

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

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

**AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF CROWN
CREST CAPITAL MANAGEMENT CORP., CROWN CREST FINANCIAL CORP., CROWN
CREST FUNDING CORP., SIMPLY GREEN HOME SERVICES INC., SIMPLY GREEN HOME
SERVICES CORP., AND CROWN CREST CAPITAL TRUST**

PEOPLES TRUST COMPANY

APPLICANT

AND

**CROWN CREST CAPITAL MANAGEMENT CORP., CROWN CREST FINANCIAL CORP.,
CROWN CREST FUNDING CORP., SIMPLY GREEN HOME SERVICES INC., SIMPLY
GREEN HOME SERVICES CORP., AND CROWN CREST CAPITAL TRUST**

RESPONDENTS

**FACTUM OF THE APPLICANT
(Application for an Initial Order)
(Returnable November 9, 2023)**

November 6, 2023

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Respondents

**FACTUM OF THE APPLICANTS
(CCAA Initial Application)
(Returnable November 9, 2023)**

PART I – OVERVIEW

1. This Factum is submitted on behalf of Peoples Trust Company (“PTC” or, the “**Applicant**”) in support of its application for a stay of proceedings in respect of Crown Crest Capital Management Corp. (“**CC Management Co**”), Crown Crest Financial Corp. (“**CCFC**”), Crown Crest Funding Corp. (“**Trustee Co**”), Simply Green Home Services Inc. (“**New Simply Green**”), Simply Green Home Services Corp. (“**Old Simply Green**”) and Crown Crest Capital Trust (“**CC Trust**” and together with CC Management Co, CCFC, Trustee Co, New Simply Green and Old Simply Green, the “**Simply Green Leasing Group**” or, the “**Respondents**”) and such other relief as is more particularly set out in the draft initial order (the

“**Draft Initial Order**”) appended to PTC’s Application Record, pursuant to the *Companies’ Creditors Arrangement Act*, RSC 1985, c C-36, as amended (the “**CCAA**”).¹

2. This application is supported by the Affidavit of Michael Lombard, Chief Credit Officer of the Applicant sworn November 6, 2023 (the “**Lombard Affidavit**”).² Capitalized terms not defined herein have the meanings given to them in the Lombard Affidavit.

3. The Simply Green Leasing Group operates a home improvement equipment rental, leasing and servicing business. Since 2016, PTC has been the Respondents’ principal source of financing. PTC has done so by way of warehouse loan agreements and secured debentures advanced to certain of the Simply Green Leasing Group entities (the “**Loan Agreements**”). PTC has also entered into a number concurrent leases with members of the Simply Green Leasing Group under which PTC has certain rights pertaining to the underlying rents payable for specific portfolios of consumer lease agreements (“**Concurrent Leases**”).³

4. The Simply Green Leasing Group is in a precarious position with mounting liquidity issues and potential class action litigation against certain of the Simply Green Leasing Group entities.

5. PTC brings this Application with the intent to use the CCAA proceedings to stabilize the business of the Simply Green Leasing Group and ultimately implement a strategy that will maximize stakeholder recovery from the lease portfolios that represent substantially all of the value of the Simply Green Leasing Group’s business.⁴

PART II – THE FACTS

6. The facts with respect to this application are briefly recited herein and are more fully set out in the Lombard Affidavit.

A. THE APPLICANT

7. PTC is a financial services company carrying on business in Toronto and elsewhere in the Province of Ontario and throughout Canada. PTC is the senior secured creditor of the Respondents.

¹ *Companies’ Creditors Arrangement Act*, RSC 1985 c C-36, as amended (the “**CCAA**”).

² Affidavit of Michael Lombard, sworn November 6, 2023 (the “**Lombard Affidavit**”), Application Record, Tab 2.

³ Lombard Affidavit, paras 3-5, Application Record, Tab 2.

⁴ Lombard Affidavit, para 7, Application Record, Tab 2.

B. DESCRIPTION OF THE SIMPLY GREEN LEASING GROUP

8. Each of the members of the Simply Green Leasing Group is incorporated under the *Business Corporations Act*, RSO 1990 c. B-16 (Ontario).⁵ The head office for each member of the Simply Green Leasing Group is located at 2225 Sheppard Ave East, Toronto.⁶

9. Generally, the Simply Green Leasing Group is in the business of leasing and servicing home improvement equipment to retail consumers including hot water heaters, furnaces, heat pumps, air conditioners, boilers, air filtration systems and other related products. The leasing portfolio owned by the Simply Green Leasing Group is spread across the common law provinces of Canada, with the majority of its equipment leases concentrated in Ontario.⁷

10. The members of the Simply Green Leasing Group are as follows:

- (a) Old Simply Green is the direct and / or indirect parent of CC Management Co., CC Trust, Trustee Co. and CCFC. Old Simply Green held the operational assets used in the Simply Green Leasing Group's business to service the lease contract portfolio held by it, CCFC and CC Trust prior to a corporate reorganization completed in 2020;⁸
- (b) CCFC is a party to a Concurrent Lease Agreement and a guarantor of a debenture given by Old Simply Green in favour of PTC and holds pools of lease contracts and receivables;⁹
- (c) CC Trust is a special purpose funding trust and is a party to three Concurrent Lease Agreements. CC Trustee is the trustee of the CC Trust and CC Management Co is the beneficiary of the Trust;¹⁰ and
- (d) New Simply Green was created in fall of 2020 in tandem with a corporate reorganization (the "**2020 Reorganization**"). Pursuant to the 2020 Reorganization, the operational assets held by Old Simply Green were transferred to New Simply Green (i.e. the assets other than the lease agreement portfolio assets). Following the 2020 Reorganization new lease

⁵ Lombard Affidavit, para 12 Exhibit A, Application Record, Tab 2

⁶ Lombard Affidavit, para 13, Application Record, Tab 2.

⁷ Lombard Affidavit, para 8, Application Record, Tab 2.

⁸ Lombard Affidavit, para 16-17, Application Record, Tab 2.

⁹ Lombard Affidavit, para 18, Application Record, Tab 2.

¹⁰ Lombard Affidavit, para 19, Application Record, Tab 2.

agreements were originated via New Simply Green until its origination operations were wound down commencing June 2023.¹¹

C. INDEBTEDNESS AND FINANCIAL POSITION

Indebtedness owing to PTC

11. As at September 30, 2023 PTC is owed \$32,859,800.00 under the Warehouse Loan Agreements and \$6,877,620.00 under the Debentures.¹²

12. The above noted indebtedness is secured by general security agreements from each of the Respondents pursuant to which PTC obtained a first-ranking general security interest in all of the personal property, assets, and undertakings of the applicable grantor, as security for all indebtedness, liability and obligations of that grantor to PTC, including, without limitation, guarantee obligations and future indebtedness.¹³

13. Under each of the Concurrent Leases, PTC obtained a proprietary interest in the underlying consumer lease agreements originated or acquired by the Simply Green Leasing Group members. PTC has also been granted a security interest in the underlying leased assets, including without limitation all amounts owed to or received by the applicable lessor, and all of the lessor's right, title and interest, in and to all collections in respect of the remaining term of the lease agreements.¹⁴

14. Further, in connection with the Loan Agreements, PTC has been granted certain guarantees of existing credit facilities by non-borrower entities.¹⁵

Other Secured Creditors

15. The Simply Green Leasing Group has a limited number of other creditors with registered financing statements under the PPSA that largely appear to relate to the leasing or financing of motor vehicles and other equipment. The TD Registration appears to relate to certain bank accounts operated by the Simply Green Leasing Group.¹⁶

¹¹ Lombard Affidavit, paras 20-23, Application Record, Tab 2.

¹² Lombard Affidavit, para 32, Application Record, Tab 2.

¹³ Lombard Affidavit, para 42, Application Record, Tab 2.

¹⁴ Lombard Affidavit, para 43, Application Record, Tab 2.

¹⁵ Lombard Affidavit, paras 44-45, Application Record, Tab 2.

¹⁶ Lombard Affidavit, paras 47-50, Application Record, Tab 2.

Litigation

16. All of the members of the Simply Green Leasing Group have been named as defendants in a claim commenced under the *Class Proceedings Act*, 1992. A certification hearing in respect of this action is currently scheduled for October 2024.¹⁷

17. Old Simply Green and Trustee Co, in its capacity as trustee of the CC Trust are named defendants in litigation commenced by MNP Corporate Finance Inc.¹⁸

D. NEED FOR CCAA PROCEEDINGS

18. The Simply Green Leasing Group is in financial distress. At or around July of 2023, senior management of the Simply Green Leasing Group advised PTC, that it was facing significant near-term liquidity challenges, estimating an approximate loss of \$300,000 a month without taking into account the payment of operating expenses, based on, among other things, its debt service requirements and other variable costs that are rising as a result of inflation. Senior management of the Simply Green Leasing Group further advised PTC that the Respondents were projecting a significant net cash flow shortfall through December of 2026 that could not be covered by its existing resources. Senior Management stated that in order to manage the Respondents' liquidity, a significant restructuring of their debt obligations was required. At present Simply Green Leasing Group has no other source of financing to meet these shortfalls.¹⁹

19. PTC has brought these proceedings in the form of a creditor-initiated CCAA application based in significant part on the specifics of the Simply Green Leasing Group business, with the support of Simply Green Leasing Group management. In order to preserve value for PTC and other stakeholders, continuity of the entities which are the counterparty on approximately 80,000 consumer lease agreements is essential. At this time, the Simply Green Leasing Group requires a broad stay of proceedings to provide it with the "breathing room" necessary to continue its current operations, preserve and stabilize existing contracts and to ensure that the thousands of lease customers using Simply Green Leasing Group equipment in their homes have continued services, particularly in light of the impending winter months.²⁰ As well, the stability of existing contracts with suppliers and service providers and of banking arrangements will be significantly enhanced by permitting continuity of the existing corporate entities through these proceedings.

¹⁷ Lombard Affidavit, paras 54-55, Application Record, Tab 2.

¹⁸ Lombard Affidavit, para 56, Application Record, Tab 2.

¹⁹ Lombard Affidavit, para 63, Application Record, Tab 2.

²⁰ Lombard Affidavit, paras 67-69, Application Record, Tab 2.

20. As noted, senior management of the Respondents and PTC are taking a cooperative approach to the commencement of these proceedings. Senior management has accordingly indicated their willingness to continue to support the business as consultants through a transition period after the filing, on terms to be agreed with PTC and the Proposed CRO, but will be resigning as directors and officers of the Respondents prior to the filing. In the circumstances, PTC is seeking the Court's approval of the engagement of HWS Consulting Inc. as chief restructuring officer (in such capacity, the "**CRO**").²¹ The CRO engagement will vest significantly all of the powers of management in the CRO. The proposed CRO powers include the ability to exercise consents and discretions provided under the Initial Order.²²

21. The terms of the CRO's engagement provide that it may be terminated and the CRO may resign or be terminated on 10 days written notice by the CRO or the Monitor, as applicable. In the unlikely event of this occurring, PTC anticipates that it would seek the relief from the Court to expand the powers of the Monitor to provide for the continued stewardship of the Companies and their business²³

E. INTERIM FINANCING

22. In light of the Simply Green Leasing Group's liquidity issues, the Simply Green Leasing Group requires interim financing to sustain its operations, including the payment of professional fees, during these CCAA proceedings.

23. Under a DIP facility term sheet to be entered into by the CRO on behalf of the Respondents, subject to Court approval (the "**DIP Term Sheet**"), PTC (the "**DIP Lender**") has agreed to establish an interim financing facility (the "**DIP Facility**") in the aggregate maximum principal amount of fifteen million dollars (\$15,000,000) for use during these CCAA proceedings.²⁴

24. During the initial ten (10) day stay period, availability under the DIP Facility will be limited to the principal amount of one million one hundred thousand dollars (\$1,100,000).²⁵

²¹ Lombard Affidavit, para 80, Application Record, Tab 2.

²² Lombard Affidavit, para 80, Application Record, Tab 2.

²³ Lombard Affidavit, para 81, Application Record, Tab 2.

²⁴ Lombard Affidavit, para 86, Application Record, Tab 2.

²⁵ Lombard Affidavit, paras 87, Application Record, Tab 2.

PART III – ISSUES

25. The issues to be determined by the Court with respect to this Application, are whether:
- (a) the Applicant has standing to bring the Application for an Initial Order under the CCAA;
 - (b) the Respondents meet the criteria for, and should be granted, protection under the CCAA;
 - (c) KPMG Inc. (“**KPMG**”) should be appointed as the monitor in these proceedings (in such capacity, the “**Proposed Monitor**”);
 - (d) the DIP Term Sheet should be approved by this Court;
 - (e) this Court should grant the Administration Charge and the DIP Lender’s Charge; and
 - (f) this Court should approve the engagement of the CRO.

PART IV – THE LAW

A. THE APPLICANT, AS A CREDITOR, HAS STANDING TO BRING AN INITIAL APPLICATION UNDER THE CCAA IN RESPECT OF THE RESPONDENTS

26. There is ample authority that creditor-commenced CCAA proceedings are permitted by the CCAA. In *ATB Financial v. Metcalfe & Mansfield Alternative Investments II Corp*, the creditors successfully sought and obtained an Initial Order.¹⁶ In granting the order, the Court held that the creditor-commenced application complied with all of the requirements of the CCAA.²⁶ This is consistent with the broad standing given to creditors under the CCAA, including as it pertains to the formulation of a CCAA plan.²⁷

27. In a 2019 decision, *Miniso International Hong Kong Limited v. Migu Investments Inc.*²⁸ the British Columbia Supreme Court granted an Initial Order on an application brought by the secured creditors of the debtor companies. In granting the order, the Court held that the CCAA expressly grants standing to creditors to commence proceedings in respect of a debtor company, and that commencement of CCAA proceedings is a proper exercise of creditors’ rights in certain circumstances:

The CCAA expressly grants standing to creditors, such as the Miniso Group, to commence proceedings in respect of a debtor company

²⁶ *ATB Financial v. Metcalfe & Mansfield Alternative Investments II Corp*, 1008 CanLII 21724.

²⁷ *CCAA*, *supra* note 1, ss. 4 and 5

²⁸ *Miniso International Hong Kong Limited v. Migu Investments Inc.*, 2019 BCSC 1234 [“*Miniso*”]

[...]

The commencement of CCAA proceedings is a proper exercise of creditors' rights where, ideally, the CCAA will preserve the going-concern value of the business and allow it to continue for the benefit of the "whole economic community", including the many stakeholders here. This is intended to allow stakeholders to avoid losses that would be suffered in an enforcement and liquidation scenario.²⁹

28. The Applicant seeks to take these measures in CCAA proceedings, so as to minimize harm and prejudice to PTC and other stakeholders and losses to the portfolio assets. PTC's proposed CCAA proceedings and their structure will mitigate impairment of the streams of payment from the leasing customers and customer cancellations, and allow the CRO, if appointed, to explore potential restructuring options.³⁰ This application is therefore an appropriate and proper case to issue an Initial Order at PTC's request.³¹

B. THIS COURT SHOULD GRANT PROTECTION TO THE RESPONDENTS UNDER THE CCAA

The Respondents are either "Debtor Companies" or "Affiliated Debtor Companies"

29. The CCAA applies to a "debtor company" or "affiliated debtor companies" whose liabilities are in excess of five (5) million dollars.³²

30. The term "company" is defined in section 2 of the CCAA as follows:

"company" means any company, corporation or legal person incorporated by or under an Act of Parliament or of the legislature of a province and any incorporated company having assets or doing business in Canada, wherever incorporated, and any income trust, but does not include banks, authorized foreign banks within the meaning of section 2 of the *Bank Act*, railway or telegraph companies, insurance companies and companies to which the *Trust and Loan Companies Act* applies.³³

²⁹ **Miniso**, *supra* note 28, at **paras 45, 47**

³⁰ Lombard Affidavit, para 12, Application Record, Tab 2

³¹ **MJardin Group, Inc. (Re)**, 2022 ONSC 3338 at **paras 22-25**; **Citibank Canada v. Chase Manhattan Bank of Canada**, 1991 CarswellOnt 182 at para 49.

³² **CCAA**, *supra* note 1, ss. **2(1)** and **3(1)**.

³³ **CCAA**, *supra* note 1, s. **2**.

31. Each member of the Simply Green Leasing Group is incorporated under the laws of the Province of Ontario and accordingly, each is a “company” under the CCAA.³⁴

32. The CCAA defines a “debtor company” as, *inter alia*, a company that is “insolvent”.³⁵

33. The term “insolvent” is not defined in the CCAA. In CCAA applications, courts have interpreted insolvency with reference to, and by examining, the definition of an “insolvent person” in sub-section 2(1) of the *Bankruptcy and Insolvency Act*, R.S.C., 1985, c B-3 (the “BIA”).³⁶ Under the BIA an “insolvent person” is a person who:

[...] is not bankrupt and who resides, carries on business or has property in Canada, and whose liability to creditors provable as claims under this Act amount to one thousand dollars, and

(a) who is for any reason unable to meet his obligations as they generally become due,

(b) who has ceased paying his current obligations in the ordinary course of business as they generally become due, or

(c) the aggregate of whose property is not, at a fair valuation, sufficient, or if disposed of at a fairly conducted sale under legal process, would not be sufficient to enable payment of all his obligations, due and accruing due.³⁷

34. Companies are defined as being affiliated for the purpose of the CCAA (and therefore “affiliated debtor companies”) when one of them is the subsidiary of the other, or both are subsidiaries of the same company.³⁸ Two (2) companies that are affiliated with the same company are also deemed to be affiliated under the CCAA.³⁹

35. Each entity within the Simply Green Leasing Group is either a “debtor company” or an “affiliated debtor company”. In the aggregate, the Simply Green Leasing Group has claims against them well in excess of the five million dollar (\$5,000,000) threshold provided for in the CCAA. Each company within the

³⁴ Lombard Affidavit, paras 67-69, Application Record, Tab 2.

³⁵ CCAA, *supra* note 1, ss. **2(1)** and **3(1)**.

³⁶ Stelco Inc, Re, 2004 CanLII 24933 (Sup Ct [Comm List]) **paras 21-22**.

³⁷ Bankruptcy and Insolvency Act, RSC, 1985, c. B-3 [“BIA”], **s 2(1)**

³⁸ CCAA, *supra* note 1, **s. 3(2)**.

³⁹ CCAA, *supra* note 1, **s. 3(2)**.

Simply Green Leasing Group is a guarantor or direct obligor under the Loan Agreements or the Concurrent Leases.

36. The Simply Green Leasing Group is “insolvent” on a balance sheet basis.⁴⁰

37. The Simply Green Leasing Group is also “insolvent” on a cash flow basis. Absent the commencement of CCAA proceedings, the Simply Green Leasing Group will not have sufficient means to meet its obligations as they generally become due. Based on PTC’s discussions with senior management, PTC understands that the Simply Green Leasing Group is facing significant near-term liquidity challenges and projecting an approximate loss of \$300,000 a month without taking into account the payment of operating expenses.⁴¹

38. For all of the foregoing reasons, each of the entities within the Simply Green Leasing Group are “debtor companies” or “affiliated debtor companies” to which the CCAA applies and are eligible for protection under the Act.

An Order Granting a Stay of Proceedings is Appropriate

39. Under sub-section 11.02(1) of the CCAA, a Court may grant an initial stay of proceedings under the CCAA for a period not to exceed ten (10) days.⁴²

40. The CCAA is intended to be highly flexible and should be given a broad and liberal interpretation. In determining whether to grant a stay of proceedings, the Court should consider the purpose of the CCAA, which includes maintaining the *status quo* and providing a debtor with “breathing room” necessary to restructure its affairs, to the benefit of both the debtor and its various stakeholders.⁴³

41. Once the basic statutory requirements for obtaining relief under the CCAA are satisfied, the Applicants have the burden of satisfying the Court that the relief is appropriate. In *Century Services Inc. v. Canada (Attorney General)*, the majority of the Supreme Court of Canada provided guidance on the principles that should guide this analysis:

However, the requirements of appropriateness, good faith, and due diligence are baseline considerations that a court should always bear in mind when exercising CCAA authority. Appropriateness under the CCAA is assessed by

⁴⁰ Lombard Affidavit, paras 58-62, Application Record, Tab 2.

⁴¹ Lombard Affidavit, para 63, Application Record, Tab 2.

⁴² **CCAA**, *supra* note 1, s. **11.02(1)**.

⁴³ **Ted Leroy Trucking [Century Services] Ltd, Re**, 2010 SCC 60 [“Century Services”] at **para 60**; **Nortel Networks Corp. (Re)**, 2009 CanLII 39492 (Ont. S.C.J.) [Comm. List] at **para 47**; **Target Canada Co (Re)**, 2015 ONSC 303 at **para 8**

inquiring whether the order sought advances the policy objectives underlying the CCAA. The question is whether the order will usefully further efforts to achieve the remedial purpose of the CCAA - avoiding the social and economic losses resulting from liquidation of an insolvent company. I would add that appropriateness extends not only to the purpose of the order, but also to the means it employs. Courts should be mindful that chances for successful reorganizations are enhanced where participants achieve common ground and all stakeholders are treated as advantageously and fairly as the circumstances permit.⁴⁴

42. In *Industrial Properties Regina Limited v. Copper Sands Land Corp.*, the Saskatchewan Court of Appeal held that the evidential burden in establishing appropriate circumstances for the purposes of a stay order is not exceptionally onerous and that therefore a plan does not have to be fully developed or supported by all of the creditors at the initial stage. Otherwise, such a threshold would unduly hinder the purpose of an initial order which is to provide the conditions under which a debtor can attempt to reorganize. The Applicant must show that the initial order will usefully further its efforts towards an attempted restructuring.⁴⁵

43. In this case, the Applicant has satisfied the requirement of developing a “germ of a plan” or rationale for this proposed restructuring and there is no allegation that any party has acted in bad faith. Accordingly, it is appropriate to grant protection under the CCAA.

C. KPMG SHOULD BE APPOINTED AS MONITOR

44. Upon the granting of an Initial Order, sub-section 11.7(1) of the CCAA requires that the Court appoint a person to monitor the business and financial affairs of the company.⁴⁶

45. The Applicant is seeking the appointment of KPMG to serve as the CCAA Monitor in these proceedings.

46. KPMG is a trustee within the meaning of sub-section 2(1) of the BIA and is not subject to any of the restrictions set out in sub-section 11.7(2) of the CCAA.⁴⁷

47. It is the Applicant’s view that it is particularly appropriate that KPMG be appointed as CCAA Monitor. KPMG has familiarity with, and knowledge of, the Simply Green Leasing Group’s financial records and general business model through a prior mandate described in the proposed Monitor's pre-filing

⁴⁴ **Century Services**, *supra* note 43, at **para 70**.

⁴⁵ **Industrial Properties Regina Limited v Copper Sands Land Corp.**, 2018 SKCA 36 at **paras 19** and **21**.

⁴⁶ **CCAA**, *supra* note 1, **s. 11.7(1)**

⁴⁷ **BIA**, *supra* note 37, **s. 2(1)**; **CCAA**, *supra* note 1, **s. 11.7(2)**; Lombard Affidavit, para 74, Application Record, Tab 2.

report.⁴⁸ This familiarity and knowledge will create cost efficiencies during the course of the proposed CCAA proceedings, should KPMG be appointed as Monitor.⁴⁹

48. The Applicant accordingly submits that it is reasonable and appropriate for the Court to appoint KPMG as Monitor of the Simply Green Leasing Group in these proceedings.

D. THE COURT SHOULD APPROVE THE DIP LOAN AGREEMENT AND THE DIP LENDER'S CHARGE

49. The Simply Green Leasing Group requires urgent DIP financing during the initial ten (10) day stay period to cover operating expenses and professional costs during that period.

50. The DIP Lender has agreed to provide the Simply Green Leasing Group with interim financing during the CCAA proceedings pursuant to the terms of the DIP Term Sheet.

51. The DIP Term sheet provides for a DIP Facility in the maximum principal amount of fifteen million dollars (\$15,000,000). During the initial ten (10) day stay period, availability under the DIP Facility will be limited to the principal amount of one million one hundred thousand dollars (\$1,100,000).⁵⁰

52. It is proposed that the DIP Lender's Charge, will rank subordinate to the Administration Charge, but in priority to all other interests against the assets, property and undertakings of the Simply Green Leasing Group (collectively, the "**Property**").

53. Section 11.2 of the CCAA gives the Court the explicit authority to grant the DIP Lender's Charge. In turn, sub-section 11.2(4) of the CCAA provides that in determining whether to grant the DIP Lender's Charge, the Court should consider, among other things, the following factors:

- (a) the period during which the company is expected to be subject to proceedings under the CCAA;
- (b) how the company's business and financial affairs are to be managed during the proceedings;
- (c) whether the company's management has the confidence of its major creditors;

⁴⁸ Pre Filing Report of the Proposed Monitor KPMG Ltd. dated November 9, 2023, paras 14-15; Lombard Affidavit, para 75, Application Record, Tab 2.

⁴⁹ Lombard Affidavit, para 76, Application Record, Tab 2.

⁵⁰ Lombard Affidavit, paras 86-88, Application Record, Tab 2.

- (d) whether the loan would enhance the prospects of a viable compromise or arrangement being made in respect of the company;
- (e) the nature and value of the company's property;
- (f) whether any creditor would be materially prejudiced as a result of the security or charge; and
- (g) the monitor's pre-filing report, if any.⁵¹

54. Pursuant to sub-section 11.2(5) of the CCAA, in order for the Court to approve any advances under the DIP Term Sheet during the initial ten (10) day stay period and to grant the DIP Lender's Charge, the Court must be satisfied that the terms of the loan are limited to what is reasonably necessary for the continued operations of the Simply Green Leasing Group in the ordinary course of business during that period.⁵²

55. In this case, the Applicant submits that the Court should approve the DIP Term Sheet (subject to limiting the initial borrowing to one million one hundred thousand dollars (1,100,000)) and grant the DIP Lender's Charge, on the basis, among other things, that:

- (a) the cash flow forecast prepared by the Proposed Monitor demonstrates that advances of up to one million one hundred thousand dollars (1,100,000) during the initial ten (10) day stay period, are necessary to continue operating in the ordinary course of business and to service associated professional fees during this period;
- (b) the ability to draw on the DIP Facility (both during the initial ten (10) day stay period, and after the comeback hearing, if approved), will allow the Simply Green Leasing Group to fund its operations and focus on restructuring its business for the benefit of its various stakeholders during the course of these CCAA proceedings;
- (c) the DIP Lender's Charge will not secure any obligations that existed before the granting of the Initial Order and owing to the Lenders;
- (d) the Applicant PTC, the Simply Green Leasing Group's senior secured creditor is providing the DIP Facility;

⁵¹ CCAA, *supra* note 1, s. 11.2.

⁵² CCAA, *supra* note 1, s. 11.2(5).

- (e) the DIP Facility will preserve the value and going concern operations of the Simply Green Leasing Group and enhance the probability of a successful restructuring of the Simply Green Leasing Group; and
- (f) as set out in its pre-filing report, to be filed in connection with these proceedings, the Proposed Monitor is of the view that the DIP Term Sheet and DIP Lender's Charge are appropriate and limited to what is reasonably necessary in the circumstances.⁵³

56. When all of the foregoing factors are considered, the relief sought by the Applicant with respect to the DIP Facility and DIP Lender's Charge is demonstrably necessary and appropriate in the circumstances.

E. THE ADMINISTRATION CHARGE SHOULD BE GRANTED

The Administration Charge Should be Approved

57. The Applicant is requesting that a charge be granted against the Property in the initial maximum amount of \$250,000 to secure the fees and disbursements of the Monitor, counsel to the Monitor, the CRO, counsel to the CRO, and counsel to the Simply Green Leasing Group (the "**Administration Charge**") during the initial ten (10) day stay period incurred at their standard rates and charges.⁵⁴

58. Sub-section 11.52(1) of the CCAA explicitly provides the Court with the jurisdiction to grant an administration charge in the form being sought by the Applicant:

11.52(1) Court may order security or charge to cover certain costs – 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 debtor company 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 monitor, including the fees and expenses of any financial, legal or other experts engaged by the monitor in the performance of the monitor's duties;

(b) any financial, legal or other experts engaged by the company for the purpose of proceedings under this Act; and

⁵³ Lombard Affidavit, para 83, Application Record, Tab 2; Pre Filing Report of the Proposed Monitor dated November 9, 2023 at para 62.

⁵⁴ Lombard Affidavit, para 93, Application Record, Tab 2.

(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 their effective participation in proceedings under this Act.⁵⁵

59. In determining whether to grant an administrative charge, a Court may consider, among other things, the following non exhaustive factors:

- (a) the size and complexity of the business being restructured;
- (b) the proposed role of the beneficiaries of the charge;
- (c) whether there is an unwarranted duplication of roles;
- (d) whether the quantum of the proposed charge appears to be fair and reasonable;
- (e) the position of the secured creditors likely to be affected by the charge; and
- (f) the position of the monitor.⁵⁶

60. The Applicant submits that in this case, the granting of the Administration Charge, and the quantum of the Administration Charge are reasonable and appropriate in the circumstances, on the basis, among other things, that:

- (a) a restructuring of the Simply Green Leasing Group will have certain complexities given the substantial lease portfolio managed by the Simply Green Leasing Group;
- (b) the CCAA proceedings will require significant participation from the proposed beneficiaries of the Administration Charge;
- (c) there is no unwarranted duplication of roles between the proposed beneficiaries of the Administration Charge;
- (d) KPMG, in its capacity as the Proposed Monitor, and the Applicant, in its capacity as the senior lenders to the Simply Green Leasing Group, are supportive of the granting of the Administration Charge;⁵⁷ and

⁵⁵ CCAA, *supra* note 1, s. **11.52**.

⁵⁶ **Canwest Publishing Inc. Re.** 2010 ONSC 222 at **para 54**.

⁵⁷ Pre-filing report of the Proposed Monitor dated November 9, 2023 at para 67.

- (e) the quantum of the Administration Charge being sought in the Initial Order is limited to what is reasonably necessary to cover the fees and disbursements of its beneficiaries for the initial ten (10) day stay period.⁵⁸

F. THE CRO APPOINTMENT IS APPROPRIATE

61. Since the directors and officers of the Simply Green Leasing Group will be resigning in connection with this CCAA filing, PTC is seeking the Court's approval of the engagement of HWS Consulting Inc. as chief restructuring officer (in such capacity, the "CRO"). Pursuant to Section 11 of the CCAA, this Court has the jurisdiction to grant an order approving the CRO Engagement and appointing the CRO.

62. Where the appointment of a chief restructuring officer, is desirable or necessary, for successful CCAA proceedings, as is anticipated here, CCAA courts have exercised their jurisdiction under Section 11 to appoint a CRO, including in the circumstance where the Court is of the view that a chief restructuring officer will stabilize operations pending a restructuring or sale, and assist the debtors in their CCAA objectives.⁵⁹ The appointment of the CRO is particularly necessary in these proceedings, given the complexity of the Simply Green Leasing Group's business and the vacuum of control created by the resignation of senior management.

63. CCAA courts have also granted CROs certain protections from liability in the execution of their duties in a similar manner to court-appointed monitors. These protections, are necessary in the circumstances, and will ensure that the CRO can conduct the day-to-day business of the Respondents and oversee the Respondents' restructuring efforts as part of the proposed CCAA proceeding.⁶⁰

PART IV - ORDER SOUGHT

64. For the foregoing reasons, PTC respectfully requests that this Court grant an Order substantially in the form of the Draft Initial Order attached at Tab 3 to the Applicant's Application record.

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 6th November, 2023.



David F.W. Cohen / Clifton P. Prophet / Thomas Gertner

⁵⁸ Lombard Affidavit, para 94, Application Record, Tab 2.

⁵⁹ **Walter Energy Canada Holdings, Inc. Re**, 2016 BCSC 107 at **para 27**; **Gesco Industries Inc. (Re)**, 2023 ONSC 3050 paras 21-22 [beginning at page 38 of the PDF];

⁶⁰ **Northstar Aerospace, Inc. (Re)**, 2012 ONSC 3974, **para 11-12**.

**SCHEDULE “A”
LIST OF AUTHORITIES**

1. *ATB Financial v. Metcalfe & Mansfield Alternative Investments II Corp.*, 1008 CanLII 21724.
2. *Miniso International Hong Kong Limited v. Migu Investments Inc.*, 2019 BCSC 1234
3. *MJardin Group, Inc. (Re)*, 2022 ONSC 3338
4. *Citibank Canada v. Chase Manhattan Bank of Canada*, 1991 CarswellOnt 182
5. *Stelco Inc, Re*, 2004 CanLII 24933 (Sup Ct [Comm List])
6. *Ted Leroy Trucking [Century Services] Ltd, Re*, 2010 SCC 60
7. *Nortel Networks Corp. (Re)*, 2009 CanLII 39492 (Ont. S.C.J.) [Comm. List])
8. *Target Canada Co (Re)*, 2015 ONSC 303
9. *Industrial Properties Regina Limited v Copper Sands Land Corp.*, 2018 SKCA 36
10. *Canwest Publishing Inc, Re*, 2010 ONSC 222
11. *843504 Alberta Ltd., Re.*, 2003 ABQB 1015
12. *Walter Energy Canada Holdings, Inc. Re*, 2016 BCSC 107
13. *Gesco Industries Inc. (Re)*, 2023 ONSC 3050 [available at page 38 of 48]
14. *Northstar Aerospace, Inc. (Re)*, 2012 ONSC 3974

**SCHEDULE “B”
RELEVANT STATUTES**

Companies’ Creditors Arrangement Act, R.S.C. 1985, c. C-36

Definitions

2 (1) In this Act,

company means any company, corporation or legal person incorporated by or under an Act of Parliament or of the legislature of a province, any incorporated company having assets or doing business in Canada, wherever incorporated, and any income trust, but does not include banks, authorized foreign banks within the meaning of section 2 of the *Bank Act*, telegraph companies, insurance companies and companies to which the *Trust and Loan Companies Act* applies; (*compagnie*)

debtor company means any company that

(a) is bankrupt or insolvent,

(b) has committed an act of bankruptcy within the meaning of the Bankruptcy and Insolvency Act or is deemed insolvent within the meaning of the Winding-up and Restructuring Act, whether or not proceedings in respect of the company have been taken under either of those Acts,

(c) has made an authorized assignment or against which a bankruptcy order has been made under the Bankruptcy and Insolvency Act, or

(d) is in the course of being wound up under the Winding-up and Restructuring Act because the company is insolvent; (*compagnie débitrice*)

Application

3 (1) This Act applies in respect of a debtor company or affiliated debtor companies if the total of claims against the debtor company or affiliated debtor companies, determined in accordance with section 20, is more than \$5,000,000 or any other amount that is prescribed.

Affiliated companies

(2) For the purposes of this Act,

(a) companies are affiliated companies if one of them is the subsidiary of the other or both are subsidiaries of the same company or each of them is controlled by the same person; and

(b) two companies affiliated with the same company at the same time are deemed to be affiliated with each other.

Compromise with unsecured creditors

4 Where a compromise or an arrangement is proposed between a debtor company and its unsecured creditors or any class of them, the court may, on the application in a summary way of the company, of any such creditor or of the trustee in bankruptcy or liquidator of the company, order a meeting of the creditors or class of creditors, and, if the court so determines, of the shareholders of the company, to be summoned in such manner as the court directs.

Compromise with secured creditors

5 Where a compromise or an arrangement is proposed between a debtor company and its secured creditors or any class of them, the court may, on the application in a summary way of the company or of any such creditor or of the trustee in bankruptcy or liquidator of the company, order a meeting of the creditors or class of creditors, and, if the court so determines, of the shareholders of the company, to be summoned in such manner as the court directs.

General power of court

11 Despite anything in the *Bankruptcy and Insolvency Act* or the *Winding-up and Restructuring Act*, if an application is made under this Act in respect of a debtor company, the court, on the application of any person interested in the matter, may, subject to the restrictions set out in this Act, on notice to any other person or without notice as it may see fit, make any order that it considers appropriate in the circumstances.

Stays, etc. — initial application

11.02 (1) A court may, on an initial application in respect of a debtor company, make an order on any terms that it may impose, effective for the period that the court considers necessary, which period may not be more than 10 days,

- (a) staying, until otherwise ordered by the court, all proceedings taken or that might be taken in respect of the company under the *Bankruptcy and Insolvency Act* or the *Winding-up and Restructuring Act*;
- (b) restraining, until otherwise ordered by the court, further proceedings in any action, suit or proceeding against the company; and
- (c) prohibiting, until otherwise ordered by the court, the commencement of any action, suit or proceeding against the company.

Interim financing

11.2 (1) On application by a debtor company and on notice to the secured creditors who are likely to be affected by the security or charge, a court may make an order declaring that all or part of the company's property is subject to a security or charge — in an amount that the court considers appropriate — in favour of a person specified in the order who agrees to lend to the company an

amount approved by the court as being required by the company, having regard to its cash-flow statement. The security or charge may not secure an obligation that exists before the order is made.

Priority — secured creditors

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

Priority — other orders

(3) The court may order that the security or charge rank in priority over any security or charge arising from a previous order made under subsection (1) only with the consent of the person in whose favour the previous order was made.

Factors to be considered

- (4) In deciding whether to make an order, the court is to consider, among other things,
- (a) the period during which the company is expected to be subject to proceedings under this Act;
 - (b) how the company's business and financial affairs are to be managed during the proceedings;
 - (c) whether the company's management has the confidence of its major creditors;
 - (d) whether the loan would enhance the prospects of a viable compromise or arrangement being made in respect of the company;
 - (e) the nature and value of the company's property;
 - (f) whether any creditor would be materially prejudiced as a result of the security or charge; and
 - (g) the monitor's report referred to in paragraph 23(1)(b), if any.

Additional factor — initial application

(5) When an application is made under subsection (1) at the same time as an initial application referred to in subsection 11.02(1) or during the period referred to in an order made under that subsection, no order shall be made under subsection (1) unless the court is also satisfied that the terms of the loan are limited to what is reasonably necessary for the continued operations of the debtor company in the ordinary course of business during that period.

Court to appoint monitor

11.7 (1) When an order is made on the initial application in respect of a debtor company, the court shall at the same time appoint a person to monitor the business and financial affairs of the company. The person so appointed must be a trustee, within the meaning of subsection 2(1) of the *Bankruptcy and Insolvency Act*.

Restrictions on who may be monitor

(2) Except with the permission of the court and on any conditions that the court may impose, no trustee may be appointed as monitor in relation to a company

(a) if the trustee is or, at any time during the two preceding years, was

(i) a director, an officer or an employee of the company,

(ii) related to the company or to any director or officer of the company, or

(iii) the auditor, accountant or legal counsel, or a partner or an employee of the auditor, accountant or legal counsel, of the company; or

(b) if the trustee is

(i) the trustee under a trust indenture issued by the company or any person related to the company, or the holder of a power of attorney under an act constituting a hypothec within the meaning of the *Civil Code of Quebec* that is granted by the company or any person related to the company, or

(ii) related to the trustee, or the holder of a power of attorney, referred to in subparagraph (i).

Court may order security or charge to cover certain costs

11.52 (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 debtor company 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 monitor, including the fees and expenses of any financial, legal or other experts engaged by the monitor in the performance of the monitor's duties;

(b) any financial, legal or other experts engaged by the company for the purpose of proceedings under this Act; 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 their effective participation in proceedings under this Act.

Priority

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

Bankruptcy and Insolvency Act, R.S.C., 1985, c B-3

Definitions

2 In this Act,

insolvent person means a person who is not bankrupt and who resides, carries on business or has property in Canada, whose liabilities to creditors provable as claims under this Act amount to one thousand dollars, and

- (a) who is for any reason unable to meet his obligations as they generally become due,
- (b) who has ceased paying his current obligations in the ordinary course of business as they generally become due, or
- (c) the aggregate of whose property is not, at a fair valuation, sufficient, or, if disposed of at a fairly conducted sale under legal process, would not be sufficient to enable payment of all his obligations, due and accruing due; (*personne insolvable*)

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

Court File No. CV-23-00709183-00CL

AND IN THE MATTER OF A PLAN OF COMPROMISE OR
ARRANGEMENT OF CROWN CREST CAPITAL MANAGEMENT CORP.,
CROWN CREST FINANCIAL CORP., CROWN CREST FUNDING CORP.,
SIMPLY GREEN HOME SERVICES INC., SIMPLY GREEN HOME
SERVICES CORP., AND CROWN CREST CAPITAL TRUST

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

Proceeding commenced at Toronto

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