

**ONTARIO
SUPERIOR COURT OF JUSTICE**

**IN THE MATTER OF THE NOTICE OF INTENTION TO
MAKE A PROPOSAL OF FUN AND FITNESS
TRAMPOLINES INC., A CORPORATION INCORPORATED
UNDER THE *CANADA BUSINESS CORPORATIONS ACT***

FACTUM OF FUN & FITNESS TRAMPOLINES INC.
(extension of time to file a proposal and approval of stalking horse sale process)
(returnable October 30, 2020)

October 26, 2020

GOLDMAN SLOAN NASH & HABER LLP
480 University Avenue, Suite 1600
Toronto, Ontario M5G 1V2
Fax: 416-597-6477

R. Brendan Bissell (LSO# 40354V)
Tel: 416-597-6489
Email: bissell@gsnh.com

Joël Turgeon (Member of the Bar of Quebec,
Ontario student-at-law)

Lawyers for Fun & Fitness Trampolines Inc.

I. NATURE OF THIS MOTION

1. This is a motion by Fun & Fitness Trampolines Inc. (“**FFT**”), the debtor in the herein notice of intention to make a proposal to creditors (“**NOI**”) proceeding under the *Bankruptcy and Insolvency Act* (“**BIA**”), for orders:
 - a. that Crowe Soberman Inc. in its capacity as proposal trustee (the “**Trustee**”) conduct the proposed sale process for FFT’s assets,
 - b. approving the “stalking horse” asset purchase agreement (the “**Stalking Horse APA**”) dated October 26, 2020 between FFT as vendor and 2786323 Ontario Inc. as purchaser (the “**Purchaser**”), including its break fee, for the purpose of constituting the stalking horse bid in the sale process,
 - c. extending the time for the Trustee to file, on behalf of FFT, a proposal to creditors,
 - d. ordering a first-ranking charge in the maximum amount of \$50,000 over FFT’s assets to secure payment of the reasonable fees and expenses of counsel for FFT, the Trustee, and counsel for the Trustee incurred in respect of these proceedings, and
 - e. temporarily sealing Confidential Appendix 1 to the affidavit of Ghulam Memon sworn October 26, 2020.
2. This is the first motion in the proceeding. Suggested draft orders are provided at tabs 3 and 4 of FFT’s motion record for the herein motion. The Trustee supports the relief sought.

II. OVERVIEW

3. FFT operates a “SkyZone” trampoline park in Kitchener. The COVID-19 pandemic has caused its revenues to be dramatically lower than expenses, even taking into account the federal wage subsidy and the prior and possible further federal commercial rent relief programs.
4. FFT’s financial situation became even more bleak when two related companies that operated similar trampoline parks in the Montreal area were forced to shut down entirely

at the end of September. FFT had guaranteed obligations of those companies to landlords, and at least some of their creditors.

5. Royal Bank of Canada is the only known secured creditor of FFT, with a collateral security registration for loans made to one or more of the Montreal companies. FFT's creditors are otherwise unsecured, including its Kitchener landlord for rent arrears, and unsecured creditors arising out of the Montreal companies' failure.
6. FFT's hard assets are really only the trampoline equipment and other chattels inside its leased premises. FFT currently operates at a loss and is expected to do so for some time yet. FFT's management hopes that in time its business could become profitable as COVID-19 restrictions ease.
7. FFT filed its NOI on October 3, 2020. The initial 30-day stay expires on November 2, 2020. This motion includes a request to extend the period in which FFT can make a proposal to December 17, 2020, which is the 45 day extension permitted by the BIA.
8. FFT also seeks approval of the Stalking Horse APA to be used as the basis for a stalking horse sale process to be run by the Trustee. FFT proposes that the Trustee run this process because the principals of the Purchaser are the wives of the principals of FFT so arm's length management of the process is appropriate. FFT has arranged for this offer to be made because it believes that the amount offered is superior to the liquidation value of FFT's assets and will therefore represent a better recovery for creditors and a better result for FFT's customers, suppliers (including landlord) and employees. The public nature of the process will of course show whether that is true or not, but FFT understands that the Trustee has obtained a liquidation valuation of FFT's assets that it will file on this motion..
9. FFT also seeks a charge to secure the payment of the professionals, in the amount of \$50,000. FFT is not seeking a DIP charge at this point, and is instead funding ongoing losses through contributions from shareholders and related parties.

III. FACTS

A. Business and assets

10. FFT is owned by Dr. Ghulam Memon, being FFT's president and one of its directors, his business partner Mr. Kamran Ali, and family members. FFT's business the operation of a "Sky Zone" franchise playground area where adults and children may use trampolines and similar fitness and recreative equipment for a fee. The business is operated from leased premises in Kitchener, Ontario. FFT owns trampolines and other equipment, with most of which purchased from the "Sky Zone" franchisor using funds from an unsecured shareholder loan. FFT has 1 full-time employee and 34 part-time employees.¹

B. Creditors

11. Per the NOI mailing package creditor list, which was prepared by Dr. Memon and the Trustee, creditor claims against FFT total approximately \$1,341,942.32. The largest creditors are Royal Bank of Canada ("RBC"), on account of guarantees for related company debt, as described below (approximately \$388,765), Beconridge Development, on account of rent arrears for the Kitchener premises (\$214,772), and the Canada Revenue Agency (\$112,000). Most of the balance consists of debt to companies related to Dr. Memon, Mr. Ali and/or friends and family members on account of unsecured and shareholder loans.²
12. FFT's *Personal Property Security Act* registrants as of October 22, 2020 include RBC and National Leasing Group Inc. No obligation should attach to the latter registration anymore, and National Leasing Group Inc. is not listed in the NOI materials, but it was served in respect of the herein motion out of an abundance of caution.³

¹ Affidavit of Ghulam Memon sworn October 26, 2020 (the "**Memon Affidavit**"), Tab 2 of the motion record in respect of the herein motion (the "**MR**"), paras. 3-6.

² Memon Affidavit, Tab 2 of the MR, para. 8.

³ Memon Affidavit, Tab 2 of the MR, para. 9.

13. Around March 2020, FFT obtained a \$40,000 loan from the federal government as part of the COVID-19 emergency measures. The terms of reimbursement for this loan in the particular situation of FFT remain unclear at this time.⁴

C. Causes of insolvency

i. Increased insurance costs

14. Before 2019, FFT's insurance policy premium was approximately \$25,000/year. When the policy was renewed in 2019, the premium increased to \$98,820. This weakened FFT's profitability, as insurance was already an important head of expense for FFT's business.⁵

ii. COVID-19

15. The business was closed to customers between March 15 and August 3, 2020 due to emergency measures then in force in Kitchener. It could since reopen, with social distancing and sanitary measures in place. Nevertheless, customer attendance is low. Relative to the same period in 2019, for the period from August to October 2020, FFT's gross revenues decreased by about 78%.⁶
16. By reopening and keeping some of its employees, FFT qualifies for the federal government's wage and rent subsidy programs. FFT receives an average of approximately \$26,725 per month in rent subsidy since March. The wage subsidy is for approximately 75% of FFT's payroll, which fluctuates at around \$22,000 per month. Despite such governmental aid, FFT's business will become or remain unsustainable until it attracts a pre-COVID number of customers again, which is unpredictable.⁷

iii. Failure of related companies

17. Montreal Trampolines Inc. and Laval Trampolines Inc. were incorporated to operate two additional SkyZone franchises in Dorval and Laval, Quebec, respectively. FFT guaranteed those companies' obligations to RBC, Business Development Bank of Canada, and landlords. Due to the COVID-19 pandemic, those businesses failed. At the end of

⁴ Memon Affidavit, Tab 2 of the MR, para. 17.

⁵ Memon Affidavit, Tab 2 of the MR, para. 11.

⁶ Memon Affidavit, Tab 2 of the MR, paras. 12-15.

⁷ Memon Affidavit, Tab 2 of the MR, paras. 16-18.

September 2020, the sites were closed and creditors are presently realizing on the companies' equipment and property. Some of those creditors have made demand on FFT on account of its guarantee obligations. RBC, who is a *Personal Property Security Act* registrant against FFT in Ontario, also served a notice of intention to enforce security under BIA s. 244 of the BIA on September 24, 2020.⁸

D. Restructuring approach

18. FFT does not have the cashflow or assets to navigate through the above in the normal course of business. It is insolvent and seeks to effect a financial restructuring through the herein proceedings.⁹
19. Already within the first 30 days of filing, FFT, in consultation with the Trustee, legal counsel and stakeholders, formulates a restructuring plan centered around financing a viable proposal to creditors via a “stalking horse” sale process.¹⁰
20. For context, a “stalking horse” sale process is one wherein a person makes an offer that the debtor company is willing to accept conditional on that offer proving to be the best one after the process is concluded. Here, that first bidder is the Purchaser, on terms set out in the Stalking Horse APA.
21. For clarity, it should be emphasized the court is not being asked to approve any sale at this point. If the sale process is ordered and as further described below, the Trustee will determine if there are any superior bids, and if so there will be an auction among the Purchaser and any such qualified bidder(s). It is only after that process that FFT will come to court for an approval and vesting order on the winning transaction.
22. FFT must also note that the Purchaser is a related party. Its shareholders are Dr. Memon and Mr. Ali's respective wives, who are doctors and invested their own money and money raised from friends and family, excluding Dr. Memon and Mr. Ali. Such friends and family

⁸ Memon Affidavit, Tab 2 of the MR, paras. 19-21.

⁹ Memon Affidavit, Tab 2 of the MR, paras. 22-24.

¹⁰ Memon Affidavit, Tab 2 of the MR, para. 25.

believe in the business returning to profitability post-COVID. The Purchaser hired its own separate legal counsel (GLG LLP) in respect of the Stalking Horse APA.¹¹

E. Stalking Horse APA

23. The material terms of the Stalking Horse APA include:

- a. Purchased assets – all of FFT’s right, title and interest in and to all assets used in its business on an “as is, where is” basis, save those assets that the Purchaser excludes before closing (such exclusion would not affect the purchase price).¹²
- b. Assumed lease – the Purchaser would assume the lease agreement as to the premises where the business is operated, and would take responsibility for any monetary default thereunder as required under BIA s. 84.1.¹³
- c. Purchase price – the purchase price is set out in the unredacted copy of the Stalking Horse APA, filed on a confidential basis.¹⁴ This unredacted copy is subject to the sealing order sought, as discussed below.

FFT understands that the Trustee is obtaining a valuation of FFT’s assets on a liquidation basis and will be filing it with the Court on this motion. If so, FFT (and presumably the Trustee) will ask that such valuation be sealed until FFT’s assets have been disposed of or pending further Court Order, for the reasons set out below.

- d. Deposit – the Purchaser paid a \$20,000 deposit to the Trustee.¹⁵
- e. Legal costs – each party pays its own legal costs.¹⁶
- f. Employees – the Purchaser intends on extending employment offers to all or substantially all of FFT’s employees on comparable terms.¹⁷

¹¹ Memon Affidavit, Tab 2 of the MR, paras. 26-28.

¹² Stalking Horse APA, Exhibit “A” to the Memon Affidavit (page 20 of the MR), s. 3.1 and 4.3.

¹³ Stalking Horse APA, Exhibit “A” to the Memon Affidavit (page 20 of the MR), s. 3.2 and Schedule “C”.

¹⁴ Unredacted Stalking Horse APA, Confidential Exhibit “1” to the Memon Affidavit.

¹⁵ Stalking Horse APA, Exhibit “A” to the Memon Affidavit (page 20 of the MR), s. 3.3.

¹⁶ Stalking Horse APA, Exhibit “A” to the Memon Affidavit (page 20 of the MR), s. 3.7.

¹⁷ Stalking Horse APA, Exhibit “A” to the Memon Affidavit (page 20 of the MR), s. 3.8.

- g. Break Fee – \$10,000.¹⁸
- h. Conditions – the salient conditions are the court’s approval of the sale process proposed herein and, should the Stalking Horse APA prove the best offer, the making of an approval and vesting order substantially in the form of the Commercial List model.¹⁹

F. Sale Process

24. The proposed sale process terms are in a form regularly used in insolvency proceedings on the Commercial List. The material terms are as follows:

- a. Advertisement – Trustee to advertise in The National Post (national edition) and distribute teasers to potentially interested parties.²⁰
- b. Due diligence and data room – Trustee to set up a data room with all reasonably required information for access by potentially interested parties upon execution of a confidentiality agreement.²¹
- c. Bid Deadline – 5pm EST time on November 30, 2020.²²
- d. Qualified bids – Trustee to determine which bids, if any, are “Qualified Bids”, as defined to generally mean a binding offer to purchase substantially all of FFT’s assets that is substantially the same or better than the Stalking Horse APA, made with a 10% deposit.²³
- e. Auction and winning bid – if there is more than one Qualified Bid, the Trustee will conduct an auction among the bidders on terms set by the Trustee.²⁴ The Trustee will determine the “Winning Bid” (as defined) in the totality of the circumstances.²⁵

¹⁸ Stalking Horse APA, Exhibit “A” to the Memon Affidavit (page 20 of the MR), s. 6.4.

¹⁹ Stalking Horse APA, Exhibit “A” to the Memon Affidavit (page 20 of the MR), s. 5.1, 6.1, 6.3.

²⁰ Proposed sale process, Schedule “A” to the draft sale process order, Tab 3 of the MR, para. 2.

²¹ Proposed sale process, Schedule “A” to the draft sale process order, Tab 3 of the MR, para. 3.

²² Proposed sale process, Schedule “A” to the draft sale process order, Tab 3 of the MR, para. 4.

²³ Proposed sale process, Schedule “A” to the draft sale process order, Tab 3 of the MR, para. 5.

²⁴ Proposed sale process, Schedule “A” to the draft sale process order, Tab 3 of the MR, paras. 6, 7.

²⁵ Proposed sale process, Schedule “A” to the draft sale process order, Tab 3 of the MR, para. 8.

- f. Court approval – FFT to make a motion to the court for approval of the transaction contemplated in the Winning Bid or the Stalking Horse APA, as the case may be, within 10 days of the auction.²⁶

IV. ISSUES AND LAW

25. The issues are whether the court should **(A)** order the sale process and approve the use of the Stalking Horse APA within that process, **(B)** extend the time to file a proposal, **(C)** order the administrative charge, and **(D)** make the sealing orders.

A. Sale process and Stalking Horse APA

26. This Court has jurisdiction to order the proposed sale process and approve the Stalking Horse APA for purposes of constituting the stalking horse bid, including under BIA s. 65.13. Stalking horse sale processes are not a rare occurrence in restructurings, whether NOIs or proceedings under the *Companies' Creditors Arrangement Act*.²⁷ As mentioned above, the court is not asked to approve any sale *per se* at this time. There will be a motion for this after the sale process if one is ordered.²⁸
27. In *Nortel*,²⁹ the court set out the following non-exhaustive list of guiding factors: whether a sale is warranted at this time, whether the sale is to benefit the whole “economic community”, whether any of the debtors’ creditors have a *bona fide* reason to object to the sale of the business, and whether there is a better viable alternative.³⁰
28. These factors have been used in NOI proceedings as well. A notable precedent is *Mustang*.³¹ There the court referenced *CCM*³² (a receivership) and the *Soundair*³³ principles to propose the following additional factors: the fairness, transparency and

²⁶ Proposed sale process, Schedule “A” to the draft sale process order, Tab 3 of the MR, paras. 9, 10.

²⁷ Notable precedents include *Nortel Networks Corporation (Re)*, [2009] O.J. No. 3169 (ON SC) [[2009 CanLII 39492](#)] (“*Nortel*”), para. 49, *Colossus Minerals Inc. (Re)*, [2014 ONSC 514](#) (“*Colossus*”), paras. 22-25, *Mustang GP Ltd. (Re)*, [2015 ONSC 6562](#) (“*Mustang*”), paras. 36-40 and *Danier Leather Inc. (Re)*, [2016 ONSC 1044](#) (“*Danier Leather*”), paras. 20-35.

²⁸ See *CCM Master Qualified Fund v blutip Power Technologies*, [2012 ONSC 1750](#) (“*CCM*”), para. 16.

²⁹ *Nortel*.

³⁰ *Nortel*, para. 49.

³¹ *Mustang*.

³² *CCM*, paras. 6-7; *Danier Leather*, paras. 23-25.

³³ [1991] O.J. No. 1137 (ON CA) [[1991 CanLII 2727](#)].

integrity of the proposed process, the commercial efficacy of the proposed process in light of the specific circumstances of the case, and whether the sales process will optimize the chances, in the particular circumstances, of securing the best possible price for the assets up for sale.³⁴

29. BIA s. 65.13(5) imposes additional considerations for approval when the purported purchaser is a related party. In short, the related party's bid must be fair and be the best one following a reasonable process to locate arm's length offers.
30. In light of the above the court may approve the proposed sale process and the first bid that is the Stalking Horse APA, including for the following reasons:³⁵
 - a. the Stalking Horse APA's price and terms are commercially fair and reasonable to FFT in the circumstances (more detailed submissions will be made at the oral hearing and with reference to the confidential materials),³⁶
 - b. the Stalking Horse APA protects the interests of key stakeholders such as employees and the landlord and provides for the continuation of the business,
 - c. should the Stalking Horse APA prove the best offer following the sale process, FFT believes that transaction will already allow a viable proposal to creditors, and likely afford greater recovery than in a receivership/liquidation/bankruptcy scenario,³⁷
 - d. the Stalking Horse APA remains a "floor" the commercial reasonableness of which will be assessed "in real life" through the proposed sale process, which process may also allow FFT to locate arm's length and additional offers,
 - e. the Stalking Horse APA ensures that only serious parties are attracted to the sale process, which ensures its efficiency,

³⁴ *Mustang*, para. 39.

³⁵ See the Memon Affidavit, Tab 2 of the MR, para. 32.

³⁶ Memon Affidavit, Tab 2 of the MR, paras. 29, 30.

³⁷ Memon Affidavit, Tab 2 of the MR, paras. 29, 33, 38.

- f. the process will be run exclusively by the Trustee which ensures fairness and impartiality,
 - g. the process provides sufficient time for prospective purchaser to complete due diligence and submit competitive bids,
 - h. the Trustee supports the relief sought for the additional reasons set out in its report.³⁸
31. On the break fee specifically, those are commonplace in stalking horse agreements and have been permitted provided they are reasonable. The rationale is consideration for the stalking horse bidder's time, costs and risk in acting as the initial bidder in the event its offer is not the winning bid. Break fees with additional expense reimbursement of up to 4-5% have been approved.³⁹ Here the break fee is appropriate.
32. Thus the relief sought in respect of the sale process and the Stalking Horse APA is in the best interests of all stakeholders, including customers, suppliers, creditors and employees, and may be order by this court.
- B. Extension of time to file a proposal**
33. This is the first motion to extend the time to file a proposal, and it is supported by the Trustee.
34. BIA s. 50.4(9) sets out the following mandatory conditions for such time extension: (a) that the insolvent person has acted, and is acting, in good faith and with due diligence; (b) that the insolvent person would likely be able to make a viable proposal if the extension being applied for were granted; and (c) that no creditor would be materially prejudiced if the extension being applied for were granted.
35. Here, FFT has put forth a viable restructuring plan within the initial 30 days of the NOI process. The extension would be to run the sale process, assuming it is ordered. As recounted above, the sale process is a good faith, commercially reasonable attempt at

³⁸ First report of the trustee, to be served and filed by the Trustee's counsel.

³⁹ See *Danier Leather*, para. 42 (provides references to precedents approving break fees of 4% of the stalking horse bid amount and cumulative break fee/expense reimbursements amounts of 5%).

locating offers for FFT's assets that is supported by an initial bid that is fair to all stakeholders, and FFT believes the Stalking Horse APA itself – and *a fortiori* any better offer that manifests itself through the sale process – would allow a viable proposal. A 45-day extension should be sufficient to run the sale process, paper the winning transaction and obtain an approval and vesting order. If the sale process is not ordered, then FFT would use the time to make good faith efforts, with the assistance of the Trustee, to define alternative restructuring options.⁴⁰

36. The primary purpose of financial restructurings is “to permit the debtor to carry on business, and, where possible, avoid the social and economic costs of liquidating its assets.”⁴¹ This first extension is in the best interests of all stakeholders and no creditor would be materially prejudiced thereby.⁴²

C. Administration charge

37. BIA s. 64.2 gives this court jurisdiction to order the first-ranking administration charge sought. The conduct of the sale process, and FFT's restructuring generally, are dependent on professional assistance. The quantum of the administration charge sought, \$50,000, is *prima facie* fair and reasonable.⁴³ A relevant consideration is that no debtor-in-possession financing charge is sought at this time.⁴⁴ The administration charge requested is therefore appropriate in the circumstances.⁴⁵

D. Sealing orders

38. FFT seeks an order that Confidential Exhibit “1”, being a fully unredacted copy of the Stalking Horse APA, be sealed from the public record. FFT otherwise filed a copy of the Stalking Horse APA with only the purchase price being redacted. If granted the sealing

⁴⁰ Memon Affidavit, Tab 2 of the MR, paras. 35-39.

⁴¹ *Century Services Inc. v Canada (Attorney General)*, [2010 SCC 60](#), para. 15; *9354-9186 Québec inc. v Callidus Capital Corp.*, [2020 SCC 10](#), para. 41.

⁴² See *In the Matter of the Proposal of Cantrail Coach Lines Ltd.*, [2005 BCSC 351](#).

⁴³ Memon Affidavit, Tab 2 of the MR, para. 40.

⁴⁴ Memon Affidavit, Tab 2 of the MR, para. 37; compare the cases of *Nautican v Dumont*, [2020 PESC 15](#), paras. 25-28 (where the court ordered an administration charge but did not order the DIP charge sought), and *Colossus*, paras. 11-15, where the court ordered a non-first ranking administration charge, but also a first-ranking DIP charge, in the context of a sale process within an NOI proceeding.

⁴⁵ See *Canwest Publishing Inc.*, [2010 ONSC 222](#), paras. 54, 55.

order sought would terminate after a transaction is closed as evidenced by the Trustee's filing a certificate, or further order of the court. Further, if the Trustee files an valuation of FFT's assets, then FFT (and likely the Trustee) will seek that it be sealed even if the sale process is ordered.

39. This court has jurisdiction to make the sealing orders sought.⁴⁶ Sealing orders are typical attendant relief in stalking horse sale processes. "There is a public interest in maximizing recovery in an insolvency that goes beyond each individual case."⁴⁷ The rationale is to not "pollute" the process with public accessibility to documents that may deter or lower bidding on assets. Indeed, if the stalking horse amount or the appraisal of liquidation value were available, interested parties would have no incentive to bid but marginally higher than those amounts, if at all. The same is true should the Stalking Horse APA win but the transaction fail to close, and a return to market was attempted.⁴⁸ The sealing orders sought are therefore appropriate in the circumstances.

V. NATURE OF THE ORDER SOUGHT

40. FFT therefore seeks orders in the form of the suggested draft orders, filed at tabs 3 and 4 of FFT's Motion Record.

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 26th day of October, 2020.



Brendan Bissell (LSO# 40354V)

Tel: 416-597-6489

Email: bissell@gsnh.com

Joël Turgeon (Member of the Bar of Quebec,
Ontario student-at-law)

Lawyers for Fun & Fitness Trampolines Inc

⁴⁶ *Courts of Justice Act*, [R.S.O. 1990, c. C.43](#), s. 137(2); see *Danier Leather*, paras. 79-86, and *Nortel*, paras. 3, 57.

⁴⁷ *Danier Leather*, para. 84.

⁴⁸ Memon Affidavit, Tab 2 of the MR, para. 41.

SCHEDULE A – LIST OF AUTHORITIES

1. *Nortel Networks Corporation (Re)*, [2009] O.J. No. 3169 (ON SC) [\[2009 CanLII 39492\]](#)
2. *Colossus Minerals Inc. (Re)*, [2014 ONSC 514](#)
3. *Mustang GP Ltd. (Re)*, [2015 ONSC 6562](#)
4. *Danier Leather Inc. (Re)*, [2016 ONSC 1044](#)
5. *CCM Master Qualified Fund v blutip Power Technologies*, [2012 ONSC 1750](#)
6. *Royal Bank of Canada v Soundair Corp.*, [1991] O.J. No. 1137 (ON CA) [\[1991 CanLII 2727\]](#)
7. *Century Services Inc. v Canada (Attorney General)*, [2010 SCC 60](#)
8. *9354-9186 Québec inc. v Callidus Capital Corp.*, [2020 SCC 10](#)
9. *In the Matter of the Proposal of Cantrail Coach Lines Ltd.*, [2005 BCSC 351](#)
10. *Nautican v Dumont*, [2020 PESC 15](#)
11. *Canwest Publishing Inc.*, [2010 ONSC 222](#)

SCHEDULE B – RELEVANT STATUTES

Bankruptcy and Insolvency Act, [R.S.C., 1985, c. B-3](#)

Notice of intention

50.4 (8) Where an insolvent person fails to comply with subsection (2), or where the trustee fails to file a proposal with the official receiver under subsection 62(1) within a period of thirty days after the day the notice of intention was filed under subsection (1), or within any extension of that period granted under subsection (9),

(a) the insolvent person is, on the expiration of that period or that extension, as the case may be, deemed to have thereupon made an assignment;

(b) the trustee shall, without delay, file with the official receiver, in the prescribed form, a report of the deemed assignment;

(b.1) the official receiver shall issue a certificate of assignment, in the prescribed form, which has the same effect for the purposes of this Act as an assignment filed under section 49; and

(c) the trustee shall, within five days after the day the certificate mentioned in paragraph (b.1) is issued, send notice of the meeting of creditors under section 102, at which meeting the creditors may by ordinary resolution, notwithstanding section 14, affirm the appointment of the trustee or appoint another licensed trustee in lieu of that trustee.

Extension of time for filing proposal

(9) The insolvent person may, before the expiry of the 30-day period referred to in subsection (8) or of any extension granted under this subsection, apply to the court for an extension, or further extension, as the case may be, of that period, and the court, on notice to any interested persons that the court may direct, may grant the extensions, not exceeding 45 days for any individual extension and not exceeding in the aggregate five months after the expiry of the 30-day period referred to in subsection (8), if satisfied on each application that

(a) the insolvent person has acted, and is acting, in good faith and with due diligence;

(b) the insolvent person would likely be able to make a viable proposal if the extension being applied for were granted; and

(c) no creditor would be materially prejudiced if the extension being applied for were granted.

Court may not extend time

(10) Subsection 187(11) does not apply in respect of time limitations imposed by subsection (9).

Court may order security or charge to cover certain costs

64.2 (1) On notice to the secured creditors who are likely to be affected by the security or charge, the court may make an order declaring that all or part of the property of a person in respect of whom a notice of intention is filed under section 50.4 or a proposal is filed under subsection 62(1) is subject to a security or charge, in an amount that the court considers appropriate, in respect of the fees and expenses of

- (a) the trustee, including the fees and expenses of any financial, legal or other experts engaged by the trustee in the performance of the trustee's duties;
- (b) any financial, legal or other experts engaged by the person for the purpose of proceedings under this Division; and
- (c) any financial, legal or other experts engaged by any other interested person if the court is satisfied that the security or charge is necessary for the effective participation of that person in proceedings under this Division.

Priority

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

Individual

(3) In the case of an individual,

- (a) the court may not make the order unless the individual is carrying on a business; and
- (b) only property acquired for or used in relation to the business may be subject to a security or charge.

Restriction on disposition of assets

65.13 (1) An insolvent person in respect of whom a notice of intention is filed under section 50.4 or a proposal is filed under subsection 62(1) may not sell or otherwise dispose of assets outside the ordinary course of business unless authorized to do so by a court. Despite any requirement for shareholder approval, including one under federal or provincial law, the court may authorize the sale or disposition even if shareholder approval was not obtained.

Individuals

(2) In the case of an individual who is carrying on a business, the court may authorize the sale or disposition only if the assets were acquired for or used in relation to the business.

Notice to secured creditors

(3) An insolvent person who applies to the court for an authorization shall give notice of the application to the secured creditors who are likely to be affected by the proposed sale or disposition.

Factors to be considered

- (4) In deciding whether to grant the authorization, the court is to consider, among other things,
- (a) whether the process leading to the proposed sale or disposition was reasonable in the circumstances;
 - (b) whether the trustee approved the process leading to the proposed sale or disposition;
 - (c) whether the trustee 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 to be received for the assets is reasonable and fair, taking into account their market value.

Additional factors — related persons

- (5) If the proposed sale or disposition is to a person who is related to the insolvent person, the court may, after considering the factors referred to in subsection (4), grant the authorization only if it is satisfied that
- (a) good faith efforts were made to sell or otherwise dispose of the assets to persons who are not related to the insolvent person; and
 - (b) the consideration to be received is superior to the consideration that would be received under any other offer made in accordance with the process leading to the proposed sale or disposition.

Related persons

- (6) For the purpose of subsection (5), a person who is related to the insolvent person includes
- (a) a director or officer of the insolvent person;
 - (b) a person who has or has had, directly or indirectly, control in fact of the insolvent person; and

(c) a person who is related to a person described in paragraph (a) or (b).

Assets may be disposed of free and clear

(7) The court may authorize a sale or disposition free and clear of any security, charge or other restriction and, if it does, it shall also order that other assets of the insolvent person or the proceeds of the sale or disposition be subject to a security, charge or other restriction in favour of the creditor whose security, charge or other restriction is to be affected by the order.

Restriction — employers

(8) The court may grant the authorization only if the court is satisfied that the insolvent person can and will make the payments that would have been required under paragraphs 60(1.3)(a) and (1.5)(a) if the court had approved the proposal.

Companies' Creditors Arrangement Act, [R.S.C., 1985, c. C-36](#)

Restriction on disposition of business assets

36 (1) 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. Despite any requirement for shareholder approval, including one under federal or provincial law, the court may authorize the sale or disposition even if shareholder approval was not obtained.

Notice to creditors

(2) A company that applies to the court for an authorization is to give notice of the application to the secured creditors who are likely to be affected by the proposed sale or disposition.

Factors to be considered

(3) In deciding whether to grant the authorization, the court is to consider, among other things,

(a) whether the 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 to be received for the assets is reasonable and fair, taking into account their market value.

Additional factors — related persons

(4) If the proposed sale or disposition is to a person who is related to the company, the court may, after considering the factors referred to in subsection (3), grant the authorization only if it is 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 to be received is superior to the consideration that would be received under any other offer made in accordance with the process leading to the proposed sale or disposition.

Related persons

(5) For the purpose of subsection (4), a person who is related to the company includes

(a) a director or officer of the company;

(b) a person who has or has had, directly or indirectly, control in fact of the company; and

(c) a person who is related to a person described in paragraph (a) or (b).

Assets may be disposed of free and clear

(6) The court may authorize a sale or disposition free and clear of any security, charge or other restriction and, if it does, it shall also order that other assets of the company or the proceeds of the sale or disposition be subject to a security, charge or other restriction in favour of the creditor whose security, charge or other restriction is to be affected by the order.

Restriction — employers

(7) The court may grant the authorization only if the court is satisfied that the company can and will make the payments that would have been required under paragraphs 6(5)(a) and (6)(a) if the court had sanctioned the compromise or arrangement.

Courts of Justice Act, [R.S.O. 1990, c. C.43](#)

Documents public

137 (1) On payment of the prescribed fee, a person is entitled to see any document filed in a civil proceeding in a court, unless an Act or an order of the court provides otherwise.

Sealing documents

(2) A court may order that any document filed in a civil proceeding before it be treated as confidential, sealed and not form part of the public record.

Court lists public

(3) On payment of the prescribed fee, a person is entitled to see any list maintained by a court of civil proceedings commenced or judgments entered.

Copies

(4) On payment of the prescribed fee, a person is entitled to a copy of any document the person is entitled to see.

IN THE MATTER OF THE NOTICE OF INTENTION TO MAKE A PROPOSAL
OF FUN AND FITNESS TRAMPOLINES INC., A CORPORATION
INCORPORATED UNDER THE *CANADA BUSINESS CORPORATIONS ACT*

Estate No. 35-2677628

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST
Proceeding commenced in TORONTO

FACTUM OF FUN & FITNESS
TRAMPOLINES INC.
(stay extension and approval of sale process and stalking
horse agreement)
(motion returnable October 30, 2020)

GOLDMAN SLOAN NASH & HABER LLP
480 University Avenue, Suite 1600
Toronto (ON) M5G 1V2

Brendan Bissell (LSO# 40354V)
Tel: 416-597-6489
Email: bissell@gsnh.com

Joël Turgeon (Member of the Bar of Quebec,
Ontario student-at-law)

Lawyers for Fun & Fitness Trampolines Inc.