



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

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: Joe 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 teleconference** 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 **Thursday, August 13, 2020 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 sale of the subject lands and premises, as described below.

PART 2: FACTUAL BASIS

2. By Order (the “**Receivership Order**”) pronounced on November 21, 2019, C. Cheveldave & Associates Ltd. was appointed as Receiver and Manager (the “**Receiver**”), without security, of the assets, undertakings and property of Sather Ranch Ltd. (the “**Debtor**”), including all proceeds thereof and including without limitation, the following lands and premises legally described as:

PID: 011-781-441
SUB LOT 8 DISTRICT LOT 2711 SIMILKAMEEN DIVISION YALE
DISTRICT PLAN 1190

(the “**Lands**”).

3. The Receivership Order provides, *inter alia*, that the Receiver is authorized to market the Lands for sale, to solicit offers in respect of those assets and to negotiate such terms and conditions of sale as deemed appropriate, with any eventual sale being subject to Court approval.
4. The relevant facts are set out in the Affidavit #1 of Cecil Cheveldave filed herein.

The Lands

5. The Lands are located at 1313 Greyback Mountain Road, Penticton, British Columbia.
6. The Receiver commissioned an independent appraisal of the Lands by Mr. Lionel Hoffman of NCA Commercial Inc. dated January 30, 2020 (the “**Appraisal**”). The appraiser concluded that the current market value of the Lands as at January 30, 2020 was is \$1,050,000.
7. On June 23, 2020, the Receiver listed the Lands for sale for a list price of \$1,595,000.
8. A summary of the marketing efforts and interest received are set out in the realtor’s report attached as an exhibit to Mr. Cheveldave’s affidavit.

The Offer

9. On July 4, 2020, Dennis and Kim Brodersen made an offer to purchase the Lands for a purchase price of \$1,600,000. The Receiver accepted the offer subject to the approval of this Honourable Court.
10. The Completion date is September 14, 2020, and the Offer is subject only to Court approval.

11. The Receiver obtained a deposit in the amount of \$80,000 from Dennis and Kim Brodersen, to be paid as follows:
- (a) \$10,000 within 72 hours of agreement acceptance; and
 - (b) \$70,000 upon final subject removal.
12. The Offer excludes the property listed in Schedule "B" of the Offer, as set out below:
- 1000 gallon tank
 - Snow plow blade
 - Old cattle squeeze
 - Misc. gates
 - 600 gallon water trough
 - Calf shelters (6)
 - Horse shelters (3)
 - Feeders (4)
 - Steel panels (20)
 - HiQual cattle squeeze
 - Calf squeeze
 - 10 x 8 Hi Hog frame gate (6)
 - Hi Hog Maternity Pen
 - 40 x 40 tent
 - Heavy duty bull feeders (2)
 - Wall tent 14 x 16
 - Honda Generator 3500 (well used)
 - Misc tools / chainsaw
 - Truck ramps
 - Stock waterers (5)
 - 2009 Modular Home.
13. The Receiver recommends the sale and is applying to the Court for its approval of same and an order vesting title in the purchaser.
14. As contemplated in the attached order, the net sale proceeds are to be applied first in repayment of the Receiver's Borrowings and the balance will then be held in the Post-Receivership Accounts pursuant to the terms of the Receivership Order herein.

PART 3: LEGAL BASIS

15. Based upon the facts set out in Part 2 above, the Receiver submits that the subject offer reflects the fair market value of the Lands, given the ongoing marketing efforts of the Receiver, and that its sale is commercially reasonable.

16. The applicant will rely on Rules 6-2 and 13-5 of the Supreme Court Civil Rules and s. 15 of the *Law and Equity Act*, R.S.B.C. 1996, c. 253.

PART 4: MATERIAL TO BE RELIED ON

17. Order appointing Receiver made September 17, 2018;
 18. Order appointing Receiver made November 21, 2019;
 19. Affidavit #1 of Cindy Curran, sworn herein on July 29, 2020; and
 20. Affidavit #1 of Cecil Cheveldave, sworn herein on July 29, 2020.

The applicant estimates that the application will take **5 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 29th day of July, 2019.



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 Approval of Sale**

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

ORDER MADE AFTER APPLICATION

APPROVAL AND VESTING ORDER

BEFORE THE HONOURABLE)
) THURSDAY, AUGUST 13, 2020
)

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. coming on for hearing at Vancouver, British Columbia, on the 13th day of August, 2020; AND ON HEARING Scott R. Andersen, counsel for the Receiver, and those other counsel listed on Schedule "A" hereto, and no one else appearing although duly served; AND UPON READING the material filed, including the Affidavit #1 of Cecil Cheveldave sworn and filed herein (the "**Affidavit**");

THIS COURT ORDERS AND DECLARES THAT:

1. The sale transaction (the "**Transaction**") contemplated by the Contract of Purchase and Sale dated July 4, 2020, (the "**Sale Agreement**") between the Receiver and Dennis and Kim Brodersen (collectively, the "**Purchaser**"), a copy of which is attached as **Schedule "A"** hereto is hereby approved, and the Sale Agreement is commercially reasonable. The execution of the Sale Agreement by the Receiver is hereby authorized and approved, and the Receiver is hereby authorized and directed to take such additional steps and execute such additional documents as may be necessary or desirable for the completion of the Transaction and for the conveyance to the Purchaser of the assets described in the Sale Agreement (the "**Purchased Assets**").

2. Upon delivery by the Receiver to the Purchaser of a certificate substantially in the form attached as **Schedule "B"** hereto (the "**Receiver's Certificate**"), all of the Debtor's right, title and interest in and to the Purchased Assets described in the Sale Agreement shall vest absolutely in the Purchaser in fee simple, free and clear of and from any and all security interests (whether contractual, statutory, or otherwise), hypothecs, mortgages, trusts or deemed trusts (whether contractual, statutory, or otherwise), liens, executions, levies, charges, or other financial or monetary claims, whether or not they have attached or been perfected, registered or filed and whether secured, unsecured or otherwise (collectively, the "**Claims**") including, without limiting the generality of the foregoing: (i) any encumbrances or charges created by the Orders of this Court dated September 17, 2018 and November 21, 2019; (ii) all charges, security interests or claims evidenced by registrations pursuant to the *Personal Property Security Act* of British Columbia or any other personal property registry system; and (iii) those Claims listed on **Schedule "C"** hereto (all of which are collectively referred to as the "Encumbrances", which term shall not include the permitted encumbrances, easements and restrictive covenants listed on **Schedule "D"** hereto), and, for greater certainty, this Court orders that all of the Encumbrances affecting or relating to the Purchased Assets are hereby expunged and discharged as against the Purchased Assets.

3. Upon presentation for registration in the Kamloops Land Title Office of a certified copy of this Order, together with a letter from Lawson Lundell LLP, the solicitors for the Receiver, authorizing registration of this Order, the British Columbia Registrar of Land Titles is hereby directed to:
 - (a) enter the Purchaser as the owner of the Lands, as identified in **Schedule "E"** hereto, together with all buildings and other structures, facilities and improvements located thereon and fixtures, systems, interests, licenses, rights, covenants, restrictive covenants, commons, ways, profits, privileges, rights, easements and appurtenances to the said hereditaments belonging, or with the same or any part thereof, held or enjoyed or appurtenant thereto, in fee simple in respect of the Lands, and this Court declares that it has been proved to the satisfaction of the Court on investigation that the title of the Purchaser in and to the Lands is a good, safe holding and marketable title and directs the BC Registrar to register indefeasible title in favour of the Purchaser as aforesaid; and
 - (b) having considered the interest of third parties, to discharge, release, delete and expunge from title to the Lands all of the registered Encumbrances except for those listed in **Schedule "D"**.

4. For the purposes of determining the nature and priority of Claims, the net proceeds from the sale of the Purchased Assets shall stand in the place and stead of the Purchased Assets, and from and after the delivery of the Receiver's Certificate all Claims shall attach to the net proceeds from the sale of the Purchased Assets with the same priority as they had with respect to the Purchased Assets immediately prior to the sale,

as if the Purchased Assets had not been sold and remained in the possession or control of the person having had possession or control immediately prior to the sale.

5. The Receiver is to file with the Court a copy of the Receiver's Certificate forthwith after delivery thereof.
6. Subject to the terms of the Sale Agreement, vacant possession of the Purchased Assets, including any real property, shall be delivered by the Receiver to the Purchaser at 12:00 noon on the Closing Date (as defined in the Sale Agreement), subject to the permitted encumbrances as set out in the Sale Agreement and listed on **Schedule "D"**.
7. The Receiver, with the consent of the Purchaser, shall be at liberty to extend the Closing Date to such later date as those parties may agree without the necessity of a further Order of this Court provided that the Closing Date occurs within 10 Business Days of the date of this Order.
8. The proceeds of the sale, after adjustments, be paid to the law firm of Lawson Lundell LLP, Barristers and Solicitors, "In Trust", 1600 - 925 West Georgia Street, Vancouver, British Columbia, to be paid without further order in accordance with the following priorities:
 - (a) Firstly, in payment of all matters of adjustment with respect to the sale of the Lands, including without limitation, outstanding property taxes, water and sewer rates, and interest and penalties thereon, owing in connection with the Lands;
 - (b) Secondly, in payment of real estate commission;
 - (c) Thirdly, in payment of the borrowings of C. Cheveldave & Associates Ltd. in its capacity as the Receiver;
 - (d) Fourthly, the balance, if any, be held by the Receiver in the Post-Receivership Accounts herein.
9. Notwithstanding:
 - (a) these proceedings;
 - (b) any applications for a bankruptcy order in respect of the Debtor now or hereafter made pursuant to the *Bankruptcy and Insolvency Act* and any bankruptcy order issued pursuant to any such applications; and
 - (c) any assignment in bankruptcy made by or in respect of the Debtor,

the vesting of the Purchased Assets in the Purchaser pursuant to this Order shall be binding on any trustee in bankruptcy that may be appointed in respect of the Debtor and shall not be void or voidable by creditors of the Debtor, nor shall it constitute or be

deemed to be a transfer at undervalue, fraudulent preference, assignment, fraudulent conveyance or other reviewable transaction under the *Bankruptcy and Insolvency Act* or any other applicable federal or provincial legislation, nor shall it constitute oppressive or unfairly prejudicial conduct pursuant to any applicable federal or provincial legislation.

- 10. THIS COURT HEREBY REQUESTS the aid and recognition of any court, tribunal, regulatory or administrative body, wherever located, to give effect to this Order and to assist the Receiver and its agents in carrying out the terms of this Order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Receiver, as an officer of this Court, as may be necessary or desirable to give effect to this Order or to assist the Receiver and its agents in carrying out the terms of this Order.
- 11. The Receiver or any other party have liberty to apply for such further or other directions or relief as may be necessary or desirable to give effect to this 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
 Party Lawyer for the Receiver

 Scott R. Andersen

 Signature of
 Party Lawyer for <name of party(ies)>

 <Print Name>

BY THE COURT

 REGISTRAR

Schedule A – Contract of Purchase and Sale

Schedule B – Receiver’s Certificate

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PLAINTIFFS

AND:

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DEFENDANT

RECEIVER’S CERTIFICATE

RECITALS

A. Pursuant to an Order of the Supreme Court of British Columbia (the “**Court**”) dated on November 21, 2019, in this proceeding, C. Cheveldave & Associates Ltd., was appointed Receiver and Manager (the “**Receiver**”) of all of the assets, undertakings and property of Sather Ranch Ltd..

B. Pursuant to an Order of the Court dated August 13, 2020 (the “**Approval and Vesting Order**”), the Court approved the Contract of Purchase and Sale dated July 4, 2020, (the “**Sale Agreement**”) between the Receiver and Dennis and Kim Brodersen (collectively, the “**Purchaser**”) and provided for the vesting in the Purchaser of all of the right, title and interest in and to the Purchased Assets, which vesting is to be effective with respect to the Purchased Assets upon the delivery by the Receiver to the Purchaser of a certificate confirming (i) the payment by the Purchaser of the Purchase Price for the Purchased Assets; (ii) that the conditions to Closing as set out in the Sale Agreement have been satisfied or waived by the Receiver and the Purchaser; and (iii) the Transaction has been completed to the satisfaction of the Receiver.

C. Unless otherwise indicated herein, capitalized terms have the meanings set out in the Approval and Vesting Order or the Sale Agreement, as applicable.

THE RECEIVER CERTIFIES the following:

1. The Purchaser has paid and the Receiver has received the Purchase Price for the Purchased Assets payable on the Completion Date pursuant to the Sale Agreement;
2. The conditions to Closing set out in the Sale Agreement have been satisfied or waived by the Receiver and the Purchaser; and

3. The Transaction has been completed to the satisfaction of the Receiver.

This Certificate was delivered by the Receiver at Vancouver, BC this ____ day of _____, 2020.

C. Cheveldave & Associates Ltd.
in its capacity as Receiver and Manager of certain
assets, undertakings and properties of the Defendant
Sather Ranch Ltd.
and not in its personal capacity

Per: _____
Cecil Cheveldave, Receiver

Schedule C – Claims to be deleted/expunged from title to Real Property

1. Nature: MORTGAGE
Registration Number: CA5807665
Registration Date and Time: 2017-02-06 15:46
Registered Owner: MICHAEL NEIL STREET
MARIELLE JACQUELINE ANGELLA BRULE
AS JOINT TENANTS
Transfer Number: CA7496634

2. Nature: ASSIGNMENT OF RENTS
Registration Number: CA5807666
Registration Date and Time: 2017-02-06 15:46
Registered Owner: MICHAEL NEIL STREET
MARIELLE JACQUELINE ANGELLA BRULE
AS JOINT TENANTS
Transfer Number: CA7496635

**Schedule D – Permitted Encumbrances, Easements
and Restrictive Covenants related to Real Property**

1. Nature: RESERVATION
Registration Number: 44185E
Registered Owner: THE COLUMBIA WESTERN RAILWAY
Remarks: DD 8303

2. Nature: RIGHT OF WAY
Registration Number: N32015
Registration Date and Time: 1978-06-12
Registered Owner: WEST KOOTENAY POWER AND LIGHT COMPANY LIMITED

Schedule E – Name of Purchaser

Dennis Brodersen, and
Kim Brodersen

as joint tenants

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**ORDER MADE AFTER APPLICATION
APPROVAL AND VESTING ORDER**



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

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

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