



Court File No. CV-23-00710259-00CL

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

THE HONOURABLE
JUSTICE STEELE

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FRIDAY, THE 12TH
DAY OF JANUARY, 2024

**IN THE MATTER OF THE COMPANIES' CREDITORS
ARRANGEMENT ACT, R.S.C. 1985, c. C-36, AS AMENDED**

**AND IN THE MATTER OF A PLAN OF COMPROMISE OR
ARRANGEMENT OF MASTERMIND GP INC.**

(the "**Applicant**")

ANCILLARY ORDER

THIS MOTION made by the Applicant pursuant to the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the "**CCAA**") for an Order, *inter alia*, (i) expanding the Monitor's Powers, (ii) changing the style of cause in these CCAA proceedings, and (iii) granting certain other ancillary relief, was heard this day at 330 University Avenue, Toronto, Ontario by videoconference via Zoom.

ON READING the Affidavit #4 of Lucio Milanovich sworn January 5, 2024, the Notice of Motion, the Motion Record of the Applicant, and the Third Report (the "**Third Report**") of Alvarez & Marsal Canada Inc. ("**A&M**"), in its capacity as court-appointed monitor (in such capacity, the "**Monitor**") of Mastermind GP Inc. and Mastermind LP (collectively, the "**Mastermind Entities**"), and on hearing the submissions of counsel for the Mastermind Entities, the Monitor, the Buyer, and counsel for the other persons listed on the Participant Information Form, no one appearing for any other person on the service list, although properly served as appears from the Lawyer's Certificate of Service of Kristine Spence sworn January 5, 2024, filed:

SERVICE AND DEFINITIONS

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

2. **THIS COURT ORDERS** that capitalized terms used herein but not otherwise defined have the definitions given to them in the asset purchase agreement dated as of December 1, 2023 (the “**APA**”), between Mastermind LP, by its general partner, Mastermind GP Inc., and Unity Acquisitions Inc. (or any permitted assignee under the APA) or the Approval and Vesting Order in these CCAA proceedings dated December 13, 2023 (the “**AVO**”), as applicable.

MONITOR’S ENHANCED POWERS

3. **THIS COURT ORDERS** that, in addition to the powers and duties of the Monitor set out in the Amended and Restated Initial Order or any other Order of this Court granted in these CCAA proceedings, the CCAA and applicable law, and without in any way altering the obligations of the Mastermind Entities in these CCAA proceedings, including the Mastermind Entities’ obligations under the APA and Transactions, effective upon the delivery of the Monitor’s Certificate to the Mastermind Entities and the Buyer, the Monitor is hereby authorized and empowered, but not required to:

- (a) take any and all actions and steps, and execute all agreements, documents, instruments and writings, on behalf of, and in the name of, the Mastermind Entities in order to facilitate the performance of any of the Mastermind Entities’ powers or obligations, including, without limitation, under the APA and the Transactions (including any post-closing matters) or any Order of this Court, and to carry out the

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Monitor's duties under this Order or any other Order of this Court in these CCAA proceedings;

- (b) execute administrative filings as may be required on behalf of the Mastermind Entities;
- (c) exercise any powers which may be properly exercised by a board of directors of the Mastermind Entities;
- (d) conduct, supervise and direct the continuation or commencement of any process or effort to collect or recover any Property (as defined in the Amended and Restated Initial Order) or other assets of the Mastermind Entities (including any accounts receivable or cash) and to sell or dispose of such Property or other assets in accordance with the Orders of this Court in these CCAA proceedings;
- (e) meet and consult with current or former management of (i) the Mastermind Entities and/or their affiliates or (ii) the Buyer and its affiliates, or any of their respective advisors, with respect to the carrying out of its powers and obligations under this Order or any other Order of this Court in these CCAA proceedings;
- (f) engage, retain, or terminate or cause the Mastermind Entities to engage, retain or terminate the services of any officer, employee, consultant, agent, representative, advisor, or other persons or entities, as the Monitor deems necessary or appropriate to assist with the exercise of the Monitor's powers and duties, including such powers and duties as enhanced pursuant to this Order. For greater certainty, any such officer, employee, consultant, agent, representative, advisor, or other persons or entities engaged or retained pursuant to this paragraph 3(f) shall

thereafter be deemed to be Assistants under the Amended and Restated Initial Order;

- (g) perform or cause the Mastermind Entities to perform such other functions or duties, and enter into or cause the Mastermind Entities to enter into any agreements, disclaim or terminate any agreements or incur any obligations, as the Monitor considers necessary or desirable in order to facilitate or assist the winding-down or liquidation of the Mastermind Entities, the realization and/or sale of all of the Property not transferred pursuant to the AVO, the distribution of any net proceeds of such Property and/or the Transactions, or any other related activities, including, without limitation, in connection with (i) developing and conducting a process for the solicitation, determination and resolution of claims against the Mastermind Entities and their present and former directors and officers, and (ii) terminating these CCAA proceedings;
- (h) exercise any shareholder, partnership, joint venture or other rights of the Mastermind Entities;
- (i) initiate, prosecute, and/or continue the prosecution of any and all proceedings and to defend all proceedings now pending or hereafter instituted with respect to the Mastermind Entities or the Property;
- (j) have access to all books and records that are the Property of the Mastermind Entities or that are in the Mastermind Entities' possession or control and the same access as the Mastermind Entities have to any books and records no longer in the Mastermind Entities' control or possession (collectively, the "**Books and Records**");

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- (k) engage, deal, communicate, negotiate, agree and settle with any creditor or other stakeholder of the Mastermind Entities (including, without limitation, any governmental authority) in the name of or on behalf of the Mastermind Entities;
- (l) claim or cause the Mastermind Entities to claim any and all insurance proceeds or refunds or tax refunds to which either of the Mastermind Entities is entitled that were not transferred pursuant to the AVO;
- (m) act as an authorized representative of the Mastermind Entities in respect of dealings with any taxing or regulatory authority, and the Monitor shall hereby be entitled to execute any appointment or authorization form on behalf of the Mastermind Entities that a taxing or regulatory authority may require in order to confirm the Monitor's appointment as an authorized representative for such purposes;
- (n) consult with any taxing or regulatory authority with respect to any issues arising in respect of these CCAA proceedings;
- (o) file, or take such actions necessary for the preparation and filing of, on behalf of and in the name of the Mastermind Entities, (i) any tax returns, and (ii) the Mastermind Entities' employee-related remittances, T4 statements and records of employments for the Mastermind Entities' former employees, in either case, based solely upon the information in the Books and Records and on the basis that the Monitor shall incur no liability or obligation to any person with respect to such returns, remittances, statements, records or other documents;
- (p) sign documentation or take other steps as necessary to cause or implement the dissolution or winding-up of the Mastermind Entities;

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- (q) assign the Mastermind Entities, or cause the Mastermind Entities to be assigned into bankruptcy and to take any steps incidental thereto, and that A&M is authorized and empowered, but not obligated, to act as the licensed insolvency trustee in bankruptcy of each of the Mastermind Entities;
- (r) apply to this Court for advice and directions or any further Orders necessary or advisable to carry out the Monitor's powers and duties under this Order or any other Order of this Court granted in these CCAA proceedings; and
- (s) take any steps reasonably incidental to the exercise by the Monitor of the powers listed above or the performance of any statutory obligations.

4. **THIS COURT ORDERS** that, upon the delivery of the Monitor's Certificate, the banks and/or financial institutions which maintain the Mastermind Entities' central cash management system, as modified by subsection 2.1(q) of the APA (the "**Cash Management System**") are directed to recognize and permit the Monitor and its representatives to complete any and all transactions on behalf of the Mastermind Entities in connection with such Cash Management System and for such purpose, the Monitor and its representatives are empowered and shall be permitted to execute documents for or on behalf of and in the name of the Mastermind Entities and shall be empowered and permitted to add and remove persons having signing authority with respect to the Cash Management System. The financial institutions maintaining such Cash Management System shall not be under any obligation whatsoever to inquire into the propriety, validity or legality of any transfer, payment, collection or other action taken in accordance with the instructions of the Monitor for and on behalf of the Mastermind Entities and/or as to the use or application of funds transferred, paid, collected or otherwise dealt with in accordance with such instructions and such financial institutions shall be authorized to act in

accordance with and in reliance upon such instructions without any liability in respect thereof to any person.

5. **THIS COURT ORDERS** that, notwithstanding anything contained in this Order, the Monitor is not and shall not be or be deemed to be a director, officer or employee of the Mastermind Entities.

6. **THIS COURT ORDERS** that, without limiting, and subject to, the provisions of the Amended and Restated Initial Order and the AVO, the Mastermind Entities shall remain in possession and control of the Property and Business.

7. **THIS COURT ORDERS** that the Monitor shall not be liable for any employee-related liabilities of the Mastermind Entities, including, without limitation, any successor employer liabilities as provided for in subsection 11.8(1) of the CCAA. Nothing in this Order shall, in and of itself, cause the Monitor to be liable for any employee related liabilities of the Mastermind Entities, including, without limitation, wages, severance pay, termination pay, vacation pay, and pension or benefit amounts.

8. **THIS COURT ORDERS** that, in addition to the rights and protections afforded to the Monitor under the CCAA, as an officer of this Court or otherwise at law, the Monitor and its legal counsel shall continue to have the benefit of all of the indemnities, charges, protections and priorities as set out in the Amended and Restated Initial Order and any other Order of this Court granted in these CCAA proceedings and all such indemnities, charges, protections and priorities shall apply and extend to the Monitor in carrying out the provisions of this Order and exercising any powers granted to it hereunder. Without limiting the generality of the foregoing, in exercising any powers granted to it hereunder: (i) the Monitor shall not be deemed to have taken or maintained possession or control of the Business or Property, or any part of either of the foregoing; (ii) the Monitor shall be entitled to rely on the Books and Records of the Mastermind

Entities without independent investigation; and (iii) the Monitor shall incur no liability or obligation as a result of exercising any powers granted to it hereunder, save and except for any gross negligence or wilful misconduct on its part.

9. **THIS COURT ORDERS** that nothing in this Order shall constitute or be deemed to constitute the Monitor as a receiver, assignee, liquidator, administrator, receiver-manager, agent of the creditors, or legal representative of the Mastermind Entities or the Property within the meaning of any applicable legislation.

10. **THIS COURT ORDERS** that the powers and authority granted to the Monitor by virtue of this Order shall, if exercised in any case, be paramount to the power and authority of the Mastermind Entities with respect to such matters and, in the event of a conflict between the terms of this Order and those of the Amended and Restated Initial Order or any other Order of this Court granted in these CCAA proceedings, the provisions of this Order shall govern.

DISTRIBUTIONS

11. **THIS COURT ORDERS** that Mastermind LP, following the delivery of the Monitor's Certificate in accordance with the AVO and APA, shall be hereby authorized and directed, without further Order of the Court, to distribute to the Canadian Imperial Bank of Commerce (the "**Agent**") any amounts required to satisfy all obligations owing under the CIBC Credit Agreement and the forbearance agreement dated December 1, 2023 between the Mastermind Entities and the Agent (the "**Forbearance Agreement**"), which amounts shall be evidenced in a written payout letter from the Agent and delivered in accordance with the APA, and such distribution(s) shall be free and clear of all Claims (including Encumbrances and claims that may arise in connection with the APA), and upon such payment, all commitments to make loans or otherwise extend credit to the Mastermind Entities under the CIBC Credit Agreement or the Forbearance Agreement shall terminate.

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12. **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 any of the Mastermind Entities and any bankruptcy order issued pursuant to any such applications; or
- (c) any assignment in bankruptcy made in respect of any of the Mastermind Entities;

the distribution(s) permitted by paragraph 11 above shall be binding on any trustee in bankruptcy or receiver that may be appointed in respect of any of the Mastermind Entities and shall not be void or voidable by creditors of any of the Mastermind Entities, nor shall it constitute nor be deemed to be a fraudulent preference, assignment, fraudulent conveyance, transfer at 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.

TERMINATION OF THE DIP CHARGE AND THE KERP CHARGE

13. **THIS COURT ORDERS** that, upon the payment contemplated in paragraph 11 being made, the DIP Charge and the KERP Charge (each as defined in the Amended and Restated Initial Order) are hereby terminated, released and discharged without any further act or formality.

14. **THIS COURT ORDERS** that, for greater certainty, all Claims and Encumbrances shall continue to attach to the net proceeds from the sale of the Purchased Assets in accordance with section 7 of the AVO, other than the DIP Charge and the KERP Charge.

COOPERATION WITH THE MONITOR

15. **THIS COURT ORDERS** that the Buyer, the Mastermind Entities and each of their respective advisors, current and former officers, directors, employees, agents and representatives shall co-operate with the Monitor in the exercise of its powers pursuant to this Order or any other Order of this Court granted in these CCAA proceedings, and shall provide the Monitor and the Mastermind Entities with such assistance as the Monitor or the Mastermind Entities may request from time to time to enable the Monitor to carry out and discharge its powers and duties set out in this Order or any other Order of this Court granted in these CCAA proceedings; provided, however, that in the case of the Mastermind Entities' former employees that are, at the time of any such requests for assistance or information by the Mastermind Entities or the Monitor, current employees of the Buyer, subject to further order of this Court, such co-operation and requests will be limited to reasonable requests for information or assistance that will not reasonably be expected to materially interfere with the day-to-day duties or activities of such employee for the Buyer, shall not cause or potentially cause liability to the Buyer (including in respect of any indemnification of or responsibility for the employees in question) and shall be at the Mastermind Entities' sole expense.

EXTENSION OF STAY OF PROCEEDINGS

16. **THIS COURT ORDERS** that the Stay Period (as defined in the Amended and Restated Initial Order) is hereby extended until and including April 30, 2024, or such later date as this Court may order.

WAGE EARNER PROTECTION PROGRAM ACT

17. **THIS COURT ORDERS AND DECLARES** that pursuant to subsections 5(1)(b)(iv) and 5(5) of the *Wage Earner Protection Program Act* (Canada), S.C. 2005, c. 47, s. 1 ("**WEPPA**"),

Mastermind LP meets the criteria prescribed by section 3.2 of the *Wage Earner Protection Program Regulations*, SOR/2008-222 and Mastermind LP's former employees are eligible to receive payments under and in accordance with WEPPA following the termination of their employment.

STYLE OF CAUSE

18. **THIS COURT ORDERS** that upon the official change to the legal names of the Mastermind Entities that is to occur in accordance with the AVO, the name of the Applicant in the within title of proceedings shall be deleted and replaced with the new legal name of the Applicant, and any document filed thereafter in these proceedings (other than the Monitor's Certificate) shall be filed using such revised title of proceedings:

IN THE MATTER OF THE COMPANIES' CREDITORS
ARRANGEMENT ACT, R.S.C. 1985, c. C-36, AS AMENDED

AND IN THE MATTER OF A PLAN OF COMPROMISE OR
ARRANGEMENT OF OLD MM GP INC.

GENERAL

19. **THIS COURT ORDERS** that the Applicant, Buyer or the Monitor may apply to the Court as necessary to seek further orders and directions to give effect to this Order.

20. **THIS COURT ORDERS** that this Order shall have full force and effect in all provinces and territories in Canada.

21. **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 Mastermind Entities, the Monitor and their respective 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 Mastermind Entities and to the Monitor, as an officer of this Court, as may be necessary or desirable to give effect to this Order, to grant representative status to the Monitor in any foreign proceeding, or to assist the Mastermind Entities and the Monitor and their respective agents in carrying out the terms of this Order.

22. **THIS COURT ORDERS** that, except as may be necessary to give effect to this Order, the Amended and Restated Initial Order and AVO remain in full force and effect and in the event of a conflict between the terms of this Order and those of the Amended and Restated Initial Order and AVO, the provisions of this Order shall govern.

23. **THIS COURT ORDERS** that, unless otherwise set out herein, this Order and all of its provisions are effective as of 12:01 a.m (Toronto time) on the date of this Order.

 Digitally signed
by Jana Steele
Date:
2024.01.12
15:49:20-05:00

IN THE MATTER OF THE COMPANIES' CREDITORS ARRANGEMENT ACT, R.S.C. 1985, c. C-36, AS AMENDED
AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF MASTERMIND GP INC.

Applicant

Court File No. CV-23-00710259-00CL

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

PROCEEDING COMMENCED AT
TORONTO

ANCILLARY ORDER

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