



FORM 32 (RULE 8-1(4))

No. S-226284
Vancouver Registry

IN THE SUPREME COURT OF BRITISH COLUMBIA

BETWEEN:

VANCOUVER CITY SAVINGS CREDIT UNION

Petitioner

AND:

CEDAR ROAD BIOENERGY INC.
SUNCURRENT INDUSTRIES INC.
PAUL LIDDY

Respondents

NOTICE OF APPLICATION

Names of applicant: D. Manning & Associates Inc., Court appointed Receiver and Manager of all the assets and property of Cedar Road Bioenergy Inc.

To: THE SERVICE LIST

TAKE NOTICE that an application will be made by the applicant to the presiding judge at the courthouse at 800 Smithe Street, Vancouver, BC, V6Z 2E1 on Tuesday January 10, 2023 at 9:45 a.m., for the order set out in Part 1 below.

Part 1: ORDER SOUGHT

1. An order substantially in the in the form attached as Schedule "A" or as the court may otherwise order:

- a) Approving the sales and commission agreement entered into by D. Manning & Associates Inc. (the "**Receiver**") and TCL Asset Group Inc. ("**TCL**") dated

- December 14, 2022 with respect to the marketing and sale of the Remaining Assets (as defined below), in the form attached as Exhibit “A” to the Addendum to the Receiver’s First Report dated December 19, 2022;
- b) increasing the principal amount the Receiver is authorized and empowered to borrow, as contemplated in paragraph 23 of the order made August 4, 2022 (the “**Receivership Order**”), to \$200,000;
 - c) authorizing and directing the Receiver to release its interest in the Transformer (as defined below); and
 - d) approving the activities of the Receiver as set out in the Receiver’s First Report to the Court dated December 6, 2022 and the Addendum to the Receiver’s First Report to the Court dated December 19, 2022 (collectively, the “**Receiver’s Report**”).

Part 2: FACTUAL BASIS

Background

1. The Receivership Order was granted by the Honourable Justice Tammen on August 4, 2022 appointing the Receiver as the Receiver and Manager of all of the assets and property of Cedar Road Bioenergy Inc. (the “**Company**”).
2. Prior to pronouncement of the Receivership Order, the Company operated a business on a landfill site in Nanaimo, British Columbia (the “**Lands**”) owned by the Regional District of Nanaimo (“**RDN**”).
3. The Company’s business involved harvesting methane gas from the Lands and converting it into electricity, which was then sold to third parties. RDN and the Company entered into agreements outlining, *inter alia*, the terms upon which the Company would conduct its business and allowing the Company to operate on the Lands (the “**RDN Agreements**”). The Company also entered into an electricity supply agreement with B.C. Hydro (as third-party purchaser) (the “**Supply Agreement**”).

4. In addition to the RDN Agreements and the Supply Agreement, the Company acquired certain assets to extract the methane gas and convert it into electricity. These assets are more particularly described in the Receiver's Report, but include a generator, shipping containers, and gas booster and distribution substations (the "**Tangible Assets**").
5. In early 2020, the Company's business was interrupted by labour shortages, material and equipment servicing and supply chain delays. In large part, the Company attributes these issues to the Covid-19 outbreak.
6. The Company's business had not operated or generated any revenue for more than a year prior to pronouncement of the Receivership Order (and only reported a minor profit in 2020).
7. Prior to the Receivership Order being granted, the Company's principal, Mr. Paul Liddy, made efforts to offer the Company's business for sale. Those efforts were unsuccessful. Mr. Liddy has opined that the time for burning methane gas from a landfill facility has come and gone and that alternative gas processing options are now more viable.
8. Subsequent to its appointment, the Receiver identified the option of selling the RDN Agreements, the Supply Agreement and the Tangible Assets (collectively, the "**Assets**") *en bloc* to provide an option for a potential purchaser to run a business similar to that operated by the Company. The Receiver also considered the option to sell the Assets separately, or in any combination.

Receiver's Marketing of the Assets - Offers and Proposals

Marketing Efforts

9. The terms of the RDN Agreements and the Supply Agreement have not expired, and in the Receiver's view, remain binding and enforceable. The Tangible Assets are currently located on the Lands and are not being used.

10. The Receiver prepared and published an information package on August 29, 2022 offering the Assets for sale, whether *en bloc*, individually or in any combination (the “**Information Package**”).
11. The Receiver directly distributed the Information Package to 22 parties (those identified by Mr. Liddy, by the Receiver and/or that contacted the Receiver). The Receiver also placed an advertisement for the Assets on the “Insolvency Insider” website and the “Insolvency Insider” newsletter on four (4) occasions (September 6, 12, 19 and 26, 2022). That newsletter is distributed to approximately 6,800 professionals in the insolvency community across Canada. The Receiver also published an advertisement for the Assets on its website (www.manning-trustee.com).
12. Prospective purchasers were permitted to view the RDN Agreements upon execution of a confidentiality agreement (the “**Confidentiality Agreement**”). 14 parties signed the Confidentiality Agreement and viewed the RDN Agreements. In person viewings of the Assets were scheduled for and took place at the Lands in Nanaimo between August 28, 2022 and September 27, 2022.

Offers and Proposals

13. Upon completion of the above-described sales process, on October 5, 2022, the Receiver accepted an offer for the purchase of the RDN Agreements and one of the Tangible Assets, being an “Office & 1 HC 40’ Sea Container” (the “**Offer**”).
14. The Offer remains subject to conditions. The conditions pertain to certain confirmations and acknowledgements on the part of RDN. As it remains conditional, the Receiver is not in a position to seek court approval of the Offer at this time.
15. The Receiver also received a proposal from TCL with respect to the Assets not included in the Offer (the “**Remaining Assets**”). Generally, that proposal is for TCL to conduct a sale of the Remaining Assets by way of an online auction over a period of 60 days, for which TCL

would be paid \$15,000 in exchange for its marketing and advertising services, plus a 15% commission on the Assets sold (the “**Proposal**”).

16. The Receiver has analyzed the Proposal for its expected realization and supports it. Relevant factors include a lack of other viable options to sell the Remaining Assets, a relatively quick timeframe of sixty (60) days and thus a related material reduction or elimination of carrying costs, and that the auction would be conducted online (the Lands have elaborate security measures in place which, in the Receiver’s opinion, would render bidders’ physical attendance difficult to facilitate). The Receiver has considered postponing the sale of the Remaining Assets until after it achieves certainty with respect to the Offer; however, as there is no reasonable prospect that a purchaser will wish to acquire the Assets *en bloc* (or otherwise run a business similar to that which was operated by the Company), the Receiver determined there is no good reason to delay that sale process.
17. Additionally, the senior secured creditor, and only party having a material financial interest in the Company’s Assets, Vancouver City Savings Credit Union (“**VanCity**”), has advised that it supports the Receiver seeking approval of TCL’s Proposal.
18. Accordingly, the Receiver entered into a sales and commission agreement with TCL, dated December 14, 2022 that is subject only to Court approval. This agreement sets out the terms upon which the Receiver and TCL will proceed with carrying out the Proposal.

Additional Asset - the Transformer

19. The Company owns a Carte International Inc. 3 phase transformer with serial number 23539-001 located offsite in Quebec (the “**Transformer**”). A third-party company, Surplec Inc., asserts a possessory lien on the Transformer for outstanding repairs in the amount of \$40,296.37 plus costs. In consultation with Mr. Terrance Jacobs of TCL, Receiver has determined that the Transformer’s value is far less than the outstanding repair cost and that there is no equity in that asset. Accordingly, the Receiver seeks a direction from the Court to release its interest in the Transformer.

The Receiver's Borrowings

20. The Receivership Order authorized and empowered the Receiver to borrow a principal amount not to exceed \$100,000.
21. The Receiver's Interim Statement of Cash Receipts and Disbursements for the period August 4, 2022 to November 18, 2022 (Exhibit "F" to the Receiver's Report) shows a net cash balance of \$4,317.18. The Receiver estimates that, in order to perform its duties and conclude its mandate, an increase of its borrowing power of \$100,000 to a maximum of \$200,000 is required (the "**Receiver's Charge**"). The relevant analysis is set out in the Receiver's Report. Primary factors include anticipated security costs, insurance premiums, unbilled and future receiver's fees and legal costs, and a contingency.

Part 3: LEGAL BASIS

1. Paragraph 2(k) of the Receivership Order empowers and authorizes the Receiver to market the Assets, including soliciting offers in respect of the Assets and negotiating terms and conditions of sale as the Receiver considers appropriate. Paragraph 2(s) of the Receivership Order empowers and authorizes the Receiver to take any steps reasonably incidental to the exercise of its powers granted under the Receivership Order. Under paragraph 2(l) of the Receivership Order, the Receiver requires court approval of a sale for aggregate consideration in excess of \$50,000.
2. The factors that the court considers in determining whether to approve a sale 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

3. In order to protect the integrity of the sale process, the court generally gives deference to its court appointed 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

4. The Assets are unique and specialized. The Receiver was unable to obtain formal valuations and, consequently, determined that the appropriate course of action was to permit the market to place a value on the Assets. The Receiver conducted a commercially reasonable sales process. TCL's Proposal is the only viable option to realize upon the Remaining Assets. There is no known benefit to delaying the sale of the Remaining Assets until after certainty is achieved with respect to the Offer. In contrast, there is a benefit to effecting a sale of the Remaining Assets now in the form of reduction or elimination of associated carrying costs. Vancity, the senior secured creditor and the only party having a material financial interest in the subject Assets, supports the Proposal.
5. Paragraph 23 of the Receivership Order provides that the Receiver may apply to this Court to increase its borrowing powers. In order to perform its duties and complete its mandate, the Receiver estimates that additional borrowings of \$100,000 will be required. Accordingly, an order permitting the Receiver to borrow an amount not to exceed a total of \$200,000 is appropriate in the circumstances.
6. Paragraph 35 of the Receivership Order directs that the Receiver may from time to time apply to this Court for advice and directions in the discharge of its powers and duties. In consultation with TCL, the Receiver has determined that there is no equity in the Transformer. Accordingly, it is appropriate in the circumstance for the Receiver to release its interest in that asset and seeks that direction from the Court.
7. The Court has inherent jurisdiction to approve the activities of its court-appointed receiver. The Receiver's Report summarizes its activities to date and establishes that it has acted

reasonably, prudently and not arbitrarily. An order approving the activities of the Receiver, as outlined in the Report, is appropriate in the circumstances.

8. The Receiver relies on the terms of the Receivership Order, the *Law and Equity Act*, the *Bankruptcy and Insolvency Act*, Rules 1-3, 13-5 and 22-1, and the inherent jurisdiction of the Court.

Part 4: MATERIAL TO BE RELIED ON

1. The Receivership Order made August 4, 2022.
2. The Receiver's First Report to the Court dated December 6, 2022; and
3. Addendum to the Receiver's First Report to the Court dated December 19, 2022.
4. Such other materials as counsel may advise and this Court permit.

The Receiver estimates that the application will take 10 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: December 20, 2022.



Heather A. Frydenlund solicitor for the
Receiver, 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) AND 17-1(2))

No. S-226284
Vancouver Registry

IN THE SUPREME COURT OF BRITISH COLUMBIA

Between

VANCOUVER CITY SAVINGS CREDIT UNION

Petitioner

and

CEDAR ROAD BIOENERGY INC.
SUNCURRENT INDUSTRIES INC.
PAUL LIDDY

Respondents

ORDER MADE AFTER APPLICATION

BEFORE THE HONOURABLE
JUSTICE

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)
)

___/JAN/2023

ON THE APPLICATION of D. MANNING & ASSOCIATES INC., in its capacity as court-appointed Receiver and Manager (the "**Receiver**") of Cedar Road Bioenergy Inc. (the "**Company**"), coming on for hearing at Vancouver, British Columbia on ___/JAN/2023 and on hearing Heather A. Frydenlund for the Receiver and no one else appearing, although duly served;

THIS COURT ORDERS that:

Approve Activities

1. The Receiver's activities as set out in the Receiver's First Report dated December 6, 2022 and the Addendum to the Receiver's First Report dated December 19, 2022 (collectively, the "**Receiver's Report**") are hereby approved.

Approval of Sales Agreement

2. The sale and commission agreement entered into by the Receiver and TCL Asset Group Inc. ("**TCL**") dated December 14, 2022 is hereby approved (the "**Sales Agreement**") and is commercially reasonable.
3. The Receiver is hereby authorized to sign such further documents and take all steps and actions as may be necessary to carry out the Sales Agreement and effect the sale of the assets contemplated by the Sales Agreement without further Order of this Court.
4. All of the Debtor's right, title and interest in and to any assets purchased under the Sales Agreement (the "**Purchased Asset(s)**") shall, upon completion of the sale, vest absolutely in the purchaser, free and clear of and from any and all security interests (whether contractual, statutory, or otherwise), hypothecs, mortgages, trusts or deemed trusts (whether contractual, statutory, or otherwise), liens, executions, levies, charges, or other financial or monetary claims, whether or not they have attached or been perfected, registered or filed and whether secured, unsecured or otherwise (collectively, the "**Claims**") including, without limiting the generality of the foregoing: (i) any encumbrances or charges created by the Order of this Court made August 4, 2022; and (ii) all charges, security interests or claims evidenced by registrations pursuant to the *Personal Property Security Act* of British Columbia or any other personal property registry system (all of which are collectively referred to as the "**Encumbrances**"), and, for greater certainty, this Court orders that all of the Encumbrances affecting or relating to the Purchased Assets are hereby expunged and discharged as against the Purchased Assets.

5. For the purposes of determining the nature and priority of Claims, the net proceeds from the sale of a Purchased Asset shall stand in the place and stead of the Purchased Asset, and from and after completion of the sale, all Claims shall attach to the net proceeds from the sale of a Purchased Asset with the same priority as they had with respect to the Purchased Asset immediately prior to the sale, as if the Purchased Asset had not been sold and remained in the possession or control of the person having had possession or control immediately prior to the sale.

6. Notwithstanding:
 - a) these proceedings;
 - b) any applications for a bankruptcy order in respect of the Debtor now or hereafter made pursuant to the *Bankruptcy and Insolvency Act* and any bankruptcy order issued pursuant to any such applications; and
 - c) any assignment in bankruptcy made by or in respect of the Debtor,the vesting of a Purchased Asset in a purchaser pursuant to this Order shall be binding on any trustee in bankruptcy that may be appointed in respect of the Debtor and shall not be void or voidable by creditors of the Debtor, nor shall it constitute or be deemed to be a transfer at undervalue, fraudulent preference, assignment, fraudulent conveyance or other reviewable transaction under the *Bankruptcy and Insolvency Act* or any other applicable federal or provincial legislation, nor shall it constitute oppressive or unfairly prejudicial conduct pursuant to any applicable federal or provincial legislation.

7. The timelines contemplated in the Sales Agreement may be extended by agreement between the Receiver and TCL, without further Order of this Court.

8. The Receiver shall incur no liability or obligation as a result of it carrying out the Sale's Agreement, save and except in the event of any gross negligence or wilful misconduct on its part.

Release of Interest in Transformer

9. The Receiver's interest in a Carte International Inc. 3 phase transformer bearing serial number 23539-001 is hereby released and the Receiver shall have no further liability in respect thereof.

Receiver's Borrowings

10. The Receiver is authorized and empowered to borrow by way of revolving credit or otherwise, such monies from time to time as it may consider necessary or desirable, provided that the outstanding principal amount does not exceed \$200,000 (or such greater amount as this Court may by further Order authorize) at any time, at such rate or rates of interest as the Receiver deems advisable for such period or periods of time as it may arrange, for the purpose of funding the exercise of the powers and duties conferred upon the Receiver by the Receivership Order granted in these proceedings on August 4, 2022, including interim expenditures.

General

11. This Court hereby requests the aid and recognition of any court, tribunal, regulatory or administrative body, wherever located, to give effect to this Order and to assist the Receiver and its agents in carrying out the terms of this Order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Receiver, as an officer of this Court, as may be necessary or desirable to give effect to this Order or to assist the Receiver and its agents in carrying out the terms of this Order.
12. The Receiver has liberty to apply for such further or other directions or relief as may be necessary or desirable to give effect to this Order.

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, D.
Manning & Associates Inc.,
Heather A. Frydenlund

By the Court.

Registrar

No. S-226284
Vancouver Registry

IN THE SUPREME COURT OF BRITISH COLUMBIA

Between

VANCOUVER CITY SAVINGS CREDIT UNION

Petitioner

And

CEDAR ROAD BIOENERGY INC.

SUNCURRENT INDUSTRIES INC.

PAUL LIDDY

Respondents

ORDER MADE AFTER APPLICATION

OWEN BIRD LAW CORPORATION

P.O. Box 1
Vancouver Centre II
2900 – 733 Seymour Street
Vancouver, BC V6B 0S6

Attention: Heather A. Frydenlund
File No. 23024-0135

No. S-226284
Vancouver Registry

**IN THE SUPREME COURT OF BRITISH
COLUMBIA**

BETWEEN:

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AND:

CEDAR ROAD BIOENERGY INC.
SUNCURRENT INDUSTRIES INC.

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NOTICE OF APPLICATION

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