

Court File No. 32-2211776
Estate No. 32-2211776

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

IN THE MATTER OF THE PROPOSAL OF
PV LABS INC., OF THE CITY OF BURLINGTON,
IN THE REGIONAL MUNICIPALITY OF HALTON,
IN THE PROVINCE OF ONTARIO

MOTION RECORD

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Tab Document

1 Notice of Motion dated March 23, 2017

A Draft Order

Tab 1

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IN THE MATTER OF THE PROPOSAL OF
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NOTICE OF MOTION

PV Labs Inc. (“**PV Labs**” or the “**Company**”) will make a motion to a Judge of the Commercial List on Friday, March 31, 2017, at 10:00 a.m., or as soon after that time as the motion can be heard, at 330 University Avenue, Toronto, Ontario.

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

THE MOTION IS FOR:

1. an Order, substantially in the form attached hereto as **Schedule “A”**, among other things:
 - (a) if necessary, abridging the time for service of the Notice of Motion and the Motion Record and validating service thereof;
 - (b) approving the sale transaction contemplated by the Asset Purchase Agreement between 902878 Ontario Limited (the “**Purchaser**”) and the Company (the “**902 APA**”); and

- (c) vesting in the Purchaser or its assignee the Company's right, title and interest in and to the "Purchased Assets" described in the APA (the "**Purchased Assets**") free and clear of claims and encumbrances (other than permitted encumbrances) upon the delivery of a certificate to the Purchaser by BDO Canada Limited ("**BDO**"), in its capacity as trustee in the proposal of the Company under the *Bankruptcy and Insolvency Act* (Canada), R.S.C. 1985, c. B-3, as amended (the "**BIA**") (in such capacity, the "**Proposal Trustee**");
2. an order sealing the Confidential Appendices to the Second Report of the Proposal Trustee dated March 23, 2017 (the "**Second Report**") pending completion of the transaction under the 902 APA;
 3. an order approving the activities of the Proposal Trustee as described in its Report dated January 27, 2017 (the "**First Report**") and in the Second Report;
 4. an order approving the professional fees of the Proposal Trustee and its counsel, Pallett Valo LLP; and
 5. such further and other relief as this Honourable Court may deem just.

THE GROUNDS FOR THE MOTION ARE:

Background

1. PV Labs designs and develops turnkey aerial imaging systems for the (a) Cinema, (b) Intelligence, Surveillance, Reconnaissance, and (c) Aerial Survey markets. The Company's expertise is in the development of solutions that require high performance

gimbal stabilization, optics and data management that leverage its common software and hardware components.

2. On January 27, 2017, PV Labs filed a Notice of Intention to File a Proposal pursuant to section 50.4 of the BIA. BDO was appointed as Proposal Trustee.

The February 2, 2017 Order

3. By Order of Madam Justice Conway dated February 2, 2017, this Court, *inter alia*:
 - (a) extended the time for PV Labs to file a proposal, and the stay of proceedings under the BIA, to April 12, 2017;
 - (b) approved the sale and investment solicitation process (the “**SISP**”) described in the First Report, and authorized and empowered the Proposal Trustee and PV Labs to take such steps as are necessary or desirable to carry out and perform their obligations under the SISP, provided that any definitive agreement to be executed by PV Labs in respect of the sale of all or part of its assets shall require further approval of this Court;
 - (c) approved the execution by PV Labs of the term sheet between PV Labs and 902878 Ontario Limited, as lender (the “**DIP Lender**”) dated as of January 20, 2017, and appended to the First Report (the “**DIP Term Sheet**”), and authorized and empowered PV Labs to perform its obligations under the DIP Term Sheet and to obtain and borrow amounts under DIP Term Sheet, provided that borrowings under such credit facility (the “**DIP Facility**”) shall not exceed the principal amount of \$1.5 million unless permitted by further Order of this Court.

- (d) granted the following priority charges over the assets of PV Labs:
- i. a priority charge in favour of the Proposal Trustee, counsel to the Proposal Trustee and counsel for PV Labs in respect of their fees and disbursements;
 - ii. a priority charge in favour of the DIP Lender to secure all amounts owing under the DIP Term Sheet; and
 - iii. a priority charge in favour of the directors and officers of PV Labs.

The 902 APA

4. The SISP was conducted by the Proposal Trustee and it is recommending that this Court approve the 902 APA for, *inter alia*, the following reasons:
- (a) it is of the opinion that the SISP was conducted in a fair and reasonable manner;
 - (b) it is satisfied that the SISP adequately exposed the assets of the Company as a going concern to the marketplace;
 - (c) it is satisfied that the SISP provided sufficient exposure of the assets of the Company to all parties who might reasonably have wished to consider a transaction in respect of same; and
 - (d) it is of the view that the Sale Agreement with the Purchaser constitutes the highest and best offer

5. Pursuant to the 902 APA:
 - (a) the Purchaser is acquiring all of the assets, properties and undertakings of the Company on an “as is, where is” basis for the amount owed under the DIP Facility;
 - (b) it is a condition precedent that the Company obtain an approval and vesting order from the Court with respect to the proposed transaction; and
 - (c) closing of the sale transaction is currently scheduled for March 31, 2017;
6. The information contained in the Confidential Appendices to the Second Report is sensitive in nature and, if disclosed publicly before the completion of a sale transaction, could prejudice the Company and its stakeholders. Accordingly, the Proposal Trustee is recommending that the Confidential Appendices be sealed until the transaction under the 902 APA is completed.

Other Grounds

7. Section 65.13 of the BIA and the inherent and equitable jurisdiction of this Court.
8. Such further and other grounds as counsel may advise and this Honourable Court permits.

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

1. The Second Report; and

2. Such further and other material as counsel may advise and this Honourable Court permits.

Dated: March 23, 2017

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TO: THE SERVICE LIST

Tab A

hereby authorized and directed to take such additional steps and execute such additional documents as may be necessary or desirable for the completion of the Transaction and for the conveyance of the Purchased Assets to the Purchaser.

2. THIS COURT ORDERS AND DECLARES that upon the delivery by the Proposal Trustee of a certificate to the Purchaser substantially in the form attached as **Schedule A** hereto (the “**Trustee’s Certificate**”), all of the Debtor's right, title and interest in and to the Purchased Assets described in the Sale Agreement shall vest absolutely in the Purchaser, free and clear of and from any and all security interests (whether contractual, statutory, or otherwise), hypothecs, mortgages, trusts or deemed trusts (whether contractual, statutory, or otherwise), liens, executions, levies, charges, or other financial or monetary claims, whether or not they have attached or been perfected, registered or filed and whether secured, unsecured or otherwise (collectively, the “**Claims**”) including, without limiting the generality of the foregoing: (i) any encumbrances or charges created by the Order of the Honourable Justice Conway dated February 2, 2017; and (ii) all charges, security interests or claims evidenced by registrations pursuant to the *Personal Property Security Act* (Ontario) or any other personal property registry system (all of which are collectively referred to as the “**Encumbrances**”) and, for greater certainty, this Court orders that all of the Encumbrances affecting or relating to the Purchased Assets are hereby expunged and discharged as against the Purchased Assets.

3. THIS COURT ORDERS that for the purposes of determining the nature and priority of Claims, the net proceeds from the sale of the Purchased Assets shall stand in the place and stead of the Purchased Assets, and that from and after the delivery of the Trustee’s Certificate all Claims and Encumbrances shall attach to the net proceeds from the sale of the Purchased Assets with the same priority as they had with respect to the Purchased Assets immediately prior to the sale, as if the Purchased Assets had not been sold and remained in the possession or control of the person having that possession or control immediately prior to the sale.

4. THIS COURT ORDERS AND DIRECTS the Proposal Trustee to file with the Court a copy of the Trustee’s Certificate, forthwith after delivery thereof.

5. THIS COURT ORDERS that, pursuant to clause 7(3)(c) of the Canada *Personal Information Protection and Electronic Documents Act*, the Debtor is authorized and permitted to disclose and transfer to the Purchaser all human resources and payroll information in the

Company's records pertaining to the Transferring Employees (as defined in the Sale Agreement). The Purchaser shall maintain and protect the privacy of such information and shall be entitled to use the personal information provided to it in a manner which is in all material respects identical to the prior use of such information by the Debtor.

6. THIS COURT ORDERS that, notwithstanding:

- (a) the pendency of these proceedings;
- (b) any applications for a bankruptcy order now or hereafter issued pursuant to the *Bankruptcy and Insolvency Act* (Canada) in respect of the Debtor and any bankruptcy order issued pursuant to any such applications; and
- (c) any assignment in bankruptcy made in respect of the Debtor;

the vesting of the Purchased Assets in the Purchaser pursuant to this Order shall be binding on any trustee in bankruptcy that may be appointed in respect of the Debtor and shall not be void or voidable by creditors of the Debtor, nor shall it constitute nor be deemed to be a fraudulent preference, assignment, fraudulent conveyance, transfer at undervalue, or other reviewable transaction under the *Bankruptcy and Insolvency Act* (Canada) 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.

7. THIS COURT ORDERS AND DECLARES that the Transaction is exempt from the application of the *Bulk Sales Act* (Ontario).

8. THIS COURT HEREBY REQUESTS the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or in the United States to give effect to this Order and to assist the Debtor, the Proposal Trustee and their 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 Debtor and the Proposal Trustee, as an officer of this Court, as may be necessary or desirable to give effect to

this Order or to assist the Debtor, the Proposal Trustee and their agents in carrying out the terms of this Order.

Schedule A – Form of Trustee’s Certificate

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TRUSTEE’S CERTIFICATE

RECITALS

A. On January 27, 2017, PV Labs Inc. (the “**Debtor**”) filed a Notice of Intention to Make a Proposal (the “**NOI**”) pursuant to section 50.4 of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended (the “**BIA**”). BDO Canada Limited (“**BDO**”) was named trustee (the “**Proposal Trustee**”) in the proposal proceedings.

B. Pursuant to an Order of the Court dated March 31, 2017, the Court approved the agreement of purchase and sale made as of March 8, 2017 (the “**Sale Agreement**”) between the Debtor and 902878 Ontario Limited (the “**Purchaser**”) and provided for the vesting in the Purchaser of the Debtor’s right, title and interest in and to the Purchased Assets, which vesting is to be effective with respect to the Purchased Assets upon the delivery by the Proposal Trustee to the Purchaser of a certificate confirming (i) the payment by the Purchaser of the Purchase Price for the Purchased Assets; (ii) that the conditions to Closing as set out in the Sale Agreement have been satisfied or waived by the Debtor and the Purchaser; and (iii) the Transaction has been completed to the satisfaction of the Proposal Trustee.

C. Unless otherwise indicated herein, terms with initial capitals have the meanings set out in the Sale Agreement.

THE PROPOSAL TRUSTEE CERTIFIES the following:

1. The Purchaser has paid and the Proposal Trustee has received the Purchase Price for the Purchased Assets payable on the Closing Date pursuant to the Sale Agreement;
2. The conditions to Closing as set out in the Sale Agreement have been satisfied or waived by the Debtor and the Purchaser; and
3. The Transaction has been completed to the satisfaction of the Proposal Trustee.

This Certificate was delivered by the Proposal Trustee at _____ [TIME] on _____ [DATE].

BDO CANADA LIMITED, in its capacity as trustee in the proposal proceedings of PV LABS INC., and not in its personal capacity

Per: _____
Name:
Title:

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Proceedings commenced at TORONTO

MOTION RECORD

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