

Court File No.: CV-23-00692784-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE - COMMERCIAL LIST

B E T W E E N :

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

AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF
INSCAPE CORPORATION, INSCAPE (NEW YORK) INC., AND INSCAPE INC.
(collectively, the "**Applicants**")

Applicants

MOTION RECORD OF THE APPLICANTS
(Returnable June 9, 2023)

June 5, 2023

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**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
(the "CCAA")

AND IN THE MATTER OF A PLAN OF COMPROMISE OR
ARRANGEMENT OF INSCAPE CORPORATION, INSCAPE
(NEW YORK) INC., AND INSCAPE INC. (the "**Applicants**")

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Court File No.: CV-23-00692784-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE - COMMERCIAL LIST

B E T W E E N :

IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*,
R.S.C. 1985, C. C-36, AS AMENDED (“**CCAA**”)

AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF
INSCAPE CORPORATION, INSCAPE (NEW YORK) INC., AND INSCAPE INC.
(collectively, the “**Applicants**”)

Applicants

INDEX

TAB	DOCUMENT
1.	Notice of Motion returnable June 9, 2023
2.	Draft Order (Settlement Approval)

TAB 1

ONTARIO
SUPERIOR COURT OF JUSTICE - COMMERCIAL LIST

B E T W E E N :

IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*,
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NOTICE OF MOTION
(Returnable June 9, 2023)

Inscape Corporation ("**Inscape**"), Inscape (New York) Inc. and Inscape Inc. (collectively, the "**Inscape Group**" or the "**Applicants**") will bring a motion before the Court on June 9, 2023, at 9:00 a.m., or as soon after that time as the motion can be heard, via Zoom video conference.

THE MOTION IS FOR:

1. An Order, among other things:
 - (a) abridging the time for service and filing of this Notice of Motion and the Motion Record, validating service effective to date, and dispensing with service thereof on any other party other than those persons served;
 - (b) approving a settlement agreement made between Prevolv, Inc. ("**Prevolv**") and the Applicants and dated as of May 30, 2023 ("**Settlement Agreement**");
 - (c) vacating the motion date scheduled for July 11, 2023 for the hearing of the Applicants' Constructive Trust Motion (as defined below); and

(d) such further and other relief as this Honourable Court may deem just.

THE GROUNDS FOR THE MOTION ARE:

1. Prior to the commencement of these CCAA proceedings and ensuing wind-down of operations, the Inscope Group was in the business of designing, manufacturing and selling office furniture and architectural walls.

2. As a result of its insolvency, the Inscope Group determined that the best path forward to maximize value for its stakeholders was through a court-supervised process under the CCAA including a liquidation of its assets and an orderly wind-up of the business.

CCAA Initial Order

3. On January 12, 2023, the Applicants applied for relief pursuant to the CCAA and this Court granted the Initial Order in favour of the Applicants. Pursuant to the Initial Order, among other things, the Court:

- (a) granted an initial stay of proceedings in favour of the Applicants and their directors and officers up to and including January 20, 2023;
- (b) granted an Administration Charge and Directors Charge (each as defined in the Initial Order); and
- (c) appointed Alvarez & Marsal Canada Inc. as the Monitor of the Applicants (in such capacity, the “**Monitor**”).

4. The stay of proceedings has been extended a number of times and is currently set to expire on July 14, 2023.

Procedural History of Prevolv Dispute

Background

5. Prevolv is a commercial furniture dealer specializing in workstation design, office reconfiguration and furniture installation. For approximately 24 years, beginning in 1999, Prevolv was one of Inscape's authorized dealers.

6. In addition to being one of Inscape's authorized dealers, Prevolv and Inscape are co-tenants in the lease of a showroom located in Chicago, Illinois ("**Chicago Lease**"), pursuant to which Prevolv and Inscape are jointly and severally liable for lease payments. The parties have entered into a sublease listing agreement for the showroom, which is currently being marketed by a commercial real estate broker.

7. On March 24, 2023, at Prevolv's request, Justice Conway granted an order (the "**March 24 Scheduling Order**") scheduling a motion (the "**Prevolv Motion**") for the summary determination of the set-off claims that Prevolv raised to refuse payment of a US\$2,147,490 receivable ("**Inscape Receivable**") owing to Inscape. The Inscape Receivable resulted from Inscape having manufactured certain furniture products for Prevolv, which Prevolv would then sell to major end customers in the United States.

8. Justice Conway ordered that the Prevolv Motion proceed in accordance with a court-approved timetable, as set out in the March 24 Scheduling Order.

9. On April 10, 2023, Prevolv served its motion record in accordance with the court-approved timetable.

10. On April 17, 2023, Inscape served its responding motion record (including its cross-claim) in accordance with the court-approved timetable.

Abandonment of Motion, Interim Relief and Costs Order

11. On April 20, 2023, Prevolv served a notice of abandonment (“**Notice of Abandonment**”), abandoning the Prevolv Motion.

12. By order of Justice Conway dated April 24, 2023, which Prevolv did not oppose, Prevolv was ordered to pay the full amount of the Inscape Receivable to the Applicants (“**Receivable Order**”).

13. At the time of the issuance of the Receivable Order, the Court was advised of the Applicants’ intention to continue to pursue their cross-motion which involved, *inter alia*, a claim for equitable remedies, including a constructive trust (“**Constructive Trust Motion**”). Justice Conway scheduled a full-day hearing on July 11, 2023 for the hearing of the Constructive Trust Motion.

14. The Endorsement of Justice Conway dated April 24, 2023 granted the Applicants’ request for leave to seek costs of the Notice of Abandonment pursuant to section 37.09 of the *Rules of Civil Procedure* (the “**Costs Motion**”) in accordance with a specified timeline for the exchange of costs submissions. The Costs Motion was scheduled for May 2, 2023.

15. On May 2, 2023, Justice Conway made an order (the “**Costs Order**”) awarding the Applicants costs in the amount of \$165,692.35, inclusive of HST and disbursements.

Settlement of Prevolv Dispute

16. In the weeks since the issuance of the Costs Order, the Applicants and Prevolv, with the assistance of the Monitor, engaged in settlement negotiations.

17. On May 30, 2023, the parties executed the Settlement Agreement, a copy of which will be appended to the Monitor's Fifth Report, to be filed. The key terms of the Settlement Agreement are as follows:

- (a) Payment Terms: Prevolv shall pay to Inscape the sum of US\$437,500, as follows:
 - (i) US\$300,000 payable immediately upon the execution of the Settlement Agreement; and
 - (ii) US\$137,500 payable by way of six equal monthly installments, starting on July 1, 2023.
- (b) Chicago Lease: If the Chicago showroom is sub-leased on or before December 1, 2023, Prevolv shall pay Inscape US\$312,000 by way of six equal monthly installments, starting on January 1, 2023, subject to such reductions as set out in paragraph 3 of the Settlement Agreement.
- (c) Unsecured Claim (Construction Costs): Prevolv shall file an unsecured claim in the amount of US\$1,626,521.53 in respect of its claim for financed and unfinanced construction costs, which claim shall not be disputed by Inscape and shall be allowed by the Monitor in full.
- (d) Unsecured Claim (Chicago Lease Costs): Prevolv shall file an unsecured claim in the amount of US\$2,820,218.88 in respect of its claim for Inscape's portion of the costs of the Chicago Lease, which claim shall not be disputed by Inscape and shall be allowed by the Monitor in full, *provided that* there is no Sublease in effect on the date when the Monitor commences any Court-supervised claims process in the CCAA proceedings.

18. The Settlement Agreement includes a full and final mutual release of the parties' claims, including in respect of the Receivable Order and the Costs Order. The release provision is only operative if Prevolv fulfils its obligation under the Settlement Agreement.

Court Approval of Settlement

19. The Settlement Agreement is conditional upon court approval.

20. The Settlement Agreement represents a fair and commercially reasonable resolution of the parties' claims. In the circumstances of the CCAA, the Settlement Agreement avoids material and costly litigation and facilitates a more cost-efficient wind-down.

21. The Settlement Agreement is beneficial to the Applicants and their stakeholders.

22. The Settlement is consistent with the purpose of the CCAA and resolves the dispute with Prevolv consensually, fully and finally.

23. The Monitor assisted the parties in the negotiation of the Settlement Agreement. The Monitor supports and approves of the Settlement Agreement and the bringing of this motion for court approval.

24. The Applicants are unaware of any opposition to the Settlement Agreement.

Vacating the July 11, 2023 Hearing Date

25. Subject to this Court's approval of the Settlement Agreement, the Constructive Trust Motion will no longer proceed.

26. The parties therefore seek to vacate the July 11, 2023 hearing date scheduled for the Constructive Trust Motion.

General

27. The provisions of the CCAA, including section 11 and the statutory, inherent and equitable jurisdiction of this Court.

28. Rules 1.04, 2.03, 3.02, 16, and 37 of the *Rules of Civil Procedure*, R.R.O. 1990, Reg. 194, as amended.

29. Such further other grounds as counsel may advise and this Court may permit.

THE FOLLOWING DOCUMENTARY EVIDENCE will be used at the hearing of the motion:

- (a) the Fifth Report of the Monitor, to be filed; and
- (b) such further and other evidence as counsel may advise and this Court may permit.

June 6, 2023

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Court File No.: CV-23-00692784-00CL

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Proceeding commenced at TORONTO

NOTICE OF MOTION
(Returnable June 9, 2023)

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TAB 2

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

THE HONOURABLE

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FRIDAY, THE 9TH

JUSTICE CONWAY

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DAY OF JUNE, 2023

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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 INSCAPE CORPORATION, INSCAPE
(NEW YORK) INC., AND INSCAPE INC.

ORDER

(Settlement Approval)

THIS MOTION, made by Inscap Corporation, Inscap (New York) Inc. and Inscap Inc. (collectively, the “**Applicants**”) pursuant to the *Companies’ Creditors Arrangement Act*, RSC 1985, c C-36, as amended (the “**CCAA**”), for an order, among other things, approving a settlement agreement dated as of May 30, 2023 (“**Minutes of Settlement**”) and made between the Applicants and Prevolv, Inc. (“**Prevolv**”), was heard this day by Zoom videoconference.

ON READING the Applicants’ Notice of Motion dated June 6, 2023, and the Fifth Report of Alvarez & Marsal Canada Inc., in its capacity as the court-appointed monitor of the Applicants (the “**Monitor**”) dated June 6, 2023, and on hearing the submissions of counsel for the Applicants, counsel for the Monitor and counsel for those other parties present as indicated on the counsel slip, and on reading the affidavit of service of Maureen McLaren sworn June 6, 2023, filed:

SERVICE

1. **THIS COURT ORDERS** that the time for service and filing of the Notice of Motion, and the Motion Record is hereby abridged and validated so that this motion is properly returnable today, and hereby dispenses with further service thereof.

SETTLEMENT APPROVAL

2. **THIS COURT ORDERS** that the Minutes of Settlement are hereby approved, and shall be fully and effectively binding on the parties thereto

3. **THIS COURT ORDERS** that the Applicants, Prevolv and the Monitor are hereby authorized and directed to take such steps as may be necessary or desirable to give effect to the Minutes of Settlement.

GENERAL

4. **THIS COURT ORDERS** that, notwithstanding Rule 59.05, this Order is effective from the date it is made, and is enforceable without any need for entry and filing.

5. **THIS COURT HEREBY REQUESTS** the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada, the United States or elsewhere, to give effect to this Order and to assist the Monitor and its respective agents and counsel 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 Monitor, as an officer of this Court, as may be necessary or desirable to give effect to this Order, to grant representative status to the Monitor in any foreign proceeding, or to assist the Monitor and its respective agents and counsel in carrying out the terms of this Order.

ONTARIO
SUPERIOR COURT OF JUSTICE -
COMMERCIAL LIST
Proceeding commenced at TORONTO

ORDER
(Returnable June 9, 2023)

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IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF
INSCAPE CORPORATION, INSCAPE (NEW YORK) INC., AND INSCAPE INC.

Court File No.: CV-23-00692784-00CL

ONTARIO
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MOTION RECORD OF THE APPLICANTS
(Returnable June 9, 2023)

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