

**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 THE OTHER ENTITIES LISTED ON SCHEDULE "A"**

(Applicants)

**FACTUM OF THE APPLICANTS
(Re: Comeback Motion)
(Returnable September 10, 2020)**

September 8, 2020

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PART I - OVERVIEW

1. The Applicants are part of the IWG multinational corporate group that offers a network of on-demand office and co-working spaces, and ancillary services and support, to a variety of clients across a host of industries in over 1,000 locations in the United States and Canada.

2. Due to external factors caused by the COVID-19 pandemic, certain of the Applicants' affiliates in the United States (the "**Chapter 11 Debtors**") filed voluntary petitions for relief pursuant to chapter 11 of title 11 of the United States Code with the United States Bankruptcy Court for the District of Delaware (the "**U.S. Court**") between July 30, 2020 and August 17, 2020 (such proceedings in the U.S. Court, the "**Chapter 11 Cases**").

3. Certain of the Chapter 11 Debtors (the "**Guarantor Debtors**") are guarantors of 85 Leases in Canada. Pursuant to approximately 38 of these guaranteed Leases, the commencement of the Chapter 11 Cases by a guarantor is a technical event of default. Due to concerns that Landlords may take action under the Leases, the Chapter 11 Debtors sought recognition of the Chapter 11 Cases under Part IV of the CCAA. On August 24, 2020, this Court recognized the Chapter 11 Cases as "foreign main proceedings".

4. As part of the Chapter 11 Cases, the Chapter 11 Debtors requested that the U.S. Court approve certain lease termination notice procedures. That relief was denied by the U.S. Court, which prompted the Applicants to seek protection under the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the "**CCAA**"). On August 31, 2020, this Court granted the Initial Order in respect of the Applicants and certain affiliated limited partnerships. The Initial Order provided for a Stay Period to and including September 10, 2020, and appointed KSV Restructuring Inc. (f/k/a KSV Kofman Inc.) as monitor of the Applicants (the "**Monitor**"). The Initial Order did not create any charges over the Applicants' property.

5. This factum is filed in support of a motion by the Applicants for an Amended and Restated Initial Order, substantially in the form of the draft order attached to the Motion Record at Tab 3, that, *inter alia*:

- (a) expands the Applicants' restructuring authority and the Monitor's ability to assist with the Applicants' restructuring efforts; and
- (b) extends the Stay Period to and including November 27, 2020, or such further and other date as determined by the Court.

PART II - THE FACTS

6. The facts with respect to this motion are more fully set out in the affidavit of James S. Feltman sworn September 8, 2020 (the "**Second Feltman Affidavit**"). Capitalized terms used within this factum but not otherwise defined have the meanings ascribed to them in the Second Feltman Affidavit.

7. Since commencing these CCAA Proceedings, the Applicants, with the assistance of the Monitor, have worked diligently and in good faith to stabilise their business and ensure that the CCAA Proceedings continue in a coordinated manner with the Chapter 11 Cases

and the Recognition Proceedings. The activities of the CCAA Debtors have included, among other things, responding to inquires from Landlords, publishing notices to creditors, and reviewing financial information.

Second Feltman Affidavit at para. 11, Applicant's Motion Record, Tab 2.

8. As disclosed in the materials filed in connection with the Initial Order, the Applicants, along with the Chapter 11 Debtors, intend to use these CCAA Proceedings and the Chapter 11 Cases to pursue discussions with their Landlords, including Landlords in the United States, on the implementation of a plan. The Applicants also intend to use these CCAA Proceedings to continue evaluating the viability of Centres, taking into account the new market realities caused by the COVID-19 pandemic.

Second Feltman Affidavit at paras. 14-15, Applicant's Motion Record, Tab 2.

PART III - ISSUES

9. The issues before this Court, as addressed below, are whether:
- (a) this Court should grant the Amended and Restated Initial Order that, among other things, expands the Applicants' authority to restructure; and
 - (b) the Stay Period should be extended to and including November 27, 2020.

PART IV - THE LAW

A. The Restructuring-related Provisions in the Amended and Restated Initial Order Should be Granted

10. In compliance with s. 11.001 of the CCAA, the relief sought by the Applicants in the Initial Order was limited to what was reasonably necessary for the initial ten-day stay period. The Applicants are now seeking to expand the relief granted by the Initial Order so that it more closely aligns with the Model Initial Order.

Draft Amended and Restated Initial Order, Applicant's Motion Record, Tab 3.

11. The proposed restructuring and Monitor-related provisions being requested are largely identical to provisions found in the Model Initial Order.

Blackline of the Amended and Restated Initial Order to the Model Order, Applicant's Motion Record, Tab 4.

12. In recent CCAA proceedings, this Court has inserted restructuring- and Monitor-related provisions from the Model Initial Order into amended and restated initial orders granted as part of a CCAA comeback hearing.

See e.g. *Lydian International Limited (Re)*, 2019 ONSC 473 at para. 4 ([Monitor's website](#)).

13. The Applicants submit that the insertion of the restructuring-related provisions in the Amended and Restated Initial Order are necessary in the circumstances as these provisions will enable the Applicants and the Monitor to take certain steps that may become necessary in the course of these CCAA Proceedings, including renegotiating Leases and developing a plan.

Second Feltman Affidavit at paras. 12-16, Applicant's Motion Record, Tab 2.

B. The Stay of Proceedings Should be Extended

14. The current Stay Period expires on September 10, 2020. Pursuant to s. 11.02 of the CCAA, the Court may grant an extension of a stay of proceedings where: (a) circumstances exist that make the order appropriate; and (b) the debtor company satisfies the Court that it has acted, and is acting, in good faith and with due diligence.

CCAA, s. 11.02(2) and (3).

15. The Applicants are seeking to extend the Stay Period to and including November 27, 2020. This will provide the Applicants with the stability necessary to pursue discussions with

their Landlords regarding the terms of a Chapter 11 plan and potential amendments to the leases.

Second Feltman Affidavit at para. 22, Applicant's Motion Record, Tab 2.

16. No creditors are expected to suffer material prejudice as a result of the extension of the Stay Period. The Landlords are being paid in the ordinary course during these CCAA proceedings. The Applicants are acting in good faith and with due diligence in pursuing their restructuring strategy.

Second Feltman Affidavit at paras. 11 and 22 , Applicant's Motion Record, Tab 2.

17. As detailed in the Applicants' cash flow forecast, the Applicants will have access to sufficient liquidity to continue their operations during the extension of the Stay Period.

Affidavit of James S. Feltman sworn August 30, 2020 at paras. 63-64, Applicant's Motion Record, Tab 2 – Exhibit D.

18. For the reasons described above, the Stay Period should be extended to November 27, 2020.

PART V - ORDER SOUGHT

19. The Applicants respectfully request that this Court grant the requested relief substantially in the form of the draft Amended and Restated Initial Order attached at Tab 3 of the Motion Record.

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 8th day of September 2020.



Stikeman Elliott LLP
Lawyers for the Applicants

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

SCHEDULE "B"
LIST OF AUTHORITIES

Cases

1. *Lydian International Limited (Re)*, 2019 ONSC 473 ([Monitor's website](#))

**SCHEDULE “C”
RELEVANT STATUTES**

Companies’ Creditors Arrangement Act, RSC 1985, c C-36

Definitions

2 (1) In this Act, [...]

company means any company, corporation or legal person incorporated by or under an Act of Parliament or of the legislature of a province, any incorporated company having assets or doing business in Canada, wherever incorporated, and any income trust, but does not include banks, authorized foreign banks within the meaning of section 2 of the Bank Act, telegraph companies, insurance companies and companies to which the Trust and Loan Companies Act applies; (compagnie) [...]

debtor company means any company that

(a) is bankrupt or insolvent,

(b) has committed an act of bankruptcy within the meaning of the Bankruptcy and Insolvency Act or is deemed insolvent within the meaning of the Winding-up and Restructuring Act, whether or not proceedings in respect of the company have been taken under either of those Acts,

(c) has made an authorized assignment or against which a bankruptcy order has been made under the Bankruptcy and Insolvency Act, or

(d) is in the course of being wound up under the Winding-up and Restructuring Act because the company is insolvent; (compagnie débitrice)

[...]

Application

3 (1) This Act applies in respect of a debtor company or affiliated debtor companies if the total of claims against the debtor company or affiliated debtor companies, determined in accordance with section 20, is more than \$5,000,000 or any other amount that is prescribed.

[...]

General power of court

11 Despite anything in the Bankruptcy and Insolvency Act or the Winding-up and Restructuring Act, if an application is made under this Act in respect of a debtor company, the court, on the application of any person interested in the matter, may, subject to the restrictions set out in this Act, on notice to any other person or without notice as it may see fit, make any order that it considers appropriate in the circumstances.

Relief reasonably necessary

11.001 An order made under section 11 at the same time as an order made under subsection 11.02(1) or during the period referred to in an order made under that subsection with respect to an initial application shall be limited to relief that is reasonably necessary for the continued operations of the debtor company in the ordinary course of business during that period.

[...]

Stays, etc. — initial application

11.02 (1) A court may, on an initial application in respect of a debtor company, make an order on any terms that it may impose, effective for the period that the court considers necessary, which period may not be more than 10 days,

- (a) staying, until otherwise ordered by the court, all proceedings taken or that might be taken in respect of the company under the Bankruptcy and Insolvency Act or the Winding-up and Restructuring Act;
- (b) restraining, until otherwise ordered by the court, further proceedings in any action, suit or proceeding against the company; and
- (c) prohibiting, until otherwise ordered by the court, the commencement of any action, suit or proceeding against the company.

Stays, etc. — other than initial application

11.02 (2) A court may, on an application in respect of a debtor company other than an initial application, make an order, on any terms that it may impose,

- (a) staying, until otherwise ordered by the court, for any period that the court considers necessary, all proceedings taken or that might be taken in respect of the company under an Act referred to in paragraph (1)(a);
- (b) restraining, until otherwise ordered by the court, further proceedings in any action, suit or proceeding against the company; and
- (c) prohibiting, until otherwise ordered by the court, the commencement of any action, suit or proceeding against the company.

[...]

Bankruptcy and Insolvency Act, RSC 1985, c B-3

Definitions

2 In this Act, [...]

insolvent person means a person who is not bankrupt and who resides, carries on business or has property in Canada, whose liabilities to creditors provable as claims under this Act amount to one thousand dollars, and

(a) who is for any reason unable to meet his obligations as they generally become due,

(b) who has ceased paying his current obligations in the ordinary course of business as they generally become due, or

(c) the aggregate of whose property is not, at a fair valuation, sufficient, or, if disposed of at a fairly conducted sale under legal process, would not be sufficient to enable payment of all his obligations, due and accruing due; (personne insolvable) [...]

trustee or licensed trustee means a person who is licensed or appointed under this Act. (syndic ou syndic autorisé)

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Proceeding commenced at Toronto

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(RETURNABLE SEPTEMBER 10, 2020)

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