



COURT/ESTATE 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

APPLICANT NILEX INC. and NILEX USA INC.

DOCUMENT **AFFIDAVIT OF TREVOR DERKSEN**

ADDRESS FOR SERVICE AND
CONTACT INFORMATION OF PARTY
FILING THIS DOCUMENT BLAKE, CASSELS & GRAYDON LLP
3500, 855 – 2nd Street S.W.
Calgary, Alberta T2P 4J8

Attention: Kelly Bourassa / Alexia Parente
Telephone: 403-260-9697 / 416-863-2417
Facsimile: 403-260-9700
E-mail: kelly.bourassa@blakes.com /
alexia.parente@blakes.com

File Ref.: 99580/8

**AFFIDAVIT NO. 1 OF Trevor Derksen
Sworn March 10, 2023**

I, Trevor Derksen, of the City of Edmonton, in the Province of Alberta, **MAKE OATH AND SWEAR THAT:**

INTRODUCTION

1. I am the President, Chief Executive Officer of the Applicant, Nilex Inc. ("**Nilex**"). In this capacity, I am responsible for overseeing the operations of Nilex and its wholly owned subsidiary, Nilex USA Inc. ("**Nilex USA**", and together with Nilex, the "**Companies**").
2. I have personal knowledge of the matters in this Affidavit, except where I state that my knowledge is based on information and belief, in which case I believe my statements to be true.

TP

3. In preparing this Affidavit, I have consulted with members of the Companies' board of directors, senior management team, legal advisors and the Proposal Trustee (defined below).

NATURE OF APPLICATION AND OVERVIEW OF RELIEF SOUGHT

4. This Affidavit is sworn in support of the Companies' application returnable on March 20, 2023 (the "**Application**") before the Court of King's Bench of Alberta (the "**Court**") for an order, among other things:
 - (a) extending the time by which each of the Companies may file a proposal to their creditors pursuant to section 50.4(9) of the BIA for a maximum 45-day period from the date following the current deadline to do so;
 - (b) approving and ratifying the actions, conduct and activities of KSV Restructuring Inc., the proposal trustee appointed in these proceedings (the "**Proposal Trustee**"), as set out in the fifth report of the Proposal Trustee to the Court dated March 10, 2023 (the "**Fifth Report**"); and
 - (c) approving the fees and disbursements of the Proposal Trustee and its counsel as set out in the Fifth Report and in the fee affidavits, to be sworn, and provided to the Court.
5. As set out in the Proposal Trustee's second report to the Court dated November 21, 2022, the execution of the TSA by the Parties was a condition to closing of the Transaction. Pursuant to the TSA, the Companies agreed to provide the benefit of certain leases, services and employees to the Purchasers at the Purchasers' expense for up to six months following closing.
6. On December 2, 2022, the Proposal Trustee, in its capacity as foreign representative, filed with the US Bankruptcy Court, among other things, a petition for the recognition of the Nilex USA NOI Proceeding.
7. On December 9, 2022, the US Bankruptcy Court granted a preliminary injunction order in respect of Nilex USA and scheduled a hearing date for final recognition of the Nilex USA NOI Proceeding and the Approval Order, as it relates to the Transaction in respect of Nilex USA.

TP

8. On January 10, 2023, the Honourable Judge M.E. Romero of the US Bankruptcy Court entered orders, among other things, recognizing the Approval Order and approving the Transaction with respect to Nilex USA.
9. Background information regarding the Companies' business and these proceedings are more fully set out in the affidavits sworn by Jeff Allen, Vice President and CFO of Nilex, in these proceedings on October 31, 2022, November 21, 2022, December 7, 2022 and January 30, 2023 (the "**Fourth Allen Affidavit**", collectively the "**Allen Affidavits**"), and the Proposal Trustee's various reports to the Court issued in these proceedings. I have reviewed the Allen Affidavits and adopt the information set forth therein as my own. Capitalized terms not otherwise defined herein have the meaning ascribed to them in the Fourth Allen Affidavit.

HISTORY

10. The orders granted in these proceedings prior to January 30, 2023 are set out in detail in the Fourth Allen Affidavit. Among them:
 - (a) on November 28, 2022, the Honourable Justice M. H. Hollins of the Court granted orders, among other things, authorizing the Proposal Trustee to act as the foreign representative in respect of the Companies, or either of them, for the purpose of having the NOI Proceedings, or either of them recognized in the United States of America pursuant to chapter 15 of title 11 of the United States Code, 11 U.S.C §§ 101-1532 in the US Bankruptcy Court (the "**Chapter 15 Proceedings**"); and
 - (b) on December 13, 2022, the Honourable Justice J.T. Neilson of the Court granted an order, among other things, authorizing the Proposal Trustee to make an interim distribution or distributions to PEF 2010 Nilex Investment Limited Partnership from the proceeds of sale resulting from the Transaction up to the full amount of the Assigned Debt (as defined in my affidavit sworn December 7, 2022) (the "**Canadian Distribution Order**").
11. On February 7, 2023, the Honourable Justice J.T. Nielson of the Court granted an order, among other things, extending the time for each of the Companies to file a proposal to their creditors pursuant to section 50.4(9) of the BIA to and including March 24, 2023 (the "**February 7 Order**").

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12. On February 16, 2023, the Proposal Trustee in its capacity as foreign representative, filed a motion with the US Bankruptcy Court for entry of an order recognizing the Canadian Distribution Order. The motion materials contemplate that any interested party wishing to object to the relief sought therein shall file an objection no later than March 9, 2023. There were no objections filed by the deadline. It is anticipated that counsel will have an update for the Court at the time of the Application.

THE TRANSITION SERVICES AGREEMENT

13. As mentioned in the Fourth Allen Affidavit, the Transaction in respect of Nilex and Nilex USA closed on December 19, 2022 (with an effective date of December 16, 2022), and January 27, 2023, respectively.
14. As set out in the second report of the Proposal Trustee dated November 21, 2022, the execution of the TSA by the Parties was a condition to closing of the Transaction. Pursuant to the TSA, the Companies agreed to provide the benefit of certain contracts, services and employees to the Purchasers at the Purchasers' expense for up to six months following closing.
15. Since the granting of the February 7 Order, the Companies have continued to provide transition services to the Purchasers under the TSA and have assisted with the consensual assignment of certain contracts to be assumed under the APA.

RELIEF REQUESTED

Extension of Time to File a Proposal

16. Pursuant to section 50.4(8) of the BIA, each of the Companies is required to file a proposal with the official receiver within 30 days of commencing its respective NOI Proceedings (the "**Initial 30 Days**") unless it otherwise obtains an extension from the Court.
17. Pursuant to section 50.4(9) of the BIA, before the expiry of the Initial 30 Days, each of the Companies may apply to the Court for an order extending the time to file a proposal or proposals by a period not exceeding 45 days and not exceeding in the aggregate five months after the expiry of the Initial 30 Days for any individual extension.
18. Unless the Companies receive extensions of time to file a proposal or proposals, each of the Companies' deadline to file a proposal with the official receiver will expire at 11:59 pm

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(local Edmonton time) on March 24, 2023, and the Companies will be deemed to have made an assignment in bankruptcy at that time.

19. The Companies are seeking an extension of time to file a proposal or proposals to and including 11:59 pm (local Edmonton time) on April 26, 2023 (the “**Extension Period**”).
20. The extension requested will not cause either of the Companies to exceed the aggregate five-month period after expiry of the Initial 30 Days, as set out below:

Filing Timeline	Nilex	Nilex USA
Filing Date	October 27, 2022	November 24, 2022
Initial 30 Days pursuant to section 50.4(8) of the BIA	November 26, 2022	December 24, 2022
Extension granted November 8, 2022	January 10, 2023	---
Extension granted November 28, 2022	February 7, 2023 (28-day extension)	February 7, 2023
Extension granted February 7, 2023	March 24, 2023	March 24, 2023
Extension to be sought on March 20, 2023	April 26, 2023 (33-day extension)	April 26, 2023 (33-day extension)
5 months after Initial 30 Days	April 26, 2023	May 24, 2023

21. Since commencing the NOI Proceedings, the Companies have diligently complied with various requirements under the BIA including:
 - (a) continuing to operate their businesses in the ordinary course;
 - (b) preparing and analyzing creditor lists;
 - (c) providing the Proposal Trustee with access to the Companies' senior employees and books and records;
 - (d) completing cash flow forecasts; and

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- (e) working with the Proposal Trustee, the Companies' sale advisor, Valitas Capital Partners, and the Companies' legal advisors to negotiate and enter into the APA and to close the Transaction in respect of Nilex with a view to maximizing value for the Companies' creditors and stakeholders.
21. Pursuant to the APA, the Purchasers purchased the right to operate the business of the Companies under the Companies' registered business names. Accordingly, over the course of the Extension Periods, the Companies anticipate changing their registered business names to allow the Purchasers to continue operating under the Nilex and Nilex USA names.
 22. The Companies' cash flow forecast for the extension period will be attached to the Fifth Report. It reflects that the Companies each have the funding required to preserve the status quo for the Extension Period.
 23. An extension of time for each of the Companies to file a proposal or proposals is a material component of the NOI Proceedings to allow each of the Companies to restructure their affairs following the completion of the Transaction and will permit the Companies to fulfill the terms of the TSA. In this regard:
 - (a) each of the Companies has acted and is acting in good faith and with due diligence both in the period prior to and since the commencement of the NOI Proceedings; and
 - (b) an extension of time will enhance the Companies' ability to make a viable proposal or proposals following the completion of the Transaction.

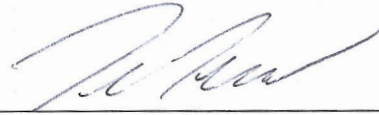
TD

Conclusion

24. I swear this Affidavit in support of the Application and for any other proper purpose in connection with the NOI Proceedings.

SWORN BEFORE ME on the 10th day of March, 2023 at the City of Edmonton, Alberta.

A Commissioner for Oaths in and for
Alberta



Trevor Derksen

Clerk's Stamp

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Conclusion

24. I swear this Affidavit in support of the Application and for any other proper purpose in connection with the NOI Proceedings.

SWORN BEFORE ME on the 10th day of March, 2023 at the City of Edmonton, Alberta.


A Commissioner for Oaths in and for
Alberta

Jessica MacKinnon
Barrister & Solicitor

Trevor Derksen

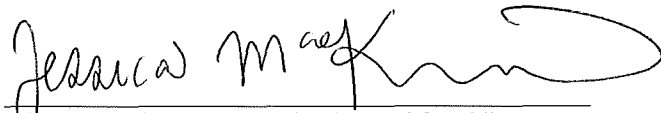


Certificate of Commissioning by Videoconference

I, Jessica MacKinnon, Commissioner of Oaths in and for Alberta, took the Affidavit of Trevor Derksen sworn via videoconference on March 10, 2023, (the "**Affidavit**").

The affiant and I followed the process outlined by the Alberta Court of King's Bench in Notice to the Profession and Public #2020-02 dated March 25, 2020. In addition to the steps described in the Affidavit, I compared each page of the copy I received from the affiant with the initialed copy that was before me while I was linked by videoconference with the affiant. Upon being satisfied that the two copies were identical, I affixed my name to the jurat.

On March 17, 2020, the Government of Alberta declared a state of public health emergency pursuant to the Alberta *Public Health Act* in response to the COVID-19 pandemic. The Government of Alberta also strongly recommends that all individuals stay home and avoid contact with others whenever possible. I am satisfied that this process was necessary.



Commissioner of Oaths in and for Alberta

Jessica MacKinnon
Barrister & Solicitor