



No. B-210198
Estate No. 11-2716201
Province of British Columbia
Bankruptcy Division
Vancouver Registry

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

**IN THE MATTER OF THE PROPOSAL OF
BEAR CREEK CONTRACTING LTD.**

NOTICE OF APPLICATION

Name of applicant: Bear Creek Contracting Ltd. (“BCC”, or the “Applicant”)

To: The Service List, a copy of which is attached hereto as Schedule “A”.

TAKE NOTICE that an application will be made by the Applicant to the Honourable Mr. Justice Walker at the courthouse at 800 Smithe Street, Vancouver, British Columbia at 9:45 a.m. on August 19, 2022 for the orders set out in Part 1 below.

Part 1: ORDER SOUGHT

1. The Applicant seeks an order in substantially the form of draft order attached hereto as Schedule “B” (the “**Proposal Amendment Order**”) amending the Applicant’s amended proposal to its creditors (the “**Proposal**”) with the effect of changing the date on which the Certificate of Completion (as defined below) is to be filed from the date on which all distributions to creditors have been made to the date on which BCC has made all payments to the Proposal Trustee (as defined below) in accordance with the Proposal.

Part 2: FACTUAL BASIS

A. Overview

1. Capitalized terms not otherwise defined herein have the meanings ascribed to them in the amended Proposal (the “**Amended Proposal**”), which is attached as Appendix “A” to the

Fourth Report to Court of the Proposal Trustee, dated August 12, 2022 (the “**Fourth Report**”).

B. Background and Procedural History

2. On February 26, 2021 (the “**Filing Date**”), the Applicant filed a Notice of Intention to Make a Proposal with the Office of the Superintendent of Bankruptcy Canada (the “**OSB**”) pursuant to Section 50.4 of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c B-3 (the “**BIA**”), and Crowe MacKay & Company Ltd. (the “**Proposal Trustee**”) was appointed proposal trustee of BCC.
3. On June 24, 2021, the Applicant filed a proposal to its creditors with the OSB pursuant to subsection 62(1) of the BIA.
4. On July 15, 2021, the Applicant tabled an amended proposal (i.e. the Proposal) at the meeting of the Affected Creditors (the “**Meeting**”) held that day. At the Meeting, the Proposal was approved by the Required Majority of Affected Creditors, with 97.53% in number and 99.09% by value voting in favour. The Proposal was subsequently filed with the OSB.
5. On August 31, 2021, on the application of the Proposal Trustee, the Honourable Mr. Justice Walker granted an order approving the Proposal.

C. Payment to the Proposal Trustee and Distributions to Creditors

6. The Applicant has paid all funds required to be paid by it to the Proposal Trustee under the Proposal, being the sum of \$1,408,473.92.
7. On or about April 4, 2022, the Proposal Trustee notified creditors that the Applicant had fulfilled its obligations as it relates to the funding of the Proposal and that an interim distribution will be issued to all proven Affected Creditors of the estate.
8. On April 28, 2022, the Proposal Trustee issued dividend cheques related to the interim distribution to Affected Creditors, totalling \$966,583.62.

9. As at August 12, 2022, the Proposal Trustee approximately holds \$442,000, being the funds remaining to be distributed to Affected Creditors once certain disputed claims are resolved (collectively, the “**Disputed Claims**”).
10. The conclusion of these proposal proceedings has been delayed due to the resolution of the Disputed Claims. The Proposal currently provides for issuance of the certificate of completion (the “**Certificate of Completion**”) by the Proposal Trustee under section 65.3 of the BIA only after the Proposal Trustee has made all distributions to Affected Creditors as contemplated by the Proposal.
11. BCC has made all payments to the Proposal Trustee which are required to make all distributions to Affected Creditors once the Dispute Claims are resolved. However, due to the terms of the Proposal, BCC is still subject to the proposal process, affecting its ability both to bid on certain projects and to secure new financing.

Part 3: LEGAL BASIS

1. Pursuant to section 65.3 of the BIA, where a proposal is fully performed, the Proposal Trustee shall issue the Certificate of Completion to the Applicant and to the OSB.
2. Notwithstanding the outstanding payment by the Proposal Trustee of the Remaining Distributions, the Applicant has fulfilled its obligations under the Proposal, namely the payment of the required funds to the Proposal Trustee.
3. Accordingly, the Applicant seeks the Proposal Amendment Order to vary the terms of the Proposal, such that the Proposal Trustee may issue the Certificate of Completion now so as to allow the Applicant to emerge from these proposal proceedings.
4. On the application of the debtor or the proposal trustee, and on notice to all proven creditors and the OSB, the court may grant an order amending a court approved proposal.

***Barrigar (Re)*, 2012 ONSC 962 (“Barriger”) at para. 3.**

5. BCC's application is supported by the Proposal Trustee, as the only outstanding matter in these proposal proceedings is payment by the Proposal Trustee of the Remaining Distributions.
6. The Applicant submits that the Proposal Amendment Order should be granted as the Applicant has performed all of its obligations under the Proposal and the proposed amendment is warranted in the circumstances. The filing of the Certificate of Completion at this time is practical and in no way prejudicial to any of the Applicant's creditors.

Part 4: MATERIAL TO BE RELIED ON

1. The Fourth Report to Court of the Proposal Trustee, dated August 12, 2022;
2. The Fifth Affidavit of Ian Munson, yet to be sworn; and
3. Such further and other material as counsel may advise and as this court deems admissible.

The Applicant estimate that the application will take **10 minutes**.

- This matter is NOT within the jurisdiction of a master.

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).

Dated: 12-Aug-2022

DocuSigned by:
Mishaal Gill
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Signature of Lawyer for Applicant
Mishaal Gill

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 are Fasken Martineau DuMoulin LLP, whose office address and address for delivery is 550 Burrard Street, Suite 2900, Vancouver, BC V6C 0A3 Telephone: +1 604 631 3131 Facsimile: +1 604 631 3232. (Reference: KXJ/322707.00001)

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
- OTHER

SCHEDULE "A"

Service List

No. B-210198
Estate No. 11-2716201
Province of British Columbia
Bankruptcy Division
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 BEAR CREEK CONTRACTING LTD.**

SERVICE LIST
(Current to: July 15, 2021)

<p>Fasken Martineau DuMoulin LLP 2900 – 550 Burrard Street Vancouver, BC V6C 0A3</p> <p>Attention: Kibben Jackson Glen Nesbitt</p> <p>Tel: 604.631.4786 (K. Jackson) 604.631.4833 (G. Nesbitt)</p> <p>Email: kjackson@fasken.com gnesbitt@fasken.com svolkow@fasken.com misobe@fasken.com</p> <p><i>Counsel for Bear Creek Contracting Ltd.</i></p>	<p>Bear Creek Contracting Ltd.</p> <p>Attention: Ian Munson Savanna Noel</p> <p>Email: imunson@bearcreekgroup.onmicrosoft.com snoel@bearcreekgroup.onmicrosoft.com</p> <p><i>Bear Creek Contracting Ltd.</i></p>
<p>Cassels Brock & Blackwell LLP 2200 – 885 West Georgia Street Vancouver, BC V6E 3C8</p> <p>Attention: H. Lance Williams Forrest Finn</p> <p>Tel: 604.691.6112 (L. Williams) 604.630.5455 (F. Finn)</p> <p>Email: lwilliams@cassels.com ffinn@cassels.com sdanielisz@cassels.com</p> <p><i>Counsel for Proposal Trustee</i></p>	<p>Crowe MacKay & Company Ltd. 1100 – 1177 West Hastings Street Vancouver, BC V6E 4T5</p> <p>Attention: Derek Lai</p> <p>Tel: 604.697.5257</p> <p>Email: Derek.Lai@crowemackay.ca</p> <p><i>Proposal Trustee</i></p>

<p>Clyde & Co LLP Suite 700 – 555 Burrard Street Vancouver, BC V7X 1M8</p> <p>Attention: Seema Lal</p> <p>Tel: 604.684.0727</p> <p>Email: seema.lal@clydeco.ca jc.roberge@clydeco.ca</p> <p><i>Counsel for Gitga'at Matrix Workforce Services Ltd.</i></p>	<p>Lawson Lundell LLP Suite 1600 Cathedral Place 925 West Georgia Street Vancouver, BC V6C 3L2</p> <p>Attention: Thomas D. Boyd William L. Roberts Marko Vesely Craig A.B. Ferris, Q.C.</p> <p>Tel: 604.631.9132 (T. Boyd)</p> <p>Email: tboyd@lawsonlundell.com wroberts@lawsonlundell.com mvesely@lawsonlundell.com cferris@lawsonlundell.com</p> <p><i>Counsel for Pretium Exploration Ltd.</i></p>
<p>Daniel Le Dressay #1010 – 736 Granville Street Vancouver, BC V6Z 1G3</p> <p>Tel: 604.739.0017</p> <p>Email: dan@ledressay.com</p> <p><i>Counsel for More Core Diamond Drilling Services Ltd.</i></p>	<p>McQuarrie Hunter LLP 1500 – 13450 102 Avenue Surrey, BC V3T 5X3</p> <p>Attention: Douglas J. Conolly Ashley Dhaliwal</p> <p>Tel: 604.580.7066</p> <p>Email: dconolly@mcquarrie.com adhaliwal@mcquarrie.com asalak@mcquarrie.com</p> <p><i>Counsel for Blue Max Drilling Inc.</i></p>
<p>Ministry of Attorney General (British Columbia) Legal Services Branch PO Box 9290 Stn Prov Govt Victoria, BC V8W 9J7</p> <p>Email: AGLSBRRevTaxInsolvency@gov.bc.ca Aaron.Welch@gov.bc.ca Cindy.Cheuk@gov.bc.ca</p> <p><i>Secured Creditor</i></p>	<p>Northbridge General Insurance Corporation Societe D'Assurance Generale Northbridge 105 Adelaide Street West Toronto, ON M5H 1P9</p> <p>Attention: Iqbal Bhinder James Choleras</p> <p>Email: iqbalbhinder@unitedsurety.ca James.Choleras@nbfc.com info@nbfc.com</p> <p><i>Secured Creditor</i></p>

<p>Accord Small Business Finance Corp. c/o Alexander Holburn Beaudin & Lang LLP 2700 – 700 West Georgia Street Vancouver, BC V7Y 1B8</p> <p>Attention: David Garner James Jang Jennifer Moir</p> <p>Tel: 604.484.1708 (D. Garner)</p> <p>Email: dgarner@ahbl.ca jjang@AccordFinancial.com jmoir@AccordFinancial.com</p> <p><i>Senior Secured Creditor</i></p>	<p>Arundel Capital Corporation Suite 420, 5119 Elbow Drive SW Calgary, AB T2V 1H2</p> <p>Attention: Vik Ghosh</p> <p>Fax: 403.287.9847</p> <p>Email: vghosh@arundelcapital.com</p> <p><i>Equipment Financers</i></p>
<p>Current Financial Corp. Tower 1 2020, 10060 Jasper Avenue Edmonton, AB T5J 3R8</p> <p>Attention: Maya Winfrey</p> <p>Fax: 780.665.4901</p> <p>Email: mwinfrey@currentfinancial.com</p> <p><i>Equipment Financers</i></p>	<p>Dynamic Capital Equipment Finance Inc. 208, 1824 Gordon Drive Kelowna, BC V1Y 0E2</p> <p>Attention: Dustin White</p> <p>Fax: 877.521.9273</p> <p>Email: dwhite@dynamic-capital.ca</p> <p><i>Equipment Financers</i></p>
<p>Ford Credit Canada Company PO Box 2400 Edmonton, AB T5J 5C7</p> <p>Tel: 877.636.7346 Fax: 780.443.5352</p> <p>Email: n/a</p> <p><i>Equipment Financers</i></p>	<p>Terrace Totem Ford Sales Ltd. 4631 Keith Avenue Terrace, BC V8G 1K3</p> <p>Tel: 855.908.2929 Fax: n/a</p> <p>Email: Mitch@totemford.net</p> <p><i>Equipment Financers</i></p>
<p>DLA Piper (Canada) LLP Suite 2800 – 666 Burrard Street Vancouver, BC V6C 2Z7</p> <p>Attention: Jeffrey Bradshaw Taryn Urquhart</p> <p>Tel: 604.643.2941 (J. Bradshaw) 604.642.2942 (T. Urquhart)</p> <p>Email: jeffrey.bradshaw@dlapiper.com taryn.urquhart@dlapiper.com</p> <p><i>Counsel for John Deere Financial</i></p>	<p>Burrard Law LLP 1320 – 355 Burrard Street Vancouver, BC V6C 2G8</p> <p>Attention: David Plunkett</p> <p>Tel: 604.235.3205</p> <p>Email: dplunkett@burrardlaw.com</p> <p><i>Counsel for Pomerleau Inc.</i></p>

Rick Bandstra

Bandstra Transportation Systems
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SCHEDULE "B"

Proposal Amendment Order

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

IN THE MATTER OF THE PROPOSAL OF
BEAR CREEK CONTRACTING LTD.

ORDER MADE AFTER APPLICATION

BEFORE)
) THE HONOURABLE)
) MR. JUSTICE WALKER) AUGUST 19, 2022
)
)

ON THE APPLICATION OF Bear Creek Contracting Ltd. (the “**Applicant**”), coming on for hearing at Vancouver, British Columbia on this day, and on hearing Mishaal Gill, counsel for the Applicant, and those counsel listed in Schedule “A” attached hereto; AND UPON READING the materials filed, including the Proposal Trustee’s Fourth Report to Court;

THIS COURT ORDERS that:

1. The time for service of the Notice of Application filed August 12, 2022 and supporting materials is hereby abridged such that the Notice of Application is properly returnable today and service thereof upon any interested party, other than those parties on the service list maintained by Crowe MacKay & Company Ltd. in its capacity as proposal trustee of the Applicant in this proceeding, be and is hereby dispensed with.
2. Section 9.3 of the Applicant’s amended proposal to its creditors, approved by this court on August 31, 2021, is deleted and replaced to read as follows:

9.3 Certificate of Completion

Upon the Company making all monetary payments that it is required to make to the Proposal Trustee under this Proposal, the Company will be deemed to have satisfied the terms of this Proposal and the Proposal Trustee will

promptly deliver a certificate pursuant to section 65.3 of the BIA to the Company and the Official Receiver.

3. Endorsement of this order by counsel appearing, other than counsel for the Applicant, is hereby 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 Mishaal Gill
Lawyer for the Applicant

BY THE COURT

REGISTRAR

SCHEDULE "A"

List of Counsel Appearing

Name of Party	Counsel Name
Crowe MacKay & Company Ltd., in its capacity as Proposal Trustee	Lance Williams

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PROPOSAL OF
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ORDER MADE AFTER APPLICATION

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Counsel: Kibben Jackson
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