



FORCE FILED

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: All Canadian Investment Corporation

To: the Service List

TAKE NOTICE that an application will be made by the applicant to the Honourable Justice Walker at the courthouse at 800 Smithe Street, Vancouver, British Columbia, on the 13th day of June, 2023, 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 "A"**:
 - a. abridging the time for service of this notice of application and dealing with its service;
 - b. authorizing the Petitioner to settle proceedings commenced in the Vancouver Registry of the Supreme Court of British Columbia, Action No. S1910892; and
 - c. authorizing the Monitor to make a further interim distribution to the Preferred Shareholders in the amount of \$2,000,000.

Part 2: FACTUAL BASIS

2. All Canadian Investment Corporation, is a company duly incorporated pursuant to the laws of British Columbia with an address for service in these proceedings of 1200 – 1075 West Georgia Street, Vancouver, British Columbia (“**ACIC**”).
3. On November 20, 2017, ACIC was granted protection pursuant to the *Companies Creditors Arrangement Act* R.S.C., 1985, C-36 (the “**CCAA Proceedings**”).
4. As a result of an Order made November 22, 2018 in the CCAA Proceedings, the Monitor is managing the wind down of operations of ACIC in accordance with the Plan of Arrangement approved by Sanction Order made February 5, 2021.
5. By Order made January 20, 2023, the stay of proceedings was extended to January 25 2024 (the “**Stay**”).
6. The Petitioner, with the assistance of the Monitor, is in the final steps of realizing on the assets of the Petitioner.

Approval of Weninger Settlement

7. Ronald Weninger also known as Ron Weninger (“**Mr. Weninger**”) and Elfrieda Weninger (“**Mrs. Weninger**”) are preferred shareholders of, and borrowers from, ACIC.

Investment

8. Mr. and Mrs. Weninger acquired preferred shares in ACIC as follows:
 - a. \$100,000 of preferred shares on June 11, 2008; and
 - b. \$100,000 of preferred shares on February 5, 2009.
 (the “**Investment**”)
9. From time to time Mr. and Mrs. Weninger received dividend payments on the Investment from ACIC including in 2015 and 2016.
10. In accordance with an Order made July 11, 2022 in these proceedings, the Monitor held back the sum of \$16,095.72 representing the Weningers’ share of the First Interim Preferred Shareholders Distribution pending resolution of the recovery proceedings.

Loan Agreements

11. Between September 4, 2012 and March 25, 2016 ACIC (as lender) and Mr. Weninger and Mrs. Weninger (as borrowers) entered into various loan agreements (together referred to hereinafter as the “**Loan Agreements**”)
12. As of March 25, 2016:

- a. the outstanding principal was \$150,000;
 - b. interest was accruing at a rate of 6% per annum;
 - c. interest was repayable on a monthly basis; and
 - d. the outstanding principal was due and owing August 26, 2016.
- (the “**Outstanding Loan**”)

13. ACIC demanded repayment of the monies due and owing under the Outstanding Loan but the Weningers refused or neglected to repay the monies due and owing.

Proceedings

14. By Notice of Civil Claim filed September 27, 2019 the Petitioner commenced proceedings against the Weningers in the Vancouver Registry of the Supreme Court of British Columbia under Action No. S1910892.

15. On November 1, 2019, the Weningers filed their Response to Civil Claim and have subsequently served an Amended Response to Civil Claim filed June 27, 2022. (the “**Response**”).

16. The Weningers allege that:

- a. after making the Investment in 2008 and 2009 they made a redemption request for \$100,000.00 of their preferred shares on or about September 17, 2013 (the “**Alleged Redemption Request**”);
- b. after making the Alleged Redemption Request they were advised by ACIC that it was unable to redeem the preferred shares due to financial constraints;
- c. ACIC agreed to provide \$100,000.00 (and a further \$50,000) structured as a secured loan; and
- d. ACIC’s security for the loans was restricted to the Investment and in the event that there was a shortfall, ACIC would not personally pursue the Weningers.

17. The parties have exchanged summary trial materials. The Weningers’ application response materials included an affidavit of Wayne Blair who is a former mortgage officer for ACIC. Mr. Blair deposed, amongst other things, that:

- a. September 2013 the Weningers contacted him to redeem the Investment;
- b. he confirmed, after speaking to Mr. Bergman, that ACIC was not in a financial position to redeem the Investment;

- c. Mr. Bergman suggested, as an alternative to the redemption, that ACIC could lend funds to the Weningers;
- d. at the time ACIC believed that there would be no issues redeeming the Investment; and
- e. he had oral discussions with the Weningers in which he confirmed that ACIC would only seek repayment of the Outstanding Loan from the Investment.

18. As a result of the summary trial materials exchanged, the Monitor instructed counsel to initiate settlement discussions with the Weningers.

Settlement

19. The parties have agreed, subject to court approval, to settle the proceedings on the following terms:

- a. the Weningers will pay the sum of \$105,000 as follows:
 - i. ACIC will set off the sum of \$16,095.72 representing the Weningers' share of the First Interim Preferred Shareholders Distribution authorized by order made July 11, 2022; and
 - ii. balance of \$88,904.28 to be paid 21 days following the court approval

(collectively, the "**Payment**")

- b. the parties will enter into a mutually satisfactory release and settlement agreement;
- c. on receipt of the Payment, ACIC will execute and provide to the Weningers a consent dismissal order, on the merits and without costs, dismissing the proceedings; and
- d. The Weningers will be entitled to participate in any further Preferred Shareholders Distributions authorized by the court.

20. ACIC, Mr. Weninger and Mrs. Weninger have agreed to a form of settlement agreement and release in contemplation of court approval.

21. The Monitor is of the view that the proposed settlement is advantageous to the stakeholders.

Further Interim Distribution to Preferred Shareholders

22. The Petitioner commenced foreclosure proceedings against Censorio Group (Agnes & Elliot) Holdings Ltd. and related entities under Action No. H180143. Orders approving sale were made in those proceedings and the sum of approximately \$2,185,000 is presently held in court (the “Sale Proceeds”).
23. The Sale Proceeds were the subject of a priority dispute between the Petitioner and the CRA which has now been resolved by agreement. The Petitioner is seeking, by separate application in Action No. H180143, an order distributing the Sale Proceeds on the following basis:
- a. \$25,000 to the Receiver General for Canada; and
 - b. the balance to the court appointed Monitor of the petitioner, All Canadian Investment Corp.
24. Assuming that order is made providing for the distribution of the Sale Proceeds, the Monitor will hold sufficient funds to make a further interim distribution to the Preferred Shareholders in the amount of \$2,000,000 (the “Second Interim Preferred Shareholders Distribution”).

Part 3: LEGAL BASIS

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

Part 4: MATERIAL TO BE RELIED ON

26. Monitor’s 33rd Report dated June 7, 2023; and
27. Such further and other materials as counsel may advise.

The Applicant estimates that the Application will take 20 minutes.

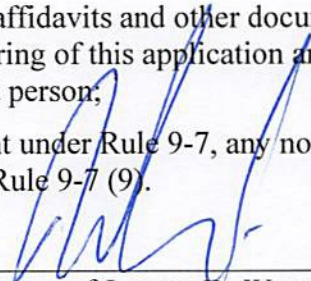
- This matter is within the jurisdiction of a master.
- This matter is not within the jurisdiction of a master.

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: June 7, 2023



 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**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 "A"

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

ORDER MADE AFTER APPLICATION

BEFORE JUSTICE WALKER) THE 13th DAY OF JUNE, 2023
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ON THE APPLICATION of All Canadian Investment Corporation coming on for hearing at Vancouver, British Columbia on the 13th day June, 2023 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;

THIS COURT ORDERS 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").

Approval of Settlement

2. The Petitioner is authorized to enter into a settlement agreement with the defendants, Ronald Weninger and Elfrieda Weninger, in proceedings commenced in the Vancouver Registry of the Supreme Court of British Columbia, Action No.

S1910892, on the terms and conditions set out in the Settlement Agreement and Release described in the Monitor's Thirty Third Report Court.

Further Interim Distribution to Preferred Shareholders

3. On receipt of funds from Action No. H180143 the Monitor is authorized and directed to make a further interim distribution to the preferred shareholders (in accordance with the Plan of Arrangement) in the amount of \$2,000,000 (the "Second Interim Preferred Shareholders Distribution").
4. 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