

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

**IN THE MATTER OF THE NOTICE OF INTENTION TO MAKE A PROPOSAL TO  
CREDITORS OF IGLOO INDUSTRIES GOUP LTD.**

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**FACTUM OF THE RECEIVER**  
(Motion returnable December 11, 2024)

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December 2, 2024

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msi Spergel inc.

TO: SERVICE LIST

## NATURE OF MOTION

1. This is a motion by msi Spergel inc. ("**Spergel**"), in its capacity as Court-appointed receiver of Igloo Industries Group Ltd. (the "**Debtor**") (in such capacity, the "**Receiver**"), for, *inter alia*, the following relief:
  - a) That the time for service, filing and confirmation of the Notice of Motion and the Motion Record be abridged so that this motion is properly returnable today, and dispensing with further service and confirmation hereof;
  - b) An Approval and Vesting Order, substantially in the form attached hereto at Schedule "A", approving the transaction (the "**Transaction**") contemplated by the asset purchase agreement dated October 30, 2024 (the "**APA**") as between the Receiver and Nella Cutlery (Toronto) Inc. (the "**Purchaser**") contained in the First Report of the Receiver dated December 2, 2024 (the "**First Report**") and the Confidential Appendices to the First Report (the "**Confidential Appendices**"), for the sale of the Purchased Assets (as defined in the APA) and vesting all of the right, title and interest in and to the Purchased Assets of the Debtor absolutely in the Purchaser, free and clear of and from any security, charge or other encumbrance;
  - c) approving the First Report and the Confidential Appendices and the activities and conduct of the Receiver set out therein provided, however, that only the Receiver, in its personal capacity and only with respect to its own personal liability, shall be entitled to rely upon or utilize in any way the approval of the First Report;
  - d) approving the Receiver's Interim Statement of Receipts and Disbursements as detailed in the First Report;
  - e) sealing the Confidential Appendices until the completion of the APA, or until a further order of this Court;
  - f) approving the fees and disbursements of the Receiver and its counsel, Harrison Pensa LLP, and authorizing payment of same.
2. It is the position of the Receiver that the Receiver's actions and the Transaction should be approved and that the relief requested should be granted, for the following reasons:

- a. The APA provides the greatest realization for the assets of the Debtor included in the Sales Process (as defined herein), and represents the best and highest offer received;
- b. The Sales Process was one approved by the Debtor and meets the Soundair principals;
- c. The APA provides certainty to realizations and eliminates future risk to the Receiver and the Debtor's estate with regard to market conditions;
- d. The purchaser pursuant to the APA is seeking to complete the Transaction as soon as practicable, which is beneficial to the stakeholders of the Debtor's estate; and,
- e. The APA and the Transaction is supported by Royal Bank of Canada ("**RBC**"), the Debtor's primary secured creditor, and is not opposed by the Debtor.

### **THE FACTS**

3. The Debtor is a corporation incorporated pursuant to the laws of the Province of Ontario and was in the business of the wholesale and retail sale of commercial grade food service equipment, small wares and supplies, out of leased premises located at 124 Norfinch Drive, North York, Ontario, (the "**Business Premises**").

***First Report to the Court Submitted by the Receiver dated December 2, 2024  
(the "First Report"), para 2.***

4. On February 21, 2024, the Debtor filed a Notice of Intention to Make a Proposal pursuant to the *Bankruptcy and Insolvency Act* (the "**Notice of Intention**") and subsequently, RBC successfully brought a motion to have Spergel appointed as Receiver of the Debtor's property.

***First Report, paras 3-7 and Appendices "1" to "4" thereto***

#### Actions of the Receiver

5. Following its appointment, the Receiver has taken a number of actions for the benefit of the Debtor's estate and stakeholders, including:
  - a) Obtained the Debtor's books and records and met with senior management;

- b) Terminated all employees of the Debtor and completed necessary WEPPA filings;
- c) Communicated with Canada Revenue Agency;
- d) Arranged for a seizure of all of the Debtor's vehicles and a manual inventory of all equipment on site at the Business Premises;
- e) Coordinated with the Debtor's landlord for occupation rent, and ensured that the Business Premises were secure and insured;
- f) Conducted and completed a factory clearance sale from the Business Premises which resulted in the sale of a significant portion of the Debtor's inventory located at the Business Premiss;
- g) Engaged an auctioneer, NDG North America, LLC, to liquidate the Debtor's inventory located in the USA;
- h) Conducted the Sales Process (as defined below) which resulted in the Transaction; and,
- i) Prepared the First Report.

***First Report, paras 13-20***

Sales Process and APA

6. The Receiver conducted a factory clearance sale from the Business Premises for the period of May 23, 2024 to August 15, 2024, which generated 1,160 transactions and collections of \$2,757,601.96 excluding HST.

***First Report, paras 17 and 18***

7. Following completion of the factory clearance sale , the Receiver commenced a sales process (the "**Sales Process**") for the assets of the Debtor not included in the prior sales,

including vehicles, inventory, equipment, and intellectual property, and which involved actions by the Receiver:

- a. Advertised to potential purchasers in the Globe and Mail and Insolvency Insider;
- b. Provided a teaser document to interested parties;
- c. Provided a detailed Confidential Information Memorandum to twenty-one interested parties who had executed a non-disclosure agreement with the Receiver.

***First Report, paras 21-26 and Appendices "5" to "8" and Confidential Appendix "1" thereto***

8. The Receiver received five (5) offers following the Sales Process, and ultimately accepted the Purchaser's offer, which is conditional only upon the issuance of the Approval and Vesting Order sought herein.

***First Report, paras 27-33 and Appendix "9" and Confidential Appendices "2" and "3" thereto***

9. The Receiver states that the Sales Process was commercially reasonable and extensively canvassed the market and recommends that the APA and the transaction be approved as it provides the best and highest recovery to the Debtor's estate and its stakeholders, for the reasons set out at paragraph 2, above.

***First Report, paras 29-30***

#### Sealing Order

10. The Receiver is of the view that the information and documentation contained in the Confidential Appendices contain commercially sensitive information and should be sealed in order to avoid the negative impact that the dissemination of the confidential information contained therein would have if the Transactions is not completed. As a result, the Receiver is seeking a sealing order in respect of the Confidential Appendices until such time as the Transaction is complete, or until further order of this Court.

***First Report, para 41***

## ISSUES, LAW AND ARGUMENT

### A. The Receiver's Activities

11. The Receiver's activities were undertaken in furtherance of the Receiver's duties and are consistent with the Receiver's powers, pursuant to the Appointment Order. The Receiver has acted reasonably and in the best interests of the Debtors' stakeholders, and this Court has the inherent jurisdiction to approve such activities.

***Bank of America Canada v. Willann Investments Ltd. (1993) 20 C.B.R. (3d) 223 (ONSC), Tab 1 at paras. 3 and 4***

12. All of the Receiver's activities were necessary to ensure that the proceedings were as orderly, effective and fair to all stakeholders as possible. It is respectfully submitted that the Receiver's activities should be approved by this Court.

### B. Approval of the Transaction and the Approval and Vesting Order

13. Receivers are clothed with the powers set out in the order appointing them. Receivers are consistently granted the power to market and sell property belonging to a debtor. Absent evidence that a sale is improvident or that there was an abuse of process, it is respectfully submitted that a Court is to grant deference to the recommendation of the Receiver to sell the Purchased Assets.

***Appointment Order, sub-paragraphs 3(j) and 3(k)***

***Integrated Building Corp. v. Bank of Nova Scotia, 1989 ABCA 114 (CanLII)***

***Battery Plus Inc. (Re.), [2002] O.J. No. 731, Tab 2 at paras. 2-3, 19, 22-23, 34-35***

14. This Honourable Court has the jurisdiction to vest in any person an interest in real or personal property. Where a Court is asked to approve a transaction in a receivership context, the Court is to consider:

- a) whether the party made a sufficient effort to obtain the best price and to not act improvidently;
- b) the interests of all parties;
- c) the efficacy and integrity of the process by which the party obtained offers; and,

d) whether the working out of the process was unfair.

*Courts of Justice Act (Ontario), R.S.O. 199020. c. C-43, s. 100*

*Royal Bank of Canada v. Soundair Corp. (1991), 4 O.R. (3d) 1 (ONCA), Tab 3 at para. 16*

*Skyepharma PLC v. Hyal Pharmaceutical Corp., 1999 CanLII 15007 (ON SC) at para. 3 ("Skyepharma PLC")*

15. Only in exceptional circumstances where there is clear evidence that a sale is improvident or involved an abuse of process will a Court intervene and proceed contrary to the recommendation of its officer, the Receiver.

*Royal Bank of Canada v. Soundair, Tab 3 supra at para. 21*

*Skyepharma PLC, supra at para. 3*

16. It is respectfully submitted that the Transaction is provident and followed a thorough, impartial and fair Sales Process that fully tested the market, as indicated by the following factors:

- a) The Sales Process was fair, transparent and commercially reasonable, and effectively canvassed the market for such assets, and resulted in interest from a high number of potential purchasers, including a number of offers;
- b) The APA provides the greatest realization for the assets of the Debtor included in the Sales Process (as defined herein), and represents the best and highest offer received;
- c) The APA provides certainty to realizations and eliminates future risk to the Receiver and the Debtor's estate with regard to market conditions;
- d) The purchaser pursuant to the APA is seeking to complete the Transaction as soon as practicable, which is beneficial to the stakeholders of the Debtor's estate; and,
- e) The APA and the Transaction is supported by RBC, and is not opposed by the Debtor.

17. In the circumstances set out above, the Court should conclude that the fair market value of the property is the purchase price in the best offer received in the sale process. As Tzimas, J. said in *Stanbarr Services Limited et al. v. Reichert*, "... the real proof in the pudding lies with actual offers, it does not lie with the appraisals; they are just estimates." As such, it is submitted that the Transaction ought to be approved.

[B & M Handelman Investments Limited et al. v. Mass Properties Inc., 2009 CanLII 41349 \(ON SC\) at para. 13](#)

[Stanbarr Services Limited et al. v. Reichert, 2014 ONSC 6435 \(CanLII\), at para. 15](#)

*Bank of America Canada v. Willann Investments Ltd., 1992 CarswellOnt 1743 (Ont. Gen. Div. [Commercial List], Tab 4 at para. 5*

18. RBC, senior secured creditor of the Debtor, approves of the Transaction. The Sales Process was extensive, transparent, and fair to all parties involved. The Receiver respectfully submits that the Transaction should be approved.

### **The Sealing Order Should be Granted.**

19. It is submitted that it is just, appropriate and necessary to the integrity of these proceedings that the Confidential Appendices be sealed by this Court. The Confidential Appendices contains sensitive information, the release of which prior to the completion of the Transaction could be prejudicial to the stakeholders of the Debtor and to any future sales process, should the Transaction fail to close.

### **Jurisdiction**

20. The Court's jurisdiction to seal documents filed with it is found in s. 137(2) of the *Courts of Justice Act* (Ontario):

137(2) A court may order that any document filed in a civil proceeding before it be treated as confidential, sealed and not form a part of the public record.

[\*Courts of Justice Act\* \(Ontario\), s. 137\(2\).](#)

21. In addition to statutory jurisdiction, the Court also has inherent jurisdiction to issue sealing orders: "there is no doubt that the court has inherent jurisdiction, and jurisdiction under s. 137(2) of the *Courts of Justice Act*, to seal a portion of the court file."



[\*Fairview Donut Inc. v. The TDL Group Corp. \(2010\), 100 O.R. \(3d\) 510 \(ONSC\), at para. 34.\*](#)

## Discretion

22. Sealing Orders are granted regularly in a commercial context where court openness may pose a risk to the public interest in enabling stakeholders in an insolvency to maximize the realization of a debtor's assets. In this context, such an order is necessary in order to prevent a serious risk to an important commercial interest; and the salutary effects of the sealing order outweigh its deleterious effects, which in this context includes the public interest in open and accessible court proceedings.

[\*Sierra Club of Canada v. Canada \(Minister of Finance\), 2002 SCC 41 at para. 53-57.\*](#)

[\*Sherman Estate v. Donovan, 2021 SCC 25 \("Sherman"\), at para. 38.\*](#)

23. The Receiver submits that there are no reasonable alternative measures to a sealing order which would fulfill the twin purposes of (i) allowing this Court to review the reasonableness of the Transaction/the APA and (ii) ensuring that the commercially-sensitive information contained within the Confidential Appendices is not available to the public prior to the completion of the Transaction.

[\*Sherman, supra, at para. 38.\*](#)

24. Ontario Courts have recognized the customary practice of seeking a sealing order in the context of a sale approval motion. In *Ron Handelman Investments Ltd. v. Mass Properties Inc.*, Madam Justice Pepall stated:

[a]s is customary in sale approval motions, the Receiver seeks an order sealing the appraisal until the transaction is completed. This ensures the integrity of the process and avoids any prejudice to stakeholders in the event that the transaction does not close and a new purchaser must be sought.

[\*Ron Handelman Investments Ltd. v. Mass Properties Inc., 55 C.B.R. \(5th\) 271 at para. 26.\*](#)

[Maxtech Manufacturing Inc. \(Re\), 2010 ONSC 1161 at paras. 29 and 30.](#)

25. The Confidential Appendices contains both the purchase price of the APA and bid summary information. Should the Transaction not proceed, the information contained within the Confidential Appendices could cause a reduction in any future sale of the Property, and harm the creditors of the Debtor if made available to the public. Protecting the information contained within the Confidential Appendices is an important commercial interest that should be protected. There is no other reasonable alternative to sealing that will prevent Confidential Appendices from becoming public.
26. With regard to the Confidential Appendices, it is the Receiver's opinion that the Confidential Appendices should remain sealed until the completion of the Transaction, or an Order by this Court.

**ORDER REQUESTED**

27. The Receiver requests the following Orders:
- a) That the APA and the related Transaction be approved as recommended by the Receiver and that an Approval and Vesting Order be granted; and,
  - b) That the additional relief sought in the Ancillary Order be granted.

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 2<sup>nd</sup> day of December, 2024.



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**SCHEDULE "A"**  
**LIST OF AUTHORITIES**

1. *Bank of America Canada v. Willann Investments Ltd.* (1993) 20 C.B.R. (3d) 223 (ONSC)
2. *Re: Outdoor Broadcast Networks Inc.*, 2010 ONSC 5647 (CanLII)
3. *Fairview Donut Inc. v. The TDL Group Corp.* (2010), 100 O.R. (3d) 510 (ONSC)
4. *Sierra Club of Canada v. Canada (Minister of Finance)*, 2002 SCC 41
5. *Sherman Estate v. Donovan*, 2021 SCC 25
6. *Ron Handelman Investments Ltd. v. Mass Properties Inc.*, 55 C.B.R. (5th) 271
7. *Maxtech Manufacturing Inc. (Re)*, 2010 ONSC 1161

**SCHEDULE “B”  
RELEVANT STATUTES**

Courts of Justice Act (Ontario), R.S.O. 1990, c. C-43.

**Vesting orders**

**100** A court may by order vest in any person an interest in real or personal property that the court has authority to order be disposed of, encumbered or conveyed.

**Sealing documents**

**137 (2)** A court may order that any document filed in a civil proceeding before it be treated as confidential, sealed and not form part of the public record.

Rules of Civil Procedure, R.R.O. 1990, Reg 194.

**Court May Dispense with Compliance**

**2.03** The court may, only where and as necessary in the interest of justice, dispense with compliance with any rule at any time.

**Extension or Abridgment  
General Powers of Court**

**3.02 (1)** Subject to subrule (3), the court may by order extend or abridge any time prescribed by these rules or an order, on such terms as are just.

**(2)** A motion for an order extending time may be made before or after the expiration of the time prescribed.

**Substituted Service or Dispensing with Service  
Where Order May be Made**

**16.04 (1)** Where it appears to the court that it is impractical for any reason to effect prompt service of an originating process or any other document required to be served personally or by an alternative to personal service under these rules, the court may make an order for substituted service or, where necessary in the interest of justice, may dispense with service.

### **Validating Service**

**16.08** Where a document has been served in a manner other than one authorized by these rules or an order, the court may make an order validating the service where the court is satisfied that,

- (a) the document came to the notice of the person to be served; or
- (b) the document was served in such a manner that it would have come to the notice of the person to be served, except for the person's own attempts to evade service.

**IN THE MATTER OF THE NOTICE OF INTENTION TO  
MAKE A PROPOSAL TO CREDITORS OF IGLOO INDUSTRIES GROUP LTD.**

Court File No. BK-24-03046358-0031

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

PROCEEDING COMMENCED AT  
TORONTO, ONTARIO

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