

COURT FILE NUMBER

25-2038923

COURT

COURT OF QUEEN'S BENCH OF ALBERTA,
IN BANKRUPTCY

JUDICIAL CENTRE

CALGARY

IN THE MATTER OF THE *BANKRUPTCY*
AND INSOLVENCY ACT

AND IN THE MATTER OF THE
BANKRUPTCY OF
APACHE SUPERIOR PRINTING LTD.

DOCUMENT

SUPPLEMENTAL TO THE FIRST
REPORT OF THE TRUSTEE, HARDIE &
KELLY INC.
SEPTEMBER 30, 2015

ADDRESS FOR SERVICE AND
CONTACT INFORMATION OF
PARTY FILING THIS
DOCUMENT

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SUPPLEMENTAL TO THE FIRST REPORT OF THE TRUSTEE
HARDIE & KELLY INC.
SEPTEMBER 30, 2015

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INTRODUCTION

1. On September 23, 2015, Apache Superior Printing Ltd. (“**Apache**” or the “**Company**”) filed an assignment in bankruptcy pursuant to the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3 (the “**BIA**”) with Hardie & Kelly Inc. appointed as trustee (the “**Trustee**”) of the bankrupt estate pending affirmation at the first meeting of creditors.
2. On September 29, 2015, the Trustee filed its First Report to provide information to this Honourable Court with respect to the following:
 - (a) the background of the Company;
 - (b) details surrounding the material assets and liabilities of the Company;
 - (c) the activities of the Trustee since the date of bankruptcy;
 - (d) details surrounding a purchase and sale agreement entered into by the Trustee and The Times Press Limited (the “**TPL Purchase Agreement**”).
3. The Trustee is filing this supplemental to the First Report (the “**Supplemental to the First Report**”) to provide additional information to this Honourable Court with respect to the transfer of certain computer equipment, as well as the Trustee’s efforts to mitigate the impact of the transfer of such computer equipment.
4. Capitalized terms not defined in this Supplemental to the First Report are as defined in the First Report or the TPL Purchase Agreement.

TRANSFER OF CERTAIN COMPUTER EQUIPMENT

5. The TPL Purchase Agreement contemplates the transfer of Computer Equipment, which includes, *inter alia*, a web server, a mail server and two desktops formerly used by Apache staff for the customer order processing.
6. The Trustee is aware that the Apache mail server contains e-mails of former Apache employees that will ultimately be transferred to the Purchaser pursuant to the TPL Purchase Agreement.

7. The Trustee understands from the supplemental affidavit of Mr. Gordon-Cooper, sworn on September 30, 2015 and filed in these proceedings, that a term of employment with Apache was that employees agree to the terms of Apache's Internet and E-mail Usage Policy (the "**Policy**") which states that all e-mail accounts and all information and messages that were created, sent, received or stored on Apache's email system were the sole property of Apache and Apache had the right to monitor, access, read, delete, copy, disclose and use email without prior notice to the originators or recipients of such email.
8. Notwithstanding the existence of the Policy, the Trustee and TPL have entered into a Supplement to the TPL Purchase Agreement (the "**Supplemental TPL Purchase Agreement**"), attached hereto as Appendix "A", which stipulates that prior to the transfer of the mail server, the Trustee will instruct the former Apache information technology contractor (the "**Apache IT Contractor**") to delete the email data of all former Apache employees except for eight former Apache sales personnel (the "**Former Sales Personnel**"). In addition, TPL has agreed that any emails of the Former Sales Personnel for the period prior to the date of bankruptcy will be deleted. Accordingly, a term of the Supplemental TPL Purchase Agreement is that transfer of the mail server shall only occur upon confirmation from the Apache IT Contractor that the above described deletions have occurred.
9. The Trustee understands from TPL that they require the email data of the Former Sales Personnel for the period subsequent to the date of bankruptcy as they anticipate that there may be unfulfilled orders that are being sent to Apache care of the Former Sales Personnel which would appropriately be included in the definition of Customer Data as per the TPL Purchase Agreement. In order to mitigate any privacy concerns that may arise in the circumstances, TPL has agreed to restrict the scope of the e-mails they will acquire to e-mails received subsequent to the date of bankruptcy, as it is reasonably anticipated that any orders received during this period could be considered "live" orders.
10. In addition, the Trustee has asked the Apache IT Contractor to review the two desktops contemplated to be included in the Purchased Assets for the existence of personal and confidential information which was backed up by the Apache IT Contractor in the event

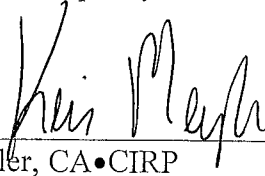
that the former employees request access to such documents. The contents of the original version of such personal information was reviewed with TPL who agreed that it could be deleted from the desktops prior to closing of the TPL Purchase Agreement, in respectful anticipation of the Court's approval of the TPL Purchase Agreement.

All of which is respectfully submitted this 30th day of September 2015

Hardie & Kelly Inc.

In its capacity as Trustee of Apache Superior Printing Ltd.
and not in its personal capacity.

Per:



Kevin Meyler, CA • CIRP
Senior Vice President

APPENDIX A

SUPPLEMENT TO AGREEMENT

Dated as of September 30, 2015

SUPPLEMENT TO AGREEMENT (this "Supplement") dated as of September 30, 2015, by and among Hardie & Kelly Inc., in its capacity as Trustee in Bankruptcy of Apache Superior Printing Ltd., and not in its personal capacity (the "Vendor"), and The Times Press Limited (the "Purchaser").

WHEREAS the Vendor and the Purchaser are parties to that certain Purchase Agreement, dated as of the * day of September, 2015 (the "Purchase Agreement"), pertaining to the sale of the Purchased Assets, as that term is defined in the Purchase Agreement. All capitalized terms not otherwise defined herein shall bear the meaning given to them in the Purchase Agreement.

AND WHEREAS the Computer Equipment and Discs includes Apache's mail server, which contains e-mail correspondence sent to the former employees of Apache and the parties hereto wish to provide in this Supplement for the manner in which these emails shall be handled, on the terms set forth below.

NOW THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged by the Vendor and the Purchaser, the parties hereto agree as follows:

1. Section 2.1 of the Purchase Agreement is hereby amended to include the following provision:

2.1.4 e-mail correspondence stored on the mail server that was sent to the following e-mail addresses on or after September 24, 2015 (the "Former Employee E-mails");

1. audrey@apacheprint.com;
2. carlyb@apacheprint.com;
3. claus@apacheprint.com and cj@apacheprint.com;
4. dereks@apacheprint.com;
5. mikes@apacheprint.com;
6. neilj@apacheprint.com;
7. sharon@apacheprint.com; and
8. vanessas@apacheprint.com

2. Section 2.6 of the Purchase Agreement is hereby amended to include the following provision:

2.6.1 the Computer Equipment and Discs, with the exception of the mail server, which will be provided immediately upon confirmation from the former Apache IT contractor that all e-mails other than the Former Employee E-mails have been permanently deleted from the mail server; and

3. Section 2.9 of the Purchase Agreement is hereby amended to include the following provisions:



2.9.1 Notwithstanding the sale of the Former Employee E-mails, the Purchaser agrees that it will arrange to have all Former Employee E-mails redirected to a central repository and will conduct a review of all such e-mails for the purpose of determining whether the information contained therein relates to the business of Apache.

To the extent that the information contained in a Former Employee E-mail relates to the business of Apache, the Purchaser may contact the sender for any purpose related to the business of Apache.

In the unlikely event that the information contained in a Former Employee E-mail is determined not to be related to the business of Apache:

2.9.1.1 where the e-mail was sent by a known former customer of Apache, the Purchaser agrees to contact the sender for the sole purpose of advising that: (i) the intended recipient is no longer affiliated with the e-mail address in question; and (ii) the Purchaser has purchased certain of the assets of Apache and is ready and willing to assist former Apache customers with their printing needs. Immediately thereafter, the Purchaser agrees to permanently delete the e-mail in question.

2.9.1.2 where the e-mail was sent by a person that is not a known former customer of Apache, the Purchaser agrees to contact the sender for the sole purpose of advising that: (i) the intended recipient is no longer affiliated with the e-mail address in question; (ii) the sender should no longer send personal e-mails to the intended recipient at the e-mail address in question. Immediately thereafter, the Purchaser agrees to permanently delete the e-mail in question.

4. Section 4.9 of the Purchase Agreement is hereby amended to include the following provision:

4.9.1 Each party acknowledges that the personal information contained in the Customer Data and Former Employee E-mails (collectively, "Disclosed Personal Information") is necessary:

- (a) for the parties to determine whether to proceed with the Transaction; and
- (b) if the determination is to proceed with the Transaction, for the parties to carry out and complete the Transaction.

4.9.2 The Purchaser shall at all times prior to the closing of the Transaction, keep strictly confidential all Disclosed Personal Information provided to it, and shall instruct those employees responsible for processing such Disclosed Personal Information to protect the confidentiality of that information in a manner consistent with the Purchaser's obligations hereunder. The Purchaser shall restrict access to the Disclosed Personal Information to those employees or service providers of the Purchaser who have a *bona fide* need to access that information in order to fulfill their obligations in the course of their employment or in providing services to the Purchaser.

Handwritten signature and initials in black ink, located in the bottom right corner of the page.

4.9.3 Where the parties do not complete or proceed with the Transaction, the Purchaser shall, at the Vendor's option, destroy the Disclosed Personal Information or return it to the Vendor.

4.9.4 The Purchaser covenants and agrees to: (i) prior to the completion of the Transaction, collect, use and disclose the Disclosed Personal Information solely for the purpose of reviewing and completing the Transaction, including determining to complete such Transaction; (ii) after the completion of the Transaction, collect, use and disclose the Disclosed Personal Information only for those purposes for which the Disclosed Personal Information was initially collected from, or in respect of, the individual to which such Disclosed Personal Information relates or for the completion of the Transaction, unless (a) the the Purchaser has first notified such individual of such additional purpose, and where required by law, obtained the consent of such individual to such additional purpose, or (b) such use or disclosure is permitted or authorized by law, without notice to, or consent from, such individual; (iii) where required by law, promptly notify the individuals to whom the Disclosed Personal Information relates that the transactions contemplated herein have taken place and that the Disclosed Personal Information has been disclosed to the Purchaser; (iv) return or destroy the Disclosed Personal Information, at the option of the Vendor, should the transactions contemplated herein not be completed; and (v) use all reasonable efforts to protect and safeguard the Disclosed Personal Information including, without limitation, to protect the Disclosed Personal Information from loss or theft, or unauthorized access disclosure, copying, use, modification, disposal or destruction and promptly advise Vendor should any such loss, theft or unauthorized activity occur prior to the completion of the Transaction.

[Signature Page to follow]

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