

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

THE HONOURABLE REGIONAL
SENIOR JUSTICE MORAWETZ

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WEDNESDAY, THE 14th
DAY OF NOVEMBER, 2018



BETWEEN:

COMERICA BANK

Applicant

- and -

DRAGONWAVE INC.

Respondent

APPLICATION PURSUANT TO SECTION 243 OF THE BANKRUPTCY AND
INSOLVENCY ACT, R.S.C. 1985, c. B-3, AS AMENDED AND SECTION 101(1) OF
THE COURTS OF JUSTICE ACT, R.S.O. 1990, c. C.43, AS AMENDED

DISCHARGE ORDER

THIS MOTION, made by KSV Kofman Inc. ("**KSV**") in its capacity as the Court-appointed receiver and receiver and manager (the "**Receiver**") of the assets, undertakings and properties of 3517667 Canada Inc. (formerly known as DragonWave Inc.) (the "**Debtor**"), for an order (i) directing the Receiver to publish an advertisement (the "**Advertisement**") substantially in the form attached hereto as Schedule "A" in *USA Today* (national edition) one time during the week of November 19, 2018; (ii) declaring that except for any claim (a "**Preserved Claim**") received by the Receiver prior to December 20, 2018 at 5:00pm Toronto Time (the "**Claims Bar Date**"), Westchester Fire Insurance Company (Chubb) ("**Westchester**") shall have no further liability of any nature or kind to any person including without limitation Sprint/United Management Company ("**Sprint**") and the persons listed on Schedule "B" hereto pursuant to the labor

and material payment bond and the annual performance bond bearing Number K09087011 issued by Westchester in favour of Sprint as Obligee in connection with certain claims under a Master Construction Service Agreement between DragonWave Corporation ("**DragonWave Corp.**") and Sprint (the "**Bonds**"); (iii) directing Westchester to on or about December 28, 2018 pay to the Receiver the amount of US\$833,000 plus any further amounts held by Westchester which remain unused and less any amounts required to satisfy valid Preserved Claims; (iv) authorizing the Receiver, in consultation with Westchester, to consensually resolve any Preserved Claims or seek the aid and assistance of this Court in doing so; (v) approving the activities of the Receiver as set out in the third report of the Receiver dated October 22, 2018 (the "**Third Report**"); (vi) approving the fees and disbursements of the Receiver and its counsel as set out in the affidavits of David Sieradzki sworn October 22, 2018 and Joseph Bellissimo sworn October 18, 2018 (the "**Fee Affidavits**") including the Fee Accrual (as defined in the Third Report); and (vii) discharging KSV as Receiver of the undertaking, property and assets of the Debtor and releasing KSV from any and all liability other than claims arising out of wilful misconduct or gross negligence, was heard this day at 330 University Avenue, Toronto, Ontario.

ON READING the Third Report, the Fee Affidavits, and on hearing the submissions of counsel for the Receiver, Westchester, Comerica, EDC and no one else appearing although served as evidenced by the affidavit of Sophie Moher sworn October 23, 2018, filed;

1. THIS COURT ORDERS that the time for and method of service of this motion are hereby abridged and validated so that this motion is properly returnable today and hereby dispenses with further service hereof.
2. THIS COURT ORDERS that the Receiver be and is hereby directed to publish the Advertisement in the USA Today (national edition) one time during the week of November 19, 2018.
3. THIS COURT ORDERS that except for a Preserved Claim, being a claim received by the Receiver prior to the Claims Bar Date of December 20, 2018 at 5:00pm

Toronto Time, Westchester shall have no liability, or any continuing obligation to any person, including without limitation Sprint, DragonWave Corp., the Debtor, the Receiver, any corporation, partnership, limited liability partnership, or any other legal entity, any and all suppliers and subcontractors to Sprint and/or DragonWave Corp., including the persons listed on Schedule B hereto (collectively a "**Person**") pursuant to or with respect to the Bonds, or any other matter or thing arising from or related to the Bonds and any and all claims, including without limitation any suits, debts, causes of action that any Person has, may have or could have pursuant the Bonds be and are hereby forever barred, released and extinguished and Westchester is hereby released from any and all liabilities and/or obligations to any Person for any matters that have been able raised, or which could have been raised in respect of the Bonds.

4. THIS COURT ORDERS that if Sprint (a) locates the original Bonds, Sprint shall forthwith deliver up to the Receiver the original Bonds. Provided Westchester has complied with paragraph 5 hereof and the Receiver receives the original Bonds, the Receiver shall deliver up to Westchester the original Bonds for cancellation; (b) is unable to locate the original Bonds and provided Westchester has complied with paragraph 5 hereof, the Bonds shall be deemed to be cancelled on the date that the Receiver receives the amount specified in paragraph 5 hereof.

5. THIS COURT ORDERS that notwithstanding whether or not the original Bonds have been returned to Westchester pursuant to paragraph 4 hereof, Westchester is hereby directed on or about December 28, 2018 to pay to the Receiver, on behalf of the Debtor the amount of US\$833,000 plus any further amounts held by Westchester which remain unused and less the amount necessary to satisfy any valid Preserved Claims, in full and final satisfaction of any and all amounts owing by Westchester to the Debtor, other than amounts necessary to satisfy the Preserved Claims, including without limitation, in respect of the collateral held by Westchester to secure amounts owing by the Debtor to Westchester pursuant to the Bonds.

6. THIS COURT ORDERS that the Receiver, in consultation with Westchester be and is hereby authorized, to consensually resolve any Preserved Claims or seek the aid and assistance of this Court in doing so.

7. THIS COURT ORDERS that the Third Report and the activities of the Receiver described therein are hereby approved; provided, however, that only the Receiver, in its personal capacity and only with respect to its own personal liability, shall be entitled to rely upon or utilize in any way such approvals.

8. THIS COURT ORDERS that the fees and disbursements of the Receiver and its counsel, as set out in the Third Report and the Fee Affidavits (including the Fee Accruals), are hereby approved.

9. THIS COURT ORDERS that upon receipt of the amounts set out in paragraph 5 hereof, the resolution of any Preserved Claims as set out in paragraph 6 hereof or pursuant to further order of the Court, and upon the Receiver filing a certificate substantially in the form attached hereto as Schedule C (the "**Discharge Certificate**") certifying that it has completed the activities described herein and in the Third Report, the Receiver shall be discharged as Receiver of the undertaking, property and assets of the Debtor, provided however that notwithstanding its discharge herein (a) the Receiver shall remain Receiver for the performance of such incidental duties as may be required to complete the administration of the receivership herein including without limitation, complying with its obligations pursuant to paragraph 3 hereof, and (b) the Receiver shall continue to have the benefit of the provisions of all Orders made in this proceeding, including all approvals, protections and stays of proceedings in favour of KSV in its capacity as Receiver.

10. THIS COURT ORDERS AND DECLARES that KSV is hereby released and discharged from any and all liability that KSV now has or may hereafter have by reason of, or in any way arising out of, the acts or omissions of KSV while acting in its capacity as Receiver herein up to and including the date hereof (the "**Order Date**"), save and except for any gross negligence or wilful misconduct on the Receiver's part. Without

limiting the generality of the foregoing, KSV is hereby forever released and discharged from any and all liability relating to matters that were raised, or which could have been raised, in the within receivership proceedings, save and except for any gross negligence or wilful misconduct on the Receiver's part, up to and including the Order Date.

11. THIS COURT ORDERS that the Receiver shall, at least fourteen (14) days prior to proposed date of filing the Discharge Certificate (the "**Filing Date**"), provide notice to the Service List in the receivership proceeding: (i) of the Receiver's intention to file the Discharge Certificate; and (ii) that, upon the filing of the Discharge Certificate, the release and discharge from liability set out in paragraph 9 hereof shall be automatically deemed to be effective up to and including the Filing Date (the "**Release Extension**").

12. THIS COURT ORDERS that in the event that any person objects to the Release Extension, that person must send a written notice of the objection, and the grounds therefore, to the email addresses of the Receiver and its counsel as set out on the Service List, such that the objection is received by the Receiver prior to the proposed Filing Date. If no objection is received by the Receiver prior to the proposed Filing Date, the Receiver shall file the Discharge Certificate on the proposed Filing Date and the Release Extension shall be deemed to have occurred, without further Order of the Court.

13. THIS COURT ORDERS that if an objection is received by the Receiver in accordance with paragraph 12 hereof, the Receiver shall only file the Discharge Certificate: (i) if the objection is resolved, whereupon the Release Extension shall be deemed to have occurred, or (ii) on further Order of the Court.

14. 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 Receiver 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 Receiver, as an officer of this Court, as may be necessary or desirable to give effect

to this Order or to assist the Receiver and its agents in carrying out the terms of this Order.



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

NOV 14 2018

PER / PAR:



Schedule "A"
Advertisement

**NOTICE TO the CREDITORS OF 3517667 Canada Inc. formerly known as
DRAGONWAVE INC. and the SUPPLIERS AND SUB-CONTRACTORS of
DRAGONWAVE CORPORATION related to projects for SPRINT/UNITED
MANAGEMENT COMPANY,
(hereinafter referred to as “DragonWave Inc.”, “DragonWave Corp” and Sprint”
respectively)**

**RE: CALL FOR CLAIMS OF ANY AMOUNTS OWED BY ANY OF DRAGONWAVE
INC, DRAGONWAVE CORP in respect of MATERIALS SUPPLIED OR WORK
PERFORMED for DRAGONWAVE CORP ON ANY SPRINT PROJECTS PRIOR TO
JULY 31, 2017.**

PLEASE TAKE NOTICE that this notice is being published in order to provide notice that KSV Kofman Inc., in its capacity as court appointed receiver and manager (the “Receiver”) of the property, assets and undertaking of DragonWave Inc., has obtained an order from the Superior Court of Justice of Ontario (Commercial List) on November 14th, 2018, (the “Order”) pursuant to which Westchester Fire Insurance Company (Chubb) (“Westchester”) shall be (a) released from any liability, or any continuing obligation to any person or legal entity, including any creditors of DragonWave Inc. and any suppliers and subcontractors to DragonWave Corp with respect to projects for Sprint pursuant to a labour and material payment bond and an annual performance bond No. K09087011 issued by Westchester in favour of Sprint in connection with claims made under a Master Construction Service Agreement between DragonWave Corp and Sprint (collectively the “Bonds”) and (b) directed to pay any remaining amounts held as collateral by Westchester pursuant to the Bonds to the Receiver four (4) days after the expiry of the call for claim period as set out in this notice.

If you claim to be owed any amounts by DragonWave Inc., DragonWave Corp, for work performed, or materials supplied to any Sprint projects prior to July 31, 2017, please provide full particulars of your claim, including the precise amount(s) owing, the nature of the work performed, or the materials supplied to DragonWave Inc., DragonWave Corp., or Sprint for the period prior to July 31, 2017 to the attention of:

David Sieradzki
Managing Director
KSV Kofman Inc.
Email: dsieradzki@ksvadvisory.com

**PRIOR TO 5:00 P.M. Eastern Time, on *DECEMBER 20, 2018* FAILING WHICH ANY
CLAIM(S) BY YOU FOR ANY AMOUNTS ALLEGED TO BE OWING BY ANY OF
DRAGONWAVE INC., DRAGONWAVE CORP., or WESTCHESTER FOR WORK
DONE ON SPRINT PROJECTS PRIOR TO JULY 31, 2017 WILL BE FOREVER
BARRED, RELEASED AND EXTINGUISHED IN ACCORDANCE WITH THE TERMS
OF THE ORDER**

DATED at Toronto this _____ day of _____, 2018.

KSV Kofman Inc., in its capacity as Court-appointed receiver and manager of 3517667
Canada Inc (formerly known as DragonWave Inc.)
150 King Street West, Suite 2308
Toronto, ON, M5H 1J9 Canada

Attention: David Sieradzki: dsieradzki@ksvadvisory.com
Phone: (416) 932-6030

Schedule "B"
List of Contractors

Communication Infrastructure Corporation

MasTec Network Solutions

North Sky Communications, LLC

Pathwave Telecom Site Management Software

Pearce Services, LLC

Quest Construction Services

Vertical Technology Solutions

EZ Wireless

Future Technologies, LLC

Heartland Solutions Corp.

Quantum Contracting Northwest LLC

RUC, LLC

Tetra Tech

Total Comm Systems Inc.

Schedule "C"

Court File No. CV-17-579715-00CL

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

B E T W E E N:

COMERICA BANK

Applicant

- and -

DRAGONWAVE INC.

Respondent

**APPLICATION PURSUANT TO SECTION 243 OF THE BANKRUPTCY AND
INSOLVENCY ACT, R.S.C. 1985, c. B-3, AS AMENDED AND SECTION 101(1) OF
THE COURTS OF JUSTICE ACT, R.S.O. 1990, c. C.43, AS AMENDED**

DISCHARGE CERTIFICATE

RECITALS

A. KSV Kofman Inc. ("**KSV**") was appointed as receiver and receiver and manager (the "**Receiver**") of the assets, undertakings and properties of 3517667 Canada Inc. (formerly DragonWave Inc.) (the "**Debtor**"), pursuant to an Order of the Ontario Superior Court of Justice (Commercial List) (the "**Court**") dated July 31, 2017 (the "**Receivership Order**");

B. Pursuant to an Order of the Court dated November 14, 2018 (the "**Discharge Order**"), KSV shall be discharged as Receiver upon the filing of this Discharge Certificate with the Court;

C. Unless otherwise indicated herein, capitalized terms used in this Discharge Certificate shall have the meanings ascribed thereto in the Discharge Order.

THE RECEIVER CERTIFIES the following:

1. The remaining activities described in the Discharge Order and the Third Report have been completed.

Accordingly, pursuant to the Discharge Order, KSV has been discharged as Receiver.

DATED at Toronto, Ontario at _____ on this ____ day of _____,
20____.

KSV KOFMAN INC., solely in its capacity as
Court-appointed receiver and receiver and
manager of the assets, undertakings and
properties of 3517667 Canada Inc. (formerly
DragonWave Inc.) and not in its personal
capacity

By: _____
Name:
Title:

COMERICA BANK
Applicant

and DRAGONWAVE INC.
Respondent

Court File No. CV-17-579715-00CL

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

PROCEEDING COMMENCED AT
TORONTO

DISCHARGE ORDER

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Lawyers for KSV Kofman Inc., in its capacity as court
appointed Receiver and Receiver and manager of the
assets, properties and undertakings of Dragonwave Inc.