

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

DIESEL EQUIPMENT LIMITED

Applicant

– and –

DEL EQUIPMENT INC.

Respondent



NOTICE OF APPLICATION

TO THE RESPONDENTS:

A LEGAL PROCEEDING HAS BEEN COMMENCED by the Applicant. The claim made by the Applicant appears on the following page.

THIS APPLICATION will come on for a hearing before a Judge presiding over the Commercial List on April 29, 2020 at 10:00 a.m. (Toronto time) or as soon after that time as the matter may be heard by videoconference call in light of the COVID-19 crisis.

IF YOU WISH TO OPPOSE THIS APPLICATION, to receive notice of any step in the application or to be served with any documents in the application, you or an Ontario lawyer acting for you must forthwith prepare a notice of appearance in Form 38A prescribed by the Rules of Civil Procedure, serve it on the Applicant's lawyer or, where the Applicant does not have a lawyer, serve it on the Applicant, and file it, with proof of service, in this court office, and you or your lawyer must appear at the hearing.

IF YOU WISH TO PRESENT AFFIDAVIT OR OTHER DOCUMENTARY EVIDENCE TO THE COURT OR TO EXAMINE OR CROSS-EXAMINE WITNESSES ON THE APPLICATION, you or your lawyer must, in addition to serving your notice of appearance, serve a copy of the evidence on the Applicant's lawyer or, where the Applicant does not have a lawyer, serve it on the Applicant, and file it, with proof of service, in the court office where the application is to be heard as soon as possible, but not later than 2 p.m. on the day before the hearing.

IF YOU FAIL TO APPEAR AT THE HEARING, JUDGMENT MAY BE GIVEN IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU. IF YOU WISH TO OPPOSE THIS APPLICATION BUT ARE UNABLE TO PAY LEGAL FEES, LEGAL AID MAY BE AVAILABLE TO YOU BY CONTACTING A LOCAL LEGAL AID OFFICE.

Date April 24, 2020

Issued by 
Local registrar **C. Irwin**
Registrar

Address of court office 330 University Avenue, 9th Floor
Toronto, Ontario M5G 1R7

APPLICATION

1. **THE APPLICANT MAKES AN APPLICATION FOR:** an Order (the “**Limited Receivership Order**”), in substantially the form attached at Tab 3 of the Applicant’s Application Record dated April 22, 2020, among other things:

- a) lifting the stay of proceedings granted by this Court in the Initial Order dated October 22, 2019 (the “**Initial Order**”) made in the proceedings of Del Equipment Inc. (“**DEL**” or the “**Company**”) under the *Companies’ Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the “**CCAA**”) (Court File No. CV-19-629552-00CL) (the “**CCAA Proceedings**”), solely with respect to DEL and the Limited Receivership Property (as defined below) and solely to allow: (a) the appointment of MNP Ltd. (“**MNP**”) as receiver (in such capacity, the “**Receiver**”) over the Limited Receivership Property; and (b) the Receiver to act in respect of the Limited Receivership Property in accordance with the provisions of the Limited Receivership Order;
- b) appointing the Receiver, without security, over the Limited Receivership Property pursuant to Section 243(1) of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended (the “**BIA**”) on the terms set out in the Limited Receivership Order;
- c) relieving the Receiver from compliance with the provisions of Section 245(1), 245(2) and 246 of the BIA, subject to certain qualifications; and
- d) such further and other relief as this Court may deem just.

2. **THE GROUNDS FOR THE APPLICATION ARE:**

- a) On October 22, 2019, DEL was granted protection from its creditors under the CCAA pursuant to the Initial Order which, among other things, (i) appointed MNP as the monitor (the “**Monitor**”) of DEL in the CCAA Proceedings, (ii) granted a stay of proceedings in respect of DEL, and (iii) approved DEL’s commencement of a sale and investment solicitation process. The stay of proceedings was subsequently extended by this Court on November 19, 2019 to February 28, 2020, and was further extended by this Court on February 27, 2020 to May 29, 2020.
- b) As at the time of DEL’s CCAA filing, the Company employed approximately 174 employees, comprised of approximately 55 salaried and sales employees and 119 hourly employees, most of whom were located in Ontario and Alberta.
- c) On February 27, 2020, this Court granted an Order (the “**Approval and Vesting Order**”), among other things, approving a sale transaction (the “**DPI Transaction**”) pursuant to an asset purchase agreement dated as of February 21, 2020 (as amended, the “**Purchase Agreement**”) between DEL and Drive Products Inc. (“**DPI**”). The DPI Transaction closed on March 31, 2020.
- d) Upon the closing of the DPI Transaction, 36 of DEL’s employees commenced employment with DPI. Except for: (i) approximately 36 employees who voluntarily terminated their employment with the Company during the case; and (ii) 25 employees who remain with DEL temporarily in order to assist with its remaining restructuring and wind-down activities, the balance of the Company’s

employees (approximately 113 in total, including those contemporaneously terminated by DEL and hired by DPI on closing) have been terminated during the course of the CCAA Proceedings.

- e) The *Wage Earners Protection Program Act*, S.C. 2005, c. 47, s. 1 (the “**WEPPA**”) entitles certain eligible individuals to receive certain payments from the government in respect of wages and severance payments owed to them by employers who are bankrupt or subject to a receivership.
- f) Although the WEPPA has been amended to apply to CCAA proceedings, those amendments are not yet in force and, as such, DEL’s former employees are not currently eligible to receive any payments under the WEPPA as DEL is currently not subject to bankruptcy or receivership proceedings.
- g) The bank account to be listed at Schedule “A” to the Limited Receivership Order (the “**Limited Receivership Property**”) will contain only limited amounts.
- h) The appointment of the Receiver over the Limited Receivership Property would not affect the CCAA Proceedings and will not cause any prejudice to any party.
- i) It is just and convenient in the circumstances that the Receiver be appointed over the Limited Receivership Property pursuant to Section 243(1) of the BIA on the terms set out in the Limited Receivership Order.
- j) Given that MNP has been appointed as Monitor of DEL in the CCAA Proceedings and is subject to reporting obligations to creditors under the CCAA

and the Initial Order, no party will be prejudiced by an order relieving the Receiver from compliance with Section 245(1), 245(2) and 246 of the BIA.

- k) The Monitor supports this Application and DEL consents to and supports the granting of the requested relief in the present circumstances.
- l) The provisions of the CCAA and this Court's equitable and statutory jurisdiction thereunder.
- m) Section 243(1) and 243(2) of the BIA.
- n) The provisions of the WEPPA.
- o) Rules 2.03, 3.02, 16 and 38 of the *Rules of Civil Procedure*, R.R.O. 1990 Reg. 194, as amended; and
- p) Such further and other grounds as counsel may advise and this Court may permit.

3. **THE FOLLOWING DOCUMENTARY EVIDENCE** will be used at the hearing of the Application:

- a) The affidavit of Douglas Lucky sworn April 20, 2020, and the exhibits attached thereto;
- b) The Third Report of the Monitor to be filed in the CCAA Proceedings; and
- c) Such further and other material as counsel may advise and this Court may permit.

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April 22, 2020

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DIESEL EQUIPMENT LIMITED, APPLICANT – AND –
DEL EQUIPMENT INC., RESPONDENT

Court File No: CV-20-00640027-00
CL

AND IN THE MATTER OF AN APPLICATION UNDER SECTION 243(1) OF THE
BANKRUPTCY AND INSOLVENCY ACT, R.S.C. 1985, c. B-3, AS AMENDED

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

NOTICE OF APPLICATION

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