

Court File Number: CV-16-11573-002

Superior Court of Justice
Commercial List

FILE/DIRECTION/ORDER

JCF CAPITAL ULC
Plaintiff(s)

AND

TALON INTERNATIONAL INC.
Defendant(s)
et al.

Case Management Yes No by Judge: _____

Counsel	Telephone No:	Facsimile No:

- Order Direction for Registrar (No formal order need be taken out)
- Above action transferred to the Commercial List at Toronto (No formal order need be taken out)
- Adjourned to: _____
- Time Table approved (as follows):

① Mr Wine has brought a Motion seeking the following Order:

(a) Appointing his law firm as counsel for

Date

Judge's Signature

Additional Pages _____

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Judges Endorsment Continued

The condominium owners
of suites 1202, 1402 and
2305 in The Trump
International Hotel and
Tower and regarding
JCF Capital LLC to
pursue his firm's
representations of these
clients up to an amount
of \$25,000; and

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(b) Lifting the stay of
of proceedings in 19
civil actions that I
ordered on November,
2016 when I approved
a review of the
Trump International Hotel
and Tower.

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Appointment of Counsel.

② At the request of the applicant and with the concurrence of all parties I appointed Chaitous LLP as Representative Counsel for all unit owners regarding common issues in respect of these proceedings.

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proceedings today.

③ The applicant entered into an agreement with certain unit owners whereby it agreed that Shibley Lighton LLP could consult with Representative Council with respect to all decisions made at

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positions taken by
Representative Council in
the course of its mandate.

The applicant also
agreed to fund Shibley
Lightons' legal fees
for doing so up to a
maximum of \$50,000.

(4) At the request of
all parties I made

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an order today to this effect.

⑤ Mr Wine represents the owners of three suites in Trump Tower in connection with litigation against Talon International Inc. He asks me to order the applicant

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D entered into a similar agreement with him and his clients and to pay for his legal fees up to \$25,000.

(b) I decline to make the order Mr. Wine seeks for the following reasons:

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(a) I have appointed
Chaumont LLP as
representative counsel.
I did not appoint
Shibley Kightley LLP
as representative
counsel. They are
referred to in my
order today because
they entered into an

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agreement with the
applicant. There is
no legal basis for
me to order the
applicant to enter
into a similar agreement
with Mr Winn's firm.

(b) The purpose of
appointing Representative
counsel is set out at

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paragraph 2 of my order
today. I am satisfied
that Chaitans is able
to provide legal
advice to all unit
owners with respect
to those issues. This
includes Mr. Wine's
clients. I see no
need for additional

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counsel to essentially
duplicate Chariton's role.

(c) I agree with
Ms. Huff's submission

that Mr. Wine's

representation of these

clients in respect of

their claims against

Talon may put Mr.

Wine in a position

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of conflict in respect
of the role of
representative counsel.
Lifting The Stay

⑦ Mr Wine asks the
to lift the stay
provided for in My
Order dated November,
2016 so that he
can pursue claims

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against Tolon on
behalf of a number
of his clients.

⑧ He relies upon a
recent decision of the
Ontario Court of Appeal
in which his client,
Gurbjit Singh, was
successful in having
his agreement of purchase

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and sell for his unit
in Trump Tower
reopened. Mr. White
submits that this was
a test case that
should ensure that
all of the other
plaintiffs' actions be
made to pursue will
succeed.

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⑨ Mr. Zucker, who represents Tolson, submits that there are many factual differences in the other cases Mr. Wine wishes to pursue and that Tolson has applied for leave to appeal the Court of Appeal's decision to the Supreme

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Court of Canada. Mr.
Zucker argues that
Mr. Wine's clients'
rights to pursue their
claims against Tolon
are merely being
postponed for 4-5
months and there
is therefore very
little, if any,

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prejudice to them.

(10) Ms Huff submits that the stay should not be lifted now so that the Receiver has a "period of peace" in which to develop and implement a sales process for Trump Tower. She argues

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That the sales process
that is contemplated
will likely be completed
early in 2017.

⑩ In paragraph 102
of his affidavit Jay
Wolf explains why
the stay is necessary
to allow the sales
process to proceed

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expeditiously. The
outstanding litigation
against Tolson could
interfere with the
receiver's sales
process.

(12) In deciding whether
the stay should be
lifted I must
balance the equities

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between the parties.

The receiver opposes

the lifting of the

stay because it needs
some "breathing room"

to attempt to complete

a court-supervised

sales process. The

clients who Mr.

Ward represents

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want to get on with
their claims against
Telco. Their claims
have been outstanding
for many years.

(13) Considering the
portions of all parties
I am satisfied that
the stay should not
be lifted at this

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time. In my view,
The prejudice to the
Receiver's ability to
complete an orderly
sales process outweighs
The prejudice to Mr.
Wine's clients to
delay the prosecution
of their claims for
a few months. I

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Thereupon decline to
lift the stay today.

However, if the sales
process is prolonged
beyond four months.

The parties shall
appear before me
at a 9:30 AM

appointment at which
time I will consider

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whether the stay should
be lifted with
respect to Mr. White's
clients.

(14) Under the circumstances
I make no order as
to the costs of this
Motion.

November 9, 2016 *H. J. H. J.*