

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

B E T W E E N:

GLOBAL RESOURCE FUND

Applicant

- and -

TAMERLANE VENTURES INC. and PINE POINT HOLDING CORP.

Respondents

FACTUM OF THE RECEIVER

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Restructuring Inc., in its capacity as
Receiver

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PART I. INTRODUCTION

1. Tamerlane Ventures Inc. ("**Tamerlane**") and Pine Point Holding Corp. (together with Tamerlane, the "**Company**") were granted protection in proceedings under the *Companies' Creditors Arrangement Act* (the "**CCAA Proceedings**") pursuant to an Order of this Honourable Court dated August 23, 2013 (the "**Initial Order**"), and Duff & Phelps Canada Restructuring Inc. ("**D&P**") was appointed Monitor of the Company. Pursuant to an Order of this Honourable Court dated January 30, 2014 (the "**CCAA Termination Order**"), the CCAA Proceedings were terminated and D&P was discharged as Monitor. By Order of this Honourable Court dated the same day (the "**Receivership Order**"), D&P was appointed receiver (the "**Receiver**") of the assets, properties and undertakings of the Company (the "**Property**"). The principal purpose of the receivership proceedings in respect of the Company (the "**Receivership Proceedings**") is to continue the sale and investment solicitation process ("**SISP**") for the Company's business and assets, which commenced during the CCAA Proceedings.
2. The Receivership Order authorized the Receiver, *inter alia*, to market any or all of the Property, to sell the Property or any part thereof outside of the ordinary course of

business with the approval of the Court for any transaction in which the purchase price exceeds \$100,000, and to apply for any vesting order necessary to convey the Property or part thereof to a purchaser thereof.

Receivership Order, paras. 3(k), (m) and (n), Appendix C to the First Report, Motion Record, Tab 2C, at pages 66 and 67.

3. The Receiver is seeking an Order (the “**Approval and Vesting Order**”), among other things:
 - (a) approving the proposed sale transaction (the “**Transaction**”) contemplated by an offer letter (the “**Sale Agreement**”) issued by D’Angelo International LLC (“**D’Angelo**”) dated July 15, 2014, and vesting in D’Angelo all of the Receiver’s and Tamerlane’s right, title and interest in and to the assets described in the Sale Agreement (the “**Purchased Assets**”); and
 - (b) authorizing the Receiver to use the proceeds from the Transaction to pay obligations of the Company secured by the Administration Charge and the DIP Lender’s Charge (both as defined in the Initial Order).
4. The marketing and sale process undertaken over the course of sixteen months with respect to the Purchased Assets (the “**Equipment Sale Process**”) was extensive and fair. The D’Angelo offer was the highest and only offer submitted for the Purchased Assets and the Receiver recommends its approval, as the Receiver has determined that the Transaction is in the best interests of the Company and its stakeholders.
5. The Transaction is supported by Global Resource Fund (“**GRF**”), the Company’s senior secured creditor and provider of debtor-in-possession (“**DIP**”) financing, and the only party that appears to have an economic interest in the Company.
6. The use of the proceeds from the Transaction to pay obligations of the Company secured by the Administration Charge and the DIP Lender’s Charge in accordance with their priority is appropriate in the circumstances.

7. For the reasons outlined in the First Report of the Receiver dated August 7, 2014 (the “**First Report**”), the Receiver applies to this Honourable Court for approval of the Transaction and the granting of the Approval and Vesting Order.

PART II. THE FACTS

8. The relevant facts are set forth in the First Report and referred to below.

PART III. ISSUES AND THE LAW

A. COURT APPROVAL OF THE TRANSACTION

9. *Royal Bank v. Soundair Corp.* sets out the following principles a Court should consider when it is asked to approve a sale transaction in a receivership context (the “**Soundair principles**”):

- (a) whether the receiver has made a sufficient effort to get the best price and has not acted improvidently;
- (b) the interests of all parties;
- (c) the efficacy and integrity of the process by which offers are obtained; and
- (d) whether there has been unfairness in the working out of the process.

Royal Bank v. Soundair Corp., 4 O.R. (3d) 1, 83 D.L.R. (4th) 76 (Ont. C.A.) at para. 16 [**Soundair**].

10. Where a receiver attempted to sell certain assets for a period of over ten months and had not received a single acceptable offer in respect of such assets, the receiver did not act improvidently by accepting an acceptable offer received at the end of that ten-month period.

Soundair at para. 19.

11. The support of a secured creditor with an economic interest in the proceeds of a sale transaction is an important factor in determining whether a sale transaction should be approved:

[W]here there is a small number of creditors who are the only parties with a real interest in the proceeds of the sale (i.e. where it is clear that the highest price attainable would result in recovery so low that no other creditors, shareholders, guarantors, etc. would possibly benefit therefore), the wishes of the interested creditors should be very seriously considered by the receiver.

Soundair at para. 73.

12. The court must place a great deal of confidence in the actions taken and in the opinions formed by the receiver. It should assume that the receiver is acting properly unless the contrary is clearly shown. The court should be reluctant to second-guess the considered business decisions made by its receiver.

Soundair at para. 14.

13. The Receiver seeks the Approval and Vesting Order approving the Transaction and vesting in D'Angelo all of the Receiver's and Tamerlane's right, title and interest in and to the Purchased Assets and submits that the Transaction satisfies the *Soundair* principles because:
 - (a) Tamerlane originally engaged D'Angelo, as a broker, in or around February 2013 to conduct the Equipment Sale Process;
 - (b) D'Angelo conducted an extensive Equipment Sale Process, which included, *inter alia*, online advertising, three direct mail campaigns to more than 4,000 mining companies, discussions with fourteen (14) potential purchasers and dealings with the five (5) largest used mineral process equipment dealers in Canada and the United States;
 - (c) the D'Angelo offer represents the highest and only offer submitted for the Purchased Assets, notwithstanding a sixteen month sale process;
 - (d) given the initial broker role of D'Angelo in the Equipment Sale Process, the Receiver consulted with Hilco Asset Sales Canada Corp. ("**Hilco**"), an appraiser and liquidator with knowledge of the Purchased Assets, to review the value of the Purchased Assets and Hilco advised the Receiver that the consideration received

for the Purchased Assets pursuant to the Sale Agreement is consistent with the market value of the Purchased Assets;

- (e) the purchase price for the Purchased Assets of US\$337,500 is consistent with the price obtained by the Receiver for similar flotation cells in other arm's length transactions completed during the Receivership Proceedings in respect of the Company and approved by this Court;
- (f) the Receiver is of the view that D'Angelo conducted the Equipment Sale Process in good faith to maximize the value of the Company for its stakeholders, made satisfactory efforts to obtain the best price for the Purchased Assets, and did not act improvidently;
- (g) completion of the Transaction will reduce carrying costs associated with holding the Purchased Assets and will not impact or impair other options for the Company being considered by the Receiver, including a sale or refinancing of the business;
- (h) the Transaction is subject only to the granting of the Approval and Vesting Order on or before August 17, 2014; and
- (i) GRF, which is the only party that appears to have an economic interest in the Company, supports approval of the Transaction.

First Report, sections 3.0 and 3.2, Motion Record, Tab 2, at pages 15-18.

Offer Letter, Appendix D to the First Report, Motion Record, Tab 2D, at page 80.

14. For the foregoing reasons, the Receiver recommends that this Honourable Court approve the Transaction and grant the Approval and Vesting Order.

First Report, section 3.2(2), Motion Record, Tab 2, at page 18.

B. DISTRIBUTION OF PROCEEDS FROM THE TRANSACTION

15. Pursuant to the CCAA Termination Order, each of the Charges (as defined in the Initial Order, which Charges include the Administration Charge and the DIP Lender's Charge)

shall continue to constitute a charge on the Property in the Receivership Proceedings, with the priority set out in the Receivership Order.

CCAA Termination Order, para. 11, Appendix B to the First Report, Motion Record, Tab 2B, at page 59.

Receivership Order, para. 24, Appendix C to the First Report, Motion Record, Tab 2C, at pages 74 and 75.

16. The Receiver intends to use the proceeds of the Transaction to pay outstanding amounts owing under the Charges in accordance with their priority, as follows:

(a) First, to pay amounts owing to professionals in connection with the CCAA Proceedings that are secured by the Administration Charge (\$300,000) under the Initial Order. The beneficiaries of the Administration Charge are the Company's legal counsel during the CCAA Proceedings (Bennett Jones LLP), the Monitor (D&P) and the Monitor's legal counsel (Goodmans LLP); and

(b) Second, to repay a portion of the amounts owing to GRF, in its capacity as DIP Lender, under the DIP Term Sheet (as defined in the Initial Order). During the CCAA Proceedings, GRF advanced approximately US\$1.1 million to the Company under the DIP Term Sheet, which amount was secured against the Property of the Company pursuant to the DIP Lender's Charge. Approximately US\$740,000 remains outstanding under the DIP Term Sheet, plus interest.

First Report, section 4.0(2), Motion Record, Tab 2, at page 18.

17. The use of the proceeds from the Transaction to pay obligations of the Company secured by priority Court-ordered Charges over the Property is appropriate. The CCAA Proceedings were terminated in January 2014 and amounts secured by the Administration Charge remain unpaid at this time, over six months later. Furthermore, repaying a portion of the Company's obligations under the DIP Term Sheet secured by the DIP Lender's Charge will reduce the interest expense incurred by the Company, in the interests of the Company's stakeholders.

18. The Receiver requests that that this Honourable Court approve the distribution of the proceeds from the Transaction as outlined above.

PART IV. ORDER REQUESTED

19. For the reasons set out above, the Receiver requests that this Honourable Court approve the Transaction and grant the relief requested in the Approval and Vesting Order.

ALL OF WHICH IS RESPECTFULLY SUBMITTED

Brend Wilson
for _____
Melaney J. Wagner

SCHEDULE "A"
LIST OF AUTHORITIES

- 1 *Royal Bank v. Soundair Corp.*, 4 O.R. (3d) 1, 83 D.L.R. (4th) 76 (Ont. C.A.)

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Court File No. CV-14-10417-00CL

Applicant

Respondents

<p>ONTARIO SUPERIOR COURT OF JUSTICE COMMERCIAL LIST Proceeding commenced at Toronto</p> <hr/> <p>FACTUM OF THE RECEIVER (Returnable August 13, 2014)</p> <p>GOODMANS LLP Barristers & Solicitors 333 Bay Street, Suite 3400 Toronto, Canada M5H 2S7</p> <p>Melaney J. Wagner LSUC#: 44063B</p> <p>Tel: (416) 979-4258 Fax: (416) 979-1234</p> <p>Lawyers for Duff & Phelps Canada Restructuring Inc., in its capacity as Receiver</p>	
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