

Court File No. CV-19-615560-00CL

**ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)**

THE HONOURABLE
JUSTICE HAINEY

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FRIDAY, THE 28TH
DAY OF AUGUST, 2020

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 BONDFIELD CONSTRUCTION
COMPANY LIMITED, 950504 ONTARIO INC., 352021
ONTARIO LIMITED, 2433485 ONTARIO INC. AND 2433486
ONTARIO INC. (each, an "**Applicant**", and collectively, the
"**Applicants**")

Court File No. CV-18-608978-00CL

**ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)**

BRIDGING FINANCE INC., as agent for
2665405 ONTARIO INC.

-and-

1033803 ONTARIO INC. AND 1087507
ONTARIO LIMITED

ORDER

THIS MOTION made by KSV Kofman Inc., in its capacity as Court-appointed receiver
and manager of, inter alia, all of the assets, undertakings and properties of 1033803 Ontario Inc.

operating as Forma-Con Construction and Forma Finishing and 1087507 Ontario Limited (the “Receiver”) was heard this day via Zoom videoconference, in Toronto, Ontario.

ON READING the Notice of Motion and on hearing the submissions of counsel for the Receiver:

1. **THIS COURT ORDERS THAT** notwithstanding the Order of Justice Hainey dated September 18, 2019, the Protocol Regarding Transactions of Interest attached as Schedule “A”, is not subject to any sealing order or other court-imposed confidentiality obligations.



(Signature of Judge)

SCHEDULE "A"

PROTOCOL REGARDING TRANSACTIONS OF INTEREST

WHEREAS on May 30, 2019, Ernst & Young Inc., in its capacity as court-appointed Monitor (the "**Bondfield Monitor**") in the proceedings of Bondfield Construction Company Limited ("**BCCL**") et al. under the *Companies' Creditors Arrangement Act* (Canada) (the "**CCAA Proceedings**"), obtained an Order (the "**May 30 Order**") of the Ontario Superior Court of Justice (Commercial List) (the "**Court**") authorizing the Bondfield Monitor and its counsel to take all steps deemed necessary or desirable to undertake the investigation described in Confidential Appendix "A" to the Second Report of the Bondfield Monitor (the "**Phase II Investigation**").

AND WHEREAS pursuant to an Order of the Court dated November 19, 2018 (the "**FC Receivership Order**"), KSV Kofman Inc. was appointed as receiver and manager (in such capacity, the "**FC Receiver**") of all of the assets, undertakings and properties of 1033803 Ontario Inc. operating as Forma-Con Construction and Forma Finishing and 1087507 Ontario Limited (the "**Forma-Con Entities**"). The receivership of the Forma-Con Entities is defined herein as the "**FC Receivership**".

AND WHEREAS the Bondfield Monitor confirms that Bondfield Monitor's Phase II Investigation is ongoing at this time and it includes an investigation into certain transactions that appear to have involved material payments purporting to be made to suppliers for services rendered and materials provided in circumstances where the Bondfield Monitor has reason to believe that no such services were rendered or materials were provided by such purported suppliers (the "**Transactions of Interest**").

AND WHEREAS upon completion of the Phase II Investigation, the May 30 Order requires that the Bondfield Monitor deliver a confidential and sealed report to the Court on the results of the Phase II Investigation (the "**Report**"), including recommendations on any rights or claims that BCCL and its affiliated Applicants in the CCAA Proceedings may have against any parties and recommendations on any further steps that the Bondfield Monitor deems appropriate in connection with such investigation.

AND WHEREAS the FC Receiver has requested access to information currently in the Bondfield Monitor's possession or generated from the Phase II Investigation to the extent such information relates to both: (i) the Transactions of Interest and/or the Phase II Investigation; and (ii) property that may have been transferred by the Forma-Con Entities or relates to transactions in which the Forma-Con Entities appear to have participated or have a direct financial interest (the "**Requested Information**").

AND WHEREAS, the FC Receiver and the Bondfield Monitor recognize the sensitive and confidential nature of the Requested Information and have, subject to Court approval, agreed to this protocol for the purpose of protecting the confidentiality of such information and to preserve the integrity and effectiveness of the Bondfield Monitor's investigation.

Subject to approval of the Court, the Bondfield Monitor and the FC Receiver have agreed as follows:

1. Without limiting the obligations described in paragraph 9 hereof, the Bondfield Monitor shall be entitled to disclose Requested Information that it deems appropriate to the FC Receiver, provided that such disclosure shall be subject to the terms set out herein.
2. The FC Receiver acknowledges that certain information received by the Bondfield Monitor from third parties is subject to common interest privilege and independent confidentiality arrangements (the "**Restricted Information**") and, as a result, the Bondfield Monitor is not permitted to disclose that information, provided however, that if any of the Restricted Information relates directly to the property of the Forma-Con Entities, the Bondfield Monitor shall use commercially reasonable efforts to obtain any necessary consents to provide such information to the FC Receiver and if

such consents are not provided, the Bondfield Monitor and FC Receiver shall jointly seek directions from the Court on a confidential basis, but on notice to all parties whose common interest privilege or confidentiality arrangements may be affected, to determine the FC Receiver's entitlement to obtain such Restricted Information.

3. Any information provided by the Bondfield Monitor to the FC Receiver described in paragraphs 1 and 2 above shall be kept strictly confidential by the FC Receiver and, for greater certainty, shall not be disclosed to any interested parties in the proceedings in which the FC Receiver has been appointed. In the event that the FC Receiver reasonably believes it is required, in accordance with its duties as FC Receiver, to disclose any such information received from the Bondfield Monitor (or derived from information received from the Bondfield Monitor) to the Court (a "**FC Disclosure Obligation**"), any such disclosure shall be limited only to those matters required by the FC Disclosure Obligation and shall be subject to a customary confidentiality and sealing order. In the event that the FC Receiver reasonably believes it has an FC Disclosure Obligation, the FC Receiver shall provide at least 10 days' prior notice to the Bondfield Monitor and shall consult with the Bondfield Monitor prior to any such disclosure. In the case of any inadvertent disclosure of such information, the FC Receiver will immediately identify the nature of the disclosure to the Bondfield Monitor and will take all reasonable steps to prevent further disclosure and to recover anything that has been disclosed and to otherwise mitigate the effects of or contain any disclosure that has occurred, all with the view of protecting confidentiality.
4. While the Bondfield Monitor will make reasonable good faith efforts to provide information to the FC Receiver that the Bondfield Monitor believes is accurate, the Bondfield Monitor and its counsel shall have no personal liability as a result of the disclosure of information described in this protocol and the Bondfield Monitor and its counsel make no representation or warranty, express or implied, including as to the accuracy or completeness, in connection with any information provided to the FC Receiver in connection with this protocol.
5. Until otherwise ordered by the Court on at least 10 days' notice to the Bondfield Monitor, or consented to by the Bondfield Monitor, the FC Receiver will not take any steps to investigate or obtain remedies in connection with the transactions that are disclosed to the FC Receiver by the Bondfield Monitor or the parties that are identified by the Bondfield Monitor to the FC Receiver as being the subject of the Bondfield Monitor's investigation. Absent order of the Court or the prior consent of the Bondfield Monitor, the FC Receiver shall take no steps inconsistent with the investigation being undertaken by the Bondfield Monitor into the Transactions of Interest or the parties believed to be involved in the Transactions of Interest
6. In connection with delivery of the Report to the Court, the Bondfield Monitor and the FC Receiver shall consult in good faith regarding the implementation of any further steps recommended in the Report in connection with the Transactions of Interest to the extent those steps involve property of the Forma-Con Entities that may have been transferred by the Forma-Con Entities or relates to transactions in which the Forma-Con Entities appear to have participated or have a direct financial interest. Such consultation shall include the following matters:
 - a. the party who will conduct any such further steps;
 - b. the funding of any such further steps; and
 - c. the sharing of any costs incurred in connection with the Phase II Investigation and the Report.
7. Any further steps in connection with the recommendations set out in the Report regarding the Transactions of Interest shall only be undertaken with approval of the Court. In the case of any steps by the Bondfield Monitor involving property of the Forma-Con Entities that may have been transferred by the Forma-Con Entities or related to transactions in which the Forma-Con Entities appear to have participated or in which the FC Receiver or the Forma-Con Entities may have a

direct financial interest, the Bondfield Monitor will not take any steps or obtain remedies in connection with such transactions unless the Court has approved such further steps pursuant to a motion brought on at least 10 days' notice to the FC Receiver. For greater certainty, nothing in this Protocol expands the powers of the Bondfield Monitor with respect to the Forma-Con Entities.

8. Any recoveries by the Bondfield Monitor or the FC Receiver in connection with the Transactions of Interest shall be held in trust pending (a) the Court's determination as to entitlement to those recoveries; or (b) agreement by Zurich Insurance Company Ltd., Bridging Finance Inc., the FC Receiver and the Bondfield Monitor regarding the distribution of those proceeds.
9. For greater certainty, all persons shall comply with all obligations to disclose information as required pursuant to any court order granted in the FC Receivership or the CCAA Proceedings (including, for greater certainty, the obligations set out in paragraphs 5 and 6 of the FC Receivership Order), provided, however, that, to the extent that any such information is Restricted Information, the provisions of paragraph 2 above shall apply and, in any event, any information so disclosed shall remain subject to the confidentiality provisions set out in this Protocol.

IN THE MATTER OF A PLAN OF COMPROMISE OR
ARRANGEMENT OF BONDFIELD CONSTRUCTION COMPANY
LIMITED, 950504 ONTARIO INC., 352021 ONTARIO LIMITED,
2433485 ONTARIO INC. AND 2433486 ONTARIO INC.

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-and-

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1033803 ONTARIO INC. AND 1087507 ONTARIO LIMITED

**ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)**

Proceeding commenced at TORONTO

ORDER

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