

ONTARIO

SUPERIOR COURT OF JUSTICE
(Commercial List)

IN THE MATTER OF SECTION 41(1) AND 47.1(1) OF THE BANKRUPTCY AND
INSOLVENCY ACT, R.S.C. 1985 C. B-3, AS AMENDED; AND

IN THE MATTER OF CREATIVE BUILDING MAINTENANCE INC., an Ontario
corporation; and

IN THE MATTER OF CREATIVE BUILDING MAINTENANCE INC., a Delaware
corporation

B E T W E E N:

HSBC BANK CANADA,
KEYBANK NATIONAL ASSOCIATION AND
KEY EQUIPMENT FINANCE INC.

Applicants

- and -

CREATIVE BUILDING MAINTENANCE INC., an Ontario corporation
and
CREATIVE BUILDING MAINTENANCE INC, a Delaware corporation

Respondents

SUPPLEMENT TO THE FIFTH REPORT OF THE INTERIM RECEIVER AND
MONITOR—
DOYLE SALEWSKI INC.
July 19, 2006

I. Introduction

1. This report is a supplement to the fifth report of the interim receiver and monitor, Doyle Salewski Inc. ("DSI" or the "Receiver") dated July 14, 2006 (the "Fifth Report"). Terms not otherwise defined herein have the meanings ascribed to them in the Fifth Report.

2. This is provided in response to the affidavits of representatives of CIT (Guy Leroux) (the "Leroux Affidavit") and RoyNat (Barry Vallier) (the "Vallier Affidavit") dated July 19, 2006, respectively

II. The Opposing Creditors – CIT and RoyNat

3. Both CIT and RoyNat advise that they are withholding consent to the Settlement Agreement because the settlement would leave them with a zero recovery. Neither creditor has, however, provided the basis for their conclusions.

4. The Receiver has developed five alternate recovery scenarios assuming different outcomes on priorities that demonstrate, objectively, the ranges of recovery. In each scenario, RoyNat recovers funds. In all but one scenario, CIT recovers funds. It should be noted, however, that these scenarios does not include the monies CIT will recover from the equipment sales. The range of recovery for RoyNat is between \$2.8 million and \$1,397,832 and between \$688,000 and \$100,000 for CIT. The unsubstantiated assumptions made by both CIT and RoyNat are thus inaccurate. Attached as **Appendix "1"** are copies of the scenarios developed by the Receiver.

5. The Vallier Affidavit is inaccurate insofar as it alleges RoyNat was not made aware of the settlement until June 20, 2006.

6. Contrary to what is stated in the Vallier Affidavit, the Receiver sought and obtained consent from RoyNat, HSBC and KeyBank on June 12, 2006 to open a settlement dialogue with counsel for Mr. Cerny, Ms. Periet, Ms. Alfonsi and Ms. Cerny (the "Cerny Parties"). The Receiver was instructed to settle these claims for \$3.5 million.

7. Having obtained instructions to settle, the Receiver met with counsel for the Cerny Parties. Following extensive negotiations, the terms of a settlement agreement were developed and communicated to all counsel and their clients by way of a conference call on June 14, 2006. Counsel for RoyNat and a representative of RoyNat (Norm Stevenson) were present on the call as well as counsel for KeyBank, HSBC and their respective clients. The mechanics of the settlement, including the Claims Bar Order and the parties to the mutual releases, were reviewed with the creditors in significant detail. Attached as **Appendix "2"** is a copy of the June 14, 2006 email.

8. By way of email dated June 15, 2006, RoyNat advised that it was not consenting to the terms of the settlement agreement. The Receiver is, therefore, perplexed as to how RoyNat can allege it was not advised of the settlement agreement until 5 days later and/or

advise that the inspectors of the estate (which are Mr. Stevenson and counsel for KeyBank) were not made aware of the settlement at the first meeting of creditors held on June 15, 2006. Furthermore, the Receiver met at length with Mr. Stevenson immediately following the first meeting of creditors to review the pros and cons of the settlement. Thereafter, the Receiver met with Mr. Stevenson in the afternoon of June 15, 2006 and Mr. Vallier participated in the discussion via telephone. Attached as **Appendix "3"** is a copy of the June 15, 2006 email.

9. Furthermore, counsel for the Receiver, RoyNat, HSBC and the Cerny Parties attended before Justice Cumming on June 16, 2006 at which time the parties advised His Honour that they were working towards a settlement. At this time, counsel for RoyNat advised that court that it was not consenting to the settlement but would continue to work with the Receiver to negotiate same. Prior to the attendance, counsel for RoyNat advised the Receiver that it was prepared to adopt the settlement provided the quantum was increased by \$200,000. A similar statement was made by KeyBank who, after consulting with the Receiver, consented to the settlement. Accordingly, the Receiver has not trivialized RoyNat's position; it has simply relayed what RoyNat advised.

10. The Vallier Affidavit also provides a general overview of RoyNat's thought process for declining the settlement. He misstates the Receiver's comments on the estimated recovery to the creditors. Contrary to what is indicated, the Receiver did not advise RoyNat *following* the examinations that its case against the Cerny Parties was "open and shut" and a recovery of \$5 to \$ 6 million was possible. As indicated in the Fifth Report, the Receiver prepared an estimated recovery of approximately \$5 million prior to completing the examinations. However, that estimate was, as stated in the Fifth Report, prepared *prior* to the examinations.

11. Once the examinations were completed, the Receiver was firmly of the view (and indicated such in the Fifth Report) that the estimate overly optimistic insofar as the monies were (a) recycled through CBMI; and (b) the Cerny Parties had, *inter alia*, credible defences to claims RoyNat could advance particularly given that the RoyNat Debenture was designed to enable the Cerny Parties to remove \$3million from CBMI. Accordingly, the Receiver advised HSBC, RoyNat and KeyBank on June 12, 2006 that a more realistic settlement was \$3.5 million and the creditors authorized the Receiver to settle for that amount.

12. What is apparent, from a review of the Vallier Affidavit, is RoyNat has not reviewed the transcripts in significant detail. By their own admission, RoyNat advises that they reviewed "some" of the transcripts. As a court-appointed officer, the Receiver is obligated to act in the best interests of the creditors. The Receiver and its counsel have spent a considerable amount of time and effort to review the situation and develop a reasonable settlement. RoyNat did not attend the examinations.

13. The Leroux Affidavit is also inaccurate insofar as it advises that CIT had no "input whatsoever with respect to the negotiation of the settlement nor that matter did CIT have any knowledge of the fact that the Receiver was conducting examinations...".

14. As set out in the fourth report of the Receiver dated July 6, 2006, CIT only provided the Receiver with their security documentation on June 29, 2006, which included a general security agreement (the "CIT GSA") executed by CBM Canada.

15. While CIT did have a PPSA registration against CBM Canada, CIT had, to date, only provided the Receiver with a copy of an equipment lease. CIT was now, however, asserting that it had a second position general security agreement over the assets of CBM Canada. Once CIT made its position known to the Receiver, counsel met on July 5, 2006 and discussed the settlement agreement in detail.

All of which is respectfully submitted on this 19th day of July 2006.

DOYLE SALEWSKI INC.

Trustee in Bankruptcy of Creative Building Maintenance Inc. (Ontario) and Interim Receiver and Monitor of Creative Building Maintenance Inc. (Ontario) and Creative Building Maintenance Inc. (Delaware), and not in its personal capacity



Brian P. Doyle, CA • CIRP
President