



SUPERIOR COURT OF JUSTICE

COUNSEL/ENDORSEMENT SLIP

COURT FILE NO.: CV-24-00713245-00CL

DATE: July 31, 2024

NO. ON LIST: 4

TITLE OF PROCEEDING: IN THE MATTER OF A COMPROMISE OR ARRANGEMENT OF
BALBOA INC. et al.

BEFORE: JUSTICE STEELE

PARTICIPANT INFORMATION

For Plaintiff, Applicant, Moving Party:

Name of Person Appearing	Name of Party	Contact Info
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For Defendant, Respondent, Responding Party:

Name of Person Appearing	Name of Party	Contact Info

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Name of Person Appearing	Name of Party	Contact Info
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ENDORSEMENT OF JUSTICE STEELE:

- [1] The Monitor, KSV Restructuring Inc., seeks an order, among other things, extending the stay period for a month and approving the Property Management Agreement with Richmond Advisory Services Inc.
- [2] No party opposes the relief sought on this motion.
- [3] The Monitor is a so-called “super Monitor” and has expanded powers.
- [4] The Monitor seeks to extend the stay period to August 31, 2024. Section 11.02(2) of the CCAA empowers the court to grant a stay extension where the court is satisfied that circumstances exist that make such an order appropriate, and the applicants have acted and continue to act in good faith. In the context of a “super-Monitor” in CCAA proceedings, the monitor is held to the good faith standard: *Forme Development Group Inc. (Re)*, Court File No.: CV-18-608313-00CL.
- [5] The Monitor has acted in good faith and due diligence in discharging its duties and obligations under the CCAA and the Expanded Powers Order; there is no evidence to the contrary. In addition, I am satisfied that circumstances exist such that it is appropriate to extend the stay. As noted by the Monitor, additional time is needed to advance and present the Alternative Solution (as defined in section 3.3(2) of the Monitor’s Sixth Report). There is sufficient funding available to fund operations during the extension period based on the Cash Flow Forecast.
- [6] The replacement of the property manager, SID Management, was contemplated in the Expanded Powers Order. Further, the Monitor states that it makes commercial sense and will address issues in the business practices of SID identified by the Monitor. The Monitor wishes to retain Richmond Advisory Services. Before selecting Richmond, the Monitor solicited and received proposals from three parties to act as property managers. The Monitor sought proposals from additional property managers that declined the opportunity. The Monitor notes that Richmond is qualified to perform the mandate, has experience dealing with distressed properties and provided a superior proposal to the other prospective property managers.
- [7] The Monitor asks the Court to approve the Sixth Report and the activities set out therein. This is common practice and there are good policy and practical reasons for the court to do so: *Target Canada Co. (Re)*, 2015 ONSC 7574 at para. 23.

- [8] The Monitor also seeks court approval of the fees and disbursements of the Monitor and its counsel incurred between April 1, 2024 to May 31, 2024. The Court will consider whether fees and disbursements are “fair and reasonable in all circumstances:” *Re Nortel Networks Corporation et al*, 2017 ONSC 673, at para. 13.
- [9] In assessing the reasonableness of the Monitor’s fees, the court may consider the following factors set out in *Bank of Nova Scotia v. Diemer*, 2014 ONCA 851 at para 33:
- a. The nature, extent and value of the assets being handled;
 - b. The complications and difficulties encountered;
 - c. The degree of assistance provided by the company, its officers or its employees;
 - d. The time spent;
 - e. The Monitor’s knowledge, experience and skill;
 - f. The diligence and thoroughness displayed;
 - g. The responsibilities assumed;
 - h. The results achieved; and
 - i. The cost of comparable services when performed in a prudent and economical manner.

[10] In paragraph 7.0(3) of the Monitor’s Sixth Report, the Monitor states that an “extensive amount of work” has been undertaken in this CCAA proceeding to date. The Monitor further indicates in paragraph 7.0(4) that because the Investigation has concluded, the Monitor expects the pace of the incurrence of fees going-forward to be reduced. While the fees are significant, I agree with the Monitor that the hourly rates charged by their counsel are consistent with the rates charged by large corporate law firms practicing in this market in Toronto. The Monitor confirmed that their counsel’s “billings reflect work performed consistent with the Monitor’s instructions.” I also understand that because the expanded powers, significantly more work was required of the Monitor and its counsel than under a typical CCAA. The fees sought are supported by fee affidavits. The Monitor states that the overall fees charged by its counsel and the Monitor are reasonable and appropriate in the circumstances.

[11] Order attached.

A handwritten signature in blue ink, appearing to be 'J. [unclear]', located at the bottom right of the page.