



No. B-180261  
Estate No.: 11-254119  
VANCOUVER REGISTRY

IN THE SUPREME COURT OF BRITISH COLUMBIA  
IN BANKRUPTCY AND INSOLVENCY

IN THE MATTER OF THE PROPOSAL OF  
WISTON INTERNATIONAL TRADE CO. LTD.

NOTICE OF APPLICATION

Names of applicants: Wiston International Trade Co. Ltd., Huigang Sun

To: The Secured Creditors

**WITHOUT NOTICE** an application will be made by the applicants to the presiding judge or master at the courthouse at 800 Smithe Street, Vancouver, British Columbia on 24/Apr/2018 at 2:00 p.m. for the orders set out in Part 1 below.

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

1. An order that the time to file a proposal under section 50.4(8) of the *Bankruptcy and Insolvency Act* be extended by 44 days to June 7, 2018.
2. An order that the stay of proceedings created by section 69 of the *Bankruptcy and Insolvency Act* on filing of the notice of intention filed on March 26, 2018 be extended as against all creditors to June 7, 2018.
3. Such other and further relief as the Court may deem just and proper.

**Part 2: FACTUAL BASIS**

The Companies

1. Wiston International Trade Co. Ltd. ("Wiston") is a company incorporated in accordance with laws of the province of British Columbia. See corporate search attached to the Affidavit #1 of Leah Jonak. The company is an insolvent person.
2. It is owned and controlled by Huigang (Andrew) Sun. Mr. Sun does not read or write in the English language fluently.
3. Founded in 2009, Wiston is a wholesale flooring distributor. Its products are primarily imported from the People's Republic of China, and are widely used in projects and home renovations. Its customers are fabricators and installers of flooring for the construction industry. Its supplier (the "Supplier") is Heilong Jiang

Far East Wood Co. located in Harbin, China. Some of the locations which sell its product are set out and attached to the Affidavit #1 of Leah Jonak.

4. Wiston has a distribution location in both British Columbia and in Ontario. See extract from the website of Wiston attached to the Affidavit #1 of Leah Jonak.
5. The description of its business, reason for financial failure, and assets and liabilities are described in the Trustee's Preliminary Report. There are nine fulltime employees.
6. One major contributor to its insolvency is the failure of a major related company to collect its receivables.

#### **Guarantor and Indemnitor**

7. Inventory is valued at \$1,500,000.
8. Mr. Sun holds a residential property at 1922 West 44<sup>th</sup> Avenue, Vancouver, British Columbia, more particularly known and described as Parcel Identifier 006-486-126 Lot 34 of Lot 9 Block 15 District Lot 526 Plan 5019.
9. The B.C Assessment value for the property is \$4,930,000.

#### **Summary Of Liabilities Position**

10. The Bank of Montreal is owed \$2,431,732.55 as at November 27, 2017 secured by inventory and receivables.
11. The company has trade liabilities (including liabilities to shareholders and related parties) of \$23,831,000. Wiston is unable to pay its liabilities generally as they become due now, as a result of demand on its obligations to the Bank of Montreal.
12. Wiston's liabilities exceed its assets by \$8,000,000. Trade creditors are owed \$23,831,000 of which \$22,670,000 is to related parties of Wiston. Canada Revenue Agency is owed \$176,599 for source deductions and \$28,780 for GST.

#### **The Bank of Montreal Position**

13. It appears that payments to unsecured creditors are being paid in accordance with their terms. Accordingly, the company is proceeding in good faith.
14. The Borrower and the Guarantor entered into a Forbearance Extension Agreement with the Bank of Montreal, dated November 27, 2017, in which the Bank agreed to extend the forbearance period to March 31, 2018, in consideration for certain other agreements.

15. The Forbearance Extension Agreement requires \$13,489 per month to be paid.
16. On March 16, 2018, the Bank of Montreal declared there to be a breach of the Forbearance Extension Agreement and issued a notice of intention to enforce its security.
17. On March 26, 2018, Wiston filed a notice of intention to make a proposal which appointed G. Powroznik Group Inc. of G. Force Group as trustee. See attached to the Affidavit #1 of Leah Jonak.

### **Cash Flow**

18. The cash flow generated from the financial records of the company indicates that the combined entity will be able to generate cash flow which is adequate for the purposes of operating its business through the extension period although it will not make a profit. See cash flow attached to the Trustee's Report.
19. The companies have anticipated professional fees and disbursements for G. Powroznik Group Inc., DS lawyers Canada LLP and Burns Fitzpatrick LLP.
20. Based on the records of the company, it is anticipated that operations will generate adequate funds to pay for provincial sales tax, federal GST, employee source deductions for income tax, employment insurance and Canada pension. However, it may be that reporting periods are such that the payments remitted will lag behind the actual obligations for payment.
21. The plan will have the following components:

#### **Overall Goal**

- 1.01 The company will continue to operate in the normal course of business.
- 1.02 It will refinance or discharge Bank of Montreal. It now appears that the company has refinancing and has satisfied the Trustee that sufficient financing to take out Bank of Montreal will be available.
- 1.03 Pay all or settle Unsecured Creditors within a reasonable time.

#### **Proposal of Wiston**

- 2.01 The company anticipates one further extension application.
- 2.02 Wiston intends will file a proposal which contemplates the normal course of business and:
  - (a) excludes its obligations to Bank of Montreal as secured creditor;

- (b) both land lessors will be paid monthly, in accordance with their lease terms;
- (c) all chattel lessors will be paid the amount under their lease monthly in accordance with the terms;
- (d) Crown claims will be paid in accordance with the statutory priorities;
- (e) The Supplier will be paid on a schedule to be negotiated at the same time as the postponement is settled but commencing on a date after approval of the proposal by the Court;
- (f) each unsecured creditor will be paid on terms settled once Bank of Montreal is refinanced; and
- (g) the supply of inventory will be restored as soon as is possible.

2.03 Mr. Sun will arrange for funds to be used to acquire the debt from new advances from the financing referred to above and from postponement of claims from Wiston's main supplier.

2.04 The specific details of the new financing have not been finalized.

### Filings

22. The company has filed a notice of intention to make a proposal.

### **Part 3: LEGAL BASIS**

#### Extension of Time to File a Proposal

1. Section 50.4(1) of the *Bankruptcy And Insolvency Act* provides as follows:

**50.4 (1)** *Before filing a copy of a proposal with a licensed trustee, an insolvent person may file a notice of intention, in the prescribed form, with the official receiver in the insolvent person's locality, stating*

*(a) the insolvent person's intention to make a proposal,*

*(b) .....*

2. Section 69(1) of the *Bankruptcy And Insolvency Act* provides as follows:

**Stay of proceedings — notice of intention**

**69(1)** Subject to subsections (2) and (3) and sections 69.4, 69.5 and 69.6, on the filing of a notice of intention under section 50.4 by an insolvent person,

(a) no creditor has any remedy against the insolvent person or the insolvent person's property, or shall commence or continue any action, execution or other proceedings, for the recovery of a claim provable in bankruptcy,

(b) no provision of a security agreement between the insolvent person and a secured creditor that provides, in substance, that on

(i) the insolvent person's insolvency,

(ii) the default by the insolvent person of an obligation under the security agreement, or

(iii) the filing by the insolvent person of a notice of intention under section 50.4,

the insolvent person ceases to have such rights to use or deal with assets secured under the agreement as he would otherwise have, has any force or effect,

3. Sections 50.4(8), (9) and (10) of the *Bankruptcy And Insolvency Act* provides as follows:

**Where assignment deemed to have been made**

**(8)** Where an insolvent person fails to comply with subsection (2), or where the trustee fails to file a proposal with the official receiver under subsection 62(1) within a period of thirty days after the day the notice of intention was filed under subsection (1), or within any extension of that period granted under subsection (9),

(a) the insolvent person is, on the expiration of that period or that extension, as the case may be, deemed to have thereupon made an assignment;

(b) .....

**Extension of time for filing proposal**

**(9)** The insolvent person may, before the expiry of the 30-day period referred to in subsection (8) or of any extension granted under this subsection, apply to the court for an extension, or further extension, as the case may be, of that period, and the court, on notice to any interested

persons that the court may direct, may grant the extensions, not exceeding 45 days for any individual extension and not exceeding in the aggregate five months after the expiry of the 30-day period referred to in subsection (8), if satisfied on each application 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.

**Court may not extend time**

(10) Subsection 187(11) does not apply in respect of time limitations imposed by subsection (9).

**(A) Good Faith And With Due Diligence**

4. All necessary filings have been made. Wiston continues to operate and cash flow indicates that operations may continue during the extension.
5. Wiston is working diligently on refinancing. It has implemented a prudent approach to refinancing which entails maintaining installments to the Bank of Montreal. Because Andrew Sun controls the Supplier, the Supplier supports an extension. It is acknowledged that supply has been interrupted but a refinancing would allow supply to resume.
6. Useful steps have been taken in refinancing such that refinancing is a real likelihood as opposed to an option. Wiston has engaged two law firms and a trustee for the purpose of restructuring.
7. One positive impact of the refinancing plan is that it will entail a greater involvement of the related supplier creditor.

**Due Diligence**

8. The Trustee's Preliminary Report dated April 24, 2018 (the "Report") describes the company's due diligence.
9. Mr. Sun has suspended payment of indebtedness due to himself and related companies and he is prepared to support refinancing which will provide further funds.

10. Further, Mr. Sun has employed professionals who have provided advice and recommendations which have resulted in what appears to be a reasonable path to continue the business.
11. At this stage what is required is a germ of a plan. The plan is described in the Report. At this early stage, the indications are that restoration of the source of supply will be the key ingredient to a successful plan. Refinancing which is underway will facilitate restoration of supply.
12. The trustee's report dated October 27, 2016 is favourable.
13. In *Enirgi Group Corp. v. Andover Mining Corp.*, 2013 BCSC 1833 ("*Enirgi Group Corp.*") evidence that the debtor was engaged in discussions to formalize refinancing was sufficient to show due diligence. The efforts of Mr. Sun easily rise to this threshold:

*65 - With regards to due diligence, since August 2013 Andover has obtained the September 24, 2013 letter from Ophir that says the latter "is in the process" of finalizing a loan of \$3,000,000 to Andover. This is not a firm commitment of funds and nor does it need to be under s. 50.4(9); it does reflect some diligence on Andover's part. Mr. Blankstein also deposes that he has been having discussions with another party but he cannot reveal the name of that party because he is concerned that Enirgi will obstruct those discussions, as they did with Chief in June 2013. This latter information is not particularly helpful. Nonetheless I conclude that Andover has acted with sufficient due diligence.*

**(B) Likely Be Able To Make A Viable Proposal**

14. CCAA cases are often considered in this context. The test in the extension of the stay in the CCAA under this heading is whether circumstances exist that make the order appropriate. The authorities determined that the order is appropriate if it will usefully further efforts to achieve the remedial purpose of the CCAA which of course is to effect a plan.
15. Madam Justice Fitzpatrick considered an application in *Pacific Shores Resort and Spa (Re)*, 2011 BCSC 1775 for an extension of the stay of proceedings which was opposed by secured creditors who wished to appoint a receiver and, weighing the release to be granted, the court noted at paragraph 58 that a receivership would destroy junior financial interests.
16. On these facts, it is highly unlikely that an enforcement proceeding would result in the realization of the fundamental assets prior to a refinancing granted in this process in any event. Here, the major creditor is Mr. Sun. Bank of Montreal has security over the inventory and receivables but its primary asset-based security is

a mortgage over residential real estate in Vancouver. Enforcement of this mortgage will likely be subject to a six month redemption. The test is the same and it goes to value. It relates to the potential risk to the secured creditor. The relief sought by the petitioner is not by any means extraordinary. It will no doubt benefit the bank.

17. The company has engaged in energetic refinancing efforts which are the most efficient in the circumstances
18. The company can file a viable proposal with the assistances of the Supplier. The importance of this is that once refinancing is effected with the supplier, the operation of the company will continue. This makes logical sense because the Supplier would be seen to preserve its market.
19. *Enirgi Group Corp.* considered opposing lines of cases with respect to the question of whether the "viable proposal" test in s. 50.4(9)(b) can be satisfied where a majority creditor says that it will oppose any proposal. The court concluded that the test in s. 50.4(9)(b) is objective and not subject to the views of majority creditors who might claim to have a "veto" over any proposal.

*66 - Turning to s. 50.4(9)(b), a viable proposal is one that would be reasonable on its face to a reasonable creditor; "this ignores the possible idiosyncrasies of any specific creditor": Cumberland at para. 4. It follows that Enirgi's views about any proposal are not necessarily determinative. The proposal need not be a certainty and "likely" means "such as might well happen."(Baldwin, paras. 3-4). And Enirgi's statement that it has lost faith in Andover is not determinative under s. 50.4(9): Baldwin at para. 3; Cantrail at paras. 13-18).*

...

*75 - Enirgi points out that it holds the largest portion of unsecured debt of Andover (more than 80%) and it submits that this gives them a veto over any proposal. That may take place but thus far there is no proposal and Enirgi will have to make a business decision about its response in the event one is presented. **Again, as an issue under s. 50.4(9), a proposal does not have to be acceptable to Enirgi.** As well, I also note comments from the Court of Appeal, in the context of the Companies' Creditors Arrangement Act, R.S.C. 1985, c. C-36, that questioned the legal basis of a creditor forestalling an application for a stay and whether the court's jurisdiction could be "neutralized" in that way: *Forest & Marine Financial Corp., Re*, 2009 BCCA 319 (B.C. C.A.) at para. 26, cited in *Pacific Shores Resort & Spa Ltd., Re*, 2011 BCSC 1775 (B.C. S.C. [In Chambers]), at paras. 40-41.*

20. Here, the predominant creditor is Mr. Sun and his supplier corporation.



21. The company will satisfy this aspect of the test easily. With respect to factor (b), this is where the Bank of Montreal's position is most relevant. It now appears that by the time a proposal is filed, Bank of Montreal will be refinanced. In any event, it holds real estate back security which will satisfy the debt in full.

**(C) No Creditor Would Be Materially Prejudiced**

22. Bank of Montreal will not be adversely affected. The primary effect of this is to maintain the business for the benefit of the unsecured creditors, employees, the supplier, related party creditors, and shareholders.

23. In this case, the Bank of Montreal is secured by real estate pledged by Mr. Sun with an assessed value of \$4,930,000 for debt of \$2,400,000. The loan to value ratio is less than 50%.

24. Additionally, there is no material prejudice to other creditors; the vast majority of which are owned or controlled by Mr. Sun.

25. The criteria for financing are similar to those for extension and were applied in *P.J. Wallbank Manufacturing Co. (Re)*, 2011 CarswellOnt 15300, 2011 ONSC 7641. See also the CCAA Court on the same criteria in *Azure Dynamics Corporation (Re)*, 2012 BCSC 781 (CanLII) at paragraphs 37-49. In CCAA cases, the court has determined that a going concern will result in better recovery for stakeholders than some other form of liquidation (*Azure* at para. 37), applying the statutory criteria.

**(A) The Time Period**

26. This debtor contemplates the subject proceedings to be satisfied within 90 days by refinancing of the equity in real property owned and controlled by the debtor or its associated companies. Based on the information we now have it may be much sooner.

**(B) Management**

27. The debtor's business and financial affairs will be managed by the existing management. It is clear that management has been successful; only that it has encountered supply issues that affected profitability which are not likely to recur and litigation by a related party. The previous manager ordered excessive amounts of inventory. That practice will not be repeated.

**(C) Confidence in Management**

28. Certainly the Supplier of the company has confidence in management. Essentially no creditor is at an impasse with the company. No creditor has expressed dissatisfaction with the management. It is anticipated that existing management will resume the business.

**(D) Enhancing The Prospects For A Proposal**

29. Refinancing will pave the way to new sales for the company which would preserve the enterprise for stakeholders and employees. It appears that at this early stage the company has assembled the necessary components for proposal and needs interim financing for the purpose of paying fees and disbursements of the professionals during that period and for the delay during which it assembles the amounts necessary to take out Bank of Montreal from its operating facility. At this stage, the company has not sought DIP financing.

30. Enforcement would result in potential financial losses for all junior creditors. There is nothing to be gained from enforcement at this point given that there appears to be a path to restructure the business.

31. There is the consistent risk that if the company is not permitted to operate, and it fails then the unsecured creditors and related party creditors will suffer a serious shortfall. Accordingly, the extension is in the interest of employees, suppliers, and junior creditors and will not prejudice senior creditors having regard to the value of the assets.

**(E) The Nature And Value Of The Indemnitor's Property**

32. The BC Assessment shows value of \$4,930,000.

**(F) Materially Prejudiced**

33. No creditor will be materially prejudiced as a result of the security because:

- (a) as to secured creditors, it appears there is ample third party security for the Bank of Montreal on the land alone without reference to inventory;
- (b) the minor chattel leaseholders have security against their asset and are entitled to retake possession of it in the event that there is a default. To the extent that their asset is inadequate to repay them in full, their position is one of an unsecured creditor; and
- (c) the risk is to the unsecured creditors who will benefit from a plan.

**(G) Trustee's Report**

34. The Trustee's Report favours the extension.

**Administration Charge**

35. No administrative charge or directors charge is sought on this application. No DIP charge is sought on this application.

**(A) The Size And Complexity Of The Business**

47. Size and complexity are two distinct tests. The business is large. Two locations in different provinces could lead to a complex business structure. It appears from the amounts of the charges sought that a business which is large in dollars will be efficiently managed. We say this by comparison with a receivership which would involve taking possession in two different provinces with uncertain supply from China. Accordingly, the current structure permits an efficient administration of a comparatively large business without undue complexity at lower cost. Receivership would add unnecessary complexity and substantially higher costs.

**(B) The Position Of The Trustee**

53. These applicants rely in sections 50.4(1), 50.4 (8)-(10), 50.6, 64.1(1), 64.2(1), and 69(1) of the *Bankruptcy and Insolvency Act* and Bankruptcy Rule 6(2)(a).

54. These applicants rely upon the inherent jurisdiction of the court

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

1. Affidavit #1 of Leah Jonak, sworn 24/Apr/2018
2. Trustee's Report, dated 24/Apr/2018

The applicant(s) estimate(s) that the application will take thirty (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 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;
- (ii) if this application is brought under Rule 9-7, any notice that you are required to give under Rule 9-7 (9).

Date:

*24*/Apr/2018

  
Signature of  
 applicant  lawyer for applicant(s)  
Dennis K. Fitzpatrick

**FITZPATRICK**

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