

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

B E T W E E N:

PRICEWATERHOUSECOOPERS INC.

(solely in its capacity as court-appointed receiver and manager of Bridging Finance Inc. and certain related entities and investment funds)

Applicant

- and -

MJARDIN GROUP, INC.

Respondent

**IN THE MATTER OF SECTION 101 OF THE *COURTS OF JUSTICE ACT*, R.S.O. 1990,
c. C.43, AS AMENDED, AND IN THE MATTER OF SECTION 243(1) OF THE
BANKRUPTCY AND INSOLVENCY ACT, R.S.C. 1985, c. B-3, AS AMENDED**

FACTUM OF THE RECEIVER

Motion for Supplemental Discharge and Fee Approval Order
(Returnable June 9, 2022)

Goodmans LLP
Barristers & Solicitors
Bay Adelaide Centre
333 Bay Street, Suite 3400
Toronto, ON M5H 2S7

Christopher Armstrong LSO# 55148B
carmstrong@goodmans.ca

Andrew Harmes LSO#: 73221A
aharmes@goodmans.ca

Brennan Caldwell LSO#: 81627N
bcaldwell@goodmans.ca

Tel: 416.979.2211
Fax: 416.979.1234

Lawyers for KSV Restructuring Inc.

TABLE OF CONTENTS

PART I – INTRODUCTION1

PART II – FACTS3

A. Background3

B. Approval of the Fees and Activities of Receiver and its Counsel6

C. Approval of Release7

PART III - ISSUES AND THE LAW7

A. Approval of the Fees and Activities of the Receiver and its Counsel8

B. Approval of Release12

PART IV - CONCLUSION.....13

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

B E T W E E N:

PRICEWATERHOUSECOOPERS INC.

(solely in its capacity as court-appointed receiver and manager of Bridging Finance Inc. and certain related entities and investment funds)

Applicant

- and -

MJARDIN GROUP, INC.

Respondent

**IN THE MATTER OF SECTION 101 OF THE *COURTS OF JUSTICE ACT*, R.S.O. 1990,
c. C.43, AS AMENDED, AND IN THE MATTER OF SECTION 243(1) OF THE
BANKRUPTCY AND INSOLVENCY ACT, R.S.C. 1985, c. B-3, AS AMENDED**

FACTUM OF THE RECEIVER

Motion for Supplemental Discharge and Fee Approval Order
(Returnable June 9, 2022)

PART I – INTRODUCTION

1. This is the factum of KSV Restructuring Inc. (“**KSV**”), in its capacity as the receiver and manager (in such capacity, the “**Receiver**”) of the assets, undertakings and properties of MJardin Group, Inc. (“**Debtor**”) pursuant to section 243(1) of the *Bankruptcy and Insolvency Act* (Canada) and section 101 of the *Courts of Justice Act* (Ontario), excluding the Excluded Assets and Excluded

Business (each as defined below), for an order (the “**Supplemental Discharge and Fee Approval Order**”), among other things:

- (a) approving the Receiver’s First Report to the Court dated June 1, 2022 (the “**First Report**”), and the activities of the Receiver referred to therein;¹
 - (b) approving (i) the fees and disbursements of the Receiver incurred from the commencement of the receivership proceedings to May 29, 2022 (the “**Period**”), and (ii) the fees and disbursements of the Receiver’s legal counsel, Goodmans LLP (“**Goodmans**”), for the same Period; and
 - (c) releasing the Receiver and its affiliates, partners, employees, agents, counsel and other advisors (collectively, the “**Released Persons**”) from any present and future liability that such Released Persons may have based on the acts or omissions of the Receiver while acting in its capacity as Receiver in these receivership proceedings, save and except for any gross negligence or wilful misconduct on a Released Person’s part with respect to that Released Person alone.
2. The Receiver respectfully submits that its fees and disbursements for the Period, and those of its counsel, are fair and reasonable, and that it is appropriate for the Court to grant the requested Supplemental Discharge and Fee Approval Order.

¹ The First Report was filed as a joint report along with KSV’s report as proposed Court-appointed monitor of the Debtor and certain of its affiliates.

PART II – FACTS

A. BACKGROUND

3. The Debtor is the parent company of a group of companies (collectively, the “**MJar Group**”) primarily engaged in cannabis cultivation.

First Report, at para. 2.2; Motion Record of the Receiver for Supplemental Discharge and Fee Approval Order (the “**Motion Record**”), Tab 2 [[CL p. 375;E20](#)].

4. Bridging Finance Inc. and certain related entities and investment funds (collectively, “**Bridging**”) is the senior secured creditor of the MJar Group, having made various loans available to entities in the MJar Group. According to Bridging’s books and records, as at the time of the Appointment Order (as defined below), the MJar Group’s indebtedness to Bridging totaled approximately \$178 million.

First Report, at para. 3.1; Motion Record, Tab 2 [[CL p. E376;E21](#)]

5. On March 23, 2022, PricewaterhouseCoopers Inc., in its capacity as the receiver and manager of Bridging (the “**Bridging Receiver**”) pursuant to section 129 of the *Securities Act* (Ontario), sought and obtained an Order of the Court (the “**Appointment Order**”), appointing KSV as the receiver and manager of the Debtor’s assets, business and undertaking. The Appointment Order did not appoint KSV as Receiver over any assets, properties, or undertakings of the Debtor or any of its direct or indirect subsidiaries (the “**Excluded Assets**”) or any business of the Debtor or any of its direct or indirect subsidiaries (the “**Excluded Business**”) for which any permit or license is issued or required in accordance with cannabis related legislation in Canada or the United States, as further set out in the Appointment Order.

Appointment Order at paras. 2, 3 and 7 [[CL p. E319-E321](#)].

6. The purpose of the receivership was to enable the Receiver to bring stability to the MJar Group's business and to review and consider available options for the restructuring and/or refinancing of the MJar Group, all in an effort to minimize the losses that Bridging will suffer as a result of the loans made by Bridging to the MJar Group.

First Report, at para. 7.1; Motion Record, Tab 2 [[CL p. E383:E28](#)].

7. The Receiver undertook this review by, among other things, reviewing financial and other business information in respect of the MJar Group, meeting with remaining management, touring the MJar Group's key production facility and arranging for an appraisal of the MJar Group's operating assets. In addition, the Receiver engaged Howards Capital Corp. ("**HCC**") to prepare a comprehensive business assessment report in respect of the MJar Group's core cannabis cultivation business, which report concluded that, subject to a successful operational restructuring, the estimated realizations from a going concern sale of the MJar Group's would be significantly higher than estimated realizations from an orderly liquidation.

First Report, at para 4.1.4 and 5.1; Motion Record, Tab 2 [[CL p. E378:E23](#) and [E381:E26](#)].

8. Following the Receiver's review, the Bridging Receiver, in consultation with the Receiver, determined the best path for the Debtor and certain of its affiliates (collectively, the "**CCAA Debtors**") was to develop and implement an operational restructuring of their business and ultimately seek to implement a restructuring transaction in the context of proceedings under the *Companies' Creditors Arrangement Act* (Canada) (the "**CCAA**"). The Receiver assisted the Bridging Receiver in preparations for the CCAA filing, including assisting management in preparation of a 13-week cash flow forecast and negotiating the terms of an engagement letter

pursuant to which (subject to Court approval), HCC has agreed to act as chief restructuring officer (“**CRO**”) of the CCAA Debtors.

First Report, at para. 4.1, 5.0 and 8.2; Motion Record, Tab 2 [[CL p. E378;E23, E381;E26](#) and [E384;E29](#)].

9. On June 2, 2022, the Bridging Receiver sought and obtained an initial order (the “**Initial Order**”) under the CCAA in respect of the CCAA Debtors. The CCAA Initial Order appointed KSV as the Court-appointed Monitor of the CCAA Debtors.

Initial Order dated June 2, 2022.

10. Also on June 2, 2022, the Court issued an Order (the “**Discharge Order**”) providing for the discharge of the Receiver upon the issuance of a discharge certificate, which the Discharge Order authorized the Receiver to issue following the issuance of the Initial Order. The Receiver issued the discharge certificate on June 3, 2022.

Discharge Order dated June 2, 2022 [[CL p. E344](#)]

Receiver’s Discharge Certificate dated June 3, 2022 [[CL p. E353](#)].

11. The motion for the Discharge Order was brought on limited notice as it was dependent on the bringing of the CCAA application and the issuance of the Initial Order. Accordingly, the Receiver determined to seek approval of its fees and disbursements and those of its counsel, together with the customary release granted to court-appointed receivers in receivership proceedings, on a subsequent motion to be heard immediately following the comeback motion in the CCAA proceeding.

B. APPROVAL OF THE FEES AND ACTIVITIES OF RECEIVER AND ITS COUNSEL

12. The proposed Supplemental Discharge and Fee Approval Order provides for the approval of the fees and disbursements of the Receiver and its counsel incurred during the Period (March 23, 2022, being the date of the Appointment Order, through to and including May 29, 2022). The Period represents the almost the entirety of the receivership proceeding as the Receiver was discharged effective June 3, 2022.

Draft Supplemental Discharge and Fee Approval Order, para 3; Motion Record, Tab 3 [[CL p. E509;E154](#)].

13. The Receiver delivered the First Report in support of this motion, which attaches affidavits from representatives of the Receiver and its counsel that provide a comprehensive listing of the accounts sought to be passed, including each account and summaries identifying the individuals professionals who have worked on this matter, their hourly billing rates and total number of hours worked, among other information. Goodmans' accounts have been redacted to protect privileged and confidential information.

Affidavit of Noah Goldstein sworn June 1, 2022 (the "**KSV Affidavit**"); Motion Record, Tab 2H; [[CL p. E435;E80](#)].

Affidavit of Christopher Armstrong sworn May 31, 2022 (the "**Goodmans Affidavit**"); Motion Record, Tab 2I; [[CL p. E455;E100](#)].

14. In addition, the activities of the Receiver and its counsel in these receivership proceedings have been described in the First Report. These activities included, among other things, assisting the Bridging Receiver in considering the restructuring options available to the MJar Group and assisting in preparations for the CCAA proceedings.

First Report, at para. 5; Motion Record, Tab 2; [[CL p. E381;E26](#)].

15. The accounts of the Receiver and its counsel for the Period total approximately \$220,476.50 and \$203,682.00, respectively, exclusive of disbursements and applicable taxes.

First Report at para. 6.1; Motion Record, Tab 2 [[CL p. E382;E27](#)].

16. The evidence is that the Receiver and its counsel billed amounts at standard hourly rates consistent with the relevant market and that they, in their professional judgment, considered fair and reasonable in the circumstances of these proceedings.

KSV Affidavit, at para 7; Motion Record, Tab 2H; [[CL p. E436;E81](#)].

Goodmans Affidavit, at para 7; Motion Record, Tab 2I; [[CL p. E457;E102](#)].

First Report at para. 6.3; Motion Record, Tab 2 [[CL p. E383;E28](#)].

C. APPROVAL OF RELEASE

17. The proposed Supplemental Discharge and Fee Approval Order provides that the Released Persons be forever discharged and released from any and all liability that the Released Persons now or may hereafter have by reason of, or in any way arising out of, the acts or omissions of the Receiver while acting in its capacity as Receiver, relating to matters that were raised, or could have been raised, in the within proceedings, save and except for any gross negligence or wilful misconduct on a Released Person's part with respect to that Released Person alone.

Draft Supplemental Discharge and Fee Approval Order at para. 4; [[CL p. E510;E155](#)].

PART III - ISSUES AND THE LAW

18. The issues to be considered on this motion are whether the Court should approve:

- (a) the activities of the Receiver described in the First Report, and the fees and disbursements of the Receiver and its counsel; and

(b) the proposed release of the Released Persons.

A. APPROVAL OF THE FEES AND ACTIVITIES OF THE RECEIVER AND ITS COUNSEL

(i) *Jurisdiction and Test*

19. The jurisdiction of this Court to pass the accounts of the Receiver and its counsel is confirmed in the Appointment Order, which directs that: “the Receiver and its legal counsel shall pass their accounts from time to time, and for this purpose the accounts of the Receiver and its legal counsel are hereby referred to a judge of the Commercial List of the Ontario Superior Court of Justice.”

Appointment Order at para 27; [\[CL p. E333\]](#).

20. The overarching test on a motion to pass accounts is to consider the “overriding principle of reasonableness”, with the predominant consideration in such assessment being the overall value contributed by the Receiver and its counsel. As stated by this Court in *Laurentian* “the Court does not engage in a docket-by-docket or line-by-line assessment of the accounts as minute details of each element of a professional services may not be instructive when looked at in isolation.”

[Laurentian University of Sudbury](#), 2022 ONSC 2927 at para 9. [*Laurentian*]

[Bank of Nova Scotia v Diemer](#), 2014 ONCA 851 at para 45. [*Diemer*]

21. The Appointment Order provides that the Receiver and counsel to the Receiver “shall be paid their reasonable fees and disbursements, in each case at their standard rates and charges, unless otherwise ordered by the Court on the passing of accounts.” The evidence is that the Receiver and its counsel charged standard hourly rates that are consistent with relevant market rates. Although this does not oust the need for the court to consider whether the fees claimed are

fair and reasonable, it has been held that where standard rates have been charged under an order so directing, this is a relevant consideration supporting approval.

Appointment Order at para 26; [[CL p. E333](#)].

[Diemer](#), 2014 ONCA 851 at para [48](#).

[Confectionately Yours Inc \(Re\)](#), 219 DLR (4th) 72, 36 CBR (4th) 200 (Ont Sup Ct) at paras [52-54](#).

(ii) Factors to be Considered

22. The following factors assist courts in evaluating the quantum of a court-appointed officer's fees. These factors are not intended to be an exhaustive list and other factors may be material in any particular case:

- (a) the nature, extent and value of the assets being handled;
- (b) the complications and difficulties encountered;
- (c) the degree of assistance provided by the company, its officers or its employees;
- (d) the time spent;
- (e) the Receiver's knowledge, experience and skill;
- (f) the diligence and thoroughness displayed;
- (g) the responsibilities assumed;
- (h) the results achieved; and
- (i) the cost of comparable services when performed in a prudent and economical manner.

[Laurentian](#), *supra* at para 10.

23. The factors relevant to the present case include: (a) the nature of the assets being handled; (b) the degree of assistance provided by the company; (c) time spent; (d) the Receiver's

knowledge, experience and skill; (e) diligence and thoroughness displayed; (f) responsibilities assumed; and (g) results of the Receiver's efforts.

24. Applying these factors above to this case, it is clear the accounts should be approved:

- (a) The MJar Group's core business is cannabis cultivation, which is a highly regulated industry. While the Receiver was only appointed as Receiver of the Debtor's assets to avoid jeopardizing the cannabis licenses held by certain of its subsidiaries, the Appointment Order authorized the Receiver to access information in respect of the entire MJar Group and explore all opportunities for the restructuring and financing of the MJar Group as a whole. As described above, the Receiver undertook an extensive review of the MJar Group's business and operations, and it was ultimately determined that pursuing an operational restructuring of the MJar Group's core business through the CCAA proceedings was the best available option to maximize value;
- (b) These receivership proceedings, although relatively brief, have required extensive involvement of the Receiver and its counsel. As all of the members of the Debtor's board of directors and most of its senior management team resigned following the issuance of the Appointment Order, the Receiver's scope of work has included assisting the MJar Group's remaining management in efforts to stabilize its business and maintain normal course operations, as well as corresponding and liaising with Health Canada, the Ontario Securities Commission and the Canadian Stock Exchange regarding the commencement of the receivership. Once it was determined to pursue an operational restructuring in the context of a CCAA

proceeding, the Receiver worked with the Bridging Receiver to prepare for a CCAA filing, including negotiating the engagement of HCC as proposed CRO, working with management to prepare a 13-week cash flow forecast and preparing draft communication materials for customers, suppliers and employees;

- (c) The efforts of the Receiver and its counsel have helped stabilize the MJar Group and its business, enabling completion of a detailed review of the MJar Group's operations and an assessment of the viability of its business as a going concern. This review ultimately led to the Bridging Receiver determining that an operational restructuring of the CCAA Debtors' represents the best available option in the circumstances to preserve and maximize value; and
- (d) The Receiver and its counsel are experienced restructuring professionals who have been integral in these receivership proceedings and have at all times demonstrated diligence and thoroughness.

First Report at paras. 4.0 and 5.0; [\[CL p. E377;E22-E381;E26\]](#).

25. Accordingly, for the reasons set out above, a consideration of the applicable factors supports the approval of the accounts of the Receiver and its counsel as being fair and reasonable.

(iii) Receiver's First Report and Activities

26. The request to approve a court-officer's report is "not unusual". As stated in *Laurentian* in the context of the approval of a CCAA monitor's reports and activities, there are good policy and practical reasons for such court approval, including that court approval:

- (a) allows the court-officer to move forward with next steps in the proceeding;

- (b) brings the court-officer's activities before the court;
- (c) allows an opportunity for the concerns of the stakeholders to be addressed, and any problems to be rectified;
- (d) enables the Court to satisfy itself that the court-officer's activities have been conducted in prudent and diligent manners;
- (e) provides protection for the court-officer not otherwise provided by the CCAA; and
- (f) protects the creditors from the delay and distribution that would be caused by: (i) re-litigation of steps taken to date, and (ii) potential indemnity claims by the court-officer.

Laurentian, *supra*, at paras. 13-14.

27. In this case, the First Report and the activities of the Receiver described therein should be approved. All activities described in the First Report were necessary and undertaken in good faith pursuant to the Receiver's duties and powers set out in the Appointment Order, and were in each case in the best interests of the Debtor's stakeholders generally.

B. APPROVAL OF RELEASE

28. The proposed Supplemental Discharge and Fee Approval Order provides that the Released Persons will be discharged and released from any present or future liability that such Released Persons may have based on the acts or omissions of the Receiver while acting in its capacity as Receiver in these receivership proceedings, save and except for any gross negligence or wilful misconduct on a Released Person's part with respect to that Released Person alone.

Draft Supplemental Discharge and Fee Approval Order at para 4; Motion Record, Tab 3 [[CL p. E510:E155](#)].

29. The Receiver seeks the approval of the release so as to achieve certainty and finality for the Released Parties at the conclusion of the receivership and transition into the CCAA proceedings. The Receiver has diligently fulfilled its duties and the release is a standard term in the Commercial List model order of discharge. Absent any evidence of improper or negligent conduct on the part of the Receiver (of which there is none), the release sought should be issued by the Court.

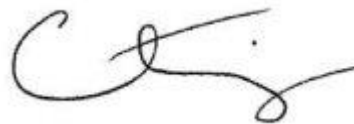
Pinnacle v Kraus, 2012 ONSC 6376 at para 47.

PART IV- CONCLUSION

30. For the reasons set out above, the Receiver respectfully requests that this Court grant the requested Supplemental Discharge and Fee Approval Order.

ALL OF WHICH IS RESPECTFULLY SUBMITTED

June 7, 2022



Goodmans LLP

Christopher Armstrong (LSO#: 55148B)
Email: carmstrong@goodmans.ca

SCHEDULE A

LIST OF AUTHORITIES

1. *Laurentian University of Sudbury*, 2022 ONSC 2927.
2. *Bank of Nova Scotia v. Diemer*, 2014 ONCA 851.
3. *Confectionately Yours Inc (Re)*, 219 DLR (4th) 72, 36 CBR (4th) 200 (Ont Sup Ct).
4. *Pinnacle v Kraus*, 2012 ONSC 6376.

**IN THE MATTER OF SECTION 101 OF THE *COURTS OF JUSTICE ACT*, R.S.O. 1990
c.C.43, AS AMENDED, AND IN THE MATTER OF SECTION 243(1) OF THE
BANKRUPTCY AND INSOLVENCY ACT, R.S.C. 1985, c. B-3, AS AMENDED**

Court File No.: CV-22-00678813-00CL

PRICEWATERHOUSECOOPERS INC. - and - MJARDIN GROUP, INC.

(solely in its capacity as court-appointed
receiver and manager of Bridging Finance
Inc. and certain related entities and
investment funds)

Applicant

Respondent

**ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)**
Proceeding commenced at Toronto

**FACTUM OF THE RECEIVER
(Returnable June 9, 2022)**

GOODMANS LLP
Barristers & Solicitors
333 Bay Street, Suite 3400
Toronto, Canada M5H 2S7

Christopher Armstrong LSO#: 55148B
carmstrong@goodmans.ca

Andrew Harmes LSO#: 73221A
aharmes@goodmans.ca

Brennan Caldwell LSO#: 81627N
bcaldwell@goodmans.ca

Tel: (416) 979-2211
Fax: (416) 979-1234

Lawyers for KSV Restructuring Inc., in its capacity as
Court-appointed Receiver