

**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 ONE BLOOR WEST TORONTO  
GROUP (THE ONE) INC. AND ONE BLOOR WEST  
TORONTO COMMERCIAL (THE ONE) GP INC.**

**RESPONDING FACTUM OF  
YU-CHIAO CHANG, HSIN-YI LIN, and HUNG-MING KEVIN LIN**  
(Motion returnable November 17, 2025)

November 16, 2025

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## PART I – OVERVIEW

1. This motion brought by the Monitor within *Companies' Creditors Arrangement Act* (Canada) (“**CCAA**”) proceedings seeks approval of a sweeping CSA Plan, Deposit Return Protocol and CSA Plan Reconfiguration (the “**CSA Plan Approval Order**”) that would disclaim 314 out of 329 pre-construction condominium sale agreements (“**CSA**”), including Unit 3004 (as defined below). It also identifies 15 other CSAs that it intends to honour, which it designates in its motion materials and Second Report (defined below) as the “Potentially Retained CSAs”.

2. Yu-Chiao Chang (“**Ms. Chang**”), Hsin-Yi Lin (“**Ms. Lin**”), and Hung-Ming Kevin Lin (“**Mr. Lin**”) (collectively herein, the “**Responding Parties**” or “**Purchasers**”) purchased the property at Unit 3004, 1 Bloor Street West, Toronto, Ontario (the “**Unit 3004**” or “**Unit**”) which CSA the Monitor seeks to disclaim.

3. The Purchasers oppose the CSA Plan Approval Order that is before the Court for its approval and they seek tailored relief: retention of the Unit (such that the Unit is one of the Potentially Retained CSAs) or, alternatively, damages and disclosure of the Confidential Appendices to the Second Report of the Monitor dated November 3, 2025 (the “**Second Report**”) which the moving party seeks to have sealed and kept confidential.

## PART II – FACTS

4. The material facts are set out in the Affidavit of Ms. Lin sworn November 10, 2025 (“**Ms. Lin Affidavit**”), found in the Motion Record of the Responding Parties, dated November 10, 2025.

5. On or about October 25, 2017, Ms. Chang entered into an Agreement of Purchase and Sale (“**APS**”) with Mizrahi Development Group (The One) Inc., one of the companies that later went into receivership and that is now subject to these *CCAA* proceedings, to purchase the Unit, a two-

bedroom, two-bathroom suite of approximately 1,100 square feet, and 1 locker unit, with the purchase price of \$1,759,900.00.

**Ms. Lin Affidavit at paras 3 and 6, Exhibits A and D.**

6. In November 2017, the APS was amended to add Ms. Lin as a co-purchaser. On or about October 26, 2022, the APS was assigned to Ms. Chang, Ms. Lin, and Mr. Lin.

**Ms. Lin Affidavit at paras 4-5, Exhibits B and C.**

7. The Respondents' intention was to reside together in the Unit, so that Ms. Lin and Mr. Lin can take care of their aging mother, Ms. Chang, who is now 70 years old. The Notice of Disclaimer (described below) greatly disrupts the Purchasers' plan to reside together in the Unit. They had planned this for approximately 8 years and counting.

**Ms. Lin Affidavit at para 6.**

8. The Covid-19 pandemic resulted in delays, for which the Responding Parties received notice.

**Ms. Lin Affidavit at para 7, Exhibits E and F.**

9. A hard copy of the Notice of Disclaimer for the Unit, dated October 24, 2025, was mis-served to an outdated address, despite Ms. Lin having provided her updated address back in March 2024. Ms. Lin did receive the said Notice of Disclaimer by e-mail, on October 24, 2025, which was when she first became aware of the Monitor's plan to disclaim the CSA for the Unit. No prior communication was given to the Purchasers indicating that the Unit would be affected by the restructuring process.

**Ms. Lin Affidavit at paras 8-10, Exhibits E and F.**

10. Comparable units in neighbouring luxury buildings based on recent market data are selling for \$1,825 to \$2,351 per square foot, which would make Unit 3004 now valued approximately \$2 million to \$2.58 million. This would make the damages range from \$247,600 to \$826,200,

calculated using the difference between the purchase price of the Unit (\$1,759,900) and today's estimated market values.

**Ms. Lin Affidavit at para 13, Exhibit I.**

### **PART III – ISSUES AND THE LAW**

11. The issues to be considered on this motion are whether the Court should:
  - (a) Approve the CSA Plan and the disclaimer of Unit 3004, or for Unit 3004 to be a Potentially Retained CSA (as defined in the Second Report);
  - (b) Grant damages to the Purchasers if disclaimer of Unit 3004 is granted; and
  - (c) Grant a sealing order of all the Confidential Appendices to the Second Report?
12. The Purchasers respectfully submit that the Court should grant the relief they herein seek.

#### **A. The CSA Plan Should Not Be Approved with Respect to Disclaiming Unit 3004 & Unit 3004 Should be a Potentially Retained CSA**

13. The Court retains discretion under s. 32(1) of the *CCAA* to refuse a disclaimer where the equities favour the party to whom the disclaimer would directly affect and where the disclaimer would cause disproportionate prejudice.
14. Without the benefit of information that may be available upon this Court's refusal to grant the sealing order that the Monitor seeks, the Purchasers do not strenuously argue against the legal priorities or the potential value enhancement that the Monitor suggests in its Second Report and proposed CSA Plan Approval Order. However, the Purchasers submit that equities strongly favour retention of their Unit.
15. The Purchasers have waited and relied on the construction of their Unit for approximately eight years and counting for personal housing and elder care plans, not for speculative investment. The disclaimer of their Unit would cause disproportionate hardship for marginal incremental value.

16. The Purchasers only had little more than two weeks from their being mis-served with a hard copy of the Notice of Disclaimer (albeit received by e-mail) to submit a written objection of same. If the disclaimer is granted effective November 23, 2025, then they will have had under or approximately one month from first being notified of the Notice of Disclaimer after the years-long wait for progress on the construction of their Unit.

17. From a procedural fairness and transparency perspective, sealing key appendices like the Unit Pricing Analysis and CSA Analysis impairs the Purchasers' ability to make informed decisions about whether to continue seeking to be on the list of Potentially Retained CSAs, to relent on same (if they conclude the disclaimer is justified) and instead exercise the Early Purchase Opportunity for their Unit, and to assess if they have a potential claim for damages or other legal recourse.

**Ms. Lin Affidavit at paras 14-15.**

18. The CSA Plan retains 15 CSAs that it deems economically viable. Without more information from the Confidential Appendices that the Purchasers may be able to rely on, cite, and produce relevant excerpts from (perhaps under a protective order) to advance their rights and interests, they submit that Unit 3004 should be sufficiently economically viable. It was designed to be a relatively large two-bedroom and two-bedroom suite. Retaining it should be consistent with the Monitor's own aims to reduce smaller units (i.e., small one-bedroom and one-bedroom plus den units).

**Second Report at section 7.16.**

**B. Alternatively, the Purchasers Should Be Entitled to Damages**

19. If the Responding Parties have the CSA for Unit 3004 disclaimed, then they alternatively seek damages arising therefrom that are over and above the deposit and applicable interest relating to Unit 3004. They submit the damages should represent the loss in market value of Unit 3004

between the purchase price of \$1,759,900.00 and today's estimated market values for comparable or equivalent properties. As aforementioned, the damages should range from \$247,600 to \$826,200 according to these calculations, but the Purchasers reserve their rights to claim more in damages depending on a review of the information that may be disclosed if the sealing order is not fully granted.

### **C. Sealing Order Should Not Be Granted**

20. This Court has broad discretion pursuant to section 11 of the *CCAA* to make any order it considers appropriate in the circumstances.

21. Sealing orders are not a matter of course in *CCAA* proceedings. Judicial scrutiny and approval are at the forefront of the analysis. For example, in *Crystallex International Corporation (Re)*, 2021 ONCA 87, the motion judge dismissed the insolvent company's motion to seal certain information (including financial information) contained in its monitor's report, in part finding that the affidavit evidence was highly speculative and did not specify incremental risk to the company if disclosed. The monitor later identified redactions that should be made if the full sealing order were not granted and the company later filed a supplementary affidavit to address the issues the judge raised. Subsequently, the motion judge agreed to the monitor's proposed redactions. References to the cash balance and related information were not be redacted.

*Crystallex International Corporation (Re)*, 2021 ONCA 87 (CanLII) at paras 1-8.

22. The Court of Appeal dismissed the motion for leave to appeal and in doing so, found that the proposed appeal was not *prima facie* meritorious.

*Crystallex International Corporation (Re)*, 2021 ONCA 87 (CanLII) at paras 11-12.

23. Subsection 137(2) of the *Courts of Justice Act*, R.S.O. 1990, c. C.43, provides for the Court's authority to grant a sealing order.

24. The *CCAA* only explicitly provides for confidential/protective orders when it comes to cash-flow statements (or any parts thereof) under section 10(3). Its express wording also limits the order only to publication bans and not sealing orders, and allows for making the statements, or any parts, available to specified persons on certain terms or conditions. It is not automatically an unequivocal protective order.

25. It is unclear if any of the Confidential Appendices to the Second Report contain such statements because information on same is unavailable to the Purchasers. If they do contain such statements, it is unclear to what extent and why the other contents of the Confidential Appendices should be treated equally confidentially and deserving of a sealing order, without more information.

26. A Court has discretion to order that any document filed in a civil proceeding be treated as confidential, sealed and not part of the public record. However, this relief is extraordinary and an exception to the open court principle. In *Sherman Estate v. Donovan*, 2021 SCC 25, the Supreme Court of Canada held that the person asking for a sealing order must establish that:

- a. court openness poses a serious risk to an important public interest;
- b. the order sought is necessary to prevent this serious risk to the identified interest because reasonably alternative measures will not prevent this risk; and
- c. as a matter of proportionality, the benefits of the order outweigh its negative effects.

*Sherman Estate v Donovan*, 2021 SCC 25, [2021] 2 SCR 75 at paras 37-38.

27. Open courts promote accountability and maintain public confidence in the judicial system. The Court should only grant a sealing order where all of these prerequisites have been met, where there is compelling evidence that secrecy is strictly necessary.

28. A sealing order should only be granted where there is a serious risk to an important interest. Reports by the Monitor have been published but no affidavit or similar evidence has been tendered to support the allegedly commercially sensitive nature of the entirety of all the Confidential Appendices to the Second Report, at least with respect to Unit 3004. The Monitor not rebutted the presumption of openness with specific, concrete, and non-speculative evidence of harm.

29. The sealing order should not be granted if there are reasonably alternative measures that could be taken to mitigate the alleged risk. Reasonable alternatives, such as redaction, anonymization, or partial sealing, before resorting to the overzealous sealing order that the Monitor seeks, would not impair efforts to maximize the value of the project that the Monitor is overseeing.

30. Furthermore, as a matter of proportionality, the Monitor has not established that the benefits of the sealing order outweigh its negative effects, at least specific to Unit 3004

31. The Purchasers submit they should be entitled to make further submissions after reviewing the information that may be revealed in the Confidential Appendices if the sealing order is not fully granted, at least with respect to their Unit.

#### **PART IV – CONCLUSION**

32. For all of the foregoing reasons, the Responding Parties respectfully submit that this Court should exercise its discretion under the *CCAA* and decline to approve the CSA Plan Approval Order insofar as it seeks to disclaim Unit 3004. Alternatively, if the Court permits the disclaimer, the Purchasers seek damages representing the loss in market value, in addition to the return of their deposit and applicable interest.

33. The sealing order sought should not be granted in its current form. The open court principle requires transparency and reasonable alternatives such as targeted redactions exist to mitigate any

alleged risk. The Purchasers should be entitled to review the Confidential Appendices and make further submissions after doing so.

**ALL OF WHICH IS RESPECTFULLY SUBMITTED**

Date: November 16, 2025

A handwritten signature in black ink, reading "Angel Leung". The signature is written in a cursive, flowing style. Below the signature is a horizontal line.

**Angel Leung, Poon & Ho LLP**

Lawyer for the Responding Parties, Yu-Chiao Chang, Hsin-Yi  
Lin, and Hung-Ming Kevin Lin

## **SCHEDULE “A”**

1. *Crystallex International Corporation (Re)*, 2021 ONCA 87 (CanLII)
2. *Sherman Estate v Donovan*, 2021 SCC 25, [2021] 2 SCR 75

## SCHEDULE “B”

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

#### Section 32(1)

##### **Disclaimer or resiliation of agreements**

**32 (1)** Subject to subsections (2) and (3), a debtor company may — on notice given in the prescribed form and manner to the other parties to the agreement and the monitor — disclaim or resiliate any agreement to which the company is a party on the day on which proceedings commence under this Act. The company may not give notice unless the monitor approves the proposed disclaimer or resiliation.

#### Section 11

##### **General power of court**

**11** Despite anything in the *Bankruptcy and Insolvency Act* or the *Winding-up and Restructuring Act*, if an application is made under this Act in respect of a debtor company, the court, on the application of any person interested in the matter, may, subject to the restrictions set out in this Act, on notice to any other person or without notice as it may see fit, make any order that it considers appropriate in the circumstances.

R.S., 1985, c. C-36, s. 11; 1992, c. 27, s. 90; 1996, c. 6, s. 167; 1997, c. 12, s. 124; 2005, c. 47, s. 128.

### Courts of Justice Act, RSO 1990, c C43

#### Section 137(2)

##### **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.

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Court File No. CV-25-00740512-00CL

Applicants

***ONTARIO***  
**SUPERIOR COURT OF JUSTICE**

Proceeding commenced at  
Toronto

**FACTUM OF THE RESPONDING  
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