Court File No. CV-22-00682153-00CL

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 ARMSTRONG FLOORING, INC., AFI LICENSING LLC, ARMSTRONG FLOORING LATIN AMERICA, INC. AND ARMSTRONG FLOORING CANADA LTD. (THE "DEBTORS")

APPLICATION OF ARMSTRONG FLOORING CANADA LTD. UNDER SECTION 46 OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*, R.S.C. 1985, c. C-36, AS AMENDED

FACTUM OF THE APPLICANT, ARMSTRONG FLOORING CANADA LTD.
(Termination and Discharge)
(Returnable September 28, 2022)

September 27, 2022

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PART I - OVERVIEW

1. This factum is filed in support of a motion by Armstrong Flooring Canada Ltd. ("**Armstrong Flooring Canada**" or the "**Applicant**") pursuant to Part IV of the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the "**CCAA**"), in its capacity as foreign representative of itself, as well as Armstrong Flooring, Inc., AFI Licensing LLC and Armstrong Flooring Latin America, Inc. (collectively, the "**U.S. Debtors**" and together with Armstrong Flooring Canada, collectively the "**Debtors**" or the "**AFI Group**") in respect of the U.S. Proceedings (as defined below) under Chapter 11 of Title 11 ("**Chapter 11**") of the United States Bankruptcy Code (the "**U.S. Code**") in the United States Bankruptcy Court for the District of Delaware (the "**U.S. Court**"), for certain relief, as set out below.

2. On May 8, 2022 (the "**Filing Date**"), each of the Debtors filed voluntary petitions for relief pursuant to Chapter 11 of the U.S. Code (collectively, the "**Petitions**" and each a "**Petition**") with the U.S. Court (the "**U.S. Proceedings**").

3. As part of the first day motions (the "**First Day Motions**") that were heard by the U.S. Court on May 11, 2022, which hearing was continued on May 13, 2022 and May 17, 2022, the U.S. Court made several orders in the U.S. Proceedings (the "**First Day Orders**"),

including an order authorizing Armstrong Flooring Canada to act as foreign representative of the AFI Group in respect of the U.S. Proceedings (the "**Foreign Representative Order**") to, among other things, seek recognition of the U.S. Proceedings in Canada pursuant to Part IV of the CCAA. Pursuant to the Foreign Representative Order, the US Court requested the assistance of the Ontario Superior Court of Justice (Commercial List) (the "**Canadian Court**" or the "**Court**") in aiding and supporting the U.S. Proceedings.

4. On June 8, 2022, on application brought by Armstrong Flooring Canada in these proceedings under Part IV of the CCAA (the "**Part IV CCAA Proceedings**"), this Court made an initial recognition order (the "**Initial Recognition Order**") which, *inter alia*, declared Armstrong Flooring Canada a "foreign representative" as defined in section 45 of the CCAA, recognized the U.S. Proceedings as a "foreign main proceeding" pursuant to section 45 of the CCAA, and a supplemental order (the "**Supplemental Order**", and together with the Initial Order, the "**Recognition Orders**") which, *inter alia*, recognized the First Day Orders, appointed Grant Thornton Limited ("**Grant Thornton**") as the Information Officer (the "**Information Officer**") of the Debtors, with the powers and duties set out in the Supplemental Order, and granted the Administration Charge in the amount of $300,000 in favour of the Information Officer and its counsel (the "**Administration Charge**").

5. The within Part IV CCAA Proceedings were brought with a view to facilitating a cross-border restructuring that would ensure the protection of the Debtors' Canadian assets, the interests of Armstrong Flooring Canada and the interests of its Canadian stakeholders during the course of the U.S. Proceedings.

6. On July 13, 2022, the U.S. Court granted the U.S. Sale Order (as defined below) with respect to a sale transaction (the "**Sale Transaction**") pursuant to an asset purchase agreement dated July 10, 2022 (the "**APA**") among the Debtors, as sellers, and AHF LLC ("**AHF**") and Gordon Brothers Commercial & Industrial LLC ("**GBG**", and together with AHF, the "**AHF/GB Consortium**"), as purchasers (collectively, the "**Purchasers**"), wherein certain North American assets of the Debtors, as set forth in the APA (the "**Transferred Assets**"), were sold to the Purchasers, including certain assets of Armstrong

Flooring Canada consisting of the accounts receivable of Armstrong Flooring Canada and cash received in respect thereof (the "**Canadian AR**").

7. On September 23, 2022, Armstrong Flooring Canada and the U.S. Debtors entered into the Settlement Agreement (as defined below) in order to set out the terms of a proposed settlement, including, *inter alia*, the withdrawal, release and discharge of the Inter-Company Debt (as defined in the Dalton Affidavit referred to below) and the payment of a certain amount to Armstrong Flooring Canada from a portion of the purchase price paid by the Purchasers pursuant to the APA in connection with the Sale Transaction.

8. The Applicant brings this motion to seek certain relief, including, *inter alia*:

(a) abridging and validating the time for service of the Notice of Motion and the Motion Record and directing that any further service of the Notice of Motion and Motion Record be dispensed with such that this motion is properly returnable on September 28, 2022;

(b) effective upon the filing of the Information Officer's Certificate (as defined below), recognizing and enforcing in Canada an order of the U.S. Court dated July 13, 2022, *inter alia*, (i) approving the sale of certain of the Debtors' assets free and clear of all liens, claims, encumbrances and other interests, (ii) approving the assumption and assignment of certain executory contracts and unexpired leases related thereto, and (iii) granting related relief (the "**U.S. Sale Order**");

(c) approving a settlement agreement between Armstrong Flooring Canada and the U.S. Debtors, in accordance with the terms of the Settlement Agreement dated September 23, 2022 (the "**Settlement Agreement**") between Armstrong Flooring Canada and the U.S. Debtors;

(d) declaring that Grant Thornton Limited ("**Grant Thornton**"), in its capacity as Court-appointed information Officer (the "**Information Officer**"), shall, upon the satisfaction of the terms and conditions of the Settlement Agreement, file an Information Officer's certificate (the "**Information Officer's Certificate**") with the Court and deliver a copy to the service list by email;

(e) declaring that Element Fleet Management Inc. ("**Element**") is not a secured creditor of Armstrong Flooring Canada;

(f) directing the registrar of personal property security in Ontario (the "**Registrar**") to fully discharge and delete the registration made by Element pursuant to the provisions of the PPSA on March 27, 2017, as File Number 725951925, bearing Registration Number 20170327 1402 1462 3216 (the "**Element PPSA Registration**"), from the personal property registry;

(g) approving the Pre-Filing Report of Grant Thornton as the proposed information officer, dated June 6, 2022, and the appendices thereto (the "**Pre-Filing Report**") and the activities of the proposed information officer described therein;

(h) approving the First Report of the Information Officer dated September 23, 2022 and the appendices thereto (the "**First Report**") and the activities of the Information Officer described therein;

(i) approving the fees and disbursements of the Information Officer for the period from May 9, 2022 to September 21, 2022, and approving the estimated fees and disbursements of the Information Officer up to its date of discharge, as described in the affidavit of Jonathan Krieger, sworn September 22, 2022 (the "**Krieger Affidavit**");

(j) approving the fees and disbursements of Lax O'Sullivan Lisus Gottlieb LLP ("**Lax**"), legal counsel to the Information Officer, for the period from May 1, 2022 to August 31, 2022, and approving the estimated fees and disbursements of Lax for services to be provided to the Information Officer up to its date of discharge, as described in the affidavit of Andrew Winton, sworn September 22, 2022 (the "**Winton Affidavit**");

(k) amending paragraph 19 of the Supplemental Order dated June 8, 2022, made by Justice Cavanagh, to read as follows:

> **THIS COURT ORDERS** that the Information Officer, counsel to the Information officer and Borden Ladner Gervais LLP ("**BLG**") shall be entitled to the benefit of

and are hereby granted a charge (the "**Administration Charge**") on the Property in Canada, which charge shall not exceed an aggregate amount of $600,000, as security for their professional fees and disbursements incurred in respect of these proceedings, both before and after the making of this Order. The Administration Charge shall have the priority set out in paragraphs 21 and 23 hereof.

(l) authorizing the payment of the fees and disbursements of BLG, by any of Armstrong Flooring Canada, or Grant Thornton, from the assets of Armstrong Flooring Canada;

(m) authorizing, the Information Officer to file an assignment in bankruptcy on behalf of Armstrong Flooring Canada under the *Bankruptcy and Insolvency Act,* R.S.C. 1985, c. B-3, as amended (the "**BIA**");

(n) authorizing Grant Thornton to act as trustee in bankruptcy on behalf of Armstrong Flooring Canada;

(o) effective upon the filing of the discharge certificate (the "**Discharge Certificate**") by the Information Officer with this Court, certifying that the Information Officer has attended to certain remaining matters, as described in the First Report:

i. terminating the stay of proceedings, as provided for in the Initial Recognition Order and the Supplemental Order and terminating these proceedings commenced under Part IV of the CCAA;

ii. terminating, discharging and releasing the Administration Charge, as defined in and created by the Supplemental Order;

iii. discharging Grant Thornton in its capacity as Information Officer; and

iv. releasing Grant Thornton in its capacity as Information Officer from any and all liability that it now has or may hereafter have in any way arising out of the acts or omissions of the Information Officer, while acting in its capacity as Information Officer in the CCAA proceedings, save and except for liability arising from any gross negligence or wilful misconduct on its part.

PART II - FACTS

9. The relevant facts in connection with this motion are more fully set out in the Affidavit of Dalton Edgecomb, sworn September 26, 2022 (the "**Dalton Affidavit**"). Any capitalized terms used and not otherwise defined herein shall have the meanings given to such terms in the Dalton Affidavit.

PART III - THE ISSUES

10. The issues to be determined in this motion are as follows:

   (a) Should the Court grant the Order sought by the Applicant pursuant to section 49 of the CCAA recognizing the U.S. Sale Order?

   (b) Should the Court approve the Settlement Agreement and the terms of the proposed settlement between Armstrong Flooring Canada and the U.S. Debtors as set forth therein?

   (c) Should the Court declare that Element is not a secured creditor of Armstrong Flooring Canada and accordingly direct the Registrar to fully discharge and delete the Element PPSA Registration from the personal property registry?

   (d) Should the Court amend paragraph 19 of the Supplemental Order so as to expand the Administration Charge to include BLG and increase the quantum of the Administration Charge?

   (e) Should the Court authorize the Information Officer to file an assignment in bankruptcy on behalf of Armstrong Flooring Canada under the BIA and authorize Grant Thornton to act as trustee in bankruptcy on behalf of Armstrong Flooring Canada?

PART IV - THE LAW

A. Recognition of the U.S. Sale Order

11. The purpose of Part IV of the CCAA is to effect cross-border insolvencies and create a system under which foreign insolvency proceedings can be recognized in Canada. Orders under Part IV are intended, among other things, to promote cooperation between Canadian courts with those of foreign jurisdictions in order to promote fair and efficient administration of cross-border insolvencies, which protects the interests of debtors, creditors and other interested persons.

> *Zochem Inc. (Re)*, 2016 ONSC 958 [***Zochem***], ¶15, BOA, Tab 1.
>
> CCAA at s. 44.

12. Canadian courts often recognize sale approval orders granted by U.S. Courts in Chapter 11 cases that are foreign main proceedings.

> *Rockport Blocker LLC et al.*, Court File No. CV-18-597987-00CL, Toronto: Ont. S.C.J. [Commercial List], Order granted by Justice McEwen dated July 20, 2018 [***Rockport***] at ¶3(c), BOA, Tab 2.
>
> *Jack Cooper Ventures Inc. et al.*, Court File No. CV-19-625200-00CL, Toronto: Ont. S.C.J. [Commercial List], Sale Recognition and Vesting Order granted by Justice Hainey dated October 18, 2019 [***Jack Cooper Ventures***] at ¶3(a), BOA, Tab 3.
>
> *Digital Domain Media Group, Inc (Re)*, 2012 BCSC 1567 [***Digital Domain***] at ¶¶15, 20 (CanLII), BOA, Tab 4.

13. Pursuant to the Initial Recognition Order, this Court has recognized the U.S. Proceedings as a "foreign main proceeding" pursuant to Part IV of the CCAA. Section 49 of the CCAA grants this Court broad discretion to make any order that it considers appropriate, which is frequently exercised to recognize orders granted by foreign courts in foreign insolvency proceedings, if it is satisfied that it is necessary for the protection of a debtor company's property or that the order is in the interests of a creditor or creditors.

> CCAA at s. 49.

14. Section 50 of the CCAA further provides that an order made under Part IV of the CCAA, including pursuant to section 49, may be made on any terms and conditions that the court considers appropriate. Further, Section 52(1) of the CCAA provides that once an order recognizing a foreign proceeding is made, the Court is required to cooperate, to the maximum extent possible, with the foreign representative and the foreign court involved in the foreign proceeding, so long as the requested relief is not inconsistent with the CCAA, or which would raise concerns regarding public policy.

CCAA at ss. 49, 50, 52(1) and 61(2).

15. The U.S. Sale Order is not inconsistent with any order that may be granted under the CCAA. Canadian courts have regularly exercised their jurisdiction under sections 49 and 50 of the CCAA to recognize Chapter 11 bankruptcy orders with similar effect to the U.S. Sale Order to protect the assets of debtors and to implement a sales process as approved by a foreign court. Furthermore, when considering whether to recognize a sale approval order granted by a foreign court in a Part IV proceeding, Canadian courts must determine whether the order is "necessary for the protection of the debtor company's property or the interests of a creditor or creditors", pursuant to section 49(1) of the CCAA.

Massachusetts Elephant & Castle Group Inc. (Re), 2011 ONSC 4201 (Ont. S.C.J. [Commercial List]) [***Elephant & Castle***] at ¶¶35, 38, BOA, Tab 5.

16. The central principles animating the exercise of the Court's discretion under Part IV are comity and cooperation, as embodied in sections 44(a) and 52(1) of the CCAA. Comity mandates that Canadian courts should recognize and enforce the judicial acts of foreign courts, provided that those foreign courts have assumed jurisdiction on a basis consistent with the principles of order, predictability and fairness. To that end, Canadian courts have consistently emphasized comity and cooperation between courts across jurisdictions to facilitate successful cross-border restructurings.

Caesars Entertainment Operating Co., Re, 2015 ONSC 712 at ¶38, BOA, Tab 6.

17. In cross-border insolvencies, Canadian and U.S. courts have made particular efforts to complement, coordinate and, where appropriate, accommodate the proceedings of the other court in order to enable cross-border enterprises to successfully restructure. Where there is

interdependence between the operations of a company in Canada and the U.S., granting relief under Part IV of the CCAA is of particular importance.

> *Hartford Computer Hardware Inc., Re*, 2012 ONSC 964 [***Hartford***] at ¶¶14, 15 and 17, BOA, Tab 7.
>
> *Elephant & Castle* at ¶39, BOA, Tab 5.
>
> *Babcock & Wilcox Canada Ltd. (Re)*, 2000 CarswellOnt 704 (Ont. S.C.J. [Commercial List]) **[*Babcock*]** at ¶¶4-13, BOA, Tab 8.
>
> *Matlack Inc. (Re)*, 2001 CarswellOnt 1830, [2001] O.J. No. 6121 (S.C.J. [Commercial List]) [***Matlack***] at ¶¶3, 8 and 9, BOA, Tab 9.
>
> *Modular Space Intermediate Holdings Inc. et al.*, Court File No. CV-16-11656-00CL, Toronto: Ont. S.C.J. [Commercial List], Order granted by Justice Newbould dated January 25, 2017 at ¶4, BOA, Tab 10.

18. Canadian courts will not lightly second-guess the decisions made by a U.S. court in a foreign main proceeding. In a foreign non-main proceeding under Part IV, Canada has an "ancillary role". So long as the U.S. court's orders are not contrary to public policy or the purposes of the CCAA, Canadian courts will give deference to the judgment of a U.S. court charged with overseeing a restructuring.

> *Babcock* at ¶21, BOA, Tab 8.
>
> *Hartford* at ¶¶ 14, 15 and 17, BOA, Tab 7.
>
> *Elephant & Castle* at ¶39, BOA, Tab 5.

19. The U.S. Sale Order was obtained by the Debtors to facilitate their restructuring efforts in the Sale Transaction by, among other things, minimizing the adverse effects of the U.S. Proceedings on their business, and preserving and maximizing the potential value of the Debtors' assets for the benefit of their creditors and other stakeholders.

20. In considering whether to recognize an order made by a foreign court, including an order made in Chapter 11 proceedings, Canadian courts take into account a number of factors including:

(a) the principles of comity and the need to encourage cooperation between courts of various jurisdictions;

(b) the need to accord respect to foreign bankruptcy and insolvency legislation unless in substance generally it is so different from the bankruptcy and insolvency laws of Canada or diverges radically from the processes in Canada;

(c) whether stakeholders will be treated equitably, and in particular whether recognition will ensure that, to the extent reasonably possible, stakeholders are treated equally, regardless of the jurisdiction to which they reside;

(d) the importance of promoting plans that allow the enterprises to reorganize globally, especially where there is an established interdependence on a transnational basis. To the extent reasonably practical, one jurisdiction should take "charge" of the principal administration of the enterprise's reorganization, where this approach will facilitate a potential reorganization and which will respect the claims of stakeholders in all jurisdictions and does not detract from the net benefits that may be available from alternative approaches;

(e) that the appropriate level of court involvement depends to a significant degree upon the court's nexus to the enterprise;

(f) that where one jurisdiction is to have an ancillary role, the court in the ancillary jurisdiction should be provided with information on an ongoing basis and be kept apprised of developments regarding the reorganizational efforts in the foreign principal jurisdiction and stakeholders in the ancillary jurisdiction should be afforded appropriate access to the proceedings in the principal jurisdiction; and

(g) that all affected stakeholders receive effective notice as is reasonably practicable in the circumstances.

Babcock at ¶21, BOA, Tab 8.

Xerium Technologies Inc., Re, 2010 ONSC 3974 at ¶¶26-27, BOA, Tab 11.

21. In granting the U.S. Sale Order, the U.S. Court determined that the entry into the APA and the consummation of the Sale Transaction constitute sound exercises of business judgment, and such acts are in the best interests of the Debtors, their estates and creditors, and all

parties in interest. The U.S. Court was satisfied that (i) the Debtors conducted a robust marketing process to sell the Transferred Assets, (ii) the bidding and sale procedures utilized in connection with the Sale Transaction (the "**Bidding Procedures**") as approved by the U.S. Court pursuant to an order granted by the U.S. Court on May 31, 2022 (the "**Bidding Procedures Order**"), were designed to yield the highest or otherwise best bids for the Transferred Assets, (iii) the APA and the Sale Transaction present the best opportunity to realize the highest value for the Transferred Assets, (iv) there is risk of deterioration of the value of the Transferred Assets if the Sale Transaction is not consummated promptly, and (v) the APA and the Sale Transaction provide greater value to the Debtors' estates than would be provided by any other presently available alternative.

22. The U.S. Court was also satisfied that (i) the Bidding Procedures were substantively and procedurally fair to all parties and all potential bidders and afforded notice and a full, fair, and reasonable opportunity for any person to make a higher or otherwise better offer to purchase any of the assets of the Debtors (the "**Assets**"), (ii) the Debtors and their professionals adequately marketed the Assets and conducted the marketing and sale process in accordance with the Bidding Procedures and the Bidding Procedures Order, (iii) the Debtors determined that the APA constituted the highest and best offer with respect to the Transferred Assets and selected the APA as the successful bid with respect to the Transferred Assets, and (iv) the Debtors therefore determined in a valid and sound exercise of their business judgment, and in accordance with the Bidding Procedures and Bidding Procedures Order, that the highest and best qualified bid for the Transferred Assets is that of the Purchasers and that the APA will provide a greater recovery for the Debtors' estates than would be provided by any other available alternative.

23. Further, the U.S. Court determined that the APA was negotiated and undertaken by the Debtors and the Purchasers at arm's-length and in good faith within the meaning of the U.S. Code, and that the total consideration provided by the Purchasers for the Transferred Assets represents the highest and best offer received by the Debtors for the Transferred Assets, and constitutes reasonably equivalent value and fair consideration under the relevant legislation.

24. The recognition of the U.S. Sale Order will approve the sale of the Canadian AR in accordance with the APA, which is necessary to comply with paragraph 5 of the Initial Recognition Order.

25. The Sale Transaction is the product of a robust and competitive sales process sanctioned by the U.S. Court, and has been approved by the U.S. Court as a transaction that resulted from the reasonable business judgment of the Debtors, was negotiated and undertaken by the parties thereto at arm's length, in good faith and in compliance with all applicable orders of the U.S. Court, and will support the maximization of the value of the Debtors' estates for the benefit of the Debtors' stakeholders.

26. Further, the recognition of the U.S. Sale Order is necessary in connection with the terms of the proposed settlement between Armstrong Flooring Canada and the U.S. Debtors, pursuant to the Settlement Agreement, which, for the reasons further set out below and detailed in the First Report, represents a settlement that is fair, reasonable, and in the interests of the estate of Armstrong Flooring Canada.

> Dalton Affidavit at ¶19-20, BOA, Tab 12.
>
> First Report of the Information Officer at pages 13-23.

27. The recognition of the U.S. Sale Order is supported by the Information Officer.

> First Report of the Information Officer at pages 13-23.

28. Accordingly, the Applicant respectfully requests that the Court recognize the U.S. Sale Order.

B. Approval of Settlement Agreement.

29. Section 11 of the CCAA provides the Court with broad powers to make any order that it considers appropriate.

> CCAA at s. 11.

30. The CCAA therefore confers jurisdiction on courts to "approve transactions, including settlements during the stay period […] and prior to the proposal of any plan of compromise

or arrangement". Settlement agreements that facilitate a successful restructuring and resolve issues between stakeholders without recourse to the court are to be encouraged in CCAA proceedings. As noted by Fitzpatrick J. in *Great Basin*, "settlement agreements between the parties in these types of proceedings [i.e., CCAA proceedings] are very much encouraged where resolutions take place in the boardroom, as opposed to the courtroom. There is every reason to encourage such settlements, with approval and implementation subject to appropriate judicial oversight."

> *Nortel Networks Corporation (Re)*, 2010 ONSC 1708 at ¶70, BOA at Tab 13.
>
> *Fraser Papers Inc (*Re), 2012 ONSC 4882 at ¶54, BOA, Tab 14.
>
> *Great Basin Gold Ltd. (Re)*, 2012 BCSC 1773 at ¶15, BOA, Tab 15.

31. The CCAA is a flexible statute that allows the Court to give effect to the objects of the CCAA beyond merely staying proceedings and adapt to meet contemporary business needs. It a longstanding principle of insolvency law that a CCAA court has the jurisdiction to approve a settlement reached by a debtor if the settlement is beneficial to the debtor and its stakeholders, is fair and reasonable, and is consistent with the purpose and spirit of the CCAA. Settlement agreements that facilitate a successful restructuring and resolve issues between stakeholders, without recourse to the court, are to be encouraged in CCAA proceedings.

> *Labourers Pension Fund of Central and Eastern Canada v Sino-Forest Corp*., 2013 ONSC 1078 [***Sino-Forest***] at ¶¶44, 47 and 49, BOA, Tab 16.

32. CCAA courts have routinely exercised both their inherent and statutory jurisdiction to grant relief to a debtor company that advances the progress of the proceedings and "fills the gaps" between provisions of the CCAA in a way that is consistent with the broad public policy objectives of the CCAA.

> *Lehndorff General Partner Ltd, Re*, [1993] O.J. No. 14, 17 CBR (3d) 24 (Ont. Ct. J. (Gen Div)) at ¶¶5-6, BOA, Tab 17.
>
> *Calpine Canada Energy Ltd, Re,* 2007 ABQB 504 at ¶¶71-72 [***Calpine***], BOA, Tab 18.

33. When approving a settlement under the CCAA, the Court must be satisfied that: (i) the transaction is fair and reasonable; (ii) the transaction will be beneficial to the debtor and its stakeholders generally; and (iii) the settlement is consistent with the purpose and spirit of the CCAA.

> *Sino-Forest* at ¶49, BOA, Tab 16.
>
> *Robertson v ProQuest Information & Learning Co,* 2011 ONSC 1647 at ¶22 BOA, Tab 19.
>
> *Air Canada, Re (2004)*, 47 CBR (4th) 169 at ¶9; BOA, Tab 20.
>
> *Calpine* at ¶¶59, 75, BOA, Tab 18.

34. Having regard to the foregoing considerations, the Settlement Agreement represents a reasonable compromise in all of the circumstances, which is consistent with fundamental principles underlying the CCAA. Specifically, the Settlement Agreement:

(a) provides a comprehensive and commercially reasonable compromise between Armstrong Flooring Canada and the U.S. Debtors in the circumstances;

(b) mitigates and avoids collection risk and further costs with respect to the accounts receivable of Armstrong Flooring Canada, and provides certainty and finality with respect to the realization of the Canadian AR and the funds made available to the creditors of Armstrong Flooring Canada from the proceeds thereof;

(c) provides certainty and finality with respect to potential issues arising from or in connection with the Inter-Company Debt, including potential risks and costs of litigation, given the withdrawal, release and discharge by the U.S. Debtors of the Inter-Company Debt and the waiver by the U.S. Debtors of the right to file a proof of claim in the proposed bankruptcy proceedings of Armstrong Flooring Canada pursuant to the BIA or any other insolvency proceeding of Armstrong Flooring Canada in respect of the Inter-Company Debt, pursuant to the terms of the Settlement Agreement;

(d) will likely result in a larger pool of available funds for the creditors of Armstrong Flooring Canada than other alternatives;

(e) will substantially reduce the costs associated with the administration of, and expedite the completion of, the within Part IV CCAA Proceedings; and

(f) is consistent with the purpose and spirit of the CCAA, as it resolves the Inter-Company Debt on a consensual basis between Armstrong Flooring Canada and the U.S. Debtors, will make available the Cash Consideration (as defined in the Settlement Agreement) for distribution to the creditors of Armstrong Flooring Canada.

First Report of the Information Officer at pages 13-23.

35. The Settlement Agreement is supported by the Information Officer.

First Report of the Information Officer at pages 22-23.

36. The settlement terms as set forth in the Settlement Agreement reflect a fair outcome for the stakeholders of Armstrong Flooring Canada and are fair, reasonable and consistent with the objectives and principles of the CCAA. Accordingly, the Applicant respectfully requests that the Court grant the Order to approve the Settlement Agreement.

C. Discharge of the Element PPSA Registration.

37. The PPSA contemplates that the secured party, not the debtor, bears the responsibility for the preparation and registration of financing change statements in connection with the discharge of a PPSA registration once the obligations under a security agreement to which the registration relates have been performed. Accordingly, Element is responsible for discharging the Element PPSA Registration pursuant to section 56(1) of the PPSA.

PPSA at s. 56(1).

38. Section 56(1) of the PPSA provides that any person having an interest in the collateral covered by the security agreement may make a demand upon the secured party to register a financing change statement or a certificate of discharge, or both, in order to discharge its PPSA registration. Further, pursuant to section 56(3) of the PPSA, the secured party has the obligation to register such financing change statement or certificate of discharge within

10 days, failing which the secured party is liable to pay $500 to the person making the demand and any damages resulting from its failure to comply.

PPSA at ss. 56(1) and 56(4).

39. Given its interest in the collateral subject to the Element PPSA Registration (the "**Collateral**"), as the owner of such Collateral, Armstrong Flooring Canada is entitled to deliver a demand upon Element pursuant to section 56(1) of the PPSA on the basis that (i) the records of Armstrong Flooring Canada do not contain any documentation evidencing any obligations owing to Element on account of the Element PPSA Registration, (ii) BLG delivered a letter dated August 17, 2022 to Element (the "**Element Letter**") with respect to the Element PPSA Registration and the discharge thereof and received no response from Element, and (iii) Element was duly served with the materials in connection with the application brought by Armstrong Flooring Canada for the Initial Recognition Order and the Supplemental Order on June 8, 2022 (the "**Initial Recognition Application**") and did not serve any responding materials or appear at the hearing of the application, or otherwise provide any response thereto or any response to the Element Letter. Further, Element was served with the Motion Record of Armstrong Flooring Canada in respect of the relief sought by Armstrong Flooring Canada as against Element.

Dalton Affidavit at ¶28, BOA, Tab 12.

First Report of the Information Officer at pages 18-19.

40. The Court is given wide powers under section 56(5) of the PPSA if the secured party becomes uncooperative at the time of discharge of its security interest in the property of the debtor. Therefore, if the secured party will not or cannot register the appropriate financing change statement to effect the discharge, the Court is empowered to order the Registrar to amend the information recorded in the personal property registry to indicate that the registration of the financing statement has been discharged.

PPSA at s.56 (5).

Secured Transactions in Personal Property in Canada, 3rd Edition by Richard H. McLaren [***McLaren***] at §10:4. BOA, Tab 21.

41. Ontario courts encourage a prompt discharge of personal property security registrations to enable parties to obtain refinancing even if there is a dispute over the parties' obligations. A secured party must have a reasonable excuse not to discharge its PPSA registration upon demand, or comply within 10 days of receipt of the demand, as specified in section 56(4) of PPSA. Failure to comply can result in the secured party being held liable for the statutory fine contemplated in section 56(4) of the PPSA.

> *McLaren* at §16:33, BOA, Tab 21.

42. Consequently, the absence of any legitimate basis to assert a PPSA registration, or the failure to provide such basis to a person making a demand under section 56(1) in a timely manner, would warrant an order from the Court for the discharge of the PPSA registration and the payment of such statutory fine. A PPSA registration without colour of right should be discharged forthwith pursuant to section 56(5) of the PPSA.

> PPSA at s. 56(5).
>
> *Myers v. Blackman*, 2014 ONSC 5226 at ¶¶19, 21 and 28, BOA, Tab 22.
>
> *Sekulovski v. Georgiou*, 2022 ONSC 1819 at ¶120, BOA, Tab 23.

43. Additionally, section 67(1) of the PPSA provides that the Court may give directions regarding the exercise of a debtor’s rights or the discharge of the debtor's obligations under Part V of the PPSA. Further, the Court has the express authority to make any order necessary to ensure protection of the interests of any person in the collateral secured on terms that are just for all parties concerned.

> PPSA at ss. 67(1)(b) and 67(1)(e).
>
> *STN Labs Inc. v. Saffron Rouge Inc.*, 2010 ONSC 3042 at ¶40, BOA, Tab 24.

44. The broad authority of the Court pursuant to section 67(1) of the PPSA empowers it to, among other things, make a binding declaration of right that a purported secured party does not have a security interest in the property of a debtor.

> *Diamler Truck Financial v. 9936726 Canada Inc.*, 2020 ONSC 6452 at ¶1, BOA, Tab 25.

45. Further, the inherent jurisdiction of the Court provides it with a broad, residual power to grant such a declaration. In *Urbancorp Cumberland 1 GP Inc., Re*, Chief Justice Morawetz confirmed the inherent jurisdiction of this Court:

> There is also scope to grant the requested relief using the inherent jurisdiction of the court. The inherent jurisdiction of the provincial superior courts is a broad and diverse power. It has been said that inherent jurisdiction is a power that is exercisable "in any situation where the requirements of justice demands it"… and that "nothing shall be intended to be out of the jurisdiction of the Superior Court, but that which is specifically appears to be so"…
>
> Recently, the Supreme Court of Canada reviewed the inherent jurisdiction of superior courts in Endean v. British Columbia, 2016 SCC 42, and described it as follows:
>
>> …Inherent jurisdiction derives from the very nature of the court as a superior court of law and may be defined as a "reserve or fund of powers" or a "residual source of powers", which a superior court "may draw upon as necessary whenever it is just or equitable to do so" … [emphasis added].
>
> In the oft-cited 80 Wellesley St. E., Ltd. v. Fundy Bay Builders Ltd… the Court of Appeal for Ontario held that except where provided specifically to the contrary, the court's inherent jurisdiction is "unlimited and unrestricted in substantial law and civil matters". [emphasis added].

Urbancorp Cumberland 1 GP Inc., Re, 2020 ONSC 7920, at ¶¶33 and 34, BOA, Tab 26.

46. Having regard to the foregoing jurisprudence, Chief Justice Morawetz held that if the *BIA* in conjunction with the *Courts of Justice Act* (Ontario) did not provide the basis for the requested relief, it was appropriate to resort to the inherent jurisdiction of the Court.

47. Element has failed to respond in any manner to the Element Letter or the application materials duly served upon them in connection with the Initial Recognition Application,

and has otherwise failed to provide any evidence of the existence of any obligations owing by Armstrong Flooring Canada to Element.

48. It is therefore the Applicant's submission that in the absence of any obligations owing Element in respect of the Collateral, the Court ought to grant the requested Order declaring that Element is not a secured creditor of Armstrong Flooring Canada and directing the Registrar to discharge and delete the Element PPSA.

D. Expansion of the Administration Charge.

49. The Supplemental Order provides for the sole Court-ordered charge in the within Part IV CCAA Proceedings, which is the Administration Charge for the benefit of the Information Officer and its counsel in the aggregate amount of $300,000.

50. Section 11.52 of the CCAA expressly provides that this Court has the jurisdiction to grant an administration charge to secure the fees and expenses of financial, legal and other advisors and experts. This section is permissive and does not expressly provide for any specific criteria for a court to consider in granting such a charge.

CCAA, at s. 11.52.

51. The Court routinely grants such administration charges on the property of debtors in CCAA Part IV proceedings to secure the fees and disbursements of the professionals.

Brooks Brothers Group, Inc., Court File No. CV-20-00647463-00CL, Toronto: Ont. S.C.J. [Commercial List], Supplemental Order granted by Justice Hainey dated September 14, 2020 [***Brooks Brothers***] at ¶19, BOA, Tab 27.

Hartford at ¶¶14 and 16, BOA, Tab 7.

Hollander Sleep Products LLC, et al., Re, 2019 ONSC 3238 [***Hollander***] at ¶56, BOA, Tab 28.

Elephant & Castle at ¶¶37 and 40, BOA, Tab 5.

Rockport, Order granted by Justice McEwen dated December 21, 2018 [***Rockport***] at ¶10, BOA, Tab 29.

Revlon, Inc., Re, Court File No. CV-22-00682880-00CL, Toronto: Ont. S.C.J. [Commercial List], Supplemental Order (Foreign Main Proceeding) granted by Justice Conway dated June 20, 2022 [***Revlon***] at ¶19, BOA, Tab 30.

52. The granting of an administration charge and the approval of retention of professionals is common in CCAA Part IV proceedings, given that the work performed is supervised by the Canadian Court and not the foreign court. An expansion of the Administration Charge to include BLG as a beneficiary thereto is therefore appropriate in these Part IV Proceedings, given that the work performed by BLG is supervised by this Court and not the U.S. Court.

> *Jack Cooper Ventures* at ¶¶17-18, BOA, Tab 3.
>
> *Knotel, Inc. and Knotel Canada, Inc.*, Court File No. CV-21-00658434-00CL, Toronto: Ont. S.C.J. [Commercial List], Supplemental Order (Foreign Main Proceeding) granted by Justice Cavanaugh dated March 12, 2021 [***Knotel***] at ¶19, BOA, Tab 31.

53. In considering whether to grant such charges, the Court consider a number of factors including (i) the size and complexity of the business being restructured; (ii) the proposed role of the beneficiaries of the charge; (iii) whether there is an unwarranted duplication of roles; (iv) whether the quantum of the proposed charge appears to be fair and reasonable; (v) the position of the secured creditors likely to be affected by the charge; and (vi) the position of the monitor.

> *Re Canwest Publishing*, 2010 ONSC 222 [***Canwest Publishing***] at ¶54, BOA, Tab 32.
>
> *Re Target Canada Co.*, 2015 ONSC 303 [***Target***] at ¶74-75, BOA, Tab 33.

54. In *Montreal, Maine & Atlantic Canada Cie / Montreal, Maine & Atlantic Co., Re*, the Quebec Superior Court recognized that it is difficult to refuse payment of professionals' fees when they fully meet the criteria established by case law to determine the reasonableness of fees, including but not limited to, the complexity of work done by the professionals in realizing the debtor company's assets, the continuity of the operations of the debtor company and the transparency of such professionals with respect to the fees incurred.

> *Montreal, Maine & Atlantic Canada Cie / Montreal, Maine & Atlantic Canada Co., Re*, 2014 QCCS 4516 (QCSC) [***MMA***] at ¶¶30 and 31, BOA, Tab 34.

55. BLG has represented Armstrong Flooring Canada, together with the other Debtors, throughout these proceedings as Canadian counsel, with a view to maximizing opportunities for the protection and realization of the Debtors' assets in Canada for the benefit of the stakeholders of the Debtors, in particular the stakeholders of the Applicant. The Debtors could not have advanced these Part IV CCAA Proceedings, which has led to assets that will be available for creditors of Armstrong Flooring Canada, without the assistance of BLG, including in connection with the Settlement Agreement.

Dalton Affidavit at ¶¶31 and 32, BOA, Tab 12.

56. The requested expansion and increase of the Administration Charge satisfies the above-noted *Canwest* factors, having regard to the size and complexity of these proceedings, particularly in light of the cross-border nature of the Debtors' business and operations. BLG has played a critical role in its capacity as Canadian counsel to the Debtors in connection with ongoing restructuring activities in both the U.S. Proceedings and these Part IV CCAA Proceedings, including the Sale Transaction and the negotiation of the Settlement Agreement, and will continue to provide essential legal services throughout these Part IV CCAA Proceedings and in the proposed bankruptcy proceedings of Armstrong Flooring Canada.

57. The proposed increase of the Administration Charge is commensurate with the complexity of the Debtors' business and operations and the cross-border proceedings, as well as the roles that will be required of the Information Officer, its legal counsel and the Debtors' legal counsel in order to effect a successful and expeditious restructuring.

58. The expansion of Administration Charge to include BLG as a beneficiary thereof and the increase of its quantum are supported by the Information Officer.

First Report of the Information Officer at page 13.

E. Assignment in Bankruptcy of Armstrong Flooring Canada.

59. The Court has routinely granted orders providing for the termination of CCAA Part IV proceedings, the discharge of information officers and the release of information officers from liability relating to such proceedings upon discharge, which such release is consistent

with releases routinely granted when discharging other Court-appointed insolvency officials analogous to information officers.

> *Rockport*, Order granted by Justice McEwen dated January 24, 2019 at ¶¶7-10, BOA, Tab 35.
>
> *Syncreon Group B.V. et al.*, Court File No. CV-19-624659-00CL, Toronto: Ont. S.C.J. [Commercial List], Discharge and Termination Order granted by Justice Hainey dated September 19, 2019 at ¶¶2-8, BOA, Tab 36.
>
> *Vari-Form Inc.*, Court File No. CV-19-612116-0000, Toronto: Ont. S.C.J. [Commercial List], CCAA Termination Order granted by Justice McEwen dated April 3, 2019 [***Vari-Form***] at ¶¶7-13, BOA, Tab 37.

60. Further, the Court has granted orders authorizing Court-appointed insolvency officials, upon the termination of proceedings under the CCAA, to file an assignment into bankruptcy under the BIA in respect of the debtor company and to act as trustee in bankruptcy of such debtor company.

> *Variform* at ¶¶14-16, BOA, Tab 37.
>
> *PharmHouse Inc.*, Court File No. CV-20-00647704-00CL, Toronto: Ont. S.C.J. [Commercial List], CCAA Termination Order granted by Justice Wilton-Siegel dated June 23, 2021 [***PharmHouse***] at ¶¶10-15, 20-21 and 23, BOA, Tab 38.

61. The termination of these Part VI CCAA Proceedings and the authorization for the Information Officer to file an assignment in bankruptcy under the BIA in respect of Armstrong Flooring Canada is supported by the Information Officer, having regard to the current status of Armstrong Flooring Canada, as detailed in the First Report and the funds that will be available for distribution to its creditors, including funds arising from the consideration to be paid to Armstrong Flooring Canada pursuant to the Settlement Agreement. The commencement of the proposed bankruptcy proceedings for Armstrong Flooring Canada will allow Grant Thornton, as the proposed trustee in bankruptcy, to conduct a claims process and pursue a distribution to its creditors, in accordance with the scheme of distribution contained within the BIA.

PART V - RELIEF REQUESTED

62. Armstrong Flooring Canada requests that this Court grant the Orders in the form included at Tabs 3 and 4 of the Motion Record.

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 27th day of September 2022.

Roger Jaipargas

Lawyers for Armstrong Flooring Canada Ltd. Armstrong Flooring, Inc., AFI Licensing LLC and Armstrong Flooring Latin America, Inc.

SCHEDULE “A”

LIST OF AUTHORITIES

1. *Zochem Inc. (Re)*, 2016 ONSC 958 (Ont. S.C.J. [Commercial List])

2. *Digital Domain Media Group, Inc (Re)*, 2012 BCSC 1567

3. *Massachusetts Elephant & Castle Group Inc. (Re)*, 2011 ONSC 4201 (Ont. S.C.J. [Commercial List])

4. *Caesars Entertainment Operating Co., Re*, 2015 ONSC 712

5. *Hartford Computer Hardware Inc., Re*, 2012 ONSC 964

6. *Babcock & Wilcox Canada Ltd. (Re)*, 2000 CarswellOnt 704 (Ont. S.C.J. [Commercial List])

7. *Matlack Inc. (Re)*, 2001 CarswellOnt 1830, [2001] O.J. No. 6121 (S.C.J. [Commercial List])

8. *Xerium Technologies Inc., Re,* 2010 ONSC 3974

9. *Nortel Networks Corporation (Re)*, 2010 ONSC 1708

10. *Fraser Papers Inc (*Re), 2012 ONSC 4882

11. *Great Basin Gold Ltd. (Re)*, 2012 BCSC 1773

12. *Labourers Pension Fund of Central and Eastern Canada v Sino-Forest Corp*., 2013 ONSC 1078

13. *Lehndorff General Partner Ltd, Re*, [1993] O.J. No. 14, 17 CBR (3d) 24 (Ont. Ct. J. (Gen Div))

14. *Calpine Canada Energy Ltd, Re,* 2007 ABQB 504

15. *Robertson v ProQuest Information & Learning Co,* 2011 ONSC 1647

16. *Air Canada, Re (2004)*, 47 CBR (4th) 169

17. *Secured Transactions in Personal Property in Canada*, 3rd Edition by Richard H. McLaren

18. *Myers v. Blackman*, 2014 ONSC 5226

19. *Sekulovski v. Georgiou*, 2022 ONSC 1819

20. *STN Labs Inc. v. Saffron Rouge Inc*., 2010 ONSC 3042

21. *Diamler Truck Financial v. 9936726 Canada Inc.*, 2020 ONSC 6452

22. *Urbancorp Cumberland 1 GP Inc., Re,* 2020 ONSC 7920

23. *Hollander Sleep Products LLC, et al., Re*, 2019 ONSC 3238

24. *Re Canwest Publishing*, 2010 ONSC 222

25. *Re Target Canada Co.*¸ 2015 ONSC 303

26. *Montreal, Maine & Atlantic Canada Cie / Montreal, Maine & Atlantic Canada Co., Re*, 2014 QCCS 4516 (QCSC)

SCHEDULE "B"

STATUTES

Companies' Creditors Arrangement Act, R.S.C. 1985, c. C-36, as amended

PART II

JURISDICTION OF COURTS

General power of court

11. Despite anything in the *Bankruptcy and Insolvency Act* or the *Winding-up and Restructuring Act*, if an application is made under this Act in respect of a debtor company, the court, on the application of any person interested in the matter, may, subject to the restrictions set out in this Act, on notice to any other person or without notice as it may see fit, make any order that it considers appropriate in the circumstances.

Court may order security or charge to cover certain costs

11.52 (1) On notice to the secured creditors who are likely to be affected by the security or charge, the court may make an order declaring that all or part of the property of a debtor company is subject to a security or charge — in an amount that the court considers appropriate — in respect of the fees and expenses of

(a) the monitor, including the fees and expenses of any financial, legal or other experts engaged by the monitor in the performance of the monitor's duties;

(b) any financial, legal or other experts engaged by the company for the purpose of proceedings under this Act; and

(c) any financial, legal or other experts engaged by any other interested person if the court is satisfied that the security or charge is necessary for their effective participation in proceedings under this Act.

Priority

(2) The court may order that the security or charge rank in priority over the claim of any secured creditor of the company.

PART IV

CROSS-BORDER INSOLVENCIES

Purpose

44. The purpose of this Part is to provide mechanisms for dealing with cases of cross-border insolvencies and to promote

(a) cooperation between the courts and other competent authorities in Canada with those of foreign jurisdictions in cases of cross-border insolvencies;

(b) greater legal certainty for trade and investment;

(c) the fair and efficient administration of cross-border insolvencies that protects the interests of creditors and other interested persons, and those of debtor companies;

(d) the protection and the maximization of the value of debtor company's property; and

(e) the rescue of financially troubled businesses to protect investment and preserve employment.

Interpretation

Definitions

45. (1) The following definitions apply in this Part.

"foreign court" means a judicial or other authority competent to control or supervise a foreign proceeding.

"foreign main proceeding" means a foreign proceeding in a jurisdiction where the debtor company has the centre of its main interests.

"foreign non-main proceeding" means a foreign proceeding, other than a foreign main proceeding.

"foreign proceeding" means a judicial or an administrative proceeding, including an interim proceeding, in a jurisdiction outside Canada dealing with creditors' collective interests generally under any law relating to bankruptcy or insolvency in which a debtor company's business and financial affairs are subject to control or supervision by a foreign court for the purpose of reorganization.

"foreign representative" means a person or body, including one appointed on an interim basis, who is authorized, in a foreign proceeding respect of a debtor company, to

(a) monitor the debtor company's business and financial affairs for the purpose of reorganization; or

(b) act as a representative in respect of the foreign proceeding.

Centre of debtor company's main interests

(2) For the purposes of this Part, in the absence of proof to the contrary, a debtor company's registered office is deemed to be the centre of its main interests.

Recognition of Foreign Proceeding

Application for recognition of a foreign proceeding

46. (1) A foreign representative may apply to the court for recognition of the foreign proceeding in respect of which he or she is a foreign representative.

Documents that must accompany application

(2) Subject to subsection (3), the application must be accompanied by

(a) a certified copy of the instrument, however designated, that commenced the foreign proceeding or a certificate from the foreign court affirming the existence of the foreign proceeding;

(b) a certified copy of the instrument, however designated, authorizing the foreign representative to act in that capacity or a certificate from the foreign court affirming the foreign representative's authority to act in that capacity; and

(c) a statement identifying all foreign proceedings in respect of the debtor company that are known to the foreign representative.

Documents may be considered as proof

(3) The court may, without further proof, accept the documents referred to in paragraphs (2)(a) and (b) as evidence that the proceeding to which they relate is a foreign proceeding and that the applicant is a foreign representative in respect of the foreign proceeding.

Other evidence

(4) In the absence of the documents referred to in paragraphs (2)(a) and (b), the court may accept any other evidence of the existence of the foreign proceeding and of the foreign represent-ative's authority that it considers appropriate.

Translation

(5) The court may require a translation of any document accompanying the application.

Order recognizing foreign proceeding

47. (1) If the court is satisfied that the application for the recognition of a foreign proceeding relates to a foreign proceeding and that the applicant is a foreign representative in respect of that foreign proceeding, the court shall make an order recognizing the foreign proceeding.

Nature of foreign proceeding to be specified

(2) The court shall specify in the order whether the foreign proceeding is a foreign main proceeding or a foreign non-main proceeding.

Order relating to recognition of a foreign main proceeding

48. (1) Subject to subsections (2) to (4), on the making of an order recognizing a foreign proceeding that is specified to be a foreign main proceeding, the court shall make an order, subject to any terms and conditions it considers appropriate,

(a) staying, until otherwise ordered by the court, for any period that the court considers necessary, all proceedings taken or that might be taken against the debtor 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 debtor company;

(c) prohibiting, until otherwise ordered by the court, the commencement of any action, suit or proceeding against the debtor company; and

(d) prohibiting the debtor company from selling or otherwise disposing of, outside the ordinary course of its business, any of the debtor company's property in Canada that relates to the business and prohibiting the debtor company from selling or otherwise disposing of any of its other property in Canada.

<u>Scope of order</u>

(2) The order made under subsection (1) must be consistent with any order that may be made under this Act.

<u>When subsection (1) does not apply</u>

(3) Subsection (1) does not apply if any proceedings under this Act have been commenced in respect of the debtor company at the time the order recognizing the foreign proceeding is made.

<u>Application of this and other Acts</u>

(4) Nothing in subsection (1) precludes the debtor company from commencing or continuing proceedings under this Act, the Bankruptcy and Insolvency Act or the Winding-up and Restructuring Act in respect of the debtor company.

Other orders

49. (1) If an order recognizing a foreign proceeding is made, the court may, on application by the foreign representative who applied for the order, if the court is satisfied that it is necessary for the protection of the debtor company's property or the interests of a creditor or creditors, make any order that it considers appropriate, including an order

(a) if the foreign proceeding is a foreign non-main proceeding, referred to in subsection 48(1);

(b) respecting the examination of witnesses, the taking of evidence or the delivery of information concerning the debtor company's property, business and financial affairs, debts, liabilities and obligations; and

(c) authorizing the foreign representative to monitor the debtor company's business and financial affairs in Canada for the purpose of reorganization.

Restriction

(2) If any proceedings under this Act have been commenced in respect of the debtor company at the time an order recognizing the foreign proceeding is made, an order made under subsection (1) must be consistent with any order that may be made in any proceedings under this Act.

Application of this and other Acts

(3) The making of an order under paragraph (1)(a) does not preclude the commencement or the continuation of proceedings under this Act, the Bankruptcy and Insolvency Act or the Winding-up and Restructuring Act in respect of the debtor company.

Terms and conditions of orders

50. An order under this Part may be made on any terms and conditions that the court considers appropriate in the circumstances.

Commencement or continuation of proceedings

51. If an order is made recognizing a foreign proceeding, the foreign representative may commence and continue proceedings under this Act in respect of a debtor company as if the foreign representative were a creditor of the debtor company, or the debtor company, as the case may be.

Obligations

Cooperation — court

52. (1) If an order recognizing a foreign proceeding is made, the court shall cooperate, to the maximum extent possible, with the foreign representative and the foreign court involved in the foreign proceeding.

Cooperation — other authorities in Canada

(2) If any proceedings under this Act have been commenced in respect of a debtor company and an order recognizing a foreign proceeding is made in respect of the debtor company, every person who exercises powers or performs duties and functions under the proceedings under this Act shall cooperate, to the maximum extent possible, with the foreign representative and the foreign court involved in the foreign proceeding.

Forms of cooperation

(3) For the purpose of this section, cooperation may be provided by any appropriate means, including

(a) the appointment of a person to act at the direction of the court;

(b) the communication of information by any means considered appropriate by the court;

(c) the coordination of the administration and supervision of the debtor company's assets and affairs;

(d) the approval or implementation by courts of agreements concerning the coordination of proceedings; and

(e) the coordination of concurrent proceedings regarding the same debtor company.

Obligations of foreign representative

53. If an order recognizing a foreign proceeding is made, the foreign representative who applied for the order shall

(a) without delay, inform the court of

(i) any substantial change in the status of the recognized foreign proceeding,
(ii) any substantial change in the status of the foreign representative's authority to act in that capacity, and
(iii) any other foreign proceeding in respect of the same debtor company that becomes known to the foreign representa-tive; and

(b) publish, without delay after the order is made, once a week for two consecutive weeks, or as otherwise directed by the court, in one or more newspapers in Canada specified by the court, a notice containing the prescribed information.

Multiple Proceedings

Concurrent proceedings

54. If any proceedings under this Act in respect of a debtor company are commenced at any time after an order recognizing the foreign proceeding is made, the court shall review any order made under section 49 and, if it determines that the order is inconsistent with any orders made in the proceedings under this Act, the court shall amend or revoke the order.

Multiple foreign proceedings

55. (1) If, at any time after an order is made in respect of a foreign non-main proceeding in respect of a debtor company, an order recognizing a foreign main proceeding is made in respect of the debtor company, the court shall review any order made under section 49 in respect of the foreign non-main proceeding and, if it determines that the order is inconsistent with any orders made under that section in respect of the foreign main proceedings, the court shall amend or revoke the order.

Multiple foreign proceedings

(2) If, at any time after an order is made in respect of a foreign non-main proceeding in respect of the debtor company, an order recognizing another foreign non-main proceeding is made in respect of the debtor company, the court shall, for the purpose of facilitating the coordination of the foreign non-main proceedings, review any order made under section 49 in respect of the first recognized proceeding and amend or revoke the order if it considers it appropriate.

Miscellaneous Provisions

Authorization to act as representative of proceeding under this Act

56. The court may authorize any person or body to act as a representative in respect of any proceeding under this Act for the purpose of having them recognized in a jurisdiction outside Canada.

Foreign representative status

57. An application by a foreign representa-tive for any order under this Part does not submit the foreign representative to the jurisdiction of the court for any other purpose except with regard to the costs of the proceedings, but the court may make any order under this Part conditional on the compliance by the foreign representative with any other order of the court.

Foreign proceeding appeal

58. A foreign representative is not prevented from making an application to the court under this Part by reason only that proceedings by way of appeal or review have been taken in a foreign proceeding, and the court may, on an application if such proceedings have been taken, grant relief as if the proceedings had not been taken.

Presumption of insolvency

59. For the purposes of this Part, if an insolvency or a reorganization or a similar order has been made in respect of a debtor company in a foreign proceeding, a certified copy of the order is, in the absence of evidence to the contrary, proof that the debtor company is insolvent and proof of the appointment of the foreign representative made by the order.

Credit for recovery in other jurisdictions

60. (1) In making a compromise or an arrangement of a debtor company, the following shall be taken into account in the distribution of dividends to the company's creditors in Canada as if they were a part of that distribution:

(a) the amount that a creditor receives or is entitled to receive outside Canada by way of a dividend in a foreign proceeding in respect of the company; and

(b) the value of any property of the company that the creditor acquires outside Canada on account of a provable claim of the creditor or that the creditor acquires outside Canada by way of a transfer that, if it were subject to this Act, would be a preference over other creditors or a transfer at undervalue.

Restriction

(2) Despite subsection (1), the creditor is not entitled to receive a dividend from the distribution in Canada until every other creditor who has a claim of equal rank in the order of priority established under this Act has received a dividend whose amount is the same percentage of that other creditor's claim as the aggregate of the amount referred to in paragraph (1)(a) and the value referred to in paragraph (1)(b) is of that creditor's claim.

Court not prevented from applying certain rules

61. (1) Nothing in this Part prevents the court, on the application of a foreign representative or any other interested person, from applying any legal or equitable rules governing the recognition of foreign insolvency orders and assistance to foreign representatives that are not inconsistent with the provisions of this Act.

Public policy exception

(2) Nothing in this Part prevents the court from refusing to do something that would be contrary to public policy.

***Personal Property Security Act*, R.S.O. 1990, c. P.10, as amended**

PART IV

REGISTRATION

Discharge or amendment

Discharge where security interest existed

56 (1) Where a financing statement or notice of security interest is registered under this Act, and,

(a) all the obligations under a security agreement to which it relates have been performed; or

(b) it is agreed to release part of the collateral covered by a security agreement to which it relates upon payment or performance of certain of the obligations under the security agreement, then upon payment or performance of such obligations, any person having an interest in the collateral covered by the security agreement may deliver a written notice to the secured party demanding registration of a financing change statement referred to in section 55 or a certificate of discharge or partial discharge referred to in subsection 54 (4), or both, and the secured party shall register the financing change statement or the certificate of discharge or partial discharge, or both, as the case may be.

Discharge where no security interest acquired

(2) Where a financing statement or notice of security interest is registered under this Act and the person named in the financing statement or notice as the secured party has not acquired a security interest in the property to which the financing statement or notice relates, any person having an interest in the property may deliver a written notice to the person named as the secured party demanding registration of a financing change statement referred to in section 55 or a certificate of discharge referred to in subsection 54 (4), or both, and the person named as the secured party shall register the financing change statement or the certificate of discharge, or both, as the case may be.

Definition

(3) For the purposes of subsections (4) and (5),

"secured party" includes a person named in a financing statement or notice of security interest as the secured party to whom subsection (2) applies.

Failure to deliver

(4) Where the secured party, without reasonable excuse, fails to register the financing change statement, or certificate of discharge or partial discharge, or all of them, as the case may be, required under subsection (1), (2), (2.1), (2.2) or (2.3) within 10 days after receiving a demand for it, the secured party shall pay $500 to the person making the demand and any damages resulting from the failure; the sum and damages are recoverable in any court of competent jurisdiction.

Security or payment into court

(5) Upon application to the Superior Court of Justice, the court may,

(a) allow security for or payment into court of the amount claimed by the secured party and such costs as the court may fix, and thereupon order the secured party to discharge or partially discharge, as the case may be, the registration of the financing statement or notice of security interest; or

(b) order upon any ground that the court considers proper that,

(i) the registrar amend the information recorded in the central file of the registration system to indicate that the registration of the financing statement has been discharged or partially discharged, as the case may be, or

(ii) the land registrar delete any entry in the books of the land registry office related to the notice of security interest or that the land registrar amend the books of the land registry office to indicate that the security interest has been discharged or partially discharged, as the case may be.

Successors in interest

(6) Where the person receiving a notice under clause (1) (a) did not have a security interest in the collateral immediately before all the obligations under the security agreement to which it relates were performed, the person shall, within fifteen days after receiving the notice, disclose the name and address of the latest successor in interest known to the person, and, if without reasonable excuse, the person fails to do so or the answer is incomplete or incorrect, the person shall pay $500 to the person making the demand and any damages resulting from the failure which sum and damages are recoverable in any court of competent jurisdiction.

PART VI

MISCELLANEOUS

Court orders and directions

67 (1) Upon application to the Superior Court of Justice by a debtor, a creditor of a debtor, a secured party, an obligor who may owe payment or performance of the obligation secured or any person who has an interest in collateral which may be affected by an order under this section, the court may,

(a) make any order, including binding declarations of right and injunctive relief, that is necessary to ensure compliance with Part V, section 17 or subsection 34 (3) or 35 (4);

(b) give directions to any party regarding the exercise of the party's rights or the discharge of the party's obligations under Part V, section 17 or subsection 34 (3) or 35 (4);

(c) make any order necessary to determine questions of priority or entitlement in or to the collateral or its proceeds;

(d) relieve any party from compliance with the requirements of Part V, section 17 or subsection 34 (3) or 35 (4), but only on terms that are just for all parties concerned;

(e) make any order necessary to ensure protection of the interests of any person in the collateral, but only on terms that are just for all parties concerned;

(f) make an order requiring a secured party to make good any default in connection with the secured party's custody, management or disposition of the collateral of the debtor or to relieve the secured party from any default on such terms as the court considers just, and to confirm any act of the secured party; and

(g) despite subsection 59 (6), if the secured party has taken security in both real and personal property to secure payment or performance of the debtor's obligation, make any order necessary to enable the secured party to accept both the real and personal property in satisfaction of the obligation secured or to enable the secured party to enforce any of its other remedies against both the real and personal property, including an order requiring notice to be given to certain persons and governing the notice, an order permitting and governing redemption of the real and personal property, and an order requiring the secured party to account to persons with an interest in the real property or personal property for any surplus.

Compensation for loss or damages

(2) Where a person fails to discharge any duties or obligations imposed upon the person by Part V, section 17 or subsection 34 (3) or 35 (4), the person to whom the duty or obligation is owed has a right to recover compensation for any loss or damage suffered because of the failure and which was reasonably foreseeable, and, where the collateral is consumer goods, the debtor has a right to recover in any event an amount equal to the greater of $500 or the actual loss or damages.

Court File No.: CV-22-00682153-00CL

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

AND IN THE MATTER OF ARMSTRONG FLOORING, INC., AFI LICENSING LLC, ARMSTRONG FLOORING LATIN AMERICA, INC. AND ARMSTRONG FLOORING CANADA LTD. (THE "DEBTORS")

APPLICATION OF ARMSTRONG FLOORING CANADA LTD. UNDER SECTION 46 OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*, R.S.C. 1985, c. C-36, AS AMENDED

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

PROCEEDINGS COMMENCED AT TORONTO

FACTUM OF THE APPLICANT, ARMSTRONG FLOORING CANADA LTD.
(Termination and Discharge)
(Returnable September 28, 2022)

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