

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 Friday, September 27, 2019 at 10:00 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 April 26, 2019 from October 1, 2019 to November 1, 2019 or such other date as this Honourable Court deems just; and
 - b. such further and other orders as this Honourable Court deems just.
2. The Petitioner seeks directions:
 - a. authorizing, but not obliging, the Monitor to negotiate, execute and deliver a priority agreement(s) (or such other agreements as may be required) to the Peoples Trust Company, and/or PK Capital Ltd., or such other potential lenders as the Monitor deems appropriate with respect to the Petitioner's certificate of pending litigation registered against title to the

real property comprising the Carleton development and such execution and delivery shall be binding on the Petitioner; and

- b. regarding the preparation and circulation of procedure for a claims process, plan of arrangement and related matters;

Part 2: FACTUAL BASIS

3. 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").
4. On November 9, 2018 an application proceeded before Mr. Justice Walker (who is seized of the proceedings) as a result of which an order was pronounced (the "November 9 Order"), the terms of which 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");
 - b. for the Monitor to assume responsibility for management and decision-making authority over the Petitioner's operations; and
 - c. that the Petitioner would retain possession and control of its property and business.
5. As a result of the November 9 Order the Monitor has effectively exercised management control over the Petitioner.
6. The Stay provided for in the Initial Order has been extended on various occasions, the most recent of which was on April 26, 2019 extending the Stay to October 1, 2019.
7. On January 11, 2019 the Court issued directions regarding a notice of application dealing with the status of preferred shareholders (the "Preferred Shareholders Application").
8. The hearing of the Preferred Shareholders Application commenced June 18, 2019 and Reasons for Judgment were issued September 4, 2019. The appeal period expires on September 25, 2019 (s. 13 and 14(2) of the CCAA).
9. The Petitioner (under the direction of the Monitor) is continuing to administer the realisation of its Loan Portfolio (and other assets), seeking to enhance its security and advancing the preparation of a plan of arrangement or compromise, including by taking the following actions:

- a. working with its largest borrower to arrange for further security for its portion of the Loan Portfolio, including registering mortgages and realisation of security;
 - b. assisting in the the listing, marketing and sales process of property securing the Loan Portfolio assets
 - c. commencing further proceedings against borrowers for the purposes of recovering the Loan Portfolio;
 - d. negotiating with secured lenders to complete the Carleton development project; and
 - e. developing a proposed plan and claims process which suits the specific needs of the Petitioner and its circumstances.
10. The Petitioner is continuing to act in good faith and to diligence and with support of the Monitor, seeks an extension of the Stay to November 1, 2019.
11. In addition, the Petitioner and the Monitor seek directions from the court with respect:
- a. the form and timing of a claims process; and
 - b. the form and timing of a plan of arrangement.

Part 3:LEGAL BASIS

12. The Petitioner relies on the terms and provisions of the CCAA, as amended.
13. 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

14. Pursuant to s. 11 of the CCAA, the Court may make any order that it considers appropriate.
15. 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.

16. 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

17. 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

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

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

19. 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.
20. 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.
21. There will be little, if any, prejudice to any stakeholders in the event the Stay Period is extended.

Directions

22. Section 45 of the Initial Order provides that the Petitioner may from time to time apply to this Honourable Court for directions in the discharge of its duties under the CCAA.

*Initial Order of Madam Justice Adair, Vancouver Registry
Court File No. S1710393, pronounced November 10, 2017*

Part 4: MATERIAL TO BE RELIED ON

23. The pleadings and materials filed herein;
24. Affidavit #2 of Kyle Record sworn September 25, 2019;
25. The Monitor's Sixteenth Report to Court; and

26. Such further and other material as counsel may advise and this Honourable Court may allow.

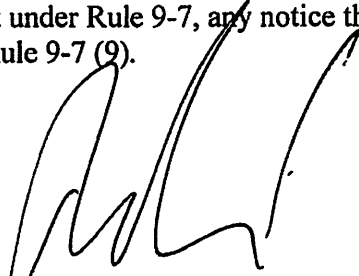
The Applicants estimates that the Application will take 60 minutes.

- 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: September 25, 2019



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

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