

COURT/ESTATE NO: 25-2038923

COURT COURT OF QUEEN'S BENCH OF ALBERTA IN BANKRUPTCY AND INSOLVENCY

JUDICIAL CENTRE CALGARY

IN THE MATTER OF THE *BANKRUPTCY AND INSOLVENCY ACT*, RSC 1985 c B-3, AS AMENDED

AND IN THE MATTER OF APACHE SUPERIOR PRINTING SOLUTIONS LTD.

DOCUMENT **APPLICATION BY HARDIE & KELLY INC., IN ITS CAPACITY AS TRUSTEE IN BANKRUPTCY OF APACHE SUPERIOR PRINTING SOLUTIONS LTD.**

ADDRESS FOR SERVICE AND CONTACT INFORMATION OF PARTY FILING THIS DOCUMENT

**BENNETT JONES LLP**  
Barristers and Solicitors  
4500, 855 – 2<sup>nd</sup> Street SW  
Calgary, Alberta T2P 4K7

Attention: Chris Simard/Jennie Buchanan  
Telephone No.: (403) 298-4485/3130  
Facsimile No.: (403) 265-7219  
Client File No.: 58368.9

**NOTICE TO RESPONDENTS**

This application is made against you. You are a respondent.

You have the right to state your side of this matter before the master/judge.

To do so, you must be in Court when the application is heard as shown below:

Date: Thursday, October 1, 2015  
Time: 10:00 a.m. on the Commercial List  
Where: Calgary Courts Centre, 601 – 5<sup>th</sup> Street SW, Calgary, AB  
Before Whom: The Honourable Justice C. M. Jones

Go to the end of this document to see what else you can do and when you must do it.

**Remedy claimed or sought:**

1. The Applicant, Hardie & Kelly Inc. (the "**Trustee**"), in its capacity as the trustee in bankruptcy of Apache Printing Solutions Ltd. ("**Apache**" or the "**Debtor**"), makes application for an Order substantially in the form attached hereto as Schedule "A":
  - (a) declaring that the within Application is properly returnable on Thursday, October 1, 2015 and that service of this Notice of Application on the service list is validated and deemed good and sufficient and that no persons other than those actually served are entitled to service of this Notice of Application;
  - (b) approving the sale of certain of Apache's assets to The Times Press Limited (the "**Prospective Purchaser**"), pursuant to an Agreement of Purchase and Sale entered into between the Prospective Purchaser and the Trustee dated September 28, 2015 (the "**Sale Agreement**");
  - (c) vesting in the name of the Prospective Purchaser all of Apache's right, title and interest, if any, in and to the Purchased Assets, as that term is defined in the Sale Agreement, free and clear of all encumbrances, claims, charges and liens, subject to the right of any of Apache's customers, or the Trustee, to request the return of, and be provided with, any information or property related to those customers;
  - (d) requiring the Prospective Purchaser to contact Apache's customers to determine whether each such customer requires the Prospective Purchaser to return any information or property related to that customer, and to convey such related information or property requested back to the customer, with all costs of notifying the customers and returning the information or property to be borne by the Prospective Purchaser, in accordance with the Sale Agreement;
  - (e) extinguishing all right, title and interest of Apache, if any, in and to the Purchased Assets;
  - (f) directing that the net proceeds from the sale of the Purchased Assets shall stand in the place and stead of the Purchased Assets, as if the Purchased Assets had not been sold (the "**Proceeds**"); and

- (g) directing that the Proceeds shall be held by the Trustee in trust until distribution; and
- (h) such further and other relief as set out in the Approval and Vesting Order attached hereto as Schedule "A".

**Grounds for making this application:**

*Background*

2. On September 23, 2015, Apache filed an assignment under section 49 of the *Bankruptcy and Insolvency Act* and the Trustee was appointed as trustee in bankruptcy of Apache's estate.
3. Apache was in the commercial printing business. As at the date of bankruptcy, its assets included its customer database, which included all information related to Apache's customers such as customer lists, customer data files and customer dockets.
4. On September 23, 2015, the Trustee was approached by the Prospective Purchaser offering to buy certain of Apache's assets, including, *inter alia*, its customer database.
5. Prior to being contacted by the Prospective Purchaser, the Trustee understood based on information provided by the former President and Chief Executive Officer of Apache that the customer database was of little to no value, as Apache's former employees were well-established in the industry and would quickly find alternative employment and attract former Apache customers to the former employees' new employers.
6. Following exploratory discussions with the Prospective Purchaser and Apache management, and for reasons outlined in the First Report of the Trustee dated September 28, 2015 (the "**Trustee's Report**"), the Trustee determined that it would be in the best interest of the estate of the Debtor to enter into a purchase and sale agreement for the sale of the Trustee's right, title and interest (if any) the Purchased Assets which are considered likely to depreciate rapidly in value, subject to Court approval.

*Material Terms of the Sale Agreement*

7. The Sale Agreement contains, *inter alia*, the following material terms:
  - (a) the Purchased Assets include:

- (i) all information related to the customers of Apache, including, but not limited to, customer lists in digital format, customer data files (including customer history, art files and any other files pertaining to the customers in digital format including the software), physical customer dockets and customer plates;
  - (ii) Apache's website and domain name; and
  - (iii) Miscellaneous computer equipment containing the above information;
- (b) the closing date of the transaction contemplated by the Sale Agreement is October 1, 2015 (the "**Closing**");
- (c) the Purchased Assets are being sold "as is, where is" with no representations or warranties;
- (d) the purchase price of the Purchased Assets is \$80,000.00 payable as follows:
  - (i) \$20,000.00 deposit which has been received by the Trustee and which shall be non-refundable, except in the event that the offer does not receive the approval of this Honourable Court; and
  - (ii) \$60,000.00 payable upon Closing;
- (e) the Prospective Purchaser is required to notify all customers whose contact information is included in the Customer Data within 30 days of Closing to ask whether such customer requires the Prospective Purchaser to return any information or property related to such customer in the Prospective Purchaser's possession. If any customer requests the return of information or property related to that customer, or if the Trustee requests the return of information or property related to any customer, the Prospective Purchaser agrees to convey such information or property to such customer or the Trustee, as the case may be within 15 days of such request, or October 24, 2015, whichever is later, with the costs of notifying and returning such property to be borne by the Prospective Purchaser;

- (f) the Sale Agreement specifically excludes any other assets of the Debtor, without limiting the generality of the foregoing, including any accounts receivable outstanding to the Debtor. In the event that any monies due to Apache are paid to the Prospective Purchaser subsequent to Closing, such monies shall be held in trust by the Prospective Purchaser and shall be paid to the Trustee within 3 business days of receipt of such payment, without offset of any kind; and
- (g) in the event that the Trustee requires access to the assets subject to the Sale Agreement for the administration of the estate, the Prospective Purchaser shall deliver such requested documents or records and provide access at anytime.

#### *Service and Notice*

- 8. Given the time sensitive nature of this Application, the Trustee has given notice of this Application only to Apache's primary secured creditor and its two largest unsecured creditors who hold the vast majority of the unsecured claims as listed on the Statement of Affairs of the Debtor.
- 9. No notice of this Application was given to Apache's customers. The Prospective Purchaser has agreed to purchase the Purchased Assets subject to the rights of Apache's customers and the Trustee to request the return of any information or property belonging to those customers, in addition to which, there are many hundreds of customers, making service administratively and financially difficult.

#### *Approval of Sale*

- 10. The Trustee has, subject to approval of this Honourable Court, entered into the Sale Agreement with the Prospective Purchaser for the sale of the Purchased Assets. The Trustee's authority to enter the Sale Agreement is pursuant to section 18(a) of the *Bankruptcy and Insolvency Act* which allows the Trustee to “[t]ake conservatory measures and summarily dispose of property that is perishable or likely to depreciate rapidly in value”.
- 11. As set out in the Trustee's report, the value of Apache's customer list and historical sales information is likely to depreciate rapidly in value as the time period in which the customers

are not serviced increases and Apache is at constantly increasing risk of losing any residual value from its customer relationship as time lapses from the date of bankruptcy.

12. The sale of Apache's right, title and interest, if any, in and to the Purchased Assets should be approved for the following reasons:
  - (a) the Purchased Assets are likely to depreciate rapidly in value as the time in which Apache's former customers are not serviced increases.
  - (b) the process leading to the sale of the Assets was reasonable in the circumstances, given the rapidly depleting value inherent in the Purchased Assets, such that they would be worthless if subject to a typical marketing process;
  - (c) the Prospective Purchaser is at arm's length with Apache;
  - (d) the consideration to be received for the sale of the Purchased Assets is reasonable and fair, given that the Purchased Assets will only retain their value for a limited time;
  - (e) Apache's major secured creditor and its two largest unsecured creditors who hold the vast majority of the unsecured claims as listed on the Statement of Affairs of the Debtor;
  - (f) the closing date for the transaction contemplated by the Sale Agreement is October 1, 2015;
  - (g) the Sale Agreement affords sufficient protection to Apache's former customers; and
  - (h) The sale will save the Trustee the administrative costs of removing the physical Purchased Assets from Apache's premises.
13. Such further and other grounds as counsel may advise and this Honourable Court may permit.

**Material or evidence to be relied on:**

14. The First Report of the Trustee dated September 28, 2015, filed.
15. Affidavit of David Gordon-Cooper, sworn September 28, 2015, to be filed.

16. Such further and other material as counsel may advise and this Honourable Court may permit.

**Applicable rules:**

17. None.

**Applicable Acts and regulations:**

18. The *Bankruptcy and Insolvency Act*, RSC 1985, c B-3, as amended, ss. 18, 19, 30, 34 and 81.
19. Such further and other Acts and regulations as counsel may advise and this Honourable Court may permit.

**Any irregularity complained of or objection relied on:**

20. None.

**How this Application is to be heard or considered:**

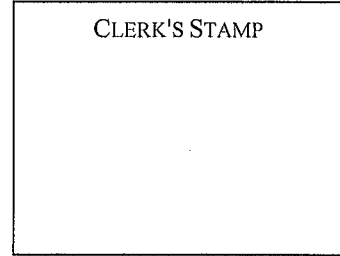
21. In person before the Honourable Justice C. M. Jones on the Commercial List.

**WARNING**

If you do not come to Court either in person or by your lawyer, the Court may give the applicant(s) what they want in your absence. You will be bound by any order that the Court makes.

If you want to take part in this application, you or your lawyer must attend in Court on the date and at the time shown at the beginning of the form. If you intend to rely on an affidavit or other evidence when the application is heard or considered, you must reply by giving reasonable notice of the material to the applicant.

**SCHEDULE "A"**



COURT/ESTATE NO. 25-2038923

COURT COURT OF QUEEN'S BENCH OF ALBERTA IN  
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JUDICIAL CENTRE CALGARY

IN THE MATTER OF THE *BANKRUPTCY AND  
INSOLVENCY ACT*, RSC 1985 c B-3, AS AMENDED

AND IN THE MATTER OF APACHE SUPERIOR  
PRINTING SOLUTIONS LTD.

DOCUMENT **ORDER**

ADDRESS FOR SERVICE AND CONTACT  
INFORMATION OF PARTY FILING THIS  
DOCUMENT **BENNETT JONES LLP**  
Barristers and Solicitors  
4500, 855 – 2<sup>nd</sup> Street SW  
Calgary, Alberta T2P 4K7

Attention: Chris Simard/Jennie Buchanan  
Telephone No.: (403) 298-4485/3130  
Facsimile No.: (403) 265-7219  
Client File No.: 58368.9

**DATE ON WHICH ORDER WAS PRONOUNCED: October 1, 2015**

**LOCATION WHERE ORDER WAS PRONOUNCED: Calgary**

**NAME OF JUSTICE WHO MADE THIS ORDER: The Honourable Justice C. M. Jones**

UPON the application of Hardie & Kelly Inc., in its capacity as Trustee in Bankruptcy (the "Trustee") of Apache Superior Printing Ltd. (the "Debtor") for an order approving the sale transaction (the "Transaction") contemplated by an Agreement of Purchase and Sale (the "Sale Agreement") between the Trustee and The Times Press Limited (the "Purchaser") made as of September 28, 2015 and appended to the First Report of the Trustee dated September 28, 2015 (the "Trustee's Report"), and vesting in the Purchaser the Debtor's right title and interest, if any, in and to the assets described in the Sale Agreement (the "Purchased Assets"); AND UPON



having read the Application, the Trustee's Report and the Affidavit of David Gordon-Cooper sworn September 28, 2015; AND UPON hearing from counsel for the Trustee and any other interested party present;

IT IS HEREBY ORDERED AND DECLARED THAT:

#### **DEFINED TERMS**

1. All capitalized terms not otherwise defined in this Order shall bear the meaning given to them in the Sale Agreement.

#### **SERVICE**

2. The application for this Order is properly returnable as of the date hereof, and the time for service of the notice of the application for this Order is hereby abridged and service thereof is validated and deemed good and sufficient, and no persons other than those on the service list are entitled to service of the said notice of application.

#### **APPROVAL OF THE SALE AGREEMENT AND THE TRANSACTION**

3. The Trustee is hereby authorized and directed, *nunc pro tunc*, to execute and deliver the Sale Agreement to the Purchaser, conclude the Transaction contemplated by the Sale Agreement, and to take all such steps and execute all such deeds, documents and instruments as may reasonably be necessary or desirable to complete the Transaction contemplated therein substantially in accordance with its terms. Following execution and delivery of the Sale Agreement, the Trustee and the Purchaser may agree to amendments to the Sale Agreement which do not materially or adversely alter the Sale Agreement or the Transaction.
4. The Sale Agreement and the Transaction are hereby approved and ratified and it is hereby declared that the Sale Agreement is commercially reasonable and in the best interests of the Debtor's estate and its creditors.

#### **VESTING OF PROPERTY**

5. Upon the Trustee filing a certificate (the "Trustee's Certificate"), substantially in the form attached as Schedule "A" hereto, all of the Debtor's right, title and interest, if any, in and to the Purchased Assets described in the Sale Agreement shall hereby 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, all charges, security interests or claims evidenced by registrations pursuant to the *Personal Property Security Act* (Alberta) 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, **except that** the Purchased Assets shall remain subject to:

- (a) the right of any of the Debtor's customers to request the return of, and the obligation of the Purchaser to convey, any information or property related to that customer pursuant to paragraphs 6 and 7 hereof; and
  - (b) the right of the Trustee to request the return of, and the obligation of the Purchaser to convey, any information or property related to any of the Debtor's customers pursuant to paragraph 7 hereof.
6. The Purchaser shall, within 30 days of the date of this Order, contact all of the Debtor's customers whose contact information is included in the Customer Data, for the purposes of asking whether each such customer requires the Purchaser to return any information or property related to that customer that was conveyed to the Purchaser as part of the Transaction, and the cost of contacting the Debtor's customers shall be borne solely by the Purchaser.
7. If any of the Debtor's customers requests the return of information or property related to that customer, or the Trustee requests the return of information or property related to any of the Debtor's customers, the Purchaser shall convey such information or property to such customer or the Trustee, as the case may be, within 15 days of the request for same, or October 24, 2015, whichever is later, and the cost of conveying such information or property shall be borne solely by the Purchaser.

8. Any request made by a customer to the Purchaser for the return of the customer's information or property shall not be deemed to be, and is not, a reclamation of property claim for the purposes of section 81 of the *Bankruptcy and Insolvency Act*, RSC 1985, c B-3, as amended.
9. 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 (the "Proceeds").
10. The Trustee shall hold the Proceeds in trust until further Order of the Court.
11. The Purchaser shall, by virtue of the completion of the Transaction, have no liability of any kind whatsoever in respect of any Claims against the Debtor, except for requests for the return of information or property by the Debtor's customers or the Trustee as provided for in the Sale Agreement and paragraphs 5 to 7 of this Order.
12. The Debtor and all persons who claim by, through or under the Debtor in respect of the Purchased Assets, save and except for the rights of the Debtor's customers and the Trustee to request the return of property or information as provided for in the Sale Agreement and paragraphs 5 to 7 of this Order, shall stand absolutely barred and foreclosed from all right, title, interest and equity of redemption of the Purchased Assets and, to the extent that any such persons remains in possession or control of any of the Purchased Assets, they shall forthwith deliver possession thereof to the Purchaser.
13. The Purchaser shall be entitled to hold and enjoy the Purchased Assets for its own use and benefit without any interference by the Debtor or any person claiming by or through or against the Debtor, save and except the rights of the Debtor's customers and the Trustee to request the return of property or information as provided for in the Sale Agreement and paragraphs 5 to 7 of this Order.

14. The Trustee shall file with the Court a copy of the Trustee's Certificate, forthwith after delivery thereof to the Purchaser.
15. The Transaction shall not be void or voidable at the instance of any creditor or creditors of the Debtor, nor shall it constitute nor be deemed to be a transfer at undervalue, fraudulent preference, assignment, fraudulent conveyance or other reviewable transaction under the *Bankruptcy and Insolvency Act*, RSC 1985, c B-3, as amended 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.
16. The Trustee, the Purchaser, and any other interested party, shall be at liberty to apply for further advice, assistance and directions as may be necessary in order to give full force and effect to the terms of this Order and to assist and aid the Trustee and the Purchaser in closing the Transaction.

#### **MISCELLANEOUS MATTERS**

17. This Court hereby requests the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada to give effect to this Order and to assist the Trustee and its 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 Trustee, as an officer of this Court, as may be necessary or desirable to give effect to this Order or to assist the Trustee and its agents in carrying out the terms of this Order.
18. Service of this Order on the Service List by email facsimile, registered mail, courier or personal delivery shall constitute good and sufficient service of this Order, and no persons other than those on the Service List are entitled to be served with a copy of this Order.

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J.C.Q.B.A.

**SCHEDULE "A"**

COURT/ESTATE NO. 25-2038923

COURT COURT OF QUEEN'S BENCH OF ALBERTA IN  
BANKRUPTCY AND INSOLVENCY

JUDICIAL CENTRE CALGARY

IN THE MATTER OF THE *BANKRUPTCY AND  
INSOLVENCY ACT*, RSC 1985 c B-3, AS AMENDED

AND IN THE MATTER OF APACHE SUPERIOR  
PRINTING SOLUTIONS LTD.

DOCUMENT **TRUSTEE'S CERTIFICATE**

ADDRESS FOR SERVICE AND CONTACT  
INFORMATION OF PARTY FILING THIS  
DOCUMENT

**BENNETT JONES LLP**  
Barristers and Solicitors  
4500, 855 – 2<sup>nd</sup> Street SW  
Calgary, Alberta T2P 4K7

Attention: Chris Simard/Jennie Buchanan  
Telephone No.: (403) 298-4485/3130  
Facsimile No.: (403) 265-7219  
Client File No.: 58368.9

All capitalized terms not otherwise defined herein shall have the meanings ascribed to them in the Approval and Vesting Order of the Honourable Mr. Justice Jones made in these proceedings on the 1<sup>st</sup> day of October, 2015 (the "Vesting Order");

Pursuant to a Certificate of Appointment dated September 23, 2015 (the "Certificate of Appointment"), the Trustee was appointed as Trustee of Apache;

**THE TRUSTEE HEREBY CERTIFIES** that the Transaction approved in the Vesting Order has closed, and the Sale Agreement and Vesting Order shall now be effective according to their terms.

DATED this \_\_\_\_ day of October, 2015.

**HARDIE & KELLY INC.**, in its capacity  
as Trustee of Apache Superior Printing Ltd.

Per: \_\_\_\_\_  
Name:  
Title: