



FORM 32 (RULE 8-1(4)) **FORCE FILED**

No. S253365
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,
DOUGLAS HOWG doing business as STP PAINTING,
JOHN DOE AND ALL TENANTS OR OCCUPIERS OF THE
SUBJECT LANDS AND PREMISES

Respondents

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

NOTICE OF APPLICATION – INCREASE RECEIVER’S BORROWINGS

Name of applicant: D. MANNING & ASSOCIATES INC. IN ITS CAPACITY AS
RECEIVER AND MANAGER OF THE PROJECT (THE
“RECEIVER”).

To: The respondents and the service list

TAKE NOTICE that an application will be made by the applicant to the Honourable Mr. Justice Milman at the courthouse at the Law Courts, 800 Smithe Street, Vancouver, British Columbia V6Z 2E1 on June 25, 2025 at 9:00 a.m. for the order(s) set out in Part 1 below.

The applicant estimates that the application will take 15 minutes.

☒ This matter is not within the jurisdiction of an associate judge.

Part 1: ORDER(S) SOUGHT

1. An order,
 - a) abridging the time for service of this application; and
 - b) substantially in the form attached as Schedule "A" to this application, amending the order made by the Honourable Mr. Justice Milman on May 6, 2025 (the "Initial Order"), by replacing subparagraph 2(r) of the Initial Order with the following:
 - r) to receive further advances of the Petitioner's loan to the Debtor, up to \$2,000,000 (which amount may be further increased be either by the agreement of the parties hereto or further Order of this Court) for the purpose of carrying on its duties pursuant hereto which advances will be in full priority to all Respondents and all Claims of Builders' Lien, pursuant to s. 32(5) of the *Builders' Lien Act* S.B.C. 1997 c.45.

Part 2: FACTUAL BASIS

The Parties' Roles and Interests

1. Peoples Trust Company is a trust company which provides services as a commercial real estate lender. Peoples loaned monies to Peak Developments Corp. and Peak Developments Limited Partnership ("**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.
2. Peak Developments owns a residential real estate development located at 500 – 302nd 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**").

3. On May 6, 2025, on the application of Peoples, Mr. Justice Milman made an order appointing D. Manning & Associates Inc. as receiver and manager of the Project (the "Receiver"). Among other things, Mr. Justice Milman permitted the Receiver to receive a further \$1,000,000.00 under Peoples' loan. The Receiver now seeks to increase that amount by a further \$1,000,000, to \$2,000,000.

Activities of the receiver

4. The Receiver has issued a report dated June 20, 2025 (the "Report") which describes activities to date.
5. Upon its appointment on May 6, 2025, the Receiver took the following conservatory and protective measures:
 - a) Advising the principal of the Company, Mr. Chris York, of its appointment;
 - b) Preparing statutory notices including the Form 7 and Notice and Statement of Receiver and Manager;
 - c) Publishing the statutory notice in the legal section of the *Vancouver Province* newspaper on May 8, 2025;
 - d) Informing all utilities of the appointment of the Receiver and setting up new accounts in the name of the Receiver for B.C. Hydro and Fortis B.C.;
 - e) Advising the City of Kimberley of the appointment of the Receiver and requesting statements of property taxes owing and reviewing an updated statement;
 - f) Contacting Magna Insurance Corp. and advising them of the appointment of the Receiver and determining if there were any outstanding insurance premiums, and adding the Receiver and Peak Developments Limited Partnership as named insureds;
 - g) Setting up a new Canada Revenue Agency ("CRA") account for Goods and Services Tax ("GST") in the name of the Receiver;
 - h) Attending the Property on May 9 and May 10, 2025, and meeting with Messrs. Cal Harvey and Randy Brawner, and viewing the Property and each of the Buildings.

6. Prior to attending the Property, the Receiver had discussions regarding the option of self-managing the project, as opposed to engaging local experts for construction management services, and in particular it interviewed Mr. Cal Harvey, one of the principals of Tribus Project Management Ltd. (“**Tribus**”). Ultimately, it was decided that Tribus should remain as the local project manager for Kimberley Crossing, under the Receiver's supervision (through Mr. Doug Chysik, Senior Construction Associate and Senior Project Manager). The Receiver confirmed its engagement of Tribus' services after meeting with it on site and in Kimberley, and determining the scope of work locally and assisting and reporting to the Receiver.
7. Mr. Cal Harvey will be the Receiver's primary point of contact with Tribus on this project going forward. The Senior Site Superintendent will be Mr. Randy Brawner of Tribus. Mr. Brawner has three decades of construction experience and developed an in-depth understanding of the project, trades and supplies while working for Riverview Custom Homes Ltd. on site since November of 2024. Mr. Brawner's employment with Riverview was terminated on May 6, 2025. He was subsequently hired by Tribus to assist with completion of the Project.
8. Mr. Cal Harvey met with the Receiver at the Cranbrook Airport on May 9, 2025, and they proceeded directly to the Kimberley Crossing site, where they met with Mr. Randy Brawner and immediately commenced reviewing all critical site conditions relating to:
 - a) Site security, both video and physical;
 - b) Complete fencing, changing locks where necessary, and access gate lockup procedures;
 - c) Current insurance coverage;
 - d) On-site equipment inventory;
 - e) Random building material inventory (not installed).

9. Mr. Randy Brawner provided a complete site tour to the Receiver's representatives, including building progress in place, and concluded that eight (8) building blocks were at various stages of completion. He noted some critical building deficiencies and identified many building details requiring clarification from the Architect and the City of Kimberley's Inspection Branch.
10. It was determined that immediate critical meetings needed to be held with the following:
 - a) City of Kimberley officials including the head of Development and Planning, and the Chief Building Inspector. A Microsoft Teams meeting was scheduled and held May 15, 2025;
 - b) Beck Vale Architects & Planners Inc. and related consulting team. A Microsoft Teams meeting was scheduled and held May 16, 2025.
11. While on site, the Receiver conducted a preliminary review of the on-site and off-site civil work in place, and also discussed the critical schedule and estimate of cost to complete the balance of all civil work. Most important will be powering up the site (B.C. Hydro); this is currently being worked on. The Project requires materials and compaction testing, and adjusting the elevation of previously installed infrastructure and electrical boxes to correct design grades. It is essential this work begins in July for the Project to have sub base, hard surfaces (curbs, sidewalks, etc.) and paving installed, and site work complete before winter.
12. The Receiver and Tribus are overall satisfied with the building sequencing and flow of construction on the existing buildings. They have discussed and come to an agreement on the preferred plan for phasing the occupancy (Final Occupancy Permits) which will be discussed and ultimately confirmed by the City officials and Architect.

13. While in Kimberley, the Receiver and Tribus arranged to meet with two key trades, both of which had previously provided substantial work on the project prior to the Receiver's appointment:
 - a) KulKon Construction Corp. (Mr. Ryan Sarfeld) ("KulKon");
 - b) IKA Builders Inc. (Mr. Gill Lafleur) ("IKA").
14. Both KulKon and IKA advised that they wish to be acceptable candidates for the completion of the project moving forward; their involvement will be considered as the Receiver ascertains the status of the Project and develops options for its completion. Furthermore, both KulKon and IKA have existing liens on the Kimberley Crossing project, and both have agreed to provide quotations to complete the work according to the Receiver's desired scope of work.
15. Tribus will work with both KulKon and IKA to properly prepare detailed quotations relating to their scope of work and schedules of values. Tribus will also develop a new baseline estimate for the Project to measure these detailed quotations against to ensure neither bid is inflated, and to provide options to complete should the quotations from KulKon and IKA be deemed unacceptable. Should Tribus and the Receiver choose to engage one of these candidates, Tribus will prepare appropriate contracts for completion of the project according to Tribus' scopes of work prior to the start of construction.

STATUS OF INDIVIDUAL BUILDINGS

16. The Kimberley Crossing project was planned to consist of 66 rental units housed in nine (9) individually permitted buildings. Eight (8) of those buildings are at various stages of completion; construction has not started on the final building.
17. Completion averages about 55-60% across the project with individual buildings at various stages of construction. On-site civil (water, sanitary, storm) has been

installed, but sub-base materials, grading and compacting, road base, curbs, paving, hard and soft landscaping, etc. have not yet started.

Block A-1 (8 units)

18. A-1 is about 40% complete. Plumbing and electrical rough-ins are complete. Suites have been partially insulated. Deficiencies to be addressed include fire stopping, retesting and recertification of the sprinkler system.

Block A-2 (8 units)

19. A-2 is about 40% complete. Plumbing and electrical rough-ins are complete. Suites have been partially insulated. Deficiencies to be addressed include fire stopping, retesting and recertification of the sprinkler system.

Block A-3 (8 units)

20. A-3 is about 40% complete. Plumbing and electrical rough-ins are complete. Suites have been partially insulated. Deficiencies to be addressed include fire stopping, retesting and recertification of the sprinkler system.

Block B-1 (4 units)

21. B-1 is about 50% complete. Four (4) windows still need to be installed. The building has been insulated. Plumbing and electrical rough-ins are complete. The suites are loaded with drywall and ready for boarding. Garage doors need to be installed. Deficiencies to be addressed include fire stopping, retesting and recertification of the sprinkler system.

Block B-2 (4 units)

22. B-2 is about 55% complete. The suites in the building are boarded and ready to tape. Some doors have been hung and some millwork has been installed. Garage doors need to be installed. Deficiencies to be addressed include fire stopping, retesting and recertification of the sprinkler system.

Block B-3 (4 units)

23. B-3 is about 60% complete. The suites in the building are boarded, taped and ready for painting. Some doors have been hung and some millwork has been installed. Deficiencies to be addressed include fire stopping, retesting and recertification of the sprinkler system.

Block C-1 (10 units)

24. Construction has not started on C-1.

Block C-2 (10 units)

25. C-2 is about 80% complete. Individual suites are at the finishing stage; doors are hung, flooring is installed, cabinets are installed, tiling is underway, and fixtures are being installed. Garage doors need to be installed. Deficiencies to be addressed include fire stopping, retesting and recertification of the sprinkler system, and support posts in the stairwells.

Block C-3 (10 units)

26. C-3 is about 80% complete. Individual suites are at the finishing stage; doors are hung, flooring is installed, cabinets are installed, tiling is underway, and fixtures are being installed. Garage doors need to be installed. Deficiencies to be addressed include fire stopping, retesting and recertification of the sprinkler system, and support posts in stairwells.

OPTIONS TO COMPLETE THE PROJECT

27. The Receiver and Tribus are presently gathering information on the estimated costs to complete the Kimberley Crossing project.

FURTHER BORROWING

28. The Initial Order permitted borrowings of up to \$1,000,000, increasable by consent or by further Court order. To date, the Receiver has received advances totalling \$1,000,000.
29. The Receiver seeks an order permitting an increase to the petitioner's loan by a further \$847,884, summarized as follows and on Schedule "C" to the Report:

	\$
Estimated site preservation costs	147,275
Estimated construction analysis costs & professional fees	183,114
Estimated site work costs	538,775
Estimated immediate project requirements	86,324
Estimated cost for planning, site work, and preconstruction	317,269
Estimated Receiver's fees and disbursements	300,000
Estimated Receiver's legal costs	24,157
Estimated MNP LLP's accounting costs	20,000
Contingency	150,000

GST	<u>80,970</u>
TOTAL	<u>\$1,847,884</u>

30. Primary reasons for additional costs include:

- a) Site preservation costs – increased insurance costs for C-buildings due to higher insured values, rates, and wrap up liability, and due to separate lump-sum payments required for A- and B-buildings;
- b) Construction analysis & professional fees – the City required third party consultants to investigate the fire stopping issue, and do sprinkler testing and recertification. A new site survey was also needed, and architects and consultants fees have increased;
- c) Site work – extensive fire stop work is required throughout all Kimberley Crossing buildings, purchase of materials necessary to correct additional deficiencies identified by architect (staircase structural / load issues and ventilation of attic spaces to prevent ice buildup), undertake materials and compaction testing, and adjust previously installed civil infrastructure which is settling / sloughing / was incorrectly installed to meet design grades;
- d) Immediate project requirements – City of Kimberley property taxes (arrears and current) were paid;
- e) Planning, site work, and preconstruction – labour costs to deconstruct and cleanup the C2 and C3 buildings, and the B-building garages, and open all fire rated assemblies for fire stop work, and remediate deficiencies identified by architect, namely staircase structural / load issues and ventilation of attic spaces to prevent ice buildup;
- f) Additionally, the Receiver has provided a contingency to deal with any further unanticipated deficiencies that may be uncovered, and it has added separate line items to the budget for GST, MNP LLP's accounting fees, Receiver's legal costs, and Receiver's fees and disbursements.

FURTHER HEARING

31. The Receiver anticipates making an application for a further hearing on or about the week of July 21, 2025.

Part 3: LEGAL BASIS

Receivership Application

32. 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.

33. 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.

34. 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,
leave to appeal refused, May 1, 2025 (SCC)

Priority of Secured Lender

31. 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.

32. 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, sworn May 5, 2025.
2. Affidavit #1 of Kim MacDonald, sworn May 1, 2025.
3. Report of the Receiver, dated June 20, 2025

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:

June 20, 2025



Signature of lawyer for applicant
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

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" to application

No. S253365
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

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

ORDER MADE AFTER APPLICATION

BEFORE THE HONOURABLE

MR. JUSTICE MILMAN

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WEDNESDAY, THE 25TH DAY OF JUNE,
2025

ON THE APPLICATION of D. MANNING & ASSOCIATES INC. as RECEIVER AND
MANAGER (the "Receiver") of all of the assets, undertakings and property of PEAK
DEVELOPMENTS CORP. and PEAK DEVELOPMENTS LIMITED PARTNERSHIP
(collectively, the "Debtor") acquired for, or used in relation to a business carried on by the
Debtor in constructing residential and commercial strata lots located at 500 – 302nd
Avenue, Kimberley, British Columbia, legally described as, City of Kimberley, Parcel
Identifier 031-836-780, Lot 1, District Lot 2378, Kootenay District, Plan EPP124173 (the
"Lands"), coming on for hearing this day at Vancouver, British Columbia.

AND ON READING the Report of the Receiver dated June 20, 2025, and the affidavits
and pleadings filed herein; AND ON HEARING Jonathan L. Williams, Counsel for the

Receiver, and other counsel as listed on Schedule "A" hereto, and no one else appearing, although duly served.

THIS COURT ORDERS AND DECLARES that:

1. The time for service of the notice of application for this order is hereby abridged and validated so that the notice of application is properly returnable today and this Court hereby dispenses with further service thereof.
2. The order made herein by the honourable Mr. Justice Milman, dated May 6, 2025 (the "Initial Order") is hereby amended, by deleting subparagraph 2(r) of the Initial Order, and replacing it with:

(r) to receive further advances of the Petitioner's loan to the Debtor, up to \$3,000,000 (which amount may be further increased be either by the agreement of the parties hereto or further Order of this Court) for the purpose of carrying on its duties pursuant hereto which advances will be in full priority to all Respondents and all Claims of Builders' Lien, pursuant to s. 32(5) of the *Builders' Lien Act* S.B.C. 1997 c.45.

3. All other terms of the Initial Order remain valid and subsisting.
4. Endorsement of this Order by counsel appearing on this application other than the Petitioner is dispensed with.

THE FOLLOWING PARTIES APPROVE OF 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 Jonathan L. Williams
lawyer for Petitioner

REGISTRAR

Schedule "A"

Counsel Appearing

Action No. S253365
Vancouver Registry

IN THE SUPREME COURT OF BRITISH
COLUMBIA

BETWEEN:

Peoples Trust Company/Compagnie De Fiducie

Petitioner

- and -

PEAK DEVELOPMENTS
CORP. and others

Respondents

RECEIVERSHIP ORDER
