

**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 DEL EQUIPMENT INC.**

Applicant

**SUPPLEMENTARY AFFIDAVIT OF DOUGLAS LUCKY  
(sworn January 15, 2020)**

I, Douglas Lucky, of the City of Toronto, in the Province of Ontario, MAKE OATH AND  
SAY:

**I. INTRODUCTION**

1. I am the Chief Restructuring Officer (“**CRO**”) of Del Equipment Inc. (“**DEL**” or the “**Company**”), a Canadian truck body and equipment “up-fitter” that engineers, designs, manufactures and sells special truck bodies, attachments, equipment and work-ready vehicles nationwide through its six manufacturing and distribution locations.
2. DEL retained 2255987 Ontario Limited o/a Strategic Results Advisors (a company which I am the principal of) on July 23, 2019 to provide restructuring and turn-around advisory services. I was appointed by DEL as CRO immediately prior to the Company’s commencement of the within proceedings under the *Companies’ Creditors Arrangement*

*Act* (the “**CCAA**”), with such appointment becoming effective upon the issuance by this Court of the Initial Order. I was previously employed as the chief executive officer and chief operating officer of DEL Equipment Limited (the previous entity through which DEL’s business was operated) from April 2013 to November 2017.

3. Accordingly, I have personal knowledge of the matters to which I depose in this affidavit. Where I do not possess personal knowledge, I have stated the source of my information and, in all such cases, believe it to be true.
4. I previously swore an affidavit in these proceedings on October 20, 2019 (the “**Initial Affidavit**”) in connection with DEL’s application for the Initial Order. Capitalized terms not otherwise defined herein have the meanings given to them in my Initial Affidavit.
5. This affidavit supplements my Initial Affidavit and is sworn in respect of the dispute involving Mack Defense, LLC (“**Mack Defense**”) and Gin-Cor Industries Inc. (“**GCI**” and, together with its affiliates, the “**Gin-Corp Group**”), in which payment of \$874,107.08 (the “**Funds**”) owing to DEL from Mack Defense was improperly made by Mack Defense to GCI.<sup>1</sup>
6. On October 22, 2019, concurrent with the issuance of the Initial Order and the commencement of these proceedings, DEL obtained an order of this Court which, among other things, required GCI to transfer the Funds to the Monitor by no later than October 25, 2019. On November 5, 2019, following a motion by DEL seeking a further preservation order as a result of GCI’s failure to transfer the Funds to the Monitor, the

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<sup>1</sup> Unless otherwise indicated, monetary references in this affidavit are references to Canadian dollars.

Court granted a consent preservation order directing GCI to transfer the Funds to its counsel in trust pending further order of this Court or the consent of DEL, GCI and the Monitor.

7. The parties are respectfully asking that the Court approve a process (through a combination of a Court hearing and a referral to a CCAA claims officer, as necessary) to resolve the following two issues relating to this dispute:
  - (a) whether GCI has the right to retain all or any portion of the Funds and to set-off the Funds against: (i) any amount owing by DEL to GCI, and (ii) any amount owing by DEL to another entity in the Gin-Cor Group (the “**Set-Off Dispute**”); and
  - (b) the amounts owing by: (i) DEL to each entity in the Gin-Cor Group, and (ii) each entity in the Gin-Cor Group to DEL, including the specific amount that GCI is entitled to set-off against the Funds if the Court determines the Set-Off Dispute in favour of GCI.

## II. RESPONSE TO SILVERI AFFIDAVIT

8. I have read the affidavit of Renzo Silveri sworn November 3, 2019 (the “**Silveri Affidavit**”) filed by GCI in connection with DEL’s motion for the further preservation order, and respond in this affidavit to certain specific matters raised therein. I do not address all issues in the Silveri Affidavit with which I disagree. The fact that I do not specifically address any particular allegation made in the Silveri Affidavit does not mean that I agree with it.
9. At paragraph 25 of the Silveri Affidavit, Mr. Silveri states that immediately prior to GCI receiving the Funds, DEL was indebted to the Gin-Cor Group in the amount of

approximately \$1,296,206. In paragraph 34 of the Silveri Affidavit, Mr. Silveri further states that the Funds were being “retained by GCI and properly credited to pre-existing and legitimate debts owing by DEL to the Gin-Cor Group.”

10. The statements in the Silveri Affidavit do not fully explain the situation that existed between DEL and the Gin-Cor Group.
11. First, while DEL is in the process of reviewing and reconciling its accounts with Gin-Cor Group entities, it believes the amount owing by DEL to the Gin-Cor Group is less than the amount set forth in in the Silveri Affidavit, including because various entities in the Gin-Cor Group also owe amounts to DEL. I also note that, for clarity, in addition to amounts DEL owes to GCI, DEL’s records reflect amounts owing to four other Gin-Cor Group entities. As part of the contemplated dispute resolution process, DEL is prepared to work with GCI towards consensually resolving the quantum of any amounts owing by DEL to the Gin-Cor Group. If the quantum of such amounts cannot be resolved consensually, it is proposed that the matter will be referred to the CCAA claims officer for final determination to the extent relevant.
12. Second, the Silveri Affidavit omits the fact that, with the exception of the amount of \$8,717.96 (which is discussed in greater detail below), none of the amounts owed by DEL to the Gin-Cor Group relate to the work that DEL undertook for Mack Defense pertaining to the MD Trucks (as defined below) and for which Mack Defense attempted to pay the Funds to DEL.
13. By way of background and as described in further detail in the Initial Affidavit, the Funds were paid by Mack Defense in respect of DEL’s up-fit of four different truck configurations

and 19 up-fit trucks (the “**MD Trucks**”). Mack Defense issued purchase orders for the MD Trucks to DEL through DEL’s Moncton branch, and DEL performed the necessary work to up-fit the MD Trucks and deliver them to DND bases and Parks Canada locations, as requested.

14. I have consulted with Steve Lewin, the general manager of DEL’s Moncton branch, and understand that DEL outsourced certain work in respect of the MD Trucks to various subcontractors, including GCI. I understand from Mr. Lewin that DEL has paid all amounts due and owing to GCI in respect of the work it performed in connection with the MD Trucks except for the amount of \$8,717.96 which remains outstanding and subject to the CCAA stay. The invoices relating to the outstanding \$8,717.96 owed by DEL to GCI in respect of the MD Trucks are attached as Exhibits “A” and “B” to this affidavit. I note that the invoices for the \$8,717.96 amount were rendered by GCI to DEL, and were not rendered by GCI to Mack Defense.
15. Other than this small amount of \$8,717.96, there are no amounts owing by DEL to the Gin-Cor Group that relate in any manner whatsoever either to the MD Trucks and/or any purchase orders issued by, or invoices issued to, Mack Defense. Rather, amounts owing by DEL to the Gin-Cor Group relate to their other business dealings, including rent and management payments.

### **III. STATUS OF CLAIMS OF CREDITORS**

16. As described in greater detail in the Initial Affidavit, DEL owed significant amounts to its creditors at the outset of this case, including approximately \$11.5 million to its senior secured creditor (Diesel) and \$8 million to its supplier base. Except for certain critical

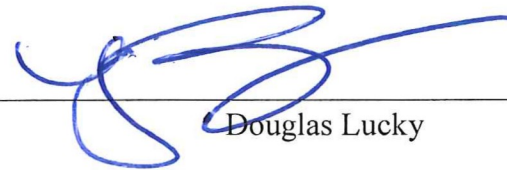
vendor payments authorized by this Court, most pre-filing amounts owing by DEL to its creditors remain unpaid and subject to the CCAA stay.

17. DEL, with the assistance of its professional advisors, continues to advance the sale and investment process (the “**Sale Process**”) approved by this Court in the Company’s CCAA proceedings as it works towards identifying and implementing a sale or restructuring transaction or other alternative that may be available to maximize the value of its business for the benefit of the Company and its stakeholders. There is no certainty at this stage of the Sale Process and the CCAA proceedings as to the recoveries for DEL’s creditors. As such, to the extent GCI were permitted to retain all or any portion of the Fund, it could receive preferential treatment over DEL’s other creditors, including other unsecured creditors.

SWORN before me at the City of Toronto, in the Province of Ontario, on January 15, 2020.



A Commissioner for taking affidavits



Douglas Lucky

**THIS IS EXHIBIT "A"  
TO THE AFFIDAVIT OF DOUGLAS LUCKY  
SWORN BEFORE ME THIS 15<sup>th</sup> DAY OF JANUARY, 2020**

A handwritten signature in blue ink, appearing to read "Atwater", is written over a horizontal line.

Commissioner for Taking Affidavits

**Gin-Cor Industries Inc.**5151 Highway 17 West  
Mattawa, ON P0H 1V0 Canada

Phone # 705 744 5543

Fax # 705 744 2943

E-mail accountsreceivable@gincor.com

Web Site www.gincor.com

**Invoice #****54130**

Mar-29-2019

Location

Carleton Place

GST/HST No.

864578240

Sold ToDel Equipment Inc. - Moncton Division  
83 Caledonia Road  
Moncton, NB E1H 2E6Ship ToDel Equipment Inc. - Moncton Division  
83 Caledonia Road  
Moncton, NB E1H2E6

<b>Payment Terms</b> Due on receipt	<u>Quotation #</u> J19-048	<u>Make / Model</u> Mack	<u>Box Serial #</u> DH-383236	<u>Rep</u>
<u>Customer P.O.</u>	<u>Job #</u>	<u>Chassis #</u>	<u>End User</u>	
	J19-048	1M2GR3GC4KM011841	CFB Trenton	

<u>Ship Qty</u>	<u>Part ID</u>	<u>Part Description</u>	<u>U/M</u>	<u>Unit Price</u>	<u>Extended Price</u>
1.00	Dump box extra c...	Extra charge for Dump Boxes Re & re taillights and mudflaps To blast, mask and prime box To sand box sides and paint yellow To prep and paint balck @ post and rear section Subletted by: Thomas Cavanagh #41177, copy attached	EA	4,465.00	4,465.00

ENTERED IN SPOKANE  
 VENDOR # 30682  
 NETV 20211 4 @ 580.46  
 CHG TO: \_\_\_\_\_ CIG: \_\_\_\_\_  
 CHG TO: 11200 CIG: 4465.00  
 CHG TO: \_\_\_\_\_ CIG: \_\_\_\_\_  
 DATE: 04/04 APPD: \_\_\_\_\_

**Thank you for your business!**

If you have any queries with this invoice, please contact

Phone: (705) 744-5543

Fax: (705) 744-2943

Invoice Sub-total

CAD 4,465.00

Harmonized Sales Tax (13%)

CAD 580.46

**Invoice Total****CAD 5,045.46**

Deposits/Credits

CAD 0.00

**Balance Due****CAD 5,045.46**



**THIS IS EXHIBIT "B"**  
**TO THE AFFIDAVIT OF DOUGLAS LUCKY**  
**SWORN BEFORE ME THIS 15<sup>th</sup> DAY OF JANUARY, 2020**

A handwritten signature in blue ink, appearing to read "Alc nee", is written above a horizontal line.

Commissioner for Taking Affidavits

**Gin-Cor Industries Inc.**5151 Highway 17 West  
Mattawa, ON P0H 1V0 CanadaPhone # 705 744 5543  
Fax # 705 744 2943  
E-mail accountsreceivable@ginco.com  
Web Site www.ginco.com**Invoice # 54862**

May-09-2019

Location Carleton Place

GST/HST No. 864578240

*part as per Steve*Sold ToDel Equipment Inc. - Moncton Division  
83 Caledonia Road  
Moncton, NB E1H 2E6Ship ToDel Equipment Inc. - Moncton Division  
83 Caledonia Road  
Moncton, NB E1H2E6

<u>Payment Terms</u> <b>Net 30</b>	<u>Quotation #</u>	<u>Make / Model</u> <b>Mack</b>	<u>Box Serial #</u>	<u>Rep</u> <b>KB</b>
<u>Customer P.O.</u> <b>PO# Steve Lewin</b>	<u>Job #</u>	<u>Chassis #</u>	<u>End User</u> <b>DND Trenton</b>	

<u>Part ID</u>	<u>Part Description</u>
<b>Delivery/Shunting</b>	To cover the cost of fuel and delivery to DND Trenton for the following jobs J19-046 VIN: KM011839 J19-047 VIN: KM011840 J19-048 VIN: KM011841 J19-049 VIN: KM011842 J19-050 VIN: KM011838

ENTERED IN SPOKANE	
VENDOR#	30682
INSTR#	
CHG TO:	GIC:
CHG TO:	GIC:
CHG TO: 11200	GIC:
DATE: 05/17	APPD:
119	\$

**Total Job CAD 3,250.00****Thank you for your business!**

If you have any queries with this invoice, please contact

Phone: (705) 744-5543

Fax: (705) 744-2943

<i>Invoice Sub-total</i>	CAD 3,250.00
<i>Harmonized Sales Tax (13%)</i>	CAD 422.50
<b>Invoice Total</b>	<b>CAD 3,672.50</b>
<i>Deposits/Credits</i>	CAD 0.00
<b>Balance Due</b>	<b>CAD 3,672.50</b>

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C-36, AS AMENDED**

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

**AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF DEL  
EQUIPMENT INC.**

Applicant

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

**AFFIDAVIT OF DOUGLAS LUCKY  
(Sworn January 15, 2020)**

**GOODMANS LLP**  
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Toronto, Canada M5H 2S7

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Fax: (416) 979-1234

Lawyers for Del Equipment Inc.