



Court File No. S-253365
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**

APPLICATION RESPONSE

Application response of: Kulkon Construction Corp (the "KulKon")

THIS IS A RESPONSE TO the Notice of Application – Further Advances force filed on August 21, 2025.

The Application Respondent estimates that the Application will take 20 minutes.

Part 1: ORDERS CONSENTED TO

The Application Respondent consents to the granting of the Orders set out in the following paragraphs of Part 1 of the Notice of Application on the following terms:

NIL.

Part 2: ORDERS OPPOSED

The Application Respondent opposes the granting of the Orders set out in paragraphs 1 of Part 1 of the Notice of Application.

Part 3: ORDERS ON WHICH NO POSITION IS TAKEN

The Application Respondent takes no position on the granting of the Orders set out in paragraphs NONE of Part 1 of the Notice of Application.

Part 4: FACTUAL BASIS

Background

1. The Petitioner, Peoples Trust Company, is a trust company, which provides services as a commercial real estate lender ("Peoples").
2. Sometime in August 2022, Peoples loaned money to Peak Developments ("Peak") with respect to a real estate construction project.¹
3. In return for the loan, Peoples was granted a first priority mortgage and security interest in all present and after acquired property of the real estate construction project.²

4. The lands which Peak was developing are legally described as follows:

Civic Address: 500 – 302nd Avenue, Kimberley, BC, V1A 3H7

PID: 031-836-780

LOT 1 DISTRICT LOT 2378

KOOTENAY DISTRICT PLAN EPP124173³

(the "Lands").

5. Sometime in mid-2025, the loan to the Petitioner was in arrears, and the project was overbudget, with Peak having no funds left to continue developing the Lands.⁴
6. In addition, multiple builders liens were registered against the Lands, one of which was the Applicant's lien in the amount of \$1,197,145.17.⁵

Procedural History

7. On May 06, 2025, the Petitioner applied to the court seeking an order for D. Manning & Associates to be appointed as receiver and manager of the development on the Lands.
8. On May 06, 2025, a court order was filed, appointing D Manning & Associates as the Receiver pursuant to section 243(1) of the *Bankruptcy and Insolvency Act* (the "BIA")⁶ and section 39 of the *Law and Equity Act* (the "LEA").⁷

¹ Petition to the Court, filed on May 02, 2025 at part 2, para 20.

² Petition to the Court, filed on May 02, 2025 at part 2, para 23.

³ Notice of Application, filed on May 02, 2025 at part 2, para 2.

⁴ Notice of Application, filed on May 02, 2025 at part 2, paras 13–14.

⁵ Notice of Application, filed on May 02, 2025 at part 2, para 16.

⁶ RSC, 1985, c B-3 [BIA].

⁷ RSBC 1996, c 253 [LEA].

9. Pursuant to paragraph 2 of the Court Order entered on May 06, 2025, the Receiver was empowered and authorized to receive further advances of the Petitioner's loan to Peak up to \$1,000,000 (one million dollars). The amount of the loan could be increased either by agreement of all the parties or by further order of the Court.⁸
10. In its first filed report, the Receiver outlined the conservatory and protective steps it took and provided a review of the property. In its review, the Receiver confirmed the appointment of Cal Harvey as the local project manager for the development on the lands⁹.
11. On June 20, 2025, the Petitioner applied to the Court to amend the Court Order filed on May 06, 2025 to allow the Petitioner to increase its advance to Peak by \$1,000,000.¹⁰
12. On June 25, 2025, a court order was filed, amending the first court order and allowing the Petitioner to increase its advances to Peak by \$1,000,000.¹¹

August 21st Application

13. On August 21, 2025, the Petitioner filed a Notice of Application, seeking court approval for the loan amount to Peak to be increased to \$3,900,000.¹²
14. At the same time, the Receiver filed a letter, providing an update to its First Report dated June 20, 2025 (the "Letter").
15. In the Letter, the Receiver noted that a stop work order was issued by the City of Kimberly on December 12, 2024, and work could only be re-commenced in the first week of June 2025.¹³
16. In addition, the Receiver noted that it was proceeding with "work critical to preparing the site for winter".¹⁴
17. Under the recommendation section, the Receiver recommended for the Petitioner's loan advance to be increased to \$3,900,000.¹⁵
18. There has been limited explanation as to the progress made to date. KulKon has concerns due to the lack of progress with approximately 85% of the funding provided and that the Project is only 50% complete.
19. The Klkon seeks that this application be adjourned and the Receiver provide the following information to stakeholders:

⁸ Order Made After Application, filed on May 06, 2025 at paragraph 2(r).

⁹ First Report of the Receiver, filed on June 20, 2025 at page 3.

¹⁰ Notice of Application, filed on June 20, 2025 at Part 1, para 1.

¹¹ Order Made After Application, filed on June 25, 2025 at para 2.

¹² Notice of Application, filed on August 21, 2025 at Part 1, para 1(b).

¹³ Letter of the Receiver, filed on August 21, 2025 at page 2.

¹⁴ Letter of the Receiver, filed on August 21, 2025 at page 2.

¹⁵ Letter of the Receiver, filed on August 21, 2025 at page 3.

- a. With reference to paragraph 9 of the August 21 Letter, a detailed plan outlining the steps to bring the Project to practical completion, to include specific project milestones and estimated total costs to complete the Project.
- b. In parallel with the information at point 1 above, an updated valuation of the Project: (i) on an "as-is" basis today; and (ii) as of the anticipated date of practical completion.
- c. A full account of *actual* costs incurred and paid to date, with reference to the costs budgets.
- d. A full breakdown of the Receiver's professional fees from the date of appointment, which appear to exceed \$550,000, which also includes their site management. This is necessary to understand the Receiver's professional fees associated with their involvement on an itemized basis.
- e. An itemized breakdown of the works and costs to winterize the Project, which are stated in the August 21 Letter to be \$728,600.
- f. All Quantitative Survey certifications, draw requests, and fund uses based on the fact Project was 85% funded and only 50% completed.
- g. Lastly, whether there is any forensic accounting being completed by the Receiver for the funds used in the project.

Part 5: LEGAL BASIS

1. The borrowing authority was provided in paragraph 2(r) of the initial order which states that:
 - a. to receive further advances of the Petitioner's loan to the Debtor, up to \$3,000,000 (which amount may be further increased by 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.
2. The August 21 Letter expressly confirms (at paragraph 8) that "*the status of the buildings is substantially the same as it was at June 20.*" This raises significant questions as to how approximately \$2 million funds have already been expended but also how the additional \$3M of borrowing expressly relates to the Receiver carrying on its duties.
3. Such delays, combined with escalating senior secured debt, will materially impair the residual value available to subordinate creditors, including KulKon and other creditors and lien claimants. .

4. Paragraph 21 of *British Columbia v. Peakhill Capital Inc.*, 2024 BCCA 246 states in full that:

It is important to begin by recognizing that 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: *Third Eye Capital Corporation v. Ressources Dianor Inc./Dianor Resources Inc.*, 2019 ONCA 508 at para. 73 [*Third Eye*], quoting *Hamilton Wentworth Credit Union Ltd. v. Courtcliffe Parks Ltd.* (1995), 23 O.R. (3d) 781 (S.C.), 1995 CanLII 7059. This necessarily involves the receiver being endowed with the power to liquidate assets, and being charged with a principal responsibility to ensure the liquidation of the assets results in a maximum return to the creditors: *Third Eye* at para. 73, quoting 1117387 *Ontario Inc. v. National Trust Company*, 2010 ONCA 340 at para. 77. It is, perhaps, surprising that there is no *express* power in the *BIA* authorizing a receiver to liquidate and sell assets. Although, those powers are incontrovertibly conferred on a court-appointed receiver, inherent in their role and standardly contained in the order appointing them, in order to give effect to the purpose and object of the insolvency regime contained in the *BIA*: *Third Eye* at para. 74.

5. Pursuant to section 247 of the *BIA*, a receiver is required to act honestly and in good faith and to deal with the property of the insolvent person or bankrupt in a commercially reasonable manner.
6. Case law affirms that as an officer of the court, the receiver is “obliged to act in a commercially reasonable manner in the interest of all stakeholders”¹⁶
7. The information provided by the Receiver to explain the rationale for further advances does not meet the test of commercial reasonability set out in section 247 of the *BIA* but also in the rationale provided in *Peakhill*.
8. The Receiver’s application should be adjourned to provide further information before additional borrowing is provided in that further borrowing advances are necessary without sufficient information provided to the court and stakeholders to evaluate the reasonableness of the request.
9. Further, in order to protect the interests of all stakeholders, financial disclosure should be provided by the Receiver or the Receiver should investigate as to the funds already

¹⁶ *Royal Bank of Canada v Norland Forest Products Ltd*, 2016 BCSC 1456, citing Frank Bennett, Bennett on Receiverships, 3d ed. (Toronto: Thomas Reuters, 2011) at 6, 38; *Gentra Canada Investments Inc v Lehdorff United Properties*, 1995 CanLII 18044 (AB CA) at para 10.

expanded in relation to the Project given the direct impact that the borrowing charge has as against the priority position of any lien claimants.

10. Without further information, the Receiver's application for an increase to the borrowing charge should be adjourned and reset once further information has been provided.

Part 6: MATERIAL TO BE RELIED ON

1. Materials filed by the Petitioner and the Receiver Manager.
 2. Bankruptcy and Insolvency Act.
 3. Law and Equity Act.
 4. Affidavit #1 of Jacqueline Ann Kirzner to be filed.
- ☐ The Application Respondent has filed in this proceeding a document that contains the Application Respondent's address for service.
- ☒ The Application Respondent has not filed in this proceeding a document that contains an address for service.

The Application Respondent's ADDRESS FOR SERVICE is:

Reedman Law
#800a - 1030 West Georgia Street
Vancouver BC V6E 2Y3

Date: August 25, 2025



Signature of ☐ application respondent
☒ Lawyer for application respondent

Cody Reedman