



No. KEL-S-H-135244
KELOWNA REGISTRY

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 **455 Columbia Street, Kamloops, British Columbia on Monday, August 28, 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 amount that the Receiver is authorized and empowered to borrow be increased from \$200,000 to \$260,000;

2. That the activities of the Receiver be approved;
3. That the fees and disbursements of the Receiver and its counsel be approved, including estimated costs to discharge;
4. That the Receiver be discharged;
5. That the Receiver be entitled to its costs of this application on a full indemnity basis.
6. Conduct of sale to be granted to the Petitioner Harbourfront Holdings Ltd. in place of the Receiver;
7. The Petitioner Harbourfront Holdings Ltd. be appointed as receiver of rents for the lands of the Respondent 1245946 B.C. Ltd.

Part 2: FACTUAL BASIS

1. This is a foreclosure proceeding involving 6 residential strata properties located at 1275 Brookside Avenue, Kelowna, BC (the “**Lands**”).
2. The Petitioner, Harbourfront Holdings Ltd., was granted Order Nisi of Foreclosure on November 23, 2022 with a redemption amount of \$1,573,906.66.
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 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 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 was based on the BC Model Receiver Order and it provides, among other things, that:
 - (a) the Receiver is authorized to collect the rents for the Lands, to lease the Lands and to make mortgage payments to Bank of Montreal under its first mortgage of the Lands (para 2(a));
 - (b) 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));
 - (c) there is a Receiver’s Charge in respect of the fees and disbursements of the Receiver and its legal counsel, forming a charge against the Lands (para 14); and
 - (d) there is a Receiver’s Borrowings Charge in respect of monies borrowed by the Receiver to fund the receivership, forming a charge against the Lands (para 17).

6. An Order Made After Application in this proceeding on January 16, 2023 provides, among other things, that:
 - (a) the amount the Receiver is authorized and empowered to borrow under the Receiver's Borrowings Charge was increased to \$200,000; and
 - (b) judgment was granted against certain tenants of the Lands in connection with unpaid rents, together with eviction orders;
 - (c) conduct of sale of the Lands was granted to the Receiver.
7. The Receiver subsequently obtained Writs of Possession and retained the court bailiff to evict certain tenants under the January 16, 2023 Order. The Receiver was subsequently able to re-let those units.
8. The Lands were listed for sale by the Receiver *en bloc* on February 16, 2023 at an initial listing price of \$5,290,000. The price was subsequently reduced to \$4,999,999 on March 21, 2023. To date only one offer to purchase was received but did not proceed to contract.
9. The Receiver has made payments to Bank of Montreal to bring up arrears and then maintain the first mortgage current. The amounts paid to Bank of Montreal by the Receiver total \$89,069.68 to June 30, 2023.
10. Fees of the Receiver and legal counsel amount to approximately \$112,000 (not including applicable taxes) to June 30, 2023.
11. The Receiver's Charge of \$200,000, secured by the Receiver's Borrowings Charge, has been exhausted.
12. As described in Affidavit #3 of C. Cheveldave, the Receiver estimates that it may be necessary to borrow up to \$60,000 to fund the receivership up to the Receiver's discharge. This would bring the total amount under the Receiver's Charge up to \$260,000, secured by the Receiver's Borrowings Charge.
13. Over time the management of the Lands has normalized and the Petitioner, who is funding the receivership, supports the discharge of the Receiver and wishes to take over conduct of sale of the Lands and to act as receiver of rents.

Part 3: LEGAL BASIS

1. The applicant relies on the Orders made in this proceeding.
2. The applicant also relies on Rules 10-2 (receivership), 13-5 (sales by the court) and 21-7 (foreclosure) of the BC Civil Rules of Court.
3. The Receiver was initially appointed by court order to deal with tenants and to maintain the Lands. Certain tenants were subsequently evicted and new tenants now occupy those units at the Lands.

4. The Receiver was subsequently granted an order for conduct of sale of the Lands. The Lands have been listed for sale *en bloc* by the Receiver since February 16, 2023, with no acceptable offers received to date.
5. The Receiver has been funding the receivership in part by collecting in rents and in part by borrowing funds from the Petitioner in accordance with the Receivership Order.
6. An Order discharging the Receiver is now sought to reduce the complexity and costs of the proceeding while the Lands are listed for sale, either *en bloc* or as individual units if a Disclosure Statement can be filed under the B.C. *Real Estate Marketing Act* by the Petitioner.

Part 4: MATERIAL TO BE RELIED ON

1. Order Nisi of Foreclosure pronounced November 23, 2022;
2. Receivership Order pronounced November 23, 2022;
3. Order Made After Application pronounced herein on January 16, 2023;
4. Affidavit #3 of Cecil Cheveldave sworn August 11, 2023.

The applicant estimates that the application will take 45 minutes.

- ☒ 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
- (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: August 15, 2023



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

IN THE SUPREME COURT OF BRITISH COLUMBIA

BETWEEN:

HARBOURFRONT HOLDINGS LTD.

PETITIONER

AND:

1245946 B.C. LTD.
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JOHN ALEX MCGREGOR AND AMANDA MCGREGOR

RESPONDENTS

ORDER MADE AFTER APPLICATION

BEFORE

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MONDAY, THE 28th DAY
OF AUGUST, 2023

ON THE APPLICATION of the Receiver, C. Cheveldave & Associates Ltd., in its capacity as Court-appointed Receiver (the “**Receiver**”) of the lands of the Respondent 1245946 B.C. Ltd. which are the subject of this proceeding, coming on for hearing at Kamloops, British Columbia, on Monday, August 28, 2023; AND ON HEARING Sherryl Dubo, counsel for the Receiver for the purposes of this application, and no one else appearing although duly served; AND UPON READING the material filed, including Affidavit of C. Cheveldave sworn August 11, 2023 exhibiting the Receiver’s report to the court (the “**Report**”);

THIS COURT ORDERS AND DECLARES THAT:

Receivership

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**”), as amended by Order made herein on January 16, 2023, is further amended to increase the amount that the Receiver is authorized and empowered to borrow from \$200,000 to \$260,000.
2. The activities of the Receiver as set out in the Report, including those activities anticipated by the Receiver up to the date of its discharge, are hereby approved.
3. The fees and disbursements of the Receiver and its counsel, including those fees and disbursements estimated by the Receiver up to the date of its discharge, as set out in the Report and the Affidavit filed in support of this application, are hereby approved.
4. After payment of the fees and disbursements of the Receiver as herein approved, the Receiver shall pay all funds remaining in its hands to the Petitioner Harbourfront Holdings Ltd.
5. Upon payment of the amounts set out in paragraph 4 herein and upon the Receiver filing a certificate in the form attached hereto as Schedule “A” certifying that it has completed any remaining outstanding activities described in the Report or this Order, the Receiver shall be discharged as Receiver of the lands of the Respondent 1245946 B.C. Ltd which are the subject of this proceeding, provided that notwithstanding its discharge herein: (a) the Receiver shall remain Receiver for the performance of such incidental duties as may be required to complete the administration of the receivership herein; and (b) the Receiver shall continue to have the benefit of the provisions of all Orders made in this proceeding, including all approvals, protections and stays of proceedings in favour of C. Cheveldave & Associates Ltd. in its capacity as Receiver.
6. Without limiting the generality of the foregoing the Receiver shall, prior to the effective date of its discharge, have the authority:
 - (a) To assign to the Petitioner Harbourfront Holdings Ltd. each or any of the tenancy agreements in respect of the lands and the property management agreement with Vantage West Realty Inc. to Harbourfront Holdings Ltd. and upon such assignment(s) being made the Receiver shall have no further obligations under the agreement so assigned, and the parties to any of those agreements shall have no further recourse against the Receiver. Any party to an agreement so assigned by the Receiver may apply to this Court to vary or amend this Order on not less than seven (7) clear business days’ notice to the Receiver and to any other party who may be affected by the variation or amendment, or upon such other notice, if any, as this Court may order; and
 - (b) To assign to the Petitioner Harbourfront Holdings Ltd. the Receiver’s rights and interests in the judgments against certain tenants granted in this proceeding on January 16, 2023, and more specifically against:

- (i) Francois St. Onge and Vilay Khammanivong (tenants of Unit 2) shall pay to the Receiver the amount of \$9,900 representing unpaid rents for November, December 2022 and January 2023;
- (ii) Sarah Garniss and Cole Cole (tenants of Unit 3) shall pay to the Receiver the amount of \$10,500 representing unpaid rents for November, December 2022 and January 2023;
- (iii) Nathan Obrigewitsch, Jen Obrigewitsch and Julie Pillon (tenants of Unit 4) shall pay to the Receiver the amount of \$9,900 representing unpaid rents for November, December 2022 and January 2023; and
- (iv) Leanne Rockwell (tenant of Unit 5) shall pay to the Receiver the amount of \$10,350 representing unpaid rents for November, December 2022 and January 2023;

7. C. Cheveldave & Associates Ltd. is hereby released and discharged from any and all liability that C. Cheveldave & Associates Ltd. now has or may hereafter have by reason of, or in any way arising out of, the acts or omissions of C. Cheveldave & Associates Ltd. while acting in its capacity as Receiver herein. Without limiting the generality of the foregoing, C. Cheveldave & Associates Ltd. is hereby forever released and discharged from any and all liability relating to matters that were raised, or which could have been raised, in the within receivership proceedings.

8. C. Cheveldave & Associates Ltd. is entitled to its costs of and incidental to this application on a full indemnity basis.

Conduct of Sale

9. The lands of the Respondent 1245946 B.C. Ltd. known and described as:

PID: 031-114-440
 Strata Lot 1, Section 19, Township 26, ODYD, Strata Plan EPS6505
 PID: 031-114-458
 Strata Lot 2, Section 19, Township 26, ODYD, Strata Plan EPS6505
 PID: 031-114-466
 Strata Lot 3, Section 19, Township 26, ODYD, Strata Plan EPS6505
 PID: 031-114-474
 Strata Lot 4, Section 19, Township 26, ODYD, Strata Plan EPS6505
 PID: 031-114-482
 Strata Lot 5, Section 19, Township 26, ODYD, Strata Plan EPS6505
 PID: 031-114-491
 Strata Lot 6, Section 19, Township 26, ODYD, Strata Plan EPS6505

(collectively the “**Lands**”)

be offered for sale, 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.

8. The Petitioner has exclusive conduct of the said sale and the Receiver's conduct of sale is terminated.

9. The Petitioner may list the Lands 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 Petitioner 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 and two and a half (2.5%) percent on the amounts above \$100,000 of the gross selling price with respect to such sale from the proceeds of such sale.

10. The Respondents or 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.

11. The Lands be sold at a price not less than that required to pay:

- (a) the taxes, penalties, arrears of taxes and interest on arrears of taxes owing in respect of the Lands;
- (b) the costs and expenses of the said sale, including real estate commission; and
- (c) the costs of the Petitioner with respect to this proceeding and the conduct of the said sale as herein ordered.

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

Receiver of Rents

13. The Petitioner Harbourfront Holdings Ltd. be appointed receiver without security of the rents and profits of the Lands (the "**Receiver of Rents**"). The Receiver of Rents is empowered and authorized, but not obligated, to do all or any of the following things:

- (a) To collect, get in and receive the rents and profits of the Lands and to retain and employ some competent person or person to assist in the collection or to take an assignment of the existing property management agreement with Vantage West Realty Inc.;

- (b) To enter into such lease or leases of any part of the Lands, and to take an assignment of any existing leases, and to let the same from time to time upon such terms as the Receiver of Rents shall consider advisable and to fix rents at such sum or sums as it may consider proper in the circumstances;
 - (c) To take whatever steps the Receiver of Rents may consider advisable for repairing and preserving the Lands or any part thereof, but it shall not be liable for waste;
 - (d) To repair or cause to be repaired any buildings or improvements on the Lands;
 - (e) Generally to manage the Lands, including obtaining insurance, and to do all things which may be necessary or advisable for the proper management thereof; and
 - (f) Cause to be filed a Disclosure Statement under the B.C. *Real Estate Marketing Act* to enable the Lands to be sold under the conduct of sale Order as individual units.
14. Any person or persons in occupation of any portion of the Lands do attorn and become tenants of the Receiver of Rents and shall pay the Receiver of Rents their respective rents and arrears of rents so long as the Receiver of Rents continues in office.
15. The Receiver of Rents be at liberty to enforce payment to it of any rents by such proceedings, either judicial or extra-judicial as it may deem advisable, and whether by distress or otherwise without the necessity of any further or other applications or Orders of this Court.
16. No action at law or other proceeding shall be taken or continued against the Receiver of Rents without the leave of this Court being first obtained.
17. The Receiver of Rents shall receive any funds paid to it by C. Cheveldave & Associates Ltd. on account of deposits received from tenants of the Lands which were held in trust by C. Cheveldave & Associates Ltd.
18. The Receiver of Rents be at liberty to apply any monies received from the Lands for monthly mortgage payments to Bank of Montreal on account of its mortgage security registered against the Lands, and in payment of property taxes, utility charges, cost of repairs and other expenses reasonably required to maintain and safeguard the Lands, and the balance, if any, to be applied towards the amount owing under the Petitioner's mortgage in this proceeding.
19. The Receiver of Rents will be liable to account only for the monies which actually come into its hands, and all questions as to the passing of the Receiver of Rents accounts shall be reserved until the time of the Petitioner's application for a Final Order of Foreclosure or approval of the sale of the Lands.
20. At the time of passing the account of the Receiver of Rents, the District Registrar of this Court may fix the remuneration and indemnification of the Receiver of Rents.

21. The Receiver of Rents shall continue in office until further Order.

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 Sherryl Dubo

☐ Party ☒ Lawyer for Receiver for the purposes
of this Application

BY THE COURT

REGISTRAR

Schedule “A”

No. KEL-S-H-135244
KELOWNA REGISTRY

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JOHN ALEX MCGREGOR AND AMANDA MCGREGOR

RESPONDENTS

RECEIVER’S CERTIFICATE

RECITALS:

- A. Pursuant to the terms of a Receivership Order granted November 23, 2022, C. Cheveldave & Associates Ltd. as Receiver of the lands owned by 1245946 B.C. Ltd. which are the subject of this proceeding.
- B. Pursuant to an Order of the Court granted on August 28, 2023 (the “Discharge Order”), the Court authorized the completion of the receivership in accordance with the Receiver’s First Report to the Court, and further provided that upon the Receiver filing a Receiver’s Certificate confirming completion of any remaining activities, the Receiver would be discharged.

Schedule "A"

THE RECEIVER HEREBY CERTIFIES:

1. the Receiver has completed the outstanding matters of the receivership in accordance with the Receiver's First Report to the Court and the Discharge Order, such that the discharge and release of the Receiver should now be effective.

DATED AT Kamloops, British Columbia, this ____ day of _____, 2023.

Cheveldave & Associates Ltd.
in its capacity as Court-appointed Receiver
of the lands owned by 1245946 B.C. Ltd.
and not in its personal capacity

Per:

No. KEL-S-H-135244
KELOWNA REGISTRY

IN THE SUPREME COURT OF BRITISH COLUMBIA

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RESPONDENTS

ORDER

FILE NO. 3901-101

SAD/lt

MCMILLAN DUBO LLP
401, 121 5th 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:

- ☐ 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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NOTICE OF APPLICATION

FILE NO. 5001-108

SAD/lt

MCMILLAN DUBO LLP
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Kamloops, BC V2C 0M1
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