

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

B E T W E E N:

**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**

**REPLY AFFIDAVIT OF TIMOTHY OLDFIELD
(sworn April 21, 2020)**

I, **TIMOTHY OLDFIELD**, of the City of Burlington, in the Province of Ontario,
MAKE OATH AND SAY AS FOLLOWS:

1. For the reasons set out in my affidavit sworn April 7, 2020 (the “**Original Affidavit**”), I have personal knowledge of the matters to which I hereinafter depose. Where I do not have personal knowledge of the matters set out herein, I have stated the source of my information and, in all such cases, believe it to be true.
2. Unless otherwise stated, all capitalized terms herein are defined as they appear in the Original Affidavit.

PURPOSE AND SCOPE

3. This affidavit (this “**Reply Affidavit**”), sworn in support of the pending receivership application against the Debtor, is sworn further to my Original Affidavit and in reply to the responding affidavit of Mr. Murad sworn April 18, 2020 (the “**Responding Affidavit**”).

4. This Reply Affidavit is further limited in scope in that it replies only to the material evidence in the Responding Affidavit that, in my view, is relevant to the receivership application (and, even then, given the length of the Responding Affidavit, only addresses a sample of such evidence that I believe would be helpful for His or Her Honour in adjudicating the receivership application).

5. Having reviewed the Responding Affidavit, I believe that the majority of its contents deals with issues outside the scope of the rights and obligations under the Credit Agreement and Security, and, while I have a very different understanding of these extraneous issues than does Mr. Murad (including, without limitation, the reasons why Crown Capital did not enter into *additional* credit agreements with the Debtor), I do not see how they inform whether it is just and convenient to appoint a receiver as a result of the Debtor’s repeated breaches of the Credit Agreement and Security that *were* entered into, and Crown Capital’s contractual rights thereunder.

6. Accordingly, to the extent that this Reply Affidavit does not reply to most of the statements in the Responding Affidavit, such silence should not be interpreted as my agreement with Mr. Murad on these issues.

MATERIAL CONCERNS RAISED BY THE RESPONDING AFFIDAVIT

7. As he has done since the outset, I note that Mr. Murad continues to maintain in his Responding Affidavit that “*there has been no default by [the Debtor]*” (see, for example, paragraph 9 of the Responding Affidavit), that the Debtor “*was not and is not in default of the Credit Agreement*” (see, for example, paragraph 156 of the Responding Affidavit) and that “*if any default existed it was cured promptly*” (see, for example, paragraph 184 of the Responding Affidavit).

8. I understand from Crown Capital’s legal counsel, Aird & Berlis LLP, and verily believe, that being served contemporaneously with my Reply Affidavit and Crown Capital’s factum is an *aide-mémoire*, setting out, in table form, each of the specified defaults alleged in my Original Affidavit and the corresponding responses provided in the Responding Affidavit. I have reviewed this “side-by-side” analysis, which clearly reflects that all 20 defaults did in fact occur, that there is no ability under the Credit Agreement to cure many of them, and, even in certain cases where the Debtor *could* have cured them, it has elected not to do so.

9. By way of example, and without being exhaustive, it is noteworthy that Mr. Murad has failed to provide any compliance certificates or auditor comfort letters. Contrary to Mr. Murad’s statement in his Responding Affidavit that “*providing compliance certificates seems rather silly at this point,*” I believe that their omission – together with the failure to provide auditor comfort letters – is extremely relevant to the matter before the Court.

10. In addition, Mr. Murad alleges repeatedly in the Responding Affidavit that Crown Capital only began “*manufacturing*” defaults in November 2019, once it became clear that Crown Capital was not going to advance additional credit facilities. He says, for example, that

“Throughout this time, not once did Crown indicate any issues with how the Credit Agreement was being carried out, nor did it make any indication to Mill Street that it wasn’t complying with the terms of the Credit Agreement” (see paragraph 42 of the Responding Affidavit). This is patently false. By way of example, and without being exhaustive, attached as **Exhibit “A”** to this Reply Affidavit is an email from me to Mr. Murad from three months earlier, in August 2019, where I clearly indicate that:

We should also address the financial covenants. As I mentioned in our meeting today, your audited financial statements suggest that you are in compliance with Crown’s financial covenants...see attached screen shot from your f/s. However, I reviewed the Mill Street & Co. f/s this morning and based on my calculations you are offside the FCCR ratio as well as the concentration covenant.

11. Mr. Murad also claims repeatedly in the Responding Affidavit that, by not objecting to a transaction, Crown Capital should somehow be seen as consenting to a proposed transaction, and that the Debtor somehow operated on an understanding that Crown Capital’s written consent was not required. This is also patently false. Aside from this turning the terms of the Credit Agreement on their head (which require the Debtor to obtain Crown Capital’s prior written consent), the Debtor sought and obtained Crown Capital’s prior written consent in respect of other transactions, as set out in the emails attached collectively as **Exhibit “B”** to this Affidavit. The Debtor therefore knew of its obligation to seek Crown Capital’s prior written consent, but was selective about when chose to request such consent.

12. Mr. Murad also complains in the Responding Affidavit that the proposed Amending Agreement (as defined in his affidavit) *“was not a forbearance”* (paragraph 128). There is good reason for this. In response to Crown Capital’s willingness to enter into a forbearance agreement, the email attached as Exhibit “S” to Mr. Murad’s Responding Affidavit expressly

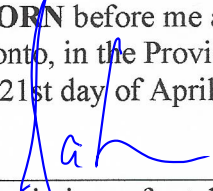
advises that the Debtor “*will not be entering into any forbearance agreement.*” This email is dated February 6, 2020, and predates the proposed Amending Agreement that was circulated to the Debtor on February 14, 2020 and that is attached as Exhibit “T” to the Responding Affidavit. Mr. Murad’s narrative in the Responding Affidavit makes it appear as if Crown Capital refused to enter into a forbearance, when, in fact, the evidence shows that it was the other way around.

13. Finally, attached as Exhibit “JJ” to the Responding Affidavit is an annual operations report allegedly prepared for Crown Capital. Crown Capital has never seen this document before and, based on a brief review, it disagrees with many of the statements contained therein.

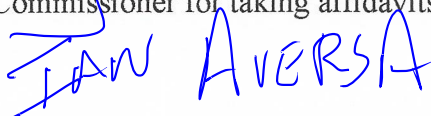
14. The above examples are not meant to be exhaustive, but are nonetheless reflective of Crown Capital’s total lack of confidence in Mr. Murad’s management of the Debtor, including, most notably, in regards to transparency.

15. Having reviewed Mr. Murad’s Responding Affidavit, I am more concerned than ever that Crown Capital is not being given an accurate picture of the Debtor’s actual performance, that Mr. Murad is not being forthcoming and that the appointment of a receiver is the only reasonable approach in the circumstances.

16. This Reply Affidavit is made in support of the within application, and for no other or improper purpose whatsoever.

SWORN before me at the City of
Toronto, in the Province of Ontario,
this 21st day of April, 2020


Commissioner for taking affidavits, etc.


IAN AVERSA

)
)
)
)



TIMOTHY OLDFIELD

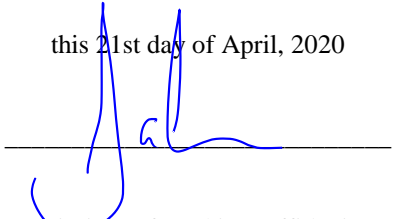
Attached is Exhibit "A"

Referred to in the

AFFIDAVIT OF TIMOTHY OLDFIELD

Sworn before me

this 21st day of April, 2020



Commissioner for taking Affidavits, etc

From: Tim Oldfield <tim.oldfield@crowncapital.ca>
Subject: Meeting Follow Up
Date: August 21, 2019 at 3:22:37 PM EDT
To: Noah Murad <nmurad@millstreetco.com>
Cc: Josh Axler <josh.axler@crowncapital.ca>

Noah,

Thanks for coming in today...always good to discuss things face to face.

Josh and I will have a bunch of work to do around the review of the year-end financials...we've already started this as you know and Fazarri has been responsive to date. It would be great if you can provide them with your consent to continue to share information with us as we progress (re: emails sent this morning). It would also be good to get them going on the Q1 and Q2 reviews. Let me know if it makes sense to get on a call with them to discuss scope / timing etc.

It would also be useful to meet with Trevor. Things are a little disjointed with Vin's departure and it would be good to discuss expectations going forward for information and timing.

We should also address the financial covenants. As I mentioned in our meeting today, your audited financial statements suggest that you are in compliance with Crown's financial covenants...see attached screen shot from your f/s. However, I reviewed the Mill Street & Co. f/s this morning and based on my calculations you are offside the FCCR ratio as well as the concentration covenant. Happy to review this with you and Trevor to make sure you are managing this going forward.

14. Long-term debt

	2019	2018
Mill Street & Co. Inc.		
Term loan, bearing interest at the Government of Canada 5 year bond rate plus 10% (12% minimum), repayable in monthly payments of \$100,000 plus interest beginning in May 2024 and due May 2029. The loan is secured by all current and future assets of the Group, subject to prior interests, and a share pledge agreement. At year end the company is in compliance with its financial covenants	\$10,000,000	\$ -

Happy to discuss this further with you tomorrow / Friday.

Tim.

Tim Oldfield, CPA, CA, CFA
 Chief Investment Officer
Crown Capital Partners Inc.
 Direct 416-640-6798
tim.oldfield@crowncapital.ca
www.crowncapital.ca

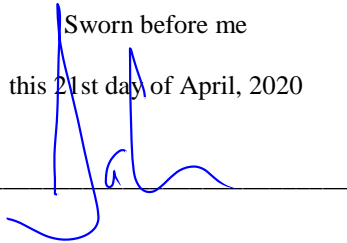
Attached is Exhibit "B"

Referred to in the

AFFIDAVIT OF TIMOTHY OLDFIELD

Sworn before me

this 21st day of April, 2020

A handwritten signature in blue ink is written over a horizontal line. The signature is stylized, with a large initial 'J' or 'T' and a smaller 'O' or 'L' following it, and a wavy line at the end.

Commissioner for taking Affidavits, etc

From: Tim Oldfield <tim.oldfield@crowncapital.ca>
Subject: Re: Sale of Saleevent group of Companies
Date: January 31, 2019 at 10:11:47 AM EST
To: Jacob Murad <jmurad@millstreetco.com>
Cc: Noah Murad <nmurad@millstreetco.com>, Josh Axler
<josh.axler@crowncapital.ca>

Jacob, thanks for providing the summary and SPA. Sounds like a great transaction and Crown will consent to the transaction on the terms set out in the attached SPA.

See you tonight.

Tim.

Tim Oldfield, CPA, CA, CFA
Chief Investment Officer
Crown Capital Partners Inc.
Direct 416-640-6798

tim.oldfield@crowncapital.ca
www.crowncapital.ca

On Jan 30, 2019, at 3:09 PM, Josh Axler <josh.axler@crowncapital.ca> wrote:

Josh Axler
Investment Associate
Crown Capital Partners Inc.
416-640-4159
josh.axler@crowncapital.ca
www.crowncapital.ca

Begin forwarded message:

From: Jacob Murad <jmurad@millstreetco.com>
Subject: Re: Sale of Saleevent group of Companies
Date: January 30, 2019 at 3:08:24 PM EST
To: Josh Axler <josh.axler@crowncapital.ca>
Cc: Noah Murad <nmurad@millstreetco.com>

Hi Josh,

Further to our discussions concerning the sale of the remainder of the saleevent companies; we are finalizing the sale to the same Winnipeg company that had purchased the event licensing rights from us back in November for \$2million – I've attached a draft SPA that we are working with for your review and Crown's consent. As you can see we are selling the remainder of the company for \$4,020,000 payable in monthly payments of \$67,000 for 5 years with one payment down on closing. We are also getting about \$950,000 for inventory with half of that to come on closing and the balance within 60 days. So all told, we purchased the company two years ago for 750,000 of Mill Shares and are selling it for over \$6million.

We are still finalizing (they've moved very quickly) but ideally they would like to close this week so please let me know if you have any questions or concerns.

I will see you tomorrow at the dinner.

Best,

JACOB MURAD, J.D., LL.M.
general counsel

jmurad@millstreetco.com

TEL: 905-764-5465 ext. 223 CELL: 416-879-0227

7616 Yonge Street, Thornhill, Ontario L4J 1V9

<image001.png>

This email may contain confidential information, and is intended only for the named recipient and may be privileged. Distribution or copying of this email by anyone other than the named recipient is prohibited. If you are not the named recipient, please notify us immediately and permanently delete this email and destroy all copies of it.

<SPA - SaleEvent.com draft v2.docx>

From: Tim Oldfield <tim.oldfield@crowncapital.ca>
Subject: Re: Tuque Sale
Date: April 26, 2019 at 6:38:59 PM EDT
To: Josh Axler <josh.axler@crowncapital.ca>, Jacob Murad
<jmurad@millstreetco.com>, Noah Murad <nmurad@millstreetco.com>

Jacob / Noah,

Thanks for sending this along. We consent to the transaction.

I would appreciate your input on how the proceeds will be used and flow from Tuque to Mill Street.

Also, when I looked at the APA I was confused by 3.2(a)(i)...it seemed to read the same to me if commissions are greater than 85% or less than 85%...both were at 3x multiple? Am I missing something?

Have a great weekend.

Sincerely,

Tim.

Tim Oldfield, CPA, CA, CFA
Chief Investment Officer
Crown Capital Partners Inc.
Direct 416-640-6798
tim.oldfield@crowncapital.ca
www.crowncapital.ca

On Apr 25, 2019, at 4:33 PM, Josh Axler <josh.axler@crowncapital.ca> wrote:

Josh Axler
Investment Associate
Crown Capital Partners Inc.
416-640-4159
josh.axler@crowncapital.ca
www.crowncapital.ca

Begin forwarded message:

From: Jacob Murad <jmurad@millstreetco.com>
Subject: Re: Tuque Sale
Date: April 25, 2019 at 4:32:55 PM EDT
To: Josh Axler <josh.axler@crowncapital.ca>
Cc: Noah Murad <nmurad@millstreetco.com>

Hi Josh

As an FYI further to your conversations with Noah I've attached the final APA for Tuque which is set to close on Tuesday – let me know if you have any questions and if you could provide consent that would be great as well. Thank you

Best,

JACOB MURAD, J.D., LL.M.
general counsel

jmurad@millstreetco.com

TEL: 905-764-5465 ext. 223 CELL: 416-879-0227

7616 Yonge Street, Thornhill, Ontario L4J 1V9

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<RRJ Tuque APA EXECUTION COPY.pdf>

<APA RRJ pf Tuque Signature page Purchaser.pdf>

<Noah signature of APA.pdf>

From: Jacob Murad <jmurad@millstreetco.com>
Subject: RE: Request for Consent
Date: August 6, 2019 at 10:10:40 AM EDT
To: Josh Axler <josh.axler@crowncapital.ca>
Cc: Noah Murad <nmurad@millstreetco.com>

Hi Josh,

I wanted to follow up on this. Have you/Tim had a chance to review? Please let me know as we were hoping to close at the end of this week.

JACOB MURAD, J.D., LL.M.
general counsel

jmurad@millstreetco.com

TEL: 905-764-5465 ext. 223 CELL: 416-879-0227

7616 Yonge Street, Thornhill, Ontario L4J 1V9

MILL STREET & Co.

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From: Josh Axler <josh.axler@crowncapital.ca>
Sent: Wednesday, July 24, 2019 4:44 PM
To: Jacob Murad <jmurad@millstreetco.com>
Cc: Noah Murad <nmurad@millstreetco.com>
Subject: Re: Request for Consent

Hi Jacob,

Summer has been great so far, hope the same for you.

I have forwarded to Tim, he is traveling the next few days so probably be a few days before I get back to you.

Thanks,

Josh Axler
Investment Associate
Crown Capital Partners Inc.
416-640-4159
josh.axler@crowncapital.ca
www.crowncapital.ca

On Jul 24, 2019, at 2:15 PM, Jacob Murad <jmurad@millstreetco.com> wrote:

Hi Josh,

Hope you've had a nice summer.

I am writing to request Crown's written consent for the attached transaction. As you know, 2455432 Ontario Inc is the holdco that owns our office building 7616 Yonge Street. We have been discussing a concept where we sell the property to our family trust company – 997- for approx.. \$2 million. The reason we want to do this is because, it removes \$1.6 million of debt on the Mill Street balance sheet, and puts \$400,000 in cash back into the company for something non-cash producing. It also creates a better tax scenario for our family trust, where we can point to capital investments that can be used to offset future gains on the shares of Mill Street if/when they occur. I have attached our draft SPA and the potential closing date is no later than August 15, likely earlier.

If you have any questions please let me know

JACOB MURAD, J.D., LL.M.
general counsel

jmurad@millstreetco.com

TEL: 905-764-5465 ext. 223 CELL: 416-879-0227

7616 Yonge Street, Thornhill, Ontario L4J 1V9

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<Share Purchase Agreement - v1.DOC>

From: Jacob Murad <jmurad@millstreetco.com>
Subject: RE: Request for Consent
Date: August 20, 2019 at 11:05:02 AM EDT
To: Tim Oldfield <tim.oldfield@crowncapital.ca>
Cc: Josh Axler <josh.axler@crowncapital.ca>, Noah Murad
<nmurad@millstreetco.com>

Good Morning Tim,

I wanted to follow up on this – are you able to provide consent or did you have any other questions.
Please let me know thanks.

JACOB MURAD, J.D., LL.M.
general counsel

jmurad@millstreetco.com

TEL: 905-764-5465 ext. 223 CELL: 416-879-0227

7616 Yonge Street, Thornhill, Ontario L4J 1V9

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From: Jacob Murad

Sent: Tuesday, August 6, 2019 2:01 PM

To: Tim Oldfield <tim.oldfield@crowncapital.ca>

Cc: Josh Axler <josh.axler@crowncapital.ca>; Noah Murad <nmurad@millstreetco.com>

Subject: RE: Request for Consent

Hi Tim –

I am working on a solution with our accountants that will prevent a tax liability due to the non-arms length nature of the transaction, but in the event that there will be a tax liability in the future, we also have a number of capital expenses that we should be able to use to reduce it so any liability should be minor (it is also the reason for valuing the company around \$2million to also reduce the exposure).

Regarding the go-forward, right now Mill Street pays rent to 245 to fund the mortgage and that will have to remain the same but if there are any improvements to the real estate in the future, that will be paid by the family trust and going forward, the mortgage debt itself will be on the family trust financial statements while inserting \$400,000 back into Mill Street.

JACOB MURAD, J.D., LL.M.

general counsel

jmurad@millstreetco.com

TEL: 905-764-5465 ext. 223 CELL: 416-879-0227

7616 Yonge Street, Thornhill, Ontario L4J 1V9

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From: Tim Oldfield <tim.oldfield@crowncapital.ca>

Sent: Tuesday, August 6, 2019 1:43 PM

To: Jacob Murad <jmurad@millstreetco.com>

Cc: Josh Axler <josh.axler@crowncapital.ca>; Noah Murad <nmurad@millstreetco.com>

Subject: Re: Request for Consent

Thanks Jacob.

A couple of questions. Is there a tax liability created in the real estate co that will need to be paid out of the proceeds? Also, will there be a mortgage in the family trust that will need to be paid and funded by Mill Street? Ideally there would be a cash savings in Mill Street.

Tim Oldfield, CPA, CA, CFA
Chief Investment Officer
Crown Capital Partners Inc.
Direct 416-640-6798
tim.oldfield@crowncapital.ca
www.crowncapital.ca

On Aug 6, 2019, at 11:39 AM, Jacob Murad <jmurad@millstreetco.com> wrote:

Hi Josh,

Here is an older appraisal in 2018 for 2.3 million value but note this value was a bit of a stretch as it was completed as a condition of the refinancing the property at the time. If you look at the comparables in the appraisal report, this value is on the high side due to the unique nature of the space but approx. 2million is closer to what can likely be sold to a third party.

JACOB MURAD, J.D., LL.M.
general counsel

jmurad@millstreetco.com

TEL: 905-764-5465 ext. 223 CELL: 416-879-0227

7616 Yonge Street, Thornhill, Ontario L4J 1V9

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From: Josh Axler <josh.axler@crowncapital.ca>
Sent: Tuesday, August 6, 2019 10:40 AM
To: Jacob Murad <jmurad@millstreetco.com>
Cc: Noah Murad <nmurad@millstreetco.com>; Tim Oldfield <tim.oldfield@crowncapital.ca>
Subject: Re: Request for Consent

Hi Jacob,

Thanks for following up. Do you guys have a recent appraisal? How did you come to the \$1.94mm value for the property?

Thanks,

Josh Axler
Investment Associate
Crown Capital Partners Inc.
416-640-4159
josh.axler@crowncapital.ca
www.crowncapital.ca

On Aug 6, 2019, at 10:10 AM, Jacob Murad <jmurad@millstreetco.com> wrote:

Hi Josh,

I wanted to follow up on this. Have you/Tim had a chance to review?
Please let me know as we were hoping to close at the end of this week.

JACOB MURAD, J.D., LL.M.
general counsel

jmurad@millstreetco.com

TEL: 905-764-5465 ext. 223 CELL: 416-879-0227

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Cc: Noah Murad <nmurad@millstreetco.com>
Subject: Re: Request for Consent

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Josh Axler
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Crown Capital Partners Inc.
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<jmurad@millstreetco.com> wrote:

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If you have any questions please let me know

JACOB MURAD, J.D., LL.M.
general counsel

jmurad@millstreetco.com

TEL: 905-764-5465 ext. 223 CELL: 416-879-0227

7616 Yonge Street, Thornhill, Ontario L4J 1V9

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<Share Purchase Agreement - v1.DOC>

<APPRAISAL REPORT - 7616 Yonge Street, Thornhill + 10 Parking Spaces - Update - TD (18-08-122).pdf>

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

- and -

MILL STREET & CO. INC.

Respondent

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

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

Proceedings commenced at Toronto

**REPLY AFFIDAVIT OF TIMOTHY OLDFIELD
(sworn April 21, 2020)**

AIRD & BERLIS LLP
Barristers and Solicitors
Brookfield Place
181 Bay Street, Suite 1800
Toronto, ON M5J 2T9

Ian Aversa (LSO # 55449N)
Tel: (416) 865-3082
Fax: (416) 863-1515
Email: iaversa@airdberlis.com

Jeremy Nemers (LSO # 66410Q)
Tel: (416) 865-7724
Fax: (416) 863-1515
Email: jnemers@airdberlis.com

Lawyers for the Applicant