SUPERIOR COURT

(Commercial Division)

CANADA
PROVINCE OF QUÉBEC
DISTRICT OF MONTRÉAL
No. 500-11-057566-198
DATE: December 5, 2019

PRESIDING : THE HONOURABLE DAVID R. COLLIER, J.S.C.

IN THE MATTER OF THE NOTICE OF INTENTION OF:

Bentley Leathers Inc.

Debtor

-and-

KPMG Inc.

Trustee

APPROVAL AND VESTING ORDER

---

[1] **ON READING** the Debtor's *Motion seeking the approval of a transaction, the issuance of a vesting order and an extension of the delay to file a proposal* (the "**Motion**"), the affidavit and the exhibits in support thereof, as well as the Report of the Trustee (the "**Report**");

[2] **SEEING** the service of the Motion;

[3] **SEEING** the submissions of the Debtor's attorneys; and

[4] **SEEING** that it is appropriate to issue an order approving the transaction (the "**Transaction**") contemplated by the agreement entitled Offer to Purchase (the "**Purchase Agreement**") by and between the Debtor (the "**Vendor**"), as vendor, and 11580965 Canada Inc. (the "**Purchaser**"), as purchaser, copy of which was filed as Exhibit R-17 to the Motion, and vesting in the Purchaser the assets described in the Purchase Agreement (the "**Purchased Assets**").

WHEREFORE THE COURT:

[5] **GRANTS** the Motion;

JCOB37

SERVICE

[6] **ORDERS** that any prior delay for the presentation of this Motion is hereby abridged and validated so that this Motion is properly returnable today and hereby dispenses with further service thereof.

[7] **PERMITS** service of this Order at any time and place and by any means whatsoever.

SALE APPROVAL

[8] **ORDERS AND DECLARES** that the Transaction is hereby approved, and the execution of the Purchase Agreement by the Vendor is hereby authorized and approved, with such non-material alterations, changes, amendments, deletions or additions thereto as may be agreed to but only with the consent of the Trustee and, with respect to any provisions of the Purchase Agreement that apply to or may otherwise affect the Liquidator, the Liquidation or CIBC (each as defined in the Purchase Agreement), with the additional written consent of the Liquidator and/or CIBC, as applicable.

EXECUTION OF DOCUMENTATION

[9] **AUTHORIZES** the Vendor and the Purchaser to perform all acts, sign all documents and take any necessary action to execute any agreement, contract, deed, provision, transaction or undertaking stipulated in the Purchase Agreement (Exhibit R-17) and any other ancillary document which could be required or useful to give full and complete effect thereto.

AUTHORIZATION

[10] **ORDERS** and **DECLARES** that this Order shall constitute the only authorization required by the Vendor to proceed with the Transaction and that no shareholder or regulatory approval, if applicable, shall be required in connection therewith.

VESTING OF PURCHASED ASSETS

[11] **ORDERS** and **DECLARES** that upon the issuance of a Trustee's certificate substantially in the form appended as Schedule "A" hereto (the "**Certificate**"), all rights, title and interest in and to the Purchased Assets shall vest absolutely and exclusively in and with the Purchaser, free and clear of and from any and all claims, liabilities (direct, indirect, absolute or contingent), obligations, interests, prior claims, security interests (whether contractual, statutory or otherwise), liens, charges, hypothecs, mortgages, pledges, deemed trusts, assignments, judgments, executions, writs of seizure or execution, notices of sale, options, adverse claims, levies, rights of first refusal or other pre-emptive rights in favour of third parties, restrictions on transfer of title, or other claims or encumbrances, whether or not they have attached or been perfected, registered, published or filed and whether secured, unsecured or otherwise (collectively, the "**Encumbrances**"), including without limiting the generality of the foregoing all charges, security interests or charges evidenced by registration, publication or filing pursuant to the Civil Code of Québec, the Ontario, Bristish-Columbia, Alberta, Saskatchewan, Manitoba, Nova Scotia, New-Brunswick,

Newfoundland and Prince Edward Island Personal Property Security Act, or any other applicable legislation providing for a security interest in personal or movable property, excluding however, the permitted encumbrances, easements and restrictive covenants listed on Schedule "B" hereto (the "**Permitted Encumbrances**") and, for greater certainty, **ORDERS** that all of the Encumbrances affecting or relating to the Purchased Assets, other than the Permitted Encumbrances, be expunged and discharged as against the Purchased Assets, in each case effective as of the applicable time and date of the Certificate.

[12] **ORDERS** and **DECLARES** that upon the issuance of the Certificate, the rights and obligations of the Vendor under the Agreement listed on Schedule "C" hereto (the "**Assigned Agreement**") is assigned to the Purchaser, being understood and agreed between the Purchaser and the Co-contractors to said Assigned Agreement that (i) the monetary default under said Assigned Agreement cannot be remedied and (ii) paragraph 11 herein will not affect in any manner whatsoever their rights under the Assigned Agreement other than any monetary right they may have had as of November 26, 2019.

[13] **ORDERS and DIRECTS** the Trustee to file with the Court a copy of the Certificate, forthwith after issuance thereof.

CANCELLATION OF SECURITY REGISTRATIONS

For Quebec Property:

[14] **ORDERS** the Quebec Personal and Movable Real Rights Registrar, upon presentation of the required form with a true copy of this Order and the Certificate, to strike the registrations number 09-0073008-0001, 11-0265548-0001, 11-0570561-0001, 11-0624394-0010, 12-0432659-0001 and 15-0620071-0001 in connection with the Purchased Asset in order to allow the transfer to the Purchaser of the Purchased Assets free and clear of such registrations.

For Property Outside Quebec:

[15] **ORDERS** that upon the issuance of the Certificate, the Vendor shall be authorized to take all such steps as may be necessary to effect the discharge of all Encumbrances registered against the Purchased Assets, including filing such financing change statements in the Ontario Personal Property Registry, the British Columbia Property Registry, the Alberta Personal Property Registry, the Saskatchewan Personal Property Registry, the Manitoba Personal Property Registry, the New-Brunswick Personal Property Registry, the Nova Scotia Personal Property Registry, the Prince Edward Island Personal Property Registry and the Newfoundland Personal Property Registry (collectively, the "**PPR**") as may be necessary, from any registration filed against the Vendor in the PPR, provided that the Vendor shall not be authorized to effect any discharge that would have the effect of releasing any collateral other than the Purchased Assets, and the Vendor shall be authorized to take any further steps by way of further application to this Court.

PROTECTION OF PERSONAL INFORMATION

[16] **ORDERS** that, pursuant to sub-section 7(3)(c) of the *Canada Personal Information Protection and Electronic Documents Act* or any similar provision of any applicable provincial legislation, the Vendor is authorized and permitted to disclose and transfer to the Purchaser all human resources and payroll information in the Company's records pertaining to the Debtor's past and current employees. The Purchaser shall maintain and protect the privacy of such information and shall be entitled to use the personal information provided to it in a manner which is in all material respects identical to the prior use of such information by the Debtor.

VALIDITY OF THE TRANSACTION

[17] **ORDERS** that notwithstanding:

(i) the pendency of these proceedings;

(ii) any petition for a receiving order now or hereafter issued pursuant to the *Bankruptcy and Insolvency Act* ("**BIA**") and any order issued pursuant to any such petition; or

(iii) the provisions of any federal or provincial legislation;

the vesting of the Purchased Assets contemplated in this Order, as well as the execution of the Purchase Agreement pursuant to this Order, are to be binding on any trustee in bankruptcy that may be appointed, and shall not be void or voidable nor deemed to be a preference, assignment, fraudulent conveyance, transfer at undervalue or other reviewable transaction under the BIA or any other applicable federal or provincial legislation, as against the Vendor, the Purchaser or the Trustee.

LIMITATION OF LIABILITY

[18] **DECLARES** that, subject to other orders of this Court, nothing herein contained shall require the Trustee to occupy or to take control, or to otherwise manage all or any part of the Purchased Assets. The Trustee shall not, as a result of this Order, be deemed to be in possession of any of the Purchased Assets within the meaning of environmental legislation, the whole pursuant to the terms of the BIA.

[19] **DECLARES** that no action lies against the Trustee by reason of this Order or the performance of any act authorized by this Order, except by leave of the Court. The entities related to the Trustee or belonging to the same group as the Receiver shall benefit from the protection arising under the present paragraph.

GENERAL

[20] **ORDERS** that Exhibits R-4, R-5, R-6, R-7, R-8, R-9, R-10, R-12, R-13, R-16, R-17, R-18, R-19, R-20, R-21 and R-22 and of the Motion be kept confidential and under seal until further order of this Court.

[21] **ORDERS** that the Amending Agreement to the Agency Agreement entered into between and Merchant Retail Solutions ULC (the "Liquidator") (the "Amending Agreement") and the transactions contemplated in it, are hereby approved, authorized and ratified with such minor amendments as the Vendor (with the consent of the Proposal Trustee) and the Liquidator may agree to in writing. Subject to the provisions of this Order, Bentley and the Proposal Trustee are hereby authorized and directed to take such additional steps and execute such additional documents as may be necessary or desirable to implement the Amending Agreement and each of the transactions contemplated therein;

[22] **ORDERS** that the Purchaser shall be bound by the terms of the Agency Agreement and the Amending Agreement and shall perform, or shall assist the Vendor or the Trustee to perform, all of the Vendor's obligations under the Agency Agreement (as defined in the Liquidation Order rendered by this Honourable Court on November 26, 2019).

[23] **ORDERS** that the Purchaser or the Vendor shall be authorized to take all steps as may be necessary to effect the discharge of the Encumbrances.

[24] **ORDERS**, in the event that the Certificate is issued, that the Purchaser shall be bound by the agreement and the business terms more fully described in Exhibit R-19, R-20, R-21 and R-22 produced under seal and other standard terms according to each respective landlord's usual forms of agreements in order to enter into lease amending agreements to be concluded with the landlords more fully identified in said Exhibit R-19, R-20, R-21 and R-22.

[25] **ORDERS** and **DECLARES** that upon the issuance of the Certificate, the rights and obligations of the Vendor under the leases which are the object of conclusion 24 herein are assigned to the Purchaser in accordance with paragraph 24 herein.

[26] **ORDERS** that, notwithstanding any other provisions of this order (save with respect to the conclusion contained at paragraph 24 herein and only for the landlords more fully identified in Exhibit R-19, R-20, R-21 and R-22), (i) no real property lease shall be transferred, conveyed, assigned or vested in the purchaser by operation of this Order and (ii) no real property lease shall be amended or varied, or be deemed to amend or vary, by the terms of this Order. For clarity, no real property lease shall be transferred, conveyed, assigned or vested in the purchaser absent the consent of the applicable landlord or a further order from this court.

[27] **ORDERS** that the Purchase Agreement be kept confidential and under seal until the earlier of a) the closing of the Transaction; or b) further order of this Court.

[28] **DECLARES** that this Order shall have full force and effect in all provinces and territories in Canada.

[29] **REQUESTS** the aid and recognition of any court or administrative body in any Province of Canada and any Canadian federal court or administrative body and any federal or state court or administrative body in the United States of America and any court or administrative body elsewhere, to act in aid of and to be complementary to this Court in carrying out the terms of the Order.

[30] **ORDERS** the provisional execution of the present Order notwithstanding any appeal and without the requirement to provide any security or provision for costs whatsoever.

THE WHOLE WITHOUT COSTS.

DAVID R. COLLIER, J.S.C.

SCHEDULE "A"

CERTIFICATE OF THE TRUSTEE

CANADA

PROVINCE OF QUEBEC
DISTRICT OF MONTRÉAL

SUPERIOR COURT
Commercial Division

File: No: 500-11-052566-198

IN THE MATTER OF THE NOTICE OF INTENTION TO MAKE A PROPOSAL OF:

Bentley Leathers Inc.

Debtor

-and-

KPMG Inc.

Trustee

CERTIFICATE OF THE TRUSTEE

RECITALS:

WHEREAS on ●, the Superior Court of Quebec (the "**Court**") issued a ● order (the "● **Order**") pursuant to the *Bankruptcy and Insolvency Act* (the "**Act**") in respect of the notice of intention to make a proposal of Bentley Leathers Inc. (the "**NOI**");

WHEREAS pursuant to the terms of the NOI, KPMG Inc. (the "**Trustee**") was named trustee of the NOI; and

WHEREAS on ●, the Court issued an Order (the "**Vesting Order**") thereby, *inter alia*, authorizing and approving the execution by the Petitioner of an agreement entitled ● *Agreement* (the "**Purchase Agreement**") by and between Bentley Leathers Inc., as vendor (the "**Vendor**") and ● as purchaser (the "**Purchaser**"), copy of which was filed in the Court record, and into all the transactions contemplated therein (the "**Transaction**") with such alterations, changes, amendments, deletions or additions thereto, as may be agreed to with the consent of the Trustee.

WHEREAS the Vesting Order contemplates the issuance of this Certificate of the Trustee once the (a) the Purchase Agreement has been executed and delivered; and (b) the Purchase Price (as defined in the Purchase Agreement) has been paid by the Purchaser; and (c) and all the conditions to the closing of the Transaction have been satisfied or waived by the parties thereto.

THE TRUSTEE CERTIFIES THAT IT HAS BEEN ADVISED BY THE VENDOR AND THE PURCHASER AS TO THE FOLLOWING:

(a) the Purchase Agreement has been executed and delivered;

(b) the Purchase Price (as defined in the Purchase Agreement) payable upon the closing of the Transaction and all applicable taxes have been paid; and

(c) all conditions to the closing of the Transaction have been satisfied or waived by the parties thereto.

This Certificate was issued by the Trustee at ____ **[TIME]** on _____ **[DATE].**

KPMG Inc. in its capacity as trustee, and not in its personal capacity.

Name: _____

Title: _____

*****

SCHEDULE "B"

PERMITTED ENCUMBRANCES

-The deed of hypothec dated June 11, 2008 between Bentley Leathers Inc., as grantor, and CIT Business Credit Canada Inc., as secured creditor, which was subsequently assigned to Canadian Imperial Bank of Commerce;

-The general security agreement dated July 18, 2008 between Bentley Leathers Inc., as grantor, and CIT Business Credit Canada Inc., as secured creditor, which was subsequently assigned to Canadian Imperial Bank of Commerce;

-The trademark security agreement dated July 18, 2008 between Bentley Leathers Inc., as grantor, and CIT Business Credit Canada Inc., as secured creditor, which was subsequently assigned to Canadian Imperial Bank of Commerce;

-The notice of security interest dated July 18, 2008 between Bentley Leathers Inc. in favour of CIT Business Credit Canada Inc., as secured creditor, which was subsequently assigned to Canadian Imperial Bank of Commerce;

-The assignment of insurance dated July 18, 2008 between Bentley Leathers Inc. in favour of CIT Business Credit Canada Inc., which was subsequently assigned to Canadian Imperial Bank of Commerce;

-The Deed of hypothec dated November 20, 2013 between Bentley Leathers Inc., as grantor, and Canadian Imperial Bank of Commerce, as secured creditor;

-The general security agreement dated February 26, 2019 among Bentley Leathers Inc., and Novacap Industries III, L.P., as secured party. The creditor subsequently assigned its rights pursuant to an Assignment Agreement dated November 7, 2019 to HUK 89 Ltd.;

- The general security agreement dated February 26, 2019 among Bentley Leathers Inc., as debtor and Novacap Industries International SRL, as secured party. The creditor subsequently assigned its rights pursuant to an Assignment Agreement dated November 7, 2019 to HUK 89 Ltd.;

- The general security agreement dated February 26, 2019 among Bentley Leathers Inc., as debtor and Novacap Industries International III.1 L.P., as secured party. The creditor subsequently assigned its rights pursuant to an Assignment Agreement dated November 7, 2019 to HUK 89 Ltd.;

- The movable hypothec dated February 26, 2019 among Bentley Leathers Inc., as grantor and Novacap Industries III, L.P., as secured party. The creditor subsequently assigned its rights pursuant to an Assignment Agreement dated November 7, 2019 to HUK 89 Ltd.;

- The movable hypothec dated February 26, 2019 among Bentley Leathers Inc., as grantor and Novacap SRL, as secured party. The creditor subsequently assigned its rights pursuant to an Assignment Agreement dated November 7, 2019 to HUK 89 Ltd.;

- The movable hypothec dated February 26, 2019 among Bentley Leathers Inc., as grantor and Novacap Industries International III.1 L.P., as secured party. The creditor subsequently assigned its rights pursuant to an Assignment Agreement dated November 7, 2019 to HUK 89 Ltd.;

- The Subordinated Loan and Security Agreement as of November 21, 2019 between, inter alia, Bentley Leathers Inc., as grantor, and HUK 89 Ltd., as creditor;

- The D&O Charge as such term is defined in the First Day Order issued by this Court on November 26, 2019;

- The Administration Charge as such term is defined in the First Day Order issued by this Court on November 26, 2019;

SCHEDULE "C"
ASSIGNED AGREEMENTS

-An agreement between Bentley Leathers Inc., Travelway Group International Inc. and Travelway Group International Hong Kong Limited dated September 1st, 2019.