

Court File No. 11-CL-9159-00CL

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

THE HONOURABLE MR.)
JUSTICE MORAWETZ) WEDNESDAY, THE 14TH
DAY OF SEPTEMBER, 2011

**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 PRISZM INCOME FUND, PRISZM CANADIAN OPERATING TRUST,
PRISZM INC. AND KIT FINANCE INC.**

TERMINATION AND DISCHARGE ORDER

THIS MOTION made by FTI Consulting Canada Inc., in its capacity as Court-appointed monitor (the "**Monitor**") of Priszm Income Fund, Priszm Canadian Operating Trust, Priszm Inc. and Kit Finance Inc. (collectively, the "**Applicants**" and along with Priszm LP, the "**Priszm Entities**") for an order *inter alia* (a) providing for the termination of the proceeding of the Applicants under the CCAA (the "**CCAA Proceedings**"); and (b) providing for the discharge and release of the Monitor, was heard this day at 330 University Avenue, Toronto, Ontario.

ON READING the Notice of Motion of the Monitor returnable September 14, 2011, the Fourth Report of the Monitor dated September 9, 2011 (the "**Fourth Report**"), the Supplement to the Fourth Report of the Monitor dated September 13, 2011 (the "**Supplement to the Fourth Report**"), the affidavit of Jim Robertson sworn September 8, 2011, the affidavit of Paul Procyk sworn September 9, 2011, the Motion Record of the Applicants for a Motion returnable September 14, 2011, all filed, and on hearing the submissions of counsel to the

Monitor, the Prizm Entities, The Prudential Insurance Company of America, Pruco Life Insurance Company and Prudential Retirement Insurance and Annuity Company, 2289500 Ontario Inc. and Jim Robertson, YUM! Restaurants International (Canada) Company, Scott's Real Estate Investment Trust, SR Operating Trust, Scott's Real Estate Limited Partnership, Scott's Trustee Corp. and Scott's GP Trust, and certain other critical suppliers of the Prizm Entities, no other parties appearing although duly served as appears from the affidavit of service, filed.

SERVICE

1. **THIS COURT ORDERS** that the time for service of the Notice of Motion and the Motion Record herein is hereby abridged so that this Motion is properly returnable today and any further service thereof is hereby dispensed with.

DEFINITIONS

2. **THIS COURT ORDERS** that all capitalized terms used but not defined in this Order shall have the meaning given in the Amended and Restated Initial Order of the Honourable Justice Mesbur dated April 29, 2011 (the "**Amended and Restated Initial Order**").

APPROVAL OF ACTIVITIES

3. **THIS COURT ORDERS** that the Third Report of the Monitor dated June 24, 2011 (the "**Third Report**"), the Fourth Report, the Supplement to the Fourth Report and the actions, conduct and activities of the Monitor described in the Third Report, the Fourth Report and the Supplement to the Fourth Report be and are hereby approved.

4. **THIS COURT ORDERS AND DECLARES** that the Monitor has duly and properly discharged and performed its obligations, liabilities, responsibilities and duties in its capacity as Monitor pursuant to the Amended and Restated Initial Order, any other Order of this Court in the CCAA Proceedings, the CCAA or otherwise.

TERMINATION OF CCAA PROCEEDING

5. **THIS COURT ORDERS** that, except as expressly provided in this Order or in the Order granted by this Court of even date (the “**Receivership Order**”) appointing RSM Richter Inc. (the “**Receiver**”) as receiver of the assets, properties and undertakings of the Prizm Entities (the “**Receivership Proceedings**”), the CCAA Proceedings shall be and are hereby terminated effective at 12:01 a.m. on the business day after the Monitor’s filing with this Court of the Monitor’s certificates (the “**Vesting Certificates**”) contemplated by and appended to the Approval and Vesting Orders granted by this Court of even date, in respect of the two asset purchase agreements with FMI Atlantic Inc., as purchaser, and FMI Ontario Inc., as guarantor, dated July 29, 2011 and August 23, 2011, respectively.

6. **THIS COURT ORDERS AND DIRECTS** that the Monitor transfer all amounts held by the Monitor, except for an amount equal to the Administration Charge Reserve (as defined below), to the Receiver forthwith upon:

- (a) the appointment of the Receiver becoming effective as set out by the terms of the Receivership Order; and
- (b) the Receiver providing the Monitor with wire transfer instructions for its bank account opened in connection with the Receivership Order.

7. **THIS COURT ORDERS** that the Charges, other than the Administration Charge and the DIP Lender's Charge, shall have the priority and rank set out in the Receivership Order.

DISCHARGE OF THE MONITOR

8. **THIS COURT ORDERS** that, immediately upon the Monitor's filing with this Court of the Vesting Certificates, the Monitor be and is hereby discharged and relieved from any further obligations, liabilities, responsibilities or duties in its capacity as Monitor pursuant to the Amended and Restated Initial Order, any other Order of this Court in the CCAA Proceedings, the CCAA or otherwise, provided that the Monitor shall not be discharged in respect of the Outstanding Matters set out in paragraph 12 below until the filing of the Monitor certificate referred to in paragraph 13 below.

9. **THIS COURT ORDERS** that, in addition to the protections in favour of the Monitor as set out in the Amended and Restated Initial Order, in any other Order of this Court in the CCAA Proceedings or the CCAA, the Monitor shall not be liable for any act or omission on the part of the Monitor, including with respect to any reliance thereof, including without limitation, with respect to any information disclosed, any act or omission pertaining to the discharge of the Monitor's duties in the CCAA Proceedings or with respect to any other duties or obligations of the Monitor under the CCAA or otherwise, save and except for any claim or liability arising out of any gross negligence or wilful misconduct on the part of the Monitor. Subject to the foregoing and in addition to the protections of the Monitor as set out in the Orders of this Court in the CCAA Proceedings, any claims against the Monitor in connection with the performance of its duties as Monitor are hereby released, stayed, extinguished and forever barred and the Monitor shall have no liability in respect thereof.

10. **THIS COURT ORDERS** that no action or other proceeding shall be commenced against the Monitor in any way arising from or related to its capacity or conduct as Monitor except with prior leave of this Court and on prior written notice to the Monitor and such further order securing, as security for costs, the full indemnity costs of the Monitor in connection with any proposed action or proceeding as the Court hearing the motion for leave to proceed may deem just and appropriate.

11. **THIS COURT ORDERS** that, notwithstanding any provision of this Order, nothing contained in this Order shall affect, vary, derogate from or amend any of the rights, approvals and protections in favour of the Monitor pursuant to the Amended and Restated Initial Order, any other Order of this Court in the CCAA Proceedings, the CCAA or otherwise, all of which are expressly continued and confirmed.

12. **THIS COURT ORDERS** that, notwithstanding any provision of this Order, upon the appointment of the Receiver becoming effective as set out by the terms of the Receivership Order, the Administration Charge be and is hereby discharged, and:

- (a) the Monitor is hereby authorized, directed and empowered to retain \$1.5 million in cash from the amounts held by the Monitor as a reserve to satisfy any and all claims of the beneficiaries of the Administration Charge (other than 2289500 Ontario Inc. as Chief Restructuring Officer of the Prizm Entities, the “**Administration Charge Beneficiaries**”). The claims of the Administration Charge Beneficiaries hereby attach to the Administration Charge Reserve and the Administration Charge Beneficiaries shall only have recourse to the Administration Charge Reserve. Following receipt of written confirmation from each of the Administration Charge Beneficiaries that each such beneficiary has no

further claims that would be secured by the Administration Charge, the Monitor shall forthwith distribute the remaining amounts in the Administration Charge Reserve, if any, to the Receiver; and

- (b) provide promptly the Receiver with copies of any and all Initial D&O Claims (as defined in the D&O Claims Solicitation Procedure Order granted by the Honourable Justice Morawetz on June 29, 2011 (the “**D&O Claims Solicitation Procedure Order**”)) received by the Monitor on the FTI Claims Site (as defined in the D&O Claims Solicitation Procedure Order) or otherwise (collectively, (a) and (b) above, the “**Outstanding Matters**”).

13. **THIS COURT ORDERS AND DIRECTS** the Monitor to, within one (1) business day following the completion of the final Outstanding Matter, file a Monitor’s certificate with this Court certifying that the Outstanding Matters have been completed.

PROCEEDINGS AGAINST DIRECTORS AND OFFICERS

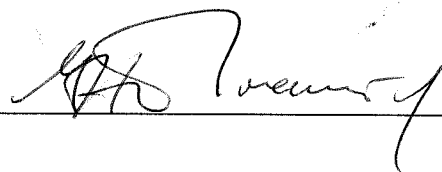
14. **THIS COURT ORDERS** that, notwithstanding any provision of this Order, the Stay Period be and is hereby extended only in respect of the Directors and Officers (as defined in the D&O Claims Solicitation Procedure Order) until the completion of the D&O Claims Solicitation Procedure (as defined in the D&O Claims Solicitation Procedure Order) and the resolution of any and all D&O Claims (as defined in the D&O Claims Solicitation Procedure Order) and, except in respect of Proceedings alleging claims contemplated by subsection 11.03(2) of the CCAA, during the Stay Period no Proceeding may be commenced or continued against any of the Directors and Officers with respect to any claim against such Directors and Officers that arose before the date of the commencement of the CCAA Proceedings and that relates to any obligations of the Prizm Entities whereby the Directors and Officers are alleged

under any law to be liable in their capacity as Directors and Officers for the payment or performance of such obligations, or against any employee of the Prizm Entities that is a party to an action involving the Prizm Entities.

GENERAL

15. **THIS COURT ORDERS** that any and all administrative matters relating to the CCAA Proceedings, which arise following the termination of the CCAA Proceedings and the effective date of the appointment of the Receiver as set out in the Receivership Order, may be brought before the Court for determination, advice and direction. All such matters shall simultaneously be brought before the Court in the CCAA Proceedings and the Receivership Proceedings.

16. **THIS COURT HEREBY REQUESTS** the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada, the United States of America or elsewhere to give effect to this Order and to assist the Monitor and its 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 the Monitor, as an officer of this Court, as may be necessary or desirable to give effect to the Order or to assist the Monitor and its agents in carrying out the terms of this Order.



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

SEP 14 2011

PER/PAR: 

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Ontario
**SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

Proceeding commenced at Toronto

TERMINATION AND DISCHARGE ORDER

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