

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

BETWEEN:

**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 FERINA 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**

**SUPPLEMENTAL RESPONDING MOTION RECORD OF
FERINA CONSTRUCTION LIMITED
(Motion returnable August 7, 2019)**

August 2, 2019

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AND TO: THE PARTIES ON THE SERVICE LIST ATTACHED

**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

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TAB 1

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BETWEEN:

IN THE MATTER OF THE *COMPANIES' CREDITORS*
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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**

AFFIDAVIT OF GLORIA KALKOUNIS
(Sworn August 2, 2019)

I, Gloria Kalkounis, of the City of Toronto, in the Province of Ontario, **MAKE OATH**
AND SAY AS FOLLOWS:

1. I am a legal assistant with the law firm of Thornton Grout Finnigan LLP ("**TGF**"), insolvency counsel for Ferina Construction Limited ("**Ferina**") in this proceeding, and as such I have knowledge of the matters to which I hereinafter depose.
2. I am advised by D.J. Miller, a partner of TGF, and do verily believe that on June 29, 2019, she wrote to Cynthia Kuehl, litigation counsel to Mike Wang ("**Wang**") in these proceedings. A copy of that e-mail is attached as **Exhibit "A"**.
3. In that e-mail, D.J. Miller asked questions regarding the exact scope of the relief sought on Wang's motion to amend his undertaking, dated March 15, 2019 (the "**Undertaking**"), given in these proceedings. These questions included a request for clarity as to whether the

proposed amendments to the Undertaking would include a mechanism by which Wang's creditors could have visibility into the legal fees that he incurs.

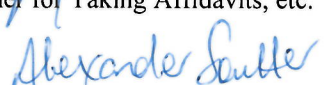
4. I am advised by D.J. Miller, and do verily believe, that Wang's litigation counsel responded on June 30, 2019, and, among other things, confirmed that the amendment to the Undertaking would not include rights in favour of Wang's creditors to know what professional fees are paid pursuant to the Undertaking, and advised that there was no basis for such rights. A copy of that e-mail is attached as **Exhibit "B"**.
5. I am advised by Alexander Soutter, an associate at TGF, and do verily believe, that on July 18, 2019, he wrote to Wang's litigation counsel and requested answers to the questions posed by D.J. Miller on June 29, 2019. On July 20, 2019, Wang's counsel replied that they had given those answers in a letter to the Monitor's counsel. A copy of that e-mail exchange is attached as **Exhibit "C"**.
6. I am advised by Alexander Soutter, and do verily believe, that on July 22, 2019, he asked the Monitor's counsel for the letter that Wang's counsel referred to, and was advised that the Monitor's counsel would revert to Wang's counsel. A copy of this e-mail exchange is attached as **Exhibit "D"**.
7. I am advised by Alexander Soutter, and do verily believe, that on July 24, 2019, after following up with the Monitor's counsel, he received a copy of a revised letter sent by Wang's counsel to the Monitor. A copy of the e-mails exchanged and the letter from Wang's counsel are attached collectively as **Exhibit "E"**.

8. I am advised by Alexander Soutter, and do verily believe, that on July 31, 2019, after receipt of the Supplement to the Seventh Report of the Monitor, he sent a letter outlining Ferina's position on Wang's motion to the Monitor's counsel. A copy of that letter is attached as **Exhibit "F"**.
9. I am advised by Alexander Soutter, and do verily believe, that in the afternoon on August 2, 2019, he received a letter from the Monitor's counsel in reply to the letter at Exhibit "F". A copy of that letter from the Monitor's counsel is attached as **Exhibit "G"**.
10. I make this affidavit in response to Wang's motion returnable on August 7, 2019.

SWORN before me at the City of Toronto,
in the Province of Ontario, this 2nd day of
August, 2019.



Commissioner for Taking Affidavits, etc.

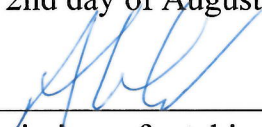

Alexander Soutter
Barrister & Solicitor



GLORIA KALKOUNIS

EXHIBIT “A”

This is Exhibit "A" referred to in the
Affidavit of Gloria Kalkounis sworn before me
this 2nd day of August, 2019.



A Commissioner for taking affidavits

Alexander Sautter
Barrister & Solicitor

Gloria Kalkounis

From: D. J. Miller
Sent: June-29-19 8:00 AM
To: 'Cynthia B. Kuehl'
Cc: Emily Y. Fan; Alexander Soutter
Subject: Forme Development Group Inc., et al. Court File No.: CV-18-608313-00CL [IWOV-Client.FID121524]

Hi Cynthia:

Thanks for your note. We'll be seeking an adjournment of your motion in order to obtain additional information, and determine the position to be taken by our client which is a second mortgagee on the Kingston Road property. In that regard, it would be helpful to receive the following information on a preliminary basis:

- (i) Is there any urgency to having this motion heard on Tuesday? (If so, what is the urgency?)
- (ii) Is the funding request in respect of fees that have already been incurred, or are expected to be incurred?
- (iii) If it is in respect of fees already incurred, what are those?
- (iv) If it is in respect of fees to be incurred:
 - a. what is the budget for such fees?
 - b. what legal work is Mike Wang requesting funding for legal fees in respect of?
 - c. is Mike Wang seeking funding in order to challenge personal guarantees held by mortgagees such as my client?
 - d. Is there a proposed cap to the amount that is sought for legal fees?
 - e. Is there a proposed mechanism for creditors who have claims against Mike Wang (such as my client pursuant to a personal guarantee) to have visibility into the legal fees incurred by Mike Wang which are sought to be paid from the funds held by Cassels Brock and/or the Monitor?

The personal guarantee in favour of my client is attached as Exhibit "B" to the Responding Motion Record we served yesterday. Kindly advise if Mike Wang confirms the validity and enforceability of the guarantee in favour of Ferina, and does not dispute in any respect his liability under such guarantee. We have already received the Monitor's counsel's view, included at Exhibit "C" to our motion record.

I look forward to hearing from you regarding the above. At that time, I'd be happy to schedule a call to discuss. Please include Alex Soutter of my office on emails regarding this matter. Thank you.

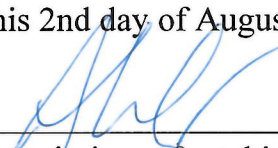
Regards,

D.J.



EXHIBIT “B”

This is Exhibit "B" referred to in the
Affidavit of Gloria Kalkounis sworn before me
this 2nd day of August, 2019.



A Commissioner for taking affidavits

Alexander Sautter
Barrister & Solicitor

Gloria Kalkounis

From: Cynthia B. Kuehl <ckuehl@lernalers.ca>
Sent: June-30-19 6:11 PM
To: D. J. Miller
Cc: Emily Y. Fan; Alexander Soutter; James Grout
Subject: RE: Forme Development Group Inc., et al. Court File No.: CV-18-608313-00CL

D.J.,

Thanks for your email. It is unfortunate that you are not willing to have a conversation pending receipt of a written response. However, I will try to provide some context and to the extent possible, address your comments.

In terms of context, with the consent of the Monitor, the motion is to revise the undertaking that already exists, so as to provide explicitly for the payment of Mike Wang's personal legal fees out of funds being held by Cassels following the sale of the non-applicant properties. These personal fees would both be in respect of insolvency advice (from Jim Grout) and litigation assistance (Lernalers). The undertaking already provides for the payment of Cassels fees.

In the existing undertaking, the mortgagees of the CCAA properties (or other properties) do not currently have informational rights, including a right to know what fees have been paid, in respect of what matters fees have been incurred or to request a budget. The proposed revised undertaking does not contemplate, nor do we see any basis for the mortgagees to now receive those rights. There are, however, informational rights of the Monitor, including in respect of fees paid. We understand that the Monitor has, from time to time, asked for information as to fees and received it.

The mortgagees of the CCAA properties do, however, receive a significant benefit under the undertaking. As you know, but for the undertaking which requires that the funds be held in trust at Cassels, those funds would flow out to the individual corporations that own the non-applicant properties after payment of the creditors for those properties. But for the undertaking, the claims against Mr. Wang personally would be litigated in the ordinary course in court with execution on any valid claims to follow thereafter, also in the ordinary course. Instead, the undertaking in its current form contemplates that there will be a claims process and requires Cassels to hold funds in trust including for the purpose of paying out valid claims against Mr. Wang personally, rather than disburse them.

To determine validity of the claims, there needs to be litigation or a claims process. Of necessity, there will be fees incurred by Mr. Wang in any claims process relating to the personal guarantees. In order to meaningfully participate in the process, Mr. Wang requires legal counsel. The undertaking cannot be used as a means by which to defeat Mr. Wang's fundamental right to retain counsel to address personal guarantee claims. He is entitled to access legal funds to participate in the claims process or any litigation that may arise. He is also entitled to personal insolvency advice in these processes.

While all parties need instructions, I can also advise we have already been in preliminary discussions with Sean about a time- and cost-efficient process to deal with claims. That process would inure to the benefit of anyone holding what they believe to be valid personal guarantee claims, and would certainly be less costly and have less delay than the alternative, i.e., a traditional litigation process. While there is no urgency with the motion on Tuesday, we understand that the Monitor wants to move forward with a claims procedure order sooner rather than later, and this issue must be addressed before then.

Finally, we do not propose to provide an opinion to you about whether Ferina has a valid personal guarantee claim or not. First, the appropriate time to do so is within a claims process or litigation over the personal guarantee. Second, the validity of any personal guarantee does not have, nor should it have, anything to do with Mr. Wang's right to be able to

retain personal legal counsel to deal with all litigation and insolvency matters, which is the only issue before the court on Tuesday.

Please let us know if your client's instructions are still to seek an adjournment.

Cynthia

From: D. J. Miller
Sent: June 29, 2019 8:00 AM
To: Cynthia B. Kuehl
Cc: Emily Y. Fan ; Alexander Soutter
Subject: Forme Development Group Inc., et al. Court File No.: CV-18-608313-00CL [IWOV-Client.FID121524]

Hi Cynthia:

Thanks for your note. We'll be seeking an adjournment of your motion in order to obtain additional information, and determine the position to be taken by our client which is a second mortgagee on the Kingston Road property. In that regard, it would be helpful to receive the following information on a preliminary basis:

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I look forward to hearing from you regarding the above. At that time, I'd be happy to schedule a call to discuss. Please include Alex Soutter of my office on emails regarding this matter. Thank you.

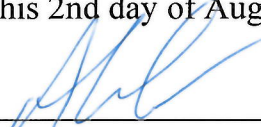
Regards,

D.J.



EXHIBIT “C”

This is Exhibit "C" referred to in the
Affidavit of Gloria Kalkounis sworn before me
this 2nd day of August, 2019.



A Commissioner for taking affidavits

Alexander Sautter
Barrister & Solicitor

Gloria Kalkounis

From: Cynthia B. Kuehl <ckuehl@lernalers.ca>
Sent: July-20-19 5:28 PM
To: Alexander Soutter; D. J. Miller
Cc: Emily Y. Fan; James Grout; 'Sean Zweig'
Subject: RE: Forme Development Group Inc., et al. Court File No.: CV-18-608313-00CL

Follow Up Flag: Follow up
Flag Status: Completed

Alexander,

Thank you for your email. I sent Sean a letter yesterday that addresses the anticipated scope of my retainer, my role to date and going forward, fees incurred and a proposal regarding fees budgets. I believe that it answers most, if not all, of the outstanding questions. I have proposed to Sean that, for efficiency purposes, I would direct inquiries from mortgagees on these types of issues to him, and I have let him know to expect your call. If you or D.J. would like to speak to me thereafter or if you have any further questions that Sean cannot answer, please do not hesitate to call me. I am in the office this upcoming week.

Regards,
 Cynthia

Cynthia B. Kuehl | **Lernalers LLP** | Partner | phone 416.601.2363 | direct fax 416.867.2433 | ckuehl@lernalers.ca | 130 Adelaide Street West, Suite 2400 - Toronto - Ontario - M5H 3P5
 Certified by the Law Society as a Specialist in Civil Litigation

LERNERS
 LAWYERS



From: Alexander Soutter
Sent: July 18, 2019 10:54 AM
To: Cynthia B. Kuehl ; D. J. Miller
Cc: Emily Y. Fan ; James Grout
Subject: RE: Forme Development Group Inc., et al. Court File No.: CV-18-608313-00CL [IWOV-Client.FID121525]

Dear Ms. Kuehl,

We understand that you spoke with the Monitor's counsel on July 12th and discussed your client's motion and the substance of our e-mails, below. We are following up for answers to the questions that DJ posed on June 29, 2019, as her questions ii-iv, inclusive, were not completely answered. Please provide your position on these issues well in advance of the August 7, 2019, motion date.

Yours truly,

TGF

Alexander Soutter | Direct Line: +1 416-304-0595 | Thornton Grout Finnigan LLP | www.tgf.ca
 PRIVILEGED & CONFIDENTIAL - This electronic transmission is subject to solicitor-client pr
 contains confidential information intended only for the person(s) named above. Any other distrib

EXHIBIT “D”

This is Exhibit "D" referred to in the
Affidavit of Gloria Kalkounis sworn before me
this 2nd day of August, 2019.



A Commissioner for taking affidavits

Alexander Sautter
Barrister & Solicitor

From: Sean Zweig <ZweigS@bennettjones.com>
Sent: July-22-19 9:35 AM
To: Alexander Soutter; Aiden Nelms
Cc: D. J. Miller
Subject: RE: Forme Development Group Inc., et al. Court File No.: CV-18-608313-00CL

We are reviewing the letter, and may be going back to Cynthia to request some changes. I would prefer to hold off sending until it is final. On your other questions:

1. I expect that to be out this week.
2. Not yet. I followed-up with FirstSource again yesterday. We are pushing for them to be provided. I think it just an issue of people travelling during the summer.



Sean Zweig
Partner, Bennett Jones LLP

3400 One First Canadian Place, P.O. Box 130, Toronto, ON, M5X 1A4
 T. [416 777 6254](tel:4167776254) | F. [416 863 1716](tel:4168631716)
 E. zweigs@bennettjones.com

From: Alexander Soutter <ASoutter@tgf.ca>
Sent: Monday, July 22, 2019 8:09 AM
To: Sean Zweig <ZweigS@bennettjones.com>; Aiden Nelms <NelmsA@bennettjones.com>
Cc: D. J. Miller <DJMiller@tgf.ca>; Alexander Soutter <ASoutter@tgf.ca>
Subject: Fwd: Forme Development Group Inc., et al. Court File No.: CV-18-608313-00CL

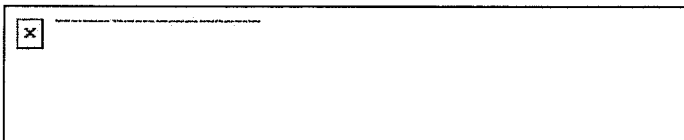
Good morning Sean,

Would you please send us a copy of the letter that Ms. Kuehl has referred to?

Two other questions:

- 1) When should we expect your supplemental Monitor’s report; and,
- 2) Has First Source delivered a mortgage statement yet? We won’t be able to resolve the holdback issue until they do.

Yours truly,



PRIVILEGED & CONFIDENTIAL - This electronic transmission is subject to solicitor-client privilege and contains confidential information intended only for the person(s) named above. Any other distribution, copying or disclosure is strictly prohibited. If you have received this e-mail in error, please notify our office immediately by calling (416) 304-1616 and delete this e-mail without forwarding it or making a copy. To Unsubscribe/Opt-Out of any electronic communication with Thornton Grout Finnigan, you can do so by clicking the following link: [Unsubscribe](#)

Begin forwarded message:

From: "Cynthia B. Kuehl" <ckuehl@lernalers.ca>
Date: July 20, 2019 at 5:28:02 PM EDT
To: Alexander Soutter <ASoutter@tgf.ca>, "D. J. Miller" <DJMiller@tgf.ca>
Cc: "Emily Y. Fan" <efan@lernalers.ca>, James Grout <jimhgrout@gmail.com>, 'Sean Zweig' <ZweigS@bennettjones.com>
Subject: RE: Forme Development Group Inc., et al. Court File No.: CV-18-608313-00CL

Alexander,

Thank you for your email. I sent Sean a letter yesterday that addresses the anticipated scope of my retainer, my role to date and going forward, fees incurred and a proposal regarding fees budgets. I believe that it answers most, if not all, of the outstanding questions. I have proposed to Sean that, for efficiency purposes, I would direct inquiries from mortgagees on these types of issues to him, and I have let him know to expect your call. If you or D.J. would like to speak to me thereafter or if you have any further questions that Sean cannot answer, please do not hesitate to call me. I am in the office this upcoming week.

Regards,
Cynthia

Cynthia B. Kuehl | Lernalers LLP | Partner | phone 416.601.2363 | direct fax 416.867.2433 | ckuehl@lernalers.ca | 130 Adelaide Street West, Suite 2400 - Toronto - Ontario - M5H 3P5
Certified by the Law Society as a Specialist in Civil Litigation



From: Alexander Soutter <ASoutter@tgf.ca>
Sent: July 18, 2019 10:54 AM
To: Cynthia B. Kuehl <ckuehl@lernalers.ca>; D. J. Miller <DJMiller@tgf.ca>
Cc: Emily Y. Fan <efan@lernalers.ca>; James Grout <jimhgrout@gmail.com>
Subject: RE: Forme Development Group Inc., et al. Court File No.: CV-18-608313-00CL [IWOV-Client.FID121525]

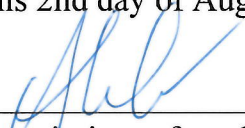
Dear Ms. Kuehl,

We understand that you spoke with the Monitor's counsel on July 12th and discussed your client's motion and the substance of our e-mails, below. We are following up for answers to the questions that DJ posed on June 29, 2019, as her questions ii-iv, inclusive, were not completely answered. Please provide your position on these issues well in advance of the August 7, 2019, motion date.

Yours truly,

EXHIBIT “E”

This is Exhibit "E" referred to in the
Affidavit of Gloria Kalkounis sworn before me
this 2nd day of August, 2019.



A Commissioner for taking affidavits

Alexander Sautter
Barrister & Solicitor

Gloria Kalkounis

From: Aiden Nelms <NelmsA@bennettjones.com>
Sent: July-24-19 4:59 PM
To: D. J. Miller; Alexander Soutter
Cc: Sean Zweig
Subject: RE: Forme Development Group Inc., et al. Court File No.: CV-18-608313-00CL [IWOV-Client.FID121525] [BJ-WSLegal.FID4559602]
Attachments: 5794696_1.pdf

D.J./Alex,
Please find Lerner's letter attached.



Aiden Nelms
Associate, Bennett Jones LLP

3400 One First Canadian Place, P.O. Box 130, Toronto, ON, M5X 1A4
T. [416 777 4642](tel:4167774642) | F. [416 863 1716](tel:4168631716)
E. nelmsa@bennettjones.com
BennettJones.com

From: Sean Zweig
Sent: Wednesday, July 24, 2019 4:56 PM
To: Alexander Soutter ; D. J. Miller ; Aiden Nelms
Subject: RE: Forme Development Group Inc., et al. Court File No.: CV-18-608313-00CL [IWOV-Client.FID121525]
We received the revised letter from Ms. Kuehl today. Aiden, please send to DJ and Alex.
I do still expect that we will serve our supplemental report this week.

Sean Zweig
Bennett Jones LLP
(416) 777-6254
zweigs@bennettjones.com

From: Alexander Soutter <ASoutter@tgf.ca>
Date: Wednesday, Jul 24, 2019, 4:50 PM
To: Sean Zweig <ZweigS@bennettjones.com>, D. J. Miller <DJMiller@tgf.ca>, Aiden Nelms <NelmsA@bennettjones.com>
Subject: RE: Forme Development Group Inc., et al. Court File No.: CV-18-608313-00CL [IWOV-Client.FID121525]

Hi Sean,
With the return of Mr. Wang's motion now only 2 weeks away, we would like an answer to DJ's questions of Ms. Kuehl. Should we be writing to her for those answers? Her last e-mail to us certainly led us to believe that you would be sending us her letter (which we still haven't seen) to us, which she characterized as answering most, if not all, of our questions.
Further, is it still your expectation to deliver a supplemental Monitor's report this week?
Thanks,
Alex

From: Sean Zweig [<mailto:ZweigS@bennettjones.com>]
Sent: July-22-19 11:30 AM
To: D. J. Miller ; Alexander Soutter ; Aiden Nelms
Subject: RE: Forme Development Group Inc., et al. Court File No.: CV-18-608313-00CL

LERNERS
LAWYERS

Lerners LLP
130 Adelaide Street West, Suite 2400
Toronto, Ontario M5H 3P5
Telephone: 416.867.3076
Fax: 416.867.9192
www.lerners.ca

Cynthia B. Kuehl
Direct Line: 416.601.2363
Direct Fax: 416.867.2433
ckuehl@lerners.ca
*Certified by the Law Society as a
Specialist in Civil Litigation*

July 24, 2019

FILE NUMBER 114479-00001

Sean Zweig
Partner, Bennett Jones LLP
3400 One First Canadian Place
P.O. Box 130, Toronto, ON, M5X 1A4

Dear Mr. Zweig:

Re: Forme Group

We write in advance of, and to provide some context for the motion of August 7, 2019 to amend the existing undertaking provided to the Monitor by Mike Wang to permit payment of the invoices of Lerners LLP from funds currently being held in trust at Cassels Brock & Blackwell LLP ("CBB").

To confirm, Mr. Wang does not waive any solicitor-client privilege in respect of our retainer, and nothing in this letter should be taken as a waiver as any privilege belonging to Mr. Wang.

As we communicated previously, Mr. Wang retained Lerners LLP in late April 2019 to act as his personal counsel in respect of any litigation matters arising in or related to the current CCAA proceedings.

Based on the information known to date, it is anticipated that our retainer will involve reviewing and defending personal guarantee claims advanced in the claims process, and preparing for and attending any other court appearances in the existing CCAA proceedings that may impact those personal guarantee claims. Given that Mr. Wang's personal interests are at stake in the claims process, it is appropriate and necessary that he have his own legal counsel to defend those claims.

We wish to assure you that it is not our intention to be obstructionist or to advance frivolous and unmeritorious defences to the personal guarantee claims. Valid defences will be advanced, consistent with our mandate to protect Mr. Wang's interests.

From late April to present, we have incurred fees of approximately \$50,000 inclusive of HST and disbursements. Those fees reflect time for:

- Lerners to review and get up to speed on the existing proceedings;
- research and analysis on legal issues that may affect the personal guarantee claims;
- meetings with insolvency counsel;
- meetings with the client;
- reviewing the draft claims procedure order;

LERNERS

LAWYERS

Page 2

- meeting with you and the Monitor with respect to outstanding issues;
- the preparation of, and attendance on the motion to amend the undertaking; and,
- considerable work in reviewing and undertaking a preliminary analysis of all available documents possibly relevant to the personal guarantee claims in advance of the claims process. We believe these efforts will reduce the time and cost to advance the claims process expediently, which you have advised is an objective of the Monitor.

The latter work, in particular, has been undertaken to put us in the best position as reasonably possible to advance the claims process once the claims procedure order is made. We were assisted in our review by previous work done by CBB to organize and analyze documents it had in its possession, including in respect of the non-applicant properties.

We do not anticipate the need to undertake significant additional work prior to the commencement of the claims process. This is based on our understanding that there is unlikely to be any other contentious matters. There will, of necessity, be ongoing discussions regarding the claims process until the claims procedure order is finalized as well a need to prepare for and attend on the motion on August 7. We do not anticipate that fees prior to the commencement of the claims process will exceed more than \$20,000 and hopefully will be less than that amount. If our fees are to exceed that amount, we will discuss with you in advance.

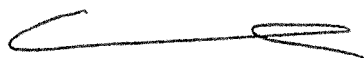
As we do not yet know the number of claims, the exact claims process, the volume of documents involved or all the legal issues that may arise, we are not in a position to provide you at this time with a budget for the claims process itself. We undertake to provide you with a budget once the claims and supporting documents are filed. That budget will include the anticipated fees for the claims process but not any fees for possible future appeals by any party.

Under the terms of the undertaking, we will ensure that the Monitor receives, promptly upon request, an update from our office of the fees incurred by Mr. Wang. Please do not hesitate to contact me directly in that regard. For efficiency reasons, we do not propose to provide that information directly to the mortgagees. We propose to direct any inquiries to you. We also understand that the Monitor may choose, in his reports to the court, to disclose the total amount of fees paid to Lerner LLP.

I have discussed the issues dealt with in this letter with Mr. Wang. He has reviewed and approved this letter, including the fees to date and those budgeted going forward.

Please let me know if you require any further information.

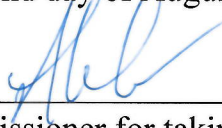
Yours truly,



Cynthia B. Kuehl
CBK/mb

EXHIBIT “F”

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Affidavit of Gloria Kalkounis sworn before me
this 2nd day of August, 2019.



A Commissioner for taking affidavits

Alexander Seutter

Barrister & Solicitor



Thornton Grout Finnigan LLP
RESTRUCTURING + LITIGATION

Toronto-Dominion Centre
100 Wellington Street West
Suite 3200, P.O. Box 329
Toronto, ON Canada M5K 1K7
T 416.304.1616 F 416.304.1313

D.J. Miller
T: 416-304-0559
E: djmiller@tgf.ca
File No. 1977-001

July 31, 2019

VIA EMAIL

Bennett Jones LLP
1 First Canadian Place
100 King Street West
Suite 3400, P.O. Box 130
Toronto, ON M5X 1A4
Attention: Sean Zweig

Dear Sir:

**Re: In the Matter of a Plan or Compromise or Arrangement of Forme Development Group Inc. et al
Court File No.: CV-18-608313-00CL**

We have reviewed the Monitor's Supplement to the Seventh Report (the "Supplement") and have a number of questions. We have also raised certain concerns with you at various times, many of which we understand are shared by the Monitor, and include some of those in this letter for context. For ease of reference, capitalized terms in this letter have the meaning ascribed to them in the Supplement.

Wang's Motion

Our instructions are to continue to oppose Wang's motion on behalf of our client Ferina Construction. Wang obtained the benefit of the stay of proceedings against him personally on the basis that these CCAA proceedings, including the stay of proceedings in his favour, would maximize recoveries for the benefit of all creditors, including those with guarantee claims. It is incongruous with the purpose of these proceedings, and that stay, that Wang be permitted to tap into the funds held in the Trust Account to fuel an attack on the guarantees which he has given. The Monitor states in the Supplement that it is unlikely that there will be any surplus of funds from the Trust Account for Wang at the end of the day. If that is the case, then Wang has no interest whatsoever in those funds, and should not be seeking to utilize any portion of them. If Wang's motion is granted, there would be every incentive for him to dispute the enforceability of every guarantee. It is a risk-free proposition for Wang to spend creditors' money – with only potential upside to him personally. That is inconsistent with the equitable principles underpinning the CCAA wherein he sought protection from his creditors.

Wang's motion is also inconsistent with the Monitor's view from before the Undertaking was given, that the stay against Wang should be terminated unless all sale proceeds from the Non-



Thornton Grout Finnigan LLP

2.

Applicants' properties are held in trust for the creditors with guarantee claims, among other creditors. Wang obtained the benefit of a continuing stay, and now seeks to use the very funds for which a trust account was created for the benefit of his creditors. We note the conspicuous absence of any information of Wang's personal finances in the materials filed. There is nothing to suggest that he could not pay his lawyers himself other than a bald statement by Wang that the Trust Account contains the only source of funds available to him. No sworn statement or disclosure of all bank accounts, interests of any kind, existence of any side agreements for use of funds, assets, income from any source or other information has been provided to support the bald statement that he requires access to the funds.

We have not seen any intended Claims Order, but we understand the Monitor intends to seek one in the future. We have no difficulty with the Monitor calling for claims against Wang in order to: (i) determine the universe of claims that may exist; (ii) determine whether they are claims relating to a specific entity or project, or against Wang generally; and (iii) identify those that are capable of being compromised as D&O claims in a CCAA proceeding, and those that cannot be (such as guarantee claims). Since guarantee claims of Wang cannot be compromised under the CCAA and Wang has no interest in any funds in the Trust Account unless and until all creditor claims against him personally are paid in full, we query why he would have a role in the Claims Process at all.

At the very least, any request by Wang for access to funds in any amount is premature until the Claims Bar Date, when the universe of claims against Wang is known. At that time Wang's counsel will be in a position to provide an actual budget, and more details as to how any funds are intended to be spent. We would be pleased to work with the Monitor in considering or developing any draft Claims Order.

CBB Fees

The Supplement was the first report of the Monitor containing any information as to the quantum of CBB's fees incurred, and paid from the Trust Account. A super-Monitor has been in place since the Undertaking was given in March. Our client (and perhaps other creditors) have assumed at all times that the Monitor will keep a very close eye on amounts incurred and paid from the Trust Account, to ensure that all such amounts are "reasonable" in accordance with the Undertaking. That's particularly the case where a super-Monitor is in place. In our client's view the amounts incurred to date by CBB are not reasonable, particularly when viewed in relation to the professional fees incurred by or on behalf of the super-Monitor itself. We trust that no confirmation has, or will be given to CBB by the Monitor as to whether such fees are determined to be "reasonable" as required by the Undertaking, without notice to all stakeholders.

In our view, a simple cap on future CBB fees is insufficient. There must be actual, active oversight by the Monitor on the reasonableness of CBB's fees that are sought to be paid from the Trust Account going forward. We would also request that the Monitor seek an Endorsement which makes explicitly clear that any reference to CBB fees in the Supplement does not constitute court approval of same (even if the Monitor's Report itself is approved).



Thornton Grout Finnigan LLP

3.

Our client has a number of questions arising from the Supplement:

1. Why is the Monitor (rather than Wang) not the most appropriate party to determine the enforceability of any guarantees? If Wang was inclined to challenge any such determination, he could bring a motion to have the Monitor's decision reviewed at his own cost. That is particularly where the Monitor has the role of super-Monitor in this case.
2. What steps has the Monitor taken to date to ensure that the fees incurred by Wang's counsel are reasonable?
3. If Wang's motion is granted on the basis of any budget, how will the Monitor actually ensure that fees incurred going forward are reasonable?
4. Why does the Monitor view the budgets proposed by Wang's counsel as reasonable? There is no support for this in the Supplement.
5. What steps will the Monitor take to ensure that CBB's fees going forward are reasonable?
6. What steps does the Monitor intend to take in respect of CBB's fees to date?

We expect to receive instructions to file further materials in respect of Wang's motion by 3:00 pm on August 2, 2019 so that all parties have an opportunity to review our client's position. We will include this letter in our materials. If we hear from you before that time, we would be happy to include your response in our materials.

Yours truly,

Thornton Grout Finnigan LLP

A handwritten signature in black ink, appearing to read 'D.J. Miller', written over the printed name.

D.J. Miller

DJM/AS

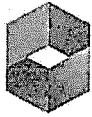
EXHIBIT "G"

This is Exhibit "G" referred to in the
Affidavit of Gloria Kalkounis sworn before me
this 2nd day of August, 2019.



A Commissioner for taking affidavits

Alexander Sautter
Bernard & Solicitor



Sean H. Zweig
Partner
Direct Line: 416.777.6254
e-mail: zweigs@bennettjones.com
Our File No.: 74735.22
Your File No.: 1977-001

August 2, 2019

Via E-Mail

Thornton Grout Finnigan LLP
Suite 3200
100 Wellington Street West
PO Box 329
Toronto, Ontario
M5K 1K7

Attention: D.J. Miller

Dear Sirs/Mesdames:

Re: In the Matter of a Plan of Compromise or Arrangement of Forme Development Group Inc., et al

We are in receipt of your letter dated July 31, 2019 and respond to your questions as follows (using the same numbering as in your letter). Please note that the Monitor does not necessarily agree with every characterization in your letter, but we view the following as a complete answer to your letter.

- 1. Why is the Monitor (rather than Wang) not the most appropriate party to determine the enforceability of any guarantees? If Wang was inclined to challenge any such determination, he could bring a motion to have the Monitor's decision reviewed at his own cost. That is particularly where the Monitor has the role of super-Monitor in this case.*

Please remember that the Monitor is only the super-Monitor of the Applicants; not of the Non-Applicants or of Mr. Wang. As such, the Monitor only derives its authority with respect to the Non-Applicants and Mr. Wang (in his personal capacity) from the Undertaking.

We acknowledge that you have not yet seen the proposed Claims Procedure Order, but we can advise that the Monitor expects to remain closely involved in the process to determine the guarantee claims. Once you see the proposed Claims Procedure Order, we would be pleased to discuss any comments or suggestions you might have. In any event, regardless of whether the Monitor or Mr. Wang initially determines the enforceability of any guarantees, Mr. Wang will require counsel. The Monitor is of the view that it is likely that Mr. Wang would be opposed to the Monitor being the party primarily responsible to determine Mr. Wang's exposure.

2. *What steps has the Monitor taken to ensure that the fees incurred by Wang's counsel are reasonable?*

As described in the Supplemental Report, the Monitor and its counsel have had numerous discussions with Mr. Wang's counsel, including an in-person meeting on July 12, 2019. The Monitor requested that both Grout and Lerner provide it with a letter summarizing, among other things, their fees to date, their estimated future fees and the way they intend to handle their respective mandates. In the Supplemental Report, the Monitor included the letters received and summarized the fees to date and estimated fees to the commencement of the claims process of Mr. Wang's counsel so that the parties on the Service List would have the opportunity to consider their fees.

3. *If Wang's motion is granted on the basis of any budget, how will the Monitor actually ensure that fees incurred going forward are reasonable?*

In addition to the amounts already incurred by Grout and Lerner (as set out in the Supplemental Report), the budgeted amounts are \$20,000 for each of them to the time that the Claims Process begins. By having those budgets in place, the Monitor is comfortable that fees incurred going forward will be reasonable until the Claims Process commences. Grout has advised that he will not be handling the claims against Mr. Wang and Lerner is required to provide a new fee budget once claims have been filed. The budget will be subject to the Monitor's review and approval, or further Order of the Court. As noted in the Supplemental Report, the Monitor will continue to have oversight over the fees and costs incurred by Mr. Wang that are contemplated by the Undertaking and will report to Court thereon, if necessary. Additionally, as advised in the Supplemental Report, the Monitor will report to Court if it believes that the positions taken by Mr. Wang on his guarantee claims are unreasonable.

4. *Why does the Monitor view the budgets proposed by Wang's counsel as reasonable? There is no support for this in the Supplement.*

The budgeted amounts are \$20,000 for each of Grout and Lerner. The Monitor believes those amounts are in the range of reasonableness for work between July 24, 2019 and the date the Claims Procedure Order is granted.

5. *What steps will the Monitor take to ensure that CBB's fees going forward are reasonable?*

As noted in the Supplemental Report, the Monitor recognizes that the Non-Applicants may require some legal advice going forward, but has suggested that the Non-Applicants' future legal fees should be subject to a fee cap. The Monitor understands that CBB and the Non-Applicants continue to discuss how to move forward, and the Monitor expects to have an update before the return of the motion. We will provide an update at the hearing, if not sooner.



August 2, 2019
Page 3

6. *What steps does the Monitor intend to take in respect of CBB's fees to date?*

The Monitor has reported to the Court and the stakeholders with respect to CBB's fees through June 30, 2019. Pursuant to the Undertaking, the Monitor is only required to be advised about CBB's fees after they are paid from the Trust Account – and payment of those fees is not an acknowledgement of their reasonableness. The Supplemental Report was the first Report issued by the Monitor after the Monitor became aware of CBB's fees.

The Monitor believes that, with the benefit of that reporting, the Court and/or the stakeholders may take whatever steps they deem appropriate. The Monitor, in its Supplemental Report, has commented on CBB's fees relative to our firm's fees, given the number of matters in which we have been involved, as well as the significantly longer duration of our involvement.

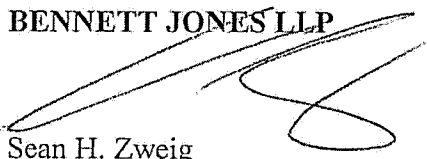
As per your request, the Monitor is prepared to seek an Endorsement making it clear that any reference to CBB's fees in the Supplemental Report does not constitute Court approval of CBB's fees.

Lastly, with respect to the statements at the top of page 2 of your letter, please note that on several occasions earlier in these proceedings, the Monitor requested that Mr. Wang provide information concerning his personal financial situation, but no such information was ever provided.

We and the Monitor are available if you wish to discuss further.

Yours truly,

BENNETT JONES LLP


Sean H. Zweig

cc: Bobby Kofman & David Sieradzki (KSV Kofman Inc.)
Aiden Nelms (Bennett Jones LLP)



Bennett Jones

APPLICATION UNDER 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. et
al

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

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

Proceedings commenced at Toronto

**AFFIDAVIT OF GLORIA KALKOUNIS
(Sworn August 2, 2019)**

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APPLICATION UNDER 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. et
al

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

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

Proceedings commenced at Toronto

SUPPLEMENTAL RESPONDING MOTION
RECORD OF FERINA CONSTRUCTION LIMITED
(Motion returnable August 7, 2019)

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