

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

In the matter of the proposal of
MASTER CLEANING SUPPLIES INC.
of the Town of Richmond Hill, in the Province of Ontario

NOTICE OF MOTION

Master Cleaning Supplies Inc. (“MCSI”) will make a Motion to a Judge presiding over the Commercial List on [Tuesday](#), September 25, 2012 at 10:00 a.m., or as soon after that time as the Motion can be heard at the court house, 330 University Avenue, 8th Floor, Toronto, Ontario, M5G 1R7.

PROPOSED METHOD OF HEARING: The Motion is to be heard

☐ in writing under subrule 37.12.1(1) because it is ;

☐ in writing as an opposed motion under subrule 37.12.1(4);

☒ orally.

THE MOTION IS FOR:

(a) Orders substantially in the forms attached at Tabs 4 and 5 of the Motion Record granting the following relief:

- (i) approving an agreement of purchase and sale dated [September 13, 2012](#) (the “**Asset Purchase Agreement**”) entered into by MCSI and Roy Turk Industrial Sales Ltd. (the “**Purchaser**”) and authorizing MCSI to complete

the sale of assets contemplated therein, namely, the sale of substantially all of the assets of MCSI;

- (ii) vesting MCSI's right, title and interest in the Assets (as defined in the Asset Purchase Agreement) in and to the Purchaser free and clear of any encumbrances, except as specifically provided for in the Asset Purchase Agreement;
 - (iii) granting an administrative charge in favour of John Gardner (the "**Sales Agent**") in respect of any amount due and owing to the Sales Agent pursuant to the agreement made between MCSI and the Sales Agent as described in the First Report of the Proposal Trustee and the Affidavit of the Sales Agent (the "**Agreement**"), namely payment of the amount of ten percent (10%) of the gross realizations on any sale of the Assets above the base price of \$400,000.00 (the "**Success Fee**"), but limited to ten percent (10%) of the proceeds of sale actually received by MCSI and not applying to any other amounts due to, but not received by, MCSI;
 - (iv) approving the First Report to Court of the Proposal Trustee and the activities of the Proposal Trustee set out therein; and
- (b) Such further and other Relief as to this Honourable Court may seem just.

THE GROUNDS FOR THE MOTION ARE:

Introduction

- (a) MCSI is an insolvent wholesaler of cleaning supplies and chemicals trading primarily in the Greater Toronto Area. The value of MCSI's annual sales is approximately \$3,000,000.00;
- (b) On September 17, 2012, MCSI filed a Notice of Intention to Make a Proposal ("NOI") pursuant to the *Bankruptcy and Insolvency Act*. A. Farber & Partners Inc. was appointed as the Proposal Trustee of MCSI;
- (c) Prior to filing the NOI, MCSI had entered into the Asset Purchase Agreement, which is conditional upon approval of the transaction by this Honourable Court;

Events Leading Up to Filing of the NOI

- (d) MCSI suffered operating losses for the fiscal years ending December 2010 and December 2011. MCSI operated at a break-even level for the first six months prior to June 2012, which negatively affected working capital and restricted the availability of new inventory;
- (e) On August 31, 2012, MCSI's lease expired and was not renewed by the landlord. MCSI is currently located in a temporary space provided by the Purchaser;
- (f) On June 28, 2012, MCSI retained the services of the Sales Agent, a third-party with extensive industry experience, to attempt to sell MCSI to a purchaser with a larger inventory base. The Sales Agent's industry background is set out in his affidavit sworn September 18, 2012;

- (g) The Sales Agent was retained based on a commission in the form of the Success Fee. The Success Fee motivated the Sales Agent to find the best price possible from a purchaser of MCSI's business;

Sale Process

- (h) The Sales Agent conducted a sale process for nine weeks, and received two offers to purchase. One offer was far below the asking price of the business, while the offer of the Purchaser nearly matched the asking price set for the Assets in accordance with the recommendation of the Sales Agent. No other parties have expressed interest in MCSI and no other offers to purchase are expected. The Purchaser is a Toronto company in the same industry as MCSI with over 30 years of experience;
- (i) Subject to Court approval, on September 13, 2012, MCSI entered into the Asset Purchase Agreement with the Purchaser;

The Asset Purchase Agreement

- (j) The key elements of the Asset Purchase Agreement are summarized in the First Report of the Proposal Trustee;
- (k) Substantially all inventory and customer information of MCSI are being sold. Inventory worth approximately \$100,000.00 will be sold for \$65,000.00 payable in three instalments. The customer lists and goodwill of MCSI will generate a recovery of up to \$400,000.00 payable by the Purchaser to MCSI over the next five years if certain sales targets are met. An employment agreement retaining

MCSI principle Mr. Gary Hyde will be entered into prior to closing with the objective of Mr. Hyde maintaining sales relationships with MCSI customers yet being able to yield greater profit margins as a function of the Purchaser's improved purchasing power over MSCI . There is no obligation for the Purchaser to retain other employees of MCSI, although offers may be made;

- (l) The Asset Purchase Agreement excludes MCSI's current accounts receivable of approximately \$379,000.00 and some fixed assets. However, the Purchaser will assist in the collection of existing accounts receivables and supply of product to customers at no cost to MCSI;
- (m) It is recommended that this Honourable Court approve the Asset Purchase Agreement for the following reasons:
 - (i) the process leading to the execution of the Asset Purchase Agreement and MCSI's use of an independent third party Sales Agent during this process was reasonable in the circumstances;
 - (ii) the Sales Agent is a highly qualified individual with extensive business experience in a similar industry to MCSI;
 - (iii) the Sales Agent's efforts to obtain the best price for MCSI's assets were sufficient and reasonable. The Sales Agent approached numerous potential purchasers, from competitors of MCSI to industry broadliners and wholesalers;
 - (iv) nine parties determined that they wished to proceed with further due diligence and, subject to non-disclosure agreements, the Sales Agent

provided these parties with an information package containing details regarding MCSI's business and assets;

- (v) the Asset Purchase Agreement provides for the highest overall realization and benefit to the estate. A sale or disposition under a bankruptcy would result in no funds being available to any unsecured creditors;
- (vi) should the Asset Purchase Agreement not be approved, the secured creditors will exercise their rights to sell or dispose of the assets of MCSI, resulting in no funds being available to the unsecured creditors;
- (vii) the Asset Purchase Agreement provides for a closing which is anticipated to take place as soon as possible after the granting of the Approval and Vesting Order, if so granted by this Honourable Court, which will in turn reduce the costs associated with securing and monitoring MCSI's business and assets;
- (viii) the professional fees incurred in completing the proposed transaction will be significantly less than professional fees required to complete a liquidation of MCSI's assets, either pursuant to the NOI or in a bankruptcy scenario;
- (ix) the Proposal Trustee has recommended, and the secured creditors of MCSI have approved, the proposed transaction;
- (x) if the Asset Purchase Agreement is not approved by the Court, MCSI will no longer be able to operate out of its current temporary premises; and

- (xi) no party will be prejudiced if the Asset Purchase Agreement is approved by this Court.

Arrangement with Sales Agent

- (n) The agreement between the Sales Agent and MCSI (the “**Agreement**”) entitles the Sales Agent to receive payment of the Success Fee over time and in priority to the secured and unsecured creditors at a rate of ten percent of any gross realizations over \$400,000 payable as a result of the Asset Purchase Agreement. Such amounts are to be paid to the Sales Agent on the basis of ten (10%) of any realizations as, and only as, such payments are actually received by MSCI. The charge shall only apply to ten percent (10%) of realizations over \$400,000.00 as and when they are received. The balance of any realizations in excess of such ten percent (10%) shall be paid to the secured parties until paid in full and thereafter in accordance with the terms of the proposal to be filed by MCSI;
- (o) The secured creditors support the Agreement and consent to the granting of an administrative charge or security ranking in priority in favour of the Sales Agent in accordance with the above terms;
- (p) No unsecured creditors would be prejudiced by the priority ranking of the Sales Agent;
- (q) It is appropriate that an administrative charge be granted in favour of the Sales Agent for the following reasons:

- (i) the Sales Agent undertook in good faith to find the Purchaser for MCSI and there would be no Asset Purchase Agreement but for the work of the Sales Agent; and
- (ii) the work undertaken by the Sales Agent to finalize the Asset Purchase Agreement will likely generate a benefit to the unsecured creditors that they would not see if MCSI is sold or disposed of through bankruptcy procedures.
- (r) sections 65.13(1), 64.2(1)(b), 64.2(1)(c), and 64.2(2) of the *Bankruptcy and Insolvency Act*, R.S.C., 1985, c. B-3; and
- (s) Such further and other grounds as the lawyers may advise.

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

- (t) The First Report of the Proposal Trustee dated September 18, 2012;
- (u) The Affidavit of John Gardner, sworn September 18, 2012; and
- (v) Such further and other evidence as the lawyers may advise and this Honourable Court may permit.

September 19, 2012

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Lawyers for the Applicant, Master Cleaning
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TO: **SERVICE LIST**

In the matter of the proposal of **MASTER CLEANING SUPPLIES INC.**
of the Town of Richmond Hill, in the Province of Ontario

Court File No. 31-1665939

ONTARIO
SUPERIOR COURT OF JUSTICE
IN BANKRUPTCY AND INSOLVENCY
PROCEEDING COMMENCED AT TORONTO

NOTICE OF MOTION

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RCP-E 4C (July 1, 2007)