

**ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)**

B E T W E E N:

PILLAR CAPITAL CORP.

Applicant

- and -

TURUSS (CANADA) INDUSTRY CO., LTD.

Respondent

APPLICATION UNDER SECTION 243(1) OF THE *BANKRUPTCY AND INSOLVENCY ACT*,
R.S.C. 1985, c. B-3, AS AMENDED AND SECTION 101 OF THE *COURTS OF JUSTICE
ACT*, R.S.O. 1990, c. C-43, AS AMENDED

**NOTICE OF MOTION
(returnable June 25, 2021)**

MNP Ltd. (“MNP”), in its capacity as the Court-appointed receiver and manager (the “**Receiver**”) of the assets, undertakings and properties of Turuss (Canada) Industry Co., Ltd. (“**Turuss**”), will make a motion via videoconference to a judge presiding over the Ontario Superior Court of Justice (Commercial List) (the “**Court**”) on June 25, 2021, at 12:30 p.m., or as soon after. Please refer to the conference details attached as **Schedule “A”** hereto in order to attend the motion and advise if you intend to join the motion by emailing amanda.campbell@dentons.com.

PROPOSED METHOD OF HEARING: The motion is to be heard orally.

THE MOTION IS FOR:

1. An Order, substantially in the form attached hereto as **Schedule “B”**, for the following relief:

- (a) advice and direction regarding the Sale Process, Stalking Horse Bidding Procedures, Auction Procedures and a proposed first amendment (the “**First Amendment**”) to the asset purchase agreement between the Receiver and Chelsea Property Holdings Inc. dated May 31, 2021 (the “**Chelsea APA**”); and
 - (b) such further and other relief as counsel may request and this Court deems just.
2. Capitalized terms not otherwise defined herein shall have the meaning ascribed to that term pursuant to the Chelsea APA.

THE GROUNDS FOR THE MOTION ARE:

- 3. On October 29, 2020, the Court issued an order authorizing the Receiver to implement the Sale Process for the assets, undertakings and properties of Turuss, including the property municipally known as 60 Industrial Park Road, Chesley, Ontario (the “**Chesley Property**”).
- 4. On March 26, 2021, the Court issued an order extending the Sale Process bid deadline and approved the Auction Procedures.
- 5. On April 14, 2021, the Court issued an order authorizing the Receiver to execute the stalking horse bid by Westmount Park Investments Inc. and approved the Stalking Horse Bidding Procedures.
- 6. As set out in the Receiver’s Sixth Report to the Court dated June 1, 2021 (the “**Sixth Report**”), the Receiver implemented the Sale Process, as supplemented by the Stalking Horse Bidding Procedures and Auction Procedures, which resulted in the Receiver selecting the Chelsea APA as the Successful Offer.
- 7. On June 1, 2021, the Receiver filed its motion record (and the Sixth Report) in support of an Approval and Vesting Order in respect of the Chelsea APA (the “**Motion Record**”). In the Sixth Report, the Receiver reported to the Court that the Sale Process was conducted in a commercially reasonable manner, and was fair and transparent.
- 8. On June 7, 2021, the Court granted the Approval and Vesting Order.

9. The Chelsea APA contemplates the Closing Date for the Transaction to be five (5) Business Days following the granting of the Approval and Vesting Order, or such other date as may be agreed to in writing between the parties.
10. As noted in the Receiver's supplement to the Sixth Report dated June 24, 2021 (the "**Supplement**"), the Closing Date would have been June 14, 2021.
11. On June 14, 2021, the Purchaser indicated to the Receiver that in fact it required until mid-July 2021 to complete the Transaction.
12. On June 15, 2021, the Receiver was advised by the Purchaser that the reason for the delay in closing was as a result of its decision to finance the Transaction on what the Purchaser considered to be more favourable terms than utilizing its own internal resources. The Purchaser would now require up to July 29, 2021 to close the Transaction.
13. As a result of the Purchaser's request for an extension to the closing, the Receiver requested a copy of the financing commitment letter to evidence that a financing process was, in fact, underway. The Receiver notes that the Chelsea APA contained a Purchaser representation and warranty at section 3.02(h) that the Purchaser had sufficient funding to enable the Purchaser to complete the Transaction.
14. On June 15, 2021, the Purchaser delivered a copy of a commitment letter, dated June 2, 2021, to the Receiver for review (the "**June 2 Commitment**").
15. Until being advised of the decision to finance the Transaction and the receipt of the June 2 Commitment, the Receiver was unaware of the Purchaser's decision to obtain financing rather than utilize internal resources. Neither the Purchaser nor its counsel advised the Receiver (or its counsel) of the change to the source of financing for the Transaction and the need to extend the closing date at the time the Receiver filed the Motion Record for the Approval and Vesting Order, or even at the June 7th hearing (nor did the Purchaser's counsel disclose the existence of the June 2 Commitment at any time after service of the Receiver's Motion Record through to the hearing before the Court on June 7th).

16. On June 22nd, 2021, the Receiver was advised by the Purchaser that the Purchaser would be in a position to close the Transaction on Friday, June 25, 2021 (“**Amended Closing Date**”) because it had arranged alternative financing.
17. In the event the Court is prepared to approve an extension to the closing date contained in the Cheslea APA, the Purchaser and the Receiver have negotiated a form of First Amendment for this Court to consider. The salient terms of the First Amendment are set out below:
 - (a) the “Closing Date” shall mean June 25, 2021; and
 - (b) the Purchaser is to pay for all accrued interest costs of the secured creditors from June 15, 2021 to the Amended Closing Date (the “**Additional Interest**”), to be paid by the Purchaser to the Receiver as part of the closing.
18. With respect to the economic terms of the First Amendment, the Receiver is of the view that the terms of First Amendment will provide sufficient economic protections to the receivership estate to ensure that the extension of time requested by the Purchaser does not economically prejudice the stakeholders. It is also not expected that the extension of the Closing Date would negatively impact the market value of the Chesley Property.
19. Given the nature of the Purchaser’s request for an extension to the Closing Date and the underlying reason for such request (arranging financing when the Chelsea APA contains no conditions associated with financing), the Receiver is seeking advice and direction from the Court regarding the Receiver’s execution and delivery of the First Amendment.

Other Grounds

20. Rules 1.04, 2.03, 3.02, 16.08 and 37 of the *Rules of Civil Procedure* (Ontario).
21. Section 243 of the *Bankruptcy and Insolvency Act* (Canada).
22. Such further and other grounds as counsel may advise and this Court may permit.

THE FOLLOWING DOCUMENTARY EVIDENCE WILL BE USED AT THE HEARING OF THE MOTION:

23. The Sixth Report;
24. The Supplement; and
25. Such further and other material as counsel may advise and this Court may permit.

DATE: June 24, 2021

DENTONS CANADA LLP

77 King Street West, Suite 400
Toronto-Dominion Centre
Toronto, ON M5K 0A1

Robert Kennedy (LSO #474070)

Tel: (416) 637-6756

Fax: (416) 863-4592

robert.kennedy@dentons.com

Daniel Loberto (LSO #79632Q)

Tel: 416-863-4760

daniel.loberto@dentons.com

Lawyers for the Receiver

TO: SERVICE LIST

Schedule “A” – Conference Details to join Motion via Zoom

Join Zoom Meeting

<https://dentons.zoom.us/j/97986334783?pwd=MmM0Qit5bzBnc29ZakZ3eIN2VEN1dz09>

Meeting ID: 979 8633 4783

Passcode: 155918

Dial by your location

+1 613 209 3054 Canada

+1 647 558 0588 Canada

+1 778 907 2071 Canada

855 703 8985 Canada Toll-free

Schedule “B” – Draft Order

Court File No. CV-20-00646729-00CL

**ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)**

THE HONOURABLE
JUSTICE DUNPHY

)
)
)

MONDAY, THE 25th
DAY OF JUNE, 2021

BETWEEN:

PILLAR CAPITAL CORP.

Applicant

-and-

TURUSS (CANADA) INDUSTRY CO., LTD.

Respondent

APPLICATION UNDER SECTION 243(1) OF THE *BANKRUPTCY AND INSOLVENCY ACT*,
R.S.C. 1985, c. B-3, AS AMENDED AND SECTION 101 OF THE *COURTS OF JUSTICE*
ACT, R.S.O. 1990, c. C-43, AS AMENDED

ORDER

THIS MOTION, made by MNP Ltd., in its capacity as court-appointed receiver and manager (the “**Receiver**”) of the assets, undertakings and properties of Turuss (Canada) Industry Co., Ltd. (“**Turuss**”), for:

- a) advice and direction regarding the sale process approved by the Order of Justice Cavanagh dated October 29, 2020, the stalking horse bidding procedures approved by the Order of Justice Koehnen dated April 14, 2021, the auction procedures approved by the Order of Justice Hailey dated March 26, 2021, and a proposed first amendment (the “**First Amendment**”) to the asset purchase agreement between the Receiver and Chelsea Property Holdings Inc. dated May 31, 2021 (the “**Chelsea APA**”);

b) such further and other relief as counsel may request and this Honourable Court deems just.

was heard this day via videoconference due to the COVID-19 pandemic.

ON READING the supplemental report to the sixth report of the Receiver dated June 24, 2021, and on hearing the submissions of counsel for the Receiver and any such other counsel as were present, no one appearing for any other person on the service list, although properly served as appears from the Affidavit of Service of Daniel Loberto sworn June 24, 2021, filed:

FIRST AMENDMENT

1. **THIS COURT ORDERS AND DECLARES** that the First Amendment to the Chelsea APA is hereby approved, and the execution and delivery of the First Amendment by the Receiver is hereby authorized and approved.

PILLAR CAPITAL CORP.
Applicant

- and -

TURUSS (CANADA) INDUSTRY CO., LTD.
Respondent

**ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)**

PROCEEDING COMMENCED AT TORONTO

**NOTICE OF MOTION
(returnable June 25, 2021)**

DENTONS CANADA LLP

77 King Street West, Suite 400
Toronto-Dominion Centre
Toronto, Ontario M5K 0A1

Robert Kennedy (LSO #474070)

Tel: (416) 367-6756

Fax: (416) 863-4592

robert.kennedy@dentons.com

Daniel Loberto (LSO #79632Q)

Tel: (416) 863-4760

daniel.loberto@dentons.com

Lawyers for the Receiver