

**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 OCTOBER 30, 2024)**

October 25, 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**”), extending the Stay Period (as defined in the SARIO) to and including October 31, 2024.

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

PART II - SUMMARY OF FACTS

A. Overview and Background

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, the Applicants obtained an initial order (the “**Initial Order**”) under the CCAA, which among other things, appointed KSV Restructuring Inc. as the Monitor in these

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

CCAA proceedings. The Initial Order was subsequently amended and restated resulting in the SARIO.²

5. On June 25, 2024, the Court granted the Expanded Powers Order, which, among other things:³

- (a) authorized and empowered the Monitor to exercise any powers which may be properly exercised by a board of directors or any officers of the Applicants to cause the Applicants to take various actions or steps as set out in paragraph 3 of the Expanded Powers Order;
- (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; and
- (c) granted various additional and ancillary relief to facilitate the foregoing.

6. On August 30, 2024, the Court granted an Order, which, among other things:⁴

- (a) extended the Stay Period to and including October 31, 2024; and
- (b) approved the restructuring term sheet (the “**Restructuring Term Sheet**”), and authorized and directed the Monitor to carry out its obligations under the Restructuring Term Sheet, including, without limitation, facilitating the negotiation

² Eighth Report at section 1.0(1).

³ Eighth Report at section 1.0(9).

⁴ Eighth Report at section 1.0(10).

and settlement of the transactions contemplated therein and finalizing all documentation reasonably necessary to carry out such transactions.

B. The Restructuring Term Sheet

7. The Restructuring Term Sheet established deadlines of September 20, 2024 for first mortgagees, and September 30, 2024 for second mortgagees, to submit credit bids for their respective properties. In total, the Monitor received 323 credit bids, each accompanied with the required deposit. Subject to Court approval to be sought at the next motion in these proceedings and completion of the credit bid transactions, 84 properties will remain in the portfolio.⁵

8. On October 11, 2024, the Monitor sent an update to all secured and unsecured lenders and posted the notice on its case website, which provided among other things, that the Monitor is working to have the management and liquidation of the remaining portfolio remain as consistent as possible with the terms of the Restructuring Term Sheet.⁶

9. Given the number of credit bids received and the economics of the remaining portfolio, the Monitor is working with stakeholders, including the DIP lender and Court-appointed representative counsel, to finalize a path forward.⁷

C. Extension of the Stay Period

10. The Monitor is requesting that the Stay Period be extended to November 30, 2024 to provide sufficient time to finalize financing and other arrangements in order to be in a position to

⁵ Eighth Report at section 3.2(1).

⁶ Eighth Report at sections 3.2(2) and 3.2(3).

⁷ Eighth Report at section 3.2(3).

seek the Credit Bid Vesting Order (as defined in the Restructuring Term Sheet) and related relief in respect of the go-forward management and liquidation of the remaining portfolio.⁸

PART III - STATEMENT OF ISSUES, LAW & AUTHORITIES

11. The sole issue on this motion is whether this Court should extend the Stay Period.

A. The Stay Period Should Be Extended

12. 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 make such an order appropriate; and (b) the applicants have acted and are continuing to act in good faith and with due diligence.⁹

13. 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.¹⁰

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

- (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;¹¹
- (b) it will provide additional time to finalize financing and other arrangements in order to seek the Credit Bid Vesting Order (as defined in the Restructuring Term Sheet)

⁸ Eighth Report at section 5.0(2)(d).

⁹ *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, ss. [11.02\(2\)-\(3\)](#) [CCAA].

¹⁰ *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.

¹¹ Eighth Report at section 5.0(2)(a).

and related relief in respect of the go-forward management and liquidation of the remaining portfolio;¹²

- (c) the Monitor believes that no creditor will be materially prejudiced as a result of the extension of the Stay Period;¹³ and
- (d) the Cash Flow Forecast projects that there will be sufficient funding available to fund operations and the costs of these proceedings during the extension period.¹⁴

PART IV - ORDER REQUESTED

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

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 25th day of October, 2024.

Cassels Brock & Blackwell LLP

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¹² Eighth Report at section 5.0(2)(d).

¹³ Eighth Report at section 5.0(2)(b).

¹⁴ Eighth Report at section 5.0(2)(c).

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

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.

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

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