



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

TAKE NOTICE that an application will be made by the applicant 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 **May 10, 2023 at 9:45 a.m.** 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 fees and disbursements for services rendered for the period January 1, 2021 to December 31, 2022.

**PART 2: FACTUAL BASIS**

**Background**

2. 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.

3. 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.
4. By an order made on October 28, 2020, the Prior Receiver was discharged.
5. The Receiver applied to have its professional fees and those of its counsel approved for the period November 21, 2019 to December 31, 2020. The Order was granted by Justice Walker on July 13, 2021 whereby the Court approve the fees and activities of the Receiver for that period of time.
6. The Receiver now applies to have its professional fees approved for the period January 1, 2021 to December 31, 2022.
7. As detailed in Third Report and Affidavit #3 of Cecil Cheveldave, most of the time spent was in regard to the claims process, adjudication of claims received, routine receivership administration matters and then in litigation advanced by the Receiver against Joseph Sather.

#### **Receiver’s Fees and Disbursements**

8. The Receiver’s fees and administration costs incurred in this matter from January 1, 2021 to December 31, 2022 \$123,684.89 (including taxes and disbursements). The Receiver has spent 447.4 hours as detailed in its invoices.
9. 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.
10. 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.
11. The Receiver requests that the Court summarily approve the Receiver’s fees incurred from January 1, 2021 to December 31, 2022.
12. The Receiver engaged Lawson Lundell LLP (“**Lawson**”) as its independent legal counsel. As the litigation of the Grazing Lands Action is ongoing, the Receiver does not yet seek approval of the fees of its legal counsel for the period January 1, 2021 to December 31, 2022 as doing so could give rise to a waiver over the solicitor file, which would be inappropriate until that litigation has concluded on its merits.

**PART 3: LEGAL BASIS**

13. The application is brought pursuant to paragraph 22 of the Receivership Order herein.
14. 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.
15. 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 support the accounts being taxed as rendered herein.
16. The evidenced tendered in support of the application meets the requirements articulated by this Court in *Redcorp*. The accounts of the Receiver:
  - (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.
17. The actions advanced by the Receiver in 2021-2022 seek to both increase the net realization and recovery for the benefit of stakeholders herein and to create certainty and finality as to how the net realization will be distributed to creditors and then to shareholders herein. Both of those steps significantly advance the receivership towards a conclusion and distribution.

**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 Second Report dated May 11, 2021;
4. Receiver’s Third Report dated April 25, 2023;
5. Affidavit #3 of C. Cheveldave, sworn herein;
6. Such further and other material as counsel may advise and this Honourable Court may consider.

The applicant estimates that the application will take **10 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 26<sup>th</sup> day of April, 2023.

\_\_\_\_\_  
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.

*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  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 for interim approval of accounts**



2. The fees and disbursements of the Receiver, as set out in the Report and the Fee Affidavit, are hereby approved.

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:

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Scott R. Andersen  
Counsel for the Court Appointed Receiver

BY THE COURT

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REGISTRAR

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**PLAINTIFFS**

**AND:**

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

**DEFENDANT**

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**NOTICE OF APPLICATION**

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Barristers & Solicitors  
403 – 460 Doyle Avenue  
Kelowna, British Columbia  
V1Y 0C2

Phone: (778) 738-2610  
Attention: Scott R. Andersen