



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.

**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 presiding judge **by telephone** at the courthouse at 800 Smithe Street, Vancouver, British Columbia at 9:45 a.m. on May 12, 2021 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” extending the time for filing a proposal pursuant to subsection 50.4(9) of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3 (“**BIA**”) to 11:59 p.m., Vancouver time, on June 25, 2021 (the “**Second Extension**”).

**Part 2: FACTUAL BASIS**

**A. Overview**

1. Capitalized terms used and not defined herein shall have the meanings given to them in the Notice of Application filed by the Applicant in these proceedings (the “**Proposal Proceedings**”) on March 9, 2021 (the “**Initial Relief Application**”).

2. Since the Filing Date, the Applicant has worked diligently to: (a) stabilize operations; (b) market and sell its redundant assets; and (c) develop a viable proposal to its creditors. While the Applicant has made significant progress towards filing a proposal, it requires additional time to do so. It anticipates being in a position to do so by June 25, 2021.

## **B. Procedural History**

3. On February 26, 2021 (the “**Filing Date**”), the Applicant filed a Notice of Intention to Make a Proposal (the “**NOI**”) with the Office of the Superintendent of Bankruptcy Canada pursuant to Section 50.4 of the BIA, and Crowe MacKay & Company Ltd. (in such capacity, the “**Proposal Trustee**”) was appointed trustee of the Applicant in relation to these Proposal Proceedings.
4. On March 15, 2021, the Honourable Mr. Justice Punnett granted an order (the “**Initial Relief Order**”) whereby, among other things:
  - (a) the Proposal Trustee, its counsel, and counsel for the Applicant were granted the benefit of a charge on the Applicant’s assets, property and undertakings, such charge not exceeding the aggregate amount of \$200,000 (the “**Administration Charge**”), as security for their respective fees and disbursements incurred in relation to these Proposal Proceedings;
  - (b) the Applicant was permitted to market and dispose of redundant or non-material assets (i.e. the Redundant Equipment) in accordance with the provisions set forth in the Initial Relief Order;
  - (c) the Applicant was permitted to make certain payments on account of certain pre-filing obligations (the “**Pre-filing Amounts**”); and
  - (d) the time for filing a proposal pursuant to subsection 50.4(9) of the BIA was extended to May 12, 2021.
5. On March 31, 2021, on the application of the Proposal Trustee in British Columbia Supreme Court Action No. KEL-S-S-120384 (the “**Burnco Action**”), Mr. Justice Milman

granted an order whereby, among other things, the Registrar of Land Titles was directed to discharge from title to certain parcels of land owned by the Applicant (i.e. the Warehouse and Vacant Parcels) judgments that had been granted in favour of Burnco in the Burnco Action (collectively, the “**Burnco Judgments**”).

6. On April 6, 2021, Mr. Justice Punnett granted an order whereby, among other things:
  - (a) the stay of proceedings arising in these Proposal Proceedings pursuant to Section 69(1) of the BIA (the “**Stay**”) would no longer operate in respect of the Pretium Claim and certain related actions, but only to the extent necessary to permit such actions to continue unimpeded by the Stay; and
  - (b) these Proposal Proceedings were transferred from the Prince Rupert Registry to the Vancouver Registry for all purposes.

**C. Activities of the Applicant Since the Initial Relief Order**

7. Since the Initial Relief Order, the Applicant has:
  - (a) stabilized and continued operations on a reduced basis;
  - (b) sold Redundant Equipment and collected sale proceeds totalling approximately \$72,400, while continuing to market the remaining Redundant Equipment for sale;
  - (c) paid the Matrix Payment to Matrix pursuant to its agreements with Northbridge and Matrix (i.e. the Settlement Agreements);
  - (d) continued to work with its construction litigation counsel to pursue various claims, including the Pretium Claim; and
  - (e) worked with the Proposal Trustee to develop a viable proposal, including exchanging a draft of same.<sup>1</sup>

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<sup>1</sup> Affidavit #2 of Ian Munson, made May 6, 2021 (“**Munson #2**”), para. 5.

8. The Applicant, with the assistance of the Proposal Trustee, is working on finalizing a 15-week cash flow statement (the “**Updated Cash Flow Forecast**”) covering the period from May 10 through August 22, 2021.<sup>2</sup> The Updated Cash Flow Forecast will be appended to the Second Report of the Proposal Trustee to be filed in these Proposal Proceedings (the “**Second Report**”).
  
9. As will be reported in the Second Report, the Applicant has not required any interim financing to date, in part due to the following:
  - (a) Bear Creek Construction Ltd. (“**BCK**”), a related company, has continued to pay certain obligations of BCC in accordance with the parties’ arrangements, thereby reducing the amount owing from BCK to BCC from \$940,195.86 as at the Filing Date to approximately \$438,853.42;
  - (b) the Accord Group has continued to make the Applicant’s operating lines available;
  - (c) as a result of the discharge of the Burnco Judgments from the Warehouse and Vacant Parcels, the Accord Group released a cash deposit in the amount of the Burnco Amount (approximately \$400,000) onto the Credit Facilities in order to make such funds available for BCC’s use; and
  - (d) Antler Creek Contracting Ltd. (“**Antler Creek**”) has paid to the Applicant the sum of \$289,945.90 on account of the amount owing from Antler Creek to BCC as at the Filing Date, a portion of which funds were used by BCC to pay Canada Revenue Agency for statutory liabilities relating to source deductions, not including penalties and interest.<sup>3</sup>
  
10. Depending on certain factors, the Applicant may require interim financing during the period of the Second Extension, the amount and timing of which will need to be determined should the need for interim financing become apparent.

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<sup>2</sup> Munson #2, para. 6.

<sup>3</sup> Munson #2, para. 7.

**D. The Applicant's Need for the Second Extension**

11. Pursuant to the Initial Relief Order, the Applicant will be deemed to have been assigned into bankruptcy at midnight on May 12, 2021 if the Second Extension is not granted.
12. Prior to and since the Filing Date, the Applicant has acted in good faith and with due diligence in order to advance its restructuring. Indeed, all of the Applicant's activities in these Proposal Proceedings (and others) have been undertaken so as to put itself in a position itself to make a viable proposal to its creditors.
13. In particular, the Applicant: (a) obtained the Initial Relief Order in part to enable it to sell the Redundant Equipment during these Proposal Proceedings further to paying down secured creditors (i.e. the Equipment Financers) and retrenching and focussing on the Core Business; and (b) lifted the Stay in order to continue pursuing the Pretium Claim; and (c) has taken steps to secure financing from various sources in order to continue operations and fund these Proposal Proceedings.
14. The Second Extension is required to permit the Applicant additional time to finalize its proposal, which is currently in draft. The proposal, in essence, contemplates payments to unsecured creditors from the proceeds received by BCC from the Pretium Claim. There are details yet to be worked out, including in relation to the Proposal Trustee's analysis of BCC's financial position and ultimate recommendations. While sorting out these matters will take additional time, the Applicant expects that a viable proposal can be filed by June 25, 2021.<sup>4</sup>
15. The Applicant is not aware of any creditor that would be materially prejudiced if the Second Extension were granted, and the Proposal Trustee supports the Applicant's application for the Second Extension.<sup>5</sup>

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<sup>4</sup> Munson #2, para. 9.

<sup>5</sup> Munson #2, para. 10.

**Part 3: LEGAL BASIS**

1. The Applicant seeks the Second Extension to file a proposal in these proceedings to June 11, 2021.
2. Subsection 50.4(9) of the BIA provides that this court may grant an insolvent person an extension (or a further extension, as the case may be) of time to file a proposal for a period not exceeding 45 days if 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 applied for were granted; and
  - (c) no creditor would be materially prejudiced if the extension applied for were granted.
3. The Applicant has acted in good faith and with due diligence both prior to the commencement of, and during these Proposal Proceedings. It has taken concrete steps to position itself to make a viable proposal, as described above, and is working with its counsel and the Proposal Trustee to finalize a proposal to its creditors that is currently in draft.
4. In light of the foregoing, the likelihood of a viable proposal being formulated would be enhanced if the Second Extension were to be granted.

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

1. Affidavit #2 of Ian Munson, made May 6, 2021;
2. Second Report of the Proposal Trustee, to be filed;
3. Affidavit #1 of Ian Munson, made March 9, 2021 (body only);
4. First Report of the Proposal Trustee, filed March 9, 2021 (body only);

- 5. Notice of Application, filed March 9, 2021;
- 6. Order Made After Application, granted March 15, 2021;
- 7. Order Made After Application, granted March 31, 2021 (KEL-S-S-120384);
- 8. Order Made After Application, granted April 6, 2021; and
- 9. Such further and other material as counsel may advise and as this court deems admissible.

The Applicant estimate that the application will take **15 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: 06-May-2021

DocuSigned by:  
  
 4A0B70DD412F45F...  
 Signature of Lawyer for Applicant  
 For: Kibben Jackson

***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 <input type="checkbox"/> Judge <input type="checkbox"/> 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

**SCHEDULE "A"**

**SERVICE LIST**

Province of British Columbia  
Bankruptcy Division  
Prince Rupert Registry  
Court No. PRR-S-B-11725  
Estate No. 11-2716201

**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: April 1, 2021)

<p><b>Fasken Martineau DuMoulin LLP</b> 2900 – 550 Burrard Street Vancouver, BC V6C 0A3</p> <p><b>Attention: Kibben Jackson Glen Nesbitt</b></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><b>Bear Creek Contracting Ltd.</b></p> <p><b>Attention: Ian Munson Savanna Noel</b></p> <p>Email: imunson@bearcreekgroup.onmicrosoft.com snoel@bearcreekgroup.onmicrosoft.com</p> <p><i>Bear Creek Contracting Ltd.</i></p>
<p><b>Cassels Brock &amp; Blackwell LLP</b> 2200 – 885 West Georgia Street Vancouver, BC V6E 3C8</p> <p><b>Attention: H. Lance Williams Forrest Finn</b></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><b>Crowe MacKay &amp; Company Ltd.</b> 1100 – 1177 West Hastings Street Vancouver, BC V6E 4T5</p> <p><b>Attention: Derek Lai</b></p> <p>Tel: 604.697.5257</p> <p>Email: Derek.Lai@crowemackay.ca</p> <p><i>Proposal Trustee</i></p>

<p><b>SHK Law</b> Suite 700 – 555 Burrard Street Vancouver, BC V7X 1M8</p> <p><b>Attention: Seema Lal</b></p> <p>Tel: 604.408.2026</p> <p>Email: slal@shk.ca jcroberge@shk.ca</p> <p><i>Counsel for Gitga'at Matrix Workforce Services Ltd.</i></p>	<p><b>Lawson Lundell LLP</b> Suite 1600 Cathedral Place 925 West Georgia Street Vancouver, BC V6C 3L2</p> <p><b>Attention: Thomas D. Boyd</b></p> <p>Tel: 604.631.9132</p> <p>Email: tboyd@lawsonlundell.com</p> <p><i>Counsel for Pretium Exploration Ltd.</i></p>
<p><b>Daniel Le Dressay</b> #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><b>McQuarrie Hunter LLP</b> 1500 – 13450 102 Avenue Surrey, BC V3T 5X3</p> <p><b>Attention: Douglas J. Conolly Ashley Dhaliwal</b></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><b>Ministry of Attorney General (British Columbia)</b> 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><b>Northbridge General Insurance Corporation Societe D'Assurance Generale Northbridge</b> 105 Adelaide Street West Toronto, ON M5H 1P9</p> <p><b>Attention: Iqbal Bhinder James Choleras</b></p> <p>Email: iqbalbhinder@unitedsurety.ca James.Choleras@nbfc.com info@nbfc.com</p> <p><i>Secured Creditor</i></p>

<p><b>Accord Small Business Finance Corp.</b> c/o Alexander Holburn Beaudin &amp; Lang LLP 2700 – 700 West Georgia Street Vancouver, BC V7Y 1B8</p> <p><b>Attention: David Garner James Jang</b></p> <p>Tel: 604.484.1708 (D. Garner)</p> <p>Email: dgarner@ahbl.ca jjang@accordfinancial.net</p> <p><i>Senior Secured Creditor</i></p>	<p><b>Arundel Capital Corporation</b> Suite 420, 5119 Elbow Drive SW Calgary, AB T2V 1H2</p> <p><b>Attention: Vik Ghosh</b></p> <p>Fax: 403.287.9847</p> <p>Email: vghosh@arundelcapital.com</p> <p><i>Equipment Financers</i></p>
<p><b>Current Financial Corp.</b> Tower 1 2020, 10060 Jasper Avenue Edmonton, AB T5J 3R8</p> <p><b>Attention: Maya Winfrey</b></p> <p>Fax: 780.665.4901</p> <p>Email: mwinfrey@currentfinancial.com</p> <p><i>Equipment Financers</i></p>	<p><b>Dynamic Capital Equipment Finance Inc.</b> 208, 1824 Gordon Drive Kelowna, BC V1Y 0E2</p> <p><b>Attention: Dustin White</b></p> <p>Fax: 877.521.9273</p> <p>Email: dwhite@dynamic-capital.ca</p> <p><i>Equipment Financers</i></p>
<p><b>Ford Credit Canada Company</b> 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><b>Terrace Totem Ford Sales Ltd.</b> 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><b>DLA Piper (Canada) LLP</b> Suite 2800 – 666 Burrard Street Vancouver, BC V6C 2Z7</p> <p><b>Attention: Jeffrey Bradshaw Taryn Urquhart</b></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><b>Burrard Law LLP</b> 1320 – 355 Burrard Street Vancouver, BC V6C 2G8</p> <p><b>Attention: David Plunkett</b></p> <p>Tel: 604.235.3205</p> <p>Email: dplunkett@burrardlaw.com</p> <p><i>Counsel for Pomerleau Inc.</i></p>

**SCHEDULE “B”**

**DRAFT ORDER**

**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.

**ORDER MADE AFTER APPLICATION**  
**(EXTENSION OF TIME TO FILE A PROPOSAL)**

BEFORE )  
          ) THE HONOURABLE )  
          ) \_\_\_\_\_ ) May 12, 2021  
          ) )  
          ) )

ON THE APPLICATION OF Bear Creek Contracting Ltd. (the “**Applicant**”), coming on for hearing **by telephone** at Vancouver, British Columbia on this day, and on hearing Glen Nesbitt, counsel for the Applicant, and those counsel listed in Schedule “A” attached hereto; AND UPON READING the material filed;

THIS COURT ORDERS that:

1. The time for filing the Applicant’s proposal under Part III of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, be and is hereby extended to 11:59 p.m., Vancouver time, on June 25, 2021.
2. 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 Glen Nesbitt  
Lawyer for the Applicant

BY THE COURT

\_\_\_\_\_  
REGISTRAR

**SCHEDULE "A"**

List of Counsel Appearing

<b>Name of Party</b>	<b>Counsel Name</b>
Crowe MacKay & Company Ltd.	Lance Williams



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.

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**ORDER MADE AFTER APPLICATION  
(SECOND EXTENSION)**

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**FASKEN MARTINEAU DuMOULIN LLP**  
Barristers and Solicitors  
550 Burrard Street, Suite 2900  
Vancouver, BC, V6C 0A3  
+1 604 631 3131

Counsel: Kibben Jackson  
Matter No: 322707.00001