2022 01G 1964

IN THE SUPREME COURT OF NEWFOUNDLAND AND LABRADOR

IN BANKRUPTCY AND INSOLVENCY

IN THE MATTER OF the *Companies Creditors Arrangement Act* R.S.C., 1985 c. C-36 as Amended (the "**CCAA**"); and

AND IN THE MATTER OF an application of Edward Collins Contracting Ltd., Classic Security Limited, FGC Holdings Limited, 51037 Newfoundland and Labrador Inc. and H&E Designs Ltd. (collectively, "**ECC**" or the "**Company**").

SUMMARY OF CURRENT DOCUMENT	
Court File Number (s):	2022 01G 1964
Date of Filing of Document:	12 December 2022
Name of Filing Party or Person:	Applicant, Edward Collins Contracting Ltd. ("**ECC**"), Classic Security Limited ("**Classic**"), FGC Holdings Limited ("**FGC**"), 51037 Newfoundland and Labrador Inc. ("**51037**") and H&E Designs Ltd. ("**H&E**") (collectively, "**ECC Group**" or the "**Company**")
Application to which Document being filed relates:	Application filed by the Applicant for an extension to the stay of proceedings granted under s.11 CCAA;
Statement of purpose in filing:	In support of an Interlocutory Application seeking an extension to the stay of proceedings under s.11 CCAA and to respond to the affidavit of David Savoie filed 9 December 2022.
Court Sub-File Number, if any:	N/A

AFFIDAVIT

I, Josh Collins of the Town of Placentia, in the Province of Newfoundland and Labrador, MAKE OATH AND SAY THAT:

1. I am Vice President of the ECC Group and am familiar with their financial affairs and status for the purpose of the within application.

2. The facts stated in this affidavit are based on my knowledge of the Company and its business and affairs up to December 12, 2022. Where I have relied on the information provided to me by others, I have stated the source of the information and I believe the same to be true.

3. This affidavit is sworn in support of an application made by the Company to extend the stay of proceedings granted to the Company pursuant to s.11 of the *Companies' Creditors Arrangement Act* (Canada) R.S.C. 1985, c. C-36, as amended (the "**CCAA**") and to respond to the affidavit of David Savoie from the Royal Bank of Canada dated December 9, 2022 (the "**Savoie Affidavit**").

4. I have reviewed the within application and the facts contained therein are true to the best of my knowledge, information and belief.

I. BIAS

5. Throughout these CCAA Proceedings RBC has, on several occasions, filed false and misleading information with this Honourable Court to undermine our CCAA Proceedings. It is my belief that RBC has done so to cause our proceedings to fail and to install its own liquidation team including its own professional advisors from Ernst & Young and Stewart McKelvey.

6. I believe it is important for the Court to understand the influence RBC's professional fee accounts with Ernst & Young and Stewart McKelvey has had on their conduct in this matter. The Company has a serious concern that the cost of RBC's professional fees is a significant factor influencing RBC's conduct on this file. This is, in turn, creating a bias and preventing RBC from dealing with the Company in good faith as required by the CCAA. It is my belief, based on my personal observations, that RBC wants to control the liquidation process and install their own professionals to prevent the Company from challenging the exorbitant amount of their professional fee's they have incurred.

7. In my personal observation, at all material times, RBC has had two, sometimes three senior partners from Stewart McKelvey working on this file. In my personal observation, RBC has had a minimum of two Stewart McKelvey partners attending *each and every* hearing before this Honorable Court. It is my understanding from speaking with the Monitor that he has asked on more than one occasion for RBC to confirm how much it has accumulated in legal and accounting fees to date, but RBC refused to do so.

8. I also believe that the Savoie Affidavit clearly demonstrates RBC's bias and lack of good faith. In his affidavit Mr. Savoie refers to information provided to him by Ernst & Young and Stewart McKelvey and proceeds to make several false and misleading statements with respect to an alleged "lack of transparency". In my view, this couldn't be further from the truth. In my personal observation the Monitor has been constantly updating RBC and their professional advisors, and actively engaging with CRA, in order to advance these proceedings in a fair and transparent manner.

9. I am informed by the Monitor and do verily believe that the following updates having been provided:

REPORTING	ADDRESSED TO	DATE
From Phil Clarke, Re: RE: ECC - CRA Trust Exam Results	Ernst & Young	Oct. 24, 2022
From Phil Clarke, Re: ECCL | Life insurance	Ernst & Young	Oct. 24, 2022
From Phil Clarke, Re: ECCL et al - Second Report	Ernst & Young	Oct. 27, 2022
From Phil Clarke, Re: RE: ECC (Classic) - Proposed Sales Approach of 35 Bonaventure Avenue, Suite 121	Stewart McKelvey and Ernst & Young	Oct. 28, 2022

From Phil Clarke, Re: ECC - Disclaimer of CWB Lease in FGC	Stewart McKelvey and Ernst & Young	Oct. 31, 2022
From Phil Clarke, Re: Proposed Sale of 28 and 30 Reid Lane	Stewart McKelvey and Ernst & Young	Nov. 15, 2022
From Phil Clarke, Re: ECC (Classic) - Update on Sales Approach of 35 Bonaventure Avenue, Suite 121	Stewart McKelvey and Ernst & Young	Nov. 15, 2022
From Phil Clarke, Re: ECC - Proposed Sales Process for Redundant Equipment / Ritchie Brothers	Stewart McKelvey and Ernst & Young	Nov. 16, 2022
From Phil Clarke, Re: Edward Collins Contracting - Proposed Sale of 28 and 30 Reid Lane	Stewart McKelvey, Ernst & Young, CRA	Nov. 16, 2022
From Phil Clarke, Re: ECC (Classic) - Update on Sales Approach of 35 Bonaventure Avenue, Suite 121	Stewart McKelvey, Ernst & Young, CRA	Nov. 16, 2022
From Phil Clarke, Re: ECC - Proposed Sales Process for Redundant Equipment / Ritchie Brothers	Stewart McKelvey, Ernst & Young, CRA	Nov. 21, 2022
From Phil Clarke, Re: RE: ECC - Proposed Sales Process for Redundant Equipment / Ritchie Brothers	Stewart McKelvey, Ernst & Young, CRA	Nov. 22, 2022
From Phil Clarke, Re: ECC - Update on Ritchie Brothers Contract and Traveler's	Stewart McKelvey, Ernst & Young, RBC	Nov. 27, 2022
From Phil Clarke: ECCL et al - Second Report	Ernst & Young	Dec. 2, 2022

From Phil Clarke: RE: ECCL et al - Second Report Part 1	Ernst & Young	Dec. 7, 2022
From Phil Clarke, Re: Appraisal on 104 Charter Avenue	Stewart McKelvey, Ernst & Young, RBC	Dec. 7, 2022
From Phil Clarke, Re: Update - Extension Application Date / Condo/ Ritchie's / Financial Reporting	Stewart McKelvey, Ernst & Young, RBC, CRA	Dec. 7, 2022
From Phil Clarke, Re: Additional Information to the Monitor's Third Report	RBC, CRA, Stewart McKelvey, Ernst & Young	Dec. 9, 2022
From Phil Clarke, Re: ECCL - call	Ernst & Young	Dec. 9, 2022

II. SAVOIE AFFIDAVIT:

10. At paragraph 5 of his affidavit, Mr. Savoie begins his attack on the Company's restructuring efforts. He says that despite the information provided by the Monitor, the Company's efforts "appears .... *to be limited to*":

    (a) finalizing the CRA trust exam;

    (b) completing real estate appraisals on two properties;

    (c) commissioning a real estate appraisal on a third property;

    (d) completing a Phase 1 environmental report on one property; and

    (e) making arrangements to secure external financial accounting support.

11. As they have done throughout this process, RBC continues to ridicule and criticize the Company and its restructuring advisors for their efforts. RBC deliberately minimizes the time and effort the Company is putting into its restructuring.

12. Personally, I have had endure much embarrassment with RBC calling our Company's position "nonsense" and accusing me and my family of malfeasance and bad faith. This matter has been widely reported in the media since the s.11 Order was granted, and in our local community these sorts of personal attacks have a lasting effect on our personal and business reputations. To make matters worse, RBC has now taken to attacking the credibility of the Court Appointed Monitor in a further effort to undermine these CCAA proceedings.

13. The Savoie Affidavit further misstates and misleads on the facts, as follows:

   a. In response to paragraph 5 of the Savoie Affidavit, it should be noted that the Company and the Monitor have has several meetings and correspondences with Traveler's to ensure everything Traveler's needs is being provided on a timely basis. RBC is aware of the extensive discussions the Monitor has had with Travelers. The last communication with Travelers was on December 6, 2022.

   b. RBC fails to mention that obtaining professionals to complete appraisals is very difficult in the current post-Covid environment. Each professional has required weeks rather than days to complete their assessments. The most challenging appraisal issue has been identifying a professional with the necessary experience to appraise the lands and gravel pit at Point Verde. We finally did find an appraiser who attended at site on December 7, 2022; however, we do not have an expected date to receive the appraisal.

   c. In response to paragraph 6 of the Savoie Affidavit, it should be noted that the Company has performed an extensive analysis of the equipment to be kept and the equipment to be sold. This also involved Ritche Brothers Ltd. ("**RBL**") making a second inspection trip to different areas of the province where the assets are located. Extensive inspection reports, marketing pictures and videos have been prepared to assist in listing the assets on the RBL online selling site "www.IronPlanet.com". Equipment which has been inspected in this manner can be listed subject to the "IronClad Assurance" program designed to avoid "as-is" sales, which can be expected to result in higher prices obtained. On IronPlanet.com sales are not subject to the hammer prices of an auction, rather the Monitor can assess the value of offers with an expectation to achieve higher proceeds than at auction, accepting or rejecting offers in a prudent way.

d. In response to Paragraph 12(a) of the Savoie Affidavit, it should be noted that when the Court granted the s.11 CCAA order in this proceeding, it expressed an observation that the Company was incurring a deficit of approximately $100,000 per month. The interim statement to October 31, 2022, was calculated to better advise management and the Monitor how to manage its project revenues and cash expenditure. The Company's external accountant has determined that the income before amortization and interest of the Company for the period of August 1, 2022, to October 31, 2022, 13 weeks (91 days) was $594,650. The portion of this interim accounting period from issuance of the initial CCAA order was twenty-six (days)

e. Included in the period referred to in paragraph e. are expenses incurred for professional fees of $129,341 related to the onetime costs of legal and accounting analysis incurred in relation to the CCAA. If this extraordinary expense was adjusted the normalized income before Amortization and Interest Expense would exceed $700,000.

f. The Company has implemented stronger operational and project management controls resulting in daily and weekly assessments of all expenses. The Company has scheduled 5 calls per week with the Monitor so that the Monitor can be updated on all relevant events and or where required provide approval.

g. In response to paragraph 12(b) of the Savoie Affidavit, the Company had no such agreement with the Bank or the Monitor to pay $250,000 into trust.

h. Further, with reference to paragraph 12(b) of the Savoie Affidavit, the Company's cash position has not deteriorated. On July 31, 2022, the Company balance sheet indicates a $62,502 deficit or negative cash balance, zero bid deposits, $193,116 cash in trust with O'Keefe & Company and no funds in trust with Grant Thornton resulting in a net cash position of $130,614.

i. The October 31, 2002, balance sheet shows cash of $335,970, Bid Deposits of $47,854, trust deposits with O'Keefe & Company of $103,992, trust deposits with Grant Thornton of $29,025 and prepaid deposits of $103,992 resulting in a net cash position of $625,937.

j. The third Monitors report shows significant amounts of cash in addition to RBC bank balances. As of December 2, 2022 the Monitors report (at Appendix I) shows a reconciled cash balance of $719,664. Additionally, the Company has refundable bid deposits of $110,354 and the Company has not expensed any of its 103,992 in pre-paid expenses, which includes insurance prepaid until August 2023. The total ($719,664+$110,354+$103,992) is $994,010, which is an $803,396 advancement over July 31, 2022.

k. Between October 31, 2022, and December 2, 2022, the cash position continues to improve not erode. Net Cash has improved by an additional $308,073. ($994,010 - $625,937) in 32 days.

l. The Company was very recently low bidder on a $525,000 contract to maintain the Placentia Lift Bridge. When the award is made an additional $52,000 will be paid into a bid the bid deposit. This will result in bid deposits of approximately $162,354.

m. With respect to <u>paragraph 13</u> of the Savoie Affidavit of the nine listed legal disputes (listed by the Monitor in paragraph 61 of his Second Report), four (4) have been resolved or effectively resolved. While it is an unfortunate situation, the Company has had to commence litigation to collect certain receivables and has determined that such action is both necessary and prudent. The Company's work so far has seen a significant number of receivables recovered through the litigation process, with legal fee's being, comparatively, only a fraction of the recovered amount.

14. With respect to certain litigation matters that have yet to be resolved, <u>RBC's own legal counsel</u> at Stewart McKelvey have been advising counterparties who have - in turn - refused to make certain contract payments owed to the Company, contrary to the s.11 CCAA Order.

a. For example, the Town of Placentia (represented by RBC's counsel) failed to pay the Company it's holdback on a contract for the Placentia Water Line Upgrade which has resulted in threatened legal action, (2) the Town of Placentia (again represented by RBC's counsel) were involved in a contract dispute over the Placentia Wellness Center where the counterparties failed to pay ECC amounts owing to it which required the Company to commence litigation, and (3) the Town of Humber Arm South (again, represented by RBC's counsel) refused to pay amounts owed by it under a contract to replace a lift station.

b. The Company has had to commence legal proceedings (or threaten to do so) to get paid on projects where it is legitimately owed money, or to prevent parties from terminating their contracts contrary to the s.11 CCAA Order. Three such examples are (i) contract with the Town of Bryant's Cove (again, represented by RBC's counsel), (ii) contracts with the Government of Newfoundland and Labrador (12-21 and 46-21) and (iii) a contract with the Town of Hughes Brook.

c. Finally, with respect to Mr. Savoies comments on the restructuring work we are doing, the original estimated funding gap identified at the commencement of the CCAA proceedings has been reduced due to higher-than-expected real estate values and additional equipment that will be sold on an ordinary liquidation basis rather than refinance at 90% of forced liquidation value. The current gap is due to consideration of selling expenses of $188,546 and a conversative reserve for CRA, because the amounts owing are still not known.

V. RBC BAD FAITH POST s.11 CCAA ORDER:

15. The Company agreed during the hearing on October 5 and 17, 2022, that it would not raise issues of bad faith against RBC for conduct leading up to those hearings. However, at this juncture the Company's feels it is necessary to raise the point that RBC has continued to act in bad faith post s.11 CCAA Order.

16. Various issues have arisen since we obtained the s.11 CCAA Order, including:

a. RBC's continued to use the "manual override" system to interfere with the Company's RBC payments, notwithstanding the s.11 Order requires that any Persons having agreements with the Company for centralized banking services continue to provide those services without altering, interfering with, or terminating any such services;

b. RBC has cut off the Company's ability to make direct deposits to employees. This has caused great confusion for many employees when cheques are subject to a hold periods up to 5 days. We have had employees come to us overcome with emotion and stress as a result of payment delays and have had to advance them short term loans to cover the hold period;

c. After the direct deposit to employees has been blocked by RBC a Company agent was then empowered to drive to all chartered banks, credit unions etc. to deposit manual cheques directly into each employees' personal account on pay day. We did this regularly at RBC in Placentia until a month ago when the manager at the Placentia RBC branch advised that RBC had "changed its policy on depositing manual cheques" in third party personal accounts. Based on my experience, the Placentia Branch Manager obtains her instructions on our file directly from David Savoie.

d. I am informed and do verily believe that following this alleged "change in policy" Frank Collins drove to a RBC branch in St Johns RBC where he was advised no such policy change had taken place. The St. John's RBC branch then deposited the employee cheques to each of the respective accounts. It is my believe that this interference with our employees and their family's welfare, especially in this winter season with approaching holidays, is designed to interfere with the Company's ability to retain its workers.

e. RBC unilaterally decided to transfer the outstanding balances from the Company Visa cards to an RBC loan account where the debt was centralized. With zero credit facilities attached to the Visa cards the Company could deposit cash on the cards allowing our supervisors to obtain needed supplies, parts, and fuel at our worksites. The Company asked RBC to allow them to use the Visa cards, but RBC has refused to do so, advising the Company it's a debt "with Visa" not with RBC, notwithstanding that the Visa card debt is listed as a secured debt owed to RBC within this proceeding and not listed as a debt owed to a third party.

V. TRAVELERS REFINANCE:

17. As noted above, we have been working diligently since June 2022 on the Travelers refinance. While RBC has complained about progress, they fail to recognize that once the Receivership and CCAA applications were filed, the credit risk of the Company changed significantly, and we essentially had to go back to square one with Travelers in undertaking our loan process.

18. We have been in contact with CRA and have been working with them to reconcile our accounts and deemed trust claims. This work is ongoing and the last communication between the Monitor and CRA was on 9 December 2022.

19. Furthermore, the Receivership and CCAA applications caused several operational concerns and we have spent a significant amount of time dealing with customers and suppliers who are concerned with the company's ability to carry on business. This has taken an inordinate amount of time including managing payment of various accounts on a cash and carry basis.

20. Despite all our challenges, including those with RBC, we are confident that we can successfully restructure the Company.

21. I make this affidavit in support of the within application and for no other purpose.

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SWORN at St. John's, Newfoundland and Labrador, on the 12 day of December 2022, before me

Commissioner, notary public, etc.
Darren D. O'Keefe, B.C.L, LL.B
Barrister, Solicitor, Notary Public
Newfoundland & Labrador, Canada

Josh Collins