

SUPREME COURT
OF BRITISH COLUMBIA
VANCOUVER REGISTRY

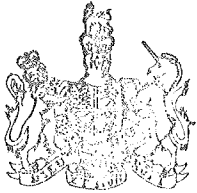
SEP 05 2017

ENTERED



SUPREME COURT
OF BRITISH COLUMBIA

SEAL
VANCOUVER
REGISTRY



No. VLC-S-H-178181
Vancouver Registry

IN THE SUPREME COURT OF BRITISH COLUMBIA

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

ORDER MADE AFTER APPLICATION

BEFORE THE HONOURABLE) TUESDAY, THE 5th DAY
)
MADAM JUSTICE WARREN) OF SEPTEMBER 2017.
)

THE EX PARTE HEARING of the Petition for an Order pursuant to Section 39 of the *Law and Equity Act*, R.S.B.C. 1996 c. 253, as amended (the "LEA") and Section 66 of the *Personal Property Security Act* appointing Boale Wood & Company Ltd. as Receiver (in such capacity, the "Receiver") without security;

COMING ON FOR HEARING THIS 5TH DAY OF SEPTEMBER 2017 IN VANCOUVER, BC AT THE COURT HOUSE

AND ON READING Affidavit #1 of Joel S. Mackoff sworn August 29, 2017 and Affidavit #1 of Sandra Riley sworn August 31, 2017; AND ON HEARING Douglas B. Hyndman, Counsel for the Petitioners, Ex Parte, and on reading the consent of Boale Wood & Company Ltd. to act as the Receiver.

APPOINTMENT

1. THIS COURT ORDERS that pursuant to Section 39 of the LEA, the Rules of Court and Section 66 of the *Personal Property Security Act* Boale Wood & Company Ltd. is hereby 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. THIS COURT ORDERS 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. THIS COURT ORDERS 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. THIS COURT ORDERS 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. THIS COURT ORDERS that the implied undertaking to maintain the confidentiality relating or pertaining to any such transcripts and the contents thereof of any of the Defendants is hereby waived in respect of disclosure thereof to the Receiver who may disclose any document or information to the Plaintiffs 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. THIS COURT ORDERS 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. THIS COURT ORDERS 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. THIS COURT ORDERS 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. THIS COURT ORDERS 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. THIS COURT ORDERS 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. THIS COURT ORDERS 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. THIS COURT ORDERS 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. THIS COURT ORDERS 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. THIS COURT ORDER 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. THIS COURT ORDERS 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. THIS COURT ORDERS 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. THIS COURT ORDERS 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. THIS COURT ORDERS 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. THIS COURT ORDERS 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. THIS COURT ORDERS 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. THIS COURT ORDERS 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. THIS COURT ORDERS 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.

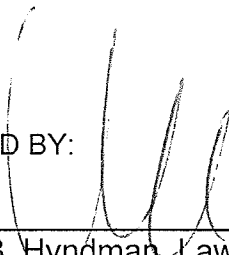
GENERAL

23. THIS COURT ORDERS 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. THIS COURT ORDERS 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. THIS COURT ORDERS 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. THIS COURT ORDERS 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. THIS COURT ORDERS 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. THIS COURT ORDERS that the relief sought in Paragraph 30 of the Petition be and it is hereby adjourned generally.
- 30. THIS COURT ORDERS 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.

APPROVED BY: 

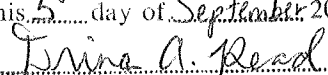
Douglas B. Hyndman, Lawyer for the Petitioners

BY THE COURT



 DISTRICT REGISTRAR 

Certified a true copy according to the records of the Supreme Court at Vancouver, B.C.

This 5th day of September 2017


 Authorized Signing Officer

DRINA READ

SCHEDULE "A"

RECEIVER CERTIFICATE

CERTIFICATE NO.

AMOUNT \$ _____

1. THIS IS TO CERTIFY that **[RECEIVER'S NAME]**, the **[Interim Receiver and/or Receiver and Manager]** (the "Receiver") of all of the assets, undertakings and properties of **[DEBTOR'S NAME]** appointed by Order of the Supreme Court of British Columbia and/or the Supreme Court of British Columbia (In Bankruptcy and Insolvency) (the "Court") dated the _____ day of _____, 200_ (the "Order") made in SCBC Action No. _____ and/or SCBC Action No. _____/Estate No. _____ has received as such Receiver from the holder of this certificate (the "Lender") the principal sum of \$_____, being part of the total principal sum of \$_____ which the Receiver is authorized to borrow under and pursuant to the Order.
2. The principal sum evidenced by this certificate is payable on demand by the Lender with interest thereon calculated and compounded [daily] [monthly] not in advance on the _____ day of each month after the date hereof at a notional rate per annum equal to the rate of _____ per cent above the prime commercial lending rate of Bank _____ from time to time.
3. Such principal sum with interest thereon is, by the terms of the Order, together with the principal sums and interest thereon of all other certificates issued by the Receiver pursuant to the Order or to any further order of the Court, a charge upon the whole of the Property (as defined in the Order), in priority to the security interests of any other person, but subject to the priority of the charges set out in the Order, and the right of the Receiver to indemnify itself out of the Property in respect of its remuneration and expenses.
4. All sums payable in respect of principal and interest under this certificate are payable at the main office of the Lender at _____, British Columbia.
5. Until all liability in respect of this certificate has been terminated, no certificates creating charges ranking or purporting to rank in priority to this certificate shall be issued by the Receiver to any person other than the holder of this certificate without the prior written consent of the holder of this certificate.
6. The charge securing this certificate shall operate to permit the Receiver to deal with the Property as authorized by the Order and as authorized by any further or other order of the Court.

7. The Receiver does not undertake, and it is not under any personal liability, to pay any sum under this Certificate in respect of which it may issue certificates under the terms of the Order.

DATED the ____ day of _____, 20__.

[RECEIVER'S NAME], solely in its capacity as Receiver of the Property (as defined in the Order), and not in its personal capacity

Per:

Name:

Title: