



**Second Supplement to the
Twelfth Report of
KSV Kofman Inc.
as CCAA Monitor of
Forme Development Group Inc.
and the Companies Listed on
Appendix “A”**

March 16, 2020

and

**Second Supplement to the
Eighth Report of
KSV Kofman Inc.
as Proposal Trustee of
58 Old Kennedy Development Inc.,
76 Old Kennedy Development Inc. and
82 Old Kennedy Development Inc.**

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COURT FILE NO.:CV-18-608313-00CL

**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 THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT
OF FORME DEVELOPMENT GROUP INC. AND THE OTHER COMPANIES
LISTED ON APPENDIX "A"**

**APPLICATION UNDER THE COMPANIES' CREDITORS ARRANGEMENT
ACT, R.S.C. 1985, c. C-36, AS AMENDED**

ESTATE FILE NO.: 31-2436568

**ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)
(IN BANKRUPTCY AND INSOLVENCY)**

**IN THE MATTER OF THE PROPOSAL OF
58 OLD KENNEDY DEVELOPMENT INC.,
76 OLD KENNEDY DEVELOPMENT INC. AND
82 OLD KENNEDY DEVELOPMENT INC.,
ALL CORPORATIONS INCORPORATED UNDER THE LAWS OF ONTARIO**

**SECOND SUPPLEMENT TO TWELFTH REPORT OF KSV
KOFMAN INC. AS MONITOR AND EIGHTH REPORT OF KSV
KOFMAN INC. AS PROPOSAL TRUSTEE**

March 16, 2020

1.0 Introduction

1. This report (the "Second Supplemental Report") is the second supplement to the twelfth report of the Monitor and the eighth report of the Proposal Trustee dated February 12, 2020 (the "Report"), which was jointly filed in the CCAA Proceedings and the NOI Proceedings. The Second Supplemental Report will be jointly filed in the CCAA Proceedings and the NOI Proceedings, and will also be served on the Service List for Mr. Wang's NOI Proceedings.

2. The Second Supplemental Report is subject to the restrictions and qualifications set out in the Report.
3. Defined terms in the Second Supplemental Report have the meaning provided to them in the Report.

2.0 The Wang NOI Proceedings

1. Ferina's motion to terminate Mr. Wang's NOI Proceedings is scheduled to be heard on March 31, 2020. The Monitor did not intend to file any additional materials in respect of Ferina's motion given that: (a) the Report includes the Monitor's views on Mr. Wang's NOI Proceedings, to the extent applicable; and (b) the Monitor's relief with respect to the treatment of Wang Claims was granted pursuant to the February 20th Order. However, due to the responding materials filed by Mr. Wang on March 2, 2020, the Monitor believes a response is warranted. The Second Supplemental Report provides that response.
2. Pursuant to a Court order made on February 20, 2020 (the "February 20th Order"), Wang Claims (as defined in the Claims Procedure Order), as determined under the Claims Procedure Order, constitute proven claims in Mr. Wang's NOI Proceedings and in any future bankruptcy of Mr. Wang. Based on the Monitor's preliminary review of the Wang Claims filed in the Claims Procedure, it appears probable that the Surplus will not be sufficient to fully or substantially satisfy the proven Wang Claims.
3. Mr. Wang's responding materials include support letters from: (a) Alan Tregebov, an architect on various Forme Group projects; (b) Yuk Yin Ho Leung and Ping Sang Stephen Leung, being investors in a syndicated mortgage investment on the Applicants' Kingston Road project; (c) Hasson Pereira, a mortgage broker with Sans Souci Mortgage Services Corp., who the Monitor understands was a broker involved in arranging the syndicated mortgages on the Applicants' Danforth and Kingston projects; and (d) Yi Zhou, the bare trustee for the third mortgage on the Applicants' Danforth and Kingston projects (together, Alan Tregebov, Yuk Yin Ho Leung, Ping Sang Stephen Leung, Hasson Pereira and Yi Zhou are referred to as the "Supporting Parties"). In respect of these letters, the Monitor notes the following:
 - a) the context of the support letters is unclear. There is no discussion of the questions asked of the Supporting Parties that gave rise to the support letters and there is no discussion about the information that was provided to the Supporting Parties so that they could consider the issue. Certain of the Supporting Parties provided no rationale for their support. Understanding the information provided and the rationale is particularly important given that the activities to be performed in Mr. Wang's NOI Proceedings will result in incremental professional costs and serve no specific benefit to creditors, particularly as all Wang Claims constitute proven claims in Mr. Wang's NOI Proceedings and distributions in respect of proven claims in the CCAA Proceedings (including Wang Claims) will be made in the CCAA Proceedings;

- b) the only Supporting Party that filed a Wang Claim is Mr. Tregebov, and Mr. Tregebov did not include any basis upon which he asserts a claim against Mr. Wang in his personal capacity. Mr. Tregebov provided services to certain Applicants and Non-Applicants. Mr. Zou filed a D&O Claim (as defined in the Claims Procedure Order) against Mr. Wang (a D&O Claim is not a Wang Claim);
- c) certain of the letters allege that the Sale Process for the Applicants' real property resulted in realizations less than fair market value. The Monitor notes that the Sale Process and each sale was approved by the Court, and none of the motions to approve the Sale Process or the sale of any of the Applicants' real property were opposed by any party;
- d) the letter signed by Yuk Yin Ho Leung and Ping Sang Stephen Leung states that there are approximately 51 investors/lenders in that mortgage; however, only two of the investors/lenders signed the letter (being Yuk Yin Ho Leung and Ping Sang Stephen Leung);
- e) Mr. Pereira does not represent the syndicated mortgage investors on either of the Applicants' Danforth or Kingston projects. Yuce Baykara is the Trustee under the syndicated mortgage documents and Mr. Baykara is named as the mortgagee on title to those properties. Accordingly, the Monitor is not aware of any role or authority Mr. Pereira has with respect to the claim of the syndicated mortgage investors. Over the course of these proceedings, the Monitor's dealings in respect of the syndicated mortgage investors have been with Mr. Baykara. As at the date of the Second Supplemental Report, Mr. Baykara has not advised the Monitor that he opposes any of the relief sought by the Monitor in the CCAA Proceedings. Mr. Baykara has not to-date taken a position on Ferina's motion;
- f) Mr. Pereira's letter raises issues that the Monitor has previously addressed in the CCAA Proceedings, including in respect of the Sale Process and Mr. Wang's involvement in it. Mr. Pereira raised these issues with the Monitor in April 2019 and the Monitor responded to him in a letter dated April 8, 2019. A copy of that letter is attached as Appendix "B";
- g) Mr. Wang's responding materials fail to disclose that Mr. Zhou is conflicted as he acts and has acted as legal counsel to Mr. Wang in numerous real estate transactions, including the transactions that resulted in the Surplus¹;
- h) Mr. Zhou's letter includes his views on the results of the Sale Process. As set out in the Report, the Monitor sent the January Letter to each mortgagee on the Applicants' CCAA properties, including Mr. Zhou. The January Letter provided, *inter alia*, each mortgagee with an opportunity to receive updates concerning the Sale Process while it was being carried out, subject to executing a non-disclosure agreement ("NDA"). Mr. Zhou did not sign the NDA;

¹ Mr. Zhou acted as legal counsel in the sale transactions completed by 22 Old Kennedy Development Inc., 19 Turff Development Inc., 35 Thelma Development Inc. and 4550 Steeles Development Inc.

- i) both Mr. Zhou and Mr. Pereira have not provided evidence that they have the support of the investors they purport to represent, nor have they included any communications with the parties they purport to represent;
 - j) the letters all reference the relief the Non-Applicants were seeking that the Court dismissed on February 20, 2020, including a bankruptcy of all of the Applicants and Non-Applicants. It is unclear why those letters reference that relief, particularly the letters from Mr. Zhou, which are dated February 24, 2020, being four days after the hearing giving rise to the February 20th Order; and
 - k) certain of the letters reference the Non-Applicants' 186 Old Kennedy property as the "crown jewel project". The responding record fails to disclose that on January 31, 2020, the Court made an order that 186 Old Kennedy Development Inc. ("186 Old Kennedy") would be subject to a receivership order, which was to be held in escrow until March 1, 2020 subject to 186 Old Kennedy paying forbearance fees totalling \$165,000 to its first and second mortgagees. A final forbearance fee of \$25,000 was not paid and the receivership order over 186 Old Kennedy was issued and entered on March 3, 2020.
4. Pursuant to an endorsement issued by the Court on February 25, 2020 (the "Endorsement"), Mr. Wang was to be cross-examined on March 9, 2020 by Thornton Grout Finnigan LLP, Ferina's legal counsel. The schedule set out in the Endorsement was preemptory to Mr. Wang. On March 8, 2020, Mr. Wang's legal counsel advised that Mr. Wang would not be attending the examination on March 9, 2020 due to health reasons. A copy of the Endorsement is attached as Appendix "C".

3.0 Other Matters

- 1. The following is a brief update on other developments since the Monitor's motion was heard on February 20, 2020:
 - a) pursuant to the Undertaking, the Non-Applicants are required to provide weekly status updates on the sale of the remaining Non-Applicant properties. The Non-Applicants had not provided one since January 28, 2020. Upon request by the Monitor, the Non-Applicants provided an update on March 12, 2020;
 - b) Mr. Wang has not been examined by the Monitor in connection with his financial affairs, and accordingly, no funding is available from the Surplus for Mr. Wang's legal counsel;
 - c) Lerner's LLP and James Grout Professional Corp., both former counsel to Mr. Wang, have served a motion returnable March 30, 2020, seeking payment of their outstanding professional fees from the Surplus. The Monitor is considering its position with respect to that motion; and
 - d) the Kennedy Transaction closed on March 11, 2020.

* * *

All of which is respectfully submitted,

KSV Kofman Inc

**KSV KOFMAN INC.,
SOLELY IN ITS CAPACITIES AS MONITOR OF
FORME DEVELOPMENT GROUP INC. AND
THE AFFILIATED ENTITIES LISTED ON APPENDIX "A"
AND AS PROPOSAL TRUSTEE OF
58 OLD KENNEDY DEVELOPMENT INC., 76 OLD KENNEDY DEVELOPMENT INC. AND
82 OLD KENNEDY DEVELOPMENT INC.,
AND NOT IN ITS PERSONAL CAPACITY**

Appendix “A”

2358825 Ontario Ltd.

27 Anglin Development Inc.

29 Anglin Development Inc.

250 Danforth Development Inc.

3310 Kingston Development Inc.

1296 Kennedy Development Inc.

1326 Wilson Development Inc.

189 Carrville Development Inc.

169 Carrville Development Inc.

159 Carrville Development Inc.

5507 River Development Inc.

4439 John Development Inc.

Appendix “B”



Bobby Kofman
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April 8, 2019

DELIVERED BY E-MAIL

Hasson Pereira
Sans Souci Mortgage Services Corp.
7491 Jane Street
Suite 201
Vaughan, ON L4K 4L6

Dear Mr. Pereira,

Re: Forme Development Group Inc. (the "Company")

As you know, KSV Kofman Inc. is the court-appointed monitor (the "Monitor") in the proceedings under the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the "CCAA") bearing court file no. CV-18-608313-00CL (the "CCAA Proceedings"). We are in receipt of your letter dated March 6, 2019. As a preliminary matter, please be advised that 7397 Islington Development Inc. is not part of the CCAA Proceedings, and accordingly, this letter only deals with 250 Danforth Development Inc. ("250 Danforth") and 3310 Kingston Development Inc. ("3310 Kingston").

We wish to address various inaccuracies in your letter. In addition, we think you will benefit from some additional background related to the CCAA Proceedings.

Background to CCAA Proceedings

When Yuan (Mike) Hua Wang ("Mr. Wang") first approached KSV Kofman Inc. ("KSV"), we were advised that (i) the Forme Group had no liquidity, (ii) the Forme Group had approximately \$220 million in mortgage debt and (iii) all of the Forme Group's mortgages were in, or about to be in, default. Additionally, Mr. Wang advised KSV that substantially all the mortgagees had commenced, or were in the process of commencing, power of sale ("POS") proceedings. KSV, with the assistance of Mr. Wang, made all efforts to restructure the Forme Group's affairs through a comprehensive CCAA filing. However, these efforts were unfortunately resisted by many of the mortgagees and only six of the projects and their related companies were granted CCAA protection, with the remaining projects subject to mortgagee enforcement.

Prior to approaching KSV, we understand that Mr. Wang had made extensive, but unsuccessful, efforts to sell, refinance and otherwise transact for the Forme Group's properties. In fact, Mr. Wang continues to do so to this day. Mr. Wang has completed sales of two non-CCAA applicant projects since the consummation of the CCAA Proceedings. These two non-applicant projects were both "Pacific Property" projects, which the Monitor (and Mr. Wang) always perceived to be the most valuable of the Forme Group's portfolio. This view was also shared by TD Cornerstone Commercial Realty, Inc. ("TD"), the realtor retained by the Monitor to market the Applicants' real property for sale. Apart from the sale of these two non-applicant projects, the Monitor is not aware of any other transactions completed by the Forme Group and/or Mr. Wang to the present date.

The Sale Process

The sale process conducted for the properties in the CCAA Proceedings was approved by the CCAA Court and is consistent with other Court-supervised insolvency sale processes. TD conducted a broad marketing of the properties, including a mass email campaign which was sent to approximately 2,000 parties. TD also took out advertisements in the Globe and Mail, Nove Res Urbis and Urban Toronto, and the properties were listed on MLS giving them exposure to approximately 53,000 realtors. In total, 120 Confidentiality Agreements were signed and TD actively canvassed the market. Additionally, as identified by TD during the process, these CCAA Proceedings were known to almost all major developers in the City of Toronto. The CCAA Proceedings were also the subject of at least two Globe and Mail newspaper articles. Any and all developers with an interest in these properties and projects had ample opportunity and notice to participate in the process.

Notwithstanding what Mr. Wang may have told you, he was not excluded from the sale process until very late in the sale process, and that was only because he asked to be provided confidential information concerning the bids submitted. It is inappropriate for any party, including Mr. Wang, to be a bidder in a court supervised process when that party has knowledge of the bids received in that process. To do so would be inconsistent with the principals that govern CCAA sale processes. Of additional note, and contrary to the comment in your letter, at the outset of the sale process, TD asked Mr. Wang if there were any particular parties it should contact. Mr. Wang failed to provide any such information to TD and could have, and should have, directed interested parties to TD. Also, if you were aware of any interested parties, you could have, and should have, instructed them to contact TD directly.

The 250 Danforth and 3310 Kingston Projects

Mr. Wang purchased the 250 Danforth and 3310 Kingston properties on May 28, 2015 and December 9, 2015, respectively. Mr. Wang went to market with plans (and valuations) assuming all projects could be developed using various assumptions, however, he has been unsuccessful in securing final and binding zoning approvals. The appraisals provided to us by Mr. Wang were based on all approvals having been obtained and the developments completed. Many of the projects continue to have issues, which we can discuss with you in more detail when we meet. In many cases, the value of the first mortgage alone exceeds the purchase price paid for the property, and the total value of all the mortgages greatly exceeds the purchase price on all but one project. This issue has been compounded given the recent general softening of the real estate market.

The Monitor is very sympathetic to the losses that may be suffered by the syndicated mortgage investors ("SMI") of 250 Danforth and 3310 Kingston, many of which have been in contact with the Monitor since the outset of the CCAA Proceedings and who were specifically advised of the credit bidding right, which is in the Initial Order. The Initial Order was issued on November 30, 2018, so all parties have had ample opportunity to submit bids or to prepare to do so. In the event that a subsequent ranking mortgagee wishes to be a bidder, it has that right, but it cannot be expected that prior ranking mortgagees will not move expeditiously to protect their interests. Absent the CCAA process, mortgagees would have advanced their POS rights.

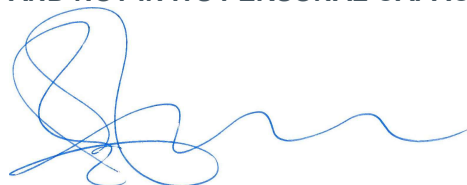
Yuce Baykara ("Mr. Baykara") is the party named as the mortgagee on title and as such, we intend to continue to speak and deal with him directly. We are prepared to talk with you but we first need to understand your role and authority. We have already advised Victor Hua and Ying Guo Ai that all communications regarding the SMIs need to be through Mr. Baykara. Messrs. Hua and Ai seem to have inappropriately held themselves out as the representatives of the SMIs. We continue to urge the SMIs to act expeditiously. Given the complexities of organizing and coordinating the SMIs, and the challenges of doing additional fundraises in such a structure, it is surprising to the Monitor that the SMIs have waited until the conclusion of the Sale Process to consider their credit bid rights. As previously mentioned, this right is set out in the Initial Order and has been known to all stakeholders from the outset of these proceedings. We note that counsel to all mortgagees, including Mr. Baykara, were sent a confidentiality agreement in mid-January, 2019 and advised that upon execution of the confidentiality agreement, they would be entitled to receive routine updates on the sale process from both the Monitor and TD. Mr. Baykara never executed the confidentiality agreement.

Lastly, the Monitor has yet to be provided with a copy of the trust indentures which govern the SMI facilities. The Monitor is unclear as to how monies were raised and what disclosures were made to the SMIs in the context of these raises. Please provide all of the relevant documentation as soon as possible.

We look forward to meeting with you on Tuesday, April 9, 2019 at KSV's office and we are hopeful that we can have a productive discussion now that you have the benefit of this additional information.

Yours very truly,

**KSV KOFMAN INC.
IN ITS CAPACITY AS COURT APPOINTED MONITOR OF
FORME DEVELOPMENT GROUP INC. ET AL
AND NOT IN ITS PERSONAL CAPACITY**

A handwritten signature in blue ink, appearing to be 'Bobby Kofman', with a large, stylized initial 'B' and a long, wavy tail.

Per: Bobby Kofman

BK:rk

Appendix “C”

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

IN THE MATTER OF THE BANKRUPTCY AND INSOLVENCY ACT, R.S.C. 1985, c. B-3,
AS AMENDED
AND IN THE MATTER OF THE NOTICE OF INTENTION TO MAKE A PROPOSAL OF
YUAN HUA (MIKE) WANG
APPLICATION UNDER THE BANKRUPTCY AND INSOLVENCY ACT, R.S.C. 1985, c. B-3,
AS AMENDED

Court File No. CV-18-608313-00CL

**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 THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF
FORME DEVELOPMENT GROUP INC. AND OTHER COMPANIES LISTED ON SCHEDULE "A"
APPLICATION UNDER THE COMPANIES' CREDITORS ARRANGEMENT ACT, R.S.C. 1985, c. C-36, AS AMENDED

ENDORSEMENT

1. Ferina Construction Limited ("**Ferina**") served a motion on February 19, 2020 to terminate the time set out in section 50.4(8) of the *Bankruptcy and Insolvency Act* for Yuan Hua (Mike) Wang ("**Mr. Wang**") to make a proposal. Mr. Wang also served a motion on February 19, 2020 to extend the time for him to make a proposal. Each of these motions was stated to be returnable on February 20, 2020 to coincide with the return of motions brought by the court-appointed Monitor and the Non-Applicant companies in the related CCAA proceeding. The motions brought by Ferina and Mr. Wang were not heard that day pursuant to my direction, and were to be scheduled by counsel.
2. Counsel have now attended on this 9:30 Chambers attendance to schedule the motions. The motions brought by Ferina and Mr. Wang will be heard together on March 23, 2020 at 10 a.m. for a total of 90 minutes. 31
3. Given the related nature of these motions to the Forme Development Group Inc. *et al* CCAA proceeding of which I am seized, I am also seized of these motions. GH

4. I am advised that the time period within which Mr. Wang may make a proposal currently expires on February 26, 2020. That time period is hereby extended to March 23, 2020 on a without prejudice basis, including to any argument that Ferina or any other party or participant on the motion may make. If, prior to the return of the motions, Mr. Wang files a proposal, Ferina's motion may proceed as a motion pursuant to section 50(12) of the BIA, rather than section 50.4(8), without the need for any further or amended Notice of Motion being filed.

5. The following conditions apply to the Ferina motion and the motion brought by Mr. Wang:

a. Mr. Wang may be served with any materials by e-mailing him a copy at mike@formeddevelopmentgroup.com;

b. Unless and until such time as Mr. Ullmann advises counsel for Ferina that his firm no longer represents Mr. Wang, a copy of any materials served by e-mail on Mr. Wang will also be served by e-mail on Mr. Ullmann at dullmann@blaney.com

c. the March 23, 2020 motion date and all dates set out below are preemptory to Mr. Wang, regardless of whether he continues to be represented by his current counsel.

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Nothing in this Endorsement or the order requires Blaney to remain as counsel to Mr. Wang.

6. The parties will each adhere to the following timetable:

Step to be completed	By which party	Date to be completed
Responding Motion Record, if any	Any	March 2, 2020
Cross-Examinations, if any	All	March 9, 2020
Answers to Undertakings	All	March 12, 2020
Factum/Book of Authorities	All	March 17, 2020