

**ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)**

THE HONOURABLE

)

MONDAY, THE 2nd

JUSTICE DIETRICH

)

DAY OF MARCH, 2020

)



**IN THE MATTER OF THE *BANKRUPTCY AND INSOLVENCY ACT*,
R.S.C. 1985, c. B-3, AS AMENDED**

**AND IN THE MATTER OF CERTAIN PROCEEDINGS TAKEN IN THE UNITED
STATES BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE WITH
RESPECT TO CELADON GROUP, INC. AND THE AFFILIATED ENTITIES LISTED
IN FOOTNOTE "1" HERETO**

**APPLICATION OF CELADON GROUP, INC. PURSUANT TO PART XIII OF THE
BANKRUPTCY AND INSOLVENCY ACT AND SECTION 101 OF THE *COURTS OF
JUSTICE ACT*, R.S.O. 1990, c. C-43, AS AMENDED**

**ORDER
(Liquidation and Vesting)**

THIS MOTION, made by Canadian Western Bank ("**CWB**") for an order (i) appointing Ritchie Bros. Auctioneers (Canada) Ltd. and IronPlanet Canada Ltd. (collectively the "**Liquidator**") as agent for CWB to liquidate collateral subject to security interest in favour of CWB and (ii) vesting all the right, title and interest of Hyndman Transport Limited ("**Hyndman**") in purchasers from the Liquidator, was heard this day at 330 University Avenue, Toronto, Ontario.

¹ In addition to Celadon, the Chapter 11 Debtors are A R Management Services, Inc., Bee Line, Inc., Celadon Canadian Holdings, Limited ("**CCHL**"), Celadon E-Commerce, Inc., Celadon International Corporation, Celadon Logistics Services, Inc., Celadon Mexicana, S.A. de C.V., Celadon Realty, LLC, Celadon Trucking Services, Inc., Distribution, Inc., Eagle Logistics Services Inc., Hyndman Transport Limited ("**Hyndman**"), Jaguar Logistics, S.A. de C.V., Leasing Servicios, S.A. de C.V., Osborn Transportation, Inc., Quality Companies LLC, Quality Equipment Leasing, LLC, Quality Insurance LLC, Servicios Corporativos Jaguar, S.C., Servicios de Transportacion Jaguar, S.A. de C.V., Stinger Logistics, Inc., Strategic Leasing, Inc., Taylor Express, Inc., Transportation Insurance Services Risk Retention Group, Inc. and Vorbas, LLC

ON READING the Second Report of KSV Kofman Inc. in its capacity as the court-appointed receiver of Hyndman (the “**Receiver**”) dated February 24, 2020 and on hearing the submissions of counsel for the CWB, Hyndman and the Receiver. no one appearing for any other person on the service list, although properly served as appears from the affidavit of service of Brendan Bissell sworn February 27, 2020, filed:

SERVICE

1. **THIS COURT ORDERS** that the time for service of CWB’s Notice of Motion and the Motion Record is hereby abridged and validated so that this motion is properly returnable today and hereby dispenses with further service thereof.

APPOINTMENT OF THE LIQUIDATOR AND VESTING OF THE ASSETS SUBJECT TO CWB’S SECURITY INTEREST

2. **THIS COURT ORDERS** that the Liquidator be and hereby is appointed as agent of CWB to dispose of the collateral subject to security in favour of CWB as listed in Schedule “A” (the “**CWB Collateral**”).

3. **THIS COURT ORDERS** that any sale by the Liquidator on behalf of CWB of the CWB Collateral shall be free and clear of and from any and all security interests (whether contractual, statutory or otherwise), hypothecs, trusts or deemed trusts (whether contractual, statutory or otherwise), liens executions, levies, charges or other financial or monetary claims whether or not they have attached or been perfected, registered or filed and whether secured, unsecured or otherwise (collectively, the “**Claims**”) including, without limiting the generality of the foregoing: (i) any encumbrances or charges created by the Supplemental Order and the Initial Recognition Order dated January 23, 2020, as applicable; and (ii) all charges, security interests or claims evidenced by registrations pursuant to the Personal Property Security Act (Ontario) or any other personal property registry system ((i) and (ii) are collectively referred to as the “**Encumbrances**”), and for greater certainty, this Court orders that all of the Claims and Encumbrances affecting or relating to the CWB Collateral shall be deemed expunged and discharged as against the CWB Collateral upon any disposition by the Liquidator and that all of

Hyndman's right, title and interest in and to the CWB Collateral shall vest absolutely in the applicable ultimate purchasers (the "**Purchasers**").

4. **THIS COURT ORDERS** that, notwithstanding:

- (a) the pendency of these proceedings or the Chapter 11 Cases;
- (b) any applications for a bankruptcy order now or hereafter issued pursuant to the BIA in respect of any of the Chapter 11 Debtors and any bankruptcy order issued pursuant to any such applications; and
- (c) any assignment into bankruptcy made in respect of any of the Chapter 11 Debtors;

the vesting of the Canadian Assets in the Purchasers pursuant to this Order shall be binding on any trustee in bankruptcy that may be appointed in respect of the Chapter 11 Debtors' and shall not be void or voidable by the creditors of the Chapter 11 Debtors, nor shall it constitute nor be deemed to be a fraudulent preference, assignment, fraudulent conveyance, transfer at undervalue or other reviewable transaction under the *Bankruptcy and Insolvency Act* or any other applicable federal or provincial legislation, nor shall it constitute oppressive or unfairly prejudicial conduct pursuant to any applicable federal or provincial legislation.

5. **THIS COURT ORDERS** that for the purposes of determining the nature and priority of Claims and Encumbrances, the net proceeds from the sale of the CWB Collateral shall stand ^{By} in the place and stead of such CWB Collateral, and that all Claims and Encumbrances shall attach to the net proceeds from the sale of the CWB Collateral with the same priority as they had with respect to such CWB Collateral immediately prior to the sale, as if the CWB Collateral had not been sold and remained in the possession or control of the person having that possession or control immediately prior to the sale.

6. **THIS COURT ORDERS** that the Liquidator be and hereby is authorized to pay any and all net proceeds of sale in respect of the CWB Collateral to CWB, provided that (i) CWB shall account to the Receiver in respect of disposition of the CWB Collateral, (ii) any net equity in the proceeds of the CWB Collateral after payment of all amounts owing to CWB pursuant to its loan agreements with Hyndman shall be remitted by CWB to the Receiver, and (iii) the payment of


the proceeds of sale in respect of the CWB Collateral shall be without prejudice to any steps that the Receiver may later wish to take to challenge the security of CWB over the CWB Collateral in whole or in part, but any such challenge shall only be in respect of the applicable proceeds pursuant to paragraph 5, above.

7. **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 Liquidator and its 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 Liquidator as may be necessary or desirable to give effect to this Order or to assist the Liquidator in carrying out the terms of this Order.



ENTERED AT / INSCRIT À TORONTO
ON / BOOK NO:
LE / DANS LE REGISTRE NO:

MAR 02 2020

PER / PAR: 

SCHEUDLE "A" – CWB COLLATERAL

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2016	INTERNATIONAL	CONVENTIONAL	3HSDJAPR7GN000918
2016	INTERNATIONAL	CONVENTIONAL	3HSDJAPR9GN000919

IN THE MATTER OF THE *BANKRUPTCY AND INSOLVENCY ACT*, R.S.C. 1985, c. B-3, AS AMENDED
AND IN THE MATTER OF CERTAIN PROCEEDINGS TAKEN IN THE UNITED STATES BANKRUPTCY COURT FOR THE DISTRICT OF
DELAWARE WITH RESPECT TO CELADON GROUP, INC. AND THE AFFILIATED ENTITIES LISTED IN FOOTNOTE "1" HERETO
APPLICATION OF CELADON GROUP, INC. PURSUANT TO PART XIII OF THE *BANKRUPTCY AND INSOLVENCY ACT* AND SECTION 101 OF
THE *COURTS OF JUSTICE ACT*, R.S.O. 1990, c. C-43, AS AMENDED

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

Proceeding commenced at Toronto

ORDER
(Liquidation and Vesting)

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