



ESTATE NUMBER BK01 095189
COURT COURT OF QUEEN'S BENCH OF ALBERTA
JUDICIAL CENTRE CALGARY

30320

IN THE MATTER OF THE NOTICE OF INTENTION TO MAKE A PROPOSAL UNDER THE *BANKRUPTCY AND INSOLVENCY ACT*, R.S.C. 1985, C. B-3, AS AMENDED, OF TRADESMEN ENTERPRISES LIMITED PARTNERSHIP

ENTERED

AND IN THE MATTER OF THE NOTICE OF INTENTION TO MAKE A PROPOSAL UNDER THE *BANKRUPTCY AND INSOLVENCY ACT*, R.S.C. 1985, C. B-3, AS AMENDED, OF TRADESMEN ENTERPRISES INC.

DOCUMENT **ORDER (Approval and Vesting)**

ADDRESS FOR SERVICE AND CONTACT INFORMATION OF PARTIES FILING THIS DOCUMENT
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File No.: 29768-155647

DATE ON WHICH ORDER WAS PRONOUNCED: March 16, 2021

NAME OF JUDGE WHO MADE THIS ORDER: The Honourable Mr. Justice P.R. Jeffrey

LOCATION OF HEARING: Calgary, Alberta

UPON THE APPLICATION of Tradesmen Enterprises Inc. (“**TEI**”) and Tradesmen Enterprises Limited Partnership (“**TELP**”, and together with TEI, “**Tradesmen**” or the “**Applicants**”) for an order approving a liquidation services agreement dated as of March 3, 2021 between Ritchie Bros. Auctioneers (Canada) Ltd. (the “**Liquidator**”) and TELP, by its general partner TEI (the “**Liquidation Services Agreement**”) and authorizing Tradesmen and the Liquidator to carry out the sales contemplated thereby;

AND UPON reading the Notice of Application of the Applicants, the Affidavit No. 3 of Dean

Kato sworn on March 8, 2021 (the “**Kato Affidavit No. 3**”), and the Third Report of KSV Restructuring Inc. in its capacity as Proposal Trustee of Tradesmen (the “**Proposal Trustee**”) dated March 8, 2021 (the “**Third Report**”), all filed; **AND UPON** noting the Affidavit of Service of Rachel Dingman, affirmed on March 10, 2021, filed; **AND UPON** reading the Order (Procedural Consolidation, Approval of Interim Financing, Interim Financing Charge, and Administration Charge) dated February 3, 2021 (the “**Interim Financing Order**”) and the Amended and Restated Order (Procedural Consolidation, Approval of Interim Financing, Interim Financing Charge, Administration Charge and KERP Charge) dated March 2, 2021 (the “**Amended and Restated Interim Financing Order**”) and the Order (Extension of Time to File a Proposal) dated March 2, 2021 (the “**Extension Order**”);

AND UPON hearing the submissions of counsel for the Applicants, counsel for Bank of Montreal (“**BMO**”), counsel for the Proposal Trustee, and any other counsel or interested parties present;

IT IS HEREBY ORDERED THAT:

Service and Definitions

1. The time for service of the notice of application for this order (the “**Order**”) is hereby abridged and deemed good and sufficient and the application for this Order is properly returnable today, and no person other than those served is entitled to service of the notice of application.
2. All capitalized terms not otherwise defined in this Order have the meaning given to them in the Liquidation Services Agreement.

The Liquidation Services Agreement, the Sales, and the Transactions

3. The Liquidation Services Agreement, the NMG Sale and the Commission Sale (collectively, the “**Sales**”), and all transactions contemplated thereunder (collectively, the “**Transactions**”), are hereby approved, authorized and ratified, and the execution of the Liquidation Services Agreement by the Applicants is hereby approved, authorized and ratified, with such minor amendments as the Applicants and the Proposal Trustee may

deem necessary. Subject to the provisions of this Order, the Applicants and the Liquidator are hereby authorized and directed to perform the Liquidation Services Agreement and complete the Transactions and the Sales in accordance with the terms and conditions of the Liquidation Services Agreement, including taking such additional steps and executing such additional documents as may be necessary or desirable for the completion of the Sales or the Transactions.

4. The Liquidator is entitled to use the Applicants' Facility for the purposes of the NMG Sale.
5. All of the Applicants' right, title and interest in and to the Auction Assets and the Additional Equipment (collectively, the "**Assets**"), shall be sold by the Liquidator, in its capacity as agent for the Applicants, as contemplated by the Liquidation Services Agreement and, upon payment of the applicable purchase price for each of the Assets by a buyer of any of the Assets (each, a "**Buyer**"), the Assets purchased from the Applicants in accordance with the Liquidation Services Agreement (the "**Purchased Assets**") shall vest absolutely in the name of the applicable Buyer of such Purchased Assets free and clear of and from any and all caveats, security interests, hypothecs, pledges, mortgages, liens, trusts or deemed trusts, reservations of ownership, royalties, options, rights of pre-emption, privileges, interests, assignments, actions, judgements, executions, levies, taxes, writs of enforcement, charges, or other claims, whether contractual, statutory, financial, monetary or otherwise, whether or not they have attached or been perfected, registered or filed and whether secured, unsecured or otherwise (collectively, "**Encumbrances**") including, without limiting the generality of the foregoing:
 - (a) any encumbrances or charges created by the Interim Financing Order dated February 3, 2021 or the Amended and Restated Interim Financing Order dated March 2, 2021;
 - (b) any charges, security interests or claims evidenced by registrations pursuant to the *Personal Property Security Act* (Alberta) or any other personal property registry system; and

- (c) any Encumbrances held by or in favour of the parties or entities which are served or whose solicitors are served with the Notice of Application to approve the Liquidation Services Agreement;

and, for greater certainty, this Court orders that all of the Encumbrances affecting or relating to the Purchased Assets are hereby expunged and discharged as against the Purchased Assets.

6. Upon filing of a certified 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 certified 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 Buyers clear title to the Purchased Assets. Without limiting the foregoing:
 - (a) the Registrar of the Alberta Personal Property Registry shall and is hereby directed to forthwith cancel and discharge any registrations at the Alberta Personal Property Registry (whether made before or after the date of this Order) claiming security interests in the estate or interest of the Applicants in any of the Purchased Assets which are of a kind prescribed by applicable regulations as serial-number goods.
7. In order to effect the transfers, interest authorizations, discharges and discharge statements of conveyance 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. Presentment of this Order 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 Encumbrances.
8. The Sale Proceeds and the Additional Sale Proceeds (after deduction of the Liquidator’s Commission, the Transfer Costs, and the Liquidator’s out-of-pocket expenses as agreed to in writing by the Proposal Trustee and Tradesmen) (collectively, the “**Net Proceeds**”) shall stand in the place and stead of Purchased Assets and shall stand charged with all the

Encumbrances as existed in respect of the Purchased Assets, as applicable, which were released, discharged or otherwise displaced by the sale of the Purchased Assets, and such Encumbrances on the Net Proceeds shall enjoy the same priorities as each such Encumbrance had in respect of the Purchased Assets, as applicable, as of the date on which the Sale Term commences, as applicable, as if the sale of the Purchased Assets had not occurred, but the holder of any such Encumbrance shall have no further right in or against, or recourse to, the Purchased Assets, as applicable.

9. The Liquidator shall incur no liability or obligation as a result of its appointment or carrying out the provisions of the Liquidation Services Agreement, save and except for (i) any gross negligence or wilful misconduct on its part, and (ii) any liabilities or obligations owing to the Applicants under the Liquidation Services Agreement, or in connection therewith.

Redaction and Sealing

10. The redaction of the sensitive commercial information in the Liquidation Services Agreement and the schedules thereto as set forth in Confidential Exhibit “2” of the Kato Affidavit No. 3 is hereby approved *nunc pro tunc*.
11. Notwithstanding the procedural requirements of Rule 6.28 and Division 4 of the *Alberta Rules of Court*, the (i) summary of offers attached as Confidential Exhibit “1” to the Kato Affidavit No. 3 and (ii) the unredacted Liquidation Services Agreement and the schedules thereto attached as Confidential Exhibit “2” to the Kato Affidavit No. 3 shall be sealed on the Court file and shall not form part of the public record until further Order of this Court.
12. The Clerk of this Honourable Court shall file Confidential Exhibits “1” and “2” to the Kato Affidavit No. 3 in a sealed envelope attached to a notice that sets out the style of cause of these proceedings and states:

THIS ENVELOPE CONTAINS CONFIDENTIAL MATERIALS
SEALED PURSUANT TO THE SEALING ORDER ISSUED BY THE
HONOURABLE MR. JUSTICE JEFFREY ON MARCH 16, 2021.

Miscellaneous

13. Notwithstanding:


- (a) the pendency of these proceedings and any declaration of insolvency made herein;
- (b) the pendency of any applications for a bankruptcy order now or hereafter issued pursuant to the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended (the “**BIA**”) in respect of the Applicants and any bankruptcy order issued pursuant to any such applications;
- (c) any assignment in bankruptcy made in respect of the Applicants; and
- (d) the provisions of any federal or provincial statute.

the Liquidation Services Agreement, the Sales, the Transactions, and the vesting of the Purchased Assets in the Buyers thereof pursuant to this Order shall be binding on any trustee in bankruptcy that may be appointed in respect of the Applicants and shall not be void or voidable by creditors of the Applicants, nor shall it constitute nor be deemed to be a 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.

14. 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, to act in aid of and to be complimentary to this Court in carrying out the terms of this Order, to give effect to this Order and to assist the Applicants and the Proposal Trustee and their respective agents in carrying out the terms of this Order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such order and to provide such assistance to the Applicants and to the Proposal Trustee, as an officer of the Court, as may be necessary or desirable to give effect to this Order or to assist the Applicants and the Proposal Trustee and their respective agents in carrying out the terms of this Order.

General

15. 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 Queen's Bench of Alberta