

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

IN THE MATTER OF THE *BANKRUPTCY AND INSOLVENCY ACT*, R.S.C.
1985, c. B-3, AS AMENDED

AND IN THE MATTER OF THE PROPOSAL OF **YUAN HUA (MIKE) WANG**

APPLICATION UNDER THE *BANKRUPTCY AND INSOLVENCY ACT*, R.S.C.
1985, c. B-3, AS AMENDED

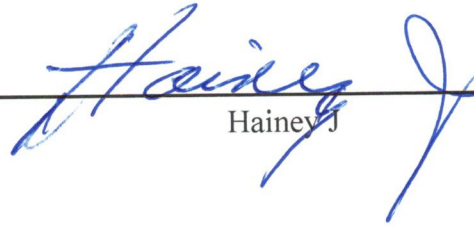
ENDORSEMENT
(APRIL 15, 2020)

1. This Motion was heard on March 31, 2020 by teleconference in accordance with the change in operations of the Commercial List in light of the COVID-19 crisis and the Chief Justice's Notice to the Profession dated March 15, 2020.
2. At the conclusion of the argument on this Motion, I indicated that I would provide the parties with my decision in due course. This is my decision.
3. Ferina Construction Limited ("Ferina") brought a Motion to terminate the period during which Yuan Hua (Mike) Wang ("Wang") may make a proposal ("NOI Period") pursuant to section 50.4 of the BIA. Wang brought a motion returnable on the same date to extend the NOI Period to make a Proposal. Wang has since filed a Proposal and accordingly his motion for an extension of time has been withdrawn. As part of my endorsement dated February 25, 2020 in setting these two motions down for a hearing, I ordered that if a Proposal was filed by Wang prior to the date that Ferina's motion was heard, Ferina's motion could proceed under section 50(12) of the BIA as a motion to terminate the NOI proceeding, which is what has occurred.
4. Ferina submits that Wang's proposal proceeding is an attempt to avoid the effect of orders made in the CCAA proceedings involving Forme Development Group Inc and certain affiliates ("Applicants").

5. The Applicants were granted CCAA protection in November 2018. Certain other affiliated companies were not granted protection (“Non-Applicants”). Wang is the sole shareholder, director and directing mind of the Applicants and the Non-Applicants.
6. From the outset of the debtor-driven CCAA proceedings stakeholders have expressed concerns about Wang’s conduct. As a result, KSV Kofman Inc. (“KSV”) was appointed as “super” Monitor with expanded powers.
7. In March 2019 Wang attempted to surreptitiously sell certain Non-Applicant properties and put approximately \$12 million out of reach of Wang’s creditors. As a result the Monitor brought a Motion for an order that all net proceeds from the sale be held in trust by the Monitor. In settling the Motion, Wang and the Non-Applicants gave an undertaking to the court that all sale proceeds would be held in trust. The undertaking also contemplated a claims process to determine claims against the Non-Applicants and Wang. In October 2019 a claims process was instituted by court order, that was acquiesced in by Wang’s legal counsel.
8. Ferina filed a claim against Wang, in his capacity as a guarantor, for \$2,284,336.94 in the claims process. The claims bar date was January 27, 2020. On that date Wang advised the Monitor that all claims filed against him in the claims process should be disallowed.
9. I agree with Ferina’s submissions that this proposal proceeding that Wang has recently commenced and the CCAA proceedings that he commenced 18 months ago are inextricably linked for the following reasons:
 - a. Wang is the sole shareholder of the Applicants and the Non-Applicants. Any equity remaining from the sale of the properties is an asset of Wang’s;
 - b. Wang has provided personal guarantees to various creditors in the CCAA proceedings, including Ferina;
 - c. Wang is subject to the undertaking to the Court in his personal capacity which forms part of a court order for the benefit of his creditors;
 - d. Wang is subject to a Claims Procedure Order in the CCAA proceedings which includes claims against him personally. Wang participated in negotiating this Order and agreed to it; and

- e. I have already made findings of lack of good faith in my Endorsement in the CCAA proceedings dated February 20, 2020, which, in my view, apply equally to Wang's recent commencement of this proposal proceeding under the BIA.
10. The main issue on this Motion is whether the proposal proceeding should continue. Under s.50(12) of the BIA the court may, on application by a creditor at any time before the meeting of creditors, declare that the proposal is deemed to have been refused by the creditors if the court is satisfied that:
 - (a) the debtor has not acted, or is not acting, in good faith and with due diligence;
 - (b) the proposal will not likely be accepted by the creditors; or
 - (c) the creditors as a whole would be materially prejudiced if the application under this subsection is rejected.
11. I have concluded that the proposal proceeding should not continue and should be terminated for the following reasons.
12. Wang has not acted in good faith because he has,
 - a. Authorized entirely duplicative assignments in bankruptcy of the four Non-Applicants that I found served no valid purpose;
 - b. Filed a Proposal that has no hope of being accepted by his creditors;
 - c. Permitted the Non-Applicants' legal counsel to bring an *ex parte* motion before me without making full and frank disclosure;
 - d. Kept his NOI filing secret despite exchanging e-mails with the Monitor the business day after swearing his Statement of Affairs; and
 - e. Refused to answer proper questions regarding his sources of financing.
13. Wang's pre-filing conduct is also a factor to consider when assessing his good faith under s.50(12) of the BIA. He has displayed a lack of transparency and good faith with respect to the CCAA proceedings because he has,
 - a. Secretly attempted to put \$12 million beyond the reach of his creditors;
 - b. Refused to be examined on his financial circumstances;
 - c. Refused to advise how the Non-Applicants are paying Gardiner Roberts LLP's fees.
14. My conclusion that Wang has not acted and is not acting with good faith is sufficient to justify the orders sought by Ferina on this Motion.

15. However, I have also concluded that it is not likely that Wang's proposal would be accepted for the reasons set out at paras 32-36 of Ferina's Factum which I adopt.
16. Further, I have also concluded that the creditors as a whole would be materially prejudiced if the proposal proceeding is not terminated for the same reasons that I gave in my Endorsement dated February 20, 2020. There is already a process in place in the CCAA proceedings to determine claims against Wang which should not be undermined by Wang's proposal.
17. For these reasons, Ferina's motion is granted on the terms of the attached Orders declaring that Wang's proposal is deemed to be refused by creditors and substituting KSV as Wang's Trustee in Bankruptcy.
18. These orders are effective today whether or not they are entered.



Hainey J