

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

THE HONOURABLE)	FRIDAY, THE 10 TH
)	
JUSTICE PENNY)	DAY OF NOVEMBER, 2023

**IN THE MATTER OF THE NOTICE OF INTENTION TO MAKE A PROPOSAL OF
BAD BOY FURNITURE WAREHOUSE LIMITED
IN THE CITY OF TORONTO, IN THE PROVINCE OF ONTARIO**

ORDER

THIS MOTION, made by Bad Boy Furniture Warehouse Limited (the “**Company**”) for an order, *inter alia*: (a) extending the stay of proceedings under the *Bankruptcy and Insolvency Act*, R.S.C. 1985 c. B-3 (the “**BIA**”) by ordering the continuation of services and certain other protections in respect of the Company; (b) approving the Administration Charge (as defined and described below); (c) approving the Director’s Charge (as defined and described below); and (d) granting certain other relief was heard this day virtually via videoconference.

ON READING the Company’s Notices of Motion, the First Report of KSV Restructuring Inc., in its capacity as proposal trustee of the Company (the “**Proposal Trustee**”), dated November 9, 2023 (the “**First Report**”), filed, on being advised that the Company filed a notice of intention to make a proposal pursuant to section 50.4(1) of the BIA on November 9, 2023 (the “**NOI Filing Date**”), and on hearing the submissions of respective counsel for the Company, the Proposal Trustee and such other counsel as were present as shown on the Participant Information Form, no one else appearing although duly served:

SERVICE AND DEFINITIONS

1. **THIS COURT ORDERS** that the time for service of the Company's Notice of Motion and First Report are hereby abridged and validated so that this Motion is properly returnable today and hereby dispenses with further service thereof.
2. **THIS COURT ORDERS** that any capitalized term used and not defined herein shall have the meaning ascribed thereto in the First Report.

NO INTERFERENCE WITH RIGHTS

3. **THIS COURT ORDERS** that until the expiry of the date by which the Company must file a proposal pursuant to section 50.4(1) of the BIA (including as such date may be extended pursuant to section 50.4(9) of the BIA, the "**Proposal Outside Date**"), no individual, firm, corporation, governmental body or agency, or any other entities (all of the foregoing, collectively being "**Persons**" and each being a "**Person**") shall discontinue, fail to honour, alter, interfere with, repudiate, terminate or cease to perform any right, renewal right, contract, agreement, licence, permit, lease, purchase order or other arrangement, whether written or oral (each, an "**Agreement**"), in favour of or held by the Company, except with the written consent of the Company and the Proposal Trustee, or leave of this Court.

CONTINUATION OF SERVICES

4. **THIS COURT ORDERS** that until the expiry of the Proposal Outside Date, all Persons having an Agreement with the Company or statutory or regulatory mandates for the supply of goods and/or services, including without limitation all computer software, communication and other data services, centralized banking services, payroll services, merchant and credit card processing services, insurance, transportation services, utility or other services to the Company, are hereby restrained until further order of this Court from discontinuing, altering, interfering with or terminating the supply of such goods or services as may be required by the Company, and that the Company shall be entitled to the continued use of its current premises, telephone numbers, facsimile numbers, internet addresses and domain names, provided in each case that the normal prices or charges for all such goods or services received after the date of this Order are paid by the Company in accordance with normal payment practices of the Company or such other practices as

may be agreed upon by the supplier or service provider and the Company and the Proposal Trustee, or as may be ordered by this Court.

5. **THIS COURT ORDERS** that no Person shall be entitled to set off any amounts that are or may become due from the Company to such Person in respect of obligations relating to the period prior to the NOI Filing Date, against any amounts that are or may become due from such Person to the Company in respect of obligations arising on or after the NOI Filing Date, in each case without the consent of the Company and the Proposal Trustee, or as may be ordered by this Court. For greater certainty and without limiting the generality of the foregoing, no merchant or credit card service provider (a “**Provider**”) shall be entitled to set off any monies that are in its possession or control as of the NOI Filing Date, or that come into its possession and control subsequent to the NOI Filing Date, against any amounts that may be owing to the Provider, or may become owing to the Provider, in respect of transactions prior to the NOI Filing Date, including in respect of any customer chargebacks relating to sales by the Company prior to the NOI Filing Date.

6. **THIS COURT ORDERS** that until a real property lease is disclaimed or resiliated in accordance with the BIA, the Company shall pay all amounts constituting rent or payable as rent under real property leases (including, for greater certainty, common area maintenance charges, utilities and realty taxes and any other amounts payable to the applicable landlord (each, a “**Landlord**”) under the lease or as otherwise may be negotiated between the Company and the Landlord from time to time (“**Rent**”) twice-monthly in equal payments on the first and fifteenth day of each month, in advance (but not in arrears). On the date of the first of such payments following the date of this Order, any Rent relating to the period commencing from and including the NOI Filing Date shall also be paid.

7. **THIS COURT ORDERS** that no Person shall be prohibited from requiring immediate payment for goods, services, use of leased or licensed property or other valuable consideration provided on or after the NOI Filing Date, nor shall any Person be under any obligation on or after the NOI Filing Date to advance or re-advance any monies or otherwise extend any credit to the Company.

SALE OF NON-MATERIAL ASSETS

8. **THIS COURT ORDERS** that the Company shall have the right to sell, dispose of, transfer or assign redundant or non-material assets not exceeding \$150,000 in any one transaction or \$300,000 in the aggregate, without further order of the Court, to permit the Company to proceed with an orderly restructuring of the Company's business.

ADMINISTRATION CHARGE

9. **THIS COURT ORDERS** that the Proposal Trustee, counsel to the Proposal Trustee, and counsel to the Company (collectively, the "**Administrative Professionals**") shall be paid their reasonable fees and disbursements, in each case at their standard rates and charges, whether incurred prior to, on or subsequent to the NOI Filing Date, by the Company as part of the costs of these proceedings. The Company is hereby authorized and directed to pay the accounts of the Administrative Professionals on a bi-weekly basis, or as they may otherwise agree, and is hereby authorized to pay or to have paid retainers to the Administrative Professionals as security for the payment of their respective fees and disbursements outstanding from time to time.

10. **THIS COURT ORDERS** that the Administrative Professionals shall be entitled to the benefit of and are hereby granted a charge (the "**Administration Charge**") on all of the Company's present and future assets, undertakings and property of every nature and kind whatsoever and wherever situate, including all proceeds thereof (collectively, the "**Property**"), which charge shall not exceed an aggregate amount of \$250,000, as security for payment of their respective professional fees and disbursements incurred at their standard rates and charges, both before and after the making of this Order, in respect of this proceeding. The Administration Charge shall have the priority set out in paragraphs 14 and 16 hereof.

INDEMNIFICATIONS AND CHARGE

11. **THIS COURT ORDERS** that the Company shall indemnify its directors and officers against obligations and liabilities that they may incur as a director or officer of the Company after the NOI Filing Date, except to the extent that, with respect to any officer or director, the obligation or liability was incurred as a result of the director's or officer's gross negligence or wilful misconduct.

12. **THIS COURT ORDERS** that the directors and officers of the Company shall be entitled to the benefit of and are hereby granted a charge (the “**Director’s Charge**”) on the Property, which charge shall not exceed an aggregate amount of \$790,000, as security for the indemnity provided in paragraph 11 of this Order. The Director’s Charge shall have the priority set out in paragraphs 14 and 16 herein.

13. **THIS COURT ORDERS** that, notwithstanding any language in any applicable insurance policy to the contrary, (a) no insurer shall be entitled to be subrogated to or claim the benefit of the Director’s Charge; and (b) the Company’s directors and officers shall only be entitled to the benefit of the Director’s Charge to the extent that they do not have coverage under any directors and officers insurance policy, or to the extent that such coverage is insufficient to pay amounts indemnified in accordance with paragraph 11 of this Order.

VALIDITY AND PRIORITY OF CHARGES CREATED BY THIS ORDER

14. **THIS COURT ORDERS** that the priorities of the Administration Charge and the Director’s Charge (collectively, the “**Charges**”), as among them, with respect to the Property shall be as follows:

First – Administration Charge

Second – Director’s Charge

15. **THIS COURT ORDERS** that the filing, registration or perfection of 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.

16. **THIS COURT ORDERS** that each of the Charges shall constitute a charge on the Property and such Charges shall rank in priority to all other security interests, trusts (including any statutory, deemed or constructive trust), liens, charges and encumbrances, claims of secured creditors, statutory or otherwise (collectively, “**Encumbrances**”) in favour of any Person, including claims evidenced by registrations pursuant to the *Personal Property Security Act* (Ontario) (the “**Ontario PPSA**”) or any other personal, movable or real property registration system, provided that the Charges shall rank subordinate to the Encumbrances evidenced by the

Ontario PPSA registrations listed on Schedule “A” to this Order (collectively, the “**Priority PPSA Registrations**”).

17. **THIS COURT ORDERS** that except as otherwise expressly provided for herein, or as may be approved by this Court, the Company shall not grant any Encumbrances over any Property that rank in priority to, or *pari passu* with, any of the Charges, unless the Company also obtains the prior written consent of the Proposal Trustee and the beneficiaries of the Charges (collectively, the “**Chargees**”), or further Order of this Court.

18. **THIS COURT ORDERS** that the Charges shall not be rendered invalid or unenforceable and the rights and remedies of 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) or receivership order(s) issued pursuant to the BIA or otherwise, or any bankruptcy order or receivership order subsequently made; (c) the provisions of any federal or provincial statutes; or (d) any negative covenants, prohibitions or other similar provisions with respect to borrowings, incurring debt or the creation of Encumbrances, contained in any Agreement which binds the Company, and notwithstanding any provision to the contrary in any Agreement:

- (a) the creation of the Charges shall not create or be deemed to constitute a breach by the Company of any Agreement to which it 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 Charges; and
- (c) the payments made by the Company 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.

19. **THIS COURT ORDERS** that any Charge created by this Order over a lease of real property in Canada shall only be an Encumbrance in the Company’s interest in such real property lease.

SERVICE OF DOCUMENTS

20. **THIS COURT ORDERS** that the E-Service Guide of the Commercial List (the “**Guide**”) is approved and adopted by reference herein and, in this proceeding, the service of documents made in accordance with the Guide (which can be found on the Commercial List website at <https://www.ontariocourts.ca/scj/practice/regional-practice-directions/eservice-commercial/>) shall be valid and effective service. Subject to Rule 17.05 of the *Rules of Civil Procedure*, R.R.O. 1990, Reg. 194, as amended (the “**Rules of Civil Procedure**”), this Order shall constitute an order for substituted service pursuant to Rule 16.04 of the Rules of Civil Procedure. Subject to Rule 3.01(d) of the Rules of Civil Procedure and paragraph 13 of the Guide, service of documents in accordance with the Guide will be effective on transmission. This Court further orders that a Case Website shall be established in accordance with the Guide with the following URL: <https://www.ksvadvisory.com/experience/case/bad-boy>.

21. **THIS COURT ORDERS** that the Company, the Proposal Trustee and their respective counsel are at liberty to serve or distribute this Order, and other materials and orders as may be reasonably required in these proceedings, including any notices, or other correspondence, by forwarding copies thereof by electronic message to the Company’s creditors or other interested parties and their advisors. For greater certainty, any such distribution or service shall be deemed to be in satisfaction of a legal or judicial obligation and notice requirements within the meaning of clause 3(c) of the *Electronic Commerce Protection Regulations*, Reg. 81000-2-175 (SOR/DORS).

22. **THIS COURT ORDERS** that if the service or distribution of documents in accordance with the Guide is not practicable, the Company and the Proposal Trustee and their respective counsel and agents are at liberty to serve or distribute this Order, any other materials and orders in these proceedings, any notices or other correspondence, by forwarding copies thereof by prepaid ordinary mail, courier, personal delivery, e-mail or facsimile transmission to the Company’s creditors or other interested parties at their respective addresses (including e-mail addresses) as last shown on the records of the Company and that any such service or distribution shall be deemed to be received on the earlier of (a) the date of transmission thereof, if sent by electronic message on or prior to 5:00 p.m. Eastern Time; (b) the next business day following the date of forwarding or transmission thereof, if sent by courier, personal delivery, facsimile transmission or electronic

message sent after 5:00 p.m. Eastern; or (c) on the third business day following the date of forwarding thereof, if sent by ordinary mail.

GENERAL

23. **THIS COURT ORDERS** that this Order shall have full force and effect in all provinces and territories in Canada.

24. **THIS COURT HEREBY REQUESTS** the aid and recognition of any court, tribunal, agency or regulatory or administrative bodies, having jurisdiction in Canada, the United States of America or any other jurisdiction, to give effect to this Order and to assist the Company, the Proposal Trustee and their respective agents in carrying out the terms of this Order. All courts, tribunals, agencies and regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Company 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 Company and the Proposal Trustee and their respective agents in carrying out the terms of this Order.

25. **THIS COURT ORDERS** that this Order and all of its provisions are effective as of 12:01 a.m. Eastern Time on the date of this Order without the need for entry or filing.



A handwritten signature in blue ink, appearing to read "Perry J.", is written above a horizontal line.

SCHEDULE “A”
PRIORITY PPSA REGISTRATIONS

1. Registration No. 20061220 1453 1530 in favour of Panasonic Canada Inc.
2. Registration No. 20200720 1008 1532 3556 in favour of Mercedes-Benz Financial.
3. Registration No. 20210415 1228 1532 4094 in favour of Mercedes-Benz Financial.
4. Registration No. 20220624 1336 4085 3823 in favour of Mercedes-Benz Financial.
5. Registration No. 20220824 1657 1532 3588 in favour of Mercedes-Benz Financial.
6. Registration No. 20220928 1308 5064 5980 in favour of Konica Business Solution (Canada) Ltd.
7. Registration No. 20221229 1538 1532 0001 in favour of Mercedes-Benz Financial.

**IN THE MATTER OF THE NOTICE OF INTENTION TO MAKE A PROPOSAL OF BAD BOY
FURNITURE WAREHOUSE LIMITED IN THE CITY OF TORONTO, IN THE PROVINCE OF
ONTARIO**

Estate / Court File No. 31-3008133

**ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)
IN BANKRUPTCY AND INSOLVENCY**
Proceeding commenced at Toronto

ORDER

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