

File No. BK 17-01-04509

**THE QUEEN'S BENCH
Winnipeg Centre
IN BANKRUPTCY AND INSOLVENCY**

**IN THE MATTER OF THE *BANKRUPTCY AND
INSOLVENCY ACT* R.S.C. 1985,
c. B-3, AS AMENDED**

**AND IN THE MATTER OF THE PROPOSAL OF
5274398 MANITOBA LTD.**

SALE APPROVAL, VESTING AND DISTRIBUTION ORDER

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File No. 1702631

Box No. 3

THE QUEEN'S BENCH
Winnipeg Centre
IN BANKRUPTCY AND INSOLVENCY

THE HONOURABLE)
MR. JUSTICE DEWAR) Tuesday, the 5th day of December, 2017
)

IN THE MATTER OF THE *BANKRUPTCY AND*
***INSOLVENCY ACT* R.S.C. 1985,**
c. B-3, AS AMENDED

AND IN THE MATTER OF THE PROPOSAL OF
5274398 MANITOBA LTD.

SALE APPROVAL, VESTING AND DISTRIBUTION ORDER

THIS MOTION, made by 5274398 Manitoba Ltd (o/a Cross Country Manufacturing Ltd.) ("**Cross Country**") for an order approving the sale transaction (the "**Transaction**") contemplated by an asset purchase agreement (the "**APA**") between Cross Country and 2598309 Ontario Limited d/b/a Gincor Trailer Holdings (the "**Purchaser**") dated November 14, 2017 and appended to the First Confidential Report of the Proposal Trustee dated December 1, 2017 (the "**Confidential Report**"), and vesting in the Purchaser Cross Country's right, title and interest in and to the assets described in the APA the ("**Purchased Assets**"), was heard this day at the Law Courts Building, 408 York Avenue, Winnipeg, Manitoba.

ON READING the Fifth Report of the Proposal Trustee dated December 1, 2017 (the "**Fifth Report**"), the Confidential Report, and the Affidavit of Jonathan Doerksen sworn November 29, 2017, filed, and on hearing the submissions of counsel for Cross

Country, counsel Lazer Grant Inc. in its capacity as the Proposal Trustee of Cross Country (the "**Proposal Trustee**") and counsel for Bank of Montreal ("**BMO**"), no one appearing for any other person on the service list, although properly served as appears from the Affidavit of Samantha Dunn sworn December 4, 2017, filed:

SERVICE VALIDATED

1. THIS COURT ORDERS that the time for service of the Notice of Motion and the supporting materials herein is hereby abridged and validated so that this motion is properly returnable today and hereby disposed with further service thereof.

SALE APPROVAL AND VESTING

2. THIS COURT ORDERS AND DECLARES that the Transaction is hereby approved, with such minor amendments as Cross Country and the Proposal Trustee may deem necessary. Cross Country is hereby authorized and directed to take such additional steps and execute such additional documents as may be necessary or desirable for the completion of the Transaction and for the conveyance of the Purchased Assets to the Purchaser.

3. THIS COURT ORDERS AND DECLARES that upon the delivery of a Proposal Trustee's certificate to the Purchaser substantially in the form attached as Schedule 1 hereto (the "**Proposal Trustee's Certificate**"), (i) all of Cross Country's right, title and

interest in and to the Purchased Assets described in the APA (other than the real property identified in Schedule 2 hereto) shall vest absolutely in the Purchaser and (ii) all of Cross Country's right, title and interest in and to the real property identified in Schedule 2 hereto shall vest absolutely in the nominee of the Purchaser, 2607717 Ontario Limited, in each case free and clear of and from any and all security interests (whether contractual, statutory, or otherwise), hypothecs, mortgages, trusts or deemed trusts (whether contractual, statutory, or otherwise), liens, executions, levies, charges, or other financial or monetary claims, whether or not they have attached or been perfected, registered or filed and whether secured, unsecured or otherwise (collectively, the "**Claims**") including, without limiting the generality of the foregoing: (i) any encumbrances or charges created by the Order of the Honourable Mr. Justice Dewar dated September 7, 2017; (ii) all charges, security interests or claims evidenced by registrations pursuant to the *Personal Property Security Act* (Ontario) or any other personal property registry system; and (iii) those Claims listed on Schedule 3 hereto (all of which are collectively referred to as the "**Encumbrances**", which term shall not include the permitted encumbrances, easements and restrictive covenants listed on Schedule 4) and, for greater certainty, this Court orders that all of the Encumbrances affecting or relating to the Purchased Assets are hereby expunged and discharged as against the Purchased Assets.

4. THIS COURT ORDERS that upon the registration in the Land Registry Office for the Land Titles Division of Kent County (No. 24) of an Application for Vesting Order in the form prescribed by the *Land Titles Act*, the Land Registrar is hereby directed to enter 2607717 Ontario Limited as the owner of the subject real property identified in

Schedule 2 hereto (the "**Real Property**") in fee simple, and is hereby directed to delete and expunge from title to the Real Property all of the Claims listed in Schedule 3 hereto.

5. THIS COURT ORDERS that for the purposes of determining the nature and priority of Claims, the net proceeds from the sale of the Purchased Assets shall stand in the place and stead of the Purchased Assets, and that from and after the delivery of the Proposal Trustee's Certificate all Claims and Encumbrances shall attach to the net proceeds from the sale of the Purchased Assets with the same priority as they had with respect to the Purchased Assets immediately prior to the sale, as if the Purchased Assets had not been sold and remained in the possession or control of the person having that possession or control immediately prior to the sale.

6. THIS COURT ORDERS AND DIRECTS the Proposal Trustee to file with the Court a copy of the Proposal Trustee's Certificate, forthwith after delivery thereof.

7. THIS COURT ORDERS that, pursuant to clause 7(3)(c) of the *Canada Personal Information Protection and Electronic Documents Act*, Cross Country is authorized and permitted to disclose and transfer to the Purchaser all human resources and payroll information in Cross Country's records pertaining to Cross Country's past and current employees, including personal information of those employees listed in the APA. The Purchaser shall maintain and protect the privacy of such information and shall be entitled to use the personal information provided to it in a manner which is in all material respects identical to the prior use of such information by Cross Country.

8. THIS COURT ORDERS that, notwithstanding:
- (a) the pendency of these proceedings;
 - (b) any applications for a bankruptcy order now or hereafter issued pursuant to the *Bankruptcy and Insolvency Act* (Canada) in respect of Cross Country and any bankruptcy order issued pursuant to any such applications; and
 - (c) any assignment in bankruptcy made in respect of Cross Country;

the vesting of the Purchased Assets in the Purchaser or 2607717 Ontario Limited, as the case may be, pursuant to this Order shall be binding on any trustee in bankruptcy that may be appointed in respect of Cross Country and shall not be void or voidable by creditors of Cross Country, nor shall it constitute nor be deemed to be a fraudulent preference, assignment, fraudulent conveyance, transfer at undervalue, or other reviewable transaction under the *Bankruptcy and Insolvency Act* (Canada) or any other applicable federal or provincial legislation, nor shall it constitute oppressive or unfairly prejudicial conduct pursuant to any applicable federal or provincial legislation.

DEPOSIT

9. THIS COURT ORDERS THAT PricewaterhouseCoopers LLP, in its capacity as financial advisor to Cross Country (the “**Financial Advisor**”) pay to the Proposal Trustee the full amount of the deposit paid by the Purchaser in connection with the APA

and the Transaction, promptly upon delivery to the Financial Advisor of a copy of the Proposal Trustee's Certificate, to be applied to the Purchase Price in accordance with the terms of the APA.

DISTRIBUTIONS

10. THIS COURT ORDERS that the capitalized terms not otherwise defined in this Order shall have the meanings ascribed to them in the Fifth Report.

11. THIS COURT ORDERS that Cross Country and the Proposal Trustee are authorized to hold back from the net proceeds of the sale of the Purchased Assets the CRA Source Deduction Estimated Deemed Trust Claim in the amount of \$282,270.00 and to pay same to the Receiver General promptly upon court approval of a proposal in the within proceedings, and otherwise to distribute same in accordance with the priority of claims in respect of such funds as at immediately prior to the sale, as if the such assets had not been sold and remained in the possession or control of Cross Country immediately prior to the sale.

12. THIS COURT ORDERS that Cross Country and the Proposal Trustee are authorized to pay from the net proceeds of the sale of the Purchased Assets the Financial Advisor's Claim to the Financial Advisor, PricewaterhouseCoopers LLP in the amount of \$114,318.75.

13. THIS COURT ORDERS that Cross Country and the Proposal Trustee are authorized to hold back from the net proceeds of the sale of the Purchased Assets the

Administration Charge (as defined in the this Honourable Court's Order pronounced on September 7, 2017 (the "**September 7 Order**")), the amount of which shall be reduced to \$100,000 following payment of the Financial Advisor's Claim in paragraph 12 above.

14. THIS COURT ORDERS that Cross Country and the Proposal Trustee are authorized to pay from the net proceeds of the sale of the Purchased Assets to the DIP Lenders (as defined in the September 7 Order) all amounts owing in accordance with the DIP Term Sheets (as defined in the September 7 Order),

15. THIS COURT ORDERS that the DIP Lenders' Charge as defined and ordered in the September 7 Order shall be discharged following the payment of the amounts described in paragraph 14 above.

16. THIS COURT ORDERS that Cross Country is authorized to pay from the net proceeds of the sale of the Purchased Assets the Property Tax Claim to the Municipality of Chatham-Kent in the amount of approximately \$125,000.00.

17. THIS COURT ORDERS that Cross Country and the Proposal Trustee are authorized to hold back from the net proceeds of the sale of the Purchased Assets, an amount equal to the Bank Permanent Debt Reduction Amount (as defined in the Confidential Report) and to thereafter pay to BDC and BMO such portions of the Bank Permanent Debt Reduction Amount at such time, in such manner and for the payment of such loan obligations, as may be agreed among BDC, BMO and Cross Country, or as otherwise may be directed by further Order of this Honourable Court. For greater certainty, the amount to be held and distributed (in due course) in accordance with this

paragraph 17 shall include the Deferred Equipment Payment Amount as defined in the APA, when received.

18. THIS COURT ORDERS that Cross Country and the Proposal Trustee are authorized to pay from the net proceeds of the sale of the Purchased Assets the Sale Closing Fees to Cross Country's legal counsel, MLT Aikins LLP in the amount of \$50,000.00.

19. THIS COURT ORDERS that Cross Country and the Proposal Trustee are authorized to pay from the net proceeds of the sale of the Purchased Assets the balance of such net sale proceeds, after payment or holdback of the amounts described above, to BMO for deposit to Cross Country's operating account with BMO as the BMO Operating Credit Adjustment (as defined in the Confidential Report), for working capital purposes, in accordance with arrangements made between Cross Country and BMO.

SEALING

20. THIS COURT ORDERS that the Confidential Report be sealed, kept confidential and not form part of the public record and shall remain stored electronically with this Court on an encrypted basis limiting access to only the Registrar of this Court and the presiding Judge and shall only be made accessible or form part of the public record upon the filing of a certificate by the Proposal Trustee confirming the completion of all terms of the APA within 10 business days of completion of all terms of the APA or as otherwise earlier Ordered by this Court upon motion by any interested party.

EXTENSION

21. THIS COURT ORDERS that the time within which the Proposal Trustee may file a proposal with the Official Receiver in the matter of the proposal of Cross Country shall be extended to 11:59 PM (CST), Friday, January 19, 2018.

22. 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 Cross Country, the Proposal Trustee and their 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 Cross Country and the Proposal Trustee as may be necessary or desirable to give effect to this Order or to assist Cross Country, the Proposal Trustee and their agents in carrying out the terms of this Order.

December 5, 2017

**R.A.
Dewar J.**

Digitally signed by
R.A. Dewar J.
DN: c=ca, o=ldrc,
cn=R.A. Dewar J.
Date: 2017.12.05
13:20:57 -06'00'

Dewar, J.

Schedule 1 — Form of Proposal Trustee's Certificate

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5274398 MANITOBA LTD.**

PROPOSAL TRUSTEE'S CERTIFICATE

MLT AIKINS LLP
Barristers and Solicitors
3000 - 360 Main Street
Winnipeg, Manitoba R3C 4G1

G. BRUCE TAYLOR / JJ BURNELL
Ph: (204) 957-4669 / 957-4663
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PROPOSAL TRUSTEE'S CERTIFICATE

RECITALS

- A. On August 11, 2017 5274398 Manitoba Ltd. ("**Cross Country**"), filed a Notice of Intention to Make a Proposal ("**NOI**") pursuant to section 50.4 of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3 (the "**BIA**") as amended. Lazer Grant Inc. was named proposal trustee in Cross Country's NOI (the "**Proposal Trustee**").
- B. Pursuant to an Order of the Court dated December 5, 2017, the Court approved the agreement of purchase and sale made as of November 14, 2017 (the "**APA**") between Cross Country and 2598309 Ontario Limited d/b/a Gin-Cor Trailer Holdings (the "**Purchaser**") and provided for the vesting in the Purchaser of Cross Country's right, title and interest in and to the Purchased Assets, which vesting is to be effective with respect to the Purchased Assets upon the delivery by the Proposal Trustee to the Purchaser of a certificate confirming (i) the payment by the Purchaser of the Purchase Price for the Purchased Assets; (ii) that the conditions to Closing as

set out in the APA have been satisfied or waived by Cross Country and the Purchaser; and (iii) the transaction contemplated by the APA (the "**Transaction**") has been completed to the satisfaction of Cross Country and the Proposal Trustee.

C. Unless otherwise indicated herein, terms with initial capitals have the meanings set out in the APA.

THE PROPOSAL TRUSTEE CERTIFIES the following:

1. The Purchaser has paid and Cross Country has received the Purchase Price for the Purchased Assets payable on the closing date pursuant to the APA;
2. The conditions to closing as set out in the APA have been satisfied or waived by Cross Country and the Purchaser; and
3. The Transaction has been completed to the satisfaction of Cross Country and the Proposal Trustee.
4. This Certificate was delivered by the Proposal Trustee at [TIME] on [DATE].

LAZER GRANT INC. in its capacity as the
Proposal Trustee of Cross Country, and not in
its personal capacity

Per: _____

Name:

Title:

Schedule 2 – Purchased Assets

The Purchased Assets includes:

1. the Blenheim Real Property (as defined in the APA and as outlined below);
2. the Assumed Contracts (as defined in the APA);
3. the Blenheim Inventory (as defined in the APA);
4. the Blenheim Fixed Assets (as defined in the APA);
5. the Blenheim Intellectual Property (as defined in the APA);
6. the Books and Records (as defined in the APA);
7. the Blenheim Trade Names (as defined in the APA);
8. all Authorizations (as defined in the APA), licenses, and permits owned, held or used by Cross Country relating directly to the Blenheim Business (as defined in the APA) and to the extent transferrable; and
9. the Blenheim Goodwill (as defined in the APA).

Blenheim Real Property

Civic Address: 1 Solvay Drive, Blenheim, Ontario

Pin No. 00928-0617 (LT)

Legal Description:

PART OF LOT 12, CONCESSION 1, EAST COMMUNICATION ROAD, GEOGRAPHIC TOWNSHIP OF HARWICH, DESIGNATED AS PART 1, 24R3292, EXCEPT PART 1, 24R9801; SUBJECT TO INTEREST, IF ANY, IN 513921; TOGETHER WITH AN EASEMENT OVER PART LOT 12, CON. 1, ECR, HARWICH DESIGNATED AS PART 2, 24R3292 AS IN 492487; MUNICIPALITY OF CHATHAM-KENT

Schedule 3 — Claims to be deleted and expunged from title to Real Property

1. Registration No. CK80203 registered on January 18, 2013 as a Transfer
2. Registration No. CK80204 registered on January 18, 2013 as a Charge by the Business Development Bank of Canada
3. Registration No. CK101893 registered on December 4, 2014 as a Notice of Lease by Solar Power Network 001 Inc. / SPN LP 2
4. Registration No. CK134716 registered on August 4, 2017 as a charge by the Bank of Montreal

Schedule 4

Permitted Encumbrances, Easements and Restrictive Covenants related to the Real Property

(unaffected by the Vesting Order)

1. Instrument No. 24R3292 registered on May 8, 1984 as a Plan Reference
2. Instrument No. 403300 registered on June 1, 1984 as an Order
3. Instrument No. 403910 registered on June 20, 1984 as an Order
4. Instrument No. 408784 registered on November 2, 1984 as a By-Law
5. Instrument No. LT1360 registered on January 4, 1994 as a Notice Agreement registered by The Corporation of the Town of Blenheim regarding plan
6. Instrument No. LT4724 registered on December 2, 1994 as a Notice registered by Solvay Automotive Canada, Inc. in favour of The Corporation of the Town of Blenheim