

Court File No.: 07-CL-6926

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

**LASALLE BUSINESS CREDIT, A DIVISION OF
ABN AMRO BANK N.V., CANADA BRANCH**

Applicant

- and -

GENFAST MANUFACTURING COMPANY

Respondent

**SECOND REPORT TO THE COURT OF KPMG INC.
IN ITS CAPACITY AS RECEIVER OF
GENFAST MANUFACTURING COMPANY**

May 15, 2007

Table of Contents

1.0	INTRODUCTION.....	1
1.1	Appointment of Receiver	1
1.2	Background	1
1.3	Previous Report.....	2
1.4	Purpose of this Report.....	3
2.0	SECURITY REVIEW PROCESS.....	4
2.1	PPSA Search	4
2.2	Related Companies	4
2.3	Johnston Equipment, JPI and MCAP Leases.....	5
2.4	ICF Lease	6
2.5	Utica Leases	6
3.0	MARKETING PROCESS FOR GENFAST BUSINESS AND FOR MACHINERY AND EQUIPMENT.....	13
3.1	Background.....	13
3.2	Sale of Business Process.....	13
3.3	Fixed Asset Sale/Auction Process	14
4.0	SUMMARY AND RECOMMENDATIONS.....	16

Listing of Appendices

- Appendix "A" - Order of the Ontario Superior Court of Justice (Commercial List) dated April 5, 2007
- Appendix "B" - *Personal Property Security Act* Summary current as of May 9, 2007
- Appendix "C" - MNP General Security Agreement dated October 25, 2000 and GF General Security Agreement dated October 30, 1999
- Appendix "D" - MNP/GF Subordinations dated November 30, 2000
- Appendix "E" - Utica Lease One dated December 20, 2006
- Appendix "F" - Utica Lease Two dated December 20, 2006
- Appendix "G" - Mann E-mail dated December 28, 2006
- Appendix "H" - Sale of Business Information Package
- Appendix "I" - Form of Confidentiality Agreement
- Appendix "J" - Form of Advertisement for Invitation for Proposals to Purchase the Business of Genfast Manufacturing Company
- Appendix "K" - Fixed Asset Information Package
- Appendix "L" - Form of Advertisement for Invitation for Proposals to Purchase/Auction of Genfast Manufacturing Company Fixed Assets

1.1 Appointment of Receiver

- 1.1.1 Pursuant to the Order of the Honourable Mr. Justice Campbell of the Ontario Superior Court of Justice (Commercial List) dated April 5, 2007 (the “**Appointment Order**”), KPMG Inc. was appointed as receiver (the “**Receiver**”) without security, of all of Genfast Manufacturing Company’s (“**Genfast**” or the “**Company**”) current and future assets, undertakings and properties of every nature and kind whatsoever, and wherever situate including all proceeds thereof (the “**Property**”), effective at 3:00 p.m. (EST) immediately after the Bankruptcy Order (as defined below) became effective against the Company and the proceedings initiated by the Company under the *Companies’ Creditors Arrangement Act* (Canada) (“**CCAA**”) on March 8, 2007 were terminated. The Appointment Order was made pursuant to Sections 101 of the *Courts of Justice Act* (Ontario).
- 1.1.2 A copy of the Appointment Order is attached hereto as **Appendix “A”**. The application for the appointment of the Receiver was made by LaSalle Business Credit, A Division of ABM AMRO Bank N.V., Canada Branch (the “**Applicant**” or the “**Bank**”).

1.2 Background

- 1.2.1 Genfast is a limited liability corporation incorporated under the laws of the Province of Nova Scotia operating from leased facilities located in Brantford, Ontario. The Company was in the business of manufacturing bolts, screws, rivets and other types of fasteners, primarily for the automotive industry.
- 1.2.2 Prior to the Bankruptcy Order being effective, the Company employed approximately 185 hourly employees, all of whom are members of the United Steelworkers of America, Local 3567, and 50 salaried employees.
- 1.2.3 The Receiver understands that the Applicant is the operating lender of the Company pursuant to a credit agreement dated November 30, 2000 as amended by agreements dated April 18, 2001, June 21, 2002, October 1, 2003 and November 18, 2005 (collectively, the “**Credit Agreement**”). Pursuant to the terms of the Credit Agreement, the Bank extended a revolving loan facility and a term loan facility to the Company. As at April 3, 2007, the Receiver understands that the amount outstanding under the revolving loan was \$7,563,682.26 and the amount outstanding under the term loan was \$13,045,646.82. As security for its indebtedness to the Applicant, the Company executed and delivered to the Applicant, among other things, a general security agreement dated November 30, 2000 (the “**GSA**”) and a general assignment of book debts dated November 30, 2000 (the “**GABD**”). The Applicant registered its security interests against the Company pursuant to the *Personal Property Security Act* (Ontario) on November 22, 2000 against all classes of collateral except “consumer goods”.
- 1.2.4 Pursuant to the Order of Honourable Mr. Justice Campbell dated March 8, 2007 (the “**Initial Order**”), the Company was granted a stay of proceedings pursuant to the CCAA and Alvarez & Marsall Canada ULC was appointed as monitor of the Company (the “**Monitor**”).

- 1.2.5 Pursuant to the terms of a forbearance agreement dated March 8, 2007 (the “**Forbearance Agreement**”), the Applicant agreed to provide debtor-in-possession financing (the “**DIP Borrowings**”) to the Company during the Company’s orderly wind down. On March 23, 2007, pursuant to the terms of the Forbearance Agreement, the Applicant provided notice to the Company that Forbearance Terminating Events had occurred under the terms of the Forbearance Agreement. By letter dated March 25, 2007, the Applicant terminated the Forbearance Agreement, including its obligations to provide DIP Borrowings (as defined in the Initial Order). The Applicant subsequently provided financing to the Company on a short term basis.
- 1.2.6 On April 5, 2007, the Applicant brought forth a motion for the Appointment Order.
- 1.2.7 In addition to granting the Appointment Order, the Honourable Mr. Justice Campbell issued an Order adjudging the Company bankrupt effective as at 3:00 p.m. on April 5, 2007 (the “**Bankruptcy Order**”). The Bankruptcy Order, among other things, appointed KPMG Inc. as Trustee of the Estate of Genfast (“**Trustee**”). A separate Order was also issued on April 5, 2007 which, among other things, ordered that:
- the Company’s CCAA proceedings shall be terminated effective immediately after the Bankruptcy Order became effective;
 - the Monitor be discharged from any further obligations under the Initial Order (the Monitor, however, may oversee payment of certain amounts in respect of the supply of goods and services during the CCAA proceedings); and
 - the Directors’ Charge, the Administration Charge and the DIP Charge (all as defined in the Initial Order) shall continue to attach to the Property of the Company and shall continue to rank in priority relative to all other security interests, liens, charges and encumbrances affecting the Property, as set out in paragraph 39 of the Initial Order.

1.3 Previous Report

- 1.3.1 The Receiver prepared its First Report to the Court dated April 20, 2007 (the “**First Report**”) in order to advise the Court of:
- the initial activities of the Receiver, which included taking possession of, and securing, the premises;
 - potential claims against the Directors’ Charge; and
 - the proposed marketing process for the Company’s raw material inventory.
- 1.3.2 On April 24, 2007, the Honourable Mr. Justice Campbell granted an Order which, among other things:

- directed the Receiver to make a cash distribution to each of the former employees of the Company in an amount equal to the sum of: (i) their unpaid wages; and (ii) fifty percent of their vacation pay. In the case of the distribution for 50% of the vacation pay, the amount was to be treated as an advance against the Directors' Charge;
- approved the claims process to identify Directors' Charge claims; and
- approved the marketing process for the Company's raw material inventory.

1.4 Purpose of this Report

1.4.1 The purpose of this Second Report of the Receiver to the Court is to:

- report on the results of the security review process performed by the Receiver's legal counsel; and
- outline the proposed marketing process for the Company's business and assets, which assets include the Company's machinery, office furniture and equipment, including the Utica Leased Equipment (as described and defined below) (collectively, the "**Fixed Assets**").

2.1 PPSA Search

- 2.1.1 The Receiver has received an opinion from Blake, Cassels and Graydon LLP, its Ontario counsel (the “**Receiver’s Counsel**”) that, subject to the usual qualifications, the GSA creates a valid security interest in favour the Applicant. The opinion was provided to KPMG Inc. in its capacity as proposed trustee in bankruptcy of Genfast, immediately prior to Genfast’s bankruptcy. The opinion has been relied on by the Receiver, with the permission of the Receiver’s Counsel. A summary of search results indicating the parties that had registered financing statements against Genfast pursuant to the terms of the *Personal Property Security Act* (Ontario) (the “**PPSA**”) current as at May 9, 2007 are attached hereto as **Appendix “B”** (the “**PPSA Search**”).
- 2.1.2 The Bank’s registration under the PPSA is registered prior to all other registrations. In addition to the Bank, the search results indicated that the following parties have registered financing statements against Genfast in Ontario (some parties have registered multiple financing statements in respect of different collateral) after the Bank’s registration:
- MNP Corporation (“**MNP**”);
 - MCAP Leasing Inc. (formerly, MTC Leasing Inc.) (“**MCAP**”);
 - G.N. Johnston Equipment Co. Ltd. (“**Johnston Equipment**”);
 - General Fasteners Company (“**General Fasteners**”);
 - Jim Pattison Industries Ltd. (“**JPI**”);
 - Irwin Commercial Finance Canada Corporation (formerly, Onset Capital Corporation) (“**ICF**”); and
 - Utica Leaseco, LLC (“**Utica**”).
- 2.1.3 The Receiver is advised by the Receiver’s Counsel, that each of the parties listed above or their counsel have been contacted by the Receiver’s Counsel and such parties have been asked to provide the Receiver’s Counsel with such information as the Receiver’s Counsel has considered necessary to determine the nature, scope and priority of the security held by the creditor.

2.2 Related Companies

- 2.2.1 MNP and General Fasteners are affiliates of Genfast. The Receiver also understands that Utica (as discussed separately below) is an affiliate of MNP and General Fasteners.
- 2.2.2 The Receiver’s Counsel has been provided with two general security agreements each dated August 26, 2003 but stated “to be effective October 25, 2000” in favour of MNP and “to be effective October 30, 1999” in favour of General Fasteners, respectively (collectively, the “**MNP/GF GSAs**”). The Receiver will not be able to determine whether there will be any surplus proceeds available to creditors subordinate to the Bank until the marketing process being proposed in this Second Report is completed. Accordingly, the Receiver has not yet requested that the Receiver’s Counsel review the MNP/GF GSAs. If and when the entitlement of these companies to any surplus funds becomes relevant, the

Receiver will request such review. Copies of the MNP/GF GSAs are attached hereto as **Appendix "C"**.

- 2.2.3 The Receiver's Counsel has also been provided with two subordination agreements, each dated as of November 30, 2000, between the Bank and each of MNP (the "**MNP Subordination**") and General Fasteners (collectively, the "**MNP/GF Subordinations**"). Copies of the MNP/GF Subordinations are attached hereto as **Appendix "D"**.
- 2.2.4 Based on the PPSA Search, MNP has also filed PPSA registrations against Genfast in respect of specific equipment. The first registration, filed on October 29, 2003, is in respect of a Hartford Roller, Size 30-180V, Serial #30-106-2, Steel Bowl Stand, Midwest Bowl, Cooling Unit, all books, accounts, invoices, letters, papers, documents and other records relating thereto and other property and assets as described in the security agreement between the parties, and all proceeds thereof. The second registration, filed on December 19, 2003, is in respect of a Menn Roller, Model GW120H, Serial #189 with Bowl Stand, including all spare parts, all books, accounts, invoices, letters, papers, documents and other records relating thereto and other property and assets as described in the security agreement between the parties, and all proceeds thereof.

2.3 Johnston Equipment, JPI and MCAP Leases

- 2.3.1 The Receiver's Counsel has reviewed the leases held by Johnston Equipment, JPI and MCAP, respectively, and has determined that the leases are financing leases, which are subject to the priority regime set out in the PPSA. The Receiver's Counsel has also reviewed supporting documentation in order to determine if the aforementioned lessors obtained priority, ahead of prior registered secured creditors, in the collateral subject to their respective leases. Priority of this nature can be obtained by holders of a "purchase-money security interest" as defined in, and in accordance with, the terms of the PPSA ("**PMSI Priority**"). In order to obtain PMSI Priority under the PPSA, the Receiver's Counsel advises that the financing lease must have been executed and a financing statement must have been registered under the PPSA by the lessor against the debtor, before or within 10 days of the date that Genfast obtained possession of the collateral subject to the financing lease, as a debtor. The definition of "purchase-money security interest" under the PPSA expressly provides that it "does not include a transaction of sale by and lease back to the seller".
- 2.3.2 Based on a review of the evidence provided to the Receiver's Counsel by the aforementioned lessors, the Receiver has been advised by the Receiver's Counsel that Johnston Equipment, JPI and MCAP have each obtained PMSI Priority in their leased equipment. The Johnston Equipment lease relates to forklifts, the JPI lease relates to two motor vehicles (a 2004 Pontiac Grand Prix sedan and a 2004 Chevrolet Impala sedan) and the MCAP equipment relates to a forklift. The Receiver has also satisfied itself that there is no equity in any such equipment, other than the Grand Prix (which is still being appraised as at the date hereof) leased by JPI. The equipment, other than the Grand Prix, has been released to the equipment lessors or arrangements will be made for their release.

2.4 ICF Lease

2.4.1 The Receiver's Counsel has also reviewed the lease held by ICF in respect of a forklift and information regarding the date on which the forklift was delivered to Genfast. The Receiver's Counsel has determined that the lease is a financing lease and that ICF has not obtained PMSI Priority. ICF was advised of this determination on May 3, 2007 by way of telephone discussion. The ICF collections agent with whom the Receiver's Counsel spoke, was invited to have ICF's solicitor contact the Receiver's Counsel. As of the date hereof, no further communication has been received by ICF.

2.5 Utica Leases

2.5.1 There are two leases between Utica and Genfast, both dated December 20, 2006 (collectively, the "**Utica Leases**") which by their terms are governed by Michigan law. Copies of each of the Utica Leases, together with any appendices to the Utica Leases are attached hereto as **Appendix "E"** ("**Utica Lease One**") and **Appendix "F"** ("**Utica Lease Two**").

2.5.2 It is the Receiver's understanding based on discussions with former employees of Genfast and the Bank that Utica is related to MNP and General Fasteners and therefore also related to Genfast.

2.5.3 Utica Lease One relates to various pieces of equipment certain of which are integral to Genfast's manufacturing process. The assets subject to Utica Lease One include the following:

- Nedschroef Herentals 4-die progressive cold header (the "**Nedschroef Header**");
- Fastener Engineers wire drawer and pay-off reel (collectively, the "**Fastener Engineers Equipment**");
- Mectron CNC laser beam bolt inspection system;
- 2 Western packing systems;
- Tennant electric riding sweeper;
- Hitachi Seiki 2-axis turning center; and
- Yang 3-axis CNC chucker.

2.5.4 Doug Webster, the former plant engineer for Genfast has advised the Receiver that the Nedschroef Header, in conjunction with the Fastener Engineers Equipment, will be critical to any proposed purchaser of the Genfast business operations because it manufactured large size, high profit margin fasteners. While in operation, this equipment generated approximately 10% of the Company's sales in 2006. Historically, Genfast had the Nedschroef Header consistently over booked due to high demand for its output. Mr. Webster has indicated that there are likely no more than half a dozen Nedschroef Headers in North America, making it highly desirable in the market place.

2.5.5 The assets subject to Utica Lease Two include the following:

- National Machinery 3-die cold header (the “**National Header**”);
- Various die packs and set-up jigs for the National Header;
- Asahi Sunac 2-die cold header (the “**Asahi Header**”);
- RMG Autodraw wire drawer;
- Hartford roller; and
- Menn roller.

2.5.6 Mr. Webster has also advised the Receiver that the National Header and the Asahi Header are also both critical to any purchaser that intends to operate Genfast’s business because they are high-speed machines able to produce fasteners quickly and accurately. While in operation, the machines had a significant impact on the Company’s bottom line by increasing productivity and volume. Mr. Webster indicated that these pieces of equipment are relatively modern compared to the other manufacturing machines owned by the Company making them highly desirable in the market place.

2.5.7 The equipment subject to Utica Lease One and Utica Lease Two are collectively, the “Utica Leased Equipment” and are separately the “Utica Lease One Equipment” and the “Utica Lease Two Equipment”.

Priority Dispute on Utica Lease One Equipment

2.5.8 The Bank’s counsel, Thornton Grout Finnegan LLP (the “**Bank’s Counsel**”) has advised the Receiver’s Counsel that the Bank claims priority, ahead of Utica and all other creditors, in the Utica Leased Equipment, based on its first registered security interest.

2.5.9 Cassels Brock and Blackwell LLP (“**Cassels**”) counsel to MNP and General Fasteners, also acts as Utica’s counsel. On April 24, 2007 Cassels in the course of a very brief discussion advised the Receiver and the Receiver’s Counsel that Utica was asserting priority, ahead of the Bank and all other creditors, in the Utica Leased Equipment. Separately, the Receiver requested that Utica consent to the inclusion of the Utica Leased Equipment in the marketing of Genfast’s business and assets and have the priority of its claim dealt with following the completion of the sale but prior to the time any proceeds of sale are distributed. Cassels informed the Receiver that it would seek instructions from Utica.

2.5.10 Following that initial discussion, the Receiver’s Counsel continued to follow up with Cassels to clarify the basis on which Utica claimed priority and whether Utica would consent to the inclusion of the Utica Leased Equipment in the marketing process. On May 11, 2007 Cassels confirmed that Utica claims first priority in the Utica Lease One Equipment on the basis that the Bank has provided a subordination of its security over the Utica Lease One Equipment in favour of Utica and that MNP claims first priority in the Utica Lease Two Equipment on the basis that MNP has obtained PMSI Priority. Cassels also reserved Utica’s right to assert that the Utica Leases are true leases and thus not subject to the priority scheme set out in the PPSA. Lastly, Cassels advised that Utica and MNP objected to the inclusion of the Utica Leased Equipment in the marketing process. On May 15, 2007 Cassels subsequently advised that their clients consent to the inclusion

of the Utica Lease Two Equipment in the marketing process, but, continued to object to the inclusion of Utica Lease One Equipment. Cassels advised that any priority issues regarding the Utica Lease Two Equipment could be dealt with prior to the distribution of any sale proceeds.

- 2.5.11 For the reasons outlined in more detail below, the Receiver is of the view that the priority dispute between the Bank and Utica in respect of the Utica Lease One Equipment is unlikely to be resolved on a timely basis. Both parties are holding steadfast to their assertions of priority with respect to Utica Lease One. The Receiver believes that given the nature of the priority dispute between the Bank and Utica and the value of the equipment at issue, a resolution of the outstanding disputes will likely involve protracted litigation, witness evidence and the possibility of appeals. Until the business is sold or assets liquidated, it is costing approximately \$225,000 a month for the leased premises and related costs (i.e. utilities, security, etc.). Consequently, Genfast's creditors will be prejudiced by any further delay in the marketing of Genfast's business and assets.
- 2.5.12 As the Utica Lease One Equipment is integral to the operations of Genfast's business and constitutes some of Genfast's most marketable assets, the Receiver is also of the view that it would not be in the best interest of the creditors as a whole to have a marketing process that did not include the Utica Lease One Equipment. Therefore, the Receiver recommends that the Utica Leased Equipment, including the Utica Lease One Equipment, be included in the marketing process and the priority of the parties to the proceeds from the sale of such equipment be determined prior to distribution of the proceeds of sale. As mentioned above, Cassels' clients have already consented to this approach with respect to the Utica Lease Two Equipment. The Receiver has not been provided with any evidence to suggest that the Bank, Utica or MNP would be prejudiced as a result of a similar course of action for the Utica Lease Two Equipment.
- 2.5.13 In order to assist the Court in better understanding the nature and scope of the dispute between the Bank and Utica in respect of the Utica Lease One Equipment, this Second Report will summarize the positions of the parties as they relate to each of the Utica Leases and the Receiver's and the Receiver's Counsel's view on each of these positions.

True versus Financing Lease

- 2.5.14 In the Receiver's Counsel's view, the preponderance of case law suggests the law of the jurisdiction where the equipment is situate should determine whether the lease is a true lease or a financing lease and not the jurisdiction which is the governing law of the lease. Accordingly, it is the Receiver's Counsel's view that in this matter, the law of Ontario should govern the determination of this issue and not the law of Michigan.
- 2.5.15 Although in both Utica Leases, the parties state their intention that the Utica Leases should be considered true leases and not financing leases, the Receiver is advised by the Receiver's Counsel that in order to determine whether a lease is a financing lease or a true lease, courts in Ontario will apply an objective test. That is, a transaction that in essence forms a loan with equipment held as security, will be characterized as a financing arrangement and courts will have regard to the substance, rather than simply the form, of the arrangement.

2.5.16 The Receiver's Counsel has reviewed the Utica Leases and based on the following factors is of the view that both Utica Leases are financing leases and are not true leases:

- Utica Lease One is a type of financing vehicle known as a sale and lease back transaction. The Utica Lease One Equipment was sold by Genfast to Utica. Utica then leased the equipment back to Genfast. The sale and lease back arrangement is evidenced by the Asset Purchase Agreement dated December 20, 2006 between Genfast, as seller, and Utica, as purchaser, which is appended to Utica Lease One, and is also confirmed by Cassels.
- Both Utica Leases provide for a "Fixed Rent" component and a "Rent Factor" component. The two components taken together equal the "Total Leasehold Rent". The Fixed Rent for Utica Lease One is \$930,000. This is also the amount of the "Asset Purchase Price" paid by Utica to Genfast as set out in the Asset Purchase Agreement annexed to Utica Lease One. The Rent Factor set out in Utica Lease One is \$257,787.38. The Total Leasehold Rent for Utica Lease One is \$1,187,787.38. The Fixed Rent set out in Utica Lease Two is \$695,000 and the Rent Factor is \$192,647.64. The Total Leasehold Rent for Utica Lease Two is \$887,647.64.
- In the Receiver's view, the Fixed Rent represents the principal amount of the loan and the Rent Factor represents the interest payable on the loan amount. Both Utica Leases provide that the Rent Factor is to be paid in the following way: "Commencing as of December 20, 2006, 60 monthly installments of an amount equal to 2.5% plus the current prime interest rate, multiplied by the declining balance of the Fixed Rent, with the prime interest rate to be adjusted based upon movement in that prime rate as announced by Comerica Bank on the 1st day of January and the 1st day of July of each year (the "**Rent Factor**")" [emphasis added]. The amortization schedules setting out the "declining balance" are annexed to each of the Utica Leases as "Exhibit B" thereto.
- Genfast has an option to purchase the Utica Leased Equipment. The option to purchase in Utica Lease One can be exercised following payment of the Total Leasehold Rent plus \$46,500. The option on Utica Lease Two can be exercised following payment of the Total Leasehold Rent plus \$34,750. Based on Genfast's books and records, the economic life of the Utica Leased Equipment would only be half exhausted at the end of the lease term. The purchase option at the end of each Utica Lease is equal to 5% of the total Fixed Rent amount as set out in the Utica Leases (the total Fixed Rent amount being the purchase price for each set of Utica Leased Equipment).
- In the event of a default, each Utica Lease provides for the automatic acceleration of all amounts owing by Genfast to Utica and there is provision for a "default rate" of interest on the "entire outstanding balance".

2.5.17 For these reasons, the Receiver's Counsel is of the view that the Utica Leases are financing leases, subject to the provisions of the PPSA.

Utica's Claim that the Bank has Subordinated on Utica Lease One

- 2.5.18 As previously noted, Utica is asserting priority as to the Utica Lease One Equipment on the basis of a subordination provided to Utica by the Bank. Cassels has advised that there is no formal written subordination agreement between the parties but that the subordination is set out in an email between Utica and the Bank. Cassels subsequently produced an email from Jackie Mann, an employee of the Bank, to Craig Stormer dated December 28, 2006 (the "**Mann E-mail**"). In that e-mail, Ms. Mann confirms that the Bank "has no objection to the proposed lease financing for the equipment listed in the email [being the Utica Lease One Equipment] and "will provide discharge of any security interest it may have in the equipment at your request." The Receiver understands that Mr. Stormer was both an officer of MNP and Genfast so it is unclear to the Receiver whether the Mann E-mail was being addressed to Mr. Stormer in his capacity as an officer of MNP or Genfast. A copy of the Mann E-mail is attached hereto as **Appendix "G"**. Cassels has confirmed that there is no similar subordination for the Utica Lease Two Equipment.
- 2.5.19 The Bank's Counsel has advised the Receiver's Counsel that the Bank's position on the Mann E-mail is that the Mann E-mail does not constitute a subordination by the Bank and that the Bank has not otherwise agreed to any subordination of its security interests over the Utica Lease One Equipment.
- 2.5.20 The Receiver's Counsel has advised the Receiver that it is not in a position to provide a view on whether the Mann E-mail constitutes a subordination by the Bank in favour of Utica in respect of the Utica Lease One Equipment. That determination will require more evidence of the negotiations and discussions between Utica and the Bank at the time of the lease arrangements and as to what the intentions of the parties were at that time and would therefore be an issue that is more appropriately considered by the Court rather than by the Receiver.

Utica Lease Two Equipment

- 2.5.21 On May 11, 2007, Cassels advised the Receiver's Counsel that MNP is asserting a priority position in the Utica Lease Two Equipment on the basis of PMSI Priority. Cassels advised that MNP had sold the Utica Lease Two Equipment to Genfast and was granted a security interest in the equipment by Genfast to secure payment of the purchase price. Implicit in this position is that Utica could not have title to the Utica Leased Equipment which it purported to lease to Genfast under the Utica Leases, notwithstanding that the Utica Leases themselves provide that Utica has title to the Utica Leased Equipment.
- 2.5.22 Cassels has provided the Receiver's Counsel with certain documentation to support its position but is still in the process of gathering additional documentation and considering its clients position as to priority over the Utica Lease Two Equipment.

2.5.23 As stated above, Cassels subsequently advised the Receiver's Counsel that its clients would consent to the inclusion of the Utica Lease Two Equipment in the proposed marketing process and that any priority issues could be dealt with prior to any distribution of proceeds.

Inclusion of Utica Leased Equipment in the Proposed Marketing Process

2.5.24 As at the date of this Report, Utica continues to assert that it has priority over the Utica Lease One Equipment by virtue of the Mann E-mail.

2.5.25 The Bank has advised the Receiver's Counsel that it continues to assert that it has priority in the Utica Lease One Equipment and that it has not waived or subordinated its security interest over the Utica Lease One Equipment in favour of Utica by the Mann E-mail.

2.5.26 Cassels has advised the Receiver's Counsel that while MNP and General Fasteners were in general agreement with the general marketing process being proposed by the Receiver for the sale of the business and the machinery and equipment, Utica does not want the Utica Lease One Equipment to be included in the proposed marketing process. Cassels argues that there is an expected shortfall and therefore no equity in the Utica Leased Equipment. The Receiver notes that the Company's appraisal evidence from January, 2007 supports Utica's position that there is likely no equity in the Utica Leased Equipment. Utica takes the position that it should be entitled to possession of the Utica Lease One Equipment by virtue of its asserted priority.

2.5.27 Given the nature and scope of the priority dispute between the Bank and Utica over the Utica Lease One Equipment, the Receiver does not reasonably expect there to be a resolution of the priority dispute between these parties any time soon. In the meantime, the Receiver believes that it is important to move forward as quickly as possible with its primary mandate of maximizing value for the Genfast creditors as a whole while also minimizing the costs to the Genfast estate of any further delay in commencing a marketing process for Genfast's business and assets.

2.5.28 In light of the comments of former management concerning the importance of the Utica Leased Equipment, including the Utica Lease One Equipment, to the business if operations were to be re-started and comments from a former potential purchaser, the Receiver believes that the Utica Leased Equipment will be critical to any marketing process for the business.

2.5.29 It is the Receiver's experience that certain high profile equipment, like the Nedschroef Header and Fastener Engineers Equipment, generally draws more attention from potential purchasers to the assets being offered for sale more generally. It is also the Receiver's view that the entitlement of any person to the disputed equipment can be effectively substituted with an interest in the proceeds and that it is in the interests of the creditors as a whole to do so.

2.5.30 The Receiver believes that if the Utica Lease One Equipment is not to be included in the proposed marketing process until the issue of priority is finally determined by the Court, the delay in commencing the marketing process will be detrimental to the Receiver's ability to maximize value for the Genfast business and assets.

2.5.31 The Receiver is not aware of and has not been advised by Cassels or Utica of any material prejudice that will be suffered by Utica if the Utica Lease One Equipment is included in the proposed marketing process set out in this Second Report. If the Court were to ultimately determine that Utica has priority in the Utica Lease One Equipment, its rights will be preserved in the proceeds of sale of such equipment. As noted above, on behalf of its clients, Cassels has agreed to this approach for the Utica Lease Two Equipment. The Receiver is not aware of any reason why there should be a different approach for the Utica Lease One Equipment. If the Utica Lease One Equipment is not included in the sale, however, in the Receiver's view, the general stakeholders of Genfast, are likely to suffer material prejudice.

3.0 Marketing Process for Genfast Business and for Machinery and Equipment

3.1 Background

3.1.1 The Receiver understands that during the latter stages of the CCAA Proceedings Genfast was approached by a party who expressed an interest in acquiring Genfast's business on a going concern basis. The same party, along with several others, approached the Receiver shortly after its appointment to express its interest in purchasing Genfast's business. However, none of the parties were aware that the majority of Genfast's customers had re-sourced their business during the CCAA period, and that the operations of Genfast has ceased upon the appointment of the Receiver. As a result of this new information, all of the prospective purchasers indicated that their interest in the Genfast business was diminished, with one party subsequently indicating that they were no longer interested. Given this background, and with the support of the Bank, the Receiver has decided that it will conduct two separate sales processes: one to solicit expressions of interest to purchase Genfast's business (the "**Sale of Business Process**") and the second to solicit proposals to purchase/auction Genfast's fixed assets (the "**Fixed Asset Sale/Auction Process**"). The Sale of Business Process will commence approximately one week prior to the Fixed Asset Sale/Auction Process, but the deadline for submissions will be the same for both.

3.2 Sale of Business Process

3.2.1 The Receiver has prepared an information package that outlines the assets associated with Genfast's business that are being offered for sale, and the terms and conditions associated with the process (the "**Sale of Business Information Package**"), a copy being attached hereto as **Appendix "H"**. The Sale of Business Information Package, along with the Fixed Asset Information Package (as defined below), will be provided to prospective purchasers of Genfast's business upon their execution of a confidentiality agreement, which is attached hereto as **Appendix "I"**. Both the Sale of Business Information Package and the Fixed Assets Information Package include the Utica Leased Equipment for the reasons discussed above.

3.2.2 The Receiver intends to place an advertisement in The Globe and Mail on Thursday, May 17, 2007 to notify prospective purchasers of the Invitation for Proposals to Purchase the Business of Genfast, a copy of the advertisement being attached hereto as **Appendix "J"**. Parties who respond to the advertisement will be provided a copy of the Sale of Business Information Package upon execution of the confidentiality agreement.

3.2.3 As outlined in the Sale of Business Information Package, the terms and conditions under which the Receiver is seeking expressions of interest to purchase Genfast's business are as follows:

- The sale will be on an "as is, where is" basis;
- The highest or any expression of interest will not necessarily be accepted;

- The Receiver reserves the right to negotiate the terms of any expression of interest received, or to discontinue or withdraw assets from the process, at any time, without notice, and at its sole discretion.
- All expressions of interest to purchase of the business of Genfast must be received by the Receiver, no later than 5:00 p.m. (EST) on Thursday, June 14, 2007; and
- The Receiver's acceptance of any Purchase and Sale Agreement and Expression of Interest will be conditional on Court approval.

3.3 Fixed Asset Sale/Auction Process

- 3.3.1 The Receiver has prepared an information package that lists the specific Fixed Assets for which it is seeking purchase/auction proposals, and the terms and conditions associated with same (the "**Fixed Asset Information Package**"), a copy of which is attached hereto as **Appendix "K"**. This package will be provided to all interested parties.
- 3.3.2 The Receiver intends to place an advertisement in The Globe and Mail newspaper on Friday, May 25, 2007 to notify prospective purchasers/auctioneers of the Invitation for Proposals to Purchase/Auction Genfast's Fixed Assets, the form of advertisement is attached hereto as **Appendix "L"**. Parties who respond to the advertisement will be provided with a copy of the Fixed Asset Information Package.
- 3.3.3 The Receiver has also identified, either itself or based on input from former Company management and the Monitor, 14 parties to which it intends to distribute the Fixed Asset Information Package to. These parties are either auctioneers or other parties involved in the North American fastener industry.
- 3.3.4 As outlined in the Fixed Assets Information Package, the terms and conditions under which the Receiver is seeking purchase/auction proposals for Genfast's Fixed Assets are as follows:
- The sale will be on an "as is, where is" basis;
 - All proposals must be submitted under the following scenarios: (i) an auction on a straight commission basis; (ii) an auction on a net minimum guarantee basis; and (iii) an outright direct purchase of the machinery and equipment;
 - The highest or any, proposal will not necessarily be accepted;
 - The Receiver reserves the right to negotiate the terms of any proposal received, or to discontinue or withdraw assets from the process, at any time without notice, and at its sole discretion;

- Within 48 hours of a request from the Receiver, an offeror must provide a deposit by way of a draft drawn by, or certified cheque drawn on, a Canadian chartered bank, for an amount equal to 15% of the purchase price offered/the minimum guarantee amount, which is to be held by the Receiver as a deposit;
- All proposals to purchase and/or auction the Fixed Assets must be received by the Receiver, no later than 12:00 p.m. (EST) on Thursday, June 14, 2007;
- The Receiver's acceptance of any proposal will be conditional on Court approval; and
- The premises shall be left in a clean, broom swept condition with all electrical wires and air/water/other lines removed and/or capped to the buss bar/nearest wall, all bolts "blown off", and all pits created by the removal of equipment filled in with gravel.

3.3.5 The list of specific Fixed Assets included in the Fixed Asset Information Package has been broken into three lots, with each lot corresponding to the equipment that a specific secured lender either has, or is asserting, a first ranking secured charge over.

4.0 Summary and Recommendations

4.1.1 The Receiver recommends that this Honourable Court:

- (i) approve this Second Report and the activities of the Receiver described therein; and
- (ii) approve the Receiver's proposed marketing process and related marketing materials attached hereto as **Appendices "H", "I", "J", "K" and "L"** for Genfast's business and assets, including the Utica Leased Equipment and the other Fixed Assets as outlined herein.

All of which is respectfully submitted this 15th day of May, 2007

KPMG Inc.,
solely in its capacity as Court-Appointed Receiver
of the assets, properties and undertakings of
Genfast Manufacturing Company and not in its
personal or corporate capacity



Per: Nicholas Brearton
Senior Vice President

LaSalle Business Credit,
A Division of ABM AMRO Bank N.V., Canada Branch
Applicant

Genfast Manufacturing Company
Respondent

Court File No: 07-CL-6926

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

Proceeding commenced at Toronto

**RECEIVER'S SECOND REPORT TO
THE COURT DATED MAY 15, 2007**

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