

2016

Hfx. No. 453673

Supreme Court of Nova Scotia

Application by Hefler Forest Products Limited (the "Applicant")
for relief under the *Companies' Creditors Arrangement Act*

RECEIVED
JUL 22 2016
COURT ADMINISTRATION

Initial Order (and Interim Financing Order)

Before the Honourable Justice Glen G. McDougall in chambers

The Applicant proposes to make a compromise or arrangement under the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36 as amended (the "CCAA") and it applied for an initial order and, now or in the future, other relief under the CCAA as may be sought on notice of motion.

The following parties received notice of this application:

The Service List attached at Schedule "A" to the Notice of Application in chambers filed on July 20th, 2016

The following parties, represented by the following counsel, made submission:

Party	Counsel
Applicant	Carl A, Holm, Q.C.
Royal Bank of Canada	Maurice Chaisson, Q.C and Sara Scott
Business Development Bank of Canada	Tim Hill, Q.C.

On motion of the Applicant the following is ordered and declared:

Service

1. The service of the notice of application in chambers, and the supporting documents, as set out in the affidavit of service is hereby deemed adequate notice so that the motion is properly returnable today *and further service thereof is hereby dispensed with.*

Application

2. The Applicant is a company to which the CCAA applies.

Plan of Arrangement

3. The Applicant, in consultation with the Monitor shall have the authority to file and may subject to further order of this Court, file with this Court, a plan of compromise or arrangement (the "Plan").

Possession of Property and Operations

4. The Applicant shall remain in possession and control of its current and future assets, undertakings, and properties of every nature and kind whatsoever, and wherever situate including all proceeds thereof (the "Property"). Subject to further order of this Court, the Applicant shall continue to carry on business in a manner consistent with the preservation of its business (the "Business") and Property. The Applicant shall be authorized and empowered to continue to retain and employ consultants, agents, experts, accountants, counsel and such other persons (collectively "Assistants") and the employees currently retained or employed by it, with liberty to retain such further Assistants as it deems reasonably necessary or desirable in the ordinary course of business or for the carrying out of the terms of this Order.

5. The Applicant may pay the following expenses whether incurred prior to or after this

Order:

- a. all outstanding and future wages, salaries, employee and pension benefits, vacation pay, and expenses payable to employees who continue to provide service on or after the date of this Order (“Active Employees”), in each case incurred in the ordinary course of business and consistent with existing compensation policies and arrangements; and
 - b. all existing and future employee health, dental, life insurance, short and long term disability and related benefits (collectively, the “Group Benefits”) payable on or after the date of this Order to Active Employees, in each case incurred in the ordinary course of business and consistent with existing policies and arrangements as are necessary or desirable to deliver the existing Group Benefits;
 - c. with prior written approval of the Monitor, the fees and disbursements for any Assistants retained or employed by the Applicant in respect of these proceedings, at their reasonable standard rate and charges.
6. Except as otherwise provided to the contrary herein, the Applicant may pay all reasonable expenses incurred by the Applicant in carrying on the Business in the ordinary course after this Order, and in carrying out the provisions of this Order, which expenses shall include, without limitation:
- a. all expenses and capital expenditures reasonably necessary for the preservation of the Property or the Business including, without limitation, payments on account of insurance including directors and officers insurance, maintenance, and security services; and
 - b. payment for goods or services actually supplied to the Applicant following the date of this Order.

7. The Applicant shall remit or pay, in accordance with legal requirements or on terms as may be agreed to between the Applicant and the applicable authority:

- a. any statutory deemed trust amounts in favour of the Crown in right of Canada or of any province thereof or any other taxation authority which are required to be deducted from employees' wages, including, without limitation, amounts in respect of: i) employment insurance, ii) Canada Pension Plan, iii) Quebec Pension Plan, and iv) income taxes;
- b. all goods and services or other applicable sales taxes (collectively, "Sales Taxes") required to be remitted by the Applicant in connection with the sales of goods and services by the Applicant, but only where such Sales Taxes are accrued or collected after the date of this Order, or where such Sale Taxes were accrued or collected prior to the date of this Order but not required to be remitted until on or after the date of this Order; and
- c. any amount payable to the Crown in right of Canada or of any Province or any regulatory or administrative body or any other authority, in all cases in respect of municipal realty, municipal business, or other taxes, assessments or levies of any nature or kinds which are: i) entitled at law to be paid in priority to claims of secured creditors; ii) attributable to or in respect of the ongoing Business carried on by the Applicant; and iii) payable in respect of the period commencing on or after the date of this Order.

8. Until such time as the Applicant disclaims a real property lease in accordance with the CCAA, the Applicant shall pay all amounts constituting rent or payable as rent under real property leases, including, for greater certainty, a common area maintenance charges, utilities and realty taxes, and any other amounts payable to the landlord under the lease, or as otherwise may be negotiated between the Applicant and the landlord from time to time ("Rent"), for the period commencing from and including the date of this Order, in accordance with its existing lease agreements. On the date of the first of such payments, any arrears relating to the period

commencing from and including the date of this Order shall also be paid.

9. Except as specifically permitted herein or by further order of this Court, the Applicant is hereby directed, until further order of this Court i) to make no payments of principal, interest thereon or otherwise on account of amounts owing by the Applicant to any of its creditors as of this date without prior written consent of the Monitor; ii) to grant no security interests, trusts, liens, charges, or encumbrances upon or in respect of any of its Property; and iii) to not grant credit or incur liabilities except in the ordinary course of the Business or with the prior written approval of the Monitor.

Restructuring

10. The Applicant shall, subject to such requirements as are imposed by the Monitor and under any agreements for debtor in possession financing which may be granted, have the right to:
- a. permanently or temporarily cease, downsize or shut down any of its business or operations;
 - b. terminate the employment of such of its employees or temporarily lay off such of its employees as it deems appropriate and, as applicable, in accordance with the terms of any collective agreement;
 - c. pursue all avenues of refinancing of its Business or Property, in whole or part, subject to prior approval of this Court being obtained being any refinancing; and
 - d. in accordance with its ordinary course of business, dispose of redundant or non-material assets not exceeding \$10,000 in value in a single transaction or \$50,000 in aggregate.

No Proceedings Against the Applicant or the Property

11. Until and including the 2nd day of August, 2016, or such later date as this Court may

order (the “Stay Period), no claim, grievance, application, action, suit, right or remedy, or proceeding or enforcement process in any court, tribunal, or arbitration association (each, a “Proceeding”) shall be commenced, continued, or enforced against or in respect of any of the Applicant or the Monitor, or affecting the Business or the Property, except with the written consent of the Applicant and the Monitor, or with leave of this Court, and any and all Proceedings currently under way against or in respect of the Applicant or affecting the Business or the Property are hereby stayed and suspended pending further order of this Court.

No Exercise of Rights or Remedies

12. During the Stay Period, all rights and remedies of any individual, firm, corporation, governmental body or agency, or any other entities (all of the foregoing, collectively being “Persons” and each being a “Person”) against or in respect of the Applicant or the Monitor, or affecting the Business or the Property, are hereby stayed and suspended except with the written consent of the Applicant and the Monitor, or leave of this Court, provided that nothing in this Order shall i) empower the Applicant to carry on any business which the Applicant is not lawfully entitled to carry on; ii) affect such investigations, actions, suits or proceedings by a regulatory body as are permitted by Section 11.1 of the CAA; iii) except the Application from compliance with statutory or regulatory provisions relating to health, safety, or the environment; iv) prevent the filing of any registration to preserve or perfect a security interest; or v) prevent the registration of a claim for lien and the related filing of an action to preserve the right of a lien holder, provided that the Applicant shall not be required to file a defence during the stay period.

No Interference with Rights

13. During the Stay Period, no Person shall discontinue, fail to honour, alter, interfere with, repudiate, terminate, or cease to perform any right, renewal right, contract, agreement, licence, or permit in favour of or held by the Applicant, including but not limited to renewal rights in respect of existing insurance policies on the same terms, except with the written consent of the Applicant and the Monitor, or leave of this Court.

Continuation of Services

14. During the Stay Period, all Persons having oral or written agreements with the Applicant or statutory or regulatory mandates for the supply of goods or services, including without limitation all computer software, communication and other data services, centralized banking services, payroll services, insurance, transportation services, utility, or other services to the Business or the Applicant, are hereby restrained until further order of this Court from discontinuing, altering, interfering with, or terminating the supply of such goods or services as may be required by the Applicant, and the Applicant shall be entitled to the continued use of its current premises, telephone numbers, facsimile numbers, internet addresses, and domain names, provided in each case that the normal prices or charges for all such goods or services received after the date of this Order are paid by the Applicant in accordance with normal payment practices of the Applicant or such other practices as may be agreed upon by the supplier or service provider and each of the Applicant and the Monitor, or as may be ordered by this Court.

Non-Derogation of Rights

15. Notwithstanding anything else contained herein, no Person shall be prohibited from requiring immediate payment for goods, services, use of leased or licensed property, or other valuable consideration provided on or after the date of this Order, nor shall any Person be under any obligation on or after the date of this Order to advance or re-advance any monies or otherwise extend any credit to the Applicant.

Proceedings Against Directors and Officers

16. During the Stay Period, and except as permitted by subsection 11.03(2) of the CCAA, no Proceeding may be commenced or continued against any of the former, current, or future directors or officers of the Applicant with respect to any claim against the directors or officers that arose before the date hereof and that relates to any obligations of the Applicant whereby the directors or officers are alleged under any law to be liable in their capacity as directors or officers for the payment or performance of such obligations, until a compromise or arrangement

in respect of the Applicant, if one is filed, is sanctioned by this Court or is refused by the creditors of the Applicant or this Court, these proceedings are dismissed by final order of this Court, or with leave of this Court.

Directors' Charge

17. The directors and officers of the Company shall be entitled to the benefit of and are hereby granted a charge (the "Directors' Charge") on the Property, which charge shall not exceed an aggregate amount of \$100,000, as security for the indemnity provided in this Order.

18. Notwithstanding any language in any applicable insurance policy to the contrary, (a) the Company's directors and officers shall only be entitled to the benefit of the Directors' Charge to the extent that they do not have coverage under any directors' and officers' insurance policy, or to the extent that such coverage is insufficient to pay amounts indemnified in accordance with this Order, and (b) no insurer shall be entitled to be subrogated to or claim the benefit of the Directors' Charge.

Appointment of Monitor

19. Green Landers Limited is hereby appointed pursuant to the CCAA as the Monitor, an officer of this Court, to monitor the Business and financial affairs of the Applicant, the Property, and the Applicant's conduct of the Business with the powers and obligations set out in the CCAA or set forth herein and the Applicant and its shareholders, officers, directors, employees and Assistants shall advise the Monitor of all material steps taken by the Applicant pursuant to this Order, co-operate fully with the Monitor in the exercise of its powers and discharge of its obligations, and provide the Monitor with the assistance that is necessary to enable the Monitor to adequately carry out the Monitor's functions.

20. The Monitor, in addition to its prescribed rights and obligations under the CCAA, is hereby directed and empowered to:

- a. monitor the Applicant's receipts and disbursements;

- b. report to this Court at such times and intervals as the Monitor may deem appropriate with respect to matters relating to the Property, the Business, the activities of the Applicant, and such other matters as may be relevant to the proceedings herein;
- c. advise the Applicant in its development of the Plan and any amendments to the Plan, and, to the extent deemed appropriate by the Monitor, assist in its negotiations with creditors, customers, vendors, and other interested Persons;
- d. assist the Applicant, to the extent deemed appropriate by the Monitor, with the holding and administering of creditors' or shareholders' meetings for voting on the Plan;
- e. have full and complete access to the Property, including the premises, books, records, data, including data in electronic form, and other financial documents and to the Business of the Applicant, to the extent that is necessary to adequately assess the Applicant's Business and financial affairs or to perform its duties arising under this Order;
- f. be at liberty to engage independent legal counsel or such other persons as the Monitor deems necessary or advisable respecting the exercise of its powers and performance of its obligations under this Order, including any affiliate of, or person related to the Monitor;
- g. develop a claims process to ascertain the quantum of the claims of all creditors; and
- h. be at liberty to perform such other duties as are required by this Order or by this Court from time to time.

21. The Monitor shall not take possession of the Property and shall take no part whatsoever in the management or supervision of the management of the Business and shall not, by fulfilling its obligations hereunder, be deemed to have taken or maintained possession or control of the Business or Property, or any part thereof.

22. Nothing herein contained shall limit the protections afforded the Monitor at law including those protections set out in the CCAA.

23. The Monitor shall provide any creditor of the Applicant or a potential Debtor In Possession lender (“DIP Lender”) with information provided by the Applicant in response to reasonable requests for information made in writing by such creditor or a DIP Lender addressed to the Monitor. The Monitor shall not have any responsibility or liability with respect to the information disseminated by it pursuant to this paragraph. In the case of information that the Monitor has been advised by the Applicant is confidential, the Monitor shall not provide such information to creditors or a DIP Lender unless otherwise directed by this Court or on such terms as the Monitor and the Applicant may agree.

24. The Monitor, counsel to the Monitor, and counsel to the Applicant shall be paid their reasonable fees and disbursements, in each case not to exceed their standard rates and charges, by the Applicant as part of the costs of these proceedings. The Applicant is hereby authorized and directed to pay the accounts of the Monitor, counsel for the Monitor and counsel for the Applicant on a weekly basis and, in addition, the Applicant is hereby authorized to pay to the Monitor, which shall include counsel to the Monitor, and counsel to the Applicant, retainers in the amounts of \$60,000, and \$30,000, respectively to be held by them as security for payment of their respective fees and disbursements outstanding from time to time.

25. The Monitor and its legal counsel shall pass their accounts from time to time before a judge of this court or a referee appointed by a judge.

Critical Suppliers

26. Any supplier of goods or services to the Applicant which the Monitor, in consultation with the Company, deems critical to the continued operations of the Applicant, as contemplated by section 11.4 of the CCA, shall be considered a critical supplier (a “Critical Supplier”).

27. Each Critical Supplier shall continue to supply the Applicant with goods or services on terms and conditions that are consistent with existing arrangements and past practices.

28. The Applicant shall make prompt payment for goods or services supplied to the Applicant by a Critical Supplier. For greater clarity, the Applicant who receives goods or services from a Critical Supplier on and after the date of this Order shall make payment to such Critical Supplier for such goods or services on the next date on which such Applicant ordinarily issues cheques, provided that such date is at least two days, and no more than seven days, after the date on which the Applicant receives from such Critical Supplier an invoice for the purchase price of the goods or services supplied.

29. No Critical Supplier may require the payment of a deposit or the posting of any security in connection with the supply of goods or services to the Applicant after the date of this Order.

30. Each Critical Supplier shall be entitled to the benefit of and is hereby granted a charge (together, the "Critical Supplier Charge") on the Property in an amount equal to the purchase price of the goods and services supplied by such Critical Supplier and received by the Applicant after the date of this Order less all amounts paid to such Critical Supplier in respect of such goods and services. Notwithstanding the foregoing, the aggregate of all such charges shall not exceed an aggregate amount of \$200,000 (Dollars). The Critical Supplier Charge shall have the priority set out herein.

Administration Charge

31. The Monitor, the Monitor's counsel, the Applicant's counsel and Assistants (collectively, the "Chargees") shall be entitled to the benefit of and are hereby granted a charge (the "Administration Charge") on the Property, which charge shall not exceed an aggregate amount of \$150,000, as security for their professional fees and disbursements incurred at the standard rates and charges of the Monitor, such counsel and Assistants both before and after the making of this Order in respect of these proceedings.

32. The filing, registration or perfection of the Administrative Charge shall not be required

and the Administrative Charge shall be valid and enforceable for all purposes, including as against any right, title, or interest filed, registered, recorded or perfected subsequent to the Administration Charge coming into existence, notwithstanding any such failure to file, register, record or perfect.

33. The Administration Charge shall constitute a charge on the Property and shall rank in priority to claims of the following secured creditors: Royal Bank of Canada, Business Development Bank of Canada, 3263403 Nova Scotia Limited, and AML Communications Inc., and in priority to any other interests, trusts, liens, charges, and encumbrances and claims, statutory or otherwise, in favour of any Person.

34. The Applicant and the Chargees shall be entitled, upon giving notice to parties likely affected, to seek an order changing the amount of the Administration Charge or providing that the Administrative Charge shall rank in priority to secured creditors not named in paragraph 33.

35. Except as otherwise expressly provided for herein, or as may be approved by this Court, the Applicant shall not grant any encumbrance over any Property that ranks in priority to, or pari passu with the Administration Charge unless the Applicant also obtains the prior written consent of the Chargees, or further order of this Court.

36. The Administration Charge shall not be rendered invalid or unenforceable and the rights and remedies of the Chargees shall not otherwise be limited or impaired in any way by: (a) the pendency of these proceedings and the declarations of insolvency made herein; (b) any application for a bankruptcy order issued pursuant to the BIA, or any bankruptcy order made pursuant to such applications; (c) the filing of any assignments for the general benefit of creditors made pursuant to the BIA; or (d) any negative covenants, prohibitions, or other similar provisions with respect to borrowings, incurring debt or the creation of encumbrances, contained in any existing loan documents, lease, sublease, offer to lease, or other agreement (collectively, an "Agreement") which binds the Applicant, and notwithstanding any provision to the contrary in any Agreement:

- a. the creation of the Administration Charge shall not create or be deemed to constitute a breach by the Applicant of any Agreement to which it is a party;
- b. none of the Chargees shall have any liability to any Person whatsoever as a result of any breach of any Agreement caused by or resulting from the Applicant seeking the creation of the Administration Charge; and
- c. the payments made by the Applicant pursuant to this Order do not and will not constitute preferences, fraudulent conveyances, transfers at undervalue, oppressive conduct, or other challengeable or voidable transactions under any applicable law.

Validity and Priority of Charges Created by this Order

37. The priorities of the Director's Charge, Administration Charge and the Critical Supplier Charge as among them, and as against the existing security held by any secured creditor prior to the issuance of this Order (the "Existing Security"), including the Royal Bank of Canada, the Business Development Bank of Canada, 3263403 Nova Scotia Limited and AML Communications Inc. (for amounts advanced prior to the date of this Order), shall be as follows:

- (a) First – Administration Charge;
- (b) Second – Directors' Charge;
- (c) Third – Critical Supplier Charge; and
- (d) Fourth – Existing Security in such priority as they currently have.

38. The filing, registration, or perfection of the Directors' Charge, the Administration Charge, and the Critical Supplier Charge (collectively, the "Charges") shall not be required, and the Charges shall be valid and enforceable for all purposes, including as against any right, title, or interest filed, registered, recorded or perfected subsequent to the Charges coming into existence, notwithstanding any such failure to file, register, record, or perfect.

39. Each of the Charges, all as constituted and defined herein, shall constitute a charge on the Property and such Charges shall rank in priority to other security interests, trusts, liens, charges, and encumbrances, statutory or otherwise (collectively, "Encumbrances") in favour of any person.

40. Except as otherwise expressly provided for herein, or as may be approved by this Court, the Company shall not grant any Encumbrances over any Property that rank in priority to, or pari passu with, the Existing Security or any of the Charges, unless the Company also obtains the prior written consent of the Monitor, its existing secured creditors, and the beneficiaries of the Charges (the "Chargees"), or further order of this Court.

41. The Charges shall not be rendered invalid or unenforceable and the rights and remedies of the Chargees shall not otherwise be limited or impaired in any way by (i) the pendency of these proceedings and the declarations of insolvency made herein; (ii) any application for a bankruptcy order issued pursuant to BIA, or any bankruptcy order made pursuant to such applications; (iii) the filling of any assignments for the general benefit of the creditors made pursuant to the BIA; or (iv) any negative covenants, prohibitions or other similar provisions with respect to borrowings, incurring debt, or the creation of Encumbrances, contained in any Agreement which binds the Company, and notwithstanding any provision to the contrary in any Agreement:

- (a) the creation of the Charges shall not create or be deemed to constitute a breach by the Company of any Agreement to which it is a party;
- (b) none of the Chargees shall have any liability to any Person whatsoever as a result of any breach of any Agreement caused by or resulting from the creation of the Charges; and
- (c) the payments made by the Company pursuant to this Order and the granting of the Charges, do not and will not constitute fraudulent preferences, fraudulent conveyances, oppressive conduct, settlements, or other

challengeable, voidable, or reviewable transaction under any applicable law.

42. Any Charge created by this Order over leases of real property in Canada shall only be a Charge on the Company's interest in such real property leases.

43. The Monitor, in addition to its prescribed rights and obligations under the CCAA and under this Order, is hereby directed and empowered to:

(a) advise or assist the Company in its preparation of the Company's cash flow statements.

44. Any amounts actually advanced or expended pursuant to any of the Charges shall have the priority as provided for herein regardless of the time of advance or the use to which funds were actually put

Service and Notice

45. The Monitor shall: i) without delay, publish in the provincial edition of the Chronicle Herald a notice containing the information prescribed under the CCAA, ii) within five days after the day of this Order, (A) make this Order publicly available in the manner prescribed under the CCAA, (B) send, in the prescribed manner, a notice to every known creditor who has a claim against the Applicant of more than \$1,000, and (C) prepare a list showing the names and addresses of those creditors and the estimated amounts of those claims, and make it publicly available in the prescribed manner, all in accordance with section 23(1)(a) of the CCAA and the regulations made thereunder.

46. The Applicant and the Monitor may give notice of this Order, any other materials and orders in these proceedings, and any notices, and provide correspondence, by forwarding originals or true copies by prepaid ordinary mail, courier, personal delivery, or electronic transmission to the Applicant's creditors or other interested parties at their respective addresses as last shown on the records of the Applicant and any such notice by courier, personal delivery,

or electronic transmission shall be deemed to be received on the next business day following the date of forwarding thereof, or if sent by ordinary mail, on the third business day after mailing.

47. The Applicant and the Monitor, and any party who has filed a demand of notice may serve any court materials in these proceedings by e-mailing a PDF or other electronic copy of such materials to counsel's e-mail addresses as recorded on the service list from time to time, and the Monitor may post a copy of any or all such materials on its website at greenlanders.ca/documents.

General

48. The Applicant or the Monitor may from time to time apply to this Court for advice and directions in the discharge of its powers and duties hereunder.

49. Nothing in this Order shall prevent the Monitor from acting as an interim receiver, a receiver, a receiver and manager, construction lien trustee, or a trustee in bankruptcy of the Applicant, the Business or the Property.

50. The aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction outside Nova Scotia, is requested to give effect to this Order and to assist the Applicant, the Monitor and their respective agents in carrying out the terms of this Order. All courts, tribunals, and regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Applicant and to the Monitor, as an officer of this Court, as may be necessary or desirable to give effect to this Order, to grant representative status to the Monitor in any foreign proceeding, or to assist the Applicant and the Monitor and their respective agents in carrying out the terms of this Order.

51. Each of the Applicant and the Monitor may apply to any court, tribunal, or regulatory or administrative body, wherever located, for the recognition of this Order and for assistance in carrying out of the terms of this Order, and the Monitor may act as a representative in respect

of the within proceedings for the purpose of having these proceedings recognized in a jurisdiction outside Canada.

52. Any interested party, including the Applicant and the Monitor, may apply to this Court to vary or amend this Order on such notice required under the *Civil Procedure Rules* or as this Court may order.

53. The Applicant's application for DIP financing is adjourned and an application by the Applicant for an extension of the stay granted herein and for such other relief as it may request is adjourned to be heard on Tuesday the 2nd day of August, 2016 at the hour of 9:30 a.m at the Law Courts Lower Water Street, Halifax. Submissions and any other documents which counsel may wish to submit in respect of the hearing on August 2nd shall be filed with the court by 12:00 noon on Thursday July 28, 2016.

54. This Order and all of its provisions are effect as of 4:00 p.m. Atlantic Daylight Saving time on the 22nd day of July, 2016.

Issued *July 22*, 2016

IN THE SUPREME COURT
COUNTY OF HALIFAX, N.S.

I hereby certify that the foregoing is a true copy of the original order on file herein.

Dated the *22* day of *July*
A.D., 20*16*

[Signature]
GINA DIDIODATO
Deputy Prothonotary

[Signature]
Deputy
Prothonotary
GINA DIDIODATO
Deputy Prothonotary