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ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)
IN BANKRUPTCY & INSOLVENCY

IN THE MATTER OF THE NOTICE OF INTENTION TO MAKE A PROPOSAL OF
125 FERRIS INC.

IN THE CITY OF TORONTO, IN THE PROVINCE OF ONTARIO

FACTUM OF THE MOVING PARTY, 125 FERRIS INC.
(returnable November 5, 2024)

November 1, 2024

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TABLE OF CONTENTS

Part I – Overview	3
Part II – The Facts	4
Background and Overview	4
Extension of Time to Make a Proposal.....	5
Part III – The Issues	6
Part IV – Law & Argument	6
The Time to make a Proposal Should be Extended	6
Good Faith	8
Viable Proposal.....	8
Prejudice	9
Conclusion	9
Part V – Order Sought.....	10
Schedule “A” List of Authorities.....	11
Schedule “B” Statutes and Regulations	12

PART I – OVERVIEW

1. On July 8, 2024, 125 Ferris Inc. (“**Ferris**” or the “**Company**”), filed a Notice of Intention to Make a Proposal (the “**NOI**”) pursuant to section [50.4](#) of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended (the “**BIA**”). KSV Restructuring Inc. was appointed as the proposal trustee under the NOI (the “**Proposal Trustee**”).
2. On July 31, 2024, the Ontario Superior Court of Justice (Commercial List) (the “**Court**”) made an order granting the Company an extension of time to file a proposal to September 21, 2024 (the “**July 31 Order**”), along with other related relief, which is more particularly described below.
3. On September 20, 2024, the Court issued a second order (the “**September 20 Order**”), which is more particularly described below.
4. On this motion, the Company seeks an order (the “**Proposed Order**”):
 - (a) abridging the time for service of the Motion and Motion Record and dispensing with service on any person other than those served;
 - (b) extending the time for the Company to file a proposal pursuant to section [50.4\(9\)](#) of the *BIA* from 11:59 p.m. on November 5, 2024, to 11:59 p.m. on December 20, 2024, which is 45 days;
 - (c) extending the stay of proceedings from 11:59 p.m. on November 5, 2024, to 11:59 p.m. on December 20, 2024; and
 - (d) such further and other relief as this Honourable Court may deem just.

PART II – THE FACTS

Background and Overview

5. The facts are set out in greater detail in the third affidavit of Michael Di Iorio, sworn October 30, 2024 (the “**Third Di Iorio Affidavit**”).¹

6. The Company was formed primarily to hold legal title to lands, together with a commercial building, located at 125 Ferris Drive, North Bay, ON P1B 8Z4 and legally described in PIN 49177-0022 (LT) (the “**Commercial Property**”).²

7. Due to a variety of reasons, including the loss of two major tenants, Ferris was unable to generate and maintain regular income from the Commercial Property and as a result, was no longer able to finance its on-going business and day-to-day costs associated with the preservation of the Commercial Property. Ferris had negligible cash available to it and on October 31, 2023 received demands for repayment from its primary secured creditor, Laurentian Bank of Canada (“**Laurentian**” or the “**Bank**”).³

8. On July 8, 2024 (the “**Filing Date**”), Ferris filed its NOI with the Official Receiver pursuant to section [50.4\(1\)](#) of the BIA. KSV Restructuring Inc. was appointed as the proposal trustee under the NOI (in such capacity, the “**Proposal Trustee**”).⁴

9. On July 31, 2024, the Court issued the July 31 Order that, among other things: (i) extended the stay of proceedings to September 21, 2024, (ii) approved an interim financing facility,

¹ Capitalized terms used and not otherwise defined herein have the meanings ascribed to them in the Third Affidavit of Michael Di Iorio sworn on October 30, 2024 (the “**Third Di Iorio Affidavit**”).

² Third Di Iorio Affidavit at para 6.

³ Third Di Iorio Affidavit at para 7.

⁴ Third Di Iorio Affidavit at paras 2 and 8.

(iii) granted an interim lender's charge and administration charge, and (iv) approved the JLL Listing Agreement (as defined herein).⁵

10. On September 20, 2024, the Court issued the September 20 Order extending the stay of proceedings and the time for Ferris to file a proposal to 11:59 p.m. on November 5, 2024.⁶

Ferris' Activities since the Filing Date

11. As part of Ferris' restructuring strategy, Ferris has been soliciting interest in and opportunities for the sale of the Commercial Property.⁷

12. On June 25, 2024, Ferris entered into a listing agreement (the "**JLL Listing Agreement**") with Jones Lang Lasalle Real Estate Services, Inc. ("**JLL**").⁸

13. Since the Filing Date, the Company has worked with JLL to implement the sale strategy associated with the JLL Listing Agreement and has completed a number of activities including, among other things, uploading the JLL Listing Agreement to various real estate marketing forums, arranging for tours of the Commercial Property, and answering inquiries and following up with interested buyers.⁹

Extension of Time to Make a Proposal

14. Ferris' restructuring efforts are on-going.¹⁰

⁵ Third Di Iorio Affidavit at paras 10 and 11.

⁶ Third Di Iorio Affidavit at para 12.

⁷ Third Di Iorio Affidavit at para 14.

⁸ Third Di Iorio Affidavit at para 15.

⁹ Third Di Iorio Affidavit at para 16.

¹⁰ Third Di Iorio Affidavit at para 14.

15. The extension relief requested by Ferris is in the best interests of Ferris' stakeholders and is necessary in order to allow Ferris and JLL to successfully carry out the solicitation contemplated by the JLL Listing Agreement.¹¹

16. Ferris requests a 45-day extension of the time for filing such proposal from 11:59 p.m. on November 5, 2024 to 11:59 p.m. on December 20, 2024, in accordance with section [50.4\(9\)](#) of the BIA.¹² Ferris also requests an extension of the stay of proceedings in this matter until 11:59 p.m. on December 20, 2024.¹³

PART III – THE ISSUES

17. The principal issues before this Court are whether this Court should:

- (a) extend the time for the Company to file a proposal and extend the stay of proceedings.

PART IV – LAW & ARGUMENT

The Time to make a Proposal Should be Extended

18. The Company seeks a 45-day extension of time to file a proposal from the current deadline of 11:59 p.m. on November 5, 2024 to 11:59 p.m. on December 20, 2024 (the “**Extension**”).¹⁴ The Extension will not exceed, in the aggregate, six months from the Filing Date and remains in accordance with section [50.4\(9\)](#) of the BIA.¹⁵

¹¹ Third Di Iorio Affidavit at para 20.

¹² Third Di Iorio Affidavit at para 19.

¹³ Third Di Iorio Affidavit at para 23.

¹⁴ Third Di Iorio Affidavit at para 19.

¹⁵ Third Report of the Proposal Trustee.

19. Section [50.4\(9\)](#) of the BIA allows a debtor in a proposal proceeding to apply to the court for an order extending the time to file a proposal by a maximum of forty-five (45) days. This Court may grant an extension if satisfied that:¹⁶

- (a) the insolvent person has acted, and is acting, in good faith and with due diligence;
- (b) the insolvent person would likely be able to make a viable proposal if the extension being applied for were granted; and
- (c) no creditor would be materially prejudiced if the extension being applied for were granted.

20. The section [50.4\(9\)](#) factors are assessed using an objective standard, considering what is reasonable in the circumstances.¹⁷

21. A court should consider the intent of the BIA, specifically the rehabilitative purpose of a proposal proceeding. Further, a court should take a broad approach and consider the impact on all stakeholders, including employees, secured creditors, unsecured creditors and other impacted parties.¹⁸

22. To find good faith and due diligence, a court must be satisfied that the insolvent company is not acting in bad faith and is taking steps towards forming a proposal. A court need only look for “some diligence”.¹⁹

¹⁶ BIA at s. [50.4\(9\)](#).

¹⁷ *In the Matter of the Proposal of Cantrail Coach Lines Ltd.*, 2005 BCSC 351 at para. [11](#) [*Cantrail*]. *Andover Mining Corp. (Re)*, 2013 BCSC 1833 at paras. [50](#), [58](#) [*Andover*].

¹⁸ *Cantrail* at paras. [11–12](#).

¹⁹ *Andover* at paras. [64–65](#).

Good Faith

23. Ferris has acted and continues to act in good faith and with due diligence in the NOI proceedings by:

- (a) continuing to stabilize and reduce its operational costs where possible;
- (b) continuing to secure and monitor the Commercial Property;
- (c) responding to inquiries from the Ferris stakeholders, including Laurentian, regarding the Commercial Property and the NOI;
- (d) working diligently with the Proposal Trustee and JLL to continue to carry out the marketing sale process and complete a sale of the Commercial Property with a view of maximizing value for the benefit of stakeholders; and
- (e) working with the Proposal Trustee in the Proposal Proceedings.

24. Further, the Proposal Trustee is of the opinion that Ferris has acted, and is acting, in good faith and with due diligence.²⁰

Viable Proposal

25. To find the insolvent company would likely be able to make a viable proposal, a court must be satisfied that the insolvent company “would likely be able to make a viable proposal, a

²⁰ Third Report of the Proposal Trustee.

proposal that is at least feasible, a proposal that would be practicable from an economic standpoint, if the extension being applied for were granted.”²¹

26. Evidence of a viable proposal need not be certain, but rather, an insolvent company must show that a viable proposal “might well happen.”²²

27. The extension will provide Ferris the necessary time to continue implementing the sale process contemplated by the JLL Listing Agreement, and solicit interest in and opportunities for the sale of the Commercial Property.

Prejudice

28. To find that no creditor will be materially prejudiced by the extension, a court must be satisfied that none of the insolvent company’s creditors will face “substantial” or “considerable” prejudice above and beyond the normal prejudice imposed on all creditors by the BIA during the proposal period.²³

29. Granting the extension to Ferris will not materially prejudice creditors. In fact, the Company’s primary secured creditor, Laurentian, supports the process and will likely derive a greater benefit from the continued restructuring proceedings.

Conclusion

30. Considering the rehabilitative purposes of a proposal and all stakeholders involved, Ferris submits that it has met the test set out in section [50.4\(9\)](#) of the BIA.

²¹ *Cantrail* at paras. [19–20](#).

²² *Andover* at para. [66](#).

²³ *Cantrail* at paras. [21–22](#).

31. Accordingly, Ferris is of the view that it is appropriate to grant the order extending the time for filing a proposal and the order extending the stay of proceedings.

PART V – ORDER SOUGHT

32. For all of the foregoing reasons, the Company requests that this Court grant the proposed relief by making an order substantially in the form of the proposed Order.

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 1st day of November, 2024.



DENTONS CANADA LLP
Lawyers for 125 Ferris Inc.

SCHEDULE “A”

LIST OF AUTHORITIES

1. *In the Matter of the Proposal of Cantrail Coach Lines Ltd.*, [2005 BCSC 351](#)
2. *Andover Mining Corp. (Re)*, [2013 BCSC 1833](#)

SCHEDULE “B”

STATUTES AND REGULATIONS

Bankruptcy and Insolvency Act, R.S.C., 1985, c. B-3

50.4 (1) Before filing a copy of a proposal with a licensed trustee, an insolvent person may file a notice of intention, in the prescribed form, with the official receiver in the insolvent person’s locality, stating

- (a) the insolvent person’s intention to make a proposal,
 - (b) the name and address of the licensed trustee who has consented, in writing, to act as the trustee under the proposal, and
 - (c) the names of the creditors with claims amounting to two hundred and fifty dollars or more and the amounts of their claims as known or shown by the debtor’s books,
- and attaching thereto a copy of the consent referred to in paragraph (b).

Certain things to be filed

(2) Within ten days after filing a notice of intention under subsection (1), the insolvent person shall file with the official receiver

- (a) a statement (in this section referred to as a “cash-flow statement”) indicating the projected cash-flow of the insolvent person on at least a monthly basis, prepared by the insolvent person, reviewed for its reasonableness by the trustee under the notice of intention and signed by the trustee and the insolvent person;
- (b) a report on the reasonableness of the cash-flow statement, in the prescribed form, prepared and signed by the trustee; and
- (c) a report containing prescribed representations by the insolvent person regarding the preparation of the cash-flow statement, in the prescribed form, prepared and signed by the insolvent person.

Creditors may obtain statement

(3) Subject to subsection (4), any creditor may obtain a copy of the cash-flow statement on request made to the trustee.

Exception

(4) The court may order that a cash-flow statement or any part thereof not be released to some or all of the creditors pursuant to subsection (3) where it is satisfied that

- (a) such release would unduly prejudice the insolvent person; and
- (b) non-release would not unduly prejudice the creditor or creditors in question.

Trustee protected

(5) If the trustee acts in good faith and takes reasonable care in reviewing the cash-flow statement, the trustee is not liable for loss or damage to any person resulting from that person's reliance on the cash-flow statement.

Trustee to notify creditors

(6) Within five days after the filing of a notice of intention under subsection (1), the trustee named in the notice shall send to every known creditor, in the prescribed manner, a copy of the notice including all of the information referred to in paragraphs (1)(a) to (c).

Trustee to monitor and report

(7) Subject to any direction of the court under paragraph 47.1(2)(a), the trustee under a notice of intention in respect of an insolvent person

(a) shall, for the purpose of monitoring the insolvent person's business and financial affairs, have access to and examine the insolvent person's property, including his premises, books, records and other financial documents, to the extent necessary to adequately assess the insolvent person's business and financial affairs, from the filing of the notice of intention until a proposal is filed or the insolvent person becomes bankrupt;

(b) shall file a report on the state of the insolvent person's business and financial affairs — containing the prescribed information, if any —

(i) with the official receiver without delay after ascertaining a material adverse change in the insolvent person's projected cash-flow or financial circumstances, and

(ii) with the court at or before the hearing by the court of any application under subsection (9) and at any other time that the court may order; and

(c) shall send a report about the material adverse change to the creditors without delay after ascertaining the change.

Where assignment deemed to have been made

(8) Where an insolvent person fails to comply with subsection (2), or where the trustee fails to file a proposal with the official receiver under subsection 62(1) within a period of thirty days after the day the notice of intention was filed under subsection (1), or within any extension of that period granted under subsection (9),

- (a) the insolvent person is, on the expiration of that period or that extension, as the case may be, deemed to have thereupon made an assignment;
- (b) the trustee shall, without delay, file with the official receiver, in the prescribed form, a report of the deemed assignment;
- (b.1) the official receiver shall issue a certificate of assignment, in the prescribed form, which has the same effect for the purposes of this Act as an assignment filed under section 49; and
- (c) the trustee shall, within five days after the day the certificate mentioned in paragraph (b.1) is issued, send notice of the meeting of creditors under section 102, at which meeting the creditors may by ordinary resolution, notwithstanding section 14, affirm the appointment of the trustee or appoint another licensed trustee in lieu of that trustee.

Extension of time for filing proposal

(9) The insolvent person may, before the expiry of the 30-day period referred to in subsection (8) or of any extension granted under this subsection, apply to the court for an extension, or further extension, as the case may be, of that period, and the court, on notice to any interested persons that the court may direct, may grant the extensions, not exceeding 45 days for any individual extension and not exceeding in the aggregate five months after the expiry of the 30-day period referred to in subsection (8), if satisfied on each application that

- (a) the insolvent person has acted, and is acting, in good faith and with due diligence;
- (b) the insolvent person would likely be able to make a viable proposal if the extension being applied for were granted; and
- (c) no creditor would be materially prejudiced if the extension being applied for were granted.

Court may not extend time

(10) Subsection 187(11) does not apply in respect of time limitations imposed by subsection (9).

Court may terminate period for making proposal

(11) The court may, on application by the trustee, the interim receiver, if any, appointed under section 47.1, or a creditor, declare terminated, before its actual expiration, the thirty day period mentioned in subsection (8) or any extension thereof granted under subsection (9) if the court is satisfied that

- (a) the insolvent person has not acted, or is not acting, in good faith and with due diligence,
- (b) the insolvent person will not likely be able to make a viable proposal before the expiration of the period in question,

(c) the insolvent person will not likely be able to make a proposal, before the expiration of the period in question, that will be accepted by the creditors, or

(d) the creditors as a whole would be materially prejudiced were the application under this subsection rejected, and where the court declares the period in question terminated, paragraphs (8)(a) to (c) thereupon apply as if that period had expired.

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