

Court File No.: BK-23-00459641-0031
Estate No.: 31-459641

**ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)
IN BANKRUPTCY AND INSOLVENCY**

IN THE MATTER OF THE BANKRUPTCY OF
INTEGRO BUILDING SYSTEMS INC.,
IN THE CITY OF VAUGHAN,
IN THE PROVINCE OF ONTARIO

AIDE MEMOIRE OF THE TRUSTEE

April 18, 2024

CASSELS BROCK & BLACKWELL LLP
Suite 3200, Bay Adelaide Centre – North Tower
40 Temperance Street
Toronto, ON M5H 0B4

Alan Merskey LSO#: 41377I
Tel: 416.860.2948
amerskey@cassels.com

Jane Dietrich LSO#: 49302U
Tel: 416.860.5223
jdietrich@cassels.com

Alec Hoy LSO#: 85489K
Tel: 416.860.2978
ahoy@cassels.com

Lawyers for MNP Ltd. as Trustee of Integro
Building Systems Inc.

TO: SERVICE LIST

1. The sole remaining issue between the parties is whether the Court should grant the Administrative Order set out at **Schedule “A”** of this Aide Memoire (the “**Amended Administrative Order**”) in a form that approves the activities of the Trustee as set out in the First Report.¹ All other aspects of the Amended Administrative Order are now proceeding on consent or unopposed. RBC continues to oppose the approval of the Trustee’s activities but agrees for cost efficiencies that the issue should be addressed on this attendance without the need for a further hearing.

I. Update on Proceedings

2. Since the case conference held before the Honourable Justice Black on March 8, 2024 (the “**March 8 Case Conference**”), the Trustee has facilitated discussions with RBC and CRA in furtherance of resolving the issues discussed at the March 8 Case Conference.

3. On March 15, 2024, in accordance with the endorsement of the Honourable Justice Black dated March 8, 2024, the Trustee sent a letter to RBC and CRA (the “**March 15 Letter**”) to solicit their respective expectations of the Trustee with regards to continuing its collection efforts with respect to the Estate, including the identification of potential recoveries available associated with litigation with Vitrum Industries Ltd. (“**Vitrum**”) that commenced prior to the Date of Bankruptcy. The March 15 Letter² noted that collection

¹ Terms not otherwise defined herein have the meanings given to them in the First Report to Court of the Trustee dated February 14, 2024 (the “**First Report**”).

² The three letters referred to in this aide memoire contain information with respect to prospective realizations. To avoid any prejudice to those steps, the Trustee has not attached the letters.

of any remaining assets in the Estate was uncertain and would require material expense to be pursued.

4. On March 17, 2024, RBC requested copies of the Vitrum pleadings and on March 19, 2024, the Trustee, through its counsel, provided same to RBC, as well as to CRA.

5. On April 10, 2024, in response to the March 15 Letter, RBC provided a letter (the “**April 10 Letter**”) to the Trustee, copying CRA, wherein RBC, among other things: (i) requested that the Trustee provide RBC with a detailed listing of the accounts receivables of the Estate and the status thereof; (ii) indicated that, in their view based upon the information in the March 15 Letter, (A) there was a real prospect of additional realization in the Estate, (B) they may choose to pursue such additional realization streams with the assistance of KPMG LLP (“**KPMG**”), and (C) they did not intend to request the Trustee’s assistance with any realization efforts they may undertake; (iii) attached a revised version of the Initial Proposed Administrative Order which removed the relief approving the activities of the Trustee; and (iv) set out certain language which RBC sought to be included in any endorsement issued by the Court.

6. On April 12, 2024, the Trustee responded to the April 10 Letter by letter (the “**April 12 Letter**”) addressed to RBC and copying CRA. The April 12 Letter, among other things: (i) attached a detailed receivable listing with the Trustee’s commentary; (ii) advised that the Trustee was agreeable to the proposed language to be included in an endorsement,

(iii) advised that it would not oppose the terms of payment, and (iii) advised that the inclusion of relief approving the Trustee's activities was necessary for the Trustee.

7. The Trustee notes it has no objection to RBC pursuing such realization steps. The Trustee also intends to seek its imminent discharge as a result.

8. RBC and CRA subsequently agreed to the inclusion of language in an endorsement accompanying the Order that clarified: (i) the Proposed Fee Payment Order (as defined below), (ii) that any payment of the Fees would not be in priority to RBC's claim and (iii) that CRA did not intend to provide further funding in respect of the litigation between Integro and Vitrum, and that RBC would have priority to any amounts it recovers in respect thereof.

II. Approval of the Trustee's Activities

9. Upon payment of the Fees and granting of an order approving the activities of the Trustee, the Trustee intends to seek its discharge. Accordingly, approval of the Trustee's activities is a typical and important step for the Trustee.

10. The positive evidence describing the Trustee's activities is set out in the First Report at pages 7-15 under the heading "Trustee's Activities" and pages 15-20 under the heading "The Vaughan Asset Sale Process". That evidence includes, among other things: (i) the Trustee negotiating the APA for the sale of the Vaughan Assets (ii) the Trustee facilitating the sale of the Surrey Assets; (iii) the Trustee entering into the Occupation Agreement as a costs saving and practical measure for the Estate; (iv) the Trustee

addressing the claims of several lien claimants; (v) the Trustee taking steps to dispose of the Other Inventory, as subsequently approved by the inspectors of the Estate; (vi) the Trustee meeting and corresponding with RBC and KPMG to address their inquiries related to the administration of the Estate; (vii) the Trustee conducting analysis and collection of accounts receivable and holdback; and (viii) the Trustee investigating outstanding legal actions and addressing employee matters.

11. As set out in paragraphs 46 to 49 of the First Report, Barry Mutis of RBC was nominated and appointed as an inspector in the estate³ (the “**RBC Inspector**”).

12. Only limited matters were addressed by the RBC Inspector at the first two (2) meetings of the inspectors⁴, though a process for the approval of the Trustee’s activities was discussed and agreed to with the RBC Inspector. However, the RBC Inspector chose to resign on January 15, 2024, prior to there being a meeting of the inspector to approve of the Trustee’s activities, and those of its counsel.

13. The Trustee’s activities and fees in respect of this proceeding, as well as those of its counsel, were later approved by the subsequently appointed inspector, Sabrina Missio⁵ of CRA, by resolution on February 22, 2024.

³ As set out in paragraph 31 of the First Report, there was originally two (2) persons nominated and appointed as inspectors of the Estate at the First Meet of Creditors held on September 19, 2023, however, one of the inspectors resigned on November 27, 2023, leaving Mr. Barry Mutis as the sole inspector of the Estate up until to his resignation.

⁴ First Report, para 31, p9 and Appendix “F”.

⁵ As set out in paragraph 33(j) of the First Report, Ms. Sabrina Missio was nominated and appointed as an inspector of the Estate at the 2nd Creditors’ Meeting held on January 31, 2024.

14. The first notice to the Trustee regarding RBC's concerns was by email from the RBC Inspector on January 10, 2024, in which he stated:

In my capacity as an inspector, I do have certain concerns with the steps that have been taken to date by the trustee leading up to the proposed Sale Transactions. I do not see the need to get into a debate about this at this time, save and except to advise of those concerns and to communicate to you that you are best to obtain the authorizations in respect of the Sale Transactions in your motion to the Court.⁶

15. In an effort to address the concerns raised by the RBC Inspector, the Trustee sent a reply email on January 11, 2024, asking for further information and made similar inquiries to KPMG, RBC's financial adviser. KPMG indicated that in RBC's view the then proposed Sale Transaction was too low.⁷ The Trustee received no further information and the RBC Inspector resigned on January 15, 2024. The Sale Transaction over which the RBC Inspector had expressed his concerns was approved by the Honourable Justice Wilton-Siegel on February 23, 2024.

16. In his endorsement of that date, Justice Wilton-Siegel wrote "The Trustee made a sufficient effort to market the assets. ...There is no evidence in the record of any unfairness in the process or that the process lacked integrity. ...In any event, the outcome of the sale process provides comfort that the sale price presents market value for the assets." Additionally, the endorsement directed RBC to file any materials which it intended to introduce into evidence by March 4, 2024 in connection with the Trustee's motion for

⁶ First Report, para 46, p18.

⁷ First Report, para 47-48, p19.

(i) the approval of the Trustee's activities as contained in the First Report, and (ii) the approval of the fees and disbursements of the Trustee and its counsel.

17. In accordance with this requirement, RBC filed its motion record dated March 4, 2024, which included the Affidavit of Barry Mutis, sworn March 4, 2024 (the "**Mutis Affidavit**"). The Mutis Affidavit states that RBC does not dispute the quantum of the Fees, but rather the source of the payment of such fees and disbursements.⁸ The Mutis Affidavit also notes that RBC has some concerns with the activities of the Trustee which included⁹: (1) not being consulted or advised by MNP prior the filing of the assignment, (2) not taking "swift steps" to deal with the assets in the Estate, (3) not disclosing the existence of the Occupation Agreement with State until late in the process, and (4) not disclosing in the First Report the fee indemnity arrangement¹⁰.

18. The Trustee believes these concerns are not properly founded and notes:

- (a) While the Trustee tries to work co-operatively with creditors, such as RBC, throughout the engagement, the Trustee's mandate, duties and responsibilities are to the Court, all of the Estate's creditors and other stakeholders generally and not necessarily to RBC. MNP's inclusion of language in its engagement letter is to permit it to speak with RBC in advance of a filing and is designed to provide flexibility and eliminate any perceived confidentiality or non-disclosure issues with the debtor, as well

⁸ Mutis Affidavit, para 3.

⁹ Mutis Affidavit, para 14.

¹⁰ Mutis Affidavit, para 22.

as to allow MNP to terminate the engagement should there be a serious concern identified during the course of the preparation of filing documents, which MNP determines would be materially prejudicial to RBC;

- (b) As set out in the First Report, given that the Property is subject to various security interest and priority claims, the Property would not form part of the Estate to be administered by the Trustee unless it entered into an administrative agreement with CRA and/or another agreement to act on behalf of other secured or priority creditors.¹¹ Notwithstanding that it took until November 7, 2023 to identify the CRA representative assigned, assemble the significant information to make a request for an administrative agreement and ultimately obtain CRA's consent to the Administrative Agreement, the Trustee took immediate steps to preserve and protect the Property, including taking possession and control of the Vaughan Location, where much of the physical assets were located, as well as engaging with PCL Constructors Inc. on the SickKids project (September 5, 2023) to commence discussions on the receivable collection and the work to be completed, all to reduce set off and damages claims and maximize the collection of the receivable (estimated at approximately \$2 million);
- (c) As early as August 31, 2023, the Trustee corresponded with RBC's counsel and had a call with RBC and its counsel on September 1, 2023, to discuss

¹¹ First Report, para 28, p8.

the Property and the steps forward for the Estate.¹² Further, since September 19, 2023, the Trustee has endeavoured to provide the information requested by RBC, its counsel and its financial advisor, KPMG, including preparing and updating spreadsheets and assembling documents, in the spirit of cooperation and with a view of keeping RBC apprised of the Trustee's efforts to maximize realizations and determine the ultimate priority claim of CRA;¹³

- (d) Although the Occupation Agreement itself was not shared with RBC until January 5, 2024, when the Trustee sought to review the offers received with KPMG, the issue of the occupation of the Vaughan Location was identified in an email to the RBC Inspector as one of the thirteen activities of the Trustee since the first meeting of creditors that the Trustee tabled to review with the RBC Inspector as part of a proposed agenda for the first meeting of inspectors proposed to be held on November 27, 2023; no inspectors' meeting was held on such date; and
- (e) The request of a fee indemnity is a standard practice and common component of MNP's insolvency engagement letters. Given the potential costs to enforce on an indemnity agreement, a retainer or cash third-party

¹² Fee Affidavit of Sheldon Title, August 31, September 1, 2023.

¹³ See for instance Fee Affidavit of Sheldon Title, September 22, 2023, September 27, 2023, September 28, 2023, October 2, 2023, October 12, 2023, October 17, 2023, October 20, 2023, October 30, 2023, November 6, 2023, November 16, 2023, November 23, 2023, November 29, 2023, December 4, 2023, December 5, 2023, December 18, 2023, December 20, 2024, January 4, 2023, January 5, 2024, January 10, 2024, January 11, 2024, January 22, 2024.

deposit is relied upon for the guarantee of the Fees, with the indemnity as a back-up in cases of unforeseen events that materially impact the professional fees.

19. The Trustee respectfully submits that in these circumstances, in light of the evidence before the Court and RBC's agreement to dispose of the issue at this attendance, approval of its activities is appropriate today. It is also in the interest of the fair and expeditious administration of bankrupt estates that such relief be granted at this time and no undefined cloud left over the Trustee's head.

Schedule "A"
Amended Administrative Order

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)
IN BANKRUPTCY AND INSOLVENCY

THE HONOURABLE

)

FRIDAY, THE ~~23RD~~ 19th

JUSTICE ~~WILTON-SIEGEL~~ BLACK

)

DAY OF ~~FEBRUARY~~ APRIL, 2024

IN THE MATTER OF THE BANKRUPTCY OF
INTEGRO BUILDING SYSTEMS INC.,
OF THE CITY OF VAUGHAN,
IN THE PROVINCE OF ONTARIO

ADMINISTRATIVE ORDER

THIS MOTION, made by MNP Ltd. ("**MNP**") in its capacity as licensed insolvency trustee (the "**Trustee**") of Integro Building Systems Inc. (the "**Bankrupt**") for an order, *inter alia*, approving the activities of the Trustee as set out in the First Report to Court of the Trustee dated February 14, 2024 (the "**First Report**") and the fees and disbursements of the Trustee and its counsel, Cassels Brock & Blackwell LLP ("**Cassels**"), as set out in the affidavit of Sheldon Title sworn February 14, 2024 and the affidavit of Jane Dietrich sworn February 14, 2024 (together, the "**Fee Affidavits**"), was heard this day by judicial videoconference via Zoom in Toronto, Ontario.

ON READING the Notice of Motion of the Trustee, the First Report and the Appendices thereto including the Fee Affidavits, the Supplemental Report to the First Report of the Trustee dated February 22, 2024, the Affidavit of Joanna Earl sworn February 22, 2024, the Affidavit of Barry Mutis sworn March 4, 2024 and the Affidavit of Pritesh Patel sworn March 4, 2024, and on hearing the submissions of counsel for the Trustee, ~~State Window Corporation~~ counsel for Royal Bank of Canada ("**RBC**") and the other parties listed on the counsel slip, no one appearing for any other party although duly served as appears from the affidavit of service of Alec Hoy sworn February 16, 2024,

SERVICE

1. **THIS COURT ORDERS** that the time for service of the Notice of Motion and the Motion Record is hereby abridged and validated so that this Motion is properly returnable today and hereby dispenses with further service thereof.

APPROVAL OF THE FEES & ACTIVITIES

2. **THIS COURT ORDERS** that the First Report, and the activities of the Trustee described therein, be and are hereby approved, provided that only MNP in its personal capacity and only with respect to its personal liability, shall be entitled to rely upon or utilize such approval in any way.

3. **THIS COURT ORDERS** that the Trustee's statement of receipts and disbursements for the period from August 31, 2023 to February 13, 2024 attached at Appendix "M" to the First Report be and are hereby approved.

4. **THIS COURT ORDERS** that the fees and disbursements of the Trustee and Cassels, as described in the First Report and the Fee Affidavits, be and are hereby approved.

5. **THIS COURT ORDERS AND DECLARES** that the fees and disbursements of the Trustee and its legal counsel, Cassels, approved pursuant to paragraph 4 of this Order and any further Orders of this Court approving fees and disbursements hereafter are and shall be approved on the basis that the payment of same shall not be paid out of the estate of the Bankrupt in priority to the secured claims of RBC as the secured creditor of the Bankrupt.

GENERAL

6. ~~5.~~ **THIS COURT ORDERS** that this Order shall have full force and effect in all provinces and territories in Canada.

7. ~~6.~~ **THIS COURT ORDERS** that this Order and all of its provisions are effective as of 12:01 a.m. (Eastern Time) on the date of this Order without the need for entry or filing.

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SUPERIOR COURT OF JUSTICE
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PROCEEDING COMMENCED AT TORONTO

ADMINISTRATIVE ORDER

CASSELS BROCK & BLACKWELL LLP
Suite 3200, Bay Adelaide Centre – North Tower
40 Temperance St.
Toronto, ON M5H 0B4

Jane Dietrich LSO#: 49302U
Tel: 416.860.5223
jdietrich@cassels.com

Alan Merskey LSO#: 41377I
Tel: 416.860.2948
amerskey@cassels.com

Alec Hoy LSO#: 85489K
Tel: 416.860.2976
ahoy@cassels.com

Lawyers for MNP Ltd. as Trustee of Integro Building Systems Inc.

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CASSELS BROCK & BLACKWELL LLP

Suite 3200, Bay Adelaide Centre – North Tower
40 Temperance Street
Toronto, ON M5H 0B4

Alan Merskey LSO#: 41377I

Tel: 416.860.2948
amerskey@cassels.com

Jane Dietrich LSO#: 49302U

Tel: 416.860.5223
jdietrich@cassels.com

Alec Hoy LSO#: 85489K

Tel: 416.860.2976
ahoy@cassels.com

Lawyers for MNP Ltd. as Trustee of Integro Building
Systems Inc.