

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

THE HONOURABLE MR
H A I N E Y
JUSTICE NEWBOULD

)


WEDNESDAY, THE 25th
DAY OF JANUARY, 2017

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
ARRANGEMENT OF 2123125 ONTARIO INC.

Applicant

DISCHARGE AND TERMINATION ORDER

THIS MOTION, made by 2123125 Ontario Inc., previously named FirstOnSite G.P. Inc. ("212"), the general partner of Former Restoration L.P., previously named FirstOnSite Restoration L.P. ("**Former LP**", collectively with 212, "**FirstOnSite**"), a limited partnership formed under the laws of Ontario, for an order, *inter alia*:

- (a) approving a final distribution of funds held by the Monitor (as defined below) on behalf of FirstOnSite;
- (b) terminating these proceedings (the "**CCAA Proceedings**") and releasing the Charges (as defined below) effective as of the CCAA Termination Date (as defined below);
- (c) discharging FTI Consulting Canada Inc. ("**FTI**") as Monitor in the CCAA Proceedings (the "**Monitor**") effective as of the CCAA Termination Date;

- (d) discharging Oriole Advisors Ltd. ("**Oriole**") as Chief Restructuring Officer ("**CRO**") in the CCAA Proceedings effective as of the CCAA Termination Date or such earlier date as agreed by the CRO, FirstOnSite and the Monitor;
- (e) extending the Stay Period (as defined in the Initial Order, defined below) until the CCAA Termination Date;
- (f) approving the fees and disbursements of the Monitor and its counsel including their estimated fees to complete the CCAA Proceedings; and
- (g) approving the Fifth Report of the Monitor dated January 19, 2017 (the "**Fifth Report**") and the activities of the Monitor described therein,

was heard this day at 330 University Avenue, Toronto, Ontario.

ON READING the affidavit of Kevin McElcheran, sworn January 18, 2017 (the "**McElcheran Affidavit**") and the Fifth Report and the affidavits of Paul Bishop and Robert J. Chadwick each sworn on January 18, 2017 (together, the "**Fee Affidavits**"), and on hearing the submissions of counsel for FirstOnSite, counsel for the Monitor and those other parties present, no one appearing for any other person, although duly served as appears from the affidavit of service of C. Haddon Murray, sworn January 19, 2017, filed:

SERVICE

1. **THIS COURT ORDERS** that the time for service of the Notice of Motion, the Motion Record and the Fifth Report is hereby abridged and validated so that this Motion is properly returnable today and hereby dispenses with further service thereof.

RELEASE OF FUNDS

2. **THIS COURT ORDERS** that, notwithstanding anything to the contrary in the Distribution Order of Justice Newbould dated May 18, 2016 (the “**Distribution Order**”) or any other Order of this Court, after payment of the amounts secured by the Administration Charge (as defined in the Initial Order) and other amounts in connection with the completion of the CCAA Proceedings approved by the Monitor in consultation with FirstOnSite, the Monitor is hereby authorized and directed to, on or prior to the CCAA Termination Date, disburse the remaining Sale Proceeds (as defined in the Distribution Order) and any other funds held by the Monitor on behalf of FirstOnSite (including, without limitation, any tax refunds that may be received by or on behalf of FirstOnSite) to BDC Capital Inc. (“**BDC Capital**”), provided that, for certainty, the aggregate amount of all distributions made to BDC Capital on behalf of FirstOnSite (whether before or after the date of this Order) shall not exceed the amount of the obligations owing by FirstOnSite under the letter of offer dated November 25, 2014 among, *inter alia*, FirstOnSite and BDC Capital.

3. **THIS COURT ORDERS** that, notwithstanding paragraph 2 of this Order, if the CRO provides notice of the CRO’s intention to file assignments into bankruptcy for the Applicant and Former LP pursuant to this Order, an amount acceptable to the Monitor, in consultation with FirstOnSite, shall be reserved by the Monitor from the distribution set out in paragraph 2 of this Order in respect of costs in connection with such bankruptcy proceedings.

EXTENSION OF STAY PERIOD

4. **THIS COURT ORDERS** that the Stay Period referred to in the Claims Bar and Stay Extension Order granted on October 28, 2016 in the CCAA Proceedings is extended until the CCAA Termination Date.

BANKRUPTCY PROCEEDINGS

5. **THIS COURT ORDERS** that the CRO is authorized, but not required, to, with the consent of the Monitor and BDC Capital or by further order of this Court, file assignments into bankruptcy for the Applicant and Former LP.

6. **THIS COURT ORDERS** that the CRO shall provide at least seven (7) days' notice to the E-Service List of the CRO's intention to file assignments into bankruptcy for the Applicant and Former LP.

TERMINATION OF CCAA PROCEEDINGS

7. **THIS COURT ORDERS** that upon the earlier of (a) the filing of a certificate of the Monitor substantially in the form attached hereto as **Schedule "A"** (the "**CCAA Termination Certificate**") certifying that, to the knowledge of the Monitor, all matters to be attended to in connection with the CCAA Proceedings have been completed, or (b) the assignment into bankruptcy of the Applicant and Former LP pursuant to paragraph 5 of this Order (the "**CCAA Termination Date**"), the CCAA Proceedings shall be terminated without any other act or formality.

8. **THIS COURT ORDERS** that the Monitor shall provide at least seven (7) days' notice to the E-Service List of the Monitor's intention to file the CCAA Termination Certificate.

9. **THIS COURT ORDERS** that the Charges, as defined in the Amended and Restated Initial Order of Justice Newbould dated April 21, 2016 (the "**Initial Order**"), shall be and are hereby terminated, released and discharged effective at the CCAA Termination Date.

DISCHARGE OF THE MONITOR

10. **THIS COURT ORDERS AND DECLARES** that effective at the CCAA Termination Date, FTI shall be discharged as Monitor and shall be relieved from any further obligations, responsibilities or duties in its capacity as Monitor pursuant to the Initial Order and any other Orders of this Court in the CCAA Proceedings.

DISCHARGE OF THE CRO

11. **THIS COURT ORDERS AND DECLARES** that effective at the CCAA Termination Date, or such earlier date as agreed to by the CRO, FirstOnSite and the Monitor, the CRO shall be discharged and relieved from any further obligations, responsibilities or duties in its capacity as CRO pursuant to the Order of this Court granted on June 27, 2016 and any other Orders of this Court in the CCAA Proceedings.

RELEASES

12. **THIS COURT ORDERS** that effective as of the date of this Order, in addition to the protections in favour of the Monitor and the CRO, respectively, in any Order of this Court in the CCAA Proceedings or the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the "**CCAA**"), the Monitor, the Monitor's legal counsel and the CRO, and each of their respective affiliates and officers, directors, partners, employees and agents (collectively, the "**Released Parties**") are hereby released and discharged from any and all claims that any person may have or be entitled to assert against the 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 existing or taking place on or prior to the date of this Order in any way relating to, arising out of or in respect of the CCAA Proceedings or with respect to their respective conduct in the CCAA Proceedings (collectively, the "**Released Claims**"), and any such

Released Claims are hereby released, stayed, extinguished and forever barred and the Released Parties shall have no liability in respect thereof, provided that the Released Claims shall not include any claim or liability arising out of any gross negligence or willful misconduct on the part of the Released Parties.

13. **THIS COURT ORDERS** that, subject to paragraph 14 hereof, effective as of the CCAA Termination Date, in addition to the protections in favour of the Monitor and the CRO, respectively, in any Order of this Court in the CCAA Proceedings or the CCAA, the Released Parties are hereby released and discharged from any and all claims that any person may have or be entitled to assert against the 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 existing or taking place following the date of this Order in any way relating to, arising out of or in respect of the CCAA Proceedings or with respect to their respective conduct in the CCAA Proceedings (collectively, the "**Subsequent Released Claims**"), and any such Subsequent Released Claims are hereby released, stayed, extinguished and forever barred and the Released Parties shall have no liability in respect thereof, provided that the Subsequent Released Claims shall not include any claim or liability arising out of any gross negligence or willful misconduct on the part of the Released Parties.

14. **THIS COURT ORDERS** that in the event that any person objects to the release and discharge of the Subsequent Released Claims, that person must send a written notice of objection and the grounds therefor to the Monitor and the CRO at the applicable address set out on the E-Service List such that the objection is received by the Monitor and CRO prior to the proposed CCAA Termination Date. If no objection is received by the Monitor or CRO prior to the proposed CCAA Termination Date, the release and discharge of Subsequent Released Claims

pursuant to paragraph 13 hereof shall be automatically deemed effective upon the CCAA Termination Date, without further Order of the Court.

15. **THIS COURT ORDERS** that if an objection to the release of the Subsequent Released Claims pursuant to paragraph 14 hereof is received by the Monitor or the CRO, the release and discharge of the Subsequent Released Claims pursuant to paragraph 13 hereof shall only become effective if the objection is resolved or upon further Order of the Court. For greater certainty, no objection received in accordance with paragraph 14 hereof shall affect the release and discharge of the Released Claims pursuant to paragraph 12 hereof, which shall be effective as of the date of this Order.

16. **THIS COURT ORDERS** that no action or other proceeding shall be commenced against any of the Released Parties in any way arising from or related to the CCAA Proceedings, except with prior leave of this Court on at least seven days' prior written notice to the applicable Released Party, and provided that any such Order granting leave includes a term granting the applicable Released Party security for its costs and the costs of its counsel in connection with any proposed action or proceeding, such security to be on terms this Court deems just and appropriate.

17. **THIS COURT ORDERS** that, notwithstanding any provision of this Order and the termination of the CCAA Proceedings, nothing herein shall affect, vary, derogate from, limit or amend, and the Monitor and CRO shall each continue to have the benefit of, any of the protections in favour of the Monitor and of the CRO, respectively, at law or pursuant to the CCAA or any Order of this Court in the CCAA Proceedings or otherwise.

18. **THIS COURT ORDERS** that, notwithstanding any provision of this Order, the Monitor and CRO shall each have the authority from and after the date of this Order to complete the matters set out in the Fifth Report and any other matters

necessary or appropriate in connection with completing the CCAA Proceedings as requested by FirstOnSite and agreed to by the Monitor.

APPROVAL OF THE MONITOR'S REPORT, ACTIVITIES AND FEES

19. **THIS COURT ORDERS** that the Fifth Report and the activities of the Monitor set out therein are hereby approved.

20. **THIS COURT ORDERS** that the fees and disbursements of the Monitor and its counsel, including the Completion Estimates (as defined in the Fifth Report), as set out in the Fifth Report and the Fee Affidavits, are hereby approved.

GENERAL

21. **THIS COURT HEREBY REQUESTS** the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada, the United States, or elsewhere to give effect to this Order and to assist FirstOnSite, the Monitor and their respective agents in carrying out the terms of this Order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to FirstOnSite and the Monitor, as an officer of this Court, as may be necessary or desirable to give effect to this Order or to assist FirstOnSite, the Monitor and their respective agents in carrying out the terms of this Order.



ENTERED AT / INSCRIT À TORONTO
ON / BOOK NO:
LE / DANS LE REGISTRE NO:

JAN 25 2017

PER / PAR: 

D. Unless otherwise indicated herein, terms with initial capitals have the meanings set out in the Discharge and Termination Order.

THE MONITOR CERTIFIES the following:

1. To the Monitor's knowledge, all matters to be attended to in connection with the CCAA Proceedings have been completed.

ACCORDINGLY, the CCAA Termination Date has occurred.

DATED at Toronto, Ontario this _____ day of _____, _____.

**FTI Consulting Canada Inc., in its capacity
as Monitor of FirstOnSite, and not in its
personal capacity**

Per: _____

Name:

Title:

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

Proceeding commenced at Toronto

DISCHARGE AND TERMINATION ORDER

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