



**ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)**

THE HONOURABLE) **TUESDAY, THE 31st DAY**
)
MR. JUSTICE FARLEY) **OF MAY, 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 BDO Dunwoody Limited ("BDO"), in its capacity as court-appointed interim receiver (the "Interim Receiver") of the property, assets and undertaking of Fincore Industries Inc. ("Fincore") and 999361 Ontario Inc. ("999361") (collectively, Fincore and 999361 are referred to herein as the "Applicants") appointed by an Order of this Honourable Court dated April 14, 2005 (the "Interim Receivership Order") made pursuant to section 47(1) of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended (the "BIA") and in its capacity as monitor (the "Monitor") pursuant to its appointment under the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the "CCAA") for an Order, *inter alia*, approving a sale of the Applicants' property, assets and undertaking pursuant to an Agreement of Purchase and Sale (as defined below), together with the Cross-Motion by the former landlord of

Fincore, N. Turk Investments Limited/48 Investments Limited (the "Landlord") was heard this day at 393 University Avenue, Toronto, Ontario.

ON READING the Motion Record, including the Fifth Report to the Court submitted by BDO in its capacity as Monitor and the First Report to the Court of BDO in its capacity as Interim Receiver dated May 24, 2005 (the "BDO Report"), filed, on being advised that the parties listed on Schedule "I", attached hereto, were served with the Motion Record herein and on hearing the submissions of counsel for BDO, 1542490 Ontario Inc. (the "Purchaser"), the Landlord, US Filters/Canada Inc., United Steelworkers of America and no one appearing for any other persons listed in Schedule "I" to this Order, being persons, affected or which may be affected by the relief granted herein and which have been served with the Notice of Motion and supporting materials, as appears from the affidavit of service of Anna-Marie Jones sworn May 26, 2005, filed, and on reading the Cross-Motion Record of the Landlord,

Confirmation of Service

1. **THIS COURT ORDERS** that the time for service of the Notice of Motion and the Motion Record and the Notice of Cross-Motion and Cross-Motion Record herein be and is hereby abridged and service, including the manner of service of the motion materials, be and is hereby approved and validated, so that the motion is properly returnable today, and that all parties entitled to notice of this motion have been properly served and further service upon any interested party thereof is hereby dispensed with.

Definitions

2. **THIS COURT ORDERS** that capitalized terms used but not defined in this Order, have the same meaning as ascribed thereto in the Agreement of Purchase and Sale.

Approval of the BDO Report

3. **THIS COURT ORDERS** that the BDO Report and the activities of the Monitor and the Interim Receiver, including the marketing of the property, assets and

undertaking of the Applicants (the "Marketing") described therein be and are hereby ratified and approved.

Authority of the Interim Receiver and Trustee to Enter Into and Effect the Transaction Contemplated by the Agreement of Purchase and Sale

4. **THIS COURT ORDERS** that the Interim Receiver and Trustee (as defined below) are hereby authorized, empowered and directed to complete the transactions (the "Sale") set out in the agreement of purchase and sale between the Interim Receiver and the Purchaser dated as of May 24, 2005 (the "Agreement of Purchase and Sale") and are further directed to act in accordance with the Agreement of Purchase and Sale and to take such steps, execute such documents and deliver such documents as, in the opinion of the Interim Receiver, the Trustee and the Purchaser are necessary or incidental to the performance of its obligations under the Agreement of Purchase and Sale or this Order in order to complete the transactions contemplated therein and to agree to such modifications or amendments to the Agreement of Purchase and Sale in writing that the Interim Receiver, Trustee and Purchaser may deem appropriate.

Approval of the Sale of the Purchased Assets and Agreement of Purchase and Sale

5. **THIS COURT ORDERS** that the Agreement of Purchase and Sale (including all Schedules attached thereto) and the sale of the Purchased Assets (as defined in the Agreement of Purchase and Sale, which for greater certainty does not include any assets referred to or related to a Water Services Agreement dated June 27, 2002 and First Addendum dated October 17, 2002 between US Filter Industrial Process Water Division ("US Filter") and Fincore, as further amended (the "Water Services Agreement")) to the Purchaser be and is hereby approved.

6. **THIS COURT ORDERS AND DECLARES** that the Sale, the Purchase Price, the Marketing and terms set out in the Agreement of Purchase and Sale are fair and commercially reasonable and were determined or conducted, as the case may be, in a commercially reasonable manner.

7. **THIS COURT ORDERS AND DECLARES** that the *Bulk Sales Act*, R.S.O. 1990, c. B-14 (the "Act") does not apply to the sale of the Purchased Assets pursuant to the Agreement of Purchase and Sale and the Sale can be completed without compliance with the provisions of the Act.

Authority of the Trustee in Bankruptcy

8. **THIS COURT ORDERS** that BDO, in its capacity as trustee in bankruptcy of the estates of Fincore and 999361 (the "Trustee"), be and is hereby authorized and directed to execute and deliver the Agreement of Purchase and Sale to complete the sale of the Purchased Assets to the Purchaser.

9. **THIS COURT ORDERS** that the Trustee be and is hereby granted all of the powers, authority and protection (including, without limitation, the benefit of any Court-ordered charges) granted to or in favour of the Interim Receiver or the Monitor pursuant to any previous orders of this Court in these proceedings.

10. **THIS COURT ORDERS** that any protection, entitlements, authority, duties or powers granted herein to the Trustee upon its appointment are in addition to and supplemental to the protections, entitlements, authority, duties and powers granted to the Trustee under the BIA, and at law or equity.

11. **THIS COURT ORDERS** that the Interim Receiver and the Trustee are hereby authorized and directed to fulfill the covenants and obligations of the Vendor (as defined in the Agreement of Purchase and Sale), including taking all steps necessary to conclude the transactions contemplated by the Agreement of Purchase and Sale.

No Further Notice Required With Respect to the Sale of the Purchased Assets

12. **THIS COURT ORDERS AND DECLARES** that, subject to the terms of the Vesting Order, the Interim Receiver and the Trustee are hereby authorized, empowered and directed to sell or transfer the Purchased Assets, without giving any notice of sale or any other notice to the Applicants, any secured creditors of the Applicants or any other person under any applicable personal property security

legislation (including, without limitation, the *Personal Property Security Act* (Ontario)) or otherwise.

The Applicants' Business and Employees

13. **THIS COURT ORDERS AND DECLARES** that the employment of any employees of the Applicants whose employment was not previously terminated, be and is hereby terminated.

14. **THIS COURT ORDERS** that the business and undertaking of the Applicants has not been and shall not be deemed to have been, nor treated as having been, sold or transferred, by the granting of this Order or the sale of the Moveable Assets.

Premises and Possession

15. **THIS COURT ORDERS** that nothing herein contained shall require the Purchaser to take care, ownership, control, charge, occupation, possession or management (separately and/or collectively, "Possession"), or require or obligate the Purchaser to occupy or to take control, care, charge, occupation, possession or management of any of the property which may be environmentally contaminated, or a pollutant or a contaminant, or cause or contribute to a spill, discharge, release or deposit of a substance contrary to any federal, provincial or other legislation, statute, regulation or rule of law or equity 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.

Termination of CCAA Proceedings and Amendments to April 14, 2005 Order

16. **THIS COURT ORDERS** that the CCAA proceedings of Fincore and 999361 be and are hereby terminated.

17. **THIS COURT ORDERS** that the order of April 14, 2005 in these proceedings be and is hereby amended *nunc pro tunc* to relieve BDO from its duties and obligations arising with respect to paragraph 28 of such order.

General

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

- (a) the pendency of these proceedings; or
- (b) the pendency of any other proceeding pursuant to the BIA, including any applications for bankruptcy orders hereafter issued pursuant to the BIA in respect of the Applicants, any bankruptcy order issued pursuant to any such applications, any assignments in bankruptcy filed or deemed to be filed by the Applicants, or the provisions of any federal or provincial statute,

neither the Agreement of Purchase and Sale, nor any of the Transactions contemplated therein or by this Order will be void, voidable or opposable by creditors or claimants, nor do the Agreement of Purchase and Sale or Transactions constitute nor shall they be deemed to be settlements, fraudulent preferences, assignments, fraudulent conveyances or other reviewable transactions under the BIA or any other applicable federal or provincial legislation, nor do they constitute conduct meriting an oppression remedy, and each of such Agreement of Purchase and Sale and Transactions shall be binding on the Trustee as if it were the Applicants.

19. **THIS COURT ORDERS** that the Wheels (as defined below) located at the premises municipally known as 10 Melford Drive, Units 1 to and including 12, in Scarborough, Ontario (the "Premises") belong to TSW Manufacturing (PTY) Ltd. (the "Wheels") and that neither Fincore and/or 999361 and/or BDO and/or the Purchaser claim any interest in the Wheels or are aware of any third party having any interest in the Wheels.

20. **THIS COURT ORDERS** that TSW Manufacturing (PTY) Ltd. shall remove the Wheels from the Premises on or before June 13, 2005;

21. **THIS COURT ORDERS** that Fincore, 999361, Durable G.M. Products Inc., Sheldon Gross and Deborah Gross shall produce to the Landlord within sixty (60) days from the date of this Order a written list of any and all assets located at the Premises which do not belong to Fincore and/or 999361, and/or which are not being sold to the Purchaser, together with the names and contact information for the owners of all such assets.
22. **THIS COURT ORDERS** that BDO shall produce to the Landlord within sixty (60) days from the date of this Order a written list of any and all assets located at the Premises which do not belong to Fincore and/or 999361, and/or which are not being sold to the Purchaser together with the names and contact information for the owners of all such assets, only to the extent of BDO's knowledge, information and belief and without any requirement for BDO to do any inventory or to conduct any enquiries to supplement any knowledge that it may have in this matter.
23. **THIS COURT ORDERS** that BDO shall include in its mailing as Trustee a notice to be provided by the Landlord (the "Notice") concerning its intention to remove and dispose of unclaimed goods, and failing the removal of the assets from the Premises by any party following the mailing of the Notice provided by the Landlord, the Landlord shall be entitled to dispose of such assets in any manner it sees fit without any liability to any party after the expiration of sixty (60) days from the date of this Order or the provision by BDO of the list referred to in paragraph 22 above, which ever first occurs.
24. **THIS COURT ORDERS** that in the event the lists referred to in paragraphs 21 and 22 above are not provided within sixty (60) days, the Landlord shall be entitled to advertise the assets in *The Toronto Star* for one (1) week, and, failing the removal of the assets from the Premises by any party within ten (10) days from the last date of the advertisement appearing in said newspaper, the Landlord shall be entitled to dispose of such assets in any manner it sees fit without any liability to any party.
25. **THIS COURT ORDERS** that the assets, equipment and components referred to or related to the Water Services Agreement between US Filter and Fincore (the "Reverse Osmosis Unit") located at the Premises belong to US Filter and none of

Fincore and/or 999361 and/or BDO in its capacity as Monitor, Interim Receiver or Trustee of Fincore and/or 999361 or in its personal capacity and/or the Purchaser claim any interest in, or are aware of any third party having or claiming any interest in the Reverse Osmosis Unit.

26. **THIS COURT ORDERS** that the Landlord shall provide reasonable access commencing June 6, 2005 to US Filter during normal business hours to maintain, and commencing June 14, 2005, to remove the Reverse Osmosis Unit, including the ability to disconnect the Reverse Osmosis Unit from the machine or structure to which it is attached and including the ability to disconnect power and water to the Reverse Osmosis Unit as long as US Filter by so doing does not interfere with the possession any tenants to the building or the access of the Purchaser to the building (pursuant to its access agreement) and as long as no damage is done by US Filter to the Premises or any of the machinery and equipment contained therein and provided power and water supply to the Premises or the building is not interrupted as a result of such removal or disconnection of the Reverse Osmosis Unit.



JOSEPH P. VAN TASSEL
REGISTRAR

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

MAY 31 2005

PER/PAR



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**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.**

Court File No. 04-CL-5552

**ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)**

Proceeding commenced at TORONTO

ORDER

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