

ONTARIO
SUPERIOR COURT OF JUSTICE
(Commercial List)

IN THE MATTER OF THE *COMPANIES' CREDITORS
ARRANGEMENT ACT*, R.S.C. 1985, c. C-36, as amended

IN THE MATTER OF A PLAN OF COMPROMISE OR
ARRANGEMENT OF MICROFORUM INC.

AFFIDAVIT OF STEVEN SCHOFIELD
(Sworn April 9, 2002)

I, Steven Schofield, of the City of Toronto, in the Province of Ontario, MAKE OATH AND SAY AS FOLLOWS:

1. I am the President, Chief Executive Officer, and a member of the board of directors of Microforum Inc. ("**Microforum**" or the "**Company**") and as such I have personal knowledge of the matters that I attest to in this affidavit, except where same are stated to be on information and belief, in which case I believe such information to be true.

2. This affidavit is made in support of the Company's motion seeking the following: (1) court approval of an agreement the Company has entered into with its landlord at 150 Ferrand Drive, conditional upon Court approval; (2) approval of a proposed claims procedure; (3) an extension of the time within which to file a plan or plans of compromise or arrangement (hereinafter collectively referred to as the "**Plan**"); and (4) an extension of the Stay Period (as defined below) to July 31, 2002.

Background

3. Microforum commenced an application on January 29, 2002, for relief under the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the "**CCAA**"). By Order of the Court dated January 29, 2002, a copy of which is attached

hereto as Exhibit "A" (the "**Initial Order**"), Mr. Justice Spence ordered that Microforum is a company to which the CCAA applies, and ordered a general stay of proceedings as against Microforum until February 28, 2002 (the "**Stay Period**"). The Initial Order also ordered that Ernst & Young Inc. be appointed as the monitor for Microforum (the "**Monitor**").

4. By Order of the Court dated February 28, 2002, a copy of which is attached hereto as Exhibit "B", (the "**Second Order**"), the Court extended the Stay Period until May 6, 2002 and approved the First Report of the Monitor dated February 22, 2002.

5. By Order of the Court dated March 18, 2002, a copy of which is attached hereto as Exhibit "C", (the "**Third Order**"), the Court approved the sale of certain assets of the Company pursuant to an Asset Purchase Agreement dated March 1, 2002.

The Ferrand Lease

6. As described in the affidavit of Michel Beland sworn on January 29, 2002 and filed in support of the initial CCAA application made by Microforum, at the time the Initial Order was granted, the Company was in default with respect to its lease at 150 Ferrand Drive, Toronto, Ontario, the Company's principal place of business and corporate headquarters (the "**Ferrand Premises**"). By lease dated January 10, 2000, as amended, the Company entered into a 10-year lease agreement expiring on August 31, 2010 for 83,335 square feet of office space located at 150 Ferrand Drive (the "**Ferrand Lease**"). The Ferrand Lease requires the Company to make monthly payments of approximately \$190,559 (based on current additional rent) for years two and three of the lease, monthly rental payments of approximately \$197,504 for years four and five of the lease (based on current additional rent), and then monthly payments of approximately \$204,449 (based on current additional rent) for years six through ten of the lease.

7. As a result of considerable downsizing of its business operations, at the time of the initial CCAA application the Company was only using two of the five leased floors for its existing operations. The Company, with the assistance of Leonard Commercial Inc. and subsequently Colliers International Inc., had previously tried to sublease the excess space but was unsuccessful. At present, the Company is only using one floor and a small portion of a second floor for a telephone and computer room, comprising 20,000 square feet in total.

8. The Company has known since prior to making the initial CCAA application that in order to successfully restructure the Company or sell the Company, it was necessary to reach a suitable arrangement to restructure the Ferrand Lease in order to reduce the Company's obligations. The Company cannot afford to continue to pay its rent obligation, particularly in light of the amount of excess space and the decline in its business operations. As well, potential purchasers of the business are similarly concerned with the Company's inability to occupy the Ferrand Premises and make the payments required pursuant to the Ferrand Lease. Therefore, it had become apparent that without a restructuring of the Ferrand Lease, the Company's only other alternative was to make an assignment into bankruptcy for the benefit of its creditors.

9. As a result, the Company has prioritized a restructuring of the Company's lease arrangement with the landlord of the Ferrand Premises during the course of the CCAA proceeding, as it represents a key requirement to successfully restructure the Company. After the Initial Order was granted, I began discussions with the landlord to determine if a compromise arrangement could be reached. These discussions culminated in an agreement between Black Saxon II, as general partner for Black Saxon Limited Partnership II and 1422451 Ontario Inc. (collectively, the "**Ferrand Landlord**") and Microforum that was executed on April 3, 2002, conditional upon court approval (the "**Ferrand Agreement**"). A copy of the Ferrand Agreement is attached hereto as Exhibit "**D**".

10. The material terms of the Ferrand Agreement are: (1) the space leased by Microforum at 150 Ferrand Drive will be reduced from 83,335 square feet to 20,000 square feet, effective April 1, 2002 and Microforum has committed to leasing this reduced space until July 31, 2002 and thereafter on a month-to-month basis, terminable by either party on 30 days notice; (2) Microforum will forfeit its rental deposit in the amount of approximately \$110,000 and pay certain costs associated with the transaction worth approximately \$20,000; (3) provided Microforum fulfills all of its obligations under the Ferrand Agreement, the Ferrand Landlord releases Microforum from all claims for payment of rent for the premises surrendered under the Ferrand Agreement; (4) the Ferrand Landlord has agreed that any right it may have had to file a creditor claim under the Plan is extinguished and that it will not file a claim nor seek any entitlement to compensation pursuant to the Plan; and (5) the Ferrand Landlord will receive \$500,000 in cash and 1,000,000 common shares of Microforum, subject to regulatory approval and a 12-month resale restriction.

11. In addition to Court approval, the Ferrand Agreement is conditional upon the approval of the Microforum board of directors, which was granted on March 8, 2002, and confirmed on March 26, 2002 with minor amendments. As well, because the Ferrand Agreement has been negotiated and executed in advance of the formulation of the Plan, the Ferrand Landlord has been given the opportunity to review the Plan before it is submitted to the Court and to accept or reject the Plan. The Ferrand Landlord is required to approve the Plan if the Company's financial position as described in the Plan is not materially more favourable than the following:

- (a) the Company shall not pay greater than 50 cents cash for every one dollar of indebtedness of creditor claims that are compromised; and
- (b) the Company shall not have net working capital in excess of \$5 million as of April 1, 2002 prior to the payment of professional fees (estimated to be approximately \$850,000) relating to the CCAA proceeding and other payments to be made to creditors under the Plan.

In the event that the Ferrand Landlord does not approve the Plan, Microforum can terminate the Ferrand Agreement and the Company has the right to terminate the Ferrand Agreement at any time prior to the landlord accepting the Plan.

12. The Company is of the view that the Ferrand Agreement is in the best interest of all stakeholders because without the participation of the Ferrand Landlord there could be no Plan due to the enormity of the potential claim by the Ferrand Landlord in the absence of a bankruptcy. Without reaching a suitable agreement with the Ferrand Landlord, the Company's prospects for continuing to operate the business and/or selling the business were unlikely. Therefore, Microforum is asking the Court to approve the Ferrand Agreement as it is fair and reasonable and in the best interest of the stakeholders of Microforum and necessary for Microforum to continue with its restructuring process and formulation of a Plan for submission to the Court.

Extension of Stay of Proceedings

13. Since the issuance of the Third Order, and particularly since the Ferrand Agreement was concluded, Microforum and the Monitor have been working to develop the claims procedure for submission to the Court for approval. Microforum, with the assistance of the Monitor, has also been working to formulate a Plan that will be acceptable and fair to the creditors of Microforum. Microforum anticipates it will be in a position to submit a Plan to the Court on or before June 6, 2002 and is asking the Court to amend paragraph 3 of the Initial Order to reflect that timeline. In addition, Microforum is also seeking an extension of the Stay Period until July 31, 2002, at which time it will be anticipated that the Claims Procedure will have been successfully concluded and the Company will have sought Court approval for the Plan.

Claims Procedure

14. The Claims Procedure proposed by Microforum, developed in conjunction with the Monitor, is set out in detail in the Third Report of the Monitor and the exhibits thereto.

SWORN BEFORE ME

at the City of Toronto, in the
Province of Ontario
on April 9, 2002.

Commissioner for Taking Affidavits

STEVEN SCHOFIELD

IN THE MATTER OF THE COMPANIES' CREDITORS
ARRANGEMENT ACT, R.S.C. 1985, C.C-36

Court File No: 02-CL-4394

AND IN THE MATTER OF A PLAN OF COMPROMISE OR
ARRANGEMENT OF MICROFORUM INC.

**SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

Proceeding commenced at [Toronto](#)

**AFFIDAVIT OF STEVEN SCHOFIELD
(sworn April 9, 2002)**

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