



COURT FILE NUMBER

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COURT

COURT OF KING'S BENCH OF ALBERTA

JUDICIAL CENTRE

CALGARY

APPLICANT

SEQUENT AI LTD.

RESPONDENTS

GENESIS INTEGRATION INC. and  
FUSION CINE SALES & RENTALS INC.

DOCUMENT

BRIEF OF LAW OF THE APPLICANT,  
SEQUENT AI LTD.

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## PART I – INTRODUCTION

1. This Brief of Law is filed in support of an application (the "**Application**") before the Court of King's Bench of Alberta (the "**Court**"), made by Sequent AI Ltd. ("**Sequent**"), in its capacity as collateral and administrative agent (in such capacity (the "**Agent**")) for the lenders party to the Credit Agreement, which at the current time is Sequent (in such capacity, the "**Lender**").
2. The Application is for, among other things, a consent receivership order (the "**Receivership Order**") appointing KSV Restructuring Inc. ("**KSV**") as receiver and manager (in such capacity, the "**Receiver**")<sup>1</sup> over the current and future assets, undertakings and properties of Genesis Integration Inc. ("**Genesis**") and Fusion Cine Sales & Rentals Inc. ("**Fusion**", and collectively with Genesis, the "**Debtors**").
3. Capitalized terms not otherwise defined herein have the meanings ascribed to them in the Pre-Filing Report of the Receiver, to be filed (the "**Pre-Filing Report**"), or the Affidavit of Kyle Lanzinger, dated October 18, 2023 (the "**Affidavit**"), filed in connection with this Application, as applicable.

## PART II – FACTS

4. The facts relevant to the Application are set out in detail in the Pre-Filing Report and the Affidavit. A summary of the key facts as they relate to the relief requested in the Application is set out below.
  - a. The Lender and the Debtors are parties to a Credit Agreement (as defined in the Affidavit).<sup>2</sup>
  - b. The Credit Agreement was initially entered into in December, 2020, by Cortland Credit Lending Corporation (an unrelated third party) ("**Cortland**"), as lender, 965591 Alberta Ltd. ("**965 Alberta**"), as borrower, and the Debtors, as guarantors.<sup>3</sup>

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<sup>1</sup> As used herein, the term Receiver refers to KSV in its capacity as proposed Receiver and court-appointed Receiver when and if appointed.

<sup>2</sup> Affidavit at paras 11-14, and para 33.

<sup>3</sup> Affidavit at para 11.

- c. 965 Alberta did not carry on any independent business. It was a holding company that borrowed funds under the Credit Agreement for the purpose of lending to its operating subsidiaries which, at that time, were Genesis and Fusion.<sup>4</sup>
- d. Due to financial difficulties facing 965 Alberta and Genesis, Cortland, in September 2022, made an application to the Court seeking the appointment of a receiver over the current and future assets, undertakings and property of Genesis and 965 Alberta.<sup>5</sup> Fusion was not included in that receivership application as it was a wholly owned subsidiary of Genesis and all of the shares issued by Fusion already constituted property that was subject to the receivership.<sup>6</sup>
- e. On September 13, 2022, the Court granted a consent receivership order which, among other things, appointed KSV as the receiver of Genesis and 965 Alberta.<sup>7</sup>
- f. The primary purpose of the previous receivership proceedings was to facilitate the purchase and sale of all issued and outstanding shares of Genesis (then owned by 965 Alberta), pursuant to a Share Purchase Agreement (the "**SPA**"), to Sequent AI Exchangeco Ltd. (a wholly owned subsidiary of Sequent), with a view to facilitating the continued operations of the Debtors.<sup>8</sup> As part of the SPA, Genesis was obligated to retain its secured debt as well as a significant portion of its unsecured trade debt.<sup>9</sup> Further, due to the proposed acquisition of Fusion's shares, Fusion's creditor obligations would be unaffected by either the receivership proceedings or the SPA.<sup>10</sup>
- g. The Court ultimately granted an Approval and Reverse Vesting Order on September 13, 2022, which, among other things, approved the SPA.<sup>11</sup> Following the closing of the SPA, the Court, on September 29, 2022, granted a discharge order discharging KSV as the receiver of the assets of Genesis.<sup>12</sup>
- h. Notwithstanding the Debtors efforts to successfully operate following the closing of the SPA and the prior receivership proceedings, the Debtors have continued to incur

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<sup>4</sup> Affidavit at para 12.

<sup>5</sup> Pre-Filing Report at para 2.1.1

<sup>6</sup> Ibid.

<sup>7</sup> Affidavit at para 17

<sup>8</sup> Affidavit at para 18.

<sup>9</sup> Pre-filing report at para 2.1.3 and 2.1.5.

<sup>10</sup> Pre-filing report at para 2.1.5.

<sup>11</sup> Affidavit at para 20.

<sup>12</sup> Pre-filing report at para 2.1.6.

significant operating losses as a result of declining revenues and supply chain difficulties.<sup>13</sup>

- i. As a direct consequence, multiple Events of Default (as defined in the Credit Agreement) have occurred.<sup>14</sup> Further, the Debtors have received various demands and threats for payment from unpaid suppliers,<sup>15</sup> Genesis has received a notice from one of its landlords threatening the termination of its tenancy,<sup>16</sup> and Genesis has received an order for payment under the Employment Standards Code (Alberta) in connection with unpaid termination and severance obligations.<sup>17</sup>
- j. Due to these financial challenges, the Debtors have been unable to satisfy their obligations under the Credit Agreement and have effectively ceased operations.<sup>18</sup>
- k. As at October 6, 2023, the amount owing under the Credit Agreement was \$8,208,075.05.<sup>19</sup>
- l. In consultation with Cortland, Sequent (the ultimate parent of Sequent AI Exchangeco Ltd. and the Debtors), agreed to execute an Assignment of Debt and Security dated October 6, 2023 (the "**Assignment of Debt and Security**"), which assigned all of Cortland's right, title, and interests in the Credit Agreement and the associated security to Sequent.<sup>20</sup>
- m. The primary purpose of the Assignment of Debt and Security was to allow Sequent to achieve certain efficiencies in the liquidation and wind down of the Debtors' business pursuant to a court appointed receivership.<sup>21</sup>
- n. On October 18, 2023, the Agent delivered demand letters and notices of intention to enforce security to Genesis and Fusion pursuant to section 244 of the BIA.<sup>22</sup> By acknowledgements and consents authorized later that day, the Debtors each waived

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<sup>13</sup> Affidavit at para 27.

<sup>14</sup> Affidavit at para 37.

<sup>15</sup> Affidavit at para 28.

<sup>16</sup> Affidavit at para 28.

<sup>17</sup> Affidavit at para 29.

<sup>18</sup> Affidavit at para 49.

<sup>19</sup> Affidavit at para 35.

<sup>20</sup> Affidavit at para 33.

<sup>21</sup> Affidavit at para 32.

<sup>22</sup> Affidavit at para 39.

the ten-day notice period under section 244 of the BIA and consented to the Agent bringing an Application for the appointment of KSV as Receiver.<sup>23</sup>

- o. KSV, a licensed insolvency trustee, is already familiar with the Debtors due to its appointment in the prior receivership proceedings and has consented to act as Receiver.<sup>24</sup>

### **PART III – ISSUES**

5. The following issue is before the Court: is it just and convenient for the Court to grant the Receivership Order and appoint KSV as Receiver?

### **PART IV – LAW AND ANALYSIS**

6. A court may appoint a receiver pursuant to Section 243 of the *Bankruptcy and Insolvency Act* (the "**BIA**") where it is just or convenient to do so. In determining whether it is just or convenient to appoint a receiver, the Court should have regard to all the circumstances of the case, the nature of the assets and the rights of interested parties.<sup>25</sup>
7. The Debtors have consented to the Receivership Order and the appointment of KSV as Receiver.<sup>26</sup>
8. This Court recently articulated the considerations applicable in determining whether to grant a consent Receivership Order in the *Proform Management* decision.<sup>27</sup> At paragraphs 60-62, the Court distilled the following guiding principles:

[60] On how to approach a consent order, the guiding principles are as follows:

- the Court is not obliged, from the mere fact of consent, to grant a consent order; and
- the Court must be satisfied (at minimum) that:
  - it has the jurisdiction to grant the order;

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<sup>23</sup> Affidavit at para 41.

<sup>24</sup> Affidavit at para 54 and 55.

<sup>25</sup> *Elleway Acquisitions Limited v The Cruise Professionals Limited*, 2013 ONSC 6866 at para 26 [TAB 1].

<sup>26</sup> Affidavit at para 41.

<sup>27</sup> *Servus Credit Union Ltd. v Proform Management Inc.*, 2020 ABQB 316 at paras 57-63 [*Proform Management*] [TAB 2].

- if it has the jurisdiction, any preconditions (statutory or common law) to the exercise of its jurisdiction are met;
- consent has actually been provided;
- the consent is not the product of fraud, duress, or undue influence or otherwise tainted;
- where the consent was provided on a conditional basis (e.g. order not to be entered unless certain conditions are satisfied), the condition(s) are satisfied;
- the proposed relief does not exceed that consented to; and
- consent aside, the ordered relief is warranted in the circumstances.

[61] The level of scrutiny required depends on the circumstances. The onus to raise a concern rests with the consenting (or ostensibly consenting) party. If that party is present at the application for the order and raises no concerns, or if it is content to allow the other party (or parties) to appear at the application and relay the "we have consented" message, the Court can usually proceed on the basis that all of these elements are satisfied.

[62] At minimum, the Court may have to consider whether it has the jurisdiction to grant the order i.e. to guard against parties (inadvertently or otherwise) pulling the Court outside its jurisdiction.

9. There is no question that the Debtors have consented to the Receivership Order, that this Court has the jurisdiction to grant the Receivership Order, or that the Receivership Order is supported on a consideration of its merits.
10. In respect of the merits of the relief sought, the factors to consider in determining whether to appoint a receiver are set out in the *Paragon* decision.<sup>28</sup> At paragraph 27 of *Paragon*, the Court highlighted the following relevant factors:

[27] The factors a court may consider in determining whether it is appropriate to appoint a receiver include the following:

- a) whether irreparable harm might be caused if no order were made, although it is not essential for a creditor to establish irreparable harm if a receiver is not appointed, particularly where the appointment of a receiver is authorized by the security documentation;
- b) the risk to the security holder taking into consideration the size of the debtor's equity in the assets and the need for protection or safeguarding of the assets while litigation takes place;

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<sup>28</sup> *Paragon Capital Corporation Ltd. v Merchants & Traders Assurance Company*, 2002 ABQB 430 at paras 27-28 [*Paragon*] [TAB 3].

- c) the nature of the property;
- d) the apprehended or actual waste of the debtor's assets;
- e) the preservation and protection of the property pending judicial resolution;
- f) the balance of convenience to the parties;
- g) the fact that the creditor has the right to appoint a receiver under the documentation provided for the loan;
- h) the enforcement of rights under a security instrument where the security-holder encounters or expects to encounter difficulty with the debtor and others;
- i) the principle that the appointment of a receiver is extraordinary relief which should be granted cautiously and sparingly;
- j) the consideration of whether a court appointment is necessary to enable the receiver to carry out its' duties more efficiently;
- k) the effect of the order upon the parties;
- l) the conduct of the parties;
- m) the length of time that a receiver may be in place;
- n) the cost to the parties;
- o) the likelihood of maximizing return to the parties; and
- p) the goal of facilitating the duties of the receiver.

11. In this case, it is just and convenient to grant the Receivership Order and appoint KSV as Receiver, including for the following reasons:

- a. the Credit Agreement and the security documents provide Sequent with the right to appoint the Receiver as a result of the defaults of the Debtors under the Credit Agreement and security documents.<sup>29</sup> The fact that a security agreement acknowledges the right of the creditor to make an application for a receiver is strong support for the imposition of a receiver;<sup>30</sup>

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<sup>29</sup> Affidavit at para 51.

<sup>30</sup> *Paragon*, *supra* note 28 at para 28; *Textron Financial Canada Ltd v Chetwynd Motels Ltd.*, 2010 BCSC 477 at para 75 [TAB 4]; *Maple Trade Financial Inc v CY Oriental Holdings Ltd.*, 2009 BCSC 1527 at para 26 [TAB 5].



- b. the Debtors have consented to the appointment of the Receiver;
- c. there is no known opposition by any interested party to the appointment of the Receiver;
- d. KSV, due to its prior appointment as receiver in the receivership proceedings of Genesis and 965 Alberta is, already familiar with the financial circumstances of the Debtors and their arrangements with the Agent and the Lender;<sup>31</sup>
- e. the Lender is not prepared to extend any further credit under the Credit Agreement or provide the Debtors with any waivers of its rights;<sup>32</sup>
- f. each of Genesis and Fusion have effectively ceased operations; and
- g. the receivership proceedings provide the optimal court-supervised realization vehicle to preserve value for stakeholders and mitigate the most deleterious effects of the Debtors' insolvency.

12. In the circumstances, it is both just and convenient for the Court to grant the Receivership Order and appoint KSV as Receiver.

## **PART V – CONCLUSION**

13. For the reasons set out above, Sequent requests that this Honourable Court grant the relief requested in the Application.

**ALL OF WHICH IS RESPECTFULLY SUBMITTED** this 19<sup>th</sup> day of October, 2023.

**Blake, Cassels & Graydon LLP**



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Linc Rogers / Christopher Keliher / Jessica MacKinnon  
Counsel for Sequent AI Ltd.

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<sup>31</sup> Affidavit at para 54.

<sup>32</sup> Affidavit at para 50.

## TABLE OF AUTHORITIES

TAB	AUTHORITY
1.	<a href="#"><i>Elleway Acquisitions Limited v the Cruise Professionals Limited</i>, 2013 ONSC 6866</a>
2.	<a href="#"><i>Servus Credit Union Ltd. v Proform Management Inc.</i>, 2020 ABQB 316</a>
3.	<a href="#"><i>Paragon Capital Corporation Ltd. v Merchants &amp; Traders Assurance Company</i>, 2002 ABQB 430</a>
4.	<a href="#"><i>Textron Financial Canada Ltd v Chetwynd Motels Ltd.</i>, 2010 BCSC 477</a>
5.	<a href="#"><i>Maple Trade Financial Inc v CY Oriental Holdings Ltd.</i>, 2009 BCSC 1527</a>