

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

THE HONOURABLE MR.

)

MONDAY, THE 14TH

JUSTICE HAINEY

)

DAY OF SEPTEMBER, 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 DEL EQUIPMENT INC.

Applicant

DEMONSTRATION VEHICLE EQUIPMENT APPROVAL AND VESTING ORDER

THIS MOTION, made by Del Equipment Inc. (the "Applicant" or "DEL"), pursuant to the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the "CCAA") for an order (this "Order"), among other things, (i) approving the sale transaction (the "Transaction") contemplated by the bill of sale (the "Bill of Sale") to be entered into between the Applicant and Diesel Equipment Limited ("Diesel") substantially in the form attached as Exhibit "C" to the Lucky Affidavit (as defined below), and (ii) vesting in Diesel all of the Applicant's right, title and interest in and to the Equipment (as defined in the Bill of Sale), was heard this day by videoconference in light of the COVID-19 crisis.

ON READING the affidavit of Douglas Lucky sworn September 8, 2020 (the "Lucky Affidavit"), and the Exhibits thereto, the Fifth Report of MNP Ltd. in its capacity as monitor of the Applicant (the "Monitor"), and on hearing the submissions of counsel for the Applicant, the Monitor, and those other parties present as indicated on the counsel sheet, and on reading the affidavit of service of Andrew Harnes sworn September 9, 2020:

1. **THIS COURT ORDERS** that the time for service of the Notice of Motion and the Motion Record is hereby abridged and validated so that this Motion is properly returnable today and hereby dispenses with further service thereof.

2. **THIS COURT ORDERS** that unless otherwise indicated or defined herein, capitalized terms used in this Order shall have the meaning given to them in the Bill of Sale or the Lucky Affidavit, as applicable.
3. **THIS COURT ORDERS AND DECLARES** that the Transaction is hereby approved, and the execution of the Bill of Sale by the Applicant is hereby authorized and approved, with such minor amendments as the Applicant and Diesel may agree to with the consent of the Monitor. The Applicant is hereby authorized and directed to take such additional steps and execute such additional documents as may be necessary or desirable for the completion of the Transaction and for the conveyance of the Equipment to Diesel.
4. **THIS COURT ORDERS AND DECLARES** that upon the delivery of a Monitor's certificate to the Applicant and Diesel substantially in the form attached as Schedule A hereto (the "**Monitor's Certificate**"), all of the Applicant's right, title and interest in and to the Equipment described in the Bill of Sale shall vest absolutely in Diesel, free and clear of and from any and all security interests (whether contractual, statutory, or otherwise), hypothecs, mortgages, trusts or deemed trusts (whether contractual, statutory, or otherwise), liens, executions, levies, charges, or other financial or monetary claims, whether or not they have attached or been perfected, registered or filed and whether secured, unsecured or otherwise (collectively, the "**Claims**") including, without limiting the generality of the foregoing: (i) any encumbrances or charges created by the Order of this Court dated October 22, 2019 or any other Order of this Court in these proceedings; and (ii) all charges, security interests or claims evidenced by registrations pursuant to the *Personal Property Security Act* (Ontario), the *Personal Property Security Act* (British Columbia), the *Personal Property Security Act* (Alberta), the *Personal Property Security Act* (Saskatchewan), the *Personal Property Security Act* (New Brunswick) (all of which are collectively referred to as the "**Encumbrances**"), and, for greater certainty, this Court orders that all of the Encumbrances affecting or relating to the Equipment are hereby expunged and discharged as against the Equipment.
5. **THIS COURT ORDERS** that for the purposes of determining the nature and priority of Claims, the net proceeds from the sale of the Equipment shall stand in the place and stead of the Equipment, and that from and after the delivery of the Monitor's Certificate all

Claims and Encumbrances shall attach to the net proceeds from the sale of the Equipment with the same priority as they had with respect to the Equipment immediately prior to the sale, as if the Equipment had not been sold and remained in the possession or control of the person having that possession or control immediately prior to the sale.

6. **THIS COURT ORDERS AND DIRECTS** the Monitor to file with the Court a copy of the Monitor's Certificate, forthwith after delivery thereof to the Applicant and Diesel.
7. **THIS COURT ORDERS** that, notwithstanding:
 - (a) the pendency of these proceedings;
 - (b) any applications for a bankruptcy or receivership order now or hereafter issued pursuant to the *Bankruptcy and Insolvency Act* (Canada) in respect of the Applicant and any bankruptcy or receivership order issued pursuant to any such applications; and
 - (c) any assignment in bankruptcy made in respect of the Applicant;

the entering into of the Bill of Sale and the vesting of the Equipment in Diesel pursuant to this Order shall be binding on any trustee in bankruptcy that may be appointed in respect of the Applicant and shall not be void or voidable by creditors of the Applicant, nor shall it constitute nor be deemed to be a fraudulent preference, assignment, fraudulent conveyance, transfer at undervalue, or other reviewable transaction under the *Bankruptcy and Insolvency Act* (Canada) or any other applicable federal or provincial legislation, nor shall it constitute oppressive or unfairly prejudicial conduct pursuant to any applicable federal or provincial legislation.


8. **THIS COURT HEREBY REQUESTS** the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or in the United States to give effect to this Order and to assist the Applicant, the Monitor and their respective agents in carrying out the terms of this Order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Monitor, as an officer of this Court, as may be necessary or

desirable to give effect to this Order or to assist the Monitor and its agents in carrying out the terms of this Order.

A handwritten signature in black ink, appearing to read "Harvey", written over a horizontal line.

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

SEP 15 2020

PER / PAR: 

SCHEDULE "A"
FORM OF MONITOR'S CERTIFICATE

Court File No. CV-19-629552-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

IN THE MATTER OF THE COMPANIES' CREDITORS
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MONITOR'S CERTIFICATE

RECITALS

- A. Pursuant to an Order of the Ontario Superior Court of Justice (Commercial List) (the "Court") dated October 22, 2019, MNP Ltd. was appointed as the monitor (the "Monitor") of Del Equipment Inc. (the "Applicant") in proceedings pursuant to the *Companies' Creditors Arrangement Act* (Canada).
- B. Pursuant to an Order of the Court dated September ●, 2020 (the "**Demonstration Vehicle Equipment Approval and Vesting Order**"), the Court approved the bill of sale (the "**Bill of Sale**") to be entered into between the Applicant and Diesel Equipment Limited ("**Diesel**") (which Bill of Sale was subsequently entered into on ●, 2020) and provided for the vesting in Diesel of all of the Applicant's right, title and interest in and to the Equipment, which vesting is to be effective with respect to the Equipment upon the delivery by the Monitor to the Applicant and Diesel of a certificate confirming (i) the payment by Diesel of the Purchase Price for the Equipment; (ii) that the conditions set out in the Bill of Sale have been satisfied or waived by the Applicant and Diesel; and (iii) the Transaction has been completed to the satisfaction of the Applicant and Diesel.
- C. Unless otherwise indicated herein, terms with initial capitals have the meanings set out in the Bill of Sale.

THE MONITOR CERTIFIES the following:

1. Diesel has paid and the Applicant has received the Purchase Price for the Equipment pursuant to the Bill of Sale.
2. The conditions set out in the Bill of Sale have been satisfied or waived by the Applicant and Diesel, as applicable.
3. The Transaction has been completed to the satisfaction of the Applicant and Diesel.
4. This Certificate was delivered by the Monitor at _____ [a.m/p.m.] on _____, 2020.

MNP LTD., in its capacity as Court-appointed Monitor of Del Equipment Inc. and not in its personal or corporate capacity

Per: _____

Name:

Title:

IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*, R.S.C.
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Court File No: CV-19-629552-00CL

Applicant

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)
Proceeding commenced at Toronto

**DEMONSTRATION VEHICLE EQUIPMENT
APPROVAL AND VESTING ORDER**

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