



**Supplement to the
Twelfth Report of
KSV Kofman Inc.
as CCAA Monitor of
Forme Development Group Inc.
and the Companies Listed on
Appendix “A”**

February 19, 2020

and

**Supplement to the
Eighth Report of
KSV Kofman Inc.
as Proposal Trustee of
58 Old Kennedy Development Inc.,
76 Old Kennedy Development Inc. and
82 Old Kennedy Development Inc.**

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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 APPENDIX "A"**

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

ESTATE FILE NO.: 31-2436568

**ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)
(IN BANKRUPTCY AND INSOLVENCY)**

**IN THE MATTER OF THE PROPOSAL OF
58 OLD KENNEDY DEVELOPMENT INC.,
76 OLD KENNEDY DEVELOPMENT INC. AND
82 OLD KENNEDY DEVELOPMENT INC.,
ALL CORPORATIONS INCORPORATED UNDER THE LAWS OF ONTARIO**

**SUPPLEMENT TO TWELFTH REPORT OF KSV KOFMAN INC.
AS MONITOR AND EIGHTH REPORT OF KSV KOFMAN INC.
AS PROPOSAL TRUSTEE**

February 19, 2020

1.0 Introduction

1. This report (the "Supplemental Report") supplements the twelfth report of the Monitor and the eighth report of the Proposal Trustee dated February 12, 2020 (the "Report"), which was jointly filed in the CCAA Proceedings and the NOI Proceedings.
2. This Supplemental Report is subject to the restrictions and qualifications set out in the Report.
3. Defined terms in the Supplemental Report have the meaning provided to them in the Report.

2.0 Bankrupt Non-Applicants

1. The first meetings of creditors of the Bankrupt Non-Applicants were convened on February 13, 2020. GT was affirmed as Trustee in Bankruptcy (the “Trustee”) of each Bankrupt Non-Applicant at those meetings. GT’s preliminary reports indicate that Jessica Wang, Mr. Wang’s daughter, has guaranteed GT’s fees to a maximum of \$12,500 per estate (or \$50,000 in aggregate for the four bankruptcies).
2. Immediately after each first meeting of creditors, an inspectors’ meeting was convened. Two inspectors were appointed in each of the bankrupt estates: David Sieradzki of KSV and Chris Besant of Gardiner Roberts. Mr. Besant objected to the appointment of Mr. Sieradzki as an inspector given the Monitor’s pending motion to annul the bankruptcies. That issue will be dealt with should the bankruptcies continue beyond the return of this motion, at which point the Monitor believes the objection would be moot.
3. At the meetings of inspectors on February 13, 2020, the Trustee did not ask for a resolution appointing estate counsel.
4. On February 18, 2020, by email to Mr. Sieradzki and Mr. Besant, the Trustee requested that an inspectors’ meeting be convened for the purpose of appointing Miller Thomson as estate counsel of each Bankrupt Non-Applicant. Mr. Besant approved this request. Mr. Sieradzki advised that, in his view, Miller Thomson may have a conflict given Larry Ellis recently joined the firm from CBB, which was counsel to the Non-Applicants. Mr. Sieradzki stated that, in his opinion, this issue should be addressed at a future meeting of inspectors if the bankruptcies are not annulled. The Trustee responded by email received at 2:27 pm on February 18th that the Trustee intended to convene an inspectors’ meeting at 4:30 pm that afternoon. Mr. Sieradzki confirmed once again that he believes that Miller Thomson is conflicted and objected to the convening of inspectors’ meetings on such short notice. The Trustee replied at 4:20 pm advising, among other things, that the Trustee does not believe Miller Thomson has a conflict, that Mr. Sieradzki has a conflict with respect to the appointment of Miller Thomson given the Monitor’s pending motion, and that the Trustee intends to hold an inspectors’ meeting prior to Thursday’s motion. A copy of the email correspondence concerning this matter is attached as Appendix “B”.
5. For clarity, Mr. Sieradzki and the Monitor will not object to Miller Thomson representing the Trustee at the Monitor’s motion, without prejudice to any future arguments Mr. Sieradzki, as inspector, and/or the Monitor may wish to make with respect to any further role for Miller Thomson in the event the bankruptcies are not annulled.

3.0 Gardiner Roberts

1. The Monitor understands that Gardiner Roberts is counsel to the non-bankrupt, Non-Applicants. The best and only evidence presently available is that the only stakeholders with an economic interest in the non-bankrupt Non-Applicants are the mortgagees of those entities, and that these entities are insolvent. Accordingly, it is unclear to the Monitor that these entities have standing to make submissions in these CCAA proceedings. It is therefore unclear what economic interest Gardiner Roberts represents, although it appears that Gardiner Roberts appears to be attempting to be advancing the interests of Mr. Wang in his personal capacity.
2. The Monitor notes that Gardiner Roberts filed a proof of claim in the Claims Procedure in the amount of \$237,000 for its fees and costs up to and including January 10, 2020. The Monitor suspects that Gardiner Roberts has incurred significant fees since that time given its level of activity in these proceedings, including the motion served on February 19, 2020. Gardiner Roberts' claim was filed in the Claims Procedure against all of the Non-Applicants and indicates that an affiliate of Gardiner Roberts has registered mortgages for its unpaid fees and costs against all of the Non-Applicants' real property, including the Bankrupt Non-Applicants whose real property sales gave rise to the Surplus.
3. As set out in the Report, the Monitor has been asking for several months how the Non-Applicants are paying the fees of Gardiner Roberts. No response has been provided. The Monitor only learned of the mortgages registered against the Non-Applicants' real property upon receipt of the proof of claim filed by Gardiner Roberts in the Claims Procedure. The granting of security by the Non-Applicants in respect of legal fees is contrary to the Undertaking. Mr. Wang states in his affidavit sworn February 19, 2020 (the "Affidavit") that the Monitor never asked Gardiner Roberts for this information. While that request was not made directly of Gardiner Roberts, the Monitor repeatedly asked the Non-Applicants and Mr. Wang through their respective counsel (i.e. CBB and Lerner).

4.0 Purpose of the CCAA Proceedings and NOI Proceedings

1. These proceedings continue to have the purposes contemplated by the various orders issued by this Court, including completing the Claims Procedure. These processes are characterized as being disorderly in the Affidavit. The Monitor does not share that view, nor does it believe that view is shared by stakeholders. To the extent there is confusion in the process, that is the result of the January 31st *ex parte* motion to amend the Undertaking, the assignments in bankruptcy recently made by the Bankrupt Non-Applicants and the NOI filed by Mr. Wang.
2. The fact that all properties have been sold is not a reason to terminate the CCAA and NOI Proceedings, which is a suggestion made by the Non-Applicants and/or Mr. Wang. As with many CCAA and NOI proceedings, the first step is to generate proceeds and the next is to distribute them upon completion of a claims process. The Monitor is now dealing with claims process issues, pursuant to the orders issued by this Court in these proceedings.

3. The Monitor believes that the Claims Procedure Order provides an appropriate level of input by the Non-Applicants and Mr. Wang. To the extent that the Non-Applicants or Mr. Wang disagree with decisions made by the Monitor, they have the right under the Claims Procedure Order to argue those matters before a claims officer or the Court.
4. As noted in the Report, Mr. Wang has told the Monitor he wants all Wang Claims to be disallowed. The Monitor understood from Lerner that Mr. Wang did not intend to take a scorched earth approach to the Wang Claims. The Claims Procedure Order establishes an impartial process to review all claims and provides Mr. Wang with the opportunity to participate in the process. He did not oppose the Claims Procedure Order.
5. Mr. Wang complains in the Affidavit that he does not have funding for counsel to assist him in the Claims Procedure; however, he has not been able to satisfy the Monitor's questions on his declaration, as required by the Court. Mr. Wang previously sought direction from the Court that he need not submit to an examination in order to have his personal counsel funded, but the Court agreed with the Monitor that an examination was appropriate. Additionally, Mr. Wang has been able to source monies to pay certain forbearance fees (as noted in the Report) and Jessica Wang, Mr. Wang's daughter, has been able to source at least \$50,000 as a third-party guarantee for GT's fees. The Monitor is unsure if the Proposal Trustee has also been paid a retainer.
6. All claims in respect of all entities that have sold their properties have been submitted in accordance with the Claims Procedure and all the claims have been reviewed by the Monitor and/or Bennett Jones. The Monitor has provided to Mr. Wang copies of all Wang Claims as required pursuant to the Claims Procedure Order. Despite Mr. Wang's suggestion to the contrary in the Affidavit, the Monitor has, and will continue to, comply with its obligations under Claims Procedure Order, including as it relates to providing parties with copies of claims.

5.0 Relationship with the Non-Applicants and Mr. Wang

1. The Monitor has reported many times in these proceedings. The Monitor's reports detail that Mr. Wang has not opposed any order made in these proceedings, including the sale process order, the approval of any sale transaction or the Claims Procedure Order. The Monitor's frustrations with Mr. Wang are due to the steps he has taken when he does not like the outcome of a particular process; for example, the number and value of the claims filed in the Claims Procedure and the objections by many mortgagees at the outset of this process to a debtor-in-possession process run by Mr. Wang. These objections resulted in the appointment of KSV as the "super" Monitor. The consequences of KSV's enhanced mandate were explained to Mr. Wang.
2. The Monitor is also concerned that Mr. Wang's activities have resulted in unnecessary costs which have been funded from or accruing against the Surplus, including retaining multiple lawyers, including more than \$237,000 of legal fees payable to Gardiner Roberts. Such efforts run contrary to Mr. Wang's stated intention at the outset of these proceedings to honour his obligations to his creditors, including those whose obligations he personally guaranteed

3. Mr. Wang complains of the cost of these proceedings and notes that the Monitor and its counsel have not passed their accounts. The accounts will be passed in due course. However, the Monitor notes that Mr. Wang has approved legal costs of more than \$1.67 million for himself and the Non-Applicants. This includes paid and accrued fees totaling in excess of \$1.2 million for CBB, \$152,000 for Grout, \$82,000 for Lerner and \$237,000 for Gardiner Roberts (as of January 10, 2020). Mr. Wang has also retained a lawyer by the name of Yi Zhou who the Monitor understands has closed each of the Non-Applicants' real estate transactions; however, the Monitor does not know the total amount Yi Zhou has invoiced. It now appears that Mr. Wang has also engaged Blaney McMurtry LLP as his latest personal counsel.
4. In the Monitor's opinion, the Non-Applicants and Mr. Wang should no longer be entitled to have the Surplus used to fund efforts which frustrate the purpose of these proceedings.

6.0 Service

1. The Monitor served its motion record on the Service List in these proceedings on February 12, 2020.
2. On February 18, 2020, Gardiner Roberts sent an email to the Service List in these proceedings advising:

"We are counsel to the Non Applicant Companies ("NACs")

1. *We refer to the Monitor's motions returnable Feb. 20, 2020. The NACs will be opposing the CCAA Extension, and the Monitor's motions concerning the Non Applicant bankruptcies, the Undertaking and the funds held thereunder.*
2. *The NACs are also bringing a motion on Feb. 20, 2020 to convert the Former CCAA Process to a BIA bankruptcy and to put the remaining NAC companies which have completed their property sales into bankruptcy and for other relief.*

The Notice of Motion, and an affidavit in support of both positions will be served today under separate cover."

3. In response, Bennett Jones sent an email to the Service List asking that Gardiner Roberts provide the name of the affiant and the time that the affiant will be available to be examined on February 19, 2020, if required. Gardiner Roberts did not respond to the email. Gardiner Roberts served its materials on February 19, 2020 at 11:34 a.m., leaving the Monitor no time to conduct an examination. The Monitor will seek to reserve its rights to examine Mr. Wang on the Affidavit following the motion.

7.0 The Affidavit

1. The Affidavit is 34 pages, and given the time it was served, there is insufficient time for the Monitor to respond to it in detail. Suffice to say, the Monitor disagrees with its content and characterizations and believes that it is largely rife with falsehoods and attempts to rewrite the history of these proceedings, including in respect of the advice provided by KSV and other professionals involved in these proceedings. A more comprehensive response can be provided in due course, if necessary. Unfortunately, doing so will require significant time and cost that will be funded from monies otherwise distributable to creditors. In the shortness of time, the Monitor is responding below to a few of the general themes in the Affidavit.
2. From the time of Mr. Wang's first meeting with KSV, the Forme Group was without liquidity (the combined bank balance of all entities in the Forme Group was negligible), mortgage payments had not been made, and each of the entities in the Forme Group was at risk of being placed in power of sale proceedings. Several mortgagees had commenced power of sale proceedings and/or issued 244 notices, and substantially all others were preparing to do so, according to Mr. Wang. Mr. Wang wanted to file NOIs for all companies forthwith. Thereafter, KSV and the other professionals involved worked with Mr. Wang to formulate a process that attempted to balance the interests of the Forme Group and its stakeholders, including, in particular, its mortgagees. KSV and the other professionals advised of the pros and cons of filing for CCAA protection, including that certain mortgagees may oppose a debtor-led restructuring process, which is precisely what happened. Mr. Wang was advised that the Court in various instances has refused to grant CCAA protection to real estate development companies.
3. Mr. Wang's affidavit repeatedly states that the Monitor has not permitted funding for the Forme Group, his daughter Jessica, and for counsel. Mr. Wang's comments are misleading:
 - a) The Undertaking provides a mechanism for funding various costs, particularly that the funding request is accompanied by evidence that there is value in the Non-Applicant real estate greater than the mortgage debt. Mr. Wang was unable to satisfy that requirement. The Monitor provided the opportunity to do so, including consulting with a realtor that had been retained by the Non-Applicants, Cushman & Wakefield;
 - b) Many months ago, and on more than one occasion, CBB advised that a motion would be brought to pay Jessica from the Surplus. The Monitor advised that it would form a view on such a motion once it reviewed the motion record. No such motion was ever brought; and
 - c) Mr. Wang did not satisfy the Court's requirements, as also required by creditors in these proceedings, that he does not have personal assets available to pay his personal counsel from resources other than the Surplus. Mr. Wang's declaration raised issues that the Monitor believed required exploration. Lerner was advised repeatedly by the Monitor that it preferred that Mr. Wang have responsible legal counsel representing him. Mr. Wang, unfortunately, refused to be examined on his declaration.

4. The Affidavit raises concerns with the realizations achieved for the CCAA Applicants' real property. However, the Monitor notes that (i) the sale process was approved by this Court, (ii) the sale process was run by a highly reputable and experienced real estate brokerage under the oversight of the Monitor, (iii) Mr. Wang and the CCAA Applicants were given the opportunity to assist the broker, and (iv) each sale transaction was approved by the Court without objection by any party.
5. Mr. Wang neglects to provide any context for the Undertaking, instead saying that it was "to harmonize the Non Applicants marketing process with value maximization objectives of the me (sic) and my personal creditors, the NAC and CCAA Creditors, and the possible reconciliation of the intercompany indebtedness accounts in the Forme Group". Attached as Appendix "C" is the Third Report of the Monitor dated February 26, 2019 ("Third Report"), without appendices, which details at Section 5 the Monitor's concerns at the time, and the context for the Undertaking. In short, the Monitor was concerned that approximately \$12 million may be put out of reach of the stakeholders in these proceedings as a result of a sale of certain properties that was not disclosed to the Monitor and which only came to the Monitor's attention through the inadvertence of one of the Forme Group's employees.
6. Mr. Wang has raised issues with the Claims Procedure, and in particular, the Intercompany Claims. Having a court officer file intercompany claims is not unique to these proceedings. Such a process was approved by this Court in the Urbancorp proceedings, as it was in many others. The intercompany claims review has not been shared with any creditors, despite Mr. Wang's suggestion to the contrary. The intercompany review is ongoing and cannot be completed until information is received from RBC. Additionally, the claims arise because the Forme Group transferred monies raised from mortgagees from one entity to another, contrary to contractual entitlements. The Forme Group's records are incomplete and unreliable, as set out in the Report.
7. There have been 18 reports filed in the CCAA proceedings (including supplements) and 11 filed in the NOI proceedings (including supplements). The history of these proceedings has been well documented in the materials filed in these proceedings. The Court has approved all relief sought by the Monitor and the Proposal Trustee; Mr. Wang has not opposed any of the relief sought.
8. When convenient, Mr. Wang complains he lacks an understanding of these proceedings due to a lack of proficiency with the English language. This has not been the Monitor's experience in its dealings with Mr. Wang, and it is further not consistent with swearing the 34-page Affidavit.
9. Based on the foregoing, the Monitor will be requesting that costs be awarded against Mr. Wang personally.

* * *

All of which is respectfully submitted,

KSV Kofman Inc

**KSV KOFMAN INC.,
SOLELY IN ITS CAPACITIES AS MONITOR OF
FORME DEVELOPMENT GROUP INC. AND
THE AFFILIATED ENTITIES LISTED ON APPENDIX "A"
AND AS PROPOSAL TRUSTEE OF
58 OLD KENNEDY DEVELOPMENT INC., 76 OLD KENNEDY DEVELOPMENT INC. AND
82 OLD KENNEDY DEVELOPMENT INC.,
AND NOT IN ITS PERSONAL CAPACITY**

Appendix “A”

2358825 Ontario Ltd.

27 Anglin Development Inc.

29 Anglin Development Inc.

250 Danforth Development Inc.

3310 Kingston Development Inc.

1296 Kennedy Development Inc.

1326 Wilson Development Inc.

189 Carrville Development Inc.

169 Carrville Development Inc.

159 Carrville Development Inc.

5507 River Development Inc.

4439 John Development Inc.

Appendix “B”

David Sieradzki

From: Wootton, Daniel <Dan.Wootton@ca.gt.com>
Sent: February 18, 2020 4:20 PM
To: David Sieradzki; Kwon, Jennifer; Besant, Chris
Subject: RE: In the Matter of the Bankruptcies of 19 Turff, 22 Old Kennedy, 35 Thelma and 4550 Steeles

Hi David,

Let me know if there is a time that works better to convene an inspectors' meeting. We are looking to ensure we have counsel to comment and participate in the Monitor's motion to seek the annulment of the bankruptcies, which I understand is this Thursday. I think the Trustee should have counsel and representation at this motion.

With respect to your concern regarding a potential conflict, please be advised that we started to discuss this matter with Mr. Bobby Sachdeva and Ms. Stephanie De Caria of Miller Thomson prior to Larry Ellis leaving Cassels. Larry Ellis is not involved in this matter, and so we do not see any real conflict with Miller Thomson. In any event, I also understand that internal firewalls have been put into place at Miller Thomson such that Larry Ellis (and the other lawyers that accompanied him from Cassels) do not have any access to this matter. This I understand is customary, and should adequately address any conflict concerns.

We could let the Court know on Thursday of your position that it would like the Trustee to respond to the Monitor's motion without counsel.

If we don't hear back from you we will hold an inspector's meeting at our convenience in advance of Thursday. In addition, the Trustee takes the position that you, as Inspector, would not necessarily have a say on this issue in any event, as you are conflicted given the relief you/the Monitor is seeking against the Bankrupts.

Regards,
Dan

Dan Wootton, CIRP, LIT | Senior Vice President
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From: David Sieradzki [mailto:dsieradzki@ksvadvisory.com]
Sent: Tuesday, February 18, 2020 2:47 PM
To: Kwon, Jennifer <Jennifer.Kwon@ca.gt.com>; Besant, Chris <cbesant@grllp.com>
Cc: Wootton, Daniel <Dan.Wootton@ca.gt.com>
Subject: RE: In the Matter of the Bankruptcies of 19 Turff, 22 Old Kennedy, 35 Thelma and 4550 Steeles

Jennifer, I have communicated my concerns to you regarding the retention of Miller Thomson and am opposed to the convening of an inspectors' meeting on such short notice. If you proceed, we intend to bring this matter to the attention of the court on Thursday.

David Sieradzki
Managing Director
KSV Advisory Inc.

Office: (416) 932-6030

Cell: (416) 428-7211

From: Kwon, Jennifer <Jennifer.Kwon@ca.gt.com>

Sent: February 18, 2020 2:27 PM

To: David Sieradzki <dsieradzki@ksvadvisory.com>; Besant, Chris <cbesant@grllp.com>

Cc: Wootton, Daniel <Dan.Wootton@ca.gt.com>

Subject: RE: In the Matter of the Bankruptcies of 19 Turff, 22 Old Kennedy, 35 Thelma and 4550 Steeles

Hi David,

We plan on having an inspector's meeting via telephone at 4:30 PM today; a calendar invite with dial-in information will be circulated shortly.

Would you be able to join the meeting to discuss your concerns of the perceived conflict of interest with respect to the retention of Miller Thomson? Please let us know as soon as possible.

Regards,

Jennifer Kwon LL.B., CIRP, LIT

Grant Thornton Limited

416-360-4167

From: Kwon, Jennifer

Sent: Tuesday, February 18, 2020 1:22 PM

To: David Sieradzki <dsieradzki@ksvadvisory.com>; Besant, Chris <cbesant@grllp.com>

Cc: Wootton, Daniel <Dan.Wootton@ca.gt.com>

Subject: RE: In the Matter of the Bankruptcies of 19 Turff, 22 Old Kennedy, 35 Thelma and 4550 Steeles

Hi David,

Thanks for your email. Please let us know if you would like to discuss your concerns with the retention of Miller Thomson today.

From our knowledge, we began to engage with Miller Thomson prior to Mr. Ellis joining Miller Thomson. Further, Miller Thomson has confirmed that Mr. Ellis has no access or knowledge of the bankruptcies. Grant Thornton Limited will be focusing on our role as a court officer and trustee in bankruptcy to the estates and Miller Thomson will be taking directions from the Trustee.

Please let us know if you would like to discuss with Dan and I today.

Jennifer Kwon LL.B., CIRP, LIT

Grant Thornton Limited

416-360-4167

From: David Sieradzki <dsieradzki@ksvadvisory.com>

Sent: Tuesday, February 18, 2020 12:10 PM

To: Kwon, Jennifer <Jennifer.Kwon@ca.gt.com>; Besant, Chris <cbesant@grllp.com>

Cc: Wootton, Daniel <Dan.Wootton@ca.gt.com>

Subject: RE: In the Matter of the Bankruptcies of 19 Turff, 22 Old Kennedy, 35 Thelma and 4550 Steeles

Jennifer,

From my perspective, a further meeting is required. I have concerns with the retention of Miller Thomson on the basis of a potential conflict. Until recently, the Non-Applicants were represented by Cassels Brock, and the mandate there was being led by Larry Ellis. Mr. Ellis has recently joined Miller Thomson, right around the time of the bankruptcies in fact. I would like to discuss this potential conflict (and whether the Trustee ought to engage different counsel) at a meeting.

David

David Sieradzki
Managing Director
KSV Advisory Inc.
Office: (416) 932-6030
Cell: (416) 428-7211

From: Kwon, Jennifer <Jennifer.Kwon@ca.gt.com>
Sent: February 18, 2020 9:59 AM
To: David Sieradzki <dsieradzki@ksvadvisory.com>; Besant, Chris <cbesant@grllp.com>
Cc: Wootton, Daniel <Dan.Wootton@ca.gt.com>
Subject: In the Matter of the Bankruptcies of 19 Turff, 22 Old Kennedy, 35 Thelma and 4550 Steeles

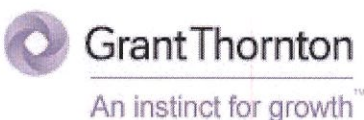
Good morning David and Chris,

During the first meeting of creditors/ first meeting of inspectors held last week at the Trustee's offices, we have not included the appointment of Miller Thompson as counsel to the Trustee of the bankrupt estates in the minutes. As such, please indicate whether you approve that the Trustee amend the minutes to include that Miller Thompson was engaged by Grant Thornton Limited as counsel to the bankrupt estates or whether the Trustee should hold another inspector's meeting regarding the matter.

Please let me know this morning or as soon as possible.

Thank you for your attention.

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Appendix “C”



**Third Report of
KSV Kofman Inc.
as CCAA Monitor of
Forme Development Group Inc.
and the Companies Listed on
Appendix “A”**

February 26, 2019

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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 APPENDIX "A"**

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

**THIRD REPORT OF KSV KOFMAN INC. AS MONITOR
February 26, 2019**

1.0 Introduction

1. Pursuant to an order of the Ontario Superior Court of Justice (Commercial List) (the "Court") made on November 30, 2018, as amended and restated on December 6, 2018 (the "Initial Order"), Forme Development Group Inc. and the affiliated entities listed on Appendix "A" (the "Applicants") were granted protection under the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the "CCAA"), and KSV Kofman Inc. ("KSV") was appointed monitor (the "Monitor"). A copy of the Initial Order is attached as Appendix "B".
2. The principal purpose of these proceedings is to create a stabilized environment to conduct a Court-approved sale process ("Sale Process") for the Applicants' real property. The Initial Order approved the Sale Process, including a listing agreement between the Applicants and TD Cornerstone Commercial Realty Inc. The bid deadline for all properties included in the Sale Process is March 27, 2019.
3. Several real estate development companies related to the Applicants initially applied for but were not granted protection in these CCAA proceedings (the "Non-Applicants", and together with the Applicants, the "Forme Group") due to opposition from one or more mortgagees on each of the Non-Applicants' real property. The Non-Applicants are listed on Appendix "C".

4. The Monitor understands that Yuan (Mike) Hua Wang (“Wang”) is the sole shareholder of each of the Applicants and the Non-Applicants. Wang has guaranteed millions of dollars of mortgages on the majority of the Applicants’ and Non-Applicants’ real property; however, the amount of those guarantees has not yet been quantified by the Monitor. The Monitor believes that it will be necessary to do so through a Court-approved claims process. Pursuant to the terms of the Initial Order, Wang has the benefit of a broad stay of proceedings relating to his guarantees of the commitments or loans of any of the Applicants and certain other mortgage obligations. The stay of proceedings in favour of Wang does not include his guarantees of the commitments or loans of the Non-Applicants.
5. KSV is filing this report (“Report”) in its capacity as Monitor.

2.0 Purposes of this Report

1. The purposes of this Report are to:
 - a) provide background information about these proceedings;
 - b) report on the Monitor’s concerns regarding Wang, including concerns that arose during the week of February 18, 2019 in respect of the potential sale of certain of the Non-Applicants’ real property;
 - c) set out the basis on which the Monitor believes that the sale proceeds from the Non-Applicants’ real property should be paid to the Monitor net of all *bona fide* mortgage obligations and transaction costs, and, in light of Wang’s guarantee obligations to certain of the Applicants’ creditors, only be distributed subject to further order of the Court after completion of a claims process; and
 - d) recommend that the Court issue an order directing the Non-Applicants, any mortgagee of the Non-Applicants (if real property is sold through a mortgagee enforcement process) or any other person to remit the net proceeds of any transaction to the Monitor. In the event that the Court does not make this order, the Monitor is of the view that the stay of proceedings granted to Wang under the Initial Order should be terminated.

3.0 Currency

1. All currency references in this Report are to Canadian dollars.

4.0 Background

1. The Forme Group is comprised of several commercial and residential real estate development companies, each of which is believed to be owned by Wang. Wang is also the sole director of each entity. The Forme Group’s properties are primarily located in the Greater Toronto Area, with a few located in Southwestern Ontario.

2. Except for one project, known as Birchmount Gardens, the Forme Group's projects have not advanced beyond the planning stage. Birchmount Gardens is a condominium project located in Scarborough, Ontario. All of the condominiums in this project have been sold and the Monitor believes that all purchasers are occupying their units; however, the transactions have not closed. Closings were to have occurred approximately three years ago. The Monitor is working to close these transactions. Construction and other issues need to be resolved before closings can take place. The level of frustration with Wang and the Forme Group's management by Birchmount purchasers is illustrated by the emails provided in Appendix "D"¹.
3. According to Wang's affidavit sworn November 5, 2018 filed as part of the Forme Group's initial CCAA application (the "Wang Affidavit"), the causes of the Forme Group's financial difficulties include:
 - a) the Forme Group has approximately \$220 million of mortgage debt, which it is unable to service²; and
 - b) the Forme Group's liquidity issues resulted in delays in the planning and development of several of its projects. Wang states that the delays were caused by the following factors:
 - delays from municipalities which required the Forme Group to incur substantial legal and consulting fees for resubmission;
 - appeals filed in respect of zoning, planning and development applications;
 - a slowdown in the real estate market in the Greater Toronto Area; and
 - rising interest rates.
4. It was initially contemplated that the CCAA proceedings would include the entire Forme Group. Several mortgagees of the Non-Applicants opposed the CCAA application. The Initial Order was the result of multiple Court attendances and extensive negotiation between the Monitor and mortgagees. Several mortgagees have commenced power of sale proceedings.
5. When Wang first met with KSV, he explained that some of his projects have millions of dollars of equity (the "Positive Equity Projects") while others likely do not have sufficient value to repay in full their mortgage debt (the "Negative Equity Projects"). Wang explained to KSV that he had personally guaranteed millions of dollars of mortgage debt and that his objective was to use the surplus from the Positive Equity Projects to satisfy his guarantee obligations on the Negative Equity Projects. Wang also explained that he had no other means to satisfy his obligations under his personal guarantees. This was a principal reason that KSV supported the Forme Group's application for CCAA protection and the extension of the stay of proceedings to Wang in connection with his personal guarantees.

¹ The senders' names have been redacted for privacy reasons.

² KSV has a mortgage on certain of the Forme Group's real property in respect of its and its counsel's fees and disbursements. Goldman Sloan Nash & Haber LLP, counsel to the Forme Group, also has a mortgage on certain of the Non-Applicants' real property. These mortgages are junior to all other mortgages on the relevant property and were provided prior to the commencement of these proceedings as protection for the unpaid fees and costs of the professionals.

6. Paragraph 39 of the Wang Affidavit states:

*“A stay of proceedings is required to provide protective relief during this process. In addition to the stay of proceedings for the Forme Group, the Applicants are also requesting a limited third party stay for my benefit given my personal guarantees on many of the mortgages. Allowing enforcement on personal guarantees during the pendency of the CCAA proceedings will only result in an end run around the primary purpose of the main stay of proceedings, which is to maximize recoveries for all creditors. **As most of my net worth is tied up in the equity in these projects, and my intention is to use the equity realized in the CCAA proceedings to repay my creditors, I require the benefit of a stay while an orderly restructuring process is conducted. I do not believe that any creditor will be prejudiced by the stay as I do not have the financial means to satisfy my guarantees until I can realize on my equity in certain of the Projects in any event.**” [emphasis added]*

A copy of the Wang Affidavit is provided in Appendix “E”, without exhibits.

7. Paragraph 16 of the Initial Order provides, among other things, a stay of proceedings against Wang or any of Wang’s current and future assets, businesses, undertakings and properties arising upon or as a result of any default under the terms of any document entered into in connection with any of Wang’s guarantees of any of the commitments or loans of any of the Applicants or default by Wang in respect thereof.
8. The Initial Order provides the Monitor with powers beyond those contemplated by the model Initial Order. KSV is the “super” Monitor. It is controlling the Applicants’ receipts and disbursements, the Sale Process and overseeing the Applicants’ operations generally. Paragraph 24 of the Initial Order provides:

THIS COURT ORDERS that KSV Kofman Inc. is hereby appointed pursuant to the CCAA as the Monitor, an officer of this Court, to monitor the business and financial affairs of the Applicants with the powers and obligations set out in the CCAA or set forth herein and that the Applicants and its shareholders, officers, directors, and Assistants shall not take any steps with respect to the Applicants, the Business or the Property save and except at the direction of the Monitor pursuant to paragraph 25 of this Order, and shall co-operate fully with the Monitor in the exercise of its powers and discharge of its obligations and provide the Monitor with the assistance that is necessary to enable the Monitor to adequately carry out the Monitor’s functions.

9. Copies of Court materials filed in these proceedings, including the Monitor’s Reports to Court, are available on the Monitor’s website at <https://www.ksvadvisory.com/insolvency-cases/case/forme-development-group-inc.>

5.0 Monitor's Concerns

1. It is now apparent to the Monitor that the majority of the Forme Group's stakeholders have lost confidence in Wang and the Forme Group's management team.
2. Throughout these proceedings, the Monitor has advised Wang of the need for transparency in light of, *inter alia*, the stay of proceedings afforded to him under the Initial Order, including in respect of the Non-Applicants' real property and the stated purpose of these proceedings, which is to maximize the proceeds available to repay Wang's creditors, including his obligations under his personal guarantees. The Monitor has expressed concerns to Wang and his management team about a lack of transparency, communication and respect for the CCAA process. The most recent issues arose during the weeks of February 18, 2019 and February 25, 2019 and are described below.
 - a) KSV is the Proposal Trustee in proceedings involving three development companies that comprise one assembly on Old Kennedy Road (the "NOI Companies"). Each of the three NOI Companies filed Notices of Intention to Make a Proposal on October 26, 2018. A transaction was completed for the sale of the real estate owned by the NOI Companies (the "Old Kennedy Transaction") and these companies have each since filed a proposal. KSV, as Proposal Trustee, is statutorily required to perform a review of transactions for the year preceding the filing of the notice of intention to make a proposal. KSV identified \$2.8 million of disbursements from the NOI Companies during that period, for which it sought an explanation from the Forme Group's management³;
 - b) On February 21, 2019, in response to KSV's inquiry, the Applicants inadvertently sent KSV copies of four cheques payable to the Forme Group's real estate lawyer, Yi Zhou, as summarized in the table below.

Date on Cheque	Payor	Non-Applicant Real Property Referenced on Cheque
December 11, 2018	Canada Feng Tai International Inc.	22 Old Kennedy Road
December 11, 2018	Cheng Yi Wei	4550 Steeles Ave.
February 4, 2019	5008830 Ontario Inc. and 5008831 Ontario Inc.	22 Old Kennedy Road
February 4, 2019	5008830 Ontario Inc. and 5008832 Ontario Inc.	Unknown

- c) As a result of the names of the payors (5008830 Ontario Inc. is the purchaser in the Old Kennedy Road Transaction and Cheng Yi Wei is its counsel), and the Non-Applicants' real property referenced on the cheques, it appeared to the Monitor that Wang is attempting to complete transactions for the real property owned by Non-Applicants referenced on the cheques.

³ As of the date of this Report, no explanation or support has been provided for these transactions.

- d) It is noteworthy that Wang never disclosed these transactions to the Monitor notwithstanding that:
- i. two of the cheques are dated December 11, 2018, which is more than two months ago and only 11 days after the Initial Order was granted; and
 - ii. on many occasions after the Initial Order was granted, KSV suggested that an orderly process should be conducted for the Non-Applicants' real property in order to maximize its value. Wang refused to do so and never once suggested to KSV that he was in discussions for the sale of the properties nor that he had received deposits for 22 Old Kennedy Road and 4550 Steeles Avenue.
- e) The Monitor believes that if the cheques were not inadvertently disclosed to it, it would not have found out about the proposed transactions of the Non-Applicants until after they had closed.
- f) On learning of these cheques, the Monitor sent an email on February 21, 2019 to Wang and his management team asking for an explanation. A further email was sent the following morning. Copies of these emails are attached as Appendices "F" and "G" (Appendix "F" has been redacted for the reasons noted in the following paragraph).
- g) Wang did not respond to the Monitor's email until February 24, 2019, at which time he sent an email to the Monitor (the "February 24th Email"). His response provided the value of the transaction and other information; however, it did not provide the name of the purchaser, copies of the agreements with the purchaser nor the contemplated closing date/dates. A redacted copy of Wang's response is provided in Appendix "H". The unredacted email is provided in Confidential Appendix "I". The Monitor respectfully requests that the redacted email, copies of the cheques and a preliminary calculation of net proceeds available to the Non-Applicants be filed with the Court on a confidential basis and be sealed as they contain confidential information. If the redacted terms are not sealed, the information may negatively impact realizations. The Monitor is not aware of any party that will be prejudiced if the information is sealed.
- h) On February 25, 2019, the Monitor responded to the February 24th Email. A copy of the Monitor's response is provided in Appendix "I". An excerpt from the Monitor's email is provided below:

"In light of your representations to the court and your creditors in your affidavit at the application for the Initial Order ... which is the stated purpose of the CCAA proceedings, KSV will be finalizing a report to court by no later than tomorrow morning that provides the following:

1. For as long as you have the benefit of a stay of proceedings in the CCAA:

a. The proceeds generated from the sale (or any other transaction) involving any real property owned by Non-Applicants are to be paid to the Monitor, net of all amounts owing on bond [sic] fide mortgages;

b. The sale proceeds will be held pending a further order of the court;

c. The distribution of any of the sale proceeds is subject to a claims process that will include all creditors for whom you provided a personal guarantee.”

- i) In addition to concerns regarding the potential transactions for the Non-Applicants' real property and a lack of transparency, the Monitor has frequently conveyed to Wang its concerns about its lack of communication and respect for the CCAA process, as well as concerns regarding the timeliness of its responses to the Monitor's questions.
- j) On the morning of February 26, 2019, the Monitor received an email from Cassels Brock & Blackwell LLP ("Cassels Brock") advising that it has been approached to represent the Applicants. Cassels Brock provided a follow-up email later on the same day advising it had been retained. The Applicants are presently and have been represented by Goldman Sloan Nash & Haber LLP ("GSNH") throughout these proceedings and GSNH has extensive knowledge about the Forme Group as a result. The Monitor knows of no reason to replace GSNH as the Applicants' counsel and no reason has been provided to the Monitor by Wang or the Forme Group's other management representatives. The Monitor is aware, however, that GSNH has advised Wang of his requirement to act transparently and to make full disclosure of his activities as it relates to the Forme Group's real property. It is the Monitor's respectful submission that as a result of paragraph 24 of the Initial Order (which was reproduced above), neither the Applicants nor Wang have the authority to replace GSNH and/or engage Cassels Brock without the Monitor's consent. The Monitor is concerned that changing counsel, or having Cassels Brock act as co-counsel to GSNH, will result in unnecessary cost and potentially adversely affect these proceedings.
- k) During the week of February 18, 2019, the Monitor learned that Wang's personal counsel in the CCAA proceedings resigned for reasons that it was not prepared to disclose to the Monitor. The Monitor understands that its resignation was not related to fees.
- l) As a result of the foregoing events, the Monitor is concerned about the possibility that Wang may seek to put any funds received by him as shareholder of the Non-Applicants beyond the reach of his creditors, including those with guarantee claims against Wang in respect of the Applicants' mortgages. The Monitor is also concerned that there be a process to deal with Wang's guarantee obligations under the supervision of the Court and not under the control and direction of Wang. This process should be conducted at the conclusion of the Sale Process.

6.0 Good Faith and Due Diligence

1. Pursuant to section 11.02(3)(b) of the CCAA, a debtor company is required to act in good faith and with due diligence to be afforded the benefit of a stay of proceedings.
2. It is the Monitor's view that in CCAA proceedings where the Court finds it appropriate to grant the monitor powers beyond those contemplated by the model Initial Order, the good faith and due diligence standard should focus on the Monitor's conduct. In this case, the Monitor is exercising control and oversight over the Applicants' business and affairs, as well as over the Sale Process. The Monitor exercises these powers under the Court's supervision.
3. The Monitor is also of the view that terminating the stay of proceedings against the Applicants would disrupt the Sale Process and that the significant time and cost incurred to-date in the Sale Process will have been wasted. Completion of the Sale Process is likely to result in more timely transactions for the Applicants' real property than would separate mortgagee enforcements. Additionally, terminating the stay of proceedings against the Applicants would adversely impact the Monitor's efforts to close the condominium sales on the Birchmount Project.

7.0 Recommendation

1. The Monitor believes that if Wang is to continue to have the benefit of the stay of proceedings with respect to his guarantees, it is appropriate for the Court to direct that any surplus proceeds generated from the sale of the Applicants' and the Non-Applicants' real property, after payment of *bona fide* mortgage debt and transaction expenses, be paid to the Monitor for the following reasons:
 - a) the stated purpose of the CCAA proceedings is to allow for an orderly sale process of the Forme Group's real property so that Wang could maximize recoveries for the benefit of the Forme Group's creditors, including his obligations under his personal guarantees. This was a primary reason that KSV supported these proceedings;
 - b) the Monitor has concerns about the level of communication, transparency and respect for the CCAA process from the Forme Group's management;
 - c) there is a risk that Wang could move the proceeds of sale out of the reach of his creditors;
 - d) a process is required to deal with Wang's guarantee claims – such a process should be conducted under the supervision of the Court at the conclusion of the Sale Process; and
 - e) it is apparent to the Monitor that most of the stakeholders in these proceedings have lost confidence in Wang.
2. It is also KSV's intention in its capacity as Proposal Trustee not to distribute any funds to Wang as shareholder of the NOI Companies until the guarantee claims are quantified and addressed. A process will be established in this regard in due course.

8.0 Conclusion and Recommendation

1. Based on the foregoing, the Monitor respectfully recommends that this Honourable Court make an order granting the relief detailed in this Report.

* * *

All of which is respectfully submitted,

A handwritten signature in blue ink that reads "KSV Kofman Inc". The signature is written in a cursive, flowing style.

**KSV KOFMAN INC.
SOLELY IN ITS CAPACITY AS MONITOR OF
FORME DEVELOPMENT GROUP INC. AND
THE AFFILIATED ENTITIES LISTED ON APPENDIX "A"
AND NOT IN ITS PERSONAL CAPACITY**