



No. S-222758
Vancouver Registry

IN THE SUPREME COURT OF BRITISH COLUMBIA

THE MATTER OF THE COMPANIES' CREDITORS ARRANGEMENT ACT,
R.S.C. 1985, c. C-36, AS AMENDED

AND

IN THE MATTER OF A PLAN OF COMPROMISE AND ARRANGEMENT OF 0989705 B.C.
LTD., ALDERBRIDGE WAY LIMITED PARTNERSHIP, AND ALDERBRIDGE WAY GP LTD.

PETITIONERS

NOTICE OF APPLICATION

Name of applicant: Romspen Investment Corporation ("Romspen")

To: The Service List

TAKE NOTICE that an application will be made by the applicants to the Honourable Madam Justice Fitzpatrick at the courthouse at 800 Smithe Street, Vancouver, B.C. on August 11, 2022 at 9:45 am for the orders set out in Part 1 below.

Part 1: ORDERS SOUGHT

1. Romspen seeks approval of the "**Second Amended and Restated Initial Order**" (the "**SARIO**"), a draft of which is attached to this application at Schedule "**A**", which will, among other things:

- (a) expand the powers of The Bowra Group Inc. ("**Bowra**") in its capacity as court-appointed monitor (the "**Monitor**") of the Petitioners;
- (b) approve an interim financing credit facility in the maximum principal amount of \$2.5 million (the "**Romspen Interim Financing Credit Agreement #2**") provided by Romspen as interim lender and a corresponding charge in favour of Romspen (as interim lender) (the "**Romspen Interim Financing Charge #2**") over the assets, property and undertakings of the Petitioners in priority to all other creditors of the Petitioners other than the Administration Charge and the Directors Charge (each as defined in the Amended and Restated Initial Order made April 25, 2022 (the "**ARIO**")) up to a maximum principal amount of \$2.5 million, plus interest, costs, fees and disbursements; and
- (c) extend the stay of proceedings until October 7, 2022.

2. Romspen further requests such other relief as this Honourable Court may deem to be just and appropriate in the circumstances.

Part 2: FACTUAL BASIS

History of these CCAA Proceedings

3. Romspen is the Petitioners' senior secured creditor. As of July 31, 2022, Romspen was owed approximately \$185 million, with interest accruing on that debt at approximately \$1.5 million per month.

Affidavit #2 of Wesley Roitman, made August 8, 2022
("Roitman Affidavit #2") at para. 3

4. The Petitioners have been unable to meet their obligations to Romspen for more than two and a half years (since March 2020). Despite this, Romspen has refrained from taking active enforcement steps in March 2020 and in subsequent months and years to give the Petitioners an opportunity to consummate a transaction that would see Romspen repaid. As is set out below, unfortunately, the Petitioners' efforts to date have been unsuccessful.

Roitman Affidavit #2 at para. 14

5. The Petitioners were granted protection under the *Companies Creditors' Arrangement Act*, R.S.C. 1985, c. C-36 (the "CCAA") on April 1, 2022. The Petitioners' filing for CCAA protection (the "**Consensual CCAA Filing**") was made with the consent of Romspen after considerable discussion, negotiation and compromise and on terms that reflected a careful balancing of Romspen's rights with the Petitioners' desire to attempt to restructure under the CCAA.

Affidavit #1 of Wesley Roitman, made March 31, 2022
("Roitman Affidavit #1") at paras. 13-14

6. The mechanisms in the Consensual CCAA Filing that were negotiated and agreed upon to achieve this balance, while ensuring that Romspen's rights and interests are protected, included the following:

- (a) an Initial Order with certain enhanced powers provided to the proposed monitor with respect to the CCAA SISF;
- (b) an interim lending facility that ranks after Romspen;
- (c) a sales investment and solicitation process, prepared in consultation with the Monitor, and to be run by the Monitor with terms and timelines that are the result of extensive negotiations between the Petitioners and Romspen, with the involvement of the Monitor, (the "**CCAA SISF**"); and
- (d) an agreed upon termination of the CCAA SISF and an alternative path forward if the CCAA SISF fails.

Roitman Affidavit #1 at para. 15; Petition Response of
Romspen dated April 1, 2022 at para. 5

7. In order to facilitate this agreed upon termination of the CCAA SISP and an alternative path forward should the CCAA SISP fail, the Petitioners executed both a Consent to Receivership and Consent Receivership Order (which remains unfiled).

Roitman Affidavit #2 at para. 6

The CCAA SISP

8. On April 25, 2022, this Court approved the CCAA SISP. The following key dates were included in the CCAA SISP:

- (a) a Final Bid Deadline of June 22, 2022;
- (b) a Final Agreement Deadline of July 4, 2022; and
- (c) an Outside Closing Date of July 27, 2022 (each as defined in the CCAA SISP).

Approval of Sales and Investment Solicitation Process
Order of Justice Fitzpatrick granted April 25, 2022, Schedule
B para. 8

9. As was noted in the Petitioners' materials before the Court at the application for the Initial Application, the Petitioners' restructuring plans included a credit bid for the Project as between the Petitioners and their second mortgage lenders (the "**2MLs**"), who are either unitholders of one of the Petitioners, Alderbridge Way Limited Partnership, or entities associated with those unitholders.

Affidavit #1 of Graham Thom made March 31, 2022 at
paras. 22, 23, 124

10. The activities of the Monitor in implementing the SISP are described in the Third Monitor's Report dated July 20, 2022 (the "**Third Monitor's Report**"). By the original Final Bid Deadline on June 22, 2022, no complaint Final Bid had been made and none of the Final Bids received were adequately advanced so as to be acceptable to the Monitor and Romspen. The Monitor, in consultation with and with the consent of Romspen, determined that it was advisable to extend the CCAA SISP deadline to provide the interested parties further time to advance their respective bids.

11. Romspen's consent is required to extend the timelines in the CCAA SISP. Romspen has now consented to five separate extensions of the CCAA SISP:

- (a) On June 24, 2022, the CCAA SISP deadlines were extended as follows:
 - (i) the Final Bid Deadline was extended from June 22 to July 5, 2022;
 - (ii) the Final Agreement Deadline was extended from July 4 to July 15, 2022;
and
 - (iii) the Outside Closing Date was extended from July 27 to August 9, 2022.
- (b) On July 6, 2022, the CCAA SISP deadlines were extended as follows:
 - (i) the Final Bid Deadline was extended from July 5 to July 19, 2022;

- (ii) the Final Agreement Deadline was extended from July 15 to July 29, 2022;
and
 - (iii) the Outside Closing Date from August 9 to August 23, 2022.
- (c) On July 20, 2022, the CCAA SISP deadlines were extended as follows:
- (i) the Final Bid Deadline was extended from July 19 to July 27, 2022;
 - (ii) the Final Agreement Deadline was extended from July 29 to August 8, 2022; and
 - (iii) the Outside Closing date was extended from August 23 to August 31, 2022.
- (d) On July 27, 2022, the CCAA SISP deadlines were extended as follows:
- (i) the Final Bid Deadline was extended from July 27 to August 5, 2022;
 - (ii) the Final Agreement Deadline was extended from August 8 to August 17, 2022; and
 - (iii) the Outside Closing Date was extended from August 31 to September 9, 2022.
- (e) On August 7, 2022, the CCAA SISP deadlines were extended as follows:
- (i) the Final Bid Deadline was extended from August 5 to August 10, 2022;
 - (ii) the Final Agreement Deadline was extended from August 17 to August 22, 2022; and
 - (iii) the Outside Closing Date was extended from September 9 to September 14, 2022.

Roitman Affidavit #2 at para. 11

12. Unfortunately, notwithstanding these five extensions, as of the date of this application no party has submitted a compliant Final Bid in the CCAA SISP.

Roitman Affidavit #2 at para. 13

13. For the reasons discussed in greater detail in the Roitman Affidavit #2, based on Romspen's experience with the Petitioners' efforts to restructure their affairs, both prior to and after the commencement of these CCAA proceedings, Romspen has lost confidence in the Petitioners' ability to consummate a transaction or otherwise restructure their business.

Roitman Affidavit #2 at paras. 14-15

14. In Romspen's view, a change is needed. Enhancing the Monitor's powers in the manner proposed by Romspen on this application will allow the Monitor, a court-appointed officer, to take control of the efforts to sell the Project in the context of these CCAA proceedings through a streamlined and efficient process. This CCAA proceeding needs, and would benefit from, these expanded powers being given to the Monitor in place of the Petitioners.

Roitman Affidavit #2 at para. 16

15. The enhanced powers granted to the Monitor pursuant to the SARIO expand beyond the powers previously granted to the Monitor with respect to the CCAA SISF and are more akin to powers of a traditional “super-monitor”. Under the SARIO the Monitor will have the ability to, among other things:

- (a) continue with the CCAA SISF or, should the CCAA SISF terminate, to market the Project, negotiate terms of sale as the Monitor considers appropriate and cause the Petitioners to complete one or more transactions for the sale of the Project;
- (b) preserve and protect the Project;
- (c) engage persons necessary to assist with protecting, preserving and enhancing the Project, such as consultants and experts;
- (d) enter into any agreements, incur any obligation in relation to the Project, or cease to perform any contracts of the Petitioners with respect to the Project; and
- (e) engage with the City of Richmond and any other governmental agency or authority on behalf of the Petitioners, including without limitation to deal with or apply for any development or building permits or any amendments thereto.

16. The Monitor is prepared to accept the expanded role.

Additional Interim Financing

17. In furtherance of the Petitioners’ restructuring efforts, Romspen has already provided \$1.65 million in interim financing to the Petitioners, which was approved by this Court on April 25, 2022.

Roitman Affidavit #2 at para. 14; ARIO at paras. 49-54

18. However, the Petitioners require additional liquidity to continue their restructuring efforts.

19. Romspen is prepared to provide additional interim financing in the amount of \$2.5 million to allow the Monitor to fund the continued costs of this restructuring and the activities to be undertaken by the Monitor under its expanded powers. This facility (the “**Romspen Interim Financing Credit Agreement #2**”) shall be on the same commercial terms and in substantially the same form as the first interim financing agreement between Romspen, as interim lender, and the Petitioners that was approved by this Court on April 25, 2022.

Roitman Affidavit #2 at para. 18

20. The funds advanced under the Romspen Interim Financing Credit Agreement #2 shall be secured by the Romspen Interim Financing Charge #2, a charge over the assets, property and undertakings of the Petitioners in priority to all other creditors of the Petitioners other than the Administration Charge and the Directors Charge up to a maximum principal amount of \$2.5 million, plus interest, costs, fees and disbursements.

Part 3: LEGAL BASIS

The Monitor's Powers should be Expanded

21. This Court's discretionary ability to grant enhanced powers to the monitor is contemplated by section 23(1)(k) of the CCAA, which directs that a monitor shall "carry out any other functions in relation to the company that the court may direct".

Ernst & Young Inc. v. Essar Global Fund Limited, 2017 ONCA 1014 at para. 106.

22. As our Court of Appeal recently noted, courts have used section 23(1)(k) "liberally" to assign additional functions to monitors beyond investigating and reporting to the Court.

8640025 Canada Inc. (Re), 2018 BCCA 93 at para. 49 [8640025].

23. Section 11 of the CCAA additionally provides the CCAA court with broad discretion to "make any order that it considers appropriate in the circumstances". It is widely accepted that the CCAA, and in particular section 11, allows for flexible and creative solutions to achieve its main objective of restructuring a financially distressed company.

Montréal (City) v. Deloitte Restructuring Inc., 2021 SCC 53 at paras. 113-115 [**Deloitte Restructuring**].

24. The expansion of a Monitor's powers is not uncommon in CCAA proceedings. Such relief has been granted in previous cases, including by this Honourable Court:

1077 Holdings Co-operative (Re), 2020 BCSC 2037; *Walter Energy Canada Holdings, Inc. (Re)*, 2016 BCSC 1746; *North American Tungsten Corporation Ltd. (Re)*, 2016 BCSC 12.

25. Given the events to date in these CCAA proceedings, and in particular the failure of the CCAA SISF to secure a complaint bid to purchase the Project, Romspen now asks this Court to grant the Monitor enhanced powers as set out in the SARIO in order to set these CCAA proceedings on a more streamlined and efficient path.

Roitman Affidavit #2 at para. 8

26. The enhanced powers set out in the SARIO will permit the Monitor to preserve the value of the Project and engage in further efforts to effect a transaction, through the CCAA SISF or otherwise.

27. The relief sought in the SARIO is consistent with the Petitioners' agreement to the appointment of a receiver should the CCAA SISF fail. It is, in Romspen's view, a reasonable and efficient alternative to the termination of these CCAA proceedings and the appointment of a receiver.

Roitman Affidavit #2 at para. 17

The Additional Romspen Interim Financing Credit Agreement Should be Approved

28. Pursuant to section 11.24 of the CCAA, the Court has the authority to approve interim financing and grant an interim lenders' change.

29. Interim financing charges are integral to the CCAA process. They incentivize lending by reducing risks and are, practically, often the only way to encourage lending to insolvent companies.

9354-9186 Québec inc. v. Callidus Capital Corp., 2020 SCC 10 at para. 89 [**Callidus**].

30. The CCAA court may exercise its discretion to approve such financing "to achieve the important statutory objective under the CCAA of not only providing working capital, but also enabling the 'preservation and realization of the value of a debtor's assets'".

1057863 B.C. Ltd. (Re), 2020 BCSC 1359 at para. 32 [**1057863**], citing *Callidus* at paras. 85-86.

31. The Petitioners and the Monitor require further funds to continue this restructuring and Romspen is prepared to provide that funding. Further funds will be necessary to permit the Monitor to preserve the value of the Project and engage in further efforts to effect a transaction, through the CCAA SISF or otherwise. Further interim financing will therefore be necessary to preserve the value of the Project and increase the likelihood of a successful transaction, to the benefit of the Petitioners' stakeholders.

The Stay of Proceedings Should be Extended

32. The current stay of proceedings expires on August 12, 2022. Romspen is seeking an extension of the stay of proceedings up to and including September 30, 2022.

33. The CCAA provides this Court with broad jurisdiction to extend a stay of proceedings.

CCAA, s. 11.02

34. An extension of the stay is required to permit the Monitor to use its enhanced powers to preserve the value of the Project and continue the CCAA SISF or engage in another sale process. Romspen submits that an extension of the stay is necessary and appropriate in the circumstances.

Part 4: MATERIAL TO BE RELIED ON

1. Affidavit #1 of Wesley Roitman, made March 31, 2022;
2. Affidavit #2 of Wesley Roitman, made August 8, 2022;
3. Affidavit #3 of Jennifer Alambre, made August 8, 2022;
4. Affidavit #1 of Graham Thom, made March 31, 2022;

5. The Third Report of the Monitor, dated July 20, 2022;
6. The Fourth Report of the Monitor (to be filed); and
7. Such other materials as counsel may advise


The applicant estimates that the application will take 20 minutes

This matter is not within the jurisdiction of a master. This application has been scheduled to be heard before Madam Justice Fitzpatrick by Trial Scheduling.

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: 8/Aug/2022

F02: 
Signature of Peter Rubin
Lawyer for applicant

Blake, Cassels & Graydon LLP
Barristers and Solicitors
Suite 2600, Three Bentall Centre
595 Burrard Street PO Box 49314
Vancouver, BC V7X 1L3
Email: peter.rubin@blakes.com
Telephone: 604.63133315

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:

Date: _____

Signature of Judge 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