



Court File No. CV-19-629552-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

THE HONOURABLE MR.) THURSDAY, THE 27TH
)
JUSTICE HAINEY) DAY OF FEBRUARY, 2020

IN THE MATTER OF THE *COMPANIES' CREDITORS*
***ARRANGEMENT ACT*, R.S.C. 1985, c. C-36, AS AMENDED**

AND IN THE MATTER OF A PLAN OF COMPROMISE OR
ARRANGEMENT OF DEL EQUIPMENT INC.

Applicant

APPROVAL AND VESTING ORDER

THIS MOTION, made by Del Equipment Inc. (the "**Applicant**" or "**DEL**") pursuant to the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the "**CCAA**") for an order (i) approving the sale transaction (the "**Transaction**") contemplated by an asset purchase agreement (the "**Purchase Agreement**") between the Applicant and Drive Products Inc. (the "**Purchaser**") dated as of February 21, 2020, and (ii) vesting in the Purchaser all of the Applicant's right, title and interest in and to the Purchased Assets, was heard this day at 330 University Avenue, Toronto, Ontario.

ON READING the affidavit of Douglas Lucky sworn February 22, 2020 (the "**Lucky Affidavit**"), the second report (the "**Second Report**") of MNP Ltd. in its capacity as the Court-appointed monitor of DEL (the "**Monitor**"), and on hearing the submissions of counsel for the Monitor, counsel for the Applicant, and those other parties present as indicated on the counsel sheet, and on reading the affidavit of service of Andrew Harnes sworn February 24, 2020, filed:

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

2. **THIS COURT ORDERS** that unless otherwise indicated or defined herein, capitalized terms used in this Order shall have the meaning given to them in the Purchase Agreement or the Lucky Affidavit, as applicable.

3. **THIS COURT ORDERS AND DECLARES** that the Transaction is hereby approved, and the execution of the Purchase Agreement by the Applicant is hereby authorized and approved, with such minor amendments to the Purchase Agreement as the Applicant and the Purchaser may agree to with the consent of the Monitor. The Applicant is hereby authorized and directed to take such additional steps and execute such additional documents as may be necessary or desirable for the completion of the Transaction and for the conveyance of the Purchased Assets to the Purchaser.

4. **THIS COURT ORDERS AND DECLARES** that upon the delivery of a Monitor's certificate to the Applicant and the Purchaser substantially in the form attached as Schedule A hereto (the "**Monitor's Certificate**"), all of the Applicant's right, title and interest in and to the Purchased Assets shall vest absolutely in the Purchaser, 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) any encumbrances or charges created by the Order of this Court dated October 22, 2019 or any other Order of this Court in these proceedings; (ii) all charges, security interests or claims evidenced by registrations pursuant to the *Personal Property Security Act* (Ontario), the *Personal Property Security Act* (British Columbia), the *Personal Property Security Act* (Alberta), the *Personal Property Security Act* (Saskatchewan), the *Personal Property Security Act* (New Brunswick), or any other personal property registry system (all of which are collectively referred to as the "**Encumbrances**", which term shall not include the Permitted Encumbrances) 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.

5. **THIS COURT ORDERS** that for the purposes of determining the nature and priority of Claims and Encumbrances, from and after delivery of the Monitor's Certificate, the net proceeds

from the sale of the Purchased Assets (the “**Net Proceeds**”) shall stand in the place and stead of the Purchased Assets and all Claims and Encumbrances shall attach to the Net Proceeds with the same priority as they had with respect to the Purchased Assets immediately prior to the sale, as if the Purchased Assets had not been sold and remained in the possession or control of the person having that possession or control immediately prior to the sale.

6. **THIS COURT ORDERS AND DIRECTS** the Monitor to file with the Court a copy of the Monitor’s Certificate, forthwith after delivery thereof to the Applicant and the Purchaser.

7. **THIS COURT ORDERS** that the Monitor may rely on written notice from the Applicant and the Purchaser or their respective counsel regarding the satisfaction of the Purchase Price and the fulfillment or waiver of conditions to closing under the Purchase Agreement and shall incur no liability with respect to the delivery of the Monitor’s Certificate.

8. **THIS COURT ORDERS** that, pursuant to clause 7(3)(c) of the *Canada Personal Information Protection and Electronic Documents Act*, the Applicant is authorized and permitted to disclose and transfer to the Purchaser all human resources and payroll information in the Applicant’s records pertaining to the Applicant’s past and current employees. The Purchaser shall maintain and protect the privacy of such information and shall be entitled to use the personal information provided to it in a manner which is in all material respects identical to the prior use of such information by the Applicant.

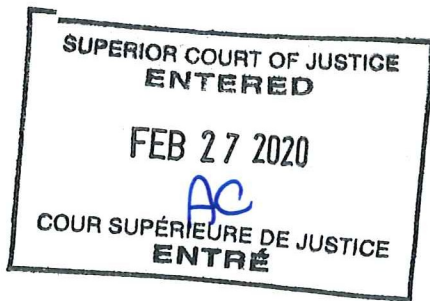
9. **THIS COURT ORDERS** that, notwithstanding:

- (a) the pendency of these proceedings;
- (b) any applications for a bankruptcy or receivership order now or hereafter issued pursuant to the *Bankruptcy and Insolvency Act* (Canada) or other applicable legislation in respect of the Applicant and any bankruptcy or receivership order issued pursuant to any such applications; and
- (c) any assignment in bankruptcy made in respect of the Applicant;

the entering into of the Purchase Agreement and the vesting of the Purchased Assets in the Purchaser pursuant to this Order, shall be binding on any trustee in bankruptcy that may be appointed in respect of the Applicant and shall not be void or voidable by creditors of the Applicant, nor shall it constitute nor be deemed to be a fraudulent preference, assignment, fraudulent conveyance, transfer at undervalue, or other reviewable transaction under the *Bankruptcy and Insolvency Act* (Canada) 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.

10. **THIS COURT ORDERS** that confidential appendices 1 and 2 to the Second Report be sealed, kept confidential and not form part of the public record, unless otherwise ordered by further Order of this Court.

11. **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 and to assist the Applicant, the Monitor 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 orders and to provide such assistance to the Monitor, as an officer of this Court, as may be necessary or desirable to give effect to this Order or to assist the Applicant, the Monitor and their respective agents in carrying out the terms of this Order.



A handwritten signature in blue ink, written over a horizontal line. The signature is cursive and appears to read "Hainey J".

**SCHEDULE A
FORM OF MONITOR'S CERTIFICATE**

Court File No. CV-19-629552-00CL

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

**IN THE MATTER OF THE *COMPANIES' CREDITORS
ARRANGEMENT ACT*, R.S.C. 1985, c. C-36, AS
AMENDED**

**AND IN THE MATTER OF A PLAN OF COMPROMISE
OR ARRANGEMENT OF DEL EQUIPMENT INC.**

MONITOR'S CERTIFICATE

RECITALS

- A. Pursuant to an Order of the Ontario Superior Court of Justice (Commercial List) (the "**Court**") dated October 22, 2019, MNP Ltd. was appointed as the monitor (the "**Monitor**") of Del Equipment Inc. (the "**Applicant**") in proceedings pursuant to the *Companies' Creditors Arrangement Act* (Canada).
- B. Pursuant to an Order of the Court dated February 27, 2020 (the "**Approval and Vesting Order**"), the Court approved the asset purchase agreement dated as of February 21, 2020 (the "**Purchase Agreement**") between the Applicant and Drive Products Inc. (the "**Purchaser**") and provided for the vesting in the Purchaser of all of the Applicant's right, title and interest in and to the Purchased Assets, which vesting is to be effective with respect to the Purchased Assets upon the delivery by the Monitor to the Applicant and the Purchaser of a certificate confirming (i) the payment by the Purchaser of the Purchase Price for the Purchased Assets; (ii) that the conditions to Closing as set out in the Purchase Agreement have been satisfied or waived by the Applicant and the Purchaser, as applicable; and (iii) the Transaction has been completed to the satisfaction of the Applicant and the Purchaser.

C. Unless otherwise indicated herein, terms with initial capitals have the meanings set out in the Purchase Agreement.

THE MONITOR CERTIFIES the following:

1. The Purchaser has paid and the Applicant has received the Purchase Price for the Purchased Assets pursuant to the Purchase Agreement.
2. The conditions to Closing as set out in the Purchase Agreement have been satisfied or waived by the Applicant and the Purchaser, as applicable.
3. The Transaction has been completed to the satisfaction of the Applicant and the Purchaser.
4. This Certificate was delivered by the Monitor at _____ [a.m/p.m.] on _____, 2020.

MNP LTD., in its capacity as Court-appointed Monitor of Del Equipment Inc. and not in its personal or corporate capacity

Per: _____

Name:

Title:

**IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*, R.S.C.
1985, c. C-36, AS AMENDED**

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**AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF DEL
EQUIPMENT INC.**

Applicant

**ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)**
Proceeding commenced at Toronto

**APPROVAL AND VESTING ORDER
(February 27, 2020)**

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