

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

**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 2607380 ONTARIO INC.**

Applicant

**FACTUM OF THE APPLICANT  
(Re: SISP Termination & Stay Extension)  
(Returnable November 23, 2020)**

November 20, 2020

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**PART I - OVERVIEW**

1. The Company is in the business of the development and operation of the Nuvo Building located at 1295 North Service Road, Burlington, Ontario. The Nuvo Building is a multi-purpose commercial building that provides businesses with office space, film and television studios, and corporate and personal event space.

2. The Company sought and was granted the Initial Order under the *Companies' Creditors Arrangement Act*, RSC 1985, c C-36 ("CCAA") on February 25, 2020. Richter Advisory Group Inc. was appointed as Monitor in these CCAA Proceedings. On March 6, 2020, this Court granted an Order amending and restating the Initial Order. On July 10, 2020, this Court granted the SISP Order that, among other things, approved the SISP. The Stay Period under the Initial Order currently expires on November 30, 2020.

3. This factum is filed in support of a motion by the Company seeking an Order, substantially in the form attached at Tab 3 of the Company's Motion Record, *inter alia*:

- (a) terminating the formal SISP established by the SISP Order;

- (b) enabling the Company, the Monitor and the Brokers to continue to solicit sale or refinancing proposals with respect to the Nuvo Property and to take such steps and execute such documents as may be necessary or incidental to such sale or financing efforts provided, however, that any binding sale or financing transaction is to be subject to the approval of the Court;
- (c) approving the Pre-Filing Report of the Monitor dated February 24, 2020, the First Report of the Monitor dated March 5, 2020, the Second Report of the Monitor dated July 8, 2020 and the Third Report of the Monitor dated November 19, 2020 (the “**Third Report**”, and together with the other reports, the “**Monitor’s Reports**”) and the activities of the Monitor described in each of the Monitor’s Reports; and
- (d) extending the Stay Period up to and including January 29, 2021, with respect to the Company, Nuvo Network Inc., Shawn Saulnier and Bridget Saulnier.

## **PART II - THE FACTS**

4. The facts with respect to this application are more fully set out in the Affidavit of Shawn Saulnier sworn November 18, 2020 (the “**Fifth Saulnier Affidavit**”) and the Third Report. Capitalized terms used herein but not otherwise defined have the meanings ascribed to them in the Fifth Saulnier Affidavit.

### **A. THE STATUS OF THE CCAA PROCEEDINGS**

5. Since the granting of the SISP Order on July 10, 2020, the Company, with the assistance of the Monitor, has continued to operate as a going concern business. The Company’s activities since July 10, 2020 have included, among other things, the following:

- (a) managing relationships with key stakeholders, including creditors, tenants and secured lenders;
- (b) liaising with Maple, the Company's general contractor, with respect to the ongoing renovations at the Nuvo Property, which are near completion;
- (c) responding to the COVID-19 pandemic by implementing protective measures to reduce the risk of COVID-19 transmission on the Nuvo Property;
- (d) conducting an extensive marketing campaign to attract new tenants of the Nuvo Property; and
- (e) working with the Monitor and the Brokers to carry out the SISP.

Fifth Saulnier Affidavit at para 11, Applicant's Motion Record, Tab 2.

Third Report at para 11.

6. The Company has worked diligently since the start of these CCAA Proceedings to advance the Nuvo Renovations. On October 30, 2020, Maple issued a Certificate of Substantial Performance with respect to the Nuvo Property, which certifies that the Nuvo Renovations are substantially complete. That same day, the architecture firm overseeing the Nuvo Renovations wrote to the City of Burlington to confirm that, subject to the approval of the municipal building inspector, the Nuvo Property is fit and ready for occupancy.

Fifth Saulnier Affidavit at paras 16 to 17, Applicant's Motion Record, Tab 2.

7. The COVID-19 pandemic has significantly impacted the Company's operations, the SISP, and the CCAA Proceedings generally. The COVID-19 pandemic delayed the substantial completion of the Nuvo Renovations beyond the initial anticipated completion

date, and it also required that the Company implement new pandemic-related protocols to keep tenants and other visitors to the Nuvo Property safe and healthy. In response, the Company has changed the layout of the co-working spaces to facilitate social distancing, installed barriers in strategic areas, and made face masks and hand sanitizer available to tenants and visitors. The cost of these measures has directly impacted the Company's liquidity.

Fifth Saulnier Affidavit at paras 18 to 23, Applicant's Motion Record, Tab 2.

8. The COVID-19 pandemic resulted in certain tenants of the Nuvo Property being unable to continue operations, causing the Company's revenue to decrease. The Company launched a sales campaign as part of an effort to attract new tenants and reverse its revenue declines beginning in July 2020.

Fifth Saulnier Affidavit at paras 18 to 20, Applicant's Motion Record, Tab 2.

9. The COVID-19 pandemic has also adversely affected the Sale Process; based on feedback from prospective purchasers and CBRE, the unsuccessful results of the Sale Process (as discussed in greater detail below) were principally influenced by the impacts of COVID-19 on the commercial real estate market in the GTA, which, among other things, is in a state of unprecedented uncertainty, with no clear end in sight. Market conditions have declined since the commencement of these CCAA Proceedings and that decline has accelerated during the pendency of the SISF.

Third Report at para 24.

**B. THE SISP**

10. The Company has been working diligently with the Monitor and its advisors to carry out the SISP since the granting of the SISP Order. The SISP consists of two components, which have run in parallel: (a) the Refinancing Process and (b) the Sale Process. The SISP was designed to be a broad and flexible process to canvass bids for a sale and/or a refinancing proposal to repay existing indebtedness of the Company.

Third Report at paras 15 to 16.

**i. The Refinancing Process**

11. The Refinancing Process was intended to identify third party interest in providing financing to the Company. An overview of the Refinancing Process is provided in the Third Report. An investment profile and teaser summarizing the refinancing opportunity was distributed to 60 prospective parties, including banks, mortgage lenders, private equity firms and alternative lenders. Fifteen parties executed a non-disclosure agreement and performed diligence on the refinancing opportunity.

Fifth Saulnier Affidavit at para 26, Applicant's Motion Record, Tab 2.

Third Report at paras 17 to 20.

12. The Company, with the assistance of the Monitor, Halo and MA, entered into negotiations with Interested Parties with respect to a potential refinancing transaction. These discussions are on-going. The Company, with the assistance of the Monitor, MA and Halo, intends to use the time provided by the extension of the Stay Period, if granted, to continue negotiations with the Interested Parties with a view to finalizing the terms of a refinancing transaction. If an agreement is reached with one of the Interested Parties, the Company will

return to Court to seek approval of a refinancing transaction before the expiry of the extended Stay Period, if granted.

Fifth Saulnier Affidavit at paras 27 and 28, Applicant's Motion Record, Tab 2.

Third Report at paras 20 and 29.

## **ii. The Sale Process**

13. The Sale Process as outlined in the SISP Order was intended to solicit bids for the Nuvo Property. CBRE has been assisting with the Sale Process and the related marketing strategy. The Sale Process, as contemplated by the SISP, consists of two phases. These phases are described in detail in the Third Report.

Fifth Saulnier Affidavit at para 33, Applicant's Motion Record, Tab 2.

Third Report at paras 21(i) and (ii).

14. Phase 1 commenced immediately following the date of the SISP Order. Among the various activities undertaken during Phase 1, CBRE, in consultation with the Company and the Monitor, prepared a list of potential bidders comprising more than 5,600 potentially interested parties, being domestic and foreign financial and strategic buyers including more than 200 studio operators and ancillary businesses. Each of these parties received a marketing summary describing the opportunity to acquire the Nuvo Property. Twenty-four of these parties executed a non-disclosure agreement and performed diligence, including eleven site tours conducted with representatives of CBRE and the Company.

Third Report at para 21(iii).

15. The deadline for interested parties to submit a non-binding letter of intent ("LOI") was September 30, 2020; however, in light of the fact that the Nuvo Renovations were still in progress and the general negative impact that COVID-19 has had on the commercial real

estate market, the Monitor, in consultation with CBRE and the Company, extended the Initial Phase 1 Bid Deadline to October 31, 2020 (the “**Extended Phase 1 Bid Deadline**”).

Third Report at para 21(v).

16. By the Extended Phase 1 Bid Deadline, only one party had submitted a non-binding LOI, which was for a value substantially less than the amounts owing by the Company to Meridian as the senior secured lender, was not acceptable to Meridian and would not result in any proceeds being available for any of the other secured creditors. The Monitor and CBRE determined that the non-binding LOI was not a “Qualified LOI” within the meaning of the SISP.

Fifth Saulnier Affidavit at para 34, Applicant’s Motion Record, Tab 2.

Third Report at para 22.

17. The Monitor understands that, despite the significant capital improvements made to the Nuvo Property, it is difficult to complete a sale transaction at a reasonable value in this market, as evidenced by the limited interest in a transaction to acquire the Nuvo Property from the Sale Process. Accordingly, following the Extended Phase 1 Bid Deadline, the Monitor, in consultation with the Company and CBRE, informed CBRE to temporarily suspend its marketing of the Nuvo Property on the basis that there was no reasonable prospect of obtaining a Final Bid.

Fifth Saulnier Affidavit at para 34, Applicant’s Motion Record, Tab 2.

Third Report at paras 24 and 25.

18. Notwithstanding the results of the Sale Process, the Monitor is of the view that the Sale Process conducted by CBRE was commercially reasonable, including the timelines, breadth of CBRE’s canvassing of the market, the information made available to interested



parties, including the information in the data room, and the availability of management for meetings and site tours.

Third Report at para 23.

19. In light of the fact that no acceptable bid emerged despite CBRE's efforts, the Company is of the view that that the formal Sale Process should be terminated, and efforts going forward should be focused on pursuing discussions with existing parties to see if a refinancing or sale transaction acceptable to Meridian and the Court can be developed. The Monitor supports the Company's request.

Third Report at para 25.

20. The DIP Lender supports the process being proposed by the Company, and to this effect the DIP Lender and the Company have agreed to enter into the Third DIP Agreement to accommodate the requested extension of the Stay Period.

Third Report at paras 19 and 27.

### **PART III - ISSUES**

21. The issues on this motion are whether this Court should:
- (a) terminate the formal SISP established by the SISP Order;
  - (b) approve the Monitor's Reports and the activities detailed therein; and
  - (c) extend the Stay Period to January 29, 2021.

## PART IV - THE LAW

### A. THE SISP SHOULD BE TERMINATED

22. The Company is requesting that the Court terminate the formal SISP as outlined in the SISP Order. The Company and the Monitor further seek the ability to continue to have discussions in respect of and advance any proposals with respect to the Nuvo Property as they may deem appropriate, and to take such steps and execute such documentation as may be necessary or incidental to closing any such sale or refinancing transaction, subject to the approval of the Court.

Third Report at para 26.

23. This Court has the jurisdiction to terminate the SISP pursuant to s. 11 of the CCAA, which provides that “the court [...] may, subject to the restrictions set out in this Act, on notice to any other person or without notice as it may see fit, make any order that it considers appropriate in the circumstances.”

CCAA, s. 11.

24. The SISP provides that the Monitor, in consultation with the Broker and the Company, may “apply to the Court for advice and directions regarding the continuation or termination” of the SISP.

Sale and Investor Solicitation Process at paras 25(c), 36 and 44, Applicant’s Motion Record, Tab 2 - Exhibit C, Schedule “A”.

25. It is common for a SISP to be terminated when a debtor company does not enter into a successful transaction after running a SISP. Once a SISP is terminated, debtor companies often pursue alternative opportunities.

*Re Sino-Forest Corporation*, 2012 ONSC 6275 at paras 6 and 7 ([CanLII](#)) (the debtor company terminated an unsuccessful SISP and pivoted to a CCAA plan).

*Re AgMedica Bioscience Inc. et al* (26 June 2020), Toronto CV-19-00632052-00CL (Ont Sup Ct [Commercial List]) Order (Re: Stay Extension, SISP Termination & Distribution of Net Proceeds) at para 3 ([Monitor's website](#)) (the Court ordered the termination of an unsuccessful SISP and the debtor company pivoted to a CCAA plan).

*Re Ontario Graphite, Ltd.* (28 April 2020), Toronto CV-20-00634195-00CL (Ont Sup Ct [Commercial List]) Supplemental Second Report of the Monitor at para 11(c) and (d) ([Monitor's website](#)) (the Monitor and the debtor company terminated the SISP with the understanding that the debtor company would continue to engage with potential purchasers).

26. In the present circumstances, it is appropriate for this Court to terminate the SISP. As noted above, the SISP has been running since July 10, 2020. The formal Sale Process has not identified a satisfactory bid and has been suspended since October 31, 2020. The Refinancing Process has identified potential lenders, but it has not resulted in a transaction capable of completion on or before November 30, 2020.

Third Report at paras 19, 21(iii) and 25.

27. The Monitor supports the termination of the formal SISP. The COVID-19 pandemic has dramatically impacted the commercial real estate market in the GTA. The resulting market conditions have made it difficult to complete a sale transaction at a reasonable value for the Nuvo Property, as evidenced by the limited interest in a transaction to acquire the Nuvo Property from the Sale Process. The Monitor believes that the relief requested by the Company presents the best option in the circumstance to maximize the value obtained for the Nuvo Property, taking into consideration the interests of the Company's creditors and other stakeholders.

Third Report at paras 24 and 27.

28. For the reasons above, the formal SISP should be terminated. Going forward, the Company, the Monitor, the Brokers and their respective advisors may continue to have discussions in respect of and advance any proposals with respect to the Nuvo Property as they may deem appropriate, and to take such steps and execute such documentation as may be necessary or incidental to closing any such sale or refinancing transaction, subject to the approval of the Court.

**B. THE MONITOR'S REPORTS AND ACTIVITIES SHOULD BE APPROVED**

29. The Company is seeking an order approving the Monitor's Reports and the activities detailed therein. This Court has not previously approved any of the Monitor's activities or reports.

30. In *Re Target Canada Co.*, the Court wrote that a request to approve a monitor's report "is not unusual" and that "there are good policy and practical reasons for the court to approve of Monitor's activities and providing a level of protection for Monitors during the CCAA process."

*Re Target Canada Co.*, 2015 ONSC 7574 at paras 2 and 22 ([CanLII](#)).

31. The form of the proposed order is consistent with the approval language in *Re Target Canada Co.* and subsequent proceedings.

32. In the present case, the Monitor's Reports and the activities as described therein should be approved. The Monitor has carried out its activities in a manner consistent with the provisions of the CCAA and in compliance with the Initial Order.

**C. THE STAY PERIOD SHOULD BE EXTENDED**

33. The current Stay Period expires on November 30, 2020. Pursuant to s. 11.02 of the CCAA, the Court may grant an extension of a stay of proceedings where: (a) circumstances exist that make the order appropriate; and (b) the debtor company satisfies the Court that it has acted, and is acting, in good faith and with due diligence.

CCAA, s. 11.02(2) and (3).

34. The Company is seeking to extend the Stay Period until and including January 29, 2021 to allow it to continue its restructuring efforts. The proposed extension to the Stay Period will afford the Company, with the assistance of the Monitor and the Brokers, the time needed to continue any discussions with existing parties and enable a refinancing or sale transaction to occur should one develop, with a view to closing a transaction prior to the expiry of the proposed extension to the Stay Period. Additional time is warranted on account of the complications and difficulties caused by the COVID-19 pandemic.

Fifth Saulnier Affidavit at para 39, Applicant's Motion Record, Tab 2.

Third Report at para 39(i).

35. As detailed in the Company's cash flow forecast, the Company is expected to have access to sufficient liquidity to continue its operations during the proposed extension of the Stay Period.

Fifth Saulnier Affidavit at para 40, Applicant's Motion Record, Tab 2.

Third Report at para 39(iii).

36. No creditors are expected to suffer material prejudice as a result of the extension of the Stay Period. Meridian, being the Company's first secured senior lender and the DIP

Lender in these CCAA Proceedings, is supportive of the extension to the Stay Period. The DIP Lender and the Company have agreed to enter into the Third DIP Amendment to correspond with the requested extension of the Stay Period.

Fifth Saulnier Affidavit at para 41, Applicant's Motion Record, Tab 2.

Third Report at para 39(iii) and (iv).

37. The Company is acting in good faith and with due diligence in pursuing its restructuring strategy.

Fifth Saulnier Affidavit at para 38, Applicant's Motion Record, Tab 2.

Third Report at para 39(i).

38. The Monitor is of the view that the proposed extension to the Stay Period is appropriate in the circumstances.

Third Report at para 39.

39. For the reasons described above, the Stay Period should be extended to January 29, 2021.

#### **PART V - ORDER SOUGHT**

40. For the foregoing reasons, the Company respectfully requests that this Court grant an Order substantially in the form of the draft Order attached at Tab 3 to the Company's motion record.

**ALL OF WHICH IS RESPECTFULLY SUBMITTED** this 20th day of November, 2020.

  
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**Stikeman Elliott LLP**  
Lawyers for the Applicant

**SCHEDULE "A"**  
**LIST OF AUTHORITIES**

1. *Re AgMedica Bioscience Inc. et al* (26 June 2020), Toronto CV-19-00632052-00CL (Ont Sup Ct [Commercial List]) Order (Re: Stay Extension, SISP Termination & Distribution of Net Proceeds) ([Monitor's website](#))
2. *Re Ontario Graphite, Ltd.* (28 April 2020), Toronto CV-20-00634195-00CL (Ont Sup Ct [Commercial List]) Supplemental Second Report of the Monitor ([Monitor's website](#))
3. *Re Sino-Forest Corporation*, 2012 ONSC 6275 ([CanLII](#))
4. *Re Target Canada Co.*, 2015 ONSC 7574 ([CanLII](#))

**SCHEDULE "B"**  
**RELEVANT STATUTES**

*Companies' Creditors Arrangement Act, RSC 1985, c C-36* 

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**General power of court**

**11** Despite anything in the Bankruptcy and Insolvency Act or the Winding-up and Restructuring Act, if an application is made under this Act in respect of a debtor company, the court, on the application of any person interested in the matter, may, subject to the restrictions set out in this Act, on notice to any other person or without notice as it may see fit, make any order that it considers appropriate in the circumstances.

[...]

**Stays, etc. – other than initial application**

**11.02 (2)** A court may, on an application in respect of a debtor company other than an initial application, make an order, on any terms that it may impose,

(a) staying, until otherwise ordered by the court, for any period that the court considers necessary, all proceedings taken or that might be taken in respect of the company under an Act referred to in paragraph (1)(a);

(b) restraining, until otherwise ordered by the court, further proceedings in any action, suit or proceeding against the company; and

(c) prohibiting, until otherwise ordered by the court, the commencement of any action, suit or proceeding against the company.

**Burden of proof on application**

**(3)** The court shall not make the order unless

(a) the applicant satisfies the court that circumstances exist that make the order appropriate; and

(b) in the case of an order under subsection (2), the applicant also satisfies the court that the applicant has acted, and is acting, in good faith and with due diligence.

[...]



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ARRANGEMENT OF 2607380 ONTARIO INC.

Court File No.: CV-20-00636875-00CL

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Proceeding commenced at Toronto

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