

**SUPERIOR COURT**  
(Commercial Division)

CANADA  
PROVINCE OF QUÉBEC  
DISTRICT OF MONTRÉAL  
No. 500-11-058617-206  
DATE: August 20, 2020

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PRESIDING: THE HONOURABLE MICHEL A. PINSONNAULT, J.S.C.

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IN THE MATTER OF THE NOTICE OF INTENTION TO MAKE A PROPOSAL OF:  
KIDIWAY INC.

Debtor

-and-

THE REGISTRAR OF THE REGISTER OF PERSONAL AND MOVABLE REAL  
RIGHTS (Québec)

Mis-en-Cause

-and-

MNP LTD.

Trustee

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**APPROVAL AND VESTING ORDER**

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- [1] **ON READING** the *Motion for the Issuance of an Approval and Vesting Order* (the "**Motion**") of Kidiway Inc. (the "**Debtor**" or "**Kidiway**"), the affidavit and the exhibits in support thereof, as well as the Report of the Trustee dated August 18, 2020 (the "**Report**");
- [2] **SEEING** the service of the Motion;
- [3] **SEEING** the submissions of Debtor's attorneys;

- [4] **SEEING** that it is appropriate to issue an order approving the transaction(s) (the "**Transaction**") contemplated by the agreement dated August 10, 2020 entitled Offer to Purchase (the "**Purchase Agreement**") by and between, *inter alia*, the Debtor, as one of the vendors (the "**Vendor**"), and Mark Srour, acting without personal liability on behalf of a company to be incorporated, as purchaser (the "**Purchaser**"), copy of which was filed as Exhibit P-1 to this Motion under seal, and vesting in the Purchaser the assets described in the Purchase Agreement (the "**Purchased Assets**"), and which are more fully described in **Schedule "B"** to this Order.

**WHEREFORE THE COURT:**

- [5] **GRANTS** the Motion;

**SERVICE**

- [6] **ORDERS** that any prior delay for the presentation of the Motion is hereby abridged and validated so that the Motion is properly returnable today and hereby dispenses with further service thereof.
- [7] **PERMITS** service of this Order at any time and place and by any legal means whatsoever.

**SALE APPROVAL**

- [8] **ORDERS** and **DECLARES** that the Transaction is hereby approved, and the execution of the Purchase Agreement by the Vendor is hereby authorized and approved, with such non-material alterations, changes, amendments, deletions or additions thereto as may be agreed to but only with the consent of the Trustee.

**EXECUTION OF DOCUMENTATION**

- [9] **AUTHORIZES** the Vendor and the Purchaser to perform all acts, sign all documents and take any necessary action to execute any agreement, contract, deed, provision, transaction or undertaking stipulated in the Purchase Agreement (Exhibit **P-1**) and any other ancillary document which could be required or useful to give full and complete effect thereto.

**AUTHORIZATION**

- [10] **ORDERS** and **DECLARES** that this Order shall constitute the only authorization required by the Vendor to proceed with the Transaction and that no shareholder or regulatory approval, if applicable, shall be required in connection therewith.

**VESTING OF PURCHASED ASSETS**

- [11] **ORDERS** and **DECLARES** that upon the issuance of a Trustee's certificate substantially in the form appended as **Schedule "A"** hereto (the "**Certificate**"), all rights, title and interest in and to the Purchased Assets shall vest absolutely and exclusively in and with the Purchaser, and all of the Purchased Assets will be completely free and clear of all claims, liabilities (direct, indirect, absolute or contingent), obligations, interests, prior claims, security interests, hypothecs, mortgages, pledges, deemed trusts, assignments, judgments, executions, writs

of seizure of execution, notices of sale, options, adverse claims, levies, rights of first refusal or other pre-emptive rights in favour of third parties, restrictions on transfer of title, contractual rights relating to the Purchased Assets, pre-inscriptions or any other publications in favour of third parties relating to the Purchased Assets or other claims or encumbrances, whether or not they have attached or have been perfected, registered, published or filed and whether secured, unsecured or otherwise, including, without limitation, any and all of the foregoing evidenced by any registrations, publications or filings pursuant to the *Civil Code of Quebec* or any other applicable legislation (collectively the “**Encumbrances**”).

- [12] **ORDERS** that all of the Encumbrances affecting or relating to the Purchased Assets, be discharged as against the Purchased Assets, in each case effective as of the applicable time and date of the Certificate.
- [13] **DECLARES** that upon issuance of the Certificate, (i) the Transaction shall be deemed to constitute and shall have the same effect as a sale under judicial authority as per the provisions of the *Code of Civil Procedure* and a forced sale as per the provisions of the *Civil Code of Quebec*, and (ii) other than the “Assumption” (as defined in the Purchase Agreement), Purchaser will not, under any circumstances whatsoever, assume or be liable for any debts, liabilities or obligations of the Debtor.
- [14] **ORDERS** and **DIRECTS** the Trustee to file with the Court a copy of the Certificate, forthwith after issuance thereof.

**REDUCTION OF SECURITY REGISTRATIONS**

- [15] **ORDERS** the Quebec Personal and Movable Real Rights Registrar, upon presentation of the required form with a true copy of this Order and the Certificate, to reduce any registrations in connection with the Purchased Assets, including, without limitation, the following registrations in connection with the Purchased Asset in order to allow the transfer to the Purchaser of the Purchased Assets free and clear of such registrations:

<b>Deed</b>	<b>Number</b>	<b>Date</b>	<b>Secured Party</b>
Hypothèque conventionnelle sans dépossession	12-0609000-0001	July 26, 2012	Banque Nationale du Canada
Hypothèque conventionnelle sans dépossession	14-0067483-0001	January 28, 2014	Investissement Québec
Hypothèque conventionnelle sans dépossession	16-0059206-0005	January 25, 2016	Banque Nationale du Canada

## **NET PROCEEDS**

- [16] **ORDERS** that the net proceeds from the sale of the Debtor's Purchased Assets (the "**Net Proceeds**") shall be remitted to the Trustee and shall be distributed in accordance with applicable legislation.
- [17] **ORDERS** that for the purposes of determining the nature and priority of the Encumbrances, the Net Proceeds from the sale of the Purchased Assets shall stand in the place and stead of the Purchased Assets, and that upon payment of the Purchase Price (as defined in the Purchase Agreement) by the Purchaser, all Encumbrances shall attach to the Net Proceeds with the same priority as they had with respect to the Purchased Assets immediately prior to the sale, as if the Purchased Assets had not been sold and remained in the possession or control of the person having that possession or control immediately prior to the sale.

## **VALIDITY OF THE TRANSACTION**

- [18] **ORDERS** and **DECLARES** that notwithstanding:
- (i) the pendency of these proceedings;
  - (ii) any petition for a receiving order now or hereafter issued pursuant to the *Bankruptcy and Insolvency Act* ("**BIA**") and any order issued pursuant to any such petition; or
  - (iii) the provisions of any federal or provincial legislation;

the vesting of the Purchased Assets contemplated in this Order, as well as the execution of the Purchase Agreement pursuant to this Order, are to be binding on any trustee in bankruptcy that may be appointed, and shall not be void or voidable nor deemed to be a preference, assignment, fraudulent conveyance, transfer at undervalue or other reviewable transaction under the BIA or any other applicable federal or provincial legislation, as against the Vendor, the Purchaser or the Trustee.

## **LIMITATION OF LIABILITY**

- [19] **DECLARES** that, subject to other orders of this Court, nothing herein contained shall require the Trustee to occupy or to take control, or to otherwise manage all or any part of the Purchased Assets. The Trustee shall not, as a result of this Order, be deemed to be in possession of any of the Purchased Assets within the meaning of environmental legislation, the whole pursuant to the terms of the BIA.
- [20] **DECLARES** that no action lies against the Trustee by reason of this Order or the performance of any act authorized by this Order, except by leave of the Court. The entities related to the Trustee shall benefit from the protection arising under the present paragraph;

## **GENERAL**

- [21] **ORDERS** that the Purchaser or the Vendor shall be authorized to take all steps as may be necessary to effect the discharge of the Encumbrances.

- [22] **ORDERS** that the Purchase Agreement be kept confidential and under seal until further order of this Court.
- [23] **DECLARES** that this Order shall have full force and effect in all provinces and territories in Canada;
- [24] **DECLARES** that the Trustee shall be authorized to apply as it may consider necessary or desirable, with or without notice, to any other court or administrative body, whether in Canada, the United States of America or elsewhere, for orders which aid and complement the Order and, without limitation to the foregoing, an order under Chapter 15 of the U.S. Bankruptcy Code, for which the Trustee shall be the foreign representative of the Debtor. All courts and administrative bodies of all such jurisdictions are hereby respectfully requested to make such orders and to provide such assistance to the Trustee as may be deemed necessary or appropriate for that purpose;
- [25] **REQUESTS** the aid and recognition of any court or administrative body in any Province of Canada and any Canadian federal court or administrative body and any federal or state court or administrative body in the United States of America and any court or administrative body elsewhere, to act in aid of and to be complementary to this Court in carrying out the terms of the Order;
- [26] **ORDERS** the provisional execution of the present Order notwithstanding any appeal and without the requirement to provide any security or provision for costs whatsoever;

**THE WHOLE WITHOUT COSTS.**

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**MICHEL A. PINSONNAULT, J.S.C.**  
JP1736

**SCHEDULE "A"**  
**DRAFT CERTIFICATE OF THE TRUSTEE**

CANADA

PROVINCE OF QUEBEC  
DISTRICT OF MONTRÉAL

File No: 500-11-058617-206

SUPERIOR COURT  
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Trustee

**CERTIFICATE OF THE TRUSTEE**

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**RECITALS:**

**WHEREAS** on August 12, 2020, Kidiway Inc. (the “**Debtor**” or “**Kidiway**”) filed a notice of intention (the “**NOI**”) to make a proposal pursuant to the Bankruptcy and Insolvency Act (the “**Act**”);

**WHEREAS** pursuant to the terms of the NOI, MNP Ltd. (the "**Trustee**") was named Trustee of the **Debtor**; and

**WHEREAS** on August 20, 2020, the Superior Court of Quebec (the "**Court**") issued an Order (the "**Vesting Order**") thereby, *inter alia*, authorizing and approving the execution by the Petitioner of an agreement pursuant to an Offer to Purchase (the "**Purchase Agreement**") by and between, *inter alia*, the Debtor as one of the vendors (the "**Vendor**") and Mark Srour for a corporation to be incorporated and without personal liability, as purchaser (the "**Purchaser**"), copy of which was filed in the Court record, and into all the transactions contemplated therein (the "**Transaction**") with such alterations, changes, amendments, deletions or additions thereto, as may be agreed to with the consent of the Trustee;

**WHEREAS** the Vesting Order contemplates the issuance of this Certificate of the Trustee.

**THE TRUSTEE CERTIFIES THAT:**

- (a) all of the "Closing Conditions" as defined in the Purchase Agreement have occurred or have been waived by the Purchaser;
- (b) "Closing" as defined in the Purchase Agreement has occurred; and
- (c) the "Purchase Price" as defined in the Purchase Agreement has been paid to the Trustee.

This Certificate is issued by the Trustee at \_\_\_\_ on \_\_\_\_\_ .

MNP Ltd in its capacity as Trustee, and not in its personal capacity.

**Name:** \_\_\_\_\_

**Title:** \_\_\_\_\_

**SCHEDULE "B"**  
**Purchased Assets**

The property to be purchased by Purchaser from Kidiway (the "**Purchased Property**") consists of:

- 1.1 All corporeal and incorporeal / tangible and intangible property, of any nature, form, description or location whatsoever, owned by Kidiway or in which Kidiway has any right, title or interest (to the extent of such right, title or interest) as at Closing, with the sole exception of the Excluded Property;

Without restricting the generality of clause 1.1, the Purchased Property owned by Kidiway, or in which Kidiway has any right, title or interest, includes:

- 1.2 All claims and accounts receivable resulting from merchandise sales made by Kidiway which are unpaid and outstanding as at Closing (the "**Receivables**") as well as all credit insurance claims relating to such Receivables;
- 1.3 All goods, wares, merchandise and inventories owned by Kidiway and situated in any of the Locations as at Closing (the "**Inventory**");
- 1.4 All goods, wares, merchandise and inventories which, as at Closing, have been purchased by Kidiway, are unpaid and are not situated in the Locations;
- 1.5 All of the machinery, equipment, tools, parts and other corporeal/tangible property (other than the Inventory) owned by Kidiway or in which Kidiway has any right, title or interest (to the extent of such right, title or interest) which, on the date of this Offer, are situated in any of the Locations;
- 1.6 All intellectual property in its broadest sense owned by Kidiway or in which Kidiway has any right, title or interest (to the extent of such right, title or interest) as at the date of this Offer including without limitation the corporate/trade name "Kidiway", all other trade names and trademarks and all patents and patents pending;
- 1.7 All domain names, websites, computer software, computer programs and all other similar property which is, as at the date of this Offer, owned by Kidiway or in which Kidiway has any right, title or interest (to the extent to such right, title or interest);
- 1.8 All of Kidiway's right, title or interest (to the extent of such right, title or interest) in all customer orders for future merchandise sales and supplier bookings/orders for future supply of merchandise which exist as at Closing; and



- 1.9 All of the Kidiway's right, title or interest (to the extent of such right, title or interest) in and to all contracts or agreements, accounts and account or other numbers between Kidiway and any of Kidiway's customers (including, without limitation, Walmart, Best Buy, TJX and Toys R Us) which exists as at the date of this Offer.

The Purchased Property expressly excludes all of the following (the "**Excluded Property**") namely:

- 1.10 All cash on deposit in any of Kidiway's bank accounts as at Closing;
- 1.11 All of Kidiway's right, title or interest in and to any and all leases, subleases, agreements or similar contracts governing and/or with respect to Kidiway's occupancy of the Locations;
- 1.12 All of Kidiway's right, title or interest in and to all leases, warehouse agreements, storage agreements, other agreements, or any other contract governing and/or with respect to Kidiway's storage/warehousing of any property and all services related thereto;
- 1.13 All of Kidiway's right, title or interest in and to any and all finance leases under which Kidiway is a lessee including, without limitation, all finance leases governing and/or related to Kidiway's leasing of motor vehicles or any other property; and
- 1.14 With the sole exception of the Receivables and credit insurance claims relating thereto, all other accounts receivable or claims of any nature owing or to become owing to Kidiway, including without limitation, duty drawbacks and tax refunds.