

**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
(Fourth Stay Extension, Third 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 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 (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 (the “**Initial Order**”) by this Court (the “**CCAA Court**”) on the application of Peoples Trust Company (“**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 \$1.1 million 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 an engagement letter dated November 8, 2023 (the “**CRO Engagement Letter**”).

3. On November 17, 2023, the CCAA 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 authorized the increase of the maximum borrowings under the DIP Facility to \$10 million.

4. On February 5, 2024, the CCAA Court issued an 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 CCAA Court issued an Order, which extended the Stay Period to and including September 27, 2024, and increased the maximum borrowings under the DIP Facility to \$21 million. On September 25, 2024, the CCAA Court issued an Order (the “**Third Stay Extension Order**”), which extended the Stay Period to and including January 31, 2025 and increased the maximum borrowings under the DIP Facility to \$25 million.

5. Since the Third 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 “**Fourth Stay Extension Order**”), which will:

- (a) extend the Stay Period until and including April 4, 2025;
- (b) approve the Third DIP Amendment (as defined below) and amend paragraph 39 of the ARIIO to increase the approved borrowings under the DIP Facility to \$30 million; and
- (c) approve the Fourth CRO Amendment (as defined below) to the CRO Engagement Letter.

6. The Monitor submits that the relief requested in the Fourth 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 Fifth Report of the Monitor¹ and in the Fourth 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 following the commencement of the CCAA Proceedings and have been conducting operations in the ordinary course since that time. The CRO, with the assistance of the Monitor, has performed the following activities since the date of the Third Stay Extension Order:³

- (a) substantially completing the global data review project to, among other things, conform the various lease types into saleable portfolios;
- (b) actively participating in the discussions and the Mediation (as defined below) which culminated in the Class Action Settlement (as defined below), which is subject to court approval by the Class Action Judge (as defined below) and the CCAA Court;
- (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 (as defined below);

¹ Fifth Report of the Monitor dated January 3, 2025 (“**Fifth Report**”). Unless otherwise specified, capitalized terms in this factum have the same meaning as in the Fifth Report. Unless otherwise stated, all monetary amounts referred to in this factum are expressed in Canadian dollars.

² Affidavit of Josef Prosperi sworn January 3, 2025 (“**Fourth Prosperi Affidavit**”).

³ Fifth Report at para. 14; Fourth Prosperi Affidavit at para. 16.

- (d) commencing preliminary preparations for a sale and investment solicitation process in the CCAA Proceedings (the “SISP”);
- (e) continuing to develop and implement certain cost-saving initiatives which have assisted the Debtors in operating within the cash flow projections;
- (f) 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
- (g) 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 Third 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 an interested party to sell 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;

⁴ Fifth Report at para. 15.

- (d) assisting the Debtors, in consultation with the CRO, with the preparation of the Updated Cash Flow Forecast (as defined below);
- (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 the 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 the Class Action Proceedings and with other counsel of record involved in such proposed class action;
- (h) with the assistance of legal counsel, facilitating and participating in the Mediation, and related settlement discussions, which culminated in the Class Action Settlement which is subject to court approval;
- (i) attending case conferences before the CCAA Court in connection with the Class Action Settlement;
- (j) considering and advancing preliminary SISP materials;
- (k) reviewing materials filed by the CRO in connection with the within motion; and
- (l) with the assistance of its legal counsel, preparing the Fifth Report and the motion materials for the Fourth Stay Extension Order.

C. Update on Class Action Proceedings

10. Since the Initial Order Date, the Monitor, through its counsel, has been actively engaged with counsel of record for the plaintiffs and all other counsel of record involved in a proposed class action commenced against certain of the Debtors and their former CEO, Mr. Lawrence Krimker (the “**Bonnick Action**”) and a separate proposed class action commenced by the plaintiffs against PTC, which is related to the Bonnick Action (the “**PTC Action**” and together, the “**Actions**” and the proceedings, the “**Class Action Proceedings**”). The class action parties, together with the Monitor and the CRO, attended a mediation (the “**Mediation**”) with the Honourable Thomas J. McEwen and McEwen Resolutions Inc. as mediator in August and September 2024 to see if a consensual settlement of the issues in both Actions could be achieved.⁵

11. Following the Mediation, the parties had not been able to achieve a settlement and therefore proceeded to a contested certification and summary judgment motion (the “**Certification Motion**”) before Justice Akbarali, as case management judge of the Actions (the “**Class Action Judge**”), which commenced on October 1, 2024 and was scheduled for three days. Following the first day of the Certification Motion, the parties reached a tentative settlement of both Actions. On November 1, 2024, the parties signed the final settlement agreement (the “**Settlement Agreement**”) and thereafter advised the Class Action Judge and the CCAA Court that a settlement had been achieved (the “**Class Action Settlement**”).⁶ The Class Action Settlement is expressly conditional on approval by the Class Action Judge and the CCAA Court.

12. Following the execution of the Settlement Agreement, class counsel brought certain motions before the Class Action Judge seeking various relief, all for purposes of moving towards

⁵ Fifth Report at paras. 36-37.

⁶ Fifth Report at paras. 38-39.

a settlement approval hearing, including (a) amending the statement of claim in the PTC Action, including adding additional defendants; (b) consolidating the two Actions; (c) certifying the consolidated class proceeding for settlement purposes only; and (d) approving the notice plan and proposed notices of the class action settlement approval hearing. The Class Action Judge released her endorsement on November 15, 2024 in *Bonnick v. Krimker et al.*, 2024 ONSC 6331.⁷

13. The notices of settlement set out, among other things, that the class action settlement approval hearing has been scheduled for February 4, 2025 before the Class Action Judge (the “**Approval Hearing**”). Notices of the Approval Hearing have been distributed to the class by class counsel in accordance with the notice plan.⁸

14. If approved by the Class Action Judge at the Approval Hearing, the Monitor and the CRO intend to come back before the CCAA Court to schedule a motion for consideration and approval, on behalf of the Debtors, of the Class Action Settlement and the Settlement Agreement by the CCAA Court. If ultimately approved by the Class Action Judge and the CCAA Court and implemented, the Class Action Settlement will facilitate the conduct of a SISF in the CCAA Proceedings by the Monitor, with the assistance of the CRO and in consultation with stakeholders, for some or all of the Debtors’ business or assets, at the appropriate time.⁹

PART III - THE ISSUES AND THE LAW

15. This factum addresses the following issues:

- (a) This Court should extend the Stay Period to April 4, 2025;
- (b) This Court should approve the Third DIP Amendment; and

⁷ Fifth Report at paras. 42-43.

⁸ Fifth Report at para. 44.

⁹ Fifth Report at para. 45.

- (c) This Court should approve the Fourth CRO Amendment.

A. The Stay Period Should be Extended

16. 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.

17. The Stay Period currently expires on January 31, 2025. The Monitor, on behalf of the Debtors and with the concurrence of the CRO, asks that the Stay Period be extended to and including April 4, 2025. The Monitor submits that extending the Stay Period is warranted for the following reasons:¹⁰

- (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 the time required to bring a motion before the CCAA Court for approval of the Class Action Settlement, should it be approved by the Class Action Judge at the Approval Hearing on February 4, 2025;
- (c) the extension of the Stay Period will provide the Monitor, in consultation with the CRO and the DIP Lender, with the opportunity to continue to advance the development of the SISP, and seek the CCAA Court's approval of same in due course;

¹⁰ Fifth Report at paras. 56-57. See also Fourth Prospero Affidavit at para. 12.

- (d) as of the date of the Fifth 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 extension of the Stay Period.

B. The Third DIP Amendment Should be Approved

18. As discussed above, the DIP Facility is currently subject to a borrowing limit of \$25 million under the terms of the Third Stay Extension Order. As of December 21, 2024, the Debtors have borrowed \$22.8 million against the DIP Facility.¹¹

19. On January 3, 2025, the DIP Lender and the Debtors entered into an amendment to the DIP Term Sheet (the “**Third DIP Amendment**”). Pursuant to the Third DIP Amendment, the borrowing limit under the DIP Facility is to be increased from \$25 million to \$30 million, and the maturity date is to be extended to April 4, 2025, or such later date as the DIP Lender may agree to.¹²

20. 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 December 22, 2024 to April 5, 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

¹¹ Fifth Report at para. 32.

¹² Fifth Report at para. 33.

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.¹³

21. 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 \$5 million on the following basis:¹⁴

- (a) operating cash receipts are anticipated to total approximately \$17.7 million;
- (b) operating and non-operating disbursements are anticipated to total approximately \$8.3 million; and
- (c) payments to PTC in order to service debts owing under the warehouse loan agreements and secured debenture facilities with PTC and in respect of the CLAs are anticipated to total approximately \$15.9 million.

22. 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 \$5 million over the Forecast Period.¹⁵

23. Based on the Updated Cash Flow Forecast, the Monitor submits that the Third 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 Third DIP Amendment should be

¹³ Fifth Report at paras. 22-24.

¹⁴ Fifth Report at paras. 25-28.

¹⁵ Fifth Report at para. 28.

approved, and paragraph 39 of the ARIO should be amended to authorize borrowing under the DIP Facility of up to \$30 million.¹⁶

C. The Fourth CRO Amendment Should be Approved

24. The CRO Engagement Letter was amended pursuant to the Third Stay Extension Order dated September 25, 2024. This order approved the monthly fee payable to the CRO by the Debtors (the “**Work Fee**”) of \$65,000 per month for the four-month period commencing in October 2024 through to January 2025.¹⁷

25. Further to discussions between the CRO, the Monitor, the Applicant and their respective counsel, the CRO and the Applicant have agreed to an amendment, in consultation with the Monitor, to maintain the Work Fee at \$65,000 per month for an additional three months, from February 2025 through to April 2025 (the “**Fourth CRO Amendment**”).¹⁸

26. The Monitor was consulted in respect of the Fourth CRO Amendment and is supportive of same. The Fourth CRO Amendment maintains the Work Fee at the level previously approved by the CCAA Court and the CRO’s total remuneration is comparable to those paid to other chief restructuring officers in similar cases.¹⁹

¹⁶ Fifth Report at paras. 34-35.

¹⁷ Fifth Report at para. 51.

¹⁸ Fifth Report at para. 52.

¹⁹ Fifth Report at para. 53. See, in addition to the Stay Extension Order, the Second Stay Extension Order, and the Third 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).

PART IV - NATURE OF THE ORDER SOUGHT

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

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 6th day of January, 2025.



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per **Marleigh Dick**

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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. *Pride Group Holdings Inc.*, [2024 ONSC 1830](#)

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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