



FORCE FILED
FORM 32 (RULE 8-1(4))

No. H 200252
Vancouver Registry

IN THE SUPREME COURT OF BRITISH COLUMBIA

BETWEEN:

VANCOUVER CITY SAVINGS CREDIT UNION

Petitioner

And

371392 B.C. LTD.
371392 B.C. LTD. doing business as DIAMOND HEAD MOTOR
INN and DIAMOND HEAD MOTEL
1134365 B.C. LTD.
H.D.P. HOLDINGS INC.
FARHEEN RAWJI
DIPTI PANCHAL
HITESH PANCHAL
ALL TENANTS AND OCCUPIERS OF THE SUBJECT
LANDS

Respondents

NOTICE OF APPLICATION

Name of applicant: **D. MANNING & ASSOCIATES INC.**, Court Appointed Receiver and Manager (“Receiver”) of 371392 B.C. Ltd. (“Debtor”).

To: THE PETITIONER, THE RESPONDENTS AND TO THEIR SOLICITORS

TAKE NOTICE that an application will be made by the Receiver to the presiding JUDGE at the courthouse at 800 Smithe Street, Vancouver, BC, FRIDAY, MARCH 11, 2022, at 9:45 a.m. by 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 of draft Order attached to this Notice of Application as Schedule “A”, approving the Receiver’s activities, summarily passing the Receiver’s accounts and discharging the Receiver.

Part 2: FACTUAL BASIS

1. By Order of the Court made June 24, 2020 D. Manning & Associates Inc. (the “Receiver”) was appointed as Receiver and Manager, of all of the assets, undertakings and property of the Respondent, 371392 B.C. Ltd. (the “Debtor”), including all proceeds thereof (the “Receivership Order”).
2. The sole asset of the Debtor was a motel located in Mission, B.C. on lands legally described as:
PID 003-439-411
Lot 114: Except Part Road on Plan 87258,
District Lot 165, Group 3 New Westminster District Plan 64278
(the “Lands”).
3. The Debtor was the registered owner of the Lands.
4. The Receivership Order was sought and granted on the basis of, *inter alia*, a stalemate arising between the Directors of the Debtor with respect to the ownership and control of Debtor.
5. As at the Receivership Date, there was extant litigation that had been commenced by way of a Petition filed on May 20, 2020 by Ms. Farheen Rawji, one of the two Directors of the Debtor, and her company (1134365 B.C. Ltd. (“113”)), naming the other Director of Debtor, Mr. Hitesh Panchal, his company (H.D.P. Holdings Inc. (“HDP”)) and the Debtor as Respondents (the “Extant Litigation”).
6. At the hearing of the application for the Receivership Order it was anticipated:
 - a) That the Debtor would refinance the Lands and retire the indebtedness owed to the Petitioner (approximately \$1,806,490.58 as of November 19, 2020 plus interest).

- b) That the Extant Litigation between the parties relative to the ownership and control of the Debtor would continue.
7. The Receivership Order authorized the Receiver to, *inter alia*, apply for vesting orders to convey portions of the Lands of the Debtor, but did not grant the Receiver with conduct of sale of the Lands or with the authority to enter into listing agreements and undertake measures to market the Lands.
 8. As outlined in the Receiver's First and Second Reports, dated August 19, 2020 and October 13, 2020, respectively, Mr. Hitesh Panchal, a Director of the Debtor, was making attempts to refinance, however those attempts had not been successful.
 9. Due to it appearing that the refinancing was not going to come through and it also seeming unlikely that a settlement would be achieved amongst the directors of the Debtor, given that the Extant Litigation over the ownership and control of the Debtor, the Receiver made an application on November 6, 2020 for conduct of sale over the Lands.
 10. By Order of this Court made November 6, 2020, the Receivership Order was enhanced to grant the Receiver powers to market and sell the Lands, effected December 1, 2020.
 11. In accordance with the Receivership Order as enhanced, the Receiver offered and advertised the Lands for sale in December, 2020.
 12. The Lands were sold pursuant to a Court Order approving the sale dated January 15, 2021.
 13. The petitioner, being the first and only mortgage holder on title to the Lands was paid out in full from the proceeds of the sale of the Lands. There were no other interests registered on title to the Lands.
 14. At the time of the sale, the Extant Litigation was still outstanding and related to disputed claims as to the entitlement to the proceeds after payment to the petitioner.

15. At the time of the sale, four (4) additional actions had been brought, subsequent to the Receivership Order being granted, each involving at least one of each of the Debtor, a Director of the Debtor, 113 or HDP (collectively, the “**Additional Litigation**”).
16. As a result of the Extant Litigation and the Additional Litigation having not been resolved at the time of the sale and potentially impacting the entitlement of the funds flowing from the sale of the Lands, and the Receiver remains in possession of surplus funds in the amount of \$293,224.53 held as a cash balance as at February 28, 2022 (the “**Surplus Funds**”).
17. The Receiver remained in place pending the resolution of the Extant Litigation and Additional Litigation, which have now all been resolved.
18. The Receiver’s fees and disbursements from June 17, 2020 to April 30, 2021 amount to \$242,593.37, as summarized at Schedule “**E**” to the Receiver’s Third Report, made May 7, 2021 (the “**Third Report**”).
19. The Receiver’s fees and disbursements from May 1, 2021 to completion amount to \$64,345.04, as summarized at Schedule “**B**” to the Receiver’s Fourth and Final Report, made February 24, 2022 (the “**Fourth Report**”).
20. The Receiver’s legal counsel’s fees and disbursements from June 24, 2020 to April 30, 2021 amount to \$92,276.48 as summarized at Schedule “**F**” of the Receiver’s Third Report.
21. The Receiver’s legal counsel’s fees and disbursements from May 1, 2021 to February 23, 2022 amount to \$11,357.71 as summarized at Schedule “**C**” of the Receiver’s Fourth Report.
22. The Receiver’s legal counsel’s fees and disbursements from Nordel Law Group LLP amount to one bill in the amount of \$560.00, dated September 23, 2020 as summarized at Schedule “**C**” of the Receiver’s Fourth Report.

23. The Receiver requests a holdback in the total amount of \$10,000 the Receiver's anticipated legal fees for work yet to be completed, including the costs of bringing this application.
24. The Receivership Order provides for the summary passing of its accounts before a Justice of this Court.

Part 3: LEGAL BASIS

1. Section 15 of the *Law and Equity Act*, R.S.B.C. 1996, c. 253;
2. The Receivership Order, as enhanced; and
3. Rules 10-2 of the Supreme Court Civil Rules.

Part 4: MATERIAL TO BE RELIED ON

1. Affidavits #1 of Alex En Hwa Ng, made February 28, 2022;
2. Affidavit #1 of Alan Frydenlund, made February 28, 2022;
3. The Receiver's Third Report, dated May 7, 2021;
4. The Receiver's Fourth Report, dated February 24, 2022;
5. The Receivership Order, as enhanced.

The Receiver estimates that the application will take 5 minutes.

This matter is within the jurisdiction of a Master.

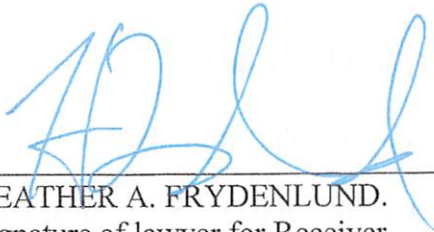
This matter is not within the jurisdiction of a Master.

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: February 28, 2022



 HEATHER A. FRYDENLUND.
 Signature of lawyer for Receiver

<i>To be completed by the court only:</i>	
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 <input type="checkbox"/> Judge <input type="checkbox"/> 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

SCHEDULE "A"

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ORDER MADE AFTER APPLICATION

(ORDER DISCHARGING RECEIVER)

BEFORE THE HONOURABLE)
)
_____ JUSTICE _____)

FRIDAY, MARCH 11, 2022

THE APPLICATION of D. MANNING & ASSOCIATES INC., in its capacity as court-appointed Receiver and Manager (the "Receiver") of 371392 B.C. Ltd. (the "Debtor"), coming on for hearing at Vancouver British Columbia on the 11 day of March, 2022 by MS Teams; AND ON HEARING Heather A. Frydenlund, counsel for the Receiver, and no one else appearing, though duly served; AND UPON READING the material filed, including the Third

Report of the Receiver dated May 7, 2021 (the “**Receiver’s Third Report**”) and the Fourth and Final Report of the Receiver dated February 24, 2022 (the “**Receiver’s Fourth Report**”);

THIS COURT ORDERS AND DECLARES THAT:

1. The Receiver’s interim statement of cash receipts and disbursements for the period June 24, 2020 to February 24, 2022 as set out in the Receiver’s Third Report and the Receiver’s Fourth Report are hereby approved.
2. The activities of the Receiver as set out in the Receiver’s Third Report and the Receiver’s Fourth Report are hereby approved.
3. The fees and disbursements of the Receiver, as set out in the Receiver’s Third Report and the Receiver’s Fourth Report for the period June 17, 2020 to February 24, 2022, are hereby approved.
4. The fees and disbursements of the Receiver’s legal counsel, Owen Bird Law Corporation, as set out in the Receiver’s Third Report and the Receiver’s Fourth Report for the period June 24, 2020 to February 23, 2022, are hereby approved.
5. The fees and disbursements of the Receiver’s legal counsel, Nordel Law Group LLP, as set out in the Receiver’s Fourth Report, for September 23, 2020, is hereby approved.
6. The Receiver is authorized to pay any further GST refunds received by it to the Debtor, 371392 B.C. Ltd., without further order of this Court.
7. A holdback in the amount of \$10,000 as set out in the Receiver’s Fourth Report is hereby approved. The Receiver is entitled to use these funds to pay the Receiver’s legal counsel’s fees without further order of this Court.

8. All surplus funds held by the Receiver after making holdback referenced above, are to be paid to Owen Bird Law Corporation, in trust.
9. After payment of the fees and disbursements, maintaining the holdback and providing the surplus funds to Owen Bird Law Corporation as herein approved, the Receiver shall be discharged as Receiver of the assets, undertaking and property of the Debtor, provided that notwithstanding its discharge herein: (a) the Receiver shall remain Receiver for the performance of such incidental duties as may be required to complete the administration of the receivership herein; and (b) the Receiver shall continue to have the benefit of the provisions of all Orders made in this proceeding, including all approvals, protections and stays of proceedings in favour of D. Manning & Associates Inc. in its capacity as Receiver.
10. Notwithstanding any provision herein, this Order shall not affect any person to whom notice of these proceedings was not delivered as required by the *Bankruptcy and Insolvency Act* and regulations thereto, any other applicable enactment or any other Order of this Court.

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:

Signature of lawyer for the Receiver,
Heather A. Frydenlund

By the Court.

Registrar

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**ORDER MADE AFTER APPLICATION
(ORDER DISCHARGING RECEIVER)**

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. 23024-0095

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