

CANADA)
PROVINCE OF SASKATCHEWAN)

Court No.: Q.B. No. 1033 of 2020
Estate No.: 23-2664678

**COURT OF QUEEN'S BENCH FOR SASKATCHEWAN
IN BANKRUPTCY AND INSOLVENCY**

JUDICIAL CENTRE SASKATOON

APPLICANT D'AMANI STUCCO SOLUTIONS INC.

**IN THE MATTER OF SECTION 50.4 OF THE *BANKRUPTCY AND INSOLVENCY ACT*, RSC
1985, C. B-3, AS AMENDED**

**AND IN THE MATTER OF THE NOTICE OF INTENTION TO MAKE A PROPOSAL OF
D'AMANI STUCCO SOLUTIONS INC.**

NOTICE OF APPLICATION

(First Extension, Interim Financing, and Administration Charge)

NOTICE TO THE RESPONDENT

This application is made against you. You are a respondent.

You have the right to state your side of this matter before the Court. To do so, you must be in Court when the application is heard as shown below:

Where Court of Queen's Bench
 520 Spadina Crescent East,
 Saskatoon Saskatchewan

Date Thursday, September 9, 2020

Time 10:00. A.M.

(Read the Notice at the end of this document to see what else you can do and when you must do it.)

**APPLICATION FOR FIRST EXTENSION, INTERIM FINANCING AND ADMINISTRATIVE
CHARGE PURSUANT TO THE *BANKRUPTCY AND INSOLVENCY ACT***

Remedy claimed or sought:

1. The Applicant, D'AMANI STUCCO SOLUTIONS INC., seeks an Order pursuant to sections 50.4(9), 50.6(1) and 64.2(1) of the *Bankruptcy and Insolvency Act*, RSC

1985, c B-3, (the “**BIA**”), Rules 12-1(1) and 10-4(2) of *The Queen’s Bench Rules*, and the inherent jurisdiction of this Honourable Court, substantially in the form of the draft First Extension, Interim Financing and Administration Charge Order filed herewith:

- a. validating service of this Notice of Application and the materials filed herewith;
- b. extending the stay of proceedings herein and the Applicant’s timeline required for filing a proposal to its creditors for a period from September 12, 2020, to 11:59 p.m. on October 28, 2020;
- c. granting a first-priority security interest or charge in the amount of \$50,000.00 over all real and personal property of the Applicant to secure the fees and disbursements of the Applicant’s counsel, the W Law Group LLP, the Proposal Trustee, The Bowra Group Inc. (the “**Proposal Trustee**”), and the Proposal Trustee’s counsel (if any);
- d. granting a second-priority security interest or charge (the “**Interim Financing Charge**”) in the amount of up to \$200,000.00 over all of the property of Applicant to secure interim financing (the “**Interim Financing**”) to be made available to the by a private lender – namely, ADEXMAT INC. (the “**Interim Financing Lender**”) to the Applicant;
- e. waiving the requirements of Rule 10-4(2); and
- f. providing such further and other relief that Court may deem appropriate or necessary.

Grounds for making this application:

1. The applicant’s summary of the material facts is as follows:
 - a. the Applicant is an experienced exterior stucco contractor servicing new constructions and renovations within Saskatchewan that has operated a successful business in Saskatchewan since 2013. As of the date hereof:
 - i. the Applicant’s assets consist of its vehicles, tools, equipment, inventory, goodwill and accounts receivable;
 - ii. the Applicant is indebted to various creditors, consisting primarily of lenders and trade creditors, for a cumulative amount of approximately \$2,741,455.00;

- iii. the Applicant's current level of cash-flow is insufficient to allow it to meet its financial obligations as they become due;
 - iv. enforcement against the Applicant's business assets, such as its tools, equipment and inventory, would cause the Applicant to cease to carry on business, thereby negating the possibility of the Applicant generating future cash-flow to service its indebtedness;
 - v. the Applicant does not seek to compromise the claims of its secured creditors, but rather only those of its unsecured creditors;
 - vi. indebtedness owing to the Applicant's unsecured creditors would not be satisfied in the event that the Applicant was to make an assignment into bankruptcy;
 - vii. the proposed interim financing lender has made the interim financing available to the Applicant on the basis that the Applicant will seek an Order granting an interim financing charge in these proceedings;
 - viii. the Applicant requires the interim financing to fund its operational costs and the professional costs associated with these proposal proceedings;
- b. since filing the NOI on August 13, 2020, the Applicant has acted diligently and in good faith by, without limitation:
- i. working extensively with its counsel and the Proposal Trustee to complete all requisite filings and to develop its proposal with a view to putting the same forward at the earliest possible date;
 - ii. continuing to carry on its contracting business in the ordinary course;
 - iii. arranging for the Interim Financing; and
 - iv. communicating regularly and openly with its major stakeholders;
- c. the Applicant will continue to operate in good faith and to manage all of its business and affairs with the utmost due diligence throughout these proceedings; and
- d. to date, the Applicant's major creditors appear to have confidence in the Applicant's management.

2. The Applicant's grounds for making this application are as follows:
- a. on August 13, 2020, the Applicant, D'AMANI STUCCO SOLUTIONS INC., filed a Notice of Intention to Make a Proposal (the "**NOI**") pursuant to section 50.4(1) of the *BIA* with the Superintendent of Bankruptcy. Although the Applicant has acted diligently and in good faith with a view to making a proposal to its various creditors since the filing of its NOI, it will not be in a position to make a proposal to its creditors by September 12, 2020;
 - b. this Honourable Court has the discretionary authority pursuant to section 50.4(9) of the *BIA* to extend the time, by a period not exceeding 45 days, in which an insolvent debtor that has filed an NOI is required to put forward a proposal to its creditors. If such extension is not granted, the Applicant will be deemed to have made an assignment into bankruptcy pursuant to section 50.4(8) of the *BIA* to the detriment of all of its secured creditors, unsecured creditors and other stakeholders;
 - c. the Applicant, which continues to carry on business, is likely to be able to put forward a viable proposal prior to the expiry of the aggregate five-month maximum extension period set out in section 50.4(9) of the *BIA*. Additionally, none of the Applicant's creditors are likely to be materially prejudiced by the granting of an extension. Accordingly, the Applicant submits that the granting of an initial 45-day extension pursuant to section 50.4(9) of the *BIA* is justified;
 - d. section 64.2(1) of the *BIA* provides the Court with the discretionary authority to grant a Court-ordered security interest or charge, ranking ahead of pre-existing security interests or charges, in the assets of a debtor who has filed an NOI to secure the fees and disbursements of the professionals retained to assist the debtor in *BIA* proceedings. The continuing engagement of the Proposal Trustee, any counsel retained by the Proposal Trustee and the Applicant's counsel is critical to the Applicant's chances of success in putting forward a viable proposal in these proceedings. Thus, it is respectfully submitted that the granting of the modest Administration Charge proposed by the Applicant is justified; and
 - e. section 50.6(1) of the *BIA* provides the Court with the discretionary authority to grant a Court ordered security interest or charge, ranking ahead of pre-existing security interests or charges, in the assets of a debtor who has filed an NOI to a

creditor who will provide interim financing to the debtor. On balance, a review of the factors set out in s. 50.6(5) of the *BIA* that the Court is bound to consider in making its decision grant an interim financing charge, strongly favours the granting of the Interim Financing Charge sought by the Company to support operations and the professional fees estimated to be required in these proceedings.

Material or evidence to be relied on:

3. The applicants rely on the following materials in support of their Application:
 - a. this Notice of Application;
 - b. Affidavit of Tomas Sabau, dated September 4, 2020;
 - c. Form 10-3 (draft) Order;
 - d. the First Report of the Proposal Trustee, dated September 4, 2020;
 - e. the Applicant's NOI and related materials filed with the Office of the Superintendent of Bankruptcy;
 - f. a Brief of Law; and
 - g. such further and other material as counsel may advise and the Court may allow.

DATED at Saskatoon, Saskatchewan, this ____ day of September, 2020.

THE W LAW GROUP LLP

Per:



**Mike J. Russell, Counsel for D'AMANI
STUCCO SOLUTIONS INC.**

NOTICE

If you do not come to Court either in person or by your lawyer, the Court may give the applicant(s) what they want in your absence. You will be bound by any order that the Court makes. If you want to take part in this application, you or your lawyer must attend in Court on the date and at the time shown at the beginning of the form. If you intend to rely on an affidavit or other evidence when the application is heard or considered, you must reply by giving reasonable notice of the material to the applicant.

CONTACT INFORMATION AND ADDRESS FOR SERVICE

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