

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)
(IN BANKRUPTCY AND INSOLVENCY)

**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 VERSACCOUNTS LIMITED, OF THE CITY OF
OTTAWA, IN THE PROVINCE OF ONTARIO**

**SECOND REPORT OF A. FARBER & PARTNERS INC., IN ITS CAPACITY AS
TRUSTEE UNDER THE NOTICE OF INTENTION TO MAKE A PROPOSAL OF
VERSACCOUNTS LIMITED**

MARCH 14, 2019

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LIST OF APPENDICES

- “A” Notice of Intention to Make a Proposal of VersAccounts Limited, dated January 22, 2019
- “B” First Report of the Proposal Trustee dated January 25, 2019 (without appendices)
- “C” Affidavit of James Welch, sworn January 24, 2019 (without exhibits)
- “D” Sale Process Order, dated January 30, 2019
- “E” Bidding Procedures
- “F” Asset Purchase Agreement, dated March 1, 2019 (redacted)
- “G” Cashflow Statement
- “H” Affidavit of Hylton Levy, sworn March 14, 2019
- “I” Affidavit of Kenneth Kraft, affirmed March 13, 2019

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SECOND REPORT OF THE PROPOSAL TRUSTEE

MARCH 14, 2019

A. Farber & Partners Inc. (“**Farber**”), in its capacity as the trustee appointed *in re* the proposal proceedings of VersAccounts Limited (“**VersAccounts**” or the “**Company**”), hereby submits its second report (the “**Second Report**”) to the Ontario Superior Court of Justice (Commercial List) (the “**Court**”).

INTRODUCTION

1. On January 22, 2019, VersAccounts filed a Notice of Intention to Make a Proposal (“**NOI**”) pursuant to Section 50.4 of the *Bankruptcy and Insolvency Act*, R.S.C 1985, c. B-3, as amended (the “**BIA**”). Farber was appointed as proposal trustee (the “**Proposal Trustee**”) in the VersAccounts’ NOI proceedings. A copy of the NOI is attached hereto as **Appendix “A”**.
2. The primary purpose of the NOI proceeding, as explained in the affidavit of James Welch, sworn January 24, 2019 (the “**Welch Affidavit**”) and the Proposal Trustee’s First Report to Court, dated January 25, 2019 (the “**First Report**”), is to create a stabilized environment to allow VersAccounts, in concert with the Proposal Trustee, to administer

the Court-approved Sale Process (as defined below) in respect of the assets and business of VersAccounts (the “**Property**”) and close a transaction for the sale of the Property. A copy of the First Report is attached hereto as **Appendix “B”**, without appendices. A copy of the Welch Affidavit is attached hereto as **Appendix “C”**, without exhibits.

3. On January 30, 2019, the Court granted an order (the “**Sale Process Order**”), a copy of which is attached hereto as **Appendix “D”**, which, *inter alia*:
 - (a) approved the stalking-horse sale solicitation process (the “**Sale Process**”) for the sale of the Property;
 - (b) approved the Asset Purchase Agreement, dated January 23, 2019 (the “**Stalking Horse APA**”), between Seattle Atlantic, Inc. (“**SAI**” and, in such capacity, the “**Stalking Horse Bidder**”) and VersAccounts;
 - (c) approved a charge (the “**Deposit Charge**”) on the Property in favour of the Stalking Horse Bidder, up to a maximum amount of US\$50,000, to secure repayment of the deposit (the “**Deposit**”) provided pursuant to the terms of the Stalking Horse APA;
 - (d) approved a charge (the “**Break Fee Charge**”) on the Property in favour of the Stalking Horse Bidder, up to a maximum amount of US\$50,000, to secure the payment of the break fee and expense reimbursement provided for under Section 4.2 of the Stalking Horse APA;
 - (e) approved a charge (the “**Administration Charge**”) in favour of the Proposal Trustee, counsel for the Proposal Trustee, and counsel for VersAccounts, to secure payment of their fees and disbursements, which charge shall not exceed the amount of CDN\$125,000;
 - (f) required that all of VersAccounts’ current and former directors, officers, employees, agents, accountants, legal counsel, shareholders and others who may possess or control the Property, grant immediate and continued access to the Proposal Trustee; and

- (g) extended the time within which a proposal must be filed by the Company with the Official Receiver to April 8, 2019.

PURPOSE OF THIS REPORT

4. The purpose of the Second Report is to:

- (a) report to the Court on the actions undertaken and results of the Sale Process conducted by the Proposal Trustee;
- (b) support VersAccounts' motion seeking an Order of this Court (the "**Approval and Vesting Order**"):
 - (i) approving the Asset Purchase Agreement, dated March 1, 2019 (the "**Cloud APA**"), entered into by the Company and BidCo Cloud ERP, Inc. (the "**Purchaser**") and the transaction (the "**Transaction**") contemplated therein and vesting the Purchased Assets (as defined in the Cloud APA) in the Purchaser free and clear of any and all security interests, encumbrances, estates, rights and claims, with the exception of any permitted encumbrances;
 - (ii) authorizing the Proposal Trustee to repay the Deposit and pay the break fee and expense reimbursement to SAI, as provided for under Section 4.2 of the Stalking Horse APA, out of the closing proceeds of the Transaction;
 - (iii) if necessary, assigning the rights and obligations of the Company under the Consent Required Contracts (as defined in the Cloud APA) to the Purchaser, in accordance with Section 84.1 of the BIA; and
 - (iv) sealing the unredacted Cloud APA from the public record until the closing of the Transaction or further Order of the Court;

- (c) Support VersAccounts' motion seeking an Order of this Court:
- (i) approving the Proposal Trustee's First Report and this Second Report, and the activities and conduct of the Proposal Trustee described in each report;
 - (ii) approving the professional fees and disbursements of the Proposal Trustee and its legal counsel for the period from January 22, 2019 to March 8, 2019, and its legal counsel for the period January 22, 2019 to February 28, 2019, plus an estimate of fees in the event that the Company files, or is deemed to have made, an assignment in bankruptcy immediately following the closing of the Transaction; and
 - (iii) extending the time within which the Company must file a proposal with the Official Receiver under Section 62(1) of the BIA to April 29, 2019.

DISCLAIMER

5. Farber has relied upon the financial records and information provided by VersAccounts, as well as other information supplied by management, appraisers, accountants, auditors and advisors, and Farber has not independently reviewed or verified such information. Farber assumes no responsibility or liability for any loss or damage incurred by or caused to any person or entity as a result of the circulation, publication, re-production or use of or reliance upon this Second Report. Any use which any person or entity, other than the Court, makes of this Second Report, or any reliance on or a decision made based upon this Second Report is at such person's or entity's own risk.

BACKGROUND

6. The background with respect to the Company's business and the reasons for the commencement of these proceedings is set out in detail in the Welch Affidavit and the First Report, each served and filed in these proceedings in support of the Sale Process Order. The Proposal Trustee has not repeated those details in this Second Report to the Court, except to the extent necessary.

7. Since the commencement of the NOI proceedings, VersAccounts has been operating under the supervision of three of its four directors, with a view toward preserving the Property while the Sale Process is conducted by the Proposal Trustee.
8. According to a search of registrations made pursuant to the *Personal Property Security Act*, R.S.O. 1990, c P.10, as amended, VersAccounts has no secured creditors.
9. As at January 22, 2019, VersAccounts' creditor list included in its NOI filing lists unsecured creditors with claims totalling CDN\$1,244,292.45. Of the amount owed to unsecured creditors, CDN\$940,330 is owed in respect of subordinated convertible promissory notes.

ACTIVITIES OF THE PROPOSAL TRUSTEE

10. The Proposal Trustee's activities since the filing of the NOI include:
 - (a) assisting with the negotiation of the Stalking Horse APA;
 - (b) conducting the Sale Process;
 - (c) drafting and filing the Proposal Trustee's First Report and attending Court on the sale process approval motion;
 - (d) responding to queries from creditors;
 - (e) responding to queries from prospective purchasers and arranging for access to the data room;
 - (f) reviewing and monitoring the cash flow of VersAccounts for material adverse changes;
 - (g) reviewing the Qualifying Bid (as defined below) received as part of the Sale Process;
 - (h) conducting the Auction (as defined below); and
 - (i) preparing this Second Report.

MARKETING AND SALE PROCESS

Marketing

11. As described in the Welch Affidavit and the First Report, the primary purpose of VersAccounts' NOI proceedings is to find a purchaser for the Property who will continue to service the clients of VersAccounts.
12. Pursuant to the terms of the Sale Process Order, the Court approved, among other things, the Sale Process in respect of the Property and the Stalking Horse APA. The Sale Process was described in the First Report and the Bidding Procedures, attached to the Stalking Horse APA. A copy of the Bidding Procedures is attached hereto as **Appendix "E"**.
13. The Sale Process was implemented by the Proposal Trustee in consultation with the directors of VersAccounts and in accordance with the Sale Process Order. The Sale Process commenced on January 30, 2019 and contemplated marketing the Property over a 30-day period with a view to exposing the Property to the marketplace and obtaining competing bids that would improve the realization on the Property for the benefit of VersAccounts' creditors and other stakeholders.
14. The deadline for the submission of competing bids ("**Competing Bids**") under the Sale Process was 5:00 p.m. (Eastern Time) on March 1, 2019 (the "**Bid Deadline**").
15. During the Sale Process:
 - (a) the opportunity was advertised in the business section of The Globe and Mail (National Edition) on February 5, 2019 and in the Toronto Star on February 3, 2019;
 - (b) the opportunity was noted in the Assets for Sale section of the Insolvency Insider's weekly email to the insolvency community;
 - (c) the Proposal Trustee distributed an interest solicitation letter by email and/or fax to 82 prospective investors and purchasers and to parties identified as operating in

the same or related industry as VersAccounts, with operations in Canada and the United States. The prospective purchasers were identified by use of a corporate data base tool, Capital IQ, through an internet search and as advised by VersAccounts;

- (d) the Proposal Trustee facilitated due diligence by prospective purchasers by populating an electronic online data room with the Stalking Horse APA, customer contracts, service provider contracts, certain financial and other information with respect to VersAccounts, which interested parties were provided access to upon executing a non-disclosure agreement (“**NDA**”);
 - (e) a total of six (6) prospective purchasers executed NDAs and accessed the data room; and
 - (f) on February 27, 2019, the Proposal Trustee communicated to all parties or their counsel who had requested an NDA by voicemail and email to remind them of the Bid Deadline and to offer assistance regarding the bid submission process.
16. The Proposal Trustee received one Competing Bid in advance of the Bid Deadline, which was determined to be a Qualified Bid (as defined in the Stalking Horse APA). The sole Qualified Bid was submitted by the Purchaser. The two directing minds of the Purchaser are Sunil Pande, a director and former CEO of the Company, and Richard Zhou, the Company’s former head engineer.
17. Each of Mssrs. Pande and Zhou have had no role or involvement in the management of the Company during these NOI proceedings, and similarly had no involvement in the negotiation of the Stalking Horse APA. Each also formally stepped away (or, in the case of Mr. Zhou, resigned) from their roles with the Company shortly after issuance of the Sale Process Order in order to focus on the preparation of their Competing Bid.
18. As a significant amount of the financial support for the Purchaser’s bid is sourced from a foreign jurisdiction, the Proposal Trustee requested that the Purchaser’s deposit be increased from US\$50,000 (as originally required under the Bidding Procedures) to

US\$150,000. The Purchaser agreed and provided the additional funds to the Proposal Trustee, in trust.

Auction and Successful Bid

19. All capitalized terms in this section of the Second Report that are not defined in this Second Report shall have the meaning ascribed to them in the Bidding Procedures.
20. Pursuant to the Bidding Procedures, if one or more Qualified Bids (including the Stalking Horse Bid) were received, an Auction would be conducted by the Proposal Trustee within seven (7) business days of the Bid Deadline.
21. On Tuesday, March 5, 2019, the Proposal Trustee notified both the Purchaser and the Stalking Horse Bidder that the Auction would take place on Thursday, March 7, 2019 at 11:00 am Eastern time at the offices of Dentons Canada LLP (“**Dentons**”). The Proposal Trustee and its counsel conducted a conference call with each of the participants’ counsel advising of the Auction procedures and the amount of the Leading Bid. The Proposal Trustee made clear to each participant that it would require evidence, satisfactory to the Proposal Trustee, of the bidder’s financial ability to close each bid submitted at the Auction. The Proposal Trustee also made clear to each participant that in accordance with the Bidding Procedures, the bid that was not the Successful Bid in the Auction was to remain open for acceptance as a Back-Up Bid until closing of the Successful Bid.
22. Representatives and counsel of VersAccounts, SAI and the Purchaser attended the Auction. The Purchaser’s Qualified Bid stood as the Leading Bid and the Opening Bid for the first round. The Auction was conducted over seventeen (17) rounds. The Auction ended with the Cloud APA representing the highest and best offer for the Purchased Assets and accordingly was selected as the Successful Bid. The next highest bid, submitted by SAI, was identified by the Proposal Trustee as the Back-Up Bid. A copy of the executed Cloud APA, with commercially sensitive terms redacted, is attached hereto as **Appendix “F”**. An unredacted copy of the Cloud APA will be submitted to the Court on a sealed basis.
23. The following is a summary of the salient terms of the Cloud APA:

- (a) Purchased Assets: substantially all of the Property of VersAccounts;
 - (b) 'As is, Where Is': Transaction to be completed on an 'as is where is' basis;
 - (c) Conditions: the assignment of certain of the Consent Required Contracts (as defined in the Cloud APA) whether by way of consent or Court Order, and otherwise standard for a Transaction of this nature in the context of BIA proposal proceedings, including the delivery of an Approval and Vesting Order;
 - (d) Closing Date: five (5) Business Days (as defined in the Cloud APA) after the date of the Approval and Vesting Order.
24. Pursuant to the terms of the Sale Process, should the Purchaser fail to close the Transaction, the Back-Up Bid must remain open for acceptance until the closing of the Successful Bid.

Proposal Trustee Recommends Approval of the Cloud APA

25. The Proposal Trustee recommends that the Court approve the Cloud APA and Transaction for the following reasons:
- (a) the Proposal Trustee carried out the Sale Process in accordance with the terms of the Sale Process approved by the Court and made good faith efforts to sell the Property to persons who are not related to VersAccounts;
 - (b) the Property has been exposed to the market for a sufficient period of time and the market has been adequately canvassed;
 - (c) the Purchase Price (as defined in the Cloud APA) represents the best and highest offer for the Purchased Assets;
 - (d) if VersAccounts is forced to cease operations in a bankruptcy and liquidate the Property on a forced liquidation basis, the Company's creditors will likely receive significantly less recovery than what will be distributed as a result of the Sale Process;

- (e) the Cloud APA is not conditional on due diligence or financing;
 - (f) the sale is on an 'as is, where is' basis; and
 - (g) the Transaction is in the best interests of the stakeholders and for the benefit of the estate.
26. There is anticipated to be sufficient cash generated from the closing of the Transaction to pay, in full, the various charges against the Property granted by the Sale Process Order, including: (a) the Deposit Charge; (b) the Administration Charge; and (c) the Break Fee Charge.
27. As of the date of this Second Report, the full amount of the Deposit has been utilized.
28. Accordingly, VersAccounts is seeking authorization for the Proposal Trustee to pay, from the proceeds of the Transaction, (a) the Deposit secured by the Deposit Charge, and (b) the break fee and expense reimbursements provided for under Section 4.2 of the Stalking Horse APA which are secured by the Break Fee Charge.

Assignment of Contracts

29. Pursuant to the terms of the Cloud APA, those contracts which are not assignable to the Purchaser without the consent of the counterparty are defined as Consent Required Contracts. The Purchaser was required to provide the Company with a list of Consent Required Contracts no later than one Business Day prior to service of the Company's Motion Record. The Purchaser listed contracts with Amazon Web Services, Inc. ("AWS"), Google LLC ("Google"), Hubspot, Inc. ("Hubspot") and Shopify Inc. ("Shopify") as Consent Required Contracts.
30. Each of the Consent Required Contracts concerns the provision of online hosting and software services to the Company that are integral to its continued operations. The contracts are each standard form online contracts and the Company's primary obligation under each is to pay the required subscription fee each month.

31. The Company has provided written notice to each of AWS, Google, Hubspot and Shopify requesting their consent to the assignment of their respective contracts to the Purchaser but as of the date of service of this Second Report, no response has been provided to the Company's request. Pursuant to the terms of the Cloud APA, if the counterparties' consent is not obtained, the Company is obligated to bring a motion seeking an Order compelling the assignment of the Consent Required Contracts to the Purchaser on the closing of the Transaction.
32. Each of the counterparties to the Consent Required Contracts will be served with a copy of the Company's motion seeking an order assigning same to the Purchaser.
33. Three of the Consent Required Contracts, being those with AWS, Google and Hubspot, are considered by the Purchaser to be essential to the continued operation of the Company's business and are listed in the Cloud APA as "Essential Software Contracts". The assignment of the Essential Software Contracts is a condition precedent to closing under the Cloud APA.
34. In the circumstances, the Proposal Trustee recommends that this Court issue an order compelling the assignment of the Company's rights and obligations under the Consent Required Contracts to the Purchaser. The assignment is essential to closing the Transaction and there is no reason to believe that the Purchaser will not be able to perform the obligations set out in the Consent Required Contracts. In addition, the Cloud APA provides that the Purchaser is responsible for the payment of all Cure Costs (as defined in the Cloud APA) in respect of any assigned contract. If granted, the Approval and Vesting Order would also direct the Purchaser to pay Cure Costs in respect of each Consent Required Contract within ten (10) days of receiving payment instructions from the applicable counterparty.

EXTENSION OF DEADLINE TO FILE PROPOSAL

35. At all material times since the filing of the NOI, the Company has acted and continues to act in good faith and with due diligence. Pursuant to the Sale Process Order, the current

deadline by which the Company must file a proposal with the Official Receiver under the BIA is April 8, 2019.

36. The Company is seeking a brief extension of the deadline for it to file a proposal with the Official Receiver until April 29, 2019 to provide additional time to close the Transaction contemplated by the APA and, in the event that such closing does not take place, to close the Transaction contemplated by the Stalking Horse APA as the Back-Up Bid under the Bidding Procedures.
37. The cash-flow projections, attached hereto **Appendix “G”** show that the Company is expected to have sufficient cash to maintain its current limited level of operations through to the end of the extension period.
38. The Company would likely be able to make a viable proposal to its creditors if the extension is granted. In the Proposal Trustee’s view, none of the Company’s creditors will be materially prejudiced if the extension is granted.

APPROVAL OF FEES

39. Pursuant to paragraph 12 of the Sale Process Order, the fees and disbursements of the Proposal Trustee, counsel to the Proposal Trustee and counsel to VersAccounts are secured by the Administration Charge on the Property, which charge shall not exceed the amount of CDN\$125,000. The Administration Charge has the priority set out in paragraphs 13 and 14 of the Sale Process Order.
40. Farber, in its capacity as Proposal Trustee of VersAccounts, has incurred fees of \$55,235 and disbursements of \$7,819.30, plus HST, for the period from January 22, 2019 to March 8, 2019. A copy of the detailed billings of the Proposal Trustee, supported by the Affidavit of Hylton Levy, sworn March 14, 2019, is attached hereto as **Appendix “H”**. In the event that the Company files, or is deemed to have made, an assignment in bankruptcy immediately following the closing of the Transaction, the Proposal Trustee estimates that, barring unforeseen circumstances, its fees and disbursements, excluding HST, for the period from March 9, 2019 to the date of bankruptcy, will not exceed \$30,000.

41. Dentons, in its capacity as legal counsel to the Proposal Trustee, has incurred fees of \$18,690.50 and disbursements of \$269.49, plus HST, for the period of January 22, 2019 to February 28, 2019. A copy of the detailed billings of Dentons, supported by the Affidavit of Kenneth Kraft, affirmed March 13, 2019, is attached as **Appendix “I”**. In the event that the Company files, or is deemed to have made, an assignment in bankruptcy immediately following the closing of the Transaction, Dentons estimates that, barring unforeseen circumstances, its fees and disbursements, excluding HST, for the period from March 1, 2019 to the date of bankruptcy, will not exceed \$35,000.

RECOMMENDATIONS

42. Based on the foregoing, the Proposal Trustee respectfully recommends that this Honourable Court make an Order granting the relief sought by VersAccounts’ in its Notice of Motion.

All of which is respectfully submitted this 14th day of March, 2019.

**A. FARBER & PARTNERS INC.
THE TRUSTEE ACTING *IN RE* THE
PROPOSAL OF VERSACCOUNTS LIMITED**



Robyn White, CPA, CGA, CIRP, LIT
Managing Director

Estate No. 33-2466100
Court File No. 33-2466100

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PROCEEDING COMMENCED AT TORONTO

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