

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

THE HONOURABLE

JUSTICE KOEHNEN

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TUESDAY, THE 20TH

DAY OF OCTOBER, 2020

**IN THE MATTER OF THE NOTICE OF INTENTION
TO MAKE A PROPOSAL OF 2505243 ONTARIO LIMITED
OF THE CITY OF TORONTO, IN THE PROVINCE OF ONTARIO**

**ORDER
(Extension, Administration Charge and DIP Lender’s Charge)**

THIS MOTION, made by 2505243 Ontario Limited (the **Debtor**) for an order, among other things, extending the time for the Debtor to file a proposal pursuant to the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended (the **BIA**); granting an Administration Charge (defined below); and the DIP Lender’s Charge (defined below) was heard this day virtually via Zoom videoconference as a result of the COVID 19 pandemic.

ON READING the affidavit of Peter Eliopoulos sworn October 16, 2020 (the **Eliopoulos Affidavit**), the second report of KSV Restructuring Inc., in its capacity as proposal trustee (in such capacity, the **Proposal Trustee**) dated October 18, 2020 (the **Second Report**), and on hearing the submissions of counsel for the Debtor, the Proposal Trustee and those other parties present, no one else appearing although duly served as evidenced by the Affidavit of Service of Gianni Bianchi sworn October 16, 2020, filed;

SERVICE

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

EXTENSION OF TIME TO FILE A PROPOSAL

2. **THIS COURT ORDERS** that pursuant to section 50.4(9) of the BIA, the time for the Debtor to file a proposal with the Official Receiver be and is hereby extended to December 8, 2020.

ADMINISTRATION CHARGE

3. **THIS COURT ORDERS** that the Proposal Trustee, counsel to the Proposal Trustee and counsel to the Debtor shall be entitled to the benefit of and are hereby granted a charge (the **Administration Charge**) on all of the Debtor's current and future assets, undertakings, properties of every nature and kind whatsoever, and wherever situate including all proceeds thereof (the **Property**), which charge shall not exceed an aggregate amount of \$100,000 as security for their professional fees and disbursements, incurred at their standard rates and charges, both before and after the granting of this Order in respect of these proceedings. The Administration Charge shall have the priority set out in paragraphs 8 and 10 hereof.

DIP FINANCING AND DIP LENDER'S CHARGE

4. **THIS COURT ORDERS** that the Debtor is hereby authorized and empowered to borrow monies (**Post-Filing Advances**) from Peter and Paul's Gifts Limited (in such capacity, the **DIP Lender**) pursuant to the DIP Term Sheet (as defined in and attached to the Second Report) in order to finance the Debtor's restructuring proceedings substantially in accordance with the cash flow budget attached to the Second Report (the **Cash Flow**).

5. **THIS COURT ORDERS** that pursuant to section 50.6 of the BIA, the DIP Lender shall be entitled to the benefit of and is hereby granted a charge (the **DIP Lender's Charge**) on the Property, which DIP Lender's Charge shall secure only advances made to the Debtor under the DIP Term Sheet after this Order is made as well as any accrued and unpaid interest and professional fees of counsel to the DIP Lender.

6. **THIS COURT ORDERS** that, notwithstanding any other provision of this Order or the provisions of section 69 of the BIA:

- (a) the DIP Lender may take such steps from time to time as it may deem necessary or appropriate to file, register, record or perfect the DIP Lender's Charge;

- (b) the foregoing rights and remedies of the DIP Lender shall be enforceable against any receiver, receiver and manager, interim receiver or trustee in bankruptcy of the Debtor or the Property.

VALIDITY AND PRIORITY OF CHARGES

7. **THIS COURT ORDERS** that the priorities of the Administration Charge and DIP Lender's Charge, as among them, shall be as follows:

- (a) First: Administration Charge (to the maximum amount of \$100,000); and
- (b) Second: DIP Lender's Charge.

8. **THIS COURT ORDERS** that the filing, registration or perfection of the Administration Charge and the DIP Lender's Charge (collectively, the **Charges**) shall not be required, and that the Charges shall be valid and enforceable for all purposes, including as against any right, title or interest filed, registered, recorded or perfected subsequent to the Charges coming into existence, notwithstanding any such failure to file, register, record or perfect.

9. **THIS COURT ORDERS** that each of the Charges shall constitute a charge on the Property and the Charges shall rank ahead in priority to all other security interests, trusts, liens, charges and encumbrances claims of secured creditors, statutory or otherwise (collectively, **Encumbrances**) in favour of any person but subject to sections 14.06(7) and 81.3(1) of the BIA and any properly perfected purchase money security interests in existence and in priority to advances already made under the DIP Term Sheet as at the time of this Order or any valid priority lien held by the Ministry of Finance in respect of its PPR registration (as defined and described in the Eliopoulos Affidavit).

10. **THIS COURT ORDERS** that except as otherwise expressly provided for herein, or as may be approved by this Court, the Debtor shall not grant any Encumbrances over any Property that rank in priority to, or *pari passu* with, any of the Charges, unless the Debtor also obtains the prior written consent of the beneficiaries of the applicable Charges or further Order of this Court.

11. **THIS COURT ORDERS** that the Charges shall not be rendered invalid or unenforceable and the rights and remedies of the chargees entitled to the benefit of the Charges (collectively, 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 (expressly or impliedly) made

herein; (b) any application(s) for bankruptcy order(s) issued pursuant to the BIA, or any bankruptcy order made pursuant to such application(s); (c) the filing of any assignments for the general benefit of creditors made or deemed to have been 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 (collectively, an **Agreement**) which binds the Debtor, and notwithstanding any provision to the contrary in any Agreement:

- (a) the creation of the Charges or the execution, delivery, perfection, registration or performance in connection thereof shall not create or be deemed to constitute a breach by the Debtor of any Agreement to which it is a party; and
- (b) the payments made by the Debtor pursuant to this Order and the granting of the Charges, 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 Charges created by this Order over leases of real property in Canada shall only be a charge in the Debtor's interest in such real property leases.

RECOGNITION

13. **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 Debtor, 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 Debtor 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 Debtor and the Proposal Trustee and their respective agents in carrying out the terms of this Order.



IN THE MATTER OF THE NOTICE OF INTENTION TO MAKE A PROPOSAL OF
2505243 ONTARIO LIMITED OF THE CITY OF TORONTO,
IN THE PROVINCE OF ONTARIO

Estate/Court File No.: 31-2675288

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

Proceeding commenced at TORONTO

**ORDER
(Extension, Administration Charge
& DIP Lender's Charge)**

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