

11-May-22

REGISTRY

FORM 32 (RULE 8-1(4))

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 applicant to the presiding judge at the courthouse at 800 Smithe Street, Vancouver, BC V6Z 2E1 on May 30, 2022 at 9:45 a.m., by MS Teams or as the court may otherwise direct, for the order set out in Part 1 below.

Contact information for counsel to the applicant is as follows:

Email: hfrydenlund@owenbird.com

Telephone number: (604) 691-7532

Address: Owen Bird Law Corporation, 2900-595 Burrard St., Vancouver, B.C. V7X 1J5

Part 1: ORDER(S) SOUGHT

1. An approval and vesting order substantially in the form attached as **Schedule “A”**, or as the court may otherwise order, approving the sale of the following lands:

PID: 002-841-231

LOT 20 BLOCK 34 CAPILANO ESTATES PLAN 9111

(the “**Lands**”).

Part 2: FACTUAL BASIS

The Lands and Receivership History

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 Company’s only asset is the Lands, which is a completed new residential home.
3. 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.

History of Offers on the Lands Amir Hamzehali Listing

4. Prior to the Receivership date, the Lands were listed by Amir Hamzehali on June 6, 2020 at a list price of \$10,998,000, which list price was reduced on October 14, 2020 to \$9,980,000. During this listing an offer at \$7,104,762 was accepted on January 11, 2021. That deal ultimately collapsed as the occupancy permit was not issued by the completion date.

Paul Tan Listing

5. Still prior to the Receivership date on May 25, 2021 the Lands were listed by Paul Tan of Marine Vista Realty at a list price of \$9,288,000, plus GST. During this listing, there were 4 offers on the Lands, as follows:

Offer Date	Amount	Comments
June 3, 2021	\$7,108,000, plus GST and furnishings	Negotiations resulted in the buyer offering \$7,500,000 plus GST and furnishings which was not accepted by the seller. Offer made by Li Mei Zhou (“ Zhou ”)
June 17, 2021	\$7,750,000, plus GST	Offer once again made by Zhou. Prior to

	and furnishings	conditions being lifted, Zhou reduced her price to \$6,500,000 including GST and furnishings, and which time the Receiver chose to allow the Zhou offer to lapse
October 7, 2021	\$6,100,000, plus GST, including appliances but excluding furniture and accessories.	The Receiver chose not to accept this offer and allowed it to lapse. Offer made by Mr. Phil Garrow, principal of the Petitioner
October 12, 2021	\$6,330,000, plus GST, including appliances but excluding furniture	The Receiver chose not to accept this offer and allowed it to lapse.

Virani Listing

6. On October 20, 2021 Virani Real Estate entered into a multiple listing contract with the Receiver with respect to the Lands and listed the Lands for sale at a price of \$8,000,000 plus GST.
7. During the Virani Real Estate listing, the listing price was reduced to \$7,400,000 plus GST in January 2022 and reduced again to \$6,888,000 plus GST on April 20, 2022 (subsequent to the subject offer being accepted).
8. Since the Lands' listing with Virani Real Estate, there have been 4 offers on the Lands, including the current offer under contract, as follows:

Offer Date	Amount	Comments
January 4, 2022	\$6,350,000 Plus GST and including furniture and appliances	Countered at \$6,450,000 which was not accepted by the buyer. This offer was from Quantum West Capital Corp, a company owned by Mr. Phil Garrow, principal of the Petitioner
March 6, 2022	\$6,000,000 Plus GST, not including furniture	Countered at \$7,000,000 plus GST, which counteroffer lapsed
March 12, 2022	\$6,200,000 Plus GST and including furniture	Negotiations resulted in an accepted offer at \$6,470,000 excluding furniture. Conditions not removed by buyer and deal collapsed

Subject Offer: April 12, 2022	\$6,300,000 plus GST including furniture	Negotiations resulted in an accepted offer at \$6,330,000 Offer made by Zhou
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9. The subject offer to purchase the Lands is once again from Zhou. The signed between the Receiver and Zhou is dated April 12, 2022 (the “CPS”).
10. The CPS is now subject only to approval by the court. The deposit totalling \$316,500 is held in trust. The completion date contemplated in the CPS is twelve (12) business days following Court approval of the CPS.
11. Feedback from prospective purchasers has included the following with respect to the Lands:
 - I) Buyers are looking for a more move in ready property;
 - II) Substantial work is required on the property;
 - III) Did not like the interior stairs and entrance;
 - IV) Did not like the kitchen and appliances; and
 - V) Were concerned and did not want to deal with the Court process.
12. The Receiver continues to market the Lands and will do so until the Court has approved a sale. The Receiver will also be carrying out the competitive bid process with respect to the Lands in accordance with COVID-19 Notice No. 31.

Value of the Lands and Marketing Efforts

13. An appraisal dated August 8, 2021 valued the Lands at \$8,200,000 inclusive of GST (\$7,809,523 net of GST) but exclusive of furnishings.
14. An appraisal dated December 20, 2021 valued the Lands at \$7,000,000 including GST (\$6,666,667 net of GST).
15. An appraisal dated January 18, 2022 valued the Lands at \$7,750,000 including GST (\$7,380,952 net of GST).
16. The 2022 B.C. assessment of the Lands, dated July 1, 2021, shows an assessed value of \$4,572,000 (land \$3,244,000 and building \$1,328,000).

17. The listing price of the Lands has been as follows:
- i) Original listing price in June 2020 at \$10,998,000 (Amir Hamzehali)
 - ii) In October 2020, reduced to \$9,980,000 (Amir Hamzehali).
 - iii) In May 2021, reduced to \$9,288,000 (Paul Tan).
 - iv) In October 2021 reduced to \$8,000,000 (Haneef Virani).
 - v) In January 2022, reduced to \$7,400,000 (Haneef Virani).
 - vi) In April 2022, reduced to \$6,888,000 (Haneef Virani).
18. In terms of marketing efforts, the Lands have been marketed widely online through various websites, including MLS, Realtors.ca, Virani.ca, exposing it to 1,353 realtors and 742 clients with home buying criteria that matches the Lands' details. The Lands have also been marketed through paper and mixed media, including Real Estate Weekly, Virani E Newsletter, Virani social media and the V List Magazine, exposing the Lands to the open market widely.

Condition of the Lands

19. As set out in the Receiver's Second Report, the finishing's are poor for a home at this price point. Colour schemes, design and attention to detail are not good. It is estimated to take approximately \$500,000 to improve the finishings.
20. It is difficult to find a buyer at this price point who is willing to invest additional time and money to improve the condition of the Lands. As set out in Affidavit #1 of Haneef Virani, feedback was that buyers were looking for a more move in ready property.
21. The Lands are being sold on an "as is, where is" basis with no remediation of non-emergency deficiencies. The cost of remediating the non-emergency deficiencies would likely be greater than the increase in the purchase price achievable on the Lands.

Secured Creditors

22. The following are secured creditors of the Lands, as identified in the Receiver's First and Second Reports:

District of West Vancouver	2020 and 2021 Property Taxes and municipal	\$41,981.19 as of May 3, 2022
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	water/sewer	
Canada Revenue Agency	Deemed Trust Claim, if any	TBD
Montreal Trust Company	Mortgage over Right of way	Non-financial
Wealth One Bank of Canada	1 st Mortgage	\$2,755,040.91 as of April 29, 2022 plus further interest and costs
Gino Muoio Holdings Inc.	2 nd Mortgage	\$689,961.84 as of January 12, 2022 plus further interest
Jeana Ventures Ltd.	3 rd Mortgage	\$3,383,016.40 plus estimated interest of \$352,816.40 to February 28, 2022
Receiver	Receiver's Borrowings	\$51,616.44, inclusive of estimated interest on the borrowings to February 28, 2022.
Griff Building Supplies Ltd.	Claim of Builders Lien	\$55,478.19 as of October 31, 2019 (figure to be reduced)
Aloha Pools Ltd.	Claim of Builders Lien	\$87,733.49 as of July 31, 2020
ADC Holdings Ltd.	4 th Mortgage	\$1,680,000 (approximately) as of August 4, 2021
Open Windows Inc.	Claim of Builders Lien	\$30,000 as of February 10, 2021
Westfloors Ltd.	Claim of Builders Lien	\$11,631 as of May 31, 2021

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 Lands have been extensively marketed and have been on the open market since June, 2020. This listing period has provided ample exposure to the market and opportunity for prospective purchasers to make offers.
4. The Receiver will continue to market the Lands until the Court has approved a sale. Interested parties have been informed of the opportunity to submit competing bids in accordance with the court implemented bid process.
5. The purchase price for the Lands represents a fair and reasonable price.
6. The Receiver relies on the terms of the Receivership Order, sections 15 and 37 of the *Law and Equity Act*, R.S.B.C. 1996, c. 253, Rules 8-1, 13-2, 13-5, 14-1, and 21-7 of the Supreme Court Civil Rules and the inherent jurisdiction of this court.

Part 4: MATERIAL TO BE RELIED ON

1. The Receivership Order, pronounced August 4, 2021;
2. The Receiver’s First Report to the Court, dated August 31, 2021;
3. The Receiver’s Second Report to the Court, dated May 10, 2022;
4. Affidavit #1 of H. Virani, made May 10, 2022;

The applicant estimates that the application will take 15 minutes.

This matter is 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: May 11, 2022



Heather A. Frydenlund
Signature of lawyer for applicant, 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.

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

OWEN BIRD LAW CORPORATION

P.O. Box 49130

Three Bentall Centre

2900-595 Burrard Street

Vancouver, B.C.

V7X 1J5

Tel: (604) 688-0401

Fax: (604) 632-4458

Attention: Heather A. Frydenlund

File No. 23024-0131

SCHEDULE “A”

MODEL APPROVAL AND VESTING ORDER

[current to August 1, 2015]

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

APPROVAL AND VESTING ORDER

BEFORE THE HONOURABLE)
) 30/05/2022
JUSTICE)

THE APPLICATION of D. MANNING & ASSOCIATES INC., in its capacity as Court-appointed Receiver and Manager (the “Receiver”) of the assets, undertakings and properties of 1103 GILSTON ROAD HOLDINGS INC. coming on for hearing at Vancouver, British Columbia, on the 30 day of May, 2022; AND ON HEARING Heather A. Frydenlund, counsel for the Receiver, and those other counsel listed on Schedule “A” hereto, and no one appearing for [REDACTED], although duly served; AND UPON READING the material filed, including the First Report of the Receiver dated October 15, 2021 (the “First Report”) and the Second Report of the Receiver dated May [REDACTED], 2022 (the “Second Report”);

THIS COURT ORDERS AND DECLARES THAT:

1. The sale transaction (the “Transaction”) contemplated by the Contract of Purchase and Sale dated April 12, 2022 (the “Sale Agreement”) between the Receiver and Lei Mei

Zhou (the “Purchaser”), a copy of which is attached as Schedule “D” to the Second Report is hereby approved, and the Sale Agreement is commercially reasonable. The execution of the Sale Agreement by the Receiver is hereby authorized and approved, and the Receiver is hereby authorized and directed to take such additional steps and execute such additional documents as may be necessary or desirable for the completion of the Transaction and for the conveyance to the Purchaser of the assets described in the Sale Agreement (the “Purchased Assets”).

2. Upon delivery by the Receiver to the Purchaser of a certificate substantially in the form attached as Schedule “B” hereto (the “Receiver’s Certificate”), all of the Debtor’s right, title and interest in and to the Purchased Assets described in the Sale Agreement [and listed on Schedule “C” hereto] shall vest absolutely in the Purchaser in fee simple, free and clear of and from any and all security interests (whether contractual, statutory, or otherwise), hypothecs, mortgages, trusts or deemed trusts (whether contractual, statutory, or otherwise), liens, executions, levies, charges, or other financial or monetary claims, whether or not they have attached or been perfected, registered or filed and whether secured, unsecured or otherwise (collectively, the “Claims”) including, without limiting the generality of the foregoing: (i) all charges, security interests or claims evidenced by registrations pursuant to the *Personal Property Security Act* of British Columbia or any other personal property registry system; and (ii) those Claims listed on Schedule “D” hereto (all of which are collectively referred to as the “Encumbrances”, which term shall not include the permitted encumbrances, easements and restrictive covenants listed on Schedule “E” hereto), and, for greater certainty, this Court orders that all of the Encumbrances affecting or relating to the Purchased Assets are hereby expunged and discharged as against the Purchased Assets.
3. Upon presentation for registration in the Land Title Office for the Land Title District of Vancouver of a certified copy of this Order, together with a letter from Owen Bird Law Corporation, solicitors for the Receiver, authorizing registration of this Order, the British Columbia Registrar of Land Titles is hereby directed to:
 - (a) enter the Purchaser as the owner of the Lands, as identified in Schedule “F” hereto, together with all buildings and other structures, facilities and improvements located thereon and fixtures, systems, interests, licenses, rights, covenants, restrictive covenants, commons, ways, profits, privileges, rights, easements and appurtenances to the said hereditaments belonging, or with the same or any part thereof, held or enjoyed or appurtenant thereto, in fee simple in respect of the Lands, and this Court declares that it has been proved to the satisfaction of the Court on investigation that the title of the Purchaser in and to the Lands is a good, safe holding and marketable title and directs the BC Registrar to register indefeasible title in favour of the Purchaser as aforesaid; and
 - (b) having considered the interest of third parties, to discharge, release, delete and expunge from title to the Lands all of the registered Encumbrances except for those listed in Schedule “E”.

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;
 - c) GST;
 - d) in payment of any monies owing to Canada Revenue Agency for a deemed trust claim, if payable;
 - e) to the Receiver to the credit of this proceeding.
5. For the purposes of determining the nature and priority of Claims, the net proceeds from the sale of the Purchased Assets shall stand in the place and stead of the Purchased Assets, and from and after the delivery of the Receiver's Certificate all Claims shall attach to the net proceeds from the sale of the Purchased Assets with the same priority as they had with respect to the Purchased Assets immediately prior to the sale, as if the Purchased Assets had not been sold and remained in the possession or control of the person having had possession or control immediately prior to the sale.
6. The Receiver is to file with the Court a copy of the Receiver's Certificate forthwith after delivery thereof.
7. Subject to the terms of the Sale Agreement, vacant possession of the Purchased Assets, including any real property, shall be delivered by the Receiver to the Purchaser at 12:00 noon on the Closing Date (as defined in the Sale Agreement), subject to the permitted encumbrances as set out in the Sale Agreement and listed on Schedule "E".
8. The Receiver, with the consent of the Purchaser, shall be at liberty to extend the Closing Date to such later date as those parties may agree without the necessity of a further Order of this Court
9. Notwithstanding:
 - (a) these proceedings;
 - (b) any applications for a bankruptcy order in respect of the Debtor now or hereafter made pursuant to the *Bankruptcy and Insolvency Act* and any bankruptcy order issued pursuant to any such applications; and
 - (c) any assignment in bankruptcy made by or in respect of the Debtor,

the vesting of the Purchased Assets in the Purchaser pursuant to this Order shall be binding on any trustee in bankruptcy that may be appointed in respect of the Debtor and shall not be void or voidable by creditors of the Debtor, nor shall it constitute or be deemed to be a transfer at undervalue, fraudulent preference, assignment, fraudulent conveyance or other reviewable transaction under the *Bankruptcy and Insolvency Act* or

any other applicable federal or provincial legislation, nor shall it constitute oppressive or unfairly prejudicial conduct pursuant to any applicable federal or provincial legislation.

10. THIS COURT HEREBY REQUESTS the aid and recognition of any court, tribunal, regulatory or administrative body, wherever located, to give effect to this Order and to assist the Receiver and its agents in carrying out the terms of this Order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Receiver, as an officer of this Court, as may be necessary or desirable to give effect to this Order or to assist the Receiver and its agents in carrying out the terms of this Order.
11. The Receiver or any other party have liberty to apply for such further or other directions or relief as may be necessary or desirable to give effect to 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:

Signature of lawyer for D. Manning & Associates
Inc., in its capacity as Receiver of 1103 Gilston
Road Holdings Inc.

<Print Name>

BY THE COURT

REGISTRAR

Schedule A – List of Counsel

COUNSEL	NAME OF PARTY(IES) REPRESENTED

Schedule B – Receiver’s Certificate

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

RECEIVER’S CERTIFICATE

PURSUANT TO THE APPROVAL AND VESTING ORDER pronounced _____,
2022, D. Manning & Associates Inc., in its capacity as the Receiver of 1103 Gilston Road
Holdings Inc. (the “**Receiver**”) hereby certifies as follows:

1. The Receiver confirms that Li Mei Zhou has paid the purchase price to the Receiver and the Transaction has completed.

DATED at the City of Vancouver, in the Province of British Columbia, this ___ day of _____, 2022.

D. MANNING & ASSOCIATES INC., in
its capacity as court appointed Receiver of
1103 GILSTON ROAD HOLDINGS INC.,
and not in its personal capacity

By: _____
Name:
Position:

Schedule C – List of Purchased Assets

Real property located in West Vancouver, B.C. legally described as follows:

PID: 002-841-231
Lot 20 Block 34
Capilano Estates Plan 9111

Schedule D – Claims to be Deleted/Expunged from Title to Lands

CLAIMS TO BE DELETED/EXPUNGED FROM TITLE TO REAL PROPERTY:

the Charges, Liens and Interests to be deleted are as follows:

1. Nature: Mortgage
Registration Number: D9422
Registration Date: February 25, 1976
Registered Owner: Montreal Trust Company, In Trust

2. Nature: Mortgage and Assignment of Rents
Registration Numbers: CA6178243 and CA6178244
Registration Date: July 27, 2017
Registered Owner: Wealth One Bank of Canada

3. Nature: Mortgage
Registration Number: CA580979
Registration Date: June 26, 2019
Registered Owner: Jeana Ventures Ltd.

4. Nature: Mortgage and Assignment of Rents
Registration Numbers: CA8032538 and CA8032539
Registration Date: February 12, 2020
Registered Owner: Gino Muoio Holdings Inc.

5. Nature: Priority Agreement

Registration Number: Ca8033891

Registration Date: February 12, 2020

Registered Owner: N/A

6. Nature: Claim of Builders Lien
Registration Number: CA8193007
Registration Date: May 15, 2020
Registered Owner: Griff Building Supplies Ltd.

7. Nature: Claim of Builders Lien
Registration Number: CA8339503
Registration Date: July 31, 2020
Registered Owner: Aloha Pools Ltd.

8. Nature: Mortgage
Registration Number: CA8548024
Registration Date: November 4, 2020
Registered Owner: ADC Holdings Ltd.

9. Nature: Certificate of Pending Litigation
Registration Number: CA8602667
Registration Date: November 27, 2020
Registered Owner: Jeana Ventures Ltd.

10. Nature: Claim of Builders Lien

Registration Number: WX2158410

Registration Date: February 17, 2021

Registered Owner: Open Windows Inc.

11. Nature: Certificate of Pending Litigation
Registration Number: CA9001606
Registration Date: May 13, 2021
Registered Owner: Griff Building Supplies Ltd.

12. Nature: Claim of Builders Lien
Registration Number: WX2165868
Registration Date: July 6, 2021
Registered Owner: Westfloors Ltd.

13. Nature: Certificate of Pending Litigation
Registration Number: CA9241759
Registration Date: July 30, 2021
Registered Owner: Aloha Pools Ltd.

Schedule E – Permitted Encumbrances

ENCUMBRANCES PERMITTED TO REMAIN ON TITLE TO REAL PROPERTY:

the encumbrances to remain on title are as follows:

1. Nature: Restrictive Covenant
Registration Number: N105541
Registration Date: N/A
Registered Owner: N/A

2. Nature: Right of Way
Registration Number: 204264M
Registration Date: March 28, 1955
Registered Owner: British Columbia Telephone Company, Inter Alia

3. Nature: Right of Way
Registration Number: 321681M
Registration Date: January 3, 1961
Registered Owner: British Columbia Hydro and Power Authority, British Columbia Telephone Company, Inter Alia

Action No. S214960

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

APPROVAL AND VESTING ORDER

23024-0131 HAF

MODEL APPROVAL AND VESTING ORDER

[current to August 1, 2015]

No. S214960

 Vancouver Registry

IN THE SUPREME COURT OF BRITISH COLUMBIA

BETWEEN:

~~{PLAINTIFF(S)}~~ ADC PROJECTS LTD.

PETITIONER ~~(S)~~

<PLAINTIFFS> / <PETITIONERS>

AND:

~~{DEFENDANT(S)}~~ JEANA VENTURES LTD. and 1103 GILSTON ROAD HOLDINGS INC.

RESPONDENT ~~(S)~~

<DEFENDANTS> / <RESPONDENTS>

Action No.

Estate No.

~~IN THE SUPREME COURT OF BRITISH COLUMBIA
IN BANKRUPTCY AND INSOLVENCY~~

~~IN THE MATTER OF THE RECEIVERSHIP OF
{NAME OF DEBTOR(S)}~~

ORDER MADE AFTER APPLICATION

APPROVAL AND VESTING ORDER

BEFORE THE HONOURABLE)

~~dd/mm/yyyy~~30/05/2022

JUSTICE

THE APPLICATION of ~~[RECEIVER'S NAME]~~, D. MANNING & ASSOCIATES INC., in its capacity as Court-appointed ~~[Receiver or Receiver and Manager]~~ (the "Receiver") of the assets, undertakings and properties of ~~[Name of Debtor]~~ 1103 GILSTON ROAD HOLDINGS INC., coming on for hearing at Vancouver, British Columbia, on the ~~_____~~ 30 day of ~~_____~~, 201_____; May, 2022; AND ON HEARING ~~_____~~, Heather A. Frydenlund, counsel for the Receiver, and those other counsel listed on Schedule "A" hereto, and no one appearing for ~~_____~~, although duly served; AND UPON READING the material filed, including the First Report of the Receiver dated ~~_____~~ October 15, 2021 (the "First Report") ~~[1]~~; and the Second Report of the Receiver dated May _____, 2022 (the "Second Report"):

THIS COURT ORDERS AND DECLARES THAT:

1. The sale transaction (the "Transaction") contemplated by the Contract of Purchase and Sale ~~[Asset Purchase Agreement]~~ dated ~~_____~~, April 12, 2022 (the "Sale Agreement") between the Receiver and ~~_____~~ Lei Mei Zhou (the "Purchaser") ~~[2]~~, a copy of which is attached as Appendix "_____" Schedule "D" to the Second Report is hereby approved, and the Sale Agreement is commercially reasonable ~~[3]~~. The execution of the Sale Agreement by the Receiver ~~[4]~~ is hereby authorized and approved, and the Receiver is hereby authorized and directed to take such additional steps and execute such additional documents as may be necessary or desirable for the completion of the Transaction and for the conveyance to the Purchaser of the assets described in the Sale Agreement (the "Purchased Assets").
2. Upon delivery by the Receiver to the Purchaser of a certificate substantially in the form attached as Schedule "B" hereto (the "Receiver's Certificate"), all of the Debtor's right, title and interest in and to the Purchased Assets described in the Sale Agreement [and listed on Schedule "C" hereto] 5] shall vest absolutely in the Purchaser in fee simple, free and clear of and from any and all security interests (whether contractual, statutory, or otherwise), hypothecs, mortgages, trusts or deemed trusts (whether contractual, statutory, or otherwise), liens, executions, levies, charges, or other financial or monetary claims, whether or not they have attached or been perfected, registered or filed and whether secured, unsecured or otherwise (collectively, the "Claims" ~~[6]~~) including, without limiting the generality of the foregoing: (i) ~~any encumbrances or charges created by the Order of this Court dated [Date]~~; (ii) all charges, security interests or claims evidenced by registrations pursuant to the *Personal Property Security Act* of British Columbia or any other personal property registry system; and (iii) those Claims listed on Schedule "D" hereto (all of which are collectively referred to as the "Encumbrances", which term shall not include the permitted encumbrances, easements and restrictive covenants listed on Schedule "E" hereto), and, for greater certainty, this Court orders that all of the

Encumbrances affecting or relating to the Purchased Assets are hereby expunged and discharged as against the Purchased Assets. [7]

3. Upon presentation for registration in the Land Title Office for the Land Title District of Vancouver of a certified copy of this Order, together with a letter from [Receiver's counsel], Owen Bird Law Corporation, solicitors for the Receiver, authorizing registration of this Order, the British Columbia Registrar of Land Titles is hereby directed to:

- (a) enter the Purchaser as the owner of the Lands, as identified in Schedule "F" hereto, together with all buildings and other structures, facilities and improvements located thereon and fixtures, systems, interests, licenses, rights, covenants, restrictive covenants, commons, ways, profits, privileges, rights, easements and appurtenances to the said hereditaments belonging, or with the same or any part thereof, held or enjoyed or appurtenant thereto, in fee simple in respect of the Lands, and this Court declares that it has been proved to the satisfaction of the Court on investigation that the title of the Purchaser in and to the Lands is a good, safe holding and marketable title and directs the BC Registrar to register indefeasible title in favour of the Purchaser as aforesaid; and
- (b) having considered the interest of third parties, to discharge, release, delete and expunge from title to the Lands all of the registered Encumbrances except for those listed in Schedule "E" [8].

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;
- c) GST;
- d) in payment of any monies owing to Canada Revenue Agency for a deemed trust claim, if payable;
- e) to the Receiver to the credit of this proceeding.

4.5. For the purposes of determining the nature and priority of Claims, the net proceeds [9] from the sale of the Purchased Assets shall stand in the place and stead of the Purchased Assets, and from and after the delivery of the Receiver's Certificate all Claims shall attach to the net proceeds from the sale of the Purchased Assets with the same priority as they had with respect to the Purchased Assets immediately prior to the sale [10], as if the Purchased Assets had not been sold and remained in the possession or control of the person having had possession or control immediately prior to the sale.

5.6. The Receiver is to file with the Court a copy of the Receiver's Certificate forthwith after delivery thereof.

6. ~~Pursuant to Section 7(3)(c) of the Canada *Personal Information Protection and Electronic Documents Act* or Section 18(10)(e) of the *Personal Information Protection Act* of British Columbia, the Receiver is hereby authorized and permitted to disclose and transfer to the Purchaser all human resources and payroll information in the company's records pertaining to the Debtor's past and current employees, including personal information of those employees listed in Schedule "_____" to the Sale Agreement. The Purchaser shall maintain and protect the privacy of such information and shall be entitled to use the personal information provided to it in a manner which is in all material respects identical to the prior use of such information by the Debtor. [11]~~
7. Subject to the terms of the Sale Agreement, vacant possession of the Purchased Assets, including any real property, shall be delivered by the Receiver to the Purchaser at 12:00 noon on the Closing Date (as defined in the Sale Agreement), subject to the permitted encumbrances as set out in the Sale Agreement and listed on Schedule "E".
8. The Receiver, with the consent of the Purchaser, shall be at liberty to extend the Closing Date to such later date as those parties may agree without the necessity of a further Order of this Court ~~[provided that the Closing Date occurs by _____ or within _____ days of the date of this Order].~~
9. Notwithstanding:
- (a) these proceedings;
 - (b) any applications for a bankruptcy order in respect of the Debtor now or hereafter made pursuant to the *Bankruptcy and Insolvency Act* and any bankruptcy order issued pursuant to any such applications; and
 - (c) any assignment in bankruptcy made by or in respect of the Debtor,
- the vesting of the Purchased Assets in the Purchaser pursuant to this Order shall be binding on any trustee in bankruptcy that may be appointed in respect of the Debtor and shall not be void or voidable by creditors of the Debtor, nor shall it constitute or be deemed to be a transfer at undervalue, fraudulent preference, assignment, fraudulent conveyance or other reviewable transaction under the *Bankruptcy and Insolvency Act* or any other applicable federal or provincial legislation, nor shall it constitute oppressive or unfairly prejudicial conduct pursuant to any applicable federal or provincial legislation.
10. THIS COURT HEREBY REQUESTS the aid and recognition of any court, tribunal, regulatory or administrative body, wherever located, to give effect to this Order and to assist the Receiver and its agents in carrying out the terms of this Order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Receiver, as an officer of this Court, as may be necessary or desirable to give effect to this Order or to assist the Receiver and its agents in carrying out the terms of this Order.

11. The Receiver or any other party have liberty to apply for such further or other directions or relief as may be necessary or desirable to give effect to 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:

Signature of

Party Lawyer lawyer for ~~the Petitioners~~ D. Manning & Associates Inc., in its capacity as Receiver of 1103 Gilston Road Holdings Inc.

<Print Name>

Signature of

Party Lawyer for <name of party(ies)>

<Print Name>

BY THE COURT

REGISTRAR

Schedule A – Purchased Assets

~~[Note: Specifically list legal titles if Real Property]~~

Schedule B — Claims to be deleted/expunged from title to Real Property

**Schedule C – Permitted Encumbrances, Easements and Restrictive Covenants
related to Real Property**

1. ~~The reservations, limitations, provisos and conditions expressed in the original grant thereof from the Crown:~~

1. ~~←*→~~

BRITISH COLUMBIA MODEL APPROVAL AND VESTING ORDER
EXPLANATORY NOTES

B.C. Model Insolvency Order Committee
Vancouver, British Columbia

These Notes are to be read together with the new Model Approval and Vesting Order developed by the B.C. Model Insolvency Order Committee (as described below).

[1] — This model order assumes that the time for service does not need to be abridged. The motion seeking a vesting order should be served on all persons having an economic interest in the Purchased Assets, unless circumstances warrant a different approach. In the past, the Land Title Office has been unwilling to vest off interests without proof that certain parties have been served. Accordingly, it is recommended that the Order itself reflect service on all parties whose interests are to be removed from title.

[2] — If the Purchased Assets include real property, counsel will need to describe the Purchaser in accordance with how it wishes to be described on title including Purchaser's full name, incorporation details if applicable, address, joint tenancy, etc.

[3] — Section 247 [List of](#) the *Bankruptcy and Insolvency Act*, section 68(2) of the British Columbia *Personal Property Security Act* and the relevant case authorities provide that the Receiver has a duty to ensure that any sale of assets is commercially reasonable. Accordingly, it has become the practice of Receivers and their counsel to seek a declaration of the Court that a particular asset sale is commercially reasonable. The Receiver and its counsel should ensure that there is sufficient evidence to enable the Court to make a finding that the transaction to be approved is commercially reasonable, including without limitation evidence as to marketing and any appraisals. [Counsel](#)

[4] — In some cases, the Debtor will be the vendor under the Sale Agreement, or otherwise actively involved in the Transaction. In those cases, care should be taken to ensure that this Order authorizes either or both of the Debtor and the Receiver to execute and deliver documents, and take other steps.

[5] — To allow this Order to be free standing (and not require reference to the Court record and/or the Sale Agreement), it may be preferable that the Purchased Assets be specifically described in a schedule. Some judges prefer to have the Sale Agreement itself appended as a schedule to the Order.

[6] — The "Claims" being vested out may, in some cases, include ownership claims, where ownership is disputed and the dispute is brought to the attention of the Court. Such ownership claims would, in that case, still continue as against the net proceeds from the sale of the

~~claimed asset. Similarly, other rights, titles or interests could also be vested out, if the Court is advised what rights are being affected, and the appropriate persons are served. It is the BCMIOC's view that a non-specific vesting out of "rights, titles and interests" is vague and therefore undesirable.~~

~~[7] — The Order is not intended to relieve the Debtor, the Receiver or any Purchaser of any applicable statutory or regulatory requirements arising on the transfer of the Purchased Assets (for example, complying with *Forest Act* requirements in respect of the transfer of a license such as a Forest License).~~

~~[8] — This provision is required if the Purchased Assets include real property. In addition, in some cases, it is appropriate to provide that the Petitioner or Plaintiff provide a release of its Certificate of Pending Litigation.~~

~~[9] — The Report should identify the disposition costs and any other costs which should be paid from the gross sale proceeds, to arrive at "net proceeds". In some cases, it may be appropriate to direct the Receiver to pay certain claims, such as, for example, to secured creditors where there is no issue as to priority.~~

~~[10] — This provision crystallizes the date as of which the Claims will be determined. If a sale occurs early in the insolvency process, or potentially secured claimants may not have had the time or the ability to register or perfect proper claims prior to the sale, this provision may not be appropriate, and should be amended to remove this crystallization concept.~~

~~[11] — The Receiver and Purchaser should take care to act under this provision with respect to the Purchased Assets only.~~

<u>COUNSEL</u>	Action No. <u>NAME OF PARTY(ES)</u> <u>REPRESENTED</u>	

Schedule B – Receiver’s Certificate

No. S214960

IN THE SUPREME COURT OF BRITISH COLUMBIA

BETWEEN:

ADC PROJECTS LTD.

Petitioner

AND:

JEANA VENTURES LTD. and 1103 GILSTON ROAD
HOLDINGS INC.

Respondents

RECEIVER'S CERTIFICATE

PURSUANT TO THE APPROVAL AND VESTING ORDER pronounced _____,
2022, D. Manning & Associates Inc., in its capacity as the Receiver of 1103 Gilston Road
Holdings Inc. (the "Receiver") hereby certifies as follows:

1. The Receiver confirms that Li Mei Zhou has paid the purchase price to the
Receiver and the Transaction has completed.

DATED at the City of Vancouver, in the Province of British Columbia, this ____ day of
_____, 2022.

D. MANNING & ASSOCIATES INC., in
its capacity as court appointed Receiver of
1103 GILSTON ROAD HOLDINGS INC.,
and not in its personal capacity

By: _____
Name:
Position:

Schedule C – List of Purchased Assets

Real property located in West Vancouver, B.C. legally described as follows:

PID: 002-841-231

Lot 20 Block 34

Capilano Estates Plan 9111

Schedule D – Claims to be Deleted/Expunged from Title to Lands

CLAIMS TO BE DELETED/EXPUNGED FROM TITLE TO REAL PROPERTY:

the Charges, Liens and Interests to be deleted are as follows:

1. Nature: Mortgage

Registration Number: D9422

Registration Date: February 25, 1976

Registered Owner: Montreal Trust Company, In Trust

2. Nature: Mortgage and Assignment of Rents

Registration Numbers: CA6178243 and CA6178244

Registration Date: July 27, 2017

Registered Owner: Wealth One Bank of Canada

3. Nature: Mortgage

Registration Number: CA580979

Registration Date: June 26, 2019

Registered Owner: Jeana Ventures Ltd.

4. Nature: Mortgage and Assignment of Rents

Registration Numbers: CA8032538 and CA8032539

Registration Date: February 12, 2020

Registered Owner: Gino Muoio Holdings Inc.

5. Nature: Priority Agreement

Registration Number: Ca8033891

Registration Date: February 12, 2020

Registered Owner: N/A

6. Nature: Claim of Builders Lien

Registration Number: CA8193007

Registration Date: May 15, 2020

Registered Owner: Griff Building Supplies Ltd.

7. Nature: Claim of Builders Lien

Registration Number: CA8339503

Registration Date: July 31, 2020

Registered Owner: Aloha Pools Ltd.

8. Nature: Mortgage

Registration Number: CA8548024

Registration Date: November 4, 2020

Registered Owner: ADC Holdings Ltd.

9. Nature: Certificate of Pending Litigation

Registration Number: CA8602667

Registration Date: November 27, 2020

Registered Owner: Jeana Ventures Ltd.

10. Nature: Claim of Builders Lien

Registration Number: WX2158410

Registration Date: February 17, 2021

Registered Owner: Open Windows Inc.

11. Nature: Certificate of Pending Litigation

Registration Number: CA9001606

Registration Date: May 13, 2021

Registered Owner: Griff Building Supplies Ltd.

12. Nature: Claim of Builders Lien

Registration Number: WX2165868

Registration Date: July 6, 2021

Registered Owner: Westfloors Ltd.

13. Nature: Certificate of Pending Litigation

Registration Number: CA9241759

Registration Date: July 30, 2021

Registered Owner: Aloha Pools Ltd.

Schedule E – Permitted Encumbrances

ENCUMBRANCES PERMITTED TO REMAIN ON TITLE TO REAL PROPERTY:

the encumbrances to remain on title are as follows:

1. Nature: Restrictive Covenant

Registration Number: N105541

Registration Date: N/A

Registered Owner: N/A

2. Nature: Right of Way

Registration Number: 204264M

Registration Date: March 28, 1955

Registered Owner: British Columbia Telephone Company, Inter Alia

3. Nature: Right of Way

Registration Number: 321681M

Registration Date: January 3, 1961

Registered Owner: British Columbia Hydro and Power Authority, British Columbia Telephone Company, Inter Alia

Action No. S214960

IN THE SUPREME COURT OF BRITISH
COLUMBIA

BETWEEN:

[PLAINTIFF(S)/PETITIONER(S)]
Plaintiff(s)/ADC PROJECTS LTD.
Petitioner(s)

- and -

[DEFENDANT(S)/RESPONDENT(S)]
Defendant(s)/Respondent(s)

AND:

Action No. _____
Estate No. _____

~~IN THE SUPREME COURT OF BRITISH COLUMBIA
IN BANKRUPTCY AND INSOLVENCY~~

~~IN THE MATTER OF THE RECEIVERSHIP OF
[THE DEBTOR(S)]~~

JEANA VENTURES LTD. and 1103 GILSTON ROAD
HOLDINGS INC.
Respondents)

ORDER MADE AFTER APPLICATION

APPROVAL AND VESTING ORDER

23024-0131 HAF

B.C. MODEL APPROVAL AND VESTING ORDER
