



FORM 32 (RULE 8-1(4))

No. KEL-S-S-127397  
Kelowna Registry

**IN THE SUPREME COURT OF BRITISH COLUMBIA**

**BETWEEN:**

**ALBERT WEISSTOCK**

**PETITIONER**

**AND:**

**WALTER WEISSTOCK, ANTONY WEISSTOCK, SILVIA RITA  
GERARD, WITMAR HOLDINGS LTD., DONALD JAMES  
RAMSAY (ADMINISTRATOR OF THE ESTATE OF MARIA  
CONCETTA WEISSTOCK), 1100748 B.C. LTD., ANTONY  
WEISSTOCK (TRUSTEE OF THE WILLY AND MARIA  
CONCETTA WEISSTOCK TRUST), and ISLANDVIEW  
COUNTRY ESTATES LTD.**

**RESPONDENTS**

**NOTICE OF APPLICATION**

**Name of applicant: C. Cheveldave & Associates Ltd., Liquidator (the "Applicant")**

To: The Respondents

TAKE NOTICE that an application will be made by the Petitioner to the presiding judge or associate judge at the courthouse at 1355 Water Street, Kelowna, British Columbia on June 18, 2025 at 9:45 a.m. for the order(s) set out in Part 1 below.

The applicant estimates that the application will take 30 minutes.

☒ This matter is within the jurisdiction of an Associate Judge.

☐ This matter is not within the jurisdiction of an Associate Judge.

**Part 1: ORDERS SOUGHT**

1. The Property, as described in the Order Made After Application granted January 26, 2024 (the "**Order**") be offered for sale by the Liquidator, by way of private sale, free and clear of all encumbrances of the parties, subject to the reservations, provisos, exceptions, and conditions expressed in the original grant(s) from the Crown, without a right of a first refusal or any credit or equity bid process.

2. The Liquidator has exclusive conduct of the said sale and may list the Property with one or more licensed real estate agents or real estate firms, for sale by way of either general, exclusive or multiple listing, and further, that the said Applicant shall be at liberty to pay such real estate agent or firm who may arrange the sale of the Lands commission of not more than seven (7%) percent on the first \$100,000.00 and two and one half (2.5%) percent on the amounts above \$100,000.00 of the gross selling price with respect to such sale from the proceeds of such sale.
4. Any sale of the Property be subject to the approval of the court unless otherwise agreed to in writing by all parties.
5. See attached draft form of Order.

## **Part 2: FACTUAL BASIS**

1. The Order appointing the Applicant as Liquidator of Witmar Holdings Ltd. ("**Witmar**") was granted January 26, 2024.
2. Witmar is a Kelowna, BC based company that has business operations and property that includes 176 apartment units, 10 residential homes and 2 hotels with a combined 99 units.
3. Witmar's shareholders are:
  - (a) Wise Stock Developments Ltd. (A company the Liquidator understands is beneficially owned / controlled by Walter Weisstock).
  - (b) SOAL Collective Inc. (A company the Liquidator understands is beneficially owned / controlled by Antony Weisstock).
  - (c) Delta Vector Developments Corporation. (A company the Liquidator understands is beneficially owned / controlled by Albert Weisstock).
  - (d) Saskgerards Holding Corporation. (A company the Liquidator understands is beneficially owned / controlled by Silvia Gerard).
  - (e) Islandview Country Estates Inc. (A company the Liquidator understands is controlled by Antony Weisstock as trustee of the Willy and Maria Concetta Weisstock Trust).
  - (f) 1100748 B.C. Ltd. (A company the Liquidator understands is controlled by the Estate of Maria Concetta Weisstock with Donald James Ramsay as the trustee. The Liquidator also understands that Walter Weisstock, Antony Weisstock, Albert Weisstock and Silvia Gerard are beneficiaries of the Estate).

4. Albert Weisstock, Walter Weisstock, Antony Weisstock and Silvia Gerard are siblings.
5. As discussed in the Liquidator's First Report, the Witmar shareholders advised the Liquidator of their desire to undertake a process of reaching a negotiated settlement to divide or distribute the Property. The Liquidator was of the view that so long as the shareholders were attempting to work towards reaching a settlement, the opportunity should be afforded to them. As such, the Liquidator agreed to temporarily pause proceeding with advancing specific realization steps.
6. The Liquidator has provided the shareholders/parties with time to reach a negotiated settlement to divide the Property and consulted with the shareholders/parties to determine if a negotiated settlement could be reached. Despite all efforts undertaken by the shareholders/parties, they have been unable to reach a consensus on the method and process that the Property could be bid on and ultimately acquired in a closed, shareholder-only approach.
7. The Liquidator does not believe that any further efforts on the part of the shareholders/parties to arrive at an acceptable arrangement to distribute the Property among themselves will be successful. As a result, the liquidation and realization of the Property should begin.

### **Part 3: LEGAL BASIS**

1. Rule 8-1, of the B.C. Supreme Court Civil Rules, B.C. Reg 168/2009 (the "Rules of Court").
2. Rule 13-5 of the *Rules of Court*, which reads as follows:

#### **Court may order sale**

(1) If in a proceeding it appears necessary or expedient that property be sold, the court may order the sale and may order a person in possession of the property or in receipt of the rents, profits or income from it to join in the sale and transfer of the property and deliver up the possession or receipt to the purchaser or person designated by the court.

#### **Sale in debenture holder's proceeding**

(2) In a debenture holder's proceeding in which the debenture holder is entitled to a charge on any property, the court, if it is of the opinion that eventually there must be a sale of the property, may order the sale before or after judgment, whether or not all interested persons are ascertained or served.

#### **Conduct of sale**

(3) If an order is made directing property to be sold, the court may permit any person having the conduct of the sale to sell the property in the manner the person considers appropriate or as the court directs.

### **Directions for sale**

(4) The court may give directions for the purpose of effecting a sale, including directions

(a) appointing the person who is to have conduct of the sale,

(b) fixing the manner of sale, whether by contract conditional on the approval of the court, private negotiation, public auction, sheriff's sale, tender or some other manner,

(c) fixing a reserve or minimum price,

(d) defining the rights of a person to bid, make offers or meet bids,

(e) requiring payment of the purchase price into court or to trustees or to other persons,

(f) settling the particulars or conditions of sale,

(g) obtaining evidence of the value of the property,

(h) fixing the remuneration to be paid to the person having conduct of the sale and any commission, costs or expenses resulting from the sale,

(i) that any conveyance or other document necessary to complete the sale be executed on behalf of any person by a person designated by the court, and

(j) authorizing a person to enter on any land or building.

### **Application for directions**

(5) A person having conduct of a sale may apply to the court for further directions.

### **Certificate of sale**

(6) The result of a sale by order of the court must be certified in Form 60 by the person having conduct of the sale and that certificate must be filed promptly after completion of the sale.

### **Vesting order**

(7) The person having conduct of the sale may apply to the court for a vesting order in favour of a purchaser.

3. Subsection 334(1) of the B.C. *Business Corporations Act*, SBC 2002, c 57, which reads, in part, as follows:

**Powers of liquidators**

**334** (1) Subject to section 320 (1), if a liquidator is appointed under this Act,

(a) the liquidator has the powers to manage or supervise the management of the business and affairs of the company that were, before the appointment, held by the directors and officers of the company, and the powers of the directors and officers cease, except so far as the liquidator approves the continuation of them,

(b) the liquidator may exercise the powers of the company that are not required by this Act to be exercised by shareholders of the company, and

(c) the liquidator may, without limiting paragraphs (a) and (b) of this subsection,

(i) retain lawyers, accountants, engineers, appraisers and other professional advisers,

(ii) bring, defend or take part in any legal proceeding in the name of and on behalf of the company,

(iii) carry on the business of the company if and to the extent that the liquidator considers it necessary or advisable to do so for the liquidation,

(iv) sell by public auction or private sale any assets of the company,

(v) do all acts and sign any records in the name of and on behalf of the company,

(vi) *borrow money on the security of the assets of the company,*

(vii) settle or compromise any claims by or against the company,

(viii) do all other things necessary for the liquidation and distribution of the company's assets, and

(ix) change one or both of the mailing address and delivery address of one or both of the company's registered office and records office by filing with the registrar a notice of change of address in the form established by the registrar, and section 35 (3) applies.

4. Subparagraph 3(q) of the Order specifically empowers the Liquidator to market any or all of the Property for sale at the Liquidator's discretion. Subparagraph 3(q) reads as follows:

“subject to the terms of this Order, to market any or all of the Property, including advertising and soliciting offers in respect of the Property or any part or parts thereof and negotiating such terms and conditions of sale as the Liquidator considers appropriate, including to solicit offers or credit bids from the Company’s shareholders in accordance with the procedures set out in Schedule B or otherwise, at the Liquidator’s discretion;”

5. Schedule B of the Order sets out the details of a right of first refusal process (the “ROFR Process”) that would allow the parties to match any offer made by third parties.
6. While the ROFR Process as set forth in the Order is discretionary, the Liquidator has the following concerns with the implications of the ROFR Process, including:
  - (a) The addition of the ROFR Process on any sale of the Property may result in less real estate brokerages willing to list some or all of the Property.
  - (b) Real estate brokerages may be less willing to invest the time, effort and money required to deploy a fulsome marketing campaign given the uncertainty of the commission amount that may be earned.
  - (c) The prospective pool of interested purchasers may be limited due to the uncertainty that a purchase transaction can be closed with a third party should the ROFR Process commence in addition to prospective purchasers not being willing to spend the time, money and effort to conduct serious due diligence.
  - (d) Achieving maximum realization value for the benefit of the Liquidation estate is unlikely should there be a limited pool of interested, prospective purchasers.
  - (e) In the event that the ROFR Process is triggered and the resultant transaction is not able to be closed, the Liquidator would be forced to market the property again which may attract lower offers from prospective purchasers compared to the initial offer. This results in increased time and cost to the Liquidation estate.
  - (f) Any of the shareholders could make an offer to purchase the Property without utilizing the ROFR Process which renders such a process redundant.
7. Notwithstanding the language contained in subparagraph 3(q) of the Order referencing the solicitation of equity or credit bids from the shareholders, the Liquidator has the following concerns regarding the use of shareholder credit bids:
  - (a) The valuation of equity that could be attributed to each shareholder would need to be agreed to by the shareholders collectively. Given the long-

standing disputes between the shareholders, the Liquidator has little confidence that such an agreement by the shareholders can be reached.

- (b) The value of the shareholders equity in Witmar be ultimately determined until such time that all Property is realized on, Witmar operations are completely wound down, all taxes are paid, all statutory priority creditor claims and any remaining unsecured creditor claims have been addressed. Calculating the value of equity prior to this point would require utilizing estimates for various provisions of expenses and claims resulting in significant discounting of equity values.
- (c) The ownership positions of the shareholders have not been completely settled as the Willy and Maria Weisstock Trust and the Estate of Maria Concetta Weisstock have not been wound up. As a result, the beneficial ownership of all shares in Witmar Holdings Ltd. is unclear and the estate that cannot be considered for the purposes of valuing equity positions of the shareholders.
- (d) The use of equity to purchase the Property instead of cash may result in insufficient cash being available to fund remaining obligations such as tax obligations, the operating costs of remaining Property, and the administration costs of finalizing the Liquidation.
- (e) Silvia Gerard has indicated she has no wish to acquire any of the Property and no desire to participate in utilizing equity to do so. A credit bid scenario may result in Silvia Gerard's equity position being unfunded if there is insufficient cash to distribute to the shareholders.
- (f) In order to determine a value to attribute to the shareholders' equity for the purposes of using that value to credit bid, there would need to be provisions for amounts to be held back to address future claims and ongoing obligations. Items that would need to be provided for include *inter alia*:
  - (i) Capital gains tax pursuant to prevailing tax rules and calculations that would be in force at the time of a transaction.
  - (ii) The balance of the Royal Bank of Canada mortgage registered against some Property plus any accrued interest.
  - (iii) The balance of the Liquidator's borrowings plus any accrued interest.
  - (iv) Corporate income tax for net income resulting from operations of Witmar.
  - (v) Payroll and severance obligations for employees that would be terminated as a result of a sale of particular Property.

- (vi) Operating costs of the underlying business related to specific assets that are unsold for an indefinite period of time.
- (vii) Claims arising from a future claims process that would be conducted.
- (viii) The administration costs to fund the required work to complete the Liquidation, wind up and dissolution of Witmar.
- (ix) Amounts for contingencies and unforeseen events and claims.

**Part 4: MATERIAL TO BE RELIED ON**

1. Liquidator's First Report, dated January 14, 2025;
2. Liquidator's Second Report, dated June 2, 2025;
3. Affidavit #3 of Cecil Cheveldave; and
4. Order Made After Application granted January 26, 2024.

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 this 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;
  - (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 3, 2025



Signature of Hal Hicks

☐ applicant ☒ lawyer for applicant



***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:

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Date: [dd/mmm/yyyy] . \_\_\_\_\_

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.

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**PETITIONER**

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COUNTRY ESTATES LTD.**

**RESPONDENTS**

**ORDER MADE AFTER APPLICATION**

BEFORE	~~~~~ ~~~~~ ~~~~~ ~~~~~ ~~~~~	THE HONOURABLE JUSTICE _____	~~~~~ ~~~~~ ~~~~~ ~~~~~ ~~~~~	WEDNESDAY, THE 18 <sup>th</sup> DAY OF JUNE, 2025
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ON THE APPLICATION of C. Cheveldave & Associates Ltd., (the “**Liquidator**”) as Liquidator of Witmar Holdings Ltd. (“**Witmar**”) coming on for hearing at Kelowna, BC on June 18, 2025 and on hearing Hal Hicks on behalf of the Liquidator and upon reading the material provided in Affidavit #3 of Cecil Cheveldave; and no one else appearing;

THIS COURT ORDERS and DECLARES that:

1. The Property, as described in the Order Made After Application granted January 26, 2024 be offered for sale by the Liquidator, by way of private sale, free and clear of all encumbrances of the parties, subject to the reservations, provisos, exceptions, and conditions expressed in the original grant(s) from the Crown, without a right of a first refusal or any credit or equity bid process.
2. The Liquidator has exclusive conduct of the said sale and may list the Property with one or more licensed real estate agents or real estate firms, for sale by way

of either general, exclusive or multiple listing, and further, that the said Applicant shall be at liberty to pay such real estate agent or firm who may arrange the sale of the Lands commission of not more than seven (7%) percent on the first \$100,000.00 and two and one half (2.5%) percent on the amounts above \$100,000.00 of the gross selling price with respect to such sale from the proceeds of such sale.

3. Any sale of the Property be subject to the approval of the court unless otherwise agreed to in writing by all parties.

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.

\_\_\_\_\_  
Signature of Hal Hicks

☐ party ☒ lawyer for the Liquidator, C.  
Cheveldave & Associates Ltd.

By the Court

\_\_\_\_\_  
Registrar

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**RESPONDENTS**

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**ORDER MADE AFTER APPLICATION**

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FILE NO. 077284-0002

HRH/dns

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