



No. S-1710510
Vancouver Registry

IN THE SUPREME COURT OF BRITISH COLUMBIA

IN THE MATTER OF THE *BANKRUPTCY AND INSOLVENCY ACT*,
R.S.C. 1985, C. B-3, AS AMENDED

AND

IN THE MATTER OF THE RECEIVERSHIP OF
0744860 B.C. LTD.

BETWEEN:

BOALE, WOOD & COMPANY LTD.
in its capacity as TRUSTEE IN BANKRUPTCY OF
MARIA YUEN-MAI KWONG a.k.a. MARIA KWONG

PETITIONER

AND:

0744860 B.C. LTD.

RESPONDENT

NOTICE OF APPLICATION

Name of applicant: Boale, Wood and Company Ltd. in its capacity as court appointed receiver ("Boale Wood").

To: The Service List, attached as **Schedule "B"**

TAKE NOTICE that an application will be made by the applicant to the presiding Judge or Master at the courthouse at 800 Smithe Street, Vancouver, British Columbia, on the 31st day of May, 2018, at ~~10.00~~ ^{9:45 a.m.} a.m., for the orders set out in Part 1 below.

Part 1: ORDER(S) SOUGHT

1. The time for service of the Notice of Application and related materials is hereby abridged such that the Notice of Application is properly returnable today and service hereof upon any interested party other than those parties on the service list attached hereto is hereby dispensed with.

2. An order substantially in the form attached hereto as **Schedule “A”**.
3. Such further and other relief as counsel may advise and this Honourable Court may allow.

Part 2: FACTUAL BASIS

4. By order pronounced November 20, 2017 (the “Order”) Boale Wood was appointed Receiver of 0744860 B.C. Ltd. (the “Company”)
5. The primary asset of the Company is a piece of real property located at 111 3rd Street West, North Vancouver, British Columbia, V7M 1E7 more particularly described as:

PID: 015-131-696
Lot 10, Block 140, District Lot 274
Plan 879
(the “Property”)
6. In accordance with the powers prescribed at paragraph 3(k) of the Order, in December 2017 Boale Wood retained Cushman & Wakefield ULC (“C&W”) to list, market and sell the Property.
7. On March 28, 2018, Boale Wood, in its capacity as Receiver, and Beacon Pacific Properties Ltd. (the “Purchaser”) entered into an Offer to Purchase the Property (the “OTP”) and the Purchaser provided an initial deposit of \$100,000.
8. The OTP incorporated conditions precedent in favour of the Purchaser which were removed by notice dated April 12, 2018.
9. On April 13, 2018 the Purchaser caused the additional deposit (as defined in the OTP) of \$400,000 to be deposited with C&W.

10. Boale Wood then took steps to remove certain other conditions (in its favour) contained in the OTP.
11. By Notice of Application dated April 27, 2018 Boale Wood applied for:
 - a. court approval as required by paragraph 3(l) of the Order and clause 10(b) of the OTP; and
 - b. a vesting order in favour of the Purchaser.
12. By Order pronounced May 2, 2018 the OTP was approved and a vesting order granted in favour of the Purchaser (the “Vesting Order”).
13. Clause 32 of the OTP provides:

This Offer to Purchase cannot be assigned by the Purchaser without the prior written consent of the Vendor, such consent not to be unreasonably withheld. Notwithstanding the foregoing, the Vendor agrees that the Purchaser will be entitled, without the consent of the Vendor, to assign this Offer to Purchase to an affiliate (as defined in the British Columbia Business Corporations Act). In connection with any such assignment of this Offer to Purchase, the Purchaser must deliver to the Vendor, prior to such assignment becoming effective, a written agreement executed by the assignee and the Purchaser in favour of the Vendor wherein the assignee agrees to observe and perform all of the Purchaser's obligations under this Offer to Purchase and the Purchaser acknowledges that the assignment does not release the Purchaser from its obligations under this Offer to Purchase.

(the “Right of Assignment”)

14. The Purchaser has given notice to Boale Wood that it has assigned its rights and obligations under the OTP to 273 Lonsdale Properties Ltd. (“273 Lonsdale”).
15. 273 Lonsdale is an affiliate, as defined in the *Business Corporations Act*, of the Purchaser.

Part 3:LEGAL BASIS

16. The Receiver relies on the:
- a. Order;
 - b. Vesting Order;
 - c. Supreme Court Civil Rules;
 - d. the *Bankruptcy and Insolvency Act* (the “BIA”) and the *Bankruptcy and Insolvency General Rules*;
 - e. the original, auxiliary and ancillary jurisdiction in bankruptcy of this Honourable Court under s. 183 of the BIA; and
 - f. the inherent and equitable jurisdiction of this Honourable Court.

17. The *Business Corporations Act* provides as follows:

Definitions***1 (1) In this Act:***

.....

“affiliate” means a corporation that is affiliated with another corporation within the meaning of section;

.....

Corporate relationships***2 (1) For the purposes of this Act, one corporation is affiliated with another corporation if***

- (a) one of them is a subsidiary of the other,*
- (b) both of them are subsidiaries of the same corporation, or*
- (c) each of them is controlled by the same person.*

(2) For the purposes of this Act, a corporation is a subsidiary of another corporation if

- (a) it is controlled by*
 - (i) that other corporation,*
 - (ii) that other corporation and one or more corporations controlled by that other corporation, or*
 - (iii) 2 or more corporations controlled by that other corporation, or*
- (b) it is a subsidiary of a subsidiary of that other corporation.*

(3) For the purposes of this section, a corporation is controlled by a person if

- (a) shares of the corporation are held, other than by way of security only, by the person, or are beneficially owned, other than by way of security only, by*
 - (i) the person, or*

- (ii) a corporation controlled by the person, and
 (b) the votes carried by the shares mentioned in paragraph (a) are sufficient, if exercised, to elect or appoint a majority of the directors of the corporation.*
- (4) For the purposes of this Act, a corporation is the holding corporation of a corporation that is its subsidiary.*
- (5) For the purposes of this Act, a corporation is a wholly owned subsidiary of another corporation if all of the issued shares of the first corporation are held by one or both of
 (a) that other corporation, and
 (b) a wholly owned subsidiary, or wholly owned subsidiaries, of that other corporation.*

....

18. The proposed order provides for title to the Property to vest in the name of 273 Lonsdale, an affiliate of the Purchaser, which is specifically contemplated in the OTP.

Part 4: MATERIAL TO BE RELIED ON

19. Receivership Order, made November 20, 2017;
20. Affidavit #1 of Stephen Boale, made on November 9, 2017;
21. Affidavit #2 of Stephen Boale, made on April 27, 2018;
22. Affidavit #1 of Ajeet Singh Manhas, made on May 22, 2018;
23. Order Made After Application made on May 2, 2018; and
24. Such further and other materials as counsel may advise.

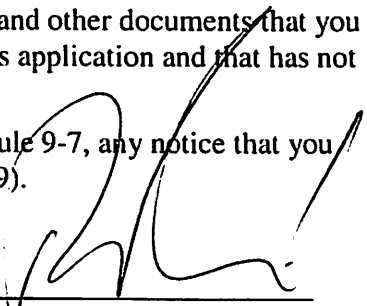
The Applicant estimates that the Application will take 10 minutes.

- 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 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;
 - (iii) if this application is brought under Rule 9-7, any notice that you are required to give under Rule 9-7 (9).

Date: May 22, 2018



Signature of Jeremy D. West
Counsel for the Petitioner

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:

[Check the box(es) below for the application type(s) included in this application.]

- discovery: comply with demand for documents
- discovery: production of additional documents
- 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

SCHEDULE "A"

No. S-1710510
Vancouver Registry

IN THE SUPREME COURT OF BRITISH COLUMBIA
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PETITIONER

AND:

0744860 B.C. LTD.

RESPONDENT

ORDER MADE AFTER APPLICATION

APPROVAL AND VESTING ORDER

BEFORE THE HONOURABLE) **THE 31st DAY OF MAY, 2018**
)
_____ **JUSTICE** _____)

ON THE APPLICATION of the Petitioner, coming on for hearing at Vancouver, British Columbia, on the 31st day of May, 2018, and on hearing Jeremy D. West, counsel for the Petitioner, and those other counsel listed on **Schedule "B"** hereto, **AND UPON READING** the materials filed herein.

THIS COURT ORDERS AND DECLARES THAT:

- 1. The time for service of the Notice of Application and related court materials herein is hereby abridged such that the Notice of Application is properly**

returnable today and service hereof upon any interested party other than those parties on the service list to the Notice of Application is hereby dispensed with.

2. The sale transaction (the "**Transaction**") contemplated by the Offer to Purchase dated March 28, 2018 (the "**Sale Agreement**") between the Receiver and Beacon Pacific Properties Ltd. (the "**Purchaser**"), a copy of which is attached as Exhibit "B" to the Affidavit #2 of Stephen Boale sworn on April 27, 2018, is hereby 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 real property located at 103, 105 & 111 3rd Street West, North Vancouver, British Columbia, V7M 1E7 and 273 Lonsdale Ave, North Vancouver, BC V7M 2E9 more particularly described as;

PID: 015-131-696

Lot 10, Block 140, District Lot 274

Plan 879

(the "**Property**")

described in the Sale Agreement.

3. The assignment by Purchaser of its rights and obligations under the Sale Agreement to 273 Lonsdale Properties Ltd. ("**273 Lonsdale**"), pursuant to the Assignment and Assumption of Offer to Purchase dated May 15, 2018, is approved.
4. Upon delivery by the Receiver to 273 Lonsdale of a certificate substantially in the form attached as **Schedule "A"** (the "**Receiver's Certificate**"), all of 0744860 B.C. Ltd.'s (the "**Company**") right, title and interest in and to the Property described in the Sale Agreement shall vest absolutely in 273 Lonsdale in fee simple, subject to the permitted encumbrances, easements and restrictive covenants listed in

Schedule "A" to the Sale Agreement, but otherwise 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 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 November 20, 2017; (ii) all charges, security interests or claims evidence by registrations pursuant to the *Personal Property Security Act* of British Columbia or any other personal property registry system; (all of which are collectively referred to as the "Encumbrances", which term shall not include the permitted encumbrances, easements and restrictive covenants listed in Schedule "A" to the Sale Agreement), and, for greater certainty, this Court orders that all of the Encumbrances affecting or relating to the Property are expunged and discharged as against the Property on delivery of the Receiver's Certificate to 273 Lonsdale.

5. Upon representation for registration in the Land Title Office for the Land Title Survey Authority, New Westminster District of a certified copy of this Order, together with a letter from Jeremy D. West, counsel for the Receiver, authorizing registration of this Order, the British Columbia Registrar of Land Titles is hereby directed to:
 - a. enter 273 Lonsdale as the owner of the Property, 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 Property, and this Court declares that it has been proved to the satisfaction of the Court on investigation that the title of 273 Lonsdale

in and to the Property has good, safe holding and marketable title and directs the BC Registrar to register indefeasible title in favour of 273 Lonsdale as aforesaid; and

- b. having considered the interest of third parties, to discharge, release, delete and expunge from title to the Property all of the registered Encumbrances except for those permitted encumbrances, easements and restrictive covenants listed in Schedule "A" to the Sale Agreement.
6. For the purposes of determining the nature and priority of Claims, the net proceeds from the sale of the Property shall stand in the place and stead of the Property, and from and after the delivery of the Receiver's Certificate all Claims shall attach to the net proceeds from the sale of the Property with the same priority as they had with respect to the Property immediately prior to the sale, as if the Property had not been sold and remained in the possession or control of the person having had possession or control immediately prior to the sale.
 7. The Receiver is to file with the Court a copy of the Receiver's Certificate forthwith after delivery thereof.
 8. The Receiver, with the consent of the Purchaser or 273 Lonsdale, 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 that such extension shall be no longer than 30 days.
 9. Notwithstanding:
 - a. these proceedings;
 - b. any applications for a bankruptcy order in respect of the Respondent 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 Respondent,

the vesting of the Property in 273 Lonsdale pursuant to this Order shall be binding on any trustee in bankruptcy that may be appointed in respect of the Respondent and shall not be void or voidable by creditors of the Respondent, 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. 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.
11. Endorsement of this Order by counsel appearing on this application other than counsel for the Receiver is hereby dispensed.

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 Jeremy D. West
Solicitor for the Receiver

By the Court.

Registrar

Schedule "A"**Receiver's Certificate****RECITALS**

A. Pursuant to an Order of the Honourable Mr. Justice Brundrett of the Supreme Court of British Columbia (the "**Court**") dated November 20, 2017, Boale, Wood & Company Ltd. was appointed as receiver (the "**Receiver**") of the assets, undertakings and properties of 0744860 B.C. Ltd. (the "**Company**").

B. Pursuant to an Order of the Court dated May 2, 2018 and amended by Order of the Court dated [...] (the "**Vesting Order**"), the Court approved the Offer to Purchase, dated March 28, 2018 (the "**Sale Agreement**") between the Receiver and Beacon Pacific Properties Ltd. (the "**Purchaser**"), the assignment of the Purchaser's rights and obligations under the Sale Agreement to 273 Lonsdale Properties Ltd. ("**273 Lonsdale**") and provided for the vesting in 273 Lonsdale of the Company's right, title and interest in and to the the real property located at 103, 105 & 111 3rd Street West, North Vancouver, British Columbia, V7M 1E7 and 273 Lonsdale Ave, North Vancouver, BC V7M 2E9 more particularly described as;

PID: 015-131-696

Lot 10, Block 140, District Lot 274

Plan 879

(the "**Property**")

which vesting is to be effective with respect to the Property upon delivery by the Receiver to the 273 Lonsdale of a certificate confirming (i) the conditions set out in the Vesting Order have been satisfied; (ii) the payment by 273 Lonsdale of the Purchase Price for the Property; and (iii) the Transaction has been completed to the Satisfaction of the Receiver.

C. Unless otherwise indicated herein, capitalized terms used herein have the meanings set out in the Sale Agreement.

THE RECEIVER CERTIFIES the following:

1. The conditions set out in the Vesting Order have been satisfied.
2. 273 Lonsdale has paid and the Receiver has received the Purchase Price for the Property payable on the Closing Date pursuant to the Sale Agreement.

3. The Transaction has completed to the satisfaction of the Receiver.
4. This Certificate was delivered by the Receiver at _____ [TIME] on _____
[DATE].

BOALE, WOOD & COMPANY LTD., solely
in its capacity as court appointed receiver of
0744860 B.C. Ltd., and not in its personal or
any other capacity

Per: _____
Stephen Boale

Schedule "B"

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SCHEDULE "B"**IN THE SUPREME COURT OF BRITISH COLUMBIA****IN THE MATTER OF THE RECEIVERSHIP OF
0744860 B.C. LTD.****BETWEEN:****BOALE, WOOD & COMPANY LTD.
in its capacity as TRUSTEE IN BANKRUPTCY OF
MARIA YUEN-MAI KWONG a.k.a. MARIA KWONG****PETITIONER****AND:****0744860 B.C. LTD.****RESPONDENT****SERVICE LIST****(as of May 22, 2018)**

<p>John McLean QC & Andrew Bury QC Gowling WLG (Canada) LLP Suite 2300 – 550 Burrard Street, Bentall 5 Vancouver, BC V6C 2B5</p> <p>Tel: 604.683.6498 Fax: 604.683.3558 Email: John.McLean@gowlingwlg.com; Andrew.Bury@gowlingwlg.com</p> <p><i>(counsel for John Combs and Chartell Properties Ltd.)</i></p>	<p>Wayne R. Powell Harrop Phillips Powell & Gray LLP 400 – 110 Cambie Street Vancouver, BC V6B 2M8</p> <p>Tel: 604.688.8211 Fax: 604.688.9539 Email: wpowell@harrop-phillips.com</p> <p><i>(counsel for Gulf & Fraser Fisherman's Credit Union)</i></p>
<p>Mike Jukic Axis Law 1500 – 701 West Georgia Street Vancouver, BC V7Y 1C6</p> <p>Tel: 604.601.8501 Fax: 604.608.4956 Email: mj@axlaw.ca</p> <p><i>(counsel for Thomas Tsang)</i></p>	<p>Beacon Pacific Properties Ltd. c/o Clark Wilson LLP 900 – 885 West Georgia Street Vancouver, BC V6C 3H1</p> <p>Tel: 604.643.3146 Fax: 604.687.6314 Email: ctyson@cwilson.com</p>