

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

THE HONOURABLE MR.

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WEDNESDAY, THE

)

JUSTICE NEWBOULD

)

15th DAY OF OCTOBER, 2014

**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**

**(LEAVE TO AMEND NOTICE OF APPLICATION)**

**THIS MOTION**, made by Miles Andrew Benham and Paul Robert Appleton, in their capacity as Joint Liquidators and as Foreign Representative ("**Foreign Representative**") of Banners Broker International Limited ("**Debtor**") pursuant to the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3 ("**BIA**") and msi Spergel inc., in its capacity as receiver and manager of Banners Broker International Limited pursuant to the Order of the Honourable Justice Matheson, issued August 22, 2014 ("**Receiver**"), for an Order that the Receiver be entitled to an order for the issuance of a certificate of pending litigation against title to the Bayview Property (as defined herein) was heard this day at the Court House at 330 University Avenue, Toronto, Ontario.

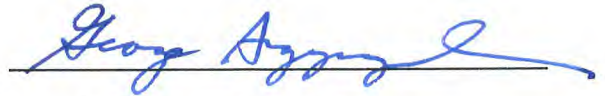
**ON READING** the Receiver and Foreign Representatives' Notice of Motion and the First Report of the Receiver, filed, and on hearing submissions from counsel for the Receiver and Foreign Representatives

1. **THIS COURT ORDERS** that the Applicants be and are hereby granted leave to issue an Amended Notice of Application in the form attached hereto as **Schedule "A"**.

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



OCT 17 2014



G. Argyropoulos, Registrar  
Superior Court of Justice

**SCHEDULE "A"**

Court File No. CV-14-10663-00CL

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

**IN THE MATTER OF THE *BANKRUPTCY AND INSOLVENCY ACT*,  
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**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)**

**AMENDED NOTICE OF APPLICATION**

**(Application for Recognition of Foreign Main Proceeding)**

TO THE RESPONDENTS:

A LEGAL PROCEEDING HAS BEEN COMMENCED by the applicant. The claim made by the applicant appears on the following page.

THIS APPLICATION will come on for a hearing on August 22, 2014, at 10:00 a.m., at the courthouse located at 330 University Avenue, Toronto, Ontario.

IF YOU WISH TO OPPOSE THIS APPLICATION, to receive notice of any step in the application or to be served with any documents in the application, you or an Ontario lawyer acting for you must forthwith prepare a notice of appearance in Form 38A prescribed by the Rules of Civil Procedure, serve it on the applicant's lawyer or, where the applicant does not have a lawyer, serve it on the applicant, and file it, with proof of service, in this court office, and you or your lawyer must appear at the hearing.

IF YOU WISH TO PRESENT AFFIDAVIT OR OTHER DOCUMENTARY EVIDENCE TO THE COURT OR TO EXAMINE OR CROSS-EXAMINE WITNESSES ON THE APPLICATION, you or your lawyer must, in addition to serving your notice of appearance, serve a copy of the evidence on the applicant's lawyer or, where the applicant does not have a lawyer, serve it on the applicant, and file it, with proof of service, in the court office where the application is to be heard as soon as possible, but at least two days before the hearing.

IF YOU FAIL TO APPEAR AT THE HEARING, JUDGMENT MAY BE GIVEN IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU. IF YOU WISH TO OPPOSE THIS APPLICATION BUT ARE UNABLE TO PAY LEGAL FEES, LEGAL AID MAY BE AVAILABLE TO YOU BY CONTACTING A LOCAL LEGAL AID OFFICE.

Date August 8, 2014  
October , 2014

Issued by

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Local registrar

Address of court office Ontario Superior Court of Justice  
Commercial List  
330 University Ave., 7th Floor  
Toronto, ON

TO: **AIRD & BERLIS LLP**  
Brookfield Place, 181 Bay Street  
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Lawyers for the Respondent, 2341620 Ontario Corporation

## APPLICATION

1. The applicants, Miles Andrew Benham and Paul Robert Appleton, in their capacity as Joint Liquidators ("**Joint Liquidators**") of Banners Broker International Limited ("**BBIL**"), make this application for an Initial Recognition Order (Foreign Main Proceeding) and a Supplemental Order (Foreign Main Recognition) in the form of the draft orders included in the application record:

- (a) abridging the time for and validating service of this notice of application and the application record and dispensing with further service thereof;
- (b) declaring that the Joint Liquidators are "foreign representatives" pursuant to section 268(1) of the *Bankruptcy and Insolvency Act*, R.S.C. 1992, c. 27, s.2, as amended ("**BIA**"), and are entitled to bring this application pursuant to section 269 of the BIA;
- (c) declaring and recognizing the proceedings commenced in respect of BBIL in the High Court of Justice of the Isle of Man, pursuant to Part V of the *Companies Act 1931* of the Isle of Man ("**Isle of Man Proceeding**") as a "foreign main proceeding" for the purposes of section 270 of the BIA;
- (d) staying and enjoining any claims, rights, liens or proceedings against or in respect of BBIL and the property of BBIL ("**Stay of Proceedings**");
- (e) appointing msi Spergel inc. as receiver (in such capacity, the "**Receiver**") of the property of BBIL located in Canada ("**Property**") and entrusting the administration and realization of the Property to the Receiver;
- (f) requiring the following persons to attend an examination under oath by the Joint Liquidators and/or the proposed Receiver, pursuant to sections 272(1)

and 163(1) of the BIA, as persons reasonably believed to have knowledge of the business, affairs and/or Property of BBIL:

- (i) Christopher G. Smith;
  - (ii) Rajiv Dixit;
  - (iii) Kuldip Josun; and
  - (iv) Any other person who has been an officer, director or employee of BBIL or who the Joint Liquidators or proposed Receiver reasonably believe to have knowledge as to the business, affairs and/or Property of BBIL;
- (g) an order pursuant to sections 272(1) and 164(1) of the BIA requiring any person, including third party service providers and financial institutions, to produce or otherwise make available to the Joint Liquidators and/or the proposed Receiver any and all documents and information in their possession or control concerning BBIL's property, affairs, debts, liabilities and obligations, including but not limited to:
- (i) TD Canada Trust;
  - (ii) CIBC;
  - (iii) HSBC;
  - (iv) Royal Bank of Canada;
  - (v) 6717381 Canada Inc. o/a SolidTrust Pay; and
  - (vi) UseMyServices, Inc.;
- (h) authorizing the Joint Liquidators and /or the proposed Receiver to apply from time to time to this Court for advice and directions;



- (i) requesting the aid and recognition of any court, tribunal, regulator or administrative body having jurisdiction in Canada, the Isle of Man or elsewhere;
- (j) an Order granting leave to issue a certificate of pending litigation for registration against title to a property municipally known as 1376 Bayview Avenue, Toronto, Ontario, M4G 3A1, and legally described as:

PCL 113-3 SEC M5; PT LT 113 W/S BAYVIEW AV PL M5 TORONTO COMM AT THE S ELY ANGLE OF THE SAID LT 1113; THENCE NLY MEASURED ALONG THE ELY LIMIT OF SAID LT, 50 FT MORE OR LESS TO A POINT 102 FT MEASURED SLY FROM THE NE ANGLE OF LT 112 ON SAID PL; THENCE WLY PARALLEL WITH THE SLY LIMIT OF SAID LT 113, 120 FT; THENCE SLY PARALLEL WITH THE ELY LIMIT OF SAID LT, 50 FT MORE OR LESS TO THE SLY LIMIT OF SAID LT 113; THENCE ELY ALONG THE LAST MENTIONED LIMIT 120 FT TO THE POB; TORONTO, CITY OF TORONTO

and bearing PN 21122-0131 (LT) ("**Bayview Property**");

- (k) such further and other relief as this Court deems just.

2. The grounds for the application are:

**BBIL**

- (a) BBIL is a company incorporated in the Isle of Man as a company under the *Companies Act 1931* of the Isle of Man.
- (b) BBIL is central to a global corporate network or group including entities in Canada and Belize (the "**BBIL Group**"). The BBIL Group has operations around the world including Canada, the United States, the United Kingdom, Portugal and India.

- (c) The BBIL Group carries on business in the online advertising industry, connecting advertisers with online ad space and publishers with advertisements for their websites.

#### **Isle of Man Proceeding**

- (d) On February 26, 2014, as a result of an application made in the Isle of Man High Court of Justice by BBIL's sole shareholder, Targus Holdings Limited ("**Targus**") and submissions made in that application by substantial BBIL creditor, Ian Driscoll ("**Driscoll**"), the Isle of Man High Court ordered that BBIL be wound up pursuant to Part V of the *Companies Act 1931* (the "**Isle of Man Proceeding**"). The Joint Liquidators were initially appointed as Joint Provisional Liquidators and Deemed Official Receivers of BBIL.
- (e) On March 14, 2014, the Isle of Man court made a further order appointing the Joint Liquidators to their current positions and appointing a five-member Committee of Inspection to act with the Joint Liquidators.

#### **Isle of Man Proceeding is a "Foreign Main Proceeding"**

- (f) The Isle of Man Proceeding is a judicial proceeding dealing with creditors' collective interests generally under a law relating to bankruptcy or insolvency in which BBIL's property is subject to supervision by the Isle of Man High Court of Justice. As such, The Isle of Man Proceeding is a "foreign proceeding" pursuant to section 268(1) of the BIA.
- (g) BBIL's centre of main interest is located in the Isle of Man. Accordingly the Isle of Man Proceeding is a "foreign main proceeding" as defined in section 268(1) of the BIA.



### **Joint Liquidators are “Foreign Representatives”**

- (h) The Joint Liquidators have authority, pursuant to the Orders made by the High Court of Justice in the Isle of Man Proceeding and the *Companies Act 1931* to administer the BBIL's property and affairs for the purpose of liquidation.
- (i) The Joint Liquidators have authority, pursuant to the Orders made by the High Court of Justice in the Isle of Man Proceeding, the *Companies Act 1931* and the authorization and instruction of the court-appointed Committee of Inspection, to act as foreign representatives in the Isle of Man Proceeding.
- (j) As such the Joint Liquidators fall within the definition of “foreign representative” pursuant to section 268(1) of the BIA.

### **Recognition of the Isle of Man Proceeding is Appropriate**

- (k) Based on the Joint Liquidators' investigations to date, BBIL appears to have business connections and financial dealings tied to Canada which are deserving of further investigation.
- (l) For the purpose of ensuring that all interested parties cooperate in the liquidation proceedings of BBIL, the Joint Liquidators request that the Isle of Man Proceeding be recognized by this court as a “foreign main proceeding.”

### **Stay of Proceedings is Appropriate**

- (m) Pursuant to section 271 of the BIA, this Court shall, upon recognition of a foreign main proceeding, exercise its jurisdiction to prohibit the commencement or continuance of any action, suit or proceeding against BBIL, subject to any terms that the Court considers appropriate.

- (n) A Stay of Proceedings will support the efforts of the Joint Liquidators in proceeding with the fair and efficient liquidation of BBIL, the protection of creditors' interests and the maximization of value of BBIL's assets.

#### **Appointment of a Receiver is Appropriate**

- (o) In the circumstances, it is just, convenient and necessary to the effective liquidation of BBIL and the protection of creditors that a receiver be appointed over the Property and that the administration and realization of the Property be entrusted to the Receiver.
- (p) The appointment of msi Spergel inc. ("**Spergel**") as Receiver will assist both the Court and any Canadian stakeholders in BBIL.
- (q) Spergel's experience in the insolvency field and presence on the ground in Canada will assist the Joint Liquidators in their investigation of BBIL's business and affairs in Canada and the fair and efficient liquidation of BBIL.

#### **Further Orders Compelling Examinations and Productions are Appropriate**

- (r) The Joint Liquidators have attempted to request information and documents from third parties and financial institutions in Canada believed to have had dealings with BBIL and knowledge of BBIL's affairs. These requests have been met with the response that no information will be provided without an order from a Canadian court.
- (s) Several of key individuals believed to have knowledge of BBIL's affairs are Canadian nationals. The examination, under oath, of these individuals will assist the Joint Liquidators in the fair and efficient liquidation of BBIL, the

protection of creditors' interests and the maximization of value of BBIL's assets.

- (t) As such, an order compelling the production of documents concerning BBIL's property, affairs, debts, liabilities and obligations will assist the Joint Liquidators in the fair and efficient liquidation of BBIL, the protection of creditors' interests and the maximization of value of BBIL's assets.

#### **Claim for a CPL**

- (u) The Joint Liquidators and the Receiver claim an interest in the Bayview Property on the basis that the property was purchased and/or improved using monies properly owing or belonging to BBIL.

#### **General**

- (v) Part XIII of the BIA (sections 267 to 284), which govern the recognition of foreign insolvency proceedings;
- (w) Section 163(1) of the BIA, which entitles a trustee in bankruptcy to examine under oath any person reasonably believed to have knowledge of the affairs of the bankrupt and to order any person liable to being so examined to produce any books, documents, correspondence or papers in that person's possession or power relating in all or in part to the bankrupt or the bankrupt's dealings or property;
- (x) Section 164(1) of the BIA, which entitles a trustee in bankruptcy to inspect any book, document or paper of any kind relating in whole or in part to the

bankrupt, his dealings or property and requires any third party in possession of such documents to produce or deliver them, upon request, to the trustee;

- (y) Section 106 of the *Courts of Justice Act*, R.S.O. 1990, c. C-43, which allows the court to stay proceedings on such terms as are just;
- (z) Section 243(1) of the BIA and section 101 of the *Courts of Justice Act*, R.S.O. 1990, c. C-43, which allow the court to appoint a receiver where it is just or convenient to do so;
- (aa) Rules 2.03, 3.02 of the *Rules of Civil Procedure*, R.R.O. 1990, R. 194 (the "**Rules**"), which allow the court to dispense with compliance of the *Rules* and extend or abridge prescribed timelines;
- (bb) Rule 16 of the *Rules*, which governs service of documents;
- (cc) Sections 101 and 103 of the *Courts of Justice Act* R.S.O. 1990, c. C.43 and Rules 37, 40.01 and 42 of the *Rules* which govern the application for a CPL; and
- (dd) Such further grounds as counsel may advise.

3. The following documentary evidence will be used at the hearing of the application:

- (a) The affidavit of Paul Robert Appleton, sworn on August 6, 2014, and the exhibits attached thereto;
- (b) The affidavit of Miles Andrew Benham, sworn on August 6, 2014;
- (c) The consent of the proposed Receiver;

- (d) Certified copies of the orders of the High Court of Justice of the Isle of Man – Civil Division, Chancery Procedure:
- (i) The order of His Honour the Deemster Doyle, First Deemster and Clerk of the Rolls, issued February 26, 2014 that (a) BBIL be wound up pursuant to section 162(6) of the *Companies Act 1931*, (b) Benham and Appleton be appointed as Joint Provisional Liquidators and Deemed Joint Official Receivers of BBIL pursuant to section 174 of the *Companies Act 1931*; and
  - (ii) The order of His Honour the Deemster Doyle, First Deemster and Clerk of the Rolls, issued March 14, 2014 appointing Benham and Appleton as Joint Liquidators of BBIL and appointing the Committee of Inspection.
- (e) Such further and other materials as counsel may advise and this honourable court may permit.

August 8, 2014  
October 17, 2014

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Lawyers for the Applicants

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

Court File No.

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INSOLVENCIES)

ONTARIO  
SUPERIOR COURT OF JUSTICE  
(Commercial List)

Proceeding commenced at TORONTO

NOTICE OF APPLICATION  
(Application for Recognition of Foreign Main Proceeding)

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

Proceeding commenced at TORONTO

**ORDER**

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Lawyers for the Receiver and Joint Liquidators