

Court File No. CV-20-00648528-00CL

**ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)**

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

**AND IN THE MATTER OF THE
COMPROMISE OR ARRANGEMENT OF 2808447
ONTARIO INC., 2809588 ONTARIO INC, AND 2809590
ONTARIO INC. ("APPLICANTS")**

**FOURTH REPORT OF CROWE SOBERMAN INC. IN ITS CAPACITY AS MONITOR
OF THE APPLICANTS**

SEPTEMBER 3, 2021

Table of Contents

I. INTRODUCTION	3
II. ASNA SETTLEMENT	6
III. EXTENSION OF THE STAY OF PROCEEDINGS	6

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OF THE APPLICANTS

SEPTEMBER 3, 2021

I. INTRODUCTION

1. This report (the "**Fourth Report**") is filed by Crowe Soberman Inc. ("**Crowe**") in its capacity as monitor (the "**Monitor**") of the Applicants under the CCAA.
2. Capitalized terms not defined in this Fourth Report have the meanings ascribed to them in the affidavit of Charlie Dahl sworn August 26, 2021 ("**Dahl Affidavit**") filed in connection with the Applicants' motion.
3. Prior to the commencement of these proceedings, on April 17 and April 20, 2020, JMX Contracting Inc., JMX Leasing Inc., BRND Properties Inc., and JMX National Inc. (the "**Original Applicants**") filed Notices of Intention to Make a Proposal under the Bankruptcy and Insolvency Act and Crowe was appointed as Proposal Trustee ("**NOI Proceedings**"). On September 29, 2020, the Court issued an order ("**Initial Order**"), among other things:

- a. converting the NOI Proceedings into proceedings under the CCAA (“**CCAA Proceedings**”) in order to allow time for the completion of the restructuring process initiated by the Original Applicants during the NOI Proceedings;
 - b. approving the Stalking Horse Agreement (as defined in the Initial Order);
and
 - c. approving a stalking horse sale process conducted by the Monitor for the marketing and sale of the business and assets of the Applicants (the “**Sale Process**”).
4. Following the Sale Process, on February 2, 2021, the Court issued an approval and vesting order and a reverse vesting order (collectively, the “**Vesting Orders**”), among other things:
- a. vesting out of JMX Contracting Inc. (“**JMX Contracting**”) and transferring to 2809588 Ontario Inc. (“**Residual Contracting**”) all claims against JMX Contracting, other than the Assumed Liabilities, such that those claims shall no longer be obligations of JMX Contracting;
 - b. vesting in Residual Contracting all rights and benefits, including causes of action, of JMX Contracting in the CCDC17 Contract for 1400 Robson Empire Landmark Hotel Demolition dated October 23, 2017 (the “**ASNA Contract**”) including, without limitation: the lien action commenced in British Columbia by JMX Contracting bearing Court File No. VLC-S-S-207196; JMX Contracting’s right to receive progress payments pursuant to the ASNA Contract; and any actions, claims, rights or lawsuits of any nature whatsoever, whether against ASNA or any other party, arising out of or in connection with the ASNA Contract (collectively, the “**ASNA Claims**”);
 - c. vesting in Residual Contracting all rights and benefits, including causes of action, of JMX Contracting in the Lambton Generating Station Demolition Agreement #RG00287132 with Ontario Power Generation (“**OPG**”) dated July 10, 2020 (the “**OPG Contract**”) including, without limitation: JMX

Contracting's interest in amounts drawn down by OPG pursuant to a letter of credit provided by JMX Contracting; JMX Contracting's right to receive progress payments pursuant to the OPG Contract; and any actions, claims, rights or lawsuits of any nature whatsoever, whether against OPG or any other party, arising out of or in connection with the OPG Contract (collectively, the "**OPG Claims**");

- d. adding each of New ParentCo, Residual Leasing and Residual Contracting as Applicants in the CCAA Proceedings and adding such parties to the style of cause; and
 - e. terminating the CCAA Proceedings in respect of, *inter alia*, JMX Contracting and JMX Leasing.
5. On February 22, 2021, the Monitor issued its certificate confirming that the sale transaction was complete.
 6. The Applicants are the only remaining companies in these CCAA Proceedings, which now hold the non-assumed liabilities of the Original Applicants, including JMX Contracting, pursuant to the RV Order. The assets of the Applicants now consist only of the ASNA Claims and the OPG Claims.
 7. On March 5, 2021, the Court issued a further Order, among other things, extending the stay of proceedings to September 8, 2021.
 8. On April 5, 2021, the Applicants brought a motion for approval of a litigation funding agreement ("**LFA**") pursuant to which the purchaser under the stalking horse agreement ("**Purchaser**") would advance funding for Residual Contracting to advance an action (the "**OPG Action**") against Ontario Power Generation Inc. ("**OPG**") relating to work done by JMX Contracting on the demolition of the Lambton Generating Station. OPG brought a cross motion for payment of security for costs. The Court denied approval of the LFA.
 9. The Monitor understands that on August 16, 2021, Residual Contracting executed a confidential, non-binding term sheet with a third-party, Omni

Bridgeway Capital (Canada) Limited (“**Omni Bridgeway**”), to fund the OPG Action. The term sheet provides that Omni Bridgeway has a 60-day exclusivity period to conduct its due diligence before deciding if it wishes to enter into a formal litigation funding agreement with Residual Contracting. As the exclusivity period extends beyond the expiry of the current stay period, the Applicants are seeking a stay extension up to March 8, 2022 for the purpose of finalizing a litigation funding agreement and to have such agreement approved by this Court.

10. This Fourth Report has been prepared for the use of this Court and the Applicants’ stakeholders as general information relating to the Applicants and to assist the Court in determining whether to grant the relief sought by the Applicants. Accordingly, the reader is cautioned that this Fourth Report may not be appropriate for any other purpose.

II. ASNA SETTLEMENT

11. Lawyers for ASNA and the Monitor, in consultation with the lawyers for Residual Contracting, have reached an agreement in principle to settle the ASNA Claim, subject to Court approval. The lawyers for ASNA are currently preparing the draft settlement documentation. Once finalized, the Monitor or Residual Contracting will bring a motion to the Court for approval of the settlement.

III. EXTENSION OF THE STAY OF PROCEEDINGS

12. The Applicants are seeking an extension of the stay of proceedings in order to enter into and seek court approval of a litigation funding agreement in respect of the OPG Action and finalize the ASNA settlement.
13. The Applicants have no means to advance the OPG Action and generate any recovery for Residual Contracting’s creditors without litigation funding.
14. The Applicants have no ongoing operating costs during the requested stay period, other than professional costs, which are current and are being funded by the Purchaser. The Applicants have acted and continue to act in good faith in respect

of all matters relating to the CCAA Proceedings and no creditors are materially prejudiced by the extension of the stay period.

15. Based on the foregoing, the Monitor supports an extension of the stay of proceedings up to and including March 8, 2022 as requested by the Applicants.

All of which is respectfully submitted this 3rd day of September, 2021.

CROWE SOBERMAN INC.

In its capacity as Monitor in the CCAA Proceedings of
The JMX Group and in no other capacity

A handwritten signature in blue ink, appearing to be a stylized 'B' or similar character.

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PROCEEDING COMMENCED AT
TORONTO, ONTARIO

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IN ITS CAPACITY AS MONITOR OF THE
APPLICANTS
DATED SEPTEMBER 3, 2021

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