

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

B E T W E E N:

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**

**HEARD: NOVEMBER 9, 2016**

**Unofficial Transcription of Endorsement of Mr. Justice Hainey**

1. Mr. Wine has brought a Motion seeking the following orders:
  - (a) Appointing his law firm on counsel for the condominium owner of 1202, 1402 and 2305 in The Trump International Hotel and Tower and requiring JCF Capital, ULC to fund his firm's representations of these clients up to an amount of \$25,000; and
  - (b) Lifting the stay of proceedings in 19 civil actions that I ordered on November 1, 2016, where I appointed a Receiver of The Trump International Hotel and Tower.

**Appointment of Counsel**

2. At the request of the applicant and with the concurrence of all parties, I appointed Chaitons LLP as Representative Counsel for all Unit Owners regarding common issues in respect of these receivership proceedings today.
3. The applicant entered into an agreement within certain Unit Owners whereby it agreed that Shibley Righton LLP could consult with Representative Counsel with respect to all

decisions made or positions taken by Representative Counsel in the course of its mandate. The Applicant also agreed to fund Shibley Righton's legal fees for doing so up to a maximum of \$50,000.

4. At the request of all parties, I made an order today of this effect.
5. Mr. Wine represents the owners of three suites in Trump Tower in connection with litigations against Talon International Inc. He asks me to order the Applicant to enter into a similar agreement with him and his clients and to pay for his legal fees up to \$25,000.
6. I decline to make the order Mr. Wine seeks for the following reasons:
  - (a) I have appointed Chaitons LLP as Representative Counsel. I did not appoint Shibley Righton LLP as Representative Counsel. They are referred to in my Order today because they entered into an agreement with the Applicant. There is no legal basis for me to order the Applicant to enter into a similar agreement with Mr. Wine's firm.
  - (b) The purpose of appointing Representative Counsel is set out at paragraph 2 of my Order today. I am satisfied that Chaitons is able to provide legal advice to all Unit Owners with respect to these issues. This includes Mr. Wine's clients. I see no need for additional counsel to essentially duplicate Chaiton's role.
  - (c) I agree with Ms. Huff's submission that Mr. Wine's representation of these clients in respect of their claims against Talon may put Mr. Wine in a position of conflict in respect of the role of representative counsel.

### **Lifting the Stay**

7. Mr. Wine asks me to lift the stay provided for in my Order dated November 1, 2016, so that he can pursue claims against Talon on behalf of a number of his clients.
8. He relies upon a recent decision of the Ontario Counsel of Appeal in which his client, Sarbjit Singh, was successful in having his agreement of Purchase and Sale for his unit in Trump Tower rescinded. Mr. Wine submits that this was a test case that should ensure that all of the other plaintiffs' actions he wishes to pursue will succeed.
9. Mr. Zucker, who represents Talon, submits that there are many factual differences in the other cases Mr. Wine wishes to pursue and that Talon has applied for leave to appeal the Court of Appeal's decisions of The Supreme Counsel of Canada. Mr. Zucker argues that Mr. Wine's clients' rights to pursue their claims against Talon are merely being postponed for 4-5 months and there is therefore very little, if any, prejudice to them.
10. Ms. Huff submits that the stay should not be lifted now so that the Receiver has a "Period of Peace" in which to develop and implement a sales process for Trump Tower. She argues that the sales process that is contemplated will likely be completed early in 2017.
11. At paragraph 102 of his affidavit, Jay Wolf, explains why the stay is necessary to allow the sales process to proceed expeditiously. The outstanding litigations against Talon could interfere with the Receiver's sales process.

12. In deciding whether the stay should be lifted, I must balance the equities between the parties. The Receiver opposed the lifting of the stay because it needs some “Breathing Room” to attempt to complete a Court-supervised sales process. The clients who Mr. Wine represents want to get on with their claims against Talon. Their claims have been outstanding for many years.
13. Considering the positions of all parties, I am satisfied that the stay should not be lifted at this time. In my view, the prejudice and the Receiver’s ability to complete an orderly sales process outweighs the prejudice to Mr. Wine’s clients to delay the prosecutions of their claims for a few months. I therefore decline to lift the stay today. However, if the sales process is prolonged beyond four months, the parties should appear before me at a 9:30 a.m. appointment at which time I will consider whether the stay should be lifted with respect to Mr. Wine’s clients.
14. Under the circumstances, I make no order as to the costs of this Motion.

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**Hainey J.**