

THE KING'S BENCH
WINNIPEG CENTRE

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 POLAR WINDOW OF CANADA LTD., ACCURATE DORWIN (2020) INC., GLASS 8 INC., NATIONAL INTERIORS (2021) INC., 12986647 CANADA LTD. o/a ALLSCO WINDOWS & DOORS, 12986591 CANADA LTD. o/a ALWEATHER WINDOWS & DOORS, POLAR HOLDING LTD., 10064720 MANITOBA LTD. AND 12986914 CANADA LTD.

(the "Applicants")

APPLICATION UNDER: THE *COMPANIES' CREDITORS ARRANGEMENT ACT*, R.S.C., c. C-36, AS AMENDED

ORDER
(STAY EXTENSION, SEALING, AND OTHER RELIEF)
DATE OF HEARING: TUESDAY, DECEMBER 5, 2023 AT 9:00 A.M.
THE HONOURABLE MR. JUSTICE BOCK

McDougall Gauley LLP
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CLIENT FILE NO. 549268.11

ON READING the Fifth Report of the Monitor dated December 3, 2023 (the "**Fifth Report**"), the and Confidential Supplement, and on hearing the submissions of counsel for the Monitor, the Applicants, The Toronto-Dominion Bank, Canada Revenue Agency, and Maxim Transportation Services Inc. ("**Maxim**"), no one appearing for any other person on the Service List, although properly served as appears from the affidavit of Alecia Iwanchuk sworn December 4, 2023; all filed:

AND ON CONSIDERING the matters raised in the Affidavit of Michael Rosenbaum sworn on October 26, 2023 and the submissions of counsel for Maxim in respect of the same, following which the Court deferred granting any relief at this time:

SERVICE

1. THIS COURT ORDERS that the time for service of the Monitor's notice of motion and supporting materials is hereby abridged and validated so that the motion is properly returnable today and hereby dispenses with further service thereof.

EXTENSION OF THE STAY PERIOD

2. THIS COURT ORDERS that that the Stay Period (as that term is defined in the Amended and Restated Initial Order of the Honourable Mr. Justice Bock dated February 14, 2023) is hereby extended from December 5, 2023 to January 29, 2024.

SEALING OF THE CONFIDENTIAL SUPPLEMENT

3. THIS COURT ORDERS that the Confidential Supplement and the appendices thereto be filed under seal, kept confidential, and not form part of the public record. The Confidential Supplement shall be kept separate and apart from the other contents of the Court file in a sealed envelope which sets out the style of cause of these proceedings and a statement that the contents thereof are subject to a Sealing Order, and shall not be

opened except by the Registrar of this Court and the Honourable Mr. Justice Bock (or another Justice of the Court of King's Bench).

4. The Confidential Supplement shall only be made available or form part of the public record after the Monitor's Certificate (as that term is defined in the Approval and Vesting Order of the Honourable Justice Bock dated July 21, 2023, as amended by paragraph 3 of the Order (Amendment to the Sale Agreement and Other Relief) of the Honourable Justice Bock dated September 12, 2023 (the "AVO")) is filed with this Court, or further Order of this Court.

SECOND AMENDMENT TO THE APPROVAL AND VESTING ORDER

5. THIS COURT ORDERS that the preamble, paragraphs 4 and 9, and Schedule "A" of the AVO are hereby further amended as follows (with the bold and underlined text to be added to the Order):

THIS MOTION, made by Deloitte Restructuring Inc. in its capacity as the Court-appointed monitor (the "**Monitor**") of the undertaking, property and assets of Polar Window of Canada Ltd., Accurate Dorwin (2020) Inc., Glass 8 Inc., National Interiors (2021) Inc., 12986647 Canada Ltd. o/a Allsco Windows & Doors, 12986591 Canada Ltd. o/a Alweather Windows & Doors, Polar Holding Ltd., 10064720 Manitoba Ltd. and 12986914 Canada Ltd. (collectively, the "**Applicants**") for an order approving the sale transaction (the "**Transaction**") contemplated by an agreement of purchase and sale between the Monitor, in its capacity as court-appointed monitor of the Applicants and not in its personal or corporate capacity, and Stephen Segal (in trust for a corporation or corporations to be formed) (the "**Purchaser**") and appended to the Second Report of the Monitor dated July 20, 2023 (the "**Second Report**"), as amended by the the Amendment to the Asset Purchase Agreement dated August 31, 2023 appended to the Third Report of the Monitor dated September 8, 2023, the **Second Amendment to the Asset Purchase Agreement dated October 6, 2023 and appended to the Fourth Report of the Monitor dated October 24, 2023, and the Third Amendment to the Asset Purchase Agreement dated October 26, 2023 and Fourth Amendment to the Asset Purchase Agreement dated November 30, 2023 appended to the Fifth Report of the Monitor dated December 3, 2023** (together, the "**Sale Agreement**"), and vesting in the Purchaser the Applicants' right, title and interest in and to the assets described in the Sale Agreement (the "**Purchased Assets**"), was heard this day at the Law Courts Building at 408 York Avenue, in the City of Winnipeg, Manitoba.

[...]

VESTING OF PROPERTY

4. THIS COURT ORDERS AND DECLARES that, upon the delivery of a Monitor's certificate to the Purchaser substantially in the form attached as Schedule A hereto (the "**Monitor's Certificate**") certifying, among other things, that the outstanding principal amount owing under the DIP Facility (as defined in the Amended and Restated Order of the Honourable Mr. Justice Bock dated February 14, 2023) ("DIP Facility") is no greater than \$1,800,000 in compliance with the Fifth Amendment to Interim Facility Loan Agreement dated December 1, 2023, all of the Applicants' right, title and interest in and to the Purchased Assets described in the Sale Agreement 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 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 charges created by the Amended and Restated Initial Order of the Honourable Justice Bock dated February 14, 2023; and (ii) all charges, security interests or claims evidenced by registrations pursuant to The Personal Property Security Act (Manitoba) or any other personal property registry system (all of which are collectively referred to as the "**Encumbrances**", but which term shall not include the permitted encumbrances listed at Schedule B herein) and, for greater certainty, this Court orders that all of the Encumbrances affecting or relating to the Purchased Assets are hereby expunged and discharged as against the Purchased Assets.

[...]

RELEASE

9. THIS COURT ORDERS that, conditional on the closing of the Transaction contemplated hereby, the delivery of the Monitor's Certificate to the Purchaser certifying, among other things, that the outstanding principal amount owing under the DIP Facility is no greater than \$1,800,000 in compliance with the Fifth Amendment to Interim Facility Loan Agreement dated December 1, 2023, and the Purchaser's payment of the Additional Consideration (as that term is defined in the Sale Agreement) to First West Credit Union Corp. and Sallyport Commercial Finance, LLC and effective immediately upon the filing of the Monitor's Certificate contemplated herein, Stephen Segal, Brant Enderle and Tim Morris (together the "**Principals**") are hereby forever and permanently released and discharged from any and all claims, liabilities or obligations in connection with any of the Principals' guarantees of any of the commitments, loans or obligations of any of the Applicants. Notwithstanding the foregoing, this release shall not release or discharge any statutory obligations that the Principals may have in their capacity as Directors or Officers of the Applicants (should they, in fact, be or have been a Director or Officer of the Applicants) or release or discharge any claims or entitlements that a Person may have against any Director's or Officer's liability insurance or the Director's Charge as contained in the Amended and Restated Order.

[...]

Schedule A – Form of Monitor's Certificate

[...]

THE MONITOR CERTIFIES the following:

1. The Purchaser has paid and the Monitor has received the Purchase Price for the Purchased Assets payable on the Closing Date pursuant to the Sale Agreement;
2. The conditions to Closing the Sale Agreement have been satisfied or waived by the Monitor and the Purchaser; and
3. The Transaction has been completed to the satisfaction of the Monitor **and the outstanding principal amount owing under the DIP Facility (as defined in the Amended and Restated Order of the Honourable Mr. Justice Bock dated February 14, 2023) is no greater than \$1,800,000 in compliance with the Fifth Amendment to Interim Facility Loan Agreement dated December 1, 2023.**

[...]

USE OF THE DEPOSIT

6. THIS COURT ORDERS that the Monitor shall be authorized and directed to pay the outstanding professional fees owing by the Applicants to the Monitor, the Monitor's legal counsel, McDougall Gauley LLP, and the Applicant's legal counsel, MLT Aikins LLP, as set out in the Fifth Report, from the Increased Deposit (as defined in the Fifth Report) in the following amounts:

- (a) \$401,817 to the Monitor;
- (b) \$269,090 to McDougall Gauley LLP; and
- (c) \$242,971 to MLT Aikins LLP.

THIRD AMENDMENT TO THE JULY 21 ORDER

7. THIS COURT ORDERS that paragraph 7 of the Order (Stay Extension, Interim Distribution, and Other Relief) of the Honourable Justice Bock dated July 21, 2023 (as amended by the Order (Amendment to the Sale Agreement and Other Relief dated September 12, 2023 and the Order (Stay Extension and Other Relief) dated October 31, 2023) (the "**July 21 Order**") is hereby amended as follows (with the bold and underlined text to be substituted for the struck out text in the Order):

7. THIS COURT ORDERS that the Monitor shall **be authorized to repay the amount of the outstanding DIP Facility, up to the maximum amount of \$2,350,000, to TD Bank** ~~make the following interim distributions from the Net Proceeds:~~

- (a) ~~first, to reduce the amounts presently owed by the Applicants and secured by the Administration Charge:~~
 - (i) ~~to Deloitte Restructuring Inc., \$326,554 on account of the Monitor's outstanding fees and disbursements;~~
 - (ii) ~~to McDougall Gauley LLP, \$235,580 on account of its outstanding fees and disbursements;~~
 - (iii) ~~to MLT Aikins LLP, \$216,636.94 on account of its outstanding fees and disbursements;~~
- (b) ~~second, in satisfaction of the DIP Lender's Charge, to TD Bank, the repayment of the DIP Facility to the maximum amount of \$2,350,000.~~

NET PROCEEDS HOLDBACK

8. THIS COURT ORDERS that, after making the distributions contemplated by paragraph 6 of this Order and paragraph 7 of the July 21 Order (as amended herein), the balance of the net proceeds of the Amended Transaction (as defined in the Fifth Report) shall be held in trust by the Monitor pending a future motion to determine priority to the same.

AMENDMENT TO THE ENHANCED POWERS ORDER

9. THIS COURT ORDERS that paragraphs 2 and 8 and Schedule "A" of the Order (Enhancement of the Monitor's Powers) of the Honourable Mr. Justice Bock dated October 27, 2023 are hereby amended as follows (with the bold and underlined text to be substituted for the struck out text in the Order):

ORDER TO TAKE EFFECT UPON FILING OF MONITOR'S CERTIFICATE

2. THIS COURT ORDERS that the Monitor shall file the Monitor's certificate attached as **Schedule "A"** to this Order (the "**Monitor's Certificate**") if **the Monitor determines, in its sole discretion, that the Amended Transaction (as that term is defined in the Fifth Report of the Monitor dated December 4, 2023) is unlikely to**

close or, alternatively, that a material adverse change in the Applicants' financial condition has occurred. (i) the transaction for the purchase and sale of Applicants' assets pursuant to an Asset Purchase Agreement dated July 21, 2023 between Stephen Segal, in trust for a corporation of corporations to be formed (the "**Purchaser**") and the Monitor for and on behalf of the Applicants (as amended by amending agreements dated August 31, 2023 and October 6, 2023 and as may be amended thereafter) (collectively the "**APA**") fails to close by November 3, 2023, and (ii), the Purchaser fails to provide the Monitor with an additional non-refundable deposit by November 3, 2023 in accordance with the APA in an amount agreed upon by TD.

[...]

USE OF THE DEPOSIT

8. THIS COURT ORDERS that the Monitor shall be authorized and entitled to make the following interim disbursements from the Deposit (as that term is defined in the APA):

(a) ~~first, to pay the outstanding professional fees owing by the Applicants to the Monitor, the Monitor's legal counsel, McDougall Gauley LLP ("MG"), and the Applicant's legal counsel, MLT Aikins LLP ("MLTA") as set out in the Fourth Report.~~

(b)(a) ~~second~~ first, to pay the ongoing reasonable professional fees and disbursements of the Monitor and MG McDougall Gauley LLP and any final invoice received from MLTA MLT Aikins LLP, in each case at their standard rates and charges as part of the costs of these proceedings; and

(e)(b) ~~third~~ second, to pay the reasonable costs and expenses incurred in exercising the Monitor's powers pursuant to the terms of this Order

[...]

Schedule A – Form of Monitor's Certificate

[...]

THE MONITOR CERTIFIES the following:

1. The Monitor has concluded that:

[the transaction for the purchase and sale of the Applicants' assets pursuant to an Asset Purchase Agreement dated July 21, 2023 between Stephen Segal, in trust for a corporation ~~or~~ of corporations to be formed (the "Purchaser") and the Monitor for and on behalf of the Applicants (as amended by the amending agreements dated August 31, 2023, and October 6, 2023, **October 26, 2023, and November 30, 2023**, and as may be amended thereafter **is unlikely to close]**

OR

that a material adverse change in the Applicants' financial circumstances has occurred.]

~~2. The Purchaser failed to provide the Monitor with an additional non-refundable deposit by November 3, 2023 in accordance with the APA in an amount agreed upon by TD; and~~

~~3.2.~~ This Certificate was delivered by the Monitor at _____ [TIME] on _____ [DATE].

[...]

APPROVALS

10. THIS COURT ORDERS that the Fifth Report, the Confidential Supplement, and the activities, actions, and conduct of the Monitor described therein are hereby approved.

11. THIS COURT ORDERS that the fees and disbursements of the Monitor and its legal counsel, McDougall Gauley LLP, as set out in the Fifth Report are hereby approved.

MISCELLANEOUS MATTERS

12. 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 the Applicants, the Monitor and their 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 Applicants or the Monitor, as an officer of this Court, as may be necessary or desirable to give effect to this Order or to assist the Applicants, the Monitor and their agents in carrying out the terms of this Order.

December 5, 2023

T. BOCK

BOCK, J.

I, Craig Frith, of the firm of McDougall Gauley LLP, hereby certify that I have received the consents as to form of the following parties:

J.J. Burnell, MLT Aikins LLP, counsel for the Applicants
Sam Gabor, Gowling WLG, counsel for The Toronto-Dominion Bank
Penny Piper, Department of Justice (Canada), counsel for Canada Revenue Agency

Donald R. Knight, K.C., Knight Law Office, counsel for Maxim Transportation Services Inc.