



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

APPLICATION RESPONSE

Application Response of: The petitioner

THIS IS A RESPONSE TO the notice of application of James Hancock & 103163 Alberta Ltd. (the "applicants") dated the 20th day of February, 2020 (the "Application").

Part 1: ORDER CONSENTED TO

The petitioner consents to the granting of NONE of the orders set out in the Application.

Part 2: ORDERS OPPOSED

The petitioner opposes the granting of NONE of the orders set out in the Application.

Part 3: ORDERS ON WHICH NO POSITION IS TAKEN

The petitioner takes no position on the granting of ALL of the orders set out in the Application.

Part 4: FACTUAL BASIS

1. The applicants seek an order directing the petitioner to pay the sum of \$47,242.73, representing legal costs incurred by them for attendances in respect to a notice of

application dated January 24, 2019 (the "Preferred Shareholders Application"), from the petitioner's estate.

2. In the Preferred Shareholders Application the petitioner sought directions and declarations regarding the status, for the purposes of the *Companies' Creditors Arrangement Act* (the "Act"), of the claims advanced by preferred shareholders. The Preferred Shareholders Application was necessary in order to determine whether or not the preferred shareholders were "equity" claimants as defined in s.2 (1) of the Act and in particular, to allow the petitioner to:
 - a. develop and submit a claims process for review and approval by the court; and
 - b. develop and submit for consideration of the court, and ultimately creditor approval, a plan of arrangement.
3. As at the date of the Initial Order the applicants had asserted claims, as creditors, against the petitioner. The status of the applicants as creditors of the petitioner has been confirmed in the claims process by the monitor (see Monitor's Nineteenth Report to Court filed January 29, 2020).
4. Based on the petitioner's review of the authorities it was of the view that:
 - a. the preferred shareholders claims were "equity claims" for the purposes of the Act and the proceedings: and
 - b. there was no difference between the claims of the Redeeming Shareholders and the Non-Redeeming Shareholders.
5. However, for the purposes of the Preferred Shareholders Application the petitioner attempted to avoid an adversarial position given the competing interests of its stakeholders including the potential sub- groups amongst the preferred shareholders. The petitioner's role in the hearing was not to prefer the position of any particular stakeholder.

6. By orders pronounced in the proceedings:
- a. Lakes Whyte LLP's was appointed representative counsel for the preferred shareholders on March 26, 2019;
 - b. Lake Whyte LLP was granted a charge of \$73,396 on March 26, 2019 (the "Representative Counsel Charge") which ranks in priority over the claims by all creditors and other charges, except for claims by creditors that were known as of March 26, 2019;
 - c. Lakes Whyte LLP's appointment was varied to an appointment as representative counsel for those persons owning preferred shares in the capital of the petitioner who took all necessary steps to submit a valid redemption request to the petitioner at a time when reasonable grounds did not exist to believe that the petitioner was insolvent, or that honouring a redemption request would make the petitioner insolvent, and such other preferred shareholders as the court may determine have analogous claims "on April 5, 2019" (the "Redeeming Shareholders");
 - d. Richards Buell Sutton LLP was appointed representative counsel for those persons owning preferred shares in the capital of the petitioner other than the Redeeming Shareholders on April 5, 2019 (the "Non-Redeeming Shareholders"); and
 - e. the Representative Counsel Charge was amended to include a charge securing the anticipated legal services of Richards Buell Sutton LLP for the purposes of the Preferred Shareholders Application.
7. The Representative Counsel Charge does not have priority to the claims of creditors who were known as at March 26, 2019.
8. The petitioner takes no specific position on the relief sought by the applicants but has identified below the general principles applying to costs awards in proceedings under the Act.

Part 5: LEGAL BASIS

9. The starting point in *CCAA* proceedings is that, as a matter of practice, and distinct from substantive law, each party will often bear its own costs. The court does, however, consider cost awards where appropriate.

Canada North Group Inc. (Re), 2020 ABQB 12

10. The court may award costs pursuant to the *Supreme Court Civil Rules*, including party and party costs and special costs.

BuildDirect.com Technologies Inc. (Re), 2018 BCSC 210 (“*BuildDirect*”)

11. The court also has the inherent jurisdiction to award costs on a full indemnity basis.

Jackpine Forest Products Ltd. (Re), 2004 BCSC 20 (“*Jackpine*”)

12. In *Jackpine*, the debtor company was awarded full indemnity costs following a meritless application to replace the monitor. However, there should be some special circumstances to warrant an order requiring a participant in a *CCAA* proceeding to pay the other party’s actual legal costs.

BuildDirect

13. In *BuildDirect*, the court stated at para. 26:

... In my view, this court should be cautious about making an award of costs amounting to a full indemnity in CCAA proceedings in the absence of a contractual right to such costs. In so doing, the court is in effect awarding costs that would not be available in any other proceeding.

14. While *BuildDirect* was an application by the *CCAA* debtor for its costs from a party to the *CCAA* proceeding, the language used by the court is of general application to cost awards in *CCAA* proceedings.

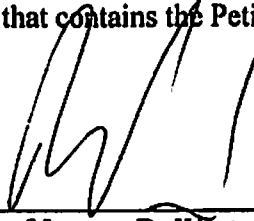
Part 6: MATERIAL TO BE RELIED ON

15. The materials filed herein.

The petitioner estimates that the application will take 60 minutes.

The Petitioner has filed in this proceeding a document that contains the Petitioner's address for service.

Date: February 25, 2020

A handwritten signature in black ink, appearing to read 'J. West', written over a horizontal line.

Signature of Jeremy D. West
Counsel for the Petitioner