

**Court File No. 31-2675583
Estate File No. 31-2675583**

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

**IN THE MATTER OF THE NOTICE OF INTENTION TO MAKE A PROPOSAL OF
CONFORTI HOLDINGS LIMITED**

**SECOND REPORT OF CROWE SOBERMAN INC. IN ITS CAPACITY AS PROPOSAL
TRUSTEE UNDER THE NOTICE OF INTENTION TO MAKE A PROPOSAL OF
CONFORTI HOLDINGS LIMITED**

December 9, 2020

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

**IN THE MATTER OF THE NOTICE OF INTENTION TO MAKE A PROPOSAL OF
CONFORTI HOLDINGS LIMITED**

**SECOND REPORT OF CROWE SOBERMAN INC. IN ITS CAPACITY AS PROPOSAL
TRUSTEE UNDER THE NOTICE OF INTENTION TO MAKE A PROPOSAL OF
CONFORTI HOLDINGS LIMITED**

December 9, 2020

I. INTRODUCTION

1. This report (the **“Second Report”**) is filed by Crowe Soberman Inc. (**“Crowe”**) in its capacity as proposal trustee (the **“Proposal Trustee”**), in connection with the Notice of Intention to Make a Proposal (**“NOI”**) filed by Conforti Holdings Limited (**“Conforti”** or the **“Company”**).
2. Conforti is a privately held Ontario Corporation that, as at the date of the NOI filing, operated 51 beauty salons under 10 different trade names in Southern Ontario. All of the Company’s salons are located in rental units in shopping malls and commercial office buildings across Southern Ontario with the exception of one salon that is located in an outdoor shopping plaza in Collingwood, Ontario.
3. The Proposal Trustee understands that the business was started by Antonio Conforti in 1977 and has been a family-owned operated business for more than 44 years. The directors of the Company are Antonio Conforti and Sylvia Conforti.
4. The Proposal Trustee understands that Conforti currently has approximately 500 employees and 300 independent contractors. The Company’s head office is located at 7755 Warden Avenue, Unit 2, Markham, Ontario (the **“Head Office”**). The Head Office is owned by the Company
5. On September 28th, 2020 (the **“Filing Date”**), the Company filed an NOI and Crowe was appointed as Proposal Trustee.

6. On October 26, 2020, the Ontario Superior Court of Justice (Commercial List) (the **"Court"**) issued a court order (the **"October 26 Order"**) which, among other things:
- a. approved a first ranking Administration Charge against the assets of the Company to a maximum of \$250,000, to secure payment of the fees and expenses of the Proposal Trustee and its counsel, as well as counsel to the Company;
 - b. approved a second ranking charge against the assets of the Company in favor of Mr. Conforti (the DIP lender) to a maximum amount of \$500,000;
 - c. approved a third ranking charge against the assets of the Company to a maximum of \$100,000, to indemnify the Company's Directors and Officers against obligations and liabilities that they may incur as directors or officers of Conforti after the commencement of the Proposal Proceedings; and
 - d. granted an extension of time within which a Proposal must be filed to December 14, 2020 (the **"First Stay Extension"**).

A copy of the October 26 Order is attached hereto as **Appendix "A"**.

7. The Proposal Trustee filed its First Report dated October 23, 2020 (the **"First Report"**) with the Court in support of the Initial Order. A copy of the First Report, without appendices is attached hereto as **Appendix "B"**.
8. The purpose of this Second Report is to provide the Court with information pertaining to the following:
- a. the activities of the Company and the Proposal Trustee since the First Stay Extension was granted;
 - b. further financial challenges experienced by the Company since the First Stay Extension was granted, as a result of the ongoing COVID-19 Pandemic;

- c. various matters concerning the ongoing business and affairs of the Company;
- d. an overview of the Company's cash flow projections for the period from the week of December 5, 2020 to the week of March 6, 2021 (the "**Cash Flow Projections**"); and
- e. the Company's request for a further extension of time, within which to file a Proposal, to the stay initiated on the Filing Date (the "**Stay Period**") to January 28, 2021.

II. TERMS OF REFERENCE

- 9. Unless otherwise noted, all monetary amounts contained in this Second Report are expressed in Canadian dollars.
- 10. In preparing this Second Report, the Proposal Trustee has relied upon certain unaudited internal financial information prepared by the Company's representatives, the Company's books and records and discussions with their management and employees (collectively, the "**Information**"). The Proposal Trustee has not performed an audit or other verification of the Information in a manner that would comply with Generally Accepted Assurance Standards ("**GAAS**") pursuant to the Chartered Professional Accountant of Canada Handbook (the "**CPA Handbook**") and, as such, the Proposal Trustee expresses no opinion or other form of assurance contemplated under GAAS in respect of the Information.

III. THE NOI PROCEEDINGS

Overview of Conforti's Activities

- 11. Since the First Stay Extension was granted, Conforti has been engaged in, among other things:
 - a. communicating with the Proposal Trustee and the Company's legal counsel on various matters in connection with the NOI Proceedings;

- b. negotiating with its landlords in respect of lease payments during the Proposal Proceedings;
- c. negotiating with the Company's trade suppliers to ensure the timely and ongoing supply of goods and services to the Company;
- d. attending to numerous inquiries of creditors, landlords, and other stakeholders;
- e. applying for the government of Canada's commercial rent subsidy program;
- f. vacating those salons where the leases were terminated by Conforti's landlords or disclaimed by the Company;
- g. managing logistics associated with the Government of Ontario's increased COVID-19 restrictions that were placed on the Toronto and Peel regions effective November 23, 2020 forcing Conforti to close its stores located in those regions for a minimum of 28 days;
- h. operating Conforti's remaining 42 salons; and
- i. working with the Proposal Trustee to prepare the Cash Flow Projections.

Overview of the Proposal Trustee's Activities

12. In addition to assisting Conforti and its legal counsel in connection with the above, the Proposal Trustee has been engaged in, among other things:
- i. monitoring the Company's bank balance, and considering whether it approximated the Company's cash flow projections filed as part of the First Report;
 - ii. ensuring there were sufficient funds available in the bank with which to pay rent to various landlords for the months of October and November, as agreed upon, prior to the October 26 court hearing;

- iii. ensuring that various landlords were actually paid the rent that was due for the months of October and November, as agreed upon, prior to the October 26 court hearing;
- iv. preparing and sending out a Material Adverse Change Report, dated December 7, 2020 (“**MAC Report**”) which has been attached hereto as **Appendix “C”**; and
- v. assisting the Company in the preparation of the Cash Flow Projections and reviewing the information and support provided therein.

Further Financial Challenges due to the COVID-19 Pandemic

13. On November 20, 2020, the Government of Ontario announced that Toronto and Peel regions would be moved into lockdown on November 23, 2020, for a minimum of 28 days, until December 21, 2020 (the “**Lockdown**”). As a result, Conforti was required to close 15 of its salons in Toronto and Peel effective November 23, 2020. This has further compounded Conforti’s financial difficulties by significantly reducing the Company’s cash flow.
14. The Lockdown has also complicated Conforti’s efforts to develop a proposal to its creditors. It has not only constrained the Company’s current cash flows but has also made it difficult to predict future cash flows because of the uncertainty associated with the Lockdown and whether it will be extended.
15. The Proposal Trustee is of the opinion that the impact to the Company from the Lockdown represents a material adverse change in Conforti’s financial circumstances, and accordingly prepared and sent out the MAC Report. A copy of the MAC Report is attached hereto as **Appendix “C”**.

IV. EXTENSION OF THE STAY PERIOD TO JANUARY 28, 2021

16. The current stay of proceedings will expire on December 14, 2020. Accordingly, the Company is seeking a 45-day extension of time pursuant to Section 50.4(9) of the *Bankruptcy and Insolvency Act* to January 28, 2021 (the “**Stay Extension**”).
17. The Company with the assistance of the Proposal Trustee has prepared Cash Flow Projections. A copy of the Cash Flow Projections is attached hereto as **Appendix “D”** and is summarized below.

Conforti Holdings Limited
Cash flow Projections
For the Period December 5, 2020 to March 6, 2021

		\$
Cash-in		
Salons Revenue		3,287,754
CEWS		708,000
CERS		288,000
	A	<u>4,283,754</u>
Cash-out		
Rent		697,055
Payroll		1,972,652
Head Office Payroll		105,000
CRA Source Deductions		394,933
Accounts payable (salons)		723,306
Accounts payable (Corp)		164,388
Supplies		756,183
Management Fee		226,000
Mortgage Interest		30,000
Payments to Mr. Conforti		20,000
Professional Fees		140,000
EHT		60,000
Merchant Fees & Bank Charges		65,755
	B	<u>5,355,272</u>
Net Cash inflow (outflow)	C=A-B	<u>(1,071,518)</u>
Opening cash balance (per the Cash Flow Projections)	D	(305,675)
Net Cash (above)	C	(1,071,518)
Closing cash before DIP	E=D+C	(1,377,193)
DIP loan	F	<u>1,377,193</u>
Closing cash balance	E+F	<u>-</u>
Proposal Trustee's analysis re actual cash on hand		
Revised Opening cash balance	G	1,694,325
Net Cash (above)	C	<u>(1,071,518)</u>
Revised Closing cash balance	G+C	<u>622,807</u>

18. The Proposal Trustee notes that the Cash Flow Projections reflect the ongoing bank balance minus \$2,000,000. This amount represents \$2,000,000 in cash being hypothecated out of the Company's bank to Mr. Conforti in order to secure repayment of the amount that he advanced to take out RBC prior to the NOI filing.
19. It is the opinion of the Proposal Trustee that the Company's actual cash balance is sufficient to fund both operating costs and the costs of these Proposal proceedings, for the duration of the Stay Extension, if granted and accordingly, a further DIP Loan is likely not required.
20. In addition, the Company expects to receive ongoing relief from the federal government, specifically from the COVID Emergency Wage Subsidy ("**CEWS**") and the COVID Emergency Rent Subsidy ("**CERS**") all of which have been reflected in the above cash flow projections.
21. The Proposal Trustee has been advised that CERS subsidies are expected to cover approximately 35% of Conforti's total rent commitments each month. The Company expects to receive these payments throughout the duration of the Stay Extension (beginning the week of December 12), if granted.
22. The Proposal Trustee supports the Company's request for the Stay Extension for the following reasons:
- a. It will afford the necessary time for the Company to continue to negotiate with its landlords and develop a viable proposal to its creditors;
 - b. The Company is acting in good faith and with due diligence;
 - c. It is the Proposal Trustee's view that the Stay Extension will not materially prejudice any creditors; and
 - d. The Company will likely be able to make a viable proposal to their creditors if their request for an extension is granted.

CONCLUSION AND RECOMMENDATIONS

23. Based on the foregoing, the Proposal Trustee respectfully recommends that this Honorable Court grant the Orders sought by the Company:

- a. approving the Second Report and the conduct and activities of the Proposal Trustee described herein; and
- b. approving the extension of the Stay Period to January 28, 2021.

All of which is respectfully submitted this 9th day of December 2020.

CROWE SOBERMAN INC.

Trustee acting under a Notice of Intention to Make a Proposal of
Conforti Holdings Limited



Appendix “A”

District: Ontario
Division No. 09-Toronto
Court No. 31-2675583
Estate No. 31-2675583

**ONTARIO
SUPERIOR COURT OF JUSTICE
(Commercial List)**



THE HONOURABLE MADAM

)

MONDAY, THE 26TH

JUSTICE CONWAY

)

DAY OF OCTOBER, 2020

)

**IN THE MATTER OF THE NOTICE OF INTENTION TO MAKE A PROPOSAL OF
CONFORTI HOLDINGS LIMITED**

**ORDER
(Priority Charges and Stay Extension)**

THIS MOTION, made by Conforti Holdings Limited ("**Conforti**"), pursuant to the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended (the "**BIA**") for an order, among other things, (i) approving a debtor-in-possession ("**DIP**") term sheet, a DIP loan, and authorizing Conforti to borrow up to \$500,000; (ii) granting a charge in favour of the DIP lender, an administrative charge in favour of Crowe Soberman Inc., in its capacity as proposal trustee of Conforti (the "**Proposal Trustee**"), counsel to the Proposal Trustee, and counsel to Conforti, and a charge in favour of Conforti's officers and directors; (iii) approving the first report of the Proposal Trustee, dated October 23, 2020 (the "**First Report**"), and the conduct and activities of the Proposal Trustee as described therein; and (iv) extending the time for Conforti to file a proposal from October 28, 2020 to December 14, 2020, was heard this day by videoconference due to the COVID-19 pandemic.

ON READING Conforti's notice of motion, the affidavit of Antonio Conforti, sworn October 21, 2020, and the First Report, and on hearing the submissions of counsel for Conforti and counsel for the Proposal Trustee, and counsel for those other parties appearing as indicated by

the counsel slip, no one appearing for any other party although duly served as appears from the affidavit of service, filed,

SERVICE

1. **THIS COURT ORDERS** that the time for service of the notice of motion and the motion record (including service of the First Report) be and is hereby abridged and validated so that this motion is properly returnable today and hereby dispenses with further service thereof.

DIP FINANCING

2. **THIS COURT ORDERS** that Conforti is hereby authorized and empowered to obtain and borrow under a credit facility (the "**DIP Loan**") from Antonio Conforti (in such capacity, the "**DIP Lender**") in order to finance Conforti's working capital requirements and other general corporate purposes and capital expenditures, provided that borrowings under such credit facility shall not exceed \$500,000.

3. **THIS COURT ORDERS** that such credit facility shall be on the terms and subject to the conditions set forth in the DIP Term Sheet between Conforti and the DIP Lender, dated as of October 20, 2020 (the "**DIP Term Sheet**"), filed.

4. **THIS COURT ORDERS** that Conforti is hereby authorized and empowered to execute and deliver such credit agreements, mortgages, charges, hypothecs and security documents, guarantees and other definitive documents (collectively, the "**Definitive Documents**"), as are contemplated by the DIP Term Sheet or as may be reasonably required by the DIP Lender pursuant to the terms thereof, and Conforti is hereby authorized and directed to pay and perform all of its indebtedness, interest, fees, liabilities and obligations to the DIP Lender under and pursuant to the DIP Term Sheet and the Definitive Documents as and when the same become due and are to be performed, notwithstanding any other provision of this Order.

5. **THIS COURT ORDERS** that the DIP Lender shall be entitled to the benefit of and is hereby granted a charge (the "**DIP Lender's Charge**") on all of the current and future assets, licenses, undertakings and properties of every nature and kind whatsoever, and wherever situate including all proceeds thereof (the "**Property**"), which DIP Lender's Charge shall not secure an obligation that exists before this Order is made. The DIP Lender's Charge shall have the priority set out in paragraphs 14 and 16 hereof.

6. **THIS COURT ORDERS** that, notwithstanding any other provision of this Order:

- a. the DIP Lender may take such steps from time to time as it may deem necessary or appropriate to file, register, record or perfect the DIP Lender's Charge or any of the Definitive Documents;
- b. upon the occurrence of an event of default under the Definitive Documents or the DIP Lender's Charge, the DIP Lender, upon three Business Days' (as that term is defined in the DIP Term Sheet) notice to Conforti and the Proposal Trustee, may exercise any and all of its rights and remedies against Conforti or the Property under or pursuant to the DIP Term Sheet, Definitive Documents and the DIP Lender's Charge, including without limitation, to cease making advances to Conforti and set off and/or consolidate any amounts owing by the DIP Lender to Conforti against the obligations of Conforti to the DIP Lender under the DIP Term Sheet, the Definitive Documents or the DIP Lender's Charge, to make demand, accelerate payment and give other notices, or to apply to this Court for the appointment of a receiver, receiver and manager or interim receiver, or for a bankruptcy order against Conforti and for the appointment of a trustee in bankruptcy of Conforti; and

- c. the foregoing rights and remedies of the DIP Lender shall be enforceable against any trustee in bankruptcy, interim receiver, receiver or receiver and manager of Conforti or the Property.

7. **THIS COURT ORDERS AND DECLARES** that the DIP Lender shall be treated as unaffected in any proposal filed by Conforti under the BIA with respect to any advances made under the Definitive Documents.

ADMINISTRATION CHARGE

8. **THIS COURT ORDERS** that the Proposal Trustee, Goldman Sloan Nash & Haber LLP as counsel to the Proposal Trustee, and Miller Thomson LLP as counsel to Conforti (collectively, the "**Professional Group**"), shall be paid their reasonable fees and disbursements, in each case at their standard rates and charges, by Conforti as part of the costs of these proceedings both before and after the making of this Order in respect of these proceedings and related matters. Conforti is hereby authorized to pay the accounts of the Professional Group on a monthly basis.

9. **THIS COURT ORDERS** that the Professional Group shall pass their accounts from time to time, and for this purpose, the accounts of the Professional Group are hereby referred to a judge of the Ontario Superior Court of Justice (Commercial List) at Toronto, Ontario.

10. **THIS COURT ORDERS** that the Professional Group shall be entitled to the benefit of and are hereby granted a charge (the "**Administration Charge**") on the Property which charge shall not exceed an aggregate amount of \$250,000, as security for their professional fees and disbursements incurred at the standard rates and charges of the Professional Group, both before and after the making of this Order with respect to and incidental to these proceedings, including the reasonable fees and disbursements of the Professional Group incurred in preparation of the filing of Conforti's proposal pursuant to section 50 of the BIA. The Administration Charge shall have the priority set out in paragraphs 14 and 16 hereof.

DIRECTORS CHARGE

11. **THIS COURT ORDERS** that Conforti shall indemnify its directors and officers against obligations and liabilities that they may incur as directors or officers of Conforti after the commencement of the within proceedings, except to the extent that, with respect to any officer or director, the obligation or liability was incurred as a result of the director's or officer's gross negligence or wilful misconduct.

12. **THIS COURT ORDERS** that the directors and officers of Conforti shall be entitled to the benefit of and are hereby granted a charge (the "**Director's Charge**") on the Property, which charge shall not exceed an aggregate amount of \$100,000, as security for the indemnity provided in paragraph 11 of this Order. The Director's Charge shall have the priority set out in paragraphs 14 and 16 hereof.

13. **THIS COURT ORDERS** that, notwithstanding any language in any applicable insurance policy to the contrary, (a) no insurer shall be entitled to be subrogated to or claim the benefit of the Directors' Charge, and (b) Conforti's directors and officers shall only be entitled to the benefit of the Directors' Charge to the extent that they do not have coverage under any directors' and officers' insurance policy, or to the extent that such coverage is insufficient to pay amounts identified in accordance with paragraph 11 of this Order.

VALIDITY AND PRIORITY OF CHARGES CREATED BY THIS ORDER

14. **THIS COURT ORDERS** that the priorities of the DIP Lender's Charge, the Administration Charge and the Directors' Charge (collectively the "**Charges**") as among them, shall be as follows:

First – Administration Charge (to the maximum of \$250,000);

Second – DIP Lender's Charge (to the maximum amount of \$500,000); and

Third – Director's Charge (to the maximum of \$100,000)

15. **THIS COURT ORDERS** that the filing, registration or perfection of the Charges shall not be required, and that the Charges shall be valid and enforceable for all purposes, including as against any right, title or interest filed, registered, recorded or perfected subsequent to the Charges coming into existence, notwithstanding any such failure to file, register, record or perfect.

16. **THIS COURT ORDERS** that each of the Charges shall constitute a charge on the Property and such Charges shall rank in priority to all other security interests, trusts, liens, charges and encumbrances, claims of secured creditors, statutory or otherwise (collectively, "**Encumbrances**") in favour of any individual, firm, corporation, governmental body or agency, or any other entities (all of the foregoing, collectively being "**Persons**" and each being a "**Person**").

17. **THIS COURT ORDERS** that except as otherwise expressly provided for herein, or as may be approved by this Court, Conforti shall not grant any Encumbrances over any Property that rank in priority to, or *pari passu* with, any of the Charges, unless Conforti also obtains the prior written consent of the Proposal Trustee, the DIP Lender and the beneficiaries of the Administration Charge and the Directors' Charge, or further Order of this Court.

18. **THIS COURT ORDERS** that the Charges, the DIP Term Sheet and the Definitive Documents shall not be rendered invalid or unenforceable and the rights and remedies of the chargees entitled to the benefit of the Charges (collectively, the "**Chargees**") and/or the DIP Lender thereunder shall not otherwise be limited or impaired in any way by (a) the pendency of these proceedings and the declarations of insolvency made herein; (b) any application(s) for bankruptcy order(s) issued pursuant to BIA, or any bankruptcy order made pursuant to such applications; (c) the filing of any assignments for the general benefit of creditors made pursuant to the BIA; (d) the provisions of any federal or provincial statutes; or (e) any negative covenants, prohibitions or other similar provisions with respect to borrowings, incurring debt or the creation of Encumbrances, contained in any existing loan documents, lease, sublease, offer to lease or

other agreement (collectively, an "**Agreement**") which binds Conforti and notwithstanding any provision to the contrary in any Agreement:

- a. neither the creation of the Charges nor the execution, delivery, perfection, registration or performance of the DIP Term Sheet or the Definitive Documents shall create or be deemed to constitute a breach by Conforti of any Agreement to which it is a party;
- b. none of the Chargees shall have any liability to any Person whatsoever as a result of any breach of any Agreement caused by or resulting from Conforti entering into the DIP Term Sheet, the creation of the Charges, or the execution, delivery or performance of the Definitive Documents; and
- c. the payments made by Conforti pursuant to this Order, the DIP Term Sheet or the Definitive Documents, and the granting of the Charges, do not and will not constitute preferences, fraudulent conveyances, transfers at undervalue, oppressive conduct, or other challengeable or voidable transactions under any applicable law.

19. **THIS COURT ORDERS** that any Charge created by this Order over leases of real property in Canada shall only be a Charge in the Applicants' interest in such real property leases.

APPROVAL OF FIRST REPORT

20. **THIS COURT ORDERS** that the First Report, together with the conduct and activities of the Proposal Trustee as set out therein, be and are hereby approved.

EXTENSION OF TIME TO MAKE A PROPOSAL

21. **THIS COURT ORDERS** that the time to make a proposal is delayed and extended to December 14, 2020.

OTHER


22. **THIS COURT ORDERS** that the E-Service Protocol of the Commercial List (the "**Protocol**") is approved and adopted by reference herein and, in this proceeding, the service of documents made in accordance with the Protocol (which can be found on the Commercial List website at <http://www.ontariocourts.ca/scj/practice/practice-directions/toronto/eservice-commercial>) shall be valid and effective service. Subject to Rule 17.05, this Order shall constitute an order for substituted service pursuant to Rule 16.04 of the Rules of Civil Procedure. Subject to Rule 3.01(d) of the *Rules of Civil Procedure* and paragraph 21 of the Protocol, service of documents in accordance with the Protocol will be effective on transmission. This Court further orders that a Case Website shall be established in accordance with the Protocol with the following URL: <https://www.crowesobermaninc.com/insolvency/insolvency-cases/conforti-holdings-limited/>.

23. **THIS COURT ORDERS** that Conforti and the Proposal Trustee and their respective counsel are at liberty to serve or distribute this Order, and other materials and orders as may be reasonably required in these proceedings, including any notices, or other correspondence, by forwarding true copies thereof by electronic message to Conforti's creditors or other interested parties and their advisors. For greater certainty, any such distribution or service shall be deemed to be in satisfaction of a legal or judicial obligation, and notice requirements within the meaning of clause 3(c) of the *Electronic Commerce Protection Regulations*, Reg. 81000-2-175 (SOR/DORS).

24. **THIS COURT ORDERS** that this Order and all of its provisions are effective as of 12:01 a.m. Toronto time on the date of this Order, and this Order is enforceable without the need for entry and filing.

25. **THIS COURT REQUESTS** the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or in the United States to give effect to this

Order and to assist the Proposal Trustee and its agents in carrying out the terms of this Order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Proposal Trustee, as an officer of this Court, as may be necessary or desirable to give effect to this Order or to assist the Proposal Trustee and its agents in carrying out the terms of this Order.



IN THE MATTER OF THE NOTICE OF INTENTION TO MAKE A PROPOSAL OF
CONFORTI HOLDINGS LIMITED

Court File Nos.: Division No. 09-Toronto
Court No. 31-2675583 and Estate No. 31-2675583

**ONTARIO
SUPERIOR COURT OF JUSTICE**

Proceeding commenced at Toronto

**ORDER
(Priority Charges and Stay Extension)**

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Lawyers for Conforti Holdings Limited

Appendix “B”

**Court File No. 31-2675583
Estate File No. 31-2675583**

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

**IN THE MATTER OF THE NOTICE OF INTENTION TO MAKE A PROPOSAL OF
CONFORTI HOLDINGS LIMITED**

**FIRST REPORT OF CROWE SOBERMAN INC. IN ITS CAPACITY AS PROPOSAL
TRUSTEE UNDER THE NOTICE OF INTENTION TO MAKE A PROPOSAL OF
CONFORTI HOLDINGS LIMITED**

October 23, 2020

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APPENDIX "C"- DIP TERM SHEET

APPENDIX "D"- CASH FLOW PROJECTIONS

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

**IN THE MATTER OF THE NOTICE OF INTENTION TO MAKE A PROPOSAL OF
CONFORTI HOLDINGS LIMITED**

**FIRST REPORT OF CROWE SOBERMAN INC. IN ITS CAPACITY AS PROPOSAL
TRUSTEE UNDER THE NOTICE OF INTENTION TO MAKE A PROPOSAL OF
CONFORTI HOLDINGS LIMITED**

October 23, 2020

1. This report (the “**First Report**”) is filed by Crowe Soberman Inc. (“**Crowe**”) in its capacity as proposal trustee (the “**Proposal Trustee**”), in connection with the Notice of Intention to Make a Proposal (“**NOI**”) filed by Conforti Holdings Limited (“the “**Company**”).
2. On September 28th, 2020 (the “**Filing Date**”), the Company filed an NOI and Crowe was appointed as Proposal Trustee. A copy of the Certificate of Filing issued by the Superintendent of Bankruptcy for the Company is attached hereto as **Appendix “A”**.
3. The purpose of this First Report is to provide the Ontario Superior Court of Justice (Commercial List) (the “**Court**”) with information pertaining to the following:
 - a. a limited summary of certain background information about the Company;
 - b. the recent challenges experienced by the Company as a result of the COVID-19 Pandemic;
 - c. the Company’s planned restructuring steps to be undertaken during these proceedings;
 - d. the proposed charges (the “**Charges**”) sought by the Company; and

- e. the Company's request for an extension of the stay initiated on the Filing Date (the "**Stay Period**") to December 14, 2020.

I. TERMS OF REFERENCE

4. Unless otherwise noted, all monetary amounts contained in this First Report are expressed in Canadian dollars.
5. In preparing this First Report, the Proposal Trustee has relied upon certain unaudited internal financial information prepared by the Company's representatives, the Company's books and records and discussions with their management and employees (collectively, the "**Information**"). The Proposal Trustee has not performed an audit or other verification of the Information in a manner that would comply with Generally Accepted Assurance Standards ("**GAAS**") pursuant to the Chartered Professional Accountant of Canada Handbook (the "**CPA Handbook**") and, as such, the Proposal Trustee expresses no opinion or other form of assurance contemplated under GAAS in respect of the Information.

II. GENERAL BACKGROUND INFORMATION ON THE COMPANY

6. The Company is a privately held corporation that, as at the date of the NOI filing, operated 52 beauty salons under 10 different trade names in Southern Ontario. The Proposal Trustee understands that the business was started by Antonio Conforti in 1977 and has been a family owned operated business for more than 44 years.
7. As per the Corporation Profile Report, the Company amalgamated with a number of its subsidiaries under the *Ontario Business Corporations Act* with effect as at April 1, 2015. The directors of the Company are Antonio Conforti and Sylvia Conforti. The Company's head office is located at 7755 Warden Avenue, Unit 2, Markham, Ontario (the "**Head Office**"). The Head Office is owned by the Company.

Overview of Operations

8. The Company's salons are located in rental units in shopping malls and commercial office buildings across Southern Ontario. As well, there is a location in Collingwood Ontario in an outdoor shopping plaza.
9. We have been advised by the Company that it has more than 600 employees and 400 independent contractors working at the Head Office and salons as stylists, estheticians, and front desk personnel.

The Company's Financial Position

10. Sales revenue has been declining in the previous two fiscal years (\$60.5 million in fiscal 2017; \$58.9 million in fiscal 2018; and \$55.8 million in fiscal 2019). Gross profit has remained consistent at approximately \$35 million for the fiscal years 2017 to 2019. Income from operations has declined in the previous two fiscal years as there have been significant losses from operations (gain of \$186,942 in fiscal 2017; loss of \$1,367,864 in fiscal 2018; and loss of \$2,156,240 in fiscal 2019).
11. The Proposal Trustee has been advised that the financial statements for the fiscal year 2020 were not yet complete as at the date of this report.
12. The Company's financial statements for the fiscal year ending March 31, 2019 were issued by Steve Pethakas Professional Corporation, CPA, CA. A copy of the Financial Statements is attached hereto as **Appendix "B"**.

Causes of Insolvency

13. As noted above, most of the Company's salons are located in shopping malls. Traffic in malls came to a halt on March 24, 2020, when the Province of Ontario shut down all non-essential workplaces, including shopping malls in order to limit the spread of COVID-19.
14. Due to the COVID-19 pandemic, shopping malls in Ontario remained closed for nearly three months until June 19, 2020, when most of the Province was allowed

to move to “Stage 2” of the Province’s re-opening plans. The City of Toronto and Peel Region, where 19 of the Company’s salons are located, did not re-open shopping malls until June 24, 2020.

15. Despite the fact that the salons were closed pursuant to the provincial government’s orders to limit the spread of COVID-19, and therefore were not earning any revenue, the Company’s landlords continued to charge the company rent for the closed salons. Although the salons have since re-opened, mall traffic and the salons’ revenue have not returned to pre-COVID-19 levels. The salons’ revenue has declined significantly. The decline in revenue can be attributed not only to decreased mall traffic, but also the social distancing protocols that the Company has implemented to comply with public health guidelines.

16. Additional details of the Company’s causes of insolvency are detailed in the affidavit of Antonio Conforti sworn October 21, 2020 in support of the Company’s October 26, 2020 motion (the “**Conforti Affidavit**”) and are, therefore, not repeated herein.

The Company’s Creditors

17. As detailed in the Conforti Affidavit, the Company has a banking relationship with Royal Bank of Canada (“**RBC**”) and maintain their operating accounts at RBC. RBC had provided various credit facilities to the Company since 2015. The Proposal Trustee understands that indebtedness owing to RBC had been secured by a collateral charge against the Head Office (up to \$2.5 million) and a Personal Property Security Agreement (“PPSA”) over all of the Company’s assets.

18. Antonio Conforti, a principal of the Company, had personally guaranteed the Company’s indebtedness owing to RBC Pursuant to the Assignment of Debt & Security Agreement dated October 15, 2020 (the “**Assignment Agreement**”). Mr. Conforti acquired all of the indebtedness and security held by RBC, which was \$1,931,333.68 according to Schedule “B” of the Assignment Agreement. The Company advises that this was not done with company funds and was done with personal funds of Mr. Conforti.

19. In addition to RBC, the Toronto Dominion Bank (“**TD**”) has registered a security interest against the Company under the PPSA. We understand this relates to a letter of credit extended by TD in connection with an agreement between the Company and an American Company for the acquisition of salon supplies. Additionally, there are two registrations in connection with financing for vehicles.
20. The Company’s remaining creditors are unsecured and are owed approximately \$5.7 million. Unsecured creditors mainly consist of landlords and trade creditors.

III. THE NOI PROCEEDINGS

21. Due to the financial challenges experienced by the Company, it has been unable to maintain its ongoing financial obligations to various creditors, such as the Company’s landlords.
22. One of the Company’s landlords, The Cadillac Fairview Corporation Limited (“**Cadillac Fairview**”) sent the Company a notice of default and demanded that the Company pay the landlord all outstanding rent (\$919,181.84) by September 28, 2020. If the Company did not pay all outstanding rent by that date, Cadillac Fairview advised the Company that it “may, without further notice” exercise its rights and remedies under the leases, including terminating the same. To avoid the closure of its Cadillac Fairview salon locations, and in recognition of the fact that other similar requests could be made by its other landlords, the Company engaged Crowe and it was determined that it is in the best interest of all stakeholders, for the Company to explore restructuring options, specifically, filing an NOI on September 28, 2020.
23. The Company requires the stay of proceedings afforded through these Proposal Proceedings to allow it an opportunity to restructure its business operations on a going-concern basis under the supervision of the Proposal Trustee, and in a manner that will maximize value for the benefit of the Company’s stakeholders.

The Company's Activities Since NOI was Filed

24. Since the NOI was filed on September 28, 2020, the Company has been engaged in, among other things:

- i. working with the Proposal Trustee to prepare various cash flow projections;
- ii. assigning the obligation of the Company's indebtedness owing to RBC over to Antonio Conforti;
- iii. sending notices to various landlords regarding disclaiming the leases of certain unprofitable salon locations;
- iv. engaging in discussions/negotiations with various landlords regarding lease payments over the next 6 months;
- v. arranging for a potential DIP Loan to be provided to the Company to assist in funding ongoing operations and restructuring costs during these proposal proceedings; and
- vi. communicating with the Proposal Trustee and the Company's legal counsel on various matters in connection with the NOI Proceedings.

25. The Proposal Trustee understands that discussions have commenced between the Company and its landlords regarding possible restructuring options. Such discussions are limited for the time being by the fact that the federal government is switching its programs for commercial rent relief to a new one, the details of which are not fully known. Since the Company advises that it did not qualify for the prior program, the availability of any relief from the federal government and the terms of such relief may provide further factors and opportunities for a restructuring and a proposal that may be acceptable to creditors.

Dip Loan

26. As per the Cash flow Projections, the Company needs additional financing to fund operations and restructuring costs during these proposal proceedings. An entity related to the Company (Mr. Conforti), is prepared to provide up to \$500,000 in funding to assist the Company with meeting its operational expenses, the proposal proceedings and its restructuring (the **"DIP Loan"**). The proposed DIP Loan is conditional upon court approval and the granting of the DIP Charge as a first-ranking charge on the Company's property. The terms of the DIP Loan are outlined in the DIP Term Sheet which is attached hereto as **Appendix "C"**.
27. The Proposal Trustee has reviewed the DIP Term sheet and believes the terms are reasonable under the circumstances, as the rate of interest is lower than that of comparable DIP loans and there are no other commitment or administration fees.
28. The Company advises that subsequent to the filing of the Company's Motion Record, its counsel was contacted by Linda Galessiere, who acts for several other landlords, to discuss the rate of interest proposed in the DIP Loan. After discussion, the Company and Mr. Conforti have agreed to set the interest rate at 8% instead. The Proposal Trustee's view is that this rate of interest is at the lower end of what could likely be achieved in better conditions than those applying to the Company and is therefore reasonable in this case.

IV. COURT ORDERED CHARGES

29. The Company's Motion Record seeks an order granting, among other things, the following Charges against the Company's property:
- i. a charge in favor of the DIP lender to a maximum amount of \$500,000 (the **"DIP Charge"**). The DIP Charge is proposed to rank first on the Company's property;
 - ii. a charge to a maximum amount of \$250,000, to secure the fees and disbursements of the Proposal Trustee, counsel to the Proposal Trustee

and counsel to the Company, in each case incurred in connection with services rendered to the Company before and after the commencement of these proposal proceedings (the “**Administration Charge**”). The Administration Charge is proposed to rank second on the Company’s property; and

- iii. a charge to a maximum amount of \$100,000, to indemnify the directors and officers for liabilities incurred by the Company that result in post-filing claims against the directors and officers in their personal capacities (the “**D&O Charge**”). The D & O Charge is proposed to rank third on the Company’s property.

30. The Proposal Trustee supports the proposed charges for the Company’s restructuring efforts. The DIP Charge will assist the Company to maintain its business as going concern while restructuring is undertaken. The Administration Charge is a normal facet of restructuring efforts and will permit the Company to fully utilize restructuring professionals to attempt to achieve the best result for the Company and its stakeholders. The D&O Charge will similarly ensure that the directors and officers of the Company are able to remain fully engaged with the restructuring efforts without fear of possible adverse consequences that may otherwise cause them to consider resignation.

31. Subsequent to service of the Company’s Motion Record, the Proposal Trustee discussed the relative ordering of the proposed charges with the Company. The Company now advises that the proposed ordering is (i) the Administration Charge, (ii) the DIP Charge, and (iii) the D&O Charge. The Proposal Trustee supports this revised ordering in these circumstances.

V. EXTENSION OF THE STAY PERIOD TO DECEMBER 14, 2020

32. The current stay of proceedings will expire on October 28, 2020. Accordingly, the Company is seeking a 45-day extension of time pursuant to Section 50.4(9) of the *Bankruptcy and Insolvency Act* to December 14, 2020 (the “**Stay Extension**”).

33. The Company with the assistance of the Proposal Trustee has prepared Cash Flow Projections. A copy of the Cash Flow Projections is attached hereto as **Appendix “D”**, and is summarized below.

Conforti Holdings Limited
Cash Flow Projections
For the Period October 19 to January 11

Receipts		\$
Gross Salons Revenue		4,417,758
A/R Collections		250,000
HST Refund		83,138
COVID-19 Federal Wage Subsidy		575,000
	A	<u>5,325,896</u>
Disbursements		
Supplies & Personal Protective Equipment		736,753
Office and general		175,346
Rent		2,179,672
Professional Fees		186,000
Moving Costs		30,000
HST on Expenses		423,900
Wages		2,819,211
Variable Costs from additional revenue from closed stores		74,350
Bank Charges / Merchant Fees		66,266
Insurance		71,518
Mortgage		30,000
BE Management Fee		200,000
Owner Cash Collateral Reimbursement		100,000
Property Tax		20,486
	B	<u>7,113,502</u>
Net inflow (outflow)	C=A-B	(1,787,606)
Opening cash balance	D	238,209
Ending cash balance	C+D	<u>(1,549,397)</u>

34. Notwithstanding the negative ending cash balance, the Company advises that it plans to rely on the DIP Loan, negotiations with its landlords, and potential relief from the federal government (all of which were not reflected in the above cash flow projections) to fund both operating costs and the costs of these Proposal proceedings, for the duration of the Stay Extension, if granted. The Company further advises that if no or insufficient improvement in cash flow is obtained from such negotiations with landlords and/or relief from the federal program, then the Company will disclaim the affected location(s) in order to avoid the full extend of the existing projections. The Proposal Trustee supports this approach in these circumstances.

35. The Proposal Trustee supports the Company's request for the Stay Extension for the following reasons:

- a. More time is required for negotiations with the Company's landlords to figure out a plan for how the Company can meet its financial obligations throughout the COVID-19 Pandemic;
- b. The Company is acting in good faith and with due diligence;
- c. It is the Proposal Trustee's view that the Stay Extension will not materially prejudice any creditors; and
- d. While the relatively recent Filing Date has not afforded a great deal of time to engage in discussions with stakeholders, which has been complicated by the as yet unknown details of the proposed new federal commercial rent program, the Proposal Trustee believes that the Company is likely to be able to offer a viable proposal to its creditors.

VI. CONCLUSION AND RECOMMENDATIONS

36. Based on the foregoing, the Proposal Trustee respectfully recommends that this Honorable Court grant the Orders sought by the Company:

- a. approving the Charges; and
- b. approving the extension of the Stay Period to December 14, 2020.

All of which is respectfully submitted this 23rd day of October 2020.

CROWE SOBERMAN INC.

Trustee acting under a Notice of Intention to Make a Proposal of
Conforti Holdings Limited

Per

Hans Rizarri, CIRP, LIT



Appendix “C”

35-2675583

**In the matter of the proposal of
CONFORTI HOLDINGS LIMITED
of the City of Markham
in the Province of Ontario**

**REPORT OF THE PROPOSAL TRUSTEE ON MATERIAL ADVERSE
CHANGE IN FINANCIAL CIRCUMSTANCES**

We, Crowe Soberman Inc. ("**Crowe**") of the City of Toronto, in the Province of Ontario, the Proposal Trustee acting in re the Proposal of Conforti Holdings Limited ("**Conforti**" or the "**Company**"), an insolvent company, hereby report to the Official Receiver and the Court as follows:

1. That Conforti did on September 28, 2020 file with us a Notice of Intention to Make a Proposal ("**NOI**") pursuant to s. 50.4 of the *Bankruptcy and Insolvency Act* ("**BIA**").
2. That on October 26, 2020, Conforti sought and was granted by the Court an Order extending the stay of proceedings and the deadline for the lodging of a Proposal for a period of 45 days, or until December 14, 2020 (the "**Extension**"). The Extension was necessary in order to allow sufficient time to negotiate with the Company's landlords to figure out a plan for how the Company can meet its financial obligations throughout the COVID-19 Pandemic and to develop a proposal.
3. That it was Conforti's hope that through the NOI proceedings, Conforti could restructure its business operations by disclaiming leases of certain unprofitable locations, negotiating lease payments with various landlords, receiving financing from a related company, and relying on potential relief from the federal government.
4. That at the time the Order was granted on October 26, 2020, Conforti was planning to continue the business operations while adhering to the rules and regulations under the relevant COVID-19 guidelines and restrictions. Sales from ongoing operations of Conforti were necessary to provide working capital to fund ongoing operations during the proposal proceeding.

5. That on November 23, 2020, the Toronto and Peel regions increased their COVID-19 restrictions forcing Conforti to close its stores located in those regions for a minimum of 28 days.
6. The company advises that a total of 14 stores have been closed and over 300 employees laid off

Material Adverse Change

The cash flow projections filed as Appendix D to the Proposal Trustee's First Report dated October 23, 2020 need to be revised to reflect the negative effects of the restrictions that were placed on the Toronto and Peel regions as of November 23, 2020. Specifically, cash receipts from "Gross Salons Revenue" (approximately \$350,000 per week) are going to be materially reduced while the restrictions are in place. The company estimates a decline in sales of 40% – 50%.

The Proposal Trustee is of the opinion that these events represent a material adverse change in Conforti's financial circumstances.

All of which is respectfully submitted, this 7th day of December 2020.

Crowe Soberman Inc.
Licensed Insolvency Trustee
Acting re: Proposal of
CONFORTI HOLDINGS LIMITED,
A Debtor



Daniel Posner, CPA, CA, CBV
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Appendix “D”

Conforti Holdings Limited
Cash flow Projections

For the Week Beginning:

	05-Dec	12-Dec	19-Dec	26-Dec	02-Jan	09-Jan	16-Jan	23-Jan	30-Jan	06-Feb	13-Feb	20-Feb	27-Feb	06-Mar	TOTAL
Cash-in	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$
Salons Revenue	281,100	281,100	323,700	226,590	226,590	226,590	226,590	226,590	203,931	203,931	203,931	203,931	226,590	226,590	3,287,754
CEWS	-	233,000	-	175,000	-	-	-	-	150,000	-	-	-	150,000	-	708,000
CERS (Note 1)	-	91,000	-	97,000	-	-	50,000	-	-	-	50,000	-	-	-	288,000
Total Cash-in	281,100	605,100	323,700	498,590	226,590	226,590	276,590	226,590	353,931	203,931	253,931	203,931	376,590	226,590	4,283,754
Cash-out															
Rent	-	-	-	235,122	-	-	-	-	226,811	-	-	-	235,122	-	697,055
Payroll	168,660	168,660	194,220	135,954	135,954	135,954	135,954	135,954	122,359	122,359	122,359	122,359	135,954	135,954	1,972,652
Head Office Payroll	7,500	7,500	7,500	7,500	7,500	7,500	7,500	7,500	7,500	7,500	7,500	7,500	7,500	7,500	105,000
CRA Source Deductions	45,960	32,045	32,045	36,902	25,831	25,831	25,831	25,831	25,831	23,248	23,248	23,248	23,248	25,831	394,933
Accounts payable (salons)	61,842	61,842	71,214	49,850	49,850	49,850	49,850	49,850	44,865	44,865	44,865	44,865	49,850	49,850	723,306
Accounts payable (Corp)	14,055	14,055	16,185	11,330	11,330	11,330	11,330	11,330	10,197	10,197	10,197	10,197	11,330	11,330	164,388
Supplies	64,653	64,653	74,451	52,116	52,116	52,116	52,116	52,116	46,904	46,904	46,904	46,904	52,116	52,116	756,183
Management Fee	56,500	-	-	-	56,500	-	-	-	56,500	-	-	-	56,500	-	226,000
Mortgage Interest	7,500	-	-	-	7,500	-	-	-	7,500	-	-	-	7,500	-	30,000
Payments to Mr. Conforti (Note 2)	-	20,000	-	-	-	-	-	-	-	-	-	-	-	-	20,000
Professional Fees	10,000	10,000	10,000	10,000	10,000	10,000	10,000	10,000	10,000	10,000	10,000	10,000	10,000	10,000	140,000
EHT	-	20,000	-	-	-	20,000	-	-	-	-	20,000	-	-	-	60,000
Merchant Fees & Bank Charges	5,622	5,622	6,474	4,532	4,532	4,532	4,532	4,532	4,079	4,079	4,079	4,079	4,532	4,532	65,755
Total Cash-out	442,292	404,377	412,089	543,305	361,112	317,112	297,112	297,112	562,545	269,151	289,151	269,151	593,651	297,112	5,355,272
Net Cash inflow (outflow)	(161,192)	200,723	(88,389)	(44,715)	(134,522)	(90,522)	(20,522)	(70,522)	(208,614)	(65,220)	(35,220)	(65,220)	(217,061)	(70,522)	(1,071,518)
Opening cash balance (Note 3)	(305,675)	-	200,723	112,333	67,619	-	-	-	-	-	-	-	-	-	(305,675)
Net Cash (above)	(161,192)	200,723	(88,389)	(44,715)	(134,522)	(90,522)	(20,522)	(70,522)	(208,614)	(65,220)	(35,220)	(65,220)	(217,061)	(70,522)	(1,071,518)
Closing cash before DIP	(466,867)	200,723	112,333	67,619	(66,903)	(90,522)	(20,522)	(70,522)	(208,614)	(65,220)	(35,220)	(65,220)	(217,061)	(70,522)	(1,377,193)
DIP loan	466,867	-	-	-	66,903	90,522	20,522	70,522	208,614	65,220	35,220	65,220	217,061	70,522	1,377,193
Closing cash balance	-	200,723	112,333	67,619	-	-	-	-	-	-	-	-	-	-	-
Proposal Trustee's analysis re actual cash on hand (Note 3)															
Revised Opening cash balance	1,694,325	1,533,133	1,733,856	1,645,466	1,600,752	1,466,230	1,375,708	1,355,186	1,284,663	1,076,050	1,010,830	975,610	910,390	693,329	1,694,325
Net Cash (above)	(161,192)	200,723	(88,389)	(44,715)	(134,522)	(90,522)	(20,522)	(70,522)	(208,614)	(65,220)	(35,220)	(65,220)	(217,061)	(70,522)	(1,071,518)
Revised Closing cash balance	1,533,133	1,733,856	1,645,466	1,600,752	1,466,230	1,375,708	1,355,186	1,284,663	1,076,050	1,010,830	975,610	910,390	693,329	622,807	622,807

Notes:

- Canada Emergency Rent Subsidy (CERS) receipts are based on management's best estimates.
- Remaining payments to Mr. Conforti for the additional \$100,000 collateral advanced to RBC (to take out RBC) on behalf of Conforti Holdings Limited.
- Opening cash balance consists of the following:

	\$
Actual bank balance on December 3, 2020	2,160,473
Outstanding deposits	56,000
Outstanding cheques	(522,148)
Actual Opening Cash balance	1,694,325
Deduct: Hypothecate/Security to Tony Conforti***	(2,000,000)
Opening cash balance	(305,675)

***We have reflected this amount as already paid out to Tony Conforti, for repayment of the funds he advanced to take out RBC.