

**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: Stay Extension and Estate Account Agreement)
(Returnable November 19, 2020)**

November 13, 2020

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

Nicholas Avis LSO#: 76781Q
Tel: (416) 869-5504
Email: navis@stikeman.com

Lawyers for the Applicants

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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**", and 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 *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. The Applicants and certain affiliated limited partnerships (collectively, the “**CCAA Debtors**”) subsequently sought and were granted the Initial Order under the CCAA on August 31, 2020. On September 10, 2020, this Court granted an Order amending and restating the Initial Order. The stay period under the Initial Order currently expires on November 27, 2020 (the “**Stay Period**”).

5. On November 5, 2020, this Court granted an Order continuing the proceedings under the *Bankruptcy and Insolvency Act*, R.S.C., 1985, c. B-3 (the “**BIA**”) in respect of RGN Ontario II LP with these CCAA Proceedings and extending all the rights, benefits and protections under the Initial Order to RGN Ontario II LP as a “CCAA Debtor”.

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

- (a) approves the Estate Account Agreement, as described below, including the Revised Cash Management System contemplated therein and grants customary protections to KSV Restructuring Inc., in its capacity as Monitor of the CCAA Debtors (the “**Monitor**”);
- (b) authorizes the CCAA Debtors to pay pre-filing amounts owing to certain Critical Suppliers (as defined below); and
- (c) extends the Stay Period to and including March 16, 2021, or such further and other date as determined by the Court.

PART II - THE FACTS

7. The facts with respect to this motion are more fully set out in the affidavit of James S. Feltman sworn November 13, 2020 (the “**Fifth Feltman Affidavit**”). Capitalized terms used

within this factum but not otherwise defined have the meanings ascribed to them in the Fifth Feltman Affidavit.

8. Since commencing these CCAA Proceedings, the CCAA Debtors, with the assistance of the Monitor, have worked diligently and in good faith to stabilize their business and ensure that the CCAA Proceedings continue in a coordinated manner with the Chapter 11 Cases, the NOI Proceedings and the Recognition Proceedings. The activities of the CCAA Debtors have included, among other things, responding to inquiries from Landlords of the CCAA Debtors' Centres; reviewing the CCAA Debtors' cash flow statements; paying rent for October and November 2020 for each of the Leases held by the CCAA Debtors; reviewing and analysing the CCAA Debtors' cash management system and developing the Estate Account Agreement and the Revised Cash Management System; and negotiating amendments to a number of Leases held by the CCAA Debtors.

Fifth Feltman Affidavit at paras. 14 and 22, Applicants' Motion Record, Tab 2.

9. Throughout the entirety of these CCAA Proceedings, the CCAA Debtors have continued to operate their businesses and manage their property as debtors in possession.

Fifth Feltman Affidavit at para. 19, Applicants' Motion Record, Tab 2.

A. The CCAA Debtors' Restructuring Efforts

10. The CCAA Debtors have initiated and are conducting a comprehensive review of their unexpired Leases to determine whether any such Leases should be disclaimed as part of the CCAA Proceedings. In conjunction with these efforts, the CCAA Debtors continue 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.

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

11. As of November 6, 2020, the CCAA Debtors have re-negotiated eight of their Leases (subject to final documentation). The CCAA Debtors are hopeful that they will not need to disclaim any of their Leases if other potentially uneconomical Leases can be re-negotiated.

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

12. 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.

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

B. The Revised Cash Management System

13. The CCAA Debtors, with the input of the Monitor, developed the Revised Cash Management System as outlined in the Estate Account Agreement.

Fifth Feltman Affidavit at para. 28, Applicants' Motion Record, Tab 2.

Fifth Feltman Affidavit, "Estate Account Agreement", Applicants' Motion Record, Tab 2 – Exhibit D.

14. The Estate Account Agreement provides that any Net Operating Cash Flow generated following the Filing Dates shall be held in the Estate Account so that such amounts are available to be distributed to creditors of the SPE Debtors in these CCAA Proceedings or the NOI Proceedings, if necessary or required, to the extent that a SPE Debtor has a positive cash balance. Briefly, the mechanisms to achieve this goal are as follows:

- (a) The SPE Debtors and RGN Management, in consultation with the Court Officer, will prepare an estimate of the Net Operating Cash Flow of each SPE Debtor from the Filing Date until October 31, 2020. RGN Management will

then transfer an amount equal to the aggregate estimated Net Operating Cash Flow of the SPE Debtors from the applicable Filing Date until October 31, 2020, to the Court Officer to be held in the Estate Account. Following the closing of the SPE Debtors' accounting for the month of October 2020, the SPE Debtors and RGN Management, in consultation with the Court Officer, will determine the Net Operating Cash Flow of each SPE Debtor since the Filing Date and make necessary adjustments depending on the actual amount of the Net Operating Cash Flow attributable to each SPE Debtor.

- (b) Each month after October 2020, following the closing of the SPE Debtors' accounting for the month, the SPE Debtors and RGN Management, in consultation with the Court Officer, are to determine the Net Operating Cash Flow of each SPE Debtor for the previous month and shall transfer the aggregate amount of the Net Operating Cash Flow of the SPE Debtors to the Court Officer to be held in the Estate Account in accordance with the Estate Account Agreement, subject to certain considerations outlined in the Estate Account Agreement.

Fifth Feltman Affidavit at para. 29, Applicants' Motion Record, Tab 2.

15. The calculation of Net Operating Cash Flow and corresponding payments and disbursements from the Estate Account as set forth above are to occur individually for each SPE Debtor on an unconsolidated basis. The Court Officer will keep an accounting of the receipts and disbursements of the Estate Account on an entity-by-entity basis.

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

16. The Estate Account Agreement and Order sought by the Applicants are intended to provide the Court Officer with customary protections related to the fulfillment of its duties under the Estate Account Agreement. Among other things, the Court Officer will not be liable

for any act or omission pertaining to the discharge of its duties under the Estate Account Agreement, save and except for any claim or liability arising out of any gross negligence or wilful misconduct on the part of the Court Officer.

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

C. Pre-filing Payments to Critical Suppliers

17. The CCAA Debtors are seeking authorization to pay pre-filing arrears to certain of their suppliers that provide essential services to the CCAA Debtors (the "**Critical Suppliers**"). These Critical Suppliers primarily consist of contractors that are involved in various projects to maintain and improve the Centres operated by the CCAA Debtors. Ensuring the Centres are maintained and attractive for Occupants to license is essential to the CCAA Debtors' on-going operations and will also be critical to any restructuring effort.

Fifth Feltman Affidavit at paras. 36 and 37, Applicants' Motion Record, Tab 2.

18. At least one Critical Supplier already stopped working on a project until its pre-filing arrears were paid,¹ and another contractor, who is in the midst of renovating a Centre, has threatened to withhold its services until pre-filing arrears related to construction work it performed in August are paid. The CCAA Debtors are concerned that other Critical Suppliers that are also owed pre-filing amounts may similarly attempt to withhold vital services. The CCAA Debtors do not have any readily available means to replace uncooperative Critical Suppliers, and in any event, such replacement efforts would be time consuming and costly.

Fifth Feltman Affidavit at paras. 16, 36 and 37, Applicants' Motion Record, Tab 2.

19. The proposed form of Order provides that payments will only be made to Critical Suppliers if the CCAA Debtors determine payment is necessary for the preservation of their

¹ The situation was resolved after RGN Management agreed to make the payment on behalf of the CCAA Debtor.

business or property, following consultation with the Monitor. This form of order is intended to give the CCAA Debtors the necessary flexibility to deal with ever-changing circumstances in a time-sensitive manner, while also ensuring that any payments for pre-filing arrears are subject to appropriate scrutiny. The proposed maximum aggregate amount that may be paid to Critical Suppliers for pre-filing arrears is \$1.25 million.

Fifth Feltman Affidavit at paras. 37 and 38, Applicants' Motion Record, Tab 2.

PART III - ISSUES

20. The issues before this Court, as addressed below, are whether:
- (a) the Estate Account Agreement, including the Revised Cash Management System and Court Officer protections contemplated therein, should be approved;
 - (b) the CCAA Debtors should be authorized to pay pre-filing arrears owing to certain Critical Suppliers, up to a maximum amount of \$1.25 million; and
 - (c) the Stay Period should be extended to and including March 16, 2021.

PART IV - THE LAW

A. The Estate Account Agreement Should Be Approved

21. This Court has the jurisdiction to approve the Estate Account Agreement pursuant to s. 11 of the CCAA, which provides that “the court [...] 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.”

CCAA, s. 11.

22. CCAA courts have frequently authorized debtors to modify their existing cash management systems to, among other things, ensure efficient control of cash, cash movements and cash reporting.

Victorian Order of Nurses for Canada (Re), 2015 ONSC 7371 paras 20 to 25 ([CanLII](#)).

Re Canada North Group Inc, 2017 ABQB 508 at para 31 ([CanLII](#)).

23. The CCAA Debtors submit that approval of the Estate Account Agreement and the Revised Cash Management System contemplated therein is reasonable and necessary in the circumstances for the following reasons:

- (a) the Estate Account Agreement and the Revised Cash Management System contemplated therein provide additional protections for the creditors of the SPE Debtors (which includes all of the CCAA Debtors) in the event any such entities are liquidated;
- (b) the Revised Cash Management System efficiently uses administrative and accounting resources;
- (c) the Court Officer has existing systems and infrastructure to fulfill its responsibilities under the Estate Account Agreement; and
- (d) the Estate Account Agreement requires that the SPE Debtors obtain an Order from this Court approving the Estate Account Agreement for it to become effective.

Fifth Feltman Affidavit at paras. 31 and 35, Applicants' Motion Record, Tab 2.

24. For the foregoing reasons, the Estate Account Agreement, including the Revised Cash Management System and Court Officer protections contemplated therein, should be approved by this Court.

25. **Pre-filing Payments to Critical Suppliers Should be Approved**

26. The CCAA Debtors are seeking authorization to pay pre-filing arrears to certain of its Critical Suppliers. For greater certainty, the CCAA Debtors are not seeking an order declaring that any of its suppliers are “critical suppliers” for the purposes of s. 11.4 of the CCAA.

27. This Court has previously permitted payments to be made to unsecured creditors where those creditors refuse to continue supplying a debtor company unless they are paid their pre-filing claims, and the loss of these services imperils the debtor company’s business. In such cases, this Court has empowered the monitor to supervise such payments to critical unsecured creditors with respect to their pre-filing claims.

Re Toys “R” Us (Canada) Ltd., 2017 ONSC 5571 at para 9 ([CanLII](#)).

Cinram International Inc. (Re), 2012 ONSC 3767 at para. 23 ([CanLII](#)).

Clover Leaf Holdings Company, Re., 2019 ONSC 6966 at paras 24-27 ([CanLII](#)).

28. The CCAA Debtors’ Critical Suppliers are essential to their on-going operations and their ability to implement a successful restructuring.

Fifth Feltman Affidavit at para. 37, Applicants’ Motion Record, Tab 2.

29. The CCAA Debtors do not have any readily available means to replace the Critical Suppliers.

Fifth Feltman Affidavit at para. 37, Applicants’ Motion Record, Tab 2.

30. The proposed form of order provides that the Monitor will oversee payments of pre-filing amounts made to Critical Suppliers. Payments will only be made following consultation with the Monitor, and after considering whether any particular supplier is essential to the

CCAA Debtors' business operations. The maximum amount that may be paid to all Critical Suppliers for pre-filing arrears is \$1.25 million in the aggregate.

Fifth Feltman Affidavit at paras. 37 and 38, Applicants' Motion Record, Tab 2.

Draft Order (Re: Stay Extension and Estate Account Agreement) at para. 3, Applicants' Motion Record, Tab 3.

31. For the reasons described above, the CCAA Debtors should be authorized to pay pre-filing arrears owing to their Critical Suppliers.

B. The Stay of Proceedings Should be Extended

32. The current Stay Period expires on November 27, 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).

33. The CCAA Debtors are seeking to extend the Stay Period to and including March 16, 2021 to allow them to continue their restructuring initiatives. During the proposed extension of the Stay Period, the CCAA Debtors will continue to advance their restructuring efforts as outlined in the Fifth Feltman Affidavit. The CCAA Debtors' progress to date has been achieved in no small part due to the stability provided by the CCAA. The contemplated extension of the Stay Period aligns with the outside date for implementation of a plan in the Chapter 11 Cases which is critical for a successful restructuring of the CCAA Debtors.

Fifth Feltman Affidavit at paras. 24, 40 and 42, Applicants' Motion Record, Tab 2.

34. No creditors are expected to suffer material prejudice as a result of the extension of the Stay Period. The CCAA Debtors will continue to pay their post-filing obligations, including

rent obligations, as they become due. The CCAA Debtors are acting in good faith and with due diligence in pursuing their restructuring strategy.

Fifth Feltman Affidavit at paras. 42 and 44, Applicants' Motion Record, Tab 2.

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

Fifth Feltman Affidavit at para. 41, Applicants' Motion Record, Tab 2.

Fifth Feltman Affidavit, "Cash Flow Statement", Applicants' Motion Record, Tab 2 – Exhibit E.

36. For the reasons described above, the Stay Period should be extended to March 16, 2021.

PART V - ORDER SOUGHT

37. 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 13th day of November 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. *Cinram International Inc. (Re)*, 2012 ONSC 3767 ([CanLII](#)).
2. *Clover Leaf Holdings Company, Re.*, 2019 ONSC 6966 ([CanLII](#)).
3. *Re Canada North Group Inc*, 2017 ABQB 508 ([CanLII](#))
4. *Re Toys “R” Us (Canada) Ltd.*, 2017 ONSC 5571 ([CanLII](#)).
5. *Victorian Order of Nurses for Canada (Re)*, 2015 ONSC 7371 ([CanLII](#))

**SCHEDULE “C”
RELEVANT STATUTES**

Companies’ Creditors Arrangement Act, RSC 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.

[...]

ONTARIO
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Proceeding commenced at Toronto

FACTUM OF THE APPLICANTS
(RETURNABLE NOVEMBER 19, 2020)

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

Nicholas Avis LSO#: 76781Q
Tel: (416) 869-5504
Email: navis@stikeman.com
Fax: (416) 947-0866

Lawyers for the Applicants