

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

**IN THE MATTER OF THE *COMPANIES' CREDITORS
ARRANGEMENT ACT*, R.S.C. 1985, c. C-36, AS AMENDED**

**AND IN THE MATTER OF A PLAN OF COMPROMISE OR
ARRANGEMENT OF BALBOA INC., DSPLN INC., HAPPY
GILMORE INC., INTERLUDE INC., MULTIVILLE INC.,
THE PINK FLAMINGO INC., HOMETOWN HOUSING
INC., THE MULLIGAN INC., HORSES IN THE BACK INC.,
NEAT NESTS INC. AND JOINT CAPTAIN REAL ESTATE
INC. (collectively the "Applicants", and each an "Applicant")**

**FACTUM OF THE MONITOR
(MOTION RETURNABLE AUGUST 30, 2024)**

August 27, 2024

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PART I - NATURE OF THIS MOTION

1. This factum is filed in support of a motion by KSV Restructuring Inc., in its capacity as court-appointed monitor (in such capacity, the “**Monitor**”) of the Applicants, pursuant to the Initial Order of the Ontario Superior Court of Justice (Commercial List) (the “**Court**”) dated January 23, 2024, as subsequently amended and restated by Orders dated February 15, 2024 and March 28, 2024 (as amended and restated, the “**SARIO**”) and pursuant to the Order (Expansion of Monitor’s Powers) of the Court dated June 25, 2024 (the “**Expanded Powers Order**”), for an order (the “**Proposed Order**”), among other things:

- (a) extending the Stay Period (as defined in the SARIO) to and including October 31, 2024;
- (b) approving the restructuring term sheet (the “**Term Sheet**”) substantially in the form attached as Appendix “C” to the Seventh Report of the Monitor dated August 23, 2024 (the “**Seventh Report**”), and authorizing and directing the Monitor to carry out its obligations under the Term Sheet, including, without limitation, facilitating the negotiation and settlement of the transactions contemplated therein and finalizing all documentation reasonably necessary to carry out such transactions, provided that nothing in the Proposed Order shall constitute an approval of any specific transaction or agreement contemplated by the Term Sheet, all of which shall be subject to further approval by the Court;
- (c) approving the amended DIP Agreement made as of August 23, 2024 and attached as Appendix “F” to the Seventh Report (the “**DIP Amendment Agreement**”), which amends the DIP Agreement (as defined in the SARIO) to increase the amount

of the facility by \$3 million, plus interest, fees and expenses, and authorizing and directing the Monitor, on behalf of the Applicants, to enter into and perform the Applicants' obligations under the DIP Amendment Agreement;

- (d) amending paragraphs 49, 52, and 55 of the SARIO to replace each reference to "\$12,000,000" with "\$15,000,000"; and
- (e) approving (i) the Seventh Report and the activities of the Monitor referred to therein, and (ii) the fees and disbursements of the Monitor and its counsel, Cassels Brock & Blackwell LLP ("**Cassels**"), referred to in the Seventh Report.

2. Capitalized terms not defined herein have their meaning as set out in the Seventh Report.

PART II - SUMMARY OF FACTS

A. Orders Granted in these CCAA Proceedings

3. The Applicants, together with certain non-Applicant related entities, including SIDRWC Inc. o/a SID Developments, SID Management Inc., and 2707793 Ontario Inc. o/a SID Renos (the "**SID Companies**"), are part of a group of companies involved in the acquisition, renovation and leasing of distressed real estate in undervalued markets throughout Ontario (the "**Business**").¹

4. On January 23, 2024, this Court granted an Initial Order which, among other things:²
- (a) granted a stay of proceedings until February 2, 2024 (the "**Stay Period**") in respect of the Applicants, the Monitor, the Business and the Applicants' current and future assets, undertakings and properties (the "**Applicants' Property**") and three of the

¹ The Seventh Report of the Monitor dated August 23, 2024 at section 1.0(2) [Seventh Report].

² Seventh Report at section 1.0(4).

Applicants' directors and officers, being Aruba Butt, Dylan Sutor and Ryan Molony (the "**Additional Stay Parties**");

- (b) appointed Chaitons LLP as the Secured Lender Representative Counsel to all of the Secured Lenders and Unsecured Lenders, and approved a mechanism by which a committee of up to six parties would be formed to instruct Secured Lender Representative Counsel (the "**Secured Lender Representatives**"); and
- (c) granted the Administration Charge in the amount of \$750,000 on the Applicants' Property to secure the fees and disbursements of the Monitor and its legal counsel, Cassels, the Applicants' legal counsel, Bennett Jones, and Secured Lender Representative Counsel.

5. On January 31, 2024, this Court granted an amended Initial Order which, among other things:³

- (a) extended the Stay Period to February 16, 2024;
- (b) approved the Applicants' ability to borrow under the DIP Facility pursuant to the DIP Agreement between the Applicants and the DIP Lender and granted a charge in favour of the DIP Lender in the maximum amount of \$4 million (plus interest, fees and expenses) to secure the Applicants' obligations under the DIP Agreement and DIP Facility (the "**DIP Lender's Charge**"); and

³ Seventh Report at section 1.0(5).

- (c) increased the maximum amount of the Administration Charge from \$750,000 to \$1 million.

6. On February 15, 2024, this Court granted an Amended and Restated Initial Order which, among other things:⁴

- (a) extended the Stay Period to March 28, 2024;
- (b) increased the maximum amount of the Administration Charge to \$1.5 million;
- (c) increased the maximum amount of the DIP Facility and the DIP Lender's Charge to \$12 million;
- (d) amended the scope of Secured Lender Representative Counsel's mandate by removing the Unsecured Lenders such that the group of creditors represented by Secured Lender Representative Counsel includes only the Secured Lenders; and
- (e) directed and empowered the Monitor to (i) conduct an investigation into the use of funds borrowed by the Applicants, pre-filing transactions conducted by the Applicants and/or their principals (the "**Principals**") and affiliates, and such other matters as may be requested by the Lender Representatives and agreed by the Monitor, in each case, to the extent such investigation relates to the Applicants' Property, the Business or such other matters as may be relevant to the proceedings herein as determined by the Monitor (the "**Investigation**"), and (ii) report to the

⁴ Seventh Report at section 1.0(6).

Secured Lender Representatives and the Court on the findings of such investigation as the Monitor deems necessary and appropriate.

7. On March 28, 2024, this Court granted the SARIO which, among other things:⁵

- (a) extended the Stay Period to April 30, 2024; and
- (b) appointed Goldman Sloan Nash & Harber LLP (the “**Unsecured Lender Representative Counsel**”) for all of the unsecured lenders of the Applicants other than (i) The Lion's Share Group Inc.; and (ii) any other unsecured lenders directly or indirectly controlled by, or under common control or otherwise affiliated with, Lion's Share Group Inc. or its principal, Claire Drage.

8. On April 12, 2024, this Court granted the SISP Approval Order, which, among other things:⁶

- (a) extended the Stay Period to June 24, 2024;
- (b) approved the SISP;
- (c) approved (i) the Pre-Filing Report of the Monitor dated January 23, 2024, the First Report of the Monitor dated January 29, 2024, the Supplement to the First Report of the Monitor dated February 13, 2024, the Second Report of the Monitor dated March 26, 2024, the Third Report of the Monitor dated April 9, 2024 (the “**Third**

⁵ Seventh Report at section 1.0(7).

⁶ Seventh Report at section 1.0(8).

Report”) and the Monitor’s activities referred to therein and (ii) the fees of the Monitor and Cassels as set out in the Third Report; and

(d) approved the Applicants’ engagement of the SISP Advisors.

9. On June 25, 2024, the Court granted the Expanded Powers Order which, among other things:⁷

(a) expanded the Monitor’s powers over the Applicants, including removing the Principals’ decision-making authority over the Applicants, as more fully discussed in the Seventh Report;

(b) provided a process for the Monitor to transition the Applicants’ property and other management service providers from the SID Companies (as defined in the Expanded Powers Order) as determined necessary by the Monitor; and

(c) granted various additional and ancillary relief to facilitate the foregoing.

10. Also on the same date, the Court granted the Ancillary Order which, among other things:⁸

(a) extended the Stay Period to July 31, 2024;

(b) extended the stay of proceedings in respect of the Additional Stay Parties during the Transition Period (as defined in the Expanded Powers Order) to be

⁷ Seventh Report at section 1.0(9).

⁸ Seventh Report at section 1.0(9).

automatically terminated upon the issuance of the Monitor's Transition Period Termination Certificate (as defined in the Expanded Powers Order);

- (c) provided that, until the issuance of the Monitor's Transition Period Termination Certificate, no Proceeding shall be commenced against or in respect of any of the SID Companies, or their respective employees, advisors or representatives, or affecting their respective business or property, except with the prior written consent of the Monitor and the SID Companies, or with leave of this Court; and
- (d) granted various additional and ancillary relief to facilitate the foregoing.

11. On July 31, 2024, the Court granted an order (the "**July 31st Order**") which, among other things:⁹

- (a) extended the Stay Period to August 31, 2024;
- (b) approved the Property Management Agreement (the "**PMA**") with Richmond Advisory Services Inc. which authorized and directed the Monitor, on behalf of the Applicants in accordance with the Expanded Powers Order, to enter into and perform the Applicants' obligations under the PMA; and
- (c) approved (i) the Sixth Report of the Monitor dated July 24, 2024 (the "**Sixth Report**") and the activities described therein; and approved (ii) the fees and disbursements of the Monitor and Cassels referred to in the Sixth Report.

⁹ Seventh Report at section 1.0(10).

B. The Term Sheet

12. Pursuant to the SISP conducted by the Monitor, interested parties were required to submit any non-binding LOIs by 5:00 p.m. (Toronto Time) on June 10, 2024 (the “**LOI Deadline**”).¹⁰ On or before the LOI Deadline, the Monitor received 12 letters of intent that contemplated third-party sales or refinancing transactions, as well as 452 letters of intent that contemplated a credit bid by first and/or second mortgagees for their respected mortgaged Properties.¹¹

13. After extensive consultation with the Secured Lender Representative Counsel, the Unsecured Lender Representative Counsel, and the Lion’s Share Representative (collectively, the “**Lender Representatives**”), the Monitor determined not to pursue any of the offers received in the SISP and instead has been diligently working with the Lender Representatives and the Monitor’s counsel to develop a process which presents options for either (a) completion of credit bids, subject to required terms; and (b) ongoing management, maintenance, and the eventual sale of properties not acquired under credit bids (the “**Portfolio**”).¹² Accordingly, while the SISP has not been formally terminated, the Monitor is not taking any further steps thereunder.¹³

14. The Lender Representatives, with the input of the Monitor and its counsel, have developed the Term Sheet, which represents terms negotiated among all of the Court-appointed representatives on behalf of their respective creditor groups.¹⁴

15. The Term Sheet contemplates, among other things:¹⁵

¹⁰ Seventh Report at section 3.2(1).

¹¹ Seventh Report at section 3.2(1).

¹² Seventh Report at section 3.2(2).

¹³ Seventh Report at section 3.2(2).

¹⁴ Seventh Report at section 4.4(3).

¹⁵ Seventh Report at section 4.0(2).

- (a) an option for secured creditors to credit bid for their specific Properties in a fair and equitable manner;
- (b) an orderly liquidation of the balance of the Portfolio over an extended period of time;
- (c) management of the Portfolio to be conducted by a professional property manager under the oversight of a Chief Executive Officer (“CEO”) and a committee of creditors; and
- (d) distributions of proceeds of sale of Properties as and when they are sold in accordance with their legal entitlement and priority.

16. Subject to Court approval, the timelines for each milestone of the Term Sheet are provided in the table below:¹⁶

Milestone	Date
First Mortgagee Credit Bid Deadline	September 20, 2024
Second Mortgagee Credit Bid Deadline	September 30, 2024
Motion for Credit Bid Vesting Order	Prior to October 31, 2024
Motion for Exit Order	Prior to October 31, 2024
Closing of Credit Bid Transactions and Portfolio Transition	As soon as possible after granting of Credit Bid Vesting Order and Exit Order

¹⁶ Seventh Report at section 4.1.

17. A form of Credit Bid APA has been circulated to first and second mortgagees by the Secured Lender Representative Counsel, as well as details concerning the non-refundable deposit requirements for first and second mortgagees credit bidders under the Credit Bid APAs.¹⁷ The Monitor has also made available an estimate of the “Allocated DIP Amount” for each Property, which reflects the priority payables that would need to be funded by a credit bidding mortgagee in cash on closing.¹⁸ Further details regarding the credit bid option, including the “Credit Bid Criteria”, are set out in the Seventh Report.¹⁹

18. The Properties that are not subject to Credit Bids will remain in the Portfolio.²⁰ Key provisions regarding how the Portfolio will continue to operate, including the orderly liquidation of properties, allocation of costs, and distribution of proceeds are described in greater detail in the Monitor’s Seventh Report.²¹

C. Increase to the DIP Facility

19. As previewed in the Sixth Report, an increase in the DIP Facility would be necessary to fund the costs of this proceeding through to its completion.²²

20. As of the date of the Seventh Report, the Applicants have drawn \$11.75 million of the \$12 million available under the existing DIP Facility.²³

¹⁷ Seventh Report at section 4.2(2).

¹⁸ Seventh Report at section 4.2(3).

¹⁹ Seventh Report at section 4.2(5).

²⁰ Seventh Report at section 4.3(1).

²¹ Seventh Report at section 4.3(1).

²² Seventh Report at section 5.0(4).

²³ Seventh Report at section 5.0(1).

21. Based on the Cash Flow Forecast, an additional \$3 million of DIP financing, will be required to pay operating and professional costs to the completion of the proposed extended Stay Period.²⁴

22. The Monitor has negotiated the DIP Amendment Agreement pursuant to which the DIP Lender has agreed to increase the DIP Facility from \$12 million to \$15 million.²⁵

D. Approval of the Monitor's Seventh Report, Activities and Fees

23. The Monitor is seeking approval of the Seventh Report and the activities of the Monitor described therein, as well as the fees and disbursements of the Monitor and its counsel, Cassels.

24. In support of this motion, the Seventh Report attaches affidavits from representatives of the Monitor and Cassels and provides a comprehensive listing of accounts sought to be passed, including each account (redacted for matters of privilege) and summary tables identifying the individual professionals who have worked on this matter, their hourly billing rates and total number of hours worked, among other information.²⁶

25. The fees (excluding disbursements and HST) of the Monitor and Cassels in the period described in the Seventh Report total \$320,391.50 and \$825,833.50, respectively.²⁷

²⁴ Seventh Report at section 5.0(5); Appendix "D" of the Seventh Report.

²⁵ Seventh Report at section 5.0(6).

²⁶ Seventh Report at section 7.0(5).

²⁷ Seventh Report at section 7.0(2).

E. Extension of the Stay Period

26. The Monitor is requesting that the Stay Period be extended to October 31, 2024 to provide sufficient time to allow the process contemplated by the Term Sheet to be completed by the Monitor and other interested parties and to move towards terminating these CCAA proceedings.²⁸

PART III - STATEMENT OF ISSUES, LAW & AUTHORITIES

27. The issues on this motion are whether this Court should:

- (a) extend the Stay Period;
- (b) approve the Term Sheet and authorize and direct the Monitor to carry out its obligations under the Term Sheet;
- (c) approve the DIP Amendment Agreement and amend the SARIO to reflect the proposed \$3 million increase in the DIP Facility;
- (d) approve the Seventh Report and the activities described therein, and the fees and disbursements of the Monitor and Cassels.

A. The Stay Period Should Be Extended

28. Section 11.02(2) of the CCAA empowers courts to grant a stay extension, for any period that the court considers necessary, where a court is satisfied that (a) circumstances exist which may such an order appropriate; and (b) the applicants have acted and are continuing to act in good faith and with due diligence.²⁹

²⁸ Seventh Report at section 6.0(1).

²⁹ [CCAA](#), ss. 11.02(2)-(3).

29. As endorsed by the Court in this proceeding and other CCAA proceedings, in the context of a “super monitor”, the monitor is held to the good faith standard.³⁰

30. Extending the Stay Period is necessary and appropriate in the circumstances, and the following factors support the extension of the Stay Period to October 31, 2024:³¹

- (a) the Monitor is discharging its duties and obligations under the CCAA, the Expanded Powers Order and other orders made in these CCAA proceedings in good faith and with due diligence;
- (b) as stated in its Sixth Report, the Monitor was “only seeking a brief stay extension as it intends to seek approval of the process described in section 3.4 [of the Sixth Report] in August 2024 and, at that time, will seek a further extension to provide sufficient time to allow the process to be implemented, following which these proceedings will be terminated”;
- (c) to provide the Monitor and the stakeholders sufficient time to implement the steps contemplated under the Term Sheet, following which the Exit Order will be sought;
- (d) the Monitor believes that no creditor will be materially prejudiced as a result of the extension of the Stay Period; and
- (e) the Cash Flow Forecast projects that there will be sufficient funding under the increased DIP Facility to fund operations, such as the implementation of the Term Sheet, and the costs of this proceeding through the proposed extended Stay Period.

B. The Term Sheet Should be Approved

31. Pursuant to the Expanded Powers Order, the Monitor has been empowered by this Court to, among other things, pursue alternative transactions in respect of the Property, including

³⁰ *Forme Development Group Inc. (Re)*, Court File No.: CV-18-608313-00CL ([Endorsement of Mr. Justice Hainey](#)) February 20, 2020; *In the Matter of a Compromise or Arrangement of Balboa Inc. et. al.*, Court File No.: CV-24-00713245-00CL ([Endorsement of Madame Justice Steele](#)) July 31, 2024.

³¹ Seventh Report at section 6.0(2).

negotiating the terms and conditions of sale or other transactions as the Monitor, in its discretion, may deem appropriate.³²

32. Additionally, section 11 of the CCAA empowers courts to make any order that it considers appropriate in the circumstances.³³ As the Supreme Court of Canada has recognized, the power granted to courts by section 11 of the CCAA is “vast” and, considering the importance of judicial discretion in the CCAA, a supervising judge must be satisfied that the order is appropriate, advances the remedial objectives of the CCAA, and that the applicant has acted in good faith and with due diligence.³⁴

33. The proposed Term Sheet reflects the most efficient and effective conclusion for this proceeding and is the product of extensive negotiations among the representatives of the stakeholders and the Monitor.

34. As noted above, the proposed Term Sheet gives secured creditors the option to credit bid for their specific Properties in a fair and equitable manner.³⁵ The Credit Bid APA provides for among other things, a non-refundable deposit in the amount of \$10,000 to be paid on submission of the Credit Bid APA.³⁶ Given the circumstances of these CCAA proceedings, the Monitor submits that a deposit of this quantum will bring certainty to the closing of the transactions contemplated by the Credit Bid APAs.

³² See [Expanded Powers Order dated June 25, 2024](#) at para 3.

³³ [CCAA](#), s. 11.

³⁴ *Canada v. Canada North Group Inc.*, [2021 SCC 30](#) at [para 21](#).

³⁵ Seventh Report at section 4.0(2)(a).

³⁶ Seventh Report at section 4.2(2).

35. The Monitor submits that the Term Sheet should be approved for the reasons set out below.³⁷

- (a) it represents terms negotiated among all of the Court-appointed representatives on behalf of their respective creditor groups. To the extent a limited number of provisions were not fully settled, the Term Sheet includes the Monitor's view as to what is reasonable and appropriate in the circumstances;
- (b) the SISP did not generate any offers for amounts greater than the DIP Lenders' Charge and the Secured debt;
- (c) it presents a fair opportunity for First Mortgagees and Second Mortgagees to exit this proceeding on a property-by-property basis, consistent with their secured debt arrangements;
- (d) the Term Sheet represents a global solution that respects the legal priorities afforded to the Lenders and does not force any first or second mortgagee to surrender their secured claim status;³⁸
- (e) it preserves the ability for unsecured lenders to participate in any value realized from the Portfolio liquidation, subject to prior ranking creditor claims;
- (f) it provides an imminent and efficient exit (or transition) from these CCAA proceedings, which is necessary given the critical need to minimize costs;
- (g) the Monitor's Investigation provides substantial support and justification for the provision of the Term Sheet that subordinates all Related Party Claims;
- (h) the process (i) for the Monitor to summarily determine "Accepted First Mortgagee Claims" and "Accepted Second Mortgagee Claims" for purposes of credit bidding and then (ii) to determine remaining claims for purposes of the Portfolio liquidation under the supervision of the CEO, pursuant to the Term Sheet and Exit Order, is reasonable and appropriate in the circumstances as it should minimize the significant professional costs that would be incurred with administering a traditional claims process; and
- (i) the Lion's Share Representative and its counsel have made a significant contribution to the development and finalization of the Term Sheet, and,

³⁷ Seventh Report at section 4.4(3).

³⁸ Seventh Report at section 4.4(2).

accordingly, the Monitor has been supportive of its fees being paid by the Applicants from the DIP Financing to a maximum of \$125,000, as provided for in the Term Sheet. Those fees would have been incurred by the Applicants under any other alternative.

36. The Term Sheet, largely developed by the Lender Representatives with input from the Monitor, allows parties to advance the transactions contemplated by the Term Sheet. However, it is important to note that the actual approval and implementation of the transactions contemplated by the Term Sheet will occur through the Exit Order to be sought at a further motion before the Court.

C. The Increase in DIP Financing Should Be Approved

37. This Court's authority to approve interim financing and a related charge in an amount it considers appropriate is derived from section 11.2 of the CCAA. To determine whether to approve of increase interim financing and an interim financing charge, the following non-exhaustive factors under section 11.2(4) should be considered:

- (a) the period during which the company is expected to be subject to proceedings under the CCAA;
- (b) how the company's business and financial affairs are to be managed during the proceedings;
- (c) whether the company's management has the confidence of its major creditors;
- (d) whether the loan would enhance the prospects of a viable compromise or arrangement being made in respect of the company;
- (e) the nature and value of the company's property;
- (f) whether any creditor would be materially prejudiced as a result of the security or charge; and

- (g) the monitor's report referred to in paragraph 23(1)(b), if any.³⁹

38. In light of these factors, the Monitor submits that the Court should approve the increase in the DIP Facility and the corresponding increase in the DIP Lender's Charge, for the reasons set out below:

- (a) the requested relief reflects the cash flow requirements to the end of the proposed Stay Period, as set out in the Cash Flow Forecast;
- (b) the additional DIP financing provides the financial support required for the Monitor to manage the Portfolio, and to implement the Term Sheet for the general benefit of the Applicants' stakeholders;
- (c) the increase in the DIP Facility will (i) preserve the value of the Applicants' Property; (ii) will prevent an uncoordinated liquidation of the properties at distressed prices; and (iii) will support the process to allow secured creditors to credit bid for their specific properties under the Term Sheet;
- (d) the Lender Representatives have been extensively involved in the development of the strategy to maximize recoveries and exit these CCAA proceedings and such strategy depends on sufficient funding during the Stay Period; and
- (e) the Monitor with its expanded powers has filed a report in support of the increase of the DIP Facility.

39. The proposed increase in the DIP Facility will provide the liquidity necessary to manage the Portfolio, advance the implementation of the Term Sheet, and move towards terminating these CCAA proceedings.

³⁹ [CCAA](#), s. 11.2(4).

D. The Seventh Report and Activities, and Fees and Disbursements of the Monitor and Cassels should be Approved

40. As has been noted by this Court, requests to approve a monitor's report are not unusual, and there are good policy and practical reasons for the court to do so, including:⁴⁰

- (a) allowing the Monitor to move forward with the next steps in these CCAA proceedings;
- (b) allowing the Monitor to bring its activities before the court;
- (c) allows an opportunity for the concerns of the stakeholders to be addressed, and any problems to be rectified;
- (d) enabling the court to satisfy itself that a monitor's activities have been conducted in prudent and diligent manners;
- (e) providing protection for a monitor not otherwise provided by the CCAA; and
- (f) protecting creditors from delay that may be caused by re-litigation of steps and potential indemnity claims by the Monitor.

41. This Court has approved prior Monitor's reports in these CCAA proceedings.⁴¹ The Seventh Report and the actions, conduct and activities of the Monitor described therein should be approved, as the Monitor has acted reasonably and in good faith throughout these CCAA proceedings.⁴²

42. The Proposed Order also approves the fees and disbursements incurred between June 1, 2024 to July 31, 2024 of the Monitor and its counsel, Cassels.

⁴⁰ *Target Canada Co. (Re)*, [2015 ONSC 7574](#) at [para 23](#).

⁴¹ See [SISP Approval Order dated April 12, 2024](#), the [Order dated June 24, 2024](#), [Ancillary Order dated June 25, 2024](#), and the [July 31st Order](#).

⁴² Seventh Report at section 6.0(2)(a) and (b).

43. In considering whether to approve fees and disbursements, the court has regard to the “overriding principle of reasonableness,” and does not engage in a docket-by-docket or line-by-line assessment of the accounts.⁴³ The following factors assist a court in assessing the reasonableness of the Monitor’s fees:⁴⁴

- (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.

44. Additionally, courts will often consider whether fees and disbursements are “fair and reasonable in all circumstances. The concerns are ensuring that the monitor is fairly compensated while safeguarding the efficiency and integrity of the CCAA process.”⁴⁵

⁴³ *Nortel Networks Inc.*, [2022 ONSC 668](#) at [para 10](#).

⁴⁴ *Bank of Nova Scotia v. Diemer*, [2014 ONCA 851](#) at [para 33](#); *Nortel* at [para 11](#).

⁴⁵ *Re Nortel Networks Corporation et al*, [2017 ONSC 673](#) at [para. 13](#) [*Nortel*].

45. The fee affidavits attached as Appendices “G” and “H” to the Seventh Report, provide detailed information on the fees and disbursements of the Monitor and of Cassels, from June 1 to July 31, 2024.⁴⁶

46. The scope of work performed by the Monitor and Cassels to date, and the resulting fees incurred, are fair and reasonable reflecting the Monitor’s efforts to efficiently carry out its court-ordered duties and responsibilities to the Applicants and their stakeholders. The Monitor and Cassels have been required to undertake an extensive amount of work in these CCAA proceedings, which has included:

- (a) Communicating with hundreds of Lender stakeholders and the Lender Representatives;
- (b) enhanced cash flow and operational oversight mandated by the Second ARIO;
- (c) conducting the SISP;
- (d) dealing with numerous issues arising from management of the Applicants prior to the granting of the Expanded Powers Order;
- (e) completing the Investigation and finalizing the Fourth Report;
- (f) exercising the additional responsibilities under the Expanded Powers Order;
- (g) negotiating the PMA and coordinating the transition of the property management function from the SID Companies; and
- (h) negotiating the Term Sheet.⁴⁷

47. For these reasons, the Monitor submits that the fees of the Monitor and its counsel are reasonable and appropriate in the circumstances and should be approved.⁴⁸

⁴⁶ Appendix “G” and Appendix “H” of the Seventh Report.

⁴⁷ Seventh Report at section 7.0(4).

⁴⁸ Seventh Report at section 7.0(7).

PART IV - ORDER REQUESTED

48. For the reasons set out above, the Monitor respectfully requests that this Court grant the Proposed Order.

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 27 day of August, 2024.

Cassels Brock & Blackwell LLP

Cassels Brock & Blackwell LLP
Lawyers for the Monitor, KSV
Restructuring Inc.

SCHEDULE “A”

LIST OF AUTHORITIES

1. *Forme Development Group Inc. (Re)*, Court File No.: CV-18-608313-00CL ([Endorsement of Mr. Justice Hainey](#)) February 20, 2020
2. *In the Matter of a Compromise or Arrangement of Balboa Inc. et. al*, Court File No.: CV-24-00713245-00CL ([Endorsement of Madame Justice Steele](#)) July 31, 2024
3. *Canada v. Canada North Group Inc.*, [2021 SCC 30](#)
4. *Target Canada Co. (Re)*, [2015 ONSC 7574](#)
5. *Re Nortel Networks Corporation et al*, [2017 ONSC 673](#)
6. *Nortel Networks Inc.*, [2022 ONSC 668](#)
7. *Bank of Nova Scotia v. Diemer*, [2014 ONCA 851](#)

SCHEDULE “B”

TEXT OF STATUTES, REGULATIONS & BY - LAWS

Companies’ Creditors Arrangement Act, R.S.C. 1985, c. C-36

General power of court

11. Despite anything in the *Bankruptcy and Insolvency Act* or the *Winding-up and Restructuring Act*, if an application is made under this Act in respect of a debtor company, the court, on the application of any person interested in the matter, may, subject to the restrictions set out in this Act, on notice to any other person or without notice as it may see fit, make any order that it considers appropriate in the circumstances.

...

Stays, etc. — other than initial application

11.02 (2) A court may, on an application in respect of a debtor company other than an initial application, make an order, on any terms that it may impose,

(a) staying, until otherwise ordered by the court, for any period that the court considers necessary, all proceedings taken or that might be taken in respect of the company under an Act referred to in paragraph (1)(a);

(b) restraining, until otherwise ordered by the court, further proceedings in any action, suit or proceeding against the company; and

(c) prohibiting, until otherwise ordered by the court, the commencement of any action, suit or proceeding against the company.

Burden of proof on application

(3) The court shall not make the order unless

(a) the applicant satisfies the court that circumstances exist that make the order appropriate; and

(b) in the case of an order under subsection (2), the applicant also satisfies the court that the applicant has acted, and is acting, in good faith and with due diligence.

...

Interim financing

11.2(1) On application by a debtor company and on notice to the secured creditors who are likely to be affected by the security or charge, a court may make an order declaring that all or part of the company's property is subject to a security or charge — in an amount that the court considers appropriate — in favour of a person specified in the order who agrees to lend to the company an amount approved by the court as being required by the company, having regard to its cash-flow statement. The security or charge may not secure an obligation that exists before the order is made.

Factors to be considered

(4) In deciding whether to make an order, the court is to consider, among other things,

(a) the period during which the company is expected to be subject to proceedings under this Act;

(b) how the company's business and financial affairs are to be managed during the proceedings;

- (c) whether the company's management has the confidence of its major creditors;
- (d) whether the loan would enhance the prospects of a viable compromise or arrangement being made in respect of the company;
- (e) the nature and value of the company's property;
- (f) whether any creditor would be materially prejudiced as a result of the security or charge; and
- (g) the monitor's report referred to in paragraph 23(1)(b), if any.

IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*, R.S.C. 1985, c. C-36, AS AMENDED

Court File No. CV-24-00713245-00CL

AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF BALBOA INC., DSPLN INC., HAPPY GILMORE INC., INTERLUDE INC., MULTIVILLE INC., THE PINK FLAMINGO INC., HOMETOWN HOUSING INC., THE MULLIGAN INC., HORSES IN THE BACK INC., NEAT NESTS INC. AND JOINT CAPTAIN REAL ESTATE INC.

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)
PROCEEDING COMMENCED AT
TORONTO

FACTUM OF THE MONITOR
(RETURNABLE ON AUGUST 30, 2024)

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