

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
(COMMERCIAL LIST - IN BANKRUPTCY)**

Court File No. 31-1932502

IN THE MATTER OF THE BANKRUPTCY OF  
CRATE MARINE SALES LIMITED

Court File No. 31-1932534  
Court File No. 31-1932548  
Court File No. 31-1932557  
Court File No. 31-1932540  
Court File No. 31-1932555  
Court File No. 31-1932553

IN THE MATTER OF THE BANKRUPTCIES OF  
F.S. CRATE & SONS LIMITED, 1330732 ONTARIO LIMITED,  
1328559 ONTARIO LIMITED 1282648 ONTARIO LIMITED,  
1382415 ONTARIO LTD., and 1382416 ONTARIO LTD.

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**MOTION RECORD OF THE TRUSTEE**  
**(Motion Returnable February 13, 2015 for Stalking Horse and Sales Process)**

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Dated: February 8, 2015

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Lawyers for A. Farber & Partners Inc. in its capacity as the trustee in bankruptcy of the estates of Crate Marine Sales Limited, F.S. Crate & Sons Limited, 1330732 Ontario Limited, 1328559 Ontario Limited 1282648 Ontario Limited, 1382415 Ontario Ltd., and 1382416 Ontario Ltd.

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**AND TO: THE SERVICE LIST**

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**ONTARIO  
SUPERIOR COURT OF JUSTICE  
(COMMERCIAL LIST- IN BANKRUPTCY)**

Court File No. 31-1932502

IN THE MATTER OF THE BANKRUPTCY OF  
CRATE MARINE SALES LIMITED

Court File No. 31-1932534  
Court File No. 31-1932548  
Court File No. 31-1932557  
Court File No. 31-1932540  
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Court File No. 31-1932553

IN THE MATTER OF THE BANKRUPTCIES OF  
F.S. CRATE & SONS LIMITED, 1330732 ONTARIO LIMITED,  
1328559 ONTARIO LIMITED 1282648 ONTARIO LIMITED,  
1382415 ONTARIO LTD., and 1382416 ONTARIO LTD.

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**NOTICE OF MOTION**

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A. FARBER & PARTNERS INC., in its capacity as the trustee in bankruptcy (the “**Trustee**”) of the estates of Crate Marine Sales Limited, F.S. Crate & Sons Limited, 1330732 Ontario Limited, 1328559 Ontario Limited, 1282648 Ontario Limited, 1382415 Ontario Ltd., and 1382416 Ontario Ltd. (collectively the “**Companies**”), will make a Motion to a Judge of the Commercial List sitting in bankruptcy, on Friday February 13, 2015 at 10:00 a.m. or soon after that time as the motion can be heard, at 330 University Avenue, 8th Floor, Toronto, Ontario.

**THE PROPOSED METHOD OF HEARING:** The motion is to be heard:

\_\_\_ in writing under subrule 37.12.1(1) because it is made without notice;

\_\_\_ in writing as an opposed motion under subrule 37.12.1(4); or  
 X  orally.

**THE MOTION IS FOR:**

1. An Order abridging the time for service of the Trustee's notice of motion and motion record and validating the service of such motion materials;
2. An Order in the form attached as **Schedule "A"**:
  - a. providing this Honorable Court's advice and directions regarding the Trustee's execution of the agreement of purchase and sale dated February 8, 2015 entered into between A. Farber & Partners Inc., in its capacity as the Court-appointed Receiver of the Companies ("**the Receiver**") and 2450902 Ontario Limited (the "**Stalking Horse Offer**") for the limited purpose of being bound by Sections 1.1(s) and 2.7 thereof; and
  - b. sealing Confidential Appendix "A" to the Third Report until further Order of this Court; and
3. Such further and other relief as this Honourable Court may deem just.

**THE GROUNDS FOR THE MOTION ARE:**

1. The Receiver has accepted the Stalking Horse Offer, subject to approval by this Court, which provides for the Stalking Horse Process;

2. The Stalking Horse Offer requires the signature of the Trustee for the limited purpose of acknowledging and agreeing to be bound by sections 1.1(s) and 2.7 in exchange for the consideration stated in section 2.7 thereof;
3. The Trustee has reviewed the prudence of so doing, and seeks advice and direction from the Court in that regard with a recommendation that it do so;
4. Sections 34(1) and 183(1) of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, as amended ;
5. Rules 1.04, 2.01, 3, 02, and 37 of the *Rules of Civil Procedure*; and
6. 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 Third Report of A. Farber & Partners Inc. as Trustee;
2. The Third Report of A. Farber & Partners Inc. as Receiver; and
3. Such further and other documentary evidence as counsel may advise and this Honourable Court may accept.

**DATE:** February 12, 2015

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Limited, 1323559 Ontario Limited, 1282648 Ontario  
Limited, 1382415 Ontario Ltd. and 1382416 Ontario Ltd.

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**AND TO: THE SERVICE LIST**

**IN THE MATTER OF THE BANKRUPTCY OF  
CRATE MARINE SALES LIMITED**

Court File No. 31-1932502

**IN THE MATTER OF THE RECEIVERSHIP OF CRATE MARINE SALES LIMITED,  
F.S. CRATE & SONS LIMITED, 1330732 ONTARIO LIMITED, 1328559 ONTARIO  
LIMITED, 1282648 ONTARIO LIMITED, 1382415 ONTARIO LTD., and 1382416  
ONTARIO LTD.**

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**ONTARIO  
SUPERIOR COURT OF JUSTICE  
(COMMERCIAL LIST – IN BANKRUPTCY)**

**Proceedings commenced at Toronto**

**NOTICE OF MOTION**

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Lawyers for A. Farber & Partners Inc. in its capacity as the trustee in bankruptcy of the estates of Crate Marine Sales Limited, F.S. Crate & Sons Limited, 1330732 Ontario Limited, 1328559 Ontario Limited 1282648 Ontario Limited, 1382415 Ontario Ltd., and 1382416 Ontario Ltd.

SCHEDULE "A" TO THE NOTICE OF MOTION

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
(COMMERCIAL LIST- IN BANKRUPTCY)**

THE HONOURABLE ) FRIDAY, THE 13TH  
JUSTICE )  
) DAY OF FEBRUARY, 2015

Court File No. 31-1932502

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CRATE MARINE SALES LIMITED

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1382415 ONTARIO LTD., and 1382416 ONTARIO LTD.

**ORDER**

**(Advice and Directions - Stalking Horse Agreement)**

**THIS MOTION**, made by A. Farber & Partners Inc. ("**Farber**"), in its capacity as the Trustee in bankruptcy (in such capacity, the "**Trustee**") of the estates of Crate Marine Sales Limited, F.S. Crate & Sons Limited, 1330732 Ontario Limited, 1328559 Ontario Limited 1282648 Ontario Limited, 1382415 Ontario Ltd., and 1382416 Ontario Ltd. (collectively, the "**Companies**"), for an order substantially in the form included in the Trustee's Motion Record, amongst other things, providing this Honourable Court's advice and directions regarding the



Trustee's executing the agreement of purchase and sale dated February 8, 2015 entered into between A. Farber & Partners Inc., in its capacity as the Court-appointed Receiver of the Companies (the "**Receiver**") and 2450902 Ontario Limited (the "**Stalking Horse Offer**"), for the limited purpose of being bound by Sections 1.1(s) and 2.7 thereof, and sealing Confidential Appendix "A" to the Third Report of the Trustee dated February 12, 2015 (the "**Third Report**") was heard this day at 330 University Avenue, Toronto, Ontario.

**ON READING** the Third Report and appendix thereto and the Third Report of A. Farber & Partners Inc. as Receiver (the "**Receiver**") and the appendices thereto, and on hearing the submissions of counsel for the Trustee, and 2450902 Ontario Limited (the "**Stalking Horse Bidder**"), and ■, no one appearing for any other person on the service list, although duly served as appears from the affidavit of service of ■ sworn February ■, 2015, filed.

1. **THIS COURT ORDERS** that the time for service and filing of the Trustee's Notice of Motion and the Motion Record is hereby abridged and the service thereof is hereby validated so that this motion is properly returnable today and further service thereof is hereby dispensed with.
  2. **THIS COURT ORDERS** that Confidential Appendix "A" to the Third Report be and is hereby sealed until further Order of this Court.
  3. **THIS COURT ORDERS** that the Trustee is hereby authorized and directed to enter into the Stalking Horse Offer, substantially in the form of the agreement attached as Appendix "Z" to the Third Report of the Receiver, for the limited purpose of being bound by Sections 1.1(s) and 2.7 thereof.
-

**IN THE MATTER OF THE BANKRUPTCY OF  
CRATE MARINE SALES LIMITED**

Court File No. 31-1932502

**IN THE MATTER OF THE RECEIVERSHIP OF CRATE MARINE SALES LIMITED,  
F.S. CRATE & SONS LIMITED, 1330732 ONTARIO LIMITED, 1328559 ONTARIO  
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**ONTARIO  
SUPERIOR COURT OF JUSTICE  
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**Proceedings commenced at Toronto**

**ORDER  
(Advice and Directions - Stalking Horse Agreement)**

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Lawyers for A. Farber & Partners Inc. in its capacity as the trustee in bankruptcy of the estates of Crate Marine Sales Limited, F.S. Crate & Sons Limited, 1330732 Ontario Limited, 1328559 Ontario Limited 1282648 Ontario Limited, 1382415 Ontario Ltd., and 1382416 Ontario Ltd.

Tab 2

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
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**THIRD REPORT OF THE TRUSTEE**

**FEBRUARY 12, 2015**

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Analysis of the consideration offered to the Trustee

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
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1382415 ONTARIO LTD., and 1382416 ONTARIO LTD.

**THIRD REPORT OF THE TRUSTEE**

**February 12, 2015**

A. FARBER & PARTNERS INC. in its capacity as the trustee in bankruptcy (the “Trustee”) of the estates of Crate Marine Sales Limited, F.S. Crate & Sons Limited, 1330732 Ontario Limited, 1328559 Ontario Limited, 1282648 Ontario Limited, 1382415 Ontario Ltd., and 1382416 Ontario Ltd. (collectively the “Companies”) hereby reports to the Court as follows:

**PURPOSE OF THIS REPORT**

1. This is the third report of the Trustee (the “Trustee’s Third Report”). Its purpose is to seek an order giving advice and direction regarding the execution by the Trustee for limited purposes of an agreement of purchase and sale dated February 8, 2015 (the “Stalking Horse

**Offer**") entered into between A. Farber & Partners Inc. in its capacity as the Court appointed receiver (the "**Receiver**") of the Companies and 2450902 Ontario Limited (the "**Purchaser**").

2. A. Farber & Partners Inc. in its capacity as the Receiver has separately applied to the Court for approval of the Stalking Horse Offer for the purpose of conducting the sales process described in that offer and in the draft Order sought.

## **INTRODUCTION**

3. On November 14, 2014, the Companies each filed a Notice of Intention to Make a Proposal (the "**NOI's**") pursuant to the *Bankruptcy and Insolvency Act* (Canada) (the "**BIA**").

4. On November 20, 2014, the currently-known largest secured creditor, Crawmet Corp. ("**Crawmet**") filed motion material for a November 21, 2014 hearing seeking to (i) have the NOI's of certain of the Companies immediately terminated; (ii) appoint A. Farber & Partners Inc., as a receiver over the properties, assets and undertakings of certain of the Companies and (iii) to substitute A. Farber & Partners Inc. as bankruptcy trustee of certain of the Companies. At the November 21, 2014 hearing, this motion was adjourned to December 1, 2014.

5. On December 8, 2014, the Honourable Mr. Justice Newbould terminated the NOI proceedings of the Companies and appointed A. Farber & Partners Inc. as Receiver and also as trustee in bankruptcy (the "**Trustee**") of all of the Companies. A copy of the Order of that date is attached as Appendix "C" to the Third Report of the Receiver dated February 8, 2015 (the "**Receiver's Third Report**"), which has also been filed for the hearing to be held on February 13, 2015. A copy of the handwritten Endorsement of that date is attached as Appendix "D" to the Receiver's Third Report.

6. On December 12, 2014, the Receiver and Trustee brought a motion to correct a typographical error in the Order dated December 8, 2014 and for procedural consolidation of certain of the bankruptcy estates of the Companies and other administrative relief. The First Report of the Receiver and Trustee in that regard is attached (without appendices) as Appendix "E" to the Receiver's Third Report. The Honourable Justice Newbould issued an



Amended Order dated December 8, 2014 (the “**Appointment Order**”) and also issued an order dated December 12, 2014 in respect of the consolidation and administrative relief, copies of which are attached as Appendix “F” and Appendix “G”, respectively, to the Receiver’s Third Report.

7. On December 23, 2014, the Receiver and Trustee brought a motion to, among other things, establish a property claims process pertaining to the proprietary and secured claims against tangible personal property of the Companies. The Second Report of the Receiver and Trustee in that regard is attached (without appendices) as Appendix “H” to the Receiver’s Third Report. On December 23, 2014, the Honourable Justice Penny issued an Order approving a property claims procedure process. This order is attached as Appendix “K”, to the Receiver’s Third Report. A copy of the endorsement dated December 23, 2014 is attached as Appendix “L” to the Receiver’s Third Report.

8. Crawmet has agreed to provide funding sufficient for the Trustee’s fees and expenses in performing its basic statutory duties in respect of the estates of the Companies.

#### **LIMITATION OF REVIEW**

9. A. Farber & Partners Inc. in its capacity as Trustee has relied upon the financial records and information provided by the Companies, as well as other information supplied by management, appraisers, accountants, auditors and advisors, and has not, except as specifically noted in this Third Report, audited, reviewed or otherwise attempted to verify the accuracy or completeness of the above information in a manner that would wholly or partially comply with Generally Accepted Assurance Standards pursuant to the Canadian Institute of Chartered Accountants Handbook. It has prepared this Third Report for the sole use of the Court and of the other stakeholders in these proceedings.

## **A) THE PROPOSED STALKING HORSE OFFER**

### **The nature of the Trustee's involvement in negotiating the Stalking Horse Offer**

10. The Stalking Horse Offer that has been negotiated and signed by the Receiver, subject to approval by this Court, is attached at Appendix "Z" to the Receiver's Third Report.

11. It is the opinion of A. Farber & Partners Inc. in both of its capacities as Trustee and Receiver that there is unlikely to be any material assets for the Trustee to administer separately from the Receiver, because substantially all of the assets of the Companies are encumbered by security agreements that are enforceable against the Receiver and Trustee and rank in priority to the interests of the Trustee.

12. The security review conducted in that regard and the opinions provided by counsel to the Receiver (and Trustee) is discussed at paragraphs 63-65 of the Receiver's Third Report, and the opinions are attached as Appendices "V" to "Y" to the Receiver's Third Report.

13. The Stalking Horse Offer was accordingly negotiated by the Receiver. The involvement of the Trustee in the Stalking Horse Offer has been limited to reviewing what is sought in the Stalking Horse Offer from the Trustee.

### **What is sought from the Trustee in the Stalking Horse Offer**

14. A. Farber & Partners Inc. in its capacity as Trustee and its counsel have reviewed the terms of the Stalking Horse Offer. It is the opinion of the Trustee and its counsel that the Purchased Assets, as described in the Stalking Horse Offer, are almost entirely within the capacity of the Receiver as Vendor under that offer to convey.

15. The sole exceptions in that regard are (as reflected in the signature line proposed for the Trustee on page 22 of the Stalking Horse Offer) are that the Trustee's signature would indicate that it "hereby acknowledges and agrees to be bound by the terms of Sections 1.1(s) and 2.7 hereof, provided that it has no further obligations, liabilities and/or benefits hereunder."

16. The terms of Sections 1.1(s) and 2.7 of the Stalking Horse Offer are as follows:

- a) section 1.1(s) provides that the “Claims” to be purchased under the Stalking Horse Offer includes the right, title and interest of the Trustee under Court File Nos. CV-15-10830-00CL and CV-15-10849-00CL; and
- b) section 2.7 provides that the Trustee agrees to provide such participation and/or assistance as is required to fulfil the obligations of the Receiver as Vendor under the Stalking Horse Offer, but at the cost of the Purchaser, as follows:

... the Vendor hereby acknowledges and agrees that in the event that the Trustee’s participation and/or assistance is required in order to fulfil the obligations of the Vendor hereunder and/or otherwise transfer any of the Purchased Assets to the Purchaser in accordance with the terms and conditions hereof, the Trustee shall provide such participation and/or assistance to the extent required, subject to obtaining such inspector and/or Court approval as may be required, and provided that the Purchaser shall first fund all costs and expenses and all payments to third parties and other amounts required to be paid or expended in connection with such participation and/or assistance.

#### **Evaluation of the prudence of the Trustee’s execution of the Stalking Horse Offer**

17. The Trustee has considered the prudence of executing the Stalking Horse Offer in the manner sought, and is of the view that it is appropriate. The Trustee accordingly recommends that it be authorized by the Court to do so.

18. In particular, the Trustee has considered:

- a) the value of the Claims in the Stalking Horse Offer, including the portion thereof that would otherwise accrue to the benefit of the Trustee, and
- b) the value of the Trustee’s participation or assistance in conveying or transferring the Purchased Assets,

and has concluded that the consideration offered, as set out in detail in paragraph 16(b), above, is appropriate value.

19. In particular, the commitment by the Purchaser to pay all costs associated with, among other things, the claims being assigned and conveyed, is of benefit to the estates of the Companies because the existing agreement by Crawmet to provide funding sufficient for the Trustee’s fees and expenses in performing its basic statutory duties in respect of the estates of

the Companies may not extend to such claims or any potential costs exposure in connection with those claims.

20. In that regard, the detailed considerations of the Trustee are set out in **Confidential Appendix “A”**.

### **Request for Court approval**

21. The Trustee is requesting that the Court approve its execution of the Stalking Horse Offer, rather than that the execution be approved by the inspectors of the estates of the Companies.

22. The Trustee is doing so for the following reasons:

- a) The Trustee is administering seven bankruptcy estates. One is for Crate Marine Sales Limited (“CMS”), and the other six are for the remaining Companies on a procedurally consolidated basis. The sole inspector of the estates of the remaining Companies is affiliated with the Purchaser such that the Trustee would not be entitled to rely on any approval by him on account of a conflict of interest;
- b) The evaluation of the prudence of executing the Stalking Horse Offer as compared with the value of the consideration being offered involves a complicated set of factors and asset evaluation. The Trustee is concerned that a truly fair and independent review by the inspectors of the estate of CMS would represent an unfair imposition of time and effort on their behalf, particularly in circumstances where the estate of CMS is not in a position to offer compensation to inspectors and the evaluation of appropriate compensation is a complex matter;
- c) The evaluation of the prudence of executing the Stalking Horse Offer as compared with the value of the consideration being offered involves confidential information the disclosure of which would be harmful to the Companies and their stakeholders. The risk of release of the information is of concern to the Trustee; and
- d) In view of the dual appointment of A. Farber & Partners Inc. as Receiver and Trustee, the Trustee would seek Court approval even if approval by the inspectors were feasible.

23. The Trustee is providing the inspectors of the estates of the Companies with notice of

this motion.

**B) SEALING ORDER**

24. The Trustee requests that Confidential Appendix "A" be sealed pending further Order of the Court, because:

- (i) it includes detailed commentary on the value of the purchased assets in the Stalking Horse Offer, the disclosure of which would affect the sales process for the assets of the Companies, and which would harm the interests of the Companies and their stakeholders if the sales process does not result in the closing of a sale for the assets and the assets must be marketed further; and
- (ii) it includes detailed commentary on the claims being asserted by the Trustee, which are to be sold to the winning bidder and the disclosure of which to the Respondents under those claims would cause harm to those claims.

**C) CONCLUSION**

25. A. Farber & Partners Inc. in its capacities as Trustee accordingly seeks the Order attached as Schedule "A" to its Notice of Motion.

All of which is respectfully submitted this 12<sup>th</sup> day of February, 2015.

**A. FARBER & PARTNERS INC.  
TRUSTEE IN BANRUPTCY OF THE ESTATES OF CRATE MARINE SALES  
LIMITED, F.S. CRATE & SONS LIMITED, 1330732 ONTARIO LIMITED, 1328559  
ONTARIO LIMITED, 1282648 ONTARIO LIMITED, 1382415 ONTARIO LTD., and  
1382416 ONTARIO LTD.**

  
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Per: John Hendriks  
Vice President

**IN THE MATTER OF THE BANKRUPTCY OF  
CRATE MARINE SALES LIMITED**

Court File No. 31-1932502

**IN THE MATTER OF THE RECEIVERSHIP OF CRATE MARINE SALES LIMITED,  
F.S. CRATE & SONS LIMITED, 1330732 ONTARIO LIMITED, 1328559 ONTARIO  
LIMITED, 1282648 ONTARIO LIMITED, 1382415 ONTARIO LTD., and 1382416  
ONTARIO LTD.**

Court File No.: 31-193502  
Court File No.: 31-193534  
Court File No.: 31-193548  
Court File No.: 31-193557  
Court File No.: 31-193540  
Court File No.: 31-193555  
Court File No.: 31-193553

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
(COMMERCIAL LIST – IN BANKRUPTCY)**

**Proceedings commenced at Toronto**

**MOTION RECORD OF THE TRUSTEE  
(Motion Returnable February 13, 2015 for Stalking  
Horse and Sales Process)**

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