

NO. S-124409
VANCOUVER REGISTRY

IN THE SUPREME COURT OF BRITISH COLUMBIA

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

AND

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

AND

IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT
OF LEMARE HOLDINGS LTD., LEMARE LAKE LOGGING LTD., LONE TREE
LOGGING LTD., C. & E. ROADBUILDERS LTD., COAST DRYLAND SERVICES LTD.,
DOMINION LOG SORT LTD. AND CENTRAL COAST INDUSTRIES LTD.

PETITIONERS

NOTICE OF APPLICATION

Name of applicant: C. & E. Roadbuilders Ltd. (“**C&E**”) and Lemare Lake Logging Ltd.
 (“**Lemare Lake**”, and collectively with C&E, the “**Applicants**”)

To: Those Parties on the Service List attached as Schedule “A” hereto

TAKE NOTICE that an application will be made by the Applicants to the Honourable Mr Justice Grauer, at the courthouse at 800 Smithe Street, Vancouver, BC, V6Z 2E1, on July 11, 2012 at 9:00 a.m. for the order set out in Part 1 below.

Part 1: ORDER(S) SOUGHT

1. An Order that the Applicants pay the outstanding accounts of its creditors under the Cape Scott and the Kokish Run of the River road-building contracts.

Part 2: FACTUAL BASIS

1. On June 21, 2012, the Honourable Mr Justice Grauer pronounced an Initial Order in these proceedings pursuant to the provisions of the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended, which granted relief, including, *inter alia*, a stay of proceedings until 11:59 p.m. on July 16, 2012.
2. Since the pronouncement of the Initial Order, the Petitioners, comprised of the Applicants, Lemare Holdings Ltd., Lone Tree Logging Ltd., Coast Dryland Services Ltd.,

Dominion Log Sort Ltd., and Central Coast Industries Ltd. (collectively, the “**Lemare Group**”) have acted with due diligence and good faith in their restructuring efforts.

3. These efforts include the continuation of various road-building contracts.
4. The Applicant C&E is the subcontractor to the subcontractor 3 Nations Construction Ltd., pursuant to the Cape Scott road-building head contract (the “**Cape Scott Contract**”) dated April 2, 2012, between International Power Canada Inc. and GDF Suez, as owners, and AMEC Black & McDonald Joint Venture, as general contractor.
5. The Applicants are also the subcontractor to the subcontractor Namgis Excavating Limited Partnership, pursuant to the Kokish Run of the River road-building head contract dated March 12, 2012, between Kwagis Power Ltd., as owner, and Kiewit Corporation, as general contractor (the “**Kokish Contract**”, and collectively with the Cape Scott Contract, the “**Contracts**”).
6. The Cape Scott Contract will result in the construction of the first wind farm on Vancouver Island that will produce enough electricity to supply the annual needs of 30,000 homes on the Island.
7. The Kokish Contract is a hydroelectric project that will result in the construction of a run-of-river facility that will produce clean energy while providing economic diversification through jobs, local and provincial revenue, and strengthening of the ‘Namgis First Nation.
8. The Applicant’s material suppliers under the Cape Scott Contract are Armtec Ltd., Canada Culvert, Dyno Nobel Canada Inc. (“**Dyno**”) and Layfield Geosynthetics & Industrial Fabrics Ltd. (“**Layfield**”, and collectively, the “**Suppliers**”).
9. Details of the Cape Scott Contract, including total value, value remaining to be earned and current accounts receivable are as follows:

CONTRACT VALUE	COMPLETED	TO BE COMPLETED	PAID	CURRENT ACCOUNTS RECEIVABLE
\$15,000,000.00	\$2,887,750.00	\$12,112,250.00	\$1,071,816.00	\$1,815,934.00

10. The sole material supplier under the Kokish Contract is Dyno.
11. Details of the Kokish Contract, including total value, value remaining to be earned and current accounts receivable are as follows:

CONTRACT VALUE	COMPLETED	TO BE EARNED	PAID	CURRENT ACCOUNTS RECEIVABLE
\$12,000,000.00	\$642,000.00	\$11,358,000.00	\$130,000.00	\$512,000.00

12. Details of the pre-filing amounts owing to the Suppliers are as follows:

	AMOUNT OWED		
SUPPLIER	CAPE SCOTT	KOKISH	TOTAL
Armtec Ltd.	\$25,222.92	\$11,331.45	\$36,554.37
Canada Culvert	\$72,835.03		\$72,835.03
Dyno	\$77,146.45		\$77,146.45
Layfield	\$16,158.42		\$16,158.42
TOTAL	\$191,362.82	\$11,331.45	\$202,694.27

13. The Canadian Construction Documents Committee standard form contract requires that, prior to being paid, contractors such as the Applicant and Lemare Lake swear a monthly statutory declaration (“**Declaration**”) that all accounts for labour, subcontracts, products, services, and construction machinery and equipment, and for which the owner might be held responsible, have been paid in full.
14. On or about July 5, 2012, Canada Culvert, through its counsel, asserted its right to file a lien pursuant to the *Builders Lien Act*, S.B.C. 1997, c. 45, for its supply of materials to the Applicant pursuant to the Cape Scott Contract.
15. If the Applicants do not pay the outstanding amounts under the Contracts, the Suppliers may file liens for unpaid materials which would interfere with the Lemare Group’s restructuring efforts and may lead to a default under the Contracts.
16. Due to the fact that the Applicants have not paid the Suppliers’ accounts in full, which gives rise to potential lien rights, the Applicants’ representatives cannot swear the Declaration and consequently, the Applicants cannot be paid under the Contracts. The cash flow from the Contracts is essential to the Lemare Group’s restructuring and the completion of the Contracts offers a superior value to the Lemare Group’s creditors over allowing them to terminate.
17. It is in the best interests of all of the Lemare Group’s stakeholders that the Suppliers’ accounts are paid so that the Applicants can continue the Contracts as part of the Lemare Group’s restructuring, to the benefit of the shareholders, employees and communities which benefit from its operations.

Part 3: LEGAL BASIS

1. *Companies’ Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended, and in particular s. 11 thereof; and

2. the inherent and equitable jurisdiction of this Honourable Court.

Part 4: MATERIAL TO BE RELIED ON

1. Affidavit #2 of Eric Dutcyvich, sworn July 9, 2012;
2. Initial Order made June 21, 2012;
3. The pleadings and other materials filed herein; and
4. Such further and other material as counsel may advise and this Honourable Court may allow.


The applicants estimate that the application will take approximately 20 minutes to be heard.

- ☐ This matter is within the jurisdiction of a master.
- ☒ This matter is not within the jurisdiction of a master. This matter is to be heard before the Honourable Mr Justice Grauer, who is seized of this matter.

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).

July 9, 2012
Dated _____



Signature of lawyer for the Applicant
Davis LLP (Mary I.A. Buttery/H. Lance Williams)
Counsel for the Petitioners

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

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
- ☐ oral 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

SCHEDULE "A"

No. S-124409
Vancouver Registry

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E. ROADBUILDERS LTD., COAST DRYLAND SERVICES LTD., DOMINION LOG SORT
LTD. AND CENTRAL COAST INDUSTRIES LTD.

PETITIONERS

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Department of Justice Canada

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PETITIONERS

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