

**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)

**FACTUM OF THE APPLICANTS
(Re: Stay Extension and Other Relief)
(Returnable June 30, 2021)**

June 25, 2021

STIKEMAN ELLIOTT LLP
Barristers & Solicitors
5300 Commerce Court West
199 Bay Street
Toronto, Canada M5L 1B9

Ashley Taylor LSO#: 39932E
Tel: (416) 869-5236
Email: ataylor@stikeman.com

Lee Nicholson LSO#: 66412I
Tel: (416) 869-5604
Email: leenicholson@stikeman.com

Ben Muller LSO#: 80842N
Tel: (416) 869-5543
Email: bmuller@stikeman.com

Lawyers for the Applicants

**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)

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. Since July 30, 2020, certain of the Applicants' affiliates in the United States (the "**Chapter 11 Debtors**") have been filing 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**", and such proceedings, the "**Chapter 11 Cases**"). Certain Chapter 11 Debtors (the "**Guarantor Debtors**") guaranteed certain Leases held by the CCAA Debtors (as defined below). The commencement of the Chapter 11 Cases by the Guarantor Debtors may have been a technical event of default under the CCAA Debtors' Leases.
3. 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 *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the "**CCAA**"). On August 24, 2020, this Court recognized the Chapter 11 Cases as "foreign main proceedings".
4. On August 31, 2020, the Applicants commenced these proceedings under the CCAA (the "**CCAA Proceedings**") and this Court granted an Initial Order in respect of the Applicants

and certain affiliated limited partnerships (together, the “**CCAA Debtors**”, and each a “**CCAA Debtor**”). On September 10, 2020, this Court granted an Order amending and restating the Initial Order (as amended and restated, the “**Initial Order**”). KSV was appointed monitor (the “**Monitor**”) of the CCAA Debtors. The Initial Order provided a stay of proceedings (the “**Stay Period**”) until November 27, 2020. On November 19, 2020, this Court granted an Order in the CCAA Proceedings that, among other things, extended the Stay Period until March 16, 2021. On March 11, 2021, this Court granted an Order in the CCAA Proceedings that, among other things, extended the Stay Period until June 30, 2021 (the “**Stay Extension Order**”).

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

- (a) extends the Stay Period to September 30, 2021;
- (b) terminates and discharges the CCAA Proceedings with respect to RGN British Columbia XXIV Limited Partnership and its general partner, RGN British Columbia XXIV GP Inc.; and
- (c) seals a confidential exhibit of the Seventh Feltman Affidavit (as defined below).

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 June 21, 2021 (the “**Seventh Feltman Affidavit**”). Capitalized terms used within this factum but not otherwise defined have the meanings ascribed to them in the Seventh Feltman Affidavit.

A. The Chapter 11 Cases

7. As stated above, the commencement of the Chapter 11 Cases by the Guarantor Debtors may have been a technical event of default under the CCAA Debtors' Leases. Accordingly, the restructuring of the CCAA Debtors is significantly intertwined with the restructuring of the Guarantor Debtors, and the CCAA Proceedings are significantly intertwined with the Chapter 11 Proceedings.

Seventh Feltman Affidavit at paras. 19-20, Applicants' Motion Record, Tab 2.

8. To advance the CCAA Proceedings in parallel with the Chapter 11 Proceedings, the Court extended the Stay Period to June 30, 2021, to align with the key milestones in the Chapter 11 Cases (the "**Milestones**"). The Milestone have since been extended again by the Chapter 11 Debtors and certain key stakeholders in the Chapter 11 Cases. The current Milestones are summarized below:

<u>Milestone</u>	<u>Original Milestone Date</u>	<u>Second DIP Amendment Milestone Date</u>	<u>Current Milestone Date</u>
Filing of a plan of reorganization	November 25, 2020	March 31, 2021	June 11, 2021
Obtain a confirmation order from the U.S. Court confirming the plan of reorganization	February 15, 2021	June 23, 2021	July 23, 2021
"Effective Date" of the plan of reorganization	March 16, 2021	June 30, 2021	July 30, 2021
"Maturity Date" of DIP Facility	March 16, 2021	June 30, 2021	August 27, 2021

Seventh Feltman Affidavit at para. 21, Applicants' Motion Record, Tab 2.

9. In keeping with the Milestones, the Chapter 11 Debtors, including the Guarantor Debtors, filed a joint plan with the U.S. Court on June 11, 2021 (the "**U.S. Plan**").

Seventh Feltman Affidavit at para. 22, Applicants' Motion Record, Tab 2.

10. The U.S. Plan contains two mechanism to effectuate the restructuring of the Chapter 11 Debtors—the U.S. Plan of Reorganization and the U.S. Plan of Liquidation.

Seventh Feltman Affidavit at para. 22, Applicants' Motion Record, Tab 2.

11. The U.S. Plan of Liquidation only applies to eight (8) special purpose entities formed to hold a Lease for a Centre in the United States (the "**Liquidating SPE Debtors**"). The U.S. Plan of Liquidation does not affect the CCAA Debtors and any other Canadian stakeholders.

Seventh Feltman Affidavit at para. 23, Applicants' Motion Record, Tab 2.

12. The U.S. Plan of Reorganization applies in respect of the other Chapter 11 Debtors (except for any Liquidating SPE Debtors or Excluded SPE Debtors), including the Guarantor Debtors. Each of the classes of claims under the U.S. Plan of Reorganization are unimpaired and therefore the holders of claims in each of the classes are deemed to have accepted the U.S. Plan of Reorganization. This includes the claims of Canadian Landlords against the Guarantor Debtors.

Seventh Feltman Affidavit at paras. 25 and 26, Applicants' Motion Record, Tab 2.

13. The U.S. Plan contains two conditions precedent related to the CCAA Proceedings that must be satisfied for the U.S. Plan to become effective. The two conditions precedent are, first, that this Court grant the CCAA Recognition Order and, second, that this Court grant the CCAA Termination Order. As a result, it is expected that, provided the U.S. Court grants an order confirming the U.S. Plan, shortly afterwards the CCAA Debtors and the Foreign Representative will bring a motion before this Court seeking the CCAA Recognition Order and the CCAA Termination Order.

Seventh Feltman Affidavit at paras. 29 and 30, Applicants' Motion Record, Tab 2.

B. The CCAA Debtors' Restructuring Efforts

14. Since the Court granted the latest Stay Extension Order, the CCAA Debtors have continued to engage in good-faith, arm's-length negotiations with their Landlords to obtain favourable lease amendments to ensure that each Centre is financially viable and sustainable on a long-term basis.

Seventh Feltman Affidavit at para. 31, Applicants' Motion Record, Tab 2.

15. As of June 21, 2021, the CCAA Debtors and their Canadian Affiliates have successfully negotiated Lease amendments ("**LAAs**" and each a "**LAA**") for 42 Centres. In addition, the CCAA Debtors finalized 15 LAAs where agreements in principle had previously been reached.

Seventh Feltman Affidavit at paras. 33-35, Applicants' Motion Record, Tab 2.

16. The CCAA Debtors remain focused on, among other things, further negotiations with their Landlords and consummating a successful restructuring in a coordinated manner with the Chapter 11 Debtors to address the liabilities of the Guarantor Debtors under the Leases in Canada and the United States.

Seventh Feltman Affidavit at para. 35, Applicants' Motion Record, Tab 2.

C. The LAA of RGN British Columbia XXIV Limited Partnership

17. RGN British Columbia XXIV Limited Partnership ("**RGN BC XXIV LP**") is the Canadian Tenant SPE for a Centre located at 3450 Uptown Boulevard in Victoria, British Columbia, pursuant to a Lease with its Landlord Ravine Equities Inc. and Ravine Properties Limited Partnership (collectively, "**Ravine**").

Seventh Feltman Affidavit at para. 43, Applicants' Motion Record, Tab 2.

18. RGN BC XXIV LP successfully negotiated a LAA with Ravine, the specific terms of which are confidential.

Seventh Feltman Affidavit at para. 43, Applicants' Motion Record, Tab 2.

19. Ravine has agreed that, following the payment of certain pre-filing arrears, the Lease will be in good standing. Ravine has also agreed to waive any claim that the Lease is in default for acts, events or omissions of RGN BC XXIV LP arising prior to execution of the LAA and waive any default arising from the commencement of the Chapter 11 Cases.

Seventh Feltman Affidavit at para. 44, Applicants' Motion Record, Tab 2.

20. Effectively, provided certain pre-filing arrears are satisfied, RGN BC XXIV LP will be in a position where its Lease cannot be terminated as a result of the Chapter 11 Cases and the CCAA Proceedings and the CCAA Proceedings in respect of RGN BC XXIV LP and its general partner, RGN British Columbia XXIV GP Inc. ("**RGN BC XXIV GP**") will no longer be necessary.

Seventh Feltman Affidavit at paras. 44 and 45, Applicants' Motion Record, Tab 2.

PART III - ISSUES

21. The issues before this Court are whether:
- (a) the Stay Period should be extended to September 30, 2021;
 - (b) the CCAA Proceedings with respect to RGN BC XXIV LP and its general partner, RGN BC XXIV GP, should be terminated and discharged; and
 - (c) An exhibit within the Seventh Feltman Affidavit should be sealed.

PART IV - THE LAW

A. The Stay of Proceedings Should be Extended

22. The current Stay Period expires on June 30, 2021. Pursuant to s. 11.02 of the CCAA, the Court may extend a stay of proceedings where: (a) circumstances exist that make the order

appropriate; and (b) the debtor company satisfies the Court that it has been acting in good faith and with due diligence.

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

23. The CCAA Debtors are seeking to extend the Stay Period to and including September 30, 2021. The extension of the Stay Period would align with the time needed to obtain an order from the U.S. Court confirming the U.S. Plan and then to obtain from this Court the CCAA Recognition Order and the CCAA Termination Order.

24. The extension of the Stay Period would also allow the CCAA Debtors to continue their restructuring initiatives, including reviewing Leases and negotiating Lease amendments. The CCAA Debtors have sufficient funds to continue operating through the proposed extension of the Stay Period. During the proposed extension of the Stay Period, the CCAA Debtors will continue to work with the Chapter 11 Debtors and other stakeholders to develop and advance a resolution to the CCAA Proceedings.

25. The CCAA Debtors' progress towards a successful restructuring to date has been achieved in large part due to the stability provided by the stay of proceedings. The contemplated extension of the Stay Period is intended to encompass the period during which the Chapter 11 Debtors will pursue confirmation of the U.S. Plan and the CCAA Debtors and Foreign Representative will bring a motion before this Court seeking the CCAA Termination Order and the CCAA Recognition Order.

26. No creditors are expected to suffer material prejudice as a result of extending the Stay Period. The CCAA Debtors will continue to pay their post-filing obligations, including post-filing rent obligations, as they become due. The CCAA Debtors are acting in good faith and with due diligence in pursuing their restructuring strategy and the Monitor supports the CCAA Debtors' request to extend the Stay Period.

27. For the reasons described above, the Stay Period should be extended to September 30, 2021.

B. The CCAA Proceedings with respect to RGN BC XXIV LP and RGN British Columbia XXIV GP Inc. should be Terminated and Discharged

28. The CCAA Debtors submit that this Court should order the termination and discharge of the CCAA Proceedings with respect to RGN BC XXIV LP, and its general partner, RGN British Columbia XXIV GP Inc. This Court has the jurisdiction to terminate the CCAA Proceedings with respect to RGN BC XXIV LP and RGN British Columbia XXIV GP Inc. pursuant to s. 11 of the CCAA.

CCAA, s. 11.

29. RGN BC XXIV LP is seeking to terminate these CCAA Proceedings in order to return to ordinary course business operations. The LAA that RGN BC XXIV LP negotiated with its Landlord, Ravine, provides RGN BC XXIV LP with a broad waiver of claims in order to provide stability to its business and allow it to emerge from creditor protection.

30. It has always been the intention that the CCAA Proceedings would provide RGN BC XXIV LP with a limited period of time by which it could negotiate with Ravine in a stabilized environment. RGN BC XXIV LP entered into negotiations as intended and emerged with the LAA. The CCAA Proceedings have served their purpose and RGN BC XXIV LP is able to exit the process.

31. The CCAA Debtors believe the resolution embodied in the LAA is the best option available to RGN BC XXIV LP in the circumstances and provides RGN BC XXIV LP with the best chance to operate as a going-concern outside of these restructuring proceedings. In *Century Services*, the Supreme Court of Canada has noted, “[t]he best outcome [in a CCAA proceeding] is achieved when the stay of proceedings provides the debtor with some breathing

space during which solvency is restored and the CCAA process terminates without reorganization being needed”.

Century Services Inc. v. Canada (Attorney General), 2010 SCC 60 at para. 14 ([CanLII](#)) [*Century Services*].

32. The CCAA Debtors and the Monitor do not believe that any stakeholder will be prejudiced by the termination of the CCAA Proceedings with respect to RGN BC XXIV LP.

33. As part of the termination of the CCAA Proceedings, the CCAA Debtors also seek to discharge and relieve KSV from its role as Monitor with respect to RGN BC XXIV LP and RGN British Columbia XXIV GP Inc. It is well-established that the Court may grant an order discharging the Monitor on terms similar to those being sought in the proposed order. The Courts jurisdiction for making such an order is grounded in s. 11 of the CCAA.

See e.g. *Re Golf Town Canada Inc. et al.* (29 March 2018), Toronto CV-16-11527-00CL (Ont. Sup. Ct. [Comm. List]) CCAA Termination Order at paras. 8-12 ([Monitor's Website](#)).

Re: Toys “R” Us Canada Ltd. et al (9 May 2018), Toronto CV-17-00582960-00CL (Ont. Sup. Ct. [Comm. List]) CCAA Discharge Order at para 24 ([Monitor's Website](#)).

Re JTI-MacDonald Corp., 2010 ONSC 4212 at para. 19 ([CanLII](#)).

C. Confidential Exhibit Should be Sealed

34. The CCAA Debtors seek to seal an exhibit of the Seventh Feltman Affidavit which contain confidential and commercially sensitive information. Specifically, the CCAA Debtors seek to seal Confidential Exhibit “I”, which is the LAA entered into between RGN BC XXIV LP and Ravine.

35. The *Courts of Justice Act* (Ontario) grants this Court the discretion to order that any document filed in a civil proceeding be treated as confidential and sealed and not form part of the public record.

Courts of Justice Act, R.S.O., 1990 c. C. 43, s. 137(2).

36. The test to determine if a sealing order should be granted is set out in *Sierra Club* as recast in *Sherman Estate*:

- (a) court openness poses a serious risk to an important public interest;
- (b) the order sought is necessary to prevent this serious risk to the identified interest because reasonably alternative measures will not prevent this risk; and
- (c) as a matter of proportionality, the benefits of the order outweigh its negative effects.

Sierra Club of Canada v. Canada (Minister of Finance), 2002 SCC 41 at para. 53 ([CanLII](#)) [*Sierra Club*]
Sherman Estate v. Donovan, 2021 SCC 25 at paras. 38 and 43 ([CanLII](#)) [*Sherman Estate*].

37. The Courts in *Sierra Club* and *Sherman Estate* explicitly recognized that commercial interests such as preserving confidential information or avoiding a breach of a confidentiality agreement are an “important public interest” for purposes of this test.

Sierra Club of Canada v. Canada (Minister of Finance), 2002 SCC 41 at para. 55 ([CanLII](#))
Sherman Estate v. Donovan, 2021 SCC 25 at paras. 41-43 ([CanLII](#)).

38. Courts have applied the *Sierra Club* and *Sherman Estate* tests in the insolvency context and authorized sealing orders over confidential or commercially sensitive documents to protect the interests of debtors.

Re Danier Leather Inc., 2016 ONSC 1044 at para. 82 ([CanLII](#))
Ontario Securities Commission v. Bridging Finance Inc., 2021 ONSC 4347 at paras. 23-28.

39. The LAA contains a confidentiality clause that serves a *bona fide* commercial purpose. Disclosing the LAA’s contents could have significant negative effects on the CCAA Debtors’ ability to negotiate LAAs with other Landlords. The material contained in the LAA could create certain expectations related to future LAAs with other Landlords. Further, other Landlords may

be unwilling to enter into LAAs with the CCAA Debtors if they do not have confidence that the confidentiality provisions therein will be honoured. On the other side, disclosing the LAA's contents could have significant negative effects on the Landlord's ability to negotiate terms with other tenants for its properties.

40. The CCAA Debtors and the Monitor believe that no stakeholder will be prejudiced if Confidential Exhibit "I" is sealed. The other Landlords involved in these CCAA Proceedings are not creditors of RGN BC XXIV LP, and the LAA does not affect the other CCAA Debtors.

PART V - ORDER SOUGHT

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

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 25th day of June 2021.



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"
OTHER CCAA DEBTORS

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

**SCHEDULE “C”
LIST OF AUTHORITIES**

Cases

1. *Century Services Inc. v. Canada (Attorney General)*, 2010 SCC 60 ([CanLII](#)).
2. *JTI-MacDonald Corp.*, 2010 ONSC 4212 ([CanLII](#)).
3. *Sierra Club of Canada v. Canada (Minister of Finance)*, 2002 SCC 41 ([CanLII](#)).
4. *Sherman Estate v. Donovan*, 2021 SCC 25 ([CanLII](#)).
5. *Danier Leather Inc.*, 2016 ONSC 1044 ([CanLII](#)).
6. *Ontario Securities Commission v. Bridging Finance Inc.*, 2021 ONSC 4347.

**SCHEDULE “D”
RELEVANT STATUTES**

Companies’ Creditors Arrangement Act, R.S.C. 1985, c. C-36

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.

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.

Burden of proof on application

11.02 (3) The court shall not make the order unless

(a) the applicant satisfies the court that circumstances exist that make the order appropriate; and

(b) in the case of an order under subsection (2), the applicant also satisfies the court that the applicant has acted, and is acting, in good faith and with due diligence.

Courts of Justice Act, R.S.O. 1990, c. C. 43

Sealing documents

137 (2) A court may order that any document filed in a civil proceeding before it be treated as confidential, sealed and not form part of the public record.

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

FACTUM OF THE APPLICANTS
(RETURNABLE JUNE 30, 2021)

STIKEMAN ELLIOTT LLP
Barristers & Solicitors
5300 Commerce Court West
199 Bay Street
Toronto, Canada M5L 1B9

Ashley Taylor LSO#: 39932E
Tel: (416) 869-5236
Email: ataylor@stikeman.com

Lee Nicholson LSO #66412I
Tel: (416) 869-5604
Email: leenicholson@stikeman.com

Ben Muller LSO#: 80842N
Tel: (416) 869-5543
Email: bmuller@stikeman.com

Lawyers for the Applicants