

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

THE HONOURABLE MR. ) WEDNESDAY, THE 2<sup>nd</sup>  
 )  
JUSTICE CAVANAGH ) DAY OF MARCH, 2022

B E T W E E N

**BRYTON CAPITAL CORP. GP LTD. and BAYVIEW CREEK RESIDENCES INC.  
(formerly known as BRYTON CREEK RESIDENCES INC.)**

Applicants

and

**CIM BAYVIEW CREEK INC., GRANT THORNTON LIMITED IN ITS CAPACITY  
AS THE BANKRUPTCY TRUSTEE OF CIM BAYVIEW CREEK INC., BAYVIEW  
CREEK (CIM) LP, 10502715 CANADA INC., MNP LTD. IN ITS CAPACITY AS THE  
BANKRUPTCY TRUSTEE OF BAYVIEW CREEK (CIM) LP AND 10502715  
CANADA INC., GR (CAN) INVESTMENT CO. LTD., MONEST FINANCIAL INC.,  
TRACY HUI, JOJO HUI, CARDINAL ADVISORY LTD., and THE CORPORATION  
OF THE CITY OF RICHMOND HILL**

Respondents

**ORDER**

**THIS APPLICATION**, made by Bryton Capital Corp. GP Ltd. (“**Bryton Capital**”) and Bayview Creek Residences Inc. (“**Bayview Residences**”) (collectively, the “**Bryton Group**”) for the relief set out in the Bryton Group’s Amended Notice of Application and factum, including the following:

- a. an order directing and approving the sale of a property in Richmond Hill (the “**Property**”), by RSM Canada Limited, in its capacity as the privately appointed receiver over the property of CIM Bayview Creek Inc. (“**CIM Bayview**”), Bayview Creek (CIM) LP, 10502715 Canada Inc. (collectively the “**Debtors**”), pursuant to the

terms of Bryton Capital's mortgage registered on title to the Property and the agreement of purchase and sale between the Debtors and Bayview Residences, together with an order vesting title to the Property free and clear of all encumbrances;

- b. an order declaring that any proceedings commenced after December 21, 2020 relating to the validity of the Option are barred by the principles of *res judicata* and abuse of process, or in the alternative, an order declaring that no relief may be granted to set aside the Option pursuant to the *Fraudulent Conveyances Act*, R.S.O. 1990, c. A.33, *Assignments and Preferences Act*, R.S.O. 1990, c. A.33, or the statutory oppression remedy; and
- c. an order declaring that any claims brought under, among other things, ss. 95 and 96 of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, relating to the Option shall have no effect on the validity of enforceability of the Option, together with an order dismissing those claims,

was heard on August 11, 2021 by Zoom videoconference at Toronto, Ontario, with judgment having been reserved to this day.

**ON READING** the Affidavits of Bryan McWatt sworn November 24, 2020, November 25, 2020, November 26, 2020, December 7, 2020, December 11, 2020, May 24, 2021, June 22, 2021, July 5, 2021, July 12, 2021 and July 15, 2021, the Affidavits of Daniel Kim, sworn December 14, 2020 and July 16, 2021, the Affidavit of Feng Shi, sworn July 31, 2021, the Affidavit of Jeremy Bornstein sworn July 12, 2021, the Affidavit of Lawrence Hansen, sworn August 9, 2021; the transcripts of the cross-examinations of Jeremy Bornstein dated July 20, 2021, of Bryan McWatt dated December 16, 2020 and July 23, 2021, of Jiubin Feng dated December 15, 2020 and of Riz Ahmad dated July 23, 2021; the undertaking answers from the cross-examinations of Jeremy Borstein on July 20, 2021 and of Bryan McWatt on July 23, 2021, and on hearing the submissions of counsel for each of the Bryton Group, Grant Thornton Limited in its capacity as bankruptcy trustee and former capacity as proposal trustee, the Enforcement Committee of Debentureholders, the Subordinated Secured Creditors, Cardinal

Advisory Limited in its capacity as DIP Lender, Monest Financial, and RSM Canada Limited  
in its capacity as private receiver,

1. **THIS COURT ORDERS** that the application is dismissed.
2. **THIS COURT FURTHER ORDERS** that, if the parties are unable to resolve costs,  
they shall agree on a timetable for cost submissions and file it with the court for  
approval.

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CAVANAGH, J.

**BRYTON CAPITAL CORP. GP LTD ET AL. - and- CIM BAYVIEW CREEK INC. ET AL.**

*Applicants*

*Respondents*

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Court File No.: CV-21-00662099-00CL

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**PROCEEDING COMMENCED AT  
TORONTO**

**ORDER**

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*Lawyers for Bryton Capital Corp. GP Ltd et al.*