

Estate Number: 31-2693094, 31-2693092, 31-2693095  
Court File No.: 31-2693094

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

**IN THE MATTER OF THE NOTICE OF INTENTION TO MAKE A  
PROPOSAL OF 33 LAIRD INC. AND 33 LAIRD GP INC.,  
CORPORATIONS INCORPORATED UNDER THE *ONTARIO BUSINESS  
CORPORATIONS ACT*, AND 33 LAIRD LIMITED PARTNERSHIP, A  
LIMITED PARTNERSHIP FORMED UNDER THE *ONTARIO  
LIMITED PARTNERSHIPS ACT***

**FACTUM OF THE PROPOSAL TRUSTEE**  
**(RE: APPROVAL OF PROPOSALS)**

August 3, 2021

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**TO: THE SERVICE LIST**

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## **PART I – OVERVIEW**

1. This is a motion by MNP Ltd. in its capacity as proposal trustee (the “**Proposal Trustee**”) of 33 Laird Inc., 33 Laird GP Inc., and 33 Laird Limited Partnership Inc. (the “**Laird Entities**”) for an order that, among other things, approves the proposals submitted by the Laird Entities (the “**Proposals**”) and approved by the requisite majority of their creditors.
  
2. At a meeting of creditors held on July 2, 2021, the Proposals were considered and unanimously approved by 100% in number and 100% in value of the creditors entitled to vote at the meeting.
  
3. The Proposal Trustee is of the opinion that the Proposals are advantageous for the creditors for the following reasons:
  - (a) the Proposals contemplate an Unsecured Creditor Cash Pool (as defined in the Proposals) of \$50,000 funded from the proceeds of the Transaction being made available to the unsecured creditors;
  
  - (b) in the event of a bankruptcy, the unsecured creditors would receive no recovery as the quantum of the secured claims and priority payables are greater than the amounts realized under the Transaction;
  
  - (c) the Proposal therefore benefits the general body of creditors and results in greater recovery than in a bankruptcy.
  
4. The Proposal Trustee therefore recommends that the Proposals be approved.

## **PART II – FACTS**

5. The facts are as set out in the Report of the Trustee on Proposals dated July 14, 2021 as appended at Tab 2 to the Motion Record of the Proposal Trustee.

## **PART III – ISSUES**

6. The sole issue in this motion is whether the Court should approve the Proposals which have been voted upon and accepted by the requisite majority of creditors of the Laird Entities.

## **PART IV – LAW & ARGUMENT**

### **The Proposals Have Been Accepted by the Creditors**

7. Pursuant to s. 54(2)(d) of the *Bankruptcy and Insolvency Act* (“**BIA**”), a proposal is deemed to be accepted by the creditors if it has achieved the requisite “double majority” voting threshold at a duly constituted meeting of creditors.<sup>1</sup> In this case, the Proposals were unanimously accepted by 100% of the creditors entitled to vote at the meeting, both in number and in value.<sup>2</sup>

8. Section 58 of the BIA describes the steps that a proposal trustee must take upon acceptance of the proposal by creditors. The Proposal Trustee has fulfilled the requirements of Section 58 of the BIA:

- (a) The Proposal Trustee’s counsel sought a hearing for the Court’s approval of the Proposals within five days of the meeting of creditors;

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<sup>1</sup> [BIA, s. 54\(2\)\(d\).](#)

<sup>2</sup> [Report of the Trustee on Proposal at para. 15., Motion Record of the Proposal Trustee at Caselines Reference E1030](#)

- (b) On July 14, 2021, the Proposal Trustee sent the Notice of Hearing of Application for Court Approval for each of the Laird entities to those creditors who had filed claims;
- (c) The Proposal Trustee forwarded a copy of its Report to the official receiver at least 10 days before the hearing; and
- (d) The Proposal Trustee has filed with the Court a copy of the Report.<sup>3</sup>

### **Test for Approval of Proposal**

9. The BIA requires the Proposal Trustee to apply to Court to sanction a Proposal. Section 59(2) of the BIA requires that the Court refuse to approve the proposal where its terms (a) are not reasonable, or (b) not calculated to benefit the general body of creditors.<sup>4</sup>

10. In order to satisfy the test set out in s. 59(2) of the BIA, the Courts have held that the following three-pronged test must be satisfied:

- (a) the proposal is reasonable;
- (a) the proposal is calculated to benefit the general body of creditors; and
- (b) the proposal is made in good faith and with due diligence.<sup>5</sup>

11. With respect to the third prong of the test, Courts have generally taken into account the interests of the debtor, the interests of the creditors, and the interests of the public at large in the integrity of the bankruptcy system.<sup>6</sup>

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<sup>3</sup> [Report of the Trustee on Proposal at para. 17., Motion Record of the Proposal Trustee at Caselines Reference E1030](#)

<sup>4</sup> [BIA, s. 59\(2\).](#)

<sup>5</sup> [Kitchener Frame Limited \(Re\), 2012 ONSC 234, at paras. 19 – 21.](#)

<sup>6</sup> [Kitchener Frame Limited \(Re\), 2012 ONSC 234, at para 20.](#)

12. Courts also accord substantial deference to the majority vote of creditors at a meeting of creditors and the recommendation of the proposal trustee.<sup>7</sup>

13. For the reasons stated above and in the Report, the Proposal Trustee is of the view that the Proposals result in recovery to the general unsecured creditors that is greater than the recovery available in a bankruptcy.<sup>8</sup> The Proposal is calculated to benefit the general body of the creditors of the Company and are made in good faith and with due diligence.<sup>9</sup>

### **Approval of Director and Officer Releases in Proposal**

14. The Proposal provides that, in addition to releases specifically contemplated under the provisions of 50(13) of the BIA, acceptance of the Proposal constitutes a full and final release of all claims by the Laird Entities or the Unsecured Creditors against the holders of the Second Mortgage (as defined in the Proposals). The holders of the Second Mortgage have agreed to fund the Unsecured Creditors Cash Pool in consideration for such release.<sup>10</sup>

15. The Proposal also provides that acceptance of the Proposal constitutes a full and final release of all claims against any officer or director of the Laird Entities, as applicable.<sup>11</sup>

16. Under the provisions of the BIA, claims against directors, arising prior to the commencement of proceedings, may be compromised if they relate to the obligations of the corporation that the directors are by law liable for in their capacity as directors.<sup>12</sup>

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<sup>7</sup> [Kitchener Frame Limited \(Re\)](#), 2012 ONSC 234, at para 21.

<sup>8</sup> [Report at para. 20., Motion Record of the Proposal Trustee at Caselines Reference E1032](#)

<sup>9</sup> [Report at para. 20., Motion Record of the Proposal Trustee at Caselines Reference E1032](#)

<sup>10</sup> [Proposals at Clause 6.1, Motion Record of the Proposal Trustee at Caselines Reference E1043.](#)

<sup>11</sup> [Proposal at Clause 6.2, Motion Record of the Proposal Trustee at Caselines Reference E1043.](#)

<sup>12</sup> [BIA, s. 50\(13\).](#)

17. A proposal cannot compromise the types of claims described in s. 50(14) of the BIA relating to contracts with directors or based on allegations of misrepresentation or other wrongful or oppressive conduct by directors.<sup>13</sup>

18. The Proposal Trustee is not aware of any claims filed against the former or current directors or the officers, nor any liabilities in respect of outstanding HST or source deductions.

19. The Court has the jurisdiction to grant third party releases where they are appropriate. In the context of a plan under the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-43, as amended (the "CCAA"), the Ontario Court of Appeal held "...the release of the claim in question must be justified as part of the compromise or arrangement between the debtor and its creditors" provided that there is a "reasonable connection" between the release and the restructuring to be achieved.

20. The criteria for approval of releases in a Proposal include:

- (a) the parties released are necessary and essential to the restructuring of the debtor;
- (b) the claims released are rationally related to the purpose of the plan and necessary for it;
- (c) the plan cannot succeed without the releases;
- (d) the parties who are to have claims against them released are contributing in a tangible and realistic way to the plan;
- (e) the plan will benefit not only the debtor companies but creditors generally;

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<sup>13</sup> [BIA, s. 50\(14\)](#).



- (f) the voting creditors who have approved the proposal did so with knowledge of the nature and effect of the releases, and
- (g) the releases are fair and reasonable and not overly broad or offensive to public policy.<sup>14</sup>

21. The releases are necessary, essential and rationally connected to the Proposal. The holders of the Second Mortgage have agreed to fund the Unsecured Creditors Cash Pool in consideration for the release. The release is necessary to ensure recovery to the general unsecured creditors.

**The Proposal Trustee Recommends that the Proposal be Approved**

22. The Proposal Trustee is of the view that the Proposals are made in good faith and provide for an advantageous recovery for the creditors. The Proposal has been accepted by the requisite majority of creditors entitled to vote at a meeting and satisfies the test set out under s. 59(2) of the BIA for the approval of a Proposal by the Court.

**PART IV – ORDER REQUESTED**

23. The Proposal Trustee respectfully requests that the Court issue an Order that, among other things, approves the Proposals.

**ALL OF WHICH IS RESPECTFULLY SUBMITTED THIS 3<sup>rd</sup> DAY OF AUGUST, 2021**

*/s/ Weisz Fell Kour LLP*

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**WEISZ FELL KOUR LLP**

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<sup>14</sup> [FT EN E Canada Inc. \(Re\), 2019 ONSC 5793 at para 48.](#)

**SCHEDULE "A"****List of Authorities**

1. <a href="#"><i>Kitchener Frame Limited (Re)</i>, 2012 ONSC 234</a>
2. <a href="#"><i>FT ENE Canada Inc. (Re)</i>, 2019 ONSC 5793</a>

**SCHEDULE "B"****Statutory Authorities****[Bankruptcy and Insolvency Act - R.S.C., 1985, c. B-3](#)****54.2(D)**

(d) the proposal is deemed to be accepted by the creditors if, and only if, all classes of unsecured creditors — other than, unless the court orders otherwise, a class of creditors having equity claims — vote for the acceptance of the proposal by a majority in number and two thirds in value of the unsecured creditors of each class present, personally or by proxy, at the meeting and voting on the resolution.

**59.2****Court may refuse to approve the proposal**

(2) Where the court is of the opinion that the terms of the proposal are not reasonable or are not calculated to benefit the general body of creditors, the court shall refuse to approve the proposal, and the court may refuse to approve the proposal whenever it is established that the debtor has committed any one of the offences mentioned in [sections 198](#) to [200](#).

**50(13)****Claims against directors — compromise**

(13) A proposal made in respect of a corporation may include in its terms provision for the compromise of claims against directors of the corporation that arose before the commencement of proceedings under this Act and that relate to the obligations of the corporation where the directors are by law liable in their capacity as directors for the payment of such obligations.

**50(14)****Exception**

(14) A provision for the compromise of claims against directors may not include claims that

(a) relate to contractual rights of one or more creditors arising from contracts with one or more directors; or

(b) are based on allegations of misrepresentation made by directors to creditors or of wrongful or oppressive conduct by directors.

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Proceedings commenced at Toronto

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