



FORM 32 (RULE 8-1(4))

No. H 200039
Vancouver Registry

IN THE SUPREME COURT OF BRITISH COLUMBIA

BETWEEN:

PEOPLES TRUST COMPANY

Petitioner

AND:

CENSORIO GROUP (HASTINGS & CARLETON)
HOLDINGS LTD.
PETER CENSORIO also known as PETER ANTHONY
CENSORIO and PETER ANTHONY CENSORIO
STRADA 39 TRUST
BANCORP GROWTH MORTGAGE FUND II LTD.
BANCORP BALANCED MORTGAGE FUND II LTD.
BANCORP FINANCIAL SERVICES INC.
PK CAPITAL LTD.
ALL CANADIAN INVESTMENT CORPORATION
FBM CANADA GSD, INC.
MEDINA CONCRETE SERVICES LTD.
TUCUVAN CONSTRUCTION LTD.
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RAHUL GLASS LTD.
SERIN INVESTMENTS LTD.
CLARION PROPERTY CORPORATION
G. I. H. PROPERTIES LTD.
BARRY CHARLES HOLDINGS LTD.
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SANDRA CHAPPELL
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YORK VENTURES LTD.
HI-GROVE HOLDINGS (1995) LTD.
DIANE RAUCH
JEFFREY RAUCH
GERHARD RAUCH
HELGA RAUCH
PAVILION INVESTMENTS INC.
RODNEY GRANT KENYON
ALAN LONG
MANDATE MANAGEMENT CORPORATION

Respondents

NOTICE OF APPLICATION

Name of applicant: D. Manning & Associates Inc. as Receiver and Manager (“Receiver”)

To: The Respondents and to their Solicitors

TAKE NOTICE that an application will be made by the Receiver to the presiding judge at the courthouse at 800 Smithe Street, Vancouver, British Columbia V6Z 2E1 on August 12, 2020, at 9:45 am., by teleconference, for the orders set out in Part 1 below.

Part 1: ORDERS SOUGHT

1. An Order maintaining any priority held by the respondent All Canadian Investment Corporation (“**All Canadian**”), relative to the other respondents, attributable to All Canadian’s Certificate of Pending Litigation being registered against title to the Lands under No. CA7750158 at 14:27 on September 16, 2019, the (“**CPL**”) so that All Canadian may release the CPL in order to permit the registration of the Strata Plan without losing any priority that All Canadian may have attributable to the time and date of the registration of their CPL all as set out in the form of Order attached as Schedule “A”.

Part 2: FACTUAL BASIS

Background

2. D. Manning & Associates Inc. was appointed Receiver and Manager (the “**Receiver**”) in respect of the assets, undertakings and property of Censorio Group (Hastings & Carleton) Holdings Ltd. (the “**Company**”) relating to a Property at 4223-4229 Hastings Street, Burnaby, British Columbia (the “**Property**”) pursuant to the Order of Mr. Justice Crerar pronounced February 5, 2020.
3. The Property, is a five storey, multi-family condominium project on Hastings Street, in North Burnaby contemplating 28 residential strata lots: 27 residential units, 1 commercial strata lot which is being completed and marketed by the Receiver however the Property has not yet been strata titled.
4. Construction of the Property is nearing completion and the strata plans for the Property will be ready for registration at the Land Title Office, which strata plans will have to be

signed by the registered mortgagees before registration, all of whom have confirmed that they will sign the strata plans if in accordance with Disclosure Statement, filed by the Receiver.

5. The respondents who have registered Claims of Builders Lien (“CBLs”) need not sign the strata plans as their CBLs will simply be carried over to the subdivided strata lots and will reflect their previous respective times and date of registration.
6. All Canadian registered the CPL at 14:27 on September 16, 2019 which was before, in time and date, to any the respondents filing their respective CBLs.
7. In order to register the strata plans All Canadian must release the CPL as the Registrar of Titles will not issue the strata titles with the CPL on title to the Property.
8. The allegations contained in the Notice of Claim filed by All Canadian resulting in the CPL being registered have not been proven, however the claims include:
 - a. a declaration that All Canadian is entitled to and has a mortgage on the Property to secure the monies advanced under a loan agreement (\$1,250,000.00) and a re-advance of \$280,000.00 and that All Canadian’s mortgage ranks in priority to the interests of the Defendants (being the Company and Peter Censorio);
 - b. an order fixing the amount to be paid by the Defendants (being the Company and Peter Censorio) to All Canadian to pay back the monies advanced by All Canadian pursuant to their agreement with the Company;
 - c. a certificate of pending litigation to be registered in the Land Title Office against the title to the Property (i.e. the CPL).
9. The liquidated amount claimed by All Canadian against the Company in the Receivership, pursuant to the claim giving rise to the CPL, is the sum of \$2,374,468.34 as at February 5, 2020, plus per diem interest at the rate of 12% and costs.

Receiver’s Recommendation

10. The Receiver recommends that the Court permit All Canadian to release the CPL to allow for registration of the strata plan of the Property without losing any priority *vis*

a vis the other respondents that registered their CBLs subsequent in in time and date to the registration of the CPL against the Lands by the All Canadian.

Part 3: LEGAL BASIS

1. Sections 28, 31(a), 215(1), 216(1), 256 and 257 of the *Land Title Act* [RSBC 1996] c. 250 as follows:

s. 28 If 2 or more charges appear entered on the register affecting the same land, the charges have, as between themselves, but subject to a contrary intention appearing from the instruments creating the charges, priority according to the date and time the respective applications for registration of the charges were received by the registrar, and not according to the respective dates of execution of the instruments.

s. 31 (a) If a caveat has been lodged or a certificate of pending litigation has been registered against the title to land, (a) the caveator or plaintiff, if that person's claim is subsequently established by a judgment or order or admitted by an instrument duly executed and produced, is entitled to claim priority for that person's application for registration of the title or charge so claimed over a title, charge or claim, the application for registration, deposit or filing of which is made after the date of the lodging of the caveat or registration of the certificate of pending litigation,

s 215(1) A person who has commenced or is a party to a proceeding, and who is

- (a) claiming an estate or interest in land, or
- (b) given by another enactment a right of action in respect of land,

may register a certificate of pending litigation against the land in the same manner as a charge is registered, and the registrar of the court in which the proceeding is commenced must attach to the certificate a copy of the pleading or petition by which the proceeding was commenced, or, in the case of a certificate of pending litigation under Part 5 of the *Court Order Enforcement Act*, a copy of the notice of application or other document by which the claim is made.

s. 216(1) After registration of a certificate of pending litigation, the registrar must not make any entry in the register that has the effect of charging, transferring or otherwise affecting the land described in the certificate until registration of the certificate is cancelled in accordance with this Act.

s. 256 (1) A person who is the registered owner of or claims to be entitled to an estate or interest in land against which a certificate of pending litigation has been registered may, on setting out in an affidavit

- (a) particulars of the registration of the certificate of pending litigation,
- (b) that hardship and inconvenience are experienced or are likely to be experienced by the registration, and
- (c) the grounds for those statements,

apply for an order that the registration of the certificate be cancelled.

(2) An owner whose indefeasible title or charge is registered subject to a certificate of pending litigation under section 217 (2) (a) or (c) (ii) may, on setting out in an affidavit

(a) that the pleading or petition by which the proceeding was commenced or notice of application attached to the certificate contains no allegation that the owner is not a purchaser in good faith and for valuable consideration,

(b) that the owner applied to register the owner's indefeasible title or charge before the certificate was received by the registrar, and

(c) particulars of dates and times of receipt, application and registration of the owner's application and the certificate,

apply for an order that the registration of the certificate be cancelled.

(3) An application under this section must be made to the court in which the proceeding was commenced and must be brought

(a) as an application in that proceeding, if the applicant is a party to the proceeding, or

b) by petition, if the applicant is not a party.

s. 257 (1) On the hearing of the application referred to in section 256 (1), the court

(a) may order the cancellation of the registration of the certificate of pending litigation either in whole or in part, on

(i) being satisfied that an order requiring security to be given is proper in the circumstances and that damages will provide adequate relief to the party in whose name the certificate of pending litigation has been registered, and

(ii) the applicant giving to the party the security so ordered in an amount satisfactory to the court, or

(b) may refuse to order the cancellation of the registration, and in that case may order the party

(i) to enter into an undertaking to abide by any order that the court may make as to damages properly payable to the owner as a result of the registration of the certificate of pending litigation, and

(ii) to give security in an amount satisfactory to the court and conditioned on the fulfillment of the undertaking and compliance with further terms and conditions, if any, the court may consider proper.

(2) The form of the undertaking must be settled by the registrar of the court.

(3) In setting the amount of the security to be given, the court may take into consideration the probability of the party's success in the action in respect of which the certificate of pending litigation was registered.

(4) On hearing the application referred to in section 256 (2) and on being satisfied that

(a) the facts set out in the affidavit are consistent with the records of the land title office, and

(b) there is nothing in the pleading or petition by which the proceeding was commenced or notice of application attached to the certificate that expressly or by necessary implication alleges that the owner is not a purchaser in good faith and for valuable consideration,

the court may make an order declaring that the owner's indefeasible title or charge is not affected by the certificate of pending litigation or the outcome of the proceeding.

(5) On receipt of an order made under subsection (4), the registrar must file it and cancel the registration of the certificate of pending litigation.

2. In the present case the CPL creates inconvenience and hardship as the Receiver cannot strata-title the Property without the CPL being released, the latter of which would result in any priority that All Canadian has arising from their CPL being lost.
3. The Receiver also relies on, sections 4 and 7 of the *Law and Equity Act*, s. 249 of the *BIA*, the Supreme Court Civil Rules including 10-1, and the inherent jurisdiction of this Court.

Part 4: MATERIAL TO BE RELIED ON

1. Affidavit #1 of William Choo made July 29, 2020.
2. The Receiver's First Report.
3. The Orders of Madam Justice Fitzpatrick pronounced May 25, 2020, June 30, 2020 and July 6, 2020
4. The Order of Mr. Justice Crerar pronounced February 5, 2020.

The applicant estimates that the application will take 10 minutes.

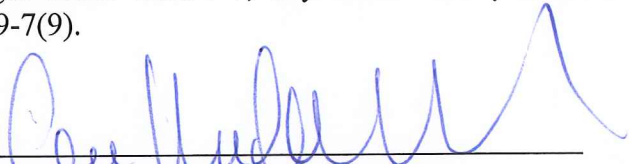
This matter is NOT within the jurisdiction of a master.

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 29, 2020



 Signature of lawyer for applicant,
 Alan A. Frydenlund QC

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"

No. H - 200039
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Petitioner

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and PETER ANTHONY CENSORIO
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MANDATE MANAGEMENT CORPORATION

Respondents

IN THE MATTER OF THE RECEIVERSHIP OF
CENSORIO GROUP (HASTINGS & CARLETON) HOLDINGS LTD.

ORDER MADE AFTER APPLICATION

BEFORE THE HONOURABLE

_____ JUSTICE _____

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WEDNESDAY, THE 12TH DAY OF AUGUST,
2020

ON THE APPLICATION of the Receiver and Manager, D. MANNING & ASSOCIATES INC., (“Receiver”) coming on for hearing this day at Vancouver, British Columbia, by teleconference.

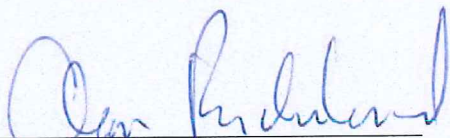
AND ON READING Affidavit #1 of William Choo made July 29 2020, the First Report of the Receiver dated April 16, 2020, and the pleadings filed herein; AND ON HEARING Alan A. Frydenlund QC, Counsel for the Receiver and other counsel as listed on Schedule A hereto, and no one else appearing, although duly served, and on judgment being reserved to this date.

THIS COURT ORDERS AND DECLARES THAT;

1. The Respondent, All Canadian Investment Corporation be directed to release the Certificate of Pending Litigation registered at 14:27, September 16, 2019, under number CA7750158 (“CPL”) against title to the lands the subject of this proceeding (the “Property”) to permit the Receiver to register strata plans to subdivide the Property.
2. All Canadian Investment Corporation shall, notwithstanding the release of the CPL, maintain any priority attributable to the CPL and its time and date of registration against the Property as though it was not released.
3. All Canadian may, but is not obliged to, register a Certificate of Pending Litigation against the titles to the Property following subdivision of the Property and such registration shall be deemed to be effective as of 14:27, September 16, 2019.
4. Endorsement of this Order by Counsel appearing on this application other than the Receiver is dispensed with.

APPROVED BY:

BY THE COURT



Signature of Alan A. Frydenlund QC
lawyer for Receiver and Manager

REGISTRAR

Schedule A
Counsel Appearing

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Vancouver Registry

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STRADA 39 TRUST, BANCORP GROWTH MORTGAGE FUND II
LTD., BANCORP BALANCED MORTGAGE FUND II LTD.,
BANCORP FINANCIAL SERVICES INC., PK CAPITAL LTD., ALL
CANADIAN INVESTMENT CORPORATION, FBM CANADA GSD,
INC., MEDINA CONCRETE SERVICES LTD., TUCUVAN
CONSTRUCTION LTD., OMNI DRYWALL LTD., 1223293 B.C.
LTD., RAHUL GLASS LTD., SERIN INVESTMENTS LTD.,
CLARION PROPERTY CORPORATION, G. I. H. PROPERTIES
LTD., BARRY CHARLES HOLDINGS LTD., BECISON HOLDING
CORPORATION, SANDRA CHAPPELL, CREST CAPITAL
CORPORATION, DURHAM CAPITAL MANAGEMENT INC.,
YORK VENTURES LTD., HI-GROVE HOLDINGS (1995) LTD.,
DIANE RAUCH, JEFFREY RAUCH, GERHARD RAUCH, HELGA
RAUCH, PAVILION INVESTMENTS INC., RODNEY GRANT
KENYON, ALAN LONG and MANDATE MANAGEMENT
CORPORATION

RECEIVERSHIP ORDER SUPPLEMENTAL #3

OWEN BIRD LAW CORPORATION
P.O. Box 49130
Three Bentall Centre
2900 - 595 Burrard Street
Vancouver, BC V7X 1J5
Attention: Alan A. Frydenlund, Q.C.
File No. 23024-0093

No. H-200039
Vancouver Registry

**IN THE SUPREME COURT OF BRITISH
COLUMBIA**

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Petitioner

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NOTICE OF APPLICATION

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P.O. Box 49130
Three Bentall Centre
2900 - 595 Burrard Street
Vancouver, BC V7X 1J5
Attention: Alan A. Frydenlund, Q.C.
File No. 23024-0093