



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 applicant to the presiding Judge or Master at the courthouse at 800 Smithe Street, Vancouver, British Columbia, on the 11<sup>th</sup> day of September, 2019, at 9:00 a.m., for the order(s) set out in Part 1 below.

**Part 1: ORDER(S) SOUGHT**

1. An Order authorizing the Monitor to cause the discharge of a:
  - a. certificate pending litigation, issued in proceedings commenced by the Petitioner in the Vancouver Registry of the Supreme Court of British Columbia, Action No: S184595; and
  - b. mortgage registration number CA7479965;

registered against Lots 1 and 2 (as defined below).

2. Such further and other relief as this Honourable Court deems just.

**Part 2: FACTUAL BASIS**

3. On November 9, 2018 an order was pronounced in these proceedings pursuant to which the Monitor was granted additional powers with respect to the management and operations of the Petitioner (the “November Order”). Since the granting of the November Order, counsel for the Petitioner and the Monitor have met, and subsequently corresponded with, legal counsel for Peter Censorio (“Mr. Censorio”) to discuss the status of the Censorio Group loans, the status of certain properties which secure those loans and the terms on which the Monitor would support an ongoing wind down through CCAA proceedings.
4. Mr. Censorio is the directing mind of the companies comprising the Censorio Group which includes Altezza Properties Ltd. (“Altezza Properties”) and Altezza Development Limited (“Altezza Development”).

**The Altezza Lands**

5. Altezza Properties is the registered owner of certain lands and premises, located on Hastings Street, in Burnaby, legally known and described as:

PID 028-874-391  
 STRATA LOT 1 DISTRICT LOT 122 GROUP 1 NEW WESTMINSTER  
 DISTRICT  
 STRATA PLAN EPS675

(“Lot 1”)

AND

PID 028-874-382  
 STRATA LOT 2 DISTRICT LOT 122 GROUP 1 NEW WESTMINSTER  
 DISTRICT  
 STRATA PLAN EPS675

(“Lot 2”)

(collectively, the “Altezza Lands”)

6. ACIC has advanced certain funds to Altezza Properties and Altezza Development which advances are secured by, amongst other things, the Altezza Lands (the “Altezza Loan”).
7. As at August 23, 2019 the balance outstanding (comprising principal and interest) on the Altezza Loan is \$9,870,898.89 with interest accruing at a per diem rate of \$2,645.09 per day.
8. In addition to the Petitioner’s encumbrances the Altezza Lands are subject to the following encumbrances which are registered in priority to the CPL:
  - a. first mortgage in favour of North Shore Credit Union which counsel for Mr. Censorio advises secures a sum of approximately \$1,743,984.11; and
  - b. second mortgage in favour of Bancorp Growth Mortgage Fund II Ltd. (Incorporation no. BC0856914), Bancorp Balanced Mortgage Fund II Ltd. (Incorporation no. BC0856913), and Bancorp Financial Service Inc. (Incorporation no. BC0712503).
9. The Altezza Loan is in default.

### **Mortgages**

10. As at the transfer of the Altezza Lands to Altezza Properties, the Altezza Lands were subject to an equitable mortgage in favour of ACIC and Altezza Properties’ interest in the Altezza Lands is subject to that mortgage.
11. On May 2, 2019 ACIC registered a mortgage with registration number CA7479965 on the Altezza Lands.

**ACIC proceedings**

12. On April 12, 2018 the Petitioner commenced proceedings against a number of parties including Mr. Censorio and Altezza Properties (the “Censorio Proceedings”) and a certificate of pending litigation was issued (the “CPL”). The CPL was, and remains, registered (under registration number CA 673-4886) against a number of properties including the Altezza Lands.

**Sale contract**

13. On or about August 30, 2019, Altezza Properties and 1110303 B.C. Ltd. entered into a contract of purchase and sale for Lot 1 and Lot 2 the particulars of which included:

- a. purchase price of \$3,650,000.00;
- b. certain subjects in favour of 1110303 B.C. Ltd.;
- c. a condition that Altezza Properties obtain the Petitioner’s agreement to discharge its encumbrances registered against the Altezza Lands within 14 days of the date of acceptance; and
- d. completion date of November 13, 2019.

the (“Altezza Contract”)

14. The Petitioner and the Monitor have made independent enquiries into the market value of the Altezza Lands with Cushman & Wakefield the listing agent (the “Monitor’s Enquiries”).

15. The Monitor’s Enquiries indicate that for a variety of reasons including the leases in place for the Altezza Lands and the timing of completion, the purchase price in the Altezza Contract is reasonable.

16. At the request of the Petitioner, counsel for Mr. Censorio has confirmed that Mr. Censorio has no interest, directly or indirectly, financially or otherwise, in 1110303 B.C. Ltd.
17. In order to complete the Altezza Contract, Altezza Properties has requested the Petitioner discharge the encumbrances registered in the Petitioners name.

**Part 3:LEGAL BASIS**

18. Pursuant to s.36(1) of the CCAA, a debtor company in respect of which an order has been made under the CCAA may not sell or otherwise dispose of assets outside the ordinary course of business unless authorized to do so by the court.
19. Pursuant to s.36(2) of the CCAA, a company that applies for an authorization to sell is to give notice of the application to the secured creditors who are likely to be affected by the proposal proposed sale or disposition.
20. Although the properties which are the subject of this application are not registered in the name of the Petitioner the discharge of the CPL and mortgages is necessary for the contracts to complete and the funds realized on completion will not be sufficient to repay the Altezza Loan.
21. Section 36(3) of the CCAA provides that in deciding whether to grant the authorization to sell, the court is to consider, amongst other things:
- a. whether the process leading to the proposed sale or disposition was reasonable in the circumstances;
  - b. whether the monitor approved the process leading to the proposed sale or disposition;
  - c. whether the monitor filed with the court a report stating that in its opinion the sale or disposition that would be more beneficial to the creditors than a sale or disposition under a bankruptcy;

- d. the extent to which the creditors were consulted;
- e. the effect of the proposed sale or disposition on the creditors and other interested parties; and
- f. whether the consideration to be received for the assets is reasonable and fair, taking into account their market value.

22. Section 36(6) of the CCAA provides that the court may authorize a sale or disposition free and clear of any security, charge or other restriction and, if it does, it shall also order that other assets of the company or the proceeds of sale or disposition be subject to a security, charge or other restriction in favour of the creditor whose security, charge or other restriction is to be affected by the order.

23. The Petitioner further relies on s.11 of the CCAA and the inherent and equitable jurisdiction of this Honourable Court.

**Part 4: MATERIAL TO BE RELIED ON**

24. Affidavit #1 of Kyle Wilson, made on the 6<sup>th</sup> day of September, 2019

25. Affidavit #1 of Kyle Record, made on the 6<sup>th</sup> day of September, 2019

26. Monitor's Report to be filed.

The Applicant(s) estimate(s) that the Application will take 30 minutes.

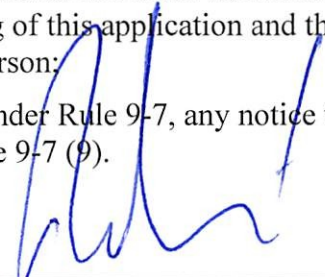
This matter is within the jurisdiction of a master.

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 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: September 6, 2019




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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