

**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 PLAN OF COMPROMISE OR ARRANGEMENT OF CROWN
CREST CAPITAL MANAGEMENT CORP., CROWN CREST FINANCIAL CORP., CROWN
CREST FUNDING CORP., SIMPLY GREEN HOME SERVICES INC., SIMPLY GREEN HOME
SERVICES CORP., AND CROWN CREST CAPITAL TRUST**

PEOPLES TRUST COMPANY

APPLICANT

AND

**CROWN CREST CAPITAL MANAGEMENT CORP., CROWN CREST FINANCIAL CORP.,
CROWN CREST FUNDING CORP., SIMPLY GREEN HOME SERVICES INC., SIMPLY
GREEN HOME SERVICES CORP., AND CROWN CREST CAPITAL TRUST**

RESPONDENTS

**FACTUM OF THE APPLICANT
(Motion for an Amended and Restated Initial Order)
(Returnable November 17, 2023)**

November 16, 2023

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Respondents

**FACTUM OF THE APPLICANT
(MOTION FOR AN AMENDED AND RESTATED INITIAL ORDER)**

1. This factum is being filed by Peoples Trust Company (“**PTC**” or the “**Applicant**”) in connection with its motion returnable before the Ontario Superior Court of Justice [Commercial List] (the “**Court**”) on November 17, 2023 (the “**Comeback Hearing**”) for an amended and restated initial order (the “**Amended and Restated Initial Order**”) in respect of the Simply Green Leasing Group under the *Companies’ Creditors Arrangement Act*¹ (the “**CCAA**”) among other things:

- (a) extending the stay of proceedings (the “**Stay**”) to February 10, 2023 (the “**Extended Stay Period**”);

¹ *Companies’ Creditors Arrangement Act*, RSC, 1985, c C-36 [“**CCAA**”]

- (b) increasing the maximum borrowings available under the DIP Facility established by PTC in favour of the Simply Green Leasing Group to fifteen million dollars (\$15,000,000) (the “**Maximum Amount**”);
- (c) and increasing the amount of the Administration Charge to one million five hundred thousand (\$1,500,000).

2. In addition to the submissions set out in this factum, in connection with its motion for the Amended and Restated Initial Order, PTC relies on and adopts the submissions set out in its factum dated as of November 6, 2023², previously filed in these proceedings.

PART II – THE FACTS

3. The facts with respect to this motion are briefly recited herein and are more fully set out in the Affidavit of Michael Lombard sworn November 15, 2023³ (the “**Lombard November 15 Affidavit**”). Capitalized terms used herein but not otherwise defined have the meanings ascribed to them in the Lombard November 15 Affidavit.

4. On November 9, 2023 (the “**November 9 Hearing**”), the Honourable Justice Conway granted an Initial Order (the “**November 9 Initial Order**”) in respect of the Simply Green Leasing Group pursuant to the CCAA.⁴

5. In the limited amount of time that has passed since the November 9 Initial Order was granted, the Simply Green Leasing Group has acted in good faith and with due diligence. Among other things, the Companies have, under the stewardship of the CRO:

- (a) met with key employees to discuss the ongoing business of the Simply Green Leasing Group in these CCAA proceedings and their continued employment in order to stabilize the business;
- (b) met with certain former directors and officers of the Simply Green Leasing Group to discuss temporary consulting agreements, in order to facilitate an orderly transition of the stewardship of the business to the CRO as part of these CCAA proceedings. Given the

² Factum of the Applicant, Peoples Trust Company dated November 6, 2023 [[H: A1274](#)]

³ Affidavit of Michael Lombard sworn November 15, 2023, Motion Record of Peoples Trust Company dated November 15, 2023, Tab 2 [the “**Lombard November 15 Affidavit**”] [[H: A1471](#)]

⁴ Lombard November 15 Affidavit, *supra* note 2, at para 2 [[H: A1472](#)]

nascency of the CRO's engagement, these consulting agreements are designed to allow certain members who were formerly part of the management of the Simply Green Leasing Group to assist the CRO in furthering its understanding of the day-to-day operations of the Simply Green Leasing Group;

- (c) in concert with former senior management of the Simply Green Leasing Group, distributed a press release announcing the commencement of these CCAA proceedings and the issuance of the November 9 Initial Order;
- (d) communicated with, and provided information to various stakeholders;
- (e) consulted with the Monitor concerning the Monitor's preparation of a revised cash flow-forecast for the Simply Green Leasing Group, to be filed, as part of the Monitor's First Report; and
- (f) met with the Monitor to discuss various matters, including the cash flow and interim financing requirements of the Companies both before and after the Comeback Hearing.⁵

PART III– ISSUES

- 6. The issues to be determined by the Court with respect to this motion, are whether:
 - (a) this Court should extend the Stay until the end of the Extended Stay Period;
 - (b) this Court should increase the maximum amount of borrowings under the DIP Facility to fifteen million dollars (\$15,000,000); and
 - (c) this Court should increase the amount of the Administration Charge to one million five hundred dollars (\$1,500,000).

⁵ Lombard November 15 Affidavit, *supra* note 2, at para 5 [[H: A1473](#)]

PART IV – THE LAW

A. EXTENSION OF THE STAY

7. Under sub-section 11.02(1) of the CCAA, a Court may grant a Stay under the CCAA for a period not to exceed ten (10) days.⁶ On November 9, 2023, the Court granted an initial Stay to the Simply Green Leasing Group of ten (10) days which is set to expire on November 19, 2023.

8. PTC is now seeking a further extension of the Stay to the end of the Extended Stay Period (being February 10, 2023).⁷

9. Pursuant to section 11.02(2) of the CCAA, the Court may grant an extension of the Stay if the Court is satisfied that (a) the Simply Green Leasing has acted, and is acting, in good faith and with due diligence; and (b) that circumstances exist that make the order appropriate.⁸

10. In determining whether a CCAA debtor has acted in good faith, the focus of examination should be the debtor companies' conduct within the CCAA proceedings, and not their conduct prior to, or unrelated to, the CCAA proceedings.⁹

11. In turn, the appropriateness of a request for an order extending a stay of proceedings, must be viewed within the lens of the remedial objectives of the CCAA and in turn the purpose of a stay of proceedings.¹⁰

12. The purpose of a stay of proceedings under the CCAA is well established: it is designed to give companies under CCAA protection the “breathing room” required to restructure with a view to maximizing recoveries, whether the restructuring takes place as a going concern or as an orderly liquidation or wind-down.¹¹

⁶ CCAA, *supra* note 1, s **11.02(1)**

⁷ Lombard November 15 Affidavit, *supra* note 2, at paras 3-4 [[H: A1472](#)]

⁸ CCAA, *supra* note 1, s **11.02(2)**

⁹ *Re 4519922 Canada Inc.*, 2015 ONSC 124 (CanLII), **paras 44-46**; *Muscletech Research & Development Inc., Re.*, [2006] OJ No. 462, 2006 CanLII 3282 (ONSC), **para 4**.

¹⁰ *Century Services Inc. v Canada (Attorney General)*, 2010 SCC 60 (CanLII), [2010] 3 SCR 379 [“*Century Services*”], **para 70**.

¹¹ *Target Canada Co. (Re)*, 2015 ONSC 303 (CanLII), **para 8**; *Century Services*, *supra* note 10, **para 14**; *Imperial Tobacco Canada Limited, et al. Re*, 2019 ONSC 1684, **para 9**; *Industrial Properties Regina Limited v Copper Sands Land Corp.*, 2018 SKCA 36, **paras 19** and **21**.

13. Extending the Stay in this case is reasonable and appropriate. The evidence is clear that the Simply Green Leasing Group, under the supervision of the CRO, has acted in good faith and with due diligence in the limited period that has elapsed since the CCAA proceedings were commenced.¹²

14. To the extent that allegations have been made by the representative plaintiffs as part of Bonnick Action that the Simply Green Leasing Group's practices are contrary to consumer protection legislation, PTC notes that (a) those allegations are unproven, have not been subject to judgement, and are contested by the Simply Green Leasing Group; and (b) relate to conduct of the Simply Green Leasing Group under the stewardship of prior management of the Simply Green Leasing Group, who resigned in advance of these CCAA proceedings.¹³

15. Any determination at this stage by the Court that the Simply Green Leasing Group has not acted in good faith based on the allegations set out in the Bonnick Action would be tantamount to summary judgement in a contested class proceeding (that has not even reached certification), advanced by two contingent creditors (being the class action representative plaintiffs), to the material prejudice of stakeholder recoveries in these CCAA proceedings (including PTC, the Companies' senior secured creditor).¹⁴

16. An extension of the Stay will provide the Simply Green Leasing Group with continued breathing space to stabilize operations under the guidance of the CRO and determine a strategy to maximize value for the benefit of its stakeholders through the CCAA proceedings. It will do so, while also preserving:

- (a) the value of approximately 80,000 consumer rental agreements, which are collateral for PTC's pre-filing senior secured exposure to the Simply Green Leasing Group;¹⁵
- (b) service to thousands of rental customers using the Simply Green Leasing Group equipment in their homes, including repairs and servicing of furnaces and water heaters as winter approaches;¹⁶ and

¹² Lombard November 15 Affidavit, *supra* note 2, at para 6. [[H: A1473](#)]

¹³ Lombard November 15 Affidavit, *supra* note 2, at para 21 [[H: A1477](#)]

¹⁴ PTC notes that the form of Amended and Restated Initial Order being sought explicitly provides that nothing in that Order empower the Simply Green Leasing Group to carry on any business which they are not lawfully entitled to carry on.

¹⁵ Affidavit of Michael Lombard sworn November 6, 2023, Application Record of Peoples Trust Company dated November 6, 2023, Tab 2 [the "**Lombard November 6 Affidavit**"] [[H: A17](#)], at para 67 [[H: A36](#)]; Pre-Filing Report of the Proposed Monitor, KPMG Inc. dated November 6, 2023 [the "**Pre-Filing Report**"] [[H: E1](#)], at paras 23 [[H: E10](#)]

¹⁶ Lombard November 6 Affidavit, *supra* note 15, at para 68 [[H: A36](#)]; Pre-Filing Report, *supra* note 15, at paras 55 [[H: E18](#)], 60 [[H: E20](#)], 63 [[H: E21](#)]

- (c) the employment of approximately 70-80 full time employees of the Simply Green Leasing Group.¹⁷

17. The revised cash flow forecast, to be filed, indicates that, with the advances made available under the DIP Facility (should the amount available be increased to \$15,000,000 as sought by PTC), the Simply Green Leasing Group will have sufficient liquidity to meet its obligations during the stay extension period being sought.¹⁸

18. For the reasons set out above, PTC submits that the Stay should be extended until the end of the Extended Stay Period.

B. INCREASE OF THE AMOUNT RESPONDENTS ARE AUTHORIZED TO BORROW UNDER THE DIP FACILITY

19. PTC is seeking authorization under the Amended and Restated Initial Order for the Simply Green Leasing Group to borrow up to the Maximum DIP Amount.

20. Section 11.2 of the CCAA¹⁹ gives the Court the explicit authority to grant the DIP Lender's Charge. In turn, sub-section 11.2(4) of the CCAA²⁰ provides that in determining whether to grant the DIP Lender's Charge, the Court should consider, among other things, the following factors:

- (a) the period during which the company is expected to be subject to proceedings under the CCAA;
- (b) how the company's business and financial affairs are to be managed during the proceedings;
- (c) whether the company's management has the confidence of its major creditors;
- (d) whether the loan would enhance the prospects of a viable compromise or arrangement being made in respect of the company;
- (e) the nature and value of the company's property;

¹⁷ Lombard November 6 Affidavit, *supra* note 15, at paras 71-72 [[H: A37](#)]; Pre-Filing Report, *supra* note 15, at paras 31 [[H: E12](#)], 60 [[H: E20](#)], 63 [[H: E21](#)]

¹⁸ Lombard November 15 Affidavit, *supra* note 2, at para 10 [[H: A1474](#)]

¹⁹ CCAA, *supra* note 1, s 11.2

²⁰ CCAA, *supra* note 1, s 11.2(4)

- (f) whether any creditor would be materially prejudiced as a result of the security or charge; and
- (g) the monitor's findings in its report, if any.

21. The Simply Green Leasing Group's current operations do not generate sufficient funds to cover the Simply Green Leasing Group's day-to-day expenses including professional fees that are set to accrue during these CCAA proceedings, and therefore the increase in the availability under the DIP Facility to the Maximum Amount of \$15,000,000 is required to allow the Simply Green Leasing Group to service its post-filing expenses.²¹

22. An increase in the Simply Green Leasing Group's ability to borrow until the DIP Facility will allow the Simply Green Leasing Group to, among other things, continue its restructuring efforts and in the interim maintain the value of its property, assets and undertakings for the benefit of its stakeholders.

23. The Simply Green Leasing Group's need to borrow up to the Maximum Amount under the DIP Facility as part of the CCAA proceedings is consistent with and supported by the revised cash flow forecast.²² It is further supported by the Monitor in its capacity as an independent Court-officer, and PTC in its capacity as the Companies' senior secured lender.

24. Accordingly, an increase in the authorized borrowings under the DIP Facility up to Maximum Amount is reasonable and appropriate in the circumstances.

C. INCREASE IN THE AMOUNT OF THE ADMINISTRATION CHARGE

25. Pursuant to the Initial Order, this Court granted an Administration Charge in the amount of two hundred fifty thousand (\$250,000).

26. PTC is seeking an Order increasing the amount of the Administration Charge to \$1,500,000.²³

27. Sub-section 11.52(1) of the CCAA explicitly provides the Court with the jurisdiction to grant an administration charge:

11.52(1) Court may order security or charge to cover certain costs – On notice to the secured creditors who are

²¹ Lombard November 15 Affidavit, *supra* note 2, at para 10 [\[H: A1474\]](#)

²² Lombard November 15 Affidavit, *supra* note 2, at para 10 [\[H: A1474\]](#)

²³ Lombard November 15 Affidavit, *supra* note 2, at para 12 [\[H: A1475\]](#)

likely to be affected by the security or charge, the court may make an order declaring that all or part of the property of a debtor company is subject to a security or charge – in an amount that the court considers appropriate – in respect of the fees and expenses of

(a) the monitor, including the fees and expenses of any financial, legal or other experts engaged by the monitor in the performance of the monitor's duties;

(b) any financial, legal or other experts engaged by the company for the purpose of proceedings under this Act; and

(c) any financial, legal or other experts engaged by any other interested person if the court is satisfied that the security or charge is necessary for their effective participation in proceedings under this Act.²⁴

28. In determining whether to grant an administrative charge, a Court may consider, among other things, the following non exhaustive factors:

(a) the size and complexity of the business being restructured;

(b) the proposed role of the beneficiaries of the charge;

(c) whether there is an unwarranted duplication of roles;

(d) whether the quantum of the proposed charge appears to be fair and reasonable;

(e) the position of the secured creditors likely to be affected by the charge; and

(f) the position of the monitor.²⁵

²⁴ CCAA, *supra* note 1, s **11.52**

²⁵ Canwest Publishing Inc, Re, 2010 ONSC 222, **para 54**.

29. PTC submits that in this case, the increase sought to the Administration Charge, is reasonable and appropriate in the circumstances, on the basis, among other things, that:

- (a) a restructuring of the Simply Green Leasing Group will involve complexities given the substantial lease portfolio managed by the Simply Green Leasing Group;
- (b) the CCAA proceedings will require significant participation from the beneficiaries of the Administration Charge;
- (c) there is no unwarranted duplication of roles between the beneficiaries of the Administration Charge; and
- (d) the Monitor, and the Applicant, in its capacity as the senior lender to the Simply Green Leasing Group, are supportive of increasing the amount of the Administration Charge.

PART II- ORDER SOUGHT

30. For the foregoing reasons, PTC respectfully requests that this Court grant the Amended and Restated Initial Order substantially in the form of the draft Order, attached at Tab 3, to PTC's Motion record.

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 16th day of November, 2023.



**Clifton Prophet / Thomas Gertner /
Katherine Yurkovich**

**SCHEDULE “A”
LIST OF AUTHORITIES**

Canwest Publishing Inc, Re, 2010 ONSC 222

Century Services Inc. v Canada (Attorney General), 2010 SCC 60 (CanLII), [2010] 3 SCR 379

Imperial Tobacco Canada Limited, et al, Re, 2019 ONSC 1684,

Industrial Properties Regina Limited v Copper Sands Land Corp., 2018 SKCA 36

Muscletech Research & Development Inc., Re., [2006] OJ No. 462, 2006 CanLII 3282 (ONSC)

Re 4519922 Canada Inc., 2015 ONSC 124 (CanLII)

Target Canada Co. (Re), 2015 ONSC 303 (CanLII)

**SCHEDULE “B”
RELEVANT STATUTES**

[Companies’ Creditors Arrangement Act, R.S.C. 1985, c. C-36](#)

Definitions

Stays, etc. — initial application

11.02 (1) A court may, on an initial application in respect of a debtor company, make an order on any terms that it may impose, effective for the period that the court considers necessary, which period may not be more than 10 days,

- (a) staying, until otherwise ordered by the court, all proceedings taken or that might be taken in respect of the company under the *Bankruptcy and Insolvency Act* or the *Winding-up and Restructuring Act*;
- (b) restraining, until otherwise ordered by the court, further proceedings in any action, suit or proceeding against the company; and
- (c) prohibiting, until otherwise ordered by the court, the commencement of any action, suit or proceeding against the company.

Stays, etc. — other than initial application

(2) A court may, on an application in respect of a debtor company other than an initial application, make an order, on any terms that it may impose,

- (a) staying, until otherwise ordered by the court, for any period that the court considers necessary, all proceedings taken or that might be taken in respect of the company under an Act referred to in paragraph (1)(a);
- (b) restraining, until otherwise ordered by the court, further proceedings in any action, suit or proceeding against the company; and
- (c) prohibiting, until otherwise ordered by the court, the commencement of any action, suit or proceeding against the company.

Interim financing

11.2 (1) On application by a debtor company and on notice to the secured creditors who are likely to be affected by the security or charge, a court may make an order declaring that all or part of the company’s property is subject to a security or charge — in an amount that the court considers appropriate — in favour of a person specified in the order who agrees to lend to the company an amount approved by the court as being required by the company, having regard to its cash-flow statement. The security or charge may not secure an obligation that exists before the order is made.

Priority — secured creditors

(2) The court may order that the security or charge rank in priority over the claim of any secured creditor of the company.

Priority — other orders

(3) The court may order that the security or charge rank in priority over any security or charge arising from a previous order made under subsection (1) only with the consent of the person in whose favour the previous order was made.

Factors to be considered

- (4) In deciding whether to make an order, the court is to consider, among other things,
- (a) the period during which the company is expected to be subject to proceedings under this Act;
 - (b) how the company's business and financial affairs are to be managed during the proceedings;
 - (c) whether the company's management has the confidence of its major creditors;
 - (d) whether the loan would enhance the prospects of a viable compromise or arrangement being made in respect of the company;
 - (e) the nature and value of the company's property;
 - (f) whether any creditor would be materially prejudiced as a result of the security or charge; and
 - (g) the monitor's report referred to in paragraph 23(1)(b), if any.

Additional factor — initial application

(5) When an application is made under subsection (1) at the same time as an initial application referred to in subsection 11.02(1) or during the period referred to in an order made under that subsection, no order shall be made under subsection (1) unless the court is also satisfied that the terms of the loan are limited to what is reasonably necessary for the continued operations of the debtor company in the ordinary course of business during that period.

Court may order security or charge to cover certain costs

11.52 (1) On notice to the secured creditors who are likely to be affected by the security or charge, the court may make an order declaring that all or part of the property of a debtor company is subject to a security or charge — in an amount that the court considers appropriate — in respect of the fees and expenses of

- (a) the monitor, including the fees and expenses of any financial, legal or other experts engaged by the monitor in the performance of the monitor's duties;
- (b) any financial, legal or other experts engaged by the company for the purpose of proceedings under this Act; and
- (c) any financial, legal or other experts engaged by any other interested person if the court is satisfied that the security or charge is necessary for their effective participation in proceedings under this Act.

Priority

(2) The court may order that the security or charge rank in priority over the claim of any secured creditor of the company.

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

Court File No. CV-23-00709183-00CL

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COMMERCIAL LIST

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FACTUM

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