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COURT OF QUEEN'S BENCH OF ALBERTA

JUDICIAL CENTRE

CALGARY

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J. Jeffrey
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IN THE MATTER OF THE NOTICE OF INTENTION TO MAKE A PROPOSAL UNDER THE *BANKRUPTCY AND INSOLVENCY ACT*, R.S.C. 1985, C. B-3, AS AMENDED, OF TRADESMEN ENTERPRISES LIMITED PARTNERSHIP

AND IN THE MATTER OF THE NOTICE OF INTENTION TO MAKE A PROPOSAL UNDER THE *BANKRUPTCY AND INSOLVENCY ACT*, R.S.C. 1985, C. B-3, AS AMENDED, OF TRADESMEN ENTERPRISES INC.

APPLICANTS

TRADESMEN ENTERPRISES LIMITED PARTNERSHIP
AND TRADESMEN ENTERPRISES INC.

DOCUMENT

APPLICATION (Approval and Vesting Order)

ADDRESS FOR SERVICE
AND CONTACT
INFORMATION OF
PARTIES FILING THIS
DOCUMENT

LAWSON LUNDELL LLP
Barristers and Solicitors
Suite 1100, 225 – 6 Avenue SW
Calgary, AB T2P 1N2
Attention: Alexis Teasdale
Telephone: (403) 218-7564
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File No.: 29768-155647

NOTICE TO RESPONDENT(S)

This application is made against you. You are Respondents.

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:	March 16, 2021
Time:	10:00 a.m.
Where:	Virtual WebEx Hearing on the Calgary Commercial List
Before Whom:	The Honourable Justice P.R. Jeffrey

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

Remedy Claimed or Sought:

1. The Applicants, Tradesmen Enterprises Limited Partnership (“**TELP**”) and Tradesmen Enterprises Inc. (“**TEI**”, and together with TELP, “**Tradesmen**” or the “**Applicants**”), seek an Order substantially in the form attached hereto as Schedule “A”:
 - (a) abridging the time for service of the Application and the supporting materials and deeming service thereof to be good and sufficient;
 - (b) approving, authorizing and ratifying the Liquidation Services Agreement dated March 3, 2021, between Tradesmen and Ritchie Bros. Auctioneers (Canada) Ltd. (the “**Liquidator**” and the “**Liquidation Services Agreement**”, respectively), the NMG Sale and the Commission Sale (each as defined herein and together, the “**Sales**”), and all transactions contemplated thereunder (collectively, the “**Transactions**”) pursuant to s. 65.13 of the *Bankruptcy and Insolvency Act*, RSC 1985, c B-3, as amended (the “**BIA**”);
 - (c) vesting all of the Applicants’ right, title and interest in and to the Auction Assets and the Additional Equipment (each as defined in the Liquidation Services Agreement), as applicable, free and clear of any and all encumbrances, in and to the applicable buyer;
 - (d) sealing the summary of offers received in response to the Proposal Solicitation Letter;
 - (e) approving the Applicants’ redaction of the sensitive commercial information contained in the Liquidation Services Agreement together with an Order sealing the unredacted Liquidation Services Agreement and the schedules thereto; and
 - (f) Such further and other relief as to this Honourable Court may seem just and appropriate.

Grounds for Making this Application:

Events Leading to these Proceedings

2. Until January 11, 2021, Tradesmen’s principal contract (the “**Teck Contract**”) was with Teck Coal Limited (“**Teck**”) for the construction of a water management project located near Elkford, British Columbia (the “**Project**”).
3. During the term of the Teck Contract, Teck requested massive changes in scope to the Project, more than quadrupling its initial budget. This led to Tradesmen issuing various change documents, including change order requests and requests for information. Unfortunately, Teck and its engineering consultant consistently delayed in approving those change documents, and in making payments to Tradesmen for work done in connection with such change documentation.
4. The consistent delays in payment were ongoing throughout the Project, and culminated in a period of non-payment between December 11, 2020 and January 11, 2021, which caused Tradesmen to issue a notice of default to Teck on January 11, 2021. Teck’s response was to issue a notice of termination of the Teck Contract.
5. Due to Teck’s termination of the Teck Contract, Tradesmen filed and registered builders’ liens against multiple properties and commenced a civil action against Teck, Fluor, and others, seeking over \$52 million in damages. The litigation comprised of the builders’ liens and the civil action (the “**Litigation**”) is Tradesmen’s most significant and valuable asset.
6. On February 1, 2021, as a result of the liquidity crisis occasioned by the events described in the preceding paragraph, each of TEI and TELP filed a Notice of Intention to Make a Proposal (each, an “**NOI**”) pursuant to subsection 50.4(1) of the BIA with the Office of the Superintendent of Bankruptcy. KSV Restructuring Inc. was appointed as Proposal Trustee under the NOIs (in such capacity, the “**Proposal Trustee**”).

Procedural History

7. On February 3, 2021, Tradesmen sought and obtained an Order (the “**Interim Financing Order**”), which, among other things:
 - (a) procedurally consolidating the NOI proceedings of TEI and TELP;

- (b) approving the Interim Financing Agreement, in the form set out in the interim financing sheet attached at Schedule “A” of the Interim Financing Order, and authorizing TELP to borrow up to \$1.9 million thereunder; and
 - (c) granting a super-priority Administration Charge and the Interim Financing Charge against Tradesmen’s Property (each as defined in the Interim Financing Order).
8. On March 2, 2021, Tradesmen sought and obtained an Order, which, among other things:
- (a) approved an extension of the period of time within which Tradesmen must file a proposal to its creditors, up to and including Friday, April 16, 2021;
 - (a) approved the Amended and Restated Interim Financing Agreement, by which, among other things, Tradesmen is permitted to borrow up to \$2,800,000 thereunder;
 - (b) approved the Key Employee Retention Plan (the “**KERP**”); and
 - (b) granted a super-priority Interim Financing Charge, Administration Charge, and KERP Charge against Tradesmen’s Property to secure the amounts payable under the KERP.

Solicitation Process

9. Given the Termination of the Teck Contract and Tradesmen’s resulting liquidity crisis, its operations as a general contractor also ceased, and Tradesmen’s principal focus became the Litigation. The Applicants no longer require their fixed assets to carry on business while these proceedings, and the Litigation, are ongoing, and they have therefore undertaken a process to liquidate their fixed assets.
10. The Proposal Trustee, in consultation with the Applicants, assembled a list of potential interested parties that regularly liquidate assets in insolvency proceedings (collectively, the “**Prospective Liquidators**”) and solicited liquidation proposals from those parties for its fixed assets.
11. On February 2, 2021, the Proposal Trustee, with the assistance of Tradesmen, distributed an offer solicitation letter to the Prospective Liquidators (the “**Proposal**”

Solicitation Letter”), requesting liquidation proposals for Tradesmen’s fixed assets, and setting out the submission procedures, including an offer deadline of February 18, 2021 at 2:00 p.m. MST (the “**Offer Deadline**”). The Proposal Solicitation Letter provided that any liquidation services agreement entered into would be subject to Court approval.

12. Four offers to conduct the liquidation of the Applicants’ fixed assets were received by the Offer Deadline (the “**Offers**”).
13. The Offer from the Liquidator was selected because it provided the greatest amount of consideration, by way of a net minimum guarantee sale, and acknowledged that it could meet a deadline of April 30, 2021 for completing the Transaction.
14. Following the selection of the Offer, the Liquidator agreed to retrieve and sell on a commission basis the Additional Equipment that was left at Tradesmen’s last job site in Elkford, British Columbia at an auction to be run by the Liquidator on or around March 25, 2021 in Lethbridge, Alberta.
15. The process undertaken to solicit liquidation proposals was reasonable and fair in all of the circumstances.

The Liquidation Services Agreement

16. On March 3, 2021, the Applicants and the Liquidator entered into the Liquidation Services Agreement.
17. The Liquidation Services Agreement contemplates that the Liquidator will sell the fixed assets of the Applicants by way of two separate auction sales, as follows:
 - (a) the Auction Assets, comprising construction machinery, equipment, tools and rolling stock located at the Applicants’ Facility, will be sold by way of an auction to be conducted on or around April 12, 2021 (the “**NMG Sale**”); and
 - (b) the Additional Equipment will be sold by way of a liquidation sale to be conducted by the Liquidator on behalf of the Applicants at the Liquidator’s facility in Lethbridge, by way of any combination of a liquidation or auction sale, and/or an

online auction that is anticipated to be conducted on or around March 25, 2021 (the “**Commission Sale**”).

18. It is a condition precedent to the Transactions contemplated under the Liquidation Services Agreement that the Applicants have obtained one or more approval and vesting orders from the Court which will vest the assets identified in the Liquidation Services Agreement in each purchaser of such assets free and clear of any claims or encumbrances on or before March 19, 2021.
19. The terms of the Liquidation Services Agreement and the consideration set out in the Liquidation Services Agreement are fair and commercially reasonable and were arrived at in a commercially reasonable manner.
20. The Liquidation Services Agreement provides for the sale of all of the Auction Assets and the Additional Equipment (collectively, the “**Assets**”) on the open market in a fair and efficient manner, and provides the Applicants with the best opportunity to attain the highest value for the Assets.
21. The Liquidation Services Agreement presents minimal risk to the Applicants as it includes a net minimum guarantee, of which the Applicants have already received half, with the balance to be paid no later than twenty one (21) calendar days following the NMG Sale, which is scheduled to be conducted on or around April 12, 2021.
22. The Sales and Transactions contemplated by the Liquidation Services Agreement are beneficial to the Applicants’ creditors because they will generate sale proceeds and reduce the costs associated with storing, maintaining, and transporting the Assets, which are not necessary to these proceedings or Tradesmen’s pursuit of the Litigation.
23. The Proposal Trustee supports the proposed relief and the Applicants’ first and second priority secured creditors consent to the relief sought.

Sealing Order

24. The summary of Offers and the unredacted Liquidation Services Agreement and schedules attached as Confidential Exhibits “1” and “2” to the Kato Affidavit No. 3 (the “**Confidential Information**”) contain commercially sensitive information which

may have a negative impact on the realization and marketability of the Auction Assets and the Additional Equipment, or any future sale of the Auction Assets and the Additional Equipment should such assets not be sold pursuant to the Liquidation Services Agreement.

25. The Applicants request that the Confidential Information be subject to a sealing Order of this Honourable Court pending further Order of the Court. The salutary effects of keeping the Confidential Information from the public record outweigh any deleterious effects of so doing.

Material or Evidence to be Relied On:

26. The pleadings and proceedings had and taken in this Action, including but not limited to:
- (a) the Affidavit No. 3 of Dean Kato sworn March 8, 2021, to be filed; and
 - (b) the Third Report of the Proposal Trustee, dated March 8, 2021.
27. Such further and other materials as counsel may advise and this Honourable Court may permit.

Applicable Rules:

28. *Alberta Rules of Court*, Alta Reg 124/2010, as amended.
29. The Bankruptcy and Insolvency General Rules, CRC, c 368.

Applicable Acts and Regulations

30. *Bankruptcy and Insolvency Act*, RSC 1985, c B-3, as amended; and
31. Such further and other Acts and Regulations as counsel may advise and this Honourable Court may permit.

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 rely 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"

ESTATE NUMBER BK01 095189
COURT COURT OF QUEEN'S BENCH OF ALBERTA
JUDICIAL CENTRE CALGARY

IN THE MATTER OF THE NOTICE OF INTENTION TO MAKE A PROPOSAL UNDER THE *BANKRUPTCY AND INSOLVENCY ACT*, R.S.C. 1985, C. B-3, AS AMENDED, OF TRADESMEN ENTERPRISES LIMITED PARTNERSHIP

AND IN THE MATTER OF THE NOTICE OF INTENTION TO MAKE A PROPOSAL UNDER THE *BANKRUPTCY AND INSOLVENCY ACT*, R.S.C. 1985, C. B-3, AS AMENDED, OF TRADESMEN ENTERPRISES INC.

DOCUMENT **ORDER (Approval and Vesting)**

ADDRESS FOR SERVICE AND CONTACT INFORMATION OF PARTIES FILING THIS DOCUMENT
LAWSON LUNDELL LLP
Barristers and Solicitors
Suite 1100, 225 – 6 Avenue SW
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Attention: Alexis Teasdale
Telephone: (403) 218-7564
Fax: (403) 269-9494
Email: ateasdale@lawsonlundell.com
File No.: 29768-155647

DATE ON WHICH ORDER WAS PRONOUNCED: March 16, 2021

NAME OF JUDGE WHO MADE THIS ORDER: The Honourable Mr. Justice P.R. Jeffrey

LOCATION OF HEARING: Calgary, Alberta

UPON THE APPLICATION of Tradesmen Enterprises Inc. (“**TEI**”) and Tradesmen Enterprises Limited Partnership (“**TELP**”, and together with TEI, “**Tradesmen**” or the “**Applicants**”) for an order approving a liquidation services agreement dated as of March 3, 2021 between Ritchie Bros. Auctioneers (Canada) Ltd. (the “**Liquidator**”) and TELP, by its general partner TEI (the “**Liquidation Services Agreement**”) and authorizing Tradesmen and the Liquidator to carry out the sales contemplated thereby;

AND UPON reading the Notice of Application of the Applicants, the Affidavit No. 3 of Dean

Kato sworn on March 8, 2021 (the “**Kato Affidavit No. 3**”), and the Third Report of KSV Restructuring Inc. in its capacity as Proposal Trustee of Tradesmen (the “**Proposal Trustee**”) dated March 8, 2021 (the “**Third Report**”), all filed; **AND UPON** noting the Affidavit of Service of Rachel Dingman, affirmed on March [***], 2021, filed; **AND UPON** reading the Order (Procedural Consolidation, Approval of Interim Financing, Interim Financing Charge, and Administration Charge) dated February 3, 2021 (the “**Interim Financing Order**”) and the Amended and Restated Order (Procedural Consolidation, Approval of Interim Financing, Interim Financing Charge, Administration Charge and KERP Charge) dated March 2, 2021 (the “**Amended and Restated Interim Financing Order**”) and the Order (Extension of Time to File a Proposal) dated March 2, 2021 (the “**Extension Order**”);

AND UPON hearing the submissions of counsel for the Applicants, counsel for Bank of Montreal (“**BMO**”), counsel for the Proposal Trustee, and any other counsel or interested parties present;

IT IS HEREBY ORDERED THAT:

Service and Definitions

1. The time for service of the notice of application for this order (the “**Order**”) is hereby abridged and deemed good and sufficient and the application for this Order is properly returnable today, and no person other than those served is entitled to service of the notice of application.
2. All capitalized terms not otherwise defined in this Order have the meaning given to them in the Liquidation Services Agreement.

The Liquidation Services Agreement, the Sales, and the Transactions

3. The Liquidation Services Agreement, the NMG Sale and the Commission Sale (collectively, the “**Sales**”), and all transactions contemplated thereunder (collectively, the “**Transactions**”), are hereby approved, authorized and ratified, and the execution of the Liquidation Services Agreement by the Applicants is hereby approved, authorized and ratified, with such minor amendments as the Applicants and the Proposal Trustee may

deem necessary. Subject to the provisions of this Order, the Applicants and the Liquidator are hereby authorized and directed to perform the Liquidation Services Agreement and complete the Transactions and the Sales in accordance with the terms and conditions of the Liquidation Services Agreement, including taking such additional steps and executing such additional documents as may be necessary or desirable for the completion of the Sales or the Transactions.

4. The Liquidator is entitled to use the Applicants' Facility for the purposes of the NMG Sale.
5. All of the Applicants' right, title and interest in and to the Auction Assets and the Additional Equipment (collectively, the "**Assets**"), shall be sold by the Liquidator, in its capacity as agent for the Applicants, as contemplated by the Liquidation Services Agreement and, upon payment of the applicable purchase price for each of the Assets by a buyer of any of the Assets (each, a "**Buyer**"), the Assets purchased from the Applicants in accordance with the Liquidation Services Agreement (the "**Purchased Assets**") shall vest absolutely in the name of the applicable Buyer of such Purchased Assets free and clear of and from any and all caveats, security interests, hypothecs, pledges, mortgages, liens, trusts or deemed trusts, reservations of ownership, royalties, options, rights of pre-emption, privileges, interests, assignments, actions, judgements, executions, levies, taxes, writs of enforcement, charges, or other claims, whether contractual, statutory, financial, monetary or otherwise, whether or not they have attached or been perfected, registered or filed and whether secured, unsecured or otherwise (collectively, "**Encumbrances**") including, without limiting the generality of the foregoing:
 - (a) any encumbrances or charges created by the Interim Financing Order dated February 3, 2021 or the Amended and Restated Interim Financing Order dated March 2, 2021;
 - (b) any charges, security interests or claims evidenced by registrations pursuant to the *Personal Property Security Act* (Alberta) or any other personal property registry system; and

- (c) any Encumbrances held by or in favour of the parties or entities which are served or whose solicitors are served with the Notice of Application to approve the Liquidation Services Agreement;

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. Upon filing of a certified copy of this Order, together with any applicable registration fees, all governmental authorities including those referred to below in this paragraph (collectively, “**Governmental Authorities**”) are hereby authorized, requested and directed to accept delivery of such certified copy of this Order as though they were originals and to register such transfers, interest authorizations, discharges and discharge statements of conveyance as may be required to convey to the Buyers clear title to the Purchased Assets. Without limiting the foregoing:
- (a) the Registrar of the Alberta Personal Property Registry shall and is hereby directed to forthwith cancel and discharge any registrations at the Alberta Personal Property Registry (whether made before or after the date of this Order) claiming security interests in the estate or interest of the Applicants in any of the Purchased Assets which are of a kind prescribed by applicable regulations as serial-number goods.
7. In order to effect the transfers, interest authorizations, discharges and discharge statements of conveyance described above, this Court directs each of the Governmental Authorities to take such steps as are necessary to give effect to the terms of this Order. Presentment of this Order shall be the sole and sufficient authority for the Governmental Authorities to make and register transfers of title or interest and cancel and discharge registrations against any of the Purchased Assets of any Encumbrances.
8. The Sale Proceeds and the Additional Sale Proceeds (after deduction of the Liquidator’s Commission, the Transfer Costs, and the Liquidator’s out-of-pocket expenses as agreed to in writing by the Proposal Trustee and Tradesmen) (collectively, the “**Net Proceeds**”) shall stand in the place and stead of Purchased Assets and shall stand charged with all the

Encumbrances as existed in respect of the Purchased Assets, as applicable, which were released, discharged or otherwise displaced by the sale of the Purchased Assets, and such Encumbrances on the Net Proceeds shall enjoy the same priorities as each such Encumbrance had in respect of the Purchased Assets, as applicable, as of the date on which the Sale Term commences, as applicable, as if the sale of the Purchased Assets had not occurred, but the holder of any such Encumbrance shall have no further right in or against, or recourse to, the Purchased Assets, as applicable.

9. The Liquidator shall incur no liability or obligation as a result of its appointment or carrying out the provisions of the Liquidation Services Agreement, save and except for (i) any gross negligence or wilful misconduct on its part, and (ii) any liabilities or obligations owing to the Applicants under the Liquidation Services Agreement, or in connection therewith.

Redaction and Sealing

10. The redaction of the sensitive commercial information in the Liquidation Services Agreement and the schedules thereto as set forth in Confidential Exhibit “2” of the Kato Affidavit No. 3 is hereby approved.
11. Notwithstanding the procedural requirements of Rule 6.28 and Division 4 of the *Alberta Rules of Court*, the (i) summary of offers attached as Confidential Exhibit “1” to the Kato Affidavit No. 3 and (ii) the unredacted Liquidation Services Agreement and the schedules thereto attached as Confidential Exhibit “2” to the Kato Affidavit No. 3 shall be sealed on the Court file and shall not form part of the public record until further Order of this Court.
12. The Clerk of this Honourable Court shall file Confidential Exhibits “1” and “2” to the Kato Affidavit No. 3 in a sealed envelope attached to a notice that sets out the style of cause of these proceedings and states:

THIS ENVELOPE CONTAINS CONFIDENTIAL MATERIALS
SEALED PURSUANT TO THE SEALING ORDER ISSUED BY THE
HONOURABLE MR. JUSTICE JEFFREY ON MARCH 16, 2021.

Miscellaneous

13. Notwithstanding:

- (a) the pendency of these proceedings and any declaration of insolvency made herein;
- (b) the pendency of any applications for a bankruptcy order now or hereafter issued pursuant to the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended (the “**BIA**”) in respect of the Applicants and any bankruptcy order issued pursuant to any such applications;
- (c) any assignment in bankruptcy made in respect of the Applicants; and
- (d) the provisions of any federal or provincial statute.

the Liquidation Services Agreement, the Sales, the Transactions, and the vesting of the Purchased Assets in the Buyers thereof pursuant to this Order shall be binding on any trustee in bankruptcy that may be appointed in respect of the Applicants and shall not be void or voidable by creditors of the Applicants, nor shall it constitute nor be deemed to be a fraudulent preference, assignment, fraudulent conveyance, transfer at undervalue, or other reviewable transaction under the BIA 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.

14. This Honourable Court hereby requests the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or in any of its provinces or territories or in any foreign jurisdiction, to act in aid of and to be complimentary to this Court in carrying out the terms of this Order, to give effect to this Order and to assist the Applicants and the Proposal Trustee and their respective agents in carrying out the terms of this Order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such order and to provide such assistance to the Applicants and to the Proposal Trustee, as an officer of the Court, as may be necessary or desirable to give effect to this Order or to assist the Applicants and the Proposal Trustee and their respective agents in carrying out the terms of this Order.

General

15. Service of this Order may be effected by facsimile, electronic mail, personal delivery or courier. Service is deemed to be effected the next business day following transmission or delivery of this Order.

Justice of the Court of Queen's Bench of Alberta