

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

THE HONOURABLE) TUESDAY, THE 23RD DAY
)
MADAM JUSTICE HOY) OF MARCH, 2010

BETWEEN:



BANK OF MONTREAL

Applicant

- and -

FINANCIAL TRANSPORT INC., FREIGHTLINER OF KINGSTON INC.,
6181732 CANADA INC., GLOBAL TRANSPORT INSURANCE BROKERS INC.,
JAIN TRUCK LEASE LTD. and 2105810 ONTARIO INC.

Respondents

APPLICATION UNDER Section 243 of the *Bankruptcy and Insolvency Act*, R.S.C 1985, c. B-3,
and Section 101 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43.

ORDER

THIS MOTION, made by Deloitte & Touche Inc., in its capacity as court appointed Receiver (the “**Receiver**”) of the assets, undertakings and properties of Financial Transport Inc., Freightliner of Kingston Inc., 6181732 Canada Inc., Global Transport Insurance Brokers Inc., Jain Truck Lease Ltd. and 2105810 Ontario Inc. (collectively the “**Debtors**”) appointed pursuant to an Order dated February 4, 2010 (the “**Receivership Order**”), for an Order, among other things:

- (a) accepting and approving the Second Report of the Receiver dated March 15, 2010 (the "**Second Report**"), and the activities of the Receiver and its counsel described therein;
- (b) approving the offer from Ritchie Bros. Auctioneers (Canada) Ltd. ("**Ritchie**") dated March 11, 2010 and attached as Exhibit "D" to the Second Report (the "**Ritchie Proposal**"), in connection with the sale of the truck and trailer inventory of the Debtors (the "**Vehicles**");
- (c) sealing the unredacted copy of the Ritchie Proposal;
- (d) authorizing the Receiver to retain the services of Ritchie with respect to future dispositions of any Vehicles recovered by the Receiver;
- (e) approving the process to deal with the return of undisputed Vehicles and Vehicles with conflicting security interests; and
- (f) approving the listing price of the property located at 4598 Tomken Road, Mississauga, Ontario (the "**Tomken Property**");

was heard this day at 330 University Avenue, Toronto, Ontario.

ON READING the Second Report and the Supplement to the Receiver's Second Report, including the Exhibits thereto and on hearing the submissions of counsel for the Receiver and counsel for the Debtors, and counsel for Corporation Alter Moneta/Alter Moneta Corporation and CIT Financial Ltd., no one else attending although properly served as appears from the affidavit of service of Susy Moniz sworn March 16, 2010,

1. **THIS COURT ORDERS** that the Second Report be and is hereby accepted and approved, along with the activities of the Receiver and its counsel described therein.

2. **THIS COURT ORDERS** that the Ritchie Proposal in connection with the sale of the truck and trailer inventory of the Debtors as recorded with the Ministry of Transportation for the Province of Ontario as at February 4, 2010 (the "**Vehicles**") be and is hereby approved. The execution of the Ritchie Proposal by the Receiver is hereby authorized and approved and the

Receiver is hereby authorized and directed to take such additional steps and to execute such additional documents as may be necessary or desirable for the completion of the sale of Vehicles pursuant to the Ritchie Proposal and for the conveyance of any assets in accordance with the Ritchie Proposal.

3. **THIS COURT ORDERS** and declares that upon Ritchie completing the sale of any of the Vehicles to a purchaser in accordance with the terms of the Ritchie Proposal, and the delivery of proceeds of sale to Ritchie with delivery of a Bill of Sale to such purchaser ("Bill of Sale") all right, title and interest in and to the subject Vehicles described in the Bill of Sale shall vest absolutely in such purchaser free and clear of and from:

- (i) Any encumbrances created by the Order of the Honourable Mr. Justice Cameron of February 4, 2010;
- (ii) Any and all security interests including all charges, security interests, claims or claims to title evidence by registrations pursuant to the *Personal Property Security* (Ontario) or any other personal property security registration system; or
- (iii) Claims to ownership interests contrary to the title recorded with the Ministry of Transportation with the Province of Ontario as at February 4, 2010;

(collectively "Claims").

4. **THIS COURT ORDERS** that for the purposes of determining the nature and priority of Claims, the net proceeds from the sale of any Vehicle shall stand in the place and stead of that Vehicle, and that from and after the delivery to the relevant Purchaser of the Bill of Sale conveying such Vehicle, all Claims shall attach to the net proceeds from the sale of the Vehicle with the same priority as they had with respect to the Vehicle immediately prior to the sale, as if such Vehicle 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** that, notwithstanding:

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

the vesting of the Vehicles in the Purchasers pursuant to this Order shall be binding on any trustee in bankruptcy that may be appointed in respect of the Debtors and shall not be void or voidable by creditors of the Debtors, nor shall it constitute nor be deemed to be a settlement, fraudulent preference, assignment, fraudulent conveyance 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.

6. **THIS COURT ORDERS AND DECLARES** that the Transactions are exempt from the application of the *Bulk Sales Act* (Ontario).

7. **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 Receiver and its 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, as an officer of this Court, as may be necessary or desirable to give effect to this Order or to assist the Receiver and its agents in carrying out the terms of this Order.

8. **THIS COURT ORDERS** that the process to deal with the return of undisputed Vehicles and Vehicles with conflicting security interests as described in the Second Report is hereby approved.

9. **THIS COURT ORDERS** that any person or entity claiming to have an interest in any Vehicle may move in this proceeding on at least 4 days notice to the service list and any other

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Applicant

Respondents

Court File No: CV-10-8556-00CL

**ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)**

Proceeding commenced at Toronto

ORDER

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