



No. 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 WEISSTOCK AND 1100748 B.C.
LTD., ANTONY WEISSTOCK, TRUSTEE WILLY AND MARIA WEISSTOCK TRUST
and ISLANDVIEW COUNTRY ESTATES LTD.

Respondents

APPLICATION RESPONSE

Application response of: **Albert Weisstock**

THIS IS A RESPONSE TO the notice of application (the "**Application**") of C.
Cheveldave & Associates Ltd., Liquidator, filed 03/Feb/26.

The application respondent estimates that the Application will take 2 hours.

Part 1: ORDERS CONSENTED TO

The application respondent consents to the granting of the orders set out in the
following paragraphs of Part 1 of the notice of application on the following terms: NONE.

Part 2: ORDERS OPPOSED

The application respondent opposes the granting of the orders set out in paragraph 1 of
Part 1 of the notice of application.

Part 3: ORDERS ON WHICH NO POSITION IS TAKEN

The application respondent takes no position on the granting of NONE of the orders set
out in Part 1 of the notice of application.

Part 4: FACTUAL BASIS

1. The Order appointing the Liquidator provides that the Liquidator and its legal counsel shall pass their accounts from time to time, and allows for such applications to be heard summarily (Liquidation Order pronounced January 26, 2024, paragraph 22).
2. The material filed in support of the Application indicates a total of 2,341.6 hours of work is claimed by the Liquidator for the administration of Witmar Holdings Ltd. (“**WHL**”) during the period January 1, 2025 to December 31, 2025. This equates to 6.5 hours per day for 365 days, or 9.9 hours per day based upon 240 annual working days.
3. Throughout this period, the Liquidator had engaged Walter Weisstock and Antony Weisstock, at their full salaries, to provide administrative and management services consistent with their roles prior to the Liquidation Order.
4. The Liquidator’s explanation for retaining Walter Weisstock and Antony Weisstock is that they held knowledge of the business operations and performed tasks necessary for the business operations at both the Palisade apartments and the hotel properties. Presumably they were engaged in managing the business of WHL on the same basis as pre-liquidation, and therefore the Liquidator’s day to day involvement should have been minimized, including compiling routine financial data and addressing the liquidation of WHL’s assets. However, no explanation is provided for the apparent overlap between the Liquidator’s services and those ostensibly performed by Walter and Antony Weisstock.
5. The fees claimed by the Liquidator include time charges for travel and administrative matters. The time spent on such matters is not specifically indicated, and no explanation is provided as to why such travel was necessary, or why matters could not have been addressed via electronic means.
6. The time entries provided by counsel are redacted, but based upon claims for mileage reimbursement, they presumably include claims for time spent in travel.

7. This proceeding is a Kelowna file; there is no explanation provided as to why local counsel was not engaged, or why counsel could not have appeared remotely or by agent on uncontested applications.
8. The disbursements claimed by the Liquidator include travel and accommodation charges, but supporting invoices are not provided.

Part 5: LEGAL BASIS

1. The passing of accounts allows for a detailed analysis of the accounts, the manner and the circumstances in which they were incurred, and the time taken to perform the Liquidator's duties.¹
2. The court can adjust the fees and charges of a Liquidator; the applicable standard of review is whether the fees and charges were properly made or incurred, and are fair and reasonable.²
3. The Liquidator bears the onus of satisfying the court that the fees and charges are fair and reasonable.³
4. While the ultimate focus is upon the fairness and reasonableness of the fees and charges, specific considerations can include:
 - a. the value of the assets;
 - b. complications and difficulties encountered by the Liquidator;
 - c. the degree of assistance provided by the company in liquidation;
 - d. the time spent by the Liquidator;

¹ *Re Confectionately Yours, Inc. et al* (2002), 2002 CanLII 45059 (ON CA) ("**Confectionately Yours**"), cited with approval in *Redcorp Ventures Ltd. (Re)*, 2016 BCSC 188 ("**Redcorp**"), para. 19.

² *Redcorp*, para. 22.

³ *Redcorp*, para. 25.

- e. the Liquidator's knowledge, experience, and skill;
 - f. diligence and thoroughness;
 - g. responsibilities assumed;
 - h. results; and
 - i. cost of comparable services when performed in a prudent and economical manner.⁴
5. The assessment of fees should not be just a matter of calculating the number of hours spent times an hourly rate. There must be some correlation between the cost and the benefits derived.⁵
6. Here, there are concerns over the degree of disclosure provided in relation to the Liquidator's accounts, and those of its counsel. Specifically, there is no basis upon which to determine what time was spent on the various categories of services (e.g., travel, administrative, consulting, matters related to marketing the assets, compiling routine financial reports, etc.) provided by the Liquidator.⁶
7. Moreover, the claimed fees represent approximately 200 hours per month in billable time. On a wholistic analysis, and given the engagement of two shareholders (Walter and Antony Weisstock) who were managing the operations at their full pre-liquidation salaries, that level of involvement is presumptively unreasonable.

⁴ *Bank of Montreal v. Nican Trading Co.*, 1990 CanLII 454 (BCCA).

⁵ *Redcorp*, para. 32. See also *Bank of Nova Scotia v. Diemer*, 2014 ONCA 851 at paras. 39-40 and 45.

⁶ In *Confectionately Yours*, Borins J.A. stated (at para. 37) that "[t]he accounts should be in a form that can be easily understood by those affected by the receivership (or by the judicial officer required to assess the accounts) so that such person can determine the amount of time spent by the receiver's employees (and others that the receiver may have hired) in respect to the various discrete aspects of the receivership."

8. In all the circumstances, the Liquidator should be compelled to provide a fulsome explanation as to the benefit of spending 2400 hours on this matter while paying the salaries of two managers capable of operating the business without the Liquidator's involvement. Respectfully, the Liquidator has failed to discharge this obligation, and its materials do not meet the standard required under the prevailing authorities.
9. The question as to whether the accounts should be assessed summarily by a judge in chambers, or assessed through the usual process before a registrar, is directly engaged in this case.
10. The inclusion of paragraph 22 in the Liquidation Order establishes a permissive, not mandatory, process.⁷ It is intended to reflect the fact that, in typical insolvency proceedings, a single judge is assigned to hear all applications and is therefore best situated to consider the reasonableness of claimed fees.⁸ That factor does not apply in this case.
11. The fundamental question is whether the summary process is appropriate to the circumstances, including whether the procedural protections of a registrar's hearing are necessary, and whether judicial time should be engaged for the process.⁹
12. The Application Respondent submits that this matter should proceed by way of a registrar's hearing, with appropriate pre-hearing orders. Given the scope and nature of the questions to be resolved, and the expected time required to conduct the assessment, the registrar is in a better position than a chambers judge to determine a fair and reasonable fee for the services provided by the Liquidator and its counsel.

⁷ *Redcorp*, paras. 35-36.

⁸ *Redcorp*, para. 37; *Pandion Mine Finance Fund LP v. Otso Gold Corp.*, 2022 BCSC 1923 ("**Pandion**"), at para. 17.

⁹ *Pandion*, paras. 18-19.

Part 6: MATERIAL TO BE RELIED ON

1. The Liquidator's Third Report to Court.
2. Such further and other material as counsel for the Application Respondent may advise in advance of the hearing of the Application.

The Application Respondent has filed in this proceeding a document that contains the application respondent's address for service.

Date: September 29, 2026



Steven D. Dvorak
Lawyer for the Application Respondent
Albert Weisstock