

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 (the "Applicants")

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

**MOTION RECORD
(Stay Extension)
(returnable February 15, 2019)**

February 8, 2019

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TAB 1

**ONTARIO
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**NOTICE OF MOTION
(Stay Extension)
(returnable February 15, 2019)**

Forme Development Group Inc. and the other companies listed on Schedule "A" hereto (collectively, the "Applicants") will make a motion to Justice Hainey of the Commercial List on **Friday, February 15, 2019 at 10:00 a.m.** or as soon as after that time as the motion can be heard, at 330 University Avenue, 8th Floor, Toronto, Ontario.

THE PROPOSED METHOD OF HEARING: The motion is to be heard:

- in writing under subrule 37.12.1(1) because it is made without notice;
- in writing as an opposed motion under subrule 37.12.1(4); or
- orally.

THE MOTION IS FOR ORDERS:

- (a) abridging the time for service of the Notice of Motion and Motion Record in respect of this motion and dispensing with further service thereof; and
- (b) extending the Stay Period (as defined in the Initial Order, defined below) to and including May 17, 2019;

THE GROUNDS FOR THE MOTION ARE:

- (c) On November 6, 2018, Forme Development Group Inc. and a number of its affiliates (the “**Original Applicants**”) brought an application pursuant to the CCAA;
- (d) No Order was granted on November 6, although an interim stay (“**Interim Stay**”) was provided by way of endorsement;
- (e) Through subsequent Court appearances, a number of the Original Applicants were released from the CCAA application and the Interim Stay was extended to a hearing on November 30, 2018;
- (f) On November 30, 2018, this Court granted an initial order (as subsequently amended and restated, the “**Initial Order**”) in respect of the Applicants and the proceedings (the “**CCAA Proceedings**”) pursuant to the CCAA were commenced;
- (g) KSV was appointed monitor (the “**Monitor**”) in the CCAA Proceedings;
- (h) Since that time, certain Applicants were added to the proceedings and others were terminated at the request of the first mortgagees;
- (i) As set out in the Initial Order, TD Cornerstone Commercial Realty Inc. was retained to conduct a sale process (the “**Sale Process**”) under the supervision of the Monitor for the properties owned by the Applicants, other than the development located at 1483 and 1485 Birchmount Road (“**Birchmount**”);
- (j) The bid deadline under the Sale Process is March 27, 2019;
- (k) The Applicants require an extension of the Stay to continue to move forward with the Sale Process and to continue to address issues on certain of their projects, including Birchmount and others;
- (l) Given that multiple properties are subject to the Sale Process, the Monitor and the Applicants will require some time after the bid deadline to review, assess and

negotiate the bids received with the intention of returning to Court to seek approval of transactions thereafter;

- (m) The Applicants have and continue to act in good faith and with due diligence to assist the Monitor in preparing for the Sale Process;

GENERAL

- (n) The provisions of the CCAA and the inherent and equitable jurisdiction of this Court;
- (o) Such further and other grounds as counsel may advise and this Honourable Court may permit.

THE FOLLOWING DOCUMENTARY EVIDENCE will be used at the hearing of the motion:

- (a) The affidavit of Yuan Hua Wang sworn February 8, 2019;
- (b) The second report of the Monitor to be filed; and
- (c) Such further and other evidence as counsel may advise and this Honourable Court may permit.

February 8, 2019

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Lawyers for the Applicants

TO: The Attached Service List

IN THE MATTER OF THE COMPANIES' CREDITORS ARRANGEMENT ACT,
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ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

Proceeding commenced TORONTO

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(Stay Extension)
(returnable February 15, 2019)

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TAB 2

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**AFFIDAVIT OF YUAN HUA WANG
(sworn February 8, 2019)**

I, Yuan Hua Wang, of the City of Markham, in the Province of Ontario, MAKE OATH
AND SAY:

1. This Affidavit is made in support of a motion by Forme Development Group Inc. ("**Forme Development**") and those other entities listed on Schedule "A" hereto (collectively and together with Forme Development, the "**Forme Group**" or the "**Applicants**") for an order extending the stay of proceedings (the "**Stay**") in these CCAA proceedings to and including May 17, 2019;
2. I am the founder, sole shareholder and director of all entities in the Forme Group. As such, I have personal knowledge of the matters deposed to in this Affidavit. Where I have relied on other sources of information, I have specifically referred to such sources and verily believe them to be true. In preparing this Affidavit, I have consulted with legal, financial and other advisers of the Applicants and other members of the management team of the Applicants.

I. BACKGROUND

3. The original application under the *Companies' Creditors Arrangement Act* ("CCAA") was returnable on November 6, 2018 before the Ontario Superior Court of Justice (Commercial List) (the "**Court**"). As a result of concerns raised by a mortgagee, the November 6 hearing was postponed to November 8, 2018, although an interim stay ("**Interim Stay**") was provided by way of endorsement. The Interim Stay was subsequently extended from time to time to a hearing on November 30, at which point certain of the Applicants were granted protection under the CCAA (and the Interim Stay continued to be extended with respect to certain other Applicants). During the course of these extensions, however, a number of the original applicants were relieved from the CCAA application given the objections by certain mortgagees to the inclusion in the application of the properties on which they have a mortgage.
4. On November 30, 2018, the Court granted an initial order (the "**Original Initial Order**") on an unopposed basis as it relates to the Applicants. KSV Kofman Inc. ("**KSV**") was appointed as the monitor (the "**Monitor**") in the CCAA proceedings. It was understood that the continuation of the return of the application as it related to certain other companies, including the companies involved in the Carrville development, the Anglin development, 250 Danforth Development Inc. and 58 Old Kennedy Development Inc. ("**58 Old Kennedy**") would be addressed at a hearing set for December 6, 2018. 58 Old Kennedy is part of an assembly with properties owned by 76 Old Kennedy Development Inc. and 82 Old Kennedy Development Inc. (collectively, the "**NOI Companies**") each of which had previously filed notices of intention ("**NOIs**") to file a proposal under the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3 (the "**BIA**").
5. On December 3, 2018, Home Trust Company ("**Home Trust**") served a motion seeking an order to include substantially completed residential properties located at 59 & 63 Elm Ave (the "**Elm Properties**") in the CCAA proceedings. Home Trust is the first mortgagee on the Elm Properties. My wife and I own the Elm Properties.
6. On December 6, 2018, this Court granted an amended and restated initial order, amending and restating the Original Initial Order (the "**Initial Order**") to provide for the relief sought

in Home Trust’s motion and to add the companies owning the Carville properties, Anglin Properties and 250 Danforth Development Inc. as applicants in the CCAA proceedings. The issues relating to the inclusion of 58 Old Kennedy were not resolved at the December 6 motion and as such, the Interim Stay relating to 58 Old Kennedy was extended to December 28, 2018.

- 7. On December 21, 2018, this Court granted an order lifting the Interim Stay as it related to 58 Old Kennedy. As a result, none of the NOI Companies form part of the CCAA proceedings. Instead, the NOI Companies continued under the previously filed NOIs. Under these NOI proceedings, a separate sale process was commenced by the proposal trustee in respect of the properties owned by the NOI Companies. TD Cornerstone Commercial Realty Inc. (“TD”) was retained as the listing agent in the NOI proceedings, as it is in the CCAA proceedings.
- 8. During the course of the NOI proceedings, the NOI Companies received unsolicited offers for their properties for an aggregate purchase price of \$30 million, which amounts greatly exceeded the mortgage debt on those properties. The offers were accepted by the NOI companies and were approved by this Court on January 22, 2019. The sales closed on January 31, 2019.
- 9. On December 21, 2018, this Court also granted separate orders terminating the CCAA proceedings as they related solely to 376 Derry Development Inc. and 9500 Dufferin Development Inc. and discharging KSV as Monitor of both companies at the request of the first mortgagees on those properties.

II. EVENTS SINCE FILING

- 10. Since the commencement of these proceedings we have reduced our head office staff given the extreme liquidity constraints of the Forme Group. We have only a few remaining key employees. Those employees are focussed primarily on assisting the Monitor with providing information required by TD to list the properties it will be marketing, as well as addressing the remaining matters that need to be taken care of in order to close the sale of Birchmount Gardens condominiums to the purchasers of those condominiums. I have also continued to meet with parties who approach me who have interests related to properties

both in and out of the CCAA proceedings. I have been directing all of interested parties to TD and TD is aware of all discussions I have had with these parties.

The Sale Process

11. As set out in the Initial Order, TD was retained to conduct a sale process for the properties owned by the Applicants, under the supervision of the Monitor, other than the development located at 1483 and 1485 Birchmount Road (“**Birchmount Gardens**”)¹. The terms of the sale process (the “**Sale Process**”) are set out in the third supplement to the report of KSV as proposed monitor (the “**Third Supplemental Report**”) which assumed that TD would underwrite the sale through January and that the sale process would launch on or about February 6, 2019. The bid deadline is March 27, 2019.
12. Among the properties included in the TD listing is the property known as 250 Danforth Road East (“**250 Danforth**”). 250 Danforth was intended to be a condo/townhouse development and was mostly sold prior to the commencement of the proceedings. The Applicants’ real estate law firm involved in 250 Danforth continues to hold deposits from purchasers. We have received numerous calls and requests from purchasers as to the status and return of their deposit. Given that 250 Danforth is part of the Sale Process, we will not be in a position to return the deposits until we know the buyer’s intention with respect to the project and whether it wishes to retain the agreements of purchase and sale.
13. I understand that the Monitor will be filing its second report to Court (the “**Second Report**”) in connection with this motion with an update as to the status of the Sale Process.

Birchmount Gardens

14. As set out above, the Sale Process does not include Birchmount Gardens, development of which was largely completed prior to the commencement of the CCAA proceedings. There have been a number of impediments to closing including an outstanding work order from the City of Toronto. Consistent with its powers under the Initial Order, the Monitor has

¹ TD was not mandated to sell the Birchmount Gardens, which is a constructed residential condominium and is discussed in paragraph 14 below and in the Monitor’s Second Report.

been working to address the remaining issues to facilitate a closing as quickly as possible. I understand the Second Report will provide further details as to the status of the remaining issues on Birchmount Gardens.

Extension of the Stay

- 15. The current Stay period expires on February 22, 2019. The Applicants require an extension of the Stay beyond February 22, 2019 to continue to move forward with the sale process. Upon the bid deadline, the Monitor and Applicants will require time to review and assess the bids received with the intention of returning to Court to seek approval of transactions thereafter. I believe a request for the extension of the Stay Period to May 17, 2019 is reasonable and appropriate in the circumstances given that multiple properties are subject to the Sale Process. Completing the Sale Process is consistent with the purpose of these proceedings.
- 16. I understand that the Monitor will attach an updated cash flow to its report for the proposed extension period. The Applicants are working in good faith and with due diligence to assist the Monitor in preparing for the sale process.

SWORN BEFORE ME at the City of Toronto, in the Province of Ontario, this 8th day of February, 2019.



Commissioner for taking affidavits



Yuan Hua Wang

Schedule "A" – List of 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.

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AFFIDAVIT OF YUAN HUA WANG
(sworn February 8, 2019)

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Lawyers for the Applicants

TAB 3

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

THE HONOURABLE MR.) FRIDAY, THE 15TH
)
JUSTICE HAINEY) DAY OF FEBRUARY, 2019

IN THE MATTER OF THE *COMPANIES' CREDITORS*
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AMENDED

ORDER
(Stay Extension)

THIS MOTION, made by Forme Development Group Inc. and the other companies listed on Schedule "A" hereto (collectively, the "**Applicants**"), pursuant to the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the "**CCAA**") was heard this day at 330 University Avenue, Toronto, Ontario.

ON READING the affidavit of Yuan Hua Wang sworn February 8, 2019 (the "**Wang Affidavit**"), and on reading the second report dated February 8, 2019 (the "**Second Report**") of KSV Kofman Inc., in its capacity as monitor (the "**Monitor**"), and on hearing the submissions of counsel for the Applicants, the Monitor and those other parties present, no one appearing for any other party although duly served as appears from the affidavit of service of Katie Parent sworn February • , 2019.

SERVICE

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

EXTENSION OF STAY

2. **THIS COURT ORDERS** that the Stay Period (as defined in paragraph 15 of the Initial Order of this Court made on November 30, 2018 as amended and restated, the “**Initial Order**”) be and is hereby extended to and including May 17, 2019.

GENERAL

3. **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, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Applicants and 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.

4. **THIS COURT ORDERS** that each of the Applicants and the Monitor be at liberty and are hereby authorized and empowered to apply to any court, tribunal, regulatory or administrative body, wherever located, for the recognition of this Order and for assistance in carrying out the terms of this Order, and that the Monitor is authorized and empowered to act as a representative in respect of the within proceedings for the purpose of having these proceedings recognized in a jurisdiction outside Canada.

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.

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