

SUPERIOR COURT
(Commercial Division)

CANADA
PROVINCE OF QUEBEC
DISTRICT OF MONTREAL
DIVISION NO. : 01-MONTREAL
COURT NO.: 500-11-058310-208
FILE NO.: 41-2647457
DATE: June 29, 2020

PRESIDING : THE HONOURABLE LOUIS J. GOUIN, J.S.C.

IN THE MATTER OF THE NOTICE OF INTENTION TO MAKE A PROPOSAL UNDER THE
BANKRUPTCY AND INSOLVENCY ACT ("BIA") OF:

COALISION INC.
Debtor

-and-

DELOITTE RESTRUCTURING INC.
Trustee to the Notice of Intention

-and-

REGISTRAR OF PERSONAL AND MOVABLE REAL RIGHTS

-and-

ONTARIO PERSONAL PROPERTY REGISTRY

-and-

BRITISH COLUMBIA PROPERTY REGISTRY

-and-

ALBERTA PERSONAL PROPERTY REGISTRY

-and-

MANITOBA PERSONAL PROPERTY REGISTRY

Mis-en-Cause

APPROVAL, ASSIGNMENT AND VESTING ORDER

- [1] **ON READING** the Debtor's *Application for the Approval of a Sale of Assets Outside the Ordinary Course of Business and for the Issuance of an Approval, Assignment and Vesting Order* dated June 26, 2020 (the "**Application**"), the affidavit and the exhibits in support thereof, as well as the Report of the Trustee to the Notice of Intention (the "**Trustee**") dated June 26, 2020 (the "**Report**");
- [2] **SEEING** the service of the Application;

[3] **SEEING** the submissions of the lawyers of the Debtor and the submissions of the lawyers of the Trustee;

[4] **SEEING** that it is appropriate to issue an order approving the transaction (the “**Transaction**”) contemplated by the agreement entitled Asset Purchase Agreement (the “**Asset Purchase Agreement**”) by and between Coalision Inc. (the “**Vendor**”), as vendor, and 1254429 B.C. Unlimited Liability Company (the “**Purchaser**”), as purchaser, copy of which was filed as Exhibit P-11 to the Application, assigning certain agreements and vesting in the Purchaser the assets described in the Asset Purchase Agreement (the “**Purchased Assets**”).

WHEREFORE THE COURT:

SERVICE

[5] **ORDERS** that any prior delay for the presentation of the Application is hereby abridged and validated so that the Application is properly returnable today and hereby **DISPENSES** with further service thereof.

[6] **PERMITS** service of this Order at any time and place and by any means whatsoever.

SALE APPROVAL

[7] **DECLARES** that the Transaction is hereby approved, and the execution of the Asset Purchase Agreement by the Vendor is hereby authorized and approved, with such non-material alterations, changes, amendments, deletions or additions thereto as may be agreed to but only with the consent of the Trustee.

EXECUTION OF DOCUMENTATION

[8] **AUTHORIZES** the Vendor, the Trustee and the Purchaser to perform all acts, sign all documents and take any necessary action to execute any agreement, contract, deed, provision, transaction or undertaking stipulated in the Asset Purchase Agreement and any other ancillary document which could be required or useful to give full and complete effect thereto.

AUTHORIZATION

[9] **ORDERS** and **DECLARES** that this Order shall constitute the only authorization required by the Vendor to proceed with the Transaction and that no shareholder, creditor or regulatory approval, if applicable, shall be required in connection therewith.

VESTING OF PURCHASED ASSETS

[10] **ORDERS** and **DECLARES** that upon the issuance of a Trustee's certificate substantially in the form appended as Schedule “A” hereto (the “**Certificate**”), all rights, title and interest in and to the Purchased Assets shall vest absolutely and exclusively in and with the Purchaser, free and clear of and from any and all claims, liabilities (direct, indirect, absolute or contingent), obligations, interests, prior claims, security interests (whether contractual, statutory or otherwise), liens, charges, hypothecs, mortgages, pledges, deemed trusts,

assignments, judgments, executions, notices of seizure, notices of execution, notices of sale, options, adverse claims, levies, rights of first refusal or other pre-emptive rights in favour of third parties, restrictions on transfer of title, or other claims or encumbrances, whether or not they have attached or been perfected, registered, published or filed and whether secured, unsecured or otherwise (collectively, the “**Encumbrances**”), including without limiting the generality of the foregoing all charges, security interests or charges ordered by the Court in these proceedings, or evidenced by registration, publication or filing pursuant to the Civil Code of Québec, the Ontario, British-Columbia, Alberta and Manitoba Personal Property Security Acts, or any other applicable legislation providing for a security interest in personal or movable property, excluding however, the permitted encumbrances, easements and restrictive covenants listed on Schedule “B” hereto (the “**Permitted Encumbrances**”) and, for greater certainty, **ORDERS** that all of the Encumbrances affecting or relating to the Purchased Assets, other than the Permitted Encumbrances, be expunged and discharged as against the Purchased Assets, in each case effective as of the applicable time and date of the Certificate.

- [11] **ORDERS** and **DECLARES** that upon the issuance of the Certificate, the rights and obligations of the Vendor under the Agreements listed on Schedule “C” hereto (the “**Assigned Agreements**”) are assigned to the Purchaser and **ORDERS** that all monetary defaults of the Debtor in relation to the Assigned Agreements – other than those arising by reason only of the insolvency of the Debtor, the commencement of proceedings under the BIA or the failure to perform non-monetary obligations – shall be remedied by the Purchaser on or before August 29, 2020.
- [12] **ORDERS** the Trustee to serve a copy of this Order to every party to the Assigned Agreements.
- [13] **ORDERS** the Trustee to issue the Certificate once (a) the Asset Purchase Agreement has been executed and delivered; and (b) the Purchase Price (as defined in the Asset Purchase Agreement) has been paid by the Purchaser; and (c) all the conditions to the closing of the Transaction have been satisfied or waived by the parties thereto, and to file with the Court a copy of the Certificate, forthwith after issuance thereof.
- [14] **AUTHORIZES** and **ORDERS** the Debtor, upon the issuance of the Certificate, to change its name for a designating number in lieu of a name and to change its address, and that no shareholder approval, if applicable, shall be required in connection therewith.

CANCELLATION OF SECURITY REGISTRATIONS

For Québec Property:

- [15] **ORDERS** the Québec Personal and Movable Real Rights Registrar, upon presentation of the required form with a true copy of this Order and the Certificate, to reduce the scope of the registrations listed in Schedule “D” hereto in connection with the Purchased Asset in order to allow the transfer to the Purchaser of the Purchased Assets free and clear of such registrations.

For Property Outside Québec:

- [16] **ORDERS** that upon the issuance of the Certificate, the Vendor shall be authorized to take all such steps as may be necessary to effect the discharge of all Encumbrances registered

against the Purchased Assets, including filing such financing change statements in the Ontario Personal Property Registry, the British Columbia Property Registry and the Alberta Personal Property Registry and the Manitoba Personal Property Registry (collectively, the “PPR”) as may be necessary, from any registration filed against the Vendor in the PPR, provided that the Vendor shall not be authorized to effect any discharge that would have the effect of releasing any collateral other than the Purchased Assets, and the Vendor shall be authorized to take any further steps by way of further application to this Court.

For Intellectual Property:

[17] **ORDERS** the Canadian Intellectual Property Office upon presentation of a certified copy of this Order accompanied by the required application for registration and a copy of the Certificate, and upon payment of the prescribed fees, if any, to publish this Order in the Canadian Trademark Database in connection with:

- Application number 1633114;
- Application number 1632662;
- Application number 1589458;
- Application number 1568598;
- Application number 1560208;
- Application number 1500340;
- Application number 1497883;
- Application number 1476318;
- Application number 1307777;
- Application number 1215366;
- Application number 1180921;
- Application number 1152857;
- Application number 1143923;
- Application number 1141965;
- Application number 1118095;
- Application number 1071609; and
- Application number 1040759.

NET PROCEEDS

- [18] **ORDERS** that the net proceeds from the sale of the Purchased Assets (the “**Net Proceeds**”) shall be remitted to the Trustee and shall be distributed in accordance with applicable legislation.
- [19] **ORDERS** that for the purposes of determining the nature and priority of the Encumbrances, the Net Proceeds from the sale of the Purchased Assets shall stand in the place and stead of the Purchased Assets, and that upon payment of the Purchase Price (as defined in the Asset Purchase Agreement) by the Purchaser, all Encumbrances except for the Permitted Encumbrances shall attach to the Net Proceeds with the same priority as they had with respect to the Purchased Assets immediately prior to the sale, as if the Purchased Assets had not been sold and remained in the possession or control of the person having that possession or control immediately prior to the sale.

PROTECTION OF PERSONAL INFORMATION

- [20] **ORDERS** that, pursuant to sub-section 7(3)(c) of the *Canada Personal Information Protection and Electronic Documents Act* or any similar provision of any applicable provincial legislation, the Vendor is authorized and permitted to disclose and transfer to the Purchaser all human resources and payroll information in the Company's records pertaining to the Debtor's past and current employees. The Purchaser shall maintain and protect the privacy of such information and shall be entitled to use the personal information provided to it in a manner which is in all material respects identical to the prior use of such information by the Debtor.

VALIDITY OF THE TRANSACTION

- [21] **ORDERS** that notwithstanding:
- (i) the pendency of these proceedings;
 - (ii) any petition for a receiving order now or hereafter issued pursuant to the BIA and any order issued pursuant to any such petition; or
 - (iii) the provisions of any federal or provincial legislation;

the vesting of the Purchased Assets contemplated in this Order, as well as the execution of the Asset Purchase Agreement pursuant to this Order, are to be binding on any trustee in bankruptcy that may be appointed, and shall not be void or voidable nor deemed to be a preference, assignment, fraudulent conveyance, transfer at undervalue or other reviewable transaction under the BIA or any other applicable federal or provincial legislation, as against the Vendor, the Purchaser or the Trustee.

LIMITATION OF LIABILITY

- [22] **DECLARES** that, subject to other orders of this Court, nothing herein contained shall require the Trustee to occupy or to take control, or to otherwise manage all or any part of the Purchased Assets. The Trustee shall not, as a result of this Order, be deemed to be in

possession of any of the Purchased Assets within the meaning of environmental legislation, the whole pursuant to the terms of the BIA.

- [23] **DECLARES** that no action lies against the Trustee by reason of this Order or the performance of any act authorized by this Order, except by leave of the Court. The entities related to the Trustee or belonging to the same group as the Receiver shall benefit from the protection arising under the present paragraph;

GENERAL

- [24] **ORDERS** that Exhibits P-1, P-2 and P-10 of the Application be kept confidential and under seal until further order of this Court.
- [25] **ORDERS** that the Asset Purchase Agreement, Exhibit P-11, be kept confidential and under seal until the earlier of a) the closing of the Transaction; or b) further order of this Court.
- [26] **DECLARES** that the schedules to this Order shall form an integral part of this Order.
- [27] **ORDERS** that the Purchaser or the Vendor shall be authorized to take all steps as may be necessary to effect the discharge of the Encumbrances.
- [28] **DECLARES** that this Order shall have full force and effect in all provinces and territories in Canada;
- [29] **REQUESTS** the aid and recognition of any court or administrative body in any Province of Canada and any Canadian federal court or administrative body and any federal or state court or administrative body in the United States of America and any court or administrative body elsewhere, to act in aid of and to be complementary to this Court in carrying out the terms of the Order;
- [30] **ORDERS** the provisional execution of the present Order notwithstanding any appeal and without the requirement to provide any security or provision for costs whatsoever;

THE WHOLE WITHOUT COSTS.

LOUIS J. GOUIN, J.S.C.

Schedule "A"

DRAFT CERTIFICATE OF THE TRUSTEE

CANADA
PROVINCE OF QUEBEC
DISTRICT OF MONTREAL
DIVISION NO.: 01-MONTREAL
COURT NO.: 500-11-058310-208
FILE NO.: 41-2647457

SUPERIOR COURT
Commercial Division

IN THE MATTER OF THE NOTICE OF
INTENTION TO MAKE A PROPOSAL UNDER
THE *BANKRUPTCY AND INSOLVENCY ACT*
OF:

Coalision Inc.
Debtor

-and-

Deloitte Restructuring Inc.

Trustee to the Notice of Intention

CERTIFICATE OF THE TRUSTEE

RECITALS:

WHEREAS on May 26, 2020, Coalision Inc. filed a Notice of intention to make a proposal to its creditors (the "**NOI**") pursuant to the *Bankruptcy and Insolvency Act* (the "**Act**");

WHEREAS pursuant to the terms of the NOI, Deloitte Restructuring Inc. was named Trustee to the NOI (the "**Trustee**");

WHEREAS on June 29, 2020, the Court issued an Order (the "**Vesting Order**") thereby, *inter alia*, authorizing and approving the transaction contemplated by the agreement entitled Asset Purchase Agreement (the "**Asset Purchase Agreement**") by and between Coalision Inc., (the "**Vendor**"), as vendor, and 1254429 B.C. Unlimited Liability Company (the "**Purchaser**"), as purchaser, copy of which was filed in the Court record and into all the transactions contemplated therein (the "**Transaction**") with such alterations, changes, amendments, deletions or additions thereto, as may be agreed to with the consent of the Trustee;

WHEREAS the Vesting Order contemplates the issuance of this Certificate of the Trustee once the (a) the Asset Purchase Agreement has been executed and delivered; and (b) the Purchase Price (as defined in the Asset Purchase Agreement) has been paid by the Purchaser; and (c) and all the conditions to the closing of the Transaction have been satisfied or waived by the parties thereto.

THE TRUSTEE CERTIFIES THAT IT HAS BEEN ADVISED BY THE VENDOR AND THE PURCHASER AS TO THE FOLLOWING:

- (a) the Asset Purchase Agreement has been executed and delivered;
- (b) the Purchase Price (as defined in the Asset Purchase Agreement) payable upon the closing of the Transaction and all applicable taxes have been paid; and
- (c) all conditions to the closing of the Transaction have been satisfied or waived by the parties thereto.

This Certificate was issued by the Trustee at _____ **[TIME]** on _____ **[DATE]**.

Deloitte Restructuring Inc. in its capacity as trustee, and not in its personal capacity.

Name: Jean-François Nadon

Title: CPA, CA, CIRP, LIT

SCHEDULE "B"
PERMITTED ENCUMBRANCES

All claims, liabilities (direct, indirect, absolute or contingent), obligations, prior claims, right of retention, liens, security interests, charges, hypothecs, contractual rights, encumbrances, whether or not they have been registered, published or filed and whether secured, unsecured or otherwise related to the third amended and restated credit agreement dated April 6, 2018, among Canadian Imperial Bank of Commerce, as administrative agent and lender, Coalision Inc., as borrower, Coalision USA Inc., as guarantor, and the financial institutions party thereto from time to time, as lenders, as may be amended, restated, replaced or otherwise modified from time to time, including, without limitation, the following:

1. the hypothec pursuant to the Deed of Hypothec executed by Coalision Inc. in favour of Canadian Imperial Bank of Commerce on March 24, 2014 before Me Robert Alain, Notary, under his minute 12,547, published at the Register of Personal and Movable Real Rights of the Province of Quebec on March 25, 2014 under number 14-0234181-0001, together with the Demand Debenture No. 1 in the principal amount of \$100,000,000 with interest thereon at the rate of 25% per annum, the Fondé de Pouvoir's Certificate, and the Pledge of Debenture Agreement, executed on March 27, 2014;
2. the security interest, hypothec and pledge of shares pursuant to the Pledge of Securities executed by Coalision Inc. in favour of Canadian Imperial Bank of Commerce on March 27, 2014;
3. the security pursuant to Section 427 of the Bank Act executed by Coalision Inc. in favour of Canadian Imperial Bank of Commerce, registered with the Authorized Section 427 Bank Act Registrar for the Province of Quebec on March 19, 2014 under number 01291236;
4. the security interest pursuant to the General Security Agreement executed by Coalision Inc. in favour of Canadian Imperial Bank of Commerce on March 27, 2014, registered pursuant to the Personal Property Security Act in the Province of Ontario under number 20140325 1024 1862 7993, in the Province of British Columbia on March 25, 2014 under number 863768H, in the Province of Alberta on March 25, 2014 under number 14032507895, and in the Province of Manitoba on April 26, 2017 under number 201707150209; and
5. the continuing security interest pursuant to the Trademark Security Agreement executed by Coalision Inc. in favour of Canadian Imperial Bank of Commerce on March 27, 2014.

SCHEDULE "C"
ASSIGNED AGREEMENTS

Counterparty	Description of agreement
Costco Wholesale Canada Ltd.	Costco.ca Vendor Agreement entered into on September 21, 2018
Costco Wholesale Canada Ltd.	Basic Vendor Agreement dated March 13, 2003
Costco Wholesale Canada Ltd.	Costco Wholesale Global Import Supplier Agreement dated May 15, 2019
Wiptec Inc.	Fulfillment Services Agreement entered into on December 1, 2019
Proactive Supply Solutions Inc.	Service contract entered into on May 1, 2020 with respect to the building located at 175 Claireville Drive, Toronto, Ontario, for the provision of Yoga Mats/Down Jacket Programs and other storage services (DOWN EC)
Proactive Supply Solutions Inc.	Service contract entered into on April 20, 2020 with respect to the building located at 175 Claireville Drive, Toronto, Ontario, for the provision of Pallet Display and other storage services (MERINO EC)
Proactive Supply Solutions Inc.	Service contract entered into on May 25, 2020 with respect to the building located at 18351 McCartney Way, Richmond, British Columbia, for the provision of Pallet Display – Down Jacket Programs and other storage services (Down WC)
Proactive Supply Solutions Inc.	Service contract entered into on May 25, 2020 with respect to the building located at 18351 McCartney Way, Richmond, British Columbia, for the provision of Pallet Display and other storage services (Merino WC)
Proactive Supply Solutions Inc.	Service contract entered into on May 25, 2020, between with respect to the building located at 18351 McCartney Way, Richmond, British Columbia, for the provision of Pallet Display Yoga Mats and other storage services (YOGA MAT WC)
United Parcel Service Canada	Service agreement entered into on March 16, 2018
C.H. Robinson Worldwide Canada, Ltd. (formerly known as Millgram & Company Ltd.)	Continuous General Agency Agreement and Power of Attorney entered into on March 30, 2018 between Millgram & Company Ltd. and Coalision Inc.

Schedule "D"

SECURITY AND REGISTRATIONS

1. A conventional movable hypothec without delivery granted by Coalision Inc. to Simon Coalision Investment, Inc. in the amount of \$14,400,000, with interest thereon at the rate of 20% per annum, registered at the Register of Personal and Movable Real Rights on April 5, 2018, under number **18-0324622-0001**.
2. A conventional movable hypothec without delivery granted by Coalision Inc. to Pelican II Investment Fund L.P. in the amount of \$7,200,000, with interest thereon at the rate of 20% per annum, registered at the Register of Personal and Movable Real Rights on April 5, 2018, under number **18-0324622-0002**.
3. A conventional movable hypothec without delivery granted by Coalision Inc. to Red Moon Group Inc. in the amount of \$5,400,000, with interest thereon at the rate of 20% per annum, registered at the Register of Personal and Movable Real Rights on April 9, 2018, under number **18-18-0339921-0001**.