



Court File No. **VLC-S-S-209798**

Form 32 (Rule 8-1(4))

NO. 209798  
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 CREDITLOANS CANADA FINANCING INC. and CREDITLOANS  
CANADA CAPITAL INC.  
PETITIONERS

**NOTICE OF APPLICATION**

**Name of Applicant:** David Hardy

TAKE NOTICE that an application will be made by the Petitioners to Madam Justice Fitzpatrick, by teleconference, on December 2, 2020 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 "A"** (the "**Adjournment Order**"),
2. Such further and other relief as this Honourable Court may deem just.

**PART 2: FACTUAL BASIS**

**Background**

1. By application, on September 30, 2020, the Honourable Madam Justice Fitzpatrick granted Creditloans Canada Financing Inc., also known as Progressa ("**Progressa**") and Creditloans Canada Capital Inc. ("**Creditloans Capital**", collectively with Progressa, the "**Petitioners**") the Initial Order, granting the Petitioners protection from their creditors and appointing BDO Canada Limited (the "**Monitor**") as monitor pursuant to the *Companies' Creditors Arrangement Act*, RSC 1985 as amended (the "**CCAA**").

2. On October 2, 2020, the Honourable Madam Justice Fitzpatrick granted the Amended and Restated Initial Order, extending the stay period until October 9, 2020.
3. On October 9, 2020, the Honourable Madam Justice Fitzpatrick granted the Extended Amended and Restated Initial Order, extending the stay period until December 4, 2020.
4. The applicant, David Hardy, is the holder of a bond of Creditloan Capital (a "**Bondholder**"). He invested \$150,000.
5. LM Credit Inc. ("**LM Credit**") is a reputable alternative loan provider and is a serious bidder in respect of the assets of Progressa. On November 2, 2020, LM Credit contacted the Monitor about making an offer in connection with these CCAA proceedings and requested information about how to make such a proposal.
6. The Monitor advised that offers should go through Nathan Slee, CEO of Progressa, and that there was no formal process in place for such communication.
7. Over the following weeks, LM Credit unsuccessfully tried to negotiate a non-disclosure agreement ("**NDA**") to facilitate due diligence on the Petitioners' assets.
8. On November 16, 2020, the Honourable Madam Justice Fitzpatrick granted the Meeting Order, authorizing the Petitioners to present the proposed Plan of Compromise, Arrangement and Reorganization attached as Schedule "B" to the Meeting Order (the "**Plan**") at a meeting of the creditors on December 3, 2020 (the "**Creditors' Meeting**"). The Bondholders are a class of creditors for the purposes of the Creditors' Meeting and these CCAA proceedings.
9. The Plan contemplates a restructuring transaction with ACF Financial Limited Partnership ("**ACF**") and its affiliates. ACF purports to be the largest secured creditor of the Petitioners.
10. On November 25, 2020, LM Credit provided the Monitor with a non-binding term sheet (the "**Term Sheet**").
11. The term sheet provided for greater recovery to the Bondholders than contemplated under the Plan.
12. Progressa further refused to sign an NDA on the basis that LM Credit was a competitor. LM Credit tried to alleviate these concerns by suggesting to the Monitor that no personal or identifiable information with respect to customers or borrowers needed to be provided.
13. On November 27, 2020, LM Credit wrote to the Monitor to set out LM Credit's concerns with the ACF Debt and to request the ability to perform due diligence on Progressa, that the creditors' meeting scheduled for December 3, 2020 be adjourned, and that the Monitor investigate the ACF Debt and its security.

14. On November 27, 2020, the Monitor replied and stated that there was no apparent basis on which to challenge the ACF Debt or security, and that LM Credit's other concerns would be addressed in the Monitor's forthcoming report, which was not served until December 1, 2020.

15. LM Credit further replied with an updated term sheet (the "**Revised Offer**") that, among other things, contemplates the repayment of the ACF Debt in full unless it was determined invalid by the Court prior to the closing of the transaction, and offers a greater return to Bondholders who elect to cash out their bonds.

16. The Revised Offer is subject to a very limited and expedited due diligence period of 10 days, for which a short adjournment of the Creditors' Meeting is required.

17. LM Credit requested an adjournment of the Creditors' Meeting and the scope of the due diligence required from the Monitor.

18. On November 30, 2020, the Monitor did not answer these requests but served a request to appear before this Honourable Court.

19. On December 1, 2020, LM Credit provided evidence of LM Credit's ability to complete the transaction by providing the Monitor with an "offer to finance" from Financial Square Inc., under which Financial Square would be the lender to LM Credit for the funds to pay out the ACF Debt.

20. The Monitor responded by confirming that it would not adjourn the Creditors' Meeting.

21. The Revised Offer should be given time for consideration since, among other reasons

- (a) the Revised Offer provides a better return for the stakeholders, including the Bondholders;
- (b) there is no prejudice to allow for 10 days adjournment to review the Revised Offer;
- (c) the CCAA process should maximize value for all stakeholders; and
- (d) there was no sales process initiated by the Petitioners either inside or outside of these CCAA proceedings.

### **PART 3: LEGAL BASIS**

#### **Adjournment of Creditors' Meeting**

1. Section 7 of the CCAA provides the Court with the power to adjourn a meeting of the creditors as follows:

Where an alteration or a modification of any compromise or arrangement is proposed at any time after the court has directed a meeting or meetings to be summoned, the meeting or meetings may be adjourned on such term as to notice and otherwise as the court may direct, and those directions may be given after as well as before adjournment of any meeting or meetings, and the court may in its discretion direct that it is not necessary to adjourn any meeting or to convene any further meeting of any class of creditors or shareholders that in the opinion of the court is not adversely affected by the alteration or modification proposed, and any compromise or arrangement so altered or modified may be sanctioned by the court and have effect under section 6.

2. A meeting may be adjourned where sufficient information cannot be provided for the proper consideration of the proposed plan.

*Northland Properties Ltd., Re*, 1988 CarswellBC 557, 73 C.B.R. (N.S.) 171

3. Section 11 of the CCAA authorizes the Court, on the application of any person interested in the matter, to make any order that it considers appropriate in the circumstances.

4. The applicant wishes to adjourn the Creditors' Meeting for two weeks to allow the Petitioners and the Monitor to consider the Revised Offer in circumstances where it will clearly provide a better return to the creditors.

5. The creditors do not have sufficient information to properly consider the Plan in circumstances where the Fifth Report of the Monitor has been served on the eve of the Creditors' Meeting. The creditors should have sufficient time to consider the Monitor's Report prior to the Creditors' Meeting.

6. LM Credit has put forward a viable competing offer that will see a greater return to the creditors. In these circumstances, the Creditors' Meeting should be adjourned for a short period of time to allow the Monitor and Petitioners time to explore the Revised Offer.

7. Where a legitimate proposal is available but not before the creditors, the creditors do not have "sufficient information" to consider the Plan.

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

1. The Affidavit #1 of Alex Yusuf.
2. The Affidavit #1 of Sarah Curran.
3. The materials and the pleadings filed herein.
4. Such further and other material as counsel may advise and this Honourable Court may allow.

The Applicant estimates that the application will take 2.5 hours.

- 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: December 1, 2020



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Signature of Lawyer for the Petitioners  
Lawyer: Christopher J. Ramsay /  
Nicholas Carlson

This NOTICE OF APPLICATION is prepared by Nicholas Carlson of the firm of **Clark Wilson LLP** whose place of business is 900 – 885 West Georgia Street, Vancouver, British Columbia, V6C 3H1 (Direct #: 604.891.7797, Fax #: 604.687.6314, Email: NCarlson@cwilson.com) (File #: 99999-9999).

**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: \_\_\_\_\_  
[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

# Schedule "A"

Form 35 (Rules 8-4(1), 13-1(3), 17-1(2) and 25-9(2))

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## ORDER MADE AFTER APPLICATION (ADJOURNMENT ORDER)

BEFORE )  
) THE HONOURABLE MADAM ) Dec \_\_\_\_, 2020  
) JUSTICE FITZPATRICK )

ON THE APPLICATION of the applicant, David Hardy, and on hearing counsel for the applicant, Christopher G. Ramsay and Nicholas Carlson;

THIS COURT ORDERS that:

1. The meeting of the creditors scheduled to take place on December 3, 2020 as authorized by the Honourable Madam Justice Fitzpatrick in the Meeting Order of November 16, 2020 is hereby adjourned until December 16, 2020.

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:

BY THE COURT

\_\_\_\_\_  
Signature of Lawyer for Petitioner  
Lawyer: Christopher G. Ramsay/Nicholas Carlson

\_\_\_\_\_  
Registrar