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

-and-

WELLS FARGO BANK, NATIONAL ASSOCIATION

Impleaded party

MOTION FOR THE ISSUANCE OF AN ORDER REGARDING CERTAIN TRANSACTIONS (FACTORING WITH WELLS FARGO BANK, NATIONAL ASSOCIATION)
Sections 4, 5, 11 and *ff.* of the *Companies' Creditors Arrangement Act* (“**CCAA**”)

INTRODUCTION

1. The Petitioners (collectively, the "**Spectra Group**") are debtor companies for whom a first day initial order under the CCAA was rendered in this file on March 10, 2020 (the "**First Day Order**") and an amended and restated initial order was rendered on March 24, 2020 and a second amended and restated initial order was rendered on September 25, 2020 (collectively, the "**A&R Initial Order**"), as appears from the court record. The stay period provided for in the A&R Initial Order expires on January 30, 2021.

2. Since the issuance of the First Day Order, the Spectra Group, with the assistance of the Monitor, have been in contact with their suppliers, clients and several other stakeholders to inform them of the fact that all proceedings regarding pre-filing debts are stayed and that the Spectra Group are continuing their operations in the normal course of business.

3. On April 6, 2020, this Court rendered an order regarding the approval of certain transaction in the normal course of business which were factoring agreement allowing the Spectra Group to significantly reduce the terms of payment of certain clients in consideration for a discount rate.

4. The intervention of this Court is once again required for a similar situation.

CONTRACTS AT ISSUE

- AAP, LLC

5. AAP, LLC is a large distributor of several automobile products in the United States that owns several subsidiaries (collectively, "**AAP**").

6. In the year 2019, the Spectra Group sold over 13 M $ to AAP.

7. AAP requests terms of payment of 365 days to its suppliers, which would simply be impossible to support financially for the Spectra Group. As an alternative, suppliers can participate in a factoring program allowing them to be paid within 30 to 60 days, after deduction of the discount applied by the factoring bank.

8. Wells Fargo Bank, National Association ("**WF Factoring**") is prepared to act as the factoring bank for AAP's amount owed to Spectra Group.

9. As of this day, the Spectra Group has receivables that are past due by AAP in an approximate amount of 1.4M $ and an additional approximate amount of 200,000 $ will become due by AAP before the end of the year 2020.

- Trico Group LLC / First Brands Group, LLC

10. On May 21, 2020, this Court rendered an order approving a sale of assets (the "**Trico Sale**") between the Spectra Group and Trico Group, LLC ("**Trico**"). The purpose of that sale was to downsize certain lines of products of its US aftermarket division (cooling and fuel pumps).

11. This transaction with Trico provided, *inter alia*, that i) Trico would pay a certain percentage of the book value of the purchased assets and ii) the transfer and payment of the purchased assets would be made over a period of 6 months.

12. During the summer of 2020, Trico requested that the payments owed to the Spectra Group under the Trico Sale be made through an existing factoring program that Trico had with SGSF Master Purchasing De LLC, which is something the Spectra Group was willing to do insofar as the fees of the factoring be assumed exclusively by Trico so that the terms of the Trico Sale, as was approved by this Court, would not be modified.

13. The Monitor was made aware of this situation and on August 18, 2020, the parties signed an addendum to the Trico to provide for the factoring of the payments to be made by Trico, without any consequences as to the proceeds of sale to be received by the Spectra Group, as appears from that addendum, **Exhibit R-1** *under seal*;

14. Practically speaking, the Spectra Group increased the amount of the sale of the assets purchased compare to what was provided in the Trico Sale to take into consideration the discount being applied by SGSF Master Purchasing De LLC as factoring bank.

15. SGSF Master Purchasing De LLC had never requested a court order to proceed with the factoring of these payments owed by Trico to the Spectra Group, hence why this Court's intervention was not requested before.

16. Trico has recently changed its name to First Brands Group, LLC ("**FBG**") and WF Factoring is now also the factoring bank of FBG.

17. As of this day, the Petitioners have received a total amount of 12M $ from Trico/FBG in accordance with the Trico Sale and a last payment of approximately 3.5M$ is scheduled to be paid before the end of the year.

POSITION OF WF FACTORING AND CONCLUSIONS SOUGHT

18. Despite the fact that WF Factoring is related to Wells Fargo Capital Finance Corporation Canada, the main secured creditor of the Spectra Group, WF Factoring is insisting that an order be rendered confirming that the Spectra Group is authorized to enter into the factoring contract (or contracts) substantially in the form submitted as **Exhibit R-2**, *under seal* (the "**Contract**") and that no other parties will have rights on the receivables being purchased by WF Factoring pursuant to the Contract;

19. Therefore, the Spectra Group has no other real alternative but to request the Court's intervention to satisfy WF Factoring's request and issue the order sought herein.

20. As it relates to AAP, the sale of the receivables to WF Factoring in accordance with the Contract is done in the normal course of business and is essential to the Spectra Group' cash flow.

21. As it relates to Trico/FBG, although the receivables being sold to WF Factoring in accordance with the Contract are not in the normal course of business, it is simply a way to finalize the Trico Sale that was already approved by this Court without any burden on the Spectra Group or the creditors, as the fees of WF Factoring will be assumed by Trico/FBG.

22. Without the factoring program allowing for the efficient payment of the amounts owed to the Spectra Group by AAP and Trico/FBG, these amounts are at risk of not being collected for several months which would have a detrimental effect on the Spectra Group's business.

23. More generally, it is in the interest of Spectra Group's business to have the flexibility to enter into contracts that are substantially in the form of the Contract in order to have the capacity, in the normal course of business, to assign receivables to WF Factoring in order to collect amounts owed by clients in an efficient manner.

24. The Monitor has been made aware of the situation described herein and has advised the Spectra Group that it approves the factoring program with WF Factoring and that it supports the present motion.

FOR THESE REASONS, MAY IT PLEASE THE COURT TO:

GRANT the present *Motion regarding certain transactions in the normal course of business* (the "**Motion**")*;*

ABRIDGE the delays of presentation of the Motion;

DECLARE that the Petitioners are authorised to enter into factoring contracts with Wells Fargo Bank, National Association, or any related party or assignee (the "**WF Factoring**") that are substantially in the form of the draft contract file under seal as Exhibit R-2 to the Motion (the "**Contract**").

ORDER that upon the receipt by the Petitioners of a payment from WF Factoring pursuant to a Contract, all rights, title and interest in and to the receivables of the Petitioners corresponding to said payment shall vest absolutely and exclusively in and with WF Factoring, free and clear of and from any and all claims, liabilities (direct, indirect, absolute or contingent), obligations, prior claims, right of retention, charges, hypothecs, deemed trusts, judgments, writs of seizure or execution, notices of sale, contractual rights relating to the said receivables, encumbrances, whether or not they have been registered, published or filed and whether secured, unsecured or otherwise.

THE WHOLE without costs, except in case of contestation.

MONTREAL, January 8, 2021

Lavery De Billy

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

AFFIDAVIT

I, the undersigned, HENRI PAUL BOYER, Vice-President, Finance 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 an order regarding certain transactions (Factoring with Wells Fargo Bank, National Association) are true.

AND I HAVE SIGNED:

____
HENRI PAUL BOYER

SOLEMNLY AFFIRMED before me on January 8, 2021, by videoconference Zoom, in St-Donat and St-Hubert allowing me to recognize Henri-Paul Boyer, 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 an order regarding certain transactions (Factoring with Wells Fargo Bank, National Association).*

COMMISSAIRE À L'ASSERMENTATION POUR LE QUÉBEC
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 order regarding certain transactions (Factoring with Wells Fargo Bank, National Association)** will be presented for before the Honourable Justice Louis Gouin, S.C.J., on January 14, 2021. Any party wishing to object to this motion shall file a notice of objection **no later than January 13, at 5 p.m.** If no notice of objection is received, the judge will render judgment on January 14, 2021, without a hearing. If a notice of objection is filed within the aforementioned delay, hearing details will be arranged with the Court.

DO GOVERN YOURSELVES ACCORDINGLY.

MONTREAL, January 8, 2021

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

-and-

WELLS FARGO BANK, NATIONAL ASSOCIATION

Impleaded party

LIST OF EXHIBITS

PIÈCE R-1: *Under seal*, Addendum signed on August 18, 2020;

PIÈCE R-2: *Under seal*, Factoring contract (or contracts)

MONTREAL, January 8, 2021

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

-and-

WELLS FARGO BANK, NATIONAL ASSOCIATION

Impleaded party

MOTION FOR THE ISSUANCE OF AN ORDER REGARDING CERTAIN TRANSACTIONS (FACTORING WITH WELLS FARGO BANK, NATIONAL ASSOCIATION)
Sections 4, 5, 11 and *ff.* of the *Companies' Creditors Arrangement Act* ("**CCAA**")**, AFFIDAVIT, NOTICE OF PRESENTATION, LIST OF EXHIBITS**

O/file: 001320-00060 BL 1332

Me Jonathan Warin : 514 878-5616

LAVERY, DE BILLY, L.L.P.
SUITE 4000, 1, PLACE VILLE MARIE, MONTREAL, QUEBEC H3B 4M4
TELEPHONE: 514 871-1522 FAX NUMBER: 514 871-8977
EMAIL NOTIFICATIONS: NOTIFICATIONS-MTL@LAVERY.CA