

COUNSEL SLIP

COURT FILE

NO.: CV-18-00608313-00CL

DATE: February 20, 2020

NO. ON LIST 9

TITLE OF PROCEEDING

FORME DEVELOPMENT GROUP INC et al v. WINDSOR FAMILY CREDIT UNION et al

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- APPLICANT(S)
- PETITIONER(S)

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SLS No. 0613
Boek + Blackwell LLP

Feb. 20, 2020 5:01 PM EST

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FILE/DIRECTION/ORDER

IN THE MATTER OF A PLAN OF
Plaintiff(s)

AND

COMPROMISE OF FORMER DEVELOPMENT GROUP
Defendant(s)
INC.

Case Management Yes No by Judge: _____

Counsel	Telephone No:	Facsimile No:

- Order Direction for Registrar (No formal order need be taken out)
- Above action transferred to the Commercial List at Toronto (No formal order need be taken out)
- Adjourned to: _____
- Time Table approved (as follows):

① The Monitor brings a motion for relief to be reviewed below. The motion is supported by all stakeholders represented by counsel

Date

Judge's Signature

Additional Pages _____

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Judges Endorsment Continued

recorded on the counsel
ship except the Non-
applicant companies
represented by Mr
Bevan who oppose
the Motion.

② At the outset of the
Motion the Monitor's
counsel, at my direction,
suggested to Mr Bevan

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Judges Endorsment Continued

That the order could be granted without prejudice to his client's position. Mr Berant declined to proceed in this fashion and insisted that the Motion proceed.

③ Despite Mr Berant's submissions, I granted the order for the

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Judges Endorsment Continued

following reasons:

① The Kennedy approval and vesting order and the distribution order were not opposed and I am satisfied the sale and proposed distributions are in the best interests of the stakeholders.

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Judges Endorsment Continued

② The ancillary order is appropriate and the time for service of the Motion Record is abridged. No one is prejudiced by this order as the Motion Record was served eight days before the Motion was heard.

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Judges Endorsment Continued

③ I am satisfied that
the stay period should
be extended to May 31, 2020.
The applicants have acted
in good faith and
circumstances exist that
make the order
appropriate because it
will permit the Plaintiff
to maximize stakeholder

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Judges Endorsement Continued

recovery for the reasons
set out at para 53 of
the Monitor's report.

④ The confidential appendices
of the Monitor's Twelfth
Report contain sensitive
commercial information
that should be sealed
in accordance with the
test in *Sierra Club*. They

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Judges Endorsement Continued

aspect of the order is not
opposed.

⑤ The Undertaking
dated March 14, 2019

should be amended by
Order of the Court to
substitute Bennett & Jones
LLP, the Monitor's legal
counsel, to hold the
surplus funds currently

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held in Connel Brook &
Blackwell FFP's ("CBB")
Trust account and any
further realizations
from the Non-applicants'
unsold real property.
CBB is therefore ordered
to transfer these funds
to Bennett Jones FFP
forthwith on the terms set

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Judges Endorsment Continued

out in the order.

⑥ I am satisfied that
I should make an
order pursuant to
s. 181(1) of the BIA
annulling the arrangements
into bankruptcy made
on January 28, 2020
by the Non-Applicants
companies without any

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Judges Endorsment Continued

notice to the Monitor for
the following two
reasons:

(a) The Non-Applicant
companies need not
demonstrate involvement
person. Each company
has sold its real
property generating
sufficient proceeds to

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Judges Endorsment Continued

repay its mortgage debt
in full and to fund
the surplus funds
currently held in
CBB's trust account in
the amount of approximately
\$11 million. The only
evidence before the
Court is that the value
of the Non-Applicants' assets

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exceeds their liabilities.

This is not a "clear
cut situation" of

insolvency that is

"clearly established by

sound and convincing

evidence."; and

(b) In my view

The assignments into

bankruptcy are an

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Judges Endorsment Continued

abuse of process because
There is an ongoing
claims process, approved
by Me, to address
any remaining claims
against the Non-applicants,
and distributions will
not require a
bankruptcy. The
arrangements are

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entirely duplicative
and serve no real
purpose. The non
applicants' creditor
relationships are already
being managed in
these CAA proceedings
and the court-supervised
claims process, all
of which was consented

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Judges Endorsment Continued

to by Mr Wang, the
controlling mind of
the Non-applicants.

If these arrangements are
not annulled, they
will stay the court-
approved claims
process at the expense
of creditors and the
court and will not

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Judges Endorsment Continued

accomplish anything
already achieved by
These unique and heavily
negotiated CAA proceedings
The claims process
is one of several
integral "building blocks"
in the CAA proceedings
and, in my view,
must be respected.

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The assignments must not be permitted to undermine this important building block. [see Chief Justice Morneau's reasons at para 81 in Target Canada Co, 2015 ONSC 303]

③ I am satisfied that the CAA claims

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Judges Endorsment Continued

~~Claims~~ process should
continue and that
proven Wang claims
will be admitted as
proven claims in the
proceedings related to
the Wang No 9.

⑧ Finally, without
further order of the
court the surplus funds

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Judges Endorsment Continued

To be transferred from
CBB to The Monitor's
counsel shall not
be used to pay any
parties' legal fees.

⑨ In my view, this
is an appropriate
case to make an order
as to costs. I have
requested counsel

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provide me with
short written costs
submissions.

⑩ I thank all counsel
for their helpful
submissions.

Justice J.

February 20, 2020