



# HERCULES

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Hon. Justice John Bodurtha  
Supreme Court of Nova Scotia (Halifax)  
The Law Courts  
1815 Upper Water Street  
Halifax, NS B3J 1S

My Lord:

**Re: Hfx. No. 507069: Atlantic Crane & Material Handling Limited, Labrador Cranes 2005 Limited, and LCB Rentals Limited**

I am the President of Hercules SLR Inc. ("Hercules"). Hercules entered into an Asset Purchase agreement dated September 9, 2021 ("APA") whereby Hercules agreed the purchase the assets of Atlantic Crane & Material Handling Limited, Labrador Cranes 2005 Limited, and LCB Rentals Limited (collectively, the "Vendor"). Pursuant to a Sale Approval and Vesting Order of this Honourable Court, issued September 29, 2021, the APA was approved. All parties consented to the issuance of the September 29, 2021 Order.

Hercules has reviewed the letter filed by Mr. Hill, Q.C. and does not agree with Mr. Hill's assertion that there has been a material adverse change in the circumstances of the Vendors, nor does it agree that the facts are undisputed; rather, Hercules submits that it has abided by the Court approved APA, which states:

#### 1.16 Purchase Price

The purchase price payable by the Purchaser to the Vendors for the Purchased Assets (the "Purchase Price") is the sum of One Million Three Hundred and Fifty-Seven Thousand Dollars (\$1,357,000.00), plus payment to BDC or assumption of those sums due to BDC and secured by the Permitted Encumbrance described in Scheduled "D" hereto. The Purchase Price is based on the value of the Purchased Assets as at August 4, 2021. The Purchase Price shall be adjusted at Closing in the event of any decrease in value of the Purchased Assets between August 4, 2021 and Closing.

[Emphasis added]

The affidavit of Peter Wong, enclosed, attaches the assets list of the Vendor as of August 2021 and as of October 4, 2021. The asset value has decreased by approximately \$370,000.00 as the result of items physically missing, damage, or unsupported values.



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Hercules requested MNP Ltd. as the Court appointed monitor attend to take inventory with them on October 4, 2021. MNP Ltd declined to do so.

Pursuant to the unambiguous language of the Court-approved APA, the purchase price is to be adjusted downward in the event of a decrease in value of the Purchased Assets as of the closing. This is in accordance with the APA and, by extension, the requirements of the September 29, 2021 Order. There has not been any material adverse change in the circumstances of the Vendor. The APA accounted for any decrease in the asset holdings of the Vendors by providing for an adjustment on closing for same. This adjustment mechanism was approved by this Honourable Court. Respectfully, nothing has changed in that regard as it had already been contemplated by the APA.

The Stalking Horse bidding process was approved by this Honourable Court. Hercules participated in this Court approved process. Hercules's bid was accepted, and was formalized in the APA, which was subsequently approved by this Honourable Court. Hercules is prepared to, and should be allowed, to comply with the APA. To permit a third party, namely Russell Industries, to submit a new offer at this time circumvents the Court-approved auction which took place on September 16, 2021.

If this Honourable Court sets aside an approved APA on the basis that the vendor has what can be characterized as "seller's regret", it risks undermining its own processes, as well as the confidence of sophisticated commercial parties in the Court.

Respectfully

A handwritten signature in black ink, appearing to read "Chris Giannou", written in a cursive style.

Chris Giannou  
President  
Hercules SLR Inc.



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