Court No. S-258845
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 AND ARRANGEMENT OF 1061511 B.C. LTD., JAMESON BROADWAY & BIRCH GENERAL PARTNERSHIP LTD., AND JAMESON BROADWAY & BIRCH LIMITED PARTNERSHIP

PETITIONERS

NOTICE OF APPLICATION
(Lift Stay of Proceedings)

Name of applicant: CMLS Financial Ltd., on behalf of Computershare Trust Company of Canada

To: Service List

TAKE NOTICE that an application will be made by the applicant to Justice Masuhara at the courthouse at 800 Smithe Street, Vancouver, British Columbia on July 28 and 29, 2026 at 10:00 a.m. for the order(s) set out in Part 1 below. The applicant estimates that the application will take 1 hour.

PART 1: ORDERS SOUGHT

1. The Applicant, CMLS Financial Ltd. ("**CMLS**"), on behalf of Computershare Trust Company of Canada ("**Computershare**") seeks the following orders:

   a. validating and abridging the time for service of this Notice of Application and the supporting materials and deeming service thereof to be good and sufficient;

   b. an order lifting the stay of proceedings (the "**Stay**") in the within *Companies Creditors' Arrangement Act*, RSC 1985, c C-36 ("***CCAA***") proceedings (the "**CCAA Proceeding**") as against James Holdings Ltd. ("**James Holdings**") to allow the Portage Lenders (as defined below) to enforce against its Security (as defined below), including James Holdings' interest in the Portage Secured Properties (as defined below);

   c. such further relief as the circumstances may require and as this Honourable Court deems appropriate.

PART 2: FACTUAL BASIS

Overview

2. The Portage Lenders seek to lift the Stay in respect of James Holdings in order to allow the Portage Lenders to pursue enforcement of the Security (as defined below) granted by the Portage Borrowers (as defined below). After eight months, the Birch Companies have repeatedly failed to secure a transaction that will secure a path forward in this CCAA Proceeding and there is no guarantee that the Portage Lenders will receive any amounts from the sale of the Birch Property. The Portage Lenders are prejudiced by the Stay, which prejudice increases each month as arrears continue to accrue and the Security relating to assets outside of the purview of this CCAA Proceeding continues to deteriorate, with no real end in sight.

3. There is significant uncertainty in the sale process put forward by the Birch Companies (as defined below) and Alvarez & Marsal Inc., in its capacity as monitor of the Birch Companies (in such capacity, the "**Monitor**"), given that the sale process contemplates accepting bids for the Birch Property as a hotel, notwithstanding that the City of Vancouver has not approved the re-zoning application for the uses of the Birch Property (the "**Re-Zoning Application**"), and given that British Columbia Housing Management Commission ("**BC Housing**") has not agreed to discharge the s. 219 restrictive covenant from the Birch Property (the "**Covenant**").

Procedural Background

4. On November 25, 2025, the Honourable Justice Masuhara of the Supreme Court of British Columbia (the "**Court**") granted an initial order (the "**Initial Order**") in the CCAA Proceeding in respect of Jameson Broadway & Birch Limited Partnership, Jameson Broadway & Birch General Partner Ltd., 1061511 B.C. Ltd. (collectively, the "**Birch Companies**") pursuant to the CCAA. The Initial Order granted a stay of proceedings in respect of the Birch Companies and James Holdings until December 4, 2025 (the "**Stay Period**").

5. On December 4, 2025, this Honourable Court granted the Amended and Restated Initial Order in the CCAA Proceeding which extended the Stay Period to March 5, 2026.

6. This Honourable Court has granted two further extensions to the Stay Period in this CCAA Proceeding on March 5, 2026 and May 29, 2026. The Stay Period is currently set to expire on July 31, 2026.

Background

7. RBC Global Asset Management Inc. ("**RBC GAM**"), is a corporation amalgamated pursuant to the laws of Canada. RBC GAM is the manager of certain investment funds (the "**Funds**") which Funds invest in loans made to borrowers, being James Holdings in this case, under mortgage-backed loan agreements.

First Affidavit of Jeffrey Burt, sworn July 24, 2026 (the "**Burt Affidavit**") at para 6

8. Portage Capital Corporation ("**Portage**") is a corporation incorporated pursuant to the laws of British Columbia. Portage is a mortgage originator on behalf of RBC GAM, which means Portage may enter into mortgage-backed loan agreement which RBC GAM will advance funding for (a "**Mortgage Originator**"). Portage's authority arises from a Mortgage Origination Agreement dated October 21, 2020 between RBC GAM and Portage, wherein Portage was appointed by RBC GAM to act as agent of RBC GAM in respect of sourcing and entering into loans in which RBC GAM Funds would invest in and coordinating funding processes with the assistance of the Mortgage Servicer (as defined below).

Burt Affidavit at para 7

9. CMLS is a corporation incorporated under the laws of British Columbia. CMLS is both a Mortgage Originator and an administrator and servicer of the mortgages entered into that the RBC GAM Funds have an interest in (a "**Mortgage Servicer**"). CMLS' authority arises from an Amended and Restated Mortgage Origination and Servicing Agreement dated December 1, 2020 between RBC GAM and CMLS, wherein CMLS was appointed by RBC GAM to act as agent of the Funds in respect of collecting and enforcing payments, and enforcing security relating to mortgages which RBC GAM Funds have an interest.

Burt Affidavit at para 8

10. Computershare is a corporation incorporated pursuant to the laws of Canada. Computershare acts as a trustee and custodian on behalf of the Funds as the moneys advanced by RBC GAM for loans are moneys received by the Funds investors and not from RBC GAM itself. Any mortgages entered into by Portage and CMLS that are to be funded by RBC GAM will be held in the name of Computershare, as custodian for the Funds.

Burt Affidavit at para 9

11. For simplicity, RBC GAM, Portage, CMLS, and Computershare shall be collectively referred to herein as the "**Portage Lenders**".

12. James Holdings is a corporation incorporated pursuant to the laws of British Columbia on October 27, 1977.

Burt Affidavit at para 11; Exhibit "A"

13. No. 198 Cathedral Ventures Ltd. ("**Cathedral Ventures**") is a corporation incorporated pursuant to the laws of British Columbia on July 15, 1997. Cathedral Ventures is a bare trustee for the benefit of James Holdings.

Burt Affidavit at para 12; Exhibit "B"

14. 5186 Investments Ltd. ("**5186 Ltd.**") is a corporation incorporated pursuant to the laws of British Columbia on December 17, 2002. 5186 Ltd. is a bare trustee for the benefit of James Holdings.

Burt Affidavit at para 13; Exhibit "C"

15. 4354 Investments Ltd. ("**4354 Ltd.**", and collectively with Cathedral Ventures and 5186 Ltd., the "**Borrower Trustees**", and together with James Holdings, the "**Portage Borrowers**") is a corporation incorporated pursuant to the laws of British Columbia on January 29, 2001. 4354 Ltd. is a bare trustee for the benefit of James Holdings.

Burt Affidavit at para 14; Exhibit "D"

16. 1060485 B.C. Ltd. ("**106 Ltd.**") is a corporation incorporated pursuant to the laws of British Columbia on January 4, 2016. 106 Ltd. is a bare trustee of certain real estate for the benefit of James Holdings.

Burt Affidavit at para 15; Exhibit "E"

The Loan

17. Pursuant to a commitment letter between Portage, as lender, the Portage Borrowers, as borrowers, and James Holdings, Anthony Pappajohn, John Pappajohn, and Thomas Pappajohn (collectively, the "**Guarantors**"), as guarantors, dated November 5, 2021 (the "**Commitment Letter**"), as extended by an extension letter dated April 8, 2024 (the "**Extension Letter**", and together with the Commitment Letter, the "**Loan Agreement**"), Portage agreed to advance funds to the Portage Borrowers on terms and conditions agreed to by the Portage Borrowers and Guarantors.

Burt Affidavit at para 16; Exhibits "F" – "G"

18. In accordance with the Loan Agreement, the Portage Lenders extended a $21,500,000 credit facility to the Portage Borrowers (the "**Loan**"). The terms of the Loan Agreement included:

a. term of Loan expires on January 1, 2025;

b. interest rate of 10% per annum for the first 24 months and then 12% thereafter;

c. interest-only payments and property taxes payable monthly on the first business day of each month that the loan remains unpaid; and

d. the Portage Lenders would be entitled to seek the appointment of a receiver over the Portage Secured Properties (as defined below) upon default under the Loan Agreement.

Burt Affidavit at para 17

19. The term of the Loan expired on January 1, 2025 and the Portage Lenders did not issue an extension of the Loan Agreement. The Portage Borrowers did not pay the Portage Lenders

the outstanding amount of the Loan but did continue to service the Loan in accordance with the terms of the expired Loan Agreement until November 1, 2025, after which date all payments to the Portage Lenders ceased.

Burt Affidavit at para 18

The Security

20. To secure repayment of the indebtedness owed and to be owed to the Portage Lenders in relation to the Loan Agreement, the following parties provided security including, *inter alia* (collectively, the "**Original Security**"):

  a. the Borrower Trustees provided the Portage Lenders with a collateral second mortgage in the amount of $21,500,000, executed November 23, 2021 (the "**Granville Mortgage**") over the following real property of the Portage Borrowers (the "**Granville Properties**"):

    i. 2933 - 2935 Granville Street, Vancouver, B.C.
    PID: 027-480-917
    LOT A DISTRICT LOT 526 GROUP 1 NEW WESTMINSTER DISTRICT PLAN EPP672
    Legal Owner/Nominee: 5186 Ltd.
    Beneficial Owner: James Holding

    ii. 3050 - 3088 Granville Street, Vancouver, B.C.
    PID: 025-836-471
    PARCEL C EXCEPT: PART SUBDIVIDED BY PLAN BCP23566; BLOCK 451 DISTRICT LOT 526 GROUP 1 NEW WESTMINSTER DISTRICT PLAN BCP8982
    Legal Owner/Nominee: 4354 Ltd.
    Beneficial Owner: James Holding

    iii. 2903 - 2915 Granville Street, Vancouver, B.C.
    PID: 014-175-207
    LOT 11 BLOCK 430 DISTRICT LOT 526 PLAN 1949
    Legal Owner/Nominee: Cathedral Ventures
    Beneficial Owner: James Holding

    iv. 1520 West 13 Ave, Vancouver, B.C.
    PID: 014-174-707
    LOT 10 BLOCK 430 DISTRICT LOT 526 PLAN 1949
    Legal Owner/Nominee: Cathedral Ventures
    Beneficial Owner: James Holding

    v. 1520 West 13 Ave, Vancouver, B.C.
    PID: 014-174-685
    LOT 9 BLOCK 430 DISTRICT LOT 526 PLAN 1949

Legal Owner/Nominee: Cathedral Ventures
Beneficial Owner: James Holding

b. the Borrower Trustees provided the Portage Lenders with a second priority General Assignment of Rents and Leases dated November 30, 2021 in respect of the rents received in relation to the Granville Properties;

c. James Holdings and each of the Borrower Trustees entered into a Beneficial Authorization and Charge Agreement wherein James Holdings authorized the applicable Borrower Trustee to enter into the Granville Mortgage for the applicable Granville Properties and James Holdings agreed to be bound by the Granville Mortgage;

d. the Portage Borrowers provided Portage with a second priority site-specific General Security Agreement, dated November 23, 2021 (the "**Granville GSA**"), wherein the Portage Borrowers granted RBC a security interest in all of the Portage Borrowers' present and after acquired personal property in relation to the Granville Properties;

e. James Holdings entered into an Interest Reserve Agreement dated November 23, 2021 with Computershare, wherein the amount of $3,225,000 would be held in escrow by Computershare and used to make scheduled interest payments on the Loan as long as there were no defaults (the "**Interest Reserve Payments**");

f. James Holdings provided a guarantee, dated November 23, 2021, wherein James Holdings jointly and severally guaranteed to pay on demand all debts and liabilities owing by the Portage Borrowers to Portage relating to the Granville Mortgage;

g. Anthony Pappajohn provided a guarantee, dated November 23, 2021, wherein Anthony Pappajohn ("**Anthony**") jointly and severally guaranteed to pay on demand all debts and liabilities owing by the Portage Borrowers to Portage relating to the Granville Mortgage;

h. John Pappajohn provided a guarantee, dated November 23, 2021, wherein John Pappajohn jointly and severally guaranteed to pay on demand all debts and liabilities owing by the Portage Borrowers to Portage relating to the Granville Mortgage;

i. Thomas Pappajohn provided a guarantee, dated November 23, 2021, wherein Thomas Pappajohn jointly and severally guaranteed to pay on demand all debts and liabilities owing by the Portage Borrowers to Portage relating to the Granville Mortgage;

Burt Affidavit at para 19; Exhibit "H" – "L"

21. The Granville GSA and Granville Mortgage grants Portage the authority to appoint a receiver and receiver manager over the Granville Properties upon the Portage Borrowers committing an "Event of Default" under the Granville Mortgage.

Burt Affidavit at para 20

22. Under the Extension Letter, the Portage Borrowers provided the Portage Lenders with additional security, including (the "**Additional Security**", and together with the Original Security, the "**Security**"):

a. James Holdings granted a Specific Assignment of Net Proceeds dated September 17, 2024 (the "**Larch Assignment**") in respect of the net sale proceeds relating to the sale of 2538 Birch Street, Vancouver and/or 1807 Larch Street, Vancouver (the "**Larch Property**");

b. 4354 Ltd. provided the Portage Lenders with a collateral second mortgage in the amount of $21,500,000, executed September 17, 2024 (the "**4354 Mortgage**") over the following real property of 4354 Ltd. (the "**4354 Property**"):

i. PH1 – 1477 West 15th Avenue, Vancouver, B.C.
PID: 026-682-672
STRATA LOT 32 DISTRICT LOT 526 GROUP 1 NEW WESTMINSTER DISTRICT STRATA PLAN BCS1875
Legal Owner/Nominee: 4354 Ltd.
Beneficial Owner: James Holding

c. 106 Ltd. provided the Portage Lenders with a collateral second mortgage in the amount of $21,500,000, executed September 17, 2024 (the "**106 Mortgage**") over the following real property of 106 Ltd. (the "**106 Properties**", and collectively with the Granville Properties and the 4354 Property, the "**Portage Secured Properties**"):

i. PH9 – 1477 West 15th Avenue, Vancouver, B.C.
PID: 026-682-656
STRATA LOT 30 DISTRICT LOT 526 GROUP 1 NEW WESTMINSTER DISTRICT STRATA PLAN BCS1875
Legal Owner/Nominee: 106 Ltd.
Beneficial Owner: James Holding

ii. Unit 204 – 1477 West 15th Avenue, Vancouver, B.C.
PID: 026-682-460
STRATA LOT 11 DISTRICT LOT 526 GROUP 1 NEW WESTMINSTER DISTRICT STRATA PLAN BCS1875
Legal Owner/Nominee: 106 Ltd.
Beneficial Owner: James Holding

d. James Holdings and each of 4354 Ltd. and 106 Ltd. entered into a Beneficial Authorization and Charge Agreement wherein James Holdings authorized 4354 Ltd. to enter into the 4354 Mortgage for the 4354 Property and 106 Ltd. to enter into the 106 Mortgage for the 106 Properties. James Holdings agreed to be bound by the 4354 Mortgage and the 106 Mortgage;

e. 4354 Ltd. provided Portage with a second priority site-specific General Security Agreement, dated September 17, 2024, wherein 4354 Ltd. granted RBC a security interest in all of 4354 Ltd.'s present and after acquired personal property in relation to the 4354 Property;

f. 106 Ltd. provided Portage with a second priority site-specific General Security Agreement, dated September 17, 2024, wherein 106 Ltd. granted RBC a security interest in all of 106 Ltd.'s present and after acquired personal property in relation to the 106 Properties;

Burt Affidavit at para 21; Exhibit "M" – "Q"

Payment of the Loan

23. The Loan was advanced to the Portage Borrowers on the expectation that the monthly payments would be paid from the surplus rental income generated from the Granville Properties, after payment of the obligations owing to the first mortgagee on the Granville Properties (the "**Granville Rent Surplus**"), Vancouver City Savings Credit Union ("**Van City**"), and plus the Interest Reserve Payments. The Interest Reserve Payments were exhausted on August 1, 2023.

Burt Affidavit at para 22

24. At all times prior to the CCAA, all of the Portage Lenders believed and understood that the Loan was being serviced by the Granville Rent Surplus and the Interest Reserve Payments, and that any enforcement for recovery of the Loan would be in respect of the Granville Properties.

Burt Affidavit at para 23

25. At no time prior to the CCAA Proceedings were any of the Portage Lenders made aware that payments made by the Portage Borrowers towards the Loan were sourced from any property other than the Granville Properties, including the Birch Property. The Portage Lenders are not aware of cash flows relating to other properties owned by the Portage Borrowers.

Burt Affidavit at para 24

26. At no time prior to the CCAA Proceedings were any of the Portage Lenders made aware of the loan agreement entered into by James Holdings and the Birch Companies, referred to as the "JHL Credit Agreement".

Burt Affidavit at para 25;

First Affidavit of Thomas Pappajohn dated November 24, 2025 ("**First Pappajohn Affidavit**")

The Defaults and Indebtedness

27. On January 1, 2025, the Portage Borrowers failed to pay all amounts of principal and interest outstanding under the Loan Agreement to the Portage Lenders.

Burt Affidavit at para 26

28. On August 28, 2025, the Portage Borrowers did not advance any of the net sale proceeds from the sale of the Larch Property to the Portage Lenders pursuant to the Larch Assignment. James Holdings received $1,827,523.73 from the sale of the Larch Property as a creditor and not as a partnership distribution. It has been the Portage Lenders expectation that they would receive the $1,827,523.73 but were told by Anthony Pappajohn that James Holdings received these funds as a creditor, and not as a limited partnership distribution, allowing it to use the funds to pay other creditors.

Burt Affidavit at para 27

29. Around September 17, 2025, Andrew Jones of Portage and Anthony had discussions regarding James Holdings' use of the net sale proceeds from the Larch Property. The proceeds were used to pay Mohel Holdings Ltd. pursuant to an Irrevocable Covenant to Pay and Direction dated August 19, 2025.

Burt Affidavit at para 28; Exhibit "R"

30. On October 29, 2025, James Holdings issued an irrevocable direction to pay in favour of Portage upon the sale of the Birch Property (the "**Portage Direction**"). The Portage Direction was granted by James Holdings on the condition that the Portage Lenders continue to make the Loan available and provided the Portage Lenders with the following:

> "… [James Holdings] undertakes in favour of [Portage] that, following the sale of the [Birch Property], [James Holdings] will cause the Birch Owner to pay to [Portage] the entire outstanding balance of the Loan, as defined in the Agreement, plus interest thereon and any other amounts, costs, charges and expenses due and payable by the [Portage Borrowers] to [Portage] under the Agreement (the "Indebtedness") <u>from the amounts [James Holdings] is entitled to receive from the Birch Owner following the sale of the [Birch Property] pursuant to the Agreement of Purchase and Sale (the "Birch PSA") between the Birch Owner, together as vendor, and FPB Holdings Group Inc.,</u> as purchaser (the "Birch Sale Transaction"); …"

Burt Affidavit at Exhibit "S"

31. Notwithstanding receiving the Portage Direction, at all times, it remained the Portage Lenders' expectation that Granville Surplus Rent would continue to be paid by the Portage Borrowers towards the Loan.

Burt Affidavit at para 29; Exhibit "S"

32. On December 19, 2025, when the Birch PSA with FPB Holdings Group Inc. was terminated, the Portage Direction ceased to act as security for the Portage Lenders.

Monitor's Second Report at para 5.1

33. Beginning on December 1, 2025, the Portage Borrowers ceased making any payments toward the Loan. The Portage Lenders have not received any payments under the Loan Agreement since November 1, 2025.

Burt Affidavit at para 30

34. On December 24, 2025, the Portage Lenders issued demand letters to the Portage Borrowers and 1060485 B.C. Ltd. enclosing Notices of Intention to Enforce Security pursuant to s. 244 of the BIA. It was not understood by the Portage Lenders at this time that there was a Stay that affected the Security granted by James Holdings to the Portage Lenders.

Burt Affidavit at para 31; Exhibit "T"

35. By a Forbearance Agreement dated February 9, 2026, *inter alios*, CMLS on behalf of Computershare, the Portage Borrowers, the Guarantors, and the Birch Companies agreed that Portage would forbear from enforcing the Security on certain terms and conditions.

Burt Affidavit at para 32; Exhibit "U"

36. One of the most critical terms of the Forbearance Agreement for the Portage Lenders was that the Portage Borrowers agreed that any redemption period in respect of the Portage Secured Properties, either in a foreclosure or in receivership proceeding, would be correspondingly reduced by the duration of the Forbearance Agreement.

Burt Affidavit at para 33

37. The Forbearance Agreement required, *inter alia*, the following before the Portage Lenders would agree to forbear from taking enforcements steps:

a. the Birch Companies would agree to register a collateral mortgage in the amount of $35,000,000 in favour of Portage and Argo Ventures Inc. (the "**Birch Mortgage**") to be registered against the property municipally known as 2538 Birch Street, Vancouver (the "**Birch Property**"); and

b. the Birch Companies must provide an Order of the Court approving the Forbearance Agreement, the Birch Mortgage, and registration of the Birch Mortgage.

Burt Affidavit at para 34

38. This Honourable Court did not approve the Forbearance Agreement or the Birch Mortgage and the Forbearance Agreement is therefore in breach. Notwithstanding this, the Forbearance Agreement expires on July 31, 2026.

Burt Affidavit at para 35

39. Additionally, on July 20, 2026, the Portage Lenders became aware that Van City had registered subsequent mortgages on the Granville Properties without obtaining the consent of the Portage Lenders, contrary to the terms of the Granville Mortgage.

Burt Affidavit at para 36

The Portage Lenders continue to be prejudiced

40. As of July 20, 2026, the total indebtedness of the Portage Borrowers to the Portage Lenders pursuant to the Loan Agreement is $23,740,728.23, with interest accruing thereafter at 12% per annum, plus accrued and accruing costs and expenses, including legal costs on a solicitor and own client, full indemnity basis (collectively, the "**Indebtedness**"). Of this amount, $1,791,733.33 is the amount of accrued arrears since the first payment default on December 1, 2025 (the "**Arrears**").

Burt Affidavit at para 37; Exhibit "V"

41. The Portage Lenders are being materially prejudiced by not being able to enforce against the Portage Secured Properties while the Arrears continue to accrue by more than $215,000 per month. Prior to the CCAA Proceedings, the monthly payments owing to the Portage Lenders were being paid by the Granville Rent Surplus and the Interest Reserve Payments but the Portage Lenders are no longer receiving any of these funds, contrary to the Security. It is not known why the Granville Rent Surplus stopped being paid or where these funds are being used now.

Burt Affidavit at para 38

42. The Portage Lenders are not creditors of the Birch Companies but have been stayed from taking enforcement steps for a period of 8 months, with no end date in sight. The Portage Lenders should not continue to be prevented from enforcing against their Security while material arrears are accruing but other lenders to James Holdings continue to be paid.

Burt Affidavit at para 39

PART 3: LEGAL BASIS

A. Lifting a CCAA Stay

43. The Portage Lenders are not creditors of the Birch Companies but are secured creditors of James Holdings, a third party entity in the CCAA Proceedings. The Portage Lenders seek to lift the Stay over James Holdings for the purpose of allowing the Portage Lenders to enforce the Security as against the Portage Secured Properties.

44. While there is no statutory test to lift a stay of proceedings under the CCAA, the Court may use its discretion under s. 11 of the CCAA to grant such an order. The applicable test to lift the stay of proceedings is set out by Justice Fitzpatrick in *Yukon Zinc* (citations omitted):

> [26] There is also no controversy concerning the principles which govern applications by creditors under the CCAA to lift the stay of proceedings to litigate claims in other courts or forums, other than by the procedures in place in the restructuring proceedings:
>
> a) the lifting of the stay is discretionary;
>
> b) there are no statutory guidelines and the applicant faces a "very heavy onus" in making such an application;
>
> c) there are no set circumstances where a stay will or will not be lifted, although examples of situations where the courts have lifted stay orders are set out in *Canwest* (2009) at para. 33;
>
> d) relevant factors will include the status of the CCAA proceedings and what impact the lifting of the stay will have on the proceedings. The court may consider whether there are sound reasons for doing so consistent with the objectives of the CCAA, including a consideration of the relative prejudice to parties and, where relevant, the merits of the proposed action;
>
> e) particularly where the issue is one which is engaged by a claims process in place, it must be remembered that one of the objectives of the CCAA is to promote a streamlined process to determine claims that reduces expense and delay; and
>
> f) as an overarching consideration, the court must consider whether it is in the interests of justice to lift the stay.

Yukon Zinc Corporation (Re), 2015 BCSC 1961 at para 26

45. The examples of situations where the courts have lifted stay orders in CCAA proceedings include:

a. When the plan is likely to fail.

b. The applicant shows hardship (the hardship must be caused by the stay itself and be independent of any pre-existing condition of the applicant creditor).

c. The applicant shows necessity for payment (where the creditors' financial problems are created by the order or where the failure to pay the creditor would cause it to close and thus jeopardize the debtor's existence).

d. The applicant would be significantly prejudiced by refusal to lift the stay and there would be no resulting prejudice to the debtor company or the positions of creditors.

e. It is necessary to permit the applicant to take steps to protect a right which could be lost by the passing of time.

f. After the lapse of a significant time period, the insolvent is no closer to a proposal than at the commencement of the stay period.

g. There is a real risk that a creditor's loan will become unsecured during the stay period.

h. It is necessary to allow the applicant to perfect a right that existed prior to the commencement of the stay period.

i. It is in the interests of justice to do so.

Canwest Global Communications Corp., Re, 2009 CarswellOnt 7882 at para 33

46. As will be detailed further below, this is a case where the Stay should be lifted in order to allow the Portage Lenders to enforce against the Portage Borrowers, including James Holdings, as:

a. There is no plan that can be accepted by the Birch Companies creditors. As stated by BC Housing, since the commencement of this proceeding the Birch Companies have failed to advance any consistent and coherent plan with a reasonable prospect of payment to the creditors and have only put forward vaguely defined efforts to restructure by way of equity/debt financing with nothing to show for it.

BC Housing Notice of Application at para 32

b. The Portage Lenders are prejudiced by being unable to enforce against any of their Security, all of which secures property that is not subject of this CCAA Proceeding. The Arrears continue to grow with each month under the Stay, the Granville Surplus Rent is being reallocated for some other purpose, and the value of the Portage Secured Properties are subject to the declining market fluctuations. There is no prejudice to the creditors of the CCAA Proceeding by allowing the Portage Lenders to enforce against the Security, notwithstanding James Holdings (an equity holder and creditor) claims that it will be kept from "deploying all their attention" to the Birch Property.

c. The CCAA Proceeding has not advanced and now, given BC Housing's total loss of confidence in the Birch Companies, BC Housing is seeking to enhance the powers of the Monitor to take control of and sell the Birch Property through a sale process, which sale process is anticipated to take until at least December 18, 2026 for an agreement to close. The sale process proposed by the Monitor currently contemplates accepting bids that will be subject to approval of the Re-Zoning Application and/or the removal of the Covenant from the Birch Property, which BC Housing has not agreed to. BC Housing is concerned with its security eroding as a result of the DIP financing, which suggests that there may be no surplus proceeds available for any other creditors after BC Housing is paid, in full or in part.

Kwong Affidavit at paras 32 - 36

d. After being stayed for eight months in a CCAA Proceeding that does not affect the Security of the Portage Lenders, it is in the interests of justice to allow it to pursue recovery of the Indebtedness and the accruing Arrears.

B. The Stay against James Holdings should be lifted

47. While the Debtors laid out the correct test to apply for the extension of the stay of proceedings to third party entities, the analysis and justification set out in the Petition for including James Holdings under the Stay was superficial.

48. This Court has exercised its discretion to capture third parties under a CCAA stay of proceedings where the inclusion of those parties benefits the creditors and the restructuring of process. Examples include:

a. In *MMA*, a railway company experienced a significant rail disaster that resulted in, among other things, the destruction of a part of Lac-Megantic. The railway sought an initial order under the CCAA and sought to have the stay of proceedings apply to its civil liability insurer. The intention was to contain all of the claims and debts in one process to ensure an organized distribution to creditors and victims. The Court granted the stay over the insurer as based on the fair administration of justice.

Montréal, Maine & Atlantique Canada Co. (Arrangement relatif à), 2013 QCCS 4039 ("***MMA***") at paras 56 – 66

b. In the creditor-led CCAA proceeding of the "Migu Group", the Migu Group debtors were formed primarily to sell "Miniso" branded products in Canada under a licensing agreement with the "Miniso Group", being the petitioning creditor. While the Migu Group held the licence, subsidiaries were formed to sell the Miniso products in various retail stores across Canada (the "**Retail Entities**"). The Miniso Group sought to have the stay apply to the related general partner companies (the "**Retail GPs**") that were formed to operate the Retail Entities. The Court granted the stay over the Miniso Group (including the Retail Entities) and extended the stay to the Retail GPs as the business operations of the Retail Entities were directly intertwined with the Retail GPs.

Miniso International Hong Kong Limited v Migu Investments Inc., 2019 BCSC 1234

c. In the ELNA Group, the Court granted a stay over the sole director and shareholder of the debtor entities in respect of specific liabilities. The director had taken a personal loan and advanced all of those funds to the debtor entities while providing his personal residence as collateral. The director would not have been able to satisfy his personal obligations until the restructuring was completed and he was unable to file for bankruptcy as he would then be disqualified to act as a director of the debtors. The director was found to be essential to the operations of the debtors and the restructuring and found that his creditor would not be prejudiced.

Arrangement relatif a ELNA Medical Group Inc./Groupe Medical ELNA Inc., 2024 QCCS 4612

d. In the 2675970 Ontario case, the CCAA debtors operated retail and online cannabis dispensaries. Prior to the CCAA Initial Order, certain CCAA debtors and another entity, DAK Capital Inc., were named in a Notice of Arbitration relating to a dispute over a share purchase agreement. DAK had provided a guarantee for certain payments under the Agreement. The CCAA debtors claimed that DAK shared a centralized management, which would undermine the SISP and restructuring effort. The decision focuses predominantly on whether guarantors can be captured by a stay and relied upon the Monitor's view that an arbitration would be counterproductive to the SISP and overall restructuring.

2675970 Ontario Inc., 2024 ONSC 6174 at paras. 6-7.

49. In each of the above cases, there were circumstances that justified the inclusion of third parties as those parties had a material role in the reorganization. This is not such a case.

50. The Birch Companies and James Holdings are not a retail business which involves daily procurement, managing employees or daily operations, nor is this a complex multi-unit development with buildings in various stages of completion. This CCAA Proceeding relates to a single land development that is, based on the statements of the Birch Companies' counsel, substantially complete and ready for sale.

First Pappajohn Affidavit at para 45

Fifth Affidavit of Thomas Pappajohn dated July 23, 2026 (the "**Fifth Pappajohn Affidavit**") at paras 19, 22-23

51. James Holdings is a shareholder in the Birch GP, a limited partner in the Birch Partnership, and a creditor of the Birch Partnership. James Holdings' connection to this development has been to collect the equity after the Birch Property was completed (if in fact there is any). It is not clear on the evidence what James Holdings does in respect of managing the development of the Birch Property as it was stated in the First Pappajohn Affidavit that Jameson Management Limited Partnership and Jameson Development Corp. are the entities involved in the management and development of the Birch Property, that there are no employees, and that the individuals working on the development of the Birch Property are hired by third-party contractors. Further, in the Fifth Pappajohn Affidavit, the cash flows for the completion of the project do not contemplate any services from James Holdings.

First Pappajohn Affidavit at paras 36-38

Fifth Pappajohn Affidavit at para 28-29, 31

52. James Holdings may be intertwined in the corporate and partnership structure relating to the Birch Property, but James Holdings is primarily an equity investor and, more recently, a creditor (by its own actions). This does not support James Holdings being captured by the Stay or prejudicing the creditors of James Holdings from enforcing against their legitimate security that is unrelated to the Birch Companies and the Birch Property. In other words, James Holdings is not significantly intertwined in the management of the businesses of the Birch Companies, it is just seeking shelter under the Stay in the hope that it receives a limited partnership distribution from the Birch Property, which will not occur if all creditors are not paid out in full. The prejudice to the Portage Lenders far outweighs the distraction management claims James Holdings may experience in dealing with a realization by the Portage Lenders.

First Pappajohn Affidavit at para 83
Fifth Pappajohn Affidavit at para 85

53. The Stay in respect of James Holdings is an attempt to prevent the Portage Lenders from enforcing their rights under their Security against the Portage Secured Properties while not making payments to the Portage Lenders. The funds that James Holdings should be paying the Portage Lenders under its security, which includes the Granville Surplus Rent, is not being paid to the Portage Lenders.

Burt Affidavit at para 27-28; Exhibit "R"

54. Additionally, there are serious issues and uncertainty with the sale process proposed by the Monitor and the Birch Companies:

a. it contemplates accepting bids that will be subject to approval of the Re-zoning Application and which would also require the discharge of the Covenant, which does not allow hotel use or short term accommodations on the Birch Property;

b. it is not clear how the Monitor is going to determine what the best bid is where some bids will contemplate the purchase of a hotel or short term accommodations, which are conditional on the Re-zoning Application and the Covenant being discharged, which could take several months, if approved at all;

c. It is very likely that the proposed sale process will have delays to accommodate the Re-zoning Application and removal of the Covenant, which will further prejudice the Portage Lenders, who will continue to go unpaid for any delays. The proposed dates in the sale process are identified as 'target dates' and it is not clear who has authority to change or extend those dates;

d. The winning bid will be subject to court approval, which may not be approved, resulting in further delays if a new sale process needs to be initiated;

e. There is no indication of what will happen if the sale process is terminated. Will BC Housing be permitted to appoint a receiver or will the Monitor become a true super Monitor?

Fifth Pappajohn Affidavit at para 69 and 71

Fifth Monitor's Report at para 10.10

C. This is a situation where the court has lifted the stay

55. In respect of this CCAA Proceeding, the Portage Lenders submit:

a. It is clear that, after 8 months under the Stay, the Birch Companies are no closer to a plan than they were at the commencement of this proceeding and BC Housing has lost confidence in the Birch Companies. The original plan was for the Birch Property to be sold to FPB Holdings Group Inc. for the "Dunna'eh House of Healing", which plan ended on December 19, 2025, then the plan was for the Birch Property to be restructured as a medical accommodation called "Northern House", and conversion of the Birch Property to part-hotel use. According to Fifth Pappajohn Affidavit, there are currently no actual investors or agreements in place at this time, just interested parties.

Fourth Affidavit of Thomas Pappajohn dated May 27, 2026 at para 29-33
Fifth Pappajohn Affidavit at paras 44-59
First Affidavit of Raymond Kwong dated July 23, 2026 ("**Kwong Affidavit**") at paras 29 - 40

b. The Portage Lenders are being prejudiced by the Stay as they have not been paid any amount since November of 2025 and the Arrears are now $1,791,733.33, which are accruing at a rate of $215,000 per month. If the Portage Lenders continue to be stayed from their enforcement against James Holdings until the proposed stay extension to December 31, 2026, the Arrears will further increase by approximately $1,100,000.

Burt Affidavit at para 38

c. In the Birch Companies' petition, James Holding is described as only being able to service and repay the Indebtedness to the Portage Lender and the debt to Argo through repayment of the Birch Companies to James Holding. The Portage Lenders have no visibility on the Portage Secured Properties while the first mortgagee on the Granville Properties, being Van City, continues to be paid and the loan owing by James Holdings to Argo also appears to be in good standing. It is only the Portage Lenders who continue to actually be materially impacted by the Stay and unable to enforce their Security against the Portage Secured Properties. The Birch Companies have paid over $1,200,000 in management fees over the course of the CCAA Proceeding but James Holdings is unable to find sufficient cash to service the debt owed to the Portage Lenders.

Fifth Pappajohn Affidavit at paras 28, 83 and 89

d. There is prejudice to the Portage Lenders if the Stay is not lifted as the Arrears continue to accrue. There is no real prejudice to the Birch Companies if the Stay is lifted, notwithstanding their claims that allowing the Portage Lenders to commence enforcement will imperil the entire CCAA Proceeding. The development of the Birch Property is substantially complete and the Birch Property will be marketed for sale by the Monitor. The sale of the Portage Secured Properties will reduce the Indebtedness owing to the Portage Lenders, which will reduce the Indebtedness owing by James Holdings to the Portage Lenders. Based on the assessed values of the Portage Secured Properties, it is unlikely that the Portage Lenders will be receive full recovery of the Indebtedness from the sale of the Portage Secured Properties and the Portage Lenders' position as unsecured creditors will increase as Arrears continue to accrue.

Fifth Pappajohn Affidavit at para 23

e. It is in the interests of justice to, after being stayed for 8 months, allow the Portage Lenders to pursue recovery of the Indebtedness by enforcing against the Portage Secured Properties. BC Housing has determined that it has lost all confidence in management of the Birch Companies and opposes management having any control or management over the marketing and sale of the Birch Property. In the event that the Monitor is granted enhanced powers, management of James Holdings will have increased capacity to deal with enforcement of the Portage Secured Properties.

Kwong Affidavit at paras 41 – 43,

Notice of Application of BC Housing at paras 41 – 43, 46

D. The status of the CCAA Proceeding and the effect of lifting the Stay

56. This CCAA Proceeding relates to a single land development that is, based on the statements of the Birch Companies' counsel, substantially complete and ready for sale. The next steps for this development are for it to be marketed and sold in a sales process, and the funds to be distributed. If BC Housing's application is successful, these steps will be performed by the super Monitor.

57. This CCAA Proceeding has continued for a period of 8 months, pivoting directions a number of time, without any indication of when a plan will be put to the creditors of the Birch Companies. During this time, the Portage Lenders have not been paid and they have not been able to enforce their security against the Portage Secured Properties.

58. If the Stay is lifted in order to allow the Portage Lenders to pursue enforcement against the Portage Secured Properties, there will be no material negative impact on the CCAA Proceeding. As previously mentioned, the Portage Secured Properties are not property that is subject to the CCAA Proceedings, there will be no impact to the other creditors in the CCAA if these properties are sold. Additionally, notwithstanding that James Holdings does not appear to be involved in the management of development of the Birch Property, if the Court grants the Monitor enhanced powers as sought by BC Housing, management of the Birch Property will not be performed by the directors of the Birch Companies or James Holdings.

59. Neither the Monitor nor BC Housing have made any arguments that support continuing to extend the Stay in respect of James Holdings.

E. Conclusion

60. For all of the foregoing reasons, the Portage Lenders respectfully submit that it is in the interests of justice that the Stay in this CCAA Proceeding be lifted as against James Holdings in order to allow the Portage Lenders to enforce their security against the Portage Secured Properties. The Portage Lenders are prejudiced by this Stay and there will be no negative effect to the CCAA Proceeding by lifting the Stay for this purpose.

PART 4: MATERIAL TO BE RELIED ON

61. The Orders and court materials granted in this proceeding;

62. First Affidavit of James Burt, dated July 24, 2026.

63. First Affidavit of Thomas Pappajohn dated November 24, 2025.

64. Fourth Affidavit of Thomas Pappajohn dated May 27, 2026.

65. Fifth Affidavit of Thomas Pappajohn dated July 23, 2026.

66. First Affidavit of Raymond Kwong dated July 23, 2026.

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,

file an application response in Form 33,

file the original of every affidavit, and of every other document, that

1. you intend to refer to at the hearing of this application, and
2. has not already been filed in the proceeding, and

serve on the applicant 2 copies of the following, and on every other party of record one copy of the following:

3. a copy of the filed application response;
4. 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;
5. if this application is brought under Rule 9-7, any notice that you are required to give under Rule 9-7(9).

Date: July 27, 2026

Signature of William E.J. Skelly
☒ Lawyer for Applicant

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: .....[*dd/mmm/yyyy*]......

Signature of ☐ Judge ☐ Associate Judge

Appendix

(2) 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
- X other