

Vancouver

31-Oct-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 Receiver to the presiding JUDGE at the courthouse at 800 Smithe Street, Vancouver, BC, November 15, 2022, 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, approving the Receiver’s activities and summarily passing the Receiver’s accounts.

Part 2: FACTUAL BASIS

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 were 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 17th and 20th, 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:

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

- 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 (leaving an outstanding balance of approximately \$1,006,000);
 - 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. 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.
12. 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.

Disputed Fixtures and Agreed Chattels

13. 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.
14. 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**").
15. Jeana disputed the enforceability of the Holdings GSA.

16. Pursuant to the GSA, Holdings claimed a security interest in various items that were sold along with the Lands. Holdings claimed these items were chattels over which the Holdings GSA attached. Jeana claimed these items were fixtures over which its mortgage security attached (the “**Disputed Fixtures**”).
17. As a result of the dispute the Receiver held back \$400,000 representing the maximum amount that could be claimed by Holdings under the Holdings GSA for the Disputed Fixtures.
18. The sale of the Lands did not include furniture. Both Jeana and Holdings agree that the furniture are chattels (the “**Agreed Chattels**”).
19. While the enforceability of the Holdings GSA is in dispute by Jeana and Holdings, these parties 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.
20. As a result of the dispute between Jeana and Holdings over the Disputed Fixtures and Agreed Chattels, the Receiver made an Application to Court to have that issue resolved. That application was heard over two (2) days on August 29, 2022 and September 2, 2022.
21. 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.
22. By way of Order dated September 9, 2022, Madam Justice Murray declared the Disputed Fixtures to be fixtures over which Jeana’s mortgage security attached and authorized the Receiver to release the holdback of \$400,000 to Jeana (the “**Disputed Fixtures Order**”). The Receiver has released this amount to Jeana.

Fees and Disbursements

23. The Receiver's fees and disbursements from August 2, 2021 to September 30, 2022 amount to \$269,904.43, as summarized at Schedule "B" to the Receiver's Fifth Report, made October 18, 2022 (the "**Fifth Report**").
24. The Receiver's legal counsel's fees and disbursements from August 4, 2021 to September 12, 2022 amount to \$88,086.59 as summarized at Schedule "G" of the Receiver's Fifth Report.
25. The Receiver's receipts and disbursements from August 4, 2021 to October 17, 2022 amount to \$273,658.23 as summarized at Schedule "C" of the Receiver's Fifth Report.
26. 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; and
3. Rules 10-2 of the Supreme Court Civil Rules.

Part 4: MATERIAL TO BE RELIED ON

1. Affidavit #1 of Alex En Hwa Ng, made October 18, 2022;
2. Affidavit #1 of Alan Frydenlund, made October 18, 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 Receivership Order;

9. The Approval Order;
10. The Agreed Chattels Order; and
11. The Disputed Fixtures Order.

The Receiver estimates that the application will take 10 minutes.

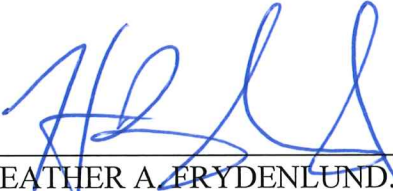
This matter is within the jurisdiction of a Master.

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: October 31, 2022



HEATHER A. ERYDENLUND.
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"

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Petitioner

And

JEANA VENTURES LTD. and 1103 GILSTON ROAD
HOLDINGS INC.

Respondents

ORDER MADE AFTER APPLICATION

(ORDER APPROVING FEES AND ACTIVITIES OF RECEIVER)

BEFORE THE HONOURABLE)
) November 15, 2022
____ 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 10th day of November, 2022; 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 Fifth Report of the Receiver dated October 18, 2022 (the "**Receiver's Fifth Report**");

THIS COURT ORDERS AND DECLARES THAT:

1. The Receiver's interim statement of cash receipts and disbursements for the period August 4, 2021 to October 17, 2022 as set out in the Receiver's Fifth 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 Fifth 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 Fifth Report for the period August 2, 2021 to September 30, 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 Fifth Report for the period August 4, 2021 to September 12, are hereby approved and the Receiver shall have no further liability in respect thereof.

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 APPROVING FEES AND ACTIVITIES OF 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

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