

**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 December 14, 2009)**

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

IN THE MATTER OF THE *COMPANIES' CREDITORS
ARRANGEMENT ACT*, R.S.C. 1985, c. C-36, AS
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AND IN THE MATTER OF A PLAN OF COMPROMISE OR
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Applicant

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TAB 1

**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

NOTICE OF MOTION

The Applicant will make a motion to a Judge presiding over the Commercial List on December 14, 2009 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 December 14, 2009 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 March 31, 2010;

3. an Order approving the terms of a reimbursement agreement between the Applicant, the Monitor (as defined in the Initial Order), and JPMorgan Chase Bank, N.A. and CIBC World Markets Corp. (collectively, the "**Noteholders**") in substantially the same form as that attached to the Report (as defined below) (the "**Reimbursement Agreement**") and authorizing the Applicant and the Monitor to enter into the Reimbursement Agreement;

4. an Order authorizing and directing the Monitor to continue to hold the amount of \$1.75 million (the "**Reserve**") in accordance with the terms of the Order of this Court made in these proceedings on November 12, 2009 (the "**Expansion of Monitor's Powers Order**");

5. an Order limiting the amount of the Administration Charge (as defined in the Initial Order) to \$750,000;

6. an Order authorizing and directing the Monitor (as defined in the Initial Order) to make a disbursement to: (a) JPMorgan Chase Bank, N.A. and CIBC Inc. (collectively, the "**ABL Lenders**"), jointly, of an amount equal to the total amount of any and all remaining obligations owing by the Applicant to the ABL Lenders (the "**Residual ABL Amount**"); and (b) The Bank of New York Mellon (as indenture trustee relating to certain secured notes issued by Barzel Finco Inc. in favour of the Noteholders in respect of which certain secured inter-company promissory notes issued by the Applicant in favour of Barzel Finco Inc. were assigned to the Noteholders) of all funds currently being held by the Monitor pursuant to the

Expansion of Monitor's Powers Order but for the Residual ABL Amount and the amount of the Reserve (collectively, the "**Disbursement**");

7. an Order approving of the activities of the Monitor as set out in the Report, the Fifth Report of the Monitor dated November 10, 2009, and the Fourth Report of the Monitor dated October 30, 2009;

8. an Order approving the fees and disbursements of the Monitor and its counsel as set out in the Report (defined below); and

9. 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 December 15, 2009;

2. Finally resolving such matters as final federal income tax and excise tax audits and provincial payroll audits to determine any claims which may invoke the Director's Charge will likely take until March 31, 2010 or longer;

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

4. Post-closing working capital and other payment adjustments in connection with the closing of the sale transaction as approved by this Court by an Order made in these proceedings on October 30, 2009, as amended and restated by Order of this Court made in these proceedings on November 12, 2009, (the **"Amended and Restated Approval and Vesting Order"**) may not be completed until on or shortly after December 14, 2009;

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 March 31, 2010;

7. The Monitor is supportive of the Applicant's request for an extension of the Stay Period to and including March 31, 2010;

Reimbursement Agreement and Disbursement

8. The Applicant does not currently know whether or not there are any claims which may give rise to recourse to the Director's Charge;

9. Currently, the Initial Order provides that the Directors' Charge shall not exceed an aggregate amount of \$2.3 million, as security for the indemnity provided in paragraph 21 of the Initial Order;

10. The total amount of the Applicant's Property (as defined in the Initial Order) is now represented by the net proceeds realized by the Applicant on

consummation of the sale transaction as approved by the Amended and Restated Approval and Vesting Order, which proceeds amount to approximately \$5.8 million;

11. Effecting the Disbursement will reduce the total amount of the Applicant's Property to the amount of the Reserve;

12. The amount of the Reserve contemplates retaining \$500,000 as a reasonable amount to currently cover the limited likelihood and quantum of any possible claims that would invoke recourse to the Directors' Charge;

13. Nevertheless, in order to ensure that funds remain available to satisfy the Directors' Charge to an aggregate amount not to exceed \$2.3 million, the Applicant, Monitor and Noteholders have entered into the Reimbursement Agreement which provides that the Noteholders will reimburse the Applicant to a maximum amount of \$1.8 million should claims arise that would invoke recourse to the Director's Charge;

14. The Reimbursement Agreement is a fair and reasonable way of ensuring that the potential claimants entitled to the benefit of the Directors' Charge up to an aggregate amount of \$2.3 million will continue to have access to such coverage should such claims arise notwithstanding giving effect to the Disbursement;

15. The Noteholders and ABL Lenders have valid and perfected security interests in the Applicant's Property which appears to rank in priority to all other claims but for the Charges and, therefore, are entitled to the Disbursement;

16. The Monitor supports the Applicant's entering into the Reimbursement Agreement and effecting the Disbursement;

Monitor's Activities and Fees and Disbursements

17. 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;

18. The fees and disbursements of the Monitor and its counsel as set out in the Report are reasonable under the circumstances;

19. The Monitor has examined the bills of its counsel and has found the services outlined therein to have been duly authorized and duly rendered and the charges set out therein are reasonable in the Monitor's opinion;

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

Miscellaneous

21. paragraphs 11(a) and 49 of the Initial Order;

22. Rules 3.02 and 37.02(1) of the *Rules of Civil Procedure*; and

23. 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 Sixth Report of the Monitor and all exhibits and appendices thereto (the "Report"), to be filed separately; and
2. such further and other materials as counsel may advise and this Court may permit.

Date: December 8, 2009

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TO: ATTACHED SERVICE LIST

Court File No. 09-8363-00CL

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 BARZEL INDUSTRIES CANADA INC.

Applicant

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Attention: Robert Camplani
Responsable du dossier

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 December 14, 2009)

DAVIES WARD PHILLIPS & VINEBERG LLP
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Lawyers for the Applicant

TAB 2

ONTARIO
SUPERIOR COURT OF JUSTICE – COMMERCIAL LIST

THE HONOURABLE MR.)	MONDAY, THE 14 TH DAY
)	
JUSTICE MORAWETZ)	OF DECEMBER, 2009.

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 terms of a reimbursement agreement, authorizing Deloitte & Touche Inc., in its capacity as the monitor appointed by this Court in these proceedings (the "**Monitor**") to disburse certain funds in its possession while maintaining a fixed reserve for other items, and approving the activities of the Monitor and the fees and disbursements of the Monitor and its counsel, was heard this day at 330 University Avenue, Toronto, Ontario.

ON READING the Sixth Report of the Monitor dated December ■, 2009 (the "**Report**") and on hearing the submissions of counsel for the Applicant, the Monitor, and JPMorgan Chase Bank, N.A. and CIBC World Markets Corp., no one appearing for any other person on the service list, although properly served as appears from the Affidavits of Service filed:

1. THIS COURT ORDERS that the time for service of the Notice of Motion, the Report and the Motion Record is hereby abridged 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 March 31, 2010.
3. THIS COURT ORDERS that the terms of a reimbursement agreement between the Applicant, the Monitor, and JPMorgan Chase Bank, N.A. and CIBC World Markets Corp. (collectively, the "**Noteholders**") in substantially the same form as that attached to the Report (the "**Reimbursement Agreement**") be and are hereby approved the Applicant and the Monitor be and are hereby authorized and directed to enter into the Reimbursement Agreement.
4. THIS COURT ORDERS that the Monitor be and is hereby authorized and directed to continue to hold the amount of \$1.75 million (the "**Reserve**") in accordance with the terms of the Order of this Court made in these proceedings on November 12, 2009 (the "**Expansion of Monitor's Powers Order**").
5. THIS COURT ORDERS that the amount of the Administration Charge (as defined in the Initial Order) be and is hereby limited to a maximum of \$750,000 until further Order of this Court.
6. THIS COURT ORDERS that the Monitor be and is hereby authorized and directed to make a disbursement as soon as practicable after the date of this Order to: (a) JPMorgan Chase Bank, N.A. and CIBC Inc. (collectively, the "**ABL Lenders**"), jointly, of an amount equal to the total amount of any and all remaining obligations owing by the Applicant to the ABL Lenders (the "**Residual ABL Amount**"); and (b) The Bank of New York Mellon (as indenture trustee relating to certain secured notes issued by Barzel Finco Inc. in favour of the Noteholders in respect of which certain secured inter-company promissory notes issued by the Applicant in favour of Barzel Finco Inc. were assigned to the Noteholders) of all funds currently being held by the Monitor pursuant to the Expansion of Monitor's Powers Order but for the Residual ABL Amount and the amount of the Reserve (collectively, the "**Disbursement**").

DRAFT

7. THIS COURT ORDERS that the activities of the Monitor as set out in the Report, the Fifth Report of the Monitor dated November 10, 2009, and the Fourth Report of the Monitor dated October 30, 2009 be and are hereby approved.

8. 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.

9. 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.

10. 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.

11. 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.

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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
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Court File No. 09-8363-00CL

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

Proceeding Commenced at Toronto

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

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Court File No. 09-8363-00CL

ONTARIO

SUPERIOR COURT OF JUSTICE – COMMERCIAL LIST

Proceeding commenced at Toronto

**MOTION RECORD
OF THE APPLICANT
(Returnable December 14, 2009)**

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