DUPLICATE ORIGINAL

Form 3-49
(Rule 3-49)

COURT FILE NUMBER **Q.B. No. 885 of 2018**

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

JUDICIAL CENTRE	**SASKATOON**
APPLICANTS	**KOLSY HOMES LTD. and RIVAIRO CAPITAL CORPORATION**

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

AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF KOLSY HOMES LTD. and RIVAIRO CAPITAL CORPORATION

ORIGINATING APPLICATION
(Re: Application for Initial Order)

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	Friday, June 15, 2018
Time	10:00. A.M.

Go to the end of this document to see what you can do and when you must do it.

APPLICATION FOR INTIAL ORDER AND OTHER RELIEF PURSUANT TO THE *COMPANIES' CREDITORS ARRANGEMENT ACT*

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1. The applicants, KOLSY HOMES LTD. ("**Kolsy**") and RIVAIRO CAPITAL CORPORATION ("**Rivairo**"), seek an Order pursuant to Rules 3-49 of *The Queen's*

Bench Rules, sections 9, 10, 11, 11.2 and 11.7 of the *Companies' Creditors Arrangement Act*, RSC 1985 c C-36, (the "**CCAA**") and the inherent jurisdiction of this Honourable Court, substantially in the form of the draft CCAA Initial Order filed herewith:

a. declaring that the applicants are companies within the meaning of section 2(1) of the CCAA to whom the CCAA applies;

b. staying all proceedings taken or that might otherwise be taken in respect of the applicants under the *Bankruptcy and Insolvency Act*, RSC, 1985, c B-3, or the *Winding-up and Restructuring Act*, RSC, 1985, c W-11, for an initial period of thirty (30) days;

c. restraining further proceedings in any action, suit or proceeding against the applicants for an initial period of 30 days;

d. prohibiting the commencement of any action, suit or proceeding against the applicants for an initial period of 30 days;

e. prohibiting the commencement or continuation of actions against Kurt Kolisnek ("**Kolisnek**"), the director of the applicants, for debts of or claims against the applicants for which Kolisnek may be liable at law in his capacity as a director of the applicants;

f. appointing KPMG Inc. (the "**Proposed Monitor**") as monitor within the meaning of section 11.7(1) of the CCAA to monitor the business and financial affairs of the applicants;

g. granting the applicants' counsel a first-priority interest or charge over the real and personal property of the applicants;

h. authorizing the applicants to obtain debtor in possession financing (the **DIP Loan**") from a lender to be approved by the Court (the "**DIP Lender**");

i. granting the DIP Lender a second-priority security interest or charge over the real and personal property of the applicants to secure the DIP Loan; and

j. providing such further and other relief that Court may deem appropriate or necessary.

2. The applicants' grounds for making this application are as follows:

   a. the applicants are companies within the meaning of section 2(1) of the CCAA;

   b. the applicants are insolvent related debtor companies whose total liabilities exceed $5,000,000 and, therefore, fall within the ambit of section 3(1) of the CCAA;

   c. the applicants' have their offices and chief places of business in Saskatchewan. Saskatchewan is therefore the appropriate jurisdiction for the within Application pursuant to section 9(1) of the CCAA;

   d. section 11.02(1) of the CCAA provides the Court with the discretionary authority to stay, restrain and prohibit the procession or commencement of actions or potential actions against applicant debtors so as to facilitate the making of a compromise or arrangement to enable debtor applicants in CCAA proceedings to carry on business until the Court has had the opportunity to review a proposed compromise or arrangement. The applicants are presently unable to satisfy their debts as they become due and therefore require time to restructure their financial affairs so as that they may continue to carry on business as a going concern. The granting of such relief pursuant to section 11.02(1) will further the applicants' efforts towards the reorganization of their business and financial affairs, such that they may continue to carry on business in the future;

   e. section 11.03(1) of the CCAA provides that the Court may include in an Initial Order made pursuant to 11.02(1) of the CCAA an Order prohibiting the commencement or continuation of actions against a director of a debtor applicant for debts arising prior to the commencement of CCAA proceedings, provided that the director may be liable under any law in his capacity as a director for the payment of such debts. Kolisnek bears potential personal liability for debts of the applicants pursuant to, *inter alia*, section 2-68 of *The Saskatchewan Employment Act*, SS, 2013, c S-15.1, section 112(4) of Alberta's *Employment Standards Code*, RSA, 2000, and c E-9, and, section 227.1(1) of

the *Income Tax Act*, RSC, 1985, c 1. Kolisnek is therefore eligible to receive temporary creditor protection pursuant to section 11.03(1) of the CCAA;

f. sections 11.2(1)-(2) of the CCAA provide the Court with the discretionary authority to grant an Order allowing a creditor to take a first-priority security interest or charge in the assets of an applicant debtor in exchange for advancing emergency interim financing ("**DIP Financing**") to the debtor. The applicants respectfully submit that they require DIP Financing in so as to significantly enhance the prospects of coming to a viable compromise or arrangement with their current creditors. The applicants further submit that the factors the Court must consider pursuant to section 11.2(4), on balance, lend themselves to the conclusion that DIP Financing is appropriate and necessary in the instant case.

3. The applicants' summary of the material facts is as follows:

a. the primary business of the applicants is residential real property development.

b. Kolsy's assets chiefly consist of 143 acres of land located south of Saskatoon in the Rural Municipality of Corman Park No. 344 (the "**R.M. of Corman Park**") and three titles to land sited within the vicinity of the Resort Village of Candle Lake.

c. Rivairo's assets chiefly consist of 5.36 acres of urban land located within the City of Airdrie, Alberta.

d. collectively, the applicants are indebted to various creditors for in excess of $5,000,000.

e. the applicants' current level of cash-flow is insufficient to allow the applicants to meet their respective financial obligations as they become due.

f. KPMG Inc., has consented to act as Monitor.

4. The applicants rely on the following materials in support of their Application:

a. Originating Application;

b. Affidavit of Kurt Kolisnek;

c. Consent of KPMG Inc. to act as Monitor;

d. Draft CCAA Initial Order, including a copy of such draft order redlined against

the Saskatchewan Template CCAA Initial Order;

e. Brief of Law (to be filed); and

f. Such further and other material as counsel may advise and the Court may allow.

DATED at Saskatoon, Saskatchewan, this 11th day of June, 2018.

THE W LAW GROUP LLP

Per: _____

Mike J. Russell and Michelle M. Tobin,
Counsel for Kolsy Homes Ltd. and Rivairo Capital Corporation

This notice is issued at the above-noted judicial centre on the 7th day of June, 2018.

D/ _____
Local Registrar

CONTACT INFORMATION AND ADDRESS FOR SERVICE

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