



ONTARIO SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

COUNSEL SLIP/ENDORSEMENT

COURT FILE NO.: CV-23-00692784-00CL DATE: NOVEMBER 28 2023

NO. ON LIST: 3

TITLE OF PROCEEDING: **INSCAPE CORP et al v PREVOLV et al**
BEFORE JUSTICE: **STEELE**

PARTICIPANT INFORMATION

For Plaintiff, Applicant, Moving Party, Crown:

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For Defendant, Respondent, Responding Party, Defence:

Name of Person Appearing	Name of Party	Contact Info

For Other, Self-Represented:

Name of Person Appearing	Name of Party	Contact Info
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ENDORSEMENT OF JUSTICE STEELE :

1. The applicant seeks an order to terminate the CCAA proceedings and discharge the monitor, among other things.
2. The CCAA proceedings were commenced by the applicant in January 2023. This was a liquidating CCAA.
3. The Monitor supports the relief requested by the applicant.
4. The applicant broadly served the materials and is not aware of any opposition to the relief sought.
5. The requested order is granted.

Should the Court approve the releases sought?

6. The applicant seeks releases covering the present and former directors and officers of the Inscape Group, and the Monitor and its legal counsel.
7. The proposed releases cover all present and future claims against the released party based upon any fact, matter or occurrence in respect of the Company, except any claim that is not permitted to be released under s. 5.1(2) of the CCAA.
8. The court has jurisdiction to grant the requested releases under s. 11 of the CCAA.
9. When determining whether to grant such releases the court has drawn on well-established factors, which have been modified in cases where there is no plan of compromise or arrangement: *Lydian International Limited (Re)*, 2020 ONSC 4006, at para. 54, *Green Relief Inc. (Re)*, 2020 ONSC 6837, at para. 27. These factors include:
 - a) Whether the claims to be released are rationally connected to the restructuring;
 - b) Whether the restructuring can succeed without the releases;
 - c) Whether the parties to be released contributed to the restructuring;
 - d) Whether the releases benefit the debtor as well as its creditors generally;
 - e) Whether the debtor's creditors have knowledge of the nature and effect of the releases;
 - and
 - f) Whether the releases are fair, reasonable and not overly-broad.
10. The applicant relies on *Re Entrec Corporation*, 2020 ABQB 751. In that case, the Alberta court recognized that the release of third-party claims against directors and officers where there is no CCAA plan of arrangement is unusual. The court determined that it was appropriate, nonetheless, to grant the requested release given the factors before the court.

11. In *Green Relief*, at para. 23, the Court noted that the absence of a plan does not deprive the Court the jurisdiction to approve a release. In *Harte Gold Corp. (Re)*, 2022 ONSC 653, at para. 79, the Court noted that “CCAA courts have frequently approved releases, both in the context of a plan and in the absence of a CCAA plan, both on consent and in contested matters.”
12. At para. 23 of the factum, the applicant details the numerous factors that support the proposed director and officer releases in this case, including:
- a. The released parties have made material contributions to this restructuring, including various activities to maximize realization of accounts receivable such as leveraging their relationships with customer accounts to secure the timely collection of significant accounts receivable;
 - b. The releases are contemplated in the stay agreements entered into by certain officers/directors;
 - c. The Monitor supports the granting of the releases on the basis that they are proportionate, among other things, given the beneficial contributions of these individuals to the CCAA proceeding;
 - d. No party has opposed; and
 - e. The releases are not overly-broad. The terms of the proposed releases follow the CCAA limitations and would not extend to claims based on allegations of misrepresentations made by directors to creditors or of wrongful or oppressive conduct by directors.
13. The applicant advised the Court that they were not aware of any director/officer claims that could arise.
14. I am satisfied that the releases sought are appropriate and proportionate and will further the CCAA policy objectives.

Should the stay be extended?

15. Inscape requests a further stay to the earlier of December 15, 2023 or the date of the filing of the Discharge Certificate.
16. Under section 11.02(2)-(3) of the CCAA, the Court may grant an extension of the stay of proceedings where the Court is satisfied that it is appropriate in the circumstances and the applicants are acting in good faith and with due diligence.
17. The stay extension is modest and is needed such that the remaining activities may be completed. The applicants have acted and continue to act in good faith and with due diligence, as set out at para. 26 of the factum.
18. The stay extension is granted.

Should the CCAA proceedings be terminated, including the release of the CCAA charges and the discharge of the Monitor?

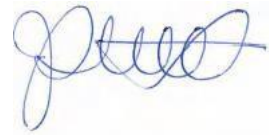
19. Following the completion of the remaining activities set out in the Monitor’s Eighth Report, the CCAA proceedings will be substantially complete. The applicants seek to terminate the proceedings.

20. Once the Monitor has completed its responsibilities as monitor, it will serve and file the discharge certificate. The applicants request the discharge of all court-ordered priority charges effective as of the filing of the discharge certificate.

Approval of fees

21. The applicant also seeks court approval of the fees and disbursements of the Monitor, its Canadian and U.S. counsel. There is no opposition to this relief sought. The professional fees for which approval is sought are supported by affidavit. The professional fees sought appear fair and reasonable in the circumstances.

22. Order attached.

A handwritten signature in blue ink, appearing to be "J. H. H. H.", is located in the lower right quadrant of the page. The signature is fluid and cursive, with a horizontal line extending from the end.