

UNITED STATES BANKRUPTCY COURT  
DISTRICT OF COLORADO

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

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PRELIMINARY INJUNCTION ORDER

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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 collectively with Nilex Inc., 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 and a preliminary injunction (the “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 support of the Motion and the Petition; (iv) the Order entered in the Canadian Nilex USA Proceeding on November 28, 2022

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<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.**”

(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 this Court having heard the parties on December 9, 2022, 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 Nilex USA 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 preliminary injunction 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 Proposal Trustee’s efforts to achieve an equitable result for the benefit of all of Nilex USA’s creditors. Accordingly, there is a material risk that Nilex USA may suffer immediate and irreparable injury for which it will have no adequate remedy at law and therefore it is necessary that the Court enter this Order;
- D. The interest of the public will be served by this Court’s entry of this Order;
- E. The Proposal Trustee, in its role as foreign representative of Nilex USA, and Nilex USA, is entitled to the full protections and rights available pursuant to Section 1519(a) of the Bankruptcy Code; and
- F. 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 beginning on the date of this Order and continuing until further Order of this Court, all persons and entities are:

1. enjoined from: (i) 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; and (iii) the commencement or continuation of any Action to create, perfect or enforce any lien, setoff or other claim against Nilex USA or against any of their 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. required 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 receive: (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. prohibited 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 Proceeding.

It is further ordered that nothing in this Order shall be deemed to prohibit or enjoin any civil action pending in the United States against third parties or enjoin discovery as otherwise authorized against third parties.

It is further ordered that until further Order of this Court, the Proposal Trustee, in its role as foreign representative of Nilex USA, is entitled to the full protection and rights available pursuant to Section 1519(a) of the Bankruptcy Code, including:

- a. The right and power to transfer, encumber, or otherwise dispose of any assets of Nilex USA is prohibited, except as provided in this Preliminary

Injunction, the Ancillary Order, 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 (i) any party in interest may make a motion seeking relief from, or modification of, this Preliminary Injunction, by filing a motion on not less than ten (10) business days notice to the U.S. Counsel (as 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.

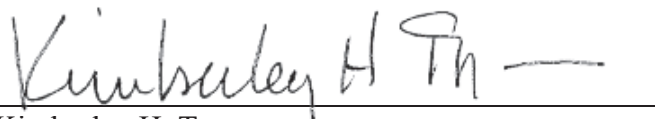
It is further ordered that, motions, if any, submitted for the purpose of opposing or seeking relief from this Preliminary Injunction must be made in writing and shall be filed with this Court electronically by registered users of the Court's ECF System, and served upon Brent R. Cohen, Esq., Lewis Roca Rothgerber Christie LLP, 1601 19th Street, Suite 1000, Denver, CO 80202 (the "U.S. Counsel").

It is further order that, pursuant to Section 1519(b), this Preliminary Injunction shall terminate upon entry of an order granting the Proposal Trustee's Petition.

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

Dated: December 9th, 2022.

BY THE COURT

A handwritten signature in black ink, reading "Kimberley H. Tyson", written over a horizontal line. The signature is cursive and includes a long horizontal stroke at the end.

Kimberley H. Tyson  
United States Bankruptcy Judge