

**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, May 26, 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 Tenth Report of the Receiver to the Court dated May 18, 2011 (the "Tenth Report") and directing that any further service of this Notice of Motion and the Tenth Report be dispensed with such that this motion is properly returnable on May 26, 2011;
- (b) an Order for judgment in the amount of \$5,000.00 plus interest (the "Judgment") in accordance with the terms of an Agreement and Consent to Judgment signed by ProTerra LED Inc. ("ProTerra");

- (c) costs of this motion as against ProTerra;
- (d) an Order approving the transfer of \$3,800,000 from the receivership estate to the bankruptcy estate plus such further transfers as the Receiver deems appropriate;
- (e) 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 and ProTerra entered into an Agreement dated August 25th, 2010 (the "Agreement");
- c) The Agreement provided that ProTerra would pay the sum of \$30,864.16 to the Receiver according to a schedule of payments;
- d) Pursuant to the Agreement, ProTerra executed a consent to judgment and agreed that the Receiver could move for judgment in the event that ProTerra failed to make payment as required under the terms of the Agreement;
- e) ProTerra defaulted under the Agreement by failing to make the final payment in the amount of \$5,000.00;
- f) By letter dated March 8, 2011, the Receiver notified ProTerra of the default and demanded payment of \$5,000.00 within 21 days (the "Notice Period");
- g) The Notice Period has expired;
- h) ProTerra has failed to pay the \$5,000.00 as required under the Agreement;
- i) Pursuant to paragraph 3(s) of the Receivership Order, the Receiver was authorized to file an assignment for the general benefit of the creditors of ACS;

- j) The Receiver filed an assignment in bankruptcy for ACS on April 28, 2011;
- k) The Receiver proposes to transfer funds to the bankruptcy estate of ACS while maintaining a reserve in the receivership estate to pay potential claims and professional fees of the Receiver and its legal counsel;
- l) Rules 1.04, 2.03, 3.02, 16, 37 and 57 of the *Rules of Civil Procedure*;
- m) Sections 127 to 129 of the *Courts of Justice Act*; and
- n) 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 Tenth Report;
- b) Such further and other materials as counsel may advise and this Honourable Court may permit.

May 18, 2011

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TO: Service List Attached

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(May 18, 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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