



FORM 32 (RULE 8-1(4))

No. H 200039
Vancouver Registry

IN THE SUPREME COURT OF BRITISH COLUMBIA

BETWEEN:

PEOPLES TRUST COMPANY

Petitioner

AND:

CENSORIO GROUP (HASTINGS & CARLETON)
HOLDINGS LTD.
PETER CENSORIO also known as PETER ANTHONY CENSORIO
and PETER ANTHONY CENSORIO
STRADA 39 TRUST
BANCORP GROWTH MORTGAGE FUND II LTD.
BANCORP BALANCED MORTGAGE FUND II LTD.
BANCORP FINANCIAL SERVICES INC.
PK CAPITAL LTD.
ALL CANADIAN INVESTMENT CORPORATION
FBM CANADA GSD, INC.
MEDINA CONCRETE SERVICES LTD.
TUCUVAN CONSTRUCTION LTD.
OMNI DRYWALL LTD.
1223293 B.C. LTD.
RAHUL GLASS LTD.
SERIN INVESTMENTS LTD.
CLARION PROPERTY CORPORATION
G. I. H. PROPERTIES LTD.
BARRY CHARLES HOLDINGS LTD.
BECISON HOLDING CORPORATION
SANDRA CHAPPELL
CREST CAPITAL CORPORATION
DURHAM CAPITAL MANAGEMENT INC.
YORK VENTURES LTD.
HI-GROVE HOLDINGS (1995) LTD.
DIANE RAUCH
JEFFREY RAUCH
GERHARD RAUCH
HELGA RAUCH
PAVILION INVESTMENTS INC.
RODNEY GRANT KENYON
ALAN LONG
MANDATE MANAGEMENT CORPORATION

Respondents

NOTICE OF APPLICATION

Name of applicant: D. Manning & Associates Inc. (the “Receiver”)

To: The Petitioner, the Respondents; the Service List and to their respective Solicitors

TAKE NOTICE that an application will be made by the applicant to the presiding judge at the courthouse at the Law Courts, 800 Smithe Street, Vancouver, British Columbia V6Z 2E1 on TUESDAY, JUNE ~~23rd~~^{30th}, 2020, at 9:00 a.m., by teleconference or videoconference, as the Court may direct, for the orders set out in Part 1 below.

Part 1: ORDERS SOUGHT

1. The Receiver applies for directions from this Honourable Court to disclaim all Pre-Sale Contracts as particularized in the Receiver’s First Report and the Affidavit #2 of Alex En Hwa Ng sworn June 5, 2020 and filed herewith or whether, in the circumstances, the Receiver should complete any or all of the 14 Pre-Sale Contracts;
2. In the event the Court directs that some or none of the Pre-Sale Contracts should be completed, directions to immediately take steps to sell each of the subject prospective strata lots in the development at market value free and clear of all financial encumbrances, subject to Court approval;
3. Authorizing the Receiver to pay \$20,000 to Empire Masonry Ltd., as a critical payable; and
4. Endorsement of the Order by counsel appearing, other than counsel for the Receiver, is hereby dispensed with.

Part 2: FACTUAL BASIS

Receivership History

1. D. Manning & Associates Inc. was appointed Receiver and Manager (the “Receiver”) in respect of the assets, undertakings and property of Censorio Group (Hastings & Carleton) Holdings Ltd. (the “Company”) relating to a Property at 4223-4229 Hastings Street,

Burnaby, British Columbia (the “**Property**”) pursuant to the Order of Mr. Justice Crerar pronounced February 5, 2020.

2. The Property, is a five storey, multi-family condominium project on Hastings Street, in North Burnaby contemplating 28 residential strata lots: 27 residential units, 1 commercial strata lot. Currently, it has not yet been completed or strata titled however there are 13 residential presale contracts for 14 of the residential units (one contract for 2 units contemplates combining 2 strata lots as one residential space) and one Pre-Sale contract for the commercial unit. The Receiver is currently completing construction in order to strata title the Property and is not able to close any sales until construction is completed AND THE Property is strata titled.
3. The Receiver is of the view that all of the Pre-Sale contracts are generally at prices under current market value and that the proceeds of realization would be increased by about \$1,600,000 if all Pre-Sale contracts were disclaimed and those units sold on the open market.
4. Pursuant to the Order of Madam Justice Fitzpatrick made May 25, 2020 the Receiver was to bring this application today to determine the appropriateness of disclaiming some or all of the Pre-Sale contracts.

Secured Debt and Secured Claims

5. Mortgages

- a) Peoples Trust Company - Mortgage registered August 24, 2017 (CA6245585)
Amount: \$10,957,362 as at February 5, 2020, plus interest and costs, being about \$55,000 monthly to take it to about \$11,200,000
- b) Bancorp Growth Mortgage Fund II Ltd., Bancorp Balanced Mortgage Fund II Ltd., Bancorp Financial Services Inc. - Mortgage registered August 24, 2017
Amount: \$3,991,443 as at February 5, 2020 plus interest and costs;
- c) PK Capital Ltd. - Mortgage registered November 29, 2018
Assignment of Rents registered November 29, 2018 (CA7219415)
Amount: \$787,307 as at February 5, 2020, plus interest and costs;

Total Mortgage Claims at February 5, 2020 -\$15,736,112.

6. All Canadian Investment Corporation - Certificate of Pending Litigation registered September 16, 2019 Claim Amount \$2,374,468 (approx.) as at February 5, 2020 plus interest at 12% and costs.
7. Estimated Costs to complete \$4,350,000.

Effect of Pre-Sales on Distribution of Proceeds (“Waterfall”)

8. Receiver’s estimated realization value;
 - a) With Pre-Sales maintained, (residential \$14,625,000, commercial \$2,550,000) = \$18,606,925;
 - b) Disclaiming Pre-Sales (residential \$17,100,029, commercial \$3,100,000) = \$20,200,029.
9. As mortgage charges total in excess of \$15,736,112 and the costs to complete are estimated at \$4,350,000 any recovery less than \$20,086,112 will borne by the mortgagees therefore
 - a) Proceeding with Pre-Sales Contracts will result in no payment to PK Capital Ltd. and a shortfall to the Bancorp Companies;
 - b) Disclaiming the Pre-Sales contracts may see the Bancorp companies paid in full with perhaps some monies available to PK Capital Ltd. and beyond.

Pre-Sales Contracts - Terms

10. Pre-Sales contracts have an outside completion date of February 29, 2020 with extension language as per 5.1 as amended:

Completion Date. The Purchaser will pay the Balance at the Purchaser's expense by way of **CERTIFIED CHEQUE or BANK DRAFT** to the Vendor's Solicitors **by NO LATER THAN 4:00 p.m. on the Completion Date** (defined below). The completion of the purchase and sale of the Strata Lot will take place on that date (the "**Completion Date**") specified in a written notice from the Vendor to the Purchaser to be delivered to the Purchaser or the Purchaser's Solicitor no later than that date which is between two and 60 days after the later of (i) the date that title to the Strata Lot is issued in the Land Title Office, and (ii) the date that the Strata Lot is ready to be occupied. The Completion Date

specified in the aforesaid notice will be a minimum of 10 business days (or as otherwise may be agreed between the parties) and no more than 30 days from the date of delivery of the notice. Whether the Strata Lot is ready to be occupied refers only to the Strata Lot and not to any other strata lot or common property within the Development and the Strata Lot will be deemed to be ready to be occupied on the Completion Date if the City of Burnaby (the "**City**") has given oral or written permission to occupy the Strata Lot, whether such permission is temporary, conditional, provisional or final. If the Completion Date falls on a Saturday, Sunday, holiday or a day upon which the Land Title Office is not open for business, the Completion Date will be the next following business day. The notice of the Completion Date delivered from the Vendor or the Vendor's Solicitors to the Purchaser or the Purchaser's Solicitor may be based on the Vendor's estimate as to when the Strata Lot will be ready to be occupied. If the Strata Lot is not ready to be occupied on the Completion Date so established, then the Vendor may delay the Completion Date for up to 30 days from time to time as required by notice of such delay to the Purchaser or the Purchaser's Solicitor. If the Completion Date has not occurred by February 29, 2020 (the "**Outside Date**"), then the Purchaser may terminate this Agreement by written notice to the Vendor, in which case the Deposit together with any accrued interest thereon, less the Vendor's Solicitors' reasonable administration fees, will be promptly returned to Purchaser and each party will be released from all of its obligations to the other hereunder, provided that:

- i) if the Vendor is delayed from completing the construction of the Strata Lot or satisfying any other conditions of closing as a result of earthquake, flood or other act of God, fire, explosion or accident, howsoever caused, act of any governmental authority, strike, lockout, inability to obtain or delay in obtaining labour, supplies, materials or equipment, delay or failure by carriers or contractors, breakage or other casualty, climactic condition, interference of the Purchaser, or any other event of any nature whatsoever beyond the control of the Vendor, then the Outside Date will be extended for a period equivalent to such period of delay; and
- ii) the Vendor may, at its option, exercisable by notice to the Purchaser, in addition to any other extension pursuant to this paragraph 5.1 and whether or not any delay described in this paragraph 5.1 has occurred, elect to extend the Outside Date for up to 120 days.

The Vendor confirms that it currently estimates that the Completion Date will occur between December 1, 2019 and February 29, 2020 (the "Estimated Date Range"). The Purchaser acknowledges that the Estimated Date Range has been provided by the Vendor as a matter of convenience only and is not meant to be legally binding upon the Vendor, and that the actual Completion Date will be established in the manner set out above, which may be sooner or later than, or fall within, the Estimated Date Range.

11. The Pre-Sales contracts specify that time is of the essence in paragraph 13.1;

Time of Essence. Time is of the essence hereof and unless all payments on account of the Purchase Price, subject to adjustments thereto as provided for herein, and any other monies payable by the Purchaser hereunder are paid when

due, then the Vendor may, at the option of the Vendor in its sole discretion, either:

(a) terminate this Agreement and in such case the entire Deposit, including both paid and unpaid portions thereof, and all interest accrued thereon will be absolutely forfeited to the Vendor, which payment shall be non-refundable, shall not be deemed to be all Inclusive liquidated damages and shall not preclude any further claims or remedies by the Vendor against the Purchaser arising as a result of the default of the Purchaser; or

(b) elect to extend the time for completion, and revise such terms of this Agreement as may be required in order to accommodate the extension, and to complete the transaction contemplated by this Agreement, in which event the Purchaser will pay to the Vendor, In addition to the Purchase Price, interest on the unpaid portion of the Purchase Price and other unpaid amounts payable by the Purchaser hereunder at the rate of 3.0% per annum above the annual rate of Interest designated by the Vendor's principal bank as its "prime rate", as that rate may change from time to time, which interest will be calculated daily from and including the date upon which such payment and amounts were due pursuant to the terms hereof to and Including the date upon which such payment and amounts are paid.

If from time to time the Purchaser's default continues beyond the last extended date for completion established pursuant to subparagraph 13.1(b) above the Vendor, in its sole discretion, may thereafter elect to terminate this Agreement pursuant to subparagraph 13.1(a) above or permit one or more further extensions pursuant to subparagraph 13.1(b) above.

Should any extension of the Completion Date pursuant to subparagraph 13.1(b) result in the Completion Date extending beyond the Outside Date, as discussed In paragraph 5.1 of this Schedule "A", the Outside Date will be deemed to be extended to the same date as the Completion Date, and will not give the Purchaser any rights to terminate this Agreement.

12. The Pre-Sales contracts have an “entire agreement” clause:

7.1 The Purchaser acknowledges and agrees that this Agreement constitutes the entire agreement between the parties with respect to the sale and purchase of the Strata Lot and supersedes any prior agreements, negotiations or discussions, whether oral or written, of the Vendor and the Purchaser, and that there are no representations, warranties, conditions or collateral contracts, expressed or Implied, statutory or otherwise, or applicable hereto, made by the Vendor, its agents or employees, or any other person on behalf of the Vendor, other than those contained herein and in the Disclosure Statement. For clarity, all sales brochures, models, websites, representative view sets, showroom displays, photographs, illustrations or renderings or other marketing materials provided to the Purchaser or made available for the Purchaser's viewing do not form part of this Agreement. Without in any way limiting the foregoing, the Purchaser acknowledges and agrees that presentation centre/display suite/showroom decorator features, wall treatments, drapes/curtains, dining light fixtures and furnishings are not included in the Purchase Price. In particular, the Purchaser acknowledges and agrees that the materials, specifications, details, dimensions and floorplans set out In any materials viewed by the Purchaser are approximate and subject to change without notice in order to comply with building site

conditions and municipal, structural and Vendor and/or architectural requirements.

13. Pre-Sales contracts create contractual rights only and not an interest in land.

13.8 The Pre-Sales contracts are contractual and do not give the purchasers an interest in land.

14. All Pre-Sales deposits are held in trust and would be refundable to each purchaser.

Pre-Sales Contracts – Prices and Values

15. Based on the historical estimates of value, the information received by the Receiver from Mr. Peter Censorio, (the operating mind of Censorio Group (Hastings & Carleton) Holdings Ltd. (the “Company”) prior to the appointment of the Receiver, the marketing proposals of Oaklyn , Fifth Avenue Real Estate Marketing Ltd. (“Fifth Avenue”) as set out in Schedule “B” (page 39) of the Receiver’s First Report, Rennie Developer Service (“Rennie”), as set out in Schedule “F” (page 76) of the Receiver’s First Report and Framework Real Estate Group (“Framework”) as set out in Schedule “G” (page 101) of the Receiver’s First Report, salient points of each of the residential Pre-Sales contracts as headed by their prospective strata lot number are summarized as follows:

- a) Strata Lot 1, signed May 30, 2017, price \$784,900 (\$779,900 net of incentives), purchaser(s) - Hunter and Donald;
 - i) Historical Estimates-contract date \$742,900, January 2018 \$777,150,
 - ii) Fifth Avenue - current market value \$859,900 - \$899,000,
 - iii) Rennie – current market value \$789,900 - \$829,900,
 - iv) Oakwyn – current market value \$839,000,
 - v) Framework – current market value \$859,000,
 - vi) Mr. Hunter, was at the time of the purchase, an employee of the Company and Mr. Donald is Mr. Hunter’s father-in-law;

- b) Strata Lot 3, signed November 4, 2016, price \$404,900, purchaser(s) - Gillis;
 - i) Historical Estimates-contract date \$415,400, January 2018 \$555,650,
 - ii) Fifth Avenue - current market value \$499,000 - \$509,900,
 - iii) Rennie – current market value \$499,900 - \$539,900,
 - iv) Oakwyn – current market value \$515,000,
 - v) Framework – current market value \$484,900,
 - vi) no known connection to the Company;

- c) Strata Lot 4, signed September 3, 2016, price \$347,900 (\$332,900 net of incentives), purchaser(s) – Boretto and Van Hombeeck;

- i) Historical Estimates-contract date \$394,900, January 2018, \$527,950,
 - ii) Fifth Avenue - current market value \$472,900 - \$482,900,
 - iii) Rennie – current market value \$459,900 - \$499,900,
 - iv) Oakwyn – current market value \$489,900,
 - v) Framework – current market value \$434,900,
 - vi) Van Hombbeck is a marketing employee of a company owned by Peter Censorio, Boretto her partner;
- d) Strata Lot 9, signed August 5, 2016, price \$400,000, purchaser(s) - Dorsey;
- i) Historical Estimates-contract date \$461,000, January 2018, \$560,650,
 - ii) Fifth Avenue - current market value \$509,900 - \$519,900,
 - iii) Rennie – current market value \$499,900 - \$539,900,
 - iv) Oakwyn – current market value \$525,000,
 - v) Framework – current market value \$484,900,
 - vi) Dorsey is an employee of a supplier to the Company;
- e) Strata Lot 11, signed January 25, 2017, price \$399,900, purchaser(s) – Bryce and Tinucci;
- i) Historical Estimates-contract date \$411,900, January 2018, \$549,400,
 - ii) Fifth Avenue - current market value \$499,900 - \$509,900,
 - iii) Rennie – current market value \$489,900 - \$529,900,
 - iv) Oakwyn – current market value \$515,000,
 - v) Framework – current market value \$464,900,
 - vi) No know connection to the Company;
- f) Strata Lot 17, signed May, 27, 2017, price \$424,900 (\$414,900 net of incentives), purchaser(s) – Bevacqua and Bevacqua;
- i) Historical Estimates-contract date \$466,200, January 2018, \$565,650,
 - ii) Fifth Avenue - current market value \$509,900 - \$519,900,
 - iii) Rennie – current market value \$519,900 - \$549,900,
 - iv) Oakwyn – current market value \$535,000,
 - v) Framework – current market value \$489,900,
 - vi) No known connection to the Company;
- g) Strata Lot 19, signed April 4, 2017, price \$409,900 (\$402,900 net of incentives), purchaser(s) – Vatanchi;
- i) Historical Estimates-contract date \$457,200, January 2018, \$554,400,
 - ii) Fifth Avenue - current market value \$489,900 - \$499,900,
 - iii) Rennie – current market value \$509,900 - \$549,900,
 - iv) Oakwyn – current market value \$525,000,
 - v) Framework – current market value \$469,900,
 - vi) previously purchased a unit in different Peter Censorio real estate development;
- h) Strata Lot 21, signed July 31, 2016, price \$671,900, purchaser(s) – Retreat Homes Ltd., assigned to 2533596 Ontario Ltd.;

- i) Historical Estimates-contract date \$707,900, January 2018, \$813,850,
 - ii) Fifth Avenue - current market value \$868,900 - \$878,900,
 - iii) Rennie – current market value \$849,900 - \$889,900,
 - iv) Oakwyn – current market value \$879,900,
 - v) Framework – current market value \$859,900,
 - vi) Purchaser assignee’s principal is a personal friend of Peter Censorio;
- i) Strata Lot 22, signed May 27, 2017, price \$699,900 (\$690,000 net of incentives), purchaser(s) – Graham and Graham;
- i) Historical Estimates-contract date \$743,800, January 2018, \$777,650,
 - ii) Fifth Avenue - current market value \$869,900 - \$879,900,
 - iii) Rennie – current market value \$819,900 - \$859,900,
 - iv) Oakwyn – current market value \$829,900,
 - v) Framework – current market value \$779,900,
 - vi) Alexandra Graham’s mother previously purchased a unit in different Peter Censorio real estate development;
- j) Strata Lot 25, signed July 14, 2016, price \$419,900 (\$414,900 net of incentives), purchaser(s) – De Santis;
- i) Historical Estimates-contract date \$443,200, January 2018, \$582,650,
 - ii) Fifth Avenue - current market value \$512,900 - \$522,900,
 - iii) Rennie – current market value \$559,900 - \$589,900,
 - iv) Oakwyn – current market value \$565,000,
 - v) Framework – current market value \$494,900,
 - vi) No known connection to the Company;
- k) Strata Lot 26, signed February 27, 2017, price \$424,900, purchaser(s) – Wong assigned to DiNicolo Enterprises Ltd.;
- i) Historical Estimates-contract date \$488,400, January 2018, \$585,650,
 - ii) Fifth Avenue - current market value \$519,900 - \$529,900,
 - iii) Rennie – current market value \$559,900 - \$589,900,
 - iv) Oakwyn – current market value \$555,000,
 - v) Framework – current market value \$474,900,
 - vi) Contract assigned, Peter Censorio knows the principal of the assignee;
- l) Combined Unit, Strata Lots 27/28, signed July 22, 2016, price \$1,100,000, purchaser(s) – Serraglio and Garcea;
- i) Historical Estimates-contract date \$1,100,900, January 2018, \$1,130,500,
 - ii) Fifth Avenue - current market value \$1,230,000 - \$1,260,000,
 - iii) Rennie – current market value \$1,199,900 - \$1,249,900,
 - iv) Oakwyn – current market value \$1,265,000,
 - v) Framework – current market value \$1,179,000,
 - vi) Peter Censorio knows Garcea through the construction industry;

16. The Pre-Sale contract for the commercial retail space (“CRU”) is for the price of \$2,550,000 (\$2,500,000 net of improvements), and signed July 10, 2016 which, as set out in the Receiver’s First Report in Schedule H (page 110), has an anticipated sales price of between \$3,100,000 to \$3,300,000 according to Colliers International.
17. The principal of the purchaser of the CRU (1166538 B.C. Ltd.) is Aleksandra lameo who is Peter Censorio’s sister.

Critical Payable

18. Subsequent to issuing the Receiver’s First Report, the Receiver became aware of a further critical payable, Empire Masonry Ltd. (“**Empire**”), which is owed \$31,979.01. Empire did not file a lien against the project, and no holdback was kept by the Company. It was determined that the Receiver requires a “seismic restraint signoff” from Empire’s structural engineer, as the Receiver’s own structural engineer will not provide such a signoff. Empire is prepared to provide the structural engineer’s signoff for a negotiated amount of \$20,000.00 including GST for their arrears. There is further work for Empire to complete in the amount of \$5,578 plus GST, the Receiver recommends adding Empire to the list of critical payables in the amount of \$20,000.00.

Part 3: LEGAL BASIS

Receiver’s powers under the Receivership Order

1. The Receiver recognizes that it has discretion to disclaim contracts in making business choices however the decision regarding the disclaimer of Pre-sales contracts and their validity and enforceability is also a legal issue taking into account legal priorities between the creditors and the purchasers, realization preferences, and equities.

Forjay Management Ltd. v. 0981478 B.C. Ltd. 2018 BCSC, 527 (upheld on appeal)

See: Forjay Management Ltd. v. Peverconn 2018 BCCA, 251

2. The Receiver relies on the powers granted to it under the Receivership Order, as supplemented for the directions it seeks herein as paragraph 2 of the Receivership Order empowers the Receiver to, among other things:

c) to manage, operate and carry on the business of the Debtor, including the power to enter into agreements, incur any obligations in the ordinary course of business..., or cease to perform any contracts of the Debtor; [...]

i) to execute, assign, issue and endorse documents of whatever nature in respect of the Property, whether in the Receiver's name or in the name and on behalf of the Debtor, for any purpose pursuant to this Order; [...]

l) to market any or all of the Property, including advertising and soliciting of in offers in respect of the Property or any parts thereof and negotiating such terms and conditions of sale as the Receiver in its discretion may deem appropriate;

to sell, convey, transfer lease or assign the Property or any parts thereof out of the ordinary course of business... with the, with approval of this Court [....];

t) to take any steps reasonably incidental to the exercise of these powers [...].

therefore the determination of the enforceability of the Pre-Sales Contracts can be resolved by consideration of the disclaimer issue alone rather than expensive and lengthy litigation.

Forjay Management Ltd. v. 0981478 B.C. Ltd. supra

3. The Receiver submits that the very powers granted to it by Court Order, provide it with the ability to enter into what would be amendments to the 14 Pre-sales contracts so as to permit those sales to complete now by setting out a new completion date for the same. Such right is subject to the Court's determination that the some or all of the 14 Pre-Sales contracts are valid, enforceable and, in the circumstances, should be completed.
4. A Receiver is therefore not bound by any pre-existing contract entered into by the company, unless it decides to be bound by that agreement.

bcIMC Construction Fund Corp. v. Chandler Homer Street, 2008 BCSC 897

Forjay Management Ltd. v. 0981478 B.C. Ltd., supra

5. In Court-appointed Receiverships the Receiver is not bound by existing contracts made by the company, nor is the Receiver personally liable for performance of those contracts entered into before Receivership.

*Bennett on Receiverships, 2d ed (Toronto Carswell, 199). p.169, 341
New Skeena Forest Products Inc., Re, (2005) 39 BCLR 327 (BCCA)
Forjay Management Ltd. v. 0981478 B.C. Ltd. supra*

Competing Interests

6. The Receiver has a duty to preserve the assets of the business and on that basis, it would be inconsistent with that duty to disregard contracts entered into by the company before his appointment. That duty is primarily owed to the debtor company rather than the creditors.

bcIMC Construction Fund Corp. v. Chandler Homer Street, supra, citing Bayhold Financial Corp. vs. Clarkson Co. [1991] Carswell NSL 22 (NSCA)

7. On the face of the 14 Pre-Sale Contracts, they have all expired, though through no fault of the Pre-sale purchasers.
8. The Pre-Sales contract price of each strata lot (except Strata Lot 1) was at less than the estimates of each of their fair market value at the time that the contract was entered into.
9. The Pre-Sales contract prices are all below current market value.
10. The Pre-Sales contracts grant only contractual rights not an interest in land and therefore do not have an equitable interest in the land.

Forjay Management Ltd. v. 0981478 B.C. Ltd. supra citing Pan Canadian Mortgage Group III Inc. v. 0859811 B.C. Ltd., 201, (BCCA) and Firm Capital Mortgage Fund Inc. v. 2012241 Ontario Ltd. 2012 ONSC 4816

11. To perform the Pre-Sale contracts would enhance the pre-receivership position of the purchasers relative to the secured creditors.

Forjay Management Ltd. v. 0981478 B.C. Ltd. supra, citing Romspen Investment Corporation v. Horseshoe Valley Lands Ltd. 2017 ONSC 426

12. Specific performance of the Pre-Sales contracts cannot be compelled, where the construction is not complete.

Forjay Management Ltd. v. 0981478 B.C. Ltd. supra, citing Firm Capital, supra

13. The sales of the CRU and Strata Lots 1, 4, 9, 19, 22 and 26 may not be arms-length sales.
14. Strata Lots 21 and 26 sales were assigned and may have been “flipped”.

General

15. The Petitioner will rely upon the law of contract, s. 39 of the Law and Equity Act, s. 243(1) of the BIA, the Supreme Court Civil Rules including 8-5, 10-1, 10-2, 10-4 and 14-1 and the inherent jurisdiction of this Court.

Part 4: MATERIAL TO BE RELIED ON


1. The Order of Mr. Justice Crerar, made February 5, 2020 herein.
2. The Order of Madam Justice Fitzpatrick, made May 25, 2020 herein
3. The Receiver's First Report.
4. Affidavit #2 Alex En Hwa Ng made June 5, 2020.

The applicant(s) estimate(s) that the application will take 1 day.
This matter is NOT within the jurisdiction of a master.

TO THE PERSONS RECEIVING THIS NOTICE OF APPLICATION: If you wish to respond to this notice of application, **you must, by June 16, 2020,**

- 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: June 8, 2020



Signature of lawyer for applicant(s)
Alan A. Frydenlund, Q.C.

To be completed by the court only:

Order made

in the terms requested in paragraphs _____ of Part 1 of this notice of application

with the following variations and additional terms:

Date: _____

Signature of [] Judge [] Master

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. H-200039
Vancouver Registry

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INC., MEDINA CONCRETE SERVICES LTD., TUCUVAN
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CORPORATION, SANDRA CHAPPELL, CREST CAPITAL
CORPORATION, DURHAM CAPITAL MANAGEMENT INC.,
YORK VENTURES LTD., HI-GROVE HOLDINGS (1995) LTD.,
DIANE RAUCH, JEFFREY RAUCH, GERHARD RAUCH, HELGA
RAUCH, PAVILION INVESTMENTS INC., RODNEY GRANT
KENYON, ALAN LONG and MANDATE MANAGEMENT
CORPORATION

NOTICE OF APPLICATION

OWEN BIRD LAW CORPORATION
P.O. Box 49130
Three Bentall Centre
2900 - 595 Burrard Street
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Attention: Alan A. Frydenlund, Q.C.
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