



**FORCE FILED**

No. B-230306  
Estate No. 11-2959889  
Division No. 03 – Vancouver  
Vancouver Registry

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

**IN THE MATTER OF THE PROPOSAL OF  
LA BICICLETTA BICYCLES INC.**

**NOTICE OF APPLICATION**

**Name of applicant: La Bicicletta Bicycles Inc. (the “Applicant”)**

**TO:**

FTI Consulting Canada Inc.  
Suite 1450 – 701 West Georgia Street  
Vancouver, BC V7Y 1B6

Royal Bank of Canada  
c/o Borden Laden Gervais LLP  
200 Burrard Street, Suite 1200  
Vancouver, BC V7X 1T2

Business Development Bank of Canada  
1133 Melville Street, Suite 1500  
Vancouver, BC V6E 4E5

Office of the Superintendent of Bankruptcy  
2000 – 300 West Georgia Street  
Vancouver, BC V7Y 1C7

TAKE NOTICE that an application will be made by the Applicant, La Bicicletta Bicycles Inc. (the “Debtor”) to the presiding judge at the courthouse at 800 Smithe Street, Vancouver, British Columbia, on Tuesday, the 25<sup>th</sup> day of July, 2023 at 9:45 a.m. for the orders set out in Part 1 below.

**PART 1: ORDER(S) SOUGHT**

1. The Debtor seeks the following relief:
  - (a) an order substantially in the form of the draft order attached hereto as **Schedule “A”**, among other things, extending the time within which the Debtor may file a proposal with the Official Receiver under Part III of Division I of the

*Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3 (the “**BIA**”), up to 11:59 p.m. on August 31, 2023; and,

- (b) such further and other relief as may be sought by the Applicant.

**PART 2: FACTUAL BASIS**

1. The facts in support of this Application are more fully set out in Affidavit #1 of Graham Fox, sworn on July 19, 2023 (the “**Fox Affidavit**”). Capitalized terms used but not otherwise defined in this Application have the same meaning as ascribed to them in the Fox Affidavit.

2. On June 27, 2023 (the “**Filing Date**”), the Debtor filed a Notice of Intention to Make a Proposal (the “**NOI**”) pursuant to subsection 50.4(1) of the BIA. FTI Consulting Canada Inc. (“**FTI**”) was appointed as the Debtor’s proposal trustee under the NOI (in such capacity, the “**Proposal Trustee**”). The NOI has been filed as part of a restructuring process (the “**Restructuring Process**”) that the Debtor is pursuing in order to address a recently-developed and acute liquidity crisis.

Fox Affidavit at para. 3.

3. The period within which the Debtor may file a proposal to its creditors with the Official Receiver under Part III of Division I of the BIA (the “**Filing Period**”) will expire on July 27, 2023, unless extended by this Honourable Court.

Fox Affidavit at para. 39.

**The Debtor and the Business**

4. The Debtor is a privately-held corporation, incorporated pursuant to the laws of the Province of British Columbia. Its registered office is located in the City of Surrey, in the Province of British Columbia.

Fox Affidavit at para. 6 and Exhibit A.

5. The Debtor carries on business as a specialist road cycle shop, primarily selling premium road bikes, mountain bikes, gravel bikes, cycling clothing, and cycling accessories. Prior to the commencement of the Restructuring Process, the Debtor conducted its operations from three (3) leased warehouses located in Vancouver, British Columbia (collectively, the “**Warehouses**”) and a leased physical store located at 233

West Broadway, Vancouver, British Columbia (the "**West Broadway Location**"). At present, as described in further detail below, the Debtor is conducting its physical business operations at two (2) remaining Warehouses, with all sales carried out online through its website and sales portal (the "**Online Store**").

Fox Affidavit at para. 7.

6. The Debtor's business was initially founded in 1984. The Debtor, in its current corporate form, was incorporated on August 28, 1989, at which time it was named Great Western Bicycle Company Ltd. Further details regarding the Debtor's historical operations are set out in the Fox Affidavit.

Fox Affidavit at paras. 8 - 9.

7. Since its inception as an Italian-focused specialist shop, the Debtor's business has grown to a full-service bike shop selling custom road bikes of various types and countries of origin, as well as specialized parts and apparel. As part of the Debtor's expansion, the Online Store was opened in December 2018.

Fox Affidavit at para. 10.

8. The Debtor's Online Store and distribution center operates worldwide, and the Debtor is the only Canadian cycling business to offer sales in all ten Canadian provinces. Approximately fifty percent (50%) of the Debtor's sales are made to customers located outside of British Columbia.

Fox Affidavit at para. 11.

9. The Debtor has long-standing relationship with its key suppliers and with the cycling community at large, and the Debtor's name and brand are well known in the Canadian cycling community. Among other community-building activities, the Debtor: (i) has sponsored or supported various amateur cycling racing teams, including Ruckus Racing, a Vancouver-based women's race team focused on increasing women's participation in cycle racing; (ii) supports the Bicicletta Ride Club, an online group of new and experienced cyclists in multiple countries; and, (iii) participates in the North Shore Mountain Bike Association's Trail Adoption Plan, sponsoring the upkeep of certain cycling trails.

Fox Affidavit at para. 12.

Cause of Financial Difficulties

10. Prior to 2022, the Debtor was in a sound financial position; it maintained a positive balance sheet, did not have any long-term debt, and was fully current with all payables.

Fox Affidavit at para. 13.

11. The Debtor's business experienced rapid growth between the calendar years 2019 through mid-2022, a significant portion of which related to sales through the Online Store. During the COVID-19 pandemic, demand for road bikes was significantly higher than the available supply, due in part to supply chain constraints and an increase in the popularity of cycling during the pandemic. The Debtor was able to capitalize on this dynamic by focusing its efforts on conducting sales through the Online Store, which allowed the Debtor to expand its reach into other markets beyond British Columbia.

Fox Affidavit at para. 14.

12. The Debtor's revenue in 2019 was approximately \$5,500,000, which increased to approximately \$10,000,000 in 2020, and further increased to approximately \$18,000,000 in 2021. This rapid growth initially continued into 2022. In the first quarter of 2021, the Debtor's revenue was approximately \$3,286,000. In the first quarter of 2022, the Debtor's revenue was approximately \$3,911,000, an increase of nineteen percent (19%) year-over-year.

Fox Affidavit at para. 15.

13. The Debtor's revenue growth was accompanied by a growth in its inventory, staffing, and other overhead costs. The Debtor obtained two credit facilities in 2022 to assist in meeting its working capital requirements, pursuant to:
- (a) a loan agreement dated April 20, 2022, between the Debtor, as borrower, BDC Capital Inc. ("**BDC**"), a wholly-owned subsidiary of the Business Development Bank of Canada, as lender, and Graham Fox and Jonathan Bula, as guarantors (the "**BDC Loan Agreement**"). Pursuant to the BDC Loan Agreement, BDC agreed to extend a non-revolving credit facility to the Debtor, in the maximum principal amount of \$2,000,000; and,

- (b) a loan agreement, dated May 24, 2022, between the Debtor, as borrower, Royal Bank of Canada (“**RBC**”, and collectively with BDC, the “**Lenders**”), as lender, and Graham Fox and Jonathan Bula, as guarantors (the “**RBC Loan Agreement**”, and collectively with the BDC Loan Agreement, the “**Loan Agreements**”). Pursuant to the RBC Loan Agreement, RBC agreed to extend two credit facilities to the Debtor: (i) a revolving demand facility in the maximum principal amount of \$1,650,000 (initially \$2,000,000, subject to reduction with the passage of time); and, (ii) a corporate credit card facility in the maximum principal amount of \$150,000.

Fox Affidavit at para. 16.

- 14. In mid-2022, the cycling market shifted considerably. Following the onset of the war in Ukraine, rising interest rates, and a rebound in the available supply of road cycles and cycling equipment, the situation became the inverse of that during the peak of the pandemic. Across the industry, supply began to outweigh demand, and sales declined generally. For instance, in the third quarter of 2021, the Debtor's revenue was approximately \$5,330,000. In the third quarter of 2022, the Debtor's revenue declined by approximately twenty-five percent (25%) year-over-year, to \$4,020,000.

Fox Affidavit at para. 17.

- 15. Economic factors and a series of developments have recently left the Debtor unable to address its short-term working capital requirements. Despite its long history of financial success, strong industry ties, and a number of recent actions taken by the Debtor's senior management in an effort to reduce its ongoing obligations and to obtain sufficient liquidity to support its short-term needs (as described in further detail below), the Debtor is now facing an acute liquidity crisis.

Fox Affidavit at para. 18.

- 16. The primary issues driving the Debtor's current liquidity crisis include:
  - (a) a significant decrease in consumer spending following the onset of the Ukrainian war in the first half of 2022;
  - (b) inflationary pressures and interest rate hikes by the Bank of Canada, which have increased operational costs and costs of borrowing;

- (c) ongoing balance sheet challenges, as overhead was increased during the growth period from 2019 through early 2022, which augmented the impact of the declining sales rate; and,
- (d) the residual impact of the Debtor's constrained financial situation beginning in the latter half of 2022, which prevented the Debtor from procuring necessary inventory in the fall of 2022.

Fox Affidavit at para. 19.

17. There is significant value in the Debtor's business as a going concern, including because: (i) there is significant goodwill associated with the Debtor's brand and business; (ii) the Debtor's business is fundamentally sound and has a unique place in the Canadian marketplace, with a demonstrated track record of growth and capacity to manage significant sales volumes, provided that the current balance sheet issues are addressed; and, (iii) as outlined above, the Debtor has long-standing connections with the Canadian cycling community, which is of significant value to many potential purchasers and investors. However, that value is likely to be eroded, to the detriment of all interested stakeholders, if the Debtor is unable to complete the Restructuring Process and a liquidation is commenced with respect to its properties and assets.

Fox Affidavit at para. 20.

## **Restructuring Efforts to Date**

### **Pre-Filing Sales and Restructuring Efforts**

18. In early 2023, as the Debtor's financial situation failed to improve, the Debtor began to explore potential strategic options. Efforts were initially focused on pursuing a restructuring outside of a formal court process, which included canvassing interest in the sale of the business as a going concern, as well as discussions with several parties regarding potential bridge financing or refinancing transactions.

Fox Affidavit at para. 21.

19. In April 2023, as a result of its initial market testing activities, the Debtor received an initial non-binding indicative letter of intent (the "**LOI**") from a publicly-traded strategic purchaser operating in the sports e-commerce industry (the "**LOI Counterparty**"). The



LOI contemplated that the LOI Counterparty would acquire one hundred percent (100%) of the common shares of the Debtor in consideration of the payment, by the LOI Counterparty, of an amount in excess of the Debtor's outstanding trade debt and indebtedness to the Lenders.

Fox Affidavit at para. 22.

20. In early June 2023, the LOI Counterparty advised the Debtor that due to various factors, including the LOI Counterparty's recent completion of certain other acquisitions, it would be unable to complete the transaction contemplated by the LOI. As a result of this development and the other financial factors affecting the Debtor, it became apparent that more drastic measures would be required in the near term, as the Debtor's cash reserves were quickly depleting.

Fox Affidavit at para. 23.

#### Engagement of FTI and Filing of NOI

21. On June 2, 2023, the Debtor engaged FTI as its financial advisor, to assist the Debtor in implementing the Restructuring Process.

Fox Affidavit at para. 24.

22. Since FTI's engagement, in preparation for and following the filing of the NOI, the Debtor has undertaken significant cost-cutting and cash preservation efforts; commenced the Sales Process (as defined below); and engaged with its Lenders and critical suppliers regarding its intention to undertake an operational and balance sheet restructuring.

Fox Affidavit at para. 25.

23. In mid-June 2023, the Debtor provided the Lenders with advance notice of its intention to file the NOI. As a result, on June 16, 2023, RBC issued a demand letter, to the Debtor, which enclosed a Notice of Intention to Enforce Security pursuant to section 244(2) of the BIA (collectively, the "**Demand Letter**"). Among other things, the Demand Letter demanded that the Debtor repay its indebtedness to RBC, in full.

Fox Affidavit at para. 26.

24. Notwithstanding the issuance of the Demand Lender, the Lenders are currently supportive of the Debtor undertaking the Restructuring Process and, in particular, the

Sales Process (as defined and described below). In addition, the Debtor's trade suppliers are generally supportive of the Restructuring Process. The Debtor is not aware of any creditors having expressed opposition to the extension of the Filing Period.

Fox Affidavit at para. 27.

25. As part of its cash preservation efforts, the Debtor did not pay the rent due to (i) the landlord of the Warehouse, Wesgroup Properties ("**Wesgroup**"), and (ii) the landlord of the West Broadway Location, Hardal Management Inc. ("**Hardal**"), for the month of June 2023. As a result of such non-payment, on June 21, 2023, Wesgroup applied the Debtor's security deposit towards the Debtor's rental arrears in respect of the Warehouses.

Fox Affidavit at paras. 28 - 29 and Exhibit B.

26. On the Filing Date, June 27, 2023:

- (a) Wesgroup delivered Termination Notices to the Debtor, with respect to the leases concerning the Warehouses (collectively, the "**Termination Notices**");
- (b) the Debtor filed the NOI, which was not specifically in response to the receipt of the Termination Notices but had been planned for some time as described above;
- (c) a representative of the Debtor advised Wesgroup by way of email that the Debtor had filed the NOI, intended to continue occupying certain of the Warehouses, and would pay occupation rent for same; and,
- (d) the Debtor terminated the lease of one of the Warehouses as it would not be required to conduct the Debtor's business during the Restructuring Process.

Fox Affidavit at para. 30 and Exhibits C - D.

27. Following the filing of the NOI, the Debtor has undertaken further cost-cutting measures, including:
- (a) terminating twenty (20) of its thirty-six (36) employees on June 29, 2023; and,
  - (b) terminating the lease of the West Broadway Location on July 14, 2023.



Fox Affidavit at para. 31.

28. The Debtor's remaining sixteen (16) employees are engaged in operations at the remaining Warehouses, with all sales currently conducted through the Online Store. All head office and management functions have been transferred from the West Vancouver Location and are currently conducted on-site at the Warehouses.

Fox Affidavit at para. 32.

Sales Process

29. On July 2, 2023, with the assistance of the Proposal Trustee, the Debtor commenced a sales and investment solicitation process (the "**Sales Process**"), for the purpose of locating the highest and best available transaction with respect to the Debtor. In light of the Debtor's liquidity constraints, the Sales Process contemplates a compressed timeline, which incorporates input received from the Proposal Trustee.

Fox Affidavit at para. 33.

30. With the assistance of the Proposal Trustee, the Debtor has undertaken various activities in connection with the Sales Process, including:
- (a) preparing and distributing an invitation for offers (the "**Teaser Letter**"), outlining the Debtor's history and business, financial highlights, and Sales Process timelines;
  - (b) preparing a form of non-disclosure agreement (the "**NDA**");
  - (c) populating a virtual data room hosted by the Proposal Trustee;
  - (d) preparing a confidential information memorandum for review by interested parties who have executed NDAs; and,
  - (e) hosting management presentations to potential bidders and interested parties.

Fox Affidavit at para. 34.

31. The material dates contemplated by the Sales Process are as follows:

- (a) **July 7, 2023** - The initial distribution of the Teaser Letter, with additional copies having been delivered to other parties, on an ongoing basis, as potential bidders have been identified. To date, the Teaser Letter has been distributed to forty-three (43) potential bidders, including fourteen (14) strategic investors and twenty-nine (29) financial investors;
- (b) **July 26, 2023** - The deadline for submission of binding offers; and,
- (c) **August 6 - August 15, 2023** – The intended timeline for: (i) finalizing the selected offer; (ii) seeking court approval; and, (iii) closing a transaction.

Fox Affidavit at para. 35 and Exhibit E.

32. The Sales Process has been structured to permit both sales and restructuring offers (including investments or other recapitalization transactions) to be put forward as bids. This structure preserves the ability of a bidder to make an offer to the Debtor that would be implemented by way of a proposal made under the BIA. The structure of a sale is unknown at this time. However, it is through a sale that the Debtor is most likely to be able to make a viable proposal to its creditors.

Fox Affidavit at para. 36.

33. The Debtor has received significant interest in the Sales Process to date.

Fox Affidavit at para. 37.

### **Restructuring Matters**

#### **Liabilities**

34. As at July 14, 2023: (i) the known liabilities and indebtedness of the Debtor are in the aggregate amount of \$6,499,701, consisting of \$3,410,798 in unsecured claims and \$3,088,902 in secured claims; (ii) the amounts owed to BDC are: (a) \$320,760 in unsecured claims, and (b) \$1,500,000 in secured claims; and, (iii) the amounts owed to RBC are: (a) \$203,032 in unsecured claims, and (b) \$1,588,902 in secured claims.

Fox Affidavit at para. 38 and Exhibit F.

Extension of Filing Period

35. The NOI was filed on June 27, 2023 and accordingly the initial thirty (30) day Filing Period will expire on June 27, 2023, unless otherwise extended by this Honourable Court.

Fox Affidavit at para. 39.

36. The Debtor will require additional time to complete the Restructuring Process, particularly as the Sales Process contemplates that binding offers will be received only one (1) day prior to the expiration of the current Filing Period. Depending upon the results of the Sales Process, the Debtor may require additional time to assess its position; select a winning bid; seek court approval of a sale; complete a transaction under the Sales Process; and/or prepare a proposal to its creditors.

Fox Affidavit at para. 40.

37. Since the commencement of these proceedings (the "**NOI Proceedings**"), the Debtor has been diligently pursuing activities aimed at the completion of the Restructuring Process and potentially the presentation of a proposal, including:

- (a) engaging with the Proposal Trustee, including regarding the Sales Process and other strategic restructuring decisions;
- (b) providing the Proposal Trustee with access to the Debtor's premises, property, and books and records;
- (c) working with the Proposal Trustee to implement the Sales Process;
- (d) working with the Proposal Trustee to prepare and analyze the list of creditors and complete other statutorily-required documentation under the BIA;
- (e) working with the Proposal Trustee and counsel to engage with creditors and answer creditor inquiries regarding the NOI Proceedings, and engaging with creditors and stakeholders generally, to address concerns raised since the lodging of the NOI;

- (f) working with its professional advisors and the Proposal Trustee to prepare the Cash Flow Forecast (as defined below) and to identify issues with respect to the Debtor's financial condition, operations, and funding requirements; and,
- (g) carrying on business and operations in the ordinary course and taking actions incidental thereto, to preserve the Debtor's going concern value, to the benefit of its creditors, employees, and other stakeholders.

Fox Affidavit at para. 41.

38. The Debtor is acting, and has acted, in good faith and with due diligence. The extension of the Filing Period will not materially prejudice any creditor of the Debtor, including because: (a) the Debtor likely has more value as a going concern than in a liquidation scenario, due to the nature of its operations (which includes a primarily online-based business operating in multiple provinces), the goodwill associated with the La Bicicletta brand, and the Debtor's long-standing relationships with customers and suppliers; (b) the Lenders are supportive of the Restructuring Process; (c) the Debtor is projected to have sufficient cash flow to support its operations during the extended Filing Period; and, (d) no interim financing or priority charges are being sought by the Debtor.

Fox Affidavit at para. 42.

#### Cash Flow Forecast

39. The Debtor, with the assistance of the Proposal Trustee and its professional advisors, has prepared a cash flow forecast (the "**Cash Flow Forecast**") for the seven-week period ending September 3, 2023 (the "**Forecast Period**").

Fox Affidavit at para. 43.

40. As set out in the Cash Flow Forecast, the Debtor projects having sufficient cash flow to meet its obligations during the entirety of the Forecast Period. The net negative cash flow of the Debtor, during the Forecast Period, is projected to be approximately \$100,000.

Fox Affidavit at para. 44.

41. The participants in the Sales Process have been advised that, in the event the Debtor's cash reserves are depleted before the end of the Forecast Period, the successful

purchaser may be required to fund the Debtor's operations during the period between the selection of a successful bid and the closing of the corresponding transaction.

Fox Affidavit at para. 45.

42. The Debtor is not currently seeking, and does not anticipate seeking during these NOI Proceedings, approval of any interim financing or corresponding priority charges.

Fox Affidavit at para. 46.

### Security and Guarantees

43. The Debtor has granted security interests to and in favour of the Lenders, certain vehicle and equipment lessors, and certain investors and creditors, as described in further detail in the Fox Affidavit.

Fox Affidavit at paras. 47 - 49.

44. In addition to the security interests described above, the Debtor's obligations under the Loan Agreements have been guaranteed by the Debtor's co-owners, Graham Fox and Jonathan Bula, pursuant to personal guarantees in favour of the Lenders.

Fox Affidavit at para. 50.

## **PART 3: LEGAL BASIS**

### The Filing Period

1. Pursuant to Subsection 50.4(8) of the BIA, an insolvent person who files an NOI but does not file a proposal with the official receiver within thirty (30) days of filing the NOI shall be deemed to have made a voluntary assignment in bankruptcy.
2. Specifically, Subsections 50.4(1), (2), and (8) of the BIA state:

#### **Notice of intention**

50.4 (1) Before filing a copy of a proposal with a licensed trustee, an insolvent person may file a notice of intention, in the prescribed form, with the official receiver in the insolvent person's locality, stating

- (a) the insolvent person's intention to make a proposal,
- (b) the name and address of the licensed trustee who has consented, in writing, to act as the trustee under the proposal, and
- (c) the names of the creditors with claims amounting to two hundred and fifty dollars or more and the amounts of their claims as known or shown by the debtor's books,

and attaching thereto a copy of the consent referred to in paragraph (b).

**Certain things to be filed**

(2) Within ten days after filing a notice of intention under subsection (1), the insolvent person shall file with the official receiver

- (a) a statement (in this section referred to as a "cash-flow statement") indicating the projected cash-flow of the insolvent person on at least a monthly basis, prepared by the insolvent person, reviewed for its reasonableness by the trustee under the notice of intention and signed by the trustee and the insolvent person;
- (b) a report on the reasonableness of the cash-flow statement, in the prescribed form, prepared and signed by the trustee; and
- (c) a report containing prescribed representations by the insolvent person regarding the preparation of the cash-flow statement, in the prescribed form, prepared and signed by the insolvent person.

[...]

**Where assignment deemed to have been made**

(8) Where an insolvent person fails to comply with subsection (2), or where the trustee fails to file a proposal with the official receiver under subsection 62(1) within a period of thirty days after the day the notice of intention was filed under subsection (1), or within any extension of that period granted under subsection (9),

- (a) the insolvent person is, on the expiration of that period or that extension, as the case may be, deemed to have thereupon made an assignment;
- (b) the trustee shall, without delay, file with the official receiver, in the prescribed form, a report of the deemed assignment;
- (b.1) the official receiver shall issue a certificate of assignment, in the prescribed form, which has the same effect for the purposes of this Act as an assignment filed under section 49; and
- (c) the trustee shall, within five days after the day the certificate mentioned in paragraph (b.1) is issued, send notice of the meeting of creditors under section 102, at which meeting the creditors may by ordinary resolution,



notwithstanding section 14, affirm the appointment of the trustee or appoint another licensed trustee in lieu of that trustee.

BIA at ss. 50.4(1), (2), and (8).

3. As the Debtor's NOI was filed on June 27, 2023, the Filing Period will expire on July 27, 2023. Accordingly, the Debtor will be deemed to make an assignment in bankruptcy on such date, unless the Filing Period is extended pursuant to Subsection 50.4(9) of the BIA.

Fox Affidavit at paras. 3, 39.

### **Jurisdiction to Extend the Filing Period**

4. Subsection 50.4(9) of the BIA provides this Court with jurisdiction to grant an extension of the Filing Period, provided that certain statutory prerequisites are met. Specifically, Subsection 50.4(9) states:

#### **Extension of time for filing proposal**

(9) The insolvent person may, before the expiry of the 30-day period referred to in subsection (8) or of any extension granted under this subsection, apply to the court for an extension, or further extension, as the case may be, of that period, and the court, on notice to any interested persons that the court may direct, may grant the extensions, not exceeding 45 days for any individual extension and not exceeding in the aggregate five months after the expiry of the 30-day period referred to in subsection (8), if satisfied on each application 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.

5. The test set out under Subsection 50.4(9) is to be assessed using an "objective" standard, with regard to what a reasonable person or creditor would do in the circumstances.

*In the Matter of the Proposal of Cantrail Coach Lines Ltd.,*  
2005 BCSC 351 at para. 11 [**"Cantrail"**].

6. In assessing an application under Subsection 50.4(9), the Court should take a broad approach and consider the impact on all stakeholders, including employees, secured creditors, and unsecured creditors.

*Cantrail* at para. 12.

7. Additionally, the interpretation of Subsection 50.4(9) should be made in light of the objective of the BIA proposal regime, which is rehabilitation rather than liquidation.

*Andover* at para. 77.

***The Debtor Is Acting and Has Acted With Good Faith and Due Diligence***

8. The first aspect of the test requires that the Debtor must have acted, and be acting, “with good faith and due diligence”. This factor is assessed primarily by reference to the conduct of the debtor following the filing of its NOI, rather than its pre-filing conduct.

BIA at s. 50.4(9)(a);

*Enirgi Group Corp. v Andover Mining Corp.*, 2013 BCSC 1833 at para. 64 [**“Andover”**];

*N. T.W. Management Group Ltd., Re* (1993), 19 C.B.R. (3d) 162, 1993 CarswellOnt 208 (Ont. Ct. J. (G.D.)) at paras. 16 - 17 (cited to CarswellOnt).

9. The test does not require the debtor to demonstrate perfect diligence. For instance, it has been held that “some diligence” is sufficient to satisfy the requirement.

*Andover* at para. 65.

10. The Proposal Trustee has confirmed that, in its view, the Debtor is acting in good faith and with due diligence. No party has asserted otherwise.

First Report of the Proposal Trustee, dated July 19, 2023 [**“First Report”**]

11. The record provides ample evidence of the Debtor’s good faith and due diligence, and that the Debtor has made significant efforts to obtain the best possible result for its stakeholders in the circumstances. As set out above and described in the Fox Affidavit, the Debtor has taken significant steps to advance its restructuring since the Filing Date, including, among others:

- (a) attending to cost-cutting and cash preservation matters, to preserve its business and property during the Restructuring Period;

Fox Affidavit at paras. 25, 28, 30 - 31.

- (b) engaging with the Proposal Trustee, including regarding the Sales Process and other strategic restructuring decisions, and working with the Proposal Trustee to implement the Sales Process;

Fox Affidavit at paras. 25, 33 - 34, 41(a), 41(c).

- (c) providing the Proposal Trustee with access to the Debtor's premises, property, and books and records;

Fox Affidavit at para. 41(b).

- (d) working with the Proposal Trustee and counsel, as applicable, to (i) prepare and analyze the list of creditors and complete other statutorily-required documentation under the BIA; (ii) engage with creditors and answer creditor inquiries regarding the NOI Proceedings, and engaging with creditors and stakeholders generally; (iii) prepare the Cash Flow Forecast (as defined below) and to identify issues with respect to the Debtor's financial condition, operations, and funding requirements; and,

Fox Affidavit at paras. 25, 41(d) - (f), 43.

- (e) carrying on business and operations in the ordinary course and taking actions incidental thereto, to preserve the Debtor's going concern value, to the benefit of its creditors, sixteen (16) remaining employees, and other stakeholders.

Fox Affidavit at paras. 20, 32, 41(g).

12. Accordingly, the Debtor has made significant and measurable progress within the initial thirty (30) day period following the Filing Date, but requires an extension of the Filing Period in order to consummate a transaction.

13. These NOI Proceedings are intended to maximize value for all stakeholders by avoiding the loss of value anticipated in the event that the Debtor ceases to continue as a going concern. That outcome will only be possible if the Filing Period is extended.

14. The Debtor submits that it has acted and is acting in good faith and with due diligence, and continues to operate the business with a view to closing a transaction that will enable the Debtor to emerge from these NOI Proceedings.

***The Debtor Will Likely Be Able to Make a Viable Proposal if the Filing Period is Extended***

15. The second aspect of the test requires that the Debtor “would likely be able to make a viable proposal if the extension being applied for were granted”.

BIA at s. 50.4(9)(b).

16. A proposal need not be a certainty. It has been held that “likely”, in the context of Subsection 50.4(9)(b), means “might well happen”, “probable”, or “to be reasonably expected”.

*Andover* at para. 66, citing *Baldwin Valley Investors Inc. (Re)*, [1994] O.J. No. 271 (C.J. (Gen. Div.)) at paras. 3- 4 [**“Baldwin”**];

*Lockhart Saw Limited (Re)*, 2007 NBQB 93 at para. 8 [**“Lockhart”**], citing *Baldwin* and *Scotia Rainbow Inc. v Bank of Montreal* (2000), 2000 CanLII 50602 (NSSC), 18 CBR (4<sup>th</sup>) 114;

*Heritage Flooring BIA Proposal, Re*, 2004 NBQB 168 at paras. 32, 35- 37 [**“Heritage Flooring”**].

17. A “viable” proposal is one that “would be reasonable on its face to a reasonable creditor; “this ignores the possible idiosyncrasies of any specific creditor””.

*Andover* at para. 66, citing *Cumberland Trading Inc. (Re)*, [1994] O.J. No. 132 (C.J. (Gen. Div.)) at para. 4.

18. In *Lockhart*, viability was assessed, in part, by reference to whether the core business could support a viable proposal. Specifically:

“On the evidence before me I find that there appears to be a core business to form the base of a business enterprise; that management is key to the ongoing viability of the business and that management appears committed to such ongoing viability; and that debts owed to creditors after sale of the real property can likely be serviced by the restructured entity.”

*Lockhart* at para. 9.

19. In these proceedings, there is no doubt that an extension of the Filing Period will be necessary if the Debtor is to make a viable proposal; the deadline for binding offers

under the Sales Process is July 26, 2023, leaving only one (1) day until the expiration of the Filing Period. More time is needed to assess, select, and complete a transaction.

Fox Affidavit at para. 40.

20. The specific terms of any proposal are yet to be determined. Those terms will, by necessity, depend upon the terms of the offers received and the transaction ultimately completed by the Debtor. Nonetheless, given the level of interest expressed with respect to the Debtor's business to date, the threshold requirement of likelihood is met on the facts. Furthermore, the Debtor's business is fundamentally sound but requires restructuring in order to address its liquidity crisis. As such, a proposal "might well happen" and may be "reasonably expected" if the Debtor is permitted sufficient time to complete the Sales Process.

Fox Affidavit at paras. 12, 15, 20, 36 - 37, 42.

21. The Debtor also has the support of its major creditors and trade suppliers and has made significant efforts to engage with those stakeholders since filing the NOI. This fact supports the likelihood that the Debtor will be able to make a "viable" proposal, *i.e.* a proposal that is reasonable on its face to a reasonable creditor.

See Fox Affidavit at paras. 26 - 27, 41(e).

22. The extension sought by the Debtor will permit the Debtor with sufficient time to assess its position following the July 26, 2023 deadline for binding offers under the Sales Process, select a successful bid, obtain court approval of and close the transactions contemplated by the Sales Process, and/or make a viable proposal to its creditors.

Fox Affidavit at para. 40.

23. The Debtor submits that requirement to show that a viable proposal "might well happen" is satisfied, and the test under Subsection 50.4(9)(b) of the BIA is met.

***No Creditor Will Be Materially Prejudiced by the Extension Sought***

24. The third aspect of the test requires that "no creditor would be materially prejudiced if the extension being applied for were granted".

BIA at s. 50.4(9)(c).

25. The issue is not whether any creditor would be prejudiced at all, but whether there would be “material prejudice” to a creditor. In the context of Subsection 50.4(9)(c), “material prejudice” has a specific meaning which differs from the ordinary course prejudice that may be experienced by all creditors as a result of the BIA stay of proceedings. The term has been interpreted as meaning “substantial” or “considerable” prejudice.

*Cantrail* at paras. 21 - 22; *Andover* at para. 76; *Heritage Flooring* at paras. 78 - 79.

26. The extension of the Filing Period will not materially prejudice any of the Debtor’s creditors, including because:
- (a) the Debtor’s secured creditors have indicated their continuing support of its restructuring efforts;

Fox Affidavit at para. 27.
  - (b) no interim financing or priority charges are being sought at this time;
  - (c) no creditor has tendered evidence of material prejudice, nor established that it will be particularly negatively impacted by the extension sought by the Debtor. To the contrary, the evidence is that: (i) the stay of proceedings will continue to preserve and maintain the Debtor’s business and operations; (ii) the Debtor is projected to have sufficient cash flow to maintain its operations during the extended Filing Period; (iii) no erosion of the collateral or property of the Debtor is anticipated to occur; and, (iv) the Sales Process seeks to obtain the highest and best price for a going concern business, as opposed to a liquidation; and

Fox Affidavit at paras. 20, 33, 39 - 42, 44.
  - (d) the Debtor’s business is likely more valuable as a going concern than in a liquidation, including, among other reasons, due to the nature of its operations (which includes a primarily online-based business operating in multiple provinces), the goodwill associated with the La Bicicletta brand, and the Debtor’s long-standing relationships with customers and suppliers. Accordingly, the extension of the Filing Period is likely to be to the benefit of all interested stakeholders, without materially prejudicing any creditor.

Fox Affidavit at paras. 20, 42.



27. The Debtor submits that: (i) there is no evidence that the extension sought would materially prejudice any of its creditors; (ii) it is in the interest of all creditors and stakeholders (including the Debtor's remaining employees) for the Debtor to have sufficient time to complete a transaction under the Sales Process; and, (iii) the test under Section 50.4(9) of the BIA has been satisfied, and an extension of the Filing Period is both necessary and appropriate in the circumstances.
28. In the event that the Filing Period is not extended, the Debtor will be deemed to make an assignment in bankruptcy. This outcome would likely materially prejudice the Debtor's creditors and other stakeholders as it raises the possibility of the termination of the Debtor's operations and a piecemeal liquidation of the Debtor's assets.

### **Conclusion**

29. The Proposal Trustee supports the extension of the Filing Period.

First Report.
30. The Debtor respectfully submits that the relief sought in the within Application should be granted, and the Debtor has met the test set out in Subsection 50.4(9) of the BIA, as:
  - (a) the Debtor has acted, and continues to act, in good faith and with due diligence during the course of these NOI Proceedings, including by pursuing a viable path forward for the business to continue as a going concern and thereby maximize value for all stakeholders;
  - (b) the Debtor will likely be able to make a viable proposal if the extension is granted; and
  - (c) no creditor will be materially prejudiced by the extension of the Filing Period.

### **PART 4: MATERIAL TO BE RELIED ON**

1. Affidavit #1 of Graham Fox, made July 19, 2023;
2. First Report of FTI Consulting Canada Inc., in its capacity as proposal trustee of La Bicicletta Bicycles Inc., dated July 19, 2023; and

3. such further and other materials as counsel may advise and this Honourable Court may permit.

The applicant estimates that the application will take twenty (20) minutes.

This matter is not within the jurisdiction of a master.

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: July 19, 2023

  
\_\_\_\_\_  
Signature of Lawyer for the Applicant  
McCarthy Tétrault LLP  
(H. Lance Williams)

**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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Dated: \_\_\_\_\_

Signature of  Judge  Master

**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
- none of the above

**SCHEDULE "A"**

No. B-230306  
Estate No. 11-2959889  
Division No. 03 – Vancouver  
Vancouver Registry

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

IN THE MATTER OF THE PROPOSAL OF  
LA BICICLETTA BICYCLES INC.

**ORDER MADE AFTER APPLICATION**  
**(STAY EXTENSION)**

BEFORE THE HONOURABLE

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TUESDAY, THE 25<sup>TH</sup> DAY OF

JULY, 2023

ON THE APPLICATION of the Applicant, La Bicicletta Bicycles Inc. (the "**Debtor**") coming on for hearing at Vancouver, British Columbia, on the 25<sup>th</sup> day of July, 2023; AND ON HEARING H. Lance Williams, counsel for the Debtor and those other counsel listed on **Schedule "A"** hereto; AND UPON READING the material filed, including Affidavit #1 of Graham Fox made July 19, 2023 (the "**Fox Affidavit**") and the First Report of FTI Consulting Canada Inc., in its capacity as proposal trustee of the Debtor, dated July 19, 2023 (the "**First Proposal Trustee's Report**"); AND PURSUANT TO the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended (the "**BIA**") and the inherent jurisdiction of this Honourable Court;

THIS COURT ORDERS AND DECLARES THAT:

1. The time for service of the notice of application for this order (the "**Order**"), the Fox Affidavit, and the First Proposal Trustee's Report is hereby abridged and deemed good and sufficient and this application is properly returnable today.
2. The time within which the Debtor may file a proposal with the Official Receiver under Part III of Division I of the BIA be and is hereby extended up to 11:59 p.m. on August 31, 2023.

3. Endorsement of this Order by counsel appearing on this application other than counsel to the Debtor 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 Lawyer for the Applicant  
McCarthy Tétraut LLP  
(H. Lance Williams)

BY THE COURT

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REGISTRAR



**SCHEDULE "A"**  
**LIST OF COUNSEL**

<b>Name of Counsel</b>	<b>Party Represented</b>