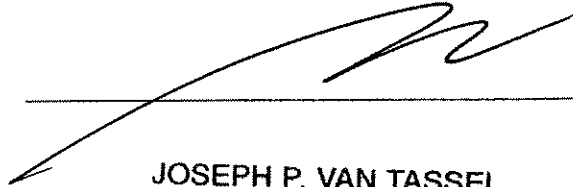
- (a) advertisements (two times in the National Edition of the Globe and Mail) during the week of April 18, 2005;
- (b) viewing of assets to be during the week of May 9, 2005;
- (c) expressions of interest to be made by May 31, 2005;
- (d) binding agreement to be entered into by June 10, 2005.

29. **THIS COURT ORDERS** that the Agreement of Purchase and Sale is to be subject to Court approval. Time lines set out above may be extended by the Interim Receiver.

30. **THIS COURT ORDERS** that the Applicants are to forthwith fund the Interim Receiver with \$10,000.00 for sales expenses. If not funded, the Interim Receiver may apply to be discharged.

31. **THIS COURT ORDERS** that in the event of a termination of the lease, the Landlord is to allow the Interim Receiver 30 days from termination to conduct an auction or sale of the assets out of the premises, provided that, after recovering its costs as Interim Receiver and as Monitor, the Interim Receiver shall pay rent for the said 30 day period out of the proceeds of sale before making any other distribution.

32. **THIS COURT ORDERS** that the Applicants shall pay to the Landlord its costs of this motion on a partial indemnity basis fixed in the amount of \$5,000.00 plus disbursements and GST, within 30 days of the date of this Order.



JOSEPH P. VAN TASSEL
REGISTRAR

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

APR 19 2005

PER/PAR:



**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 FINCORE INDUSTRIES INC.**

Court File No. 04-CL-5552

ONTARIO

**SUPERIOR COURT OF JUSTICE –
COMMERCIAL LIST**

Proceeding commenced at TORONTO

ORDER

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