

IN THE COURT OF KING'S BENCH
WINNIPEG CENTRE
IN BANKRUPTCY AND INSOLVENCY

IN THE MATTER OF THE BANKRUPTCY AND INSOLVENCY ACT, R.S.C. 1985 c.B-3, AS AMENDED

AND IN THE MATTER OF THE NOTICE OF INTENTION TO MAKE A PROPOSAL OF UNITED SLEEP PRODUCTS, (A PARTNERSHIP)

TRUE COPY

ORDER

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(Matter No. 0196093 AJS)
(A. J. Stacey 204-934-2537)
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IN THE COURT OF KING'S BENCH
WINNIPEG CENTRE
IN BANKRUPTCY AND INSOLVENCY

THE HONOURABLE
MADAM JUSTICE GREENBERG

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Thursday, the 10th day of November, 2022

IN THE MATTER OF THE BANKRUPTCY AND INSOLVENCY ACT, R.S.C. 1985 c.B-3, AS AMENDED

AND IN THE MATTER OF THE NOTICE OF INTENTION TO MAKE A PROPOSAL OF UNITED SLEEP PRODUCTS, (A PARTNERSHIP)

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ORDER

THIS MOTION, made by United Sleep Products (“USP”) for an order extending the time in which the Proposal Trustee may file a proposal with the Official Receiver in the within proceedings to 11:59 PM. on Wednesday, December 28, 2022, and approving the creation of an Administration Charge was heard this day at the Law Courts Building, 408 York Avenue, Winnipeg, Manitoba.

ON READING the Notice of Motion, the affidavit of Gary Shnier, filed, the First Report of the Proposal Trustee dated November 8, 2022, and the Affidavit of Service of Tracey Lev sworn November 9, 2022, and hearing from counsel for USP, and from the Proposal Trustee, and no one appearing for any other person although properly served as appears from the aforementioned affidavit of service.

SERVICE VALIDATED

1. THIS COURT ORDERS that the time for service of the Notice of Motion and the supporting materials herein is hereby abridged and validated so that this motion is properly returnable today and hereby dispenses with further service thereof.

EXTENSION OF PROPOSAL FILING DATE

2. THIS COURT ORDERS that the time within which the Proposal Trustee may file a Proposal with the Official Receiver in the matter of the Proposal of United Sleep Products in these proceedings be and is hereby extended to 11:59 p.m. Central Standard Time on Wednesday, December 28, 2022.

ADMINISTRATION CHARGE

3. THIS COURT ORDERS that the Proposal Trustee and counsel to USP shall be entitled to the benefit of and are hereby granted a charge (the "**Administration Charge**") on all of USP's current and future assets, undertakings and properties of ever nature and kind whatsoever, and wheresoever situate, including all proceeds thereof and over the current and future assets of S-W Realty Inc., including its undertakings and properties of ever nature and kind whatsoever, and wheresoever situate, including all proceeds thereof (collectively the "**Property**"), which charge shall not exceed an aggregate amount of \$100,000.00, as security for (i) in respect of the Proposal Trustee and counsel to USP their respective professional fees and disbursements incurred at standard hourly rates

both before and after the making of this Order in respect of these proceedings. The Administration Charge hereby granted shall extend to and apply for the benefit of the Proposal Trustee and counsel for USP in the event of a bankruptcy of USP and any proceedings taken in respect thereof under the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended (the "**BIA**"), for those purposes having the priority provided for by the further terms of this Order.

4. THIS COURT ORDERS that the filing, registration or perfection of the Administration Charge shall not be required, and that the Charge shall be valid and enforceable for all purposes as against the Property, including as against any right, title or interest filed, registered, recorded or perfected subsequent to the Charge coming into existence, notwithstanding any such failure to file, register, record or perfect.

5. THIS COURT ORDERS that the Administration Charge shall constitute a charge on the Property and shall rank in priority to all other security interests, trusts, liens, charges and encumbrances, claims of secured creditors, statutory or otherwise (collectively "**Encumbrances**") in favour of any person or entity (a "**Person**") except for (i) the charges of Canadian Western Bank and the Government of Manitoba Department of Finance Taxation Division, and CWB National Leasing Inc., and Toyota Credit Canada Inc. in the Property, and (ii) the charge of any secured creditor, as defined in the BIA, who did not receive notice of this Motion, and (iii) any statutory encumbrance existing as at the date USP filed its Notice of Intention to Make a Proposal, being October 14, 2022 in favour of any Person which is a "secured creditor", as defined in the BIA, in respect of

(A) any amounts under the *Wage Earners' Protection Program* that are subject to a priority claim under the BIA, including source deductions from wages, employer health tax, workers compensation, vacation pay and banked overtime for employees, and (B) any amounts that are subject to a priority claim pursuant to section 81.5(1) of the BIA and subsection 227 (4) and (4.1) of the *Income Tax Act*, subsections 23 (3) and (4) of the *Canada Pension Plan* subsections 86(2) and 86 (2.1) of the *Employment Insurance Act*. Provided that nothing contained in this Order shall prevent USP from making a further motion to this Honourable Court for an Order (a "**Charge Amending Order**") that any or all of the Charges shall rank in priority to any or all of the security interests referred to in subparagraph (i) herein, upon such notice to secured creditors proposed to be affected by such Charge Amending Order as the Court may consider just.

6. THIS COURT ORDERS that the rights and remedies of those parties entitled to the protection of the Administration Charge shall not be limited or impaired in any way by (i) the pendency of these proceedings and any declaration of insolvency made herein; (ii) any application(s) for bankruptcy order(s) issued pursuant to the BIA; (iii) the filing of any assignment for the general benefit of creditors made pursuant to the BIA; (iv) the provisions of any federal or provincial statutes, or (v) any negative covenants, prohibitions or similar provisions with respect to borrowings, incurring of debt or the creation of any Encumbrance contained in any existing loan documents, security agreement or other instrument.

SERVICE AND NOTICE OF THIS ORDER

7. THIS COURT ORDERS that notice of this Order shall be posted by the Proposal Trustee on its website at www.lazergrant.ca/insolvency/current-proceedings/ .

8. THIS COURT ORDERS that the Proposal Trustee shall file with this Court and post on its website its Report dated November 8, 2022 and the cash flows of the Debtor as at November 8, 2022.

GENERAL

9. 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 respective agents in carrying out the terms of this Order. All courts, tribunals, regulatory or 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, to grant representative status to the Proposal Trustee in any foreign proceeding, or to assist the Debtor and /or the Proposal Trustee and their respective agents in carrying out the terms of this Order.

10. THIS COURT ORDERS that each of the Debtor and the Proposal Trustee be at liberty and is hereby authorized and empowered to apply to any court, tribunal, regulatory

or administrative body, wherever located, for the recognition of this Order and for assistance in carrying out the terms of this Order, and that the Proposal Trustee 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.

11. THIS COURT ORDERS that this Order and all of its provisions are effective as of 12:01 a.m. Central Standard Time on the date of this Order.

November 10, 2022


Greenberg J.