



Estate No. 35-2721716

ONTARIO
SUPERIOR COURT OF JUSTICE

THE HONOURABLE Mr.) FRIDAY, THE 10th
)
JUSTICE M.D. McArthur) DAY OF SEPTEMBER, 2021

**IN THE MATTER OF THE PROPOSAL TO
CREDITORS PROCEEDINGS OF DREXLER
CONSTRUCTION LIMITED, FOLMUR
CONSTRUCTION (2004) LIMITED AND DOWN
UNDER PIPE AND CABLE LOCATING LIMITED,
CORPORATIONS INCORPORATED UNDER THE
ONTARIO *BUSINESS CORPORATIONS ACT***

ORDER

**(DIP increase, approval of long-term financing, approval of proposal trustee's
fees and activities, withdrawal of one notice of intention and proposal)**

THIS MOTION made by Drexler Construction Limited and Folmur Construction (2004) Limited (the "**Companies**"), as well as Down Under Pipe and Cable Locating Limited ("**Down Under**"), for the orders herein was heard this day at 80 Dundas St., London, by videoconference due to COVID-19.

ON READING the affidavit of Jerome Drexler sworn September 1, 2021 (the "**Drexler September Affidavit**") and the fourth report dated September 1, 2021 (the "**Fourth Report**") of Albert Gelman Inc. in its capacity as proposal trustee (in such capacity, the "**Proposal Trustee**") to the proposal to creditors proceedings of the Companies and Down Under, and upon hearing the submissions of counsel for the Companies and Down Under and counsel for the Proposal Trustee as well as those other

parties present, as indicated on the counsel slip, no other parties being present although duly served as more fully appears from the affidavit of service, filed:

I. NOTICE AND SERVICE

1. **THIS COURT ORDERS** that the time for service of the motion record in respect of this motion and the Fourth Report is abridged and validated so that the motion is properly returnable today, and that further service thereof is dispensed with.

II. INCREASED DIP FACILITY

2. **THIS COURT ORDERS** that the Companies are and each of them is hereby authorized and empowered to obtain and borrow under an increased credit facility (the “**Increased DIP Facility**”) from Corwin Mortgage Capital Inc. (the “**DIP Lender**”) in order to finance the Companies’ operations, capital expenditures and restructuring, which Increased DIP Facility shall be on the terms and subject to the conditions set forth in the amended term sheet (the “**Amended Term Sheet**”) attached as Exhibit “J” to the Drexler September Affidavit.

3. **THIS COURT ORDERS** that the Companies are hereby authorized to borrow, under the Increased DIP Facility, up to \$1,000,000, which for avoidance of doubt shall be in addition to the Initial DIP Facility (term defined below).

4. **THIS COURT ORDERS** that the Companies are 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 may be reasonably required pursuant to the terms of the

Amended Term Sheet, and the Companies are authorized and directed to pay and perform all of their indebtedness, interest, fees, liabilities and obligations to the DIP Lender under the Increased DIP Facility and pursuant to the Amended Term Sheet and the Definitive Documents as and when the same become due and are to be performed in accordance with their terms.

5. **THIS COURT ORDERS** that the DIP Lender's Charge, defined and created by order of this court made in this proceeding as of April 16, 2021 (the "**April 16 Order**"), shall hereby secure and be deemed to be in an amount equal to any Companies' outstanding obligations to the DIP Lender under the DIP facility approved in the April 16 Order (the "**Initial DIP Facility**"), the Increased DIP Facility, the Amended Term Sheet and the Definitive Documents, including any that begun to exist prior to this order but on or after the day of the April 16 Order, it being understood that within the DIP Lender's Charge, amounts due in respect of the Initial DIP Facility shall rank in priority to amounts due in respect of the Increased DIP Facility.

6. **THIS COURT ORDERS** that paragraphs 10 to 17 of the April 16 Order shall be deemed reproduced and applicable herein in respect of the Increased DIP Facility save:

- a. in the case of paragraph 13, the words "save and except any Encumbrance in favour of RBC and any Encumbrance ranking in priority to RBC's Encumbrance" are removed.
- b. that in case of conflict or difference between such paragraphs and this section II. of the present order, the latter shall control.

III. WITHDRAWAL OF NOTICE OF INTENTION AND PROPOSAL

7. **THIS COURT ORDERS** that upon the Proposal Trustee filing a certificate with the court (the “**Effective Time**”) substantially in the form of Schedule “A” to this order (the “**Down Under Completion Certificate**”) certifying that the Proposal Trustee has completed the administration, in accordance with the present order, in respect of the notice of intention to make a proposal to creditors and proposal to creditors filed by Down Under respectively on March 18, 2021 and August 30, 2021 (collectively, the “**Down Under NOI & Proposal**”):

- a. the Down Under NOI & Proposal shall be deemed withdrawn and shall thereupon cease to have any effects for the future, it being understood that no order in this section III. is retroactive to any prior date.
- b. the Proposal Trustee shall be discharged as Proposal Trustee with respect to the Down Under NOI & Proposal, and, for avoidance of doubt, the filing of the Down Under Completion Certificate shall not discharge the Proposal Trustee as Proposal Trustee with respect to the Companies.

8. **THIS COURT ORDERS** that the Proposal Trustee shall file with the Office of the Superintendent in Bankruptcy (the “**OSB**”) a copy of the executed Down Under Completion Certificate together with a copy of this order as soon as reasonably practicable after the Effective Time, and, upon receipt of the same, the OSB is hereby directed to record the same as other notices and documents are recorded in the ordinary course of the administration of an estate and to designate the Down Under NOI & Proposal as “Withdrawn pursuant to order of the court dated September 10, 2021”.

9. **THIS COURT ORDERS** that for avoidance of doubt:
- a. from the Effective Time, any stay of proceedings triggered under the *Bankruptcy and Insolvency Act* (Canada) (the “**BIA**”) by the filing of the Down Under NOI & Proposal shall cease to apply for the future.
 - b. from the Effective Time, orders made in this proceeding shall cease to apply with respect to Down Under for the future, it being understood that such orders shall continue to have their full force and effect with respect to the Companies.
 - c. with respect to the Down Under NOI & Proposal, Down Under shall not be deemed bankrupt by reason only of there being no proposal approved by Down Under’s creditors, by reason only of there being no court approval of a proposal, or by reason only of the present order causing any other irregularity in respect of the proposal process under the BIA.
 - d. Down Under and its directors and officers shall not be deemed to have committed a fault, tort, reviewable conduct, or like behaviour by reason only of the filing of the Down Under NOI & Proposal or by reason only of having acted or done any thing in good faith in respect of the Down Under NOI & Proposal, save gross negligence or wilful misconduct.
10. **THIS COURT ORDERS** that upon the Proposal Trustee filing the Down Under Completion Certificate, and save further court order, Albert Gelman Inc. (“**AGI**”) shall be released and discharged from any and all liability that AGI now has or may hereafter have

by reason of, or in any way arising out of, AGI's acts or omissions while acting in its capacity as Proposal Trustee with respect to the Down Under NOI & Proposal, save gross negligence or wilful misconduct. Without limiting the generality of the foregoing, AGI shall, upon its filing the Down Under Completion Certificate, be forever released and discharged from any and all liability relating to matters that were raised, or which could have been raised, with respect to the Down Under NOI & Proposal, save and except gross negligence or wilful misconduct.

IV. APPROVAL OF CEFL FACILITY

11. **THIS COURT ORDERS** that the Companies and Down Under are (and each of them is, as applicable) hereby authorized to enter into a long-term financing facility with Canadian Equipment Finance and Leasing Inc. ("**CEFL**") on the terms contemplated in an equipment finance proposal #2021154 dated August 25, 2021 from CEFL (the "**CEFL Facility**"), of which a copy is included as exhibit "H" to the Drexler September Affidavit.

12. **THIS COURT ORDERS** that the Companies and Down Under are (and each of them is, as applicable) hereby authorized and empowered to execute and deliver such contracts, agreements, mortgages, charges, hypothecs and security documents, guarantees and other definitive documents as may be reasonably required to close and implement the CEFL Facility.

V. APPROVAL OF PROPOSAL TRUSTEE'S FEES AND ACTIVITIES

13. **THIS COURT ORDERS** that the Fourth Report and the activities described therein – including, for avoidance of doubt, those in respect of the withdrawal of the Down

Under NOI & Proposal as ordered in section III. of this order – be and are hereby approved, provided, however, that only (i) the Proposal Trustee and (ii) Albert Gelman Inc. in its personal capacity and only with respect to its personal liability, shall be entitled to rely upon or utilize in any way such approval.

14. **THIS COURT ORDERS** that the professional fees and disbursements of the Proposal Trustee and its independent legal counsel, Macdonald Sager Manis LLP, as set out in the Fee Affidavits (term defined in the Fourth Report), be and are hereby approved.

15. **THIS COURT ORDERS** that the Companies are authorized to pay the approved fees from the Companies' funds.

16. **THIS COURT ORDERS** that the Proposal Trustee's fees and disbursements incurred after August 30, 2021 in relation to the Down Under NOI & Proposal shall be paid by Down Under in accordance with the agreements in place among Down Under and AGI, and shall not be required to be taxed under the BIA or reviewed or approved by the court or by the OSB.

17. **THIS COURT ORDERS** that this order is effective without the requirement for issuance and entering.



Schedule A – Form of Proposal Trustee’s Completion Certificate

[See next page]

ONTARIO
SUPERIOR COURT OF JUSTICE

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UNDER PIPE AND CABLE LOCATING LIMITED,
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PROPOSAL TRUSTEE'S CERTIFICATE OF COMPLETION

WHEREAS:

- a. on March 18, 2021, Down Under Pipe and Cable Locating Limited (“**Down Under**”) filed a notice of intention to make a proposal to creditors under the *Bankruptcy and Insolvency Act* (Canada) (the “**BIA**”) and on August 30, 2021, Down Under filed a proposal to creditors under the BIA (together, the “**Down Under NOI & Proposal**”).
- b. Albert Gelman Inc. acts as proposal trustee to the Down Under NOI & Proposal (in such capacity, the “**Proposal Trustee**”).
- c. on September 10, 2021, the Ontario Superior Court of Justice made an order (the “**September 10 Order**”) in this court file ordering *inter alia* (i) the withdrawal of the Down Under NOI & Proposal as of the Effective Time (as defined in the September 10 Order) and (ii) that upon the Proposal Trustee filing the present certificate certifying that the Proposal Trustee has completed the administration of

the Down Under NOI & Proposal proceeding, the Proposal Trustee shall be discharged as Proposal Trustee with respect to the Down Under NOI & Proposal.

THE PROPOSAL TRUSTEE HEREBY CERTIFIES that the Proposal Trustee has completed the administration of the Down Under NOI & Proposal.

DATED AT TORONTO, THIS _____ DAY OF _____ 2021.

ALBERT GELMAN INC., solely in its capacity as proposal trustee to the notice of intention to make a proposal and proposal to creditors of Down Under Pipe and Cable Locating Limited

Per: Bryan Gelman, CIRP, LIT, managing director

**IN THE MATTER OF THE PROPOSAL TO CREDITORS
PROCEEDINGS OF DREXLER CONSTRUCTION LIMITED,
FOLMUR CONSTRUCTION (2004) LIMITED AND DOWN UNDER
PIPE AND CABLE LOCATING LIMITED, CORPORATIONS
INCORPORATED UNDER THE ONTARIO *BUSINESS
CORPORATIONS ACT***

Estates No. 35-2721716

**ONTARIO
SUPERIOR COURT OF JUSTICE
Proceeding commenced in LONDON**

**ORDER
(DIP increase, approval of long-term financing,
approval of proposal trustee's fees and activities,
withdrawal of one notice of intention and proposal)**

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