

FORCE FILED



IN THE SUPREME COURT OF BRITISH COLUMBIA

BETWEEN:

ADC HOLDINGS LTD.

Petitioner

AND:

JEANA VENTURES LTD. and 1449 SANDHURST PLACE
HOLDINGS LIMITED

Respondents

NOTICE OF APPLICATION

Name of applicant: D. Manning & Associates Inc., the Court appointed Receiver
Manager of 1449 Sandhurst Place Holdings Limited

To: THE PETITIONER, THE RESPONDENTS AND TO THEIR SOLICITORS

TAKE NOTICE that an application will be made by the applicant(s) to the presiding judge or master at the courthouse at the Vancouver Law Courts, 800 Smithe Street, Vancouver, British Columbia, V6Z 2E1 on Wednesday, August 25, 2021, at 9:45 a.m. by Microsoft Teams for the order(s) set out in Part 1 below.

Part 1: ORDER(S) SOUGHT

1. An Order abridging the time for service of this notice of this application to that actually given, or alternatively, an Order deeming service to be valid and effective.
2. An Order in the form attached as Schedule "A" hereto directing that the Lands (as defined below) be conveyed to and vest in the purchaser Saina Taghi Ganji.

Part 2: FACTUAL BASIS

1. D. Manning & Associates Inc. was appointed Receiver Manager (the "**Receiver**") in respect of the assets, undertakings and property of 1449 Sandhurst Place Holdings

Limited (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 property includes real estate situated at 1449 Sandhurst Place, in the District of West Vancouver, British Columbia and more particularly described as:

PID: 008-870-110

LOT 36 BLOCK 50 CAPILANO ESTATES EXTENSION NO. 12 PLAN 12621

(the “**Lands**”).

3. The Lands are a vacant piece of property located in a residential area.
4. 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.
5. As of the Receivership date, there was an accepted contract of purchase and sale, dated June 10, 2021 with respect to the Lands for the purchase price of \$3,350,000, plus GST and set to close on August 16, 2021 (the “**Contract of Purchase**”).
6. Upon its appointment as Receiver of the Company, the Receiver took steps to see the sale of the Lands close pursuant to the Contract of Purchase. However, due to there ultimately being a shortfall to the secured creditors on title, including a claim of builders lien, the sale of the Lands requires a vesting order from the Court in order to close.
7. Due to the requirement to obtain a vesting order, the sale of the Lands could not close on August 16, 2021. Accordingly, the purchaser has agreed with the Receiver to extend the closing date to September 3, 2021 in exchange for a \$10,000 reduction in the purchase price.
8. ADC Holdings Ltd. and Jeana Ventures Ltd. have been made aware of and accept the \$10,000 price reduction in exchange for the extension.

Value of the Lands and Marketing Efforts

- 9. An appraisal dated October 8, 2020 valued the Land as vacant at \$3,300,000 and the 2021 B.C. Assessment value of the Lands is \$3,015,000.
- 10. The Lands were originally listed for sale with an agent on November 2, 2020 for a purchase price of \$3,888,000.
- 11. The Lands were listed by a new listing agent on January 7, 2021 for a purchase price of \$3,898,000. The listing price was later increased to \$4,128,000 on March 16, 2021 and subsequently reduced to \$3,980,000.
- 12. Two (2) offers were made by a prospective purchaser: one in March, 2021 for \$3,500,000, inclusive of GST and one in June, 2021 for \$3,360,000 inclusive of GST, both of which were rejected by the seller.
- 13. The subject offer was made by a new prospective purchaser on June 10, 2021 for the purchase price of \$3,350,000, plus GST, which was accepted by the seller.
- 14. In terms of marketing efforts, the Lands have been listed on MLS as well as the listing agent's website, and marketed through email broadcasting and through calls to builders and investors.

Secured Creditors

- 15. The following are secured creditors of the Lands, as identified in the Receiver's First Report:

District of West Vancouver	2019, 2020 and 2021 Property Taxes	\$23,150.23 as of August 6, 2021
Pursuit Capital Corp. and VWR Capital Corp.	1 st Mortgage	\$2,085,758.00 as of August 16, 2021
John Hing Wong	2 nd Mortgage	\$455,730.05 as of August 16, 2021

Jeana Ventures Ltd.	3 rd Mortgage	\$1,685,128.46 as of August 16, 2021
Al's One Stop Services	Builders Lien	\$67,831.22 as of August 7, 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 Lands have been on the open market since November, 2020 and have been marketed sufficiently with ample opportunity for prospective purchasers to make offers.
4. The sale price for the Lands exceeds the appraisal price and its assessed value.
5. The first and second mortgage holders will be paid out in full. The third mortgage holder has been made aware of and is agreeable to a purchase price of the Lands at \$3,340,000.

6. Section 15 of the *Law and Equity Act*, R.S.B.C. 1996, c. 253; and
7. 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. The Receivership Order, pronounced August 4, 2021; and
2. The Receiver's First Report to the Court, dated August 16, 2021.


The applicant estimates that the application will take 5 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: August 17, 2021



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.

SCHEDULE "A"

Form 35 (Rules 8-4(1), 13-1(3), 17-1(2), and 25-9(2))

No. S214959
Vancouver Registry

IN THE SUPREME COURT OF BRITISH COLUMBIA

BETWEEN:

ADC HOLDINGS LTD.

Petitioner

AND:

JEANA VENTURES LTD. and 1449 SANDHURST PLACE
HOLDINGS LIMITED

Respondents

ORDER MADE AFTER APPLICATION

BEFORE) MASTER) _____, THE ___ DAY
)) OF AUGUST, 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. Service of the notice of application is hereby abridge to the time that was actually given and is deemed effective on all respondents.

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

PID: 008-870-110

LOT 36 BLOCK 50 CAPILANO ESTATES EXTENSION NO. 12 PLAN 12621

(the "Lands")

to SAINA TAGHI GANJI, of _____, 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 June 10, 2021, as amended for the sum of \$3,340,000 is hereby approved.

3. Upon filing a certified copy of this Order in the Vancouver 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, SAINA TAGHI GANJI, 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.

4. The dates for completion, adjustment and possession be set to be September 3, 2021, or so soon before or so soon thereafter as the Receiver and the purchaser shall agree in writing.

5. 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.

6. 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/PARTIES	NATURE OF INTERESTS	REGISTRATION NUMBERS
PURSUIT CAPITAL CORP. and VWR CAPITAL CORP.	Mortgage	CA7644513
	Assignment of Rents	CA7644514
	Certificate of Pending Litigation	CA8466192
JEANA VENTURES LTD.	Mortgage	CA7646590
	Certificate of Pending Litigation	CA8602667
JOHN HING WONG	Mortgage	CA8280518
	Assignment of Rents	CA8280519
	Certificate of Pending Litigation	CA8933129
AL'S ONE STOP SERVICES	Claim of Builders Lien	WX2152175
	Certificate of Pending Litigation	CA9262834

together with any other charges, liens, encumbrances, caveats, mortgages, or certificates of pending litigation registered against the Lands subsequent to 2:06 pm on August 11, 2021.

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

8. 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. S214959
Vancouver Registry

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Petitioner

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HOLDINGS LIMITED

Respondents

ORDER MADE AFTER 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

No. S214959
Vancouver Registry

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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