

ONTARIO

SUPERIOR COURT OF JUSTICE

COMMERCIAL LIST

THE HONOURABLE MR.)

TUESDAY, THE 9th DAY

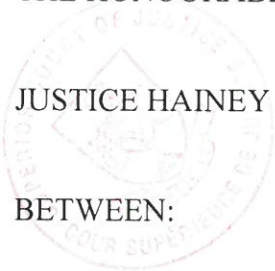
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JUSTICE HAINEY)

OF NOVEMBER, 2016

)

BETWEEN:



JCF CAPITAL ULC

Applicant

and

TALON INTERNATIONAL INC., MIDLAND DEVELOPMENT INC., 1456253 ONTARIO INC., 2025401 ONTARIO LIMITED, BARREL TOWER HOLDINGS INC., HARVESTER DEVELOPMENTS INC., TALON INTERNATIONAL DEVELOPMENT INC., TFB INC., 2263847 ONTARIO LIMITED AND 2270039 ONTARIO LIMITED

Respondents

APPLICATION UNDER SECTION 101 OF THE *COURTS OF JUSTICE ACT*, R.S.O. 1990, C. C.43, AS AMENDED, AND SECTION 243 OF THE *BANKRUPTCY AND INSOLVENCY ACT*, R.S.C. 1985, C. B-3 AS AMENDED

ORDER

(Appointing Representative Counsel)

THIS APPLICATION made by JCF Capital ULC (the “**Secured Creditor**”) for an Order pursuant to section 243(1) of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended (the “**BIA**”) and section 101 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43, as amended (the “**CJA**”), *inter alia*, appointing Chaitons LLP (“**Chaitons**”) as representative

counsel to represent the interests of owners of residential units and hotel units (collectively, the “**Unit Owners**”) in the condominium residence and hotel branded as the Trump International Hotel & Tower and Trump Residences located at 311 and 325 Bay Street, Toronto, Ontario (the “**Project**”), was heard this day at 330 University Avenue, Toronto, Ontario.

ON READING the affidavit of Jay Wolf sworn October 25, 2016 and the Exhibits thereto and on hearing the submissions of counsel for the Secured Creditor, Chaitons and the counsel on the counsel slip, attached, no one else appearing, although duly served as appears from the affidavits of service, filed, of Nancy Thompson, sworn October 26, 2016, Sabrina Winters, sworn October 26, 2016, Tim Lenehan, sworn October 26, 2016, Norman Ng, sworn October 27, 2016 and Kelly Peters, sworn October 28, 2016, and from the acceptances of service of counsel, filed, of Steven Rukavina dated October 25, 2016 and Marc Senderowitz dated October 25, 2016,

SERVICE

1. **THIS COURT ORDERS** that the time for service of the Notice of Application and the Application is hereby abridged and validated so that this application is properly returnable today and hereby dispenses with further service thereof.

APPOINTMENT OF REPRESENTATIVE COUNSEL

2. **THIS COURT ORDERS** that, subject to Paragraph 7 hereof, Chaitons LLP is hereby appointed as counsel (“**Representative Counsel**”) for all Unit Owners regarding common issues of the Unit Owners in respect of these receivership proceedings, unless and until written notice is provided by a particular Unit Owner to Representative Counsel that such Unit Owner does not wish to be represented by Representative Counsel. For greater certainty and without limitation, Representative Counsel shall not be charged with the responsibility of dealing with any individual Unit Owner’s purchase of or agreement to purchase a unit or units in the Project, or any individual dispute relating to same.

3. **THIS COURT ORDERS** that FTI Consulting Canada Ltd., in its capacity as Court appointed receiver of certain of the assets of the Respondents (in such capacity, the “**Receiver**”)

shall provide to Representative Counsel, without charge, the following information, documents and data as may be in the Receivers' possession or control (the "**Information**"):

- (a) The names, last known addresses and last known email addresses (if any) of the Unit Owners (the "**Unit Owner Information**"), as the same are provided to the Receiver by Toronto Standard Condominium Corporation No. 2267 and Toronto Standard Condominium Corporation No. 2279 (collectively, the "**Condominium Corporations**"); and
- (b) Such additional documents and information as may be specifically requested in writing by Representative Counsel and which the Receiver determines are relevant to the Unit Owners' participation in these receivership proceedings, or as ordered by the Court,

and that, in so doing, the Receiver is not required to obtain express consent from any Unit Owner or other Person authorizing disclosure of the Information to Representative Counsel, and this Order shall be sufficient to authorize the disclosure of the Information without knowledge or consent of the individual Unit Owners or other Person.

4. **THIS COURT ORDERS** that all reasonable professional fees and disbursements that may be incurred by Representative Counsel at its standard rates and charges, whether incurred prior to or after the date of this Order, not to exceed \$100,000 in the aggregate, shall be paid from the retainer paid by the Secured Creditor to Representative Counsel and, for greater certainty, such amount will form part of the indebtedness owing by the Respondents to the Secured Creditor, and in the event of any disagreement regarding such fees and disbursements, such disagreement may be remitted to this Court for determination.

5. **THIS COURT ORDERS** that Representative Counsel is hereby authorized to take all steps and do all acts necessary or desirable to carry out the terms of this Order.

6. **THIS COURT ORDERS** that notice of the granting of this Order, substantially in the form attached hereto as **Schedule "A"**, shall be sent by Representative Counsel to each Unit Owner by electronic or regular mail, to addresses provided pursuant to Paragraph 3(a), within


two business days of the date of receipt by Representative Counsel of the Unit Owner Information.

7. **THIS COURT ORDERS** that any Unit Owner who does not wish to be represented by Representative Counsel in these proceedings shall notify the Receiver and Representative Counsel, in writing, that he, she or it is opting out of representation by delivering a notice by electronic or regular mail substantially in the form attached as **Schedule "B"** hereto (an "**Opt-out Notice**"), and shall thereafter not be bound by the actions of Representative Counsel and shall represent himself, herself or itself or be represented by any counsel that he, she or it may retain exclusively at his, her or its own expense, and Representative Counsel shall owe no duty to such Unit Owners who have opted out.¹

8. **THIS COURT ORDERS** that Representative Counsel may appoint, in its sole discretion, a committee of up to five (5) Unit Owners and/or agents or authorized representatives acting on their behalf (the "**Ad Hoc Committee**") to represent the interests of all of the Unit Owners subject to this Order, and Representative Counsel shall be entitled to consult with and seek advice from the Ad Hoc Committee in connection with the fulfillment of its duties in carrying out the provisions of this Order.

9. **THIS COURT ORDERS** that any member of the Ad Hoc Committee may resign or be replaced by Representative Counsel as a member of the Ad Hoc Committee at any time and that, in the event of resignation, Representative Counsel may appoint another Unit Owner to the Ad Hoc Committee.

10. **THIS COURT ORDERS** that Representative Counsel and Shibley Righton LLP, legal counsel to certain Unit Owners ("**Shibley**"), shall consult with respect to all decisions made or positions taken by Representative Counsel in the course of its mandate as Representative Counsel, and Shibley shall be entitled to attend and make submissions at the hearing of any motions in these proceedings on behalf of any Unit Owner or Unit Owners that have retained Shibley as counsel. Nothing in this Paragraph shall limit Representative Counsel's sole


¹ ~~Unit Owners Se Na Lee, Gitaben Patel, Rajanikant Patel, Syed W. Zaidi and Bente E. Zehra shall be deemed for all purposes to have opted out of representation pursuant to Paragraph 7 hereof, without any further action or notice being required from any of them.~~

discretion to take any position with respect to its mandate on behalf of Unit Owners that have not delivered an Opt-out Notice.


11. **THIS COURT ORDERS** that all reasonable professional fees and disbursements that may be incurred by Shibley in connection with undertaking the activities in Paragraph 10, at its standard rates and charges, incurred after the date of this Order, not to exceed \$50,000 in the aggregate, shall be paid from any retainer paid by the Secured Creditor to Shibley and, for greater certainty, such amount will form part of the indebtedness owing by the Respondents to the Secured Creditor, and in the event of any disagreement regarding such fees and disbursements, such disagreement may be remitted to this Court for determination.

12. **THIS COURT ORDERS** that Representative Counsel shall have no liability as a result of their appointment or the performance of their duties or in carrying out the provisions of this Order and any subsequent Orders in these proceedings, save and except for any gross negligence or willful misconduct on their part.

13. **THIS COURT ORDERS** that Representative Counsel shall be at liberty and is authorized at any time to apply to this Court, on notice to the Receiver and the Secured Creditor, for advice and directions in the performance or variation of its powers and duties.

14. **THIS COURT ORDERS** that Representative Counsel shall be given notice of all motions in these proceedings, and that the giving of notice to Representative Counsel shall constitute service on all of the Unit Owners who have not opted out pursuant to Paragraph 7 hereof.

15. **THIS COURT HEREBY REQUESTS** the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or in the United States to give effect to this Order and to assist Representative 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 Representative Counsel, as an officer of this Court, as may be necessary or desirable to give effect to this Order or to assist Representative Counsel and its agents in carrying out the terms of this Order.



ENTERED AT / INSCRIT À TORONTO
ON / BOOK NO:
LE / DANS LE REGISTRE NO:

NOV 09 2016

PER / PAR: 

SCHEDULE "A"

By Order dated November 9, 2016 granted by the Ontario Superior Court of Justice in the receivership proceedings in respect of Talon International Inc., Midland Development Inc., 1456253 Ontario Inc., 2025401 Ontario Limited, Barrel Tower Holdings Inc., Harvester Developments Inc., Talon International Development Inc., TFB Inc., 2263847 Ontario Limited and 2270039 Ontario Limited, (collectively, the "**Debtors**") under the *Bankruptcy and Insolvency Act* and *Courts of Justice Act* (the "**Receivership Proceedings**"), Chaitons LLP was appointed as representative counsel ("**Representative Counsel**") for owners of hotel and residential units in the Trump International Hotel & Tower and Trump Residences (collectively, "**Unit Owners**"). A copy of the Order appointing Representative Counsel dated November 9, 2016 is attached.

The Debtors will be responsible for the reasonable legal fees incurred by Chaitons LLP as court-appointed counsel in carrying out its prescribed mandate in the Receivership Proceedings, up to a maximum amount of \$100,000, which shall be funded by the Secured Creditor to Representative Counsel and accounted for as a loan from the Applicant to the Debtors.

If you do not wish to be bound by this Order, you may opt-out of the group in accordance with paragraph 7 of the Order.

Unit Owners may in confidence directly contact Harvey Chaiton at Chaitons LLP, as set out below:

Harvey Chaiton
Chaitons LLP
5000 Yonge Street, 10th Floor
Toronto, ON M2N 7E9

E: Harvey@Chaitons.com
P: 416-218-1129

SCHEDULE "B"

TO: FTI Consulting Canada Inc.
Receiver of certain assets of Talon International Inc., et. al
TD Waterhouse Tower
79 Wellington Street West
Suite 2010, P.O. Box 104
Toronto, ON M5K 1G8

Attention: Toni Vanderlaan
Email: Toni.Vanderlaan@fticonsulting.com

AND: Chaitons LLP
TO: 5000 Yonge Street, 10th Floor
Toronto, ON M2N 7E9

Attention: Harvey Chaiton
Email: Harvey@chaitons.com

I, _____, am a Unit Owner as defined in the Order dated November 9, 2016.

Under Paragraph 7 of that Order, Unit Owners who do not wish Chaitons LLP to act as their representative counsel may opt out.

I hereby notify you that I do not wish to be bound by the Order and will be represented as an independent individual party at my own expense to the extent I wish to appear in these proceedings.

Date

Signature

APPLICATION UNDER SECTION 101 OF THE *COURTS OF JUSTICE ACT*, R.S.O. 1990, C. C.43, AS Court File No: CV-16-11573-00CL
AMENDED, AND SECTION 243 OF THE *BANKRUPTCY AND INSOLVENCY ACT*, R.S.C. 1985, C. B-3 AS

JCF CAPITAL ULC and Talon International Inc. et al.
Applicant Respondents

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

Proceeding Commenced at Toronto

ORDER
(Appointing Representative Counsel)

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Lawyers for the Applicant, JCF Capital ULC