

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)
(IN BANKRUPTCY AND INSOLVENCY)

IN THE MATTER OF THE PROPOSAL OF WISP INTERNET SERVICES
INC., OF THE TOWNSHIP OF SCUGOG, IN THE PROVINCE OF
ONTARIO

NOTICE OF MOTION
(Returnable January 28, 2020)

WISP Internet Services Inc. (“**WISP**”) will make a motion to the Commercial List on Tuesday, January 28, 2020 at 10:00 a.m. at the courthouse, 330 University Avenue, 8th Floor, Toronto, Ontario, M5G 1R8 (the “**Court**”).

PROPOSED METHOD OF HEARING: The motion is to be heard orally.

THE MOTION IS FOR AN ORDER, substantially in the form attached as Schedule “A” hereto:

1. Abridging and validating the timing and method of service of this Notice of Motion so that this motion is properly returnable on January 28, 2020, and dispensing with further service thereof;
2. Extending the interim and interlocutory relief granted to WISP pursuant to the DCI Interim Order and the Stonedger Interim Order from the date of the Approval Hearing to the Effective Date (all capitalized terms are defined below);
3. If this motion is opposed, its costs of this motion; and
4. Such further and other relief as counsel may advise and this Honourable Court deems just.

THE GROUNDS FOR THE MOTION ARE:

Background

1. WISP is in the business of delivering high-speed internet services to rural clients through a network of communication towers located throughout Ontario (the “**Towers**”). The Towers are primarily located on private lands and are subject to tower agreements between WISP and the landowners (the “**Tower Agreements**”).
2. On August 29, 2019, WISP filed a Notice of Intention to Make a Proposal (the “**NOI**”) under section 50.4 of the *Bankruptcy and Insolvency Act* (Canada) (the “**BIA**”) and Dodick Landau Inc. was appointed as the proposal trustee (the “**Proposal Trustee**”).
3. On November 11, 2019, WISP filed a proposal under the provisions of the BIA. Following further consultations with WISP’s creditors, the proposal was amended on November 29, 2019.
4. On December 3, 2019, a meeting of creditors was held to vote on the proposal. Subject to one further minor amendment, the amended proposal (as amended and revised, the “**Proposal**”) was approved by WISP’s voting creditors (approximately 75% in value and 74% in number).
5. The Proposal Trustee has scheduled a January 28, 2020 hearing date for Court approval of the Proposal (the “**Approval Hearing**”).
6. Subsequent to WISP obtaining creditor approval of its Proposal, two landowners subject to Tower Agreements, Dogs Camp Inc. (“**DCI**”) and Stonededge Farms Ltd. (“**Stonededge**”), wrongfully took possession of the Towers on their lands and entered into service arrangements with a third-party internet service provider.

7. The actions of DCI and Stonedge were disruptive to WISP's operations as a minority of its customers were temporarily cut off from WISP's internet service for a period of time and costs were incurred by WISP to ensure services could resume to these customers.

The DCI Tower Agreement

8. DCI is party to a Tower Agreement with WISP (the "**DCI Tower Agreement**"), dated April 19, 2018, in connection with a tower built on DCI's property in December 2018 (the "**DCI Tower**"). The DCI Tower Agreement grants WISP an exclusive right to use the DCI Tower.

9. On December 4, 2019, DCI wrote to WISP advising that it: (i) had "automatically" taken possession and ownership of the DCI Tower; (ii) had entered into an arrangement of internet access with another provider; and (iii) if WISP attempted to enter the property, "authorities would be contacted immediately".

10. As of December 4, 2019 DCI had disconnected WISP's equipment from the DCI Tower such that WISP could no longer provide internet access to a group of its customers and had allowed one of WISP's competitors to access and "plug-in" to the DCI Tower in breach of the DCI Tower Agreement.

11. On December 4, 2019, WISP's legal counsel wrote to DCI advising that DCI had breached the stay of proceedings under the BIA and demanding that DCI immediately reconnect WISP's access to the DCI tower. On December 5, 2019, DCI responded with a letter confirming its position refusing to grant WISP access to the DCI Tower.

12. On December 6, 2019, WISP sought and was granted an interim and interlocutory Order directing DCI to provide WISP access and an exclusive right to use the DCI Tower pending the return of the Approval Motion (the “**DCI Interim Order**”).

13. DCI has complied with the DCI Interim Order and WISP restored service to its affected customers by December 7, 2019.

The Stonedge Tower Agreement

14. Stonedge is party to a Tower Agreement with WISP (the “**Stonedge Tower Agreement**”), dated June 5, 2017, in connection with a tower built on Stonedge’s property in 2017 (“**Stonedge Tower**”). The Stonedge Tower Agreement grants WISP an exclusive right to use the Stonedge Tower.

15. On or about December 27, 2019, Stonedge disconnected WISP’s equipment from the Stonedge Tower such that WISP could no longer provide internet access to certain of its active clients and allowed one of WISP’s competitors to access and “plug-in” to the Stonedge Tower in breach of the Stonedge Tower Agreement.

16. On December 27, 2019, WISP’s legal counsel wrote to Stonedge advising that Stonedge was in breach of the stay of proceedings under the BIA and demanding that Stonedge immediately reconnect WISP’s access to the Stonedge Tower. Access was not restored.

17. On January 6, 2020, WISP obtained an interim and interlocutory Order directing Stonedge to provide WISP access and an exclusive right to use the Stonedge Tower and service WISP’s customers pending the return of the Proposal Hearing (the “**Stonedge Interim Order**”, and together with the DCI Interim Order, the “**Interim Orders**”). In addition, the Court permitted

WISP to reserve the right to seek costs it had incurred as a result of Stonedger disconnecting the Stonedger Tower.

18. Stonedger has complied with the Stonedger Interim Order and WISP restored internet service to its affected customers by January 7, 2020.

19. As a result of the temporary disconnections of the DCI Tower and the Stonedger Tower, WISP was required to provide credits and refunds to certain affected customers totaling approximately \$10,000, and a nominal number of customers chose to cancel service amounting to approximately \$1,000 per month in lost subscriptions.

Extension of the Interim Orders

20. The interim and interlocutory relief granted pursuant to the Interim Orders is set to expire at the Approval Motion scheduled for January 28, 2020.

21. If the Proposal is approved by this Court at the Approval Motion, its terms will not become effective until the “**Effective Date**”, which is defined in the Proposal as follows:

“**Effective Date**” means 10 calendar days from the date of the Approval Order, unless the Approval Order is appealed, in which case the Effective Date means the later of: (i) one Business Day after the full and final determination of the appeal; and (ii) the expiry of any further appeal periods.

22. Given the gap between the date of the Approval Motion and the Effective Date, the proposed extension of the Interim Orders is necessary to ensure WISP has continued and uninterrupted access to the DCI Tower and the Stonedger Tower until the Proposal becomes effective, at which time the terms of the Proposal and the Tower Agreements, as amended, will govern the relationship between WISP and each of DCI and Stonedger.

Other Grounds

23. Section 69(1) and 195 of the BIA.
24. Rules 1.04, 3.02, 16, 37 and 40 of the *Rules of Civil Procedure*.
25. Such other grounds as counsel may advise and this Honourable Court may accept.

THE FOLLOWING DOCUMENTARY EVIDENCE will be used at the hearing of the Motion:

1. The Second Report of the Proposal Trustee dated January 17, 2020 (filed separately);
2. Such further and other evidence as the lawyers may advise and this Honourable Court may permit.

January 21, 2020

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(as at January 7, 2020)

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SCHEDULE “A”

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)
(IN BANKRUPTCY AND INSOLVENCY)

THE HONOURABLE) TUESDAY, THE 28th
)
JUSTICE) DAY OF JANUARY, 2020
)

**IN THE MATTER OF THE PROPOSAL OF WISP INTERNET SERVICES INC., OF
THE TOWNSHIP OF SCUGOG, IN THE PROVINCE OF ONTARIO**

ORDER

THIS MOTION, made by WISP Internet Services Inc. (“**WISP**”), for an Order, among other things:

- a) extending the interim and interlocutory relief granted to WISP pursuant to the Order of the Honourable Mr. Justice Pattillo dated December 6, 2019, a copy of which is attached hereto as Schedule “A” (the “**DCI Interim Order**”), from the date of the Approval Motion (as defined in the DCI Interim Order), being January 28, 2020, to the date on which WISP’s court-approved proposal becomes effective in accordance with its terms (the “**Effective Date**”); and
- b) extending the interim and interlocutory relief granted to WISP pursuant to the Order of the Honourable Madam Justice Conway dated January 6, 2020, a copy of which is attached hereto as Schedule “B” (the “**Stonedge Interim Order**”), from the date of the Approval Motion (as defined in the Stonedge Interim Order), being January 28, 2020, to the Effective Date,

was heard this day at 330 University Avenue, Toronto, Ontario;

ON READING the Notice of Motion dated January 20, 2020, and the Second Report of the Proposal Trustee dated January 17, 2020, and on hearing the submissions of counsel for WISP and counsel for Dodick Landau Inc., in its capacity as Proposal Trustee, no other party appearing although duly served as appears from the affidavit of service of Amanda Campbell sworn January 21, 2020, filed;

1. **THIS COURT ORDERS** that the timing and method of service of the Notice of Motion is hereby abridged and validated and this Motion is properly returnable today.
 2. **THIS COURT ORDERS** that the interim and interlocutory relief granted to WISP in paragraphs 1, 2 and 3 of the DCI Interim Order is hereby extended from the date of the Approval Motion to the Effective Date.
 3. **THIS COURT ORDERS** that the interim and interlocutory relief granted to WISP in paragraphs 2, 3 and 4 of the Stonedge Interim Order is hereby extended from the date of the Approval Motion to the Effective Date.
 4. **THIS COURT ORDERS** that paragraphs 2 and 3 of this Order are subject to provisional execution under section 195 of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended.
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SCHEDULE "A"

Court File No.: 31-2551574
Estate File No.: 31-2551574

**ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)
(IN BANKRUPTCY AND INSOLVENCY)**

THE HONOURABLE

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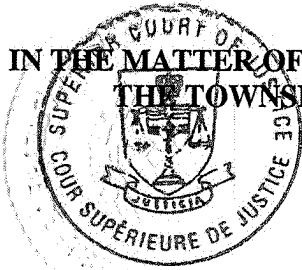
FRIDAY, THE 6th

JUSTICE PATTILLO

)

DAY OF DECEMBER, 2019

)



**IN THE MATTER OF THE PROPOSAL OF WISP INTERNET SERVICES INC., OF
THE TOWNSHIP OF SCUGOG, IN THE PROVINCE OF ONTARIO**

ORDER

THIS MOTION, made by WISP Internet Services Inc. ("**WISP**"), for an Order directing Dogs Camp Inc., in care of Glen Kowarsky ("**DCI**") to provide WISP with access and the exclusive right to use the DCI Tower (as defined below) on an interim and interlocutory basis was heard this day at 330 University Avenue, Toronto, Ontario;

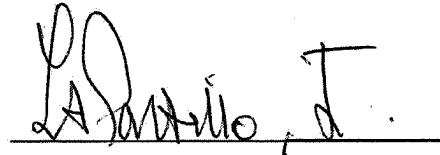
ON READING the Notice of Motion dated December 5, 2019, the Affidavit of Christopher Doyle sworn December 5, 2019, together with the exhibits thereto; and

ON HEARING the submissions of counsel for WISP Internet Services Inc. and on being advised that DCI was provided with notice of this proceeding and served with copies of the above-noted materials by means of email communication at 4:27 p.m. on December 5, 2019;

1. **THIS COURT ORDERS** that DCI immediately provide for and allow WISP and its employees safe passage over the property located at 20850 Marsh Hill Road, Uxbridge,

Ontario, in order to allow WISP to thereby access, service and maintain the transmission tower sited at or about 44° 8'32.96"N 79° 3'37.09"W (the "**DCI Tower**") pending the return of a motion, on a date to be scheduled, for court approval of the plan approved by WISP's creditors on December 3, 2019 (the "**Approval Motion**");

2. **THIS COURT ORDERS AND DECLARES** that, pending the return of the Approval Motion, WISP holds the sole and exclusive right to use the DCI Tower together with the related shed and equipment. For greater certainty, DIC shall not permit any person or entity, other than WISP and its employees, to access or use the DCI Tower prior to the return of the Approval Motion.
3. **THIS COURT ORDERS AND DECLARES** that this Order is subject to provisional execution under section 195 of the *Bankruptcy and Insolvency Act*, R.S.C., c. B-3, as amended.



A handwritten signature in dark ink, appearing to read "L. Santillo", is written over a horizontal line.

**IN THE MATTER OF THE PROPOSAL OF WISP INTERNET SERVICES INC., OF THE TOWNSHIP OF SCUGOG, IN THE
PROVINCE OF ONTARIO**

**ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)
(IN BANKRUPTCY & INSOLVENCY)**

PROCEEDING COMMENCED AT TORONTO

ORDER

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SCHEDULE "B"

Court File No.: 31-2551574
Estate File No.: 31-2551574

**ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)
(IN BANKRUPTCY AND INSOLVENCY)**

THE HONOURABLE)

MONDAY, THE 6th

JUSTICE *Conway*)

DAY OF JANUARY, 2020

**IN THE MATTER OF THE PROPOSAL OF WISP INTERNET SERVICES INC., OF
THE TOWNSHIP OF SCUGOG, IN THE PROVINCE OF ONTARIO**



ORDER

THIS MOTION, made by WISP Internet Services Inc. ("WISP"), for an Order directing Stonededge Farms Ltd. ("Stonededge") to provide WISP with access and the exclusive right to use the Stonededge Tower (as defined below) on an interim and interlocutory basis was heard this day at 330 University Avenue, Toronto, Ontario;

ON READING the Notice of Motion dated January 2, 2020, the Affidavit of Christopher Doyle sworn January 2, 2020, together with the exhibits thereto; and

Mr. Scott Stone, for Stonededge

ON HEARING the submissions of counsel for WISP, ~~counsel for Dodick Landau Inc.,~~
~~in its capacity as proposal trustee, and on being advised that counsel for Stonededge was provided~~

BC ~~with notice of this proceeding and served with copies of the above noted materials by means of~~
~~email communication at 3:11pm on January 2, 2020, and via overnight courier, no other party~~
appearing although duly served as appears from the affidavit of service of Amanda Campbell
sworn January 2, 2020, filed;

1. **THIS COURT ORDERS** that the timing and method of service of the Notice of Motion and Motion Record be and is hereby abridged and validated and this Motion is properly returnable today.
2. **THIS COURT ORDERS** that Stonedge immediately provide for and allow WISP and its employees safe passage over the property located at 1475 Saintfield Rd, Sunderland, ON L0C 1H0, in order to allow WISP to thereby access, service and maintain the transmission tower sited at or about 44°11'44.36"N 79° 0'49.00"W (the "**Stonedge Tower**") pending the January 28, 2020 return of a motion for court approval of the plan approved by WISP's creditors on December 3, 2019 (the "**Approval Motion**").
3. **THIS COURT ORDERS AND DECLARES** that, pending the return of the Approval Motion, WISP holds the sole and exclusive right to use the Stonedge Tower together with the related shed and equipment. For greater certainty, Stonedge shall not permit any person or entity, other than WISP and its employees, to access or use the Stonedge Tower prior to the return of the Approval Motion.
4. **THIS COURT ORDERS AND DECLARES** that paragraphs 2 and 3 of this Order are subject to provisional execution under section 195 of the *Bankruptcy and Insolvency Act*, R.S.C., c. B-3, as amended.
5. ~~**THIS COURT ORDERS** that Stonedge shall forthwith reimburse WISP in the amount of \$12,850.00 for costs WISP had to incur plus \$23,000.00 for lost services~~

6. ~~THIS COURT ORDERS~~ that Stonedge shall pay costs of this motion fixed in the
B amount of \$ _____.

Conrad J.

ENREGISTRÉ À TORONTO
DATE DE DÉPÔT:
LE REGISTRE NO:

JAN 06 2020

PER/PAR: Ch

**IN THE MATTER OF THE PROPOSAL OF WISP INTERNET SERVICES INC., OF THE TOWNSHIP OF SCUGOG, IN THE
PROVINCE OF ONTARIO**

**ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)
(IN BANKRUPTCY & INSOLVENCY)**

PROCEEDING COMMENCED AT TORONTO

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Lawyers for WISP Internet Services Inc.

**IN THE MATTER OF THE PROPOSAL OF WISP INTERNET SERVICES INC., OF THE TOWNSHIP OF SCUGOG, IN THE
PROVINCE OF ONTARIO**

**ONTARIO
SUPERIOR COURT OF JUSTICE
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**NOTICE OF MOTION
(Returnable January 28, 2020)**

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