

COMERICA BANK

- and -

MTB INDUSTRIES INC.

Applicant

Respondent

Ms. Dietrich for the

Receiver

Ms. Reale for Comerica.

Adjourned to a 9:30 on June 24, 2009 to permit discussions w/ handoff.

Tabs E & G to be sealed pending return of material.

clearance by G
(Hox)

July 2/09

The Receiver applies for various relief including removal of an auction services agreement with 141608's ordering limited in substance. The Receiver is a true two auto parts supplier & its employees were all terminated & operated as usual prior to the appointment of the Receiver. The first secured creditor, Comerica Bank, is the applicant & is owed in excess of \$7 million. The Receiver met with Comerica & certain of the debtor's customers to consider alternatives & a part of the information received

June 19, 2009

Court File No: 09-CL-163

2 July 2009

ONTARIO

SUPERIOR COURT OF JUSTICE

PROCEEDING COMMENCED AT
TORONTO

MOTION RECORD

(Returnable June 19, 2009)

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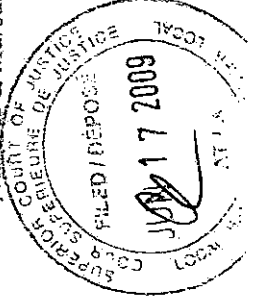
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Lawyers for the Receiver, Alvarez & Marsal
Canada ULC



the significant extent of comenca's exposure relative to asset or firm value, the Recover restricted its sales process to soliciting 6 liquidation proposals. No one has attended today to oppose the relief requested. Based on a comparison of the bids received by the Recover, I draw the inference that the economic interest in liquidation resides with comenca who will ultimately experience a significant shortfall. In these circumstances, I am prepared to grant the order requested.

I am also sealing ~~with~~ Appendices E & F which contain commercially sensitive information the release of which would negatively affect the integrity of the process + the stakeholders. See SCC decision - Overseas Club

Lastly, the Recover, the landlord + comenca have agreed on terms of understanding relating to the premises + the Recover's + debtor's relationship with the landlord. I am attaching those terms as schedule A to this endorsement. The order requested is granted.

Griffiths, J

Terms of Understanding

1. Alvarez & Marsal Canada ULC in its capacity as court appointed receiver (the "**Receiver**") of the assets, undertakings and property of MTB Industries Inc. ("**MTB**") and GPM Real Property (10) Ltd. and GPM (10) GP Inc. (collectively, the "**Landlord**") agree that the overhead cranes and all of their supporting structures (the "**Cranes**") will be removed from the auction list. As well, the Receiver agrees to transfer any interest it may have, if any, in and to the Cranes to the Landlord on an as is where is basis with no representation or warranty being made as to the condition of the Cranes (subject to the repair obligations in paragraph 3 hereof);
2. MTB's assets, including the assets listed on the schedule to the Auction Services Agreement as well as the substructures under the presses which include the steel frames at floor surface level around the presses, steel tanks, steelwork for vibration pads, intermediary electrical equipment and distribution boards providing supply to the assets (but not including any steel beams embedded into the concrete which are entirely below floor surface level), unless otherwise agreed to by the Landlord and the Receiver, shall be removed from the Premises by the Receiver. The Premises will be returned as provided for hererin, with all MTB assets removed with the exception of the Cranes. If any substantial work is required to the Premises to remove any of MTB's assets, for example opening holes in the walls or roof, reasonable advance notice will be provided of such to the Landlord by 1416088 Ontario Limited c.o.b. Danbury Industrial ("**Danbury**") on the Receiver's behalf and arrangement's for such work made in consultation with the Landlord;
3. The Premises will be returned in a clean and broom-swept condition. Any oil released from the assets since May 4, 2009, including during removal, will be removed by the Receiver. The Receiver will clean the floors with Absorbal and then with a mechanical floor sweeper. All garbage will be removed from inside and outside the Premises. All compressed air lines and steel barriers will be removed from the Premises. All electrical supply, cables and conduits will be removed or terminated back to secondary distribution boards on the building walls as identified previously by the Landlord and Danbury. All damages to the Premises, including to the roof and the Cranes, since May 4, 2009, and in particular resulting from the removal of any of the assets, will be repaired by the Receiver.
4. The Receiver will have the current annual inspection certificate with respect to the sprinkler system issued prior to the Receiver vacating the Premises.
5. The monies currently held by McCarthy Tétrault LLP as escrow agent will be retained in full by the Landlord for use in fixing the concrete pits at the Premises, after the Premises have been returned in the condition outlined above.
6. The Receiver will vacate the smaller of the units (which is a part of the Premises currently occupied by it, which measures approximately 13,800 sf and which houses no cranes/cement pits) in the condition outlined above by July 2, 2009. Thereafter, no rent (which is currently payable at \$11,173 monthly) will be payable for that unit.

7. The Landlord will provide a total rent reduction in the amount of \$75,000 in respect of rent for July and August, 2009 for the units which continue to be occupied by the Receiver, provided that if the Receiver shall vacate the Premises in the condition outlined above prior to August 31, 2009, the rebate shall be pro rated accordingly.
8. Comerica Bank ("**Comerica**") will not have any obligation to contribute \$50,000 towards pit restoration as pursuant to the Pit Restoration Agreement attached to the First Report of the Receiver dated June 16, 2009.
9. The Landlord shall be entitled upon reasonable notice to the Receiver or Danbury to attend at the Premises while the Receiver continues its occupation, provided that the Landlord does not interfere with the Auction.
10. Any and all claims of any nature whatsoever by or against the Landlord on one hand and Danbury, Comerica and/or the Receiver on the other shall be hereby released and discharged, other than those claims specifically arising from the terms of these Terms of Understanding.