

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

**IN THE MATTER OF THE *BANKRUPTCY AND
INSOLVENCY ACT*, R.S.C. 1985, c. B-3, AS AMENDED**

**AND IN THE MATTER OF THE NOTICES OF INTENTION
TO MAKE A PROPOSAL OF SIREG 700 PARKHILL INC.,
SIREG 1-4 BALMORAL INC., SIREG 4 CARTIER INC.,
SIREG 6 CARTIER INC., SIREG 8 CARTIER INC., SIREG
10 CARTIER INC., SIREG 12 CARTIER INC., SIREG 14
CARTIER INC., SIREG 16 CARTIER INC., SIREG 1390
KENSINGTON INC., SIREG 1400-1410 KENSINGTON INC.,
1000001856 ONTARIO INC., and 1000366987 ONTARIO
CORPORATION**

Court File No. BK-26-03428760-0032

**AND IN THE MATTER OF THE NOTICE OF INTENTION
TO MAKE A PROPOSAL OF SIREG HOLDINGS INC.**

Court File No. BK-26-03428714-0032

**AND IN THE MATTER OF THE NOTICE OF INTENTION
TO MAKE A PROPOSAL OF SIREG MANAGEMENT INC.**

Court File No. BK-26- 03428735-0032

**AND IN THE MATTER OF THE NOTICE OF INTENTION
TO MAKE A PROPOSAL OF THE SIMPLE INVESTOR
REAL ESTATE GROUP INC.**

Court File No. BK-26-03433064-0032

**AND IN THE MATTER OF THE NOTICE OF INTENTION
TO MAKE A PROPOSAL OF SIREG 1075 SUTTON DRIVE
INC.**

Court File No. BK-26-03429965-0032

**AND IN THE MATTER OF THE NOTICE OF INTENTION
TO MAKE A PROPOSAL OF SIREG 3438 SINNICKS INC.**

FACTUM OF THE PROPOSAL TRUSTEE

October 19, 2026

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AlixPartners Restructuring, Inc.

PART I - NATURE OF THE MOTION

1. This motion is brought by AlixPartners Restructuring, Inc. (“**AlixPartners**”) in its capacity as proposal trustee (the “**Proposal Trustee**”) of SIREG Management Inc. (“**SIREG Management**”), SIREG Holdings Inc. (“**SIREG Holdings**”) and the other entities set out in Schedule “C” (the “**SIREG Entities**”), each of which has filed a Notice of Intention to Make a Proposal (each, an “**NOI**,” and the related proceedings, the “**NOI Proceedings**”) pursuant to s. 50.4(1) of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended (the “**BIA**”).

2. While the initial purpose of the NOI Proceedings was to provide the SIREG Entities with an opportunity to consider potential restructuring options, certain SIREG Entities, in consultation with the Proposal Trustee, have ultimately concluded that a restructuring or sale is not possible, and that an orderly wind-down of the business of certain of the SIREG Entities represents the best and only available path forward.

3. The Proposal Trustee therefore seeks an order (the “**NOI Termination Order**”), which will, among other things:

- (a) terminate the period within which certain of the SIREG Entities may file a proposal, pursuant to s. 50.4(11) of the BIA, such that each of those SIREG Entities will be deemed to have made an assignment in bankruptcy; and
- (b) authorize AlixPartners, in its capacity as trustee in bankruptcy of the applicable SIREG Entities (in such capacity, the “**Trustee**”), to administer the resulting bankruptcy estates (the “**Estates**”) on a procedurally consolidated basis.

4. The proposed relief is necessary and appropriate in the circumstances. As set out below, the applicable SIREG Entities face extreme liquidity constraints, and will not be able to fund their

operations or pay their employees beyond October 20, 2026. Given these constraints, the applicable SIREG Entities are unlikely to be able to make a viable proposal prior to the end of the ongoing proposal period, and would in any case be unable to pay the costs associated with any hypothetical restructuring or sale process. Further, only limited property remains which could be subject to such a process, given the Lift Stay Orders (as defined below) granted earlier in the NOI Proceedings.

PART II - SUMMARY OF FACTS

5. The facts are more fully set out in the First Report of the Proposal Trustee.¹

A. Background

6. The SIREG Entities, along with their affiliates, comprise the “**Simple Investor Group**,” a residential real estate investment and property management business. The Simple Investor Group is managed on a consolidated basis by SIREG Management Inc, with the majority of the remaining SIREG Entities being single-purpose property-owning vehicles, which have little to no revenue, employees, or operations. All employees are employed by either SIREG Management or SIREG Holdings.²

7. The Simple Investor Group’s business model is comprised of: (i) the acquisition and operation of multi-residential rental properties (i.e., apartment buildings); (ii) the conversion of

¹ First Report of the Proposal Trustee, dated October 19, 2026 [First Report]. Capitalized terms not otherwise defined have the same meaning as in the First Report.

² First Report at para. 2.3.3.

rental properties into condominiums (“**Condo Buildings**”); and (iii) the sale of individual condominium units (“**Condo Units**”) to individual investors (“**Unit Owners**”).³

8. The Simple Investor Group owns approximately 900 residential units, which are a mix of apartment buildings and unsold Condo Units (the “**Owned Properties**”), the acquisition of which was typically financed through a combination of secured debt and investor capital. In addition, the Simple Investor Group managed approximately 2,200 Condo Units in 43 Condo Buildings, on behalf of the Unit Owners (the “**Managed Properties**”).⁴

9. As part of this business model, SIREG Management engaged in the following activities:

(a) **Property Management Agreements:** Following the sale of a Condo Unit, SIREG Management would enter into an agreement with the Unit Owner, pursuant to which SIREG Management would pay the Unit Owner a fixed monthly rent amount and agree to provide property management services (a “**Property Management Agreement**”). SIREG Management would then enter into a lease agreement for the Condo Unit and collect rent from the tenant.⁵

(b) **Apartment Buildings:** SIREG Management additionally acted as property manager for each of the approximately 900 owned residential units, and entered into residential lease agreements with tenants in respect of those units.⁶

³ First Report at para. 2.1.3.

⁴ First Report at paras. 2.1.2, 2.1.5.

⁵ First Report at para. 2.1.4.

⁶ First Report at para. 2.1.6.

10. The rents owing in respect of the Owned Properties and the Managed Properties were collected by SIREG Management, which was responsible for paying substantially all of the Simple Investor Group's costs.⁷

B. NOI Proceedings

11. All but two of the SIREG Entities filed NOIs on September 25, 2026, with the remaining two SIREG Entities filing the applicable NOIs on September 28, 2026 and October 5, 2026. At the time the NOIs were filed, the purpose of the NOI Proceedings was to create a stabilized environment to allow the SIREG Entities to consider possible restructuring options.⁸

12. Following motions made by Firm Capital Mortgage Fund Inc. and Monarch Realty Fund LLC, each of which is a secured creditor of certain Simple Investor Group entities, and on consent of the Proposal Trustee, the Court issued orders on October 13, 2026, lifting the stay of proceedings in respect of the applicable entities (the "**Lift Stay Orders**").⁹

13. Certain Unit Owners of Condo Units previously managed by SIREG Management (the "**Owner Group**") brought a motion seeking the appointment of an administrator in respect of certain of the condominium corporations relating to the Owner Group's Condo Units (the "**Condo Corps**"). On October 15, 2026, the Court granted an order appointing Brian Antman as administrator of the Condo Corps for which no objection had been raised.¹⁰

⁷ First Report at para. 2.1.7.

⁸ First Report at paras. 2.2.1, 2.3.2.

⁹ First Report at para. 2.2.3. The applicable entities are 1000001856 Ontario Inc., 1000366987 Ontario Corporation, SIREG 1-4 Balmoral Inc., SIREG 4 Cartier Inc., SIREG 6 Cartier Inc., SIREG 8 Cartier Inc., SIREG 10 Cartier Inc., SIREG 12 Cartier Inc., SIREG 14 Cartier Inc., SIREG 16 Cartier Inc., SIREG 1390 Kensington Inc., SIREG 1400-1410 Kensington Inc., and SIREG 700 Parkhill Inc.

¹⁰ First Report at para. 2.2.4.

C. Liquidity Issues and Need for an Orderly Winddown

14. The Simple Investor Group's business did not generate sufficient cash to pay its expenses, with the rents collected in respect of the Owned Properties and the Managed Properties being insufficient to pay, among other things: (i) the guaranteed rent owing under the Property Management Agreements; (ii) property management costs; (iii) condominium management costs; and (iv) debt servicing payments. Historically, these shortfalls had been funded through refinancings or sales of Owned Properties.¹¹

15. Shortly before the commencement of the NOI Proceedings, the SIREG Entities retained Reflect Advisors LLC ("**Reflect**") to provide interim management services (with Adam Zalev acting as the Chief Restructuring Officer), and to determine whether a viable restructuring or sale of the Simple Investor Group was possible. Ultimately, for the reasons discussed in detail below, SIREG Management, SIREG Holdings, and SIREG Inc. have determined, in consultation with the Proposal Trustee, that a viable restructuring or sale will not be possible. As a result, it is necessary for the applicable SIREG Entities to enter into bankruptcy proceedings in order to facilitate an orderly wind-down of their operations.¹²

D. Sutton

16. The NOI Termination Order does not apply to Sutton, which is the registered owner of an industrial building located at 1075 Sutton Drive in Burlington, Ontario (the "**Sutton Building**"). The Sutton Building serves as SIREG Management's head office, and the Proposal Trustee understands that SIREG Management has historically not paid rent to Sutton for its use. The

¹¹ First Report at para. 2.3.1.

¹² First Report at paras. 2.2.2., 2.3.2, 2.3.6.

Proposal Trustee intends to have the SIREG Entities' property (which primarily consists of books, records, and a server) removed from the Sutton Building, and to have the condominium keys returned to the various condominium owners, within the next one to two weeks.¹³

17. In anticipation of this motion, the Proposal Trustee and counsel for the holder of the second-ranking mortgage on the Sutton Building, 1000018790 Ontario Ltd. ("**790 Ontario**"), had various communications regarding access to the Sutton Building in the event of the bankruptcy of Sutton. During the course of these communications, 790 Ontario provided the Proposal Trustee with an appraisal of the Sutton Building, which indicated that the value of the Sutton Building is several million dollars in excess of the aggregate value of the debt secured against it.¹⁴

18. In light of this appraised value, the Proposal Trustee does not seek to have the NOI Termination Order apply to Sutton, and is considering potential next steps.¹⁵

PART III - THE ISSUES AND THE LAW

19. This Factum addresses whether:

- (a) the applicable NOI Proceedings should be terminated; and
- (b) the Estates should be procedurally consolidated.

¹³ First Report at paras. 2.4.1-2.4.3.

¹⁴ First Report at paras. 2.4.3-2.4.5.

¹⁵ First Report at para. 2.4.5.

A. The Applicable NOI Proceedings Should Be Terminated

(a) This Court Has Jurisdiction to Grant the Proposed Relief

20. Where an insolvent person files a Notice of Intention under s. 50.4 of the BIA, that person by default has thirty days to file a proposal, failing which the insolvent person is deemed to have made an assignment in bankruptcy pursuant to s. 50.4(8).¹⁶

21. Section 50.4(11) in turn provides that this thirty day period for making a proposal may be terminated early on the application of a trustee, interim receiver, or creditor. In order to terminate the period for making a proposal in this manner, the court must be satisfied that one of the following disjunctive criteria applies:¹⁷

- (a) the insolvent person has not acted, or is not acting, in good faith and with due diligence;
- (b) the insolvent person will not likely be able to make a viable proposal before the expiration of the period in question;
- (c) the insolvent person will not likely be able to make a proposal, before the expiration of the period in question, that will be accepted by the creditors; or
- (d) the creditors as a whole would be materially prejudiced were the application under this subsection rejected.

¹⁶ BIA, s. 50.4(8).

¹⁷ See *Cogent Fibre Inc. (Re)*, [2015 ONSC 5139](#) at para. 25, in which the court noted the disjunctive nature of the s. 50.4(11) test [*Cogent Fibre*].

22. Section 50.4(11) is an essential part of the BIA proposal provisions, which operates to provide a quick method to deal with a “hopeless case” during an ongoing proposal period.¹⁸ Where the court terminates the period for making a proposal, s. 50.4(8), including the deemed assignment into bankruptcy, applies as if the period for making the proposal had expired.¹⁹

(b) The Applicable SIREG Entities are Not Likely to Make a Viable Proposal

23. Pursuant to s. 50.4(11)(b), a court may terminate the proposal period early where it is satisfied that a debtor “will not likely be able to make a viable proposal” prior to the expiration of the period for making a proposal. In this context, a “viable proposal” is one that would seem reasonable on its face to a hypothetical “reasonable creditor,”²⁰ while the “likelihood” of such a proposal being made is assessed on the balance of probabilities.²¹

24. The Proposal Trustee submits that it is clear that the applicable SIREG Entities will not likely be able to make a viable proposal during the proposal period, for the following reasons:²²

- (a) as of October 20, 2026, the applicable SIREG Entities will no longer have sufficient liquidity to fund their operations and pay their employees (taking into account the need for a reserve to fund the proposed bankruptcies), and therefore would not be able to maintain their operations for the remainder of the proposal period, or for the period of any hypothetical restructuring or sale process;

¹⁸ *Triangle Drugs Inc. (Re)*, 1993 [CanLII 8663](#) (ON CTGD) at para. 3.

¹⁹ BIA, s. 50.4(11).

²⁰ *Baldwin Valley Investors Inc. (Re)*, 1994 CarswellOnt 253 (ONSC) at para. 4, attached to this factum as Schedule “D”.

²¹ *Cogent Fibre* at para. 35.

²² First Report at paras. 2.3.4.

- (b) in addition to being unable to fund ongoing operations going forward, the applicable SIREG Entities would not be able to fund the costs associated with any hypothetical restructuring or sale process; and
- (c) as a result of the Lift Stay Orders, only limited property remains which could be subject to a hypothetical restructuring or sale process.

25. In these circumstances, it is clear that no viable proposal is likely to be made by the applicable SIREG Entities during the remainder of the proposal period, and that the ongoing NOI Proceedings of the applicable SIREG Entities represent precisely the type of “hopeless case” which s. 50.4(11) was designed to address. Courts in similar situations have approved early termination on the basis that a viable proposal was not likely, including where the debtor had effectively no cash flow or assets²³ and where it was unlikely that there would be any further interest from lenders or investors.²⁴ In contrast, where there is evidence that a debtor has significant assets – i.e., “something to work with” – or where there is evidence that a potential proposal may result in creditors being paid out, there is no cause to terminate the proposal period,²⁵ and the debtor should be permitted to put forward the proposal, even in the face of creditor opposition.²⁶

²³ *Cogent Fibre*, at para. 35.

²⁴ *1512759 Ontario Ltd. (Re)*, [2002 CanLII 17534](#) (ONSC) at para. 2.

²⁵ *Cogent Fibre*, at para. 34, citing *Cantrail Coach Lines Ltd. (Re)*, [2005 BCSC 351](#) at para. 17 [*Cantrail*] and *Andover Mining Corp. (Re)*, [2013 BCSC 1833](#) at para. 74.

²⁶ *Cantrail*, at paras. 13-18; *N.T.W. Management Group Ltd. (Re)*, 1993 CarswellOnt 208 (OCJ GD) at paras. 18-19, attached to this factum as Schedule “E”.

26. Given these constraints, bankruptcy represents the best path forward for the applicable SIREG Entities, and will facilitate an orderly wind-down of the Simple Investor Group, including Wage Earner Protection Program filings.²⁷

B. The Estates Should Be Procedurally Consolidated

27. Upon the termination of the NOI Proceedings in respect of the applicable SIREG Entities, there will be 16 Estates. In order to reduce the costs of the bankruptcy process and facilitate the orderly administration of the Estates, the proposed NOI Termination Order authorizes AlixPartners, in its capacity as Trustee, to administer the Estates on a consolidated basis.

28. Procedurally consolidating the estates will allow for significant administrative and cost efficiencies, including by, among other things, permitting the Trustee to deal with all filing and notice requirements under the BIA on a consolidated basis, and by allowing meetings of creditors to be convened through one combined notice and advertisement, and conducted jointly, rather than requiring 16 separate notices and meetings. The proceedings would remain substantively separate, such that the result of any creditor's votes will be tabulated separately for each Estate, and the substantive rights of creditors will not be prejudiced by consolidation.²⁸

29. The requested relief is therefore appropriate in the circumstances and is in the best interest of the Estates and creditors generally, particularly given the Simple Investor Group's extremely limited remaining resources. Similar relief is routinely given where restructuring proceedings are

²⁷ First Report at para. 2.3.6.

²⁸ First Report at paras. 3.3.2-3.3.5.

converted into bankruptcy proceedings under the BIA, in order to maximize efficiency and minimize the costs associated with the resulting bankruptcies.²⁹

PART IV - NATURE OF THE ORDER SOUGHT

30. The Proposal Trustee therefore request that this Court grant the proposed NOI Termination Order substantially in the form of the draft order found in the Motion Record.

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 19th day of October, 2026:



OSLER, HOSKIN & HARCOURT, LLP per Laura Culleton
P.O. Box 50, 1 First Canadian Place
Toronto, ON M5X 1B8

Lawyers for the Proposal Trustee

TO: THE ATTACHED SERVICE LIST

²⁹ See, e.g., *Aleafia Health Inc. et al.* (Re), (March 1, 2024), Ont. S.C.J. [Commercial List], Court File No. CV-23-007033350-00CL ([Endorsement of Justice Conway](#)) at para. 6, in which the court approved the procedural consolidation of bankruptcy proceedings on the basis that it would “reduce the cost of the bankruptcy process and facilitate the orderly administration of the estate.” See also *Atlas Global Brands et al. v. the Attorney General of Canada et al.*, (October 29, 2024), Ont. S.C.J. [Commercial List], Court File No. CV-24-00722386-00CL ([Endorsement of Justice Steele](#)) at paras. 41-42

SCHEDULE “A”: LIST OF AUTHORITIES

1. *1512759 Ontario Ltd. (Re)*, [2002 CanLII 17534](#) (ONSC)
2. *Aleafia Health Inc. et al. (Re)*, (March 1, 2024), Ont. S.C.J. [Commercial List], Court File No. CV-23-00703350-00CL ([Endorsement of Justice Conway](#))
3. *Andover Mining Corp. (Re)*, [2013 BCSC 1833](#)
4. *Atlas Global Brands et al. v. the Attorney General of Canada et al.*, (October 29, 2024), Ont. S.C.J. [Commercial List], Court File No. CV-24-00722386-00CL ([Endorsement of Justice Steele](#))
5. *Baldwin Valley Investors Inc. (Re)*, 1994 CarswellOnt 253 (ONSC)
6. *Cantrail Coach Lines Ltd. (Re)*, [2005 BCSC 351](#)
7. *Cogent Fibre Inc. (Re)*, [2015 ONSC 5139](#)
8. *N.T.W. Management Group Ltd. (Re)*, 1993 CarswellOnt 208 (OCJ GD)
9. *Triangle Drugs Inc. (Re)*, 1993 [CanLII 8663](#) (ON CTGD)

I certify that I am satisfied as to the authenticity of every authority, and I am satisfied that every quotation from an authority that appears in the factum accurately reproduces the text of the authority.

Date October 19, 2026



Signature
Laura Culleton

SCHEDULE “B”
TEXT OF STATUTES, REGULATIONS & BY-LAWS

BANKRUPTCY AND INSOLVENCY ACT

R.S.C., 1985, c. B-3, as amended

Notice of intention

50.4 (1) Before filing a copy of a proposal with a licensed trustee, an insolvent person may file a notice of intention, in the prescribed form, with the official receiver in the insolvent person’s locality, stating

- (a) the insolvent person’s intention to make a proposal,
- (b) the name and address of the licensed trustee who has consented, in writing, to act as the trustee under the proposal, and
- (c) the names of the creditors with claims amounting to two hundred and fifty dollars or more and the amounts of their claims as known or shown by the debtor’s books,

and attaching thereto a copy of the consent referred to in paragraph (b).

[...]

Where assignment deemed to have been made

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

- (a) the insolvent person is, on the expiration of that period or that extension, as the case may be, deemed to have thereupon made an assignment;
- (b) the trustee shall, without delay, file with the official receiver, in the prescribed form, a report of the deemed assignment;
- (b.1) the official receiver shall issue a certificate of assignment, in the prescribed form, which has the same effect for the purposes of this Act as an assignment filed under section 49; and
- (c) the trustee shall, within five days after the day the certificate mentioned in paragraph (b.1) is issued, send notice of the meeting of creditors under section 102, at which meeting the creditors may by ordinary resolution, notwithstanding section 14, affirm the appointment of the trustee or appoint another licensed trustee in lieu of that trustee.

[...]

Court may terminate period for making proposal

(11) The court may, on application by the trustee, the interim receiver, if any, appointed under section 47.1, or a creditor, declare terminated, before its actual expiration, the thirty day period mentioned in subsection (8) or any extension thereof granted under subsection (9) if the court is satisfied that

- (a)** the insolvent person has not acted, or is not acting, in good faith and with due diligence,
- (b)** the insolvent person will not likely be able to make a viable proposal before the expiration of the period in question,
- (c)** the insolvent person will not likely be able to make a proposal, before the expiration of the period in question, that will be accepted by the creditors, or
- (d)** the creditors as a whole would be materially prejudiced were the application under this subsection rejected,

and where the court declares the period in question terminated, paragraphs (8)(a) to (c) thereupon apply as if that period had expired.

**SCHEDULE “C”
SIREG ENTITIES**

Title	Court No. / Estate No.
IN THE MATTER OF THE NOTICE OF INTENTION TO MAKE A PROPOSAL OF SIREG HOLDINGS INC.	Court No.: 32-3428760 Estate No.: 32-3428760
IN THE MATTER OF THE NOTICE OF INTENTION TO MAKE A PROPOSAL OF SIREG MANAGEMENT INC.	Court No.: 32-3428714 Estate No.: 32-3428714
IN THE MATTER OF THE NOTICE OF INTENTION TO MAKE A PROPOSAL OF THE SIMPLE INVESTOR REAL ESTATE GROUP INC.	Court No.: 32-3428735 Estate No.: 32-3428735
IN THE MATTER OF THE NOTICE OF INTENTION TO MAKE A PROPOSAL OF 1000001856 ONTARIO INC.	Court No.: 32-3429053 Estate No.: 32-3429053
IN THE MATTER OF THE NOTICE OF INTENTION TO MAKE A PROPOSAL OF 1000366987 ONTARIO CORPORATION	Court No.: 32-3429076 Estate No.: 32-3429076
IN THE MATTER OF THE NOTICE OF INTENTION TO MAKE A PROPOSAL OF SIREG 1-4 BALMORAL INC.	Court No.: 32-3429058 Estate No.: 32-3429058
IN THE MATTER OF THE NOTICE OF INTENTION TO MAKE A PROPOSAL OF SIREG 4 CARTIER INC.	Court No.: 32-3429060 Estate No.: 32-3429060
IN THE MATTER OF THE NOTICE OF INTENTION TO MAKE A PROPOSAL OF SIREG 6 CARTIER INC.	Court No.: 32-3429064 Estate No.: 32-3429064
IN THE MATTER OF THE NOTICE OF INTENTION TO MAKE A PROPOSAL OF SIREG 8 CARTIER INC.	Court No.: 32-3429067 Estate No.: 32-3429067
IN THE MATTER OF THE NOTICE OF INTENTION TO MAKE A PROPOSAL OF SIREG 10 CARTIER INC.	Court No.: 32-3429069 Estate No.: 32-3429069
IN THE MATTER OF THE NOTICE OF INTENTION TO MAKE A PROPOSAL OF SIREG 12 CARTIER INC.	Court No.: 32-3429071 Estate No.: 32-3429071
IN THE MATTER OF THE NOTICE OF INTENTION TO MAKE A PROPOSAL OF SIREG 14 CARTIER INC.	Court No.: 32-3429073 Estate No.: 32-3429073
IN THE MATTER OF THE NOTICE OF INTENTION TO MAKE A PROPOSAL OF SIREG 16 CARTIER INC.	Court No.: 32-3429078 Estate No.: 32-3429078
IN THE MATTER OF THE NOTICE OF INTENTION TO MAKE A PROPOSAL OF SIREG 700 PARKHILL INC.	Court No.: 32-3429084 Estate No.: 32-3429084
IN THE MATTER OF THE NOTICE OF INTENTION TO MAKE A PROPOSAL OF SIREG 1390 KENSINGTON INC.	Court No.: 32-3429085 Estate No.: 32-3429085
IN THE MATTER OF THE NOTICE OF INTENTION TO MAKE A PROPOSAL OF SIREG 1400-1410 KENSINGTON INC.	Court No.: 32-3429087 Estate No.: 32-3429087
IN THE MATTER OF THE NOTICE OF INTENTION TO MAKE A PROPOSAL OF SIREG 3438 SINNICKS INC.	Court No.: 32-3429965 Estate No.: 32-3429965
IN THE MATTER OF THE NOTICE OF INTENTION TO MAKE A PROPOSAL OF SIREG 1075 SUTTON DRIVE INC.	Court No.: 32-3433064 Estate No.: 32-3433064

SCHEDULE "D"

1994 CarswellOnt 253
Ontario Court of Justice (General Division [Commercial List]), In Bankruptcy

Baldwin Valley Investors Inc., Re

1994 CarswellOnt 253, [1994] O.J. No. 271, 23 C.B.R. (3d) 219

Re proposal of BALDWIN VALLEY INVESTORS INC. and of VARION INCORPORATED

Farley J.

Judgment: February 3, 1994 *

Docket: Doc. 32-65038

Counsel: *Frank Bennett* , for debtor companies.

Larry Crozier , for secured creditor, Royal Bank of Canada.

Farley J.:

1 Baldwin Valley Investors Inc. ("Baldwin") and Varion Incorporated ("Varion"), the debtor companies appealed the dismissal of their extension of time to file proposals requests heard January 27, 1994 by Registrar Ferron. The Registrar indicated that he had refused extensions that day with reasons to follow shortly [reported at 23 C.B.R. (3d) 219 at 223]. The matter came before me on January 28th and on consent was adjourned to be heard today when it was expected that reasons would be available, as they in fact were. The Registrar was of the view that the debtor companies had failed to meet all three tests under s. 50.4(9) of the *Bankruptcy and Insolvency Act* , R.S.C. 1985, c. B-3 as amended ("BIA"). That section provides that:

(9) The insolvent person may, before the expiration of the thirty day period mentioned in subsection (8) or any extension thereof granted under this subsection, apply to the court for an extension, or further extension, as the case may be, of that period, and the court may grant such extensions, not exceeding forty-five days for any individual extension and not exceeding in the aggregate five months after the expiration of the thirty day period mentioned in subsection (8), if satisfied on each application that

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

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

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

This should be contrasted with the termination provisions of s. 50.4(11) which provide that:

(11) The court may, on application by the trustee, the interim receiver, if any, appointed under section 47.1, or a creditor, declare terminated, before its actual expiration, the thirty day period mentioned in subsection (8) or any extension thereof granted under subsection (9) if the court is satisfied that

(a) the insolvent person has not acted, or is not acting, in good faith and with due diligence,

(b) the insolvent person will not likely be able to make a viable proposal before the expiration of the period in question.

(c) the insolvent person will not likely be able to make a proposal, before the expiration of the period in question, that will be accepted by the creditors, or

(d) the creditors as a whole would be materially prejudiced were the application under this subsection rejected,

and where the court declares the period in question terminated, paragraphs (8)(a) to (c) thereupon apply as if that period expired.

2 The facts are as set out in the Registrar's reasons released today. Counsel were agreed that the standard of review was that I had to be satisfied that the Registrar either erred in law or in principle.

3 Let me deal with the middle test of s. 50.4(9)(b) that the debtor companies must show that they "would likely be able to make a viable proposal if the extension being applied for were granted". The Registrar appeared to focus on the fact that the Bank, as the 92% creditor of Baldwin and almost 100% creditor of Varion, had lost all confidence in the debtor companies and would not vote for any proposal put forth. However, in my view this is not the test of s. 50.4(9)(b). This becomes clear when one examines s. 50.4(11)(b) and (c); it appears that Parliament wished to distinguish between a situation of a viable proposal (s. 50.4(9)(b) and (11)(b)) versus a situation in which it is likely that the creditors will not vote for this proposal, no matter how viable that proposal (s. 50.4(11)(c) but with no corresponding clause in s. 50.4(9)).

4 It seems to me that "viable proposal" should have to take on some meaning akin to one that seems reasonable on its face to the "reasonable creditor"; this ignores the possible idiosyncrasies of any specific creditor. However, it does appear to me that the draft proposal being floated by the debtor companies is one which proposes making the Bank (which has lost faith with the management of the debtor companies) a partner with the owners of the debtor companies, failing which (a likely certainty in these circumstances) the debtor companies propose that third parties become equity participants instead of the Bank; yet there is no indication of the names and substance of these fallback partners. It does not appear to me that the debtor companies have shown that they are likely to be able to make a viable proposal. While that need not be a certainty: see my views at pp. 10-11 in *Re Cumberland Trading Inc.* released January 24, 1994 [now reported at 23 C.B.R. (3d) 225 , at p. 231]. "Likely" as defined in *The Concise Oxford Dictionary of Current English* , 7th ed. (1987; Oxford, The Clarendon Press) means:

likely 1. such as *might well happen* , or turn out to be the thing specified; *probable* . 2. to be *reasonably expected* . [emphasis added]

I do not see the conjecture of the debtor companies' rough submission as being "likely ".

5 While one may well fault the Bank for its approach to this situation, one has to recognize that the onus is on the debtor companies to show that they have acted in good faith and with due diligence. I am satisfied that the Registrar correctly assessed the situation in that regard that the debtor companies could have and should have proceeded with laying the foundation for their proposal and in fact building on that foundation rather than relying on anything that may be forthcoming from the Bank. In particular, see Cohn, *Good Faith and the Single Asset Debtor* (1988) 62 Am. Bankr. L.J. 131 on which it appears the Registrar relied. However, it is noted that there was no examination of the jurisprudential principles therein.

6 I discussed the question of material prejudice in *Cumberland, supra* , at pp. 11-13 [pp. 231-232]. The debtor companies have provided no information in that regard for the 45 day extension period from February 28, 1994. The only information close to this is the cash-flow statement of the previous extension granted December 16, 1993. However, for this extension there was no information. It appears therefore, that the debtor companies did not even attempt to meet this condition.

7 I am therefore, of the view that on all three tests (one failure of a test being sufficient to disqualify a debtor company from being able to ask for an extension) the debtor companies have failed to overcome the onus on them. The Registrar was correct in the result on all counts, although I feel that he inadvertently used the wrong test in s. 50.4(9)(b), a quite understandable situation given the terminology used in the legislation.

8 I would also point out that it was clear that if the debtor companies had won a victory in this appeal, it would have been a Pyrrhic victory. The Bank would have been able to come right back in with a motion based on s. 50.4(11)(c).

9 The appeal is dismissed. Costs were agreed at \$2,500 and are payable by the debtor companies jointly and severally to the Bank forthwith.

Appeal dismissed.

Footnotes

- * This judgment is an appeal from the decision reported at 23 C.B.R. (3d) 219 at 223 .

SCHEDULE "E"

1993 CarswellOnt 208
Ontario Court of Justice (General Division), In Bankruptcy

N.T.W. Management Group Ltd., Re

1993 CarswellOnt 208, [1993] O.J. No. 621, 19 C.B.R. (3d) 162

Re insolvency of N.T.W. MANAGEMENT GROUP LIMITED; Re insolvency of COAST OPERATIONS OF CANADA LIMITED; Re insolvency of PERSONALIZED LEASING SERVICES LIMITED

Chadwick J.

Judgment: March 15, 1993

Docket: Docs. Ottawa 065330/93, 065331/93, 065332/93

Counsel: *Hugh Blakeney* and *Annette J. Nicholson*, for Canadian Imperial Bank of Commerce.
John P. O'Toole, for interim receiver and trustee.
Heather P. Griffiths, for trustee.

Chadwick J.:

1 The applicant, Canadian Imperial Bank of Commerce (C.I.B.C.) is a secured creditor of each of the three insolvent corporations, Coast Operations of Canada Limited (Coast), N.T.W. Management Group Limited (N.T.W. Management), and Personalized Leasing Services Limited (c.o.b. Mac's). The applicant, C.I.B.C. brings this application pursuant to s. 50.4(11), R.S.C. 1985, c. B-3.

2 On February 16th, 1993 C.I.B.C. served notice of their intention to enforce their security in accordance with s. 224(1) against each of the insolvent companies. On the same date they applied for receiving orders regarding each of the companies. On the 17th of February, 1993 the three companies filed notices of intention to make a proposal pursuant to the provisions of s. 50.4 of the *Bankruptcy and Insolvency Act*. Deloitte & Touche Inc. were named as trustees for the purpose of the notice.

3 C.I.B.C. immediately moved for the appointment of an interim receiver in accordance with s. 47.1. This application was based upon the companies opening a new bank account with the Royal Bank. As such funds covered by the General Security Agreement of C.I.B.C. were being diverted. I was satisfied on the evidence that an interim receiver should be appointed. The debtor company opposed the appointment of the interim receiver recommended by C.I.B.C. In order to attempt to reduce costs, I appointed the insolvent companies' trustee as interim receiver.

4 At the time of the application for interim receiver, the prime concern was Personalized Leasing Services Limited which carries on business as Mac's Delivery Service. On the evening of February 17th, 1993 Budget Rent-A-Car, operating under Ottawa Car and Truck Leasing, attempted to seize vehicles operated by Mac's. On February 18th, Ottawa Car and Truck Leasing voluntarily returned the vehicles to Mac's. I provided directions to the interim receiver in order to protect the interest of Ottawa Car and Truck Leasing. On that date as well, Ottawa Car and Truck Leasing brought an application to terminate the proposal filed by Personalized Leasing Services Limited according to s. 50.4(11) of the *Bankruptcy and Insolvency Act*. That application was adjourned *sine die*. The position put forward by Ottawa Car and Truck Leasing was that, as a result of their leasing arrangement with Mac's, they were the largest single creditor of that company, excluding C.I.B.C.

5 There is some dispute in the affidavit material as to how much is owing to C.I.B.C. by the insolvent companies. As all of the companies are inter-related there are guarantees and cross-guarantees between the companies to secure the indebtedness of

C.I.B.C. It is also apparent that under the terms of the C.I.B.C. General Security Agreement if C.I.B.C. were to realize on their security, there would be no assets left in the three insolvent companies.

6 The Notice of Intention dated February 17th, 1993 filed by the companies, acknowledged a debt to C.I.B.C. of \$10,453,302.96. In addition, there is an unlimited guarantee of the debts of N.T.W. Realty Limited, another insolvent company related to the three named companies which are the subject matter of this application. Under the unlimited guarantee, there is indebtedness of \$14,916,427.99. According to C.I.B.C.'s material, the companies are indebted to them in the amount of \$21,369,427.99.

7 C.I.B.C. now seeks an order pursuant to s. 50.4(11) terminating the notice of intention. It is the position of C.I.B.C. that as a result of the conduct of the insolvent companies and their principle Walter Boyce, they will not support any proposal put forth by the insolvent companies. On this basis alone, they take the position that the court should terminate the notice of intention to file a proposal and the subsequent protection that that proposal gives the insolvent companies.

8 Counsel on behalf of the insolvent companies argue that the application is premature. Their position is that they should be allowed to formulate a proposal which would allow them to pay out the indebtedness of C.I.B.C. In support of their position, Michael K. Carson, Senior Vice-President of Deloitte & Touche, the trustee and interim receiver of the insolvent companies has filed affidavit material setting forth what actions they have taken since their appointment. The trustee has filed a cash-flow statement, as required by s. 50.4(2).

9 I am satisfied on the evidence that the interim receiver and trustee has received in the cooperation of the principals of the insolvent companies and that the bank's security over the general assets is not in jeopardy.

10 The thrust of C.I.B.C.'s application pursuant to s. 50.4(11) is sub-paragraph (a), (b) and (c). This section allows the creditors such as C.I.B.C. to apply to the court to terminate the application prior to the 30-day expiration period if the court is satisfied as follows:

(a) the insolvent person has not acted, or is not acting, in good faith and with due diligence,

(b) the insolvent person will not be likely able to make a viable proposal before the expiration of the period in question,

(c) the insolvent person will not be likely able to make a proposal, before the expiration of the period in question, that will be accepted by the creditors ...

11 In support of their application, Mr. Blakeney, counsel for C.I.B.C. has referred me to a number of cases which were decided under the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36. where applications by insolvent companies were dismissed when the applications were opposed by major creditors who would not approve the plan of compromise or arrangement. (See *Diemaster Tool Inc. v. Skvortsoff (Trustee of)* (1991), 3 C.B.R. (3d) 133 (Ont. Gen. Div.); *851820 N.W.T. Ltd. v. Hopkins Construction (Lacombe) Ltd.* (1992), 12 C.B.R. (3d) 31 (N.W.T. S.C.); *First Treasury Financial Inc. v. Congo Petroleums Inc.* (1991), 3 C.B.R. (3d) 232 (Ont. Gen. Div.); *Re Inducon Development Corp.* (1991), 8 C.B.R. (3d) 306 (Ont. Gen. Div.); *Re Perkins Holdings Ltd.* (1991), 6 C.B.R. (3d) 299 (Ont. Gen. Div.); *Re Triangle Drugs Inc.* (1993, unreported) [now reported at 16 C.B.R. (3d) 1 (Ont. Bkcty.)].)

12 In *Nova Metal Products Inc. v. Comiskey (Trustee of)* [(1990), 1 C.B.R. (3d) 101 (Ont. C.A.)] Finlayson, J.A. on behalf of the court considered the operation of the *Companies' Creditors Arrangement Act* as it related to various secured creditors. After reviewing the classification of creditors and placing the major secured creditors in one particular class, it was apparent that the major secured creditor would not support the proposed plan of arrangement. At p. 115 he concluded:

My assessment of these secured creditors is that the bank should be in its own class. This being so, it is obvious that no plan of arrangement can succeed without its approval. There is no useful purpose to be served in putting a plan of arrangement to a meeting of creditors if it is known in advance that it cannot succeed. This is another cogent reason for the Court declining to exercise its discretion in favour of the debtor companies.

13 Doherty J.A. dissented in part with the views of Finlayson J.A. At p. 129 he states:

I agree that the feasibility of the plan is a relevant and significant factor to be considered in determining whether to order a meeting of creditors: S.E. Edwards, "Reorganizations Under the Companies' Creditors Arrangement Act," at pp. 594-595. I would not, however, impose a heavy burden on the debtor company to establish the likelihood of ultimate success from the outset. As the Act will often be the last refuge for failing companies, it is to be expected that many of the proposed plans of reorganization will involve variables and contingencies which will make the plan's ultimate acceptability to the creditors and the Court very uncertain at the time the initial application is made.

14 The procedure set out in the *Companies' Creditors Arrangement Act* are far different than the procedure in the new *Bankruptcy and Insolvency Act*. Under the C.C.A.A. application for a stay must be made to the court. The onus is on the applicant to show that there is some likelihood of success. Under the *Bankruptcy and Insolvency Act* the stay is granted automatically once the notice of intention or proposal is filed. The *Bankruptcy and Insolvency Act* then goes on to provide specific time restrictions and requirements that the applicant must comply with in order to continue to receive the protection of the Act. The insolvent company may seek a 45-day extension of time, but the onus is on the insolvent company to satisfy the requirement of s. 50.9. These requirements are similar to requirements that the creditors must satisfy in an application to terminate under s. 50.4(11). The difference being the onus is now on the insolvent company rather than the creditor.

15 Considering the application on its merits and the provisions of s. 50.4(11).

(a) the insolvent person has not acted, or is not acting, in good faith and with due diligence,

16 The opening of a new bank account and diverting the funds from C.I.B.C. is certainly an indication of bad faith. This action was done before the filing of the notice of intention. Since filing the notice the insolvent companies appear to be acting in good faith. The isolated act of changing the bank account is not evidence that the insolvent companies are not acting in good faith regarding this application.

17 C.I.B.C. takes the position that the insolvent companies have not proceeded with due diligence. I am not satisfied on the evidence before me that this is the case. The insolvent companies have a difficult task in attempting to arrange new financing. This is not something that can be accomplished overnight. The officers and principals of the insolvent companies are cooperating with the trustee. There is no evidence they are not acting in good faith or that the notice of intention to file a proposal is a sham or delaying tactic.

(b) the insolvent person will not be likely able to make a viable proposal before the expiration of the period in question,

18 Under s. 50(8) the insolvent companies must file their proposal within thirty days. There was no evidence before me that they could not meet that deadline. The question is whether they "will not be likely able to make a viable proposal". It is difficult to make this determination so early in the proceedings. It is clear that for any proposal to be viable it will have to contain provisions for a complete discharge of the C.I.B.C. obligation. The evidence indicates that the principals are negotiating with other banks to arrange new take-out financing. The onus is on the applicant to prove on a balance of probabilities that the insolvent companies will likely not be able to make a viable proposal before the expiration period. The applicant has not met this onus.

(c) The insolvent person will not be likely able to make a proposal, before the expiration of the period in question, that will be accepted by the creditors ...

19 C.I.B.C. the major secured creditor has indicated they will not accept any proposal put forth, other than complete discharge of the C.I.B.C. indebtedness. Other substantial creditors have taken the same position. There is no doubt that the insolvent companies have a substantial obstacle to overcome. As the insolvent companies have not had the opportunity to put forth this proposal, it is impossible to make the final determination. In *Triangle Drugs Inc.* Farley J. had the proposal. Well over one-half of the secured creditors indicated they would not vote for the proposal. As such, he then terminated the proposal. We have not reached that stage in this case. The insolvent companies should have the opportunity of putting forth the proposal.

(d) the creditors as a whole would be materially prejudiced were the application under this subsection rejected,

20 There is no doubt that C.I.B.C. is prejudiced by the delay. The insolvent companies are not paying down their loans and are using the secured capital to operate the companies. However, the wording of this section deals with all creditors and they must be materially prejudiced. There is no evidence before me that all the creditors will be materially prejudiced.

21 Although the general principles in the cases referred to under the C.C.A.A. may have some application, there are now statutory requirements to be satisfied under s.50.4(11)(c).

22 The bankruptcy insolvency legislation and in particular the proposal sections are to give an insolvent company or person, an opportunity of putting forward a plan. The intent of the legislation is towards rehabilitation, not liquidation. In this case, the application to terminate has been made even before a proposal was put forward.

23 For these reasons, the application which would terminate the intention to file a proposal, is dismissed. In dismissing the application it is without prejudice to C.I.B.C. to re-apply once the proposal has been filed or if the insolvent companies fail to comply with the specific requirements of the *Bankruptcy and Insolvency Act*. If the insolvent companies apply for extensions of time to file their proposals, the application should be made before me.

24 The interim receiver and trustee applied for an order for the payment of fees and disbursements pursuant to s. 47(2). They also sought further directions. In my initial order, I defined the duties of the interim receiver in respect to the operation of N.W.T. Management Group. I did not make any order with reference to the other two companies.

25 With reference to the payment of fees and disbursements, I will hear submissions from counsel once the proposal has been filed or if it is terminated and in regards to duties of the interim receiver with reference to the other two companies, if the parties cannot agree upon the duties, then I will review C.I.B.C.'s proposal and the interim receiver and trustee's proposals.

26 Costs of this application will be reserved until the filing of the proposal.

Application dismissed.

IN THE MATTER OF THE *BANKRUPTCY AND INSOLVENCY ACT*, R.S.C. 1985, c. B-3, AS AMENDED
IN THE MATTER OF THE NOTICES OF INTENTION TO MAKE A PROPOSAL OF SIREG 700 PARKHILL INC. ET AL.

Court File Number: BK-26-03429084-0032

AND IN THE MATTER OF THE NOTICE OF INTENTION TO MAKE A PROPOSAL OF SIREG HOLDINGS INC.

Court File No. BK-26-03428760-0032

AND IN THE MATTER OF THE NOTICE OF INTENTION TO MAKE A PROPOSAL OF SIREG MANAGEMENT INC.

Court File No. BK-26-03428714-0032

AND IN THE MATTER OF THE NOTICE OF INTENTION TO MAKE A PROPOSAL OF THE SIMPLE INVESTOR REAL ESTATE GROUP INC.

Court File No. BK-26- 03428735-0032

AND IN THE MATTER OF THE NOTICE OF INTENTION TO MAKE A PROPOSAL OF SIREG 1075 SUTTON DRIVE INC.

Court File No. BK-26-03433064-0032

AND IN THE MATTER OF THE NOTICE OF INTENTION TO MAKE A PROPOSAL OF SIREG 3438 SINNICKS INC.

Court File No. BK-26-03429965-0032

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

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