



No. S-1710393
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 *CA NADA 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

Names of applicants: JAMES HANCOCK & 103163 ALBERTA LTD. (the
"Applicants")

To: The Service List, a copy of which is attached hereto as Schedule A.

TAKE NOTICE that an application will be made by the applicants to the Honourable Mr. Justice Walker at the courthouse at 800 Smithe St, Vancouver, BC V6Z 2E1 on 03/MAR/2020 at 9:00 AM for the orders set out in Part 1 below.

Part 1: ORDERS SOUGHT

1. An order directing the Petitioner to pay to the Applicants the total amount of \$47,242.73 for legal costs incurred by the applicants in regards to the Notice of Application of the Petitioner dated January 24, 2019; and
2. Such further relief as this Honourable Court may deem just.

Part 2: FACTUAL BASIS

1. The Petitioner commenced this proceeding on November 8, 2017.
2. By Notice of Application dated November 5, 2018, the Petitioner sought, among other things, an order directing the Petitioner to file an application seeking a determination of the status of certain Preferred Shareholders of the Petitioner (the “**Redeeming Preferred Shareholders**”).
3. By order made January 11, 2019, the Honourable Mr. Justice Walker granted leave to the Petitioner to file and serve an application dealing with the claims of the Redeeming Preferred Shareholders. That application was filed by the Petitioner on January 24, 2019.
4. The application regarding the Redeeming Preferred Shareholders was heard by the Honourable Mr. Justice Walker on June 18 – 20, 2019.
5. Two creditors of the Petitioner, James Hancock (“**Hancock**”) and 1083163 Alberta Ltd. (“**1083163**”) together owed in excess of \$1,500,000 by the Petitioner, retained counsel to appear at the hearing to support the Petitioners’ application to have the Redeeming Preferred Shareholders determined to be equity claimants and not creditors of the Petitioner. If the Redeeming Preferred Shareholders were equity claimants, the Monitor estimated that unsecured creditors of the Petitioner, including Hancock and 1083163, would be paid in full. If the Redeeming Preferred Shareholders were found to be creditors of the Petitioner, the Monitor estimated that the creditors would receive as little as 35.6% of their claims.
6. Hancock and 1083163 retained McMillan LLP to represent them at the hearing. Vicki Tickle, a partner of McMillan LLP, appeared at the hearing on behalf of Hancock and 1083163.
7. In Reasons for Judgement dated September 4, 2019, Mr. Justice Walker concluded that the Redeeming Preferred Shareholders held an equity interest in the petitioner and not debt claims.
8. Hancock and 1083163 have collectively incurred legal fees, disbursements and applicable taxes in the total amount of \$47,242.73 in relation to the January 24, 2019 Notice of Application.

Part 3: LEGAL BASIS

1. Hancock and 1083163 rely on the provisions of the *Companies Creditors Arrangement Act*, R.S.C 1985 c. C-36 as amended.
2. This court has determined that fairness should be applied in CCAA proceedings so that stakeholders are treated as fairly and equitably as the circumstances allow.

Ascent Industries Corp. (Re), 2019 BCSC 1880, para. 74
3. The actions of Hancock and 1083163 in retaining counsel to appear at the hearings to support the Petitioner and the Monitor in opposing the position of the Redeeming Preferred Shareholders was of benefit to the unsecured creditors in general.

4. The Representative Counsel for the Redeeming Preferred Shareholders who sought to be creditors of the Petitioner was granted a charge over all of the property of the Petitioner in the amount of \$73,396.00 in priority to the claims of unsecured creditors, including Hancock and 1083163. The amount of that charge was subsequently increased to \$76,996.00. Consequently, some or all of the costs of the Redeeming Preferred Shareholders who sought to be creditors are to be paid in priority to the unsecured creditor claims even though they were unsuccessful.
5. Counsel for non-redeeming preferred shareholders was granted a charge over the property of the Petitioner in the amount of \$35,608.00 in priority to the claims of the unsecured creditors. Counsel for the non-redeeming preferred shareholders supported the position of the Petitioner, the Monitor and Hancock and 1083163 and opposed the position of the Redeeming Preferred Shareholders.

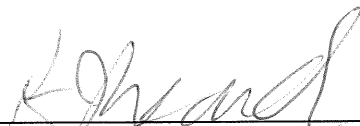
Part 4: MATERIAL TO BE RELIED ON

1. Order of the Honourable Mr. Justice Walker made September 4, 2019;
2. Affidavit #2 of James Hancock to be sworn;
3. The Monitor's 11th report dated January 21, 2019;
4. The Monitor's 13th report dated May 3, 2019;
5. The Monitor's 19th report dated January 28, 2020; and
6. Such further and other material as counsel may advise and this Honourable court may allow

The applicants' estimate that the application will take 30 minutes.

x This matter is not within the jurisdiction of a master. The Honourable Mr. Justice Walker is seized of these proceedings and the hearing date has been arranged with Trial Scheduling.

Date: 20/FEB/2020



Signature of counsel for applicants
Peter Reardon

THIS NOTICE OF APPLICATION is prepared by Peter Reardon, of the firm of Nathanson, Schachter & Thompson LLP, Barristers and Solicitors, whose place of business and address for service is Suite 750 – 900 Howe Street, Vancouver, B.C. V6Z 2M4, telephone (604) 662-8840 and whose email address for service is preardon@nst.bc.ca.

<i>To be completed by the court only:</i>	
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:

Dated: _____	_____
	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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SERVICE LIST

Updated: February 13, 2020

<p>Watson Goepel LLP 1200 - 1075 West Georgia Street Vancouver, BC V6E 3C9</p> <p>Attention: Jeremy West</p> <p>Email: jwest@watsongoepel.com ypa@watsongoepel.com ccochrane@watsongoepel.com</p> <p><i>Counsel for the Petitioners</i></p>	<p>McEown + Associates Ltd. 1140 – 800 West Pender Street Vancouver, BC V6C 2V6</p> <p>Attention: John McEown</p> <p>Email: jm@mceownassociates.ca mt@mceownassociates.ca</p> <p><i>The Monitor</i></p>
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<p>Owen Bird Law Corporation P.O. Box 49130, Three Bentall Centre 2900 – 595 Burrard Street Vancouver, BC V7X 1J5</p> <p>Attention: Alan A. Frydenlund, Q.C. Scott H. Stephens</p> <p>Email: afrydenlund@owenbird.com sstephens@owenbird.com</p> <p><i>Counsel for Fisgard Capital Corporation</i></p>	<p>John and Gwen Greathead c/o Leah Greathead</p> <p>Email: kim.reimer@telus.net</p>
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<p>Department of Justice Canada 900 – 840 Howe Street Vancouver, BC V6Z 2S9</p> <p>Attention: Sonia Singh</p> <p>Email: Sonia.Singh@justice.gc.ca</p> <p><i>Counsel for Canada Revenue Agency</i></p>	<p>Davidson Pringle LLP 3009 – 28th Street Vernon, BC V1T 4Z7</p> <p>Attention: Jeffrey C. Boschert</p> <p>Email: jeffb@davidsonpringle.com</p> <p><i>Counsel for Mehl Holdings Inc.</i></p>
<p>Drysdale Bacon McStravick LLP 211 – 1015 Austin Avenue Coquitlam, BC V3K 3N9</p> <p>Attention: Richard J.S. Rainey</p> <p>Email: rrainey@dbmlaw.ca</p> <p><i>Counsel for Dianne Harvey and Douglas Nicks</i></p>	<p>Kornfeld LLP 1100 One Bentall Centre 505 Burrard Street, Box 11 Vancouver, BC V7X 1M5</p> <p>Attention: Douglas B. Hyndman</p> <p>Email: dhyndman@kornfeldllp.com</p> <p><i>Counsel for the Monitor</i></p>

<p>James and Gudrun Moore Email: jgmr6@gmail.com</p>	<p>Sean Kelly Law #101 – 1353 Ellis Street Kelowna, BC V1Y 1Z9 Attention: Sean M. Kelly Email: sean@seankellylaw.ca <i>Counsel for Parkland Funding Inc.</i></p>
<p>Ministry of Attorney General, Legal Services Branch 1301 – 865 Hornby Street Vancouver, BC V6Z 2G3 Attention: Joni Worton Email: joni.worton@gov.bc.ca <i>Counsel for the Registrar of Mortgage Brokers</i></p>	<p>Fasken Martineau DuMoulin LLP 550 Burrard Street, Suite 2900 Vancouver, BC V6C 0A3 Attention: Kibben Jackson Suzanne Volkow Email: kjackson@fasken.com svolkow@fasken.com <i>Counsel for DIDS-BC Holdings Ltd.</i></p>
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<p>Gudmundseth Mickelson LLP 2525 – 1075 West Georgia Street Vancouver, BC V6E 3C9 Attention: Howard A. Mickelson Email: ham@lawgm.com</p>	<p>Gudmundseth Mickelson LLP 2525 – 1075 West Georgia Street Vancouver, BC V6E 3C9 Attention: Janet L. Gartner Email: jlg@lawgm.com zjh@lawgm.com <i>Counsel for BDO Canada LLP</i></p>

<p>Estate of Thomas Siny c/o Brandon (Anthony Merwin) 961 Skeen Court Kelowna, BC V1V 2B3</p> <p>Attention: Brandon (Anthony) Merwin</p> <p>Email: brandonantonio@me.com</p> <p><i>Personally acting for the Estate of Thomas Siny</i></p>	<p>Lakes, Whyte LLP 200 – 879 Marine Drive North Vancouver, BC V7P 1R7</p> <p>Attention: John D .Whyte</p> <p>Email: jdwhyte@lakeswhyte.com chartnett@lakeswhyte.com joanna@lakeswhyte.com; Jordana@lakeswhyte.com</p> <p><i>Counsel for Redeeming Shareholders</i></p>
<p>Davidson Pringle LLP 3009 28th Street Vernon, BC V3T 4Z7</p> <p>Attention: Steven Dvorak</p> <p>Email: StevenD@davidsonpringle.com</p> <p><i>Counsel for the Estate of Klaus Kroeger</i></p>	<p>Richards Buell Sutton LLP 700 – 401 West Georgia Street Vancouver, BC V6B 5A1</p> <p>Attention: Mark Davies</p> <p>Email: MDavies@rbs.ca TDoolan@rbs.ca</p> <p><i>Counsel for Non-Redeeming Shareholders</i></p>
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