ONTARIO SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

COUNSEL/ENDORSEMENT SLIP

COURT FILE NO.: CV-23-00703161-00CL **DATE: June 4, 2024**

NO. ON LIST: 3

TITLE OF PROCEEDING: ROMPSEN INVESTMENT CORPORATION VS. TUNG-KEE INVESTMENTS CANADA LTD., et al

BEFORE: JUSTICE KIMMEL

PARTICIPANT INFORMATION

For Plaintiff, Applicant, Moving Party:

Name of Person Appearing	Name of Party	Contact Info
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For Defendant, Respondent, Responding Party:

Name of Person Appearing	Name of Party	Contact Info
Poliak, Maya (Counsel)	Tung-Kee Investment Canada Ltd. Tung-Kee Investment Ltd. Partnership	maya@chaitons.com

For Other, Self-Represented:

Name of Person Appearing	Name of Party	Contact Info
Searles, Neil (Counsel)	DX Strategies	nsearles@zubco.com

ENDORSEMENT OF JUSTICE KIMMEL:

[1] Ernst & Young Inc. ("EYI"), in its capacity as court-appointed receiver and manager (the "Receiver"), without security, of all of the assets, undertakings and properties of the Respondents (the "Property") seeks an order, among other things, approving the process pursuant to which the Receiver will call for claims of the Respondents' creditors, establish a bar date by which such claims must be filed, and determine the status and amount of such claims for distribution purposes (the "Claims Process").

[2] The Receiver points to the courts general discretion for the court's jurisdiction to approve a Claims Process in BIA proceedings, and the following relevant considerations from the jurisprudence:

a. The general purpose of a claims process and any corresponding adjudication process is to "streamline the resolution of the multitude of claims against an insolvent debtor in the most time sensitive and cost-efficient manner". See *Canwest Global Communications Corp.,* 2011 ONSC 2215 at para. 40.

b. Courts have routinely approved claims processes in the context of receiverships under the BIA and proceedings under the *Companies' Creditors Arrangement Act* (the "CCAA"). See for example, *Laurentian University of Sudbury,* 2021 ONSC 3885 ("*Laurentian*") at paras. 15-53, Claims Procedure Order of Justice Conway dated October 6, 2017 in the Receivership Proceeding of *Paramount Equity Financial Corporation et. al.* and Claims Procedure and Unitholdings Identification Procedure Order of Chief Justice Morawetz dated July 19, 2022 in the Receivership Proceeding of *Bridging Finance Inc. et. al.*

c. Claims process orders should be both flexible and expeditious, in order to achieve the remedial objectives of the statutes under which the proceedings were commenced and to ensure that stakeholders are treated as fairly as the circumstances permit. The Order must be drafted carefully to ensure that it is fair and reasonable to all stakeholders, including those who may be directly impacted by the acceptance of other claims. See *Laurentian* at paras. 30-32.

[3] The Receiver recommends the approval of the Claims Process, which provides for a fair, reasonable and efficient process to call for and determine Claims, is appropriate given the Receiver's role as an independent court officer, and is consistent with processes utilized in similar court proceedings. The Claims Bar Date is reasonable in that it provides over 45 calendar days (from June 4, 2024, to July 22, 2024) from the date of the proposed Claims

Process Order, during which Creditors may evaluate their Claims against the Respondents and submit the necessary Proofs of Claim.

[4] Previous orders made in this proceeding have resulting in distributions to the secured creditors and the satisfaction of their claims in full. There are remaining undistributed sale proceeds being held by the Receiver in the amount of $2,142,063. In the First Supplement to the Third Report of the Receiver dated May 29, 2024 a number of unsecured claims that pre-date the Receiver's appointment are identified from unpaid invoices provided by the Respondents, totalling approximately $345,045 (some of which are disputed by the Respondents). The Receiver has identified additional invoices from DX Strategies and the Morris Group not included in the invoices initially provided by the Respondents.

[5] Based on the Receiver's review of the books and records, it appears that there are a number of known unsecured creditors whose debts pre-date the Appointment Order, but the Receiver is not able to determine the nature and quantum of all of the claims that the remaining creditors may have against the Respondents. This warrants the Receiver conducting a claims process to effect a distribution to the unsecured creditors before any surplus is returned to the Respondents. The Respondents have an interest in this process since it does appear that there will be a surplus based on current known claims, and any surplus, after all accepted claims have been paid out and receivership costs have been covered, will revert to the Respondents.

[6] I am satisfied that this Claims Process claims is necessary and appropriate to streamline the potential remaining unsecured against the Respondents in the most time sensitive and cost-efficient manner. It is both practical and expeditious and has been drafted in an effort to be fair and reasonable to all stakeholders, including those who may be directly impacted by the acceptance of other claims. The process for adjudicating any disputed claims remains open and will be subject to further court order for any disputed claims that are not resolved.

[7] The Receiver's request for approval of its statement of receipts and disbursements for the period from October 19, 2023, to May 24, 2024 as part of the claims process order is appropriate. This statement corresponds with amounts that have been previously approved by the court for distribution and the amounts that the Receiver has recorded it has received.

[8] Order to go in the amended form signed by me today, with immediate effect.

Kimmel J.

KIMMEL J.