

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

THE HONOURABLE MR.) TUESDAY, THE 2ND
JUSTICE KOEHNEN) DAY OF FEBRUARY, 2021

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 JMX CONTRACTING INC., JMX
NATIONAL INC., BRND PROPERTIES INC., AND JMX
LEASING INC.

Applicants

TRANSACTION APPROVAL AND REVERSE VESTING ORDER

THIS MOTION, made by JMX Contracting Inc. (“**JMX Contracting**”), JMX National Inc., BRND Properties Inc. (“**BRND**”), and JMX Leasing Inc. (“**JMX Leasing**” collectively, the “**Applicants**”) pursuant to the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the “**CCAA**”) for an order (i) approving the reorganization transactions and steps (the “**Restructuring Transaction Steps**”) as contemplated in Affidavit of Charlie Dahl sworn January 25, 2021 (the “**Dahl Affidavit**”); (ii) declaring that 2808447 Ontario Inc. (“**New ParentCo**”), 2809590 Ontario Inc. (“**Residual Leasing**”) and 2809588 Ontario Inc. (“**Residual Contracting**”) are companies to which the CCAA applies; (iii) approving the vesting of all liabilities of JMX Leasing, JMX Contracting and BRND other than the Assumed Liabilities (as defined in Schedule “A” hereto) in and to Residual Leasing, Residual Contracting and New ParentCo respectively was heard this day at 330 University Avenue, Toronto, Ontario.

ON READING the Dahl Affidavit and the Second Report (the “**Second Report**”) of Crowe Soberman Inc., in its capacity as the Court-appointed monitor of the Applicants (the

“Monitor”) and on hearing the submissions of counsel for the Applicants, the Monitor and such other counsel who were present and wished to be heard, and on reading the affidavit of service of Shaun Parsons sworn January 25, 2021, the affidavit of service of Shaun Parsons sworn January 28, 2021 and the affidavit of service of Christel Paul, sworn February 1, 2021 filed:

1. **THIS COURT ORDERS** that the time for service of the Notice of Motion and the Motion Record is hereby abridged and validated so that this Motion is properly returnable today and hereby dispenses with further service thereof.

CCAA Applicants

2. **THIS COURT ORDERS AND DECLARES** that New ParentCo, Residual Contracting and Residual Leasing (the “**New Applicants**”) shall be companies to which the CCAA applies.

3. The New Applicants shall be added as an applicant in these CCAA proceedings and all references in any Order of this Court in respect of this CCAA proceeding to (i) an “**Applicant**” shall refer to and include the New Applicants and (ii) “**Property**” shall include the current and future assets, licenses, undertakings and properties of every nature and kind, whatsoever and wherever situate including all proceeds thereof of the New Applicants (the “**New Applicant Property**”) and for greater certainty, each of the Administration Charge and the DIP Lender’s Charge (each as defined in the Initial Order dated September 29, 2020) shall constitute a charge on the New Applicant Property.

Restructuring Transaction

4. **THIS COURT ORDERS AND DECLARES** that the Restructuring Transaction Steps are hereby approved and the Applicants and their successors (including New ParentCo, Residual Leasing, and Residual Contracting) to implement and complete the restructuring contemplated in the Restructuring Transaction Steps (the “**Restructuring Transaction**”), including notably the following steps:

(a) 2542097 Ontario Inc., Dahl Demolition Corp., 2391212 Ontario Inc., and 2391213 Ontario Inc. (the “**JMX Shareholders**”) - will be issued shares of New ParentCo in exchange for all of the issued and outstanding common shares held by each of them in JMX Leasing and of BRND on a 1:1 basis (the “**Share Exchange**”);

- (b) Following the completion of the Share Exchange: (i) each of the JMX Shareholders will hold 25% of the common shares of New ParentCo; and (ii) JMX Leasing and BRND will be wholly owned subsidiaries of New ParentCo; and
- (c) New ParentCo will hold 100% of the shares of Residual Contracting and Residual Leasing.

5. **THIS COURT ORDERS** that the Applicants, New ParentCo, Residual Contracting and Residual Leasing are 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 Restructuring Transaction.

6. **THIS COURT ORDERS** that this Order shall constitute the only authorization required by the Applicants to proceed with the Restructuring Transaction and that no shareholder or other approval shall be required in connection therewith.

Reverse Vesting

7. **THIS COURT ORDERS** that the following shall occur and be deemed to occur in the following sequence:

- (a) all liabilities, debts, obligations, indebtedness, trusts, or deemed trusts (whether contractual, statutory, or otherwise), liens, executions, rights of distress, levies, and charges of any kind or nature whatsoever, whether direct or indirect, known or unknown, absolute or contingent, accrued or unaccrued, liquidated or unliquidated, matured or unmatured or due or not due yet in law or equity and whether based on statute or otherwise of JMX Contracting (the “**Residual Contracting Liabilities**”) other than the Assumed Liabilities shall be transferred to, assumed by and vest absolutely and exclusively in Residual Contracting and shall no longer be obligations of JMX Contracting and JMX Contracting and all of its assets, licenses, undertakings, properties of every nature and kind whatsoever and wherever situate (the “**Contracting Property**”) shall be and are hereby forever released and discharged from the Residual Contracting Liabilities and all related claims affecting or relating to the Contracting Property are hereby expunged and discharged as against the Contracting Property;

- (b) all liabilities, debts, obligations, indebtedness, trusts, or deemed trusts (whether contractual, statutory, or otherwise), liens, executions, rights of distress, levies, and charges of any kind or nature whatsoever, whether direct or indirect, known or unknown, absolute or contingent, accrued or unaccrued, liquidated or unliquidated, matured or unmatured or due or not due yet in law or equity and whether based on statute or otherwise of JMX Leasing (the “**Residual Leasing Liabilities**”) other than the Assumed Liabilities shall be transferred to, assumed by and vest absolutely and exclusively in Residual Leasing and shall no longer be obligations of JMX Leasing and JMX Leasing and all of its assets, licenses, undertakings, properties of every nature and kind whatsoever and wherever situate (the “**Leasing Property**”) shall be and are hereby forever released and discharged from the Residual Leasing Liabilities and all related claims affecting or relating to the Leasing Property are hereby expunged and discharged as against the Leasing Property;
- (c) all liabilities, debts, obligations, indebtedness, trusts or deemed trusts (whether contractual, statutory, or otherwise), liens, executions, rights of distress, levies and charges, of any kind or nature whatsoever, whether direct or indirect, known or unknown, absolute or contingent, accrued or unaccrued, liquidated or unliquidated, matured or unmatured or due or not due yet in law or equity and whether based on statute or otherwise of BRND (the “**Residual BRND Liabilities**”) other than the Assumed Liabilities shall be transferred to, assumed by and vest absolutely and exclusively in New ParentCo and shall no longer be obligations of BRND and BRND and all of its assets, licenses, undertakings, properties of every nature and kind whatsoever and wherever situate (the “**BRND Property**”) shall be and are hereby forever released and discharged from the Residual BRND Liabilities and all related claims affecting or relating to the BRND Property are hereby expunged and discharged as against the BRND Property; and
- (d) all rights and benefits, including causes of action, of JMX Contracting in:
 - (i) CCDC17 Contract for 1400 Robson Empire Landmark Hotel Demolition dated October 23, 2017 (the “**ASNA Contract**”). including, without

limitation: the lien action commenced in British Columbia by JMX Contracting bearing Court File No. VLC-S-S-207196; JMX Contracting's right to receive progress payments pursuant to the ASNA Contract; and any actions, claims, rights or lawsuits of any nature whatsoever, whether against ASNA or any other party, arising out of or in connection with the ASNA Contract (collectively, the "**ASNA Litigation**"); and

- (ii) Lambton Generating Station Demolition Agreement #RG00287132 with Ontario Power Generation ("**OPG**") dated July 10, 2020 (the "**OPG Contract**") including, without limitation: JMX Contracting's interest in amounts drawn down by OPG pursuant to a letter of credit provided by JMX Contracting; JMX Contracting's right to receive progress payments pursuant to the OPG Contract; and any actions, claims, rights or lawsuits of any nature whatsoever, whether against OPG or any other party, arising out of or in connection with the OPG Contract (collectively, the "**OPG Litigation**")

shall be transferred and vested absolutely and exclusively in and to Residual Contracting.

8. **THIS COURT ORDERS** that for the purposes of determining the nature and priority of the claims relating to the Residual Contracting Liabilities, the Residual Leasing Liabilities and the Residual BRND Liabilities, the net proceeds, if any, received from the ASNA Litigation or the OPG Litigation shall stand in the place and stead of the Contracting Property, the Leasing Property, and the BRND Property, respectively with the same priority as they had immediately prior to the date of this Order.

9. **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) (the "**BIA**") in respect of the Vendors and any bankruptcy order issued pursuant to any such applications; and

(c) any assignment in bankruptcy made in respect of the Vendors,

the entering into of the Restructuring Transaction and the transactions approved in this Order shall be binding on any trustee in bankruptcy that may be appointed in respect of the Applicants and shall not be void or voidable by creditors of the Applicants, nor shall it constitute nor be deemed to be a fraudulent preference, assignment, fraudulent conveyance, transfer at undervalue, or other reviewable transaction under the BIA 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.

GENERAL

10. **THIS COURT ORDERS** that, notwithstanding Rule 59.05, this Order is effective from the date that it is made, and is enforceable without any need for entry and filing. In accordance with Rules 77.07(6) and 1.04, no formal order need be entered and filed unless an appeal or a motion for leave to appeal is brought to an appellate court. Any party may nonetheless submit a formal order for original signing, entry and filing when the Court returns to regular operations.

11. **THIS COURT ORDERS** that this Order shall have full force and effect in all provinces and territories in Canada.

12. **THIS COURT HEREBY REQUESTS** the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada, the United States or in any other foreign jurisdiction to give effect to this Order and to assist the Vendors, 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 Vendors and the Monitor, as an officer of this Court, as may be necessary or desirable to recognize and give effect to this Order and to assist the Vendors, the Monitor and their respective agents in carrying out the terms of this Order.

Schedule “A”

1. the payment in cash, or the assumption of, any payables of JMX Contracting Inc., which by operation of law, are in priority to the security interest of Royal Bank of Canada;
2. the assumption of the amount, if any, comprising the secured indebtedness owing by JMX Leasing Inc. or JMX Contracting Inc. to the Royal Bank of Canada as of the Closing Date which amount as of the date hereof is \$2,647,883, less the amount of the DIP Loan;
3. the assumption of the DIP Loan in the amount of \$1,000,000 plus any accrued interest owing by JMX Contracting Inc. to the DIP Lender (as defined in the Order dated September 29, 2020).
4. the assumption of the ordinary course trade liabilities of JMX Contracting as set out below:

	\$
JMX Environmental	3,849,955
Vendors relating to current projects	68,220
CRA, Minister of Finance, Worksafe BC, WSIB	51,296
Labourers Pension Fund and Union	41,234
Miscellaneous	24,117
	4,034,821

5. the assumption of the mortgage granted to BRND by Hillmount Capital Inc., of which \$1,700,000 is outstanding as of the date hereof;
6. the assumption of post-filing liabilities of JMX Leasing in connection with any equipment leasing contract; and
7. the assumption of the indebtedness owing by BRND to Dahl Demolition Corp; 23912112 Ontario Inc., and 2391213 Ontario Inc. representing a total indebtedness of \$ 1,245,087.53 as of the date hereof.

IN THE MATTER OF THE COMPANIES' CREDITORS
ARRANGEMENT ACT, R.S.C. 1985, c. C-36, AS AMENDED

Court File No. CV-20-00648528-00CL

AND IN THE MATTER OF A PLAN OF COMPROMISE OR
ARRANGEMENT OF JMX CONTRACTING INC., JMX NATIONAL INC.,
BRND PROPERTIES INC., and JMX LEASING INC.

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

Proceedings commenced at Toronto

**TRANSACTION APPROVAL AND REVERSE
VESTING ORDER**

WEISZ FELL KOUR LLP
100 King Street West,
Suite 5600
Toronto, ON M5X 1C9

Sharon Kour
LSO No. 58328D
skour@wfkllp.ca
Tel: 416.613.8283

Caitlin Fell
LSO No. 60091H
cfell@wfkllp.ca
Tel: 416.613.8282

Fax: 416.613.8290

Lawyers for JMX Contracting Inc., et al.