



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 July 28, 2022 at 09:45 a.m. for the order(s) set out in Part 1 below.

**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 September 12, 2022.
3. Such further and other relief as counsel may advise and this Honourable Court may deem just.

**Part 2: FACTUAL BASIS**

Litigation Background

1. On June 15, 2022, Justice MacIntosh granted the following orders:
  - (a) interim financing commonly known as DIP financing:

- (b) an administrative charges; and
  - (c) an extension of the stay of proceedings and time for the filing of a proposal to July 29, 2022.
2. The July 29, 2022 extension was the first extension provided in this matter.

### General Background

3. Drake is a British Columbia based corporation that was incorporated under the *British Columbia Business Corporations Act* on May 29, 2018.
4. Drake's directors are Ms. Abosede Omolara Onaba, Mr. Mark Jonathan Onaba, and Mr. Sauer.
5. 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.
6. 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.
7. Shareholder issues between the Onabas and other shareholders remain, however the company is moving towards a resolution by way of a proposal to creditors or a sale of assets.
8. 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.
9. 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.
10. 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.
11. 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.

### Creditor History

12. 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.
13. The unsecured creditors are set out in the Proposal Trustee's first report, (the "First Report"). A second report is provided to describe the activities since June 15, 2022 (the "Second Report").

### Extension of Stay of Proceedings

14. The expiry of the initial 30 day stay of proceedings from May 16, 2022 was June 16, 2022. Extending the stay of proceedings by an additional 45 days to September 12, 2022, will allow Drake to pursue a viable proposal for their creditors or a sale of the assets.
15. No creditors will be materially prejudiced by an extension of the stay of proceedings of 45 days to September 12, 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.
16. Drake has been acting in good faith and with due diligence to address the ongoing operations, obtaining the interim financing, and bringing this motion.
17. Drake continues to work with its stakeholders to stabilize cash flows.
18. Drake has been actively dealing with discharges of security related to the sale of motor vehicles with the knowledge of the Bank of Montreal ("**BMO**").
19. Drake, with the assistance of the trustee has been developing proposals for the consideration of and with the Bank of Montreal.
20. Drake has paid its post-filing obligations.
21. Drake has been working with the Proposal Trustee and continues to evaluate cash flows for the purposes of:
  - (a) stabilizing expenses, which predominantly includes eliminating unpermitted expenses;
  - (b) reviewing its assets and accounts receivable;
  - (c) starting negotiations and discussions related to a potential management buyout and with possible investors for the potential purchase of the company; and

- (d) evaluating cash flows such that payment to priority creditors, including the Canada Revenue Agency ("CRA") can be assessed for payment from their deemed trust claim; and
- (e) assessing ways to increase its account receivables and cash flow.

22. 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 3: 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 continue to stabilize accounting methods, continue operations, look for efficiency gains in operation, and develop a plan for a proposal to its creditors or a sales process in the extended time requested.

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

- 1. Affidavit #1 of Harvey Sauer sworn June 13, 2022;
- 2. Proposal Trustee's First Report to the Court.
- 3. Proposal Trustee's Second Report to the Court.

4. Such further and other material as counsel may advise and this Honourable Court permits.

The applicant(s) estimate(s) that the application will take 20 minutes.

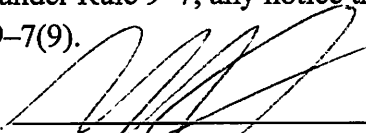
This matter is within the jurisdiction of a master.

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: July 21, 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:

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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.