FORM 32 (RULE 8-1(4))

VANCOUVER
MAY 13 2026
REGISTRY

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

NOTICE OF APPLICATION – VESTING ORDER

SCSS

Names of applicant: D. MANNING & ASSOCIATES INC. IN ITS CAPACITY AS RECEIVER AND MANAGER OF THE PROJECT (THE "RECEIVER")

To: **The Respondents**

TAKE NOTICE that an application will be made by the Applicant to the ~~presiding judge or associate judge~~ Honourable Mr. Justice Milman at the courthouse at the Law Courts, 800 Smithe Street, Vancouver, British Columbia V6Z 2E1 on June 2, 2026 at ~~9:45~~ 9:00 a.m. for the orders set out in Part 1 below.

The applicant estimates that the application will take ~~30~~ 45 minutes.

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

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21420 S253365

Part 1: ORDERS SOUGHT

1. An order substantially in the form attached as Schedule "A", or as the court may otherwise order, approving the sale of the Lands (as defined below).

Part 2: FACTUAL BASIS

Lands

1. These are receivership proceedings. The subject property is an uncompleted multi unit residential development, located in Kimberley, B.C. (the "Project"), and has the following legal description:

   PARCEL IDENTIFIER: 031-836-780
   LOT 1 DISTRICT LOT 2378
   KOOTENAY DISTRICT PLAN EPP124173

   (the "Lands").

2. The petitioner is the holder of a first mortgage and assignment of rents registered against title to the Lands under numbers CB383780 and CB383781 (the "Mortgage"). In related foreclosure proceedings, on January 30, 2026, the petitioner obtained order nisi, with a redemption amount of over $22,373,943.87 as at January 30, 2026, plus interest and costs.

3. The history of these proceedings are set out in the Affidavits and receiver reports filed herein.

Listing, Marketing and the Subject Offer

4. The petitioner applied for and obtained an order on January 30, 2026, giving the receiver the power of sale of the Lands, effective March 2, 2026.

5. On March 5, 2026, the Receiver entered into a listing agreement for the Lands with NAI Commercial (BC) Ltd. (the "Listing Agent").

6. A history of listing of the Lands is set out in the Affidavit of Vincenzo Caputo, filed herein.

7. The Lands were marketed via the internet, social media, websites and viewings, and the postings have generated over two thousand views.

8. The Listing Agent set up a virtual data room containing relevant documents.

9. Fourteen interested parties have entered into confidentiality agreements with regard to the data room.

10. Four tours of the Property have taken place, with one scheduled.

11. Two offers were received on the Lands. One was at $6,000,000 and was not accepted. The agreement that is before the Court was made on April 27, 2026, at $7,000,000 by 2594335 Alberta Ltd. The receiver countered at $7,500,000 and on April 28, 2026, the parties agreed on those terms.

12. By way of an assignment dated May 8, 2026, 2594335 Alberta Ltd. assigned the purchase contract to 500-305 ST. KIMBERLEY INC., which assignment has been consented to by the Receiver.

13. There is some urgency to completing the sale. There are building permits which are scheduled to expire at the end of June 2026, unless work on the project recommences in June. Expiry of the permits has the potential for damaging the viability of the Project.

14. The contract is unconditional other than court approval. The $750,000 deposit is held by the Listing Agent.

15. The Lands have been extensively marketed, and the current offer is the best received to date.

Continued Marketing of the Lands

16. The Listing Agent will continue to actively market the property until a contract of purchase and sale has been approved by the court.

17. All interested parties will be informed of the hearing date and the opportunity to submit competing bids.

Part 3: LEGAL BASIS

18. It is essential on any court ordered sale that the subject property be properly exposed to the market.

Fright v. Fright, 1996 CanLII 10205 (BCCA)

19. The court exercises its discretion in deciding a sale approval application. A party seeking court approval of a sale must show that marketing efforts were conducted in a businesslike manner and that the sale would be provident in all of the circumstances A "provident" sale does not require that "market value" be achieved or the best possible price obtained. The market recognizes the "forced sale" nature of foreclosures and often expects a price discount.

Dundarave Mortgage Investment v. AAPNA Real Estate Mortgage, 2022 BCSC 1624 at paras 83 to 86

20. A sale at undervalue may be provident in the circumstances provided that the mortgagee acted in good faith and took reasonable precautions to obtain a proper price. As held by our Court of Appeal in *J & W Investments Ltd. v. Black* (1963), 1963 CanLII 471 (B.C.C.A.), 38 D.L.R. (2d) 251 at 262:

> ... the mortgagee has an interest and the right to protect that interest by selling to realize the moneys due, notwithstanding such sale may be at an undervalue, provided always that he exercises such power of sale "in good faith, without any intention of dealing unfairly by his mortgagor" ... That is so stated in Farrar v. Farrars Ltd., [(1888) 40 Ch. D. 395] by Lindley, L.J., at pp. 410-1, as follows:

> A mortgagee is under obligations to the mortgagor, but he has rights of his own which he is entitled to exercise adversely to the mortgagor. A trustee for sale has no business to place himself in such a position as to give rise to a conflict of interest and duty. But every mortgage confers upon the mortgagee the right to realize his security and to find a purchaser if he can, and if in exercise of his power he acts bona fide and takes reasonable precautions to obtain a proper price, the mortgagor has no redress, even although more might have been obtained for the property if the sale had been postponed ...

21. The proposed sale is provident in the circumstances and, subject to the submission of a superior competing bid, ought to be approved.

22. The petitioner relies on s. 15 of the *Law and Equity Act*, R.S.B.C. 1996, c. 253 and Rules 6-2, 21-7(5), 21-7(7) and 22-1(4) of the *Supreme Court Civil Rules*.

Part 4: MATERIAL TO BE RELIED ON

1. Affidavit #1 of Vincenzo Caputo, sworn May 7, 2026.
2. The report of the receiver, dated May 8, 2026.
3. The pleadings filed herein.
4. Such further and other material as counsel shall advise and this Honourable Court permits.

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: May 13, 2026

Signature of Jonathan L. Williams, lawyer for the applicant

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
[ ] 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, DOUGLAS HOWG doing business as STP PAINTING, JOHN DOE AND ALL TENANTS OR OCCUPIERS OF THE SUBJECT LANDS AND PREMISES

Respondents

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ORDER MADE AFTER APPLICATION
(ORDER APPROVING SALE)

BEFORE) MISTER JUSTICE MILMAN) 2/JUN/2026
))

The application of the petitioner, coming on for hearing on June 2, 2026, at 800 Smithe Street, Vancouver, BC, and upon hearing, Jonathan Williams, counsel for the petitioner, and no one else appearing although duly served, and on reading the material filed, and with reasons for judgment being reserved until today:

THIS COURT ORDERS THAT:

1. The sale of the following lands and premises:

   PARCEL IDENTIFIER: 031-836-780
   LOT 1 DISTRICT LOT 2378
   KOOTENAY DISTRICT PLAN EPP124173

   (the "Lands")

to 500-305 ST. KIMBERLEY INC. (the "Purchaser"), or if amended or assigned by the Purchaser and agreed to by the petitioner, as set out in a letter from the solicitors for the petitioner, on the terms and conditions set out in the contract of purchase and sale dated April 28, 2026, and assigned to the Purchaser on May 8, 2026, for the sum of $7,500,000.00, is hereby approved.

2. Upon filing a certified copy of this order in the Land Title Office together with a letter from the petitioner's solicitor authorizing such registration and subject to the terms of this order, the Lands be conveyed to and vest in the Purchaser in fee simple, free and clear of any estate, right, title, interest, equity of redemption, and other claims of the parties, excepting only the reservations, provisos, exceptions, and conditions expressed in the original grant(s) thereof from the Crown.

3. The date for completion, adjustment and possession be set 14 business days after court approval or so soon before or so soon thereafter as the petitioner 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, interest and penalties thereon;

   b) in payment of any real estate commission of 3.00% percent plus GST to be paid from the proceeds of the gross selling price;

   c) GST, if payable;

   d) the balance then remaining of the proceeds of the sale to Peoples Trust Company.

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:

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RESPONDENTS	NATURE OF INTEREST	REGISTRATION NUMBER
MacKay Contracting Ltd.	Claim of lien	CB1826406
Kulkon Construction Corp.	Claim of lien	CB1876435
1111053 BC Ltd., dba JJ Mechanical	Claim of lien	CB1921687
Gauer Power Ltd.	Claim of lien	CB1927320
Riverview Custom Homes Ltd.	Claim of lien	CB1927469
IKA Builders Inc.	Claim of lien	HB12546
Westcastle Holdings Ltd.	Claim of lien	CB1939465
689048 Alberta Limited	Claim of lien	CB1944843
Steven Douglas Howg	Claim of lien	HB13198
WSP Canada Inc.	Claim of lien	CB2034386
Kulkon Construction Corp.	Certificate of pending litigation	CB2045728
South-Way Equipment Rental Ltd.	Claim of lien	HB14261
1111053 BC Ltd., dba JJ Mechanical	Certificate of pending litigation	CB2066336

together with any other charges, liens, encumbrances, caveats, mortgages, or certificates of pending litigation registered against the Lands subsequent to charge number CB2353343.

6. The respondent, Peak Developments Corp., or any person or persons on behalf of the said respondent, including any tenants or occupants of the Lands, shall immediately deliver up to the petitioner, PEOPLES TRUST COMPANY or to who it shall appoint in writing, possession of the Lands. If the said respondent, or any person claiming by through or under them, including without limitation, any tenants or occupants of the Lands, fails to deliver up vacant possession to the petitioner immediately, then the petitioner may apply to the Registrar for a writ of possession under Rule 13-2(13) without further order.

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

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.

BY THE COURT

Signature of Jonathan Williams, lawyer for the applicant PEOPLES TRUST COMPANY

REGISTRAR

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SCHEDULE "A"

No. S253365
Vancouver Registry

In the Supreme Court of British Columbia

Between

PEOPLES TRUST COMPANY/COMPAGNIE DE FIDUCIE PEOPLES

Petitioner

And:

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Respondents

ORDER MADE AFTER APPLICATION
(ORDER APPROVING SALE)

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Attention: Jonathan L. Williams
File No. 23024-0139
(HL Litigation)

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