

**ONTARIO
SUPERIOR COURT OF JUSTICE
(Commercial List)**

THE HONOURABLE) FRIDAY, THE
)
JUSTICE NEWBOULD) 7th DAY OF AUGUST, 2015

**IN THE MATTER OF THE *BANKRUPTCY AND INSOLVENCY ACT*,
R.S.C. 1992, c. 27, s.2, AS AMENDED**

**AND IN THE MATTER OF CERTAIN PROCEEDINGS TAKEN IN THE ISLE OF MAN WITH
RESPECT TO BANNERS BROKER INTERNATIONAL LIMITED**

**APPLICATION OF MILES ANDREW BENHAM AND PAUL ROBERT APPLETON, IN THEIR
CAPACITY AS JOINT LIQUIDATORS OF BANNERS BROKER INTERNATIONAL LIMITED,
UNDER PART XIII OF THE *BANKRUPTCY AND INSOLVENCY ACT* (CROSS-BORDER
INSOLVENCIES)**



ORDER

**(Approval of Receiver's Activities, Fees and Disbursements, Additional Investigatory
Authority and Approval of Settlement with 2341620 Ontario Corporation)**

THIS MOTION, made by msi Spergel inc., in its capacity as receiver and manager of Banners Broker International Limited ("**Debtor**") pursuant to the Order of the Honourable Justice Matheson, issued August 22, 2014 ("**Receiver**") and by Miles Andrew Benham and Paul Robert Appleton, in their capacity as Joint Liquidators and as Foreign Representative ("**Foreign Representative**") of the Debtor pursuant to the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3 ("**BIA**") for an Order approving the Receiver's activities, fees and disbursements, granting certain additional authority to the Receiver, and approving a settlement of certain claims with the respondent, 2341620 Ontario Corporation ("**234**"), was heard this day at the Court House at 330 University Avenue, Toronto, Ontario.

ON READING the notice of motion of the Receiver and the Foreign Representative and the Third Report of the Receiver, dated July 30, 2015 ("**Third Report**"), filed, and on hearing submissions from counsel for the Receiver and the Foreign Representative, counsel for Christopher G. Smith and 234, and counsel for Rajiv Dixit:

Service

1. **THIS COURT ORDERS** that the time for service of the Notice of Motion and Motion Record of the Receiver and Foreign Representative is hereby abridged and validated so that this motion is properly returnable today and hereby dispenses with further service thereof.

Court Approval of Receiver's Activities, 234 Settlement, Fees and Disbursements

2. **THIS COURT ORDERS** that the Third Report and the activities of the Receiver described therein be and are hereby approved.

3. **THIS COURT ORDERS** that the 234 Settlement (as described in the Third Report) be and is hereby authorized and approved.

4. **THIS COURT ORDERS** that the Receiver's interim statement of receipts and disbursements, as at May 31, 2015, as appended to the Third Report, be and is hereby approved.

5. **THIS COURT FURTHER ORDERS** that the fees and disbursements of the Receiver and its counsel, Cassels Brock and Blackwell LLP, for services rendered from August 22, 2014 to May 31, 2015, as particularized in the affidavits of Philip Gennis, sworn July 22, 2015 and Larry Ellis, sworn July 28, 2015, appended to the Third Report, be and are hereby approved.

Additional Investigatory Authority

6. **THIS COURT FURTHER ORDERS** that any capitalized terms not otherwise defined herein shall have the meanings given to such terms in the Initial Recognition Order (Foreign Main Proceeding) dated August 22, 2014 (the "**Recognition Order**") and Supplemental Order (Foreign Main Recognition), dated August 22, 2014 ("**Supplemental Order**").

7. **THIS COURT FURTHER ORDERS** that the Receiver's powers and authorities as set out in the Recognition Order be expanded to include the authorities set out in paragraphs 8 and 9 below in respect of the following corporations:

- (a) 8643989 Canada Inc. o/a Dixit Consortium Inc. ("**Dixit Consortium**"); and
- (b) Dreamscape Ventures Ltd. ("**Dreamscape**").

8. **THIS COURT FURTHER ORDERS** that all persons having notice of this Order advise the Receiver of the existence of any books, documents, securities, contracts, orders, corporate and accounting records, and any other papers, records and information of any kind related to the business or affairs of Dixit Consortium and Dreamscape, and any computer programs, computer tapes, computer disks, servers, electronic backups, or other data storage media containing any such information (the foregoing, collectively, "**Records**") in their possession or control in relation to Dixit Consortium and Dreamscape and shall provide to the Receiver or permit the Receiver to make, retain and take away copies thereof and grant to the Receiver unfettered access to and use of accounting, computer, software and physical facilities relating thereto, provided however that nothing in this Order shall require the delivery of Records, or the granting of access to Records, which may not be disclosed or provided to the Receiver due to the privilege attaching to solicitor-client communication or due to statutory provisions prohibiting such disclosure.

9. **THIS COURT FURTHER ORDERS** that if any Records are stored or otherwise contained on a computer or other electronic system of information storage, whether by independent service provider or otherwise, all Persons in possession or control of such Records shall forthwith give unfettered access to the Receiver for the purpose of allowing the Receiver to recover and fully copy all of the information contained therein whether by way of printing the information onto paper or making copies of computer disks or such other manner of retrieving and copying the information as the Receiver in its discretion deems expedient, and shall not alter, erase or destroy any Records without the prior written consent of the Receiver. Further, for the purposes of this paragraph, all Persons shall provide the Receiver with all such assistance in gaining immediate access to the information in the Records as the Receiver may in its discretion require including providing the Receiver with instructions on the use of any computer or other system and providing the Receiver with any and all access codes, account names and account numbers that may be required to gain access to the information.

Amendment of Supplemental Order

10. **THIS COURT FURTHER ORDERS THAT** paragraph 6 of the Supplemental Order be and is hereby amended to include the following additional powers:

RECEIVER'S POWERS

6. **THIS COURT ORDERS THAT** the receiver is hereby empowered and authorized, but not obligated, to act at once in respect of the Property and, without in any way limiting the generality of the foregoing, the Receiver is hereby expressly empowered and authorized to do any of the following where the Receiver considers it necessary or desirable:

[...]

- (g) to receive, preserve, and protect the Property, or any part or parts thereof, including, but not limited to, the changing of locks and security codes, the relocating of Property to safeguard it, the engaging of independent security personnel, the taking of physical inventories and the placement of such insurance coverage as may be necessary or desirable;
- (h) to manage, operate, and carry on the business of the Debtor, including the powers to enter into any agreements, incur any obligations in the ordinary course of business, cease to carry on all or any part of the business, or cease to perform any contracts of the Debtor;
- (i) to purchase or lease such machinery, equipment, inventories, supplies, premises or other assets to continue the business of the Debtor or any part or parts thereof;
- (j) to receive and collect all monies and accounts now owed or hereafter owing to the Debtor and to exercise all remedies of the Debtor in collecting such monies, including, without limitation, to enforce any security held by the Debtor;
- (k) to settle, extend or compromise any indebtedness owing to the Debtor;
- (l) to execute, assign, issue and endorse documents of whatever nature in respect of any of the Property, whether in the Receiver's name or in the name and on behalf of the Debtor, for any purpose pursuant to this Order;
- (m) to initiate, prosecute and continue the prosecution of any and all proceedings and to defend all proceedings now pending or hereafter instituted with respect to the Debtor, the Property or the Receiver, and to

settle or compromise any such proceedings. The authority hereby conveyed shall extend to such appeals or applications for judicial review in respect of any order or judgment pronounced in any such proceeding;

(n) to market any or all of the Property, including advertising and soliciting offers in respect of the Property or any part or parts thereof and negotiating such terms and conditions of sale as the Receiver in its discretion may deem appropriate;

(o) to sell, convey, transfer, lease or assign the Property or any part or parts thereof out of the ordinary course of business,

(i) without the approval of this Court in respect of any transaction not exceeding \$100,000 provided that the aggregate consideration for all such transactions does not exceed \$500,000; and

(ii) with the approval of this Court in respect of any transaction in which the purchase price or the aggregate purchase price exceeds the applicable amount set out in the preceding clause;

and in each such case notice under subsection 63(4) of the Ontario *Personal Property Security Act*, or section 31 of the Ontario *Mortgages Act*, as the case may be, shall not be required, and in each case the Ontario *Bulk Sales Act* shall not apply.

(p) to apply for any vesting order or other orders necessary to convey the Property or any part or parts thereof to a purchaser or purchasers thereof, free and clear of any liens or encumbrances affecting such Property;

(q) to register a copy of this Order and any other Orders in respect of the Property against title to any of the Property;

(r) to enter into agreements with any trustee in bankruptcy appointed in respect of the Debtor, including, without limiting the generality of the foregoing, the ability to enter into occupation agreements for any property owned or leased by the Debtor; and

(s) to exercise any shareholder, partnership, joint venture or other rights which the Debtor may have;

and in each case where the Receiver takes any such actions or steps, it shall be exclusively authorized and empowered to do so, to the exclusion of all other Persons (as defined below), including the Debtor, and without interference from any other Person.

Sealing Order

11. **THIS COURT FURTHER ORDERS THAT** Confidential Appendices "P" and "Q" to the Third Report be and are hereby sealed from the public court file in accordance with the terms of the Order of Justice Newbould, dated October 23, 2014, and in particular paragraph 4 thereof, pending further Order of this Honourable Court.

Aid and Recognition

12. **THIS COURT HEREBY REQUESTS** the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or in the Isle of Man to give effect to this Order and to assist the Receiver 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 Receiver, as an officer of

this Court, as may be necessary or desirable to give effect to this Order or to assist the Receiver and its agents in carrying out the terms of this Order.

ENTERED AT / INSCRIT A TORONTO
ON / BOOK NO:
LE / DANS LE REGISTRE NO.:



AUG 07 2015



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Proceeding commenced at TORONTO

ORDER

Cassels Brock & Blackwell LLP

2100 Scotia Plaza
40 King Street West
Toronto, Ontario M5H 3C2

David S. Ward LSUC #: 33541W

Tel: 416.869.5960
Fax: 416.640.3154
dward@casselsbrock.com

Christopher Horkins LSUC #: 61880R

Tel: 416.815.4351
Fax: 416.642.7129
chorkins@casselsbrock.com

Lawyers for the Receiver and Joint Liquidators