

**ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)**

**IN THE MATTER OF THE *BANKRUPTCY AND INSOLVENCY ACT*, R.S.C. 1985, c. B-3,
as amended**

BETWEEN:

GRAND RIVER ENTERPRISES SIX NATIONS LIMITED

Applicant

- and -

LANWEST MFG. TECHNOLOGIES INC.

Respondent

**NOTICE OF MOTION
(Returnable December 16, 2016)
(Re: Minister of Finance Settlement, CRA Cash Security and Bond, KPMG Funds)**

BDO Canada Limited (“**BDO**”), in its capacity as receiver and manager (the “**Receiver**”) of the respondent, Lanwest Mfg. Technologies Inc. (“**Lanwest**”) will make a motion to the Court at 10:00 a.m. on December 16, 2016 on the Commercial List, or as soon after that time as the parties can be heard, at 330 University Avenue, 8th Floor, Toronto, Ontario.

PROPOSED METHOD OF HEARING: The motion is to be heard orally.

1. **THE MOTION IS FOR** an Order, substantially in the form as attached hereto as Schedule "A":

- (a) if necessary, abridging and validating the time for service of the Notice of Motion, the First Report to the Court of the Receiver dated December 8, 2016 (the "**First Report**") and the Motion Record so that this motion is properly returnable today and hereby dispenses with further service thereof;
- (b) directing that paragraph 5 of the Order of the Honourable Madam Justice Conway dated October 14, 2016 (the "**Appointment Order**") be and is hereby amended to read as follows: "THIS COURT ORDERS that the Receiver is hereby authorized and directed to execute and implement the terms of the Minutes of Settlement between the Debtor, Her Majesty The Queen In Right Of the Province of Ontario As Represented by the Minister of Finance (the "**Minister**") and RBC, as more particularly described in and attached as Exhibit "P" to the Porter Affidavit, as amended (the "**Minutes of Settlement**"). Upon execution of the Minutes of Settlement, the Minister shall forthwith pay the amount of \$4,404,461.67 (the "**Minister Amount**") to the Receiver, and RBC shall forthwith pay the amount of \$1,212,5338.33 less an amount not to exceed \$10,000 (including HST) with respect to RBC's reasonable costs (the "**RBC Amount**") to the Receiver and upon receipt of such funds, the Receiver shall pay the Minister Amount and the RBC Amount to GRE as a permanent reduction to the amounts owed by the Debtor to GRE under its security.";
- (c) directing that the Canada Revenue Agency (the "**CRA**") shall forthwith pay to the Receiver the amount of \$1,400,000 representing cash security paid by Lanwest to the CRA (the "**Cash Security**") which the Receiver shall pay to GRE as a permanent reduction to the amounts owed by Lanwest to GRE under its security;
- (d) directing and declaring that the time to make claims under Bond No. #TM0003011571 in the amount of \$600,000 issued by The Guarantee Company of North America ("**GCNA**") on behalf of Lanwest in favour of Her Majesty in Right of Canada, Her Heirs and Successors As Represented By The Minister of

National Revenue of Canada (the "**Bond**") has expired and that the Bond be and is hereby cancelled;

- (e) directing and declaring that the Bond is null and void; no claims may be made against the Bond; all claims that were or could have been made against the Bond are forever barred and extinguished; and CRA shall forthwith deliver the Bond to GCNA;
- (f) directing that, upon receipt of the Bond, GCNA be and is hereby authorized and directed to forthwith deliver Irrevocable Standby Letter of Credit No. P304829T04117, as amended, issued by RBC in favour of GCNA (the "**Letter of Credit**") to RBC;
- (g) directing that, upon receipt of the Letter of Credit, RBC be and is hereby authorized and directed to forthwith deliver the amount of \$600,000 representing cash security paid by Lanwest to RBC in respect of the Letter of Credit to the Receiver, \$500,000 of which the Receiver shall pay to GRE as a permanent reduction to the amounts owed by Lanwest to GRE under its security and \$100,000 of which the Receiver shall retain to pay Lanwest's expenses and the costs of these proceedings;
- (h) directing that KPMG Inc. ("**KPMG**") is hereby authorized and directed to deliver the funds in its possession in its capacities as former Proposal Trustee of Lanwest and Private Receiver of Lanwest, as set out in the First Report and the Statements of Receipts and Disbursements attached as Appendices "I" and "J" thereto, to the Receiver, subject to any amendments and adjustments as the Receiver and KPMG may agree;
- (i) directing that any claims against any funds paid by any party(ies), including RBC, to the Receiver, pursuant to the terms of the Appointment Order, this Order or any Order granted in these proceedings, shall be filed and asserted with the Receiver, and any such parties shall be released from any claims with respect to such funds upon payment of the funds to the Receiver;

- (j) approving the First Report, and the activities of the Receiver as described therein;
- (k) approving the fees and disbursements of the Receiver and its counsel, as described in the First Report and the fee affidavits attached as Appendices "K" and "L" thereto; and
- (l) such further and other relief as the Receiver may request and this Court shall deem just.

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

- (a) the Receiver was appointed pursuant to the Appointment Order;
- (b) pursuant to the Appointment Order, the Receiver was authorized and directed to execute and implement the terms of the Minutes of Settlement. At the return of the application for the Appointment Order, RBC requested that the Minutes of Settlement be amended to reflect the payment of its costs in dealing with these issues;
- (c) the CRA continues to hold the Cash Security and the Bond which were provided by the Debtor to the CRA as security for any obligations incurred by the Debtor under the *Excise Tax Act* (Canada) with respect to its license to manufacture and warehouse tobacco products and its operations;
- (d) CRA has completed final audits of the Debtor and has confirmed that no amounts are owing by Lanwest. Since the Debtor's tobacco and excise warehouse licenses have been cancelled and the Debtor has ceased operations, there is no need for the CRA to retain the Cash Security and the Bond. However, notwithstanding requests by the Private Receiver for the immediate return of the Cash Security and the Bond, the CRA has not done so;
- (e) the terms of the Bond require GCNA to provide CRA with thirty days' notice of its intention to terminate the Bond and that any demands under the Bond shall be made to GCNA within one year following the date of termination. On September 16, 2015, GCNA sent the thirty day notice to CRA informing them that the Bond

was being cancelled (the “**Bond Cancellation Notice**”). CRA confirmed receipt of the Bond Cancellation Notice on September 22, 2015, resulting in the cancellation being effective thirty days later on October 22, 2015. The one year time period to make any claims under the Bond has now passed and GCNA has advised the Receiver that CRA did not make any claims under the bond and the Bond is now cancelled;

- (f) pursuant to the Appointment Order, the Receiver was authorized and directed to take possession of any and all proceeds, receipts and disbursements arising out of or from the property of Lanwest except, among other things, any funds in the hands of the Private Receiver which are to be transferred to the Receiver pursuant to further order of the Court. The Private Receiver has prepared its statement of receipts and disbursements as at November 15, 2016 which shows a net balance of funds on hand of \$202,523.63;
- (g) pursuant to the Appointment Order, the funds currently being held by KPMG in its capacity as Proposal Trustee are to be transferred to BDO in its capacity as the replacement Proposal Trustee pursuant to further order of the Court. The statement of receipts and disbursements as at November 15, 2016 of KPMG in its capacity as Proposal Trustee shows that KPMG currently holds \$505,488.25 in respect of the Lanwest Proposal;
- (h) as of August 8, 2016, the Debtor was indebted to GRE under the December Security in the amount of \$12,596,490.45 plus interest, costs, legal fees and expenses, which continue to accrue. BDO, in its capacity as Trustee in Bankruptcy, had GRE’s security reviewed by independent counsel, Scarfone Hawkins LLP which concluded that GRE’s security is valid and enforceable;
- (i) the facts and recommendations set out in the First Report;
- (j) Rules 2.03 and 37 of the Ontario Rules of Civil Procedure, R.R.O. 1990, Reg. 194, as amended; and

- (k) such further and other grounds as counsel may advise and this Honourable Court may permit.

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

- (a) the First Report; and
- (b) such further and other material as counsel may advise and this Honourable Court may permit.

DATE: December 9, 2016

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SCHEDULE "A"

Court File No. CV-16-11546-00CL

ONTARIO

SUPERIOR COURT OF JUSTICE

(COMMERCIAL LIST)

THE HONOURABLE

)

FRIDAY , THE 16TH

JUSTICE

)

DAY OF DECEMBER, 2016

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GRAND RIVER ENTERPRISES SIX NATIONS LIMITED

Applicant

- and -

LANWEST MFG. TECHNOLOGIES INC.

Respondent

ORDER

(Re: Minister of Finance Settlement, CRA Cash Security and Bond, KPMG Funds)

THIS MOTION made by BDO Canada Limited ("BDO") in its capacity as receiver and manager (the "Receiver") of the Respondent Lanwest Mfg. Technologies Inc. ("Lanwest") pursuant to the Order of the Honourable Madam Justice Conway dated October 14, 2016 (the "Appointment Order") was heard this day at 330 University Avenue, Toronto, Ontario.

ON READING the First Report of the Receiver dated December 8, 2016 and the Appendices attached thereto (the "First Report") and on hearing the submissions of counsel for Applicant, Grand River Enterprises Six Nations Limited ("GRE"), and other parties listed on the counsel slip, no else one appearing although all parties on the service list were duly served as appears from the affidavits of service filed with this Court,

SERVICE

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

MINISTER OF FINANCE SETTLEMENT

2. THIS COURT ORDERS that paragraph 5 of the Appointment Order be and is hereby amended to read as follows: "THIS COURT ORDERS that the Receiver is hereby authorized and directed to execute and implement the terms of the Minutes of Settlement between the Debtor, Her Majesty The Queen In Right Of the Province of Ontario As Represented by the Minister of Finance (the "**Minister**") and RBC, as more particularly described in and attached as Exhibit "P" to the Porter Affidavit, as amended (the "**Minutes of Settlement**"). Upon execution of the Minutes of Settlement, the Minister shall forthwith pay the amount of \$4,404,461.67 (the "**Minister Amount**") to the Receiver, and RBC shall forthwith pay the amount of \$1,212,5338.33 less an amount not to exceed \$10,000 (including HST) with respect to RBC's reasonable costs (the "**RBC Amount**") to the Receiver and upon receipt of such funds, the Receiver shall pay the Minister Amount and the RBC Amount to GRE as a permanent reduction to the amounts owed by the Debtor to GRE under its security."

CRA CASH SECURITY AND BOND

3. THIS COURT ORDERS that the Canada Revenue Agency (the "**CRA**") shall forthwith pay to the Receiver the amount of \$1,400,000 representing cash security paid by Lanwest to the CRA which the Receiver shall pay to GRE as a permanent reduction to the amounts owed by Lanwest to GRE under its security.

4. THIS COURT ORDERS AND DECLARES that the time to make claims under Bond No. #TM0003011571 in the amount of \$600,000 issued by The Guarantee Company of North America ("**GCNA**") on behalf of Lanwest in favour of Her Majesty in Right of Canada, Her Heirs and Successors As Represented By The Minister of National Revenue of Canada (the "**Bond**") has expired and that the Bond be and is hereby cancelled.

5. THIS COURT ORDERS AND DECLARES that: the Bond is null and void; no claims may be made against the Bond; all claims that were or could have been made against the Bond are forever barred and extinguished; and CRA shall forthwith deliver the Bond to GCNA.

6. THIS COURT ORDERS that, upon receipt of the Bond, GCNA be and is hereby authorized and directed to forthwith deliver Irrevocable Standby Letter of Credit No. P304829T04117, as amended, issued by RBC in favour of GCNA (the "Letter of Credit") to RBC.

7. THIS COURT ORDERS that, upon receipt of the Letter of Credit, RBC be and is hereby authorized and directed to forthwith deliver the amount of \$600,000 representing cash security paid by Lanwest to RBC in respect of the Letter of Credit to the Receiver, \$500,000 of which the Receiver shall pay to GRE as a permanent reduction to the amounts owed by Lanwest to GRE under its security and \$100,000 of which the Receiver shall retain to pay Lanwest's expenses and the costs of these proceedings.

FUNDS FROM PRIVATE RECEIVER AND FORMER PROPOSAL TRUSTEE

8. THIS COURT ORDERS that KPMG Inc. ("KPMG") is hereby authorized and directed to deliver the funds in its possession in its capacities as former Proposal Trustee of Lanwest and Private Receiver of Lanwest, as set out in the First Report and the Statements of Receipts and Disbursements attached as Appendices "I" and "J" thereto, to the Receiver, subject to any amendments and adjustments as the Receiver and KPMG may agree.

CLAIMS AGAINST FUNDS PAID TO RECEIVER

9. THIS COURT ORDERS that any claims against any funds paid by any party(ies), including RBC, to the Receiver, pursuant to the terms of the Appointment Order, this Order or any Order granted in these proceedings, shall be filed and asserted with the Receiver, and any such parties shall be released from any claims with respect to such funds upon payment of the funds to the Receiver.

APPROVAL OF FIRST REPORT

10. THIS COURT ORDERS that the First Report, and the activities of the Receiver as described therein, be and are hereby approved.

FEE APPROVAL

11. THIS COURT ORDERS that the fees and disbursements of the Receiver and its counsel, as described in the First Report and the fee affidavits attached as Appendices "K" and "L" thereto, be and are hereby approved.

GRAND RIVER ENTERPRISES SIX NATIONS LIMITED

- and -

LANWEST MFG. TECHNOLOGIES INC.

Applicant

Respondent

**ONTARIO
SUPERIOR COURT OF JUSTICE
(Commercial List)**

Proceeding commenced at Toronto

ORDER

**(Re: Minister of Finance Settlement, CRA Cash
Security and Bond, KPMG Funds)**

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**ONTARIO
SUPERIOR COURT OF JUSTICE
(Commercial List)**

Proceeding commenced at Toronto

**NOTICE OF MOTION
(MINISTER OF FINANCE SETTLEMENT, CRA
CASH SECURITY AND BOND, KPMG FUNDS),
(RETURABLE DECEMBER 16, 2016)**

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