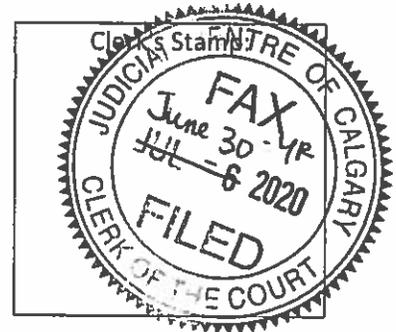


ENTERED



COURT FILE NUMBERS BK NO: 25-2651361
BK NO: 25-2651362

COURT COURT OF QUEEN'S BENCH OF ALBERTA

JUDICIAL CENTRE CALGARY

PROCEEDINGS IN THE MATTER OF THE NOTICE OF INTENTION TO MAKE A
PROPOSAL OF SWIMCO AQUATIC SUPPLIES LTD. AND SWIMCO
PARTNERSHIP

DOCUMENT APPLICATION

Field LLP
400, 444 – 7 Avenue SW
Calgary AB T2P 0X8
Lawyer: Trevor Batty
Phone Number: (403) 260-8537
Fax Number: (403) 264-7084
Email Address: tbatty@fieldlaw.com
File No. 70179-1

ADDRESS FOR SERVICE AND CONTACT INFORMATION OF PARTY FILING THIS DOCUMENT

NOTICE TO RESPONDENTS: [listed in the service list attached as Schedule "B"]

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

You have the right to state your side of this matter before the Judge.

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

Date: July 9, 2020
Time: 10:30 pm
Where: Calgary Courts Centre, 601 – 5th Street SW, Calgary, AB T2P 5P7
Before Whom: The Honourable Madam Justice B.E.C. Romaine

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

Remedy claimed or sought:

An Order, in the form attached as Schedule "A":

1. Abridging the time for service of this Application and the supporting materials, as necessary, and deeming service thereof to be good and sufficient.

2. Pursuant to section 50.4(9) of the *Bankruptcy and Insolvency Act*, R.S.C. 1985 c.B-3 (the “**BIA**”) extending the stay of proceedings of both of Swimco Aquatic Supplies Ltd. (“**SAS**”) and Swimco Partnership (“**SP**” and together with SAS, the “**Swimco Group**”) under the BIA for a further period of 45 days from July 11, 2020 to August 24, 2020.
3. Pursuant to section 64.2 of the BIA declaring that the Trustee, Deloitte Restructuring Inc. (the “**NOI Trustee**”), counsel to the NOI Trustee and counsel to the Swimco Group shall be paid their reasonable fees and disbursements, and declaring that the NOI Trustee, counsel to the NOI Trustee and Swimco Group’s counsel, as security for the professional fees and disbursements incurred both before and after the granting of the requested Order, shall be entitled to the benefits of and are hereby granted a first priority charge (the “**Administration Charge**”) on all present and after-acquired property of Swimco Group, which charge shall not exceed an aggregate amount of \$150,000.00.
4. Declaring that the Administration Charge shall rank in priority to all other security interests, trusts, liens, charges and encumbrances, claims of secured creditors, statutory or otherwise in favour of any Person.
5. For procedural consolidation of the proposal proceedings of SAS and SP.
6. Granting such further and other relief as counsel may advise and this Honourable Court deems appropriate in the circumstances.

Grounds for making this application:

7. SAS and SP are each an “insolvent person”, as defined by the BIA, who filed a Notices of Intention to Make a Proposal on June 11, 2020.
8. The Swimco Group requires an extension of their stays of proceedings in order to continue with their financial restructuring and a proposal to their creditors.
9. The extension of the stays of proceedings is appropriate because:
 - a. The Swimco Group has acted, and is acting, in good faith and with due diligence;
 - b. The Swimco Group will likely be able to make a viable proposal if the extension it is applying for is granted; and
 - c. No creditor will be materially prejudiced if the extension the Swimco Group is applying for is granted.
10. In order to ensure the participation of professionals in the restructuring, an Administration Charge is required to protect and secure the fees and disbursements of these professionals.
11. Procedural consolidation of the proposal proceedings of SAS and SP will reduce cost and administrative burden and will not prejudice anyone.
12. Such further and other grounds as counsel may advise and this Honourable Court deem fit.

Material or evidence to be relied on:

13. Affidavit of Lori Bacon, sworn June 29, 2020, filed.
14. The First Report of the NOI Trustee, dated June 30, 2020, filed.
15. Such further and other materials as counsel may advise and this Honourable Court deem fit.

Applicable Rules:

16. N/A

Applicable Acts and Regulations:

17. *Bankruptcy and Insolvency Act*, R.S.C. 1985 c. B-3, specifically ss. 50.4(9) and 64.2

Any irregularity complained of or objection relied on:

18. N/A

How the application is proposed to be heard or considered:

19. This Application is proposed to be heard in Justice Chambers before the Honourable Commercial Court Justice.

WARNING:

If you do not come to Court either in person or by your lawyer, the Court may give the Swimco Group 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 give evidence in response to the application, you must reply by filing an affidavit or other evidence with the Court and serving a copy of that affidavit or other evidence on the Swimco Group a reasonable time before the application is to be heard or considered.

Schedule "A"
Form of Order

See attached.

Clerk's Stamp:

| | |
|---|--|
| COURT FILE NUMBERS | BK NO: 25-2651361 BK NO: 25-2651362 |
| COURT | COURT OF QUEEN'S BENCH OF ALBERTA |
| JUDICIAL CENTRE | CALGARY |
| PROCEEDINGS | IN THE MATTER OF THE NOTICE OF INTENTION TO MAKE A PROPOSAL OF SWIMCO AQUATIC SUPPLIES LTD. AND SWIMCO PARTNERSHIP |
| DOCUMENT | ORDER |
| ADDRESS FOR SERVICE AND CONTACT INFORMATION OF PARTY FILING THIS DOCUMENT | Field LLP 400, 444 – 7 Avenue SW Calgary AB T2P 0X8 Lawyer: Trevor Batty Phone Number: (403) 260-8537 Fax Number: (403) 264-7084 Email Address: tbatty@fieldlaw.com File No. 70179-1 |

DATE ON WHICH ORDER WAS PRONOUNCED: July 9, 2020

NAME OF JUSTICE WHO MADE THIS ORDER: Madam Justice Barbara E.C. Romaine

LOCATION OF HEARING: Calgary, Alberta

ORDER

UPON THE APPLICATION OF Swimco Aquatic Supplies Ltd. ("**SAS**") and Swimco Partnership ("**SP**", together with SAS, the "**Swimco Group**"), AND UPON HAVING read the Application filed by SAS and SP and the Affidavit of Lori Bacon, sworn on June 29, 2020 (the "**Bacon Affidavit**"), AND UPON READING the First Report of Deloitte Restructuring Inc. (the "**NOI Trustee**"), dated June 30, 2020; AND UPON HEARING counsel for SAS and SP and the NOI Trustee and all other interested parties present; IT IS HEREBY ORDERED THAT:

1. The time for service of the Application and all materials in support is hereby abridged to the date of actual service and service is hereby deemed good and sufficient.
2. The 30-day period of time within which SAS and SP is required to file a proposal to their creditors with the Official Receiver, under Section 50.4 of the *Bankruptcy and Insolvency Act*,

R.S.C. 1985 c. B-3 (the "**BIA**"), shall be and is hereby extended by forty-five (45) days, from July 11, 2020, to and including August 24, 2020.

3. All Swimco Group's current and future assets, undertakings and properties of every nature and kind whatsoever, and wherever situate including all proceeds thereof (the "**Property**") shall be and is hereby subject to a first charge (the "**Administration Charge**") up to a maximum total aggregate amount of One Hundred Fifty Thousand (\$150,000.00) Dollars in favour of:
 - (a) Deloitte Restructuring Inc., the NOI Trustee under the Notices of Intention filed by the Swimco Group on June 11, 2020, (the "**NOIs**"), in order to secure payment to the NOI Trustee of all of the NOI Trustee's reasonable professional fees and disbursements for professional services rendered by the NOI Trustee in the performance of its duties both before and after the date of Swimco Group filing its NOIs;
 - (b) the law firm of Cassels Brock and Blackwell LLP ("**Cassels Brock**"), legal counsel to the NOI Trustee, in order to secure payment of all of Cassel Brock's reasonable professional fees and disbursements for professional services rendered by Cassels Brock to the NOI Trustee for the purpose of the NOI proceedings both before and after the date of Swimco Group filing its NOIs; and
 - (c) the law firm of Field LLP ("**Field**"), legal counsel to Swimco Group, in order to secure Swimco Group's payment of all of Field's reasonable professional fees and disbursements for professional services rendered by Field for the purpose of the NOI proceedings both before and after the date of Swimco Group filing its NOIs.
4. The Administration Charge (as constituted and defined herein) shall constitute a charge on the Property and shall rank in priority to all other security interests, trusts, liens, charges and encumbrances, claims of secured creditors, statutory or otherwise (collectively, "**Encumbrances**") in favour of any Person.
5. Except as otherwise expressly provided for herein, or as may be approved by this Court, Swimco Group shall not grant any Encumbrances over any Property that rank in priority to, or *pari passu* with, the Administration Charge, unless Swimco Group also obtains the prior written consent of the beneficiaries of the Administration Charge, or further order of this Court.

6. The filing, registration or perfection of the Administration Charge shall not be required, and the Administration Charge shall be enforceable for all purposes, including as against any right, title or interest filed, registered, recorded or perfected subsequent to the Administration Charge coming into existence, notwithstanding any such failure to file, register, record or perfect.
7. The Administration Charge shall not be rendered invalid or unenforceable and the rights and remedies of the NOI Trustee and Field thereunder shall not otherwise be limited or impaired in any way by:
 - (a) the pendency of these proceedings and the declarations of insolvency made in this Order;
 - (b) any application(s) for bankruptcy order(s) issued pursuant to BIA, or any bankruptcy order made pursuant to such applications;
 - (c) the filing of any assignments for the general benefit of creditors made pursuant to the BIA;
 - (d) the provisions of any federal or provincial statutes; or
 - (e) any negative covenants, prohibitions or other similar provisions with respect to borrowings, incurring debt or the creation of Encumbrances, contained in any existing loan documents, lease, sublease, offer to lease or other agreement (collectively, an "**Agreement**") which binds the Applicant, and notwithstanding any provision to the contrary in any Agreement:
 - (i) neither the creation of the Administration Charge nor the execution, delivery, perfection, registration or performance of any documents in respect thereof shall create or be deemed to constitute a new breach by Swimco Group of any Agreement to which it is a party;
 - (ii) neither the NOI Trustee, Cassels Brock or Field shall have any liability to any Person whatsoever as a result of any breach of any Agreement caused by or resulting from the creation of the Administration Charge; and

(iii) the payments made by Swimco Group pursuant to this order and the granting of the Administration Charge do not and will not constitute preferences, fraudulent conveyances, transfers at undervalue, oppressive conduct or other challengeable or voidable transactions under any applicable law.

8. The within NOI proceedings of SAS and SP are hereby administratively consolidated for procedural purposes only. For clarity, the estates of SAS and SP are to remain substantively separate and shall not be merged by virtue of this Order. The Clerk of the Court is hereby directed to open a single, consolidated file for both proceedings.
9. Service of this Order shall be deemed to have been achieved by posting a copy of this Order on the website of the NOI Trustee and by delivering a copy of this Order to those parties listed on the Service List prepared by counsel for SAS and SP.

J.C.Q.B.A.

Schedule "B"
Service List

See attached.

QB Action No. 25-2651361 & SP – 25-2651362
 In the Matter of the Notice of Intention to Make a Proposal of
 Swimco Aquatic Supplies Ltd. (“SAS”) and Swimco Partnership (“SP”)
 Our File: 70179-1

SERVICE LIST

| Party | Contact Information | Role |
|--|--|----------------------------------|
| Field LLP 400, 444 – 7 Avenue SW Calgary, AB T2P 0X8 Attention: Trevor Batty | tbatty@fieldlaw.com | Counsel for SAS and SP |
| Swimco Aquatic Supplies Ltd. & Swimco Partnership 6403 Burbank Road SE Calgary, AB T2H 2E1 Attention: Lori Bacon & Dave Bacon | lbacon@swimco.com dbacon@swimco.com | |
| Cassels Brock & Blackwell LLP Suite 3810, Bankers Hall West 888 3rd Street SW Calgary, AB T2P 5C5 Attention: Jeffrey Oliver | joliver@cassels.com | Counsel for the Proposal Trustee |
| Deloitte Suite 700 850-2nd Street SW Calgary, AB T2P 0R8 Attention: Ryan Adlington & Lexi Ng | radlington@deloitte.ca lexng@deloitte.ca | Proposal Trustee |
| Richter 1981 McGill College, 11th Floor Montréal, QC H3A 0G6 Attention: Phil Lichtsztral & Andrew Adessky | PLichtsztral@richter.ca AAdessky@richter.ca | Consultant to Swimco |
| McCarthy Tetrault 421 7th Avenue SW Suite 4000 Calgary, AB T2P 4K9 Attention: Pantelis Kyriakakis | pkyriakakis@mccarthy.ca | Counsel for RBC |
| Royal Bank of Canada 200 Bay Street Toronto, ON M5J 2W7, Attention: Juergen Manski & Jessica Chohan | juergen.manski@rbc.com jessica.chohan@rbc.com | |
| Gardiner Roberts LLP Bay Adelaide Centre East Tower 22 Adelaide St. W, Ste. 3600 Toronto, ON M5H 4E3 Attention: S. Michael Citak | mcitak@grllp.com | Counsel for Oxford Properties |

| Party | Contact Information | Role |
|--|--|--|
| Camelino Galessiere LLP 6 Adelaide St. East, Suite 220 Toronto, ON M5C 1H6 Attention: Jessica Wuthmann | jwuthmann@cglegal.ca | Counsel for Ivanhoe Cambridge Morguard Corporation Cushman & Wakefield RioCan |
| TORYS LLP 525 – 8 Avenue SW, 46 Floor Calgary, AB T2P 1G1 Attention: Kyle Kashuba | kkashuba@torys.com | Counsel for Cadillac Fairview |
| Kim E. Nutz Professional Corp. o/a Sunstone Legal in association with West Legal Suite 880, 10201 Southport Rd. SW Calgary, AB T2W 4X9 Attention: Kim E. Nutz | | Counsel for Jacqueline Simpson |
| Taylor Janis LLP Suite 610, 211 11 Avenue SW Calgary, AB T2R 0C6 Attention: Paul Beriault | pberiault@taylorjanis.com | Counsel for Krista Kerth |
| Canada Revenue Agency Surrey National Verification And Collection Centre 9755 King George Boulevard Surrey BC V3T 5E1 | 1-866-219-0311(fax) | |
| Department of Justice Canada Tax Law Services - Prairie Region 510, 606 – 4 Street SW Calgary, AB T2P 1T1 Attention: Jill L. Medhurst | jill.medhurst@justice.gc.ca | <i>Canadian Revenue Agency and Service Canada</i> |