

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

IN THE MATTER OF Section 101 of the Courts of Justice Act, R.S.O. 1990 c.C43, as amended, and in the matter of Section 243(1) of the Bankruptcy and Insolvency Act, R.S.C. 1985, c. B-3, as amended

BETWEEN:

NATIONAL BANK OF CANADA

Applicant

and

**NIMBUS ENVIRONMENTAL SOLUTIONS INC., OAKDALE ENTERPRISES INC.,
NIMBUS WATER SYSTEMS INC., 365 PRO INSTALLATION INC.,
2242462 ONTARIO LIMITED AND WATER FILTER CART INC.**

Respondents

NOTICE OF MOTION

TAKE NOTICE THAT Peter BOZZO, on his own account and as director of the Respondent corporations, for the corporations, will bring a motion to be heard virtually on the return of the motion of BDO CANADA LIMITED to approve the sale of the assets of the Respondent corporations to the Honourable Justice Conway on Tuesday, November 9, 2021, at 10:00 a.m. (Eastern Time), or as soon after that time as the motion can be heard, by Zoom videoconference due to the COVID-19 pandemic.

PROPOSED METHOD OF HEARING: This motion is to be heard via Zoom videoconference, the details of which are attached at Schedule "A" to the Notice of Motion delivered by BDO CANADA LIMITED.

THIS MOTION IS FOR:

1. An order:

- a.) abridging time for notice and service hereof;

- b.) adding Peter BOZZO to the within Application as an intervenor;
- c.) directing the production of the affidants of BDO CANADA LIMITED namely Leanne WILLIAMS and Matthew MARCHAND be produced for cross examination;
- d.) affording Peter BOZZO four (4) days to serve additional material as evidence herein;
- e.) adjourning the motion to approve the sale and grant a vesting order;
- f.) reserving the costs of this motion to the Court hearing the motion on the merits; and
- g.) such other relief as counsel may advise.

THE GROUNDS FOR THE MOTION ARE:

2. The sale of the assets of the Respondent corporations at the Stalking Horse bid price constitutes an improvident sale;
3. There is available to the receiver a bid to purchase the assets of the Respondent corporations at a price more or less Five Million Dollars (\$5,000,000) greater than the Stalking Horse price;
4. The receiver did not abide by its own SISF procedures in offering the assets of the Respondent corporations for sale;
5. It would be unconscionable to complete a sale of the assets of the Respondent corporations for more or less \$5 Million less than the available sale price of \$18.1Million to the prejudice of creditors and shareholders of less priority than the Applicant.

THE MOVING PARTY WILL RELY ON THE FOLLOWING EVIDENCE

6. The Affidavit of Peter BOZZO Sworn November 9, 2021; and
7. The Affidavit of Antonio MAINIERI Sworn November 9, 2021.

Date: November 8, 2021

**GILMOUR BARRISTERS
PROFESSIONAL CORPORATION**
Barristers and Solicitors
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Peter BOZZO

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AND TO:

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Nick Desmarais,

Managing Director, Legal Services

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AND TO:

**HER MAJESTY THE QUEEN IN THE RIGHT OF THE
PROVINCE OF BRITISH COLUMBIA**

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Victoria, BC V8T 4K6

c/o Sonja Shaw (Receivables Management Office)

Fax: 1-250-356-1090

Email: sonja.shaw@gov.bc.ca

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AND TO:

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c/o Credit/Retail Lending

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Email: sdacredit@scotiadealeradvantage.com

Email: customerservice@scotiadealeradvantage.com

AND TO:

FORD CREDIT CANADA COMPANY

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c/o Legal Department

E.C. (Lisa) Kozma

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AND TO:

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PPSA registrant (Ontario)

AND TO:

DEPARTMENT OF JUSTICE (CANADA)

Ontario Regional Office

120 Adelaide St. W., Suite 400

Toronto, ON M5H 1T1

AND TO:

**HER MAJESTY THE QUEEN IN RIGHT OF THE PROVINCE OF ONTARIO AS
REPRESENTED BY THE MINISTER OF FINANCE, INSOLVENCY UNIT**

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Insolvency Unit

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Lawyers for Ford Credit Canada Company

NATIONAL BANK OF CANADA - and -
Applicant

NIMBUS ENVIRONMENTAL SOLUTIONS INC. et al
Respondents

Court File No. CV-21-00667395-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)
Proceeding commenced at **TORONTO**

NOTICE OF MOTION

GILMOUR BARRISTERS
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Lawyers for the

**ONTARIO
SUPERIOR COURT OF JUSTICE
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2242462 ONTARIO LIMITED AND WATER FILTER CART INC.**

Respondents

**Affidavit of Peter BOZZO
Sworn November 9, 2021**

I, Peter BOZZO, MAKE OATH AND SAY THAT:

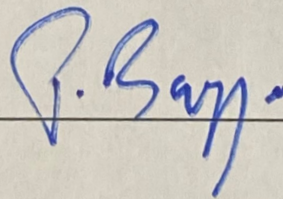
1. I am the majority shareholder in the Respondent corporations and in that capacity have personal knowledge of the matters herein testified to.
2. I am aware that a company owned by Antonio MAINIERI named ACQUAMIA INC. made a bid to purchase the assets of the Respondent corporations to BDO CANADA LIMITED for a price of Eighteen Million One Hundred Thousand Dollars (\$18,100,000).
3. I am further aware that ACQUAMIA INC, had financing in hand to make such purchase.

4. I am further aware that it was as a result of the conduct of BDO CANADA LIMITED in failing to abide by the terms and provisions of its own SISP process that such financing was held up and compromised.
5. I have been offered such financing as to match that purchase price of Eighteen Million One Hundred Thousand Dollars (\$18,100,000) provided only that I have a transaction in place to purchase the assets of the Respondents at that price.
6. I require further time to obtain and advance the evidence of various witnesses to fully establish the foregoing on independent evidence.
7. It would be unconscionable to override the potential interests of the unsecured creditors and the shareholders of the Respondent corporations to permit the sale of the assets of the Respondent corporations at a price under the Stalking Horse Agreement when sale at a price greater by Five Million Dollars (\$5,000,000) is available.

I make this Affidavit in support of a motion by me for an adjournment of the motion to approve the sale of the assets of the Respondents, to add me to the proceedings as an intervenor and to require BDO CANADA LIMITED to examine and accept the greater offer for the sale of the assets of the Respondents and for no other or improper purpose.

Affirmed remotely by Peter BOZZO
 stated as being located in the City of
 TORONTO in the Province of Ontario,
 on November 9, 2021 in accordance
 with O. Reg 431/20, Administering Oath
 or Declaration Remotely.

)
)
)
)



Peter BOZZO



Commissioner for Taking Affidavits
 William R. GILMOUR – LSO 31392J
 At Her Majesty's pleasure

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SUPERIOR COURT OF JUSTICE
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Respondents

**Affidavit of Antonio MAINIERI
Sworn November 9, 2021**

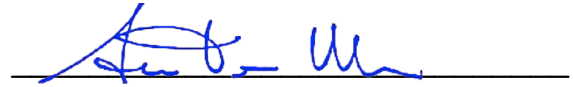
I, Antonio MAINIERI, MAKE OATH AND SAY THAT:

1. I am the incorporator of ACQUAMIA INC. which I incorporated for the purpose of the purchase of the assets of the Respondent corporations.
2. I offered the price of Eighteen Million One Hundred Thousand Dollars (\$18,100,000) for the purchase of such assets of the Respondent corporations.
3. I had financing in place from SINCERE DISTRIBUTION INC. to make such purchase.
4. Such financing was placed in jeopardy by the failure of BDO CANADA LIMITED to abide by the terms of its own SISP in the administration of the offering of the said assets to the market.


5. Such financing remains available to me from the same source provided only that I obtain a commitment that upon advance of the funds by SINCERE DISTRIBUTION INC. can purchase the said assets of the Respondent corporations.

I make this Affidavit in support of a motion by Peter BOZZO for an adjournment of the motion to approve the sale of the assets of the Respondents, to add Peter BOZZO to the proceedings as an intervenor and to require BDO CANADA LIMITED to examine and accept the greater offer for the sale of the assets of the Respondents and for no other or improper purpose.

Affirmed remotely by Antonio MAINIERI)
stated as being located in the City of)
TORONTO in the Province of Ontario,)
on November 9, 2021 in accordance)
with O. Reg 431/20, Administering Oath)



Antonio MAINIERI



Commissioner for Taking Affidavits
William R. GILMOUR – LSO 31392J
At Her Majesty's pleasure

NATIONAL BANK OF CANADA - and -
Applicant

NIMBUS ENVIRONMENTAL SOLUTIONS INC. et al
Respondents

Court File No. CV-21-00667395-00CL

ONTARIO
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Proceeding commenced at **TORONTO**

MOTION RECORD

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