



FORCE FILED

FORM 32 (RULE 8-1(4))

No. S253365
Vancouver Registry

In the Supreme Court of British Columbia

Between

PEOPLES TRUST COMPANY/COMPAGNIE DE FIDUCIE PEOPLES

Petitioner

and

PEAK DEVELOPMENTS CORP., PEAK DEVELOPMENTS
LIMITED PARTNERSHIP, WESTCASTLE HOLDINGS LTD.,
WESTCASTLE LAND DEVELOPMENTS CORP.,
BOULEVARD CONSTRUCTION CORPORATION,
RIVERVIEW CUSTOM HOMES LTD., PHIL SALGADO, also
known as PHILIP SALGADO, CHRIS YORK, also known as
CHRISTOPHER YORK, MACKAY CONTRACTING LTD.,
KULKON CONSTRUCTION CORP., 1111053 B.C. LTD.
DOING BUSINESS AS JJ MECHANICAL, GAUER POWER
LTD., IKA BUILDERS INC., 689048 ALBERTA LIMITED,
DOUGLAS HOWG doing business as STP PAINTING,
JOHN DOE AND ALL TENANTS OR OCCUPIERS OF THE
SUBJECT LANDS AND PREMISES

Respondents

**IN THE MATTER OF THE RECEIVERSHIP OF PEAK DEVELOPMENTS CORP. and
PEAK DEVELOPMENTS LIMITED PARTNERSHIP**

NOTICE OF APPLICATION – FURTHER ADVANCES

Name of applicant: PEOPLES TRUST COMPANY/COMPAGNIE DE FIDUCIE
PEOPLES

To: the Receiver

And to: respondents and the service list

TAKE NOTICE that an application will be made by the applicant to the Honourable Mr. Justice Milman at the courthouse at the Law Courts, 800 Smithe Street, Vancouver, British Columbia V6Z 2E1 on August 25, 2025 at 9:00 a.m. for the order(s) set out in Part 1 below.

The applicant estimates that the application will take 15 minutes.

☒ This matter is not within the jurisdiction of an associate judge.

Part 1: ORDER(S) SOUGHT

1. An order,
 - a) abridging the time for service of this application; and
 - b) substantially in the form attached as Schedule "A" to this application, amending the order made by the Honourable Mr. Justice Milman on May 6, 2025 (the "Initial Order"), by replacing subparagraph 2(r) of the Initial Order with the following:
 - r) to receive further advances of the Petitioner's loan to the Debtor, up to \$3,900,000 (which amount may be further increased be either by the agreement of the parties hereto or further Order of this Court) for the purpose of carrying on its duties pursuant hereto which advances will be in full priority to all Respondents and all Claims of Builders' Lien, pursuant to s. 32(5) of the *Builders' Lien Act* S.B.C. 1997 c.45.

Part 2: FACTUAL BASIS

The Parties' Roles and Interests

1. Peoples Trust Company is a trust company which provides services as a commercial real estate lender. Peoples loaned monies to Peak Developments Corp. and Peak Developments Limited Partnership ("Peak Developments") for the purposes of a real estate construction project (the "Project"). Peak Developments, in turn, granted first priority mortgage and personal property security in favour of Peoples.
2. Peak Developments owns a residential real estate development located at 500 – 302nd Avenue, Kimberley, BC, V1A 3H7, and legally described as follows:

Parcel Identifier: 031-836-780
LOT 1 DISTRICT LOT 2378
KOOTENAY DISTRICT PLAN EPP124173

(the "Lands").

3. On May 6, 2025, on the application of Peoples, Mr. Justice Milman made an order appointing D. Manning & Associates Inc. as receiver and manager of the Project (the "Receiver"). Among other things, Mr. Justice Milman permitted the Receiver to receive a further \$1,000,000 under Peoples' loan.
4. On June 25, 2025, on the application of the Receiver, the Court ordered that the Petitioner may make further advances under its loan to the Debtor, up to \$2,000,000 for the purpose of carrying on its duties which advances to have full priority to all Respondents and all Claims of Builders' Lien, pursuant to s. 32(5) of the *Builders' Lien Act* S.B.C. 1997 c.45.
5. The Petitioner now seeks an order increasing the amounts it may make under loan in priority to all other claims, to \$3,900,000.

Activities of the Receiver

6. The Receiver has issued a report dated June 20, 2025 (the "Report") which describes activities up to that date.
7. The Receiver has issued a letter dated August 21, 2025 (the "Letter") which describes activities up to that date and makes recommendations.

STATUS OF INDIVIDUAL BUILDINGS

8. Activities on the buildings and project generally have been remediation, correction of deficiencies, and getting the stop work order, imposed by the City of Kimberley, lifted. These activities are described in the Letter, dated August 21. The status of the buildings is substantially the same as it was at June 20, the date of the Report.

OPTIONS TO COMPLETE THE PROJECT

9. The Receiver and Tribus are presently gathering information on the estimated costs to complete the Kimberley Crossing project.

FURTHER ADVANCES

10. The June 25 order permitted advances of up to \$2,000,000 increasable by consent or by further Court order. To date, the Receiver has received advances totalling \$2,000,000.
11. The petitioner seeks an order permitting an increase to the petitioner's loan by a further \$1,900,000, summarized as follows:

Additional site preservation costs	158,500
Additional construction analysis costs & professional fees	45,750
Additional site work costs, including remediation of deficiencies	137,000
Additional immediate project requirements & general conditions	50,450
Additional cost for planning, site work, and preconstruction team	328,000
Cost for winterization work	728,600
Additional Receiver's fees and disbursements	252,000
Additional Receiver's legal costs	35,000
Contingency	60,000
GST paid and to be paid	<u>104,700</u>

TOTAL INCREASE	\$1,900,000
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12. Particulars of the costs for the period May 6, 2025 to October 31, 2025 are set out in the Receiver's Cash Flow Forecast attached as Schedule "A" to the Letter.

Part 3: LEGAL BASIS

Receivership Application

13. The *Law and Equity Act*, RSBC 1996, c 253, provides:

39 (1) An injunction or an order in the nature of mandamus may be granted or a receiver or receiver manager appointed by an interlocutory order of the court in all cases in which it appears to the court to be just or convenient that the order should be made.

14. The *Bankruptcy and Insolvency Act*, RSC 1985, c B-3, provides:

243 (1) Subject to subsection (1.1), on application by a secured creditor, a court may appoint a receiver to do any or all of the following if it considers it to be just or convenient to do so:

(a) take possession of all or substantially all of the inventory, accounts receivable or other property of an insolvent person or bankrupt that was acquired for or used in relation to a business carried on by the insolvent person or bankrupt;

(b) exercise any control that the court considers advisable over that property and over the insolvent person's or bankrupt's business; or

(c) take any other action that the court considers advisable.

15. The purpose and object of a receivership authorized by the *BIA* is to facilitate and enhance the preservation and realization of the assets of an insolvent debtor for the benefit of the creditors in accordance with their priority rankings.

British Columbia v. Peakhill Capital Inc., 2024 BCCA 246, para. 21,
leave to appeal refused, May 1, 2025 (SCC)

Priority of Secured Lender

16. Section 32 of the *Builders Lien Act*, SBC 1997, c 45, provides as follows:

(5) Despite subsections (1) and (2) or any other enactment, if one or more claims of lien are filed in a land title office in relation to an improvement, a mortgagee may apply to the court for an order that one or more further advances under the mortgage are to have priority over the claims of lien.

(6) On an application by a mortgagee under subsection (5), the court must make the order if it is satisfied that

(a) the advances will be applied to complete the improvement, and

(b) the advances will result in an increased value of the land and the improvement at least equal to the amount of the proposed advances.

17. Subsections (5) and (6) create an exception to the general scheme of lien priority whereby advances made after a lien has been filed may obtain priority through a court order. Such an order is mandatory when the requirements of ss. 32(5) and (6) are met; the provision therefore gives the court no room to contemplate the fairness or desirability of allowing the application.

Bank of Montreal v. Peri Formwork Systems Inc., 2012 BCCA 4,
leave to appeal refused 2013 CanLII 2397 (SCC)

Part 4: MATERIAL TO BE RELIED ON

1. Report of the Receiver, dated June 20, 2025.
2. Receiver's Letter, dated August 21, 2025.

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 of 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 proceedings, 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).

Date: _____

August 21, 2025



Signature of lawyer for applicant
Jonathan L. Williams

To be completed by the court only:	
Order made	
<input type="checkbox"/>	in the terms requested in paragraphs _____ of Part 1 of this notice of application
<input type="checkbox"/>	with the following variations and additional terms:

Date: _____	Signature of [] Judge [] Associate Judge

APPENDIX

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
- ☒ none of the above

SCHEDULE "A"

No. S253365
Vancouver Registry

IN THE SUPREME COURT OF BRITISH COLUMBIA

BETWEEN:

**PEOPLES TRUST COMPANY/COMPAGNIE DE FIDUCIE
PEOPLES**

Petitioner

AND:

**PEAK DEVELOPMENTS CORP., PEAK DEVELOPMENTS LIMITED
PARTNERSHIP, WESTCASTLE HOLDINGS LTD., WESTCASTLE LAND
DEVELOPMENTS CORP., BOULEVARD CONSTRUCTION
CORPORATION, RIVERVIEW CUSTOM HOMES LTD., PHIL SALGADO,
also known as PHILIP SALGADO, CHRIS YORK, also known as
CHRISTOPHER YORK, MACKAY CONTRACTING LTD., KULKON
CONSTRUCTION CORP., 1111053 B.C. LTD. DOING BUSINESS AS JJ
MECHANICAL, GAUER POWER LTD., IKA BUILDERS INC., 689048
ALBERTA LIMITED, STEVEN DOUGLAS HOWG, also known as STEVEN
DOUGLAS HOWG doing business as STP PAINTING, JOHN DOE AND ALL
TENANTS OR OCCUPIERS OF THE SUBJECT LANDS AND PREMISES**

Respondents

**IN THE MATTER OF THE RECEIVERSHIP OF
PEAK DEVELOPMENTS CORP. and
PEAK DEVELOPMENTS LIMITED PARTNERSHIP**

ORDER MADE AFTER APPLICATION

BEFORE THE HONOURABLE

MR. JUSTICE MILMAN

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25/AUGUST/2025

**ON THE APPLICATION of PEOPLES TRUST COMPANY/COMPAGNIE DE FIDUCIE
PEOPLES, coming on for hearing this day at Vancouver, British Columbia.**

**AND ON READING the Letter of the Receiver dated August 21, 2025, and the affidavits
and pleadings filed herein; AND ON HEARING Jonathan L. Williams, Counsel for the
petitioner, and other counsel as listed on Schedule "A" hereto, and no one else appearing,
although duly served.**

THIS COURT ORDERS AND DECLARES that:

1. The time for service of the notice of application for this order is hereby abridged and validated so that the notice of application is properly returnable today and this Court hereby dispenses with further service thereof.
2. The order made herein by the honourable Mr. Justice Milman, dated May 6, 2025 (the "Initial Order") is hereby amended, by deleting subparagraph 2(r) of the Initial Order, and replacing it with:

(r) to receive further advances of the Petitioner's loan to the Debtor, up to \$3,900,000 (which amount may be further increased be either by the agreement of the parties hereto or further Order of this Court) for the purpose of carrying on its duties pursuant hereto which advances will be in full priority to all Respondents and all Claims of Builders' Lien, pursuant to s. 32(5) of the *Builders' Lien Act* S.B.C. 1997 c.45.
3. All other terms of the Initial Order remain valid and subsisting.
4. Endorsement of this Order by counsel appearing on this application other than the Petitioner is dispensed with.

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

APPROVED BY:

BY THE COURT

Signature of Jonathan L. Williams,
lawyer for the petitioner

REGISTRAR

Schedule "A"

Counsel Appearing

Name

Party

Robyn Gurofsky

PEAK DEVELOPMENTS CORP., PEAK DEVELOPMENTS
L.P.