

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

THE HONOURABLE MADAM

JUSTICE PEPALL

) THURSDAY, THE 2ND DAY OF
)
) JULY, 2009



COMERICA BANK

Applicant

- and -

MTB INDUSTRIES INC.

Respondent

ORDER

THIS MOTION, made by Alvarez & Marsal Canada ULC ("A&M") in its capacity as the Court-appointed receiver (the "**Receiver**") of the undertaking, property and assets of MTB Industries Inc. (the "**Debtor**") for an order in the form attached as schedule "A" to the notice of motion of the Receiver dated June 16, 2009 (the "**Notice of Motion**") *inter alia*: (i) abridging and validating the timing and method of service of this Motion Record so that this Motion is properly returnable; (ii) approving the first report to Court of the Receiver dated June 16, 2009 (the "**First Report**") and the activities of the Receiver as set out therein; (iii) authorizing the Receiver to file an assignment into bankruptcy in the name of and on behalf of the Debtor; and (v) approving the auction services agreement between 1416088 Ontario Limited c.o.b Danbury Industrial ("**Danbury**") and the Receiver dated June 15, 2009 (the "**Auction Agreement**") in the

form attached to the First Report, in respect of the Assets (as defined in the Auction Agreement) and vesting the Assets in the respective Purchasers free and clear of any and all claims, encumbrances and security interests; and (v) sealing and treating as confidential the unredacted version of the Auction Agreement and the offer comparison attached as confidential appendices to the First Report (the "Confidential Appendices") pending completion of the auction or further Court order, was heard this day at 330 University Avenue, Toronto, Ontario.

ON READING the First Report and on hearing the submissions of counsel for the Receiver and Comerica Bank, no one else appearing and making submissions although duly served as appears from the affidavit of service of Laura Bowles-Dove sworn June 16, 2009;

and on consent of
Comerica Bank + title
Service landlord in light of the
Terms of Understanding, -

GPM Real Property (10) Ltd. and
GPM (10) GP Inc. (the landlord)
GMP.

1. **THIS COURT ORDERS** that the time for service 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 Receiver's Activities

2. **THIS COURT ORDERS** that the First Report and the activities of the Receiver as set out therein, be and are hereby approved.

Approval of Auction Agreement

3. **THIS COURT ORDERS** that the Auction Agreement and the transactions contemplated therein (the "Transactions") be and are hereby approved.
4. **THIS COURT ORDERS** that the execution of the Auction Agreement by the Receiver is hereby authorized and approved and the Receiver is hereby authorized to take such additional steps and execute such additional documents as may be necessary or desirable for the completion of the Transactions or otherwise in accordance with the Auction Agreement.
5. **THIS COURT ORDERS** that upon delivery of a bill of sale from Danbury to a purchaser of Assets (a "Purchaser"), a Purchaser takes such Assets set out on such

bill of sales, free and clear of and from any and all claims, security interests (whether contractual, statutory, or otherwise), hypothecs, mortgages, conditional sales contracts or title retention agreements, trusts or deemed trusts (whether contractual, statutory, or otherwise), liens, judgments, orders, 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 and whether created by or pursuant to the orders made in these proceedings or other proceedings (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 Claims and Encumbrances affecting or relating to such Assets are hereby expunged and discharged as against such Assets.

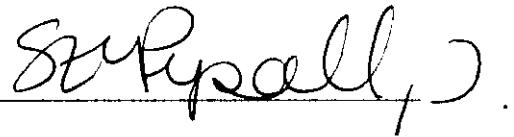
6. **THIS COURT ORDERS** that for the purposes of determining the nature and priority of Claims, the net proceeds from the sale of the Assets shall stand in the place and stead of the Assets, and that from and after the delivery of the applicable bill of sale all Claims and Encumbrances shall attach to the net proceeds from the sale of the Assets with the same priority as they had with respect to the Assets immediately prior to the sale, as if the 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.
7. **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 approval of the Auction Agreement and the vesting of the Assets in each 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, 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.

8. **THIS COURT ORDERS AND DECLARES** that any Transactions contemplated by Auction Agreement ^{are} ~~is~~ exempt from the application of the *Bulk Sales Act* (Ontario). SRP

Sealing

9. **THIS COURT ORDERS** that the Confidential Appendices to the First Report shall be and are hereby sealed and treated as confidential pending completion of the auction or further order of this Court.



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

JUL 02 2009

PER / PAR: 

Court File No: 09-CL-8163
MTB INDUSTRIES INC.
Respondent

-and -

COMERICA BANK
Applicant

ONTARIO

SUPERIOR COURT OF JUSTICE

**PROCEEDING COMMENCED AT
TORONTO**

**ORDER
(July 2, 2009)**

FRASER MILNER CASGRAIN LLP

1 First Canadian Place
100 King Street West,
Toronto, Ontario
M5X 1B2

Lawyer: R. Shayne Kukulowicz / Jane Dietrich
LSUC: 30729S / 49302U
Email: shayne.kukulowicz@fmc-law.com /
jane.dietrich@fmc-law.com
Telephone: 416 863-4740 / 416-863-4467
Facsimile: 416 863-4592

*Lawyers for the Receiver, Alvarez &
Marsal Canada ULC*