FORCE FILED

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 Smith Street Vancouver BC V6Z 2E1 on June 17, 2022 at 10:00 a.m., for the order set out in Part 1 below.

PART 1: ORDERS SOUGHT

1. A Claims Process Order substantially in the form attached as **Schedule "A"** hereto, approving a claims procedure (the "**Claims Procedure**");

2. A Meeting Order substantially in the form attached as **Schedule "B"** hereto, providing for the following relief:

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

   (b) authorizing the Applicants to file a plan of arrangement (the "**Plan**") and present it to creditors for voting;

(c) authorizing and directing the Applicants to convene a meeting of their creditors to vote on the Plan.

3. Such further and other relief as this Honourable Court may deem just.

PART 2: FACTUAL BASIS

4. The Applicants, 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.

5. 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**").

6. 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**").

7. Pursuant to the Court approved sale investment and solicitation process ("**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.

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

9. Pursuant to the SISP, the Court approved the break fee contained in 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.

10. On June 15, 2021, the Court dismissed the application of 1296371 B.C. Ltd. ("**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 Applicants' assets and undertakings to Solterra Acquisitions Corp.

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

12. 1296371 B.C. Ltd. ("**129**") sought and obtained leave to appeal from the Court's June 15, 2021 orders.

13. 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 Mortgage Corp; 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.

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

15. 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 Applicants for this proceeding.

16. On April 29, 2022 and May 13, 2022, the Court granted further extensions to the stay of proceedings. The most recent extension was to September 30, 2022. On May 13, 2022, the Court also approved interim financing from Mandate Management Corporation ("**Mandate**") in the amount of $20 million.

17. The Applicants have been developing the Plan in consultation with the Monitor. Key aspects of the Plan include:

(a) the security held by Domain Mortgage Corp, 129, 1260780 B.C. Ltd., and the Aviva Insurance Company of Canada remain unaffected by the Plan and subordinate to the new Mandate loan;

(b) the claims of the Pre-sale Purchasers will be compromised and extinguished in exchange for consideration in the amount of $10 and the Outside Date of each Pre-sale Purchaser's Agreement of Purchase and Sale will be amended to July 24, 2025;

(c) the claims of Unsecured Creditors will be compromised and extinguished in exchange for (i) an Excess Profit Sharing Note; or (ii) a Convenience Cash Payment in an amount, that is the lessor of $5000 or the amount of the Unsecured Claim of such Unsecured Creditor, as the case may be.

18. In order to conduct voting on the Applicants' Plan and to be able to make distributions thereunder, it is necessary to determine the quantum and classification of the claims being asserted against the Applicants and schedule a meeting for voting on the Applicants' Plan.

19. The Applicants have with the participation of the Monitor, developed the Claims Procedure for this purpose. It provides for a negative claims process, with a Claims Bar Date that is on July 8, 2022, 21 days after the date that this Application is to be heard.

20. Given the proposed negative claims process, the Applicants submit that the 21 day Claims Bar Date is reasonable. On August 8, 2022, one month after the Claims Bar Date, the Creditors Meeting would be held for voting by the two classes of creditors: Unsecured Creditors and Pre-Sale Purchasers.

PART 3: LEGAL BASIS

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

Claims Procedure Order

22. Section 11 of the CCAA provides the Court with the jurisdiction to make any order it considers appropriate including the ability to solicit and determine claims against the Applicants.

23. The Monitor approves the proposed procedures and order comprising the Claims Procedure.

24. The purpose of a claims process is to streamline a resolution of claims against the CCAA party in the most cost effective manner, assist the debtor company in determining the value of the claims against it and allow creditors to make informed decisions as to the alternatives presented to them.

Canwest Global Communications Re, 2011 ONSC 2215 at para. 40

25. British Columbia courts have on a number of occasions approved a "negative" or "reverse claims process" in meeting these goals, including where a claims package is issued to each known claimant by the Monitor setting out the quantum of that creditor's claim in accordance with the books and records of the company.

Quest University Canada (Re), 2020 BCSC 1845
Mountain Equipment Co-Operative (Re), 2020 BCSC 2037

26. The Applicants believe that the Claims Procedure will be effective, and is reasonable and appropriate. The Claims Procedure is designed to create a process that will allow for a timely and efficient review and confirmation or determination of the potential claims against the Applicants.

Meeting Order and Plan

27. The Court has jurisdiction to grant the Meeting Order pursuant to section 4 of the CCAA, which provides as follows:

> Where a compromise or an arrangement is proposed between a debtor company and its unsecured creditors or any class of them, the court may, on the application in a summary way of the company, of any such creditor or of the trustee in bankruptcy or liquidator of the company, order a meeting of the creditors or class

of creditors, and, if the court so determines, of the shareholders of the company, to be summoned in such manner as the court directs.

CCAA, section 4

28. The threshold for granting the Meeting Order is low. It is not up to the Court to second guess the probability of success of a proposed plan of arrangement. The Court should only decline to give preliminary approval and refuse to order a meeting of creditors if it is of the view that there is no hope the Plan would receive creditor approval or, if approved by the creditors, it would not be approved by the Court.

ScoZing Ltd., Re, 2009 NSSC 163, para. 7

29. There is no evidence supporting a finding that the Plan has no hope of being approved by the Affected Creditors. The Applicants believe that the proposed Plan represents the best outcome for their stakeholders in the circumstances.

30. The proposed Plan provides for the compromise of the claims of the Pre-Sale Purchasers and extension of the Outside Date. In the Clover on Yonge Inc. and the Clover on Yong Limited Partnership CCAA Proceedings a plan was sanctioned which provided for the compromise of pre-sale purchasers' claims.

Clover on Yonge Inc. and the Clover on Yonge Limited Partnership Sanction Order

Clover on Young Inc. and the Clover on Yonge Limited Partnership Endorsement

31. It has been recognized that section 11 of the CCAA authorizes the interference with contractual relationships.

Cansugar Inc. re Option Agreement, 2005 NBQB 199 ["**Cansugar**"] at paras. 24-29

32. Courts have previously granted the extension of dates prescribed in contracts.

Jameson House Properties Ltd. (Re), 2009 BCCA 339

Cansugar, supra

33. Having regard to all the circumstances, it is reasonable and appropriate to grant the Meeting Order.

PART 4: MATERIAL TO BE RELIED ON

34. At the hearing of this Application, the Applicants will rely on:

(a) The Twelfth Report of the Monitor to be filed;

(b) The Eleventh Report of the Monitor, filed;

(c) The Tenth Report of the Monitor, filed; and

(d) Such further material as counsel may advise and the Court may permit.

The applicants estimate that the application will take 1 day.

☒ 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: June 15, 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