



No. B180261
Estate No.: 11-254119
VANCOUVER REGISTRY

**IN THE SUPREME COURT OF BRITISH COLUMBIA
IN BANKRUPTCY AND INSOLVENCY**

**IN THE MATTER OF THE PROPOSAL OF
WISTON INTERNATIONAL TRADE CO. LTD.**

NOTICE OF APPLICATION

Names of applicants: Wiston International Trade Co. Ltd., Huigang Sun

To: The Secured Creditors

WITHOUT NOTICE an application will be made by the applicants to the presiding judge or master at the courthouse at 800 Smithe Street, Vancouver, British Columbia on 20/July/2018 at 9:45 a.m. for the orders set out in Part 1 below.

Part 1: ORDER(S) SOUGHT

1. An order that the time to file a proposal under section 50.4(8) of the *Bankruptcy and Insolvency Act* be extended by 42 days to August 31, 2018.
2. An order that the stay of proceedings created by section 69 of the *Bankruptcy and Insolvency Act* on filing of the notice of intention filed on March 26, 2018 be extended as against all creditors to August 31, 2018.
3. An order for an administrative charge in the amount of \$200,000 (Two Hundred Thousand Dollars) for Burns Fitzpatrick LLP, the trustee G. Powroznik Group Inc., and any independent counsel appointed by the trustee, pursuant to section 64.2 of the *Bankruptcy and Insolvency Act*.
4. An order that a directors charge in the amount of \$100,000 (One Hundred Thousand Dollars) be granted by order of this Honourable Court pursuant to section 64.1 of the *Bankruptcy And Insolvency Act* to secure and indemnify the director or officer of the debtor against obligations and liabilities of directors which they may incur after the filing of the notice of intention and, in particular and without limitation, statutory obligations of the directors for remittances to the Federal or Provincial Crown statutory trusts and liens and other obligations of the debtors to the Crown which will result from the continued operation of the business.
5. A declaration that G. Powroznik Group Inc., Burns Fitzpatrick LLP are experts engaged by the debtors for the purposes of the proceedings under this division and in particular in accordance with section 64.2 of the *Bankruptcy And Insolvency Act*.
6. Such other and further relief as the Court may deem just and proper.

Part 2: FACTUAL BASIS

The Companies

1. The company Wiston International Trade Co. Ltd. ("Wiston") filed a notice of intention to make a proposal on March 26, 2018 and two applications for orders to extend the time to file a proposal, the last of which expires July 20, 2018.
2. Wiston is a company incorporated in accordance with laws of the province of British Columbia. See corporate search attached to the Affidavit #1 of Leah Jonak. The company is an insolvent person.
3. It is owned and controlled by Huigang (Andrew) Sun. Mr. Sun does not read or write in the English language fluently.
4. Founded in 2009, Wiston is a wholesale flooring distributor. Its products are primarily imported from the People's Republic of China, and are widely used in projects and home renovations. Its customers are fabricators and installers of flooring for the construction industry. Its supplier (the "Supplier") is Heilong Jiang Far East Wood Co. located in Harbin, China. Some of the locations which sell its product are set out and attached to the Affidavit #1 of Leah Jonak.
5. Wiston has a distribution location in both British Columbia and in Ontario. See extract from the website of Wiston attached to the Affidavit #1 of Leah Jonak.
6. The description of its business, reason for financial failure, and assets and liabilities are described in the trustee's Preliminary Report. There are nine fulltime employees.
7. One major contributor to its insolvency is the failure of a major related company to collect its receivables. This company's insolvency results directly from its inability to collect a related party receivable of \$5,500,000. The related parties have sued a condominium project to collect a construction receivable over a failed project in Fort McMurray.

Guarantor and Indemnitor

8. The book value of inventory is now valued at \$1,300,000 on a going concern but \$600,000 on a liquidation basis. It should be increased by twenty-two containers and the first two of these may be received within the extension period.
9. Mr. Sun holds a residential property at 1922 West 44th Avenue, Vancouver, British Columbia, more particularly known and described as Parcel Identifier 006-486-126 Lot 34 of Lot 9 Block 15 District Lot 526 Plan 5019.
10. The B.C Assessment value for the property is \$4,930,000.

Summary Of Liabilities Position

11. The Bank of Montreal is owed \$2,431,732.55 as at November 27, 2017 secured by inventory and receivables. The Bank of Montreal position remains the same. It is fully secured by a first mortgage on 1922 West 44th Avenue and Bank of Montreal has commenced foreclosure on it. The company plans to make arrangements to have the debt and security assigned to a new lender.
12. The company has 103 small creditors with payables balances of \$224,000 plus customers with credit notes for an additional \$144,000. These are the creditors who will be protected by the extension. It is material that inventory value far exceeds the claims of unsecured creditors (see page 7 of the trustee's report).
13. The trade liabilities as a whole (including liabilities to shareholders and related parties) are \$22,904,000 of which \$22,680,000 is to related parties. The related claims would share in the assets on liquidation.

Prior to Assignment

14. Unsecured creditors are substantially paid although cash flows indicate that they lag behind expectation. The post filing debt of \$122,500 to the trade and Crown is to be paid out of a pending \$100,000 bulk sale of inventory. Professional fees are estimated at \$50,000 to the end of June (page 3 of the trustee's report).

Bank of Montreal Position

15. The borrower and the guarantor entered into a forbearance extension agreement with the Bank of Montreal, dated November 27, 2017. On March 16, 2018, the Bank of Montreal declared there to be a breach of the forbearance extension agreement and issued a notice of intention to enforce its security.
16. On April 24, 2018, the time to file a proposal and stay of proceedings were extended to June 7, 2018 by order of Justice Butler and on June 6, 2018, to July 20, 2018 by order of Justice Schultes.
17. The Bank of Montreal has a first charge on inventory and enforcement by Bank of Montreal will adversely affect junior creditors and terminate the business. The inventory is not worth enough to pay out Bank of Montreal. the principal of the company prefers Bank of Montreal to take its enforcement rights against 1922 West 44th Avenue.

Cash Flow

18. The company projected cash flow which was anticipated to be adequate for the purposes of operating its business through the extension period but was unable to reach that goal. See cash flow attached to the trustee's report.
19. The company requires an administrative charge to secure professional fees and disbursements for G. Powroznik Group Inc., DS Lawyers Canada LLP and Burns Fitzpatrick LLP.

20. The company reported that operations would generate adequate funds to pay for provincial sales tax, federal GST, employee source deductions for income tax, employment insurance and Canada pension. Now that reporting is complete, the payments remitted lag behind the actual obligations.
21. The cash flow demonstrates a deficiency at the end of the extension period of \$52,250. The trustee has recommended that the company inject some cash to offset this deficiency from its refinancing efforts when available. The administrative charge will secure the payments to professionals if that amount is not injected.
22. The plan continues to have the following components. This is an unusual case because the unrelated trade debt is comparatively small.

Overall Goal

1.01 The company will continue to operate in the normal course of business. The company has now planned bulk sales and sales to the public of 'end of line' stock to settle existing debt and to clear stock to make room for new inventory lines. An aggregate of \$250,000 of these sales is included in the cash flow.

1.02 It intends to refinance or discharge Bank of Montreal within the extension period.

1.03 Pay all or settle all post-filing unsecured creditors.

Proposal of Wiston

2.01 Wiston intends will file a proposal which contemplates the normal course of business and:

- (a) excludes its obligations to Bank of Montreal as secured creditor;
- (b) both land lessors will be paid monthly, in accordance with their lease terms;
- (c) all chattel lessors will be paid the amount under their lease monthly in accordance with the terms;
- (d) Crown claims will be paid in accordance with the statutory priorities;
- (e) The Supplier will be paid on a schedule to be negotiated at the same time as the postponement is settled but commencing on a date after approval of the proposal by the Court;
- (f) each unsecured creditor will be paid on terms settled once Bank of Montreal is refinanced; and

- (g) plans are underway to restore the supply of inventory since the notice of intention to make a proposal was filed.

2.02 Mr. Sun will arrange for postponement of claims from Wiston's main supplier.

2.03 The specific details of the new financing have not been finalized but formal discussions are advanced to a point where the company has identified a party with capacity to refinance Bank of Montreal. Timing is not certain but it will be within the time for redemption period for the Bank of Montreal foreclosure.

Filings

23. The company has filed: (i) notice of intention to make a proposal; (ii) extension application dated April 24, 2018; and (iii) extension application dated June 6, 2018.

Part 3: LEGAL BASIS

Extension of Time to File a Proposal

1. Section 50.4(1) of the *Bankruptcy And Insolvency Act* provides as follows:

50.4 (1) *Before filing a copy of a proposal with a licensed trustee, an insolvent person may file a notice of intention, in the prescribed form, with the official receiver in the insolvent person's locality, stating*

(a) the insolvent person's intention to make a proposal,

(b)

2. Section 69(1) of the *Bankruptcy And Insolvency Act* provides as follows:

Stay of proceedings — notice of intention

69(1) *Subject to subsections (2) and (3) and sections 69.4, 69.5 and 69.6, on the filing of a notice of intention under section 50.4 by an insolvent person,*

(a) no creditor has any remedy against the insolvent person or the insolvent person's property, or shall commence or continue any action, execution or other proceedings, for the recovery of a claim provable in bankruptcy,

(b) no provision of a security agreement between the insolvent person and a secured creditor that provides, in substance, that on

(i) the insolvent person's insolvency,

(ii) the default by the insolvent person of an obligation under the security agreement, or

(iii) the filing by the insolvent person of a notice of intention under section 50.4,

the insolvent person ceases to have such rights to use or deal with assets secured under the agreement as he would otherwise have, has any force or effect,

3. Sections 50.4(8), (9) and (10) of the *Bankruptcy And Insolvency Act* provides as follows:

Where assignment deemed to have been made

(8) Where an insolvent person fails to comply with subsection (2), or where the trustee fails to file a proposal with the official receiver under subsection 62(1) within a period of thirty days after the day the notice of intention was filed under subsection (1), or within any extension of that period granted under subsection (9),

(a) the insolvent person is, on the expiration of that period or that extension, as the case may be, deemed to have thereupon made an assignment;

(b)

Extension of time for filing proposal

(9) The insolvent person may, before the expiry of the 30-day period referred to in subsection (8) or of any extension granted under this subsection, apply to the court for an extension, or further extension, as the case may be, of that period, and the court, on notice to any interested persons that the court may direct, may grant the extensions, not exceeding 45 days for any individual extension and not exceeding in the aggregate five months after the expiry of the 30-day period referred to in subsection (8), if satisfied on each application that

(a) the insolvent person has acted, and is acting, in good faith and with due diligence;

(b) the insolvent person would likely be able to make a viable proposal if the extension being applied for were granted; and

(c) no creditor would be materially prejudiced if the extension being applied for were granted.

Court may not extend time

(10) Subsection 187(11) does not apply in respect of time limitations imposed by subsection (9).

(A) Good Faith And With Due Diligence

4. All necessary filings have been made. Wiston continues to operate and cash flow indicates that operations may continue during the extension.
5. Wiston is working diligently on refinancing. It has implemented a prudent approach to refinancing. Because Andrew Sun controls the Supplier, the Supplier supports an extension. It is acknowledged that supply has been interrupted but a refinancing would allow supply to resume.
6. Useful steps have been taken in refinancing such that refinancing is a real likelihood as opposed to an option. Wiston has engaged two law firms and a trustee for the purpose of restructuring.
7. One positive impact of the refinancing plan is that it will entail a greater involvement of the related supplier creditor.

Due Diligence

8. The trustee's preliminary report dated April 24, 2018 (the "Report") describes the company's due diligence.
9. Mr. Sun has suspended payment of indebtedness due to himself and related companies and he is prepared to support refinancing which will provide further funds.
10. Further, Mr. Sun has employed professionals who have provided advice and recommendations which have resulted in what appears to be a reasonable path to continue the business.
11. At this stage what is required is a germ of a plan. The plan is described in paragraph 22 below. At this early stage, the indications are that restoration of the source of supply will be the key ingredient to a successful plan. During the current extension period Wiston has been able to secure a shipment of twenty-two (22) containers of product to begin selling new inventory back into the Canadian market, which are subject to inspection by Wiston before the product is shipped.
12. The trustee's recent report is favourable.
13. In *Enirgi Group Corp. v. Andover Mining Corp.*, 2013 BCSC 1833 ("*Enirgi Group Corp.*") evidence that the debtor was engaged in discussions to formalize refinancing was sufficient to show due diligence. The efforts of Mr. Sun easily rise to this threshold:

65 - With regards to due diligence, since August 2013 Andover has obtained the September 24, 2013 letter from Ophir that says the latter "is in the process" of finalizing a loan of \$3,000,000 to Andover. This is not a firm commitment of funds and nor does it need to be under s. 50.4(9); it does reflect some diligence on Andover's part. Mr. Blankstein also deposes that he

has been having discussions with another party but he cannot reveal the name of that party because he is concerned that Enirgi will obstruct those discussions, as they did with Chief in June 2013. This latter information is not particularly helpful. Nonetheless I conclude that Andover has acted with sufficient due diligence.

(B) Likely Be Able To Make A Viable Proposal

14. CCAA cases are often considered in this context. The test in the extension of the stay in the CCAA under this heading is whether circumstances exist that make the order appropriate. The authorities determined that the order is appropriate if it will usefully further efforts to achieve the remedial purpose of the CCAA which of course is to affect a plan.
15. Madam Justice Fitzpatrick considered an application in *Pacific Shores Resort and Spa (Re)*, 2011 BCSC 1775 for an extension of the stay of proceedings which was opposed by secured creditors who wished to appoint a receiver and, weighing the release to be granted, the court noted at paragraph 58 that a receivership would destroy junior financial interests.
16. On these facts, it is highly unlikely that an enforcement proceeding would result in the realization of the fundamental assets prior to a refinancing granted in this process in any event. Here, the major creditor is Mr. Sun. Bank of Montreal has security over the inventory and receivables but its primary asset-based security is a mortgage over residential real estate in Vancouver. Enforcement of this mortgage will likely be subject to a six month redemption. The test is the same and it goes to value. It relates to the potential risk to the secured creditor. The relief sought by the petitioner is not by any means extraordinary. It will no doubt benefit the bank.
17. The company has engaged in energetic refinancing efforts which are the most efficient in the circumstances
18. The company can file a viable proposal with the assistances of the Supplier. The importance of this is that once refinancing is effected with the supplier, the operation of the company will continue. This makes logical sense because the Supplier would be seen to preserve its market.
19. *Enirgi Group Corp.* considered opposing lines of cases with respect to the question of whether the "viable proposal" test in s. 50.4(9)(b) can be satisfied where a majority creditor says that it will oppose any proposal. The court concluded that the test in s. 50.4(9)(b) is objective and not subject to the views of majority creditors who might claim to have a "veto" over any proposal.

66 - Turning to s. 50.4(9)(b), a viable proposal is one that would be reasonable on its face to a reasonable creditor; "this ignores the possible idiosyncrasies of any specific creditor": Cumberland at para. 4. It follows that Enirgi's views about any proposal are not necessarily determinative. The

proposal need not be a certainty and "likely" means "such as might well happen."(Baldwin, paras. 3-4). And Enirgi's statement that it has lost faith in Andover is not determinative under s. 50.4(9): Baldwin at para. 3; Cantrail at paras. 13-18).

...
75 - Enirgi points out that it holds the largest portion of unsecured debt of Andover (more than 80%) and it submits that this gives them a veto over any proposal. That may take place but thus far there is no proposal and Enirgi will have to make a business decision about its response in the event one is presented. **Again, as an issue under s. 50.4(9), a proposal does not have to be acceptable to Enirgi.** As well, I also note comments from the Court of Appeal, in the context of the Companies' Creditors Arrangement Act, R.S.C. 1985, c. C-36, that questioned the legal basis of a creditor forestalling an application for a stay and whether the court's jurisdiction could be "neutralized" in that way: *Forest & Marine Financial Corp., Re*, 2009 BCCA 319 (B.C. C.A.) at para. 26, cited in *Pacific Shores Resort & Spa Ltd., Re*, 2011 BCSC 1775 (B.C. S.C. [In Chambers]), at paras. 40-41.

20. Here, the predominant creditor is Mr. Sun and his supplier corporation.
21. Refinancing is where the Bank of Montreal's position is most relevant. It now appears that by the time a proposal is filed, Bank of Montreal will be refinanced. But, the corporate assets are not the Bank's main security. Because the Bank's main security is the land, if it enforces, it must wait for six (6) month in any event. The 45 days here is incidental.

(C) No Creditor Would Be Materially Prejudiced

22. The primary effect of this is to maintain the business for the benefit of the unsecured creditors, employees, the supplier, related party creditors, and shareholders.
23. In this case, the Bank of Montreal is secured by real estate pledged by Mr. Sun with an assessed value of \$4,930,000 for debt of \$2,400,000. The loan to value ratio is less than 50%. Arrangements have been made to substitute a lender for Bank of Montreal.
24. Additionally, there is no material prejudice to other creditors; the vast majority of which are owned or controlled by Mr. Sun. if there is liquidation, Bank of Montreal will take inventory under its primary security and other creditors will not get inventory value. The projected increases to inventory will augment the Bank's security position.
25. The criteria for financing or administrative charges are similar to those for extension and were applied in *P.J. Wallbank Manufacturing Co. (Re)*, 2011 CarswellOnt 15300, 2011 ONSC 7641. See also the CCAA Court on the same criteria in *Azure Dynamics Corporation (Re)*, 2012 BCSC 781 (CanLII) at paragraphs 37-49. In CCAA

cases, the court has determined that a going concern will result in better recovery for stakeholders than some other form of liquidation (*Azure* at para. 37), applying the statutory criteria.

(A) The Time Period

26. At the time of the April 24, 2018 extension application, Wiston stated that the subject proceedings to be satisfied within 90 days by refinancing of the equity in real property owned and controlled by the debtor or its associated companies. The company is behind in its expectations and currently expects that Bank of Montreal refinancing will be accomplished within a reasonable time.

(B) Management

27. The debtor's business and financial affairs will be managed by the existing management. It is clear that management has been successful; only that it has encountered: (i) supply issues that affected profitability which are not likely to recur; and (ii) litigation by a related party. The previous manager ordered excessive amounts of inventory. That practice will not be repeated.

(C) Confidence in Management

28. Certainly the Supplier of the company has confidence in management. Except Bank of Montreal, no creditor is at an impasse with the company and no such creditor has expressed dissatisfaction with the management. It is anticipated that existing management will resume the business.

(D) Enhancing The Prospects For A Proposal

29. Refinancing will pave the way to new sales for the company which would preserve the enterprise for stakeholders and employees. It appears that at this stage the company has assembled the necessary components for proposal and needs new financing and an administrative charge for the purpose of paying fees and disbursements of the professionals during that period and for the delay during which it assembles the amounts necessary to take out Bank of Montreal from its operating facility. At this stage, the company has not sought DIP financing.

30. Enforcement would result in potential financial losses for all junior creditors. There is nothing to be gained from enforcement at this point given that there appears to be a path to restructure the business.

31. There is the consistent risk that if the company is not permitted to operate, and it fails then the unsecured creditors and related party creditors will suffer a serious shortfall. Accordingly, the extension is in the interest of employees, suppliers, and junior creditors and will not prejudice senior creditors having regard to the value of the assets.

(E) The Nature And Value Of The Indemnitor's Property

32. The BC Assessment shows value of \$4,930,000.

(F) Materially Prejudiced

33. No creditor will be materially prejudiced as a result of the security because:

- (a) as to secured creditors, it appears there is ample third party security for the Bank of Montreal on the land alone without reference to inventory;
- (b) the minor chattel leaseholders have security against their asset and are entitled to retake possession of it in the event that there is a default. To the extent that their asset is inadequate to repay them in full, their position is one of an unsecured creditor; and
- (c) the risk is to the unsecured creditors who will benefit from a plan.

(G) Trustee's Report

34. The trustee's report favours the extension.

Administration Charge

35. An administrative charge will secure professionals if the principal does not inject new cash.

36. Section 64.2(1) of the BIA provides as follows:

Court may order security or charge to cover certain costs

64.2 (1) On notice to the secured creditors who are likely to be affected by the security or charge, the court may make an order declaring that all or part of the property of a person in respect of whom a notice of intention is filed under section 50.4 or a proposal is filed under subsection 62(1) is subject to a security or charge, in an amount that the court considers appropriate, in respect of the fees and expenses of

- (a) the trustee, including the fees and expenses of any financial, legal or other experts engaged by the trustee in the performance of the trustee's duties;***
- (b) any financial, legal or other experts engaged by the person for the purpose of proceedings under this Division; and***
- (c) any financial, legal or other experts engaged by any other interested person if the court is satisfied that the security or charge is***

necessary for the effective participation of that person in proceedings under this Division.

Directors Charge

37. Section 64.1(1) of the BIA provides as follows:

Security or charge relating to director's indemnification

64.1 (1) *On application by a person in respect of whom a notice of intention is filed under section 50.4 or a proposal is filed under subsection 62(1) and on notice to the secured creditors who are likely to be affected by the security or charge, a court may make an order declaring that all or part of the property of the person is subject to a security or charge — in an amount that the court considers appropriate — in favour of any director or officer of the person to indemnify the director or officer against obligations and liabilities that they may incur as a director or officer after the filing of the notice of intention or the proposal, as the case may be.*

47. Generally speaking when the court considers whether it should grant an administrative charge or directors charge to secure: (i) the fees and disbursements of trustee and legal counsel to the trustee and the company; and (ii) the directors during the proposal process (against statutory liability for which directors are liable) it applies the same general broad considerations as are applicable to DIP financing. The expenditures are necessary in ensuring that the trustee and counsel are secured for their role in monitoring the affairs of the debtor and consulting in connection with the proposal, and advising creditors of the position of the debtor on an ongoing basis.
48. A successful restructuring invariably requires the services of professionals to assist debtor. Factors considered on an application for an order for an administrative charge in *CanWest Publishing Inc. (Re)*, 2010 ONSC 222 (paragraph 54) include:
- (a) the size and complexity of the business;
 - (b) the proposed role of the beneficiaries of the charge;
 - (c) whether there is an unwarranted duplication of roles;
 - (d) whether the quantum of the proposed charge appears to be fair and reasonable;
 - (e) the position of the secured creditors likely to be affected by the charge; and
 - (f) the position of the monitor.
49. Given the factors and the possibility of opposition in the filing, the amounts sought are comparatively small when compared with the amounts granted in other proceedings where millions of dollars are allocated to DIP. See *Timminco Limited (Re)*, 2012 ONSC 506 at paragraphs 65-68 and *Azure Dynamics* at paragraph 26.

50. It is clear that many of the beneficiaries of the administrative charge and the directors charge are persons who are not before the court. They are employees, suppliers, customers and unsecured creditors.
51. The cases deal with the greater constituency which involves people who are indirectly impacted by the failure of a business. The prospect of refinancing benefits those parties in a manner which is not before the court but which is clear. Accordingly, it is not only the professionals who are the beneficiaries of the administrative charge although each plays an integral role to ensure the successful completion of the process. What the professionals achieve is a stabilization of the process and a preservation of the status quo to enable the company to restructure. Here it appears the company business has been viable and may continue to be viable.

(A) The Size And Complexity Of The Business

52. Size and complexity are two distinct tests. We annualize sales at approximately \$2,400,000 based on the post-filing sales in the trustee's report. The size of the business is consistent with the amount of the administration charges sought. There are two locations. Current management comparison with a receivership which would result from enforcement by the Bank of Montreal would involve taking possession in two different provinces. Accordingly, the current structure permits an efficient administration of the business without undue complexity at lower cost. Receivership would add unnecessary complexity and substantially higher costs.

(B) The Proposed Role Of The Beneficiaries Of The Charge

53. The role of the trustee and its counsel and counsel to the company is not novel. The role is contemplated to be supervisory and administrative. It is particularly important in this case to have a trustee and counsel who are familiar with the operation of Canadian restructuring law and Canadian law generally. We say that because Mr. Sun is from China. The facility of the English language is also an important asset to him as he must speak through his counsel.

(C) Whether There Is An Unwarranted Duplication Of Roles

54. The trustee is a required statutory advisor. Burns Fitzpatrick LLP is minimizing the additional expenditure by giving advice to the trustee and simultaneously consulting with DS Lawyers relative to the insolvency aspect of their client's position provided no conflicts arise.

(D) Whether The Quantum Of The Proposed Charge Appears To Be Fair And Reasonable

55. There are nine employees and \$2,400,000 in annual sales which would lead to the conclusion that the business is efficient. Accordingly, the administrative charges sought are reasonable. The expectation is that the refinancing will conclude in a prompt manner. Further delay and controversy will expand the services required and increase the amount of the charge. In the meantime it will facilitate a restructuring. It

is submitted that counsel have taken an active role in assisting in developing the plan and obtaining financing in Canada.

(E) The Position Of The Secured Credit Is Likely To Be Affected By The Charge

56. The position of the secured creditor will not be affected by the charge for the same reasons advanced above under the argument for extensions.
57. The additional inventory inflow will augment the secured creditor's position; especially the Bank of Montreal, because of the additional containers of inventory which will be received and for which a \$239,000 prepayment has been made. This will also affect the administrative charge.

(F) The Position Of The Trustee

58. These applicants rely in sections 50.4(1), 50.4 (8)-(10), 50.6, 64.1(1), 64.2(1), and 69(1) of the *Bankruptcy and Insolvency Act* and Rule 22-1(4)(e).
59. These applicants rely upon the inherent jurisdiction of the court

Part 4: MATERIAL TO BE RELIED ON

1. Trustee's Second Report dated 19/Jul/2018
2. Affidavit #2 of Leah Jonak, sworn 20/Jul/2018
3. Affidavit #1 of Jeff Ayre, sworn 06/Jun/2018
4. Trustee's First Report dated 24/Apr/2018
5. Affidavit #1 of Leah Jonak, sworn 24/Apr/2018

The applicant(s) estimate(s) that the application will take thirty (30) minutes.

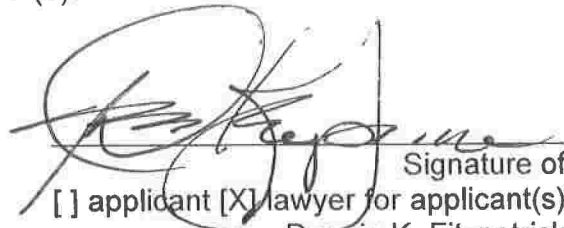
This matter is not within the jurisdiction of a master.

TO THE PERSONS RECEIVING THIS NOTICE OF APPLICATION: If you wish to respond to this notice of application, you must, within 5 business days after service of this notice of application or, if this application is brought under Rule 9-7, within 8 business days after service of this notice of application,

- (a) file an application response in Form 33,
- (b) file the original of every affidavit, and of every other document, that
 - (i) you intend to refer to at the hearing of this application, and
 - (ii) has not already been filed in the proceeding, and
- (c) serve on the applicant 2 copies of the following, and on every other party of record one copy of the following:
 - (i) a copy of the filed application response;
 - (ii) a copy of each of the filed affidavits and other documents that you intend to refer to at the hearing of this application and that has not already been served on that person;

- (iii) if this application is brought under Rule 9-7, any notice that you are required to give under Rule 9-7 (9).

Date: 20/Jul/2018


Signature of
 applicant lawyer for applicant(s)
Dennis K. Fitzpatrick