



ONTARIO SUPERIOR COURT OF JUSTICE  
(COMMERCIAL LIST)

**COUNSEL/ENDORSEMENT SLIP**

COURT FILE NO.: CV-23-00700581-00CL

HEARING DATE: March 26, 2025

NO. ON LIST: 3

TITLE OF PROCEEDING: FIRE & FLOWER HOLDINGS CORP. et al

BEFORE: JUSTICE KIMMEL

**PARTICIPANT INFORMATION**

**For Plaintiff, Applicant, Moving Party:**

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Name of Person Appearing	Name of Party	Contact Info

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## **ENDORSEMENT OF JUSTICE KIMMEL:**

### **The Motion and Background**

- [1] The Applicants (“F&F Entities”) sought protection under the *Companies’ Creditors Arrangement Act* (“CCAA”) on June 5, 2023 to stabilize their business operations and to secure a going-concern solution for the benefit of their employees, creditors, and other stakeholders.
- [2] Capitalized terms not otherwise defined in this endorsement shall have the meanings ascribed to them in the Applicants’ factum filed in support of this motion, by which they are seeking a CCAA Termination and Distribution Order. The relief sought by this motion is not opposed by any party on the service list.
- [3] The Court-approved SISP conducted by the F&F Entities and the Monitor resulted in FFHC entering into the Subscription Agreement and the Transactions with the Purchaser, which closed on September 15, 2023. As a result of the Transactions, among other things, the F&F Entities are continuing to operate, with most employees retaining their employment, most of their landlords retaining a paying tenant and most of their suppliers retaining a paying counterparty. In addition, the Transactions generated approximately \$13 million in proceeds in excess of the secured debt of the F&F Entities.
- [4] Following the completion of the SISP, the F&F Entities with the assistance of the Monitor identified the successful bid and transaction. On August 29, 2023, the F&F Entities sought and obtained from the Court: (a) the Approval and Reverse Vesting Order which, among other things, approved the Subscription Agreement between FFHC and the Purchaser and the Transactions contemplated therein; and (b) the Claims Process Order which approved the Claims Process pursuant to which claimants could file claims against the Applicant.
- [5] The Transactions closed on September 15, 2023. The Applicant has periodically sought and obtained orders that extended the Stay Period, most recently until and including March 31, 2025.

### **Analysis**

- [6] The proposed Termination and Distribution Order seeks approval of proposed distributions, the activities described in the Monitor’s Ninth Report, the fees and disbursements and proposed fee accruals of the Monitor and its counsel, and approval of a termination reserve and the termination of these CCAA proceedings.

## *Approval of Distributions*

- [7] The Court-ordered Claims Process was designed to identify, quantify, and resolve claims against Residual Co. with respect to the F&F Entities, with a view to making distributions to the Applicant's creditors. The Proposed Distributions are to the Applicants' creditors with Proven Claims on a pro-rata basis.
- [8] The court's jurisdiction to approve distributions to creditors outside of a plan of arrangement in a CCAA proceeding is well established: see *Nortel Networks Corp., Re*, 2014 ONSC 4777, at paras 53-55 and 58; *Re Mobilicity*, Distribution Order granted August 14, 2015, Court File No. CV-13-10274-00CL; and *AbitibiBowater Inc.*, 2009 QCCS 6461 (Que. S.C.), at para 71.
- [9] The Applicant seeks authority for the Monitor to make the Proposed Distributions to creditors with Proven Claims against the Applicant on a pro-rata basis without regard to which F&F Entity any Proof of Claim was filed against. Further, all Excluded Contracts, Excluded Leases, and Excluded Liabilities were channeled to, assumed by, and vested absolutely and exclusively in Residual Co., such that the Excluded Contracts, Excluded Leases and Excluded Liabilities became the obligations of Residual Co.
- [10] The Approval and Reverse Vesting Order vested all of the F&F Entities' right, title and interest in and to the Excluded Assets exclusively in Residual Co., with all applicable Claims and Encumbrances continuing to attach to the Excluded Assets in the same nature and priority as they had immediately prior to the transfer.
- [11] The pro-rata basis of the Proposed Distributions effectively mirrors the outcome that would occur if the F&F Entities' estates were substantively consolidated. Applying the test for substantive consolidation from *Redstone Investment Corporation (Re)*, 2016 ONSC 4453 at para. 78, I am satisfied that the pro-rata basis of the Proposed Distributions meets the test for substantive consolidation:
  - a. The elements of consolidation, such as the intertwining of corporate functions and other commonalities across the group, are present, as detailed in paragraphs 33-41 of the Applicants' factum
  - b. The benefits of consolidation outweigh the prejudice to particular creditors, as detailed in paragraphs 42-43 of the Applicants' factum.
  - c. Consolidation (by way of the Proposed Distribution) is fair and reasonable in the circumstances, as detailed in paragraphs 44-46 of the Applicants' factum.

### *Approval of Monitor's Activities, Fees and Disbursements*

- [12] The approval of the Monitor's Ninth Report and the activities described therein has been made subject to the standard qualification that has become the Commercial List practice to include in these types of orders. There are well recognized policy and practical reasons for the Court to approve the Monitor's activities and provide a level of protection for the Monitor during the CCAA Proceedings: see *Re Target Canada Co*, 2015 ONSC 7574.
- [13] The Monitor's accounts are assessed on a standard of reasonableness, with a focus on the overall value contributed by the Monitor and its counsel: see *Nortel Networks Inc.*, 2022 ONSC 6680, at para 10; and *Re Nortel Networks Corporation et al*, 2017 ONSC 673, at paras 15, 21.
- [14] The relevant factors to be considered in this assessment are detailed in paragraphs 57 to 63 of the Applicants' factum and in the Ninth Report and supporting fee affidavits filed. I am satisfied that the time spent, and thus the fees (at market hourly rates), and disbursements of the Monitor and TGF resulting from their activities, are commensurate with the significant role and responsibilities and activities undertaken: see *Bank of Nova Scotia v. Diemer*, 2014 ONCA 851, at paras 33 and 44-45. The fees and disbursements of the Monitor and its counsel are thus approved.

### *CCAA Termination, Stay Extension and Termination Reserve*

- [15] There will be no need to continue the CCAA proceedings once the last remaining disputed Claim has been determined and the Proposed Distributions have been made. The proposed CCAA Termination and Distribution Order provides that the CCAA Proceedings shall be terminated upon service by the Monitor of an executed Monitor's Termination Certificate on the service list in these CCAA Proceedings, certifying that, to the knowledge of the Monitor, all matters to be attended to in connection with the CCAA Proceedings have been completed. Making this order now so that there is no need to return to court for a further order, is appropriate in the circumstances.
- [16] So too is the extension of the Stay to the CCAA Termination Time, to allow time for the Applicant and the Monitor to complete the outstanding activities required to complete the CCAA Proceedings in an efficient manner which include: (a) making the Proposed Distributions to the Applicant's creditors; (b) completing necessary statutory and administrative steps for terminating the CCAA Proceedings and discharging the Monitor; and (c) bankrupting and administering Residual Co.
- [17] The temporary lifting of the Stay to allow for the assignment into bankruptcy of Residual Co. flows from, and is ancillary to and in service of, the same objectives.

- [18] The Monitor has indicated that it requires a reserve fund for the benefit of itself, its counsel, and the Applicant's counsel in the amount of \$200,000.00 along with an amount of \$25,000.00 for the benefit of the Claims Officer and \$75,000.00 in Director fees (the "Estimated Termination Fees") to fund the remainder of these CCAA Proceedings up to and including the CCAA Termination Time. The Monitor also requires a further reserve fund for the benefit of itself and its counsel in the amount of \$100,000.00 (the "Estimated Bankruptcy Fees") to fund the administration of the bankruptcy of Residual Co.
- [19] The Estimated Termination Fees and Estimated Bankruptcy Fees constitute the Monitor's best estimate of fees and disbursements, excluding HST, for services that have been or will be provided, on the assumption that there are no delays, disputes, or unforeseen developments in connection with any of the remaining steps of these CCAA Proceedings and the subsequent bankruptcy proceedings of Residual Co., if applicable. The reserve to cover the Estimated Termination Fees and Estimated Bankruptcy Fees (the "Termination Reserve") will need to be approximately \$452,000.00, inclusive of HST.
- [20] A new provision was added to the proposed order on the day of the hearing that specifies what is to happen if there are any unused funds in the Termination Reserve. The Purchaser has agreed to this. The provisions of the order dealing with the Termination Reserve are reasonable and appropriate in the circumstances.

### *Releases*

- [21] The proposed CCAA Termination and Distribution Order seeks a release of the Monitor and its affiliates, officers, directors, employees, legal counsel and agents from any and all claims that any Person may have or be entitled to assert against any of the Monitor Released Parties, whether known or unknown, matured or unmatured, foreseen or unforeseen, existing or hereafter arising, based in whole or in part on any act or omission, transaction, dealing or other occurrence in any way relating to, arising out of, or in respect of, the CCAA Proceedings or with respect to their respective conduct in these CCAA Proceedings. The proposed release language appropriately excludes gross negligence and willful misconduct, as is the practice of this court for these orders
- [22] The court will approve third party releases in favour of the parties to a restructuring, their professional advisors, their directors and officers, and the Monitor outside of a CCAA plan in the context of a transaction, including in the context of RVO, when appropriate and after consideration of the criteria in *Lydian International Limited (Re)*, 2020 ONSC 4006 at para. 54: see, for example, *Harte Gold Corp (Re)*, 2022 ONSC 653, at para. 79; *Green Relief Inc (Re)*, 2020 ONSC 6837, at para. 76.
- [23] I have considered the applicable criteria in this case, as summarized in paragraph 73 of the Applicants' factum, and am satisfied that the inclusion of a release in favour of the Monitor Released Parties is appropriate in this case.

## Order

[24] I have granted the Termination and Distribution Order dated March 26, 2025, as signed by me today.

A handwritten signature in cursive script, appearing to read "Kimmel J.", written in dark ink.

KIMMEL J.

March 28, 2025