



## IN THE SUPREME COURT OF BRITISH COLUMBIA

BETWEEN:

HARBOURFRONT HOLDINGS LTD.

**PETITIONER** 

AND:

1245946 B.C. LTD.
RICHARD VERNON PROVOST
LINDSAY ANDREA KNITTER
HIS MAJESTY THE KING IN RIGHT OF CANADA
OCCUPANTS OF THE LANDS
CHAD MOENCH, BRAYDEN HESSLER, HAYLEY CARTWRIGHT
FRANCOIS ST. ONGE AND VILAY KHAMMMANIVONG
SARAH GARNISS AND COLE COLE
NATHAN OBRIGEWITSCH, JEN OBRIGEWITSCH AND JULIE PILLON
LEANNE ROCKWELL AND ANTHONY WARMANN
JOHN ALEX MCGREGOR AND AMANDA MCGREGOR

**RESPONDENTS** 

## **NOTICE OF APPLICATION**

Name of Applicant: C. Cheveldave & Associates Ltd.,

in its capacity as court appointed receiver

To: The Respondents

TAKE NOTICE that an application will be made by C. Cheveldave & Associates Ltd., in its capacity as court appointed receiver of the lands of the Respondent 1245946 B.C. Ltd., to the presiding judge or master at 1355 Water Street, Kelowna, British Columbia on Monday, January 16, 2023 at 9:45 a.m. for the order(s) set out in Part 1 below.

### **Part 1: ORDERS SOUGHT**

See attached draft form of Order for, inter alia, the following relief:

1. That the Receiver have vacant possession of Units 2, 3, 4 and 5 of the subject property located at 1275 Brookside Avenue;

- 2. That a Writ of Possession be issued for Units 2, 3, 4 and 5;
- 3. That the Respondent tenants of Units 2, 3 4 and 5 each pay the amount of \$12,000 to the Receiver in respect of unpaid rents or such other amount as may be established by the Respondents;
- 4. That the Respondent mortgagor pay the amount of \$48,000 to the Receiver in respect of unpaid rents or such other amount as may be established by the Respondent mortgagor;
- 5. That the Respondent mortgagor, and any agent or intermediary on its behalf having possession or control of deposits, pay over to the Receiver all security deposits for the Lands;
- 6. That the Receiver have immediate conduct of sale of the Lands;
- 7. That the amount that the Receiver is authorized and empowered to borrow be increased to \$200,000;
- 8. That the parties are at liberty to schedule hearings of future applications in this proceeding at the Kamloops Registry of this Court;
- 9. That in the event of non-compliance with the order granted at the hearing of this application, the Receiver is at liberty to apply for a contempt order.
- 10. That the Receiver be entitled to its special costs of this application.

#### Part 2: FACTUAL BASIS

- 1. This is a foreclosure proceeding involving 6 residential strata properties located at 1275 Brookside Avenue, Kelowna, BC (referred to herein as Units 1-6) (the "Lands").
- 2. The Petitioner, Harbourfront Holdings Ltd., was granted Order Nisi of Foreclosure on November 23, 2022.
- 3. The Petitioner was also granted, on November 23, 2022, an order appointing C. Cheveldave & Associates Ltd. as Receiver of the Lands (the "Receivership Order").
- 4. The Receivership Order was necessitated primarily by:
  - (a) the interference of the mortgagor 1245946 B.C. Ltd. and its principal Richard Vernon Provost with the Petitioner's attempt to exercise its assignment of rents; and
  - (b) the refusal and/or failure of certain occupants to pay rents to the Petitioner in connection with the Lands, pursuant to the Petitioner's assignment of rents.
- 5. The Receivership Order provides, among other things, that:

- (a) the Receiver is authorized to collect the rents for the Lands (para 2(a)(i));
- (b) tenants occupying the Lands are required to vacate them upon request by the Receiver (para 3);
- (c) copies of all leases, tenancy agreements, licences and insurance certificates in connection with the Lands are to be provided to the Receiver upon request (paras 4 and 5);
- (d) all persons who occupy the Lands as tenants are required to pay their rents to the Receiver until such time as the Receiver provides written direction otherwise or until further Order of the Court (para 8(a));
- (e) in respect of the rents which came due and owing between October 14, 2022 (when the rent assignment notice was served on behalf of the Petitioner) and the date of pronouncement of the Receivership Order (the "Assigned Rents"):
  - (i) all tenants were required to forthwith pay the Assigned Rents to the Receiver;
  - (ii) any Assigned Rents received by the mortgagor were required to be paid to the Receiver within 5 business days of the pronouncement of the Receivership Order; and
  - (iii) the obligation to pay Assigned Rents to the Receiver was to be joint and several as between the mortgagor and the corresponding tenants, and the Receiver is at liberty to pursue payment from any or all of them (at para 8(b)).
- 6. The Receivership Order and Order Nisi were provided to the Respondents by counsel for the Petitioner, by email to addresses used by the Respondents or by posting to the doors of the units.
- 7. The Receiver made requests for documents and information from the mortgagor 1245946 B.C. Ltd. and Mr. Provost. However, the only information received to date by the Receiver from them pursuant to the Receivership Order has been documentation relating to the need to renew property insurance.
- 8. The Receiver initially contacted the tenants by telephone, text and/or email requesting payment of rents and copies of tenancy agreements. The only rents and tenancy agreements the Receiver received in response were from the tenants in Units 1 and 6.
- 9. The Receiver was advised by a tenant in Unit 5 (Leanne Rockwell) that rent had been paid to Mr. Provost. Despite the Receiver's request, no confirmation of such payment has been provided by the tenant and Mr. Provost has not advised the Receiver he has received any rents.

- 10. The Receiver subsequently posted a letter to the door of each of Units 2, 3, 4 and 5 on December 10, 2022. Since posting the letter, the Receiver has received no communication whatsoever from any of those tenants.
- 11. More specifically, to date the following Respondents have failed to pay to the Receiver the November and December 2022 rents and have failed to provide the Receiver with copies of their tenancy agreements:
  - (a) François St. Onge and Vilay Khammanivong, occupants of Unit 2;
  - (b) Sarah Garniss and Cole Cole, occupants of Unit 3;
  - (c) Nathan Obrigewitsch, Jen Obrigewitsch and Julie Pillon, occupants of Unit 4; and
  - (d) Leanne Rockwell and Anthony Warmann, occupants of Unit 5.
- 12. As the receiver has had no communications from the tenants for Units 2, 3 and 4, and has had no confirmation of payment of rents from the tenants for Units 5 despite the suggestion they had paid rents, the Receiver does not know why rents have not been paid to the Receiver or whether rents have been received by the mortgagor or anyone else.
- 13. As the Receiver has not received the tenancy agreements for Units 2, 3, 4 and 5, the amount of rents payable for each unit and the amount paid by tenants as security deposits is unknown.
- 14. The tenancy agreements provided by the tenants of Units 1 and 6 indicate rents of \$4000/month and \$3500/month respectively. Presumably the rents for the other units are for similar amounts.
- 15. The security deposits are assumed to be held by the mortgagor or an agent or intermediary acting on behalf of the mortgagor, potentially Mr. Provost's other company 1245948 B.C. Ltd. which is referenced in the two tenancy agreements for Units 1 and 6.
- On December 22, 2022, the Receiver signed notices to the tenants of Units 2, 3, 4 and 5 advising them they must pay rents and provide copies of tenancy agreements to the Receiver by no later than January 1, 2023 or the Receiver would be seeking a Writ of Possession to evict them (the "**December Notices**").
- 17. Arrangements have been made for a process server to personally serve the December Notices on those tenants, failing which the December Notices will be posted to the doors of such units.
- 18. If any of those tenants comply with the December Notices by paying rent and providing their tenancy agreement by January 1, 2023, the Receiver is prepared to agree for those tenants to continue their tenancy so long as they continue to comply with their obligation to pay rent.

## **Increase to Authorized Borrowings**

- 19. Pursuant to the Receivership Order, the Receiver was authorized to borrower up to \$25,000 to fund the receivership (at para 17). To date the Receiver has borrowed \$10,000.
- 20. The Receiver has prepared a six-month cash flow projection based on the limited information available to it.
- 21. The Receiver anticipates that it may be necessary to borrow up to \$175,000 over the next six months to fund the receivership, in addition to the \$25,000 that was authorized in the Receivership Order.
- 22. The need for increased borrowing authorization is in part due to the failure of Respondents to pay rents to the Receiver.

#### Conduct of Sale

- Pursuant to the Receivership Order, the Receiver is authorized to market and sell the Lands, subject to further court order (at para 2(f) and (g)).
- 24. The Receivership Order was necessitated primarily by:
  - (a) the interference of the mortgagor 1245946 B.C. Ltd. and its principal Richard Vernon Provost with the Petitioner's attempt to exercise its assignment of rents; and
  - (b) the refusal and/or failure to of certain occupants to pay rents to the Petitioner in connection with the Lands, pursuant to the Petitioner's assignment of rents.
- 25. Given that the continued lack of cooperation by the mortgagor, Mr. Provost and the majority of the tenants, notwithstanding the clear language in the Receivership Order and 4 of 6 of the units comprising the Lands will become vacant if this the orders sought are granted, the Receiver seeks authorization to proceed to market and sell the Lands.

## **Part 3: LEGAL BASIS**

- 1. The applicant relies on the Orders made in this proceeding.
- 2. Rules 13-2(3), 13-5 and 21-7 of the BC Civil Rules of Court.
- 3. No rents have been paid and no tenancy agreements have been provided to the Receiver in respect of Units 2, 3, 4 and 5 despite the clear obligation under the Receivership Order and the Receiver's requests.
- 4. As a result of the lack of cooperation from the mortgagor, Mr. Provost and the tenants of Units 2, 3, 4 and 5, the Receiver does not know who has or has not paid rents, and whether the mortgagor has received any rents that should have been paid to the Receiver. In the result, the Receiver is seeking orders for payment from all of them.

- 5. Having failed to pay rent and to otherwise comply with their obligations under the Receivership Order, the tenants in Units 2, 3, 4 and 5 have no entitlement to remain in possession of the rented units.
- 6. The court orders made in this foreclosure proceeding supercede the provisions of the B.C. *Residential Tenancy Act*.

Residential Tenancy Act, S.B.C. 2002, s.94 First National Financial GP Corp v. Sirotka, 2011 BCSC 340

## Part 4: MATERIAL TO BE RELIED ON

1.	Order Nisi of Foreclosure;
2.	Receivership Order;
3.	Alternative service Order for email service on the mortgagor and Mr. Provost;
4.	Affidavit #4 of Lisa Trenzek sworn November 10, 2022;
5.	Affidavit #5 of Lisa Trenzek sworn December 22, 2022;
6.	Affidavit #1 of Cecil Cheveldave sworn December 22, 2022;
The ap	plicant estimates that the application will take 45 minutes.
$\boxtimes$	This matter is within the jurisdiction of a master.
	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 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
- 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: <u>Dec. 23</u>, 2022

Signature of SHERRYL DUBO Lawyer for the Receiver for the purposes of this application

### IN THE SUPREME COURT OF BRITISH COLUMBIA

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LEANNE ROCKWELL AND ANTHONY WARMANN
JOHN ALEX MCGREGOR AND AMANDA MCGREGOR

RESPONDENTS

# **ORDER MADE AFTER APPLICATION**

BEFORE	MASTER	MONDAY, THE 16th DA
6	{	OF JANUARY, 2023

ON THE APPLICATION of the Receiver, C. Cheveldave & Associates Ltd., coming on for hearing at Kelowna, British Columbia on January 16, 2023 and on hearing Sherryl Dubo, appearing as counsel for the Receiver for the purposes of this application, and no one else appearing although duly served;

#### THIS COURT ORDERS that:

- 1. Paragraph 17 of the Order made herein on November 23, 2022 appointing C. Cheveldave & Associates Ltd. as Receiver of the lands the subject of this proceeding (the "Receivership Order") is amended to increase the amount that the Receiver is authorized and empowered to borrow from \$25,000 to \$200,000.
- 2. The Respondents, Francois St. Onge, Vilay Khammanivong, Sarah Garniss, Cole Cole, Nathan Obrigewitsch, Jen Obrigewitsch, Julie Pillon, Leanne Rockwell, Anthony

Respondents 1245946 B.C. Ltd. and Richard Vernon Provost, having failed to pay rents to the Receiver in accordance with the Receivership Order, shall forthwith deliver vacant possession to Units 2, 3, 4 and 5 of the Lands (as defined in the Receivership Order) more particularly known and described as:

Civic: Unit 2, 1275 Brookside Avenue, Kelowna, BC

PID: 031-114-458

Strata Lot 2, Section 19, Township 26, ODYD, Strata Plan EPS6505

Civic: Unit 3, 1275 Brookside Avenue, Kelowna, BC

PID: 031-114-466

Strata Lot 3, Section 19, Township 26, ODYD, Strata Plan EPS6505

Civic: Unit 4, 1275 Brookside Avenue, Kelowna, BC

PID: 031-114-474

Strata Lot 4, Section 19, Township 26, ODYD, Strata Plan EPS6505

Civic: Unit 5, 1275 Brookside Avenue, Kelowna, BC

PID: 031-114-482

Strata Lot 5, Section 19, Township 26, ODYD, Strata Plan EPS6505

(collectively the "Tenanted Units").

- 3. The Registrar shall issue a Writ of Possession in respect of each of the Tenanted Units on the terms and conditions contained in the draft Writ of Possession annexed hereto as **Schedule A**.
- 4. Francois St. Onge of Vilay Khammanivong (tenants of Unit 2) shall pay to the Receiver the amount of \$12,000 representing unpaid rents for November, December 2022 and January 2023.
- 5. Sarah Garniss and Cole Cole (tenants of Unit 3) shall pay to the Receiver the amount of \$12,000 representing unpaid rents for November, December 2022 and January 2023.
- 6. Nathan Obrigewitsch, Jen Obrigewitsch and Julie Pillon (tenants of Unit 4) shall pay to the Receiver the amount of \$12,000 representing unpaid rents for November, December 2022 and January 2023.
- 7. Leanne Rockwell and Anthony Warmann (tenants of Unit 5) shall pay to the Receiver the amount of \$12,000 representing unpaid rents for November, December 2022 and January 2023.
- 8. The Receiver will be at liberty to proceed forthwith with enforcing the Writ of Possession, except that in the event the Receiver is provided with all of the following in respect of any Tenanted Units by 4:00pm on January 1, 2023:
  - (a) A copy of the applicable tenancy agreement for the unit; and

(b) All rents for the unit from and after October 14, 2022 to January 1, 2023 in accordance with the applicable tenancy agreement;

then the Writ of Possession for the particular unit or units in respect of which the foregoing has been provided will be held in abeyance by the Receiver but only for so long as such Tenants thereafter comply with their obligations under their respective tenancy agreements and provided such Tenants comply with the requests and directions of the Receiver made under the authority of the Receivership Order.

- 9. 1245946 B.C. Ltd., Richard Vernon Provost and any agent or intermediary acting on behalf of either of them as landlord of any of the Lands including without limitation 1245948 BC Ltd. (collectively the "Landlord") are required within 2 business days of pronouncement of this Order to provide the Receiver with the following in respect of each of Units 1 through 6 comprising the Lands:
  - (a) A copy of all the tenancy agreements; and
  - (b) Payment of \$48,000 representing unpaid rents for Units 2, 3, 4 and 5; and
  - (c) Payment of all security deposits in respect of tenancy agreements are to be paid over to the Receiver in trust, together with all particulars of those security deposits, to be held by the Receiver during the tenancy of the respective units;

and the Landlord is directed to pay all rents to the Receiver in the event any further rents are received by any of them after January 1, 2023 until such time as the Receiver provides written direction otherwise or until further Order of this Court.

- 10. In the event of non-compliance with the terms of this Order by any of the Tenants or the Landlord, the Receiver be at liberty to apply for an order of contempt.
- 11. The Receiver be at liberty to offer all of the Lands as defined in the Receivership Order (meaning, for greater clarity, Units 1 through 6 of 1275 Brookside Avenue, Kelowna, BC) for sale, either individually or *en bloc*, by private sale, free and clear of all encumbrances of the parties, together with any other charges, liens, encumbrances, caveats, or certificates of pending litigation registered against the Lands subsequent to the Petitioner's certificate of pending litigation, but subject to the reservations, provisos, exceptions, and conditions expressed in the original grant(s) from the Crown.
- 2. The Receiver shall have exclusive conduct of the said sale and may list the Lands individually or *en bloc* with one or more licensed real estate agents or real estate firms, and further, that the Receiver 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 three (3%) percent of the gross selling price with respect to such sale from the proceeds of such sale(s).
- 3. The Respondents or any person on behalf of the Respondents including any person in possession of the Lands shall permit authorized real estate agents or other agents appointed by the Petitioner to inspect or appraise the Lands and to show the Lands to prospective

purchasers between the hours of 9:00 a.m. to 7:00 p.m. on any day of the week, and to post signs on the Lands that the Lands are offered for sale.

- 4. The Receiver be authorized to apply for an order approving the sale(s) of the Lands in the event acceptable offer(s) to purchase are received.
- 5. Any sale be subject to the approval of the Court unless otherwise agreed to in writing by all parties.
- 6. The Receiver is entitled to its special costs of this application and costs shall be recoverable by the Receiver, at its option, from the Receiver's Charge (as defined in the Receivership Order) against the Lands or from the Respondents, 1245946 B.C. Ltd., Richard Vernon Provost, Francois St. Onge, Vilay Khammanivong, Sarah Garniss, Cole Cole, Nathan Obrigewitsch, Jen Obrigewitsch, Julie Pillon, Leanne Rockwell and Anthony Warmann, jointly and severally.
- 7. The parties be at liberty to schedule hearings of future applications in this proceeding at the Kamloops Registry of this Court.
- 8. Service of a copy of this Order may be effected either by personal service or by posting a copy of the Order to the door of each of the Tenanted Lands, or in the case of 1245946 B.C. Ltd. and Richard Vernon Provost by email to <a href="mailto:richard@pmbchomebuyers.ca">richard@pmbchomebuyers.ca</a> in accordance with the Order for alternative service granted in this proceeding on October 19, 2022.

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.

By the Court
Registrar

## **SCHEDULE A**

FORM 52 (RULE 13-2 (3))

> No. KEL-S-H-135244 KELOWNA REGISTRY

## IN THE SUPREME COURT OF BRITISH COLUMBIA

BETWEEN:

HARBOURFRONT HOLDINGS LTD.

**PETITIONER** 

AND:

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RICHARD VERNON PROVOST
LINDSAY ANDREA KNITTER
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JOHN ALEX MCGREGOR AND AMANDA MCGREGOR

RESPONDENTS

#### WRIT OF POSSESSION

Name and address of lawyer or person causing this writ to be issued: C. Cheveldave & Associates Ltd., in its capacity as Receiver of the lands of the Respondent 1245946 B.C. Ltd. (the "Receiver"), Suite 600-I, 235 – 1st Avenue, Kamloops, BC V2C 3J4.

To the Sheriff

WHEREAS it was ordered, on the \_\_\_\_ day of January, 2023, that

1. The Respondents, 1245946 B.C. Ltd. and Richard Vernon Provost, Francois St. Onge, Vilay Khammanivong, Sarah Garniss, Cole Cole, Nathan Obrigewitsch, Jen Obrigewitsch, Julie Pillon, Leanne Rockwell, Anthony Warmann shall forthwith vacate the lands the subject of these proceedings located at 1275 Brookside Avenue, Kelowna, BC, more particularly known and described as:

Civic: Unit 2 - 1275 Brookside Avenue, Kelowna, BC

PID: 031-114-458

Strata Lot 2, Section 19, Township 26, ODYD, Strata Plan EPS6505

Civic: Unit 3 - 1275 Brookside Avenue, Kelowna, BC

PID: 031-114-466

Strata Lot 3, Section 19, Township 26, ODYD, Strata Plan EPS6505

Civic: Unit 4 - 1275 Brookside Avenue, Kelowna, BC

PID: 031-114-474

Strata Lot 4, Section 19, Township 26, ODYD, Strata Plan EPS6505

Civic: Unit 5 - 1275 Brookside Avenue, Kelowna, BC

PID: 031-114-482

Strata Lot 5, Section 19, Township 26, ODYD, Strata Plan EPS6505

(collectively the "Lands")

YOU ARE COMMANDED promptly to enter the Lands and cause the Receiver to have possession of the Lands;

AND YOU ARE ALSO COMMANDED promptly to seize and sell at public auction or tender for the best price available sufficient of the goods and chattels of Francois St. Onge and Vilay Khammanivong, Sarah Garniss and Cole Cole, Nathan Obrigewitsch, Jen Obrigewitsch and Julie Pillon, Leanne Rockwell and Anthony Warmann respectively to realize the Receiver's costs, fees and expenses of execution and the costs, fees and expenses for executing this writ.

Date:	<u> </u>	•
	Signature of C. Cheveldave & Associates Ltd	Ī.,
	in its capacity as Receiver of the land	ls

of the Respondent 1245946 B.C. Ltd.

## No. KEL-S-H-135244 KELOWNA REGISTRY

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JOHN ALEX MCGREGOR AND AMANDA MCGREGOR

RESPONDENTS

**ORDER** 

FILE NO. 5001-108

SAD/lt

MCMILLAN DUBO LLP

401, 121 5<sup>th</sup> Avenue Kamloops, BC V2C 0M1 Phone: 778-765-1701

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: [dd/mmm/yyyy] .  Signature of Judge Master

# **APPENDIX**

# THIS APPLICATION INVOLVES THE FOLLOWING:

L	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.

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MCMILLAN DUBO LLP

401, 121 5<sup>th</sup> Avenue Kamloops, BC V2C 0M1 Phone: 778-765-1701

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