



FILE NO. S-1913131
VANCOUVER REGISTRY

BETWEEN:

MICHAEL NEIL STREET and
MARIELLE JAQUELINE ANGELLA BRULE

PLAINTIFFS

AND

SATHER RANCH LTD.

DEFENDANT

APPLICATION RESPONSE

Application response of: Michael Street and Marielle Brule (the "**Application Respondents**")

THIS IS A RESPONSE TO the notice of application of C. Cheveldave & Associates Ltd., filed April 27, 2023.

Part 1: ORDERS CONSENTED TO

1. The Application Respondents consent to the granting of the orders set out in the following paragraphs of Part 1 of the notice of application, on the following terms:

The Application Respondents consent to the granting of the relief sought in paragraph 1 of Part 1, on the condition that all costs of and incidental to this application are ordered to be paid by Joe Sather and AMX Real Estate Inc. (the "**JS Respondents**").

Part 2: ORDERS OPPOSED

1. The Application Respondents oppose the granting of the orders set out in the following paragraphs **NIL** of Part 1 of the notice of application.

Part 3: ORDERS ON WHICH NO POSITION IS TAKEN

1. The Application Respondents take no position on the granting of the orders set out in **NIL** of Part 1 of the notice of application:

Part 4: FACTUAL BASIS

1. By an order pronounced on September 17, 2018, in Kelowna Registry Action No. 120281 (the “First Receivership Order”), G. Moroso & Associates Ltd. was appointed receiver and manager over the assets and undertaking of Sather Ranch Ltd. (“**SRL**”).
2. The First Receivership Order was made due to an inability of the shareholders and directors of SRL to conduct the affairs of the company.
3. The dispute between the shareholders included a concern that Mr. Joseph Sather had taken a corporate opportunity for himself, in breach of his fiduciary obligations to SRL. This was in relation to Mr. Sather’s acquisition of a 160 acre parcel from which SRL operated its cattle ranch, which is the subject of an action in Kelowna Registry Action No. 122417 (the “**Fiduciary Claim**”).
4. The First Receivership Order was made with the agreement of counsel for the JS Respondents.
5. The JS Respondents subsequently disputed the First Receiver’s authority to act as receiver, and the Application Respondents therefore applied for a second receiver (the Applicant, C. Cheveldave & Associates Ltd., or the “**Second Receiver**”) to be appointed under their security held against the assets of SRL.
6. The Second Receiver was appointed by an order pronounced in this proceeding on November 21, 2019 (the “**Second Receivership Order**”).
7. The terms of the Second Receivership Order were consistent with the Model Receivership Order.
8. The First Receiver obtained its discharge and approval of its accounts by the order of Mr. Justice Hori pronounced June 7, 2021.

9. Mr. Sather opposed the accounts of the First Receiver. His opposition was determined to be unfounded, and by order pronounced on August 19, 2021, he was ordered to pay all costs in connection with the First Receiver's application, in excess of costs that would otherwise have been incurred by the First Receiver if the application had proceeded on an uncontested basis.
10. The vast majority of costs incurred by the Second Receiver relate to the prosecution of the Fiduciary Claim. These costs are wholly attributable to the misconduct of Mr. Sather.
11. The JS Respondents have offered no principled basis for their opposition to approval of the Second Receiver's actions and accounts, and the Application Respondents should not be prejudiced by the continued, unfounded opposition to the actions of the Second Receiver by the JS Respondents.

Part 5: LEGAL BASIS

1. The Application Respondents support the Second Receiver's application for approval of its actions and accounts.
2. The compensation for which the Receiver seeks court approval is fair and reasonable having regard to the relevant factors:
 - (a) the value of the assets;
 - (b) complications and difficulties encountered by the Receiver;
 - (c) degree of assistance provided by the parties;
 - (d) time spent by the Receiver;
 - (e) Receiver's knowledge, experience and skill;
 - (f) diligence and thoroughness;
 - (g) responsibilities assumed;
 - (h) results;
 - (i) cost of comparable services.

Bank of Montreal v. Nican Trading Co. (1990) CanLII 454 (BCCA)

3. The Receiver's costs of this application would ordinarily be borne by the Estate, on a full indemnity basis.

CIBC v. Barley Mow Inn Inc., 1996 CanLII 1437 (BCCA).

4. As the JS Respondents alone are opposing this application, any costs incurred by the Second Receiver in addressing that opposition should be allocated entirely to the JS Respondents.

5. Allocation is an exercise in judicial discretion, to be undertaken in a fair and equitable manner.

HSBC v. Maple Leaf Loading Ltd., 2016 BCSC 361, at paras. 34-36

Part 6: MATERIAL TO BE RELIED ON

1. The Second Receiver's Reports.
2. The Second Receivership Order.
3. Affidavit #1 of Karen Baird.

The Application Respondents estimate that the application will take 45 minutes.

- [X] The Application Respondents have filed in this proceeding a document that contains the Application Respondents' address for service.

Date: May 23, 2023



Signature of Steven Dvorak, lawyer
for the Application Respondents

THE WITHIN DOCUMENT is filed by Steven Dvorak of the law firm of DAVIDSON Lawyers LLP, #301 – 3126 31st Avenue, Vernon, BC, V1T 2H1. Telephone: (250) 542-1177. Fax: (250) 542-1105/SDD/tjm /91516001