

No. B-150075  
Vancouver Registry

IN THE SUPREME COURT OF BRITISH COLUMBIA  
IN BANKRUPTCY AND INSOLVENCY

IN THE MATTER OF THE NOTICE OF INTENTION TO MAKE A PROPOSAL  
OF WILLIAMS MOVING & STORAGE (B.C.) LTD.

NOTICE OF APPLICATION

**Name of applicant:** Williams Moving & Storage (B.C.) Ltd. (the “Company”)

WITHOUT NOTICE

TAKE NOTICE that an application will be made by the Company to Madam Justice Gropper at the courthouse at 800 Smithe Street, Vancouver, British Columbia on Thursday, February 26, 2015 at 11:30 a.m. for the orders set out in Part 1 below.

**Part 1 ORDERS SOUGHT**

1. An order authorizing and approving the Boulevard Addendum (defined below).
2. An order that the Order of Madam Justice Gropper pronounced herein on February 19, 2015 (the “**Prince Rupert Authorization Order**”) be amended:
  - (a) by removing paragraph 2(c) thereof and substituting the following therefor:
    - “(c) the offer to purchase dated February 6, 2015 among MDC, Williams Transfer Limited (“**Transfer**”) and the Company, as amended by the addendum among MDC, Transfer and the Company dated February 25, 2015 (collectively, the “**Boulevard Agreement**”, and collectively with the Kaien Road Agreement and the Metlakatla Road Agreement, the “**Prince Rupert Agreements**”); and
  - (b) by way of the attachment of a copy of each of:
    - (i) the offer to purchase dated February 6, 2015 among Metlakatla Development Corporation (“**MDC**”), Williams Holdings Ltd. (“**Holdings**”) and the Company (the “**Metlakatla Road Agreement**”);

- (ii) the offer to purchase dated February 6, 2015 among MDC, Williams Transfer Ltd. (“**Transfer**”, and collectively with Holdings and the Company, the “**Williams Group**”) and the Company (the “**Original Boulevard Agreement**”); and
- (iii) the Boulevard Addendum,  
to Schedule “B” thereto (in addition to the copy of the Kaien Road Agreement (defined below) which is currently attached).

## Part 2 FACTUAL BASIS

1. On February 19, 2012, the Honourable Justice Madam Gropper granted the Prince Rupert Authorization Order, pursuant to which this Honourable Court, *inter alia*, authorized and approved the sale of the Company’s assets contemplated by:
  - (a) the offer to purchase dated February 6, 2015 between MDC and the Company (the “**Kaien Road Agreement**”);
  - (b) the Metlakatla Road Agreement; and
  - (c) the Original Boulevard Agreement,  
(collectively, the “**Prince Rupert Agreements**”).
2. The Prince Rupert Authorization Order contemplated that copies of the Prince Rupert Agreements would be attached thereto as Schedule “B”. Following entry of the Prince Rupert Authorization Order it was noticed that, through inadvertence, while a copy the Kaien Road Agreement was attached, copies of the Metlakatla Road Agreement and the Original Boulevard Agreement were not attached to the Prince Rupert Vesting Order as Schedule “B” thereto.
3. Copies of all of the Prince Rupert Agreements were included in the First Report to the Court of Deloitte Restructuring Inc. dated February 16, 2015 (the “**First Report**”), which was served on all parties (the “**Interested Parties**”) with an interest in the application pursuant to which the Prince Rupert Authorization Order was made.
4. As noted in the First Report, as part of the Williams Group’s efforts to utilize the tax losses held within the Company, prior to the parties entering into the Prince Rupert Agreements, Holdings and Transfer ‘rolled over’ the beneficial interest in two properties (of which they are the respective beneficial owners) to the Company, pursuant to section 85 of the *Income Tax Act*.
5. Transfer is the registered owner of two properties, located at 1600 and 1651 Prince Rupert Boulevard, Prince Rupert, and more particularly described respectively as:

PID: 005-880-971

Lot A District Lot 251 Range 5 Coast District Plan 9668 Except Plan 11090

(the “1600 Property”)

and

PID: 004-733-100

Lot 1 District Lot 251 Range 5 Coast District Plan 11090

(the “1651 Property”).

6. Following entry of the Prince Rupert Authorization Order, it was noticed that, through inadvertence, the parties had prepared and executed the Original Boulevard Agreement on the basis that the Company was the beneficial owner of the 1651 Property. However, it was actually the beneficial interest in the 1600 Property that was transferred to the Company pursuant to the s. 85 ‘rollover’.
7. In order to address the error, MDC, Transfer and the Company have executed an addendum to the Original Boulevard Agreement, pursuant to which the Original Boulevard Agreement is amended to reflect that the Company is the beneficial owner of the 1600 Property, rather than the 1651 Property, and that it is the Company’s beneficial interest in the 1600 Property that is intended to be sold to MDC.
8. The amendment of the Original Boulevard Agreement pursuant to the Boulevard Addendum has no substantive effect on the interests of the Interested Parties, and accurately reflects the commercial intention of MDC, Transfer and the Company.
9. Deloitte Restructuring Inc., the trustee under the Company’s Notice of Intention to Make a Proposal, consents to the Company entering into the Boulevard Addendum and the sale of the Company’s beneficial interest in the 1600 Property contemplated thereby.

### **Part 3 LEGAL BASIS**

1. The Company relies on Rule 13-1(17) of the *Supreme Court Civil Rules*, section 65.13 of the *Bankruptcy and Insolvency Act* and the Court’s inherent jurisdiction.
2. The omission of the Metlakatla Road Agreement and the Original Boulevard Agreement from Schedule “B” to the Prince Rupert Authorization Order was an error arising from an accidental slip or omission, and as such falls within the scope of Rule 13-1(17).
3. The Company submits that the sale of the Company’s interest in the 1600 Property is a matter that should have been but was not adjudicated on by the Court, for the purposes of Rule 13-1(17).
4. Separate and apart from Rule 13-1(17), the Court has inherent jurisdiction to correct entered orders: *Lochhead v. Lochhead* 2011 BCSC 1662.

**Part 4 MATERIAL TO BE RELIED ON**

1. 1<sup>st</sup> Affidavit of Vicki Tickle sworn February 25, 2015.
2. 1<sup>st</sup> Affidavit of Peter Finley sworn February 25, 2015.
3. All pleadings had and taken herein.
4. Such further and other material as counsel may advise and this Honourable Court

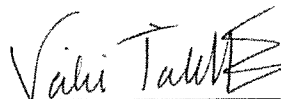
The Company estimates that the application will take 10 minutes.

This matter is not within the jurisdiction of a master. Madam Justice Gropper 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 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) service 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).

Dated: 25-Feb-2015



\_\_\_\_\_  
Signature of Vicki Tickle  
Lawyer for Applicant

***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  Master

The Solicitors for the applicant, Williams Moving & Storage (B.C.) Ltd. are Fasken Martineau DuMoulin LLP, whose office address and address for delivery is 2900 - 550 Burrard Street, Vancouver, BC V6C 0A3 Telephone: +1 604 631 3131 Facsimile: +1 604 631 3232. (Reference: Vicki Tickle/254284.00015)

## 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