



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 Monday, June 11, 2018 at 9:45 a.m., for the Orders set out in Part 1 below.

Part 1: ORDERS SOUGHT

1. The Petitioner is seeking orders:
 - a. abridging the time for service of this Notice of Application and the materials herein such that the application is properly returnable on Wednesday, June 11, 2018;
 - b. extending the stay of proceedings provided for in the order pronounced by this Honourable Court on April 11, 2018 to September 7, 2018;
 - c. that as at April 26, 2018, the conditions set forth at paragraph 20 of the Order pronounced in these proceedings on April 11, 2018, were satisfied in full, or are hereby deemed to have been satisfied in full, and the relief granted in the Order pronounced April 11, 2018, including the approval of the interim lending facility agreement between the Petitioner and DID-BC

Holdings Ltd., dated March 27, 2018, and the granting of the interim lender's charge, is in full force and effect; and

- d. 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") extended 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. Pursuant to the April 2018 Order, the stay of proceedings expires on June 11, 2018 (the "Stay Period").
9. The Petitioner seeks an extension of the Stay Period to September 7, 2018.
10. This extension is sought in order to allow further time for the Petitioner to develop a plan of compromise and arrangement (a "Plan") to present to its stakeholders. Specifically, this extension would allow the Petitioner to:
 - i. assess options and prepare materials for use in these proceedings including in submitting a Plan;
 - ii. prosecute recovery proceedings which have already been initiated and, if necessary, institute further recovery proceedings;

- iii. continue with its efforts to sell certain real property;
- iv. determine whether properties which stand as security for loans in the Loan Portfolio, which are presently the subject of conditional sales contracts, are sold;
- v. continue to negotiate repayment arrangements with Borrowers;
- vi. monitor completion of a development project which is presently anticipated to complete September 30, 2018 and from which a loan repayment is expected;
- vii. develop a claims process for court review and implementation;
- viii. develop the Plan to present to its stakeholders that would involve a fair, controlled and orderly wind-down of its business operations;
- ix. work with the Monitor in discussions with the Borrowers and in the development of the Plan; and
- x. obtain support from its creditors and hold a meeting to vote on the Plan.

Background

11. 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”).
12. The Petitioner’s primary asset is its portfolio of Loans (the “Loan Portfolio”).
13. 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”). The balance of the properties are presently listed for sale.
14. The Petitioner’s primary objective as a MIC is to provide its preferred shareholders with dividend payments. The Petitioner has issued a total of 37,277 preferred shares and 15,647 warrants, for an aggregate capital of approximately \$37,277,000.

15. From 2005 to 2014, shareholders received between 6.25% to 8% annual returns on their Preferred Shares. Dividends to shareholders were decreased to 2.75% in 2015 and to 1.0% in 2016 and the Petitioner did not pay any dividends in 2017.
16. The Petitioner does not have any employees and is managed by ACIC Financial Development Inc. ("AFDI"), which is contractually entitled to receive an annual management fee equal to the Petitioner's assets and 15% of the Petitioner's gross annual revenues payable on a monthly basis. AFDI's management fee has been reduced during the CCAA proceedings and now stands at \$25,000 per month.
17. 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").
18. The foregoing resulted in a decrease in cash flow and ultimately in decrease dividend payments to the preferred shareholders in 2015 and 2016. The Petitioner was unable to make any dividend payments at all to the preferred shareholders in 2017. This led to a significant number of the preferred shareholders sending Equity Redemption Notices.

19. To date, of the \$37,277,000 capital in preferred shares issued Equity Redemption Notices that have been received totalling approximately \$24,229,000.
20. Prior to filing three actions were commenced in the British Columbia Supreme Court by preferred shareholders against the Petitioner and others, including AFDI, Donald Bergman and Wayne Blair (both officers of the Petitioner) with respect to their shares and Equity Redemption Notices.
21. 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. The equity claims identified above arise out of that capital.
22. 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 March 2018 Order and the Extension of the Stay

23. Since of the date of the April 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 prepare and update cash flow statements;
 - b. worked cooperatively with the Monitor to provide the Monitor with information regarding the Loan Portfolio, the Real Property and its security realization efforts;
 - c. continued its review of the value and enforceability of assets in the Loan Portfolio;
 - d. communicated with Borrowers, financial advisors, legal counsel, and other parties to assess and verify loan status and possible issues regarding collectability;
 - e. communicated with Borrowers, lenders, financial institutions, legal counsel, and other parties and conducted independent inquiries regarding security realization;
 - f. negotiated repayment arrangements for payment of both loan interest and principal;
 - g. instructed certain Borrowers to list properties pledged by way of security and monitored the listing process;

- h.** received and reviewed contractual documentation for the sale, by Borrowers, of certain real property security;
 - i.** communicated with stakeholders in the CCAA proceedings;
 - j.** prosecuted foreclosure proceedings against certain properties against which it has first mortgage security;
 - k.** commenced other proceedings to crystallize security against certain real property assets;
 - l.** advised Borrowers that, absent a mutually acceptable repayment proposal, it intends to institute collection proceedings;
 - m.** negotiated and closed (with court approval) an interim financing facility in the amount of \$2,060,000, which has enabled the Petitioner to continue to pay its post-filing debts as well as redeem valuable real property assets which were charged by and Order Nisi and related security documents in favour of Fisgard;
 - n.** considered and discussed potential restructuring plans with the Monitor to maximize the recovery to all stakeholders;
 - o.** reviewed issues relating to the status of certain stakeholders including preferred shareholders;
 - p.** sourced, from Borrowers, updated information relating to the value and status of certain properties in the Loan Portfolio; and
 - q.** continued negotiations with Borrowers regarding additional security options.
- 24.** The Petitioner believes that given a further extension it will be able to take further steps to realize on the Loan Portfolio. In particular:
- a.** there are presently four properties subject to conditional contracts (three of which have subject removal dates no later than June 8, 2018), which have closing dates prior to the end of June 2018;
 - b.** another property is also subject to a conditional contract (with a subject removal date at the end of June 2018); and
 - c.** there are also a number of other properties, against which the Petitioner has registered first mortgages, which are listed for sale and being aggressively marketed.
- 25.** If some, or all, of those properties sell then there will be significant payments made to the Petitioner over the next few months

26. The granting of an extension will allow those sales and marketing 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.
27. The Petitioner’s plan will likely involve a structured recovery from Borrowers together with potentially an *en bloc* sale, or partial sale, of the Loan Portfolio and the Real Property to pay its stakeholders.
28. 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, prosecuted and where necessary institute further proceedings to realize on security and develop a Plan to present to its creditors.
29. 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
30. The Petitioner will continue to work with the Monitor to attempt to reduce its overhead costs which have already been significantly reduced.
31. There is little to no prejudice to any stakeholders in the event the Stay Period is extended.
32. The Monitor has been fully apprised of the Petitioner’s intention to apply for an extension of the Stay Period to September 7, 2018.
33. The Petitioner has acted, and continues to act, in good faith and with due diligence in these CCAA proceedings.

Part 3:LEGAL BASIS

34. The Petitioner relies on the terms and provisions of the CCAA, as amended.
35. 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

36. Pursuant to s. 11 of the CCAA, the Court may make any order that it considers appropriate.
37. 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.

38. 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

39. 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

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

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

41. 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.
42. The Petitioner has acted and continues to act in good faith and with due diligence.
43. There is little to no prejudice to any stakeholders in the event the Stay Period is extended.

Part 4: MATERIAL TO BE RELIED ON

44. The pleadings and materials filed herein;
45. Affidavit #1 of Donald Bergman, made November 7, 2017;
46. Affidavit #2 of Donald Bergman, made November 30, 2017;
47. Affidavit #3 of Donald Bergman, made January 19, 2018; and

- 48. Affidavit #4 of Donald Bergman, made March 1, 2018;
- 49. Affidavit #5 of Donald Bergman, made on April 6, 2018;
- 50. Affidavit #6 of Donald Bergman, made on June 6, 2018 (to be filed); and
- 51. 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.

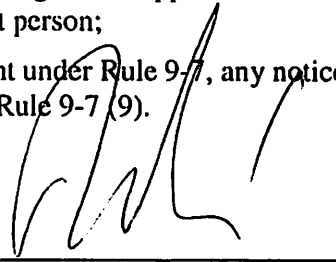
[] This matter is within the jurisdiction of a master.

[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: June 7, 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

[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