

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

THE HONOURABLE MR.
JUSTICE MCEWEN

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MONDAY, THE 17th
DAY OF JUNE, 2019



BETWEEN:

CORNER FLAG LLC

Applicant

– and –

ERWIN HYMER GROUP NORTH AMERICA, INC.

Respondent

**APPLICATION UNDER section 243 of the *Bankruptcy and Insolvency Act*,
R.S.C. 1985, c. B-3, as amended, and under section 101 of the *Courts of Justice Act*,
R.S.O. 1990, c. C.43**

**ORDER
(Infinity Approval and Vesting)**

THIS MOTION made by Alvarez & Marsal Canada Inc., in its capacity as the court-appointed receiver and manager (the “**Receiver**”) without security of all of the assets, undertakings and properties of Erwin Hymer Group North America, Inc. (“**EHGNA**” or the “**Debtor**”), for an Order approving the transaction (the “**Infinity Transaction**”) contemplated by the Agreement of Purchase and Sale dated as of June 10, 2019 appended as Appendix “H” to the Receiver’s Second Report (as hereinafter defined) (the “**Infinity APS**”) between the Receiver and Infinity Asset Solutions Inc. (the “**Purchaser**”) and vesting in the Purchaser the Debtor’s right,

title and interest in and to the Purchased Assets (as defined in the Infinity APS) was heard this day at the Court House, 330 University Avenue, Toronto, Ontario.

ON READING the Second Report of the Receiver dated June 10, 2019 (the “**Second Report**”), and on hearing the submissions of counsel for the Receiver, Corner Flag LLC, the Purchaser and such other counsel as were present, no one else appearing although duly served as appears from the Affidavit of Service of Waleed Malik affirmed June 11, 2019 and the Affidavit of Service of Ana Chalupa sworn June 11, 2019, both filed:

SERVICE AND DEFINITIONS

1. **THIS COURT ORDERS** that the timing and method of service of the Notice of Motion and Motion Record be and are hereby abridged and validated, and this motion is properly returnable today.
2. **THIS COURT ORDERS** that any capitalized term used and not defined herein shall have the meaning ascribed thereto in the Infinity APS or the Second Report.

APPROVAL OF INFINITY APS

3. **THIS COURT ORDERS AND DECLARES** that the Infinity Transaction is hereby approved, and the execution of the Infinity APS by the Receiver is hereby authorized and approved, with such minor amendments as the Receiver may deem necessary. The Receiver 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 Infinity Transaction and for the conveyance of the Purchased Assets to the Purchaser.
4. **THIS COURT ORDERS AND DECLARES** that upon the delivery of a Receiver’s certificate to the Purchaser substantially in the form attached as Schedule “A” hereto

(the “**Receiver’s Certificate**”), all of the Debtor’s right, title and interest in and to the Purchased Assets described in the Infinity APS shall vest absolutely in the Purchaser, 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 (including possessory liens), executions, levies, charges, warranties, 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) any encumbrances or charges created by the Order of the Honourable Justice McEwen dated February 15, 2019; and
- (b) 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 the Purchased Assets are hereby expunged and discharged as against such Purchased Assets.

5. **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 (the “**Net Proceeds**”) shall stand in the place and stead of the Purchased Assets, and that from and after the delivery of the Receiver’s Certificate all Claims and Encumbrances shall attach to the Net Proceeds 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.

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

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 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 Debtor and shall not be void or voidable by creditors of the Debtor, 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.

GENERAL

8. **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 Receiver 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 Receiver, as an officer of this Court, as

may be necessary or desirable to give effect to this Order or to assist the Receiver and its agents in carrying out the terms of this Order.

A handwritten signature in black ink, appearing to be 'M. J. T.', written over a horizontal line.

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

JUN 17 2019

PER / PAR: 

Schedule A – Form of Receiver’s Certificate

Court File No. CV-19-614593-00CL

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

B E T W E E N:

CORNER FLAG LLC

Applicant

– and –

ERWIN HYMER GROUP NORTH AMERICA, INC.

Respondent

**APPLICATION UNDER section 243 of the *Bankruptcy and Insolvency Act*,
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RECEIVER’S CERTIFICATE

RECITALS

A. Pursuant to an Order of the Honourable Justice McEwen of the Ontario Superior Court of Justice (Commercial List) (the “**Court**”) dated February 15, 2019, Alvarez & Marsal Canada Inc. was appointed as the receiver (the “**Receiver**”) of all of the assets, undertakings and properties of Erwin Hymer Group North America, Inc. (the “**Debtor**”).

B. Pursuant to an Order of the Court dated June ●, 2019, the Court approved the Agreement of Purchase and Sale dated as of June 10, 2019 (the “**Infinity APS**”) between the Receiver and Infinity Asset Solutions Inc. (the “**Purchaser**”), and provided for the vesting in the Purchaser of the Debtor’s right, title and interest in and to the Purchased Assets (as defined in the Infinity APS), which vesting is to be effective upon the delivery by the Receiver to the Purchaser of a certificate confirming (i) the payment by the Purchaser of the Purchase Price for the Purchased Assets; (ii) that the conditions to Closing as set out in Sections 4.1, 4.2 and 4.3 of the Infinity APS have been

satisfied or waived by the Receiver and the Purchaser; and (iii) the Transaction has been completed to the satisfaction of the Receiver.

C. Unless otherwise indicated herein, terms with initial capitals have the meanings set out in the Infinity APS.

THE RECEIVER CERTIFIES the following:

1. The Purchaser has paid and the Receiver has received the Purchase Price for the Purchased Assets payable on the Closing Date pursuant to the Infinity APS;
2. The conditions to Closing as set out in Sections 4.1, 4.2 and 4.3 of the Infinity APS have been satisfied or waived by the Receiver and the Purchaser, as applicable; and
3. The Transaction has been completed to the satisfaction of the Receiver.

This Certificate was delivered by the Receiver at _____ [TIME] on _____ [DATE].

ALVAREZ & MARSAL CANADA INC., in its capacity as Receiver of the undertaking, property and assets of Erwin Hymer Group North America, Inc., and not in its personal capacity

Per: _____

Name:

Title:

CORNER FLAG LLC
Applicant

and

ERWIN HYMER GROUP NORTH AMERICA, INC.
Respondent

Court File No. CV-19-614593-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

Proceeding commenced at Toronto

ORDER
(Infinity Approval and Vesting)

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