

2025 01G 0491
IN THE SUPREME COURT OF NEWFOUNDLAND AND LABRADOR
IN BANKRUPTCY AND INSOLVENCY

IN THE MATTER OF the *Companies Creditors Arrangement Act* R.S.C., 1985 c. C- 36 as Amended (the “**CCAA**”)

AND IN THE MATTER OF an application of Karwood Contracting Ltd., Karwood Engineering Ltd., Karwood Design Group Ltd., and Karwood Ontario Ltd. (the “**Applicants**”)

NOTICE OF MOTION

SUMMARY OF CURRENT DOCUMENT	
Court File Number:	2025 01G 0491
Date of Filing of Document:	25 February 2025
Name of Filing Party or Person:	Applicants
Application to which Documents Being Filed Relates:	Notice of Motion filed by the Applicants
Statement of Purpose of Filing:	Seeking approval for a sale of property
Court Sub-File Number, if any:	N/A

The Applicants make a motion before the Honourable Justice MacDonald of the Newfoundland and Labrador Supreme Court (sitting in Bankruptcy and Insolvency) to be heard on ____ February 2025, or as soon after that time as the motion may be heard.

THIS MOTION IS FOR:

1. The Applicants seek an Order pursuant to the CCAA substantially in the form attached as **Schedule “B”** to this Motion, which, among other things:
 - a. abridges the notice periods pursuant to s. 11 of the CCAA and Rules 3.03(1), 6.04(2), and 6.06 of the *Rules of the Supreme Court, 1986*, SNL 1986, c. 42,

Schedule D, as amended (the “**Rules**”);

- b. directs that service on the Service List attached as **Schedule “A”** to this Notice of Motion is sufficient for the purpose of this Motion pursuant to s. 11 of the CCAA;
 - c. approves the proposed property sale transaction outlined herein (the “**Purchased Property**”), thereby vesting the right, title and interest in the Purchased Property in the purchaser.
2. Capitalized terms used but not defined in this Notice of Motion shall have the meanings given to them in the Amended and Restated Initial Order (“**ARIO**”).

THE FOLLOWING EVIDENCE will be relied upon at the hearing of this Motion:

- a. affidavit of Gregory Hussey, to be filed;
- b. such further and other evidence as counsel may advise.

GROUNDINGS FOR THE MOTION:

3. In January 2025, the Applicants were granted protection under s. 11 of the CCAA (the “**Initial Order**”). The relief outlined in the Initial Order was extended by virtue of the Amended and Restated Initial Order (“**ARIO**”).
4. The Applicants’ assets include real property located in the Province of Newfoundland and Labrador. The Applicants are currently seeking Court approval for the sale of one parcel of land located in Paradise, NL.
5. The Agreement of Purchase and Sale (“**APS**”) relating to the property for which the sales approval is requested is attached to the Affidavit of Greg Hussey as **Confidential Exhibit “A”**.
6. The APS is dated 8 July 2024 and pertains to 55 Silver Birch Crescent, Paradise, NL. The parties to the APS are Karwood Contracting Ltd. as Vendor and Amanda Roberts as Purchaser.
7. The proposed sale for which the Applicants seek Court approval meets an assessment of fair market value and is supported by the Applicants and the Monitor as being in the best interest of all stakeholders, in addition to complying with s. 36

(1) of the CCAA and meeting the Soundair test.

CONCLUSION:


8. The Applicants repeat the foregoing and request approval of the transactions proposed and a formal vesting order vesting all right, title, and interest in and to the Purchased Property free and clear of all charges, liens, and encumbrances.

GROUNDS:

9. In addition to the other grounds discussed herein, the Applicants rely on:
- a. the provisions of the CCAA;
 - b. the provisions of the *Rules of the Supreme Court, 1986*;
 - c. the inherent and equitable jurisdiction of this Honourable Court;
 - d. such further and other grounds as counsel may advise.

DATED at St. John's, in the Province of Newfoundland and Labrador, this 25 day of February 2025.

O'KEEFE & SULLIVAN



Darren D. O'Keefe
Solicitor for the Applicants
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St. John's, NL, A1A 1W7
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To: The Honourable Supreme Court
233 Duckworth Street,
St. John's, NL, A1C 1B6

And to:

The Service List attached hereto as **Schedule "A"**

**KARWOOD CONTRACTING LTD. AND KARWOOD ENGINEERING INC. AND KARWOOD
ONTARIO LTD. AND KARWOOD DESIGN GROUP LTD.**

**SCHEDULE "A"
MASTER SERVICE
LIST**

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<p>ROYAL BANK OF CANADA 1871 Hollis Street, 7th Floor Halifax, NS B3J 1M7</p> <p>David Savoie 902-421-4905 David.Savoie@rbc.com</p>	<p>AXIOM LEASING INC. 4 Robert Speck Pkwy 15th Floor, Mississauga, ON L4Z 1S1</p>
<p>MOSKOWITZ CAPITAL MORTGAGE FUND II INC.</p> <p>Stewart McKelvey Suite 1100, Cabot Place 100 New Gower St. St. John's, N.L. A1C 6K3 Tel 709.570.8851 Fax 709.722.4565</p> <p>Stephen Winter swinter@stewartmckelvey.com</p> <p>Joe Thorne</p>	<p>BANK OF MONTREAL 31 Water Street St. John's NL A1C 1A9 Canada Raffael Di Genova Raffael.digenova@bmo.com</p> <p>Cox & Palmer Scotia Centre, 235 Water St suite 1100, St. John's, NL A1C 1B6</p> <p>Josh McElman jmcelman@coxandpalmer.com</p>

<p>joethorne@stewartmckelvey.com</p>	<p>Allison Philpott aphilpott@coxandpalmer.com</p> <p>Counsel for the Bank of Montreal</p>
<p>ROYAL BANK OF CANADA 7101 Pare Avenue, 5th Floor Montreal QC H3N 1X9 Canada</p>	<p>CANADA REVENUE AGENCY Shawinigan – Sud National Verification Collections Centre 4695 Shawinigan- Sud Boulevard Shawinigan QC G9P 5H9</p> <p>Atlantic Canada AGC-PGC.Atlantic-Tax-Fiscal@justice.gc.ca</p>
<p>DEPARTMENT OF FINANCE Dept of Digital Government and Service NL 2nd Floor, West Block, P.O. Box 8700 St. John's, NL A1B 4J6 Tel 709-729-2981 Fax 709-729-2091</p> <p>collections@gov.nl.ca</p>	<p>Boreal Atlantic Ltd. 239 Main Street Milltown NL Canada A0H 1W0</p> <p>White Wayne Law Office wayne@waynewhitelaw.ca</p> <p>386 Elizabeth Ave, St. John's, NL A1B 3G3</p>
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<p>BMW CANADA INC. 50 Ultimate Drive, Richmond Hill ,ON L4S 0C8</p>	<p>RANDY ORAM TAMMY ORAM</p> <p>14 Old Topsail Hill CBS, NL, A1W 5W6 Canada</p>
<p>DEPARTMENT OF JUSTICE CANADA CRA Suite 1400, Duke Tower 5251 Duke Street Halifax NS B3J 1P3 Tel: 782-409-0068</p> <p>Deanna Frappier, K.C. Deanna.Frappier@justice.gc.ca Caitlin Ward caitlin.ward@justice.gc.ca</p>	<p>Kent Building Supplies c/o Learmonth, Boulos & Fitzgerald 804-140 Water St. PO Box 700, Stn. C St. John's, Newfoundland and Labrador A1C 5L4</p> <p>R. Barry Learmonth Email: barry@lbflegal.com</p>

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**Karwood Contracting Ltd. And Karwood Engineering Inc. And Karwood Ontario Ltd. And
Karwood Design Group Ltd.**

SCHEDULE "B"

**2025 01G 0491
IN THE SUPREME COURT OF NEWFOUNDLAND AND LABRADOR
IN BANKRUPTCY AND INSOLVENCY**

IN THE MATTER OF the *Companies Creditors Arrangement Act* R.S.C., 1985 c. C- 36 as Amended (the "**CCAA**")

AND IN THE MATTER OF an application of Karwood Contracting Ltd., Karwood Engineering Ltd., Karwood Design Group Ltd., and Karwood Ontario Ltd. (the "**Applicants**")

ORDER

THIS MOTION made by the Applicants was heard on ____ February 2025.

ON READING the Applicants' Motion and supporting Affidavit; and

ON HEARING the submissions of counsel for the Applicants and such other counsel as were present, and no one else appeared for any other party although duly served as outlined in the affidavit of service.

SERVICE

1. **THIS COURT ORDERS** that the time for service of this Motion and accompanying materials is abridged so that this Motion is properly returnable today and therefore dispenses with further service hereof. Capitalized terms used but not defined in this Order shall have the meaning attributed to them in the Notice of Motion or the ARIO, as the case may be.

APPROVAL AND VESTING

2. **THIS COURT ORDERS AND DECLARES AND CONFIRMS** that the APS is hereby approved and the execution of the APS by KCI is hereby authorized and approved, with such minor amendments as KCI and/or Purchaser may deem necessary or

otherwise agree to, with the approval of the Monitor. KCI are hereby authorized and directed to perform their obligations under the APS and to take such additional steps and execute such additional documents as may be necessary or desirable for the completion of the transactions contemplated thereunder, and to execute and deliver such additional documents as contemplated in the APS.

3. **THIS COURT ORDERS AND DECLARES** that this Order shall constitute the only authorization required by the Monitor and KCI to proceed with the sale of property contemplated under the APS and that no shareholder or other approval shall be required by KCI in connection therewith.

4. **THIS COURT ORDERS AND DECLARES** that, at the time of the delivery of the Monitor's certificate (the "**Monitor's Certificate**") to KCI and the Purchaser (the "**Effective Time**"), substantially in the form attached as **Schedule "A"** hereto, the following shall occur and shall be deemed to have occurred at the Effective Time, all in accordance with the APS and the steps contemplated thereunder:
 - (a) KCI shall be deemed to have transferred to the Purchaser, and the Purchaser shall be deemed to have accepted such assignment and assumption of the Purchased Property in consideration of the Purchase Price; and

 - (b) all of the right, title and interest in and to the Purchased Property 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 (maritime or otherwise), executions, levies, charges, or other financial or monetary claims, whether or not they have attached or been perfected, registered or filed and whether secured, unsecured or otherwise (collectively, the "**Claims**") including, without limiting the generality of the foregoing: (i) any encumbrances or all Charges (as defined in the ARIO) charges created by the ARIO, or any other Order of the Court; (ii) all charges, security interests or Claims evidenced by registrations

pursuant to the *Personal Property Security Act* (Newfoundland and Labrador), or any other personal property registry system or pursuant to the *Registration of Deeds Act, 2009* (Newfoundland and Labrador), the *Mechanics' Lien Act* (Newfoundland and Labrador) or any other real property or real property related registry or recording system (all of which are collectively referred to as the "**Encumbrances**"), and, for greater certainty, this Court orders that all of the Encumbrances affecting or relating to the Purchased Property are hereby expunged and discharged as against the Purchased Property, as applicable, and shall be of no further force and effect.

7. **THIS COURT ORDERS** that the Monitor may rely on written notice from KCI and the Purchaser regarding the satisfaction of the Purchase Price and satisfaction or waiver of conditions to closing under the APS and shall have no liability with respect to delivery of the Monitor's Certificate.
8. **THIS COURT ORDERS AND DIRECTS** the Monitor to file with the Court a copy of the Monitor's Certificate, forthwith after receipt of the Purchase Funds required under the APS.
9. **THIS COURT ORDERS** that upon the delivery of the Monitor's Certificate, and upon filing of a copy of this Order, together with any applicable registration fees, all governmental authorities and any other applicable registrar or government ministries or authorities exercising jurisdiction with respect to KCI and the Purchased Property (collectively, the "**Governmental Authorities**") are hereby authorized, requested and directed to accept delivery of such Monitor's Certificate and a copy of this Order as though they were originals and to register, as applicable, such transfers, interest authorizations, discharges and discharge statements of conveyance as may be required to give effect to the terms of this Order and the APS. Presentment of this Order and the Monitor's Certificate shall be the sole and sufficient authority for the Governmental Authorities to make and register, as applicable, transfer of title or interest and cancel and discharge registrations against any of KCI or the Purchased Property of any Claims or Encumbrances, and the Monitor and the Purchaser are hereby specifically authorized to discharge the

registrations against KCI or the Purchased Property, as applicable.

10. **THIS COURT ORDERS** that no authorization, approval or other action by and no notice to or filing with any Governmental Authority or regulatory body exercising jurisdiction over KCI or the Purchased Property is required for the due execution, delivery and performance by KCI of the APS.

11. **THIS COURT ORDERS** that except to the extent expressly contemplated by the APS, all Contracts, suits, choses of action, claims in *personam* or *in rem*, whether commenced or contingent, to which KCI are the proper party upon delivery of the Monitor's Certificate will be and remain in full force and effect upon and following delivery of the Monitor's Certificate and no individual, firm, corporation, governmental body or agency, or any other entity (all of the foregoing, collectively being "**Persons**" and each being a "**Person**") who is a party to any such arrangement may accelerate, terminate, rescind, refuse to perform or otherwise repudiate its obligations thereunder, to deny the availability of any such claim in the name of the Purchaser, or to enforce or exercise any right (including any right of set-off, dilution or other remedy) or make any demand under or in respect of any such arrangement and no automatic termination will have any validity or effect, by reason of:
 - (a) any event that occurred on or prior to the delivery of the Monitor's Certificate and is not continuing that would have entitled such Person to enforce those rights or remedies (including defaults or events of default arising as a result of the insolvency of KCI);
 - (b) any monetary defaults in relation to the contracts incurred on or prior to the delivery of the Monitor's Certificate;
 - (c) the insolvency of KCI or the fact that KCI sought or obtained relief under the CCAA;
 - (d) any compromises, releases, discharges, cancellations, transactions,

arrangements, or other steps taken or effected pursuant to the APS, the transactions contemplated thereunder, or the provisions of this Order, or any other Order of the Court in these proceedings; or

- (e) any effective change of control of KCI arising from the implementation of the APS or the provisions of this Order.
12. **THIS COURT ORDERS** that from and after the Effective Time, any and all Persons shall be and are hereby forever barred, estopped, stayed and enjoined from commencing, taking, applying for or issuing or continuing any and all steps or proceedings, whether directly, derivatively or otherwise, and including without limitation, administrative hearings and orders, declarations and assessment, commenced, taken or proceeded with or that may be commenced, taken or proceeded with against the Purchased Property.
13. **THIS COURT ORDERS** that for greater certainty, nothing in this Order shall affect, vary, derogate from, limit or amend, and the Monitor shall continue to have the benefit of, any and all rights and approvals and protections in favour of the Monitor at law or pursuant to the CCAA, the Initial Order, the ARIO, this Order, any other Orders in these CCAA Proceedings or otherwise, including all approvals, protections and stays of proceedings in favour of the Monitor, all of which are expressly continued and confirmed.
14. **THIS COURT ORDERS** that, notwithstanding:
- (a) the pendency of these CCAA Proceedings;
 - (b) any applications for a bankruptcy order now or hereafter issued pursuant to the BIA in respect of KCI and any bankruptcy order issued pursuant to any such applications; and
 - (c) any assignment in bankruptcy made in respect of KCI;
 - (d) the provisions of any federal or provincial statutes pertaining to fraudulent

preferences, assignments, fraudulent conveyances, transfers at undervalue, other reviewable transactions, or oppressive or unfairly prejudicial conduct;

the APS, the implementation of the transactions contemplated thereunder (including without limitation the transfer and vesting of the Purchased Property) and any payments by the Purchaser authorized herein or pursuant to the APS shall be binding on any trustee in bankruptcy that may be appointed in respect of KCI, and shall not be void or voidable by creditors of KCI or the Purchaser, as applicable, nor shall they constitute nor be deemed to be a fraudulent preference, assignment, fraudulent conveyance, transfer at undervalue, or other reviewable transaction under the CCAA, the BIA or any other applicable federal or provincial legislation, nor shall they constitute oppressive or unfairly prejudicial conduct pursuant to any applicable federal or provincial legislation.

THE MONITOR

15. **THIS COURT ORDERS** that the Monitor, its employees and representatives shall not be deemed directors of the Purchaser, de facto or otherwise, and shall incur no liability as a result of acting in accordance with this Order, other than any liability arising out of or in connection with the gross negligence or wilful misconduct of the Monitor.
16. **THIS COURT ORDERS** that no action lies against the Monitor by reason of this Order or the performance of any act authorized by this Order, except by leave of the Court following a motion brought on not less than fifteen (15) days' notice to the Monitor and its legal counsel. The entities related or affiliated with the Monitor or belonging to the same group as the Monitor (including, without limitation, any agents, employees, legal counsel or other advisors retained or employed by the Monitor) shall benefit from the protection granted to the Monitor in this paragraph.
17. **THIS COURT ORDERS** that the Monitor shall not, as a result of this Order or any matter contemplated hereby: (i) be deemed to have taken part in the management or supervision of the management of KCI or the Purchaser, or to

have taken or maintained possession or control of the business or property of any of KCI or the Purchaser, or any part thereof; or (ii) be deemed to be in Possession (as defined in the Initial Order and ARIO) of any property of KCI or the Purchaser within the meaning of any applicable Environmental Legislation (as defined in the Initial Order and ARIO) or otherwise.

18. **THIS COURT ORDERS** that for the purposes of determining the nature and priority of Claims, the net proceeds from the sale of the Purchased Assets shall stand in the place and stead of the Purchased Assets, and that from and after the delivery of the Monitor's Certificate all Claims and Encumbrances 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 sale¹, 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.

GENERAL

19. **THIS COURT ORDERS** that following the Effective Time, the Purchaser shall be authorized to take all steps as may be necessary to affect the discharge of the Claims and Encumbrances against KCI and the Purchased Property.
20. **THIS COURT DECLARES** that this Order shall have full force and effect in all provinces and territories in Canada.
21. **THIS COURT DECLARES** that the Monitor, KCI and/or the Purchaser shall be authorized to apply as it may consider necessary or desirable, with or without notice, to any other court or administrative body, whether in Canada, the United States or elsewhere, for orders which aid and complement this Order. All courts and administrative bodies of all such jurisdictions are hereby respectfully requested to make such orders and to provide such assistance to KCI, the Monitor, and/or the Purchaser as may be deemed necessary or appropriate for that purpose.
22. **THIS COURT HEREBY 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 KCI, the Monitor, and/or the Purchaser and their respective 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 KCI, the Purchaser, and the Monitor, as an officer of this Court, as may be necessary or desirable to give effect to this Order or to assist KCI, the Purchaser and the Monitor and their respective agents in carrying out the terms of this Order.

23. **THIS COURT ORDERS** that this Order and all of its provisions are effective as of 12:01 a.m. Newfoundland and Labrador Time on the date hereof.

Issued by _____ on the ____ day of February 2025.

Schedule "A"
2025 01G 0491
IN THE SUPREME COURT OF NEWFOUNDLAND AND LABRADOR
IN BANKRUPTCY AND INSOLVENCY

IN THE MATTER OF the *Companies Creditors Arrangement Act* R.S.C., 1985 c. C- 36 as Amended (the "**CCAA**")

AND IN THE MATTER OF an application of Karwood Contracting Ltd., Karwood Engineering Ltd., Karwood Design Group Ltd., and Karwood Ontario Ltd. (the "**Applicants**")

CERTIFICATE OF THE MONITOR

1. On ____ February 2025 the Court approved a purchase and sale agreement between KCI and Amanda Roberts (the "**Purchaser**") concerning the sale of 55 Silver Birch Crescent, Paradise, NL (the "**APS**").

2. The Court provided that upon the Monitor's satisfaction that all terms and conditions of the APS have been met, and the purchase funds called for thereunder have been paid, the Monitor shall deliver to KCI and the Purchaser a certificate signed by the Monitor stating the terms of the APS have been met and the transaction contemplated thereunder closed.

THE MONITOR CERTIFIES the following:

3. The Monitor has received written confirmation from KCI and the Purchaser that the transaction contemplated under the APS has closed and confirms that the purchase funds called for thereunder have been received.
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