

No. S073456  
Vancouver Registry

IN THE SUPREME COURT OF BRITISH COLUMBIA

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

AND

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

AND

IN THE MATTER OF TUAN DEVELOPMENT INC.

PETITIONER

ORDER

BEFORE THE HONOURABLE ) FRIDAY, THE 18<sup>th</sup> DAY  
MR. JUSTICE TYSOE ) OF MAY, 2007

THE APPLICATION of the Petitioner coming on for hearing *ex parte* at Vancouver, British Columbia, on the 18<sup>th</sup> day of May, 2007, (the "Filing Date"); AND ON HEARING Dennis K. Fitzpatrick, counsel for the Petitioner; AND UPON READING the material filed, including the Affidavit #1 of Brian Hauff, sworn May 18, 2007, the Affidavit # 1 of Russell Law, sworn May 18, 2007, AND pursuant to the *Companies' Creditors Arrangement Act*, R.S.C. 1985 c. C-36 (the "CCAA"), Rules 3, 10, 12, 13(1), 13(6), 14 and 44 of the Rules of Court and the inherent jurisdiction of this Honourable Court:

**PETITION HEARING**

1. THIS COURT ORDERS that the hearing of the Notice of Motion filed May 18, 2007 in this proceeding be heard at the Courthouse at 800 Smithe Street, Vancouver, British Columbia at 10:00 a.m. on Monday the 28th day of May, 2007

2. THIS COURT ORDERS that all of the relief provided for in the subsequent paragraphs of this Order is granted to the Petitioner on an interim basis only, and that the relief made in the subsequent paragraphs will expire at 11:59 p.m. (local Vancouver time) on May 28, 2007, unless extended by this Court at the hearing of the application which will occur on that date.

#### **POSSESSION OF PROPERTY AND OPERATIONS**

4 - 16. Intentionally deleted.

17. THIS COURT ORDERS that until and including May 28, 2007, or such later date as this Court may order (the "Stay Period"), no action, suit or proceeding in any court or tribunal (each, a "Proceeding") shall be commenced or continued against or in respect of the Petitioner, or affecting the Business or the Property and no notice or certificate of pending litigation shall be filed, except with the written consent of the Petitioner or with leave of this Court, and any and all Proceedings currently under way against or in respect of the Petitioner or affecting the Business or the Property are hereby stayed and suspended during the Stay Period pending further Order of this Court.
18. THIS COURT ORDERS that during the Stay Period, no Proceeding shall be commenced against or in respect of the Monitor, in its capacity as Monitor, except with the written consent of the Monitor or with leave of this Court.

#### **NO EXERCISE OF RIGHTS OR REMEDIES**

19. THIS COURT ORDERS that during the Stay Period, all rights and remedies of any individual, firm, corporation, governmental body or agency, or any other persons or entities having notice of this Order (all of the foregoing, collectively being "Persons" and each being a "Person") against or in respect of the Petitioner or the Monitor, or affecting the Business or the Property, are hereby stayed and suspended except with the written consent of the Petitioner and the Monitor or leave of this Court, provided that nothing in this paragraph shall (i) empower the Petitioner to carry on any business which the

Petitioner is not lawfully entitled to carry on, (ii) affect the rights and remedies of a regulatory body with respect to any investigation in respect of the Petitioner, Property or the Business or Proceeding taken or to be taken by a regulatory body against the Petitioner or with respect to the Property or Business, except when it is seeking, directly or indirectly, to enforce any of its rights as a secured creditor or an unsecured creditor, (iii) prevent the filing of any registration to preserve or perfect a mortgage, charge or security interest (subject to the provisions of Section 18.5 of the *CCAA* relating to the priority of statutory Crown securities) or (iv) prevent the registration or filing of a lien or claim for lien or the commencement of a Proceeding to protect lien or other rights that might otherwise be barred or extinguished by the effluxion of time, provided that no further step shall be taken in respect of such lien, claim for lien or Proceeding except for service of the initiating documentation on the Petitioner.

20. THIS COURT ORDERS that the rights and remedies hereby stayed shall include all rights or remedies relating to mortgages, charges, trusts, security interests, securities, instruments, debentures, notes or bonds issued by or on behalf of the Petitioner.

#### **NO INTERFERENCE WITH RIGHTS**

21. THIS COURT ORDERS that during the Stay Period, no Person shall discontinue, fail to honour, alter, interfere with, repudiate, terminate or cease to perform any right, renewal right, contract, agreement, licence or permit in favour of or held by the Petitioner, except with the written consent of the Petitioner and the Monitor or leave of this Court.

#### **CONTINUATION OF SERVICES**

22. THIS COURT ORDERS that during the Stay Period, all Persons having agreements with the Petitioner or mandates under an enactment for the supply of goods and/or services, including without limitation all computer software, communication and other data services, centralized banking services, payroll services, insurance, transportation, services, utility or other services to the Business or the Petitioner, are hereby restrained until further Order of this Court from discontinuing, altering, interfering with, breaching

or terminating any such agreement for the supply of such goods or services as may be required by the Petitioner, and that the Petitioner shall be entitled to the continued use of its current premises, telephone numbers, facsimile numbers, internet addresses and domain names, provided in each case that the normal prices or charges (excluding amounts outstanding as at the Filing Date) for all such goods or services received by the Petitioner after the date of this Order are paid by the Petitioner in accordance with normal payment practices of the Petitioner or such other arrangements as may be agreed upon by the supplier or service provider and the Petitioner, or as may be ordered by this Court.

23. THIS COURT ORDERS that during the Stay Period and subject to the other provisions of this Order, no creditor of or other person who has dealt or may deal with the Petitioner shall be under any obligation after the date of this Order to enter into new or renewed arrangements with the Petitioner except that:

(a) any person who has provided construction bonds policies of insurance or indemnity at the request of the Petitioner shall be required to continue or to renew such policies of insurance or indemnities following the date of this Order provided that the Petitioner makes payment of the premiums (other than premiums outstanding as at the Filing Date) on the usual commercial terms (as if these proceedings had not been commenced) and otherwise complies with the provisions of such policies; and

(b) any person who has supplied goods and/or services to the Petitioner essential to the operations of the Petitioner shall be required to continue or to renew any contracts or agreements or otherwise continue the arrangement for the provision of such supply or service, provided that the Petitioner pays the prices or charges under the agreements for such goods or services (excluding amounts outstanding as at the Filing Date) incurred after the Filing Date concurrently with such supply, or alternatively when the same become due in accordance with the payment terms negotiated between the Petitioner and such person subsequent to the Filing Date, and provided that such terms shall be the usual or common commercial terms

charged by such person to others for the same or similar supplies and services and, in any event, such terms to be no more onerous than those which applied to the Petitioner before these proceedings had been commenced for such supplies and services.

24. THIS COURT ORDERS that, notwithstanding any provision in this Order, no creditor of the Petitioner shall be under any obligation after the making of this Order to advance or re-advance any monies or otherwise extend any credit to the Petitioner.
25. The Petitioner may, by written advice from its counsel of record herein and with the written consent of the Monitor, agree to waive any of the protections provided to it herein.
- 26-29. Intentionally deleted.

#### **APPOINTMENT OF MONITOR**

30. THIS COURT ORDERS that MacKay & Company Ltd. is hereby appointed pursuant to the *CCAA* as the monitor (the "Monitor"), an officer of this Court, to monitor the Property and the Petitioner's conduct of the Business with the powers and obligations set out in the *CCAA* or set forth herein, and that the Petitioner and its shareholders, officers, directors, and Assistants shall cooperate fully with the Monitor in the exercise of its powers and rights and discharge of its obligations.
31. THIS COURT ORDERS that the Monitor, in addition to its rights and obligations specifically set out in the *CCAA*, is hereby directed and empowered to:
- (a) monitor the Petitioner's receipts and disbursements;
  - (b) report to this Court and the creditors at such times and intervals as the Monitor may deem appropriate with respect to matters relating to the Property, the

Business, the Restructuring and such other matters as may be relevant to the proceedings herein;

- (c) advise the Petitioner as to the preparation of the Petitioner's cash flow statements and reporting and such financial and other information as required by the Lender;
- (d) advise the Petitioner as to the development of any Plan authorized to be presented to the creditors, and any amendments to the Plan;
- (e) have full and complete access to the Property, books, records and management, employees and advisors of the Petitioner, to the extent required to perform its duties arising under this Order;
- (f) be at liberty to engage independent legal counsel or such other persons as the Monitor deems necessary or advisable respecting the exercise of its powers and performance of its obligations under this Order;
- (g) perform such other duties as are required by this Order or by this Court from time to time;
- (h) take all reasonable steps to ensure that the Petitioner makes payment of all required amounts from its bank accounts or otherwise in the manner directed in this Order; and
- (i) provide assistance to the Petitioner with respect to the Restructuring and the downsizing.

32. THIS COURT ORDERS that the Monitor shall not take possession of the Property and shall take no part whatsoever in the management or supervision of the management of the Business and shall not, by fulfilling its obligations hereunder, or by inadvertence in relation to the due exercise of powers or performance of duties under this Order, be

deemed to have taken or maintained possession or control of the Business or Property, or any part thereof, and nothing in this Order shall be construed as resulting in the Monitor being an employer or a successor employer, within the meaning of any statute, regulation or rule of law or equity, for any purpose whatsoever.

33. THIS COURT ORDERS that the Monitor shall provide the Lender and any other creditor of the Petitioner with information provided by the Petitioner in response to reasonable requests for information made in writing by the Lender or such creditor addressed to the Monitor. The Monitor shall not have any responsibility or liability with respect to the information provided by it pursuant to this paragraph. In the case of information that the Monitor has been advised by the Petitioner is confidential, the Monitor shall not provide such information to the Lender or the creditors unless otherwise directed by this Court or on such terms as the Monitor and the Petitioner may agree.
34. THIS COURT ORDERS that, in addition to the rights and protections specifically afforded to the Monitor under the *CCAA* or which the Monitor possesses as an officer of this Court, the Monitor shall incur no liability or obligation as a result of its appointment or the carrying out of the provisions of this Order, save and except for any gross negligence or wilful misconduct on its part. Nothing in this Order shall derogate from the rights and protections given to the Monitor by any applicable legislation.
35. THIS COURT ORDERS that the Monitor need not file security with this Court for the due and proper exercise and performance of its powers and duties as Monitor.
36. THIS COURT ORDERS that the Monitor shall be at liberty to post any report relating to the subject matter of this proceeding on the Monitor's web site at [www.mackayco.ca](http://www.mackayco.ca) in lieu of mailing such reports to creditors of the Petitioner or to any other interested parties.

### ADMINISTRATION CHARGE

37. THIS COURT ORDERS that the Monitor shall be paid its reasonable fees and disbursements, in each case at its standard rates and charges, by the Petitioner as part of the cost of these proceedings. The Petitioner is hereby authorized and directed to pay the accounts of the Monitor, on a periodic basis and, in addition, the Petitioner is hereby authorized to pay to the Monitor, a retainer in the amount of \$50,000.00 to be held by it as security for payment of their respective fees and disbursements outstanding from time to time.
38. THIS COURT ORDERS that the Monitor shall pass its accounts from time to time, and for this purpose the accounts of the Monitor are hereby referred to a judge of the British Columbia Supreme Court and may be heard on a summary basis.
39. THIS COURT ORDERS that the Monitor shall be entitled to the benefits of, and are hereby granted, a charge (the "Administration Charge") on the Property, which charge shall not exceed an aggregate amount of \$50,000.00 as security for payment of its respective fees and disbursements incurred at the standard rates and charges of the Monitor and such counsel, both before and after the making of this Order in respect of these proceedings. The Administration Charge shall have the priority set out in paragraphs 41 and 42 hereof.
- 39A-40. Intentionally deleted.
41. THIS COURT ORDERS that the filing, recording, registration or perfection of the Administration Charge and the Directors' Charge (collectively, the "Charges") shall not be required, and the Charges shall, notwithstanding any lack of filing, recording, registering or perfection, be valid and enforceable for all purposes, including as against any right, title or interest filed, recorded, registered or perfected before or after the Charges come into existence.

42. THIS COURT ORDERS that the Administration Charge (as constituted and defined herein) shall constitute a charge on the Property and such Charge shall rank in priority to all other security interests, trusts, liens, mortgages, charges and encumbrances, statutory or otherwise (collectively, "Encumbrances"), in favour of any Person.
43. THIS COURT ORDERS that except as otherwise expressly provided herein, or as may be approved by this Court, the Petitioner shall not grant any Encumbrances over any Property that rank in priority to, or *pari passu* with the Charges, unless the Petitioner obtains the prior written consent of the Monitor and the beneficiaries of the Charges (collectively, the "Chargees").
44. THIS COURT ORDERS that the Charges shall not be rendered invalid or unenforceable and the rights and remedies of the Chargees shall not otherwise be limited or impaired in any way by (a) the pendency of these proceedings and the declarations of insolvency made herein; (b) any application(s) for bankruptcy order(s) issued pursuant to *Bankruptcy and Insolvency Act* ("BIA"), or any bankruptcy order made pursuant to such applications; (c) the filing of any assignments for the general benefit of creditors made pursuant to the BIA; or (d) any negative covenants, prohibitions or other similar provisions or lack of consent with respect to borrowings, incurring debt or the creation of Encumbrances, contained in any existing loan document, lease, mortgage, security agreement, debenture, sublease, offer to lease or other agreement (collectively, an "Agreement") which binds the Petitioner; and notwithstanding any provision to the contrary in any Agreement:
- (a) neither the creation of the Charges nor the execution, delivery, perfection, registration or performance of any documents relating thereto shall create or be deemed to constitute a breach by the Petitioner of any Agreement to which it is a party; and

- (b) none of the Chargees shall have any liability to any Person whatsoever as a result of any breach of any Agreement caused by or resulting from the creation of the Charges.

45-48 Intentionally deleted.

**GENERAL**

49. THIS COURT ORDERS that the Petitioner or the Monitor may from time to time apply to this Court for advice and directions in the discharge of their respective powers, duties and obligations hereunder.

50. THIS COURT ORDERS that nothing in this Order shall prevent the Monitor from acting as an interim receiver, a receiver, a receiver and manager, or a trustee in bankruptcy of the Petitioner, the Business or the Property.

51-53. Intentionally deleted.

54. THIS COURT FURTHER ORDERS that the Petitioner is hereby at liberty to apply for such further interim or interlocutory relief as to it may be advisable within the time for the filing of an Appearance by the creditors of the Petitioner in this proceeding.

55. Intentionally deleted.

56. THIS COURT FURTHER ORDERS that liberty is reserved to any interested person or party to apply to this Court on two (2) clear days' notice to the Petitioner and such persons who have filed Appearances for such further Order of this Court or for variation of this Order or otherwise as may be advised.

57. THIS COURT FURTHER ORDERS that short leave is hereby granted to allow the hearing of an application on two (2) clear days' notice after delivery of the Notice of

Motion, affidavits in support and Notice of Hearing, subject to the Court in its discretion further abridging or extending the time for service. Outlines, Responses and Chambers Records shall not be required to be exchanged by counsel or filed in this proceeding.

58. Intentionally deleted.

59. THIS COURT ORDERS that this Order and all of its provisions are effective as of 12:01 a.m. local Vancouver time, the date of this Order.

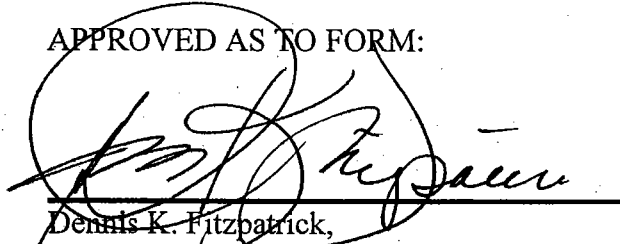
60. Intentionally deleted.

BY THE COURT



DISTRICT REGISTRAR

APPROVED AS TO FORM:



Dennis K. Fitzpatrick,

Counsel for the Petitioner

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**INITIAL ORDER**

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