



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. ET AL

Respondents

NOTICE OF APPLICATION

Name(s) of applicant(s): Receiver and Manager, D. MANNING & ASSOCIATES INC. (the
"Receiver")

To: THE RESPONDENTS AND TO THEIR SOLICITORS

TAKE NOTICE that an application will be made by the applicant(s) to the presiding master at the courthouse at 800 Smithe Street, Vancouver, BC, V6Z 2E1 on THURSDAY, DECEMBER 17, 2020 at 9:45 a.m. by telephone conference and/or Microsoft Teams or as the court may direct for the order(s) set out in Part 1 below.

Part 1: ORDER(S) SOUGHT

1. An Order in the form attached as Schedule "A", approving the sale of a commercial unit being Strata Lot 29 in a condominium project located at 4223-4229 Hastings Street, Burnaby, British Columbia (the "Commercial Unit").

Part 2: FACTUAL BASIS

1. The Commercial Unit is located in a five storey multi-family condominium project in Burnaby, British Columbia. The condominium project contains a total of 28 residential

strata lots consisting of 27 residential units and 1 commercial strata lot, being the Commercial Unit in question (the "**Development**").

Receivership History

2. 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 the Property, pursuant to the Order of Mr. Justice Crerar pronounced February 5, 2020 (the "**Receivership Date**"). The Development including the Commercial Unit therein forms part of the Company's Property.
3. The Receivership Order authorizes the Receiver to, *inter alia*, market and sell the Company's Property and to apply for any orders necessary to convey the Company's Property of any part or parts thereof to a purchaser, free and clear of any liens or encumbrances.
4. As of the Receivership Date, there were 13 residential presale contracts for 14 of the residential units (one contract for 2 units contemplated combining 2 strata lots as one residential space) and one Pre-Sale contract for the Commercial Unit (the "**Pre-Sale Contracts**").
5. The Pre-Sale Contract for the Commercial Unit was for a purchase price in the amount of \$2,550,000 (\$2,500,000 net of improvements).
6. The Receiver was of the view that the Pre-Sale Contracts were at prices under market value and that the proceeds of realization would be substantially increased if the Pre-Sales Contracts were disclaimed and the units sold on the open market.
7. By way of an order granted by the Honourable Madam Justice Fitzpatrick on July 6, 2020 with written reasons for that order issued on July 7, 2020 the Receiver was authorized to, *inter alia*, disclaim the remaining 11 Pre-Sales Contracts and market and sell those units (the "**July 6 Order**").
8. The July 6 Order also directed the Receiver to offer the 10 residential units that were previously under Pre-Sale Contracts to the pre-sale purchasers at 92.5% of the price

recommended by Rennie Developer Services & Advisory, being a real estate services company retained by the Receiver to assist with marketing and selling the units (“**Rennie**”). The Commercial Unit was one of the units under a Pre-Sale Contract and pursuant to the July 6 Order, was offered for sale to the pre-sale purchaser for \$3,100,000.

9. In accordance with the July 6 Order the Receiver offered the remaining pre-sale units for sale to the pre-sale purchasers at the court directed prices, including the Commercial Unit. However the pre-sale purchaser of the Commercial Unit declined to purchase the Commercial Unit at that price.
10. On November 20, 2020 the Receiver obtained an Order pre-approving minimum sales prices of 24 of the units in the Development on the basis of valuations of those units by Rennie.
11. The November 20 Order did not pre-approve a minimum price for the Commercial Unit as the Receiver was in the process of negotiating a sale with prospective purchasers.
12. The strata title plan was registered at the Land Title Office on October 30, 2020, so titles have now been issued.
13. The Occupancy Permit is anticipated to be issued on or about December 11, 2020.

Marketing Efforts

14. Following the July 6 Order and the Receiver’s offers to the pre-sale purchasers pursuant thereto, on August 13, 2020 the Receiver entered into a Multiple Listing Contract with Rennie as the listing brokerage.
15. The Commercial Unit was listed for sale on the open market, by the Receiver for the purchase price of \$3,380,000 since August 17, 2020.
16. Two (2) offers were received and accepted by the Receiver to purchase the Commercial Unit prior to the subject offer. One was a conditional offer in the amount of \$3,100,000 dated September 30, 2020. The other was another conditional offer dated October 22, 2020 in the amount of \$3,300,000, less a tenant improvement allowance in the amount of

\$175,000 for a net total of \$3,125,000. Ultimately neither of these offerors removed conditions during the due diligence period and neither completed.

17. On November 23, 2020 the Receiver accepted an offer at \$3,120,000 from the current purchaser, Canadian Mr. Sweeper Inc. (the "**Purchaser**"). The conditions have been removed and the purchaser has paid 2 deposits, each in the amount of \$156,000.00 (the "**Contract**").
18. The stated completion date in the Contract is a date specified in a written notice from the Receiver to the Purchaser to be delivered to the Purchaser or the Purchaser's solicitor no later than that date which is between 2 and 60 days after the later of (i) the date that title to the Commercial Unit is issued in the Land Title Office, and (ii) the date that the Commercial Unit is ready to be occupied. The completion date will be a minimum of 10 business days (or as otherwise agreed between the parties) and no more than 30 days from the date of delivery of the notice.
19. The Contract is subject only to approval by the court.
20. At this time, there are no other competing offers with respect to purchasing the Commercial Unit.

Mortgages

21. The mortgages registered against title are as follows:
 - 1) Peoples Trust Company – Mortgage registered August 24, 2017 (CA6245585)
Amount: \$15,651,525 as at October 31, 2020, inclusive of the Receiver's advances under their mortgage of \$4,085,973.41, plus interest.
 - 2) Bancorp Growth Management Fund II Ltd., Bancorp Balanced Mortgage Fund II Ltd., Bancorp Financial Services Inc. – Mortgage registered August 24, 2017
Amount: \$4,534,965 as at September 30, 2020, plus interest and costs.
 - 3) 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.

Part 3: LEGAL BASIS

1. The factors that the court ought to consider in determining whether to approve a sale of assets by a receiver include:

- a) Whether the receiver made sufficient efforts to obtain the best price and did not act improvidently.
- b) The interests of all parties and, in particular, the interests of any secured creditors.
- c) The efficacy and integrity of the process by which offers were obtained.
- d) Whether there has been unfairness in the process.

Royal Bank v. Soundair Corp. (1991), 7 C.B.R. (3d) 1 (O.N.C.A.) [“*Soundair*”] at para 16

2. In order to protect the integrity of the sale process, the court generally gives deference to the receiver.

Soundair at para 14

Re Regal Constellation Hotel Ltd. (2004), 50 C.B.R. (4th) 258 (O.N.C.A.) at para 23

Corpfinance International Ltd. v. Earth Energy Utility Corp., 2006 BCSC 1994 at para 28

B.C. v. A & A Estates Ltd., 2000 BCCA 317 at para 40

3. The Receiver has undergone market analysis in conjunction with Rennie and Oakwyn Realty Commercial to determine commercially reasonable and appropriate market values for each of the units in the Development, including the Commercial Unit.

4. The purchase price of the Commercial Unit is net of all tenant inducements and is \$20,000 in excess of the price that was previously pre-approved by the Court by way of the July 6 Order.

5. The Commercial Unit was marketed and listed on the open market and sufficient opportunity was provided for other prospective purchasers to make offers and does not prejudice any other party.
6. Section 15 of the *Law and Equity Act*, R.S.B.C. 1996, c. 253; and
7. Rules 8-1, 13-2, 13-5, 14-1, and 21-7 of the Supreme Court Civil Rules.

Part 4: MATERIAL TO BE RELIED ON

1. Affidavits #2 and #7 of Alex En Hwa Ng, made June 5, 2020 and December 2, 2020, respectively;
2. The Receivership Order pronounced herein on February 5, 2020; and
3. Receiver's First Report, Made April 16, 2020.

The Receiver estimates that the application will take 5 minutes.

This matter is within the jurisdiction of a master.

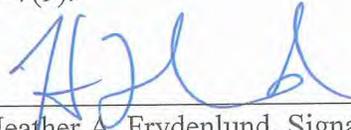
This matter is not within the jurisdiction of a master.

TO THE PERSONS RECEIVING THIS NOTICE OF APPLICATION: If you wish to respond to this notice of application, you must, 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: December 3, 2020.



 Heather A. Frydenlund, Signature of lawyer for
 applicant(s), Receiver and Manager, D.
 MANNING & ASSOCIATES INC.

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"

FORM 35 (RULES 8-4(1), 13-1(3), 17-1(2) AND 25-9(2))

No. H 200039
Vancouver Registry

IN THE SUPREME COURT OF BRITISH COLUMBIA

BETWEEN:

PEOPLES TRUST COMPANY

Petitioner

AND:

CENSORIO GROUP (HASTINGS & CARLETON)
HOLDINGS LTD. ET AL

Respondents

**ORDER MADE AFTER APPLICATION
(ORDER APPROVING SALE)**

BEFORE) MASTER) ◆, THE ◆ DAY OF
) _____) DECEMBER, 2020
))

ON THE APPLICATION of D. MANNING & ASSOCIATES INC. (the "Receiver") coming on for hearing on this day at Vancouver, British Columbia, and on hearing HEATHER A. FRYDENLUND, counsel for the Receiver, and no-one else appearing, although given notice in accordance with the Rules of the Court, and on reading the materials filed herein:

THIS COURT ORDERS THAT:

1. The sale of the following the lands and premises:

City of Burnaby

Parcel Identifier: 031-227-902

Strata Lot 29 District Lot 121 Group 1 NWD Strata Plan EPS5728

(the "Lands")

to CANADIAN MR. SWEEPER INC., Inc. No. BC0141100, of #901 – 1788 West Broadway, Vancouver, BC V6J 1Y1, or if amended or assigned by the purchaser and agreed to by the Receiver, as set out in a letter from the solicitors for the Receiver, on the terms and conditions set out in the Contract of Purchase and Sale dated November 20, 2020 and accepted November 23, 2020 for the sum of \$3,120,000.00 is hereby approved.

2. Upon filing a certified copy of this Order in the New Westminster Land Title Office together with a letter from the Receiver's solicitor authorizing such registration and subject to the terms of this Order, the Lands be conveyed to and vest in the purchaser, CANADIAN MR. SWEEPER INC, in fee simple, free and clear of any estate, right, title, interest, equity of redemption, and other claims of the parties, except the reservations, provisos, exceptions, and conditions expressed in the original grant(s) thereof from the Crown.

3. The dates for completion, adjustment and possession be set at 14 days following the issuance of an Occupancy Permit or so soon before or so soon thereafter as the Receiver and the purchaser shall agree.

4. The net purchase price after adjustments shall be paid to OWEN BIRD LAW CORPORATION, in trust, and shall be paid out in accordance with the following priorities without further order:

- a) in payment of any outstanding property taxes, water and sewer rates;
- b) in payment of real estate commission and GST, if payable;
- c) to The Owners, Strata Plan EPS5728, the amount appropriately due pursuant to Section 116 of the *Strata Property Act*;
- d) GST, if payable;
- e) to the Receiver to the credit of this proceeding.

5. For the purpose of issuing title and in respect of the Lands, the following charges, liens, encumbrances, caveats, mortgages, and certificates of pending litigation be cancelled insofar as they apply to the Lands:

RESPONDENTS	NATURE OF INTERESTS	REGISTRATION NUMBERS
PEOPLES TRUST COMPANY	Mortgage	CA6245585
	Assignment of Rents	CA6245586
	Certificate of Pending Litigation	CA7994287
	Certificate of Pending Litigation	CA7996226
BANCORP GROWTH MORTGAGE FUND II LTD., BANCORP BALANCED MORTGAGE FUND II LTD. and BANCORP FINANCIAL SERVICES INC.	Mortgage	CA6245684 modified by CA7557828
	Assignment of Rents	CA6245685 modified by CA7557829
PK CAPITAL LTD.	Mortgage	CA7219414
	Assignment of Rents	CA7219415
ALL CANADIAN INVESTMENT CORPORATION	Certificate of Pending Litigation	CA7750158
FBM CANADA GSD, INC.	Claim of Builders Lien	CA7847746
MEDINA CONCRETE SERVICES LTD.	Claim of Builders Lien	CA7883860
TUCUVAN CONSTRUCTION LTD.	Claim of Builders Lien	CA7914853
OMNI DRYWALL LTD.	Claim of Builders Lien	CA7929493
1223293 B.C. LTD.	Claim of Builders Lien	CA7992704
RAHUL GLASS LTD.	Claim of Builders Lien	CA7995006

together with any other charges, liens, encumbrances, caveats, mortgages, or certificates of pending litigation registered against the Lands subsequent to 11:33 am on January 23, 2020 being the time and date of the registration of the Petitioner's Certificate of Pending Litigation No. CA7996226 which had been released to permit registration of the Strata Plan herein.

6. The parties may apply for such further direction as may be necessary to carry out this Order.

7. Endorsement of this Order by Counsel appearing on this application other than the Receiver is dispensed with.

THE FOLLOWING PARTIES APPROVE 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 Heather A. Frydenlund
lawyer for Receiver and Manager,
D. MANNING & ASSOCIATES INC.

REGISTRAR

No. H-200039
Vancouver Registry

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COLUMBIA**

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Respondents

**ORDER MADE AFTER APPLICATION
(ORDER APPROVING SALE)**

OWEN BIRD LAW CORPORATION
P.O. Box 49130
Three Bentall Centre
2900 - 595 Burrard Street
Vancouver, BC V7X 1J5
Attention: Heather A. Frydenlund
File No. 23024-0093

No. H-200039
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NOTICE OF APPLICATION

OWEN BIRD LAW CORPORATION

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