



NO. S 1913131
VANCOUVER REGISTRY

IN THE SUPREME COURT OF BRITISH COLUMBIA

BETWEEN:

MICHAEL NEIL STREET and
MARIELLE JAQUELINE ANGELLA BRULE

PLAINTIFFS

AND:

SATHER RANCH LTD. by its
Court Appointed Receiver and Manager,
C. CHEVELDAVE & ASSOCIATES LTD.

DEFENDANT

NOTICE OF APPLICATION

Name of Applicant: C. Cheveldave & Associates Ltd., in its capacity as Receiver and Manager, without security, of all of the assets, undertakings and property of Sather Ranch Ltd., appointed by the Order of the Honourable Mr. Justice Walker on November 21, 2019.

To: Plaintiffs and to their Counsel

And to: Joseph Sather and to his Counsel

And to: G. Moroso & Associates Inc., former Court Appointed Receiver, and its counsel

TAKE NOTICE that an application will be made by the applicant **by MS Teams** to the presiding Judge in Chambers at the Courthouse at 800 Smithe Street, in the City of Vancouver, in the Province of British Columbia, on **June 18, 2021**, at **9:00 a.m.** as arranged through trial scheduling for the orders set out in Part 1 below.

PART 1: ORDERS SOUGHT

1. An Order substantially in the form attached hereto as **Schedule "A"** approving the Receiver's and its counsel's interim fees and disbursements for services rendered up to and including December 31, 2020.
2. An Order for directions regarding the hearing of the Related Party Claims, as that term is defined in the Receivership Order made herein.

PART 2: FACTUAL BASIS

Background

3. By an order made on September 17, 2018 (the “**First Receivership Order**”), G. Moroso & Associates Inc. (the “**Prior Receiver**”) was appointed receiver of all the assets, undertakings and properties of the Company.
4. By an order made on November 21, 2019 (the “**Second Receivership Order**”), the Receiver was effectively substituted as the Receiver although the Prior Receiver was not formally discharged and a separate stand alone receivership order was issued.
5. By an order made on October 28, 2020, the Prior Receiver was discharge.

The Nature, Extent and Value of the Assets

6. The details of the assets are set out in the narrative report attached as Exhibit “A” to the Affidavit #2 of Cecil Cheveldave sworn herein (the “**Cheveldave Affidavit**”).
7. As detailed therein, the main asset was lands that were marketed for sale by the Receiver and then sold for \$1.6 million.
8. In addition to the lands, there was the remaining cattle and personal property used in the ranching operation as detailed in the narrative report.
9. The final remaining asset are two separate actions that Sather Ranch Ltd. (the “**Company**”) has against both of its shareholders, referred to in the narrative report as the Grazing Lands Action and the Oppression Action.

Tasks Performed and Complications and Difficulties Encountered

10. The tasks performed by the Receiver are detailed in the narrative report attached as Exhibit “A” to the Cheveldave Affidavit.
11. The realization on the lands was complicated by an expropriation notice issued by the Regional District of Okanagan Similkameen (“**RDOS**”) shortly before the Receiver’s application to obtain court approval of a sale of those lands to the Brodersens.
12. The adversarial relationship between Mike Street and Joseph Sather, principals behind the two shareholder companies, is also a complicating factor. As noted, the Company has pending litigation against each shareholder.
13. Although the Receiver has sought to report to and seek input from both Mr. Street and Mr. Sather, it has not always been possible to obtain the agreement of both. For example,

the Receiver determined that an *en bloc* sale of the remaining personal property to Mr. Street and Ms. Brule would maximize realization for the benefit of the estate as compared trying to sell those items individually to different buyers. Mr. Sather objected to the Receiver's right to sell that property, notwithstanding that he and Mr. Street unanimously resolved to approve the Company's financial statements which encompasses the Company's assets, including those assets to be sold by the Receiver to Mr. Street and Ms. Brule.

14. Similarly, the Receiver sought to obtain the consent from the shareholders (through their counsel) to the claims process. Although the parties had input on the form of order and had indicated they agreed to its terms, Mr. Sather's counsel raised issues at several appearances such that the claims process order required four attendances over a two and half month period before those issues could be satisfied to the satisfaction of Mr. Sather's counsel. The manner and timing by which these issues were raised increased the professional fees borne by the receivership estate in this matter.

The Degree of Assistance Provided by the Company, its Officers or its Employees

15. Mr. Street was retained by the previous receiver as the ranch manager. Upon its appointment, the Receiver met with Mr. Street and concluded that Mr. Street's continued role as ranch manager would be cost effective and would result in overall efficiencies in administering the receivership. The Receiver contracted with Mr. Street to continue providing ranch management services.
16. Outside of his role as the ranch manager, the Receiver has also received information and support from Mr. Street when and as requested.
17. As noted, the Receiver has had to respond to and address objections and issues raised by Mr. Sather. The Receiver has requested Mr. Sather's assistance (via his legal counsel) in regard to the Oppression Action (as that claim is defined in the narrative report); however, Mr. Sather has not yet provided any assistance.

Receiver's Fees and Disbursements

18. The Receiver's fees and administration costs incurred in this matter from the date of appointment to December 31, 2020 was \$101,551.77 (including applicable taxes).
19. The time and disbursements incurred by the Receiver in the course of its duties are fair and reasonable in a receivership of the nature described herein. In the Receiver's opinion, the cost of this receivership is comparable to receivership assignments of similar scale and complexity.

20. The hourly rates charged by the Receiver are consistent with the average hourly rates billed by the Receiver on its other engagements and, to the Receiver's knowledge, consistent with other insolvency firms of comparable size engaged on similar receivership matters.
21. The Receiver requests that the Court summarily approve the Receiver's interim fees incurred from the date of appointment up to and including December 31, 2020.

Receiver's Legal Counsel's Fees and Costs

22. The Receiver engaged Lawson Lundell LLP ("**Lawson**") as its independent legal counsel. The fees of Lawson up to and including December 31, 2020, were \$81,988.51 (inclusive of taxes and disbursements), as summarized in Exhibit "C" of the Cheveldave Affidavit.
23. The Receiver has reviewed the invoices rendered to it by Lawson and believes them to be reasonable and proper. The legal services provided were necessary for the Receiver to fulfill its obligations in the proceeding.

PART 3: LEGAL BASIS

24. The application is brought pursuant to paragraph 22 of the Receivership Order herein.
25. In *Redcorp Ventures Ltd (Re)*, 2016 BCSC 188 ("**Redcorp**") at ¶28, this Court held that the Receiver should apply from time to time to pass its accounts rather than waiting until the end of a matter. In accordance with that direction, the Receiver applies to pass its account on an interim basis.
26. The factors to be considered by the Court are set out in *Bank of Montreal v. Nican Trading Co. Limited* (1990), 43 B.C.L.R. (2d) 315 (C.A.), which factor are addressed above and support the accounts being taxed as rendered herein.
27. The evidenced tendered in support of the application meets the requirements articulated by this Court in *Redcorp*. The accounts of the Receiver and its counsel:
 - (a) have been properly incurred;
 - (b) were incurred at the standard rates and charges of the Receiver;
 - (c) are fair and reasonable in the circumstances.

PART 4: MATERIAL TO BE RELIED ON

1. Order appointing Receiver made September 17, 2018;
2. Order appointing Receiver made November 21, 2019;
3. Receiver's First Report dated February 12, 2021;
4. Receiver's Second Report dated May 11, 2021;
5. Affidavit #2 of C. Cheveldave, sworn herein;
6. Affidavit #1 of Scott Andersen, sworn herein;
7. Such further and other material as counsel may advise and this Honourable Court may consider.

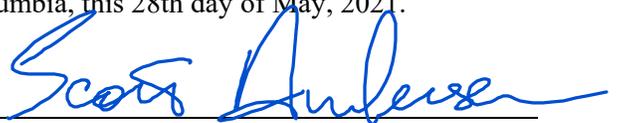
The applicant estimates that the application will take **20 minutes**.

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 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 proceeding, 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;
- (d) if this application is brought under Rule 9-7, any notice that you are required to give under Rule 9-7(9).

Dated at the City of Kelowna, in the Province of British Columbia, this 28th day of May, 2021.



 Scott R. Andersen
 Lawson Lundell LLP
 Solicitor for the Court Appointed Receiver

This Notice of Application is filed by the law firm of Lawson Lundell LLP, whose place of business and address for delivery is 1600 – 925 West Georgia Street, Vancouver, British Columbia, V6C 3L2.

| | |
|---|--|
| <i>To be completed by the court only:</i> | |
| Order made | |
| <input type="checkbox"/> | in the terms requested in paragraphs _____ of Part 1 of this Notice of Application |
| <input type="checkbox"/> | with the following variations and additional terms: |
| | _____ |
| | _____ |
| Date: | _____ |
| | Signature of <input type="checkbox"/> Judge <input type="checkbox"/> Master |

APPENDIX

The following information is provided for data collection purposes only and is of no legal effect.

THIS APPLICATION INVOLVES THE FOLLOWING:

- Other –application by Receiver interim approval of accounts**

IN THE SUPREME COURT OF BRITISH COLUMBIA

BETWEEN:

MICHAEL NEIL STREET and
MARIELLE JACQUELINE ANGELLA BRULE

PLAINTIFFS

AND:

SATHER RANCH LTD. by its
Court Appointed Receiver and Manager,
C. CHEVELDAVE & ASSOCIATES LTD.

DEFENDANT

ORDER MADE AFTER APPLICATION

| | | |
|-----------------------|---|-------------------|
| BEFORE THE HONOURABLE |) | FRIDAY, THE 18TH |
| |) | |
| JUSTICE WALKER |) | DAY OF JUNE, 2021 |
| |) | |

The Notice of Application dated May 28, 2021 (the “**Application**”) of C. Cheveldave & Associates Ltd., in its capacity as Court-appointed Receiver and Manager (the “**Receiver**”) of the assets, undertakings and properties of Sather Ranch Ltd., and coming on for hearing on **June 18, 2021, by MS Teams**, at Vancouver, British Columbia; and on hearing Scott R. Andersen, counsel for the Receiver, Steve Dvorak, counsel for the Plaintiffs, Daniel Johnson, counsel for Joe Sather and upon reading the materials filed including the Affidavit #2 of Cecil Cheveldave and the First Report of the Receiver dated February 12, 2021 (the “**Report**”) and the Affidavit #1 of Scott Andersen (the “**Fee Affidavit**”);

THIS COURT ORDERS that:

1. The activities of the Receiver, as set out in the Report, are hereby approved.
2. The fees and disbursements of the Receiver and its legal counsel Lawson Lundell LLP, as set out in the Report and the Fee Affidavit, are hereby approved.

3. Approval as to the form of this Order by counsel other than the Receiver be and is hereby 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:

Scott R. Andersen
Counsel for the Court Appointed Receiver

BY THE COURT

REGISTRAR

NO. S 1913131
VANCOUVER REGISTRY

IN THE SUPREME COURT OF BRITISH COLUMBIA

BETWEEN:

MICHAEL NEIL STREET and
MARIELLE JAQUELINE ANGELLA BRULE

PLAINTIFFS

AND:

SATHER RANCH LTD. by its Court Appointed Receiver and Manager,
G. MOROSO & ASSOCIATES INC.

DEFENDANT

NOTICE OF APPLICATION



Barristers & Solicitors
403 – 460 Doyle Avenue
Kelowna, British Columbia
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Phone: (778) 738-2610
Attention: Scott R. Andersen