



Court File No.: CV-20-00643158-00CL

**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 ROBERTS COMPANY CANADA
LIMITED**

Applicant

NOTICE OF APPLICATION

TO THE RESPONDENTS:

A LEGAL PROCEEDING HAS BEEN COMMENCED by the Applicant. The claim made by the Applicant appears on the following page.

THIS APPLICATION will come on for a hearing on June 29, 2020 at 11:30 a.m. via videoconference due to the COVID-19 pandemic. Please refer to the videoconference details attached at Schedule "A" hereto in order to attend the application and advise if you intend to join the Application by emailing Danish Afroz at afrozd@bennettjones.com.

IF YOU WISH TO OPPOSE THIS APPLICATION, to receive notice of any step in the application or to be served with any documents in the application, you or an Ontario lawyer acting for you must forthwith prepare a notice of appearance in Form 38A prescribed by the Rules of Civil Procedure, serve it on the Applicant's lawyer or, where the Applicant does not have a lawyer, serve it on the Applicant, and file it, with proof of service, in this court office, and you or your lawyer must appear at the hearing.

IF YOU WISH TO PRESENT AFFIDAVIT OR OTHER DOCUMENTARY EVIDENCE TO THE COURT OR TO EXAMINE OR CROSS-EXAMINE WITNESSES ON THE APPLICATION, you or your lawyer must, in addition to serving your notice of appearance, serve a copy of the evidence on the Applicant's lawyer or, where the Applicant does not have a lawyer, serve it on the Applicant, and file it, with proof of service, in the court office where the application is to be heard as soon as possible, but not later than 2 p.m. on the day before the hearing.

IF YOU FAIL TO APPEAR AT THE HEARING, JUDGMENT MAY BE GIVEN IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU. IF YOU WISH TO OPPOSE THIS APPLICATION BUT ARE UNABLE TO PAY LEGAL FEES, LEGAL AID MAY BE AVAILABLE TO YOU BY CONTACTING A LOCAL LEGAL AID OFFICE.

Date: June 29, 2020

Issued by:


Local Registrar

Address of court office: 330 University Avenue, 9th Floor
Toronto, ON M5G 1R7

TO: THE SERVICE LIST

APPLICATION

THE APPLICANT MAKES THIS APPLICATION FOR:

1. An initial order (the “**Initial Order**”) pursuant to the *Companies’ Creditors Arrangement Act*, R.S.C., 1985, c. C-36, as amended (the “**CCAA**”) substantially in the form attached at Tab 3 of this Application Record, *inter alia*:

- (a) abridging and validating the time for service and filing of this Notice of Application and the Application Record and dispensing with further service thereof;
- (b) declaring that the Applicant is a party to which the CCAA applies;
- (c) appointing Richter Advisory Group Inc. (“**Richter**”) as an officer of this Court to monitor the assets, business and financial affairs of the Applicant (in such capacity, the “**Monitor**”);
- (d) staying all proceedings taken or that might be taken in respect of the Applicant, its directors and officers, or the Monitor until and including July 9, 2020, subject to further Order of this Court (the “**Stay of Proceedings**”); and
- (e) granting the following charges over the Applicant’s current and future assets, undertakings and properties of every nature and kind whatsoever, and wherever situate, including all proceeds thereof:
 - (i) an administration charge in favour of the Monitor, counsel to the Monitor, and counsel to the Applicant (the “**Administration Charge**”) to the maximum amount of \$500,000; and
 - (ii) a charge in favour of the directors and officers of the Applicant (the “**Directors’ Charge**”) to the maximum amount of \$250,000;

2. Such further and other relief as this Honourable Court deems just;

THE GROUNDS FOR THIS APPLICATION ARE:

General

- (a) The Applicant, Roberts Company Canada Limited (“**RCCL**”), is insolvent and is a company to which the CCAA applies;
- (b) RCCL is a privately held corporation incorporated under the *Business Corporations Act*, R.S.O. 1990, c. B. 16 (Ontario), and has its registered head office located in Brampton, Ontario.
- (c) RCCL is in the business of manufacturing, marketing and distributing a comprehensive range of flooring, installation tools, adhesives and other flooring-related products in Canada;
- (d) RCCL is the direct wholly owned subsidiary of Roberts Consolidated Industries Inc. (“**RCI**”), and an indirect wholly owned subsidiary of Q.E.P. Co. Inc. (“**QEP**”);
- (e) Historically, RCCL operated as a profitable business that principally manufactured and sold its products, as well as those of its affiliates, to large Canadian retailers and distributors;
- (f) In 2018, RCCL acquired substantially all of the Canada-based assets related to the trading product sales division (the “**TPS Business**”) of Kraus Brands Inc., Kraus Canada Ltd., Kraus Carpet Inc., Kraus Properties Inc., Kraus USA Inc., and Strudex Inc. (the “**Kraus Group**”) in an effort to expand its sales distribution channels and diversify its customer base;
- (g) The synergies and benefits which RCCL believed would accrue from its acquisition of the TPS Business from the Kraus Group have not materialized, and the TPS Business has incurred substantial losses since its acquisition by RCCL;
- (h) The COVID-19 pandemic has further complicated RCCL’s management’s efforts to mitigate such losses;

- (i) RCCL is a party to the Fourth Amended and Restated Loan Agreement, dated as of January 31, 2017, (as amended, supplemented and otherwise modified from time to time, the “**ABL Agreement**”), that was entered into by and among RCCL (as “**Canadian Borrower**”), QEP, RCI, and other borrowers (together with the Canadian Borrower, the “**Borrowers**”), BOA and the lenders from time to time party to the ABL Agreement (the “**Lenders**”), and BOA, as agent for the Lenders (in such capacity, the “**Agent**”);
- (j) RCCL’s obligations under the ABL Agreement are secured against all of RCCL’s assets;
- (k) On April 17, 2020, BOA, in its capacity as the Agent under the ABL Agreement, provided written notice of an Event of Default under the ABL Agreement resulting from the Borrowers’ violation of certain covenants under the ABL Agreement;
- (l) RCCL requires significant and continued funding from BOA and its parent company QEP, and without such funding, RCCL, as currently structured, is unable to financially support all of its operations and is unable to meet its obligations as they come due;
- (m) In light of RCCL’s ongoing liquidity issues, further funding is not available to RCCL from QEP absent a significant restructuring;
- (n) RCCL and the other Borrowers under the ABL Agreement have entered into a forbearance agreement (the “**ABL Forbearance Agreement**”) pursuant to which the Agent and the Lenders have agreed to forbear from exercising their rights and remedies under the ABL Agreement with respect to existing defaults, continue to make available the credit facilities under the ABL Agreement to meet RCCL’s working capital requirements, and extend credit and make advances in order to support the ongoing working capital needs of RCCL at the outset of the restructuring, pending potential debtor-in-possession funding arrangements to be entered into after the commencement of the CCAA proceedings;

- (o) RCCL is insolvent, and with the cessation of ongoing support from QEP, RCCL is unable to meet its obligations as they generally become due, including its employee obligations, trade debt, rent payments and other contractual commitments;
- (p) RCCL is seeking the Initial Order in order to stabilize and preserve the value of RCCL's business for the benefit of RCCL's stakeholders;
- (q) Richter has consented to act as the Monitor in RCCL's CCAA proceedings (the "CCAA Proceedings");

Stay of Proceedings

- (r) RCCL requires the Stay of Proceedings to maintain the status quo to preserve the value of RCCL's business, its undertakings and assets, and to ensure that no creditor of RCCL obtains preferred treatment relative to other creditors;
- (s) RCCL also requires the Stay of Proceeding and the other relief sought to permit it to continue operating as a going concern as it pursued restructuring options;
- (t) Without the benefit of the protection afforded under the CCAA, there could be an immediate and significant erosion of value to the detriment of stakeholders;
- (u) Under the circumstances, the Stay of Proceedings is necessary and in the best interests of RCCL and its stakeholders;

Court Ordered Charges

- (v) RCCL is seeking the Administration Charge in the amount of \$500,000 to secure the professional services required to complete the CCAA Proceedings;
- (w) RCCL is also seeking the Directors' Charge in the amount of \$250,000 to ensure the continued cooperation of RCCL's directors and officers;
- (x) The proposed Monitor is supportive of the granting of the Administration Charge and Directors' Charge and their quantum;

Other Grounds

- (y) The provisions of the CCAA and the inherent and equitable jurisdiction of this Honourable Court;
- (z) Rules 1.04, 2.03, 3.02, 14.05(2), 16, 38 and 39 of the Ontario *Rules of Civil Procedure*, R.R.O 1990, Reg. 194, as amended;
- (aa) Section 106 of the *Ontario Courts of Justice Act*, R.S.O. 1990, c. C.43 as amended;
and
- (bb) Such further and other grounds as counsel may advise and this Honourable Court may permit;

THE FOLLOWING DOCUMENTARY EVIDENCE will be used at the hearing of the application for the Initial Order:

- (a) The Affidavit of Ravi Williams-Singh, sworn June 26, 2020, and the exhibits attached thereto;
- (b) The consent of Richter to act as Monitor;
- (c) The Pre-Filing Report of Richter dated June 26, 2020; and
- (d) Such further and other evidence as counsel may advise and this Court may permit.

June 29, 2020

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SCHEDULE "A"

To join the hearing using a computer:

<https://us02web.zoom.us/j/83424996189?pwd=SSthRmVHbUJTaWdHZWowZFdK0hMdz09>

Meeting ID: 834 2499 6189

Password: 943210

To join hearing by phone:

One tap mobile

+13462487799,,83424996189#,,,,0#,,943210# US (Houston)

+16699006833,,83424996189#,,,,0#,,943210# US (San Jose)

OR Dial by your location

+1 346 248 7799 US (Houston)

+1 669 900 6833 US (San Jose)

+1 929 205 6099 US (New York)

+1 253 215 8782 US (Tacoma)

+1 301 715 8592 US (Germantown)

+1 312 626 6799 US (Chicago)

Meeting ID: 834 2499 6189

Password: 943210

Find your local number: <https://us02web.zoom.us/j/83424996189?pwd=SSthRmVHbUJTaWdHZWowZFdK0hMdz09>

**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 OR COMPROMISE OR ARRANGEMENT OF ROBERTS COMPANY CANADA LIMITED**

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SUPERIOR COURT OF JUSTICE
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Proceedings commenced in Toronto

NOTICE OF APPLICATION
(returnable June 29, 2020)

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