

**ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)**

APPLICATION UNDER SECTION 243(1) OF THE *BANKRUPTCY AND INSOLVENCY ACT*, R.S.C. 1985, c. B-3, AS AMENDED AND SECTION 101 OF THE *COURTS OF JUSTICE ACT*, R.S.O. 1990, c. C.43, AS AMENDED

B E T W E E N

MBL ADMINISTRATIVE AGENT II LLC, as agent for POST ROAD
SPECIALTY LENDING FUND II LP (f/k/a MAN BRIDGE LANE
SPECIALTY LENDING FUND II (US) LP), and POST ROAD SPECIALTY
LENDING FUND (UMINN) LP (f/k/a MAN BRIDGE LANE SPECIALTY
LENDING FUND (UMINN) LP)

Applicant

v.

TRADE X GROUP OF COMPANIES INC., 12771888 CANADA INC., TVAS INC.,
TRADEXPRESS AUTO CANADA INC., TRADE X FUND GP INC., TRADE X LP FUND
I, TRADE X CONTINENTAL INC., TX CAPITAL CORP., TECHLANTIC LTD. AND TX
OPS CANADA CORPORATION

Respondents

AMENDED NOTICE OF MOTION

FTI Consulting Canada Inc. (“**FTI Consulting**”), in its capacity as the Court-appointed receiver and manager (the “**Receiver**”), without security, of substantially all of the assets, undertakings and properties of Trade X Group of Companies Inc., 12771888 Canada Inc., TVAS Inc., Tradexpress Auto Canada Inc., Trade X Fund GP Inc., Trade X LP Fund I, Trade X Continental Inc., TX Capital Corp., Techlantic Ltd. and TX Ops Canada Corporation (collectively, “**Trade X**” or the “**Debtors**”), as set forth in further detail in the Receivership Order (as defined below) will make a motion to a Judge of the Commercial List as soon as the motion can be heard, at 330 University Avenue, 8th Floor, Toronto Ontario.

PROPOSED METHOD OF HEARING: The motion is to be heard:

- In writing under subrule 37.12.1 (1);

- In writing as an opposed motion under subrule 37.12.1 (4);
- In person;
- By telephone conference;
- By video conference.

THE MOTION IS FOR:

- (a) A Declaration that the \$1,723,495 paid by Mr. Stephen Zhou to 1309767 Ontario Ltd.; and 2601658 Ontario Ltd. ~~and Mr. Wouter Van Essen~~ (the “**Techlantic Funds**”) are Property (as defined in the Receivership Order) of the Debtors;
- (b) A declaration that the Purported Set-Off (as defined below) is void as against the Receiver pursuant to section 95 of the *Bankruptcy and Insolvency Act*;
- (c) ~~(b)~~ An Order directing that 1309767 Ontario Ltd.; and 2601658 Ontario Ltd. ~~and Mr. Wouter Van Essen~~ transfer \$1,723,495 to the Receiver;
- (d) ~~(e)~~ Costs of this motion; and
- (e) ~~(d)~~ Such further or other order as to this Honourable Court may seem just.

THE GROUNDS FOR THE MOTION ARE:

A. The Debtors

1. The Debtors are primarily involved in operating a business-to-business vehicle trading platform for car dealerships to purchase inventory from or sell inventory to Canada and other overseas markets. Their operations are carried out by a number of entities, including Techlantic.
2. Techlantic, and certain other Debtors, entered into a senior secured revolving credit agreement dated February 5, 2021 (the “**Global Facility**”). MBL Administrative Agent II LLC (“**MBL**”) is the Administrative Agent for the Global Facility on behalf of a syndicate of lenders (the “**Lenders**”). MBL is the Applicant in this proceeding.

3. The Global Facility is a sophisticated agreement involving a number of related Debtors. In very simple terms, the Lenders advanced funds to purchase specific vehicles and took security over those vehicles or the proceeds earned by selling them. The Global Facility, as it relates to this motion, is summarized at a very high level below:

- (a) Techlantic acquired vehicles for sale;
- (b) the Lenders provided an advance to pay the purchase price for the vehicles (the “**Advance**”);
- (c) the amount available to the Debtors under the Global Facility was based on the collateral owned by the Debtors and listed on a borrowing base from time to time (the “**Borrowing Base**”);
- (d) when the vehicle was sold to an end user, the purchase price was (or should have been) deposited into a dedicated account over which the Lenders have security (the “**Collection Accounts**”).

B. Appointment of the Receiver

- 4. On December 4, 2023, MBL brought an application (the “**Receivership Application**”) to appoint FTI Consulting as and the Receiver of the Property, pursuant to section 243 of the *Bankruptcy and Insolvency Act* (Canada) (the “**BIA**”) and section 101 of the *Courts of Justice Act* (Ontario), as amended.
- 5. MBL alleged that the Debtors had defaulted on their obligations under the Global Facility by, among other things, diverting vehicle sale proceeds totalling approximately \$7 million that should have been deposited into the Collection Accounts.
- 6. The Receiver has not independently verified MBL’s allegations. It notes, however, that the Debtors did not challenge MBL’s evidence.

7. On December 11, Penny J. issued an order (the “**Interim Order**”), among other things, adjourning the hearing of the Receivership Application until December 22, 2023 (the “**Postponed Hearing**”) and appointing FTI Consulting as Information Officer in respect of the Debtors.
8. The adjournment was granted to provide the Debtors additional time to complete a sale transaction involving a party related to the Debtors that is not subject to these proceedings, and the Interim Order sought to otherwise preserve the *status quo* in respect of the Debtors.
9. In order to accomplish this goal, the Interim Order imposed a stay of proceedings that prevented any person from exercising any right or remedy against the Debtors from the date of the Order until the Postponed Hearing (the “**Stay Period**”), except with leave of the Court:
 4. **THIS COURT ORDERS that during the Stay Period,** and subject to, *inter alia*, section 101 of the CJA, **all rights and remedies** of any individual, natural person, firm, corporation, partnership, limited liability corporation, trust, joint venture, association, organization, governmental body or agency, or any other entity (all of the foregoing, collectively being “**Persons**” and each being a “**Person**”) **against or in respect of the Debtors, or affecting the Business, the Property or any part thereof, are hereby stayed and suspended except with leave of this Court.** [emphasis added]
10. The Receivership Application was heard on December 22, 2023. That same day, Cavanagh J. issued an order (the “**Receivership Order**”) appointing FTI Consulting as the Receiver, without security, of the Property (as defined in the Receivership Order), including (among other things) Techlantic’s assets, undertakings and properties acquired for, or used in relation to a business carried on by Techlantic, including all proceeds thereof.

11. Pursuant to the Receivership Order, the Receiver is empowered to take possession of and exercise control over the Property and any and all proceeds, receipts and disbursements arising out of it.
 12. The Receiver is also entitled to receive, preserve and protect the Property, and to take any steps reasonably incidental to the exercise of these powers or the performance of any statutory obligation.
- C. Transfer of Techlantic Funds to 1309767 Ontario Ltd. and/or 2601658 Ontario Ltd.**
13. This motion relates to 14 vehicles (the “**Techlantic Vehicles**”) that the Van Essen Companies apparently purchased and subsequently sold to Techlantic.
 14. Techlantic sold the Techlantic Vehicles to a customer named Stephen Zhou for a total of \$1,723,495 (defined above as the “**Techlantic Funds**”). According to Techlantic’s invoices, these sales occurred between September 2023 and December 2023, although Techlantic employees have advised the Receiver that these invoices were not provided to Mr. Zhou.
 15. Techlantic listed the Techlantic Vehicles on the Borrowing Base, and received Advances under the Global Facility in respect of each Techlantic Vehicle.
 16. Between November 28, 2023 and December 22, 2023 Mr. Zhou paid the Techlantic Funds to 1309767 Ontario Ltd. and 2601658 Ontario Ltd. (the “**Van Essen Companies**”).
 17. The Van Essen Companies ~~may~~do not deal at arm’s length with Techlantic. The Techlantic officer responsible for these transactions is Eric Van Essen (“**Eric**”). The Van Essen

Companies are ~~owned and~~ operated by Eric's father, Wouter Van Essen ("**Wouter**"). Wouter is Techlantic's founder, and he was involved in key aspects of its business at material times. Among other things, Wouter was actively involved in determining what vehicles Techlantic should buy and how much it should pay to MBL from time to time. Wouter and Eric operated Techlantic and the Van Essen Companies as an integrated enterprise pursuing common goals.

18. On January 2, 2024, Wouter wrote to Eric and others at Techlantic to advise that the Van Essen Companies had received the Techlantic Funds from Mr. Zhou. Wouter specifically acknowledged that the Techlantic Funds represented "a payment due to Techlantic Ltd. of \$1,723,495".
19. Wouten claimed to have applied the Techlantic Funds against a debt allegedly owed by Techlantic to the Van Essen Companies on December 20, 2023 (the "**Purported Set-Off**").
20. The debt allegedly owed by Techlantic to the Van Essen Companies is not related to the Techlantic Vehicles. The alleged debt relates to transactions between Techlantic and the Van Essen Companies that took place in 2022.
21. As noted above, the Interim Order specifically prohibited any exercise of any right or remedy by any person against Techlantic (and the other Debtors). The Purported Set-Off occurred nine days after the Interim Order was issued and only two days before the Receivership Order was issued.

The Receiver's Attempts to Recover the Techlantic Funds

22. By way of letter dated January 4, 2024, counsel to the Receiver (Goodmans LLP) advised counsel to the Van Essen Companies (Rosemount Law) that Techlantic Funds are Property (as defined in the Receivership Order) of Techlantic and demanded immediate payment of the Techlantic Funds.
23. The Van Essen Companies refused to return the Techlantic Funds. They asserted that the Techlantic Funds are not Property, because the Purported Set-Off Transaction occurred before the Receivership Order. The Receiver does not agree, because (among other reasons) the Purported Set-Off Transaction was prohibited by the Interim Order.
24. In addition, the Purported Set-Off set- effected – and was meant to effect – a preference contrary to section 95 of the BIA. It is void as against the Receiver.
25. The Van Essen Companies had an unsecured claim against Techlantic. The Lenders held a first ranking security interest over all of Techlantic's property, including the Techlantic Vehicles and the Techlantic Funds. By executing the Purported Set-Off, the Van Essen Companies purported to recover the Techlantic Funds ahead of the Lenders. As noted, the Van Essen Companies did not deal at arm's length with Techlantic. In any event, the Purported Set-Off was executed with a view to giving the Van Essen Companies a preference.
26. ~~24.~~ The Van Essen Companies also claim that they have a proprietary right to the Techlantic Funds because they sold the Techlantic Vehicles to Techlantic, their invoices to Techlantic state that title did not transfer to Techlantic until Techlantic made payment in full and Techlantic never made payment in full. ~~The Receiver has not yet had an~~

~~opportunity to fully investigate these claims~~ But the Van Essen Companies have failed to explain (or provide evidence to support) the claimed proprietary relief.

~~25. In any event, the Receiver does not seek a final determination with respect to the Van Essen Companies' entitlement to the Techlantic Funds. All it seeks, at this stage, is to preserve the Techlantic Funds in accordance with the terms of the Receivership Order so that any competing claims to the Techlantic Funds can be addressed in an orderly manner.~~

27. ~~26.~~ Such further and other grounds as counsel may advise and this Honourable Court deems just.

THE FOLLOWING DOCUMENTARY EVIDENCE will be used at the hearing of the motion:

- (a) The First Report of the Receiver, dated February 1, 2024;
- (b) Such further and other evidence as the parties may submit and this Honourable Court may allow.

DATE: ~~February 2, 2024~~

AMENDED: February 27, 2024

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Proceeding commenced at Toronto

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