



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 Thursday, November 22, 2018 at 9:45 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 Thursday, November 22, 2018;
 - b. extending the stay of proceedings provided for in the order pronounced November 9, 2018 from November 22, 2018 to January 21, 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. The Stay provided for in the Initial Order has been extended on various occasions, the most recent of which was on November 9, 2018 (the “November Order”) extending the Stay to November 22, 2018.
4. The November Order also 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”); and
 - b. for the Monitor to assume interim responsibility for management of the Petitioner’s operations;
5. Since the granting of the November Order:
 - a. the Petitioner and Mr. Bergman have assisted and cooperated with the Monitor in its assumption of management functions;
 - b. counsel for the Petitioner has investigated, and discussed with the Monitor, options to continue the wind-down of the business activities of the Petitioner within a variety of insolvency frameworks including receivership, bankruptcy, liquidation and the CCA;
 - c. counsel for the Petitioner and the Monitor have met, and subsequently corresponded with, legal counsel for Peter 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 ongoing wind down through the CCA proceedings;
 - d. the Petitioner and the Monitor have sought further advice from a realtor regarding the value of certain properties which secure the loan portfolio;
 - e. the Petitioner has communicated with counsel for the DIP Lender regarding the default fee allegedly triggered by the Order; and
 - f. followed up on the Stonewater Motel refinancing.
6. Notwithstanding the progress made since November 9, 2018 in the development of the Game Plan there has been insufficient time for the Petitioner and the Monitor to formalise it for submission to the Court for consideration and review.

7. The Petitioner, with the support of the Monitor, seeks a sixty day (60) extension of the Stay to allow it further time to work with the Monitor to develop the Game Plan. It is also anticipated that if the extension is granted the interim financing, approved by order pronounced April 11, 2018, will be repaid in its entirety thereby

Part 3:LEGAL BASIS

8. The Petitioner relies on the terms and provisions of the CCAA, as amended.
9. 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

10. Pursuant to s. 11 of the CCAA, the Court may make any order that it considers appropriate.
11. 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.
12. 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**

13. 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**

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

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

15. 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.
16. 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.
17. There is little to no prejudice to any stakeholders in the event the Stay Period is extended.

Part 4: MATERIAL TO BE RELIED ON

18. The pleadings and materials filed herein;
19. Order pronounced November 9, 2018;
20. The Monitor's Ninth Report to Court; and
21. 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: November 20, 2018



Signature of Jeremy D. West
Counsel for the Petitioner

<p>To be completed by the court only:</p> <p>Order made</p> <p><input type="checkbox"/> in the terms requested in paragraphs _____ of Part 1 of this notice of application</p> <p><input type="checkbox"/> with the following variations and additional terms:</p> <p>_____</p> <p>_____</p> <p>_____</p> <p>_____</p> <p>Date: _____</p> <p>Signature of <input type="checkbox"/> Judge <input type="checkbox"/> Master</p>
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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