

23-Sep-26

REGISTRY

Form 32 (Rule 8-1(4))

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 applicant to Justice Stephens at the courthouse at 800 Smithe Street, Vancouver, British Columbia on September 28, 2026, at 2:00 p.m. for the orders set out in Part 1 below.

The applicant estimates that the application will take 2 hours.

- ☐ This matter is within the jurisdiction of an associate judge.
- ☒ This matter is not within the jurisdiction of an associate judge. Justice Stephens is seized of this matter.

PART 1: ORDERS SOUGHT

1. An order substantially in the form attached hereto as **Schedule “B”**:
 - (a) abridging the time for service and hearing of the within Notice of Application, if necessary;
 - (b) declaring that the Notice of Intention to Make a Proposal dated November 27, 2023 (the “**NOI**”), as amended by the Proposal dated May 10, 2024 (the “**Original Proposal**”) and the Amended Proposal dated May 30, 2024 (the

"**Amended Proposal**" and with the Original Proposal, the "**Proposals**") filed by the Company shall be deemed withdrawn and shall cease to have any effect going forward;

- (c) declaring that from the date of this order, any stay of proceedings triggered under the *Bankruptcy and Insolvency Act* RSC 1985, c B-3 (the "**BIA**") by the filing of the NOI or the Proposals shall cease to apply going forward;
- (d) declaring the withdrawal of the NOI and the Proposals shall not deem the company bankrupt by reason only of there being no proposal approved by the Company's creditors, by reason only of there being no court approval of a proposal or by reason only of this order causing any other irregularity in respect of the proposal process under the BIA.
- (e) directing the Office of the Superintendent in Bankruptcy (the "**OSB**") to amend its records to reflect the withdrawal and the provisions of this order; and
- (f) such further relief as the circumstances may require and this Honourable Court deems appropriate.

PART 2: FACTUAL BASIS

Background

- 2. The Company is in the business of real estate development for a project known as "Prima" located at 6833 Buswell Street, Richmond, BC (the "**Prima Project**").
- 3. The Prima Project was previously known as "ALFA" and is located in downtown Richmond, British Columbia. The Prima 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.
- 4. The Prima Project experienced delays and cost overruns as a result of various issues including a delayed building permit, replacement of the general contractor partway through construction and lien claims, amongst other things. As a result, the Prima Project was not completed on schedule, and the residential occupancy permit was not issued until September 2022 (not April 2019 as originally anticipated).
- 5. The challenges faced by the Company with the Prima Project resulted in several lien claims being filed against title to the Prima Project by the general contractor, subcontractors, material suppliers and subtrades (the "**Liens**"). The Liens include builder's lien claims from Scott Construction Ltd. ("**Scott Construction**") and Lower Mainland Forming, parties that filed proof of claim as part of these proceedings.

6. By Court Order made on November 2, 2020, the Liens, including the lien claim by Scott Construction and Lower Mainland Forming, and any certificates of pending litigation 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**”). The Lien Funds will be sufficient to cover any settlement of the Liens, and the Company has no additional exposure beyond the Lien Funds.
7. 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**”). The trial of the Pre-Sale Litigation concluded on December 20, 2023. On February 9, 2024, the BC Supreme Court issued its judgment in the Pre-Sale Litigation, finding that the Company is liable to the plaintiffs for damages totalling \$13,093.900 (the “**Pre-Sale Judgments**”).
8. On March 7, 2024, the Company filed a Notice of Appeal of the Pre-Sale Judgments.
9. Aside from the Liens, the Company has one known potential 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.
10. On or about November 20, 2023, Anderson Plaza issued a demand against the Company for repayment of the loans in the total amount 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.
11. The sale of the remaining units in the Project has been slower than anticipated for a number of reasons, largely due to the rapidly increasing interest rates from April 2023 onwards that have made it very difficult for buyers to secure mortgages from the banks as they are facing greater difficulties passing the mortgage stress test.
12. 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 is larger than average with higher-end finishings, making the units more expensive compared to the Company’s competitors.
13. There currently remain 32 unsold residential units and one unsold commercial unit (the “**Unsold Units**”). The Unsold Units have been and continue to be listed for sale.

Status of This Proceeding

1. On November 27, 2023, the Company filed the NOI, pursuant to section 50.4(1) of the BIA. Deloitte Restructuring Inc. (the “**Proposal Trustee**”) was appointed as the proposal trustee on the same date.
2. On December 22, 2023, the Company applied for and was granted an extension of time to make a proposal to its creditors, with that extension expiring on February 10, 2024.
3. On March 25, 2024, the Company applied for and was granted an extension of time to make a proposal to its creditors, with that extension expiring on May 10, 2024.
4. On May 10, 2024, the Company submitted the Original Proposal to its creditors.
5. On May 21, 2024, the Proposal Trustee provided notice of the creditors’ meeting to vote on the Original Proposal to the Office of the Superintendent of Bankruptcy and to every known creditor of the Company and also provided, among other things, copies of:
 - (a) the Original Proposal; and
 - (b) the Trustee’s Report to Creditors dated May 21, 2024.
6. On May 30, 2024, the Company provided the Trustee with the Amended Proposal.
7. The Amended Proposal and its minor changes were reviewed by and discussed with the Company’s creditors during the meeting of the creditors held on May 31, 2024. At this meeting, the Amended Proposal was approved by the Pre-Sale Buyers, who were the only creditors entitled to vote on the Amended Proposal.
8. Generally, the Amended Proposal provided for a pro rata sharing of proceeds from the sale of the remaining unsold units of the Project and any cash in the Company’s accounts, subject to any amounts the Proposal Trustee holds back as necessary for the Company to fund its ongoing operations and this Proposal proceeding, including the Proposal Trustee’s fees.
9. The Proposal Trustee supported the Amended Proposal.
10. The Proposal Trustee initially set down an application to approve the Amended Proposal on July 3, 2024 (the “**Court Approval Application**”). This hearing was ultimately adjourned until December, 2024 before Justice Stephens. At the December hearing, Justice Stephens adjourned the application, expressing concerns about approving a proposal based entirely on creditors whose claims were under appeal.

11. The Court Approval Application was subsequently scheduled for September 3, 2025, due to the uncertainty regarding the Pre-Sale Judgments appeal.
12. From January to August 2025, the Company and the Proposal Trustee discussed ways to address this concern but ultimately decided to wait until the appeal of the Pre-Sale Judgments was completed before moving forward with an application to approve and sanction the Amended Proposal.
13. On August 18, 2025, the Court of Appeal for British Columbia overturned the Pre-Sale Judgments in their entirety (the “**BCCA Decision**”).
14. On August 27, 2025, the Court Approval Application was adjourned generally with no scheduled date while the Pre-Sale Buyers and the Company assessed their positions after the BCCA Decision.
15. On October 17, 2025, the Pre-Sale Buyers ultimately chose to file an application to seek leave to appeal the BCCA Decision to the Supreme Court of Canada.
16. On July 30, 2026, leave to appeal the BCCA Decision to the Supreme Court of Canada was refused.
17. As the Pre-Sale Judgments are extinguished, the Pre-Sale Buyers no longer have a claim against the Company and therefore are not eligible to vote on the Amended Proposal.
18. As the Pre-Sale Buyers were the only eligible creditors to vote on the Amended Proposal, the Amended Proposal can no longer be approved.
19. Without the Pre-Sale Judgments, the Company is not insolvent and is able to pay its obligations as they come due. The fulcrum creditor of the Company is Anderson Plaza, a related entity that will be paid out from the proceeds from the sale of the remaining unsold units and the cash the Company currently has on hand.
20. Any other creditors will be paid in full.
21. The purpose of the Company filing the NOI was to deal with the Pre-Sale Judgments, and now that the Pre-Sale Judgments have been fully extinguished, there is no purpose to these proceedings currently.

PART 3: LEGAL BASIS

22. The Company relies on:
 - (a) the *BIA*;
 - (b) the *Supreme Court Civil Rules*, BC Reg 168/2009;
 - (c) the inherent and equitable jurisdiction of the Honourable Court; and

- (d) such further and other legal basis and authorities as counsel may advise and this Honourable Court may permit.
23. Section 50(4) of the *BIA* discusses the withdrawal of a proposal and states
- 50(4) No proposal or any security, guarantee or suretyship tendered with the proposal may be withdrawn pending the decision of the creditors and the court.
24. Section 43(14) of the *BIA* provides for a mechanism for the withdrawal of bankruptcy applications and states
- 43(14) An application shall not be withdrawn without the leave of the court.
25. Section 183 of the *BIA* grants this Honourable Court such jurisdiction at law and in equity as will enable it to exercise original, auxiliary and ancillary jurisdiction in bankruptcy and in other proceedings authorized by the *BIA*.

Withdrawal of Proposal

26. While section 50(4) of the *BIA* prohibits the unilateral withdrawal of a proposal while it is pending before its creditors and the court, it does not prevent the court from exercising its discretion to authorize a withdrawal.
27. There is very limited jurisprudence on the discretion of the court to grant a withdrawal of a proposal while it is pending court approval. The *BIA* does not contemplate situations like the present case where, after a proposal has been approved by the eligible creditors, those creditors lose their claim in its entirety through a successful appeal.
28. In an unreported order out of the Ontario Superior Court of Justice on September 10, 2021, in the proposal proceeding of *Drexler Construction Limited, Folmur Construction (2004) Limited, and Down Under Pipe and Cable Locating Limited, Corporations Incorporated Under The Ontario Business Corporations Act*, Estate No. 35-2721716 ("**Drexler**"), Justice McArthur granted an order that allowed Down Under Pipe and Cable Locating Limited ("**Down Under**") to withdraw its NOI and proposal.
29. As set out in the moving parties' factum, Down Under was insolvent as a result of its guarantee to RBC on a loan that other parties defaulted on. The RBC loan was subsequently repaid, rendering Down Under no longer insolvent. However, despite this, Down Under had made a proposal to its creditors and could not withdraw its proposal as no provision of the *BIA* expressly provides for the withdrawal of a proposal in such a case.
30. Moreover, Down Under's sole remaining creditor was a related party under the *BIA* and as such could only vote against the proposal, which would have resulted in

Down Under's bankruptcy despite its solvency. The moving parties relied on the court's ancillary jurisdiction under s. 183 of the *BIA* and the order was granted on the same grounds.

31. This is the precise situation the Company is facing. With the Pre-Sale Buyers no longer creditors, the only creditor to which the Amended Proposal is made is a related party, Anderson Plaza, which can only vote against the Amended Proposal if it chooses to vote at all. This puts the Company in a state of legislative "limbo" under the *BIA*: if Anderson Plaza makes no vote, the Amended Proposal does not proceed; if Anderson Plaza votes against the Amended Proposal, the Company is assigned into bankruptcy despite being solvent.
32. The reason why the Company filed the NOI is because of the Pre-Sale Judgments, and now that the Pre-Sale Judgments are extinguished, it would be impractical and unfair to all the stakeholders to require the Company to proceed with the proposal process. There is no prejudice to any creditors, and the withdrawal of the NOI and the Proposals benefits the Company and all its stakeholders.
33. The overarching purpose of the *BIA* proposal proceedings is to allow a debtor to continue as a going concern. The withdrawal of the NOI and the Proposals aligns with this purpose, as it would effectively preserve the going concern of a solvent company.
34. There is also an analogous line of jurisprudence regarding the withdrawal of NOIs before a proposal has been presented to creditors. This line of jurisprudence culminates in *Elk Gold Mining Corp. (Re)*, 2024 BCSC 371 ("**Elk Gold**") where Justice Fitzpatrick finds this Honourable Court has jurisdiction to grant an order for the withdrawal of a NOI:

[41] In my view, the above authorities support my conclusion that I have the jurisdiction to allow Elk Gold to withdraw the NOI if the circumstances justify that relief. As counsel noted, there is a functional "gap" in the *BIA*, as was noted in *Poly Innovation*. Using the analogy of a withdrawal of a bankruptcy application under s. 43(14) of the *BIA* (*Poly Innovation*), unusual circumstances not contemplated by the normal progress of NOI proceedings allow the Court to consider such relief, so as to give effect to the purposes of the *BIA*.

[42] In addition, and in the alternative, I conclude that this Court has the jurisdiction to grant an order for the withdrawal of a NOI pursuant to s. 183(1) of the *BIA*, in the exercise of this Court's statutory jurisdiction toward fulfilling the objectives of the *BIA*.

35. The only difference between the case at bar and the *Elk Gold* line of jurisprudence is that, in the present case, a proposal was presented to creditors. This is a distinction without a difference; the functional "gap" remains.
36. The Proposal Trustee also supports the reliefs sought in this application.

37. It is the Company's submission that the orders sought in this application are within the jurisdiction of the court and should be granted in these unique circumstances.

PART 4: MATERIAL TO BE RELIED ON

1. First Report of the Proposal Trustee, filed December 21, 2023.
2. Second Report of the Proposal Trustee, filed February 6, 2024.
3. Third Report of the Proposal Trustee, dated March 21, 2024.
4. Report of the Proposal Trustee on Proposal, dated June 18, 2024.
5. First Supplemental Report to the Proposal Report, dated October 24, 2024.
6. Fourth Report of the Proposal Trustee, dated September 22, 2026
7. Such further and other material as counsel may advise and this Honourable Court may accept.

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).



Date: September 23, 2026

Signature of Lawyer for Applicant
Lawyer: Christopher Ramsay

This NOTICE OF APPLICATION is prepared by Simon Wu of the firm of **Clark Wilson LLP** whose place of business is 900 – 885 West Georgia Street, Vancouver, British Columbia, V6C 3H1 (Direct #: 604.643.3193, Fax #: 604.687.6314, Email: swu@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: _____

Signature of ☐ Judge ☐ Associate Judge

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

SERVICE LIST

Updated: September 23, 2026

<i>Party</i>	<i>Counsel</i>
Counsel for Proposal Trustee	Norton Rose Fulbright LLP Kieran E. Siddall 1800 – 510 West Georgia Street Vancouver, BC V6B 0M3 T. 604.641.4868 Email: kieran.siddall@nortonrosefulbright.com
Counsel for the Company, Anderson Square Holdings Ltd.	Clark Wilson LLP Christopher Ramsay, Nick Carlson, and Simon Wu 900 – 885 West Georgia Street Vancouver, BC V6C 3H1 T. 604.687.5700 Email: cramsay@cwilson.com, ncarlson@cwilson.com, swu@cwilson.com Jaime Landa – Legal Assistant Email : jlanda@cwilson.com
Proposal Trustee	Jeff Keeble, Chris Knox, and Kaleb Butt 410 West Georgia Street Vancouver, BC V6B 0S7 T. 604.235.4197 Email: jkeeble@deloitte.ca, cknox@deloitte.ca, kbutt@deloitte.ca

Party	Counsel
Counsel for Anderson Plaza Holdings Inc.	Watson Goepel LLP Jeremy West / Thomas Hanson 1200 – 1075 West Georgia Street Vancouver, BC V6E 3C9 T. 604.642.5684 / 604 609 3067 Email: jwest@watsongoepel.com thanson@watsongoepel.com Beckett Reinecke – Legal Assistant Email: breinecke@watsongoepel.com
Counsel for Scott Construction	Borden Ladner Gervais LLP Ryan Laity & Matthew Swanson 1200 – 200 Burrard Street Vancouver, BC V7X 1T2 E. rlaity@blg.com & mswanson@blg.com
Trial Co-counsel for the Pre-Trial Litigation Plaintiffs	Allen/McMillan Litigation Counsel Wes McMillan 1625 – 1185 West Georgia Street Vancouver, BC V6E 4E6 T. 604.569.2652 Email: wes@amlc.ca
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Insolvency Counsel for the Pre-Trial Litigation Plaintiffs	Nathanson, Schachter & Thompson LLP Peter Reardon Suite 750 – 900 Howe Street Vancouver, British Columbia Canada V6Z 2M4 Email: preardon@nst.ca

<i>Party</i>	<i>Counsel</i>
Counsel for Lower Mainland Framing Inc.	Jenkins Marzban Logan LLP Michael Dew 900 – 808 Nelson Street Vancouver, BC, V6Z 2H2 Email: mdew@jml.ca

Schedule "B"

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

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

BEFORE)
) THE HONOURABLE JUSTICE STEPHENS) 28/Sep/2026
)

ON THE APPLICATION of the Applicant, Anderson Square Holdings Ltd. (the "**Company**") coming on for hearing at 800 Smithe Street, Vancouver, British Columbia on September 28, 2026 and on hearing Christopher Ramsay, counsel for the Company, Kieran Siddall, counsel for the Proposal Trustee and those counsel listed on Schedule "A" here to 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 the Notice of Application for this order is hereby abridged and deemed good and sufficient, and this Notice of Application is properly returnable today, and no one other than those persons served is entitled to service of the Notice of Application.
2. That upon filing this order, the Notice of Intention to Make a Proposal dated November 27, 2023 (the "**NOI**"), as amended by the Proposal dated May 10, 2024 (the "**Original Proposal**") and the Amended Proposal dated May 30, 2024 (the "**Amended Proposal**") and with the Original Proposal, the "**Proposals**") filed by the Company shall be deemed withdrawn and shall cease to have any effect going forward
3. For the avoidance of doubt:
 - (a) from the date of this order, any stay of proceedings triggered under the *Bankruptcy and Insolvency Act* RSC 1985, c B-3 (the "**BIA**") by the filing of the NOI or the Proposals shall cease to apply going forward;

- (b) the withdrawal of the NOI and the Proposals shall not deem the Company bankrupt by reason only of there being no proposal approved by the Company's creditors, by reason only of there being no court approval of a proposal or by reason only of this order causing any other irregularity in respect of the proposal process under the BIA.
4. That upon filing of a copy of this order with the Office of the Superintendent in Bankruptcy (the "**OSB**"), the OSB is directed to amend its records and designate the NOI and the Proposal as "withdrawn pursuant to court order".
5. Such further relief as the circumstances may require, and this Honourable Court deems appropriate.
6. The approval of counsel as to form of this order, 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
Anderson Square Holdings Ltd.
Lawyer: Christopher Ramsay

BY THE COURT

Registrar

Schedule "A"

Party	Counsel