

Court File No. CV-14-10784-00CL

**ONTARIO
SUPERIOR COURT OF JUSTICE**

THE HONOURABLE MR.) WEDNESDAY, THE 8th DAY OF
JUSTICE PATTILLO)
) APRIL, 2015.

B E T W E E N:

ROYAL BANK OF CANADA

Applicant

-and-

A-1 ASPHALT MAINTENANCE LTD.

Respondent

O R D E R

THIS MOTION, made by KPMG Inc. (“KPMG”) in its capacity as receiver (“the “Receiver”) of all the assets, undertakings and properties of A-1 Asphalt Maintenance Ltd. (“A-1”) for directions and ancillary relief was heard this day at 330 University Avenue, Toronto.

UPON READING the Notice of Motion and the Second Report of the Receiver dated March 27, 2015 (the “Second Report”) and upon hearing submissions of counsel for the Receiver, Royal Bank of Canada, the Corporation of the Town of Halton Hills, the City of Hamilton, LIUNA Local 837, Ministry of

Transportation Ontario, The Guarantee Company of North America, Nortrax Canada Inc., no one else appearing although properly served, as appears from the Affidavit of Victoria Stewart sworn March 30, 2015, filed,

1. **THIS COURT ORDERS** that time for service of this motion is hereby abridged and validated so that this motion is properly returnable today and hereby dispenses with further service thereof.
2. **THIS COURT ORDERS** that the activities of the Receiver as described in the Second Report is hereby approved and authorized.
3. **THIS COURT ORDERS** that the Ministry of Transportation Ontario (“MTO”) is hereby directed and required to pay all amounts properly due to A-1 for contractual work undertaken for the MTO, without any deduction or holdback for amounts due to A-1’s suppliers, in accordance with the Orders of Justice Newbould made December 4 and 17, 2014.
4. **THIS COURT ORDERS** that the Receiver is hereby authorized to enter into the engagement letter dated March 10, 2015, with Morrison Hershfield attached as Appendix “G” to the Second Report.
5. **THIS COURT ORDERS** that Jackson Tkach Inc., Capital Paving Inc., Lippert & Wright Fuels Ltd. and Guru Baba Hundal Transport Inc. shall deliver to the Receiver an accounting of the deposits received and the balances held by each of them as deposits provided by A-1 as described in the Second Report.
6. **THIS COURT ORDERS** that the Receiver is authorized and directed to undertake a Construction Claims Bar Process as follows:

- Each A-1 customer will be required to confirm the date they received a lien claim or other notice from the creditor of their claim;
- A publicly advertised claims bar date will be set providing creditors with a reasonable period to file their claims. The Receiver proposes 60 days from the proof of claim mailing date, after which time the creditor's claim will be forever barred;
- The Receiver will compare the information supplied in each proof of claim received to A-1's records to confirm the amount owing on a project by project basis;
- If the Receiver disputes the creditor's claim then the Receiver will issue a disallowance letter to the creditor disallowing the claim in whole or in part and whether it should be treated as a lien or trust claim;
- The creditor will then have 30 days to dispute the disallowance, failing which the claim will be disallowed as set out in the Receiver's disallowance letter; and,
- Any disputed disallowances will either be settled by the Receiver, with the assistance of counsel, or there will be an application to court to make a determination of the disputed claim.

7. **THIS COURT ORDERS** that the Receiver is authorized and directed to undertake a Customer Claims Bar Process as follows:

- Customers claiming to have a contractual damage claim must provide the Receiver with the applicable contract referencing the section(s) being relied upon for the damage claim; and the detailed calculation of the damage claim;
- Customers claiming to have a construction deficiency claim will provide a detailed description of the deficiency sufficient enough for the Receiver's engineering consultant to understand the claim being made and will provide the support necessary to calculate the amount of the claim;
- Customers must allow the Receiver and/or its engineering consultant access to the location where deficiency work is to be completed so that the Receiver and/or its engineering consultant can verify the deficiency;
- Customers must supply the Receiver with the quotes received from suppliers for the completion of A-1's contract in order to verify the costs to complete and must confirm that the quotes encompass only the costs to complete A-1's signed contract with no additional work being included. The customer is also to provide the Receiver with the calculation of the claim for the increased costs to complete A-1's contract;
- All customer claims are to be filed with the Receiver within 90 days of the granting of the Court's Order approving the Customer Claims Bar Process, failing which all of the customers' claims for set off against A-1's account receivable or holdback will be forever barred.

- If the Receiver disputes the customer's claim then the Receiver will issue a disallowance letter to the customer disallowing the claim in whole or in part;
- The customer will then have 30 days to dispute the disallowance, failing which the claim will be disallowed as set out in the Receiver's disallowance letter;
- Any disputed disallowances will either be settled by the Receiver, with the assistance of counsel, or there will be an application to Court to make a determination; and,
- Notwithstanding the Customer Claims Bar, this Order shall not be construed to limit any warranty rights of the Customer.

8. **THIS COURT ORDERS** that, in addition to the Customer Claims Bar Process, The Corporation of the Town of Halton Hills and the City of Hamilton shall, within 20 business days hereof, provide to the Receiver:

- i. A reconciliation on a project by project basis showing the amounts owing to A-1 as advised by the Receiver, less any deductions claimed; and,
- ii. Payment of the net balance of such reconciliation, and in the case of the City of Hamilton, no less than \$68,027.83 (Sidewalk Project), \$116,472.62 (Queensdale Project) and \$112,492.88 (Delta East Project), and in the case of The Corporation of the Town of Halton Hills, the amount of \$221,010.76. Such payment shall be paid in accordance with

the Orders of this Court dated December 4, 2014, December 11, 2014, December 17, 2014, and shall be without prejudice to the rights of the Receiver or any stakeholder as to the quantum that ought to have been paid or the nature of same.

9. **THIS COURT ORDERS** that the Receiver is authorized and directed not to file claims under the Wage Earner Protection Program (“WEPP”) for the unionized workers at A-1 at this time, pending the disposition of the bankruptcy and construction lien claims filed by the unions, and for greater certainty, the time for filing the WEPP claims by the Receiver with Service Canada is hereby extended, until such time as they can reasonably be filed after the disposition of the union claims described above. Without deciding the issue, this Order is without prejudice to the Guarantee Company of North America’s (“GCNA”) position that the WEPP claims must be pursued prior to any payment on account of the Labour and Material Payment Bonds issued on behalf of A-1, and is without prejudice to the terms and conditions of those bonds, and any defences available to GCNA, including GCNA’s position that it is not liable to the unions in respect of their claims.

10. **THIS COURT ORDERS** that Newport Leasing Limited is directed and required to forthwith deliver a Ford F450 cube van with VIN No. 1FDXW46P75EA61893 leased to A-1 to the Ritchie Bros. Auctioneers (Canada) Ltd. (“Ritchie”) storage lot at 3 Manchester Court, Bolton, Ontario L7E 2Y1.

11. **THIS COURT ORDERS** that the sale of equipment owned by A-1 currently stored at 3 Manchester Court, Bolton, Ontario L7E 2Y1 (the “Equipment”), is hereby approved and title is vested in Ritchie free and clear of

any and all security interests (whether contractual, statutory, or otherwise), hypothecs, mortgages, trusts or deemed trusts (whether contractual, statutory, or otherwise), liens, executions, levies, charges, or other financial or monetary claims, whether or not they have been attached or been perfected, registered or filed and whether secured, unsecured or otherwise (collectively, the “Claims”) including, without limiting the generality of the foregoing, all charges, security interests or claims evidenced by registrations pursuant to the *Personal Property Security Act (Ontario)* or any other personal property registry system, and, for greater certainty, this Court orders that all of the Claims affecting or relating to the Equipment are hereby expunged and discharged as against the Equipment.

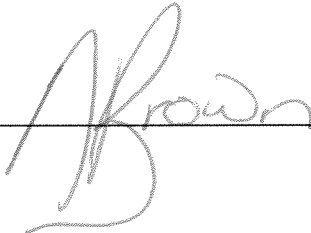
12. **THIS COURT ORDERS** that for the purposes of determining the nature and priority of Claims, the net proceeds from the sale of the Equipment shall stand in the place and stead of the Equipment, and that all Claims shall attach to the net proceeds from the sale of the Equipment with the same priority as they had with respect to the Equipment immediately prior to the sale to Ritchie, as if the Equipment had not been sold and remained in the possession or control of the person having that possession or control immediately prior to such sale.

13. **THIS COURT ORDERS** that the vesting of the Equipment in Ritchie pursuant to this Order shall be binding on the trustee in bankruptcy of A-1, and shall not be void or voidable by creditors of A-1, nor shall it constitute nor be deemed to be a settlement, fraudulent preference, assignment, fraudulent conveyance, transfer at undervalue, or other reviewable transaction under the *Bankruptcy and Insolvency Act (Canada)* 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 COURT ORDERS AND DECLARES** that the sale to Ritchie is exempt from the application of the *Bulk Sales Act* (Ontario).

15. **THIS COURT ORDERS** that the fees and disbursements of the Receiver and its counsel as outlined in the Affidavit of Kevin J. Treacy dated March 26, 2015, and the Affidavits of Kenneth L. Kallish dated February 27, 2015 and March 26, 2015, attached as Appendices “Q” and “R”, respectively, in the Second Report are hereby approved.

16. **THIS COURT ORDERS** that the Receiver’s Interim Statement of Receipts and Disbursements for the period December 4, 2014 to March 20, 2015, attached as Appendix “P” to the Second Report is hereby approved.


Natasha Brown
Registrar

#2292967 | 4092559

ENTERED AT / INSCRIT À TORONTO
ON / BOOK NO:
LE / DANS LE REGISTRE NO.:

APR 10 2015
NB

B E T W E E N :

ROYAL BANK OF CANADA
Applicant

-and-

A-1 ASPHALT MAINTENANCE LTD.
Respondent

Court File No. CV-14-10784-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

Proceeding commenced at TORONTO

ORDER

MINDEN GROSS LLP
145 King Street West, Suite 2200
Toronto ON M5H 4G2

Raymond M. Slattery (LSUC #20479L)
416-369-4149

rslattery@mindengross.com

Kenneth L. Kallish (LSUC #23093E)

416-369-4124

kkallish@mindengross.com

416-864-9223 fax

Lawyers for KPMG Inc.