

WILLIAM HARVEY JONES

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August 22, 2017

Chaitons LLP
Barristers & Solicitors
5000 Yonge Street, 10th. floor
Toronto Ontario
MM2N 7E9
Attention: Maya Poliak

And to the attached service list

Dear Sirs and Mesdames

RE: In the matter of the Notice of intention to Make a Proposal of Forte EPS Solutions Inc.

Please find attached hereto the supplementary motion record returnable on Thursday August 24, 2017.

The Debtor is seeking an order authorizing the undertaking of the SISP.

Yours very truly



William Harvey Jones

Court File No. 31-2253654

Estate File No. 31-2253654

ONTARIO
SUPERIOR COURT OF JUSTICE
IN BANKRUPTCY AND INSOLVENCY

**IN THE MATTER OF THE NOTICE OF INTENTION TO MAKE A PROPOSAL OF
FORTE EPS SOLUTIONS INC., A CORPORATION WITH A HEAD OFFICE IN THE
TOWN OF MIDLAND IN THE PROVINCE OF ONTARIO**

Applicant

MOTION RECORD
(Motion returnable August 24, 2017)

Date August 22, 2017

William Harvey Jones
Barrister & Solicitor
Suite 2702 – 401 Bay Street
Toronto, Ontario M5H 2Y4
Law Society # 38733J
Tel: (416) 596-8876
Fax: (416) 596-0907

Service List

Business Development Bank of Canada

Care of Chaitons LLP.
5000 Yonge Street
Toronto, Ontario
M2N 7E7
Email: maya@chaitons.com

Department of Justice (Canada)
The Exchange Tower
130 King Street West, Suite 3400
P.O. Box: 36
Toronto, Ontario
M5X 1K6
Email: diane.winners@justice.gc.ca

Ministry of Finance Legal Services Branch
Michael Starr Building
33 King Street West, 6th/ Floor
P.O. Box 627, Station A
Oshawa, Ontario
L1H 8H5

Email: kevin.ohara@ontario.ca

Pacific High Tech Ltd
Care of Folger Rubinoff LLP
77 King Street West, Suite 3000
Toronto, Ontario
M5K 1G8

Attention: W. Ross MacDougall

Email: rmacdougall@foglars.com

Travelers Leasing Ltd.
500-4180 Lougheed Highway
Burnaby, BC V 5C 6A7

Email: AFisher@travelersfinancial.com

First Source Mortgage Corporation
1 Valley Brook Drive, Suite 100
Tonto, Ontario
M3B 2S7

Email:

Western Ontario Mortgage Community Futures Development Corporation
330 West Street, Unit 10,
Brantford, Ontario
N3R 7V5
Attention: David Penton

Email: david@wocfdca.com

North Simcoe Community Futures Development Corporation
P.O. Box 8, 355 Cranston Crescent
Midland Ontario
L4R 4K6

Email: admin@nscfcd.on.ca

2306732 Ontario Inc.
Care of Angelo Mancini
Barrister & Solicitor
505 -7050m Weston Road
Woodbridge, Ontario
L4L 8G7

Emil: acm@manciniassociates.com

Court File No. 31-2253654

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ONTARIO
SUPERIOR COURT OF JUSTICE
IN BANKRUPTCY AND INSOLVENCY

**IN THE MATTER OF THE NOTICE OF INTENTION TO MAKE A PROPOSAL OF
FORTE EPS SOLUTIONS INC., A CORPORATION WITH A HEAD OFFICE IN THE
TOWN OF MIDLAND IN THE PROVINCE OF ONTARIO**

Applicant

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- 1. Notice of Motion;**
- 2. Draft Order;**
- 3. Affidavit of John Cipressi sworn August 22, 2017**

Date August 22, 2017

William Harvey Jones
Barrister & Solicitor
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TAB 1

Court File No. 31-2253654

Estate File No. 31-2253654

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

**IN THE MATTER OF THE NOTICE OF INTENTION TO MAKE A PROPOSAL OF
FORTE EPS SOLUTIONS INC., A CORPORATION WITH A HEAD OFFICE IN THE
TOWN OF MIDLAND IN THE PROVINCE OF ONTARIO**

NOTICE OF MOTION

(RETURNABLE ON AUGUST 24, 2017)

THE Debtor, Forte EPS Solutions Inc. (the “Debtor”) will make a motion to a Judge on the Commercial List at 10:00 am on Monday, July 31, 2017, or as soon thereafter as the motion can be heard, at The Court House, 7th Floor, 330 University Avenue, Toronto, Ontario M5G 1R7.

PROPOSED METHOD OF HEARING: The motion is to be heard

- in writing under subrule 37.12.1 (1) because it is on consent;
- in writing as an opposed motion under subrule 37.12.1 (4);
- orally.

THE MOTION IS FOR an order in the form contained at Tab 1 to the Debtor’s Motion record:

- (a) approving the Supplementary Report of the Proposal Trustee (the “Supplementary Report”) and the activities as described therein
- (b) authorizing the Debtor and empowering the Proposal Trustee on behalf of the Debtor to undertake the Sales and Investment Solicitation Process as outlined in the Supplementary Report; and
- (c) such further and other relief as counsel may advise and this Honourable Court may permit.

THE GROUNDS FOR THE MOTION ARE:

- (a) the Debtor was established in 2011 and operates as an expanded polystyrene products manufacturer;
- (b) on May 19, 2017, the Debtor filed and notice of intention to file a proposal (the “NOI”) pursuant to Section 50.4 (1) of the *Bankruptcy and Insolvency Act* RSC. 1985 c. B-3 as amended (the “BIA”). The Proposal Trustee consented and was appointed to act;
- (c) as of the date of the NOI the Applicant had four (4) secured creditors (the “Secured Creditors”) as follows:
 - (i) Business Development Bank of Canada (“BDC”) which is issued a Notice of Intention to enforce its security pursuant to Section 244 of the BIA on November 3, 2016, and which is owed approximately \$554,000.00. BDC has entered into a forbearance agreement whereby BDC will temporarily forbear from continuing to enforce its security through the appointment of a receiver;
 - (ii) Western Ontario Community Futures Development Corporation (Southern Ontario Fund for Investment in Innovation) which is owed approximately \$440,000.00;
 - (iii) North Simcoe Community Futures Development Corporation which is owed approximately \$250,000.00; and
 - (iv) Travelers Leasing Ltd. which is a lessor of certain capital equipment used by the Applicant and which is owed approximately \$400,000.00;
- (d) in addition to the Secured Creditors the Debtor is in arrears on wages and employee source deduction payments and rent due to its landlord and proposed DIP Lender, 16567 Highway 12 Holdings Inc.;
- (e) the Debtor continues to operate with the financial support of its shareholders and proposed DIP Lender, 16567 Highway 12 Holdings Inc. However, pending the completion of any sale of the assets of the Debtor, the Debtor will require additional funds to fund working capital requirements including the payment of

costs of wages, salaries, statutory obligations and raw material inventory. The proposed DIP Lender, continues to forego its monthly rental payments of \$18,400.00. Presently the estimated working capital shortfall to pay such obligations and to purchase critically needed raw material inventory, is approximately \$200,000.00. In addition, the Debtor anticipates future working capital requirements to amount to an additional \$90,000.00 until mid-September 2017 and that the costs of implementing the sales and Investment process contemplated hereunder will amount to at least \$100,000. In addition, the Debtor foresees a potential addition requirement of \$40,000.00 for contingencies. These expected costs and working capital shortfalls will simply an aggregate short-term financing need of at least \$450,000.00. The DIP Lender anticipates that it will be able to advance such funds to the Debtor as required from time to time, subject to the documentation of the DIP Loan Agreement and the grant of the DIP Charge as sought in this motion;

- (f) since its appointment, the Proposal Trustee has been assisting the Debtor in preparing cash flows and preparing a sale and marketing process;
- (g) in addition, since its appointment, the Proposal Trustee has communicated with stakeholders including the Secured Creditors and the Proposed DIP Lender regarding the NOI process;
- (h) since the Initial Order, the Debtor has received expressions of interest from third parties proposing to purchase the assets of the Debtor subject to the approval of the Creditors of the Debtor and the grant of a vesting order from this Court. The Debtor has been unable to settle the terms of an offer to purchase its assets with one of these potential purchasers. Since such agreements did not materialize, the Debtor must undertake a sales and investment solicitation program as described in the Supplementary Report of the Proposal Trustee;
- (i) sections 50.4, 50.6, 64.2 and 65.13 of the BIA; and
- (j) such further and other grounds as counsel may advise and this Honourable Court may permit.

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

- (a) the affidavit of John Cipressi sworn August 22, 2017;
- (b) the Supplementary Report and the appendices thereto; and
- (c) such further and other material as counsel may advise and this Honourable Court may permit.

Date August 22, 2017

William Harvey Jones
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TAB 2

ONTARIO
SUPERIOR COURT OF JUSTICE
IN BANKRUPTCY AND INSOLVENCY

THE HONOURABLE
JUSTICE

MONDAY, THE 24TH.
DAY OF AUGUST 2017

**IN THE MATTER OF THE NOTICE OF INTENTION TO MAKE A PROPOSAL
OF FORTE EPS SOLUTIONS INC., A CORPORATION WITH A HEAD OFFICE
IN THE TOWN OF MIDLAND IN THE PROVINCE OF ONTARIO**

ORDER

THIS MOTION, made by Forte EPS Solutions Inc. (the “Debtor”) was heard on this 24th. day of August 2017 at 330 University Avenue, Toronto, Ontario.

ON READING, the affidavit of John Cipressi sworn August 22, 2017 and filed, (the Cipressi Affidavit”), the second report of Albert Gelman Inc., in its capacity as a proposal trustee (the “Proposal Trustee”) dated July ne, 2017, (the “Second Report”) and on hearing submissions by counsel for the Debtor and counsel for the Proposal Trustee, and all others present, no others appearing although duly served as evidenced by the affidavit of William Harvey Jones, sworn August 22, , 2017, and filed.

1. **THIS COURT ORDERS** that, if necessary, the time for service of the Notice of Motion and the Motion Record is hereby abridged and validated so that this motion is properly returnable today and hereby dispenses with further service thereof.
2. **THIS COURT ORDERS** that the Supplementary Report and the activities of the Proposal Trustee and its counsel be and are hereby approved.

SALES AND INVESTMENT SOLICITATION PROCESS

3. **THIS COURT ORDERS** that the Debtor is authorized to carry out the Sales and Investment Solicitation Process in the manner described generally in Schedule “A” (the “SISP”).

(Signature of Judge)

SCHEDULE "A"

SALE AND INVESTMENT SOLCITATION PROCESS

Forte EPS Solutions Inc.

Defined Terms

1. All capitalized terms contained herein but not otherwise defined herein shall have the meanings given to them in the order granted by the Ontario Superior Court of Justice [Commercial List] (the “**Court**”) on August 24, 2017 (the “**Approving Order**”) in respect of the Forte EPS Solutions Inc.’s (“**Forte**” or the “**Company**”) proceedings commenced under the *Bankruptcy and Insolvency Act* (the “**BIA**”).
2. The terms of the SISP described herein shall, collectively, be referred to as the SISP Procedures throughout this document.

Role of the Proposal Trustee

3. The SISP will be administered by the Proposal Trustee on behalf of the Company. The roles and responsibilities of the Proposal Trustee are described in further detail throughout the SISP Procedures, however, the Proposal Trustee’s role in the SISP does not include managing, operating, or taking possession or control of any of the Company’s property, assets and undertaking.
4. The Company and its principals, employees and professional advisors shall cooperate with the Proposal Trustee throughout the SISP and provide documents and information requested as part of the SISP to the Proposal Trustee in a prompt fashion.

Commencement of SISP

5. Within three (3) business days of the date of the Approving Order (the “**Commencement Date**”), the Proposal Trustee shall contact parties previously identified by the Company who may either be interested in purchasing the assets of the Company or making and investment in the Company together with any other parties who have advised the Proposal Trustee of their interest (the “**Prospective SISP Participants**”) and provide those parties with a copy of the “teaser” document. The teaser document shall contain general details about the opportunity to either purchase the assets of Forte or make an investment in Forte (the “**Opportunity**”) as well as some general background information about the Company.

Due Diligence

6. Any Prospective SISP Participants who advise the Proposal Trustee of their interest in participating in the SISP shall execute a non-disclosure agreement (the “**NDA**”) in a form satisfactory to the Proposal Trustee.

7. Commencing on the Commencement Date (and after each respective Prospective SISP Participant has executed the NDA), the Proposal Trustee shall make available to the Prospective SISP Participant the following:
 - a) Confidential information memorandum (“CIM”) prepared by the Company with the assistance of the Proposal Trustee describing the SISP Procedures and the Opportunity as well as providing additional background information about the Company; and,
 - b) Access to an electronic data room, to be maintained by the Proposal Trustee, which shall contain information pertaining to the Opportunity along with other corporate financial and other documents as provided by the Company.

Offer Deadline

8. All offers must be submitted in writing to and received by the Proposal Trustee at 100 Simcoe Street, Suite 125, Toronto, Ontario, M5H 1L2, attention: Tom McElroy, by no later than 5:00 p.m. (Toronto time) on September 28, 2017 (the “**Offer Deadline**”) each offer must remain open for acceptance until 5:00 pm on October 13, 2017 (the “**Acceptance Date**”).

Qualifying Offers

9. An offer will only be considered a “Qualified Offer” if it is submitted before the Offer Deadline and if it meets the following minimum criteria:
 - a) It is irrevocable until after the Acceptance Date;
 - b) It must be accompanied by a deposit in the form of a certified cheque or bank draft payable to the Proposal Trustee “in trust” which is equal to at least fifteen (15%) percent of the total purchase price payable under the offer;
 - c) It includes evidence that the offeror has the financial means to complete the proposed acquisition or investment;
 - d) Includes an acknowledgement that the purchaser or investor has relied solely on an independent review and investigation and that its has not relied on any representation by the Company, the Proposal Trustee or their respective agents, employees or advisers;
 - e) The offer must not contain any contingency relating to due diligence or financing or any other material conditions precedent to the offeror’s obligation to complete the transaction;
 - f) It does not entitle any proposed purchaser to claim any break up, termination or similar fees or expense claim; and,
 - g) It must be on such terms and conditions as are typical in the context of sales conducted through a restructuring and insolvency proceeding, which terms shall include, without limitation: (i) acknowledgement that any purchase or investment is on an “as is where is basis” without any representation, warranties or conditions made or granted in connection therewith; (ii) that the completion of the transaction is conditional on the granting of an approval and vesting Order by the Court (the “**Approval and Vesting Order**”); and, (iii) a closing of the transaction to occur within three (3) business days of the Approval and Vesting Order being issued by the Court.

10. The Proposal Trustee shall review all offers submitted under the SISP and first determine whether any of the bidders are Related Persons (as that term is defined under section 4(2) of the BIA) and:
 - a. If none of the offers are made by parties that are Related Persons, then the determination of whether an offer is a Qualified Offer shall be made jointly by the Company and the Proposal Trustee;
 - b. If offers are made by one or more Related Persons, then the Proposal Trustee shall, in its sole discretion, determine what offers, if any, represent a Qualified Offer.
11. Each Qualified Offer shall be considered and, if necessary, there may be further discussions with some or all of the parties who have submitted a Qualified Offer with a view to clarifying terms. The Company shall participate in these discussions providing that a Related Person has not submitted a Qualified Offer.

Winning Offer

12. Providing that there are one or more Qualified Offers, the Proposal Trustee shall determine the highest and best offer within five (5) business days of the Offer Deadline and shall convey its decision to the Company at that time (the “**Best Offer**”).
13. The Company will have seven (7) business days from the date that they are advised of the Best Offer to either: (a) accept the Best Offer and enter into a definitive agreement of purchase and sale in connection therewith (the “**Sale Agreement**”); or (b) make a proposal to its creditors.

Court Approval

14. Within three (3) business days following the execution of the Sale Agreement, the Company will apply for the approval of the Court of the Winning Offer and the Sale Agreement (the “**Approval Motion**”) and an approval and vesting order in respect of same
15. The Proposal Trustee shall serve and file a report with respect to the SISP and Sale Agreement in advance of the Approval Motion.

Other Terms

16. All deposits received (except such deposit forming part of the Winning Offer, if there is a Winning Offer) shall be held by the Proposal Trustee “in trust” until the execution of the Sale Agreement. All deposits submitted by Prospective SISP Participants who did not submit the Winning Offer shall have same returned following execution of the Sale Agreement. The deposit forming part of the Winning Offer shall be dealt with in accordance with the Sale Agreement.

17. In the event that the Company chooses to make a proposal to its creditors pursuant to Part III, Division I of the BIA, all deposits received from Prospective SISP Participants shall be returned after the Company lodges its proposal with the Office of the Superintendent in Bankruptcy.
18. In the event that the deposit is forfeited for any reason it shall be forfeited as liquidated damages and not as a penalty.
19. All Qualified Offers (other than the Winning Offer) shall be deemed rejected on the date of the approval of the Sale Agreement by the Court or on the day that the Company lodges its proposal with the Office of the Superintendent in Bankruptcy, whichever is applicable.
20. Subject to the Approving Order or other order of the Court, the Company, in consultation with the Proposal Trustee, shall have the right to adopt such other rules for the SISP that, at its sole discretion, will better promote the goals of the SISP.

IN THE MATTER OF THE NOTICE OF INTENTION TO MAKE A PROPOSAL OF FORTE EPS INC.

(Short title of proceeding)

Court file no. 31-2253654
Estate File no. 31-2253654

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL DIVISION

ORDER

William Harvey Jones
Barrister and Solicitor
Suite 2702 – 401 Bay Street
Toronto, Ontario
M5H 2Y4
LSUC # 38733J

(416) 596-8876
Fax: (416) 596-0907

Solicitor for the Debtor

TAB 3

Court File No. 31-2253654

Estate File No. 31-2253654

ONTARIO
SUPERIOR COURT OF JUSTICE
IN BANKRUPTCY AND INSOLVENCY
IN THE MATTER OF THE NOTICE OF INTENTION TO MAKE A PROPOSAL OF
FORTE EPS SOLUTIONS INC., A CORPORATION WITH A HEAD OFFICE IN THE
TOWN OF MIDLAND IN THE PROVINCE OF ONTARIO

Applicant

SUPPLEMENTARY AFFIDAVIT OF JOHN CIPRESSI SWORN AUGUST 22, 2017

I, John Cipressi, businessman, of the City of Mississauga, Province of Ontario, make oath and say as follows:

1. I am a shareholder, director and the vice president and chief executive officer of Forte EPS Solutions Inc. the applicant herein (hereinafter the "Debtor") and as such I have personal knowledge of the facts and matters hereinafter deposed to except where such facts and matters are stated to be based upon information and belief and where so stated I verily believe the same to be true.

Orders Sought

2. The Debtor was seeking an order authorising the Debtor and empowering the Proposal Trustee to undertake a sales and investment solicitation program (hereinafter "SISP") as described in the Supplementary Report of the Proposal Trustee.

3. The earlier motion of the Debtor for an order for the authorization for the undertaking of a SISP was adjourned on July 31, 2017 in order to permit the Debtor to attempt to formulate an agreement with a purchaser as described in my July 23, 2017 affidavit. In my July 23 Affidavit at paragraph 16, I advised the court that the Debtor had received and entered into an unsolicited "Term Sheet" concerning the potential sale of the assets of the Debtor to a significant commercial enterprise (the "Proposed Purchaser"). Since July 23, 2017 discussions between the

Debtor and the Proposed Purchaser at first advanced and then terminated. Amongst other things, an estimated timeline to proceed the settlement of the terms of the acquisition by the Proposed Purchaser has been abandoned and the Proposed Purchaser has indicated to me that it wishes to participate any SISP if one is undertaken.

4. Accordingly, because of the abandonment of the Term Sheet by the Proposed Purchaser the rationale for the adjournment on July 31, 2017 of the motion for the SISP is now gone.

5. I believe that since the abandonment of the proposed transaction by the Proposed Purchaser the most beneficial manner of proceeding to the orderly liquidation of the assets of the Debtor will be through a SISP process managed by the Proposal Trustee as described in the Supplementary Report of the Proposal Trustee filed in these proceedings.

DIP Loan Facility and Commercial Credit Facility

6. Since its authorization of July 31, 2017, the Debtor has received an advance of \$40,000.00 pursuant to a DIP Loan Facility. I and my family remain will to advance further sums to ensure the operation of the Debtor pending any sale of the assets of the Debtor through the Proposal Process.

7. In addition, the landlord to the Debtor and DIP Loan Facility Lender, 16567 Highway 12 Holdings Limited has arranged a credit facility of up to \$100,000.00 with a supplier of polystyrene raw material used by the Debtor in the production of its expanded polystyrene products. Accordingly, the Debtor will have access to a supply of necessary raw material inputs to operate its business based on the credit worthiness of its DIP Lender.


8. I swear this affidavit in support for an order:

- (a) approving the Supplementary Report of the Proposal Trustee;
- (b) granting the Debtor's motion for authority to undertake a SISP; and
- (c) Such further and other relief as counsel may advise and as the Court may approve.

SWORN BEFORE ME at the)
City of Toronto, in the)
Province of Ontario this 22)
Day of August 2017)



A Commissioner, etc.



John Cipressi

**IN THE MATTER OF THE NOTICE OF INTENTION TO MAKE A PROPOSAL OF
FORTE EPS SOLUTIONS INC.**

(Short title of proceeding)

Court file no. 31-2253654
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ONTARIO
**SUPERIOR COURT OF JUSTICE
IN BANKRUPTCY AND INSOLVENCY**

MotionRecord

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Lawyer for the DEBTOR/APPLICANT