

FORCED FILED



No. H-210441
Vancouver Registry

IN THE SUPREME COURT OF BRITISH COLUMBIA

BETWEEN:

PROSPERA CREDIT UNION

PETITIONER

AND:

PORTLIVING FARMS (3688 PARKVIEW) INVESTMENTS INC.
LIVING BEACHSIDE DEVELOPMENT LIMITED PARTNERSHIP
PORT CAPITAL FARMS (BEACH) INC.
PORT CAPITAL GROUP INC.
PORT CAPITAL DEVELOPMENT INC.
MACARIO TEODORO REYES
ERLENMATTE AG
ROLAND KRUGER
ROLAND KRUGER FAMILY TRUST IN TRUST
HAGEN KRUGER
HAGEN KRUGER FAMILY TRUST IN TRUST
JOHN DOE

RESPONDENTS

NOTICE OF APPLICATION

Name of applicant: The Bowra Group Inc., court- appointed receiver of Portliving Farms (3688 Parkview) Investments Inc. and Living Beachside Development Limited Partnership (the “**Receiver**”)

To: the Respondents

TAKE NOTICE that an application will be made by the Applicant to the presiding judge at the courthouse at 800 Smithe Street, Vancouver, BC on March 23, 2022 at 9:45 am for the order set out in Part 1 below.

Part 1: ORDER SOUGHT

1. An Order, in the form of the draft order attached as **Schedule “A”** to this Notice of Application:
 - (a) that service of notice of this Application and supporting materials is hereby declared to be good and sufficient, and no other person is required to have been

served with notice of this Application, and time for service of this Application is abridged to that actually given.;

- (b) approving the fees and disbursements of the Receiver and the Receiver's counsel;
- (c) discharging the Receiver's Charge relating to the within Receivership proceedings;
- (d) terminating these receivership proceedings; and
- (e) discharging the Receiver.

Part 2: FACTUAL BASIS

Background

1. Portliving Farms (3688 Parkview) Investments Inc. and Living Beachside Development Limited Partnership (the "**Companies**") own and operate a motel located on the shore of Skaha Lake in Penticton, B.C.
2. On February 8, 2022, the Court granted the Receiver the authority to market and sell the motel commencing on February 18, 2022.
3. On March 4, 2022, the Receiver was advised that the Portliving Group had made arrangements for new financing to payout the first mortgagee, Prospera Credit Union ("**Prospera**") and the second mortgagee, Erlenmatte AG ("**Erlenmatte**").
4. On March 16, 2022, the Prospera and Erlenmatte mortgages was refinanced and paid in full.
5. It was a requirement of the new mortgagees that the Receiver cease all marketing activities and seek its discharge.

Summary of the Receiver's Activities

6. The Receiver's activities since appointment are more fully detailed in the First Report of the Receiver, dated February 4, 2022 (the "**First Report**") and the Second Report of the Receiver, dated March 16, 2022 (the "**Second Report**", and collectively with the First Report, the "**Reports**"), but generally, since appointment, the Receiver has:
 - (a) marketed the properties for sale;
 - (b) preserved and protected the assets; and
 - (c) administered the estate.
7. The Receiver has performed the following activities since its appointment:

- (a) taken possession of the assets and operations;
 - (b) engaged Cushman & Wakefield ULC (“**Cushman**”) on February 24, 2022 to market the assets of the Company;
 - (c) numerous correspondence and discussions with Cushman;
 - (d) numerous discussions and correspondence with prospective purchasers during the sales process;
 - (e) discussions and correspondence with legal counsel;
 - (f) reviewed and reconciled daily sales activity;
 - (g) liaised with the general manager of the motels on a weekly basis regarding operations, required repairs and maintenance and a marketing strategy;
 - (h) set up new Moneris accounts to allow for online payments and to allow for deposits to go into the proper motel bank account;
 - (i) prepared cash flow projections;
 - (j) liaised with numerous creditors; and
 - (k) reviewed various internal reports regarding future bookings and provided recommendations to increase revenue.
8. The Receiver holds approximately \$123,000 in its three trust accounts and will be paid an additional \$116,000 to pay costs and professional fees to complete the receivership. The \$239,000 will be used to pay:
- (a) costs for ongoing operations of \$68,250;
 - (b) Cushman work fee of \$15,750 including GST;
 - (c) outstanding Receiver’s fees of \$63,000;
 - (d) outstanding fees of the Receiver’s legal counsel of \$22,000;
 - (e) estimated Receiver’s fees to completion of the receivership of up to \$55,000 including disbursements and taxes; and,
 - (f) estimated fees for the Receiver’s legal counsel of up to \$25,000 including disbursements and taxes.

Fees and Disbursements of the Receiver

9. The Receiver's Statements of Fees, Disbursements and Taxes from November 29, 2021 to February 28, 2022 are included in **Appendix "B"** of the Second Report. The Receiver's billings include \$54,968 in fees, \$2,682 in disbursements and \$2,883 for taxes, for total billings of \$60,553.
10. The Receiver estimates that there will be a maximum of \$55,000 in additional Receiver's fees, disbursements and taxes required to complete the administration of the estate.

Fees and Disbursements of the Receiver's Counsel

11. The invoices for fees, disbursements and taxes of the Receiver's counsel, DLA Piper (Canada) LLP, for the period of November 29, 2021 to February 28, 2022, are included in **Appendix "C"**. DLA's billings include \$8,928 in fees, \$7 in disbursements and \$1,071 for taxes, for total billings of \$10,006.
12. The Receiver has reviewed the accounts for DLA rendered in this matter and is satisfied that the work detailed therein was completed by DLA at the request of the Receiver and was necessary. In the Receiver's experience, the fees and rates charged by DLA in its invoices are consistent with those charged by other law firms for work of a similar nature and complexity in British Columbia.
13. The Receiver's counsel estimates that there will be a maximum of \$25,000 in additional legal fees, disbursements, and taxes required to complete the administration of the estate.

Part 3: LEGAL BASIS

1. The Receivership Order made in these Proceedings.
2. The Receiver relies generally on the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3 ("**BIA**"), and particularly Part XI and sections 243, 246, 247, and 249.
3. The Receiver has acted with good faith throughout these proceedings and has complied with the statutory requirements of Receivers as set out in the BIA, and the orders issued by this Court from time to time.
4. The Receiver's fees as set out in the Reports are consistent with fees charged by similar firms in British Columbia that have the capacity and expertise to undertake a file of comparable size and complexity and work undertaken was delegated to the appropriate professionals in the Receiver's organisation based on seniority and hourly rates.
5. The Receiver has reviewed all accounts rendered by the Receiver's Counsel in this period and confirms that all services described in the accounts of the Receiver's Counsel were rendered to the Receiver, and that the Receiver believes that all charges are fair reasonable and consistent with the market for such legal services in British Columbia.

6. The within receivership proceedings commenced on November 29, 2021, and have resulted in a refinancing and a full payout to the Petitioner and Erlenmatte.
7. Receiver is currently in a position to close these receivership proceedings without requiring any further relief from this Honourable Court.
8. Accordingly, the Receiver is of the view that it is appropriate for this Honourable Court to issue an order terminating the receivership proceedings.
9. The Receiver proposes that this Honourable Court grant an order on notice to the Service List, that:
 - (a) approves the fees and disbursements of the Receiver and the Receiver's counsel;
 - (b) discharges the Receiver's Charge;
 - (c) discharges the Receiver; and
 - (d) terminates the within proceedings.

Part 4: MATERIAL TO BE RELIED ON

1. Affidavit #1 of Chris Bowra, made on March 16, 2022;
2. Receiver's First Report, dated February 4, 2022; and
3. Receiver's Second Report, dated March 16, 2022.

The applicant estimates that the application will take 20 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).

March 17, 2022
Dated _____

Jeffrey Bradshaw

Signature of lawyer for filing party
DLA Piper (Canada) LLP (Jeffrey D. Bradshaw)
Lawyer for the Receiver

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

SCHEDULE "A"

No. H-210441
Vancouver Registry

IN THE SUPREME COURT OF BRITISH COLUMBIA

BETWEEN:

PROSPERA CREDIT UNION

PETITIONER

AND:

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JOHN DOE

RESPONDENTS

ORDER MADE AFTER APPLICATION

BEFORE) THE HONOURABLE) March 23, 2022
)
)
)
)

ON THE APPLICATION of The Bowra Group Inc., Court-appointed Receiver of Portliving Farms (3688 Parkview) Investments Inc. and Living Beachside Development Limited Partnership (the "**Receiver**"), coming on for hearing at Vancouver, British Columbia on March 23, 2022, by MS Teams; and on hearing Jeffrey D. Bradshaw, counsel for the Receiver, and no one appearing on behalf of the other parties, although duly served; AND ON READING the Receiver's Second Report dated March 16, 2022 filed herein;

THIS COURT ORDERS that:

1. service of notice of this Application and supporting materials is hereby declared to be good and sufficient, and no other person is required to have been served with notice of this Application, and time for service of this Application is abridged to that actually given.

FEE APPROVAL

2. The fees and disbursements of the Receiver from November 29, 2021 to February 28, 2022, as set out in the First Report, are hereby approved.
3. The fees and disbursements of DLA Piper (Canada) LLP ("**DLA**", in its capacity as counsel to the Receiver), from November 29, 2021 to February 28, 2022, and as set out in the Second Report, are hereby approved.
4. The fees and disbursements of the Receiver and DLA, estimated not to exceed \$80,000 in aggregate, for the completion of remaining activities in connection with these Receivership proceedings, are hereby approved. If the additional fees and disbursements of the Receiver and DLA exceed this amount, the Receiver shall seek approval of this Court for the amount in excess. For greater certainty, if the additional fees and disbursements incurred by the Receiver and DLA are less than the maximum approved herein, no further action is required by any party to effect the approval of such additional fees and disbursements.

DISCHARGE OF RECEIVER'S CHARGE

5. Upon the service by the Receiver of an executed certificate in substantially the form attached hereto as **Schedule "A"** (the "**Receiver's Termination Certificate**") on the Service List, by email, the Receiver's Charge (as defined in the Receivership Order) shall be and are hereby terminated, released and discharged, and shall be of no further force or effect, without the need for any further act or formality.
6. The Receiver is hereby directed to file a copy of the Receiver's Termination Certificate with the Court as soon as practicable following service thereof on the Service List.
7. The Receiver is hereby directed to post a copy of the filed Receiver's Termination Certificate on the Receiver's website.

TERMINATION OF PROCEEDINGS

8. Upon the service by the Receiver of the Receiver's Termination Certificate on the Service List, by email, certifying that, to the knowledge of the Receiver, all matters to be attended to in these proceedings have been completed, these proceedings shall be terminated without any further act or formality (the "**Termination Time**"), provided that nothing herein impacts the validity of any Orders made in these proceedings or any action or steps taken by any individual, firm, partnership, corporation, governmental body or agency, or any other entity pursuant thereto.

9. The Receiver is hereby directed to file a copy of the Receiver's Termination Certificate with the Court as soon as practicable following service thereof on the Service List.

DISCHARGE OF RECEIVER

10. Effective at the Termination Time, The Bowra Group Inc., shall be and is hereby discharged from its duties as the Receiver and shall have no further duties, obligations, liabilities, or responsibilities as Receiver from and after the Termination Time, provided that, notwithstanding its discharge as Receiver, The Bowra Group Inc. shall have the authority to carry out, complete or address any matters in its role as Receiver as are ancillary or incidental to these proceedings following the Termination Time as may be required.
11. Notwithstanding any provision of this Order, the Receiver's discharge or the termination of these proceedings, nothing herein shall affect, vary, derogate from, limit or amend, and the Receiver shall continue to have the benefit of any of the rights, approvals and protections in favour of the Receiver at law or pursuant to the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, the Receivership Order, any other Order of this Court in these proceedings or otherwise, all of which are expressly continued and confirmed following the Termination Time, including in connection with any actions taken by the Receiver following the Termination Time with respect to Portliving Farms (3688 Parkview) Investments Inc. and Living Beachside Development Limited Partnership or these proceedings.
12. No action or other proceeding shall be commenced against the Receiver in any way arising from or related to its capacity or conduct as Receiver except with prior leave of this Court on not less than fifteen (15) days' prior written notice to the Receiver.

GENERAL

13. Any party affected by this order may apply to the Court as necessary to seek further orders and directions to give effect to this Order.
14. This Court hereby requests the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or in any of its provinces or territories or in any foreign jurisdiction, to act in aid of and to be complimentary to this Court in carrying out the terms of this Order, to give effect to this Order and to assist the Petitioner, Purchaser or the Receiver and their respective 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 Petitioner, Purchaser or 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 Petitioner, Purchaser, or the Receiver and their respective agents in carrying out the terms of this Order.

15. endorsement of this Order by counsel or any unrepresented party appearing on this application, other than counsel to the Receiver, is hereby dispensed with.

Signature of lawyer for the Receiver
DLA Piper (Canada) LLP (Jeffrey D. Bradshaw)

BY THE COURT

REGISTRAR

SCHEDULE "A"

Receiver's Termination Certificate

No. H-210441
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RECEIVER'S CERTIFICATE

- A. By Order pronounced on November 29, 2021, (the "**Receivership Order**") of the Supreme Court of British Columbia, The Bowra Group Inc. was appointed as the Receiver of the assets, undertakings and property of Portliving Farms (3688 Parkview) Investments Inc. and Living Beachside Development Limited Partnership (and in such capacity, the "**Receiver**") .
- B. Pursuant to an order of the Court dated March 23, 2022 (the "**Termination Order**"), the Court authorized these within proceedings be terminated by delivery of a Receiver's Certificate and upon delivery, the Receiver's Charge, granted in the Receivership Order, will be terminated, released and discharged, and shall be of no further force or effect.
- C. Unless otherwise indicated herein, capitalized terms have the meanings set out in the

Sale Approval, Vesting and Termination Order.

THE RECEIVER HEREBY CERTIFIES the following:

1. The Receiver's Charge is hereby terminated, released and discharged, and shall be of no further force or effect.
2. The within proceedings are terminated.

This Certificate was delivered by the Receiver at [TIME] on _____ 2022.

The Bowra Group Inc., in its capacity as the Receiver of Portliving Farms (3688 Parkview) Investments Inc. and Living Beachside Development Limited Partnership and not in its personal capacity:

Per:

Name

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FAMILY TRUST IN TRUST,
HAGEN KRUGER, HAGEN
KRUGER FAMILY TRUST IN
TRUST, JOHN DOE

RESPONDENTS

ORDER MADE AFTER APPLICATION

DLA Piper (Canada) LLP
Barristers & Solicitors
2800 Park Place
666 Burrard Street
Vancouver, BC V6C 2Z7

Tel. No. 604.687.9444
Fax No. 604.687.1612

File No. 063227-00019

JDB/day

APPENDIX

The following information is provided for data collection purposes only and is of no legal effect.

THIS APPLICATION INVOLVES THE FOLLOWING:

- discovery: comply with demand for documents
- discovery: production of additional documents
- oral matters concerning document discovery
- 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
- none of the above

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