

**ONTARIO
SUPERIOR COURT OF JUSTICE**

**IN THE MATTER OF THE NOTICES OF INTENTION TO
MAKE A PROPOSAL OF 33 LAIRD INC. AND 33 LAIRD
GP INC., CORPORATIONS INCORPORATED UNDER THE
ONTARIO *BUSINESS CORPORATIONS ACT*, AND 33 LAIRD
LIMITED PARTNERSHIP, A LIMITED PARTNERSHIP
FORMED UNDER THE ONTARIO *LIMITED
PARTNERSHIPS ACT***

**FACTUM OF 33 LAIRD INC., 33 LAIRD GP INC.,
AND 33 LAIRD LIMITED PARTNERSHIP**
(extension of time to file a proposal, administration charge, approval of trustee's fees
and activities, sealing)
(motion returnable May 12, 2021)

May 7, 2021

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I. NATURE OF THIS MOTION AND OVERVIEW

1. This is a motion by 33 Laird Inc., 33 Laird GP Inc., and 33 Laird Limited Partnership Inc. (together, the “**Laird Entities**”) for orders extending to May 28, 2021 the time to file a proposal, creating a \$150,000 administration charge to rank behind the mortgage held by DUCA Financial Services Credit Union Ltd. (“**DUCA**”), sealing confidential exhibits, and approving the proposal trustee’s reports, activities and fees. MNP Ltd. in its capacity as proposal trustee (the “**Proposal Trustee**”) supports the motion. After consultation with counsel for the stakeholders, the relief sought appears to be on consent or unopposed.
2. This is the final possible extension due to reaching the 6-month statutory limit. The extension is to finalize the sale agreement with the Selected Bidder for the Property (terms defined below) following the end of the court-approved sale process, and then move for approval and vesting orders.
3. The administration charge is sought because the Laird Entities have requested that their lawyers’ fees be paid from the proceeds of the Property’s sale rather than draws on the DIP facility. The charge is to allow payment out of the proceeds in the same way that a draw made on the DIP loan would have been repaid. The impact on creditors is neutral.
4. Confidential Exhibits “1” and “2” to the affidavit of Jason L. S. Birnboim sworn May 7, 2021 (the “**Birnboim May Affidavit**”) contain highly confidential information, including bidders’ identity and bid terms and amounts. Sealing orders are appropriate to safeguard any further sale efforts.
5. The Proposal Trustee’s activities have been reported to stakeholders. Fee affidavits are provided in the Fourth Report (defined below). The sought approvals would, *inter alia*, streamline the administration of the estates.

II. FACTS

A. Background

6. The Laird Entities were set up into a limited partnership structure to pursue a real estate development project at 33 Laird Drive in Toronto.¹ They each filed a notice of intention to make a proposal (“**NOI**”) under the *Bankruptcy and Insolvency Act*² (the “**BIA**”) on November 28, 2020. The Proposal Trustee acts as such in each NOI proceeding, which were administratively consolidated by order dated December 16, 2020.³ The main asset is the real property and unfinished project at 33 Laird Drive (the “**Property**”), on which DUCA and Centurion Asset Management Inc.⁴ hold a first ranking mortgage.⁵

B. Restructuring approach: sale process

7. A sale process was considered from the outset to realize on the value of the Property and allow a viable proposal to creditors.⁶ On February 10, 2021, this court granted the Laird Entities’ motion for a listing and sale process to be conducted by Jones Lang Lasalle Real Estate Services Inc. (“**JLL**”).⁷ On March 26, 2021, this court extended to May 13, 2021 the time to file a proposal, including to allow time to advance the sale process.⁸

¹ Affidavit of Jason L.S. Birnboim sworn May 7, 2021 (the “**Birnboim May Affidavit**”), tab 2 (page 9) of the Laird Entities’ motion record returnable May 12, 2021 (the “**MR**”), para. 4.

² [R.S.C., 1985, c. B-3](#).

³ Birnboim May Affidavit, tab 2 (page 9) of the MR, para. 5; order of Conway J. dated December 16, 2020, tab 2B (page 31) of the MR.

⁴ Both are herein referred to together for simplicity as DUCA only.

⁵ Birnboim May Affidavit, tab 2 (page 9) of the MR, para. 7.

⁶ See the Birnboim December Affidavit, tab 2A (page 21) of the MR, paras. 20-26.

⁷ Birnboim May Affidavit, tab 2 (page 9) of the MR, paras. 8, 9; order of Cavanagh J. dated February 10, 2021, tab 2D (page 49) of the MR.

⁸ Birnboim May Affidavit, tab 2 (page 9) of the MR, para. 10; order of Cavanagh J. dated March 26, 2021, tab 2E (page 57) of the MR.

C. Activities since last extension and status of sale process

8. The Laird Entities' activities since the last extension are set out in the Birnboim May Affidavit.⁹ As to the sale process, the solicitation of offers concluded with the second round of bids on April 21, 2021. The Laird Entities identified one of the offers as preferred (the "**Selected Bid**") and have been working with the Selected Bid offeror (the "**Selected Bidder**"), through counsel, towards a final agreement, which is now essentially complete but for secondary elements. Finalization is expected within days. The Laird Entities believe the Selected Bid amount will be sufficient to allow a viable proposal.¹⁰

III. ISSUES AND LAW

9. The issues are whether the court should **(A)** extend the time, **(B)** order the administration charge, **(C)** approve the Proposal Trustee's reports, fees and activities, and **(D)** make the sealing order sought.

A. Extension of time

10. BIA s. 50.4(9) sets out mandatory criteria for an extension of the time to file a proposal.
- Good faith and due diligence – the above demonstrates the Laird Entities' good faith and due diligence. By working towards a sale agreement with respect to the Selected Bid, the Laird Entities are pursuing the best avenue available in the circumstances as evidenced by the results of the sale process and DUCA's support.
 - Likelihood to make a viable proposal – the facts reveal the sale process allowed the Laird Entities to collect numerous offers among which to elect the Selected Bid. The Laird Entities believe the Selected Bid will allow a viable proposal to creditors.

⁹ Birnboim May Affidavit, tab 2 (page 9) of the MR, paras. 12-18.

¹⁰ Birnboim May Affidavit, tab 2 (page 9) of the MR, paras. 13-20, 25.

- Any material prejudice to creditors – there is no reasonably possible “material” prejudice, and any prejudice is outweighed by the benefits of allowing the Laird Entities the opportunity to complete the restructuring path approved by this court and finalize a sale of the Property. Such was the purpose of the sale process.¹¹

11. Also, the Proposal Trustee recommends the extension for the above reasons and the additional ones noted in its fourth report, filed separately (the “**Fourth Report**”). This court may therefore make the extension order sought.

B. Administration Charge

12. While a debtor-in-possession (DIP) facility and charge is in place, the Laird Entities have requested that a portion of their lawyers’ fees be paid from the proceeds of the Property’s sale rather than draws on the facility.¹² The charge is to allow payment out of the proceeds in the same way that a draw made on the DIP loan would have been repaid.
13. The administration charge sought is limited to \$150,000 which is reflective of the amounts outstanding plus anticipated professional fees to bring the Laird Entities’ restructuring to completion, and a reasonable contingency. It would rank after any DUCA security interest and any interests in priority to those of DUCA (such as any municipal taxes and construction lien holdbacks), and otherwise first on all the Laird Entities’ Property (as defined in the draft order).¹³

¹¹ See *In the Matter of the Proposal of Cantrail Coach Lines Ltd.*, [2005 BCSC 351](#).

¹² Birnboim May Affidavit, tab 2 (page 9) of the MR, para. 28.

¹³ Birnboim May Affidavit, tab 2 (page 9) of the MR, para. 29.

14. The restructuring is dependent on professionals. The suggested quantum and rank are fair and reasonable. No creditor would be affected any differently than if draws were made under the DIP charge. The court may order the administration charge sought.¹⁴

C. Sealing

15. Confidential Exhibits “1” and “2” to the Birnboim May Affidavit contain highly confidential information including the identity of bidders and the terms and amount of their bids. For reasons further set out in the affidavit, the disclosure of those exhibits’ content to the public would be against the reasonable expectations of those involved and would have material adverse effects on the integrity of the current and any necessary further sale efforts.¹⁵ This court has jurisdiction to make the sealing orders sought, including under s. 137(2) of the *Courts of Justice Act*.¹⁶ It is a typical attendant relief in sale processes as a matter of “public interest”.¹⁷ The sealing orders sought are appropriate.

D. Approval of Proposal Trustee’s fees and activities

16. On February 10, 2021, this court approved the Proposal Trustee’s two prior reports and the activities and fees described therein. The Proposal Trustee’s activities since then were reported in the third report dated March 23, 2021 and the Fourth Report. As to the approval of the Proposal Trustee’s and its counsel’s fees, affidavits are provided with the Fourth Report which confirm the fees are comparable to those charged by other accounting and law firms in Toronto for similar services.¹⁸ Those fees are payable in priority both in a

¹⁴ BIA s. 64.2; see *Canwest Publishing Inc.*, [2010 ONSC 222](#), paras. 52-55, and *Target Canada Co. (Re)*, [2015 ONSC 303](#), paras. 73-79.

¹⁵ Birnboim May Affidavit, tab 2 (page 9) of the MR, paras. 31-34.

¹⁶ See *Danier Leather Inc. (Re)*, [2016 ONSC 1044](#) (“*Danier Leather*”), paras. 79-86, and *Nortel Networks Corporation (Re)*, [2009] O.J. No. 3169 (ON SC) [[2009 CanLII 39492](#)], paras. 3, 57.

¹⁷ *Danier Leather*, para. 84.

¹⁸ See *Confectionately Yours Inc. (Re)*, [2002 CanLII 45059 \(ON CA\)](#), paras. 42-54, and the cases cited there.

proposal¹⁹ and in bankruptcy.²⁰ The sought approvals would have the constructive effects noted in *Target*,²¹ benefitting the Laird Entities and streamlining the administration of the NOI proceedings generally. This court may therefore make the approval orders sought.

IV. NATURE OF THE ORDER SOUGHT

17. The Laird Entities therefore seek orders in suggested accordance with draft order filed at tab 3 of their motion record.

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 7th day of May, 2021.

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¹⁹ BIA, s. 60.

²⁰ BIA, s. 136.

²¹ *Target Canada Co. (Re)*, [2015 ONSC 7574](#) (“*Target*”); see paras. 2 and 23.

SCHEDULE A – LIST OF AUTHORITIES

1. *In the Matter of the Proposal of Cantrail Coach Lines Ltd.*, [2005 BCSC 351](#)
2. *Canwest Publishing Inc.*, [2010 ONSC 222](#)
3. *Target Canada Co. (Re)*, [2015 ONSC 303](#)
4. *Danier Leather Inc. (Re)*, [2016 ONSC 1044](#)
5. *Nortel Networks Corporation (Re)*, [2009] O.J. No. 3169 (ON SC) [[2009 CanLII 39492](#)]
6. *Confectionately Yours Inc. (Re)*, [2002 CanLII 45059 \(ON CA\)](#)
7. *Target Canada Co. (Re)*, [2015 ONSC 7574](#)

SCHEDULE B – RELEVANT STATUTES

Bankruptcy and Insolvency Act, [R.S.C., 1985, c. B-3](#)

Notice of intention

50.4 (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.

Extension of time for filing proposal

(9) The insolvent person may, before the expiry of the 30-day period referred to in subsection (8) or of any extension 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, on notice to any interested persons that the court may direct, may grant the extensions, not exceeding 45 days for any individual extension and not exceeding in the aggregate five months after the expiry of the 30-day period referred to 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.

Court may order security or charge to cover certain costs

64.2 (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 person in respect of whom a notice of intention is filed under section 50.4 or a proposal is filed under

subsection 62(1) 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 trustee, including the fees and expenses of any financial, legal or other experts engaged by the trustee in the performance of the trustee's duties;

(b) any financial, legal or other experts engaged by the person for the purpose of proceedings under this Division; 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 the effective participation of that person in proceedings under this Division.

Priority

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

Courts of Justice Act, [R.S.O. 1990, c. C.43](#)

Documents public

137 (1) On payment of the prescribed fee, a person is entitled to see any document filed in a civil proceeding in a court, unless an Act or an order of the court provides otherwise.

Sealing documents

(2) A court may order that any document filed in a civil proceeding before it be treated as confidential, sealed and not form part of the public record.

Court lists public

(3) On payment of the prescribed fee, a person is entitled to see any list maintained by a court of civil proceedings commenced or judgments entered.

Copies

(4) On payment of the prescribed fee, a person is entitled to a copy of any document the person is entitled to see.

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Estate No. 31-2693094

**ONTARIO
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COMMERCIAL LIST
Proceeding commenced in TORONTO**

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