

2018 01G 3114
IN THE SUPREME COURT OF NEWFOUNDLAND AND LABRADOR
TRIAL DIVISION (GENERAL)

IN THE MATTER OF an application by Canadian Imperial Bank of Commerce for an order appointing BDO Canada Limited as Receiver of PTL Holdings Limited, PTL Services (Equipment) Limited, CSL Services (Industrial) Ltd. and 9263357 Canada Inc.

AND IN THE MATTER OF the Bankruptcy and Insolvency Act, R.S.C. 1985, c. B-3, as amended

BETWEEN:	CANADIAN IMPERIAL BANK OF COMMERCE	APPLICANT
AND:	PTL HOLDINGS LIMITED	FIRST RESPONDENT
AND:	PTL SERVICES (EQUIPMENT) LIMITED	SECOND RESPONDENT
AND:	CSL SERVICES (INDUSTRIAL) LIMITED	THIRD RESPONDENT
AND:	9263357 CANADA INC.	FOURTH RESPONDENT

AMENDED NOTICE OF MOTION

BDO Canada Limited, in its capacity as Receiver of PTL Holdings Limited, PTL Services (Equipment) Limited, CSL Services (Industrial) Limited and 9263357 Canada Inc. (the “**PTL Group**”) will make a motion before the presiding Judge in Bankruptcy and Insolvency on Tuesday, the 4th day of December, 2018, at 10:00 am or so soon thereafter as the motion can be heard at the Courthouse, Duckworth Street, St. John’s, Newfoundland and Labrador.

The motion is for the following relief:

1. An order authorizing and directing BDO Canada Limited (**BDO**), in its capacity as receiver (the **Receiver**) of all the assets, undertaking and property of the PTL Group, pursuant to section 243 of the *Bankruptcy and Insolvency Act*, RSC 1985, c B-3, as amended (the **BIA**), to distribute certain proceeds realized from the sale, or otherwise, by the Receiver of certain assets of the PTL Group in a manner consistent with the Receivers Schedule of Proposed Distribution attached to this Notice of Motion as **Schedule A**; and approving the Second Report of the Receiver and the Receiver's Interim Statement of Receipts and Disbursements, substantially in the form attached to this Notice of Motion as **Schedule B**;
2. Such further and other order as this Court deems just.

The grounds for the motion are:

3. By a Receivership Order of this Court dated 11 May 2018 (the **Receivership Order**), BDO was appointed as receiver of all the assets, undertaking and property of the PTL Group acquired for, or used in relation to, the business carried on by the PTL Group (collectively, the **Property**) pursuant to section 243 of the BIA.
4. By an Approval and Vesting Order of this Court dated 23 August 2018 (the **Approval and Vesting Order**), the Receiver was authorized to complete the transaction between the Receiver and Locke's Electrical Limited (the **Purchaser**) contemplated by the Purchase Agreement between the Receiver and the Purchaser referred to in the Approval and Vesting Order (the **Sale Transaction**). The Sale Transaction contemplated the purchase by the Purchaser for certain of the assets of the PTL Group for a total purchase price of \$4,100,000.00.
5. The Sale Transaction closed on 10 September 2018. The Receiver currently holds \$5,539,209.00 in trust as outlined in **Schedule A** attached to this Notice of Motion.

The Approval and Vesting Order provided that all security interests, hypothecs, mortgages, trusts, deemed trusts, liens, executions, levies, charges or other financial or monetary claims in and to the assets subject to the Sale Transaction attach to and continue in the Proceeds with the same priority as they had with respect to such assets immediately prior to the completion of the Sale Transaction.

6. Canadian Imperial Bank of Commerce (“CIBC”) has a valid and enforceable first priority security interest in all of the Personal Property and assets of the PTL Group, subject to the following:
 - (a) Charges as set out in the Receivership Order, including but not limited to, for the fees and disbursements of the Receiver and counsel to the Receiver;
 - (b) the Union Pension Charge;
 - (c) the Union Dues Charge, pursuant to section 81.4 of the BIA; and
 - (d) the Salaried Employee Charge, pursuant to section 81.4 of the BIA.

7. The Receiver therefore proposes to make the following distributions (collectively, the “**Proposed Distribution**”):
 - (a) a distribution to the respective Unions (as are more particularly set out in the Second Report of the Receiver filed herein) for the Union Pension Charge totaling \$169,833 (the “**Pension Distribution**”);
 - (b) a distribution in respect of the Union Dues Charge, pursuant to section 81.4 of the BIA, totaling \$83,375 (“**Union Dues Distribution**”);

- (c) a maximum distribution of \$15,000 for the Salaried Employees Charge, pursuant to section 81.4 of the BIA once the calculation is finalized by the Receiver (the “**Salaried Employee Distribution**”);
 - (d) a distribution of the Receivers fees and disbursement up until June, 2018 and the fees of the Receiver’s legal counsel, all as are set out in the Second Report of the Receiver (the “**Fee Distribution**”); and
 - (e) an interim distribution to CIBC in the amount of \$3,250,000.
8. The Proposed Distribution holds back sufficient estimated funds to allow the Receiver to satisfy any outstanding estate costs incurred, projected professional fees to complete the administration of the estate, professional fees and costs to complete the administration of the bankruptcy estates, and complete the receivership estate.
 9. The priority security interest of CIBC continues in the proceeds.
 10. The Proposed Distribution is further detailed in Schedule A attached to this Notice of Motion and sets out the Receiver’s position and proposal on the distribution of the proceeds. The Proposed Distribution reflects the recommendations of the Receiver with respect to an appropriate holdback amount and the relative priorities.
 11. A distribution of proceeds is appropriate at this time as the Receiver anticipates receiving only funds from future collection of the Receiver’s accounts receivable.
 12. The Receiver supports the Proposed Distribution.
 13. Such further and other grounds as counsel may advise.

The following documentary evidence will be used at the hearing of the motion:

1. The Receiver's Interim Statement of Receipts and Disbursements;
2. The Second Report of the Receiver; and
3. Such further and other material as counsel may advise and this Court may permit.

Dated the 19th day of November, 2018



Cox & Palmer
Solicitors for the Receiver
Suite 1100, Scotia Centre
235 Water Street
St. John's, NL A1C 1B6
Attention: Darren D. O'Keefe
Phone: 709.570.5509
Email: dokeefe@coxandpalmer.com

ISSUED at St. John's, Newfoundland and Labrador, this day of November, 2018.

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AFFIDAVIT

I, Allison Philpott, of the City of St. John's, in the Province of Newfoundland and Labrador, Barrister and Solicitor, make oath and say as follows:

1. That I am an associate in the law firm Cox & Palmer, solicitors for BDO Canada Limited ("**BDO**") and file this affidavit to ground the subject Motion.
2. That I have reviewed the within Motion and do verily believe that the facts set forth in the Motion are true.
3. That I make this Affidavit in support of BDO's motion.

SWORN TO at St. John's, in the Province of Newfoundland and Labrador, this 19th day of November, 2018, before me:


Allison J. Philpott

AMANDA HOBBS
A Commissioner for Oaths in and for
the Province of Newfoundland and Labrador.
My commission expires on December 31, 2022.

Schedule "A"

PTL Holdings Limited, PTL Services (Equipment) Limited,
CSL Services (Industrial) Limited, and 9263357 Canada Inc.

Receiver's Schedule of Proposed Distributions
as at September 28, 2018

		<u>PTL Services</u>	<u>CSL Services</u>	<u>PTL Holdings</u>	<u>9263357</u>	<u>Total</u>
Funds on Hand Per R&D		\$ 4,185,473	\$ 126,358	\$ -	\$ 1,227,378	\$ 5,539,209
Re-allocation of Sale Proceeds		-	-	-	-	-
Re-allocated Funds on hand	A	\$ 4,185,473	\$ 126,358	\$ -	\$ 1,227,378	\$ 5,539,209
Add: Anticipated receipts						
AR - outstanding as at 9/28/18		540,000	1,000	-	-	541,000
Outstanding billings		TBD	TBD	-	-	TBD
	B	540,000	1,000	-	-	541,000
Net Estimated Gross Receipts	A+B=C	\$ 4,725,473	\$ 127,358	\$ -	\$ 1,227,378	\$ 6,080,209
Less: Priority Payments						
Source Deductions		-	-	-	-	-
81.6 Pension Claim		(136,916)	(32,916)	-	-	(169,832)
81.4 Union Dues Claim		(14,101)	(69,275)	-	-	(83,375)
81.4 Salary Claim		(15,000)	-	-	-	(15,000)
HAPSET		-	-	-	-	-
Sub-total	D	(166,017)	(102,191)	-	-	(268,208)
Net Funds estimated funds after prior ranking claims and prior to ongoing disbursements	C-D=E	\$ 4,559,456	\$ 25,168	\$ -	\$ 1,227,378	\$ 5,812,002
Less:						
Wind-up and Admin (Payroll, overhead, etc.)		(80,000)	-	-	-	(80,000)
Open P.O.'s / AP / Union Dues		(340,000)	(25,000)	-	-	(365,000)
Outstanding HST Remittance		(85,000)	(5,000)	-	-	(90,000)
Fees		(359,000)	-	-	-	(359,000)
	F	(864,000)	(30,000)	-	-	(894,000)
Net Estimated funds available for Distribution to CIBC	E-F=G	\$ 3,695,456	\$ (4,832)	\$ -	\$ 1,227,378	\$ 4,918,002
Proposed CIBC Distribution	H	2,250,000	-	-	1,000,000	3,250,000
Net Estimated Funds available for future distribution	G-H	<u>\$ 1,445,456</u>	<u>\$ (4,832)</u>	<u>\$ -</u>	<u>\$ 227,378</u>	<u>\$ 1,668,002</u>

Notes:

- (1) Based on Company records there are no CRA deemed trust amounts for outstanding source deductions as at the Appointment Date.
- (2) As a result of the bankruptcy, CRA has an unsecured claim in respect of the outstanding HST owing from PTL and CSL.
- (3) As a result of the bankruptcy the Government of Newfoundland and Labrador has an unsecured claim in respect of the outstanding HAPSET owing from PTL and CSL.

**SCHEDULE B
TO THE NOTICE OF MOTION**

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AMENDED DISTRIBUTION ORDER

UPON reading the Notice of Motion of BDO Canada Limited (“**BDO**”) seeking a distribution by BDO, in its capacity as receiver (the **Receiver**), of the assets, undertaking and property of PTL Holdings Limited, PTL Services (Equipment) Limited, CSL Services (Industrial) Limited and 9263357 Canada Inc. (collectively, the “**PTL Group**”) **AND UPON** hearing the

submissions of counsel, **AND UPON** reading the material as filed by counsel, **IT IS HEREBY ORDERED AS FOLLOWS:**

1. The time for service of the Notice of Motion is hereby abridged and validated, and all service of the Notice of Motion is hereby validated, so that this motion is properly returnable today and further service of the Notice of Motion is hereby dispensed with.
2. The Receivers fees and disbursement up until June, 2018 and the fees of the Receiver's legal counsel, all as set out in the Second Report of the Receiver, are hereby approved.
3. The Second Report of the Receiver and the Receiver's Interim Statement of Receipts and Disbursements are hereby approved.
4. The Receiver is hereby authorized and directed to distribute certain proceeds currently held by the Receiver from the sale, or otherwise, of property of the PTL Group as follows (the "**Distribution**"):
 - (a) a distribution of the Receivers fees and disbursement up until June, 2018 and the fees of the Receiver's legal counsel, all as are set out in the Second Report of the Receiver;
 - (b) the amount of \$169,833 to the respective Unions for the Union Pension Charge totaling \$169,833;
 - (c) the amount of \$83,375 for respective Unions for the Union Dues Charge, pursuant to section 81.4 of the BIA, totaling \$83,375;

- (d) the maximum amount of \$15,000 for the Salaried Employees Charge, pursuant to section 81.4 of the BIA once the calculation is finalized by the Receiver; and
 - (e) the amount of \$3,250,000 to Canadian Imperial Bank of Commerce (“CIBC”).
5. The Distribution is subject to a holdback of sufficient estimated funds to allow the Receiver to satisfy any outstanding estate costs incurred, projected professional fees to complete the administration of the estate, professional fees and costs to complete the administration of the bankruptcy estates, and complete the receivership estate.
6. Notwithstanding:
- (a) the pendency of these proceedings;
 - (b) the applications for a bankruptcy order issued pursuant to the *Bankruptcy and Insolvency Act* (Canada) (the BIA), in respect of the PTL Group and any bankruptcy order issued pursuant to such applications; and
 - (c) any assignment in bankruptcy made in respect of the PTL Group.

the payments authorized and directed by section 1 of this Order shall be binding on any trustee in bankruptcy that may be appointed in respect of the PTL Group and shall not be void or voidable by creditors of the PTL Group nor shall it constitute nor be deemed to be a settlement, fraudulent preference, assignment, fraudulent conveyance, transfer at undervalue or other reviewable transaction under the BIA or any other applicable federal or provincial legislation, nor shall it constitute oppressive or unfairly prejudicial conduct pursuant to any applicable federal or provincial legislation.

