ONTARIO SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

COUNSEL/ENDORSEMENT SLIP

COURT FILE NO.: CV-24-00713245-00CL **DATE: January 28, 2026**

NO. ON LIST: 2

TITLE OF PROCEEDING: BALBOA INC. et al

BEFORE: JUSTICE KIMMEL

PARTICIPANT INFORMATION

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ENDORSEMENT OF JUSTICE KIMMEL:

The Motion

[1] KSV Restructuring Inc. ("KSV"), in its capacity as court-appointed monitor (in such capacity, the "Monitor") of the Applicants, pursuant to the Order (Expansion of Monitor's Powers) dated June 25, 2024 (the "Expanded Powers Order"), seeks the following three orders:

(a) A Third Omnibus Approval and Vesting Order (the "Third Omnibus AVO") approving the sale transactions (collectively, the "Transactions" and each a "Transaction") contemplated by agreements of purchase and sale (collectively, the "Sale Agreements" and each a "Sale Agreement") between, in each case, the Monitor, on behalf of an Applicant, as seller, and a Purchaser (as defined below), as buyer, substantially in the form attached as Appendices "G" to "M" to the Fourteenth Report of the Monitor dated January 21, 2026 (the "Fourteenth Report") and transferring and vesting in the applicable person(s) or entity(ies) listed on Schedule "A" to the Third Omnibus Approval and Vesting Order (each, a "Purchaser") all of the applicable Applicant's right, title and interest in and to the applicable lands and premises legally described in Schedule "A" to the Third Omnibus Approval and Vesting Order (collectively, the "Purchased Properties" and each a "Purchased Property").

(b) An Approval and Vesting Order (Kimberly) ("Kimberly AVO") approving the transaction (the "Kimberly Transaction") contemplated by an agreement between the Monitor and the Corporation of the City of Timmins (the "City") dated January 21, 2026 (the "Kimberly Transfer Agreement") and transferring and vesting all of the Applicants' right, title and interest in and to the Kimberly Avenue Property in exchange for the full and final satisfaction of all tax arrears and demolition costs.

(c) An Ancillary Matters Order extending the Stay Period (as defined in the SARIO) to and including July 31, 2026, authorizing the repayment of the Viscount DIP Facility and the termination of the DIP Lender's Charge and certain associated rights of the DIP Lender, approving the Fourteenth Report and the Monitor's activities described therein, and approving the fees and disbursements of the Monitor and its counsel, Cassels Brock & Blackwell LLP ("Cassels"), as set out in the Fee Affidavits appended to the Fourteenth Report.

[2] Capitalized terms not otherwise defined in this endorsement shall have the meanings ascribed to them in the Fourteenth Report.

[3] The Service List was served with the Monitor's motion a week ago. The relief sought today is unopposed. No other party has filed responding materials, and none appears today to oppose the motion.

[4] I am satisfied that the proposed relief is appropriate and should be granted.

Prior Orders

[5] An Initial Order was granted in this matter on January 23, 2024 and was subsequently amended and restated by Orders dated February 15, 2024 and March 28, 2024 (as amended and restated, and as further amended from time to time, including by Order dated December 6, 2024, the "SARIO").

[6] Various other orders have been granted during the pendency of these CCAA proceedings. On April 14, 2025, the Court granted an Order (the "Orderly Liquidation Mechanics Order"), which, among other things: (a) authorized the Monitor, on behalf of the Applicants, without further order of the court, to sell the Liquidation Portfolio Properties with the consent of the applicable prescribed stakeholders for each Liquidation Portfolio Property; and (b) approved the Second DIP Allocation and prescribed a method by which the proceeds from the sale of the remaining Properties would be used to repay the outstanding obligations under the Viscount DIP Facility.

[7] On July 28, 2025, this court granted an order, which, among other things: (i) extended the Stay Period to January 31, 2026; and (ii) approved the fees and disbursements of the Monitor and Cassels through to June 30, 2025.

The Third Omnibus AVO and Kimberly AVO

[8] Since the Orderly Liquidation Mechanics Order was made, the Monitor, with the assistance of the Listing Agents, has sold forty-seven of the Liquidation Portfolio Properties, with twenty-seven remaining (the "Remaining Liquidation Properties").

[9] The objective of the Orderly Liquidation Mechanics Order was to allow the Monitor to complete sales of Liquidation Portfolio Properties without further approval of the court having to be sought and provided on an individual or "one-off" basis, as long has the Monitor has the consent of those stakeholders or stakeholder representatives who have economic interests in the proceeds. The idea was to avoid the staggering costs, relative to recoveries, with what would be dozens and dozens of court appearances. The sales have proceeded in this manner.

[10] However, there are seven properties under the Third Omnibus Approval and Vesting Order and one property under the Kimberly AVO in respect of which the Monitor does not have the consent from all necessary stakeholders, specifically the requisite consents of certain "out-of-the-money" creditors for the Liquidation Portfolio Property subject to each applicable Transaction. The Monitor is also in this instance taking proactive steps to ensure the closing of one of the Transactions under the Third Omnibus AVO (at a price that had been previously consented in connection with an earlier aborted sale transaction) and the Kimberly Transaction, whose circumstances have necessitated the Monitor incurring additional costs.

[11] The Monitor considers it to be in the interests of all stakeholders for these to be approved by the court (on notice to all creditors who might have been asked for consent) rather than attempting to confirm consents previously given or seek consents from a secured creditor that has not been responsive in respect of other requested consents.

[12] In the Monitor's view, the Transactions and the Kimberly Transaction, in each instance, represent the best or only actionable transaction available in respect of the applicable Liquidation Portfolio Property and provide for the greatest recovery to stakeholders. The Monitor is satisfied with the marketing efforts that were undertaken in accordance with the Orderly Liquidation Mechanics Order and does not believe that

further marketing efforts would result in a superior transaction. The reasons in each instance are detailed in the Fourteenth Report. The Kimberly Transaction was likened to a credit bid by a priority secured creditor.

[13] Similar relief to what is sought in the Third Omnibus AVO has been granted by this court previously in these CCAA proceedings. I am satisfied here, for the reasons set out in the Fourteenth Report, that the factors enumerated in section 36(3) of the CCAA together with the overlapping but not identical *Soundair* Principles, which I have also considered, have been satisfied here.

[14] While not determinative of the issue, the support of both the Secured Lenders and the Unsecured Lenders confirmed by their counsel who appeared on this motion, and who may or may not receive any recovery, is a factor to be taken into account.

[15] The Monitor has provided notice of the proposed Kimberly Transaction to each creditor with a registration against the Kimberly Avenue Property of which the Monitor is aware. The Monitor has also served its motion record on all registered secured creditors and any other known interested stakeholder that may have an interest that will be discharged under the Third Omnibus AVO. The absence of any objections or opposition from these other interested parties is also a relevant consideration in support of granting the requested order.

The Ancillary Order

Stay Extension

[16] With respect to the proposed stay extension, the Monitor is of the view, as fully set out in the Fourteenth Report, that the stay should be extended to July 31, 2026 to allow for the continued advancement of the Orderly Liquidation Plan previously approved, and in particular the listing for sale and realizing on the Remaining Liquidation Properties. The Monitor submits that the progress made so far in carrying out the Orderly Liquidation Plan justifies the extension of these proceedings to complete the sale of the now remaining 27 Remaining Liquidation Properties.

[17] The Cash Flow Forecast provided in the Fourteenth Report reflects that there is sufficient funding available (even after repayment of the DIP Loan) to fund operations and the costs of these proceedings during the proposed extension period. The Monitor believes that no creditor will be prejudiced if the extension is granted.

[18] I satisfied that the proposed stay of proceedings should be extended through and including July 31, 2026, pursuant to section 11.02(2) of the CCAA. Such an extension is necessary and appropriate and I am satisfied that the Monitor continues to be acting in good faith and with due diligence.

[19] As endorsed by the Court in this proceeding and other CCAA proceedings, in the context of a "super monitor", the monitor is held to the good faith standard: see *Forme Development Group Inc. (Re) (*February 20, 2020), ONSC (Commercial List), Court File No. CV-18- 608313-00CL (Endorsement of Mr. Justice Hainey); *In the Matter of a Compromise or Arrangement of Balboa Inc. et. al*. (July 31, 2024), ONSC (Commercial List), Court File No. CV-24-00713245-00CL (Endorsement of Madame Justice Steele).

Approval of Fourteenth Report and Activities, Fees and Disbursements

[20] I am also satisfied that the Fourteenth Report and the activities of the Monitor therein should be approved. The activities have been accretive to the progress of this proceeding, and are consistent with the powers given to the Monitor in the SARIO, the Expanded Powers Order and the Orderly Liquidation Mechanics Order. The activities of the Monitor described therein are appropriate, reasonable and are

approved. This court has repeatedly recognized that there are good policy and practical reasons for the court to grant periodic orders approving the activities and fees, and the fees of its counsel: see *Target Canada Co. (Re)*, 2015 ONSC 7574 at paras 2 & 22-23.

[21] The fees of the Monitor and its counsel are commensurate with those activities, reflect reasonable rates and time spent on the activities undertaken, as fully set out in the fee affidavits appended to the Fourteenth Report. I am satisfied that the fees and disbursements meet the standard of the "overriding principle of reasonableness" given the nature, extent and value of the assets being administered, the complications, the time, diligence and thoroughness displayed, responsibilities assumed and results achieved: see *Bank of Nova Scotia v. Diemer*.

Repayment and Termination of Viscount DIP Facility

[22] The Monitor is seeking authorization to repay the Viscount DIP Facility from the amounts held by the Monitor.

[23] As of the date of the Fourteenth Report, the Monitor is holding approximately $2.5 million in its trust account, which funds are largely the net sale proceeds from sold Properties, net of the Second DIP Allocation amounts previously remitted to the DIP Lender and ongoing expenses, including the expenses of these CCAA proceedings. The outstanding amount owing under the Viscount DIP Facility is approximately $821,000 (less than anticipated in the motion materials).

[24] Based on the Monitor's projections, there are sufficient funds in the Monitor's trust account to repay all amounts outstanding under the Viscount DIP Facility, without impairment to the Monitor's ability to fund the remaining costs anticipated in these CCAA proceedings. Further, the repayment, and resulting termination, of the Viscount DIP Facility will eliminate various costs in these CCAA proceedings, including interest payable under the Viscount DIP Facility and costs related to the Monitor's reporting obligations under the Viscount DIP Facility.

[25] The proposed Ancillary Matters Order also contemplates that, upon repayment, the Viscount DIP Facility will be terminated. Accordingly, the Ancillary Matters Order provides that, upon termination of the Viscount DIP Facility, the DIP Lender's Charge will be discharged, as there will no amounts secured thereby, and the DIP Lender will cease to have any further consent rights or involvement in the ongoing liquidation process previously approved by this Court.

[26] Section 11 of the CCAA provides this Court with broad discretion to make "any order that it considers appropriate in the circumstances." The discretion conferred upon this Court by section 11 of the CCAA must be exercised in furtherance of the CCAA's remedial objectives, having regard to whether (a) the order sought is appropriate in the circumstances; (b) the debtor company is acting in good faith; and (c) the debtor company is acting with due diligence: see *9354-9186 Quebec Inc v. Callidus Capital Corp*., 2020 SCC 10, at para. 49.

[27] The relief sought by the Monitor is consistent with the remedial objectives of the CCAA. Repayment of the Viscount DIP Facility will eliminate certain costs being incurred in these CCAA proceedings in connection therewith, including interest and costs related to the Monitor's reporting obligations. The Monitor is holding sufficient proceeds to repay the Viscount DIP Facility and the repayment thereof will not change the manner in which the Second DIP Allocation is applied to sales of the Liquidation Portfolio Properties going forward.

[28] Pursuant to the Orderly Liquidation Mechanics Order, the Monitor is not permitted, without Court approval, to repay the Viscount DIP Facility other than in accordance with the Second DIP Allocation from the proceeds of sold Liquidation Portfolio Properties.

[29] Pursuant to the proposed Ancillary Matters Order, the Monitor is seeking: (a) authorization, notwithstanding paragraphs 4 or 5(a) of the Orderly Liquidation Mechanics Order (which do not permit repayment of the Viscount DIP Facility in amounts that exceed the proportionate allocation for each property as it is sold), to repay all amounts outstanding under the Viscount DIP Facility; and (b) upon repayment of the Viscount DIP Facility, the termination of the DIP Lender's Charge. The Ancillary Order also eliminates the need for the Monitor to obtain the DIP Lender's consent in respect of future sale transactions, after it has been repaid.

[30] For the reasons summarized above and in the Monitor's Factum, and detailed in the Fourteenth Report, this approval is granted.

Orders

[31] I have signed each of the Third Omnibus AVO, Kimberly AVO and Ancillary Matters Order, and each are effective immediately without the necessity of issuing and entering.

Kimmel J.

Date: Jan 28, 2026

Jessica Kimmel