

**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 CROWN CREST CAPITAL MANAGEMENT CORP., CROWN CREST FINANCIAL CORP., CROWN CREST FUNDING CORP., SIMPLY GREEN HOME SERVICES INC., SIMPLY GREEN HOME SERVICES CORP., AND CROWN CREST CAPITAL TRUST

PEOPLES TRUST COMPANY

Applicant

AND

CROWN CREST CAPITAL MANAGEMENT CORP., CROWN CREST FINANCIAL CORP., CROWN CREST FUNDING CORP., SIMPLY GREEN HOME SERVICES INC., SIMPLY GREEN HOME SERVICES CORP., AND CROWN CREST CAPITAL TRUST

Respondents

**FACTUM OF THE MONITOR
(Third Stay Extension, Second DIP Amendment and Other Relief)**

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TO: **THE SERVICE LIST**

PART I - NATURE OF THE MOTION

1. This factum is filed in support of a motion by KPMG Inc. (“**KPMG**”), in its capacity as the monitor (in such capacity, the “**Monitor**”) of Crown Crest Financial Corp., Simply Green Home Services Inc., Simply Green Home Services Corp, Crown Crest Capital Management Corp., Crown Crest Funding Corp., and Crown Crest Capital Trust (collectively, the “**Crown Crest Leasing Group**” or the “**Debtors**”) in its proceedings under the *Companies’ Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the “**CCAA**” and the within proceedings, the “**CCAA Proceedings**”).

2. The CCAA Proceedings were commenced on November 9, 2023, by the issuance of an initial order on the application of Peoples Trust Company (the “**Initial Order**” and “**PTC**”). The Initial Order, among other things, (i) appointed KPMG as Monitor; (ii) granted an initial stay of proceedings to and including November 19, 2023 (the “**Stay Period**”); (iii) authorized the creation of a DIP Facility, under which the Debtors were permitted to borrow up to \$1,100,000 from PTC (in such capacity, the “**DIP Lender**”); and (iv) approved the appointment of HWS Consulting Inc. (“**HWS**”) as the Chief Restructuring Officer of the Debtors (the “**CRO**”) pursuant to the terms of the CRO Engagement Letter (as defined below).

3. On November 17, 2023, the Court issued the Amended and Restated Initial Order (the “**ARIO**”), which incorporated certain amendments to the Initial Order. Among other things, the ARIO extended the Stay Period to and including February 10, 2024, and increased the amount which the Debtors were maximum borrowings under the DIP Facility up to \$10 million.

4. On February 5, 2024, this Court issued an Order (the “**Stay Extension Order**”) which extended the Stay Period to and including May 10, 2024 and increased the maximum borrowings under the DIP Facility to \$15 million. On May 7, 2024, the Court issued an Order (the “**Second**

Stay Extension Order”) which further extended the Stay Period to and including September 28, 2024, and further increased the maximum borrowings under the DIP Facility to \$10 million,

5. Since the Second Stay Extension Order, the Debtors, under the stewardship of the CRO and in consultation with the Monitor, have continued to operate the business. During this period, the CRO and the Monitor have provided substantial assistance and direction to the Debtors. On this motion, the Monitor therefore seeks, for and on behalf of the Debtors, an order (the “**Third Stay Extension Order**”), which will:

- (a) extend the Stay Period until and including January 31, 2025;
- (b) approve the Second DIP Amendment (as defined below) and amend paragraph 39 of the ARIO to increase the approved borrowings under the DIP Facility to \$25 million;
- (c) approve the Third CRO Amendment (as defined below) to the CRO Engagement Letter;
- (d) approve the reports and activities of the Monitor; and
- (e) approve the fees of the Monitor and its counsel, Osler, Hoskin & Harcourt LLP (“**Osler**”), for the period from October 25, 2023, to July 31, 2024.

6. The Monitor submits that the relief requested in the Third Stay Extension Order is fair and reasonable in the circumstances and should be granted.

PART II - SUMMARY OF FACTS

7. The facts regarding this motion are more fully set out in the Fourth Report of the Monitor¹ and in the Third Affidavit of Josef Prosperi.²

A. Activities of the Debtors and the CRO

8. The Debtors, under the stewardship of the CRO and the supervision of the Monitor, stabilized the Debtors' business during the initial phase of these CCAA proceedings, and over the spring and summer months have focused on data collection and regularization, participating in the August Mediation (as defined in the Fourth Report) and preparing for the certification and summary judgment motions in respect of the Bonnick Action (as defined below). More particularly, the activities of the Debtors and the CRO since the date of the Second Stay Extension Order include:³

- (a) continuing to develop and implement a project plan for the global data review project, including engaging a temp agency and an AI firm to conform the various lease types into saleable portfolios;
- (b) actively participating in the ongoing August Mediation;
- (c) conducting financial analysis and developing various financial models in an effort to arrive at an appropriate path to settlement of the class action proceedings;

¹ Fourth Report of the Monitor dated September 19, 2024 ("**Fourth Report**"). Unless otherwise specified, capitalized terms in this factum have the same meaning as in the Fourth Report. Unless otherwise stated, all monetary amounts referred to in this factum are expressed in Canadian dollars.

² Affidavit of Josef Prosperi sworn September 19, 2024 ("**Third Prosperi Affidavit**").

³ Fourth Report at para. 13; Third Prosperi Affidavit at para. 12.

- (d) continuing to develop and implement certain cost-saving initiatives which have assisted the Debtors in operating within the cash flow projections;
- (e) re-aligning internal resources after the implementation of the cost saving initiatives to allow same to continue to carry through operations with minimal disruption to customer service, collection and billing; and
- (f) continuing to operate the day-to-day business of the Debtors and maintain the engagement of internal personnel.

B. Activities of the Monitor

9. Since the date of the Second Stay Extension Order, the Monitor's activities have included:⁴
- (a) monitoring the Debtors' cash flows and reviewing analyses on variances to the Debtors' cash flow forecast;
 - (b) corresponding and communicating with certain parties who have expressed interest in acquiring the Debtors' interests and rights to certain RNC related equipment or assets;
 - (c) communicating with certain interested parties regarding the business of the Debtors and their potential interest in same;
 - (d) assisting the Debtors, in consultation with the CRO, with the preparation of the Updated Cash Flow Forecast;

⁴ Fourth Report at para. 14.

- (e) corresponding and communicating with the DIP Lender and its counsel in respect of the Debtors' cash flows, the Updated Cash Flow Forecast and other matters relating to these CCAA proceedings;
- (f) assisting the Debtors and the CRO with their communications with stakeholders including employees, vendors, key partners and creditors;
- (g) communicating, through counsel, with counsel of record for the plaintiffs in a proposed class action commenced against certain of the Debtors and with other counsel of record involved in such proposed class action;
- (h) with the assistance of legal counsel, addressing certain information requests from stakeholders, including plaintiffs' Counsel in the proposed Bonnick class action (the "**Bonnick Action**");
- (i) considering and addressing a separate proposed class action commenced by the plaintiffs against PTC;
- (j) attending several case conferences in connection with a proposed motion by plaintiffs' Counsel;
- (k) with the assistance of legal counsel, facilitating the August Mediation, including communications with the Mediator, negotiating and coordinating certain financial disclosure, preparing a mediation brief, reviewing materials filed by the Debtors, the plaintiffs and other interested parties in advance of the August Mediation, and participating in the August Mediation;
- (l) addressing issues pertaining to extraprovincial corporate registrations;

- (m) considering and advancing preliminary SISP materials;
- (n) reviewing materials filed by the CRO in connection with the motion for the Third Stay Extension Order; and
- (o) with the assistance of its legal counsel, preparing the Fourth Report and the motion materials for the Third Stay Extension Order.

PART III - THE ISSUES AND THE LAW

10. This factum addresses the following issues:
- (a) The Court should extend the Stay Period to January 25, 2025;
 - (b) The Court should approve the Second DIP Amendment;
 - (c) The Court should approve the Third CRO Amendment;
 - (d) The Court should approve the activities and reports of the Monitor; and
 - (e) The Court should approve the fees and disbursements of the Monitor and its counsel.

A. The Stay Period Should be Extended

11. Pursuant to section 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. There is no statutory time limit on how long a stay of proceedings can be extended.

12. The Stay Period currently expires on September 27, 2024. The Monitor, on behalf of the Debtors and with the concurrence of the CRO, asks that the Stay Period be extended to and

including January 31, 2025. The Monitor submits that extending the Stay Period is warranted for the following reasons:⁵

- (a) the Debtors, under the stewardship of the CRO and supervision of the Monitor, are acting in good faith and with due diligence;
- (b) the extension of the Stay Period will allow additional time for the Monitor to facilitate discussions with the parties to the Bonnick Action;
- (c) the extension of the Stay Period will provide the Monitor with the opportunity to continue to advance the development of the SISP, in consultation with the CRO and the DIP Lender, and seek this Court's approval of same;
- (d) as of the date of the Fourth Report, the Monitor is not aware of any party opposed to an extension of the Stay Period; and
- (e) the extension of the Stay Period should not materially prejudice any creditor of the Debtors as the Updated Cash Flow Forecast reflects that the Debtors are projected to have sufficient funding to continue to operate in the normal course through the proposed stay extension period.

B. The Second DIP Amendment Should be Approved

13. As discussed above, the DIP Facility is currently subject to a borrowing limit of \$21 million under the terms of the Second Stay Extension Order. As of September 14, 2024, the Debtors have borrowed \$16.8 million against the DIP Facility.⁶

⁵ Fourth Report at paras. 51-52. See also Third Prosperi Affidavit, at para. 10.

⁶ Fourth Report at paras. 30-32.

14. On September 18, 2024, the DIP Lender and the Debtors entered into an amendment to the DIP Term Sheet (the “**Second DIP Amendment**”). Pursuant to the Second DIP Amendment, the borrowing limit under the DIP Facility is to be increased from \$21 million to \$25 million, and the maturity date is to be extended to January 25, 2024, or such later date as the DIP Lender may agree to.⁷

15. The Debtors, with the assistance of the Monitor and in consultation with the CRO, have prepared an updated cash flow forecast for the purpose of projecting the estimated liquidity needs of the Debtors for the period September 15, 2024, to February 1, 2025 (the “**Updated Cash Flow Forecast**” and the “**Forecast Period**”). The Updated Cash Flow Forecast has been prepared on a conservative basis using the probable and hypothetical assumptions set out in the notes to the Updated Cash Flow Forecast, and reflects the Debtors’ estimates of receipts and disbursements over the course of the Forecast Period. The Updated Cash Flow Forecast has been reviewed by the Monitor.⁸

16. The Updated Cash Flow Forecast makes clear the Debtors’ need for additional liquidity in order to continue operating during the Forecast Period. Over the course of the Forecast Period, the Debtors are projected to incur a net cash outflow of approximately \$7.5 million on the following basis:⁹

- (a) operating cash receipts are anticipated to total approximately \$24.1 million;
- (b) operating disbursements are anticipated to total approximately \$12.1 million; and

⁷ Fourth Report at para. 33.

⁸ Fourth Report at paras. 21-23.

⁹ Fourth Report at paras. 24-28.

- (c) payments to PTC in order to service debts owing under the Loan Agreements and in respect of the cash flows arising from the Concurrent Lease Agreements (each as defined in the Fourth Report) are anticipated to total approximately \$19.5 million.

17. In order to make up for the anticipated net cash outflow, the Updated Cash Flow Forecast projects the use of cash on hand as of the beginning of the Forecast Period and additional borrowings under the DIP Facility in the amount of \$7 million over the Forecast Period.¹⁰

18. Based on the Updated Cash Flow Forecast, the Monitor submits that the Second DIP Amendment is reasonable and necessary in the circumstances, as the Debtors will require the additional liquidity to operate going forward. As a result, the Second DIP Amendment should be approved, and paragraph 39 of the ARIIO should be amended to authorize borrowing under the DIP Facility of up to \$25 million.¹¹

C. The Third CRO Amendment Should be Approved

19. On November 8, 2023, an engagement letter (the “**CRO Engagement Letter**”) was executed to appoint HWS, acting through Mr. Josef Prosperi and others, to act as the CRO in respect of each of the Debtors.¹² On May 1, 2024, HWS, PTC and the Monitor acknowledged and agreed to an amendment to the CRO Engagement Letter (the “**Second CRO Amendment**”), which extended the monthly fee payable to HWS (the “**Work Fee**”) of \$65,000 per month to the period

¹⁰ Fourth Report at para. 28.

¹¹ Fourth Report at paras. 34-35.

¹² Fourth Report at para. 2.

from June 2024 to September 2024. The Second CRO Amendment was approved by the Court as part of the Second Stay Extension Order.¹³

20. PTC and HWS, in consultation with the Monitor, have agreed to a third amendment to the CRO Engagement Letter (the “**Third CRO Amendment**”) which will fix the Work Fee at \$65,000 per month from October 2024 to January 2025, thereby maintaining the Work Fee at the level approved in the Second Stay Extension Order.¹⁴

21. As outlined above, since the date of the Second Stay Extension Order, the CRO has continued to engage in extensive efforts in relation to the Debtors.¹⁵ These efforts are expected to continue into the future, with the Debtors, CRO, and Monitor intending to work together in order to, among other things, continue the implementation of a global data review process, prepare for an eventual SISP, and continue to engage in discussions with counsel of record in the Bonnick Action in an effort to reach a negotiated resolution of the issues raised in that action.¹⁶

22. The Monitor was consulted in respect of the Third CRO Amendment and is supportive of same. The Third CRO Amendment maintains the Work Fee at the level previously approved by this Court and the CRO’s total remuneration is comparable to those paid to other chief restructuring officers in similar cases.¹⁷

¹³ Fourth Report at para. 42.

¹⁴ Fourth Report at para. 44.

¹⁵ Third Prosperi Affidavit at paras. 11-12.

¹⁶ Third Prosperi Affidavit at para. 10.

¹⁷ Fourth Report at para. 45. See, in addition to the Stay Extension Order and the Second Stay Extension Order, *Laurentian University of Sudbury*, [2021 ONSC 3885](#) at paras. 4-12, in which the court approved fees amounting to \$52,000 per month; *Nextpoint Financial (Re)*, (July 25, 2023), BCSC Vancouver Registry No. 5-235288 ([Initial Order](#)) at para. 10, citing the CRO engagement letter found at Exhibit S to the [Affidavit of Peter Kravitz](#), sworn July 25, 2023 at p. 1207, in which the court approved fees of \$80,000 per month; and *Pride Group Holdings Inc.*, [2024 ONSC 1830](#) at para. 45, in which the court approved the engagement of the CRO, including fees amounting to a work fee of CAD \$100,000 per month plus HST, commencing on the 1st day of March, 2024 and USD \$75,000 plus applicable taxes, payable on the first day of each month thereafter (which fees are set out in Exhibit L to [the Affidavit of Sulakhan Johal](#) sworn March 26, 2024 at p. 238).

D. The Reports and Activities of the Monitor Should be Approved

23. The Monitor seeks the approval of the actions, conduct and activities of KPMG in its capacity as Proposed Monitor, as described in the reports filed KPMG, including the pre-filing report dated November 6, 2023, the first report of the Monitor dated November 16, 2023, the second report of the Monitor dated January 29, 2024, the third report of the Monitor dated May 1, 2024, and the Fourth Report (collectively, the “**Reports**”).

24. As has been noted by the court, requests to approve a monitor’s report and activities are not unusual, and there are good policy and practical reasons for the court to do so, including:¹⁸

- (a) allowing the monitor to move forward with the next steps;
- (b) allowing the monitor to bring its activities before the Court;
- (c) enabling the Court to satisfy itself that a monitor’s activities have been conducted in prudent and diligent manners;
- (d) providing protection for a monitor not otherwise provided by the CCAA; and
- (e) protecting creditors from delay that may be caused by re-litigation of steps.

25. The Monitor submits that the Reports, along with the applicable activities described therein, should be approved. The activities of the Monitor have been carried out in accordance with the orders of this Court, and the Monitor has acted reasonably and in good faith throughout.

E. The Accounts of the Monitor and its Counsel Should be Approved

¹⁸ *Target Canada Co. (Re)*, [2015 ONSC 7574](#) at para. 23.

26. The Monitor additionally seeks the approval of the following fees and disbursements of itself and its counsel, Osler:¹⁹

- (a) fees of the Monitor from October 25, 2023, to July 31, 2024, totalling \$842,931.25, together with disbursements in the amount of \$59,526.20; and
- (b) fees of Osler from October 29, 2023 to July 31, 2024, totalling \$757,855.00, together with disbursements of \$33,465.22.

27. In considering whether to approve fees and disbursements, the court has regard to the “overriding principle of reasonableness,” and does not engage in a docket-by-docket or line-by-line assessment of the accounts.²⁰ The following factors assist a court in assessing the reasonableness of the Monitor’s fees:²¹

- (a) the nature, extent and value of the assets being handled;
- (b) the complications and difficulties encountered;
- (c) the degree of assistance provided by the company, its officers or its employees;
- (d) the time spent;
- (e) the Monitor’s knowledge, experience and skill;
- (f) the diligence and thoroughness displayed;
- (g) the responsibilities assumed;

¹⁹ Fourth Report at paras. 47-48.

²⁰ *Nortel Networks Inc.*, [2022 ONSC 668](#) at para. 10 [*Nortel*].

²¹ *Nortel* at para. 11.

- (h) the results achieved; and
- (i) the cost of comparable services when performed in a prudent and economical manner.

28. The fees and disbursements are appropriate and should be approved. The Monitor and Osler have acted with diligence throughout these CCAA proceedings. The fees and disbursements of the Monitor and Osler have been reviewed by both the CRO and PTC, who do not oppose the approval of the fees and disbursements. In addition, the Monitor has reviewed the fees and disbursements of Osler, which the Monitor confirms reflect duly authorized and duly rendered services, and which are reasonable in the circumstances.²²

PART IV - NATURE OF THE ORDER SOUGHT

29. For the reasons set out above, the Monitor requests that this Court grant the proposed Third Stay Extension Order.

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 23rd day of September, 2024.



OSLER, HOSKIN & HARCOURT LLP
per Sierra Farr

²² Fourth Report at para. 49-50.

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SCHEDULE "A": LIST OF AUTHORITIES

1. *Laurentian University of Sudbury*, [2021 ONSC 3885](#)
2. *Nextpoint Financial (Re)*, (July 25, 2023), BCSC Vancouver Registry No. 5-235288 ([Initial Order](#))
3. *Nortel Networks Inc.*, [2022 ONSC 668](#)
4. *Pride Group Holdings Inc.*, [2024 ONSC 1830](#)
5. *Target Canada Co. (Re)*, [2015 ONSC 7574](#)

SCHEDULE “B”
TEXT OF STATUTES, REGULATIONS & BY-LAWS

Companies’ Creditors Arrangement Act, RSC 1985, c C-36

Stays, etc. — initial application

11.02 (1) A court may, on an initial application in respect of a debtor company, make an order on any terms that it may impose, effective for the period that the court considers necessary, which period may not be more than 10 days,

- (a) staying, until otherwise ordered by the court, all proceedings taken or that might be taken in respect of the company under the Bankruptcy and Insolvency Act or the Winding-up and Restructuring Act;
- (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.

Stays, etc. — other than initial application

(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.

Restriction

(4) Orders doing anything referred to in subsection (1) or (2) may only be made under this section.

IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*, R.S.C. 1985,
c. C-36, AS AMENDED

Court File No. CV-23-00709183-00CL

AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF
CROWN CREST CAPITAL MANAGEMENT CORP., CROWN CREST FINANCIAL
CORP., CROWN CREST FUNDING CORP., SIMPLY GREEN HOME SERVICES INC.,
SIMPLY GREEN HOME SERVICES CORP., AND CROWN CREST CAPITAL TRUST

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PROCEEDING COMMENCED AT TORONTO

FACTUM OF THE MONITOR

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