Court File No. CV-00713245-00CL

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 IN THE MATTER OF A PLAN OR 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.

Applicants

FACTUM OF THE SECURED LENDERS OF THE APPLICANTS
(Motion Returnable June 24, 2024)

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TO: SERVICE LIST

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I - OVERVIEW

1. This is a motion by the secured lenders of the Applicants (the "**Secured Lenders**"), by their representative counsel, Chaitons LLP, appointed pursuant to the Initial Order of this 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 "**ARIO**"), seeking an order expanding the powers of the KSV Restructuring Inc. ("**KSV**"), in its capacity as court-appointed CCAA monitor of the Applicants (in such capacity, the "**Monitor**").

2. The Applicants have operated a sham enterprise, borrowing well over $100 million from innocent investors (including retirement savings). These investors are facing potentially catastrophic losses.

3. As detailed below, the Applicants and the Principals[1] have, among other things: (a) lied to their investors; (b) withheld material information from their investors and from the Monitor; (c) misappropriated millions of dollars of investor funds; (d) neglected their duties as owners and managers of the only assets available for recoveries to the investors (i.e., the mortgaged properties); (e) committed various bankruptcy offences; and (f) not been truthful in their filings with the Court during the course of this proceeding.

4. The Applicants are also abusing the CCAA process to protect the Principals, who own or control additional non-Applicant corporations which continue to operate outside the supervision of the Court. During the course of this proceeding, the Principals have sold assets, and are continuing to attempt to sell other assets, while having the benefit of a stay of proceedings granted in this proceeding.

5. The Monitor and all of the Applicants' lender constituents, secured and unsecured, have lost all faith in the Applicants and the Principals' ability to manage their business and assets, and will not support an extension of the stay period without an expansion of the Monitor's powers to protect their interests.

6. The draft order submitted by the Secured Lenders on this motion (the "**Expanded Monitor Powers Order**") was prepared in consultation with the Monitor and all of the other lenders' Court-appointed representatives, and has all of their support.

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[1] Robert Clark ("**Clark**"), Aruba Butt, Ryan Molony, Dylan Suitor, Sam Drage and Bronwyn Bullen (collectively, the "**Principals**").

7. The Secured Lenders have also notified counsel for the Applicants that they are seeking:

(a) cost orders against the Principals personally on a full indemnity scale in respect of the motions brought by the Secured Lenders and the Monitor, if such motions are opposed by the Applicants; and

(b) recovery from the Principals personally in respect of all fees and disbursements incurred by Bennett Jones LLP in responding to these motions,

in circumstances where the entire lender constituency and the Monitor support the Expanded Monitor Powers Order and the Monitor has concluded that the Applicants have not met the required good faith and due diligence standard under the CCAA.

II - THE FACTS

A. Background

8. The Secured Lenders consist of first and second mortgagees on 406 residential properties located in tertiary markets in Ontario, including Timmins, Sault Ste. Marie, Sudbury, Kirkland Lake, Capreol, Temiskaming Shores and Val Caron. These lenders are owed approximately $81.5 million and $8.6 million plus interest and costs, respectively.[2]

9. The Applicants also have unsecured lenders to whom they issued promissory notes, which they initially declared to total approximately $54 million, but have recently stated they believe that figure to be overstated.[3]

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[2] Fifth Report of the Monitor dated June 17, 2024 (the "**Fifth Report**"), section 2.0, at para. 3.
[3] Fifth Report, section 2.0, at para. 3.

B. Monitor's Investigation

10. On June 11, 2024, the Monitor released a report detailing its findings following its conduct of an investigation into, among other things, the Applicants' use of borrowed funds and pre-filing transactions conducted by the Applicants and/or the Principals and affiliates, undertaken in accordance with the ARIO (the "**Investigation**").[4] The Monitor has identified, among other things:

(a) "questionable" transfers from the Applicants to the Principals, affiliated entities and third parties without any apparent benefit to the Applicants' business;

(b) "questionable" dividend payments or repayment of amounts identified as "shareholder loans";

(c) "a pervasive lack of proper record keeping, particularly for a business with assets and liabilities with a book value in the hundreds of millions of dollars"; and

(d) myriad other "deficient business practices".[5]

11. The Monitor identified numerous instances of borrowed funds transferred by the Applicants to either the Principals or non-Applicant corporations owned or controlled by one or more of the Principals. These transactions totalled millions of dollars and accelerated the Applicants' liquidity crisis that resulted in this CCAA proceeding.[6]

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[4] Fourth Report of the Monitor dated June 11, 2024 (the "**Fourth Report**").
[5] Fourth Report, section 2.0.
[6] Fourth Report, section 2.1, at para. 1.

12. It appears to the Monitor that the recurring transfers of the Applicants' borrowed funds to the Principals, or corporations that they control or own, form a pattern of unjustifiable defalcation of funds lent to the Applicants by investors.[7]

13. Personal expenses paid from funds lent by innocent investors include jewellery, lavish travel expenses, including private jets and luxury villas/hotels, private chefs, payments at various nightclubs, payments to social media personalities and payments to other marketing companies with no apparent connection to the Applicants' business.[8]

14. The Monitor also identified transfers totalling approximately $7.4 million in net payments to non-Applicant corporations owned or controlled by the Principals.[9]

15. The Monitor also identified payments to SID Management[10] and SID Renos that could not be adequately explained by the fee structure described in Clark's affidavits filed with this Court. Without accounting for funds received directly by SID Management or SID Renos from the Applicants' rental income, the Monitor identified payments by the Applicants of over $2.5 million to SID Management and SID Renos. In addition, the Monitor noted that SID Renos appears to receive undisclosed "vendor rebates" from contractors, paid by the Applicants, further increasing the funds SID Renos received.[11]

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[7] Fourth Report, section 2.1, at para. 2.
[8] Fourth Report, section 2.1, at para. 3.
[9] Fourth Report, section 2.1, at para. 4.
[10] The SID Companies are entities owned and/or controlled by the Principals that allegedly "run the business of specializing in the acquisition, renovation and leasing of distressed residential real estate in tertiary markets throughout Ontario".
[11] Fourth Report, section 2.1, at para. 5.

16. The Monitor also identified additional direct payments by the Applicants to the Principals, alleged to be business-related, but which the Applicants have not validated as having any business purpose.[12]

17. The Monitor also identified almost $1 million in questionable net payments by the Applicants to their shareholders described in their general ledgers as "dividend payments" or "shareholder loans".[13] In the case of the shareholder loans, there is limited evidence of the actual loans. In addition, the timing of repayment was concerning given the Applicants' liquidity issues.[14]

18. The Applicants also failed to maintain appropriate corporate or accounting records, including the failure to pass corporate resolutions, hold board meetings, maintain general ledgers, file tax returns. In that respect, tens of millions of dollars of receipts and disbursements were not recorded in the general ledgers and each of the Applicants failed to maintain a general ledger after 2022.[15]

19. The Applicants' failure to maintain up-to-date or proper financial records, including records of how the proceeds of the promissory note loans were spent, has limited the Monitor's ability to gain complete visibility into the use of the Applicants' funds.[16]

20. The absence of proper accounting and record-keeping resulted in an inability to track, understand and assess the extent of liability associated with and arising from mortgage loans and promissory note loans. In at least one instance, the Monitor became aware that a promissory note loan that referenced a property was renewed after that property had been sold. In another instance,

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[12] Fourth Report, section 2.1, at para. 6.
[13] Fourth Report, section 2.1, at para. 1.
[14] Fourth Report, section 2.2, at para. 2.
[15] Fourth Report, section 2.3, at para. 1.
[16] Fourth Report, section 2.3, at para. 2.

the Monitor learned that two promissory note loans referencing a property were renewed after that property burned down. Additionally, the Applicants failed, were unable to or did not have proper accounting records to ensure municipal taxes were paid on time (or at all) while signing loan agreements representing that there were no tax arrears.[17] The Applicants misrepresented to investors when they advanced funds that realty taxes on mortgaged properties were fully paid when in fact they had not and would not be paid.

21. The Monitor has also raised serious concerns regarding the continued borrowing from investors and transfers to Principals and affiliated entities when the solvency of the Applicants' business was highly questionable. The Applicants continued borrowing, in part to finance interest payments on prior debt obligations. As the Applicants' challenges servicing their debt became more apparent, at least as early as the "severe liquidity issues" of mid-2022, the Applicants continued to renew loans and increase leverage. Importantly, the investors were not apprised of the corporate structure of the Applicants, liquidity issues or more generally the insolvency of the Applicants.[18]

22. The Monitor also has raised serious concerns about the Applicants' pervasive practice of transferring borrowed funds amongst related companies without restricting the use of funds to the Applicant that borrowed them or the property in respect of which the funds were loaned. There appears to have been complete disregard for the importance of treating each Applicant and affiliated/related company as separate and distinct corporate entities.[19]

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[17] Fourth Report, section 2.3, at para. 3.
[18] Fourth Report, section 2.4, at para. 1.
[19] Fourth Report, section 2.4, at para. 2.

23. In total, the Monitor identified over $12 million in transfers among the Applicants. Investors did not receive any or adequate disclosure of this practice. Rather, investors were led to believe that their funds would exclusively be used by the borrower, and more specifically, in relation to a particular property. Notably, the promissory notes issued by the Applicants each reference a specific property. However, the proceeds of such promissory note loans were not always used for the property referenced in the promissory note. Investors holding first mortgages and promissory notes were not made aware of this practice nor did any of the loan documents examined contemplate such transfers. In these respects, the Applicants misled investors as to how the funds they were lending to the Applicants would be used.[20]

24. The Principals also appear to be attempting to disavow their liability under personal guarantees that they signed in favour of investors in respect of some of their borrowings.

25. The Monitor also identified a number of properties that were listed and sold prior to the date the Applicants filed for CCAA protection, many of which were sold to what appear to be non-arm's length parties.[21] The Monitor is concerned about the timing of these non-arm's length sales (which closed in December 2023 and January 2024), especially when it is clear that not all promissory note holders in respect of these properties were repaid.[22]

26. Notwithstanding earlier filings with this Court deposing that unsecured lenders were owed approximately $50 million,[23] the Applicants are now asserting (over 4 months after their CCAA filing) that these lenders are owed closer to $20 million.

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[20] Fourth Report, section 2.4, at para. 4.
[21] Fourth Report, section 6.0, at para. 2
[22] Fourth Report, section 6.0, at para. 9.
[23] Fourth Report, section 4.4, at para. 12.

27. The Monitor has also identified undisclosed conflicts of interest among certain of the Applicants and/or the Principals.[24]

28. The Monitor has also concluded that the Applicants continued to borrow funds and renew loans when they knew or ought to have known that there was no reasonable chance of repaying them. Despite that knowledge, the Applicants appeared willing to borrow more to pay interest on prior debt obligations.[25]

29. In summary, it appears to the Monitor that the Principals diverted, misused or misappropriated funds that were borrowed from Investors by the Applicants. Funds were improperly used for personal benefits or extravagant expenses of the Principals without any discernable benefit to the Business. These questionable business practices continued even as the Applicants experienced liquidity issues which ultimately necessitated the commencement of these CCAA proceedings.[26]

Dispositions of Assets by Non-Applicants

30. The Principals own or control additional non-Applicant corporations which continue to operate outside the supervision of the Court. During the course of this proceeding, the Principals have sold assets, and are continuing to attempt to sell other assets, while having the benefit of a stay of proceedings granted in this proceeding.[27]

[24] Fourth Report, section 5.8, at para. 1.
[25] Fourth Report, section 7.0, at para. 9.
[26] Fourth Report, section 2.4, at para. 6.
[27] Fourth Report, section 5.3.4, at paras. 1-4; Affidavit of Sofia Pino sworn on June 14, 2024 ("**Sofia's Affidavit'**), Motion Record of the Secured Lenders returnable June 24, 2024 (the "**MR of the Secured Lenders**"), Tab 2, at paras. 33-37.

Applicants' Neglect of the Mortgaged Properties[28]

31. The Applicants have neglected many of the mortgaged properties. On at least three of the mortgaged properties, the residential structures have been demolished or are slated for demolition. The Applicants did not notify their secured or unsecured lenders regarding these circumstances. Affected lenders now face potentially irreparable harm as a result of the Applicants' breaches of their duties as owners and/or managers of these properties, particularly where their actions have negated any available insurance coverage.

Monitor's Fifth Report

32. In its Fifth Report, the Monitor has concluded that it does not believe that the good faith and due diligence standard has been met by the Applicants, and accordingly the Applicants should not be granted an extension of the stay of proceedings absent the granting of the Expanded Monitor Powers Order.[29]

33. The Monitor's position arises from (among other things):[30]

(a) the issues identified by the Monitor over the course of the Investigation as set out in the Fourth Report. Without repeating all of those significant issues, the Fourth Report concludes by stating: "*On an overall basis, the Monitor finds that the Applicants' Business and the Investors' funds were mismanaged, with the effect*

[28] Sofia's Affidavit, Tab 2 of the MR of the Secured Lenders, at paras. 16-32; Affidavit of Andrew Adams sworn on June 14, 2024, Tab 3 of the MR of the Secured Lenders, at paras. 4-11; Affidavit of Paul Searle sworn on June 14, 2024, Tab 4 of the MR of the Secured Lenders, at paras. 4-8; Fifth Report, section 7.0, at para. 3.
[29] Fifth Report, section 7.0, at para. 2.
[30] Fifth Report, section 7.0, at para. 3.

that the true beneficiaries of the Business were the Principals and their corporations";

(b) neglect of properties owned by the Applicants;

(c) failure of the Applicants, the Additional Stay Parties and Mr. Clark to comply with several reasonable requests for basic information from the Monitor in a timely manner, or at all. For example, the Applicants and their Principals have, to date, declined to produce bank statements from either SID Renos or SID Management, two entities that are linked to the Applicants and which have received and made many payments from and to the Applicants. Another example is Clark's failure to respond to the Monitor's specific request for "a list of all of the companies that [he] has an interest in currently or had an interest in during the currency of the [A]pplicants' operations, and for each one, to advise if they received funds from the [A]pplicants"; and

(d) advice received by the Monitor from all of the Applicants' lender constituents, secured and unsecured, that they have lost all faith in the Applicants and their principals' ability to manage the Business, and that they will not support an extension of the Stay Period without an expansion of the Monitor's powers to protect their interests.

34. Given the results of the Investigation (as set out in the Fourth Report) and the proposed Expanded Monitor Powers Order, the Monitor does not believe there is any basis on which the

stay of proceedings over the Additional Stay Parties should continue. Accordingly, the proposed order terminates the stay of proceedings as it relates to the Additional Stay Parties.[31]

III - ISSUES

35. The issues on this Motion are:

a) whether it is appropriate for this Court to expand the Monitor's powers on the terms of the Expanded Monitor Powers Order; and

b) whether costs orders should be made against the Principals in their personal capacities.

IV - LAW AND ARGUMENT

A. This Court Has Jurisdiction to Expand the Monitor's Powers

36. The *Companies' Creditors Arrangement Act*, R.S.C., 1985, c. C-36 (the "**CCAA**") provides the Court with broad discretion in respect of the monitor's functions pursuant to sections 11 and 23 of the CCAA.[32]

37. Section 11 of the CCAA authorizes the Court to make any order that is necessary and appropriate in the circumstances.[33]

[31] Fifth Report, section 7.0, at para. 5.
[32] *Companies' Creditors Arrangement Act*, R.S.C., 1985, c. C-36 (the "**CCAA**").
[33] CCAA, section 11.

38. Section 23 of the CCAA sets out a basic framework of the minimum mandatory duties and functions of the monitor under the CCAA, which may be augmented through the exercise of the Court's discretion.[34]

39. Section 23(1)(k) of the CCAA expressly provides the Court to expand the list of duties and functions of the monitor by directing it to carry out any other functions in relation to the debtor company that the court may direct.[35] Thus, while the law provides the basic framework within which the monitor must act, the Court may use its discretion to grant additional powers as it considers appropriate.

40. This discretion cannot be exercised arbitrarily but must be exercised in a manner consistent with and directed toward the attainment of the objectives of the CCAA, which is to, among other things, maximize creditor recovery and preserve going-concern value where possible.[36] The flexibility inherent in the restructuring process permits a broad balancing of these objectives and the multiple stakeholder interests engaged when a corporation faces insolvency.[37]

41. In recent years, courts have shown a willingness to grant certain enhanced powers to monitors to allow them to perform atypical functions.[38]

42. In *PricewaterhouseCoopers Inc. v. Canada Fluorspar (NL) Inc.*, the Court granted the monitor enhanced powers to allow it to administer affairs of an applicant company to wind down

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[34] CCAA, section 23.
[35] CCAA, section 23(1)(k).
[36] *Ernst & Young Inc. v. Essar Global Fund Ltd.*, 2017 ONCA 1014 ("***Essar Global***"), at para. 103.
[37] *Ibid.*
[38] *Arrangement relatif à Bloom Lake General*, 2021 QCCS 2946 ("***Bloom Lake***"), at para. 100; *Essar Global*, at para. 127; *Arrangement relatif à 9323-7055 Québec inc (Aquadis International Inc.)*, 2020 QCCA 659 ("***Aquadis***"), at para. 82.

the CCAA proceedings because, among other things, the monitor needed such powers to achieve the benefits of a transaction to stakeholders.[39]

43. In *Arrangement relatif à Bloom Lake General*, the Court granted the monitor enhanced powers to complete final distribution of the debtors' assets, reasoning that it was necessary and appropriate to enable the monitor to, among other things, fulfill its statutory duties and maximize recoveries and further the valid purpose of the CCAA to maximize the recovery of the creditors.[40]

44. In *Ernst & Young Inc. v. Essar Global Fund Ltd.*, there were a number of questionable transactions between related parties in the months leading up to the CCAA proceedings.[41] In this case, the Court granted the monitor expanded powers so that it might file a claim against the related parties alleging oppression. The Court stated that although the monitor is intended to play a neutral role in CCAA proceedings, in exceptional circumstances, it may be appropriate for a monitor to serve as a complainant.[42]

45. In *Arrangement relatif à 9323-7055 Québec inc (Aquadis International Inc.)*, the Court held that in expanding the monitor's powers under section 23 of the CCAA, the principle of the monitor's neutrality is "far from absolute". The Court emphasized that the Court's neutrality, while important, can be balanced with taking justified positions that further the objectives of the CCAA.[43]

[39] *PricewaterhouseCoopers Inc. v. Canada Fluorospar (NL) Inc.*, 2023 NLSC 88, at para. 85.
[40] *Bloom Lake*, *supra*, at para. 73.
[41] *Essar Global*, *supra,* at para. 124.
[42] *Essar Global*, *supra,* at paras. 119-120.
[43] *Aquadis*, *supra*, at paras. 72-73.

B. It is Appropriate for the Court to Expand the Monitor's Powers in this Case

46. The Expanded Monitor Powers Order is appropriate in this case for (*inter alia*) the following reasons:[44]

(a) the results of the Investigation cause the Monitor and all of the Applicants' economic stakeholders to be seriously concerned about the Principals' continued involvement in the business and the related impact that this would have on these proceedings and the Applicants' ability to maximize value for their stakeholders;

(b) the Secured Lender Representative Counsel, Unsecured Lender Representative Counsel and the Lion's Share Representative, all of which were appointed by this Court, are emphatic that their constituencies have lost all confidence in the Applicants and they support the requested relief. These Court-appointed representatives represent the economic interests of virtually all of the Applicants' stakeholders;

(c) no LOI received in the SISP provides any equity value (i.e. value over and above the debt owing by the Applicants);

(d) the Monitor has been contacted on an unsolicited basis by representatives of various cities/municipalities in which the Applicants' properties are located, complaining about the Applicants' lack of responsiveness and overall incompetency, to the detriment of their lenders; and

[44] Fifth Report, section 3.0.

(e) many of the sale and refinancing LOIs submitted in the SISP are expressly conditional on a change of management. Accordingly, the Applicants are not required to assist the Monitor to complete the SISP and/or may serve as an obstacle to maximizing value through a transaction resulting from the SISP, or otherwise.

47. Based on the foregoing, the Expanded Monitor Powers Order is reasonable, appropriate and necessary in the circumstances.

48. The Monitor has requested that the proposed order include a provision requiring the SID Companies to assist in any transition of property management services the Monitor considers appropriate. The Monitor believes this provision is critical to ensure an orderly transition of the property management function, including rent collections and general upkeep of the properties, which will take some time to implement given the number of properties and locations involved.

C. Cost Orders Should Be Made Against the Principals in their Personal Capacities

49. There is no rule against awarding costs in CCAA proceedings.[45]

50. This Court has the inherent jurisdiction to order non-party costs, on a discretionary basis, in situations where the non-party has initiated or conducted litigation in such a manner as to amount to an abuse of process.[46]

51. As the Court's inherent power to order costs against non-parties derives from its power to prevent its process from being abused, it focuses on conduct of the non-party in instigating or

[45] *Return on Innovation Capital Ltd v Gandi Innovations Ltd.*, 2011 ONSC 7465, at paras. 5-7 (Commercial List, per Newbould J), cited with approval in *Urbancorp Toronto Management Inc (Re)*, 2019 ONCA 757, at para. 82.
[46] *Davies v. Clarington (Municipality)*, 2023 ONCA 376 ("***Davies***"), at para. 56; *Costa v. Seneca College of Applied Arts and Technology*, 2023 ONCA 673, at para. 14; *1318847 Ontario Ltd. v. Laval Tool & Mould Ltd.*, 2017 ONCA 184 ("***Laval Tool***"), at para. 2.

controlling the litigation in a manner that results in such abuse. Cases where the non-party was actively involved in the instigation or conduct of the litigation, or actively asserted a significant degree of control over it, and thus brought about the abuse of process, invoke the Court's discretion to order costs against the non-party.[47]

52. Situations of gross misconduct, vexatious conduct or conduct by a non-party that undermines the fair administration of justice can justify an order for costs against a director, shareholder or principal of a corporation who behaved inappropriately in the instigation or conduct of litigation involving the corporation.[48]

53. To constitute an abuse of process, conduct need not require the instigation or commencement of frivolous or vexatious litigation. Rather, conduct of a non-party during litigation can, in appropriate circumstances, amount to an abuse.[49]

54. In the face of:

(a) the negative findings against the Principals and the Applicants detailed in the Fourth Report and the Fifth Report;

(b) the results of the SISP confirming nil value in the Applicants' assets over and above the debt owing by them; and

[47] *Sunsource Grids Inc. v. University of Windsor*, 2023 ONSC 5621, at para. 96; *BMO v. Can United Consulting Corporation*, 2023 ONSC 4773 ("***BMO***"), at paras. 27-28; *Gupta v. 2075750 Ontario Inc.*, 2021 ONSC 2272, at paras. 160-163.
[48] *Laval Tool*, *supra*, at paras. 76-77, cited with approval in *BMO*, *supra*, at para. 25; *Davies*, *supra*, at para. 57.
[49] *BMO*, *supra*, at para. 27; *Davies*, *supra*, at para. 6.

(c) the unanimous position asserted by the Monitor and all lender constituencies that the Expanded Monitor Powers Order should be granted,

the Applicants (through the Principals) have chosen to continue engaging in costly litigation. These significant costs (likely measured in the hundreds of thousands of dollars), unless recovered from the Principals personally, will be borne by the lenders, who are already facing catastrophic losses as a result of the Principals' misconduct.

55. There can be no doubt that the Applicants' opposition to the motions by the Monitor and the Secured Lenders, including the request for an end to the stay of proceedings in favour of the Non-Applicants, is being conducted purely for the personal benefit of the Principals.

56. Accordingly, it is respectfully submitted that the cost relief sought against the Principals personally should be granted in this case.

V - RELIEF SOUGHT

57. For the reasons set out above, the Secured Lenders respectfully request that this Court grant the Expanded Monitor Powers Order.

58. The Secured Lenders also respectfully request:

(a) cost orders on a full indemnity scale against the Principals personally in favour of the moving parties in respect of the motions brought by the Secured Lenders and the Monitor; and

(b) an order requiring the Principals to personally pay to the moving parties all fees and disbursements incurred by Bennett Jones LLP in responding to these motions.

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 21st day of June, 2024.

George Benchetrit, CHAITONS LLP

Court-Appointed Secured Lender Representative Counsel

SCHEDULE "A"

LIST OF AUTHORITIES

1. *Ernst & Young Inc. v. Essar Global Fund Ltd.*, 2017 ONCA 1014.
2. *Arrangement relative a Bloom Lake General*, 2021 QCCS 2946.
3. *Arrangement relative a 9323-7055 Quebec inc (Aquadis International Inc)*, 2020 QCCA 659.
4. *PricewaterhouseCoopers Inc. v. Canada Fluorospar (NL) Inc.*, 2023 NLSC 88.
5. *Return on Innovation Capital Ltd v Gandi Innovations Ltd.*, 2011 ONSC 7465.
6. *Urbancorp Toronto Management Inc (Re)*, 2019 ONCA 757.
7. *Davies v. Clarington (Municipality)*, 2023 ONCA 376.
8. *Costa v. Seneca College of Applied Arts and Technology*, 2023 ONCA 673.
9. *1318847 Ontario Ltd. v. Laval Tool & Mould Ltd.*, 2017 ONCA 184.
10. *Sunsource Grids Inc. v. University of Windsor*, 2023 ONSC 5621.
11. *BMO v. Can United Consulting Corporation*, 2023 ONSC 4773.
12. *Gupta v. 2075750 Ontario Inc.*, 2021 ONSC 2272.

SCHEDULE "B"

TEXT OF STATUTES, REGULATIONS & BY - LAWS

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

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.

23(1) The monitor shall

(a) except as otherwise ordered by the court, when an order is made on the initial application in respect of a debtor company,

(i) publish, without delay after the order is made, once a week for two consecutive weeks, or as otherwise directed by the court, in one or more newspapers in Canada specified by the court, a notice containing the prescribed information, and

(ii) within five days after the day on which the order is made,

(A) make the order publicly available in the prescribed manner,

(B) send, in the prescribed manner, a notice to every known creditor who has a claim against the company of more than $1,000 advising them that the order is publicly available, and

(C) prepare a list, showing the names and addresses of those creditors and the estimated amounts of those claims, and make it publicly available in the prescribed manner;

(b) review the company's cash-flow statement as to its reasonableness and file a report with the court on the monitor's findings;

(c) make, or cause to be made, any appraisal or investigation the monitor considers necessary to determine with reasonable accuracy the state of the company's business and financial affairs and the cause of its financial difficulties or insolvency and file a report with the court on the monitor's findings;

(d) file a report with the court on the state of the company's business and financial affairs — containing the prescribed information, if any –

(i) without delay after ascertaining a material adverse change in the company's projected cash-flow or financial circumstances;

(ii) not later than 45 days, or any longer period that the court may specify, after the day on which each of the company's fiscal quarters ends, and

(iii) at any other time that the court may order;

(d.1) file a report with the court on the state of the company's business and financial affairs — containing the monitor's opinion as to the reasonableness of a decision, if any, to include in a compromise or arrangement a provision that sections 38 and 95 to 101 of the *Bankruptcy and Insolvency Act* do not apply in respect of the compromise or arrangement and containing the prescribed information, if any — at least seven days before the day on which the meeting of creditors referred to in section 4 or 5 is to be held;

(e) advise the company's creditors of the filing of the report referred to in any of paragraphs (b) to (d.1);

(f) file with the Superintendent of Bankruptcy, in the prescribed manner and at the prescribed time, a copy of the documents specified in the regulations;

(f.1) for the purpose of defraying the expenses of the Superintendent of Bankruptcy incurred in performing his or her functions under this Act, pay the prescribed levy at the prescribed time to the Superintendent for deposit with the Receiver General;

(g) attend court proceedings held under this Act that relate to the company, and meetings of the company's creditors, if the monitor considers that his or her attendance is necessary for the fulfilment of his or her duties or functions;

(h) if the monitor is of the opinion that it would be more beneficial to the company's creditors if proceedings in respect of the company were taken under the *Bankruptcy and Insolvency Act*, so advise the court without delay after coming to that opinion;

(i) advise the court on the reasonableness and fairness of any compromise or arrangement that is proposed between the company and its creditors;

(j) make the prescribed documents publicly available in the prescribed manner and at the prescribed time and provide the company's creditors with information as to how they may access those documents; and

(k) carry out any other functions in relation to the company that the court may direct.

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.

Applicants

Court File No.: CV-00713245-00CL

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FACTUM OF THE SECURED LENDERS

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