



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 Judge or Master at the courthouse at 800 Smithe Street, Vancouver, British Columbia, on the December 4, 2018 day of December, 2018, at 9:00 a.m, for the orders set out in Part 1 below.

Part 1: ORDER(S) SOUGHT

1. An Order authorizing the Monitor to cause the discharge of 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, registered against Lots 9, 10 and 11 (as defined below); and
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 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 correspondence 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 an ongoing wind down through CCAA proceedings.
4. Peter Censorio (“Mr. Censorio”) is the directing mind of the companies comprising the Censorio Group which includes Censorio Group (Hastings & Beta) Holdings Ltd. (“Beta Holdings”) and Censorio Group (Hastings & Beta) Properties Ltd. (“Beta Properties”).

The Beta Lands

5. Beta Properties is the registered owner of certain lands and premises legally known and described as:

PID 029-636-876
 STRATA LOT 9 DISTRICT LOT 122 GROUP 1 NEW WESTMINSTER
 DISTRICT
 STRATA PLAN EPS2787
 TOGETHER WITH AN INTEREST IN THE COMMON PROPERTY IN
 PROPORTION TO THE UNIT ENTITLEMENT OF THE STRATA LOT
 AS SHOWN ON FORM V

(“Lot 9”)

PID 029-636-884
 STRATA LOT 10 DISTRICT LOT 122 GROUP 1 NEW
 WESTMINSTER DISTRICT
 STRATA PLAN EPS2787
 TOGETHER WITH AN INTEREST IN THE COMMON PROPERTY IN
 PROPORTION TO THE UNIT ENTITLEMENT OF THE STRATA LOT
 AS SHOWN ON FORM V

(“Lot 10”)

PID 029-636-892
STRATA LOT 11 DISTRICT LOT 122 GROUP 1 NEW
WESTMINSTER DISTRICT
STRATA PLAN EPS2787
TOGETHER WITH AN INTEREST IN THE COMMON PROPERTY IN
PROPORTION TO THE UNIT ENTITLEMENT OF THE STRATA LOT
AS SHOWN ON FORM V

(“Lot “11”)

(collectively, the “Beta Lands”)

6. On or around March 8, 2012, by written agreement between the Petitioner, Mr. Censorio and Beta Holdings the parties entered into a loan agreement the terms of which provided, *inter alia*, that:

- a. ACIC would lend \$800,00.00 to Beta Holdings;
- b. the advance would be secured by way of a mortgage;
- c. Censorio would guarantee the loan; and
- d. interest would accrue at a rate of 12% per annum calculated and paid quarterly.

(the “Initial Beta Loan”)

7. ACIC advanced the funds under the Initial Beta Loan and registered a mortgage on title to certain properties which ultimately became the Beta Lands.

8. On or about July 25, 2013, the mortgage was discharged and the properties were consolidated into a single parcel legally described as:

PID: 029-125-626
LOT A DISTRICT LOT 122 GROUP 1 NWD PLAN BCP52071

(the “2013 Beta Lands”)

9. On or about March 3, 2015, based on Beta Holdings' intention to subdivide the 2013 Beta Lands, the Petitioner, Mr. Censorio and Beta Holdings agreed to amend the Initial Beta Loan (the "Amended Beta Loan"). The terms of such amendment included, *inter alia* that:
 - a. ACIC would increase the maximum principal advance to \$3,000,000;
 - b. Beta Holdings and Censorio would provide an acknowledgment that as at March 3, 2015 the outstanding balance was \$2,010,037.82; and
 - c. Beta Holdings would provide a Form B mortgage in registrable form, registerable against the 2013 Beta Lands and any future subdivision or alteration of those lands.
10. In accordance with the Amended Beta Loan a Form B Mortgage (in registrable form) was executed by Beta Holdings and delivered to counsel for ACIC.
11. In or around August 2015, the 2013 Beta Lands were subdivided to create, among other properties, the Beta Lands.
12. On or about August 26, 2015, the Beta Lands were transferred by Beta Holdings to Beta Properties. As at the date of transfer the Beta Lands were subject to an equitable mortgage in favour of Petitioner and Beta Properties' interest in the Beta Lands is subject to that mortgage.
13. As at December 1, 2018 the balance outstanding (comprising principal and interest) on the Amended Beta Loan is \$3,254,743.07 with interest accruing at a per diem rate of \$938.33 per day.
14. In addition to the Petitioner's interest the Beta Lands are subject to the following encumbrances which are registered in priority to the CPL:
 - a. first mortgage in favour of BlueShore Financial Credit Union which counsel for Mr. Censorio advises secures a sum of approximately \$2,846,000.00; 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) which counsel for Mr. Censorio advises secures a sum of approximately \$1,250,000.00. This mortgage is also registered against two other properties against which the CPL is registered and will be fully paid off if the sales referred to herein complete.

15. The Amended Beta Loan is in default.

ACIC proceedings

16. On April 12, 2018 the Petitioner commenced proceedings against a number of parties including Mr. Censorio, Beta Properties and Beta Holdings (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 Beta Lands.

Sale contracts

17. On or about November 9, 2018 Beta Properties and 1158233 B.C. Ltd. entered into a contract of purchase and sale for Lot 11 the particulars of which included:
 - a. purchase price of \$2,100,000.00;
 - b. certain subjects in favour of 1158233 B.C. Ltd. (the “Lot 11 Subjects”);
 - and
 - c. completion date December 13, 2018.

(the “Lot 11 Contract”)

18. On November 27, 2018 the Lot 11 Subjects were removed.
19. On or about June 22, 2015 Beta Properties entered into a lease for Lot 11 with Censorio Construction Group Ltd. which is a member of the Censorio Group (the

- “Censorio Beta Lease”). Counsel for Mr. Censorio has advised that the terms of the Censorio Beta Lease, and in particular the base rent rate, is significantly higher than market rent. The Petitioner and the Monitor have made independent enquiries which confirm that the base rent is in excess of market value (the “Monitor’s Enquiries”).
20. The terms of the Lot 11 Contract include a subject providing for the renegotiation of the Censorio Beta Lease and counsel for Mr. Censorio has advised that new lease terms have been agreed between 1158233 B.C. Ltd. and Censorio Construction Group Ltd. which provide for a reduced base rent per square foot of \$18.00. The Monitor’s Enquiries suggest that is consistent with the market rate for comparable properties.
 21. Lot 11 has been assessed value of \$2,210,000.00.
 22. The Monitor’s Enquiries indicate that for a variety of reasons including the amended lease terms for Lot 11 and the timing of completion, the purchase price in the Lot 11 Contract is reasonable.
 23. On or about November 9, 2018 Beta Properties and 1B Investments Ltd. entered into a contract of purchase and sale for Lot 9 and Lot 10 the particulars of which included:
 - a. purchase price of \$2,250,000;
 - b. certain subjects in favour of 1B Investments Ltd. (the “Lot 9 & 10 Subjects”); and
 - c. completion date December 11, 2018.(the “Lot 9 & 10 Contract”)
 24. On November 27, 2018 the Lot 9 & 10 Subjects were removed.
 25. Lots 9 & 10 have a combined assessed value of \$2,532,000.00.

26. The Monitor's Enquiries indicate that for a variety of reasons including the leases in place for Lot 9 & 10 and the timing of completion, the purchase price in the Lot 9 & 10 Contract is reasonable.
27. 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 1158233 B.C. Ltd. or 1B Investments Ltd. and that he is prepared to execute a statutory declaration to that effect.
28. In order to complete the Lot 9 & 10 Contract and the Lot 11 Contract Beta Properties has requested that the Petitioner discharge the CPLs registered against Lot 9, Lot 10 and Lot 11.

Part 3:LEGAL BASIS

29. 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.
30. 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.
31. Although the properties which are the subject of this application are not registered in the name of the Petitioner the discharge of the CPL is necessary for the contracts to complete and the funds realized on completion will not be sufficient to repay the Amended Beta Loan.
32. 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.
33. 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.
34. 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

- 35. Affidavit #2 of Joseline Kwok sworn December 3, 2018;
- 36. Monitor's 10th Report; and
- 37. The pleadings and materials filed herein.
- 38. Such other materials as counsel may advise and this Honourable Court may allow.

The Applicant estimates that the Application will take 30 minutes.

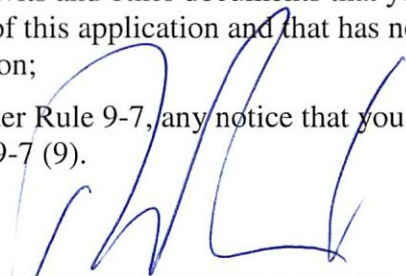
[] This matter is within the jurisdiction of a master.

[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: December 3, 2018



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:

Date: _____	_____
	Signature of <input type="checkbox"/> Judge <input type="checkbox"/> Master

APPENDIX

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