

Court File No.: CV-18-608313-00CL

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

THE HONOURABLE MR.) THURSDAY, THE 23rd
)
JUSTICE OSBORNE) DAY OF JUNE, 2022

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 FORME DEVELOPMENT GROUP INC. AND
THE OTHER COMPANIES LISTED ON SCHEDULE "A" HERETO
(the "Applicants")

APPLICATION UNDER THE *COMPANIES' CREDITORS
ARRANGEMENT ACT*, R.S.C. 1985, c. C-36, AS AMENDED

**ORDER
(CCAA Termination and Distribution Order)**

THIS MOTION, made by KSV Restructuring Inc.¹ ("**KSV**"), in its capacity as Court-appointed monitor (in such capacity, the "**Monitor**") of the Applicants in their proceedings pursuant to the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. c-36, as amended, and in its capacity as proposal trustee of 58 Old Kennedy Development Inc., 76 Old Kennedy Development Inc. and 82 Old Kennedy Development Inc. (in such capacity, the "**Proposal Trustee**"), for an Order, *inter alia*: (i) extending the Stay Period; (ii) terminating the proceedings of the Applicants under the CCAA (the "**CCAA Proceedings**") upon the filing of the Discharge Certificate (as defined below), (iii) authorizing and directing the Monitor to make the Proposed Distributions; (iv) authorizing and directing the Monitor to make the Proposed First Source Distribution; (v) approving certain of the Monitor's reports and the activities of the Monitor described therein; (vi) authorizing and directing the Monitor to establish, hold and maintain the Fee Accrual; and (vii)

¹ Effective August 31, 2020, KSV Kofman Inc. changed its name to KSV Restructuring Inc.

discharging KSV as Monitor at the CCAA Termination Time (as defined below), was heard this day by videoconference by the Ontario Superior Court of Justice (Commercial List).

ON READING the Notice of Motion of the Monitor and the Proposal Trustee and the Twenty-First Report of the Monitor and the Seventeenth Report of the Proposal Trustee dated June 14, 2022 (the "**Report**"), together with the appendices thereto, and on hearing the submissions of counsel for the Monitor, and such other parties as were present, no one else appearing although duly served as appears from the affidavit of service of Aiden Nelms, sworn;

SERVICE AND DEFINITIONS

1. **THIS COURT ORDERS** that the time for service and filing of the Motion Record be and is hereby abridged, if necessary, so that the Motion is properly returnable today, and that further service thereof be and it is hereby dispensed with, and that service of the aforementioned materials be and is hereby validated in all respects.
2. **THIS COURT ORDERS** that all terms not otherwise defined herein shall have the meaning ascribed to them in the Report or the Initial Order, as the case may be.

STAY EXTENSION

3. **THIS COURT ORDERS** that the Stay Period be and is hereby extended up to and including the earlier of: (i) December 31, 2022; and (ii) the CCAA Termination Time.

FEE ACCRUAL, THE PROPOSED FIRST SOURCE DISTRIBUTION AND THE PROPOSED DISTRIBUTIONS

4. **THIS COURT ORDERS AND DIRECTS** the Monitor to establish, hold and maintain the Fee Accrual, and to pay any additional fees of the Monitor and its counsel from the Fee Accrual without further Order of this Court.
5. **THIS COURT ORDERS** that the Monitor is authorized to make one or more distributions from the Surplus to First Source, or as it may direct, up to the amount owing to it in connection with the Proposed First Source Distribution, provided that the distributions to First Source will result in the same percentage for First Source on its accepted claim as the other secured creditors of Mr. Wang will receive.
6. **THIS COURT ORDERS** that the Proposed Distributions to be made under this Order, and any subsequent distributions that may be made using the same distribution methodology from any additional

funds that may become available, including from any remaining balance of the Fee Accrual, if any, are hereby approved.

7. **THIS COURT ORDERS** that the Monitor is authorized and directed to make the distribution contemplated in the Report to be made in connection with 186 Old Kennedy Development Inc. ("**186 Old Kennedy**") and 31 Victory Development Inc. ("**31 Victory**") as follows:

- (a) to Pollard, in its capacity as trustee in bankruptcy of 186 Old Kennedy, the sum of \$2,113,165.00; and
- (b) to Pollard, in its capacity as trustee in bankruptcy of 31 Victory, the sum of \$54,129.00.

8. **THIS COURT ORDERS** that, in consideration of the Claims Procedure undertaken by the Monitor in respect of, among others, 186 Old Kennedy and 31 Victory and the fees of the Monitor and its legal counsel allocated to the estates of 186 Old Kennedy and 31 Victory:

- (a) the following Claims accepted by the Monitor in respect of 186 Old Kennedy shall be deemed to be proven proofs of claim filed in the estate of 186 Old Kennedy without the creditor having to file a new proof of claim or take any action:
 - (i) Tregebov Cogan Architects Ltd., unsecured: \$3,390.00;
 - (ii) AJ Tregebov, Architect, unsecured: \$40,956.04;
 - (iii) Strybos Barron King Ltd., unsecured: \$1,048.64;
 - (iv) Cole Engineering Group Ltd., unsecured: \$16,862.53; and
 - (v) Weston Consulting Group Inc., unsecured: \$35,978.06;
- (b) the following Claims that were either disallowed by the Monitor or settled by the Monitor shall be deemed to be disallowed in the estates of 186 Old Kennedy and 31 Victory:
 - (i) Yuce Baykara (in respect of 250 Danforth Development Inc.);
 - (ii) Yuce Baykara (in respect of 3310 Kingston Development Inc.);
 - (iii) Yuce Baykara (in respect of 7397 Islington Development Inc.);

- (iv) Omnibus Claim filed by Tarion Warranty Corporation;
 - (v) Omnibus Claim filed by Koskie Minsky, in its capacity as representative counsel for the Birchmount Purchasers;
 - (vi) Omnibus Claim filed by Toronto Standard Condominium Corporation #2393; and
 - (vii) Claim filed by Gardiner Roberts LLP;
- (c) a hearing date shall be scheduled by Pollard with the Commercial List to determine the Claims filed by 2592898 Ontario Inc., 2620094 Ontario Inc., 2627235 Ontario Inc., 2638796 Ontario Inc. and 2646429 Ontario Inc. in the estate of 186 Old Kennedy, including whether such Claims are barred by:
- (i) the settlement of the indebtedness allegedly owed by 186 Old Kennedy to 2592898 Ontario Inc., 2620094 Ontario Inc., 2627235 Ontario Inc., 2638796 Ontario Inc. and 2646429 Ontario Inc.;
 - (ii) the Order of Mr. Justice Cavanagh in Court File No. CV-19-627410-00CL dated November 2, 2020; and/or
 - (iii) the amended Proof of Claim filed by 2592898 Ontario Inc., 2620094 Ontario Inc., 2627235 Ontario Inc., 2638796 Ontario Inc. and 2646429 Ontario Inc. in the Monitor's Claims Procedure;
- (d) any other Claims which were filed with the Monitor in the estates of 186 Old Kennedy and 31 Victory (other than Claims filed by the Corporation of the City of Markham in respect of property taxes, which were satisfied on the completion of the sale of the real property owned by 186 Old Kennedy and 31 Victory) but which have not been accepted, disallowed or settled by the Monitor shall be deemed to have been filed in the bankruptcy estates of 186 Old Kennedy and 31 Victory and shall be dealt with by Pollard, in its capacity as trustee in bankruptcy of 186 Old Kennedy and 31 Victory; and
- (e) Pollard, in its capacity as trustee in bankruptcy of 186 Old Kennedy and 31 Victory shall have the discretion, but not the obligation, to accept or disallow any other claims filed by creditors in the estates of 186 Old Kennedy and 31 Victory.

9. **THIS COURT ORDERS** that the surplus held by Pollard, if any, after the payment of all creditors of 186 Old Kennedy and/or 31 Victory, shall be remitted by Pollard to KSV in its capacity as trustee in bankruptcy of Mr. Wang.

10. **THIS COURT ORDERS** that Bennett Jones is authorized to transfer any amounts it is presently holding in trust in connection with the Surplus to the Monitor.

11. **THIS COURT ORDERS** that the Monitor, on behalf of the Applicants, Non-Applicants, NOI Entities and Mr. Wang, as the case may be, is hereby authorized, directed and empowered to make the cash distributions in connection with the Proposed Distributions and the Proposed First Source Distribution.

12. **THIS COURT ORDERS** that all distributions shall be made in Canadian dollars, regardless of the currency indicated in the Proof of Claim, calculated by the Monitor, as set out in the Claims Procedure Order.²

13. **THIS COURT ORDERS** that the Monitor is hereby authorized, directed and empowered to take any further steps that it deems necessary or desirable to complete the distributions described in this Order.

14. **THIS COURT ORDERS** that the Monitor shall not incur any liability in connection with the Proposed Distributions, the Proposed First Source Distribution and any other distribution contemplated herein or any distribution contemplated by other orders in these CCAA Proceedings, whether in its personal capacity or in its capacity as the Monitor.

15. **THIS COURT ORDERS** that in carrying out the terms of this Order, the Monitor, whether in its personal capacity or in its capacity as the Monitor:

- (a) shall have all the protections provided to it as an officer of the Court, including the protections granted pursuant to the CCAA and other orders granted in these CCAA Proceedings, including the stay of proceedings; and
- (b) shall incur no liability or obligation as a result of carrying out any duties or work in connection with this Order, save and except for any gross negligence or willful misconduct on its part.

16. **THIS COURT ORDERS** that by making the Proposed Distributions and the Proposed First Source Distribution, or in making any payments or distributions hereunder or contemplated by other orders in these

² November 30, 2018 – USD 1.3301:CAD 1.

CCAA Proceedings, on behalf of the Applicants, Non-Applicants, NOI Entities and Mr. Wang, as the case may be, the Monitor shall not constitute a "legal representative" or "representative" of the Applicants or "other person" for the purposes of Section 159 of the *Income Tax Act* (Canada), Section 270 of the *Excise Tax Act* (Canada), Section 46 of the *Employment Insurance Act* (Canada), Section 22 of the *Retail Sales Tax Act* (Ontario), Section 107 of the *Corporations Tax Act* (Ontario), or any other similar federal, provincial or territorial tax legislation in the Provinces or Territories that the Applicants, Non-Applicants, NOI Entities or Mr. Wang conducted business in (collectively, the "**Statutes**"), and the Monitor in making any such payment or deliveries of funds in accordance with this Order is not "distributing", nor shall it be considered to have "distributed", such funds or assets for the purposes of the Statutes, and the Monitor shall not incur any liability under the Statutes for making any distributions, payments or deliveries in accordance with this Order or failing to withhold amounts, ordered or permitted hereunder, and the Monitor shall not have any liability for any of the Applicants', Non-Applicants', NOI Entities' or Mr. Wang's tax liabilities regardless of how or when such liabilities may have arisen, and is hereby forever released, remised and discharged from any claims against either the Monitor under or pursuant to the Statutes or otherwise at law, arising as a result of the distributions and deliveries in accordance with this Order or other orders in these CCAA Proceedings, and any claims of such nature are hereby forever barred.

17. **THIS COURT ORDERS** that, notwithstanding:

- (a) the pendency of these proceedings or the termination of these proceedings;
- (b) any application for a bankruptcy order now or hereafter issued pursuant to the *Bankruptcy and Insolvency Act* (Canada), R.S.C. 1985 c. B-3, as amended (the "**BIA**") in respect of any of the Applicants, Non-Applicants, NOI Entities or Mr. Wang, and any bankruptcy order issued pursuant to any such application; or
- (c) any assignment in bankruptcy made in respect of any of the Applicants, Non-Applicants, NOI Entities or Mr. Wang, any distributions made pursuant to this Order are final and irreversible and shall be binding upon any licensed insolvency trustee that may be, or are now, appointed in respect of the Applicants, Non-Applicants, NOI Entities and Mr. Wang, and shall not be void or voidable by creditors of such entities, nor shall any such distributions constitute or be deemed to be fraudulent preferences, assignments, fraudulent conveyances, transfers-at-undervalue or other reviewable transactions under the BIA or any other applicable federal or provincial law, nor shall they constitute conduct which is oppressive, unfairly prejudicial to or which unfairly disregards the interests of any person,

and shall, upon the receipt thereof, be free of all claims, liens, security interests, charges or other encumbrances granted by or relating to the Applicants, Non-Applicants, NOI Entities or Mr. Wang.

APPROVAL OF THE REPORT AND ACTIVITIES

18. **THIS COURT ORDERS** that the Report and the activities of the Monitor and the Proposal Trustee referred to therein be and are hereby approved; provided, however, that only the Monitor and the Proposal Trustee, in their personal capacities and only with respect to their own personal liability, shall be entitled to rely upon or utilize in any way such approval.

DISCHARGE OF THE MONITOR

19. **THIS COURT ORDERS** that upon the Monitor filing a certificate substantially in the form attached at Schedule "B" (the "**Discharge Certificate**") certifying that all matters to be attended to in connection with the CCAA Proceedings have been completed to the satisfaction of the Monitor, KSV shall be discharged as Monitor effective immediately and shall have no further duties, obligations, or responsibilities as Monitor (the "**CCAA Termination Time**").

20. **THIS COURT ORDERS** that, notwithstanding any provision of this Order and the termination of the CCAA Proceedings, nothing herein shall affect, vary, derogate from, limit or amend any of the protections in favour of the Monitor at law or pursuant to the CCAA, the Initial Order or any other Order of this Court in the CCAA Proceedings, all of which are expressly continued and confirmed following the CCAA Termination Time, including in connection with any actions taken by KSV following the CCAA Termination Time with respect to the Applicants or these proceedings.

21. **THIS COURT ORDERS** that, notwithstanding the discharge of KSV as Monitor and the termination of the CCAA Proceedings, KSV shall have the authority from and after the CCAA Termination Time to complete any matters that may be incidental to the termination of the CCAA Proceedings. In completing any such incidental matters, KSV shall continue to have the benefit of the provisions of all Orders made in the CCAA Proceedings and all protections under the CCAA, including all approvals, protections and stays of proceedings in favour of KSV in its capacity as the Monitor, and nothing in this Order shall affect, vary, derogate from or amend any of the protections in favour of the Monitor pursuant to any Order issued in the CCAA Proceedings.

RELEASES

22. **THIS COURT ORDERS** that upon the CCAA Termination Time, the Monitor, counsel to the Monitor, and each of their respective affiliates and officers, directors, partners, employees and agents (collectively, the "**Released Parties**") are hereby released and discharged from any and all claims that any person may have or be entitled to assert against the Released Parties, whether known or unknown, matured or unmatured, foreseen or unforeseen, existing or hereafter arising, based in whole or in part on any act or omission, transaction, dealing or other occurrence existing or taking place on or prior to the CCAA Termination Time in any way relating to, arising out of, or in respect of, the CCAA Proceedings or with respect to their respective conduct in the CCAA Proceedings (collectively, the "**Released Claims**"), and any such Released Claims are hereby released, stayed, extinguished and forever barred, and the Released Parties shall have no liability in respect thereof, provided that the Released Claims shall not include any claim or liability arising out of any gross negligence or wilful misconduct on the part of the applicable Released Party.

23. **THIS COURT ORDERS** that no action or other proceeding shall be commenced against any of the Released Parties in any way arising from or related to the CCAA Proceedings, except with prior leave of this Court on at least seven (7) days' prior written notice to the applicable Released Parties.

TERMINATION OF CCAA PROCEEDINGS AND STAY PERIOD

24. **THIS COURT ORDERS** that upon the CCAA Termination Time, the CCAA Proceedings and the Stay Period are hereby terminated without any other act or formality.

25. **THIS COURT ORDERS** that the Charges shall be and are hereby terminated, released and discharged at the CCAA Termination Time.

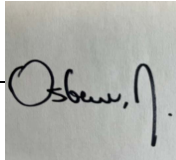
GENERAL

26. **THIS COURT ORDERS** that this Order shall have full force and effect in all provinces and territories in Canada against all persons, firms, corporations, governmental, municipal and regulatory authorities against whom it may be enforceable, notwithstanding the pendency of the CCAA Proceedings or other restructuring, insolvency, receivership, bankruptcy or other similar proceedings, or the commencement of other restructuring, insolvency, receivership, bankruptcy or other similar proceedings.

27. **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 Applicants, the Monitor and their respective agents in carrying out the

terms of this Order. All courts, tribunals and regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Applicants and the Monitor, as an officer of this Court, as may be necessary or desirable to give effect to this Order, to grant representative status to the Monitor in any foreign proceeding, or to assist the Applicants and the Monitor and their respective agents in carrying out the terms of this Order.

28. **THIS COURT ORDERS** that this Order, and all of its provisions, are effective as of 12:01 a.m. EDT on the date hereof without the need for filing.

 2022.06.23
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SCHEDULE "A"
APPLICANTS

3310 Kingston Development Inc.

1296 Kennedy Development Inc.

1326 Wilson Development Inc.

5507 River Development Inc.

4439 John Development Inc.

2358825 Ontario Ltd.

250 Danforth Development Inc.

159 Carrville Development Inc.

169 Carrville Development Inc.

189 Carrville Development Inc.

27 Anglin Development Inc.

29 Anglin Development Inc.

SCHEDULE "B"

Court File No.: CV-18-608313-00CL

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 FORME DEVELOPMENT GROUP INC. AND THE OTHER COMPANIES LISTED ON SCHEDULE "A" HERETO (the "**Applicants**")

APPLICATION UNDER THE *COMPANIES' CREDITORS ARRANGEMENT ACT*, R.S.C. 1985, c. C-36, AS AMENDED

MONITOR'S DISCHARGE CERTIFICATE

RECITALS

1. Pursuant to an Order of the Ontario Superior Court of Justice (Commercial List) (the "**Court**") dated November 30, 2018, as amended, KSV Restructuring Inc.³ ("**KSV**") was appointed as the Monitor (in such capacity, the "**Monitor**") of the Applicants.
2. Pursuant to an Order of the Court dated June 23, 2022 (the "**CCAA Termination Order**"), KSV was to be discharged as Monitor of the Applicants to be effective upon the filing by the Monitor with the Court of a certificate confirming that all matters to be attended to in connection with the CCAA Proceedings have been completed to the satisfaction of the Monitor.
3. Capitalized terms not otherwise defined herein have the meanings set out in the CCAA Termination Order.

THE MONITOR CERTIFIES the following:

1. All matters to be attended to in connection with the CCAA Proceedings have been completed to the satisfaction of the Monitor.
2. This Certificate was filed by the Monitor with the Court on the [●] day of [month], 2022 at [time].

³ Effective August 31, 2020, KSV Kofman Inc. changed its name to KSV Restructuring Inc.

KSV RESTRUCTURING INC., solely in its
capacity as the Monitor of the Applicants and
not in its personal or corporate capacity

Per:

Name: [●]

Title: [●]

Court File No.: CV-18-608313-00CL

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OTHER COMPANIES LISTED ON SCHEDULE "A" HERETO (the "Applicants")

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

Proceeding commenced at Toronto

Order
(CCAA Termination and Distribution Order)

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Court-appointed monitor and not in its personal capacity