



**SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

ENDORSEMENT

**COURT FILE
NO.:**

CV-24-00713245-00CL

DATE:

July 28, 2025

NO. ON LIST: 2

**TITLE OF
PROCEEDING:**

In the Matter of a Plan of Compromise of Balboa Inc.

BEFORE:

JUSTICE OSBORNE

PARTICIPANT INFORMATION

For Plaintiff, Applicant, Moving Party:

Name of Person Appearing	Name of Party	Contact Info
Joseph Bellissimo	KSV Restructuring	jbellissimo@cassels.com
Stephanie Fernandes	KSV Restructuring	sfernandes@cassels.com

For Defendant, Respondent, Responding Party:

Name of Person Appearing	Name of Party	Contact Info
Mario Forte	Representative Counsel for Unsecured Lenders	mforte@reconllp.com
Shaun Parsons	Viscount Capital Inc.	sparsons@airdberlis.com
George Benchetrit	Representative Counsel for Secured Lenders	george@chaitons.com

For Other, Self-Represented:

Name of Person Appearing	Name of Party	Contact Info
David Sieradzki	KSV Restructuring (CCAA Monitor)	dsieradzki@ksvadvisory.com

ENDORSEMENT OF JUSTICE OSBORNE:

1. The Monitor brings this motion for approval of the Core Claim Assignment Agreement between the Applicants and Viscount Capital Inc. dated as of May 31, 2025 and authorization for the Monitor to execute the Assignment Agreement, and also for an order that, subject to the terms of the Core Claim Assignment Agreement and the Assignment of Claims Order, authorizing the Assignee to continue proceedings including Court File No. CV-25-00742331-0000 in its own name and at its own expense and risk regarding the claims of the Applicants as against Core Acquisition Co. Inc. for damages arising from breach of contract and/or unjust enrichment relating to unpaid portions of the purchase price required to be paid under the agreement of purchase and sale dated February 24, 2022.
2. The Monitor also seeks an Ancillary Matters Order extending the Stay Period to and including January 31, 2026 and amending the restated Initial Order to replace the current Unsecured Lender Representative Counsel and appoint Reconstruct LLP in that capacity, and approve the 13th Report and the activities of the Monitor referred to therein, together with the fees of the Monitor and its counsel as set out in the notice of motion.
3. The Monitor relies upon the 13th Report dated July 21, 2025 together with the Appendices thereto.
4. Defined terms in this Endorsement have the meaning given to them in the motion materials unless otherwise stated.
5. The Service List has been served. The relief sought today is unopposed. No other party has filed responding materials, and none appears today to oppose the motion.
6. I am satisfied that the relief should be granted. Viscount approached the Monitor in May, 2025 to express an interest in acquiring the potential claim of the Applicants against Core relating to unpaid portions of the purchase price to be paid under the Core Claim. That claim had been preserved by the Monitor by, among other things, the filing of a Notice of Action in May, 2025 and the subsequent filing of a Statement of Claim.
7. Beyond preserving the cause of action, however, the Monitor lacks the resources or stakeholder input to support pursuing it.
8. The Monitor entered into the Core Claim Assignment Agreement following extensive discussions and negotiations with Viscount and, in consultation with Secured Lender Representative Counsel and Unsecured Lender Representative Counsel. The Monitor's authority flows from its powers under the Expanded Powers Order made earlier in this proceeding.
9. A key condition of the Core Claim Assignment Agreement was that the acquisition of the Core Claim by Viscount would be subject to the right of any other creditors and/or interested parties to make a better offer to acquire the Core Claim.
10. As contemplated by the Agreement, the Monitor provided notice on June 10, 2025 to all known lenders, and to the Service, soliciting any offers to take an assignment of the Core Claim by July 7, 2025. A copy of the Notice was also posted on the Monitor's Case Website.
11. The Monitor did not receive any other expression of interest. Nor were any other offers submitted by the deadline of July 7.
12. I am satisfied that the Core Claim Assignment Agreement should be approved, and the Claim assigned. This Court has jurisdiction pursuant to section 36 of the *CCAA* to authorize an applicant to dispose of

assets outside the ordinary course of business. I am satisfied here, for the reasons set out in the 13th 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. While not determinative of the issue, the support of both the Secured Lenders and the Unsecured Lenders, who may or may not receive any recovery, is a factor to be taken into account.

13. Moreover, the terms of the proposed assignment order make it clear that the exclusion providing that the Applicants and the Monitor shall not be required to participate in the Assigned to Claim, including for production and discovery, does not apply to the principals of the Applicants, including but not limited to Robert Clark and Aruba Butt.
14. With respect to the proposed stay extension, the Monitor is of the view, as fully set out in the 13th Report, that the stay should be extended to January 31, 2026 to continue advancing the Orderly Liquidation Plan previously approved, and in particular the listing for sale and realizing on the Remaining Liquidation Properties.
15. 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 54 Remaining Liquidation Properties.
16. The Cash Flow Forecast provided in the 13th Report reflects that there is sufficient funding available to fund operations and the costs of these proceedings during the proposed extension period. I am satisfied that no creditor will be prejudiced if the extension is granted.
17. I am also satisfied that the 13th 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 original appointment order enhanced by the Expanded Powers Order.
18. 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 13th Report. They are approved: *Bank of Nova Scotia v. Diemer*.
19. Finally, the relief in respect of changing the firm acting as Unsecured Lender Representative Counsel ensures the continued involvement of Mr. Forte who has changed firms but will continue to have carriage of this matter according to that mandate. That makes eminent sense in the circumstances.
20. For all of these reasons, I am satisfied that the proposed relief is appropriate, and the motion is granted.
21. I have signed each of the Ancillary Matters Order and the Assignment of Claims Order, and both are effective immediately without the necessity of issuing and entering.

A handwritten signature in green ink, appearing to read "Steven J.", with a stylized flourish at the end.