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:	29 March 2023
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 report of the Monitor dated 27 March 2023;
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 29 March 2023. 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 fifth (5th) report of Grant Thornton Ltd. as Monitor in the CCAA proceedings (the "**Monitors Report**").

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

I. UPDATE ON COMPANY ACTIVITIES:

5. Since the date of my last affidavit on 12 December 2022, ECC has undertaken the following activities:

(a) Since the last extension hearing on 17 December 2022, the Company has continued to manage and execute on its existing fourteen (14) contracts (collectively the "**Existing Contracts**") and has continued to deliver the work called for thereunder to its various counterparties and customers. The Company has enjoyed the benefit of a longer than normal fall weather season which allowed it to continue work beyond the typical construction season end date of on or around the end of November.

(b) Since on or around mid-February 2023, the Company been in harsher winter conditions which has required projects to be shut down until construction could be recommenced. Construction was recommenced on 27 March 2023. This shutdown between the middle of February and the end of March is typical of past construction years. Despite the winter shut down, with the exception of two weeks, the Company was able to continue work on the road widening contract for Boskalis throughout February and March. As noted, ECC re-started construction on the other Existing Contracts in earnest on 27 March 2023.

(c) The Existing Contracts do not require any third-party bonding. Bonding has been satisfied with either cash bid bonds or alternatively by partnering with other companies. Since the date of the last extension hearing, the Company has been successful in obtaining new contracts, including but not limited to contracts with (a) Port of Argentia, (b) the Department of Transportation, (c) the Town of Placentia. and others, and extensions to current contracts such as the White Rose Project.

(d) In addition to the foregoing, the Company has been busy executing on its CCAA Plan, including daily calls and meetings with the CCAA Monitor and counsel, taking steps to collect on its accounts receivable, and working within the CCAA process to develop a claims process in conjunction with its potential creditors. The Company has also been in frequent communication with Traveler's and other sources of refinancing, assisting with due diligence inquiries, and undertaking the necessary work to move the proposed refinancing towards completion.

II. UPDATE ON CASHFLOW:

6. As noted above, the Company is executing on its Existing Contracts, the highlights of which are as follows:

(a) As of the date hereof the Company has approximately fourteen (14) contracts in progress with a total approximate value of $7,500,000.00.

(b) None of these Existing Contracts have noted the Company as being in default. All contracts are being performed as expected and required.

(c) The Company expects these contracts to all be completed in the ordinary course, which will see a significant cashflow. The Company is currently in a cash neutral position and expects to move to a cashflow positive position by the end of July 2023.

(d) The Company continues to bid and be awarded new contracts. The Company will continue to do so during the CCAA process.

III. CLOSING THE GAP: PROTECTIVE DISBURSEMENTS

7. Throughout these CCAA Proceedings our senior secured creditor, the Royal Bank of Canada ("**RBC**") has been taking steps to actively undermine our CCAA Proceedings. It is my belief based on my personal observations that RBC is attempting to cause our proceedings to fail so that it can install its own liquidation team including Ernst & Young and Stewart McKelvey.

8. As noted in my previous affidavit of 12 December 2022, 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. This claim for fees has now created an additional hurdle for our CCAA restructuring process. The Monitor has identified a funding gap of approximately $500,000.00 in his 5th Report. The professional fees claimed by RBC as "protective disbursements" (included in the gap analysis) are in excess of $484,351.00 as of 09 March 2023.

9. 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. It is my belief, based on my personal observations, that RBC wishes to control the liquidation process and install their own professionals to prevent the Company from challenging the exorbitant fees they have incurred in running a "shadow" CCAA process.

10. In addition to the foregoing, and with respect to certain litigation matters that have yet to be resolved, Stewart McKelvey are counsel for the following parties who have - in turn - refused to make certain contract payments owed to the Company, contrary to the s.11 CCAA Order or are otherwise litigating amounts due to ECC. These parties include the following:

(a) The Town of Deer Lake (counsel of record);
(b) The Town of Bryant's Cove (counsel of record);
(c) The Town of Humber Arm South (counsel of record);
(d) Western Surety (local agency counsel); and
(e) Crane Canada Co. (local agency counsel).

11. In connection with the foregoing, I have asked ECC's counsel to request that RBC clarify its position as to whether they believe they have an interest in ECC's accounts receivable, and if so, whether ECC's failure to collect its accounts receivable would constitute an impairment of RBC's security position. I am informed and do verily believe that despite repeated requests, RBC has refused to answer this question.

12. Further, despite repeated requests, I am informed and do verily believe that RBC has refused to provide copies of ECC's security documents to the CCAA Monitor. This is similar to RBC's position at the commencement of these proceedings when it refused to provide security documents to ECC. This conduct hinders ECC's ability to deal with RBC expeditiously and to negotiate its debt during the CCAA period.

13. ECC has a serious concern that given RBC's demonstrated intention to undermine ECC's restructuring efforts, that having all of these parties represented by the same counsel causes a prejudice, in that none of the parties can deal with ECC in good faith without being influenced by the position of the other creditors. RBC's continued position that a Receivership process would be more beneficial to the creditors than a CCAA process and RBC seems fixated on defeating the CCAA process.

IV. TRAVELERS REFINANCE:

14. As noted above, we have been working diligently since June 2022 on the Travelers refinance. The current status of the Travelers refinance has been detailed in the 5th report of the Monitor. We expect the Traveler refinance to be completed by the end of May, 2023.

V. GOOD FAITH EFFORTS:

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

16. The Company has been working diligently to continue work on its Existing Contracts, to bid and perform work under new contracts, and the manage the CCAA Process. The Company's objective continues to be to repay RBC's secured debt in full, to settle with CRA in full, and to have some funds available for disbursement to unsecured creditors.

17. The Company believes that once the Traveler's refinance is in place it will be in a position to propose a plan of arrangement. During the next phase of the CCAA process, the Company also expects to deal with many of the outstanding claims that are currently subject to the claims process, and as such, expects to have additional funds available for the benefit of its estate coming out of that process.

18. The Company is respectfully requesting an extension to the ARIO until 31 May 2023, or such later date as this Court deems mete and just.

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

[remainder of this page intentionally left blank; signature page follows]

[signature page to affidavit of Josh Collins, March 29, 2023]

SWORN at St. John's, Newfoundland and Labrador, on the 29 day of March 2023, before me

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

Josh Collins