

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

THE HONOURABLE CHIEF

)

MONDAY, THE 1ST

JUSTICE MORAWETZ

)

DAY OF NOVEMBER, 2021

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**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 MCEWAN ENTERPRISES INC.**

Applicant

**STAY EXTENSION AND INTERIM
TRANSACTION FUNDING APPROVAL ORDER**

THIS MOTION, made by McEwan Enterprises Inc. (the “**Applicant**”) pursuant to the *Companies’ Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the “**CCAA**”), was heard this day via videoconference.

ON READING the Notice of Motion of the Applicant dated October 1, 2021 (the “**Notice of Motion**”), the affidavit of Dennis Mark McEwan sworn October 1, 2021 and the Exhibits thereto, the Second Report of Alvarez & Marsal Canada Inc., in its capacity as the Court-appointed monitor of the Applicant (the “**Monitor**”), dated October 14, 2021, and the Supplement to the Second Report of the Monitor dated November 1, 2021 (the “**Supplemental Report**”), and on hearing the submissions of counsel for the Applicant, counsel for the Monitor, and such other counsel as were present.

SERVICE

1. THIS COURT ORDERS that the time for service of the materials filed in respect of this Motion is hereby abridged and validated so that this Motion is properly returnable today and hereby dispenses with further service thereof.

EXTENSION OF THE STAY PERIOD

2. THIS COURT ORDERS that the Stay Period (as defined in the Amended and Restated Initial Order granted by this Court in these proceedings on October 7, 2021 (the “**Amended and Restated Initial Order**”)) be and is hereby extended to and including 11:59 p.m. on November 12, 2021, and all other terms of the Amended and Restated Initial Order shall remain in full force and effect, unamended, except as may be required to give effect to this paragraph.

INTERIM TRANSACTION FUNDING

3. THIS COURT ORDERS that the Applicant is hereby authorized and empowered to obtain interim funding (the “**Interim Transaction Funding**”) from 2864785 Ontario Corp. (the “**Interim Transaction Funding Lender**”) in order to finance the Applicant’s working capital requirements, other general corporate purposes and capital expenditures, and the costs of these proceedings, provided that the Interim Transaction Funding shall not exceed \$600,000 unless permitted by further Order of this Court, and such Interim Transaction Funding is hereby approved.

4. THIS COURT ORDERS that the Interim Transaction Funding shall be on the terms and subject to the conditions set forth in the form of debenture in the form attached as Appendix “B” of the Supplemental Report with such amendments as the Applicant and the Interim Transaction Funding Lender may agree, with the consent of the Monitor (the “**Debenture**”), which Debenture is hereby approved.

5. THIS COURT ORDERS that the Applicant is hereby authorized and empowered to execute and deliver the Debenture and, subject to the Monitor’s consent, such definitive documents (collectively, the “**Definitive Documents**”) as are contemplated by the Debenture or as may be reasonably required by the Interim Transaction Funding Lender in respect of the Interim Transaction Funding, and the Applicant is hereby authorized and directed to pay and

perform all of its indebtedness, liabilities and obligations in respect of the Interim Transaction Funding to the Interim Transaction Funding Lender under and pursuant to the Debenture and the Definitive Documents (if any) as and when the same become due and are to be performed, notwithstanding any other provision of this Order.

6. THIS COURT ORDERS that the Interim Transaction Funding Lender shall be entitled to the benefit of and is hereby granted a charge (the “**Interim Transaction Funding Lender’s Charge**”) on the Property (as defined in the Amended and Restated Initial Order) to secure the Applicant’s obligations in respect of the Interim Transaction Funding to the Interim Transaction Funding Lender under and pursuant to the Debenture and the Definitive Documents (if any). The Interim Transaction Funding Lender’s Charge shall rank in priority to all Encumbrances (as defined in the Amended and Restated Initial Order) in favour of any Person (as defined in the Amended and Restated Initial Order), notwithstanding the order of perfection or attachment, except for (a) any secured creditor of the Applicant who did not receive the Notice of Motion and (b) the Encumbrances in favour of Royal Bank of Canada, and shall rank immediately behind in priority to the Directors’ Charge (as defined in the Amended and Restated Initial Order).

7. THIS COURT ORDERS that the Interim Transaction Funding Lender shall be treated as unaffected in any plan of arrangement or compromise filed by the Applicant under the CCAA, or any proposal filed by the Applicant under the *Bankruptcy and Insolvency Act* (Canada) (the “**BIA**”), with respect to the Interim Transaction Funding.

8. THIS COURT ORDERS that the filing, registration or perfection of the Interim Transaction Funding Lender’s Charge shall not be required, and that the Interim Transaction Funding Lender’s Charge shall be valid and enforceable for all purposes, including as against any right, title or interest filed, registered, recorded or perfected subsequent to the Interim Transaction Funding Lender’s Charge coming into existence, notwithstanding any such failure to file, register, record or perfect.

9. THIS COURT ORDERS that except as otherwise expressly provided for herein, the Applicant shall not grant any Encumbrances over any Property that rank in priority to, or *pari passu* with, the Interim Transaction Funding Lender’s Charge, unless the Applicant also obtains the prior written consent of the Interim Transaction Funding Lender.

10. THIS COURT ORDERS that the Debenture, the Definitive Documents (if any) and the Interim Transaction Funding Lender's Charge shall not be rendered invalid or unenforceable and the rights and remedies of the Interim Transaction Funding Lender thereunder shall not otherwise be limited or impaired in any way by (a) the pendency of these proceedings and the declarations of insolvency made herein; (b) any application(s) for bankruptcy order(s) issued pursuant to the BIA, or any bankruptcy order made pursuant to such applications; (c) the filing of any assignments for the general benefit of creditors made pursuant to the BIA; (d) the provisions of any federal or provincial statutes; or (e) any negative covenants, prohibitions or other similar provisions with respect to borrowings, incurring debt or the creation of Encumbrances, contained in any existing loan documents, lease, sublease, offer to lease or other agreement (collectively, an "**Agreement**") which binds the Applicant, and notwithstanding any provision to the contrary in any Agreement:

- (a) neither the creation of the Interim Transaction Funding Lender's Charge nor the execution, delivery, perfection, registration or performance of the Debenture or the Definitive Documents (if any) shall create or be deemed to constitute a breach by the Applicant of any Agreement to which it is a party;
- (b) the Interim Transaction Funding Lender shall not have any liability to any Person whatsoever as a result of any breach of any Agreement caused by or resulting from the creation of the Interim Transaction Funding Lender's Charge, or the execution, delivery or performance of the Debenture or Definitive Documents (if any); and
- (c) the payments made by the Applicant pursuant to this Order, the Debenture or the Definitive Documents (if any), and the granting of the Interim Transaction Funding Lender's Charge, do not and will not constitute preferences, fraudulent conveyances, transfers at undervalue, oppressive conduct, or other challengeable or voidable transactions under any applicable law.

11. THIS COURT ORDERS that the Interim Transaction Funding Lender's Charge created by this Order over leases of real property in Canada shall only be a charge in the Applicant's interest in such real property leases.

MISCELLANEOUS

12. THIS COURT HEREBY REQUESTS the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or in the United States to give effect to this Order and to assist the Applicant and the Monitor and their respective agents in carrying out the terms of this Order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Applicant and the Monitor, as an officer of this Court, as may be necessary or desirable to give effect to this Order or to assist the Applicant and the Monitor and their respective agents in carrying out the terms of this Order.



Chief Justice G.B. Morawetz

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

Court File No. CV-21-00669445-00CL

**AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF
MCEWAN ENTERPRISES INC.**

Applicant

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

Proceeding commenced at Toronto

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TRANSACTION FUNDING APPROVAL ORDER**

Goodmans LLP

Barristers & Solicitors
333 Bay Street, Suite 3400
Toronto, Canada M5H 2S7

Robert J. Chadwick LSO#: 35165K
rchadwick@goodmans.ca

Caroline Descours LSO#: 58251A
cdescours@goodmans.ca

Trish Barrett LSO#: 77904U
tbarrett@goodmans.ca

Tel: (416) 979-2211
Fax: (416) 979-1234

Lawyers for the Applicant