

**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.**

Applicants

**NOTICE OF MOTION  
(Returnable June 24, 2024)**

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**") will make a motion before the Honourable Justice Osborne of the Ontario Superior Court of Justice (Commercial List) (the "**Court**") on June 24, 2024 at 10:00 a.m. or as soon after that time as the motion can be heard.

**PROPOSED METHOD OF HEARING:** The motion is to be heard:

- In writing under subrule 37.12.1(1).
- In writing as an opposed motion under subrule 37.12.1(4).
- In person.
- By telephone conference.
- By video conference.

At a Zoom link to be provided by the Court in advance of the motion.

**THE MOTION IS FOR:**

1. An order (the "**Stay Extension Order**") substantially in the form of the draft order to be attached at Tab 3 of the Applicants' Motion Record pursuant to the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the "**CCAA**"), *inter alia*:

- (a) abridging the time for and validating the service of this Notice of Motion and the Motion Record and dispensing with further service thereof;
- (b) extending the Stay of Proceedings (as defined below) to and including July 8, 2024;
- (c) extending the date by which the Monitor (as defined below) is required to serve and file any motion for advice and directions pursuant to section 21 of the SISP (as defined below) to and including July 31, 2024; and
- (d) sealing Confidential Appendix "1" to the Fifth Report of the Monitor to be filed (the "**Fifth Report**").

2. Such further and other relief as counsel may request and this Court deems just.

**THE GROUNDS FOR THE MOTION ARE:**

***Background to, and Initial Stages in, these CCAA Proceedings***

3. The Applicants are Canadian privately-held corporations that, together with certain affiliate corporations that are not Applicants in these CCAA proceedings and SIDRWC Inc. o/a SID Developments, 2707793 Ontario Inc. o/a SID Renos and SID Management Inc., are part of a group of companies (collectively, the "**Company**") specializing in the acquisition, renovation

and leasing of distressed residential real estate in undervalued markets throughout Ontario (the "**Business**").

4. The Applicants are the principal owners of the Company's rental units and the residential properties on which they are situated. Collectively, the Applicants own 406 residential properties (collectively, the "**Properties**") containing 631 rental units, the majority being tenanted, as well as a single non-operating 200-acre golf course, 40 acres of which are zoned for development.

5. Following careful review and consideration of their financial circumstances and available alternatives, and the devastating effects of a bankruptcy, liquidation or uncoordinated enforcement efforts, the Applicants determined that the commencement of these CCAA proceedings was in the best interests of the Applicants and their stakeholders, including their over 300 secured and unsecured lenders (collectively, the "**Lenders**" and each, a "**Lender**"), and approximately 1,000 tenants. Accordingly, the Applicants sought and, on January 23, 2024, obtained an initial order (the "**Initial Order**") under the CCAA.

6. Among other things, the Initial Order:

- (a) appointed KSV Restructuring Inc. as the Monitor of the Applicants in these CCAA proceedings (in such capacity, the "**Monitor**");
- (b) stayed, until February 2, 2024 (the "**Initial Stay Period**"), all proceedings and remedies taken or that might be taken in respect of the Applicants, the Monitor or the Applicants' Directors and Officers, or affecting the Business or the Applicants' Property (as defined below), except with the prior written consent of the Applicants and the Monitor, or with leave of the Court (the "**Stay of Proceedings**");

- (c) stayed, for the Initial Stay Period, all proceedings against or in respect of Aruba Butt ("**Ms. Butt**"), Dylan Suitor ("**Mr. Suitor**") and/or Ryan Molony (collectively with Ms. Butt and Mr. Suitor, the "**Additional Stay Parties**"), or against or in respect of any of the Additional Stay Parties' current or future assets, undertakings and properties of every nature and kind whatsoever, and wherever situate, and including all proceeds thereof (collectively, the "**Additional Stay Parties' Property**") with respect to any guarantee, contribution or indemnity obligation, liability or claim in respect of or that relates to any agreement involving any of the Applicants or the obligations, liabilities and claims of and against any of the Applicants (collectively, the "**Related Claims**"), except with the prior written consent of the Applicants and the Monitor, or with leave of the Court;
- (d) appointed Chaitons LLP as representative counsel (in such capacity, the "**Lender Representative Counsel**") for all of the Applicants' Lenders in these proceedings, any proceeding under the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended or in any other proceeding respecting the insolvency of the Applicants that may be brought before the Court (collectively, the "**Insolvency Proceedings**"); and
- (e) granted the Administration Charge (as defined in the Initial Order) over the Applicants' current and future assets, undertakings and properties of every nature and kind whatsoever, and wherever situate, including all proceeds thereof (collectively, the "**Applicants' Property**").

7. On January 31, 2024, the Court adjourned the Applicants' comeback motion, in part, and granted an amended Initial Order (the "**Amended IO**"). Among other things, the Amended IO:

- (a) extended the Stay of Proceedings to and including February 16, 2024;
- (b) approved the Applicants' ability to borrow under a debtor-in-possession credit facility (the "**DIP Facility**") pursuant to a DIP Agreement dated January 26, 2024 (the "**DIP Agreement**"), between the Applicants and Harbour Mortgage Corp. or its permitted assignee (the "**DIP Lender**"); and
- (c) granted a charge over the Applicants' Property up to the maximum amount of \$4,000,000 in favour of the DIP Lender to secure all amounts advanced by the DIP Lender under the DIP Facility, together with all obligations, fees, expenses and other amounts payable by the Applicants under the DIP Agreement and the DIP Facility (the "**DIP Lender's Charge**").

8. To address certain of the Applicants' Secured Lenders' (as defined below) concerns, the Applicants sought and, on February 15, 2024, obtained an amended and restated Initial Order (the "**ARIO**"), which, among other things:

- (a) extended the Stay of Proceedings to and including March 28, 2024;
- (b) increased the Applicants' maximum borrowings under the DIP Facility from \$4,000,000 to \$12,000,000, and granted a corresponding increase to the DIP Lender's Charge;
- (c) narrowed the scope of the Lender Representative Counsel's mandate to the Applicants' secured Lenders (collectively, the "**Secured Lenders**"); and

- (d) granted the Monitor certain enhanced powers and oversight, including:
- (i) requiring the prior written consent of the Monitor for all payments to be made, and liabilities to be incurred, by the Applicants (the "**Consent Requirement**"); and
  - (ii) directing and empowering the Monitor to (A) conduct an investigation into the use of funds borrowed by the Applicants, pre-filing transactions conducted by the Applicants and/or their principals and affiliates, and such other matters as may be requested by the Lender Representatives (as defined in the ARIO) 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 these CCAA proceedings as determined by the Monitor (the "**Investigation**"), and (B) report to the Lender Representatives and the Court on the findings of the Investigation as the Monitor deems necessary and appropriate.

9. On March 28, 2024, the Applicants sought and obtained a second ARIO (the "**Second ARIO**"), which, among other things:

- (a) extended the Stay of Proceedings to and including April 30, 2024; and
- (b) appointed Goldman Sloan Nash & Harber LLP as representative counsel (in such capacity, the "**Unsecured Lender Representative Counsel**") for all of the unsecured lenders of the Applicants other than (i) The Lion's Share Group Inc. ("**Lion's Share**") 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, in the Insolvency Proceedings.

***The Applicants' Efforts to Solicit Interest in a Value-Maximizing Transaction***

10. In an effort to identify a value-maximizing refinancing, sale and/or other strategic investment or transaction involving the business, assets and/or equity of the Applicants or any part thereof, the Applicants sought and, on April 12, 2024, obtained an order (the "**SISP Approval Order**"), among other things:

- (a) extending the Stay of Proceedings to and including June 24, 2024;
- (b) approving a sale, refinancing and investment solicitation process in the form attached as Schedule "A" to the SISP Approval Order (the "**SISP**");
- (c) authorizing the Applicants to engage Howards Capital Corp. and CBRE Limited as advisors in the SISP (together, the "**SISP Advisors**"); and
- (d) authorizing and directing the Applicants, the SISP Advisors, and the Monitor to implement the SISP pursuant to the terms thereof, and to perform their respective obligations thereunder.

11. The SISP contemplates a two-stage process. The first phase requires the submission of non-binding letters of intent ("**LOIs**" and each, an "**LOI**") by Potential Bidders (as defined in the SISP) while the second phase requires the submission of binding offers.

12. Pursuant to the SISP, LOIs were required to be received by the Monitor by no later than 5:00 p.m. (Toronto time) on June 10, 2024 (the "**LOI Deadline**"). Subject to certain safeguards intended to protect its integrity, the SISP requires that:

- (a) the SISP Advisors, the Monitor, the Applicants, the Lion's Share Representative (as defined in the SISP), the Lender Representative Counsel and the Unsecured Lender Representative Counsel (collectively, the "**Reviewing Parties**") review the LOIs that were received by the LOI Deadline; and
- (b) the Reviewing Parties discuss the next steps that should be taken in respect of the Qualified LOIs (as defined in the SISP) received, if any.

13. The Applicants prepared and circulated a without prejudice term sheet following the LOI Deadline with a view to informing the discussions contemplated under the SISP among the Reviewing Parties. Since that time, the Monitor has informed the Applicants that, regardless of whether the D&Os (as defined in the SISP) comply with the confidentiality obligations contemplated thereunder, the Applicants will not be permitted to receive copies of the LOIs or participate as Reviewing Parties in the SISP.

### ***The Investigation***

14. Relying on the powers conferred under the ARIO, the Monitor provided the Applicants and the Additional Stay Parties with a significant volume of written informational and documentary requests in connection with the Investigation. The Monitor enumerated a further 185 requests following full-day, voluntary interviews of Mr. Robert Clark, Ms. Aruba Butt, Mr. Ryan Molony and Mr. Dylan Suitor (collectively, "**Management**").



15. Notwithstanding their limited resources, which have been and continue to be severely strained, the Applicants and Management made concerted efforts to address the Monitor's requests and produced numerous written responses and thousands of documents in connection with same, frequently on a confidential basis.

16. On June 11, 2024, the Monitor served its Fourth Report (the "**Report**") in respect of the Investigation and the Brief of Transcripts and Other Documents referred to therein, which together total over 2,200 pages.

17. The Applicants dispute the Monitor's findings in the Report, and have serious concerns regarding both the contents of the Report, and the information omitted from the Report without explanation.

18. The Applicants intend to respond to the Report, and continue to assemble documents and information in response to the Monitor's outstanding requests.

19. The Monitor has acknowledged that the Report may need to be revised following the delivery by the Applicants of documents and information in respect of the findings and conclusions in the Report.

20. Notwithstanding that its findings are disputed and the Applicants' responses and additional information have yet to be delivered and reviewed:

- (a) the Secured Lenders filed a motion on June 14, 2024, seeking an order (the "**Expansion of Powers Order**"), among other things, expanding the Monitor's powers, including to exercise the powers of any board of directors or officers of the Applicants to the exclusion of Management, requiring the Applicants' counsel

to take instruction from the Monitor and compelling the non-Applicants, SID Developments, SID Management and SID Renos, to continue to comply with various obligations imposed under the proposed Expansion of Powers Order; and

- (b) the Monitor, the Unsecured Lender Representative Counsel, and counsel to the Lion's Share Representative have advised that they will not support an extension of the Stay of Proceedings absent the granting of the proposed Expansion of Powers Order.

***Extending the Stay of Proceedings***

21. The Stay of Proceedings will expire on June 24, 2024. Pursuant to the proposed Stay Extension Order, the Applicants are seeking to extend the Stay of Proceedings to and including July 8, 2024 (the "**Stay Period**").

22. Since the granting of the SISP Approval Order, the Applicants have acted, and continue to act, in good faith and with due diligence to, among other things:

- (a) continue the Business' ordinary course operations;
- (b) respond to extensive information requests made by the Lenders, both directly and through the Monitor;
- (c) cooperate in, and respond to, extensive inquiries made by the Monitor and its counsel in connection with the Investigation and otherwise; and

- (d) engage extensively with the Monitor and the SISP Advisors with respect to the SISP and respond to inquiries made by Potential Bidders through the Monitor therein.

23. The proposed extension of the Stay of Proceedings will, among other things, preserve the *status quo* and afford the Applicants the breathing space and stability required to, among other things:

- (a) operate the Business in the ordinary course;
- (b) respond to the Report and engage with the Monitor in addressing the disputed findings and dispelling the concerns raised therein;
- (c) avoid uncoordinated and distressed sales or forced liquidations of the Properties, which would be value destructive and contrary to the best interests of the Applicants' stakeholders;
- (d) continue to complete value accretive renovations, dozens of which are in progress;
- (e) allow the Monitor, with the assistance of the SISP Advisors, to continue to conduct the SISP; and
- (f) respond to the Secured Lenders' request for the proposed Expansion of Powers Order.

24. The Applicants are forecast to have sufficient liquidity to fund their obligations and the costs of these CCAA proceedings through the end of the Stay Period.

25. No creditor is expected to suffer material prejudice as a result of the proposed extension of the Stay of Proceedings, especially given that:

- (a) the Monitor has, pursuant to the Consent Requirement, exclusive authority to control the payments to be made, and liabilities to be incurred, by the Applicants during the Stay Period;
- (b) the Monitor has held, and continues to hold, the proceeds of the DIP Facility disbursed to the Applicants in trust; and
- (c) the Monitor has and continues to have access to the Applicants' bank accounts.

***Extending the Stay of Proceedings in Respect of the Additional Stay Parties***

26. Pursuant to the proposed Stay Extension Order, the Applicants are seeking to extend the temporary stay of the Related Claims to prevent enforcement action from being commenced or continued against the Additional Stay Parties or the Additional Stay Parties' Property during the Stay Period.

27. In extending the temporary stay of proceedings in favour of the Additional Stay Parties and the Additional Stay Parties' Property, nothing in the proposed Stay Extension Order purports to release, compromise or permanently enjoin the Related Claims. Further, pursuant to the Second ARIO, any prescription, time or limitation period relating to any proceeding against or in respect of the Additional Stay Parties or the Additional Stay Parties' Property in respect of the Related Claims will continue to be tolled during the Stay Period.

28. The Additional Stay Parties' participation in responding to any Related Claims would severely strain the Applicants' limited resources and those of their Directors, imperiling the

Applicants' restructuring efforts and the success of these CCAA proceedings. The failure of these CCAA proceedings, and the concomitant distressed sale of the Properties, would be detrimental to the Applicants' stakeholders, including the Lenders and the Applicants' tenants.

29. The potential prejudice, if any, to certain of the Lenders that may result from a temporary stay of proceedings in favour of the Additional Stay Parties or against or in respect of any of the Additional Stay Parties' Property with respect to the Related Claims, when measured against the substantial benefits of imposing such a stay, is minimal.

***Other Grounds***

30. The provisions of the CCAA and the inherent and equitable jurisdiction of the Court.

31. Rules 1.04, 1.05, 2.01, 2.03, 3.02, 16, 37 and 39 of the *Rules of Civil Procedure* R.R.O. 1990, Reg. 194, as amended and section 106 of the *Courts of Justice Act*, R.S.O. 190, c. C. 43, as amended.

32. Such further and other grounds as counsel may advise and this Honourable Court may permit.

**THE FOLLOWING DOCUMENTARY EVIDENCE** will be used at the hearing of the Motion:

33. The Affidavit of Robert Clark, to be filed, and the exhibits thereto.

34. The Fifth Report and the appendices thereto.

35. Such further and other material as counsel may advise and this Honourable Court may permit.

June 17, 2024

**BENNETT JONES LLP**  
One First Canadian Place, Suite 3400  
P.O. Box 130  
Toronto, ON M5X 1A4

Sean Zweig (LSO# 57307I)  
Tel: (416) 777-6254  
Email: [zweigs@bennettjones.com](mailto:zweigs@bennettjones.com)

Alexander Payne (LSO# 70712L)  
Tel: (416) 777-5512  
Email: [paynea@bennettjones.com](mailto:paynea@bennettjones.com)

Joshua Foster (LSO# 79447K)  
Tel: (416) 777-7906  
Email: [fosterj@bennettjones.com](mailto:fosterj@bennettjones.com)

Thomas Gray (LSO# 82473H)  
Tel: (416) 777-7924  
Email: [grayt@bennettjones.com](mailto:grayt@bennettjones.com)

Lawyers for the Applicants

**TO: THE SERVICE LIST**

**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.**

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Proceeding commenced at Toronto

**NOTICE OF MOTION**  
**(Returnable June 24, 2024)**

**BENNETT JONES LLP**  
3400 One First Canadian Place  
P.O. Box 130  
Toronto, Ontario M5X 1A4

Sean Zweig (LSO# 57307I)  
Tel: (416) 777-6254  
Email: [zweigs@bennettjones.com](mailto:zweigs@bennettjones.com)

Alexander Payne (LSO# 70712L)  
Tel: (416) 777-5512  
Email: [paynea@bennettjones.com](mailto:paynea@bennettjones.com)

Joshua Foster (LSO# 79447K)  
Tel: (416) 777-7906  
Email: [fosterj@bennettjones.com](mailto:fosterj@bennettjones.com)

Thomas Gray (LSO# 82473H)  
Tel: (416) 777-7924  
Email: [grayt@bennettjones.com](mailto:grayt@bennettjones.com)

Lawyers for the Applicants