Court File No. 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

AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF EDWARD COLLINS CONTRACTING LIMITED, H & E DESIGNS LTD., CLASSIC SECURITY LTD., FGC HOLDINGS LTD. AND 51037 NEWFOUNDLAND & LABRADOR INC.

Eleventh Report of Grant Thornton Limited, in its Capacity as Monitor

November 28, 2023

Grant Thornton Limited,
Monitor

Suite 300 - 15 International Place
St. John's, NL A1A 0L4

Eleventh Report of the Monitor

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Introduction

1. Pursuant to an order of the Supreme Court of Newfoundland and Labrador (the "**Court**") made on October 5, 2022 (the "**Initial Order**"), Edward Collins Contracting Limited ("**ECC**"), H&E Designs Ltd. ("**H&E**"), Classic Security Ltd. ("**Classic**"), FGC Holdings Ltd. ("**FGC**") and 51037 Newfoundland and Labrador Inc. ("**51037**") (collectively, the "**Company**") were granted protection under the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended, (the "**CCAA**").

2. The Initial Order appointed Grant Thornton Limited as monitor (the "**Monitor**") in the CCAA proceedings and granted a stay of proceedings (the "**Stay Period**") initially expiring on October 17, 2022. On October 17, 2022, the Court issued an Amended and Restated Initial Order ("**ARIO**") which affirmed the terms of the Initial Order.

3. This is the Eleventh Report of the Monitor (the "**Eleventh Report**"). Additional background information on the Company and the CCAA Proceedings along with all the unsealed documents filed with the Court are available on the Monitor's website, located at: www.grantthornton.ca/ecc (the "**Monitor's Website**"). The Monitor continues to update this website as appropriate.

Purpose of this Report

4. The purpose of this Eleventh Report is to provide this Honourable Court and the Company's stakeholders with information on the dispute with regards to the settlement agreement between the Royal Bank of Canada ("**RBC**") and the Company and the related distribution order and provide the court with the following requested documents:

   a. Settlement Agreement attached hereto as **Appendix A**;

   b. Distribution Order dated September 29, 2023 and filed on October 18, 2023 attached hereto as **Appendix B**;

   c. Edited Transcript of Oral Reasons for Judgement dated October 3, 2023 attached hereto as **Appendix C**; and

   d. Summarize the dispute as between the parties.

Terms of Reference and Disclaimer

5. In preparing this Eleventh Report, the Monitor has relied upon unaudited financial information, the Company's records, financial information and projections, and discussions with the Company's management. While the Monitor reviewed various documents provided by the Company (including, among other things, unaudited internal financial documents and financial projections) and believes that the information therein provides a fair summary of the transactions as reflected in the documents, such work does not constitute an audit or verification of such information for accuracy, completeness or compliance with Generally Accepted Assurance Standards ("**GAAS**"), Generally Accepted

Accounting Principles ("**GAAP**"), or International Financial Reporting Standards ("**IFRS**"). Accordingly, the Monitor expresses no opinion or other form of assurance pursuant to GAAS, GAAP or IFRS with respect to such information.

6. In the course of its mandate, the Monitor has assumed the integrity and truthfulness of the information and explanations presented to it by the Company, its management and other stakeholders, within the context in which such information was presented. To date, nothing has come to the Monitor's attention that would cause it to question the reasonableness of these assumptions, or accuracy of the information. The Monitor has requested that management bring to its attention any significant matters which were not addressed in the course of the Monitor's specific inquiries. Accordingly, this Report is based solely on the information (financial or otherwise) made available to the Monitor by the Company, its management, and other stakeholders.

7. This Eleventh Report has been prepared for the use of this Honourable Court and the Company's stakeholders as general information relating to the Company and to assist the Court in administering this proceeding. Accordingly, the reader is cautioned that this Report may not be appropriate for any other purpose. The Monitor will not assume responsibility or liability for losses incurred by the reader as a result of the circulation, publication, reproduction or use of this Eleventh Report contrary to the provisions of this paragraph.

8. Capitalized terms not defined in this Eleventh Report have the meanings ascribed to them in the Initial Order, the Originating Application, or the previous reports of the Monitor.

9. All references to dollars are in Canadian currency unless otherwise noted.

Summary of the Dispute on the Settlement Agreement and Distribution Order

10. The Company and RBC entered into a settlement agreement on or around September 25, 2023. The body of the agreement is attached hereto as **Appendix A**.

11. The Monitor's understanding that the dispute is based on two distinct issues:

    a. The settlement agreement double counted the agreed settlement amount for the protective disbursement amount, such that the amount payable in the distribution order and paragraph G of the distribution order being $25,000 was too high;

    b. Whether the payment noted in paragraph G of the settlement agreement includes the amount in F, or is in addition to the amount in F. The amount in dispute here is $25,000.

12. ECC is of the view the agreed payment to RBC is $4,033,060. RBC view is that the agreed payment is $4,083,070 summarized as follows:

RBC March 7 Payout including interest				4,008,060
	Protective Disbursements			25,000
				4,033,060
			???	50,000
				4,083,060

Settlement Agreement and Distribution Order

13. The settlement agreement was based on a distribution waterfall attached hereto as **Appendix D**. The waterfall was calculated based on the RBC payout statements as of March 7, 2023 for ECC, H&E and 51037, excluding the HASCAP loan, CEBA loan and protective disbursement claim. The payout statements are attached hereto as **Appendix E**.

14. The waterfall has always included $50,000 on account of estimated fees and interest. This $50,000 was erroneously included in the waterfall calculation which became Schedule A to the settlement agreement and formed the amount payable to RBC in the distribution order dated September 29, 2023 attached hereto as **Appendix B**, and the RBC settlement amount in paragraph G of the settlement agreement, not withstanding the agreement between RBC and the Company to limit protective disbursements to $25,000.

15. It was the Monitors understanding that the settlement agreed was the RBC March 7, 2023 payout amounts outlined in paragraph 13 above, plus $25,000 for protective disbursements. The inclusion of the $50,000 is essentially double counting the agreed amount for protective disbursements.

16. Assuming paragraph 15 is correct then:

    a. The RBC amount in the distribution order should be $3,792,957 (not $3,817,957, difference of $25,000 lower); and

    b. The RBC amount in paragraph G should be $4,033,060 (not $4,058,060, difference of $25,000 lower).

17. A comparison of the calculations is attached hereto as **Appendix F.**

18. The Monitor had advised the parties of the error, and it is the Monitor's understanding that as a result of the uncertainty, the word approximately was inserted in front of the RBC payment amount in paragraph G of the settlement agreement.

Interpretation of the Settlement Agreement

19. The parties do not agree on the interpretation of the settlement agreement. The Monitor understands that the settlement agreement is the RBC March 7, 2023 payouts as described in paragraph 13 plus $25,000. RBC is of the view that the interpretation of the settlement agreement is that the payout to RBC is the sum of paragraphs F and G, while ECC is of the view is that paragraph G is inclusive of paragraph F.

Communications

20. The issue arose as a result of a mathematical error by the Monitor and communicated to the parties on September 25, 2023.

21. The Monitor advised the parties of the issue as early as September 25, 2023 and has attempted to resolve this dispute. That effort was unsuccessful. Communications to the parties on the issue are summarized in **Appendix G** attached hereto.

Dated at Halifax, Nova Scotia the 28th day of November 2023.

GRANT THORNTON LIMITED, in its capacity as Monitor of ***EDWARD COLLINS CONTRACTING LIMITED, H & E DESIGNS LTD., CLASSIC SECURITY LTD., FGC HOLDINGS LTD. AND 51037 NEWFOUNDLAND & LABRADOR INC.*** and not in its personal capacity

Per: ______________________________

Name: Phil Clarke, CPA, CA, CIRP, LIT
Title: Senior Vice President

Appendix A

SETTLEMENT AGREEMENT effective the 16th day of June 2023.

BETWEEN:

EDWARD COLLINS CONTRACTING LTD. (“ECC”), CLASSIC SECURITY LIMITED, FGC HOLDINGS LTD., 51037 NEWFOUNDLAND AND LABRADOR INC., H & E DESIGNS LTD. (“H&E), and UNIVERSAL ENVIRONMENTAL SERVICES INC. (“UESI”) each a corporation duly constituted and existing under the laws of the Province of Newfoundland and Labrador, with an office for service c/o O’Keefe & Sullivan, Suite 202, 80 Elizabeth Ave., St. John’s, NL

(the “ECCL Group”)

AND:

GRANT THORNTON LIMITED, in its capacity as Monitor the ECCL Group and not in its personal or corporate capacity and without personal or corporate liability.

(the “Monitor”)

AND:

THE ROYAL BANK OF CANADA, a Canadian Bank existing under the *Bank Act,* with an office for service c/o Stewart McKelvey, Suite 1100, 100 Cabot St., St. John’s, NL

(“RBC”)

WHEREAS:

A. the ECCL Group together operates as an integrated entity in the heavy civil construction industry across Newfoundland and Labrador (the “**Business**”);

B. the ECCL Group commenced proceedings under the *Companies’ Creditors Arrangement Act* (the “**CCAA**”) and an amended and restated initial order was granted by the Supreme Court of Newfoundland and Labrador in Bankruptcy and Insolvency (the “**Court**”) on October 17, 2022;

C. RBC was the secured lender of the ECCL Group, under which certain Loan and Credit Facilities were advanced to the ECCL Group (collectively, the “**Credit Facilities**”) and a HASCAP loan was advanced to ECC (the “**HASCAP Loan**”);

D. pursuant to an Order of the Court dated March 14, 2023, the Monitor conducted a claims process under which the Canada Revenue Agency (the “**CRA**”) submitted a proof of claim regarding the deemed trust claim held against the ECCL Group (the “**Deemed Trust Claim**”);

E. the ECCL Group, with the assistance of the Monitor, intends on implementing a Court-ordered stalking horse sale process for the Business and property of the ECCL Group (the "**Sale Process**") under which the Business and property of the ECCL Group will be sold to the best offer;

F. In contemplation of the stalking horse agreement (the "**Stalking Horse Bid**") being selected as the best offer, the ECCL Group prepared, with the assistance of the Monitor, a proposed distribution waterfall (the "**Distribution Waterfall**"), inclusive of all interest and costs save and except for a protective disbursement of $25,000.00 payable to RBC by the ECCL Group (the "**Protective Disbursement**");

G. the Distribution Waterfall provides that the amount of approximately $4,058,070 will be distributed to RBC on account of its secured indebtedness form the sale of the ECCL Groups assets to the stalking horse bidder, 92712 Newfoundland & Labrador Inc. ("**92712**") (the "**Distribution Amount**");

H. 92712 has informed RBC and the ECCL Group that its proposed purchase of the assets of the ECCL Group is only viable on the condition that the ECCL Group continues to operate as a going concern post-closing of the sale of its assets, and further, that based on its due diligence, that in order for the ECCL Group to continue to operate as a going concern post-closing of the sale of its assets, the ECCL Group will require the ongoing participation and support of UESI, as UESI is intricately connected to the overall operations of the ECCL Group;

I. that absent the Distribution Amount being paid to RBC, RBC would not approve the settlement scheme proposed by the ECCL Group including the sale of the ECCL Groups assets to 92712;

J. the balance of funds required by the ECCL Group to pay the full outstanding balances owed to RBC and CRA, but for this settlement agreement, is approximately $1,800,000.00;

K. that in order to satisfy RBC and CRA and to affect this settlement between the parties, the ECCL Group requested contributions from certain third-party sponsors of the ECCL Group who are not the subject of the CCAA proceedings, including the Placentia Mall Ltd. ("**PML**"), Newport Capital Corporation Inc. ("**Newport**") and UESI (the "**Third Party Sponsors**");

L. the Third-Party Sponsors have agreed to make such contributions as requested on the condition that UESI is released from the subordinate debts of ECC that existed prior to the CCAA proceeding;

M. the Parties acknowledge that the ECCL Group requires a release of UESI as a Third-Party Sponsor in order for the proposed settlement scheme to work as it should (the "**Third-Party Release**");

N. the Parties acknowledge that 92712 may not proceed with the purchase of the ECCL Groups assets in the event the Third-Party Release is not obtained;

O. the Parties acknowledge that the settlement outlined in this agreement would not be possible without the contribution of the Third-Party Sponsors including UESI; and

P. The Monitor acknowledges that but for the contribution of UESI, the restructuring of the ECCL Group would not have occurred, and that the RBC proceeds with the liquidation of the ECCL Group and UESI, is not likely that the combined value of the ECCL Group and UESI assets, in a forced liquidation scenario will exceed the full outstanding amounts owed to RBC and CRA.

NOW THEREFORE, IN CONSIDERATION of the foregoing and terms and covenants contained in Settlement Agreement and other good and valuable consideration, the receipt and sufficiency of which is hereby conclusively acknowledged, the Parties covenant and agree as follows:

AGREEMENT

1. the ECCL Group shall pay the Distribution Amount to RBC within three (3) business days of the closing of the sale of the ECC and H&E assets.

2. The Parties agree to:

   (a) Execute and exchange Mutual Releases in the form attached as **<u>Schedule "A"</u>** to this Settlement Agreement (the "**Mutual Releases**")**.** The Mutual Releases shall be delivered to counsel for the Parties within three (3) days of the date of this Settlement Agreement and shall be held in escrow in accordance with Section 3(a) of this Settlement Agreement.

   (b) Seek the Third-Party Release from the Honourable Supreme Court in respect of UESI as a Third-Party Sponsor of the ECCL Group, in connection with the CCAA proceedings, and in recognition of UESI's contribution to the settlement of the CCAA proceedings outlined in paragraphs H. through K. above, which includes but is not limited to UESI's contribution of approximately $800,000.00 to the settlement scheme proposed by the ECCL Group, and the provision of the Mutual Releases as contemplated herein; and

   (c) Do all things necessary and execute all documents reasonably necessary to give full effect to their respective obligations under this Settlement Agreement.

3. The Parties further agree:

   (a) The fully executed Mutual Releases shall be held in escrow by the RBC's counsel pending payment in full of the Distribution Amount and the Protective Disbursement in accordance with this Settlement Agreement and the issuance of the Third-Party Release from the Honorable Supreme Court.

   (b) If the ECCL Group defaults on its obligation to make pay the Distribution Amount or the Protective Disbursement as outlined in paragraph 1 this Settlement Agreement or the Honourable Supreme Court refuses to grant the Third-Party Release, then the Mutual Releases, and any copies thereof, shall be immediately destroyed and this Settlement Agreement shall be deemed void *ab intio* and of no further effect.

(c) Only upon receipt of the Third-Party Release and payment of the Settlement Amount in accordance with paragraph 1 of this Settlement Agreement, shall the Mutual Releases be released to the parties.

(d) This Settlement Agreement shall enure to the benefit of and be binding upon each of the Parties and their respective heirs, executors, administrators, successors and permitted assigns.

(e) None of the terms, conditions or provisions of this Settlement Agreement shall be changed, waived, varied, modified or altered unless done so in writing and signed by all of the Parties.

(f) This Settlement Agreement shall be construed, interpreted, and enforced in accordance with the laws of the Province of Newfoundland and Labrador, and the laws of Canada applicable therein, and the Parties shall attorn to the jurisdiction of the courts of the Province of Newfoundland and Labrador.

(g) This Settlement Agreement may be executed in counterparts, each of which constitutes an original and all of which taken together constitute one and the same instrument. This Settlement Agreement may be executed and transmitted by facsimile or by email attachment in .pdf, provided however that the Parties remain entitled to receive an original signed version, if requested.

IN WITNESS WHEREOF the Parties have caused this Settlement Agreement to be executed as of the day and year first before written.

[Execution Page 1 to Follow]

ROYAL BANK OF CANADA

Per:

Witness

Name:

Title:

I/We have the authority to bind the corporation

THE ECCL GROUP:

EDWARD COLLINS CONTRACTING LTD.

Per:

Witness

Name:

Title:

I/We have the authority to bind the Corporation

[Execution Page 2 to Follow]

Witness

CLASSIC SECURITY LTD.

Per:

Name:

Title:

I/We have the authority to bind the Corporation

Witness

FGC HOLDINGS LTD.

Per:

Name:

Title:

I/We have the authority to bind the Corporation

Witness

51037 NEWFOUNDLAND AND LABRADOR INC.

Per:

Name:

Title:

I/We have the authority to bind the Corporation

[Execution Page 3 to Follow]

H&E DESIGNS LTD.

Per: ______________________________

Witness

Name:

Title:

I/We have the authority to bind the Corporation

UNIVERSAL ENVIRONMENTAL SERVICES INC.

Per: ______________________________

Witness

Name:

Title:

I/We have the authority to bind the Corporation

ACKNOWLEDGED BY THE THIRD-PARTY SPONSORS, AS TO THEIR CONTRIBUTION ONLY:

NEWPORT CAPITAL CORPORATION INC.

Per: ______________________________

Witness

Name:

Title:

I/We have the authority to bind the Corporation

[Execution Page 4 to Follow]

PLACENTIA MALL LTD.

Per:

Witness

Name:

Title:

I/We have the authority to bind the Corporation

UNIVERSAL ENVIRONMENTAL SERVICES INC.

Per:

Witness

Name:

Title:

I/We have the authority to bind the Corporation

[Execution Page 5 to Follow]

ACKNOWLEDGED BY 92712 NEWFOUNDLAND & LABRADOR INC., AS POTENTIAL PURCHASER OF THE ECCL GROUP'S ASSETS ONLY:

92712 NEWFOUNDLAND & LABRADOR INC.

Per: ____________________

Name:

Title:

I/We have the authority to bind the Corporation

____

Witness

ACKNOWLEDGED BY THE MONITOR AS TO PARAGRAPH P. ABOVE ONLY:

GRANT THORNTON LTD.

Per: ____________________

Name:

Title:

I/We have the authority to bind the Corporation

____

Witness

[Execution Pages end 5/5]

SCHEDULE “A”

ROYAL BANK OF CANADA

Per:

Witness

IAN JOSEY
COMMERCIAL MORTGAGE SPECIALIST

Name: David Savoie

Title: Senior Manager Special Loans

I/We have the authority to bind the corporation

THE ECCL GROUP:

EDWARD COLLINS CONTRACTING LTD.

Per:

Candace Seymour

Witness

CANDACE SEYMOUR
A Commissioner for Oaths in and for
the Province of Newfoundland and Labrador.
My commission expires on December 31, 2027.

Name: Josh Collins

Title: Vice Pres.

I/We have the authority to bind the Corporation

[Execution Page 2 to Follow]

Candace Seymour Witness **CANDACE SEYMOUR** A Commissioner for Oaths in and for the Province of Newfoundland and Labrador. My commission expires on December 31, 2027.	**CLASSIC SECURITY LTD.** Per: Name: Francis Collins Title: Director I/We have the authority to bind the Corporation
Candace Seymour Witness **CANDACE SEYMOUR** A Commissioner for Oaths in and for the Province of Newfoundland and Labrador. My commission expires on December 31, 2027.	**FGC HOLDINGS LTD.** Per: Name: Francis Collins Title: Director I/We have the authority to bind the Corporation
Candace Seymour Witness **CANDACE SEYMOUR** A Commissioner for Oaths in and for the Province of Newfoundland and Labrador. My commission expires on December 31, 2027.	**51037 NEWFOUNDLAND AND LABRADOR INC.** Per: Name: Francis Collins Title: Director I/We have the authority to bind the Corporation

[Execution Page 3 to Follow]

Candace Seymour
Witness

CANDACE SEYMOUR
A Commissioner for Oaths in and for
the Province of Newfoundland and Labrador.
My commission expires on December 31, 2027.

H&E DESIGNS LTD.

Per:

Name: Francis Collins

Title: Director

I/We have the authority to bind the Corporation

Candace Seymour
Witness

CANDACE SEYMOUR
A Commissioner for Oaths in and for
the Province of Newfoundland and Labrador.
My commission expires on December 31, 2027.

UNIVERSAL ENVIRONMENTAL SERVICES INC.

Per:

Name: Francis Collins

Title: Director

I/We have the authority to bind the Corporation

ACKNOWLEDGED BY THE THIRD-PARTY SPONSORS, AS TO THEIR CONTRIBUTION ONLY:

Candace Seymour
Witness

CANDACE SEYMOUR
A Commissioner for Oaths in and for
the Province of Newfoundland and Labrador.
My commission expires on December 31, 2027.

NEWPORT CAPITAL CORPORATION INC.

Per:

Name: Peter J. Byrne

Title: Director

I/We have the authority to bind the Corporation

[Execution Page 4 to Follow]

Candace Seymour Witness **CANDACE SEYMOUR** A Commissioner for Oaths in and for the Province of Newfoundland and Labrador. My commission expires on December 31, 2027.	**PLACENTIA MALL LTD.** Per: Name: Francis Collins Title: Director I/We have the authority to bind the Corporation
Candace Seymour Witness **CANDACE SEYMOUR** A Commissioner for Oaths in and for the Province of Newfoundland and Labrador. My commission expires on December 31, 2027.	**UNIVERSAL ENVIRONMENTAL SERVICES INC.** Per: Name: Francis Collins Title: Director I/We have the authority to bind the Corporation

[Execution Page 5 to Follow]

ACKNOWLEDGED BY 92712 NEWFOUNDLAND & LABRADOR INC., AS POTENTIAL PURCHASER OF THE ECCL GROUP'S ASSETS ONLY:

Candace Seymour
Witness

CANDACE SEYMOUR
A Commissioner for Oaths in and for
the Province of Newfoundland and Labrador.
My commission expires on December 31, 2027.

92712 NEWFOUNDLAND & LABRADOR INC.

Per:

Name: Peter J. Byrne

Title: Director

I/We have the authority to bind the Corporation

ACKNOWLEDGED BY THE MONITOR AS TO PARAGRAPH P. ABOVE ONLY:

Witness

Allan R. MacDonald
A Commissioner of the
Supreme Court of Nova Scotia
Expiry: June 22nd, 2027

GRANT THORNTON LTD.

Per:

Name:

Title:

I/We have the authority to bind the Corporation

[Execution Pages end 5/5]

Appendix B

2022 01G 1964

IN THE SUPREME COURT OF NEWFOUNDLAND AND LABRADOR IN BANKRUPTCY AND INSOLVENCY

IN THE MATTER OF the Companies Creditor Arrangement Act, R.S.C. 1985 c.C-36 as amended (the **"CCAA"**)

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

DISTRIBUTION ORDER

Before the Honourable Justice Alexander MacDonald on September 29, 2023:

THIS APPLICATION, made by Edward Collins Contracting Limited ("**ECC**"), Classic Security Ltd. ("**Classic**"), FGC Holdings Ltd., 51037 Newfoundland and Labrador Inc. and H & E Designs Ltd. ("**H&E**" and collectively, the **"Applicants"**) pursuant to the CCAA for an order extending the Stay Period (as defined herein) up to and including 31 May 2023 was heard on the 26th day of September 2023.

ON READING the affidavit of Josh Collins, sworn September 20, 2023, and the Exhibits thereto, the Ninth Report of Grant Thornton Limited dated September 21, 2023 in its capacity as monitor of the Applicants (the **"Monitor"**);

ON HEARING the submissions of counsel for the Applicants, the Monitor, the Royal Bank of Canada, the Canada Revenue Agency and such other counsel that were present, no one else appearing for any party although duly served:

SERVICE

1) **THIS COURT ORDERS** that the time for service of the Notice of Motion and the materials

Filed Oct 19/23

filed, as set out in the Affidavit of Service, is hereby deemed adequate notice so that this Motion is properly returnable today and hereby dispenses with further service thereof.

DISTRIBUTION

2) **THIS COURT ORDERS** that the Monitor is hereby authorized and directed to distribute certain proceeds currently held by the Monitor, as follows: from ECC and H&E: (i) the amount owing to the Canada Revenue Agency ("**CRA**") in satisfaction of unpaid source deductions owing by ECC and H&E in the amount of $2,079,198, and (ii) the amount owing to the Royal Bank of Canada ("**RBC**") by ECC and H&E in the amount of $3,817,957.

3) Notwithstanding:

a) the pendency of these proceedings;

b) any applications for a bankruptcy order issued pursuant to the *Bankruptcy and Insolvency Act* (Canada) (the "**BIA**"), in respect of the Applicants and any bankruptcy order issued pursuant to such applications; and

c) any assignment in bankruptcy made in respect of the Applicants;

the payments authorized and directed by section 2) of this Order shall be binding on any trustee in bankruptcy that may be appointed in respect of the Applicants and shall not be void or voidable by creditors of the Applicants nor shall it constitute nor be deemed to be a settlement, fraudulent preference, assignment, fraudulent conveyance, transfer at undervalue or other reviewable transaction under the BIA or any other applicable federal or provincial legislation, nor shall it constitute oppressive or unfairly prejudicial conduct pursuant to any applicable federal or provincial legislation.

GENERAL

4) **THIS COURT ORDERS** that this Order and all of its provisions are effective as of 12:01

a/

a.m. Eastern Standard/Daylight Time on the date of this Order.

ISSUED at St. John's, Newfoundland and Labrador this 18th day of October 2023.

COURT OFFICER

Appendix C

IN THE SUPREME COURT OF NEWFOUNDLAND AND LABRADOR
GENERAL DIVISION

Citation: *Edward Collins Contracting Limited (Re)*, 2023 NLSC 139
Date: October 20, 2023
Docket: 202201G1964

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

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

Before: Justice Alexander MacDonald
Edited Transcript of Oral Reasons for Judgment

Place of Hearing: St. John's, Newfoundland and Labrador

Date of Hearing: September 26 and 29, 2023

Date of Oral Judgment: October 3, 2023

Appearances:

Darren D. O'Keefe — Appearing on behalf of the ECC Group

Caitlin E. Fell — Appearing on behalf the Monitor

Alexander T. Wells	Appearing on behalf of 92712 Newfoundland and Labrador Inc.
Neil L. Jacobs, K.C.	Appearing on behalf of Royal Bank of Canada
Maeve A. Baird	Appearing on behalf of the Minister of National Revenue
David L. Hearn Chelsey Buggie	Appearing on behalf of the Government of Newfoundland and Labrador
Jason Dutrizac	Appearing on behalf of Intact Insurance Western Surety Company
Phil Clarke	Appearing on behalf of Grant Thornton Limited
Ronald A. Cole, K.C.	CANAM Construction
William S. Kennedy	EMCO Limited

Authorities Cited:

CASES CONSIDERED: *Royal Bank of Canada v. Soundair Corporation* (1991), 4 O.R. (3d) 1, 7 C.B.R. (3d) 1 (C.A.); *Harte Gold Corp. (Re),* 2022 ONSC 653; *9354-9186 Québec Inc. v. Callidus Capital Corporation*, 2020 SCC 10; *Lydian International Limited (Re),* 2020 ONSC 4006; *PricewaterhouseCoopers Inc. v. Canadian Fluorspar (NL) Inc*., 2023 NLSC 88; *Target Canada Co., Re,* 2016 ONSC 3651; *Sports Villas Resort Inc. (Re)*, 2020 NLSC 109

STATUTES CONSIDERED: *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36

REASONS FOR JUDGMENT

MACDONALD J.

INTRODUCTION

[1] On July 8, 2022, the Royal Bank of Canada (RBC) applied to appoint Ernst and Young Inc. as a court-appointed receiver over all or substantially all of the assets of Edward Collins Contracting Limited, Classic Security Ltd., FGC Holdings Ltd., 51037 Newfoundland and Labrador Inc., and H & E Designs Ltd. (EEC Group). The ECC Group opposed the application.

[2] On July 18, 2022, the ECC Group applied for creditor protection and other relief under the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (*CCAA*).

[3] On July 20, 2022, the Court granted a consent order (Consent Order). The Court ordered that any persons having a contractual arrangement or a statutory mandate for the supply of goods or services were restrained until further order from the Court from discontinuing, altering or terminating the supply of such goods or services until September 16, 2022.

[4] On September 16, 2022, I continued the Consent Order. On October 5, 2022, I granted an initial order under the *CCAA*, and extended the stay until the comeback hearing on October 17, 2022. I appointed Grant Thornton Limited (GTL) as Monitor.

[5] On October 17, 2022, I issued the Amended and Restated Initial Order (ARIO).

[6] On November 3, 2022, I dismissed an application by His Majesty in right of Newfoundland and Labrador seeking amendments to the ARIO.

[7] On December 14, 2022, I extended the stay until March 17, 2023.

[8] On March 14, 2023, I issued a claims procedure order. The order provides for a procedure to resolve Edward Collins Contracting Limited's (CCL) claims relating to construction project receivables holdbacks, liquidated damages, and force account balances owing to CCL.

[9] On April 17, 2023, I issued a Vesting Order allowing for the sale of certain real property.

[10] On June 16, 2023, I approved a Sales Investment and Solicitation Process (SISP) and extended the stay until September 14, 2023.

[11] The SISP included a so-called stalking horse bid. This bid set a floor sales price for the assets of CCL and H & E Designs Ltd. (Vendors). The Asset Purchase Agreement (APA) between the Monitor and 92712 Newfoundland and Labrador Inc. (Purchaser) provides that the purchase price is $6.9 million, together with some other adjustments as is provided for in that Agreement, described in paragraph 74e of the Monitor's Ninth Report.

[12] A third party unrelated to the Collins family now owns 100% of the shares of the Purchaser. I will describe the potential future changes in this ownership later.

[13] In August, I amended the Claims Procedure Order to provide for certain claims made by Western Surety Company.

[14] On September 13, 2023, I extended the stay until October 11, 2023.

[15] On September 20, 2023, I ordered the Town of Deer Lake pay certain sums to the Monitor.

[16] This is a Motion by the Vendors for an approval of:

(a) an Asset Vesting Order (AVO) to allow for the sale of their assets and certain liabilities to the Purchaser as set out in the APA;

(b) an order, also contained in the AVO, releasing the Vendors, the Purchaser, and the Monitor (and certain individuals associated with each as described in the AVO). They also seek a release of Universal Environment Services Inc. (UESI) as I describe later in this decision (UESI Release);

(c) a Distribution Order authorizing the Monitor to disburse the proceeds of the AVO; and

(d) an order sealing the Schedule A of Josh Collin's Affidavit filed September 21, 2023.

[17] The Vendors served the Monitor and all known creditors and shareholders with its application materials. Monitor's counsel provided notice to stakeholders previously registered for prior court applications. It also published its report accompanying this application on GTL's website.

[18] No one opposes the AVO. CanAm, an unsecured creditor, wants the Monitor to pay it even if I grant the AVO. The Sureties and EMCO Limited (EMCO) oppose the UESI Release. The Canada Revenue Agency (CRA), RBC and the Monitor all asked me to approve the AVO and the Releases contained in it.

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[19] I hereby approve:

(a) the AVO including the Releases as set out in the revised AVO provided to me by counsel at the end of the hearing;

(b) the Distribution Order; and

(c) an order sealing Schedule A of Josh Collins' Affidavit filed September 21, 2023.

FACTS

[20] I explained the background of this *CCAA* proceeding and the circumstances that gave rise to it in my previous oral decisions. I will not repeat all of that background today.

[21] ECC Group as of June 16, 2023, owes RBC, as principal secured creditor, about $5.7 million. It owes CRA about $4.98 million of which about $1.86 million is a deemed trust amount that ranked ahead of the RBC security.

[22] The ECC Group also owes secured equipment lenders about $1.36 million.

[23] Intact Insurance Company and Western Surety Limited (Sureties) provided construction bonding to CCL. They are unsecured creditors of ECC Group. They do hold indemnity agreements from UESI as I will describe in a moment.

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[24] Although not a debtor company under the *CCAA*, UESI, a company associated with the ECC Group, has:

(a) guaranteed the ECC Group's debts to RBC. RBC has a General Security Agreement dated in May 2005 and registered that month at the Newfoundland and Labrador Personal Property Registry (PPR);

(b) guaranteed CCL's account with EMCO. Although EMCO identified its claim, it did not tell me the outstanding amounts due. EMCO opposed the UESI Release;

(c) guaranteed CCL's fuel account with Energie Valero Inc. Valero did not make any submissions in this Motion; and

(d) indemnified the Sureties for any losses it suffers because of payments it makes under the construction bonds. Intact registered its indemnity at the PPR in March of 2022. Western registered its indemnity in December 2021. The Sureties oppose the UESI Release.

[25] Western Surety Limited claims it paid about $1.04 million in claims against its construction bonds and has outstanding claims against it of about $1.66 million. It also says it has incurred about $659,000 in legal fees and expenses.

[26] Intact Insurance Company claims it paid about $154,000 in claims under its construction bonds and has outstanding claims of about $1.31 million. It also says it has incurred about $164,000 in legal fees and expenses.

[27] As of July 31, 2022, UESI had shareholders equity, mostly in the form of retained earnings, of about $1.9 million. Its property and equipment was valued at about $1.7 million.

[28] The Monitor has completed the SISP. It describes a process it followed pursuant to the SISP in paragraph 62 of its Ninth Report. Despite its best efforts, the Monitor received no bids by the bid deadline.

[29] On that basis, the Monitor deemed that the stalking horse bidder, the Purchaser, was the successful bidder. The Vendors seek approval of sale to, the Purchaser. It seeks to implement the transaction through a proposed AVO.

[30] An AVO generally involves a series of steps whereby the Purchaser acquires the assets of the debtor company free and clear of any encumbrances or claims, other than those assumed by the Purchaser, as contemplated by s. 36(4) of the *CCAA*.

[31] The purchase price stands in place of the assets and is available to satisfy creditor claims in accordance with their pre-existing priority.

[32] In this case, the Purchaser, agreed to pay $6.9 million, subject to the adjustments for assets and assumed liabilities provided for in the APA. In particular, the Purchaser will acquire all of the assets of the Vendors including most ongoing contracts, excluding one with the Government of Newfoundland and Labrador. The Purchaser intends to initiate a process whereby the Purchaser will hire ECC Group's employees.

[33] The Purchaser will assume liabilities of about $340,000 to Newport Capital Corporation (an arm's-length entity but related by common control to the Purchaser) and the Placentia Mall Ltd. (a non-arm's-length entity). The Vendors and the Monitor refer to these entities, not subject to the *CCAA* proceedings, as the Third Party Sponsors.

[34] The Purchaser paid a $200,000 deposit to the Monitor on May 19, 2023. It will pay an additional deposit of $490,000 upon issuance of the AVO.

[35] Pillar Capital Corporation (Pillar) will fund $6.1 million of the cash component of the purchase price while UESI will fund $800,000.

[36] After or on closing, the Monitor will pay secured creditors about $8,946,958 as of June 16, 2023, by paying:

(a) $4,058,070 to RBC. The ECC Group, the Monitor, and RBC agreed to this amount in a confidential settlement agreement executed on June 16, 2023 (Settlement Agreement). $3,817,957 of this amount is due from ECC and the balance from FGC Holdings Ltd.;

(b) $1,885,494 to CRA for its deemed trust (This amount is now $2,079,198 in the Distribution Order). An additional amount of $347,743.63 is due from Classic Security Limited; and

(c) $1,362,094 to equipment lease holders.

[37] I will deal with the Distribution Order later in this decision.

[38] Secured creditors subordinate to RBC, and unsecured creditors will receive nothing.

[39] The payments to RBC will repay all mortgages, lines of credit, equipment leases, Visa overdraft balances, and certain accrued interest, which as of March 7, 2023. This excludes a mortgage on real property that another of the ECC Group will deal with.

[40] The Monitor will not repay RBC Highly Affected Sectors Credit Availability Program (HASCAP) loan secured by a 90% guarantee from the Business Develop Bank of Canada. It will not pay its protective disbursements (expenses incurred in enforcing its security) and the Canada Emergency Business Account (CEBA) loan of about $1.6 million.

[41] CRA will not receive any outstanding HST amounts or income taxes owed by the ECC Group sellers as these claims are subordinate to RBC and other secured creditors.

[42] The combined ECC Group and UESI asset value is about $8.37 million. Thus, there is about a $572,000 shortfall on the total secured and deemed trust debt due (and is more than this given that the CRA debt is more than what is set out in Josh Collins' Affidavit filed on September 21, 2023), assuming liquidation of assets at 100% of their values.

[43] To make up the shortfall on the secured debt and to pay other expenses, the Third Party Sponsors will make a contribution of about $1.8 million. This is made up as follows:

(a) A transfer of 11 acres of land in Point Verde appraised at $500,000 to support the Pillar financing;

(b) A transfer of land with an appraised value of $300,000 to support the Pillar financing;

(c) A subordination of Newport Capital Corporation and Placentia Mall Limited's first mortgage of certain equipment to support the financing; and

(d) A cash injection of $1,023,000 to pay Pillar's legal and loan fees and make up the remaining shortfall. UESI's $800,000 is included in this amount.

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[44] The Settlement Agreement also provides that:

(a) RBC, UESI, Josh Collins, and Frank Collins will provide mutual releases;

(b) the "Third-Party Sponsors have agreed to make such contributions… on the condition that UESI is released from the subordinated debts of ECC that existed prior to the *CCAA* proceedings";

(c) parties acknowledge that the ECC Group requires a release of UESI "as a Third-Party Sponsor in order for the proposed settlement scheme to work as it should"; and

(d) the Purchaser informed RBC and ECC Group that the asset sale is only viable if the Purchaser can operate the construction business as a going concern with the support of UESI.

[45] The Monitor recommends that the Purchaser's bid is in the best interests of the creditors and I should approve its acceptance.

[46] The Monitor says that, but for the contribution of UESI the Vendors' restructuring would not occur. If I do not approve the AVO, the Monitor says it is unlikely that the combined value of the assets of the ECC Group and UESI in a forced liquidation will exceed the outstanding amount owed to RBC and CRA.

[47] The parties agreed that the Vendors would ask me to approve the UESI Release as part of the transaction. If granted, UESI will not be liable for the contingent EMCO or the Surety Indemnity claims. The Vendors do not ask me to release the directors of UESI.

[48] The Purchaser will then own all of the Vendors' assets and liabilities. The Vendors retain its environmental obligations.

[49] It became apparent in argument, and in the Monitor and Vendors' filings, that the APA and AVO is a vehicle to allow for an eventual transition of the ownership of the Purchaser to the Collins family to allow it to continue to operate the construction business through the auspices of the Purchaser.

[50] Although the Purchaser is now 100% owned by an unrelated party, counsel tells me that it is likely that post-transaction the Collins family will eventually control the Purchaser. Monitor's counsel tells me that some of the Collins family have creditor issues with creditors that make it impossible to make this transition now.

[51] It is now clear that UESI operated as a proxy for the Collins family's construction business interests during the *CCAA* process. I will describe this later when I discuss the Releases.

[52] This AVO structure sees the Purchaser continue to operate the Collins construction business as a successor to CCL. It offers the possibility of continued employment for CCL employees.

[53] None of this can happen unless UESI can pay the $800,000. UESI says it will not pay it unless it receives the UESI Release.

[54] UESI's counsel and Josh Collins say it is an essential component of the transaction that I release UESI from the Surety Indemnities and the EMCO claim. The Vendors says I should order the UESI Release or UESI will be liable for construction claims arising from the default of CCL.

[55] Finally, the Monitor obtained a security review from its counsel, which concluded that the RBC security from the debtors is valid, enforceable, and effective against a trustee in bankruptcy.

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ISSUES

[56] The issues are, should I approve the:

(a) AVO;

(b) the AVO provisions providing the Releases; and

(c) order sealing Schedule A of Josh Collins' Affidavit, filed on September 21, 2023?

[57] I will first deal with whether I should approve the AVO.

ANALYSIS

Should I approve the AVO?

[58] I hereby approve the AVO. I will deal with the UESI Release in a moment.

[59] A successful *CCAA* process offers results in a plan of arrangement that creditors approve. However, s. 36(1) of the *CCAA* says, "A debtor company in respect of which an order has been made under this *Act* may not sell or otherwise dispose of assets outside the ordinary course of business unless authorized to do so by a court."

[60] Section 36 provides that shareholder approval is not necessary. Furthermore, it does not require creditor approval. Section 11 of the *CCAA* also gives me general authority. It provides, "[t]he court, on the application of any person interested in the matter, may … make any order that it considers appropriate in the circumstances."

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[61] Thus, creditors need not approve a sale of assets outside the ordinary course of business. An AVO is such a transaction. No one disputes that I have authority to approve an AVO. Many courts have approved these types of transactions on numerous occasions.

[62] Section 36 of the *CCAA* directs I consider:

(a) whether the SISP process leading to the proposed sale or disposition was reasonable in the circumstances;

(b) whether the Monitor approved the process leading to the proposed sale or disposition;

(c) whether the Monitor filed with the Court a report stating that in their opinion the sale or disposition would be more beneficial to the creditors than a sale or disposition under a bankruptcy;

(d) the extent to which the creditors were consulted;

(e) the effects of the proposed sale or disposition on the creditors and other interested parties; and

(f) whether the consideration for the assets is reasonable and fair, taking into account their market value.

[63] Additional factors apply if the AVO vests to a related person. Given the unusual circumstances of this case, I will also only approve the AVO if I am satisfied that:

(a) Good-faith efforts were made to sell or otherwise dispose of the assets to persons who are not related to the company; and

(b) the consideration is superior to the consideration under any other offer made in accordance with the process leading to the proposed sale or disposition.

[64] I will also consider the guidance in *Royal Bank of Canada v. Soundair Corporation* (1991), 4 O.R. (3d) 1, 7 C.B.R. (3d) 1 (C.A.), a case for the approval of the sale of assets in an insolvency, and the additional factors referred to in paragraph 38 of *Harte Gold Corp. (Re)*, 2022 ONSC 653, a case for the approval of a reverse vesting order. I consider many of the factors described in these cases applicable to an AVO.

[65] I need not consider all of these factors. Each need not support the issuing of the AVO. I use them to assist me in exercising the broad discretion I have under the *CCAA*.

[66] Finally, I will bear in mind the direction of the Supreme Court of Canada in *9354-9186 Québec Inc. v. Callidus Capital Corporation*, 2020 SCC 10 (at para. 49), when it said, "The discretionary authority conferred by the *CCAA*, while broad in nature, is not boundless. This authority must be exercised in furtherance of the remedial objectives of the *CCAA*. … Additionally, the court must keep in mind three 'baseline considerations' which the applicant bears the burden of demonstrating: (1) that the order sought is appropriate in the circumstances, and (2) that the applicant has been acting in good faith and (3) with due diligence."

[67] I find as follows:

(a) The Vendors have acted in good faith with due diligence. The Monitor is also of this opinion;

(b) The AVO produces an economic result at least as favourable as any other viable alternative. There are no other bids;

(c) No stakeholder is worse off under the AVO than it would have been under any other viable alternative. If the AVO fails, it is likely RBC will pursue its receivership motion and a receiver will sell the assets of the ECC Group at a liquidation sale;

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(d) The AVO better preserves the value of the Vendors' assets than this liquidation alternative;

(e) No stakeholder is worse off under the AVO than it would have been under any other viable alternative. Simply stated, there is no other alternative. A liquidation sale will hurt all creditors;

(f) Furthermore, the transaction contemplates the sale to a new corporate entity. Thus, the Vendors' shareholders receive no recovery of their investment;

(g) The SISP is reasonable in the circumstances. I find that the Monitor approved the SISP. The Monitor ran the SISP in a fair, open and transparent manner. The Monitor ran the process supported by the Vendors;

(h) The Monitor sufficiently canvassed the market. Third parties could participate in the sale process in a confidential manner. The SISP provided sufficient time for parties to express interest and evaluate the opportunity. The SISP was open to all parties;

(i) The process leading to the AVO was reasonable in the circumstances. The Monitor sought Court approval of the SISP. Creditors received notice of these applications. The Court process allowed secured creditors the opportunity to provide input to the Court on these processes. The SISP is not innovative or unique; and

(j) Many courts have approved similar sales processes. The use of the stalking horse bid is widely accepted in Canadian *CCAA* proceedings.

[68] I find that the Monitor made sufficient effort to obtain the best price. There is no evidence that the Vendors acted improvidently. I agree with the Monitor and find that the purchase price is fair and reasonable.

[69] The Monitor says that the proposed sale would be more beneficial to the creditors than disposition under a bankruptcy.

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[70] Bankruptcy would jeopardize the possibility of future operations. As structured, the Purchaser will continue CCL's relationship with UESI. A bankruptcy would destroy this form of a going-concern sale and thereby risk the sale or reduce the purchase price.

[71] A bankruptcy sale would delay and perhaps jeopardize the sale. Before an AVO can be approved under a bankruptcy, Vendors must be bankrupt, a meeting of creditors must be held, inspectors must be appointed, and they must approve the sale. Thus, this transaction will provide a superior recovery for creditors than would a liquidation of the Vendors' assets in bankruptcy.

[72] The Monitor did consult with CRA and other secured creditors. I have no evidence if it consulted with unsecured creditors. I do know that it did not consult with the Sureties on the APA or the Settlement Agreement.

[73] Although there is no obligation for the Monitor to consult with creditors who will receive nothing, it is good practice that they do so.

[74] In this case, I find that the lack of consultation did not have a material effect on the Sureties' position. They are to receive, and were likely always to receive, nothing in this *CCAA* proceeding.

[75] Given that the APA and the AVO intend to support a transaction whereby the Collins family may eventually gain control of the Purchaser and continue the CCL business through this company, I must be satisfied that:

(a) good-faith efforts were made to sell or otherwise dispose of the assets to persons who are not related to the company; and

(b) the consideration is superior to the consideration under any other offer made in accordance with the process leading to the proposed sale or disposition.

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[76] I find that the Monitor did make good-faith efforts to sell the assets to the public. The use of the stalking horse bid does not create any assumption that this is not so. Since there was no other bid, arm's length or otherwise, the Purchaser's bid is inherently superior.

[77] Furthermore, the proposed transaction has the prospect of renewed employment for some of the CCL employees. It has the prospect of providing ongoing business opportunities for suppliers of goods and services to the construction business.

[78] The AVO will provide an expedient efficient transfer of Vendors' intangible assets to the Purchaser. This would support a timely continuation of the construction business through the auspices of UESI and the Purchaser. This will provide an opportunity for employees, stakeholders, and the unsecured creditors to engage with the new business. The Monitor says, and I agree that this will benefit the local community.

[79] Finally and importantly, the Monitor supports the use of the AVO.

[80] The AVO will:

(a) provide for timely, efficient and impartial resolution of the Vendors' insolvency;

(b) preserve and maximize the value of the Vendors' assets;

(c) ensure a fair and equitable treatment of the claims against the Vendors;

(d) protect the public interest and have the potential to preserve employment and third-party suppliers and service providers; and

(e) Balance the costs and benefits of Vendors' restructuring.

[81] For all these reasons, I find the proposed AVO is necessary to achieve the clear benefits of the purchase and that it is appropriate to approve this transaction in the circumstances. I find there is no reason to exempt CanAm from the operation of this order, and I dismiss its request to do so. I now turn to whether I should approve the Releases.

Should I approve the AVO provisions providing for the Releases?

[82] I approve the Releases. No one disputes most of the Releases. The only dispute is whether I should order the UESI Release. Notably, no one asks me to release UESI's directors or any of the Collins family in their personal capacity (other than in their roles as directors, officers or employees of the Vendors).

[83] The Releases will cover any present and future claims against the released parties based on any fact, or matter, or occurrence in respect of the purchase transaction. It does not release any claim for fraud or willful misconduct. It does not release any claim that I may not release pursuant to s. 5.1(2) of the *CCAA*. It does not release any environmental liability to the Government of Newfoundland and Labrador (GNL).

[84] I find that the Releases are reasonable and appropriate in the circumstances.

[85] I base my decision on an assessment of s. 5.1 of the *CCAA* and the factors taken from *Lydian International Limited (Re),* 2020 ONSC 4006 (at para. 54) , and from my decision in *PricewaterhouseCoopers Inc. v. Canadian Fluorspar (NL) Inc*., 2023 NLSC 88.

[86] Justice Morawetz in *Target Canada Co., Re,* 2016 ONSC 3651, gave an oral judgement on approval of the plan of arrangement under the *CCAA*. One of the issues was the matter of providing releases to Target Corporation (the U.S. parent of the Canadian entity), one of the "Plan Sponsor Released Parties."

[87] Target was not a debtor under the *CCAA*. At paragraph 40 he says, "It is not uncommon for *CCAA* courts to approve third-party releases in favour of a person … who could assert contribution and indemnity claims against the debtor company." He considered the economic contributions made by Target Corporation as a plan sponsor. He gave the third-party release. The Court did preserve Target Corporation guarantees of certain landlord claims for reasons not applicable here.

[88] I find this case supports the proposition that I have authority to issue a third-party release. I will consider the following factors:

(a) Whether the parties to be released from claims were necessary and essential to the restructuring of the debtor;

(b) Whether the claims to be released were rationally connected to the purpose of the plan and necessary for its success;

(c) Whether the plan could succeed without the Releases;

(d) Whether the parties being released were contributing to the AVO; and

(e) Whether the Releases will benefit the debtors as well as the creditors, generally.

[89] Again, I need not consider all of these factors. Each need not support the issuing of the Releases. I use the factors to assist me in exercising the broad discretion I have under the *CCAA*.

[90] No one says that the Releases do not meet this criteria, other than the one to UESI. I find that each of the Monitor, the Purchaser, the Vendors, and their current and former directors, officers, employees, legal counsel and advisors, met these criteria and I hereby order their release.

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[91] With respect to the UESI Release, no one seriously disputes that the UESI Release satisfies consideration (a), (b) or (d). Stated simply, without the UESI contribution as I described in this judgement, the *CCAA* process could have unfolded in a very different fashion.

[92] This proceeding is notable in that there is no Debtor in Place financing (DIP). In many ways, the CCL avoided DIP financing by the following mechanism.

[93] After the commencement of the *CCAA*, UESI became the contracting party in its first major contract, the so-called Boskalis Contract in Argentia. CCL had negotiated much of this contract before the *CCAA*, however, CCL could not obtain bonding because of its insolvency and because of the claims of Intact and Western.

[94] The parties enter into an arrangement whereby UESI and an independent third party obtain bonding for that contract. UESI became the contracting party and split the proceeds: 8% to the independent third party, and 92% to UESI. From the 92%, UESI rented equipment from ECC Group at market rates.

[95] The same parties entered into an Argentia road-widening contract on similar terms. In this contract, UESI provided cash security in lieu of bond.

[96] UESI also assumed CCL employee obligations and discharged payroll obligations. Josh Collins acted as the construction manager. The net result is that UESI facilitated allowing ECC Group to survive the *CCAA* proceeding without DIP financing. I will discuss this in more detail later.

[97] This structure allowed for:

(a) UESI to use profits from the work to pay CRA and RBC settlement amounts; and

(b) the Collins family's core construction business to remain intact, even though UESI operated it using CCL equipment and its former employees. UESI completed both projects July 2023.

[98] Thus in addition to the $800,000 contribution toward the AVO, UESI was instrumental in allowing the *CCAA* proceeding to continue thereby maintaining ECC Group's core assets and employees. This, in turn, allows the Vendors to transfer employees and equipment to the Purchaser, which will eventually become the Collins family construction business vehicle. All of this alleviated the need for DIP financing.

[99] I find that the released parties' efforts directly lead to the AVO and the sale of the enterprise. Thus, there is cash available to satisfy some creditor claims. If I do not grant the UESI Release, there is a risk that the Purchaser might not proceed. If the Purchaser does proceed, it might reduce the purchase price.

[100] The plan is that the Collins family construction business will transition to another corporate vehicle. It will continue to provide employment. It will provide benefits to suppliers and the larger community. The Releases help achieve the purposes of a *CCAA* proceeding, which includes maximizing creditor recovery and preserving continued employment in a restructured enterprise. Therefore, I find that the Releases connect rationally to the restructuring.

[101] Thus, I find that the released parties made significant contributions to the Vendors' restructuring, both prior to and throughout these *CCAA* proceedings.

[102] Furthermore, the Sureties' claims related to CCL construction defaults. These liabilities contributed to the CCL insolvency.

[103] In this case, it would be impossible to restructure CCL under the *CCAA* if I do not release the Sureties' indemnities.

[104] This case is unusual in that UESI could have participated in the *CCAA* proceeding as a debtor. In that case, the indemnitor could have compromised the Sureties' claim in a more straightforward manner.

[105] If this did occur, it is unlikely that UESI could have contributed to the Collins construction business in the manner I just described. In particular, it would have been difficult if not impossible for UESI to enter into new contracts. It would have been difficult for it to provide bonding.

[106] UESI will continue to provide bonding support and employees for the short term after the AVO. This will allow the Purchaser the potential to continue the CCL construction business as a going concern. This contribution helped facilitate RBC and CRA payments. This contribution presumably facilitated their support for the AVO.

[107] The Sureties did not seriously contest these facts.

[108] The Sureties say there is no evidence that the purchase will not close if I deny the UESI Release. They say that if this was so, the APA would have a condition precedent that the debtors arrange for the UESI Release. It did not. They argue that if UESI was critical to the continued operation as a going concern of the Collins family construction business through the vehicle of the Purchaser, the APA would have said so.

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[109] The Sureties acknowledge that if the AVO fails they will likely receive nothing. Sureties' counsel did not disagree with the Monitor's contention that there would be insufficient funds to repay both CRA's and the RBC's secured debt.

[110] When I asked Sureties counsel what his clients want, he said they want more than nothing. Thus the Sureties do not oppose the AVO but want more money.

[111] The Sureties say there is no evidence that the Purchaser will not close without the UESI Release. Although this is the Sureties view, I must consider whether UESI will make the $800,000 contribution without a release and, if not, whether RBC or CRA consent to the transaction without the $800,000 injection.

[112] I can only conclude that the parties mean what they say. RBC has compromised its claim significantly. CRA is entitled by law to the deemed trust amount. This is a carefully negotiated settlement, which balances the amounts paid to principal secured creditors with the risk inherent in demanding that UESI contribute $800,000, while still assuming significant liabilities for CCL residual operations.

[113] The Sureties suggest then that I should force RBC into a high-stakes negotiation knowing that if UESI refuses to contribute without a release RBC will suffer a significantly greater loss.

[114] Fundamentally, the Sureties are and have always been in a second position behind RBC with respect to UESI assets. RBC is in a second position behind CRA with respect to CCL assets. The two creditors with the strongest claims, who under any reasonable scenario are entitled to all the proceeds of a liquidation sale have compromised their claims.

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[115] In a complex settlement agreement with many moving parts, it is not practical to pull out one piece and expect the transaction to survive. In the end, the Sureties are unsecured creditors of CCL.

[116] Thus, the Sureties want to evoke a nuclear option that if they do not receive, as counsel said, "something more than nothing" the secured creditors will suffer.

[117] This is an unusual case. This transaction has the potential for the Collins family to continue the business under the auspices of what is now a third party Purchaser.

[118] Unusually, the ECC Group navigated the *CCAA* without DIP financing. Because RBC has security over UESI assets, and CCL business could not continue without bonding, UESI stepped into contributing in the manner it did rather than as a DIP lender. Thus, UESI could not obtain the DIP priority position they might have had under the *CCAA*.

[119] Finally, the Sureties say the Vendors did not consult them on the AVO or the Settlement Agreement.

[120] Although there is no obligation for the Monitor to consult with creditors who will receive nothing, it is good practice that they do so.

[121] However, I find that the lack of consultation did not have a material effect on the Sureties' position. They are to receive, and were likely always to receive, nothing in this *CCAA* proceeding.

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[122] In all the circumstances, I find the that:

(a) the Releases are fair and reasonable;

(b) the released claims rationally connect to the restructuring;

(c) the released parties are necessary and essential to the restructuring of the Vendors; and

(d) the released parties contributed to the restructuring.

[123] With respect to the other releases, the Monitor, Purchaser and Vendors are unaware of any claims against them or their advisors related to these *CCAA* proceedings. Therefore, the Releases should not materially prejudice any stakeholders.

[124] Furthermore, that the Releases are sufficiently narrow, any environmental liabilities to the GNL are unaffected. The Releases do not affect claims referred to in s. 5.1(2) of the *CCAA* or claims arising from fraud or willful misconduct.

[125] The scope of the Releases is sufficiently balanced. It allows the released parties to move forward with the transaction and to conclude these *CCAA* proceedings.

[126] The Monitor and its counsel served creditors with materials relating to this Motion in accordance with the process set out in the AIROs.

[127] The Monitor included the form of the Releases in the draft AVO. This provided stakeholders with ample notice and time to raise concerns with RBC or the Monitor. Only the Sureties and EMCO objected. The Sureties conceded that I had the power to order these Releases.

[128] I find that the Releases are fair and reasonable. Because of the unusual circumstances of this case, the willingness of the Court to give third-party releases like the UESI Release has little precedential value. I now turn to the Distribution Order.

Distribution Order

[129] Given that I approved the AVO, I also approve the Distribution Order as it relates to the Vendors. The Distribution Order provides that the Monitor will pay $2,079,198 to CRA, and $3,817,957 to RBC.

[130] The Monitor will make a motion approving the distribution of $240,103 to RBC for FGC Holdings Limited, and $347,742.63 to CRA for Classic Security Limited. I will hear the Motion at 9:30 a.m. on November 6, 2023.

[131] Appendix L of the Monitor's Ninth Report contains details of the complete distribution. I now turn to whether I should seal Schedule A of Josh Collins' Affidavit, filed on September 21, 2023.

Should I Approve the Order Sealing Schedule A of Josh Collins' Affidavit, Filed on September 21, 2023?

[132] I hereby seal Schedule A of Josh Collins' confidential Affidavit filed on September 21, 2023. I have the authority to grant such sealing order (See *Sports Villas Resort Inc. (Re)*, 2020 NLSC 109).

[133] At the hearing, I ordered that the Vendors provide the Sureties with parts of Schedule A, the UESI Balance Sheet and "Breakdown of the Outstanding Debts." I did not order the disclosure of the appraisals contained in that schedule.

DY

[134] I also find that the extent of the sealing order required is the minimum that will preserve the confidentiality of the financial information. No less onerous sealing order is suitable in the circumstances.

Other Observations

[135] Finally, I will comment about the way the Monitor and the Vendors presented this Motion to the Court.

[136] It was not apparent that the ultimate objective of this transaction is that the Collins family will eventually acquire the Purchaser. The Monitor and the Vendor described the form of the transaction clearly, but not its substance.

[137] Ultimately, one had to read between the lines that the Purchaser was in effect a proxy for the Collins family interests. Monitor's counsel explained, and I accept, that this was a consequence of counsels' intense focus on the details of the transaction. This focus caused them to assume that the ultimate purpose was obvious to me.

[138] While I appreciate the efforts made by the Monitor and the Vendor's counsel during the hearing to address my concerns, debtors and monitors should be mindful that they should transparently and plainly describe a transaction so it is understandable to the public and to the Court.

ALEXANDER MACDONALD
Justice

Appendix D

SCHEDULE "A"
Distribution Waterfall

ECC

- CRA for the Deemed Trust - $2,127,873 (or $1,829,821 after application of the $250,000 in life insurance proceeds, and the balance of the Humber Arm South claim in the estimated amount of $48,052);
- Province of Newfoundland and Labrador HAPSET - $56,297;
- RBC Real Estate Mortgages (except for the 26 Lakeview property discussed below) - $926,233;
- RBC Lines of Credit, Equipment Loans, Visa, Overdraft - $2,891,734;
- Bank of Nova Scotia - $15,675;
- De Lage Landen Financial Services Canada Inc. - $112,079;
- Daimler Truck Financial - $297,867;
- Honda Financial - $10,158;
- John Deere Financial - $764,053; and
- Wells Fargo - $219,189.

Not in priority to RBC (none contemplated)

No other creditor is contemplated to receive any funds.

Classic Security Ltd. ("**Classic**")

CRA will get the entire net proceeds from the sale of the condominium owned by Classic and no other creditor is contemplated to receive any funds.

FGC Holdings Ltd. ("**FGC**")

The refinancing by Townshend is meant to pay all known creditors of FGC as follows:

- RBC (mortgage on the 26 Lakeview property) - $240,103
- CRA – HST - $19,402
- CRA – Corporate Tax - $15,065
- AP - $5,000 (estimate)
-

$65,000

H&E Designs Ltd. ("**H&E**")

There is the possibility of a sale of a lot for $70,000 by H&E. Based on discussions with realtors and appraisals, the contemplated value is a satisfactory value. As RBC has a mortgage on this property, the net proceeds would flow to RBC, subject to any property taxes and the evaluation of CRA's position.

ECCL et. al.
Stalking Horse - Distribution analysis

Draft for discussion purposes only

ECCL, H&E Design, 51037			RBC		Notes
Proceeds:					
Pillar	6,100,000				Confirmed with the commitment letter.
Financial contributors	800,000				This should be $800,000. Together with Financial Contributors makes up the $6.9 million stalking horse offer.
ECC contribution	205,000				
Total		**7,105,000**			
Disbursements:					
CRA	2,127,873				Agreed - CRA's deemed trst claim
Province of NL - HAPSET	56,297				Agreed - HAPSET amount (note based on Company filings)
RBC - Real estate	926,233		926,233		Agreed - March 7 balance of 30 Reids Lane ($293,903.43) + 3 Lakeview ($320,652.03) + Morrisey's ($311,667.77)
RBC - Lines of credit, Visa, Overdraft	2,891,734		2,891,734		Agreed - Using March 7 balance of other loans and $50k estimate of accruing interest/charges
Bank of Nova Scotia	15,675				Agreed with our most current numbers.
De Lage Landen	112,079				Agreed with our most current numbers. Note this is after the disclaimer.
Daimler Truck Financial	297,867				Agreed with our most current numbers.
Honda Financial	10,158				Agreed with our most current numbers.
John Deere Financial	764,053				Agreed with our most current numbers.
Wells Fargo	219,189				Agreed with our most current numbers. Note this is after the disclaimer.
Total		**7,421,158**			
Net Balance		**-316,158**			
Other Proceeds:					
Life insurance	250,000				Agreed - in trust
Humber Arm South claim	48,675				Agreed - in trust - will be paid to CRA pursuant to the ARIO but will reduce the CRA be an equivalent amount and net $Nil impact
Other ECCL cash					This is being purchased by the Stalking Horse Bidder. Assumes ECC continues its financial performance of essentially breaking even after accounting for the cost of the CCAA proceeding.
Total		**298,675**			
Closing Balance		**-17,483**	3,817,967	A	This number will change - continuing lease payments will reduce the disbursements. The intent is to pay out RBC for those debts as of March 7.

FGC			RBC		Notes
Proceeds:					
Townshend - refinancing	315,000				Sign commitment letter is for $315k.
Total		**315,000**			
Disbursements:					
RBC	240,103		240,103		Agreed to March 7
CRA	19,402				
CRA	15,065				
AP	5,000				
Total		**279,570**			
Closing Balance		**35,430**	240,103	B	

4,058,070	C = A + B
1,000,000	HASCAP Claim, subject to BDC approval.
5,058,070	**Total realization before protective disbursements and other matters.**
	Whats not in:
120,000	CEBA
83,175	Classic Overdraft (17,630.79) and Classic Royal Credit Line ($65,543.94)
484,351	Protective Disbursements - March 7

Edward Collins Contracting Ltd., FGC Holdings Ltd., H&E Designs Ltd., 51037 NL Inc.

Sales and Investment Solicitation Process - May 17, 2023

Sources of Funds:			
			Note:
Newco Bid - Stalking Horse Offer	6,955,000		
FGC Refinancing	240,103		1
Assumption of Liabilities - Ongoing Contracts	1		
Refinancing Proceeds		**$ 7,195,104**	
Total Funds		**$ 7,195,104**	
Paid Out Debt:			
RBC Real Estate Mortgages:			
30 Reids Lane	293,903	926,223	
3 Lakeview	320,652		
Morrissey's Place	311,668		
26 Lakeview	240,103		
		$ 1,166,326	
Equipment Buyouts by Lender:			
Bank of Nova Scotia	15,675		
Brandt Finance	-		
Caterpillar Financial	-		
CWB National Leasing	-		
De Lage Landen Financial Services Canada Inc.	112,079		
Daimler Truck Financial	297,867		
Honda Financial	10,158		
John Deere Financial	764,053		
Wells Fargo	219,189		
		$ 1,419,020	
RBC Loans + Other:			
Line of Credit (ECC + 51037)	1,063,061		
RBC Equipment	1,569,965		
Visa (ECC + 51037)	207,331		
Overdraft	1,377		
Est. Fees & Interest	50,000		
		$ 2,891,734	2
Payroll Taxes:			
CRA Payroll Deemed Trust - ECC	2,127,873		3
Less - Funds Held in Trust	(250,000)		
Less - Humber Arm South	(48,052)		
Province of NL HAPSET - ECC	56,297		
		$ 1,886,118	
Total Debt to Pay Out		**$ 7,363,197**	
Cure Costs:			
Outstanding Equipment Lease	-		4
Claim for RBC Protective Disbursements	-		5

		$ -
Total Use of Refinancing		**$ 7,363,197**
Net Surplus (Deficit) from Refinancing		**$ (168,093)**
Cash From Company to Close Funding Gap		
Payment from ECC	205,000	
		$ 205,000
Net Funding Surplus (Deficit)		**$ 36,907**

Summary of RBC Payout:		
Refinanced:		
Mortgages	$ 1,166,326	
Line of Credit (ECC + 51037)	1,063,061	
RBC Equipment	1,569,965	
Visa (ECC + 51037)	207,331	
Overdraft	1,377	
HASCAP	-	
Est. Fees & Interest	*50,000*	
		4,058,060
Not Refinanced:		
~~HASCAP~~	~~1,036,958.90~~	
Protective Disbursements	484,351.33	
CEBA	120,000	
		1,641,310
Total RBC Debt		**$ 5,699,370**

Notes:

1. Separate refinancing will be obtained to pay out FGC loans.
2. HASCAP loan is assumed to not be paid out.
3. Based on deemed trust claim filed by CRA on March 14, 2023.
4. Assumes all equipment leases will be bought out. If leases are assumed cure costs will be required.
5. Professional fees incurred by RBC excluded.

Appendix E

March 7, 2023

ROYAL BANK OF CANADA
Special Loans & Advisory Services
1 Place Ville-Marie
9th Floor, West Wing
Montreal, Quebec H3C 3A9

ACCOUNT STATEMENT

EDWARD COLLINS CONTRACTING LIMITED balances owing as at March 7, 2023

Royal Credit Line loan # 80095250-001

- Principal $1,008,342.00
  Accrued interest $1,827.45
  Balance due ....$ 1,010,169.45
  Daily interest ....$ 261.06

Term Loan # 80095250-002

- Capital ....$ 275,000.00
  Accured interest ....$ 18,903.43
  Balance due..........$ 293,903.43
  Daily interest ....$ 65.55

Term loan # 80095250-004

- Capital .... $ 297,724.38
  Accrued interest $6,882.57
  Penalty..........$ 16,045.08
  Balance due $320,652.03
  Daily interest ....$ 27.98

Term loan HASCAP # 80095250-005

- Capital .... $ 1,000,000.00
  Accrued interest ....$ 26,958.90
  Penalty..........$ 10,000.00
  Balance due ....$ 1,036,958.90
  Daily interest ....$ 109.59

Term loan # 21035242-001

- Capital .... $ 10,645.12
  Accrued interest .... $ 0.00
  Balance due ....$ 10,645.12
  Daily interest .... $ 0.00

Term loan # 33039620-001

- Capital .... $ 3,520.01
  Accrued interest ....$ 131.38
  Balance due ....$ 3,651.39
  Daily interest .... $ 0.48

Term loan # 33157315-001

- Capital .... $ 1,886.05
  Accrued interest ....$ 70.39
  Balance due ....$ 1,956.44
  Daily interest .... $ 0.26

Term loan # 33194060-001

- Capital .... $ 15,937.31
  Accrued interest ....$ 636.22
  Balance due ....$ 16,573.53
  Daily interest .... $ 2.18

Term loan # 33308694-001

- Capital .... $ 16,142.16
  Accrued interest ....$ 620.12
  Balance due ....$ 16,762.28
  Daily interest .... $ 2.21

Term loan # 34410804-001

- Capital .... $ 6,656.59
  Accrued interest ....$ 253.90
  Balance due ....$ 6,910.49
  Daily interest .... $ 0.91

Visa Term loan # 80095250-019

- Capital $115,646.01
  Accrued interest $6,562.87
  Balance due $122,208.88
  Daily interest $63.34

Visa Term loan # 80095250-020

- Capital $38,579.17
  Accrued interest $1,758.06
  Balance due $40,337.23
  Daily interest $21.13

Balance Visa Facility

- **Balance due $6,279.96**

CEBA loan

- **Balance due ....$ 60,000.00**

Balance Leasing Facility #37024

- **Balance due (GST & QST $21,763.07)..$166,850.22**

Balance Leasing Facility # 49117

- **Balance due (GST & QST $ 10,548.51)..$80,871.92**

Balance Leasing Facility # 52744

- **Balance due (GST & QST $ 20,094.05)..$154,054.36**

Balance Leasing Facility # 55085

- **Balance due (GST & QST $ 0.00)..$ 1,072,179.13**

Balance Leasing Facility # 56551

- **Balance due (GST & QST $ 5,153.07)..$39,506.90**

Professional fees

- **Balance due ....$ 468,279.81**

Total…………………………………………………………………………………$ 4,928,891.48

Maria Liparota
Associate Accounts Manager

March 7, 2023

ROYAL BANK OF CANADA
Special Loans & Advisory Services
1 Place Ville-Marie
9th Floor, West Wing
Montreal, Quebec H3C 3A9

ACCOUNT STATEMENT

H & E DESIGNS LTD – balances owing as at March 7, 2023

Term loan # 47158614-003

- Capital .... $ 290,000.00
  Accrued interest .... $ 21,667.77
  Balance due .... $ 311,667.77
  Daily interest .... $ 73.10

Total.. $ 311,667.77

Maria Liparota

Maria Liparota
Associate Accounts Manager

ROYAL BANK OF CANADA
Special Loans & Advisory Services
1 Place Ville-Marie
9th Floor, West Wing
Montreal, Quebec H3C 3A9

March 7, 2023

ACCOUNT STATEMENT

51037 NEWFOUNDLAND AND LABRADOR INC– balances owing as at March 7, 2023

Account # 09403-1003557

- Overdraft .... $(1,377.16)

Royal Credit Line loan # 21203542-001

- Principal .... $ 52,785.16
  Accrued interest .... $ 106.44
  Balance due .... $ 52,891.60
  Daily interest .... $ 13.30

Visa loan # 21203542-005

- Capital .... $ 37,166.54
  Accrued interest .... $ 997.40
  Balance due .... $ 38,163.94
  Daily interest .... $ 20.35

Balance Visa Facility

- **Balance due .... $ 340.62**

CEBA loan #

- **Balance due .... $ 60,000.00**

Total........ $ 152,773.32

Maria Liparota

Maria Liparota
Associate Accounts Manager

Appendix F

	Calculation	Distribution Order	Settlement Agreement			
RBC Real Estate Mortgages:						
30 Reids Lane	293,903	293,903	293,903	March 7 Payout		
3 Lakeview	320,652	320,652	320,652	March 7 Payout		
Morrissey's Place	311,668	311,668	311,668	March 7 Payout		
	$ 926,223	**$ 926,223**	**$ 926,223**			
RBC Loans + Other:						
Line of Credit						
ECC - Royal Credit Line	1,010,169	1,010,169	1,010,169	March 7 Payout		
51037 NL Inc. - Royal Credit Line	52,892	52,892	52,892	March 7 Payout		
RBC Equipment						
Term Loan 2015 Chev 1500	10,645	10,645	10,645	March 7 Payout		
Term Loan 2018 Chev 1500	3,651	3,651	3,651	March 7 Payout		
Term Loan 2018 Chev 1500	1,956	1,956	1,956	March 7 Payout		
Term Loan 2018 Chev 2500	16,574	16,574	16,574	March 7 Payout		
Term Loan 2018 Chev 2500	16,762	16,762	16,762	March 7 Payout		
Term Loan 2018 Chev 2500	6,910	6,910	6,910	March 7 Payout		
Lease 37024 Western Star x 2	166,850	166,850	166,850	March 7 Payout		
Lease 49117 2009 Caterpillar	80,872	80,872	80,872	March 7 Payout		
Lease 52744 Roadtec etc.	154,054	154,054	154,054	March 7 Payout		
Lease 55085 Asphalt Plant	1,072,179	1,072,179	1,072,179	March 7 Payout		
Lease 56551 McCloskey C44	39,510	39,510	39,510	March 7 Payout		
Visa						
ECC - Visa Term Loan	122,209	122,209	122,209	March 7 Payout		
ECC - Visa Term Loan	40,337	40,337	40,337	March 7 Payout		
ECC - Visa Facility	6,280	6,280	6,280	March 7 Payout		
51037 NL Inc. - Visa Facility	38,164	38,164	38,164	March 7 Payout		
51037 NL Inc. - Visa	341	341	341	March 7 Payout		
Overdraft						
51037 NL Inc. - Overdraft	1,377	1,377	1,377	March 7 Payout		
Protective Disbursements	25,000	50,000	50,000	ECC RBC Settlement Dispute		
	$ 2,866,734	**$ 2,891,734**	**$ 2,891,734**			
ECC (A)	**$ 3,792,957**	**$ 3,817,957**	**$ 3,817,957**	$	(25,000)	Error in distribution order
FGC (B)	**$ 240,103**	**$ 240,103**	**$ 240,103**			
Total (A+B)	**4,033,060**	**4,058,060**	**4,058,060**		(25,000)	Error in the settlement agreement (paragraph G)

Appendix G

Clarke, Phil

From: Clarke, Phil
Sent: September 25, 2023 5:57 PM
To: Caitlin Fell; Neil L. Jacobs; Darren O'Keefe
Cc: Steve McLaughlin
Subject: RE: ECCL Settlement Agreement

All:

Heading to the airport but I am around tomorrow morning. My analysis was flawed as it had a protective disbursement amount of $50,000 in the $2,891,734.

I have read the settlement agreement and something is not clear. Here is my question – does paragraph G, the Distribution Amount, include Protective Disbursements noted in F, or exclude them? Ie is the payment to RBC the sum of F and G, or does G include F?

RBC Debt (excluded disbursements) - $4,008,070 as of March 7, 2023:

If:

- The total protective disbursements agreed is $25k then the total payment to RBC is $4,033,070.
- The total protective disbursement agreed is $25k OVER the $50k included then the total payment to RBC is $4,083,070
- The payment in G does not include F, then G is $4,008,070.

This excludes any distribution for the H&E Lot 7.

Cheers,

Phil Clarke | Partner
Grant Thornton LLP
Nova Centre, North Tower | Suite 1000 - 1675 Grafton Street | Halifax | NS | B3J 0E9
T +1 902 420 7191 | **F** +1 902 420 1068
E Phil.Clarke@ca.gt.com | **W** http://www.grantthornton.ca/

From: Clarke, Phil
Sent: September 25, 2023 4:45 PM
To: Caitlin Fell <cfell@reconllp.com>; Neil L. Jacobs <njacobs@stewartmckelvey.com>; Darren O'Keefe <dokeefe@okeefesullivan.com>

Clarke, Phil

From:	Caitlin Fell <cfell@reconllp.com>
Sent:	September 25, 2023 6:16 PM
To:	Clarke, Phil
Cc:	Neil L. Jacobs; Darren O'Keefe; Steve McLaughlin
Subject:	Re: ECCL Settlement Agreement

Steve/Neil- can you advise what numbers you have on your end?

Sent from my iPad

RECON
RECONSTRUCT LLP

Caitlin Fell
Partner
T |416.613.8282
C |416.258.5843
E |cfell@reconllp.com

Reconstruct LLP | Restructuring and Litigation Lawyers
200 Bay Street | Suite 2305 | Box 120 |Toronto ON M5J 2J3

On Sep 25, 2023, at 6:27 PM, Clarke, Phil <Phil.Clarke@ca.gt.com> wrote:

All:

Heading to the airport but I am around tomorrow morning. My analysis was flawed as it had a protective disbursement amount of $50,000 in the $2,891,734.

I have read the settlement agreement and something is not clear. Here is my question – does paragraph G, the Distribution Amount, include Protective Disbursements noted in F, or exclude them? Ie is the payment to RBC the sum of F and G, or does G include F?

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Cheers,

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E Phil.Clarke@ca.gt.com | **W** http://www.grantthornton.ca/

Clarke, Phil

From: Neil L. Jacobs <njacobs@stewartmckelvey.com>
Sent: November 10, 2023 9:15 AM
To: Clarke, Phil; Steve McLaughlin; Darren O'Keefe
Cc: Neil L. Jacobs
Subject: ECC - RBC Distribution Amount

AUTION: EXTERNAL EMAIL. DO NOT CLICK ON LINKS OR OPEN ATTACHMENTS YOU DO NOT TRUS
DO NOT ENTER YOUR GT PASSWORD ON ANY EXTERNAL EMAIL REQUEST

Phil and Darren,

We have discussed this internally and with the client (RBC) who is not happy with the numbers being confirmed at this late time and different than in the order of Justice MacDonald .

We need to clarify same internally but need to understand ECCL's position on H & E as set out in para. G. to the Settlement Agreement as signed by my client. Are we correct that we get the Distribution Waterfall, $25 k Protective Disbursement and H & E ($65k less property taxes of $1800) as our Distribution Amount per the Settlement Agreement (per paras. F and G) and can you confirm the Amounts so that we are speaking the same language as RBC views the Order of Justice MacDonald and the Settlement Agreement and Release to be clear on these matters.

Regards,
Neil

Neil L. Jacobs, K.C.
Partner
Stewart McKelvey
D: 709.570.8888
C: 709.690.5999

From: Clarke, Phil <Phil.Clarke@ca.gt.com>
Sent: Wednesday, November 8, 2023 12:03 PM
To: Steve McLaughlin <Steven.J.McLaughlin@parthenon.ey.com>; Neil L. Jacobs <njacobs@stewartmckelvey.com>; Darren O'Keefe <dokeefe@okeefesullivan.com>
Subject: ECC - RBC Distribution Amount

This is an external email.

All:

I think the RBC settlement amount on the ECC distribution order should be $3,792,957, being the March 7 payout amount of $3,767,957 plus $25,000 for protective disbursements. FGC is $240,103. Nothing from Classic.

Total between the 2 for RBC is $4,033,060.

Calculation is attached together with the supporting RBC payout statements.

The ECC distribution order has $3,817,957 (also attached). It should be $3,792,957.

Darren / Neil – I will leave it to you both to determine the path forward.

Cheers,

Phil Clarke | Partner
Grant Thornton LLP
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T +1 902 420 7191 | **F** +1 902 420 1068
E Phil.Clarke@ca.gt.com | **W** http://www.grantthornton.ca/

GrantThornton

Clarke, Phil

From: Clarke, Phil
Sent: November 10, 2023 9:18 AM
To: 'Neil L. Jacobs'; Steve McLaughlin; Darren O'Keefe
Subject: RE: ECC - RBC Distribution Amount

Thanks Neil – I will leave those discussions/agreements to RBC/ECCL.

Phil Clarke | Partner
Grant Thornton LLP
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T +1 902 420 7191 | **F** +1 902 420 1068
E Phil.Clarke@ca.gt.com | **W** http://www.grantthornton.ca/

GrantThornton

From: Neil L. Jacobs <njacobs@stewartmckelvey.com>
Sent: November 10, 2023 9:15 AM
To: Clarke, Phil <Phil.Clarke@ca.gt.com>; Steve McLaughlin <Steven.J.McLaughlin@parthenon.ey.com>; Darren O'Keefe <dokeefe@okeefesullivan.com>
Cc: Neil L. Jacobs <njacobs@stewartmckelvey.com>
Subject: ECC - RBC Distribution Amount

Phil and Darren,

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Regards,
Neil

Neil L. Jacobs, K.C.
Partner
Stewart McKelvey
D: 709.570.8888
C: 709.690.5999

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Sent: Wednesday, November 8, 2023 12:03 PM
To: Steve McLaughlin <Steven.J.McLaughlin@parthenon.ey.com>; Neil L. Jacobs <njacobs@stewartmckelvey.com>; Darren O'Keefe <dokeefe@okeefesullivan.com>
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This is an external email.

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Darren / Neil – I will leave it to you both to determine the path forward.

Cheers,

Phil Clarke | Partner
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E Phil.Clarke@ca.gt.com | **W** http://www.grantthornton.ca/

****

Clarke, Phil

From: Darren O'Keefe <dokeefe@okeefesullivan.com>
Sent: November 10, 2023 9:23 AM
To: Clarke, Phil
Cc: Neil L. Jacobs; Steve McLaughlin
Subject: Re: ECC - RBC Distribution Amount

I'm in meetings for most of the day, but I will confirm these numbers with my client. In simple terms, the agreement was always that there would be a $25,000.00 contribution towards protective disbursements. Phil, can you identify exactly where the discrepancy is?

Darren O'Keefe
Partner | Lawyer
O'Keefe & Sullivan
P: 709 699 3002

On Nov 10, 2023, at 9:18 AM, Clarke, Phil <Phil.Clarke@ca.gt.com> wrote:

Thanks Neil – I will leave those discussions/agreements to RBC/ECCL.

Phil Clarke | Partner
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E Phil.Clarke@ca.gt.com | **W** http://www.grantthornton.ca/

<image001.jpg>

From: Neil L. Jacobs <njacobs@stewartmckelvey.com>
Sent: November 10, 2023 9:15 AM
To: Clarke, Phil <Phil.Clarke@ca.gt.com>; Steve McLaughlin <Steven.J.McLaughlin@parthenon.ey.com>; Darren O'Keefe <dokeefe@okeefesullivan.com>
Cc: Neil L. Jacobs <njacobs@stewartmckelvey.com>
Subject: ECC - RBC Distribution Amount

Phil and Darren,

We have discussed this internally and with the client (RBC) who is not happy with the numbers being confirmed at this late time and different than in the order of Justice MacDonald .

We need to clarify same internally but need to understand ECCL's position on H & E as set out in para. G. to the Settlement Agreement as signed by my client. Are we correct that we get the Distribution Waterfall, $25 k Protective Disbursement and H & E ($65k less property taxes of $1800) as our Distribution Amount per the Settlement Agreement (per paras. F and G) and can you confirm the Amounts so that we are speaking the same language as RBC views the Order of Justice MacDonald and the Settlement Agreement and Release to be clear on these matters.

Regards,
Neil

Neil L. Jacobs, K.C.
Partner
Stewart McKelvey
D: 709.570.8888
C: 709.690.5999

From: Clarke, Phil <Phil.Clarke@ca.gt.com>
Sent: Wednesday, November 8, 2023 12:03 PM
To: Steve McLaughlin <Steven.J.McLaughlin@parthenon.ey.com>; Neil L. Jacobs <njacobs@stewartmckelvey.com>; Darren O'Keefe <dokeefe@okeefesullivan.com>
Subject: ECC - RBC Distribution Amount

This is an external email.

All:

I think the RBC settlement amount on the ECC distribution order should be $3,792,957, being the March 7 payout amount of $3,767,957 plus $25,000 for protective disbursements. FGC is $240,103. Nothing from Classic.

Total between the 2 for RBC is $4,033,060.

Calculation is attached together with the supporting RBC payout statements.

The ECC distribution order has $3,817,957 (also attached). It should be $3,792,957.

Darren / Neil – I will leave it to you both to determine the path forward.

Cheers,

Phil Clarke | Partner
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<image001.jpg>

<image002.png> Grant Thornton LLP is proud to be recognized as one of Canada's best workplaces for our fifteenth consecutive year!

Clarke, Phil

From:	Neil L. Jacobs <njacobs@stewartmckelvey.com>
Sent:	November 21, 2023 3:58 PM
To:	Clarke, Phil; Joe Thorne; Steve McLaughlin
Subject:	Re: ECCL

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Thanks Phil,

We still require a reply to our email re distribution. I believe Darren left this for you to respond following my latest analysis. Happy to get on a call tomorrow with Steve to discuss if you feel that would be beneficial.

Regards,
Neil

Neil L Jacobs, K.C.

From: Clarke, Phil <Phil.Clarke@ca.gt.com>
Sent: Tuesday, November 21, 2023 2:37:08 PM
To: Joe Thorne <joethorne@stewartmckelvey.com>
Cc: Neil L. Jacobs <njacobs@stewartmckelvey.com>
Subject: RE: ECCL

This is an external email.

Joe:

The closing has been delayed. The delay is on the Pillar side. They have yet to send over to the purchaser the distribution schedule for the financing. All the other financing documents have been agreed and signed, and are being held in escrow. Just waiting for this schedule to come to start the process of moving money around.

The update from Pillar this morning was that they expected this to resolved shortly and it was their expectation that it would "close in the next few days".

The Monitor is pushing the stakeholders hard and requesting frequent updates (almost daily).

I don't have any indication that this wont close very shortly. The Monitor has advised 92712 and ECC/H&E that an imminent closing is its expectation.

I will keep you all posted as updates come in.

On the FGC side, that lender has confirmed we are good to go and the funds are available when required pursuant to the plan of arrangement.

Cheers,

Phil Clarke | Partner
Grant Thornton LLP

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GrantThornton

From: Joe Thorne <joethorne@stewartmckelvey.com>
Sent: November 21, 2023 9:22 AM
To: Clarke, Phil <Phil.Clarke@ca.gt.com>
Cc: Neil L. Jacobs <njacobs@stewartmckelvey.com>
Subject: ECCL

Phil,

Can you let us know the status of closing? We understood it was meant to be yesterday.

Joe

STEWART McKELVEY
LAWYERS • AVOCATS

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Partner
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