

2025 01G 0491

IN THE SUPREME COURT OF NEWFOUNDLAND AND LABRADOR
IN BANKRUPTCY AND INSOLVENCY

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 an
application of Karwood Contracting Ltd.,
Karwood Engineering Ltd., Karwood
Design Group Ltd., and Karwood
Ontario Ltd. (the "Applicants")

SUMMARY OF CURRENT DOCUMENT	
Court File Number:	2025 01G 0491
Date of Filing Document:	October 28 th , 2025
Name of Party Filing or Person:	Kent Building Supplies, a division of J.D. Irving, Limited
Application to which document being filed relates:	An Application under section 36.1 of the CCAA
Statement of Purpose in Filing:	To support application

MEMORANDUM OF KENT BUILDING SUPPLIES, A DIVISION OF J.D. IRVING, LIMITED

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TAB 1

including any period for which the other party extends the agreement as of right, as long as the other party continues to perform its obligations under the agreement in relation to the use of the intellectual property.

2005, c. 47, s. 131; 2007, c. 36, s. 78; 2017, c. 26, s. 14; 2018, c. 27, s. 269.

Preferences and Transfers at Undervalue

Application of sections 38 and 95 to 101 of the *Bankruptcy and Insolvency Act*

36.1 (1) Sections 38 and 95 to 101 of the *Bankruptcy and Insolvency Act* apply, with any modifications that the circumstances require, in respect of a compromise or arrangement unless the compromise or arrangement provides otherwise.

Interpretation

(2) For the purposes of subsection (1), a reference in sections 38 and 95 to 101 of the *Bankruptcy and Insolvency Act*

(a) to “date of the bankruptcy” is to be read as a reference to “day on which proceedings commence under this Act”;

(b) to “trustee” is to be read as a reference to “monitor”; and

(c) to “bankrupt”, “insolvent person” or “debtor” is to be read as a reference to “debtor company”.

2005, c. 47, s. 131; 2007, c. 36, s. 78.

Her Majesty

Deemed trusts

37 (1) Subject to subsection (2), despite any provision in federal or provincial legislation that has the effect of deeming property to be held in trust for Her Majesty, property of a debtor company shall not be regarded as being held in trust for Her Majesty unless it would be so regarded in the absence of that statutory provision.

Exceptions

(2) Subsection (1) does not apply in respect of amounts deemed to be held in trust under subsection 227(4) or (4.1) of the *Income Tax Act*, subsection 23(3) or (4) of the *Canada Pension Plan* or subsection 86(2) or (2.1) of the *Employment Insurance Act* (each of which is in this subsection referred to as a “federal provision”), nor does it apply in respect of amounts deemed to be held in trust under any law of a province that creates a deemed trust the sole purpose of which is to ensure remittance to Her Majesty in right of the province of amounts deducted or withheld under a law of the province if

TAB 2

Bankruptcy and Insolvency Act, RSC 1985, c B-3

Current version: in force since 2024-12-12

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Bankruptcy and Insolvency Act

R.S.C., 1985, c. B-3

An Act respecting bankruptcy and insolvency

Short Title

Short title

1 This Act may be cited as the *Bankruptcy and Insolvency Act*.

R.S., 1985, c. B-3, s. 1; 1992, c. 27, s. 2.

Interpretation

Definitions

2 In this Act,

affidavit includes statutory declaration and solemn affirmation; (*affidavit*)

aircraft objects [Repealed, 2012, c. 31, s. 414]

special resolution means a resolution decided by a majority in number and three-fourths in value of the creditors with proven claims present, personally or by proxy, at a meeting of creditors and voting on the resolution; (*résolution spéciale*)

Superintendent means the Superintendent of Bankruptcy appointed under subsection 5(1); (*surintendant*)

Superintendent of Financial Institutions means the Superintendent of Financial Institutions appointed under subsection 5(1) of the *Office of the Superintendent of Financial Institutions Act*; (*surintendant des institutions financières*)

time of the bankruptcy, in respect of a person, means the time of

- (a) the granting of a bankruptcy order against the person,
- (b) the filing of an assignment by or in respect of the person, or
- (c) the event that causes an assignment by the person to be deemed; (*moment de la faillite*)

title transfer credit support agreement means an agreement under which an insolvent person or a bankrupt has provided title to property for the purpose of securing the payment or performance of an obligation of the insolvent person or bankrupt in respect of an eligible financial contract; (*accord de transfert de titres pour obtention de crédit*)

transfer at undervalue means a disposition of property or provision of services for which no consideration is received by the debtor or for which the consideration received by the debtor is conspicuously less than the fair market value of the consideration given by the debtor; (*opération sous-évaluée*)

trustee or licensed trustee means a person who is licensed or appointed under this Act. (*syndic ou syndic autorisé*)

R.S., 1985, c. B-3, s. 2; R.S., 1985, c. 31 (1st Supp.), s. 69; 1992, c. 1, s. 145(F), c. 27, s. 3; 1995, c. 1, s. 62; 1997, c. 12, s. 1; 1999, c. 28, s. 146, c. 31, s. 17; 2000, c. 12, s. 8; 2001, c. 4, s. 25, c. 9, s. 572; 2004, c. 25, s. 7; 2005, c. 3, s. 11, c. 47, s. 2; 2007, c. 29, s. 91, c. 36, s. 1; 2012, c. 31, s. 414; 2015, c. 3, s. 6(F); 2018, c. 10, s. 82.

Designation of beneficiary

2.1 A change in the designation of a beneficiary in an insurance contract is deemed to be a disposition of property for the purpose of this Act.

1997, c. 12, s. 2; 2004, c. 25, s. 8; 2005, c. 47, s. 3.

Superintendent's division office

2.2 Any notification, document or other information that is required by this Act to be given, forwarded, mailed, sent or otherwise provided to the Superintendent, other than an application for a licence under subsection 13(1), shall be given, forwarded, mailed, sent or otherwise provided to the Superintendent at the Superintendent's division office as specified in directives of the Superintendent.

TAB 3

property that has not been sold or realized, setting out the reason why the property has not been sold or realized and the disposition made of the property.

Duty of substituted trustee

(2) A substituted trustee shall

- (a)** [Repealed, 1992, c. 27, s. 14]
- (b)** if appointed by the creditors, file with the court a copy of the minutes of the meeting signed by the chair;
- (c)** notify the Superintendent of his appointment;
- (d)** if required by the inspectors, register a notice of the appointment in the land register of any land titles or registry office where the assignment or bankruptcy order has been registered; and
- (e)** as soon as funds are available, pay to the former trustee his remuneration and disbursements as approved by the court.

R.S., 1985, c. B-3, s. 36; 1992, c. 27, s. 14; 1997, c. 12, s. 24; 2004, c. 25, s. 23; 2005, c. 47, ss. 28, 123(E); 2007, c. 36, s. 11(F).

Appeal to court against trustee

37 Where the bankrupt or any of the creditors or any other person is aggrieved by any act or decision of the trustee, he may apply to the court and the court may confirm, reverse or modify the act or decision complained of and make such order in the premises as it thinks just.

R.S., c. B-3, s. 19.

Proceeding by creditor when trustee refuses to act

38 (1) Where a creditor requests the trustee to take any proceeding that in his opinion would be for the benefit of the estate of a bankrupt and the trustee refuses or neglects to take the proceeding, the creditor may obtain from the court an order authorizing him to take the proceeding in his own name and at his own expense and risk, on notice being given the other creditors of the contemplated proceeding, and on such other terms and conditions as the court may direct.

Transfer to creditor

(2) On an order under subsection (1) being made, the trustee shall assign and transfer to the creditor all his right, title and interest in the chose in action or subject-matter of the proceeding, including any document in support thereof.

Benefits belong to creditor

(3) Any benefit derived from a proceeding taken pursuant to subsection (1), to the extent of his claim and the costs, belongs exclusively to the creditor instituting the proceeding, and the surplus, if any, belongs to the estate.

Trustee may institute proceeding

(4) Where, before an order is made under subsection (1), the trustee, with the permission of the inspectors, signifies to the court his readiness to institute the proceeding for the benefit of the creditors, the order shall fix the time within which he shall do so, and in that case the benefit derived from the proceeding, if instituted within the time so fixed, belongs to the estate.

R.S., 1985, c. B-3, s. 38; 2004, c. 25, s. 24(F).

Remuneration of Trustee

To be voted by creditors

39 (1) The remuneration of the trustee shall be such as is voted to the trustee by ordinary resolution at any meeting of creditors.

Not to exceed 7½ per cent

(2) Where the remuneration of the trustee has not been fixed under subsection (1), the trustee may insert in his final statement and retain as his remuneration, subject to increase or reduction as hereinafter provided, a sum not exceeding seven and one-half per cent of the amount remaining out of the realization of the property of the debtor after the claims of the secured creditors have been paid or satisfied.

For carrying on debtor's business or in case of a proposal

(3) Where the business of the debtor has been carried on by the trustee or under his supervision, he may be allowed such special remuneration for such services as the creditors or the inspectors may by resolution authorize, and, in the case of a proposal, such special remuneration as may be agreed to by the debtor, or in the absence of agreement with the debtor such amount as may be approved by the court.

Successive trustees

(4) In the case of two or more trustees acting in succession, the remuneration shall be apportioned between the trustees in accordance with the services rendered by each, and in the absence of agreement between the trustees the court shall determine the amount payable to each.

Court may increase or reduce

(5) On application by the trustee, a creditor or the debtor and on notice to such parties as the court may direct, the court may make an order increasing or reducing the remuneration.

R.S., c. B-3, s. 21.

Discharge of Trustee

Disposal of unrealizable property

TAB 4

(b) is valid only in respect of amounts owing to Her Majesty or a workers' compensation body at the time of that registration, plus any interest subsequently accruing on those amounts.

R.S., 1985, c. B-3, s. 87; 1992, c. 27, s. 39; 1997, c. 12, s. 74; 2004, c. 25, s. 53; 2005, c. 47, s. 70.

Priority of Financial Collateral

Priority

88 In relation to a bankruptcy or proposal, no order may be made under this Act if the order would have the effect of subordinating financial collateral.

R.S., 1985, c. B-3, s. 88; 1992, c. 27, s. 39; 1994, c. 26, s. 6; 2007, c. 29, s. 99, c. 36, s. 112; 2009, c. 31, s. 65.

89 and 90 [Repealed, 1992, c. 27, s. 39]

Preferences and Transfers at Undervalue

91 [Repealed, 2005, c. 47, s. 71]

92 and 93 [Repealed, 2000, c. 12, s. 12]

94 [Repealed, 2005, c. 47, s. 72]

Preferences

95 (1) A transfer of property made, a provision of services made, a charge on property made, a payment made, an obligation incurred or a judicial proceeding taken or suffered by an insolvent person

(a) in favour of a creditor who is dealing at arm's length with the insolvent person, or a person in trust for that creditor, with a view to giving that creditor a preference over another creditor is void as against — or, in Quebec, may not be set up against — the trustee if it is made, incurred, taken or suffered, as the case may be, during the period beginning on the day that is three months before the date of the initial bankruptcy event and ending on the date of the bankruptcy; and

(b) in favour of a creditor who is not dealing at arm's length with the insolvent person, or a person in trust for that creditor, that has the effect of giving that creditor a preference over another creditor is void as against — or, in Quebec, may not be set up against — the trustee if it is made, incurred, taken or suffered, as the case may be, during the period beginning on the day that is 12 months before the date of the initial bankruptcy event and ending on the date of the bankruptcy.

Preference presumed

(2) If the transfer, charge, payment, obligation or judicial proceeding referred to in paragraph (1)(a) has the effect of giving the creditor a preference, it is, in the absence of evidence to the contrary, presumed to have been made, incurred, taken or suffered with a view to giving the creditor the preference — even if it was made, incurred, taken or

suffered, as the case may be, under pressure — and evidence of pressure is not admissible to support the transaction.

Exception

(2.1) Subsection (2) does not apply, and the parties are deemed to be dealing with each other at arm's length, in respect of the following:

- (a)** a margin deposit made by a clearing member with a clearing house; or
- (b)** a transfer, charge or payment made in connection with financial collateral and in accordance with the provisions of an eligible financial contract.

Definitions

(3) In this section,

clearing house means a body that acts as an intermediary for its clearing members in effecting securities transactions; (*chambre de compensation*)

clearing member means a person engaged in the business of effecting securities transactions who uses a clearing house as intermediary; (*membre*)

creditor includes a surety or guarantor for the debt due to the creditor; (*créancier*)

margin deposit means a payment, deposit or transfer to a clearing house under the rules of the clearing house to assure the performance of the obligations of a clearing member in connection with security transactions, including, without limiting the generality of the foregoing, transactions respecting futures, options or other derivatives or to fulfil any of those obligations. (*dépôt de couverture*)

R.S., 1985, c. B-3, s. 95; 1997, c. 12, s. 78; 2004, c. 25, s. 56; 2007, c. 29, s. 100, c. 36, ss. 42, 112.

Transfer at undervalue

96 (1) On application by the trustee, a court may declare that a transfer at undervalue is void as against, or, in Quebec, may not be set up against, the trustee — or order that a party to the transfer or any other person who is privy to the transfer, or all of those persons, pay to the estate the difference between the value of the consideration received by the debtor and the value of the consideration given by the debtor — if

- (a)** the party was dealing at arm's length with the debtor and
 - (i)** the transfer occurred during the period that begins on the day that is one year before the date of the initial bankruptcy event and that ends on the date of the bankruptcy,
 - (ii)** the debtor was insolvent at the time of the transfer or was rendered insolvent by it, and
 - (iii)** the debtor intended to defraud, defeat or delay a creditor; or
- (b)** the party was not dealing at arm's length with the debtor and

(i) the transfer occurred during the period that begins on the day that is one year before the date of the initial bankruptcy event and ends on the date of the bankruptcy, or

(ii) the transfer occurred during the period that begins on the day that is five years before the date of the initial bankruptcy event and ends on the day before the day on which the period referred to in subparagraph (i) begins and

(A) the debtor was insolvent at the time of the transfer or was rendered insolvent by it, or

(B) the debtor intended to defraud, defeat or delay a creditor.

Establishing values

(2) In making the application referred to in this section, the trustee shall state what, in the trustee's opinion, was the fair market value of the property or services and what, in the trustee's opinion, was the value of the actual consideration given or received by the debtor, and the values on which the court makes any finding under this section are, in the absence of evidence to the contrary, the values stated by the trustee.

Meaning of *person who is privy*

(3) In this section, a *person who is privy* means a person who is not dealing at arm's length with a party to a transfer and, by reason of the transfer, directly or indirectly, receives a benefit or causes a benefit to be received by another person.

R.S., 1985, c. B-3, s. 96; 1997, c. 12, s. 79; 2004, c. 25, s. 57; 2005, c. 47, s. 73; 2007, c. 36, s. 43.

Protected transactions

97 (1) No payment, contract, dealing or transaction to, by or with a bankrupt made between the date of the initial bankruptcy event and the date of the bankruptcy is valid, except the following, which are valid if made in good faith, subject to the provisions of this Act with respect to the effect of bankruptcy on an execution, attachment or other process against property, and subject to the provisions of this Act respecting preferences and transfers at undervalue:

(a) a payment by the bankrupt to any of the bankrupt's creditors;

(b) a payment or delivery to the bankrupt;

(c) a transfer by the bankrupt for adequate valuable consideration; and

(d) a contract, dealing or transaction, including any giving of security, by or with the bankrupt for adequate valuable consideration.

Definition of *adequate valuable consideration*

(2) The expression *adequate valuable consideration* in paragraph (1)(c) means a consideration of fair and reasonable money value with relation to that of the property assigned or transferred, and in paragraph (1)(d) means a consideration of fair and reasonable money value with relation to the known or reasonably to be anticipated benefits of the contract, dealing or transaction.

Law of set-off or compensation

(3) The law of set-off or compensation applies to all claims made against the estate of the bankrupt and also to all actions instituted by the trustee for the recovery of debts due to the bankrupt in the same manner and to the same extent as if the bankrupt were plaintiff or defendant, as the case may be, except in so far as any claim for set-off or compensation is affected by the provisions of this Act respecting frauds or fraudulent preferences.

R.S., 1985, c. B-3, s. 97; 1992, c. 27, s. 41; 1997, c. 12, s. 80; 2004, c. 25, s. 58; 2005, c. 47, s. 74.

Recovering proceeds if transferred

98 (1) If a person has acquired property of a bankrupt under a transaction that is void or voidable and set aside or, in the Province of Quebec, null or annulable and set aside, and has sold, disposed of, realized or collected the property or any part of it, the money or other proceeds, whether further disposed of or not, shall be deemed the property of the trustee.

Trustee may recover

(2) The trustee may recover the property or the value thereof or the money or proceeds therefrom from the person who acquired it from the bankrupt or from any other person to whom he may have resold, transferred or paid over the proceeds of the property as fully and effectually as the trustee could have recovered the property if it had not been so sold, disposed of, realized or collected.

Operation of section

(3) Notwithstanding subsection (1), where any person to whom the property has been sold or disposed of has paid or given therefor in good faith adequate valuable consideration, he is not subject to the operation of this section but the trustee's recourse shall be solely against the person entering into the transaction with the bankrupt for recovery of the consideration so paid or given or the value thereof.

Trustee subrogated

(4) Where the consideration payable for or on any sale or resale of the property or any part thereof remains unsatisfied, the trustee is subrogated to the rights of the vendor to compel payment or satisfaction.

R.S., 1985, c. B-3, s. 98; 2004, c. 25, s. 59(E).

General assignments of book debts ineffective

98.1 (1) If a person engaged in any trade or business makes an assignment of their existing or future book debts, or any class or part of those debts, and subsequently becomes bankrupt, the assignment of book debts is void as against, or, in the Province of Quebec, may not be set up against, the trustee with respect to any book debts that have not been paid at the date of the bankruptcy.

Foregoing provisions not to apply in some cases

(2) Subsection (1) does not apply to an assignment of book debts that is registered under any statute of any province providing for the registration of assignments of book debts if the assignment is valid in accordance with the laws of the province.

Other cases

(3) Nothing in subsection (1) renders void or, in the Province of Quebec, null any assignment of book debts due at the date of the assignment from specified debtors, or of debts growing due under specified contracts, or any assignment of book debts included in a transfer of a business made in good faith and for adequate valuable consideration.

Definition of *assignment*

(4) For the purposes of this section, ***assignment*** includes assignment by way of security, hypothec and other charges on book debts.

2005, c. 47, s. 75.

Dealings with undischarged bankrupt

99 (1) All transactions by a bankrupt with any person dealing with the bankrupt in good faith and for value in respect of property acquired by the bankrupt after the bankruptcy, if completed before any intervention by the trustee, are valid against the trustee, and any estate, or interest or right, in the property that by virtue of this Act is vested in the trustee shall determine and pass in any manner and to any extent that may be required for giving effect to any such transaction.

Receipt of money by banker

(2) For the purposes of this section, the receipt of any money, security or negotiable instrument from or by the order or direction of a bankrupt by his banker and any payment and any delivery of any security or negotiable instrument made to or by the order or direction of a bankrupt by his banker shall be deemed to be a transaction by the bankrupt with his banker dealing with him for value.

R.S., 1985, c. B-3, s. 99; 2004, c. 25, s. 60.

100 [Repealed, 2005, c. 47, s. 76]

Inquiry into dividends, redemption of shares or compensation

101 (1) When a corporation that is bankrupt has paid a dividend, other than a stock dividend, redeemed or purchased for cancellation any of the shares of the capital stock of the corporation or has paid termination pay, severance pay or incentive benefits or other benefits to a director, an officer or any person who manages or supervises the management of business and affairs of the corporation within the period beginning on the day that is one year before the date of the initial bankruptcy event and ending on the date of the bankruptcy, both dates included, the court may, on the application of the trustee, inquire into the transaction to ascertain whether it occurred at a time when the corporation was insolvent or whether it rendered the corporation insolvent.

Judgment against directors

(2) If a transaction referred to in subsection (1) has occurred, the court may give judgment to the trustee against the directors of the corporation, jointly and severally, or solidarily, in the amount of the dividend or redemption or purchase price, with interest on the amount, that has not been paid to the corporation if the court finds that

(a) the transaction occurred at a time when the corporation was insolvent or the transaction rendered the corporation insolvent; and

(b) the directors did not have reasonable grounds to believe that the transaction was occurring at a time when the corporation was not insolvent or the transaction would not render the corporation insolvent.

Judgment against directors — compensation

(2.01) If a transaction referred to in subsection (1) has occurred, the court may give judgment to the trustee against the directors of the corporation, jointly and severally, or solidarily, in the amount of the termination pay, severance pay or incentive benefits or other benefits, with interest on the amount, that has not been paid to the corporation if the court finds that

(a) the payment

(i) occurred at a time when the corporation was insolvent or rendered the corporation insolvent,

(ii) was conspicuously over the fair market value of the consideration received by the corporation, and

(iii) was made outside the ordinary course of business; and

(b) the directors did not have reasonable grounds to believe that the payment

(i) occurred at a time when the corporation was not insolvent or would not render the corporation insolvent,

(ii) was not conspicuously over the fair market value of the consideration received by the corporation, and

(iii) was made in the ordinary course of business.

Criteria

(2.1) In making a determination under paragraph (2)(b) or (2.01)(b), the court shall consider whether the directors acted as prudent and diligent persons would have acted in the same circumstances and whether the directors in good faith relied on

(a) financial or other statements of the corporation represented to them by officers of the corporation or the auditor of the corporation, as the case may be, or by written reports of the auditor to fairly reflect the financial condition of the corporation; or

(b) a report relating to the corporation's affairs prepared pursuant to a contract with the corporation by a lawyer, notary, accountant, engineer, appraiser or other person whose profession gave credibility to the statements made in the report.

Judgment against shareholders

(2.2) Where a transaction referred to in subsection (1) has occurred and the court makes a finding referred to in paragraph (2)(a), the court may give judgment to the trustee against a shareholder who is related to one or more directors or to the corporation or who is a director not liable by reason of paragraph (2)(b) or subsection (3), in the amount of the dividend or redemption or purchase price referred to in subsection (1) and the interest thereon, that was received by the shareholder and not repaid to the corporation.

Directors exonerated by law

(3) A judgment pursuant to subsection (2) shall not be entered against or be binding on a director who had, in accordance with any applicable law governing the operation of the corporation, protested against the payment of the dividend or the redemption or purchase for cancellation of the shares of the capital stock of the corporation and had thereby exonerated himself or herself under that law from any liability therefor.

Directors exonerated by law — compensation

(3.1) A judgment under subsection (2.01) shall not be entered against or be binding on a director who had, in accordance with any applicable law governing the operation of the corporation, protested against the payment of termination pay, severance pay or incentive benefits or other benefits and had exonerated himself or herself under that law from any resulting liability.

Directors' right to recover

(4) Nothing in this section shall be construed to affect any right, under any applicable law governing the operation of the corporation, of the directors to recover from a shareholder the whole or any part of any dividend, or any redemption or purchase price, made or paid to the shareholder when the corporation was insolvent or that rendered the corporation insolvent.

Onus of proof — directors

(5) For the purposes of subsection (2), the onus of proving

(a) that the corporation was not insolvent at the time the transaction occurred and that the transaction did not render the corporation insolvent, or

(b) that the directors had reasonable grounds to believe that the transaction was occurring at a time when the corporation was not insolvent or that the transaction would not render the corporation insolvent

lies on the directors.

Onus of proof — directors

(5.1) For the purposes of subsection (2.01), a director has the onus of proving any of the following:

(a) that the payment

(i) occurred at a time when the corporation was not insolvent or did not render the corporation insolvent,

(ii) was not conspicuously over the fair market value of the consideration received by the corporation, or

(iii) was made in the ordinary course of business; or

(b) that the director had reasonable grounds to believe that the payment

(i) occurred at a time when the corporation was not insolvent or would not render the corporation insolvent,

(ii) was not conspicuously over the fair market value of the consideration received by the corporation, or

(iii) was made in the ordinary course of business.

Onus of proof – shareholder

(6) For the purposes of subsection (2.2), the onus of proving that the corporation was not insolvent at the time the transaction occurred and that the transaction did not render the corporation insolvent lies on the shareholder.

R.S., 1985, c. B-3, s. 101; 1997, c. 12, s. 82; 2004, c. 25, s. 61(E); 2019, c. 29, s. 135.

Application of sections 95 to 101

101.1 (1) Sections 95 to 101 apply, with any modifications that the circumstances require, to a proposal made under Division I of Part III unless the proposal provides otherwise.

Interpretation

(2) For the purposes of subsection (1), a reference in sections 95 to 101

(a) to “date of the bankruptcy” is to be read as a reference to “day on which a notice of intention is filed” or, if a notice of intention is not filed, as a reference to “day on which a proposal is filed”; and

(b) to “bankrupt”, “insolvent person” or “debtor” is to be read as a reference to “debtor in respect of whom the proposal is filed”.

Application of sections 95 to 101 if proposal annulled

(3) If the proposal is annulled by the court under subsection 63(1) or as a result of a bankruptcy order or assignment, sections 95 to 101 apply as though the debtor became bankrupt on the date of the initial bankruptcy event.

1992, c. 27, s. 42; 2007, c. 36, s. 44.

101.2 [Repealed, 2007, c. 36, s. 44]

TAB 5



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Court File No. 2025 01G 0491

THE SUPREME COURT OF NEWFOUNDLAND AND LABRADOR
GENERAL DIVISION, IN BANKRUPTCY AND INSOLVENCY

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 AND ARRANGEMENT OF
KARWOOD CONTRACTING LTD., KARWOOD ONTARIO LTD., KARWOOD ENGINEERING INC., AND
KARWOOD DESIGN GROUP LTD.

SEVENTH REPORT OF THE MONITOR

September 29, 2025

will fund the bankruptcy administration of Karwood Contracting with the balance available for distribution to estate creditors.

43. The Monitor provides the Court the following information pertaining to the Applicants' mechanic's lien claims, priority claims, and secured claims:
- a. mechanic's lien claims by Residential Property pursuant to title searches conducted by the Monitor on September 26, 2025, are summarized in the following table:

Residential Property	Holdback Funds in Trust	Kent Liens	Newcrete Liens	Quick Shot Liens	Total Lien Claims
55 Silver Birch	\$ 6,518	\$ -	\$ 6,518	\$ -	\$ 6,518
59 Silver Birch	39,730	-	6,518	13,800	20,318
61 Silver Birch	39,557	41,709	8,941	-	50,650
63 Silver Birch	38,594	35,762	8,941	-	44,703
70 Silver Birch	29,089	-	-	-	-
41 Yellow Wood	45,379	63,501	-	-	63,501
	<u>\$ 198,867</u>	<u>\$ 140,972</u>	<u>\$ 30,918</u>	<u>\$ 13,800</u>	<u>\$ 185,691</u>

The Monitor clarifies that all mechanic's lien claims are pre-filing claims. Further, the mechanic's lien claim filed by Newcrete Investments Limited Partnership ("Newcrete") against i) 55 Silver Birch and 59 Silver Birch for \$6,518; and ii) 61 Silver Birch and 63 Silver Birch \$8,941, are single claims filed against Residential Properties within the same multiplex, as confirmed by Newcrete's counsel.

- b. pre-filing priority claims of the Applicants include CRA deemed trust claims for source deductions and HST; and
- c. pre-filing secured claims of the Applicants include:
 - i. Boreal Atlantic Ltd., a mortgage lender with security over the 1.8 acre land parcel on Kenmount Rd., Paradise, NL;
 - ii. Tammy and Randy Oram (the former, a director of the Companies), holding a subordinated mortgage with security over 61 and 63 Silver Birch;
 - iii. Libro, a mortgage lender with security over the Exempt Property pursuant to the ARIO; and
 - iv. Ford Credit Canada Company and the Royal Bank of Canada, each with Purchase Money Security Interest (PMSI) related to vehicle financing, liabilities being assumed by Newco.

TAB 6



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Court File No. 2025 01G 0491

**THE SUPREME COURT OF NEWFOUNDLAND AND LABRADOR
GENERAL DIVISION, IN BANKRUPTCY AND INSOLVENCY**

**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 AND ARRANGEMENT OF
KARWOOD CONTRACTING LTD., KARWOOD ONTARIO LTD., KARWOOD ENGINEERING INC., AND
KARWOOD DESIGN GROUP LTD.**

SUPPLEMENT TO THE SEVENTH REPORT OF THE MONITOR

October 23, 2025

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- Appendix B - Appraisal of Park Avenue dated December 18, 2023
- Appendix C - Moskowitz Capital Mortgage Amendment dated April 22, 2024
- Appendix D - Canadian West Trust Mortgage Amendment dated July 8, 2024

agreement Karwood Contracting executed with Patrick Street; ii) costs including debt service costs, and associated risk of construction completion; and iii) the cost of realization such as real estate commissions; the net benefit to the Applicants or the Private Investor is not expected to be substantial.

6. Paragraphs 14 through 16 of the Kent Submission discusses the request for the Monitor to investigate a potential Transfer at Undervalue of a 1.3-acre land parcel located at 166 Park Avenue, Mount Pearl, NL (“**Park Avenue**”). With respect to said transfer, the Monitor understands the following:
 - a. Karwood Contracting transferred Park Avenue to 77592 Newfoundland and Labrador Inc., a related party understood to be controlled by Mr. Hussey, for \$1.00 on September 12, 2024. A copy of the transfer indenture transferring Park Avenue is attached hereto as **Appendix “A”**;
 - b. on December 18, 2023, Appraisal Associates Limited appraised Park Avenue at \$6.8 million as if the development was complete and estimated the value of the land to be \$800,000. According to the Applicants, the development of Park Avenue had yet to commence at the date of transfer on September 12, 2024. A copy of the Park Avenue appraisal is attached hereto as **Appendix “B”**;
 - c. on April 22, 2024, a mortgage amendment was executed by Moskowitz Capital Mortgage Fund II Inc. with respect to a mortgage dated November 21, 2023 and registered in the Registry of Deeds as registration number 1098210 (the “**Moskowitz Mortgage Amendment**”). At the time of the Moskowitz Mortgage Amendment, the secured mortgage was in the amount of \$450,000. A copy of the Moskowitz Mortgage Amendment is attached hereto as **Appendix “C”**. The Monitor understands payment terms for the mortgage are interest only, and the principal balance remains at approximately \$450,000; and
 - d. on July 8, 2024, a mortgage amendment was executed by Canadian Western Trust Company with respect to a mortgage dated April 25, 2024 and registered in the Registry of Deeds as registration number 111675 (the “**CWT Mortgage Amendment**”). At the time of the CWT Mortgage Amendment, the secured mortgage was in the amount of \$235,000. A copy of the CWT Mortgage Amendment is attached hereto as **Appendix “D”**. The Monitor understands the current balance of the mortgage is approximately \$246,000, including accrued interest to October 15, 2025.
7. Assuming the appraisal performed by Appraisal Associates Limited on December 18, 2023 is similar to current fair market value of Park Avenue, its value exceeds the secured mortgage debt outstanding against the land parcel by approximately \$104,000. However, after considering the

costs to attack the transaction transferring Park Avenue and potential the costs of realization, the benefit to the Companies estate would likely be less.

8. The Applicants do not currently have the financial resources to fund the Monitor to take action against the transaction transferring Park Avenue pursuant to subsection 36.1(1) of the CCAA. The Monitor does note that subsection 36.1(1) also provides Kent Building Supplies or other creditors of the Applicants with the ability to obtain an order from this Court authorizing it to take the proceeding in its own name and at its own expense and risk.

All of which is submitted to this Court on this 23rd day of October 2025.

BDO CANADA LIMITED
Acting in its capacity as Monitor of
Karwood Contracting Ltd., Karwood Ontario Ltd.,
Karwood Engineering Inc., and Karwood Design Group Ltd.
and not in its personal capacity.

Per:



Neil Jones, CA, CPA, CIRP, LIT
Senior Vice-President

TAB 7

Bankruptcy and Insolvency Law of Canada, 4th Edition Appendix B § B:14

Bankruptcy and Insolvency Law of Canada, 4th Edition

The Honourable Mr. Justice Lloyd W. Houlden, Mr. Justice Geoffrey B. Morawetz, Dr. Janis P. Sarra

Appendices

Appendix B. Precedents

§ B:14. No. 14 Order Authorizing Creditor to Take Proceedings

(Section 38)

(TITLE) (FORM 1)

UPON the application of A.B. a creditor of the above named bankrupt, upon reading the affidavit of C.D., trustee, filed, and upon hearing counsel for the applicant, and for the trustee, and it appearing that the said creditor has requested the trustee to take proceedings to set aside a certain conveyance by the bankrupt to his wife, and the said trustee under the direction of the inspectors has refused by reason of lack of funds in the bankrupt estate to take such proceedings.

1. IT IS ORDERED that the applicant may and it is hereby authorized to commence and prosecute proceedings in its own name and at its own expense and risk, for the purpose of setting aside a certain conveyance made by the bankrupt herein to his wife of the property known as 16 Black Street, in the City of Toronto.
2. AND IT IS FURTHER ORDERED that notice of the granting of this order upon the other creditors of the said bankrupt shall be deemed to be sufficiently served by mailing the said notice in a prepaid addressed envelope by registered mail to each of the said creditors who have proved claims against the bankrupt estate at their place of business or address as shown in the bankrupt's statement of affairs filed.
3. AND IT IS FURTHER ORDERED that service of notice granting this order shall be deemed to be made on the day following the date on which the same is mailed as aforesaid.
4. AND IT IS FURTHER ORDERED that all benefits to be derived from the proceedings authorized by this order together with the costs of same, shall belong exclusively to the applicant, and to such other creditors of the said bankrupt who may within seven days of the service upon them of the notice of the granting of this order as hereinafter provided, agree to contribute *pro rata* according to the amount of their respective claims to the expense and risk of such proceedings, and who within the like time in writing directed to E.F., solicitors for the applicant herein, signify their agreement.
5. AND IT IS FURTHER ORDERED that the costs of the applicant and of such others as may join with it in the said proceedings shall be paid, and after paying the said costs, the balance, if any, shall be divided between the said applicant and any creditors who may contribute under paragraph 4 hereof *pro rata* according to the respective amounts of their claims in addition to any dividends that they may be entitled to out of the said bankrupt's other assets but only to the extent of their said claims.
6. AND IT IS FURTHER ORDERED that in case there be a surplus after paying the applicant its said claim and costs and the costs of the bankruptcy proceedings herein and the claims of such other parties, if any, entitled to participate, according to the priority of the same respectively as determined by paragraph 5 hereof, such surplus shall be paid to the trustee in augmentation of the said bankrupt's estate.

7. AND IT IS FURTHER ORDERED that if any creditor or creditors shall fail to join in the said agreement provided for in paragraph 4 within the time hereby limited, they shall be thereafter excluded from participating in the benefits to be derived from the said proceedings.

8. AND IT IS FURTHER ORDERED that the trustee shall provide the applicant within four days of service of this order upon him with a list of the names and addresses of all creditors who have proven claims against the said estate.

9. AND IT IS FURTHER ORDERED that the trustee shall within four days of service of this order upon him, execute an assignment assigning all his right, title and interest in the subject matter of the proceedings and shall transfer and make available, all books and documents in support thereof or relevant thereto and that such assignment shall vest in A.B. and such other creditors as may join in these proceedings all the right, title and interest which the said trustee has, had or shall have in the subject matter of the proceedings by virtue of his office as trustee.

Registrar.

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