



**First Report to Court of
KSV Restructuring Inc.
as Proposal Trustee of
Bad Boy Warehouse Furniture Limited**

November 9, 2023

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Court File No.: _____

ONTARIO**SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)****IN THE MATTER OF THE NOTICE OF INTENTION TO MAKE A PROPOSAL OF
BAD BOY FURNITURE WAREHOUSE LIMITED****OF THE CITY OF TORONTO, IN THE PROVINCE OF ONTARIO****FIRST REPORT OF KSV RESTRUCTURING INC.
AS PROPOSAL TRUSTEE OF
BAD BOY FURNITURE WAREHOUSE LIMITED****November 9, 2023****1.0 Introduction**

1. This report (“Report”) is filed by KSV Restructuring Inc. (“KSV”), in its capacity as proposal trustee (the “Proposal Trustee”) of Bad Boy Furniture Warehouse Limited (the “Company”) in connection with a Notice of Intention to Make a Proposal (the “NOI”) filed on November 9 2023 (the “Filing Date”) pursuant to Section 50.4(1) of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended (the “BIA”). A copy of the certificate of filing issued by the Office of the Superintendent of Bankruptcy is provided in Appendix “A”.
2. The principal purpose of these proceedings (the “NOI Proceedings”) is to create a stabilized environment to allow the Company the opportunity to consider its restructuring options, while it sells its inventory in a contemplated liquidation sale and collects its accounts receivable owing from customers in its Builder Business (as defined below). The Company intends to seek approval of the sale terms and a consulting agreement with a liquidator at a future motion in the NOI Proceedings, which the Company and the Proposal Trustee expect to be served in the near term.

1.1 Purposes of this Report

1. The purposes of this Report are to:
 - a) provide background information about the Company;
 - b) discuss the rationale for the Company’s request for an order expanding the scope of the stay of proceedings in these proceedings as it relates to the terms of supply and service to the Company on a basis consistent with the provisions of the model Initial Order in a proceeding under the *Companies’ Creditors Arrangement Act* (Canada) (the “CCAA”);

- c) discuss the rationale for the Company seeking approval of the following Court-ordered charges and priority of those charges:
 - i. a charge in the amount of \$250,000 (the “Administration Charge”) for the fees and disbursements of the Proposal Trustee, the Proposal Trustee’s counsel, Osler, Hoskin & Harcourt LLP (“Osler”), and the Company’s counsel, Goodmans LLP (“Goodmans”, and together with the Proposal Trustee and Osler, the “Administrative Professionals”); and
 - ii. a charge in the amount of \$790,000 (the “D&O Charge”) for the indemnification of the Company’s director and officers against obligations and liabilities that they may incur after the commencement of these proceedings; and
- d) recommend that the Court grant the relief sought by the Company in the proposed Order, and the reasons therefore.

1.2 Currency

1. All currency references in this Report are to Canadian dollars.

1.3 Restrictions

1. In preparing this Report, the Proposal Trustee has relied upon the Company’s unaudited financial information, the Company’s books and records and discussions with the Company’s representatives. The Proposal Trustee has not performed an audit or otherwise attempted to verify the accuracy or completeness of the financial information on which it relied in a manner that complies with Canadian Auditing Standards (“CAS”) pursuant to the Chartered Professional Accountants of Canada Handbook and, accordingly, the Proposal Trustee expresses no opinion or other form of assurance contemplated under the CAS in respect of such information. Any party wishing to place reliance on the financial information should perform its own diligence.
2. The Proposal Trustee accepts no responsibility for any reliance placed by any third party on the Company’s financial information presented herein. Future oriented financial information relied upon in this Report is based upon the Company’s assumptions regarding future events; actual results achieved may vary from this information and these variations may be material.

1.4 Court Materials

1. Court materials filed in these proceedings will be made available on the Proposal Trustee’s website at: <https://www.ksvadvisory.com/experience/case/bad-boy>.

1.5 KSV's Prior Mandate

1. KSV Advisory Inc. ("KSV Advisory"), an affiliate of KSV, was first engaged by the Company to provide non-restructuring advisory services pursuant to an engagement letter in March 2021 (the "Engagement Letter"). The initial engagement lasted a few months and KSV Advisory had no further material role with the Company until March 2023. KSV Advisory was re-engaged by the Company to provide it with consulting services pursuant to an engagement letter dated March 21, 2023 (the "March 21 Engagement Letter"). That mandate also lasted a couple of months. Thereafter, KSV Advisory provided periodic consulting services to the Company, with the services being more intensive recently. The March 21 Engagement Letter states that KSV Advisory's mandate would terminate if the Company commences an insolvency proceeding and KSV is appointed as the court officer in that proceeding, as at such point KSV's duties and obligations are as an officer of the court.

2.0 Background

1. The Company was incorporated under the laws of Ontario on July 17, 1990. The Company sells furniture, appliances, and electronics through 12 retail stores across Ontario and through an e-commerce platform. The Company also sells appliances to real estate developers and property managers (the "Builder Business"). Presently, retail sales (including an e-commerce component) account for approximately 65% to 70% of the business, and the Builder Business accounts for the balance.
2. The Company's head office and main warehouse is located at 3550 Sideline 24, Pickering, Ontario. The Company's flagship store is located at 1119 Kennedy Road, Scarborough, Ontario. A list of the Company's store locations, with addresses and landlord names, is provided in Appendix "B".
3. The Company is owned by Lastman Furniture Inc., which is wholly-owned by Blayne Lastman, the Company's President, Chief Executive Officer and sole Director.
4. The Company presently has approximately 275 employees, including head office, warehouse and store employees.
5. The Company's workforce is not unionized. The Company does not offer its employees a pension plan, except for a defined benefit individual pension plan for Mr. Lastman. This pension plan satisfies the definition of a multi-employer plan, other than the requirement that the entities be unrelated. The accumulated plan deficit as at September 30, 2022 was approximately \$490,000.

2.1 Financial Position

1. A summary of the Company's preliminary unaudited financial position as at September 30, 2023 is presented in the table below.

	(\$000s)
Assets	
Accounts receivable	5,411
Inventory	10,691
Receivable from parent company	1,476
Furniture, fixtures and equipment	2,274
Goodwill	3,305
Other assets	1,909
Total assets	25,066
Liabilities & Shareholders' Equity	
Operating line	4,000
Accounts payable and accrued liabilities	15,392
Customer deposits	4,544
Leasehold improvements	2,473
Total liabilities	26,409
Shareholders' Equity	(1,343)
Total liabilities and shareholders' equity	25,066

2.2 Creditors

1. Laurentian Bank of Canada ("LBC") provides the Company with a secured operating line facility that is margined against accounts receivable and inventory. The Proposal Trustee understands that LBC has security over all of the Company's business and assets pursuant to a general security agreement.
2. Over the last few weeks, the Company, through the Proposal Trustee, reached out to LBC to advise them of the deteriorating financial situation faced by the Company, and on the request of LBC, undertook to provide financial and other information to LBC. On November 8, 2023, LBC issued a notice of default and demand (the "Demand Notice") in respect of the obligations under the operating line facility and a notice of intention to enforce security pursuant to section 244(1) of the BIA. Pursuant to the Demand Notice, the amount owing by the Company to LBC is approximately \$4.4 million¹. Constructive discussions have continued, and information has been, and will continue to be, provided to LBC.
3. The Proposal Trustee's counsel had not yet provided an opinion on the validity and enforceability of LBC's security; however, the Proposal Trustee's counsel intends to review LBC's security forthwith and the Proposal Trustee will report on the results of the security review in its next report to Court if the opinion is available at that time.

¹ This is before application of cash on hand in a Company bank account.

4. Pursuant to a *Personal Property Security Act (Ontario)* search conducted on November 6, 2023, the Proposal Trustee understands that the following parties, in addition to LBC, have also registered security against the Company's assets (collectively, the "Additional Registered Encumbrances"):
 - a. Mercedes-Benz Financial and Mercedes-Benz Financial Services Canada Corporation, which has made five registrations secured against five respective motor vehicles;
 - b. Panasonic Canada Inc. that has a registration that predates the LCB registration but is limited to inventory bearing the trademarks "Panasonic", "National" or "Panafax". The Company has advised the Proposal Trustee that the book value of this inventory as of the date of this Report is less than \$50,000; and
 - c. Konica Minolta Business Solutions (Canada) Ltd., which has a registration against a photocopier.

5. A preliminary summary of the Company's unsecured creditors as of November 4, 2023 is provided in the table below.

Unsecured Creditors	(\$)
Whirlpool Canada LP	2,376,502
Solid Gold Warranty LTD ²	1,810,463
Sofa by Fancy	1,353,734
Samsung Appliances	840,924
Electrolux Home Products	822,703
MC Commercial Inc.	621,921
Kwality Imports	475,362
LG Electronics Canada Inc.	404,410
Elements International	334,734
Edgewood Furniture Limited	334,175
RioCan Real Estate Investment Trust	317,382
Curtis International LTD	185,016
MC Commercial Inc. C/O T9901	176,437
Owen and Company Limited	144,114
MANW28AH USA Inc.	140,228
Other	3,454,356
Total	13,792,460

² This is a related company.

6. The Company is significantly in arrears to many of its vendors, including substantially all appliance vendors including Whirlpool Canada LP, Samsung Appliances and Electrolux Home Products, Inc. The Company is also in arrears to most of its furniture suppliers, including Sofa by Fancy, Elements International and Edgewood Furniture Limited. The Company is presently having significant challenges sourcing inventory, which is affecting its retail business and its Builder Business. Certain developers in the Builder Business have purported to terminate their contracts with the Company. In order to meet its contractual obligations to developers during these proceedings, the Company will require the ability to purchase inventory, as more fully detailed in Section 3 below.
7. In the ordinary course of business, the Company takes deposits from customers at the time of sale for the future delivery of merchandise. These monies are not held in trust by the Company and the Company does not represent to its customers that they will be. These amounts are paid to the Company and then applied against the LBC operating line. As of the date of this Report, the Company's records reflect that it has received customer deposits totalling approximately \$4.5 million³. It is the Company's intention to advise its retail customers who paid deposits and who have not yet received their orders to contact their credit card company to attempt to obtain a refund of their deposits. Where possible, the Company, in consultation with the Proposal Trustee, also intends to attempt to work with customers to complete orders if the cost of the merchandise is less than the balance owing. The Company will also consider if other arrangements can be made with the customer.

3.0 Stay of Proceedings

1. To provide the Company with the greatest opportunity to operate while it considers its restructuring options, the Company needs to operate without disruption during the NOI proceedings.
2. In order for the Company to deliver appliances to certain real estate development clients of the Builder Business and to minimize claims against accounts receivable owing by these developers to the Company, the Company requires the ability to purchase inventory. Accordingly, the Company is requesting that the Court issue an order requiring vendors to continue to supply to the Company, provided that such vendors are not required to provide additional credit to the Company. The Proposal Trustee is of the view that this will mitigate further disruption to the Builder Business, protect the Company's accounts receivable owing from the developers, while not placing any credit risk on the vendors. This will allow accounts receivable collections to be maximized for the benefit of the Company's creditors. The ability to source inventory on cash-on-delivery (or other negotiated terms) will also allow the Company to complete retail sales, including, in certain instances, sales to customers who paid deposits.

³ Estimated. These amounts are subject to change.

3. During these proceedings, the Company will also require the continued use of its merchant credit card services, which are handled by First Data Canada Ltd. (“First Data”). If customers seek returns of their deposits, there is a risk that First Data will attempt to setoff any monies generated from post-filing transactions against deposits that are refunded to the Company’s customers. This would impair the Company’s ability to operate and effectively provide First Data with a security interest that ranks in priority to LBC. First Data is not a secured creditor of the Company. Accordingly, the Order sought by the Company prevents First Data from setting off any monies in its possession as of the Filing Date, or subsequent to the Filing Date, against any amounts it pays to the Company’s customers in respect of refunds of pre-filing sales.
4. The orderly operation of the business will be facilitated by incorporating into the requested Order the enhanced stay provisions from the model Initial Order issued in a CCAA proceeding as they relate to requiring suppliers and service providers to continue to provide goods and services without disruption, provided they are not required to do so on credit. The stay of proceedings under the Initial Order in a CCAA proceeding is significantly broader than the statutory stay of proceedings in proposal/NOI processes under the BIA. KSV was the proposal trustee in a number of cases where the debtor sought and obtained such relief, including The Sanderson-Harold Company Limited (cob as Paris Kitchens), Scotch & Soda Canada Inc./Scotch & Soda Retail Canada Inc. and Nilex Inc., among several others.
5. Expanding the scope of the stay of proceedings is in the spirit of stabilizing the Company’s operations and allowing it the greatest opportunity to preserve normal course operations during the NOI Proceedings while it considers its restructuring and other options. Any supply disruptions will impair the Company’s ability to continue to operate in the normal course and the prospect of identifying going-concern solutions. Accordingly, the Proposal Trustee believes that expanding the scope of the stay of proceedings is appropriate as the continued operation of the Company will assist it to achieve its objectives in these proceedings.

4.0 Court-Ordered Charges

4.1 Administration Charge

1. The Company is seeking Court approval of the “Administration Charge” for the fees and disbursements of the Administrative Professionals, including their unpaid fees and costs preparing for these proceedings.
2. The Proposal Trustee supports the Administration Charge for the following reasons:
 - a. it is a standard feature of Canadian restructuring proceedings;
 - b. it is required to protect the Administrative Professionals retained in these proceedings for their fees and costs given the Company’s limited liquidity at this time;
 - c. none of the Administrative Professionals has received a material retainer; and
 - d. the Administrative Professionals in these proceedings require the protections resulting from the Administration Charge in order to continue in their respective roles.

3. The proposed Order provides that the Administration Charge will constitute a charge on all present and future assets and property of the Company, including all proceeds thereof (the "Property") that ranks in priority to all Encumbrances (as defined in the proposed Order) other than the Additional Registered Encumbrances.

4.2 Director's Charge

1. The Company is also seeking Court approval of the D&O Charge for the indemnification of its director and officers against obligations and liabilities that they may incur as a director or officer of the Company after the commencement of these NOI Proceedings (primarily payroll and sales taxes), except with respect to any obligation or liability incurred as a result of the director or officer's gross negligence or wilful misconduct.
2. The Proposal Trustee understands that the Company is current on all pre-filing obligations for which the director may be personally liable, including payroll obligations and sales taxes, subject to any stub periods for which taxes or payroll amounts are not yet due. The Company contemplates that all such amounts will continue to be paid in the ordinary course. The proposed D&O Charge provides protection for the director and officers if the Company fails to, or is unable to, pay certain obligations arising after the Filing Date which may give rise to liability for the director and officers.
3. In these proceedings, the main risk of the director's and officers' exposure is unpaid payroll, accrued vacation pay and sales taxes. Payroll presently totals approximately \$250,000 per pay period (every two weeks), accrued vacation pay presently totals approximately \$440,000 and monthly sales tax obligations are estimated to total approximately \$100,000. The D&O Charge is intended to cover these obligations.
4. The Company does not have a director and officer insurance policy.
5. The D&O Charge is proposed to rank in priority to all Encumbrances other than the Administration Charge and the Additional Registered Encumbrances.
6. The Proposal Trustee is of the view that the D&O Charge is reasonable in the circumstances and that the continued involvement of the director and officers is beneficial to the Company, their stakeholders, and these proceedings. The continued involvement of these individuals will assist to reduce professional costs and to enhance recoveries.

4.3 Priority of Court Ordered Charges

1. The proposed priority of the Court ordered charges is as follows:
 - a) Administration Charge; and
 - b) D&O Charge.

5.0 Next Steps

1. The Company is considering a liquidation sale in certain or all of its stores so that it can wind-down on an orderly basis the inefficient portions of its business. The Company expects to bring a motion in the near-term seeking approval of the terms of such liquidation sale and the retention of a liquidator.

6.0 Conclusion and Recommendation

1. Based on the foregoing, the Proposal Trustee respectfully recommends that this Honourable Court make an order granting the relief being sought by the Company.

* * *

All of which is respectfully submitted,

KSV Restructuring Inc.

**KSV RESTRUCTURING INC.
IN ITS CAPACITY AS PROPOSAL TRUSTEE OF
BAD BOY FURNITURE WAREHOUSE LIMITED
AND NOT IN ITS PERSONAL CAPACITY**

Appendix “A”



Industry Canada
Office of the Superintendent
of Bankruptcy Canada

Industrie Canada
Bureau du surintendant
des faillites Canada

District of Ontario
Division No. 09 - Toronto
Court No. 31-3008133
Estate No. 31-3008133

In the Matter of the Notice of Intention to make a proposal of:

Bad Boy Furniture Warehouse Limited

Insolvent Person

KSV RESTRUCTURING INC.

Licensed Insolvency Trustee

Date of the Notice of Intention:

November 09, 2023

CERTIFICATE OF FILING OF A NOTICE OF INTENTION TO MAKE A PROPOSAL
Subsection 50.4 (1)

I, the undersigned, Official Receiver in and for this bankruptcy district, do hereby certify that the aforementioned insolvent person filed a Notice of Intention to Make a Proposal under subsection 50.4 (1) of the Bankruptcy and Insolvency Act;

Pursuant to subsection 69. (1) of the Act, all proceedings against the aforementioned insolvent person are stayed as of the date of filing of the Notice of Intention.

Date: November 09, 2023, 14:52

E-File/Dépôt Electronique

Official Receiver

151 Yonge Street, 4th Floor, Toronto, Ontario, Canada, M5C2W7, (877)376-9902

Canada

Appendix “B”

Bad Boy Warehouse Furniture Limited
List of Store Locations and Landlords

Location	Address	Landlord
Pickering (Head Office/Warehouse)	3550 Sideline 24, Pickering, ON L0H 1J0	SBB Industrial (Seaton) Limited Partnership
Scarborough	1119 Kennedy Road, Scarborough, ON M1P 2K8	N. Turk Investments Limited
Mississauga	1970 Dundas Street East, Mississauga, ON L4X2W7	RioCan Holdings (GTA Marketplace) Inc.
North York	1255 Finch Avenue West, North York, ON, M3J 2G4	Centura Real Estate Corp.
Whitby	1615 Dundas Street East, Whitby, ON L1N 2L1	First Capital Asset Management ULC
Barrie	42 Caplan Avenue, Barrie, ON, L4N 0M5	Barrie-View Farms Limited
London	1040 Wharncliffe Road South, London, ON N6L 1H2	Westwood Power Centre Inc.
Kitchener	1138 Victoria Street North, Kitchener, ON N2B 3C9	Ontario Land Holdings Inc.
Burlington	3305 Fairview St., Burlington, ON L7N 3N9	RioCan Management Inc.
Brampton	499 Main Street South, Brampton, ON L6Y 1N7	RioCan Management Inc.
Ancaster	60 Martindale Crescent, Unit 4, Ancaster, ON L9K 1J9	60 Martindale Crescent (Hamilton) Limited
Kingston	636 Gardiners Rd, Kingston Unit #12, Kingston, ON K7M 3X9	RioCan Management Inc.
Ottawa	1695 Merivale Road, Ottawa, ON K2G 3K2	Claridge Homes Merivale Inc.