

Clerk's Stamp:



COURT FILE NUMBER 1603 20704

COURT OF QUEEN'S BENCH OF ALBERTA

JUDICIAL CENTRE EDMONTON

PLAINTIFF ROYAL BANK OF CANADA

DEFENDANTS ELEMENTS WEST INC., DAMEN TRUCKING LTD., PETER DAMEN, DAVID DAMEN, ANDREW DAMEN and KAREN DAMEN

DOCUMENT APPLICATION FOR AN ORDER APPROVING PROPOSED SALES PROCESS AND TEMPORARY SEALING ORDER

ADDRESS FOR SERVICE AND CONTACT INFORMATION OF PARTY FILING THIS DOCUMENT Katherine J. Fisher Dentons Canada LLP 2900 Manulife Place 10180 – 101 Street Edmonton, Alberta T5J 3V5 Phone: 780.423.7262 Fax: 780.423.7276 File No.: 131048-86/RCR

NOTICE TO RESPONDENT(S)

This application is made against you. You are a respondent.

You have the right to state your side of this matter before the master/judge.

To do so, you must be in Court when the application is heard as shown below:

Date Monday, February 13, 2017
Time 3:00 p.m.
Where Edmonton, Law Courts Building
Before Whom The Honourable Mr. Justice R.P. Belzil

Go to the end of this document to see what you can do and when you must do it.

Remedy claimed or sought:

1. An Order:
 - a. abridging the time for service of notice of this Application to the time actually given and deeming service upon the parties served as good and sufficient;
 - b. approving the proposed minimum guarantee auction sales process (the "Auction") by Osman Auctions ("Osman") of the equipment assets of Elements West Inc. and Damen Trucking Inc. (the "Equipment") as set out in the First Report of the Receiver dated January 31, 2017 (the "First Report"), substantially in the form attached hereto as Schedule "A", or on such further and other terms as this Honourable Court may direct;
 - c. declaring that Division 4 of Part 6 of the *Rules of Court* does not apply to this Application, and that the Receiver's Confidential Schedule 2 as outlined in the First Report (the "Confidential Schedule") be temporarily sealed until after the date of the Auction of the Equipment or until further Order of the Court, substantially in the form attached hereto as Schedule "B", or on such further and other terms as this Honourable Court may direct;
 - d. alternatively, a direction that the Confidential Schedule does not have to be filed with the Clerk of the Court unless and until the Auction of the Equipment has occurred or until further Order of the Court;
 - e. alternatively, a temporary Restricted Court Access Order pursuant to Rule 6.28 of the *Rules of Court* sealing the contents of the Confidential Schedule until the Auction of the Equipment has occurred or until further Order of the Court; and
 - f. such further or other relief as may be requested of the Court by the Receiver.

Grounds for making this application:

Proposed Sale Process

2. On December 2, 2016, the Court of Queen's Bench of Alberta granted an order appointing Deloitte Restructuring Inc. as Receiver of Elements West Inc. ("Elements West") and Damen Trucking Ltd. ("Damen Trucking"; Elements West and Damen Trucking collectively the "Companies") pursuant to an application made by Royal Bank of Canada (the "Receivership Order").
3. By the Receivership Order, the Receiver was empowered to, *inter alia*, market any and all of the personal property of the Companies for sale, and to sell the property or part or parts thereof without Court approval if the aggregate consideration does not exceed \$250,000.00 and with Court approval where the aggregate consideration exceeds such sum.
4. The aggregate consideration for the proposed sale of the Equipment of the Companies will exceed \$250,000.00, and accordingly Court approval of such sale is required.
5. The Receivership Order empowers the Receiver to apply for any vesting Order or other Orders necessary to convey the property of the Companies free and clear of all liens or encumbrances, and the Receiver requires a vesting Order such that it may convey free and clear title to the purchasers of the Equipment of the Companies.

6. The proposal submitted by Osman for the Auction of the Equipment of the Companies is the best offer received by the Receiver to maximize the realizable value of the Equipment the Companies.

Sealing Order

7. The Confidential Schedule contains confidential information of a commercial nature which, if disclosed to third parties prior to the Auction set out herein, could materially jeopardize the same, or should any Equipment not sell at the Action, could materially jeopardize the value that the Receiver is subsequently able to obtain from the sale of the Equipment, and as such, it is appropriate that the Court dispense with filing the Confidential Schedule with the Clerk of the Court until the Auction has occurred, or grant an interim sealing order in relation thereto.

Material or evidence to be relied on:

8. The First Report of the Receiver, filed;
9. The Confidential Schedule, unfiled; and
10. Such further and other material as legal counsel for the Receiver may advise and this Honourable Court may permit.

Applicable rules:

11. Rules 6.3, 6.28 and 13.5(2) of the *Rules of Court*.
12. Such further and other authority as counsel may advise and this Honourable Court may permit.

Applicable Acts and regulations:

13. N/A

Any irregularity complained of or objection relied on:

14. N/A

How the application is proposed to be heard or considered:

15. In person in open Chambers.

WARNING

If you do not come to Court either in person or by your lawyer, the Court may give the applicant(s) what they want in your absence. You will be bound by any order that the Court makes. If you want to take part in this application, you or your lawyer must attend in Court on the date and at the time shown at the beginning of the form. If you intend to reply on an affidavit or other evidence when the application is heard or considered, you must reply by giving reasonable notice of the material to the applicant.

Schedule "A"

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DOCUMENT ORDER APPROVING PROPOSED SALE PROCESS

ADDRESS FOR SERVICE AND CONTACT INFORMATION OF PARTY FILING THIS DOCUMENT Katherine J. Fisher
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2900 Manulife Place
10180 – 101 Street
Edmonton, Alberta T5J 3V5
Phone: 780.423.7262 Fax: 780.423.7276
File No.: 131048-86/RCR

DATE ON WHICH ORDER WAS PRONOUNCED: February 13, 2017

LOCATION WHERE ORDER WAS PRONOUNCED: Edmonton, Alberta

NAME OF JUSTICE WHO MADE THIS ORDER: The Honourable Mr. Justice R.P. Belzil

UPON THE APPLICATION of Deloitte Restructuring Inc. in its capacity as receiver of the property of Elements West Inc. ("Elements West") and Damen Trucking Ltd. ("Damen Trucking") (the "Receiver"); AND UPON READING the Receivership Order granted by the Honourable Mr. Justice B.R. Burrows in these proceedings on December 2, 2016; AND UPON NOTING that the Receiver has solicited offers for the sale of the personal property of Elements West and Damen Trucking (the "Equipment"); AND UPON NOTING that Osman Auctions ("Osman") has presented an offer to sell the Equipment by way of a minimum guarantee auction (the "Auction"); AND UPON READING the First Report of the Receiver dated January 31, 2017 (the "First Report") and the Application filed herein and proof of service thereof and the pleadings and proceedings had and taken herein; AND UPON it appearing that the sale of the Equipment is in the best interests of the creditors of Elements West and Damen Trucking; AND UPON HEARING from counsel for the Receiver and all other interested parties:

IT IS HEREBY ORDERED THAT:

1. The time for service of notice of the application for this Order and all materials in support of such notice is deemed good and sufficient upon all interest persons and the time for such service is abridged to the time actually given and all further service is dispensed with.
2. All steps and activities taken by the Receiver, including but not limited to the Receiver's activities as described in the First Report, are hereby approved.
3. The sale of the Equipment pursuant to the Auction is hereby authorized, ratified and confirmed by this Honourable Court, subject to the remaining terms of this Order.
4. The Receiver is hereby permitted to release Equipment to any priority secured creditor(s) who has proven to the satisfaction of the Receiver a priority interest in such Equipment ("Priority Secured Creditor") who inform the Receiver in writing within seven (7) days of this Order that the Priority Secured Creditor does not wish for the Receiver to realize upon such secured Equipment, provided that such Priority Secured Creditor(s) pay 10% of the Osman guarantee (net of commission costs) with respect to the Equipment secured by the Priority Secured Creditor(s) as an allocation of the Priority Secured Creditor(s) share of super priority claims as against Elements West or Damen Trucking and the Receiver's administration costs within seven (7) days of demand being made by the Receiver, failing which the Receiver will dispose of the Equipment in the minimum guarantee auction and remit 90% of the net realized amount to the Priority Secured Creditor(s).
5. Upon Osman conducting the Auction of the Equipment and upon the successful bidder for each item or items of the Equipment paying the full purchase price (the "Highest Bid Purchase Price") for such Equipment (the "Purchased Equipment"), the successful bidder for the Purchased Equipment shall be entitled to possession of such Purchased Equipment, and Elements West or Damen Trucking and all other persons claiming through or under Elements West or Damen Trucking do stand absolutely debarred and foreclosed of and from all of their estate, right, title, interest and equity of redemption in the Purchased Equipment.
6. Upon the Receiver being in receipt of the Highest Bid Purchase Price, the Highest Bid Purchase Price shall stand in the place and stead of the Purchased Equipment and all security against the Purchased Equipment existing immediately prior to the granting of this Order shall be deemed to apply to the Highest Bid Purchase Price and all priorities with respect to such security which existed against the Purchased Equipment immediately prior to the granting of this Order shall apply, mutatis mutandis, to the Highest Bid Purchase Price. All Equipment which remains unsold following the Auction shall be dealt with by the Court upon further application.
7. Any secured creditor that has registered a security interest against a serial number (with respect to a serial number good, as defined in the *Personal Property Security Act*, RSA 2000, c P-7 and any regulation thereunder, of the Purchased Equipment) sold pursuant to the Auction may discharge its security number registration against the Purchased Equipment and the discharge shall not affect the secured party's claim or priority to the proceeds of the sale of the Purchased Equipment as is otherwise provided for in this Order or any other Order of this Honourable Court granted in these proceedings.
8. If a secured creditor does not discharge a security interest registered with respect to a serial number good of the Purchased Equipment sold pursuant to the Auction upon the request of the Receiver, the Receiver may, absent a written objection by the secured creditor to the Receiver within 10 days following the request having been made, discharge the secured creditor's

registration in a personal property security registry with respect to the Purchased Equipment and the discharge of such registration shall not affect the secured party's claim or priority to the proceeds of the Purchased Equipment as is otherwise provided for in this Order or any other Order of this Honourable Court granted in these proceedings.

9. Service of this Order may be effected upon those persons (directly or through legal counsel) who were served with a copy of the Application for this Order by facsimile or electronic mail, and such service shall constitute good and sufficient service. Service is deemed to be effected the next business day following the transmission or delivery of such documents.
10. Service on any other person is hereby dispensed with.
11. The Receiver is at liberty to reapply for further advise, assistance and direction as may be necessary to give full force and effect to the terms of this Order.

J.C.C.Q.B.A.

Schedule "B"

Clerk's Stamp:

COURT FILE NUMBER 1603 20704

COURT OF QUEEN'S BENCH OF ALBERTA

JUDICIAL CENTRE EDMONTON

PLAINTIFF ROYAL BANK OF CANADA

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DOCUMENT TEMPORARY SEALING ORDER

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NAME OF JUSTICE WHO MADE THIS ORDER: The Honourable Mr. Justice R.P. Belzil

UPON THE APPLICATION of Deloitte Restructuring Inc. in its capacity as receiver of the property of Elements West Inc. ("Elements West") and Damen Trucking Ltd. ("Damen Trucking") (the "Receiver"), pursuant to, among other things, the Receivership Order of the Honourable Mr. Justice B.R. Burrows granted in these proceedings on December 2, 2016 (the "Receivership Order") and an Order Approving Proposed Sale Process in relation to the personal property of Elements West and Damen Trucking (the "Equipment"); AND UPON READING the First Report of the Receiver dated January 31, 2017 (the "First Report"), filed; AND UPON READING THE contents of the Receiver's Confidential Schedule 2 as outlined in the First Report (the "Confidential Schedule"), as yet unfiled; AND UPON it appearing that the sale of the Equipment is in the best interests of the creditors of the Corporations; AND UPON the Application of the Receiver for a Temporary Sealing Order; AND UPON NOTING that restricting access to the Confidential Schedule is appropriate in these circumstances; AND UPON NOTING that the benefits of an order restricting access to the aforementioned Confidential Schedule outweigh the deleterious effects on the right to free expression; AND UPON HEARING from counsel for the Receiver and all other interested parties:

IT IS HEREBY ORDERED THAT:

1. The Clerk of the Court is hereby directed to seal the Confidential Schedule on the Court file until the auction of the Equipment by Osman Auctions (the "Auction") has taken place in accordance with the Order Approving Proposed Sale Process, and the filing of a letter with the Clerk of the Court from the Receiver confirming that the Auction has taken place. or unless and until otherwise ordered by this Court, upon seven days' notice to all interest parties.
2. The Clerk of the Court is hereby directed to seal the Confidential Schedule in an envelope setting out the style of cause in the within proceedings and labelled:

THIS ENVELOPE CONTAINS CONFIDENTIAL DOCUMENTS. THESE CONFIDENTIAL DOCUMENTS ARE SEALED ON THE COURT FILE PURSUANT TO THE ORDER OF THE HONOURABLE JUSTICE _____ ON _____, 2017. THE CONFIDENTIAL DOCUMENTS ARE NOT TO BE ACCESSED BY ANY PERSON UNTIL THE FILING OF A LETTER FROM DELOITTE RESTRUCTURING INC. IN ITS CAPACITY AS RECEIVER OF ELEMENTS WEST INC. AND DAMEN TRUCKING LTD., CONFIRMING THAT THE AUCTION OF THE EQUIPMENT HAS OCCURRED.

3. Service of this Order may be effected upon those persons (directly or through legal counsel) who were served with a copy of the Application for this Order by facsimile or electronic mail, and such service shall constitute good and sufficient service. Service is deemed to be effected the next business day following the transmission or delivery of such documents.
4. Service on any other person is hereby dispensed with.

J.C.C.Q.B.A