

**ONTARIO
SUPERIOR COURT OF JUSTICE
IN BANKRUPTCY AND INSOLVENCY
(COMMERCIAL LIST)**

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

**IN THE MATTER OF THE COMPANIES'
CREDITORS ARRANGEMENT ACT, R.S.C. 1985, c.
C-36, AS AMENDED AND IN THE MATTER OF THE
COMPROMISE OR ARRANGEMENT OF 2808447
ONTARIO INC., 2809588 ONTARIO INC, AND
2809590 ONTARIO INC.**

MOTION RECORD

March 2, 2021

WEISZ FELL KOUR LLP
100 King Street West,
Suite 5600
Toronto, ON M5X 1C9

Sharon Kour
LSO No. 58328D
skour@wfkaw.ca
Tel: 416.613.8283

Caitlin Fell
LSO No. 60091H
cfell@wfkaw.ca
Tel: 416.613.8282

Fax: 416.613.8290

Lawyers for 2808447 Ontario Inc., et al.

TO: THE SERVICE LIST

**ONTARIO
SUPERIOR COURT OF JUSTICE
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2809590 ONTARIO INC.**

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TAB 1

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

ONTARIO
SUPERIOR COURT OF JUSTICE
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C-36, AS AMENDED AND IN THE MATTER OF THE
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ONTARIO INC., 2809588 ONTARIO INC, AND
2809590 ONTARIO INC.

NOTICE OF MOTION
(Re: Stay Extension)

2808447 ONTARIO INC., 2809588 ONTARIO INC. and 2809590 ONTARIO INC.

(collectively, the “**Applicants**”) will make a motion to a Judge presiding over the Commercial List on Friday, March 5, at 10:00 a.m., or as soon after that time as the motion can be heard by judicial teleconference via Zoom at Toronto, Ontario. Please refer to the conference details attached as Schedule “A” hereto in order to attend the motion and advise if you intend to join the motion by emailing Christel Paul at cpaul@wfkllaw.ca.

PROPOSED METHOD OF HEARING: The motion is to be heard orally.

THE MOTION IS FOR:

1. An Order, substantially in the form attached at Tab 3 of the Motion Record (the “**Stay Extension Order**”) that, among other things, extends the Stay Period as defined in paragraph 16 of the initial order of Justice Haaney dated September 29, 2020 (the “**Initial**

Order”) pursuant to the *Companies’ Creditors Arrangement Act*, RSC 1985, c C-36, as amended (the “**CCAA**”) by 6 months, up to and including September 8, 2021.

2. Such further and other relief as this Honourable Court deems just.

THE GROUNDS FOR THIS MOTION ARE:

3. JMX Contracting Inc. (“**JMX Contracting**”), JMX Leasing Inc. (“**JMX Leasing**”) and BRND Properties Inc. (“**BRND**”) are part of a corporate group (the “**JMX Group**”) in the business of providing environmental contracting, demolition, abatement, remediation, and commodity salvage services to construction and decommissioning sites across Canada.
4. In April 2020, the corporate entities in the JMX Group filed Notices of Intention to Make a Proposal (“**NOI**”) under the *Bankruptcy and Insolvency Act* (the “**BIA**”). Crowe Soberman Inc. was appointed proposal trustee of the debtors.
5. On September 29, 2020, the Initial Order granted by Hainey J., among other things:
 - a) granted a stay of proceedings up to and including December 11, 2020 (the “**Stay Period**”); and
 - b) appointed Crowe Soberman Inc. as Monitor (the “**Monitor**”).
6. The Applicants are holding corporations vested with the liabilities of BRND, JMX Contracting and JMX Leasing, pursuant to the Order of Justice Koehnen dated February 2, 2021 (the “**RVO**”).
7. Pursuant to the further Order of Justice Koehnen dated February 2, 2021 (the “**AVO**”), the shares of JMX Leasing and BRND (and JMX Contracting, as a wholly-owned subsidiary of

JMX Leasing) were transferred to 2779076 Ontario Inc. (the “**Purchaser**”) thereby effecting a sale of the business to the Purchaser.

8. On February 22, 2021, the Monitor issued its certificate confirming that the sale as contemplated under the AVO was complete.
9. Accordingly, the business has been sold and the original CCAA applicants, the JMX Group, have exited this CCAA proceeding. The Applicants are the only remaining companies in this CCAA proceeding.
10. 28709588 Ontario Inc. (“**Residual Contracting**”) is vested with the liabilities that were not assumed by the Purchaser, as well as with the claims of JMX Contracting in connection with:
 - a) 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;
 - b) the Lambton Generating Station Demolition Agreement #RG00287132 with Ontario Power Generation Inc. (“**OPG**”) dated July 10, 2018 (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 Litigation**”).

Extension of the Stay Period

11. The extension of the Stay Period is necessary and appropriate. The Applicants are seeking an extension of the stay of proceedings up to and including September 8, 2021 to provide the time necessary to advance the litigation.
12. The Applicants and the JMX Group have acted in good faith and with due diligence since the granting of the Initial Order.
13. At this time, JMX Contracting has delivered a Statement of Defence against OPG under the *Construction Lien Act* (Ontario), which will be continued by Residual Contracting pursuant to the RVO. To permit OPG to deliver its defence and any counterclaim it may wish to make, the Applicants propose that the extended stay shall not apply to the delivery of any defence or counterclaim that OPG may wish to deliver in the OPG Litigation.

Further Grounds

14. Sections 11.02 and other provisions of the CCAA and the inherent and equitable jurisdiction of this Court;
15. Rules 1.04, 2.03, 3.02 and 37 of the *Rules of Civil Procedure*, RSO 1990, Reg 194, as amended; and
16. Such further and other grounds as counsel may advise and this Honourable Court may permit.

THE FOLLOWING DOCUMENTARY EVIDENCE WILL BE USED ON THE HEARING OF THE MOTION:

17. The Affidavit of Charlie Dahl, sworn March 2, 2021, with Exhibits attached thereto;
18. The Third Report of the Monitor, to be filed; and
19. Such further and other evidence as counsel may advise and this Honourable Court may permit.

March 2, 2021

WEISZ FELL KOUR LLP
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Suite 5600
Toronto, ON M5X 1C9

Sharon Kour
LSO No. 58328D
skour@wfkllaw.ca
Tel: 416.613.8283

Caitlin Fell
LSO No. 60091H
cfell@wfkllaw.ca
Tel: 416.613.8282

Fax: 416.613.8290

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TO: THE SERVICE LIST

**Schedule “A”
Conference Details to join Motion via Zoom**

Join Zoom Meeting

<https://us02web.zoom.us/j/89982730985>

Meeting ID: 899 8273 0985

One tap mobile

+14388097799,,89982730985# Canada

+15873281099,,89982730985# Canada

Dial by your location

+1 438 809 7799 Canada

+1 587 328 1099 Canada

+1 647 374 4685 Canada

+1 647 558 0588 Canada

+1 778 907 2071 Canada

+1 204 272 7920 Canada

Meeting ID: 899 8273 0985

Find your local number: <https://us02web.zoom.us/u/kdhxvJnvNG>

**IN THE MATTER OF THE COMPANIES' CREDITORS
ARRANGEMENT ACT, R.S.C. 1985, c. C-36, AS AMENDED AND IN THE
MATTER OF THE COMPROMISE OR ARRANGEMENT OF 2808447
ONTARIO INC., 2809588 ONTARIO INC, AND 2809590 ONTARIO INC.**

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

**ONTARIO
SUPERIOR COURT OF JUSTICE
IN BANKRUPTCY AND INSOLVENCY
(COMMERCIAL LIST)**

Proceedings commenced at Toronto

NOTICE OF MOTION

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Suite 5600
Toronto, ON M5X 1C9

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LSO No. 58328D
skour@wfkllaw.ca
Tel: 416.613.8283

Caitlin Fell

LSO No. 60091H
cfell@wfkllaw.ca
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Fax: 416.613.8290

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TAB 2

ONTARIO
SUPERIOR COURT OF JUSTICE
IN BANKRUPTCY AND INSOLVENCY
(COMMERCIAL LIST)

**IN THE MATTER OF THE COMPANIES' CREDITORS ARRANGEMENT ACT,
R.S.C. 1985, c. C-36, AS AMENDED AND IN THE MATTER OF THE
COMPROMISE OR ARRANGEMENT OF 2808447 ONTARIO INC., 2809588
ONTARIO INC, AND 2809590 ONTARIO INC.**

AFFIDAVIT OF CHARLIE DAHL
(Sworn March 2, 2021)

I, CHARLIE DAHL, of the town of Stouffville, in the province of Ontario, **MAKE OATH AND SAY:**

1. I am the CEO of 2808447 Ontario Inc. ("**New ParentCo**"), 28709588 Ontario Inc. ("**Residual Contracting**") and 2809590 Ontario Inc. ("**Residual Leasing**" and together with New ParentCo and Residual Contracting, the "**Applicants**" or the "**Residual Companies**"). Accordingly, I have personal knowledge of the matters set out below. Where I have relied on information from others, I state the source of such information and verily believe it to be true.

2. This affidavit is submitted in support of a motion for an order that, among other things extends the stay of proceedings up to and including September 8, 2021 (the "**Stay Period**").

I. OVERVIEW

3. JMX Contracting Inc. ("**JMX**"), JMX Leasing Inc. ("**JMX Leasing**") and BRND Properties Inc. ("**BRND**") are part of a corporate group (collectively, the "**JMX Group**") in the business of

providing environmental contracting, demolition, abatement, remediation, and commodity salvage services to construction and decommissioning sites across Canada.

4. In April 2020, the corporate entities in the JMX Group filed Notices of Intention to Make a Proposal (“**NOI**”) under the *Bankruptcy and Insolvency Act* (the “**BIA**”). Crowe Soberman Inc. was appointed proposal trustee of the debtors.

5. On September 29, 2020, the Honourable Mr. Justice Hainey issued an order (the “**Initial Order**”) that, among other things, continued the NOI proceeding under the *Companies’ Creditors Arrangement Act* (the “**CCAA**”) and approved a stalking horse sale process.

6. No bids were ultimately received in the sale process other than the stalking horse bid by 2779076 Ontario Inc. (the “**Purchaser**”). The Purchaser subsequently opted to structure the transaction as a reverse vesting transaction to ensure the business would continue without disruption and could continue to qualify for COVID-19 relief measures.

7. On February 2, 2021, the Honourable Mr. Justice Koehnen granted:
- a. a reverse vesting order (the “**RVO**”) approving the reverse vesting structure and pursuant to which the liabilities of and certain litigation claims of BRND, JMX and JMX Leasing were vested in New ParentCo, Residual Contracting and Residual Leasing, respectively; and
 - b. an approval and vesting order (the “**AVO**”) approving a share purchase agreement between New ParentCo and the Purchaser pursuant to which the shares of JMX Leasing and BRND (and JMX as a wholly-owned subsidiary of JMX Leasing) would be transferred to the Purchaser, thereby effecting a sale of the business to the Purchaser.

8. On February 22, 2021, the Monitor issued its certificate confirming that the sale as contemplated under the AVO was complete. JMX, JMX Leasing and BRND are no longer subject to this CCAA proceeding.

9. The only remaining companies in these CCAA proceedings are the Residual Companies. Each is a holding corporation incorporated to facilitate the RVO transaction. The Residual Companies were vested with the liabilities of BRND, JMX and JMX Leasing respectively, pursuant to the RVO.

10. The Residual Companies conduct no business and hold no assets other than the following claims of JMX vested in them pursuant to the RVO:

- a. 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 bearing Court File No. VLC-S-S-207196; JMX’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 Litigation**”);
- b. the Lambton Generating Station Demolition Agreement #RG00287132 with Ontario Power Generation Inc. (“**OPG**”) dated July 10, 2018 (the “**OPG Contract**”), without limitation: JMX’s interest in amounts drawn down by OPG pursuant to a letter of credit provided by JMX; JMX’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 Litigation**”).

Stay Extension

11. Since the last stay extension was granted, the Applicants have, among other things:
 - (a) paid off the obligations of JMX to its secured lender, the Royal Bank of Canada (“RBC”) and restructured the remaining obligations of JMX Leasing to RBC;
 - (b) effected the sale of the business pursuant to the AVO;
 - (c) continued discussions with OPG in respect to the OPG Litigation to attempt to narrow issues and to proceed on a consensual basis where appropriate;
 - (d) continued settlement discussions with ASNA in respect of the ASNA Litigation; and
 - (e) worked with the Monitor to ensure that the continuation of these CCAA proceedings, if the Stay Period is extended, will be efficient with a view to achieving timely recovery for creditors.

12. Accordingly, the JMX Group is seeking approval of a continued stay of proceedings up to and including September 8, 2021 in order to allow it to advance the litigation.

13. At this time, JMX has delivered a Statement of Defence against OPG under the *Construction Lien Act* (Ontario), which matter will be continued by Residual Contracting pursuant to the RVO. To permit OPG to deliver its defence and any counterclaim it may wish to make, the Applicants propose that the extended Stay Period shall not apply to the delivery of any defence or counterclaim that OPG may wish to deliver in the OPG Litigation.

14. As the Residual Companies conduct no business, the only expenses associated with their continued administration under this CCAA proceeding is the cost of litigation. The Applicants intend

at a later date to seek approval by the Court of a litigation funding agreement as the Residual Companies will need sufficient funding to continue the CCAA proceeding while litigation is underway.

SWORN BEFORE ME BY)
VIDEOCONFERENCE from the Town of)
Stouffville in the Province of Ontario, to the)
City of Toronto in the Province of Ontario)
this 2nd day of March, 2021.)

C. Fell

Charlie Dahl

A Commissioner for taking Affidavits.)

CHARLIE DAHL)

Name: Caitlin Fell
LSO No. 60091H

**IN THE MATTER OF THE COMPANIES' CREDITORS ARRANGEMENT
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Fax: 416.613.8290

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TAB 3

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

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

THE HONOURABLE MR.)	FRIDAY, THE 5 TH
)	
JUSTICE McEWEN)	DAY OF MARCH, 2021

**IN THE MATTER OF THE COMPANIES' CREDITORS
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MATTER OF THE COMPROMISE OR ARRANGEMENT OF 2808447
ONTARIO INC., 2809588 ONTARIO INC, AND 2809590 ONTARIO INC.
(the "Applicants")**

STAY EXTENSION ORDER

THIS APPLICATION, made by the Applicants, pursuant to the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the "CCAA") for an order extending the Stay Period up to and including September 8, 2021 was heard this day by video conference due to the COVID-19 crisis.

ON READING the affidavit of Charlie Dahl, sworn March 2, 2021, and the Exhibits thereto (the "**Dahl Affidavit**"), the report of Crowe Soberman Inc. dated March 2, 2021 (the "**Third Report**") in its capacity as monitor of the Applicants (the "**Monitor**"), and on hearing the submissions of counsel for the Applicants and the Monitor, as well as all persons present as stated in the counsel slip, although properly served as appears from the affidavit of Christel Paul sworn March 2, 2021.

1. **THIS COURT ORDERS** that the time for service of the Notice of Motion and the Motion Record is hereby abridged and validated so that this Motion is properly returnable today and hereby dispenses with further service thereof.

Stay Period

2. **THIS COURT ORDERS** that the Stay Period, as defined in the Order of Mr. Justice Hainey dated September 29, 2020 (the “**Stay Period**”), is hereby extended up to and including September 8, 2021.

 3. **THIS COURT ORDERS** that the Stay Period in place with respect to 2809588 Ontario Inc. (“**Residual Contracting**”) is hereby lifted and shall not apply to (i) any motion for security for costs Ontario Power Generation Inc. (“**OPG**”) may bring in the lien action commenced by JMX Contracting Inc. bearing the Court File No. CV-20-00000081-0000 (the “**OPG Action**”) or in any other action, claim, rights or lawsuit that may be commenced or asserted by Residual Contracting against OPG; and, (ii) any counterclaim OPG may bring in the OPG Action.

 4. **THIS COURT ORDERS** that this Order and all of its provisions are effective as of 12:01 a.m. Eastern Standard/Daylight Time on the date of this Order.
-

IN THE MATTER OF THE COMPANIES' CREDITORS
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100 King Street West,
Suite 5600
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