

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

QUALITY MEAT PACKERS HOLDINGS LIMITED

Applicant

- and -

**QUALITY MEAT PACKERS LIMITED AND
TORONTO ABATTOIRS LIMITED**

Respondents

APPLICATION UNDER SUBSECTION 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

**FACTUM OF THE RECEIVER
(Motion Returnable June 18, 2014)**

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TO: ATTACHED SERVICE LIST

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

AND IN THE MATTER OF THE NOTICE OF INTENTION TO MAKE A
PROPOSAL OF QUALITY MEAT PACKERS LIMITED

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(JUNE 12, 2014)

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**COURIER SERVICE LIST
(MAY 2, 2014)**

TO:	DE LAGE LANDEN FINANCIAL SERVICE CANADA INC. 3450 Superior Court, Unit 1 Oakville, ON L6L 0C4
AND TO:	REISER (CANADA) CO. 1549 Yorkton Court, Unit #4 Burlington, ON L7P 5B7
AND TO:	TOYOTA CREDIT CANADA INC. 80 Micro Court, Suite 200 Markham, ON L3R 9Z5
AND TO:	FINANCIALINX CORPORATION 2001 Sheppard Avenue East, 6 th Floor Toronto, ON M2J 4Z8
AND TO:	TRANSPORTACTION LEASE SYSTEMS INC. 4 Robert Speck Parkway Suite 900 Mississauga, ON L42 1S1

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**FACTUM OF THE RECEIVER
(June 18, 2014)**

PART I – FACTUAL OVERVIEW

1. A. Farber & Partners Inc. was appointed as Receiver of Quality Meat Packers Limited (“**QMP**”) and Toronto Abattoirs Limited (“**TAL**”), collectively in such capacity being (the “**Receiver**”), pursuant to an Order made by the Honourable Justice D.M. Brown dated May 6, 2014 (the “**Appointment Order**”).

Motion Record, Tab 3(A)

2. Each of QMP and TAL became bankrupts effective May 6, 2014 following their failure to file a proposal to creditors pursuant to bankruptcy proposal processes previously initiated by each entity. A. Farber & Partners Inc. was the Proposal Trustee of each of QMP and TAL and

filed a Second Report of the Proposal Trustee dated May 2, 2014 which was before the Court at the time of the making of the Appointment Order.

Second Report of the Proposal Trustee, Motion Record, Tab 4, paras. 13 and 20

3. In the Second Report of the Proposal Trustee it was noted that the companies no longer had a viable going concern business. The Proposal Trustee noted that, if appointed as receiver, the proposed receiver intended to liquidate the remaining current assets and seek auction/liquidation proposals for the equipment of the Debtors.

Second Report of the Proposal Trustee, Motion Record, Tab 4, paras. 13 and 20

4. In granting the Appointment Order the Receiver was given the power at paragraph 4(k) thereof to do the following:

“to market any or all of the Property, including advertising and soliciting offers and/or auction proposals in respect of the Property or any part or parts thereof and negotiating such terms and conditions of sale and/or auction as the Receiver in its discretion may deem appropriate”

Appointment Order, Motion Record, Tab 3(A), para. 4(k)

5. The Receiver has conducted an extensive sale process seeking option and liquidation bids for the assets of QMP and TAL, by means of the following:

- (a) The Receiver published an advertisement in the Global & Mail on May 16, 2014 seeking offers for the equipment;
- (b) The Receiver reached out to auctioneers and other parties that had expressed an interest in purchasing equipment during the NOI period;
- (c) The Receiver prepared a listing of key equipment and photos of the key pieces of equipment;
- (d) The Receiver prepared draft terms and conditions for sale and distributed those to potential buyers;
- (e) The Receiver received expressions of interest from 17 parties and 13 parties scheduled visits to view the equipment;
- (f) 7 parties viewed the equipment and made offers for the purchase of the equipment or to auction the equipment; and

- (g) The Receiver met with interested parties and negotiated terms of a liquidation agreement following a comparative analysis of the offers received.

6. The Receiver has consulted with the stakeholders having an economic interest in the assets being sold including Quality Meat Packers Holdings Limited and Royal Bank of Canada. Each of those stakeholders has expressed a desire to participate in the liquidation processes established by the Receiver and to approve the selected liquidation proposal.

First Report of the Receiver, para. 24, Motion Record, Tab 3

7. The liquidation proposal recommended by the Receiver provides the highest guaranteed return of all liquidation proposals and is commensurate with other liquidation proposals with regard to the expected gross and net realizations to be achieved. There is no evidence that any creditor or other stakeholders will be prejudiced by the selection of this proposal.

First Report of the Receiver, para. 24, Tab 3

PART II –LAW

8. It is submitted that the proposed sale through liquidation satisfies the criteria established in *Royal Bank vs. Sound Air Corp.* and approved in *Canwest Publishing Inc.* in that:

- (a) Sufficient effort was made to obtain the best price and the Receiver has not acted improvidently;
- (b) The proposed sale is in the interest of the economic stakeholders and is not prejudicial to the interest of any other party;
- (c) The sale was conducted fairly with regard to the efficacy and integrity of the process by which offers were obtained; and
- (d) There was no unfairness in the working out of the process

***Canwest Publishing Inc. (Re)* (2010) 68 CBR (5th) (233)**

***Royal Bank v. Sound Air Corp.* (1991) 4 O.R. (3rd) 1 (ON CA)**

9. The Receiver asks that Appendices B and C of the First Report showing the bids received, and the details of the bid proposed for acceptance, be sealed pending the completion of

the transaction as the public dissemination of such information would be prejudicial to any sale process in the event that the proposed transaction fail to be completed for any reason and the Receiver would be forced to re-bid.

10. In *Sierra Club of Canada v. Canada (Minister of Finance)*, a decision of the Supreme Court of Canada interpreting the sealing provisions of the Federal Court Rules, Iacobucci J. adopted the following test to determine when a sealing order should be made:

A confidentiality order under Rule 151 should only be granted when:

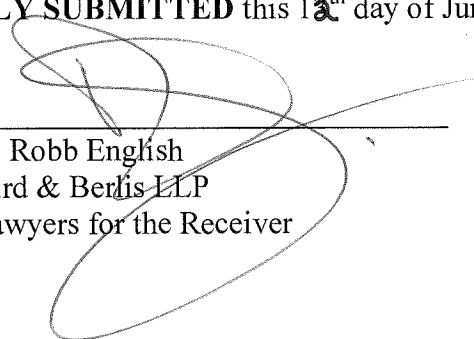
- (a) such an order is necessary in order to prevent a serious risk to an important interest, including a commercial interest, in the context of litigation because reasonably alternative measures will not prevent the risk; and
- (b) the salutary effects of the confidentiality order, including the effects on the right of civil litigants to a fair trial, outweigh its deleterious effects, including the effects on the right to free expression, which, in this context, includes the public interest in open and accessible court proceedings.

Sierra Club of Canada v. Canada (Minister of Finance), [2002] 2 S.C.R. 522

11. Confidential Appendices “B” and “C” to the First Report contain un-redacted copies of accepted liquidation bid and a comparison of the various offers received, the disclosure of which will cause harm to the Receiver and the stakeholders of the Debtors, which is an important commercial interest that should be protected.

12. Accordingly the Receiver respectfully requests that the Receiver’s acceptance of the liquidation proposal Hilco Asset Sales Canada Corp. be approved and that the Court grant an Order sealing the Confidential Appendices “B” and “C” to the Receivers’ First Report.

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 1st day of June, 2014.



D. Robb English
Aird & Berlis LLP
Lawyers for the Receiver

SCHEDULE “A”
Authorities Referred To

Canwest Publishing Inc. (Re) (2010) 68 CBR (5th) (233)

Royal Bank v. Sound Air Corp. (1991) 4 O.R. (3rd) 1 (ON CA)

Sierra Club of Canada v. Canada (Minister of Finance), [2002] 2 S.C.R. 522
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QUALITY MEAT PACKERS HOLDINGS LIMITED and

APPLICANT

QUALITY MEAT PACKERS LIMITED
AND TORONTO ABATTOIRS LIMITED

RESPONDENTS

Court File No.: CV-14-10537-00CL

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PROCEEDINGS COMMENCED AT TORONTO

FACTUM OF THE RECEIVER
(returnable June 18, 2014)

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