

SEP-15-04 14:33 FROM-FINCORE INDUSTRIES INC,

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T-674 P.02/15 F-384

09/15/2004 14:13 FAX 4163651719

LANG MICHENER LLP

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Court File No. 04-CL-5552

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

THE HONOURABLE MADAM

)

WEDNESDAY, THE 15TH DAY

JUSTICE PEPALL

)

DAY OF SEPTEMBER, 2004

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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.**

INITIAL ORDER

THIS APPLICATION made by Fincore Industries Inc. (hereinafter referred to as the "Applicant") for an Order substantially in the form attached as Schedule "A" to the Notice of Application herein was heard this day at 393 University Avenue, Toronto, Ontario.

ON READING the Notice of Application, the Affidavit of Sheldon Gross sworn September , 2004, and the consent of BDO Dunwoody Limited ("BDO"), as filed, as proposed monitor of the Applicant (the "Monitor"), as required by the *Companies' Creditors Arrangement Act* (the "CCAA") and on notice to counsel for the Monitor, and on hearing the submissions of counsel for the Applicant and the Monitor and upon being advised that no other person who might be interested in these proceedings was served with the Notice of Application herein.

SERVICE

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

APPLICATION OF THE CCAA

2. **THIS COURT ORDERS AND DECLARES** that the Applicant is a company to which the CCAA applies.

PLAN OF ARRANGEMENT

3. **THIS COURT ORDERS** that the Applicant is hereby authorized and permitted to file with this Court a plan of compromise or arrangement regarding the Applicant under the CCAA (the "Plan") on or before the expiry of the Stay Period (as subsequently defined) or such other date as may be ordered by this Court.

POSSESSION OF PROPERTY AND OPERATIONS

4. **THIS COURT ORDERS** that the Applicant shall remain in possession and control of its properties, assets and undertakings (collectively the "Property"), and shall continue to carry on business in a manner consistent with the preservation of the Applicant's businesses (the "Business") and the Property and shall be authorized and empowered to continue to retain and employ the agents, advisors, contractors, servants, solicitors and other assistants, consultants and

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valuators currently in its employ, with liberty to retain such further agents, advisors, contractors, servants, solicitors, assistants, consultants and valuers including, without limitation, those who were formerly, are now or may in the future be retained, employed or paid by the Applicant or any person, firm, corporation or other entity related to or affiliated with the Applicant, as it deems reasonably necessary or desirable in the ordinary course of business or for the purpose of the Plan or the carrying out of the terms of this Order, or otherwise subject to the approval of this Court.

5. **THIS COURT ORDERS** that, after the date hereof and except as otherwise provided to the contrary herein, the Applicant shall be entitled, but not required to pay all reasonable expenses incurred by the Applicant in carrying on the Business in the ordinary course both prior to and after this Order and in carrying out the provisions of this Order, which expenses, pending any further order of this Court, include, without limitation, payment:

- (a) of all expenses and capital expenditures reasonably necessary for the preservation of the Property or the Business including, without limitation, payments on account of insurance, maintenance and security;
- (b) of all outstanding and future wages, salaries, employee and pension benefits, vacation pay and retention payments accruing due to employees;
- (c) of goods or services supplied to the Applicant, including payments in respect of outstanding documentary credits or deposits; and
- (d) of all outstanding and future premiums on directors and officers' liability and other insurance.

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6. **THIS COURT ORDERS** that the Applicant shall remit or pay, in accordance with legal requirements:

- (a) any statutory deemed trust amounts in favour of the Crown in Right of Canada or of any province thereof or any other taxation authority which are required to be deducted from employees' wages, including, without limitation, amounts in respect of employment insurance, Canada Pension Plan and income taxes;
- (b) amounts accruing and payable by the Applicant in respect of employment insurance, Canada Pension Plan, workers compensation, employer health taxes and similar obligations of any jurisdiction with respect to employees;
- (c) all goods and services taxes or other applicable sales taxes payable by the Applicant or its customers in connection with the sale of goods and services by the Applicant to such customers; and
- (d) any amount payable to the Crown in Right of Canada or of any province thereof or any political subdivision thereof or any other taxation authority in respect of municipal realty or other taxes, assessments or levies of any nature or kind which are entitled at law to be paid in priority to claims of secured creditors and which are attributable to or in respect of the carrying on of the Business by the Applicant.

STAY OF PROCEEDINGS

7. **THIS COURT ORDERS** that until and including the date that is thirty (30) days from the date of this Order or such later date as may be ordered by this Court (the "Stay Period"), no

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suit, action, enforcement process, extra-judicial proceeding or other proceeding ("Proceeding") against or in respect of the Applicant or any Property, wheresoever located, and whether held by the Applicant in whole or in part, directly or indirectly, as principal or nominee, beneficially or otherwise (the "Applicant's Property"), shall be commenced and any and all Proceedings against or in respect of the Applicant or the Applicant's Property already commenced be and are hereby stayed and suspended, including in each case, without limiting the generality of the foregoing, any Proceedings with respect to any guarantees, securities, instruments, debentures, notes or bonds issued by or on behalf of the Applicant.

8. **THIS COURT ORDERS** that during the Stay Period, the right of any person, firm, corporation, governmental authority or other entity to assert, enforce or exercise any right (including, without limitation, rights under subsection 224(1.2) of the *Income Tax Act* (Canada) or its provincial equivalents, any right of dilution, registration, attornment, encumbrance, buy-out, divestiture, repudiation, rescission, forced sale, acceleration, set-off, repossession, right of return of product, distress, conversion, possession, termination, suspension, modification or cancellation or right to revoke any qualification or registration), option or remedy arising by law, by virtue of any agreement or by any other means (i) against the Applicant or the Applicant's Property; or (ii) as a result of any default or non-performance by the Applicant, the making or filing of these proceedings or any allegation contained in these proceedings, be and is hereby restrained.

9. **THIS COURT ORDERS** that during the Stay Period, no person, firm, corporation, governmental authority, or other entity shall, without leave, discontinue, fail to renew, alter, interfere with or terminate any right, contract, arrangement, agreement, licence or permit (i) in favour of or held by the Applicant or the Applicant's Property; or (ii) as a result of any default or

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non-performance by the Applicant, the making or filing of these proceedings or any allegation contained in these proceedings.

10. **THIS COURT ORDERS** that during the Stay Period, all persons, firms, corporations, governmental authorities, or other entities having written or oral agreements with the Applicant or statutory or regulatory mandates for the supply of goods and/or services, including without limiting the generality of the foregoing, all computer software, communication and other data services, banking services, payroll servicing, insurance, transportation services, utility, including without limitation oil, gas or electricity, or other required services, by or to the Applicant or relating to any of the Applicant's Property are hereby restrained until further order of this Court from discontinuing, failing to renew on reasonable terms, altering, interfering with or terminating the supply of such goods or services so long as the normal prices or charges for such goods and services received after the date of this Order are paid in accordance with present payment practices, or as may be hereafter negotiated from time to time.

11. **THIS COURT ORDERS** that the landlord of any premises leased, subleased or occupied by the Applicant pursuant to any oral or written agreement are hereby specifically restrained from taking any steps to terminate any lease, sublease, occupancy or other agreement to which the Applicant is a party, whether by notice of termination or otherwise, or to distrain on any Property or to terminate any ancillary agreement or arrangement, without the prior written consent of the Applicant or leave of this Court first being obtained.

12. **THIS COURT ORDERS** that during the Stay Period no action may be commenced or continued against any director of the Applicant with respect to any claim that arose before the date hereof and that relates to any obligations of the Applicant whereby the director is alleged under any law to be liable in his or her capacity as director for the payment or performance of

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such obligations, until the Plan is sanctioned by the Court or is refused by the creditors or the Court.

13. **THIS COURT ORDERS** that notwithstanding anything else contained herein: (i) no creditor of the Applicant shall be under any obligation after the making of this Order to advance or re-advance any monies or otherwise extend any credit to the Applicant; and (ii) the Applicant may, by written consent of its counsel of record herein, agree to waive any of the protections provided to it herein.

APPOINTMENT OF MONITOR

14. **THIS COURT ORDERS** that BDO Dunwoody Limited (the "Monitor") be and is hereby appointed pursuant to the CCAA as the Monitor, an officer of the Court, to monitor the business and affairs of the Applicant with the powers and obligations hereinafter set forth and that the Applicant and its shareholders, officers, directors, advisors, employees, servants, agents and representatives shall co-operate fully with the Monitor in the exercise of its powers and discharge of its obligations. Without limiting the generality of the foregoing, each of the foregoing persons and all other persons having notice of this Order shall forthwith provide the Monitor with unrestricted access to all of the Property, including, without limitation, the premises, books, records, data (including data in electronic form) and all other financial documents of the Applicant as the Monitor requires to exercise its powers and discharge its obligations under this Order.

15. **THIS COURT ORDERS** that the Monitor, in addition to its prescribed rights and obligations under the CCAA and this Order, is hereby directed, empowered and authorized to:

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- (a) monitor the business, financial affairs and operations of the Applicant, including all receipts and disbursements;
- (b) assist the Applicant, to the extent required by the Applicant and as provided under this Order, with respect to the mailing of notices and the holding and administering of any meetings for voting on the Plan, and to act as chair of any such meetings;
- (c) assist the Applicant in the restructuring process and with the development of the Plan and with any amendments to and implementation of the Plan, including, without limitation, by way of participating to the extent it deems appropriate in any discussions and negotiations with creditors or other persons relating to the Applicant;
- (d) engage independent legal counsel to advise it regarding the exercise of the Monitor's powers and the discharge of its obligations under the CCAA and this Order and also to retain and utilize the services of entities related to or affiliated with the Monitor and to engage such other agents as the Monitor deems necessary respecting the exercise of its powers and performance of its obligations under the CCAA and this Order;
- (e) provide such information regarding the Applicant as is reasonably requested by creditors and approved by the Applicant; provided that the Monitor shall not have any responsibility or liability with respect to any information it shall provide;

- (f) report to this Court as the Monitor deems appropriate, or as this Court directs in respect of the Plan, the restructuring process or the Business or in respect of such other matters as may be relevant to these proceedings;
- (g) assist the Applicant with the dissemination of financial or other information which may be used in this proceeding and in the preparation of the Applicant's cash flow statements and other financial reporting; and
- (h) perform such other duties as are required by this Order, the restructuring, the Plan or by this Court from time to time.

16. **THIS COURT ORDERS** that the Monitor shall not take possession of the Property and shall take no part whatsoever in the management or supervision of the management of the Business and shall not, by fulfilling its obligations hereunder, be deemed to have occupied, have taken or maintained possession or control of the Business or Property, or any part thereof.

17. **THIS COURT ORDERS** that the Monitor shall be paid its reasonable fees and disbursements (including the fees and disbursements of any counsel retained by the Monitor on a substantial indemnity basis), and counsel to the Applicant shall be paid their reasonable fees and disbursements on a substantial indemnity basis, by the Applicant as part of the cost of these proceedings and the Plan. The Applicant is hereby authorized and directed to pay the accounts of the Monitor and its counsel on a periodic basis. In addition, the Applicant is authorized to pay each of the Monitor and its counsel and counsel to the Applicant such retainers as may be agreed upon to be held by the Monitor and such counsel as security for payment of their fees and disbursements outstanding from time to time including, without limitation, relating and incidental to this Application. To secure the payment of such fees and disbursements, including applicable goods and services taxes, the Monitor, its counsel, and counsel for the Applicant shall

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be entitled to the benefit of and are hereby granted a first charge over the Property (the "Monitor's Charge"), and the Monitor's Charge shall rank in priority over all present and future charges, encumbrances and security in, against or in respect of the Property.

18. **THIS COURT ORDERS** that the fees and expenses of the Monitor and any other amounts paid pursuant to paragraph 17 on an interim basis shall be subject to any final assessment as may be ordered by this Court.

19. **THIS COURT ORDERS** that, in addition to the rights and protections afforded to the Monitor under the CCAA or as an officer of the Court, the Monitor shall incur no liability or obligation as a result of its appointment or the fulfilment of its duties in the carrying out of the provisions of this Order or for any act or omission, any exercise of its power, including the preparation of its reports, or the discharge of its obligations under the CCAA or any further order of this Court, save and except for gross negligence or wilful misconduct on its part, and no action, application or other proceeding shall be commenced against the Monitor as a result of or relating in any way to its appointment as Monitor, the fulfilment of its duties as Monitor, or the carrying out of any of the orders of this Court, except with prior leave of this Court on 7 days notice to the Monitor, and upon further order securing, as security for costs, the solicitor and his own client costs of the Monitor in connection with any such action, application or proceeding.

20. **THIS COURT ORDERS AND DECLARES** that the appointment of the Monitor shall not constitute the Monitor to be nor shall the Monitor be an employer or a successor employer or payor within the meaning of any federal, provincial, municipal or other legislation governing employment, labour relations, pay equity, employment equity, labour standards, human rights, or pension benefits or health and safety or any other statute, regulation, guideline or rule of law or equity for any purpose whatsoever and, further, (i) that nothing herein contained shall vest in the

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Monitor and the Monitor shall not be, nor be deemed to be an owner or in occupation, possession, charge, management or control of the Property or of the Business and (ii) that nothing in this Order shall obligate or require the Monitor to occupy or take control, care, charge, possession or management of a Property which may be environmentally contaminated or be a pollutant, or a contaminant, or cause or contribute to a spill, discharge or release of substance, contrary to or pursuant to any legislation enacted for the protection of the environment, the regulations thereunder or any other statute, regulation, guideline or rule of law or equity under any federal, provincial, municipal or other jurisdiction for any purpose whatsoever.

21. **THIS COURT ORDERS** that the appointment of the Monitor shall not disqualify it from being appointed receiver, interim receiver, or receiver and manager of the Applicant or as trustee in bankruptcy of the Applicant pursuant to any security agreement or pursuant to any further Order of this Court should the Monitor consent to such appointment.

POWER TO BORROW

22. **THIS COURT ORDERS** that, notwithstanding any other provision of this Order, the Applicant be and is hereby authorized to borrow, repay and reborrow from Sheldon Gross and Deborah Gross such amounts from time to time as the Applicant may consider necessary or desirable in order to fund ongoing operations of the Business, up to the principal sum of \$250,000.00, and that any such amounts borrowed or reborrowed by the Applicant shall be secured by the existing financing arrangements between the Applicant and Sheldon Gross and Deborah Gross, or either of them.

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MISCELLANEOUS

23. **THIS COURT ORDERS** that the Applicant and, if requested by the Applicant, the Monitor shall, forthwith upon the making of this Order, send a letter to all known creditors of the Applicant having claims in excess of \$1,000.00 and third parties having direct dealings with the Applicant advising such parties of the application filed by the Applicant, the general terms of the Order and the sources whereby the creditors may obtain additional information about the application made by the Applicant.

24. **THIS COURT ORDERS** that the Applicant or the Monitor may, from time to time, apply to this Court for directions in the discharge of the Monitor's powers and duties hereunder or in respect of the proper execution of this Order.

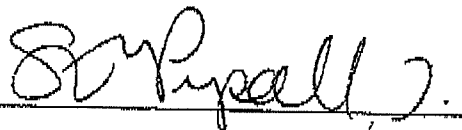
25. **THIS COURT ORDERS** that, notwithstanding any other provision of this Order, any interested person may apply to this Court to vary or rescind this Order or seek other relief upon seven (7) days' notice to the Applicant and the Monitor and to any other party likely to be affected by the order sought or upon such other notice, if any, as this Court may order.

26. **THIS COURT ORDERS** that, pursuant to clause 7(3)(c) of the *Personal Information and Electronic Documents Act*, S.C. 2000, c.5, the Applicant is permitted in the course of this proceeding to disclose personal information of identifiable individuals in the Applicant's possession or control to stakeholders or prospective investors, financiers, buyers or strategic partners and to their advisers (individually, a "Third Party"), to the extent desirable or required to negotiate or complete the preparation or implementation of the Plan or a transaction in furtherance thereof, provided that the persons to whom such personal information is disclosed enter into confidentiality agreements with the Applicant binding them to maintain and protect the

privacy of such information and to limit the use of such information to the extent necessary to complete the transaction then under negotiation. Upon the completion of the use of personal information shall be returned to the Applicant or destroyed. In the event that a Third Party requires information as part of the preparation or implementation of the Plan or a transaction in furtherance thereof, such Third Party shall be entitled to continue to use the personal information in a manner which is in all material respects identical to the prior use of such personal information by the Applicant.

27. **THIS COURT ORDERS AND REQUESTS** the aid and recognition of any court or any judicial, regulatory or administrative body in any province or territory of Canada (including the assistance of any court in Canada pursuant to Section 17 of the CCAA) and the Federal Court of Canada and any judicial, regulatory or administrative tribunal or other court constituted pursuant to the Parliament of Canada or the legislature of any province and any court or any judicial, regulatory or administrative body of the United States and the states or other subdivisions of the United States and of any other nation or state to act in aid of and to be complementary to this Court in carrying out the terms of this Order.

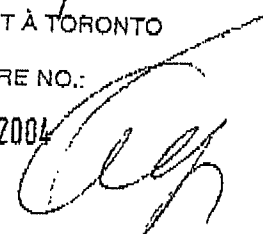
28. **THIS COURT ORDERS AND DECLARES** that this Order shall be effective as of 12:01 a.m. on the date hereof and that any rights exercised or purported to be exercised by any person on this date which would be contrary to the terms of this Order are of no force or effect and are null and void.



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ON / BOOK NO:
LE / DANS LE REGISTRE NO.:

SEP 15 2004

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.

Court File No. 04-CL-5552

ONTARIO
SUPERIOR COURT OF JUSTICE -
COMMERCIAL LIST

Proceeding commenced at TORONTO

ORDER

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