

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: the service list

TAKE NOTICE that an application will be made by the applicant to the presiding Judge or Master at the courthouse at 800 Smithe Street, Vancouver, British Columbia, on the 8th day of June, 2020, at 9:00 a.m., for the orders set out in Part 1 below.

Part 1: ORDERS SOUGHT

1. That the time for service of the Notice of Application dated June 3, 2020 and supporting materials is abridged such that the application is properly returnable on June 8, 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.
2. That the sale transaction (the "Transaction") contemplated by the Contract of Purchase and Sale dated May 20, 2020 (the "Sale Agreement") between the petitioner and Thomas Lawe MacDonald (the "Purchaser") for Lot 6 (as defined below), a copy of which is attached as Exhibit "M" to Affidavit #2 of David

Milligan, is hereby approved, on the basis that the Sale Agreement is commercially reasonable.

3. That the execution of the Sale Agreement by McEown and Associates Ltd. in its capacity as court appointed monitor of the petitioner is hereby authorized and approved, and the Monitor is hereby authorized and directed to take such additional steps and execute such additional documents as may be necessary or desirable for the completion of the Transaction and for the conveyance to the Purchaser of the assets described in the Sale Agreement.
4. Such further and other relief as this Honourable Court deems just.

Part 2: FACTUAL BASIS

5. On November 10, 2017 the Honourable Madam Justice Adair made an 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"). Pursuant to the Initial Order, the stay of proceedings expired on December 9, 2017 (the "Stay Period").
6. Boale, Wood & Company Ltd. was appointed as monitor in the CCAA proceedings. An order was subsequently granted appointing McEown and Associates Ltd. as the monitor (the "Monitor").
7. Since December 5, 2017 the Stay Period has been extended on various occasions including most recently to October 16, 2020.
8. Since the date of the Initial Order, the petitioner has continued to manage the daily operations of the business and explore restructuring options, including the sale of its real property and collection of the outstanding amounts owing to it.
9. On November 9, 2018, the Monitor was granted additional powers including, subject to the requirements for court approval, the power to direct or cause the petitioner to sell its assets, including Lot 6.
10. The petitioner's efforts to realize on its assets have resulted in the execution of the Sale Agreement to sell Lot 6, the details of which are described in further detail below.
11. The petitioner is seeking approval for the sale of Lot 6 in accordance with the terms of the Sale Agreement.

Sale of Lot 6

12. The petitioner is the registered owner of a property located at 4153 Packalen Boulevard, Garden Bay, Pender Harbour, British Columbia, V0N 1S1 more particularly described as:
- PID 026-193-019
- LOT 6 AND AN UNDIVIDED 3/12TH SHARE IN LOT 7, DISTRICT LOT 3923
- GROUP 1 NEW WESTMINSTER DISTRICT PLAN BCP15562
- ("Lot 6")
13. Lot 6 is an irregularly shaped 0.703 acre parcel of property with a two bedroom and one bathroom house.
14. The petitioner began listing Lot 6 for sale in August 2016 with a realtor on the Sunshine Coast.
15. Lot 6 has been marketed by a variety of means including:
- a. advertising continually on www.sunshinecoasthomes.com;
 - b. advertising continually on www.royallepagesussex.com;
 - c. advertising continually on www.realtylink.org;
 - d. promotional posts on Facebook and Instagram for SunshineCoastHomes.com;
 - e. advertised monthly in display advertising in the Sunshine Coast Real Estate Guide;
 - f. "For Sale" signage on Lot 6 with relator contact information for dive by showings; and
 - g. Advertised continually in window display sheet format in Royal LePage Sussex Sechelt & Pender Harbour locations and Garden Bay area kiosk.
16. Lot 6 has been shown numerous times but until recently, no one has been prepared to submit an offer.
17. On April 22, 2020 the petitioner received an offer to purchase Lot 6 for \$750,000 plus GST, if any.
18. On May 7, 2020 the petitioner, through the Monitor, made a counteroffer for \$950,000 plus GST, if any.

19. On May 18, 2020, the petitioner received a counteroffer for \$809,523.81 plus GST, if any. After further discussions between the Monitor and the Purchaser, on May 20, 2020, the offer was increased to \$819,047.62 with the Purchaser paying any GST and Property Transfer Tax due and owing on the transaction (the "Lot 6 Offer"). The Monitor has accepted the Lot 6 Offer subject to court approval. If approved, the Lot 6 Offer is scheduled to complete July 16, 2020.
20. The Lot 6 Offer requires court approval on or before June 10, 2020.
21. The petitioner is required to remit GST on the sale of Lot 6 and the Lot 6 Offer represents a sum \$860,000 (GST inclusive).
22. The Lot 6 Offer is from the only party that has been prepared to submit an offer to the petitioner since Lot 6 was listed in August 2016.
23. Lot 6 has a 2020 B.C. Assessment Value of \$1,025,000.
24. The petitioner's realtor's evidence confirms:
 - a. he has observed a downturn in the real estate market; and
 - b. properties on the Sunshine Coast are often selling below their assessed values.
25. Although the purchase price is lower than the assessed value, the property has not garnered interest that supports a value greater than the Lot 6 Offer and the realtor has confirmed that he believes the Lot 6 Offer represents the current fair market value for Lot 6.
26. The Lot 6 Offer is consistent with a recent appraisal commissioned by the Monitor (the "2020 Appraisal").
27. The sale of Lot 6 is another step forward in the petitioner's restructuring efforts.

Part 3: LEGAL BASIS

28. Rules 1-3, 8-1, and 13-5 of the *Supreme Court Civil Rules*.
29. Pursuant to s.36(1) of the *CCAA*, a debtor company in respect of which an order has been made under the *CCAA* may not sell or otherwise dispose of assets outside the ordinary course of business unless authorized to do so by the court.
30. Pursuant to s.36(2) of the *CCAA*, a company that applies for an authorization to sell is to give notice of the application to the secured creditors who are likely to be affected by the proposal proposed sale or disposition.
31. Section 36(3) of the *CCAA* provides that in deciding whether to grant the authorization to sell, the court is to consider, amongst other things:

- a. whether the process leading to the proposed sale or disposition was reasonable in the circumstances;
 - b. whether the monitor approved the process leading to the proposed sale or disposition;
 - c. whether the monitor filed with the court a report stating that in its opinion the sale or disposition that would be more beneficial to the creditors than a sale or disposition under a bankruptcy;
 - d. the extent to which the creditors were consulted;
 - e. the effect of the proposed sale or disposition on the creditors and other interested parties; and
 - f. whether the consideration to be received for the assets is reasonable and fair, taking into account their market value.
32. Section 36(6) of the *CCAA* provides that the court may authorize a sale or disposition free and clear of any security, charge or other restriction and, if it does, it shall also order that other assets of the company or the proceeds of sale or disposition be subject to a security, charge or other restriction in favour of the creditor whose security, charge or other restriction is to be affected by the order.
33. The petitioner further relies on s.11 of the *CCAA* and the inherent and equitable jurisdiction of this Honourable Court.
34. For the reasons set out below, the petitioner submits that on a consideration of the facts set out in section 36(3) of the *CCAA*, the sale of Lot 6 is appropriate in the circumstances:
- a. the property has been listed since August 2016;
 - b. the Monitor has been kept apprised of marketing activities during the course of these proceedings and has been in effective control of that process since November 2018;
 - c. the Monitor conducted the negotiations leading up to the execution of the Lot 6 Offer, is aware of the assessed value and commissioned the 2020 Appraisal;
 - d. there are no secured creditors that will be affected by this sale;
 - e. the proposed sale will benefit the stakeholder group as a whole, as it is another step towards the petitioner's restructuring plan;
 - f. the consideration to be received is fair and reasonable, taking into account the challenges of the property, including its location and market

conditions. The property has been properly exposed and marketed, and the Lot 6 Offer is the best and only offer the petitioner has received to date. Accordingly, the consideration to be received is reflective of the true market value of Lot 6.

Part 4: MATERIAL TO BE RELIED ON

35. Affidavit #2 of David Milligan, made on the 3rd day of June, 2020.
36. Affidavit #1 of Chelsey Cochrane made on the 26th day of July, 2019.
37. 22nd Report of the Monitor.
38. Such other materials as counsel may advise and this Honourable Court may allow.

The Applicant estimates that the Application will take 30 minutes.

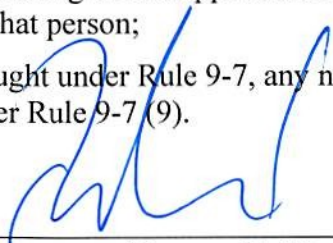
This matter is within the jurisdiction of a master.

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 3, 2020



 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