

2018 01G 3114

**SUPREME COURT OF NEWFOUNDLAND AND LABRADOR  
IN BANKRUPTCY AND INSOLVENCY**

**AND IN THE MATTER OF** an application by Canadian Imperial Bank of Commerce for an order appointing BDO Canada Limited as Court-Appointed Receiver of PTL Holdings Limited, PTL Services (Equipment) Limited, CSL Services (Industrial) Limited and 9263357 Canada Inc.

**AND IN THE MATTER OF** the *Bankruptcy and Insolvency Act, RSC 1985 c. B-3, as amended*

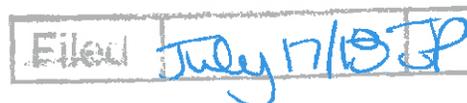
**Estate No. 51-126100  
Court No. 2018 01G 3114**

**BETWEEN:**

	<b>CANADIAN IMPERIAM BANK OF COMMERCE</b>	<b>APPLICANT</b>
<b>AND:</b>	<b>PTL HOLDINGS LIMITED</b>	<b>FIRST RESPONDENT</b>
<b>AND:</b>	<b>PTL SERVICES (EQUIPMENT) LIMITED</b>	<b>SECOND RESPONDENT</b>
<b>AND:</b>	<b>CSL SERVICES (INDUSTRIAL) LIMITED</b>	<b>THIRD RESPONDENT</b>
<b>AND:</b>	<b>9263357 CANADA INC.</b>	<b>FOURTH RESPONDENT</b>

**NOTICE OF MOTION**

BDO Canada Limited, in its capacity as receiver of all the assets, undertaking and property of PTL Holdings Limited, PTL Services (Equipment) Limited, CSL Services (Industrial) Limited and 9263357 Canada Inc. (the Receiver) will make a motion before the presiding



Judge in Bankruptcy and Insolvency on Tuesday, the 31<sup>st</sup> day of July, 2018, at 10am, or so soon thereafter as the motion can be heard at the Courthouse, Duckworth Street, St. John's, Newfoundland and Labrador.

The motion is for the following relief:

1. An order (a) authorizing the Receiver to enter into and complete the agreement of purchase and sale (the Purchase Agreement) made between the Receiver and Locke's Electrical Limited (the Purchaser) with respect to certain assets of PTL Holdings Limited, PTL Services (Equipment) Limited, CSL Services (Industrial) Limited and 9263357 Canada Inc. (the "PTL Group") arising from the Sales & Marketing Process (as defined below) undertaken by the Receiver; (b) approving the Purchase Agreement; and (c) vesting all of the property, assets and undertaking of the PTL Group subject to the Purchase Agreement (the Purchased Assets) in and to the Purchaser, all as substantially in the form attached to this Notice of Motion as **Schedule A**; and
2. Such further and other order as this Court deems just.

The grounds for the motion are:

- I. **Appointment of Receiver**
  1. By a Receivership Order of this Court dated 11 May 2018 (the **Receivership Order**), BDO Canada Ltd. was appointed as receiver of all the assets, undertaking and property of the PTL Group acquired for, or used in relation to, a business carried on by the PTL Group (collectively, the **Property**) pursuant to section 243 of the *Bankruptcy and Insolvency Act*, RSC 1985 c. B-3, as amended (the **BIA**).
  2. Pursuant to sections 3(l) and 3(m) of the Receivership Order, the Receiver is empowered to market any or all of the Property and to sell, convey, transfer, lease

or assign the Property or any part or parts thereof, provided that any transaction exceeding \$250,000.00 is subject to approval of the Court.

3. Since its appointment, the Receiver has, among other things:

- (a) taken possession and control of the Property;
- (b) conducted an inventory of equipment and other tangible personal property owned by the PTL Group (including without limitation, the Property);
- (c) communicated with creditors of the PTL Group;
- (d) obtained appraisals for all of the Purchased Assets; and
- (e) developed and implemented a sales and marketing process for the Purchased Assets, as more particularly described below (the **Sales & Marketing Process**).

## **II. Nature of the Purchased Assets**

4. The PTL Group appears to be the owner of the Purchased assets, including:

- (a) machinery and equipment;
- (b) inventories;
- (c) certain assigned contracts;
- (d) all intellectual property used in connection with the Purchased Assets; and
- (e) all books and records

all as more particularly set out in the Purchase Agreement, a copy of which is attached as an exhibit to the Receiver's Report as filed.

## **III. Sales & Marketing Process**

5. The Receiver notified potential purchasers of the acquisition opportunity for the PTL Group's assets and/or operations by sending a teaser letter to parties known to

the Receiver or as identified to the Receiver (the Teaser Letter). A copy of the Teaser Letter is attached as an exhibit to the Receivers Report as filed. A link to the Teaser Letter was also posted on Insolvency Insider, which is an industry publication distributed to a wide range of insolvency and restructuring professionals across Canada. The Receiver also arranged for the Heavy Civil Association of Newfoundland and Labrador to e-mail the Teaser Letter to its members.

6. In addition, the Receiver placed an advertisement on AllNewfoundland.com and AllNovaScotia.com, which ran for 10 business days commencing May 28, 2018 and placed the advertisement in 3 issues of the St. John's Telegram.
7. As a result of the foregoing, the Receiver was in contact with, or contacted by, a total of 47 potential interested parties. In response to these expressions of interest, the Receiver prepared a Non-Disclosure Agreement (the "NDA") to be distributed to interested parties upon request. Of the 47 interested parties, 31 requested the NDA. Of the 31 interested parties who requested the NDA, 27 signed and returned the NDA. These interested parties were provided with the Receiver's Confidential Memorandum (the "CIM") and were given an opportunity to commence due diligence, including gaining access to the Receiver's virtual data room and/or gaining access to and touring the Lands and operations of the PTL Group. A copy of the CIM is attached as an exhibit to the Receiver's Report as filed.
8. Interested parties were required to provide a deposit of not less than 15% of the purchase price offered and to submit their bids in the form of a template Asset Purchase Agreement provided by the Receiver. The Receiver provided the interested parties a deadline of 2:00 p.m. NDT on Thursday, June 14, 2018 to submit binding offers.
9. As a result of the disclosure of the information pertaining to the business operations of the PTL Group, the Receiver received 9 binding offers for the purchase of the

Property and, following negotiations with an offeree, Locke's Electrical Limited (the "Purchaser"), the Receiver accepted the Purchaser's offer for the Property (the "Offer") on July 10, 2018 (the "Acceptance Date"), subject to Court Approval. The Offer is attached as an exhibit to the Receivers Report as filed.

10. The Offer accepted by the Receiver for the Property was for a Purchase price of \$4,100,000.00 with no other terms or conditions, other than the granting of the within Order.

#### **IV. Approval and Vesting Order Sought**

11. The Receivership Order requires the approval of this Court for the Receiver to complete the transactions contemplated by the Purchase Agreement. The Receiver recommends that the Purchase Agreement be approved. The Receiver is of the view that the offer submitted by the Purchaser in the Sales & Marketing Process represents a fair and commercially reasonable price and was arrived at in a fair and commercially reasonable manner.
12. The Canadian Imperial Bank of Commerce ("CIBC"), the senior secured creditor of the PTL Group, supports concluding the transactions contemplated by the Purchase Agreement.
13. The Receiver further seeks a vesting order for the Purchased Assets, for the following reasons:
  - (a) a vesting order will allow the Receiver to complete the transactions contemplated by the Purchase Agreement in a shorter period of time than would be possible if the Receiver is required to negotiate with each of the secured creditors or other claimants for a release of their respective encumbrances;

- (b) a vesting order will give the Purchaser confidence that it will be obtaining title to the Purchased Assets free and clear of any and all security interests, mortgages, trusts, deemed trusts, liens or other claims; and
  - (c) a vesting order will substitute the sale proceeds for the Purchased Assets and provide a forum that is fair to all parties – the receivership proceeding – to establish the respective priorities to the sale proceeds, in contrast to the Receiver having to negotiate agreements with the secured creditors or other claimants in absence of a vesting order.
14. The Receiver now seeks an approval and vesting order from this Court, approving the Purchase Agreement and vesting all right, title and interest of the PTL Group in and to the Purchased Assets in and to the Purchaser upon the filing of a certificate by the Receiver certifying that the transactions contemplated by the Purchase Agreement have been completed to the satisfaction of the Receiver.
15. Such further and other grounds as counsel may advise.

The following documentary evidence will be used at the hearing of the motion:

- 1. The Report of the Receiver, as filed; and
- 2. Such further and other material as counsel may advise and this Court may permit.

Dated the 17 day of July, 2018



Cox & Palmer  
Solicitors for the Receiver  
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235 Water Street  
St. John's, NL A1C 1B6  
for Attention: Darren D. O'Keefe

**Phone: 709.570.5509**  
**Email: dokeefe@coxandpalmer.com**

**TO: PTL Holdings Limited**  
**215 Water Street, Suite 301, Box 11**  
**St. John's, NL A1C 6C9**  
**Canada**

**TO: PTL Services (Equipment) Ltd.**  
**P.O. Box 40**  
**Southern Harbour, NL A0B 3H0**  
**Canada**

**TO: CSL Services (Industrial) Limited**  
**P.O. Box 40**  
**Southern Harbour, NL A0B 3H0**  
**Canada**

**TO: 9263357**  
**P.O. Box 40**  
**Southern Harbour, NL A0B 3H0**  
**Canada**

**ISSUED** at St. John's, Newfoundland and Labrador, this 17 day of July, 2018

  
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**COURT  
OFFICER**

**SCHEDULE A**

**SUPREME COURT OF NEWFOUNDLAND AND LABRADOR  
IN BANKRUPTCY AND INSOLVENCY**

**IN THE MATTER OF** the  
*Bankruptcy and Insolvency Act*, RSC  
1985 c. B-3, as amended

**AND IN THE MATTER OF** the  
Receivership of PTL Holdings  
Limited, PTL Services (Equipment)  
Limited, CSL Services (Industrial)  
Limited and 9263357 Canada Inc.

**Estate No. 51-126100  
Court No. 21491**

**APPROVAL AND VESTING ORDER**

**UPON** reading the Notice of Motion of BDO Canada Ltd., in its capacity as receiver of the assets, undertaking and property of PTL Holdings Limited, PTL Services (Equipment) Limited, CSL Services (Industrial) Limited and 9263357 Canada Inc. (the **Receiver**) pursuant to section 243 of the *Bankruptcy and Insolvency Act*, RSC 1985 c. B-3, as amended (the **BIA**), **AND UPON** hearing the submissions of counsel, **AND UPON** reading the material as filed by counsel, **IT IS HEREBY ORDERED AS FOLLOWS:**

**Approval of Sale**

1. The Receiver is hereby authorized to complete the transaction between Locke's Electrical Limited (the **Purchaser**) and the Receiver contemplated by asset purchase agreement made between the Purchaser and the Receiver dated the 14th day of June, 2018 (the **Purchase Agreement**) in relation to certain property of PTL Holdings Limited, PTL Services (Equipment) Limited, CSL Services (Industrial) Limited and 9263357 Canada Inc. (the "**PTL Group**") as described in the Purchase Agreement.

2. The Purchase Agreement be and is hereby approved.
3. The Receiver is authorized and empowered to do all things and execute and deliver all such documents as it deems necessary in order to complete the transactions contemplated by the Purchase Agreement.

### **Vesting of Assets**

4. Effective immediately upon the filing with this Court of a Receiver's Certificate substantially in the form attached hereto as **Schedule A (the Receiver's Certificate)**, signed by the Receiver confirming that all terms and conditions under the Purchase Agreement have been either satisfied or waived and that the transactions contemplated by the Purchase Agreement have been completed to the satisfaction of the Receiver, all right, title and interest of the PTL Group in and to the Property, (also referred to as the **Purchased Assets**), shall vest and are hereby vested in and to the Purchaser, absolutely and forever, without limitation, 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 or monetary claims, whether or not they have attached or been perfected, registered or filed and whether secured, unsecured or otherwise (collectively, **Claims**) provided however that from and after the filing of the Receiver's Certificate with this Court, any and all Claims of or by any persons in or to the Purchased Assets shall attach to the proceeds derived from the completion of the transactions contemplated by the Purchase Agreement with the same priority as they had with respect to the Purchased Assets immediately prior to the completion of the transactions contemplated by the Agreement.
5. The purchase price set out in the Purchase Agreement is fair and commercially reasonable and was arrived at in a commercially reasonable manner.

6. Notwithstanding:

- (a) the pendency of these proceedings;
- (b) any applications for a bankruptcy order now or in the future issued pursuant to the BIA in respect of the PTL Group and any bankruptcy order issued pursuant to any such applications; and
- (c) any assignment in bankruptcy made in respect of the PTL Group;

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 the PTL Group and shall not be void or voidable by creditors of the PTL Group, nor shall it constitute nor be deemed to be a settlement, fraudulent preference, assignment, fraudulent conveyance, transfer at undervalue or other reviewable transaction under the BIA or any other applicable federal or provincial legislation, nor shall it constitute oppressive or unfairly prejudicial conduct pursuant to any applicable federal or provincial legislation.

- 7. Any and all third parties holding Purchased Assets are hereby directed to release such Purchased Assets forthwith upon receiving instructions to that effect from the Receiver, or, after the closing of the transactions contemplated by the Purchase Agreement, from the Receiver, the Purchaser or both.
- 8. 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 in connection with the authority granted hereunder to proceed with and conclude the transactions contemplated by the Purchase Agreement.



