



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 25th day of November, 2019, at 9:00 a.m., for the order(s) set out in Part 1 below.

Part 1: ORDERS AND DIRECTIONS SOUGHT

1. Directions from the court with respect to a Contract of Purchase and Sale for Commercial Real Estate dated November 13, 2019 (the "Bresciani Contract") between Altezza Properties Ltd. and Tommaso Bresciani in respect to properties located at 4704 & 4712 Hastings St., Burnaby, British Columbia (the "Property").

2. In the event the event that the Court authorizes the Petitioner to approve the sale of the property by Altezza Properties Ltd., 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 the Property in order to allow the Bresciani Contract to complete.
3. Such further and other relief as this Honourable Court deems just.

Part 2: FACTUAL BASIS

4. 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.
5. 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 Property

6. Altezza Properties is the registered owner of the Property legally known and described as:

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

AND

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

7. ACIC advanced certain funds to Altezza Properties and Altezza Development which are secured by, amongst other things, the Property (the “Altezza Loan”).
8. As at the transfer of the Property to Altezza Properties, the Property was subject to an equitable mortgage in favour of ACIC and Altezza Properties’ interest in the Altezza Lands is subject to that mortgage.
9. As at August 23, 2019 the balance outstanding (comprising principal and interest) on the Altezza Loan was \$9,870,898.89 with interest accruing at a per diem rate of \$2,645.09 per day.
10. The Petitioner has the following encumbrances registered against title to the Property;
 - a. certificate of pending litigation, registration number CA 6734886;
and
 - b. Form B mortgage, registration number CA7479965.

(the “Petitioner’s Encumbrances”)
11. In addition to the Petitioner’s Encumbrances the Property is 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, registration number CA3465490; 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), registration number CA5842620.
12. The Altezza Loan is in default.

The Bresciani Contract

13. On or about November 14, 2019 Altezza Properties and Tommaso Bresciani entered in to the Contract, the material terms of which include:

- a. purchase price of \$3,500,000;
- b. deposit of \$500,000 (payable within 24 hours of acceptance);
- c. completion date December 11, 2019;
- d. no conditions in favour of the buyer; and
- e. condition in favour of the seller, which provides as follows:

“The Seller being able to obtain approval from the lender and the CPL holder to the sale of the property under the Terms of this Contract of purchase and sale.”

14. On Friday, November 15, 2019 Mr. Bresciani delivered a bank draft for the sum of \$500,000, to of Southern Group West Coast Realty (the agent for the buyer) representing the deposit for the Contract.

15. The Property has been marketed and listed by Cushman Wakefield since January 2019 and this is the only offer which is unconditional that has been received.

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 the event that the Court authorizes it to do so, the Monitor will be required 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.

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 Contract 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 6th day of September, 2019;
25. Affidavit #1 of Kyle Record, made on the 6th day of September, 2019;
26. Affidavit #1 of Craig Haziza, made on the 19th day of November, 2019; and
27. Monitor's Report to be filed.

The Applicant estimates that the Application will take 45 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: November 19, 2019

Signature of Jeremy D. West
Counsel for the Petitioner

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:
<hr/> <hr/> <hr/> <hr/>	
Date: _____	_____
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:

[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