

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

THE HONOURABLE MR.) FRIDAY, THE 24th DAY
)
JUSTICE HAINEY) OF MAY 2019



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

**REPRESENTATIVE COUNSEL ORDER
(Birchmount Purchasers)**

THIS MOTION, made by KSV Kofman Inc., in its capacity as Court-appointed monitor (in such capacity, the "**Monitor**") of 159 Carrville Development Inc., 169 Carrville Development Inc., 189 Carrville Development Inc. (together, the "**Carville Applicants**"), 250 Danforth Development Inc. (including its predecessor Time Development 250 Danforth Inc., the "**Danforth Applicant**") and 2358825 Ontario Ltd. (the "**Birchmount Applicant**") in the proceedings of the Applicants pursuant to the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. c-36, as amended ("**CCAA**") was heard this day at 330 University Avenue, Toronto, Ontario.

ON READING the Notice of Motion, the Monitor's Sixth Report dated May 17, 2019 (the "**Sixth Report**"), together with the appendices thereto, and on hearing the submissions of counsel for the Monitor and such other counsel as were present, no one appearing for any other person on

the service list, although properly served as appears from the affidavit of Aiden Nelms sworn May 17, 2019, filed,

1. **THIS COURT ORDERS** that Koskie Minsky LLP is hereby appointed as representative counsel (in such capacity, "**Representative Counsel**") to represent the individuals who purchased residences from the Birchmount Applicant (each a "**Birchmount Purchaser**" and collectively the "**Birchmount Purchasers**") in respect of all claims ("**Claims**") to be made by the Birchmount Purchasers in the claims process (the "**Claims Process**") contemplated by the undertaking by Yuan (Mike) Hua Wang and certain affiliates of the Applicants dated March 11, 2019 (the "**Undertaking**").

2. **THIS COURT ORDERS** that Representative Counsel may determine, advance or compromise any Claims made by a Birchmount Purchaser, or a group or class of Birchmount Purchasers, subject to approval of this Court.

3. **THIS COURT ORDERS** that Representative Counsel shall have access to and the right to examine all relevant records and data kept by the Birchmount Applicant, whether they are kept on paper, electronic or any other form.

4. **THIS COURT ORDERS** pursuant to clause 7(3)(c) of the *Personal Information Protection and Electronic Documents Act* S.C. 2000, c. 5, the Monitor is authorized and permitted to disclose personal information of identifiable individuals who are believed to be Birchmount Purchasers to Representative Counsel. Representative Counsel shall maintain and protect the privacy of such information and shall limit the use of such information to its role as Representative Counsel.

5. **THIS COURT ORDERS** that notice of the granting of this Order shall be provided by:

(a) the Monitor, delivering a letter from Representative Counsel explaining the terms of this Order and inviting interested Birchmount Purchasers to sit on a representative committee (the "**Committee**") to provide instructions to Representative Counsel as required, which is to be delivered forthwith to the Birchmount Purchasers by ordinary mail to the physical address of each Birchmount Purchaser as last shown in the books and records of the Birchmount Applicant; and

(b) posting a copy of this Order on the Monitor's website.

6. **THIS COURT ORDERS** that Representative Counsel is authorized to take all steps and to do all necessary or desirable acts in carrying out the terms of this Order.

7. **THIS COURT ORDERS** that Representative Counsel is authorized to establish the Committee, which, upon establishment, will provide instructions to Representative Counsel as needed.

8. **THIS COURT ORDERS** that, with the exception of Opt-Out Individuals (as defined below), (a) Representative Counsel shall represent all Birchmount Purchasers in connection with Claims in the Claims Process, and (b) the Birchmount Purchasers shall be bound by the actions of Representative Counsel with respect to Claims in the Claims Process.

9. **THIS COURT ORDERS** that any Birchmount Purchaser who does not wish to be represented by Representative Counsel with respect to Claims in the Claims Process, within 30 days of the date of the letter pursuant to paragraph 5(a) above, notify the Monitor and

Representative Counsel, in writing, that he or she is opting out of representation by the Representative Counsel by delivering to the Monitor and Representative Counsel an opt out notice in the form attached as Schedule "B" hereto (each an "**Opt-Out Notice**"), and shall thereafter not be bound by the actions of the Representative Counsel and shall represent himself or herself or be represented by any counsel that he or she may retain exclusively at his or her own expense (any such person who delivers an Opt-Out Notice in compliance with the terms of this paragraph, "**Opt-Out Individuals**").

10. **THIS COURT ORDERS** that, subject to the Fee Cap (as defined below), Representative Counsel shall be paid its reasonable fees and disbursements by the Birchmount Applicant on a monthly basis, forthwith upon rendering its accounts to the Monitor for fulfilling its mandate in accordance with this Order, and subject to such redactions to the invoices as are necessary to maintain solicitor-client privilege between Representative Counsel and the Birchmount Purchasers. In the event of any disagreement with respect to such fees and disbursements, such disagreement may be remitted to this Court for determination.

11. **THIS COURT ORDERS** that Representative Counsel shall be entitled to the benefit of the Administration Charge (as defined in the Initial Order in these CCAA proceedings on November 30, 2018, as amended), only as it relates to the assets of the Birchmount Applicant, as security for its professional fees at its standard rates and charges, up to an aggregate maximum amount of One Hundred Thousand Dollars (\$100,000.00), inclusive of HST, but excluding disbursements (the "**Fee Cap**").

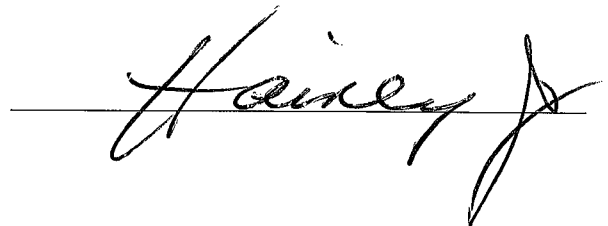
12. **THIS COURT ORDERS** that the Fee Cap may be increased ^{up to One Hundred and Fifty Thousand Dollars (\$150,000)} with the consent of the

GH Monitor, which shall not be unreasonably withheld, or upon a motion to this Court. *The Fee Cap may only be increased above \$150,000.00 upon a motion to this Court.*

13. **THIS COURT ORDERS** that the Representative Counsel and the Committee shall have no personal liability or obligations as a result of the performance of their duties in carrying out the provisions of this Order or any subsequent Orders in these CCAA proceedings, save and except for liability arising out of gross negligence or willful misconduct.


14. **THIS COURT ORDERS** that Representative Counsel and the Committee shall be at liberty and are authorized at any time to apply to this Court for advice and directions in the discharge or variation of their power and duties hereunder.

15. **THIS COURT HEREBY REQUESTS** the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or in the United States, to give effect to this Order and to assist the Monitor and its respective agents 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 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.

A handwritten signature in black ink, appearing to read "Hainey", is written over a horizontal line.

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

MAY 24 2019

PER / PAR: 

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"

OPT-OUT NOTICE

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

TO: KSV Kofman Inc., in its capacity as Court-appointed Monitor of 2358825 Ontario Ltd.
150 King Street West, Suite 2308
Toronto, ON M5H 1J9

Fax: 416.932.6266
Email: info@ksvadvisory.com

AND TO: Koskie Minsky LLP
20 Queens St. W.
Toronto, ON M5H 3R3
c/o James Harnum

Fax: 416.542.6285
Email: jharnum@kmlaw.ca

I hereby provide written notice that I do not wish to be represented by Koskie Minsky LLP, representative counsel ("**Representative Counsel**") for the individuals who purchased residences from 2358825 Ontario Ltd. (the "**Birchmount Applicant**") (each a "**Birchmount Purchaser**" and collectively the "**Birchmount Purchasers**"). I understand that, by opting out of representation, if I wish to take part in the Claims Process (as defined in the Representative Counsel Order), I would need to do so as an independent party. I am responsible for retaining my own legal counsel should I choose to do so, and that I would be personally liable for the costs of my own legal representation.

Date

Signature

Name (please print):

Address:

Telephone:

E-mail

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

Proceeding commenced at Toronto

REPRESENTATIVE COUNSEL ORDER

BENNETT JONES LLP
3400 First Canadian Place
P.O. Box 130
Toronto, Ontario M5X 1A4

Sean H. Zweig (LSO #57307D)
Tel: (416) 777-6253
Fax: (416) 863-1716

Aiden Nelms (LSO#74170S)
Tel:(416) 777-4642
Fax: (416) 863-1716

Counsel to KSV Kofman Inc., solely in its
capacity as Court-appointed monitor and not
in its personal capacity