



FORM 32 (RULE 8-1(4))

No. S-1913345
Vancouver Registry

IN THE SUPREME COURT OF BRITISH COLUMBIA

BETWEEN:

VANCOUVER CITY SAVINGS CREDIT UNION

Petitioner

AND:

356746 HOLDINGS INC. doing business as
THE GEORGE DAWSON INN
507016 B.C. LTD.
LUXOR HOLDINGS INC.
UMEDALLI THOBANI also known as
UMED THOBANI and TONY THOBANI
THE ESTATE OF AMINA THOBANI
MANOHAR ALEXANDER SAVUNDRANAYAGAM
BLUESHORE LEASING LTD.
ROYNAT INC.
1156600 B.C. LTD.
GROUPEX SYSTEMS CANADA INC.

Respondents

NOTICE OF APPLICATION

Name(s) of applicant(s): Receiver and Manager, D. MANNING & ASSOCIATES INC.

To: THE RESPONDENTS AND TO THEIR SOLICITORS

TAKE NOTICE that an application will be made by the applicant(s) to the presiding master at the courthouse at 800 Smithe Street, Vancouver, BC, V6Z 2E1 on THURSDAY, APRIL 29, 2021 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 attached as Schedule "A", approving the sale of a hotel located at 11705 – 8th Street, Dawson Creek, British Columbia V1G 4N (the "**Hotel**").

Part 2: FACTUAL BASIS

1. The Hotel contains 80 rooms, with food and beverage service along with meeting rooms as described in the Receiver's First Report dated July 16, 2020 (the "**Receiver's First Report**").
2. The Receiver made a second report dated April 7, 2021 (the "**Receiver's Second Report**").

Receivership History

3. D. Manning & Associates Inc. was appointed Receiver and Manager (the "**Receiver**") in respect of the assets, undertakings and property of 356746 Holdings Inc. doing business as the George Dawson Inn (the "**Company**") located at 11705 – 8th Street, Dawson Creek, B.C. V1G 4N9, (the "**Property**") pursuant to the Order of Madam Justice Fitzpatrick pronounced April 20, 2020 (the "**Receivership Order**").
4. The Receivership Order authorizes the Receiver to, *inter alia*, market and sell the Company's Property and to apply for any orders necessary to convey the Company's Property of any part or parts thereof to a purchaser, free and clear of any liens or encumbrances.
5. By way of the Order granted on August 11, 2020 by Madam Justice Baker, the Receiver was authorized to enter into a listing agreement with CBRE Limited ("**CBRE**") to sell the Company's Property.

Marketing Efforts

6. Pursuant to the August 11, 2020 Order, on that same date the Receiver entered into a listing agreement with CBRE to list the Hotel for sale.

7. In August 2020, CBRE collated information, prepared property flyers, a confidential information memorandum, web-marketing and email campaign, populated an online data room and prepared transaction documents.
8. In September, 2020 CBRE send out an email “blast” to over 600 hotel investors, locally, nationally and internationally, providing information about the Hotel. CBRE has marketed the Hotel widely online through various websites, magazine and correspondence with realtors and interested parties.
9. From September 2020 until present at least fourteen (14) potential purchasers have signed a confidentiality agreement and viewed the data room, containing information about the Hotel. Throughout this time CBRE has continued to market the Hotel through, *inter alia*, renewed email campaigns ad correspondence with realtors and interested parties.
10. An appraisal was conducted on the Hotel, valuing the Hotel at \$3,100,000 as of May 1, 2020.
11. The Hotel was listed for sale on the open market, for the purchase price of \$4,000,000, since August 11, 2020. The listing price was in line with CBRE’s listing proposal.
12. A letter of intent (“**LOI**”) was received prior to the subject offer in October, 2020 in the amount of \$1,200,000 which was rejected by the Receiver. That party subsequently verbally increased its offer to \$1,500,000, which was also rejected by the Receiver.
13. On February 1, 2021 the Receiver received an LOI from the proposed purchaser, Mario Laudisio (the “**Purchaser**”) in the amount of \$2,750,000 subject to a 45-day conditional period with an initial \$100,000 deposit and further second deposit of \$400,000 once subjects had been removed. That LOI was rejected and countered by the Receiver on February 12, 2021 for the amount of \$3,300,000 subject to a 45-day conditional period with an initial \$100,000 deposit and further second deposit of \$400,000 once subjects had been removed. This was accepted by the Purchaser.
14. Subsequent to the Purchaser’s tour of the Hotel, he requested a reduced price of \$2,250,000 on February 27, 2021 based on his review of the projected renovations. This was rejected by the Receiver.

15. On March 11, 2021 the Purchaser submitted a new offer in the amount of \$2,750,000, this time unconditional and with a deposit of \$1,000,000. On March 16, 2021 the Receiver countered at a price of \$3,000,000. The Purchaser subsequently countered at \$2,800,000 unconditional with a deposit of \$1,000,000.
16. On March 17, 2021, an additional purchaser submitted an LOI in the amount of \$2,480,000 unconditional with a \$500,000 deposit (the "**Subsequent Offeror**").
17. On March 17, 2021 the Receiver accepted the revised offer from the Purchaser in the amount of \$2,800,000, unconditional and with a deposit in the amount of \$1,000,000 (the "**Contract**"). Attached hereto and collectively marked as Exhibit "**D**" to this my Affidavit is a copy of the purchase contract and deposit cheque received.
18. On March 18, 2021, subsequent to the Purchaser's offer being accepted by the Receiver, the Subsequent Offeror submitted a revised LOI in the amount of \$2,880,000, unconditional with a deposit in the amount of \$500,000. The Receiver has advised the Subsequent Offeror that it may submit a competitive bid at the Court Application to approve the sale of the Hotel.
19. CBRE continues to market the Hotel and has advised that it will continue to do so until the hearing of the within Court Application.
20. The Western Canada hotel investment market has been subdued over the course of the listing period for the Hotel, with only five (5) comparable hotels having been sold in BC and Alberta since August, 2020.
21. CBRE has indicated that consistent feedback from interested parties has been that the Hotel requires over \$1,000,000 of renovations.
22. The stated completion date in the Contract is ten (10) business days following the approval of the sale of the Hotel through a Vesting Order, or such other date as agreed to by the parties in writing.
23. The Contract is subject only to approval by the court.
24. At this time, there are no other competing offers with respect to purchasing the Hotel.

Secured Creditors

25. The following are secured creditors of the Company, as identified in the Receiver's Second Report:

- 1) 2021 property taxes. Amount: estimated at \$57,000 for a closing date of May 14, 2021.
- 2) Vancouver City Savings Credit Union – 1st mortgage and Receiver's borrowings. Amount: estimated balance assuming a May 14, 2021 closing date is \$2,431,310.26 plus accrued interest and costs.
- 3) Manohar Alexander Savundranayagam – 2nd and 3rd mortgages. Amount: \$191,820.43 plus accrued interest and costs as at February 9, 2021.
- 4) Blue Shore Financial – Equipment lease. Amount: \$39,371.76 assuming a May 14, 2021 closing.
- 5) The Employer Health Tax. Amount: \$10,900.91, plus interest as of March 23, 2021;
- 6) CWB National Leasing – Hotel room locks lease. Amount: \$31,615.97 as May 14, 2021.
- 7) Ministry of Finance – Provincial Sales Tax. Amount: \$33,663.86 for period ended April 30, 2020.
- 8) Conexus Credit Union – Judgment against Hotel as at February 6, 2020. Amount: \$1,386,920.63, plus interest and costs.
- 9) Wage Earner Protection Program – holiday pay. Amount: \$2,536.17, plus interest as of November 21, 2020.
- 10) Severance pay due to employees upon termination after the closing of the sale (including Employer portion of Canada Pension Plan premiums, Employment

Insurance premiums and WorkSafe BC premiums). Amount: estimated at \$28,000.

- 11) Canada Revenue Agency - pre-Receivership Goods and Services Tax. Amount: \$10,285.50, plus interest for period ended April 20, 2020.
- 12) Pre-Receivership WorkSafe BC premiums. Amount: \$6,592, plus interest as at April 20, 2020.

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 Receiver has undergone market analysis in conjunction with CBRE to determine a commercially reasonable and appropriate market value for the Hotel.

4. The Hotel was marketed sufficiently, listed on the open market since August, 2020 and sufficient opportunity was provided for other prospective purchasers to make offers and does not prejudice any other party.
5. Section 15 of the *Law and Equity Act*, R.S.B.C. 1996, c. 253; and
6. Rules 8-1, 13-2, 13-5, 14-1, and 21-7 of the Supreme Court Civil Rules.

Part 4: MATERIAL TO BE RELIED ON

1. Affidavits #1 and #2 of William Choo, made July 29, 2020 and April 8, 2021, respectively;
2. The Receivership Order pronounced herein on April 20, 2020;
3. The Order pronounced herein on August 11, 2020;
4. Receiver's First Report, made July 16, 2020; and
5. Receiver's Second Report, made April 7, 2021.

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: April 8, 2021.

 Heather A. Frydenlund, Signature of lawyer for
 applicant(s), 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
- none of the above

SCHEDULE "A"

FORM 35 (RULES 8-4(1), 13-1(3), 17-1(2) AND 25-9(2))

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VANCOUVER CITY SAVINGS CREDIT UNION

Petitioner

AND:

356746 HOLDINGS INC. doing business as
THE GEORGE DAWSON INN
507016 B.C. LTD.
LUXOR HOLDINGS INC.
UMEDALLI THOBANI also known as
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THE ESTATE OF AMINA THOBANI
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BLUESHORE LEASING LTD.
ROYNAT INC.
1156600 B.C. LTD.
GROUPEX SYSTEMS CANADA INC.

Respondents

**ORDER MADE AFTER APPLICATION
(ORDER APPROVING SALE)**

BEFORE) MASTER) THURSDAY, THE 29 DAY OF
)) APRIL, 2021
) _____)
))

ON THE APPLICATION of D. MANNING & ASSOCIATES INC. (the "Receiver") coming on for hearing on this day at Vancouver, British Columbia, and on hearing HEATHER A. FRYDENLUND, counsel for the Receiver, and no-one else appearing, although given notice in accordance with the Rules of the Court, and on reading the materials filed herein:

THIS COURT ORDERS THAT:

1. The sale of the following the lands and premises:

Parcel Identifier: 006-931-952

Lot 4 Section 10 Township 78 Range 15 West of the 6th Meridian
Peace River District Plan 24114

Parcel Identifier: 006-931-944

Lot 3 Section 10 Township 78 Range 15 West of the 6th Meridian
Peace River District Plan 24114

Parcel Identifier: 008-324-212

Parcel A (Plan 26555) of Lot 2 Section 10 Township 78 Range 15 West of the 6th
Meridian
Peace River District Plan 24114

(collectively the “Lands”)

to MARIO LAUDISIO, of 1062 Granville Street, Vancouver, BC V6Z 1L5, or if amended or assigned by the purchaser and agreed to by the Receiver, as set out in a letter from the solicitors for the Receiver, on the terms and conditions set out in the Agreement of Purchase and Sale dated March 16, 2021 for the sum of \$2,800,000 is hereby approved.

2. Upon filing a certified copy of this Order in the Prince George Land Title Office together with a letter from the Receiver’s solicitor authorizing such registration and subject to the terms of this Order, the Lands be conveyed to and vest in the purchaser, MARIO LAUDISIO, in fee simple, free and clear of any estate, right, title, interest, equity of redemption, and other claims of the parties, except the reservations, provisos, exceptions, and conditions expressed in the original grant(s) thereof from the Crown.

3. The dates for completion, adjustment and possession be set at 10 business days following the granting of the within Order Approving Sale, or so soon before or so soon thereafter as the Receiver and the purchaser shall agree in writing.

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 and GST, if payable;
- c) GST, if payable;
- d) to the Receiver to the credit of this proceeding.

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:

| RESPONDENTS | NATURE OF INTERESTS | REGISTRATION NUMBERS |
|--------------------------------------|----------------------------|-----------------------------|
| VANCOUVER CITY | Mortgage | BB680604 |
| SAVINGS CREDIT UNION | Assignment of Rents | BB680605 |
| MANOHAR ALEXANDER SAVUNDRANAYAGAM | Mortgage | CA5967608 |
| MANOHAR ALEXANDER SAVUNDRANAYAGAM | Mortgage | CA7062860 |
| CONEXUS CREDIT UNION 2006 | Judgment | CA8023458 |
| | Judgment | CA8023461 |

together with any other charges, liens, encumbrances, caveats, mortgages, or certificates of pending litigation registered against the Lands subsequent to 4:53 pm on March 15, 2021.

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

7. Endorsement of this Order by Counsel appearing on this application other than the Receiver is dispensed with.

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:

APPROVED BY:

BY THE COURT

Signature of Heather A. Frydenlund
lawyer for Receiver and Manager,
D. MANNING & ASSOCIATES INC.

REGISTRAR

No. S-1913345
Vancouver Registry

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COLUMBIA**

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(ORDER APPROVING SALE)**

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. 23024-0091