

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

THE HONOURABLE MADAM)	WEDNESDAY, THE 15TH
)	
JUSTICE GORMAN)	DAY OF JULY, 2020

**In the Matter of the Notice of Intention to make a proposal of Educator Supplies Limited
(o/a Scholar's Choice)**

ORDER

THIS MOTION, made by Educator Supplies Limited (o/a Scholar's Choice) ("ESL") for, among other relief, an order,

- (a) if necessary, abridging the time for and validating service of the notice of motion and motion record, including the first report of MNP Ltd. (the "Proposal Trustee"), as proposal trustee, to the Court dated July 9, 2020 (the "Report"), and directing that any further service of the notice of motion and the motion record be dispensed with such that this motion is properly returnable on July 15, 2020;
- (b) approving the Consulting Agreement dated as of June 29, 2020 (the "Consulting Agreement") made between Tiger Asset Solutions Canada, ULC (the "Consultant") and ESL and authorizing ESL to carry out the liquidation of its retail store merchandise, equipment and fixtures as contemplated by the Consulting Agreement;
- (c) approving the continued use by ESL of its revolving credit facility with Accord Financial Inc. ("Accord") on existing terms and conditions and subject to existing priorities, provided that Accord shall be under no obligation on or after the date of this order to advance or re-advance any monies or otherwise extend any credit to ESL;
- (d) granting a priority charge (the "Administration Charge") over the property and assets of ESL in the amount of \$75,000 to secure the fees and disbursements of

counsel to ESL, the financial advisor to ESL, the Proposal Trustee and counsel to the Proposal Trustee;

- (e) granting a 45 day extension of the time period within which ESL must file the proposal to its creditors; and
- (f) such further and other relief as counsel may advise and this Honourable Court may deem just,

was heard this day by judicial videoconference.

ON READING the Motion Record and the Report and on hearing the submissions of counsel for the Debtor, and such other persons on the Service List as may be present and on noting that no other persons appeared, although properly served as appears from the affidavit of service of Tony Van Klink sworn July 13, 2020, filed, and Accord Financial Inc., Business Development Bank of Canada, Kegar Enterprises Ltd. and Scott Webster consenting:

SERVICE

1. THIS COURT ORDERS that the time for and method of service of the notice of motion and the motion record, including the Report, are hereby abridged and validated, as necessary, such that this motion is properly returnable today and hereby dispenses with further service thereof.

APPROVAL OF THE CONSULTING AGREEMENT

2. THIS COURT ORDERS that the Consulting Agreement and the transactions contemplated in the Consulting Agreement are hereby approved, authorized and ratified with such minor amendments as ESL (with the Consent of the Proposal Trustee) and the Consultant may agree in writing. ESL is hereby authorized and directed to take such additional steps and execute such additional documents as may be necessary or desirable to implement the Consulting Agreement and each of the transactions contemplated therein.

APPROVAL OF THE SALE

3. THIS COURT ORDERS that ESL, with the assistance of the Consultant, is authorized and directed to conduct the Sale (as defined in the Consulting Agreement) in accordance with the Consulting Agreement.

4. THIS COURT ORDERS that ESL, with the assistance of the Consultant, is authorized to market and sell the Merchandise and FF&E (as such terms are defined in the Consulting Agreement) in accordance with the Consulting Agreement and all rights, title and interest in the Merchandise and FF&E shall vest absolutely in their respective purchaser(s) free and clear of and from any and all security interests (whether contractual, statutory, or otherwise), hypothecs, mortgages, trusts or deemed trusts (whether contractual, statutory, or otherwise), liens, executions, levies, charges, or other financial or monetary claims, whether or not they have attached or been perfected, registered or filed and whether secured, unsecured or otherwise (collectively, the "Claims") including, without limiting the generality of the foregoing: (i) the Administration Charge; and (ii) all charges, security interests or claims evidenced by registrations pursuant to the *Personal Property Security Act*, (Ontario) or any other applicable personal property registry system; (all of which are collectively referred to as the "Encumbrances") and, for greater certainty, this Court orders that all of the Encumbrances affecting or relating to the Merchandise and FF&E are hereby expunged and discharged as against the Merchandise and FF&E effective upon the sale thereof.

5. THIS COURT ORDERS that for the purposes of determining the nature and priority of Claims, the proceeds from the sale of the Merchandise and FF&E shall stand in the place and stead of the Merchandise and FF&E, and all Claims and Encumbrances shall attach to the proceeds from the sale of the Merchandise and FF&E with the same priority as they had with respect to the Merchandise and FF&E immediately prior to the sale, as if the Merchandise and FF&E had not been sold and remained in the possession or control of ESL.

6. THIS COURT ORDERS that until the Sale Termination Date (as defined in the Consulting Agreement), the Consultant shall have the right to use ESL's trademarks, trade names and logos solely for the purpose of advertising and conducting the Sale in accordance with the terms of the Consulting Agreement and is authorized to promote and advertise the Sale in accordance with the Consulting Agreement.

DEPOSIT PROTECTIONS

7. THIS COURT ORDERS that ESL is authorized, *nunc pro tunc*, to pay the Deposit (as defined in the Consulting Agreement) to the Consultant in accordance with the terms of the Consulting Agreement, and that the Deposit shall be free of all Encumbrances and the Consultant shall be permitted to retain and apply the Deposit in accordance with the terms of

the Consulting Agreement without claim or interference by any creditor, trustee in bankruptcy or other stakeholder of ESL, without leave or further order of this Court.

8. THIS COURT ORDERS that ESL shall not grant any Encumbrances in or against the Deposit.

CONSULTANT LIMITED LIABILITY

9. THIS COURT ORDERS that the Consultant shall act solely as an independent consultant to ESL and that it shall not be liable for any claims against ESL other than as expressly provided in the Consulting Agreement, and for greater certainty:

- (a) The Consultant shall not be deemed to be an owner or in possession, care, control or management of the Stores, the property located therein or associated therewith including the Merchandise and the FF&E, or of ESL's employees or any other property of ESL;
- (b) The Consultant shall not be deemed to be an employer, or a joint or successor employer or a related or common employer or payor within the meaning of any legislation governing employment or labour standards or pension benefits or health and safety or other statute, regulation or rule of law or equity for any purpose whatsoever, and shall not incur any successorship liabilities whatsoever; and
- (c) ESL shall bear all responsibility for any liability whatsoever (including without limitation losses, costs, damages, fines, or awards) relating to claims of customers, employees and any other persons arising from events occurring during and after the term of the Sale, or otherwise in connection with the Sale, except to the extent that such claims are the result of events or circumstances caused or contributed to by the gross negligence or willful misconduct of the Consultant, its employees, agents or other representatives, or otherwise in accordance with the Consulting Agreement.

CONSULTANT AS UNAFFECTED CREDITOR

10. THIS COURT ORDERS that (i) the Consulting Agreement shall not be repudiated, resiliated or disclaimed by ESL, (ii) in accordance with section 69.4 of the *BIA*, the Consultant

shall not be affected by the stay of proceedings in respect of ESL and shall be entitled to exercise its rights and remedies under the Consulting Agreement including in respect of claims of the Consultant pursuant to the Consulting Agreement (collectively, the "Consultant's Claims"), and (iii) the Consultant's Claims shall not be compromised, arranged or discharged pursuant to any proposal by or in respect of ESL, and the Consultant shall be treated as an unaffected creditor in the context of the present proceedings and in any proposal or bankruptcy.

11. THIS COURT ORDERS that ESL is hereby authorized and directed to remit, in accordance with the Consulting Agreement, all amounts that become due to the Consultant thereunder.

12. THIS COURT ORDERS that no Encumbrances shall attach to any amounts payable or to be credited or reimbursed by ESL to the Consultant pursuant to the Consulting Agreement, including any amounts that must be reimbursed by ESL free and clear of all Encumbrances, notwithstanding any enforcement or other process, all in accordance with the Consulting Agreement.

13. THIS COURT ORDERS that, notwithstanding:

- (a) the pendency of these proceedings;
- (b) any applications for a bankruptcy order now or hereafter issued pursuant to the *Bankruptcy and Insolvency Act (Canada)* ("*BIA*") in respect of ESL and any bankruptcy order issued pursuant to any such applications; and
- (c) any assignment in bankruptcy made, or deemed to be made, in respect of ESL;

the vesting of the Merchandise and FF&E in the purchaser(s) thereof pursuant to this Order and the Consulting Agreement and the transactions and actions provided for and contemplated therein, including, without limitation, the payment of amounts due to the Consultant, shall be binding on any trustee in bankruptcy that may be appointed in respect of ESL and shall not be void or voidable by creditors of ESL, nor shall same 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 same constitute oppressive or unfairly prejudicial conduct pursuant to any applicable federal or provincial legislation.

PAYMENT OF RENT

14. THIS COURT ORDERS that until a lease of real property is disclaimed or resiliated by ESL in accordance with the *BIA*, ESL shall pay all amounts constituting rent or payable as rent under the lease (including, for greater certainty, common area maintenance charges, utilities and realty taxes and any other amounts payable to the landlord under the lease) or as may otherwise be negotiated between ESL and the landlord from time to time (“Rent”), for the period commencing from the date of this Order, twice monthly in equal payments on the first and fifteenth day of each month, or the immediately following business day if that day is not a business day, in advance, the first such payment to include any Rent relating to the period commencing from and including June 30, 2020 if not already paid.

ACCORD CREDIT FACILITY

15. THIS COURT ORDERS that the continued use by ESL of its revolving credit facility with Accord on existing terms and conditions and subject to existing priorities is hereby approved and authorized, provided that Accord shall be under no obligation on or after the date of this Order to advance or re-advance any monies or otherwise extend any credit to ESL.

16. THIS COURT ORDERS that the proceeds from the sale of the Merchandise shall be paid to Accord in accordance with the existing arrangements between ESL and Accord and the proceeds from the sale of the FF&E shall be paid to Business Development Bank of Canada (“BDC”) or as BDC may direct.

ADMINISTRATION CHARGE

17. THIS COURT ORDERS that the Proposal Trustee, counsel to the Proposal Trustee, ESL’s counsel and ESL’s financial advisor shall be entitled to the benefit of and are hereby granted a charge (the “Administration Charge”) on the property and assets of ESL, which charge shall not exceed an aggregate amount of \$75,000, as security for their professional fees and disbursements incurred at their standard rates and charges, both before and after the making of this Order in respect of this proceeding.

18. THIS COURT ORDERS that the filing, registration or perfection of the Administration Charge shall not be required, and that the Administration Charge shall be valid and 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.

19. THIS COURT ORDERS that the Administration Charge shall constitute a charge on the property and assets of ESL (other than the Deposit) and shall rank in priority to all other Encumbrances in favour of any person.

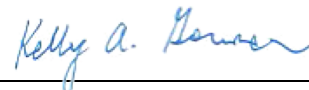
20. THIS COURT ORDERS that except as may be approved by the Court, ESL shall not grant any Encumbrances over its property and assets, or any part thereof, that rank in priority to, or *pari passu* with, the Administration Charge, unless ESL shall obtain the prior written consent of the beneficiaries of the Administration Charge.

EXTENSION OF TIME TO FILE PROPOSAL

21. THIS COURT ORDERS that the time period for ESL to file a proposal be and is hereby extended to and including September 14, 2020.

AID AND RECOGNITION

22. THIS COURT HEREBY REQUESTS the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or in the United States to give effect to this Order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance, as may be necessary or desirable to give effect to and carrying out the terms of this Order.



Justice, Ontario Superior Court of Justice

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

Proceeding commenced at LONDON

**ORDER
(Sale Approval and Stay Extension)**

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