



FORCE FILED

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 GP LTD., AND ALDERBRIDGE WAY LIMITED PARTNERSHIP

PETITIONERS

**NOTICE OF APPLICATION**

**Name of applicant: The Petitioners: 0989705 B.C. Ltd., Alderbridge Way Limited Partnership, and Alderbridge Way GP Ltd. (collectively, the "Petitioners")**

To: The Service List attached hereto as **SCHEDULE "A"**.

TAKE NOTICE that an application will be made by the Petitioners to the Honourable Madam Justice Fitzpatrick at the courthouse at 800 Smithe Street, Vancouver, B.C. on August 11, 2022 at 10:00 am for the orders set out in Part 1 below.

**Part 1: ORDERS SOUGHT**

1. An Order substantially in the form attached hereto as **SCHEDULE "B"**, which increases the administrative charge (the "**Administrative Charge**") granted in the initial order pronounced April 1, 2022 (the "**Initial Order**"), as extended by a stay extension order pronounced on April 11, 2022 (the "**First Stay Extension Order**"), the amended and restated initial order pronounced on April 25, 2022 (the "**ARIO**"), and a second stay extension order pronounced on July 22, 2022 (the "**Second Stay Extension Order**") from \$300,000 to \$700,000 and to allocate the Administrative Charge amongst the professionals involved in these proceedings as follows:
  - (a) \$500,000 allocated to the Petitioners' counsel;
  - (b) \$100,000 allocated to The Bowra Group Inc. as the monitor of the Petitioners (in such capacity, the "**Monitor**"); and
  - (c) \$100,000 allocated to the Monitor's counsel.
2. Such further and other relief as this Court may deem just.

## Part 2: FACTUAL BASIS

### Background

1. The Petitioners are in the business of developing and marketing a high-density, mixed-used construction project at 7960 Alderbridge Way and 5333, 5411 No. 3 Road, Richmond, British Columbia (the "**Development**").
2. On April 1, 2022, Madam Justice Fitzpatrick granted the Initial Order pursuant to the *Companies' Creditors Arrangement Act*, R.S.C. 1985 c. C-36, as amended (the "**CCAA**"), granting, among other things, a Stay of Proceedings in favour of the Petitioners until the initial return date of April 11, 2022.
3. On April 11, 2022, Mr. Justice Groves granted the First Stay Extension Order, granting an extension of the Stay of Proceedings and other relief until April 25, 2022 (the "**Stay Period**").
4. On April 25, 2022, Madam Justice Fitzpatrick granted the ARIO, granting an extension of the Stay of Proceedings and other relief until August 3, 2022.
5. Under the ARIO, Madam Justice Fitzpatrick appointed the Monitor, and granted the Monitor certain enhanced powers, including enhanced powers to market and sell the Petitioners' assets (the "**Enhanced Monitor's Powers**").
6. Also on April 25, 2022, Madam Justice Fitzpatrick granted an order (the "**SISP Order**") approving a sales and solicitation process (the "**CCAA SISP**"), under which the Monitor, with the Enhanced Monitor's Powers, was empowered to market the assets of the Petitioners, including the Development.
7. On July 22, 2022, Madam Justice Fitzpatrick granted the Second Stay Extension Order, extending the Stay of Proceedings and other relief until August 12, 2022.

### The CCAA SISP

8. Since granting the ARIO and the CCAA Order, the Monitor has been administering the CCAA SISP. By way of brief summary, the CCAA SISP has proceeded as follows:
  - (a) On April 26, 2022, the Monitor, in connection with Cushman & Wakefield ULC (the "**Sales Agent**") commenced the CCAA SISP, marketing the Petitioners' assets, including soliciting interest for either a restructuring bid, which would see a purchaser acquiring certain equity interests in the Petitioners, or an asset bid, which would see a purchaser acquiring certain assets of the Petitioners. The Monitor and the Sales Agent compiled a list of potential bidders, prepared and circulated teaser letters regarding the CCAA SISP, executed non-disclosure agreements with interested parties, and allowed access to a data site so that interested parties could conduct due diligence.

- (b) May 18, 2022 was the letter of intent (“LOI”) deadline, at which point interested bidders were required to submit a non-binding LOI to the Monitor. The Monitor obtained sufficient interest from multiple bidders at this point to qualify several parties as “**Qualified Bidders**” under the CCAA SISF and to continue progressing the CCAA SISF.
- (c) June 22, 2022 was the final bid (a “**Final Bid**”) deadline, at which point interested bidders were required to submit a deposit and a binding, non-conditional, Final Bid to the Monitor. The Monitor reported that it received multiple Final Bids, however, none of the Final Bids were adequately advanced in the Monitor’s opinion. The CCAA SISF provides the Monitor with the power to extend any CCAA SISF deadline. As such, following the Final Bid deadline, the Monitor extended the deadline for Final Bids first to July 5, 2022, then to July 19, 2022, then to July 27, 2022, then to August 5, 2022 and most recently to August 10, 2022. The Monitor has previously reported that the Monitor has granted these extensions of the Final Bid deadlines to continue to advance the CCAA SISF.
- (d) As a result of the extension of the Final Bid deadline, the Monitor has also extended the deadline to execute a final agreement to August 22, 2022 and extended the outside closing date for a transaction to September 14, 2022.

#### **Activities of the Petitioners**

- 9. Since the granting of the First Stay Extension Order and the SISF Order, the Petitioners worked with the Monitor to advance these CCAA proceedings, including:
  - (a) responding to information requests from various stakeholders;
  - (b) meeting and working with the Monitor to facilitate the monitoring of the Petitioners’ business;
  - (c) continuing the operations of the Petitioners’ business, including maintaining the Development, including ensuring on-going supply and services from third-party contractors;
  - (d) with the Petitioners’ counsel, continuing to meet with secured creditors and major stakeholders; and
  - (e) working with the Monitor to advance the CCAA SISF.

#### **Payment of the Petitioners’ Counsel’s Fees**

- 10. At the time of the Initial Order and subsequently the ARIO, the Monitor’s reports attached a cash flow statement accounting for, among other things, the payment of the Petitioners’ counsel’s fees out of the proceeds from the Petitioners’ interim financing facilities. As was discussed before the Court at the time of the Initial Order and consistent with the form of

Model Order, this anticipated payment of the Petitioners' counsel's outstanding pre-filing fees, incurred in preparing for these CCAA proceedings and various other matters in an effort to restructure the Petitioners and advance a transaction for the benefit of all stakeholders.

11. Given the cash flow projections and the anticipated nature and duration of these proceedings, the Petitioners and their counsel believed that a \$300,000 Administrative Charge was appropriate, given that the cash flow accounted for paying the Petitioners' counsel outstanding accounts out of the interim financing facilities.
12. The Petitioners' counsel has invoiced the Petitioners \$1,227,755.65 for legal work to date. This amount accounts for both pre-filing and post-filing work.
13. The Petitioners have been paid \$756,246.96 for the legal work performed. \$378,626.96 was paid by the Petitioners in the ordinary course prior to the CCAA filing. \$377,621.00 was paid by the Petitioners, as approved by the Monitor, after the CCAA filing. This has resulted in a \$471,508.69 shortfall in the Petitioners' counsel's fees.
14. As disclosed to this Court at the time of the Initial Order, the Petitioners' counsel applied payments received since the Initial Order to certain outstanding invoices for the Petitioners' counsel's pre-filing work.
15. Since applying the payments received, the Petitioners' counsel's invoices from July 30, 2020 up to September 30, 2021 have been paid. However, a number of the invoices from October 31, 2021 to July 31, 2022 remain outstanding or partially paid, specifically:
  - (a) with respect to the invoice dated October 31, 2021 for \$84,500.64, a partial payment of \$75,939.81 has been received and applied;
  - (b) with respect to the invoice dated December 31, 2021 for \$46,051.30, no payments have been made or applied;
  - (c) with respect to the invoice dated January 31, 2022 for \$44,726.65, no payments have been made or applied;
  - (d) with respect to the invoice dated February 28, 2022 for \$60,174.67, no payments have been made or applied;
  - (e) with respect to the invoice dated March 31, 2022 for \$185,329.98, no payments have been made or applied;
  - (f) with respect to the invoice dated May 31, 2022 for \$97,045.02, no payments have been made or applied;
  - (g) with respect to the invoice dated June 30, 2022 for \$14,807.86, no payments have been made or applied; and

- (h) with respect to the invoice dated July 31, 2022 for \$14,812.38, no payments have been made or applied (items (a) through (h) collectively, the “**Unpaid Invoices**”).
16. Although it is acknowledged that some of the more recent payments received significantly align with the amounts of the more recent invoices, consistent with the ordinary course of dealings between the Petitioners and counsel, all payments have been applied to the oldest invoices.
17. Timelines for closing a restructuring transaction in the CCAA SISP in these proceedings have been extended for several months.
18. The Monitor has made clear to the Petitioners’ counsel, and this Court, that no further payments will be made to the Petitioners’ counsel with respect to the arrears for the Petitioners’ counsel’s pre-filing amounts. As such, the Petitioners’ counsel is exposed to significant risk that it will not recover its fees under the Unpaid Invoices.
19. The current Administrative Charge is for the benefit of the Monitor, the Monitor’s counsel, and the Petitioners’ counsel. However, the \$300,000 Administrative Charge is not sufficient to even cover the outstanding arrears owing to the Petitioners’ counsel at this point.
20. Therefore, the Petitioners submit that in these circumstances it is appropriate to increase the Administrative Charge from \$300,000 to \$700,000 and to allocate the Administrative Charge amongst the professionals involved in these proceedings as set out below. The allocation will ensure that there is certainty for the various professionals regarding the protection they will have for any outstanding fees:
- (a) \$500,000 allocated to the Petitioners’ counsel;
  - (b) \$100,000 allocated to the Monitor; and
  - (c) \$100,000 allocated to the Monitor’s counsel.

### **Part 3: LEGAL BASIS**

1. The Petitioners rely on:
- (a) the *Companies’ Creditors Arrangement Act* (“**CCAA**”);
  - (b) *Supreme Court Civil Rules*;
  - (c) the inherent and equitable jurisdiction of this Court; and
  - (d) such further and other legal bases and authorities as counsel may advise and this Court may permit.

### **Increasing the Administrative Charge is Appropriate**

2. The Petitioners are seeking an order increasing the Administrative Charge from \$300,000 to \$700,000 and to allocate the Administrative Charge amongst the professionals involved in these proceedings as follows:
  - (a) \$500,000 allocated to the Petitioners' counsel;
  - (b) \$100,000 allocated to the Monitor; and
  - (c) \$100,000 allocated to the Monitor's counsel.
3. Section 11.52 of the CCAA, provides that a Court may grant a priority charge in respect of certain professional fees and expenses incurred in proceedings under the CCAA.

#### **CCAA, s. 11.52.**

4. It is not uncommon for a Court to increase the quantum of a charge granted under section 11.52 of the CCAA, as an insolvency proceeding progress and when it is appropriate in the circumstances.

**See for example: *Laurentian University of Sudbury*, 2021 ONSC 659 at para. 54 and the Amended and Restated Initial Order made by Justice Morawetz (Ont. Ct. J.) on February 11, 2021 in the *Matter of a Plan of Compromise or Arrangement of Laurentian University of Sudbury*, File No. CV-21-656040-00CL; and**

***Pacific Shores Resort & Spa Ltd. (Re)*, 2011 CarswellBC 3500 at para. 59.**

5. Courts have recognized that unless professional advisor fees are protected with the benefit of a charge over the assets of a debtor company, the objectives of the CCAA would be frustrated because professionals would be unlikely to risk offering their services without any assurance of ultimately being paid. Specifically, any failure to provide protection for professional fees will "result in the overwhelming likelihood that the CCAA proceedings would come to an abrupt halt, followed, in all likelihood by bankruptcy proceedings."

***Re Timminco Ltd.*, 2012 ONSC 506 at para. 66.**

**See also *Canada v. Canada North Group Inc.*, 2021 SCC 30 at para. 30.**

6. Factors a Court will consider in approving a charge under section 11.52 include:
- (a) the size and complexity of the business being restructured;
  - (b) the proposed role of the beneficiaries of the charge;
  - (c) whether there is unwarranted duplication of roles;
  - (d) whether the quantum of the proposed charge appears to be fair and reasonable;
  - (e) the position of the secured creditors likely to be affected by the charge; and
  - (f) the views of the monitor.

*Re Canwest Publishing Inc., 2010  
ONSC 222 at para. 54.*

**CCAA, s. 11.52.**

7. In this case, the Petitioners are seeking to have the existing Administration Charge increased and specifically allocated to the respective professionals, as the Petitioners' counsel's fees have not been paid as anticipated. The Petitioners submit that the following factors support increasing the Administrative Charge, given that:
- (a) there is sizable debt owing by the Petitioners and the Petitioners' business advancing the Development is highly complex;
  - (b) legal counsel for the Petitioners have played an active role both prior to the CCAA proceedings and subsequently in this insolvency and have the necessary experience and expertise to assist the Petitioners;
  - (c) there has not been, and it is not anticipated that there will be, any duplication of roles as between the legal counsel for the Petitioners and other professionals in these proceedings and it is anticipated that the Petitioners' counsel will still be necessary to play a limited role going forward. While at the senior secured lender's request, the group fulfilling the role of Monitor changed during these proceedings, the Monitor's counsel remained the same to help avoid additional costs;
  - (d) the Petitioners submit that the quantum of the increased charge appears to be fair and reasonable and reflects the market standard of an insolvency of this complexity, especially given that the Petitioners' counsel's fees have not been paid as anticipated;
  - (e) the secured creditors will be primed by the charge, but the Petitioners submit that the secured creditors have benefited from the CCAA proceedings and an increase in the Administration Charge is reasonable and fair in all the circumstances; and

- (f) the Monitor has reported that the Petitioners have acted in good faith and with due diligence throughout the CCAA proceedings and it is apparent from the proceedings that Petitioners' counsel has worked well and cooperatively with the Monitor, Monitor's counsel as well as counsel for Romspen Investment Corporation, the senior secured lender.
8. The Petitioners have required the specialized expertise, knowledge and participation of their legal counsel in order to continue to carry out and complete a restructuring and an increase in the Administration Charge is fair and reasonable given their past conduct and ensuring their continued assistance and participation in these proceedings as the Monitor may request and seek going forward.
  9. The increase of the Administration Charge is a result of the Petitioners' counsel continuing to act for the Petitioners, while not being paid as anticipated. The Petitioners submit that the increase is fair and reasonable in light of the role of the Petitioners' counsel, the size and complexity of the Petitioners' operations, and the complexity of the restructuring.
  10. Therefore, the Petitioners submit that it is appropriate in these circumstances to grant the increase to the Administration Charge over the Petitioners' assets, properties and undertaking, ranking in first priority.

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

1. The pleadings and materials filed herein.
2. The Monitor's Pre-Filing Report, filed April 1, 2022.
3. The Monitor's First Report, filed April 7, 2022.
4. The Monitor's Second Report, filed April 23, 2022.
5. The Monitor's Third Report, filed July 21, 2022.
6. The Monitor's Fourth Report, to be filed.
7. The First Affidavit of Belinda Diaz, sworn August 8, 2022.
8. Initial Order made April 1, 2022.
9. First Stay Extension Order made April 11, 2022.
10. ARIO made April 25, 2022.
11. SISP Order made April 25, 2022.
12. Second Stay Extension Order made July 22, 2022.



13. Such further and other materials as counsel may advise and this Court may allow.

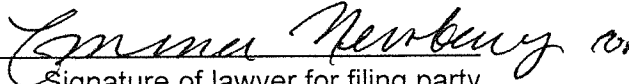
The applicant(s) estimate(s) that the application will take 1 hour.

- This matter is within the jurisdiction of a master.
- This matter is not within the jurisdiction of a master. This application has been scheduled to be heard before Madam Justice Fitzpatrick on August 11, 2022, at 10:00 am 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 of 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/August/2022

  
Signature of lawyer for filing party  
John Sandrelli

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:

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Date:

\_\_\_\_\_  
Signature of  Judge  Master

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## APPENDIX

### THIS APPLICATION INVOLVES THE FOLLOWING:

- 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"**

**SERVICE LIST**

**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 A PLAN OF COMPROMISE AND ARRANGEMENT OF  
0989705 B.C. LTD., ALDERBRIDGE WAY GP LTD., and  
ALDERBRIDGE WAY LIMITED PARTNERSHIP

PETITIONERS

**SERVICE LIST**

As at July 18, 2022

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<p>McLean &amp; Armstrong LLP 300 – 1497 Marine Drive, West Vancouver, BC, V7T 1B8</p> <p>Attention: Chris Moore</p> <p>Email: <a href="mailto:cmoore@mcleanarmstrong.com">cmoore@mcleanarmstrong.com</a></p> <p>Tel: 604 925 0672</p>	<p><i>Metro-Can Construction (AT) Ltd.</i></p>



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**SCHEDULE "B"**

**DRAFT ORDER**

**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 GP LTD., AND ALDERBRIDGE WAY LIMITED PARTNERSHIP

PETITIONERS

**ORDER MADE AFTER APPLICATION**

*[Administrative Charge Increase]*

	)	THE HONOURABLE	)	
BEFORE	)	MADAM JUSTICE FITZPATRICK	)	11/AUG/2022
	)		)	

ON THE APPLICATION of the Petitioners coming on for hearing at Vancouver, British Columbia, on the 11 day of August, 2022 (the "**Order Date**"); AND ON HEARING John Sandrelli and Valerie Cross, counsel for the Petitioners and those other counsel listed on **SCHEDULE "A"** hereto; AND UPON READING the material filed including, the Monitor's Fourth Report dated, to be filed, AND the first affidavit of Belinda Diaz dated August 8, 2022; AND pursuant to the *Companies' Creditors Arrangement Act*, R.S.C. 1985 c. C-36, as amended (the "**CCAA**"), the British Columbia Supreme Court Civil Rules and the inherent jurisdiction of this Honourable Court;

THIS COURT ORDERS AND DECLARES THAT:

1. All capitalized terms used herein and not otherwise defined shall have the meanings ascribed to them in the Order pronounced by the Honourable Madam Justice Fitzpatrick on April 25, 2022 (the "**ARIO**").

2. Paragraph 42 of the ARIO is deleted in its entirety and replaced with:

“The Monitor, counsel to the Monitor, if any, and counsel to the Petitioners shall be entitled to the benefit of and are hereby granted a charge (the “**Administration Charge**”) on the Property, which charge shall not exceed an aggregate amount of \$700,000, which shall be allocated amongst the professionals as follows i) \$500,000 allocated to the Petitioners’ counsel; ii) \$100,000 allocated to the Monitor; and iii) \$100,000 allocated to the Monitor’s counsel, as security for their respective fees and disbursements incurred at the standard rates and charges of the Monitor and such counsel, both before and after the making of this Order which are related to the Petitioners’ restructuring. The Administration Charge shall have the priority set out in paragraphs 55, 57, and 58 of this Order.”

3. Paragraph 55 of the ARIO is deleted in its entirety and replaced with:

“The priorities of the Administration Charge, the security interests registered with respect to the security of Romspen (the “**Romspen Security**”), the Romspen Interim Financing Charge, the Interim Financing Charge, and the Directors’ Charge, as among them, shall be as follows:

First – Administration Charge (to the maximum amount of \$700,000, which shall be allocated amongst the professionals as follows: i) \$500,000 allocated to the Petitioners’ counsel; ii) \$100,000 allocated to the Monitor; and iii) \$100,000 allocated to the Monitor’s counsel;

Second – Directors’ Charge (to a maximum amount of \$75,000);

Third – the Romspen Security; and

Fourth – ranking *pari passu*, the Interim Financing Charge (to a maximum principal amount of \$850,000) and the Romspen Interim Financing Charge (to a maximum principal amount of \$1,650,000).”

4. Endorsement of this Order by counsel appearing, 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:

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Signature of JOHN SANDRELLI  
 Party  Lawyer for the Petitioners

BY THE COURT

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REGISTRAR

**Schedule "A"**

(List of Counsel)

<b>Counsel Name</b>	<b>Appearing For</b>

