Court File No. 06-CL-6482

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 PROPOSED PLAN OF COMPROMISE OR ARRANGEMENT WITH RESPECT TO CFG HOLDINGS INC., FORMERLY CERVUS FINANCIAL GROUP INC.

Applicant

AFFIDAVIT OF ANGELA SCOTT

I, **ANGELA SCOTT**, of the City of Toronto, in the Province of Ontario, **MAKE OATH AND SAY**:

1. I am a lawyer with the law firm of Fraser Milner Casgrain LLP ("**FMC**"), solicitors for CFG Holdings Inc., formerly Cervus Financial Group Inc. (the "**Company**"). As such, I have personal knowledge of the matters to which I herein depose in respect of (i) the Company and (ii) the Company's former wholly-owned subsidiaries, Cervus Financial Corp. ("**CFC**") and Cervus Funding Corp. ("**Funding**"). The Company, Funding and CFC are hereinafter collectively called the "**Applicants**". To the extent that I do not have personal knowledge, I verily believe the information to which I depose to be true.

I. Overview

2. As described in detail below, the Company's assets have been sold, a claims process run, all of the creditors of the Company have been paid in full and the Monitor currently holds approximately $3,825,082 to be distributed to the shareholders of the Company.

3. In order for the Monitor to make a final distribution to the shareholders, certain technical issues relating to the surrender of certain shares of the Company, pursuant to the Founders' Undertaking (as described below) need be overcome.

4. Further, in the Founders' Undertaking, the Company also indemnified the Founders (as defined below) with respect to certain liabilities. In order to close off this liability so the Company can make a final distribution without reserving funds, certain declarations regarding the Founders and a claims bar process are being sought.

5. The Stay of Proceedings (as defined below) expires on February 28, 2007 and an extension is sought until April 30, 2007 in order to effect a final distribution to the shareholders and bring these proceedings to a close.

II. Background

6. The Company is a widely held publicly traded company listed on the Toronto Stock Exchange. The primary business of the Applicants was, through the Company's former subsidiary CFC, to source, originate, fund, sell and service prime residential mortgages.

7. The Applicants obtained protection under the *Companies' Creditors Arrangement Act* ("**CCAA**") by the granting of an Initial Order by Mr. Justice Morawetz on June 8, 2006 (the "**Initial Order**"). Attached hereto as Exhibit "A" is a true copy of the Initial Order. Under the Initial Order, KPMG Inc. was appointed as Monitor (the "**Monitor**").

8. The Applicants required restructuring because of the loss of liquidity arising from operating losses that occurred from reduction of the Applicants' profit margins, largely due to an unprecedented compression in interest rate spreads. At the time of the issuance of the Initial Order, the Applicants were about to run out of cash flow, and would have had to cease business, without the granting of CCAA protection.

9. The Company was granted an extension of the stay period granted under the Initial Order to September 22, 2006, pursuant to the Order of Justice Lax dated July 7, 2006 (the "**Extension Order**") and to November 30, 2006 pursuant to the Order of Justice Cumming dated September 6, 2006 in order to have sufficient time to implement a claims procedure, and to formulate a plan of arrangement. Attached hereto as Exhibit "B" is a true copy of the Extension Order.

Sale Transaction

10. The Boards of the Company and CFC respectively agreed to enter into a sale of the business of the Applicants (the "**Transaction**") to 6578268 Canada Inc. (the "**Purchaser**"), which is an indirect wholly owned subsidiary of Macquarie Bank Limited ("**Macquarie Bank**"), a large Australian-based global financial services institution. The Transaction followed an extensive canvassing of all of the options available to the Applicants, and lengthy discussions with Macquarie Bank, some of which included KPMG Inc. ("**KPMG**"), the Monitor appointed under the Initial Order.

11. The Transaction envisioned CFC continuing as a going concern, with all creditors of CFC and the Company paid, all employees, save it Chief Executive Officer, continuing with their employment and the possibility of some return being made to the shareholders of the Company, all of which has come to pass.

12. On June 15, 2006, Mr. Justice Cumming granted an Order (the "**Approval and Vesting Order**"), approving, *inter alia*, the Purchase and Sale Agreement between the Company, CFC and the Purchaser dated as of June 8, 2006 (the "**Definitive Agreement**"), and approving the completion of the transactions contemplated under the Definitive Agreement. Attached hereto as Exhibit "C" is a copy of the Approval and Vesting Order. On the same date Justice Cumming also granted an Order amending certain language in the Initial Order. Attached hereto as Exhibit "D" is a copy of the June 15, 2006 Order of Justice Cumming amending the Initial Order.

13. Under the terms of the Definitive Agreement, the purchase price payable on closing was $12,500,000 (the "**Sales Proceeds**"), less the total amount advanced under the DIP Financing provided by Macquarie Bank pursuant to the terms of the Initial Order (the "**DIP Financing**"). The Purchaser acquired the shares of CFC held by the Company (being 100% of the equity), plus certain intercompany debt owing by CFC to the Company (collectively, the "**Purchased Assets**"), after certain assets of the Company were conveyed to CFC immediately prior to closing (the "**Intercompany Transferred Assets**"). The Approval and Vesting Order vested the Intercompany Transferred Assets in CFC, and the Purchased Assets in the Purchaser, upon the delivery of a Vesting Certificate certifying that all conditions to closing had been completed (the "**Vesting Certificate**").

14. On June 29, 2006 Justice Morawetz granted an Order (the "**Settlement Approval Order**") approving the terms of a settlement between the Applicants and Gary Bartholomew, the former Chief Executive Officer of the Company, and a director of the Company and CFC (the "**Settlement Agreement**"). Attached hereto as Exhibit "E" is a copy of the Settlement Approval Order.

15. The Transaction closed on July 6, 2006 upon the filing of the Vesting Certificate. Attached hereto as Exhibit "F" is a copy of the Vesting Certificate as filed with the Court. To my knowledge, information and belief, as at the date of this affidavit the Monitor is in possession of the remaining net Sale Proceeds in the amount of $3,825,082.

16. As more particularly set out in the Monitor's Seventh Report dated December 21, 2006 (the "**Seventh Report**"), these Sale Proceeds are the net amount remaining from the amounts paid to the Monitor at the closing of the Transaction, after payment by the Monitor of:

    (i) the amounts payable pursuant to the Settlement Agreement, as approved by the Court in the Settlement Approval Order,

(ii) amounts owing by the Applicants at the time of the closing of the Transaction with respect to the DIP Loan Facility and the Warehouse DIP Facility,

(iii) amounts payable to the creditors of the Company identified by the Claims procedure established under the Claims Order of Justice Cumming dated September 6, 2006 (the "**Claims Order**"), which payments were approved by the Order of Justice Cumming dated October 13, 2006 (the "**Creditor Distribution Order**");

(iv) normal course disbursements in these CCAA proceedings in accordance with the September 6, 2006 Order of Justice Cumming amending the Initial Order and extending stay of proceedings (the "**Order Amending Initial Order**").

Attached as Exhibit "G" is a copy of the Claims Order. Attached as Exhibit "H" is a copy of the Creditor Distribution Order.

17. To my knowledge, information and belief, subsequent to the closing of the Transaction, the amounts owing by the Applicants under the DIP Facility, and the Warehouse DIP Facility, for indebtedness incurred prior to the closing of the Transaction, were repaid to the DIP Lender and the Warehouse DIP Lender respectively. Accordingly, the DIP Lender Charge and the Warehouse DIP Lender Charge, as well as all other security interests granted in favour of the DIP Lender, and the Warehouse DIP Lender, over the assets of the Company, were discharged and expunged as against the assets of the Company and the Sale Proceeds by the Order Amending Initial Order. Attached hereto as Exhibit "I" is a copy of the Order Amending Initial Order. The Order Amending Initial Order also extended the Stay Period to November 30, 2006. The Creditor Distribution Order extended the stay to December 29, 2006.

Payment of all Creditor Claims and Claims Bar

18. After the closing of the Proposed Transaction, the Monitor disbursed a portion of the "Sale Proceeds", as described in the Approval and Vesting Order, in accordance with the provisions of the Definitive Agreement and the Settlement Approval Order.

19. In order to distribute the remaining net Sale Proceeds to the Creditors of the Company, the Company formulated a claims identification procedure to identify the claims of the creditors of the Company, as well as to identify whether there are any claims against the present and former officers and directors of any of the Applicants (the "**Officers and Directors**").

20. The precise terms of the claims procedure are set out in the Claims Order.

21. The claims procedure barred claims against any creditor of the Company, or claims against any of the Officers and Directors, if no proof of claim was filed by October 6, 2006 (the "**Claims Bar Date**").

22. As noted in the Seventh Report, the Company and the Monitor implemented the Claims Procedure as set out in the Creditor Distribution Order. The Monitor, with the approval of the Court pursuant to the Creditor Distribution Order, distributed $7,082,948.70 to the creditors of the Company on October 13, 2006. Two claims totalling approximately $51,000 were subsequently resolved and/or adjudicated.

III. Procedure for Distributing Remaining Sales Proceeds to Shareholders

23. The Company believes that all proper creditors of the Company have been identified and paid the amounts owing to them. The only remaining creditors with Claims to the sale proceeds are the professionals whose fees are secured by the Administration Charge, and whose fees are being paid by the Monitor in the ordinary course. As noted in the Seventh Report all claims for goods and services tax alleged to be owing by the Company have been settled by the Monitor.

24. There are 42,373,660 shares of the Company issued and outstanding. The Company has attempted to identify the shareholders of the Company and their proper shareholdings, to distribute the remaining Sale Proceeds to the shareholders, and to continue with the process designed to wind up the Company as set out in the Seventh Report and as approved by the Court.

25. As noted in the Seventh Report, prior to a distribution being made to the shareholders, the issues relating to an undertaking to redistribute or return to the Company for cancellation certain issued and outstanding shares of the Company must be resolved. In general terms, on March 2, 2006 certain of the early shareholders of the Company, namely Richard Bell, Howard Broughton, Jeff Patterson, High Point Merchant Capital Inc., Gary Bartholomew, Joel Bates, Stephen Barley ("**Barley**") and Grant MacKenzie (collectively, the "**Founders**") executed the founders' undertaking (the "**Founders' Undertaking**") in which they each agreed, *inter alia*, to direct that certain shares initially issued to them, be returned to the Company either for cancellation or so that the Company could reallocate a portion of same to members of the senior management of the Company through the creation of a management trust. Attached as Exhibit "J" is a copy of the Founders Undertaking.

26. The Founders' Undertaking provided, among other things, that:

(i) the Founders would surrender or cause to be surrendered to CFG, for no consideration, 6,750,000 issued and outstanding common shares of CFG; and

(ii) the Founders would cause to be transferred for nominal consideration to a new trust to be established for the benefit of members of the senior management of CFG, 1,350,000 issued and outstanding common shares of CFG.

27. As at December 1, 2006 it was the Company's understanding that 5,737,501 common shares remained held in escrow pursuant to two escrow agreements (the "**Escrowed Shares**"). The first escrow, dated June 25, 2004 and executed by Equity Transfer Services Inc. (the "**ETS**"), GMP Securities Ltd. ("**GMP**"), CFG, the Founders, and certain other parties related to the Founders (the "**ETS/GMP Escrow Agreement**"). The second escrow agreement was dated June 25, 2004 and was executed by ETS, Lawrence Asset Management Inc. ("**Lawrence**"), and the Founders (the "**ETS/Lawrence Escrow Agreement**"). Attached as Exhibit "K" to my Affidavit is a copy of the ETS/GMP Escrow Agreement. Attached as Exhibit "L" to my Affidavit is a copy of the ETS/Lawrence Escrow Agreement.

28. The Company, by its Counsel, on December 1, 2006 and December 4, 2006 wrote to the Founders, ETS, GMP and Lawrence proposing that all of the 5,737,501 shares held in escrow by ETS (the "**Escrowed Shares**") be released from escrow and provided directions for the Founders to execute and return by December 8, 2006. The 8,100,000 common shares (being the total amount of shares referred to in paragraph 22) committed under the Founders' Undertaking would then be transferred to the Company for cancellation. Shares surrendered to the Company are to be cancelled and returned to unissued capital of the Company, thus reducing the aggregate number of issued and outstanding shares of the Company.

29. The right of senior management of the Company, as well as the chairman of the Board of Directors (the "**Senior Management**") to receive 1,350,000 common shares of the Company, as intended under the terms of the Founders Undertaking, are proposed to be satisfied by payment in cash equal to the amount that would be distributable to holders of that number of common shares once the shares are returned for cancellation by the Founders. Any escrowed common shares to which the Founders would be entitled after satisfaction of the Founders' Undertaking would be returned to the Founders and all other escrowed shares held by other parties would be returned to them with the escrow agreement being terminated, since, given the state of the company and orders having been made in these proceeding preventing transfer of shares, the escrow had ceased to have a purpose.

30. On the afternoon of December 20, 2006, ETS provided information to counsel for the Company concerning the numbers of shares that were being held by ETS that was different from the information previously provided to counsel for the Company by ETS and upon which the directions circulated to the Founders were based. Consequently, counsel for the Company had to circulate revised directions to the Founders for their signature.

31. By December 20, 2006 all of the Founders had advised counsel for the Company that they were prepared to fulfill the terms of the Founders Undertaking, provided

that certain technical issues related to indemnity language contained in the Founders Undertaking that allegedly impacted their ability to fulfill the terms of the Founders Undertaking could be resolved.

32. On December 20, 2006 ETS advised Counsel for the Company that unless all of the Founders and other parties to the escrow agreement execute the necessary directions, ETS would not release any of the Escrowed Shares. Subsequently, on January 17, 2007 ETS revised their position and advised me that only the Company, Founders, GMP, Lawrence and anyone else who was transferring escrowed shares to the Company needed to sign the directions.

33. In these circumstances the Company proposed that the Court grant an Order directed at dealing with the then known administrative and procedural impediments to distribution and such order was granted on December 27, 2006 by the Honourable Mr. Justice G.B. Morawetz (the "**Shareholder Distribution Order**"). The Shareholder Distribution Order also extended the Stay Period as described in the Initial Order to February 28, 2007. Attached as Exhibit "M" to my Affidavit is a copy of the Shareholder Distribution Order.

34. On or around January 26, 2007 some of the Founders contacted myself and my colleagues Dan Dowdall and Alex Ilchenko objecting to the certain language contained in the stock transfer power forms provided by Computershare Ltd. ("Computershare"). As a result I contacted Computershare and obtained approval for the proposed amendments to its stock transfer power form and then contacted each of the Founders, some of whom had already provided us with their executed forms, to obtain new forms or alternatively their consent to amend the executed forms.

35. Under provisions of paragraph 12 of the Shareholder Distribution Order the Company and the Monitor were to endeavour to obtain all of the documentation necessary in order to implement the Founders' Undertaking by January 15, 2007, or to seek directions thereafter.

36. However, in early January 2007 I was advised by Roxanne Parsaud at Computershare, that Computershare would only revise the shareholder list if it received original shareholder certificates from the Founders, rather than merely the certificate numbers. This was contrary to the requirements that were provided to me by Computershare in November and upon which the first letter sent to each of the Founders was based, namely that the certificate number would suffice. As a result, we had to further request that the Founders provide the Company with the original share certificates.

37. The Company, by its solicitors sent revised directions and revised letters to the Founders in the week of January 15, 2006, addressing the new requirements of Computershare and ETS so that Computershare would then be in a position to issue a revised list of Shareholders to the Monitor.

38. As at the date of my Affidavit, we have received all of the required documentation from all parties except Barley. Attached hereto as Exhibit "O" are copies of all such documentation, save and except for the required share certificates.

39. Although Barley provided the Company with a direction to Equity Transfer and a power of attorney to transfer securities dated December 23, 2006, (a copy of these documents are attached hereto as Exhibit "N") clearly indicating his intention to fulfil his undertaking there are technical deficiencies in these documents as far as the requirements of Computershare and ETS are concerned. Specifically, as the direction was executed before the revised numbers were provided by Equity Transfer, as described above, and although Barley himself amended the schedule to the Direction to reflect the correct number of shares held by him, the total number of shares referred to in the direction (being 5,184,751) was incorrect and should read 5,737,501. As well, the stock power executed by Barley was not 'medallion certified' as required by Computershare. Although the Company, through its solicitors has attempted to obtain rectified documents executed by Barley and properly certified, at this time they have not yet been received.

40. Further, to complete the Founders Undertaking, Barley would need to transfer an additional 3,573 shares to the Company. He has refused to do so based on his assertion that the undertaking was limited to shares in escrow and given the extremely small amount of money involved (approximately a $350.00 dividend would relate to those shares) the Company and the Monitor believe it is most cost effective to proceed without further pursuing the transfer of those 3,573 shares to the Company.

41. 137,750 of the shares that Barley wishes to surrender were in fact released from Escrow so that ETS advises that they need a slightly different direction then what was signed since the shares are no longer in escrow.

42. The Company anticipated that attempting to obtain the proper documentation would have been the simplest, most expeditious method of implementing the Founders' Undertaking. However, given the effort, time and expense expended to date in order to attempt to overcome the technical issues required by ETS and Computershare related to the implementation of the Founders' Undertaking, and the results obtained, the law of diminishing returns has set in. The Company is now asking the Court to assist in resolving the few remaining technical issues involved in the implementation of the Founders Undertaking and the making of the distribution to the shareholders through an Order of the Court.

43. The Company is therefore requesting that in the event that the Monitor determines that the Company is unable to obtain the remaining required documents, as set out above, or should Computershare or ETS raise additional technical issues concerning the form or execution of the documentation, that the Court now direct the Escrow Agent to deliver all of the share certificates held in escrow to the Company effectively treating Barley's existing direction and all the other documentation received from the Founders as sufficient and that Computershare shall accept such documentation as sufficient to affect the necessary cancellations on the share register in order to produce a share registry that reflects the Founders Undertaking so that a distribution to shareholders may be made.

44. The Company will provide the share certificates received from ETS and the related documentation attached as Exhibit "O" to Computershare so that Computershare can, in the normal course of business update the share registry with all changes.

45. For clarity, in the case Barley, the Company seeks an order directing Computershare to treat Barley's stock transfer power as sufficient and to amend the shareholder list to read that Barley is the registered share owner of 206,500 shares, which, would be the amount he should be shown as owning if the Founders Undertaking was completed, less 3,573 shares as discussed above. If the Company subsequently does receive the necessary documents they will deliver them to Computershare for its records.

46. In this way the share registry maintained by Computershare would be at a stage where the shareholder distribution contemplated by the Company and the Monitor can proceed.

IV. Claims Process and Declaration

47. The Founders Undertaking (which as described above, is found at Exhibit "J") contains a provision whereby the Company indemnifies the Founders for "any losses, claims, liabilities and expenses incurred by any of the undersigned related to any legal proceeding or any taxation liability to which [a Founder] becomes liable in any way connected with [the completion of the Undertaking]."

48. In order to make a final distribution, the Company requires that any possible liability with respect to this indemnity be brought to an end and hence a claims process necessary.

49. In order to proceed with a timely final distribution, the Company proposes that this Claims Bar process run in tandem with the appeal periods under any order which may be made by the Court on February 26, 2007.

50. The indemnity also extended to any negative tax consequences to the Founders for the completion of the Founders Undertaking. The Company has received an opinion from a major accounting firm which indicates that there would be no tax risk to the Founders provided that the Founders dealt at arms length with the Company and did not receive the shares in question as an employment benefit. In order to obtain their consent to the distribution of money without a reserve, the Company has agreed with certain of the Founders that it will be sufficient if the Court issues a declaration that the Founders dealt at arms length with the Company at the time of the share surrenders and that they did not receive their shares as employment compensation.

51. I have reviewed this issue with Murray Thomas, the former Chief Financial Officer of the Company who is not a Founder. He advises me that the Founders shares were issued as part of the transfer of intellectual property rights to the Company and were in no way tied to employment benefits. He further advises that at the time the Founders Undertaking was negotiated with the Company the Founders were at arms length to the Company in that they had neither individually or as a group *de jure* or *de facto* control of the Company.

52. Consequently, the Company is asking the Court to make a declaration that the Founders deal at arms length with the Company and did not receive the shares in question as an employment benefit.

V. Extension of Stay Period

53. In order to have sufficient time to resolve the outstanding issues described above and in the Seventh Report, and to conduct the distribution of the Sales Proceeds to creditors and to the shareholders, the Company will require an extension of the "Stay Date" as defined in paragraph 4 of the Initial Order to April 30, 2007. The Company has been proceeding in good faith, and with due diligence to expeditiously conclude this restructuring. To the knowledge of the Company, the Monitor supports the granting of this extension.

54. Under the provisions of paragraph 11 of the Initial Order any action, suit or other proceeding against the Officers and Directors was stayed. Therefore the stay of proceedings with respect to the Officers and Directors must also be extended.

VI. Conclusion

55. As was anticipated, the restructuring of the Company under the CCAA has resulted in payment of the creditors of the Company in full. Upon the resolution of the issues raised above, and noted in the Seventh Report, the completion of the distribution to the shareholders, and the winding up of the Company, the Monitor will apply for its discharge and the termination of these proceedings.

SWORN before me at the City of)
Toronto in the Province of Ontario this)
22nd day of February, 2007)
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Commissioner for Taking Affidavits, etc.) Angela Scott
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