

AUG 31 2017



S-178181

Court File No. VLC-S-H-  
Vancouver Registry

## IN THE SUPREME COURT OF BRITISH COLUMBIA

BETWEEN:

ROBERT SAUER  
MELVIN HABER  
CRAIG SHERIDAN  
DR. STEVEN L. KIRZNER INC.  
MACKOFF MANAGEMENT SERVICES (2012) INC.

PETITIONERS

AND:

KELOWNA MOUNTAIN DEVELOPMENT SERVICES LTD.  
KELOWNA MOUNTAIN LIMITED PARTNERSHIP  
MARK CONSIGLIO  
0741449 B.C. LTD.  
0722955 B.C. LTD.  
0768723 B.C. LTD.  
0877099 B.C. LTD.

RESPONDENTS

## PETITION TO THE COURT

**This proceeding has been started by the Petitioners for the relief set out in Part 1 below.**

If you intend to respond to this Petition, you or your lawyer must:

- (c) file a Response to Petition in Form 67 in the above-named registry of this court within the time for response to Petition described below, and
- (d) serve on the Petitioners
  - (i) 2 copies of the filed Response to Petition, and

- (ii) 2 copies of each filed Affidavit on which you intend to rely at the hearing.

**Orders, including orders granting the relief claimed, may be made against you, without any further notice to you, if you fail to file the Response to Petition within the time for response.**

**Time for response to Petition**

A Response to Petition must be filed and served on the Petitioner:

- (a) if you reside anywhere within Canada, within 21 days after the date on which a copy of the filed Petition was served on you,
- (b) if you reside in the United States of America, within 35 days after the date on which a copy of the filed Petition was served on you,
- (c) if you reside elsewhere, within 49 days after the date on which a copy of the filed Petition was served on you, or
- (d) if the time for response has been set by order of the court, within that time.

<b>(1)</b>	<b>The address of the registry is:</b>  800 Smithe Street, Vancouver, British Columbia V6Z 2E1
<b>(2)</b>	<b>The ADDRESS FOR SERVICE of the Petitioners is:</b>  c/o Kornfeld LLP 1100 One Bentall Centre, 505 Burrard Street, Box 11 Vancouver, British Columbia V7X 1M5 (Attention: Douglas B. Hyndman)
<b>(3)</b>	<b>The name and office address of the Petitioners' lawyer is:</b>  Kornfeld LLP 1100 One Bentall Centre, 505 Burrard Street, Box 11 Vancouver, British Columbia V7X 1M5 (Attention: Douglas B. Hyndman)

## **ENDORSEMENT ON ORIGINAL PLEADING OR PETITION FOR SERVICE OUTSIDE BRITISH COLUMBIA**

The Petitioner claims the right, if necessary, to serve this Petition on the Respondents, or any of them, outside British Columbia on the ground, *inter alia*, that the proceeding: is brought to enforce, assert, declare or determine proprietary or possessory rights or a security interest in property in British Columbia that is immovable or movable property pursuant to Subsection 10(a) of the *Court Jurisdiction and Proceedings Transfer Act* (the “Act”); and on the ground that the proceeding concerns contractual obligations pursuant to Subsection 10(e) of the Act; and on the grounds that the proceeding is brought to interpret, rectify, set aside or enforce a deed, will, contract or other instrument in relation to property in British Columbia that is immovable or movable property in accordance with sub-paragraph 10(c)(i) of the Act or moveable property anywhere of a deceased person who at the time of death was ordinarily resident in British Columbia in accordance with sub-paragraph 10(c)(ii) of the Act.

### **CLAIM OF THE PETITIONER**

#### **Part 1: ORDER(S) SOUGHT**

##### **APPOINTMENT**

1. That pursuant to Section 39 of the LEA, Section 66 of the Personal Property Security Act and the Inherent Jurisdiction of this Honourable Court Boale Wood & Company Ltd. be appointed Receiver, without security, of:
  - (a) Kelowna Mountain Development Services Ltd. (“Services”) and Kelowna Mountain Limited Partnership (the “Partnership”), (Services

and the Partnership are collectively referred to as “KMP”) in respect of:

- (i) all of the books, records, ledgers, and statements whether corporate, financial or otherwise, and including those which relate or pertain to:
    - (A) The receipt and disbursement of the proceeds of the loan secured by that mortgage registered in the Kamloops Land Title Office on June 4, 2013 against PID 011-781-866 (“Lot C”) under Nos. CA3162605 and CA3162606 (the “Lot C Mortgage”);
    - (B) The receipt and disbursement of all receipts from the operations carried on by KMP, whether from weddings, gate receipts, concerts, or otherwise.
  - (ii) all financial accounts, including bank accounts, as well as all accounts receivable, including those into which the proceeds from operations carried on by KMP, or otherwise, have been deposited.
- (b) 0741449 B.C. Ltd., 0722955 B.C. Ltd., 0877099 B.C. Ltd. and 0768723 B.C. Ltd. (collectively the “Numbered Companies”) in respect of:
- (i) all of the books, records, ledgers, and statements whether corporate, financial or otherwise, and including those which relate or pertain to the receipt and disbursement of the proceeds

of the loan secured by that mortgage registered in the Kamloops Land Title Office on March 25, 2009 against PID 015-122-085 (“Lot A”) under Nos. CA1067274 (the “Lot A Mortgage”) and those which relate to the subject matter of paragraph (c) below;

- (ii) all financial accounts, including bank accounts, as well as all accounts receivable;
- (iii) any and all sums which now or hereafter may become payable or be paid to the 0741449 B.C. Ltd. or 0722955 B.C. Ltd. by the Minister of National Revenue, the Canadian Revenue Agency, or other taxing authority, federal, provincial, regional or local;

- c. all of the issued and outstanding shares of all or any of the Numbered Companies.

(collectively the “Property”).

## **DEFINITIONS**

The Numbered Companies, KMP and Consiglio are sometimes hereinafter referred to collectively as the Debtor.

Where the word “Debtor” is used herein, it shall mean, as the context requires, all, any or any combination of Consiglio, the Numbered Companies and KMP.

## RECEIVER'S POWERS

2. That the Receiver is hereby empowered and authorized, but not obligated, to act at once in respect of the Property and, without in any way limiting the generality of the foregoing, the Receiver is hereby expressly empowered and authorized to do any of the following where the Receiver considers it necessary or desirable:
- (a) take possession and control of the Property and any and all proceeds, receipts and disbursements arising out of or from the Property;
  - (b) receive, preserve, protect and maintain control of the Property, or any part or parts thereof, including, but not limited to, changing of locks and security codes, relocating of Property to safeguard it, engaging of independent security personnel, the taking of physical inventories and placement of such insurance coverage as may be necessary or desirable;
  - (c) engage consultants, appraisers, agents, experts, auditors, accountants, managers, counsel and such other persons from time to time and on whatever basis, including on a temporary basis, to assist with the exercise of the powers and duties conferred by this Order;
  - (d) receive and collect all monies and accounts now owed or hereafter owing to the Debtor and to exercise all remedies of the Debtor in collecting such monies, including, without limitation, to enforce any security held by the Debtor;

- (e) execute, assign, issue and endorse documents of whatever nature in respect of any of the Property, whether in the Receiver's name or in the name and on behalf of the Debtor, for any purpose pursuant to this Order;
  - (f) report to, meet with and discuss with such affected Persons (as defined below) as the Receiver deems appropriate on all matters relating to the Property and the receivership, and to share information with such Persons, subject to such terms as to confidentiality as the Receiver deems advisable;
  - (g) exercise any shareholder, partnership, joint venture or other rights which the Debtor may have; and
  - (h) take any steps reasonably incidental to the exercise of these powers,
- and in each case where the Receiver takes any such actions or steps, it shall be exclusively authorized and empowered to do so, to the exclusion of all other Persons (as defined below), including the Debtor, and without interference from any other Person.

### **DUTY TO PROVIDE ACCESS AND CO-OPERATION TO THE RECEIVER**

3. That (i) the Debtor, (ii) all of the Debtor's current and former directors, officers, employees, agents, accountants, legal counsel and shareholders, and all other persons acting on its instructions or behalf, and (iii) all other individuals, firms, corporations, governmental bodies or agencies, or other entities having notice of this Order (all of the foregoing, collectively, being "Persons" and each being a "Person") shall forthwith advise the Receiver of

the existence of any Property in such Person's possession or control, shall grant immediate and continued access to such Property to the Receiver, and shall deliver all such Property (excluding Property subject to liens the validity of which is dependant on maintaining possession) to the Receiver upon the Receiver's request.

4. That any person with notice of this Order (including any Court Reporter) forthwith deliver to the Receiver all or any transcripts of any examination under oath, (including examination in aid of execution) of all or any of the Debtors or their representatives upon payment of the normal and reasonable costs for photocopies or (in the case of an examination that may not yet be transcribed) of any normal and reasonable transcription costs.
5. That the implied undertaking to maintain the confidentiality relating or pertaining to any such transcripts and the contents thereof of any of the Respondents is hereby waived in respect of disclosure thereof to the Receiver who may disclose any document or information to the Petitioners upon their undertaking to maintain the confidentiality thereof except for the purposes of lawful proceedings or as the Court upon application may otherwise authorize or direct.
6. That all Persons shall forthwith advise the Receiver of the existence of any books, documents, securities, contracts, orders, corporate and accounting records, and any other papers, records and information of any kind related to the business or affairs of the Debtor, and any computer programs, computer tapes, computer disks, or other data storage media containing any such information (the foregoing, collectively, the "Records") in that Person's possession or control, and shall provide to the Receiver or permit the



Receiver to make, retain and take away copies thereof and grant to the Receiver unfettered access to and use of accounting, computer, software and physical facilities relating thereto, provided however that nothing in this paragraph 4 or in paragraph 5 of this Order shall require the delivery of Records, or the granting of access to Records, which may not be disclosed or provided to the Receiver due to the privilege attaching to solicitor-client communication or documents prepared in contemplation of litigation or due to statutory provisions prohibiting such disclosure.

7. That if any Records are stored or otherwise contained on a computer or other electronic system of information storage, whether by an independent service provider or otherwise, all Persons in possession or control of such Records shall forthwith give unfettered access to Receiver for the purpose of allowing the Receiver to recover and fully copy all of the information contained therein whether by way of printing the information onto paper or making copies of computer disks or such other manner of retrieving and copying the information as the Receiver in its discretion deems expedient, and shall not alter, erase or destroy any Records without the prior written consent of the Receiver. Further, for the purposes of this paragraph, all Persons shall provide the Receiver with all such assistance in gaining immediate access to the information in the Records as the Receiver may in its discretion require including, without limitation, providing the Receiver with instructions on the use of any computer or other system and providing the Receiver with any and all access codes, account names and account numbers that may be required to gain access to the information.

## **NO PROCEEDINGS AGAINST THE RECEIVER**

8. That no proceeding or enforcement process in any court or tribunal (each, a "Proceeding"), shall be commenced or continued against the Receiver except with the written consent of the Receiver or with leave of this Court.

#### **NO PROCEEDINGS AGAINST THE DEBTOR OR THE PROPERTY**

9. That no Proceeding against or in respect of the Property shall be commenced or continued except with the written consent of the Receiver or with leave of this Court and any and all Proceedings currently under way against or in respect of the Property are hereby stayed and suspended pending further Order of this Court, provided, however, that nothing in this Order shall prevent any Person from commencing a Proceeding regarding a claim that might otherwise become barred by statute or an existing agreement if such Proceeding is not commenced before the expiration of the stay provided by this paragraph.

#### **NO EXERCISE OF RIGHTS OF REMEDIES**

10. That all rights and remedies (including, without limitation, set-off rights) against the Receiver, or affecting the Property, are hereby stayed and suspended except with the written consent of the Receiver or leave of this Court, provided however that nothing in this paragraph shall (i) empower the Receiver or the Debtor to carry on any business which the Debtor is not lawfully entitled to carry on, (ii) exempt the Receiver or the Debtor from compliance with statutory or regulatory provisions relating to health, safety or the environment, (iii) prevent the filing of any registration to preserve or perfect a security interest, or (iv) prevent the registration of a claim for lien.

#### **RECEIVER TO HOLD FUNDS**

11. That all funds, monies, cheques, instruments, and other forms of payments received or collected by the Receiver from and after the making of this Order from any source whatsoever including, without limitation, any trust funds held by Services on behalf of the Partnership or otherwise and the collection of any accounts receivable in whole or in part, whether in existence on the date of this Order or hereafter coming into existence, shall be deposited into one or more new accounts to be opened by the Receiver (the "Post-Receivership Accounts") and the monies standing to the credit of Post-Receivership Accounts from time to time, net of any disbursements provided for herein, shall be held by the Receiver to be paid in accordance with the terms of this Order or any further order of this Court.

## **EMPLOYEES**

12. That subject to the right of employees to terminate their employment notwithstanding paragraph 10, all employees of the Debtor shall remain the employees of the Debtor until such time as the Receiver, on the Debtor's behalf, may terminate the employment of such employees. The Receiver shall be liable for any employee-related liabilities, including wages, severance pay, termination pay, vacation pay, and pension or benefit amounts relating to any employees that the Receiver may hire.
13. That pursuant to Section 7(3)(c) of the *Personal Information Protection and Electronic Documents Act*, S.C. 2000, c. 5 or Section 18(1)(o) of the *Personal Information Protection Act*, S.B.C. 2003, c. 63, the Receiver may disclose personal information of identifiable individuals to prospective purchasers or bidders for the Property and to their advisors, but only to the extent desirable or required to negotiate and attempt to complete one or

more sales or dispositions of the Property (each, a “Sale”). Each prospective purchaser or bidder to whom such personal information is disclosed shall maintain and protect the privacy of such information and limit the use of such information to its evaluation of the Sale, and if it does not complete the Sale, shall return all such information to the Receiver, or in the alternative destroy all such information. The purchaser of any Property shall be entitled to continue to use the personal information provided to it, and related to the Property purchased, in a manner which is in all material respects identical to the prior use of such information by the Debtor, and shall return all other personal information to the Receiver, or ensure that all other personal information is destroyed.

#### **LIMITATION ON THE RECEIVER’S LIABILITY**

14. That the Receiver shall incur no personal liability or obligation as a result of its appointment or the carrying out of the provisions of this Order, save and except for any gross negligence or wilful misconduct on its part.

#### **RECEIVER’S ACCOUNTS**

15. That any expenditure or liability which shall properly be made or incurred by the Receiver, including the fees of the Receiver and the fees and disbursements of its legal counsel, incurred at the standard rates and charges of the Receiver and its counsel, shall be allowed to it in passing its accounts and shall form a first charge on the Property in priority to all security interests, trusts, liens, charges and encumbrances, statutory or otherwise, in favour of any Person (the “Receiver’s Charge”).

16. That the Receiver and its legal counsel shall pass their accounts from time to time, and for this purpose the accounts of the Receiver and its legal counsel are hereby referred to a judge of the Supreme Court of British Columbia and may be heard on a summary basis.
17. That prior to the passing of its accounts, the Receiver shall be at liberty from time to time to apply reasonable amounts, out of the monies in its hands, against its fees and disbursements, including legal fees and disbursements, incurred at the normal rates and charges of the Receiver or its counsel, and such amounts shall constitute advances against its remuneration and disbursements when and as approved by this Court.

#### **FUNDING OF THE RECEIVERSHIP**

18. That the Receiver be at liberty and it is hereby empowered to borrow by way of a revolving credit or otherwise, such monies from time to time as it may consider necessary or desirable, provided that the outstanding principal amount of such borrowing does not exceed \$60,000 (or such greater amount as this Court may by further Order authorize) at any time, at such rate or rates of interest as the Receiver deems advisable for such period or periods of time as it may arrange, for the purpose of funding the exercise of the powers and duties conferred upon the Receiver by this Order, including interim expenditures. The whole of the Property shall be and is hereby charged by way of a fixed and specific charge (the "Receiver's Borrowings Charge") as security for the payment of the monies borrowed, together with interest and charges thereon, in priority to all security interests, trusts, liens, charges and encumbrances, statutory or otherwise, in favour of any Person, but subordinate in priority to the Receiver's Charge.

19. That neither the Receiver's Borrowings Charge nor any other security granted by the Receiver in connection with its borrowings under this Order shall be enforced without leave of this Court.
20. That the Receiver is at liberty and authorized to issue certificates substantially in the form annexed as Schedule "A" hereto (the "Receiver's Certificates") for any amount borrowed by it pursuant to this Order.
21. That the monies from time to time borrowed by the Receiver pursuant to this Order or any further order of this Court and any and all Receiver's Certificates evidencing the same or any part thereof shall rank on a *pari passu* basis, unless otherwise agreed to by the holders of any prior issued Receiver's Certificates.

## **ALLOCATION**

22. That any interested party may apply to this Court on notice to any other party likely to be affected, for an order allocating the Receiver's Charge amongst the various assets comprising the Property.

## **GENERAL**

23. That the Receiver may from time to time apply to this Court for advice and directions in the discharge of its powers and duties hereunder.
24. That nothing in this Order shall prevent the Receiver from acting as a trustee in bankruptcy of the Debtor.
25. THIS COURT REQUESTS the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction, wherever located, to

give effect to this Order and to assist the Receiver and its agents in carrying out the terms of this Order.

26. That the Receiver be at liberty and is hereby authorized and empowered to apply to any court, tribunal or regulatory or administrative body, wherever located, for recognition of this Order and for assistance in carrying out the terms of this Order and all such courts, tribunals and 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.
27. That the Plaintiff/Petitioner/Applicant shall have its costs of this motion, up to and including entry and service of this Order, as provided for by the terms of the Plaintiff/Petitioner/Applicant's security or, if not so provided by the Plaintiff/Petitioner/Applicant's security, then on a substantial indemnity basis to be paid by the Receiver from the Debtor's estate with such priority and at such time as this Court may determine.
28. That any interested party may apply to this Court to vary or amend this Order on not less than two (2) clear business days' notice to the Receiver and to any other party likely to be affected by the order sought or upon such other notice, if any, as this Court may order.
29. That the Debtors or any other person having knowledge of this Order shall, in connection with any contract made on, after or extant as at April 8, 2016 and to which a Debtor is a privy, or where such contract was made by the

agency of another, whether such agent was a trustee or otherwise, and where under such contract:

- (a) any consideration is to be received by a Debtor, or such contract provides that consideration be given to some other person instead of the Debtor,
- (b) Any consideration is to be given to by a Debtor or by another for whom the Debtor is an agent or trustee,

shall deliver to the Receiver a copy of any such contract, for which the Receiver shall pay a reasonable sum for copy work, and where such contract is not recorded or only partially recorded in electronic or other media, shall inform the Receiver, in writing, of those terms which have not been recorded, and of those terms which have only been partially recorded.

- 30. That the Petitioners, through their counsel, be and they are hereby at liberty to examine for discovery under oath Nicola Consiglio, a person with knowledge of the business and financial affairs of all or some of the Respondents.

## **Part 2: FACTUAL BASIS**

### **THE LOAN FROM THE PETITIONERS AND FORECLOSURE OF LOT C**

- 1. Joel S. Mackoff, director of and the president of Mackoff Management Services (2012) Inc. (“MMSI”), one of the Petitioners herein, commenced communication with Mark Consiglio on behalf of the borrowers (the “Respondents”) prior to May 15, 2013 when a commitment letter was written for a loan (“the Loan”)



2. The Loan was in the principal amount of \$3,150,000 and was secured by a mortgage (the “**Lot C Mortgage**”) registered in the Kamloops Land Title Office on June 4, 2013.
3. As at April 1, 2016 the sum of \$4,129,143.42 was due from the Partnership (as defined below) and the other Respondents to the Petitioners under the Lot C Mortgage.
4. The Lot C Mortgage was for a 13 month term, but the Respondents failed to make payment upon maturity.
5. The Lot C Petitioners granted a forbearance until August 1, 2014, but the Lot C Mortgage continued in default thereafter.
6. As a result of the continuing default, the Petitioners commenced foreclosure proceedings.
7. On April 8, 2016 an Order Nisi of Foreclosure and Sale was granted to the Petitioners with a 6 month redemption period which expired in October 2016.
8. Mr. Consiglio is also a judgment debtor of the Petitioners Robert Sauer and Melvin Haber (the “**Chute Lake Road Judgment Creditors**”) herein (and others) in Vancouver Registry No VLC-S-H-150102 (the “**Chute Lake Road Foreclosure**”) in respect of which the June 11, 2015 judgment against him remains unsatisfied in excess of the amount of \$292,000.
9. As part of the Lot C Order Nisi, the Petitioners obtained Conduct of Sale of Lot C, effective after October 1, 2016.

10. Mr. Consiglio, on behalf of Services, obtained for the Lot C Petitioners an appraisal of Lot C from Mr. Dubois valuing it in May 2013 at \$9,825,000.
11. Lot C has been on the market since February 2017, but no serious expression of interest for this property alone has been generated.

### **CHUTE LAKE ROAD FORECLOSURE**

12. The Chute Lake Road Judgment Creditors, along with some others, also lent money to Mr. Consiglio's companies in respect of development property located on Chute Lake Road in Kelowna.
13. As security for those advances a first mortgage was taken.
14. The Borrowers and covenantors did not pay the mortgage when due and foreclosure proceedings were commenced.
15. Order nisi was pronounced and Order for Conduct of Sale in favour of the Petitioners.
16. When the Order for Conduct of Sale took effect the Petitioners listed the lands for sale.
17. An offer was obtained and an application to approve the sale was made in the Supreme Court.
18. The sale of the Chute Lake Road property completed, but the sale proceeds were not sufficient to pay the Petitioners out completely, leaving a deficiency balance of around \$292,000 as at June 5, 2017 (plus costs) (the "**Chute Lake Road Shortfall**").

### WRIT OF SEIZURE AND SALE

19. On or about June 21, 2017 the Chute Lake Road Judgment Creditors issued a Writ of Seizure and Sale (the “**Writ**”) with respect to the Chute Lake Road Shortfall.
20. After being unable to locate any assets in the Lower Mainland, Consolidated Bailiffs reported that they were returning the Writ to the Court Registry in Vancouver endorsed Unable to Locate Exigible Assets.

### KM AGRI PARK

21. The lands (“**Lot C**”) against which the Lot C Mortgage was registered (PID 011-781-866) formed part of a development (“**KM AgriPark**”) which Mr. Consiglio, through Kelowna Mountain Development Services Ltd. (“**Services**”), undertook as the principal of the general partner and trustee on behalf of Kelowna Mountain Limited Partnership (the “**Partnership**”).
22. Two other parcels of lands contiguous to Lot C formed part of KM AgriPark: PID: 015-122-085 (“**Lot A**”) registered to Services as owner and PID: 015-122-107 (“**Lot B**”) registered to 076 as owner.
23. Services built structures on KM AgriPark include suspension bridges, a “Welcome Centre” and other touristic attractions.
24. To the best of my knowledge the Welcome Centre is located on Lot C.
25. Though Lot C was held in trust for the Partnership, Mr. Consiglio presented the KM AgriPark as the personal asset of him and his wife, Nicola Consiglio.

26. In May of 2016 the Lot C Petitioners paid \$57,122.20 of unpaid 2014 and 2015 property taxes for Lot C.
27. In 2017 the Lot C Petitioners paid \$23,388.37 for the unpaid 2016 Lot C property taxes.

### **LOT A**

28. Lot A had been owned by one of Mr. Consiglio's companies, 076, and on January 30, 2009 he granted a mortgage of Lot A (the "**Lot A Mortgage**") to a syndicate of Lenders (the "**Lot A Lenders**"), the Petitioners in Kelowna Registry Action No. S-H-102974 (the "**Lot A Foreclosure Proceedings**").
29. According to the Order Nisi in the Lot A Foreclosure Proceedings, as at June 8, 2016 the sum of \$4,438,607.13 was due under the Lot A Mortgage.
30. On May 12, 2011, 076 transferred title to Lot A to Services in trust for the Partnership. The transfer was subject to the Lot A Mortgage in respect of which, based upon the Lot A Petitioners' Petition, the Partnership gave no express covenant to the Lot A Petitioners.

### **LOT B**

31. An Order Absolute has been pronounced in respect of Lot B, but that Order is under Appeal.

### **FLOATING CHARGE**

32. The Lot C Mortgage contains a floating charge which could be crystallized against assets of the Respondents.

33. In April 2016 the Lot C Petitioners crystallized their floating charge security over the assets of 076 and Services which included crystallization against both Lots A and B.

**DEALINGS WITH MR. CONSIGLIO**

34. Within the documents received from the mortgage broker were documents related to Mr. Consiglio's "Personal Net Worth". These included a Summary showing:
- a. 074 was 100% owned by 072;
  - b. 072 was 100% owned by Mr. Consiglio;
  - c. 076 was 100% owned by Mr. Consiglio;
  - d. 087 was 100% owned by Mr. Consiglio.
35. The offering memorandum in respect of the partnership, clause 3.3 (b) indicates that Mr. Consiglio is a discharged bankrupt.

**EASEMENT OVER LOT C AND FIDUCIARY ISSUES**

36. In November 2014, Mr. Consiglio raised the issue of what he referred to as an easement in respect to Lot C in favour of 076 as owner of Lot B. His solicitor, Mr. Brown, provided a draft easement which contemplated the grant of an easement by Services to 076. The terms of the document referred to as an easement would provide sole and exclusive use of the Welcome Centre to 076.
37. Services is the general partner of the Partnership.

38. The Partnership includes third party investors not related to Mr. Consiglio or any of his other corporations.
39. In the proposed arrangement, Services, as the general partner of the Partnership, was requesting consent of its mortgagee to the grant of an exclusive use easement to a company which was owned and controlled by Mr. Consiglio and his immediate family.
40. The fact that Mr. Consiglio proposed the arrangement as between the general partner that he controlled which had a fiduciary duty to limited partner investors and a company apparently controlled by himself and his family caused concern.

#### **CANADA REVENUE AGENCY AND THE FEDERAL COURT OF CANADA JEOPARDY**

#### **ORDER**

41. In May of 2016 the Federal Court of Canada granted The Minister of National Revenue a “Jeopardy Order” against 074 and 072 concerning a claimed tax refund of \$1,157,568.24. The Order was granted because the Court was satisfied [para. 11] “that there are reasonable grounds to believe that the funds now in the hands of the minister would likely be jeopardized if returned to the Respondent.”

#### **CONCERNS**

- a. Though the draft materials presented were to the effect that Mr. Consiglio’s shareholdings in 076 are worth in excess of \$25,000,000, he has been unable to satisfy a more than 2 year old judgment against him personally for just over \$250,000;

- b. Though the draft materials presented were to the effect that the Partnership has a liability to 076 for \$15,911,255 remaining from the purchase of Lots A and C at price of \$36,100,000, both Lots A and C have had orders nisi of foreclosure pronounced with redemption times having passed;
- c. That the combined value of Lots A and C according to Mr. Consiglio's appraiser, who has suffered peer criticism, is approximately 50% of the price at which the Partnership purchased them;
- d. That Lot C has been on the market for about 6 months and has not had an offer at a list price representing approximately 2/3<sup>rd</sup> of Mr. Dubois' valuation of it;
- e. That the integrity of the AgriPark has been broken by the pronouncement of an Order Absolute concerning Lot B;
- f. That Mr. Consiglio was fully prepared to execute an easement on behalf of the Partnership in favour of his company, in what I perceived to be a conflict of interest and was unable to provide a legal opinion which he represented he had;
- g. That Mr. Consiglio raised the prospect of a secret trust to which he had access, if he chose, to satisfy his obligation to us;
- h. That Mr. Consiglio has generated substantial revenue from the operations of the AgriPark while the Lot C Petitioners have paid 3

years of property taxes totalling in excess of \$80,000 and without receipt of any contribution from Services;

- i. A Federal Court judge has seen fit to preserve a tax refund for Mr. Consiglio’s companies 074 and 072 by a “Jeopardy Order” for fear that if refunded, the funds may disappear;

42. The Petitioners wish to have a Receiver appointed.

**Part 3: LEGAL BASIS**

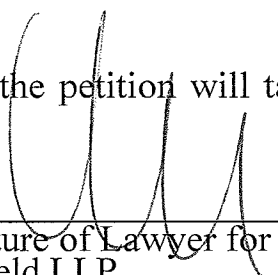
- 1. The Petitioners’ application is made pursuant to the provisions of Rules 2-1, 10-2, 13-4(5), 13-5, 14-1, 16-1, 21-7 and 22-1 of the Supreme Court Civil Rules, Section 39 of the *Law and Equity Act* R.S.B.C and the provisions of the *Personal Property Security Act*, R.S.B.C. 1996, c 359 and the Inherent Jurisdiction of this Honourable Court.

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

- 1. Affidavit #1 of Joel S. Mackoff.

The Petitioners estimate that the hearing of the petition will take 30 minutes, ex parte.

Dated: August 30, 2017.




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Signature of Lawyer for Petitioners  
Kornfeld LLP  
(Douglas B. Hyndman)

<i>To be completed by the Court only:</i>	
Order made	
<input type="checkbox"/>	in the terms requested in paragraphs _____ of Part 1 of this notice of application
<input type="checkbox"/>	with the following variations and additional terms:



<hr/> <hr/> <hr/>	
Date: _____	Signature of <input type="checkbox"/> Judge <input type="checkbox"/> Master _____

Court File No.  
Vancouver Registry

**IN THE SUPREME COURT OF BRITISH COLUMBIA**

BETWEEN:

ROBERT SAUER  
MELVIN HABER  
CRAIG SHERIDAN  
DR. STEVEN L. KIRZNER INC.  
MACKOFF MANAGEMENT SERVICES (2012) INC.

PETITIONERS

AND:

KELOWNA MOUNTAIN DEVELOPMENT SERVICES LTD.  
KELOWNA MOUNTAIN LIMITED PARTNERSHIP  
MARK CONSIGLIO  
0741449 B.C. LTD.  
0722955 B.C. LTD.  
0768723 B.C. LTD.  
0877099 B.C. LTD.

RESPONDENTS

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**P E T I T I O N**

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**KORNFELD LLP**

*Barristers & Solicitors*

1100 One Bentall Centre

505 Burrard Street

Box 11

Vancouver, British Columbia V7X 1M5

Attention: Douglas B. Hyndman  
File No.: MMS002/KEL171