



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

And to: ROYAL BANK OF CANADA

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 FRIDAY JULY 23, 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", directing that the application respondent, Royal Bank of Canada ("RBC") return Funds (as defined below) in the amount of \$19,717.31 withdrawn from the Company's 677 Dawson Creek Account (both as defined below), to D. Manning & Associates Inc. (the "Receiver"), c/o its legal counsel, Owen Bird Law Corporation.
2. An Order in the form attached as Schedule "A" directing that RBC pay costs to the Receiver forthwith in the amount of \$7000, or as otherwise directed by the Court.

Part 2: FACTUAL BASIS

Receivership History

1. The Receiver was appointed the Receiver and Manager 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").
2. 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.
3. 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.

Sale of the Hotel

3. The Property includes a hotel located at 11705 – 8th Street, Dawson Creek, British Columbia, V1G 4N9 (the "Hotel").

4. 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.
5. On April 29, 2021, Master Bilawich granted an order approving the sale of the Hotel for the purchase price of \$2,800,000, which sale closed on May 13, 2021.

Unauthorized Withdrawal by RBC

6. As of the date the Receivership Order was granted, the Company held three (3) bank accounts with RBC as follows:
 - i) Dawson Creek Branch - accounts # 01680-003-1001668 (the “**668 Dawson Creek Account**”) and # 01680-003-1072677 (the “**677 Dawson Creek Account**”); and
 - ii) West Georgia Street Vancouver - account # 00920-003-1002559 (the “**Vancouver Account**”).
7. On April 20, 2020, the same day that the Receivership Order was granted, the Receiver wrote to RBC, provided them with the Receivership Order and advised RBC *inter alia*:
 - 1) To freeze the 668 and 677 Dawson Creek Accounts, allowing deposits only and withdrawals only with the consent of the Receiver; and
 - 2) To freeze the Vancouver Account and provide any balance to the Receiver.
8. Following the court approved sale of the Hotel, the Receiver became aware that RBC made a withdrawal from the 677 Dawson Creek Account on May 5, 2021 in the amount of \$19,717.31 (the “**Funds**”). The Funds were credited to an RBC Visa debt (“**RBC Visa**”).
9. RBC’s withdrawal of the Funds was unauthorized and was not consented to or approved by the Receiver, either orally or in writing.
10. RBC Visa is an unsecured creditor of the Company and was aware of the Receivership. The RBC Visa debt was incurred prior to the Receivership Order being granted.

11. The Receiver wrote to RBC requiring the immediate return of the Funds to the Receiver.
12. Despite multiple demands and requests for the return of the Funds from RBC to the Receiver, RBC has refused or neglected to return the Funds to the Receiver.
13. The terms of the Receivership Order include:
 - 1) That any Person (as defined therein) with notice of the Receivership Order shall grant the Receiver immediate and continued access to the Company's Property and shall deliver all Property to the Receiver upon the Receiver's request (unless subject to liens, upon which liens are dependent upon maintaining possession); and
 - 2) That all rights and remedies (including, without limitation, set-off rights), against the Company, the Receiver, or affecting the Property, are stayed and suspended except with written consent of the Receiver or leave of the Court.

Part 3: LEGAL BASIS

1. The Funds are the property of the Company.
2. The Receivership Order empowers the Receiver to *inter alia*: i) preserve and protect the Company's property; and ii) initiate, manage and direct all legal proceedings now pending or hereafter pending in respect of the Company's property.
3. The Receivership Order places an obligation on RBC, having notice of the Receivership Order, to grant immediate and continued access to the Company's property and to deliver all property to the Receiver upon the Receiver's request.
4. The Receivership Order prevents any party, including RBC, from bringing any proceeding against the property or the Company. Further, any rights and remedies that RBC might have as against the Company or the Company's property, including, without limitation, any set-off rights, are stayed and suspended except with written consent of the Receiver, or with leave of the Court.

5. RBC's refusal to return the Funds is without basis, highhanded and is deserving of an increased award of costs.
6. The *Bankruptcy and Insolvency Act*, RSC 1985, c B-3, as amended; and
7. Rules 8-1, 10-2, 13-2 and 14-1 of the Supreme Court Civil Rules.

Part 4: MATERIAL TO BE RELIED ON

1. Affidavit #2 of Alex En Hwa Ng, made June 24, 2021;
2. The Receivership Order pronounced herein on April 20, 2020;
3. The Order pronounced herein on August 11, 2020;
4. The Order pronounced herein on April 29, 2021;
5. Receiver's First Report, made July 16, 2020; and
6. 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: July 5, 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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Respondents

ORDER MADE AFTER APPLICATION

BEFORE) MASTER) THURSDAY, THE __ DAY OF
)) JULY, 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 AND DECLARES THAT:

1. The funds that the Royal Bank of Canada withdrew from account number 01680-003-1072677 at its Dawson Creek branch, in the amount of \$19,717.31 on May 5, 2021 (the “Funds”) is property of 356746 Holdings Inc. doing business as the George Dawson Inn.

2. RBC shall immediately, and in any event within five (5) business days of the date of this Order, return the Funds to the Receiver’s legal counsel by way of bank draft or certified cheque to:

Owen Bird Law Corporation
29th floor 595 Burrard Street
Vancouver, BC V7X 1J5
Attention: Heather A. Frydenlund

3. RBC shall pay to the Receiver costs in the amount of \$7000, payable forthwith.

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

5. 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

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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

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