

**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**

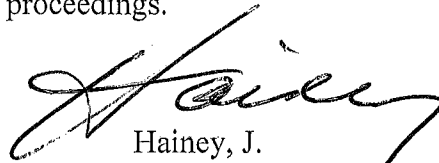
Sean Zweig / Aiden Nelms for Moving Party (KSV as Monitor)
D.J. Miller / Alex Soutter for Moving Party (Ferina)
Adam Slavens for Tarion Warranty Corporation
Dom Michaud for –various mortgagees in claims process
Chris Besant for Non-Applicant companies
Bobby Sachdeva / Stephanie DiCarie for Grant Thornton, 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**

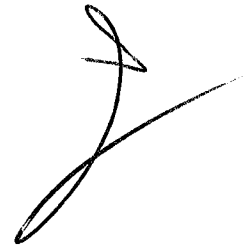
1. The Monitor brings a motion for relief to be reviewed below. The motion is supported by all stakeholders represented by counsel recorded on the Counsel Slip except the Non Applicant companies represented by Mr. Besant who opposes the motion.
2. At the outset of the motion the Monitor's counsel, at 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.



Hailey, J.
February 20, 2020



COUNSEL SLIP

COURT FILE

NO.: CV-18-00608313-00CL

DATE: February 20, 2020

NO. ON LIST 9

TITLE OF PROCEEDING

FORME DEVELOPMENT GROUP INC et al v. WINDSOR FAMILY CREDIT UNION et al

COUNSEL FOR:

- PLAINTIFF(S)
- APPLICANT(S)
- PETITIONER(S)

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- RESPONDENT(S)

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Feb. 20, 2020 5:01 PM

Court File Number: CV-18-608313-00CL

Superior Court of Justice
Commercial List

FILE/DIRECTION/ORDER

IN THE MATTER OF A PLAN OF
Plaintiff(s)

AND

COMPROMISE OF FORMER DEVELOPMENT GROUP
Defendant(s)
INC.

Case Management Yes No by Judge: _____

Counsel	Telephone No:	Facsimile No:

- Order Direction for Registrar (No formal order need be taken out)
- Above action transferred to the Commercial List at Toronto (No formal order need be taken out)
- Adjourned to: _____
- Time Table approved (as follows):

① The Monitor brings a motion for relief to be reviewed below. The motion is supported by all stakeholders represented by counsel

_____ Date _____ Judge's Signature

Additional Pages _____

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Superior Court of Justice
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Judges Endorsment Continued

recorded on the counsel
ship except the Non-
applicant companies
represented by Mr
Bevan who opposes
the Motion.

② At the outset of the
Motion the Monitor's
counsel, at my direction,
suggested to Mr Bevan

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Superior Court of Justice
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Judges Endorsment Continued

That the order could be granted without prejudice to his client's position. Mr Berant declined to proceed in this fashion and insisted that the Motion proceed.

③ Despite Mr Berant's submissions, I granted the order for the

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Superior Court of Justice
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Judges Endorsment Continued

following reasons:

① The Kennedy approval and vesting order and the distribution order were not opposed and I am satisfied the sale and proposed distributions are in the best interests of the stakeholders.

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Judges Endorsment Continued

② 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 eight days before the Motion was heard.

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Judges Endorsment Continued

③ 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 Plaintiff
to maximize stakeholder

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Judges Endorsement Continued

recovery for the reasons
set out at para 53 of
the Monitor's report.

④ 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*. They

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Judges Endorsement Continued

aspect of the order is not
opposed.

⑤ The Undertaking
dated March 14, 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

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Judges Initials _____

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Judges Endorsment Continued

held in Carol's Brook &
Blackwell FFP'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 FFP
forthwith on the terms set

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Judges Endorsment Continued

out in the order.

⑥ I am satisfied that

I should make an

order pursuant to

s. 181(1) of the BIA

amending the arrangements
into bankruptcy mode

on January 28, 2020

by the Non-Applicants

companies without any

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Judges Endorsment Continued

notice to the Monitor for
the following two
reasons:

(a) The Non-Applicant
companies need not
demonstrate involvement
person. Each company
has sold its real
property generating
sufficient proceeds to

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Judges Endorsment Continued

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-Applicants' assets

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Judges Endorsment Continued

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 an

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Superior Court of Justice
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Judges Endorsment Continued

abuse of process because
There is an ongoing
claims process, approved
by Me, to address
any remaining claims
against the Non-applicants,
and distributions will
not require a
bankruptcy. The
arrangements are

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Judges Endorsment Continued

entirely duplicative
and serve no real
purpose. The non
applicants' creditor
relationships are already
being managed in
these CAA proceedings
and the court-supervised
claims process, all
of which was consented

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FILE/DIRECTION/ORDER

Judges Endorsment Continued

to by Mr Wang, the
controlling mind of
the Non-applicants.
If these arrangements are
not annulled, they
will stay the court-
approved claims
process at the expense
of creditors and the
court and will not

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Judges Initials _____

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Judges Endorsment Continued

accomplish anything
already achieved by
These unique and heavily
negotiated CAA proceedings
The claims process
is one of several
integral "building blocks"
in the CAA proceedings
and, in my view,
must be respected.

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Superior Court of Justice
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Judges Endorsment Continued

The assignments must
not be permitted to
undermine this
important building
block. [see Chief Justice
Moran's reasons at
para 81 in Target
Canada Co, 2015 ONSC 303]

③ I am satisfied
that the CAA claims

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Superior Court of Justice
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Judges Endorsment Continued

~~Claims~~ process should
continue and that
proven Wang claims
will be admitted as
proven claims in the
proceedings related to
The Wang No 9.

⑧ Finally, without
further order of the
court the surplus funds

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Judges Endorsment Continued

To be transferred from
CBB to The Monitor's
counsel shall not
be used to pay any
parties' legal fees.

⑨ In my view, this
is an appropriate
case to make an order
as to costs. I have
requested counsel

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Judges Endorsment Continued

provide me with
short written costs
submissions.

⑩ I thank all counsel
for their helpful
submissions.

Justice J.

February 20, 2020