Form 32 (Rule 8-1(4))

No. S-205095
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 A PLAN OF COMPROMISE AND ARRANGEMENT OF
PORT CAPITAL DEVELOPMENT (EV) INC. and EVERGREEN HOUSE DEVELOPMENT
LIMITED PARTNERSHIP

NOTICE OF APPLICATION

[Rule 22-3 of the Supreme Court Civil Rules applies to all forms.]

Names of applicants: Port Capital Development (EV) Inc. and Evergreen House Development Limited partnership

To: The Service List

TAKE NOTICE that an application will be made by the applicants to Madam Justice Fitzpatrick via telephone conference on December 14, 2021 at 9:00 am for the orders set out in Part 1 below.

Part 1: ORDER(S) SOUGHT

1. A Further Amended and Restated Initial Order substantially in the form attached as **Schedule "A"** hereto, including, among other things the following relief:

    (a) abridging the time for service of this notice of application to the extent necessary; and

    (b) approving an increase to the credit facility provided by Domain Mortgage Corp. ("**Domain**"), 1260780 B.C. Ltd. ("**NumberCo**") and 1296371 B.C. Ltd. ("**129**" and collectively the "**New Lenders**") from $25,900,000 to $27,200,000.

Part 2: FACTUAL BASIS

1. The Applicants, Evergreen House Development Limited Partnership and its general partner, Port Capital Development (EV) Inc., own the **"Terrace House Property"**. The Terrace House Property is a high-rise luxury residential strata development in the Coal Harbour neighbourhood, located at 1250 W Hastings St., Vancouver. The Terrace House development is approximatley 20% complete.

2. On May 29, 2020, the Applicants obtained an order in these proceedings (the "**Initial Order**") granting them various relief pursuant to the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the "**CCAA**"). The Initial Order included approval of a Sale and Investment Solicitation Process (the "**SISP**") and appointed Ernst & Young, Inc. as monitor (the "**Monitor**") in these proceedings.

3. At the comeback hearing on June 8, 2020 the Applicants obtained an Amended and Restated Initial Order (the "**ARIO**"). The ARIO included approval of an interim financing facility provided by Desjardins Financial Security Life Assurance Company ("**Desjardins**").

4. Pursuant to the SISP, the Court approved a Bid Offer Agreement between the Applicants and Bosa Properties (OC) Inc. on December 1, 2020. The transaction contemplated by that agreement did not complete.

5. On February 24, 2021, the Court approved an increase in the Desjardins interim lending facility and an extension of the stay of proceedings.

6. Pursuant to the SISP, the Court approved the break fee contained a Purchase and Sale Agreement between the Applicants and Landa Global Acquisitions Ltd. on April 16, 2021, which agreement included a provision that the Monitor engage in a final marketing phase.

7. On June 15, 2021, the Court dismissed the application of 129 seeking a refinancing of the within proceeding in preference to a sale of the Applicants' assets, and instead approved a sale by way of reverse vesting order of the Petitioners' assets and undertakings to Solterra Acquisitions Corp.

8. The following day the Court approved a further increase in the Desjardins interim lending facility and an extension of the stay of proceedings.

9. 129 sought and obtained leave to appeal from the Court's June 15, 2021 orders.

10. On October 20, 2021, the Court of Appeal granted 129's appeal, and issued an order (the "**Refinancing Order**") which among other things:

(a) approved the proposed refinancing transaction between the Applicants and the New Lenders (as defined therein);

(b) authorized the payout of the Desjardins interim facility;

(c) authorized a purchase and assignment of the loan and security of CMLS Financial Ltd. ("**CMLS**") by Domain; and

(d) upon completion of the previous steps, reduced the Administration Charge under the ARIO and made certain other amendments to the ARIO; and

(e) extended the stay of proceedings herein to and including April 30, 2022.

Activities since the date of the Refinancing Order

11. The transactions provided for in the Refinancing Order closed on or about October 28, 2021. As a result the previous Interim Lender has been paid out and the CMLS loan and security has been assigned to the New Lenders.

12. Since the closing of the transactions contemplated by the Refinancing Order, the Petitioners have been engaged in a process of determining how best to address their insolvency with a view to obtaining new construction financing. This process has included engagement with key stakeholders and other parties, including:

(a) the New Lenders and Aviva, regarding this application and the Petitioners' strategy to resolve these proceedings;

(b) certain pre-filing construction trades and consultants whose co-operation in remobilization will be important to making the Petitioners' project attractive to a construction lender;

(c) a significant real estate marketing company who would develop a communications and marketing strategy for both existing and future pre-sales;

(d) general contractors, trades and construction managers who may be involved in completing the Terrace House Project, from whom the Petitioners are in the process of seeking competitive proposals; and

(e) potential new construction lenders, from whom the Petitioners expect to receive term sheets before the holidays.

13. The Applicants have acted, and continue to act, in good faith and with due diligence to maximize the value to their stakeholders.

Part 3: LEGAL BASIS

1. The Court of Appeal approved the facility from the New Lenders pursuant to s. 11 of the CCAA on the basis that the relief which had been sought by 129 met the standard of appropriateness and furthered the statutory objectives of the CCAA.

Port Capital Development (EV) Inc. v. 1296371 B.C. Ltd., 2021 BCCA 382 at paras. 77-86

2. The Refinancing Order contemplates (in sections 3 and 17) that the Applicants may need to seek approval of further borrowings from this Court to provide working capital for this proceeding.

3. Pursuant to section 3 of the Refinancing Order and s. 11 of the CCAA, this Court has jurisdiction to approve an increase to the credit facility provided by the New Lenders.

4. For the same reasons that the Court of Appeal concluded justified the Refinancing Order, the Applicants submit that it would be appropriate to approve the increase to the credit facility and would further the statutory objectives of the CCAA.

5. If and to the extent an analogy to interim financing under s. 11.2(1) of the CCAA is appropriately made, the standard under that provision is also satisfied.

6. On notice to those secured creditors likely to be affected by the charge, the court may order that all or part of the property of the debtors be subject to a charge, in an amount the court considers appropriate, in favour of a person who agrees to lend to the debtor company an amount approved by the court (s. 11.2(1) of the CCAA).

7. In deciding whether to make an order pursuant to s. 11.2(1) – (2) of the CCAA, the court is to consider, among other things: (a) the period during which the company is expected to be subject to the CCAA proceedings, (b) how the company's business and financial affairs are managed during the proceedings, (c) whether the company's management has the confidence of its major creditors, (d) whether the loan would enhance the prospect of a viable compromise or arrangement being made, (e) the nature and value of the company's property, (f) whether any creditor would be materially prejudiced as a result of the security or charge.

8. The increase in the facility from the New Lenders is essential to permit the Applicants to continue operations and to effectively allow them to restructure their business and affairs in the context of these CCAA proceedings. The Applicants are not aware of any creditors that would be materially prejudiced as a result of the order approving the increase in the facility from the New Lenders sought.

9. The Applicants have a critical and immediate need for additional financing. Accordingly, the Monitor is of the view that the Applicants' request for approval of the facility from the New Lenders is required and reasonable in the circumstances.

10. It would be convenient to amend the ARIO to reflect the amendments made by the Restructuring Order so as to provide clarity in this proceeding as to the operative terms.

Part 4: MATERIAL TO BE RELIED ON

1. The Applicants will rely upon:

   (a) Affidavit #5 of Macario (Tobi) Reyes, made 10/December/2021;

(b) Eighth Report of the Monitor, to be filed; and

(c) such further material as counsel may advise and the Court permits.

The applicants estimate 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).

Dated: December 10, 2021

Signature of David E. Gruber

☐ Applicant ☒ Lawyer for applicant

THIS NOTICE OF APPLICATION is prepared and delivered by David E. Gruber of the firm Bennett Jones LLP, Barristers & Solicitors, counsel for the applicants, File No. 90034.3, whose place of business and address for delivery is 2500 – 666 Burrard Street, Vancouver, British Columbia, V6C 2X8. Telephone: (604) 891-7500. Facsimile: (604) 891-5100. [gruberd@bennettjones.com]

To be completed by the court only:

Order made

☐ in the terms requested in paragraphs ____________ of Part 1 of this notice of application

☐ with the following variations and additional terms:

Dated: ______________________________ ____________________________________

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.]

☐ discovery: comply with demand for documents

☐ discovery: production of additional documents

☐ other matters concerning document discovery

☐ 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