

**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**

REPLY COSTS SUBMISSIONS OF THE PROPOSAL TRUSTEE

May 17, 2023

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capacity as proposal trustee of The Sanderson-
Harold Company Limited

1. As the proposal trustee (the “**Proposal Trustee**”) of The Sanderson-Harold Company Limited (the “**Debtor**”), KSV Restructuring Inc. was obligated to meaningfully participate in the Debtor’s motion for injunctive relief. Its report provided all of the evidence relied upon at the motion. Given that the motion was occasioned solely by the capricious conduct of 1000296348 Ontario Inc. (the “**Purchaser**”), it does not lie in the mouth of the Purchaser to now “nickel and dime” the Proposal Trustee and the Debtor for their costs of preparing the relevant record and rendering assistance to the Court.
2. There is no reason why the Proposal Trustee should be denied the costs it was required to incur to meaningfully participate in the motion or why its costs should be borne by the Debtor’s estate to the detriment of all stakeholders. This Court made no findings questioning the reasonableness or necessity of the Debtor’s motion. This Court’s decision relied on the Proposal Trustee’s evidence, with the Court noting at paragraph 11, “*Nor have I repeated all of the information contained in the Proposal Trustee’s Fourth Report, although I have read and considered it in its entirety.*” In disregarding its contractual bargain with the Debtor by taking self-help measures that put the employees and the business operations of the Debtor at risk, the Purchaser took the risk that if the Debtor successfully challenged its conduct in court, the Purchaser would be exposed to a costs award.
3. There is nothing about the Debtor’s motion that warrants reserving the decision on costs to the cause. Most motions are ‘interlocutory’ in the sense that they come some time between the commencement of litigation and its final adjudication. It is not a prerequisite under rule 57.03(1) of the *Rules of Civil Procedure* that a motion effectively terminate the litigation before costs will be ordered.¹ While a final resolution of the litigation is not required, the Debtor’s motion did, nevertheless, bring about the final resolution of the issues between the Debtor and the Purchaser that were before the Court.
4. As the Purchaser did not file a costs outline, there is nothing to suggest that the Proposal Trustee’s costs are unreasonable or disproportionate. The Purchaser’s suggestion that the only relevant costs are those incurred on October 31 and November 1, 2022 is unreasonable and ignores the Proposal Trustee’s obligation as a court officer to put forward a complete record before the Court. The Purchaser has elected not to offer up its costs outline as a comparator, but seeks to turn this Court’s mandate into that of an assessment officer. Absent some manifest error, this Court should not be called upon to second-guess the professionals in terms of what was required to be done to achieve the outcome of the motion, whether it was necessary and how long each step should have reasonably taken. As the Court noted in *United States v. Yemec*, “*To review accounts at "ground level" would turn trial judges into assessment officers, a task I did not sign on to perform.*”²
5. ALL OF WHICH is respectfully submitted.

¹ *Elegant Façade Inc v. Broccolini Construction*, 2022 ONSC 2465 at [para 7](#).

² *United States v. Yemec* (2005), [2005 CarswellOnt 5064](#) at para 28, aff’d on this point *United States v. Yemec* (2007), [2007 CarswellOnt 3365](#) at para 49.

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Estate/Court File No. BK-22-02835198-0031

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PROCEEDING COMMENCED AT
TORONTO

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