



FORM 66  
(RULES 16-1(2))

No. S E 2 5 3 3 6 5  
Vancouver Registry

*In the Supreme Court of British Columbia*

Between

PEOPLES TRUST COMPANY/COMPAGNIE DE FIDUCIE  
PEOPLES

Petitioner

and

PEAK DEVELOPMENTS CORP., PEAK DEVELOPMENTS  
LIMITED PARTNERSHIP, WESTCASTLE HOLDINGS LTD.,  
WESTCASTLE LAND DEVELOPMENTS CORP.,  
BOULEVARD CONSTRUCTION CORPORATION,  
RIVERVIEW CUSTOM HOMES LTD., PHIL SALGADO, also  
known as PHILIP SALGADO, CHRIS YORK, also known as  
CHRISTOPHER YORK, MACKAY CONTRACTING LTD.,  
KULKON CONSTRUCTION CORP., 1111053 B.C. LTD.  
DOING BUSINESS AS JJ MECHANICAL, GAUER POWER  
LTD., IKA BUILDERS INC., 689048 ALBERTA LIMITED,  
STEVEN DOUGLAS HOWG, also known as STEVEN  
DOUGLAS HOWG doing business as STP PAINTING,  
JOHN DOE AND ALL TENANTS OR OCCUPIERS OF THE  
SUBJECT LANDS AND PREMISES

Respondents

**Re: IN THE MATTER OF THE RECEIVERSHIP OF PEAK DEVELOPMENTS  
CORP. and PEAK DEVELOPMENTS LIMITED PARTNERSHIP**

### **PETITION TO THE COURT**

#### **ON NOTICE TO:**

PEAK DEVELOPMENTS CORP., PEAK DEVELOPMENTS LIMITED PARTNERSHIP,  
WESTCASTLE HOLDINGS LTD., WESTCASTLE LAND DEVELOPMENTS CORP.,  
BOULEVARD CONSTRUCTION CORPORATION, RIVERVIEW CUSTOM HOMES LTD.,  
PHIL SALGADO, also known as PHILIP SALGADO, CHRIS YORK, also known as  
CHRISTOPHER YORK, MACKAY CONTRACTING LTD., KULKON CONSTRUCTION  
CORP., 1111053 B.C. LTD. DOING BUSINESS AS JJ MECHANICAL, GAUER POWER  
LTD., IKA BUILDERS INC., 689048 ALBERTA LIMITED, STEVEN DOUGLAS HOWG, also  
known as STEVEN DOUGLAS HOWG doing business as STP PAINTING, JOHN DOE  
AND ALL TENANTS OR OCCUPIERS OF THE SUBJECT LANDS AND PREMISES

The address of the registry is: The Supreme Court of British Columbia  
The Law Courts  
800 Smithe Street  
Vancouver, BC V6Z 2E1

The petitioner estimates that the hearing of the petition will take 20 minutes.

- ☐ This matter is an application for judicial review.  
☒ This matter is not an application for judicial review.

**This proceeding is brought for the relief set out in Part 1 below, by**

- ☒ the person(s) named as petitioner(s) in the style of proceedings above  
☐ \_\_\_\_\_ (the petitioner(s))

If you intend to respond to this petition, you or your lawyer must

- a) file a response to petition in Form 67 in the above-named registry of this court within the time for response to petition described below, and  
b) serve on the petitioner(s)  
i) 2 copies of the filed response to petition, and  
ii) 2 copies of each filed affidavit on which you intend to rely at the hearing.

**Orders, including orders granting the relief claimed, may be made against you, without any further notice to you, if you fail to file the response to the petition within the time for response.**

**Time for response to petition**

A response to petition must be filed and served on the petitioner,

- a) if you were served with the petition anywhere in Canada, within 21 days after that service,  
b) if you were served with the petition anywhere in the United States of America, within 35 days after that service,  
c) if you were served with the petition anywhere else, within 49 days after that service, or  
d) if the time for response has been set by order of the court, within that time.

(1)	The ADDRESS FOR SERVICE of the petitioner is: c/o Owen Bird Law Corporation, 2900-733 Seymour Street, PO Box 1, Vancouver, B.C., V6B 0S6 Fax number address for service (if any) of the petitioner: N/A E-mail address for service (if any) of the petitioner: <a href="mailto:jwilliams@owenbird.com">jwilliams@owenbird.com</a>
(2)	The name and office address of the petitioner's lawyer is:

	<p>Owen Bird Law Corporation 2900-733 Seymour Street PO Box 1 Vancouver, BC V6B 0S6 (Attention: Jonathan L. Williams)</p> <p>Fax number address for service (if any) of the petitioner: N/A E-mail address for service (if any) of the petitioner: <a href="mailto:jwilliams@owenbird.com">jwilliams@owenbird.com</a></p>
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## CLAIM OF THE PETITIONER

### Part 1: ORDER(S) SOUGHT

1. An order,
  - a) abridging the time for service of this petition; and
  - b) appointing D. MANNING & ASSOCIATES INC. as RECEIVER AND MANAGER (in such capacity, the “**Receiver**”) without security, of all of the assets, undertakings and property of PEAK DEVELOPMENTS CORP. and PEAK DEVELOPMENTS LIMITED PARTNERSHIP (collectively, “**Peak Developments**” or the “**Borrower**”) acquired for, or used in relation to a business carried on by Peak Developments in constructing a residential real estate development located at 500 – 302<sup>nd</sup> Avenue, Kimberley, British Columbia.
2. An order for any further relief that this honourable Court may deem just.
3. Costs.

### Part 2: FACTUAL BASIS

#### The Parties

1. The petitioner, PEOPLES TRUST COMPANY/COMPAGNIE DE FIDUCIE PEOPLES (“**Peoples**”), is a trust company extra provincially registered in British Columbia, having an address for service in these proceedings, c/o PO Box 1, 2900 – 733 Seymour Street, Vancouver BC V6B 0S6.

2. The respondent, PEAK DEVELOPMENTS CORP. ("**Peak Developments**"), is a company formed under the laws of Alberta with an address at 1334 18 Avenue NW, Calgary, AB, T2M 0W4.
3. The respondent, PEAK DEVELOPMENTS LIMITED PARTNERHSIP ("**Peak Developments LP**"), is a limited partnership formed under the laws of Alberta, with an address at 1334 18 Avenue NW, Calgary, AB, T2M 0W4.
4. The respondent, WESTCASTLE HOLDINGS LTD. ("**Westcastle Holdings**"), is a company formed under the laws of Alberta, with an address at 2832-4 Avenue NW, Calgary, AB, T2N 0R1.
5. The respondent, WESTCASTLE LAND DEVELOPMENTS CORP. ("**Westcastle Land**"), is a company formed under the laws of Alberta, with an address at 2832-4 Avenue NW, Calgary, AB, T2N 0R1.
6. The respondent, BOULEVARD CONSTRUCTION CORPORATION ("**Boulevard**"), is company formed under the laws of Alberta, with an address at 804A 16 Avenue SW, Calgary, AB, T2R 0S9.
7. The respondent, RIVERVIEW CUSTOM HOMES LTD. ("**Riverview**"), is company formed under the laws of Alberta, with an address at 804A 16 Avenue SW, Calgary, AB, T2R 0S9.
8. The respondent, PHIL SALGADO, also known as PHILIP SALGADO ("**Salgado**") is a businessperson with a last known address at 2832-4 Avenue NW, Calgary, AB, T2N 0R1.
9. The respondent, CHRIS YORK, also known as CHRISTOPHER YORK ("**York**"), is a businessperson with a last known address at 804A 16 Avenue SW, Calgary, AB, T2R 0S9.
10. The respondent, MACKAY CONTRACTING LTD. ("**MacKay**"), is a company formed under the laws of British Columbia, with an office at 1600A Theatre Road, Cranbrook, BC, V1C 7G1.

11. The respondent, KULKON CONSTRUCTION CORP. ("**Kulkon**"), is a company formed under the laws of British Columbia, with an office at 9864 Hwy 93/95, Fort Steele, BC, V0B 1N0.
12. The respondent, 1111053 B.C. LTD. DOING BUSINESS AS JJ MECHANICAL ("**JJ Mechanical**"), is a company formed under the laws of British Columbia, with an office at 1335 Theatre Road, Cranbrook, BC, V1C 6Y2.
13. The respondent, GAUER POWER LTD. ("**Gauer**"), is a company formed under the laws of British Columbia with an address at 810 – 309 Street, Kimberly, B.C., V1A 3J5.
14. The respondent, IKA BUILDERS INC. ("**IKA**"), is company formed under the laws of Alberta, with an address at 3320 44 Ave SE, Calgary, AB, T2B 3J9.
15. The respondent, 689048 ALBERTA LIMITED ("**689048**"), is company formed under the laws of Alberta, with an address at c/o North & Company LLP, #600, 220 – 4<sup>th</sup> Street, Lethbridge Alberta, T1J 4J7.
16. The respondent, STEVEN DOUGLAS HOWG, also known as STEVEN DOUGLAS HOWG doing business as STP Painting ("**Howg**"), is an individual with an address at 51-2640 Warren Avenue, Kimberley, BC, V1A 1T5.

#### **The Parties' Roles and Interests**

17. Peoples is a trust company which provides services as a commercial real estate lender. Peoples loaned monies to Peak Developments for the purposes of a real estate construction project (the "**Project**"). Peak Developments, in turn, granted first priority mortgage and personal property security in favour of Peoples. Peoples' security is discussed in greater detail below.
18. Peak Developments owns a residential real estate development located at 500 – 302<sup>nd</sup> Avenue, Kimberley, BC, V1A 3H7, and legally described as follows:

Parcel Identifier: 031-836-780  
LOT 1 DISTRICT LOT 2378  
KOOTENAY DISTRICT PLAN EPP124173

(the "**Lands**").

19. Peak Developments is in the business of developing 9 buildings on the Lands intended as residential rental properties. The buildings are in various states of completion. Two buildings are believed by Peoples to be approximately 90-95% completed. One building has not started and the other 6 are between 65% and 90% completed.

#### **The loan agreement and security**

20. Pursuant to a commitment letter dated August 26, 2022 (the "**Commitment Letter**"), Peoples and Peak Developments entered into a loan agreement on the terms and conditions set out in the Commitment Letter.
21. Under the Commitment Letter, the borrower is Peak Developments. The covenantors are Peak Developments LP, Westcastle Holdings, Westcastle Land, Boulevard, Mr. Salgado, Mr. York and Riverview. The principal amount of the loan was \$20,454,000.00. The term is 30 months.
22. The loan is insured by Canada Mortgage Housing Corporation. The loan matures on June 1, 2025.
23. Pursuant to the Commitment Letter, Peoples was granted security which included the following:
  - a) A mortgage and assignment of rents granted by Peak Developments in favour of Peoples and registered in first position against the Lands in priority to the interest therein or claims thereto of the respondents;
  - b) A mortgage of beneficial interest executed by Peak Developments LP in favour of Peoples;

- c) A project specific security agreement granted by Peak Developments in favour of Peoples charging all of Peak Developments' present and after acquired personal property situated at, arising out of, used in connection with or relating to the Lands and registered in the British Columbia Personal Property Registry in priority to the interest therein or claims thereto of the respondents;
  - d) A cost overrun, debt service and completion agreement;
  - e) An assignment of agreements granted by Peak Developments in favour of Peoples pursuant to which Peak Developments absolutely assigned and granted in favour of Peoples a security interest in any:
    - i) Insurance proceeds;
    - ii) All agreements entered into by Peak Developments with respect to the Project;
    - iii) Plans, permits, approvals, licenses, contracts and agreements relation to the construction and operation of the Project;
    - iv) Letters of Credit;
    - v) Revenues, and other rights; and
  - f) The guarantees and postponement of claims of Peak Developments LP, Westcastle Holdings, Westcastle Land, Boulevard, Riverview; Salgado and York.
24. The mortgage and assignment of rents were filed in the Nelson Land Title Office on December 12, 2022, under numbers CB383780 and CB383781.
25. A financing statement was registered at the British Columbia Personal Property Registry on November 28, 2022, under Base Registration Number 222486P,

naming Peoples as secured party, and Peak Developments Corp. and Peak Developments Limited Partnership, as debtor.

26. A financing statement was registered at the British Columbia Personal Property Registry on November 28, 2022, under Base Registration Number 222508P, naming Peoples as secured party, and Peak Developments Corp. and the guarantors as debtor.
27. Under the terms of the mortgage, Peak Developments is required to pay all property taxes in connection with the Lands (as well as any other amounts that could form a charge in priority to Peoples's security). Under the terms of the mortgage, Peak Developments is also prohibited from permitting or suffering the registration of a builders lien against title to the Lands.
28. The terms of the mortgage, the security agreement, the cost overrun agreement and the assignment of contracts agreement grant Peoples, *inter alia*, the right to appoint a receiver and manager over Peak Developments upon the occurrence of an event of default.

#### **The loan is in arrears**

29. The mortgage loan made under the Commitment Letter has a principal amount of \$20,454,000.00. The balance owing to Peoples is \$17,153,910.36 as at April 1, 2025. The loan is now in arrears.

#### **The Project is overbudget**

30. The Project is overbudget and Peak Developments has no money to either complete the Project or to keep the site secure.
31. Property taxes are in arrears for 2025 in the amount of \$16,951.96 with interest accrued to April 1, 2025, in the amount of \$388.53, and penalties totalling \$1,695.20. The sums owed for property taxes form a priority charge against the Lands and erode Peoples's security position.



32. Buildings liens have registered against the Project as follows:

Date	Charge No.	Name	Amount
January 20, 2025	CB1826406	Mackay Contracting Ltd.	\$524,062.32
February 14, 2025	CB1876435	Kulkon Construction Corp.	\$1,197,145.17
March 12, 2025	CB1921687	1111053 BC Ltd., dba JJ Mechanical	\$185,879.37
March 14, 2025	CB1927320	Gauer Power Ltd.	\$172,783.62
March 14, 2025	CB1927469	Riverview Custom Homes Ltd.	\$3,463,451.47
March 18, 2025	HB12546	IKA Builders Inc.	\$944,011.32
March 21, 2025	CB1939465	Westcastle Holdings Ltd.	\$371,487.02
March 25, 2025	CB1944843	689048 Alberta Limited	\$162,162.02
April 9, 2025	HB13198	Steven Douglas Howg	\$4,000.00

33. The Project has stalled and site security and the potential for damage or waste are urgent concerns.

#### Plan

34. The immediate needs are financing to secure the site, to obtain information, and to develop a plan for the Project.
35. In order to secure the site, the fuel supplier needs to be paid to keep the buildings heated, and the site needs to be secured. Keeping labour on site may be the best way to keep the site secured and to keep insurance in place. These needs require immediate financing.
36. A reasonable scenario for recovery is a build out, but that needs to be considered on the basis of objective evidence and information that is lacking at this stage. It can only be determined with an appraisal, a plan with a budget, and an assessment of the validity of the liens and payables. A court appointed receiver

is in the best position to gather the required information and move forward with the Project.

37. Peoples wishes to appoint a receiver to secure the site, develop a plan, and implement the plan.
38. Peoples reserves all other rights and remedies.

### **The Proposed Receiver**

39. D. Manning & Associates Inc. is a licensed insolvency trustee and has substantial experience as a receiver and officer of the court, including with respect to appointments of this nature. Its proposed senior building consultant for this project, Mr. Chysik, is a builder with a great deal of experience in the construction industry, and receiverships. Specifically, he has a great deal of experience in wood frame town homes.
40. D. Manning & Associates Inc. has consented to act as Receiver and Manager of Peak Developments.

## **Part 3: LEGAL BASIS**

### **Receivership Application**

41. The *Law and Equity Act*, RSBC 1996, c 253, provides:

39 (1) An injunction or an order in the nature of mandamus may be granted or a receiver or receiver manager appointed by an interlocutory order of the court in all cases in which it appears to the court to be just or convenient that the order should be made.

42. The *Bankruptcy and Insolvency Act*, RSC 1985, c B-3, provides:

243 (1) Subject to subsection (1.1), on application by a secured creditor, a court may appoint a receiver to do any or all of the following if it considers it to be just or convenient to do so:

(a) take possession of all or substantially all of the inventory, accounts receivable or other property of an insolvent person or bankrupt that was acquired for or used in relation to a business carried on by the insolvent person or bankrupt;

(b) exercise any control that the court considers advisable over that property and over the insolvent person's or bankrupt's business; or

(c) take any other action that the court considers advisable.

43. The purpose and object of a receivership authorized by the *BIA* is to facilitate and enhance the preservation and realization of the assets of an insolvent debtor for the benefit of the creditors in accordance with their priority rankings.

*British Columbia v. Peakhill Capital Inc.*, 2024 BCCA 246, para. 21  
(lv to appeal to SCC dismissed, May 1, 2025)

44. The court will appoint a receiver and manager when "just or convenient."

*Textron Financial Canada Ltd. v. Chetwynd Motels Ltd.*, 2010 BCSC 477  
*Royal Bank of Canada v Kingsley Trucking Ltd.*, 2025 BCSC 756, para. 22  
*Golf Properties of Florida, LLC v Hentosz Resources Ltd.*,  
2025 ABCA 93, para 16

45. Where the security instrument governing the relationship between the debtor and the secured creditor provides for a right to appoint a receiver on default, the burden on the applicant is relaxed. While the appointment of a receiver is generally regarded as an extraordinary equitable remedy, the nature of the remedy is not extraordinary or equitable in circumstances where commercial parties have expressly contemplated the appointment in a contract governing their relationship.

*Textron* at paras 50 and 75  
*Royal Bank of Canada v Kingsley Trucking Ltd.*, at para. 21

46. It is just and convenient for the court to appoint D. Manning & Associates Inc. as receiver of Peak Developments for reasons including:

- a) This is a commercial loan involving sophisticated commercial entities and, as part of the balancing of the parties' respective rights and obligations, Peoples was granted the contractual right to appoint a receiver under both the mortgage and the security agreement;
- b) Related to the above point, the combination of the mortgage, the security agreement and the cost overrun agreement establishes that the parties objectively intended, in the event of default, Peoples would have the ability to control all aspects of the Lands;
- c) Peoples's security is at risk and there is a potential for Peoples to suffer a shortfall – i.e., Peoples faces the prospect of suffering irreparable harm and a Receiver is immediately required to assess and, to the extent possible, mitigate the risk of harm;
- d) Peak Developments is not meeting its liabilities as they come due and is, accordingly, insolvent and unable to pay priority claims or to fund completion of construction, in both cases, to the considerable detriment of Peoples's security position;
- e) Construction has ceased and, thus, a receiver is required to:
  - i) Secure the property and keep it from wasting or otherwise be put at risk;
  - ii) Assess the status of the construction, the lien claims and the costs to complete; and
  - iii) If appropriate in the circumstances, complete the remaining work or any portion thereof in order to maximize the value of the Lands;
- f) The actions described under this paragraph ought to benefit all secured and unsecured creditors of Peak Developments through the reduction of the rate at which indebtedness accrues in priority to their claims and/or through the increase of the value of the Lands; and

- g) Peak Developments has committed numerous, serious defaults under loan.

### Priority of Secured Lender

47. Section 32 of the *Builders Lien Act*, SBC 1997, c 45, provides as follows:

...

(5) Despite subsections (1) and (2) or any other enactment, if one or more claims of lien are filed in a land title office in relation to an improvement, a mortgagee may apply to the court for an order that one or more further advances under the mortgage are to have priority over the claims of lien.

(6) On an application by a mortgagee under subsection (5), the court must make the order if it is satisfied that

- (a) the advances will be applied to complete the improvement, and
- (b) the advances will result in an increased value of the land and the improvement at least equal to the amount of the proposed advances.


48. Subsections (5) and (6) create an exception to the general scheme of lien priority whereby advances made after a lien has been filed may obtain priority through a court order. Such an order is mandatory when the requirements of ss. 32(5) and (6) are met; the provision therefore gives the court no room to contemplate the fairness or desirability of allowing the application.

*Bank of Montreal v. Peri Formwork Systems Inc.*, 2012 BCCA 4, leave to appeal refused 2013  
CanLII 2397 (SCC)

### Part 4: MATERIAL TO BE RELIED ON

1. Affidavit #1 of Paul De Luca, to be sworn.
2. Affidavit #1 of Kim MacDonald, made May 1, 2025.

Date: MAY 2, 2025

  
\_\_\_\_\_  
Signature of lawyer for petitioner  
Jonathan L. Williams

***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 ☐ Associate Judge