

Court File No. 09-8482-00CL

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

IN THE MATTER OF the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended

AND IN THE MATTER of a Plan of Compromise or Arrangement of Brainhunter Inc., TrekLogic Inc., Brainhunter Canada Inc., Brainhunter (Ottawa) Inc. and Protec Employment Services Limited

Applicants

AFFIDAVIT OF DENNIS JEWITT

I, Dennis Jewitt, of the City of Burlington, in the Province of Ontario, MAKE

OATH AND SAY:

1. I am the President and sole shareholder of Breakwall Financial Corp. ("**Breakwall**"). Breakwall was retained by Brainhunter Inc. ("**Brainhunter**" or the "**Company**") in August 2009 as a restructuring advisor. I report to the board of directors of Brainhunter (the "**Board**"). As such I have personal knowledge of the matters referred to in this affidavit.

2. The Applicants were granted protection under the *Companies' Creditors Arrangement Act* (the "**CCAA**") by order of this Court made in these proceedings on December 2, 2009 (the "**Initial Order**"). Capitalized terms in this Affidavit that are not otherwise defined have then meaning given to them in my affidavit sworn December 1,

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2009 (the "**First Affidavit**") and filed in connection with the Application for the Initial Order.

3. I am making this affidavit in connection with a motion by the Applicants for:
- a) an Order approving and authorizing the sale process and auction (the "**Bid Process**") in accordance with the bid procedures attached hereto as Exhibit "**A**";
 - b) an Order approving the execution by the Applicants of the asset purchase agreement dated as of December 1, 2009 (the "**Stalking Horse APA**") between TalentPoint Inc. ("**TalentPoint**"), 2223945 Ontario Limited, 2223947 Ontario Limited and 2223956 Ontario Limited, as purchasers, (collectively, the "**Purchasers**") and each of the Applicants, as vendors, a copy of which is attached hereto as Exhibit "**B**";
 - c) an Order approving and ratifying the Stalking Horse APA and the transactions contemplated therein, including, without limitation, the Break Fee (as is defined in the Stalking Horse APA); and
 - d) an Order that the Stay Period, as defined in paragraph 14 of the Initial Order, be extended to and including February 5, 2010.

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The Purpose of the Stalking Horse APA and the Bid Process

4. The Bid Process and the Stalking Horse APA are intended to work in combination for the purpose of achieving two objectives. First, the existence of the Stalking Horse Bid will provide certainty to the Applicants' Clients, Contractors and employees that the business will continue. Second, the Bid Process is designed to ensure that other offers from prospective purchasers of the Applicants can be solicited with the goal of improving upon the terms of the Stalking Horse Bid and thereby resulting in maximum recovery for the Applicants' creditors.

5. The Bid Process and the proposed Stalking Horse Bid have been carefully considered by Breakwall, other advisors and the Special Committee to the Board. In the circumstances, the Applicants, the Special Committee, Breakwall and other advisors are confident that the Bid Process and the Stalking Horse will achieve these objectives. Moreover, absent the certainty that the Applicants' business will continue as a going concern, which is created by the Stalking Horse APA and the Bid Process, I believe that substantial damage will result to the Applicants' business due to the potential loss of Clients, Contractors and employees (as explained in paragraph 78 of my First Affidavit).

The Stalking Horse APA

6. Attached hereto as Exhibit "C" is my First Affidavit (without exhibits) in which I describe in detail the events leading up to the negotiation and execution of the Stalking Horse APA.

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7. As noted in my First Affidavit, the Purchasers are led by Mr. Singh (the current CEO of Brainhunter). An insider bid serves the objectives noted above and was the only viable option for the Company. In this respect, as detailed at paragraphs 77 to 88 of my First Affidavit, it was concluded by the Special Committee, Breakwall and the Toronto-Dominion Bank (the "**TD Bank**") that a Stalking Horse Bid Process was the best available restructuring option for the Company. Finding an adequate stalking horse bid was problematic. First, the Company could not solicit bids from third parties without disclosing that it was contemplating a CCAA filing. Such disclosure would have exacerbated the already existing concerns about the viability of the Applicants' business and thereby damaged the value of the business. Entering into confidentiality agreements with a prospective bidder would not entirely address this issue because of the risk that the prospective purchaser would leak the fact that a CCAA filing was pending to the market. Second, the Applicants needed to conclude a stalking horse purchase agreement quickly in order to create certainty that the business would continue as a going-concern. There was simply not sufficient time for an arm's-length party to conduct the necessary due diligence to permit an unconditional offer for the business on an "as is, where is" basis. As such, an insider bid from the Purchasers provided the best available option for putting in place a Stalking Horse Bid.

8. Any concerns related to an insider Stalking Horse Bid are also mitigated by the fact that:

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- (a) the Bid Process and the negotiation of the Stalking Horse APA have been managed by the Special Committee and Breakwall who are independent of the Purchasers;
- (b) the Special Committee was formed well before the Applicants decided to file for CCAA protection or decided to implement a bid process with a stalking horse bid;
- (c) the Stalking Horse APA is subject to higher or better offers replacing it pursuant to the Bid Process; and
- (d) the Stalking Horse APA exceeds the minimum bid which the Special Committee of the Board indicated would be acceptable as a stalking horse bid.

Key Terms of the Stalking Horse APA

9. The principal terms of the Stalking Horse APA are as follows:

- a) the agreement does not become effective unless approved by this Court;
- b) the Purchasers have offered to acquire substantially all of the assets of the Applicants for an aggregate cash consideration equal to:
 - i) the amount owing by the Applicants on the Closing Date (as described below) for any encumbrances that rank ahead of the TD Bank, including Charges created under the Initial Order (other than the permitted encumbrances referred to therein which are to be assumed by the Purchasers);
 - ii) the amounts owing by the Applicants which are secured by the Administration Charge (as defined in the Initial Order); and

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- iii) the amounts owing by the Applicants to the TD Bank under its existing Amended and Restated Credit Agreement, the Standstill Agreement and the DIP Loan;
- c) in addition to the cash consideration, the Purchasers will also provide the following additional consideration to the Applicants:
- i) the Purchasers will assign to the Applicants the Roynat Debenture dated November 14, 2005, together with all guarantees, security agreements and standstill agreements related thereto;
 - ii) the Purchasers will assume all obligations of the Applicants owing to any of its Contractors who provide services to a client of the Applicants pursuant to a contract between the Contractor and the applicable Applicant under which payment is made to the Contractor for such services on a time and material basis and is subsequently billed by the applicable Applicant to one of its clients. This will allow the Applicants to discharge the Contractors' Charge under the Initial Order following the Closing (as defined in the Bid Process);
 - iii) the Purchasers will offer employment to substantially all of the employees of the Applicants;

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- iv) the Purchasers will assume the obligations under all of the customer contracts and other contracts forming part of the purchased assets;
 - v) the Purchasers will assume the obligations and indemnify each of the directors and officers of the Applicants from claims and liabilities arising in connection with the Directors Indemnity (as defined in the Initial Order). This will allow the Applicants to discharge the Directors' Charge under the Initial Order following the Closing; and
 - vi) the Purchasers will agree to pay up to \$250,000 of fees and expenses incurred by the Applicants after the Closing in connection with the CCAA proceedings or any wind-up of their business pursuant to the *Bankruptcy and Insolvency Act (Canada)*;
- d) the Purchasers have provided a deposit of \$500,000 to be held by the Monitor, in trust, which (together with interest) will either be applied against the purchase price if the Purchasers are the Successful Bidder (as defined in the Bid Procedures) or ultimately returned to the Purchasers if they are not;
- e) the Applicants have agreed to pay the Purchasers a Break Fee of \$700,000 if (i) a party other than the Purchasers acquires the Applicants

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business; (ii) the Purchasers are not the Successful Bidder or Back-up Bidder and both such Bidders default (as such terms are defined in the Bid Process), and (iii) a closing of the transaction with the Successful Bidder does not occur and the Purchasers, being the Back-up Bidder, have not been provided with a Failure Notice (as such term is defined in the Stalking Horse APA) in accordance with the provisions of the Stalking Horse APA;

- f) I note that the Break Fee is a fixed amount. The Special Committee insisted on a fixed Break Fee (as opposed to a variable fee) to provide certainty to prospective bidders and enhance the Bid Process. Based upon the consideration payable by the Purchasers, the Break Fee represents approximately the 2½% amount originally negotiated between Raj Singh and the Special Committee. If the obligations owed to Contractors, which are to be assumed by the Purchasers, are included, the Break Fee represents substantially less than the 2½% amount. There is no requirement to reimburse the Stalking Horse Bidder for any expenses. Based on my experience and knowledge of the Applicants' business, I am confident that the Break Fee will not deter potential purchasers from participating in the Bid Process;
- g) the Stalking Horse Bid must remain open until February 25, 2010 unless the Stalking Horse APA is neither the Superior Bid Proposal nor the Back-

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Up Bid following completion of the Auction (as described in the Bid Process); and

- h) the Stalking Horse APA has no material closing conditions other than the issuance of the order approving the Stalking Horse APA and the Bid Process and the Vesting Order.

The Value of the Stalking Horse Bid

10. The amounts projected to be owing at the time of the Closing in respect of the DIP Loan, the TD Bank Debt and the Roynat Debenture are \$3.3 million, \$17.8 million and \$6.1 million, respectively.

11. The Monitor has been provided with details relating to the financial wherewithal of the Purchasers (including financing commitments provided to it) and is satisfied that it will be in a position to complete the transaction. They have also reviewed the agreement entered into between the TalentPoint and Roynat which creates an unconditional obligation of Roynat to assign the Roynat Debenture and all related security to the Purchasers in return for cash and other consideration (the "**Roynat Assignment**"). This assignment agreement provides that TalentPoint is entitled to rely on the agreement in support of the Stalking Horse APA and in connection with the motion for Court approval. Further, Roynat has agreed that it will not enter into any negotiations or agreements with any party other than TalentPoint with respect to the purchase of any of the Applicants' assets or the assignment of the Roynat Debenture or

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security so long as the Stalking Horse APA is outstanding. This will allow the Purchasers to tender the Roynat Debenture as part of the consideration to be provided to the Applicants on Closing.

12. It should be noted that the Roynat Assignment is conditional on, and occurs contemporaneously with, the closing of the Stalking Horse APA such that if the Stalking Horse APA is not successful Roynat will continue to own the Roynat Debenture and all related security and be entitled to receive any distribution resulting therefrom.

13. In summary, the Stalking Horse APA exceeds the minimum bid which the Special Committee of the Board indicated to Mr. Singh would be acceptable as a stalking horse bid. It provides certainty that the business of the Applicants will continue as a going concern thus assuring continuity to the Applicants' Clients, Contractors and employees. The Stalking Horse APA is structured to allow the Company to proceed with the Bid Process and that process is designed to test the market to ascertain whether a higher or better offer can be obtained from other parties. In this manner the Stalking Horse APA (i) establishes a floor price that will be adequate to ensure that at least the claims of TD Bank and Roynat are satisfied, and (ii) and ensures that through the sale, liabilities owed to Contractors will be assumed by the Purchasers and substantially all of the employees will continue to be employed.

14. For these reasons, the Special Committee and the Board believe that the Stalking Horse APA and the Bid Process are in the best interests of the Applicants and

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their stakeholders. The Special Committee unanimously recommended to the Board and the Board unanimously approved the Stalking Horse APA and the Bid Process.

The Bid Process

15. The Applicants, in consultation with EYO and the Monitor, have established the Bid Process which is to be followed in soliciting other offers for the sale of their assets or for the sponsorship of a plan of arrangement. The Bid Process provides for a marketing process.

16. As referenced in paragraphs 69 and 73 of my First Affidavit, EYO previously conducted a four-month marketing process for the Applicants and/or their assets that attracted interest in the business. During this period, EYO contacted approximately 100 potential purchasers in Canada and the US, approximately 30 parties executed confidentiality agreements and were provided with a Confidential Information Memorandum and certain supplementary information and four proposed offers were received for the Applicants or parts of the Applicants.

17. In addition, the Bid Process is a public, transparent process that may attract other prospective bidders in addition to those that have already been identified or expressed an interest in acquiring the Applicants' business. In particular, we believe that other prospective bidders will come forward now that they are aware that the Company has filed under the CCAA and can convey its assets with the benefit of a vesting order and without compliance with the *Bulk Sales Act*.

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18. The Bid Process has been designed having regard to the time periods permitted under the Stalking Horse APA as well as the availability of DIP financing. I believe that they will be sufficient to permit prospective bidders to conduct their due diligence. Among other reasons, certain parties have already conducted a considerable amount of due diligence through the prior solicitation efforts of EYO.

19. The Bid Process sets out in detail the timing for submission of a bid in writing as well as the requirements of any such bid. Any bid must have a value in excess of the bid submitted as part of the Stalking Horse APA plus \$700,000 to cover the Break Fee payable to the Purchasers under the Stalking Horse APA. A bidder must provide an executed copy of the Purchase Agreement or Plan Sponsorship Agreement (each as defined in the Bid Process), which will be binding at least until the completion of the Auction contemplated by the Bid Process. If a Purchase Agreement is provided, it must be blacklined against a template purchase agreement which will be provided by the Applicants and which will be based upon the Stalking Horse APA. All prospective bidders must provide a deposit of at least \$500,000 to the Monitor, to be held in trust, and provide evidence to the Monitor that they are in a position to complete the proposed transaction.

20. Ultimately, all qualified bidders will be permitted to participate in an open and transparent auction where one party will be selected as the Successful Bidder. The second highest offer must remain open until February 25, 2010 so that if the highest bidder fails to complete the transaction the Applicants can elect to enter into a

transaction with the second highest bidder. Other bids may terminate earlier than February 25, 2010 if the bidder is neither the Successful Bidder nor the Back-Up Bidder at the Auction.

21. I believe that the Bid Process will result in an open and fair process which will yield maximum value to the Applicants' stakeholders while ensuring stability in the interim.

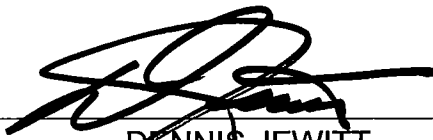
Mr. Singh's KERP

22. I understand that during the hearing of the Initial Application, counsel for the majority of Noteholders raised concerns about the KERP to be provided to Mr. Singh. The basis for providing Mr. Singh with the KERP is set out at paragraphs 116 and 117 of my First Affidavit. This KERP was agreed to before it was clear that Mr. Singh would be able to make the Stalking Horse Bid. Both the Monitor and the TD Bank support the implementation of the KERP. The amount of \$100,000 is to be paid in two equal instalments on December 31, 2009 and January 31, 2010.

SWORN BEFORE ME in
the City of Toronto, in the
Province of Ontario, this
4th day of December, 2009



Commissioner for taking
(J. Banking)
Affidavits, etc.



DENNIS JEWITT

IN THE MATTER OF the Companies' Creditors Arrangement Act,
R.S.C. 1985, c. C-36

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(Commercial List)**

Proceeding commenced at Toronto

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