Court File No. CV-20-00649154-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

B E T W E E N:

CLEARFLOW COMMERCIAL FINANCE CORP.

Applicant

- and -

TRIGGER WHOLESALE, INC., THE EN CADRE GROUP INC., MARK GDAK, JAIMEE LYNN GDAK and JAIMAK REAL PROPERTIES INC.

Respondents

APPLICATION UNDER Sections 243(1) and 47(1) of the *Bankruptcy and Insolvency Act*, R.S.C.1985, c. B-3, Section 101 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43 and Rule 40.01 of the *Rules of Civil Procedure*

STATEMENT OF LAW
(Distribution)

Date: November 26, 2021

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STATEMENT OF LAW

I. OVERVIEW

1. As set out in the Notice of Motion dated November 26, 2021, Grant Thornton Limited ("**GTL**") in its capacity as court-appointed receiver (the "**Receive**r") of all of the assets, undertakings and properties of Trigger Wholesale, Inc. ("**Trigger**") and The En Cadre Group Inc. ("**En Cadre**"), (collectively, the "**Debtors**") and certain real property owned by each of Jaimak Real Properties Inc. ("**Jaimak**") or Jaimee Lynn Gdak ("**J. Gdak**"), seeks an order, among other things:

(a) approving the sixth report of the Receiver dated November 26, 2021 (the "**Sixth Report**") and the appendices thereto and the activities of the Receiver described therein;

(b) approving the Receiver's interim statement of receipts and disbursements as at

October 31, 2021;

(c) approving the fees and disbursements of the Receiver for the period August 1, 2021 to October 31, 2021, as set out in the affidavit of Jacob Wiebe, sworn November 26, 2021 (the "**Wiebe Affidavit**");

(d) approving the fees and disbursements of Borden Ladner Gervais LLP ("**BLG**"), legal counsel to the Receiver for the period August 1, 2021 to October 31, 2021, as set out in the affidavit of Christine Mason, sworn November 19, 2021 (the "**Mason Affidavit**");

(e) approving a distribution to Clearflow Commercial Finance Corp. ("**Clearflow**") in the amount of $2,400,000, from the proceeds of the Trigger Real Property (as defined in the Sixth Report);

(f) approving a distribution to Waterloo North Condominium Corporation No. 9 in the amount of $4,058.52, solely from the proceeds arising from the sale of the property located at 265 Old Post Rd, Waterloo, Ontario, in full and final settlement of all claims that Waterloo North Condominium Corporation No. 9 may have against any of the Respondents, or in the within receivership proceedings;

(g) declaring that all of the proceeds realized from the Personal Property Assets (as defined in the Second Report), shall be applied to satisfy the amounts that have been paid, or will be paid, to GTL and BLG, on account of the fees and disbursements of GTL and BLG, as secured by the Receiver's Charge, established in the Appointment Order of Mr. Justice McEwen dated October 22, 2020 (the "**Appointment Order**"); and

(h) approving the settlement of certain claims advanced by J.B. Construction Inc. under the *Construction Act*, R.S.O. 1990, c. C.30, in respect of the supply of services and/or materials to the properties located at 157 Saugeen Beach Road, Port Elgin, Ontario (the "**Saugeen Property**") and 652 Colby Drive, Waterloo, Ontario (the "**Colby Property**").

II. FACTS

2. The facts with respect to this motion are set out in the Sixth Report, as filed with the Court.

3. The capitalized terms used but not otherwise defined herein, have the meanings ascribed thereto in the Sixth Report.

III. THE ISSUES

4. The issues to be considered on this motion are:

   A. Whether the Court should approve the proposed distribution to Clearflow from the proceeds of the Trigger Real Property (the "**ClearFlow Distribution**")?

   B. Whether the Court should approve the proposed allocation of the proceeds derived from the Personal Property Assets, toward the satisfaction of the amounts that have been paid, or will be paid, to GTL and BLG, on account of the fees and disbursements of GTL and BLG, as secured by the Receiver's Charge, established in the Appointment Order?

IV. THE LAW AND ARGUMENT

A. APPROVAL OF THE PROPOSED DISTRIBUTION TO CLEARFLOW

1. Orders granting interim distributions are routinely granted by courts in insolvency proceedings and receiverships.

> ***Re Windsor Machine & Stamping Ltd.*, (2009) 2009 CarswellOnt 4505 (ONSC [Commercial List]) at paras 8 and 13, Tab 1.**
>
> ***Re Abitibibowater Inc.*, (2009) 2009 CarswellQue 14224 (QCSC), at paras 70-75 [Abitibibowater], Tab 2.**

2. In *Re Abitibibowater Inc.*, Justice Gascon considered a number of factors in deciding whether to approve an interim distribution under the *Companies' Creditors Arrangement Act*,

R.S.C., 1985, c. C-36 (the "**CCAA**"), that are equally applicable to a receivership proceeding. These factors include:

(a) whether the payee's security is valid and enforceable;

(b) whether the distribution would result in significant interest savings to the estate; and

(c) whether the distribution will leave the estate with sufficient liquidity.

***Abitibibowater* at para 75, Tab 2.**

3. The application of each these factors to the present case demonstrates that the ClearFlow Distribution should be approved by the Court.

ClearFlow's security is valid and enforceable

4. Pursuant to a general security agreement dated July 3, 2019 (the "**Execution Date**") between Trigger and ClearFlow (the "**Trigger GSA**"), Trigger granted a continuing security interest in favour of ClearFlow in, *inter alia*, "all real and immovable property" of Trigger.

5. Pursuant to paragraph 7 of the March 31, 2021 Order for Directions of Madam Justice Dietrich, the Trigger Real Property is owned by Trigger. As such, the Trigger Real Property forms part of the security granted in favour of ClearFlow under the Trigger GSA.

Order for Directions and Endorsement of the Honourable Madam Justice Dietrich dated March 31, 2021 [March 31, 2021 Order for Directions], Tab 3.

6. Given that the Trigger Real Property was purchased and registered in the name of J. Gdak or Jaimak, as applicable, it was not open to ClearFlow to register the Trigger GSA, or a notice thereof, on title to the Trigger Real Property at any time prior to the March 31, 2021 Order for Directions. Notwithstanding this lack of registration, ClearFlow has a security interest and an equitable mortgage in respect of the Trigger Real Property.

7. In Ontario, no real property legislation requires registration in order to create a valid and enforceable security interest in real property, and there is no requirement to "perfect" a security interest, by registration or otherwise, in real property. While registration is not necessary to

create a valid interest in real property, registered interests generally have priority over unregistered interests. For instance, a registered charge has priority over any unregistered interest in land pursuant to Section 93(3) of the *Land Titles Act* (Ontario) (the "**LTA**"). Furthermore, the priority of registered interests (other than a charge) over unregistered interests is governed by the common law doctrine of actual notice, which denotes that a registered interest has priority over an unregistered interest, unless the registering party had actual notice of the prior unregistered interest.

> ***Land Titles Act, R.S.O. 1990, c. L.5, s. 93(3), Schedule "B" to this Statement of Law.***
>
> ***United Trust Co. v. Dominion Stores Ltd.*, (1977) [1977] 2 SCR 915 at para 77, Tab 4.**
>
> ***Bell Canada Inc. v. White Admiral Ltd.*, 2011 ONSC 5857 at paras 9-10, Tab 5.**

8. Notwithstanding the general priority of registered interests over unregistered interests, the LTA does not give a receiver or trustee in bankruptcy priority over an unregistered interest in real property. As a consequence, a mortgage or charge properly given by a bankrupt prior to bankruptcy, but unregistered, is effective against a receiver or trustee in bankruptcy, even where the receiver or trustee has registered notice of the bankruptcy on title to the property. In *Canadian Engineering & Contracting Co., Re*, the Ontario Court of Justice (General Division) held that the registration of the notice of bankruptcy on title did not give the trustee priority because a trustee can have no higher rights than the bankrupt and the bankrupt's subsequent loss of title could not affect the validity of the transactions and agreements as between a mortgagee and the trustee. Accordingly, an "unregistered" or "equitable" mortgage is effective against a receiver or trustee in bankruptcy.

> ***Canadian Engineering & Contracting Co., Re*, (1994) 1994 CarswellOnt 305 (Ont. Gen. Div.) at paras 15-16, Tab 6.**
>
> ***John Macdonald & Co. v. Tew*, (1914) [1914] O.J. No. 139 (Ont. C.A.) at para 11, Tab 7.**

9. The common law has long recognized "unregistered" or "equitable" mortgages in real property. An equitable mortgage is a type of mortgage that does not involve a transfer of legal title to the mortgagee, but creates in equity a charge upon the property. Such mortgage may be created by (i) the fact that the interest mortgaged is equitable or future; (ii) when a mortgagor

has not executed an instrument sufficient to transfer the legal estate; or (iii) by deposit of title deeds.

> ***Elias Markets Ltd., Re*, (2006) 2006 CarswellOnt 5597 (Ont. C.A.) [Elias] at paras 63 and 66, Tab 8.**

10. In the present case, Trigger's interest in the Trigger Real Property was equitable because Jaimak or J. Gdak, as applicable, held legal title to the Trigger Real Property as constructive trustee for the sole benefit of the creditors of Trigger pursuant to paragraph 8 of the March 31, 2021 Order for Directions. Furthermore, to the extent that the Trigger Real Property was acquired following the Execution Date, Trigger's interest therein was also a future interest.

11. In *Elias Markets Ltd., Re*, the Ontario Court of Appeal described the nature of an equitable mortgage as "the concept [that] seeks to enforce a common intention of the mortgagor and mortgagee to secure property for either a past debt or a future advance […]". Such common intention to create an equitable mortgage may be shown by, *inter alia*, an agreement to give a mortgage or to charge property for a debt.

> ***Elias* at para 65, Tab 8.**

12. In *Funding Network Inc. v. RSR Enterprises Ltd.*, the Alberta Court of Queen's Bench held that a general security agreement, which granted a security interest in all the debtor's present and after-acquired property, including all legal and equitable interest in real property, was sufficient to create an equitable mortgage in the real property owned by the debtor. The Court also stated that a general security agreement does not have to have all the elements of a "legal" mortgage, including the remedies commonly available to mortgagees such as foreclosure, in order to create a valid equitable mortgage over real property:

> … the Respondents are of the view that the GSA should have all of the elements of a "legal" mortgage under the Act. That is not the case. The equitable mortgage does not live under those rules … Whether or not there is a right to foreclose by [the secured party] under its equitable mortgage, [the secured party] also has a valid charge against the land, prior to all other claimants and is entitled to have its claim paid first on the lots in dispute.

> ***Funding Network Inc. v. RSR Enterprises Ltd.*, 2005 ABQB 805 at paras 5-6, 9 and 15, Tab 9.**

13. Similarly, in *Stewart v. 441921 B.C. Ltd.*, the British Columbia Supreme Court held that an agreement that granted a security interest in all of the debtor's "present and after-acquired real property" was valid and enforceable.

> ***Stewart v. 441921 B.C. Ltd*., (1995) 1995 CarswellBC 454 (BCSC) at paras 30-33, Tab 10.**

14. In the present case, the Trigger GSA demonstrates the common intention of the parties to create an equitable mortgage in favour of ClearFlow by expressly extending ClearFlow's security to "all real and immovable property" of Trigger. Therefore, the Trigger GSA creates a security interest and an equitable mortgage in respect of the Trigger Real Property.

15. Having regard to the foregoing, the Receiver is of the view that the security granted by Trigger in favour of ClearFlow, creates a security interest and an equitable mortgage in respect of the Trigger Real Property.

The ClearFlow Distribution will result in significant interest savings

16. The ClearFlow Distribution will pay down a portion of the indebtedness owed to ClearFlow and limit the accrual of interest and additional fees in respect thereof. This will result in significant interest savings, for the general benefit of the creditors.

There will be sufficient liquidity after the ClearFlow Distribution is made

17. As detailed in the Sixth Report, the Receiver will maintain adequate reserves to fund the present and anticipated receivership costs, including, without limitation, the fees and disbursements of the Receiver and its legal counsel and the potential claim of Ace Lawn Care Services Inc. under the *Construction Act*., R.S.O. 1990, c. C.30, as described in greater detail in the Sixth Report, and any valid encumbrance ranking in priority to the security held by ClearFlow against the Trigger Real Property.

18. For the foregoing reasons, the Receiver is of the view that the Court should approve the proposed ClearFlow Distribution.

B. APPROVAL OF THE PROPOSED ALLOCATION OF THE PROCEEDS REALIZED FROM THE PERSONAL PROPERTY ASSETS TO SATISFY THE CLAIMS OF THE BENEFICIARIES OF THE RECEIVER'S CHARGE

19. Pursuant to paragraph 27 of the Appointment Order, the Receiver and counsel to the Receiver, were granted the Receiver's Charge on the Property, as security for their respective fees and disbursements. The Appointment Order provided that the Receiver's Charge shall form a first charge in priority to all other security interests, trusts, liens, charges and encumbrances, statutory or otherwise, subject to certain provisions of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3 (the "**BIA**").

20. While amounts secured by receiver's charges, or administrative charges, are often allocated among secured creditors to whom the proceeds of realization are distributed, in accordance with the priority ranking of their claims, courts have also granted orders approving the direct application of proceeds to pay professional fees, or to satisfy court-ordered charges, such as the fees for services rendered by insolvency officials and counsel, in respect of administrative charges and debtor-in-possession ("**DIP**") charges.

21. In the CCAA proceedings of Wayland Group Corp., 2751609 Ontario Inc. and Nanoleaf Technologies Inc., Mr. Justice Hainey issued an approval and vesting order dated April 21, 2020, pursuant to which this Court directed that the proceeds arising from the sale of the debtor's assets be distributed by the court-appointed monitor, in accordance with a specified order of distribution. The proceeds were to be distributed first to the monitor, to establish a post-closing reserve, and secondly to "the beneficiaries of the Administration Charge, on a *pro rata* basis, in satisfaction of the Applicant's obligations secured thereby, up to the maximum amount secured by such charge". The beneficiaries of the administration charge, which included the monitor, counsel to the monitor and other professionals and advisors deemed necessary by the monitor, accordingly received a direct distribution from the proceeds of the sale in satisfaction of the $1,000,000 administration charge.

> **Order of Mr. Justice Hainey dated April 21, 2020 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 Wayland Group Corp., Maricann Inc. and Nanoleaf Technologies Inc. at para 27, Tab 11.

22. In *M.L. Wilkins & Son Ltd., Re*, the Court of Queen's Bench of New Brunswick upheld a provision of an order (the "**BDC Order**") permitting the CCAA monitor to sell certain parcels of unencumbered real property owned by the debtor company and to use the sale proceeds therefrom to pay all of the outstanding administration charges and DIP charges incurred over the course of the CCAA proceedings. Any surplus proceeds of the sale would be paid over to the trustee in bankruptcy of the debtor company.

***M.L. Wilkins & Son Ltd., Re*, 2008 NBQB 391 [*Wilkins*] at paras 51-53 and 61, Tab 12.**

23. In *GE Canada Real Estate Financing Business Property Company v. 1262354 Ontario Inc.*, Mr. Justice Brown considered a motion brought by PricewaterhouseCoopers Inc. ("**PwC**"), as the court-appointed receiver, for an order authorizing certain interim distributions of proceeds from the sale of the debtor's assets. PwC sought the Court's approval to distribute a portion of the proceeds to satisfy certain priority claims (the "**Priority Claims**"), including amounts secured by the receiver's charge and the receiver's borrowing charge, and a portion of the proceeds to the secured creditor, GE Canada Real Estate Financing Business Property Company ("**GE**"). In granting the order sought by PwC, the Court considered the fact that GE was the sole secured creditor and its security ranked behind the Priority Claims:

> In its Third Report the Receiver described certain Priority Claims which it had concluded ranked ahead of GE's secured claim, including the amounts secured by the Receiver's Charge, the Receiver's Borrowing Charge and an H.S.T. claim. As well… it had concluded that GE was the only secured creditor with an economic interest in the receivership. In light of those circumstances, I accepted the Receiver's request that, in order to maximize efficiency and to avoid the need for an additional motion to seek approval for a distribution, authorization should be given at this point in time to the Receiver to pay out of the sale proceeds the priority claims and a distribution to GE…

***GE Canada Real Estate Financing Business Property Company v. 1262354 Ontario Inc.*, 2014 ONSC 1173 at para 53, Tab 13.**

24. In the CCAA proceedings of Northstar Aerospace Inc. ("**Northstar**"), Mr. Justice Morawetz (as he then was) issued a distribution order dated July 24, 2012, in conjunction with the sale of assets of Northstar, authorizing the monitor to establish, hold and maintain reserves as cash collateral from the sale proceeds "in the sum of $1,000,000 (the "**Administration**

Charge Reserve”), to which the Administration Charge (as defined in the Initial Order of the Court dated June 14, 2012 (the “**Initial Order**”)), shall attach, with the priority provided by the Initial Order, as modified by the Order re Comeback Motion of the Court dated June 27, 2012 (the “**Comeback Order**”).

> **Order of Mr. Justice Morawetz dated July 24, 2012 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 Northstar Aerospace, Inc., Northstar Aerospace (Canada) Inc., 20777 Ontario Inc. and 3024308 Nova Scotia Company [*Northstar*] at para 4, Tab 14.**

25. The order further authorized the monitor to “make disbursements from the Administration Charge Reserve to the beneficiaries of the Administration Charge on account of valid claims made to such Administration Charge Reserve, pursuant to a protocol to be agreed upon between the Monitor, the Pre-Filing Agent and any beneficiary of the Administration Charge Reserve, or by further Order of the Court, free and clear of all Encumbrances, other than those in favour of the beneficiary of such disbursement”.

> ***Northstar* at para 9, Tab 14.**

26. In *Montreal, Maine & Atlantic Canada Cie / Montreal, Maine & Atlantic Canada Co., Re*, the Quebec Superior Court considered a motion brought by the monitor appointed under the CCAA, for the approval of an interim distribution of proceeds arising from the sale of the debtor company’s assets, as partial payment for services rendered by the monitor, counsel and other professionals. In determining whether such approval should be granted, the Court considered whether the professional fees to be paid from the proceeds were reasonable, and referred to the factors set out in *Tepper Holdings Inc., Re* in the context of legal fees incurred over the course of CCAA proceedings, including factors such as the amount of time spent by the lawyer, the costs and conduct of the proceedings in general, the results of the lawyer’s work and the degree of success obtained, the nature and urgency of the issues to be resolved, the size and complexity of the business to be restructured, the funds from which the fees are to be paid, and the views of the monitor, major creditors and the debtor company.

> ***Montreal, Maine & Atlantic Canada Cie / Montreal, Maine & Atlantic Canada Co., Re*, 2014 QCCS 4516 (QCSC) [*MMA*] at para 12, Tab 15.**

27. The Court recognized that "it is difficult for the court to refuse payment of professionals' fees when they fully meet the criteria established by case law to determine the reasonableness of fees". Having determined that the fees at issue were reasonable, particularly given the complexity of work done by the professionals in realizing the debtor company's assets, continuing the operations of the debtor company and acting transparently with respect to the fees incurred, the Court ordered the monitor to distribute the amount of $1,373,156 from the sale proceeds to the monitor, counsel, and beneficiaries of the administration charge.

***MMA* at paras 30 and 31 [*MMA*], Tab 15.**

28. The orders issued by courts in insolvency proceedings and receiverships, as discussed above, illustrate the various approaches courts have taken to address the entitlement of insolvency officials and other professionals to their fees and disbursements and how the proceeds realized from the debtor's assets can be used to satisfy the charges securing such entitlements.

29. Courts have also endorsed various methods by which funds that are available in an insolvency proceeding can be applied in a practical manner. In the Matter of the Bankruptcy of MF Global Canada Co. ("**MF Global**"), Mr. Justice Morawetz (as he then was), issued an order approving the strategy proposed by KPMG, as the trustee in bankruptcy, for effecting the distribution of surplus funds in the bankruptcy estate of MF Global to 4298632 Canada Limited ("**429**"), a dissolved company that was the sole shareholder of MF Global. This required the revival of 429 and the initiation of bankruptcy proceedings against 429, whereby KPMG would be appointed the trustee in bankruptcy of 429. In his endorsement, Mr. Justice Morawetz (as he then was) stated that these proposed steps were "a very practical method by which the surplus can be distributed".

Order and Endorsement of Mr. Justice Morawetz dated January 26, 2018 in the Matter of the Bankruptcy of MF Global Canada Co. [*MF Global*] at paras 5-7, Tab 16.

30. In the present case, it is the Receiver's view that the Court should exercise its discretion to approve the proposed allocation of the proceeds from the sale of the Personal Property Assets to satisfy the reasonable fees and disbursements of the Receiver and counsel to the Receiver, as secured by the Receiver's Charge. The application of the Personal Property Assets proceeds against the amounts secured by the Receiver's Charge is the most practical method to proceed.

The transfer of the proceeds realized from the Personal Property Assets to the bankruptcy estate of Trigger for a distribution to the creditors of Trigger, would result in the incurrence of additional administrative costs, as well as the levy payable to the Superintendent of Bankruptcy, pursuant to section 147 of the BIA. However, the full amount of the proceeds could instead be used to satisfy the amounts secured by the Receiver's Charge, which must be paid from the proceeds realized in the receivership proceedings, subject to Court approval of such fees and disbursements.

31. Further, the inherent jurisdiction of this Court, also provides it with broad, residual powers to grant the requested relief.

32. In the recent case of *Urbancorp Cumberland 1 GP Inc., Re*, Chief Justice Morawetz confirmed the inherent jurisdiction of this Court:

> There is also scope to grant the requested relief using the inherent jurisdiction of the court. The inherent jurisdiction of the provincial superior courts is a broad and diverse power. It has been said that inherent jurisdiction is a power that is exercisable "in any situation where the requirements of justice demands it"… and that "nothing shall be intended to be out of the jurisdiction of the Superior Court, but that which is specifically appears to be so"…
>
> Recently, the Supreme Court of Canada reviewed the inherent jurisdiction of superior courts in *Endean v. British Columbia*, 2016 SCC 42, and described it as follows:
>
> > …Inherent jurisdiction derives from the very nature of the court as a superior court of law and may be defined as a "reserve or fund of powers" or a "residual source of powers", which a superior court "may draw upon as necessary whenever it is just or equitable to do so"… [emphasis added].
>
> In the oft-cited *80 Wellesley St. E., Ltd. v. Fundy Bay Builders Ltd.*… the Court of Appeal for Ontario held that except where provided specifically to the contrary, the court's inherent jurisdiction is "unlimited and unrestricted in substantial law and civil matters". [emphasis added].

***Urbancorp Cumberland 1 GP Inc., Re*, 2020 ONSC 7920 ["*Urbancorp 1*"] at paras 65-66, Tab 17.**

33. Having regard to the foregoing jurisprudence, Chief Justice Morawetz held that if the *BIA*, in conjunction with the *CJA*, did not provide the basis for the requested relief, it was appropriate to resort to the inherent jurisdiction of the Superior Court.

***Urbancorp 1* at para 34, Tab 17.**

34. In the exercise of its inherent jurisdiction, the Court may consider whether it is just or equitable to do so in order to grant the requested relief.

35. In the present case, the Receiver is of the view that the Court should exercise its inherent jurisdiction to approve the proposed allocation of the Personal Property Assets proceeds from the sale of the Personal Property Assets in satisfaction of the amounts secured by the Receiver's Charge, given that the Receiver's Charge would be primarily borne by ClearFlow in the within receivership proceedings at any rate.

36. Moreover, as discussed above, the transfer of the proceeds from the Personal Property Assets to the bankruptcy estate of Trigger, for a distribution to the creditors of Trigger, would lead to the incurrence of additional administrative costs and with the levy payable to the Superintendent of Bankruptcy.

37. For the foregoing reasons, the Receiver is of the view that the Court should approve the allocation of the proceeds realized from the Personal Property Assets to pay the fees and disbursements of the Receiver and counsel to the Receiver, as beneficiaries of the Receiver's Charge.

V. <u>RELIEF REQUESTED</u>

38. The Receiver respectfully requests that this Court grant the Order sought, substantially in the form attached included at Tab 3 of the Receiver's Motion Record.

ALL OF WHICH IS RESPECTFULLY SUBMITTED.

November 26, 2021

Roger Jaipargas

Lawyers for Grant Thornton Limited., in its capacity as Court-appointed Receiver of Trigger Wholesale Inc. and The En Cadre Group Inc.

SCHEDULE "A"

<u>List of Authorities</u>

1. ***Re Windsor Machine & Stamping Ltd.,*** (2009) 2009 CarswellOnt 4505 (ONSC [Commercial List])

2. ***Re Abitibibowater Inc.***, (2009) 2009 CarswellQue 14224 (QCSC)

3. **Order for Directions and Endorsement of the Honourable Madam Justice Dietrich** dated March 31, 2021

4. ***United Trust Co. v. Dominion Stores Ltd.,*** (1977) [1977] 2 SCR 915

5. ***Bell Canada Inc. v. White Admiral Ltd.***, 2011 ONSC 5857

6. ***Canadian Engineering & Contracting Co., Re***, (1994) 1994 CarswellOnt 305 (Ont. Gen. Div.)

7. ***John Macdonald & Co. v. Tew***, (1914) [1914] O.J. No. 139 (Ont. C.A.)

8. ***Elias Markets Ltd., Re***, (2006) 2006 CarswellOnt 5597 (Ont. C.A.)

9. ***Funding Network Inc. v. RSR Enterprises Ltd.***, 2005 ABQB 805

10. ***Stewart v. 441921 B.C. Ltd.,*** (1995) 1995 CarswellBC 454 (BCSC)

11. **Order of the Honourable Mr. Justice Hainey 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 Wayland Group Corp., Maricann Inc. and Nanoleaf Technologies Inc.** dated April 21, 2020

12. ***M.L. Wilkins & Son Ltd., Re,*** 2008 NBQB 391

13. ***GE Canada Real Estate Financing Business Property Company v. 1262354 Ontario Inc.,*** 2014 ONSC 1173

14. **Order of the Honourable Mr. Justice Morawetz 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 Northstar Aerospace, Inc., Northstar Aerospace (Canada) Inc., 20777 Ontario Inc. and 3024308 Nova Scotia Company** dated July 24, 2012

15. ***Montreal, Maine & Atlantic Canada Cie / Montreal, Maine & Atlantic Canada Co., Re,*** 2014 QCCS 4516 (QCSC)

16. **Order and Endorsement of the Honourable Mr. Justice Morawetz in the Matter of the Bankruptcy of MF Global Canada Co.** dated January 26, 2018

17. ***Urbancorp Cumberland 1 GP Inc., Re,*** 2020 ONSC 7920

Schedule "B" – Legislation Cited

***Courts of Justice Act*, R.S.O. 1990, c. C.43, as amended**

Section 137(2)

(2) A court may order that any document filed in a civil proceeding before it be treated as confidential, sealed and not form part of the public record.

***Land Titles Act*, R.S.O. 1990, c. L.5, as amended**

Section 93(3)

(3) The charge, when registered, confers upon the chargee a charge upon the interest of the chargor as appearing in the register subject to the encumbrances and qualifications to which the chargor's interest is subject, but free from any unregistered interest in the land.

***Bankruptcy and Insolvency Act*, R.S.C. 1985, c B-3, as amended**

Section 147

(1) For the purpose of defraying the expenses of the supervision by the Superintendent, there shall be payable to the Superintendent for deposit with the Receiver General a levy on all payments, except the costs referred to in subsection 70(2), made by the trustee by way of dividend or otherwise on account of the creditor's claims, including Her Majesty in right of Canada or of a province claiming in respect of taxes or otherwise.

Court File No. CV-20-00649154-00CL

B E T W E E N:

CLEARFLOW COMMERCIAL FINANCE CORP. **-and-** **TRIGGER WHOLESALE, INC. et al.**

Applicant | Respondents

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

PROCEEDING COMMENCED AT
TORONTO

STATEMENT OF LAW
(Distribution)

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