Court File No. CV-21-656040-00CL

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 ARRANGEMENTOF **LAURENTIAN UNIVERSITY OF SUDBURY**

Applicant

FACTUM OF THE APPLICANT
(Stay Extension and DIP Refinancing)

January 25, 2022

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FACTUM OF THE APPLICANT

PART I - OVERVIEW

1. On February 1, 2021, Laurentian University of Sudbury ("**LU**" or the "**Applicant**") commenced proceedings under the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the "**CCAA**"). This step was taken as a result of a liquidity crisis forcing the Applicant to either: (i) commence insolvency proceedings in an effort to restructure the university to enable its continued operations; or (ii) close its doors, as the Applicant was otherwise unable to meet payroll obligations during the month of February and beyond.

2. The Applicant has continued to operate in the ordinary course and provide communications to ensure that any disruption to certain stakeholders, such as students and employees, has been minimized during the CCAA proceeding. The Applicant successfully completed the Winter 2021, Spring 2021, and Fall 2021 terms without interruption. The Fall 2021 term also featured a successful in-person return to campus for students, faculty and staff until the Applicant was forced to return to remote operations due to the COVID-19 Omicron variant.

3. As part of this phase of the CCAA proceeding, the Monitor and the Applicant are reviewing and resolving the many claims filed against the Applicant in accordance with the claims process. Further, the Applicant and the Monitor are preparing to engage in discussions with its stakeholders in an effort to develop a Plan of Compromise or Arrangement (a "**Plan**") that is acceptable to the creditors of the Applicant. As part of this, the Applicant is reviewing and considering the recommendations of the real estate and governance/operational reviews as part of its transformational restructuring.

4. The Applicant's motion is for:

   (a) an Order (the "**Stay Extension Order**"): (i) extending the Stay Period up to and including May 31, 2022, and (ii) authorizing the Monitor and the Chief Redevelopment Officer (the "**CRO**") to identify a third-party consultant to assist LU with the development of a strategic plan; and

   (b) an Order (the "**DIP Approval Order**") approving the Replacement DIP Facility and MCU DIP Loan Agreement.

5. The Court should grant the relief requested by the Applicant for the following reasons:

   (a) **Stay Extension.** The proposed stay extension should be granted pursuant to section 11.02(2) of the CCAA because the Applicant will have sufficient funds to continue operations during the proposed Stay Period, the Applicant needs the additional time to have creditor claims determined, negotiate a Plan, and advance its restructuring in all respects. The Applicant continues to act in good faith and with due diligence and the stay extension is supported by the Monitor;

   (b) **The Third-Party Consultant.** The involvement of a third-party is requested by the Province of Ontario (the "**Province**") as part of its package of support to LU. The third-party consultant's mandate would be to assist with the development of a strategic plan in a method that is effective, efficient, expeditious, and to the benefit of LU and its stakeholders.

(c) **Replacement DIP Facility.** The Replacement DIP Facility and MCU DIP Loan Agreement between LU, as borrower, and Her Majesty the Queen in right of Ontario, as represented by the Minster of Colleges and Universities ("**MCU**"), as lender, should be approved because the criteria under sections 11.2(1) and 11.2(4) of the CCAA are satisfied, no creditors will be prejudiced and the Applicant requires the Replacement DIP Facility to develop a Plan with its creditors, which is required in order to be able to exit from the CCAA proceedings.

PART II - FACTS

6. The relevant facts with respect to this motion are briefly summarized below and more fully set out in the Affidavit of Dr. Robert Haché sworn January 20, 2022 (the "**Haché Affidavit**").[1]

A. Background

7. On February 1, 2021, Chief Justice Morawetz granted an initial order (the "**Initial Order**") that, among other things, appointed Ernst & Young Inc. as Monitor (the "**Monitor**") of the Applicant in this proceeding, approved a stay of proceedings for the initial 10-day period (the "**Stay Period**") and granted certain Court-ordered super-priority charges.[2]

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[1] Capitalized terms used herein but not otherwise defined have the meanings ascribed to them in the Haché Affidavit. All references to currency in this factum are to Canadian dollars, unless otherwise noted.
[2] Haché Affidavit at para. 8, Motion Record of the Applicant dated January 20, 2022 ("**Motion Record**"), Tab 2, CaseLines# A6894. All references to CaseLines numbers in this factum are to the Master number.

8. On February 10, 2021, the amended and restated initial order (the "**Amended and Restated Initial Order**") was granted which, among other things, approved a debtor-in-possession interim financing arrangement in the amount of $25 million (the "**DIP Facility**"). This amount was subsequently increased to $35 million.[3]

9. The Stay Period has since been extended by court Order and is currently set to expire on January 31, 2022.[4]

10. The Applicant has worked closely with the Monitor to advance the restructuring including the commencement of two claims processes, engaging a real estate expert to undertake a review of the real estate assets of the Applicant, undertaking and completing a comprehensive governance review with respect to each of the Board and the Senate, and a full operational review of the university.[5]

11. The Applicant's efforts continue to be dedicated to its commitment to advance the restructuring towards a Plan to be presented to creditors, and to undertake all steps that could identify practices, policies, structures or challenges that may impede the Applicant's future success, and to proactively address same.[6]

B. Replacement DIP Facility

12. Due to LU's immediate liquidity crisis, it obtained debtor-in-possession financing ("**DIP**") from Firm Capital Corporation (the "**Existing DIP Lender**") to ensure it could satisfy its

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[3] Haché Affidavit at para. 10, Motion Record, Tab 2, CaseLines# A6895.
[4] Haché Affidavit at para. 8, Motion Record, Tab 2, CaseLines# A6894.
[5] Haché Affidavit at para. 13, Motion Record, Tab 2, CaseLines# A6895-A6896; Tenth Report of the Monitor dated January 24, 2022 ("**Tenth Report**") at para. 34, CaseLines# E971.
[6] Haché Affidavit at para. 13, Motion Record, Tab 2, CaseLines# A6895-A6896.

obligations as they became due. The Existing DIP loan was initially secured in the amount of $25 million. This amount was later increased to $35 million in May 2021.[7]

13. As part of its restructuring, LU will seek to replace the $35 million DIP facility with long-term exit financing provided by a lender. This amount will then be repaid to that lender over a period of time following the CCAA proceeding.[8]

14. On December 16, 2021, the Province formally announced it would provide LU with certain support. As part of this package, MCU agreed to refinance the full amount of the existing DIP financing (the "**DIP Refinancing**") and expressed its intention of replacing the DIP Facility with a long-term loan upon the Applicant's successful emergence from the CCAA proceeding.[9]

15. On January 19, 2022, LU and MCU executed an agreement (the "**MCU DIP Loan Agreement**") to refinance the Existing DIP Facility.[10]

16. Pursuant to the MCU DIP Loan Agreement, the interest rate on the Replacement DIP Facility will be based on the MCU's cost of funds at the time of the advance. As of January 12, 2022, this rate would be 1.052%. This represents a significant cost savings that will benefit LU and its creditors when compared to the 8.5% interest rate of the Existing DIP Facility.[11]

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[7] Haché Affidavit at para. 85, Motion Record, Tab 2, CaseLines# A6914-A6915.
[8] Haché Affidavit at para. 86, Motion Record, Tab 2, CaseLines# A6915.
[9] Haché Affidavit at para. 87, Motion Record, Tab 2, CaseLines# A6915.
[10] Haché Affidavit at para. 88, Motion Record, Tab 2, CaseLines# A6915.
[11] Haché Affidavit at para. 89, Motion Record, Tab 2, CaseLines# A6915; Tenth Report at para. 126(b), CaseLines# E990.

17. The remaining terms of the MCU DIP Loan Agreement are largely similar to the terms of the existing DIP Loan Agreement between LU and the Existing DIP Lender, extending the same rights and protections to the Replacement DIP Lender as those granted to the Existing DIP Lender pursuant to the Amended and Restated Initial Order.[12]

PART III - ISSUES

18. The following three issues must be determined on this motion:

(a) Should the Stay Period be extended up to and including May 31, 2022?

(b) Should the Monitor and CRO be authorized to identify a third-party consultant to assist LU with the development of a strategic plan?

(c) Should the Replacement DIP Facility be approved by this Court?

PART IV - LAW AND ANALYSIS

Issue 1: This Court should extend the Stay Period

19. The Applicant seeks an extension of the Stay Period up to and including May 31, 2022.

20. Pursuant to section 11.02 of the CCAA, the Court may, on an application in respect of a debtor company other than an initial application, grant an extension of a stay of proceedings where: (i) the applicant satisfies the Court that an extension of the stay of proceedings is appropriate in the circumstances; and (ii) the applicant further satisfies the Court that it has acted, and is acting, in good faith and with due diligence.[13]

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[12] Hache Affidavit at para. 90, Motion Record, Tab 2, CaseLines# A6915-A6916; Tenth Report at para. 126, CaseLines# E990.

[13] CCAA, s 11.02(2)-(3).

21. In deciding whether to grant an extension of the stay of proceedings, the Court will focus on whether the foregoing requirements have been satisfied. The length of the stay extension is discretionary. The extension date should be one that allows the parties some flexibility.[14]

22. Since the granting of the Stay Extension Order on August 27, 2021, the Applicant has worked diligently to advance this restructuring. However, due to many intervening events some of the originally anticipated timelines needed to be revisited. In particular, some key events that pushed out timelines leading to the development of a plan of compromise or arrangement include:[15]

(a) the initial phase of the operational and governance review public procurement process being unsuccessful, which delayed the engagement of an advisor to undertake such reviews;

(b) the delays experienced in completing the comprehensive real estate review, which will inform discussions with creditors with respect to a Plan;

(c) the ongoing delay in completing LU's audited financial statements due to the strained resources of LU's finance team and the extensive work required to review and reconcile all items. This also delayed the preparation of refreshed financial projections, which will inform discussions with creditors with respect to a Plan;

(d) the factual and legal complexity of claims filed in the Claims Process has required an extensive factual and legal review by the Monitor and LU, with challenges relating to the gathering of certain information;

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[14] *Sunrise/Saskatoon Apartments Limited Partnership (Re)*, 2017 BCSC 808 at para 21.
[15] Haché Affidavit at para. 15, Motion Record, Tab 2, CaseLines# A6896-A6897.

(e) the value-for-money audit by the Auditor General and the involvement by the Standing Committee on Public Accounts, which has required LU personnel to locate, collect and coordinate the delivery of information and documents to satisfy extensive information requests and provide regular updates to the advisors and the Board; and

(f) the onset of the Delta and Omicron variants of COVID-19, which disrupted operations on LU's campus at various times and required the immediate attention of senior leaders at LU to address the immediate health and safety needs of the students and staff on campus.

23. Notwithstanding the above, the Applicant continues to make significant progress since August. The Applicant has, with the assistance of and in consultation with the Monitor and the CRO, among other things:

(a) maintained operations in the ordinary course during the Stay Period, including the continuance of all student classes (virtually, with the exception of a portion of the Fall 2021 Term due to the COVID-19 pandemic) in the Winter 2021, Spring 2021 and Fall 2021 terms without disruption;[16]

(b) developed a return to campus plan for thousands of students that strives to protect the health and safety of students, faculty, staff and visitors. The plan was implemented in the Fall 2021 term, before it was halted due to the rise of the recent COVID-19 variant;[17]

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[16] Haché Affidavit at paras. 18, Motion Record, Tab 2, CaseLines# A6898; Tenth Report at para. 29, CaseLines# E970.

[17] Haché Affidavit at paras. 18-28, Motion Record, Tab 2, CaseLines# A6898-6900; Tenth Report at para. 29, CaseLines# E970.

(c) entered into separate transition agreements with the University of Sudbury and Thorneloe on August 23, 2021 and October 21, 2021, respectively;[18]

(d) worked with the City of Sudbury to create separate municipal addresses for each of the Former Federated Universities that are independent from LU's municipal address. This process is still ongoing;[19]

(e) continued to engage with MCU and other stakeholders throughout the proceeding, and respond to information requests;

(f) implemented amendments to the Pension Plan by which employees and former employees of Thorneloe and the University of Sudbury ceased to accrue benefits under the plan effective December 31, 2021. While the New Valuation Report has not been finalized, LU is advised by the actuary that both the going concern and solvency funded positions of the Pension Plan will be improved as of July 1, 2021 as a result of improved market conditions and the implemented amendments to the plan;[20]

(g) continued to review the Applicant's real estate portfolio, working closely with the Real Estate Advisor. Reports on the asset monetization strategy and consolidation strategy are expected to be final by January 31, 2022;[21]

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[18] Haché Affidavit at paras. 53-54, Motion Record, Tab 2, CaseLines# A6906; Tenth Report of the Monitor at para. 40, CaseLines# E972.

[19] Haché Affidavit at paras. 55, Motion Record, Tab 2, CaseLines# A6906-A6907.

[20] Haché Affidavit at paras. 57-64, Motion Record, Tab 2, CaseLines# A6907-A6909; Tenth Report at para. 41, CaseLines# E973.

[21] Haché Affidavit at para. 65-71, Motion Record, Tab 2, CaseLines# A6909-A6911; Tenth Report at paras. 51-55, CaseLines# E975-E976.

(h) engaged extensively with several key stakeholders and various government agencies regarding the Applicant's ongoing commitment to deliver robust, dynamic French-language programming to its students;[22]

(i) finalized the Replacement DIP Facility and MCU DIP Loan Agreement with the Province, which will represent a significant cost savings that will benefit LU and its stakeholders;[23]

(j) entered into discussions with the Northern Ontario School of Medicine concerning the terms of a new Relationship Agreement to reflect the material change in relationship between the two entities and the anticipated ongoing close proximity on LU's campus;[24]

(k) made significant progress, together with the Monitor, in the review and decisions relating to claims filed as part of the claims processes;

(l) responded to a court application brought by the Auditor General under the *Auditor General Act* in respect of which a decision has now been issued, confirming that the Auditor General is not legally entitled to compel the delivery of or receive privileged information;[25] and

(m) sought a stay of the Speakers Warrants issued by the Ontario Legislative Assembly on December 9, 2021 at the request of the Standing Committee on Public Accounts, which have a deadline for compliance of February 1, 2022. The motion seeking the

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[22] Haché Affidavit at paras. 77-82, Motion Record, Tab 2, CaseLines# A6913-A6914; Tenth Report at paras. 70-72, CaseLines# E978-E979.
[23] Haché Affidavit at paras. 83-90, Motion Record, Tab 2, CaseLines# A6914-A6916.; Tenth Report at para. 128, CaseLines# E991.
[24] Haché Affidavit at para. 125, Motion Record, Tab 2, CaseLines# A6924; Tenth Report at paras. 42-48, CaseLines# E973-E974.
[25] Haché Affidavit at para. 133, Motion Record, Tab 2, CaseLines# A6927; Tenth Report at para. 80, CaseLines# E980.

stay was heard by Chief Justice Morawetz on January 18, 2022 and a decision is pending.[26]

24. The Applicant is acting in good faith and with due diligence in pursuit of its restructuring goals.[27]

25. The Applicant requires an extension of the stay of proceedings until May 31, 2022, to preserve the *status quo* and permit the Applicant to continue its planned restructuring efforts, including, among other things:

(a) the determination and resolution of the universe of claims filed as part of the claims process;[28]

(b) receiving, considering and, if applicable, implementing the recommendations arising out of each of the real estate and governance and operational reviews;[29]

(c) the planning, drafting and negotiation of a Plan;[30]

(d) continuing the process of Board renewal;

(e) identifying a party to assist with the development of a Strategic Plan; and

(f) the ongoing re-building of confidence and relationships with all stakeholders of the Applicant.

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[26] Haché Affidavit at paras. 134-140, Motion Record, Tab 2, CaseLines# A6927-A6928; Tenth Report at para. 86, CaseLines# E982.

[27] Haché Affidavit at para. 152, Motion Record, Tab 2, CaseLines# A6931; Tenth Report at para. 133(c), CaseLines# E992.

[28] Haché Affidavit at paras. 141-144, Motion Record, Tab 2, CaseLines# A6928-A6929; Tenth Report at para. 133(b)(iii), CaseLines# E992.

[29] Haché Affidavit at para. 147-148, Motion Record, Tab 2, CaseLines# A6930; Tenth Report at para. 133(b)(i)(ii), CaseLines# E992.

[30] Haché Affidavit at para. 145-146, Motion Record, Tab 2, CaseLines# A6929-A6930; Tenth Report at para. 133(b)(vii), CaseLines# E992.

26. A substantial amount of work has already gone into this restructuring and significant progress has been made. That has included a comprehensive academic restructuring and operational restructuring steps that have achieved cost savings of $40 million per year, representing 25% of the university's overall annual expenses. However, a lot of work remains for the Applicant's restructuring to be completed successfully. An extension of the stay of proceedings until May 31, 2022, is in the best interests of the Applicant and all of its stakeholders.

27. The Revised Cash Flow Forecast demonstrates that the Applicant will have sufficient liquidity to operate its business and meet its obligations during the proposed extension of the Stay Period.[31]

28. The Monitor supports extending the Stay Period until May 31, 2022 and is of the view that the Applicant is acting in good faith and with due diligence.[32]

29. For all of the foregoing reasons, the Applicant respectfully submits that this Court should extend the Stay Period up to and including May 31, 2022.

Issue 2: This Court should authorize the Monitor and CRO to identify a third-party consultant to assist LU with the development of a strategic plan

30. As part of the support provided by the Province, the Province requested that LU develop a long-term strategic plan with the assistance of an external third party.[33] LU requests that this Court authorize the Monitor and the CRO to oversee a competitive process to identify

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[31] Tenth Report at Appendix "D", CaseLines# E1005-1011.
[32] Tenth Report at para. 133, CaseLines# E992.
[33] Haché Affidavit at para. 162, Motion Record, Tab 2, CaseLines# A6933.

an external third party. This will allow the process to be undertaken efficiently and expeditiously, so that the party can be identified and an understanding of what will be involved, including the cost and timeline, can be understood by creditors as they engage in negotiations around a plan of arrangement.

31. Section 11 of the CCAA provides statutory jurisdiction for the Court to make any order it considers appropriate in the circumstances.[34]

32. It is appropriate in the circumstances to authorize and direct the Monitor and CRO to immediately develop a competitive process for, and engage in discussions with, independent, prospective third parties who may be qualified and able to assist with the development of a strategic plan for the following reasons:

(a) the development of a strategic plan with the assistance of an independent third-party is a condition of the Province's support, and will be vital to the Applicant's operations going forward;

(b) the Monitor and CRO are best positioned as independent parties appointed by the Court to identify potential third parties with the qualifications and experience necessary to provide this service to the Applicant,;

(c) the Monitor and CRO can develop a streamlined process that blends competitiveness and merit with efficiency; and

(d) this step does not involve the actual development of the strategic plan, which will include consultation with a number of stakeholders and LU and its board.[35]

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[34] CCAA, 11.2.
[35] Tenth Report at paras. 129-131, CaseLines# E991.

Issue 3: This Court should approve the Replacement DIP Facility

i. Background and Terms of the Replacement DIP Facility

33. On January 19, 2022, LU and MCU executed the MCU DIP Loan Agreement to refinance the Existing DIP Facility. The Replacement DIP Facility and MCU DIP Loan Agreement provide significant cost savings that will benefit LU and its creditors. Pursuant to the MCU DIP Loan Agreement, there are no fees payable and the interest rate on the Replacement DIP Facility will be based on the MCU's cost of funds at the time of the advance. As of January 12, 2022, the interest rate on Replacement DIP Facility would be 1.052%. This represents a significant cost savings when compared to the 8.5% interest rate of the Existing DIP Facility.[36]

34. The remaining terms of the MCU DIP Loan Agreement are largely similar to the terms of the existing DIP Loan Agreement between LU and the Existing DIP Lender, extending the same rights and protections to the Replacement DIP Lender as those granted to the Existing DIP Lender pursuant to the Amended and Restated Initial Order.[37]

ii. Jurisdiction to Approve the Replacement DIP Refinancing

35. Section 11 and section 11.2 of the CCAA provide statutory jurisdiction to approve the Replacement DIP Facility.[38]

36. Section 11.2(4) of the CCAA sets out a non-exhaustive list of factors for a court to consider when deciding to make an order approving a DIP facility.[39] These factors support the

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[36] Haché Affidavit at para. 89, Motion Record, Tab 2, CaseLines# A6915; Tenth Report at para. 128, CaseLines# E991.
[37] Haché Affidavit at para. 90, Motion Record, Tab 2, CaseLines# A6915-A6916.
[38] CCAA, 11.2.
[39] CCAA, s. 11.2(4).

approval of the Replacement DIP Facility. The Applicant has successfully continued operations during the CCAA proceeding while pursuing its restructuring goals. The Replacement DIP Facility ensures stability in the Applicant's operations and provides breathing room in the event of unanticipated expenses.

37. The Applicant submits that the Replacement DIP Facility and MCU DIP Loan Agreement should be approved for the foregoing reasons, taking into consideration section 11.2(4) of the CCAA:

(a) the notice requirements under section 11.2(1) of the CCAA have been met;

(b) the Replacement DIP Facility would result in cost savings to LU and its stakeholders;[40]

(c) the terms of the MCU DIP Loan Agreement are substantially similar to the terms of the existing DIP Loan Agreement between LU and the Existing DIP Lender;[41]

(d) all encumbrances in favour of the Existing DIP Lender will be discharged, deleted and expunged from title to the Real Property upon registration of the DIP Approval Order (if granted by the Court) from the Land Register;[42]

(e) the quantum and terms of the Replacement DIP Facility and MCU DIP Loan Agreement are reasonable and appropriate, having regard to the Revised Cash Flow Forecast;[43]

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[40] Haché Affidavit at para. 89, Motion Record, Tab 2, CaseLines# A6915; Tenth Report at para. 128, CaseLines# E991.
[41] Haché Affidavit at para. 90, Motion Record, Tab 2, CaseLines# A6915-A6916; Tenth Report at para. 126(f), CaseLines# E990.
[42] Haché Affidavit at para. 159, Motion Record, Tab 2, CaseLines# A6932.
[43] Tenth Report at para. 127, CaseLines# E990-E991.

(f) stakeholders will not be prejudiced by the approval of the Replacement DIP Facility and the MCU DIP Loan Agreement; and

(g) the Monitor supports the Replacement DIP Facility and the MCU DIP Loan Agreement.[44]

38. The acceptance of the MCU DIP Loan Agreement is also necessary to allow the Applicant, the Monitor and the Applicant's creditors to focus their collective efforts towards developing a Plan that, if accepted by creditors, will ultimately allow the Applicant to emerge from CCAA protection.

PART V - RELIEF REQUESTED

39. For all of the foregoing reasons, the Applicant requests that the Stay Extension Order and the DIP Approval Order be granted, substantially in the form of draft Orders included at Tabs 3 and 4 of its Motion Record, respectively.

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 25th day of January, 2022.

Thornton Grout Finnigan LLP

Thornton Grout Finnigan LLP

Counsel for the Applicant

[44] Tenth Report at para. 128, CaseLines# E991.

SCHEDULE "A" – LIST OF AUTHORITIES

1. *Sunrise/Saskatoon Apartments Limited Partnership (Re)*, 2017 BCSC 808.

SCHEDULE "B" – RELEVANT STATUTES

Companies' Creditors Arrangement Act

Section 11

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.

Section 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.

(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.

Section 11.2

Interim financing

11.2 (1) On application by a debtor company and on notice to the secured creditors who are likely to be affected by the security or charge, a court may make an order declaring that all or part of the company's property is subject to a security or charge — in an amount that the court considers appropriate — in favour of a person specified in the order who agrees to lend to the company an amount approved by the court as being required by the company, having regard to its cash-flow statement. The security or charge may not secure an obligation that exists before the order is made.

(2) The court may order that the security or charge rank in priority over the claim of any secured creditor of the company.

(3) The court may order that the security or charge rank in priority over any security or charge arising from a previous order made under subsection (1) only with the consent of the person in whose favour the previous order was made.

(4) In deciding whether to make an order, the court is to consider, among other things,

> (a) the period during which the company is expected to be subject to proceedings under this Act;
>
> (b) how the company's business and financial affairs are to be managed during the proceedings;
>
> (c) whether the company's management has the confidence of its major creditors;
>
> (d) whether the loan would enhance the prospects of a viable compromise or arrangement being made in respect of the company;
>
> (e) the nature and value of the company's property;
>
> (f) whether any creditor would be materially prejudiced as a result of the security or charge; and
>
> (g) the monitor's report referred to in paragraph 23(1)(b), if any.

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