

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

B E T W E E N :

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 June 10, 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 the Receiver's Fourth Report and directing that any further service of this Notice of Motion and the Receiver's Fourth Report be dispensed with such that this motion is properly returnable on June 10, 2010;

- b) an Order that AarKel Tool & Die Inc. ("AarKel") forthwith deliver up possession to the Receiver of ten (10) Modular Inserts as specified in Schedule A to the Notice of Motion (collectively, the "Modular Inserts"), built by AarKel for ACS pursuant to Purchase Order number 331895 issued November 5, 2009 by ACS to AarKel;
- c) an Order for the issue of a Writ of Delivery with respect to the Modular Inserts;
- d) Costs; and
- e) Such further and other relief as this Honourable Court deems just.

THE GROUNDS FOR THE MOTION ARE:

- a) The Modular Inserts were manufactured by AarKel specifically for ACS. The Modular Inserts were delivered to ACS and used for the production of parts for ACS's customer, Brose North America, Inc. ("Brose"). The Modular Inserts were returned to the possession of AarKel shortly prior to the commencement of the receivership. The Modular Inserts are currently in the possession of AarKel. Despite requests by counsel for the Receiver, AarKel has not delivered up possession of the Modular Inserts to the Receiver;
- b) It is the Receiver's view that property in the Modular Inserts passed to ACS and AarKel's rights are those of an unpaid vendor;
- c) The Receiver requires possession of the Modular Inserts on an urgent basis to produce parts for Brose. Brose will incorporate the parts into latch assemblies supplied by Brose to Ford. If the Modular Inserts are not delivered up to the Receiver immediately to allow the Receiver to produce parts for Brose, the Ford Focus assembly line in Detroit, Michigan will likely shutdown on June 16, 2010;

- d) The Receiver seeks to have possession of the Modular Inserts delivered up to it without prejudice to the rights and claims, if any, of the parties asserting a claim against the Modular Inserts. Doing so will not prejudice AarKel and will alleviate the imminent prejudice to be suffered by Brose and its customer, Ford;
- 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 Fourth Report to the Court of the Receiver, Zeifman Partners Inc. dated June 8, 2010

June 8, 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 / 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

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.

AarKel Tool & Die Inc.
17 Elm Drive South
Wallaceburg, ON N8A 5E8

Attention: Thomas Brennan
Tel: 519.627.6078
Fax: 519.627.5925
E-mail: tbrennan@AarKel.com

Feige Nawrocki LLP
Suite 3300, 130 Adelaide Street West
Toronto, ON M5H 3P5

Attention: Julian R. Nawrocki
Tel: 416.366.8833
Fax: 416.366.3992
E-mail: nawrocki@fnlawyers.com

Lawyer for AarKel Tool & Die Inc.

Miller Canfield
Suite 300
443 Ouellette Avenue
Windsor, Ontario N9A 6R4

Attention: John Leslie
Tel: 519.561.7422
Fax: 519.977.1565
E-mail: leslie@millercanfield.com

Lawyer for Brose North America, Inc.

SCHEDULE A

Modular Inserts in the Possession of AarKel

	Modular Insert No.	Item No. on Purchase Order #331895 issued on November 5, 2009 from ACS to AarKel
1	932215	14
2	932215	20
3	932249	13
4	932249	19
5	932307	11
6	932307	17
7	932198	1
8	932200	2
9	932253	7
10	932229	8

BANK OF MONTREAL
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ACS PRECISION COMPONENTS
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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