



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: The 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 December 5, 2017 at 9:45 a.m. for the Orders set out in Part 1 below.

PART 1: ORDERS SOUGHT

1. An order extending the stay of proceedings provided for in the order pronounced by this Honourable Court on November 10, 2017 (the "Initial Order") to March 9, 2018.
2. Such further and other relief that this Honourable Court deems just.

PART 2: FACTUAL BASIS

1. On November 10, 2017, on the application of the Petitioner, the Honourable Madam Justice Adair made 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 ("CCAA").
2. Boale, Wood & Company Ltd. was appointed as monitor in these CCAA proceedings (the "Monitor").
3. Pursuant to the Initial Order, the stay of proceedings expires on December 9, 2017 (the "Stay Period").

4. The Petitioner seeks an extension of the Stay Period for 90 days, to March 9, 2018.

5. This extension is sought in order to allow the Petitioner time to develop a plan of compromise and arrangement (a "**Plan**") to present to its stakeholders that would involve a fair, controlled and orderly wind-down of its business operations, obtain support from its creditors and hold a meeting to vote on the Plan.

Background

6. 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 single and multi-family 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**").

7. As of the date of the Initial Order, the total value of the Petitioner's portfolio of Loans (the "**Loan Portfolio**") is approximately \$37.8 million. The Loan Portfolio is the Petitioner's primary asset.

8. In addition to the Loan Portfolio, the Petitioner also owns five (5) properties (the "**Real Property**"), which have a total 2017 B.C. Assessment value of approximately \$3.16 million.

9. 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.

10. 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. The Petitioner has not paid any dividends in 2017.

11. The Petitioner does not have any employees and is managed by ACIC Financial Development Inc. ("**AFDI**"), which receives an annual management fee equal to the Petitioner's assets and 15% of the Petitioner's gross annual revenues that is payable on a monthly basis. AFDI has agreed to reduce its management fee to \$50,000 per month during the CCAA proceedings.

12. The reasons for the Petitioner's financial difficulties which has 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 has led to excessive delays in construction and development, particularly with respect to obtaining permits from the municipalities.
- (b) The 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 was 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 turned to borrowing funds from third party financiers in order to advance loans and loan commitment obligations with the Borrowers. Such loans had high interest rates which caused further strain to the Petitioner's cash flow. Due to the Petitioner's default on a loan from Fisgard Capital Corporation ("**Fisgard**"), Fisgard commenced foreclosure proceedings against the Petitioner.
- (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**").

13. The foregoing resulted in a decrease in cash flow and ultimately in dividend payments to the preferred shareholders in 2015 and 2016. The Petitioner has not been in a position to make any dividend payments to the preferred shareholders in 2017. This has led to over 65% of the preferred shareholders sending Equity Redemption Notices.

14. 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.

15. There have been three (3) actions 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.

16. The Petitioner has a total of approximately \$29,914,702 in claims against it as follows:

- (a) \$1,785,702 in secured claims;
- (b) approximately \$3.96 million in unsecured claims; and
- (c) \$24,229,000 in equity claims arising from the Equity Redemption Notices received from its preferred shareholders.

17. 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 Initial Order

18. Since the date of the Initial Order, the Petitioner has continued to manage the daily operations of the business. In addition, the Petitioner has:

- (a) worked cooperatively with the Monitor to prepare cash flow statements and provide the Monitor with information regarding the Loan Portfolio and the Real Property;
- (b) communicated with Borrowers in an effort to expedite payment of both loan interest and principal;
- (c) communicated with stakeholders in the CCAA proceedings;
- (d) contacted potential lenders that could provide re-financing or debtor-in-possession ("DIP") lending to payout existing lenders on more favourable terms; and
- (e) considered potential restructuring plans to maximize the recovery to all stakeholders.

19. The Petitioner has, with the assistance of the Monitor, prepared cash flow projections to the end of March 2018. The Petitioner has sufficient funds to meet its post-filing obligations during the requested extension of the Stay Period.

20. The Petitioner believes that given a reasonable period of time to realize on its Loan Portfolio and seek interested parties, the Loan Portfolio will have greater value to stakeholders, as opposed to an immediate "as is" liquidation of the Loan Portfolio.

21. The Petitioner's plan will likely involve an en bloc sale, partial sale, or restructuring of the Loan Portfolio and the Real Property to pay its stakeholders.

22. The Petitioner requires more time to work with the Monitor to recover on the Loans, find interested parties, evaluate the value of the loan portfolio, and develop a Plan to present to its creditors. An extended timeline will result in greater value to stakeholders.

23. The Petitioner will continue to consider ways to reduce its costs and overhead as recommended by the Monitor.

24. There is little to no prejudice to any stakeholders in the event the Stay Period is extended. In particular, the Petitioner and its secured creditors, Fisgard and Van Maren Financial, have consented to an Order Nisi with a 6 month redemption period in Fisgard's foreclosure proceedings.

25. The Monitor is in support of the Petitioner's application for a 90 day extension of the Stay Period.

26. The Petitioner has acted, and is acting, in good faith and with due diligence in these CCAA proceedings.

PART 3: LEGAL BASIS

1. Pursuant to s. 11 of the CCAA, the Court may make any order that it considers appropriate.

2. Pursuant to s. 11.02(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.

3. 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. 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), 86 C.B.R. (5th) 119 (B.C.S.C.)

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

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

5. 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.

6. The Petitioner has acted and continues to act in good faith and with due diligence.

7. With the protection afforded to it from the initial Stay Period pursuant to the Initial Order, the Petitioner has had the opportunity to communicate with the Borrowers in an effort to expedite payment on both loan interest and principal, and to obtain information for when such payments can be expected. The Petitioner's efforts have resulted in cash in-flows during the current Stay Period which has allowed the Petitioner to meet its post-filing obligations.

8. In addition, the Petitioner has had discussions with Borrowers and expects further payments in the requested extended Stay Period which will not only allow the Petitioner to continue to meet its post-filing obligations, but also begin to accumulate funds that would go towards reducing its debt.

9. There is little to no prejudice to any stakeholders in the event the Stay Period is extended. In particular, the Petitioner, Fisgard and Van Maren have consented to an Order Nisi with a 6 month redemption period in Fisgard's foreclosure proceedings.

rules

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10. The Petitioner also rely on Rules 1-3, 4-4, 8-1, 8-5, 22-1 and 22-4 of the *Supreme Court Civil Rules*.

PART 4: MATERIAL TO BE RELIED ON

1. The pleadings and materials filed herein;
2. Affidavit #1 of Donald Bergman, made November 7, 2017.
3. Affidavit #2 of Donald Bergman, made November 30, 2017.
4. The Monitor's First Report to the Court dated November 30, 2017.
5. Such further and other material as counsel may advise and this Honourable Court may allow.

The Applicant estimates that the application will take 15 minutes.

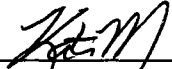
- This matter is within the jurisdiction of a Master.
- This matter is not within the jurisdiction of a Master.

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 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: 30 /Nov/2017



Signature of Lawyer for Applicant
Lawyer: Katie Mak

This NOTICE OF APPLICATION is prepared by Katie Mak of the firm of **Clark Wilson LLP** whose place of business is 900 – 885 West Georgia Street, Vancouver, British Columbia, V6C 3H1 (Direct #: 604.643.3105, Fax #: 604.687.6314, Email: KMak@cwilson.com) (File #: 24371-0033).

To be completed by the court only:	
Order made	
<input type="checkbox"/> in the terms requested in paragraphs _____ of Part 1 of this Notice of Application	
<input type="checkbox"/> with the following variations and additional terms:	

Date: _____	_____
[dd/mmm/yyyy]	Signature of <input type="checkbox"/> Judge <input type="checkbox"/> Master

APPENDIX

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

THIS APPLICATION INVOLVES THE FOLLOWING:

- discovery: comply with demand for documents
- discovery: production of additional documents
- other matters concerning document discovery
- extend oral discovery
- other matters 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