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

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 at the courthouse at 800 Smithe Street Vancouver BC V6Z 2E1 on April 29, 2022 at 9:00 a.m., by MS Teams, for the orders set out in Part 1 below.

Part 1: ORDER(S) SOUGHT

1. An Order substantially in the form attached as **Schedule A** hereto, providing for the following relief:

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

(b) extending the stay of proceedings to and including May 13, 2022; and

(c) such further and other relief as this Honourable Court may deem just.

Part 2: FACTUAL BASIS

1. The Petitioners, Evergreen House Development Limited Partnership and its general partner, Port Capital Development (EV) Inc., own the **"Terrace House Project"**. The Terrace House Project consists of an ongoing development of a high-rise luxury residential strata development in the Coal Harbour neighbourhood, located at 1250 W Hastings St., Vancouver.

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.

11. Later in October 2021, the transactions authorized by the Refinancing Order took place.

12. On February 15, 2022, the Court granted the Further Amended and Restated Initial Order ("**FARIO**") and approved an additional $1.8 million tranche of the Domain facility to provide working capital to the Petitioners for this proceeding.

Update on the Proceeding

13. Since February 15, 2022, the Petitioners have taken the following steps to advance a restructuring of the Terrace House project:

(a) the Petitioners have identified a development partner, Enso Holdings Ltd. ("**Enso**"), who has agreed with the Petitioners' parent to co-develop the Terrace House project as the majority general partner, and whose covenant will support the necessary construction financing to exit this proceeding;

(b) the Petitioners and Enso have advanced discussions towards securing pricing for a construction contract with a general contractor for the balance of construction;

(c) the Petitioners have developed the key economic terms of a Plan of Arrangement and together with Enso have discussed the intended terms with Aviva and with a number of key unsecured trade creditors;

(d) the Petitioners have obtained from Petitioners' counsel a draft form of Restructuring Support Agreement, which they intend to use to validate that the terms of the Plan of Arrangement would garner sufficient support to succeed if put to a vote of stakeholders;

(e) the Petitioners, in conjunction with Enso, have negotiated a commitment for interim financing in the amount of $20 million from Mandate Management Corporation ("**Mandate**") which, if approved, would be used to repay Domain and to provide working capital for an extended stay period through to the end of August 2022 with the objective of putting a Plan of Arrangement to a vote, securing a sanction order, and exiting the CCAA proceeding upon new construction financing being available;

(f) the Petitioners and Enso have engaged in the process of satisfying the conditions for the Mandate financing, and Enso has provided Mandate with a deposit; and

(g) the Petitioners have discussed with Domain and Aviva the proposed Mandate interim financing and the need for an extension of the stay of proceedings.

14. Aviva has communicated to the Petitioners that it will need additional time to consider the proposed Mandate interim financing before that financing is presented to the Court for approval.

15. Domain has advised the Petitioners that it is agreeable to being repaid later than April 30, 2022 in order to afford Aviva time to consider the proposed Mandate interim financing.

16. The Petitioners understand that both Aviva and Domain support an extension of the stay of proceedings to and including May 13, 2022.

17. In conjunction with the Monitor, the Petitioners have developed a cashflow which indicates that the Petitioners can meet obligations that are immediately due through to and including May 13, 2022.

Necessity for Stay Extension

18. The Petitioners seek an extension of the Stay of Proceedings to and including May 13, 2022, being the approximate anticipated timeframe for Aviva to review the terms of the proposed Mandate interim financing and to have that interim financing presented to the Court for approval with a concomitant stay extension to August 31, 2022.

19. As set out in the Tenth Report of the Monitor, the Cash Flow Forecast prepared by the Monitor for the period of April 30, 2022 to May 13, 2022 projects that the authorized borrowings under the DIP Facility are sufficient to pay obligations anticipated to arise over the proposed extension of the Stay of Proceedings.

20. The extension of the Stay of Proceedings to May 13, 2022 is necessary to permit Aviva to complete its review of the proposed Mandate interim financing, and allows the Petitioners to maintain operational control and to preserve the Terrace House Project while advancing this proceeding towards an intended restructuring.

21. The Petitioners have acted and continue to act in these proceedings in good faith and with due diligence.

Part 3: LEGAL BASIS

1. The Petitioners rely on the CCAA, the Supreme Court Civil Rules and the inherent jurisdiction of this Honourable Court.

Stay Extension

2. Pursuant to s. 11.02(3) of the CCAA, the Court may extend the stay of proceedings for any period that the Court considers necessary provided that:

(a) the extension sought is appropriate in the circumstances; and

(b) the Petitioners have acted and are acting in good faith and with due diligence.

3. Since the Initial Order was pronounced on May 29, 2020, the Petitioners have acted and continue to act and operate in good faith and with due diligence.

4. The extension of the stay of proceedings is necessary permit Aviva to complete its review of the proposed Mandate interim financing, and allows the Petitioners to maintain operational control and to preserve the Terrace House Project while advancing this proceeding towards an intended restructuring.

5. Having regard to all the circumstances and the conditions outlined in s. 11.02(3) of the CCAA, the extension of the Stay of Proceedings to and including May 13, 2022 is reasonable and appropriate.

Part 4: MATERIAL TO BE RELIED ON

1. At the hearing of this Application, the Petitioners will rely on:

   (a) The Affidavit #6 of Tobi Reyes sworn April 27, 2022

   (b) The Tenth Report of the Monitor, to be filed;

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

The applicants estimate that the application will take 1 hour.

☒ This matter is not within the jurisdiction of a master. Madam Justice Fitzpatrick is seized of this proceeding.

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: April 27, 2022

Signature of David E. Gruber
Lawyer for the Applicants

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. 090034.00001, 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

Schedule A

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IN THE MATTER OF A PLAN OF COMPROMISE AND ARRANGEMENT OF PORT CAPITAL DEVELOPMENT (EV) INC. and EVERGREEN HOUSE DEVELOPMENT LIMITED PARTNERSHIP

ORDER MADE AFTER APPLICATION
(Stay Extension)

BEFORE THE HONOURABLE	)	
MADAM JUSTICE FITZPATRICK	)	29/April/2022

THE APPLICATION of the Petitioners coming on for hearing at Vancouver, British Columbia, by MS Teams, on the 29th day of April, 2022; AND ON HEARING David Gruber, counsel for the Petitioners and those other counsel and parties listed on **Schedule "A"** hereto; AND UPON READING the material filed, including the Tenth Report of Ernst & Young, Inc., in its capacity as court appointed monitor, to be filed; AND pursuant to the *Companies' Creditors Arrangement Act*, R.S.C. 1985 c. C-36, the British Columbia Supreme Court Civil Rules and the inherent jurisdiction of this Honourable Court;

THIS COURT ORDERS AND DECLARES THAT:

SERVICE

1. The time for service of the Notice of Application filed April 27, 2022 herein be and is hereby abridged such that the Notice of Application is properly returnable today and service thereof on any interested party is hereby dispensed with.

STAY EXTENSION

2. The stay of proceedings provided for in the Initial Order pronounced in this action on May 29, 2020, as amended and restated on June 8, 2020, and further extended by Orders of this Court pronounced February 24, 2021, April 16, 2021 and June 11, 2021, and further extended by the Order of the Court of Appeal (Court of Appeal File No. CA-47585) pronounced as of September 22, 2021, is hereby continued and extended to and including May 13, 2022.

GENERAL

3. Endorsement of this Order by counsel appearing on this application other than counsel for the Petitioners 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 David Gruber
Lawyer for the Petitioners

BY THE COURT

____

REGISTRAR

Schedule "A"

(List of Counsel)

Counsel name/litigant	Party represented
Scott Stephens	Domain Mortgage Corp.
William Roberts	Aviva Insurance Company of Canada
Peter Rubin	The Monitor
Jordan Shultz	Macario Reyes and 1296371 B.C. Ltd.