

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

THE HONOURABLE JUSTICE KOEHNEN
WEDNESDAY, THE 22nd DAY

OF APRIL, 2020

**IN THE MATTER OF THE NOTICE OF INTENTION TO
MAKE A PROPOSAL OF 1348441 ONTARIO INC.**

ORDER

THIS MOTION, made by 1348441 Ontario Inc. o/a Solutions Your Organized Living Store (the “**Company**”) pursuant to Sections 50.4(9), 50.6 and 64.2 of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended (the “**BIA**”) for an order, *inter alia*: (i) approving an extension of the time for the Company to file a proposal by forty-five (45) days until June 9, 2020; (ii) approving the DIP Facility and granting the DIP Lender’s Charge (*each as hereinafter defined*); and (iii) granting the Administration Charge (*as hereinafter defined*), was heard this day virtually by “Zoom” teleconference.

ON READING the affidavit of Gurmej Walia sworn April 17, 2020 and the exhibits thereto and the First Report of Dodick Landau Inc. in its capacity as the proposal trustee of the

Company (in such capacity, the “**Proposal Trustee**”), dated April 20, 2020, and the appendices thereto (the “**First Report**”), and on hearing the submissions of counsel for the Company, the Proposal Trustee, Gurmej Walia and such other counsel as were present, no one appearing for any other person on the service list, although duly served as appears from the affidavit of service of Thomas Lambert sworn April 20, 2020, filed,

SERVICE

1. **THIS COURT ORDERS** that the time for service and filing 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.

EXTENSION

2. **THIS COURT ORDERS** that the time for the Company to file a proposal under section 50.4 of the BIA is extended by a period of forty-five (45) days to and including June 9, 2020.

DIP FINANCING

3. **THIS COURT ORDERS** that the Company is hereby authorized and empowered to obtain and borrow under a credit facility from Rick Walia (the “**DIP Lender**”) in order to finance the Company’s working capital requirements and other general corporate purposes and capital expenditures during these proceedings, provided that borrowings under such credit facility shall not exceed \$500,000, unless permitted by further Order of this Court (collectively, the “**DIP Facility**”).

4. **THIS COURT ORDERS THAT** the DIP Facility shall be on the terms and subject to the conditions set forth in the term sheet between the Company and the DIP Lender dated April 17, 2020 (the “**DIP Term Sheet**”).

5. **THIS COURT ORDERS** that the Company is hereby authorized and empowered to execute and deliver such credit agreements, mortgages, charges, hypothecs and security documents, guarantees and other definitive documents (collectively, the “**Definitive Documents**”) as are contemplated by the DIP Term Sheet or as may be reasonably required by the DIP Lender pursuant to the terms thereof, and the Company is hereby authorized and directed to pay and perform all of their indebtedness, interest, fees, liabilities and obligations to the DIP Lender under and pursuant to the DIP Term Sheet and the Definitive Documents as and when the same become due and are to be performed, notwithstanding any other provision of this Order.

6. **THIS COURT ORDERS** that the DIP Lender shall be entitled to the benefit of and is hereby granted a charge (the “**DIP Lender’s Charge**”) over all of the current and future assets, properties and undertakings of the Company of every nature and kind whatsoever, and wherever situate including all proceeds thereof (collectively, the “**Property**”), as security for the borrowings under the DIP Facility, which DIP Lender’s Charge shall not secure an obligation that exists before this Order is made. The DIP Lender’s Charge shall have the priority set out in paragraphs 12 and 14 of this Order.

7. **THIS COURT ORDERS** that, notwithstanding any other provision of this Order:

- (a) the DIP Lender may take such steps from time to time as it may deem necessary or appropriate to file, register, record or perfect the DIP Lender’s Charge or any of the Definitive Documents;

- (b) upon the occurrence of an event of default under the DIP Term Sheet, the Definitive Documents or the DIP Lender's Charge, and subject to first requesting the consent of the senior lender to the Debtor, the Bank of Nova Scotia ("BNS"), the DIP Lender, upon three (3) days' notice to the Company, the Proposal Trustee and BNS, may exercise any and all of its rights and remedies against the Company or the Property under or pursuant to the DIP Term Sheet, the Definitive Documents and the DIP Lender's Charge, including, without limitation, to cease making advances to the Company and set off and/or consolidate any amounts owing by the DIP Lender to the Company against the obligations of the Company to the DIP Lender under the DIP Term Sheet, the Definitive Documents or the DIP Lender's Charge, to make demand, accelerate payment and give other notices, or to apply to this Court for the appointment of a receiver, receiver and manager or interim receiver, or for a bankruptcy order against the Company and for the appointment of a trustee in bankruptcy of the Company; and
- (c) the foregoing rights and remedies of the DIP Lender shall be enforceable against any trustee in bankruptcy, interim receiver, receiver or receiver and manager of the Company or the Property.

8. **THIS COURT ORDERS AND DECLARES** that the DIP Lender shall be treated as unaffected in any proposal filed by the Company under the BIA with respect to any advances made under the DIP Term Sheet or the Definitive Documents.

ADMINISTRATION CHARGE

9. **THIS COURT ORDERS** that counsel to the Company, the Proposal Trustee and counsel to the Proposal Trustee shall be paid their reasonable fees and disbursements (including any pre-filing fees and disbursements), in each case at their standard rates and charges, by the Company as part of the costs of these proceedings. The Company is hereby authorized and directed to pay the accounts of counsel to the Company, the Proposal Trustee and counsel to the Proposal Trustee (for work performed in connection with these proceedings) on a weekly basis.

10. **THIS COURT ORDERS** that the Proposal Trustee and its legal counsel shall pass their accounts from time to time, and for this purpose the accounts of the Proposal Trustee and its legal counsel are hereby referred to a judge of the Commercial List of the Ontario Superior Court of Justice.

11. **THIS COURT ORDERS** that counsel to the Company, the Proposal Trustee and counsel to the Proposal Trustee shall be entitled to the benefit of and are hereby granted a charge (the "**Administration Charge**") on the Property, which charge shall not exceed an aggregate amount of \$100,000, as security for their professional fees and disbursements incurred at the standard rates and charges of the Proposal Trustee and such counsel, both before and after the making of this Order, in respect of these proceedings. The Administration Charge shall have the priority set out in paragraphs 12 and 14 of this Order.

VALIDITY AND PRIORITY OF CHARGES CREATED BY THIS ORDER

12. **THIS COURT ORDERS** that the priorities of the DIP Lender's Charge and the Administration Charge (collectively, the "**Charges**") as amongst themselves shall be as follows:

(a) first, the Administration Charge to a maximum amount of \$100,000; and (b) second, the DIP Lender's Charge.

13. **THIS COURT ORDERS** that the filing, registration or perfection of the Charges shall not be required, and that the Charges are and shall be valid and enforceable against the Property for all purposes, including, without limitation, as against any right, title or interest filed, registered, recorded or perfected subsequent to the Charges coming into existence, notwithstanding any such failure to file, register, record or perfect the Charges.

14. **THIS COURT ORDERS** that each of the Charges shall constitute a charge on the Property and that such Charges shall rank in priority to all other security interests, trusts, liens, charges, mortgages, claims and encumbrances, secured, statutory or otherwise (collectively, "Encumbrances") in favour of any other person.

15. **THIS COURT ORDERS** that except as otherwise expressly provided for herein, or as may be approved by this Court, the Company shall not, without the consent of BNS, grant any Encumbrances over any Property that ranks in priority to, or *pari passu* with, the DIP Lender's Charge or the Administration Charge, unless the Company also obtains the prior written consent of the Proposal Trustee, the DIP Lender and the beneficiaries of the Administration Charge, or further Order of this Court.

16. **THIS COURT ORDERS** that the Charges, the DIP Term Sheet and the Definitive Documents shall not be rendered invalid or unenforceable and the rights and remedies of the chargees entitled to the benefit of the Charges (collectively, the "Chargees") and/or the DIP Lender thereunder shall not otherwise be limited or impaired in any way by: (a) the pendency of these proceedings and the declarations of insolvency made in these proceedings; (b) any

application(s) for bankruptcy order(s) issued pursuant to the BIA, or any bankruptcy order made pursuant to such applications; (c) the filing of any assignments for the general benefit of creditors made pursuant to the BIA; (d) the provisions of any federal or provincial statutes; or (e) any negative covenants, prohibitions or other similar provisions with respect to borrowings, incurring debt or the creation of Encumbrances contained in any existing loan documents, lease, sublease, offer to lease or other agreement (collectively, an “**Agreements**”) which binds the Company, and notwithstanding any provision to the contrary in any such Agreement:

- (a) neither the creation of the Charges nor the execution, delivery, perfection, registration or performance of the DIP Term Sheet or the Definitive Documents shall create or be deemed to constitute a breach by the Company of any Agreement to which it is a party;
- (b) none of the Chargees shall have any liability to any person whatsoever as a result of any breach of any Agreement caused by or resulting from the Company entering into the DIP Term Sheet, the Definitive Documents, the creation of the Charges or the execution, delivery or performance of the Definitive Documents; and
- (c) the payments made by the Company pursuant to this Order, the DIP Term Sheet or the Definitive Documents, and the granting of the Charges, do not and will not constitute preferences, fraudulent conveyances, transfers at undervalue, oppressive conduct, or other challengeable or voidable transactions under any applicable law.

SERVICE AND NOTICE

17. **THIS COURT ORDERS** that the E-Service Protocol of the Commercial List (the “**Protocol**”) is approved and adopted by reference herein and, in this proceeding, the service of documents made in accordance with the Protocol (which can be found on the Commercial List website at <http://www.ontariocourts.ca/scj/practice/practice-directions/toronto/eservice-commercial/>) shall be valid and effective service. Subject to Rule 17.05, this Order shall constitute an order for substituted service pursuant to Rule 16.04 of the Rules of Civil Procedure. Subject to Rule 3.01(d) of the Rules of Civil Procedure and paragraph 21 of the Protocol, service of documents in accordance with the Protocol will be effective on transmission. This Court further orders that a Case Website shall be established in accordance with the Protocol with the following URL ‘https://dodick.ca/public_documents/1348441-ontario-inc-o-a-solutions-your-organized-living-store/’.

18. **THIS COURT ORDERS** that if the service or distribution of documents in accordance with the Protocol is not practicable, the Company and the Proposal Trustee are at liberty to serve or distribute this Order, any other materials and orders in these proceedings, any notices or other correspondence, by forwarding true copies thereof by prepaid ordinary mail, courier, personal delivery or facsimile transmission to the Company’s creditors or other interested parties at their respective addresses as last shown on the records of the Company and that any such service or distribution by courier, personal delivery or facsimile transmission shall be deemed to be received on the next business day following the date of forwarding thereof, or if sent by ordinary mail, on the third business day after mailing.

19. **THIS COURT ORDERS** that the Company, the Proposal Trustee, the DIP Lender and their respective counsel are at liberty to serve or distribute this Order, any other materials and orders as may be reasonably required in these proceedings, including any notices, or other

correspondence, by forwarding true copies thereof by electronic message to the Company's creditors or other interested parties and their advisors. For greater certainty, any such distribution or service shall be deemed to be in satisfaction of a legal or juridical obligation, and notice requirements within the meaning of clause 3(c) of the *Electronic Commerce Protection Regulations*, Reg. 81000-2-175 (SOR/DORS).

GENERAL

20. **THIS COURT ORDERS** that the Company and the Proposal Trustee may from time to time apply to this Court for advice and directions in the discharge of its powers and duties hereunder.

21. **THIS COURT ORDERS** that nothing in this Order shall prevent the Proposal Trustee from acting as an interim receiver, a receiver, a receiver and manager, a trustee in bankruptcy or a monitor of the Company, its business or the Property.

22. **THIS COURT HEREBY REQUESTS** the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or the United States, to give effect to this Order and to assist the Company, the Proposal Trustee 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 Company and to the Proposal Trustee, as an officer of this Court, as may be necessary or desirable to give effect to this Order, to grant representative status to the Proposal Trustee in any foreign proceeding or to assist the Company, the Proposal Trustee and their respective agents in carrying out the terms of this Order.

23. **THIS COURT ORDERS** that the Company and the Proposal Trustee be at liberty and are hereby authorized and empowered to apply to any court, tribunal, regulatory or administrative body, wherever located, for the recognition of this Order and for assistance in carrying out the terms of this Order, and that the Proposal Trustee is authorized and empowered to act as a representative in respect of the within proceedings for the purpose of having these proceedings recognized in a jurisdiction outside Canada.

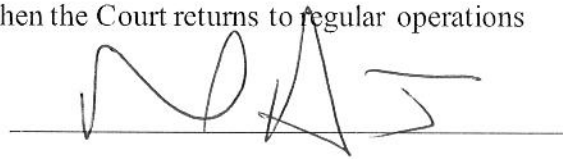
24. **THIS COURT ORDERS** that any interested party (including the Company and the Proposal Trustee) may apply to this Court to vary or amend this Order on not less than seven (7) days' notice to any other party or parties likely to be affected by the order sought or upon such other notice, if any, as this Court may order.

25. **THIS COURT ORDERS** that this Order and all of its provisions are effective as of 12:01 a.m. Eastern Daylight Time on the date of this Order; provided, however, that the DIP Lender shall be entitled to rely on this Order as issued for all advances made under the DIP Term Sheet Agreement and the Definitive Documents up to and including the date on which this Order may be varied or amended.

26. **THIS COURT ORDERS** that the First Report of the Proposal Trustee dated April 20, 2020 and the conduct and activities of the Proposal Trustee described therein are hereby approved, provided, however, that only the Proposal Trustee, in its personal capacity and only with respect to its own personal liability, shall be entitled to rely upon or utilize in any way such approval.

27. **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

A handwritten signature in black ink, consisting of stylized, cursive letters, is written over a horizontal line. The signature appears to be "N.A.S." or similar, with a large, looped 'N' and a sharp, pointed 'A'.

**IN THE MATTER OF THE NOTICE OF INTENTION TO
MAKE A PROPOSAL OF 1348441 ONTARIO INC.**

Court File No.: 32-2634165
Estate File No.: 32-2634165

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

Proceedings commenced at Toronto

ORDER
(Initial NOI Order)

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