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

ONTARIO SUPERIOR COURT OF JUSTICE (COMMERCIAL LIST)

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

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

Sean Zweig / Aiden Nelms for Moving Party (KSV as Monitor)
D.J. Miller / Alex Soutter for Moving Party (Ferina)
Adam Slavens for Tarion Warranty Corporation
Dom Michaud for –various mortgagees in claims process
Chris Besant for Non-Applicant companies
Bobby Sachdeva / Stephanie DiCarie for Grant Thornton, Trustee in Bankruptcy
Jeffrey Larry for First Source Mortgage
George Benchetrit for Home Trust Company
John N. Birch for Cassels Brock
Mario Forte for CCAA entities

ENDORSEMENT OF MR. JUSTICE HAINEY DATED FEBRUARY 20, 2020

- 1. The Monitor brings a motion for relief to be reviewed below. The motion is supported by all stakeholders represented by counsel recorded on the Counsel Slip except the Non Applicant companies represented by Mr. Besant who opposes the motion.
- 2. At the outset of the motion the Monitor's counsel, at my direction, suggested to Mr. Besant that the order could be granted without prejudice to his client's position. Mr. Besant declined to proceed in this fashion and insisted that the motion proceed.
- 3. Despite Mr. Besant's submissions, I granted the order for the following reasons:
 - (i) The Kennedy approval and vesting order and the distribution order were not opposed and I am satisfied the sale and proposed distribution are in the best interest of the stakeholders:

- (ii) The ancillary order is appropriate and the time for service of the motion record is abridged. No one is prejudiced by this order as the motion record was served 8 days before the motion was heard.
- (iii) I am satisfied that the stay period should be extended to May 31, 2020. The *Applicants have acted in good faith and circumstances exist that make the order appropriate because it will permit the Monitor to maximize stakeholder recovery for the reasons set out at paragraph 53 of the Monitor's Factum.
- (iv) The confidential appendices of the Monitor's Twelfth Report contain sensitive commercial information that should be sealed in accordance with the test in *Sierra Club*. That aspect of the Order is not opposed.
- (v) The undertaking dated March 11, 2019 should be amended by order of the Court to substitute Bennett Jones LLP, the Monitor's legal counsel, to hold the surplus funds currently held in Cassels Brock & Blackwell LLP's ("CBB") trust account and any further realizations from the Non-Applicants unsold real property. CBB is therefore ordered to transfer these funds to Bennett Jones LLP forthwith on the terms set out in the order.
- (vi) I am satisfied that I should make an order pursuant to section 181(1) of the BIA annulling the assignments into bankruptcy made on January 28, 2020 by the Non-Applicant companies without any notice to the Monitor for the following two reasons;
 - (a) the Non-Applicant companies were not demonstrably insolvent persons. Each company has sold its real property generating sufficient proceeds to repay its mortgage debt in full and to fund the surplus funds currently held in CBB's trust account in the amount of approximately \$11 million. The only evidence before the Court is that the value of the Non-Applicant's assets exceeds their liabilities. This is not a "clear cut situation" of insolvency that is "clearly established by sound and convincing evidence"; and
 - (b) in my view the assignments into bankruptcy are all entirely duplicative and serve no valid purpose. The Non-Applicant's creditor relationships are already being managed in these CCAA proceedings and the Court supervised claims process, all of which was consented to by Mr. Wang, the controlling mind of the Non-Applicants. If these assignments are not annulled, they will stay the Court approved claims process at the expense of creditors and the Court and will not accomplish anything already achieved by these unique and heavily negotiated CCAA proceedings. The claims process is one of several integral "building blocks" in the CCAA proceedings and, in my view, must be respected. The assignments must not be permitted to undermine this important building block [see Chief Justice Morawetz's Reasons at paragraph 81 in *Target Canada Co.*, 2015 ONSC 303].

- (vii) I am satisfied that this CCAA claims process should continue and that proven Wang claims will be admitted as proven claims in the proceedings related to the Wang NOI.
- (viii) Finally, without further order of the Court the surplus funds to be transferred from CBB to the Monitor's counsel shall not be used to pay any parties' legal fees.
- (ix) In my view, this is an appropriate case to make an order as to costs. I have requested counsel provide me with short written cost submissions.
- (x) I thank all counsel for their helpful submissions.

• References to "Applicants" acting in good faith in this context refers to the Monitor, as it is a super-Monitor in these CCAA proceedings.

Hainey, J.

February 20, 2020/

COUNSEL SLIP

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Superior Court of Justice Commercial List

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