



Court File No. 32-158796

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

THE HONOURABLE

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MONDAY, THE 23RD DAY

JUSTICE

T. McQuay

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OF MARCH, 2015

**IN THE MATTER OF THE PROPOSAL OF
CANADIAN INDUSTRIAL DISTRIBUTORS INC.,
A COMPANY INCORPORATED PURSUANT TO THE LAWS OF ONTARIO,
WITH A HEAD OFFICE IN THE CITY OF BRAMPTON,
IN THE PROVINCE OF ONTARIO**

ORDER

THIS MOTION, made by Canadian Industrial Distributors Inc. ("**CID**") for an order, *inter alia*: (i) approving the First Report of The Fuller Landau Group Inc. ("**FLG**") in its capacity as the proposal trustee of CID (in such capacity, the "**Proposal Trustee**") dated March 16, 2015 (the "**First Report**"), and the actions of the Proposal Trustee described therein; (ii) approving an extension of the time for CID to file a proposal; (iii) granting a priority charge over all the assets, properties and undertakings of CID (collectively, the "**Property**") in the principal amount of \$150,000 to secure the fees and disbursements of counsel to CID, the Proposal Trustee, counsel to the Proposal Trustee and BDO Canada LLP/BDO Canada Limited in its role as financial advisor to CID ("**BDO**") (collectively, the "**Administration Charge**"); (iv) granting a priority charge over the Property in the principal amount of \$50,000 in order to protect CID's directors and officers from certain potential liabilities (the "**D&O Charge**"); and (v) approving

the “**Sale Process**”, as defined in the First Report and described therein, was heard this day at 330 University Avenue, Toronto, Ontario.

ON READING the affidavit of Larry Johns sworn on March 16, 2015 (the “**Johns Affidavit**”) and the First Report, and on hearing the submissions of counsel for CID, counsel for FLG and such other counsel as were present, no one appearing for any other person on the service list, although duly served as appears from the affidavit of service of Susy Moniz sworn on or about March 16, 2015, filed,

SERVICE

1. **THIS COURT ORDERS** that the time for service and filing of the notice of motion and the motion record is hereby abridged and validated so that this motion is properly returnable today and hereby dispenses with further service thereof.

APPROVAL OF THE FIRST REPORT

2. **THIS COURT ORDERS** that the First Report be and is hereby approved and the actions of the Proposal Trustee described therein be and are hereby approved.

STAY EXTENSION

3. **THIS COURT ORDERS** that the time for filing a proposal under section 50.4 of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended (the “**BIA**”), is extended to and including May 10, 2015.

POWERS OF THE PROPOSAL TRUSTEE

4. **THIS COURT ORDERS** that the Proposal Trustee continues to be and is hereby authorized to take all steps required to fulfill its duties under the BIA or as an officer of this Court, including, without limitation, to:

- (a) report to this Court at such times and intervals as the Proposal Trustee may deem appropriate with respect to matters relating to the Property and such other matters as may be relevant to the proceedings herein;
- (b) have full and complete access to the Property, including the premises, books, records, data, including data in electronic form, and other financial documents of CID, to the extent that is necessary to adequately assess CID's business and financial affairs or to perform its duties arising under this Order; and
- (c) perform such other duties as are required by this Order or by this Court from time to time.

5. **THIS COURT ORDERS** that, in addition to the rights and protections afforded the Proposal Trustee under the BIA or as an officer of this Court, the Proposal Trustee 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 Proposal Trustee under the BIA or any applicable legislation.

ADMINISTRATION CHARGE

6. **THIS COURT ORDERS** that counsel to CID, the Proposal Trustee, counsel to the Proposal Trustee and BDO shall be entitled to the benefit of and are hereby granted the Administrative Charge on the Property, which charge shall not exceed an aggregate amount of \$150,000, as security for their fees and disbursements incurred at the standard rates and charges of the Proposal Trustee, BDO and such counsel, both before and after the making of this Order, in respect of these proceedings. The Administration Charge shall have the priority set out in paragraphs 11 and 12 of this Order.

7. **THIS COURT ORDERS** that counsel to CID, the Proposal Trustee, counsel to the Proposal Trustee and BDO shall pass their accounts from time to time, and for this purpose the accounts of CID's legal counsel, the Proposal Trustee, the Proposal Trustee's legal counsel and BDO are hereby referred to a judge of the Commercial List of the Ontario Superior Court of Justice.

DIRECTORS' AND OFFICERS' INDEMNIFICATION AND CHARGE

8. **THIS COURT ORDERS** that CID shall indemnify its directors and officers against obligations and liabilities that they may incur as directors or officers of CID after the commencement of the within proceedings that arise on or after February 24, 2015 or are otherwise referable to the period on or after February 24, 2015, 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.

9. **THIS COURT ORDERS** that the directors and officers of CID shall be entitled to the benefit of and are hereby granted the D&O Charge on the Property, which charge shall not exceed an aggregate amount of \$50,000, as security for the indemnity provided in paragraph 8 of this Order. The D&O Charge shall have the priority set out in paragraphs 11 and 12 of this Order.

10. **THIS COURT ORDERS** that, notwithstanding any language in any applicable insurance policy to the contrary, (a) no insurer shall be entitled to be subrogated to or claim the benefit of the D&O Charge, and (b) CID's directors and officers shall only be entitled to the benefit of the D&O Charge to the extent that they do not have coverage under any directors' and officers' insurance policy, or to the extent that such coverage is denied or insufficient to pay amounts indemnified in accordance with paragraphs 8 and 9 of this Order.

VALIDITY AND PRIORITY OF CHARGES CREATED BY THIS ORDER

11. **THIS COURT ORDERS** that the priorities of the Administration Charge and the D&O Charge (collectively, the "**Charges**") as between themselves shall be as follows: (a) first, the Administration Charge to a maximum amount of \$150,000; and (b) second, the D&O Charge to a maximum amount of \$50,000.

12. **THIS COURT ORDERS** that each of the Charges shall constitute a charge on the Property and that such Charges shall rank in priority to all other security interests, trusts, liens, charges, mortgages, claims and encumbrances, secured, statutory or otherwise (collectively, "**Encumbrances**") in favour of:

- (a) in the case of the Administration Charge, any other person; and

- (b) in the case of the D&O Charge, any other person except HSBC Bank of Canada (“**HSBC**”), such that, for greater certainty, the Encumbrances in favour of HSBC shall rank behind the Administration Charge but in priority to the D&O Charge.

13. **THIS COURT ORDERS** that the filing, registration or perfection of the Charges shall not be required, and that the Charges are and shall be valid and enforceable against the Property for all purposes, including, without limitation, 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 the Charges.

14. **THIS COURT ORDERS** that the Charges 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 in these proceedings; (b) any application for a bankruptcy order issued pursuant to the 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 CID, and notwithstanding any provision to the contrary in any such Agreement:

- (a) the creation of the Charges shall not create or be deemed to constitute a breach by CID of any Agreement to which it is a party;

- (b) 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 creation of the Charges; and
- (c) the payments made by CID pursuant to this Order 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.

15. **THIS COURT ORDERS** that any Charge created by this Order over leases of real property shall only be a Charge in CID's interest in such real property leases.

APPROVAL OF THE SALE PROCESS

16. **THIS COURT ORDERS** that the Sale Process, as described in the First Report, be and is hereby approved.

17. **THIS COURT ORDERS** that CID, BDO and the Proposal Trustee be and are hereby authorized and directed to perform their obligations under and take such steps as they consider necessary or desirable in carrying out the Sale Process, and any step taken by CID, BDO and the Proposal Trustee in connection with the Sale Process prior to the date hereof be and is hereby approved and ratified.

18. **THIS COURT ORDERS** that neither the Proposal Trustee nor BDO shall have any personal or corporate liability in connection with the Sale Process, including, without limitation:

- (a) by advertising the Sale Process, if any, including, without limitation, the opportunity to acquire all or a portion of the Property or invest by way of equity or debt in CID's business (the "**Business**");
- (b) by exposing or not exposing the Property to any and all parties, including, but not limited to, those parties who have made their interests known to one or both of the Proposal Trustee and BDO;
- (c) by responding to any and all requests or enquiries in regards to due diligence conducted in respect of CID or the Property;
- (d) through the disclosure of any and all information regarding CID or the Property arising from, incidental to or in connection with the Sale Process;
- (e) pursuant to any and all offers received by CID in accordance with the Sale Process; and
- (f) pursuant to any agreements entered into by CID in respect of the sale of any of the Property or the investment in or financing of the Business.

19. **THIS COURT ORDERS** that, pursuant to clause 7(3)(c) of the Canada *Personal Information Protection and Electronic Documents Act*, CID and the Proposal Trustee are authorized and permitted to disclose personal information of identifiable individuals to prospective purchasers of the Property, investors in or financiers of the Business and their respective advisors, but only to the extent desirable or required to negotiate and attempt to complete one or more sales of the Property or investments in or financings of the Business (each, a "**Sale/Investment**"). Each prospective purchaser, investor or financier to whom such

information is provided shall limit the use of such information to its evaluation of the Sale/Investment, and if it does not complete a Sale/Investment, it shall return all such information to CID or the Proposal Trustee, or in the alternative destroy all such information. The purchaser of any Property shall be entitled to continue to use the personal information provided to it, and related to the Property purchased, in a manner which is in all material respects identical to the prior use of such information by CID, and shall return all other personal information to CID or the Proposal Trustee, or ensure that all other personal information is destroyed.

GENERAL

20. **THIS COURT ORDERS** that CID or the Proposal Trustee may from time to time apply to this Court for advice and directions in the discharge of its powers and duties hereunder.

21. **THIS COURT ORDERS** that nothing in this Order shall prevent the Proposal Trustee from acting as an interim receiver, a receiver, a receiver and manager, a trustee in bankruptcy or a monitor of CID, the Business or the Property.

22. **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 CID, the Proposal Trustee 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 CID and to the Proposal Trustee, as an officer of this Court, as may be necessary or desirable to give effect to this Order, to grant representative status to the Proposal Trustee in any foreign proceeding or to

assist CID, the Proposal Trustee and their respective agents in carrying out the terms of this Order.

23. **THIS COURT ORDERS** that each of CID and the Proposal Trustee 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, and that the Proposal Trustee is authorized and empowered to act as a representative in respect of the within proceedings for the purpose of having these proceedings recognized in a jurisdiction outside Canada.

24. **THIS COURT ORDERS** that any interested party (including CID and the Proposal Trustee) 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.

25. **THIS COURT ORDERS** that this Order and all of its provisions are effective as of 12:01 a.m. Eastern Daylight Time on the date of this Order.



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Proceedings commenced at Toronto

ORDER

THOMPSON, MACCOLL & STACY LLP
Suite 5, 1020 Matheson Blvd. E.
Mississauga, ON L4W 4J9

Robert L. Riteman (LSUC # 29643R)

Tel: (905) 625-5591

Fax: (905) 238-3313

Email: riteman@tmslaw.com

Lawyers for Canadian Industrial Distributors Inc.