

COURT FILE NUMBER QBG 40 of 2019

COURT OF QUEEN'S BENCH FOR SASKATCHEWAN  
IN BANKRUPTCY AND INSOLVENCY

JUDICIAL CENTRE YORKTON

Court of Queen's Bench  
Judicial Centre of Yorkton

AUG - 2 2019

FILED

IN THE MATTER OF THE RECEIVERSHIP OF  
EMW INDUSTRIAL LTD., EMW INDUSTRIAL INC., E&S MORRISON FAMILY  
HOLDINGS LTD., PEPPER MAINTENANCE CANADA (2005) INC., EMW  
HOLDINGS LTD., and EMW REAL ESTATE CO. LTD.

**ORDER**

**(Sale Approval and Vesting)**

Before the Honourable Mr. Justice D.H. Layh in Chambers the 2<sup>nd</sup> day of August, 2019.

Upon the application of Deloitte Restructuring Inc. (the "Receiver"), in its capacity as the court-appointed receiver of all of the personal property of the debtors, EMW Industrial Ltd., EMW Industrial Inc., E&S Morrison Family Holdings Ltd., Pepper Maintenance Canada (2005) Inc., EMW Holdings Ltd., and EMW Real Estate Co. Ltd. (collectively, the "Debtors"), and upon hearing from Robert J. Taylor of Deloitte Restructuring Inc., Michael W. Milani, Q.C., counsel on behalf of the Receiver, Jeffrey M. Lee, Q.C., counsel on behalf of The Toronto-Dominion Bank, Janine L. Lavoie-Harding, counsel on behalf of Farm Credit Canada, and Mike J. Russell, counsel on behalf of Summit Acceptance Corp., and upon reading the Notice of Application dated July 24, 2019, the Second Report of the Receiver (the "Second Report") and the Confidential Supplement to the Second Report (the "Confidential Supplement"), a proposed draft Order, the Brief of Law, and proof of compliance with General Application Practice Directive #3, all filed; and the pleadings and proceedings taken herein:

The Court Orders:

**SERVICE**

1. Service of the Notice of Application on behalf of the Receiver and the materials filed in support thereof (collectively, the "Application Materials") shall be and is hereby deemed to be good and valid and, further, shall be and is hereby abridged, such that service of such Application Materials is deemed to be timely and sufficient and the application itself properly returnable at 9:00 a.m. on August 2, 2019.

**RECEIVER'S ACTIONS, RECEIPTS, AND DISBURSEMENTS**

2. The Receiver's activities, fees, receipts, disbursements, and proposed courses of action, including the Receiver and its legal counsel's fees and disbursements

outlined in the Second Report of the Receiver (the "Second Report") and the Receiver's Interim Statement of Receipts and Disbursements, in relation to the discharge of its mandate as receiver of the Property, are approved.

### APPROVAL OF AUCTION

3. The Receiver is hereby authorized to enter into an agreement with Century Services Inc. ("Century") for the sale of the tools, vehicles, and equipment of the Debtors described in the Second Report (collectively, the "Assets") by auction (the "Sales"), in the form of the agreement appended to the Confidential Supplement (the "Century Proposal"), together with such reasonable non-material modifications as the Receiver and Century may determine to be necessary.
4. The Sales of the Assets to be conducted by Century in accordance with the Century Proposal are hereby approved, together with such reasonable non-material modifications as the Receiver may determine to be necessary.

### VESTING OF THE PROPERTY

5. Upon the sale of each item comprising the Assets (the "Purchased Asset" and, collectively, the "Purchased Assets") to the respective purchaser (the "Purchaser" and, collectively, the "Purchasers"), all of the Debtors' right, title and interest in and to the Purchased Asset shall vest absolutely in the name of the Purchasers (or their nominees), free and clear of and from any and all security interests (whether contractual, statutory, or otherwise), hypothecs, interests, mortgages, trusts or deemed trusts (whether contractual, statutory, or otherwise), liens, judgments, enforcement charges, levies, charges, or other financial or monetary claims (collectively, "Encumbrances") and all rights of others, 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:
  - (a) any encumbrances or charges created by the Receivership Order; and
  - (b) all charges, security interests or claims evidenced by registrations pursuant to *The Personal Property Security Act*, 1993 SS 1993, c P-6.2, or any other personal property registry legislation;

and, for greater certainty, this Court orders that all of the Encumbrances affecting or relating to the Purchased Assets are hereby expunged and discharged as against the Purchased Assets.

6. The Receiver shall be and is hereby authorized to effect such discharges or revisions in the Personal Property Registries of Saskatchewan, British Columbia, Alberta, Manitoba, and Ontario (collectively, the "Personal Property

Registries"), as may be reasonably required to give full force and effect to the terms of this Order and to assist and aid the parties in closing the Sales.

7. For the purposes of determining the nature and priority of the Encumbrances:
- (a) the net proceeds from the sale of the Purchased Assets (the "Net Sale Proceeds") shall stand in the place and stead of the Purchased Assets; and
  - (b) from and after the completion of each of the Sales to the Purchasers, all Encumbrances and all rights of others (including the Receiver) shall attach to the Net Sale 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 closing of the Transaction.
8. The Purchasers (and their nominees) shall, by virtue of the completion of the Sales, have no liability of any kind whatsoever in respect of any Claims against the Debtors.
9. The Debtors and all persons who claim by, through or under the Debtors in respect of the Purchased Assets shall stand absolutely barred and foreclosed from all estate, right, title, interest, royalty, rental and equity of redemption of the Purchased Assets and, to the extent that any such person remains in possession or control of any of the Purchased Assets, they shall forthwith deliver possession thereof to the Purchasers (or their nominees).
10. The Purchasers (or their nominees) shall be entitled to enter into and upon, hold and enjoy the Purchased Assets for their own use and benefit without any interference of or by the Debtors, or any person claiming by or through or against the Debtors.
11. 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 Debtors and any bankruptcy order issued pursuant to such applications;
  - (c) any assignment in bankruptcy made in respect of the Debtors; and
  - (d) the provisions of any federal statute, provincial statute or any other law or rule of equity,

the vesting of any of the Purchased Assets in the Purchasers (or their nominees) pursuant to this Order shall be binding on any trustee in bankruptcy that may be

appointed in respect of the Debtors and shall not be void or voidable by creditors of the Debtors, nor shall it constitute nor be deemed to be a settlement, 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.

12. The Sales are exempt from any requirement under any applicable federal or provincial law to obtain shareholder approval and are exempt from the application of any bulk sales legislation in any Canadian province or territory.

### SEALING OF THE CONFIDENTIAL DOCUMENTS

13. The Confidential Supplement, including the exhibits thereto (collectively, the "Confidential Documents"), shall be kept sealed and confidential, and shall not form part of the public record but shall be kept separate and apart from the other contents of the Court file in respect of this matter in a sealed envelope which sets out the style of cause of these proceedings and a statement that the contents thereof are subject to a Sealing Order, and shall not be opened except by the Honourable Mr. Justice D.H. Layh until further Order of the Court or the Receiver providing written notice to the Court that the sealing of the Confidential Supplement is no longer necessary.
14. An application to unseal the Confidential Documents may be made at any time upon 14 days' notice to the Receiver and its legal counsel, McDougall Gauley LLP.

### MISCELLANEOUS MATTERS

15. The Receiver, the Purchasers (or their nominees) and any other interested party shall be at liberty to apply for further advice, assistance and directions as may be necessary in order to give full force and effect to the terms of this Order and to assist and aid the parties in closing the Sales, including, without limitation, an application to the Court to deal with interests which are registered against the Purchased Assets after the time of the granting of this Order.
16. 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, and the Registrars of the Personal Property Registries 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, and Registrars are hereby respectfully requested to make such orders and take such actions as 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.

17. Service of this Order on any party not attending this application is hereby dispensed with. Parties attending this application shall be served in accordance with the Electronic Case Information and Service Protocol adopted in the Receivership Order.

ISSUED at Yorkton, Saskatchewan, this 2<sup>nd</sup> day of August 2019.

Y. Drohatynsky  
(Deputy) Local Registrar

**DUPLICATE  
ORIGINAL**

**CONTACT INFORMATION AND ADDRESS FOR SERVICE**

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