

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)
(IN BANKRUPTCY AND INSOLVENCY)



THE HONOURABLE MR.)

MONDAY, THE 15th DAY OF

JUSTICE MCEWEN)

OCTOBER, 2018

IN THE MATTER OF THE *BANKRUPTCY AND INSOLVENCY ACT*,
R.S.C. 1985, c. B-3, AS AMENDED

AND IN THE MATTER OF THE NOTICE OF INTENTION TO MAKE A
PROPOSAL OF 2301132 ONTARIO INC. AND 2309840 ONTARIO INC.,
OF THE CITY OF PORT PERRY, IN THE PROVINCE OF ONTARIO

ORDER

THIS MOTION, made by 2301132 Ontario Inc. ("**2301132**") and 2309840 Ontario Inc. ("**2309840**", and together with 2301132, the "**Companies**"), pursuant to Sections 50.4(9) and 64.2(1) of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended (the "**BIA**"), for an order, *inter alia*, approving a "stalking horse" sale and refinancing solicitation process (the "**SISP**") in respect of the Companies and approving a stalking horse agreement of purchase and sale (the "**Stalking Horse APS**") between the Companies and E. Manson Investments Limited, ("**EMIL**") for the purposes of the SISP, was heard this day at 330 University Avenue, Toronto, Ontario.

ON READING the Motion Record of the Companies, the second report of KSV Kofman Inc., in its capacity as proposal trustee of each of the Companies (the "**Proposal Trustee**"), dated October 5, 2018 (the "**Second Report**") and the appendices thereto, and on hearing the submissions of counsel for the Companies, counsel for the Proposal Trustee, counsel for EMIL and those other parties listed on the counsel slip, no one else appearing for any other person

although duly served as appears from the Affidavit of Service of Danny M. Nunes sworn October 10, 2018, filed.

SERVICE

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

APPROVAL OF STALKING HORSE SISP

2. **THIS COURT ORDERS** that the SISP, as described in Section 5 of the Second Report, be and is hereby approved.

3. **THIS COURT ORDERS** that the Bidding Procedures Set out in Schedule “A” to the Stalking Horse APS and the break fee and expense reimbursement set out in Section 14.2 of the Stalking Horse APS are each hereby approved and that the Stalking Horse APS is hereby approved solely for the purposes of standing as the Stalking Horse Bid in the SISP, provided that if EMIL is the successful bidder under the SISP, implementation of the transaction contemplated by the Stalking Horse APS will be subject to the Court’s approval upon further motion by the Companies.

4. **THIS COURT ORDERS** that the Proposal Trustee be and is hereby authorized and directed to enter into the Multiple Listing Services Agreement in respect of the Real Property (as defined in the Second Report) with Colliers Macauley Nicolls Inc. as listing agent (the “**Listing Agreement**”).

5. **THIS COURT ORDERS** that the Companies and the Proposal Trustee be and are hereby authorized and directed to perform their obligations under and in accordance with the SISP, including under the terms of the Listing Agreement, and take such further steps as they consider necessary or desirable in carrying out the SISP and any steps taken by the Companies and/or the Proposal Trustee in connection with the SISP prior to the date hereof, as described in the Second Report, be and are hereby approved and ratified.

6. **THIS COURT ORDERS** that the Companies and the Proposal Trustee shall have no personal or corporate liability in connection with the SISP.

BREAK FEE CHARGE

7. **THIS COURT ORDERS** that EMIL shall be entitled to the benefit of and is hereby granted a charge (the “**Break Fee Charge**”) on the current and future assets, undertakings and properties of the Companies of every nature and kind whatsoever, and wherever situate including all proceeds thereof (the “**Property**”), which charge shall not exceed the amount of \$225,000, as security for payment of the break fee and expense reimbursement provided for under Section 14.2 of the Stalking Horse APS. The Break Fee Charge shall have the priority set out in paragraphs 8 and 9 hereof.

8. **THIS COURT ORDERS** that the filing, registration or perfection of the Break Fee Charge shall not be required, and that the Break Fee 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 Break Fee Charge coming into existence, notwithstanding any such failure to file, register, record or perfect.

9. **THIS COURT ORDERS** that the Break Fee Charge shall rank subordinate to the real property mortgages granted by the Companies to and registered in favour of Home Trust Company (Instrument No. HR923507), 2413349 Ontario Inc. and Derek Martin (Instrument No. HR985367), Harbouredge Mortgage Investment Corporation (Instrument No. HR1071229) (the “**Priority Charges**”) and the administration charge granted pursuant to the Order of the Honourable Mr. Justice Wilton-Siegel dated September 20, 2018 (the “**Administration Charge**”). With the exception of the Priority Charges and the Administration Charge, the Break Fee Charge shall rank in priority as against all other valid perfected security interests, trusts, liens, charges and encumbrances, including the real property mortgage granted by 2301132 in favour of Stasis Group Inc. and 2561388 Ontario Inc. (Instrument No. HR1384990), claims of secured creditors, statutory or otherwise, granted by each of the Companies or to which each of the Companies is subject (together, the “**Encumbrances**”) as of the date of this Order.

10. **THIS COURT ORDERS** that except as otherwise expressly provided for herein, or as may be approved by further order of this Court, the Companies shall not grant any Encumbrances over any Property that rank in priority to, or *pari passu* with, the Break Fee Charge.

11. **THIS COURT ORDERS** that the Break Fee Charge shall not be rendered invalid or unenforceable and the rights and remedies of the chargees entitled to the benefit of the Break Fee Charge (the “**Chargees**”) thereunder shall not otherwise be limited or impaired in any way 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 made 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 (together, the “**Agreements**”) which binds the Companies, and notwithstanding any provision to the contrary in any Agreement:

- (a) the creation of the Break Fee Charge shall not create or be deemed to constitute a breach by the Companies of any Agreement to which either of them is a party;
- (b) none of the Chargees 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 Break Fee Charge; and
- (c) the payments made by the Companies pursuant to this Order, and the granting of the Break Fee Charge, do not and will not constitute preferences, fraudulent conveyances, transfers at undervalue, oppressive conduct or other challengeable or voidable transactions under any applicable law.

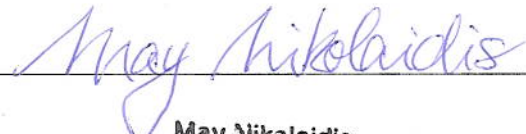
12. **THIS COURT ORDERS** that the Break Fee Charge created by this Order over leases of real property in Canada shall only be an Break Fee Charge in the Companies’ interest in such real property leases.

GENERAL

13. **THIS COURT HEREBY REQUESTS** the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or the United States, to give effect to this Order and to assist the Companies, the Proposal Trustee 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 the Companies and to the Proposal Trustee, as an officer of this Court, as may be necessary or desirable to give effect to this Order, to grant representative status to the Proposal Trustee in any foreign proceeding, or to assist the Companies and the Proposal Trustee and their respective agents in carrying out the terms of this Order.

14. **THIS COURT ORDERS** that each of the Companies and the Proposal Trustee shall be at liberty and are hereby authorized and empowered to apply to any court, tribunal, regulatory or administrative body, wherever located, for the recognition of this Order and for assistance in carrying out the terms of this Order.

15. **THIS COURT ORDERS** that Confidential Appendix 1 to the Second Report shall be sealed and remain confidential pending further order of this Court.



May Nikolaidis
Registrar, Superior Court of Justice

ENTERED AT / INSCRIT À TORONTO
ON / BOOK NO:
LE / DANS LE REGISTRE NO:
OCT 16 2018

PER / PAR: 

IN THE MATTER OF THE *BANKRUPTCY AND INSOLVENCY ACT*, R.S.C. 1985, c. B-3, AS AMENDED

AND IN THE MATTER OF THE NOTICE OF INTENTION TO MAKE A PROPOSAL OF 2301132 ONTARIO INC. and 2309840 ONTARIO INC., OF THE CITY OF PORT PERRY, IN THE PROVINCE OF ONTARIO

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)
IN BANKRUPTCY AND INSOLVENCY

PROCEEDINGS COMMENCED AT TORONTO

ORDER

DLA PIPER (CANADA) LLP
1 First Canadian Place, Suite 6000
100 King Street West
Toronto, ON M5X 1E2

Edmond F. B. Lamek (LSUC No. 33338U)
Tel.: 416.365.4444
Fax: 416.369.7945
Email: edmond.lamek@dlapiper.com

Danny M. Nunes (LSUC No. 53802D)
Tel.: 416.365.3421
Fax: 416.369.7945
Email: danny.nunes@dlapiper.com

Lawyers for 2309840 Ontario Inc. and 2301132 Ontario Inc.