



FORM 32 (RULE 8-1(4))

No. S-238583
Vancouver Registry

IN THE SUPREME COURT OF BRITISH COLUMBIA

Between

THE TORONTO-DOMINION BANK

Petitioner

and

HBJR HOLDINGS LTD.

Respondent

NOTICE OF APPLICATION

Name of applicant: BDO Canada Limited (“**BDO**”) in its capacity as the Receiver and Manager of all of the assets, undertakings and property of HBJR Holdings Ltd. (the “**Receiver**”)

To: Without notice (informal notice will be given to the petitioner, HBJR’s principal and the prospective purchaser)

TAKE NOTICE that an application will be made by the applicant to the presiding judge or associate judge at the courthouse at the Law Courts, 800 Smithe Street, Vancouver, British Columbia V6Z 2E1 on April 9, 2024 at 9:45 a.m. for the order set out in Part 1 below.

The applicant estimates that the application will take 5 minutes.

- This matter is within the jurisdiction of an associate judge.
- This matter is not within the jurisdiction of an associate judge.

Part 1: ORDER SOUGHT

1. An approval and vesting order substantially in the form attached as **Schedule “A”** or in such other form as the Receiver may seek and the court may order.

Part 2: FACTUAL BASIS

Background

1. On December 21, 2023, the Honourable Justice Wilkinson ordered that BDO be appointed Receiver and Manager of all of the assets, undertakings and property of HBJR (the “**Receivership Order**”).
2. Prior to the date of the Receivership Order, HBJR carried on a business selling compression socks, slippers, sleepwear and other apparel to consumers and other businesses through online platforms. HBJR does not own or lease any physical premises. All inventory is held at three third party logistics (“**3PL**”) warehouses, located in Surrey, BC, Richmond, BC, and Illinois, USA.
3. HBJR’s assets consist primarily of inventory, accounts receivable and intellectual property (the “**Assets**”). HBJR received orders from customers through sales representatives or through its online sales platforms. HBJR would then direct the relevant 3PL to fulfill orders.

HBJR’s Creditors

4. HBJR’s senior secured creditor is The Toronto-Dominion Bank (“**TD Bank**”). TD Bank is owed in excess of \$1.5 million. As discussed further below, TD Bank stands to suffer a significant shortfall. HBJR’s unsecured creditors are owed approximately \$419,000. There will be no recovery for HBJR’s unsecured creditors.

Significant Operating Costs

5. The Surrey and Illinois 3PLs asserted liens over inventory located at their respective facilities. As of February 2024, the quantum of the liens totaled approximately \$97,000 for the Surrey location, \$2,000 for the Richmond location and \$200,000 USD for the Illinois location.
6. The quantum of the liens accrues on a monthly basis due to storage and/or fulfilment services. Maintaining the business as a going concern necessarily involved the Receiver incurring ongoing contractor and trade costs.

Marketing and Interest in the Assets

7. On January 3, 2024, the Receiver commenced a tender bid process to solicit offers for the Assets to a wide range of parties. The Receiver sent a summary of the Assets to the following parties:
 - a) Seventeen liquidators and competitors;
 - b) Nineteen former or current customers (including HBJR's largest customers by volume);
 - c) Six parties that contacted the Receiver directly; and
 - d) The former principal of HBJR, Mr. Brandon Segal.
8. Additionally, on January 15 and 22, 2024, the Receiver published an advertisement in the *Insolvency Insider*, a widely distributed publication within the insolvency community. Interested parties were permitted to make offers for all or any part of the Assets.
9. Due to feedback received from the market, and the significant operating costs that served to reduce any potential net recovery upon a sale of the Assets, a deadline for offers was set for January 24, 2024.
10. Five parties signed non-disclosure agreements and were thereafter provided additional financial information with respect to the company. The principal of HBJR, Mr. Segal, was given access, but was not required to sign a non-disclosure agreement (due to his prior knowledge of the information).
11. Following review of the additional financial information, two parties indicated that they would not be moving forward with an offer. The other four parties put forth offers summarized as follows:
 - a) Purchase of the inventory from a liquidator for the amount of \$164,134;
 - b) Purchase of the inventory from another liquidator for an amount less than \$164,134;

- c) Purchase of all of the Assets from the Illinois 3PL, MAI Fulfillments (“MAI”) or nominee for a purchase price of \$470,000 and a waiver of its lien; and
- d) Purchase of all of the Assets from Mr. Segal for a purchase price of \$400,000 (after accounting for the 3PLs’ liens, the net value of the offer was approximately \$100,000).

The Subject Offer and Recommendation of Approval

- 12. MAI’s offer was the highest and best offer received. The Receiver engaged with MAI (and, ultimately, its nominee purchaser), to negotiate a definitive purchase and sale agreement. The parties executed a purchase and sale agreement dated March 27, 2024 (the “**Subject Offer**”). The Subject Offer is subject only to court approval.
- 13. The Receiver recommends that the Court approve the Subject Offer as it is the best offer received, represents fair market value and results in the business carrying forward as a going concern. TD Bank is of the view that the Receiver marketed the Assets in a commercially reasonable manner and the Subject Offer represents fair market value. TD Bank supports the Receiver’s application for approval of the sale.

Part 3: LEGAL BASIS

- 1. The factors that the court ought to consider in determining whether to approve a sale by a court appointed officer include:
 - a) Whether the court appointed officer made sufficient efforts to obtain the best price and did not act improvidently.
 - b) The interests of all parties and, in particular, the interests of any secured creditors.
 - c) The efficacy and integrity of the process by which offers were obtained.
 - d) Whether there has been unfairness in the process.

Royal Bank v. Soundair Corp. (1991), 7 C.B.R. (3d) 1 (O.N.C.A.) [“*Soundair*”] at para 16

2. In order to protect the integrity of the sale process, the court generally gives deference to a court appointed officer.

Soundair at para 14

Re Regal Constellation Hotel Ltd. (2004), 50 C.B.R. (4th) 258 (O.N.C.A.) at para 23

Corppinance International Ltd. v. Earth Energy Utility Corp., 2006 BCSC 1994 at para 28

B.C. v. A & A Estates Ltd., 2000 BCCA 317 at para 40

3. The Assets were marketed in a commercially reasonable manner, to a wide array of parties. The sales process provided interested parties with information about HBJR and the Assets, enabling them to make an informed decision on a potential purchase. Four offers were ultimately received on the bid deadline.
4. The Subject Offer is the highest and best offer received. The \$470,000 purchase price is effectively increased by \$200,000 due to the waiver of MAI's lien. A commercially reasonable deposit has been remitted and held in trust. Court approval of the Subject Offer is a precondition to closing.
5. TD Bank is, in effect, the only party with a direct financial interest in the sale. The Bank stands to suffer a significant shortfall. TD Bank supports approval of the Subject Offer.
6. The Receiver relies on the terms of the Receivership Order, the *Law and Equity Act*, R.S.B.C. 1996, c. 253, and the inherent jurisdiction of this court.

Part 4: MATERIAL TO BE RELIED ON

1. The Receivership Order made December 21, 2023.
2. The Receiver's First Report to the Court, dated March 28, 2024.
3. Such further and other materials as counsel may advise.

TO THE PERSONS RECEIVING THIS NOTICE OF APPLICATION: If you wish to respond to this notice of application, you must, within 5 business days after service of this notice of application or, if this application is brought under Rule 9-7, within 8 business days after service of this notice of application,

- a) file an application response in Form 33,
- b) file the original of every affidavit, and of every other document, that
 - i) you intend to refer to at the hearing of this application, and

- ii) has not already been filed in the proceedings, and
- c) serve on the applicant 2 copies of the following, and on every other party of record one copy of the following:
 - i) a copy of the filed application response;
 - ii) a copy of each of the filed affidavits and other documents that you intend to refer to at the hearing of this application and that has not already been served on that person;
 - iii) if this application is brought under Rule 9-7, any notice that you are required to give under Rule 9-7(9).

Date: April 2, 2024

Signature of lawyer for applicant,
Scott H. Stephens

To be completed by the court only:

Order made

in the terms requested in paragraphs _____ of Part 1 of this notice of application

with the following variations and additional terms:

Date: _____

Signature of [] Judge
[] Associate Judge

APPENDIX

THIS APPLICATION INVOLVES THE FOLLOWING:

- discovery: comply with demand for documents
- discovery: production of additional documents
- other matters concerning document discovery
- extend oral discovery
- other matter concerning oral discovery
- amend pleadings
- add/change parties
- summary judgment
- summary trial

- service
- mediation
- adjournments
- proceedings at trial
- case plan orders: amend
- case plan orders: other
- experts
- none of the above

SCHEDULE "A"

FORM 35 (RULES 8-4(1), 13-1(3) AND 17-1(2))

No. S-238583
Vancouver Registry

IN THE SUPREME COURT OF BRITISH COLUMBIA

Between

THE TORONTO-DOMINION BANK

Petitioner

and

HBJR HOLDINGS LTD.

Respondent

ORDER MADE AFTER APPLICATION

APPROVAL AND VESTING ORDER

BEFORE JUSTICE

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09/APR/2024

THE WITHOUT NOTICE APPLICATION of BDO CANADA LIMITED, in its capacity as Court-appointed Receiver and Manager (the "**Receiver**") of the assets, undertakings and properties of HBJR Holdings Ltd. ("**HBJR**"), coming on for hearing at Vancouver, British Columbia, on the 9th day of April, 2024; AND ON HEARING Heather A. Frydenlund, counsel for the Receiver, and no one else appearing, AND UPON READING the material filed, including the Report of the Receiver dated March 28, 2024 (the "**Report**");

THIS COURT ORDERS AND DECLARES THAT:

1. The sale transaction (the "**Transaction**") contemplated by the Asset Purchase Agreement dated March 27, 2024 (the "**Sale Agreement**") between the Receiver and The Sockdoc LLC (the "**Purchaser**"), a copy of which is attached as Appendix "**B**" to the Report is hereby approved, and the Sale Agreement is commercially reasonable. The execution of the Sale Agreement by the Receiver is hereby authorized and approved, and the Receiver is hereby authorized and directed to take such additional steps and execute such additional documents as may be necessary or desirable for the completion of the Transaction and for the conveyance to the Purchaser of the assets described in the Sale Agreement (the "**Purchased Assets**").

2. Upon delivery by the Receiver to the Purchaser of a certificate substantially in the form attached as Schedule “A” hereto (the “**Receiver’s Certificate**”), all of HBJR’s right, title and interest in and to the Purchased Assets described in the Sale Agreement shall vest absolutely in the Purchaser in fee simple, free and clear of and from any and all security interests (whether contractual, statutory, or otherwise), hypothecs, mortgages, trusts or deemed trusts (whether contractual, statutory, or otherwise), liens, executions, levies, charges, or other financial or monetary claims, whether or not they have attached or been perfected, registered or filed and whether secured, unsecured or otherwise (collectively, the “**Claims**”) including, without limiting the generality of the foregoing: (i) any encumbrances or charges created by the Order of this Court dated December 21, 2023; (ii) all charges, security interests or claims evidenced by registrations pursuant to the *Personal Property Security Act* of British Columbia or any other personal property registry system; iii) any and all charges, encumbrances, security interests, claims or lien rights asserted over the CDN Inventory (as defined in the Sale Agreement) (all of which are collectively referred to as the “**Encumbrances**”), and, for greater certainty, this Court orders that all of the Encumbrances affecting or relating to the Purchased Assets are hereby expunged and discharged as against the Purchased Assets.
3. For the purposes of determining the nature and priority of Claims, if necessary, the net proceeds from the sale of the Purchased Assets shall stand in the place and stead of the Purchased Assets, and from and after the delivery of the Receiver’s Certificate all Claims shall attach to the net proceeds from the sale of the Purchased Assets 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 had possession or control immediately prior to the sale.
4. The Receiver is to file with the Court a copy of the Receiver’s Certificate forthwith after delivery thereof.
5. Pursuant to Section 7(3)(c) of the Canada *Personal Information Protection and Electronic Documents Act* or Section 18(10)(o) of the *Personal Information Protection Act* of British Columbia, the Receiver is hereby authorized and permitted to disclose and transfer to the Purchaser all human resources and payroll information in the company’s records pertaining to HBJR’s past and current employees. The Purchaser shall maintain and protect the privacy of such information and shall be entitled to use the personal information provided to it in a manner which is in all material respects identical to the prior use of such information by HBJR.
6. The Receiver, with the consent of the Purchaser, shall be at liberty to extend the Closing Date in the Sale Agreement to such later date as those parties may agree without the necessity of a further Order of this Court (the “**Closing Date**”).
7. Notwithstanding:
 - (a) these proceedings;

- (b) any applications for a bankruptcy order in respect of HBJR now or hereafter made pursuant to the *Bankruptcy and Insolvency Act* and any bankruptcy order issued pursuant to any such applications; and
- (c) any assignment in bankruptcy made by or in respect of HBJR,

the vesting of the Purchased Assets in the Purchaser pursuant to this Order shall be binding on any trustee in bankruptcy that may be appointed in respect of the HBJR and shall not be void or voidable by creditors of HBJR, nor shall it constitute or be deemed to be a transfer at undervalue, fraudulent preference, assignment, fraudulent conveyance or other reviewable transaction under the *Bankruptcy and Insolvency Act* or any other applicable federal or provincial legislation, nor shall it constitute oppressive or unfairly prejudicial conduct pursuant to any applicable federal or provincial legislation.

- 8. THIS COURT HEREBY REQUESTS the aid and recognition of any court, tribunal, regulatory or administrative body, wherever located, to give effect to this Order and to assist the Receiver and its agents in carrying out the terms of this Order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Receiver, as an officer of this Court, as may be necessary or desirable to give effect to this Order or to assist the Receiver and its agents in carrying out the terms of this Order.
- 9. The Receiver or any other party have liberty to apply for such further or other directions or relief as may be necessary or desirable to give effect to this Order.

THE FOLLOWING PARTIES APPROVE THE FORM OF THIS ORDER AND CONSENT TO EACH OF THE ORDERS, IF ANY, THAT ARE INDICATED ABOVE AS BEING BY CONSENT:

Signature of the lawyer for the Receiver, BDO
Canada Limited
Scott H. Stephens

BY THE COURT

REGISTRAR

Schedule A – Receiver’s Certificate

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Vancouver Registry

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Between

THE TORONTO-DOMINION BANK

Petitioner

and

HBJR HOLDINGS LTD.

Respondent

RECEIVER CERTIFICATE

PURSUANT TO THE APPROVAL AND VESTING ORDER pronounced April 8, 2024, BDO Canada Limited in its capacity as the Receiver and Manager of HBJR Holdings Ltd. (the “Receiver”) hereby certifies as follows:

1. All terms and conditions under the offer to purchase made as of March 27, 2024 (the “Sale Agreement”) up to and including the completion date have either been satisfied or waived.
2. The Receiver confirms that The Sockdoc LLC has paid the purchase price to the Receiver and that the transaction has completed.

DATED at the City of Vancouver, in the Province of British Columbia, this ___ day of _____, 2024

BDO CANADA LIMITED, in its capacity as
Receiver of the assets, undertakings and property
of **HBJR HOLDINGS LTD.** and not in its personal capacity

Per: _____

Chris Bowra
Title: Vice President

Action No. S238583

Vancouver Registry

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COLUMBIA

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- and -

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