

CV-16-11573-00CL  
Court File No.

ONTARIO  
SUPERIOR COURT OF JUSTICE  
(COMMERCIAL LIST)

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

**NOTICE OF APPLICATION**

**TO THE RESPONDENTS:**

**A LEGAL PROCEEDING HAS BEEN COMMENCED** by the applicant. The claim made by the applicant appears on the following pages.

**THIS APPLICATION** will come on for a hearing before a judge of the Commercial List on Tuesday, November 1, 2016 at 10:00 a.m., at 330 University Avenue, Toronto, Ontario.

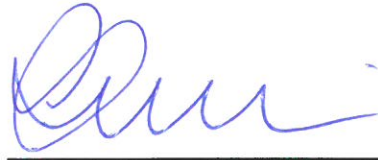
**IF YOU WISH TO OPPOSE THIS APPLICATION**, to receive notice of any step in the application or to be served with any documents in the application, you or an Ontario lawyer acting for you must forthwith prepare a notice of appearance in Form 38A prescribed by the Rules of Civil Procedure, serve it on the applicant's lawyer or, where the applicant does not have a lawyer, serve it on the applicant, and file it, with proof of service, in this court office, and you or your lawyer must appear at the hearing.

**IF YOU WISH TO PRESENT AFFIDAVIT OR OTHER DOCUMENTARY EVIDENCE TO THE COURT OR TO EXAMINE OR CROSS-EXAMINE WITNESSES ON THE APPLICATION**, you or your lawyer must, in addition to serving your notice of appearance, serve a copy of the evidence on the applicant's lawyer or, where the applicant does not have a lawyer, serve it on the applicant, and file it, with proof of service, in the court office where the application is to be heard as soon as possible, but not later than 2 days before the hearing.

**IF YOU FAIL TO APPEAR AT THE HEARING, JUDGMENT MAY BE GIVEN IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU. IF YOU WISH TO OPPOSE THIS APPLICATION BUT ARE UNABLE TO PAY LEGAL FEES, LEGAL AID MAY BE AVAILABLE TO YOU BY CONTACTING A LOCAL LEGAL AID OFFICE.**

Date: October 25, 2016

Issued by



Local registrar **C. Irwin**  
Registrar

*Address of the Court Office:*  
Commercial List Office  
330 University Avenue, 7<sup>th</sup> floor ←  
Toronto, Ontario  
M5G 1R7 ←

**TO:**

<p><b>TALON INTERNATIONAL INC.</b> c/o WeirFoulds LLP 4100 – 66 Wellington St. W. P.O. Box 35, TD Bank Tower Toronto, ON M5K 1B7</p> <p>Attention: Steven Rukavina Fax: 416-365-1876 Email: rukavina@weirfoulds.com</p>	<p><b>MIDLAND DEVELOPMENT INC.</b> c/o WeirFoulds LLP 4100 – 66 Wellington St. W. P.O. Box 35, TD Bank Tower Toronto, ON M5K 1B7</p> <p>Attention: Steven Rukavina Fax: 416-365-1876 Email: rukavina@weirfoulds.com</p>
<p><b>BARREL TOWER HOLDINGS INC.</b> c/o Wisebrod/Zeliger Associates 245 Fairview Mall Drive, Suite 510 Toronto, ON M2J 4T1</p> <p>Attention: Marc Senderowitz Fax: 416-496-1708 Email: msenderowitz@wza.ca</p>	<p><b>HARVESTER DEVELOPMENTS INC.</b> c/o Wisebrod/Zeliger Associates 245 Fairview Mall Drive, Suite 510 Toronto, ON M2J 4T1</p> <p>Attention: Marc Senderowitz Fax: 416-496-1708 Email: msenderowitz@wza.ca</p>

<p><b>2025401 ONTARIO LIMITED</b>  119 Glen Park Avenue  Toronto, ON M4W 1V1</p> <p>Attention: Gary Posner  Fax: 416-221-9144  Fax: 416-961-4023  Email: gposner_ca@yahoo.com</p>	<p><b>1456253 ONTARIO INC.</b>  181 Whitehall Drive  Markham, ON L3R 9T1</p> <p>Attention: Val Levitan  Fax: 905-496-1708  Email: val@levitan.me</p>
<p><b>TALON INTERNATIONAL DEVELOPMENT INC.</b>  c/o WeirFoulds LLP  4100 – 66 Wellington St. W.  P.O. Box 35, TD Bank Tower  Toronto, ON M5K 1B7</p> <p>Attention: Steven Rukavina  Fax: 416-365-1876  Email: <a href="mailto:rukavina@weirfoulds.com">rukavina@weirfoulds.com</a></p>	<p><b>TFB INC.</b>  c/o WeirFoulds LLP  4100 – 66 Wellington St. W.  P.O. Box 35, TD Bank Tower  Toronto, ON M5K 1B7</p> <p>Attention: Steven Rukavina  Fax: 416-365-1876  Email: <a href="mailto:rukavina@weirfoulds.com">rukavina@weirfoulds.com</a></p>
<p><b>2270039 ONTARIO LIMITED</b>  c/o WeirFoulds LLP  4100 – 66 Wellington St. W.  P.O. Box 35, TD Bank Tower  Toronto, ON M5K 1B7</p> <p>Attention: Steven Rukavina  Fax: 416-365-1876  Email: <a href="mailto:rukavina@weirfoulds.com">rukavina@weirfoulds.com</a></p>	<p><b>2263847 ONTARIO LIMITED</b>  c/o WeirFoulds LLP  4100 – 66 Wellington St. W.  P.O. Box 35, TD Bank Tower  Toronto, ON M5K 1B7</p> <p>Attention: Steven Rukavina  Fax: 416-365-1876  Email: <a href="mailto:rukavina@weirfoulds.com">rukavina@weirfoulds.com</a></p>

## Application

1. The Applicant, JCF Capital ULC (“**JCF**” or the “**Lender**”), makes an application for two Orders, each substantially in the form to be filed. The first Order (the “**Appointment Order**”) seeks orders, *inter alia*:

- (a) abridging the time for service of the Notice of Application and the Application Record, and dispensing with further service thereof;
- (b) appointing FTI Consulting Canada Inc. (“**FTI**”) as receiver (in such capacity, the “**Receiver**”), without security, of the assets, undertakings, properties and legal and beneficial ownership interests of Talon International Inc. (“**Talon**”), Midland Development Inc. (“**MDI**”), 1456253 Ontario Inc. (“**1456253**”), 2025401 Ontario Limited (“**2025401**”), Barrel Tower Holdings Inc. (“**Barrel**”), Harvester Developments Inc. (“**Harvester**”), TFB Inc. (“**TFB**”), 2263847 Ontario Limited (“**2263847**”), Talon International Development Inc. (“**Talon Development**”), and 2270039 Ontario Limited (“**2270039**”) (collectively, the “**Respondents**”) comprising, acquired for, or used in relation to the condominium residence and hotel branded as the Trump International Hotel & Tower (the “**Hotel**”) and Trump Residences (the “**Residence**”) located at 311 and 325 Bay Street, Toronto, Ontario, including those assets, undertakings, and properties described in Schedule “A” to the proposed Appointment Order, to be filed, and any interest held by Harvester to which the Crown may have rights, but excluding cash and accounts receivable of any Respondent (the “**Property**”) pursuant to section 101 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43, as amended (the “**CJA**”), and

section 243 of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended (the “**BIA**”);

- (c) granting a stay of proceedings in respect of any Respondent in connection with or related to the Property or the “**Units**” (as defined in the Appointment Order), which shall not be commenced or continued except with the written consent of the Receiver or with leave of this Court;
- (d) granting a charge over the Property in favour of the Receiver and counsel to the Receiver to secure their fees and disbursements in respect of these proceedings on the terms as set out in the proposed Appointment Order (the “**Administration Charge**”);
- (e) granting a charge over the Property for the purpose of funding the exercise of the powers and duties conferred upon the Receiver by the Appointment Order, including its fees and disbursements, and the fees and disbursements of its counsel and any Consultant (as defined in the Appointment Order) (the “**Receiver’s Borrowings Charge**”); and
- (f) such further and other relief as counsel may request and this Honourable Court may permit.

The second Order seeks orders, *inter alia*:

- (g) appointing Chaitons LLP (“**Chaitons**”) as representative counsel for owners (other than Talon and TFB) of hotel guestroom-type condominium units in the

Hotel (“**Hotel Unit Owners**”) or luxury residential condominium units in the Residence (“**Residential Unit Owners**”, together with the Hotel Unit Owners, the “**Unit Owners**”);

- (h) requiring the Receiver to disclose to Chaitons certain contact information as provided to the Receiver regarding the Unit Owners;
- (i) limiting the fees and disbursements of Chaitons in its capacity as representative counsel to \$100,000; and
- (j) such further and other relief as counsel may request and this Honourable Court may permit.

**THE GROUNDS FOR THE APPLICATION ARE:**

**The Project**

- (a) Talon was originally the registered owner of the lands, now municipally known as 311 and 325 Bay Street, Toronto, Ontario, on which was developed and constructed the sixty-five storey five-star luxury Hotel and Residence (collectively, the “**Project**”). The Respondents Talon and TFB are now the registered owner of condominium units in the Hotel and the Residence on such lands;
- (b) The condominium units in the Hotel and the Residence were created upon the registration of two separate condominiums, and marketed and sold to the public as

hotel guestroom-type condominium units (“**Hotel Units**”) or luxury residential condominium units (“**Residential Units**”);

- (c) 50 of the 261 Hotel Units and 44 of the 118 Residential Units have been sold to the Unit Owners. The remaining 211 unsold Hotel Units and 74 unsold Residential Units, as well as certain parking units, are condominium units owned by Talon. Certain commercial, retail, and amenity spaces in the Hotel and Residence, as well as 10 parking units, are condominium units owned by TFB;
- (d) Talon and TFB are nominees and bare trustees for the current beneficial owners of the Project, being MDI, 1456253, 2025401, Barrel and Harvester (collectively, the “**Beneficial Owners**”). The Beneficial Owners are also the sole shareholders of Talon. MDI holds the largest proportionate share of the Project, at 68.5%, and a corresponding proportionate share of Talon. Beneficial Owner Harvester has been administratively dissolved;
- (e) MDI, the majority Beneficial Owner, does not oppose the granting of the Appointment Order;

#### **Project Finance and Senior Indebtedness**

- (f) To finance construction of the Project, Raiffeisen Bank International AG (as successor to Raiffeisen Zentralbank Österreich Aktiengesellschaft) (the “**Bank**”) provided first priority secured credit facilities to Talon (as nominee) and the Beneficial Owners (collectively, the “**Borrowers**”) pursuant to a credit agreement

dated October 9, 2007 (as amended, the “**Credit Agreement**”) with an original aggregate commitment amount of up to \$310.5 million;

- (g) All of the obligations of the Borrowers under the Credit Agreement are secured by comprehensive grants of collateral security on the Project and ancillary assets by the Borrowers in favor of Computershare Trust Company of Canada, as agent for and on behalf of the lenders under the Credit Agreement (in such capacity, the “**Agent**”);
- (h) The Borrowers’ obligations to the Bank under the Credit Agreement and Loan Documents (as defined in the Credit Agreement) are guaranteed by the Respondents Talon Development, TFB, 2263847, and 2270039 (collectively, the “**Guarantors**”). Each guarantee is secured by grants of security in favour of the Agent, for and on behalf of the lenders under the Credit Agreement;
- (i) Since July 2, 2015, the Borrowers have been in continuous default under the Credit Agreement, including as a result of their failure to repay the loans under the Credit Agreement on the maturity date of December 31, 2015 (the “**Maturity Date**”);

#### **Acquisition of Senior Indebtedness and Security**

- (j) On September 29, 2016, JCF acquired the Bank’s right, title and interest in the Credit Agreement, the indebtedness thereunder in the aggregate amount of CAD \$301,021,425.39 (together with all interest, fees and expenses continuing to accrue thereafter, the “**Senior Indebtedness**”), the Loan Documents (as defined



in the Credit Agreement), including all guarantees and security securing the Senior Indebtedness and all related rights. This acquisition was effective as of October 3, 2016;

- (k) On October 4, 2016, the Agent issued a notice to the Borrowers and Guarantors, referencing the continuing events of default under the Credit Agreement, the failure to repay the Senior Indebtedness on the Maturity Date, and reserved all rights and remedies of the Lender in respect thereof;
- (l) On October 11, 2016, the Agent issued a demand to the Borrowers and Guarantors for and on behalf of the Lender for repayment of the Senior Indebtedness and sent to each Borrower and Guarantor a notice of intention to enforce security under section 244 of the BIA;
- (m) To date, despite notifications of default and reasonable notice to repay the Senior Indebtedness, the Respondents remain in default of their obligations under the Credit Agreement and the 10-day statutory notice period under the BIA has expired;

**Scope of Receivership**

- (n) The scope of the proposed Appointment Order is limited to the Property, which is comprised of those defined assets and undertakings of the Respondents directly related to the Project (other than cash and accounts receivable), and does not affect any other assets and undertakings of the Respondents, even if such assets are subject to the security held by the Agent for and on behalf of the Lender;

**Sale Process**

- (o) It is anticipated that the Receiver, if appointed, will seek Court approval for and, if approved, commence a sale process for the Property (the “**Sale Process**”);
- (p) The Lender intends to submit a bid for the Property in such Sale Process by way of a credit bid of the Senior Indebtedness;
- (q) It is imperative that the Receiver be appointed and the Sale Process be approved as expeditiously as possible;

**Funding of Receivership**

- (r) It is proposed that JCF will fund the professional costs of the receivership through the granting of loans to the Receiver, secured by the Receiver’s Borrowings Charge, which is anticipated to be sufficient to permit the Receiver to conduct the Sale Process;

**Ongoing Management of Project**

- (s) It is anticipated that day-to-day management of the Hotel and Residence will continue in the ordinary course of business during the proposed receivership, under the management of Trump Toronto Hotel Management Corp.;
- (t) Any need for financing of Hotel operations during the process, none of which is currently anticipated, will be addressed by the Receiver in due course, if necessary;

**Representative Counsel**

- (u) The Unit Owners have collectively invested approximately \$108,000,000 in units in the Hotel and Residence, and therefore, while not formally subject to these receivership proceedings, are a material economic stakeholder group in respect of both the Hotel and Residence;
- (v) The Unit Owners have an important interest in the day-to-day operations and the future of the Project, including in the identity of the party that owns the various facilities to which they have access. It is appropriate that the Unit Owners therefore should be represented in the proposed proceedings;

**The Proposed Receiver**

- (w) FTI is a licensed trustee, as defined in the BIA, with extensive experience in Canadian insolvency proceedings, including receiverships; and
- (x) The appointment of FTI as Receiver is just and convenient in the circumstances.

**Additional Grounds**

- (y) The grounds as more particularly set out in the Affidavit of Jay Wolf sworn October 25, 2016 (the “**Wolf Affidavit**”);
- (z) Section 243 of the BIA;
- (aa) Section 101 of the CJA;

- (bb) Rules 1.04, 2.03, 3.02, 16 and 38 of the *Rules of Civil Procedure*, R.R.O. 1990, Reg. 194, as amended; and
- (cc) Such further and other grounds as counsel may advise and this Honourable Court may permit.

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

- (a) the Wolf Affidavit, and the exhibits thereto; and,
- (b) such further and other materials as counsel may advise and this Honourable Court may permit.

October 25, 2016

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Lawyers for JCF Capital ULC

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

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

CV-16-11573-00CL  
Court File No.

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
(COMMERCIAL LIST)**

Proceeding commenced at Toronto

**NOTICE OF APPLICATION  
(Returnable November 1, 2016)**

**BLAKE, CASSELS & GRAYDON LLP**  
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