



NO. S148656  
VANCOUVER REGISTRY

**IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*,  
R.S.C. 1985, c. C-36**

**AND**

**IN THE MATTER OF THE BUSINESS CORPORATIONS ACT, S.B.C. 2002, c. 57**

**AND**

**IN THE MATTER OF  
PRETTY ESTATES LTD.**

**PETITIONER**

**NOTICE OF APPLICATION**

**NAME OF APPLICANT:**

Pretty Estates Ltd.

**To:**

All parties on the Service List maintained by G. Powroznik Group Inc., the Court-Appointed Monitor

TAKE NOTICE that an application will be made by the Applicant at the courthouse at 800 Smithe Street, Vancouver, B.C. on Tuesday, April 28, 2014, at 9:00 a.m. before Mr. Justice Burnyeat for the order(s) set out in Part 1 below.

**PART 1: ORDER(S) SOUGHT**

1. An order substantially in the form attached as Schedule "A" to this Notice of Application:
  - (a) extending the time for the filing of this application; and

- (b) confirming that the relief granted in the Order pronounced November 10, 2014 (the “**Initial Order**”), as approved and amended by an Order granted December 10<sup>th</sup> and December 15, 2014 (the “**First Extension Order**”) remains in full force and effect with the following amendments:
- (i) the stay of proceedings in the Initial Order is hereby extended from April 30, 2015, to July 31, 2015;
  - (ii) the DIP Facility, as defined in the Commitment Letter, is hereby increased from \$750,000 to \$1,000,00;
  - (iii) that a 2% commitment fee will be paid to the DIP Lender with respect to the \$250,000 increase in the DIP Facility; and
  - (iv) the DIP Lender’s Charge is hereby increased from \$750,000 to \$1,000,000.

*Position of the Parties and Valuation*

2. Jim Young (both as the DIP Lender, and the second mortgagee), Betty Ann Faulkner (as the fourth mortgagee) and 700256 B.C. Ltd (a company controlled by Mrs. Faulkner and the third mortgagee), support the relief sought herein by the Petitioner.
3. The first mortgagee, First West Credit Union’s (formerly known as Envision Credit Union) position is not known at this time.
4. The evidence of value before the court supports the increased DIP loan sought herein.

**PART 2: FACTUAL BASIS**

5. On November 10, 2014, the Initial Order was pronounced under the *Companies Creditors’ Arrangement Act* granting, among other things, a stay of proceedings until 11:59 p.m. on December 10, 2014. Capitalized terms used and not otherwise defined herein have the meaning set out in the Initial Order.

6. On December 15, 2014, pursuant to the First Amendment Order, the stay of proceedings was extended to April 30, 2015.

7. Since pronouncement of the Initial Order, the Petitioner has acted with due diligence and good faith, and fully cooperated with the Monitor in respect of its reporting obligations and obligations as set out in the Initial Order, the particulars of which are described in the Monitor's Second, Third, Fourth, and Fifth Reports filed herein.

8. In summary, since the First Extension Order was pronounced, with the assistance of Integrated Hospitality Management Ltd. ("**IHM**"), the Petitioner has:

- (a) implemented all of the 79 cost containment and revenue enhancement measures identified by IHM in the Operations Report attached to the Preliminary Report of the Monitor filed November 10, 2014 (the "**First IHM Report**");
- (b) monitored the effectiveness of the above measures, which have resulted in a \$221,100 improvement in EBITDA over the five month period ending March 31, 2015 as compared to the previous year;
- (c) registered a covenant on title to the Resort's lands to permit redevelopment of the unused 7.9 acre parcel;
- (d) implemented a process designed by the Monitor to attract investment partners and provided interested purchasers with information regarding the Petitioner's assets and financial status; and
- (e) continued to work with the Monitor to consider terms by which a Plan of Arrangement can be presented to its creditors.

### ***Financial Results***

9. IHM has prepared a report dated April 14, 2015 summarizing the Petitioner's financial results over the five month period ending March 31, 2015 compared to the previous year (the "**IHM March Report**"). Among other things, the IHM March Report reveals that:

- (a) revenues have increased by \$62,900;
- (b) labour costs have been reduced \$69,000;
- (c) other operating costs have been reduced by \$89,200;
- (d) golf department revenues for March were \$52,100, approximately \$14,700 more than the golf revenues projected (1,388 paid rounds of golf were recorded, 488 more than projected); and
- (e) EBITDA has improved by a total of \$221,000.

10. The IHM March Report also includes results from the beginning of April 2015 and indicates that operating results for April are on track for a \$2,000 surplus above projected revenues and \$2,000 improvement over the projected labour costs.

11. IHM expects that the financial projections for the operations and cash flow of the Resort, presented in November 2014, are still achievable during the balance of the year ending October 31, 2015. The financial projections target an improvement of \$770,000 EBITDA compared to the prior year.

### ***Updated Cash Flow***

12. The Initial Order authorized a DIP facility of \$750,000.00 and granted a DIP Lender's Charge of \$250,000.00 to secure the amount of the Petitioner's cash flow requirement for the 30 days following the commencement of these proceedings. The DIP facility was approved at \$750,000.00 on the basis of the cash flow projections for the 12 month period following ending October 31, 2015 (the "**Original Twelve Month Cash Flow Statements**") which were included in the First IHM Report. Pursuant to the First Extension Order, the DIP Lender's Charge was approved and increased to \$750,000.00.

13. The Original Twelve Month Cash Flow Statements included an estimate for the restructuring costs, including professional fees.

14. At the time that the Original Twelve Month Cash Flow Statements were prepared, the Petitioner anticipated that the restructuring would be a cooperative process with the involvement and consent of the major stakeholders. However, concerns of the secured creditors have put increased demands on the Petitioner's professional advisors. Further, at the request of Envision, the Court ordered that the Monitor prepare and file written reports on a monthly basis regarding the progress of the Petitioner's restructuring efforts.

15. Similarly, the Original Twelve Month Cash Flow Statements were prepared before the Petitioner had an opportunity to canvas the market for restructuring options and were premised on the availability of refinancing as a low-cost restructuring plan. From marketing efforts to date, the Petitioner has found more market interest for a purchase of the Property or a strategic partnership with respect to the Petitioner's assets. Each of these options will involve a more extensive marketing process that will result in higher restructuring costs as compared to a refinancing.

16. Due to the foregoing, the Petitioner's professional fees have been higher than budgeted in the Original Twelve Month Cash Flow Statements. In particular, the Monitor's fees incurred were \$28,000 higher than budgeted, and the Petitioner's legal fees were \$56,000 higher than budgeted.

17. Summary financial statements for Resort operations for the period from November 30, 2014 to February 28, 2015, with reference to the Original Twelve Month Cash Flow Statements are appended to the Monitor's Second, Third and Fourth Reports filed herein. IHM has prepared a revised Twelve Month Cash Flow Statement ("**Revised Cash Flow Statement**") incorporating the increased restructuring costs, which are appended to the IHM March Report. The Revised Cash Flow Statement outlines the variance between projected and actual cash flows for each major cost items in the Original Twelve Month Cash Flow Statements.

18. The Revised Cash Flow Statement indicates that additional DIP financing in the range of \$200,000 will be required to support the operation at the Resort and fund the restructuring initiatives, plus an additional provision of \$50,000 in DIP financing should be provided to fund additional commitment fees and provide for expanded interest reserves. This would increase the DIP Facility to \$1,000,000.

19. The Revised Cash Flow Statement indicates that the additional DIP financing will be required in the months of May and June 2015; with surplus cash of approximately \$200,000 occurring in July and August 2015. In the event that the Petitioner is successful in achieving the level of projected operating earnings originally presented in November 2014, additional funds will be available.

20. The Monitor acknowledges that the Revised Cash Flow Statement shows the Petitioner is generally on pace with forecasted cash flows, except for the increased professional fees.

21. The Monitor is of the opinion that no material adverse change arises with respect to the Revised Cash Flow Statement.

***DIP Financing and DIP Lender's Charge***

22. From the date of the Initial Order to April 13, 2015, the Petitioner has requested and received draws of \$672,598 with respect to the DIP Loan. Due to the increased restructuring costs referenced above, the Petitioner will require increased DIP financing to enable it to continue to retain the professional services necessary for the Petitioner to present a Plan of Arrangement. The projected increase in professional costs totals \$250,000.

23. The terms of the DIP Loan limit advances to the amount of the DIP Lender's Charge. The Petitioner therefore seeks an order increasing the DIP Lender's Charge from \$750,000 to \$1,000,000.

***Marketing***

24. The Monitor has been assisting the Petitioner with respect to its efforts to find a suitable partner, or purchaser of its assets.

25. The search for potential partners or suitable investors is ongoing. The Monitor confirms that this search process includes the following:

- (a) an electronic data room which will facilitate the due diligence process for prospective purchaser and/or investors;

- (b) a marketing plan that is expected to attract a purchaser or a suitable investor for the Petitioner's assets and business as a going concern, and which is expected to reach both local and international prospects;
- (c) an expansion of the marketing plan on May 22, 2015, to the open real estate market if a suitable investor is not identified by that date;
- (d) full transparency with the secured creditors, including providing monthly operational reports and disclosure of all written expressions of interest or offers that are received; and
- (e) objective analysis of all written expressions of interest or offers that are received, with inclusion of input from the key stakeholders.

26. The Monitor commented as follows at paragraph 24 of its Fifth Report:

...The Company's dramatic turnaround in its operating results has resulted in clearly demonstrating that there is considerable appreciation in value occurring or perhaps better described as there is a firming up the underlying value of the Company's going-concern business and Assets. A universal assessment by virtually everyone who has expressed interest in the Company's Resort acknowledges that it is a uniquely attractive property in addition to its Resort business, with likely upside development potential over the longer term.

27. Since February 2015, twenty (20) parties contacted the Monitor regarding a potential transaction or partnership with the Petitioner.

28. Seven (7) of the parties expressed continuing interest in a purchase transaction and were provided with access to a data room to conduct due diligence.

29. One of the parties interested in acquiring the Property is the owner of a hotel and recreation center in the Northern Fraser Valley. Another party interested in acquiring the Property is the owner of another resort property in British Columbia that has experience in operations similar to the Petitioner.

30. Each of the seven (7) interested parties has been advised of the Petitioner's restructuring efforts including the cost containment and revenue enhancement measure implemented by IHM. It appears that the profitability of the Resort during the peak golf season will be a key consideration in their ultimate decision to purchase the Resort. Therefore, it is expected that the

highest offer will likely be made in the late summer once projected operating results have been realized.

31. The Monitor further commenced at paragraph 29 of its Fifth Report:

There are three prospects who have indicated in an informal and preliminary manner this past week that they are very interested in becoming a Value Investor. We are in discussions with them and the Company to determine if we can obtain formal offers and confirm the financial ability of the prospects to complete on a timely basis. Two of the prospects are well known to the Monitor and appear to have the management and financial ability to complete a transaction of the size required. The third is represented by a broker who assures us that the financial capability is there for his client but their focus is on how to structure of the investment.

***Extension Order***

32. Since the date of the First Extension Order, IHM has completed the process of implementing the cost savings and revenue enhancement measures identified in the First IHM Report. As referenced above, the Petitioner has increased its EBITA by approximately \$221,000 over the previous years' results as a result of IHM's initiatives and the improved management of the Resort. However, due to the seasonal nature of Petitioner's business, the full impact of the operation changes at the Resort will not be apparent until after the peak golf season ends in the fall of 2015.

33. It is anticipated that the profits of the golf season and summer accommodations will demonstrate that the Resort can be operated profitably in the future, which will greatly increase the marketability and value of the Property.

34. Interested parties have advised the Monitor that the Petitioner's operating results over the peak golf season may need to be available for consideration before a transaction can be achieved. Therefore, in order to maximize the value of the Resort for all stakeholders, the stay of proceedings should be extended to allow the Resort to operate during the golf season.

35. Therefore, the Petitioner believes it is in the best interests of all stakeholders for the stay of proceedings to be extended to July 31, 2015.



### PART 3: LEGAL BASIS

#### Extension Order

36. The Petitioner submits that, on the basis of the facts set out above, it is appropriate and in the best interests of the stakeholders to grant the relief sought by the Petitioner so that it may present a Plan of Arrangement to its creditors.

#### Increase in DIP Lender's Charge

37. An application for an increase in the DIP charge is determined with reference to the factors set out in Section 11.2(4) of the *Companies Creditors Arrangement Act*, R.S.C. 1985, c. 36 ("CCAA").

*The Futura Loyalty Group Inc. (Re)*, 2012 ONSC 6403

38. Section 11.2(4) lists the following factors relevant to DIP financing:

#### Factors to be considered

- (4) In deciding whether to make an order, the court is to consider, among other things,
  - (a) the period during which the company is expected to be subject to proceedings under this Act;
  - (b) how the company's business and financial affairs are to be managed during the proceedings;
  - (c) whether the company's management has the confidence of its major creditors;
  - (d) whether the loan would enhance the prospects of a viable compromise or arrangement being made in respect of the company;
  - (e) the nature and value of the company's property;
  - (f) whether any creditor would be materially prejudiced as a result of the security or charge; and
  - (g) the monitor's report referred to in paragraph 23(1)(b), if any.

39. The value of the Petitioner's assets is sufficient to support an increase in the DIP Lender's Charge to \$1,000,000.

40. Regardless of the risk to the key stakeholders, such a risk is outweighed by the adverse effect on these parties that would result from a quick fire sale of the Petitioner's business. The increase in the DIP Lender's Charge should therefore be approved.

*Humber Valley Resort Corporation (Re)* 2008 NLTD 160, at para. 20  
*White Birch Paper Holding Co., Re*, 2010 QCCS 1176, at para. 33

41. Furthermore, the court may grant DIP financing even in the face of material prejudice to the secured creditors, since this factor is but one of the factors to be considered by the court and it is to be considered in equal measure with the other factors listed in s.11.2(4) of the CCAA.

*Re Pacific Shores Resort & Spa Ltd.*, 2011 BCSC 1775, at para. 49(f)

42. The Monitor supports the increase in the DIP Facility and DIP Charge as necessary in order for the Petitioner to make a viable Plan of Arrangement.

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

43. Initial Order pronounced November 10, 2014, as amended by Orders pronounced on December 10<sup>th</sup> and 15<sup>th</sup>, 2014;

44. Affidavit #1 of Betty Ann Faulkner sworn November 5, 2014;

45. Affidavit #2 of Betty Ann Faulkner sworn November 5, 2014;

46. Affidavit # 3 of Betty Ann Faulkner sworn November 5, 2014 (sealed by Court Order);

47. Monitor's First Report filed December 5, 2014;

48. Monitor's Second Report filed January 30, 2015;

49. Monitor's Third Report filed February 27, 2015;

50. Monitor's Fourth Report filed March 31, 2015;

51. Monitor's Fifth Report filed April 23, 2015;

52. Affidavit #1 of Neil Atchison sworn April 17, 2015;

53. Affidavit #2 of Kimberley Manderson sworn April 23, 2015; and

54. Such further materials filed herein.

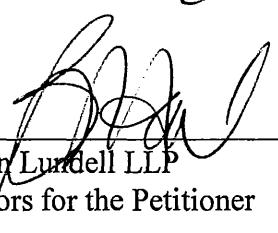
The applicant(s) estimate(s) that the application will take **30 minutes**.

☒ 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 8 business days after service of this Notice of Application or, if this application is brought under Rule 9-7, within 12 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 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 at the City of Vancouver, in the Province of British Columbia, this <sup>rd</sup>23 day of April, 2015.

  
 \_\_\_\_\_  
 Lawson Lundell LLP  
 Solicitors for the Petitioner

This Notice of Application is filed by Bonita Lewis-Hand of Lawson Lundell LLP, whose place of business and address for delivery is 1600 – 925 West Georgia Street, Vancouver, British Columbia, V6C 3L2.

*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**

The following information is provided for data collection purposes only and is of no legal effect.

**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 – CCAA**

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Attention: Bonita Lewis-Hand