



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 1st day of August, 2019, at 9:45 am, for the orders set out in Part 1 below.

**Part 1: ORDER(S) SOUGHT**

1. Orders and declarations substantially in the form attached as Schedule "A" approving the purchase and sale of Lot 137 (as defined below); and
2. Such further and other relief as this Honourable Court deems just.

**Part 2: FACTUAL BASIS**

3. On November 10, 2017, on the application of the petitioner, the Honourable Madam Justice Adair made an 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"). Pursuant to the Initial Order, the stay of proceedings expired on December 9, 2017 (the "Stay Period").

4. Boale, Wood & Company Ltd. was appointed as monitor in the CCAA proceedings (the "Monitor").
5. Since December 5, 2017, on the application of the petitioner, the Stay Period has been extended on various occasions including most recently to October 1, 2019.
6. Since the date of the Initial Order, the petitioner has continued to manage the daily operations of the business and explore restructuring options, including the sale of its real property and collection of the outstanding amounts owing to it from the Borrowers.
7. On November 9, 2018, the Monitor was granted additional powers, including, subject to the requirements for court approval, the power to direct or cause the petitioner to sell its assets, including Lot 137.
8. Mr. Justice Walker is seized of the CCAA proceedings. The petitioner made a request to appear before Mr. Justice Walker for this application, but he was not available. Mr. Justice Walker authorized this application to be heard in general chambers.
9. The petitioner's efforts have resulted in the execution of a contract to sell one of the pieces of real property which it owns, the details of which are described in further detail below.
10. The petitioner is seeking approval for the sale of that property.

**Sale of Lot 137**

11. The petitioner is the registered owner of a property located on or near Lee Road, Garden Bay, Pender Harbour, British Columbia, described as:  
  
PID 026-169-436  
LOT 137 DISTRICT LOT 3923 GROUP 1 NEW WESTMINSTER DISTRICT  
PLAN BCP15556  
  
(" Lot 137" )
12. Lot 137 is an irregular shaped property of 0.54 acres bare land.
13. The petitioner began listing Lot 137 for sale in August 2016 with a realtor on the Sunshine Coast. Prior to the petitioner's listing, Lot 137 had been listed on and off the market between 2007-2010.

14. Lot 137 has been marketed by a variety of means including:
- a. advertising continually on www.sunshinecoasthomes.com;
  - b. advertising continually on www.royalepagesussex.com/offices/schelt;
  - c. advertising continually on www.realtylink.org;
  - d. promotional posts on Facebook for SunshineCoastHomes.com;
  - e. advertised monthly in display advertising in the Sunshine Coast Real Estate Guide
  - f. “For Sale” signage on Lot 137 with relator contact information for drive by showings; and
  - g. advertised often in weekly display advertising in Coast Reporter – Realty Section;
  - h. Advertised continually in window display sheet format in Royal LePage Sussex Sechelt & Pender Harbour locations and Garden Bay area kiosk.
15. Lot 137 has been shown numerous times.
16. In March 2017, the petitioner received an offer of \$60,000. The prospective buyer was not willing to negotiate a counter-offer by the petitioner.
17. In June 2019, the petitioner received multiple offers for Lot 137. The first offer was from the prospective buyer from March 2017 for \$70,000. The petitioner made a counteroffer but the prospective buyer did not continue with negotiations. The second offer from another prospective buyer was received at \$74,000.00.
18. Ultimately, a counteroffer was made and accepted on June 21, 2019 for a sale price of \$76,000 with the buyer paying any GST due and owing on the transaction (the “Lot 137 Offer”).
19. Lot 137 has a 2019 B.C. Assessment Value of \$104,400.
20. As of July 23, 2019, the petitioner’s realtor’s evidence confirms:
- a. he has observed a downturn in the real estate market; and
  - b. properties on the Sunshine Coast are often selling below their assessed values.

21. The Lot 137 Offer is the best offer the petitioner has received to purchase Lot 137 since listing in August 2016.
22. Although the purchase price is lower than the assessed value, the property has not garnered interest that supports a value greater than the Lot 137 Offer and the realtor has confirmed that he believes the Lot 137 Offer represents the current fair market value for Lot 137.
23. The Lot 137 Offer has a completion date of August 16, 2019.
24. The sale of Lot 137 is another step forward in the petitioner's restructuring efforts.

### **Part 3:LEGAL BASIS**

25. Rules 1-3, 8-1, and 13-5 of the *Supreme Court Civil Rules*.
26. 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.
27. 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.
28. 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.

29. 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.
30. The petitioner further relies on s.11 of the *CCAA* and the inherent and equitable jurisdiction of this Honourable Court.
31. For the reasons set out below, the petitioner submits that on a consideration of the facts set out in section 36(3) of the *CCAA*, the sale of Lot 137 is appropriate in the circumstances:
  - a. the property has been listed since August 2016;
  - b. the Monitor has been kept apprised of marketing activities during the course of these proceedings;
  - c. the Monitor is aware of the Lot 137 Offer and has been provided details of the assessed value;
  - d. there are no secured creditors that will be affected by this sale;
  - e. the proposed sale will benefit the stakeholder group as a whole, as it is another step towards the petitioner's restructuring plan. The sale will see a pay down of secured debt and allow the petitioner to concentrate its restructuring and liquidation efforts on the remainder of its assets for the benefit of the stakeholders;
  - f. the consideration to be received is fair and reasonable, taking into account the challenges of the property, including its location and market conditions. The property has been properly exposed and marketed, and the Lot 137 Offer is the best offer the petitioner has received to date. Accordingly, the consideration to be received is reflective of the true market value of Lot 137.

**Part 4: MATERIAL TO BE RELIED ON**

32. Affidavit #1 of David Milligan, made on the 23<sup>rd</sup> day of July, 2019.
33. Affidavit #1 of Chelsey Cochrane, made on the 26<sup>th</sup> day of July, 2019.
34. Report of Boale, Wood & Company Ltd. in its capacity as Court-appointed Monitor to be filed.
35. Such other materials as counsel may advise and this Honourable Court may allow.

The Applicant estimates that the Application will take 20 minutes.

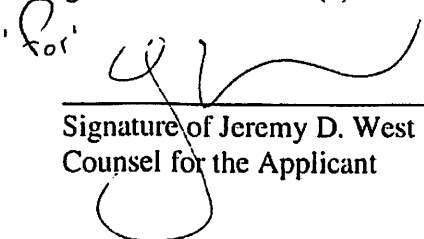
[ ] This matter is within the jurisdiction of a master.

[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: July 26, 2019

for  
  
\_\_\_\_\_  
Signature of Jeremy D. West  
Counsel for the Applicant

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**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

Schedule "A"

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**ORDER MADE AFTER APPLICATION**

BEFORE THE HONOURABLE ) THURSDAY, THE 1ST DAY OF  
\_\_\_\_\_ ) AUGUST, 2019.  
)

THE APPLICATION of the petitioner, coming on for hearing at Vancouver, British Columbia, on the 1st day of August, 2019, and on hearing Yianni E. Pappas-Acreman, counsel for the petitioner, and those other counsel listed on Schedule "A" hereto, AND UPON READING the material filed, including the Affidavit #1 of David Milligan made July 23, 2019 (the "Milligan Affidavit"), the Affidavit #7 of Donald Bergman sworn August 27, 2018, the Report of Boale, Wood & Company Ltd. in its capacity as Court-appointed Monitor (the "Monitor") relied upon in this application; AND pursuant to the *Companies' Creditors Arrangement Act*, R.S.C. 1985 c. C-36 as amended (the "CCAA"), the British Columbia Supreme Court Civil Rules and the inherent jurisdiction of this Honourable Court;

THIS COURT ORDERS AND DECLARES THAT:

1. The service upon any interested party other than those parties on the service list maintained by the petitioner and the Monitor in this matter is hereby dispensed with.



**Approval of the Sale of Lot 137**

2. The sale transaction (the "Transaction") contemplated by the Contract of Purchase and Sale dated June 19, 2019 (the "Sale Agreement") between the petitioner and Konstantin Vassev (the "Purchaser") for the lands located at PID:026-169-436 and described as Lot 137 District Lot 1923 Group 1 New Westminster District Plan BCP15556, a copy of which is attached as Exhibit "K" to the Milligan Affidavit is hereby approved, and the Sale Agreement is commercially reasonable. The execution of the Sale Agreement by the petitioner is hereby authorized and approved, and the petitioner is hereby authorized and directed to take such additional steps and execute such additional documents as may be necessary or desirable for the completion of the Transaction and for the conveyance to the Purchaser of the assets described in the Sale Agreement.

**THE FOLLOWING PARTIES APPROVE THE FORM OF THIS ORDER AND CONSENT TO EACH OF THE ORDERS, IF ANY, THAT ARE INDICATED ABOVE AS BEING BY CONSENT:**

\_\_\_\_\_  
Signature of Yianni E. Pappas-Acreman  
Solicitor for the petitioner

By the Court.

\_\_\_\_\_  
Registrar

**Schedule A- List of Counsel Appearing**
