

**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 BARZEL INDUSTRIES CANADA INC.

Applicant

**MOTION RECORD OF THE APPLICANT
(Returnable August 31, 2011)**

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Applicant

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TAB 1

Court File No. 09-8363-00CL

**ONTARIO
SUPERIOR COURT OF JUSTICE – COMMERCIAL LIST**

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AND IN THE MATTER OF A PLAN OF COMPROMISE
OR ARRANGEMENT OF BARZEL INDUSTRIES
CANADA INC.

Applicant

NOTICE OF MOTION

The Applicant will make a motion to a Judge presiding over the Commercial List on August 31, 2011 at 10:00 a.m., or as soon after that time as the motion can be heard, at 330 University Avenue, Toronto, Ontario.

PROPOSED METHOD OF HEARING:

The motion is to be heard orally.

THE MOTION IS FOR:

1. an Order, if necessary, abridging the time for service of this Notice of Motion and the Motion Record and that the Notice of Motion is properly returnable on August 31, 2011 and that further service of the Notice of Motion on any interested party, other than those served, may be dispensed with;
2. an Order that the Stay Period, as defined in paragraph 15 of the Order of this Court made in these proceedings on September 15, 2009 (the "**Initial Order**"), be extended to and including December 21, 2011;

3. an Order approving of the activities of Deloitte & Touche Inc., in its capacity as the monitor appointed by this Court in these proceedings (the "**Monitor**") as set out in the Report (defined below);
4. an Order approving the fees and disbursements of the Monitor and its counsel as set out in the Report;
5. an Order authorizing and directing the Monitor to forthwith distribute to The Bank of New York Mellon, as indenture trustee relating to certain secured notes in favour of J.P. Morgan Securities LLC and CIBC World Markets Corp. (collectively, the "**Secured Lenders**"), the amount of \$300,000 (the "**Disbursement**"); and
6. such further and other Orders as counsel may request and this Court may permit.

THE GROUNDS FOR THE MOTION ARE:

Stay Extension

1. The current Stay Period as defined in the Initial Order expires on August 31, 2011;
2. The continuation of these proceedings remains beneficial to resolving certain outstanding tax issues, the resolution of which will be further delayed if these proceedings are terminated;
3. Resolving such matters as final provincial corporate and retail sales tax audits will clarify the availability of existing provincial corporate tax credits for off-set against potential Quebec sales tax liabilities;

4. Before these proceedings are terminated, all amounts potentially subject to the Charges (as defined in the Initial Order) should be adequately dealt with or otherwise provided for;

5. The Applicant has acted, and is acting, in good faith and with due diligence;

6. The Applicant has sufficient cash to continue to cover its ongoing costs to and including December 21, 2011;

7. The Monitor is supportive of the Applicant's request for an extension of the Stay Period to and including December 21, 2011;

Monitor's Activities and Fees

8. The Monitor has complied with all Orders of this Court and its activities to date have assisted this Court and the Applicant in implementing its restructuring initiative;

9. The fees and disbursements of the Monitor and its counsel are reasonable under the circumstances at rates that are consistent with those of other Toronto accounting and law firms providing insolvency and restructuring services;

10. The Applicant supports the approval of the Monitor's activities, fees and the fees of its counsel;

Distribution to Secured Lenders

11. All of the Applicant's property currently consists of the funds being held by the Monitor, on behalf of the Applicants, in the amount of approximately \$1 million;

12. The Applicant is indebted to its U.S. parent, Barzel Finco, Inc., as evidenced by two inter-company demand promissory notes (the "**Inter-company Notes**") totalling \$125 million. The obligations of the Applicant under the Inter-company Notes are secured by all present and after-acquired property of the Applicant pursuant to a Canadian collateral agreement, dated November 15, 2007, and a charge/mortgage of land dated November 16, 2007 (collectively the "**Inter-company Notes Collateral Documents**"). The Inter-company Notes and the Inter-company Notes Collateral Documents were in turn pledged (and a valid and perfected security interest granted therein) by Barzel Finco, Inc. to secure obligations owed to the Secured Lenders. Such security interest is valid and perfected and ranks senior in priority to all other claims against Applicant other than the Charges (as defined in the Initial Order). Therefore, the Secured Lenders are entitled to the Disbursement;

13. The funds remaining with the Monitor after the Disbursement are expected to be sufficient to cover the limited likelihood and quantum of any possible claims that would invoke recourse to the Directors' Charge (as defined in the Initial Order) and all reasonably expected remaining administration costs of these proceedings;

14. The Monitor supports effecting the Disbursement;

Miscellaneous

15. paragraphs 31 and 49 of the Initial Order;
16. Rules 3.02 and 37.02(1) of the *Rules of Civil Procedure*; and
17. such further and other grounds as counsel may advise and this Court may permit.

THE FOLLOWING DOCUMENTARY EVIDENCE will be used at the hearing of the motion:

1. the affidavit of Gerard Char sworn on August 25, 2011;
2. the Twelfth Report of the Monitor and all exhibits and appendices thereto (the "**Report**"), to be filed separately; and
3. such further and other materials as counsel may advise and this Court may permit.

Date: August 26, 2011

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TO: ATTACHED SERVICE LIST

Court File No. 09-8363-00CL

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Applicant

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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
BARZEL INDUSTRIES CANADA INC.

Court File No. 09-8363-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE – COMMERCIAL LIST
Proceeding Commenced at Toronto

NOTICE OF MOTION
(Returnable August 31, 2011)

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Lawyers for the Applicant

TAB 2

Court File No. 09-8363-00CL

**ONTARIO
SUPERIOR COURT OF JUSTICE – COMMERCIAL LIST**

IN THE MATTER OF THE *COMPANIES' CREDITORS
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Applicant

**AFFIDAVIT OF GERARD CHAR
(Sworn August 25, 2011)**

I, Gerard Char, of the City of Laval, in the Province of Quebec, MAKE
OATH AND SAY:

1. I am the former Director of Tax at Barzel Industries Canada Inc. After the commencement of these proceedings, the Applicant retained me to provide periodic tax consulting advice, including in respect of certain ongoing statutory tax audits and tax re-assessments relating to the Applicant. As such, I have personal knowledge of the matters to which I depose in respect of the Applicant. To the extent that I do not have personal knowledge, I verily believe the information to which I depose.

2. Since the commencement of these proceeding, I have been the primary contact between the Applicant and the taxing authorities. I have, among other things, prepared income tax returns on behalf of the Applicant and otherwise facilitated the completion of other outstanding tax matters with Canadian and U.S. taxing authorities. I am currently in the process of preparing the Applicant's federal and provincial income tax returns for 2010.

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3. As set out in the Eleventh Report of the Monitor in these proceedings dated February 23, 2011 there were primarily two outstanding tax matters at that time, being:

(a) A Canada Revenue Agency ("**CRA**") corporate income tax re-assessment concerning the tax treatment of approximately \$46 million of disallowed expenses related to transfer pricing, management fees and corporate jet usage incurred by the Applicant's predecessors (the "Corporate Income Tax Re-assessment"); and

(b) a significant Quebec Sales Tax ("**QST**") liability and the extent to which existing Quebec corporate income tax credits relating to prior overpayments of Quebec corporate income tax obligations would be available to be applied against such liability.

4. The corporate income tax re-assessment has federal and Quebec provincial components. As such, I was advised by my counterparts at RQ that RQ has taken the position that any determination by RQ as to available credits could not be made until after RQ had reviewed and performed an independent assessment of the determinations made by CRA in the final corporate income tax re-assessment.

5. As outlined in greater detail in the Monitor's Twelfth Report, RQ has taken the position that the Applicant owes approximately \$490,000 (exclusive of interest and penalties) with respect to QST. A representative of RQ has advised me and the Monitor that the Applicant will not be liable for any post-filing interest and penalties in respect of any QST obligation. Against this obligation, the Applicant currently has a Quebec corporate income tax credit relating to an overpayment of Quebec corporate income

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taxes of approximately \$558,000 of which at least a portion may be released and become available for application against the QST-related obligation. However, RQ has indicated to me that the Quebec corporate income tax credits have been frozen by RQ pending its review of the final federal corporate income tax re-assessment.

6. The corporate income tax re-assessment was finalized on April 18, 2011. I have been advised by RQ that RQ has received and is currently reviewing the Quebec provincial components of the corporate income tax re-assessment. I am hopeful that the completion of the CRA re-assessment will expedite matters with RQ and enable the final resolution of this last remaining tax matter and ultimately determine whether any QST liability exists.

7. In connection with the above two matters, I have been in regular communication with my counterparts at the CRA and Revenu Quebec ("RQ") over the year in efforts to expedite and finalize these last outstanding tax matters which efforts can be summarized as follows:

(a) continued to liaise with the appeals division of the CRA to finalize the corporate income tax re-assessment;

(b) reviewed the final corporate income tax re-assessment received from CRA on April 18, 2011 in order to confirm the Applicant's general agreement with CRA's final corporate income tax obligation calculations;

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(c) communicated with the Applicant's account representative at RQ to determine the status of and progress on outstanding tax matters, including the re-assessment of the Applicant's Quebec corporate income tax liabilities;

(d) provided information as required to CRA and RQ in respect of ongoing and final payroll audits and former employee payroll information request forms;

(e) communicated with RQ in respect of outstanding source deduction obligations and worked to confirm the validity of such obligations;

(f) performed a review of credits and debits of La Commission de la Santé et de la Sécurité du Travail du Québec (the "CSST") and provided CSST with actual payroll information for fiscal 2009 in an effort to recover any available credits; and

(g) communicated with CRA and RQ on various other outstanding tax matters, as required.

8. In conclusion, on behalf of the Applicant, I believe that diligent and good faith efforts have been made to resolve all of the Applicant's outstanding tax matters in as timely a fashion as possible under the circumstances. Such efforts have been necessary to ensure that there are no tax claims which may have priority over the obligations owed to the Applicant's secured lenders.

SWORN/ATTESTED BEFORE ME)
at the City of Montreal, in the)
Province of Québec, this
25th day of August, 2011

[Handwritten signature]



ERARD CHAR

**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 BARZEL
INDUSTRIES CANADA INC.**

Court File No: 09-8363-00CL

**ONTARIO
SUPERIOR COURT OF JUSTICE – COMMERCIAL LIS**

Proceeding commenced at Toronto

**AFFIDAVIT OF GERARD CHAR
(Sworn August 25, 2011)**

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TAB 3

ONTARIO
SUPERIOR COURT OF JUSTICE – COMMERCIAL LIST

THE HONOURABLE ■) WEDNESDAY, THE 31ST DAY
JUSTICE ■) OF AUGUST, 2011.

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 BARZEL INDUSTRIES CANADA INC.

Applicant

ORDER
(Stay Extension and Partial Distribution)

THIS MOTION, made by the Applicant for an order extending the Stay Period as defined in paragraph 15 of the Order of this Court made in these proceedings on September 15, 2009 (the "**Initial Order**"), approving the activities of Deloitte & Touche Inc., in its capacity as the monitor appointed by this Court in these proceedings (the "**Monitor**") as set out in the Twelfth Report of the Monitor dated August ■, 2011 (the "**Report**"), approving the fees and disbursements of the Monitor and its counsel as set out in the Report, and authorizing and directing the Monitor to forthwith distribute to The Bank of New York Mellon, as indenture trustee relating to certain secured notes in favour of J.P. Morgan Securities LLC and CIBC World Markets Corp. (collectively, the "**Secured Lenders**"), the amount of \$300,000 (the "**Disbursement**"), was heard this day at 330 University Avenue, Toronto, Ontario.

ON READING the Report and on hearing the submissions of counsel for the Applicant, the Monitor, and the Secured Lenders, no one appearing for any other person on the service list, although properly served as appears from the Affidavits of Service filed:

DRAFT

1. THIS COURT ORDERS that the time for service of the Notice of Motion, the Report and the Motion Record is hereby validated so that this Motion is properly returnable today and hereby dispenses with further service thereof.
2. THIS COURT ORDERS that the Stay Period, as defined in paragraph 15 of the Initial Order, be and is hereby extended to and including December 21, 2011.
3. THIS COURT ORDERS that the activities of the Monitor as set out in the Report be and are hereby approved.
4. THIS COURT ORDERS that the fees and disbursements of the Monitor and its counsel as set out in the Report be and are hereby approved.
5. THIS COURT ORDERS that the Monitor be and is hereby authorized and directed to make a disbursement in the amount of \$300,000 as soon as practicable after the date of this Order to The Bank of New York Mellon, as indenture trustee relating to certain secured notes in favour of the Secured Lenders.
6. THIS COURT ORDERS AND DECLARES that nothing in this Order shall constitute or be deemed to constitute the Monitor as a receiver, assignee, liquidator, administrator, receiver-manager, agent of the creditors or legal representative of the Applicant within the meaning of any relevant legislation and that any distribution ultimately made to any creditor of the Applicant by the Monitor will be deemed to have been made by the Applicant itself.
7. THIS COURT HEREBY REQUESTS the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or in the United States, 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, 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.

DRAFT

8. THIS COURT ORDERS that each of the Applicant and the Monitor be at liberty and is hereby authorized and empowered to apply to any court, tribunal, regulatory or administrative body, wherever located, for the recognition of this Order and for assistance in carrying out the terms of this Order.

DRAFT

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DRAFT

**ONTARIO
SUPERIOR COURT OF JUSTICE – COMMERCIAL LIST**

Proceeding Commenced at Toronto

**ORDER
(Stay Extension and Partial Distribution)**

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