



No. S214960  
Vancouver Registry

**IN THE SUPREME COURT OF BRITISH COLUMBIA**

BETWEEN:

ADC PROJECTS LTD.

Petitioner

And

JEANA VENTURES LTD. and 1103 GILSTON ROAD HOLDINGS INC.

Respondents

**NOTICE OF APPLICATION**

**Name of applicant:** D. Manning & Associates Inc., the Court appointed Receiver Manager of 1103 Gilston Road Holdings Inc. (the “Receiver”)

To: THE SERVICE LIST

TAKE NOTICE that an application will be made by the Receiver to the presiding JUDGE at the courthouse at 800 Smithe Street, Vancouver, BC, January 31, 2023, at 9:45 a.m. 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”, or as the court may otherwise order, directing that certain funds be held in trust by counsel, approving the Receiver’s activities, summarily passing the Receiver’s accounts and discharging the Receiver.

## Part 2: FACTUAL BASIS

### Background

1. D. Manning & Associates Inc. was appointed Receiver Manager (the “**Receiver**”) in respect of the assets, undertakings and property of 1103 Gilston Road Holdings Inc. (the “**Company**”) relating to the Company’s property, pursuant to the Order of Madam Justice Horsman pronounced August 4, 2021 (the “**Receivership Order**”).
2. The Receivership Order was granted due to a deadlock between the shareholders of the Company, being the petitioner, ADC Projects Ltd. (“**ADC**”) and the respondent, Jeana Ventures Ltd. (“**Jeana**”).
3. At the time the Receivership Order was granted, the Company’s only asset was lands consisting of a completed new residential home, containing in it chattels and fixtures, and legally described as follows:

PID: 002-841-231

LOT 20 BLOCK 34 CAPILANO ESTATES PLAN 9111

(the “**Lands**”).

4. The Company was the registered owner of the Lands.
5. The Receivership Order authorizes the Receiver to, *inter alia*, market the Lands and negotiate such terms and conditions of sale as the Receiver considers appropriate, to sell the Property as directed by and with approval of the Court, and to apply for any vesting order required to convey the Property free and clear of any liens or encumbrances.
6. On April 14, 2022 the Receiver accepted an offer to purchase the Lands from Li Mei Zhou for \$6,300,000 plus GST and inclusive of the furniture in the property. On the basis of that contract, the Receiver filed an application to approve that sale on May 11, 2022, returnable May 30, 2022 (the “**Sale Approval Application**”).

7. The Sale Approval Application was adjourned and ultimately heard on June 17<sup>th</sup> and 20<sup>th</sup>, 2022 by Master Hughes. The Receiver conducted a competitive bid process and ultimately Master Hughes approved the offer from 1364286 B.C. Ltd. in the amount of \$7,200,626, not including furniture, with a closing date of July 7, 2022 (the “**Sale Approval Order**” and the “**Closing Date**”).
8. The sale closed on the Closing Date.

### **Secured Creditors and Payouts**

9. At the time the Approval Order was granted, there were eight (8) financial encumbrances registered against title to the Lands, being four (4) mortgages and four (4) claims of builders liens, as follows:

<b>Charge Holder</b>	<b>Nature of Charge</b>
Wealth One Bank of Canada (“ <b>Wealth One</b> ”)	1 <sup>st</sup> Mortgage and Assignment of Rents
Gino Muoio Holdings Inc. and Charles Funaro	2 <sup>nd</sup> Mortgage and Assignment of Rents
Jeana Ventures Ltd.	3 <sup>rd</sup> Mortgage
Griff Building Supplies Ltd.	Claim of Builders Lien
Aloha Pools Ltd.	Claim of Builders Lien
ADC Holdings Ltd. (“ <b>Holdings</b> ”)	4 <sup>th</sup> Mortgage
Open Windows Inc.	Claim of Builders Lien
Westfloors Ltd.	Claim of Builders Lien

10. From the proceeds of the sale of the Lands, the following payments were made:
- i) Wealth One, payment of its mortgage in full of principal and interest - \$2,702,784.26;
    - \$115,000 in its claimed legal costs is being held back by the Receiver, pending a taxation, or settlement
  - ii) Gino Muoio Holdings Inc., and Charles Funaro, payment of its mortgage in full and legal costs - \$720,726.22;
  - iii) Jeana, partial payment towards its mortgage - \$2,435,100.00;
  - iv) Receiver's borrowings - \$50,000;
  - v) Interest on Receiver's borrowings - \$3,431.35; and
  - vi) Holdings, maintenance costs, utilities, repairs and maintenance, final occupancy permit fee, insurance premiums, sundry costs to assist in obtaining occupancy permit.
11. When the distributions from the sale of the Lands were made, the first two mortgage holders were paid out in full, and Jeana holding the third mortgage was only partially able to be paid out leaving an outstanding balance of approximately \$1,006,000 at that time. Subsequent to the distribution from the sale of the Lands, a further \$400,000 was paid to Jeana on account of its mortgage and currently approximately \$606,000 remains outstanding.

**Holdback – Wealth One Legal Fees**

12. Jeana has advised the Receiver that it wishes to have the Wealth One legal fees taxed and accordingly the Receiver has maintained a holdback in the amount of \$115,000 on account of the Wealth One legal fees. Any amount deducted from the Wealth One legal fees would be paid to Jeana on account of its mortgage.

13. Wealth One is represented by Borden Ladner Gervais LLP (“**BLG**”) in these Receivership Proceedings.
14. Jeana has been primarily represented by Nathanson, Schachter & Thompson LLP (“**NST**”) throughout the Receivership Proceedings but has also been represented by Singleton Reynolds (“**Singleton**”) prior to the Receivership Proceedings and some minor involvement variously throughout the Receivership Proceedings.
15. Singleton is currently in the process of negotiating the Wealth One fees with BLG on behalf of Jeana.
16. The Receiver is seeking a direction from the Court that the Wealth One fees holdback of \$115,000 be held by either NST or Singleton, until that issue has settled, and that either NST or Singleton deal with the taxation or settlement on behalf of Jeana, rather than the Receiver and its counsel to reduce receivership costs.

#### **Holdback - and Agreed Chattels**

17. As described above, the Receivership Order was granted due to a deadlock between the shareholders of ADC and Jeana. ADC is controlled by Mr. Phil Garrow and Jeana is controlled by Mr. Les Sallay.
18. Holdings is a company controlled by Mr. Phil Garrow. Holdings held a fourth mortgage registered against title to the Lands. Holdings also has a general security agreement that is registered in first position as against the Company (the “**Holdings GSA**”).
19. Jeana disputes the enforceability of the Holdings GSA.
20. The sale of the Lands did not include furniture. Both Jeana and Holdings agree that the furniture are chattels (the “**Agreed Chattels**”).
21. While the enforceability of the Holdings GSA is in dispute, Jeana and Holdings agree that if the Holdings GSA is proven to be enforceable, its scope would cover the Agreed



Chattels. Accordingly, the Receiver held the Agreed Chattels in storage pending a decision on this issue.

22. As a result of the dispute between Jeana and Holdings over the Agreed Chattels, the Receiver made an Application to Court to have that issue resolved.
23. By way of Order dated September 2, 2022, Madam Justice Murray authorized the sale of the Agreed Chattels to Quantum Vacation Holdings Ltd. in the amount of \$16,500 plus GST and certain storage and insurance costs (the “**Agreed Chattels Order**”). That sale has now completed and the Receiver is holding \$16,500 in trust, pending a determination on the Holdings GSA enforceability issue (the “**Agreed Chattels Holdback**”).
24. There is extant litigation between Jeana, ADC and Holdings where the Holdings GSA is at issue. The Receiver is not part of the extant litigation.
25. The Receiver is requesting a direction from the Court that either NST or Singleton hold the Agreed Chattels Holdback until the Holdings GSA issue has been resolved, to reduce receivership costs.

#### **Holdback – Deposit Refund**

26. The Receiver is holding a deposit refund from the District of West Vancouver in the amount of \$5,016.49 (the “**Deposit Refund**”). Holdings claims a security interest in the Deposit Refund on account of the Holdings GSA. As the enforceability of the Holdings GSA is in dispute, Jeana and Holdings dispute who is entitled to the Deposit Refund.
27. There is extant litigation between Jeana and ADC and Holdings that will resolve the Deposit Refund issue. The Receiver is not part of the extant litigation.
28. The Receiver is requesting a direction from the Court that either NST or Singleton hold the Deposit Refund pending a determination of that issue to reduce receivership costs.

## **Fees, Disbursements and Directions**

29. The Receiver's fees and disbursements from October 1, 2022 to December 20, 2022 amount to \$10,578.14, as summarized at Schedule "C" to the Receiver's Sixth Report, January 4, 2023 (the "**Sixth Report**").
30. The Receiver's legal counsel's fees and disbursements from September 13, 2022 to December 19, 2022 amount to \$9,431.27 as summarized at Schedule "D" of the Receiver's Sixth Report.
31. The Receiver's receipts and disbursements from October 18, 2022 to December 21, 2022 amount to \$282,771.38 as summarized at Schedule "B" of the Receiver's Fifth Report.
32. The Receivership Order provides for the summary passing of its accounts before a Justice of this Court.
33. The Receiver's duties in these Receivership Proceedings are completed, with the exception of some incidental tasks that can be completed subsequent to the Receiver's discharge, such as making payment of legal fees and distributing surplus funds to Jeana, as described in more detail in the Receiver's Sixth Report.
34. Jeana is the one party affected by the Wealth One legal fees and its counsel is already in the process of negotiating with BLG and is familiar with that issue. Accordingly, in order to avoid the Receiver's and its legal counsel's fees to continue to accrue and be involved with the Wealth One taxation, the Receiver submits that it is most appropriate to have Jeana's legal counsel handle this issue.
35. The Receiver submits that it is appropriate to have Jeana's counsel retain the various holdback amounts pending a determination on those issues, rather than continue to have the Receiver involved simply to hold funds.

**Part 3: LEGAL BASIS**

1. Sections 243 and 249 of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c B-3.
2. Section 15 of the *Law and Equity Act*, R.S.B.C. 1996, c. 253;
3. The Receivership Order; and
4. Rules 10-2 of the Supreme Court Civil Rules.

**Part 4: MATERIAL TO BE RELIED ON**

1. Affidavit #2 of Alex En Hwa Ng, made January 5, 2023;
2. Affidavit #2 of Alan Frydenlund, made December 30, 2022;
3. The Receiver's First Report, dated October 15, 2021;
4. The Receiver's Second Report, dated May 10, 2022;
5. The Receiver's Third Report, dated June 10, 2022;
6. The Receiver's Fourth Report, dated July 18, 2022;
7. The Receiver's Fifth Report, dated October 18, 2022;
8. The Receiver's Sixth Report, dated January 4, 2023;
9. The Receivership Order;
10. The Approval Order; and
11. The Agreed Chattels Order.

The Receiver estimates that the application will take 15 minutes.

This matter is within the jurisdiction of a Master.

This matter is not within the jurisdiction of a Master.

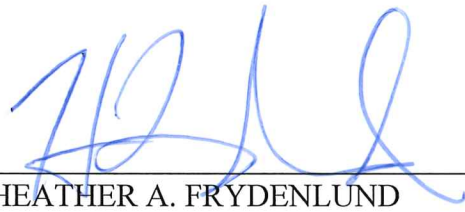
TO THE PERSONS RECEIVING THIS NOTICE OF APPLICATION: If you wish to respond to this notice of application, you must, within 5 business days after service of this notice of application or, if this application is brought under Rule 9-7, within 8 business days after service of this notice of application,

- 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: January 16, 2023



HEATHER A. FRYDENLUND  
Signature of lawyer for Receiver

***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

**SCHEDULE "A"**

No. S214960  
Vancouver Registry

**IN THE SUPREME COURT OF BRITISH COLUMBIA**

BETWEEN:

ADC PROJECTS LTD.

Petitioner

And

JEANA VENTURES LTD. and 1103 GILSTON ROAD  
HOLDINGS INC.

Respondents

**ORDER MADE AFTER APPLICATION**

**(ORDER DISCHARGING RECEIVER)**

BEFORE THE HONOURABLE )  
 ) January 31, 2023  
\_\_\_\_ JUSTICE \_\_\_\_\_ )

THE APPLICATION of D. MANNING & ASSOCIATES INC., in its capacity as court-appointed Receiver and Manager (the "**Receiver**") of 1103 Gilston Road Holdings Inc. (the "**Debtor**"), coming on for hearing at Vancouver British Columbia on the 31 day of January, 2023; 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 Sixth Report of the Receiver dated January 4, 2023 (the "**Receiver's Sixth Report**");

THIS COURT ORDERS AND DECLARES THAT:

1. The Receiver's interim statement of cash receipts and disbursements for the period October 18, 2022 to December 21, 2022 as set out in the Receiver's Sixth Report are hereby approved and the Receiver shall have no further liability in respect thereof.

2. The activities of the Receiver as set out in the Receiver's Sixth Report are hereby approved and the Receiver shall have no further liability in respect thereof.
3. The fees and disbursements of the Receiver, as set out in the Receiver's Sixth Report for the period October 1, 2022 to December 20, 2022, are hereby approved and the Receiver shall have no further liability in respect thereof.
4. The fees and disbursements of the Receiver's legal counsel, Owen Bird Law Corporation, as set out in the Receiver's Sixth Report for the period September 13, 2022 to December 19, 2022, are hereby approved and the Receiver shall have no further liability in respect thereof.
5. The Receiver is entitled to holdback \$15,000 of the Receiver's fees and disbursements to completion, and is entitled to use these funds for its fees without further Order of the Court (the "**Receiver's Holdback**").
6. The Receiver is entitled to holdback \$10,000 for Owen Bird Law Corporation's fees and disbursements to completion, and is entitled to pay these funds to Owen Bird Law Corporation without further Order of the Court (the "**OBLC Holdback**").
7. The holdback in the amount of \$115,000 (the "**Wealth One Holdback**") representing the legal fees of Wealth One Canada's ("**Wealth One**") legal counsel, shall be held in trust by Nathanson, Schachter & Thompson LLP ("**NST**") until either i) agreement between Wealth One and Jeana Ventures Ltd. ("**Jeana**") in writing; ii) a final determination of the taxation of the Wealth One account; or iii) further Court Order.
8. The holdback in the amount of \$16,500 representing the proceeds from the sale of the furniture previously contained at 1103 Gilston Road (the "**Agreed Chattels Holdback**"), shall be held in trust by NST until either i) agreement between Jeana and ADC Holdings Ltd. ("**Holdings**") in writing; or ii) further Court Order.



9. The holdback in the amount of \$5,016.49 representing a deposit refund from the District of West Vancouver with respect to 1103 Gilston Road (the “**Deposit Refund Holdback**”), shall be held in trust by NST until either i) agreement between Jeana and Holdings in writing; or ii) further Court Order.
10. The Receiver is not required to negotiate or pursue a taxation of the Wealth One legal fees and has no liability in respect thereof. Jeana is directed to use its own legal counsel to pursue a negotiation of and/or a taxation of the Wealth One legal fees.
11. After making payment of the Wealth One, Agreed Chattels and Deposit Refund Holdbacks as directed herein, and after retaining the Receiver’s and OBLC Holdbacks as directed herein, the Receiver shall make payment of the remaining funds to Jeana’s legal counsel on account of the third (3<sup>rd</sup>) mortgage previously held on 1103 Gilston Road.
12. After making payment of the Wealth One, Agreed Chattels and Deposit Refund Holdbacks, payment of the Receiver’s and OBLC’s fees and disbursements, and payment to Jeana as herein approved, the Receiver shall be discharged as Receiver of the assets, undertakings 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.
13. 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

No. S214960  
Vancouver Registry

---

---

**IN THE SUPREME COURT OF BRITISH  
COLUMBIA**

BETWEEN:

ADC PROJECTS LTD.

Petitioner

AND:

JEANA VENTURES LTD. and 1103 GILSTON ROAD HOLDINGS INC.

---

---

**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. 23024-0131

No. S214960  
Vancouver Registry

---

---

**IN THE SUPREME COURT OF BRITISH  
COLUMBIA**

BETWEEN:

ADC PROJECTS LTD.

Petitioner

AND:

JEANA VENTURES LTD. and 1103 GILSTON ROAD HOLDINGS INC.

---

---

**NOTICE OF APPLICATION**

---

---

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. 23024-0131