Court File No. CV-16-11582-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

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 PERFORMANCE SPORTS GROUP LTD., BAUER HOCKEY CORP., BAUER HOCKEY RETAIL CORP., BAUER PERFORMANCE SPORTS UNIFORMS CORP., BPS CANADA INTERMEDIATE CORP., BPS DIAMOND SPORTS CORP., EASTON BASEBALL/SOFTBALL CORP., KBAU HOLDINGS CANADA, INC., PERFORMANCE LACROSSE GROUP CORP., PSG INNOVATION CORP., BAUER HOCKEY RETAIL INC., BAUER HOCKEY, INC., BAUER PERFORMANCE SPORTS UNIFORMS INC., BPS DIAMOND SPORTS INC., BPS US HOLDINGS INC., EASTON BASEBALL/SOFTBALL INC., PERFORMANCE LACROSSE GROUP INC., PSG INNOVATION INC.

(**Applicants**)

FACTUM OF SAGARD HOLDINGS INC.

February 6, 2017

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1. INTRODUCTION

1. On November 30, 2016, following a joint hearing before the U.S. and Canadian Courts, this Court approved a Stalking Horse Asset Purchase Agreement (the "**Stalking Horse Agreement**"),[1] as well as certain prescribed bidding procedures.

2. The Stalking Horse Agreement contemplated the sale of substantially all of the Applicants' assets to 9938982 Canada Inc. (the "**Purchaser**"), unless, pursuant to the bidding procedures, a higher or better offer was received prior to the January 25, 2017 bid deadline.

3. The purpose of the Stalking Horse process was to provide certainty to stakeholders, while also maximizing value through a going concern sale of substantially all of the Applicants' business.

4. During the bidding process, held from November 2016 through January 2017, Centerview, a third-party investment banker, identified and solicited over 130 potentially interested purchasers for the Applicants' assets. Of those contacted, 40 executed non-disclosure agreements in order to perform due diligence and potentially bid on the Applicants' business. The Applicants eventually received nine non-binding letters of intent.

5. In the end, however, no qualified bid was received prior to the January 25, 2017 deadline.

6. Accordingly, the Applicants now seek an Order from this Court, approving, *inter alia*:

   a) The Stalking Horse Agreement, and the sale transaction contemplated by such Agreement;

   b) vesting of all of the purchased assets under the Stalking Horse Agreement in the Purchaser, free and clear of any security, claims charges or other restrictions other than permitted encumbrances as specified in the Stalking Horse Agreement;

   c) authorizing the assignment and assumption of the rights and obligations of the Applicants under certain agreements specified in the proposed Approval and Vesting Order to and by the Purchaser; and

   d) approving the Pre-Closing Reorganization and authorizing the Applicants to complete any steps and transactions necessary or desirable to consummate the Pre-Closing Reorganization.

7. For the reasons set out below, Sagard Holdings Inc. ("**Sagard**") respectfully submits that the overriding purposes of the *Companies' Creditors Arrangement Act* ("**CCAA**") favour this Court's exercise of its discretion to grant the requested Order, thereby facilitating the Applicants' reorganization as a going concern.

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[1] All Capitalized terms not otherwise defined herein shall have the meaning ascribed to them in the Applicants' Motion (Re: Approval and Vesting Order, Pre-Closing Reorganization, Assignment of Agreements and Stay Extension).

2. COURT APPROVAL OF THE STALKING HORSE SALE

8. Section 36 of the CCAA expressly permits a debtor company to sell its assets outside the ordinary course of business, provided that it is authorized to do so by the Court:

> 36. (1) A debtor company in respect of which an order has been made under this Act may not sell or otherwise dispose of assets outside the ordinary course of business unless authorized to do so by a court. Despite any requirement for shareholder approval, including one under federal or provincial law, the court may authorize the sale or disposition even if shareholder approval was not obtained. [...]

9. Subsection 36(3) of the CCAA provides a list of factors that the Court should consider in deciding whether to authorize a sale of assets:

> (a) whether the process leading to the proposed sale or disposition was reasonable in the circumstances;
>
> (b) whether the monitor approved the process leading to the proposed sale or disposition;
>
> (c) whether the monitor filed with the court a report stating that in their opinion the sale or disposition would be more beneficial to the creditors than a sale or disposition under a bankruptcy;
>
> (d) the extent to which the creditors were consulted;
>
> (e) the effects of the proposed sale or disposition on the creditors and other interested parties; and
>
> (f) whether the consideration to be received for the assets is reasonable and fair, taking into account their market value.

10. These factors largely overlap with those established by Mister Justice Morawetz in *Nortel Networks*, writing in the context of the approval a stalking horse sale.

- *Nortel Networks*, 2009 CarswellOnt 4838, at para. 35 [**TAB 1**]:

  The duties of the Court in reviewing a proposed sale of assets are as follows:

  1) It should consider whether sufficient effort has been made to obtain the best price and that the debtor has not acted improvidently;

  2) It should consider the interests of all parties;

  3) It should consider the efficacy and integrity of the process by which offers have been obtained;

  4) and it should consider whether there has been unfairness in the working out of the process.

11. These criteria are neither cumulative nor exhaustive. In *White Birch*, Mister Justice Mongeon, again in the context of approving a stalking horse sale, held that the Court has to look at the proposed transaction as a whole and decide whether it is appropriate, fair and reasonable.

- *White Birch Paper Holding Company (Arrangement* relatif *à)*, 2010 QCCS 4915 (leave to appeal refused: 2010 QCCA 1950) **[TAB 2]**:

> [48] The elements which can be found in Section 36 CCAA are, first of all, not limitative and secondly they need not to be all fulfilled in order to grant or not grant an order under this section.
>
> [49] The Court has to look at the transaction as a whole and essentially decide whether or not the sale is appropriate, fair and reasonable. In other words, the Court could grant the process for reasons others than those mentioned in Section 36 CCAA or refuse to grant it for reasons which are not mentioned in Section 36 CCAA.

12. Where the marketing and sales process is fair, reasonable, transparent and efficient, the Court will not interfere lightly with the exercise of the commercial and business judgment of the monitor and the debtor company.

- *AbitibiBowater inc. (Arrangement relatif à),* 2010 QCCS 1742 **[TAB 3]**:

> [70] <u>That being so, it is not for this Court to second-guess the commercial and business judgment properly exercised by the Petitioners and the Monitor</u>.
>
> [71] <u>A court will not lightly interfere with the exercise of this commercial and business judgment in the context of an asset sale where the marketing and sale process was fair, reasonable, transparent and efficient</u>. This is certainly not a case where it should. [Our emphasis]

- See also: *Aveos Fleet Performance Inc./Aveos performance aéronautique inc. (arrangement relatif à),* 2012 QCCS 4074, para. 50 **[TAB 4]**.

2.1 The Transactions Should Be Approved

2.1.1 Process Fair and Reasonable: Section 36(3)(a) CCAA

13. Bearing in mind the deference accorded to the business judgment of the monitor and the debtor company, the Court should avoid intervening in the process they have adopted to sell the assets of the company.

- *Terrace Bay Pulp Inc. (Re),* 2012 ONSC 4247 **[TAB 5]**:

> [59] I have already commented on this issue in my review of the Sales Process. Again, it is useful to review the statements of Galligan J.A. in *Soundair*. At paragraph 46, he states:
>
> > <u>It is my opinion that the court must exercise extreme caution before it interferes with the</u>

> process adopted by a receiver to sell an unusual asset. It is important that prospective purchasers know that, if they are acting in good faith, bargain seriously with the receiver and entering into an agreement with it, a court will not likely interfere with the commercial judgment of the receiver to sell the asset to them.

> [60] At paragraph 47, Galligan J.A. referenced the comments of Anderson J. in *Crown Trustco*, at p. 109:
>
>> The court ought not to sit as on appeal from the decision of the Receiver, reviewing in minute detail every element of the process by which the decision is reached. To do so would be a futile and duplicitous exercise.
>
> [61] In my view, the process, having been properly conducted, should be respected in the circumstances of this case. [Our emphasis]

14. When the sale process is pre-approved by the Court, as was the case at hand, this ensures the process is clear for all parties and reduces the likelihood of a subsequent challenge.

- *Bloom Lake, g.p.l. (Arrangement relatif à),* 2015 QCCS 1920, para. 29 **[TAB 6]**.

15. In the case at hand, the sale process was conducted fairly and openly. The Applicants performed a thorough review of the market prior to commencing the present proceedings, in order to begin soliciting interest from potential purchasers as early as possible. Following a broad and comprehensive marketing process conducted with the assistance of the Applicants' restructuring advisors, the Applicants' and Purchaser concluded the Stalking Horse Agreement, which was the result of extensive arm's-length negotiations.

16. The Stalking Horse bidding procedures were designed to ensure a fair and open process, and were approved by this Court on November 30, 2016. The bidding process complied with all terms of the Court's November 30, 2016 Order, and was closely observed by the Monitor. Pursuant to these approved bidding procedures, the entire process was conducted openly.

- Monitor's 6th Report, para. 34.

17. Centerview was responsible for identifying and actively soliciting potential bidders. Centerview, as a third-party advisor, had an interest in finding the best potential buyer and ensuring the best possible sale for stakeholders, as, pursuant to the terms of its Agreement with the Applicants, it stands to earn a 1% success fee on the aggregate consideration received by Applicants for the sale of their assets.

- Monitor's 2nd Report, page 10.

18. In the end, Centerview was in contact with over 130 prospects who were offered the opportunity to sign non-disclosure agreements so as to obtain confidential information on the Applicants and their business. In the end, 40 potential buyers executed non-disclosure agreements in order to perform due diligence and potentially bid for the Applicants' assets. The Applicants eventually received nine non-binding letters of intent. Interested bidders who so requested attended meetings with management, meetings which were also attended by the Monitor.

- Affidavit of Brian J. Fox, sworn January 24, 2017, para. 16.
- Monitor's 6th Report, para. 29.

19. Accordingly, the Applicants acted diligently to attract potential buyers to ensure the best possible recovery for stakeholders.

20. The Applicants and the Monitor are satisfied that the universe of potential purchasers has been thoroughly canvassed, and that interested parties had sufficient time to evaluate the Applicants' business.

- Affidavit of Brian J. Fox, sworn January 24, 2017, para. 19.
- Monitor's 6th Report, para. 34.

21. According to their business judgment, and following the advice of their restructuring advisors, the Applicants are satisfied that the sale was conducted fairly and reasonably.

22. Following the commencement of the sales process, the Monitor assisted and provided support to the Applicants with respect thereto. While Centerview took the lead in running the sales process, the Monitor was involved in and supervised all stages of the process.

- Monitor's 6th Report, para. 29 and 32.

23. Having been involved throughout, the Monitor is also satisfied that the sales process was carried out in accordance with the Court's instructions and that the process was fair, transparent and reasonable.

- Monitor's 6th Report, para. 34.

2.1.2 Monitor Approval: Section 36(3)(b) CCAA

24. It is also the Monitor's recommendation that this court approve the Motion and issue the Order approving the sale transaction contemplated by the Stalking Horse Agreement.

- Monitor's 6th Report, para. 44.

25. This Court should give great deference to the Monitor's recommendation.

- *AbitibiBowater inc. (Arrangement relatif à),* 2009 QCCS 6460 **[TAB 7]**:

> [59] The balance of interests clearly favours approval. The Monitor supports and recommends the approval sought. The

> recommendation of the Monitor, a court-appointed officer experienced in the insolvency field, carries great weight with the Court in any approval process. Absent some compelling, exceptional factor to the contrary, a Court should accept an applicant's proposed sale process where it is recommended by the Monitor and supported by the stakeholders. [Reference omitted]

26. Finally, it is not uncommon for the stalking horse purchaser to become the successful bidder. No other bids were received and precisely the same result was reached in numerous other Canadian restructuring proceedings:

    i) Northstar Aerospace Inc.;

    ii) AbitibiBowater Inc;

    iii) Indalex Limited;

    iv) Nortel Networks Corp. (CVAS Business);

    v) Nortel Networks Corp. (Enterprise Solutions Business);

    vi) Nortel Networks Corp. (Layer 4-7 business);[2]

    vii) *Crate Marine Sales Limited*, 2015 ONSC 6295, at para. 13 **[TAB 8]**.

2.1.3 Transactions More Beneficial Than Sale Under Bankruptcy: Section 36(3)(c) CCAA

27. Here, the Stalking Horse Agreement contemplates that the Applicants' secured debt will be fully repaid, plus assumption of ordinary course liabilities. Perhaps most significantly, the Stalking Horse Agreement contemplates that the Applicants' will continue as a going concern under new ownership, thereby preserving a significant number of jobs in Canada and the United States.

28. As such, the proposed sale is advantageous to a broad constituency of stakeholders and is undoubtedly superior to a piecemeal liquidation of the Applicants' assets through bankruptcy.

29. The Monitor is also of the view that a sale of the assets is more beneficial than a sale in bankruptcy proceedings.

    - Monitor's 6th Report, para. 38.

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[2] The results of the Northstar Aerospace, AbitibiBowater, Indalex and Nortel stalking horse sales are all outlined by Ashley Taylor and Yannick Katirai in "An Analysis of Stalking Horse Processes in Canadian Insolvency Proceedings" *Journal of the Insolvency Institute of Canada*, Vol. 2, 2013, p. 114-29 **[TAB 12]**.

2.1.4 Creditor Consultation: Section 36(3)(d) CCAA

30. In the case at hand, the Purchaser is an entity related to the DIP Lender. Accordingly, the Applicants' most important secured creditors have been involved in the process.

2.1.5 Effects of the Proposed Sale

31. When considering the effects of the proposed sale on creditors and other interested parties, this Court does not need to be satisfied that the sale provides interest for all classes of creditors. In *White Birch*, Justice Mongeon, in approving a sale of assets resulting from a stalking horse process, found that it was unnecessary for the Court to ensure that all creditors were repaid. In the context of restructuring proceedings, the Court must, rather, show deference to the monitor who is responsible for supervising the process and ensuring a fair and reasonable attempt to maximize value for all stakeholders.

- *White Birch Paper Holding Company (Arrangement relatif à),* 2010 QCCS 4915, at para. 51-52 (leave for appeal denied: 2010 QCCA 1950) **[TAB 2]**:

> [51] Here, we may have an argument that the sale will not provide significant recoveries for unsecured creditors but the question which needs to be asked is the following: "Is it absolutely necessary to provide interest for all classes of creditors in order to approve or to set aside a "Stalking Horse bid process"?
>
> [52] In my respectful view, it is not necessary. It is, of course, always better to expect that it will happen but unfortunately, in any restructuring venture, some creditors do better than others and sometimes, some creditors do very badly. That is quite unfortunate but it is also true in the bankruptcy alternative. In any event, in similar circumstances, the Court must rely upon the final recommendation of the Monitor which, in the present instance, supports the position of the winning bidder.

32. The Stalking Horse process is advantageous to the greatest number of affected stakeholders. The Stalking Horse Agreement presents the best value maximizing path for the Applicants and satisfies all applicable legal standards. The Stalking Horse bid, with a base purchase price of $575 million, plus assumption of ordinary course liabilities, estimated to be more than $50 million[3] as of December 31, 2016, represents an amount sufficient to repay all of the Applicants' secured debt in full and is expected to provide important recoveries to the Applicants' stakeholders, while preserving a significant number of jobs in Canada and the United States.

2.1.6 Is the consideration reasonable and fair? Section 36(3)(f) CCAA

33. When deciding whether the consideration to be received for the assets is reasonable and fair, the Court must consider if the monitor and the debtor company have made sufficient efforts to obtain the best price and have not acted improvidently. This conduct is examined in light of the information the monitor and the debtor company had when they agreed to

[3] Declaration of Marc. D. Puntus in Further Support of the Debtors' Sale Motion, para. 18.

accept the offer.

- *Royal Bank of Canada v. Soundair Corp.,* 1991 CanLII 2727 (ON CA), pp. 10-11 **[TAB 9]**:

> When deciding whether a receiver had acted providently, the court should examine the conduct of the receiver in light of the information the receiver had when it agreed to accept an offer. In this case, the court should look at the receiver's conduct in the light of the information it had when it made its decision on March 8, 1991. The court should be very cautious before deciding that the receiver's conduct was improvident based upon information which has come to light after it made its decision. To do so, in my view, would derogate from the mandate to sell given to the receiver by the order of O'Brien J. I agree with and adopt what was said by Anderson J. in *Crown Trust v. Rosenberg*, supra, at p. 112 O.R., p. 551 D.L.R.:
>
>> Its decision was made as a matter of business judgment on the elements then available to it. It is of the very essence of a receiver's function to make such judgments and in the making of them to act seriously and responsibly so as to be prepared to stand behind them.
>>
>> If the court were to reject the recommendation of the Receiver in any but the most exceptional circumstances, it would materially diminish and weaken the role and function of the Receiver both in the perception of receivers and in the perception of any others who might have occasion to deal with them. It would lead to the conclusion that the decision of the Receiver was of little weight and that the real decision was always made upon the motion for approval. That would be a consequence susceptible of immensely damaging results to the disposition of assets by court-appointed receivers.
>
> I also agree with and adopt what was said by Macdonald J.A. in *Cameron v. Bank of Nova Scotia* (1981), 38 C.B.R. (N.S.) 1, 45 N.S.R. (2d) 303 (C.A.), at p. 11 C.B.R., p. 314 N.S.R.:
>
>> In my opinion if the decision of the receiver to enter into an agreement of sale, subject to court approval, with respect to certain assets is reasonable and sound under the circumstances at the time existing it should not be set aside simply because a later and higher bid is made. To do so would literally create chaos in the commercial world and

> receivers and purchasers would never be sure they had a binding agreement.

[Our emphasis]

- See also: *Terrace Bay Pulp Inc. (Re),* 2012 ONSC 4247, para. 45 **[TAB 5]**.

34. The Applicants and the Monitor are satisfied that the considerations obtained for the sale of the assets is reasonable and fair in the circumstances, considering their market and potential liquidation value.

35. Indeed, the Monitor is of the view that the Stalking Horse Agreement represents fair value for the assets in the circumstances.

- Monitor's 6th Report, para. 33 and 40.

2.1.7 Other Criteria

36. The additional factors set out in subsections 36(4) and (5) of the CCAA in respect of non-arms' length sales do not apply in this case since neither the Purchaser nor Sagard are persons related to the Applicants within the meaning of the CCAA.

37. Likewise, the restriction relating to certain employee-related claims under subsection 36(7) of the CCAA is not applicable.

3. APPROVAL OF ASSIGNMENT OF AGREEMENTS

38. Section 11.3 of the CCAA provides this Court the jurisdiction to compel the assignment of contracts to which a CCAA debtor is a party:

> 11.3 (1) On application by a debtor company and on notice to every party to an agreement and the monitor, the court may make an order assigning the rights and obligations of the company under the agreement to any person who is specified by the court and agrees to the assignment.
>
> [...]
>
> (3) In deciding whether to make the order, the court is to consider, among other things,
>
> > (a) whether the monitor approved the proposed assignment;
> >
> > (b) whether the person to whom the rights and obligations are to be assigned would be able to perform the obligations; and
> >
> > (c) whether it would be appropriate to assign the rights and obligations to that person.
>
> (4) The court may not make the order unless it is satisfied that all monetary defaults in relation to the agreement — other than those arising by reason only of the company's insolvency, the

> commencement of proceedings under this Act or the company's failure to perform a non-monetary obligation — will be remedied on or before the day fixed by the court.
>
> (5) The applicant is to send a copy of the order to every party to the agreement.

39. Section 11.3(2) sets out certain exceptions to this grant of jurisdiction, none of which are relevant to the current Motion. The agreements in question do not include any collective agreements, eligible financial contracts or contracts entered into post-filing.

40. Under s. 11.3(4) of the CCAA, the Court may not make an order under s. 11.3(1) unless it is satisfied that all monetary defaults in relation to the agreement – other than those arising by reason only of the company's insolvency, the commencement of proceedings under the CCAA or the company's failure to perform a non-monetary obligation – will be remedied on or before the day fixed by the Court.

41. Judicial consideration of s. 11.3 CCAA has been relatively scarce since its enactment in 2009. However, when Courts have considered the provision, they have overwhelmingly favoured granting the assignment of contracts and thereby allowing the business to continue as a going concern.

42. In *Re TBS Acquireco Inc.*, 2013 ONSC 4663 **[TAB 10]**, the Court approved the assignment of certain leases and designated contracts, holding that assignment of the contracts would result in the continuation of the business in the greatest number of stores and the continued employment of the greatest number of people.

43. In *Veris Gold Corp. (Re),* 2015 BCSC 1204 **[TAB 11]**, the Court similarly approved the assignment, holding that it was appropriate for the purchaser to obtain the benefit of contracts that would facilitate continued operations. While the Court was concerned that certain counterparties may not have been validly notified, it nevertheless granted the assignment, as the contracts were critical to the business' operations.

3.1.1 Is it Appropriate to Assign the Contracts to the Purchaser?

44. Pursuant to the terms Stalking Horse Agreement, the Purchaser will assume certain Assigned Contracts of the Applicants. The assignment of the Applicants' contracts, particularly with its customers, contractors, suppliers, employees and business partners, is critical if the Purchaser is to successfully continue operating the business as a going concern.

45. Indeed, given their importance, it is a condition to the closing of the Stalking Horse Agreement that such contracts be assigned.

    - Section 8.3(e) of the Stalking Horse Agreement.

46. Accordingly, Notices of Assignment, as approved by the U.S. Court on November 30, 2016, were delivered to the counterparties of the Assigned Contracts on December 12, 2016. Said Notices of Assignment specified cure costs payable to each party, and requested consent by January 25, 2017.

47. Additionally, pursuant to the Bidding Procedures Order, the Applicants published notice of the Stalking Horse Sale in (1) *The New York Times* on December 5, 2016, (2) *The Globe and Mail* on December 6, 2016, (3) the national edition of *The Wall Street Journal* on December 6, 2016, (4) *The National Post* on December 7, 2016, and (5) *Le Devoir* on December 8, 2016.

- Bidding Procedures Reply at paras. 20-22.

48. Both the Applicants and the Purchaser, in consultation with the Monitor, have been working diligently to obtain all required consents of the Assigned Contracts since the Notices of Assignment were sent.

49. Despite their intensive and best efforts, the Applicants and Purchaser have not been able to secure consent to assignment from all counterparties.

50. The Applicants therefore seek authorization of the assignment of certain agreements (the "**Remaining Contracts**") of the Applicants to the Purchaser.

51. Section 11.3 allows this Court to order an assignment of an agreement even where the terms of the agreement place restrictions on assignment, including a prohibition on assignment without the counterparty's consent. There is no requirement in s. 11.3 to seek the consent of a counterparty, though the Applicants have diligently and on a good faith basis sought such consent from all contractual counterparties in relation to the Remaining Contracts.

52. Sagard submits that all necessary statutory conditions at s. 11.3 are fulfilled, and that, further, it is both appropriate and necessary to grant such assignment orders.

53. With respect to the first criterion, the Monitor recommends assigning the Remaining Contracts, notwithstanding any objections.

- Monitor's 6^{th} Report, para. 50.

54. Second, the Purchaser is willing and able to perform all of the covenants and obligations under the contracts in question. All monetary defaults associated with the assignment of the remaining contracts will be remedied. Indeed, pursuant to the terms of the Stalking Horse Agreement, the Purchaser will assume Cure Costs for the Assigned Contracts, up to $1,000,000.

- Section 2.3(x) of the Stalking Horse Agreement.

55. The Purchaser is sufficiently capitalized to both perform its obligations under the Remaining Contracts and to continue as a financially healthy going concern entity. Upon closing of the Stalking Horse Sale, the Purchaser will be a well-capitalized, low leverage company, with significant equity commitments from its sponsors. Altogether, the strong capitalization and liquidity of the Purchaser demonstrates its ability to satisfy all obligations under the Remaining Contracts.

56. Finally, the Petitioners respectfully submit that it is appropriate in this case to grant such assignment Orders in respect of the Assigned Contracts, for the following reasons:

a) The bidding process leading up to the Sale was approved by this Honourable Court as fair and reasonable, pursuant to the requirements of section 36 of the CCAA, in its order dated November 30, 2016. The Stalking Horse Agreement, which included the Assigned Contracts, was approved by this Court on the basis that it maximizes value in relation to the assets of the debtor for the benefit of stakeholders.

b) The Applicants have used intensive good faith efforts to obtain consents of the counterparties to the Remaining Contracts on a consensual basis.

c) There is minimal, if any, prejudice to the contractual counterparties.

d) The Monitor supports the assignment of the Remaining Contracts.

e) All counterparties to Remaining Contracts were provided with Notices of Assignment on December 12, 2016, as well as Notice of the present Motion for Assignment, which appeared in bold on page 2 of the Notice of Assignment.

57. The assignment of the Remaining Contracts is critical for a successful going concern solution for the business of the PSG entities, with all of the associated benefits therefrom to their employees, suppliers, customers and business associates. The counterparties in question would suffer no prejudice from the assignment, as the Purchaser is both capable and willing to assume all obligations under the Remaining Contracts.

58. As all statutory conditions are met, and the Purchaser wishes to continue the Applicants' business as a going concern, the Court should grant the assignment of the Remaining Contracts in the present instance.

4. CONCLUSION

59. For these reasons, Sagard hereby asks this Court to grant the Order according to its conclusions.

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 6th day of February, 2017.

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SCHEDULE "A"
LIST OF AUTHORITIES

Tab	Authority
1.	*Nortel Networks*, 2009 CarswellOnt 4838
2.	*White Birch Paper Holding Company (Arrangement relatif à)*, 2010 QCCS 4915
3.	*AbitibiBowater inc. (Arrangement relatif à),* 2010 QCCS 1742
4.	*Aveos Fleet Performance Inc./Aveos performance aéronautique inc. (arrangement relatif à),* 2012 QCCS 4074
5.	*Terrace Bay Pulp Inc. (Re),* 2012 ONSC 4247
6.	*Bloom Lake, g.p.l. (Arrangement relatif à),* 2015 QCCS 1920
7.	*AbitibiBowater inc. (Arrangement relatif à),* 2009 QCCS 6460
8.	*Crate Marine Sales Limited*, 2015 ONSC 6295
9.	*Royal Bank of Canada v. Soundair Corp.,* 1991 CanLII 2727 (ON CA)
10.	*Re TBS Acquireco Inc.*, 2013 ONSC 4663
11.	*Veris Gold Corp. (Re),* 2015 BCSC 1204
12.	Ashley Taylor and Yannick Katirai, "An Analysis of Stalking Horse Processes in Canadian Insolvency Proceedings" *Journal of the Insolvency Institute of Canada*, Vol. 2, 2013

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Proceeding commenced at Toronto

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