

SUPERIOR COURT
(Commercial Division)

**CANADA
PROVINCE OF QUÉBEC
DISTRICT OF MONTRÉAL
No. 500-11-057570-190**

DATE: May 15, 2020

PRESIDING: THE HONOURABLE MARIE-ANNE PAQUETTE, J.S.C.

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

**9348069 CANADA INC.
-and-
4295862 CANADA INC.
-and-
MOTOVAN CORPORATION**

Petitioners

**-and-
MONCY HOLDING COMPANY INC.
-and-
MONCY FINANCIAL SERVICES COMPANY INC.
-and-
NICHOLS MOTORCYCLE SUPPLY INC.
-and-
MONCY LLC
-and-
MOTORCYCLE TIRES & ACCESSORIES LLC;
-and-
THE REGISTRAR OF THE REGISTER OF PERSONAL AND MOVABLE REAL
RIGHTS (Québec)**

Mises en cause

**-and-
BANK OF MONTREAL
-and-**

INVESTISSEMENT QUÉBEC
-and-
EXPORT DEVELOPMENT CANADA
-and-
BDC CAPITAL INC.

Secured Creditors

-and-

KPMG INC.

Monitor

DISTRIBUTION ORDER

- [1] **ON READING** the *Petitioners' Motion (i) for an Order extending the Stay Period, (ii) to Amend the Initial Order and (iii) for the Issuance of a Distribution Order* (the "**Motion**"), the affidavit and the exhibits in support thereof, as well as the report of the Monitor dated May 11, 2020 (the "**Report**");
- [2] **SEEING** the service of the Motion;
- [3] **SEEING** the submissions of the CCAA Parties, the Monitor and their respective attorneys;
- [4] **GIVEN** that on February 19, 2020, the Court issued an *Approval and Vesting Order* (the "**Vesting Order**") approving the transaction (the "**Transaction**") entered into by and between Motovan Corporation and Motorcycle Tires & Accessories LLC (collectively the "**Vendor**") and Gestion Claude Bigras Inc., (the "**Purchaser**");
- [5] **GIVEN** that the Monitor currently holds the sales proceeds from the Transaction (the "**Proceeds**"), as namely provided for in the Vesting Order;

WHEREFORE THE COURT:

- [6] **GRANTS** the Motion.

SERVICE AND DEFINITIONS

- [7] **ORDERS** that any prior delay for the presentation of this Motion is hereby abridged and validated so that this Motion is properly returnable today and hereby dispenses with further service thereof.

- [8] **PERMITS** service of this Order at any time and place and by any means whatsoever.
- [9] **ORDERS** that any capitalized term used and not defined herein shall have the meaning ascribed thereto in the initial order of this Court dated December 2, 2019, as amended and restated (the "**Initial Order**").

DISTRIBUTION OF PROCEEDS

- [10] **ORDERS** that the Monitor be and is hereby authorized and directed to distribute, without any further Order of the Court, all such net amounts of the Proceeds held by the Monitor in the manner specified hereinafter, the whole subject to minor adjustments as to the amounts indicated hereinafter as may be deemed necessary by the Monitor upon receipt of final statements, as applicable (the "**Payments**"):
- (i) An amount of \$410,000 as partial payment of the fees and disbursements of the Monitor, the Monitor's legal counsel, the CCAA Parties' legal counsel and other advisers, as provided for at paragraph 34 of the Initial Order;
 - (ii) An amount of \$6,271,000 to Bank of Montreal, in partial payment of its secured claim;
- [11] **ORDERS** that notwithstanding:
- (iii) the pendency of these proceedings;
 - (iv) any petition for a receiving or bankruptcy order now or hereafter issued pursuant to the *Bankruptcy and Insolvency Act* ("**BIA**") and any order issued pursuant to any such petition; or
 - (v) the provisions of any federal or provincial legislation;

the Payments shall be binding on any trustee in bankruptcy, interim receiver or receiver that may be appointed in respect of the Petitioners, and shall not be void or voidable nor deemed to be a preference, assignment, fraudulent conveyance, transfer at undervalue or other reviewable transaction under the BIA, article 1631 and following of the *Civil Code of Québec* or any other applicable federal or provincial legislation, as against the Vendor, the Purchaser or the Monitor, and shall not constitute conduct meriting an oppression remedy under any applicable statute.

LIMITATION OF LIABILITY

- [12] **DECLARES** that, subject to other orders of this Court, nothing herein contained shall require the Monitor to occupy or to take control, or to otherwise manage all or any part of the Proceeds. The Monitor shall not, as a result of

this Order, be deemed to be in possession of any of the Proceeds within the meaning of environmental legislation, the whole pursuant to the terms of the *Companies' Creditors Arrangement Act*.

[13] **DECLARES** that the Payments delivered by the Monitor pursuant to this Order are not delivered by the Monitor in its personal or corporate capacity or as legal representative of the Petitioners, including the Vendor, and that the Monitor, in carrying out its role under this Order, shall have all the protections given to it by the CCAA and the Initial Order or as an officer of the Court, and shall incur no corporate or personal liability or obligation as a result of the carrying out of its obligations under this Order, and for greater certainty, further **ORDERS AND DECLARES** that the Monitor shall not, under any circumstances, be liable for any of the tax liabilities of the Petitioners regardless of how or when such liability may have arisen, and is released from any obligations or liability in connection with any tax liabilities owing by the Petitioners, including the Vendor, or any withholdings or deductions that any person or party may assert should or should not have been paid or made in connection with such Payments;

[14] **DECLARES** that no action lies against the Monitor by reason of this Order or the performance of any act authorized by this Order, except by leave of the Court. The entities related to the Monitor or belonging to the same group as the Monitor shall benefit from the protection arising under the present paragraph.

GENERAL


[15] **DECLARES** that this Order shall have full force and effect in all provinces and territories in Canada;

[16] **DECLARES** that any interested party not served with the Motion prior to the issuance of this Order may apply to this Court within a delay of ten (10) business days following the service on them of this Order, to vary or rescind this Order or seek other relief at a comeback hearing, upon five (5) days' notice to the Monitor, the Petitioners and to any other party likely to be affected by the order sought, or upon such other notice, if any, as this Court may order;

[17] **DECLARES** that the Vendor and the Monitor shall be authorized to apply as it may consider necessary or desirable, with or without notice, to any other court or administrative body, whether in Canada, the United States of America or elsewhere, for orders which aid and complement the Order and, without limitation to the foregoing, an order under Chapter 15 of the U.S. Bankruptcy Code, for which the Monitor shall be the foreign representative. All courts and administrative bodies of all such jurisdictions are hereby respectfully requested to make such orders and to provide such assistance to the Monitor as may be deemed necessary or appropriate for that purpose;

- [18] **REQUESTS** the aid and recognition of any court or administrative body in any Province of Canada and any Canadian federal court or administrative body and any federal or state court or administrative body in the United States of America and any court or administrative body elsewhere, to act in aid of and to be complementary to this Court in carrying out the terms of the Order;
- [19] **ORDERS** the provisional execution of the present Order notwithstanding any appeal and without the requirement to provide any security or provision for costs whatsoever;

THE WHOLE WITHOUT COSTS.



MARIE-ANNE PAQUETTE, J.S.C.