

Court File No. CV-20-00649154-00CL

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

B E T W E E N:

CLEARFLOW COMMERCIAL FINANCE CORP.

Applicant

-and-

TRIGGER WHOLESALE, INC., THE EN CADRE GROUP INC.,
MARK GDAK, JAIMEE LYNN GDAK and JAIMAK REAL PROPERTIES INC.

Respondents

APPLICATION UNDER Sections 243(1) and 47(1) of the *Bankruptcy and Insolvency Act*,
R.S.C.1985, c. B-3, Section 101 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43 and Rule 40.01
of the *Rules of Civil Procedure*

SUPPLEMENTARY REPLY APPLICATION RECORD
(Motion Returnable March 17, 2021)

February 25, 2021

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(ClearFlow v Trigger – Court File #CV-20-00649154-00CL)

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**ONTARIO
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BETWEEN:

CLEARFLOW COMMERCIAL FINANCE CORP.

Applicant

-and-

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**FURTHER REPLY AFFIDAVIT OF MARTIN NICHOLAS REES
(SWORN FEBRUARY 23, 2020)**

I, Martin Nicholas Rees, of the City of Port Colborne, in the Province of Ontario, MAKE

OATH AND SAY:

1. I am a shareholder and employee of the Applicant ("Clearflow") in this proceeding, and as such, have knowledge of the following matters, either through my direct knowledge or by informing myself in respect thereof, in which case I indicate the source of my information and belief.
2. I swear this Affidavit in response to certain of the allegations made by Jaimee Lynn Gdak in her Affidavit sworn February 2, 2021.

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3. Specifically, Ms. Gdak attaches to her Affidavit a series of emails from me that she alleges support the notion that Clearflow released her from the personal guarantee signed by her on April 20, 2015 (the "**Guarantee**"). I wish to explain my intention in writing those emails, and to emphasize that at no time was it my intention to indicate that Clearflow had agreed to the release of the Guarantee. Clearflow did not intend to do so, I never received instructions to release the Guarantee, I did not have the authority to release the Guarantee and there was never any discussion internally at Clearflow that the Guarantee was or would be released, unless and until the credit committee or Board of Directors specifically authorized same.

4. **Acknowledgment Letter, Exhibit "K" Affidavit of Jaimee Gdak sworn Nov. 13, 2020:**

This document is simply a draft of the acknowledgment letter that Clearflow would have signed if the new, restructured credit facilities had actually been agreed to and approved by Clearflow, which they were not. Note that this "acknowledgment" is not signed (and never was). It is intended to show the type of document that Clearflow may have been willing to sign if the other conditions for the restructuring had been met (which they never were);

5. **Email dated July 8, 2019 from me to Mark Gdak, Exhibit "D" to Affidavit of Jaimee Gdak sworn February 2, 2021:** I am quoted out of context with respect to this email. Given the clear requirements of the 2019 Proposal issued by Clearflow, together with my consistent insistence on compliance with the pre-requisites for the restructuring, as detailed in my prior Affidavit, it is clear that I was not making a commitment on behalf of Clearflow to sign the restructuring documents. In fact, at this time, namely, July, 2019:

- (a) the 2019 financial statements had not yet been delivered by Trigger;

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- (b) neither the Credit Committee nor the Board of Directors had given any commitment whatsoever to sign the "legal documents";

6. Clearly, I was saying in this email that Glenn Petersen, one of the Directors of Clearflow, who resides in British Columbia, would be in Toronto and would be able to sign the legal documents IF all of the other conditions were met and IF the Board of Directors or the Credit Committee were satisfied with the financial statements that had not yet even been provided. It defies logic to conclude that I made a binding commitment on behalf of Clearflow that Glenn was definitely going to sign the documents, and I did not do so.

7. **Email from me dated July 3, 2019, Exhibit E to Affidavit of Jaimee Gdak sworn February 2, 2021:** this relates to the same, unsigned Acknowledgment Letter that is dealt with in paragraph 4 above. The series of emails dated July 3, 2019 that appear at Exhibit "E" to Jaimee's February 2, 2021 Affidavit are simply the email chain that preceded the sending of that document on July 8, 2019. As stated above, Clearflow never signed this document; rather, it was provided as a draft of the form of Acknowledgment that Clearflow may been prepared to sign if it had proceeded with the overall restructuring (which it never did). In fact, buried in this series of emails is an email from me dated July 3, 2019 at 4:48 PM in which I specifically stated: "We do need the financial statements to implement the documents – it's a condition". Clearly, my sending of the draft form of Acknowledgement letter, which was never signed by Clearflow, was never intended to be an indication that Clearflow had actually released the guarantee itself.

8. Finally, Ms. Gdak appears to place significant reliance on the fact that, in July, 2019, Clearflow's counsel and myself sent to Mark Gdak the documentation in connection with the restructuring of the credit facilities, which appear to have been signed by Mark Gdak. At no time

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did I ever indicate that the conditions precedent for the restructuring, most notably, provision of the financial statements, and satisfactory review of same by Clearflow and final sign-off from the Board or the Credit Committee, had been removed. In fact, to the contrary, as my July 3, 2019 email indicates, provision of the financial statement was a "condition". Clearly, the documentation was being sent in the form of draft forms of documents for the Gdaks' solicitors to review and comment on.

9. Ms. Gdak is asking the Court to accept that in July, 2019, Clearflow unilaterally, for no apparent reason, abandoned its due diligence requirements in connection with the restructuring, without ever formally advising the borrower that it was doing so, and, instead, simply agreed, for no apparent reason, to enter into the restructured credit facilities. Incredibly, Ms. Gdak asks the Court to accept that Clearflow simply agreed to the restructuring without even receiving and reviewing the most basic due diligence item of all, namely, the most recent financial statements of Trigger. This did not and never would happen.

10. As if the above proposition wasn't inherently unbelievable enough, Mark Gdak himself contradicts this entire argument in an email dated June 11, 2020, attached as Exhibit "G" to my Affidavit sworn November 26, 2020 in which Mark, one year after the series of emails cited in Ms. Gdak's most recent Affidavit, lists out "the items that Clearflow lists as "Conditions Precedent" and specifically acknowledges that these conditions precedent remained outstanding as of that date.

11. I make this Affidavit in good faith and for no improper purpose.

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SWORN remotely by Martin Nicholas Rees of
the City of Port Colborne, in the Regional
Municipality of Niagara before me at the City
of Toronto, in the Province of Ontario, on
February 23, 2021 in accordance with
O. Reg. 431/20, Administering Oath or
Declaration Remotely.



Commissioner for Taking Affidavits
(or as may be)

Jeffrey J. Simpson



MARTIN NICHOLAS REES

RCP-E 4D (July 1, 2007)

REPLY AFFIDAVIT OF MAR

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PROCEEDING COMMENCED AT
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RCP-E 4C (May 1, 2016)