



Court File No. 10-8702-00CL

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

THE HONOURABLE *MR*) FRIDAY, THE 3RD
JUSTICE *NEUBOLD*) DAY OF SEPTEMBER, 2010

BETWEEN:

BANK OF MONTREAL

Applicant

- and -

ACS PRECISION COMPONENTS PARTNERSHIP

Respondent

ORDER

THIS MOTION, made by Zeifman Partners Inc. (the "Receiver") in its capacity as Receiver of ACS Precision Components Partnership ("ACS"), for an Order,

- a) if necessary, abridging the time for and validating the method of service of this Notice of Motion and the Fifth Report of the Receiver to the Court dated August 25, 2010 (the "Fifth Report") and directing that any further service of this Notice of Motion and the Fifth Report be dispensed with such that this motion is properly returnable on September 3, 2010;
- b) accepting and approving the Fifth Report and approving the activities of the Receiver described therein;
- c) approving the Receiver's Statement of Receipts and Disbursements for the period May 6, 2010 to August 6, 2010;

- d) approving, *nunc pro tunc*, the sales by the Receiver of the assets described below and the vesting, *nunc pro tunc*, of such assets in the purchasers thereof free and clear of all encumbrances:
 - i) an Engel 450 Ton Two Shot Injection Molding Machine and auxiliary equipment, as more particularly described on the Magna Closures Inc. Purchase Order 84413 dated June 30, 2010 (a copy of which is attached as Schedule G to the Fifth Report) to Magna Closures Inc.;
 - ii) an Engel 55 Ton Verticle Clamp Rotary Table Injection Moulding Machine and auxiliary equipment, as more particularly described on the Ritz Plastics Inc. Purchase Order 010223 dated July 15, 2010 (a copy of which is attached as Schedule H to the Fifth Report) to Ritz Plastics Inc.; and
 - iii) two 2-position bases and one 4-position base, as more particularly described on ACS invoice number MA0000166 dated August 12, 2010 (a copy of which is attached as Schedule J to the Fifth Report) to Brose North America, Inc.
- e) approving the following pending sales of equipment by the Receiver and any further sales of equipment or other personal property hereafter completed by the Receiver pursuant to the powers granted to the Receiver in paragraph 3(1) of the Receivership Order and the vesting of those assets in the purchasers thereof free and clear of all encumbrances:
 - i) the sale of a Cincinnati 550 Ton Injection Molding Machine, ABB Robot, and auxiliary equipment to Omex Manufacturing ULC ("Omex"), as more particularly described on Omex Purchase Order number S-29111 dated July 21, 2010 (a copy of which is attached as Schedule K to the Fifth Report);
 - ii) the sale of an Engel 55 Ton Press, a 1994 Engel 250 Ton Vertical Press, and a 1997 Engel 250 Ton Press, together with auxiliary

equipment to Delphi Automotive Systems, LLC ("Delphi"), more particularly described on Delphi Purchase Order numbers 451104225, 451104227, 451104224 dated August 13, 2010 (copies of which are attached collectively as Schedule L to the Fifth Report);

iii) the sale of an Engel 200 Ton Press and an Engel 150 Ton Press to Eckerle de Mexico ("Eckerle") as more particularly described on Eckerle Purchase Order number 39455 dated August 12, 2010 (a copy of which is attached as Schedule M to the Fifth Report); and

iv) such other sales of assets as may be completed by the Receiver in accordance with paragraph 3(l) of the Receivership Order;

f) varying the Order of the Honourable Madam Justice Hoy dated June 15, 2010 (the "Hoy Order") to extend the deadline for the filing of motion materials by Omega Tool Corporation ("Omega") for a determination of its claim, if any, to certain tooling;

g) approving the distribution from funds held by the Receiver of \$3,220,317.80, the Canadian dollar equivalent of HK\$65,800 (approximately \$9,000) and US\$968 plus additional interest thereon from August 23, 2010 to the date of payment at the per diem rate of \$413.64 to Bank of Montreal ("BMO") on account of BMO's secured claim;

h) authorizing the Receiver to make payment from funds held by the Receiver to BMO, if requested by BMO and subject to availability of funds, of amounts owing by ACS to BMO under the terms of a guarantee provided to BMO by ACS for the liabilities of Omex to BMO (the "Omex Debt");

i) approving the fees and disbursements of the Receiver for the period from April 28, 2010 to July 31, 2010 and the Receiver's legal counsel, Miller Thomson LLP, for the period from May 10, 2010 to July 31, 2010;

j) sealing the Confidential Supplement to the Fifth Report; and

- k) granting such further and other relief as counsel may advise and this Honourable Court may deem just.

was heard this day at 330 University Avenue, Toronto, Ontario.

ON READING the Notice of Motion, the Fifth Report, the Confidential Supplement to the Fifth Report, the Affidavit of Allan Rutman sworn August 20, 2010 (the "Rutman Affidavit"), the Affidavit of Sherry Kettle sworn August 25, 2010 (the "Kettle Affidavit") and on hearing the submissions of counsel for the Receiver, and the lawyers for such other parties as present:

1. THIS COURT ORDERS that the time for and method of service of the Notice of Motion and the Receiver's Fifth Report is hereby abridged and validated so that this motion is properly returnable today and hereby dispenses with further service thereof.
2. THIS COURT ORDERS that unless otherwise defined, capitalized terms in this Order shall have the same meaning as given to those terms in the Fifth Report.
3. THIS COURT ORDERS that the Fifth Report is hereby accepted and approved and the Receiver's activities as set out in the Fifth Report be and are hereby approved.
4. THIS COURT ORDERS that the Receiver's Statement of Receipts and Disbursements for the period from May 6, 2010 to August 6, 2010, a copy of which is attached as Schedule O to the Fifth Report be and is hereby approved.
5. THIS COURT ORDERS AND DECLARES *nunc pro tunc* that the sales by the Receiver of the Magna Equipment, Ritz Equipment and Bases (collectively the "Sold Assets") as described in the Fifth Report (the "Completed Sales") are approved and that all of ACS' right, title and interest in and to the Magna Equipment, Ritz Equipment and the Bases shall vest absolutely in the purchasers thereof as of the date on which such sales were completed (the "Sale Date"), namely, Magna with respect to the Magna Equipment as of June 30, 2010, Ritz with respect to the Ritz Equipment as of July 15, 2010 and Brose NA with respect to the Bases as of August 12, 2010 free and clear of and from any and all security interests (whether contractual, statutory, or otherwise), hypothecs, mortgages, trusts or deemed trusts (whether

contractual, statutory, or otherwise), liens, executions, levies, charges, or other financial or monetary claims, whether or not they have attached or been perfected, registered or filed and whether secured, unsecured or otherwise (collectively, the "Claims") including, without limiting the generality of the foregoing: (i) any encumbrances or charges created by the Receivership Order; (ii) all charges, security interests or claims whether or not evidenced by registrations pursuant to the *Personal Property Security Act* (Ontario) or any other personal property registry system (all of which are collectively referred to as the "Encumbrances"), and, for greater certainty, this Court orders that all of the Encumbrances affecting or relating to the Sold Assets are expunged and discharged as against the Sold Assets as of the Sale Date.

6. THIS COURT ORDERS AND DECLARES that the Pending Equipment Sales and any further sales (the "Further Sales") of equipment or other personal property hereafter completed by the Receiver pursuant to the powers granted to the Receiver in paragraph 3(l) of the Receivership Order are approved and that all of ACS's right, title and interest in the equipment or other personal property which is the subject matter of the Pending Equipment Sales and Further Sales (collectively the "Affected Assets") shall vest absolutely in the purchasers thereof free and clear of and from any and all Claims and Encumbrances, and, for greater certainty, this Court orders that all of the Encumbrances affecting or relating to the Affected Assets are expunged and discharged as against the Affected Assets as at the date of completion of such sales by the Receiver.

7. THIS COURT ORDERS that for the purposes of determining the nature and priority of Claims, the sale proceeds of the Sold Assets and Affected Assets shall stand in the place and stead of the Sold Assets and Affected Assets, and all Claims and Encumbrances shall attach to the sale proceeds thereof with the same priority as they had with respect to the Sold Assets and Affected Assets immediately prior to the sale as if the Sold Assets and Affected Assets had not been sold and remained in the possession or control of the person having that possession or control immediately prior to the sale.

8. THIS COURT ORDERS that, notwithstanding:

(a) the pendency of these proceedings;

- (b) any applications for a bankruptcy order now or hereafter issued pursuant to the *Bankruptcy and Insolvency Act* (Canada) in respect of ACS and any bankruptcy order issued pursuant to any such applications; and
- (c) any assignment in bankruptcy made in respect of ACS;

the vesting of the Sold Assets and Affected Assets in the Purchasers thereof pursuant to this Order shall be binding on any trustee in bankruptcy that may be appointed in respect of ACS and shall not be void or voidable by creditors of ACS, nor shall it constitute nor be deemed to be a settlement, fraudulent preference, assignment, fraudulent conveyance or other reviewable transaction under the *Bankruptcy and Insolvency Act* (Canada) or any other applicable federal or provincial legislation, nor shall it constitute oppressive or unfairly prejudicial conduct pursuant to any applicable federal or provincial legislation.

9. THIS COURT ORDERS AND DECLARES that the Completed Sales, Pending Equipment Sales and Further Sales are exempt from the application of the *Bulk Sales Act* (Ontario).

10. THIS COURT ORDERS that the Hoy Order shall be varied to extend the deadline for the filing of motion materials by Omega to September 7, 2010;

11. THIS COURT ORDERS that the distribution of the following amounts to BMO is hereby approved and directs the Receiver to make such payment to BMO in full satisfaction of the ACS Direct Debt:

- (a) \$3,220,317.80, plus interest thereon in the amount of \$413.64 per day from August 24, 2010;
- (b) the Canadian dollar equivalent of HK\$65,800 (approximately \$9,000); and
- (c) the Canadian dollar equivalent of US\$968.

12. THIS COURT ORDERS AND DECLARES that the Receiver be and is hereby authorized to make payment to BMO, if requested by BMO and subject to availability of funds, of the Omex Guarantee Debt.

13. THIS COURT ORDERS that the fees and disbursements of the Receiver in the amount of \$335,938.28, including disbursements and GST/HST, for the period from period from April 28, 2010 to July 31, 2010 as particularized in the Rutman Affidavit be and are hereby approved.

14. THIS COURT ORDERS that the fees and disbursements of the Receiver's legal counsel, Miller Thomson LLP, in the amount of \$89,314.36, including disbursements and GST/HST, for the period from May 10, 2010 to July 31, 2010 as particularized in the Kettle Affidavit be and are hereby approved.

15. THIS COURT ORDERS that the Confidential Supplement to the Fifth Report be sealed until further Order of the Court.

16. THIS COURT HEREBY REQUESTS the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or in the United States to give effect to this Order and to assist the Receiver and its agents in carrying out the terms of this Order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Receiver, as an officer of this Court, as may be necessary or desirable to give effect to this Order or to assist the Receiver and its agents in carrying out the terms of this Order.



ENTERED AT / INSCRIT À TORONTO
ON / BOOK NO:
LE / DANS LE REGISTRE NO.:

SEP 03 2010

PER / PAR:



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

ORDER

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