



Estate No. 11-2831082
Court No. B-220235
Vancouver Registry

In the Supreme Court of British Columbia

IN BANKRUPTCY AND INSOLVENCY

IN THE MATTER OF THE *BANKRUPTCY AND INSOLVENCY ACT*,
R.S.C. 1985, C. B-3, AS AMENDED

AND

**IN THE MATTER OF THE NOTICE OF INTENTION TO MAKE A
PROPOSAL OF DRAKE TOWING (2018) LTD.**

NOTICE OF APPLICATION

Name(s) of Applicant(s): Drake Towing (2018) Ltd. ("Drake")

To: Service List

TAKE NOTICE that an application will be made by the applicant to the presiding judge or master at the courthouse at 800 Smithe Street, Vancouver, British Columbia on Wednesday, June 15, 2022 at 09:45 a.m. for the order(s) set out in Part 1 below.

To be heard by MS Teams or by telephone. Counsel for the applicants Martin Sennott, Boughton Law at #700-595 Burrard Street, Vancouver, BC V7X 1S8, (604)-647-4106; msennott@boughtonlaw.com.

Part 1: ORDER(S) SOUGHT

1. Any time limits be abridged so that this application and its supporting materials may be heard.
2. Extending the stay of proceedings and the time for the filing of a proposal by the Applicants to July 29, 2022.
3. Granting an Administration Charge in favour of the Proposal Trustee, counsel to the Proposal Trustee and counsel to the Debtor in the amount of \$150,000.00.

4. Approving the interim financing of Colleen Sauer and Harvey Sauer (in such capacity, the “Interim Lender”), substantially in accordance with the terms of the term sheet (the “Interim Financing Agreement”); and granting a DIP priority charge over the assets of the Applicants in favour of the Interim Lender for all amounts owing under the Interim Financing Agreement limited to \$310,000.00 (the “Interim Financing Charge”).
5. Granting a Directors Charge against the Property in a maximum amount of \$65,000 in favour of the directors and officers of Drake, as security for Drake’s obligation to indemnify such directors and officers for obligations and liabilities which they may incur in such capacities after the commencement of these proceedings, except to the extent that such obligation or liability was incurred as a result of the director’s or officer’s gross negligence or wilful misconduct;
6. Such further and other relief as counsel may advise and this Honourable Court may deem just.

Part 2: FACTUAL BASIS

General Background

1. Drake is a British Columbia based corporation that was incorporated under the *British Columbia Business Corporations Act* on May 29, 2018.
2. Drake’s directors are Ms. Abosede Omolara Onaba, Mr. Mark Jonathan Onaba, and Mr. Sauer. It is anticipated that the Onabas will be removed as directors and that Colleen Sauer will be appointed.
3. Drake acquired, among other things, the assets and operations of Drake Towing Ltd. in or around summer of 2018 for the sum of about \$2.6 million. Until recently Ms. Onaba and Mr. Onaba (collectively, the “Onabas”) managed the day-to-day operations of Drake.
4. Financial reporting and management by the Onabas was lacking, and recently due to demands by the shareholders and other investors, the Onabas withdrew as management and the Sauers have taken that role to date.
5. Shareholder issues between the Onabas and other shareholders remain, but negotiations are ongoing with the intent that the Onabas will not continue as shareholders.
6. Upon implementing new accounting systems and software, the Sauers became aware that Drake was significantly indebted to the Canada Revenue Agency (the “CRA”) for unpaid source deductions in the approximate amount of \$600K.

7. The Sauers discovered amounts owing pursuant to employment legislation and the BC Health Tax. In addition, the Sauers discovered that the Onabas sold vehicles to third parties without obtaining security releases from the secured lender to Drake, the Bank of Montreal.
8. The Sauers determined that Drake was insolvent, faced an impending liquidity crisis, and was unable to meet its obligations as they generally became due. Accordingly, on or around May 16, 2022, the Directors passed a Resolution to file the NOI under Form 33 pursuant to section 50.4(1) of the BIA, with Crowe MacKay and Company Ltd. acting as Proposal Trustee.
9. Since the NOI, Drake has worked diligently to address all creditors, including CRA, BC Health Tax, BMO, Petro Canada, and its employees. Drake has also continued to implement the new accounting methods and software, and also continued operations.
10. Pursuant to section 50.4(8) of the BIA, the initial stay period in the proposal proceedings is from May 17, 2022 to June 16, 2022

Part 3:

Creditor History

- 1, Drake has three secured creditors; the Bank of Montreal, Gold Key Sales & Lease and Drake Towing Ltd., with a Vendor Take back loan and security.
2. The unsecured creditors will be set out in the Proposal Trustee's report, to be filed by the Proposal Trustee in connection with this motion (the "First Report") .

Interim Financing

1. In accordance with the cashflows prepared in consultation with the Proposal Trustee, the Interim Lender has provided a commitment to fund the require interim capital needs of Drake on a tranche basis. The commitment is subject to an interim financing charge and the basic terms are as follows:
 - (a) Principle - \$310,000.00 CDN.
 - (b) Interest - 11% per annum, calculated monthly.
 - (c) Draws – minimum of \$5,000.00 upon three days notice from the borrower.
 - (d) Use of funds- working capital, with specific terms connecting use to approved cashflow projections.

2. The proposed interim financing charge will rank only behind the proposed Administration Charge.
3. If the interim financing is approved by this court, Drake intends to continue the towing operations and work towards bringing Drake into a position where it will be able to make a viable proposal to creditors.

Administration Charge

4. There are a number of financial and operational issues for which Drake will require the expertise of legal counsel, and the Proposal Trustee during the Proposal proceedings.
5. Drake is seeking a first ranking charge in the maximum amount of \$100,000.00 to secure the fees and disbursements of legal counsel and the Proposal Trustee and its legal counsel and, if necessary, those fees that would be incurred in connection with those services rendered to Drake both before and after the filing of the NOI (the "Administration Charge").
6. The Administration Charge is necessary in order to retain the professional assistance required to plan a proposal for Drake's creditors, including any necessary negotiations and document preparations.
7. Drake has worked with the Proposal Trustee and legal counsel to estimate the proposed quantum of the Administration Charge and believes it to be reasonable and appropriate in view of the services to be provided by the beneficiaries of the Administration Charge.
8. The Proposal Trustee will set out its support of the quantum and appropriateness of the proposed Administration charge the First Report.

Extension of Stay of Proceedings

9. The expiry of the initial 30 day stay of proceedings from May 16, 2022, is June 16, 2022. Extending the stay of proceedings by an additional 45 days to July 29, 2022, will allow Drake to pursue a viable proposal for their creditors.
10. No creditors will be materially prejudiced by an extension of the stay of proceedings to July 29, 2022. Based on the cash flows prepared by Drake, with the assistance of the Proposal Trustee, the proposed Interim Financing will give Drake sufficient liquidity to cover any restructuring costs throughout the proposed extension of the stay of proceedings.

11. Drake has been acting in good faith and with due diligence to address the ongoing operations, obtaining the interim financing, and bringing this motion.
12. Currently, the Directors are volunteer and are not paid for their services as directors. However, the directors have requested a Director's charge as security for Drake's indemnification for possible liabilities which they may incur in their capacity as directors.
13. The Proposal Trustee supports the requested stay extension and other relief sought on this motion, and will be setting out the reasons for its support in the First Report.

Part 4: LEGAL BASIS

Extension of Stay of Proceedings and time to file a proposal

1. Pursuant to Section 50.4(9) of the BIA, a debtor in a proposal proceeding may, before the expiry of the time to file a proposal, apply to the court for an order extending the time to file a proposal, by a maximum of 45 days, and the court may extend the time if it is satisfied that:
 - (a) the insolvent person has acted, and is acting, in good faith and with due diligence;
 - (b) the insolvent person would likely be able to make a viable proposal if the extension being applied for were granted; and,
 - (c) no creditor would be materially prejudiced if the extension being applied for were granted.
2. Drake has acted in good faith and with due diligence as set out above to navigate to a position to make this application with an intention of further improving its positions to the point where a viable proposal can be made to its creditors.
3. Drake intends to stabilize accounting methods, continue operations, look for efficiency gains in operation, and develop a plan for a proposal to its creditors in the extended time requested.

Interim Financing (DIP)

4. Section 50.6 of the BIA vests the Court with the authority to grant an interim financing charge in priority to any secured creditor of the application on notice to the secured creditors who are likely to be affected by the security or charge.

5. In deciding whether to make an order under section 50.6, the Court is to consider, among other things:
 - (a) the period during which the applicant is expected to be subject to proceedings under the Act;
 - (b) how the applicant's business and financial affairs are to be managed during the proceedings;
 - (c) whether the applicant's management has the confidence of its major creditors;
 - (d) whether the loan would enhance the prospects of a viable proposal being made in respect of the applicant;
 - (e) the nature and value of the applicant's property;
 - (f) whether any creditor would be materially prejudiced as a result of the security or charge;
 - (g) the trustee's report referred to in paragraph 50(6)(b) or 50.4(2)(b), as the case may be.
6. Drake intends to stabilize accounting methods and software so that it can properly plan and present a proposal to creditors.
7. The Interim Financing Charge is to rank in priority to all other charges and security interests in Drake's property.
8. The Proposal Trustee supports the proposed interim financing on the terms contained in the commitment letter presented.

Administration Charge

9. The Administration Charge is sought to give the companies access to legal and accounting advice to allow Drake to pursue a viable proposal to all creditors.
10. The BIA confers on the court the statutory jurisdiction to grant an administration charge. Specifically, section 64.2 provides as follows:

64.2(1) Court may order security or charge to cover certain costs. On notice to the secured creditors who are likely to be affected by the security or charge, the court may make an order declaring that all or part of the property of a person in respect of whom a

notice of intention is filed under section 50.4 or a proposal is filed under subsection 62(1) is subject to a security or charge, in an amount that the order considers appropriate, in respect of the fees and expenses of (a) the trustee, including the fees and expenses of any financial, legal, or other experts engaged by the trustee in the performance of the trustee's duties; (b) any financial, legal, or other experts engaged by the person for the purpose of proceedings under this Division; and, (c) any financial, legal, or other experts engaged by any other interested person if the court is satisfied that the security or charge is necessary for the effective participation of that person in proceedings under this Division.

64.2(2) Priority. The court may order that the security or charge rank in priority over the claim of any secured creditor of the person.

11. Administrative charges have previously been approved in BIA proposal proceedings, where, as in the present case, the participation of insolvency professionals is necessary to ensure a successful proceeding under the BIA
12. The Administration Charge is to rank in priority to all other charges and security interests in the companies property except the Interim Financing/DIP Charge.

Director's Charge

13. The Directors' Charge is sought to secure the Debtor's indemnification for possible liabilities which may be incurred by the Debtor's director and officers, whose continued participation during these proceedings is critical to the Debtor's successful restructuring.
14. The Directors' Charge is to rank in priority to all other charges and security interests in the Debtor's Property except the Administration Charge and the DIP Charge.
15. Section 64.1 of the BIA confers on the Court the statutory jurisdiction to grant the Directors' Charge:

64.1(1) Security or charge relating to director's indemnification: On application by a person in respect of whom a notice of intention is filed under section 50.4 or a proposal is filed under subsection 62(1) 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 property of the person is subject to a security or charge - in an amount that the court considers appropriate - in favour of any director or officer of the person to indemnify the director or officer against obligations and liabilities that they may incur as a director or officer after the filing of the notice of intention or the proposal, as the case may be. 64.1(2) Priority: The court may order that the security or charge rank in priority over the claim of any secured creditor of the person.

64.1(3) Restriction - indemnification insurance: The court may not make the order if in its opinion the person could obtain adequate indemnification insurance for the director or officer at a reasonable cost.

64.1(4) Negligence, misconduct or fault: The court shall make an order declaring that the security or charge does not apply in respect of a specific obligation or liability incurred by a director or officer if in its opinion the obligation or liability was incurred as a result of the director's or officer's gross negligence or willful misconduct or, in Quebec, the director's or officer's gross or intentional fault.

Part 5: MATERIAL TO BE RELIED ON

1. Affidavit of #1 Harvey Sauer sworn June 13, 2022
2. Proposal Trustee's First Report to the Court
3. Such further and other material as counsel may advise and this Honourable Court permits.

The applicant(s) estimate(s) that the application will take 2 Hours.

This matter is within the jurisdiction of a master.

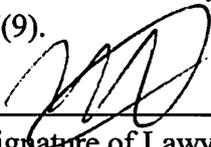
This matter is not within the jurisdiction of a master.

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 or 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: June 13, 2022



Signature of Lawyer for Applicant
Martin C. Sennott

This NOTICE OF APPLICATION is delivered by Martin C. Sennott of Martin C. Sennott Law Corporation on behalf of Boughton Law Corporation, whose place of business and address for delivery is PO Box 49290, 700 - 595 Burrard Street, Vancouver, BC V7X 1S8, 604-687-6789. (File No. 95212.1)

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

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.