Court File No. CV-20-00639312-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

CROWN CAPITAL PRIVATE CREDIT FUND, LP, by its general partner, CROWN CAPITAL PRIVATE CREDIT MANAGEMENT INC.

Applicant

- and -

MILL STREET & CO. INC.

Respondent

APPLICATION UNDER SUBSECTION 243(1) OF THE *BANKRUPTCY AND INSOLVENCY ACT*, R.S.C. 1985, c. B-3, AS AMENDED AND SECTION 101 OF THE *COURTS OF JUSTICE ACT*, R.S.O. 1990, c. C.43, AS AMENDED

FACTUM OF THE APPLICANT

April 21, 2020

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FACTUM OF THE APPLICANT

PART I – NATURE OF THE APPLICATION

1. Crown Capital Private Credit Fund, LP, by its general partner, Crown Capital Private Credit Management Inc. (together, "**Crown Capital**") seeks, amongst other things, an order pursuant to subsection 243(1) of the *Bankruptcy and Insolvency Act* (Canada) (the "**BIA**") and section 101 of the *Courts of Justice Act* (Ontario) (the "**CJA**") appointing A. Farber & Partners Inc. ("**Farber**") as receiver (in such capacity, the "**Receiver**") of all the assets, undertakings and properties of Mill Street & Co. Inc. (the "**Debtor**"), save and except for the Specified Shares (as defined below) that have been pledged in favour of TD Bank (as defined below).

2. The Debtor has a long history of defaulting under the Credit Agreement (as defined below), dating back to almost the outset of Crown Capital's relationship with the Debtor, which defaults, as set out in the below paragraphs, have been increasing in severity over time. Many,if not all, of such defaults are objective in nature and cannot legitimately be defended. In parallel, Crown Capital's concern in respect of these defaults has also been growing as time has elapsed, to the point where Crown Capital has now lost faith the Debtor's management. Both Crown Capital and the Debtor are sophisticated commercial enterprises and as such, the Court should not lightly step in to relieve parties from contractual terms they no longer wish to honour.

PART II – FACTS

Introduction

3. The Debtor is a privately-owned Ontario corporation. Its registered office is located in Thornhill, Ontario, and its sole director and officer is Noah Murad ("**Mr. Murad**").

Affidavit of Timothy Oldfield sworn April 7, 2020 [Oldfield Affidavit], at para. 3.

4. The Debtor serves as a holding company for several other companies and business ventures. At the time Crown Capital advanced the Loan (as defined below) to the Debtor in May 2018, the Portfolio companies were divided into seven groups (the "**Portfolio Groups**").

Oldfield Affidavit, at para. 5.

The Debtor's Indebtedness to Crown Capital

5. Crown Capital made a $10,000,000 loan available to the Debtor pursuant to and under the terms of a credit agreement dated and accepted May 16, 2018 (the "**Credit Agreement**").

Oldfield Affidavit, at para. 4.

6. As security for the Debtor's obligations to Crown Capital, including, without limitation, under the Credit Agreement, the Debtor provided security in favour of Crown Capital (collectively, the "**Security**"), including, without limitation, a general security agreement dated May 16, 2018 (the "**GSA**"), registration in respect of which was duly made pursuant to the *Personal Property Security Act* (Ontario) (the "**PPSA**").

Oldfield Affidavit, at para. 7.

7. Two of the Debtor's parent companies (being 2394419 Ontario Limited and 997322 Ontario Inc. (the "**Parents**")) also provided a limited recourse guarantee and recourse in favour of Crown Capital (the "**Limited Recourse Guarantee**"), a security pledge agreement in favour of Crown Capital pledging certain securities held by the Parents in the Debtor (the "**Securities Pledge Agreement**") and certain other related security set out in the Credit Agreement (together with the Limited Recourse Guarantee and the Securities Pledge Agreement, the "**Ancillary Guarantee and Security**"). Crown Capital is not seeking to enforce the Ancillary Guarantee and Security at this time, but may seek to do so in the future.

Oldfield Affidavit, at para. 8.

The Debtor's Other Secured Creditors

8. PPSA search results conducted against the Debtor reflect a blanket general registration made by Crown Capital against the Debtor. In addition to Crown Capital's registration, each of The Toronto-Dominion Bank ("**TD Bank**"), Royal Bank of Canada ("**RBC**") and Fiera Private Debt Fund VI LP, by its sole general partner, Fiera Private Debt Fund GP Inc., by its manager Fiera Private Debt Inc. (collectively, "**Fiera**"), has also made one or more registrations under the PPSA against the Debtor. The registrations in favour of TD Bank are registered prior to Crown

Capital's registration but are limited to pledges in shares in the capital stock of All Source Security Container Holding Corporation, All Source Security Container Mfg. Corp. and 2548343 Ontario Inc. (collectively, the "**Specified Shares**"). Crown Capital is not seeking the appointment of the Receiver at this time over the Specified Shares. The registrations in favour of RBC and Fiera are registered subsequent to Crown Capital's registration, limited to the collateral classifications of "accounts" and "Other" and, in the case of Fiera, limited to certain security in respect of 2534898 Ontario Inc.

Oldfield Affidavit, at para. 9.

Default and Demand

9. The Debtor has a long history of defaulting under the Credit Agreement, dating back to almost the outset of Crown Capital's relationship with the Debtor, which defaults, as set out in the below paragraphs, have been increasing in severity over time. In parallel, Crown Capital's concern in respect of these defaults has also been growing as time has elapsed, to the point where Crown Capital has now lost faith in Mr. Murad and his Debtor team.

Oldfield Affidavit, at para. 10.

10. The Debtor's initial defaults under the Credit Agreement include, without limitation:

(a) on or about August 28, 2018, the Debtor delivered its first quarter financial statements for its 2019 fiscal year to Crown Capital, being approximately 90 days' past due per the deadline set out in section 8.1 of the Credit Agreement;

(b) on or about September 17, 2018, the Debtor delivered its second quarter financial statements for its 2019 fiscal year to Crown Capital, being approximately 18 days' past due per the deadline set out in section 8.1 of the Credit Agreement;

(c) in December 2018, the Debtor breached its obligations under section 9.2(a) of the Credit Agreement by selling Sauve Lumber and Storage Inc., one of the entities in the "Fastway" Portfolio Group, without Crown Capital's prior written consent;

(d) on or about April 2, 2019, the Debtor delivered its fixed charge covenant calculation of 1.27 for its 2019 fiscal year, which was based on the Debtor's internal financial statements. However, a revised fixed charge covenant calculation was never submitted by the Debtor to Crown Capital to reflect the numbers in the Debtor's audited financial statements for the Debtor's 2019 fiscal year, notwithstanding this matter being brought to the Debtor's attention by Crown Capital. The calculations performed by Crown Capital and submitted to the Debtor for comment show that, based on the Debtor's audited financial statements for 2019, the Debtor is in breach of its required fixed charge coverage ratio per section 9.1(t)(i) of the Credit Agreement, and the Debtor has failed to provide any response or justification regarding this default to Crown Capital;

(e) on or about April 3, 2019, the Debtor delivered its fourth quarter financial statements for its 2019 fiscal year to Crown Capital, being approximately 31 days' past due per the deadline set out in section 8.1 of the Credit Agreement;

(f) on or about June 17, 2019, the Debtor delivered its first quarter financial statements for its 2020 fiscal year to Crown Capital, being approximately 18 days' past due per the deadline set out in section 8.1 of the Credit Agreement;

(g) on or about July 18, 2019, the Debtor delivered its draft audited financial statements for its 2019 fiscal year to Crown Capital, being approximately 78 days' past due per the deadline set out in section 8.1 of the Credit Agreement. Once delivered, these materials reflected significant discrepancies from the internal financial statements previously provided, thereby constituting one or more further breaches under the Credit Agreement. By way of one notable example, whereas the internal financial statements reflected cash of approximately $3.8 million, the audited financial statements reflected cash of zero;

(h) on or about August 9, 2019, the Debtor delivered its audited financial statements for its 2019 fiscal year to Crown Capital, being approximately 100 days' past due per the deadline set out in section 8.1 of the Credit Agreement. Once delivered, these materials were not accompanied by the EBITDA Report (as defined in section 8.1 of the Credit Agreement), including the comfort letter from the auditor that is required by section 8.1 of the Credit Agreement, which EBITDA Report still remains outstanding as of the date of the Oldfield Affidavit, despite requests from Crown Capital. As set out in section 8.1 of the Credit Agreement, the purpose of the auditor's comfort letter is to confirm that the calculations have been made in accordance with the Credit Agreement and properly reflect the financial information of the Debtor and the Portfolio Companies;

(i) on or about August 22, 2019, the Debtor made its interest payment for the month of July 2019 to Crown Capital after multiple follow-up requests by Crown Capital, being 22 days' past due per the August 1, 2019 deadline set out in section 4.2 of the Credit Agreement, and in further breach of the ability to cure such default within three business days, as set out in section 11.1(b) of the Credit Agreement;

(j) on or about November 1, 2019, the Debtor delivered its second quarter financial statements for its 2020 fiscal year to Crown Capital, being approximately 62 days' past due per the deadline in the Credit Agreement;

(k) in December 2019, the Debtor breached its obligations under section 9.2(d) of the Credit Agreement by proceeding with a $9.5 million debt financing with respect to GNI Management Group Inc., the operating company in the "Great Northern" Portfolio Group, without Crown Capital's prior written consent; and

(l) on or about January 7, 2020, the Debtor made its interest payment for the month of November 2019 to Crown Capital after multiple follow-up requests by Crown Capital, being approximately 38 days' past due per the December 1, 2019 deadline set out in section 4.2 of the Credit Agreement, and in further breach of the ability to cure such default within three business days, as set out in section 11.1(b) of the Credit Agreement.

Oldfield Affidavit, at para. 11.

11. During the time period referenced above, and as a result of the defaults referenced above, Crown Capital's trust and confidence in the Debtor and Mr. Murad was eroding. By the end of the above time period, being mid-January 2020, this concern got to the point whereby Crown Capital sent a formal notice of default letter to the Debtor.

Oldfield Affidavit, at para. 12.

12. Mr. Murad responded, first by email on January 17, 2020, and then by letter on January 20, 2020. The substance of both Mr. Murad's communications was to deny the clear defaults by the Debtor under the Credit Agreement, to purport to blame Crown Capital for the Debtor's difficulties and to threaten Crown Capital with legal action.

Oldfield Affidavit, at para. 13.

11. Mr. Murad's letter also advised that the Debtor "*has, to date, mitigated its damages*," and that if Crown Capital "*is unable or unwilling to accommodate the growth of our company, then we will move on an immediate buyout of your position and advocate for a more reasonable prepayment penalty than that in the Credit Agreement to ensure a smooth transition*."

Oldfield Affidavit, at para. 16.

13. In the three months since Mr. Murad sent his email and letter, there has been no buyout of Crown Capital's position by the Debtor or anyone on the Debtor's behalf, the Debtor has flatly refused to enter into any forbearance agreement and the Debtor has also not accepted a proposed written amendment to the Credit Agreement by Crown Capital to, in substance, reduce the prepayment penalty in the Credit Agreement.

Oldfield Affidavit, at para. 17.

Affidavit of Noah Murad sworn April 18, 2020 [Murad Affidavit], Exhibit "S".

14. In addition, the defaults by the Debtor under the Credit Agreement have continued. For example, and without being exhaustive:

(a) on or about January 22, 2020, the Debtor made its interest payment for the month of December 2019 to Crown Capital after multiple follow-up requests by Crown Capital, being approximately 22 days' past due per the January 1, 2020 deadline set out in section 4.2 of the Credit Agreement, and in further breach of the ability to cure such default within three business days, as set out in section 11.1(b) of the Credit Agreement;

(b) in January 2020, the Debtor breached its obligations under sections 9.2(j) and 9.3(a)(ii) of the Credit Agreement by acquiring the remaining 25% ownership position in GNI Management Group Inc., the operating company in the "Great Northern" Portfolio Group, for an amount above the Permitted Portfolio Acquisition (as defined in the Credit Agreement) without Crown Capital's prior written consent;

(c) for the fiscal year ended January 31, 2020, the Debtor made non-arm's length payments and distributions in excess of $1,000,000, which:

(i) is prohibited by sections 1.1(aaaa) and 9.2(h) of the Credit Agreement if a Pending Event of Default or Event of Default (as both terms are defined in the Credit Agreement) has occurred or is occurring (as was and remains the case); and

(ii) even in the absence of a Pending Event of Default or Event of Default, is still prohibited without payment of a prescribed 5% fee to Crown Capital that is required by section 3.4 of the Credit Agreement, which payment was never made by the Debtor to Crown Capital;

(d) on or about February 16, 2020, the Debtor submitted its annual business plan to Crown Capital, being approximately 47 days' past due per the January 1, 2020 deadline set out in section 8.1 of the Credit Agreement. Even once submitted, the business plan was incomplete and unsatisfactory to Crown Capital, contrary to section 8.1 of the Credit Agreement. Notwithstanding a follow-up by Crown Capital, the Debtor has still not provided the missing information to Crown Capital;

(e) on or about March 6, 2020, the Debtor submitted inaccurate covenant calculations to Crown Capital for the period ended January 31, 2020, thereby inaccurately representing the Debtor's financial information. Despite Crown Capital having advised that the methodology was inaccurate and inaccurately represented the Debtor's financial information, the Debtor has still failed as of the date hereof to submit revised and accurate covenant calculations to Crown Capital. The calculations performed by Crown Capital, which were provided to the Debtor, show that the Debtor is in breach of its required fixed charge coverage ratio per section 9.1(t)(i) of the Credit Agreement, and the Debtor has failed to provide any response or justification for this default to Crown Capital;

(f) at all relevant times, the Debtor has been (and remains) in breach of the requisite EBITDA concentration stipulated in section 9.1(t)(ii) of the Credit Agreement, the result of which is that the Debtor's share of one single Portfolio Group, namely the "Great Northern" Portfolio Group, has consistently exceeded 50% of the Debtor's share of the aggregate EBITDA of all the Portfolio Groups;

(g) at all relevant times, the Debtor has been (and remains) in breach of the requisite obligation to submit compliance certificates executed by its President, Mr. Murad, as required by sections 8.1(e) and 8.2 of the Credit Agreement; and

(h) at all relevant times, the Debtor has failed to provide any notice to Crown Capital of a Pending Event of Default or Event of Default, as required by section 9.1(h) of the Credit Agreement, notwithstanding that such events of default have clearly occurred, as detailed above in the Oldfield Affidavit. This raises concern that there may also be additional defaults not known to Crown Capital as a result of the Debtor's lack of transparency.

Oldfield Affidavit, at para. 18.

15. As of March 24, 2020, a total of $10,145,259.21 was still owing for principal and interest by the Debtor pursuant to the Credit Agreement, plus accruing interest thereon and recovery fees (the "**Indebtedness**").

Oldfield Affidavit, at para. 21.

16. Crown Capital made formal written demand on the Debtor for payment of the Indebtedness by letter dated March 25, 2020 (collectively, the "**Demand Letters**"), which were

accompanied by a Notice of Intention to Enforce Security prepared pursuant to subsection 244(1) of the BIA.

Oldfield Affidavit, at para. 20.

17. The Debtor failed to make payment in accordance with the Demand Letters, make alternative arrangements acceptable to Crown Capital or initiate any BIA filings.

Oldfield Affidavit, at para. 22.

Opposition to Crown Capital's Application for the Receiver's Appointment

18. On April 18, 2020, the Debtor's counsel delivered a lengthy affidavit of Noah Murad, in opposition to Crown's Capital's application for the appointment of the Receiver.

Murad Affidavit.

19. While Crown Capital's application for the appointment of the Receiver is based on the terms and conditions of the Credit Agreement and accompanying Security that were successfully negotiated and entered into between the parties, the thrust of the Murad Affidavit focuses on alternative or additional credit structures that were ultimately not agreed upon between the parties and did not lead to any advancement of credit or modification to the existing terms and conditions of the Credit Agreement and accompanying Security.

Murad Affidavit.

20. To the extent that the Murad Affidavit addresses the subject matter of the within application, namely, whether it is just and convenient to appoint the Receiver in light of the Debtor's repeated and continuous defaults under the terms and conditions of the Credit

Agreement and accompanying Security that were agreed to, the Murad Affidavit continues to assert defiantly "*that there has been no default by Mill Street*."

Murad Affidavit, at para. 6.

21. Being served concurrently with this factum is an *aide-mémoire* to facilitate the hearing of this application by the Court, setting out, in table form, each of the 20 specified defaults alleged in the Oldfield Affidavit, the corresponding responses provided in the Murad Affidavit and a brief analysis of why, in each of the 20 cases, Mr. Murad's response confirms the existence of the default in question.

PART III – ISSUE

22. The issue to be considered by this Court is whether it is just and convenient for this Court to appoint the Receiver.

PART IV – LAW AND ARGUMENT

General considerations

23. Crown Capital seeks the appointment of a receiver pursuant to subsection 243(1) of the BIA and section 101 of the CJA. Both statutes enable the Court to appoint a receiver where such appointment is "*just or convenient*". The full text of both sections is reproduced in Schedule "B" of this factum.

BIA (CanLII: http://canlii.ca/t/7vcz), s 243(1).

CJA, (CanLII: http://canlii.ca/t/9m), s 101 .

24. The "*just and convenient*" test will be met and an order for the appointment of a receiver will be made in accordance with the following standards and principles:

(a) if default has been made in making payments due, and the default continues without being cured;

(b) if default has been proven, it is not necessary for the secured creditor to establish that it will sustain irreparable harm if the receiver is not appointed;

(c) the fact that the appointment of a receiver will cause hardship to the debtor through loss of control of its assets is not grounds to refuse the appointment; and

(d) the possibility of a refinancing agreement does not justify the refusal to appoint a receiver. In fact, it may only enhance the need for the appointment so that steps can be taken to safeguard, preserve and perhaps improve the secured assets pending sale or refinancing.

***Bank of Montreal v. Carnival National Leasing Ltd.*, 2011 ONSC 1007, 74 C.B.R. (5th) 300, [2011] O.J. No. 671 at para. 25 (S.C.J. [Comm. List]) (CanLII: http://canlii.ca/t/2fqm3).**

***Swiss Bank Corp. (Canada) v. Odyssey Industries Inc.* (1995), 30 C.B.R. (3d) 49, [1995] O.J. No. 144 at paras. 28 and 31 (Gen. Div. [Comm. List]) (WestlawNext Canada: https://airdberlis.sharefile.com/d-sc0e709545cf44f9b).**

***Royal Bank of Canada v. 605298 Ontario Inc.*, [1998] O.J. No 4859 at para. 9 (Gen. Div. [Comm. List]) (WestlawNext Canada: https://airdberlis.sharefile.com/d-sb910e3e9fdd4735b).**

***Bank of Nova Scotia v. Freure Village on Clair Creek* (1996), 40 C.B.R. (3d) 274, [1996] O.J. No. 5088 at para. 12 (Gen. Div. [Comm. List]) (CanLII: http://canlii.ca/t/1wbtz).**

***Farallon Investments Ltd. v. Bruce Pallett Fruit Farms Ltd.*, [1992] O.J. No. 330 at 3, (Gen. Div.) (WestlawNext Canada: https://airdberlis.sharefile.com/d-s6b03266337a4390a).**

25. It is respectfully submitted that a receiver should be appointed over the Property for the following reasons:

(a) *Default*:

The Debtor is in default pursuant to the terms of the Credit Agreement and the Security, by reason of, amongst other things, the 20 specified defaults enumerated in the Oldfield Affidavit. These include both monetary and non-monetary defaults, and defaults of different degrees of seriousness, including, without limitation, material reporting defaults and financial inconsistencies. Crown Capital's concerns in respect of these defaults are exacerbated given the Debtor's status as a holding company, such that Crown Capital's insight into the underlying businesses relies upon the Debtor submitting fulsome, timely, complete and accurate reporting as required under the Credit Agreement.

Oldfield Affidavit, at paras. 11, 18 and 25.

(b) *Indebtedness is Not in Dispute*:

The Debtor has not disputed the quantum of the Indebtedness owing to Crown Capital or the fact that repayment of the Indebtedness was demanded on March 25, 2020 after an earlier notice of default was issued on January 17, 2020.

Murad Affidavit.

(c) *Loss of Confidence in Management*:

Crown Capital has lost all confidence in the Debtor's management for the following reasons:

(i) the defaults set out above;

(ii) the continued refusal of the Debtor to acknowledge any of the defaults, notwithstanding that many of them, if not all of them, are objective in nature and cannot legitimately be defended;

Affidavit of Timothy Oldfield sworn April 21, 2020.

(iii) the Debtor's insistence in January 2020 that it would proceed with an "*immediate buyout*," which has not occurred notwithstanding the three months that have since elapsed, and which the Debtor now asserts is likely another six months away from occurring (if at all);

(iv) the refusal of the Debtor to even consider entering into a forbearance agreement;

(v) the failure of the Debtor to make payment in accordance with the Demand Letter, make alternative arrangements acceptable to Crown Capital or initiate any BIA filings; and

(vi) the Debtor filing a lengthy affidavit in which its principal misrepresents and refuses to acknowledge the Debtor's obligations under the Credit Agreement.

Oldfield Affidavit, at paras. 10-19.

Murad Affidavit.

Just as a contractual right

26. This Court should support Crown Capital's rights derived by private contract. The Credit Agreement and the Security provide Crown Capital with the ability to appoint a receiver. As the

Debtor's defaults have not been cured (and have not even been acknowledged by the Debtor, notwithstanding the clear evidence of same), it is unjust to deny Crown Capital the remedy of a Court administration.

> ***Bank of Montreal v. Appcon Ltd.*** **(1981), 33 O.R. (2d) 97, 123 D.L.R. (3d) 394, 37 C.B.R. (N.S.) 281, [1981] O.J. No. 3016 at para 13 (H.C.J.) (CanLII: http://canlii.ca/t/g1d8l).**
>
> **Oldfield Affidavit Exhibit "C" – General Security Agreement, s. 8.(o).**

27. The Court should not lightly step in to relieve parties from contractual terms they no longer wish to honour. Where the Debtor has provided an express covenant agreeing to the appointment of a receiver in the event of default, the Court should not ordinarily interfere with the contract between the parties.

> ***United Savings Credit Union v. F&R Brokers Inc.*****, 2003 BCSC 640, [2003] B.C.J. No. 1057 at para. 16 (CanLII: http://canlii.ca/t/5bd5).**

28. The Honourable Mr. Justice Blair, now of the Court of Appeal for Ontario, similarly noted the significance of a contractual right to a court-appointed receiver. This view has also been echoed elsewhere:

> The parties in this case stipulated in their contracts that the plaintiff would be entitled to appoint a receiver or to apply for a court-appointed receiver in the event of default. The relief sought by the plaintiff is not, therefore, extraordinary.
>
> ***Freure, supra*** **at para. 12.**
>
> ***Textron Financial Canada Ltd. v. Chetwynd Motels Ltd.*****, 2010 BCSC 477, 67 C.B.R. (5th) 97, [2010] B.C.J. No. 635 at para. 75 (CanLII: http://canlii.ca/t/2972j).**

29. In contrast to the contractual rights upon which Crown Capital relies, the Debtor's positon appears to be that the contractual rights that were agreed to should not be honoured (i.e., the Debtor's reporting and payment obligations to Crown Capital, and Crown Capital's right to the appointment of a receiver in the event of default), while, at the same time, the alleged

circumstances surrounding those contracts that Crown Capital refused to enter into should somehow be dispositive. This argument by the Debtor turns basic contract law on its head.

30. Even on the Debtor's own evidence, the Debtor "*agreed to enter into the Credit Agreement, on the terms contained therein.*"

Murad Affidavit, at para. 39.

31. In its very reasonable business judgment, Crown Capital has elected to bring an end to its relationship with the Debtor, and seeks to turn control over the Property to a third party, court-appointed officer. Even if the Debtor prefers to control the realization process itself or have Crown Capital exercise an alternative remedy, Crown Capital prefers a judicial process and the Court should support the secured party's selected remedy. It is Crown Capital, and not the Debtor, that must be entitled to choose how to realize on the assets subject to the Crown Capital Security.

Protection of stakeholders

32. It is well established that a court-appointed receiver is an officer of the Court, acting in a fiduciary capacity to all parties, and distinct from a privately-appointed receiver which, while required to ensure a fair price on the disposition of assets, is not in a fiduciary relationship with the stakeholders.

***Ostrander v. Niagara Helicopters Ltd.* (1973), 1 O.R. (2d) 281, 40 D.L.R. (3d) 161, 19 C.B.R. (N.S.) 5, [1973] O.J. No. 2164 at para. 6 (H.C.J.) (CanLII: http://canlii.ca/t/g1ghz).**

33. A court-appointed receivership, involving court supervision, a forum for all stakeholders, the presence of fiduciary obligations and maximum transparency, is the best way to ensure that

the realization of the Debtor's assets is conducted fairly and equitably, in recognition of the interests of all stakeholders, including Crown Capital, the subordinated creditors, the Debtor and the chosen proposed receiver.

Appropriateness of Farber as the Receiver

34. Farber is a licensed insolvency trustee, and, as a result of discussions with Crown Capital, is familiar with the circumstances of the Debtor and its arrangements with Crown Capital. Farber has consented to being appointed as the Receiver, which appointment will enhance the prospect of recovery and protect the Property, the interests of Crown Capital, and other stakeholders.

Oldfield Affidavit, at paras. 28-30.

35. Contrary to the unsubstantiated allegations in the Murad Affidavit, Farber's familiarity with the Debtor's circumstances is not as a result of any receipt of confidential information from Farber Advisory. As set out in the Oldfield Affidavit, Farber Advisory is a related but distinct entity from Farber, and Farber has given assurances that Farber does not have (and will not have) access to Farber Advisory's files in respect of Farber Advisory's engagement.

Murad Affidavit, at paras. 216-217.

Oldfield Affidavit, at paras. 28-30.

36. Nor is there any credible basis to the assertion in the Murad Affidavit that "*the inner workings of Mill Street*" should be maintained "*in absolute confidentiality*" in a receivership. It is precisely these "*inner workings*" – i.e., proper transparency – that the receivership process is supposed to verify to protect the interests of the Debtor's stakeholders.

PART V – CONCLUSION

37. In view of that fact that:

(a) the Debtor has repeatedly and continuously defaulted under the Credit Agreement and the Security;

(b) the Debtor's management has not been forthcoming, has refused to acknowledge the existence of objective defaults and has refused to even consider entering into a forbearance agreement;

(c) the Debtor has not presented a realistic plan for refinancing or repaying the Indebtedness owed to Crown Capital;

(d) Crown Capital has completely lost confidence in the Debtor and its management as a result of the Debtor's long history of defaults including, without limitation: (i) proceeding with the GNI Management Group Inc. transaction and related Fiera Financing without Crown Capital's prior written consent; (ii) repeatedly breaching key financial covenants in many cases without explanation or justification; and (iii) demonstrating an unwillingness to provide basic information that Crown Capital is entitled to pursuant to the Credit Agreement;

(e) other than in respect of the Specified Shares (which, for the time being, are proposed to be excluded from the Receiver's mandate), Crown Capital is the Debtor's first-ranking generally secured creditor and is owed a significant sum of money by the Debtor; and

(f) the Crown Capital Security provides for the appointment of a receiver,

it is just and convenient for this Court to appoint Farber as the Receiver to implement an orderly realization of the Property.

PART VI – RELIEF REQUESTED

38. It is respectfully submitted that the relief requested by Crown Capital should be granted, and that Farber should be appointed as the Receiver on the terms of the order sought.

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 21st day of April, 2020.

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SCHEDULE "A"

AUTHORITIES CITED

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3. *Royal Bank of Canada v. 605298 Ontario Inc.*, [1998] O.J. No. 4859 (Gen. Div. [Comm. List]).

4. *Bank of Nova Scotia v. Freure Village on Clair Creek* (1996), 40 C.B.R. (3d) 274, [1996] O.J. No. 5088 (Gen. Div. [Comm. List]).

5. *Farallon Investments Ltd. v. Bruce Pallett Fruit Farms Ltd.*, [1992] O.J. No. 330 (Gen. Div).

6. *Bank of Montreal v. Appcon Ltd.* (1981), 33 O.R. (2d) 97, 123 D.L.R. (3d) 394, 37 C.B.R. (N.S.) 281 (H.C.J.).

7. *United Savings Credit Union v. F&R Brokers Inc.*, 2003 BCSC 640, [2003] B.C.J. No. 1057.

8. *Textron Financial Canada Ltd. v. Chetwynd Motels Ltd.*, 2010 BCSC 477, 67 C.B.R. (5th) 97, [2010] B.C.J. No. 635.

9. *Ostrander v. Niagara Helicopters Ltd.* (1973), 1 O.R. (2d) 281, 40 D.L.R. (3d) 161, 19 C.B.R. (N.S.) 5, [1973] O.J. No. 2164 (H.C.J.).

SCHEDULE "B"

TEXT OF STATUTES, REGULATIONS & BY-LAWS

***Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended, s. 243(1)**

243(1). Subject to subsection (1.1), on application by a secured creditor, a court may appoint a receiver to do any or all of the following if it considers it to be just or convenient to do so:

> (a) take possession of all or substantially all of the inventory, accounts receivable or other property of an insolvent person or bankrupt that was acquired for or used in relation to a business carried on by the insolvent person or bankrupt;
>
> (b) exercise any control that the court considers advisable over that property and over the insolvent person's or bankrupt's business; or
>
> (c) take any other action that the court considers advisable.

***Courts of Justice Act*, R.S.O. 1990, c. C-34, as amended, s. 101**

101. In the Superior Court of Justice, an interlocutory injunction or mandatory order may be granted or a receiver or receiver and manager may be appointed by an interlocutory order, where it appears to a judge of the court to be just or convenient to do so.

CROWN CAPITAL PRIVATE CREDIT FUND, LP, by its general partner, CROWN CAPITAL PRIVATE CREDIT MANAGEMENT INC. Applicant	- and -	**MILL STREET & CO. INC** Respondents

Court File No. CV-20-00639312-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

Proceedings commenced at Toronto

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