



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.B.C. 2002, c.C-44, AS AMENDED

**NOTICE OF APPLICATION**

Name of applicant: Parkland Funding Ltd. (the "applicant").

To: McEown and Associates Ltd. court-ordered monitor of All Canadian Investment Corporation c/o

TAKE NOTICE that an application at 800 Smithe Street, Vancouver British Columbia on March 3, 2020, at 9:45 a.m. for the Orders set out in Part 1 Below.

**Part 1: ORDER(S) SOUGHT**

The applicants seeks:

1. A Declaration that Parkland Funding is creditor of All Canadian Investment Corporation for the purposes of this proceeding as defined in the Companies' Creditors Arrangements Act and is entitled to all the rights and privileges of a creditor of All Canadian Investment Corporation in this proceeding; and
2. Such further and other relief as this Honourable Court deems just.

**Part 2: FACTUAL BASIS**

1. Between 2007 and 2012, based on oral representations by Wayne Blair and written representations by Donald Bergman, All Canadian Investment Corporation and ACIC Financial Development Inc., Parkland Funding Ltd. paid moneys totaling \$1,400,000.00 as investments in various projects undertaken by Bergman and or All Canadian Investment Corporation and or ACIC Financial Development Inc.
2. Parkland Funding Ltd. is a company owned and controlled by Wayne and Eunice Kulak, a retired couple who live in Alberta.
3. In deciding to pay those moneys Parkland Funding Ltd. relied on oral representations made by Wayne Blair that it could redeem it's investment and get it's money back anytime on three months notice.
4. Parkland Funding Ltd. made a redemption request to Wayne Blair in or about December of 2012 seeking the redemption of \$600,000.00. The redemption request was partially completed and Parkland Funding Ltd. received \$400,000.00 of the amount requested paid to it over a period of several months. Despite numerous requests the remaining \$200,000.00 was not returned to Parkland Funding Ltd. Wayne Blair made numerous promises to pay the remaining \$200,000.00 and he made representations about what was happening to explain the delay in payment and at this point it was not clear to Parkland Funding which of Donald Bergman, Wayne Blair, All Canadian Investment Corporation and ACIC Financial Development Inc. actually had the \$200,000.00.
5. Because it was not clear to Parkland Funding what had happened to the remaining \$200,000.00 that Wayne Blair promised was coming Parkland Funding commend an action against All Canadian Investment Corporation, ACIC Financial Development Inc. Donald Bergman and Wayne Blair on January 4, 2016. All four defended that action using the same counsel by filing a Response on January 26, 2016.
6. Shortly after filing to Response to Parkland Funding Ltd.'s law suit settlement discussions took place and on February 12, 2016 the parties agreed to settle the matter by all of the Defendants, including All Canadian Investment Corporation, agreeing to pay Parkland Funding Ltd. the sum of \$200,000.00. The settlement agreement was a binding contract.
7. Pursuant to the terms of the settlement reached on February 12, 2016 All Canadian Investment Corporation jointly and severally became indebted to Parkland Funding in the amount of \$200,000.00 and at the time the initial

Stay was ordered in this proceeding the full amount was still due owing to Parkland Funding Ltd.

8. At the time of the February 12, 2016 settlement, and to this day, the defendants have never produced a list of documents so it is unclear to Parkland Funding Ltd. which entity is currently holding the balance of its now \$1,000,000.00 investment.
9. Subsequent to the February 12, 2016 settlement, in September of 2016 one of the four defendants that Parkland Funding had sued, ACIC Financial Development Inc., agreed to pay Parkland \$205,000.00 to settle the law suit.
10. The second settlement agreement reached in September of 2016 was a new contract between ACIC Financial Development Inc. and Parkland Funding. All Canadian Investment Corporation, the subject matter of this proceeding, was not a party to this second settlement agreement.
11. Parkland Funding Ltd. has not been paid any funds pursuant to either the settlement agreement to which All Canadian Investment Corporation was a party or the second settlement agreement.

**Part 3: LEGAL BASIS**

1. Parkland Funding Ltd. became a creditor of All Canadian Investment Corporation on February 12, 2016 by virtue of the settlement agreement reached in a law suit in which Parkland Funding had sued All Canadian Investment Corporation and three other defendants. The settlement agreement was a binding contract to which All Canadian Investment Corporation is a party to.
2. Just because Parkland Funding Ltd. entered into a second subsequent settlement agreement with someone other than All Canadian Investment Corporation does not void the contract between All Canadian Investment Corporation and Parkland Funding Ltd. created by the first settlement agreement.
3. All Canadian Investment Corporation was not a party to the second settlement agreement and the second settlement did not supersede the settlement with All Canadian Investment Corporation.
4. Such further or other legal basis as counsel may advise.

**Part 4: MATERIAL TO BE RELIED ON**

1. The NOCC filed January 4, 2016 in the Kelowna Supreme Court Registry having file number 109643;
2. The affidavit of Hana Sparks sworn in this proceeding on January 10, 2020;
3. The 3<sup>rd</sup> affidavit of Hana Sparks sworn in this proceeding February 19, 2020; and
4. Such further or other material as this Honourable Court may admit.


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 receive notice of the time and date of the hearing or to respond to the application, you must

- (a) file an Application Response in Form 33 within 5 days after the date of service of this Notice of Application or, if the application is brought under Rule 9-7 of the Supreme Court Civil Rules, within 11 days after the date of service of this Notice of Application, and
- (b) at least 2 days before the date set for the hearing of the application, serve on the applicant 2 copies, and on every other party one copy, of a filed copy of the Application Response and the other documents referred to in Rule 9-7(12) of the Supreme Court Civil Rules.

Dated: February 19, 2020

  
Signature of **SEAN KELLY**  
 applicant     lawyer for applicant,  
Parkland Funding Ltd. (the Plaintiff)

***To be completed by the court only:***

Order made

in the terms requested in paragraphs *[specify]* of Part 1 of this notice of application

with the following variations and additional terms:

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

Dated: *[month, day, year]*. \_\_\_\_\_

Signature of  
 Judge    Master

APPENDIX

*[The following information is provided for data collection purposes only and is of no legal effect.]*

THIS APPLICATION INVOLVES THE FOLLOWING:

*[Check the box(es) below for the application type(s) included in this application.]*

- document discovery
- oral examination for discovery
- amend pleadings

- add/change parties
- summary judgment
- summary trial
- service
- mediation
- adjournments
- proceedings at trial
- case plan orders
- experts