



No.S-210353
Vancouver Registry

IN THE SUPREME COURT OF BRITISH COLUMBIA

BETWEEN:

WIT MANAGEMENT CORP.

PLAINTIFF

AND:

INDERJIT AULAKH and J.J. COOL & CO LTD.

DEFENDANTS

AND:

INDERJIT AULAKH AND TRANS BC FREIGHTWAYS (2007) LTD.

COUNTERCLAIMANTS

AND:

BRIAN ATKINS and WTC GROUP INC.

DEFENDANTS BY WAY OF COUNTERCLAIM

ORDER MADE AFTER APPLICATION

BEFORE THE HONOURABLE)
MADAM JUSTICE FITZPATRICK) AUGUST 2, 2023
)
)

ON THE APPLICATION of the Plaintiff for an Order pursuant to Section 39 of the *Law and Equity Act*, R.S.B.C. 1996 c. 253, as amended (the "LEA"), Section 227(3) of the *Business Corporations Act*, SBC 2002 c. 57, as amended (the "BCBCA"), and Rule 10-2 of the *Supreme Court Civil Rules* (the "Rules") appointing BDO Canada Limited as Receiver and Manager (in such capacity, the "Receiver") without security, of all of the assets, undertakings and property of J.J. Cool Co. Ltd. (the "Company") acquired for, or used in relation to a business carried on by the Company, coming on for hearing this day at Vancouver, British Columbia.

AND ON READING the First Report of the Inspector made May 31, 2023; the Supplemental Report of the Inspector made July 31, 2023; the Notice of Application made January 6, 2023; Response to the Notice of Application made January 17, 2023; Affidavit #1 of Brian Atkins made August 18, 2021; Affidavit #2 of Brian Atkins made October 6, 2021; Affidavit #3 of Brian Atkins made October 7, 2021; Affidavit #4 of Brian Atkins made August 3, 2022; Affidavit #5 of Brian Atkins made August 3, 2022; Affidavit #6 of Brian Atkins made January 6,

2023; Affidavit #1 of Jordan Atkins made September 16, 2021; Affidavit #2 of Jordan Atkins made August 3, 2022; Affidavit #4 of Jordan Atkins made January 6, 2023, and Affidavit #2 of Amanda Luies made August 3, 2022 and the consent of BDO Canada Ltd. ("**BDO**") to act as the Receiver; AND ON HEARING Martin Sennott, Counsel for the Plaintiff and Defendants by Way of Counterclaim, Brent Olthuis, K.C., counsel for the Defendant and Counterclaimants, and Jennifer Cockbill, Counsel for BDO.

THIS COURT ORDERS AND DECLARES, **BY CONSENT** that:

DISCHARGE OF INVESTIGATOR

1. BDO Canada Limited and Jervis Rodrigues, in their role as Investigator pursuant to sections 227(3)(p), 248, Division 3 of Part 8 of the BCBCA, and the Order of Court of Madam Justice Fitzpatrick of January 25, 2023 in the within action is discharged.
2. The accounts as presented by BDO, in their role as Investigator, are approved.

APPOINTMENT

3. Pursuant to Section 39 of the LEA, Section 227(3) of the BCBCA, and Rule 10-2 of the Rules, BDO is appointed Receiver, without security, of all of the assets, undertakings and property of the Company (the "**Property**").

RECEIVER'S POWERS

4. The Receiver is empowered and authorized, but not obligated, to act at once in respect of the Property, without in any way limiting the generality of the foregoing, to implement the mandate contained in the First Report of the Investigator dated May 31, 2023 at paragraph 94 and the Supplemental Report dated July 31, 2023 at paragraph 26 and filed in the Court and the Receiver is expressly empowered and authorized to do any of the following where the Receiver considers it necessary or desirable to:
 - (a) take possession of and exercise control over the Property, including the books and records of the Company, and any and all receipts and disbursements arising out of or from the Property;
 - (b) take possession of and exercise control over any bank accounts and credit facilities, or investment agreements, of the Company, including changing signing authority in respect of any such bank accounts and amending or terminating any credit facilities or investment agreements;
 - (c) receive, preserve and protect the Property, or any part or parts thereof, including, but not limited to, changing locks and security codes, relocation of Property, engaging independent security personnel, taking physical inventories and placing insurance coverage;
 - (d) manage, operate and carry on the business of the Company, including the powers to enter into any agreements, incur any obligations in the ordinary course of

business, cease to carry on all or any part of the business, or cease to perform any contracts of the Company;

- (e) engage consultants, appraisers, agents, experts, auditors, accountants, managers, counsel and such other persons from time to time and on whatever basis, including on a temporary basis, to assist with the exercise of the Receiver's powers and duties, including, without limitation, those conferred by this Order;
- (f) purchase or lease such machinery, equipment, inventories, supplies, premises or other assets to continue the business of the Company or any part or parts thereof;
- (g) receive and collect all monies and accounts now owed or hereafter owing to the Company and to exercise all remedies of the Company in collecting these amounts, including, without limitation, enforcement of any security held by the Company;
- (h) settle, extend or compromise any indebtedness owing to the Company;
- (i) execute, assign, issue and endorse documents of whatever nature in respect of any of the Property, whether in the Receiver's name or in the name and on behalf of the Company, for any purpose pursuant to this Order;
- (j) undertake environmental or workers' health and safety assessments of the Property and operations of the Company;
- (k) initiate, manage and direct all legal proceedings now pending or hereafter pending (including appeals or applications for judicial review) in respect of the Company, the Property or the Receiver, including initiating, prosecuting, continuing, defending, settling or compromising the proceedings;
- (l) to sell, convey, transfer, lease or assign the Property or any part or parts thereof out of the ordinary course of business:¹
 - (i) without the approval of this Court in respect of a single transaction for consideration up to \$5,000.00, provided that the aggregate consideration for all such transactions does not exceed \$25,000.00; and
 - (ii) with the approval of this Court in respect of any transaction in which the individual or aggregate purchase price exceeds the limits set out in subparagraph (i) above,

and in each such case notice under Section 59(10) of the *Personal Property Security Act*, R.S.B.C. 1996, c. 359 shall not be required;

- (m) report to, meet with and discuss with such affected Persons (as defined below) as the Receiver considers appropriate on all matters relating to the Company and the
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receivership, and to share information, subject to confidentiality terms as the Receiver considers appropriate;

- (n) to register a copy of this Order and any other Orders in respect of the Property against title to any of the Property;
- (o) apply for any permits, licences, approvals or permissions as may be required by any governmental authority and any renewals thereof for and on behalf of and, if considered necessary or appropriate by the Receiver, in the name of the Company;
- (p) to exercise any shareholder, partnership, joint venture or other rights which the Company may have; and
- (q) to take any steps reasonably incidental to the exercise of these powers or the performance of any statutory obligations;

and in each case where the Receiver takes any such actions or steps, it shall be exclusively authorized and empowered to do so, to the exclusion of all other Persons (as defined below), including the Company, and without interference from any other Person.

5. Notwithstanding anything to the contrary herein, and for clarity, except as contemplated by the immediately preceding paragraph:
 - (a) the Receiver shall not have authority to act on behalf of the Company in respect of any legal proceedings, including the within proceedings; and,
 - (b) the Company, by its duly appointed officers and directors, is authorized to retain and instruct legal counsel in respect of these legal proceedings, and the Receiver shall grant access, or otherwise make available, to the Company such of its funds as needed for these proceedings.

DUTY TO PROVIDE ACCESS AND CO-OPERATION TO THE RECEIVER

6. Each of (i) the Company; (ii) all of the Company's current and former directors, officers, employees, agents, accountants, legal counsel and shareholders, and all other persons acting on its instructions or behalf; and (iii) all other individuals, firms, corporations, governmental bodies or agencies, or other entities having notice of this Order (collectively, "**Persons**" and each a "**Person**") shall forthwith advise the Receiver of the existence of any Property in such Person's possession or control, shall grant immediate and continued access to the Property to the Receiver, and shall deliver all such Property (excluding Property subject to liens the validity of which is dependent on maintaining possession) to the Receiver upon the Receiver's request.
7. All Persons, other than governmental authorities, shall forthwith advise the Receiver of the existence of any books, documents, securities, contracts, orders, corporate and accounting records, and any other papers, records and information of any kind related to the business or affairs of the Company, and any computer programs, computer tapes, computer disks, or other data storage media containing any such information

(collectively, the “**Records**”) in that Person’s possession or control. Upon request, governmental authorities shall advise the Receiver of the existence of any Records in that Person’s possession or control.

8. Upon request, all Persons shall provide to the Receiver or permit the Receiver to make, retain and take away copies of the Records and, to the extent possible without interfering with the Persons’ private or separate commercial matters, grant to the Receiver unfettered access to and use of accounting, computer, software and physical facilities, provided however that nothing in paragraphs 7, 8, and 9 of this Order shall require the delivery of Records, or the granting of access to Records, which may not be disclosed or provided to the Receiver due to solicitor client privilege or statutory provisions prohibiting such disclosure.
9. If any Records are stored or otherwise contained on a computer or other electronic system of information storage, whether by an independent service provider or otherwise, all Persons in possession or control of such Records shall forthwith give unfettered access to the Receiver for the purpose of allowing the Receiver to recover and fully copy all of the information contained therein whether by way of printing the information or making copies of computer disks or such other manner of retrieving and copying the information as the Receiver in its discretion deems expedient, and shall not alter, erase or destroy any Records without the prior written consent of the Receiver. Further, for the purposes of this paragraph, all Persons shall provide the Receiver with all such assistance in gaining immediate access to the information in the Records as the Receiver may require including, without limitation, providing the Receiver with instructions on the use of any computer or other system and providing the Receiver with any and all access codes, account names and account numbers that may be required to gain access to the information.

NO PROCEEDINGS AGAINST THE RECEIVER

10. No proceeding or enforcement process in any court or tribunal (each, a “**Proceeding**”), shall be commenced or continued against the Receiver except with the written consent of the Receiver or with leave of this Court.

NO PROCEEDINGS AGAINST THE COMPANY OR THE PROPERTY

11. No Proceeding against or in respect of the Company or the Property, other than the within Proceedings, shall be commenced or continued except with the written consent of the Receiver or with leave of this Court; provided, however, that nothing in this Order shall prevent any Person from commencing a Proceeding regarding a claim that might otherwise become barred by statute or an existing agreement if such Proceeding is not commenced before the expiration of the stay provided by this paragraph and provided that no further step shall be taken in respect of the Proceeding except for service of the initiating documentation on the Company and the Receiver.

NO EXERCISE OF RIGHTS OR REMEDIES

12. All rights and remedies (including, without limitation, set-off rights) against the Company, the Receiver, or affecting the Property, other than the within Proceedings, are

stayed and suspended with the written consent of the Receiver or leave of this Court, provided however that nothing in this Order shall (i) empower the Receiver or the Company to carry on any business which the Company is not lawfully entitled to carry on, (ii) affect the rights of any regulatory body as set forth in section 69.6(2) of the *Bankruptcy and Insolvency Act*, RSC, 1985, c. B-3 (the "BIA"), (iii) prevent the filing of any registration to preserve or perfect a security interest, or (iv) prevent the registration of a claim for lien.

NO INTERFERENCE WITH THE RECEIVER

13. No Person shall discontinue, fail to honour, alter, interfere with, repudiate, terminate or cease to perform any right, renewal right, contract, agreement, licence or permit in favour of or held by the Company, without written consent of the Receiver or leave of this Court. Nothing in this Order shall prohibit any party to an eligible financial contract from closing out and terminating such contract in accordance with its terms.

CONTINUATION OF SERVICES

14. All Persons having oral or written agreements with the Company or statutory or regulatory mandates for the supply of goods and/or services, including without limitation, all computer software, communication and other data services, centralized banking services, payroll services, insurance, transportation services, utility or other services to the Company are restrained until further Order of this Court from discontinuing, altering, interfering with or terminating the supply of such goods or services as may be required by the Receiver, and the Receiver shall be entitled to the continued use of the Company's current telephone numbers, facsimile numbers, internet addresses and domain names, provided in each case that the normal prices or charges for all such goods or services received after the date of this Order are paid by the Receiver in accordance with normal payment practices of the Company or such other practices as may be agreed upon by the supplier or service provider and the Receiver, or as may be ordered by this Court.

RECEIVER TO HOLD FUNDS

15. All funds, monies, cheques, instruments, and other forms of payments received or collected by the Receiver from and after the making of this Order from any source whatsoever including, without limitation, the sale of all or any of the Property and the collection of any accounts receivable, in whole or in part, whether in existence on the date of this Order or hereafter coming into existence, shall be deposited into one or more new accounts to be opened by the Receiver (the "**Post-Receivership Accounts**") and the monies standing to the credit of such Post-Receivership Accounts from time to time, net of any disbursements provided for herein, shall be held by the Receiver to be paid in accordance with the terms of this Order or any further order of this Court.

EMPLOYEES

16. Subject to the employees' right to terminate their employment, all employees of the Company shall remain the employees of the Company until such time as the Receiver, on the Company's behalf, may terminate the employment of such employees. The Receiver shall not be liable for any employee-related liabilities of the Company, including any

successor employer liabilities as referred to in Section 14.06(1.2) of the BIA, other than amounts the Receiver may specifically agree in writing to pay or in respect of obligations imposed specifically on receivers by applicable legislation, including sections 81.4(5) or 81.6(3) of the BIA or under the *Wage Earner Protection Program Act*, S.C. 2005, c.47. The Receiver shall be liable for any employee-related liabilities, including wages, severance pay, termination pay, vacation pay, and pension or benefit amounts relating to any employees that the Receiver may hire in accordance with the terms and conditions of such employment by the Receiver.

LIMITATION ON ENVIRONMENTAL LIABILITIES

17. Nothing in this Order shall require the Receiver to occupy or to take control, care, charge, possession or management (separately and/or collectively, "**Possession**") of any of the Property that might be environmentally contaminated, might be a pollutant or a contaminant, or might cause or contribute to a spill, discharge, release, or deposit of a substance contrary to any federal, provincial or other law relating to the protection, conservation, enhancement, remediation or rehabilitation of the environment or relating to the disposal of waste or other contamination (collectively "**Environmental Legislation**"), provided however that nothing herein shall exempt the Receiver from any duty to report or make disclosure imposed by applicable Environmental Legislation.
18. The Receiver shall not, as a result of this Order or anything done in pursuance of the Receiver's duties and powers under this Order, be deemed to be in Possession of any of the Property within the meaning of any Environmental Legislation, unless the Receiver is actually in possession.
19. Notwithstanding anything in federal or provincial law, the Receiver is not personally liable in that position for any environmental condition that arises or environmental damage that occurred:
 - (a) before the Receiver's appointment; or,
 - (b) after the Receiver's appointment, unless it is established that the condition arose or the damage occurred as a result of the Receiver's gross negligence or wilful misconduct.
20. Notwithstanding anything in federal or provincial law, but subject to paragraph 17 of this Order, where an order is made which has the effect of requiring the Receiver to remedy any environmental condition or environmental damage affecting the Property, if the Receiver complies with the BIA section 14.06(4), the Receiver is not personally liable for the failure to comply with the order and is not personally liable for any costs that are or would be incurred by any Person in carrying out the terms of the order.

LIMITATION ON THE RECEIVER'S LIABILITY

21. The Receiver shall incur no liability or obligation as a result of its appointment or the carrying out the provisions of this Order, save and except:
 - (a) any gross negligence or wilful misconduct on its part; or

- (b) amounts in respect of obligations imposed specifically on receivers by applicable legislation.

Nothing in this Order shall derogate from the protections afforded the Receiver by Section 14.06 of the BIA or by any other applicable legislation.

RECEIVER'S ACCOUNTS

22. The Receiver and its legal counsel, if any, are granted a charge (the "**Receiver's Charge**") on the Property as security for the payment of their fees and disbursements, in each case at their standard rates, in respect of these proceedings, whether incurred before or after the making of this Order and for greater certainty the Receiver's Charge secures payment of any unpaid or unbilled fees and disbursements of BDO Canada Limited incurred in its capacity as Investigator pursuant to the Order of Justice Fitzpatrick made herein on January 25, 2023. The Receiver's Charge shall form a first charge on the Property in priority to all security interests, trusts, liens, charges and encumbrances, statutory or otherwise, in favour of any Person.
23. Subject to further order of this court, on application by the Receiver on notice to all parties, the maximum amount of the Receiver's Charge shall be \$250,000.00.
24. The Receiver and its legal counsel shall pass their accounts from time to time, and for this purpose the accounts of the Receiver and its legal counsel are referred to a judge of the Supreme Court of British Columbia and may be heard on a summary basis.
25. Prior to the passing of its accounts, the Receiver shall be at liberty from time to time to apply reasonable amounts, out of the monies in its hands, against its fees and disbursements, including legal fees and disbursements, incurred at the standard rates and charges of the Receiver or its counsel, and such amounts shall constitute advances against its remuneration and disbursements when and as approved by this Court.
26. In the event the accounts of the receiver are not satisfied by the Company, the accounts will be satisfied in equal (50/50) share as between the two shareholders, WIT Management Corp. and Trans BC Freightways (2007) Ltd. with the responsibility of the accounts of the Receiver to be determined subsequently by this Court.

FUNDING OF THE RECEIVERSHIP

27. The Receiver is authorized and empowered to borrow by way of a revolving credit or otherwise, such monies from time to time as it may consider necessary or desirable, provided that the outstanding principal amount does not exceed \$250,000.00 (or such greater amount as this Court may by further Order authorize) at any time, at such rate or rates of interest as the Receiver deems advisable for such period or periods of time as it may arrange, for the purpose of funding the exercise of the powers and duties conferred upon the Receiver by this Order, including interim expenditures. The whole of the Property shall be and is charged by way of a fixed and specific charge (the "**Receiver's Borrowings Charge**") as security for the payment of the monies borrowed, together with interest and charges thereon, in priority to all security interests, trusts, liens, charges and

encumbrances, statutory or otherwise, in favour of any Person, but subordinate in priority to the Receiver's Charge.

28. Neither the Receiver's Borrowings Charge nor any other security granted by the Receiver in connection with its borrowings under this Order shall be enforced without leave of this Court.
29. The Receiver is authorized to issue certificates substantially in the form annexed as Schedule "A" hereto (the "**Receiver's Certificates**") for any amount borrowed by it pursuant to this Order.
30. The monies from time to time borrowed by the Receiver pursuant to this Order or any further order of this Court and any and all Receiver's Certificates evidencing the same or any part thereof shall rank on a *pari passu* basis, unless otherwise agreed to by the holders of any prior issued Receiver's Certificates.

ALLOCATION

31. Any interested party may apply to this Court on notice to any other party likely to be affected for an order allocating the Receiver's Charge and Receiver's Borrowings Charge amongst the Property.

NOTICE OF ORDER

32. The Receiver shall establish and maintain a website in respect of these proceedings at: <https://www.bdo.ca/services/financial-advisory-services/business-restructuring-turnaround-services/current-engagements> (the "**Website**") and shall post there as soon as practicable a copy of this Order.

GENERAL

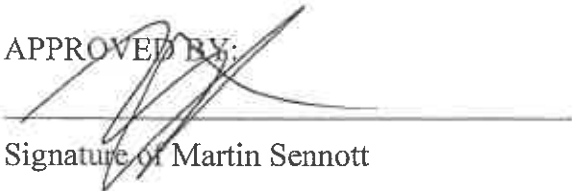
33. Any interested party may apply to this Court to vary or amend this Order on not less than seven (7) clear business days' notice to the Service List and to any other party who may be affected by the variation or amendment, or upon such other notice, if any, as this Court may order.
34. The Receiver may from time to time apply to this Court for advice and directions in the discharge of its powers and duties hereunder.
35. Nothing in this Order shall prevent the Receiver from acting as a trustee in bankruptcy of the Company.
36. This Court requests the aid, recognition and assistance of any court, tribunal, regulatory or administrative body having jurisdiction, wherever located, to give effect to this Order and to assist the Receiver and its agents in carrying out the terms of this Order. All such courts, tribunals and regulatory and administrative bodies are respectfully requested to make such orders and to provide such assistance to the Receiver, as an officer of this Court, as may be necessary or desirable to give effect to this Order or to assist the Receiver and its agents in carrying out the terms of this Order.

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- 37. The Receiver is authorized and empowered to apply to any court, tribunal or regulatory or administrative body, wherever located, for recognition of this Order and for assistance in carrying out the terms of this Order and the Receiver 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.
- 38. Costs of this motion, up to and including entry and service of this Order are to be determined by future order of this Court.
- 39. Endorsement of this Order by counsel appearing on this application other than the Applicant is dispensed with.

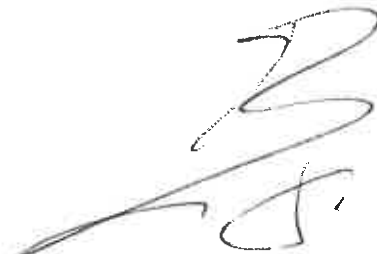
THE FOLLOWING PARTIES APPROVE OF THE FORM OF THIS ORDER AND CONSENT TO EACH OF THE ORDERS, IF ANY, THAT ARE INDICATED ABOVE AS BEING BY CONSENT:

APPROVED BY:



Signature of Martin Sennott

lawyer for the Plaintiff and Defendants by Way of Counterclaim/Applicants



BY THE COURT



DISTRICT REGISTRAR

CHECKED
SW

SCHEDULE "A"

RECEIVER CERTIFICATE

CERTIFICATE NO. _____

AMOUNT

\$ _____

1. THIS IS TO CERTIFY that BDO Canada Ltd., the Receiver and Manager (the "Receiver") of all of the assets, undertakings and properties of J.J. Cool & Co. Ltd. acquired for, or used in relation to a business carried on by the Debtor, including all proceeds thereof (collectively, the "Property") appointed by Order of the Supreme Court of British Columbia and/or the Supreme Court of British Columbia (In Bankruptcy and Insolvency) (the "Court") dated the 2nd day of August, 2023 (the "Order") made in SCBC Action No. S-210353 has received as such Receiver from the holder of this certificate (the "Lender") the principal sum of \$ _____, being part of the total principal sum of \$ _____ which the Receiver is authorized to borrow under and pursuant to the Order.
2. The principal sum evidenced by this certificate is payable on demand by the Lender with interest thereon calculated and compounded [daily] [monthly] not in advance on the _____ day of each month after the date hereof at a notional rate per annum equal to the rate of _____ per cent above the prime commercial lending rate of _____ from time to time.
3. Such principal sum with interest thereon is, by the terms of the Order, together with the principal sums and interest thereon of all other certificates issued by the Receiver pursuant to the Order or to any further order of the Court, a charge upon the whole of the Property, in priority to the security interests of any other person, but subject to the priority of the charges set out in the Order and in the *Bankruptcy and Insolvency Act*, and the right of the Receiver to indemnify itself out of the Property in respect of its remuneration and expenses.
4. All sums payable in respect of principal and interest under this certificate are payable at the main office of the Lender at _____.
5. Until all liability in respect of this certificate has been terminated, no certificates creating charges ranking or purporting to rank in priority to this certificate shall be issued by the Receiver to any person other than the holder of this certificate without the prior written consent of the holder of this certificate.
6. The charge securing this certificate shall operate to permit the Receiver to deal with the Property as authorized by the Order and as authorized by any further or other order of the Court.

7. The Receiver does not undertake, and it is not under any personal liability, to pay any sum under this Certificate in respect of which it may issue certificates under the terms of the Order.

DATED the 2nd day of August, 2023.

BDO Canada Ltd., solely in its capacity as
Receiver of the Property, and not in its
personal capacity

Per: _____

Name: Jennifer Cockbill

Title: Counsel for BDO Canada Ltd.

Action No. _____

IN THE SUPREME COURT OF BRITISH
COLUMBIA

BETWEEN:

[PLAINTIFF/PETITIONER]

Plaintiff/Petitioner

- and -

[DEFENDANT/RESPONDENT]

Defendant/Respondent

AND:

Action No. _____

Estate No. _____

IN THE SUPREME COURT OF BRITISH
COLUMBIA
IN BANKRUPTCY AND INSOLVENCY

IN THE MATTER OF THE RECEIVERSHIP OF
[THE DEBTOR]

B.C. MODEL RECEIVERSHIP ORDER VERSION
NO. 3, _____, 2015
