



COUNSEL SLIP

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TITLE OF PROCEEDING

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This is the comeback hearing from the initial order under the CCAA that I granted on Feb 25/16. The App seeks to continue & expand the order. Meridian has agreed to provide DIP financing of 7.18 million, 2.375 is to go to contractors for pre-filing amounts owed. Bridging Finance (BFI) opposes the continuation of the order & seeks a receivership instead. The first 2 secureds (BFI is 3rd), Meridian and CCCI, support the CCAA, as does the Monitor who has been actively involved over the 10 day initial stay period.

The onus is on the Applicant at this hearing to demonstrate that a CCAA order is appropriate in the circumstances. There is no onus on BFI to demonstrate that it should be set aside: Target Canada Co, Re 2015 ONSC 303, at para 82.

The evidence before me is that the Applicant owns this large multi purpose building. It is currently tenanted by studio, office & event space tenants. The A has 9 full time employees & 8 indep contractors. The A was in the process of renovating & upgrading this property until liquidity issues resulted in the suspension of renovations last summer. The main contractor is Maple. The Monitor has been in discussions with Maple re resuming construction, re establishing a budget, and setting timelines that would see construction completed in the fall. The Monitor's opinion is that doing so through Maple is the best available option in the circumstances. The ultimate goal is to refinance this property or sell it through a SISP process. Maple has refused to continue construction w/o payment of its pre-filing accounts.

~~BFI~~ The decision of whether to appoint a receiver or grant the CCAA order is discrete & complex. I must consider & balance the competing interests of the various stakeholders to determine which remedial process is more appropriate: Rompern Investments Corp v 671162 Canada Inc, 2014 ONSC 2781, at para 6 & 7; Hush Homes (Re), 2015 ONSC 370, paras 20 & 23.

This case is unlike the ones relied on by BFI. This is not vacant land or a building being constructed. There is an operating business here, with a number of different stakeholders - tenants, employees of the A, indep contractors and unsecureds. There is an opportunity here to stabilize the business, get it past its liquidity crisis, complete the renovations & enhance

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the value of the bus for all stakeholders.

Moreover, the App has a concrete plan, with specific timelines & a developed budget. The BFI, on the other hand, is quite vague in its proposal. There is nothing to give this court any assurance that putting a receiver in & starting from scratch w/ a yet to be identified contractor is a better alternative. The A has demonstrated that there is a way forward w/ DIP financing & the contractor that is well versed in the project, ^{knows} what is required, and how to work around & accommodate the existing tenants.

It is not entirely clear how much equity is in the property. However, the confid'l appraisal & the one relied on by BFI when it made its investment & appears to cover the 0's encumbrances, even w/ the DIP ~~and~~ the costs to complete the renovation forwarded by the App (2.5 million) are no higher than & indeed less than those projected by BFI (3.0 - 3.7 million).

Overall, I consider it more appropriate to stabilize this business, complete the renovation to

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fully optimize its rental potential & finance it through the arrangements proposed in the CCA. In my view, this is the preferable route for all stakeholders. I have no difficulty with the enhanced Monitors' powers, to see this project through & control the flow of funds.

The DIP facility is approved & meets the criteria of s 11.2 of the CCA (as per para 50 of the A's factum).

The A seeks to designate the contractors as critical suppliers under s. 11.4. I am satisfied that Maple & its key subcontractor Barric Glass are and are

critical suppliers. Based on the Monitor's report that they are experienced w/ the project & are the best

option to complete it, & the fact that completing the renovation is the key to restoring the viability of this

business & the restoration effort, I consider them to be critical - see ~~Canada (Att Gen) v. The Canadian Council of Ministers of the Environment~~

~~2015 FC 1013~~ In re Energy Mills Road Corp (Re) 2017 ONSC 4944 at para 30-31.

I am also prepared to authorize the pre-filing

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payments to them. I am satisfied that the circumstances of this case meet the criteria in *Cinram International Inc, Re* 2012 ONSC 3767, para 68. Again, the evidence before me is that Maple/Bairn are the best option for this company & that they will not resume their work w/o payment of their pre-filing charges. The Monitor will be keeping a close eye on all payments to them & monitoring the amounts of those payments. They are ready to go & will resume construction asap. This is in everyone's interests.

Finally, I have considered the submission re Nuvu Network. Given its interrelated connection to the App & the fact that some bases are in its name, I consider it appropriate to embrace it in the stay. The stay period until Oct 24/20 makes sense as the construction should be complete by then. Any stakeholder is free to return to Ct before then. The rec membership app is dismissed & the app to condition the CAA order is granted. DTG as signed by me. No costs sought or awarded.

