

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

**IN THE MATTER OF THE NOTICE OF INTENTION TO MAKE A PROPOSAL OF
2806041 ONTARIO INC. o/a ALLIED TRACK SERVICES INC.,
A CORPORATION INCORPORATED UNDER THE LAWS
OF ONTARIO**

**FACTUM
(Extension of Time)
Returnable September 23, 2022**

September 22, 2022

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TO: SERVICE LIST

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PART I - OVERVIEW

1. KSV Restructuring Inc. (“**KSV**”) in its capacity as interim receiver (in such capacity, the “**Interim Receiver**”) of 2806401 Ontario Inc. o/a/ Allied Track Services Inc. (“**Allied**”), on behalf of Allied, brings this motion for a 45-day extension of the time required to file a proposal from September 24, 2022 to November 8, 2022, pursuant to section 50.4(9) of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3 (the “**BIA**”)
2. On August 25, 2022, Allied filed a Notice of Intention to Make a Proposal (“**NOI**”) pursuant to subsection 50.4(1) of the BIA. KSV was appointed as proposal trustee (in such capacity, the “**Proposal Trustee**”). On September 6, 2022, KSV was appointed as Interim Receiver of Allied.
3. The principal purpose of Allied’s restructuring proceeding is to wind-down its operations and liquidate its assets for the benefit of its creditors and other stakeholders.

4. As described in greater detail below, the Interim Receiver seeks the requested extension of time to allow Allied's operations to continue without potential disruptions that could result from an extension not being granted and a deemed assignment in bankruptcy occurring.

PART II – THE FACTS

5. The facts relevant to the relief sought by the Interim Receiver are set out in the Second Report of the Proposal Trustee and First Report of the Interim Receiver dated September 16, 2022 (the "**Report**") and are summarized below. All capitalized terms not otherwise defined herein have the meanings given to them in the Report.

A. BACKGROUND

6. Allied is a railroad maintenance service provider offering various services, including track maintenance and repair, construction, bridging, civil engineering, signalling and related services. Allied leases its head office in Grimsby, Ontario and operates in Ontario, Alberta, Manitoba and British Columbia.¹

7. Allied's largest secured creditor and sole shareholder is Bridging Finance Inc. ("**Bridging**"). On April 30, 2021, the Ontario Superior Court of Justice (Commercial List) (the "**Court**") appointed PricewaterhouseCoopers Inc. as receiver and manager (in such capacity, the "**Bridging Receiver**") of Bridging and certain related entities and investment funds upon application by the Ontario Securities Commission.²

8. Bridging purchased all of the assets and undertakings of Allied out of a proposal proceeding in April 2021. Despite successful implementation of the transaction, Allied continued

¹ Report at para 2.0(1).

² Report at para 2.0(5).

to generate losses and never reached profitability. Allied is insolvent and does not have the liquidity to carry on its business. Accordingly, on August 25, 2022, Allied filed an NOI.³

9. As a result of personnel departures and stakeholder uncertainty triggered by the NOI, the Proposal Trustee brought an application under section 47.1 of the BIA seeking appointment of KSV as Interim Receiver. This was done in order to bring stability to Allied's operations and wind-down and in order to facilitate Allied completing certain Service Contracts it is party to with Canadian Pacific Railway ("CP") pursuant to a Close Out Agreement among Allied, the Proposal Trustee and CP dated September 3, 2022 (the "**Close Out Agreement**"). KSV was appointed as Interim Receiver on September 6, 2022.⁴

10. The work to be performed under the Service Contracts is expected to continue until approximately the end of October 2022; however, the final date cannot be determined with certainty.⁵

B. REQUEST FOR AN EXTENSION

11. The Interim Receiver, on the Company's behalf, is seeking a 45-day extension of the time required to file a proposal from September 24, 2022 to November 8, 2022.

12. The rationale for this request is to allow Allied's operations to continue without potential disruptions that could result from a deemed assignment in bankruptcy occurring, including:

- (a) issues associated with termination of Allied's remaining employees by operation of law and uncertainty of their employment status in a receivership;
- (b) other contract terminations, such as with customers and vendors; and

³ Report at paras 2.0(3), (4) and (6).

⁴ Report at para 2.0(7).

⁵ Report at para 4.0(4).

(c) the need at this stage to convene a meeting of creditors and appoint inspectors.⁶

13. The Interim Receiver is further concerned that the statutory notices that would be required to be sent to creditors upon the automatic bankruptcy of Allied could create confusion. The Interim Receiver has only just established a degree of certainty and continuity with the notices sent upon its appointment and is concerned that new communications advising of bankruptcy will threaten that certainty at a time when the Interim Receiver is focussed on finishing the work under the Service Contracts and coordinating recovery of Allied's equipment.⁷

PART III – ISSUES AND THE LAW

14. The sole issue on this motion is whether this Court should extend the time for Allied to file a proposal from September 24, 2022 to November 8, 2022.

A. JURISDICTION TO GRANT EXTENSION

15. As the locality of Allied, Allied filed its NOI in Hamilton, Ontario. On September 22, 2022, the NOI proceedings were approved for transfer to the Ontario Superior Court of Justice (Commercial List) by the Honourable Justice McEwen. The Interim Receiver is working with the Commercial List court office to carry out the formal transfer of the NOI proceedings to the Ontario Superior Court of Justice (Commercial List).

16. Pursuant to section 183(1) of the BIA, this Court has the jurisdiction at law and in equity to enable it to exercise jurisdiction in a proposal proceeding, wherever commenced, to grant the relief requested on this motion.⁸

⁶ Report at para 10.0(2).

⁷ Report at para 10.0(3).

⁸ BIA ss. 183(1) and 187(11); See also [Re Dominion Shipbuilding & Repair Co. \(1926\) 59 OLR 89](#).

B. THE REQUESTED EXTENSION SHOULD BE GRANTED

17. Pursuant to section 50.4(9) of the BIA:

50.4(9) Extension of time for filing proposal – The insolvent person may, before the expiry of the 30-day period referred to in subsection (8) or of any extension granted under this subsection, apply to the court for an extension, or further extension, as the case may be, of that period, and the court, on notice to any interested persons that the court may direct, may grant the extensions, not exceeding 45 days for any individual extension and not exceeding in the aggregate five months after the expiry of the 30-day period referred to in subsection (8), if satisfied on each application that

(a) the insolvent person has acted, and is acting in good faith and with due diligence;

(b) the insolvent person would likely be able to make a viable proposal if the extension being applied for were granted; and

(c) no creditor would be materially prejudiced if the extension being applied for were granted.⁹

18. If Allied does not file a proposal by September 24, 2022, and if the requested extension is not granted, Allied will be deemed to have made an assignment in bankruptcy.¹⁰

19. The Interim Receiver submits that the requested extension of time should be granted for the following reasons:

(a) Allied has acted in good faith and due diligence throughout the NOI proceeding;¹¹

(b) While remote, there is a prospect that Allied would be able to make a viable proposal to its creditors if the requested extension is granted. An automatic

⁹ BIA ss. 50.4(9).

¹⁰ BIA ss. 50.4(8).

¹¹ Report at para 10.0(4).

bankruptcy triggered by Allied's failure to file a proposal by the September 24, 2022 deadline would eliminate this possibility entirely.¹²

- (c) The requested extension should not adversely affect or prejudice any group of creditors; the Interim Receiver is projected to have funding to pay-post-filing services and supplies;¹³
- (d) the requested extension will provide Allied with the additional time it requires to further advance its restructuring and complete work under the Close Out Agreement, which is in the interest of all stakeholders;¹⁴
- (e) the requested extension will avoid disruptions that could result from an extension not being granted and a deemed bankruptcy occurring, including issues with employee and contract terminations and the need, at this stage, to convene a meeting of creditors and appoint inspectors;¹⁵ and
- (f) the requested extension will maintain the certainty and continuity established by the interim receivership proceedings and allow the Interim Receiver to remain focussed on finishing work under the Service Contracts and coordinating recovery of Allied's equipment.¹⁶

¹² Report at para 10.0(4).

¹³ Report at para 10.0(4).

¹⁴ Report at para 10.0(4).

¹⁵ Report at para 10.0(2).

¹⁶ Report at para 10.0(3).

PART IV – ORDER REQUESTED

20. For the reasons set forth above, the Interim Receiver respectfully requests that this Court grant the Order extending the time for Allied to file a proposal from September 24, 2022 to November 8, 2022 at Tab 3 of the Interim Receiver's Motion Record.

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 22nd day of September, 2022.



Chris Burr/Caitlin McIntyre
Lawyers for the Proposal Trustee

SCHEDULE "A"

LIST OF AUTHORITIES

| <u>Cases</u> | |
|---------------------|--|
| 1. | <i>Re Dominion Shipbuilding & Repair Co.</i> (1926) 59 OLR 89. |

SCHEDULE “B”

TEXT OF RELEVANT STATUTES AND REGULATIONS

Bankruptcy and Insolvency Act, R.S.C. 1985, c. B-3

Notice of intention

50.4 Where assignment deemed to have been made

(8) Where an insolvent person fails to comply with subsection (2), or where the trustee fails to file a proposal with the official receiver under subsection 62(1) within a period of thirty days after the day the notice of intention was filed under subsection (1), or within any extension of that period granted under subsection (9),

(a) the insolvent person is, on the expiration of that period or that extension, as the case may be, deemed to have thereupon made an assignment;

(b) the trustee shall, without delay, file with the official receiver, in the prescribed form, a report of the deemed assignment;

(b.1) the official receiver shall issue a certificate of assignment, in the prescribed form, which has the same effect for the purposes of this Act as an assignment filed under section 49; and

(c) the trustee shall, within five days after the day the certificate mentioned in paragraph (b.1) is issued, send notice of the meeting of creditors under section 102, at which meeting the creditors may by ordinary resolution, notwithstanding section 14, affirm the appointment of the trustee or appoint another licensed trustee in lieu of that trustee.

Extension of time for filing proposal

(9) The insolvent person may, before the expiry of the 30-day period referred to in subsection (8) or of any extension granted under this subsection, apply to the court for an extension, or further extension, as the case may be, of that period, and the court, on notice to any interested persons that the court may direct, may grant the extensions, not exceeding 45 days for any individual extension and not exceeding in the aggregate five months after the expiry of the 30-day period referred to in subsection (8), if satisfied on each application that

(a) the insolvent person has acted, and is acting, in good faith and with due diligence;

(b) the insolvent person would likely be able to make a viable proposal if the extension being applied for were granted; and

(c) no creditor would be materially prejudiced if the extension being applied for were granted.

Courts vested with jurisdiction

183 (1) The following courts are invested with such jurisdiction at law and in equity as will enable them to exercise original, auxiliary and ancillary jurisdiction in bankruptcy and in other proceedings authorized by this Act during their respective terms, as they are now, or may be hereafter, held, and in vacation and in chambers:

- (a) in the Province of Ontario, the Superior Court of Justice;
- (b) [Repealed, 2001, c. 4, s. 33]
- (c) in the Provinces of Nova Scotia and British Columbia, the Supreme Court;
- (d) in the Provinces of New Brunswick and Alberta, the Court of Queen's Bench;
- (e) in the Province of Prince Edward Island, the Supreme Court of the Province;
- (f) in the Provinces of Manitoba and Saskatchewan, the Court of Queen's Bench;
- (g) in the Province of Newfoundland and Labrador, the Trial Division of the Supreme Court; and
- (h) in Yukon, the Supreme Court of Yukon, in the Northwest Territories, the Supreme Court of the Northwest Territories, and in Nunavut, the Nunavut Court of Justice.

Court No.: 32-2859284

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