

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE**

In re:	:	Chapter 15
	:	
Kraus Carpet Inc., <u>et al.</u> , ¹	:	Case No. 18-12057 (KG)
	:	
Debtors in a Foreign Proceeding.	:	Joint Administration Pending

MOTION OF FOREIGN REPRESENTATIVE PURSUANT TO SECTIONS 105(a), 363, 365, 1501, 1507, 1520, AND 1521 OF THE BANKRUPTCY CODE, AND BANKRUPTCY RULES 2002, 6004, 6006, AND 9014, FOR ENTRY OF AN ORDER (I) RECOGNIZING AND ENFORCING THE APPROVAL AND VESTING ORDER; (II) AUTHORIZING THE SALE OF THE DEBTORS’ TPS BUSINESS FREE AND CLEAR OF ANY AND ALL LIENS, CLAIMS, ENCUMBRANCES, AND OTHER INTERESTS; AND (III) GRANTING RELATED RELIEF

Kraus Carpet Inc. (the “Foreign Representative”), in its capacity as the authorized foreign representative of the above captioned debtors (the “Debtors”) in a Canadian proceeding (the “CCAA Proceeding”) under the Companies’ Creditors Arrangement Act, R.S.C. 1985, c. C-36 (as amended, the “CCAA”) pending before the Ontario Superior Court of Justice (the “Canadian Court”), respectfully moves, pursuant to sections 105(a) 363, 365, 1501, 1507, 1520, and 1521 of title 11 of the United States Code (the “Bankruptcy Code”), Rules 2002, 6004, 6006, and 9014 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules” and Rule 6004-1 of the Local Rules of Bankruptcy Practice and Procedure of the United States Bankruptcy Court for the District of Delaware (the “Local Rules”) for the entry of an order, substantially in the form attached hereto as **Exhibit A** (the “U.S. Order”): (a) recognizing the Sale Approval and Vesting Order to be entered by the Canadian Court (the “Canadian Sale”

¹ The Debtors in these chapter 15 cases and the last four digits of each Debtor’s U.S. tax identification number or Canadian Business Number, as applicable, are as follows: Kraus USA Inc. (USA) (1024); Strudex Inc. (0906); Kraus Carpet Inc. (8687); Kraus Properties Inc. (1102); Kraus Canada Ltd. (1300); and Kraus Brands Inc. (8885). The Debtors’ mailing address for purposes of these chapter 15 cases is 65 Northfield Drive West, Waterloo, Ontario, Canada.

Order”),² substantially in the form attached hereto as **Exhibit B**; (b) authorizing and approving the sale (the “Sale”) of the Debtors’ TPS Business (as defined herein) (the “Assets”), pursuant to the terms and conditions set forth in that certain Asset Purchase Agreement (the “Asset Purchase Agreement”) ³ between Kraus Canada LP, Kraus Properties LP, and Kraus USA, Inc., and Q.E.P. Co., Inc. and Roberts Company Canada Ltd. (Q.E.P. Co., Inc. and Roberts Company Canada Ltd., collectively, the “Purchaser”), a redacted copy of which is attached hereto as **Exhibit C**,⁴ and that certain Purchase and Sale Agreement for the premises located at 2216 Abutment Road in Dalton, Georgia between Kraus USA, Inc. and Q.E.P. Co., Inc., dated as of September 10, 2018 (the “Real Property Purchase Agreement,” and collectively with the Asset Purchase Agreement, the “Purchase Agreement”) ⁵ free and clear of liens, claims, encumbrances, and other interests; and (c) granting certain relief related thereto. In support of this Motion, the Foreign Representative refers the Court to the statements contained in the *Declaration of Christopher Emmott in Support of (A) Motion of Foreign Representative for Entry of Provisional and Final Orders Granting Recognition of Foreign Main Proceeding, and (B) Other First Day Relief* (the “Emmott Declaration”), and the *Declaration of Susan Mingie in*

² The Foreign Representative expects that the Canadian Sale Order will be approved and entered by the Canadian Court before the hearing on this Motion. The Foreign Representative will file a notice of entry of the Canadian Sale Order as soon as practicable after its entry by the Canadian Court and, in any case, no later than two business days prior to the hearing on this Motion.

³ Capitalized terms used but not otherwise defined herein have the meanings ascribed to them in the Asset Purchase Agreement.

⁴ The purchase price, deposit amounts, and certain commercially sensitive information in the Purchase Agreement are redacted pursuant to the Canadian Court’s order sealing such terms. Once the sale has closed in Canada, the Foreign Representative anticipates that it will be able to file an unredacted (or substantially unredacted) copy of the Purchase Agreement in advance of the hearing on this Motion.

⁵ The Real Property Purchase Agreement has not yet been filed in the Canadian Proceeding. The Foreign Representative will file the Real Property Purchase Agreement once it has been filed in the Canadian Proceeding, and in advance of the hearing on this Motion. The Real Property Purchase Agreement is an exhibit to the Asset Purchase Agreement.

Support of the Motion of Foreign Representative Pursuant to Sections 105(a), 353, 365, 1501, 1507, 1520, and 1521 of the Bankruptcy Code, and Bankruptcy Rules 2002, 6004, 6006, and 9014, for Entry of an Order (I) Recognizing and Enforcing the Approval and Vesting Order; (II) Authorizing the Sale of the Debtors' TPS Business Free and Clear of Any and All Liens, Claims, Encumbrances, and Other Interests; (III) Granting Related Relief (the "Mingie Declaration"), both of which were filed substantially concurrently herewith and are incorporated herein by reference. In further support of the relief requested herein, the Foreign Representative respectfully represents as follows:

Jurisdiction and Venue

1. This Court has jurisdiction over this matter pursuant to sections 157 and 1334 of title 28 of the United States Code and the Amended Standing Order of Reference from the United States District Court for the District of Delaware, dated as of February 29, 2012. These cases have been properly commenced pursuant to section 1504 of the Bankruptcy Code by the filing of a verified petition (collectively, the "Petitions") for recognition of the CCAA Proceeding for each Debtor pursuant to section 1515 of the Bankruptcy Code. An order (the "CCAA Order") of the Canadian Court commencing the CCAA Proceeding and appointing the Foreign Representative is attached to each of the Petitions.

2. This is a core proceeding pursuant to section 157(b)(2)(P) of title 28 of the United States Code. Venue is proper before this Court pursuant to section 1410 of title 28 of the United States Code.

3. The statutory predicates for the relief requested herein are sections 105(a), 363, 365, 1501, 1507, 1520, and 1521 of the Bankruptcy Code. The relief is also appropriate under Bankruptcy Rules 2002, 6004, 6006, and 9014, and Local Rule 6004-1.

Background

A. General Background

4. The Debtors are part of a group of companies (collectively, the “Kraus Group”) headquartered in Waterloo, Ontario, Canada. The Kraus Group was founded in 1959 in Kitchener, Ontario as a carpet manufacturer. Over the years it gradually expanded its operations and range of products. The Kraus Group is now an integrated carpet and flooring company. The Kraus Group was acquired by Hilco Capital in 2012.

5. The Kraus Group has two divisions: (i) the manufacturing of residential and commercial broadloom carpet (the “Broadloom Business”); and (ii) the distribution and sale of flooring products to commercial and residential customers, including carpet tiles, vinyl tiles, laminate, and hardwood (the “TPS Business”).

6. On the date hereof (the “Petition Date”), the Foreign Representative commenced these chapter 15 cases by filing, among other things, verified chapter 15 petitions for each of the Debtors seeking recognition by the Court of the CCAA Proceeding as a foreign main proceeding under chapter 15 of the Bankruptcy Code

7. Detailed information about the Debtors’ business and operations, the events leading to the Petition Date, and the facts and circumstances surrounding the CCAA Proceeding and these cases is set forth in the Emmott Declaration.

B. The Marketing Process

8. On March 20, 2018, Hilco Capital (“Hilco”) engaged Deloitte Corporate Finance Inc. (“DCF”) to manage the sale of the TPS Business as a standalone business that needed to be carved out of Kraus.⁶

9. DCF, with the assistance of the Kraus Group’s management, identified a comprehensive list of strategic buyers and financial buyers that might be interested in purchasing the TPS Business (“TPS Prospective Purchasers”). The list of TPS Prospective Purchasers was created from flooring industry associate membership listings, analyst reports and research reports on the flooring sectors, and DCF’s own industry research.

10. DCF developed a teaser that contained a summary of the opportunity to purchase the TPS Business (the “Teaser”). The Teaser was widely distributed effective March 23, 2018, including to the TPS Prospective Purchasers.

11. DCF also assisted in the preparation of a Confidential Information Memorandum for the TPS Business (the “TPS CIM”), which described the TPS Business in significant detail, and included, among other things, the TPS Business sales and distribution structure, an overview of the industry, and a summary of relevant financial information. DCF contacted by phone or email approximately 59 TPS Prospective Purchasers regarding the opportunity.

12. Of the TPS Prospective Purchasers contacted, seven strategic purchasers and 14 financial purchasers executed non-disclosure agreements and were provided copies of the TPS CIM.

⁶ DCF has marketed the Broadloom Business and is working with potential purchasers of the Broadloom Business, but this Motion is solely with respect to the sale of the TPS Business.

13. On April 13, 2018, three TPS Potential Purchasers submitted expressions of interest (“EOIs”). The purchase prices listed in these EOIs were five to seven times the normalized TPS Business EBITDA disclosed in the TPS CIM.

14. The three TPS Potential Purchasers who submitted EOIs (“TPS EOI Prospective Purchasers”) were provided access to an electronic data room that had been populated by DCF. The data room contained financial, operational, human resources, legal, customer, and supplier information for the TPS Business.

15. In late April and early May of 2018, the Kraus Group’s management gave presentations to each of the three TPS EOI Potential Purchasers. The purpose of these presentations was to provide the TPS EOI Potential Purchasers with an opportunity to meet management and better understand the TPS Business.

16. In mid-May, 2018, two of the TPS EOI Prospective Purchasers withdrew from the sale process because the price they were willing to offer for the TPS Business after completing their due diligence was lower than the one stated in their respective EOIs.

17. On May 24, 2018, the Purchaser signed a letter of intent (“May 24 LOI”). After signing the May 24 LOI, the Purchaser continued its due diligence and on July 10, 2018, advised DCF that it was no longer willing to offer the purchase price provided in the May 24 LOI but instead offered a lower purchase price.

18. DCF advised the Purchaser that the lower price was unacceptable and the parties agreed that the May 24 LOI was no longer in effect. Thereafter DCF attempted to find other purchasers, but was unable to do so. Accordingly, DCF returned to the Purchaser to renegotiate a deal for the purchase of the TPS Business. On August 9, 2018, the Purchaser signed the final LOI (“Final LOI”). The purchase price in the Final LOI is higher than the price proposed by the

Purchaser on July 10, 2018, but is lower than the original purchase price offered in the May 24 LOI.

C. Summary of Purchase Agreement and Local Rule 6004-1 Disclosures

19. Pursuant to the Purchase Agreement, the Purchaser has agreed to purchase substantially all of the assets related to the TPS Business. The Purchaser has also agreed to assume specified liabilities of the Kraus Group (including selected leases and trade accounts payable).

20. The following is a summary of certain material provisions of the Purchase Agreement.⁷ The Foreign Representative believes that the Purchase Agreement is fair and reasonable under the circumstances, is the result of good-faith, arm's-length negotiations, and is in the best interests of the Debtors, their creditors, and other stakeholders.

21. The purchased assets include all accounts receivable outstanding on the closing date that relate to the TPS Business, inventory, intellectual property owned by the Kraus Sellers used in connection with the TPS Business, the furniture, fixtures, equipment, supplies and other tangible personal property of the TPS Business, and customer lists and sales records. The purchased assets also include the premises located at 2216 Abutment Road in Dalton, Georgia.

22. The Purchase Agreement contemplates that the Purchasers will operate the TPS Business as a going concern, which will result in the preservation of at least 160 jobs.

23. Among other things, the Purchase Agreement provides that the Debtors and Purchaser will use commercially reasonable efforts to achieve: (i) entry by the Canadian Court of

⁷ Any summary of, or reference to, the terms and conditions of the Purchase Agreement and/or the Canadian Sale Order herein are qualified in their entirety by the actual terms and conditions of the Purchase Agreement and the Canadian Sale Order. To the extent there is any inconsistency between any such summary or reference herein and the actual terms and conditions of the Purchase Agreement and the Canadian Sale Order, the actual terms and conditions of the Purchase Agreement and/or the Canadian Sale Order shall control.

the Canadian Sale Order by September 18, 2018; and (iii) entry by this Court of the U.S. Order by no later than October 2, 2018.

24. In accordance with Local Rule 6004-1, set forth below are certain provisions in the Purchase Agreement and/or the Sale Order that such rule requires the Foreign Representative to highlight in this Motion:⁸

Provision	Description	Location in Sale Order or Purchase Agreement
Sale to Insider	The Purchaser is not an insider as defined by Bankruptcy Code section 101(31).	N/A
Management Agreements	The Purchaser will offer employment to certain employees on terms and conditions that are substantially the same as terms and conditions on which the such employees are employed immediately prior to the Closing Date (except, with respect to Employees located in the U.S., with respect to Benefit Plans).	Purchase Agreement §8.01.
Releases	The Sale will be free and clear of all liens, claims, encumbrances and other interests.	U.S. Order ¶¶ N, 8, 9, 12.

⁸ Pursuant to Local Rule 6004-1(b)(iv), a Sale Motion (as defined in the Local Rules) must highlight certain provisions contained in the proposed form of sale order and/or the underlying purchase agreement. The Foreign Representative has highlighted below the relevant provisions of the Purchase Agreement that implicate Local Rule 6004-1(b)(iv) by providing a citation to the relevant sections of the Purchase Agreement and/or the U.S. Order. In addition, the Foreign Representative highlights that, pursuant to the proposed U.S. Order, it is requesting (i) the Sale to be approved under section 363(f) of the Bankruptcy Code, free and clear of any Interest (as defined in the U.S. Order) and (ii) a waiver of Bankruptcy Rule 6004(h).

