

**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

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 of ACS Precision Components
Partnership

TO: Service List Attached

SERVICE LIST

(May 18, 2011)

TO: 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
and Omex Manufacturing LLC***

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

Attention: Brian Empey
Tel: 416-979-2211
Fax: 416-979-1234
E-mail: bempey@goodmans.ca

Lawyers for ATS Automation Tooling Systems Inc.

TO: 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

TO: 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

Attention: Graham Phoenix
E-mail: gphoenix@fasken.com

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

TO: Davies Ward Phillips & Vineberg LLP
Barristers & Solicitors
44th Floor
1 First Canadian Place
Toronto, ON M5X 1B1

Attention: Matthew Gottlieb
Tel: 416-863-5516
Fax: 416-863-0871
E-mail: mgottlieb@dwpv.com

Lawyers for A.G. Simpson

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

Attention: Luigi DiPierdomenico
Tel: 519.736.2126
Fax: 519.736.2787
E-mail: ll@mnsl.net

Lawyer for Aalbers Tool & Mold Inc.

TO: Feige, Nawrocki LLP
Barristers & Solicitors
3300-130 Adelaide Street West
Toronto, ON M5H 3P5

Attention: Rolf Eric Feige
Tel: 416-366-8833
Fax: 416-366-3992
E-mail: feige@fnlawyers.com

Attention: Julian Roman Nawrocki
Tel: 416-366-8833
Fax: 416-366-3992
E-mail: nawrocki@fnlawyers.com

Lawyers for AarKel Tool & Die Inc.

TO: Omega Tool Corp.
2045 Solar Crescent
Oldcastle, ON N0R 1L0

Attention: Steve Jaksich, C.A., Director of Finance
Tel: 519-737-1201 (ext. 540)
E-mail: steve.jaksich@omegatoolcorp.com

TO: Miller Canfield LLP
Barristers & Solicitors
Suite 300
443 Ouellette Avenue
Windsor, ON N9A 6R4

Attention: John Leslie
Tel: 519-977-1555
Fax: 519-977-1566
E-mail: leslie@millercanfield.com

Lawyers for Brose Canada Inc.

TO: Shuh Cline & Grossman
Barristers and Solicitors
17 Weber Street West
Kitchener, ON N2H 3Y9

Attention: Mark S. Grossman
Tel: 519.578.9010 Ext. 231
Fax: 519.578.1590
E-mail: MGrossman@shuhclinegrossman.com

Lawyers for Miller's Electric Ltd.

TO: McMillan LLP
Brookfield Place,
181 Bay Street, Suite 4400
Toronto, ON M5J 2T3

Attention: Wael Rostom
Tel: 416.865.7790
Fax: 416.865.7048
E-mail: wael.rostom@mcmillan.ca

Attention: Lisa Brost
Tel: 416.865.7186
Fax: 416.865.7048
E-mail: lisa.brost@mcmillan.ca

Attention: Brad Hanna
Tel: 416-865-7276
Fax: 416-865-7048
E-mail: brad.hanna@mcmillan.ca

Lawyers for Magna Closures Inc.

TO: De Lage Landen Financial Services Canada Inc.
100 – 1235 North Service Road West
Oakville, ON L6M 2W2

TO: Ritz Plastics Inc.
435 Pido Road
Peterborough, ON K9J 6X7

Attention: Peter Gaffney
Tel: 705-748-6776
Fax: 705-748-3630
E-mail: pgaffney@ritzplastics.com

TO: Eckerle de Mexico S.A. de C.V.
Calle Jurica #121, Parque Industrial Queretaro
Santa Rosa Jauregui, Aro. C.P. 765220
Estado de Queretaro, Mexico

Attention: Matthias Perez

E-mail: mattias.perez@mx.eckerle-gruppe.com

TO: Delphi Automotive Systems LLC
5725 Delphi Drive
Troy, Michigan

Attention: Mike Olson
E-mail: mike.olson@delphi.com
Attention: Rock Lindsay
E-mail: rock.lindsay@delphi.com
Attention: Terry Willingham
E-mail: terry.willingham@delphi.com

TO: Blake, Cassels & Graydon LLP
Barristers & Solicitors
199 Bay Street, Suite 2800
Commerce Court West
Toronto, ON M5L 1A9

Attention: Jackie Moher
Tel: 416-863-3174
Fax: 416-417-5986
E-mail: Jackie.moher@blakes.com

Lawyers for Delphi Automotive Systems LLC

TO: 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

TO: 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

TO: Visteon Corporation
One Village Center Drive
Van Buren Township, Michigan
48111 U.S.

Attention: Christopher Scott
Senior Director, Global Purchasing
E-mail: cscott2@visteon.com

Attention: Michelle Laser
Corporate Transactions and Legal Affairs
E-mail: mlaser@visteon.com

TO: Dickinson Wright LLP
Barristers & Solicitors
120 Adelaide Street West
Suite 2107
Toronto, ON M5H 1T1

Attention: David Preger
Tel: 416-367-0874
Fax: 416-367-9388
E-mail: dpreger@dickinson-wright.com

Lawyers for Visteon Corporation

TO: Automotive Components Holdings, LLC
17000 Rotunda Drive
Dearborn, MI 48120

Attention: Sandy Bradford
ACH Operations Purchasing Manager
Tel: 313.722.1109
Email: sbradf15@ach-11c2.com

TO: Dickinson Wright PLLC
500 Woodward Ave., Suite 4000
Detroit, MI 48214

Attention: Kristi A. Katsma
Tel: 313.223.3180
Fax: 313.223.3589
Email: kkatsma@dickinson-wright.com

Lawyers for Visteon Corporation and Automotive Components Holdings, LLC

TO: Minden Gross LLP
Barristers & Solicitors
145 King Street West
Toronto, ON M5H 4G2

Attention: Raymond Slattery
Tel: 416-369-4149
Fax: 416-864-9223
E-mail: rslattery@mindengross.com
Lawyer for the Unsecured Creditors

TO: Chillers Inc.
1228 Gorham Street, Unit 11
Newmarket, ON L3Y 8Z1

Attention: Ziggy

TO: Christopher Park
189 Royal Orchard Drive
Kitchener, ON N2N 1T8

E-mail: cmpark.consulting@gmail.com

TO: Bryan Killop
563 Westvale
Waterloo, ON N2T 1G5

TO: Anderson-Cook Spittal Precision Components
(Shanghai) Co. Ltd.
Unit 103, T22-33,
351 Jin Zang Road
Jin Qiao Export Processing Zone
Shanghai, China 201206

Attention: Ding Yaojun, Director of China Operations
dingyaojun@andersoncook.com

Attention: Troy Curtis, Vice President, Business Development
tcurtis@andersoncook.com

TO: ProTerra LED Inc.
P.O. Box 600
6 Ridgeview St.
St. George, ON, N0E 1N0

Attention: John Johnston
E-mail: jjohnston@proterraled.com

TO: Gowling Lafleur Henderson LLP
Lawyers · Patent and Trade-mark Agents
50 Queen Street North, Suite 1020, P.O. Box 2248
Kitchener, ON N2H 6M2

Attention: Ron Craigen
Fax: 519.571.5023
E-mail: Ron.Craigen@gowlings.com

BANK OF MONTREAL
Applicant

ACS PRECISION COMPONENTS
and Respondent

Court File No: 10-8702-00CL

**ONTARIO
SUPERIOR COURT OF JUSTICE
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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