

28-Sep-20

REGISTRY

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 by teleconference to the presiding Judge or Master at the courthouse at 800 Smithe Street, Vancouver, British Columbia, on Wednesday, September 30, 2020 at 9:00 a.m., for the Orders set out in Part 1 below.

Part 1: ORDERS SOUGHT

1. The Petitioner seeks an Order, substantially in the form attached as **Schedule B**, including:
 - a. abridging the time for service of the Notice of Application dated September 28, 2020 such that the application is properly returnable on Wednesday, September 30, 2020 and 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.
 - b. extending the stay of proceedings from October 16, 2020 to January 20, 2021 or such other date as this Honourable Court deems just; and
 - c. such further and other orders as this Honourable Court deems just.

Part 2: FACTUAL BASIS

2. On May 19, 2020 the Stay of proceedings was extended to October 16, 2020 (the “Stay”).

Claims Process

3. On November 18, 2019 the court issued the Claims Process Order.
4. In the Monitor’s Nineteenth Report to Court dated January 28, 2020 the Monitor reported on its conduct of the claims process. At the request of the court, the Monitor filed a Report Supplemental to the Monitor’s Nineteenth Report to Court dated February 18, 2020 providing further information regarding claims submitted by related companies (to ACIC) in the claims process (together referred to as the “Monitor’s Claims Report”).
5. In the Monitor’s Claims Report, the Monitor accepted certain proofs of claims.
6. At the time of the last application to extend the stay of proceedings (May 19, 2020), the terms of the Claims Process Order had been completed other than the determination of the Notice of Application dated February 19, 2020 filed by Parkland Funding Limited (the “Parkland Application”).
7. The Parkland Application was heard on April 21, 2020 and May 19, 2020.
8. On May 19, 2020, the Court, *inter alia*:
 - a. approved the Monitor’s Claims Report subject only to the final determination of the Parkland Application; and
 - b. deemed certain creditor claims Proven Claims for the purposes of the Meeting Order.
9. The Parkland Application was dismissed in reasons for judgment issued June 8, 2020 and indexed at 2020 BCSC 855.
10. The terms of the Claims Process Order have now been completed.

Meeting to approve the Plan

11. On November 18, 2019 the court issued the Meeting Order.
12. On May 19, 2020, the court made a minor amendment to the Meeting Order so as to allow it to proceed at the Monitor’s discretion in light of the COVID 19 pandemic.
13. The Company and the Monitor subsequently received comments on the Plan from counsel for two of the significant creditors raising concerns about the fact that the

Plan did not provide for interest to be paid on the outstanding debts from the date of the Initial Order.

14. A hearing has been scheduled for October 30, 2020 to address that aspect of the Plan and in the meantime, efforts are being made to determine whether the issue may be able to be resolved by agreement.

Realization of assets

15. Since the May 19, 2020 extension of the Stay, the Petitioner has continued to make efforts to realize its assets for the benefit of stakeholders.
16. In particular:
 - a. on June 9, 2020, the Petitioner obtained court approval of the sale of real property near Garden Bay, British Columbia for a price of \$860,000.00 (including GST);
 - b. on August 20, 2020, the Petitioner obtained court approval of the sale of real property near Garden Bay, British Columbia for a price of \$639,450 (including GST); and
 - c. the Petitioner has been pursuing realisation of its assets for distribution in accordance with the terms of the Plan. of debts due and owing
17. Both transactions completed.

Extension of the Stay

18. The Stay is scheduled to expire October 16, 2020. The Petitioner respectfully requests an extension of the stay to January 20, 2021 in order to allow:
 - a. the issue relating to the recovery of post filing interest, by the creditors, to be resolved by agreement or order/direction of the court;
 - b. the meeting of creditors to proceed in accordance with the Meeting Process Order;
 - c. the Petitioner to apply for a sanction order in the event that the Plan is approved by the creditors at the meeting; and
 - d. the Petitioner to continue its ongoing efforts to realize its assets for the benefit of stakeholders.
19. Although a relatively lengthy extension, the Petitioner is attempting to reduce the administration costs of the proceedings by avoiding the necessity for multiple extension hearings.

20. The Petitioner is continuing to act in good faith and due diligence and with support of the Monitor, seeks an extension of the Stay to January 20, 2021 or such other date as this Honourable Court deems just.

Part 3:LEGAL BASIS

21. The Petitioner relies on the terms and provisions of the CCAA, as amended.
22. 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

23. Pursuant to s. 11 of the CCAA, the Court may make any order that it considers appropriate.
24. 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.
25. 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](#)

26. 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](#)

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

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

28. The extension of the Stay sought by the Petitioner is appropriate in the circumstances as it is consistent with the purpose of the CCAA.
29. The Petitioner has acted and continues to act in good faith and with due diligence and the need for an extension arises in order to allow the Petitioner to proceed with presenting the Plan to its creditors and assuming it is approved, seeking a sanction order and then implementing the Plan.
30. There will be no prejudice to any stakeholders in the event the Stay is extended as the Petitioner is proceeding with the restructuring process.

Part 4: MATERIAL TO BE RELIED ON

31. The pleadings and materials filed herein including:
32. The Monitor's 24th Report to Court.
33. Such further and other material 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: September 28, 2020



Signature of Jeremy D. West
Counsel for the Petitioner

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

Schedule “B”

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IN THE MATTER OF A PLAN OF COMPROMISE AND ARRANGEMENT OF
ALL CANADIAN INVESTMENT CORPORATION

ORDER MADE AFTER APPLICATION

BEFORE THE HONOURABLE) THE 30th DAY OF
MR. JUSTICE WALKER) SEPTEMBER 2020.
)

ON THE APPLICATION of the Petitioner dated September 28, 2020 coming on for hearing at Vancouver, British Columbia, on the 30th day of September, 2020, and on hearing Jeremy D. West, counsel for the Petitioner, and those other counsel listed on Schedule “A” hereto, AND UPON READING the material filed herein for the purposes of 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 DIRECTS THAT:

1. Terms and expressions not defined in this Order shall have the meanings attributed to them in the Order of this Court pronounced on November 10, 2017 (as varied from time to time, the “Initial Order”).

2. The time for service of the Notice of Application dated September 28, 2020 is abridged such that the application is properly returnable on Wednesday, September 30, 2020 and 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.

Stay of Proceedings

3. The stay of proceedings is hereby extended from October 16, 2020 to January 20, 2021.
4. The proceedings are adjourned for hearing at 10:00 a.m. [insert].
5. Approval of counsel as to form listed in **Schedule “A”** hereto, except counsel for the Petitioner, is hereby dispensed with.

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 Jeremy D. West
Counsel for the Petitioner

By the Court.

Registrar

Schedule "A"- List of Counsel Appearing

Jeremy D. West	Counsel for All Canadian Investment Corporation