



No. L053049  
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 WEST BAY SONSHIP YACHTS LTD.

PETITIONER

**FINAL ORDER**

BEFORE THE HONOURABLE     )     FRIDAY THE 23<sup>RD</sup>  
MADAM JUSTICE ROSS         )     DAY OF JUNE, 2006

UPON THE APPLICATION of the Petitioner coming on for hearing at Vancouver, British Columbia on this date; AND ON HEARING Kimberley Robertson, on behalf of counsel for the Petitioner and those other counsel listed in Schedule "A" to this Order; AND UPON READING Affidavit #5 of Wes Vermeulen, sworn June 21, 2006, Affidavit #1 of Todd Martin sworn June 21, 2006, Affidavit #4 of Daune Johns sworn June 15, 2006, and Affidavit #5 of Daune Johns sworn June 21, 2006; AND pursuant to the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36 (the "CCAA") and the inherent jurisdiction of this Honourable Court; AND UPON READING the pleadings and proceedings had and taken herein and other material provided; AND UPON SERVICE to all parties of record in this proceeding:

THIS COURT ORDERS AND DECLARES THAT:

1. The time for service of the Petitioner's Notice of Motion and the materials herein is hereby abridged and the application is properly returnable today and further service thereof is hereby dispensed with.
2. All capitalized terms not otherwise defined in this Order shall have the same meanings as attributed thereto in the Plan of Arrangement (the "Plan"). All references to the Plan in this Order shall mean the plan of compromise and arrangement of the Petitioner which is attached as Exhibit "A" to Affidavit of Wes Vermeulen and which was presented to the Meeting of General Creditors held on June 19, 2006 and continued on June 21, 2006.
3. To the extent necessary to give effect to the transactions contemplated by the Plan and to give effect to the compromises and arrangements contemplated by the Plan, and as applicable, all references to the Plan in any previous Order of the Court or in any other relevant materials, including without limiting the generality of the foregoing the Meeting Materials, shall be deemed, *nunc pro tunc*, to be references to the Plan.

**Extension of Stay of Proceedings**

4. The stay of proceedings provided for in paragraph 2 of the Initial Order pronounced on December 16, 2005 and extended by subsequent Orders of this Court is further extended to 11:59 p.m. (Vancouver time) June 30, 2006, whereupon unless subsequently extended by Court Order, the Stay of Proceedings will automatically terminate without further Order of this Court, and paragraph 7.2 of the Plan shall have no further force or effect.

**Plan Approval**

5. Affidavit material having been filed on behalf of the Petitioner confirming that the Meeting Materials were duly sent or delivered to each General Creditor substantially in accordance with the Meeting Order with notice to General Creditors of this application having been included with the Meeting Materials, the Meeting of the General Creditors was duly convened and held pursuant to the CCAA and the Orders of this Court.

6. The requisite percentages of Creditors in the Class of Creditors created under the Plan have voted to approve the Plan in conformity with section 6 of the CCAA.
7. The Plan is fair and reasonable and is hereby sanctioned and approved pursuant to sections 6 and 7 of the CCAA and, upon implementation of the Plan in accordance with its terms and this Order, the Plan, including all compromises, releases, arrangements and terms effected by the Plan, will be binding upon the Petitioner, the Creditors and all other Persons and their respective successors and assigns in accordance with the terms of the Plan, and the Petitioner and all other Released Parties will thereupon be released and discharged from all Claims of General Creditors and any and all indebtedness, obligations and liabilities, to the extent provided under the Plan and this Order.

### **Plan Implementation**

8. The Petitioner and the Monitor are hereby authorized and directed to take all actions necessary or appropriate to enter into, implement and consummate the contracts, instruments, releases and other agreements or documents to be created in connection with the Plan and/or implementing or giving effect to the Plan, including, without limitation, all of the corporate and financial transactions contemplated under the Plan, and all such transactions, once completed, shall be binding and effective in the sequential order and, where applicable, as of the times contemplated by the Plan and shall be authorized and approved in all respects and for all purposes without requirement for any further action by the shareholders, directors or officers of the Petitioner.
9. Without limiting the provisions of the Initial Order and any subsequent Orders of the Court regarding the proof of claims process (collectively, the "Claims Orders"):
  - (a) The Creditors shall file their Proofs of Claim for review by the Company in accordance with the terms of the Claims Orders;
  - (b) The Owners shall be entitled to amend, vary or alter their Proofs of Claim at any time up to the date which is 30 days following the delivery of their Yacht and its removal from the Petitioner's factory. The Petitioner shall also be entitled to amend, vary or alter the Proof of Claims of the Owners in accordance with facts

as they are subsequently determined, as the costs of the construction of the Yachts are calculated or in conformity with any methodology for the calculation of such claims as they are determined in the period limited for the Owners to amend their Proofs of Claim. The determination of the Proof of Claims of the Owners shall be carried out so as to determine with the greatest precision the actual loss or damage suffered by the Owners for purposes of their entitlement to dividends applying methods as agreed to by the Owners and the Petitioner or methods as determined by the Court to be applicable in the circumstances. The Monitor shall be at liberty to bring an application for directions to the Court concerning the Petitioner's allowance or disallowance of the Proofs of Claims of the Owners.

- (c) If a Creditor fails to file a Proof of Claim in accordance with the Claims Orders on or before the Claims Bar Date as defined in the Plan, that Creditor shall be disentitled from receiving any amounts payable hereunder unless the Court otherwise orders, but the Company shall nevertheless be released from any claims, liabilities or obligations to such Creditor as if the Creditor had filed a Proof of Claim;
- (d) Any Creditor that received a Notice of Disallowance and that does not apply to the Court to have their Claim resolved in accordance with the provisions of the Claims Orders is hereby forever barred from proving a Claim except for such Claim as was set forth in the Notice of Disallowance delivered to such Creditor.

#### **Asset Sale Agreement and Vesting of Assets**

- 10. The Petitioner is hereby authorized to complete the Agreement and is directed to assign and transfer the Assets as that term is defined in the Agreement in accordance with the terms of the Plan and the Agreement, and cause the net proceeds due thereunder to be paid to the Monitor for inclusion in the General Creditors' Pool forthwith upon closing.
- 11. Upon the assignment and transfer referred to in paragraph 10 above, the Assets shall be vested to the Purchaser free and clear of all claims, liabilities, charges, mortgages or other encumbrances.

12. If, subsequent to the Plan Implementation Date, it is necessary for the Petitioner to execute any documents necessary to give effect to the Plan and any documents necessary for it, and there is no person authorized to execute such documents on behalf of the Petitioner, the Monitor is hereby authorized to execute such documents on behalf of the Petitioner and such execution, if necessary, is hereby deemed effective for all purposes, provided that the Monitor shall incur no personal liability for such actions.

#### **Realization of General Creditors' Pool**

13. The Petitioner, with the assistance of the Monitor, is hereby ordered to effect the transfer of those funds which will comprise the General Creditors' Pool and any such funds are to be retained by the Monitor or paid to the Monitor by the Petitioner or its legal counsel.

#### **Filing of Certificate Confirming Implementation of Plan**

14. Upon the satisfaction or waiver of the conditions set forth in paragraph 8.1 of the Plan, the Monitor shall file with this Court, in accordance with section 8.1 of the Plan, a certificate (the "Certificate") which states that all conditions precedent to the Plan as set forth in the Plan have been satisfied or waived and that the Plan Implementation Date has occurred.

#### **BIA Process**

15. Effective upon the Plan Implementation Date, and upon the Monitor filing the Certificate, the Petition for Bankruptcy Order filed by David and Lois Butterfield on June 15, 2006 in the Supreme Court of British Columbia in Bankruptcy under Action No. B060969 Vancouver Registry shall be dismissed in its entirety.

#### **Permanent Injunction**

16. Subject to the performance by the Petitioner of its obligations under the Plan, all obligations or agreements, including all executory contracts, security agreements and other contractual relationships, to which the Petitioner is a party shall be and remain in full force and effect, unamended, as at the Plan Implementation Date unless previously terminated by the Petitioner in accordance with an Order of this Court, and no party to

any such obligation or agreement shall, on or following the Plan Implementation Date, accelerate, terminate, refuse to renew, rescind, refuse to perform or otherwise repudiate its obligations thereunder, or enforce or exercise (or purport to enforce or exercise) any right or remedy (including any right of set-off except as provided in paragraph 7.4 of the Plan, dilution, buy-out, divestiture, forced sale, option or other remedy) under or in respect of any such obligation or agreement, by reason of:

- (a) any event which occurred prior to the Plan Implementation Date and is not continuing after the Plan Implementation Date or which is or continues to be suspended or waived under the Plan, which would have entitled any other party thereto to enforce those rights or remedies;
- (b) the Petitioner seeking or obtaining relief under the CCAA;
- (c) any default or event of default based on the financial condition or insolvency of the Petitioner including any ongoing possible insolvency by reason of the restructuring; and
- (d) any other arrangements effected pursuant to the Plan.

**General**

- 17. Upon the occurrence of the distributions, KPMG Inc. having then fulfilled its duties as Monitor of the Petitioner pursuant to the terms of the Initial Order, shall be at liberty to file a Notice of Discharge and, subject to the completion of anything required or provided to be done pursuant to the Plan or this Order, upon filing the Notice of Discharge KPMG Inc. shall be discharged from its duties as set forth in the Initial Order in relation to the Petitioner without the necessity of taxing its accounts (provided that they are consented to by the Petitioner and Couva Ltd.) and without further Order of this Court.
- 18. At 11:59 p.m. on June 30, 2006, the restrictions imposed upon the Petitioner under the Confirmation Order shall be extinguished without further Order of this Court, except that the Monitor's powers shall continue as set forth in the Plan.

19. Subject to paragraph 11 above, the Administration Charge as that term is defined in the Initial Order shall remain in full force and effect and will remain a charge and security interest over the Assets as defined in the Initial Order, and any funds realized from their sale until such time as the amounts so secured are paid in full, in priority to the General Creditors Claims. The Monitor is hereby authorized to payout such funds as necessary to pay the amounts secured by the Administration Charge until all amounts secured thereunder have been paid by the Petitioners whereupon the Administration Charge shall be extinguished without further Order of this Court.
  
20. Pursuant to Section 16 of the CCAA, this Order shall have full force and effect in all provinces of Canada. This Court requests the aid and recognition of any court or any judicial, regulatory or administrative body in any province or territory of Canada (including the assistance of any court in Canada pursuant to Section 17 of the CCAA) and the Federal Court of Canada and any judicial, regulatory or administrative tribunal or other court constituted pursuant to the Parliament of Canada or the legislature of any province and any court or any judicial, regulatory or administrative body of the United States and the states or other subdivisions of the United States and of any other nation or state to act in aid of and to be complementary to this Court in carrying out the terms of this Order where required.
  
21. The Petitioner, the Monitor and any other interested parties are hereby granted leave to apply to this Court for any directions or determinations required to resolve any matter or dispute relating to the Plan, this Order or the subject matter thereof and the rights and benefits thereunder, provided that no provision of this Order shall be construed to modify or impair any right, title, interest, privilege or remedy expressly provided for or reserved under the Plan and nothing herein requires the Province to provide any consents or approvals that may be required to effect any transaction contemplated in the Plan or in this Order or relieves the Petitioner or any other person from any obligation to give notice to or seek consents or approvals from the Province relating to any transaction contemplated in the Plan or in this Order.

22. Endorsement of this Order by counsel appearing and noted on Schedule "A" is hereby dispensed with.

BY THE COURT

*David Ross*

DEPUTY REGISTRAR

*MB*

APPROVED AS TO FORM:

*[Signature]*

Solicitor for the Petitioner

ENTERED

JUN 26 2006

VANCOUVER REGISTRY

VOL. *S 1389* FOL. *87*

**SCHEDULE "A"**

John McLean	Counsel for the Monitor
David Garner	Counsel for Couva Ltd.
Raymond Leong	Counsel for Attorney General for Canada

No. L053049  
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  
WEST BAY SONSHIP YACHTS LTD.

Petitioner

---

**ORDER**

---

FASKEN MARTINEAU DuMOULIN LLP  
Barristers & Solicitors  
2100 - 1075 West Georgia Street  
Vancouver, B.C., V6E 3G2  
604 631 3131

Counsel: Kimberley Robertson  
Matter No: 264623.1

FAX BACK 604-632-3241  
DYE & DURHAM.

E