



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, November 6, 2019 at 9:00 a.m., for the Orders set out in Part 1 below.

Part 1: ORDERS SOUGHT

1. The Petitioner seeks the following orders:
 - a. varying paragraph 3(a) of the Order pronounced September 11, 2019 to provide as follows:

"the Contract of Purchase and Sale for Commercial Real Estate dated October 21, 2019 between Altezza Properties Ltd. and for the Altezza Lands is unconditional; and"
 - b. that the Honourable Mr. Justice Walker be seized of the following proceedings:
 - (i) Action # S1910894, All Canadian Investment Corporation v. Michael Adrian Lensen, Vancouver Registry;

- (ii) Action # S1910871, All Canadian Investment Corporation v. Meridian Resource Accommodations Inc., Vancouver Registry;
 - (iii) Action # S1910895, All Canadian Investment Corporation v. Wayne and Barb Blair, Vancouver Registry;
 - (iv) Action # S1910893, All Canadian Investment Corporation v. Robert Frederick and Catherine Frederick, Vancouver Registry; and
 - (v) Action # S1910892, All Canadian Investment Corporation v. Ronald Weninger, also known as Ron Weninger and Elfrieda Weninger, Vancouver Registry;
- c. extending the stay of proceedings provided for in the order pronounced April 26, 2019 from November 15, 2019 to February 6, 2020 or such other date as this Honourable Court deems just; and
 - d. such further and other orders as this Honourable Court deems just.
2. The Petitioner seeks directions and a timetable for the filing and service of applications for approval of a claims process order, meeting process order and related matters.

Part 2: FACTUAL BASIS

3. 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”).
4. On November 9, 2018 an application proceeded before 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.

5. As a result of the November 9 Order the Monitor has effectively exercised management control and direction over the Petitioner's operations.
6. The Stay provided for in the Initial Order has been extended on various occasions, the most recent of which was to November 15, 2019.

Altezza Lands

7. On September 11, 2019 the court made orders in these proceedings authorizing the monitor to remove certain encumbrances registered in favour of the Petitioner against real property owned by one of the Petitioner's debtors, Altezza Properties Ltd. Unfortunately, subjects were not removed for that sale and the contract did not proceed.
8. However, on October 21, 2019 Altezza Properties Ltd. entered into a contract to sell the same property, for the same purchase price as the earlier contract. Buyer's conditions in the contract need to be satisfied or waived by November 9, 2019 and completion is scheduled for November 19, 2019.
9. The Petitioner seeks an order modifying the order pronounced September 11, 2019 so as to authorize the Monitor to remove encumbrances in order to allow the October 21, 2019 contract to complete.

Proceedings

10. The Petitioner has previously commenced proceedings, including against various entities comprising the Censorio Group, and Mr. Justice Walker has directed that he be seized of those proceedings.
11. On the instructions of the Monitor, in September 2019 the following proceedings were commenced to recover debts due and owing to the Petitioner:
 - a. Action # S1910894, All Canadian Investment Corporation v. Michael Adrian Lensen, Vancouver Registry;
 - b. Action # S1910871, All Canadian Investment Corporation v. Meridian Resource Accommodations Inc., Vancouver Registry;
 - c. Action # S1910895, All Canadian Investment Corporation v. Wayne and Barb Blair, Vancouver Registry;
 - d. Action # S1910893, All Canadian Investment Corporation v. Robert Frederick and Catherine Frederick, Vancouver Registry; and
 - e. Action # S1910892, All Canadian Investment Corporation v. Ronald Weninger, also known as Ron Weninger and Elfrieda Weninger, Vancouver Registry.

The Plan and related orders

12. The Petitioner has prepared and delivered a draft plan of arrangement and claims process order to the Monitor and Council for review and comments. Given that the Monitor is effectively in control of the operations and realization efforts of the Petitioner, it has had input in the general provisions of the plan but requires time to review and provide a further comment.
13. Once the Petitioner has received the Monitor's comments it intends to bring an application for a claims process order and meeting process order. It is the Petitioner's present intention that in light of the court's previous decision regarding the status of preferred shareholders, as equity claimants, those processes will be restricted to creditors and assuming orders to that affect our ultimately granted, it is anticipated that the application (and the claims process/creditor's meeting to vote on the plan) should be able to proceed expeditiously.
14. Accordingly, the Petitioner and the Monitor seek directions from the court with respect:
 - a. the timing of an application for a:
 - (i) claims process order; and
 - (ii) meeting process order;
 - b. service of those application materials; and
 - c. any related matters.
15. The Petitioner is continuing to act in good faith and to diligence and with support of the Monitor, seeks an extension of the Stay to February 6, 2020.

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, 6, 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.
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 will be little, if any, prejudice to any stakeholders in the event the Stay Period is extended.

Directions

26. Section 45 of the Initial Order provides that the Petitioner may from time to time apply to this Honourable Court for directions in the discharge of its duties under the CCAA.

Initial Order of Madam Justice Adair, Vancouver Registry Court File No. S1710393, pronounced November 10, 2017

27. Section 6(1) of the CCAA allows the court to sanction, if approved by a majority in number representing two thirds in value of the creditors, a plan of arrangement or compromise. The section expressly provides that unless the court orders otherwise, approval by equity claims is not required.

Part 4: MATERIAL TO BE RELIED ON

28. The pleadings and materials filed herein;
29. Affidavit #3 of Kyle Record sworn November 4, 2019;
30. The Monitor's Seventeenth Report to Court; and
31. 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.

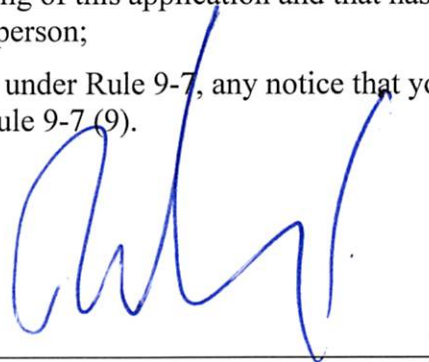
[] This matter is within the jurisdiction of a master.

[X] 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: November 4, 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