



Form 32 (Rule 8-1(4))

FORCE FILED

Court No. B-230561
Estate No. 11-3014787
Vancouver Registry

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

IN THE MATTER OF THE NOTICE OF INTENTION TO MAKE A PROPOSAL OF
ANDERSON SQUARE HOLDINGS LTD.

NOTICE OF APPLICATION

Name of Applicant: Anderson Square Holdings Ltd. (the "Company")

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

TAKE NOTICE that an application will be made by the Company to the Honourable Justice Stephens at the Courthouse at 800 Smithe Street, Vancouver, British Columbia on December 22, 2023 at 9:00 a.m. for the order set out in Part 1 below.

PART 1: ORDERS SOUGHT

1. An order substantially in the form attached hereto as **Schedule "B"**, which provides the following relief:
 - (a) abridging the time for service of this application such that this application is properly returnable on the date that it is heard; and
 - (b) extending the stay of proceedings and the time for filing of a proposal by the Company to February 10, 2024.
2. Such other relief as this Honourable Court may deem just.

PART 2: FACTUAL BASIS

Background

1. On November 27, 2023, the Company filed a Notice of Intention to Make a Proposal (the "**NOI**") pursuant to section 50.4 of the *Bankruptcy and Insolvency Act* (the "**BIA**").
2. Deloitte Restructuring Inc. was appointed as proposal trustee of the Company (in such capacity, the "**Proposal Trustee**").
3. The Company is a company incorporated pursuant to the laws of British Columbia having a registered and records office at Suite 500, 5811 Cooney Road, Richmond, British Columbia.
4. On December 7, 2023, the Company filed a cash flow report with the Office of the Superintendent of Bankruptcy, as required under the BIA.

History of the Company and the Project

5. The Company is in the business of real estate development for a project known as "Prima" located at 6833 Buswell Street, Richmond, BC (the "**Project**").
6. The Project was previously known as "ALFA" and is located in downtown Richmond, British Columbia. The Project consists of 109 residential strata lots and ten (10) commercial strata lots. Eight (8) of the residential strata lots are rented out by the Company as affordable housing units. At this time, the unsold units in the Project include 50 vacant residential strata units and two (2) vacant commercial units. There are also eight (8) rented residential units.
7. In or about May 2015, the Company began marketing and selling units in the Project prior to the completion of construction (the "**Pre-Sale**"). The Company entered into a number of Pre-Sale contracts with purchasers.
8. In or about January 2017, the Company entered into a contract with Scott Construction Ltd. ("**Scott Construction**") for the construction of the Project. The contract provided that construction would be completed by April 2019.
9. There were various delays in the construction work and cost overruns, as result of various issues including a delayed building permit, infrastructure issues, change orders, delay claims, disputes, and lien claims. In or about August 2019, Scott Construction issued a notice of termination to the Company and ceased work on the Project.
10. The Company and Scott Construction have each commenced and defended various lawsuits in the British Columbia Supreme Court against each other in relation to Scott Construction's contract for the Project and the termination. To date, none of the lawsuits have proceeded to trial.

11. The Company had no choice but to look for another general contractor to take over the project in or about late August 2019. Construction work resumed in or about February 2020 with a new general contractor.
12. The construction of the Project was substantially delayed and was completed in early fall 2022, not April 2019 as originally anticipated. The first purchasers did not move in until October 2022.
13. In addition to the litigation actions involving Scott Construction, approximately 10 subcontractors and material suppliers to Scott Construction or subtrades beneath Scott Construction on the Project filed claims of builders lien against the Project (the "**Liens**").
14. By Court Order made on November 2, 2020, the Liens, including the lien claim by Scott Construction, and any certificates of pending litigations filed in connection with the Liens were cancelled from title to the Project by the Company depositing funds in the amount of \$5,396,170.66 into Court, with the funds as security being in substitution for the Project (the "**Lien Funds**").
15. On November 15, 2019, a group of plaintiffs who had each entered into a contract with the Company for purchase of Pre-Sale units in the Project commenced an action against the Company in the British Columbia Supreme Court, Vancouver Registry Action No. S-1912984, alleging unlawful termination by the Company of their Pre-Sale contracts (the "**Pre-Sale Litigation**").
16. The trial of the Pre-Sale Litigation commenced on November 27, 2023, the same day of the NOI filing. By Order of the Court, the stay of proceedings in the NOI proceedings was lifted on November 29, 2023 to allow the trial in the Pre-Sale Litigation to proceed. The trial is expected to conclude by December 21, 2023. A judgment has not yet been rendered in the Pre-Sale Litigation and is expected to be reserved following conclusion of the trial.
17. The Company has one secured creditor, Anderson Plaza Holdings Inc. ("**Anderson Plaza**"). Anderson Plaza is a company incorporated pursuant to the laws of British Columbia. The Company is a wholly owned subsidiary of Anderson Plaza.
18. A number of lenders loaned money for development of the Project. The monies were paid to Anderson Plaza, which was then sent to the Company. Mortgages have been registered against the unsold units of the Project in favour of Anderson Plaza as security for the loans.
19. On or about November 20, 2023, Anderson Plaza issued a demand against the Company for repayment of the loans in the total of \$64,092,907.87 as of November 15, 2023 (the "**Anderson Plaza Demand**"), along with a Notice of Intention to Enforce Security issued pursuant to Section 244 of the BIA ("**Section 244 Notice**"). The Section 244 Notice provided the Company with until November 30, 2023 to pay Anderson Plaza the outstanding debt. After expiry of

the 10 day period, Anderson Plaza would have been at liberty to enforce on its security in accordance with the BIA.

20. The Company has approximately 50 residential units and 2 commercial strata units remaining in the Project which have not yet been sold. One of the residential units is currently under an unconditional sales contract that is scheduled to close in March 2024.
21. The sale of the units have been slower than anticipated for a number of reasons, largely due to the rapidly increasing interest rates from April 2023 onwards that has made it very difficult for buyers to secure mortgages from the banks as they are facing greater difficulties passing the mortgage stress test.
22. In addition, although the strata units in the Project have a lower price per square foot than the Company's competitors, the size of the units in the Project are larger than average with higher end finishings, making the units more expensive compared to the Company's competitors.
23. The remaining strata units have been and continue to be listed for sale. The total listing price for the 50 residential strata units is approximately \$53 million. There are also 2 commercial strata units plus additional parking spots that are available for purchase. The list prices for the units are before any potential negotiated price adjustments, decorating or other allowances, and sales commissions payable to the real estate agent.
24. Due to the slowdown in sales, the Company has had insufficient funds to meet the Anderson Plaza Demand.
25. The Company has filed the NOI to stabilize operations so that it can continue to sell units in an orderly manner and avoid an immediate liquidation of the unsold units.
26. In addition, the Company seeks to have the various claims against it dealt with in an orderly manner through the NOI process.

Status Since Filing the NOI and Current Restructuring Options being Explored

27. Since filing the NOI, the Company has worked cooperatively with the Proposal Trustee with respect to its financial affairs, maintaining its cash flow records and financial reporting, and is considering a basic outline of a proposal to put before its creditors.
28. In summary, the Company's assets are comprised mainly of the unsold units in the Project which include the following:
 - (a) Fifty (50) unsold residential units which are comprised of one to three bedroom units with and without dens which are currently listed for sale

with Re/Max Westcoast Realty for approximately \$53.0 million (before any decorating or other potential allowances and adjustments);

- (b) Eight (8) Affordable Rental Units that are currently under month-to-month leases pursuant to the Richmond Housing Agreement;
 - (c) Two (2) unsold commercial units which are currently listed for sale for approximately \$4.6 million; and
 - (d) Various unsold parking spots with and without electric charging.
29. Other assets of the Company include the following:
- (a) Cash on hand of approximately \$404,000 as at December 17, 2023;
 - (b) An accounts receivable for the pending unconditional sale of one (1) residential unit for net sale proceeds of approximately \$1.5 million which is scheduled to close in March 2024;
 - (c) A five (5) year vendor take back mortgage dated August 25, 2023 for \$300,000 related to the sale of a unit in July 2023 with an annual interest rate of 3.5% and monthly payments of \$1,500; and
 - (d) The Lien Funds.
30. In summary, the Company's liabilities include the following:
- (a) Approximately \$64.1 million owing to Anderson Plaza as of the NOI filing date which is for funds advanced to the Company from Anderson Plaza to fund the construction of the Project;
 - (b) Potential Lien claimants who may have rights to the Lien Funds and other amounts after their claims are proven as part of a future claims process to be run by the Proposal Trustee; and
 - (c) An unknown potential claim for the pending Pre-Sale Litigation.
31. A proposal will provide unsecured creditors with a greater return than they would receive if the Company were bankrupt and its assets immediately liquidated. The Company is seeking an extension of the stay of proceedings from December 27, 2023 to February 10, 2024 to provide for additional time to:
- a) Conclude the trial in the Pre-Sale Litigation and better determine the potential scope of damages, if any, that the Court may award against the Company and/or its directors;
 - b) Provide further documents and information to the Proposal Trustee regarding the value of the Company's assets;

- c) Provide further documents and information to the Proposal Trustee and regarding the Anderson Plaza debt, the potential Lien claimants and any other creditors so these claims can be assessed and a future claims process put in place as part of the NOI Proceedings; and
 - d) Continue to work with the Proposal Trustee around the terms of the proposal to be presented to its creditors.
32. The Company has prepared a cash flow projection for the period from December 18, 2023 to February 25, 2024 (the "**December 18 Cash Flow Forecast**"), which provides that the Company can meet its post-filing obligations as they become due during this period.

Extension of Time for Filing Proposal

33. Since the date of the filing of the NOI and the appointment of the Proposal Trustee, the Proposal Trustee has been monitoring the business and financial affairs of the Company.
34. The December 18 Cash Flow Forecast Cash provides that the Company can meet its post-filing obligations as they become due until February 25, 2024.
35. The Proposal Trustee is satisfied that:
- (a) The Company has acted, and is acting, in good faith and with due diligence;
 - (b) The Company's ability to make a viable proposal will be maximized if the extension being applied for was granted; and
 - (c) No creditor would be materially prejudiced if the extension being applied for was granted.

PART 3: LEGAL BASIS

1. Pursuant to Section 50.4(9) of the BIA, a debtor in a proposal proceeding may, before the expiry of the time to file a proposal, apply to the court for an order extending the time to file a proposal, by a maximum of 45 days, and the court may extend the time if it is 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.
2. Extending the stay of proceedings is appropriate and necessary to enable the Company to continue to sell the remaining units, restructure its affairs and formulate a proposal to its creditors.
 3. The Company has been working in good faith and with due diligence to continue to sell the remaining units and pursue a proposal that will maximize value for their stakeholders.
 4. No creditors will be materially prejudiced if the stay being applied for were granted. Funds continue to be held in Court to secure the Lien claims of the builders lien claimants.
 5. Without the stay of proceedings, the Company will be deemed bankrupt and forced into a liquidation scenario which will likely result in a shortfall to the Company's creditors less than what they would receive under a proposal. Completing the proposal and a restructuring would benefit all of the Company's stakeholders, and likely provide a better recovery to the Company's creditors than in a liquidation.
 6. The Company submits that, in these circumstances, it is necessary and appropriate that the stay of proceedings be extended to February 10, 2024, or such other date as may be determined by this Honourable Court.
 7. The Proposal Trustee supports the relief sought by the Company in this Application.
 8. The Court has the power to abridge the time for service pursuant to Rule 6(4).

*Bankruptcy and Insolvency General Rules,
CRC, c 368, r 6(4) (the "BIA Rules")*

9. The Company will also rely on section 183 of the BIA and Rule 3 of the BIA Rules, and the inherent jurisdiction of this Honourable Court.

PART 4: MATERIAL TO BE RELIED ON

1. Proposal Trustee's First Report to the Court.
2. Such further and other materials as counsel may advise and this Honourable Court may allow.


The Applicants estimate that the application will take 1 hour.

- This matter is within the jurisdiction of a Master.
- This matter is not within the jurisdiction of a Master. Justice Stephens has been assigned to hear this application.

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 20, 2023



Signature of Lawyer for Applicant
Lawyer: Katie G. Mak

This NOTICE OF APPLICATION is prepared by Katie G. Mak 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 #: 604.687.6314, Email: kmak@cwilson.com) (File #: 48285-0003).

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

Schedule "A"

Court No. B-230561
Estate No. 11-3014787
Registry

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

**IN THE MATTER OF THE NOTICE OF INTENTION TO MAKE A PROPOSAL OF
ANDERSON SQUARE HOLDINGS LTD.**

SERVICE LIST

Updated: December 21, 2023

Name of Counsel:	Name of Parties:
<p>Clark Wilson LLP 900 – 885 West Georgia Street Vancouver, BC V6C 3H1</p> <p>Attention: Christopher J. Ramsay Katie G. Mak Jaime Landa (Assistant)</p> <p>Email: CRamsay@cwilson.com; KMak@cwilson.com; JLanda@cwilson.com;</p> <p>Tel: 604-687-5700</p>	<p><i>Counsel to the Company, Anderson Square Holdings Ltd.</i></p>
<p>Watson Goepel LLP 1200 - 1075 West Georgia Street Vancouver, BC V6E 3C9</p> <p>Attention: Jeremy D. West Chelsey Cochrane (Assistant)</p> <p>Email: jwest@watsongoepel.com; ccochrane@watsongoepel.com;</p> <p>Tel: 604-642-5684</p>	<p><i>Counsel to Anderson Plaza Holdings Inc.</i></p>

Name of Counsel:	Name of Parties:
<p>Deloitte Restructuring Inc. 410 West Georgia Street Vancouver, BC V6B 0S7</p> <p>Attention: Jeff Keeble Chris Knox</p> <p>Email: jkeeble@deloitte.ca; cknox@deloitte.ca;</p> <p>Tel: 604-235-4197</p>	<p><i>Proposal Trustee</i></p>
<p>Norton Rose Fulbright Canada LLP 1800 – 510 West Georgia Street Vancouver, BC V6B 0M3</p> <p>Attention: Scott Boucher Kieran Siddall Jayda Mangat (Assistant) Nadine Abram (Assistant)</p> <p>Email: scott.boucher@nortonrosefulbright.com; kieran.siddall@nortonrosefulbright.com; jayda.mangat@nortonrosefulbright.com; nadine.abram@nortonrosefulbright.com;</p> <p>Tel: 604-641-4920 / 604-641-4868</p>	<p><i>Counsel to the Proposal Trustee</i></p>
<p>Borden Ladner Gervais LLP 1200 – 200 Burrard Street Vancouver, BC V7X 1T2</p> <p>Attention: Ryan Laity Matthew Swanson</p> <p>Email: rlaity@blg.com; mswanson@blg.com;</p> <p>Tel: 604-632-3544 / 604-632-3474</p>	<p><i>Counsel to Scott Construction Ltd.</i></p>

Schedule "B"

Court No. B-230561
Estate No. 11-3014787
Vancouver Registry

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

IN THE MATTER OF THE NOTICE OF INTENTION TO MAKE A PROPOSAL OF
ANDERSON SQUARE HOLDINGS LTD.

ORDER MADE AFTER APPLICATION

(EXTENSION OF STAY)

BEFORE THE HONOURABLE)
MR. JUSTICE STEPHENS) December 22, 2023
)

ON THE APPLICATION of the Applicant, Anderson Square Holdings Ltd. (the "**Company**"), coming on for hearing at Vancouver, British Columbia, on the 22nd day of December, 2023; AND ON HEARING those counsel listed on Schedule "A" hereto; AND pursuant to the *Bankruptcy and Insolvency Act*, the *British Columbia Supreme Court Civil Rules* and the inherent jurisdiction of this Honourable Court;

THIS COURT ORDERS that:

1. The time for service of this Notice of Application herein be and is hereby abridged and the Notice of Application is properly returnable today and service hereof upon any interested party is dispensed with.
2. The stay of proceedings and the time for filing of a proposal by the Company is hereby extended to February 10, 2024.
3. The approval of counsel as to form, except for counsel for the Company, is 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:

Signature of Lawyer for the Company
Lawyer: Katie G. Mak

BY THE COURT

Registrar

Schedule "A"

LIST OF COUNSEL
