

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

BETWEEN:

**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 ON JULY 31, 2024)**

July 29, 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, (i) if necessary, abridging the time for, and validating service of, the Notice of Motion of the Monitor and supporting materials such that the motion is properly returnable on July 31, 2024 and dispensing with further service thereof; (ii) extending the Stay Period to and including August 31, 2024; (iii) approving the Property Management Agreement (the “**PMA**”) with Richmond Advisory Services Inc. (“**Richmond**”) substantially in the form attached at Appendix “C” to the Sixth Report of the Monitor dated July 24, 2024 (the “**Sixth Report**”) and authorizing and directing 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 (iv) approving the Sixth Report and the activities of the Monitor described therein, and the fees and disbursements of the Monitor and its counsel, Cassels Brock & Blackwell LLP (“**Cassels**”), as referred to in the Sixth Report.

2. Capitalized terms not defined herein have their meaning as set out in the Sixth 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”**).<sup>1</sup>

4. On January 23, 2024, this Court granted an Initial Order which, among other things:<sup>2</sup>

- (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 Applicants’ directors and officers, being Aruba Butt, Dylan Suitor and Ryan Molony (the **“Additional Stay Parties”**);
- (b) appointed Chaitons 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:<sup>3</sup>

- (a) extended the Stay Period to February 16, 2024;

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<sup>1</sup> The Sixth Report of the Monitor dated July 24, 2024 at section 1.0(2) [Sixth Report].

<sup>2</sup> Sixth Report at section 1.0(4).

<sup>3</sup> Sixth Report at section 1.0(5).

- (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
  - (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 (the "**ARIO**") which, among other things:<sup>4</sup>
- (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

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<sup>4</sup> Sixth Report at section 1.0(6).

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 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 a second Amended and Restated Initial Order (the "**SARIO**") which, among other things:<sup>5</sup>

- (a) extended the Stay Period to April 30, 2024; and
- (b) appointed 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 or its principal, Claire Drage.

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

- (a) extended the Stay Period to June 24, 2024;
- (b) approved the SISP; and
- (c) approved the Applicants' engagement of HCC and CBRE (together with HCC, the "**SISP Advisors**").

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<sup>5</sup> Sixth Report at section 1.0(7).

<sup>6</sup> Sixth Report at section 1.0(8).

9. On June 25, 2024, the Court granted two orders (the “**Expanded Powers Order**” and the “**Ancillary Order**”), which, among other things:<sup>7</sup>

- (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 Sixth Report;
- (b) provided for 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;
- (c) extended the Stay Period to July 31, 2024;
- (d) 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 automatically terminated upon the issuance of the Monitor’s Transition Period Termination Certificate (as defined in the Expanded Powers Order);
- (e) 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;
- (f) provided that none of the Applicants, the SID Companies and/or their respective principals and affiliates shall be required to take any further steps in connection with, or respond to any requests made pursuant to, paragraph 41(k) of the ARIO,

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<sup>7</sup> Sixth Report at section 1.0(9).

but without derogating from any other obligations of any Person under the SARIO;  
and

- (g) provided that, during the Transition Period, each of the Additional Stay Parties shall provide the Monitor with notice of the earlier of (i) seven (7) business days' prior to any closing date and (ii) the listing date, for the sale of any real property owned, directly or indirectly, by the applicable Additional Stay Party, subject to certain express exceptions.

**B. Update on the SISP and The Alternative Solution**

10. Pursuant to the SISP, interested parties were required to submit any non-binding LOIs by 5:00 pm (Toronto Time) on June 10, 2024 (the "**LOI Deadline**").

11. In a Confidential Appendix to the Fifth Report, the Monitor provided the Court with a summary of the LOIs received by the LOI Deadline. As discussed in the Fifth Report, 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 respective mortgaged Properties.<sup>8</sup>

12. Pursuant to the SISP, following the LOI Deadline, the Monitor and the other Reviewing Parties (as defined in the SISP) were to discuss and, if possible, determine the next steps in the SISP. Section 21 of the SISP, provides if such an agreement cannot be reached, the Monitor shall bring a motion to the Court for advice and directions which shall be served and filed within 14 days of the LOI Deadline, being June 24, 2024, which deadline was extended by the Court to July 31, 2024.

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<sup>8</sup> Sixth Report at section 3.3(1).

13. After extensive consultation with the Secured Lender Representative Counsel, the Unsecured Lender Representative Counsel and the Lion's Share Representative and its counsel (collectively, the "**Lender Representatives**"), the Monitor determined not to pursue any of the LOIs received in the SISP at this time 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 or (b) ongoing management, maintenance and the eventual sale of properties not acquired under credit bids period (collectively the "**Alternative Solution**").<sup>9</sup>

14. The Alternative Solution being developed contemplates:<sup>10</sup>

- (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 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.

### **C. Extension of the Stay Period**

15. The Monitor is requesting that the Stay Period be extended to August 31, 2024 to provide sufficient time to advance and present the Alternative Solution for court approval.<sup>11</sup>

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<sup>9</sup> Sixth Report at section 3.3(2).

<sup>10</sup> Sixth Report at section 3.4(1).

<sup>11</sup> Sixth Report at section 5.0(1).



**D. Property Management and the PMA**

16. SID Management is currently the property manager of the Portfolio and is providing property management services until a new property manager is identified, and the Transition Period is completed, as authorized under the Expanded Powers Order.<sup>12</sup>

17. As set out further in the Sixth Report, immediately following the granting of the Expanded Powers Order, the Monitor solicited and received proposals to act as property manager and, subject to Court approval, the Monitor has selected Richmond to be the property manager as it is well qualified to perform the mandate and has the requisite expertise.<sup>13</sup>

**PART III - STATEMENT OF ISSUES, LAW & AUTHORITIES**

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

- (a) extend the Stay Period;
- (b) approve the PMA; and
- (c) approve the Sixth Report and the activities described therein, and the fees and disbursements of the Monitor and Cassels.

**A. The Stay Period Should Be Extended**

19. The Monitor seeks to extend the Stay Period to August 31, 2024.<sup>14</sup>

20. 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

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<sup>12</sup> Sixth Report at section 3.2(1).

<sup>13</sup> Sixth Report at section 3.2(2-4).

<sup>14</sup> Sixth Report at section 5.0(1).

may such an order appropriate; and (b) the applicants have acted and are continuing to act in good faith and with due diligence.<sup>15</sup>

21. Extending the Stay Period is necessary and appropriate in the circumstances to provide sufficient time to advance and present the Alternative Solution. The Monitor intends to seek approval of the Alternative Solution in August 2024 and, at that time, will seek a further extension to provide sufficient time to allow the Alternative Solution to be implemented and bring these proceedings to conclusion.<sup>16</sup>

22. The Cash Flow Forecast demonstrates that there is funding available under the DIP Facility to fund operations and the costs of these proceedings during the extension period.<sup>17</sup>

23. Justice Hainey, as he then was, held that ““Applicants” acting in good faith in this context refers to the Monitor, as it is a super-Monitor in these CCAA proceedings”, therefore it was the conduct of the “super” monitor that was to be held to a “good faith” standard.<sup>18</sup> In this regard, the Monitor is of the view that it 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.<sup>19</sup>

## **B. The PMA should be Approved**

24. Pursuant to the Expanded Powers Order, SID Management is required to transition the property management services when the Monitor, on behalf of the Applicants, identifies a

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<sup>15</sup> [CCAA](#), ss. 11.02(2)-(3).

<sup>16</sup> Sixth Report at section 1.2(1)(f).

<sup>17</sup> Sixth Report at section 5.0(2)(c).

<sup>18</sup> *Forme Development Group Inc. (Re)*, Court File No.: CV-18-608313-00CL ([Endorsement of Mr. Justice Hainey](#)) February 20, 2020.

<sup>19</sup> Sixth Report at section 5.0(2)(a).

replacement property manager.<sup>20</sup> Furthermore, pursuant to the PMA, the Monitor is required to obtain an order, among other things, approving the PMA.<sup>21</sup>

25. While replacing SID Management was contemplated in the Expanded Powers Order, the PMA also makes commercial sense, and will address the several issues the Monitor identified with the business practices of SID Management.<sup>22</sup>

26. Richmond is highly qualified to perform the mandate, has experience dealing with distressed properties and provided a superior proposal to the other prospective property managers.<sup>23</sup> It was also least expensive option that currently provides property management services in the regions where the Properties are located.<sup>24</sup> Accordingly, the Monitor submits the PMA should be approved.

**C. The Sixth Report and Activities, and Fees and Disbursements of the Monitor and Cassels should be Approved**

27. The Proposed Order approves the Sixth Report, along with the actions, conduct and activities of the Monitor referred to therein. 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:

- (a) allowing the Monitor to move forward with the next steps;
- (b) allowing the Monitor to bring its activities before the court;
- (c) enabling the court to satisfy itself that a monitor's activities have been conducted in prudent and diligent manners;
- (d) providing protection for a monitor not otherwise provided by the CCAA; and

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<sup>20</sup> Sixth Report at section 3.2(1) and Appendix "C".

<sup>21</sup> Sixth Report at section 3.2(4).

<sup>22</sup> Fourth Report of the Monitor dated June 11, 2024 at section 2.4(6) [Fourth Report]. Additional details of the Monitor's findings are found at section 2.4 of the Fourth Report.

<sup>23</sup> Sixth Report at section 3.2(8)(b).

<sup>24</sup> Sixth Report at section 3.2(4).

(e) protecting creditors from delay that may be caused by re-litigation of steps.<sup>25</sup>

28. Such approval has been granted for prior reports in these CCAA proceedings.<sup>26</sup> The Sixth 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.<sup>27</sup>

29. The Proposed Order also approves the fees and disbursements incurred between April 1, 2024 to May 31, 2024 of the Monitor and its counsel. The jurisdiction of this Court to approve the accounts of the Monitor and its counsel are confirmed in the SARIO, which directs that: “[...] the Monitor and its legal counsel shall pass their accounts from time to time, and for this purpose the accounts of the Monitor and its legal counsel are hereby referred to a judge of the Commercial List of the Ontario Superior Court of Justice”.<sup>28</sup>

30. 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.”<sup>29</sup>

31. 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.<sup>30</sup> The following factors assist a court in assessing the reasonableness of the Monitor’s fees:

(a) the nature, extent and value of the assets being handled;

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<sup>25</sup> *Target Canada Co. (Re)*, [2015 ONSC 7574](#) at para 23.

<sup>26</sup> See SISP Approval Order dated April 12, 2024, the Order dated June 24, 2024 and Ancillary Order dated June 25, 2024.

<sup>27</sup> Sixth Report at section 5.0(2).

<sup>28</sup> Sixth Report at section 7.0(1).

<sup>29</sup> *Re Nortel Networks Corporation et al*, [2017 ONSC 673](#) at [para. 13](#) [*Nortel*].

<sup>30</sup> *Nortel Networks Inc.*, [2022 ONSC 668](#) at [para 10](#).

- (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.<sup>31</sup>

32. The Monitor and Cassels have been required to undertake an extensive amount of work in these CCAA proceedings to date, which has been in consultation and close coordination with the Applicants and/or the Lender Representatives as applicable and appropriate. In addition to all of the work typically conducted by a CCAA monitor, the Monitor's workload has included enhanced cash flow monitoring and operational oversight mandated by the Second ARIO, dealing with numerous issues arising from the management of the Applicants prior to the granting of the Expanded Powers Order, conducting phase 1 of the SISF, and spending a material amount of time conducting a thorough Investigation and preparing the Fourth Report (which Investigation and report were requested by the Secured Lender Representatives) in accordance with the Second ARIO.<sup>32</sup>

33. The scope of work performed by the Monitor and Cassels to date, and the resulting fees incurred and sought to be approved, reflect the Monitor's careful efforts to efficiently carry out its court-ordered duties and responsibilities to the Applicants and their stakeholders.<sup>33</sup> Furthermore, the Monitor and its counsel have acted with diligence throughout these CCAA proceedings, and

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<sup>31</sup> *Bank of Nova Scotia v. Diemer*, [2014 ONCA 851](#) at [para 33](#); *Nortel* at [para 11](#).

<sup>32</sup> Sixth Report at section 7.0(3).

<sup>33</sup> Sixth Report at section 7.0(3).

the Monitor views the fees and disbursements as reasonable and appropriate in the circumstances.<sup>34</sup>

**PART IV - ORDER REQUESTED**

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

**ALL OF WHICH IS RESPECTFULLY SUBMITTED** this 29<sup>th</sup> day of July, 2024.

*Cassels Brock & Blackwell LLP*

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

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<sup>34</sup> Sixth Report at section 7.0(7).

## 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. *Target Canada Co. (Re)*, [2015 ONSC 7574](#)
3. *Re Nortel Networks Corporation et al*, [2017 ONSC 673](#)
4. *Nortel Networks Inc.*, [2022 ONSC 668](#)
5. *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

##### **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.

...



**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 JULY 31, 2024)**

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