Court File No. VLC-S-B-200257
Estate No. 11-2649058
Vancouver Registry

IN THE SUPREME COURT OF BRITISH COLUMBIA
IN BANKRUPTCY AND INSOLVENCY

IN THE MATTER OF THE NOTICE OF INTENTION TO MAKE A PROPOSAL OF TRIPLE M MODULAR LTD. dba METRIC MODULAR

APPLICATION RECORD OF THE APPLICANT, TRIPLE M MODULAR LTD. dba METRIC MODULAR

Solicitors for the Applicant,
Triple M Modular dba
Metric Modular

J. REILLY POLLARD
LINDSAY KENNEY LLP
1800 – 401 West Georgia St.
Vancouver, BC V6B 5A1
Tel: 604-484-3094
Email: rpollard@lklaw.ca

DATE, TIME, PLACE OF APPLICATION
June 30, 2020 at 9:45 am in Vancouver
(Appearing by Telephone Conference)

LENGTH OF HEARING: 30 minutes

APPLICATION RECORD PROVIDED BY:
Lindsay Kenney LLP, Solicitors for the Applicant

Court File No. VLC-S-B-200257
Estate No. 11-2649058
Vancouver Registry

IN THE SUPREME COURT OF BRITISH COLUMBIA
IN BANKRUPTCY AND INSOLVENCY

IN THE MATTER OF THE NOTICE OF INTENTION TO MAKE A PROPOSAL OF
TRIPLE M MODULAR LTD. dba METRIC MODULAR

APPLICATION RECORD
INDEX

TAB 1

COURT FILE NO. VLC-S-B-200257
ESTATE NO. 11-2649058
VANCOUVER REGISTRY

IN THE SUPREME COURT OF BRITISH COLUMBIA
IN BANKRUPTCY AND INSOLVENCY

IN THE MATTER OF THE NOTICE OF INTENTION TO MAKE A PROPOSAL OF TRIPLE M MODULAR LTD. dba METRIC MODULAR

NOTICE OF APPLICATION

Name of Applicant: Triple M Modular Ltd. dba Metric Modular ("Metric Modular")

To: ATB Financial (c/o their Solicitors, McCarthy Tetrault LLP)

Grant Thornton Limited, in its capacity as Proposal Trustee (c/o their Solicitors, Cassells Brock & Blackwell LLP)

Her Majesty the Queen in the Right of Canada as represented by the Minister of National Revenue (c/o Department of Justice Canada) – *and* – Canada Revenue Agency, Pacific Insolvency Intake Centre

The British Columbia Minster of Finance (c/o Ministry of Attorney General)

The Office of the Superintendent in Bankruptcy (by email to ic.osbservice-bsfservice.ic@canada.ca)

TAKE NOTICE that an application will be made by the Applicant to the presiding judge at the Courthouse at 800 Smithe Street, in the City of Vancouver, in the Province of British Columbia on Tuesday, the 30th day of June, 2020 at 9:45am (via telephone conference) for the orders set out in Part 1 below.

Part 1: ORDERS SOUGHT

1. An Order extending the time for filing a proposal by Metric Modular from 11:59pm on Wednesday July 1, 2020 to 11:59pm on August 15, 2020.

2. An Order extending the stay of proceedings from 11:59pm on Wednesday July 1, 2020 to 11:59pm on August 15, 2020.

3. An Order granting a priority charge over the assets of Metric Modular in the amount of $200,550 to fund a Key Employee Retention Plan (the "**KERP Charge**").

4. A Sealing Order in respect of Affidavit #2 of Joel Holloway sworn June 23, 2020.

5. An Order that ATB Financial is unaffected by these proceedings to the extent of their perfected secured claim against the assets of Metric Modular with the sole exception that the KERP Charge shall have priority over their claim.

6. An Order abridging the time for service of the application materials.

Part 2: FACTUAL BASIS

Background

7. Metric was incorporated on April 6, 2017 pursuant to the *Business Corporations Act* (British Columbia). Metric is a wholly owned subsidiary of Triple M Modular LP ("**Triple M LP**"), an entity that is the ultimate shareholder of Metric and its sister company, Triple M Housing Ltd. ("**Triple M Housing**"), an Alberta-based corporation located in Lethbridge, Alberta.

Affidavit #1 of Joel Holloway sworn June 23, 2020 ("**Holloway #1**"), para. 4

8. Metric Modular ("**Metric**" or the "**Company**") is a modular construction company specializing in designing, building, delivering, and installing multi-family affordable and market housing, student accommodation and education space, hotels, workforce accommodation, and high-performance energy efficient modular buildings. Metric has been in business since 2017 when it acquired the assets of the Pacific Coast Modular Construction LP o/a Britco Construction, which had been in business over forty years.

Holloway #1, para. 5

9. In the passages that follow, the dates referenced will refer to Metric's fiscal year which begins September 1 and ends August 31 (fiscal 2019 refers to the period from September 1, 2018 through to August 31, 2019). The financial quarters are as follows: Q1 refers to the period from September 1 through to November 30, Q2 refers to December 1 through to February 28, Q3 refers to March 1 through May 31, and Q4 refers to June 1 through August 31 in any given fiscal year.

Business Operations

10. Metric operates out of leased premises at its head office located at 1825 Tower Road, in the city of Agassiz, British Columbia (the "**Agassiz Facility**"). The Agassiz Facility is also the location of the Company's manufacturing facility. Prior to the filing of the Notice of Intention to make a Proposal on June 1, 2020 (the "**NOI**"), Metric also operated from a second facility located in Penticton, British Columbia (the "**Penticton Facility**"). Metric currently has 54 employees in British Columbia.

Holloway #1, para. 6

Failure to Achieve Profitability

11. Since taking over the business of Britco Construction in 2017, Metric began executing on a strategy to move the business away from its traditional revenue base of workforce accommodation to a more diversified mix of permanent modular construction revenue streams. Metric made progress on this strategic shift, growing its revenues by 54% in fiscal 2018 and 31% in the fiscal 2019. However, there were also significant financial losses of ($2.0MM) EBITDA in fiscal 2017 and ($3.1MM) EBITDA in fiscal 2018. These losses were due to:

(a) the startup of the Penticton Facility;

(b) periods with insufficient production backlog, which led to manufacturing inefficiencies; and

(c) cost overruns on project installation due to scope increase and costs incurred to meet project timelines.

In the fiscal year ended August 31, 2019 the Company reduced the losses incurred by the business to ($0.5MM) but failed to achieve targeted profitability for the business.

Holloway #1, para. 7

12. In fiscal 2019 and 2020, Metric took the following steps to improve the profitability of its business:

(a) Closed the Company's Penticton Facility which had accounted for significant financial losses in 2019 and prior years;

(b) In response to project installation losses, made changes to the Company's management by hiring a Director, Projects with extensive construction experience. The Director, Projects was tasked with addressing common sources of cost overruns in the business. Project financial performance improved considerably on projects completed under the oversight of the Director, Projects;

(c) Reduced non-production staff by 24%; and

(d) Introduced new product lines for production in the Agassiz Facility, further diversifying the revenue streams generated by that facility;

Holloway #1, para. 8

13. In fiscal 2020, the Company began the year with a single project comprising much of the production backlog for the Agassiz Facility. When the project was delayed due to timing of municipal approvals for the project, the Company experienced a reduction in manufacturing revenue and lower production efficiency. Losses in the months during which the project was delayed exceeded $1.8MM. This was followed by the onset of the COVID-19 pandemic, which further reduced production efficiencies, created uncertainty to the Company's ability to complete existing backlog efficiently, and added difficulty to projecting future sales and financial performance.

Holloway #1, para. 9

Metric's Insolvency

14. Since 2017, the ongoing losses and working capital requirements of the business necessitated financial support from the Company's ownership, TriWest Capital Partners IV L.P. ("**TriWest**") and minority investors (collectively with TriWest referred to as "**Ownership**") and ATB Financial, which is the senior secured lender to the Company and Triple M Housing pursuant to a credit facility that is secured against the assets of both (Triple H Housing is the primary borrower and Metric is a guarantor, but the funds advanced by ATB Financial are intended to be for the use of both companies). Metric received waivers of defaults on financial covenants from

ATB Financial for fiscal quarters Q2 2019 and Q1 and Q2 2020, and access to additional liquidity in the form of temporary increases to the operating credit facility during periods of fiscal 2019 and 2020. Ownership also took the following steps to support the business:

(a) In fiscal 2019 TriWest provided a parental guarantee to ATB Financial in order to obtain an increase to the operating facility to support liquidity requirements of the business;

(b) Ownership made additional investment in the business in fiscal Q1 and Q4 of 2019 to support liquidity requirements and financial covenant compliance; and

(c) In fiscal Q3 2020 TriWest again provided a parental guarantee to ATB Financial to obtain an increase to the operating.

Holloway #1, para. 10

15. On May 25, 2020 the parental guarantee provided by TriWest expired and the increase to the operating facility provided by ATB was eliminated. At this time, the business continued to face liquidity constraints and was unable to pay vendors according to the credit terms they had agreed to provide to the Company.

Holloway #1, para. 11

16. Throughout the month of May, the Company had begun to evaluate alternatives available should the Company have insufficient liquidity upon the reduction of the ATB Financial operating facility on May 25th. On May 26, 2020 Metric met with Grant Thornton Ltd. ("**GT**") to consider its options. The liquidity challenges and inability to pay creditors according to agreed terms led Metric to apply for creditor protection by filing the NOI with GT as Proposal Trustee (the "**Proposal Trustee**"). The NOI was filed in consultation with the Company's primary secured lender ATB Financial.

Holloway #1, para. 12

Financial Position at Filing Date

17. As at June 1, 2019 (the "**Filing Date**"), Metric had total liabilities of approximately $15,001,739, including:

(a) the ATB / Triple M Housing Indebtedness – $9,277,492;

(b) trade accounts payable – $2,567,781; and

(c) employee obligations – $1,391,574;

(d) Customer deposits – $1,172,105; and

(e) GST, PST and EHT obligations – $592,787.

Holloway #1, para. 13

18. Included in the above trade accounts payable are amounts owing to vendors and suppliers that on certain ongoing projects that are governed by the *Builders Lien Act* (British Columbia) (the "***BLA***"). The Company has estimated that creditors owed approximately $900,000 may have rights under the *BLA* and, as such, may have certain priority status in these proceedings.

Holloway #1, para. 13

19. The Company's assets consist of, among other things, the following items with the below noted book values as at April 30, 2020:

(a) accounts receivable – $3,466,775;

(b) hold back receivable – $1,182,201;

(c) inventory

(i) raw material – $2,304,754;

(ii) work in process – $691,989;

(iii) housing work in progress and finished goods – $443,606; and

(d) fixed assets – $814,528

Accordingly, the total book value of the Company's assets is $8,903,853 against total liabilities in excess of $15,000,000.

Holloway #1, para. 14

20. In consultation with GT, Metric determined that the NOI filing was the most effective process for generating returns to its creditors, as it would allow the Company to continue business operations to maximize collection of accounts receivables and holdbacks, and to work on a plan to sell the remaining assets of the business, either through a sale of the Company as whole, or a liquidation of its assets.

Holloway #1, para. 15

Steps Taken By Metric Since Filing Date

21. At the Filing Date, Metric had 26 ongoing customer projects, 17 of which were under active construction and 3 future projects which Metric anticipated commencing work on shortly. Of the ongoing projects, 7 related to the construction of manufactured homes for Triple M Housing. In conjunction with the NOI filing, Metric performed an analysis of each project to assess the cash flow impact of completing the project. Projects with positive cash flows (including associated Company overheads) were identified for completion. As a result of the analysis, it was determined that the company would complete 23 of the ongoing projects and 1 future project (the "**Continuing Projects**").

Holloway #1, para. 16

22. In order to complete the Continuing Projects and conduct an orderly wind down of the business, the Company identified a group of critical employees and management personnel (the "**Key Employees**"). In order to retain Key Employees, the company developed a key employee retention plan ("**KERP**") and negotiated retention bonuses for Key Employees which have been documented in individual agreements between the Key Employees and the Company.

Holloway #1, para. 17

Affidavit #2 of Joel Holloway sworn June 23, 2020, Ex. A

23. In order to maximize the value to its creditors, the Company has taken steps to align expenditures to the completion of the Continuing Projects and wind down of the business. To that end the Company has undertaken the following:

(a) On June 1, 2020, the Company disclaimed its commercial lease related to the unused Penticton Facility;

(b) On June 1, 2020, and in subsequent weeks, the Company terminated or accepted resignation of 10 sales, supervision and administrative staff, which is a 34% reduction in the associated workforce;

(c) On June 1, 2020 and in subsequent weeks the Company terminated or accepted resignation of 50 production staff, which is a 60% reduction in the production workforce;

(d) The Company has disclaimed customer purchase orders, sales agreements and contracts related to the four projects that it could not complete without incurring further losses and a corresponding decline in the returns available to its creditors;

(e) The Company has continued work on a project in Gibsons, BC (the "**Gibsons Project**") pursuant to an agreement between Metric and BC Housing Management Commission ("**BC Housing**"). Due to the length of the Gibsons Project and the significant resources required for the execution of same, the Company is forecasting that it would incur a cash loss if it were to complete the Gibsons Project. Accordingly, the Company is in the process of assigning the contract for the Gibsons Project to Triple M Housing and anticipates this assignment to be completed by the end of June 2020. It is anticipated that the assignment of this contract and related assets and liabilities will be cash positive to the Company, and therefore to the benefit of its creditors.

Holloway #1, para. 18

24. Metric is seeking an extension of the time to file a Proposal for the following reasons:

(a) To complete the Continuing Projects, generating positive cash flow for the benefit of creditors and allowing the Company to explore the sale of the business as a going concern;

(b) If a sale of the Company as a going concern is not achievable, then to conduct an orderly liquidation of the remaining assets in order to maximize recovery for the benefit of creditors;

(c) To maximize collections from the Continuing Projects, on which trade creditors will be benefited by receiving ongoing payment for their invoices and recovery of the holdback funds as a result of the Company's collection of project receipts from customers (consistent with the *BLA*, all project receipts will be used to pay the specific suppliers and subcontractors that have contributed to the to the project, and only the excess receipts will flow into the Company's general revenues).

Holloway #1, para. 19

Part 3 LEGAL BASIS

Extending the Time for Filing a Proposal and the Stay of Proceedings

25. Metric seeks an extension of time to file a proposal and an extension of the stay of proceedings under section 50.4 of the *Bankruptcy and Insolvency Act* ("*BIA*"). Section 50.4(9) of the *BIA* provides as follows:

> (9) The insolvent person may, before the expiration of the thirty day period mentioned in subsection (8) or any extension thereof 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 may grant such extensions, not exceeding forty-five days for any individual extension and not exceeding in the aggregate five months after the expiration of the thirty day period mentioned 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.

26. The requirement that the insolvent person "would likely be able to make a viable proposal" has been interpreted broadly. In *Scotia Rainbow Inc. (Re)*, 2000 CanLII 1649 (NS SC) ("*Scotia Rainbow*"), at para. 17-18, the Supreme Court of Nova Scotia interpreted the phrase

"likely be able to" to mean "might well happen": this suggests that a *real possibility* that a proposal will be made is sufficient to meet the test. In a very recent decision of the Supreme Court of Prince Edward Island – which considered the debtor company's first application under section 50.4(9) – the Court cited *Scotia Rainbow* in granting the extension: *Nautican v. Dumont*, 2020 PESC 15 (CanLII) at para. 16 ("*Nautican*"). The further comments at para. 28 of *Nautican* are apposite:

> [28] It is not in any parties' best interest to truncate the proposal stage in these matters. Nautican and Careli should be provided an opportunity to prepare a substantive proposal as a going concern thereby increasing the likelihood that the creditors will recoup the best possible financial outcome.

Based on the foregoing, it is submitted that an extension can be granted to provide the debtor company *with an opportunity* to file a proposal to its creditors, provided that continuing the proposal proceedings increases the likely return to creditors (and so long as section 50.4(c) is met – i.e. that the extension does not result in any material prejudice to a creditor).

27. In the present case, Metric has not yet determined whether and to what extent it will be in a position to make a proposal, but the continuation of these restructuring proceeding under the *BIA* will, in any event, allow Metric to generate a greater return to its creditors than would be possible if the extension were not granted, and will make it *more likely* that a proposal will be filed. Furthermore, no creditor would be materially prejudiced by the extension.

28. This position is further supported by the unreported decision of this Court in *SNFW Fitness B.C. Ltd. (Re)*, (court docket no. B200193, Vancouver Registry) made June 17, 2020 ("*SNFW*"). In *SNFW*, the both proposal trustee and the debtor company acknowledged that the company was unlikely to file a proposal, based on the value of its assets and the amount owed to its senior secured creditor. Nevertheless, the Court granted the extension, which suggests that section 50.4(9) does not require proof that *a proposal is likely to be made*. It is sufficient if: (i) the extension of the proposal proceedings is in the best interests of the creditors generally, and (ii) a proposal could well be made in the future.

Affidavit #1 of Kendra Hewson sworn June 22, 2020

KERP Charge

29. Metric seeks an Order granting a priority charge over its assets to fund the KERP, pursuant to section 64.2 of the *BIA* or the inherent jurisdiction of the Court (the "**KERP Charge**").

30. Section 64.2 of the *BIA* provides:

Court may order security or charge to cover certain costs

> **64.2 (1)** On notice to the secured creditors who are likely to be affected by the security or charge, the court may make an order declaring that all or part of the property of a person in respect of whom a notice of intention is filed under section 50.4 or a proposal is filed under subsection 62(1) is subject to a security or charge, in an amount that the court considers appropriate, in respect of the fees and expenses of
>
> **(a)** the trustee, including the fees and expenses of any financial, legal or other experts engaged by the trustee in the performance of the trustee's duties;
>
> **(b)** any financial, legal or other experts engaged by the person for the purpose of proceedings under this Division; and
>
> **(c)** any financial, legal or other experts engaged by any other interested person if the court is satisfied that the security or charge is necessary for the effective participation of that person in proceedings under this Division.
>
> **Priority**
>
> **(2)** The court may order that the security or charge rank in priority over the claim of any secured creditor of the person.

The expertise of the Key Employees and their importance to the continued restructuring of the Company are detailed in Affidavit #2 of Joel Holloway sworn June 23, 2020. In the absence of the KERP Charge, the purposes of the KERP may not be fulfilled, since the Key Employees may question the Company's ability to honour its contractual commitments under the KERP. The Company therefore submits the KERP Charge is necessary to the continued restructuring under the *BIA* and will enhance the prospects of the Company making a viable proposal. If section 64.2(1) of the *BIA* is not applicable, a priority charge for a KERP has been granted in proposal proceedings under the *BIA* based on the Court's inherent jurisdiction.

Groupe Bikini Village inc. (Proposition de), 2015 QCCS 1317

Part 4: MATERIAL TO BE RELIED ON

31. Affidavit #1 of Joel Holloway sworn June 23, 2020.

32. Affidavit #2 of Joel Holloway sworn June 23, 2020 (to be filed under seal).

33. Affidavit #1 of Kendra Hewson sworn June 22, 2020.

34. Report of the Trustee dated June 23, 2020.

The Applicant estimates that the application will take 30 minutes.

☐ This matter is within the jurisdiction of a Master.

☒ This matter is not within the jurisdiction of a Master as it involves the exercise of inherent jurisdiction.

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 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 23rd day of June, 2020.

Lindsay Kenney LLP
Solicitors for the Applicant, Metric Modular

This Notice of Application is filed by J. Reilly Pollard, of the law firm of Lindsay Kenney LLP, whose place of business and address for delivery is 1800 - 401 West Georgia Street, Vancouver, British Columbia, V6B 5A1.

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
- ☐ 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

TAB 2

COURT FILE NO. VLC-S-B-200257
ESTATE NO. 11-2649058
VANCOUVER REGISTRY

IN THE SUPREME COURT OF BRITISH COLUMBIA
IN BANKRUPTCY AND INSOLVENCY

IN THE MATTER OF THE NOTICE OF INTENTION TO MAKE A PROPOSAL OF TRIPLE M MODULAR LTD. dba METRIC MODULAR

SEALING ORDER

BEFORE THE HONOURABLE JUSTICE

TUESDAY, THE 30TH DAY OF JUNE, 2020

ON THE APPLICATION of Triple M Modular Ltd. dba Metric Modular ("**Metric Modular**"), coming on for hearing at Vancouver, on the 30th day of June, 2020, via telephone, and on hearing J. Reilly Pollard, counsel for Metric;

THIS COURT ORDERS that:

Access to Sealed Items permitted by:

[X] Counsel of Record
[ ] Parties on Records
[ ] Further Court Order

Items to be sealed:

Document Name	Date Filed	# of Copies Filed	Duration of sealing order	Sought	Granted	
					Yes	No
1 Entire File	N/A			No	N/A	
Specific Documents to be sealed: 2 Affidavit #2 of Joel Holloway	N/A		Until further Order	Yes	❑	❑
5 Clerk's Notes	June 30, 2020		Until further Order	No	❑	❑
6 Order Made After Application	June 30, 2020		Until further Order	No	❑	❑

7 Sealing Order	June 30, 2019		Until further Order	Yes	❑	❑

THE FOLLOWING PARTIES APPROVE THE FORM OF THIS ORDER:

____
J. Reilly Pollard
Counsel for Metric Modular

BY THE COURT

____
REGISTRAR

COURT FILE NO. VLC-S-B-200257
ESTATE NO. 11-2649058
VANCOUVER REGISTRY

IN THE SUPREME COURT OF BRITISH COLUMBIA
IN BANKRUPTCY AND INSOLVENCY

IN THE MATTER OF THE NOTICE OF INTENTION TO MAKE A PROPOSAL OF TRIPLE M MODULAR LTD. dba METRIC MODULAR

ORDER MADE AFTER APPLICATION

BEFORE THE HONOURABLE JUSTICE	TUESDAY, THE 30TH DAY OF JUNE, 2020

ON THE APPLICATION of Triple M Modular Ltd. dba Metric Modular ("**Metric Modular**"), coming on for hearing at Vancouver, on the 30th day of June, 2020, via telephone, and on hearing J. Reilly Pollard, counsel for Metric and those counsel listed in Schedule "A" to this Order:

THIS COURT ORDERS that:

1. The time for filing a proposal by Metric Modular be and is hereby extended from 11:59pm on Wednesday July 1, 2020 to 11:59pm on August 15, 2020.

2. The stay of proceedings against Metric Modular be and is hereby extended from 11:59pm on Wednesday July 1, 2020 to 11:59pm on August 15, 2020.

3. A priority charge is hereby granted over the assets of Metric Modular in the amount of $200,550 to fund a Key Employee Retention Plan (the "**KERP Charge**"). The KERP Charge shall have priority over all security interests and statutory charges affecting the assets of Metric Modular, including any deemed trust in favour of the federal or provincial Crown.

4. ATB Financial is unaffected by these proceedings to the extent of their perfected secured claim against the assets of Metric Modular with the sole exception that the KERP Charge shall have priority over their claim.

5. The time for service of the application materials in this matter be and is hereby abridged such that the application is properly returnable June 30, 2020.

6. Endorsement of this Order by counsel appearing on this application, other than counsel for Metric Modular, is hereby dispensed with.

THE FOLLOWING PARTIES APPROVE THE FORM OF THIS ORDER AND CONSENT TO EACH OF THE ORDERS, IF ANY, THAT ARE INDICATED ABOVE AS BEING BY CONSENT:

____
J. Reilly Pollard, Counsel for Metric Modular

BY THE COURT

____
REGISTRAR

COURT FILE NO. VLC-S-B-200257
ESTATE NO. 11-2649058
VANCOUVER REGISTRY

IN THE SUPREME COURT OF BRITISH COLUMBIA
IN BANKRUPTCY AND INSOLVENCY

IN THE MATTER OF THE NOTICE OF INTENTION TO MAKE A PROPOSAL OF TRIPLE M MODULAR LTD. dba METRIC MODULAR

ORDER MADE AFTER APPLICATION

LK LAW
Lindsay Kenney LLP
Barristers & Solicitors
Founded in 1980

Barristers and Solicitors
1800 - 401 West Georgia Street
Vancouver, British Columbia
V6B 5A1
Phone: (604) 687-1323
Attention: J. Reilly Pollard

File no. 20201024

TAB 3

This is the 1st Affidavit of Kendra Hewson
in this case and was made on June 22, 2020

COURT FILE NO. VLC-S-B-200257
ESTATE NO. 11-2649058
VANCOUVER REGISTRY

IN THE SUPREME COURT OF BRITISH COLUMBIA
IN BANKRUPTCY AND INSOLVENCY

IN THE MATTER OF THE NOTICE OF INTENTION TO MAKE A PROPOSAL OF
TRIPLE M MODULAR LTD. dba METRIC MODULAR

AFFIDAVIT

I, Kendra Hewson, c/o 1800-401 West Georgia Street, Vancouver, Paralegal, SWEAR (OR AFFIRM) THAT:

1. I am a paralegal for Lindsay Kenney LLP, counsel for Triple M Modular Ltd. and as such have personal knowledge of the matters and facts deposed to herein except where stated to be made on information and belief and where so stated I verily believe the same to be true.

2. Attached to this my Affidavit as **Exhibit "A**" is a true copy of a Notice of Application filed June 12, 2020 in the Supreme Court matter titled "In the Matter of the Notice of Intention to Make a Proposal of SNFW Fitness B.C. Ltd.", which is Court File No. B200193 (the "**SNFW Matter**").

3. Attached to this my Affidavit as **Exhibit "B**" is a true copy of a Second Report to Court of the Proposal Trustee dated June 12, 2020 in the SNFW Matter.

4. Attached to this my Affidavit as **Exhibit "C**" is a true copy of an Order Made After Application before Madam Justice Fitzpatrick on June 17, 2020 in the SNFW Matter.

5. Attached to this my Affidavit as **Exhibit "D**" is a printout of an online article by Hayley Woodin, published in Business in Vancouver, dated June 17, 2020, and titled "Steve Nash Fitness Granted Insolvency Extension."

SWORN BEFORE ME at Vancouver British Columbia, on 22/Jun/2020	
A commissioner for taking affidavits for British Columbia	Kendra Hewson

J. REILLY POLLARD
BARRISTER & SOLICITOR
1800-401 WEST GEORGIA STREET
VANCOUVER, BC V6B 5A1
TEL: 604-687-1323

This is Exhibit "A" referred to in the Affidavit of Kendra Heuser sworn before me at Vancouver this 22nd day of June 2020

RP

A Commissioner for taking Affidavits within British Columbia

COURT NO.B200193
ESTATE NO.11-2636604
VANCOUVER REGISTRY

IN THE SUPREME COURT OF BRITISH COLUMBIA
IN BANKRUPTCY AND INSOLVENCY

IN THE MATTER OF THE NOTICE OF INTENTION TO MAKE A PROPOSAL OF

SNFW FITNESS B.C. LTD.

NOTICE OF APPLICATION

Name of Applicant: SNFW Fitness B.C. Ltd. ("**SNFW**")

To: The Bowra Group Inc., in its capacity as Proposal Trustee of SNFW (the "**Proposal Trustee**")

And To: The Offices of the Superintendent of Bankruptcy

And To: The Bank of Montreal, c/o its counsel

And To: All other parties on the service list

TAKE NOTICE THAT an application will be brought on behalf of SNFW before the presiding Judge in Chambers at the Courthouse, at 800 Smithe Street, Vancouver, B.C. on June 17, 2020 at 9:00 a.m. (**via telephone conference**) or soon thereafter as counsel may be heard for the following Orders:

Part 1: Orders Sought

1. An Order extending the time for filing a proposal by SNFW from 11:59 p.m. on Wednesday June 17, 2020 to 11:59 p.m. on Monday, August 3, 2020.

2. An Order extending the stay of proceedings from 11:59 p.m. on Wednesday, June 17, 2020 to 11:59 pm on Monday, August 3, 2020.

Part 2: Factual Basis

3. On April 3, 2020, SNFW filed a notice of intention (the "**NOI**") to make a Proposal with the Office of the Superintendent of Bankruptcy with The Bowra Group Inc. being named as Proposal Trustee.

4. By Order pronounced April 24, 2020, the time for SNFW to file a proposal was extended to June 17, 2020. The subject application is for a further, that being the second, extension.

<u>Overview of SNFW's business operations:</u>
(Proposal Trustee's Second Report, paras. 6 - 12)

5. SNFW was established though a merger in 2009 between Fitness World and Steve Nash Sports Clubs:

   (b) Fitness World was founded in 1959 by Henry Polessky. At the time of the Merger in 2009, Fitness World was the largest fitness brand in Vancouver, BC, having 15 fitness clubs in the Lower Mainland of Vancouver, BC with over 100,000 members; and

   (c) Steve Nash Sports Clubs was established in 2007 by Canadian basketball legend Steve Nash, and 24 Hour Fitness founders Mark Mastrov and Leonard Schlemm. At the time of the Merger with Fitness World, Steve Nash Sports Club was operating two full-service sports clubs in Vancouver, BC.

6. Since the merger, SNFW has grown to operate 29 fitness facilities in BC, including locations in the Lower Mainland, Vancouver Island, and the Okanagan, with an additional two locations that had been scheduled to open in July, 2020.

7. SNFW is licensed to use the "Steve Nash" name through a licensing agreement, which expires in 2027. In addition, SNFW is a registered Franchisee of "UFC Gym" for three of its facilities, and the Franchisee of Crunch Fitness for two of its facilities.

8. SNFW also founded the British Columbia Personal Training Institute, which is a fully accredited personal training education program for prospective fitness trainers, which develops and certifies between 140 – 175 personal trainers annually.

9. SNFW offers fitness facilities for personal use, fitness group classes, personal training and, in certain locations, mixed martial arts training.

Financial Difficulties
(Proposal Trustee's Second Report, paras. 13 - 15)

10. On March 17, 2020, SNFW issued a notice to all members that due to the Province of BC limiting gatherings of 50 people to slow the COVID-19 spread, all facilities were shut down effective immediately and that members would not be charged during the shutdown period. Accordingly, SNFW terminated all of its staff except for 6 key personnel. SNFW typically employs around 1,300 individuals.

11. The Board of Directors estimated that SNFW would require an equity injection of over $10 million to fund the costs during the COVID-19 shutdown period, working capital requirements and estimated operating losses to get to a break-even level after the COVID-19 restrictions are lifted. This assumes that:

    (b) Landlords are not paid and do not exercise any of their rights under their respective leases during the COVID-19 shutdown period; and

    (c) The COVID-19 shutdown ends in August 2020.

12. Based on the analysis by the Board of Directors, it was determined that SNFW is not a viable business without a significant equity commitment and injection to fund COVID-19 shutdown costs and operating losses for several months after restarting operations post COVID-19 shutdown.

Creditors

(Proposal Trustee's Second Report, paras. 16 - 18)

13. SNFW has multiple authorized borrowing facilities from its secured creditor, the Bank of Montreal ("**BMO**" or the "**Bank**"), for approximately $38.8 million of which approximately $32 million has been drawn.

14. As at April 3, 2020, per the SNFW records, the amount owed to unsecured creditors was approximately $3.4 million. This amount does not include any amounts owing to the various landlord's with respect to April 1, 2020 rent that was not paid, employee severance, prepaid membership, and prepaid personal training amounts (or the unsecured shortfall that BMO is likely to realize from its claim noted above).

The Sales Process

(Proposal Trustee's Second Report, paras. 24 – 29)

15. SNFW's insolvency is based upon a liquidation plan.

16. On April 24, 2020, the SNFW obtained an order (the "**Sales Process Order**") for approving a process for the sales and solicitation of the assets and undertakings of the company (the "**Sales Process**").

17. The Sales Process contemplates that the Proposal Trustee and the Financial Advisor, acting as agent on behalf of SNFW, and with the assistance of SNFW and the Proposal Trustee, shall conduct the Sales Process. In addition, the closing of any sale transaction may involve additional intermediate steps or transactions to facilitate consummation of such sale or investment, including additional Court filings.

18. The Proposal Trustee engaged MNP Corporate Finance ("**MNPCF**") to conduct the Sales Process, with original timing for the primary steps in Sales Process is suggested to be as follows:

    (b) By April 24, 2020 the Financial Advisor will be sending out teaser letters to the marketplace;

(c) By May 20, 2020, the qualified bidders will be determined, with further negotiation to select the successful bid by May 29th;

(d) Within 5 business days of the successful bid being selected, a court date for approval will be sought, to be no later than June 15, 2020;

(e) Closing will be 15 business days after court approval.

19. On May 20, 2020, three offers were received, with a further party advising MNPCF that they required additional time to submit a bid.

20. The bids received were evaluated and found to be unacceptable as presented. Under the discretion permitted by the Sales Process Order, the Proposal Trustee, BMO and SNFW extended the bid deadline to May 28, 2020, and requested that the parties who had submitted a bid, along with the party that required additional time, to re-submit, or submit, their bids.

21. The four parties were advised that the bid selection would be extended to June 5, 2020. The Proposal Trustee, BMO and SNFW then required further time to evaluate the bids and the time to select a successful bid was further extended to June 8, 2020.

<u>Summary of Results</u>
(Trustee's Second Report to Court, paras. 30 – 35)

22. MNPCF conducted the Sales Process, as set out more fulsomely in the Proposal Trustee's Second Report to Court, and selected a successful bidder.

23. The successful bidder and SNFW are currently drafting a definitive purchase and sale agreement.

24. The successful bidder is also setting up a new corporate structure, negotiating with landlords and BMO, confirming which intellectual property and licenses it wishes to have assigned to it, and determining how many employees to whom it can offer employment.

25. The transaction contemplated in the accepted bid, as will be reflected in the final definitive documents, will be the subject of a later application for court approval and a vesting order.

Status of Proposal
(Trustee's Second Report to Court, paras. 36 – 41)

26. As set out above, SNFW requires an extension of time to complete the contemplated sale of assets.

27. It is unlikely to make a proposal to its creditors, given the results of the Sales Process and that the realization will be insufficient to pay out BMO's secured debt.

28. The Proposal Trustee and BMO support the extension of the stay of proceedings and the Proposal Trustee believes that the Sales Process offers a better recovery for creditors, including specifically certain classes of unsecured creditors, than a liquidation in bankruptcy. Specifically:

(b) The successful bidder has indicated that they will honour SNFW prepaid memberships and SNFW prepaid personal training sessions credits at their fitness facilities, and are working on the terms for doing so;

(c) Depending upon the locations that can be re-opened, it is anticipated that approximately 65% of SNFW former employees will be offered employment; and

(d) The majority of the landlords, subject to mutually agreed upon terms, will have a long term tenant rather than be faced with vacant premises in which are uncertain times due to COVID-19.

29. Accordingly, SNFW seeks an order extending the time to file a proposal and the stay of proceedings.

Part 3: Legal Basis

Extending the Time for Filing a Proposal and the Stay of Proceedings

30. In seeking an extension of time to file the Proposal, SNFW relies on section 50.4(9) of the *Bankruptcy and Insolvency Act*, which provides as follows:

(a) The insolvent person may, before the expiration of the thirty day period mentioned in subsection (8) or any extension thereof 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 may grant such extensions, not exceeding forty-five days for any individual extension and not exceeding in the aggregate five months after the expiration of the thirty day period mentioned in subsection (8), if satisfied on each application that

(i) the insolvent person has acted, and is acting, in good faith and with due diligence;

(ii) the insolvent person would likely be able to make a viable proposal if the extension being applied for were granted; and

(iii) no creditor would be materially prejudiced if the extension being applied for were granted.

31. In order to obtain an extension, the debtor must prove the required elements set out under s. 50.4(9) on a balance of probabilities.

Heritage Flooring Ltd. (2004), 3 C.B.R. (5th) 60 (N.B.Q.B.) at para. 31
2004 NBQB 168 (CanLII),

32. However, in determining whether the elements have been satisfied, an objective standard must be applied. "In other words, what would a reasonable person or creditor do in the circumstances".

Cantrail Coach Lines Ltd. (2005), BCJ No. 552 (S.C.) at para. 11
2005 BCSC 351,

33. SNFW acknowledges that it is unlikely to file a proposal, however, the proposal proceedings still have value to the class of creditors who would otherwise benefit from one being filed. Specifically, the employee, pre-paid clients, and landlords. The requirement under s. 50.4(ii) is whether the company "would be able to" file a viable proposal. While there does not appear to be a clear line of authorities, there are instances where a liquidating proposal under the BIA has been undertaken. For example:

(a) *Little Tree Farm Ltd.*, 1997 CanLii 12402 (ON SC)

(b) Danier Leather, 2016 ONS 1044 where a SISP was approved under an NOI, for an admitted liquidation plan, where it was preferable to consummate the sale in proposal proceedings rather than a bankruptcy in similar circumstances, including that if there was bankruptcy and a shut down of the various leased locations, it would face substantial landlord claims that could not be satisfied. On the timing of the SISP an extension would have been necessary. At paragraph 39, the court specifically commented that the sale process allowed for a sale as a going concern, which would be more beneficial than a bankruptcy/liquidation sale which could not.

34. In this respect, the Alberta courts seem reluctant to endorse a liquidating proposal, whereas the Ontario Courts will and, in doing so, has pointed to the authorities where it has been recognized that the CCAA, which more typically sees liquidation plans, is an analogous restructuring statute to the proposal provisions of the BIA, *Re Ted Leroy Trucking [Century Services] Ltd.*, 2010 SCC 60 at para 24; *Re Indalex Ltd.*, 2013 SCC 6 (CanLII), [2013] 1 S.C.R. 271 at paras. 50-51. The BC Courts do not appear to have expressed an opinion on the issue.

35. In one Ontario decision where an extension of time was sought under s. 50.4(9) where there would only ever be a liquidating proposal, similarly with a shortfall to BMO as the primary security creditor, the extension was not granted. However, that was because BMO opposed and brought a cross application to appoint a receiver to complete the sale transaction. Notably, the court did not indicate that the extension could not otherwise be made because the assets were being liquidated under a SISP– rather was just more appropriate that a receiver be appointed given BMO's position.

Bank of Montreal v. Trent, 2005 CanLii 25628 (ONSC)

36. Accordingly, while SNFW could arguably file a liquidating proposal, given the interests of the parties and that the material benefits to the unsecured creditors are being realized from the purchaser directly, filing a liquidating proposal would be an unnecessary step.

37. Similarly, having SNFW deemed bankrupt before the sale is closed also adds unnecessary costs, including potential costs and liability to the Proposal Trustee who

would then have the assets vested to it, and would have direct obligations and liabilities as a result.

38. Nonetheless, the proposal process is achieving the objectives given that it is providing for a more beneficial recover, that being one that provides for a going concern sales process, similar to the situation in *Danier Leather*, as noted above.

39. SNFW submits that s. 50.4(9)(ii) should be interpreted broadly – that being whether they "would be likely *able to*" file a liquidating proposal, not that they state that they will.

40. As noted above, the answer to whether SNFW would be able to is yes - if they had to in order to prevent a deemed bankruptcy, SNFW could file a liquidating plan that provides for the distribution of proceeds of sale in accordance with the Act, and that the unsecured creditor class will then realize the benefits as offered by the purchaser and noted above.

41. However, SNFW wishes to be entirely transparent that it would prefer not to file such a proposal, or be deemed bankrupt at this point, as neither is necessary to complete the sales process and bring the benefit to the unsecured class of creditors.

42. Similarly, if, no extension is granted, a premature bankruptcy will similarly provide less recovery, with further costs being incurred by a proposal trustee having to take possession of assets.

43. More importantly, the party most affected by the process, BMO, would be materially prejudiced if the process was ended and a bankruptcy were to occur.

44. Material prejudice, the third point as set out in s. 50.4(9), is generally considered from the opposite viewpoint, namely that no party is being materially prejudiced. However, such prejudice is noted to be an objective prejudice as opposed to a subjective one, and one where the balancing the prejudice of the parties in getting the extension versus not getting the extension is made:

> 12. … In other words, it refers to the degree of the prejudice suffered vis a vis the indebtedness and the attendant security and not to the extent that such prejudice may affect the creditor *qua* person, organization or entity.

> 13. In *Re Acepharm Inc.,* the Court refused to lift a stay under s. 69.4 of the BIA as the moving party pleaded subjective prejudice, which did not constitute material prejudice. At paragraph 10 the Court cited with approval the following passage from *Honsberger, Debt Restructuring*, at 8-44:
>
>> What amounts to material prejudice must be decided on a case-by-case basis. It is a broad concept … **the Bankruptcy Court being a court of equity must consider the impact of a stay on the parties. This will involve the weighing of the interest of the debtor against the hardship incurred on the creditor. This has been referred to as the "balance of hurt" test.**
>>
>> [emphasis added]

Lockhart Saw Ltd., [2007] NBJ No. 94 (N.B.Q.B.) at para. 12-13

2007 NBQB 93 (CanLII),

45. As further noted, there is a distinct difference between being prejudiced and being "materially prejudiced":

> 22 There is no doubt that Volvo has been prejudiced by the circumstances which have befallen Cantrail and befallen Volvo as a secured creditor. The Act in and of itself, and the possibility of a proposal, does create simple prejudice by staying the obligations of a person attempting to make a proposal during the period of time which the proposal is being formulated. There is no evidence before me of anything other than the normal or perhaps average prejudice to Volvo. There is no evidence of substantial prejudice or considerable prejudice. There is no evidence that in not being allowed to realize their security at this time that there is, for example, reduced security or, for example, that there are buyers out there for these assets they wish to seize under their security who will not be around once the proposal has had its opportunity to succeed or fail, once it has been completely formulated and presented to creditors. There is no worse case scenario for Volvo if the proposal is allowed to run a reasonable course. In my view, there is no evidence on which Volvo can rely to show that it has been materially prejudiced.

Cantrail Coach Lines, supra, at para. 22 **(page 23-24)**

2005 BCSC 351,

46. More recently, this Court has had an opportunity to revisit the findings of Master Groves, as he then was, in Cantrail, specifically where a creditor seeks in a cross application to have the proposal annulled. In *Andover Mining Corp.,* Mr. Justice Steeves considered the competing sections and whether or not one has paramountcy over the other. While, in the case at bar, there is no such competing application, *Andover* confirmed that Cantrail remains good law.

Andover Mining Corp. (Re), 2013 BCSC 1833
2013 BCSC 1833

47. Here there is no evidence of prejudice if the extension is granted, however there is prejudice if it is not.

48. Applying those considerations to the facts set out in Part 2 above, SNFW submits that it has met the test set out in s. 50.4(9), that:

(b) SNFW has acted, and continues to act, in good faith and with due diligence;

(c) SNFW could make a viable liquidating proposal if the extensions being applied for were granted, even though it does not intend to do so as it ultimately will provides no benefit over and above the benefit of the continuation of the proposal process solely to complete the sales transaction; and

(d) no creditor would be materially prejudiced if the extensions being applied for were granted.

49. Accordingly, SNFW submits that it is appropriate to grant the order extending the time for filing a Proposal and the order extended the stay of proceedings.

Part 4: Material To Be Relied On

50. Trustee's Second Report to Court

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

☐ This matter is within the jurisdiction of a Master.

☒ This matter is not within the jurisdiction of a Master, **as it involves inherent jurisdiction.**

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 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;

(d) 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 12th day of June, 2020.

Kim Robertson

Lawson Lundell LLP
(Kimberley A. Robertson)
Solicitors for SNFW

This Notice of Application is filed by the law firm 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:

____

____

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:

☑ **Other –Bankruptcy Matter**

DISTRICT OF BRITISH COLUMBIA
DIVISION NO. 03-VANCOUVER
COURT NO.B200193
ESTATE NO.11-2626604

IN THE SUPREME COURT OF BRITISH COLUMBIA
IN BANKRUPTCY AND INSOLVENCY

IN THE MATTER OF THE NOTICE OF INTENTION TO MAKE A PROPOSAL OF

SNFW FITNESS B.C. LTD.

NOTICE OF APPLICATION

LAWSON LUNDELL LLP

Barristers & Solicitors
1600 Cathedral Place
925 West Georgia Street
Vancouver, British Columbia
V6C 3L2
Phone: (604) 631-9145
Attention: Kimberley A. Robertson

COURT NO. B200193
ESTATE NO.11-2636604
VANCOUVER REGISTRY

IN THE SUPREME COURT OF BRITISH COLUMBIA

IN BANKRUPTCY AND INSOLVENCY

IN THE MATTER OF THE *BANKRUPTCY AND INSOLVENCY ACT*,
R.S.C. 1985, C. B-3, AS AMENDED

AND

IN THE MATTER OF THE PROPOSAL OF
SNFW FITNESS B.C. LTD.

SECOND REPORT TO COURT OF THE PROPOSAL TRUSTEE

June 12, 2020

This is Exhibit "B" referred to in the Affidavit of Kendra Hewer sworn before me at Vancouver this 22nd day of June 2020

A Commissioner for taking Affidavits within British Columbia

IN THE MATTER OF THE PROPOSAL OF
SNFW FITNESS B.C. LTD.

Proposal Trustee's Second Report to Court

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APPENDICES

I. INTRODUCTION

1. On April 3, 2020, SNFW Fitness B.C. Ltd. (the "**Company**" or "**SNFW**") filed a Notice of Intention (the "**NOI**") to Make a Proposal with the Office of the Superintendent of Bankruptcy with The Bowra Group Inc. being named as Trustee (the "**Proposal Trustee**"). A copy of the NOI is attached as **Appendix A.**

2. The Company sought and was granted an Order extending the stay of proceedings under the NOI to June 17, 2020 from the Supreme Court of British Columbia on April 24, 2020. A copy of the Order for the extension of the stay of proceedings is attached as **Appendix B.**

3. On April 24, 2020 the Company obtained an Order approving a process for the sales and solicitation of the assets and undertakings of SNFW (the "**Sales Process**"). The Sales Process Order is attached as **Appendix B**.

4. This is the Proposal Trustee's second report to Court.

Purpose of This Report

5. The purpose of this report is to update the Court with respect to the:

    i. Sales Process;

    ii. The Company's request to seek an extension of the current stay of proceedings; and

    iii. Conduct of the Company.

Background

6. SNFW was established though a merger in 2009 between Fitness World and Steve Nash Sports Clubs.

7. Fitness World was founded in 1959 by Henry Polessky. At the time of the Merger in 2009, Fitness World was the largest fitness brand in Vancouver, BC, having 15 fitness clubs in the Lower Mainland of Vancouver, BC with over 100,000 members.

8. Steve Nash Sports Clubs was established in 2007 by Canadian basketball legend Steve Nash, and 24 Hour Fitness founders Mark Mastrov and Leonard Schlemm. At the time of the Merger with Fitness World, Steve Nash Sports Club was operating two full-service sports clubs in Vancouver, BC.

9. Since the merger, SNFW has grown to operate 29 fitness facilities in BC, including locations in the Lower Mainland, Vancouver Island, and the Okanagan, with an additional two locations that were scheduled to open in July 2020.

10. The Company is licensed to use the "Steve Nash" name through a licensing agreement, which expires in 2027. In addition, SNFW is a registered Franchisee of "UFC Gym" for three of its facilities, and the Franchisee of "Crunch Fitness" for two of its facilities.

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12. SNFW offers fitness facilities for personal use, fitness group classes, personal training and, in certain locations, mixed martial arts training.

Financial Difficulties

13. On March 17, 2020, SNFW issued a notice to all members that due to the Province of BC limiting gatherings of 50 people to slow the COVID-19 spread, all facilities were shut down effective immediately and that members would not be charged during the shutdown period. Accordingly, SNFW terminated all of its staff except for 6 key personnel. SNFW typically employs around 1,300 individuals.

14. The Board of Directors estimated that SNFW would require an equity injection of over $10 million to fund the costs during the COVID-19 shutdown period, working capital requirements and estimated operating losses to get to a break-even level after the COVID-19 restrictions are lifted. This assumes that:

    i. Landlords are not paid and do not exercise any of their rights under their respective leases during the COVID-19 shutdown period; and

    ii. The COVID-19 shutdown ends in August 2020.

15. Accordingly, based on the analysis by the Board of Directors, it was determined that SNFW is not a viable business without a significant equity commitment and injection to fund COVID-19 shutdown costs and operating losses for several months after restarting operations post COVID-19 shutdown.

Secured and Unsecured Creditors

16. SNFW has multiple authorized borrowing facilities from its primary secured creditor, the Bank of Montreal ("**BMO**" or the "**Bank**"), for approximately $38.8 million of which

approximately $32 million has been drawn.

17. On April 2, 2020, BMO demanded payment of all amounts outstanding by SNFW. On the same day, at the request of BMO, SNFW waived the 10 day notice period prescribed by section 244 of the *Bankruptcy and Insolvency Act*.

18. As at April 3, 2020, per the SNFW records, the amount owed to unsecured creditors was approximately $12 million including amounts for prepaid membership and prepaid personal training. This amount does not include any amounts owing to the various landlord's with respect to April 1, 2020 rent that was not paid or employee severance.

II. LANDLORDS

19. SNFW filed an NOI on April 3, 2020. The rent due April 1, 2020 was not paid.

20. The Company has not paid either the May or June 2020 rent due to the COVID-19 shutdown.

21. The Company and Proposal Trustee have been working with and keeping the landlords informed of the Sales Process and timing.

22. Understandably, all of the landlords would like to be paid their lease payments, however, given the COVID 19 shutdown, all landlords, except for one, have not taken any action.

23. One landlord has formally terminated their lease with SNFW, but has allowed the Company to keep their assets in their facility. This is on the understanding the assets may be removed at a later date if a purchaser is unsuccessful at negotiating a new lease with this landlord.

III. SALES PROCESS

24. On April 24, 2020, the Company obtained a Sales Process Oder from the Supreme Court of British Columbia.

25. The Proposal Trustee will be filing a further report on the sales process, and its results once the application for approval of sale and a vesting order is set down. Since the results are relevant to the application for a further extension as being sought by the Company, a summary is included in this report, which is not intended to be exhaustive.

Timeline

26. The Proposal Trustee engaged MNP Corporate Finance ("**MNPCF**") to conduct the Sales Process with the following original timeline:

    i. April 3, 2020 to April 19, 2020 – Compile a target list of prospective purchasers and investor groups;

    ii. April 3, 2020 to April 19, 2020 – Compile information for data room to provide to MNPCF and work with the Proposal Trustee and MNPCF to prepare a Teaser Letter and Confidential Information Memorandum ("**CIM**");

    iii. Week of April 20, 2020 – Teaser letters and CIM are completed for prospective investors and or purchasers;

    iv. April 24, 2020 – commence marketing by contacting prospective purchasers and investors;

    v. April 24, 2020 and onwards – MNPCF will obtain confidentially and non-disclosure agreements from prospective purchasers and investors that wish to pursue this opportunity to grant them access to the SNFW data room for due diligence purposes. The prospective purchasers and investors will have to demonstrate that they have the financial wherewithal to participate in this process;

    vi. May 20, 2020 –deadline for Tender Bid Offers to be submitted to both the MNPCF and Proposal Trustee;

    vii. May 21, 2020 to May 28, 2020 – final negotiations with select purchasers; and

    viii. May 29, 2020 – select successful bid.

27. On the bid offer date of May 20, 2020, three offers were received with a further party advising MNPCF that they required additional time to submit a bid.

28. The bids received were evaluated and it was determined that none of the bids were acceptable as presented. Accordingly, and given the discretion contained in the Sales Process Order to do so, MNPCF and the Proposal Trustee (with the consent of BMO) directed the Company to extend the bid deadline to May 29, 2020 and the deadline for selection of a successful bid to June 5, 2020. All Potential Bidders (as defined in the Sales Process) were advised of the extensions and given the option to withdraw or resubmit their bids during the extended period.

29. On June 5, 2020, MNPCF and the Proposal Trustee (in consultation with BMO) determined additional time was needed further time to evaluate the bid submissions. Accordingly, the time to select a successful bid was further extended to June 8, 2020.

Summary of Results

30. MNPCF contacted 53 parties that were either operators or were financing the fitness industry.

31. Of the parties contacted:

    i. 16 signed non-disclosure agreements and accessed the data room;

    ii. 7 entered into discussions with MNPCF;

    iii. 3 submitted bids by May 20, 2020;

    iv. 4 re-submitted (1 of which was new) bids by May 28, 2020; and

    v. The successful bidder notified on June 8, 20020.

32. The successful bidder and the Company are currently drafting a definitive purchase and sale agreement, and ancillary agreements as will be required to complete the sales transaction.

33. The successful bidder has retained counsel, and is currently:

    i. setting up a new corporate structure;

    ii. negotiating leasing terms with the landlords. It is not known at this time if all of the landlords will agree to amended leasing terms, or an assignment of the existing leases, on the go forward. The Proposal Trustee believes there will be certain locations that will be disclaimed by the Company or terminated by the respective landlord, however it is not known at this time how many;

    iii. negotiating with BMO as to certain terms of the bid that require BMO's consent;

    iv. confirming what tradenames, licenses, and intellectual property it wishes to have assigned to it, and negotiating with any licence holders as may be necessary; and

v. determining how many employees it will be able to offer employment too, which is largely dependent upon the results of the negotiations with the landlords and determination of how many facilities can be re-opened.

34. As noted, the transaction which is the subject of the accepted bid, as will be reflected in the final definitive documents, and will be the subject of a later application for court approval, and vesting order.

35. In order for the above to be achieved, the Company requires an extension of the current stay of proceedings under the NOI.

IV. EFFORTS TO FORMULATE A PROPOSAL

36. SNFW is not in a position to make a proposal to its creditors by the time the current stay of proceedings expires on June 17, 2020.

37. The Sales Process as described above requires additional time to document the purchase and sale, negotiate with landlords, determine staffing needs to start engaging employees, and seek Court Approval. Accordingly, the Company requires an extension of the stay of proceedings to complete the contemplated sale of the assets.

38. Based on the results of the Sales Process, and that the realization from the bid process is insufficient to payout the Bank's secured debt, the Company will likely not make a Proposal to its creditors.

39. Nonetheless, the Proposal Trustee supports an extension of the stay of proceedings because unsecured creditors will benefit more from a sales transaction completed in these proceedings versus a liquidation in a bankruptcy, for the following reasons

i. The successful bidder has indicated that they will honour SNFW prepaid memberships and SNFW prepaid personal training sessions credits at their fitness facilities, and are working on the terms for doing so;

ii. Depending upon the locations that can be re-opened, it is anticipated that approximately 65% of SNFW former employees will be offered employment; and

iii. The majority of the landlords, subject to mutually agreed upon terms, will have a long term tenant rather than be faced with vacant premises in which are uncertain times due to COVID-19.

40. In addition, the largest single creditor affected by an extension is BMO. BMO is

providing SNFW with the necessary funds for these proceedings including the Sales Process, and supports an extension in order for the sale transaction to be approved by the court, and the sale consummated.

41. A copy of the cash flow filed of SNFW for the period April 6, 2020 to July 31, 2020 is attached as **Appendix C.**

V. CONCLUSION

42. The Proposal Trustee is of the opinion that:

    i. SNFW continues to act in good faith and with due diligence in order to complete a sales transaction, that will provide a benefit to a number of groups of unsecured creditors and stakeholders, which they would not otherwise realize;

    ii. A further 45-day extension should be granted; and

    iii. No creditor will be materially prejudiced if an extension is granted except for BMO and BMO supports an extension.

43. All of which is respectively submitted this 12th day of June 2020.

The Bowra Group Inc.
Trustee in the Matter of the Notice of Intention
to Make a Proposal of SNFW Fitness B.C. Ltd.

Per:

Mario Mainella, CA, CIRP

APPENDIX A

Notice of Intention to make a Proposal dated April 3, 2020

Industry Canada | Industrie Canada

Office of the Superintendent of Bankruptcy Canada | **Bureau du surintendant des faillites Canada**

District of	British Columbia
Division No.	03 - Vancouver
Court No.	11-2636604
Estate No.	11-2636604

In the Matter of the Notice of Intention to make a proposal of:

SNFW FITNESS B.C. LTD.
Insolvent Person

THE BOWRA GROUP INC.
Licensed Insolvency Trustee

Date of the Notice of Intention: April 03, 2020

CERTIFICATE OF FILING OF A NOTICE OF INTENTION TO MAKE A PROPOSAL
Subsection 50.4 (1)

I, the undersigned, Official Receiver in and for this bankruptcy district, do hereby certify that the aforenamed insolvent person filed a Notice of Intention to Make a Proposal under subsection 50.4 (1) of the *Bankruptcy and Insolvency Act.*

Pursuant to subsection 69(1) of the Act, all proceedings against the aforenamed insolvent person are stayed as of the date of filing of the Notice of Intention.

Date: April 03, 2020, 19:52

E-File/Dépôt Electronique

Official Receiver

300 Georgia Street W, Suite 2000, Vancouver, British Columbia, Canada, V6B6E1, (877)376-9902

Canada

APPENDIX B

Sales Process Order and Extension of Notice of Intention dated April 24, 2020

COURT NO.B200193
ESTATE NO.11-2636604
VANCOUVER REGISTRY

IN THE SUPREME COURT OF BRITISH COLUMBIA
IN BANKRUPTCY AND INSOLVENCY

IN THE MATTER OF THE PROPOSAL OF
SNFW FITNESS B.C. LTD.

ORDER MADE AFTER APPLICATION

	)	THE HONOURABLE	)	
BEFORE	)	MADAM JUSTICE	)	APRIL 24, 2020
	)	FITZPATRICK	)	

ON THE APPLICATION of SNFW Fitness B.C. Ltd. (the "**Company**") coming on for hearing at Vancouver, British Columbia on this day and on hearing Kimberley Robertson, counsel for the Company, and those counsel listed in **Schedule "A"** hereto;

THIS COURT ORDERS that:

EXTENSION OF TIME TO FILE A PROPOSAL

1. The time for the filing of a Proposal by the Company be extended from May 3, 2020 to 11:59 p.m. Wednesday, June 17, 2020

2. The stay of proceedings be extended from May 3, 2020 to 11:59 p.m., Wednesday, June 17, 2020.

APPROVAL OF FINANCIAL ADVISOR AND SALE PROCESS

3. The Company is hereby authorized to sell its assets and undertakings (the "**Property**"), and engage in the sales process substantially in the form as set out in **Schedule "B"** to this Order (the "**Sale Process**").

4. For the purpose of undertaking the Sales Process, the Proposal Trustee is hereby authorized to take all steps and actions as may be necessary to carry out

the Sales Process for and on behalf of the Company, including without limitation the following:

(a) enter into, and perform all of the Company's obligations under, an engagement agreement with MNP Corporate Finance Inc. (the "**Financial Advisor**" or "**MNP**");

(b) execute, assign, issue and endorse documents of whatever nature in connection with the Sales Process, whether in the Proposal Trustee's name or in the name and on behalf of the Company, for any purpose pursuant to this Order;

(c) market any or all of the Property pursuant to and in accordance with the Sales Process, including advertising and soliciting offers in respect of the Property or any part or parts thereof and negotiating such terms and conditions of sale as the Proposal Trustee considers appropriate; and

(d) apply for any vesting order or other orders necessary to convey the Property or any part or parts thereof to a purchaser or purchasers, free and clear of any liens or encumbrances.

and in each case where Proposal Trustee takes any such actions or steps, it shall be authorized and empowered to do so, and in the event of conflict between the actions or steps taken or proposed to be taken by the Proposal Trustee and the Company, or opinion as to how any of the above shall be undertaken or proposed to be undertaken, the actions, steps and opinion of the Proposal Trustee shall prevail.

5. Pursuant to Section 7(3)(c) of the *Personal Information Protection and Electronic Documents Act*, S.C. 2000, c. 5 or Section 18(1)(o) of the *Personal Information Protection Act*, S.B.C. 2003, c. 63, the Company, the Proposal Trustee and the Financial Advisor may disclose personal information of identifiable individuals to prospective purchasers or bidders for the Property and to their advisors (collectively, "**Potential Bidders**"), but only to the extent desirable or required to negotiate and attempt to complete one or more sales of the Property (each, a "**Sale**"). Each prospective purchaser or bidder to whom such personal information is disclosed shall maintain and protect the privacy of such information and limit the use of such information to its evaluation of the Sale, and if it does not complete a Sale, shall return all such information to the Proposal Trustee, or in the alternative destroy all such information and provide proof of same. The purchaser of any Property shall be entitled to continue to use the personal information provided to it, and related to the Property purchased, in a manner

which is in all material respects identical to the prior use of such information by the Company, and shall return all other personal information to the Proposal Trustee, or ensure that all other personal information is destroyed, and provide proof of same.

6. From and after the date of this Order, all communications and information requests made by Potential Bidders will be made to the Financial Advisor or the Proposal Trustee.

7. Except upon request by, or with the consent of, the Proposal Trustee or the Financial Advisor, no director, officer or employee of the Company shall engage in any communications with any Potential Bidder regarding the Sales Process, and actual or potential bid for the assets of the Company, or any other matter relating to the Sale Process.

8. The Financial Advisor and Proposal Trustee shall incur no liability or obligation as a result of it carrying out the Sales Process, save and except in the event of any gross negligence or willful misconduct on its part.

GENERAL

9. The Company or the Proposal Trustee may, from time to time, apply to this Honourable Court for advice and directions in connection with the Sales Process or the discharge of their powers and duties hereunder.

10. Endorsement of this Order by counsel appearing on this application, other than counsel for the Company, is hereby dispensed with.

THE FOLLOWING PARTIES APPROVE THE FORM OF THIS ORDER AND CONSENT TO EACH OF THE ORDERS, IF ANY, THAT ARE INDICATED ABOVE AS BEING BY CONSENT:

Kim Robertson

Signature of Kimberley Robertson
Lawyer for the Company

By the Court.

Registrar

Schedule "A"

(List of Counsel)

Name of Counsel	Appearing For
Jordan Schultz	Bank of Montreal
Colin Gusikoski	Employee Groups making up the Plaintiffs and proposed class members contemplated in BCSC Vancouver Registry Actions No. S197593 and S203844
Brad Kielmann	Anticipated SNFW B.C. Ltd. Club Membership Group of Creditors

SCHEDULE "B"

SALES PROCESS

On April 3, 2020, SNFW Fitness B.C. Ltd. ("**SNFW**" or the "**Company**") filed a notice of intention file a proposal in bankruptcy (the "**NOI**") under the *Bankruptcy and Insolvency Act* (the "**BIA**").

The Sales Process Order and this Sales Process shall exclusively govern the process for soliciting and selecting bids for the sale of all or substantially all of the assets or business of the Company.

Unless otherwise indicated, any event occurring on a day that is not a Business Day shall be deemed to occur on the next Business Day.

Defined Terms

"Bid Package" means the package of information to be provided by the Financial Advisor to each Potential Bidder, which shall describe the opportunity to acquire all or substantially all of the Company Property or to invest in the Company;

"Business Day" means any day other than (a) a Saturday or Sunday; or (b) a day that is a statutory holiday in Vancouver, British Columbia;

"Financial Advisor" means MNP Corporate Finance Inc.;

"Company Business" means the business carried on by the Company;

"Company Property" means the property, assets and undertakings of the Company;

"Court" means the Supreme Court of British Columbia;

"Proposal Trustee" means The Bowra Group Inc.;

"Sale Proposal" means an offer or proposal to purchase all or substantially all, or any specified portion, of the Company Property or the Company Business;

"Sales Process" means this Sales Process;

"Sales Process Order" means the Order of the Court approving this Sales Process and making other orders and directions with respect thereto;

Solicitation Process

1. This Sales Process describes, among other things, the Company property, assets and undertakings available for sale, the manner in which prospective bidders may gain access

to or continue to have access to due diligence materials concerning the Company, the manner in which bidders and bids become Qualified Bidders and Qualified Bids, respectively, the receipt and negotiation of bids and investment offers received, the ultimate selection of one or more Successful Bids, and the approval thereof by the Court (collectively, the "**Sales Process**").

2. The Financial Advisor, acting as agent on behalf of the Company, and with the assistance of the Company and the Proposal Trustee, shall conduct the Sales Process. In addition, the closing of any sale transaction may involve additional intermediate steps or transactions to facilitate consummation of such sale or investment, including additional Court filings.

3. In the event that there is a disagreement or clarification required as to the interpretation or application of this Sales Process or the Sales Process Order or the responsibilities the Financial Advisor or Proposal Trustee thereunder, the Court will have the jurisdiction to hear such matters and provide advice and directions upon the application of the Financial Advisor or Proposal Trustee with a hearing on no less than two (2) Business Days' notice.

"As Is, Where Is"

4. The sale of the Company Property will be on an "as is, where is" basis and without surviving representations, warranties, covenants or indemnities of any kind, nature or description by Company, the Financial Advisor, or any of their agents, advisors, professionals or otherwise, except to the extent expressly set forth in any relevant Purchase Agreement or Investment Agreement.

"Free of any and all Claims and Interests"

5. In the event of a sale, all of the rights, titles and interests of Company in and to the Property to be acquired will be sold free and clear of all pledges, liens, security interests, encumbrances, claims, charges, options, royalties and interests thereon and there against (collectively, the "**Claims and Interests**") pursuant to approval and vesting orders made by the Court. Contemporaneously with such approval and vesting orders being made, all such Claims and Interests, to the extent valid and enforceable, shall attach to the net proceeds of the sale of such property (without prejudice to any claims or causes of action regarding priority, validity or enforceability thereof), except to the extent otherwise set forth in the relevant sale agreement with a Successful Bidder.

Solicitation of Interest

6. As soon as reasonably practicable, the Proposal Trustee and the Financial Advisor will finalize a list of potential bidders (the "**Known Potential Bidders**") for an investment in the Company or the purchase of some or all of the Company Business or the Company Property. Such list will include both strategic and financial parties who, in the Financial Advisor's reasonable business judgment, may be interested in acquiring the Company

Business or the Company Property.

7. By **April 24, 2020** the Financial Advisor shall deliver a summary and teaser of the assets being offered for sale to the Known Potential Bidders, along with a copy of this Sales Process and a blank confidentiality and non disclosure agreement (the "**NDA**") in form and substance acceptable to the Financial Advisor and the Proposal Trustee, which shall inure to the benefit of the Company and any purchaser of the Company Business or Company Property.

Participation Requirements

8. Unless otherwise ordered by the Court, in order to receive the Bid Package, conduct its due diligence and participate in the Sales Process, an interested party must deliver to the Financial Advisor and the Proposal Trustee an executed NDA, and upon doing so each such interested party shall be deemed to be a "**Potential Bidder**".

Due Diligence

9. The Financial Advisor will provide to each Potential Bidder a Bid Package, including a confidential information memorandum prepared in consultation with the Company, describing the opportunity to acquire all, or substantially all, of the Company Business or the Company Property, or to invest in the Company.

10. Each Potential Bidder shall have such access to materials and information relating to the Company Property and the Company Business for the purpose of conducting due diligence as the Proposal Trustee and the Financial Advisor, in their collective reasonable business judgment, deem appropriate. The Company, the Proposal Trustee and the Financial Advisor shall not be obligated to furnish any due diligence information after the Bid Deadline.

11. The Company, the Proposal Trustee and the Financial Advisor (and their respective officers, directors, employees, agents, counsel and professionals) are not responsible for, and will have no liability with respect to, any information obtained by any Known Potential Bidder, Potential Bidder or Qualified Bidder in connection with the Company Business or the Company Property. The Company, the Proposal Trustee and the Financial Advisor (and their respective officers, directors, employees, agents, counsel and professionals) do not make any representations or warranties whatsoever as to the information or the material provided, except in the case of the Company to the extent expressly provided.

12. Prior to the Bid Deadline, the Proposal Trustee and the Financial Advisor may engage in discussions with any or all of the Potential Bidders to determine and explore the level of interest of any such Potential Bidder and may request from any such Potential Bidder such further information as the Company and the Financial Advisor may deem appropriate.

Sale Bidding Process

13. In order to qualify as a "**Qualified Bidder**", a Potential Bidder must deliver a Qualified Bid to the Notice Parties **so as to be received by the Notice Parties no later than May 20, 2020** (the "**Bid Deadline**").

14. A Sale Proposal will be considered a "**Qualified Bid**" only if the Sale Proposal complies with all of the following:

    a. It includes a letter stating that the Sale Proposal is irrevocable until the earlier of (a) the approval by the Court of a Successful Bid; and (b) 30 days following the Bid Deadline; provided however that if such Sale Proposal is selected as the Successful Bid it shall remain irrevocable until the closing of the Successful Bid;

    b. It includes a duly authorized and executed purchase and sale agreement (the "**Purchase Agreement**") specifying the assets being purchased, the purchase price, how the purchase price is to be paid, and requiring a closing of the purchase transaction no later than **15 business days** after court approval together with all exhibits and schedules thereto, and such ancillary agreements as may be required by the Qualified Bidder with all exhibits and schedules thereto (or term sheets that describe the material terms and provisions of such ancillary agreements), such ancillary agreements and the proposed orders to approve the sale by the Court;

    c. It does not include any request or entitlement to any break-fee, expense reimbursement or similar type of payment;

    d. It includes written evidence of a firm, irrevocable commitment for all required funding and/or financing from a creditworthy bank or financial institution to consummate the proposed transaction, or other evidence satisfactory to the Financial Advisor, in consultation with the Proposal Trustee, to allow the Financial Advisor to make a reasonable determination as to the Potential Bidder's (and its direct and indirect owners and their principals) financial and other capabilities to consummate the transaction contemplated by the Sale Proposal;

    e. It is not conditioned on (i) the outcome of unperformed due diligence by the Potential Bidder; and/or (ii) obtaining any financing and includes an acknowledgement and representation that the Potential Bidder has had an opportunity to conduct any and all required due diligence prior to making its Sale Proposal;

    f. It fully discloses the identity of each entity that is bidding or otherwise that will be sponsoring or participating in the Sale Proposal, including the identification of the Potential Bidder's direct and indirect owners and their principals, and the complete terms of any such participation;

g. It includes an acknowledgement and representation that the Potential Bidder will assume the obligations of the Company under any executory contracts and unexpired leases proposed to be assigned and, to the extent applicable, contains full details of the Potential Bidder's proposal for the treatment thereof; and it identifies with particularity any executory contract or unexpired leases the assumption and assignment of which is a condition to closing;

h. It includes an acknowledgement and representation that the Potential Bidder: (i) has relied solely upon its own independent review, investigation and/or inspection of any documents, information and other due diligence materials, and/or the assets to be acquired and liabilities to be assumed in making its Sale Proposal; (ii) did not rely upon any written or oral statements, representations, promises, warranties or guarantees whatsoever, whether express or implied (by operation of law or otherwise), regarding the assets to be acquired or liabilities to be assumed or the completeness of any information provided in connection therewith, including by the Company, the Proposal Trustee or the Financial Advisor (and their respective officers, directors, employees, agents, counsel and professionals), except as expressly stated in the Purchase Agreement submitted by it; (iii) is a sophisticated party capable of making its own assessments in respect of making its Sale Proposal; and (iv) has had the benefit of independent legal, tax, accounting and other relevant professional advice in connection with its Sale Proposal;

i. It includes evidence, in form and substance reasonably satisfactory to the Financial Advisor and the Company, of authorization and approval from the Potential Bidder's board of directors (or comparable governing body), with respect to the submission, execution, delivery and closing of the transaction contemplated by the Sale Proposal;

j. It is accompanied by a refundable deposit (the "**Deposit**"), in form and amount acceptable to the Financial Advisor and the Proposal Trustee, to be held in accordance with paragraph 25 hereof;

k. If the Potential Bidder is an entity newly formed for the purpose of the transaction, the bid shall contain an equity or debt commitment letter from the parent entity or sponsor, which is satisfactory to the Proposal Trustee and the Financial Advisor, that names the Company as third party beneficiary of any such commitment letter with recourse against such parent entity or sponsor;

l. It includes evidence, in form and substance reasonably satisfactory to the Proposal Trustee and the Financial Advisor, of compliance or anticipated compliance with any and all applicable regulatory approvals (including, if applicable, anti-trust regulatory approval) or the anticipated time frame for such compliance and any outstanding conditions or anticipated impediments for obtaining such approvals; and

m. It contains any other information reasonably requested by the Proposal Trustee or the Financial Advisor.

15. Notwithstanding paragraphs 13 and 14 hereof, the Financial Advisor and the Proposal Trustee may waive compliance with any one or more of the Qualified Bid requirements specified above, and deem such non-compliant bids to be Qualified Bids.

No Qualified Bids

16. The Financial Advisor, in consultation with the Proposal Trustee, will assess the Qualified Bids received, if any, and will determine whether it is likely that the transactions contemplated by such Qualified Bids are likely to be consummated and whether proceeding with this Sales Process is in the best interests of the Company and its stakeholders. Such assessments will be made as promptly as practicable but no later than five (5) Business Days after the Bid Deadline.

17. If the Proposal Trustee and the Financial Advisor, in accordance with paragraph 16 above, determine that (a) no Qualified Bid was received, (b) at least one Qualified Bid was received but it is not likely that the transactions contemplated in any such Qualified Bids will be consummated; or (c) proceeding with this Sales Process is not in the best interests of the Company and its stakeholders, the Proposal Trustee shall forthwith (i) terminate this Sales Process; (ii) notify each Potential Bidder (including any Qualified Bidder(s)) that this Sales Process has been terminated; (iii) consult with the Company's stakeholders regarding the Company's next steps; and (iv) report to the Court if it considers it appropriate to do so.

18. If the Proposal Trustee and the Financial Advisor, in accordance with paragraph 16 above, determine that (a) one or more Qualified Bids were received, (b) it is likely that the transactions contemplated by one or more of such Qualified Bids will be consummated, and (c) proceeding with this Sales Process is in the best interests of the Company and its stakeholders, this Sales Process will not be terminated and the Company, the Proposal Trustee and the Financial Advisor, will proceed to negotiate with one or more of the Qualified Bidders in an attempt to conclude a transaction.

Selection Criteria

19. In selecting any bid, the Proposal Trustee and the Financial Advisor will review each Qualified Bid. In determining the highest and best offer among Qualified Bids, a single Qualified Bid for all or substantially all of the Company Property and/or Company Business generally will be viewed as preferable to a combination of Qualified Bids.

20. Evaluation criteria with respect to any Qualified Bid may include, but are not limited to, items such as (a) the purchase price and the net value, including assumed liabilities or other obligations to be performed or assumed by the bidder, provided by such bid; (b) the claims likely to be created by such bid in relation to the other bids; (c) the counterparties to the transaction; (d) the terms of the proposed Purchase Agreement and other

transaction documents; (e) other factors affecting the speed, certainty and value of the transaction, including conditions and any regulatory approvals required to close the transaction; (f) the assets included or excluded from the bid and the transaction costs and risks associated with closing multiple transactions versus a single transaction for all or substantially all of the Company Property and/or the Company Business; (g) the estimated number of employees of the Company that will be offered post-closing employment by the bidder and any proposed measures associated with their continued employment; (h) the transition services required from the Company post-closing and any related restructuring costs; and (i) the likelihood and timing of consummating the transaction.

21. Upon the conclusion of the bidding, the Proposal Trustee and the Financial Advisor will identify the highest or otherwise best Qualified Bid received (such offer, the "**Successful Bid**", and the Qualified Bidder(s) who made the Successful Bid is the "**Successful Bidder**"). By **May 29, 2020** the Financial Advisor will notify the Qualified Bidders of the identities of the Successful Bidder.

22. The Proposal Trustee, for and on behalf of the Company, shall finalize any further ancillary or definitive documents required to fulfil the obligations set out in the purchase agreement in respect of the Successful Bid, if any, conditional upon the approval of the Court.

23. All Qualified Bids (other than the Successful Bid) shall be deemed rejected by the Company on and as of the date of approval of the Successful Bid by the Court.

Approval Hearing

24. Within **five Business Days** of the date of the definitive agreement(s) with the Successful Bidder), the Company shall seek a hearing to be held on a date, no later than **June 15, 2020**, or such other date as the court may assign, (the "**Approval Hearing**") to authorize the Company to enter into an agreement with the Qualified Bidder or in respect to the Successful Bid (the "**Approval Order**"). The Approval Hearing may be adjourned or rescheduled by the Proposal Trustee, in consultation with the Company and the Financial Advisor, without further notice, by notice to the service list maintained by the Company.

Deposits

25. All Deposits shall be retained by the Financial Advisor and invested in an interest bearing trust account in a Schedule I Bank in Canada. Upon closing of the transaction with the Successful Bidder, the Deposit (plus accrued interest) paid by the Successful Bidder shall be released by the Financial Advisor to the Company (and/or to other third parties as otherwise directed by Court Order) and applied to the purchase price to be paid by the Successful Bidder. The Deposits (plus applicable interest) of all Qualified Bidders not selected as the Successful Bidder shall be returned to such bidders within **five Business Days** of the date upon which the Successful Bid is approved by the Court. If the this Sales Process is terminated in accordance with the terms in this document, all Deposits

shall be returned to the bidders within **five Business Days** of the date upon which it is determined that this Sales Process is terminated.

26. If the Successful Bidder breaches its obligations to close, it shall forfeit its Deposit to the Company, provided however that the forfeit of such Deposit shall be in addition to, and not in lieu of, any other rights in law or equity that the Company has against such breaching entity, and the party holding the deposit shall be obligated to release the funds to the Company, subject to the claims of the Company's creditors.

Approvals

27. For greater certainty, the approvals required pursuant to the terms of this Sales Process are in addition to and not in substitution for any other approvals required by the BIA or any other statute or are otherwise required at law in order to implement a definitive agreement with a Successful Bidder, as the case may be.

Notice Parties

28. As used herein, the "**Notice Parties**" are, collectively, the Proposal Trustee and the Financial Advisor. The addresses to be used for delivering documents to the Notice Parties are as follows:

The Bowra Group Inc.
505 Burrard St #430, Vancouver, BC V7X 1M3

Attention: Mario Mainella
Email: mmainella@bowragroup.com

MNP Corporate Finance Inc.
1021 West Hastings, Suite 2200, Vancouver, BC V6E0C3

Attention: Aleem Bandali
Email: Aleem.Bandali@mnp.ca

29. A bid shall be delivered to all Notice Parties at the same time by electronic mail, personal delivery or courier.

Reservation of Rights

30. The Company, at the direction of the Proposal Trustee and the Financial Advisor, and not in its sole discretion:

    a. may reject, at any time any bid that is (i) inadequate or insufficient; (ii) not in conformity with the requirements of the BIA, this Sales Process or any orders of the Court applicable to the Company; and/or (iii) contrary to the interests of the Company, its estate or stakeholders, as determined by the Company and the Financial Advisor;

b. in accordance with the terms hereof, may impose additional terms and conditions and otherwise seek to modify this Sales Process at any time in order to maximize the results obtained;

c. in accordance with the terms hereof, may accept bids not in conformity with this Sales Process to the extent that the Company and the Financial Advisor determine, in their reasonable business judgment, that doing so will benefit the Company, its estate and its stakeholders; and,

d. extend the deadlines contained in this Sales Process, provided that the Bid Deadline shall not be extended beyond May 29 2020.

31. At or before the Approval Hearing, the Proposal Trustee may impose such other terms and conditions in the negotiation of a Purchase Agreement, as applicable, as the Proposal Trustee may, in consultation with the Company and Financial Advisor, determine to be in the best interest of the Company and its stakeholders, provided that such terms and conditions are not inconsistent with this Sales Process.

32. This Sales Process does not, and shall not be interpreted to, create any contractual or other legal relationship between the Company, the Proposal Trustee, the Financial Advisor and any other party, other than as specifically set forth in definitive agreements that may be executed by the Company.

No Amendment

33. Except as provided herein, there shall be no amendments to this Sales Process, including for greater certainty the process and procedures set out in this document, without the prior written consent of the Proposal Trustee unless otherwise ordered by the Court upon application and appropriate notice.

Further Orders

34. At any time during this Sales Process, the Company, the Proposal Trustee or the Financial Advisor may apply to the Court for advice and directions with respect to the discharge of their powers and duties hereunder.

COURT NO.B200193
ESTATE NO.11-2626604
VANCOUVER REGISTRY

IN THE SUPREME COURT OF BRITISH COLUMBIA
IN BANKRUPTCY AND INSOLVENCY

IN THE MATTER OF THE PROPOSAL OF
SNFW FITNESS B.C. LTD.

ORDER MADE AFTER APPLICATION

LAWSON LUNDELL LLP

Barristers and Solicitors
1600 Cathedral Place
925 West Georgia Street
Vancouver, British Columbia V6C 3L2
Phone: (604) 685-3456
Attention: Kimberley A. Robertson

30639.150895.KAR.18021638.1

APPENDIX C

Copy of the SNFW Fitness B.C. Ltd. Cash Flow for the Period April 6, 2020 to June July 31, 2020

In the Matter of the Notice of Intention to File a Proposal of SNFW Fitness B.C. Ltd.
Cash Flow Forecast
For the Period of April 3, 2020 to July 31, 2020

	Actual	Forecast - Week Ended								TOTAL
	April 3, 2020 - June 7, 2020	14-Jun	21-Jun	28-Jun	5-Jul	12-Jul	19-Jul	26-Jul	31-Jul	Actual + Forecast
Receipts										
Advances from secured creditor	411,757	100,000	150,000	200,000	275,000		250,000	150,000		1,536,757
Total Receipts	411,757	100,000	150,000	200,000	275,000	-	250,000	150,000	-	1,536,757
Disbursements										
Payroll	170,554	42,000	-	42,000	42,000	-	42,000	42,000	-	380,554
Utilities	55,231	-	-	-	-	-	-	-	-	55,231
Member Management Licensing Fee	40,184	-	-	-	-	-	-	-	-	40,184
Security and Moving Costs	4,155	12,500	20,000	12,500	35,000	20,000	12,500	12,500	-	129,155
Member Refunds	35,424	-	-	-	-	-	-	-	-	35,424
EE Expenses	1,789	1,000	-	-	1,000	-	-	1,000	-	4,789
Computer - IT Services	28,325	-	-	-	-	-	-	-	-	28,325
Insurance	72,090	-	-	-	-	-	-	-	-	72,090
Vehicle leases	4,006	-	-	-	-	-	-	-	-	4,006
Professional fees	-	-	150,000	100,000	200,000	-	150,000	-	100,000	700,000
Contingency	-	-		25,000	-	-	25,000	25,000	-	75,000
Total Disbursements	411,757	55,500	170,000	179,500	278,000	20,000	229,500	80,500	100,000	1,524,757
Net Cash Flow for the Period	-	44,500	(20,000)	20,500	(3,000)	(20,000)	20,500	69,500	(100,000)	12,000
Opening Cash Balance	-	-	44,500	24,500	45,000	42,000	22,000	42,500	112,000	-
Ending Cash Balance	-	44,500	24,500	45,000	42,000	22,000	42,500	112,000	12,000	12,000

Notes

1 Assumes that the sales transaction closes before the end of July 2020

2 Cash flows do not include payments for lease facilities

SUPREME COURT OF BRITISH COLUMBIA SEAL 18-Jun-20 Vancouver REGISTRY

This is Exhibit "C" referred to in the Affidavit of Kendra Hewer sworn before me at Vancouver this 22nd day of June 2020

A Commissioner for taking Affidavits within British Columbia

44

COURT NO.B200193
ESTATE NO.11-2636604
VANCOUVER REGISTRY

IN THE SUPREME COURT OF BRITISH COLUMBIA IN BANKRUPTCY AND INSOLVENCY

IN THE MATTER OF THE PROPOSAL OF SNFW FITNESS B.C. LTD.

ORDER MADE AFTER APPLICATION

	)	THE HONOURABLE	)	
BEFORE	)	MADAM JUSTICE	)	JUNE 17, 2020
	)	FITZPATRICK	)	

ON THE APPLICATION of SNFW Fitness B.C. Ltd. (the "**Company**") coming on for hearing at Vancouver, British Columbia on this day and on hearing Kimberley Robertson, counsel for the Company, and those counsel listed in **Schedule "A"** hereto;

THIS COURT ORDERS that:

1. The time for the filing of a Proposal by the Company be extended from 11:59 p.m. Wednesday, June 17, 2020 to 11:59 p.m. Monday, August 3, 2020.

2. The stay of proceedings be extended from 11:59 p.m., Wednesday, June 17, 2020 to 11:59 p.m. Monday, August 3, 2020.

30639.150895.BGM.18251194.1

3. Endorsement of this Order by counsel appearing on this application, other than counsel for the Company, is hereby dispensed with.

THE FOLLOWING PARTIES APPROVE THE FORM OF THIS ORDER AND CONSENT TO EACH OF THE ORDERS, IF ANY, THAT ARE INDICATED ABOVE AS BEING BY CONSENT:

Signature of Kimberley Robertson
Lawyer for the Company

By the Court.

Digitally signed by
Fitzpatrick, J

Digitally signed by
Day, Kristen

Registrar *in Bankruptcy*

30639.150895.BGM.18251194.1

Schedule "A"

(List of Counsel)

Name of Counsel	**Appearing For**
Kimberley A. Robertson	SNFW FITNESS B.C. LTD.
Jordan Schultz	Bank of Montreal
Colin Gusikoski	Employee Groups making up the Plaintiffs and proposed class members contemplated in BCSC Vancouver Registry Actions No. S197593 and S203844
Michael Hochberg / Gasper Galati	Morgan Crossing Shopping Centre and its manager Strathallen Property Management Inc.
Mario Mainella	The Bowra Group Inc., Proposal Trustee
Stephen Jackson	Selby Property Investments Limited Partnership

COURT NO.B200193
ESTATE NO.11-2626604
VANCOUVER REGISTRY

IN THE SUPREME COURT OF BRITISH COLUMBIA
IN BANKRUPTCY AND INSOLVENCY

IN THE MATTER OF THE PROPOSAL OF
SNFW FITNESS B.C. LTD.

ORDER MADE AFTER APPLICATION

LAWSON LUNDELL LLP

Barristers and Solicitors
1600 Cathedral Place
925 West Georgia Street
Vancouver, British Columbia V6C 3L2
Phone: (604) 685-3456
Attention: Kimberley A. Robertson

30639.150895.BGM.18251194.1

30639.150895.BGM.18251194.1

This is Exhibit "D" referred to in the Affidavit of Kendra Heuer sworn before me at Vancouver this 22nd day of June 2020

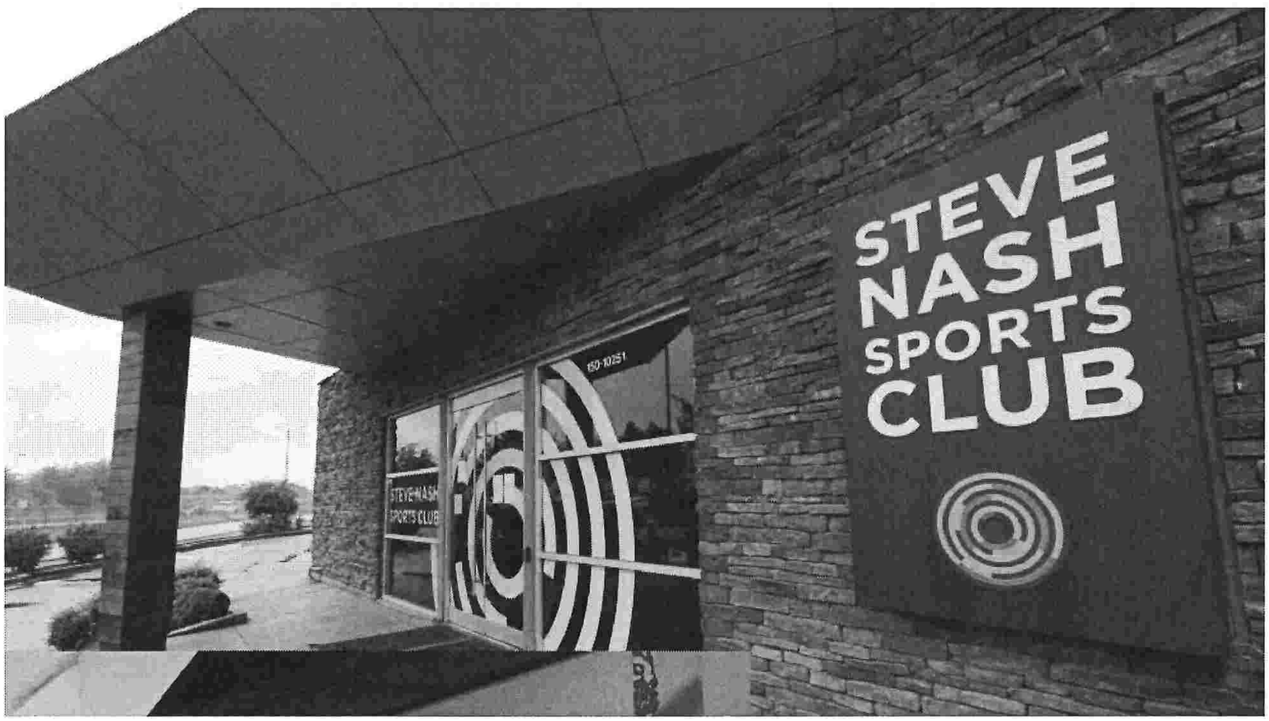
A Commissioner for taking Affidavits within British Columbia

Economy, Law & Politics

Steve Nash Fitness granted insolvency extension

The company applied for more time to file a proposal to creditors under bankruptcy and insolvency legislation

By Hayley Woodin | June 17, 2020, 10:45am



Some Steve Nash Fitness locations are reportedly preparing to open "quickly" under new ownership | Rob Kruyt

What happened: The BC Supreme Court has granted the owner of Steve Nash Fitness World and Sports Clubs more time to file a proposal to creditors.

Why it matters: SNFW Fitness B.C. Ltd. now has until midnight on August 3 to file a proposal under federal bankruptcy and insolvency legislation.

The BC Supreme Court today granted SNFW Fitness B.C. Ltd. an additional 45 days to file a proposal to its creditors, which are collectively owed upwards of an estimated $44 million.

The company – which operates more than two dozen fitness clubs in B.C. under Steve Nash, UFC Gym and Crunch Fitness brands – is more than two months into insolvency proceedings that began April 3, when the company filed a notice of intention to file a proposal to creditors under federal bankruptcy and insolvency legislation.

After an initial extension, the company's deadline for filing a proposal was June 17 at midnight. Had an extension not been granted and a proposal not filed, the company would have been deemed bankrupt.

In brief oral reasons, Madam Justice Shelley Fitzpatrick concluded that no creditor will suffer material prejudice as a result of the extension.

"In all the circumstances, I'm satisfied that the extension is appropriate," she noted.

The application heard Wednesday acknowledge that SNFW Fitness is unlikely to file a proposal to creditors, but that "proposal proceedings still have value" to certain groups of unsecured creditors, informer employees, pre-paid members and landlords – all of which are unsecured creditors.

SNFW Fitness being declared bankrupt ahead of a finalized deal to sell the company would add unnecessary costs to the process, and would ultimately result in less recovery for creditors, the company argued.

"SNFW wishes to be entirely transparent that it would prefer not to file such a proposal, or be deemed bankrupt at this point, as neither is necessary to complete the sales process and bring the benefit to the unsecured class of creditors."

The company officially announced on Tuesday that a group of investors has agreed to acquire the company. The deal has not yet been finalized, nor has it been approved by the BC Supreme Court.

Two groups of former employees, represented by Victory Square Law Office LLP, objected to the extension request. The groups argued that SNFW Fitness engaging in the proposal process with no clear intention of filing a proposal constitutes not acting in good faith.

"SNFW's proposal is unprecedented, illogical and obstructs the purpose of the [*Bankruptcy and Insolvency Act*]," states the employee groups' response to the extension application by SNFW Fitness.

"Its current proposal is designed to circumvent important legislative protections for employees in a manner that dramatically advantages another creditor."

That other creditor is the Bank of Montreal, which is owed $32 million by SNFW Fitness and has supported the company's court-approved sales process.

Madam Justice Fitzpatrick rejected the claim that former SNFW Fitness employees will be materially impacted by the deadline extension, and said she found no evidence to support the suspicions former employees have about how the company has approached its sales process.

"The [*Bankruptcy and Insolvency Act*] has evolved ... to recognize that sales are an appropriate means of enhancing and preserving stakeholder value for the benefit of the stakeholders generally," she said, noting that it would be "extremely unusual" for employees to have been included or looped into the sales process at this stage.

She added that the court will continue to have "significant oversight" of the company's insolvency and sale proceedings.

All legal actions against SNFW Fitness are stayed over the 45-day extension.

hwoodin@biv.com

@hayleywoodin

VIEW COMMENTS

TAB 4

This is the 1st Affidavit of Joel Holloway
in this case and was made on June 23, 2020

COURT FILE NO. VLC-S-B-200257
ESTATE NO. 11-2649058
VANCOUVER REGISTRY

IN THE SUPREME COURT OF BRITISH COLUMBIA
IN BANKRUPTCY AND INSOLVENCY

IN THE MATTER OF THE NOTICE OF INTENTION TO MAKE A PROPOSAL OF
TRIPLE M MODULAR LTD. dba METRIC MODULAR

AFFIDAVIT

I, Joel Holloway, Certified Professional Accountant, of 1825 Tower Road, in the City of Agassiz, in the Province of British Columbia, AFFIRM THAT:

1. I am an officer of Triple M Modular Ltd., which does business as "Metric Modular" and as such have personal knowledge of the facts and matters hereinafter deposed to, save and except where the same are stated to be made upon information and belief, and, as to such facts, I verily believe the same to be true.

2. I have been employed by Triple M Modular Ltd. o/a Metric Modular ("**Metric Modular**" or the "**Company**") as Chief Financial Officer since 2017. My responsibilities include the accounting, finance, administration and human resource functions of the business. The management of all other operations of the business is overseen by the President, Stephen Branch.

Background

3. For clarity, dates referenced in the following statements will refer to the Company's fiscal year which begins September 1 and ends August 31. Therefore, fiscal 2019 refers to the period from September 1, 2018 through to August 31, 2019. When quarters are referenced, they also refer to the Company's fiscal year. In the statements below, Q1 refers to the period from

JH

September 1 through to November 30, Q2 refers to December 1 through to February 28, Q3 refers to March 1 through May 31, and Q4 refers to June 1 through August 31 in any given fiscal year.

4. Metric Modular was incorporated on April 6, 2017 pursuant to the *Business Corporations Act* (British Columbia). Metric Modular is a wholly owned subsidiary of Triple M Modular LP ("**Triple M LP**"), an entity that is the ultimate shareholder of Metric Modular and its sister company, Triple M Housing Ltd. ("**Triple M Housing**"), an Alberta-based corporation located in Lethbridge, Alberta.

5. Metric Modular is a modular construction company specializing in designing, building, delivering, and installing multi-family affordable and market housing, student accommodation and education space, hotels, workforce accommodation, and high-performance energy efficient modular buildings. Metric Modular has been in business since 2017 when it acquired the assets of the Pacific Coast Modular Construction LP o/a Britco Construction, which had been in business over forty years.

6. Metric Modular operates out of leased premises at its head office located at 1825 Tower Road, in the city of Agassiz, British Columbia (the "**Agassiz Facility**"). The Agassiz Facility is also the location of the Company's manufacturing facility. Prior to the filing of the Notice of Intention to make a Proposal on June 1, 2020 (the "**NOI**"), Metric Modular also operated from a second facility located in Penticton, British Columbia (the "Penticton Facility"). Metric Modular currently has 54 employees in British Columbia.

7. Since taking over the business of Britco Construction in 2017, Metric Modular has been executing on a strategy to move the business away from its traditional revenue base of workforce accommodation to a more diversified mix of permanent modular construction revenue streams. Metric Modular made progress on this strategic shift, growing revenues by 54% in the fiscal year ending August 31, 2018 and 31% in the fiscal year ending August 31, 2019. However, there were also significant financial losses of ($2.0MM) EBITDA in fiscal 2017 and ($3.1MM) EBITDA in fiscal 2018. These losses were due to:

(a) the startup of the Penticton Facility;

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(b) periods with insufficient production backlog, which led to manufacturing inefficiencies; and

(c) cost overruns on project installation due to scope increase and costs incurred to meet project timelines.

In the fiscal year ended August 31, 2019 the Company reduced the losses incurred by the business to ($0.5MM) but failed to achieve targeted profitability for the business.

8. In fiscal 2019 and 2020 the Company's management took the following steps to improve profitability of the business:

(a) Closed the Company's Penticton Facility which had accounted for significant financial losses in 2019 and prior years;

(b) In response to project installation losses, made changes to the Company's management by hiring a Director, Projects with extensive construction experience. The Director, Projects was tasked with addressing common sources of cost overruns in the business. Project financial performance improved considerably on projects completed under the oversight of the Director, Projects;

(c) Reduced non-production staff by 24%; and

(d) Introduced new product lines for production in the Agassiz Facility, further diversifying the revenue streams generated by that facility;

9. In fiscal 2020, the Company began the year with a single project comprising much of the production backlog for the Agassiz Facility. When the project was delayed due to timing of municipal approvals for the project, the Company experienced a reduction in manufacturing revenue and lower production efficiency. Losses in the months during which the project was delayed exceeded $1.8MM. This was followed by the onset of the COVID-19 pandemic, which further reduced production efficiencies, created uncertainty to the Company's ability to complete existing backlog efficiently, and added difficulty to projecting future sales and financial performance.

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10. Since 2017, the ongoing losses and working capital requirements of the business necessitated financial support from TriWest Capital Partners IV L.P. ("**TriWest**") and minority investors (collectively with TriWest referred to as "**Ownership**") and ATB Financial, which is the senior secured lender to the Company and Triple M Housing pursuant to a credit facility that is secured against the assets of both (Triple H Housing is the primary borrower and Metric Modular is a guarantor, but the funds advanced by ATB Financial are intended to be for the use of both companies). Metric Modular received waivers of defaults on financial covenants from ATB Financial for fiscal quarters Q2 2019 and Q1 and Q2 2020, and access to additional liquidity in the form of temporary increases to the operating credit facility during periods of fiscal 2019 and 2020. Ownership also took the following steps to support the business:

(a) In fiscal 2019 TriWest provided a parental guarantee to ATB Financial in order to obtain an increase to the operating facility to support liquidity requirements of the business;

(b) Ownership made additional investment in the business in fiscal Q1 and Q4 of 2019 to support liquidity requirements and financial covenant compliance; and

(c) In fiscal Q3 2020 TriWest again provided a parental guarantee to ATB Financial to obtain an increase to the operating.

11. On May 25, 2020 the parental guarantee provided by TriWest expired and the increase to the operating facility provided by ATB was eliminated. At this time, the business continued to face liquidity constraints and was unable to pay vendors according to the credit terms they had agreed to provide to the Company.

12. Throughout the month of May, the Company had begun to evaluate alternatives available should the Company have insufficient liquidity upon the reduction of the ATB Financial operating facility on May 25th. On May 26, 2020 Metric Modular met with Grant Thornton Ltd ("**GT**") to consider its options. The liquidity challenges and inability to pay creditors according to agreed terms led Metric Modular to apply for creditor protection by filing the NOI with GT as Proposal Trustee (the "**Proposal Trustee**"). The NOI was filed in consultation with the Company's primary secured lender ATB Financial.

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13. As at June 1, 2019 (the "**Filing Date**"), Metric Modular had total liabilities of approximately $15,001,739, including:

(a) the ATB / Triple M Housing Ltd. Indebtedness – $9,277,492;

(b) trade accounts payable – $2,567,781; and

(c) employee obligations – $1,391,574;

(d) Customer deposits – $1,172,105; and

(e) GST, PST and EHT obligations – $592,787.

Included in the above trade accounts payable are amounts owing to vendors and suppliers that on certain ongoing projects that are governed by the *Builders Lien Act* (British Columbia) (the "***BLA***"). Based on consultations with its legal counsel, the Company has estimated that creditors owed approximately $900,000 may have rights under the *BLA* and, as such, may have certain priority status in these proceedings.

14. The Company's assets consist of, among other things, the following items with the below noted book values as at April 30, 2020:

(a) accounts receivable – $3,466,775;

(b) hold back receivable – $1,182,201;

(c) inventory

(i) raw material – $2,304,754;

(ii) work in process – $691,989;

(iii) housing work in progress and finished goods – $443,606; and

(d) fixed assets – $814,528

Accordingly, the total book value of the Company's assets is $8,903,853 against total liabilities in excess of $15,000,000.

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15. In consultation with GT, Metric Modular determined that the NOI filing was the most effective process for generating returns to its creditors, as it would allow the Company to continue business operations to maximize collection of accounts receivables and holdbacks, and to work on a plan to sell the remaining assets of the business, either through a sale of the Company as whole, or a liquidation of its assets.

16. At the Filing Date, Metric Modular had 26 ongoing customer projects, 17 of which were under active construction and 3 future projects which Metric Modular anticipated commencing work on shortly. Of the ongoing projects, 7 related to the construction of manufactured homes for Triple M Housing. In conjunction with the NOI filing, Metric Modular performed an analysis of each project to assess the cash flow impact of completing the project. Projects with positive cash flows (including associated Company overheads) were identified for completion. As a result of the analysis, it was determined that the company would complete 23 of the ongoing projects and 1 future project (the "**Continuing Projects**").

17. In order to complete the Continuing Projects and conduct an orderly wind down of the business, the Company identified a group of critical employees and management personnel (the "**Key Employees**"). In order to retain Key Employees, the company developed a key employee retention plan ("**KERP**") and negotiated retention bonuses for Key Employees which have been documented in individual agreements between the Key Employees and the Company. Details of the individual retention agreements are included in my second affidavit, which is subject to a sealing request.

18. In order to maximize the value to its creditors, the Company has taken steps to align expenditures to the completion of the Continuing Projects and wind down of the business. To that end the Company has undertaken the following:

(a) On June 1, 2020, the Company disclaimed its commercial lease related to the unused Penticton Facility;

(b) On June 1, 2020, and in subsequent weeks, the Company terminated or accepted resignation of 10 sales, supervision and administrative staff, which is a 34% reduction in the associated workforce;

(c) On June 1, 2020 and in subsequent weeks the Company terminated or accepted resignation of 50 production staff, which is a 60% reduction in the production workforce;

(d) The Company has disclaimed customer purchase orders, sales agreements and contracts related to the four projects that it could not complete without incurring further losses and a corresponding decline in the returns available to its creditors;

(e) The Company has continued work on a project in Gibsons, BC (the "**Gibsons Project**") pursuant to an agreement between Metric Modular and BC Housing Management Commission ("**BC Housing**"). Due to the length of the Gibsons Project and the significant resources required for the execution of same, the Company is forecasting that it would incur a cash loss if it were to complete the Gibsons Project. Accordingly, the Company is in the process of assigning the contract for the Gibsons Project to Triple M Housing and anticipates this assignment to be completed by the end of June 2020. It is anticipated that the assignment of this contract and related assets and liabilities will be cash positive to the Company, and therefore to the benefit of its creditors.

19. Metric Modular is seeking an extension of the time to file a Proposal for the following reasons:

(a) To complete the Continuing Projects, generating positive cash flow for the benefit of creditors and allowing the Company to explore the sale of the business as a going concern;

(b) If a sale of the Company as a going concern is not achievable, then to conduct an orderly liquidation of the remaining assets in order to maximize recovery for the benefit of creditors;

(c) To maximize collections from the Continuing Projects, on which trade creditors will be benefited by receiving ongoing payment for their invoices and recovery of the holdback funds as a result of the Company's collection of project receipts from customers (consistent with the *BLA*, all project receipts will be used to pay the specific suppliers and subcontractors that have contributed to the to the project, and only the excess receipts will flow into the Company's general revenues).

20. Based on the foregoing, it is my belief that:

(a) The Company has acted in good faith and with due diligence in this proceeding;

(b) The granting of a 45 day extension improves the likelihood that the Company will be able to develop a viable Proposal to creditors; and

(c) No creditor would be materially prejudiced if the extension being applied for is granted.

21. I affirm this Affidavit in support of an application by the Company for an Order that the time for filing a proposal, and the stay of proceedings, be extended by 45 days from July 1, 2020 to August 15, 2020.

AFFIRMED BEFORE ME at the City of Agassiz, in the Province of British Columbia, this 23 day of June, 2020.	
A Commissioner for taking Affidavits for British Columbia. BRAD R. WAAL Notary Public 9086 Young Road Chilliwack, BC V2P 4R5 604-795-0070	JOEL HOLLOWAY

TAB 5

(Subject to a Requested Sealing Order)

TAB 6

Court File No. VLC-S-B-200257
Vancouver Registry
District of British Columbia
Division No. 03 – Vancouver
Estate File No. 11-2649058

SUPREME COURT OF BRITISH COLUMBIA
IN BANKRUPTCY AND INSOLVENCY

IN THE MATTER OF THE NOTICE OF INTENTION TO MAKE A PROPOSAL OF TRIPLE M MODULAR LTD. O/A METRIC MODULAR

TRUSTEE'S FIRST REPORT TO COURT

Pursuant to Section 50.4(7)(b)(ii) of the *Bankruptcy and Insolvency Act* (Canada)

JUNE 23, 2020

Grant Thornton Limited
Suite 1600, 333 Seymour Street
Vancouver BC
Canada
V6B 0A4

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Court File No. VLC-S-B-200257
Vancouver Registry
District of British Columbia
Division No. 03 – Vancouver
Estate File No. 11-2649058

SUPREME COURT OF BRITISH COLUMBIA
IN BANKRUPTCY AND INSOLVENCY

IN THE MATTER OF THE NOTICE OF INTENTION TO MAKE A PROPOSAL OF TRIPLE M MODULAR LTD. O/A METRIC MODULAR

TRUSTEE'S FIRST REPORT TO COURT
Pursuant to Section 50.4(7)(b)(ii) of the *Bankruptcy and Insolvency Act* (Canada)

JUNE 23, 2020

INTRODUCTION

1. This report (this "**First Report**") is filed by Grant Thornton Limited ("**GTL**") in its capacity as proposal trustee (in such capacity, the "**Proposal Trustee**") in connection with a Notice of Intention to Make a Proposal ("**NOI**") filed on June 1, 2020 (the "**Filing Date**") by Triple M Modular Ltd. o/a Metric Modular ("**Metric Modular**" or the "**Company**") pursuant to section 50.4(1) of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended (the "**BIA**").

2. The first and second affidavits of Joel Holloway, Chief Financial Officer, both sworn on June 23, 2020 (collectively, the "**Holloway Affidavits**" and individually, the "**First Holloway Affidavit**" and the "**Second Holloway Affidavit**", respectively) and filed in

connection with the Company's NOI proceedings (these "**Proceedings**") describes, *inter alia*, the Company's background, including the rationale for the requested relief.

3. This First Report is submitted by the Proposal Trustee in conjunction with Metric Modular's motion for an order (the proposed "**Order**") to extend the stay of proceedings granted upon the filing of the NOI on June 1, 2020 for 45 days to and including August 15, 2020.

PURPOSE OF THIS FIRST REPORT

4. The purpose of this First Report is to provide the Supreme Court of British Columbia in Bankruptcy and Insolvency (the "**Court**") with further information related to the relief sought by the Company. This First Report specifically provides:

   (a) information regarding the Company, its financial position and the reasons for it filing the NOI;

   (b) a discussion of the Proposal Trustee's activities conducted since the filing of the NOI;

   (c) a discussion of the Company's activities conducted since the filing of the NOI;

   (d) the Proposal Trustee's comments and report on the Company's cash flow projection for the 13 weeks ending September 4, 2020 (the "**Cash Flow Projection**");

   (e) a discussion of the Company's request for the approval of a Key Employee Retention Program (the "**KERP**") and the associated priority charge;

   (f) the Company's request for an order that ATB Financial ("**ATB"**) is unaffected by these proceedings to the extent of their perfected secured claim against the assets of Metric Modular, with the sole exception of the KERP charge which shall have priority over their claim; and

(g) a discussion of the Company's request for an extension of the stay of proceedings to August 15, 2020.

5. This First Report should be read in conjunction with the Holloway Affidavits as such affidavits contain additional background information concerning Metric Modular, its structure, the business activities, and its stakeholders.

RESTRICTIONS

6. In preparing this First Report, the Proposal Trustee has relied upon unaudited financial information, the Company's records, financial information and projections, and discussions with the Company's management. While the Proposal Trustee reviewed various documents provided by the Company and believes that the information therein provides a fair summary of the transactions and material, as reflected in the documents, such work does not constitute an audit or verification of such information for accuracy, completeness or compliance with Generally Accepted Accounting Principles ("**GAAP**"), International Financial Reporting Standards ("**IFRS**"), or Generally Acceptance Auditing Standards ("**GAAS**"). Accordingly, the Proposal Trustee expresses no opinion or other form of assurance pursuant to GAAP, IFRS, or GAAS with respect to such information.

7. Some of the information used in preparing this First Report consists of financial projections, including the Cash Flow Projection. The Proposal Trustee cautions that these projections are based upon assumptions about future events and conditions that are not ascertainable. The Company's actual results may vary from the Cash Flow Projection, even if the hypothetical and probable assumptions contained therein materialize, and the

variations could be significant. The Proposal Trustee's review of the future-oriented information used to prepare this First Report did not constitute an audit of such information under GAAP, IFRS, or GAAS.

8. The Proposal Trustee also bases this First Report on the Company's cash flow projections and underlying assumptions. The Proposal Trustee's review and commentary thereon was performed in accordance with the requirements set out in the Canadian Association of Insolvency and Restructuring Professionals' Standards of Professional Practice No. 9 (Trustee's Report on Cash Flow Statement).

9. To date, nothing has come to the Proposal Trustee's attention that would cause it to question the reasonableness of the information and explanations provided to it by the Company and its management. The Proposal Trustee has requested that management bring to its attention any significant matters which were not addressed in the course of the Proposal Trustee's specific inquiries. Accordingly, this First Report is based on the information (financial or otherwise) made available to the Proposal Trustee by the Company.

10. This First Report has been prepared for the use of this Court and the Company's stakeholders as general information relating to the Company and to assist the Court in determining whether to grant the relief sought by the Company. Accordingly, the reader is cautioned that this First Report may not be appropriate for any other purpose. The Proposal Trustee will not assume responsibility or liability for losses incurred by the reader as a result of the circulation, publication, reproduction or use of this First Report contrary to the provisions of this paragraph.

11. All references to dollars are in Canadian currency unless otherwise noted.

12. Capitalized terms not defined in this First Report have the meanings ascribed to them in the Holloway Affidavits.

BACKGROUND

13. Metric Modular was incorporated on April 6, 2017 pursuant to the *Business Corporations Act* (British Columbia). The Company's head office and main production facility is located at 1825 Tower Road, Agassiz, British Columbia (the "**Agassiz Facility**").

14. Metric Modular is a wholly owned subsidiary of Triple M Modular LP ("**Triple M LP**"), an entity that is the sole shareholder of Metric Modular and its sister Company, Triple M Housing Ltd. ("**Triple M Housing**"), an Alberta based corporation located in Lethbridge, Alberta.

15. Metric Modular is a modular construction company specializing in designing, building, delivering, and installing multi-family affordable and market housing, student accommodation and education space, hotels, workforce accommodation, and high-performance energy efficient modular buildings. Prior to the NOI, in addition to the Agassiz Facility, the Company also operated from a second facility located in Penticton, British Columbia ("**Penticton Facility**").

16. As a result of the financial challenges faced by the Company, as further discussed in this First Report, the Company explored several alternatives to maximize realizations for the benefit of creditors. The Company ultimately determined that an NOI filing would provide for the most favourable opportunity to allow the Company to continue business operations to maximize collections and work on a plan to sell the remaining assets of the business, either through a sale of the Company as whole or a liquidation of the assets. The Proposal

Trustee understands that the Company's primary secured creditor, ATB, was consulted prior to filing of the NOI and is supportive of the Company's approach.

17. Prior to the Filing Date, Metric Modular employed approximately 116 full-time employees. Of the total employees, approximately 105 of the employees worked at the Agassiz Facility, while the remaining 11 employees worked remotely, installing the modular structures or in project pursuits (sales). Upon filing the NOI, the Company laid off a substantial portion of its workforce. The Company has retained certain employees to complete the Remaining Projects (as defined below) and assist in the wind-down of the business.

18. As at the Filing Date, the Company had a total of 26 ongoing customer projects (collectively, the "**Ongoing Projects**"), of which 7 were between Metric Modular and Triple M Housing. In addition to the Ongoing Projects, there were also three (3) projects that had been approved, however, work on same had not commenced (collectively, the "**Future Projects**").

19. Prior to and shortly after the Filing Date, the Company performed an analysis to determine the profitability of each Ongoing Project and Future Project to determine which projects it would complete during these NOI Proceedings. Upon completing the analysis, the Company intends to complete 23 Ongoing Projects and one (1) Future Project (collectively, the "**Remaining Projects**") by no later than August 2020. The Remaining Projects specifically exclude the Gibsons Project and Disclaimed Projects, both of which are defined and discussed in detail later in this First Report.

20. The Company is also evaluating alternatives with respect to the sale of the business either as a going concern or liquidating the remaining assets once the Remaining Projects have been completed.

FINANCIAL POSITION OF THE COMPANY

21. The Proposal Trustee has reviewed Metric Modular's internal financial information for the 24 months ending April 30, 2020. For the twelve-month periods ending April 30, 2019 and April 30, 2020, the Company generated operating losses of $152,000 and $5,351,000, respectively[1]. Although the Company had continued to increase efficiencies and reduce operating costs, the losses were driven mainly due to various unfavourable operating conditions and events. Summary financial results for the twelve months ending April 30, 2019 and April 30, 2020 are included in the table below:

For the 12 Months Ending (In 000's)	April 30, 2020	April 30, 2019	Change
Revenue	$ 46,034	$ 69,050	$ (23,016)
Cost of Goods Sold	47,556	64,903	(17,348)
Gross Profit	(1,522)	4,147	(5,668)
Operating Expenses	3,829	4,299	(469)
Operating Loss	**$ (5,351)**	**$ (152)**	**$ (5,199)**

22. As a result of the continued losses, Metric Modular has accumulated significant unsecured and secured liabilities required to continue to fund operations. Based on current trends and historical performance, coupled with the current COVID-19 pandemic, the Company

[1] The calculation of "Operating loss" excludes non-operating expenses / income as reported on the Company's internal financial statements.

forecasts that further losses will be incurred in the future, making the business unsustainable.

23. As at the Filing Date, Metric Modular had total liabilities of approximately $15 million, including amounts due to the following:

(a) ATB / Triple M Housing – $9,277,492;

(b) trade accounts payable – $2,567,781;

(c) employee obligations – $1,391,574;

(d) Customer deposits – $1,172,105; and

(e) GST, PST and EHT obligations – $592,787.

24. The amount owing to ATB / Triple M Housing relates to direct financing provided by ATB to Triple M Housing pursuant to a credit facility between the parties (the "**ATB Credit Facility**"), with a secured guarantee provided by Metric Modular in relation to and in support of the ATB Credit Facility. Under this arrangement, Triple M Housing would borrow against the ATB Credit Facility to finance the working capital requirements of Metric Modular's business, set up as an intercompany loan. As at the Filing Date, the total outstanding balance of the ATB Credit Facility was approximately $13,528,753, whereby $9,277,492 related to intercompany advances made by Triple M Housing to Metric Modular. Under the ATB Credit Facility and guarantee provided by Metric Modular, ATB has direct recourse against Metric Modular for the entire balance outstanding under the ATB Credit Facility. Based on a search of the Personal Property Registry of both British Columbia and Alberta, ATB has a registered security interest in all the present and after-acquired personal property of Metric Modular (and Triple M Housing). As at the date of this First Report, the Proposal Trustee has not undertaken a security review to confirm the

validity or enforceability of ATB's security. ATB has requested the Company seek a Court order stating that ATB is an unaffected creditor by these NOI Proceedings to the extent of its perfected secured claim against the assets of Modular Metric with the sole exception of the KERP charge which shall have priority over their claim.

25. Included in the above trade accounts payable are amounts owing to vendors / suppliers that may have lien rights on certain Ongoing Projects pursuant the *Builders' Lien Act* (British Columbia) (the "**BLA**"). Based on consultations with its legal counsel, the Company has estimated that creditors owed approximately $900,000 may have lien rights under the BLA and, as such, may have priority over certain receivables. At the time of this First Report, the Company is unable to determine the exact amount and nature of these claims.

26. The Company's assets consist of, among other things, the following items with the below noted book values as at April 30, 2020:

(a) accounts receivable – $3,466,775;

(b) hold back receivable – $1,182,201;

(c) inventory

I. raw material – $2,304,754;

II. work in process – $691,989;

III. finished goods – $443,606; and

(d) fixed assets – $814,528.

27. The First Holloway Affidavit provides further details of the Company's business, its financial performance, and its obligations.

OVERVIEW OF THE PROPOSAL TRUSTEE'S ACTIVITIES

28. Since its appointment, the Proposal Trustee has performed the following key activities:

(a) filing the necessary prescribed forms required under the BIA for the NOI;

(b) issuing the required notice under section 50.4(6) of the BIA to all known creditors of Metric Modular;

(c) monitoring the affairs of the business including review of financial information and corresponding and holding numerous discussions with the Company's management and Metric Modular's restructuring counsel, Lindsay Kenney LLP ("**LK Law**");

(d) corresponding and holding numerous discussions with various stakeholders and/or respective legal counsel to stakeholders;

(e) responding to numerous calls and emails from employees, creditors, suppliers, customers, and other stakeholders;

(f) maintaining a public website (www.GrantThornton.ca/MetricModular) (the "**Case Website**") for these NOI Proceedings;

(g) establishing a toll-free number and email account for stakeholders of Metric Modular to contact;

(h) preparing this First Report;

(i) assisting the Company in preparing the Cash Flow Projection from June 6, 2020 to September 4, 2020, along with the prescribed forms, in order to satisfy section 50.4(2)(a) of the BIA; and

(j) reviewing and approving the Company's disclaimer or resiliation of various customer contracts or agreements pursuant to section 65.11(1) of the BIA, and as discussed in further detail herein.

COMPANY INTIATIVES

29. The Company's key initiatives undertaken for the general benefit of its stakeholders and/or deemed necessary to maximize net cash position, as well as those planned or proposed by the Company are discussed below, along with any of the Proposal Trustee's comments thereon.

Commercial Lease Disclaimer

30. On June 1, 2020, pursuant to section 65.2 of the BIA, the Company disclaimed its commercial lease related to the Penticton Facility.

31. As no objection was filed within the required 15 days pursuant to the BIA, this lease will be disclaimed as of June 30, 2020. The Company is currently taking steps to vacate the Penticton Facility by that date.

Contract Disclaimers

32. Pursuant to section 65.11 of the BIA, as at the date of this First Report, the Company has disclaimed or resiliated customer contracts / agreements related to three (3) Ongoing Projects and one (1) Future Project (collectively, the "**Disclaimed Projects**") whereby the Company will not be completing same. The decision to disclaim / resiliate the Disclaimed Projects was as a result of the Company's analysis which determined that the completion of such projects would result in net cash losses to Metric Modular.

33. In addition to discussing the rationale for discontinuing the Disclaimed Projects with the Company, the Proposal Trustee reviewed, among other things: (i) the analyses prepared by the Company; and (ii) the relevant documentation for each Disclaimed Projects to determine if the issuance of disclaimers was prudent to advance the restructuring of the business. Upon completing its review, the Proposal Trustee approved the disclaimers in accordance with section 65.11(1) of the BIA.

Contract Assignment

34. The Company is currently completing a project (defined as the "**Gibsons Project**") pursuant to an agreement between Metric Modular and BC Housing Management Commission ("**BC Housing**"). Due to the length of the Gibsons Project and the significant resources required for the execution of same, the Company is forecasting that it would incur a cash loss if it were to complete the Gibsons Project. As such, the Company is in the process of assigning this project to Triple M Housing and anticipates this to be completed by the end of June 2020.

35. Pursuant to an indemnity agreement between Northbridge General Insurance Corporation ("**Northbridge**") and: (i) Metric Modular; (ii) Triple M Housing; (iii) Triple M LP; (iv) and its general partner, Triple M Housing (GP) II Ltd. (collectively, the "**Indemnitors**") dated February 2, 2018 (the "**Indemnity Agreement**"), the Indemnitors agreed to, amongst other things, indemnify Northbridge against any and all losses, charges, expenses, costs, and liabilities which Northbridge may sustain or incur: (i) by reason of having executed or procured the execution of any bonds; (ii) by reason of the failure of the Indemnitors to perform or comply with the Indemnity Agreement or any bonding facility; or (iii) in enforcing any of the covenants and conditions within the Indemnity Agreement.

36. As additional security for its obligations under the Indemnity Agreement, the Indemnitors, ATB, and Northbridge executed an Intercreditor Agreement dated January 25, 2018 outlining the relevant security priorities (the "**Intercreditor Agreement**"). The Indemnity Agreement and Intercreditor Agreement provide Northbridge with a priority security interest in certain assets of the Indemnitors, including the machinery, equipment, plant, tools, supplies, inventory, materials, and other assets related to the Bonded Projects (as defined in the Indemnity Agreement), which includes the Gibsons Project.

37. In reliance upon the Indemnity Agreement and the Intercreditor Agreement, Northbridge, upon request by the Metric Modular, issued performance bonds and labour and material payment bonds (collectively, the "**Bonds**") on behalf of Metric Modular in respect of work to be done by Metric Modular on the Bonded Projects, including the Gibsons Project.

38. As the Company continues to work with the various stakeholders to assign the Gibsons Project, including BC Housing, who, as the Proposal Trustee understands, is supportive of the proposed assignment, the Company has commenced work on same to ensure it remains on schedule, thus limiting any delays upon the assignment being completed.

39. In order to not delay the project, the Company continues to collect receipts and incur disbursements in the ordinary course in relation to the Gibsons Project and intends to do so until the eventual assignment. As outlined in the Cash Flow Projection, the Company in forecasting receipts of $237,639 and disbursements of $250,000 related to the Gibsons Project (i.e. resulting in a net cash outflow of approximately $12,361) prior to same being assigned. The Proposal Trustee continues to monitor the cash inflows and outflows with respect to the Gibsons Project until same is assigned.

40. The Company is in the process of finalizing an analysis to determine the fair market value of the Gibsons Project and quantify the consideration to be paid to Metric Modular by Triple M Housing subsequent to the assignment being complete. Upon the details of the assignment being finalized, the Proposal Trustee will undertake a review of same and report in a future court report on the fairness and reasonableness of the consideration paid by Triple M Housing.

KEY EMPLOYEE RETENTION PLAN

41. As described in the Second Holloway Affidavit, prior to the NOI, the Company identified a group of employees and management personnel (the "**Key Employees**") who are critical to the completion of the Remaining Projects and the orderly wind-down of the business. In order to retain and incentivize the Key Employees as full-time employees, the Company developed a KERP and negotiated retention bonuses which have been documented in individual agreements between the Key Employee and the Company. The details of the KERP have been included in the Second Holloway Affidavit and are currently subject to a sealing request.

42. The factors considered by the Company when designing the KERP and selecting employees for participation are as follows:

(a) the Company's ability to fund the KERP and the support of ATB, the Company's secured creditor;

(b) operational knowledge of the Key Employees specific to the completion the Remaining Projects and wind down of the business, that would be very difficult to replace in the short term; and

(c) relationships of certain Key Employees with customers, whose relationships would not be replaceable or transferable in the short term.

43. As outlined in the Company's application materials, the Company is seeking this Court's approval of a charge in the amount of $200,500 on the Company's assets to secure the Company's obligations under the KERP (the "**KERP Charge**"). The Proposal Trustee understands that ATB, the Company's primary secured creditor, is supportive of the KERP Charge.

44. The Proposal Trustee is of the view that the KERP and KERP Charge is reasonable and appropriate in the circumstances for the following reasons:

(a) it will provide stability to the business and provides continuity of leadership and knowledge during the pendency of the NOI Proceedings by encouraging the Key Employees to remain with the Company for a reasonable period of time;

(b) the Key Employees are critical to the efficient and cost-effective completion of the Remaining Projects and wind-down of the business and their participation should enhance or maximize realizations for the benefit of stakeholders;

(c) identifying replacement management / employees with the requisite sector experience and knowledge of the underlying business and projects is not practical in the short term;

(d) the number of Key Employees is proportionately reasonable to the size and nature of the business and the milestones are consistent with the Company's wind-down plan;

(e) the Proposal Trustee considered the proposed KERP terms with those in other recent restructuring proceedings under the BIA and the *Companies Creditors'*

Arrangement Act (the “**CCAA**”) and is satisfied that the quantum of the KERP payments and the terms of the KERP are commercially reasonable and are not ‘off-market’ in the circumstances;

(f) although the BIA does not contain a specific provision for a KERP Charge to be granted under an NOI proceeding, the granting of such charges is supported and commonly accepted in restructuring proceedings under both the BIA and CCAA; and

(g) the KERP has been approved by the Company’s shareholders and its primary secured creditor, ATB.

CASH FLOW PROJECTION

45. As stated above, in order to satisfy section 50.4(2)(a) of the BIA, the Company prepared the Cash Flow Projection, on a weekly basis, for the 13 weeks ending September 4, 2020 (the “**Cash Flow Period**”). The Cash Flow Projection together with the Company’s Report on the Cash Flow Projection dated June 10, 2020 and the Proposal Trustee’s Report on the Cash Flow Projection dated June 10, 2020, are collectively attached hereto as **Appendix “1”**. The Cash Flow Projection has been prepared by management using probable and hypothetical assumptions set out therein. (the “**Probable and Hypothetical Assumptions**”).

46. The Proposal Trustee makes the following comments on the Cash Flow Projection:

(a) expenses appear to be consistent with the reduced level of operations contemplated by management for the Company during the Cash Flow Period;

(b) a majority of the forecasted receipts relate to the various Remaining Projects the Company has decided to complete;

(c) given that the Company is continuing operations, it is projecting that it will receive funding under the Canadian Emergency Wage Subsidy in the months of June and July 2020;

(d) the net cash inflows projected by the Company are anticipated to be sufficient to meet the cash flow requirements of Metric Modular over the Cash Flow Period; and

(e) disbursements reflected are those to complete the Remaining Projects and administer the wind-down of the Company's operations.

47. The Proposal Trustee's review of the Cash Flow Projection consisted of inquiries, analytical procedures and discussions related to information supplied to the Proposal Trustee by the management of Metric Modular. Since hypothetical assumptions need not be supported, the Proposal Trustee's procedures with respect to such assumptions were limited to evaluating whether they were consistent with the purpose of the Cash Flow Projection. The Proposal Trustee has also reviewed the support provided by management for the probable assumptions and the preparation and presentation of the Cash Flow Projection. Based on the Proposal Trustee's review, nothing has come to its attention that causes it to believe that, in all material respects:

(a) the Probable and Hypothetical Assumptions are not consistent with the purpose of the Cash Flow Projection;

(b) as at the date of this First Report, the Probable and Hypothetical Assumptions developed by management are not suitably supported and consistent with the Company's plans or do not provide a reasonable basis for the Cash Flow Projection, given the Probable and Hypothetical Assumptions; or

(c) the Cash Flow Projection does not reflect the Probable and Hypothetical Assumptions.

PERFORMANCE COMPARED TO THE INITIAL CASH FLOW PROJECTION

48. In accordance with section 50.4(7)(b)(ii) of the BIA, the Proposal Trustee has continued to review and evaluate the state of the Company's business and financial affairs since the Filing Date.

49. The Company has remained current in respect of their obligations that have arisen since the Filing Date.

50. A comparison of Metric Modular's receipts and disbursements to the Cash Flow Projection for the period of June 6, 2020 to June 19, 2020 (the "**Post-Filing Reporting Period**") is attached hereto as **Appendix "2"**.

<u>Proposal Trustee's Comments</u>

51. For the Post-Filing Reporting Period, Metric Modular had total cash receipts of $586,689, approximately $381,014 less than forecasted in the Cash Flow Projection.

52. The Proposal Trustee recognizes the following material variances in expected receipts outlined in the Cash Flow Projection against actual receipts:

(a) BC Housing: Gibsons – an unfavourable variance of $117,639 due to a timing difference in the release of funds from Northbridge with respect to the Gibsons Project. The Company expects these funds to be received during the week ending June 26, 2020; and

(b) Triple M Housing – an unfavourable variance of $254,968 as a result of one (1) less product shipment than originally forecasted. The Company anticipates that the projected receipts from this shipment will be received during the weeks ending June 26, 2020 and July 3, 2020.

53. The Cash Flow Projection projected total disbursements of $681,141 for the Post-Filing Reporting Period. Actual disbursements for the Post-Filing Reporting Period totaled $468,846 resulting in a favourable variance of $212,296. The favourable variance in disbursements are a result of the following:

(a) cost reductions implemented by the Company have resulted in greater reductions in disbursements than initially forecasted in the Cash Flow Projection; and

(b) the Cash Flow Projection had assumed that most vendors and sub-contractors for the various Ongoing Projects would demand cash-on-delivery payment terms. The number of vendors and sub-contractors willing to extend credit terms has been greater than forecasted.

COMPANY'S REQUEST FOR AN EXTENSION

54. The Company is seeking an extension of the time to file a Proposal with the Official Receiver to August 15, 2020.

55. The Proposal Trustee supports the Company's request for the following reasons:

(a) the Company is acting in good faith and with due diligence;

(b) the Company requires additional time to complete the Remaining Projects and facilitate a sale of either the business or liquidation of the remaining assets and time to develop a viable Proposal to creditors; and

(c) no creditor would be materially prejudiced if the extension being applied for is granted.

CONCLUSION AND RECOMMENDATION

56. Granting an extension of time to file a Proposal will give Metric Modular time to continue complete the Remaining Projects which is expected to generate positive cash flow for the benefit of creditors, allow the Company to explore a sale of the business or liquidation of the remaining assets and provide Metric Modular additional time to develop a viable Proposal for its creditors. The Proposal Trustee believes that the continuation of these proceedings is in the best interest of stakeholders, and preferable to a liquidation in a bankruptcy and/or receivership.

57. The Proposal Trustee supports the relief sought by Metric Modular.

All of which is respectfully submitted,

GRANT THORNTON LIMITED,
as Trustee under a Notice of Intention to Make a Proposal
filed by Triple M Modular Ltd. o/a Metric Modular,
and not in its personal capacity.

Andrew Basi, CPA, CA, CIRP, LIT Senior Vice President	Jason Knight, CPA, CA, CIRP, LIT Vice President

APPENDIX 1

[ATTACHED]

Triple M Modular Ltd. o/a Metric Modular
Cash Flow Forecast
June 6, 2020 to September 4, 2020

		Week 1	*Week 2*	*Week 3*	*Week 4*	*Week 5*	*Week 6*	*Week 7*	*Week 8*	*Week 9*	*Week 10*	*Week 11*	*Week 12*	*Week 13*	
For the week ending, In CAD	**Notes**	**12-Jun-20**	**19-Jun-20**	**26-Jun-20**	**03-Jul-20**	**10-Jul-20**	**17-Jul-20**	**24-Jul-20**	**31-Jul-20**	**07-Aug-20**	**14-Aug-20**	**21-Aug-20**	**28-Aug-20**	**04-Sep-20**	**Total**
Opening Cash	*1*	105,542	296,812	374,722	257,761	699,653	905,666	830,380	821,821	822,029	653,745	738,470	624,391	562,217	105,542
Receipts															
BC Housing - Gibsons	*2*	-	117,639	-	120,000	-	-	-	-	-	-	-	-	-	237,639
Triple M Housing	*3*	294,505	424,630	75,835	-	-	-	-	-	-	-	-	-	-	794,970
CEWS	*4*	-	-	-	250,000	-	-	-	90,000	-	-	-	-	-	340,000
Project Receipts / Other	*5*	92,929	36,000	73,869	658,824	444,689	584,282	151,171	259,250	-	330,180	-	341,215	218,131	3,190,540
Inventory / Equipment Liquidation	*6*	-	2,000	-	2,000	-	2,000	-	-	-	-	-	-	-	6,000
Total Receipts		387,434	580,269	149,704	1,030,824	444,689	586,282	151,171	349,250	-	330,180	-	341,215	218,131	4,569,149
Disbursements															
Wages and Benefits		-	257,404	-	175,692	-	82,583	-	81,171	-	76,113	-	206,048	-	879,011
Rent	*7*	-	-	-	72,343	-	131,256	-	72,343	-	-	-	-	-	275,942
Leases		-	-	-	25,000	-	-	-	-	25,000	-	-	-	-	50,000
GST		-	-	-	-	-	-	-	35,799	-	-	-	128,111	-	163,910
Plant Overhead		7,383	17,383	22,383	22,383	17,323	17,323	17,323	17,323	16,467	16,467	16,467	-	-	188,222
Selling, General & Admin		23,899	23,899	23,899	23,899	24,941	24,941	24,941	24,941	28,381	28,381	28,381	-	-	280,501
Plant Project Costs	*5*	62,000	75,000	107,500	107,500	-	-	-	-	-	-	-	-	-	352,000
Site Project Costs	*5*	40,384	30,384	30,384	30,384	48,235	48,235	48,235	48,235	29,205	-	-	-	-	353,681
BC Housing - Gibsons Site Costs	*2*	62,500	62,500	62,500	62,500	-	-	-	-	-	-	-	-	-	250,000
Total Disbursements		196,165	466,569	246,665	519,701	90,498	304,338	90,498	279,811	99,053	120,961	44,848	334,159	-	2,793,267
Net cashflow from operations		191,269	113,700	- 96,961	511,124	354,191	281,944	60,673	69,439	- 99,053	209,219	- 44,848	7,056	218,131	1,775,882
Other Disbursements															
Legal Counsel Fees		-	5,789			28,947	-	-	-	-	20,263	-	-	-	55,000
Trustee Fees		-	10,000	-	-	35,000	-	-	-	-	25,000	-	-	-	70,000
Trustee's Legal Counsel Fees		-	-	-	-	15,000	-	-	-	-	10,000	-	-	-	25,000
Settlement of Potential Lien Obligations	*8*	-	20,000	20,000	69,231	69,231	69,231	69,231	69,231	69,231	69,231	69,231	69,231	69,231	732,308
Repayment of Payroll Advance	*9*	-	-	-	-	-	288,000	-	-	-	-	-	-	-	288,000
Total Non-Operating Disbursements		-	35,789	20,000	69,231	148,178	357,231	69,231	69,231	69,231	124,494	69,231	69,231	69,231	1,170,308
Ending Cash Balance		**296,812**	**374,722**	**257,761**	**699,653**	**905,666**	**830,380**	**821,821**	**822,029**	**653,745**	**738,470**	**624,391**	**562,217**	**711,117**	**711,117**

Management of Triple M Modular Ltd. o/a Metric Modular ("**Metric Modular**" or the "**Company**") has prepared this forecasted cash-flow statement (the "**Cash Flow Forecast**") based on probable and hypothetical assumptions detailed in Notes 1 to 9. The Cash Flow Forecast has been prepared solely for the purpose of supporting the Notice of Intention to Make a Proposal ("**NOI**") filed by the Company on June 1, 2020. As such, readers are cautioned that it may not be appropriate for their purposes. The Cash Flow Forecast of the Company prepared in accordance with the provisions of the *Bankruptcy and Insolvency Act* ("**BIA**") should be read in conjunction with the Trustee's Report on the Cash-flow Statement.

Dated at the City of Agassiz in the Province of British Columbia, this 10th day of June 2020.

Triple M Modular Ltd. o/a Metric Modular
Per:

Joel Holloway, CPA, CA
Chief Financial Officer

Grant Thornton Limited
Per:

Mark Wentzell, CPA, CA, CIRP, LIT
Senior Vice President

Triple M Modular Ltd. o/a Metric Modular
Notes to the Cash Flow Forecast
June 6, 2020 to September 4, 2020

Note 1
The Company had a cash balance of $nil on June 1, 2020, the commencement date of these proceedings.

Note 2
The "BC Housing (Gibsons Project)" line item relates to a project pursuant to an agreement between Metric Modular and BC Housing Management Commission (the "**Gibsons Project**"). Due to the length of the Gibsons Project and the significant resources required for the execution of same, the Company is forecasting that it would incur a cash loss if it were to complete the Gibsons Project. As such, the Company is in the process of assigning this project to Triple M Housing Ltd. ("**Triple M Housing**"), a related party, by the end of June 2020. As the Company continues to work with the various stakeholders to assign the Gibsons Project, the Company has commenced work on same to ensure it remains on schedule. Accordingly, the Company has forecasted cash receipts and outflows for the Gibson Project until the end of June 2020.

Note 3
Receipts noted in this line item relate to ongoing projects between Metric Modular and Triple M Housing. The Company expects that these projects will be completed by the end of June 2020.

Note 4
The amount projected to be received under the Canadian Emergency Wage Subsidy ("**CEWS**"), relates to eligible wages paid during the months of May and June. It is projected that CEWS will be received approximately one month following submission/payment of related wages.

Note 5
The projected receipts and disbursements related to the Company's ongoing projects have been estimated by Metric Modular on a project by project basis. The Company expects to have all of the outstanding projects completed during the month of August 2020. On June 8, 2020, pursuant to 65.11 of the BIA, the Company disclaimed three (3) customer contracts and therefore will not be continuing with and/or completing same. Accordingly, the cash receipts and disbursements related to the disclaimed projects have been excluded from the Cash Flow Forecast.

Note 6
Certain employees who have been terminated currently have cell phones and other minor electronic equipment that is property of the Company in their possession. The Company anticipates that it will sell some of these assets to these employees. The quantum of these sales are not expected to exceed $6,000.

In addition, subsequent to the outstanding projects being completed, the Company intends to liquidate its various inventory and equipment. As at the date of this Cash Flow Forecast, the timing, method, and proceeds of a potential sale is unknown. Pursuant to the BIA, the Company will be seeking Court approval of the sale of its assets that are outside the normal course of business.

Note 7
Projected rent includes monthly rent payable for its manufacturing facility located in Agassiz, British Columbia. On June 1, 2020, pursuant to section 65.2 of the BIA, the Company disclaimed the commercial lease related to its facility located in Penticton, British Columbia.

Note 8
Based on consultations with its legal counsel, the Company has estimated that approximately $900,000 of the total amount owing to creditors prior to the NOI may be subject to provisions of the *Builders' Lien Act* (British Columbia) (the "**BLA**") whereby these creditor claims may have certain priority status under the NOI proceedings. At this time, the Company is unable to determine if and when these claims will be required to be paid out and, as such, it has included a reserve in the Cash Flow Forecast of $20,000 for the weeks ending June 19, 2020 and June 26, 2020, and then $69,231 per week beginning the week ending July 3, 2020.

Note 9
Subsequent to the NOI being filed, the Company received an advance of $288,000 from Triple M Housing which was used to pay the required payroll during the week ending June 5, 2020. The Company is projecting that this advance will be repaid to Triple M Housing during the week ending July 17, 2020.

District of:	British Columbia
Division No.	03 - Vancouver
Court No.	11-2649058
Estate No.	11-2649058

-- FORM 29 --

Trustee's Report on Cash-Flow Statement

(Paragraphs 50(6)(b) and 50.4(2)(b) of the Act)

In the matter of the proposal of

Triple M Modular Ltd. o/a Metric Modular

of the City of Agassiz, in the Province of British Columbia

The attached statement of projected cash flow of Triple M Modular Ltd. o/a Metric Modular, as of the 10th day of June 2020, consisting of the attached summary, has been prepared by the management of the insolvent person (or the insolvent debtor) for the purpose described in the notes attached, using the probable and hypothetical assumptions set out in the notes attached.

Our review consisted of inquiries, analytical procedures and discussion related to information supplied to us by: ☒ the management and employees of the insolvent person or ☐ the insolvent person. Since hypothetical assumptions need not be supported, our procedures with respect to them were limited to evaluating whether they were consistent with the purpose of the projection. We have also reviewed the support provided by:
☒ management or ☐ the insolvent person for the probable assumptions and preparation and presentation of the projection.

Based on our review, nothing has come to our attention that causes us to believe that, in all material respects,

(a) the hypothetical assumptions are not consistent with the purpose of the projection;

(b) as at the date of this report, the probable assumptions developed are not suitably supported and consistent with the plans of the insolvent person or do not provide a reasonable basis for the projection, given the hypothetical assumptions; or

(c) the projection does not reflect the probable and hypothetical assumptions.

Since the projection is based on assumptions regarding future events, actual results will vary from the information presented even if the hypothetical assumptions occur, and the variations may be material. Accordingly, we express no assurance as to whether the projection will be achieved.

The projection has been prepared solely for the purpose described in the notes attached, and readers are cautioned that it may not be appropriate for other purposes.

Dated at the City of Calgary in the Province of Alberta, this 10th day of June 2020.

Grant Thornton Limited - Licensed Insolvency Trustee
Per:

Mark E. R. Wentzell- Licensed Insolvency Trustee
1100, 332 - 6 Avenue SW
Calgary AB T2P 0B2
Phone: (403) 260-2500

District of: British Columbia
Division No. 03 - Vancouver
Court No. 11-2649058
Estate No. 11-2649058

FORM 29 - Attachment
Trustee's Report on Cash-flow Statement
(Paragraphs 50(6)(b) and 50.4(2)(b) of the Act)

In the matter of the proposal of
Triple M Modular Ltd. o/a Metric Modular
of the City of Agassiz, in the Province of British Columbia

Purpose:

See attached summary.

Projection Notes:

See attached summary.

Assumptions:

See attached summary.

Dated at the City of Calgary in the Province of Alberta, this 10th day of June 2020.

Grant Thornton Limited - Licensed Insolvency Trustee
Per:

Mark E. R. Wentzell - Licensed Insolvency Trustee
1100, 332 - 6 Avenue SW
Calgary AB T2P 0B2
Phone: (403) 260-2500

District of:	British Columbia
Division No.	03 - Vancouver
Court No.	11-2649058
Estate No.	11-2649058

- FORM 30 -

Report on Cash-Flow Statement by the Person Making the Proposal
(Paragraphs 50(6)(c) and 50.4(2)(c) of the Act)

In the matter of the proposal of
Triple M Modular Ltd. o/a Metric Modular
of the City of Agassiz, in the Province of British Columbia

The Management of Triple M Modular Ltd. o/a Metric Modular has developed the assumptions and prepared the attached statement of projected cash flow, as of the 10th day of June 2020, consisting of the attached summary.

The hypothetical assumptions are reasonable and consistent with the purpose of the projection described in the notes attached, and the probable assumptions are suitably supported and consistent with the plans of the insolvent person and provide a reasonable basis for the projection. All such assumptions are disclosed in the notes attached.

Since the projection is based on assumptions regarding future events, actual results will vary from the information presented, and the variations may be material.

The projection has been prepared solely for the purpose described in the notes attached, using a set of hypothetical and probable assumptions set out in the notes attached. Consequently, readers are cautioned that it may not be appropriate for other purposes.

Dated at the City of Calgary in the Province of Alberta, this 10th day of June 2020.

Triple M Modular Ltd. o/a Metric Modular
Debtor

Joel Holloway, Chief Financial Officesr
Name and title of signing officer

Name and title of signing officer

District of:	British Columbia
Division No.	03 - Vancouver
Court No.	11-2649058
Estate No.	11-2649058

FORM 30 - Attachment
Report on Cash-Flow Statement by the Person Making the Proposal
(Paragraphs 50(6)(c) and 50.4(2)(c) of the Act)

In the matter of the proposal of
Triple M Modular Ltd. o/a Metric Modular
of the City of Agassiz, in the Province of British Columbia

Purpose:

See attached summary.

Projection Notes:

See attached summary.

Assumptions:

See attached summary.

Dated at the City of Calgary in the Province of Alberta, this 10th day of June 2020.

Triple M Modular Ltd. o/a Metric Modular

APPENDIX 2

[ATTACHED]

Triple M Modular Ltd. o/a Metric Modular
Post-Filing Cash Flow Period Comparison
June 6, 2020 to June 19, 2020

For the week ending, In CAD	A Actual Jun 6/20 to Jun 19/20	B Post-Filing Reporting Period	A - B Favourable / (Unfavourable) Variance
Opening Cash	$ 105,542	$ 105,542	$ -
Receipts			
BC Housing - Gibsons	-	117,639	(117,639)
Triple M Housing	464,167	719,135	(254,968)
CEWS	-	-	-
Project Receipts / Other	122,522	128,929	(6,407)
Inventory / Equipment Liquidation	-	2,000	(2,000)
Total Receipts	**586,689**	**967,703**	**(381,014)**
Disbursements			
Wages and Benefits	(241,930)	(257,404)	15,474
Rent	-	-	-
Leases	-	-	-
GST	-	-	-
Plant Overhead	(4,898)	(7,383)	2,484
Selling, General & Admin	(26,004)	(47,798)	21,795
Plant Project Costs	(77,940)	(137,000)	59,060
Site Project Costs	(20,045)	(70,768)	50,723
BC Housing - Gibsons Site Costs	(89,025)	(125,000)	35,975
Total Operating Disbursements	(459,841)	(645,352)	185,511
Other Disbursements			
Legal Counsel Fees	(9,004)	(5,789)	(3,215)
Trustee Fees	-	(10,000)	10,000
Trustee's Legal Counsel Fees	-	-	-
Settlement of Potential Lien Obligations	-	(20,000)	20,000
Repayment of Payroll Advance	-	-	-
Total Other Disbursements	(9,004)	(35,789)	26,785
Total Disbursements	**(468,846)**	**(681,141)**	**212,296**
Net Cash Flow	117,843	286,562	(168,718)
Closing Cash	**$ 223,385**	**$ 392,103**	**$ (168,718)**