

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

**IN THE MATTER OF THE RECEIVERSHIP OF 2806401 ONTARIO INC.
O/A ALLIED TRACK SERVICES INC., A CORPORATION
INCORPORATED UNDER THE LAWS OF ONTARIO**

BETWEEN:

PRICEWATERHOUSECOOPERS INC.
(solely in its capacity as Court-appointed receiver and manger of Bridging Finance Inc.
and certain related entities and investment funds)

Applicant

- and -

2806401 ONTARIO INC. o/a ALLIED TRACK SERVICES INC.

Respondent

**NOTICE OF MOTION
(Approval of Auction Services Agreement, and Ancillary Matters)
Returnable October 28, 2022**

KSV Restructuring Inc. (“KSV”) in its capacity as receiver and manager (in such capacity, the “**Receiver**”), without security, of all of the assets, undertakings and properties (the “**Property**”) of 2806401 Ontario Inc. o/a Allied Track Services Inc. (the “**Debtor**”), will make a motion before a Judge presiding over the Commercial List on **October 28, 2022 at 10:00 a.m.** (**Toronto time**), or as soon after that time as the motion can be heard.

PROPOSED METHOD OF HEARING: The motion is to be heard:

- In writing under subrule 37.12.1(1) because it is (*insert one of* on consent, unopposed *or* made without notice);
- In writing as an opposed motion under subrule 37.12.1(4);
- In person;
- By telephone conference;
- By video conference.

at the following location:

Zoom meeting link, meeting ID and passcode to be created and posted to Caselines by court staff

Please advise if you plan to attend the motion by emailing Nancy Thompson, at nancy.thompson@blakes.com.

THE MOTION IS FOR:

- (a) An order substantially in the form of the Order included in the Motion Record of the Receiver, *inter alia*:
 - (i) Approving a transaction (the “**Transaction**”) between the Receiver and Corporate Assets Inc. (the “**Auctioneer**”) whereby the Auctioneer will sell the Debtor’s right, title and interest to certain assets pursuant to an Auction Services Agreement dated October 19, 2022 (the “**ASA**”), including without limitation assets leased to the Debtor by Danella Rental Systems Ltd. (“**Danella**”), Setay Motors Inc. (“**Setay**”) and LMS Rail Services Limited (“**LMS**”);
 - (ii) Vesting all right, title and interest of the Debtor in the purchasers identified by the Auctioneer pursuant to the ASA;
 - (iii) Authorizing the Receiver to pay contract rent and to return certain leased assets to Setay;
 - (iv) Sealing the confidential appendices to the First Report of the Receiver dated October 19, 2022 (the “**Report**”);

- (v) Approving the activities of the Receiver from September 23, 2022 to October 19, 2022; and
- (b) such further and other relief as counsel may request and this Honourable court may permit.

THE GROUNDS FOR THE MOTION ARE:

Background

- (a) The Debtor is a railroad maintenance service provider, is insolvent, and does not have the liquidity to carry on its business;
- (b) On August 25, 2022, the Debtor filed a Notice of Intention to Make a Proposal (“**NOI**”) and KSV was appointed as proposal trustee (in such capacity, the “**Proposal Trustee**”). KSV was subsequently appointed as interim receiver of the Debtor on September 6, 2022 (in such capacity, the “**Interim Receiver**”), and then appointed as Receiver on September 23, 2022 pursuant to the order of Mr. Justice Osborne, dated September 23, 2022 (the “**Appointment Order**”) obtained on an application by the Debtor’s largest secured creditor, Bridging Finance Inc., represented by its Court-appointed receiver and manger, PricewaterhouseCoopers Inc. (the “**Bridging Receiver**”);

Sale of Equipment

- (c) The Debtor owns a wide assortment of equipment, machinery, vehicles and tools (the “**Equipment**”), which the Proposal Trustee, the Interim Receiver, and the Receiver have inventoried, and taken steps to locate and secure, with the assistance of representatives of the Debtor;

- (d) The Receiver commenced a process (the “**RFP Process**”) to request proposals from liquidators and other parties for the sale of substantially all of the Equipment;
- (e) After a series of competitive submissions and correspondence between the Interim Receiver, Receiver and bidders, the Auctioneer’s offer to liquidate the Equipment was selected by the Receiver as the superior offer, including because it represented a liquidation proposal with the highest net minimum guarantee and most favourable profit-sharing arrangements to the Receiver;
- (f) The Receiver believes the RFP Process was commercially reasonable and appropriate in the circumstances, the Transaction provides the greatest recovery available in the circumstances, and the commercial terms of the ASA are reasonable and is supported by the Bridging Receiver, the Debtor’s largest creditor;
- (g) The ASA is subject to Court approval, and the Receiver is bringing this motion to seek such Court approval, so that the Equipment may be liquidated before the end of the rail services season;

Leased Equipment

- (h) The Debtor leases equipment from nine different equipment lessors. The Receiver’s counsel has reviewed the applicable leases and corresponding registrations (or lack thereof) by lessors under the personal property security registries in British Columbia, Alberta, Manitoba and Ontario;
- (i) The Receiver has identified three lessors whose deemed security interests in the leased equipment is not properly perfected: Danella, Setay (as secured party under leases with Queenston Chevrolet Buick GMC) and LMS. In the Receiver’s view, as a result of their non-perfection, the interests of those lessors in the leased

equipment is subordinate to the security interests of the Debtor's other secured creditors, subject to certain curing provisions in respect of Setay and subject to certain third-party security interests in respect of LMS;

- (j) The Receiver is seeking the Court's authorization to sell all three units leased to the Debtor by Danella;
- (k) In the Receiver's view, Setay's non-perfection as against the Debtor is cured by the fact that Setay has registered a security interest against the vehicle identification numbers of 14 vehicles leased to the Debtor (the "**VIN Registered Setay Units**"), and the Receiver is accordingly seeking the Court's authorization to pay rent in respect of the VIN Registered Setay Units and return them to Setay;
- (l) Setay has not registered against the vehicle identification numbers of three vehicles leased to the Debtor (the "**Unregistered Setay Units**"), and the Receiver is seeking the Court's authorization to sell the Unregistered Setay Units;
- (m) While LMS has not registered against the Debtor or any of the vehicle identification numbers of the units leased to the Debtor, certain of LMS's creditors have registered against the vehicle identification numbers: Vic Lanoix Holdings Limited, HSBC Bank Canada, Meridian OneCap Credit Corp. and Caisse Populaire (collectively, the "**LMS Secured Creditors**");
- (n) As a result of LMS's unperfected, and therefore subordinate, security interest, the Receiver is seeking the Court's authorization to sell all of the units leased by LMS to the Debtor, subject to the Receiver segregating the proceeds of sale of such units, so that the entitlements of the LMS Secured Creditors to such proceeds, if any, can be adjudicated at a later date;

Sealing Order

- (o) In the event that the Transaction does not close for any reason, and if the allocation of value by Equipment in the ASA is not sealed, future bidders would have access to the amount that was accepted by the Receiver. Similarly, if the Offer Summary is not sealed, future bidders would have access to offer details;
- (p) The Receiver is requesting an order sealing the confidential appendices to the First Report, which contain commercially sensitive information, until (a) the earlier of (i) the end of the Auction Period (as defined in the ASA) or (ii) all of the Equipment is sold, or (b) a further order of the Court is made;
- (q) There is no prejudice to any party in sealing the commercially sensitive information in the confidential appendices, and such a sealing order will protect the integrity of the sale process;

Activities Approval

- (r) The activities of the Receiver, as detailed in the First Report, were undertaken in accordance with the Appointment Order, were necessary to the efficient and effective conduct of these receivership proceedings, and provided value to the Debtor's creditors and stakeholders;

Additional Grounds

- (s) The facts and analysis set out in the First Report;
- (t) Rules 1.04, 2.03, 3.02, 16 and 37 of the *Rules of Civil Procedure*, R.R.O 1990, Reg 194, as amended; and

- (u) Such further and other grounds as counsel may advise and this Honourable Court may permit.

THE FOLLOWING DOCUMENTARY EVIDENCE will be used at the hearing of the motion:

1. The First Report, to be filed;
2. Such further and other evidence as counsel may advise and this Honourable Court may permit.

October 19, 2022

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Lawyers for the Receiver

TO: SERVICE LIST

PRICEWATERHOUSECOOPERS INC.
(solely in its capacity as Court-appointed receiver and manger of
Bridging Finance Inc. and certain related entities and investment funds)
Applicant

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Proceeding Commenced at Toronto

**NOTICE OF MOTION
(Approval of Auction Services Agreement,
and Ancillary Matters)**

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