

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
(COMMERCIAL LIST)  
IN BANKRUPTCY AND INSOLVENCY**

**IN THE MATTER OF THE NOTICE OF INTENTION TO MAKE A PROPOSAL OF  
THE SANDERSON-HAROLD COMPANY LIMITED, C.O.B. AS PARIS KITCHENS  
IN THE CITY OF VAUGHAN, IN THE PROVINCE OF ONTARIO**

**FACTUM OF THE SANDERSON-HAROLD COMPANY LIMITED,  
C.O.B. AS PARIS KITCHENS  
(Motion Returnable June 8, 2022)**

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Harold Company Limited c.o.b. as  
Paris Kitchens**

**TO: SERVICE LIST**

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KITCHENS**

**I – NATURE OF THE MOTION**

1. This factum is filed by The Sanderson-Harold Company Limited c.o.b. as Paris Kitchens (the “**Company**”) in support of its motion for an order, among other things:

- (a) approving the KERP<sup>1</sup> and granting the KERP Charge;
- (b) approving the Interim Lending Facility and granting the Interim Lending Charge in favour of BMO;
- (c) granting the Administration Charge to secure the fees and disbursements of the Proposal Trustee, the Proposal Trustee’s counsel and the Company’s counsel;
- (d) granting the Company’s request for an extension of the time required to file its proposal, from June 30, 2022 to August 15, 2022;

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<sup>1</sup> All capitalized terms not defined in this section have the meaning defined below.

- (e) sealing the confidential appendix to the First Report of KSV Restructuring Inc., as Proposal Trustee (the “**First Report**”); and
- (f) approving the activities of the Proposal Trustee as described in the First Report.

## II - FACTS

### Background

2. The Company is a leader in the Canadian medium to high-end kitchen cabinet market. The Company designs, manufactures, and services custom kitchen and bath cabinetry for many of the most prominent and reputable residential low-rise and high-rise builders in the Greater Toronto Area and Southern Ontario.<sup>2</sup>
3. The Company owns a 110,000 square foot manufacturing facility located at 23 Railway Street, Paris, Ontario, and a 9,888 square foot storage facility located nearby at 38 Spruce Street, Paris, Ontario (collectively, the “**Paris Properties**”).<sup>3</sup>
4. The Company’s 4,000 square foot showroom and head office is located at 245 West Beaver Creek, Richmond Hill, Ontario, which is leased from a related party, Diazo Investments Limited (“**Diazo**”).<sup>4</sup>
5. The Company employs approximately one hundred fifty (150) people. Of these employees, approximately half are unionized.<sup>5</sup>

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<sup>2</sup> Affidavit of Larry Wolfman sworn May 31, 2022 (the “**Wolfman Affidavit**”), Motion Record (“**MR**”) Tab 2 at paras. 4-5, p. 2.

<sup>3</sup> *Ibid* at para. 7, p. 2.

<sup>4</sup> *Ibid* at para. 8, p. 2.

<sup>5</sup> *Ibid* at para. 9, p. 3.

6. Management is comprised of Larry Wolfman (President), Carolyn Iyer and Jocelyn Hu.<sup>6</sup>

7. Ms. Iyer is the Company's Chief Operating Officer. She is familiar with all facets of the business through her progression from Junior Estimator to Director of Project Development in 2007 to Managing Director in 2014 to Chief Operating Officer in 2019. She continues to work on cost-saving initiatives, employee development, client relationships, and managing the operations of the business. Ms. Iyer commenced her employment with the Company in 1998.<sup>7</sup>

8. Ms. Hu is the Company's Vice-President Finance. She has extensive experience in manufacturing, retail, wholesale, internet, and information technology. She is a Chartered Professional Accountant and holds certifications in human resource management. She focuses on internal controls and procedures, and cost-savings. She provides financial insights into the business which assist the senior management team in its strategic decisions. Ms. Hu commenced her employment with the Company in 2017.<sup>8</sup>

9. The Company is currently indebted to Bank of Montreal ("**BMO**") in the amount of approximately \$3 million (as of May 31, 2022) pursuant to a term loan and an operating line facility. As security for this debt, BMO holds (among other things) a general security interest ranking in first position over all of the Company's assets, other than the Paris Properties, over which it holds a mortgage ranking subordinate to Pillar (defined below). The Company has also guaranteed repayment of a related party loan to BMO.<sup>9</sup>

10. The Company is currently indebted to Pillar Capital Corp. ("**Pillar**") in the amount of approximately \$2 million pursuant to a Loan Agreement dated December 8, 2021. As security for

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<sup>6</sup> Wolfman Affidavit at para. 11, p. 3.

<sup>7</sup> *Ibid* at para. 12, p. 3.

<sup>8</sup> *Ibid* at para. 13, p. 3.

<sup>9</sup> *Ibid* at para. 14, p. 3.

this debt, Pillar holds a first-ranking mortgage over the Paris Properties and security generally ranking behind BMO over the Company's other assets.<sup>10</sup>

11. There are also registrations against the Company by Diazo and also in respect of certain specific equipment and vehicles.<sup>11</sup>

12. The Company is current in respect of payment of employee wages and vacation pay and amounts required to be remitted to governmental authorities for source deductions or otherwise.<sup>12</sup>

13. Amounts owing to trade creditors total approximately \$1.7 million as of the Filing Date (defined below). The Company also has repayment obligations to the Government of Canada represented by the Minister Responsible for Federal Economic Development Agency for Southern Ontario with respect to a \$1 million Regional Relief and Recovery Fund contribution.<sup>13</sup>

14. The Covid-19 pandemic significantly impacted the construction industry, including the Company. The Company suffered financially as a result of the pandemic in the following respects: (a) supply chain disruptions; (b) shortages of skilled labour; (c) health and safety protocols; and (d) an inability to meet increased demand for renovations and home products as a result of the challenges previously described.<sup>14</sup>

15. The Company is addressing these challenges by updating timelines for delivery and revisiting pricing with customers. The Company believes these are near term challenges that should be resolved as the Covid-19 pandemic subsides.<sup>15</sup>

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<sup>10</sup> Wolfman Affidavit at para. 15, p. 4.

<sup>11</sup> *Ibid* at para. 16, p. 4; Exhibit "A" to the Wolfman Affidavit, MR Tab 2A.

<sup>12</sup> *Ibid* at para. 17, p. 4.

<sup>13</sup> *Ibid* at para. 18, p. 4.

<sup>14</sup> *Ibid* at para. 19, pp. 4-5.

<sup>15</sup> *Ibid* at para. 20, p. 5.

16. Nevertheless, the Company has incurred significant losses since the start of fiscal 2020. 2022 sales were affected by the onset of the Omicron variant and labour shortages. The variant and the labour shortage deferred a large percentage of the Company's sales, which impacted liquidity.<sup>16</sup>

### **The NOI Proceeding**

17. On May 31, 2020 (the "**Filing Date**"), the Company filed a Notice of Intention to File a Proposal ("**NOI**") under the *Bankruptcy and Insolvency Act* (the "**BIA**") (the "**NOI Proceeding**"). The NOI filing was necessary to provide stability to the Company and allow the opportunity to continue a sale process for its business that commenced prior to this proceeding.<sup>17</sup>

18. KSV Restructuring Inc. ("**KSV**") is the trustee in the NOI Proceeding (the "**Proposal Trustee**").<sup>18</sup>

### **Cash Flows**

19. The Proposal Trustee has assisted the Company in preparing a cash flow forecast (the "**Cash Flow Forecast**") for the period ending August 19, 2022 (the "**Cash Flow Period**").<sup>19</sup> The Company is expected to have sufficient liquidity to operate to the end of the Cash Flow Period provided that it continues to have access to interim financing made available by BMO, the details of which are set out below.<sup>20</sup>

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<sup>16</sup> Wolfman Affidavit at para. 20, p. 5.

<sup>17</sup> *Ibid* at para. 21, p. 5.

<sup>18</sup> *Ibid* at para. 22, p. 5.

<sup>19</sup> *Ibid* at para. 23, p. 6; First Report of KSV Restructuring Inc. as Proposal Trustee of The Sanderson-Harold Company Limited dated June 3, 2022 (the "**KSV Report**") at section 5.0.

<sup>20</sup> Wolfman Affidavit at para. 24, p. 6.

**KERP**

20. The Company has developed a key employee retention plan, as described in the First Report (the “**KERP**”), to ensure the retention of Ms. Iyer and Ms. Hu, both of whom are long-term employees with deep knowledge of the business needed to allow it to continue to operate without disruption. The KERP has been developed to facilitate and encourage their participation in the business during the NOI Proceeding.<sup>21</sup>

21. The Company is seeking approval of the KERP and the creation of a corresponding charge on the Company’s assets (the “**KERP Charge**”) in the amount of \$120,000 to secure the maximum amount payable under the KERP at any point in time. The KERP Charge is to rank subordinate to the Administration Charge but is to have priority over all other claims against the Company, consistent with the Administration Charge.<sup>22</sup>

**Interim Financing**

22. With the assistance of the Proposal Trustee, the Company and BMO have negotiated an interim financing agreement (the “**Interim Lending Agreement**”), pursuant to which BMO has agreed to extend interim financing up to a maximum amount of \$450,000 (the “**Interim Lending Facility**”) to the Company in this proceeding, subject to Court approval.<sup>23</sup>

23. Obligations under the Interim Lending Facility are to be secured by a charge, in favour of BMO, over all of the Company’s property, assets and undertakings (the “**Interim Lending**

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<sup>21</sup> Wolfman Affidavit at para. 31, p. 7.

<sup>22</sup> *Ibid* at para. 32, p. 7; KSV Report at section 4.3.

<sup>23</sup> KSV Report at sections 6.0(1) and 6.0(1)(b).

**Charge**”) ranking in priority to all existing security interests other than Pillar’s mortgage against the Paris Properties, the Administration Charge and the KERP Charge.<sup>24</sup>

24. It is also a term of the Interim Lending Agreement that the Interim Lending Charge also secure any and all obligations of the Company to BMO arising prior to the Filing Date, and that the Company be entitled to use funds received from NOI Proceeding generated post-filing date from the sale of inventory, equipment, chattels or otherwise (but not from the real property to the extent that Pillar is not paid in full).<sup>25</sup>

25. The Company will have no prospect of making a viable proposal or restructuring its business if it does not obtain the contemplated financing.<sup>26</sup>

### **Administration Charge**

26. The Company seeks an order granting a charge over its property securing the fees and disbursements of counsel to the Company, the Proposal Trustee and its counsel (the “**Administrative Professionals**”) in the amount of \$300,000 (the “**Administration Charge**”).<sup>27</sup> The amount of the Administration Charge contemplates that professionals are paid on a current basis during these proceedings.<sup>28</sup>

### **Extension of NOI Period**

27. The NOI Period is set to expire on June 30, 2022.<sup>29</sup>

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<sup>24</sup> KSV Report at section 6.0(1)(f).

<sup>25</sup> KSV Report at section 6.0(2).

<sup>26</sup> Wolfman Affidavit at para. 27, p. 6.

<sup>27</sup> *Ibid* at para. 29, pp. 6-7; KSV Report at section 7.0(1).

<sup>28</sup> Wolfman Affidavit at para. 30, p. 7.

<sup>29</sup> *Ibid* at para. 33, p. 7.



28. The Company requests a 45-day extension of the NOI Period which would give the Company the time needed to move forward with implementation of the steps described above with a view to create a stabilized environment to allow the Company the opportunity to continue a sale process for its business that commenced prior to this proceeding and to formulate a proposal to its creditors.<sup>30</sup>

29. The Company will likely be able to make a viable proposal to its creditors if the extension is granted, particularly if a going-concern transaction is identified and completed.<sup>31</sup>

30. The Company is not aware of any creditors who would be harmed by the extension of the NOI Period by 45 days.<sup>32</sup>

### III – ISSUES

31. The main issues to be determined on this motion are:

- (a) whether this Court should approve the KERP and grant the KERP Charge;
- (b) whether this Court should approve the Interim Lending Facility and the Interim Lending Charge in favour of BMO;
- (c) whether this Court should grant the Administration Charge;
- (d) whether this Court should grant an extension of time to file a proposal; and
- (e) whether this Court should seal the confidential appendix to the First Report.

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<sup>30</sup> Wolfman Affidavit at para. 34, p. 7; KSV Report at section 1.0(2).

<sup>31</sup> Wolfman Affidavit at para. 35, p. 7; KSV Report at section 3.0(5).

<sup>32</sup> Wolfman Affidavit at para. 36, p. 8.

#### IV – LAW AND ARGUMENT

##### **The Court Should Approve the KERP and Grant the KERP Charge**

32. The Company seeks approval of the KERP and the KERP Charge in the amount of \$120,000. The KERP Charge is to rank subordinate to the Administration Charge but is to have priority over all other claims against the Company, consistent with the Administration Charge.<sup>33</sup>

33. While there is no express statutory jurisdiction under the BIA for the Court to approve a contract or plan regarding the retention of key employees, Courts have regularly recognized the importance of retaining employees that are vital to a company in the context of insolvency proceedings.<sup>34</sup>

34. In determining whether a KERP and a KERP Charge are reasonable under the circumstances, Courts will generally consider the following factors:<sup>35</sup>

- (a) whether the monitor or the trustee supports the KERP agreement and the KERP charge;
- (b) whether there is a “potential” loss of management in that the beneficiaries of the KERP may likely consider other employment opportunities if the KERP and the KERP charge are not approved;
- (c) whether the beneficiaries of the KERP are considered to be important to the management and operations of the debtor company;

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<sup>33</sup> KSV Report at section 4.0(3).

<sup>34</sup> [Grant Forest Products Inc. \(Re\)](#), 57 C.B.R. (5th) 128. See also: [Danier Leather Inc. \(Re\)](#), 2016 ONSC 1044.

<sup>35</sup> [In the matter of a proposed plan of compromise or arrangement of Canwest Global Communications Corp.](#), [2009] O.J. No. 4286 at para. 50 [“**Re Canwest**”].

- (d) whether a replacement can be found in a timely manner should the beneficiary elect to terminate his or her employment with the debtor company; and
- (e) the business judgment of the board of directors of the debtor company.

35. In the present case, the Company respectfully submits that the Court should approve the KERP and KERP Charge. The KERP and the KERP Charge are essential to assist the Company with its restructuring efforts. The following additional factors support the granting of the KERP and the KERP Charge:

- (a) the Proposal Trustee supports the KERP;
- (b) the continued involvement and cooperation of the KERP Employees is critical to the success of this proceeding;
- (c) the Proposal Trustee believes that the KERP will assist the Company to retain the KERP Employees, which is in the interest of stakeholders;
- (d) the amounts payable under the KERP are reasonable in the circumstances; and
- (e) BMO has been advised of the KERP and has not expressed any opposition to it. Pillar has also been advised of the KERP.<sup>36</sup>

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<sup>36</sup> KSV Report at section 4.0(5).

## **The Court Should Approve the Interim Lending Agreement and Interim Lending Charge**

36. The Company seeks approval of the Interim Lending Agreement and Interim Lending Charge. The Interim Lending Charge will rank subordinate to the Administration Charge, the KERP Charge and Pillar's charge against the Paris Properties.<sup>37</sup>

37. The availability of interim financing during proposal proceedings is codified by the BIA. The Court possesses the statutory jurisdiction to grant the Interim Lending Charge under section 50.6 of the BIA, which reads as follows:

**50.6(1)** On application by a debtor in respect of whom a notice of intention was filed under section 50.4 or a proposal was filed under subsection 62(1) and on notice to the secured creditors who are likely to be affected by the security or charge, a court may make an order declaring that all or part of the debtor's property is subject to a security or charge — in an amount that the court considers appropriate — in favour of a person specified in the order who agrees to lend to the debtor an amount approved by the court as being required by the debtor, having regard to the debtor's cash-flow statement referred to in paragraph 50(6)(a) or 50.4(2)(a), as the case may be. The security or charge may not secure an obligation that exists before the order is made.

[...]

**(3)** The court may order that the security or charge rank in priority over the claim of any secured creditor of the debtor.

38. Subsection 50.6(5) of the BIA sets out the following non-exhaustive list of factors to be considered by the Court in deciding whether to grant the Interim Lending Charge:

**(5)** In deciding whether to make an order, the court is to consider, among other things,

(a) the period during which the debtor is expected to be subject to proceedings under this Act;

(b) how the debtor's business and financial affairs are to be managed during the proceedings;

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<sup>37</sup> KSV Report at section 6.0(1)(f).

(c) whether the debtor's management has the confidence of its major creditors;

(d) whether the loan would enhance the prospects of a viable proposal being made in respect of the debtor;

(e) the nature and value of the debtor's property;

(f) whether any creditor would be materially prejudiced as a result of the security or charge; and

(g) the trustee's report referred to in paragraph 50(6)(b) or 50.4(2)(b), as the case may be.

39. The Interim Lending Agreement and the Interim Lending Charge are essential to provide the Company with the opportunity to make a viable proposal and restructure its business for the following reasons:<sup>38</sup>

- (a) the Interim Lending Facility and the corresponding Interim Lending Charge enhance the prospect that the Company will be able to successfully complete a restructuring and file a proposal in these proceedings;
- (b) the Cash Flow Forecast reflects that the Company will experience a liquidity crisis if additional funding is not provided, which will jeopardize its business;
- (c) the Company will have no prospect of making a viable proposal or restructuring its business if it does not obtain the contemplated financing;
- (d) BMO is the most logical lender for the Interim Lending Facility given BMO is the Company's operating and term loan lender, and it has a first charge on the assets subject to these facilities; and

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<sup>38</sup> KSV Report at section 6.1.

- (e) Pillar is aware of the Interim Lending Facility and has not expressed opposition to it.

40. Accordingly, the Company submits that this Court should approve the Interim Lending Agreement and grant the Interim Lending Charge.

### **The Court Should Approve the Administration Charge**

41. The Company also seeks the Administration Charge in the amount of \$300,000 to secure the fees of the Administrative Professionals, whose services are critical to this proceeding. This charge is to rank in priority to all other security interests in the Company's property and assets.

42. The BIA confers on the court the statutory jurisdiction to grant an administration charge. Specifically, section 64.2 provides as follows:

**64.2 (1)** On notice to the secured creditors who are likely to be affected by the security or charge, the court may make an order declaring that all or part of the property of a person in respect of whom a notice of intention is filed under section 50.4 or a proposal is filed under subsection 62(1) is subject to a security or charge, in an amount that the court considers appropriate, in respect of the fees and expenses of

(a) the trustee, including the fees and expenses of any financial, legal or other experts engaged by the trustee in the performance of the trustee's duties;

(b) any financial, legal or other experts engaged by the person for the purpose of proceedings under this Division; and

(c) any financial, legal or other experts engaged by any other interested person if the court is satisfied that the security or charge is necessary for the effective participation of that person in proceedings under this Division.

**64.2 (2)** The court may order that the security or charge rank in priority over the claim of any secured creditor of the person.

43. Administrative charges have been approved in BIA proposal proceedings, where, as in the present case, the participation of insolvency professionals is necessary to ensure a successful proceeding under the BIA.<sup>39</sup>

44. Absent the approval of the Administration Charge, the professionals are unlikely to be prepared to act.<sup>40</sup>

45. The Company submits that this is an appropriate circumstance for the Court to grant the Administration Charge with priority over pre-existing security interests and other encumbrances. The Proposal Trustee understands that BMO consents to the Administration Charge, as contemplated by the Interim Lending Agreement. The quantum of the proposed Administration Charge is both fair and reasonable given the Company's lack of liquidity.<sup>41</sup>

### **Sealing Order**

46. The Company requests an order sealing Confidential Appendix "1", which contains the KERP terms, as it contains personal, identifiable and commercially sensitive information.

47. The Supreme Court of Canada has held that a sealing order may be granted:

- (a) Where it is necessary to prevent a serious risk to an important interest, including a commercial interest, in the context of litigation because reasonably alternative measures will not prevent the risk; and

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<sup>39</sup> [\*Mustang GP Ltd. \(Re\)\*, 2015 ONSC 6562 at paras. 32-33.](#)

<sup>40</sup> KSV Report at section 7.0(2).

<sup>41</sup> KSV Report at sections 7.0(1) and 7.0(3).

- (b) Where the salutary effects of the confidentiality outweigh its deleterious effects, including the effects on the right to free expression, which includes public interest in open and accessible court proceedings.<sup>42</sup>

48. In *Re Canwest*, Justice Pepall applied the above test specifically for the sealing of a confidential supplement containing unredacted copies of the KERPs.<sup>43</sup>

49. In the case at hand, the Company submits that both the first and second branches of the test from Sierra Club are met:

- (a) Confidential Appendix “1” contains the KERP terms which include personal, identifiable and commercially sensitive information, including the proposed compensation of the KERP Employees; and
- (b) the Proposal Trustee does not believe that any stakeholder will be prejudiced if the KERP information contained in Confidential Appendix “1” is sealed.<sup>44</sup>

### **The Court Should Grant an Extension of the Proposal Period**

50. The Company filed its NOI on May 31, 2022. By operation of section 50.4(8) of the BIA, the Company is required to file a proposal within 30 days unless it otherwise obtains an extension of time from the Court within that 30-day period. The Company is seeking to extend the time within which a proposal must be filed to and including August 15, 2022.

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<sup>42</sup> [Sierra Club of Canada v. Canada \(Minister of Finance\), 2002 SCC 41 at para. 45 \[Sierra Club\].](#)

<sup>43</sup> [Re Canwest at para. 52.](#)

<sup>44</sup> KSV Report at section 4.1.



51. Pursuant to section 50.4(9) of the BIA, a debtor in a proposal proceeding may, before the expiry of the time to file a proposal, apply to the court for an order extending the time to file a proposal, by a maximum of 45 days, and the court may extend the time if it is satisfied that:

- (a) the insolvent person has acted, and is acting, in good faith and with due diligence;
- (b) the insolvent person would likely be able to make a viable proposal if the extension being applied for were granted; and
- (c) no creditor would be materially prejudiced if the extension being applied for were granted.

52. The Company respectfully submits that the extension sought ought to be approved for, *inter alia*, the following reasons:

- (a) the Company is acting in good faith and with due diligence;
- (b) the Company has indicated that it would likely be able to make a viable proposal to its creditors if the extension is granted, particularly if a going-concern transaction is identified and completed;
- (c) the extension should not adversely affect or prejudice any group of creditors as the Company is projected to have funding to pay post-filing services and supplies in the amounts contemplated by the Cash Flow Forecast;
- (d) it would provide the Company the additional time it requires to further advance its restructuring and continue the sale process, which is in the interest of all stakeholders; and

(e) the proposed extension is supported by the Proposal Trustee.<sup>45</sup>

**V – RELIEF SOUGHT**

53. For the reasons set out above, the Company requests that this Court grant an order for the relief sought in its Notice of Motion.

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 6<sup>th</sup> day of June, 2022.



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**George Benchetrit, Laura Culleton,  
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**Lawyers for The Sanderson-Harold  
Company Limited c.o.b. as Paris Kitchens**

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<sup>45</sup> KSV Report at section 8.0(2).

## SCHEDULE “A”

### LIST OF AUTHORITIES

1. [\*Grant Forest Products Inc. \(Re\)\*, 57 C.B.R. \(5th\) 128](#)
2. [\*Danier Leather Inc. \(Re\)\*, 2016 ONSC 1044](#)
3. [\*In the matter of a proposed plan of compromise or arrangement of Canwest Global Communications Corp.\*, \[2009\] O.J. No. 4286](#)
4. [\*Sierra Club of Canada v. Canada \(Minister of Finance\)\*, 2002 SCC 41](#)
5. [\*Mustang GP Ltd. \(Re\)\*, 2015 ONSC 6562](#)

## SCHEDULE “B”

### TEXT OF STATUTES, REGULATIONS & BY - LAWS

#### *Bankruptcy and Insolvency Act, R.S.C. 1985, c. B-3*

##### **Extension of time for filing proposal**

**50.4 (9)** The insolvent person may, before the expiry of the 30-day period referred to in subsection (8) or of any extension granted under this subsection, apply to the court for an extension, or further extension, as the case may be, of that period, and the court, on notice to any interested persons that the court may direct, may grant the extensions, not exceeding 45 days for any individual extension and not exceeding in the aggregate five months after the expiry of the 30-day period referred to in subsection (8), if satisfied on each application that

- (a) the insolvent person has acted, and is acting, in good faith and with due diligence;
- (b) the insolvent person would likely be able to make a viable proposal if the extension being applied for were granted; and
- (c) no creditor would be materially prejudiced if the extension being applied for were granted.

##### **Order – interim financing**

**50.6 (1)** On application by a debtor in respect of whom a notice of intention was filed under section 50.4 or a proposal was filed under subsection 62(1) and on notice to the secured creditors who are likely to be affected by the security or charge, a court may make an order declaring that all or part of the debtor’s property is subject to a security or charge — in an amount that the court considers appropriate — in favour of a person specified in the order who agrees to lend to the debtor an amount approved by the court as being required by the debtor, having regard to the debtor’s cash-flow statement referred to in paragraph 50(6)(a) or 50.4(2)(a), as the case may be. The security or charge may not secure an obligation that exists before the order is made.

##### **Priority**

**(3)** The court may order that the security or charge rank in priority over the claim of any secured creditor of the debtor.

##### **Factors to be considered**

**(5)** In deciding whether to make an order, the court is to consider, among other things,

- (a) the period during which the debtor is expected to be subject to proceedings under this Act;
- (b) how the debtor’s business and financial affairs are to be managed during the proceedings;

- (c) whether the debtor's management has the confidence of its major creditors;
- (d) whether the loan would enhance the prospects of a viable proposal being made in respect of the debtor;
- (e) the nature and value of the debtor's property;
- (f) whether any creditor would be materially prejudiced as a result of the security or charge; and
- (g) the trustee's report referred to in paragraph 50(6)(b) or 50.4(2)(b), as the case may be.

### **Court may order security or charge to cover certain costs**

**64.2 (1)** On notice to the secured creditors who are likely to be affected by the security or charge, the court may make an order declaring that all or part of the property of a person in respect of whom a notice of intention is filed under section 50.4 or a proposal is filed under subsection 62(1) is subject to a security or charge, in an amount that the court considers appropriate, in respect of the fees and expenses of

- (a) the trustee, including the fees and expenses of any financial, legal or other experts engaged by the trustee in the performance of the trustee's duties;
- (b) any financial, legal or other experts engaged by the person for the purpose of proceedings under this Division; and
- (c) any financial, legal or other experts engaged by any other interested person if the court is satisfied that the security or charge is necessary for the effective participation of that person in proceedings under this Division.

### **Priority**

(2) The court may order that the security or charge rank in priority over the claim of any secured creditor of the person.

### **Individual**

(3) In the case of an individual,

- (a) the court may not make the order unless the individual is carrying on a business; and
- (b) only property acquired for or used in relation to the business may be subject to a security or charge.

...