

Court File No. 31-2749204  
Estate No. 31-2749204

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

**IN THE MATTER OF THE PROPOSAL OF**  
**NATIONWIDE MANUFACTURING LIMITED**  
**OF THE CITY OF TORONTO**  
**IN THE PROVINCE OF ONTARIO**

**FACTUM OF THE PROPOSAL TRUSTEE**

March 21, 2022

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**To: THE SERVICE LIST**

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# FACTUM

## PART I - INTRODUCTION

1. On January 17, 2022, the motion of Nationwide Manufacturing Limited (the “Debtor”) was adjourned sine die in order to address three issues:

- (a) whether there was a deemed assignment given the timing of the order extending the time to file a proposal;
- (b) whether there is jurisdiction and authority to approve the proposal to secured creditors; and
- (c) no motion has been brought for the extension of time to request a hearing date for approval and to abridge the time for service.

2. The Debtor brought its motion to extend the time to file a proposal within the 30-day period even though the motion was not heard until after the 30 day period and as such there was no deemed assignment.

3. The effect of the secured creditors not voting in favour is that the proposal is not binding on the secured creditors however the proposal is binding on the unsecured creditors.

4. The trustee has now brought a motion for the extension of time to request a hearing date for the approval and to abridge the time for service.

## **PART II - SUMMARY OF FACTS**

5. The Debtor first requested a date for a motion to extend the time to file a proposal from the Bankruptcy Court on July 28, 2021.

**Supplement to the Second Report of Dodick Landau Inc. as Proposal Trustee of Nationwide Manufacturing Limited (the “Supplementary Report”) at paragraph 14**

6. On July 30, 2021, the Debtor was informed that Debbie Stubs, who was responsible for scheduling motions, was on vacation and there was no backup to schedule matters.

**Supplementary Report at paragraph 16**

7. On July 30, 2021, the Debtor obtained a date from the Toronto Commercial List for the motion to extend the time to file a proposal.

**Supplementary Report at paragraph 18**

8. On July 30, 2020, the Debtor served and filed its motion to extend the time to file the proposal.

**Supplementary Report at paragraph 19**

9. The Chair of the first Meeting of Creditors reported that a quorum did not exist at the Secured Creditor Meeting as no secured creditors were present in person, by proxy, or by voting letter. Accordingly, the Chair terminated the Secured Creditor’s Meeting.

**Supplementary Report at paragraph 24**

10. The Trustee has served and filed a notice of motion requesting an extension of the time to request a hearing date for the approval and to abridge the time for service.

**Notice of Motion**

**PART III - STATEMENT OF ISSUES, LAW & AUTHORITIES**

11. The issues are:
- (a) whether there was a deemed assignment given the timing of the order extending the time to file a proposal;
  - (b) whether there is jurisdiction and authority to approve the proposal to secured creditors; and
  - (c) no motion has been brought for the extension of time to request a hearing date for approval and to abridge the time for service.

**There was no deemed assignment of the Debtor**

12. An insolvent person may, before the expiry of the 30 days following the filing of a Notice of Intention to Make a Proposal, apply to the court for an extension of that period.

*Bankruptcy and Insolvency Act, R.S.C., 1985, c. B-3 (the "BIA") at s. 50.4(9)*

13. In *Kids' Farm Inc., Re*, the debtor applied to the court for an extension of the 30-day period *before* the period expired but the motion was heard *after* the 30-day period had expired.

*Kids' Farm Inc., 2011 CarswellNB 441 ("Kids' Farm") at paragraphs 6 and 7*

14. The debtor's secured lender argued that the fact that the extension was not granted by the court within the 30-day period means that the debtor must be deemed to have made an assignment.

***Kids' Farm at paragraphs 13 and 16***

15. Registrar Bray held that the debtor must apply to the court within the 30-day period, which the debtor had done and as such the debtor was not deemed to have made an assignment.

***Kids' Farm at paragraph 14***

16. In the present case, the Debtor served and filed its motion to extend the time to file the proposal on July 30, 2021, which is within the 30-day period.

17. Accordingly, the Trustee submits that there was no deemed assignment of the Debtor.

**A successful vote by the secured creditors is not required for the Proposal to pass**

18. Where no secured creditor files a proof of secured claim, the secured creditors shall be deemed to have voted for the refusal of the proposal.

***BIA at s. 50.1(5)***

19. A proposal accepted by the creditors and approved by the court is binding on (a) all unsecured claims; and (b) the secured creditors if the proposal was made to them and the requisite majority voted in favour of the proposal.

***BIA at s. 62(2)***

20. The votes of secured creditors do not count for the purpose of resolving to accept or refuse the proposal but are relevant only for the purpose of subsection 62(2).

***BIA at s. 54(1) and (2)***

21. In the present case the no secured creditor filed a proof of claim and accordingly the secured creditors are deemed to have voted for the refusal of the Debtor's proposal dated September 10, 2021 (the "**Proposal**").

22. Pursuant to subsections 54(1) and (2), the votes for the refusal of the proposal do not count for the purpose of resolving to accept or refuse the proposal but are only relevant for the purpose of decided whether the proposal is binding on the secured creditors.

23. The Trustee submits that a successful vote by the secured creditors is not required for the proposal to pass. Only a successful vote by the unsecured creditors is required. The Proposal will be binding on the unsecured creditors but does not affect the rights of secured creditors.

**Motion to extend the time to request a hearing date for approval and to abridge the time for service**

24. The Trustee has now brought a motion to extend the time to request a hearing date for the approval and to abridge the time for service.

**PART IV - ORDER REQUESTED**

25. The Trustee requests the following relief:

- (a) An order that the time for the Trustee to apply to the court for an appointment for the hearing of the application for the court's approval of the Proposal is hereby extended, nunc pro tunc, to November 1, 2021; and

- (b) An order that the Debtor's proposal dated September 10, 2021 (the "**Proposal**") be approved.

**ALL OF WHICH IS RESPECTFULLY SUBMITTED** this 21<sup>st</sup> day of March, 2022.



March 21, 2022

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**SCHEDULE “A”**

**LIST OF AUTHORITIES**

1. *Kids’ Farm Inc.*, 2011 CarswellNB 441

## **SCHEDULE “B”**

### **TEXT OF STATUTES, REGULATIONS & BY - LAWS**

1. *Bankruptcy and Insolvency Act, R.S.C., 1985, c. B-3 section 50.4(9)*

The insolvent person may, before the expiry of the 30-day period referred to in subsection (8) or of any extension granted under this subsection, apply to the court for an extension, or further extension, as the case may be, of that period, and the court, on notice to any interested persons that the court may direct, may grant the extensions, not exceeding 45 days for any individual extension and not exceeding in the aggregate five months after the expiry of the 30-day period referred to in subsection (8), if satisfied on each application that

- (a) the insolvent person has acted, and is acting, in good faith and with due diligence;
- (b) the insolvent person would likely be able to make a viable proposal if the extension being applied for were granted; and
- (c) no creditor would be materially prejudiced if the extension being applied for were granted.

2. *Bankruptcy and Insolvency Act, R.S.C., 1985, c. B-3 section 50.1(5)*

Where no secured creditor having a secured claim of a particular class files a proof of secured claim at or before the meeting of creditors, the secured creditors having claims of that class shall be deemed to have voted for the refusal of the proposal.

3. *Bankruptcy and Insolvency Act, R.S.C., 1985, c. B-3 sections 54(1) and (2)*

(1) The creditors may, in accordance with this section, resolve to accept or may refuse the proposal as made or as altered at the meeting or any adjournment thereof.

(2) For the purpose of subsection (1),

- (a) the following creditors with proven claims are entitled to vote:
  - (i) all unsecured creditors, and
  - (ii) those secured creditors in respect of whose secured claims the proposal was made;

(b) the creditors shall vote by class, according to the class of their respective claims, and for that purpose

(i) all unsecured claims constitute one class, unless the proposal provides for more than one class of unsecured claim, and

(ii) the classes of secured claims shall be determined as provided by subsection 50(1.4);

(c) the votes of the secured creditors do not count for the purpose of this section, but are relevant only for the purpose of subsection 62(2); and

(d) the proposal is deemed to be accepted by the creditors if, and only if, all classes of unsecured creditors — other than, unless the court orders otherwise, a class of creditors having equity claims — vote for the acceptance of the proposal by a majority in number and two thirds in value of the unsecured creditors of each class present, personally or by proxy, at the meeting and voting on the resolution.

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Court File No. 31-2749204

**ONTARIO  
SUPERIOR COURT OF JUSTICE**

Proceeding commenced at TORONTO

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RCP-E 4C (May 1, 2016)