



FORCE FILED

No. VLC-S-H-220132  
Vancouver Registry

IN THE SUPREME COURT OF BRITISH COLUMBIA

BETWEEN:

INSTITUTIONAL MORTGAGE CAPITAL CANADA INC., AS  
GENERAL PARTNER OF IMC LIMITED PARTNERSHIP

PETITIONER

AND:

0876242 B.C. LTD.  
GATEWAY DEVELOPMENT LIMITED PARTNERSHIP  
SEEB CAPITAL LTD.  
MARK VANRY

RESPONDENT

### NOTICE OF APPLICATION

**Name of applicant:** The Bowra Group Inc., in its capacity as Receiver of 0876242 B.C. Ltd. and Gateway Development Limited Partnership (the "Receiver")

To: the Parties on the Service List Attached as Schedule "A"

TAKE NOTICE that an application will be made by the applicant to the presiding judge at the courthouse at 800 Smithe Street, Vancouver, BC, V6Z 2E1 on June 23, 2022 at 9:45 a.m. for the orders set out in Part 1 below.

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

1. An Order that the time for service of this application is abridged such that this application is properly returnable June 23, 2022.
2. An order that the Certificate of Pending Litigation registered by Seeb Capital Ltd. ("Seeb") in the Land Title Office on or about April 29, 2021 under Number CA8961936 (the "CPL") against lands and premises commonly known and described as 3333 Bridgeway Street, Vancouver, BC and legally described as:

PID: 011-154-551

BLOCK K, EXCEPT PART ON REFERENCE PLAN 8675, NOW  
LANE TOWN OF HASTINGS PLAN 5461

(the "**Property**")

be cancelled and discharged as against the Property upon registration at the Land Title Office a court certified copy of this Court's Order (the "**CPL Discharge**").

3. The Registrar of Land Titles shall, upon presentation of a certified copy of the Court's Order immediately cancel and discharge the registration of the CPL from the title provided for in the Order.
4. The CPL Discharge will not affect the rights of:
  - (a) Seeb's claim in the Notice of Civil Claim (the "**NOCC**") dated April 19, 2021 as against 0876242 B.C. Ltd. ("**087**"), Port Capital Development (Gate) Inc., the general partner of Gateway Development Limited Partnership ("**Gateway LP**"), or any other claims it may have as against Gateway LP, 087 for breach of an alleged settlement agreement (the "**Seeb Claims**");
  - (b) Gateway LP, 087 (or the Receiver as the case may be) with respect to any claims they may have against Seeb (the "**Gateway Claims**"); or
  - (c) all parties' defence or counter claims concerning the Seeb Claims or the Gateway Claims.
5. Costs against Seeb for making this CPL Discharge application necessary.
6. An order to increase the Receiver's borrowing powers from \$900,000 to \$1,600,000 under the Receivership Order (defined below);
7. Such further and other relief as this Honourable Court may deem just.

**Part 2: FACTUAL BASIS**

*Background*

1. 0876242 B.C. Ltd. and Gateway Development Limited Partnership (the "**Companies**") own a mixed use commercial and industrial strata development (the "**Development**") located at the Property. In February 2018 the secured creditor, Institutional Mortgage Capital Canada Inc. ("**IMC**"), provided a construction financing loan for the Development in the amount of \$26.2 million secured by a first mortgage on the Property.
2. The Development was scheduled to complete in Spring 2020, but completion was delayed for over two years due to cost overruns, construction delays, and disputes between the Companies and the general contractor on the Development, Prism Construction Ltd. ("**Prism**"). IMC lost confidence in the Companies' ability to complete the Development due

to the construction delays and disputes with Prism, and on March 3, 2022 IMC issued a Notice of Intention to Enforce Security.

3. On application by IMC, The Bowra Group Inc. was appointed the Receiver and Manager of the assets, undertakings and property of the Companies pursuant to an Order of this court made May 10, 2022 (the "**Receivership Order**").
4. The Receivership Order empowers the Receiver to take all necessary steps to urgently complete the Development and close pre-sale contracts once the Development is completed. The urgency in completing the Development stems from the substantial interest accruing on the debt due by the Companies to IMC. Some of the Receiver's powers under the Receivership Order include the authority:

(e) to take those steps the Receiver deems necessary for the completion of the construction of the buildings on, or improvements to the Property including, without limitation, those steps necessary to obtain an occupancy permit and to sub-divide the Property into individual strata lots;

...

(l) to complete existing pre-sale purchase contracts in accordance with their terms and to apply for any vesting order in relation to same free and clear of any liens or encumbrances, and in each such case, notice under Section 59(1) of the *Personal Property Security Act*, R.S.B.C. 1996, c. 359, if applicable, shall not be required;

Receivership Order, sections 2(e) and 2(l).

*CPL Must Be Discharged*

5. Seeb filed a Notice of Civil Claim (the "**NOCC**") dated April 19, 2021 as against 0876242 B.C. Ltd. ("**087**"), Port Capital Development (Gate) Inc., the general partner of Gateway Development Limited Partnership ("**Gateway LP**"), and Port Capital Development Inc. ("**Port Capital**"). Seeb alleges that it is a holder of some limited partnership units it purchased from Gateway LP, and as a result it has an interest in the Property supporting the CPL.
6. Seeb registered the CPL on April 29, 2021 as against the Property which forms part of the Development.
7. The Receiver advised Seeb that the Receiver requires and is empowered to urgently proceed with completing the Development, including subdivision of the Property into individual strata lots, to avoid further interest on the secured debt due to IMC. The

Receiver further advised Seeb that it requires the CPL to be discharged forthwith so that subdivision can occur.

Affidavit #1 of Wen-Shih Yang ("**Yang Affidavit**") at para 2, Ex. A.

8. Furthermore, the Receiver advised Seeb that its interest in LP units is not an interest in land and that even if Seeb's claims were valid, Seeb's claim in equity would be paid out only after all borrowings to complete the Development and professional fees, the secured debt to IMC, and the claims of all unsecured creditors were all fully paid. Based on the Receiver's estimated recovery schedule, that is highly unlikely.

Yang Affidavit at para 2, Ex. A; Receiver's First Report to Court dated June 9, 2022 (the "**Report**") at paras 36-37.

9. The Receiver also advised Seeb that it would agree that the discharge of the CPL would not affect the rights of:
- (a) Seeb's claim in the NOCC or any other claims it may have as against Gateway LP, 087 or Port Capital for breach of an alleged settlement agreement (the "**Seeb Claims**"), but for clarity Seeb agrees it has no claim against the Receiver;
  - (b) Gateway LP, 087 or Port Capital (or the Receiver as the case may be for Gateway LP or 087) with respect to any claims they may have against Seeb (the "**Gateway Claims**"); or
  - (c) all parties' defence of the Seeb Claims or the Gateway Claims.

(the "**Settlement Offer**")

Yang Affidavit at para 2, Ex. A.

10. Despite there being no prejudice to Seeb in agreeing to the Settlement Offer, Seeb has refused to discharge the CPL on the above terms or at all. The Receiver is now forced to seek an order discharging the CPL so it can proceed with the Development.

*Increase in Receiver's Borrowings*

11. The Receiver's Report includes a cash flow forecast for the period June 6, 2022 to September 4, 2022 (the "**Cash Flow Forecast**"). Based on the Cash Flow Forecast, the Receiver estimates it will require borrowings of \$1.53 million to pay the following costs including, but not limited to:
- (a) \$150,000 for estimated tenant improvement work related to work committed by the Companies to pre-sale purchasers;
  - (b) payment of 2022 property taxes in the amount of \$207,000, due July 4, 2022;

- (c) insurance costs in the amount of \$166,000;
- (d) Amounts due under a recently executed Project Completion Agreement between Prism and the Receiver, including but not limited to:
  - (i) payment to Prism of \$214,125; and
  - (ii) posting \$337,459.50 in a separate account which monies will be disbursed to Prism (or as directed by Prism to sub contractors) on the basis the deficiency list items are certified as rectified by the architect;
- (e) strata fees in the amount of \$60,000 including a 5% contingency reserve; and
- (f) estimated professional fees of \$225,000 for the Receiver and its legal counsel.

Report at paras 32-33.

12. Based on the Cash Flow Forecast, the Receiver requests an increase to its borrowings from \$900,000 to \$1,600,000 to fund the estimated disbursements in the Cash Flow Forecast and complete the Development per its mandate.

### **Part 3: LEGAL BASIS**

1. The Receiver relies on the Receivership Order made in these proceedings, the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3 generally, and Rule 14-1 of the *Supreme Court Civil Rules* and the inherent jurisdiction of the Court.

#### *The CPL must be discharged*

2. The CPL is delaying completion of the Development, as it prevents the subdivision of the Property into individual strata lots. The Receiver has acted with good faith throughout these proceedings and is attempting to see the Development through to completion as per its mandate under the Receivership Order.
3. The claim of Seeb for payment of equity units in Gateway LP does not amount to an interest in land. Even if Seeb does have an interest in the land, this claim is out of the money in relation to priorities within the insolvency and a reservation of rights provision in the Order sought will avoid any prejudice to Seeb in discharging the CPL.
4. The CPL is blocking the subdivision and must be cancelled and discharged as against the Property or it will continue to cause substantial prejudice to all other creditors who have clear interests in the land and rank ahead of Seeb in terms of priority.

*Increase in Receiver's Borrowings*

5. Based on the Cash Flow Forecast, it is necessary for the proper administration of the receivership that the Receiver's borrowings are increased from \$900,000 to \$1,600,000 to meet the estimated disbursements as set out in the Cash Flow Forecast.

*Costs*

6. Seeb ought to have agreed to discharge the CPL on the terms set out in the Settlement Offer, or similar terms given it would suffer no prejudice with the reservation of rights provision. It is improperly using the CPL as leverage to try and secure a better result than it would be entitled to within the insolvency in the ordinary course. A key aspect of the Canadian insolvency regimes are that like creditors be treated the same. By forcing the Receiver to bring this application, further costs have been incurred thereby reducing the return to other priority creditors, and Seeb ought to pay to the Receiver the costs of the application to remove the CPL as a result.

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

1. Affidavit #1 of Wen-Shih Yang, made June 14, 2022;
2. The Receivership Order made May 10, 2022;
3. The Receiver's First Report to Court filed June 10, 2022; and
4. Such further and other material as counsel may advise.

The applicant estimates that the application will take 20 mins.

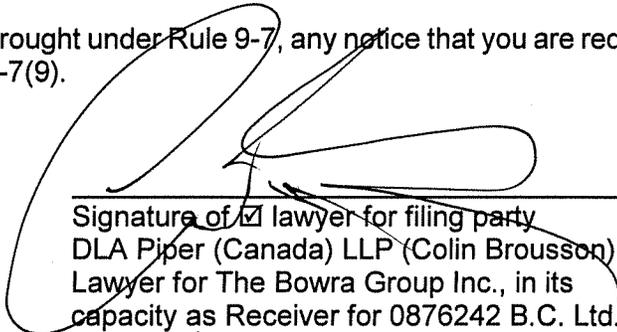
- This matter is within the jurisdiction of a master.
- This matter is not within the jurisdiction of a master.

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).

June 14, 2022  
 Dated \_\_\_\_\_

  
 \_\_\_\_\_  
 Signature of  lawyer for filing party  
 DLA Piper (Canada) LLP (Colin Brousson)  
 Lawyer for The Bowra Group Inc., in its  
 capacity as Receiver for 0876242 B.C. Ltd. and  
 Gateway Development Limited Partnership

**CONTACT DETAILS FOR HEARING BY TELEPHONE**

Name of Lawyer attending: Colin Brousson  
 Telephone: 604.643.6400  
 Email: colin.brousson@dlapiper.com

<b>To be completed by the court only:</b>	
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:
_____	
_____	
_____	
_____	
Date: _____	Signature of <input type="checkbox"/> Judge <input type="checkbox"/> Master

**SCHEDULE "A"**

No. H220132  
Vancouver Registry

IN THE SUPREME COURT OF BRITISH COLUMBIA

BETWEEN:

INSTITUTIONAL MORTGAGE CAPITAL CANADA INC., IN ITS CAPACITY  
AS GENERAL PARTNER OF IMC LIMITED PARTNERSHIP

PETITIONER

AND

0876242 B.C. LTD.  
GATEWAY DEVELOPMENT LIMITED PARTNERSHIP  
SEEB CAPITAL LTD.  
MARK VANRY

RESPONDENTS

**SERVICE LIST**

<p>Counsel for the Petitioner: Institutional Mortgage Capital Canada Inc.</p> <p><b>Bryan C. Gibbons</b> <b>Noor Mann,</b> Lawson Lundell LLP, 1600 – 925 West Georgia Street, Vancouver, B.C. V6C 3L2</p> <p>Tel: (604) 631-9152 Fax: (604) 694-2958 Email: <a href="mailto:bgibbons@lawsonlundell.com">bgibbons@lawsonlundell.com</a> <a href="mailto:nmann@lawsonlundell.com">nmann@lawsonlundell.com</a></p>	<p>Counsel for the Respondents: 0876242 B.C. Ltd. and Gateway Development Limited Partnership.</p> <p><b>Ritchie Clark, Q.C.,</b> Bridgehouse Law LLP, 9th Floor – 900 West Hastings St., Vancouver, B.C. V6C 1E5</p> <p>Tel: (604) 684-2550 Fax: (604) 684-0916 Email: <a href="mailto:rclark@bridgehouselaw.ca">rclark@bridgehouselaw.ca</a></p>
<p>Counsel for the Receiver, The Bowra Group Inc.</p> <p><b>Colin Brousson</b> <b>Jeffrey Bradshaw</b> DLA Piper (Canada) LLP Suite 2800 – 666 Burrard Street Vancouver, B.C. V6C 2Z7</p> <p>Tel: (604) 643-6400 Fax: (604) 605-4875 Email: <a href="mailto:colin.brousson@dlapiper.com">colin.brousson@dlapiper.com</a> <a href="mailto:jeffrey.bradshaw@dlapiper.com">jeffrey.bradshaw@dlapiper.com</a></p>	<p>The Receiver, The Bowra Group Inc.</p> <p>#430 - 505 Burrard Street Vancouver, B.C. V7X 1M3</p> <p>Attention: <u>Mario Mainella &amp; Kevin Koo</u></p> <p>Tel: (604) 689-8939 Fax: (604) 689-8584 Email: <a href="mailto:mmainella@bowragroup.com">mmainella@bowragroup.com</a> <a href="mailto:kkoo@bowragroup.com">kkoo@bowragroup.com</a></p>

<p>Counsel for Mark Vanry &amp; Rannoch Capital Ltd.,</p> <p><b>Doug Eyford, Q.C.,</b> Eyford Partners LLP 1744-1055 Dunsmuir Street Vancouver, B.C. V7X 1L2</p> <p>Tel: (604) 899-5226 Fax (604) 899-5216 Email: <a href="mailto:deyford@eyfordpartners.com">deyford@eyfordpartners.com</a></p>	<p>Counsel for Prism Construction Ltd.</p> <p><b>David Claassen</b> Jenkins Marzban Logan LLP Suite 900 - 808 Nelson Street Vancouver, B.C. V6Z 2H2</p> <p>Tel: (604) 895-3168 Fax: (604) 681-0766 Email: <a href="mailto:dclaassen@jml.ca">dclaassen@jml.ca</a></p>
<p>Rannoch Capital Ltd.</p> <p>c/o Registered and Records Office 2080 – 1055 West Georgia Street PO Box 11170 Stn. Royal Centre Vancouver, B.C. V6E 3R5</p> <p>Tel: (604) 992-2651 Email: <a href="mailto:rannoch29@gmail.com">rannoch29@gmail.com</a></p>	<p>Counsel for DNA Electric Ltd.</p> <p><b>Daniel C. Richardson</b> BTM Lawyers LLP 530-130 Brew Street Port Moody, B.C. V3H 0E3</p> <p>Tel: (604) 917-0126 Fax: (604) 937-5577 Email: <a href="mailto:dcr@btmlawyers.com">dcr@btmlawyers.com</a></p>
<p>Seeb Capital Ltd.</p> <p>c/o Registered and Records Office 1020-1166 Alberni Street Vancouver, B.C. V6E 3Z3</p>	<p>Summit Cladding Systems Inc.</p> <p>c/o Registered and Records Office 103 – 8380 St. George Street Vancouver, B.C. V5X 3S7</p> <p>Attention: <a href="#">Elisha Bradburn</a></p>
<p>Ikonik Enterprises Ltd.</p> <p>c/o Registered and Records Office 19876 Old Dewdney Trunk Road, Pitt Meadows B.C. V3Y 2R8</p>	<p>Phaser Fire Protection Ltd.</p> <p>2 – 19080 96<sup>th</sup> Avenue, Surrey, B.C. V4N 3Y3</p> <p>Attention: <a href="#">Eric Kirwan</a></p> <p>Tel: 604-218-4474 Email: <a href="mailto:eric@phaserfire.ca">eric@phaserfire.ca</a></p>

**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

No. VLC-S-H-220132  
Vancouver Registry

IN THE SUPREME COURT OF BRITISH COLUMBIA

BETWEEN:

INSTITUTIONAL MORTGAGE CAPITAL CANADA INC.,  
AS GENERAL PARTNER OF IMC LIMITED  
PARTNERSHIP

PETITIONER

AND:

0876242 B.C. LTD.  
GATEWAY DEVELOPMENT LIMITED PARTNERSHIP  
SEEB CAPITAL LTD.  
MARK VANRY

RESPONDENTS

---

**NOTICE OF 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.: 063227-00023

CDB