

COURT FILE NUMBER

QB No. 1884 of 2019

COURT OF QUEEN'S BENCH FOR SASKATCHEWAN

JUDICIAL CENTRE

SASKATOON

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

AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF 101098672
SASKATCHEWAN LTD., MORRIS INDUSTRIES LTD., MORRIS SALES AND SERVICE LTD.,
CONTOUR REALTY INC., and MORRIS INDUSTRIES (USA) INC.

ORDER

(Distribution and Partial Termination of Proceedings)

Before the Honourable Mr. Justice R.W. Elson in Chambers the 26th day of March, 2021.

Upon the application by Jeffrey M. Lee, Q.C. and Paul Olfert, counsel on behalf of Alvarez & Marsal Canada Inc. in its capacity as the Court-appointed monitor (the "**Monitor**") with respect to 101098672 Saskatchewan Ltd., Morris Industries Ltd. ("**MIL**"), Morris Sales and Service Ltd., Contour Realty Inc., and Morris Industries (USA) Inc. (collectively, the "**Morris Group**" or the "**Debtors**"), and upon reading the Amended and Restated Initial Order granted in these proceedings by the Honourable Mr. Justice R.S. Smith on January 16, 2020 (the "**ARI Order**"), the Notice of Application dated March 23, 2021, the Sixteenth Report of the Monitor dated March 23, 2021, (the "**Report**"), and a proposed draft Order, all filed; and the pleadings and proceedings herein;

The Court Orders:

1. Service of notice of this application and supporting materials is hereby declared to be good, timely and sufficient, and no other person is required to have been served with notice of this application, and time for service of this application is abridged to that time actually given.
2. The professional fees and disbursements of the Monitor for the period from February 1, 2021 to February 28, 2021 (as set out in paragraph 43 of the Report), are hereby approved without the necessity of a formal passing of its accounts.
3. The professional fees and disbursements of the Monitor's legal counsel, MLT Aikins LLP, for the period from February 1, 2021 to February 28, 2021 (as set out in paragraph 44 of the Report), are hereby approved without the necessity of a formal assessment of its accounts.
- 3A. The Forecast Fees and Costs of the Monitor and its legal counsel for the period from March 1, 2021 to March 26, 2021 (as set out in paragraph 49 of the Report), are hereby approved without the necessity of a formal assessment of the accounts associated with same.
4. All activities, actions and proposed courses of action of the Monitor (collectively, the "**Actions of the Monitor**") to date in relation to the discharge of its duties and mandate as Monitor of the Property pursuant to the Orders of this Honourable Court in these proceedings (collectively, the "**Monitor's Mandate**") including, without limitation, the Order (Enhancement of Monitor's Powers) granted by the Honourable Mr. Justice R.W. Elson on February 18, 2020 (the "**EMP Order**"), as such Actions of the Monitor are more particularly described in the Report and in the fifteen Monitor's reports previously filed in the CCAA Proceedings (as defined below), as well as the statement of receipts and disbursements contained in the Report, shall be and are hereby approved and confirmed.

5. From the monies on hand in the Monitor's accounts pertaining to these proceedings under the *Companies' Creditors' Arrangement Act*, RSC 1985, c C-36 (the "**CCAA Proceedings**"), the Monitor is authorized to maintain a holdback (the "**Holdback**") of such amount as the Monitor determines (in the exercise of its professional judgment) shall be required:
- (a) to pay further anticipated fees and disbursements of the Monitor and its legal counsel to the conclusion of the CCAA Proceedings (the "**Subject Fees and Disbursements**");
 - (b) to pay such amounts as the Monitor or the Receiver (as defined below) may be required to pay in order to satisfy the Directors' Charge and the Administration Charge (as each of those terms is defined in the ARI Order); and
 - (c) to pay such amounts (the "**PMSI Creditor Payments**") as the Monitor or the Receiver (as defined below) may be required to pay to:
 - i. secured creditors claiming a purchase money security interest in; or
 - ii. lessors of;

assets owned by the Debtors which were disposed of during the CCAA Proceedings (including, without limitation, two Kubota units and four units financed by DLL Financial which were sold through the Ritchie Bros. auction previously approved in these CCAA Proceedings), less associated costs to be allocated thereto).
6. Subsequent to implementing the Holdback, the Monitor shall be at liberty to apply from time to time funds from the Holdback against the Subject Fees and Disbursements (without the requirement of taxation or passing of accounts).
7. Subsequent to implementing the Holdback, the Monitor is authorized and directed to make the following distributions:
- (a) to Bank of Montreal, an amount of up to \$933,477.74 (the "**BMO Distribution**").
8. Upon the Monitor filing with the Court and serving upon the parties on the Service List in the CCAA Proceedings a Certificate substantially in accordance with the Certificate attached as Schedule "A" hereto certifying that the Monitor has made payment of the Subject Fees and Disbursements and the BMO Distribution, the Monitor shall (without further Order of the Court) be discharged as Monitor in respect of 101098672 Saskatchewan Ltd., Morris Industries Ltd., Morris Sales and Service Ltd., and Morris Industries (USA) Inc., provided that:
- (a) for greater certainty, the Monitor is not discharged as Monitor in respect of Contour Realty Inc.; and
 - (b) notwithstanding its discharge herein, the Monitor shall continue to have the benefit of the provisions of all Orders made in the CCAA Proceedings, including all approvals, protections and stays of proceedings in favour of Alvarez & Marsal Canada Inc. in its capacity as Monitor.
9. By means of the Receivership Order of the Honourable Mr. Justice R.W. Elson granted in the CCAA Proceedings on March 26, 2021 (the "**Receivership Order**"), Alvarez & Marsal Canada Inc. was appointed receiver (the "**Receiver**") of the property, assets and undertakings of 101098672 Saskatchewan Ltd., Morris Industries Ltd., Morris Sales and

Service Ltd., and Morris Industries (USA) Inc. (collectively, the “**Receivership Entities**”). To the full extent possible, this Order and the Receivership Order shall be read, interpreted, administered and implemented in a harmonious fashion. In the event of conflict or incongruity between this Order and the Receivership Order, the Receiver and any other interested party shall have leave to apply to this Court for advice and directions of the Court.

10. For greater clarity, the following tasks which would otherwise ordinarily be carried out by the Monitor within the CCAA Proceedings shall be taken up and carried out by the Receiver pursuant to the Receivership Order, namely:
 - (a) making the PMSI Creditor Payments;
 - (b) receiving, administering and distributing any refunds of Goods and Services Tax under the *Excise Tax Act* or other payments from the Government of Canada to which the Receivership Entities become entitled or which are paid to the order of the Receivership Entities;
 - (c) managing, administering and providing for the payment of all amounts subject to the Directors’ Charge and the Administration Charge;
 - (d) assisting in the review of raw material commitments made by RW Roads Solutions Limited Partnership and SuperiorFarms Solutions Limited Partnership as it relates to purchase orders made on behalf of MIL during the CCAA Proceedings (including assisting the escrow agent in its review of funds collected by the Australian Dealer in trust and distributing those funds in accordance with the Escrow Agreement entered into between BMO, MLTA, MEL (the purchaser) and the Monitor dated March 18, 2021);
 - (e) paying out remaining outstanding operating and productions costs incurred during the CCAA Proceedings that are not being assumed by MEL as part of the MEL Transaction;
 - (f) verifying certain working capital and other financial commitments related to the MEL Transaction, which may take up to 90 days after the Closing Date of the MEL Transaction to finalize; and
 - (g) filing with the Court a Report containing the Receiver’s recommendations regarding a methodology for the proposed allocation of costs of the CCAA Proceedings as between the various secured creditors of the Morris Group and seeking approval from this Honourable Court of such proposed allocation of costs.
11. It is hereby adjudged and declared that, based upon the evidence that is currently before this Honourable Court in regard to the Actions of the Monitor:
 - (a) the Monitor has acted honestly and in good faith, and has carried out the Monitor’s Mandate in a commercially reasonable manner;
 - (b) the Monitor has satisfied all of its duties and obligations pursuant to the Monitor’s Mandate;
 - (c) the Monitor shall not be liable for any act or omission arising from, relating to or in connection with its discharge of the Monitor’s Mandate, save and except for any liability arising out of fraud, gross negligence or willful misconduct on the part of the Monitor;

- (d) the Monitor has never had and shall not in the future have any liability in regard to any act or omission of the Debtors, including, without limitation, in relation to the business of the Debtors, payment of and/or accounting for any taxes (including, without limitation, goods and services tax) on revenues earned or any indebtedness or obligations whatsoever or howsoever incurred by the Debtors; and
 - (e) no person shall commence an action or proceeding asserting a claim against the Monitor arising from, relating to or in connection with its discharge of the Monitor's Mandate without first obtaining an Order of this Honourable Court (on notice to the Monitor) granting such person leave to commence such action or proceeding, and any such action or proceeding commenced without such leave being obtained is a nullity.
- 12. Subject to the foregoing, any claims against the Monitor in connection with the Monitor's Mandate are hereby stayed, extinguished and forever barred.
 - 13. Notwithstanding the discharge of the Monitor, the Monitor is hereby granted leave to apply to this Court for such further advice, direction or assistance as may be necessary to give effect to the terms of this Order.
 - 14. This Order shall have full force and effect in all Provinces and Territories in Canada, outside Canada and against all Persons against whom it may be enforceable.
 - 15. 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 Monitor 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 Monitor, as an officer of this Court, as may be necessary or desirable to give effect to this Order or to assist the Monitor and its agents in carrying out the terms of this Order.
 - 16. Service of this Order on any party not attending this application is hereby dispensed with. Parties attending this application shall be served in accordance with the Electronic Case Information and Service Protocol adopted in the ARI Order.
 - 17. The Interim Lender's Charge (as that term is defined in the ARI Order) is hereby terminated, discharged, and vacated in its entirety and is of no further force or effect.
 - 18. The stay of proceedings against 101098672 Saskatchewan Ltd., Morris Industries Ltd., Morris Sales and Service Ltd., and Morris Industries (USA) Inc., and their respective directors and officers, as initially provided for in the ARI Order and as amended from time to time by subsequent Orders of this Court, shall be and is hereby vacated and is of no further force or effect. For greater certainty, nothing in this Order shall affect the continued existence of the stay of proceedings provided for in respect of Contour Realty Inc. and its directors and officers in the ARI Order, as amended from time to time by subsequent Orders of this Court.

Issued at Saskatoon, Saskatchewan, this _____ day of March, 2021.

(Deputy) Local Registrar

CONTACT INFORMATION AND ADDRESS FOR SERVICE:

| | |
|---------------------------|--|
| Name of firm: | MLT Aikins LLP |
| Lawyer in charge of file: | Jeffrey M. Lee, Q.C. and Paul Olfert |
| Address of firm: | Suite 1201, 409 – 3 rd Avenue South, Saskatoon SK S7K 5R5 |
| Telephone number: | 306.975.7100 |
| Email address: | JMLee@mltaikins.com / POlfert@mltaikins.com |

SCHEDULE "A"
FORM OF MONITOR'S CERTIFICATE

COURT FILE NUMBER

QB No. 1884 of 2019

COURT OF QUEEN'S BENCH FOR SASKATCHEWAN

JUDICIAL CENTRE

SASKATOON

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

**AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF 101098672
SASKATCHEWAN LTD., MORRIS INDUSTRIES LTD., MORRIS SALES AND SERVICE LTD.,
CONTOUR REALTY INC., and MORRIS INDUSTRIES (USA) INC.**

MONITOR'S CERTIFICATE

RECITALS

- A. Words and phrases which begin with capital letters but which are not expressly defined herein shall have the respective meanings set out in the Order (Distribution and Partial Termination of Proceedings) of the Honourable Mr. Justice R.W. Elson granted in the CCAA Proceedings on March 26, 2021 (the "**Distribution and Partial Termination of Proceedings Order**").
- B. Pursuant to the Amended and Restated Initial Order of the Honourable Mr. Justice R.S. Smith granted in the CCAA Proceedings on January 16, 2020 (the "**ARI Order**"), Alvarez and Marsal Canada Inc. was appointed monitor (the "**Monitor**") within these proceedings (the "**CCAA Proceedings**") under the *Companies' Creditors Arrangement Act*, RSC 1985, c c-36 (the "**CCAA**") commenced by 101098672 Saskatchewan Ltd., Morris Industries Ltd. ("**MIL**"), Morris Sales and Service Ltd., Contour Realty Inc. ("**Contour**") and Morris Industries (USA) Inc. (collectively, "**Morris Group**");
- C. Pursuant to the Order (Enhancement of Monitor's Powers) of the Honourable Mr. Justice R.W. Elson granted in the CCAA Proceedings on February 18, 2020 (the "**EMP Order**"), the Monitor was empowered to carry out certain powers and to exercise certain rights for and on behalf of Morris Group in the manner more specifically described therein;
- D. Pursuant to the Distribution and Partial Termination of Proceedings Order, the Monitor was authorized and directed to pay the Subject Fees and Disbursements and the BMO Distribution.

THE MONITOR CERTIFIES that it has paid the Subject Fees and Disbursements and the BMO Distribution.

This Certificate was delivered by the Monitor at [Time] on [Date].

**ALVAREZ & MARSAL CANADA INC., in its
capacity as Monitor of the undertaking,
property and assets of Morris Industries Ltd.
and Contour Realty Inc., and not in its
personal capacity.**

Per: _____
Name:
Title: