

Division No. 03 – Vancouver
Estate No. 11-3103569
Court No. VLC-S-B240334
Vancouver Registry

**IN THE SUPREME COURT OF BRITISH COLUMBIA
IN BANKRUPTCY AND INSOLVENCY**

**IN THE MATTER OF THE NOTICE OF INTENTION TO MAKE A PROPOSAL OF
GO FLOORING LTD.**

SUBMISSIONS

1. This is an application for the extension of a stay of proceeding ordered first by Justice Duncan which expired and then by Justice Giaschi who provided for adjournment to this week. The major question is whether this court will grant a further extension. The present motion calls for (i) an Administrative Charge; and (ii) DIP financing.
2. There are two major creditors:
 - a. CRA will have a claim of about \$3 million of which there is a super priority claim for source deductions for about \$1.8 million which exceeds the available assets. It has a secondary claim of \$1.2 million for penalties and interest which should be paid out of the proposal. If there is an immediate bankruptcy, CRA will get a fraction of its super priority claim, none of its remaining claim and no other pre-filing creditors will get any money;
 - b. RBC is in second place and has a claim of approximately \$2.9 million secured by GSA in second place and it will get nothing from an immediate bankruptcy; and
 - c. four other secured creditors have secured claims of about \$665,000.

Affidavit #1 paragraph 20.

3. A proposal would see RBC and CRA paid in full. For these reasons, RBC and CRA consented to the extension to November 7, 2024. The trustee issued its Second Report and the extension was made to October 7, 2024. Thereafter, both RBC and CRA oppose the relief sought.
4. The dramatic difference between bankruptcy and proposal comes from two major factors:
 - a. the debtors swear that they will provide additional real estate which they value at \$4.5 million dollars as security for the priority and secured obligations; and
 - b. the debtors provide projections that would increase the volume of business dramatically such that they could repay the debt. They say that if they return to the core business which was successful and have working capital by way of DIP financing then they can repay the debt.

5. We do not see how the trustee could render the opinion that the proposal does not benefit creditors with this injection of capital assets.
6. The trustee has provided a report expressing concern. The question for the court is whether the test for an extension is satisfied. We submit that there is no proven issue that should deny the company an extension. The test is set out in section 50.4(9) of the BIA see tab 1;

Due Diligence and Good Faith

7. This company has been under protection for just over two months. On the filing date it had certain defaults and organization problems. The affidavit #1 of Irfan Walji #1 at paragraphs 8-12 shows rapid expansion of its non core business as the cause of the insolvency. There will be a return to the core business.
8. Paragraphs 13-17 of the affidavit #1 of Irfan Walji demonstrate the steps taken to correct these operational deficiencies. They are sweeping in scope and pass the test for active steps required to be taken for a proposal and to repair the business. The results are not immediate but the efforts expended constitute due diligence and good faith.
9. The activities of the company to August 6, 2024 in furtherance of the proposal are outlined in paragraph 43 of the trustee's first report (tab 7) at paragraph 43. See also paragraphs 14-17 where the down-sizing steps were reviewed by the trustee.
10. There was difficulty in that the Company had not been able to realize projected sales and to collect the projected receivables and has not been able use the cash it would otherwise have received to fund additional contracts. It is a compounding effect. Given the downsizing, it is not at all surprising that this company with \$21 million sales for 2023 had miscalculated what it would do in the summer of 2024. It has been working diligently to collect receivables as stated in paragraph 14 of the Trustee's Second Report. The company needs working capital to generate sales. In the result, the company has sought an offer for DIP financing and it needs time to conclude that contract and needs an Administrative Charge to gain funds so the Trustee will review our cash flow and provide its opinion.

Andover Mining Corp (Re), 2013 BCSC 1833, para. 65

11. The notion that a proposal is drafted now is a component of the manner in which the company is proceeding with due diligence and in good faith. It is also good faith for the company to cause related parties to contribute real estate.

Can The Company Make A Proposal If The Extension Is Granted?

12. A draft of the proposal is attached to the affidavit #1 of Leah Jonak (tab 2 Exhibit A) and the affidavit #2 of Irfan Walji at paragraph and Exhibit "C". There can be no doubt that the ability of the company to provide a proposal is enhanced by the extension if during that time the related parties to the company contribute the offered twelve parcels of real estate which it values at \$4.5 million as security for the proposal. It may be that the value of the real estate is challenged and that the projections for sale are called into question. But the law is not that the proposal must be final and acceptable at the extension state.

No Creditor Is Prejudiced

13. It is submitted that there is no evidence of prejudice to any creditor. The test is for **material** prejudice. The injection of the new real estate will improve the position of all creditors in order of priority. The evidence (paragraph 9 of the trustee's second report) is that the trustee has not had time to consider the new properties. There cannot be any prejudice from adding new assets.
14. The evidence is not that there are difficulties with the cash flow but that the trustee has not had time to review it (paragraph 8 of the trustee's second report). The extension will allow that review. In any event if the cash flow is not realistic that is not prejudicial, of itself.
15. Paragraph 15 of the second report is particularly helpful because it identifies causes for the slow collection of receivables. CRA had directions to pay outstanding until as recently as mid-August which delayed collection.
16. The operative result of those paragraphs is that the company is operating and is surviving and it can conduct business. Failing to meet its projections is not prejudice to any creditor.
17. The Trustee said the company was not paying "as required". By September 23, 2024, except for the trustee's accounts, every claim of a post-filing creditor was paid (some late) except for one disputed landlord amount and the amount of the trustee's fee which exceeds its \$75,000 retainer. An Administrative Charge would secure that amount. The company may have some unpaid post-filing claims. Commonly, DIP financing is used to pay post-filing obligations.
18. Paragraph 19(a) does not contain the evidence necessary for a finding that a creditor was or would be prejudiced. It clearly says that the company provided information that the creditors in question are either paid or disputed. Indeed, if the company is granted an extension these creditors would be paid in the normal course of business.
19. We submit that that it is open to the company to treat a claim for termination of a lease as set out in paragraph 19(b).

BIA, sections 65.2(4)-65.2(6)

20. The trustee has a retainer of \$75,000 which was it says was posted for the possibility of a bankruptcy. It is submitted that the position of the trustee will not be materially prejudiced if an extension is granted because: (i) the proposal, if filed, as supported by the new real estate, provides that the trustee's fees are a priority; (ii) the intention is to apply for an Administration Charge which will protect the trustee, its counsel and the borrower's counsel; (iii) the trustee's first report acknowledged the value of the Administration Charge; and (iv) given the fees to date, the extension of time is not material .
21. Employees are paid.

22. The Material Adverse Change Report issued on August 20, 2024 set out at paragraph 8(b) that post filing obligations were unpaid. There is only real evidence of nonpayment of the trustee's fees and one disclaimed rent as of September 23rd and all other payments were caught up. We are behind again on post filing obligations now and will catch up again as we have proven before.
23. The trustee's second report indicates that there are accounting issues. The company submits that there were indeed inaccuracies in its accounting as of the filing date which were part of the problem, but it has taken steps to correct them. It understood that accuracy was required. It therefore endeavored to get 2023 correct before submitting post filing general ledger and trial balance. On September 18, 2024, through counsel, it was resolved that delivery of what existed without correction could assist the trustee, so the existing trial balance and general ledger were provided. Sixty days is not a long time to rectify accounting deficiencies.
24. The projected sales are down. The company explains that the reason why the receivables are less than projected is a trickling effect because the only amount it has to use for new projects is the accounts receivable; it cannot take on new projects for which it needs cash flow. The projections are not in line with performance to date because there is no DIP yet to provide working capital.
25. The company continues to collect receivables. In any event, receivables will go first to CRA for arrears of source deductions. It will be CRA who are impacted by a failure to collect. There will not be a surplus of receivables unless there is an extension.

New Properties

26. The deficiencies in the company's accounting are not damaging to the proposal process. There is a large quantifiable benefit to adding the properties in the Exhibit which will add real value.
27. Finally, the objective of the BIA is rehabilitation.

Andover Mining Corp (Re), 2013 BCSC 1833, para. 77

All of which is respectfully submitted this ____ day of October, 2024.

Go Flooring Ltd.

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