

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

BETWEEN:

BANK OF MONTREAL

Applicant

- and -

ACS PRECISION COMPONENTS PARTNERSHIP

Respondent

**NOTICE OF MOTION**

Zeifman Partners Inc. (the "Receiver") in its capacity as Court appointed Receiver of ACS Precision Components Partnership ("ACS") will make a motion, to a Judge presiding over the Commercial List on Friday, May 28, 2010 at 9:30 a.m. or as soon after that time as the motion can be heard, at the Court House, 330 University Avenue, Toronto, Ontario.

PROPOSED METHOD OF HEARING: The motion is to be heard

- ☐ in writing under subrule 37.12.1(1) because it is on consent or unopposed or made without notice;
- ☐ in writing as an opposed motion under subrule 37.12.1(4)
- ☒ orally.

THE MOTION IS FOR

- a) an Order abridging the time for and validating the method of service of this Notice of Motion and directing that any further service of this Notice of Motion be dispensed with such that this motion is properly returnable on May 28, 2010;

- b) an Order that Aalbers Tool & Mold Inc. ("Aalbers") forthwith deliver up possession to the Receiver of a Roller Cage Mold and related inserts (collectively, the "Mold"), built by Aalbers for ACS pursuant to Purchase Order number 331148 issued July 6, 2009 by ACS to Aalbers;
- c) Costs; and
- d) Such further and other relief as this Honourable Court deems just.

THE GROUNDS FOR THE MOTION ARE:

- a) The Mold was manufactured by Aalbers specifically for ACS. The Mold was previously in the possession of ACS and used for the production of parts for ACS's customer, Brose Canada Inc. ("Brose"). The Mold was returned to the possession of Aalbers shortly prior to the commencement of the receivership, for reasons unknown to the Receiver. The Mold is currently in the possession of Aalbers. Despite a request by counsel for the Receiver, Aalbers has refused to deliver up possession of the Mold to the Receiver;
- b) ACS has not paid Aalbers for the Mold. It is the Receiver's view that, notwithstanding that no payment has been made, property in the Mold has passed from Aalbers to ACS and that the Mold is the property of ACS. Aalbers disputes that position;
- c) The Receiver requires possession of the Mold on an urgent basis to produce parts for Brose. Brose incorporates the parts in seat assemblies supplied by Brose to Volkswagen for the Jetta motor vehicle currently in production at the Volkswagen assembly plant in Puebla, Mexico. Brose only has a sufficient supply of parts to last until Monday, May 31, 2010. If the Mold is not delivered up to the Receiver immediately to allow the Receiver to produce parts for Brose, the Volkswagen Jetta production line will be shut down shortly thereafter;

- d) It is not necessary to determine at this time whether the Receiver's view or Aalbers' view regarding the ownership of the Mold is correct. The Receiver seeks to have possession of the Mold delivered up to it without prejudice to any rights which Aalbers may have in the Mold. Doing so will not prejudice Aalbers and will alleviate the imminent prejudice to be suffered by Brose and its customer, Volkswagen;
- e) The terms of the Receivership Order dated May 6, 2010, including paragraphs 6, 11 and 12;
- f) Rules 1.04, 2.03, 3.02 and 37 of the Rules of Civil Procedure.

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

- a) The Second Report to the Court of the Receiver, Zeifman Partners Inc. dated May 26, 2010

May 26, 2010

**MILLER THOMSON LLP**  
One London Place  
255 Queens Avenue, Suite 2010  
London, ON Canada N6A 5R8

Tony Van Klink LSUC#: 29008M  
Tel: 519.931-3509  
Fax: 519.858.8511

Solicitors for Zeifman Partners Inc.,  
Receiver

TO: Service List Attached

## SERVICE LIST

Thornton Grout Finnigan  
Barristers & Solicitors  
Suite 3200, Canadian Pacific Tower  
100 Wellington Street West  
P.O. Box 329  
Toronto-Dominion Centre  
Toronto, ON M5K 1K7

Attention: James Grout

Tel: 416-304-0557

Fax: 416-304-1313

Attention: Seema Aggarwal

Tel: 416-304-0603

Fax: 416-304-1313

E-mail: [jgrout@tgf.ca](mailto:jgrout@tgf.ca) / [saggarwal@tgf.ca](mailto:saggarwal@tgf.ca)

***Lawyers for ACS Precision Components Partnership***

Goodmans LLP  
Barristers & Solicitors  
Bay Adelaide Centre  
333 Bay Street, Suite 3400  
Toronto, ON M5H 2S7

Attention: David Bish

Tel: 416-979-2211

Fax: 416-979-1234

E-mail: [dbish@goodmans.ca](mailto:dbish@goodmans.ca)

***Lawyers for ATS Automation Tooling Systems Inc.***

Honigman Miller Schartz and Cohn LLP  
2290 First National Building  
660 Woodward  
Detroit, MI 48226

Attention: Donald F. Baty, Jr.

E-mail: dbaty@honigman.com

***US counsel to ACS Precision Components Partnership***

Fasken Martineau DuMoulin LLP  
Barristers & Solicitors  
66 Wellington Street West  
Suite 4200, Toronto Dominion Bank Tower  
Box 20, Toronto-Dominion Centre  
Toronto, ON M5K 1N6

Attention: Aubrey E. Kauffman

Tel: 416-868-7821

Fax: 416-364-7813

E-mail: akauffman@fasken.com

***Lawyers for Continental Automotive Systems U.S., Inc.***

Aalbers Tool & Mold Inc.  
1525 Moro Drive  
Oldcastle, ON N0R 1L0

Attention: Wayne Baert

Tel: 519.737-1369

Fax: 519.737.1711

E-mail: wayne@aalberstool.com

DiPierdomenico Law Firm  
285 Sandwich Street South  
Amherstburg, ON N9V 2A7

Attention: Luigi DiPierdomenico

Tel: 519.736.2126

Fax: 519.736.2787

***Lawyer for Aalbers Tool & Mold Inc.***

BANK OF MONTREAL  
Applicant

and ACS PRECISION COMPONENTS  
Respondent

Court File No: 10-8702-00CL

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

Proceeding commenced at Toronto

**NOTICE OF MOTION**

**MILLER THOMSON LLP**  
**ONE LONDON PLACE**  
**255 QUEENS AVENUE, SUITE 2010**  
**LONDON, ON CANADA N6A 5R8**

Tony Van Klink LSUC#: 29008M  
Tel: 519.931-3509  
Fax: 519.858.8511

Lawyers for Zeifman Partners Inc.,  
Receiver