

**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") the receiver of ACS Precision Components Partnership ("ACS") will make a motion, to a Judge presiding over the Commercial List on Thursday, April 21, 2011 at 10:00 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) if necessary, an Order abridging the time for and validating the method of service of this Notice of Motion and the Ninth Report of the Receiver to the Court dated April 15, 2011 (the "Ninth Report") and directing that any further service of this Notice of Motion and the Ninth Report be dispensed with such that this motion is properly returnable on April 21, 2011;
- (b) an Order accepting and approving the Ninth Report and approving the activities of the Receiver described therein;

- (c) an Order approving a settlement (the "Settlement Agreement") between the Receiver and Omega Tool Corporation ("Omega") including the distribution of the sum of \$109,301.85 to Omega on account of its secured claim;
- (d) directions for the determination of the claim asserted by Miller's Electric Limited ("Miller's") under the *Repair and Storage Liens Act* (the "RSLA");
- (e) an Order approving a process and timetable to determine the amount owing by ACS Precision Components (Shanghai) Co. Ltd. ("AC Shanghai") to ACS;
- (f) an Order approving the Receiver's Statement of Receipts and Disbursements for the period May 6, 2010 to April 11, 2011;
- (g) an Order approving the fees and disbursements of the Receiver for the period from November 1, 2010 to March 31, 2011 and the Receiver's legal counsel, Miller Thomson LLP, for the period from November 1, 2010 to February 28, 2011;
- (h) an Order approving the professional fees of the Representative Counsel for the unsecured creditors (the "Representative Counsel") as appointed by the Order of the Honourable Mr. Justice Cumming dated January 6, 2011 with respect to the Motion heard on January 20, 2011; and
- (i) granting such further and other relief as counsel may advise and this Honourable Court may deem just.

THE GROUNDS FOR THE MOTION ARE:

- a) By Order of the Honourable Mr. Justice Campbell dated May 6, 2010 (the "Receivership Order"), the Receiver was appointed as receiver without security of all of the assets, undertakings and properties of ACS acquired for or used in relation to a business carried on by ACS pursuant to Section 243 of the *Bankruptcy and Insolvency Act*;
- b) The Receiver wishes to report to the Court on the status of the receivership, its activities to date and the receipts and disbursements;
- c) The Receiver requires directions for the determination of the claim of Miller's under the RSLA. Pursuant to paragraph 26 of the Receivership Order, the

Receiver may from time to time apply to the Court for advice and directions in the discharge of its powers and duties under the Receivership Order;

- d) Pursuant to the Order of the Honourable Madam Justice Hoy dated June 15, 2010 as amended by the Order of the Honourable Mr. Justice Newbould dated September 3, 2010, the Receiver and Omega exchanged motion materials to determine the claim of Omega (the "Omega Claim");
- e) The Receiver and Omega have agreed, subject to Court approval, to resolve the Omega Claim and motion;
- f) The terms of the Settlement Agreement with Omega are fair, reasonable and in the best interests of the stakeholders;
- g) The Receiver has received a legal opinion from Miller Thomson LLP ("MT") that confirms that, subject to the customary exceptions and qualifications, Omega had a valid, enforceable and perfected security interest in the Omega Tooling;
- h) AC Shanghai owes approximately \$1 million to ACS;
- i) On April 8, 2011 counsel for the Receiver issued a demand for payment on behalf of the Receiver to AC Shanghai in the amount of approximately \$780,000 (the "Demand");
- j) Failing a satisfactory response to the Demand, the Court approval of a process and timetable within this receivership proceeding will facilitate the timely determination of the amount owing by AC Shanghai to ACS and judgment for the amount so determined;
- k) Pursuant to paragraph 20 of the Receivership Order, the accounts of the Receiver and its legal counsel are to be passed from time to time by a Judge on the Commercial List of the Ontario Superior Court of Justice;
- l) The fees and disbursements of the Receiver and MT are fair and reasonable and justified in the circumstances and accurately reflect the work done by the Receiver and MT in connection with the receivership during the relevant periods;

- m) The fees and disbursements of Representative Counsel are fair and reasonable and justified in the circumstances and accurately reflect the work done by the Representative Counsel;
- n) *Repair and Storage Liens Act*, R.S.O. 1990, c. R.25, as am. S.O. 1998, c. 18;
- o) *Construction Lien Act*, R.S.O. 1990, c. C.30;
- p) Rules 1.04, 2.03, 3.02, 16, 37 and 38.10 of the *Rules of Civil Procedure*; and
- q) Such further and other grounds as counsel may advise and this Honourable Court permit.

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

- a) The Ninth Report;
- b) The fees Affidavit of Allan Rutman sworn April 13, 2011;
- c) The fees Affidavit of Sherry Kettle sworn April 13, 2011;
- d) The fees Affidavit of David Ullmann sworn April 14, 2011; and
- e) Such further and other materials as counsel may advise and this Honourable Court may permit.

April 15, 2011

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BANK OF MONTREAL
Applicant

ACS PRECISION COMPONENTS
and Respondent

Court File No: 10-8702-00CL

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Proceeding commenced at Toronto

NOTICE OF MOTION

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