



Court File No. CV15-10920-00CL

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

THE HONOURABLE REGIONAL )  
SENIOR JUSTICE MORAWETZ )  
)

WEDNESDAY, THE 29TH  
DAY OF JULY, 2015

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 COMARK INC.

Applicant

**APPROVAL AND VESTING ORDER**

THIS MOTION, made by Comark Inc. (the "**Applicant**"), pursuant to the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the "**CCAA**") for an Order approving the sale transaction (the "**Transaction**") contemplated by an agreement of purchase and sale (the "**Sale Agreement**") between the Applicant and Pacific West Commercial Corporation and its permitted assignees (collectively, the "**Purchaser**") dated July 16, 2015 and appended to the Motion Record of the Applicant and vesting in the Purchaser the Applicant's right, title and interest in and to the assets described in the Sale Agreement (the "**Purchased Assets**"), was heard this day at 330 University Avenue, Toronto, Ontario.

ON READING the Affidavit of Neville Lewis sworn July 20, 2015, the Fourth Report of Alvarez & Marsal Canada Inc., in its capacity as court-appointed monitor of the Applicant (the "**Monitor**") dated July 23, 2015 and on hearing the submissions of counsel for the Applicant, the Purchaser, Salus Capital Partners, LLC, the Monitor and such other counsel as were present and on being advised that the Service List was served with the Motion Record herein;

## SERVICE AND DEFINITIONS

1. THIS COURT ORDERS that the time for service of the Notice of Motion and the 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 any capitalized term used and not defined herein shall have the meaning ascribed thereto in the Sale Agreement.

## TRANSACTION

3. THIS COURT ORDERS AND DECLARES that the Transaction is hereby approved and ratified, and that the execution of the Sale Agreement by the Applicant is hereby authorized, approved and ratified, with such minor amendments as the Applicant, in consultation with the Monitor and the Purchaser may agree to in writing. The Applicant 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 in accordance with the terms of the Sale Agreement, including for the conveyance, assignment and transfer by the Applicant of its right, title and interest in and to the Purchased Assets to the Purchaser.
4. THIS COURT ORDERS that on Closing, the Monitor shall hold back from the Closing Payment, an amount equal to \$5 million (the "**Holdback Amount**"), such amount to be held by the Monitor in trust and dealt with in accordance with this paragraph 4 as follows:
  - (a) in the event that the Working Capital is less than the Estimated Working Capital, as determined pursuant to and in accordance with section 3.5(h) of the Sale Agreement, the Monitor shall, on behalf of the Vendor, wire transfer the amount from the balance of the Holdback Amount (as may be reduced pursuant to subparagraph 4(b)) that is the lesser of: (i) the amount by which the Working Capital is less than the Estimated Working Capital; and (ii) the balance of the Holdback Amount, to the Purchaser within two (2) Business Days after the Settlement Date and following such transfer, the Holdback Amount shall be reduced accordingly and the balance, if any, shall be held by the Monitor in trust and dealt with in accordance with this paragraph 4; and

- (b) the Monitor shall, on behalf of the Vendor, wire transfer the amount from the balance of the Holdback Amount (as may be reduced pursuant to subparagraph 4(a)) that is the lesser of (i) the Tier B Lease Adjustment Amount, if any; and (ii) the balance of the Holdback Amount, to the Purchaser by wire transfer of immediately available funds to an account specified by the Purchaser within two (2) Business Days of the Tier B Lease Deadline and following such transfer, the Holdback Amount shall be reduced accordingly and the balance, if any, shall be held by the Monitor in trust and dealt with in accordance with this paragraph 4,

within two (2) Business Days after the Settlement Date, or the Tier B Lease Deadline, whichever is later, the Monitor may remit the remainder of the Holdback Amount, if any, to the Vendor.

5. THIS COURT ORDERS that the Monitor shall be authorized to take such additional steps in furtherance of its responsibilities under the Sale Agreement.

6. THIS COURT ORDERS AND DECLARES that:

- (a) with respect to the Purchased Assets, other than the Leases (which for greater certainty do not include any ~~Contract~~ excluded from the Sale Agreement in accordance with Section 2.9 thereof) ~~other than the Leases~~, upon the delivery of a certificate of the Monitor to the Purchaser substantially in the form attached as Schedule A hereto (the "**Monitor's Certificate**") all of the Applicant's right, title and interest in and to such Purchased Assets shall vest absolutely in the Purchaser, and
- (b) with respect to the Leases forming part of the Purchased Assets, upon the assignment of such Leases to the Purchaser either (i) in accordance with the terms of such Leases or as may otherwise be agreed between the Purchaser and the relevant landlords, or (ii) by order of the Court pursuant to section 11.3 of the CCAA, all of the Applicant's right, title and interest in and to such Leases shall be assigned absolutely to the Purchaser;

in each case 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:

- (A) the Administration Charge, the KERP Charge, the Directors’ Charge, the DIP Lender’s Charge, the Bridging Charge (as such terms are defined in the Amended and Restated Initial Order dated April 21, 2015, as amended by Order dated June 1, 2015);
- (B) all charges, security interests or claims evidenced by registrations pursuant to the *Personal Property Security Act* (Ontario), the *Alberta Personal Property Security Act*, the *British Columbia Personal Property Security Act*, the *Personal Property Security Act* (Saskatchewan), the *Personal Property Security Act* (Manitoba), the Register of Personal and Movable Rights (Quebec) or any other personal property registry system; and;
- (C) those Claims under the heading “Encumbrances to be Expunged/Deleted on Schedule “B” hereto.

(all of which are collectively referred to as the “**Encumbrances**”) other than any personal property leases and those Permitted Encumbrances listed on Schedule “C” hereto and, for greater certainty, this Court orders that all of the Claims and Encumbrances affecting or relating to the Purchased Assets other than the Permitted Encumbrances are hereby expunged and discharged as against the Purchased Assets, other than any registrations made at the applicable land registry of the Leases forming part of the Purchased Assets and any memorials of lease, summaries of lease, notices of lease, assignments of lease and any amendments or other registrations pertaining to the Leases forming part of the Purchased Assets, provided however that, except as may otherwise be agreed to by the applicable landlord to such Lease (a “**Landlord**”) and the Purchaser, nothing herein shall affect the rights and remedies of such Landlord against the Purchaser that may exist or arise under or in respect of any Lease that is ultimately assigned to the Purchaser in connection with the Transaction.

7. THIS COURT ORDERS that notwithstanding anything contained in this Order, nothing shall derogate from the obligations of the Purchaser to assume the Assumed Liabilities and to perform its obligations under the Assigned Contracts, as set out in the Sale Agreement.

8. THIS COURT ORDERS that: (a) nothing in this Order shall amend or vary, or be deemed to amend or vary, the terms of a Lease; and (b) none of the Leases shall be transferred conveyed, assigned or vested in the Assignee by operation of this Order.

9. THIS COURT ORDERS that upon the registration in the Canadian Intellectual Property Office of a certified copy of this Order, the applicable Registrar is hereby directed to transfer all Applicant's right, title and interest in and to the Purchased Assets that is Intellectual Property as described in the Sale Agreement, including the Intellectual Property listed on Schedule 1.1(d) to the Purchaser, free and clear of and from any and all Claims.

10. THIS COURT ORDERS that upon the registration in the applicable land registry office of a certified copy of this Order in the manner prescribed by the applicable land registry office, the applicable Land Registrar is hereby directed to specifically discharge, cancel, delete and expunge from title to the applicable real or immovable property described in Schedule "B" all of the Encumbrances listed in Schedule "B" hereto.

11. THIS COURT ORDERS that for the purposes of determining the nature and priority of Claims, the net proceeds from the sale of the Purchased Assets shall stand in the place and stead of the Purchased Assets, and that from and after the delivery of the Monitor's Certificate all Claims and Encumbrances shall attach to the net proceeds from the sale of the Purchased Assets with the same priority as they had with respect to the Purchased Assets immediately prior to the sale, as if the Purchased 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.

12. THIS COURT ORDERS THIS COURT ORDERS that, pursuant to clause 7(3)(c) of the *Canada Personal Information Protection and Electronic Documents Act*, and any similar Provincial Legislation (the "**Privacy Legislation**"), the Applicant is authorized and permitted to disclose and transfer to the Purchaser all human resources and payroll information and any customer information in the Applicant's records pertaining to the Applicant's past and current employees and customers. The Purchaser shall be entitled to use the personal information provided to it in accordance with the Privacy Legislation. The Purchaser shall maintain and protect the privacy of such information and shall be entitled to use the personal information provided to it in a manner which is in all material respects identical to the prior use of such information by the Applicant.

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

14. THIS COURT ORDERS that the Monitor may rely on written notice from the Applicant and the Purchaser regarding fulfillment of conditions to closing under the Sale Agreement and shall incur no liability with respect to the delivery of the Monitor's Certificate, save and except for any gross negligence or wilful misconduct on its part.

15. 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 Applicant and any bankruptcy order issued pursuant to any such applications; and
- (c) any assignment in bankruptcy made in respect of the Applicant;

the vesting of the Purchased Assets in the Purchaser pursuant to this Order shall be binding on any trustee in bankruptcy that may be appointed in respect of the Applicant and shall not be void or voidable by creditors of the Applicant, 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.

THIS COURT ORDERS AND DECLARES that the Transaction is exempt from the application of the *Bulk Sales Act* (Ontario), the *Retail Sales Tax Act* (Ontario) and any legislation of similar effect in any other province of Canada in which all or any part of the Purchased Assets are located.

16. THIS COURT ORDERS that: (i) on or after the Closing Date, the Applicant is hereby permitted to execute and file articles of amendment or such other documents or instruments as may be required to change its corporate and business names in accordance with the Sale Agreement, and such articles, documents or other instruments shall be deemed to be duly authorized, valid and effective and shall be accepted by the applicable Governmental Authority

without the requirement (if any) of obtaining director or shareholder approval pursuant to any federal or provincial legislation.

**SEALING**

17. THIS COURT ORDERS that an unredacted Sale Agreement be sealed, kept confidential and not form part of the public record, but rather shall be placed, separate and apart from all other contents of the Court file, in a sealed envelope attached to a notice that sets out the title of these proceedings and a statement that the contents are subject to a sealing order and shall only be opened upon further Order of the Court.

*Handwritten note:*  
Confidential  
Appendices to the  
Fourth report of  
the Monitor  
MB

**GENERAL PROVISIONS**

18. 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 Applicant 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 Applicant and to the Monitor, as an officer of this Court, as may be necessary or desirable to give effect to this Order or to assist the Applicant, the Monitor and its agents in carrying out the terms of this Order.

*Handwritten signature:*  
A. H. Jones PST

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

JUL 29 2015

MB

**SCHEDULE A – FORM OF MONITOR’S CERTIFICATE**

Court File No. CV15-10920-00CL

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

THE HONOURABLE REGIONAL )  
SENIOR JUSTICE MORAWETZ )  
)  
●, THE ●  
DAY OF JULY, 2015

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ARRANGEMENT ACT*, R.S.C. 1985, c. C-36, AS AMENDED

AND IN THE MATTER OF A PLAN OF COMPROMISE OR  
ARRANGEMENT OF COMARK INC.

Applicant

**RECITALS**

- (A) All undefined terms in this Monitor’s Certificate have the meanings ascribed to them in the Order of the Court dated July ●, 2015 (the “**Approval Order**”) approving the Sale Agreement entered into among Comark Inc. (“**Comark**”) and Pacific West Commercial Corporation and its permitted assignees (the “**Purchaser**”) dated July 16, 2015 (as amended from time to time, the “**Sale Agreement**”).
- (B) Pursuant to the Approval Order, the Court approved the Sale Agreement and provided for the vesting in and sale, assignment and transfer to the Purchaser of Comark’s right, title and interest in and to the Purchased Assets, which vesting, sale, assignment and transfer is to be effective with respect to the Purchased Assets upon the delivery by the Monitor to the Purchaser and Comark of a certificate confirming: (i) the conditions to Closing as set



out the Sale Agreement have been satisfied or waived by the Purchaser and Comark, as applicable; and (ii) the Transaction has been completed to the satisfaction of the Monitor.

(C) As of the date hereof, Comark and the Purchaser, with the consent of the Monitor, have agreed to effect the sale, assignment and transfer of the Purchased Assets in accordance with the provisions of the Sale Agreement and the Approval Order.

THE MONITOR CERTIFIES the following:

1. The conditions to Closing with respect to the Purchased Assets as set out in Articles 7 and 8 of the Sale Agreement have been satisfied or waived by the Purchaser and Comark, as applicable; and

2. The Transaction with respect to the Purchased Assets has been completed to the satisfaction of the Monitor.

This Monitor's Certificate was delivered by the Monitor at \_\_\_\_\_ on \_\_\_\_\_, 2015.

**ALVAREZ & MARSAL CANADA INC.**, in its capacity as Court-appointed Monitor of Comark Inc. and not in its personal or corporate capacity

Per: \_\_\_\_\_  
Name: ●  
Title: ●

**SCHEDULE "B"**

<b>Province</b>	<b>Land Registry Office</b>	<b>Legal Description</b>	<b>Encumbrances to be Expunged/ Deleted</b>
Georgian Mall, Ontario	Simcoe Land Registry Office (No. 51)	PIN: 58928-1969 (LT) PT LT 19 CON 4 VESPRA PTS 4, 5, 6 & 13 51R12305; BARRIE  PIN: 58928-2249 (LT) PT LT 19 CON 4 VESPRA PTS 7 & 9 51R12305; BARRIE	Construction Lien registered as Instrument No. SC1200209 on March 26, 2015
Vaughan Mills, Ontario	York Land Registry Office (No. 65)	PIN: 03280-0533 (LT) BLK 1, PL 65M3696, EXCEPT PTS 1 TO 29 INCL., 42 & 43, 65R26825, PTS 71, 72, 73, 74, 75, 78, 79, 80, 99, 100, 101 & 105, 65R27637, PTS 1 TO 8 INCL., 65R28663 & EXCEPT PTS 9, 10, 11, 12, 13, 24, 25, 30, 35, 36, 37, 38 & 39, 65R29976 , VAUGHAN	Construction Lien registered as Instrument No. YR2276519 on April 9, 2015  Certificate of Action registered as Instrument No. YR2302036 on June 8, 2015

## SCHEDULE "C" – PERMITTED ENCUMBRANCES

**"Permitted Encumbrances"** means, collectively: (a) any Encumbrances (as defined in the Sale Agreement) encumbering the freehold or other ownership interest in the Leased Real Property (as defined in the Sale Agreement) or any other landlord's interest in the Leased Real Property (b) Encumbrances resulting from the Purchaser's actions or omissions; and (c) the items identified in Schedule "1.1(g)" of the Sale Agreement

**IN THE MATTER OF 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 COMARK INC.**

**APPLICANT**

Court File No.

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
(COMMERCIAL LIST)**

**PROCEEDING COMMENCED AT  
TORONTO**

**APPROVAL AND VESTING ORDER**

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