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| COURT FILE NUMBER | 643 of 2016 |
| COURT | QUEEN'S BENCH FOR SASKATCHEWAN<br>IN BANKRUPTCY AND INSOLVENCY |
| JUDICIAL CENTRE | SASKATOON |
| APPLICANTS | 101133330 SASKATCHEWAN LTD. and<br>101149825 SASKATCHEWAN LTD. |

IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*, RSC 1985, c. C-36, AS AMENDED

AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF 101133330 SASKATCHEWAN LTD. and 101149825 SASKATCHEWAN LTD.

**BRIEF OF LAW ON BEHALF OF THE APPLICANTS, 101133330 SASKATCHEWAN LTD. and 101149825 SASKATCHEWAN LTD.**

**(RE: THIRD EXTENSION OF STAY OF PROCEEDINGS AND ADDITIONAL DIP FINANCING)**

## I. INTRODUCTION

1. On May 20, 2016, the Honourable Justice N.G. Gabrielson granted 101149825 Saskatchewan Ltd. ("**825**") and 101133330 Saskatchewan Ltd. ("**33330**") (825 and 33330 hereinafter collectively referred to as the "**Applicants**") an Initial Order pursuant to the *Companies' Creditors Arrangement Act*, RSC 1985, c C-36, as amended (the "**CCAA**") which, among other things, provided for a stay of proceedings (the "**Stay of Proceedings**") in favour of the Applicants and an opportunity for the Applicants to prepare and present a plan or plans of compromise or arrangement (a "**Plan**") to their creditors and this Honourable Court.

2. The Stay of Proceedings granted by the Initial Order expired at 11:59 p.m. (local Saskatchewan time) on Sunday, June 19, 2016. On June 13, 2016, the Honourable

Justice G.A. Meschishnick granted an Order extending the Stay of Proceedings until 11:59 p.m. on August 31, 2016 (the **"First Extension Order"**). On August 17, 2016, the Honourable Justice G.A. Meschishnick granted an Order extending the Stay of Proceedings until 11:59 p.m. on January 1, 2017 (the **"Second Extension Order"**).

3. For the purposes of permitting the Applicants to continue their restructuring efforts, including to allow the Monitor and the Applicants to continue communicating and working with the various professional advisors and stakeholders of the Applicants in order to develop and present a Plan, the Applicants are seeking an order that extends the Stay of Proceedings granted in the Order, the First Extension Order, and the Second Extension Order up to and including 11:59 p.m. on June 12, 2017.

4. The Applicants rely upon the facts set forth in the previous Affidavit of John Orr dated May 12, 2016 (the "**First Orr Affidavit**"), the Affidavit of John Orr sworn June 6, 2016 (the **"Second Orr Affidavit**"), the Affidavit of John Orr dated June 9th, 2016 (the **"Reply Orr Affidavit"**), the Affidavit of John Orr sworn August 12, 2016 (the **"Third Orr Affidavit"**), the Confidential Supplementary Affidavit of John Orr sworn August 12, 2016, and the Affidavit of David Calyniuk sworn August 12, 2016 (the **"First Calyniuk Affidavit"**), (collectively, the **"Previous Affidavits"**). The Applicants further rely on the Affidavit of John Orr sworn December 16, 2016 ("the **"Fourth Orr Affidavit"**), and the Affidavit of David Calyniuk sworn December 16, 2016 (the **"Second Calyniuk Affidavit"**).

5. In addition, the Applicants rely on the Pre-Filing Report, the First Report of the Monitor, the Second Report of the Monitor, the Third Report of the Monitor and the Fourth Report of the Monitor filed in the CCAA Proceedings. Capitalized words and phrases which are not otherwise defined herein shall have the respective meanings used in the Previous Affidavits, the Fourth Orr Affidavit, the Second Calyniuk Affidavit and the Initial Order.

## II. ISSUES

6. The Applicants submit that the following issues arise on this application:

(a) in regard to the application to extend the Stay of Proceedings:

i. have the Applicants acted in good faith and with due diligence?

ii. is it appropriate to extend the Stay of Proceedings granted in the Initial Order, the First Extension Order and the Second Extension Order in the circumstances?

iii. if so, how long should the Stay of Proceedings be extended?

iv. Should this Honourable Court grant an order which authorizes further debtor-in-possession financing and the DIP Lender's Charge?

## III. DISCUSSION REGARDING EXTENDING STAY OF PROCEEDINGS

7. Subsection 11.02(2) of the CCAA provides that a court may extend the stay of proceedings granted under an Initial Order for such period of time as is deemed appropriate. That section provides the following:

> 11.02(2) A court may, on an application in respect of a debtor company other than an initial application, make an order on any terms that it may impose,
> (a) staying, until otherwise ordered by the court, for any period that the court considers necessary, all proceedings taken or that might be taken in respect of the company under an Act referred to in paragraph (1)(a);
> (b) restraining, until otherwise ordered by the court, further proceedings in any action, suit or proceeding against the company; and
> (c) prohibiting, until otherwise ordered by the court, the commencement of any action, suit or proceeding against the company.

8. The onus placed upon a debtor company in making such an application is established by subsection 11.02(3):

> 11.02(3) The court shall not make the order 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.

9. Upon a review of the authorities, the Applicants submit that the Court applies tests of good faith, due diligence and balancing of prejudice to creditors in determining whether to extend a stay of proceedings.

10. In particular, factors to be considered on an application for an extension of a stay include the debtor's progress during the previous stay period toward a restructuring; whether creditors will be prejudiced if the court grants the extension; and the comparative prejudice to the debtor, creditors and other stakeholders in not granting the extension (*Federal Gypsum Co., Re*, 2007 NSSC 347, 40 C.B.R. (5th) 80 (N.S. S.C.) at paras. 24-29) [TAB 1].

11. The test is not whether the plan of arrangement is doomed to failure — that is the test for terminating, not extending, a stay of proceedings (*Rio Nevada Energy Inc., Re* (2000), 283 A.R. 146 (Alta. Q.B.)). Nonetheless, the question of whether the plan is doomed to failure is one consideration in determining whether the order is appropriate. If there is a realistic chance of success, an extension should be granted (*Re Starcom International Optics Corp.* (1998), 3 C.B.R. (4th) 177 (B.C. S.C.)) [TAB 2].

12. The well-established remedial purpose of the *CCAA* is to allow an insolvent company to stay in business while it develops a plan of compromise or arrangement with its creditors. The premise is that this will result in a benefit to the company, its creditors and employees (see e.g., *Hongkong Bank of Canada v. Chef Ready Foods Ltd.* (1990), 4 C.B.R. (3d) 311 (B.C. C.A.)[TAB 3] and *Meridian Development Inc. v. Toronto Dominion Bank* (1984), 52 C.B.R. (N.S.) 109 (Alta. Q.B.))[TAB 4]. The Act is to be given a large and liberal interpretation (see *Nova Metal Products Inc. v. Comiskey (Trustee of)* (1990), 1 C.B.R. (3d) 101 (Ont. C.A.) [TAB 5].

13. Courts are mindful of the CCAA's purpose in determining whether a stay of proceedings will be extended. In *Simpson's Island Salmon Ltd., Re* (2006), 18 C.B.R. (5th) 182 (N.B.Q.B.) [TAB 6], Glennie J. reviewed in detail the purpose of

the CCAA in deciding whether or not a stay of proceedings would be granted, and provided the following direction at paragraphs 26-28:

> [26] In *Re Juniper Lumber,* [2000] N.B.J. No. 144 (C.A.), Justice Turnbull writes:
>
> The principal purpose of the *Companies' Creditors Arrangement Act,* R.S.C. 1985, c. C-36 (the "CCAA"), "is to facilitate the making of a compromise or arrangement between an insolvent debtor company and its creditors to the end that the company is able to continue in business ... When a company has recourse to the C.C.A.A. the court is called upon to play a kind of supervisory role to preserve the status quo and to move the process along to the point where a compromise or arrangement is approved or it is evident that the attempt is doomed to failure." ... The CCAA has a remedial purpose and, therefore, must be interpreted in a broad and liberal fashion. ..More often than not time is critical. And, in order to maintain a status quo while attempts are made to determine if a successful compromise or arrangement can be reached, the courts are granted certain powers in s. 11 to hold creditors at bay.
>
> [27] In *Re Lehndorff General Part Ltd.,* [1993] O.J. No. 14 (Ont. Gen. div.), Justice Farley writes:
>
> The CCAA is intended to facilitate compromises and arrangements between companies and their creditors as an alternative to bankruptcy and, as such, is remedial legislation entitled to a liberal interpretation. It seems to me that the purpose of the statute is to enable insolvent companies to carry on business in the ordinary course or otherwise deal with their assets so as to enable a plan of compromise or arrangement to be prepared, filed and considered by their creditors and the court. In the interim, a judge has a great discretion under the CCAA to make order so as to effectively maintain the status quo in respect of an insolvent company while it attempts to gain the approval of its creditors for the proposed compromise or arrangement which will be to the benefit of both the company and its creditors.
>
> The CCAA is intended to provide a structured environment for the negotiation of compromises between a debtor company and its creditors for the benefit of both. Where a debtor company realistically plans to continue operating or to otherwise deal with its assets but it requires the protection of the court in order to do so and it is otherwise too early for the court to determine whether the debtor company will succeed, relief should be granted under the CCAA ...
>
> [28] In *The 2006 Annotated Bankruptcy & Insolvency Act,* Houlden & Morawetz state at page 1191:
>
> To obtain an extension, the applicant must establish three pre-conditions:

(a) that circumstances exist that make the order appropriate;
(b) that the applicant has acted and continues to act in good faith; and
(c) that the applicant has acted and continues to act with due diligence.

(Emphasis added)

14. As observed by Justice LoVecchio in *Blue Range Resources Corp.* 1999 ABQB 1038 (Alta. Q.B.)[TAB 7] at para. 36, reorganization of a company's affairs under the CCAA may take many forms. There is no one solution that will apply for every company. Solutions may vary from organizational and management restructuring, downsizing, refinancing or debt to equity conversion—the solutions are generally limited only by the creativity of those structuring the plan of arrangement.

**i. The Applicants are acting in good faith and with due diligence**

15. The term "good faith" is not defined in the *CCAA* and there is a paucity of judicial consideration about its meaning in the context of stay extension applications. Regardless of which definition is used, honesty is at the core. Generally speaking, the duty of "good faith" is owed to the court and the stakeholders directly affected by the process, including investors, creditors and employees.

*Re San Francisco Gifts Ltd.*, 2005 CarswellAlta 174, 10 C.B.R. (5th) 275 (Alta. Q.B.) at paras. 14, 16 & 17 [TAB 8]

16. With respect to the matter of good faith and due diligence, the courts typically focus on the efforts the debtor company is making in dealing with stakeholders, while simultaneously protecting the institutional integrity of the CCAA courts, preserving their public esteem and ensuring that the proceedings are equitable for all stakeholders.

*Re San Francisco Gifts Ltd.* at paras. 29 & 30.

17. Since the granting of the Second Extension Order on August 17, 2016, the

Applicants have continued to carry on business in the ordinary course, except insofar as affected by the Initial Order, and have been acting and are acting diligently and in good faith in the conduct of their business and towards the development of a plan of arrangement to restructure their business and financial affairs in a manner designed to achieve the best possible results for the Applicants and their stakeholders.

18. In addition to the steps outlined in the Previous Affidavits, the Applicants have, among other things, conducted the following activities diligently and in good faith, namely:

(a) worked diligently to prevent any material changes to the Applicants' cash flows and other circumstances from occurring;

(b) worked with the Owner's Consultant for the 825 Land, North Ridge Development Corporation ("**North Ridge**"), to conceptualize and develop a plan for the 825 Land whereby it will be included in the Willows community by way of an amendment to the existing Concept Plan, the preliminary version of which was submitted to the City of Saskatoon for review and comment on December 2, 2016 (the "**Amended Willows Concept Plan**");

(c) worked to complete the necessary repairs to the Orr Centre roof-top HVAC units, roof, flashing and drainage systems; and

(d) worked to retain an appropriate consultant to act as the Orr Centre Owner's Consultant and ultimately retained North Ridge to function in that capacity.

19. Each of the activities discussed in the preceding paragraph is discussed in turn below.

*Prevention of Material Adverse Changes*

20. The Applicants have been working diligently and in good faith, with the advice and assistance of their professional advisors and the Monitor, to communicate with their various stakeholders, formulate and adhere to cash flows and prevent the occurrence of material adverse changes, including by taking the actions described below.

*Development of the Plan to Improve the 825 Land*

21. The biggest milestone achieved since the Second Extension was the submission of the Amended Willows Concept Plan on December 2, 2016.

22. As mentioned in paragraph 5 of the Second Calyniuk Affidavit, Dream and North Ridge each had a distinct scope of work which was completed as part of the submission, but nevertheless had to continually dialogue and collaborate to ensure that the end product met the collective goal of a cohesive, desirable community.

23. North Ridge's specific focus, as the Applicants' representative in the process, was to conceptualize and develop a proposed land use plan for the 825 Land, as part of the overall Willows community. The land use plan is essentially a visual representation outlining the parcel's proposed subdivisions, uses (e.g., single family, multi-family, commercial, etc.), amenities spaces, and transportation networks to the City.

24. At present, it is anticipated that the 825 Land will be:

    (a) zoned as Direct Control District 4 to allow for a variety of multi-family uses (*Second Calyniuk Affidavit at para 11*);

    (b) subdivided into smaller pieces to increase the number of potential buyers at an earlier stage in the overall development process (*Ibid, at para 12*); and

    (c) overlook a hole on the revised golf course layout (*Ibid, at para 10*).

25. North Ridge has completed and submitted a number of detailed land use options showing potential subdivisions and development configurations for Dream's consideration; however, it was ultimately determined that it would be advantageous to leave the 825 Land as a generic, multi-family parcel for purposes of the Amended Willows Concept Plan. This will allow the parties to not only receive feedback from the City with respect to the development of the 825 Land,

but also accommodate the specific outcome of the servicing study, both of which are believed to have the greatest potential to maximize the 825 Land's value at the lowest possible cost for the benefit of the stakeholders.

26. As these matters have unfolded since the Second Extension, the Applicants have endeavoured in good faith to provide periodic updates to the primary secured creditors and the Monitor to ensure that they are fully apprised of the most current developments and progress.

*Orr Centre Activities*

27. Since the Second Extension, the Applicants' efforts in respect of the Orr Centre have focused on completing the repairs outlined in the Third Orr Affidavit, identifying further repairs to be made to the Orr Centre's mechanical and boiler systems, and determining the preferred candidate to assume the role of the Orr Centre Owner's Consultant.

28. As will be evident from paragraphs 25-29 of the Fourth Orr Affidavit, the Applicants' conception of the scope of services to be provided by the Orr Centre Owner's Consultant has evolved. Indeed, while it was initially thought that the Applicants' required advice and direction primarily from a commercial real estate consultant, it has since been determined that any approach to the Orr Centre and Campus' debt situation that did not also at least consider further development and construction options may undervalue the potential of the property.

29. Since North Ridge's retainer on November 8, 2016, the Applicants have, among other things, been able to obtain a servicing study report for the Campus, which will be key to determining the scope of potential further development on the property. North Ridge anticipates having high level options for discussion with the stakeholders early in the New Year, which options will include preliminary site plans.

*Conclusion Regarding the Good Faith and Due Diligence Requirement*

30. In addition to the foregoing evidence of good faith and due diligence on the part of the Applicants, the Monitor has opined in its Fourth Report that the Applicants have acted and are continuing to act in good faith and with due diligence.

31. Based on all of the foregoing, the Applicants therefore respectfully submit that they have been and are acting in good faith and with due diligence.

**ii. It is appropriate to extend the Stay of Proceedings granted by the Initial Order in the circumstances**

32. In considering whether or not a Stay of Proceedings should be granted, the interests of all stakeholders must be considered, which analysis includes a balancing of prejudice to creditors. In *Rio Nevada Energy Inc., Re* (2000), 283 A.R. 146, 2000 CarswellAlta 1584 (Q.B) [TAB 9], Romaine J. provided the following guidance at paragraph 32:

> 32 As to whether circumstances exist that make the continuation of the stay appropriate, there are a number of factors that must be taken into account. The continuation of the stay in this case is supported by the basic purpose of the CCAA, to allow an insolvent company a reasonable period of time to reorganize and propose a plan of arrangement to its creditors and the court and to prevent manoeuvres for positioning among creditors in the interim; *Pacific National Lease Holding Corp., Re*[FN7]; *Meridian Development Inc. v. Toronto Dominion Bank*. Westcoast has not satisfied the Court that an attempt at an acceptable compromise or arrangement is doomed to failure at this point in time. Negotiations for restructuring a sale or refinancing are ongoing, and there has been a strengthening of the management team. Rio Nevada continues in business, and plans are underway to remediate its two major wells, which will significantly increase the company's rate of production. A Monitor is in place, which provides comfort to the creditors that assets are not being dissipated and current operations are being supervised. The extension sought is not unduly long, and is supported by the secured creditors other than Westcoast. The costs of the CCAA proceedings are likely no less onerous than the costs of a receivership in these circumstances, and the relief sought under the CCAA less drastic to all constituencies than the order that would likely have to be made in a receivership.
>
> (Footnotes omitted)

33. In *Skeena Cellulose Inc., Re,* 2001 CarswellBC 2226, 29 C.B.R. (4th) 157 (B.C.S.C.) [TAB 10], the British Columbia Supreme Court held that a debtor corporation has an obligation to demonstrate progress towards a plan if an extension is to be granted. The Court also noted that the economic impact on stakeholders and members of the surrounding community is to be considered.

34. With respect to the development of a plan, the Applicants do not bear an onus to establish that a plan "would not be doomed to failure". In *Rio Nevada, supra,* Romaine J. offered the following comments at paragraphs 12 and 13:

> 12 The burden of proof in setting aside a CCAA stay by establishing that any plan of arrangement is "doomed to failure" rests on the applicant wishing to have CCAA proceedings terminated, in this case, Westcoast: *Bargain Harold's Discount Ltd. v. Paribas Bank of Canada*[FN2]; *Philip's Manufacturing Ltd., Re*[FN3]
>
> 13 Rio Nevada does not have the burden of proving that a plan of arrangement put forward by it is not "doomed to failure". As commented by Doherty, J.A. in *Nova Metal Products Inc. v. Comiskey (Trustee of)*[FN4], the nature of CCAA proceedings is such that many plans of arrangement will involve "variables and contingencies which will make the plan's ultimate acceptability to the creditors and the Court very uncertain at the time the initial application is made". As a result, the debtor company does not bear the burden of establishing the likelihood of success from the outset. Although this is not Rio Nevada's initial application, it is only seventeen days into CCAA proceedings, and Rio Nevada has not yet proposed any firm or specific plan of arrangement.
>
> (Footnotes omitted)

35. As explained by the court in *Azure Dynamics Corp., Re* 2012 BCSC 781 (at para. 13) [TAB 11]:

> The next issue concerns whether or not the Azure Group has a "kernel of a plan". ...it is generally considered to be a prerequisite that there must be some sense of what the petitioners intend to do so as to give the court and, obviously, the stakeholders, some comfort that there is some utility in continuing further with these proceedings. To that extent, this issue potentially involves both the first situation (whether the plan is likely to fail) and the sixth [sic] situation (whether the proceedings are showing some progress in the restructuring efforts).

36. It is submitted that there is substantial evidence adduced on this application that

the Applicants have expended significant efforts to stabilize their business and do, in fact, have a "kernel of a plan" that is progressing favourably.

37. In *Shire International Real Estate Investments Ltd., Re* 2010 ABQB 84 [TAB 12], the court denied the application for an extension of the stay of proceedings in that case for the following reasons (at para. 9):

> Having regard to the objectives of the *CCAA*, the large number of unsecured investors is, or more properly, was an appropriate consideration in granting *CCAA* protection. However, that cannot trump the interests of secured creditors when the facts show that continuing *CCAA* proceedings is putting their security at risk. That is so particularly in circumstances where there is a strong likelihood that continuing *CCAA* proceedings will do nothing to enhance the value of the properties and thereby increase the potential for return to the investors. I find that this is the situation here. A realistic estimate of value indicates that the equity available may be approaching the amount of DIP financing, the plan is really not a plan and even as a plan, is unlikely to produce any result more attractive than foreclosure proceedings.

38. It is respectfully submitted that none of the impediments identified by the court in the preceding paragraph are present in the instant application. An analysis of the distinguishing facts between the instant case and *Shire* follows.

39. A principal impediment identified by the court in *Shire* was that the continuation of the CCAA proceedings would put the security of the secured creditors at risk. The reasons advanced by the secured creditors are described at paragraph 7 of the decision:

> There is nothing about the properties in these companies that would attract new investors. These are "bits and pieces" of land geographically spread out that do not lend themselves to being sold as a package. In these circumstances, there is nothing that makes *CCAA* proceedings more likely to achieve the best result for the most parties than allowing the foreclosure proceedings to run their course. They argue that there is no equity in the properties when you consider them on a consolidated basis. The reason for the lack of equity is that the amounts used by the Monitor as value for the property are too high because the information is out of date or otherwise suspect, there is no accounting for any unpaid taxes, liens or other expenses and no recognition that selling these properties would involve real estate commissions and other expenses. Further, they

> say that on an unconsolidated basis, there is no equity in some properties and those properties should not be primed with the DIP financing. They argue that the RFP Plan is no plan at all. It is at best a plan to make a plan and at worst is proposing to do things some of the secured lenders have been already doing in their foreclosure proceedings.

40. In stark contrast, the Applicants' efforts with respect to the 825 Land have positioned the same to be included in a desirable Saskatoon development, which has the potential for the same to attract new investment or be sold for a greater value than at present. A similar approach is now being employed with respect to the Orr Centre and Campus.

41. Based on the evidence before the court, it is unlikely that the sale of the 825 Land, Orr Centre, and Campus in their present state would generate sufficient proceeds to fully pay out the secured creditors holding security over those assets. On the other hand, the evidence also suggests the inclusion of the 825 Land into the Willows by way of the Amended Willows Concept Plan is a key step towards increasing its value, while the work presently being performed by North Ridge in relation to the Orr Centre and Campus is aimed at determining a realistic path to achieving a similar result with respect to the same.

42. It is anticipated that the value of each of the most significant assets involved in the CCAA process will continue to increase over time. On a balance of convenience, therefore, there is no prejudice to any of the secured lenders (and, in particular, Firm Capital Corp. and Frank Pa which have entered a Forbearance Agreement with 825, which will be extended pursuant to the terms thereof) as a result of the requested extension.

43. Conversely, the prejudice to the Applicants and the other stakeholders if the extension is not granted, on the evidence before the court, is material and will have severe consequences. Among other things, the principal creditor of the Orr Centre, Affinity Credit Union, risks significant losses by the termination of these proceedings, as do the various stakeholders of the Orr Centre described in the

First Orr Affidavit. In *Skeena Cellulose Inc., Re* 2001 BCSC 1423 (at paragraph 27), the court, after acknowledging that far-reaching consequences are appropriate matters for the court to weigh and consider on an application to extend, determined that the severe consequences of terminating the CCAA proceedings in that case made it appropriate to extend the stay of proceedings over the objection of a secured creditor. The same considerations apply here.

44. The following paragraphs 27-36 of *AbitibiBowater inc., Re* 2009 QCCS 6463 [TAB 13] are apposite to the analysis of the balance of prejudice between the secured creditors and the other stakeholders:

> 27 Seldom, if ever, will a restructuring process not cause definite hardship on most stakeholders. As well, rarely will stakeholders not be able to establish some level of necessity for the payment of what is owed to them.
>
> 28 If the sole criteria of undue hardship and necessity for payment would suffice to lift the stay of proceedings in a *CCAA* restructuring, Courts, debtors and monitors would likely end up devoting indefinite time and energy trying to assess the levels of prejudice caused to one or the other, instead of focusing upon the end result, that is, to develop and submit a plan and gather consensus around a fair and reasonable compromise for all.
>
> 29 This would undoubtedly have an adverse impact upon many restructuring efforts.
>
> 30 From that perspective, trying to please everyone on the basis of undue hardship or utmost necessity may end up resulting in displeasing all. This is why this should be approached with caution and, in this Court's view, with great reservation.
>
> 31 Turning to the present case, the Court is not convinced that its statutory discretion should be exercised along the lines suggested.
>
> 32 Yes, hardship exists for many here. Yet, in many of the situations described, hardship arises, if only partially, from pre-existing conditions or independent conditions of Petitioners that the stay of the Initial Order itself did not necessarily cause.
>
> 33 Yes, necessity for payment exists. Yet, it remains far from obvious that it is of such a magnitude as to render untenable the delay of a few months before the likely filing of a plan.

> 34 In the meantime, certainly times will be difficult. Nobody denies it. But times would be worse if the Debtors were to collapse and go bankrupt.
>
> 35 From that standpoint, the idea of saying yes to some and no to others is not the best way to deal with the situation. In fact, it would only open the door to many similar requests and destabilize the restructuring process. This should be avoided.
>
> 36 The Court prefers to say to all: wait and be patient. The process is under way. The Court, with the help of the Monitor, closely watches and supervises the process. The Debtors realize that time is of the essence. This is the better approach.
>
> [Emphasis added.]

45. The mantra "wait and be patient" is apt too for these proceedings. Once again, there is simply no prejudice or hardship to the secured parties as result of the Stay of Proceedings continuing.

46. Based on the foregoing, it is abundantly clear that an extension of the stay will not materially prejudice any of the creditors or other stakeholders. In any event, the benefits of extending the Stay of Proceedings outweigh any prejudice that may result to creditors. It is therefore submitted that granting the proposed order extending the stay period furthers the purposes of the CCAA by permitting the Applicants to continue to take steps to maximize the underlying value of the assets of the Applicants with a view to enabling a plan or plans of compromise or arrangement to be prepared and considered by creditors and this Honourable Court and, importantly, avoids the detrimental consequences to all stakeholders including employees and the tenants of the Orr Centre should business operations cease by the termination of these proceedings.

### iii. How long should the Stay of Proceedings be extended?

47. The Applicants have requested that the Stay of Proceedings be extended until 11:59 p.m. on June 12, 2017.

48. The primary reason for the extension to this date is to allow the City to review the Amended Willows Concept Plan. During the course of the review, it is anticipated that the City will request changes and additional information, the respective completion and provision of which, along with the completion of the sanitary and Remaining Studies, will determine when final approval will be obtained. North Ridge has suggested the process can take between six and eight months, necessitating the requested extension.

49. In the meantime, the Applicants and North Ridge will continue to focus on receiving and ultimately completing a range of realistic options for improving the Orr Centre and Campus for presentation to the stakeholders. The absence of a concrete plan for these assets is the primary hurdle to formulating an overall plan of arrangement and compromise at this time, and more time and information is required in this regard

50. It is therefore submitted that it is appropriate and reasonable in the circumstances to extend the Stay of Proceedings until 11:59 p.m. on June 12, 2017.

**iv. Should the Applicants be entitled to further DIP Financing?**

51. Section 11.2 of the *CCAA* states:

> 11.2 (1) On application by a debtor company and on notice to the secured creditors who are likely to be affected by the security or charge, a court may make an order declaring that all or part of the company's property is subject to a security or charge — in an amount that the court considers appropriate — in favour of a person specified in the order who agrees to lend to the company an amount approved by the court as being required by the company, having regard to its cash-flow statement. The security or charge may not secure an obligation that exists before the order is made.
>
> (2) The court may order that the security or charge rank in priority over the claim of any secured creditor of the company.
>
> (3) The court may order that the security or charge rank in priority over any security or charge arising from a previous order made under

subsection (1) only with the consent of the person in whose favour the previous order was made.

(4) In deciding whether to make an order, the court is to consider, among other things,

(a) the period during which the company is expected to be subject to proceedings under this Act;

(b) how the company's business and financial affairs are to be managed during the proceedings;

(c) whether the company's management has the confidence of its major creditors;

(d) whether the loan would enhance the prospects of a viable compromise or arrangement being made in respect of the company;

(e) the nature and value of the company's property;

(f) whether any creditor would be materially prejudiced as a result of the security or charge; and

(g) the monitor's report referred to in paragraph 23(1)(b), if any.

52. Notice of the application has been given to the secured creditors.

53. In *Federal Gypsum Co., Re*, (2007) 40 C.B.R. (5th) 39 (N.S.S.C.), MacAdam J. considered an application for additional DIP financing and described the governing principles at paragraph 38:

[38] ...

Counsel notes the three issues outlined by Glennie J. in *Re Simpson's Island Salmon Ltd., supra*, at paras.16-17 and 19:

16 In order for DIP financing with super-priority status to be authorized pursuant to the CCAA, there must be cogent evidence that the benefit of such financing clearly outweighs the potential prejudice to secured creditors whose security is being eroded. See *United Used Auto & Truck Parts Ltd., Re*, [1999] B.C.J. No. 2754 (B.C.S.C. [In Chambers]), affirmed [2000] B.C.J. No. 409 (B.C.C.A.)

> 17 DIP financing ought to be restricted to what is reasonably necessary to meet the debtor's urgent needs while a plan of arrangement or compromises is being developed.
>
> ...
>
> 19 A Court should not authorize DIP financing pursuant to the CCAA unless there is a reasonable prospect that the debtor will be able to make an arrangement with its creditors and rehabilitate itself.

54. The Applicants will require further financing until June 12, 2017, in order to gain the City's approval of the Amended Willows Concept Plan, formulate a plan for the Orr Centre and Campus, and to ensure that payroll, utilities and other basic expenses of operating the Orr Center are met so that tenants and users of the Orr Center will not be prejudiced. The estimated shortfall through June 12, 2017 is $738,734.

55. The Applicants have secured further DIP financing up to $2,000,000. The benefits of the DIP Financing outweigh any prejudice. The Applicants require the interim financing to pay professional fees that have and will be incurred and to continue business operations and "keep the lights on", while also maximizing the value of the assets of the Applicants. Adding value to the 825 Land is fundamental to the Applicants' restructuring and presents the greatest value to stakeholders over an immediate liquidation scenario. Now that a significant milestone in this process has been achieved, the Applicants' focus can shift to formulating a plan for the Orr Centre and Campus.

## V. CONCLUSION AND RELIEF REQUESTED

56. For all the reasons set forth above, 825 and 33330 respectfully request that this Honourable Court grant the orders extending the Stay of Proceedings until 11:59 p.m. on June 12, 2017, and approving the proposed DIP financing.

**ALL OF WHICH IS RESPECTFULLY SUBMITTED** this 19th day of December, 2016.

**McDOUGALL GAULEY LLP**

Per: _____
Solicitors for the Applicants

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## TABLE OF AUTHORITIES