

Tab 5

Revised: May 11, 2010

Court File No. _____ 09-CL-8456-00CL
Estate No. 31-456351
Estate No. 31-456352

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

THE HONOURABLE) ●. THE ●TH
JUSTICE ●) DAY OF APRIL, 2013

IN THE MATTER OF THE COMPANIES' CREDITORS ARRANGEMENT ACT,
R.S.C. 1985, c. C-36, AS AMENDED

AND IN THE MATTER OF JAMES ROBERT TUCKER, RICHARD HEIS AND ALLAN
WATSON GRAHAM OF KPMG LLP, AS JOINT ADMINISTRATORS

Applicants

AND IN THE MATTER OF AERO INVENTORY (UK) LIMITED
and AERO INVENTORY PLC

Respondents

APPLICATION UNDER SECTIONS 46 AND FOLLOWING OF THE COMPANIES'
CREDITORS ARRANGEMENT ACT, R.S.C. 1985, c. C-36, AS AMENDED

THE HONOURABLE _____) _____ DAY, THE _____ DAY
JUSTICE _____) OF _____, 20____

B E T W E E N:—

PLAINTIFF

Plaintiff

— and —

DEFENDANT

Defendant

APPROVAL AND VESTING ORDER

THIS MOTION, made by ~~[RECEIVER'S NAME]~~ in its capacity as the Joint Administrators of Aero Inventory (UK) Limited (in administration) and Aero Inventory PLC (in administration) (collectively, the "Foreign Debtors") in their capacity as the Court-appointed receiver (the "Receiver") of the undertaking, property and assets of ~~[DEBTOR]~~ (the "Debtor Foreign Representatives (the "Foreign Representatives")) for an order approving the sale transaction (the "Transaction") contemplated by an agreement of purchase and sale Administration Sale of Assets Agreement (Canadian Assets) (the "Canadian Sale Agreement") between the Receiver and ~~[NAME OF PURCHASER]~~ Foreign Debtors, the Joint Administrators of the Foreign Debtors, and Diversified Aero Inventory I, LLC (the "Purchaser") dated ~~[DATE]~~ March 26, 2013 and appended to the Sixth Report of the Receiver/Information Officer dated ~~[DATE]~~ March 27, 2013 (the "Sixth Report"), and vesting in the Purchaser the ~~Debtor's~~ Foreign Debtors' right, title and interest in and to the assets described in ~~the~~ to be transferred pursuant to the Canadian Sale Agreement (the "Purchased Assets") at the times and subject to the terms specified in the Canadian Sale Agreement and this Order, was heard this day at 330 University Avenue, Toronto, Ontario.

ON READING the Sixth Report and on hearing the submissions of counsel for the ~~Receiver, Foreign Representatives, the Purchaser, Air Canada, and~~ [NAMES OF OTHER PARTIES APPEARING], no one appearing for any other person on the service list, although properly served as appears from the affidavit of ~~[NAME]~~ [NAME] sworn ~~[DATE]~~ [DATE] filed[†]:

1. THIS COURT ORDERS that capitalized terms used and not otherwise defined herein shall have the meanings ascribed to them in the Canadian Sale Agreement.

[†] This model order assumes that the time for service does not need to be abridged. The motion seeking a vesting order should be served on all persons having an economic interest in the Purchased Assets, unless circumstances warrant a different approach. Counsel should consider attaching the affidavit of service to this Order.

2. ~~THIS COURT ORDERS AND DECLARES~~ that the Transaction is hereby approved,² and the execution of the Sale Agreement by the Receiver³ is hereby authorized and approved, with such minor amendments as the Receiver~~Foreign Representatives~~ may deem necessary. The Receiver~~is Foreign Representatives~~ are hereby authorized and directed to take such additional steps and execute such additional documents as may be necessary or desirable for the completion of the Transaction and for the conveyance of the Purchased Assets to the Purchaser.

3. ~~2. THIS COURT ORDERS AND DECLARES~~ that upon the delivery of a Receiver~~an Information Officer's~~ certificate to the Purchaser substantially in the form attached as Schedule A hereto (the "Receiver's~~IQ~~ Certificate"), all of the Debtor's~~Foreign Debtors'~~ right, title and interest in and to the Purchased Assets, ~~excluding the Unresolved Parts,~~ described in the Canadian Sale Agreement ~~[and listed on Schedule B hereto]~~⁴ (the "Canadian Transferred Assets") shall vest absolutely in the Purchaser, free and clear of and from 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 attached or been perfected, registered or filed and whether secured, unsecured or otherwise (collectively, the "Claims"⁵) including, without limiting the generality of the foregoing: ~~(i) any encumbrances or charges created by the Order of the Honourable Justice [NAME] dated [DATE]; (ii) all charges, security interests, hypothecs or claims evidenced by registrations pursuant to the Personal Property Security Act (Ontario), the Quebec Personal and Moveable Real Rights Registry (Québec) or any other personal property registry system; and (iii) those Claims listed on Schedule C hereto (all of which are collectively referred to as the "Encumbrances", which term shall not include the~~

² In some cases, notably where this Order may be relied upon for proceedings in the United States, a finding that the Transaction is commercially reasonable and in the best interests of the Debtor and its stakeholders may be necessary. Evidence should be filed to support such a finding, which finding may then be included in the Court's endorsement.

³ In some cases, the Debtor will be the vendor under the Sale Agreement, or otherwise actively involved in the Transaction. In those cases, care should be taken to ensure that this Order authorizes either or both of the Debtor and the Receiver to execute and deliver documents, and take other steps.

⁴ To allow this Order to be free standing (and not require reference to the Court record and/or the Sale Agreement), it may be preferable that the Purchased Assets be specifically described in a Schedule.

⁵ The "Claims" being vested out may, in some cases, include ownership claims, where ownership is disputed and the dispute is brought to the attention of the Court. Such ownership claims would, in that case, still continue as against the net proceeds from the sale of the claimed asset. Similarly, other rights, titles or interests could also be vested out, if the Court is advised what rights are being affected, and the appropriate persons are served. It is the Subcommittee's view that a non-specific vesting out of "rights, titles and interests" is vague and therefore undesirable.

permitted encumbrances, easements and restrictive covenants listed on Schedule D), and, for greater certainty, this Court orders that all of the Encumbrances affecting or relating to the Purchased Canadian Transferred Assets are hereby expunged and discharged as against the Purchased Canadian Transferred Assets.

3. ~~THIS COURT ORDERS~~ that upon the registration in the Land Registry Office for the [Registry Division of {LOCATION}] of a Transfer/Deed of Land in the form prescribed by the *Land Registration Reform Act* duly executed by the Receiver][Land Titles Division of {LOCATION}] of an Application for Vesting Order in the form prescribed by the *Land Titles Act* and/or the *Land Registration Reform Act*]⁶, the Land Registrar is hereby directed to enter the Purchaser as the owner of the subject real property identified in Schedule B hereto (the "Real Property") in fee simple, and is hereby directed to delete and expunge from title to the Real Property all of the Claims listed in Schedule C hereto.

4. THIS COURT ORDERS that for the purposes of determining the nature and priority of Claims, the net proceeds⁷ from the sale of the Purchased Canadian Transferred Assets shall stand in the place and stead of the Purchased Canadian Transferred Assets, and that from and after the delivery of the Receiver's IQ Certificate all Claims and Encumbrances shall attach to the net proceeds from the sale of the Purchased Canadian Transferred Assets with the same priority as they had with respect to the Purchased Canadian Transferred Assets immediately prior to the sale⁸, as if the Purchased Canadian Transferred Assets had not been sold and remained in the possession or control of the person having that possession or control immediately prior to the sale.

5. THIS COURT ORDERS AND DIRECTS the Receiver Information Officer to file with the Court a copy of the Receiver's IQ Certificate, forthwith after delivery thereof.

6. ~~THIS COURT ORDERS~~ that, pursuant to clause 7(3)(e) of the *Canada Personal Information Protection and Electronic Documents Act*, the Receiver is authorized and permitted

⁶ Elect the language appropriate to the land-registry system (Registry vs. Land Titles).

⁷ The Report should identify the disposition costs and any other costs which should be paid from the gross sale proceeds, to arrive at "net proceeds".

⁸ This provision crystallizes the date as of which the Claims will be determined. If a sale occurs early in the insolvency process, or potentially secured claimants may not have had the time or the ability to register or perfect proper claims prior to the sale, this provision may not be appropriate, and should be amended to remove this crystallization concept.

~~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, including personal information of those employees listed on Schedule "●" to the Sale Agreement. 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.~~

6. ~~7.~~ THIS COURT ORDERS that, notwithstanding:

- (a) the pendency of these proceedings; and
- (b) the pendency of any applications for a bankruptcy order now or hereafter issued pursuant to the *Bankruptcy and Insolvency Act (Canada)* bankruptcy proceedings in respect of the Debtor and any bankruptcy order issued pursuant to any such applications; and Foreign Debtors;
- (c) ~~any assignment in bankruptcy made in respect of the Debtor;~~

the vesting of the Purchased Canadian Transferred Assets in the Purchaser pursuant to this Order shall be binding on any trustee in bankruptcy that has been or may be appointed in respect of the Debtor Foreign Debtors and shall not be void or voidable by creditors of the Debtor Foreign Debtors, nor shall it constitute ~~nor~~ or be deemed to be a settlement, fraudulent preference, ~~assignment,~~ fraudulent conveyance, transfer at undervalue, or other ~~reviewable~~ challengeable or voidable 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.

7. ~~8.~~ THIS COURT ORDERS AND DECLARES that the Transaction is exempt from the application of the *Bulk Sales Act (Ontario)*.

8. THIS COURT ORDERS that the Trustee shall have no obligation to take possession of or otherwise monitor, safeguard, deal with or assert an interest in, any of the proceeds from the sale of the Purchased Assets, with the exception of the Holdback.

9. THIS COURT ORDERS AND DECLARES that, in the case of the Unresolved Parts, upon receipt of payment in full of the amounts specified in Section 5.2 of the Canadian Sale Agreement, all of the Foreign Debtors' right, title and interest in and to the Unresolved Parts that meet the conditions set forth in Section 5.6 of the Canadian Sale Agreement, shall vest absolutely in the Purchaser, free and clear of and from any and all Claims and Encumbrances and, for greater certainty, this Court orders that all of the Encumbrances affecting or relating to the Unresolved Parts shall be expunged and discharged as against those Unresolved Parts immediately upon receipt of payment by the Foreign Debtors in full of the purchase price described and calculated in Section 5.2 of the Canadian Sale Agreement. The provisions of this Order relating to the Canadian Transferred Assets shall apply mutatis mutandis to the assets transferred pursuant to this Paragraph 9, except that no IO Certificate will be provided in respect of the Unresolved Parts.

10. THIS COURT ORDERS AND DIRECTS that, with the exception of the Holdback (as defined in the Sixth Report) the proceeds from the Canadian Sale Agreement shall be paid in accordance with the Canadian Sale Agreement to the Foreign Debtors to be dealt with in accordance with the Administration Proceedings (as defined in the Sixth Report) and any party asserting an interest in such proceeds (whether pursuant to paragraph 4 of this Order or otherwise) shall only be entitled to do so to the extent legally permissible in the Administration Proceedings.

11. THIS COURT ORDERS that the Holdback shall be held in trust by the Trustee until further order of this Court or until consent to the release of all or a portion of the Holdback is received from Canada Revenue Agency (on account of a \$125,000 portion of the Holdback) or from Revenu Quebec (on account of a \$175,000 portion of the Holdback), at which point the Holdback shall be released to the Foreign Debtors to the extent provided for in the Court order or the applicable consent and shall be dealt with in accordance with Paragraph 10 above.

12. 9. 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 ~~Kingdom~~ or elsewhere, to give effect to this Order and to assist the Receiver ~~and its~~ Foreign Representatives and the Information Officer 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 Receiver Foreign Representatives and the Information Officer, as an officer of this Court, as may be necessary or desirable to give effect to this Order, to grant representative status to the Foreign Representatives or the Information Officer in any foreign proceeding, or to assist the Receiver and its Foreign Representatives or the Information Officer and their respective agents in carrying out the terms of this Order.

13. THIS COURT ORDERS that each of the Foreign Representatives and the Information Officer be at liberty and is 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.

Schedule A – Form of Receiver Information Officer's Certificate

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SUPERIOR COURT OF JUSTICE
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**IN THE MATTER OF THE COMPANIES' CREDITORS ARRANGEMENT ACT,
R.S.C. 1985, c. C-36, AS AMENDED**

**AND IN THE MATTER OF JAMES ROBERT TUCKER, RICHARD HEIS AND ALLAN
WATSON GRAHAM OF KPMG LLP, AS JOINT ADMINISTRATORS**

Applicants

**AND IN THE MATTER OF AERO INVENTORY (UK) LIMITED
and AERO INVENTORY PLC**

Respondents

**APPLICATION UNDER SECTIONS 46 AND FOLLOWING OF THE COMPANIES'
CREDITORS ARRANGEMENT ACT, R.S.C. 1985, c. C-36, AS AMENDED**

BETWEEN:

~~PLAINTIFF~~

Plaintiff

- and -

~~DEFENDANT~~

Defendant

RECEIVER INFORMATION OFFICER'S CERTIFICATE

RECITALS

A. Pursuant to an Order of the Honourable ~~[NAME OF JUDGE]~~ Justice Newbould of the Ontario Superior Court of Justice (the "Court") dated ~~[DATE OF ORDER]~~, ~~[NAME OF RECEIVER]~~ was appointed as the receiver (the "Receiver") of the undertaking, property and assets of ~~[DEBTOR]~~ (the "~~Debtor~~ November 11, 2009, KPMG Inc. was appointed as the information officer (in such capacity, the "Information Officer") of Aero Inventory (UK) Limited (in administration) and Aero Inventory PLC (in administration) (collectively, the "Foreign Debtors").

B. Pursuant to an Order of the Court dated ~~[DATE]~~ ● (the "Vesting Order"), the Court approved the administration sale of assets agreement of purchase and sale (Canadian Assets) made as of ~~[DATE OF AGREEMENT]~~ March 26, 2013 (the "Canadian Sale Agreement") between the Receiver ~~[Debtor]~~ and ~~[NAME OF PURCHASER]~~ Foreign Debtors, the Joint Administrators of the Foreign Debtors, and Diversified Aero Inventory I, LLC (the "Purchaser") and provided for the vesting in the Purchaser of the ~~Debtor's~~ Foreign Debtors' right, title and interest in and to the Purchased Assets, (other than the Unresolved Parts), (the "Canadian Transferred Assets") which vesting is to be effective with respect to those Purchased Assets upon the delivery by the Receiver Information Officer to the Purchaser of a certificate confirming (i) the payment by the Purchaser of the Purchase Price for the Purchased Canadian Transferred Assets; (ii) ~~that the conditions to Closing as matters set out in section ● of the Sale Agreement~~ item 2 below have been satisfied or waived by the Receiver Foreign Debtors and the Purchaser; ~~and~~ (iii) the Purchaser has delivered the Buyer's Acknowledgment; and (iv) the Transaction has been completed to the satisfaction of the Receiver Information Officer.

C. Unless otherwise indicated herein, terms with initial capitals have the meanings set out in the Canadian Sale Agreement and the Vesting Order.

THE RECEIVER INFORMATION OFFICER CERTIFIES the following:

1. The Purchaser has paid and the Receiver ~~has~~ Foreign Debtors have received the Purchase Price for the Purchased Canadian Transferred Assets payable on the ~~Closing~~ Completion Date pursuant to the Canadian Sale Agreement;
2. The conditions to Closing Completion as set out in ~~section ●~~ Section 9.2 of the Canadian Sale Agreement have been satisfied or waived by the Receiver Foreign Debtors and the

Purchaser and the Purchaser has paid the Initial Sum in full in accordance with Section 9.2 of the Canadian Sale Agreement.

3 the Purchaser has delivered the Buyer's Acknowledgment; and

3.4. The Transaction has been completed to the satisfaction of the Receiver Foreign Debtors.

4. This Certificate was delivered by the Receiver Information Officer at _____ [TIME] on _____ [DATE].

~~[NAME OF RECEIVER]~~ **KPMG Inc., in its capacity as Receiver Information Officer of the undertaking, property and assets of ~~[DEBTOR]~~ Aero Inventory (UK) Limited (in administration) and Aero Inventory PLC (in administration), and not in its personal capacity**

Per: _____

Name:

Title:

Revised: May 11, 2010

[INSERT BACK PAGE]

Schedule B—Purchased Assets

Schedule C—Claims to be deleted and expunged from title to Real Property

Schedule D—Permitted Easements, Easements and Restrictive Covenants
related to the Real Property

(unaffected by the Vesting Order)

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WATSON GRAHAM OF KPMG LLP, AS JOINT ADMINISTRATORS (Applicants)

AND IN THE MATTER OF AERO INVENTORY (UK) LIMITED and AERO INVENTORY
PLC (Respondents)

APPLICATION UNDER SECTIONS 46 AND FOLLOWING OF THE COMPANIES'
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**ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)**

Proceeding commenced at Toronto

MOTION RECORD

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