

District: Ontario
Division No. 09-Toronto
Court No. 32-2683371
Estate No 32-2683371

**ONTARIO
SUPERIOR COURT OF JUSTICE
(Commercial List)**

THE HONOURABLE MR.) WEDNESDAY, THE 25TH
)
JUSTICE KOEHNEN) DAY OF NOVEMBER, 2020

**IN THE MATTER OF THE NOTICE OF INTENTION TO MAKE A PROPOSAL OF
WELLAND FORGE CORP.**

**ORDER
(Sale of Property to Related Party)**

THIS MOTION, made by Welland Forge Corp. ("**Welland**") for an Order (i) approving the sale (the "**Transaction**") of certain assets by Welland to IMT Partnership (the "**Purchaser**"), a related company, pursuant to a bill of sale appended to the Affidavit of Shawn Parnham dated November 19, 2020 (the "**Parnham Affidavit**"), and vesting in the Purchaser all of Welland's right, title and interest in and to the assets described in the bill of sale ("**Purchased Assets**"); (ii) granting an administration charge; (iii) approving the First Report of the Proposal Trustee, dated November 19, 2020 (the "**First Report**"); and (iv) granting a sealing order, was heard this day by Zoom Video Conference Call.

ON READING the First Report, the Parnham Affidavit, and on hearing the submissions of counsel for Welland, counsel for the Proposal Trustee, counsel for the Secured Creditor (TD Bank), Counsel for Unifor Local 199, and a representative of IMT Partnership, no one appearing for any other person, although properly served as appears from the affidavit of service of Laura

Hughes sworn November 19, 2020 and the affidavit of service of Candice Greenley sworn November 19, 2020 both filed November 19, 2020:

SERVICE

1. **THIS COURT ORDERS** that the time for service of the Notice of Motion and the Motion Record is hereby abridged and validated so that this Motion is properly returnable today and hereby dispense with further service thereof.

SALE APPROVAL

2. **THIS COURT ORDERS AND DECLARES** that the Transaction is hereby approved, and Welland is hereby authorized and directed to take such additional steps and execute such additional documents as may be necessary or desirable for the completion of the Transaction and for the conveyance of the Purchased Assets to the Purchaser.

3. **THIS COURT ORDERS AND DECLARES** that all of Welland's right, title, and interest in and to the Purchased Assets described in the Bill of Sale (appended Schedule "A" hereto) shall vest absolutely in the Purchaser, free and clear of and from any and all security interests (whether contractual, statutory, or otherwise), hypothecs, mortgages, trusts, or deemed trusts (whether contractual, statutory, or otherwise), liens, executions, levies, charges, or other financial monetary claims, whether or not they have attached or been perfected, registered or filed and whether they are secured or unsecured or otherwise (collectively, the "**Claims**") including, without limiting the generality of the forgoing all charges, security interests or claims evidenced by registrations pursuant to the *Personal Property Security Act* (Ontario) or any other personal property registry system, but excluding all Claims in favour of The Toronto-Dominion Bank in its capacity as administrative agent ("**Agent**") on its own behalf and on behalf of certain other lenders (collectively, the "**Lenders**") under that certain Credit Agreement dated as of February 19, 2019 (as amended) among, *inter alios*, the Agent, the Lenders, G&J Capital Inc. (as borrower) and Welland (as a guarantor) (the "**TD Bank Claims**").

4. **THIS COURT ORDERS AND DECLARES** that all the encumbrances (excluding the TD Bank Claims) affecting or related to the Purchased Assets are hereby expunged and discharged as against the Purchased Assets.

5. **THIS COURT ORDERS AND DECLARES** that for the purposes of determining the nature and priority of the Claims, the net proceeds from the sale of the Purchased Assets shall stand in the place and stead of the Purchased Assets, and all claims and encumbrances (including, for certainty, the TD Bank Claims) shall attach to the net proceeds from the sale of the Purchased Assets with the same priority as they had with respect to the Purchased Assets immediately prior to the sale, as if the Purchased Assets had not been sold and remained in the possession or control of the person having that possession or control immediately prior to the sale.

6. **THIS COURT ORDERS AND DECLARES** that notwithstanding:

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

the vesting of the Purchased Assets in the Purchaser pursuant to this Order shall be binding on any trustee in bankruptcy that may be appointed in respect of Welland and shall not be void or voidable by creditors of Welland, nor shall it constitute nor be deemed to be a fraudulent preference, assignment, fraudulent conveyance, transfer at under value or other reviewable transaction under the BIA or any other applicable Federal or Provincial legislation, nor shall it constitute an oppressive or unfairly prejudicial conduct pursuant to any applicable Federal or Provincial Legislation.

ADMINISTRATION CHARGE

7. **THIS COURT ORDERS AND DECLARES** that the Proposal Trustee, counsel for the Proposal Trustee, and Welland's counsel (collectively, the “**Professional Group**”) shall be paid their reasonable fees and disbursements, in each case at their standard rates and charges, by Welland as part of the costs of these proceedings, both before and after the making of this Order in respect of these proceedings and related matters. Welland is hereby authorized to pay the accounts of the Professional Group on a monthly basis.

8. **THIS COURT ORDERS** that the Professional Group shall pass their accounts from time to time, and for this purpose, the accounts of the Professional Group are hereby referred to a judge of the Ontario Superior Court of Justice (Commercial List) at Toronto, Ontario.

9. **THIS COURT ORDERS** that the Professional Group shall be entitled to the benefit of and are hereby granted a charge (the "**Administration Charge**") on the current and future assets, undertaking and property of Welland, of every nature and kind whatsoever (including all real and personal property), and wherever situate including all proceeds thereof (the "**Property**"), which charge shall not exceed an aggregate amount of \$200,000 as security for their professional fees and disbursements incurred at the standard rates and charges of the Professional Group, both before and after the making of this Order with respect to and incidental to these proceedings, including the reasonable fees and disbursements of the Professional Group incurred in preparation of the filing of Welland's proposal pursuant to section 50 of the BIA. The Administration Charge shall have the priority set out in paragraph 11 hereof.

10. **THIS COURT ORDERS AND DECLARES** that the filing, registration or perfection of the Administration Charge shall not be required, and the Administration Charge shall be valid and enforceable for all purposes, including as against any right, title, or interest filed, registered, recorded or perfected subsequent to the Administration Charge coming into existence, notwithstanding any such failure to refile, register, record, or perfect.

11. **THIS COURT ORDERS AND DECLARES** that the Administration Charge shall constitute a charge on the Property and such Administration Charge shall rank in priority to all other security interests, trusts, liens, charges and encumbrances, claims of secured creditors, statutory or otherwise (collectively "**Encumbrances**") in favour of any individual, firm, corporation, governmental body or agency, or any other entities (all of the foregoing, collectively being "**Persons**" and each a "**Person**").

12. **THIS COURT ORDERS AND DECLARES** that except by further order of the Court, Welland shall not grant any Encumbrances over any Property that rank in priority to, or *pari passu*, with the Administration Charge, unless Welland also obtains the prior written consent of each member of the Professional Group entitled to the benefit of the Administration Charge.

13. **THIS COURT ORDERS** that the Administration Charge shall not be rendered invalid or unenforceable and the rights and remedies of the Professional Group shall not otherwise be limited or impaired in anyway by (a) the pendency of these proceedings and the declarations of insolvency made herein; (b) any application(s) for bankruptcy order(s) issued pursuant to the BIA, or any bankruptcy order pursuant to such applications; (c) the filing of any assignments for the general benefit of creditors made pursuant to the BIA; (d) the provisions of any federal or provincial statutes; or (e) any negative covenants, prohibitions or other similar provisions with respect to borrowings, incurring debt or the creation of Encumbrances, contained in any existing loan documents, lease, sublease, offer to lease or other agreement (collectively, an “**Agreement**”) that bind Welland, and notwithstanding any provision to the contrary to any Agreement

- (a) the creation of the Administration Charge shall not create or be deemed to constitute a breach by Welland of any Agreement to which Welland is a party;
- (b) none of the Professional Group shall have any liability to any Person whatsoever as a result of any breach of any Agreement caused by or resulting from the creation of the Administration Charge; and
- (c) the payments made by Welland pursuant to this Order and the granting of the Administration Charge do not and will constitute preferences, fraudulent conveyances, transfers at undervalue, oppressive conduct, or other challengeable or voidable transactions under any applicable law.

SERVICE

14. **THIS COURT ORDERS AND DECLARES** that E-Service Protocol of the Commercial List (the "**Protocol**") is approved and adopted by reference herein and, in this proceeding, the service of documents made in accordance with the Protocol (which can be found on the Commercial List website at <http://www.ontariocourts.ca/scj/practice/practice-directions/toronto/eservice-commercial>) shall be valid and effective service. Subject to Rule 17.05 this Order shall constitute an order for substituted service pursuant to Rule 16.04 of the *Rules of Civil Procedure*. Subject to Rules 3.01(d) of the *Rules of Civil Procedure* and

paragraph 21 of the Protocol, service of documents in accordance with the Protocol will be effective on transmission.

15. **THIS COURT FURTHER ORDERS** that a case website shall be established in accordance with the Protocol with the following URL: <https://www.bdo.ca/en-ca/extranets/wellandforge/>.

16. **THIS COURT ORDERS** that if the service or distribution of documents in accordance with the Protocol is not practicable, Welland and the Proposal Trustee and their counsel are at liberty to serve or distribute this Order or any other materials in these proceedings, and notice or other correspondence, by forwarding true copies by pre-paid ordinary mail, courier, personal delivery, or facsimile transmission to Welland's creditors or other interested parties at their respective address as last shown in Welland's records, and that any such service or distribution by courier, personal deliver, or facsimile transmission shall be deemed to be received on the next business day following the date of forwarding thereof, or if sent by ordinarily mail, on the third business day after mailing.

17. **THIS COURT ORDERS** that Welland and the Proposal Trustee and their respective counsel are at liberty to serve or distribute this Order, and other materials and orders as may be reasonably required in these proceedings, including any notices, or other correspondence, by forwarding true copies thereof by electronic message to Welland's creditors or other interested parties and their advisors. For greater certainty, any such distribution or service shall be deemed to be in satisfaction of a legal or judicial obligation, and notice requirements within the meaning of clause 3(c) of the *Electronic Commerce Protection Regulations*, Reg. 81000-2-175 (SOR/DORS).

APPROVAL OF PROPOSAL TRUSTEE REPORT

18. **THIS COURT ORDERS** that the First Report be and is hereby approved.

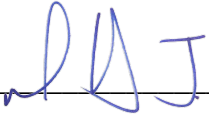
SEALING ORDER

19. **THIS COURT ORDERS** that Confidential Appendix 'I' to the First Report is hereby sealed and shall not for part of the public record, but rather shall be placed, separate and apart from all other contents of the Court File, in a sealed envelope attached to a notice that sets out

the title of proceedings and a statement that the contents are subject to a sealing order and shall only be opened upon further order of the Court.

AID AND ASSISTANCE

20. **THIS COURT REQUESTS** the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or in the United States to give effect to this Order and to assist the Proposal Trustee 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 to provide such assistance to the Proposal Trustee, as an officer of this Court, as may be necessary or desirable to give effect to this Order or to assist the Proposal Trustee and its agents in carrying out the terms of this Order.

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Schedule "A"



139 Centre Street,
P.O. Box 216
Welland, On L3B 5P4
Phone: (905) 732-7536

2020-11-16

BILL of SALE

Assets sold to:

IMT Partnership (PC Forge)
837 Reuter Road
Port Colborne, ON
L3K 5V7

Forging cell 705

Erie 4000 metric ton press s/n 990380
Blow, 300 ton trim press s/n H559
Elevator dumper
Prohlich 65" vibratory Billet Feeder
Cross feed conveyer
Raydyne billet furnace
Outfeed conveyer

Upsetter cell 804

National 4" upsetter s/n 14467
Ajax induction furnace
Raw material dumper
Outfeed conveyors
Jib crane with hoist

Miller, 200 amp tig welder, syncrowave 200

All assets sold as is.

Lot price of \$200,000

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ONTARIO
SUPERIOR COURT OF JUSTICE
(Commercial List)

Proceeding commenced at Toronto

ORDER

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