



FORM 32 (RULE 8-1(4))

No. H190678
Vancouver Registry

IN THE SUPREME COURT OF BRITISH COLUMBIA

BETWEEN:

VANCOUVER CITY SAVINGS CREDIT UNION

Petitioner

And

1150165 B.C. LTD.
FATEMEH MIRZAEI
GHOLAMREZA GHASSEMI GANGAN
THE ATTORNEY GENERAL OF CANADA on behalf of HER
MAJESTY THE QUEEN IN RIGHT OF CANADA
DULAY ROOFING LTD.

Respondents

NOTICE OF APPLICATION

Name of applicant: **D. MANNING & ASSOCIATES INC.**, Court Appointed Receiver and Manager (“**Receiver**”) of 1150165 B.C. Ltd., Fatemeh Mirzaei and Gholamreza Gangan (the “**Debtors**”).

To: THE PETITIONER, 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, BC, FRIDAY, AUGUST 12, 2022, 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 of draft Order attached to this Notice of Application as Schedule “A”, approving the Receiver’s activities and summarily passing the Receiver’s accounts.

Part 2: FACTUAL BASIS

Receivership History

1. By Order of the Court made December 19, 2019, D. Manning & Associates Inc. (the “**Receiver**”) was appointed as Receiver and Manager of all of the assets, undertakings and property of the Respondents, 1150165 B.C. Ltd., Fatemeh Mirzaei and Gholamreza Gangan (the “**Debtors**”), acquired for, or used in relation to a business carried on by the Debtors in constructing a home at 1437 Chartwell Drive, West Vancouver B.C. (the “**Receivership Order**”).
2. The home located at 1437 Chartwell Drive is legally described as:
PID: 002-885-018
Lot 8 Block 54 Capilano Estates Extension No. 15 Plan 13758
(the “**Lands**”).
3. The Respondents, Fatemeh Mirzaei and Gholamreza Gangan are the registered owners on title to the Lands.
4. The Receivership Order did not grant the Receiver the powers to complete the construction of the Lands or to market or sell the Lands. However by Order of the Court made March 30, 2020, the Receiver was granted these additional powers (the “**Enhanced Receivership Order**”).

Receiver’s Activities

5. As outlined in the Receiver’s First and Second Reports, dated March 13, 2020 and July 14, 2022, respectively, construction on the house began in 2016 or 2017 and prior to the Receiver being granted its enhanced powers, including the ability to complete construction, the house was framed and at the lock up stage.
6. Before being granted its enhanced powers and in addition to its regular duties, the Receiver was confronted with various difficulties as outlined in its Reports, with respect to the Debtors and the Lands, including:

- i) Difficulty contacting Fatemeh Mirzaei and Gholamreza Gangan;
- ii) Difficulty obtaining information from the previous general contractor, Profix and from Gholamreza Gangan;
- iii) The Lands did not have Homeowners' Protections Office or New Home Warranty coverage;
- iv) Arranging new subcontractors and obtaining quotations;
- v) Engaging structural engineer to inspect the Lands and dealing with issues found in the engineering report, including incomplete work and leaking roof;
- vi) Dealing with the Stop Work Order with respect to the Lands that had been issued by the District of West Vancouver;
- vii) Arranging for the Lands to pass envelope consultant inspection, structural inspection and sheathing inspection;
- viii) Insuring the Lands;
- ix) Arranging for the Lands to be secured with perimeter security patrols; and
- x) Registering 1150165 B.C. Ltd. with CRA.

7. After obtaining its enhanced powers, the Receiver was confronted with various further difficulties, including:

- i) Overseeing and orchestrating the construction of the Lands during the COVID-19 pandemic, impacting sourcing materials and parts, availability of labour, availability of inspectors from the District of West Vancouver, timing to obtain reports and the increase in cost of construction materials;

- ii) Adjusting to new WorkSafeBC protocols as a result of the COVID-19 pandemic, including limiting workers on-site and ensuring social distancing, which impacted timing and productivity;
 - iii) Dealing with ground water issues affecting the construction of the indoor pool and perimeter drainage system, major issues with B.C Hydro obtaining the underground service design and requiring changes to the original construction plan;
 - iv) Numerous change orders necessitated by the District of West Vancouver's inspectors, architects, consultants and engineers, as well as by B.C. Hydro, all as detailed in the Receiver's Second Report;
 - v) Resolving water leaking onto the Lands from an adjacent property;
 - vi) Obtaining a Court Order authorizing the Receiver to file the British Columbia Speculation and Vacancy Tax Declaration (which term is included in the Enhanced Receivership Order); and
 - vii) Dealing with enforcing the return of \$50,000 forming a landscape deposit that the District of West Vancouver had inadvertently sent to Fatemeh Mirzaei and Gholamreza Gangan instead of the Receiver.
8. In accordance with the Enhanced Receivership Order, the Receiver completed construction of the Lands and listed the Lands for sale.
9. As of the date of this Application and as outlined in the Receiver's Second Report, there have been four (4) offers on the Lands, however none of these offers have resulted in an accepted contract of purchase and sale that the Receiver wished to bring for Court approval.
10. The Lands are currently being marketed and are listed for sale at \$7,998,000.

Receiver's Fees

11. The Receiver's fees and disbursements, plus taxes from December 9, 2019 to June 16, 2022 amount to \$486,221.14, as summarized at Schedule "D" to the Receiver's Second Report, made July 14, 2022.
12. The Receiver's legal counsel's fees and disbursements plus taxes from December 31, 2019 to July 14, 2022 amount to \$22,491.05 as summarized at Schedule "E" to the Receiver's Second Report.
13. The Receivership Order and the Enhanced Receivership Order both provide that the Receiver and its legal counsel shall pass their accounts from time to time, which may be done on a summary basis 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;
3. The Enhanced Receivership Order; and
4. Rules 10-2 of the Supreme Court Civil Rules.

Part 4: MATERIAL TO BE RELIED ON

1. Affidavits #1 of William Choo, made July 27, 2022;
2. Affidavit #1 of Alan Frydenlund, made July 27, 2022;
3. The Receiver's First Report, dated March 13, 2020;
4. The Receiver's Second Report, dated July 14, 2022;
5. The Receivership Order, made December 19, 2019; and
6. The Enhanced Receivership Order, made March 30, 2020.

The Receiver estimates that the application will take 5 minutes.

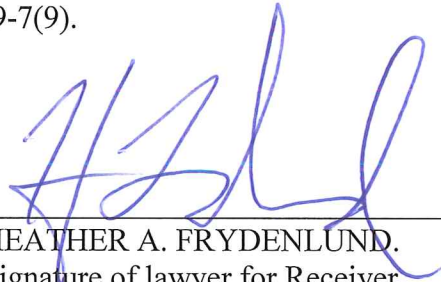
[] This matter is within the jurisdiction of a Master.

[X] 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 2022



HEATHER A. FRYDENLUND.
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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And

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THE ATTORNEY GENERAL OF CANADA on behalf of HER
MAJESTY THE QUEEN IN RIGHT OF CANADA
DULAY ROOFING LTD.

Respondents

ORDER MADE AFTER APPLICATION

(ORDER APPROVING FEES AND ACTIVITIES OF RECEIVER)

BEFORE THE HONOURABLE)
)
_____ JUSTICE _____) FRIDAY, AUGUST 12, 2022

THE APPLICATION of D. MANNING & ASSOCIATES INC., in its capacity as court-appointed Receiver and Manager (the "**Receiver**") of 1150165 B.C. Ltd, Fatemeh Mirzaei and Gholamreza Ghassemi Gangan (the "**Debtors**"), coming on for hearing at Vancouver British Columbia on the 12th day of August, 2022 by MS Teams; 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 First Report of the Receiver dated March 13, 2020 (the "**Receiver's First Report**") and the Second Report of the Receiver dated July 14, 2022 (the "**Receiver's Second Report**");

THIS COURT ORDERS AND DECLARES THAT:

1. The Receiver's interim statement of cash receipts and disbursements for the period December 19, 2019 to July 14, 2022 as set out in the Receiver's Second Report are hereby approved.
2. The activities of the Receiver as set out in the Receiver's First Report and the Receiver's Second Report are hereby approved.
3. The fees, disbursements and taxes of the Receiver, as set out in the Receiver's Second Report for the period December 9, 2019 to June 16, 2022, are hereby approved.
4. The fees, disbursements and taxes of the Receiver's legal counsel, Owen Bird Law Corporation, as set out in the Receiver's Second Report for the period December 31, 2019 to July 14, 2022, are hereby approved.
5. All steps taken by the Receiver and amounts distributed as provide herein are 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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DULAY ROOFING LTD.

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. 23024-0092

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