

COURT FILE NUMBER QBG 40 of 2019

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

JUDICIAL CENTRE YORKTON

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 22nd day of May, 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, James P. Kroczyński, counsel on behalf of Rabobank Canada and Richardson Pioneer Limited, and Rob Phillips, president of Commercial Sand Blasting & Painting and Western Urethane (1995) Ltd., and upon reading the Notice of Application dated May 15, 2019, the Supplement to the First Report of the Receiver dated May 21, 2019 (the "Supplement to the First Report"), and a proposed draft Order, 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.

APPROVAL OF TRANSACTION

2. The sale transaction (the "Transaction") contemplated by an agreement of purchase and sale (the "Sale Agreement") between the Receiver and Francis Ostapovich, Jordan Bugg, and Trevor Mack (or their nominee) (the

"Purchasers") and appended to the Supplement to the First Report, for the sale to the Purchasers (or their nominee) of the Debtors' right, title and interest in and to the assets described in the Sale Agreement (the "Purchased Assets") is declared to be commercially reasonable and in the best interests of the Debtors and their creditors and other stakeholders and is hereby authorized and approved, with such minor amendments as the Receiver may deem necessary.

3. The Receiver is hereby authorized and directed to take such additional steps and execute such additional documents as may be necessary or desirable (including any steps necessary or desirable to satisfy and/or comply with any applicable laws, regulations or orders of any courts, tribunals, regulatory bodies or administrative bodies in any jurisdiction in which the Purchased Assets may be located) for the completion of the Transaction or for the conveyance of the Purchased Assets to the Purchasers (or their nominee), subject to such amendments as the Receiver and the Purchasers may agree upon, provided that any such amendments do not materially affect the Purchase Price.

VESTING OF THE PROPERTY

4. Upon the Receiver determining that the Proposed Sale has closed to its satisfaction and on terms substantially as approved by this Honourable Court pursuant to this Order, the Receiver shall deliver to the Purchasers (or their nominee) a Receiver's certificate substantially in the form set out in Schedule "A" hereto (the "Receiver's Certificate").
5. The Receiver may rely on written notices from the Purchasers regarding fulfillment or, if applicable, waiver of conditions to closing of the Proposed Sale under the Sale Agreement and shall have no liability with respect to the delivery of the Receiver's Certificate.
6. Upon delivery of the Receiver's Certificate all of the Debtors' right, title and interest in and to the Purchased Assets described in the Sale Agreement shall, save and except for the encumbrances listed in Schedule "B" hereto (the "Permitted Encumbrances"), vest absolutely in the name of the Purchasers (or their nominee), 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 system;

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

7. Upon delivery of the Receiver's Certificate to the Purchasers, the Receiver shall be and is hereby authorized to effect such discharges or revisions in the Saskatchewan Personal Property Registry as may be reasonably required to conclude the Transaction.
8. 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 delivery of the Receiver's Certificate to the Purchasers, all Encumbrances and all rights of others 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.
9. The Purchasers (and their nominee) shall, by virtue of the completion of the Transaction, have no liability of any kind whatsoever in respect of any Claims against the Debtors.
10. The Debtors and all persons who claim by, through or under the Debtors in respect of the Purchased Assets, save and except for the persons entitled to the benefit of the Permitted Encumbrances, 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 nominee).
11. The Purchasers (or their nominee) 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.
12. Immediately after the closing of the Transaction, the holders of the Permitted Encumbrances shall have no claim whatsoever against the Receiver or the Debtors.

13. Forthwith after the delivery of the Receiver's Certificate to the Purchasers (or their nominee), the Receiver shall file a copy of the Receiver's Certificate with the Court, and shall serve a copy of the Receiver's Certificate on the recipients listed in the Service List maintained with respect to these proceedings.
14. Pursuant to clause 7(3)(c) of the *Personal Information Protection and Electronic Documents Act*, SC 2000, c 5, the Debtors and the Receiver are hereby authorized and permitted to disclose and transfer to the Purchasers all human resources and payroll information in the Debtors' records pertaining to the Debtors' past and current employees. The Purchasers 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 Debtors.
15. 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 nominee) pursuant to this Order and the obligations of the Debtors under the Sale Agreement, 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.

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

MISCELLANEOUS MATTERS

17. The Receiver, the Purchasers (or their nominee) 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 Transaction, 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.

- 18. 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 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.
- 19. 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 21 day of May 2019.


(Deputy) Local Registrar

DUPLICATE ORIGINAL

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