

THE QUEEN'S BENCH
In Bankruptcy and Insolvency
Winnipeg Centre

IN THE MATTER OF: **THE *BANKRUPTCY AND INSOLVENCY ACT*,**
 R.S.C. 1985, c. B-3, AS AMENDED

AND IN THE MATTER OF: **THE PROPOSAL OF SCHROEDER FREIGHT INC.**

NOTICE OF MOTION

Hearing Date: Friday, January 13, 2017, at 9:00 AM
before the Honourable Mr. Justice Chartier

TAPPER CUDDY LLP
Barristers and Solicitors
1000-330 St. Mary Avenue
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File No. 162501

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IN THE MATTER OF: **THE *BANKRUPTCY AND INSOLVENCY ACT*,
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NOTICE OF MOTION

SCHROEDER FREIGHT INC. ("SFI") will make a motion before The Honourable Mr. Justice Chartier on Friday, the 13th day of January, 2017, at 9:00 A.M. or as soon after that time as the motion can be heard, at the Law Courts Building, 408 York Avenue, Winnipeg, Manitoba.

THE MOTION IS FOR:

1. an Order under the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended (the "BIA") and pursuant to the inherent jurisdiction of this Honourable Court substantially in the form attached hereto as Schedule "A";
 - a) If necessary, dispensing with and/or abridging the time for service of the within Notice of Motion and materials filed in support of the motion, such

that this motion is properly returnable on the date above noted, and dispensing with further service thereof;

- b) extending to 11:59 PM on Wednesday, March 1, 2017, the time within which the Proposal Trustee (as hereinafter defined) may file a proposal with the Official Receiver as regards SFI;
- c) granting an administration charge in priority to any and all other charges, encumbrances, and claims whatsoever.

2. such further and other relief as this Honourable Court may deem just.

THE GROUNDS FOR THE MOTION ARE:

1. SFI filed a Notice of Intention to Make a Proposal with the Official Receiver on December 16, 2016, and MNP Ltd. (the "Proposal Trustee") was appointed as the trustee thereunder;

2. SFI seeks an extension of the time within which a proposal may be made to provide the Proposal Trustee with additional time in which to determine the nature and terms of a proposal to be made to the creditors of SFI, and SFI and the Proposal Trustee believe at present that a viable proposal can likely be made to SFI's creditors if the extension is granted;

3. SFI has acted, and is acting, in good faith and with due diligence;

4. no creditor will be materially prejudiced if the extension being applied for is granted;

5. an administration charge is required to secure the reasonable fees and

disbursements of the Proposal Trustee, its counsel, and counsel for SFI in connection with the proposal process;

6. secured creditors who are likely to be affected by the administration charge have been provided with prior notice of this motion;
7. General Rules 3, 4, 6, 11 and 13 of the *BIA*;
8. Rules 2.03, 3.02, 16.04 and 37 of the *Queen's Bench Rules*, Man. Reg. 553/88;
9. Sections 50.4(9), 64.2, and 187 of the *BIA*;
10. such further and other grounds as counsel may advise and this Honourable Court may permit.

THE FOLLOWING DOCUMENTARY EVIDENCE will be used at the hearing of the motion:

1. the Affidavit of Robert Schroeder, to be filed;
2. the First Report of the Proposal Trustee, to be filed;
3. such further and other evidence as counsel may advise and this Honourable Court may permit.

Date: January 8, 2017

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To: See attached service list

SERVICE LIST
(as of January 8, 2017)

**MNP Ltd., in its capacity as Proposal Trustee
of Schroeder Freight Inc.**
301-1661 Portage Avenue
Winnipeg MB
R3T 3T7
Attention: Gord Neudorf
Gord.Neudorf@mnp.ca

MLT AIKINS LLP
30th Floor - 360 Main Street
Winnipeg, MB
R3C 4G1
Attention: Bruce Taylor
BTaylor@mltaikins.com

**TD EQUIPMENT FINANCE CANADA &
THE TORONTO DOMINION BANK
c/o THOMPSON DORFMAN SWEATMAN LLP**
201 Portage Avenue
Winnipeg, MB
R3B 3L3
Attention: Don Douglas
DGD@tdslaw.com

DAIMLER TRUCK FINANCIAL
2680 Matheson Blvd. E. Suite 500
Mississauga, ON
L4W 0A5
Attention: Brent Zelenewich
brent.zelenewich@daimler.com

**MERCEDES BENZ FINANCIAL SERVICES
CANADA CORPORATION**
2680 Matheson Blvd. E. Suite 500
Mississauga, ON
L4W 0A5
Attention: Brent Zelenewich
brent.zelenewich@daimler.com

**DELL FINANCIAL SERVICES CANADA
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155 Gordon Baker Rd., Suite 501
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Attention: Maria Brandon
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5021308 MANITOBA LTD.
Box 85
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Ernie@schroederfreight.com

**HER MAJESTY THE QUEEN
IN RIGHT OF CANADA**
Department of Justice Canada
301 – 310 Broadway
Winnipeg, MB
R3C 0S6
Attention: Denyse Cote
denyse.cote@justice.gc.ca

**HER MAJESTY THE QUEEN IN RIGHT
OF THE PROVINCE OF MANITOBA**
Manitoba Justice Civil Legal Services
730 – 405 Broadway
Winnipeg, MB
R3C 3L6
Attention: Brian Jones
brian.jones@gov.mb.ca

Muhammad Siddiqui
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Mississauga ON,
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matisiddiqui@hotmail.com

SCHEDULE A

File No. BK 16-01-04227

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ORDER

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THE HONOURABLE)
)
MR. JUSTICE CHARTIER) Friday, the 13th day of January, 2017.

IN THE MATTER OF: **THE *BANKRUPTCY AND INSOLVENCY ACT*,**
 R.S.C. 1985, c. B-3, AS AMENDED

AND IN THE MATTER OF: **THE PROPOSAL OF SCHROEDER FREIGHT INC.**

ORDER

THIS MOTION, made by SCHROEDER FREIGHT INC. ("SFI") for, *inter alia*, an order extending the time within which it may make a proposal, was heard this day at the Law Courts Building, 408 York Avenue at Kennedy Street, in Winnipeg, Manitoba.

ON READING the proceedings herein, the Affidavit of Robert Schroeder sworn January __, 2017, and the first report of the MNP Ltd. (the "Proposal Trustee") dated January __, 2017, and on hearing the submissions of counsel for SFI, the Proposal Trustee, and TD Equipment Finance Canada and The Toronto Dominion Bank (collectively, "TD Bank"), and [recite appearances/non-appearances], although all duly served as appears from the Affidavit of Service affirmed January __, 2017.

SERVICE VALIDATED

1. THIS COURT ORDERS that the time for service of the Notice of Motion and the supporting material is hereby abridged and/or validated so that the motion is properly returnable today, and hereby dispenses with further service thereof.

EXTENSION OF TIME

2. THIS COURT ORDERS that the time within which SFI/the Proposal Trustee may file a proposal with the Official Receiver be and the same is extended to 11:59 PM on Wednesday, March 1, 2017.

ADMINISTRATION CHARGE

3. THIS COURT ORDERS that the Proposal Trustee, its counsel and counsel to SFI shall be entitled to the benefit of and are hereby granted a charge (the "Administration Charge") on all of SFI's property, assets, and undertaking wheresoever situated (the "Property") equal in value to the lesser of \$150,000.00 and the value of the professional fees and disbursements actually outstanding, as security for their said professional fees and disbursements incurred at normal rates and charges, both before and after the making of this Order in respect of these proceedings. The Administration Charge shall have the priority set out in paragraph 5 hereof.

VALIDITY AND PRIORITY OF CHARGE CREATED BY THIS ORDER

4. THIS COURT ORDERS that the filing, registration or perfection of the Administration Charge shall not be required, and that the said 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 said charge coming into existence, notwithstanding any such failure to file, register, record or perfect.

5. THIS COURT ORDERS that the Administration Charge shall constitute a charge on the Property and shall rank in priority to each and every existing security in favour of TD Bank, Ernie Schroeder, Linda Schroeder and 5021308 Manitoba Ltd. (collectively, the "Primed Secured Creditors"). For greater certainty, the Administration Charge shall not have priority over any interest, encumbrance, charge, security or trust in favour of any person or entity that has priority in bankruptcy over the existing security interests of the Primed Secured Creditors.

6. THIS COURT ORDERS that except as otherwise expressly provided for herein, or as may be approved by this Court, SFI shall not grant any encumbrance, charge or interest over any of its Property unless SFI first obtains the prior written consent of the Proposal Trustee.

7. THIS COURT ORDERS that the Administration Charge shall not be rendered invalid or unenforceable, and the rights and remedies thereunder, shall not otherwise be limited or impaired in any way, by: (i) the pendency of these proceedings and the declarations of insolvency made herein; (ii) any application(s) for bankruptcy order(s) issued pursuant to BIA, or any bankruptcy order made pursuant to such applications; (iii) the filing of any assignments for the general benefit of creditors made pursuant to the BIA; (iv) the appointment of a receiver, receiver-manager, interim receiver or any other officer of the court; (v) the provisions of any federal or provincial statutes; or (vi) 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 SFI, and notwithstanding any provision to the contrary in any Agreement:

- (a) neither the creation of the and the Administration Charge shall create or be deemed to constitute a breach by SFI of any Agreement to which it is a party;
- (b) the payments made by SFI 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.

SERVICE AND NOTICE OF THIS ORDER

8. THIS COURT ORDERS that notice of this Order shall be mailed by the Proposal Trustee within seven (7) days of the date hereof by ordinary mail to all creditors of SFI known to the Proposal Trustee. The Proposal Trustee shall also post this Order on its website.

9. Any party affected hereby shall be at liberty to seek to set aside or vary this Order by way of a notice of motion returnable before this Court setting out the grounds therefore and providing at least four (4) days' notice to SFI and the Proposal Trustee.

Date: January 13, 2017

Chartier, J.