

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*,
R.S.C. 1985, c. C-25, AS AMENDED

AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF
FIRE & FLOWER HOLDINGS CORP., FIRE & FLOWER INC., 13318184 CANADA INC.,
11180703 CANADA INC., 10926671 CANADA LTD., FRIENDLY STRANGER HOLDINGS
CORP., PINEAPPLE EXPRESS DELIVERY INC., and HIFYRE INC.

Applicants

**STATEMENT OF LAW OF GREEN ACRE CAPITAL FUND II (CANADA) INC.
(DIP Financing Approval)**

PART I – NATURE OF THE MOTION

1. This statement of law is filed in connection with the cross-motion brought by Green Acre Capital Fund II (Canada) Inc. (“**Green Acre**”) for an order approving a debtor-in-possession loan facility replacing the existing DIP loan facility agreement among the Applicants and ACT Investor (each term as defined in the Affidavit of Shawn Dym sworn June 19, 2023).

PART II – THE LAW

2. Section 11.2 of the *Companies' Creditors Arrangement Act*, R.S.C. 1985, C. C-36 (“**CCAA**”) provides as follows:

Interim financing

11.2 (1) On application by a debtor company and on notice to the secured creditors who are likely to be affected by the security or charge, a court may make an order declaring that all or part of the company's property is subject to a security or charge — in an amount that the court considers appropriate — in favour of a person specified in the order who agrees to lend to the company an amount approved by the court as being required by the company, having regard to its cash-flow statement. The security or charge may not secure an obligation that exists before the order is made.

...

Factors to be considered

(4) In deciding whether to make an order, the court is to consider, among other things,

(a) the period during which the company is expected to be subject to proceedings under this Act;

(b) how the company's business and financial affairs are to be managed during the proceedings;

(c) whether the company's management has the confidence of its major creditors;

(d) whether the loan would enhance the prospects of a viable compromise or arrangement being made in respect of the company;

(e) the nature and value of the company's property;

(f) whether any creditor would be materially prejudiced as a result of the security or charge; and

(g) the monitor's report referred to in paragraph 23(1)(b), if any.

3. The Court in *Great Basin Gold Ltd. Re*¹ held that while the factors set out in section 11.2(4) of the CCAA are more usually addressed in the context of whether a particular interim financing proposal will be approved, these factors are "equally applicable in deciding *who* shall be the DIP lender and on what terms the DIP financing is to be provided."² The Court further held as follows:³

The factors set out in this subsection do not represent the entirety of the factors that may be considered by a judge on this issue - the subsection specifically refers to "among other things". There may, of course, be further factors beyond those enumerated in s. 11.2(4), [...] which are relevant and will be considered by the court in the exercise of its discretion under this section.

¹ [Great Basin Gold Ltd. \(Re\), 2012 BCSC 1459.](#)

² [Great Basin Gold Ltd. \(Re\), 2012 BCSC 1459](#) at para 14.

³ [Great Basin Gold Ltd. \(Re\), 2012 BCSC 1459](#) at para 14.

4. Section 11 of the CCAA provides as follows:

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.

5. The CCAA affords courts broad jurisdiction to make orders and “fill in the gaps in legislation so as to give effect to the objects of the CCAA”.⁴
6. In *Quest University Canada (Re)*, in determining whether competing DIP loan proposals would enhance the prospects of a viable compromise or arrangement, the Court considered the competing parties’ true interests and motivation behind the financing proposal.⁵ The Court ultimately found in favour of a financing proposal that would leave open the possibility of a plan of compromise or arrangement and held as follows:⁶

It is simply too early to set this restructuring on a path – through the SISP and its strict deadlines – that would likely foreclose other possible solutions that may better serve Quest’s stakeholders and be acceptable to them and the Court through the [CCAA](#) process.

[...]

I agree with Quest that, at this time, a SISP would be antithetical to the purposes and objectives of the [CCAA](#) which is intended to afford financially troubled companies with the breathing room to address, within appropriate constraints, its financial difficulties as opposed to sending the company into liquidation of its assets, no doubt having significant negative impacts on many stakeholders [...].

⁴ *Re Canadian Red Cross Society*, 1998 CanLII 14907 (ON SC) at para 43.

⁵ *Quest University Canada (Re)*, 2020 BCSC 318 at paras 85-86, 99.

⁶ *Quest University Canada (Re)*, 2020 BCSC 318 at paras 104-109.

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Court File No.: CV-23-00700581-00CL

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Proceeding commenced at TORONTO

**STATEMENT OF LAW OF GREEN ACRE
CAPITAL FUND II (CANADA) INC
(returnable June 19, 2023)**

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