

**UNITED STATES BANKRUPTCY COURT  
DISTRICT OF COLORADO**

|                               |   |                   |
|-------------------------------|---|-------------------|
| In re:                        | ) |                   |
|                               | ) | Chapter 15        |
| NILEX USA INC.                | ) | Case No. 22-14719 |
|                               | ) |                   |
| Debtor in Foreign Proceeding. | ) |                   |
|                               | ) |                   |

**ORDER TO SHOW CAUSE WITH  
TEMPORARY RESTRAINING ORDER**

Upon the motion (the “Motion”)<sup>1</sup> of KSV Restructuring Inc. (“KSV”), as the court-appointed Proposal Trustee (the “Proposal Trustee”) and authorized foreign representative of Nilex USA Inc. (“Nilex USA” and with Nilex Inc., collectively referred to as the “Nilex Debtors”) in the proceeding (the “Canadian Nilex USA Proceeding”<sup>2</sup>), commenced by the filing of a notice of intention to make a proposal (an “NOI”) pursuant to section 50.4 of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3 (the “BIA”) on November 24, 2022 and currently pending in the Court of King’s Bench of Alberta, Canada (the “Alberta Court”), pursuant to sections 105(a) and 1519 of title 11 of the United States Code (the “Bankruptcy Code”) for entry of an order to show cause with temporary restraining order (the “TRO”) and scheduling a hearing on the Proposal Trustee’s request for a preliminary injunction, and this Court having considered and reviewed: (i) the Motion, the petition (the “Petition”) pursuant to section 1515 of the Bankruptcy Code for entry of an order recognizing the Canadian Nilex USA Proceeding as a foreign main proceeding; (iii) the Declaration of Robert Kofman (the “Declaration”) offered in

<sup>1</sup> Capitalized terms undefined herein shall have the meanings ascribed in the Motion.

<sup>2</sup> The Canadian Nilex USA Proceeding, together with similar proceedings commenced by Nilex Inc. on October 27, 2022 are collectively referred to herein as the “**Canadian Proceedings.**”

support of the Motion and the Petition; (iv) the Order entered in the Canadian Proceeding on November 28, 2022 (the “Ancillary Order”); and (v) all other documents filed in support thereof (together with the Motion, Petition, Declarations and Ancillary Order, the “Supporting Papers”), and based upon the representations made on the record at such hearing, this Court finds and concludes as follows:

- A. There is a substantial likelihood that the Proposal Trustee will be able to demonstrate that the Canadian Proceeding is a “foreign proceeding” within the meaning of section 101(23) of the Bankruptcy Code and that the Proposal Trustee is a “foreign representative” of the debtor, as defined in section 101(24) of the Bankruptcy Code;
- B. The commencement or continuation of any action or proceeding in the United States against Nilex USA, the Proposal Trustee, in its role as foreign representative of Nilex USA, or any of Nilex USA’s assets or proceeds thereof should be enjoined pursuant to Sections 105(a) and 1519 of the Bankruptcy Code to permit the expeditious and economical administration of Nilex USA’s estate in the Canadian Nilex USA Proceeding, and the relief requested either: (i) will not cause undue hardship to; or (ii) any hardship to parties in interest is outweighed by the benefits of the relief requested;
- C. Unless a restraining order issues, there is a material risk that Nilex USA’s assets could be subject to efforts by creditors in the United States to control or possess such assets. Such acts could: (i) interfere with the jurisdictional mandate of this Court under Chapter 15 of the Bankruptcy Code; (ii) interfere with and cause harm to the Canadian Nilex USA Proceeding; and (iii) undermine the Nilex Debtors’ and the Proposal Trustee’s efforts to achieve an equitable result for the benefit of all of the Nilex Debtors’ creditors. Accordingly, there is a material risk that the Proposal Trustee and Nilex USA may suffer immediate and irreparable injury for which they will have no adequate remedy at law and therefore it is necessary that the Court enter this Order;
- D. Notice of the Motion was not previously given due to the irreparable harm that would result before the adverse parties had been heard in opposition;
- E. The interest of the public will be served by this Court’s entry of this Order;
- F. The Proposal Trustee, in its role as foreign representative of Nilex USA, and Nilex USA are entitled to the full protections and rights available pursuant to section 1519(a) of the Bankruptcy Code; and

- G. The security provision provided in Rule 65(c) of the Federal Rules of Civil Procedure, made applicable through Rule 7065 of the Bankruptcy Rules, is unnecessary in this case and is therefore waived.

THEREFORE, IT IS HEREBY ORDERED, that all parties in interest come before the Honorable \_\_\_\_\_ on \_\_\_\_\_, 2022 at \_\_\_\_\_ a.m./p.m. (the “Hearing”), at the U.S. Custom House, 721 19th Street, Denver, Colorado 80202 in Courtroom \_\_ to show why a preliminary injunction should not be granted:

1. enjoining: (i) all persons and entities from commencing or continuing any legal proceeding (including, without limitation, arbitration, or any judicial, quasi judicial, administrative or regulatory action, proceeding or process whatsoever), including any discovery, or taking any other action (each, an “Action”) against the Proposal Trustee, in its role as foreign representative of Nilex USA, Nilex USA, or Nilex USA’s United States assets or the proceeds thereof, rights, obligations, or liabilities; (ii) the enforcement of any judicial, quasi judicial, administrative or regulatory judgment, assessment or order or arbitration award against the Proposal Trustee, in its role as foreign representative of Nilex USA, Nilex USA, or Nilex USA’s United States assets or the proceeds thereof; (iii) the commencement or continuation of any Action to create, perfect or enforce any lien, setoff or other claim against the Proposal Trustee, Nilex USA or against any of its assets or the proceeds thereof; provided, however, that no Action described in sections 555, 556, 557, 559, 560, 561, 562 and 1519(d) and (f) of the Bankruptcy Code shall be enjoined by such preliminary injunction (the “*Excepted Actions*”);
2. requiring that, when informed of these proceedings, every person and entity that is a plaintiff in an Action in which Nilex USA is or was named as a party, or as a result of which liability against Nilex USA may be established, to place the Proposal Trustee’s U.S. Counsel (as defined below) on the master service list of any such action or proceeding and take such other steps as may be necessary to ensure that such counsel receives: (i) copies of any and all documents served by the parties to such action or proceeding or issued by the court, arbitrator, administrator, regulator or similar official having jurisdiction over such action or proceeding, and (ii) any and all correspondence or other documents circulated to parties listed on the master service list; and
3. prohibiting all persons and entities from possessing or exercising control over Nilex USA’s assets located in the United States, except as authorized in writing by the Proposal Trustee, by Order of this Court, or in the Canadian Nilex USA Proceeding.

It is further ordered that except with respect to Excepted Actions, pending the Hearing, all persons and entities are hereby enjoined from (i) continuing any Action or commencing any Action involving the Proposal Trustee, in its role as foreign representative of Nilex USA, or relating to Nilex USA or Nilex USA's United States assets or the proceeds thereof, rights, obligations, or liabilities; (ii) enforcing or taking any steps to enforce any judicial, quasi judicial, administrative or regulatory judgment, assessment or order or arbitration award against the Proposal Trustee, in its role as foreign representative of Nilex USA, or Nilex USA, or Nilex USA's United States assets or the proceeds thereof; or (iii) commencing or continuing any Action to create, perfect or enforce any lien, setoff, or other claim against the Proposal Trustee, Nilex USA, or against any of its property or the proceeds thereof.

It is further ordered that the Proposal Trustee, in its role as foreign representative of Nilex USA, and Nilex USA, are entitled to the full protections and rights available pursuant to Section 1519(a) of the Bankruptcy Code, including: (a) prohibiting the right and power to transfer, encumber, or otherwise dispose of any assets of Nilex USA, except as provided in this TRO or to facilitate the operation of Nilex USA's business in the ordinary course; and (b) the right and power to seek additional relief that is available to a trustee, except for relief available under Sections 522, 544, 545, 547, 548, 550, and 724(a) of the Bankruptcy Code.

It is further ordered that, pursuant to Rule 65(b) of the Federal Rules of Civil Procedure, made applicable to these proceedings pursuant to Rule 7065 of the Bankruptcy Procedure (the "Bankruptcy Rules"), no notice to any person, other than the Office of the United States Trustee, is required prior to entry and issuance of this Order.

It is further ordered that (i) any party in interest may make a motion seeking relief from, or modification of, this Order, by filing a motion on not less than two (2) business days notice to

the U.S. Counsel (defined below), seeking an order for such relief, and any such request shall be the subject of a hearing scheduled by the Court; and (ii) any party in interest may file objections and be heard by the Court in accordance with the terms of any order of the Court providing for a hearing on any subsequent relief sought by the Proposal Trustee in this proceeding.

It is further ordered that copies of this Order and the Supporting Papers shall be served by the Proposal Trustee upon the Office of the United States Trustee, all parties known by the Proposal Trustee against whom provisional relief is being sought under section 1519 of the Bankruptcy Code, and all parties to any litigation in which Nilex USA is a party and that is pending in the United States, in accordance with Bankruptcy Rule 2002(q) by mail within five (5) business days of the entry of this Order, or five (5) business days following the time such party is identified by the Proposal Trustee, whichever is later. Service in accordance with this Order shall constitute adequate and sufficient service and notice.

It is further ordered that the Supporting Papers shall also be made available upon request to counsel for the Proposal Trustee, Brent R. Cohen, Esq., Lewis Roca Rothgerber Christie LLP, 1601 19<sup>th</sup>, Suite 1000, Denver, CO 80202 (the "U.S. Counsel").

It is further ordered that, objections, if any, submitted for the purpose of opposing the Proposal Trustee's request for a preliminary injunction on the terms described above must be made in writing describing the basis therefore and shall be filed with this Court electronically by registered users of the Court's ECF System, with hard copy to the Chambers of the Honorable \_\_\_\_\_, and served upon the U.S. Counsel, so as to be received on or before \_\_\_\_\_, 2022 at 5:00 p.m. (MDT); except that the foregoing is without prejudice to the right of any party in interest to seek, upon appropriate notice and hearing, to terminate or otherwise modify this TRO.

It is further ordered that if no objections to the Proposal Trustee's request for a preliminary injunction are made in accordance with the immediately preceding paragraph, the Court may enter an order granting the preliminary injunction requested in the Motion without holding the Hearing.

It is further ordered that, pursuant to Bankruptcy Rule 7065, the security provisions of Rule 65(c) of the Federal Rules of Civil Procedure are waived.

BY THE COURT

Dated: December \_\_\_, 2022

Time: \_\_\_\_\_ a.m./p.m.

\_\_\_\_\_  
Hon. \_\_\_\_\_

United States Bankruptcy Judge