



District of British Columbia
Division Number 3 - Vancouver
Court No. B240334
Estate No. 11-3103569
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.**

NOTICE OF MOTION

TO: The Service List attached as Schedule "A".

TAKE NOTICE that an application will be made by the Proposal Trustee, Crowe MacKay & Company Ltd., to the presiding judge at the courthouse at 800 Smithe Street, Vancouver, British Columbia on October 11, 2024 at 9:45 a.m., for the following declarations and orders:

1. A declaration pursuant to section 50(12) of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3 (the "*BIA*") that the proposal of Go Flooring Ltd. dated October 7, 2024 is deemed to have been refused by the creditors.
2. An order relieving Crowe MacKay & Company Ltd. in its capacity as proposal trustee (the "Proposal Trustee") of the requirements in sections 50(6), 51(1) and 62(1) (as it relates to filing the prescribed statement of affairs) of the *BIA* unless the Proposal Trustee's application for a declaration pursuant to section 50(12) of the *BIA* is dismissed. Notwithstanding any appeal brought in respect of a declaration made pursuant to section 50(12) of the *BIA*, this order is subject to provisional execution pursuant to section 195 of the *BIA*.
3. In the alternative, an order that as security for their professional fees and disbursements incurred both before and after the granting of this order, the Proposal Trustee, and legal counsel to the Proposal Trustee, Gehlen Dabbs Cash LLP (collectively with the Proposal Trustee the "Administrative Professionals"), shall be entitled to the benefit of, and are hereby granted, a first ranking charge (the "Administration Charge") on all of Go Flooring Ltd.'s present and after-acquired assets, property and undertakings, which charge will not exceed \$200,000 as security for the Administrative Professionals' professional fees and disbursements, incurred at normal rates and charges, both before and after the granting of this order, which will rank in priority to all other security interests, trusts, liens, charges, encumbrances and other claims of secured creditors, statutory or otherwise in favour of any person, other than any secured claim that arises under subsection 14.06(7) of the *BIA*.

FACTS

Background

1. Go Flooring Ltd. (the “Debtor”) is a subcontractor to restoration companies.
2. The Debtor filed a Notice of Intention to Make a Proposal (the “NOI”) on July 11, 2024 with the official receiver.
3. Crowe MacKay & Company Ltd. consented to act as proposal trustee (the “Proposal Trustee”).

First extension

4. The initial stay period in the proposal proceedings ran from July 11, 2024 to August 10, 2024.
5. On August 8, 2024, the Court granted the Debtor an extension of the initial stay period and the time to file a proposal to September 24, 2024 (the “First Extension”).
6. On August 20, 2024, the Proposal Trustee distributed a Material Adverse Change Report (the “MAC Report”) to all creditors. The MAC Report identified a material adverse change in the financial circumstances of the Debtor due to cash receipts that were substantially less than projected, which caused the Debtor to fail to meet post-filing obligations to trade vendors, landlords, and the Proposal Trustee, among others.

Second extension

7. On September 19, 2024, the Debtor obtained an order permitting it to bring an extension application on short notice, to be heard on September 23, 2024. In addition to an extension of the stay of proceedings and the deadline to file a proposal, the Debtor also sought an administrative charge to secure the fees of its counsel, the Proposal Trustee, and the Proposal Trustee’s counsel. The Debtor also indicated an intention to apply for debtor in possession (“DIP”) financing.
8. In support of its application, the Debtor attached a draft proposal as an exhibit to an affidavit (the “Draft Proposal”).
9. In a Second Report to the Court dated September 22, 2024 (the “Second Report”), the Proposal Trustee explained that:
 - a. it had no involvement in cash flow projections the Debtor attached to an affidavit in support of its extension application and that the projections did not coincide with the Debtor’s actual performance;
 - b. the Debtor had an overdraft of \$405 versus a projected cash balance of \$164,098 as of September 15, 2024;
 - c. trade creditors of the Debtor had not been paid and were owed between \$92,000 and \$167,000;

- d. the Debtor had failed to establish to the Proposal Trustee that it had paid certain trade vendor debts as claimed;
 - e. the Debtor had failed to pay one landlord after disclaiming the lease on the basis of the Debtor's position it was a pre-filing claim;
 - f. the Proposal Trustee and its counsel had not been paid for post-filing services, with about \$73,000 owing in total;
 - g. the Debtor had failed to pay its employees \$31,000 when due in September and claimed that it had since paid those wages in full;
 - h. the Debtor had not provided the Proposal Trustee with information requested by the Proposal Trustee to monitor the Debtor's business and financial affairs; and
 - i. the Debtor's responses to the Proposal Trustee's requests for information had been delayed, unsatisfied, or partially satisfied.
10. In light of the Second Report, on September 23, 2024 the Court granted the Debtor a shorter extension than sought (to October 7, 2024 rather than November 7, 2024), provided that the Debtor:
- a. pay its post-filing creditors in the ordinary course; and
 - b. provide the Proposal Trustee with information as requested in a timely manner (the "Second Extension").

Refusal of third extension

11. The Debtor reset its application to extend the stay of proceedings and the deadline to file a proposal to November 7, 2024 and for an administrative charge for a hearing on October 4, 2024. The Debtor's application was opposed by Canada Revenue Agency ("CRA") and Royal Bank of Canada ("RBC").
12. In a Third Report to the Court dated October 3, 2024 (the "Third Report"), the Proposal Trustee noted concerns regarding the Debtor's financial circumstances. In particular, and contrary to the terms of the Second Extension, the Debtor had failed to pay further post-filing creditors, including trade vendors, landlords, the Proposal Trustee and its counsel, and employee source deductions owed to the CRA.
13. The Proposal Trustee also commented on the Draft Proposal, noting that it relied on the Debtor obtaining DIP financing and that the Debtor had only put forward an unsigned term sheet that had already expired and that both the CRA and RBC opposed. On that basis, the Proposal Trustee expressed concerns that the Debtor had insufficient cash and an inability to generate sufficient cash to continue to operate.
14. The principal of the Debtor, Irfan Walji, brought an affidavit to the October 4, 2024 hearing, confirming that a number of post-filing creditors had not been paid.

15. On October 4, 2024, the Court dismissed the Debtor's application for an extension and for an administrative charge. In dismissing the application, Justice Hori was not satisfied that the Debtor had established any of the three facts the Debtor had to establish under section 50.4(9) of the *BIA*, namely that:
 - a. the Debtor had acted in good faith and with due diligence;
 - b. the Debtor would likely be able to make a viable proposal if the extension were granted; and
 - c. no creditor would be materially prejudiced if the extension being applied for were granted.

Proposal

16. On October 7, 2024, at the Debtor's request, the Proposal Trustee filed a proposal (the "Proposal") dated October 7, 2024 with the Office of the Superintendent of Bankruptcy.
17. The Proposal Trustee has had no input on the terms of the Proposal. The Proposal is substantially the same as the Draft Proposal that was before the Court on October 4, 2024.
18. As described in the Fourth Report to the Court dated October 9, 2024 (the "Fourth Report"), the Debtor's financial circumstances have materially worsened and much of the information provided to the Proposal Trustee by the Debtor is either incomplete or inaccurate.
19. Based on all of the circumstances, the Proposal Trustee recommends and requests that the Court declare that the Proposal is deemed to have been refused by the creditors.

LEGAL BASIS

Deemed refusal

1. The tests for an extension of time to file a proposal and for an order deeming a proposal to be refused by the creditors are similar.
2. Under section 50.4(9) of the *BIA*, the Court may grant an extension of time for filing a proposal for a period not exceeding 45 days if satisfied that:
 - a. the insolvent person has acted, and is acting, in good faith and with due diligence;
 - b. the insolvent person would likely be able to make a viable proposal if the extension being applied for were granted; and
 - c. no creditor would be materially prejudiced if the extension being applied for were granted.
3. The Court may deem a proposal to have been refused by the creditors under section 50(12) of the *BIA*:

(12) The court may, on application by the trustee, the interim receiver, if any, appointed under section 47.1 or a creditor, at any time before the meeting of creditors, declare that the proposal is deemed to have been refused by the creditors if the court is satisfied that

- (a) the debtor has not acted, or is not acting, in good faith and with due diligence;
- (b) the proposal will not likely be accepted by the creditors; or
- (c) the creditors as a whole would be materially prejudiced if the application under this subsection is rejected.

4. This Court has already concluded that the Debtor has not acted in good faith or with due diligence.
5. With the Draft Proposal before it on October 4, 2024, the Court also found that the Debtor would not likely be able to make a viable proposal. The Proposal is substantially the same as the Draft Proposal presented to the Court. As far as the Proposal Trustee is aware, the CRA and RBC continue to oppose the Proposal.
6. Moreover, the stakeholders as a whole will be materially prejudiced. The Debtor is unable to pay its post-filing obligations in the ordinary course which is necessary in order to continue to operate. Continued operations are critical for the unsecured creditors to receive anything in the Proposal. Further, there is a risk to the CRA and RBC that continued operations in such circumstances will deteriorate their respective deemed trust and secured claims.
7. In all of the circumstances, the Proposal ought to be deemed to be refused by the creditors to bring this proceeding to an end without further harm to the interests of the stakeholders.

Interim relief

8. If the Court reserves judgment on the application for a declaration under section 50(12) of the *BIA*, the Proposal Trustee seeks interim relief from statutory requirements it has to: file a revised cash-flow statement and reports on the same (section 50(6)), call a meeting of creditors and distribute materials in advance of that meeting (section 51(1)), and file a prescribed statement of affairs (section 62(1)). The Proposal Trustee seeks to be relieved of these requirements unless its application for a declaration deeming the proposal refused is dismissed.
9. In this proceeding, the Proposal Trustee will have to begin to work imminently to ensure it meets these requirements. Given that the proposal may be deemed to have been refused, the Proposal Trustee should not be required to take steps that involve substantial work, particularly given that the Debtor has not paid the Proposal Trustee or the Proposal Trustee's counsel for services to date.
10. The Proposal Trustee also seeks provisional execution of the order relieving it from these requirements.
11. Section 195 permits the Court to order provisional execution notwithstanding an appeal from an order:

195 Except to the extent that an order or judgment appealed from is subject to provisional execution notwithstanding any appeal therefrom, all proceedings under an order or judgment appealed from shall be stayed until the appeal is disposed of, but the Court of Appeal or a judge thereof may vary or cancel the stay or the order for provisional execution if it appears that the appeal is not being prosecuted diligently, or for such other reason as the Court of Appeal or a judge thereof may deem proper.

12. Provisional execution is within the inherent jurisdiction of the Court. An order for provisional execution is appropriate where a stay of proceedings in an appeal would cause irreparable harm or the balance of convenience or relative prejudice requires an order for provisional execution to be made.

Computershare Trust Co. of Canada v. Beachfront Developments Inc., 2010 ONSC 4833;
YG Limited Partnership and YSL Residences (Re), 2021 ONSC 5206.

13. In this case, an appeal and automatic stay of a declaration made under section 50(12) of the *BIA* would require the Proposal Trustee to continue to act in this proceeding while an appeal is pending. Those steps would be meaningless if a declaration under section 50(12) is upheld and would cause hardship to the Proposal Trustee given that the Debtor has failed to pay the Proposal Trustee. The Proposal Trustee relies on the Court's inherent jurisdiction under section 183 of the *BIA*.

Administration charge

14. If the Proposal Trustee's application for a deemed refusal of the Proposal is dismissed, the Proposal Trustee seeks an administration charge to secure the fees and disbursements of the Proposal Trustee and its counsel. That charge is appropriate as the Proposal Trustee will be required to take steps under the *BIA* and has not been paid by the Debtor.
15. Section 64.2 of the *BIA* allows the Court to authorize a priority charge for professionals involved in proposal proceedings:

64.2 (1) On notice to the secured creditors who are likely to be affected by the security or charge, the court may make an order declaring that all or part of the property of a person in respect of whom a notice of intention is filed under section 50.4 or a proposal is filed under subsection 62(1) is subject to a security or charge, in an amount that the court considers appropriate, in respect of the fees and expenses of

- (a) the trustee, including the fees and expenses of any financial, legal or other experts engaged by the trustee in the performance of the trustee's duties;
- (b) any financial, legal or other experts engaged by the person for the purpose of proceedings under this Division; and
- (c) any financial, legal or other experts engaged by any other interested person if the court is satisfied that the security or charge is necessary for the effective participation of that person in proceedings under this Division.

(2) The court may order that the security or charge rank in priority over the claim of any secured creditor of the person.

16. Participation of professionals is necessary to ensure required steps are taken. The quantum and priority of the charge are fair and reasonable, particularly given the fees incurred to date the Debtor has been unable or unwilling to pay.

In the Matter of the Bankruptcy of Bear Creek Contracting Ltd., 2021 BCSC 783.

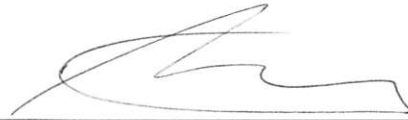
At the hearing of the application, the applicant will rely on the following:

1. The First Report to Court of the Proposal Trustee, dated August 6, 2024;
2. The Second Report to Court of the Proposal Trustee, dated September 22, 2024;
3. The Third Report to Court of the Proposal Trustee, dated October 3, 2024;
4. The Fourth Report to Court of the Proposal Trustee, dated October 9, 2024; and
5. Affidavit #3 of Irfan Walji, made on October 3, 2024.

This matter is not within the jurisdiction of a master.

The applicant estimates that the application will take 1 hour.

Dated: October 9, 2024



Signature of Lee J. Marriner
Lawyer for Crowe MacKay & Company Ltd. in its
capacity as Proposal Trustee of Go Flooring Ltd.

This Notice of Motion is delivered by Lee J. Marriner of the firm of Gehlen Dabbs Cash LLP, whose place of business and address for delivery is Suite 1201-1030 West Georgia Street, in the City of Vancouver, in the Province of British Columbia, V6E 2Y3, Telephone: 604.642.6422.

Schedule "A": Service List

<p>Go Flooring Ltd.</p> <p>1585 Cliveden Ave Unit 10 Delta, BC V3M 6P7</p> <p>Attention: Irfan Walji</p> <p>irfan@goflooring.ca</p>	<p>His Majesty the King in Right of Canada</p> <p>c/o Department of Justice Canada 900 – 840 Howe Street Vancouver, BC V8Z 2S9</p> <p>Attention: Aminollah Sabzevari and Nikhil Pandey</p> <p>aminollah.sabzevari@justice.gc.ca nikhil.pandey@justice.gc.ca khanh.gonzalez@justice.gc.ca</p>
<p>Royal Bank of Canada</p> <p>c/o McMillan Dubo LLP 401 – 121 5th Avenue Kamloops, BC V2C 0M1</p> <p>Attention: Sherryl A. Dubo</p> <p>service@mcmillandubo.com sherryl@mcmillandubo.com</p>	<p>Merchant Opportunities Fund Limited Partnership</p> <p>200 – 171 Water Street Vancouver, BC V6B 1A7</p> <p>Attention: David Gens</p> <p>support@merchantgrowth.com</p>
<p>Accord Small Business Finance Corp., Accord Small Business Leasing Corp., Accord Financial Canada Corp.</p> <p>300 – 889 Harbourside Drive North Vancouver, BC V7P 3S1</p> <p>csbf.collections@accordfinancial.com csbf.customerservice@accordfinancial.com</p>	<p>BizFund Canada Ltd.</p> <p>1018 Finch Avenue West, Unit 405 North York, ON M3J 3L5</p> <p>Attention: Isaac Levy</p> <p>isaac@bizfund.com raymond@bizfund.com</p>
<p>Liquid Capital Pacific Corp</p> <p>c/o Ellis Business Lawyers 400 – 1681 Chestnut Street Vancouver, BC V6J 4M6</p> <p>Attention: Meldon Ellis</p> <p>meldon@ellislawyers.com</p>	