



ONTARIO SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

COUNSEL SLIP/ENDORSEMENT

COURT FILE NO.: CV-23-00700581-00CL DATE: 13 October 2023

NO. ON LIST: 3

TITLE OF PROCEEDING: Fire & Flower Holdings Corp., et al. v. Fencott, et al.

BEFORE JUSTICE: Justice Osborne

PARTICIPANT INFORMATION

For Plaintiff, Applicant, Moving Party, Crown:

Name of Person Appearing	Name of Party	Contact Info
Maria Konyukhova	Applicants	mkonyukhova@stikeman.com
Philip Yang		pyang@stikeman.com

For Defendant, Respondent, Responding Party, Defence:

Name of Person Appearing	Name of Party	Contact Info
N / A		

For Other, Self-Represented:

Name of Person Appearing	Name of Party	Contact Info
Leanne Williams	Monitor (FTI Consulting)	lwilliams@tgf.ca
Jodi Porepa (Monitor Rep.)		
Christian LaChance	2707031 Ontario Inc.	clachance@dwvpv.com
Hayden Sawchuk	JEB 2 Properties Inc.	hsawchuk@nimmonslawoffice.com

ENDORSEMENT OF JUSTICE OSBORNE:

1. 15315441 Canada Inc. (the “Applicant” or “Residual Co.”) seeks an order approving the Fourth Report of the Monitor and the activities described therein; approving the fees of the Monitor and its counsel; authorizing distributions to ACT from the Cash Consideration held by the Monitor, and extending the stay until January 30, 2024.
2. Defined terms in this Endorsement have the meaning given to them in the motion materials and/or the Fourth Report, unless otherwise stated.
3. The relief sought by the Applicants today is unopposed, and is strongly supported by the court-appointed Monitor and ACT.
4. The SISP previously authorized in this CCAA proceeding, including a stalking horse bid and agreement, has been completed. On August 29, 2023, I granted an approval and reverse vesting order and approved a claims process.
5. The Transactions closed on September 15, 2023 as a result of which, in part, Residual Co. became an applicant in these proceedings.
6. At present, the F&F Entities are continuing to operate, with the majority of employees retaining their employment, the majority of their landlords retaining a paying tenant and a majority of their suppliers retaining a paying counterparty. The Transactions have generated approximately \$13 million in proceeds in excess of the secured debt of the F& F Entities.
7. The proposed stay extension is appropriate to permit the Applicant to complete a wind down of its outstanding contracts and liabilities, complete the Claims Process, and make distributions to creditors. The Updated Cash Flow Forecast reflects that the Applicant should be able to maintain liquidity and fund operations up to February 2, 2024.
8. I am satisfied that the proposed stay extension will not materially prejudice any of the stakeholders and I observe that it is supported by the Monitor. It meets the requirements of sections 11.02(2) and (3) of the CCAA.
9. The proposed distribution to ACT is as contemplated in the Subscription Agreement which provides for a cash payment to be held by the Monitor for the benefit of Residual Co. The Monitor and its counsel have reviewed the loan and security documents of ACT and the ACT Facility, and they are of the view that the security interest is valid and enforceable.
10. The authority of this Court to approve distributions in the course of a CCAA proceeding outside of a plan of arrangement is clear: see *Nortel Networks Corporation et al*, 2017 ONSC 673 at paras. 53 – 55.
11. I am satisfied that the proposed distribution of \$11,779,041.10, inclusive of interest and fees, is appropriate and is approved.
12. The activities of the Monitor are fully set out in the Fourth Report. The related fees of the Monitor and its counsel are set out in the fee affidavits of Mr. Rosenberg and Ms. Kennedy respectively, attached as Appendices.
13. Both the activities and the fees reflecting the work done to complete those activities, are appropriate and are approved. I observe that the fees, and particularly those of the Monitor, are significant. They represent work done in respect of three different work streams, including: the CCAA Proceeding preparations and post-filing monitoring; the SISP; and the creation of a Financial Statement Model, all of which work was undertaken in a compressed timeframe. Moreover, given the exigency of this

proceeding, much of the work done during the proceeding such as the Model in particular, is work that would typically be done prior to a filing.

14. In addition, I observe that the process generally, and the SISP in particular, were made even more challenging, and necessitated further work by the Monitor, as a result of the midstream an abrupt departure of the Chief Financial Officer.
15. I also observe that in addition to the issues in this proceeding being complex in and of themselves, Monitor encountered various additional challenges along the way, including a necessary motion for a lift of the stay of proceedings to seek repossession of goods held by the F&F Entities, addressing challenges to the amended and restated Initial Order and the SISP Order, ongoing engagement with regulatory authorities, and designing and building the Model in a condensed timeframe.
16. The results are positive, in challenging circumstances. The Transactions have generated approximately \$13 million in excess of secured liabilities of the F& Entities, they continue as a going concern, most of the 594 employees have their employment preserved, landlords and suppliers of goods and services have preserved their business relationships and continuity of supply has been maintained in provinces where there are distribution operations would play a critical part in the provincial supply chain.
17. I am satisfied that the fees are appropriate and meet the overriding principle of reasonableness considering the overall value contributed and results achieved: see *Nortel Networks Corporation et al*, 2017 ONSC 673 at paras. 15 and 21; and *Triple-I Capital Partners Limited v. 12411300 Canada Inc.*, 2023 ONSC 3400 at paras. 23 - 26.
18. For all of these reasons, the activities and fees are approved.
19. The proposed order is consistent with the Model order of the Commercial List. While not determinative, that is a useful guideline.
20. Order to go in the form signed by me today, which is effective immediately and without the necessity of issuing and entering.
21. I am grateful to counsel and the Monitor for the work done to achieve the results realized to this point in time.

Olson, J.