

From: Dietrich, Madam Justice Bernadette (SCJ)

Sent: November 5, 2020 2:52 PM

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Subject: RE: Re Guardian Financial Corp. et. al. (CV-20-00646507-00CL)

A hearing was held in the above-noted matter this morning via Zoom videoconference.

The counsel in attendance are shown on the attached counsel slip.

Endorsement

This motion is brought by RGN Ontario II GP Inc. (the "GP"), an Applicant in this matter, seeking to add RGN Ontario II Limited Partnership (the "LP") as a CCAA debtor in these proceedings.

The GP and the LP are part of a group of affiliates operating as IWG multinational corporate group that offers a network of on-demand office and co-working spaces and services to clients in the U.S. and Canada.

Following Chapter 11 proceedings in the U.S. involving certain of the Applicants' affiliates, at a time when the LP believed that its landlord may terminate its lease without notice, it commenced proceedings by filing a Notice of Intention to Make a Proposal (the "NOI Proceedings") and KSV Restructuring Inc. ("KSV") was appointed as proposal trustee of the LP. The LP has not made a proposal.

The Applicants commenced CCAA proceedings and they, together with certain affiliated limited partnerships, other than the LP, were granted a CCAA Initial Order by this court, and KSV was appointed the monitor of the Applicants. The Applicant and the LP are similarly situated but for the fact that the LP commenced the NOI Proceedings to obtain a stay of proceedings prior to the Applicants commencing CCAA proceedings.

The GP seeks an order: a) extending the stay of proceedings and other protections of the Initial Order to the LP; b) taking up and continuing the NOI Proceedings of the LP as part of these CCAA proceedings; and c) staying any deemed assignment in bankruptcy of the LP pursuant to the *Bankruptcy and Insolvency Act* (the "BIA").

For the reasons that follow, the requested order should be granted.

This court has authority to extend the stay of the CCAA proceedings to the LP pursuant to s. 11 of the CCAA and the court's inherent jurisdiction. Section 11 applies notwithstanding anything in the *BIA*: *Calpine Canada Energy Ltd. (Re)*, 2006 ABQB 153, at para. 34. The jurisprudence supports the extension of a stay where non-applicant companies are deeply integrated with the applicants' business operations and where partnerships that do not qualify as CCAA applicants are intertwined with the applicants' ongoing operations: *Lydian International Limited (Re)*, 2019 ONSC 7473 at para. 39; *Canwest Global Communications Corp. (Re)*, 2009 CanLII 55114 (ONSC) at paras. 28-29; *Cinram International Inc. (Re)*, 2012 ONSC 3767 at paras. 61-65; and *Payless ShoeSource Canada Inc. (Re)*, 2019 ONSC 1215 at para. 26.

The court's jurisdiction to extend the protection of a stay of proceedings to partnerships was recognized in *Target Canada Co., (Re)*, 2015 ONSC 303 at para. 42 and *Urbancorp Inc. (Re)*, 2016 ONSC 3288 at para 43. The extension of the stay is just and reasonable in this case because similarly situated limited partnerships already enjoy the benefits and protections set out in the Initial Order. The same benefits and protections should be extended to the LP to reduce inefficiencies arising from duplicative proceedings.

The GP seeks an order that the NOI proceedings be taken up and continued under the CCAA. The result of this order would be a stay of the automatic bankruptcy that would flow from the application of s. 50.4(8) of the *BIA* because the LP would no longer seek extensions of time to make a proposal.

Section 11.6 of the CCAA gives the court broad authority regarding the continuation of proceedings under the CCAA and applies notwithstanding the *BIA*. There is precedent for this type of order. In *Dundee Oil and Gas Limited (Re)*, 2018 ONSC 1070 at para. 16, the court found that it had jurisdiction to continue the existing proposal proceedings in respect of the general partner and to extend, until further order, the time for the limited partnership to be deemed to make an assignment in bankruptcy (per s. 50.48 of the *BIA*) in order for the restructuring of the general partner and the limited partnership to continue together. The granting of such an order should eliminate the duplicative and inefficient proceedings that would otherwise arise as a result of the potential conflict between *BIA* proceedings arising involving the LP alone and CCAA proceedings involving the GP, and which would not benefit the LP or the stakeholders. Consolidating the NOI Proceedings and the CCAA proceedings should save time, costs and reduce complexity.

The Monitor fully supports the relief sought and sees it as an efficient way to proceed.

The landlord, CT Tower International Inc., confirms that it does not oppose the motion or the proposed consolidation. It submits that it nonetheless reserves its right to contest any substantive consolidation, should that become an issue in the future.

Order to go the form of the draft attached hereto and signed by me. The Order is effective as of today's date and it is not required that it be entered.



Dietrich J.
Superior Court of Justice (Toronto)
November 5, 2020

**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 GUARDIAN FINANCIAL CORP. AND OTHER ENTITIES LISTED ON SCHEDULE "A"**

(Applicants)

Counsel Slip (November 5, 2020)	
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Observing

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Monitor

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Schedule "A" – Additional Applicants

RGN Alberta IV GP Inc.
RGN Alberta GP Inc.
RGN Alberta X GP Inc.
RGN Alberta XIII GP Inc.
RGN Alberta XIV GP Inc.
RGN Alberta XVII GP Inc.
RGN British Columbia XX GP Inc.
RGN British Columbia XVI GP Inc.
RGN British Columbia XXV GP Inc.
RGN British Columbia XXIV GP Inc.
RGN Manitoba II GP Inc.
RGN Ontario II GP Inc.
RGN Ontario L GP Inc.
RGN Ontario LV GP Inc.
RGN Ontario LVI GP Inc.
RGN Ontario LVIII GP Inc.
RGN Ontario LXII GP Inc.
RGN Ontario XI GP Inc.
RGN Ontario XLI GP Inc.
RGN Ontario XLII GP Inc.
RGN Ontario XLV GP Inc.
RGN Ontario XLVI GP Inc.
RGN Ontario XLVII GP Inc.
RGN Ontario XLVIII GP Inc.
RGN Ontario XXI GP Inc.
RGN Ontario XXIV GP Inc.
RGN Ontario XXIX GP Inc.
RGN Ontario XXV GP Inc.
RGN Ontario XXVIII GP Inc.
RGN Ontario XXXI GP Inc.
RGN Ontario XXXII GP Inc.
RGN Ontario XXXIII GP Inc.
RGN Quebec V GP Inc.
RGN Quebec VI GP Inc.
RGN Quebec XIV GP Inc.
RGN Quebec XVI GP Inc.
RGN Services Limited