C A N A D A

PROVINCE OF QUÉBEC
DISTRICT OF MONTREAL

Nº: 500-11-058116-209

S U P E R I O R C O U R T
(Commercial Division)
(Sitting as a court designated pursuant to the Companies' Creditors Arrangement Act, R.S.C. 1995, c. 36, as amended)

IN THE MATTER OF THE ARRANGEMENT OF:

SPECTRA PREMIUM INDUSTRIES INC.

-and-

SPECTRA PREMIUM HOLDINGS (USA) CORP.

-and-

SPECTRA PREMIUM (USA) CORP.

-and-

SPECTRA PREMIUM PROPERTIES (USA) CORP.

-and-

SPECTRA PREMIUM TAIWAN CO. LTD.

-and-

SPECTRA PREMIUM (SHANGHAI) AUTOMOTIVE TECHNICAL SERVICES CO. LTD.

-and-

SPECTRA PREMIUM (CHONGQING) AUTOMOTIVE SERVICES CO. LTD.

Petitioners

-and-

ERNST & YOUNG INC.

Monitor

MOTION FOR THE ISSUANCE OF THREE APPROVALS AND VESTING ORDERS
(Section 36 of the *Companies' Creditors Arrangement Act* ("**CCAA**"))

TO THE HONOURABLE LOUIS GOUIN, J.S.C., OR ONE OF THE HONOURABLE JUDGES OF THE SUPERIOR COURT, SITTING IN COMMERCIAL DIVISION FOR THE DISTRICT OF MONTREAL, THE PETITIONERS/MONITOR RESPECTFULLY STATE:

Introduction

1. The Petitioner Spectra Premiums Industries Inc. ("**SPI**") along with the other petitioners (collectively with SPI: the "**Spectra Group**") are debtor companies in the Motion for the issuance of an Initial Order filed on March 9, 2020 (the "**Initial Motion**") for whom a First Day Initial Order under the *Companies' Creditors Arrangement Act* ("**CCAA**") was issued in this Court file on March 10, 2020 (the "**First Day Order**"), an Amended and Restated Initial Order was rendered on March 24, 2020 (the "**A&R Initial Order**") and a Second Amended and Restated Initial Order (the "**Second A&R Initial Order**") was rendered on September 26, 2020, as appears from the Court record.

2. The A&R Initial Order provided, inter alia, that all proceedings against Spectra Group were stayed until June 6, 2020. By judgment rendered on June 5, 2020, the stay of proceedings was extended until September 26, 2020. The Second A&R Initial Order extended the stay of proceedings until January 30, 2021, as appears from the Court record.

3. Since the issuance of the First Day Order, Spectra Group, with the assistance of the Monitor, has been in contact with its suppliers and several other stakeholders advising them of the *status quo* resulting from the First Day Order, the A&R Initial Order and of Spectra Group's continuous operations in the normal course of business.

4. The Spectra Group also started the transitions that are required to eventually emerge from these restructuring proceedings as a profitable business for the future.

5. As previously announced, Spectra Group has continued to downsize its US aftermarket operations as they relate to the cooling products and the fuel products which led to the disclaimer of several leases for locations that were no longer required for the operations.

6. SPI, by the present motion, requests this Court to approve the sale of assets outside the ordinary course of business in order to allow SPI to dispose of assets that are no longer needed in light of its restructuring.

Contemplated Transactions

7. As announced in the Initial Motion, over the past few years, Spectra Group has seen a progressive reduction of its profitability and has decided to work on a plan of restructuring that involves, namely, the centralization of its activities in Canada around its newer and profitable tooling and industrial divisions.

8. At the time of the filing of the Initial Motion, the Petitioners and Monitor had already identified that at least part of the solution resided in an important downsizing of the Spectra Group, including selling some of the Spectra Group's assets.

9. As part of its restructuring, SPI decided to cease its operations at its production plant in Debert, Nova Scotia and to transfer most of the production capacity of this plant to its facility in Boucherville Quebec.

10. The Debert plant is composed of three separate properties located close to the Trans-Canada Highway ; a factory facility, a warehouse and a small storage shed.

11. As a result of this decision, SPI transferred some of the equipment to its Boucherville facility and advertised the properties for sale as they were no longer necessary for the restructured operations of SPI.

12. To this effect, SPI, with the approval of the Monitor, seeks the approval for the sale of the following assets (the “**Contemplated Transactions**”):

    - A property located at 48 Lysander Avenue, Debert, Nova Scotia, bearing PID 20318424 and designated as Lot 105-A as described on Plan Number 7641 as approved on October 18, 1994, and filed at the Registry of Deeds for the County of Colchester at Truro, Nova Scotia, with residual equipment located within the facility(the “**48 Lysander Property**”);

    - A property located at 497 McElmon Road, Debert, Nova Scotia bearing PID 20108080 and designated as Lot 105-BB as described on Plan Number 76297366 as approved on September 16, 2004, and filed at the Registry of Deeds for the County of Colchester at Truro, Nova Scotia, with residual equipment located within the facility (the “**497 McElmon Property**”); and

    - A property located at 42 Lysander Avenue, Debert, Nova Scotia, bearing PID 20276481 and designated as Lot 104 as described on Plan Number 5772 as filed at the Registry of Deeds for the County of Colchester at Truro, Nova Scotia (the “**42 Lysander Property**”).

    (collectively the “**Assets**”)

13. The draft vesting orders sought are communicated as **Exhibit R-1** for the 48 Lysander Property, as **Exhibit R-2** for the 497 McElmon Property and as **Exhibit R-3** for the 42 Lysander Property.

<u>The 48 Lysander Property</u>

14. On September 21, 2020, SPI entered into an agreement of purchase and sale with Kohltech International Limited (“**Kohltech**”) for the 48 Lysander Property, as appears from a copy of the agreement of purchase and sale communicated under seal as **Exhibit R-4**.

15. The agreement of purchase and sale essentially provides that Kohltech is to acquire the 48 Lysander Property, half of the shelving in the premises and a Toyota forklift for the sum of $900,000.

16. The agreement of purchase and sale provided that Kohltech had until October 31, 2020 to perform its due diligence and SPI was not notified by Kohltech’s of any issue within the agreed delay.

17. SPI obtained an appraisal report providing market values for the 48 Lysander Property for a sale within a period of 360 days and 120 days, as appears from a copy of the appraisal report dated July 22, 2020 prepared by Ms. Karen Archibald communicated under seal as **Exhibit R-5**.

18. The 2020 municipal assessment of the value of the 48 Lysander Property is $679,600, (Exhibit R-5).

19. The sale price agreed by the parties is close the market value for a sale within 360 days and well above the market value for a sale within 120 days.

20. The agreement of purchase and sale provides that Kohltech will pay the entire purchase price on December 31, 2020 or such other date as may determine.

The 497 McElmon Property

21. On October 27, 2020, SPI entered into an agreement of purchase and sale with Specialty Steel II Incorporated ("**Specialty Steel**") for the 497 McElmon Property, as appears from the agreement of purchase and sale communicated under seal as **Exhibit R-6**.

22. The agreement of purchase and sale essentially provides that Specialty Steel is to purchase the 497 McElmon Property and some air compressors and racking located in the premises for the sum of $965,000.

23. The agreement of purchase and sale provides that Specialty Steel has until December 4, 2020 to perform its due diligence.

24. SPI obtained an appraisal providing market values for the 497 McElmon Property for a sale within a period of 360 days and 120 days, as appears from the appraisal report dated July 22, 2020 prepared by Ms. Karen Archibald communicated under seal as **Exhibit R-7**.

25. SPI also obtained an appraisal regarding the value of the air compressors and shelves sold. This evaluation sets the market value of compressors and shelves at $23,500 and $7,750 in a liquidation context, as appears from a copy of the evaluation letter dated October 9, 2020, communicated under seal as **Exhibit R-8**.

26. The 2020 municipal assessment of the value of the 497 McElmon Property is $691,700 (Exhibit R-8).

27. The sale price agreed by the parties is above the market value for a sale within 120 days.

28. The agreement of purchase and sale provides that Specialty Steel will pay the entire purchase price on December 29, 2020.

The 42 Lysander Property

29. On October 28, 2020, Ritchie Bros Properties Inc. ("**Ritchie Bros**") submitted a letter of intent for the purchase of the 42 Lysander Property, which was accepted by Spectra Premium Industries on November 10, 2020, as appears from a copy of the letter of intent communicated under seal as **Exhibit R-9**.

30. The letter of intent provides that Ritchie Bros is to purchase the 42 Lysander Property for the sum of $65,000 (plus HST).

31. A definitive written agreement has yet to be signed by SPI and Ritchie Bros before December 28, 2020.

32. SPI obtained an appraisal report providing the market value of the 42 Lysander Property, as appears from the appraisal report dated July 22, 2020 prepared by Ms. Karen Archibald communicated under seal as **Exhibit R-10**.

33. The 2020 municipal assessment of the value of the 42 Lysander Property is $29,400 (Exhibit R-10).

34. Although the sale price agreed by the parties is below the market value for a sale within 120 days, SPI believes that the price remains acceptable in the context where SPI is ending all activities in Debert and that the 42 Lysander Property is mainly a vacant lot with a small storage shed. The proposed purchaser owns the adjacent property and is therefore the most probable interested purchaser for the property.

Security interests against the Assets

35. As described in the Initial Motion and the Second A&R Initial Order, Spectra Group's main secured creditors are Wells Fargo Capital Finance Corporation Canada, in its capacity as administrative agent for itself and Canadian Imperial Bank of Commerce (collectively: "**Wells Fargo**") and Laurentian Bank of Canada, in its capacity as administrative agent for itself and Export Development Canada (collectively: "**BLC**"). Wells Fargo and BLC are the sole secured creditors for the Assets.

36. SPI hereby files as **Exhibit R-11** an up-to-date summary of the rights registered and filed at the Registry of Deeds for the County of Colchester at Truro, Nova Scotia for the Assets.

37. Pursuant to an Intercreditor Agreement signed between the secured creditors, BLC has a priority security interest on assets of Spectra Group other than Inventory and Receivables.

38. Both Wells Fargo and BLC, the sole secured creditors for the Assets, have been consulted prior to the present motion and support the Contemplated Transactions.

Reasons justifying the approval sought

39. SPI submits that it is appropriate to approve the Contemplated Transactions and that all conditions of sections 36 CCAA are met.

40. As for the opportunity to sell the Assets, it is consistent with Spectra Group's willingness to downsize and dispose of several assets.

41. Although there has been no formal solicitation process leading to the Contemplated Transactions, it is submitted that the Court should be satisfied that the purchase prices are reasonable in the circumstances, given the appraisal reports.

42. Furthermore, since SPI did not formally solicit buyers for the sale of the Assets, it avoided brokerage fees and listing fees. No sales commission has been or will be paid by SPI with respect to the Contemplated Transactions.

43. The Assets are located in an industrial park in Debert, Nova Scotia, a small community with a population of about 1750 residents. It is unlikely that SPI could receive a higher offer for the Assets.

44. Considering the location of the Assets and the appraisal reports obtained by SPI, it is submitted that a formal solicitation process would have been cash and time consuming without any reasonable expectation of a better result.

45. The net proceeds of the sale of the Assets will reduce the indebtedness towards BLC and will allow to focus Spectra Group's efforts on other elements of its restructuring plan.

46. The Monitor has been kept informed of the contemplated transactions and supports the contemplated transactions and the conclusions sought by the present motion.

47. The Monitor will file a separate report supporting the contemplated transactions as provided by the CCAA.

48. In light of the above, SPI respectfully submit that the issuance of the approval and vesting orders sought herein is in the best interest of all stakeholders and that it should be granted;

FOR THESE REASONS, MAY IT PLEASE THE COURT TO:

GRANT the present *Motion for the issuance of an approval and vesting order* (the "**Motion**")*;*

ISSUE a Vesting Order regarding the 48 Lysander Property in accordance with the draft Vesting Order communicated as Exhibit R-1;

ISSUE a Vesting Order regarding the 497 McElmon Property in accordance with the draft Vesting Order communicated as Exhibit R-2;

ISSUE a Vesting Order regarding the 42 Lysander Property in accordance with the draft Vesting Order communicated as Exhibit R-3;

THE WHOLE without costs, except if contested.

MONTREAL, November 16, 2020

Lavery De Billy

LAVERY, DE BILLY, L.L.P.
Lawyers for Petitioners

AFFIDAVIT

I, the undersigned, DENIS CHABOT, Vice President and Chief Financial Officer of the Petitioners, having a place of business at 1421 Ampère Street, Boucherville, Québec, J4B 5Z5, solemnly affirm that:

1. I am the authorized representative of the Petitioners and, as such, I have cognizance of all the facts in the present matter.

2. All the facts alleged in the *Motion for the Issuance of Three Approvals and Vesting Orders* are true.

AND I HAVE SIGNED:

DENIS CHABOT

SOLEMNLY AFFIRMED before me on November 16, 2020, before me by videoconference Zoom, in Boucherville and St-Hubert allowing me to recognize Denis Chabot, and witnessing him having read the motion and the sworn declaration and having signed it. The document transferred by email is *Motion for the Issuance of Three Approvals and Vesting Orders*.

Nathalie Tremblay
119,696

Commissioner of Oaths for Province of Quebec

NOTICE OF PRESENTATION

TO: **THE SERVICE LIST**

TAKE NOTICE that the present *Motion for the Issuance of an Approval and Vesting Order* will be presented for before the Honourable Justice Louis J. Gouin, S.C.J., in accordance with the following instructions.

Any party wishing to object to this motion shall file a notice of objection no later than November 18, 2020 at 5:00 pm.

If no one objects, judgment will be rendered without a hearing on November 19, 2020. If a notice of objection is filed, the coordinates will circulate for a hearing that will take place in a forum and at a date to be further announced to the Service List.

DO GOVERN YOURSELVES ACCORDINGLY.

MONTREAL, November 16, 2020

Lavery De Billy

LAVERY, DE BILLY, L.L.P.
Lawyers for Petitioners

C A N A D A

PROVINCE OF QUÉBEC
DISTRICT OF MONTREAL

Nº: 500-11-058116-209

S U P E R I O R C O U R T
(Commercial Division)
(Sitting as a court designated pursuant to the Companies' Creditors Arrangement Act, R.S.C. 1995, c. 36, as amended)

IN THE MATTER OF THE COMPROMISE OR ARRANGEMENT OF:

SPECTRA PREMIUM INDUSTRIES INC.
-and-

SPECTRA PREMIUM HOLDINGS (USA) CORP.

-and-

SPECTRA PREMIUM (USA) CORP.

-and-

SPECTRA PREMIUM PROPERTIES (USA) CORP.

-and-

SPECTRA PREMIUM TAIWAN CO. LTD.

-and-

SPECTRA PREMIUM (SHANGHAI) AUTOMOTIVE TECHNICAL SERVICES CO. LTD.

-and-

SPECTRA PREMIUM (CHONGQING) AUTOMOTIVE SERVICES CO. LTD.

Petitioners

and

ERNST & YOUNG INC.

Monitor

LIST OF EXHIBITS
[*Motion for the Issuance of an Approval and Vesting Order*]

Exhibit R-1: Draft Vesting Order regarding the 48 Lysander Property

Exhibit R-2: Draft Vesting Order regarding the 497 McElmon Property

Exhibit R-3: Draft Vesting Order regarding the 42 Lysander Property

Exhibit R-4: Agreement of purchase and sale for the 48 Lysander Property, *under seal*

Exhibit R-5: Appraisal report dated July 22, 2020 prepared by Ms. Karen Archibald for the 48 Lysander Property, *under seal*

Exhibit R-6: Agreement of purchase and sale for the 497 McElmon Property, *under seal*

Exhibit R-7 Appraisal report dated July 22, 2020 prepared by Ms. Karen Archibald for the 497 McElmon Property, *under seal*

Exhibit R-8 Letter of evaluation dated October 9, 2020 regarding the movable located in the 497 McElmon Property, *under seal*

Exhibit R-9 Letter of intent for the 42 Lysander Property, *under seal*

Exhibit R-10 Appraisal report dated July 22, 2020 prepared by Ms. Karen Archibald for the 42 Lysander Property, *under seal*

Exhibit R-11 Rights registered and filed at the Registry of Deeds for the County of Colchester at Truro, Nova Scotia for the Assets

MONTREAL, November 16, 2020

Lavery De Billy

LAVERY, DE BILLY, L.L.P.
Lawyers for Petitioners

Nº: 500-11-058116-209

SUPERIOR COURT
(Commercial Division)
DISTRICT OF MONTRÉAL

IN THE MATTER OF THE ARRANGEMENT OF:

SPECTRA PREMIUM INDUSTRIES INC.
-and-
SPECTRA PREMIUM HOLDINGS (USA) CORP.
-and-
SPECTRA PREMIUM (USA) CORP.
-and-
SPECTRA PREMIUM PROPERTIES (USA) CORP.
-and-
SPECTRA PREMIUM TAIWAN CO. LTD.
-and-
SPECTRA PREMIUM (SHANGHAI) AUTOMOTIVE TECHNICAL SERVICES CO. LTD.
-and-
SPECTRA PREMIUM (CHONGQING) AUTOMOTIVE SERVICES CO. LTD.

Petitioners

AND

ERNST & YOUNG INC.

Monitor

MOTION FOR THE ISSUANCE OF THREE APPROVALS AND VESTING ORDERS
(Section 36 of CCAA),
AFFIDAVIT, NOTICE OF PRESENTATION,
LIST OF EXHIBITS AND EXHIBITS R-1, R-2, R-3 AND R-11

ORIGINAL

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