

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

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THE HONOURABLE MR)
JUSTICE PENNY)

MONDAY, THE 25TH
DAY OF FEBRUARY, 2019



BETWEEN

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

Applicant

- and -

1033803 ONTARIO INC. and 1087507 ONTARIO LIMITED

Respondents

**IN THE MATTER OF AN APPLICATION UNDER SECTION 243(1) OF THE
BANKRUPTCY AND INSOLVENCY ACT, R.S.C. 1985, c. B-3, AS AMENDED;
AND SECTION 101 OF THE COURTS OF JUSTICE ACT,
R.S.O. 1990, c. C.43, AS AMENDED**

ORDER

**(Approval of Sale Process for Real Property, Fee Approval
and Distribution of Sale Proceeds)**

THIS MOTION, made by KSV Kofman Inc. (“KSV”), in its capacity as the Court-appointed receiver and manager (KSV, in such capacity, the “Receiver”) of: (i) all of the assets, undertakings and properties of 1033803 Ontario Inc. (operating as Forma-Con Construction and Forma Finishing) (“Forma-Con”), including without limitation, the lands municipally known as 3420 Queen Street East, Brampton, Ontario (formerly 3420 Highway 7 East, Brampton, Ontario) (the “Brampton Property”) and 407 Basaltic Road, Concord, Ontario (the “Concord Property”) and 1087507 Ontario Limited including real property municipally known as 4431 Stouffville

Road, Stouffville, Ontario (the “Stouffville Property”); (ii) certain assets of Bondfield Construction Company Limited (“**BCCL**”) and Bondfield Construction Equipment Ltd (“**BCEL**”); and (iii) the real property known municipally as 131 Saramia Crescent, Vaughan, Ontario (the “Vaughan Property”) ((i) – (iii), collectively, the “Property”), for an order approving; (a) a sales and marketing process for the Concord Property, the Stouffville Property and the Vaughan Property (collectively, the “**Unsold Properties**”); (b) the purchase price allocation under the GF Transaction (as such term is defined in the Third Report) and a distribution of proceeds to Bridging Finance Inc., as agent for 2665404 Ontario Inc.; (c) the fees and disbursements of the Receiver and its counsel; and (d) the Third Report of the Receiver dated February 15, 2019 (the “**Third Report**”); and (e) certain related relief, was heard this day at 330 University Avenue, Toronto, Ontario.

ON READING the Notice of Motion and Motion Record, each dated February 15, 2019, filed, and the Third Report, filed, and on hearing the submissions of counsel for the Receiver and Bridging Finance Inc., and such other counsel appearing on the counsel slip, no one else appearing although properly served as appears from the affidavit of service of Cathy Pellegrini sworn February 19, 2019, filed, affidavit of service of Siva Sivaperuman sworn February 19, 2019, filed, and affidavit of service of Kunalan Shelvarajah sworn February 19, 2019, filed:

SERVICE

1. **THIS COURT ORDERS** that the time for service of the Notice of Motion and the Motion Record is hereby abridged and validated so that this Motion is properly returnable today and hereby dispenses with further service thereof.

SALES AND MARKETING PROCESS FOR UNSOLD PROPERTIES

2. **THIS COURT ORDERS** that the sales and marketing process for the Unsold Properties as described in Part 4 of the Third Report, including the retention of CBRE Group Inc. as listing agent, be and is hereby approved.

APPROVAL OF GF TRANSACTION PURCHASE PRICE ALLOCATION

3. **THIS COURT ORDERS** that the allocation of the purchase price of the GF Transaction (as such term is defined in the Third Report) set out in section 5.3(5) of the Third Report be and is hereby approved.

DISTRIBUTION TO BRIDGING FINANCE INC., AS AGENT FOR 2665404 ONTARIO INC.

4. **THIS COURT ORDERS** that the Receiver is hereby authorized and directed to distribute the amount of \$12.3 million from the proceeds of the sale of the assets of BCCL and BCEL to Bridging Finance Inc., as agent for 2665405 Ontario Inc. (the “**Agent**”), or as the Agent may otherwise direct in writing.

PENSION CLAIM HOLDBACK

5. **THIS COURT ORDERS** that the sum of \$131,532.27 (the “**Funds**”) from Forma-Con estate funds shall be held in trust by the Receiver, segregated and separate from other funds held by the Receiver (the “**Pension Reserve**”), solely for the benefit of: IUOE Local 793, LIUNA Local 506, and LIUNA Local 183 and their members and related trust funds (collectively the “**Unions**”). On agreement of the Unions, the Receiver and the Agent, the Funds may be paid to the Unions with respect to any valid pension claims they may have under section 81.6 of the Bankruptcy and Insolvency Act (“**BIA**”) (the “**Pension Claims**”) and, failing agreement, subject to any further order of this Court regarding the validity of the Pension Claims. If the Unions, the Receiver and Agent agree that the Pension Claims are less than \$131,532.27, or if the Court Orders that the Pension Claims are less than \$131,532.27, then the remaining balance of the Funds shall revert back to the Forma-Con estate. This Pension Reserve and Order shall survive any bankruptcy of Forma-Con. Nothing in this provision is meant to preclude the Unions from making Pension Claims in excess of \$131,532.27 and/or other claims, including but not limited to claims under section 81.4 of the BIA, and nothing in this provision shall preclude any person from opposing the Pension Claims or any other claims of the Unions.

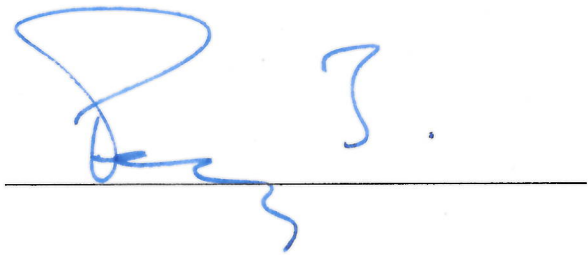
APPROVAL OF FEES AND ACTIVITIES

6. **THIS COURT ORDERS** that the fees and disbursements of the Receiver and Receiver's counsel, as set out in the Third Report are hereby approved.

7. **THIS COURT ORDERS** that the Third Report be and is hereby approved, and the actions and activities of the Receiver described therein be and they are hereby approved; provided, however, that only the Receiver, in its personal capacity and only with respect to its own personal liability, shall be entitled to rely upon or utilize in any way such approval.

GENERAL

8. **THIS COURT HEREBY REQUESTS** the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada, the United States, or any other jurisdiction, to give effect to this Order and to assist the Receiver and its agents and advisors in carrying out the terms of this Order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Receiver, as an officer of this Court, as may be necessary or desirable to give effect to this Order or to assist the Receiver and its agents and advisors in carrying out the terms of this Order.



ENTERED AT / INSCRIT À TORONTO
ON / BOOK NO:
LE / DANS LE REGISTRE NO:
FEB 25 2019

PER / PAR: 

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

Applicant

**1033803 ONTARIO INC. and
1087507 ONTARIO LIMITED**

Respondents

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

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

Proceedings commenced in Toronto

**ORDER
(Approval of Sale Process for Real
Property, Fee Approval and Distribution
of Sale Proceeds)**

TORYS LLP
79 Wellington St. W., Suite 3000
Box 270, TD Centre
Toronto, Ontario
M5K 1N2 Canada

Fax: 416.865.7380

Scott A. Bomhof (LSO#: 37006F)

Tel: 416.865.7370

Email: sbomhof@torys.com

Adam M. Slavens (LSO#: 54433J)

Tel: 416.865.7333

Email: aslavens@torys.com

Lawyers for KSV Kofman Inc.,
in its capacity as Court-appointed
Receiver