



ONTARIO SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

ENDORSEMENT

COURT FILE NO.: CV-24-00713245-00CL DATE: APRIL 12 2024

NO. ON LIST: 2

TITLE OF PROCEEDING: **BALBOA INC. et al**

BEFORE: **JUSTICE CAVANAGH**

PARTICIPANT INFORMATION

For Plaintiff, Applicant, Moving Party, Crown:

Name of Person Appearing	Name of Party	Contact Info
Sean Zweig	Bennett Jones LLP Lawyers for the Applicants	zweigs@bennettjones.com
Joshua Foster		fosterj@bennettjones.com
Thomas Gray		grayt@bennettjones.com

For Defendant, Respondent, Responding Party, Defence:

Name of Person Appearing	Name of Party	Contact Info
Adam Erlich	Fuller Landau LLP, receiver of The Lion's Share Group Inc.	aerlich@fullerllp.com
Jennifer Stam	Norton Rose Fulbright Canada LLP, lawyers for The Fuller Landau Group Inc., receiver of The Lion's Share Group Inc.	jennifer.stam@nortonrosefulbright.com

For Other, Self-Represented:

Name of Person Appearing	Name of Party	Contact Info
David Sieradzki	KSV Restructuring Inc., the Monitor	dsieradzki@ksvadvisory.com
Shayne Kukulowicz	Cassels Brock & Blackwell LLP,	skukulowicz@cassels.com

	lawyers for the Monitor	
George Benchetrit	Chaitons LLP, the Secured Lender Representative	george@chaitons.com
Jeffrey J. Simpson	Torkin Manes LLP, lawyers for the DIP Lender	jsimpson@torkin.com
Mario Forte Robert Drake	Goldman Sloan Nash & Haber LLP, Unsecured Lender Representative Counsel	forte@gsnh.com drake@gsnh.com
Joseph Bellissimo	Cassels Brock. Counsel for the Monitor, KSV Restructuring Inc.	jbellissimo@cassels.com

ENDORSEMENT OF JUSTICE P. CAVANAGH:

1. The Applicants are seeking an order under the CCAA, among other things:
 - a. extending the Stay of Proceedings (as defined in the motion materials) to and including June 24, 2024;
 - b. approving a sale, refinancing and investment solicitation process (“SISP”) in the form attached as Schedule “A” to the requested form of Order;
 - c. approving the retention of Howards Capital Corp. (“HCC”) and CBRE Limited (“CBRE”) as advisors to the Applicants (collectively in such capacities, the “SISP Advisors”) pursuant to engagement agreements between HCC and the Applicants and CBRE and the Applicants, respectively; and
 - d. authorizing and directing the Applicants, the SISP Advisors, and KSV Restructuring Inc., in its capacity as the Monitor of the Applicants (the “Monitor”), to implement the SISP pursuant to the terms thereof, and to perform their respective obligations thereunder.
2. The Applicants’ motion is not opposed.
3. The facts underlying this motion are more fully set out in the affidavit of Robert Clark sworn April 8, 2024. All capitalized terms used in this endorsement have the meanings ascribed to them in Mr. Clark’s affidavit.
4. In addition, the Monitor has filed its Third Report dated April 9, 2024. In the Third Report, the Monitor recommends that this Court make the requested order.

The SISP Advisors’ Retention

5. In contemplation of a potential SISP and to address the Applicants’ need for the assistance of an independent financial and/or sale advisor, the Applicants, with the assistance of the Monitor, solicited proposals from various prospective advisors. The Applicants and the Monitor received proposals from four advisors, including HCC and CBRE, and the Applicants separately received a proposal from an additional advisor.
6. The Monitor, following consultation with the Applicants, the Lender Representative counsel, the Unsecured Lender Representative Counsel and the court-appointed a receiver of Lion’s Share recommended that HCC and CBRE be jointly retained as the SISP Advisors on the basis that:

- a. HCC would be engaged solely in respect of any refinancing of, or other strategic investment in, the Applicants' Property; and
 - b. CBRE would be engaged solely in respect of any sale transactions involving the Applicants' Property.
7. The terms of the SISP Advisors' engagements are set out in the substantially final, unexecuted copies of the HCC Engagement Agreement and the CBRE Engagement Agreement to be entered into between HCC and the Applicants and CBRE and the Applicants, respectively. Both engagement agreements contemplate that the SISP Advisors will: (a) assist the Monitor in implementing and conducting the SISP in connection with their respective mandates; (b) consult with key stakeholders; (c) assist with the due diligence process for interested parties; (d) provide advice with respect to strategic transactions or sale transactions, as applicable; and (e) engage local agents (with the consent of the Monitor) if and when appropriate.
8. I am satisfied that the Applicants should be authorized to retain the SISP Advisors and that the engagement agreements should be approved. In this respect, I accept the submissions made on behalf of the Applicants at paragraphs 31-35 of their Factum.

The SISP

9. The SISP was developed by the Monitor in consultation with the Applicants, the SISP Advisors, the Lender Representative Counsel, the Unsecured Lender Representative Counsel and the Lion's Share Receiver.
10. The SISP prescribes the manner in which the Monitor, with the assistance of the SISP Advisors, and in consultation with the Applicants, the Lender Representative Counsel, the Unsecured Lender Representative Counsel and the Lion's Share Receiver, shall solicit interest in one or more refinancing, sale and/or other strategic transactions involving the business, assets and/or equity of the Applicants or any part thereof from interested parties.
11. The SISP contemplates a two-stage process. The first phase requires the submission of non-binding letters of intent by potential bidders while the second phase will require the submission of binding offers. To maximize the flexibility of the SISP and reduce unnecessary expenditures of time and resources, the SISP does not enumerate the parameters that will govern the submission of binding bids in the second phase. Rather, it provides for an informed, cooperative, and consultative process pursuant to which such parameters, if necessary, will be determined by the reviewing parties.
12. I am satisfied that the SISP should be approved. In this respect, I accept the submissions made on behalf of the Applicants at paragraphs 36-40 of their Factum.

Stay of Proceedings

13. The stay of proceedings under the Second Amended and Restated Initial Order issued on March 28, 2024 will expire on April 30, 2024. Pursuant to the requested form of order, the Applicants are seeking to extend the stay of proceedings, including in respect of the Additional Stay Parties and the Additional Stay Parties' Property (as defined in the motion materials) to and including June 24, 2024.
14. The Applicants' revised cash flow forecast demonstrates that the Applicants will have sufficient cash to support the business' ordinary course operations and the costs of the CCAA proceedings throughout the stay period.

15. I am satisfied that the proposed extension of the stay of proceedings is in the Applicants' best interests and those of their stakeholders, is consistent with the purposes of the CCAA, and is appropriate in the circumstances. I accept the submissions made on behalf of the Applicants at paragraphs 41-44 of their Factum.
16. I am satisfied that the stay of proceedings should be extended in favour of the Additional Stay Parties and the Additional Stay Parties' Property for the stay period. In this respect, I accept the submissions made on behalf of the Applicants at paragraphs 45-49 of their Factum.

Sealing

17. The Applicants are seeking a temporary sealing order in respect of the unredacted copy of the CBRE engagement agreement which contains commercially sensitive information. This is being done to protect the integrity of the SISP and ensure that one or more value-maximizing transactions materialize therein. The proposed sealing order is limited to the variable component of the sales fees applicable in the event of a partial sale of the overall portfolio.
18. I am satisfied that the requested limited sealing order should be made. The limited sealing of the CBRE engagement agreement is in the public interest. There is no reasonable alternative to a sealing order where declining to grant the proposed order would materially impair the maximization of asset value for the benefit of stakeholders. The benefits of the sealing request outweigh any deleterious effects. The sealing request is appropriately limited in the circumstances. The sealing order will be subject to further order of the Court.

Approval of Monitor's Reports, Activities and Fees

19. I am satisfied that the reports of the Monitor described in the requested form of Order and the activities of the Monitor referred to therein should be approved. I am satisfied that the fees and disbursements of the Monitor and its counsel as set out in the Third Report should be approved.

Investigation

20. In its Third Report, the Monitor reports that as part of its investigation described in its Second Report, interviews with each of Dylan Suitor, Aruba Butt, Ryan Molony, and Robert Clark are being scheduled. At the hearing, counsel for Monitor advised that these interviews have, by agreement, been scheduled as follows:
 - a. Robert Clark, on April 25;
 - b. Aruba Butt on April 26;
 - c. Ryan Molony on May 1; and
 - d. Dylan Suitor on May 6.

Disposition

21. Order to issue in form of Order signed by me today.