



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 Friday, April 26, 2019 at 10:00 a.m., for the Orders set out in Part 1 below.

Part 1: ORDERS SOUGHT

1. The Petitioner seeks the following orders:
 - a. abridging the time for service of this Notice of Application and the materials herein such that the application is properly returnable on Friday, April 26, 2019;
 - b. extending the stay of proceedings provided for in the order pronounced January 23, 2019 from May 3, 2019 to September 12, 2019 or such other date as this Honourable Court deems just; and
 - c. such further and other orders as this Honourable Court deems just.

Part 2: FACTUAL BASIS

2. On November 10, 2017 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”). The Initial Order incorporated, amongst other things, a stay of proceedings (the “Stay”).
3. On November 9, 2018 an application proceeded before the Honourable Mr. Justice Walker (who is seized of the proceedings) as a result of which an order was pronounced (the “November 9 Order”), the terms of which provided, amongst other things, as follows:
 - a. for the Petitioner to prepare a comprehensive plan, with the guidance and assistance of the Monitor, for submission to the court regarding the wind down and liquidation of the Petitioner’s business (the “Game Plan”);
 - b. for the Monitor to assume responsibility for management and decision-making authority over the Petitioner’s operations; and
 - c. that the Petitioner would retain possession and control of its property and business.
4. The Stay provided for in the Initial Order has been extended on various occasions, the most recent of which was on January 23, 2019 extending the Stay to May 3, 2019.
5. On January 11, 2019 the court issued directions regarding a notice of application dealing with the status of preferred shareholders (the “Preferred Shareholders Application”) which is scheduled for a three (3) day hearing commencing April 24, 2019.
6. On January 25, 2019 the Preferred Shareholders Application was filed seeking orders for the following:
 - a. a declaration that for the purposes of these proceedings that all Preferred Shareholders Claims are “equity claims” within meaning of section 2(1) of the CCAA; and
 - b. directions for the Petitioner to treat and assess all Preferred Shareholder Claims as equity claims in any plan of arrangement or compromise filed with this Honourable Court.
7. On March 15, 2019, two preferred shareholders of the Petitioner, Hans-Uwe Andresen and Linda Riesterer (the “Initial Shareholders”), brought an application seeking, amongst other things, to appoint Lakes, Whyte LLP as representative counsel for all preferred shareholders of the Petitioner and a priority charge over the assets of the Petitioner to secure Lakes, Whyte LLP’s anticipated legal fees.

8. On March 26, 2019, the court pronounced an order (the “March 26 Order”) that:
 - a. appointed Lakes, Whyte LLP as representative counsel for all preferred shareholders of the Petitioner;
 - b. granted Lakes, Whyte LLP a charge of \$73,396 (the “Representative Counsel Charge”) over the Petitioner’s assets to secure its anticipated fees, disbursements and applicable taxes;
 - c. authorized Lakes, Whyte LLP, on behalf of the preferred shareholders, to file and serve an Application Response and supporting affidavit materials in response to the Petitioner’s Notice of Application by April 3, 2019; and
 - d. authorized Lakes, Whyte LLP to apply to the court for further directions.
9. After the pronouncement of the March 26 Order and determining that there was a potential conflict between different classes of preferred shareholders, Lakes, Whyte LLP filed a requisition seeking directions regarding its appointment as representative counsel.
10. On April 5, 2019, the court pronounced an order (the “April 5 Order”) amending the March 26 Order, to provide as follows:
 - a. Lakes, Whyte LLP was appointed as the “Redeeming Shareholder Counsel”, to represent those persons owning preferred shares in the capital of the Petitioner who took all necessary steps to submit a valid redemption request to the Petitioner at a time when reasonable grounds did not exist to believe that the Petitioner was insolvent, or that honouring a redemption request would make the Petitioner insolvent, and such other preferred shareholders as the court may determine have analogous claims against the Petitioner (collectively, the “Redeeming Shareholders”);
 - b. Richard Bell Sutton LLP was appointed as the “Non-Redeeming Shareholder Counsel”, to represent the Petitioner’s preferred shareholders other than the Redeeming Shareholders (collectively, the “Non-Redeeming Shareholders”);
 - c. the Representative Counsel Charge was amended to charge the assets of the Petitioner for the benefit of both the Redeeming Shareholder Counsel and the Non-Redeeming Shareholder Counsel (together, the “Representative Counsel”); and
 - d. Representative Counsel were authorized to file and serve an Application Response and supporting affidavit materials in support in response to the Preferred Shareholders Application by April 10, 2019.
11. Following the April 5 Order, Lakes, Whyte LLP filed a requisition to appear before the court on April 15, 2019, to settle the form of the March 26 Order and

the April 5 Order and to resolve certain procedural aspects of these proceedings, including the disclosure of certain promotional materials of the Petitioner.

12. On April 15, 2019, the court pronounced an order (the "April 15 Order") adjusting the timelines in connection with the Preferred Shareholders Application, including the following:
 - a. the proceedings were adjourned to at 10:00 A.M. on April 26, 2019;
 - b. the hearing of the Preferred Shareholders Application set to commence on April 24, 2019 was adjourned to commence on June 17, 2019;
 - c. the Petitioner was directed to assemble various promotional materials and written representations regarding the preferred shareholders' ability to redeem their preferred shares;
 - d. the Petitioner was further directed to file and serve application materials by May 10, 2019, to contain all relevant and admissible promotional materials;
 - e. the Non-Redeeming Shareholders were granted leave to file and serve application response materials by May 17, 2019; and
 - f. all parties were authorized to file and serve reply materials to the Non-Redeeming Shareholders' response materials by May 31, 2019.
13. Subject to the further directions of this Court, the Preferred Shareholders Application to determine the status of the Petitioner's preferred shareholders is set for three days commencing June 17, 2019.
14. The Petitioner is continuing to administer realisation of its Loan Portfolio assets, seeking to enhance its security and realize on its assets, and advancing the preparation of a plan of arrangement or compromise, including by taking the following actions:
 - a. the Petitioner filed the Preferred Shareholders Application seeking to determine the status of its preferred shareholders, and took steps to advance that application;
 - b. the Petitioner has worked with its primary borrower to arrange for further security for the Loan Portfolio assets, including registrable mortgages and an irrevocable direction to pay;
 - c. the Petitioner cooperated with borrowers to arrange for the sale of a commercial property and one residential strata unit securing Loan Portfolio assets, and instructed borrowers regarding necessary terms and conditions, appropriate counter-offers, and closing arrangements; and

- d. the Petitioner continued to supervise sale listings, conditional sale offers, and closing arrangements for properties which comprise the Loan Portfolio assets.
15. The Petitioner, with support of the Monitor, seeks an extension of the Stay to September 12, 2019.

Part 3:LEGAL BASIS

16. The Petitioner relies on the terms and provisions of the CCAA, as amended.
17. 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

18. Pursuant to s. 11 of the CCAA, the Court may make any order that it considers appropriate.
19. 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.
20. 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

21. 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

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

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

23. 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 in the absence of an extension the Petitioner will not have the ability to apply for an extension in the usual course.

24. The Petitioner has acted and continues to act in good faith and with due diligence and the need for the short extension arises as a result of the court's availability.

25. There is little to no prejudice to any stakeholders in the event the Stay Period is extended.

Part 4: MATERIAL TO BE RELIED ON

26. The pleadings and materials filed herein;

27. Order pronounced November 9, 2018;

28. Order pronounced January 23, 2019;

29. Order pronounced January 23, 2019;

30. Affidavit #11 of Donald Bergman, made on April 24, 2019;

31. The Monitor's Twelfth Report to Court; and

32. 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.

This matter is within the jurisdiction of a master.

This matter is not within the jurisdiction of a master.

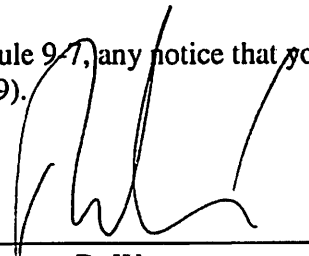
TO THE PERSONS RECEIVING THIS NOTICE OF APPLICATION: If you wish to respond to this notice of application, you must, within 5 business days after service of this notice of application or, if this application is brought under Rule 9-7, within 8 business days after service of this notice of application:

(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 24, 2019



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

THIS APPLICATION INVOLVES THE FOLLOWING:

- 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