

COURT FILE NUMBER 24-2878531
COURT COURT OF KING'S BENCH OF ALBERTA
JUDICIAL CENTRE EDMONTON



IN THE MATTER OF THE NOTICE OF INTENTION TO MAKE A PROPOSAL UNDER SECTION 50.4(1) OF THE *BANKRUPTCY AND INSOLVENCY ACT*, RSC 1985, c B-3, AS AMENDED

APPLICANTS NILEX INC. and NILEX USA INC.

DOCUMENT **ORDER (sale approval and vesting)**

ADDRESS FOR SERVICE AND CONTACT INFORMATION OF PARTY FILING THIS DOCUMENT

BLAKE, CASSELS & GRAYDON LLP
Barristers and Solicitors
3500 Bankers Hall East
855 – 2nd Street SW
Calgary, Alberta T2P 4J8

I hereby certify this to be a true copy of the original Sale Approval & Vesting Order

Dated this 30th day of November 2022

for Clerk of the Court

Attention: Kelly Bourassa / Alexia Parente
Telephone: 403-260-9697 / 416-863-2417
Email: kelly.bourassa@blakes.com / alexia.parente@blakes.com

Fax No.: 403-260-9700
File Ref.: 99580/8

DATE ON WHICH ORDER WAS PRONOUNCED: November 28, 2022

LOCATION OF HEARING: Calgary, Alberta (via Webex)

NAME OF JUDGE WHO MADE THIS ORDER: The Honourable Justice M.H. Hollins

UPON the application of Nilex Inc. and Nilex USA Inc. (the "**Companies**") for an order, among other things: (i) approving the sale transaction (the "**Transaction**") contemplated by an asset purchase agreement dated November 18, 2022 (the "**APA**") between the Companies, as vendors, and Terrafix Geosynthetics Inc. and Hanes Companies, Inc. (the "**Purchasers**"), and appended as confidential appendix "3" (the "**Confidential Appendix**"), to the second report of KSV Restructuring Inc. in its capacity as proposal trustee ("**Proposal Trustee**"), dated November 21, 2022 (the "**Second Report**"); (ii) approving the transition services agreement attached to the APA as Exhibit "E"; and (iii) vesting in the Purchasers the Companies' right, title, and interest in and to the assets described in the APA (the "**Purchased Assets**") in accordance with the terms of the APA;

AND UPON HAVING READ the Application, the affidavit of Jeff Allen sworn on November 21, 2022 (the "**Second Allen Affidavit**"), the Second Report, the Confidential Appendix and other confidential appendices thereto, the Affidavit of Service of Lindsay Farr sworn November 24, 2022, and such other material in the pleadings and proceedings as deemed necessary;

AND UPON NOTING in the Second Report that, among other things, in the Proposal Trustee's view, the Sale Process was commercially reasonable, the value of the Transaction was the highest of any going concern offers received in the Sale Process and materially exceeds the liquidation value of the Companies' business, and that the Companies are acting in good faith and with due diligence;

AND UPON HEARING the submissions of counsel for the Companies, the Proposal Trustee, Canadian Imperial Bank of Commerce ("**CIBC**") and such other counsel in attendance;

IT IS HEREBY ORDERED AND DECLARED THAT:

DEFINITIONS

1. Capitalized terms not defined in this Order shall have the meanings attributed to them in the Second Allen Affidavit or the APA.

SERVICE

2. Service of notice of this application and supporting materials is hereby declared to be good and sufficient, no other person is required to have been served with notice of this application, and time for service of this application is abridged to that actually given.

APPROVAL OF TRANSACTION

3. The Transaction is hereby approved, and the execution of the APA and the TSA by the Companies is hereby authorized and approved, with such minor amendments as the Companies may deem necessary. The Companies are hereby authorized and directed to take such additional steps, perform, consummate, implement, execute and deliver such additional documents, including conveyance documents, bills of sale, assignments, transfers, deeds, indicia of title, tax elections, documents and instructions of whatsoever nature and kind as may be necessary or desirable for completion of the Transaction and conveyance of the Purchased Assets to the Purchasers (or their nominee).

VESTING OF PROPERTY

4. Upon delivery of a Proposal Trustee's certificate to the Purchasers (or either of them, or their nominee), pursuant to the Canadian Closing or the US Closing (as defined in the APA), substantially in the form set out in Schedule "A" hereto (each respectively a "**Proposal Trustee's Certificate**"), all of the respective Company's right, title, and interest in and to the applicable Purchased Assets that are the subject of the Canadian Closing or the US Closing, as applicable, shall vest absolutely in the name of the applicable Purchaser (or its nominee), free and clear of and from any and all caveats, security interests (whether contractual, statutory, or otherwise), hypothecs, pledges, mortgages, liens, trusts or deemed trusts (whether contractual, statutory, or otherwise), reservations of ownership, royalties, options, rights of pre-emption, privileges, interests, assignments, actions, judgements, executions, levies, taxes, writs of enforcement, 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, (i) the Order of Justice J.S. Little of this Court in these proceedings dated November 8, 2022, and (ii) any other orders in these proceedings, in the event future orders modify or create additional charges;
- (ii) all charges, liens, security interests or claims, whether evidenced by registrations pursuant to the *Personal Property Security Act* (Alberta), the Uniform Commercial Code (United States) or any other personal property registry system, or otherwise; and
- (iii) those Claims listed in Schedule "B" hereto (all of which are collectively referred to as the "**Encumbrances**", which term shall not include the encumbrances, caveats, interests, easements and restrictive covenants listed in Schedule "C" (collectively, "**Permitted Encumbrances**"))

and for greater certainty, this Court orders that all Claims, including Encumbrances other than Permitted Encumbrances, affecting or relating to the Purchased Assets that are the subject of the Canadian Closing or US Closing, as applicable, are hereby expunged, discharged, and terminated as against those Purchased Assets.

5. Upon delivery of a Proposal Trustee's Certificate, and upon filing of a copy of this Order, together with any applicable registration fees, all governmental authorities including those referred to below in this paragraph (collectively, "**Governmental Authorities**") are hereby

authorized, requested and directed to accept delivery of such Proposal Trustee's Certificate and copy of this Order as though they were originals and to register such transfers, interest authorizations, discharges and discharge statements of conveyance as may be required to convey to the applicable Purchaser or its nominee clear title to the Purchased Assets that are the subject of the Canadian Closing or the US Closing, as applicable, subject only to Permitted Encumbrances.

6. The aid and assistance of the officials of the public registries of any province or territory of Canada or the United States is requested to give effect to this Order; the Registrars of the Alberta Personal Property Registry, the British Columbia Personal Property Registry, the Saskatchewan Personal Property Registry, and the Ontario Personal Property Registry shall and are hereby directed to forthwith cancel and discharge any registrations at its respective Personal Property Registry (whether made before or after the date of this Order) claiming security interests (other than Permitted Encumbrances) in the estate or interest of the Companies in any of the Purchased Assets that are the subject of the Canadian Closing or the US Closing, as applicable, which are of a kind prescribed by applicable regulations as serial-numbered goods.
7. In order to effect the transfers and discharges described above, this Court directs each of the Governmental Authorities to take such steps as are necessary to give effect to the terms of this Order and the APA. Presentment of this Order and a Proposal Trustee's Certificate shall be the sole and sufficient authority for the Governmental Authorities to make and register transfers of title or interest and cancel and discharge registrations against any of the Purchased Assets of any Claims including Encumbrances but excluding Permitted Encumbrances.
8. No authorization, approval or other action by and no notice to or filing with any governmental authority or regulatory body exercising jurisdiction over the Purchased Assets is required for the due execution, delivery and performance by the Companies of the APA.
9. For the purposes of determining the nature and priority of Claims, net proceeds from sale of the Purchased Assets (to be held in an interest bearing trust account by the Proposal Trustee) shall stand in the place and stead of the Purchased Assets, and from and after the delivery of a Proposal Trustee's Certificate all Claims, including Encumbrances (but excluding Permitted Encumbrances) shall not attach to, encumber, or otherwise form a charge, security interest, lien, or other Claim against the applicable Purchased Assets that are the subject of the Canadian Closing or the US Closing, as applicable, and may only be asserted against the net

proceeds from the sale of those Purchased Assets with the same priority as they had with respect to those Purchased Assets immediately prior to the sale, as if those Purchased Assets had not been sold and remained in the possession or control of the person having that possession or control immediately prior to the sale.

CLOSING OF THE SALE TRANSACTION

10. Except as expressly provided for in the APA or by section 5 of the Alberta *Employment Standards Code*, the Purchasers (or their nominee, if any) shall not by completion of the Transaction, have any liability of any kind whatsoever in respect of any Claims against the Companies.
11. Upon completion of the applicable Transaction and issuance of a Proposal Trustee's Certificate pursuant to the Canadian Closing or the US Closing (as defined in the APA), the applicable Company and all persons who claim by, through, or under it in respect of those Purchased Assets, and all persons or entities having any Claims of any kind whatsoever in respect of those Purchased Assets, save and except for persons entitled to the benefit of the Permitted Encumbrances, shall stand absolutely and forever barred, estopped and foreclosed from and permanently enjoined from pursuing, asserting, or claiming any and all right, title, estate, interest, royalty, rental, equity of redemption or other Claim whatsoever in respect of or to those Purchased Assets and, to the extent that any such persons or entities remain in possession or control of any of those Purchased Assets, or any certificates, instruments or other indicia of title representing or evidencing any right, title, estate, or interest in and to those Purchased Assets, they shall forthwith deliver possession thereof to the applicable Purchaser (or its nominee).
12. Upon completion of the applicable Transaction and issuance of a Proposal Trustee's Certificate pursuant to the Canadian Closing or the US Closing (as defined in the APA), the applicable Purchaser (or its nominee) shall be entitled to enter into and upon, hold, and enjoy the applicable Purchased Assets for its own use and benefit without any interference of or by the Companies, or any person claiming by, through, or against the Companies.
13. Immediately upon completion of the applicable Transaction and issuance of a Proposal Trustee's Certificate pursuant to the Canadian Closing or the US Closing (as defined in the APA), holders of Permitted Encumbrances shall have no claim whatsoever against the applicable Company or the Proposal Trustee.

14. The Proposal Trustee is directed to file with the Court a copy of each Proposal Trustee's Certificate, forthwith after delivery thereof to the applicable Purchaser (or its nominee).
15. Pursuant to clause 7(3)(c) of the *Personal Information Protection and Electronic Documents Act* (Canada), section 20(e) of the *Personal Information Protection Act* (Alberta), and any other equivalent provision in any other provincial statute, the Companies are authorized and permitted to disclose and transfer to the Purchasers all human resources and payroll information in the Companies' records pertaining to the Companies' past and current employees, including personal information of those employees listed in the APA. The Purchasers (or their nominee) shall maintain and protect the privacy of such information and shall be entitled to use the personal information provided to it in a manner which is in all material respects identical to the prior use of such information by the Companies.

MISCELLANEOUS MATTERS

16. Notwithstanding:
 - (i) the pendency of these proceedings;
 - (ii) any applications for a bankruptcy order now or hereafter issued pursuant to the *Bankruptcy and Insolvency Act*, RSC 1985, c B-3, as amended (the "BIA"), or the United States Bankruptcy Code, in respect of the Companies and any bankruptcy order issued pursuant to any such applications;
 - (iii) any assignment in bankruptcy made in respect of the Companies; and
 - (iv) the provisions of any federal or provincial statute:

the vesting of the Purchased Assets in the Purchasers (or their nominee) pursuant to this Order shall be binding on any trustee in bankruptcy that may be appointed in respect of the Companies and shall not be void or voidable by creditors of the Companies, nor shall it constitute nor be deemed to be a settlement, fraudulent preference, assignment, fraudulent conveyance, transfer at undervalue, or other reviewable transaction under the BIA 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.

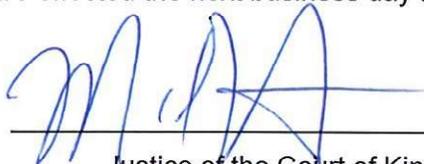
17. The Companies, the Proposal Trustee, the Purchasers (or their nominee), and any other interested party shall be at liberty to apply for further advice, assistance, and directions as may

be necessary in order to give full force and effect to the terms of this Order and to assist and aid the parties in closing the Transaction.

18. This Honourable Court hereby requests the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada, or in any of its provinces or territories or in any foreign jurisdiction including specifically, the United States of America, including the United States Bankruptcy Court, to act in aid of and to be complimentary to this Court in carrying out the terms of this Order, and to give effect to this Order and to assist the Companies 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 Companies as may be necessary or desirable to give effect to this Order or to assist the Companies and their agents in carrying out the terms of this Order.
19. Each of the Companies or the Proposal Trustee shall be at liberty and are hereby authorized and empowered to apply to any court, tribunal, regulatory or administrative body, wherever located, for the recognition of this Order and for assistance in carrying out the terms of this Order.

SERVICE OF ORDER

20. Service of this Order shall be deemed good and sufficient:
- (i) by serving same on the persons who were served with notice of this Application and any other parties attending or represented at the hearing of the Application; and
 - (ii) by posting a copy of this Order on the Proposal Trustee's website at:
<https://www.ksvadvisory.com/experience/case/nilex-inc>.
21. Service of this Order on any other person is hereby dispensed with.
22. Service of this Order may be effected by facsimile, electronic mail, personal delivery or courier. Service is deemed to be effected the next business day following transmission or delivery of this Order.



Justice of the Court of King's Bench of Alberta

Schedule "A"

Form of Proposal Trustee's Certificate

COURT FILE NUMBER 24-2878531
COURT COURT OF KING'S BENCH OF ALBERTA
JUDICIAL CENTRE EDMONTON

Clerk's Stamp

IN THE MATTER OF THE NOTICE OF INTENTION TO MAKE A PROPOSAL UNDER SECTION 50.4(1) OF THE *BANKRUPTCY AND INSOLVENCY ACT*, RSC 1985, c B-3, AS AMENDED

APPLICANTS NILEX INC. AND NILEX USA INC.

DOCUMENT PROPOSAL TRUSTEE'S CERTIFICATE

ADDRESS FOR SERVICE AND CONTACT INFORMATION OF PARTY FILING THIS DOCUMENT

Cassels Brock & Blackwell LLP
Suite 3810, 3500 Bankers Hall West
888 3rd Street SW
Calgary, Alberta T2P 5C5

Attention: Jane Dietrich / Danielle Maréchal
Telephone: 416-260-5223 / 403-351-2922
Facsimile: 403-648-1151
Email: jdietrich@cassels.com / dmarechal@cassels.com

RECITALS

- A. Pursuant to the filing of notices of intention to make a proposal under section 50.4(1) of the *Bankruptcy and Insolvency Act* (Canada) on October 27, 2022 by Nilex Inc. and on November 24, 2022 by Nilex USA Inc., KSV Restructuring Inc. consented to act as the Proposal Trustee.
- B. Pursuant to an Order of the Court dated November 28, 2022, the Court approved the Asset Purchase Agreement dated November 18, 2022 (the "**APA**"), between Nilex Inc. and Nilex USA Inc. (the "**Vendors**") and Terrafix Geosynthetics Inc. and Hanes Companies, Inc. (the "**Purchasers**"), and provided for the vesting in the Purchasers of the Vendors' right, title and interest in and to the Purchased Assets (the "**Transaction**"), which vesting is to be effective with respect to the Purchased Assets that are the subject of the Canadian Closing or the US Closing, as applicable, upon the delivery by the Proposal Trustee to the Purchasers of a certificate or certificates confirming: (i) the payment by the Purchasers of the Purchase Price for the Purchased Assets that are the subject of the Canadian Closing or the US Closing, as applicable; (ii) that the conditions to Canadian Closing or the US Closing, as applicable, as set

out in the APA have been satisfied or waived by the Vendors and the Purchasers; and (iii) the Applicable Transaction (as defined in the APA) has been completed to the satisfaction of the Vendors.

- C. Unless otherwise indicated herein, capitalized terms have the meanings set out in the Order (Sale Approval and Vesting).

THE PROPOSAL TRUSTEE CERTIFIES the following:

1. The Purchaser (or its nominee) has paid and the Proposal Trustee has received the **[Canadian / US]** Purchase Price for the Purchased Assets payable on the Closing Date **[for the Canadian Closing / US Closing]** pursuant to the APA;
2. The conditions to Closing **[for the Canadian Closing / US Closing]** as set out in sections 7.1, 7.2 and 7.3 of the APA have been satisfied or waived by the Vendors and the Purchasers (or their nominee);
3. The Applicable Transaction (as defined in the APA) has been completed to the satisfaction of the Vendors and the Vendors have notified the Proposal Trustee of this in writing; and
4. This Certificate was delivered by the Proposal Trustee at **[City], [Province]** on _____ **[Date]**, 2022 at _____ **[a.m./p.m. Edmonton Time]**.

**KSV RESTRUCTURING INC., IN ITS CAPACITY
AS PROPOSAL TRUSTEE OF NILEX INC. AND
NILEX USA INC. AND NOT IN ITS PERSONAL OR
CORPORATE CAPACITY**

Per: _____
Name:
Title:

Schedule "B"

Encumbrances to be Expunged and Discharged

The Purchased Assets shall be conveyed to the applicable Purchaser free and clear of all Encumbrances (other than Permitted Encumbrances) (each as defined in the APA), including without limitation the following:

Canadian Encumbrances to be Expunged and Discharged

Alberta

Registration Number	Registration Date	Registering Party	Nature of Registration
10010720861	January 7, 2010	Element Fleet Management Inc.	Security Agreement
13042623420	April 26, 2010	PEF 2010 Nilex Investment Limited Partnership FCPI Nilex GP Inc.	Land Charge
13042623460	April 26, 2010	PEF 2010 Nilex Investment Limited Partnership	Security Agreement
22060620459	June 6, 2022	Ian Wilson	Writ of Enforcement
22062937083	June 29, 2022	Leavitt Machinery Canada Inc.	Security Agreement
22071219384	July 12, 2022	Hugh Watt	Writ of Enforcement

British Columbia

Registration Number	Registration Date	Registering Party	Nature of Registration
314726H	April 26, 2013	PEF 2010 Nilex Investment Limited Partnership FCPI Nilex GP Inc.	Security Agreement
785579K	May 28, 2018	Canadian Imperial Bank of Commerce	Security Agreement

Saskatchewan

Registration Number	Registration Date	Registering Party	Nature of Registration
301015975	April 26, 2013	PEF 2010 Nilex Investment Limited Partnership FCPI Nilex GP Inc.	Security Agreement
301770425	May 28, 2018	Canadian Imperial Bank of Commerce	Security Agreement

Ontario

Registration Number	Registration Date	Registering Party	Nature of Registration
20130426 1704 1462 6168	April 26, 2013	PEF 2010 Nilex Investment Limited Partnership FCPI Nilex GP Inc.	Security Agreement

U.S. Encumbrances to be Expunged and Discharged

Colorado

Registration Number	Registration Date	Registering Party	Nature of Registration
20182049545	June 1, 2018	Canadian Imperial Bank of Commerce	Security Agreement

Schedule "C"

Permitted Encumbrances

At the closing of the Transaction, the applicable Purchaser will be conveyed clear title to the applicable Purchased Assets subject to the Permitted Encumbrances as set forth in the APA in the definition of "Permitted Encumbrances".