



FORM 32 (RULE 8-1(4))

No. H 200252
Vancouver Registry

IN THE SUPREME COURT OF BRITISH COLUMBIA

BETWEEN:

VANCOUVER CITY SAVINGS CREDIT UNION

Petitioner

AND:

371392 B.C. LTD.
371392 B.C. LTD. doing business as DIAMOND HEAD MOTOR
INN and DIAMOND HEAD MOTEL
1134365 B.C. LTD.
H.D.P. HOLDINGS INC.
FARHEEN RAWJI
DIPTI PANCHAL
HITESH PANCHAL
ALL TENANTS AND OCCUPIERS OF THE SUBJECT
LANDS

Respondents

NOTICE OF APPLICATION

Name(s) of applicant(s): Receiver and Manager, D. MANNING & ASSOCIATES INC. (the
"Receiver")

To: THE RESPONDENTS AND TO THEIR SOLICITORS

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, JANUARY 15, 2021 at 9:45 a.m. by ~~telephone conference and/or~~ 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", approving the sale of lands, being PID 003-439-411, Lot 114: Except Part Road on Plan 87258, District Lot 165, Group 3 New Westminster District Plan 64278 (the "**Lands**").

Part 2: FACTUAL BASIS

1. The registered owner of the Lands is 371392 B.C. Ltd. doing business as Diamond Head Motor Inn and Diamond Head Motel ("**371**"). 371 carried on a motel business on the Lands (the "**Motel**").
2. The Motel contains 41 rooms, was built in 1982, does not have food and beverage facilities and is located on the Lands at 32550 Logan Avenue, Mission British Columbia.

Receivership History

3. D. Manning & Associates Inc. was appointed Receiver and Manager (the "**Receiver**") in respect of the property of 371, being the Lands and the Motel (the "**Property**"), pursuant to the Order of Mr. Justice Walker pronounced June 24, 2020 (the "**Receivership Date**").
4. The Receivership Order was sought and granted on the basis of, *inter alia*, a stalemate arising between the Directors of 371 with respect to the ownership and control of 371.
5. As at the Receivership Date, there was extant litigation that had been commenced by way of a Petition filed on May 20, 2020 by Ms. Farheen Rawji, one of the two Directors of 371, and her company (1134365 B.C. Ltd. ("**113**")), naming the other Director of 371, Mr. Hitesh Panchal, his company (H.D.P. Holdings Inc.) and 371 as Respondents (the "**Extant Litigation**").
6. At the hearing of the application for the Receivership Order it was anticipated:
 - 1) That 371 would refinance the Property and retire the indebtedness owed to the Petitioner (approximately \$1,806,490.58 as of November 19, 2020 plus interest).
 - 2) That the Extant Litigation between the parties relative to the ownership and control of 371 would continue.

7. The Receivership Order authorized the Receiver to, *inter alia*, apply for vesting orders to convey portions of the Property of 371, but did not grant the Receiver with conduct of sale of the Property or with the authority to enter into listing agreements and undertake measures to market the Property.
8. As outlined in the Receiver's First and Second Reports, dated August 19, 2020 and October 13, 2020, respectively, Mr. Hitesh Panchal, a Director of 371, was making attempts to refinance, however those attempts had not yet been successful.
9. Due to it appearing that the refinancing was not going to come through and it also seeming unlikely that a settlement would be achieved amongst the directors of 371, given that the Extant Litigation over the ownership and control of 371, the Receiver made an application on November 6, 2020 for conduct of sale over the Property.
10. An Order for conduct of sale over the Property was granted on November 6, 2020 by the Honourable Madam Justice Wilkinson, which was made effective December 1, 2020 in an effort to provide 371 further time to refinance (the "**Order for Conduct of Sale**").

Interest in the Property

11. An unconditional offer dated October 28, 2020 was received from Heinrichs Developments Ltd. ("**Heinrichs**") to purchase the Property for the amount of \$3,375,000.
12. This offer was acceptable by Ms. Rawji but not by Mr. Panchal and therefore did not complete. This offer was also brought to the attention of the Court at the Receiver's November 6, 2020 application.
13. A further unconditional offer dated November 23, 2020 was received from Heinrichs to purchase the Property for the amount of \$3,600,000. This offer was open for acceptance until December 4, 2020, being 3 days after the Receiver was to obtain conduct of sale over the Property.
14. Two (2) appraisals were commissioned on the Property, both in October, 2020 and have been exchanged amongst the parties. Both of these appraisals are under the value of the current offer from Heinrichs.

Extant Litigation and Proposed Sales of the Property

15. Mr. Panchal filed a Notice of Application in the Extant Litigation on November 17, 2020 which came on for hearing on November 30, 2020 for an order directing that Mr. Panchal be entitled to purchase all of 113's shares in 371 for the purchase price of \$2,650,000.
16. During the course of the November 30, 2020 application in the Extant Litigation, Mr. Panchal increased his offer to purchase the shares of 113 by \$200,000 for a total of \$2,850,000.
17. This application was heard and dismissed on November 30, 2020.
18. The Receiver's counsel attended this application in the Extant Litigation and advised the Court of the second Heinrichs Offer at \$3,600,000.

Steps Following Conduct of Sale on December 1, 2020

19. Once the Receiver obtained conduct of sale on the Property, it negotiated the terms of the second Heinrichs offer and ultimately accepted Heinrichs' unconditional offer to purchase at \$3,600,000 by way of contract dated December 3, 2020 (the "**Contract**").
20. Per the Contract, the Receiver's counsel holds \$360,000 in its trust account representing the deposit. The stated completion date in the Contract is February 2, 2021.
21. The Contract is subject only to approval by the court.
22. Despite having this accepted offer, the Receiver is marketing the Property and has taken the following steps in that regard:
 - 1) The Receiver posted an advertisement in the classifieds section of the Vancouver Sun Newspaper on December 9, 2020. The Receiver intends to post this advertisement again on December 16, 2020;
 - 2) The Receiver placed a highly visible "For Sale" sign on the Property on December 10, 2020;

3) The Receiver has thus far contacted 15 realtors and other interested parties by e-mail either initially on December 9, 2020 or in response to enquiries arising from the Receiver's marketing of the Property;

4) A notice was posted on the Receiver's website: www.manning-trustee.com.

23. At this time, there are no other competing offers with respect to purchasing the Property.

Registrations Against title

24. There are no other registered interests on title to the Lands, other than those of the Petitioner.

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 two appraisals conducted in October, 2020 both support the purchase price of \$3,600,000.
4. The Property has been marketed for sale by the Receiver since December 9, 2020, providing sufficient exposure and opportunity for other prospective purchasers to make offers.
5. No party is precluded from making an offer to purchase the Property and therefore there is no prejudice to any party.
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. Affidavits #1 and #2 of William Choo, made October 13, 2020 and December 15, 2020, respectively;
2. The Receivership Order pronounced herein on June 24, 2020;
3. The Order pronounced herein on November 6, 2020; and
4. The Receiver's First Report, made August 19, 2020;
5. The Receiver's Second Report, made October 13, 2020; and
6. Oral Reasons for Judgment in the Extant Litigation made December 3, 2020 (when available).

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: December 15, 2020.

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))

No. H 200252
Vancouver Registry

IN THE SUPREME COURT OF BRITISH COLUMBIA

BETWEEN:

VANCOUVER CITY SAVINGS CREDIT UNION

Petitioner

AND:

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ORDER MADE AFTER APPLICATION
(ORDER APPROVING SALE)

BEFORE) MASTER) FRIDAY, THE 15 DAY OF
) _____) JANUARY, 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. The sale of the following the lands and premises:

District of Mission

Parcel Identifier: 003-439-411

Lot 114 Except: Part Road on Plan 87258, District Lot 165 Group 3

New Westminster District Plan 64278

(the "Lands")

to HEINRICHS DEVELOPMENTS LTD., Inc. No. BC1049778, of 202 – 32625 South Fraser Way, Abbotsford BC, V2T 1X8, 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 Contract of Purchase and Sale dated December 3, 2020 for the sum of \$3,600,000.00 is hereby approved.

2. Upon filing a certified copy of this Order in the New Westminster 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, HEINRICHS DEVELOPMENTS LTD., 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.

3. The dates for completion, adjustment and possession be set at February 2, 2021 or so soon before or so soon thereafter as the Receiver and the purchaser shall agree.

4. 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.

5. 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	NATURE OF INTERESTS	REGISTRATION NUMBERS
VANCOUVER CITY SAVINGS CREDIT UNION	Mortgage	CA7036289
	Assignment of Rents	CA7036290
	Certificate of Pending Litigation	CA8261858

together with any other charges, liens, encumbrances, caveats, mortgages, or certificates of pending litigation registered against the Lands subsequent to the petitioner's certificate of pending litigation Nos. CA8261858.

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

7. 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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ORDER MADE AFTER APPLICATION
(ORDER APPROVING SALE)

OWEN BIRD LAW CORPORATION
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Attention: Heather A. Frydenlund
File No. 23024-0095