



Court No. S-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:** Deloitte Restructuring Inc. (the "**Proposal Trustee**"), in its capacity as proposal trustee under the proposal of 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 Proposal Trustee to the Honourable Justice Stephens at the courthouse at 800 Smithe Street, in the City of Vancouver, in the Province of British Columbia on July 3, 2024, at 9:00 a.m. for the orders set out in Part 1 below.

**Part 1: ORDERS SOUGHT**

1. An Order approving the Amended Proposal (as defined below) of the Company dated May 30, 2024, and accepted by the creditors at a meeting held on Friday, May 31, 2024; and
2. Such further and other relief as this Honourable Court may deem just.

**Part 2: FACTUAL BASIS**

**Background**

3. On November 27, 2023, the Company filed a Notice of Intention to Make a Proposal to be filed (the "**NOI**"), pursuant to section 50.4(1) of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended (the "**BIA**"). The Proposal Trustee was appointed on the same date.
4. 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.
5. On February 7, 2024, the Company applied for and was granted an extension of time to make a proposal to its creditors, with that extension expiring on March 26, 2024.

6. 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.

### **History of the Company and the Project**

7. 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**").
8. 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. As at May 21, 2024, the unsold units in the Prima Project included forty-one (41) vacant residential strata units and two (2) vacant commercial units. There are also eight (8) rented residential units.
9. The Prima Project experienced delays and cost overruns as a result of various issues including a delayed building permit, replacement of the general contractor part-way 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).
10. 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**").
11. Most of the Liens were removed from title to the Prima Project, including the lien claim by the former general contractor, Scott Construction Ltd. ("**Scott Construction**") when the Company posted the sum of approximately \$5.4 million into Court on December 15, 2020, pursuant to a Court Order dated September 23, 2020.
12. Another of the Liens was subsequently discharged when the Company posted the sum of approximately \$438,000 into its solicitor's trust account.
13. 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 Prima Project (the "**Pre-Sale Buyers**") commenced an action against the Company in the B.C. 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 Court issued judgment in the Pre-Sale Litigation, finding that the Company is liable to the plaintiffs for damages totalling \$13,093,900 plus costs (the "**Pre-Sale Judgment**").

14. On March 7, 2024, the Company filed a Notice of Appeal of the Pre-Sale Judgment.
15. In addition to the Liens filed by Scott Construction and Lower Mainland Forming Inc., the Company's parent company Anderson Plaza Holdings Inc. ("**Anderson Plaza**") also claimed to be a secured creditor of the Company. The Company is a wholly owned subsidiary of Anderson Plaza.
16. On or about November 20, 2023, Anderson Plaza issued a demand against the Company for repayment of the loans in the total amount of \$64,092,908 as of November 15, 2023, 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 until November 30, 2023, to pay Anderson Plaza the outstanding debt.
17. The sale of the remaining units in the Prima Project 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 banks as they are facing greater difficulties passing the mortgage stress tests.
18. In addition, although the strata units in the Prima Project have a lower price per square foot than the Company's competitors, the size of the units in the Prima Project are larger than average with higher end finishings, making the units more expensive compared to the Company's competitors.
19. The remaining strata units have been and continue to be listed for sale.

#### **Status Since Filing the NOI**

20. On February 5, 2024, the Proposal Trustee sent out notices to prove claims to all known creditors of the Company. This process has concluded. The following proof of claims were submitted to the Proposal Trustee:

- (a) Anderson Plaza submitted a secured claim in the amount of \$64,092,908 on March 20, 2024 (the “**Plaza Claim**”);
  - (b) the Pre-Sale Buyers submitted an unsecured claim in the amount of \$13,093,900, plus costs as ordered by the Honourable Justice Loo and interest pursuant to the *Court Order Interest Act*, RSBC 1996, c. 79, on April 12, 2024, and amended on May 30, 2024; and
  - (c) Scott Construction submitted a secured claim in the amount of \$5,396,170, and an unsecured claim in the amount of \$51,330 on May 3, 2024.
21. On May 7, 2024, the Proposal Trustee delivered to Anderson Plaza a Notice of Disallowance of Claim, Right to Priority or Security or Notice of Valuation of Claim pursuant to section 135(3) of the BIA, which provided that the Proposal Trustee revised the Plaza Claim as filed against the Company in the amount of \$64,092,908 from a secured claim to an unsecured claim and reduced the amount of the claim to \$46,762,798 (the “**Partial Disallowance**”).
22. On June 6, 2024, Anderson Plaza filed a notice of application seeking to set aside the Partial Disallowance. The hearing of that application has not yet been scheduled.
23. In summary, the Company's assets are comprised mainly of the unsold units in the Prima Project which include the following as at May 14, 2024:
- (a) Forty-one (41) 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 \$44.9 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 \$4.8 million.
24. Other assets of the Company include the following:
- (a) Cash on hand of approximately \$20.6 million as at May 12, 2024;

- (b) An accounts receivable for the pending sale of residential units which are expected to close between May 15, 2024, and August 29, 2024, for net sale proceeds of approximately \$5.2 million (net of GST and before sales commission);
- (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, to the extent any amount of such funds is not required to pay valid lien claims.

25. In summary, the Company's liabilities, as allowed by the Proposal Trustee, include the following:

Creditor	Proof of Claim	Amount	Secured/Unsecured
Anderson Plaza	Yes	\$46,762,798	Unsecured
Pre-Sale Buyers	Yes	\$13,093,900	Unsecured
Scott Construction	Yes	\$5,396,170 \$51,330	Secured Unsecured
Lower Mainland Forming Inc.	No	\$438,000	Secured
Three Road Plaza Inc.	No	\$372,323	Unsecured
Otezs Project Marketing Group Ltd.	No	\$250	Unsecured
Canada Revenue Agency	No	\$250	Unsecured

### The Amended Proposal

- 26. The Company filed a proposal to its creditors on May 10, 2024 (the “**Original Proposal**”).
- 27. On May 21, 2024, the Trustee provided notice of the creditors’ meeting to vote on the Original Proposal to the Office of 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.
28. On May 30, 2024, the Company provided the Trustee with an amended proposal (the "**Amended Proposal**").
29. 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.
30. Generally, the Amended Proposal provides that:
- (a) unsecured creditors of the Company will be paid a pro rata share of the following funds available for distribution:
- (i) the proceeds of the sales from the remaining unsold units of the Project; and
- (ii) any other cash of the Company that is held in its bank account(s), except for any amount(s) the Proposal Trustee holds back from such funds upon any distribution, such amount(s) to be determined by the Trustee in its sole discretion as necessary for the Company to fund its ongoing operations and this Proposal proceeding, including the Proposal Trustee's fees, and
- (b) distribution of the funds described in paragraph (a) above (the "**Funds for Distribution**") shall be made to the unsecured creditors as follows (subject to the Conditions Precedent, as defined in the Amended Proposal, being satisfied or waived):
- (i) within fifteen (15) business days of this Court granting an order approving the Amended Proposal, the Proposal Trustee shall make an initial distribution of the Funds for Distribution then in the Proposal Trustee's possession to the Company's unsecured creditors (the "**Initial Distribution**"); and
- (ii) after the Initial Distribution, after each additional set of sales representing 20% of the Inventory, then, within fifteen (15) business days following the

Proposal Trustee's receipt of the Funds for Distribution from such sales, the Proposal Trustee shall distribute the Funds for Distribution then in the Proposal Trustee's possession to the unsecured creditors.

31. The Proposal Trustee is of the opinion that the Amended Proposal is advantageous for the Company's creditors, and that based on financial information provided by the Company, the creditors should receive a greater distribution under the Amended Proposal than they would in a bankruptcy scenario.
32. Further, it is the opinion of the Proposal Trustee that the terms of the Amended Proposal are fair and reasonable, that the Proposal has been submitted to the Company's creditors in good faith and with due diligence, and that the Company has the financial resources to complete the Amended Proposal in accordance with its terms.

### **Part 3: LEGAL BASIS**

1. The Proposal Trustee relies on:
  - (a) The provisions of the BIA, including sections 58, 59 and 60(5);
  - (b) The *Supreme Court Civil Rules*; and
  - (c) The inherent jurisdiction of this Honourable Court.

### **Approval of the Amended Proposal**

2. In order to satisfy section 59(2) of the BIA, the following three-pronged test must be met:
  - (a) The proposal is reasonable;
  - (b) The proposal is calculated to benefit the general body of creditors; and
  - (c) The proposal is made in good faith.

*Kitchener Frame Limited (Re)*, 2012 ONSC 234 ("**Kitchener**") at para. 19

3. Substantial deference is afforded to the majority vote of creditors and the recommendation of the proposal trustee.

*Kitchener* at para. 21

4. In this matter, the only creditor entitled to vote on the Amended Proposal voted in favour and the Amended Proposal is supported by the Proposal Trustee.
5. Further, the Proposal Trustee is of the view that the Amended Proposal will provide a greater distribution of funds to the unsecured creditors than in a bankruptcy scenario.
6. As such, the Proposal Trustee submits that the Amended Proposal should be approved by this Court.

**Part 4: MATERIAL TO BE RELIED ON**

7. The Proposal Trustee's Report to Creditors dated May 21, 2024;
8. The Report of Proposal Trustee on Proposal dated June 18, 2024;
9. The proceedings and pleadings herein; and
10. Such further and other material as counsel may advise and this Honourable Court may accept.

The applicant estimates that the application will take 30 minutes.

Mr. Justice Stephens is seized of this matter.

TO THE PERSONS RECEIVING THIS NOTICE OF APPLICATION: If you wish to respond to this notice of application, you must, within five (5) business days after service of this notice of application or, if this application is brought under Rule 9-7, within eight (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 two (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).

Norton Rose Fulbright Canada LLP

per: 

Date: 19/Jun/2024

Signature of  
 applicant  lawyer for applicant

Scott Boucher

<p><b>To be completed by the court only:</b></p> <p>Order made</p> <p><input type="checkbox"/> in the terms requested in paragraphs _____ of Part 1 of this notice of application</p> <p><input type="checkbox"/> with the following variations and additional terms:</p> <p>_____</p> <p>_____</p> <p>_____</p> <p>Date: _____</p> <p>Signature of <input type="checkbox"/> Judge <input type="checkbox"/> Master</p>
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**APPENDIX**

**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 matter 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

**Schedule “A”**

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**Service List**

<b><i>Party</i></b>	<b><i>Counsel</i></b>
Proposal Trustee	Deloitte Restructuring Inc.  Jeff Keeble & Chris Knox 410 West Georgia Street Vancouver, BC V6B 0S7  T. 604.235.4197 Email: jkeeble@deloitte.ca cknox@deloitte.ca
Counsel for Proposal Trustee	Norton Rose Fulbright LLP  Kieran E. Siddall and Scott Boucher 1800 – 510 West Georgia Street Vancouver, BC V6B 0M3  T. 604.641.4868 Email: kieran.siddall@nortonrosefulbright.com scott.boucher@nortonrosefulbright.com jayda.mangat@nortonrosefulbright.com nadine.abram@nortonrosefulbright.com

<b>Party</b>	<b>Counsel</b>
Counsel for the Company, Anderson Square Holdings Ltd.	<p>Clark Wilson LLP</p> <p>Nick Carlson &amp; Christopher Ramsay 900 – 885 West Georgia Street Vancouver, BC V6C 3H1</p> <p>T. 604.687.5700 Email: ncarlson@cwilson.com &amp; cramsay@cwilson.com</p> <p>Jamie Landa – Legal Assistant Email : <a href="mailto:jlanda@cwilson.com">jlanda@cwilson.com</a> &amp; cramsay@cwilson.com</p>
Counsel for Anderson Plaza Holdings Inc.	<p>Watson Goepal LLP</p> <p>Jeremy West and Thomas Hanson 1200 – 1075 West Georgia Street Vancouver, BC V6E 3C9</p> <p>T. 604.642.5684 Email: <a href="mailto:jwest@watsongoepal.com">jwest@watsongoepal.com</a> &amp; <a href="mailto:thanson@watsongoepel.com">thanson@watsongoepel.com</a></p> <p>Chelsea Cochrane – Legal Assistant Email: <a href="mailto:ccochrane@watsongoepal.com">ccochrane@watsongoepal.com</a></p>
Counsel for Scott Construction	<p>Borden Ladner Gervais LLP</p> <p>Ryan Laity &amp; Matthew Swanson 1200 – 200 Burrard Street Vancouver, BC V7X 1T2</p> <p>E. rlaity@blg.com &amp; mswanson@blg.com</p>
Counsel for the Pre-Sale Buyers	<p>Yan Muirhead</p> <p>Neriisa Yan 1100 – 736 Granville Street Vancouver, BC V6Z 1G3 T. 604.283.8579 Email: nyan@ymlaw.ca</p>

<b><i>Party</i></b>	<b><i>Counsel</i></b>
Insolvency Counsel for the Pre-Sale Buyers	Nathanson, Schachter & Thompson LLP Peter Reardon Suite 750 – 900 Howe Street Vancouver, British Columbia Canada V6Z 2M4 Email: <a href="mailto:preardon@nst.ca">preardon@nst.ca</a>
Counsel for Lower Mainland Framing Inc.	Jenkins Marzban Logan LLP Michael Dew 900 – 808 Nelson Street Vancouver, BC, V6Z 2H2 Email: <a href="mailto:mdew@jml.ca">mdew@jml.ca</a>

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**NORTON ROSE FULBRIGHT CANADA LLP**

Barristers & Solicitors  
1800 – 510 West Georgia Street  
Vancouver, BC V6B 0M3  
Telephone: (604) 687-6575  
Attention: Scott Boucher

SCB/clf

Matter# 1001278330