



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, September 6, 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. extending the stay of proceedings provided for in the order pronounced by this Honourable Court on June 11, 2018 to September 26, 2018;
 - b. 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").

3. On December 5, 2017, Mr. Justice Silverman made an order (the “December 2017 Order”) extending the stay of proceedings provided for in the Initial Order to March 9, 2018.
4. In or around late January 2018, as a result of a conflict of interest, the Petitioner’s original counsel determined that it was no longer able to act in the proceedings.
5. The Petitioner was required to locate and retain new counsel and on February 15, 2018, the Petitioner filed a Notice of Change of Lawyer in these proceedings, appointing Watson Goepel LLP as legal counsel.
6. On March 7, 2018, Madam Justice Iyer made an order (the “March 2018 Order”) further extending the stay of proceedings provided for in the Initial Order to April 11, 2018.
7. On April 11, 2018, Madam Justice Russell made an order (the “April 2018 Order”) further extending the stay of proceedings provided for in the Initial Order to June 11, 2018 and approving an interim lending facility secured by the Petitioner.
8. On June 11, 2018 Mr. Justice Sewell made an order (the “June 2018 Order”) extending the stay of proceedings to September 7, 2018 and confirming that the conditions contained in the April 2018 Order, relating to the approval of the interim lending facility, had been satisfied and confirming that the interim lender’s charge was in full force and effect.
9. Pursuant to the June 2018 Order, the stay of proceedings expires on September 7, 2018 (the “Stay Period”).
10. The Petitioner seeks an extension of the Stay Period to September 26, 2018 and understand that Boale, Wood & Company Ltd. in its capacity as court-appointed Monitor of the Petitioner (the “Monitor”) is supportive of such extension.
11. This extension is sought in order to allow further time for the Petitioner to realize further funds for distribution to stakeholders, submit a claims process for court consideration and develop a plan of compromise and arrangement (a “Plan”) to present to its stakeholders. Specifically, this extension would allow the Petitioner to:
 - i. finalize and apply for Court approval on a claims process for the Petitioner’s various creditors and stakeholders;
 - ii. finalize and apply for Court approval of a procedure to determine the priorities and status of the Petitioner’s preferred shareholders that have delivered redemption notices to the;

- iii. assist a creditor in its efforts to refinance with third-party lenders to enable repayment of its outstanding indebtedness to the Petitioner;
- iv. facilitate the completion of the sale of real property (approved by court order on August 30, 2018);
- v. negotiate payment priorities with competing creditors;
- vi. continue with its efforts to sell real property owned by the Petitioner;
- vii. continue with its efforts to sell real property pursuant to an exclusive order for conduct of sale granted to the Petitioner;
- viii. continue to supervise sale listings, conditional sale offers, and closing arrangements for properties which stand as security for loans in the Loan Portfolio;
- ix. continue to negotiate repayment arrangements with Borrowers;
- x. monitor completion of a development project which is presently anticipated to complete in October 2018 and from which a loan repayment is expected;
- xi. develop the Plan to present to its stakeholders that would involve a fair, controlled and orderly wind-down of its business operations; and
- xii. work with the Monitor in discussions with the Borrowers and in the development of the Plan;

Background

- 12. The Petitioner is a mortgage investment corporation (“MIC”) which has been in business since 1998. Its business is to provide loans to owners and developers of residential, commercial, office and industrial real estate properties (the “Borrowers”), which are secured by registered, unregistered and equitable mortgages on the properties (the “Mortgage Loans”). In addition, the Petitioner makes other loans and investments from time to time that may be unsecured (the “Other Loans”, and together with the Mortgage Loans, hereinafter referred to as the “Loans”).
- 13. The Petitioner’s primary asset is its portfolio of Loans (the “Loan Portfolio”).
- 14. In addition to the Loan Portfolio, the Petitioner owns certain real property (the “Real Property”). Since the date of filing one of the properties has been sold in accordance with the Order of the Honourable Mr. Justice Pearlman dated January

24, 2018 (the "Approval Order") and another (which was approved by Order pronounced August 30, 2018) is scheduled to complete September 12, 2018. The balance of the properties are listed for sale.

15. The reasons for the Petitioner's financial difficulties which led it to file for protection under the CCAA are described in the Petition and include the following:
 - a. the high level of development activity in the Lower Mainland which led to excessive delays in construction and development, particularly with respect to obtaining permits from the municipalities.
 - b. construction delays resulted in delays on timely interest payments and payouts of the Loans by Borrowers. This has negatively affected the Petitioner's cash flow and its ability to meet its obligations to its creditors, including to its preferred shareholders.
 - c. the Petitioner was unsuccessful in raising additional funds from investors as there has been a general decline in investor interest in MICs.
 - d. the Petitioner's ability to raise additional capital was also hindered by the sudden resignation of its auditors, BDO Canada LLP ("BDO") in March 2016 without advance warning and without completing the Petitioner's audited financial statement for 2015 or filing the Petitioner's tax return. Consequently, the Petitioner was unable to provide audited financial statements to complete an offering memorandum.
 - e. the Petitioner resorted to borrowing funds from third party financiers in order to advance loans and meet loan commitment obligations to the Borrowers. Such loans had high interest rates which caused further strain to the Petitioner's cash flow.
 - f. the Petitioner also borrowed funds through the issuance of debentures (the "Debentures"). The Debentures have now either matured or the holders of the Debentures have made redemption requests (the "Debenture Redemption Notices").
16. As at the date of filing the Petitioner had issued a total of 37,277 preferred shares and 15,647 warrants, for total capital of approximately \$37,000,277.
17. The Petitioner's purpose for seeking CCAA protection is to stabilize its operations, take steps to recover (or realize security) and develop a plan of compromise or arrangement (a "Plan") to present to its stakeholders as part of these CCAA proceedings that would involve a fair, controlled and orderly wind-down of its business operations, for the benefit of its stakeholders.

The Petitioner's Activities since the June 2018 Order and the Extension of the Stay

18. Since of the date of the June 2018 Order, the Petitioner has continued to manage the daily operations of its business. In addition, the Petitioner has:
- a. worked cooperatively with the Monitor to provide the Monitor with information regarding the Loan Portfolio, the Real Property and its security realization efforts;
 - b. communicated with Borrowers, financial advisors, legal counsel, and other parties to assess and where practicable remedy issues regarding collectability;
 - c. communicated with Borrowers, real estate agents, potential purchasers, legal counsel, and other parties regarding the listing for sale certain property securing the Loan Portfolio, and supervised the listing process;
 - d. communicated with real estate agents, potential purchasers, legal counsel, and other parties regarding the listing and sale of certain property owned by the Petitioner located on Packalen Boulevard in Pender Harbour, British Columbia (the "Packalen Boulevard Properties");
 - e. executed, delivered and obtained court approval of a contract of purchase and sale for Lot 5 of the Packalen Boulevard Properties;
 - f. assisted a borrower in its efforts to refinance a property which secures one of the loans in the Loan Portfolio;
 - g. assisted in the sale, by a borrower, of a piece of real property securing a portion of the Loan Portfolio as a result of which, the available equity in three other pieces of real property (against which the Petitioner has equitable mortgages and a CPL) has been increased by in excess of \$3 million ;
 - h. obtained an Order Nisi in foreclosure proceedings against certain properties against which it has first mortgage security, one of which properties was sold (with court approval) on August 30, 2018;
 - i. communicated with stakeholders in the CCAA proceedings;
 - j. considered and discussed restructuring plans with the Monitor to maximize the recovery to all stakeholders;
 - k. reviewed issues relating to the status of preferred shareholders with a view to presenting a process for determining priorities between them to the court for approval;

- l. prepared a draft claims process order to be provided to the Monitor for review and comments; and
 - m. continued negotiations with Borrowers regarding additional security options.
19. The Petitioner believes that given a further extension it will be able to take further steps to realize upon its assets and the Loan Portfolio and submit a claims process for court approval. This will include:
 - a. the sale of a piece of real property owned by the Petitioner which is scheduled to complete on September 12, 2018 in accordance with a court order pronounced August 30, 2018.
 - b. continue with marketing and negotiations of two other pieces of real property owned by the Petitioner.
 - c. attempt to negotiate (or litigate) a priority dispute between the Petitioner and CRA over the sale proceeds of a property against which the Petitioner commenced foreclosure proceedings (and has an Order Nisi for a sum in excess of \$6 million) which was recently sold with the net proceeds to be paid into Court.
 - d. continue to market the properties against which the Petitioner has an Order Nisi and an order for exclusive conduct of sale; and
 - e. assist a borrower in its efforts to refinance a property against which the Petitioner has a first mortgage security with a view to repayment of a sum in excess of \$1 million.
20. If some, or all, of those activities are completed, the Petitioner anticipates receiving further payments to the Petitioner over the next few months.
21. The granting of an extension will allow those endeavours to proceed in an orderly fashion which will likely provide greater value to stakeholders, as opposed to an immediate "as is" liquidation of the Loan Portfolio.
22. The Petitioner is continuing to communicate with the Monitor regarding development of a claims process and a Plan. Specifically:
 - a. the Petitioner is in the process of providing the Monitor with a proposed draft claims process order, which will enable an orderly claims process and minimize disruption to the Petitioner's ongoing efforts to realize upon the Loan Portfolio.
 - b. the Petitioner has discussed the general terms of a proposed Plan with the Monitor and is in the process of preparing materials for the Monitor's review and comment.

23. The Petitioner requires further time to work with the Monitor and the Borrowers to find prospective purchasers, evaluate the value of the Loan Portfolio, secure further security, prosecute and where necessary institute further proceedings to realize on security.
24. An extension of the stay is a vital component of that process. Without it, there is no question that the position of stakeholders will be significantly prejudiced and the value of the Loan Portfolio will be compromised
25. The Petitioner will continue to work with the Monitor to attempt to reduce its overhead costs which have already been significantly reduced.
26. There is little to no prejudice to any stakeholders in the event the Stay Period is extended.
27. The Monitor has been fully apprised of the Petitioner's intention to apply for an extension of the Stay Period to September 26, 2018.
28. The Petitioner has acted, and continues to act, in good faith and with due diligence in these CCAA proceedings.

Part 3:LEGAL BASIS

29. The Petitioner relies on the terms and provisions of the CCAA, as amended.
30. 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

31. Pursuant to s. 11 of the CCAA, the Court may make any order that it considers appropriate.
32. 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.
33. 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

34. 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

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

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

36. 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 will enable the Petitioner to proceed with its business operations and develop a Plan to be presented to its stakeholders for an orderly wind-down of the company.
37. The Petitioner has acted and continues to act in good faith and with due diligence.
38. There is little to no prejudice to any stakeholders in the event the Stay Period is extended.

Part 4: MATERIAL TO BE RELIED ON

39. The pleadings and materials filed herein;
40. Affidavit #1 of Donald Bergman, made November 7, 2017;
41. Affidavit #2 of Donald Bergman, made November 30, 2017;
42. Affidavit #3 of Donald Bergman, made January 19, 2018; and
43. Affidavit #4 of Donald Bergman, made March 1, 2018;
44. Affidavit #5 of Donald Bergman, made on April 6, 2018;
45. Affidavit #6 of Donald Bergman, made on June 6, 2018;
46. Affidavit #7 of Donald Bergman, made on August 29, 2018;

- 47. Affidavit #8 of Donald Bergman, made on August 31, 2018;
- 48. Monitor's updated report (to be filed); and
- 49. Such further and other material as counsel may advise and this Honourable Court may allow.

The Applicants estimates that the Application will take 30 minutes.

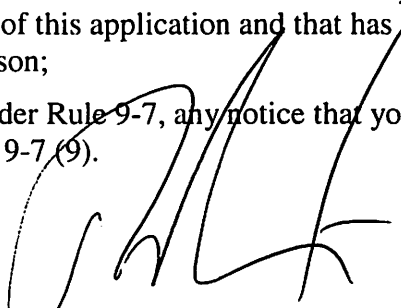
[] This matter is within the jurisdiction of a master.

[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: August 31, 2018



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

[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