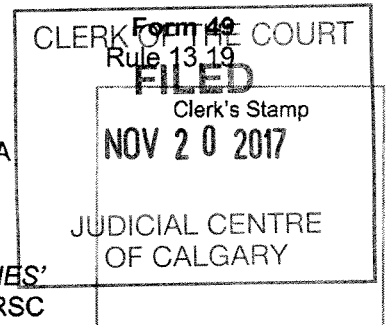


COURT FILE NUMBER 1701- 14466  
COURT COURT OF QUEEN'S BENCH OF ALBERTA  
JUDICIAL CENTRE CALGARY  
APPLICANT IN THE MATTER OF THE COMPANIES'  
CREDITORS ARRANGEMENT ACT, RSC  
1985, c C-36, AS AMENDED



AND IN THE MATTER OF A PLAN OF  
COMPROMISE OR ARRANGEMENT OF  
1031084 ALBERTA LTD. AND 623735  
SASKATCHEWAN LTD.

DOCUMENT **AFFIDAVIT #2 OF DANNY MYSAK**  
ADDRESS FOR SERVICE AND CONTACT  
INFORMATION OF PARTY FILING THIS DOCUMENT  
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**AFFIDAVIT #2 OF DANNY MYSAK**  
**Sworn November 20, 2017**

I, DANNY MYSAK, of the City of Saskatoon, in the Province of Saskatchewan, MAKE OATH AND SAY THAT:

1. I am the Chief Executive Officer of 623735 Saskatchewan Ltd. ("**623 Sask**") and 1031084 Alberta Ltd. ("**103 Alberta**", 623 Sask and 103 Alberta are collectively referred to as the "**Sellers**"). I am responsible for the day to day business operations of the Sellers. As such, I have personal knowledge of the facts and matters sworn to in this Affidavit, except where stated to be based on information and belief and, where so stated, I believe such information to be true.

**SUMMARY OF RELIEF REQUESTED**

2. This Affidavit is made in support of the application by the Sellers for an order seeking to:

- (a) approve the assignment of the asset purchase agreement between the Sellers and 102033714 Saskatchewan Corp. to 102036378 Saskatchewan Ltd. (the "**Purchaser**"), dated October 31, 2017 (the "**Sale Agreement**");
  - (b) approve the sale and the vesting of the Acquired Assets to the Purchaser pursuant to and in accordance with section 36 of the CCAA; and
  - (c) such further and other relief as the Sellers may request at the Application.
3. All capitalized terms used herein and not otherwise defined shall have the meaning ascribed to them in the Sale Agreement.

### **BACKGROUND**

4. 103 Alberta is a corporation incorporated under and pursuant to the provisions of the *Business Corporations Act* (Alberta) with a registered office located in the City of Calgary.
5. 623 Sask is a corporation incorporated under and pursuant to the provisions of *The Business Corporations Act* (Saskatchewan) with a registered office located in the city of Saskatoon.
6. The Sellers are engaged in the business of selling sunglasses, watches, and related apparel and accessories under the brand name "Spareparts" (the "**Business**").
7. The Business was originally conducted through 21 retail locations at various malls located in Western Canada and Ontario. Of the original 21 locations, 17 locations were leased by 103 Alberta and 4 locations were leased by 623 Sask.
8. On October 2, 2017, 103 Alberta and on October 3, 2017, 623 Sask commenced the NOI Proceedings under and pursuant to the BIA and concurrently disclaimed leases at store locations that are unprofitable and unsustainable. KPMG Inc. was appointed as the proposal trustee in the NOI proceedings (the "**NOI Proceedings**"). The Sellers' NOI Proceedings were subsequently converted into the CCAA Proceedings pursuant to the Initial CCAA Order granted by the Honourable Justice K. D. Yamauchi on October 31, 2017, and KPMG Inc. was appointed as Monitor in the CCAA Proceedings.

### **ACTIONS OF THE SELLERS**

9. Since the commencement of the NOI Proceedings, the Sellers have been diligently pursuing activities aimed at restructuring the Business. The Sellers' activities from the commencement of the NOI Proceedings up and to October 25, 2017 are addressed in my first affidavit, sworn on October 25, 2017.

10. Pursuant to the Initial CCAA Order the Sellers and the Court Officer were authorized and empowered, *nunc pro tunc*, to implement and carry out the SISP and to enter into the Sale Agreement. Although the SISP was approved on October 31, 2017, the marketing process was commenced concurrently with the NOI Proceedings on October 2, 2017.

### **COMPLETION OF THE SISP**

11. The SISP contemplated two stages:

- (a) **Phase 1:** potential bidders were required to submit a valid and non-binding letter of intent (a "**Qualified LOI**") to the Proposal Trustee, by no later than 5:00 pm (Calgary Time) on November 8, 2017 (the "**Phase 1 Bid Deadline**"); and,
- (b) **Phase 2:** potential bidders who had submitted a Qualified LOI to the Court Officer, in accordance with the SISP, were required to then deliver a valid, binding, and definitive agreement to the Sellers and the Proposal Trustee, by no later than 5:00 pm (Calgary Time) on November 22, 2017.

12. As a result of the relationship between the Sellers and the Purchaser, the Court Officer had sole conduct in implementing and carrying out the SISP and did not provide the Sellers with any material information about the conduct of or Persons participating in the SISP. The results of the SISP and the Court Officer's views and opinions concerning same will be set out in the Second Report of the Monitor.

13. The Court Officer has advised the Sellers that it has determined that no Qualified LOI was received on or before the Phase 1 Bid Deadline. As a result, in accordance with the terms of the SISP, the SISP did not proceed to Phase 2 and the Sellers must now proceed with an application seeking the approval and implementation of the Sale Agreement.

### **SALE AGREEMENT**

14. As no Qualified LOI has been received, the Sellers seek the approval and implementation of the Sale Agreement and the vesting of the Acquired Assets as required by the terms of the SISP. The Sale Agreement, as at the time the Sellers were authorized and empowered to enter into same, pursuant to the SISP Order, contemplated the following:

- (a) the purchase, assignment, and acquisition of the Acquired Assets by the Purchaser, from the Sellers; and,
- (b) as consideration for the Acquired Assets, the assumption, by the Purchaser, of the Assumed Liabilities and by the Purchaser paying, in cash, an amount sufficient to satisfy any liabilities by obligations secured by the Administrative Charge (as defined in the Initial CCAA Order).

15. The Assumed Liabilities consist of secured claims against the Sellers and, specifically, against the Acquired Assets.

16. The Sellers have determined that the total consideration to be paid by the Purchaser, pursuant to the Sale Agreement, amounts to approximately, \$5,250,000 CDN. No amendments have been made to the Sale Agreement following the granting of the Initial CCAA Order.

#### **DESIGNATED SELLER CONTRACTS**

17. The Sale Agreement contemplates a total of 15 lease agreements (identified as the Designated Seller Contracts in the Sale Agreement) will be assigned by the Sellers to the Purchaser pursuant to Section 11.3 of the CCAA. The assignment of the Designated Seller Contracts to the Purchaser is a critical component of the Sale Agreement and the Purchaser is prepared to perform and capable of performing all obligations owing on the Designated Seller Contracts.

18. There are no monetary defaults owing by the Sellers on any of the Designated Seller Contracts. The rent and other financial obligations owing on Designated Seller Contracts has been paid in full by the Sellers. The rent owing on the leases that have been disclaimed was paid on a *per diem* basis upon the commencement of the NOI Proceedings and up until October 17, 2017, which was the date this Sellers ceased occupancy of the premises associated with the disclaimed leases.

#### **SECTION 36(3) OF THE CCAA**

19. I believe that the Court should grant the relief sought for the following reasons:
- (a) the process leading the Sale Agreement was broad and thorough. I am advised by Ms. Pinky Law, a representative of the Court Officer, that through the SISP a total of 65 interested Persons were contacted about the opportunity to acquire or invest in the Business and 3 Persons were admitted into the data room. In addition, the Court Officer had discussions with one Person that contacted it but did not sign the required confidentiality agreement and with four other Persons who responded to the Court Officer confirming they were not interested in participating in the SISP;
  - (b) the Court Officer approved the SISP;
  - (c) the Court Officer has filed a report stating that, in its opinion, the Sale Agreement is more beneficial to the creditors than the sale or disposition under a bankruptcy;
  - (d) the Secured Creditors have been consulted throughout the process and are supportive of the Sale Agreement. The Sellers developed a restructuring plan at the outset of the NOI Proceedings, engaged with and obtained the support of the Secured Creditors in respect of the restructuring plan and proceeding to implement the restructuring plan through the Restructuring Proceedings. The issuance of the Sale Order is the culmination of the successful efforts of the Sellers to obtain the consent and support of the Secured Creditors to their restructuring plan; and
  - (e) the Sale Agreement will result in the full assumption of the obligations owing to the Secured Creditors and of the obligations owing on the Designated Seller Contracts.
20. Due to the results of the SISP, I believe that the Sale Agreement represents the highest and best price that can be obtained for the Acquired Assets under the current circumstances and that the consideration for the Sale Agreement is fair and reasonable, taking into account their current value. Additionally, I believe that the Sale Agreement, as proposed, is in the best interests of the stakeholders of the Sellers and represents a better result than a liquidation of the Sellers' assets under a bankruptcy, based on the following factors:

- (a) the Sellers and the Court Officer designed and implemented the SISP as a good faith attempt to recanvas the market for any potential Superior Offers;
- (b) the SISP was approved pursuant to the Initial CCAA Order;
- (c) the Court Officer determined, in its sole discretion, that no Qualified LOI was received on or before the Phase 1 Bid Deadline;
- (d) the Secured Creditors have consented to the Purchaser's assumption of the Assumed Liabilities; and,
- (e) the Sale Agreement will ensure the continuation of certain portions of the Sellers' businesses on a going-concern basis (albeit in a restructured format) and continued employment for approximately 82 persons.

#### **RELATED PARTY TRANSACTION**

21. I am advised by my legal counsel, Walker W. MacLeod of McCarthy Tétrault LLP, that the Sellers and the Purchasers are "related persons" for the purposes of section 36(5) of the CCAA and that the Sale Agreement is therefore subject to section 36(4) of the CCAA.

22. A series of good faith efforts were made to dispose of the Acquired Assets to Persons who are not related to the Sellers through the SISP. This is why the SISP was administered by the Court Officer and not by the Sellers. The Business is small, unique and specialized and I have built important relationships with suppliers and vendors that cannot be transferred or conveyed to a new owner. The fact that no Superior Offer was made for the Business pursuant to the SISP is not surprising in light of the nature of these relationships and the current challenges facing the Canadian retail industry. As no Superior Offer (or indeed, competing offer of any type) was made pursuant to the SISP, the Sale Agreement is the only transaction available in the current circumstances.

#### **CONCLUSION**

23. I make this affidavit in support of the application for an order:

- (a) approving the Sale Agreement; and

- (b) approving the sale and vesting of the Acquired Assets to the Purchaser in the manner contemplated under the Sale Agreement and the SISP.

SWORN BEFORE ME at the City of  
Saskatoon, in the Province of  
Saskatchewan, this 20<sup>th</sup> day of November,



*Jasmine Reddy*  
Notary Public for Oaths in and for the  
Province of Saskatchewan

DANNY MYSAK