

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

THE HONOURABLE) TUESDAY, THE 24TH
JUSTICE MCEWEN) DAY OF JULY, 2018



BETWEEN:

BANK OF MONTREAL

Applicant

- and -

INGENIOUS PACKAGING GROUP ULC

Respondent

**IN THE MATTER OF AN APPLICATION PURSUANT TO SECTION
243(1) OF THE *BANKRUPTCY AND INSOLVENCY ACT*, R.S.C. 1985, c. B-3,
AS AMENDED; AND SECTION 101 OF THE *COURTS OF JUSTICE ACT*,
R.S.O. 1990, c. C.43, AS AMENDED**

APPROVAL AND VESTING ORDER

THIS MOTION, made by Deloitte Restructuring Inc. in its capacity as the Court-appointed receiver (the “**Receiver**”) of the undertaking, property and assets of Ingenious Packaging Group ULC (the “**Debtor**”) for an order (i) approving the sale transaction (the “**Transaction**”) contemplated by an asset purchase agreement (the “**Asset Purchase Agreement**”) between the Debtor, the Receiver and Ingenious Packaging, Inc. (the “**Purchaser**”) dated July 20, 2018, a redacted copy of which is appended as Exhibit “B” to the affidavit of Michael Silverman sworn July 20, 2018 (the “**Silverman Affidavit**”) and an unredacted copy of which is appended to the Confidential Supplement (the “**Confidential**

Supplement") to the Pre-Filing Report of the Receiver dated July 23, 2018 (the "**Pre-Filing Report**"), (ii) authorizing and directing the Receiver to execute the Asset Purchase Agreement and to implement the Transaction in accordance with the terms of the Asset Purchase Agreement and this Order, including, without limitation, the distributions contemplated thereby, and (iii) vesting in the Purchaser the Debtor's right, title and interest in and to the assets described in the Asset Purchase Agreement (the "**Purchased Assets**"), was heard this day at 330 University Avenue, Toronto, Ontario.

ON READING the Confidential Supplement, the Pre-Filing Report, the affidavit of Jack Kane sworn July 20, 2018 and the Silverman Affidavit and on hearing the submissions of counsel for the Receiver, Bank of Montreal, the Debtor and the Purchaser, no one appearing for any other person on the service list, although properly served as appears from the affidavit of service filed:

1. **THIS COURT ORDERS** that the time for service of the Notice of Motion and the Motion Record is hereby abridged and validated so that this Motion is properly returnable today and hereby dispenses with further service thereof.
2. **THIS COURT ORDERS** that any defined terms used herein, unless otherwise defined in this Order, shall have the meanings ascribed to them in the Asset Purchase Agreement.
3. **THIS COURT ORDERS AND DECLARES** that the Transaction is hereby approved, and that the Receiver is hereby authorized and directed to execute the Asset Purchase Agreement, with such minor amendments as the Receiver may deem necessary or desirable, and to complete the Transaction in accordance with the terms of the Asset Purchase Agreement and this Order, including, without limitation, the distributions contemplated thereby. The Receiver and the Debtor are hereby authorized and directed to take such additional steps and execute such additional documents as may be necessary or desirable for the completion of the Transaction and for the conveyance of the Purchased Assets to the Purchaser.
4. **THIS COURT ORDERS** that the Receiver, in accordance with the terms of the Asset Purchase Agreement, is hereby authorized and empowered to act as escrow agent (in such capacity, the "**Escrow Agent**") for the purposes of holding the Adjustment Escrow Amount deposited by the Purchaser in immediately available funds with the Escrow Agent to secure any

obligation of the Debtor due to an adjustment of the Purchase Price and to perform its obligations under the Escrow Agreement. The Receiver shall have no liability as Escrow Agent or in connection with the Escrow Agreement except for any liability arising from its gross negligence or wilful misconduct.

5. **THIS COURT ORDERS AND DECLARES** that upon the delivery of a Receiver's certificate to the Purchaser substantially in the form attached as Schedule A hereto (the "**Receiver's Certificate**"), all of the Debtor's right, title and interest in and to the Purchased Assets described in the Asset Purchase Agreement shall vest absolutely in the Purchaser, free and clear of and from any and all security interests (whether contractual, statutory, or otherwise), hypothecs, mortgages, trusts or deemed trusts (whether contractual, statutory, or otherwise), liens, executions, levies, charges, or other financial or monetary claims, whether or not they have attached or been perfected, registered or filed and whether secured, unsecured or otherwise (collectively, the "**Claims**") including, without limiting the generality of the foregoing: (i) any encumbrances or charges created by the Order of this Court dated July 24, 2018; and (ii) all charges, security interests or claims evidenced by registrations pursuant to the *Personal Property Security Act* (Ontario), the *Personal Property Security Act* (British Columbia), or any other personal property registry system (all of which are collectively referred to as the "**Encumbrances**"), with the exception of those charges, security interests or claims evidenced by the registrations pursuant to the *Personal Property Security Act* (Ontario) and the *Personal Property Security Act* (British Columbia) set out in Schedule B hereto (the "**Permitted Encumbrances**"), and, for greater certainty, this Court orders that all of the Encumbrances affecting or relating to the Purchased Assets, except for the Permitted Encumbrances, are hereby expunged and discharged as against the Purchased Assets.

6. **THIS COURT ORDERS** that for the purposes of determining the nature and priority of Claims, the net proceeds from the sale of the Purchased Assets shall stand in the place and stead of the Purchased Assets, and that from and after the delivery of the Receiver's Certificate all Claims and Encumbrances shall attach to the net proceeds from the sale of the Purchased Assets 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, with such proceeds to be distributed in accordance with the terms of the Asset Purchase Agreement.

7. **THIS COURT ORDERS AND DIRECTS** the Receiver to file with the Court a copy of the Receiver's Certificate, forthwith after delivery thereof.

8. **THIS COURT ORDERS** that (a) immediately upon the Closing of the Transaction, the Receiver or the Debtor are hereby authorized and permitted to execute and file articles of amendment or such other documents or instruments as may be required to change the legal name of the Debtor in accordance with the Asset Purchase Agreement, and such articles, documents or other instruments shall be deemed to be duly authorized, valid and effective and shall be accepted by the registrar (as defined in the *Business Corporations Act* (British Columbia)) or other official without the requirement (if any) of obtaining director, shareholder or other approval pursuant to any federal or provincial legislation; and (b) upon the official change of the legal name of the Debtor, the name of the Debtor in the within title of proceedings shall be deleted and replaced with the new legal name of the Debtor, and any document filed thereafter in these proceedings (other than the Receiver's Certificate) shall be filed using such revised title of proceedings.

9. **THIS COURT ORDERS** that, pursuant to clause 7(3)(c) of the *Canada Personal Information Protection and Electronic Documents Act*, the Receiver 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.

10. **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 Debtor and any bankruptcy order issued pursuant to any such applications; and
- (c) any assignment in bankruptcy made in respect of the Debtor;

the vesting of the Purchased Assets in the Purchaser pursuant to this Order shall be binding on any trustee in bankruptcy that may be appointed in respect of the Debtor and shall not be void or voidable by creditors of the Debtor, nor shall it constitute nor be deemed to be a fraudulent preference, assignment, fraudulent conveyance, transfer at undervalue, 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.


11. **THIS COURT ORDERS** that the Confidential Supplement, including all appendices thereto, be and is hereby sealed and its contents shall not form part of the public record until the Closing of the Transaction, or upon further order of this Court.

12. **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.



ENTERED AT / INSCRIT À TORONTO
ON / BOOK NO:
LE / DANS LE REGISTRE NO:

JUL 24 2018

PER / PAR: 

Schedule A – Form of Receiver’s Certificate

Court File No. CV-18-601960-00CL

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

BETWEEN:

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Applicant

- and -

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**IN THE MATTER OF AN APPLICATION PURSUANT TO SECTION
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RECEIVER’S CERTIFICATE

RECITALS

A. Pursuant to an Order of the Ontario Superior Court of Justice [Commercial List] (the “**Court**”) dated July 24, 2018, Deloitte Restructuring Inc. was appointed as receiver (the “**Receiver**”) of the undertaking, property and assets of Ingenious Packaging Group ULC (the “**Debtor**”).

B. Pursuant to an Order of the Court dated July 24, 2018, the Court approved the asset purchase agreement made as of July 20, 2018 (the “**Asset Purchase Agreement**”) between the Receiver, the Debtor and Ingenious Packaging, Inc. (the “**Purchaser**”) and provided for the

vesting in the Purchaser of the Debtor's right, title and interest in and to the assets described in the Asset Purchase Agreement (the "**Purchased Assets**"), which vesting is to be effective with respect to the Purchased Assets upon the delivery by the Receiver to the Purchaser of a certificate confirming (i) the payment by the Purchaser of the Purchase Price for the Purchased Assets; (ii) that the conditions to Closing as set out in sections 14 and 15 of the Asset Purchase Agreement have been satisfied or waived by the Receiver and the Purchaser; and (iii) the Transaction with the Purchaser has been completed to the satisfaction of the Receiver.

C. Unless otherwise indicated herein, terms with initial capitals have the meanings set out in the Asset Purchase Agreement.

THE RECEIVER CERTIFIES the following:

1. The Purchaser has paid and the Receiver has received the Purchase Price for the Purchased Assets payable on the Closing Date pursuant to the Asset Purchase Agreement;
2. The conditions to Closing as set out in sections 14 and 15 of the Asset Purchase Agreement have been satisfied or waived by the Receiver and the Purchaser; and
3. The Transaction with the Purchaser has been completed to the satisfaction of the Receiver.
4. This Certificate was delivered by the Receiver at _____ [TIME] on _____ [DATE].

**Deloitte Restructuring Inc., in its capacity as
court-appointed receiver of Ingenious
Packaging Group ULC and not in its personal
or corporate capacity**

Per: _____

Name:

Title:

Schedule B – Permitted Encumbrances

Personal Property Security Act (Ontario)

	<u>Debtor</u>	<u>Secured Party(ies)</u>	<u>File No. / Registration No.</u>	<u>Date/ Expiry Date</u>	<u>Collateral Classification</u>	<u>Collateral Description</u>
1.	TAPP LABEL	Fujifilm Canada Inc.	737460567 / 20180321 1407 1462 5212	March 21, 2018/ March 21, 2023 (5 years)	Equipment	Equipment: FLH85Z Plate Processor S/N 94199-0649 Fuji Asset# 501027, Chiller S/N 111289011 Fuji Asset# 501028
2.	TAPP LABEL LTD.	E.I Dupont Canada Company	710013645 / 20150916 1947 1531 2598	September 16, 2015 / September 16, 2025 (10 years)	Equipment	Equipment: Cyrel (R) Fast TD1000 Flexographic Plate Making System Serial # TD1180529

Personal Property Security Act (British Columbia)

	<u>Secured Party(ies)</u>	<u>Debtor(s)</u>	<u>Registration Number (Registration Period)</u>	<u>General Collateral Description</u>
1.	E.I. Dupont Canada Company	Tapp Label Technologies Inc.	Regn No.: 523930G Regn Date: January 3, 2012 Expiry Date: January 3, 2022	<u>General Collateral:</u> E.I. Dupont Canada Company have loaned (1) Cyrel Fast TD1000 thermal processor, serial number TD1180604, to Tapp Label Technologies Inc. under a bailment arrangement. Tapp Label Technologies Inc. does not have any right, interest or title to the equipment. The equipment is the property of E.I. Dupont Canada Company.
2.	E.I. Dupont Canada Company	Tapp Label Company, LLC (Tapp Label – Vancouver North)	Regn No.: 718745I Regn Date: July 13, 2015 Expiry Date: July 13, 2025	<u>General Collateral:</u> Cyrel (R) Fast TD1000 flexographic plate making system – serial number TD1180758 Value: \$125,000 USD

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Respondent

**ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)**
Proceeding commenced at Toronto

APPROVAL AND VESTING ORDER

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as Court-appointed Receiver