



Form 32 (Rule 8-1(4))

No. **S-231354**
Vancouver Registry

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 THE *BUSINESS CORPORATIONS ACT*,
S.B.C. 2002, c. 57, AS AMENDED

AND

IN THE MATTER OF THE *CANADA BUSINESS CORPORATIONS ACT*,
R.S.C. 1985, c. C-44, AS AMENDED

IN THE MATTER OF A PLAN OF COMPROMISE AND ARRANGEMENT OF
CANWEST AEROSPACE INC. AND CAN WEST GLOBAL AIRPARTS INC.

PETITIONERS

NOTICE OF APPLICATION

Names of Applicants: CanWest Aerospace Inc. ("**CW Aerospace**") and Can West Global Airparts Inc. ("**CW Airparts**") and, together with CW Aerospace, the "**Petitioners**")

To: Those parties set out in **Schedule "A"** attached hereto.

TAKE NOTICE that an application will be made by the Petitioners to the Honourable Madame Justice Fitzpatrick at the Courthouse at 800 Smithe Street, Vancouver, British Columbia on May 4, 2023 at 10:00 a.m. 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"** (the "**Order**"), which provides the following relief:

- (a) abridging the time for service of this application;
 - (b) an extension of the stay of proceedings provided for in the ARIO (the “**Stay of Proceedings**”) up to and including June 19, 2023 (the “**Stay Period**”); and
 - (c) increasing the Administration Charge (as defined in the ARIO) from \$75,000 to \$250,000.
2. An Order substantially in the form attached hereto as **Schedule “C”** for a claims process (the “**Claims Process Order**”).
3. An Order substantially in the form attached hereto as **Schedule “D”** (the “**Meeting and Process Order**”), which provides the following relief:
 - (a) accepting the filing of a plan of compromise and arrangement (the “**Plan**”)¹, substantially in the form attached to the Meeting and Process Order;
 - (b) establishing two classes of creditors for the purpose of considering and voting on the Plan, being the Unsecured Creditor Class and the Secured Creditor Class;
 - (c) authorizing the Monitor to call, hold and conduct a Creditors Meeting on June 13, 2023 to consider and vote on a resolution to approve the Plan, and approving the procedures to be followed with respect to the Creditors Meeting; and
 - (d) setting the date for the hearing of the Petitioners’ application for the Sanction Order sanctioning the Plan should it be approved by the Required Majority.
4. Such other relief as this Honourable Court may deem just.

PART 2: FACTUAL BASIS

Background

1. On March 8, 2023, Mr. Justice Gomery 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.
2. On March 17, 2023, Mr. Justice Gomery granted the ARIO pursuant to the CCAA.

¹ All capitalized terms in this Notice of Application, unless otherwise defined herein, have the meaning ascribed to them in the Plan.

3. On April 13, 2023, Mr. Justice Gomery granted an order extending the Stay of Proceedings until and including April 24, 2023.
4. On April 24, 2023, Mr. Justice Gomery granted an order providing, among other things:
 - (a) extending the Stay of Proceedings until and including May 4, 2023; and
 - (b) approving the Share Purchase Agreement.
5. On May 1, 2023, the Purchaser paid the required deposit under the Share Purchase Agreement (the “**Deposit**”) to 0854271 B.C. Ltd (“**085**”), a related company to the Petitioners, to be transferred to Monitor.
6. The Deposit was deposited into an account of 085 at TD Bank, which put a hold on the funds for five business days.
7. 085 will transfer the Deposit to the Monitor when the hold is lifted.
8. The Petitioners have continued to work diligently to provide the Monitor with information regarding the Petitioners’ business operations, assets and liabilities.

Claims Process

9. The Petitioners are seeking the Claims Process Order to call for the submission of claims against the Petitioners.
10. The Claims Process Order provides for the following timeline:
 - (a) within two (2) business days of obtaining the Claims Process Order, the Monitor will post on its website the Claims Process Order, the Instruction Letter, a blank Proof of Claim form and a blank notice of dispute form;
 - (b) within five (5) business days of obtaining the Claims Process Order, the Monitor will forward a claims package to all known creditors of the Petitioners;
 - (c) Creditors shall have until 5:00 p.m. PST on June 3, 2023 to file their claims or, with respect to a restructuring claim, 10 days of receiving a notice of disclaimer or resiliation; and
 - (d) The Monitor, in consultation with the Petitioners, shall have 5 days after the applicable bar date to revise or disallow a creditor’s claim.
11. The Claims Process will allow the Petitioners to ascertain the full spectrum of claims against them in order to implement the Plan.

Meeting and Process

12. The Petitioners have finalized the Plan and are now seeking approval of the Meeting and Process Order.
13. The purpose of the Plan is to effect a compromise of Unsecured Creditor Claims to enable the Petitioners' business to continue following a sale to the Purchase under the Share Purchase Agreement.
14. The Plan provides for:
 - (a) the closing of the transaction pursuant to the Share Purchase Transaction as a condition precedent to implementation;
 - (b) payment to the Unsecured Creditors on 10% of their Proven Claims from the Proceeds up to a maximum amount of \$100,000 in the aggregate of all such payments to the Unsecured Creditors; and
 - (c) after payment of the Unsecured Creditors, the Employee Claims, the Post-Filing Claims, and the Crown Claim, payment of the remainder of the Proceeds on a pro rata basis of their Proven Claims to the Secured Creditors.
15. The Meeting and Process Order provides for:
 - (a) the acceptance of the Plan for filing and calling the Creditors Meetings on June 13, 2023 to seek approval of the Plan;
 - (b) the process to modify or amend the Plan;
 - (c) the process by which notice of the Creditors Meeting will be provided;
 - (d) the form of the Meeting Materials and the process by which they will be disseminated;
 - (e) the classification of the Creditors into two classes being the Unsecured Creditor Class and the Secured Creditor Class for voting purposes;
 - (f) the procedures for conduct and voting at the Creditors Meeting; and
 - (g) the scheduling of the application for the Sanction Order for on or before June 19, 2023, or such other date thereafter subject to the Court's availability, in the event the Plan is approved at the Creditors Meeting.
16. If the Plan is approved, an application will be made before this Honourable Court for the Sanction Order sanctioning the Plan.

Increase in Administration Charge

17. The Petitioners are seeking an increase in the Administration Charge (as defined in the ARIO) from \$75,000 to \$250,000.

18. The nature of the Petitioners' business and operations requires the expertise, knowledge and continuing participation of the proposed beneficiaries of the Administration Charge in order to complete a successful restructuring. In consideration of the extent of the Petitioners' business and liabilities, and the time still required to implement the Claims Process, hold Creditors Meeting, and if approved, implement the Plan and the transactions contemplated thereby, an increased Administration Charge is appropriate in the circumstances.
19. This increase in the Administration Charge was proposed in discussions with the Monitor and is supported by the Monitor.

Extension of Stay

20. The Petitioners are seeking a 45 day extension of the Stay of Proceedings until and including June 19, 2023 so that they can implement the Claims Process, allow for the Creditors Meeting to be held, and in the event the Plan is approved, allow for the application of the Sanction Order.
21. The Petitioners have worked with the Monitor to prepare a cash-flow forecast, which provides that the Petitioners can meet their post-filing obligations as they become due through the proposed Stay Period.
22. The Petitioners are acting in good faith and with due diligence.

PART 3: LEGAL BASIS

1. The Petitioners rely on:
 - (a) the CCAA;
 - (b) the inherent jurisdiction of this Honourable Court; and
 - (c) such further and other legal basis as counsel may advise and this Honourable Court may allow.

Claims Process

2. There is no specific provision within the CCAA governing the establishment or conduct of a claims process. At the same time, there is nothing in the CCAA that prohibits the Court from exercising its authority to approve a claims process. Courts therefore rely on their broad authority under the CCAA and their inherent jurisdiction when granting claims process orders.
3. Although there is limited case law concerning the establishment of claims processes, claims process orders are routinely granted in CCAA proceedings where circumstances warrant.

4. The Nova Scotia Supreme Court in *Re ScoZinc Ltd.*, 2009 NSSC 299 referred to the establishment of a claims process as a “well accepted practice” and that a typical claims process is “both flexible and expeditious”.
5. The claims process as set out in the Claims Process Order is both flexible and expeditious. It ensures that stakeholders have an opportunity to participate in the process. The Petitioners and the Monitor are of the view that the proposed claims process is both fair and efficient for the stakeholders of the Petitioners.
6. The granting of the Claims Process Order will advance the restructuring objectives of the Petitioners by allowing the Petitioners’ to assess the claims against them and assist them with presenting a Plan.

Meeting and Process

7. The Meeting and Process Order complies with the provisions of the CCAA.
8. Pursuant to s. 11 of the CCAA, the Court may make any order that it considers appropriate.
9. Pursuant to s. 5 of the CCAA, where a compromise or arrangement is proposed between a debtor company and its secured creditors, the Court may, on the application of any such creditor, order a meeting of creditors to be summoned in such manner as the Court directs.

Administration Charge

10. Pursuant to section 11.52 of the CCAA, 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 debtor company is subject to a security or charge, in an amount that the Court considers appropriate, in respect of the fees and expenses of the monitor, including the fees of the monitor’s legal advisors, and the company’s legal counsel. The Court may order that the Administration Charge ranks in priority over the claim of any secured creditor.
11. The increase in the Administration Charge from \$75,000 to \$250,000 is appropriate in the circumstances as it will ensure the continued engagement of the advisors needed to achieve the restructuring for the benefit of the stakeholders.
12. This increase in the Administration Charge was proposed in discussions with the Monitor and is supported by the Monitor.

Payment of Deposit

13. The Deposit was paid by the Purchaser to 085 for it to be transferred to the Monitor as the Deposit pursuant to the Share Purchase Agreement.

14. 085 is related to the Petitioners, and will pay the Deposit to the Monitor pursuant to the Share Purchase Agreement after the hold put on the Deposit by TD Bank is lifted.

Extension of Stay

15. Subsection 11.02(2) of the CCAA provides that the Petitioners may apply for an extension of the Stay of Proceedings for a period that a court considers necessary on any terms that a court may impose. Subsection 11.02(3) of the CCAA provides that the Court shall not make the order extending the Stay of Proceedings unless:
 - (a) the applicant satisfies the Court that circumstances exist that make the order appropriate; and
 - (b) in the case of an order under subsection (2), the applicant also satisfies the Court that the applicant has acted, and is acting, in good faith and with due diligence.

CCAA s. 11.02.

16. In determining whether the appropriate circumstances exist to extend the Stay of Proceedings, the Court should inquire whether the order sought advances the remedial purpose of the CCAA.

North American Tungsten Corp. (Re), 2015 BCSC 1376 at para. 25.

17. Extending the Stay of Proceedings is appropriate and necessary to enable the Petitioners to continue operations and restructuring, propose and seek the necessary approvals for the Plan, and ultimately implement the transactions contemplated by the Plan and the Share Purchase Agreement.
18. The Petitioners, with the assistance of the Monitor, have been working in good faith and with due diligence to advance these CCAA proceedings, in pursuit of a restructuring that will maximize value for their stakeholders.
19. Without the Stay of Proceedings and other relief provided by the CCAA, the Petitioners will be forced into a liquidation scenario which will likely result in a shortfall to the Petitioners' creditors less than what they would receive under the Plan. Completing the Transaction and a restructuring would benefit all of the Petitioners' stakeholders.
20. The Petitioners submit that, in these circumstances, it is necessary and appropriate that the Stay of Proceedings be extended to June 19, 2023.
21. The Monitor supports the relief sought by the Petitioners in this Application.

PART 4: MATERIAL TO BE RELIED ON

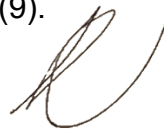
1. Monitor's Fourth Report to Court, to be filed.
2. The other materials filed in these CCAA proceedings.
3. Such other materials as this Honourable Court may allow.

The Applicants estimate that the application will take 30 minutes.

- This matter is within the jurisdiction of a Master.
- 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 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: May 3, 2023

Signature of Lawyer for Applicants
Lawyer: Nick Carlson

This NOTICE OF APPLICATION is prepared by Nick Carlson of the firm of **Clark Wilson LLP** whose place of business is 900 – 885 West Georgia Street, Vancouver, British Columbia, V6C 3H1 (Direct #: 604.643.3105, Fax #: 604.891.7797, Email: NCarlson@cwilson.com) (File #: 54101-0001).

To be completed by the court only:

Order made

- in the terms requested in paragraphs _____ of Part 1 of this Notice of Application
- with the following variations and additional terms:

Date: _____
[dd/mmm/yyyy]

Signature of Judge Master

APPENDIX

[The following information is provided for data collection purposes only and is of no legal effect.]

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 matters 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