



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

THE HONOURABLE
MR. JUSTICE C. CAMPBELL

) ^{*Tuesday*} ~~FRIDAY~~, THE 20TH DAY
)
) OF JANUARY, 2009

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

**ORDER
(Discharge of Receiver)**

THIS MOTION made by Shiner Kideckel Zweig Inc., in its capacity as the Court-appointed interim receiver and receiver and manager (the "Receiver"), without security, of all the assets, undertakings and properties of SMK Speedy International Inc. (the "Debtor"), appointed by order in these proceedings dated December 4, 2007 (the "Receivership Order"), for an order substantially in the form of the draft order found at Tab 5 of the Receiver's Motion Record, *inter alia*:

- (a) declaring that the Receiver's motion is properly returnable on December 12, 2008 and dispensing with the requirement for service of the notice of motion and

motion record herein upon interested parties, other than those served, and validating the service of the notice of motion, Third Report (as herein defined) and motion record herein as effected by the Receiver in all respects;

- (b) accepting and approving the Third Report of the Receiver dated November 13, 2008 (the "Third Report"), and the actions and activities of the Receiver described therein;
- (c) passing and approving the Receiver's final statement of receipts and disbursements attached as Appendix "H" to the Third Report (the "R&D Statement");
- (d) authorizing and approving the fees and disbursements of the Receiver for the period February 1, 2008 to completion, plus subsequent follow-up matters, as described in the Third Report and affidavit of Alan Shiner sworn November 13, 2008;
- (e) authorizing and approving the fees and disbursements of Torys LLP, lawyers for the Receiver, for the period February 1, 2008 to completion, plus subsequent follow-up matters, as described in the Third Report and affidavit of Michael B. Rotsztain sworn November 14, 2008;
- (f) terminating the appointment of the Receiver and discharging the Receiver; and
- (g) for such further and other relief as this Honourable Court deems just,

originally returnable on December 12, 2008 and adjourned to today by order dated December 12, 2008 (the "December 12th Order") was heard this day at 330 University Avenue, Toronto, Ontario.

ON READING the motion record of the Receiver, including the Third Report, the affidavit of Alan Shiner sworn November 13, 2008, and the affidavit of Michael B. Rotsztain sworn November 14, 2008, the Supplement to the Third Report of the Receiver dated January 15, 2009 (the "Supplemental Report"), the affidavit of Peter Hazleden sworn November 24, 2008,

the affidavit of Lisa Laratta sworn November 20, 2008 and the affidavit of Jason Spetter sworn November 27, 2008, filed, and on hearing the submissions of counsel for the Receiver, for 2155489 Ontario Inc. ("215"), Bank of Montreal and

and on being advised that the parties listed on Schedule "A" hereto were served with the motion record herein and that there may be other Persons who might be interested in the Proceedings;

AND none of the Asplund Parties (as defined in paragraph 2 of the December 12th Order) having on or before January 12, 2009 delivered a motion record seeking today leave to proceed against the Receiver, resulting in paragraph 3 of the December 12th Order becoming effective;

SERVICE

1. **THIS COURT ORDERS AND DECLARES** that the Receiver's motion is properly returnable today and that the requirement for service of the Notice of Motion and Motion Record and Supplemental Report herein upon interested parties, other than those served, is hereby dispensed with and that the service of the Notice of Motion, Third Report, the affidavit of Alan Shiner sworn November 13, 2008, and the affidavit of Michael B. Rotsztain sworn November 14, 2008, and Motion Record herein and of the Supplemental Report as effected by the Receiver is hereby validated in all respects.

APPROVAL OF THIRD REPORT, RECEIVER'S ACTIVITIES, R&D STATEMENT AND ACCOUNTS

2. **THIS COURT ORDERS** that the Third Report and the Supplemental Report be and they are hereby accepted and approved and the actions and activities of the Receiver described therein be and they hereby are approved.

3. **THIS COURT ORDERS** that the R&D Statement be and it is hereby passed and approved.

4. **THIS COURT ORDERS** that the fees and disbursements of the Receiver for the period February 1, 2008 to completion, plus subsequent follow-up matters, as described in the Third Report and affidavit of Alan Shiner sworn November 13, 2008, be and they hereby are authorized and approved.

5. **THIS COURT ORDERS** that the fees and disbursements of Torys LLP, lawyers for the Receiver, for the period February 1, 2008 to completion, plus subsequent follow-up matters, as described in the Third Report and affidavit of Michael B. Rotsztain sworn November 14, 2008, and as updated respecting subsequent follow-up matters in the statement of account of Torys LLP dated January 19, 2009 (the "Final Torys Account"), filed, be and they hereby are authorized and approved.

TERMINATION AND DISCHARGE OF RECEIVER

6. **THIS COURT ORDERS** that the appointment of the Receiver as interim receiver and receiver and manager of all the assets, undertakings and properties of the Debtor be and it is hereby terminated and that the Receiver shall have no further obligations, liabilities, responsibilities or duties whatsoever under the Receivership Order, or otherwise, except to make the distribution payment to 215 in accordance with paragraph 5 of this Court's order dated March 13, 2008 and the R&D Statement, as adjusted for any amount that the Court directs the Receiver to pay to Bank of Montreal in connection with its notice of motion returnable today and for the Final Torys Account.

7. **THIS COURT ORDERS** that the Receiver be and it is hereby discharged as interim receiver and receiver and manager of all the assets, undertakings and property of the Debtor and that the Receiver, which term shall include its past, present and future officers, directors, employees, agents and lawyers, be and it is hereby released from all claims, liabilities, demands, actions, costs and damages in respect of its acts and omissions in its capacity as Receiver and in its personal capacity in connection with its appointment in these proceedings.

8. **THIS COURT ORDERS** that notwithstanding the termination of its appointment and its discharge, the Receiver shall continue to have the benefit of all protections, privileges and stays of proceedings in favour of the Receiver contained in:

- (a) the Receivership Order and in all other orders of the court made in these Proceedings; and
- (b) the reimbursement agreement between the Receiver and 215 dated as of March 17, 2008.

9. **THIS COURT ORDERS AND DECLARES** that nothing in this Order, or the approval of the conduct of the Receiver and the release of the Receiver herein, shall or shall be deemed to prevent or preclude any of the Defendants in Alberta Action No. 0701-13180 from taking or continuing any action against any or all of the Third Parties to that action or any other person, other than the Receiver and Shiner Kideckel Zweig Inc. and their respective past, present and future officers, directors, employees, agents and lawyers (provided that such exclusion shall not extend to those individuals who are third parties in such Alberta Action), in respect of any matter or thing connected to the receivership of the Debtor. For greater certainty, nothing in this paragraph shall limit the effect of the release of the Receiver and other specified parties contained in paragraph 7 of this Order or the effect of the release of the Receiver and other provisions contained in paragraph 3 of the December 12th Order.

10. **THIS COURT ORDERS** that, notwithstanding any of the provisions of the orders made in this proceeding and the discharge of the Receiver but subject to paragraphs 11 and 12 of this Order, 1421571 Alberta Ltd. ("142"), (assignee of 215), and the successors and assigns of 142, shall be hereby deemed to have acquired all litigation rights and interests, including all rights to litigation and claims, that were at any time possessed by 215, relating to claims or potential claims relating to the Hamilton 214 store, as against Dorsy Asplund and the other defendants in Ontario Superior Court of Justice action 08-CV-40911 (collectively, the "Defendants").

11. **THIS COURT ORDERS** that, notwithstanding any of the provisions of the orders made in this proceeding and the discharge of the Receiver, until the total original indebtedness of the Debtor to 215 is paid in full or 142 accepts an amount less than such original indebtedness in full satisfaction thereof (such payment in full or lesser amount (the "Debt")), 142 (assignee of 215), and the successors and assigns of 142, shall be hereby exclusively authorized and empowered to prosecute and continue proceedings against the Defendants asserting any and all rights, claims and causes of action of the Debtor against the Defendants respecting the operation of Debtor's store 214 in Hamilton, Ontario.

12. **THIS COURT ORDERS THAT** if 142 (assignee of 215) is by virtue of paragraph 11 of this Order no longer exclusively authorized and empowered to prosecute and continue proceedings against the Defendants in respect of store 214, 142 shall pay to Shiner Kideckel

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APPLICATION under Subsection 47(1) of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, C.B-3
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Court File No: 07-CL-7313

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ORDER
(Discharge of Receiver)

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