

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

**IN BANKRUPTCY AND INSOLVENCY**

**IN THE MATTER OF THE NOTICE OF INTENTION TO MAKE A PROPOSAL OF  
YUAN HUA (MIKE) WANG, OF THE CITY OF MARKHAM, IN THE PROVINCE  
OF ONTARIO**

**GRANT THORNTON LIMITED, in its capacity as Licensed Insolvency Trustee of  
Yuan Hua (Mike) Wang**

**WRITTEN SUBMISSIONS OF YUAN HUA (MIKE) WANG  
(Opposing the Scheduling of an Urgent Motion during Covid-19 Crisis)**

**Date:** March 23, 2020

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Counsel for Yuan Hua (Mike) Wang

## **PART I – PURPOSE OF SUBMISSIONS**

1. These submissions are filed by Yuan Hua (Mike) Wang (“**Mr. Wang**”) in opposition to the ex parte attempt by Ferina Construction Limited (“**Ferina**”) to ask the Commercial List to schedule a motion for March 31<sup>st</sup>, 2020 in these proceedings.
2. The urgent scheduling of the Ferina Motion to seek to end the BIA proposal of Mr. Wang or to schedule a motion to extend the NOI proceedings of Mr. Wang, is opposed on the following basis:
  - a. The Motions previously scheduled on March 31<sup>st</sup>, 2020 were adjourned by the omnibus Order of Chief Justice Morawetz on March 15<sup>th</sup>, 2020 to a date to be scheduled after June 2, 2020. There is currently no motion returnable on March 31<sup>st</sup> as a result.
  - b. A motion can only now be scheduled if the Court finds it urgent to do so and then it should be scheduled with reference to the schedules and availability of the parties who are required to attend.
  - c. Ferina has no standing to schedule a motion by Mr. Wang to extend his NOI process.
  - d. The Motion previously brought by Ferina which is currently adjourned is not urgent. The Motion materials by Ferina did not claim urgency to their motion in their notice of motion when they served it on February 19, 2020.

- e. The only urgency, if any, is in respect of the fact that, absent an order of the Court or some other global solution made in this crisis to relieve proposal debtors, Mr. Wang will be found bankrupt on March 31<sup>st</sup> unless he files a proposal or seeks an extension before midnight on that day. The choice to do so or not rests with Mr. Wang, not Ferina.
- f. Mr. Wang is ill and has not provided instructions, to date, to seek such an extension motion nor has he filed a proposal. Mr. Wang presumably reserves his right to seek urgent relief in that regard, if necessary.
- g. Ferina concealed from the court the fact that it knew Mr. Wang was ill in making their submissions to this Court to urgently schedule this motion, which fact is manifestly relevant in the current health crisis and limits the ability of Mr. Wang to respond or attend the motion or for counsel to attend with him.
- h. Ferina has no standing to bring the motion they seek the court to hear in the NOI process as they are, at best, a contingent creditor who has no admitted claim in the NOI process.
- i. The motion by Ferina, as it related to the CCAA proceedings of Forme Development is moot as the only relief sought in those proceedings has already been granted by the Order of Justice Hainey dated February 24, 2020. The pending motion is therefore only in the NOI proceedings.
- j. The further extension of the NOI period to file a proposal is supported by the Proposal Trustee. Despite repeated statements made by Ferina, no other creditor

has filed any material supporting the Ferina motion to bring the proposal process to an end.

- k. Ontario has unilaterally extended the need to take any steps in any matter before the Ontario Superior Court of Justice merely because a statutory time period is expiring. While it is not clear that that provision governs this case, the Court can and should take judicial notice of that direction and apply it to the circumstances to this case.
- l. Several creditors have provided evidence supporting the continuation of the NOI process.
- m. In the current state of emergency in Ontario, it is unreasonable and unfairly prejudicial to expect any individual debtor to formulate a proposal which is acceptable to its creditors, since it cannot meet with any creditors, its counsel, nor can it reasonably raise funds in this environment. This is only compounded by the fact that Mr. Wang is ill, which Ferina chose not to mention to the Court.
- n. Counsel to Ferina were advised of all of these arguments and proceeded to attempt to schedule this motion nonetheless, presumably seeking to take advantage of the known inability of Mr. Wang to properly respond. That is improper and aggressive without reason (given the lack of urgency in the Ferina motion).

**Supporting Documentation:**

The following supporting documentation to the above submissions shall be provided in a brief of documents shortly.

- 1) The motion record of Ferina, dated February 19<sup>th</sup>, 2020, which does not state that there is any urgency to their motion, because there is none.
- 2) The Order of Justice Hainey dated February 24<sup>th</sup>, 2020 in the CCAA proceedings of Forme Development which, among other things, granted the relief also being sought by Ferina that the claims process in the CCAA proceeding should govern claims from those parties in the NOI process.
- 3) The Statement of Affairs of Mr. Wang from his NOI proceeding listing Ferina as a creditor with a zero claim. There is no evidence anywhere in the record before the Court on this Motion that Ferina is actually owed anything or will be owed anything once the related CCAA process is complete. The time for filing such additional evidence has passed in any event.
- 4) The responding record of Mr. Wang, dated March 9, 2020, which includes evidence demonstrating support of several creditors for the continuation of the NOI proceedings.
- 5) The First Report of Grant Thornton the Proposal Trustee, dated February 19, 2020, containing the Trustee's conclusion that Mr. Wang is acting with due diligence and good faith and that he should be granted an extension.

- 6) The correspondence from Mr. Ullmann to Mr. Soutter dated March 8<sup>th</sup>, 2020 including the medical records of Mr. Wang describing his illness and the regimen of medication he had been prescribed. Those medical records can be supplied to the court confidentially upon request.
- 7) The correspondence between Mr. Soutter and dated March 19, 2020 warning Ferina not to proceed in the circumstances.

#### **PART IV – RELIEF SOUGHT**

3. For all of the foregoing reasons, the Court should deny the request to schedule a motion on March 31<sup>st</sup> at this time in this matter and the Ferina motion should either be dismissed with Prejudice or adjourned to a date to be set on or after June 2, 2020.
4. Costs should be awarded in the amount of \$2,500, payable by Ferina to Mr. Wang in 30 days to account for their deliberate decision to proceed with this unnecessary motion and for purposefully withholding in their ex parte application relevant information about the health of Mr. Wang and their failure to properly consider the impact of the current emergency on this matter.

**ALL OF WHICH IS RESPECTFULLY SUBMITTED** this 23<sup>rd</sup> day of March, 2020.



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**BLANEY MCMURTRY LLP**

Lawyers for Yuan Hua (Mike) Wang

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Proceeding commenced at **TORONTO**

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