

IN THE MATTER OF THE NOTICE OF INTENTION TO
MAKE A PROPOSAL OF APELOWICZ MANAGEMENT
INC., AN INSOLVENT COMPANY

28 April 2010

Court File No. 31-1342735

S.L. Graff + S. Aversa for B70

April 28, 2010.

C. Francis for RBC

H. Chastin for A71

M.R. Kaplan for Discount Car + Truck.

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

Proceedings commenced at Toronto

On a ~~unopposed~~ basis

A number of ~~the~~ issues have been resolved without
opponent. The resolution ~~is~~ ~~is~~ recognizing

~~that there will be~~ that it is highly
unlikely that there will be a distribution
to unsecured creditors of Apelowicz Management Inc. (A71).

The motion record for B70 provides for the
appointment of Zelfma Partners Inc. as Receiver
over the B70 secured vehicles. The RBC
secured vehicles are covered by the
Amended + Retained Agency Agreement.

6653969-1

The B70 B70 secured vehicles are
the subject of a Agreement of Purchase

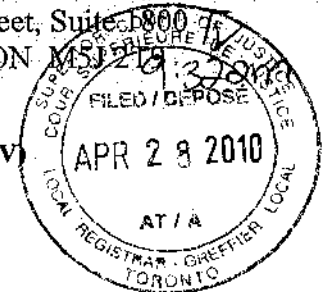
MOTION RECORD

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Solicitors for Bank of Montreal



LATE FILING

and sale to New Horizons Car + Truck Rentals Ltd. New
Horizons is related to Discont.

The proposed sale of B770 financed vehicles is
referred in the First Report of Defcon. For the
reason set out in the Report, Defcon is
recommending the immediate sale to New Horizons.

Defcon is of the view that the consideration to
be paid represents fair value ~~at~~ and also
provides for ongoing cut-backs, elimination
of auction expenses and the risk of depressed

market values of vehicles due to flooding
etc. market. The Sale Agent will generate
40 jobs. In addition, B770 is in support
of the sale. Having reviewed the record
& am satisfied that it is appropriate,
in these ~~particular~~ circumstances
to approve the ~~the~~ sale agreement
with New Horizons.

I am also satisfied that it is
appropriate to grant the request
for a sealing order in respect
of the unredacted Permit of Purchase
and Sale until completion of the

Transcripts. This sealing order is granted on the basis that I am satisfied that the Agreement of Purchase + Sale does contain sensitive, commercial & confidential information, the disclosure of which could be harmful to the stakeholders. I am also satisfied that it is appropriate to order the bankruptcy of ADI and to terminate the proposal proceedings. The bankruptcy and the termination of the proposal proceedings is to take effect contemporaneously with the filing of the Receiver's Certificate (as defined in the Approval and Vesting Order made April 28, 2010).

In view of the concurrent receivership and bankruptcy proceedings, it is appropriate to have a Occupancy

Agreement as between ~~Trustee~~ (Trustee) and New Horizons. The Occupancy

Request is approved.

The First Report of Zepher is also approved
as is the request to distribute
proceeds from the New Housing ~~Transact~~

Transacts to BTD

Two Orders

~~The order~~ shall issue to give effect
to the foregoing.

The RBC also brought a motion
in these proceedings and a Order
apparently Grant Shortin dated as
Agmt was granted by Hoj J.
on April 9, 2010. On an unopposed
basis, the Regny Order is to
be rescinded and an Amended
and Restated Regny Order is
to issue in the form presented.

 J. Hoj

**ONTARIO
SUPERIOR COURT OF JUSTICE
IN BANKRUPTCY**

THE HONOURABLE) WEDNESDAY, THE 28th DAY
MR. JUSTICE MORAWETZ) OF APRIL, 2010

B E T W E E N:

**IN THE MATTER OF THE NOTICE OF INTENTION
TO MAKE A PROPOSAL OF
APELOWICZ MANAGEMENT INC.,
INSOLVENT PERSON**



AMENDED AND RESTATED AGENCY ORDER

THIS MOTION made by Royal Bank of Canada ("RBC"), a secured creditor of Apelowicz Management Inc. (the "Debtor") for, among other things, a declaration that the stay of proceedings referred to in section 69(1) of the *Bankruptcy and Insolvency Act* ("BIA") no longer operates in respect of RBC and an Order appointing Grant Thornton Limited ("GTL") as receiver of the assets, undertakings and properties of the Debtor which are subject to the first ranking security interest of RBC, was heard this day at 330 University Avenue, Toronto, Ontario.

ON READING the affidavits of Richard Hall sworn April 6, 2010, April 15, 2010 and April 27, 2010 and the Exhibits thereto, the affidavit of Eddie Apelowicz sworn April 14, 2010 and the report of Zeifman Partners Inc. ("Zeifman") in its capacity as proposed receiver of certain assets of AMI, and on hearing the submissions of counsel for RBC, the Debtor, Bank of Montreal ("BMO") and Discount Car & Truck Rentals Ltd. ("Discount"),

SERVICE

1. THIS COURT ORDERS that the time for service of the Notice of Motion and the Motion is hereby abridged so that this motion is properly returnable today and hereby dispenses with further service thereof.

STAY OF PROCEEDINGS

2. THIS COURT ORDERS that the stay of proceedings referred to in section 69(1) of the BIA which arose on the filing by the Debtor of a Notice of Intention to File a Proposal no longer operates in respect of RBC, to the extent necessary to give effect to this order.

APPOINTMENT OF GTL

3. THIS COURT ORDERS that GTL be and is hereby appointed as agent on behalf of RBC (the "Agent") to take possession and control of all assets of the Debtor which are subject to the first-ranking priority security of RBC, as listed in Schedule "A" hereto, and in particular of all vehicles which have been financed by RBC, and all cash assets held in accounts at Canadian Imperial Bank of Commerce or elsewhere and accounts receivable which have been derived from the sale or lease of such vehicles, together with RBC's pro rata share of the proceeds of any other assets, property and undertaking of the Debtor in accordance with a Priorities Agreement (the "Priorities Agreement") between RBC and BMO dated December 12, 2005 (collectively, the "RBC Collateral").

AGENT'S POWERS

4. THIS COURT ORDERS that the Agent is hereby empowered and authorized, but not obligated, to act at once in respect of the RBC Collateral and, without in any way limiting the generality of the foregoing, the Agent is hereby expressly empowered and authorized to do any of the following where the Agent considers it necessary or desirable, provided that in exercising such powers the agent shall not interfere with the operation of the Debtor's business:

- (a) to take possession of and exercise control over the RBC Collateral;
- (b) to receive, preserve, and protect the RBC Collateral, or any part or parts thereof, including, but not limited to, the relocating of RBC Collateral to safeguard them, the engaging of independent security personnel, the taking of physical inventories and the placement of such insurance coverage as may be necessary or desirable;

- (c) to engage consultants, appraisers, agents, experts, auditors, accountants, managers, counsel and such other persons from time to time and on whatever basis, including on a temporary basis, to assist with the exercise of the Agent's powers and duties, including without limitation those conferred by this Order;
- (d) to receive and collect all monies and accounts now owed or hereafter owing to the Debtor in respect of the RBC Collateral and to exercise all remedies of the Debtor in collecting such monies, including, without limitation, to enforce any security held by the Debtor;
- (e) to execute, assign, issue and endorse documents of whatever nature in respect of any of the RBC Collateral, whether in the Agent's name or in the name and on behalf of the Debtor, for any purpose pursuant to this Order;
- (f) to market any or all of the RBC Collateral, including advertising and soliciting offers in respect of the RBC Collateral or any part or parts thereof and negotiating such terms and conditions of sale as the Agent in its discretion may deem appropriate;
- (g) to sell, convey, transfer, lease or assign the RBC Collateral or any part or parts thereof out of the ordinary course of business, without the further approval of this Court; and in respect of each such case, a sale notice under subsection 63(4) of the Ontario *Personal Property Security Act*, shall not be required, and the Ontario *Bulk Sales Act* shall not apply, provided that any sale or other disposition of the RBC Collateral shall be made on a commercially reasonable basis, and the Agent shall account to BMO and the Debtor with respect to any such sale or disposition;
- (h) to apply for any vesting order or other orders necessary to convey the RBC Collateral or any part or parts thereof to a purchaser or purchasers

thereof, free and clear of any liens or encumbrances affecting such RBC Collateral;

- (i) to remit the proceeds from any such sale or sales to RBC without further Order of this Court;
- (j) to conduct a review and investigation on behalf of RBC into the conduct and activities of the Debtor during the period preceding the filing by the Debtor of a notice of intention to file a proposal under the BIA, and in particular to review and investigate the payments made by the Debtor to BMO and RBC during the six month period preceding the filing and the respective priorities of BMO and RBC under the Priorities Agreement;
- (k) to take any steps reasonably incidental to the exercise of these powers.

DUTY TO PROVIDE ACCESS AND CO-OPERATION TO THE AGENT

5. THIS COURT ORDERS that (i) the Debtor, (ii) all of its current and former directors, officers, employees, agents, accountants, legal counsel and shareholders, and all other persons acting on its instructions or behalf; (iii) Discount and any associated or related companies and (iv) all other individuals, firms, corporations, governmental bodies or agencies, or other entities having notice of this Order (all of the foregoing, collectively, being "Persons" and each being a "Person") shall forthwith advise the Agent of the existence of any RBC Collateral in such Person's possession or control, shall grant immediate and continued access to the RBC Collateral to the Agent, and shall deliver all such RBC Collateral to the Agent upon the Agent's request.

6. THIS COURT ORDERS that all Persons shall forthwith advise the Agent of the existence of any books, documents, securities, contracts, orders, corporate and accounting records, and any other papers, records and information of any kind related to the RBC Collateral, and any computer programs, computer tapes, computer disks, or other data storage media containing any such information (the foregoing, collectively, the "Records") in that Person's possession or control, and shall provide to the Agent or permit the Agent to make, retain and take away copies thereof and grant to the Agent unfettered access to and use of accounting, computer, software and physical facilities relating thereto, provided however that nothing in this paragraph

5 or in paragraph 6 of this Order shall require the delivery of Records, or the granting of access to Records, which may not be disclosed or provided to the Agent due to the privilege attaching to solicitor-client communication or due to statutory provisions prohibiting such disclosure.

7. THIS COURT ORDERS that if any Records are stored or otherwise contained on a computer or other electronic system of information storage, whether by independent service provider or otherwise, all Persons in possession or control of such Records shall forthwith give unfettered access to the Agent for the purpose of allowing the Agent to recover and fully copy all of the information contained therein whether by way of printing the information onto paper or making copies of computer disks or such other manner of retrieving and copying the information as the Agent in its discretion deems expedient, and shall not alter, erase or destroy any Records without the prior written consent of the Agent. Further, for the purposes of this paragraph, all Persons shall provide the Agent with all such assistance in gaining immediate access to the information in the Records as the Agent may in its discretion require including providing the Agent with instructions on the use of any computer or other system and providing the Agent with any and all access codes, account names and account numbers that may be required to gain access to the information.

8. THIS COURT ORDERS that, without limiting the generality of the foregoing, Discount shall provide the Agent with access to all books and records of Discount and its associated company as they relate to AMI receipts and disbursements.

9. THIS COURT ORDERS that, pending further court order:

- (a) Up until the bankruptcy of the Debtor, the terms set out in the endorsement of Madam Justice Hoy dated April 16, 2010 shall continue to apply;
- (b) From and after the bankruptcy of the Debtor, Discount shall collect and pay two thirds of all cash receipts of the Debtor to the Agent on a daily basis;
- (c) The foregoing shall be without prejudice to any dispute between BMO and RBC as to the entitlement between them.

LIMITATION ON THE AGENT'S LIABILITY

10. THIS COURT ORDERS that the Agent shall incur no liability or obligation as a result of its appointment or the carrying out the provisions of this Order, save and except for any gross negligence or wilful misconduct on its part. Nothing in this Order shall derogate from the protections, if any, afforded the Agent by section 14.06 of the BIA or by any other applicable legislation.

GENERAL

11. THIS COURT ORDERS that the Agent may from time to time apply to this Court for advice and directions in the discharge of its powers and duties hereunder.

12. THIS COURT ORDERS that the Agent be at liberty and is hereby authorized and empowered to apply to any court, tribunal, regulatory or administrative body, wherever located, for the recognition of this Order and for assistance in carrying out the terms of this Order, and that the Agent is authorized and empowered to act as a representative in respect of the within proceedings for the purpose of having these proceedings recognized in a jurisdiction outside Canada.

13. THIS COURT ORDERS that any interested party may apply to this Court to vary or amend this Order on not less than seven (7) days' notice to the Agent and to any other party likely to be affected by the order sought or upon such other notice, if any, as this Court may order.



SCHEDULE "A"

"RBC Collateral" means all present and future Inventory of Apelowicz Management Inc. (the "Borrower") (including without limitation all Motor Vehicles and Goods and all parts, accessories, attachments, special tools, additions and Accessions thereto) with respect to which any advance or other financial accommodation has been made to the Borrower by RBC and with respect to which no advance or other financial accommodation has been previously made to the Borrower by BMO which remains unpaid, all Chattel Paper, choses in action and contractual rights relating to such Inventory (including without limitation all leases entered into from time to time by the borrower, as lessor, in respect of such Inventory), all Documents of title relating to such Inventory, all Accounts receivable from time to time of the Borrower in respect of such Inventory (including without limitation all lease payments) and all Proceeds of the foregoing, as such terms are defined in a Priorities Agreement between Bank of Montreal, Royal Bank of Canada and Apelowicz Management Inc. dated December 12, 2005.

**IN THE MATTER OF THE NOTICE OF INTENTION TO MAKE A PROPOSAL OF
APELOWICZ MANAGEMENT INC.,
INSOLVENT PERSON**

Court file no. 31-1342735

**ONTARIO
SUPERIOR COURT OF JUSTICE
IN BANKRUPTCY**

Proceeding commenced at **TORONTO**

ORDER

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**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

THE HONOURABLE MR.

WEDNESDAY, THE 28TH DAY

JUSTICE MORAWETZ

OF APRIL, 2010



**IN THE MATTER OF THE NOTICE OF INTENTION
TO MAKE A PROPOSAL OF APELOWICZ MANAGEMENT INC.,
AN INSOLVENT COMPANY**

APPROVAL AND VESTING ORDER

THIS MOTION, made by Bank of Montreal (“**BMO**”), a secured creditor of Apelowicz Management Inc. (the “**Debtor**”), for an order, among other things, approving the sale transaction (the “**Transaction**”) contemplated by an agreement of purchase and sale (the “**Sale Agreement**”) between Zeifman Partners Inc. (“**Zeifman**”), in its capacity as the Court-appointed receiver (in such capacity, the “**Receiver**”) of the vehicles of the Debtor which have been financed by BMO (the “**BMO Financed Vehicles**”), and New Horizons Car & Truck Rentals Ltd. (the “**Purchaser**”) made as of April 26, 2010 and appended to the First Report of Zeifman dated April 26, 2010 (the “**Report**”), and vesting in the Purchaser all of the Debtor’s right, title and interest in and to the BMO Financed Vehicles, was heard this day at 330 University Avenue, Toronto, Ontario.

ON READING the Report and on hearing the submissions of counsel for the Receiver, the Purchaser and BMO, no one appearing for any other person on the service list, although properly served as appears from the affidavit of Sandra Anne Vitorovich sworn April 28, 2010 filed,

1. **THIS COURT ORDERS AND DECLARES** that the Transaction, the Sale Agreement and the schedules thereto be and are hereby approved, and that the Sale Agreement is

commercially reasonable and in the best interests of the Debtor and its stakeholders. The execution of the Sale Agreement by the Receiver is hereby authorized and approved, and the Receiver is hereby authorized and directed to take such additional steps and execute such additional documents as may be necessary or desirable for the completion of the Transaction and for the conveyance of the BMO Financed Vehicles to the Purchaser.

2. **THIS COURT ORDERS** that the Report be and is hereby approved and the actions of the Receiver described therein be and are hereby approved.

3. **THIS COURT ORDERS** that the unredacted version of the Sale Agreement be and is hereby sealed until the completion of the Transaction or until further order of this Honourable Court.

4. **THIS COURT ORDERS AND DECLARES** that upon the delivery^{and filing} of a Receiver's certificate to the Purchaser substantially in the form attached as **Schedule "A"** hereto (the "**Receiver's Certificate**"), all of the Debtor's right, title and interest in and to the BMO Financed Vehicles shall vest absolutely in the Purchaser, 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, all charges, security interests or claims 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 BMO Financed Vehicles are hereby expunged and discharged as against the BMO Financed Vehicles.

5. **THIS COURT ORDERS** that for the purposes of determining the nature and priority of Claims, the net proceeds from the sale of the BMO Financed Vehicles shall stand in the place and stead of the BMO Financed Vehicles, and that from and after the delivery of the Receiver's Certificate, all Claims and Encumbrances shall attach to the net proceeds from the sale of the BMO Financed Vehicles with the same priority as they had with respect to the BMO Financed

Vehicles immediately prior to the sale, as if the BMO Financed Vehicles had not been sold and remained in the possession or control of the person having that possession or control immediately prior to the sale.

6. **THIS COURT ORDERS AND DIRECTS** the Receiver to file with the Court a copy of the Receiver's Certificate, forthwith after delivery thereof.

7. **THIS COURT ORDERS** that the Receiver is authorized and directed to distribute, without further Order of this Court, the proceeds of the Transaction to BMO on account of the Debtor's outstanding indebtedness for principal, interest and costs.

8. **THIS COURT ORDERS** that, notwithstanding:

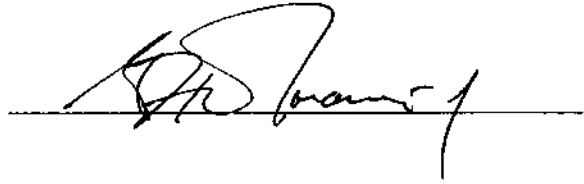
- (a) the pendency of these proceedings;
- (b) any applications for a bankruptcy order now or hereafter issued pursuant to the *Bankruptcy and Insolvency Act* (Canada) in respect of the Debtor and any bankruptcy order issued pursuant to any such applications; and
- (c) any assignment in bankruptcy made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

the vesting of the BMO Financed Vehicles in the Purchaser pursuant to this Order shall be binding on any trustee in bankruptcy that may be appointed in respect of the Debtor and shall not be void or voidable by creditors of the Debtor, nor shall it constitute nor be deemed to be a settlement, assignment, preference, transfer undervalue 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 Transaction is exempt from the application of the *Bulk Sales Act* (Ontario).

10. **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.

A handwritten signature in black ink, appearing to read "A. H. Brown", is written over a horizontal line. The signature is stylized and cursive.

Schedule "A" – Form of Receiver's Certificate

Court File No. 31-1342735

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

**IN THE MATTER OF THE NOTICE OF INTENTION
TO MAKE A PROPOSAL OF APELOWICZ MANAGEMENT INC.,
AN INSOLVENT COMPANY**

RECEIVER'S CERTIFICATE

RECITALS

(A) Pursuant to an Order of the Honourable Justice Morawetz of the Ontario Superior Court of Justice (the "**Court**") dated April 28, 2010 (the "**Order**"), Zeifman Partners Inc. ("**Zeifman**") was appointed as receiver (in such capacity, the "**Receiver**") of the vehicles of Apelowicz Management Inc. (the "**Debtor**") which have been financed by Bank of Montreal (the "**BMO Financed Vehicles**").

(B) Pursuant to an Order of the Court dated April 28, 2010, the Court approved the agreement of purchase and sale made as of April 26, 2010 (the "**Sale Agreement**") between the Receiver and New Horizons Car & Truck Rentals Ltd. (the "**Purchaser**"), and provided for the vesting in the Purchaser all of the Debtor's right, title and interest in and to the BMO Financed Vehicles, which vesting is to be effective with respect to the BMO Financed Vehicles upon the delivery by the Receiver to the Purchaser of a certificate confirming: (i) the payment by the Purchaser of the Purchase Price, subject to the adjustments, if any, provided in the Sale Agreement, for the BMO Financed Vehicles; (ii) that the conditions to Closing as set out in the Sale Agreement have been satisfied or waived by the Receiver and the Purchaser; and (iii) the Transaction has been completed to the satisfaction of the Receiver.

(C) Unless otherwise indicated herein, terms with initial capitals have the meanings set out in the Sale Agreement.

THE RECEIVER CERTIFIES the following:

1. The Purchaser has paid and the Receiver has received the Purchase Price, subject to the adjustments, if any, provided in the Sale Agreement, for the BMO Financed Vehicles payable on the Closing Date pursuant to the Sale Agreement;
2. The conditions to Closing as set out in the Sale Agreement have been satisfied or waived by the Receiver and the Purchaser;
3. The Transaction has been completed to the satisfaction of the Receiver; and
4. This Certificate was delivered by the Receiver at _____ [TIME] on _____ [DATE].

**ZEIFMAN PARTNERS INC., in its capacity
as receiver of the vehicles of Apelowicz
Management Inc. which have been financed
by Bank of Montreal, and not in its personal
or corporate capacity**

Per: _____
Name:
Title:

**IN THE MATTER OF THE NOTICE OF INTENTION
TO MAKE A PROPOSAL OF APELOWICZ
MANAGEMENT INC., AN INSOLVENT COMPANY**

Court File No. 31-1342735

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

Proceedings commenced at Toronto

APPROVAL AND VESTING ORDER

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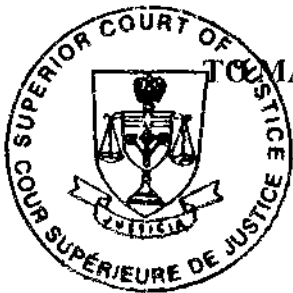
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Solicitors for Bank of Montreal

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

THE HONOURABLE MR.) WEDNESDAY, THE 28TH DAY
)
JUSTICE MORAWETZ) OF APRIL, 2010



**IN THE MATTER OF THE NOTICE OF INTENTION
TO MAKE A PROPOSAL OF APELOWICZ MANAGEMENT INC.,
AN INSOLVENT COMPANY**

ORDER

THIS MOTION, made by Bank of Montreal (“**BMO**”), a secured creditor of Apelowicz Management Inc. (the “**Debtor**”), for, among other things: (i) an order that the Debtor be adjudged a bankrupt, that the proposal proceedings arising from the Debtor’s filing of a Notice of Intention to Make a Proposal pursuant to the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended (the “**BIA**”) be terminated and that Zeifman Partners Inc. (“**Zeifman**”) be appointed as the Debtor’s Trustee in bankruptcy; (ii) an Order pursuant to subsection 243(1) of the BIA and section 101 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43, as amended (the “**CJA**”) appointing Zeifman as receiver (in such capacity, the “**Receiver**”), without security, of the vehicles of the Debtor which have been financed by BMO; (iii) an order approving the Occupancy Agreement between Zeifman and New Horizons Car & Truck Rentals Ltd. (“**New Horizons**”) and (iv) an order approving the First Report of Zeifman dated April 26, 2010 (the “**Report**”) and the activities of Zeifman as set out therein, was heard this day at 330 University Avenue, Toronto, Ontario.

ON READING ^{not opposed by} the Report and the exhibits thereto, the consent of Zeifman, the Debtor, ^{and} New Horizons and Royal Bank of Canada (“**RBC**”), and on hearing the submissions of counsel for BMO, the Receiver, the Debtor, New Horizons and RBC, no one appearing for any other person on the service list, although duly served as appears from the affidavit of service of Sandra Anne Vitorovich sworn April 28, 2010, filed,

SERVICE

1. **THIS COURT ORDERS** that the time for service and filing of the notice of motion and the motion record is hereby abridged so that this motion is properly returnable today and hereby dispenses with further service thereof.

APPROVAL OF REPORT

2. **THIS COURT ORDERS** that the Report and the activities of Zeifman set out in the Report be and are hereby approved.

BANKRUPTCY AND TERMINATION OF PROPOSAL PROCEEDINGS

3. **THIS COURT ORDERS** that the Debtor be adjudged a bankrupt and that Zeifman be and is hereby appointed as the Debtor's Trustee in bankruptcy *effective contemporaneously with the delivery and the filing of the Receiver's Certificate (as defined in the Approval and Vesting Order made April 26, 2010)*

4. **THIS COURT ORDERS** that the proposal proceedings arising from the Debtor's filing of a Notice of Intention to Make a Proposal pursuant to section 50.4 of the BIA be and are hereby terminated *effective contemporaneously with the delivery and the court filing of the Receiver's Certificate (as defined in the Approval and Vesting Order made April 26, 2010)*

APPOINTMENT

5. **THIS COURT ORDERS** that pursuant to subsection 243(1) of the BIA and section 101 of the CJA, Zeifman is hereby appointed Receiver, without security, of the vehicles of the Debtor which have been financed by BMO (the "**BMO Financed Vehicles**").

RECEIVER'S POWERS

6. **THIS COURT ORDERS** that the Receiver is hereby empowered and authorized, but not obligated, to act at once in respect of the BMO Financed Vehicles and, without in any way limiting the generality of the foregoing, the Receiver is hereby expressly empowered and authorized to do any of the following where the Receiver considers it necessary or desirable:

- (a) to sell, convey, transfer, and assign the BMO Financed Vehicles or any part or parts thereof to New Horizons pursuant to an agreement of purchase and sale between the Receiver and New Horizons made as of April 26, 2010 (the "**Sale Transaction**") and that notice under subsection 63(4) of the Ontario *Personal Property Security Act*

shall not be required and the Ontario *Bulk Sales Act* shall not apply to the Sale Transaction;

- (b) to execute, assign, issue and endorse documents of whatever nature in respect of any of the BMO Financed Vehicles, whether in the Receiver's name or in the name and on behalf of the Debtor, for any purpose pursuant to this Order;
- (c) to apply for any vesting order or other orders necessary to convey the BMO Financed Vehicles or any part or parts thereof to New Horizons as contemplated by the Sale Transaction, free and clear of any liens or encumbrances affecting such BMO Financed Vehicles;
- (d) to remit the proceeds from any such sale or sales to BMO without further Order of this Court;
- (e) to enter into agreements with any trustee in bankruptcy appointed in respect of the Debtor, including, without limiting the generality of the foregoing, one or more occupation agreements for any property owned or leased by the Debtor; and
- (f) to take any steps reasonably incidental to the exercise of these powers or the performance of any statutory obligations,

and in each case where the Receiver takes any such actions or steps, it shall be exclusively authorized and empowered to do so, to the exclusion of all other Persons (as defined below), including the Debtor, and without interference from any other Person.

DUTY TO PROVIDE ACCESS AND CO-OPERATION TO THE RECEIVER

7. **THIS COURT ORDERS** that (i) the Debtor, (ii) all of its current and former directors, officers, employees, agents, accountants, legal counsel and shareholders, and all other persons acting on its instructions or behalf, and (iii) all other individuals, firms, corporations, governmental bodies or agencies, or other entities having notice of this Order (all of the foregoing, collectively, being "**Persons**" and each being a "**Person**") shall forthwith advise the Receiver of the existence of any BMO Financed Vehicles in such Person's possession or control, shall, to the extent necessary,

grant immediate and continued access to the BMO Financed Vehicles to the Receiver, and shall deliver all such BMO Financed Vehicles to the Receiver upon the Receiver's request.

8. **THIS COURT ORDERS** that all Persons shall forthwith advise the Receiver of the existence of any books, documents, securities, contracts, orders, corporate and accounting records, and any other papers, records and information of any kind related to the BMO Financed Vehicles, and any computer programs, computer tapes, computer disks, or other data storage media containing any such information (the foregoing, collectively, the "**Records**") in that Person's possession or control, and shall provide to the Receiver or permit the Receiver to make, retain and take away copies thereof and grant to the Receiver unfettered access to and use of accounting, computer, software and physical facilities relating thereto, provided however that nothing in this paragraph 8 or in paragraph 9 of this Order shall require the delivery of Records, or the granting of access to Records, which may not be disclosed or provided to the Receiver due to the privilege attaching to solicitor-client communication or due to statutory provisions prohibiting such disclosure.

9. **THIS COURT ORDERS** that if any Records are stored or otherwise contained on a computer or other electronic system of information storage, whether by independent service provider or otherwise, all Persons in possession or control of such Records shall forthwith give unfettered access to the Receiver for the purpose of allowing the Receiver to recover and fully copy all of the information contained therein whether by way of printing the information onto paper or making copies of computer disks or such other manner of retrieving and copying the information as the Receiver in its discretion deems expedient, and shall not alter, erase or destroy any Records without the prior written consent of the Receiver. Further, for the purposes of this paragraph, all Persons shall provide the Receiver with all such assistance in gaining immediate access to the information in the Records as the Receiver may in its discretion require including providing the Receiver with instructions on the use of any computer or other system and providing the Receiver with any and all access codes, account names and account numbers that may be required to gain access to the information.

NO PROCEEDINGS AGAINST THE RECEIVER

10. **THIS COURT ORDERS** that no proceeding or enforcement process in any court or tribunal (each, a “**Proceeding**”), shall be commenced or continued against the Receiver except with the written consent of the Receiver or with leave of this Court.

NO PROCEEDINGS AGAINST THE DEBTOR OR THE BMO FINANCED VEHICLES

11. **THIS COURT ORDERS** that no Proceeding against or in respect of the Debtor or the BMO Financed Vehicles shall be commenced or continued except with the written consent of the Receiver or with leave of this Court and any and all Proceedings currently under way against or in respect of the Debtor or the BMO Financed Vehicles are hereby stayed and suspended pending further Order of this Court, except that Royal Bank of Canada is excluded from the application of this paragraph.

NO EXERCISE OF RIGHTS OR REMEDIES

12. **THIS COURT ORDERS** that all rights and remedies against the Debtor, the Receiver, or affecting the BMO Financed Vehicles, are hereby stayed and suspended except with the written consent of the Receiver or leave of this Court, provided however that nothing in this paragraph shall: (i) empower the Receiver or the Debtor to carry on any business which the Debtor is not lawfully entitled to carry on; (ii) exempt the Receiver or the Debtor from compliance with statutory or regulatory provisions relating to health, safety or the environment; (iii) prevent the filing of any registration to preserve or perfect a security interest; (iv) prevent the registration of a claim for lien or (v) prevent Royal Bank of Canada from continuing the enforcement of its security.

NO INTERFERENCE WITH THE RECEIVER

13. **THIS COURT ORDERS** that no Person shall discontinue, fail to honour, alter, interfere with, repudiate, terminate or cease to perform any right, renewal right, contract, agreement, licence or permit in favour of or held by the Debtor, without written consent of the Receiver or leave of this Court.

LIMITATION ON THE RECEIVER'S LIABILITY

14. **THIS COURT ORDERS** that the Receiver shall incur no liability or obligation as a result of its appointment or the carrying out the provisions of this Order, save and except for any gross negligence or wilful misconduct on its part. Nothing in this Order shall derogate from the protections afforded the Receiver by section 14.06 of the BIA or by any other applicable legislation.

RECEIVER'S ACCOUNTS

15. **THIS COURT ORDERS** that the Receiver and counsel to the Receiver shall be paid their reasonable fees and disbursements, in each case at their standard rates and charges, and that the Receiver and counsel to the Receiver shall be entitled to and are hereby granted a charge (the "Receiver's Charge") on the BMO Financed Vehicles, as security for such fees and disbursements, both before and after the making of this Order in respect of these proceedings, and that the Receiver's Charge shall form a first charge on the BMO Financed Vehicles in priority to all security interests, trusts, liens, charges and encumbrances, statutory or otherwise, in favour of any Person, but subject to subsections 14.06(7), 81.4(4), and 81.6(2) of the BIA.

16. **THIS COURT ORDERS** that the Receiver and its legal counsel shall pass its accounts from time to time, and for this purpose the accounts of the Receiver and its legal counsel are hereby referred to a judge of the Commercial List of the Ontario Superior Court of Justice.

17. **THIS COURT ORDERS** that prior to the passing of its accounts, the Receiver shall be at liberty from time to time to apply reasonable amounts, out of the monies in its hands, against its fees and disbursements, including legal fees and disbursements, incurred at the normal rates and charges of the Receiver or its counsel, and such amounts shall constitute advances against its remuneration and disbursements when and as approved by this Court.

GENERAL

18. **THIS COURT ORDERS** that the Receiver may from time to time apply to this Court for advice and directions in the discharge of its powers and duties hereunder.


19. **THIS COURT ORDERS** that nothing in this Order shall prevent the Receiver from acting as a trustee in bankruptcy of the Debtor.

20. **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.

21. **THIS COURT ORDERS** that the Receiver be at liberty and is hereby authorized and empowered to apply to any court, tribunal, regulatory or administrative body, wherever located, for the recognition of this Order and for assistance in carrying out the terms of this Order, and that the Receiver is authorized and empowered to act as a representative in respect of the within proceedings for the purpose of having these proceedings recognized in a jurisdiction outside Canada.

22. **THIS COURT ORDERS** that BMO shall have its costs of this motion, up to and including entry and service of this Order, provided for by the terms of BMO's security or, if not so provided by BMO's security, then on a substantial indemnity basis to be paid by the Receiver from the Debtor's estate with such priority and at such time as this Court may determine.

23. **THIS COURT ORDERS** that any interested party may apply to this Court to vary or amend this Order on not less than seven (7) days' notice to the Receiver and to any other party likely to be affected by the order sought or upon such other notice, if any, as this Court may order.

A handwritten signature in black ink, appearing to read "A. H. Brown", is written over a horizontal line. The signature is cursive and somewhat stylized.

**IN THE MATTER OF THE NOTICE OF INTENTION TO
MAKE A PROPOSAL OF APELOWICZ MANAGEMENT
INC., AN INSOLVENT COMPANY**

Court File No. 31-1342735

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

Proceedings commenced at Toronto

ORDER

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