



March 17, 2017

HAND DELIVERED

#62627-CAH

The Honourable Justice Glen G. McDougall
Supreme Court of Nova Scotia
The Law Courts
1815 Upper Water Street
Halifax, NS B3J 1S7

My Lord:

Re: Hfx No. 453673 - Application of Hefler Forest Products Limited for a Sale Approval and Vesting Order pursuant to Section 36(d) of the *Companies Creditors Arrangement Act* (the "CCAA")

We are counsel for Hefler Forest Products Limited ("HFPL").

This application seeks a Sale Approval and Vesting Order and authorization for the Monitor to receive the proceeds from closing in trust and after closing to make certain payments from those funds.

Background

On February 3, 2017, the Court issued an Order approving an earlier asset purchase agreement in this proceeding (the "Earlier APA") and extending the stay of proceeding to March 31, 2017.

On February 28, 2017, the Earlier APA was terminated by the purchaser. The purchaser and HFPL continued to negotiate which led to a new asset purchase agreement (the "APA"). This application seeks approval for that sale.

The history of this proceeding and the Earlier APA are set out in the affidavits of Floyd Gaetz, President of HFPL, filed with the Court on January 27 and 30, 2017.

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The terms of the APA are substantially the same as those of the Earlier APA approved by the Court.

The material differences between the APA and the Earlier APA are changes to some conditions precedent and revision to the process by which consideration is paid. A portion of the consideration is now being calculated based on a formula and paid over time.

The transactions contemplated by the APA are supported by HFPL, its shareholders, its secured creditors (RBC and BDC) and the Monitor.

Sale Approval and Vesting Order

This application relies on similar evidence, case law and argument to HFPL's previous application for approval of the sale contemplated by the Earlier APA, which the Court granted. We rely on similar submissions to those in our January 30, 2017 brief.

Section 36 of the CCAA sets out the requirements pursuant to which the Court may authorize a sale of assets outside the ordinary course of business. HFPL submits that these requirements are satisfied for the following reasons:

1. **Section 36(1) – providing that a company in respect of which a CCAA order has been made cannot sell or dispose of assets outside the ordinary course of business unless authorized by the Court:** HFPL continues to be a debtor company to which Section 36 applies.
2. **Section 36(2) – providing that a company which applies under s. 36(1) give notice to secured creditors who are likely to be affected by the proposed sale:** An affidavit of service will be filed on or before the hearing of this application to show that all secured creditors have received notice.
3. **Section 36(3)(a) - whether the process leading to the proposed sale was reasonable in the circumstances:** The process leading to the proposed sale involved continued negotiations with the purchaser following termination of the Earlier APA and the Monitor and secured creditors were involved and kept informed of progress.
4. **Section 36(3)(b) - whether the Monitor approved the process leading to the proposed sale:** The Seventh Report of the Monitor provides this statement.
5. **Section 36(3)(c) – whether the Monitor filed a report with the Court stating that in its opinion the sale is more beneficial to creditors than a sale under a bankruptcy:** The Seventh Report of the Monitor provides this opinion.

6. **Section 36(3)(d) – the extent to which creditors were consulted:** RBC, BDC and the shareholders of HFPL were involved in the process and support the transaction.
7. **Section 36(3)(e) – the effects of the proposed sale on the creditors and other interested parties:** Although the proceeds of sale will not be sufficient to pay out the secured debt owed to the DIP financier, RBC, and BDC, which will result in, pending any distribution order made by the Court, no payment to other creditors, no other result is possible in the circumstances.
8. **Section 36(3)(f) – whether the consideration to be received for the assets is reasonable and fair, taking into account their market values:** the consideration is fair and reasonable. As indicated in the APA, a portion of the purchase price is being paid over time. The Monitor is of the opinion that the potential revenue stream will never result in sale proceeds in excess of the monies currently owed to the DIP lender, RBC and BDC.
9. **Section 36(4) and 36(5) – dealing with sales to related persons:** the sale is not to a related person.
10. **Section 36(6) – providing the Court with discretion to authorize a sale free and clear of any security charge or other restriction provided that the Court also order that other assets of the company or the proceeds of sale are subject to a security, charge or other restriction in favour of the creditor whose security, charge or other restriction is to be effected by the order:** paragraph 6 of the draft order satisfies this requirement by providing that the net proceeds from the sale of the purchased assets shall stand in place of those assets and all claims and encumbrances shall attach to those proceeds with the same priority they had prior to the sale.
11. **Section 36(7) – providing that the Court may only approve the sale and grant a vesting order if it is satisfied that employees will be paid all salary and vacation pay due to them:** based on cash flow statements, HFPL will have the funds available to pay all wages and vacation pay at or before closing.

Monitor to hold closing funds and make certain payments

The draft order provides that the net proceeds of sale be dealt with in the same manner as provided for in the Court's February 3, 2017 Order with respect to the Earlier APA, that is, that they be held in trust by the Monitor's counsel and used to pay: the outstanding DIP Facility as defined in the August 2, 2016 Order; debts incurred in the course of business after the Initial Order issued by this Court on July 22, 2016; and amounts secured by the Critical Supplier Charge and Administration Charge as defined in the Initial Order, with the balance to be held in trust pending further order of the Court.

Relief requested

HFPL requests that the Court approve the transaction contemplated in the APA and order that the sale proceeds be held in trust by the Monitor's counsel and paid as per the draft order.

ALL OF WHICH IS RESPECTFULLY SUBMITTED

Yours very truly,

WICKWIRE HOLM

A handwritten signature in black ink, appearing to be 'MD', with a long horizontal flourish extending to the right.

Marc Dunning for Carl Holm
Solicitor for Hefler Forest Products Limited

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