

ONTARIO
SUPERIOR COURT OF JUSTICE

THE HONOURABLE MR. / ~~MDM~~)
JUSTICE *Reid*)

TUESDAY, the 28th
DAY OF MAY, 2013

B E T W E E N:

ORLANDO IERACI, GIUSEPPE MELECA, FRANK TROIANO,
CONCEZIO BATTAGLINI, CARMELO COMMISSO,
FRANCESCO GAGLIANO, GIUSEPPE GAGLIANO, DAVID
MEADOWS, GIUSEPPE COMMISSO, JOHN KOLOVOS,
BORDEN KENT, GABRIEL DIVITTORIO, 747304 ONTARIO
LIMITED, RITA BENNETT, MAGGIORINO TORRESAN, MARCO
BATTAGLINI, DAVID BATTAGLINI, LEO BATTAGLINI,
VINCENZO MINNELLA, DINO MINNELLA, FERRUCCIO
AGOSTINO, TONY MINNELLA, VITO MINNELLA, ROCCO
MINNELLA, ANNA M. MINNELLA and JOHN PETROSINO

Applicants

-and-

VINCENZO POLSINELLI, RODOLFO GRANATA, GARA
HOLDINGS, NAJEEB WAHAB, P.O.S.E. INVESTMENTS,
910913 ONTARIO INC. and TERRY HOPKINS

Respondents



CLAIMS PROCEDURE ORDER

THIS MOTION, made DELOITTE & TOUCHE INC. (“Deloitte” or the “Receiver”) in its capacity as the Manager and Receiver of the assets of P.O.S.E. Investments, 910912 Ontario Limited and 910913 Ontario Limited (collectively, “P.O.S.E.”), for an Order, among other things, authorizing and directing the Receiver to implement a claims process for certain creditors of P.O.S.E., was heard this day at 45 Main Street East, Hamilton, Ontario.

ON READING the notice of motion herein, the Third Report of the Receiver dated May 1, 2013 (the "**Third Report**") and on hearing submissions of counsel for the Receiver, no one else appearing although duly served as appears from the affidavits of service.

SERVICE

1. **THIS COURT ORDERS** that the time for service of the Notice of Motion and the Motion Record, herein, be and it is hereby abridged, if necessary, and that the service, including the manner of service of the application materials, be and it is hereby approved and validated, that this Motion is properly returnable today and that all parties entitled to notice were validly served and that the notice provided in respect of this Motion was adequate for all purposes whatsoever and that the Motion is properly returnable before this Court and that further service thereof upon any interested party other than those served is hereby dispensed with.

APPROVAL OF THIRD REPORT AND ACTIVITIES OF RECEIVER

2. **THIS COURT ORDERS** that the Third Report be and the same is hereby accepted and approved.
3. **THIS COURT ORDERS** that, without prejudice to the rights of any creditor to make submissions regarding the collection, administration and segregation of receivables by the Receiver (including the funds set aside for potential carrier trust claims by the Receiver), the conduct of the Receiver, its related entities and agents to date, as detailed in the Third Report, be and the same are hereby approved.
4. **THIS COURT ORDERS** that the Receiver's interim receipts and disbursements for the period from April 2, 2012 to April 15, 2013 be and the same are hereby approved.

DEFINITIONS

5. **THIS COURT ORDERS** the following terms shall have the meanings ascribed:
- a. **“Affected Creditor Claim”** means all Claims by a Creditor other than Unaffected Claims;
 - b. **“Affected Creditor”** means all Creditors with Creditor Claims;
 - c. **“Affected Unitholder”** means all Unitholders with Unitholder Claims;
 - d. **“Appointment Date”** means April 2, 2012;
 - e. **“Business Day”** means a day which is not: (a) a Saturday or a Sunday; or (b) a day observed as a holiday under the laws of the Province of Ontario or the federal laws of Canada applicable in the Province of Ontario;
 - f. **“Creditor Claim”** means any right or claim of any Person against the Company, whether or not asserted, in connection with any indebtedness, liability or obligation of any kind of the Company, which indebtedness, liability or obligation is in existence at the Appointment Date and which is not a Post-Filing Claim, and any interest that may accrue thereon which there is an obligation to pay, and costs which such Person would be entitled to receive pursuant to the terms of any contract with such Person at law or in equity, any right of ownership of or title to property or assets or to a trust or deemed trust (statutory or otherwise) against any property or assets, whether or not reduced to judgment, liquidated, unliquidated, fixed, contingent, matured, unmatured, disputed, undisputed, legal, equitable, secured, unsecured, perfected, unperfected, present, future, known, or unknown, by guarantee, surety or otherwise, and whether or not such right is executory or anticipatory in nature, or any right or ability of any Person to advance a claim for contribution or indemnity or otherwise with respect to any matter, action, cause or chose in action, whether existing at present or commenced in the

future, based in whole or in part on facts which exist prior to the Appointment Date, together with any other claims that would have been claims provable in bankruptcy had the Company become bankrupt on the Appointment Date;

- g. **“Cost Claim”** means any right of claim of any Person pursuant to paragraph 33 in the Order of the Honourable Justice Thompson dated April 2, 2012 in these proceedings;
- h. **“Claims Bar Date”** means 5:00 p.m. on September 30, 2013;
- i. **“Claims Procedure”** means the claims procedure and schedules set out herein and as approved by the Court, as may be amended from time to time;
- j. **“Company”** means P.O.S.E. Investments;
- k. **“Court”** means the Ontario Superior Court of Justice;
- l. **“Creditor”** means any Person having a Claim and, if the context requires, an assignee or transferee of a Claim or a trustee, receiver, receiver manager or other Person acting on behalf of such Person;
- m. **“Dollars”** or **“\$”** means lawful money of Canada unless otherwise indicated;
- n. **“Notice to Creditors and Unitholders”** means the notice substantially in the form attached hereto as **Schedule “A”**;
- o. **“Notice of Revision or Disallowance”** means the notice substantially in the form of **Schedule “C”**;
- p. **“Order”** means any order of the Court in connection with the Receivership Proceedings;

- q. **“Person”** means any individual, partnership, joint venture, trust, corporation, unincorporated organization, government or any agency or instrumentality thereof, or any other juridical entity howsoever designated or constituted;
- r. **“Proof of Claim”** means the Proof of Claim substantially in the form attached hereto as **Schedule “B”**;
- s. **“Receiver”** means Deloitte & Touche Inc., as appointed by the Initial Order;
- t. **“Unaffected Claims”** means (a) Claims of the Receiver and its counsel before or after the Appointment Date; (b) Claims for wages, salary and vacation pay accruing due to employees; and (c) Claims for amounts due for goods or services actually supplied to the Company or Receiver after the Appointment Date (c) Claims by a government authority that has the status of deemed trust;
- u. **“Unaffected Creditor”** means any Creditor with an Unaffected Claim;
- v. **“Unitholder”** means any Person having a Unitholder Claim and, if the context requires, an assignee or transferee of a Unitholder Claim or a trustee, receiver, receiver manager, estate executor or power of attorney or other Person acting on behalf of such Person; and
- w. **“Unitholder Claim”** means any paid-up ownership, equity interest or payment advance made to the Company, without interest.

GENERAL PROVISIONS

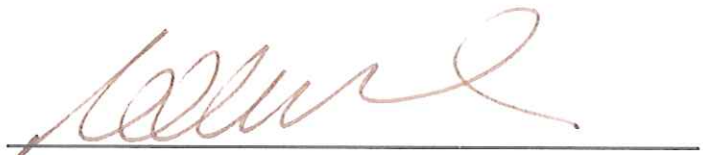
- 6. **THIS COURT ORDERS** copies of all Proofs of Claim and Notices of Revision or Disallowance, and determinations of Claims by the Court shall be maintained by the Receiver and, subject to further Order of the Court, all Creditors or Unitholders will be entitled to have access thereto by appointment during normal business hours on written request to the Receiver.


7. **THIS COURT ORDERS** for the purposes of this Claims Procedure, all Creditor Claims or Unitholder Claims which are denominated in a foreign currency shall be converted to Canadian dollars as at the Appointment Date.
8. **THIS COURT ORDERS** the Receiver is authorized to use reasonable discretion as to adequacy of compliance with respect to the manner in which Proofs of Claim and Notices of Revision or Disallowance are completed and executed, and may, where the Receiver is satisfied that a Claim has been adequately proven, waive strict compliance with the requirements of this Claims Procedure as to completion and execution of Proofs of Claim or Notices of Revision or Disallowance.
9. **THIS COURT ORDERS** any document to be sent pursuant to this Claims Procedure may be sent by e-mail, ordinary mail, registered mail, courier or facsimile transmission. An Affected Creditor or Affected Unitholder shall be deemed to have received any document sent pursuant to this Claims Procedure five (5) calendar days after such document is sent by ordinary mail and registered mail and one calendar day after such document is sent by e-mail, courier or facsimile transmission.
10. **THIS COURT ORDERS** in the event that any provision of the Claims Procedure is amended by or is contrary to a provision of an Order of the Court made in the Receivership Proceedings, the provision of such Order shall have precedence over the provision of the Claims Procedure.
11. **THIS COURT ORDERS** all references to time herein shall mean local time in Toronto, Ontario, Canada and any reference to an event occurring on a Business Day shall mean prior to 5:00 p.m. on such Business Day unless otherwise indicated herein.
12. **THIS COURT ORDERS** references to the singular herein include the plural, the plural includes the singular and any gender includes the other gender.

CLAIMS PROCEDURE

13. **THIS COURT ORDERS** that the Receiver shall send, on or before 11:59 p.m. on **June 30, 2013**, to each known Affected Creditor and Affected Unitholder a Proof of Claim together with a copy of the Claims Procedure and the Order approving the Claims Procedure.
14. **THIS COURT ORDERS** that on or before **June 30, 2013**, the Receiver shall publish the Notice to Creditors and Unitholders substantially in the form attached as **Schedule "A"** hereto, in The Globe and Mail (National Edition) and the Aurora local newspaper.
15. **THIS COURT ORDERS** that the Receiver shall send to each Affected Creditor and Affected Unitholder responding to the Notice to Creditors and Unitholders a Proof of Claim together with a copy of the Claims Procedure.
16. **THIS COURT ORDERS** that each Affected Creditor must return the Proof of Claim to the Receiver by no later than the Claims Bar Date.
17. **THIS COURT ORDERS** that any Affected Creditor or Affected Unitholder that does not file a Proof of Claim by the Claims Bar Date:
 - a. shall not be entitled to receive any distribution and its Creditor Claim or Unitholder Claim shall be forever extinguished and barred; and
 - b. shall not be entitled to notice of any further matters in the Receivership Proceedings.
18. **THIS COURT ORDERS** that unaffected Creditors shall not be required to participate in the Claims Procedure in respect of their Unaffected Claims. The Receiver will not review or consider any Proof of Claim filed in respect of an Unaffected Claim.

19. **THIS COURT ORDERS** that the Receiver shall review all Proofs of Claim received by the Claims Bar Date and by no later than 11:59 p.m. on **October 31, 2013**, have notified each Creditor and Unitholder who has filed a Proof of Claim as to whether such Creditor's Claim or Unitholder's Claim as set out therein has been revised or rejected, and the reasons therefor, by sending a Notice of Revision or Disallowance substantially in the form attached as **Schedule "C"** hereto. Where the Receiver does not send by such date a Notice of Revision or Disallowance to a Creditor or Unitholder who has submitted a Proof of Claim, the Receiver shall be deemed to have accepted such Creditor's Claim in the amount set out in the Proof of Claim.
20. **THIS COURT ORDERS** that any Creditor or Unitholder who intends to dispute a Notice of Revision or Disallowance shall, by no later than 5:00 p.m. on the day that is ten (10) days after the delivery of the Notice of Dispute or Disallowance, serve a Notice of Motion on the Receiver seeking to appeal the Receiver's determination. The motion must be returnable for scheduling on **November 19, 2013**.
21. **THIS COURT ORDERS** that where a Creditor or Unitholder that receives a Notice of Revision or Disallowance does not serve a Notice of Motion by the date required, the value of such Creditor's Claim shall be deemed to be as set out in the Notice of Revision or Disallowance.
22. **THIS COURT ORDERS** that the Receiver may apply to the Court for advice and directions with respect to the implementation and operation of the provisions of this Order.



ENTERED AT HAMILTON
IN Book No. 299
as Document No. 279
on MAY 29 2013
by. 

Schedule "A"

NOTICE TO CREDITORS AND UNITHOLDERS OF P.O.S.E. INVESTMENTS

TAKE NOTE THAT DELOITTE & TOUCHE INC., COURT-APPOINTED RECEIVER OF P.O.S.E. INVESTMENTS, a partnership holding real property through 910912 Ontario Inc. and 910913 Ontario Inc. has obtained an Order of the Ontario Superior Court of Justice made May 6, 2013 (the "Order"). The Order provides for a procedure for the determination of all claims, contingent, ownership interests or otherwise against P.O.S.E. Investments.

THE CLAIMS BAR DATE is 5:00 p.m. (Toronto time) on September 30, 2013. You must file a Proof of Claim by this date in order to participate in the distribution. Any creditor or unitholder who has not received a Proof of Claim in the mail must contact the Receiver immediately to determine if they are an Affected Creditor or Affected Unitholder and obtain a Proof of Claim. The Receiver can be contacted at:

DELOITTE & TOUCHE INC.
4210 KING STREET EAST
Kitchener, ON N2P 2G5

Attention: Dennis Pentsa, CPA, CA
Telephone: (519) 650-7849
Facsimile: (519) 650-7601
dpentsa@deloitte.ca

HOLDERS OF AFFECTED CLAIMS who do not file a Proof of Claim by the Claims Bar Date will not be entitled to participate in any distribution to be made by the Receiver.

Schedule "B"

Proof of Claim

A. Particulars of Creditor / Unitholder:

Full Legal Name

Full Mailing Address:

Telephone Number

Facsimile Number:

E-mail Address:

Attention (Contact Person):

B. Particulars of Original Creditor or Unitholder from Whom You Acquired Claim, if Applicable:

(1) Have you acquired this Claim by assignment?

Yes [] No []

(if yes, attach documents evidencing assignment)

(2) Full Legal Name of Original Creditor(s) / Unitholder (s):

C. Claim:

I,, [*name of Creditor / Unitholder or authorized representative*], do hereby certify that I am a Creditor / Unitholder of/hold the position of of the Creditor / Unitholder and have knowledge of all the circumstances connected with the Claim described herein; and

The Creditor / Unitholder makes the following Claim (e.g. claims as at April 2, 2012) against P.O.S.E. Investments (the "Company"):

Claim Amount \$ _____

D. Particulars of Claim:

Circle nature of Claim :

Affected Creditor Claim / Cost Claim / Affected Unitholder Claim

The Particulars of the undersigned's total Claim are attached.

(Provide full particulars of the Claim and supporting documentation, including amount, description of transaction(s) or agreement(s), certificate(s), bank records, etc. giving rise to the Claim).

THIS PROOF OF CLAIM MUST BE RETURNED TO AND RECEIVED BY THE RECEIVER BY 5:00 P.M. (TORONTO TIME) ON THE CLAIMS BAR DATE (SEPTEMBER 30, 2013) AT THE FOLLOWING ADDRESS:

DELOITTE & TOUCHE INC.
4210 KING STREET EAST
Kitchener, ON N2P 2G5

Attention: Dennis Pentsa, CPA, CA
Telephone: (519) 650-7849
Facsimile: (519) 650-7601
dpentsa@deloitte.ca

DATED at this day of, 2013

Per: _____
Signature

Schedule "C"

Notice of Revision or Disallowance

TO: *[insert name and address of creditor / unitholder]*

Deloitte & Touche Inc. (the "**Receiver**"), has reviewed your Proof of Claim dated the ____ day of _____, 2013, and has revised or rejected your claim for the following reasons:

[Please see attached]

Subject to further dispute by you in accordance with the provisions of the Claims Procedure, your Claim will be allowed as follows:

Claims as Filed	Affected Claim as Allowed

If you intend to dispute this Notice of Revision or Disallowance, you must, no later than **ten (10) days after the delivery of this notice**, bring a Motion seeking to appeal the Receiver's determination by serving a Notice of Motion seeking to appeal the Receiver's determination. Your Motion must be returnable for scheduling on **November 19, 2013** and served on the Receiver at:

DELOITTE & TOUCHE INC.
4210 KING STREET EAST
Kitchener, ON N2P 2G5

Attention: Rob Biehler, CPA, CA•CIRP
Telephone: (905) 315-5785
Facsimile: (519) 650-7601
rbiehler@deloitte.ca

with a copy to:

GOWLING LAFLEUR HENDERSON LLP
One Main Street West
Hamilton, Ontario
L8P 4Z5 Canada

Attention: Robert Dunford
Facsimile: (905) 523-2948
rdunford@gowlings.com

If you do not bring a Motion appealing, the value of your Claim shall be deemed to be as set out in this Notice of Revision or Disallowance.

DATED at _____, this _____ day of _____, 2013.

DELOITTE & TOUCHE INC.

Per: _____
Authorized Signing Officer

ORLANDO IERACI et al.
Applicants

v.

Court File No.: CV-12-36909
VINCENZO POLSINELLI et al.
Respondents

ONTARIO
SUPERIOR COURT OF JUSTICE
Proceeding Commenced at Orangeville

CLAIMS PROCEDURE ORDER

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Receiver of P.O.S.E. Investments