



ONTARIO SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

COUNSEL/ENDORSEMENT SLIP

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

DATE: APRIL 1, 2025

NO. ON LIST: 1

TITLE OF PROCEEDING: PEOPLES TRUST COMPANY -v- CROWN CREST CAPITAL MANAGEMENT CORP. et al

BEFORE: JUSTICE CONWAY

PARTICIPANT INFORMATION

For Plaintiff, Applicant, Moving Party:

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Others in Attendance:

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ENDORSEMENT OF JUSTICE CONWAY (released April 2, 2025):

- [1] All defined terms used in this Endorsement shall, unless otherwise defined, have the meanings ascribed to them in the Factum of the Monitor dated March 28, 2025. The factual references in this Endorsement come from the affidavit of Josef Prosperi (principal of HWS Consulting Inc., Chief Restructuring Officer of the Debtors) sworn March 25, 2025 and the Monitor's Sixth Report dated March 25, 2025, filed on this motion.

- [2] The Monitor brings this motion for approval of the Class Action Settlement (the "**settlement**"). The settlement has already been approved by Justice Akbarali, the class action judge. Since the Debtors (defendants in the class action) are subject to CCAA proceedings, the settlement must also receive approval from this court. These settlement approval hearings engage different perspectives. Justice Akbarali considered whether the settlement was fair and reasonable and in the best interests of the class members. As supervising judge in these CCAA proceedings, I must consider, as set out below, whether the settlement is fair and reasonable in the circumstances, whether it will benefit the Debtors and their stakeholders generally, and whether it is consistent with the purpose and spirit of the CCAA.

- [3] The Monitor further seeks the Fifth Extension Order that will approve the Fourth DIP Amendment, increase the approved borrowing to \$34 million, and extend the Stay of Proceedings to July 4, 2025.

- [4] The relief sought today is recommended by the Monitor and supported by PTC and the CRO. There is no opposition from any other stakeholder.

Class Action Settlement Approval

The Class Proceedings

- [5] There are two inter-related class actions involving the Debtors and their business.

- [6] The Bonnick Action was commenced in 2021 against the Debtors, the other Corporate Defendants, and Lawrence Krimker (Crown Crest Leasing Group's former CEO). The plaintiffs allege that the conduct of the Corporate Defendants with respect to the Consumer Agreements/Leases contravenes the *Consumer Protection Act, 2002*, S.O. 2002, c. 30, Sch. A. The plaintiffs claim various remedies including rescission, cancellation or declared unenforceability of the Consumer Agreements (collectively, "**Rescission**") and an award of general damages on an aggregate basis.

- [7] In December 2023, the plaintiffs commenced the PTC Action in which they allege similar issues and claim similar relief against PTC.

- [8] Both actions went to mediation in August and September 2024. They did not settle at that time. They proceeded to a certification and summary judgment motion before Justice Akbarali in October 2024. After the first day of the hearing, the parties reached a tentative settlement and signed the Settlement Agreement on November 1, 2024. As noted, Justice Akbarali approved the settlement on February 21, 2025.
- [9] The terms of the Settlement Agreement are as follows:
- a. An initial cash payment of \$17 million payable by PTC and Mr. Krimker to the plaintiffs within 30 days of the Effective Date. Mr. Prophet, for PTC, confirmed that the amount paid by it would not be added to the existing debt from the Debtors to PTC;
 - b. Participation rights in the proceeds generated by the SISF in the amount of 25% of the purchase price paid over \$250 million, payable within 10 days of closing;
 - c. various Lease modification terms, including a permanent cap of 3.5% on any annual escalation of monthly payments, a permanent reduction by 25% to the contractual buyout/termination fees for certain Leases, and cancellation of certain Leases with an aggregate value of \$13.5 million;
 - d. releases in favour of all Releasees from all Released Claims, including all claims relating in any way to any conduct that is alleged or could have been alleged in the Class Actions, including any claim for Rescission.

- [10] According to the Monitor, the Settlement Agreement provides for a minimum total value of \$32,946,000, not including any participation amount from the SISF.

Should the Settlement be Approved?

- [11] This CCAA court has the jurisdiction to approve settlement agreements entered into by debtors during the course of CCAA proceedings in respect of class actions: see *Robertson v. ProQuest Information & Learning Co.*, 2011 ONSC 1647 at para. 22.
- [12] In determining whether to approve a proposed settlement, the following three factors must be considered: (a) whether the settlement is fair and reasonable in the circumstances; (b) whether the settlement will benefit the debtor and its stakeholders generally; and (c) whether the settlement is consistent with the purpose and spirit of the CCAA: *Robertson*, at para. 22; see also *Labourers' Pension Fund of Central and Eastern Canada v. Sino-Forest Corp.*, 2013 ONSC 1078 at para. 49; *The Cash Store Financial Services Inc. (Re)*, 2015 ONSC 7538 at para. 14.

- [13] In determining whether a settlement is fair and reasonable, the court must consider whether the proposed settlement properly balances the interests of all parties and treats all parties equitably, including creditors who are not signatories to the settlement agreement: *Nortel Networks Corp., (Re)*, 2010 ONSC 1708 at para. 73. However, the requirement to treat all creditors equitably does not mean all creditors must be treated in precisely the same manner: *Calpine Canada Energy Ltd. (Re)*, 2007 ABQB 504 at para. 75.
- [14] The court must consider the benefits that the settlement offers to creditors as a whole, while at the same time ensuring that objecting creditors are not suffering excessive prejudice or having their rights unjustly confiscated: *Air Canada (Re)*, 2004 CanLII 11700 (ONSC) at para. 937. Where certain creditors hold claims of a distinctive "factual or legal nature," such creditors may be treated distinctively from other unsecured creditors: *Laurentian University of Sudbury (Re)*, 2022 ONSC 5645 at para. 36.
- [15] In this case, those considerations lead me to conclude that the settlement should be approved, for the following reasons:
- a. The resolution of these actions and approval of the Settlement Agreement will remove the prospect of risky, time-consuming, and costly litigation that will realistically take years to resolve.
 - b. Given the enormous size of the class (estimated at almost 40,000 lessees), the Debtors have exposure to significant liability if the actions are successful.
 - c. Settlement will provide certainty and finality to the Debtors moving forward. One of the terms of the settlement is a comprehensive release (discussed further below), which will only reinforce this certainty and finality.
 - d. Any further delay will have an impact on a potential successful restructuring of the Debtors. If the settlement is approved, the CCAA proceedings can proceed to the next step, a proposed SISP. The Monitor and Mr. Prosperi both state that based on preliminary discussions with potentially interested parties, without a settlement the sale of the Debtors' assets will be difficult, if not impossible. Further, if the plaintiffs succeed on their Rescission claim, there will be no material assets of the Debtors to include in the SISP.
 - e. With respect to the specific terms of the Settlement Agreement, the initial cash payment will be paid by PTC and Mr. Krimker, not by the Debtors. With respect to the participation amount (which is capped at 25% of the proceeds of any transaction concluded in the SISP over \$250 million), this was a critical term of the settlement. The Monitor's counsel submits that this settlement term recognizes the unique factual and legal nature of the plaintiffs' claim, which includes Rescission

of the Consumer Agreements in addition to monetary relief. I accept the Monitor's submission.

- f. The Settlement Agreement is a negotiated solution of the issues between the parties following a good faith, arms-length, adversarial, mediated process.

- [16] Considering all of the factors set out above, I consider the settlement to be fair and reasonable in the circumstances. The settlement, through its finality and certainty, will benefit the debtor and its stakeholders generally. It is consistent with the purpose and spirit of the CCAA as it will enable the Monitor to move forward with the SISF and secure value for stakeholders without the cloud of litigation hanging over the process.
- [17] I required two changes to the proposed order, which counsel have now made. The first is in paragraph 3 to restrict this court's approval of the settlement as it relates only to the Debtors (Respondents on this motion), not to any other parties. The second is in paragraph 5 to make it clear that this CCAA court is approving the releases in the Settlement Agreement only to the extent that they release the Debtors, the Monitor, the CRO, and their respective counsel. Following the hearing, the Monitor's counsel provided me with a revised order that was not sufficiently restricted. I contacted counsel and required that the language be further revised to the current form, which is satisfactory to me. With respect to the release in favour of other Releasees, that is the subject of Justice Akbarali's approval order. Nothing in this Endorsement shall derogate from her approval in that order.
- [18] Class Action Settlement Approval Order to go as signed by me and attached to this Endorsement. This order is effective from today's date and is enforceable without the need for entry and filing.

Fifth Extension Order

- [19] The Fifth Extension Order increases the borrowing under the DIP Facility (currently \$30 million) to \$34 million with a maturity date of July 4, 2025 or such later date as may be agreed by the DIP Lender. The need for this additional liquidity is supported by the Updated Cash Flow Forecast for the Forecast Period. The increase is approved.
- [20] The Stay Period is extended from April 4, 2025 to July 4, 2025. I am satisfied that the Debtors (under the stewardship of the CRO and supervision of the Monitor) are acting in good faith and with due diligence. The extension will permit the parties to implement the Settlement Agreement and allow the Monitor to finalize and seek approval of the SISF. The extension should not materially prejudice any creditor as the Updated Cash Flow Forecast reflects sufficient funding for the Debtors to continue operations in the ordinary course during the extension period.
- [21] Fifth Extension Order to go as signed by me and attached to this Endorsement. This order is effective from today's date and is enforceable without the need for entry and filing.

