



SUPERIOR COURT OF JUSTICE

**COUNSEL/ENDORSEMENT SLIP**

COURT FILE NO.: CV-23-00709183-00CL

DATE: Thursday 9<sup>th</sup> November 2023

NO. ON LIST: 2

TITLE OF PROCEEDING: Peoples Trust Company v. Crown Crest Capital Management Corp. et al.

BEFORE: JUSTICE CONWAY

**PARTICIPANT INFORMATION**

**For Plaintiff, Applicant, Moving Party:**

Name of Person Appearing	Name of Party	Contact Info
Clifton P. Prophet	Peoples Trust Company	Clifton.prophet@gowlingwlg.com
Stephen Kroeger	Peoples Trust Company	Stephen.Kroeger@gowlingwlg.com
Thomas Gertner	Peoples Trust Company	Thomas.gertner@gowlingwlg.com
Elizabeth Pillon,	Co-counsel to Respondents	Elizabeth.Pillon @gowlingwlg.com

**For Defendant, Respondent, Responding Party:**

Name of Person Appearing	Name of Party	Contact Info
Paul van Eyk, KPMG Inc.	KPMG Inc., Proposed Monitor	pvaneyk@kpmg.ca
Pritesh Patel, KPMG Inc.	KPMG Inc., Proposed Monitor	pritchpatel@kpmg.ca
Huey Lee, KPMG Inc.	KPMG Inc., Proposed Monitor	hueylee@kpmg.ca
Marc Wassermann, OSLER, HOSKIN & HARCOURT LLP	Counsel to KPMG Inc., Proposed Monitor	mwasserman@osler.com
Shawn Irving, OSLER, HOSKIN & HARCOURT LLP	Counsel to KPMG Inc., Proposed Monitor	sirving@osler.com
Martino Calvaruso, OSLER, HOSKIN & HARCOURT LLP	Counsel to KPMG Inc., Proposed Monitor	MCalvaruso@osler.com
Joe Proserpi	HWS CONSULTING INC., proposed CRO	Jproserpi@hwsconsultant.com
Steven Graff, AIRD & BERLIS	Counsel to HWS CONSULTING INC.,	sgraff@airdberlis.com

LLP Samantha Hans, Aird & BERLIS		
Samantha Hans, Aird & BERLIS LLP	Counsel to HWS CONSULTING INC., proposed CRO	shans@airdberlis.com
Joseph Blinick, BENNETT JONES LLP	Counsel to MNP Corporate Finance Inc	blinickj@bennettjones.com
Maria Arabella Robles, SOTOS LLP	Counsel to Class Action Plaintiffs	mrobles@sotos.ca
Mohsen Seddigh, SOTOS LLP	Counsel to Class Action Plaintiffs	mseddigh@sotos.ca
Michael Lombard	Peoples Trust Company	MichaelL@peoplestrust.com
Anne Butler	Peoples Trust Company	AnneB@peoplesgroup.com
David Cohen, Gowling WLG (Canada) LLP (OBSERVER)	Peoples Trust Company	david.cohen@gowlingwlg.com
Katherine Yurkovich, Gowling WLG (Canada) LLP (OBSERVER)	Peoples Trust Company	kate.yurkovich@gowlingwlg.com
Oscar Strawszynski	Crown Crest Management	

**For Other, Self-Represented:**

<b>Name of Person Appearing</b>	<b>Name of Party</b>	<b>Contact Info</b>

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## **ENDORSEMENT OF JUSTICE CONWAY:**

- [1] **All defined terms used in this Endorsement shall, unless otherwise defined, have the meanings ascribed to them in the Factum of the Applicant dated November 6, 2023.**
- [2] The Applicant (PTC) seeks an initial order under the CCAA. It is the senior secured creditor of the Respondents. This is a creditor-led CCAA. Counsel for the Applicant and the Respondents have worked together to make this a consensual filing.
- [3] Counsel in two class action proceedings (Mr. Blinick and Mr. Seddigh)<sup>1</sup> attended and requested an adjournment of today's hearing. They were served on Monday and say they have not had sufficient time to prepare opposing materials. After hearing submissions, I denied the adjournment. Hearings for an initial order often are brought on short notice. It was acknowledged by all counsel that if the Initial Order is granted, the comeback hearing will be a *de novo* hearing and the onus will be on the Applicant to satisfy the court that (apart from the DIP Charge for funds provided during the initial 10 day period and the Administration Charge granted in the Initial Order), the relief in an amended and restated order should be granted.
- [4] The evidence on the application is set out in the affidavit of Michael Lombard, Chief Credit Officer of the Applicant sworn November 6, 2023 and the Pre-Filing Report of the Proposed Monitor dated the same date. All factual references in this Endorsement come from those materials.

## **BACKGROUND**

- [5] The Simply Green Leasing Group is in the business of leasing and servicing home improvement equipment to retail consumers including hot water heaters, furnaces, heat pumps, air conditioners, boilers, air filtration systems and other related products. The leasing portfolio owned by the Simply Green Leasing Group is spread across the common law provinces of Canada, with the majority of its equipment leases concentrated in Ontario.
- [6] As of September 30, 2023, PTC is owed over \$32 million under the warehouse loan agreements and almost \$7 million under the debentures. All of this debt is secured. PTC also has a proprietary interest in the underlying consumer lease agreements originated or acquired by the Simply Green Leasing Group members.
- [7] The Respondents are in financial distress. As of July 2023, senior management advised PTC that it was facing significant near-term liquidity challenges, estimating an approximate loss of at least \$300,000 a month. Senior management further advised PTC that the Respondents were projecting a significant net cash flow shortfall through December 2026 that could not be covered by existing resources. PTC is bringing this application to stabilize the operations of the Respondents. There are 80,000 consumer lease

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<sup>1</sup> Mr. Blinick advised that the MNP proceeding has been certified and tried. The decision is under reserve. Mr. Seddigh advised that his proceeding has been commenced but the certification hearing is scheduled for October 2024.

agreements to be serviced. The directors and officers are resigning and PTC is seeking the appointment of a chief restructuring officer to oversee operations.

[8] PTC is proposing a DIP facility to address the liquidity issues faced by the Respondents. That facility is for \$15 million, with \$1.1 million being advanced during the initial 10 day period. The need for this financing is supported by the cash flow projection in the materials.

### **APPLICATION FOR AN INITIAL ORDER**

[9] There is no issue that creditor led proceedings are available under the CCAA and that PTC has standing to commence these proceedings: *ATB Financial et al. v. Apollo Trust et al*, 2008 CanLII 21724 (ON SC).

[10] The CCAA applies to a “debtor company” if the total claims against it or its affiliates exceed \$5 million. The Respondents meet this test. They meet the insolvency test for purposes of the CCAA as they are unable or are expected to soon become unable to meet their obligations generally as they become due.

[11] This court may grant a stay of proceedings of up to 10 days on an initial application, provided it is satisfied that: (i) such a stay is appropriate; and (ii) the applicant has acted in good faith and with due diligence (s. 11.02(1), (3)). I am satisfied that the stay of proceedings sought by the Applicant is reasonably necessary to maintain the *status quo* and to provide the breathing space that the Respondents require to continue their operations for the next ten days, all for the benefit of their stakeholders.

[12] The Respondents require immediate DIP financing in light of their liquidity crisis. As noted, PTC has agreed to provide this financing of up to \$1.1 million over the next 10 days. I approve this financing and the associated DIP Lender’s Charge.

[13] The Applicant seeks an Administration Charge of \$250,000. The Proposed Monitor is supportive of the amount of this Administration Charge. It is acceptable to me.

[14] The Proposed Monitor is acceptable to me and is appointed as Monitor.

[15] I am appointing the CRO pursuant to section 11 of the CCAA. This appointment is desirable given that the directors and officers have or will be resigning.

### **INITIAL ORDER AND COMEBACK DATE**

[16] At the conclusion of the hearing, I said that I would sign the initial order. Order to go as signed by me attached to this endorsement. This order is effective from today's date and is enforceable without the need for entry and filing. I am satisfied that the relief granted in the order for the 10-day period is limited to relief that is “reasonably necessary for the continued operations of the debtor company in the ordinary course of business during that period”, as required by s. 11.001 of the CCAA.

[17] The comeback hearing is scheduled before me on **November 17, 2023 at 2 p.m. for one hour (confirmed with the Commercial List office).**

[18] Mr. Seddigh submitted that by signing the initial order that calls for the continuation of operations over the next 10 days, the court will be endorsing practices of the Respondents that his clients are challenging in the litigation. Although I consider it clear from the order itself, I add that by signing the initial order, the court makes no comment with respect to any practices or operations that may be the subject matter of any litigation.

Conway J.