



No. S1710393
Vancouver Registry

IN THE SUPREME COURT OF BRITISH COLUMBIA

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

AND

**IN THE MATTER OF THE *BUSINESS CORPORATIONS ACT*,
S.B.C. 2002, c. 57, AS AMENDED**

AND

**IN THE MATTER OF THE *CANADA BUSINESS CORPORATIONS ACT*,
R.S.C. 1985, c. C-44, AS AMENDED**

AND

**IN THE MATTER OF A PLAN OF COMPROMISE AND ARRANGEMENT OF
ALL CANADIAN INVESTMENT CORPORATION**

NOTICE OF APPLICATION

Name of applicant: The Petitioner

To: Service List

TAKE NOTICE that an application will be made by the Petitioner to the presiding Judge or Master at the courthouse at 800 Smithe Street, Vancouver, British Columbia, on Wednesday, April 11, 2018 at 9:45 a.m., for the Orders set out in Part 1 below.

Part 1: ORDERS SOUGHT

1. The Petitioner is seeking orders:
 - a. abridging the time for service of this Notice of Application and the materials herein such that the application is properly returnable on Wednesday, April 11, 2018;
 - b. extending the stay of proceedings provided for in the order pronounced by this Honourable Court on March 7, 2018 to June 11, 2018;
 - c. approving the Interim Financing Facility Agreement between the Petitioner and DIDS-BC Holdings Ltd. (the "DIP Lender") dated March 27, 2018, authorizing the Petitioner to borrow funds pursuant to the lending facility on the terms contemplated therein; and
 - d. such further and other orders as this Honourable court deems just.

Part 2: FACTUAL BASIS

2. On November 10, 2017, on the application of the Petitioner, the Honourable Madam Justice Adair made the initial order in these proceedings (the “Initial Order”), granting the Petitioner protection from its creditors pursuant to the *Companies’ Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the “CCAA”).
3. The Initial Order provided for a stay of proceedings against the Petitioner until December 9, 2017. By consent, this stay did not restrict collection procedures previously commenced by Fisgard Capital Corporation (“Fisgard”), a secured creditor of the Petitioner.
4. On December 1, 2017, Master Taylor granted Fisgard an order nisi (the “Order Nisi”) that provides a crystallized fixed charge over certain assets of the Petitioner and providing for a redemption period set to expire on May 10, 2018 (the “Redemption Date”).
5. As at November 10, 2017 the amount required to redeem and discharge Fisgard’s encumbrances over the Petitioner’s assets under the Order Nisi \$1,308,192.81 together with interest at the rate of 8.5% per annum, compounded monthly. That debt has been paid down as a result of the sale, with court approval, of certain assets and Fisgard has advised that the total payout amount as at April 11, 2018 will be \$853,637.15.
6. On December 5, 2017, on the application of the Petitioner, the Honourable Mr. Justice Silverman made an order (the “**December 2017 Order**”) extending the stay of proceedings provided for in the Initial Order to March 9, 2018.
7. In or around late January 2018, as a result of a conflict of interest which it discovered, the Petitioner’s original counsel determined that it was no longer able to act in the proceedings.
8. The Petitioner was required to locate and retain new counsel and on February 15, 2018, the Petitioner filed a Notice of Change of Lawyer in these proceedings, appointing Watson Goepel LLP as legal counsel.
9. On March 7, 2018, on the application of the Petitioner, the Honourable Madam Justice Iyer made an order (the “**March 2018 Order**”) further extending the stay of proceedings provided for in the Initial Order to April 11, 2018.
10. Pursuant to the March 2018 Order, the stay of proceedings expires on April 11, 2018 (the “**Stay Period**”).
11. The Petitioner seeks an extension of the Stay Period for 61 days, to June 11, 2018.

12. This extension is sought in order to allow further time for the Petitioner to develop a plan of compromise and arrangement (a “**Plan**”) to present to its stakeholders. Specifically, this extension would allow the Petitioner to:
- i. assess options and prepare materials for use in these proceedings including in submitting a Plan;
 - ii. secure updated appraisals for the properties related to the Loan Portfolio;
 - iii. continue security reviews with respect to the Loan Portfolio;
 - iv. institute and advance recovery proceedings;
 - v. redeem the Petitioner’s assets by full payment of the Fisgard Debt by May 10, 2018;
 - vi. develop a claims process for court review and implementation;
 - vii. develop the Plan to present to its stakeholders that would involve a fair, controlled and orderly wind-down of its business operations;
 - viii. work with the Monitor in discussions with the Borrowers and in the development of the Plan; and
 - ix. obtain support from its creditors and hold a meeting to vote on the Plan.
13. The Petitioner also seeks approval of debtor-in-possession financing in the amount of \$2,060,000 (the “DIP Financing”) to allow the Petitioner to redeem its assets before the Redemption Date in accordance with the Order Nisi. Any remaining funds will be used to meet its post-filing obligations and pay the costs of the Petitioner’s administration in these CCAA proceedings until regular cash flow resumes.

Background

14. The Petitioner is a mortgage investment corporation (“**MIC**”) which has been in business since 1998. Its business is to provide loans to owners and developers of residential, commercial, office and industrial real estate properties (the “**Borrowers**”), which are secured by registered, unregistered and equitable mortgages on the properties (the “**Mortgage Loans**”). In addition, the Petitioner makes other loans and investments from time to time that may be unsecured (the “**Other Loans**”, and together with the Mortgage Loans, hereinafter referred to as the “**Loans**”).
15. The Petitioner’s primary asset is its portfolio of Loans (the “**Loan Portfolio**”).

16. In addition to the Loan Portfolio, the Petitioner owns certain real property (the "Real Property"). Since the date of filing one of the properties has been sold in accordance with the Order of the Honourable Mr. Justice Pearlman dated January 24, 2018 (the "Approval Order").
17. The Petitioner's primary objective as a MIC is to provide its preferred shareholders with dividend payments. The Petitioner has issued a total of 37,277 preferred shares and 15,647 warrants, for an aggregate capital of approximately \$37,277,000.
18. From 2005 to 2014, shareholders received between 6.25% to 8% annual returns on their Preferred Shares. Dividends to shareholders were decreased to 2.75% in 2015 and to 1.0% in 2016 and the Petitioner did not pay any dividends in 2017.
19. The Petitioner does not have any employees and is managed by ACIC Financial Development Inc. ("AFDI"), which is contractually entitled to receive an annual management fee equal to the Petitioner's assets and 15% of the Petitioner's gross annual revenues payable on a monthly basis. AFDI has agreed to reduce its management fee to \$40,000 per month during the CCAA proceedings.
20. The reasons for the Petitioner's financial difficulties which led it to file for protection under the CCAA is described in the Petition and include the following:
 - a. the high level of development activity in the Lower Mainland which has led to excessive delays in construction and development, particularly with respect to obtaining permits from the municipalities.
 - b. construction delays have resulted in delays on timely interest payments and payouts of the Loans by Borrowers. This has negatively affected the Petitioner's cash flow and its ability to meet its obligations to its creditors, including to its preferred shareholders.
 - c. the Petitioner has been unsuccessful in raising additional funds from investors as there has been a general decline in investor interest in MICs.
 - d. the Petitioner's ability to raise additional capital was also hindered by the sudden resignation of its auditors, BDO Canada LLP ("BDO") in March 2016 without advance warning and without completing the Petitioner's audited financial statement for 2015 or filing the Petitioner's tax return. Consequently, the Petitioner was unable to provide audited financial statements to complete an offering memorandum.
 - e. the Petitioner resorted to borrowing funds from third party financiers in order to advance loans and meet loan commitment obligations to the Borrowers. Such loans had high interest rates which caused further strain to the Petitioner's cash flow.

- f. the Petitioner also borrowed funds through the issuance of debentures (the “**Debentures**”). The Debentures have now either matured or the holders of the Debentures have made redemption requests (the “**Debenture Redemption Notices**”).
21. The foregoing resulted in a decrease in cash flow and ultimately in decrease dividend payments to the preferred shareholders in 2015 and 2016. The Petitioner was unable to make any dividend payments at all to the preferred shareholders in 2017. This has led to a significant number of the preferred shareholders sending Equity Redemption Notices.
22. To date, of the \$37,277,000 capital in preferred shares issued, the total amount of Equity Redemption Notices that have been received is approximately \$24,229,000.
23. Prior to filing three actions were commenced in the British Columbia Supreme Court by preferred shareholders against the Petitioner and others, including AFDI, Donald Bergman and Wayne Blair (both officers of the Petitioner) with respect to their shares and Equity Redemption Notices.
24. As at the date of filing the Petitioner had a total of approximately \$29,914,702 in claims against it as follows:
- a. \$1,795,702 in secured claims, a portion of which has been reduced through payments received through the Real Property sale and settlements which were the subject of the Approval Order;
 - b. approximately \$3,602,634.65 in unsecured claims; and
 - c. \$24,229,000 in equity claims arising from the Equity Redemption Notices received from its preferred shareholders.
25. As at the date of filing the Petitioner had issued a total of 37,277 preferred shares and 15,647 warrants, for total capital of approximately \$37,000,277. The equity claims identified above arise out of that capital.
26. The Petitioner’s purpose for seeking CCAA protection is to stabilize its operations and develop a plan of compromise or arrangement (a “**Plan**”) to present to its stakeholders as part of these CCAA proceedings that would involve a fair, controlled and orderly wind-down of its business operations, for the benefit of its stakeholders.

The Petitioner's Activities since the March 2018 Order and the Extension of the Stay

27. Since of the date of the March 2018 Order, the Petitioner has continued to manage the daily operations of its business. In addition, the Petitioner has:
- a. worked cooperatively with the Monitor to prepare and update cash flow statements;
 - b. worked cooperatively with the Monitor to provide the Monitor with information regarding the Loan Portfolio and the Real Property;
 - c. reviewed the value and enforceability of assets in the Loan Portfolio;
 - d. communicated with Borrowers, financial advisors, legal counsel, and other parties to assess and verify loan status and possible issues regarding collectability;
 - e. communicated with Borrowers, lenders, financial institutions, legal counsel, and other parties and conducted independent searches to assess and verify security priorities;
 - f. communicated with Borrowers in an effort to expedite payment of both loan interest and principal;
 - g. negotiated repayment of a small loan facility;
 - h. instructed certain Borrowers to list certain properties pledged by way of security;
 - i. communicated with stakeholders in the CCAA proceedings;
 - j. commenced foreclosure proceedings against certain properties against which it has first mortgage security;
 - k. initiated steps to commence proceedings against another borrower;
 - l. advised other Borrowers that, absent a mutually acceptable repayment proposal, it intends to institute collection proceedings against certain assets;
 - m. communicated with Fisgard regarding redemption of the Petitioner's assets charged by the Order Nisi;
 - n. negotiated an interim financing facility with the Interim Lender in the amount of \$2,060,000, to enable the Petitioner to pay off Fisgard and redeem valuable assets currently charged by the Order Nisi, as described below;

- o. considered and discussed with the Monitor potential restructuring plans to maximize the recovery to all stakeholders;
 - p. sourced, from Borrowers, updated appraisal reports for certain properties in the Loan Portfolio; and
 - q. continued negotiations with Borrowers regarding additional security options.
28. The Petitioner believes that given a reasonable period of time to realize on its Loan Portfolio, it will have greater value to stakeholders, as opposed to an immediate “as is” liquidation of the Loan Portfolio.
29. The Petitioner’s plan will likely involve a structured recovery from Borrowers together with an *en bloc* sale, or partial sale, of the Loan Portfolio and the Real Property to pay its stakeholders.
30. The Petitioner requires further time to work with the Monitor and the Borrowers to find prospective purchasers, evaluate the value of the Loan Portfolio, secure further security, institute proceedings to realize on security and develop a Plan to present to its creditors.
31. An extension of the stay is a vital component of that process. Without it, there is no question that the position of stakeholders will be significantly prejudiced and the value of the Loan Portfolio will be compromised
32. The Petitioner will continue to work with the Monitor to attempt to reduce its overhead costs.
33. There is little to no prejudice to any stakeholders in the event the Stay Period is extended.
34. The Monitor has been fully apprised of the Petitioner’s intention to apply for an extension of the Stay Period to June 11, 2018.
35. The Petitioner has acted, and continues to act, in good faith and with due diligence in these CCAA proceedings.

DIP Financing and the Petitioner’s Anticipated Use of Funds

36. To the date of filing, the Petitioner has continued to meet its post-filing obligations.
37. The Petitioner projects that it will be only able to continue to meet its post-filing obligations if it obtains interim financing.

38. The Petitioner projects cash outflows of approximately \$275,000 from April to June 2018, including management fees, monitors' costs, and legal costs, before deducting DIP financing interest payments.
39. The Petitioner has also been advised that if the Order Nisi is not redeemed by the Redemption Date, Fisgard will immediately take steps to sell the Petitioner's encumbered assets. If that occurs, the Petitioner is of the view that the recovery will be at substantially less than their fair market value. Therefore, if approved the Petitioner proposes utilizing a portion of the initial advance from the DIP Lender to redeem the encumbered assets.
40. Prior to entering into the agreement with the DIP Lender the Petitioner contacted various potential lenders in an effort to negotiate the most advantageous terms for interim financing.
41. Throughout January and February 2018, the Petitioner negotiated to arrange for favourable financing in the best interests of the Petitioner's stakeholders. The Monitor was kept apprised of the possibility of DIP financing and how funds would be used.
42. Unfortunately, over that time the Petitioner failed to receive projected loan repayments which increased the risk that it would not be in a position to pay out Fisgard's secured debt by the Redemption Date.
43. Throughout March 2018, the Petitioner communicated the Monitor's comments on the proposed funding to the Interim Lender and continued to negotiate the terms of the DIP financing. As a result of these discussions, the proposed DIP financing arrangement provides for an initial advance of \$1,500,000 and a subsequent advance, to be drawn down upon court approval if necessary, rather than one lump-sum advance
44. On March 27, 2018, the Petitioner and the Interim Lender entered an interim financing agreement (the "DIP Agreement").
45. It is a condition of the DIP Agreement that the Petitioner obtain court approval of the DIP Agreement and DIP Facility in terms substantially acceptable to the Interim Lender.
46. Some of the significant terms of the DIP Agreement are as follows:
 - a. the DIP Agreement is subject to court approval, and will be null and void if court approval is not granted by April 11, 2018.
 - b. total funds of \$2,060,000 (the "DIP Facility") are available, to be released in two tranches:

- (i) the first advance will be a lump sum advance of \$1,500,000, to be released shortly after court approval of the DIP is obtained (the “Interim Financing Advance”).
 - (ii) the second advance will be a lump sum \$500,000 advance, to be drawn when needed and, if required, when court approval is obtained (the “Subsequent Advance”).
- c. the term is 24 months. This term may be extended by agreement between the Petitioner and the Interim Lender, and, if required, by court approval.
 - d. the Petitioner is responsible for the Interim Lender’s costs. An upfront fee of \$50,000 has already been paid to the Interim Lender as prepaid costs.
 - e. a commitment fee of \$60,000, being 3% of the total loan facility, is immediately payable from the Interim Financing Advance on the granting of court approval.
 - f. interest will accrue at 16.5% from the date funds are released. Until the Subsequent Advance is released, a standby fee of 5% interest will accrue.
 - g. the Borrower is required to pay the Interim Lender prescribed percentages from the sale proceeds of certain Real Estate and Loan Portfolio assets. No fee or reward will be payable to the Interim Lender upon realization of any of the Petitioner’s assets.
 - h. the DIP Facility is guaranteed by Don Bergman and ACIC Financial Developments Inc. (“AFDI”).
 - i. the Interim Lender will have superpriority DIP security over all of the assets of the Petitioner.
47. If approved, the initial advance will be applied to redeem the Petitioner’s assets encumbered by the Order Nisi and repay all of the Petitioner’s obligations to Fisgard before the balance is applied to any other purpose.
48. The DIP Agreement is in the best interests of the Petitioner’s stakeholders. It is unlikely that the stakeholders will realize the true value of any of the assets encumbered by the Order Nisi if they are sold in foreclosure by Fisgard.

Part 3:LEGAL BASIS

49. The Petitioner relies on the terms and provisions of the CCAA, as amended.
50. The Petitioner also relies on Rules 1-3, 4-4, 8-1, 8-5, 22-1 and 22-4 of the *Supreme Court Civil Rules*.

Extension of the Stay

51. Pursuant to s. 11 of the CCAA, the Court may make any order that it considers appropriate.
52. Pursuant to ss. 11.02(2) and (3) of the CCAA, the Court may extend a stay of proceedings granted in an Initial Order when:
- a) the applicant satisfies the court that circumstances exist that make the order appropriate; and
 - b) in the case of an order under subsection (2) [extension of a stay], the applicant also satisfies the court that the applicant has acted, and is acting, in good faith and with due diligence.
53. An extension of a stay should only be granted in furtherance of the CCAA's fundamental purpose of facilitating a plan of arrangement between debtor companies and their creditors.

Cliffs Over Maple Bay Investments Ltd. v. Fisgard Capital Corp., 2008 BCCA 327

54. In addition to the fundamental purpose of the extension, other factors to be considered on an application for a stay include:
- a) the debtor's progress during the previous stay period toward a restructuring;
 - b) whether the creditors will be prejudiced if the court grants the extension; and
 - c) the comparative prejudice to the debtor, creditors and other stakeholders in not granting the extension.

Re Worldspan Marine Inc., 2011 BCSC 1758

55. The CCAA can be used for an orderly wind-down of a company.

Re Target Canada Co., 2015 ONSC 303 (S.C.J.)

56. The extension of the Stay Period sought by the Petitioner is appropriate in the circumstances as it is consistent with the purpose of the CCAA and will enable the Petitioner to proceed with its business operations and develop a Plan to be presented to its stakeholders for an orderly wind-down of the company.
57. The Petitioner has acted and continues to act in good faith and with due diligence.
58. There is little to no prejudice to any stakeholders in the event the Stay Period is extended.

Approval of DIP Financing

59. Pursuant to s. 11.2 of the CCAA, the Court may make an order declaring that a company's property is subject to a priority charge in favour of a DIP lender, in an amount that the court considers appropriate.
60. Pursuant to s. 11.2(2) of the CCAA, the Court may order that DIP financing has priority over other secured creditors.
61. Pursuant to s. 11.2(f) of the CCAA, the Court may only grant the Interim Lender priority over the Directors' Charge established in section 22 of the Initial Order with the consent of the directors and officers of the Petitioner.
62. Don Bergman, the principal control persons of the Petitioner, and AFDI have consented to the proposed Interim Lender's charge having priority over the Directors' Charge set out in the Initial Order and have also provided personal guarantees.
63. The factors to be considered when considering an application to grant a DIP lender a priority charge are set out in s. 11.2(4) of the CCAA, as follows:

11.2 (4) In deciding whether to make an order, the court is to consider, among other things,

(a) the period during which the company is expected to be subject to proceedings under this Act;

(b) how the company's business and financial affairs are to be managed during the proceedings;

(c) whether the company's management has the confidence of its major creditors;

(d) whether the loan would enhance the prospects of a viable compromise or arrangement being made in respect of the company;

(e) the nature and value of the company's property;

(f) whether any creditor would be materially prejudiced as a result of the security or charge; and

(g) the monitor's report referred to in paragraph 23(1)(b), if any.

64. A priority charge in favour of the Interim Lender is appropriate in these circumstances, because, among other reasons:

- a. it will likely allow the Petitioner to realize the greatest value from the Real Property and the Loan Portfolio if it is allowed to make an orderly wind-up over time instead of selling hastily at less than fair market value;
- b. the proposed DIP Financing will allow the Petitioner to redeem assets pursuant to the Order Nisi that will otherwise be sold hastily, likely at substantially less than their true value; and
- c. no creditors will be materially prejudiced by the proposed DIP Financing, since it will enable the repayment of Fisgard, the Petitioner's primary secured creditor, and the Petitioner's unsecured creditors are expected to obtain greater value from the Petitioner's sale of the redeemed assets than the costs of the DIP Financing.

Part 4: MATERIAL TO BE RELIED ON

- 65. The pleadings and materials filed herein;
- 66. Affidavit #1 of Donald Bergman, made November 7, 2017;
- 67. Affidavit #2 of Donald Bergman, made November 30, 2017;
- 68. Affidavit #3 of Donald Bergman, made January 19, 2018; and
- 69. Affidavit #4 of Donald Bergman, made March 1, 2018;
- 70. Affidavit #5 of Donald Bergman, made on April 6, 2018;
- 71. Such further and other material as counsel may advise and this Honourable Court may allow.

The Applicants estimates that the Application will take 60 minutes.

[Check the correct box]

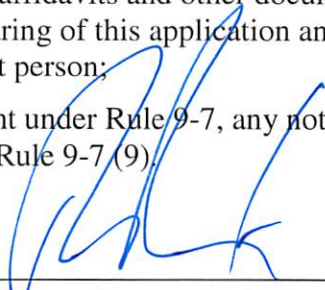
- This matter is within the jurisdiction of a master.
- This matter is not within the jurisdiction of a master.

TO THE PERSONS RECEIVING THIS NOTICE OF APPLICATION: If you wish to respond to this notice of application, you must, within 5 business days after service of this notice of application or, if this application is brought under Rule 9-7, within 8 business days after service of this notice of application:

- (a) file an application response in Form 33;
- (b) file the original of every affidavit, and of every other document, that:

- (i) you intend to refer to at the hearing of this application, and
- (ii) has not already been filed in the proceeding, and
- (c) serve on the applicant 2 copies of the following, and on every other party of record one copy of the following:
 - (i) a copy of the filed application response;
 - (ii) a copy of each of the filed affidavits and other documents that you intend to refer to at the hearing of this application and that has not already been served on that person;
 - (iii) if this application is brought under Rule 9-7, any notice that you are required to give under Rule 9-7 (9).

Date: April 6, 2018



Signature of Jeremy D. West
Counsel for the Petitioner

To be completed by the court only:

Order made

in the terms requested in paragraphs _____. of Part 1 of this notice of application

with the following variations and additional terms:

Date: _____

Signature of Judge Master

APPENDIX

[The following information is provided for data collection purposes only and is of no legal effect.]

THIS APPLICATION INVOLVES THE FOLLOWING:

[Check the box(es) below for the application type(s) included in this application.]

- discovery: comply with demand for documents
- discovery: production of additional documents
- extend oral discovery
- other matter concerning oral discovery
- amend pleadings
- add/change parties
- summary judgment
- summary trial
- service
- mediation
- adjournments
- proceedings at trial
- case plan orders: amend
- case plan orders: other
- experts