



Action No S240195
Vancouver Registry

IN THE SUPREME COURT OF BRITISH COLUMBIA
IN THE MATTER OF THE COMPANIES' CREDITORS
ARRANGEMENT ACT, RSC 1985, c C-36, as amended

and

IN THE MATTER OF NEXII BUILDING SOLUTIONS INC.,
NEXII CONSTRUCTION INC, NBS IP INC. and NEXII HOLDINGS INC. OLD
OMICRON CANADA INC., 4540514 CANADA INC., 1061660 B.C. LTD., 0592286 B.C.
LTD, 0713447 B.C. LTD, AND 0597783 B.C. LTD.

PETITIONERS

ASSIGNMENT ORDER

BEFORE THE HONOURABLE

JUSTICE STEPHENS

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April 26, 2024

ON THE APPLICATION of KSV Restructuring Inc., in its capacity as the Court-appointed Monitor (in such capacity, the "**Monitor**") coming on for a hearing at Vancouver, British Columbia, on the 26th day of April, 2024; AND ON HEARING counsel for the Monitor Michael Shakra and Andrew Froh, and those other counsel listed on **Schedule "A"** hereto, and no one else appearing although duly served; AND UPON READING, the material filed, including the Second Report of the Monitor dated April 19, 2024 (the "**Report**"); AND PURSUANT TO the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the "**CCAA**"), the *British Columbia Supreme Court Civil Rules*, and the inherent jurisdiction of this Court;

THIS COURT ORDERS AND DECLARES THAT:

1. Capitalized terms used but not otherwise defined in this Order shall have the meaning given to them in the Asset Purchase Agreement dated April 19, 2024 between the Vendors and Purchasers (as defined below) a copy of which is attached hereto as **Schedule "B"** (the "**Sale Agreement**").
2. The time for service of this Notice of Application and supporting materials is hereby abridged such that the Notice of Application is properly returnable today.

APPROVAL OF ASSIGNMENT OF ASSIGNED CONTRACTS

3. Upon delivery of the Monitor's Certificate and subject to Section 2.3 of the Sale Agreement:
- (a) all of the rights and obligations of the Vendors under and to the contracts set forth at **Schedule "C" to "H"** hereto (collectively the "**Assigned Contracts**" and each, an "**Assigned Contract**") shall be assigned, transferred, and conveyed to and assumed by 15925347 Canada Inc., 1474480 B.C. Ltd., 1474737 B.C. Ltd., 1474741 B.C. Ltd., 1464115 B.C. Ltd., 1474484 B.C. Ltd. (collectively, the "**Purchasers**"), respectively, as identified in the applicable Schedules hereto pursuant to Section 11.3 of the CCAA and such assignment is valid and binding upon all counterparties to the Assigned Contracts, notwithstanding any restriction, condition or prohibition contained in any such Assigned Contracts, relating to the assignment thereof, including but not limited to, any transfer restrictions or provision(s) relating to a change of control or requiring the consent of, or notice for any period in advance of the assignment to, any party to such Assigned Contracts; and
 - (b) the Assigned Contracts shall remain in full force and effect in accordance with the terms thereof. Notwithstanding the foregoing, and subject to paragraph 5 below, the counterparties to the Assigned Contracts are prohibited from exercising any rights or remedies (including, without limitation, any right of set-off) or pursue any demand, claim, action or suit under the Assigned Contracts, and shall be forever barred, enjoined and estopped from taking such action by reason of:
 - (i) any circumstance that existed or event that occurred on or prior to the Closing Date that would have entitled such counterparty to the Assigned Contract to enforce those rights or remedies or caused an automatic termination to occur;
 - (ii) any default arising from the insolvency of the Vendors or any of their affiliates;
 - (iii) any default arising as a result of the commencement of this CCAA proceeding;
 - (iv) any restriction, condition or prohibition contained therein, including any transfer restrictions relating to the assignment thereof or any change of control;
 - (v) the implementation of the Sale Agreement and the proposed Transaction or any parts thereof (including the assignment of the Assigned Contracts pursuant to this Order and any default arising as a result of such assignment); or
 - (vi) one or more of the Vendors having breached a non-monetary obligation under any of the Assigned Contracts,

and the counterparties under the Assigned Contracts are hereby deemed to waive any defaults relating thereto; provided, however, that the foregoing shall not prevent a counterparty to an Assigned Contract from pursuing any demand, claim, action or suit under an Assigned Contract in respect of performance of a Vendor's obligations thereunder prior to the Closing Date, but only to the extent any losses suffered by the applicable Purchaser as a result of or in connection with such demand, claim, action or suit are covered by the Purchaser's insurance policies required under the applicable Assigned Contract. For greater certainty and without limiting the generality of the foregoing, no counterparty under an Assigned Contract shall rely on a notice of default sent prior to the filing of the Monitor's Certificate to terminate an Assigned Contract as against the applicable Purchaser or its permitted assignee in accordance with the Sale Agreement or against the applicable Vendor.

4. The assignment of the Assigned Contracts shall be subject to the provisions of the approval and vesting order of the Honourable Justice Stephens dated April 26, 2024 (the "**Approval and Vesting Order**") directing that the Vendors' rights, title and interests in and to the Assigned Contracts shall vest absolutely in the Purchasers free and clear of all Claims and Encumbrances other than the Permitted Encumbrances in accordance with the provisions of the Approval and Vesting Order.
5. All monetary defaults in relation to the Assigned Contracts as set out in **Schedules "C" to "H"** hereto, if any, other than those arising solely by reason of (i) the Vendors' insolvency, (ii) the commencement of these CCAA proceedings, or (iii) any failure of any of the Vendors to perform a non-monetary obligation under any of the Assigned Contracts, shall be paid by the Purchasers, as applicable, in an amount agreed to by the Purchasers, as applicable, and the counterparty to such Assigned Contracts or as otherwise determined by further order of this Court within 30 calendar days of the delivery of the Monitor's Certificate.
6. Upon the delivery of the Monitor's Certificate and except as expressly set out to the contrary in any agreement among the Vendors, the Purchasers and the applicable counterparty under an Assigned Contract, each Purchaser, as applicable, shall be entitled to all of the rights and benefits and subject to all of the obligations pursuant to the terms of the applicable Assigned Contracts.
7. Notwithstanding:
 - (a) the pendency of these CCAA proceedings or the termination thereof, and any declaration of insolvency made herein;
 - (b) any applications for a bankruptcy order in respect of any or all of the Vendors now or hereafter made pursuant to the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3 (the "**BIA**") and any bankruptcy order issued pursuant to any such applications; and
 - (c) any assignment in bankruptcy made by or in respect of any or all of the Vendors,

the assignment of the Assigned Contracts to the Purchasers pursuant to this Order shall be binding on any trustee in bankruptcy that may be appointed in respect of the Vendors or any of them and shall not be void or voidable by creditors of the Vendors, nor shall it constitute or be deemed to be a transfer at undervalue, fraudulent preference, assignment, fraudulent conveyance or other reviewable transaction under the BIA or any other applicable federal or provincial legislation, or any similar legislation of a jurisdiction outside of Canada, nor shall it constitute oppressive or unfairly prejudicial conduct pursuant to any applicable federal or provincial legislation.

8. If an Assigned Contract is excluded from the Assumed Contracts prior to the Closing Date in accordance with the Sale Agreement (or as otherwise agreed between the Vendors and Purchasers), then such Contract shall cease to be an Assigned Contract for the purposes of this Order.

GENERAL

9. This Court hereby requests the aid and recognition of other Canadian and foreign Courts, tribunals, regulatory or administrative bodies, including any Court or administrative tribunal, to act in aid of and to be complementary of this Court in carrying out the terms of this Order where required. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Petitioners, the Vendors, the Purchasers and the Monitor, as an officer of this Court, as may be necessary or desirable to give effect to this Order or to assist the Petitioners, the Purchasers, the Vendors and the Monitor and their respective agents in carrying out the terms of this Order.
10. The Petitioners, the Vendors, the Monitor, the Purchasers or any other party, each have liberty to apply for such further and other directions or relief as may be necessary or desirable to give effect to this Order.
11. Endorsement of this Order by counsel appearing on this application, other than counsel for the Vendors, is hereby dispensed with.

THE FOLLOWING PARTIES APPROVE THE FORM OF THIS ORDER AND CONSENT TO EACH OF THE ORDERS, IF ANY, THAT ARE INDICATED ABOVE AS BEING BY CONSENT:

BY THE COURT 
REGISTRAR



Signature of

Party Lawyer for KSV Restructuring Inc.

Bennett Jones LLP
(Michael Shakra)

BY THE COURT



REGISTRAR

Schedule "A"

List of Counsel

Michael Shakra and Andrew Froh	The Monitor, KSV Restructuring Inc.
Kyle Plunkett and Matilda Lici (MS Teams)	Powerscourt Investments XXV, LP, Powerscourt Investments XXV Trust, Trinity Capital Inc., Horizon Technology Finance Corporation, Horizon Credit II LLC, Horizon Funding I LLC and Horizon Funding Trust 2022-1
Alexis Teasdale	Counsel to the Purchasers, 15925347 Canada Inc., 1474480 B.C. Ltd., 1474737 B.C. Ltd., 1474741 B.C. Ltd., 1464115 B.C. Ltd. and 1474484 B.C. Ltd.

Schedule "B"

Sale Agreement (See Attached)

Schedule "C"

Consent Required Contracts Assigned to 15925347 Canada Inc.

Vendor	Consent Required Contract	Cure Costs
Jim Pattison Developments Ltd.	Lease agreement dated July 1, 2018 between Omicron Canada Inc. and Eagle Creek Village I GP Ltd., in its capacity as general partner for and on behalf of Eagle Creek Village I Limited Partnership, in respect of property located at Suite 420, 29 Helmcken Road, Victoria.	None

Schedule "D"

Consent Required Contracts Assigned to 1474480 B.C. Ltd.

Vendor	Consent Required Contract	Cure Costs
BC Hydro & Power Authority	<p>Construction Contract SOW between Omicron Construction Management Ltd. and British Columbia Hydro and Power Authority dated September 18, 2020, as amended from time to time.</p> <p>PO#45000-12617</p> <p>Construction Contract SOW between Omicron Construction Management Ltd. and British Columbia Hydro and Power Authority dated May 4, 2020, as amended from time to time.</p> <p>PO#413000-16651</p> <p>Construction Contract SOW between Omicron Construction Management Ltd. and British Columbia Hydro and Power Authority dated May 14, 2020, as amended from time to time.</p> <p>PO#45000-01869</p> <p>Construction Contract SOW between Omicron Construction Management Ltd. and British Columbia Hydro and Power Authority dated May 26, 2020, as amended from time to time.</p> <p>PO#45000-08810</p> <p>Construction Contract SOW between Omicron Construction Management Ltd. and British Columbia Hydro and Power Authority dated Jan 24, 2023, as amended from time to time.</p> <p>PO#45000-71041</p> <p>Construction Contract SOW between Omicron Construction Management Ltd. and British Columbia Hydro and Power Authority dated August 30, 2022, as amended from time to time.</p>	None

Vendor	Consent Required Contract	Cure Costs
	<p>PO#45000-66756</p> <p>Construction Contract SOW between Omicron Construction Management Ltd. and British Columbia Hydro and Power Authority dated October 30, 2023, as amended from time to time.</p> <p>PO#45000-89294</p> <p>Construction Contract SOW between Omicron Construction Management Ltd. and British Columbia Hydro and Power Authority dated March 11, 2022, as amended from time to time.</p> <p>PO#4500-51566</p>	
Zeemac Vehicle Lease Ltd.	<p>Construction Contract SOW between Omicron Construction Management Ltd. and British Columbia Hydro and Power Authority dated March 11, 2022, as amended from time to time.</p> <p>PO#4500-51566</p>	None
Montrose Industries Ltd.	<p>Construction Management Contract for Services between Omicron Construction Ltd. and Montrose Industries Ltd. dated September 22, 2023, as amended from time to time.</p> <p>Construction Management Contract for Services between Omicron Construction Ltd. and Montrose Industries Ltd. dated June 8, 2022, as amended from time to time.</p> <p>Construction Management Contract for Services between Omicron Construction Ltd. and Montrose Industries Ltd. dated July 21, 2022, as amended from time to time.</p>	None
Nicola V.A. Allandale L.P. and A.V. Lot C	<p>Construction Management Contract for Services between Omicron Construction Ltd. and Nicola V.A. Allandale L.P. and A.V. Lot C dated July 14, 2021, as amended from time to time</p>	None

Schedule "E"

Consent Required Contracts Assigned to 1474737 B.C. Ltd.

Vendor	Consent Required Contract	Cure Costs
B.C. Transit	Construction Management Contract for Services and Construction between Omicron Construction Ltd. and BC Transit dated January 26, 2022, as amended from time to time.	None
Carson Automotive Group	Construction Management Contract for Services and Construction between Omicron Construction Ltd. and Carson Automotive Group dated January 4, 2023, as amended from time to time	None
Coastal Ford Sales Limited	Construction Preventative Maintenance Services Contracts between Omicron Construction Ltd. And Coastal Ford Sales dated June 16, 2021, as amended from time to time. Omicron Construction Ltd. to provide on-demand services to Coastal Ford Sales Ltd.	None
Hammersmith Corporation	Consultant Agreement between Omicron Construction Ltd. and Hammersmith Corporation dated October 16, 2023, as amended from time to time	None
Lotus Omicron East Broadway Development Inc.	Construction Management Contract for Services between Omicron Construction Ltd. and Lotus Omicron East Broadway Development Inc. dated January 31, 2022, as amended from time to time	None
Lululemon Athletica	Construction Management Contract for Services and Construction between Omicron Construction Ltd. and Lululemon Athletica dated Nov 29, 2022, as amended from time to time. Construction Management Contract for Services and Construction between Omicron Construction Ltd. and Lululemon Athletica dated Nov 29, 2022, as amended from time to time.	None
Marine & Bewicke Project Ltd.	Construction Management Contract for Services and Construction between Omicron Construction Ltd. and Marine and Bewicke Project Ltd. dated May 5, 2023	None

Vendor	Consent Required Contract	Cure Costs
Tsawwassen Independent School Society dba Southpointe Academy	Design and Early Works Agreement for Design and Construction Management Services between Omicron Construction Ltd. and Tsawwassen Independent School Society dba Southpointe Academy dated June 23, 2023, as amended from time to time	None
Tabor Storage Solutions	Services Agreement between Omicron Construction Ltd. and Tabor Storage Solutions dated June 24, 2022, as amended from time to time	None
TELUS Communications Inc.	<p>Construction Management Contract for Services and Construction between Omicron Construction Ltd. and TELUS Communications Inc. dated March 13, 2020, as amended from time to time.</p> <p>Construction Management Contract for Services and Construction between Omicron Construction Ltd. and TELUS Communications Inc. dated April 16, 2021, as amended from time to time.</p>	None
Ford Credit Canada Company	<p>Lease agreement between Omicron Construction Ltd. and Ford Credit Canada dated May 18, 2021 for Ford VIN 1FTEW1EB0MKE02227</p> <p>Lease agreement between Omicron Construction Ltd. and Ford Credit Canada dated August 24, 2023 for Ford VIN 1FTEW1EB0MKE09856.</p> <p>Lease agreement between Omicron Construction Ltd. and Ford Credit Canada dated April 25, 2022 for Ford VIN 1FTEW1E51JFA21078.</p>	None

Schedule "F"

Consent Required Contracts Assigned to 1474741 B.C. Ltd.

Vendor	Consent Required Contract	Cure Costs
City of West Kelowna	Agreement between Omicron Interiors Ltd. and City of West Kelowna dated April 19, 2023 as amended from time to time	None
BC Liquor Distribution Branch	General Service Agreement between Omicron Interiors Ltd. and His Majesty The King in Right of the Province of British Columbia as Represented by The General Manager of the Liquor Distribution Branch (the "Counterparty") dated September 8, 2020 as amended from time to time	None

Schedule "G"

Consent Required Contracts Assigned to 1464115 B.C. Ltd.

Vendor	Consent Required Contract	Cure Costs
BH Centre Head Corp.	Lease agreement dated October 18, 2004 between Omicron Consulting Ltd. and BH Centre Head Corp. (as successor in interest to BTC Properties II Ltd. and The Great-West Life Assurance Company), in respect of property located at the 4th Floor of 595 Burrard Street, Vancouver, BC (as amended by lease expansion and amending agreement dated February 12, 2007, by partial surrender of lease and lease expansion agreement and modification of lease dated August 22, 2007, by lease extension and amending agreement dated November 19, 2013, by lease extension and amending agreement dated April 13, 2017, and by lease extension and amending agreement dated June 8, 2022).	None

Schedule "H"

Consent Required Contracts Assigned to 1474484 B.C. Ltd.

Vendor	Consent Required Contract	Cure Costs
None	None	None

IN THE SUPREME COURT OF BRITISH
COLUMBIA

IN THE MATTER OF THE COMPANIES'
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C-36, AS AMENDED

AND

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SOLUTIONS INC.,
NEXII CONSTRUCTION INC, NBS IP INC. and
NEXII HOLDINGS INC. 4540514 CANADA INC.,
1061660 B.C. LTD., 0592286 B.C. LTD, 0713447 B.C.
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