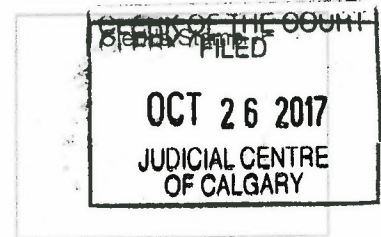


COURT FILE NUMBER 1701- 14466  
COURT COURT OF QUEEN'S BENCH OF ALBERTA  
JUDICIAL CENTRE CALGARY  
APPLICANT IN THE MATTER OF THE COMPANIES' CREDITORS ARRANGEMENT ACT, RSC 1985, c C-36, AS AMENDED



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

DOCUMENT **ORIGINATING APPLICATION**

ADDRESS FOR SERVICE AND CONTACT INFORMATION OF PARTY FILING THIS DOCUMENT  
McCARTHY TÉTRAULT LLP  
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**NOTICE TO RESPONDENT(S)**

This application is made against you. You are a respondent.

You have the right to state your side of this matter before the judge.

To do so, you must be in Court when the application is heard as shown below:

Date: October 31, 2017  
Time: 3:00 p.m.  
Where: Calgary Courts Center  
Before Whom: Honourable Justice K. D. Yamauchi

Go to the end of this document to see what else you can do and when you must do it.

**Basis for this Claim:**

1. 623735 Saskatchewan Ltd. ("**623 Sask**") and 1031084 Alberta Ltd. ("**103 Alberta**", 103 Alberta and 623 Sask are collectively referred to as, the "**Applicants**") are companies to which the *Companies Creditors Arrangement Act*, R.S.C. 1985, c-36, as amended (the "**CCAA**")

applies. The Applicants meet the statutory requirements to be eligible for relief under the CCAA.

2. The Applicants are engaged in the business of selling sunglasses, watches, and related apparel and accessories under the brand name “Spareparts” (the “**Business**”), through various retail locations in malls located in Western Canada and Ontario. The Applicants operate the Business as a single, integrated, unit.

3. The Applicants’ Business has suffered from the overall decline in the North American retail marketplace as compounded by the economic downturn in Alberta.

4. The Applicants are debtor companies with more than \$5 million in liabilities and are insolvent within the meaning of the CCAA.

5. Due to the financial difficulties faced by the Business, the Applicants developed a strategy to restructure their affairs by:

- (a) filing a Notice of Intention to Make a Proposal (each an “**NOI**” and collectively, the “**NOIs**”) under the *Bankruptcy and Insolvency Act* (Canada) (the “**BIA**”) and concurrently disclaiming leases associated with unprofitable and unsustainable store locations;
- (b) marketing the Business to all interested parties pursuant to the Sale and Investment Solicitation Procedures (the “**SISP**”) sought in connection with this Application;
- (c) having a related company make a stalking horse bid to acquire the Business, as part of the SISP;
- (d) converting the proceedings commenced upon the Applicants’ filing the NOIs (the “**NOI Proceedings**”) into proceedings under the CCAA (the “**CCAA Proceedings**”); and,
- (e) closing on either the related bid party stalking horse bid or on any superior offer that arises, as a result of the SISP,

(collectively, the “**Restructuring Strategy**”).

6. 103 Alberta filed its NOI in Alberta on October 2, 2017. 623 Sask filed its NOI in Saskatchewan on October 3, 2017.

7. KPMG Inc. was appointed as the proposal trustee (the “**Proposal Trustee**”, when acting in such capacity) in the NOI Proceedings.

8. During the NOI Proceedings, the Applicants, among other steps, proceeded to:

(a) disclaim, on October 3, 2017, nine leases under section 65.2(1) of the BIA;

(b) seek and obtain an Order on October 11, 2017, which, among other things:

(i) administratively consolidated the Applicants’ NOI Proceedings;

(ii) declared that the Alberta Court of Queen’s Bench shall have jurisdiction to hear any applications pertaining to the Applicants under the BIA, the CCAA, or any other similar or analogous federal legislation and to administer the recapitalization, restructuring, or reorganization of the Applicants or the disposition of their assets under the BIA and the CCAA; and,

(iii) granted a charge on all of the Applicants’ property, assets, and undertakings, as security for the professional fees and disbursements incurred at their standard rates and charges, both before and after the filing of the NOI Proceedings.

9. As part of the Restructuring Strategy, the Applicants now seek to transfer the NOI Proceedings into the CCAA Proceedings. The Applicants seek to continue the Restructuring Strategy under the CCAA since:

(a) the CCAA allows for greater flexibility, enabling the Applicants to restructure the Business via the SISP and APA;

(b) as the Restructuring Strategy contemplates the Applicants restructuring the Business through an asset sale, by converting the NOI Proceedings into the CCAA Proceedings the Applicants will not automatically be deemed bankrupt upon failing to file a plan; and,

- (c) as a result of not becoming bankrupt, the Applicants will not incur the costs associated with the administration of the Applicants' estate, in a bankruptcy, which costs and expenses are anticipated to be approximately \$50,000.

10. The Restructuring Strategy is based on the completion of the SISP. The SISP contemplates that the Applicants' property, assets, and undertakings will be marketed in an open, fair, and transparent manner by KMPG Inc., in its capacity as the Proposal Trustee and in its capacity as monitor (the "**Court Officer**" when acting in such dual or alternating capacity), in the event that the relief sought as part of the Application is granted.

11. The SISP also contemplates the Applicants entering into the Asset Purchase Agreement, dated October 31, 2017 (the "**APA**"), between the Applicants, as sellers, and 12033714 Saskatchewan Ltd. (the "**Purchaser**"), the purchaser, as a stalking horse bid.

12. The APA is binding on the Purchaser and conditional on obtaining Court approval of: (i) the APA; and, (ii) the vesting of the Acquired Assets (as defined in the APA) in the name of the Purchaser, free and clear of all liens other than the Assumed Liabilities (as defined in the APA). Furthermore, the APA automatically terminates upon a Superior Offer (as defined in the SISP) being completed pursuant to and in accordance with the SISP.

13. By entering into the APA, in conjunction with the commencement of the SISP, the APA provides the Applicants with a binding and definitive agreement, in the event that no Superior Offer arises, which will provide a means by which the Applicants will be able to successfully restructure and continue as going-concerns.

14. Upon completing the SISP, the Applicants intend to seek: (i) approval of the vesting and transfer of the Acquired Assets to the Purchaser, substantially in accordance with the terms of the APA; or, (ii) should a Superior Offer arise, approval of the Superior Offer and any corresponding agreement and the vesting of the property, as contemplated therein.

15. The Purchaser under the APA is related to the Applicants. If the APA is ultimately determined to be the winning bid, in accordance with the SISP, the transaction contemplated by the APA will constitute a non-arm's length transaction. Since the APA is with a related party, the Court Officer has complete authority to administer the SISP and to determine whether a Superior Offer has been made. If the Court Officer determines that a Superior Offer has been made, the Applicants will be obligated to proceed with the Superior Offer.

16. The current financial circumstances of the Applicants and additional details concerning the Restructuring Strategy, the NOI Proceedings, the SISP, and the APA are set out in the CCAA Affidavit #1 of Danny Mysak, sworn October 25, 2017 (the “**First Mysak Affidavit**”).

### **Remedy Sought**

17. The Applicants seek an initial order (the “**Initial Order**”), substantially in the form attached hereto as Schedule “**A,**” which among other things grants the following relief:

- (a) abridging the time for service of this Application and declaring that this Application is properly returnable, if necessary, and dispenses with any further service of this Application;
- (b) declaring that the Applicants are debtor companies to which the CCAA applies;
- (c) permitting the Applicants to file with this Honourable Court one or more plans of compromise or arrangement between the Applicants and their creditors;
- (d) staying all proceedings and remedies taken or that might be taken in respect of the Applicants or any of their property, assets, or undertakings, except as otherwise set forth in the Initial Order or permitted by law;
- (e) authorizing the Applicants to carry on the Business in a manner consistent with the preservation of their property and business;
- (f) appointing KPMG Inc. as monitor (the “**Monitor**”) to monitor the property, business, and financial affairs of the Company in these proceedings;
- (g) authorizing the Applicants to make payments on account of obligations incurred on or before the filing of the NOIs or the granting of any Initial Order or to honour cheques issued to providers of goods and services to the Applicants prior to such date, as such payments are determined necessary, in consultation with the Monitor;
- (h) granting the Administrative Charge and the Critical Supplier’s Charge (as such terms are defined and discussed in the First Mysak Affidavit);

- (i) approving and authorizing the Monitor, with the assistance of the Applicants, to carry out and conduct the SISP;
- (j) authorizing the Applicants to enter into the APA, in the manner contemplated by the SISP; and,
- (k) granting such further and other relief as counsel to the Applicants may request and this Honourable Court may deem just.

**Material or evidence to be relied upon:**

18. The Applicants intend to rely upon the following materials:

- (a) The First Mysak Affidavit;
- (b) The consent of KPMG Inc. dated October 25, 2017 to act as Monitor; and,
- (c) Such further and other material or evidence as counsel to the Applicants may advise and this Honourable Court may permit.

**Applicable Acts and Regulations:**

19. The Applicants will rely upon and refer to the following during the making of the Application:

- (a) The BIA;
- (b) The CCAA;
- (c) *Alberta Rules Of Court*, Alta. Reg. 124/2010; and,
- (d) Such further and other Acts and regulations as counsel to the Applicants may advise.

**WARNING**

If you do not come to Court either in person or by your lawyer, the Court may give the applicant(s) what they want in your absence. You will be bound by any order that the Court makes. If you want to take part in this application, you or your lawyer must attend in Court on the date and at the time shown at the beginning of the form. If you intend to rely on an affidavit or other evidence when the application is heard or considered, you must reply by giving reasonable notice of the material to the applicant.

**SCHEDULE "A"**

COURT FILE NUMBER 1701-  
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 **CCAA INITIAL ORDER**  
ADDRESS FOR SERVICE AND CONTACT INFORMATION OF PARTY FILING THIS DOCUMENT  
McCARTHY TÉTRAULT LLP  
Barristers & Solicitors  
Walker MacLeod / Pantelis Kyriakakis  
Suite 4000, 421 - 7 Avenue S.W.  
Calgary, AB T2P 4K9  
Phone: 403-260-3500  
Fax: 403-260-3501  
Email: [wmacleod@mccarthy.ca](mailto:wmacleod@mccarthy.ca) / [pkiriakakis@mccarthy.ca](mailto:pkiriakakis@mccarthy.ca)

**DATE ON WHICH ORDER WAS PRONOUNCED:** October 31, 2017  
**NAME OF JUDGE WHO MADE THIS ORDER:** Justice K.D. Yamauchi  
**LOCATION OF HEARING:** Calgary Courts Centre

**UPON** the application (the "**Application**") of 623735 Saskatchewan Ltd. ("**623 Sask**") and 1031084 Alberta Ltd. ("**103 Alberta**", 103 Alberta and 623 Sask are collectively referred to as, the "**Applicants**"); **AND UPON** having read the Originating Application, the Affidavit of Danny Mysak, sworn on October 25, 2017 (the "**First Mysak Affidavit**"); **AND UPON** reading the consent of KPMG Inc. to act as monitor (the "**Monitor**"); **AND UPON** reading the Affidavit of Service of Katie Doran, sworn on October •, 2017; **AND UPON** noting that the secured creditors, who are likely to be affected by the charges created herein, have been provided notice of this Application and either do not oppose or alternatively consent to the within Order;



**AND UPON** hearing counsel for the Applicants and counsel to any other parties who may be present at the Application;

**IT IS HEREBY ORDERED AND DECLARED THAT:**

**SERVICE**

1. The time for service of the notice of the Application for this order is hereby abridged and deemed good and sufficient and this Application is properly returnable today.

**APPLICATION**

2. The Applicants are companies to which the CCAA applies.

**PLAN OF ARRANGEMENT**

3. The Applicants shall have the authority to file and may, subject to further order of this Court, file with this Court a plan or plans of compromise or arrangements (hereinafter referred to as, the "**Plan**").

**POSSESSION OF PROPERTY AND OPERATIONS**

4. The Applicants shall:
  - (a) remain in possession and control of their current and future assets, undertakings and properties of every nature and kind whatsoever, and wherever situate including all proceeds thereof (the "**Property**");
  - (b) subject to further order of this Court, continue to carry on business in a manner consistent with the preservation of their business (the "**Business**") and Property;
  - (c) be authorized and empowered to continue to retain and employ the employees, consultants, agents, experts, accountants, counsel and such other persons (collectively "**Assistants**") currently retained or employed by them, with liberty to retain such further Assistants as they deem reasonably necessary or desirable in the ordinary course of business or for the carrying out of the terms of this Order;

5. To the extent permitted by law, the Applicants shall be entitled but not required to pay the following expenses, incurred prior to or after this Order:
  - (a) all outstanding and future wages, salaries, employee and pension benefits, vacation pay and expenses payable on or after the date of this Order, in each case incurred in the ordinary course of business and consistent with existing compensation policies and arrangements; and
  - (b) the fees and disbursements of any Assistants retained or employed by the Applicants in respect of these proceedings, at their standard rates and charges.
  
6. Except as otherwise provided to the contrary herein, the Applicants shall be entitled but not required to pay all reasonable expenses incurred by the Applicants in carrying on the Business in the ordinary course after this Order, and in carrying out the provisions of this Order, which expenses shall include, without limitation:
  - (a) all expenses and capital expenditures and reasonably necessary for the preservation of the Property or the Business including, without limitation, payments on account of insurance (including directors and officers insurance), maintenance, and security services;
  - (b) payment for goods or services actually supplied to the Applicants following the date of this Order;
  - (c) payments for goods or services actually supplied to the Applicants following the date of this Order by Vitaly Designs Ltd. or any affiliate thereof (the “**Critical Supplier**”). The Critical Supplier is hereby granted a charge (the “**Critical Supplier’s Charge**”) on all of the property supplied by the Critical Supplier to the Applicants (the “**Critical Supplier Property**”) to secure all obligations owed to the Critical Supplier by the Applicants and which relate to the provision of the Critical Supplier Property, to a maximum amount of \$200,000. The Critical Supplier’s Charge shall have the priority set out in Paragraphs 29 and 31 hereof. The Critical Supplier shall be obligated to supply the Applicants or any individual Applicant with goods and services after the date of this Order, on terms and conditions that are consistent with existing arrangements and past practices. The Critical Supplier will not require the payment of a pre-payment, deposit, or

the posting of any security in connection with the supply of goods or services to the Applicants after the date of this Order; and,

- (d) with respect to the Critical Supplier only and with the approval of the Monitor, pay certain amounts incurred prior to or honour cheques issued prior to the date of this Order including those prior to the Applicants' each filing a Notice of Intention to Make a Proposal (each an "**NOI**" and collectively, the "**NOIs**") under the *Bankruptcy and Insolvency Act* (Canada) (the "**BIA**").

7. The Applicants shall remit, in accordance with legal requirements, or pay:

- (a) any statutory deemed trust amounts in favour of the Crown in Right of Canada or of any province thereof or any other taxation authority which are required to be deducted from employees' wages, including, without limitation, amounts in respect of:
  - (i) employment insurance,
  - (ii) Canada Pension Plan, and
  - (iii) income taxes,

but only where such statutory deemed trust amounts arise after the date of this Order, or are not required to be remitted until after the date of this Order, unless otherwise ordered by the Court;

- (b) all goods and services or other applicable sales taxes (collectively, "**Sales Taxes**") required to be remitted by the Applicants in connection with the sale of goods and services by the Applicants, but only where such Sales Taxes are accrued or collected after the date of this Order, or where such Sales Taxes were accrued or collected prior to the date of this Order but not required to be remitted until on or after the date of this Order; and,
- (c) any amount payable to the Crown in Right of Canada or of any province thereof or any political subdivision thereof or any other taxation authority in respect of municipal realty, municipal business, or other taxes, assessments, or levies of any nature or kind which are entitled at law to be paid in priority to claims of

secured creditors and which are attributable to or in respect of the carrying on of the Business by the Applicants.

8. Until a real property lease is disclaimed or resiliated in accordance with the CCAA, the Applicants may pay all amounts constituting rent or payable as rent under real property leases (including, for greater certainty, common area maintenance charges, utilities and realty taxes and any other amounts payable as rent to the landlord under the lease) based on the terms of the existing lease arrangements or as otherwise may be negotiated by the Applicants and the landlord from time to time, for the period commencing from and including the date of this Order (the “**Rent**”, but which term shall not include and the Applicants shall not pay any rent in arrears).
9. Except as specifically permitted herein, the Applicants are hereby directed, until further order of this Court:
  - (a) to make no payments of principal, interest thereon or otherwise on account of amounts owing by the Applicants to any of their creditors as of the date of this Order.
  - (b) to grant no security interests, trust, liens, charges or encumbrances upon or in respect of any of their Property; and
  - (c) to not grant credit or incur liabilities except in the ordinary course of the Business.

## **RESTRUCTURING**

10. The Applicants shall, subject to such requirements as are imposed by the CCAA, have the right to:
  - (a) permanently or temporarily cease, downsize or shut down any of its business or operations, and to dispose of redundant or non-material assets not exceeding \$500,000 in any one transaction or \$1,000,000 in the aggregate, provided that any sale that is either (i) in excess of the above thresholds, or (ii) in favour of a person related to the Applicants (within the meaning of Section 36(5) of the CCAA), shall require authorization by this Court in accordance with Section 36 of the CCAA;

- (b) terminate the employment of such of its employees or temporarily lay off such of its employees as it deems appropriate on such terms as may be agreed upon between the Applicants and such employee, or failing such agreement, to deal with the consequences thereof, in the plan; and,
- (c) pursue all avenues of a sale, refinancing, or restructuring of its Business or Property, in whole or part, subject to prior approval of this Court being obtained before any material sale, refinancing, or restructuring takes place, except as provided in subparagraph (a) above,

all of the foregoing to permit the Applicants to proceed with an orderly sale, refinancing, or restructuring of the Business (the “**Restructuring**”).

11. The Applicants shall provide each of the relevant landlords with notice of the Applicants’ intention to remove any fixtures from any leased premises at least seven (7) days prior to the date of the intended removal. The relevant landlord shall be entitled to have a representative present in the leased premises to observe such removal. If the landlord disputes the Applicants’ entitlement to remove any such fixture under the provisions of the lease, such fixture shall remain on the premises and shall be dealt with as agreed between any applicable secured creditors, such landlord and the Applicants, or by further Order of this Court upon application by the Applicants on at least two (2) days’ notice to such landlord and any such secured creditors. If the Applicants disclaim or resiliate the lease governing such leased premises in accordance with Section 32 of the CCAA, they shall not be required to pay Rent under such lease pending resolution of any such dispute (other than Rent payable for the notice period provided for in Section 32(5) of the CCAA), and the disclaimer of the lease shall be without prejudice to the Applicants’ claim to the fixtures in dispute.
12. If a notice of disclaimer is delivered pursuant to Section 32 of the CCAA, then:
  - (a) during the notice period prior to the effective time of the disclaimer, the landlord may show the affected leased premises to prospective tenants during normal business hours, on giving the Applicants and the Monitor 24 hours’ prior written notice, and

- (b) at the effective time of the disclaimer, the relevant landlord shall be entitled to take possession of any such leased premises without waiver of or prejudice to any claims or rights such landlord may have against the Applicants in respect of such lease or leased premises and such landlord shall be entitled to notify the Applicant of the basis on which it is taking possession and to gain possession of and re-lease such leased premises to any third party or parties on such terms as such landlord considers advisable, provided that nothing herein shall relieve such landlord of its obligation to mitigate any damages claimed in connection therewith.

### **NO PROCEEDINGS AGAINST THE APPLICANTS OR THE PROPERTY**

13. Until and including November 30, 2017, or such later date as this Court may order (the “**Stay Period**”), no proceeding or enforcement process in any court or tribunal (each, a “**Proceeding**”) shall be commenced or continued against or in respect of the Applicants or the Monitor, or affecting the Business or the Property, except with the written consent of the Applicants and the Monitor, or with leave of this Court, and any and all Proceedings currently under way against or in respect of the Applicants or affecting the Business or the Property are hereby stayed and suspended pending further Order of this Court.

### **NO EXERCISE OF RIGHTS OR REMEDIES**

14. During the Stay Period, all rights and remedies of any individual, firm, corporation, governmental body or agency, or any other entities (all of the foregoing, collectively being “**Persons**” and each being a “**Person**”, whether judicial or extra-judicial, statutory or non-statutory”) against or in respect of the Applicants or the Monitor, or affecting the Business or the Property, are hereby stayed and suspended and shall not be commenced, proceeded with or continued, except with the written consent of the Applicants and the Monitor, or leave of this Court, provided that nothing in this Order shall:
- (a) empower the Applicants to carry on any business which the Applicants are not lawfully entitled to carry on;

- (b) affect such investigations, actions, suits or proceedings by a regulatory body as are permitted by Section 11.1 of the CCAA;
  - (c) prevent the filing of any registration to preserve or perfect a security interest; or,
  - (d) prevent the registration of a claim for lien.
15. Nothing in this Order shall prevent any party from taking an action against an Applicant where such an action must be taken in order to comply with statutory time limitations in order to preserve their rights at law, provided that no further steps shall be taken by such party except in accordance with the other provisions of this Order, and notice in writing of such action must be given to the Monitor at the first available opportunity.

#### **NO INTERFERENCE WITH RIGHTS**

16. During the Stay Period, no Person shall accelerate, suspend, discontinue, fail to honour, alter, interfere with, repudiate, terminate or cease to perform any right, renewal right, contract, agreement, licence or permit in favour of or held by the Applicants, except with the written consent of the Applicants and the Monitor, or leave of this Court.

#### **CONTINUATION OF SERVICES**

17. During the Stay Period, all Persons having:
- (a) statutory or regulatory mandates for the supply of goods and/or services; or,
  - (b) oral or written agreements or arrangements with the Applicants, including without limitation all computer software, communication and other data services, centralized banking services, payroll services, insurance, transportation services, utility or other services to the Business or the Applicants, are hereby restrained until further Order of this Court from discontinuing, altering, interfering with, suspending, or terminating the supply of such goods or services as may be required by the Applicants or exercising any other remedy provided under such agreements or arrangements. The Applicants shall be entitled to the continued use of their current premises, telephone numbers, facsimile numbers, internet addresses and domain names, provided in each case, other than with respect to the Critical Supplier, that the usual prices or charges for all such goods or

services received after the date of this Order are paid by the Applicants in accordance with the usual payment practices of the Applicants or such other practices as may be agreed upon by the supplier or service provider and each of the Applicants and the Monitor, or as may be ordered by this Court. Other than the Critical Supplier and subject to paragraph 6(c) of this Order, nothing in this Order has the effect of prohibiting a from requiring immediate payment for goods, services, use of leased or licensed property or other valuable consideration provided on or after the date of this Order.

#### **NO OBLIGATION TO ADVANCE MONEY OR EXTEND CREDIT**

18. Other than the Critical Supplier and subject to paragraph 6(c) of this Order, no creditor of the Applicants shall be under any obligation on or after the date of this Order to advance or re-advance any monies or otherwise extend any credit to the Applicants.

#### **PROCEEDINGS AGAINST DIRECTORS AND OFFICERS**

19. During the Stay Period, and except as permitted by subsection 11.03(2) of the CCAA and paragraph 15 of this Order, no Proceeding may be commenced or continued against any of the former, current or future directors or officers of the Applicants with respect to any claim against the directors or officers that arose before the date hereof and that relates to any obligations of the Applicants whereby the directors or officers are alleged under any law to be liable in their capacity as directors or officers for the payment or performance of such obligations, until a compromise or arrangement in respect of the Applicants, if one is filed, is sanctioned by this Court or is refused by the creditors of the Applicants or this Court.

#### **DIRECTORS' AND OFFICERS' INDEMNIFICATION**

20. The Applicants shall indemnify their directors and officers against obligations and liabilities that they may incur as directors or officers of the Applicants after the commencement of the within proceedings, except to the extent that, with respect to any officer or director, the obligation or liability was incurred as a result of the director's or officer's gross negligence or wilful misconduct.

#### **APPOINTMENT OF MONITOR**



21. KPMG Inc. is hereby appointed pursuant to the CCAA as the Monitor, an officer of this Court, to monitor the Property, Business and financial affairs of the Applicants with the powers and obligations set out in the CCAA or set forth herein and that the Applicants and their shareholders, officers, directors, and Assistants shall advise the Monitor of all material steps taken by the Applicants pursuant to this Order, and shall co-operate fully with the Monitor in the exercise of its powers and discharge of its obligations and provide the Monitor with the assistance that is necessary to enable the Monitor to adequately carry out the Monitor's functions.
22. The Monitor, in addition to its prescribed rights and obligations under the CCAA, is hereby directed and empowered to:
  - (a) monitor the Applicants' receipts and disbursements, Business and dealings with the Property;
  - (b) report to this Court at such times and intervals as the Monitor may deem appropriate with respect to matters relating to the Property, the Business, and such other matters as may be relevant to the proceedings herein and immediately report to the Court if in the opinion of the Monitor there is a material adverse change in the financial circumstances of the Applicants;
  - (c) advise the Applicants in their development of the Plan and any amendments to the Plan;
  - (d) assist the Applicants, to the extent required by the Applicants, with the holding and administering of creditors' or shareholders' meetings for voting on the Plan;
  - (e) have full and complete access to the Property, including the premises, books, records, data, including data in electronic form, and other financial documents of the Applicants, to the extent that is necessary to adequately assess the Applicants' Property, Business and financial affairs or to perform its duties arising under this Order;
  - (f) be at liberty to engage independent legal counsel or such other persons as the Monitor deems necessary or advisable respecting the exercise of its powers and performance of its obligations under this Order;

- (g) hold funds in trust or in escrow, to the extent required, to facilitate settlements between the Applicants and any other Person; and,
  - (h) perform such other duties as are required by this Order or by this Court from time to time;
23. The Monitor shall not take possession of the Property and shall take no part whatsoever in the management or supervision of the management of the Business and shall not, by fulfilling its obligations hereunder, or by inadvertence in relation to the due exercise of powers or performance of duties under this Order, be deemed to have taken or maintained possession or control of the Business or Property, or any part thereof. Nothing herein contained shall require the Monitor to occupy or to take control, care, charge, possession or management of any of the Property that might be environmentally contaminated, might be a pollutant or a contaminant, or might cause or contribute to a spill, discharge, release or deposit of a substance contrary to any federal, provincial or other law respecting the protection, conservation, enhancement, remediation or rehabilitation of the environment or relating to the disposal or waste or other contamination, provided however that this Order does not exempt the Monitor from any duty to report or make disclosure imposed by applicable environmental legislation.
24. The Monitor shall provide any creditor of the Applicants and the Interim Lender with information provided by the Applicants in response to reasonable requests for information made in writing by such creditor addressed to the Monitor. The Monitor shall not have any responsibility or liability with respect to the information disseminated by it pursuant to this paragraph. In the case of information that the Monitor has been advised by the Applicants are confidential, the Monitor shall not provide such information to creditors unless otherwise directed by this Court or on such terms as the Monitor and the Applicants may agree.
25. In addition to the rights and protections afforded the Monitor under the CCAA or as an officer of this Court, the Monitor shall incur no liability or obligation as a result of its appointment or the carrying out of the provisions of this Order, save and except for any gross negligence or wilful misconduct on its part. Nothing in this Order shall derogate from the protections afforded the Monitor by the CCAA or any applicable legislation.

26. The Monitor, counsel to the Monitor and counsel to the Applicants shall be paid their reasonable fees and disbursements, in each case at their standard rates and charges, by the Applicants as part of the costs of these proceedings. The Applicants are hereby authorized and directed to pay the accounts of the Monitor, counsel for the Monitor and counsel for the Applicants on a monthly basis.
27. The Monitor and its legal counsel shall pass their accounts from time to time.
28. The Monitor, counsel to the Monitor, and the Applicants' counsel, as security for the professional fees and disbursements incurred both before and after the granting of this Order, shall continue to be entitled to the benefit of the Administrative Charge granted pursuant to the Order granted by the Honourable Justice C.M. Jones on October 11, 2017 (the "**NOI Consolidation Order**") in the Applicants' NOI proceeding bearing Court File Number 25-2299607 (the "**Administrative Charge**") on the Property, which charge shall not exceed an aggregate amount of \$300,000 as security for their professional fees and disbursements incurred at the standard rates and charges of the Monitor and such counsel, both before and after the making of this Order in respect of these proceedings. The Administrative Charge shall have the priority set out in paragraphs 29 and 31 hereof.

#### **VALIDITY AND PRIORITY OF CHARGES CREATED BY THIS ORDER**

29. The priorities of the Administrative Charge and the Critical Supplier's Charge, as among them, shall be as follows:  
  
First – Administrative Charge (to the maximum amount of \$300,000) and against all of the Property; and,  
  
Second – Critical Supplier's Charge (to the maximum amount of \$200,000) and against the Critical Supplier Property.
30. The filing, registration or perfection of the Administrative Charge and the Critical Supplier's Charge (collectively, the "**Charges**") shall not be required, and that the Charges shall be valid and enforceable for all purposes, including as against any right, title or interest filed, registered, recorded or perfected subsequent to the Charges coming into existence, notwithstanding any such failure to file, register, record or perfect.

31. Each of the Administrative Charge and the Critical Supplier's Charge (all as constituted and defined herein) shall constitute a charge on the Property or the Critical Supplier Property, as the case may be, and subject always to Section 34(11) of the CCAA such Charges shall rank in priority to all other secured interests, trusts, deemed trusts, liens, charges, and encumbrances, claims or secured creditors, statutory or otherwise (collectively, the "**Encumbrances**") in favour of any Person, other than any claim of Element Financial Corporation or Steelcase Financial Services Ltd. that is secured by way of a valid, enforceable, and properly perfected purchase money security interest to any specific Property (each a "**PMSI Claim**"), which shall rank in priority to the Charges. For greater certainty, the priority afforded to any PMSI Claim shall extend only to the specific items or classes of Property that are subject to the valid, enforceable and properly perfect PMSI Claim and not to the Property as a whole.
32. Except as otherwise expressly provided for herein, or as may be approved by this Court, the Applicants shall not grant any Encumbrances over any Property that rank in priority to, or *pari passu* with, any of the Administrative Charge or the Critical Supplier's Charge, unless the Applicants also obtain the prior written consent of the Monitor and the beneficiaries of the Administrative Charge and the Critical Supplier's Charge, or further Order of this Court.
33. The Administrative Charge and the Critical Supplier's Charge shall not be rendered invalid or unenforceable and the rights and remedies of the chargees entitled to the benefit of the Charges (collectively, the "**Chargees**") shall not otherwise be limited or impaired in any way by
  - (a) the pendency of these proceedings and the declarations of insolvency made herein;
  - (b) any application(s) for bankruptcy order(s) issued pursuant to BIA, or any bankruptcy order made pursuant to such applications;
  - (c) the filing of any assignments for the general benefit of creditors made pursuant to the BIA;
  - (d) the provisions of any federal or provincial statutes; or

- (e) any negative covenants, prohibitions or other similar provisions with respect to borrowings, incurring debt or the creation of Encumbrances, contained in any existing loan documents, lease, sublease, offer to lease or other agreement (collectively, an “**Agreement**”) which binds the Applicants, and notwithstanding any provision to the contrary in any Agreement:
  - (i) the creation of the Charges shall not create or be deemed to constitute a breach by the Applicants of any Agreement to which they are a party;
  - (ii) none of the Chargees shall have any liability to any Person whatsoever as a result of any breach of any Agreement caused by or resulting from the Applicants entering into the Commitment Letter, the creation of the Charges, or the execution, delivery or performance of the Definitive Documents; and
  - (iii) the payments made by the Applicants pursuant to this Order, the Commitment Letter or the Definitive Documents, and the granting of the Charges, do not and will not constitute preferences, fraudulent conveyances, transfers at undervalue, oppressive conduct, or other challengeable or voidable transactions under any applicable law.

## **ALLOCATION**

- 34. Any interested person may apply to this Court on notice to any other party likely to be affected, for an order to allocate the Administrative Charge and the Critical Supplier’s Charge amongst the various assets comprising the Property.
- 35. Any Charges created by this Order over leases of real property in Canada shall only be a Charge in the Applicants’ interest in such real property leases.

## **SISP AND APA APPROVAL**

- 36. The Applicants and the Monitor are hereby authorized and empowered, *nunc pro tunc*, to implement the Sale and Investment Solicitation Procedures (“**SISP**”) developed by the Applicants, in consultation with KPMG Inc., attached as Exhibit “**A**” to this Order and to proceed, carry out, and implement any corresponding sales, marketing, or tendering processes, including any and all actions related thereto, substantially in accordance with

the proposed SISP, and, furthermore, the Applicants are hereby authorized to enter into any resulting agreement(s) or transaction(s) (collectively, the “**SISP Agreements**”) which may arise in connection thereto, as the Applicants and the Monitor determine are necessary or advisable in connection with or in order to complete any or all of the various steps, as contemplated by the SISP.

37. The Applicants are hereby authorized and empowered, *nunc pro tunc*, to enter into the Asset Purchase Agreement, dated October 31, 2017 (the “**APA**”), between the Applicants, as sellers, and 12033714 Saskatchewan Ltd. (the “**Purchaser**”), attached as Exhibit “**B**” to this Order, as part of and in the manner contemplated by the SISP.
38. Nothing herein shall act as authorization or approval of the transfer or vesting of any or all of the Applicants’ property, assets, or undertakings under any SISP Agreements, the APA, or otherwise. Such transfer and vesting shall be dealt with and subject to further Order of this Honourable Court.

#### **SERVICE AND NOTICE**

39. The Monitor shall (i) without delay, publish in The Globe and Mail a notice containing the information prescribed under the CCAA, (ii) within five days after the date of this Order, (A) make this Order publicly available in the manner prescribed under the CCAA, (B) send, in the prescribed manner, a notice to every known creditor who has a claim against the Applicants of more than \$1,000 and (C) prepare a list showing the names and addresses of those creditors and the estimated amounts of those claims, and make it publicly available (except that the names, addresses and claim amounts of any employee creditors shall not be published) in the prescribed manner, all in accordance with Section 23(1)(a) of the CCAA and the regulations made thereunder.
40. The Applicant and the Monitor shall be at liberty to serve this Order, any other materials and orders in these proceedings, any notices or other correspondence, by forwarding true copies thereof by prepaid ordinary mail, courier, personal delivery, facsimile transmission or e-mail to the Applicant’s creditors or other interested Persons at their respective addresses as last shown on the records of the Applicant and that any such service or notice by courier, personal delivery, facsimile transmission or e-mail shall be deemed to be received on the next business day following the date of forwarding thereof, or if sent by ordinary mail, on the third business day after mailing. The Monitor

shall establish and maintain a website in respect of these proceedings at <https://home.kpmg.com/ca/en/home/services/advisory/deal-advisory/creditorlinks/spareparts.html> and shall post there as soon as practicable:

- (a) all materials prescribed by statute or regulation to be made publically available; and
- (b) all applications, reports, affidavits, orders or other materials filed in these proceedings by or behalf of the Monitor, or served upon it, except such materials as are confidential and the subject of a sealing order or pending application for a sealing order.

## **GENERAL**

- 41. The Applicants or the Monitor may from time to time apply to this Court for advice and directions in the discharge of its powers and duties hereunder.
- 42. Nothing in this Order shall prevent the Monitor from acting as an interim receiver, a receiver, a receiver and manager, or a trustee in bankruptcy of the Applicants, the Business or the Property.
- 43. Notwithstanding Rule 6.11 of the Alberta *Rules of Court*, unless otherwise ordered by this Court, the Monitor will report to the Court from time to time, which reporting is not required to be an original or in affidavit form and shall be considered by this Court as evidence.
- 44. This Court hereby requests the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or in the United States, to give effect to this Order and to assist the Applicant, the Monitor 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 orders and to provide such assistance to the Applicant and to the Monitor, as an officer of this Court, as may be necessary or desirable to give effect to this Order, to grant representative status to the Monitor in any foreign proceeding, or to assist the Applicant and the Monitor and their respective agents in carrying out the terms of this Order.

45. Each of the Applicants and the Monitor are at liberty and are hereby authorized and empowered to apply to any court, tribunal, regulatory or administrative body, wherever located, for the recognition of this Order and for assistance in carrying out the terms of this Order and that the Monitor is authorized and empowered to act as a representative in respect of the within proceeding for the purpose of having these proceedings recognized in a jurisdiction outside Canada.
46. Any interested party (including the Applicant and the Monitor) may apply to this Court to vary or amend this Order on not less than seven (7) days' notice to any other party or parties likely to be affected by the order sought or upon such other notice, if any, as this Court may order.
47. This Order and all of its provisions are effective as of 12:01 a.m. Mountain Standard Time on the date of this Order.

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Justice of the Court of Queen's Bench of Alberta



**EXHIBIT "A" TO THE INITIAL CCAA ORDER  
THE SISP**

**EXHIBIT "B" TO THE INITIAL CCAA ORDER  
THE APA**