

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

THE HONOURABLE)
MR. JUSTICE C. CAMPBELL)
FRIDAY, THE 14TH DAY
OF DECEMBER, 2007

BETWEEN:

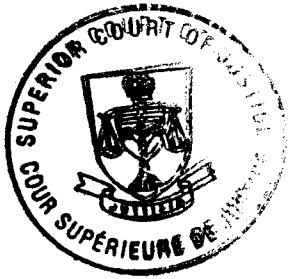
2155489 ONTARIO INC.

Applicant

- and -

SMK SPEEDY INTERNATIONAL INC.

Respondent



APPLICATION UNDER Subsection 47(1) of the *Bankruptcy and Insolvency Act* R.S.C. 1985, c. B-3 and Section 101 of the *Courts of Justice Act*, R.S.O, 1990, c. C.43

APPROVAL AND VESTING ORDER

THIS MOTION, made by Shiner Kideckel Zweig Inc. ("SKZ"), in its capacity as the Court-appointed interim receiver and receiver and manager (the "Receiver"), without security, of all the assets, undertakings and properties, except certain real property, of SMK Speedy International Inc. (the "Debtor"), for an order approving the sale transaction (the "Transaction") contemplated by an agreement of purchase and sale (the "Sale Agreement") between the Receiver and Forum Leasehold Partners Inc. (the "Purchaser") made as of December 13, 2007 and appended to the First Report of the Receiver dated December 13, 2007 (the "Report"), and vesting in the Purchaser the Debtor's right, title and interest in and to the assets described in the Sale Agreement (the "Purchased Assets"), was heard this day at 330 University Avenue, Toronto, Ontario.

ON READING the Report and on hearing the submissions of counsel for the Receiver, *21555489 Ontario Inc., 578098 Alberta, Forum Leasehold Partners Inc. and 6762042 Canada Inc.*, no one appearing for any other person on the service list, although properly served as appears from the proof of service, filed.

SERVICE

1. **THIS COURT ORDERS** that the time for service of the notice of motion, Report and motion record in respect of this motion be and it is hereby abridged and that the motion is properly returnable today and further that the requirement for service of the notice of motion and motion record herein upon interested parties, other than those served, is hereby dispensed with and that the service of the notice of motion, Report and motion record herein as effected by the Receiver is hereby validated in all respects.

APPROVAL OF REPORT AND RECEIVER'S ACTIVITIES

2. **THIS COURT ORDERS** that the Report be and it is hereby accepted and approved and the actions and activities of the Receiver described therein, including the sales process as continued by the Receiver, be and they hereby are approved.

3. **THIS COURT ORDERS AND DECLARES** that effective immediately prior to the Time of Closing (as defined in the Sale Agreement) and provided that the Montreal Property (as defined herein) is not at such time a Non-Purchased Asset (as defined in the Sale Agreement) (i) pursuant to Section 47(1) of the *Bankruptcy and Insolvency Act*, R.S.C. 1995, c. B-3, as amended (the "BIA") and Section 101 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43, as amended (the "CJA"), SKZ is hereby appointed Receiver, without security, of the real property identified in Schedule "A" hereto (the "Montreal Property"); (ii) the Montreal Property shall be included as Property (as defined in the receivership order made by this Honourable Court in connection with the Debtor on December 4, 2007 (the "Receivership Order")); and (iii) as Property, the Montreal Property shall be subject to the terms of the Receivership Order, this Order and the Sale Agreement.

4. **THIS COURT ORDERS AND DECLARES** that effective immediately prior to the Time of Closing (as defined in the Sale Agreement) and provided that the Quebec City Property

(as defined herein) is not at such time a Non-Purchased Asset (as defined in the Sale Agreement) (i) pursuant to Section 47(1) of the BIA and Section 101 of the CJA, SKZ is hereby appointed Receiver, without security, of the real property identified in Schedule "B" hereto (the "Quebec City Property"); (ii) the Quebec City Property shall be included as Property (as defined in the Receivership Order); and (iii) as Property, the Quebec City Property shall be subject to the terms of the Receivership Order, this Order and the Sale Agreement.

5. **THIS COURT ORDERS AND DECLARES** that the Transaction is hereby approved, and that the Sale Agreement is commercially reasonable and in the best interests of the Debtor and its stakeholders. 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 transfer of the Debtor's right, title and interest in the Purchased Assets to the Purchaser.

6. **THIS COURT ORDERS AND DECLARES** that effective immediately prior to the Time of Closing (as defined in the Sale Agreement) all of the remaining employees of the Company shall be terminated and the Purchaser shall have no liability in respect of any such employees except as imposed by Applicable Law (as defined in the Sale Agreement).

7. **THIS COURT ORDERS AND DECLARES** that 2036407 Ontario Inc. and 578098 Alberta Ltd., and their respective principals, directors, officers, employees and Affiliates (as that term is defined in the *Business Corporations Act* (Ontario)): (i) shall not hinder or obstruct the completion of the Transaction and the transfer and delivery to the Purchaser of the Purchased Assets; (ii) shall forthwith and in any event not later than two (2) business days hereafter deliver to the Receiver all Purchased Assets in their possession or control (including, without limitation, all Books and Records (as defined in the Sale Agreement)); and (iii) shall provide their reasonable co-operation to the Debtor, the Receiver and the Purchaser in connection therewith.

8. **THIS COURT ORDERS AND DECLARES** that upon the delivery of a Receiver's certificate to the Purchaser substantially in the form attached as Schedule "C" hereto (the "Receiver's Certificate"), all of the Debtor's right, title and interest in and to the Purchased Assets as defined in the Sale Agreement, including those assets listed on Schedule "D" hereto,

shall vest absolutely in the Purchaser, 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:

- (a) any encumbrances or charges created by the Order of the Honourable Justice Campbell dated November 8, 2007 in the Debtor's now-terminated *Companies' Creditors Arrangement Act* proceedings;
- (b) any encumbrances or charges created by the Order of the Honourable Justice Campbell dated December 4, 2007 appointing the Receiver;
- (c) all charges, security interests or claims evidenced by registrations pursuant to the *Personal Property Security Act* (Ontario) or any other personal property registry system pursuant to equivalent legislation in any other jurisdictions in which all or any part of the Purchased Assets is located; and
- (d) those Claims listed on Schedule "E" hereto (all of which are collectively referred to as the "Encumbrances", which term shall not include the permitted encumbrances, easements and restrictive covenants listed on Schedule "F"),

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.

9. **THIS COURT ORDERS AND DECLARES** that upon the exercise of the purchase option set out in Section 2.01A of the Agreement by the Purchaser, the Non-Purchased Asset(s) in question shall automatically and immediately vest absolutely in the Purchaser, free and clear of and from any and all Claims.

10. **THIS COURT ORDERS** that upon the registration in the applicable land registry office of a transfer/deed of land or equivalent document in the applicable prescribed forms, duly executed by the Receiver, and of an application for registration of vesting order in the applicable

prescribed form, the applicable land registrar or equivalent official is hereby directed to enter the Purchaser as the owner of the subject real property identified in Schedule "D" hereto (the "Real Property") in fee simple, and is hereby directed to delete and expunge from title to the Real Property all of the Claims listed in Schedule "E" hereto.

11. **THIS COURT ORDERS AND DIRECTS** the Land Registrar of the Land Registry Office of Québec for the Registry Divisions of Montréal and Quebec to accept, upon payment of the prescribed fees, a true copy of this Order, the Receiver's Certificate attesting that the Montreal Property and the Quebec City Property form part of the Purchased Assets (and any and all documentation ancillary hereto, if presented to him) and an affidavit of the Receiver, attesting that the Receiver's Certificate has been duly filed in accordance with this Order, for registration on the titles to the Montreal Property and the Quebec City Property and further orders that such registration shall take place without a certificate attesting that no appeal of this Order has been taken, this Order being good and sufficient authority for so doing.

12. **THIS COURT ORDERS** the Land Registrar of the Land Registry Office for the Registry Divisions of Montreal and Quebec, upon payment of the prescribed fees and the filing of a true copy of this Order, the Receiver's Certificate and an affidavit of the Receiver, attesting that the Receiver's Certificate has been duly filed in accordance with this Order, to proceed with the cancellation of any and all Claims listed in Schedule "E" hereof affecting the Montreal Property and the Quebec Property.

13. **THIS COURT ORDERS** that for the purposes of determining the nature and priority of Claims, the net proceeds from the sale of the Purchased Assets shall stand in the place and stead of the Purchased Assets, and that from and after the delivery of the Receiver's Certificate all Claims and Encumbrances 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 that possession or control immediately prior to the sale.

14. **THIS COURT ORDERS AND DIRECTS** the Receiver to file with the Court a copy of the Receiver's Certificate, forthwith after delivery thereof.

15. **THIS COURT ORDERS** that, pursuant to clause 7(3)(c) of the *Canada Personal Information Protection and Electronic Documents Act*, the Receiver is authorized and permitted to disclose and transfer to the Purchaser all human resources and payroll information in the Company's records pertaining to the Transferred Employees (as defined in the Sale Agreement). 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 the Debtor.

16. **THIS COURT ORDERS** that, notwithstanding:

- (a) the pendency of these proceedings;
- (b) any applications for a bankruptcy order now or hereafter issued pursuant to the *Bankruptcy and Insolvency Act* (Canada) in respect of the Debtor and any bankruptcy order issued pursuant to any such applications; and
- (c) any assignment in bankruptcy made in respect of the Debtor;

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 Debtor and shall not be void or voidable by creditors of the Debtor, nor shall it constitute nor be deemed to be a settlement, fraudulent preference, assignment, fraudulent conveyance or other reviewable transaction under the *Bankruptcy and Insolvency Act* (Canada) 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.

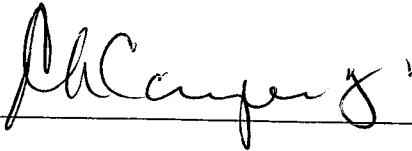
17. **THIS COURT ORDERS AND DECLARES** that the Transaction is exempt from the application of the *Bulk Sales Act* (Ontario) and any equivalent legislation in any other jurisdictions in which all or any part of the Purchased Assets is located.

18. **THIS COURT HEREBY REQUESTS** the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada (including the Court of Queen's

Bench of New Brunswick, the Supreme Court of Nova Scotia and the Quebec Superior Court (Commercial Division)) or in the United States 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 (including the Court of Queen's Bench of New Brunswick, the Supreme Court of Nova Scotia and the Quebec Superior Court (Commercial Division)) 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.

19. **THIS COURT ORDERS** that this Order shall have full force and effect in all of the provinces and territories in Canada.

20. **THIS COURT ORDERS** provisional execution of this Order, notwithstanding any appeal and without the necessity of furnishing any security.



ONTARIO COURT OF CHANCERY
TORONTO
DATE / DATE NO:
LE / DANS LE REGISTRE NO.:

DEC 17 2007

PER/PAR: 

Schedule "A" - Montreal Property

An immovable known and designated as lot number **TWO MILLION TWO HUNDRED SIXTEEN THOUSAND EIGHT HUNDRED AND EIGHTY-TWO (2 216 882)** of the Cadastre of Québec, Registration Division of Montréal.

With the building thereon erected bearing civic number 3855 Jean-Talon Street East, in the City of Montréal, Province of Québec, H2A 1Y5.

Schedule "C" – Form of Receiver's Certificate

Court File No. 07-CL-7313

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

BETWEEN:

2155489 ONTARIO INC.

Applicant

- and -

SMK SPEEDY INTERNATIONAL INC.

Respondent

APPLICATION UNDER Subsection 47(1) of the *Bankruptcy and Insolvency Act* R.S.C. 1985, c. B-3 and Section 101 of the *Courts of Justice Act*, R.S.O., 1990, c. C.43

RECEIVER'S CERTIFICATE

RECITALS

A. Pursuant to an Order of the Honourable Mr. Justice Campbell of the Ontario Superior Court of Justice (the "Court") dated December 4, 2007, Shiner Kideckel Zweig Inc. ("SKZ") was appointed as the interim receiver and receiver and manager (the "Receiver"), without security, of all the assets, undertakings and properties, except certain real property, of SMK Speedy International Inc. (the "Debtor").

B. Pursuant to an Order of the Court dated ■, 2007 (the "Approval Order"), [SKZ was appointed as the Receiver of certain real property of the Debtor located in the Province of Quebec and more fully described as an immovable known and designated as lot number TWO MILLION TWO HUNDRED SIXTEEN THOUSAND EIGHT HUNDRED AND EIGHTY-TWO (2 216 882) of the Cadastre of Québec, Registration Division of Montréal with the building thereon erected bearing civic number 3855 Jean-Talon Street East, in the City of Montréal, Province of Québec, H2A 1Y5 (the "Montreal Property") and an immovable known and designated as lot number ONE MILLION FIVE HUNDRED SEVENTY-ONE THOUSAND FIVE HUNDRED AND FORTY-FIVE (1 571 545) of the Cadastre of Québec, Registration Division of Québec, with the building thereon erected bearing civic number 2400 Sainte-Anne Boulevard, in the City of Québec, Province of

Québec, G1J 1Y3 (the "Quebec City Property"))¹ and the Court approved the agreement of purchase and sale made as of December 13, 2007 (the "Sale Agreement") between the Receiver and Forum Leasehold Partners Inc. (the "Purchaser") and provided for the vesting in the Purchaser of the Debtor's right, title and interest in and to the Purchased Assets, which vesting is to be effective with respect to the Purchased Assets upon the delivery by the Receiver to the Purchaser of a certificate confirming (i) the payment by the Purchaser of the Purchase Price for the Purchased Assets; (ii) that the conditions to Closing as set out in section ■ of the Sale Agreement have been satisfied or waived by the Receiver and the Purchaser; and (iii) the Transaction has been completed to the satisfaction of the Receiver.

C. Unless otherwise indicated herein, terms with initial capitals have the meanings set out in the Sale Agreement or the Approval Order, as the case may be.

THE RECEIVER CERTIFIES the following:

1. The Purchaser has paid and the Receiver has received the Purchase Price for the Purchased Assets payable on the Closing Date pursuant to the Sale Agreement;
2. The conditions to Closing as set out in section ■ of the Sale Agreement have been satisfied or waived by the Receiver and the Purchaser; and
3. The Transaction has been completed to the satisfaction of the Receiver.
4. [The Purchased Assets include the Montreal Property and the Quebec City Property described above.]
4. This Certificate was delivered by the Receiver at _____ [TIME] on _____ [DATE].

SHINER KIDECKEL ZWEIG INC., in its capacity as interim receiver and receiver and manager, without security, of all the assets, undertakings and properties [, except certain real property,] of SMK Speedy International Inc., and not in its personal capacity

Per: _____

Name:

Title:

¹ Such phrase shall be deleted if immediately prior to the Time of Closing, the Purchaser determines that such property shall constitute Non-Purchased Assets (as defined in the Sale Agreement).

Schedule "D" – Purchased Assets

All of the Company's right, title, benefit and interest in all of its assets, property and undertaking of and relating to the Business, including without limitation the following assets, to the extent assignable or transferable and subject to obtaining all necessary consents to such assignment or transfer thereof:

- (a) the Lands, including the following:
 - (i) An immovable known and designated as lot number **TWO MILLION TWO HUNDRED SIXTEEN THOUSAND EIGHT HUNDRED AND EIGHTY-TWO (2 216 882)** of the Cadastre of Québec, Registration Division of Montréal with the building thereon erected bearing civic number 3855 Jean-Talon Street East, in the City of Montréal, Province of Québec, H2A 1Y5;
 - (ii) An immovable known and designated as lot number **ONE MILLION FIVE HUNDRED SEVENTY-ONE THOUSAND FIVE HUNDRED AND FORTY-FIVE (1 571 545)** of the Cadastre of Québec, Registration Division of Québec with the building thereon erected bearing civic number 2400 Sainte-Anne Boulevard, in the City of Québec, Province of Québec, G1J 1Y3;
- (b) all plant, buildings, structures, erections, improvements, appurtenances and fixtures situate on or forming part of the Lands;
- (c) all plans and specifications in the Vendor's possession or under its control relating to the plant, buildings, structures, erections, improvements, appurtenances and fixtures and utility services situate on or forming part of the Lands including all such electrical, mechanical and structural drawings related thereto as are in the possession or under the control of the Vendor;
- (d) the Corporate Store Leases, the Headleases and the Subleases;
- (e) the Franchise Agreements;
- (f) the VTBs;
- (g) the Accounts Receivable;
- (h) the Forum Receivable and the Forum Escrow Agreement;
- (i) the Computer-Related Assets;
- (j) the Contracts;
- (k) the Corporate Store Assets;
- (l) the Head Office Assets;

- (m) the Cash Collateral;
- (n) the Supplier Rebate Receivables;
- (o) the Intellectual Property; and
- (p) the Books and Records,

but excluding, for greater certainty, in each and every case and notwithstanding anything to the contrary in the Sale Agreement, the Excluded Assets and the Non-Purchased Assets to the extent such Non-Purchased Assets do not become Purchased Assets pursuant to the Purchaser's option set out in section 2.01A of the Sale Agreement.

All capitalized terms used by not otherwise defined in this schedule or in this Order shall have the meanings ascribed thereto in the Sale Agreement.

Schedule "E" – Claims to be deleted and expunged from title to Real Property

A. 179 Herring Cove Road, Halifax, Nova Scotia

1. Debenture registered in favour of Northcastle Loan LP registered on May 16, 2006 and having registration no. 85090703
2. Assignment of debenture registered in favour of 1144515 Alberta Ltd. registered on November 8, 2006 and having registration no. 86572162

B. 99 City Road, Saint John, New Brunswick

1. Debenture or other voluntary charge registered in favour of 1144515 Alberta Ltd. on May 16, 2006 and having registration no. 22103494
2. Assignment of mortgage or charge registered in favour of 1144515 Alberta Ltd. on January 9, 2007 and having registration no. 23307177

C. 3855 Jean-Talon Street East, Montreal, Quebec

1. A hypothec of an initial amount of \$10,000,000.00 granted by SMK Speedy International Inc. in favour of Northcastle Loan LP under the terms of a deed of hypothec executed on May 10, 2006 before Michael L. Garmaise, Notary, and registered at the Registry Office on May 11, 2006 under number 13 271 440, which hypothec has been assigned by Northcastle Loan LP in favour of FCCD Limited under the terms of an agreement of assignment of security executed under private writing on November 7, 2006 and registered at the Registry Office for the Registration Division of Montreal on November 8, 2006 under number 13 790 269

D. 2400 St. Anne Blvd., Quebec City, Quebec

1. A hypothec of an initial amount of \$10,000,000.00 granted by SMK Speedy International Inc. in favour of Northcastle Loan LP under the terms of a deed of hypothec executed on May 10, 2006 before Michael L. Garmaise, Notary, and registered at the Registry Office on May 12, 2006 under number 13 275 185, which hypothec has been assigned by Northcastle Loan LP in favour of FCCD Limited under the terms of an agreement of assignment of security executed under private writing on November 7, 2006 and registered at the Registry Office on November 8, 2006 under number 13 788 991 and which affects the property designated as lot number **ONE MILLION FIVE HUNDRED SEVENTY-ONE THOUSAND FIVE HUNDRED AND FORTY-FIVE (1 571 545)** of the Cadastre of Québec, Registration Division of Québec with the building thereon erected bearing civic number 2400 Sainte-Anne Boulevard, in the City of Québec, Province of Québec, G1J 1Y3

**Schedule "F" – Permitted Encumbrances, Easements and Restrictive Covenants
related to the Real Property**

(unaffected by the Vesting Order)

A. 3855 Jean-Talon Street East, Montreal, Quebec

A lease entered into between SMK Speedy International Inc., as landlord, and 3100-0607 Québec Inc., as lessee, and registered at the Registry Office for the Registration Division of Montreal on August 1, 2003 under number 10 615 847

and which affects the property designated as lot number **TWO MILLION TWO HUNDRED SIXTEEN THOUSAND EIGHT HUNDRED AND EIGHTY-TWO (2 216 882)** of the Cadastre of Québec, Registration Division of Montréal, with the building thereon erected bearing civic number 3855 Jean-Talon Street East, in the City of Montréal, Province of Québec, H2A 1Y5.

2155489 Ontario Inc. - and - SMK Speedy International Inc.
APPLICATION under Subsection 47(1) of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, C.B-3 and
Section 101 of the *Courts of Justice Act*, R.S.O. 1990, C. C.43

Court File No: 07-CL-7313

ONTARIO
SUPERIOR COURT OF JUSTICE- COMMERCIAL
LIST

APPROVAL AND VESTING ORDER

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Interim Receiver and Receiver and Manager