

February 3, 2021

**HAND DELIVERED**

The Honourable Justice Presiding in Chambers  
Supreme Court of Nova Scotia  
The Law Courts  
1815 Upper Water Street  
Halifax NS B3J 1S7

My Lord/My Lady:

**Re: Canadian Imperial Bank of Commerce v. 3304051 Nova Scotia Limited –  
- Application for Bankruptcy Order**

We act for the Applicant, Canadian Imperial Bank of Commerce (“CIBC”), which brings this application for a bankruptcy order against 3304051 Nova Scotia Limited, which carries on business as Hefler Forest Products (“Hefler”).

CIBC is a creditor of Hefler, which operated a sawmill and a biomass electric co-generation facility in Middle Sackville, Nova Scotia.

CIBC applied for, and was granted, an interlocutory receivership order against Hefler on January 22, 2021. CIBC has also applied for the appointment of Deloitte as a Rule 73 Receiver of Hefler, a motion to be heard on the same date as this application.

On this application, we filed an affidavit of Kyle Lane. Deloitte Restructuring Inc. is expected to file a report on its interlocutory receivership activities. We will also be filing our affidavit of service.

Please accept the following as the submissions of CIBC on the application.

## **Facts**

The facts relevant to this proceeding are set out in the affidavit filed herein and the Deloitte Report. CIBC is the first priority secured lender of Hefler. The affidavit of Kyle Lane describes the indebtedness. Mr. Lane has estimated the value of the assets under security and the estimated remaining unsecured claim of \$3,146,978.45, as at January 14, 2021. Maritime Pressureworks Limited filed a Builders' Lien on the Hefler lands on January 15, 2021 for the sum of \$154,113.32 for services provided on or before December 19, 2020.

On January 22, 2021, this court granted a Rule 41 Interlocutory Receivership order.

At the same time as seeking this order, CIBC is seeking the issuance of a Rule 73 Receivership Order against Hefler.

## **Issues**

The issue for determination on this motion is whether a bankruptcy order should be issued against Hefler.

## **Law**

Bankruptcy and Insolvency Act, section 43 provides, in part:

**43 (1)** *Subject to this section, one or more creditors may file in court an application for a bankruptcy order against a debtor if it is alleged in the application that*

**(a)** *the debt or debts owing to the applicant creditor or creditors amount to one thousand dollars; and*

**(b)** *the debtor has committed an act of bankruptcy within the six months preceding the filing of the application.*

### ***If applicant creditor is a secured creditor***

**(2)** *If the applicant creditor referred to in subsection (1) is a secured creditor, they shall in their application either state that they are willing to give up their security for the benefit of the creditors, in the event of a bankruptcy order being made against the debtor, or give an estimate of the value of the applicant creditor's security, and in the latter case they may be admitted as an applicant creditor to the extent of the balance of the debt due to them after deducting the value so estimated, in the same manner as if they were an unsecured creditor.*

### ***Affidavit***

**(3)** *The application shall be verified by affidavit of the applicant or by someone duly authorized on their behalf having personal knowledge of the facts alleged in the application. ...*

### ***Place of filing***

**(5)** *The application shall be filed in the court having jurisdiction in the judicial district of the locality of the debtor.*

***Proof of facts, etc.***

**(6)** *At the hearing of the application, the court shall require proof of the facts alleged in the application and of the service of the application, and, if satisfied with the proof, may make a bankruptcy order. ...*

***Appointment of trustee***

**(9)** *On a bankruptcy order being made, the court shall appoint a licensed trustee as trustee of the property of the bankrupt, having regard, as far as the court considers just, to the wishes of the creditors.*

As to the statutory requirements above:

- a) CIBC has valued its security and estimated its unsecured claim. That unsecured claim is in excess of \$1,000.
- b) Helfer has committed an act of bankruptcy in the last six months by failing to pay its creditors generally as they became due.
- c) The facts have been verified by affidavit. The Deloitte Report is a report from an officer of the court and has the evidentiary weight of an affidavit.
- d) This court has jurisdiction in the judicial district of the locality of the debtor.
- e) Service has been proven.
- f) Deloitte Restructuring Inc. has consented to act as Trustee of the bankruptcy estate and is qualified to do so.

**ORDER & RELIEF SOUGHT**

CIBC therefore requests this Honourable Court grant a bankruptcy order against 3304051 Nova Scotia Limited, which carries on business as Helfer Forest Products, and appoints Deloitte Restructuring Inc. as Trustee of the bankruptcy estate.

We have included a form of order which is in the standard format.

All of which is respectfully submitted.

BURCHELLS LLP



D. Bruce Clarke, Q.C.

DBC/grm  
Encls.  
c. Service List  
c. client

**Schedule "A" – Service List**

<b>Person</b>	<b>Contact</b>	<b>Method of Service</b>
3304051 Nova Scotia Limited	No officers, directors or recognized agent	Delivery to registered office, 300-1969 Upper Water Street, Halifax, NS B3J 3R7
Canadian Imperial Bank of Commerce	Bruce Clarke, QC	<a href="mailto:bclarke@bruchells.ca">bclarke@bruchells.ca</a>
Hawthorne Capital Inc.	Maurice Chaisson, QC	<a href="mailto:mchaisson@stewartmckelvey.com">mchaisson@stewartmckelvey.com</a>
Katalyst Wind Inc.	Amy Chan, Recognized Agent	Delivery to registered office, 300 Prince Albert Road, Unit 216, Dartmouth, NS B2Y 4J2
Maritime Pressureworks Limited	Brian Creighton	<a href="mailto:bcreighton@creightonshatford.ca">bcreighton@creightonshatford.ca</a>
RiverRoad Holdings Inc.	Michael Simms, Recognized Agent	<a href="mailto:Michael.simms@mcinnescooper.com">Michael.simms@mcinnescooper.com</a>
Thornridge Holdings Limited	Maurice Chaisson, QC	<a href="mailto:mchaisson@stewartmckelvey.com">mchaisson@stewartmckelvey.com</a>
VFS Canada Inc.	238 Wellington St., E., 3 <sup>rd</sup> Floor Aurora, ON L4F 1J5 Fax: (905) 726-5525	<a href="mailto:infocanada@vfsco.com">infocanada@vfsco.com</a>