

Court File No. 31-2610052
Estate No. 31-2610052

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 NOTICE OF INTENTION TO MAKE A PROPOSAL OF **YUAN HUA (MIKE) WANG**

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

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 OTHER COMPANIES LISTED ON SCHEDULE "A" HERETO

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

FACTUM OF FERINA CONSTRUCTION LIMITED
(Motions returnable March 31, 2020)

March 17, 2020

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TABLE OF CONTENTS

	Page
FACTS	- 1 -
<i>Concerns About Wang Arose Quickly and Continued</i>	- 2 -
<i>The Undertaking and the Claims Process</i>	- 3 -
<i>Wang’s Attacks on CCAA Building Blocks</i>	- 4 -
<i>Wang’s Evidence on these Motions.....</i>	- 6 -
ISSUES & ARGUMENT.....	- 7 -
<i>Wang’s Lack of Due Diligence.....</i>	- 8 -
<i>Wang’s Lack of Good Faith.....</i>	- 8 -
<i>It Is Not Likely That Wang Will Make a Viable Proposal.....</i>	- 11 -
<i>Ferina Would Be Materially Prejudiced If The NOI Period Is Extended.....</i>	- 13 -
<i>If the NOI Period is Terminated, KSV Should Be Appointed As Wang’s Trustee</i>	- 14 -
CONCLUSION & ORDER SOUGHT.....	- 15 -
SCHEDULE “A”.....	- 1 -
SCHEDULE “B”.....	- 1 -
SCHEDULE “C”.....	- 19 -

1. Ferina Construction Limited (“**Ferina**”) brings a motion to terminate the period (the “**NOI Period**”) during which Yuan Hua (Mike) Wang (“**Wang**”) may make a proposal. Wang brings a competing motion to extend the NOI Period. This factum is filed in respect of both motions.
2. The Notice of Intention to Make a Proposal (“**NOI**”) that Wang filed is merely the latest attempt to avoid the effect of orders made in the *Companies’ Creditors Arrangement Act* proceeding (the “**CCAA Proceeding**”) involving Forme Development Group Inc. and certain affiliates (collectively, the “**Applicants**”).
3. The NOI Period should therefore end for any and all of three reasons:
 - a. Wang has not, and is not, acting in good faith and with due diligence;
 - b. it is not likely that Wang will be able to make a viable proposal, nor one that would be accepted by his creditors;
 - c. Wang’s creditors will be materially prejudiced if Wang’s NOI proceeding continues.

FACTS

4. In November 2018, the Applicants were granted protection in the CCAA Proceeding. Other affiliated companies (the “**Non-Applicants**”) were not.¹

¹ Twelfth Report of KSV Kofman Inc. as CCAA Monitor, without appendices (the “**12th Report**”), page 1, para 1.0(1), Ferina’s Supplementary Motion Record (“**Ferina’s SMR**”), Tab 7.

5. Wang is the sole shareholder, director, and directing mind of the Applicants and the Non-Applicants.²
6. The purpose of the CCAA Proceeding is to maximize recovery for all creditors, including those holding guarantees given by Wang personally through an orderly sale of the Applicants' and Non-Applicants' properties. A stay of proceedings was extended to Wang to give effect to that purpose.³

Concerns About Wang Arose Quickly and Continued

7. From the outset, stakeholders expressed serious reservations about a debtor-driven CCAA process. Accordingly, KSV Kofman Inc. ("**KSV**") was appointed as "super" Monitor with expanded powers (in such capacity, the "**Monitor**").⁴
8. Concerns about Wang's conduct continued. In March 2019, the Monitor learned that Wang was attempting to surreptitiously sell certain Non-Applicant properties and put approximately \$12 million out of reach of Wang's creditors.⁵

² Schedule "B" to the Order of Hailey J dated March 18, 2019, recital (a), Ferina's SMR, Tab 3.

³ Third Report of KSV Kofman Inc. as CCAA Monitor, without appendices (the "**3rd Report**"), page 4, para 4.0(6), and page 8, para 7.0(1)(a), Ferina's SMR, Tab 2.

⁴ Supplement to the Twelfth Report of the KSV Kofman Inc. as CCAA Monitor, without appendices (the "**12th Report Supplement**"), page 4, para 5.0(1), Ferina's SMR, Tab 8.

⁵ 3rd Report, pages 5-7, para 5.0, Ferina's SMR, Tab 2; 12th Report Supplement, page 7, para 7.0(5), Ferina's SMR, Tab 8.

9. Accordingly, the Monitor brought a motion for all net proceeds of sale of the Non-Applicants' properties to be held in trust by the Monitor.⁶ In settling that motion, Wang and the Non-Applicants gave the Court an undertaking (the "**Undertaking**") that was later approved by court order.⁷

The Undertaking and the Claims Process

10. The purpose of the Undertaking was to:

provide a mechanism to facilitate the orderly sale of the Non-Applicants' real property and to hold in a trust account of Cassels Brock & Blackwell LLP ("**CBB**"), the Non-Applicants' legal counsel, any surplus funds realized therefrom [the "**Surplus**"] for the benefit of all creditors, including those with personal guarantee claims against Mr. Wang. As detailed in the [3rd Report Supplement], the Monitor was concerned with the proceeds of the Non-Applicants' properties being paid directly to Mr. Wang or otherwise not being made available to satisfy guarantee and other potential claims against Mr. Wang, as well as unsecured claims against the Non-Applicants.⁸

11. The Undertaking also contemplated a claims process in order to determine claims against the Non-Applicants and Wang. In October 2019, a claims process was instituted by court order.⁹ The Monitor, various stakeholders, and Wang, through counsel, negotiated its terms

⁶ 3rd Report, page 5, para 5.0(2), Ferina's SMR, Tab 2; 12th Report Supplement, page 7, para 7.0(5), Ferina's SMR, Tab 8.

⁷ 12th Report, page 7, para 2.1(3), Ferina's SMR, Tab 7; Schedule "B" to the Order of Hailey J dated March 18, 2019, Ferina's SMR, Tab 3.

⁸ Ninth of KSV Kofman Inc. as CCAA Monitor, without appendices (the "**9th Report**"), page 3, para 2.0(1), Ferina's SMR, Tab 5.

⁹ Claims Procedure Order of Hailey J dated October 22, 2019, Ferina's SMR, Tab 6.

extensively. Wang's counsel attended the motion to approve the claims process and did not oppose it.¹⁰

12. Ferina was a mortgagor of one of the Applicants, and is an unsecured creditor of Wang's pursuant to a written guarantee. Ferina filed a claim against Wang in the claims process for \$2,284,336.94¹¹
13. The claims bar date under the claims procedure was January 27, 2020 (the "**Claims Bar Date**"). On the Claims Bar Date, Wang advised the Monitor that all claims filed against him in the claims process should be disallowed.¹²

Wang's Attacks on CCAA Building Blocks

14. In June 2019, Wang sought an amendment to the Undertaking to permit his personal counsel to be funded from the Surplus. Wang's motion was hotly contested, and adjourned *sine die*. Wang was required to provide full financial disclosure to the Monitor before any return of that motion.¹³ To date, Wang has not given satisfactory disclosure, and has not sought to return his motion.¹⁴
15. In the days surrounding the Claims Bar Date, without prior notice to the Monitor or the stakeholders in the CCAA Proceeding,

¹⁰ 12th Report, pages 2-3, paras 1.0(6-7), Ferina's SMR, Tab 7.

¹¹ Affidavit of Gloria Kalkounis, sworn February 19, 2020, Ferina's Motion Record, Tab 2.

¹² 12th Report, page 12, paras 5.0(3-4), Ferina's SMR, Tab 7.

¹³ Endorsement of Hainey J dated August 7, 2019, Ferina's SMR, Tab 4.

¹⁴ 12th Report, page 10, paras 3.1(2-4), Ferina's SMR, Tab 7.

- a. Wang filed his NOI. He did not disclose his filing when exchanging e-mails with the Monitor on the Claims Bar Date, despite swearing his Statement of Affairs the previous business day;
 - b. Wang caused four of the Non-Applicants (the “**Four Non-Applicants**”) to file assignments in bankruptcy; and
 - c. CBB and Gardiner Roberts LLP, the then and intended counsel to the Non-Applicants, attended in chambers for the purpose of amending the Undertaking by transferring the Surplus from CBB to Gardiner Roberts LLP. The next day, CBB filed a motion record for that relief. The motion record did not disclose that the motion was *ex parte*, that any of the above filings were made, nor that Gardiner Roberts LLP was a secured creditor of the Non-Applicants for at least \$237,000.¹⁵
16. In February 2020, the Non-Applicants brought a motion to terminate the CCAA Proceeding and bankrupt all the Non-Applicants. Wang swore an affidavit in support of the Non-Applicants’ motion.¹⁶

¹⁵ 12th Report Supplement, page 3, paras 3.0(1-2), Ferina’s SMR, Tab 7.

¹⁶ 12th Report Supplement, pages 5-6, paras 6.0 and 7.0, Ferina’s SMR, Tab 8.

Wang's Evidence on these Motions

17. The First Report of Wang's Proposal Trustee assumes "the integrity and truthfulness of the information and explanations presented to it by [Wang]" and is "based solely on the information (financial or otherwise) made available" by Wang.¹⁷
18. Wang's proposal will likely be funded from the Surplus.¹⁸ Wang has "essentially no current assets" and "extremely limited personal cash flow".¹⁹ Wang intends to make a proposal once he has "had further time to consider [his] options and sources of possible funding", and once issues in the CCAA Proceeding, as described in Exhibit "B" to Wang's Affidavit, are resolved.²⁰ However, Wang has refused to answer questions about his funding and about his issues with the CCAA Proceeding.²¹
19. Wang filed letters from "various possible creditors in the NOI proceeding".²² None of writers state that they are creditors of Wang's.²³ Further, the context of these letters is unclear, only one of the writers actually filed a claim in the claims process, other writers

¹⁷ First Report of the Proposal Trustee dated February 19, 2020, para 10, Wang's Responding Motion Record, Tab 2.

¹⁸ Wang's Affidavit at para 20, Wang's Motion Record, Tab 2.

¹⁹ Affidavit of Yuan Hua (Mike) Wang, sworn February 19, 2020 ("**Wang's Affidavit**") at paras 15-16, Wang's Motion Record, Tab 2.

²⁰ Wang's Affidavit at paras 19 and 24-25, Wang's Motion Record, Tab 3.

²¹ Exhibit "B" to the Affidavit of Maria Magni, sworn March 17, 2020 (the "**Magni Affidavit**"), Ferina's SMR, Tab B.

²² Affidavit of Jessica Wuthmann, sworn March 2, 2020, at para 5, Wang's Responding Motion Record, Tab 1.

²³ Exhibits "C"- "F" to the Affidavit of Jessica Wuthmann, sworn March 2, 2020, Wang's Responding Motion Record, Tabs C-F.

are not representatives of the syndicated mortgage investors that they purport to be, and one is Wang's lawyer.²⁴

ISSUES & ARGUMENT

20. The central issue on these motions is whether the NOI Period should continue. An NOI Period may be extended for up to 45 days where the court is satisfied that:²⁵
- a. the insolvent person has acted, and is acting, in good faith and with due diligence;
 - b. the insolvent person would likely be able to make a viable proposal if the extension were granted; and,
 - c. no creditor would be materially prejudiced if the extension were granted.
21. Where there are competing motions to extend and terminate an NOI Period, the extension motion should proceed first.²⁶ If Wang's motion fails, Ferina's motion to terminate the NOI Period should succeed.
22. The NOI Period should not be extended, and should end, for any one of three reasons:
- a. Wang has not acted, and is not acting, in good faith and with due diligence;
 - b. it is not likely that Wang will make a viable proposal; and,

²⁴ Second Supplement to the Twelfth Report of KSV Kofman Inc., as CCAA Monitor, without appendices (the "**12th Report 2nd Supplement**"), pages 2-4, para 2.0, Ferina's SMR, Tab 9.

²⁵ Section 50.4(9) of the *Bankruptcy and Insolvency Act*, RSC 1985, c B3.

²⁶ *Enirgi Group Corp v Andover Mining Corp*, 2013 BCSC 1833 at para 62 [*Enirgi*], Ferina's Book of Authorities ("**Ferina's BOA**"), Tab 1.

c. Ferina would be materially prejudiced if the NOI Period is extended.

23. If the NOI Period is terminated, Wang will be deemed bankrupt. Appointing KSV as Wang's bankruptcy would be appropriate given KSV's knowledge of these proceedings and the savings to creditors that would result.

Wang's Lack of Due Diligence

24. Wang has not acted, and is not acting, with due diligence. On a motion to extend an NOI Period, the debtor must put forward at least the "germ of a plan".²⁷ There is no evidence that Wang has even a hint of one. The NOI Period should end for Wang's lack of due diligence alone.

Wang's Lack of Good Faith

25. The court should take a purposive approach to interpreting s.50.4 by allowing the scheme and object of the BIA provisions at issue to give meaning to the term "good faith".²⁸
26. The purpose of the BIA is two-fold: to ensure an equitable distribution of the insolvent person's assets among their creditors while permitting their financial rehabilitation.²⁹
27. The proposal sections of the BIA are "not intended to create an obstacle course for creditors". They are intended to complement the overall object of the BIA by giving the

²⁷ *Cumberland Trading Inc, Re* (1994), 23 CBR (3d) 225 at para 8 (Ont Gen Div Commercial List) [*Cumberland Trading*], Ferina's BOA, Tab 2.

See also *NS United Kaiun Kaisha Ltd v Cogent Fibre Inc*, 2015 ONSC 5139 at para 12 [*NS United*], Ferina's BOA, Tab 3.

²⁸ *US Steel Canada Inc (Re)*, 2016 ONCA 662 at paras 43-45, Ferina's BOA, Tab 4.

²⁹ *Alberta (Attorney General) v Moloney*, 2015 SCC 51 at para 32, Ferina's BOA, Tab 5.

debtor sufficient breathing room to develop a viable proposal.³⁰ The result of a viable proposal will give effect to the BIA's purposes by equitably distributing the debtor's assets among their creditors and permitting their financial rehabilitation, with the added benefit of avoiding bankruptcy.

28. Because a successful proposal requires creditor and court approval, the debtor's "honesty is at the core of [their] good faith."³¹ Complete transparency into the insolvent person's financial affairs is expected, and necessary, to give effect to the purpose of a proposal and the dual purposes of the BIA.³²
29. The debtor's conduct during the proceeding is the focus of the inquiry into their good faith.³³ Since swearing his Statement of Affairs in his NOI proceeding, Wang has failed to act in good faith:
 - a. by authorizing the "entirely duplicative" assignments in bankruptcy of the Four Non-Applicants that "serve[d] no valid purpose",³⁴
 - b. similarly, by filing an NOI that has no hope of leading to a viable proposal (as outlined below);

³⁰ *NS United* at paras 20-21 and 36, Ferina's BOA, Tab 3.

³¹ *Re Canada North Group Inc*, 2017 ABQB 508 at para 36 [*Re Canada North*], aff'd 2019 ABCA 314, Ferina's BOA, Tab 6.

³² *Milan, Re*, 2012 ONSC 2899 at para 40 (Commercial List), Ferina's BOA, Tab 7.

³³ *Re 4519922 Canada Inc*, 2015 ONSC 124 at para 45 Ferina's BOA, Tab 9.

³⁴ Endorsement of Hainey J dated February 20, 2020, para 3(vi)(b), Ferina's BOA, Tab 8.

- c. by permitting the Non-Applicants' lawyers to bring an *ex parte* motion without making full and frank disclosure;
 - d. by keeping his NOI filing secret for as long as possible, despite exchanging e-mails with the Monitor the business day after swearing his Statement of Affairs;
 - e. by refusing to answer questions regarding his sources of funding.³⁵
30. The debtor's pre-filing conduct is also a valid consideration when assessing good faith,³⁶ particularly where such conduct was in the context of another insolvency proceeding. Restricting an interpretation of "has acted... in good faith" to Wang's post-NOI filing conduct would create an arbitrary distinction between two periods where Wang sought protection from the Court's insolvency jurisdiction.
31. Wang has displayed a lack of transparency and respect for the CCAA Proceeding.³⁷ Among other things, he has:
- a. secretly attempted to put \$12 million beyond the reach of creditors,³⁸

³⁵ Exhibit "B" to the Magni Affidavit, Ferina's SMR, Tab B.

³⁶ *Re Canada North* at para 53, Ferina's BOA, Tab 6.

³⁷ 3rd Report, page 5, para 5.0(2), Ferina's SMR, Tab 2.

³⁸ 3rd Report, pages 5-7, para 5.0, Ferina's SMR, Tab 2; 12th Report Supplement, page 7, para 7.0(5), Ferina's SMR, Tab 8.

- b. refused to be examined on his financial circumstances despite claiming that he has no source of funds, all the while managing to find over \$140,000 to pay forbearance fees to some of the Non-Applicants' creditors;³⁹ and
- c. refused to advise how the Non-Applicants are paying Gardiner Roberts LLP's fees.⁴⁰

It Is Not Likely That Wang Will Make a Viable Proposal

32. Wang must demonstrate a likelihood that he will be able to make a viable proposal.⁴¹ A viable proposal is one that would be reasonable on its face to a reasonable creditor.⁴² To be reasonable, a proposal must be more advantageous to creditors than a bankruptcy.⁴³
33. Wang is not likely to make a viable proposal. His motion should fail for any and all of three reasons:
- a. Wang has only baldly asserted that a proposal is coming. Bald assertions supported by a paucity of evidence are not enough for a court to determine that a debtor is likely to make a viable proposal;⁴⁴

³⁹ 12th Report, page 9, para 3.0(5)(e), Ferina's SMR, Tab 7; 12th Report Supplement, page 4, para 4.0(5), Ferina's SMR, Tab 8.

⁴⁰ 12th Report Supplement, page 3, para 3.0(2), Ferina's SMR, Tab 8.

⁴¹ *NS United* at para 21, Ferina's BOA, Tab 3.

⁴² *Cumberland Trading* at para 4, Ferina's BOA, Tab 2; *Enirgi, infra*, at para 66, citing *Cumberland*, Ferina's BOA, Tab 1.

⁴³ *Mayer, Re*, 1994 CarswellOnt 268 (Gen Div) at para 18, Ferina's BOA, Tab 10.

⁴⁴ *NS United* at paras 31-32, Ferina's BOA, Tab 3.

- b. Wang's creditors already expect that the Surplus will be distributed to them in the CCAA Proceeding. While not determinative, it is a proper consideration that Ferina, and other creditors, will veto any proposal that provides otherwise.⁴⁵ More importantly, however, is that there is not even a hint that a proposal would be more advantageous to Wang's creditors than a bankruptcy;
 - c. a proposal will not be approved by the court where there has not been "full and complete disclosure" by the debtor of their financial position.⁴⁶ Wang has not made such disclosure. He therefore cannot make a viable proposal.
34. A comparison of *NS United* and *Enirgi* enforces these reasons to refuse Wang's motion. In *NS United*, the debtor filed an NOI believing that its creditor would be expeditiously taking enforcement steps.⁴⁷ Penny J held that the debtor failed to demonstrate that it was acting in good faith and with due diligence given that the evidence in support of the extension lacked detail and amounted to "vague, conclusory assertions."⁴⁸
35. In *Enirgi*, the court accepted that the debtor had acted diligently in pursuing a loan application and had a strong asset base. These factors supported a likelihood that the debtor could present a viable proposal.⁴⁹ Unlike in *NS United*, where the debtor had minimal

⁴⁵ *NS United* at para 31, Ferina's BOA, Tab 3.

⁴⁶ *Milan, Re*, 2012 ONSC 2899 at paras 40-42, Ferina's BOA, Tab 7.

⁴⁷ *NS United* at para 4, Ferina's BOA, Tab 3.

⁴⁸ *NS United* at paras 9-10, 12 and 20, Ferina's BOA, Tab 3.

⁴⁹ *Enirgi* at para 74, Ferina's BOA, Tab 1.

assets, the debtor in *Enirgi* had assets valued approximately 4.5 times the amount of its liabilities, with millions of dollars in annual cash flows.⁵⁰

36. Like the debtor's last-minute filing in *NS United*, Wang filed his NOI on the eve of the Claims Bar Date. He has made only vague assertions that a proposal is forthcoming. Unlike the debtor in *Enirgi*, however, Wang does not have substantial assets and cash flows. It is not likely that Wang will make a viable proposal.

Ferina Would Be Materially Prejudiced If The NOI Period Is Extended

37. There is already a process to determine claims against Wang. The Monitor intends to seek an order distributing the Surplus among Wang's creditors with proven claims. The same prejudice that this Court recognized as a result of the bankruptcies of the Four Non-Applicants will befall Wang's creditors if the NOI Period is extended:

the assignments into bankruptcy are entirely duplicative and serve no valid purpose. The Non-Applicants' creditor relationships are already being managed in these CCAA proceedings and the Court supervised claims process, all of which was consented to by Mr. Wang, the controlling mind of the Non-Applicants. If these assignments are not annulled, they will stay the Court approved claims process at the expense of creditors and the Court will not accomplish anything already achieved by these unique and heavily negotiated CCAA proceedings. The claims process is one of several integral "building blocks" in the CCAA proceedings and, in my view, must be respected. The assignments must not be permitted to undermine this important building block [see Chief Justice Morawetz' Reasons at paragraph 81 in *Target Canada Co.*, 2015 ONSC 303].⁵¹

⁵⁰ *Energi* at paras 68-73, Ferina's BOA, Tab 1.

⁵¹ Endorsement of Hainey J dated February 20, 2020, para 3(vi)(b), Ferina's BOA, Tab 8.

If the NOI Period is Terminated, KSV Should Be Appointed As Wang's Trustee

38. Where it is in the best interest of creditors, a court may appoint a trustee in lieu of the proposal trustee after declaring an NOI Period terminated.⁵²
39. The professional advisors who Wang has selected to implement his plan include those who:
- a. attended in chambers to obtain an amendment to the Undertaking without notice to any party including the Monitor;
 - b. filed a motion record without serving it on any party on the Service List that failed to make full and frank disclosure;
 - c. obtained an Order amending the Undertaking that would have placed approximately \$11 million in the hands of a creditor of the Non-Applicants and of Wang;
 - d. accepted the NOI filing without notice to the Monitor, and did not give notice for several days, despite the obviously related CCAA Proceeding;
 - e. took security in the Non-Applicants to secure legal fees without notice to the Monitor or any stakeholder; and
 - f. include the new law firm of former counsel to the Non-Applicants who undertook (a) – (c), above, on his last day at CBB.

⁵² Section 57.1 of the BIA.

40. It would be in the best interests of creditors to appoint KSV as Wang's bankruptcy trustee. KSV has pre-existing knowledge of Wang's financial circumstances, is directing the claims process, and will be involved in the future distribution of the Surplus. There will be minimal duplication of work and cost with KSV as Wang's trustee.

CONCLUSION & ORDER SOUGHT

41. Wang has not acted in good faith, nor with due diligence. He has not demonstrated a likelihood that he can make a viable proposal. Ferina, and other creditors, would be prejudiced by the extension of the NOI Period. Ferina therefore seeks the following orders:
- a. an order dismissing Wang's motion;
 - b. an order declaring that the period during which Wang can make a proposal is immediately terminated; and
 - c. an order appointing KSV as Wang's trustee in bankruptcy.

ALL OF WHICH IS RESPECTFULLY SUBMITTED, this 17th day of March, 2020



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SCHEDULE "A"
THE APPLICANTS

3310 Kingston Development Inc.
1296 Kennedy Development Inc.
1326 Wilson Development Inc.
5507 River Development Inc.
4439 John Development Inc.
2358825 Ontario Ltd.
250 Danforth Development Inc.
159 Carrville Development Inc.
169 Carrville Development Inc.
189 Carrville Development Inc.
27 Anglin Development Inc.
29 Anglin Development Inc.

SCHEDULE “B”
LIST OF AUTHORITIES

NO.	CASE
1	<i>Enirgi Group Corp v Andover Mining Corp</i> , 2013 BCSC 1833
2	<i>Cumberland Trading Inc, Re (1994)</i> , 23 CBR (3d) 225 (Ont Gen Div Commercial List)
3	<i>NS United Kaiun Kaisha Ltd v Cogent Fibre Inc</i> , 2015 ONSC 5139
4	<i>US Steel Canada Inc (Re)</i> , 2016 ONCA 662
5	<i>Alberta (Attorney General) v Moloney</i> , 2015 SCC 51
6	<i>Re Canada North Group Inc</i> , 2017 ABQB 508, aff’d 2019 ABCA 314
7	<i>Milan, Re</i> , 2012 ONSC 2899 (Commercial List)
8	Endorsement of Hainey J dated February 20, 2020
9	<i>Re 4519922 Canada Inc</i> , 2015 ONSC 124
10	<i>Mayer, Re</i> , 1994 CarswellOnt 268 (Gen Div)

SCHEDULE “C”
TEXT OF STATUTES, REGULATIONS & BY – LAWS

Bankruptcy and Insolvency Act, R.S.C. 1985, c. B-3, as amended

Sections 4.2(1) and 4.2(2)

Good faith

4.2(1) Any interested person in any proceedings under this Act shall act in good faith with respect to those proceedings.

Good faith — powers of court

4.2(2) If the court is satisfied that an interested person fails to act in good faith, on application by any interested person, the court may make any order that it considers appropriate in the circumstances.

Section 14.04

Removal and appointment

14.04 The court, on the application of any interested person, may for cause remove a trustee and appoint another licensed trustee in the trustee’s place.

Sections 50.4(8), 50.4(9), 50.4(10) and 50.4(11)

Where assignment deemed to have been made

50.4(8) Where an insolvent person fails to comply with subsection (2), or where the trustee fails to file a proposal with the official receiver under subsection 62(1) within a period of thirty days after the day the notice of intention was filed under subsection (1), or within any extension of that period granted under subsection (9),

(a) the insolvent person is, on the expiration of that period or that extension, as the case may be, deemed to have thereupon made an assignment; ... (emphasis added)

Extension of time for filing proposal

50.4(9) The insolvent person may, before the expiry of the 30-day period referred to in subsection (8) or of any extension granted under this subsection, apply to the court for an extension, or further extension, as the case may be, of that period, and the court, on notice to any interested persons that the court may direct, may grant the extensions, not exceeding 45 days for any individual extension and not exceeding in the aggregate five months after the expiry of the 30-day period referred to in subsection (8), if satisfied on each application that

(a) the insolvent person has acted, and is acting, in good faith and with due diligence;

- (b) the insolvent person would likely be able to make a viable proposal if the extension being applied for were granted; and
- (c) no creditor would be materially prejudiced if the extension being applied for were granted.

Court may not extend time

50.4(10) Subsection 187(11) does not apply in respect of time limitations imposed by subsection (9).

Court may terminate period for making proposal

50.4(11) The court may, on application by the trustee, the interim receiver, if any, appointed under section 47.1, or a creditor, declare terminated, before its actual expiration, the thirty day period mentioned in subsection (8) or any extension thereof granted under subsection (9) if the court is satisfied that

- (a) the insolvent person has not acted, or is not acting, in good faith and with due diligence,
- (b) the insolvent person will not likely be able to make a viable proposal before the expiration of the period in question,
- (c) the insolvent person will not likely be able to make a proposal, before the expiration of the period in question, that will be accepted by the creditors, or
- (d) the creditors as a whole would be materially prejudiced were the application under this subsection rejected,

and where the court declares the period in question terminated, paragraphs (8)(a) to (c) thereupon apply as if that period had expired.

Section 57.1

Appointment of new trustee

57.1 Where a declaration has been made under subsection 50(12) or 50.4(11), the court may, if it is satisfied that it would be in the best interests of the creditors to do so, appoint a trustee in lieu of the trustee appointed under the notice of intention or proposal that was filed.

IN THE MATTER OF THE *BANKRUPTCY AND INSOLVENCY ACT*, RSC 1985, C B-3, AS AMENDED
AND IN THE MATTER OF THE NOTICE OF INTENTION TO MAKE A PROPOSAL OF YUAN HUA (MIKE) WANG

Court File No. / Estate No.: 31-2610052

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., et al

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

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(COMMERCIAL LIST)

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