



No. S-022876  
Vancouver Registry

**IN THE SUPREME COURT OF BRITISH COLUMBIA**

**IN THE MATTER OF THE *TRUSTEE ACT* R.S.B.C. 1966 c. 464**

BETWEEN

**257955 B.C. LIMITED, BRENDA BENNETT,  
PETER HIEBERT and KIM HIEBERT**

PLAINTIFFS

AND

**STRATEGIC CONCEPTS INVESTMENT TRUST**

DEFENDANT

**JUDICIAL TRUSTEE'S  
REPORT TO COURT**

**FEBRUARY 17, 2012**

**Boale, Wood & Company Ltd.**  
In its Capacity as Judicial Trustee of  
Strategic Concepts Investment Trust

**Suite 1140 – 800 West Pender Street  
Vancouver, BC V6C 2V6**

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## **I. APPOINTMENT**

Pursuant to an Application made by the Defendants, on November 30, 2011 an Order was made by the Supreme Court of British Columbia (the "2011 Order") appointing Boale, Wood & Company Ltd. to replace Campbell Saunders Ltd. as Judicial Trustee of all real and personal, tangible and intangible property, assets, businesses, undertakings, estate, books and records, and effects of Strategic Concepts Investment Trust (the "Trust"), whatsoever and whosoever, present and future (the "Trust Property") with the powers to act as the Trustee of the Trust, all as set out and provided and subject in all respects to the terms of the Order of the Honorable Mr. Justice Parrett pronounced May 30, 2002 (the "2002 Order").

Copies of the 2011 Order and the 2002 Order have been attached hereto as Appendix A and B respectively to this report.

The powers and authority granted to the Judicial Trustee pursuant to the 2002 Order include but are not limited to the following:

- To enter into possession of, manage administer and control the Trust and Trust Property;
- To invest any cash balances held by the Judicial Trustee in securities in which trustees may by law invest trust money or as otherwise permitted by the Trust, or place such deposits in interest or non-interest bearing accounts at financial institutions;
- To carry on such aspects of the business and affairs of the Trust and Trust Property, to perform or not perform any agreement made by the Trust and enter into new agreements which the Judicial Trustee deems necessary, advisable or beneficial to the Trust;

- To execute, assign, issue or endorse and deliver such deeds, bills of sale, cheques, bills of lading or exchange, or other documents which the Judicial Trustee deems necessary, advisable or beneficial for its management, possession, preservation, administration and control of the Trust and Trust Property;
- To pay such debts of the Trust to third parties as the Judicial Trustee deems necessary, advisable and beneficial to pay in order to properly operate, administer, manage, preserve, protect, advance or maintain the business property and affairs of the Trust and Trust Property;
- To settle and pay claims which may be brought against the Trust or Trust Property on such terms and in such manner as the Judicial Trustee deems necessary, advisable or beneficial;
- To employ and retain such agents, assistance, employees, solicitors and accountants as the Judicial Trustee deems necessary, advisable and beneficial for the purpose of protecting, preserving, administering, managing and dealing with the Trust and Trust Property;
- To collect, realize or otherwise deal with debts, accounts, claims, monies and choses of action due to or owing to or owed by the Trust or Trust Property as the Judicial Trustee deems necessary or advisable including the power to commence, continue and prosecute and defend legal and administrative proceedings; and
- To exercise any and all ownership powers in relation to the Trust Property, including, without limitation, the power to exercise its rights as shareholder to vote for directors and officers of any company whose shares are owned by the Trust and to nominate, appoint and vote for the appointment of a member of the Judicial Trustee as an officer or director of any company in which the Trust has an interest and to take and assume such office as a director or officer as the case may be.

## **II. PURPOSE AND LIMITATIONS OF REPORT**

The purpose of the Judicial Trustee's report is to advise the Court with respect to the activities of both the former and current Judicial Trustee since the date of the former Judicial Trustee's report to the Court dated August 14, 2002 and to seek approval of an interim distribution to the Trust investors.

This Report has been prepared by the Judicial Trustee based on information obtained from the records of the Trust and personal knowledge of representatives of the Judicial Trustee that have been involved in the management of the Trust and Trust Property since 2002.

The financial information received from the records of Trust has not been audited, reviewed or otherwise verified by the Judicial Trustee as to its accuracy or completeness. As a result, readers are cautioned that this report has been prepared solely for the purposes of these proceedings and may not be suitable for any other purposes. The Judicial Trustee does not express an opinion or other form of assurance on the financial information presented in this report.

### **III. TRUST INVESTMENTS/LOANS**

As reported by the former Judicial Trustee, the Trust Property includes loans to several related companies, a loan to Prospero Entertainment Group Inc. and a loan to and shares in 599768 B.C. Ltd., the sole shareholder of McBride Forest Industries Ltd. ("McBride")

The activities of the former Judicial Trustee with respect to each of the loans and the investment in McBride follows:

#### **Loan to River Ranch Resort Corp.**

The Trust's loan to River Ranch Resort Corp. was reported in the books and records of the Trust in the amount of \$457,848.90. The Loan Agreement provided for interest at a rate of 12% per annum. At the time of the former Judicial Trustee's appointment the loan had not been registered in the Personal Property Registry. The Former Trustee arranged to have the security registered.

The River Ranch Resort Corp. property was sold in 2004 and resulted in a partial repayment of the loan of \$174,000. The funds received were used to reimburse professional fees incurred by the Plaintiffs and Judicial Trustee.

As River Ranch Resort Corp. had no other assets, accordingly, the balance of the loan is considered uncollectible.

#### **Loan to 557515 B.C. Ltd, Comprehensive Financial Services Inc., AFP Securities Ltd.**

The Trust's loans to 557515 B.C. Ltd., Comprehensive Financial Services Inc., AFP Securities Ltd. were reported on the books of the Trust as follows:

557515 B.C. Ltd.	\$54,127.85
Comprehensive Financial Services Inc.	17,150.42
AFP Securities Ltd.	<u>7,783.61</u>
	<u>\$79,061.88</u>

These loans that also provide for interest at a simple rate of 12% were made to related companies that have been investigated by the Securities Commission.

Based on the former Judicial Trustee's investigation, it was determined that these companies ceased operating at the commencement of the securities commission's investigation and have since been struck from the registry of Companies.

Accordingly the Judicial Trustee is of the opinion that the loans are uncollectible.

#### **Prospero Entertainment Group Inc.**

The Trust's loan to Prospero Entertainment Group Inc. was reported in the books and records of the Trust in the amount of \$369,000. The Loan Agreement provided for interest at 1.5% per month with a maturity date on December 31, 2002.

Despite registration of the security in the Personal Property Registry by the former Judicial Trustee and years of efforts made to collect on this loan, there has been no recovery to date.

Accordingly the Judicial Trustee is of the opinion that the loans are uncollectible.

#### **Loan to 599768 B.C. Ltd.**

The loan to 599768 B.C. Ltd. ("599768") represents the Trust's most significant asset.

As background, this loan in the amount of \$1,750,086 was made to 599768 in 2000 and 2001 to facilitate a share purchase of McBride Forest Industries Ltd ("McBride") formerly West Fraser Mills Ltd. ("West Fraser").

The 2000 Audited Financial Statements of the Trust report the loan as an unsecured, non-interest bearing and with no specific terms.

The former Judicial Trustee's in its' report to the Court commented on the fact that there was no documents evidencing the obligation to repay the funds to the Trust nor did McBride guarantee the indebtedness of 599768 to the Trust.

The Former Trustee recommended in its report to the Court that an Order be made to have McBride guarantee the indebtedness of 599768 to the Trust and that McBride provide collateral security for the debt.

Due to the uncertainty of any funds ever being returned to the Trust by 599768/McBride the Judicial Trustee chose not to incur the costs of properly documenting the loan arrangement and guarantee.

Since the time of the former Judicial Trustee's report to the Court in 2002 the following Court Orders have been made that impact on the shareholdings of 599768:

1. On August 12, 2004 and upon application by the Plaintiffs, the Honourable Madam Justice Boyd declared that the shares of 599768 issued to Comprehensive Financial Services Inc. were Trust property, and ordered that they be cancelled and reissued to the Trust. Comprehensive Financial Services Inc. later applied to set aside that order and its application was denied in reasons for judgment issued by Madam Justice Boyd on Oct. 15, 2004.
2. On June 16, 2005 and upon application by the Plaintiffs, the Honourable Mr. Justice Pitfield declared that the shares issued to Capital Financial Services Ltd. were Trust Property and ordered that they be cancelled and reissued to the Trust.

As a result of these Court Orders the Trust's current shareholdings in 599768, based on its corporate records, are as follows:

745 Class A common no par value shares	74.5% of issued shares
69,500 Class D common no par value shares	69.5% of issued shares



The remaining common shares were issued to Runtz Forest Management Ltd. and other parties that were employed by companies related to the Trust. The Judicial Trustee is unaware of any consideration being paid by the other common shareholders for their shares. The validity of the shares held by parties other than the Trust has not been adjudicated on.

### **Shares in McBride Forest Industries Ltd.**

As mentioned above, the Trust loaned funds 599768 to facilitate the share purchase of McBride Forest Industries Ltd. ("McBride"). 599768 owns 100% of the issued and outstanding shares of McBride.

At the time of the acquisition of McBride by 599768 there was also a vendor take back loans from West Fraser Mills Ltd. totalling \$1,100,000. These loans with interest of 10 and 12% were repaid by 2004.

McBride was successfully operated as a plywood mill until 2006 when it became insolvent and eventually ceased operating in October 2006. Following the closure of the mill, McBride filed for protection under the *Bankruptcy and Insolvency Act* ("BIA").

While under the protection of the BIA the former Judicial Trustee was able to negotiate a sale of McBride's Forest Licence. On April 23, 2007 the Honourable Mr. Justice Rice approved the sale of the McBride Forest Licenses to Carrier Lumber Ltd. for \$16,001,500, most of which was disbursed immediately to pay income tax and to repay the secured and unsecured creditors.

Shortly after completing the purchase of the forest licences, Carrier Lumber Ltd. commenced legal proceedings against McBride, Lawson Lundell LLP and Mr. John McEown in B.C. Supreme Court, Vancouver Registry No. S074154 alleging that the price at which Carrier had bought McBride's forest licence had resulted from an improper disclosure by McBride, Lawson Lundell and Mr. McEown to another prospective buyer

of confidential information relating to the price at which Carrier had initially offered to purchase the licence, contrary to alleged duties in contract and an alleged duty of confidence, and seeking a declaration that the remaining proceeds were received and held by McBride.

The lawsuit was eventually settled leaving McBride with funds in excess of \$3,000,000 after payment of all its obligations. These funds are currently being invested by McBride in term deposits and municipal bonds.

The remaining assets of McBride which include land, buildings and equipment, are being offered for sale en bloc. Although several parties have expressed an interest in acquiring the assets en bloc, the following issues have prevented parties from submitting offers:

- No guaranteed wood supply due to the sale of McBride's forest licence. It should be noted that the former Judicial Trustee in recommending to the Court that the Forest Licences be sold separate from the mill, was well aware of the impact the sale would have of the value of the remaining assets. The overall realization was still be significantly higher than would have been achieved if the Forest Licences were not sold separately; and
- An outstanding Environmental Order on the property that remains unresolved and could result in very expensive remediation.

The Judicial Trustee has retained an environmental consultant to assist with a remediation plan that will satisfy the concerns of the Ministry of Environment.

The Judicial Trustee is of the opinion that once an acceptable remediation plan is in place the remaining assets of McBride will sell.

#### **IV. COURT APPLICATION BY INVESTORS IN TRUST**

The Judicial Trustee has been served Notice of an Application by 257955 B.C. Limited, Brenda Bennett, Peter Hiebert and Kim Hiebert (the "Plaintiffs"), who collectively represent 31% of the Trust investors. A copy of their application is attached as Appendix C to this report.

The Order being sought by the Plaintiffs is in respect of the terms of the loan between the Trust and 599768. The Plaintiffs are requesting that the Court declare the following:

- That the loan bear interest at a rate of 12% per annum, compounded annually from January 17, 2001 to present. If granted the Plaintiffs have calculated the loan balance at February 22, 2012 to be \$6,159,814.08;
- That the Judicial Trustee direct McBride to indemnify the Plaintiffs in the sum of \$36,914.22 for their unreimbursed legal accounts;
- That the Judicial Trustee direct McBride to pay the sum of \$1,750,086 to the Trust investors on a pro-rata basis; and
- That the Judicial Trustee be a liberty to make further payments to the Trust investors as it considers appropriate from time to time without further order of the Court.

The Judicial Trustee wishes to bring to the attention of the Court that its employee, John McEown, has been a Director of 599768 since 2002. John McEown was appointed a Director to protect the Trust's investment in McBride. As the interest of the Trust and 599768 differ with respect to the Order being sought, the Judicial Trustee is aware of the conflict of interest that exists between Boale, Wood & Company Ltd. as Judicial Trustee and its employee, John McEown as a Director of McBride.

The Judicial Trustee is of the opinion that the Trust loan to 599768 should be treated the same as the other Trust loans and the loan from West Fraser with interest accruing at a similar rate for the following reasons:

- The funds advanced were likely intended as a short term loan but have now been outstanding for over 12 years;
- The loan is no different than other loans of the Trust and the loan from West Fraser and therefore should be treated the same;
- The 12% rate of interest for a relatively high risk unsecured loan is reasonable; and
- The loan was contemporaneous with and supported by a secured vendor take-back mortgage to an arm's-length third party at 10% and 12%.

The Judicial Trustee is also aware that charging interest on the loan will negatively impact the registered minority shareholders of 599768 (if indeed any of their shares are validly issued) as there may be no return to them after the loan and interest is paid. Despite this fact, the Judicial Trustee's mandate is to maximize the return to the investors of the Trust. The charging of interest on the loan as outlined above would facilitate this and would be consistent with the other Trust loans.

The Judicial Trustee also approves of the declarations being sought with respect to the payment of funds to the investors. The proposed immediate payout of \$1,750,086 will result in sufficient funds being held back to deal with the environmental concerns discussed in our report and any income tax consequences that may arise from the payments from McBride to 599768.

Once the environmental issues are resolved and the remaining McBride assets are sold, the Judicial Trustee intends to distribute the balance of funds, net of any income taxes owed by 599768, to the investors.

## V. CONCLUSIONS AND RECOMMENDATIONS

In conclusion, the Judicial does not oppose the Order being sought by the Plaintiffs and is satisfied that sufficient funds are being held back to address the environmental issues and pay any incomes owed by 599768.

The Judicial Trustee will continue its efforts to resolve the environmental issues and sell the remaining assets of McBride.

Upon resolution of the environmental issues and sale of the remaining McBride assets the final distribution can be made to the Trust investors and the Judicial Trustee can apply to Court for its discharge.

DATED at Vancouver, British Columbia, this 17<sup>th</sup> day of February, 2012.

**Boale, Wood & Company Ltd.**  
Judicial Trustee of  
Strategic Concepts Investment Trust

Per: John D. McEown, CA, CIRP

# **APPENDIX A**

**SUPREME COURT OF BRITISH COLUMBIA ORDER DATED  
MAY 30, 2002**

No S022876  
VANCOUVER REGISTRY



IN THE SUPREME COURT OF BRITISH COLUMBIA

IN THE MATTER OF THE TRUSTEE ACT R.S.B.C. 1996 c. 464

BETWEEN:

155 B.C. LIMITED, BRENDA BENNETT, PETER HIEBERT, and KIM HIEBERT

PLAINTIFFS

AND:

CAPITAL FINANCIAL SECURITIES INC., STRATEGIC CONCEPTS INVESTMENT TRUST, COMPREHENSIVE FINANCIAL SERVICES INC., COMPREHENSIVE FINANCIAL HOLDINGS LTD., COMPREHENSIVE FINANCIAL DEVELOPMENT CORP., RIVER RANCH RESORT CORP., and PROSPERO ENTERTAINMENT GROUP INC.

DEFENDANTS

ORDER

BEFORE THE HONOURABLE ) THURSDAY, THE 30TH DAY OF  
)  
) MAY, 2002  
MR. JUSTICE PARRETT )

*At Vancouver, B.C.*

UPON THE APPLICATION of the PLAINTIFF coming on for hearing this day and UPON HEARING Daniel S. Parlow, counsel for the Plaintiffs, and Kimberly Campbell, counsel for the Defendant, CAPITAL FINANCIAL SECURITIES INC., and no-one appearing for the Defendants, COMPREHENSIVE FINANCIAL SERVICES INC., COMPREHENSIVE FINANCIAL HOLDINGS LTD., COMPREHENSIVE FINANCIAL DEVELOPMENT CORP. RIVER RANCH RESORT CORP., and PROSPERO ENTERTAINMENT GROUP INC. although duly served, and UPON READING the Notice of Motion herein and the Affidavits of Karen Tamaki, Jacob Hiebert David Gray and John Lambert, sworn, and the pleadings and proceedings had and taken herein;

THIS COURT ORDERS THAT:

STRATEGIC CONCEPTS INVESTMENT TRUST

1. The Defendant, Capital Financial Securities Inc. (the "Former Trustee") be and is hereby immediately removed as trustee of Strategic Concepts Investment Trust (the "Trust") created by trust agreement dated November 19, 1998 by Scott Cramer as initial settlor;
2. The Former Trustee shall immediately upon receipt of a copy of this Order, by facsimile or other mode of communication, cease to exercise any rights or powers in relation to its role as trustee under the Trust and shall immediately give up possession and control of the Trust to the Judicial Trustee appointed by this Order, provide the Judicial Trustee with such information regarding the Trust, shall otherwise comply with the terms and conditions of this Order, and shall forthwith upon the express written request by the Judicial Trustee at any time and from time to time provide such authorizations, notices, directions or confirmations in relation to the Trust to persons regarding the rights, powers and authority of the Judicial Trustee as the Judicial Trustee may from time to time reasonably find necessary, advisable or convenient;
3. Campbell Saunders Ltd., of the City of Vancouver, Province of British Columbia, be and is hereby appointed Judicial Trustee, (the "Judicial Trustee") of all the real and personal, tangible and intangible property, assets, businesses, undertaking, estate, books and records, and effects of the Trust, whatsoever and wheresoever, present and future (the "Trust Property") with power to act as the Trustee of the Trust as provided in this Order and pursuant to rights and powers in the Trust;
4. Subject to the terms of paragraph 20 of this Order, the Judicial Trustee has the power to act at once and the Judicial Trustee has full right, power and authority to enter into possession of, manage, administer and control the Trust and Trust Property and to carry on or concur in carrying on the business of the Trust and Trust Property, provided however, that the Judicial Trustee may not sell or dispose of any of the business, assets or undertaking of the Trust or Trust Property, except in the ordinary course of the business of the Trust or Trust Property, without the prior approval of this Honourable Court;
5. The Defendants and any other person with notice of this Order, including, without limitation, any person with possession or control of any aspect of the Trust or Trust Property, shall forthwith upon the request of the Judicial Trustee provide a list of, and deliver up possession, custody and control to the Judicial Trustee over, all Trust Property of which they have possession, custody or control and all information reasonably sought by the Judicial Trustee in relation thereto, including, without limitation, all keys, security codes, computer passwords or codes or authorizations necessary to gain possession,



custody, or control of or access to Trust Property or the Trust, and delivery up of all electronic, magnetic or other storage and processing facilities in relation to the Trust, or which constitute the Trust Property, and all Trust documents, including, without limitation, all records, instruments, shares, bonds, securities, agreements, contracts, bills of exchange, books of accounts, banking or brokerage records and documents, including cheque books and cheque registers, financial statements, general ledgers and journals relating to the Trust or Trust Property;

6. The Judicial Trustee shall provide notice of its appointment to the beneficiaries of the Trust by mailing a notice of its appointment to the beneficiaries within fourteen days of its appointment under this Order;
7. The Defendants and Former Trustee shall account within seven days of receipt of a copy of this Order, or such further time as the Judicial Trustee may allow, for all funds or assets drawn directly or indirectly from the Trust to their credit or to the credit of any of their bank or brokerage accounts;
8. The Judicial Trustee may invest any cash balances held by the Judicial Trustee in securities in which trustees may by law invest trust money or as otherwise permitted by the Trust, or place such deposits in interest or non interest bearing accounts at financial institutions, with all such interest earned to form part of the Trust;
9. No action at law or other proceedings shall be taken or continued against the Judicial Trustee and no further action or proceeding shall be taken or continued against the Trust or Trust Property in control of the Judicial Trustee without leave of this Court;
10. Without limiting the generality of the foregoing, the Judicial Trustee be and it is hereby authorized and empowered to do all or any of the following acts and things with respect to the Trust and Trust Property forthwith and from time to time:
  - a. To carry on such aspects of the business and affairs of the Trust and Trust Property, to perform or not perform any agreement made by the Trust and to enter into any new agreements which the Judicial Trustee deems necessary, advisable or beneficial for the Trust;
  - b. To execute, assign, issue or endorse and deliver such deeds, bills of sale, cheques, bills of lading or exchange, or other documents which the Judicial Trustee deems necessary, advisable or beneficial for its management, possession, preservation,

administration and control of the Trust and Trust Property;

- c. To pay such debts of the Trust to third parties (except in relation to the parties hereto or any officers and directors thereof, or any other company, partnership, individual or other legal entity affiliated or related directly or indirectly to the said companies, officers or directors, which will require Court approval or consent of the parties) as the Judicial Trustee deems necessary, advisable or beneficial to pay in order to properly operate, administer, manage, preserve, protect, advance or maintain the business, property and affairs of the Trust and Trust Property;
- d. To settle and pay any claims (except in relation to the parties hereto or any officers and directors thereof, or any other company, partnership, individual or other legal entity affiliated or related directly or indirectly to the said companies, officers or directors, which will require Court approval or consent of the parties) which may be made or brought against the Trust or Trust Property on such terms and in such manner as the Judicial Trustee deems necessary, advisable or beneficial;
- e. To employ and retain such agents, assistants, employees, solicitors and accountants as the Judicial Trustee deems necessary, advisable or beneficial for the purposes of protecting, preserving, administering, managing or dealing with the Trust or Trust Property or carrying on the business and undertaking of the Trust and Trust Property or other powers granted hereunder, as the Judicial Trustee deems necessary, advisable or beneficial, and to enter into agreements with any person, firm or corporation respecting such purposes and any such expenditure or charge which shall be properly made or incurred by the Judicial Trustee in so doing shall constitute a charge on the Trust and Trust Property ranking in priority to all liens, charges and encumbrances;
- f. To collect, realize or otherwise deal with all debts, accounts, claims, monies and choses in action due to or owing to or owed by the Trust or Trust Property or any one on behalf of the Trust or Trust Property in such manner and at such time or times as the Judicial Trustee deems necessary or desirable (including the power to commence, continue and prosecute and defend legal or administrative proceedings) and to grant releases and discharges and otherwise deal with the debtors of the Trust and Trust Property (except in relation to the parties hereto or any officers and directors thereof, or any other company, partnership, individual

- or other legal entity affiliated or related directly or indirectly to the said companies, officers or directors) which will require Court approval or consent of the parties, in such manner as the Judicial Trustee deems necessary, advisable or beneficial;
- e. To take such further or other steps as the Judicial Trustee deems necessary, advisable or beneficial to preserve, realize, protect, manage, administer or deal with the Trust Property and Trust for the benefit of the Trust or Trust Property;
  - h. To direct the Former Trustee in writing to provide such authorizations, notices, directions or confirmations to persons regarding the rights, powers and authority of the Judicial Trustee as the Judicial Trustee may from time to time reasonably find necessary, advisable or convenient,
  - i. To exercise any and all ownership powers in relation to the Trust Property, including, without limitation, the power to exercise its rights as a shareholder to vote for directors and officers of any company whose shares are owned by the Trust and to nominate, appoint and vote for the appointment of a member of the Judicial Trustee as an officer or director of any company in which the Trust has an interest and to take and assume such office as a director or officer as the case may be;
11. The Judicial Trustee is authorized and empowered to take all steps which it may consider necessary and advisable to defend the interests of the Trust in connection with investigations by the British Columbia Securities Commission (the "Commission") of or relating to the Trust, including, without limiting the generality of the foregoing, retaining legal counsel to represent the interests of the Trust before the Commission and obtaining production of documents from the Commission to the extent the Judicial Trustee considers necessary and advisable.
12. The Judicial Trustee do, from time to time, in accordance with the Trustee Act, pass its accounts before the District Registrar of the Supreme Court of British Columbia and that at the time of the passing of such accounts the District Registrar may recommend in its report the amount of the remuneration of the Judicial Trustee to be fixed by the Court based on the scale of hourly rates of the employees or assistants utilized by the Judicial Trustee, and the Judicial Trustee shall be at liberty before passing its accounts and applying to have the report of the District Registrar confirmed by an Order of this Court, to pay itself or its firm in respect of its services, including fees and expenses incurred as

Judicial Trustee a reasonable amount either monthly or at such longer intervals as it deems appropriate, which amount shall constitute and advance against its remuneration when fixed;

13. The Judicial Trustee shall pay from the Trust or Trust Property:
  - a. Costs of repairs necessary for preservation of the Trust or Trust Property;
  - b. Costs of premiums of fire or other insurance upon the Trust or Trust Property;
  - c. Advances against its remuneration when fixed and as set forth above; and that it shall not be necessary for the Judicial Trustee to pay any monies so received into Court, and that the Judicial Trustee shall be liable to account only for the monies which shall actually come into its hands or into the hands of any person or persons retained or employed by the Judicial Trustee in exercising its authority under the Order; and
  - d. Such other payments as are authorized by this Order;
14. Any expenditure made or indebtedness properly incurred by the Judicial Trustee and any fees, remuneration or indemnification of the Judicial Trustee shall form a charge on the Trust and Trust Property, subject to taxation of the Judicial Trustee's remuneration and accounts by this Court as provided herein, and shall rank in priority to all liens, charges and encumbrances;
15. The Judicial Trustee and parties hereto may, on two clear days' notice to the Parties and the Judicial Trustee, from time to time apply to this Court for directions and guidance in the discharge of the Judicial Trustee's duties hereunder;
16. The costs of and incidental to this application shall be costs in the cause;
17. Nothing in this Order shall vest in the Judicial Trustee the ownership, control, possession or management of, nor require the Judicial Trustee to take possession, control or manage, any property which may have located thereon a pollutant or contaminant or which may cause or contribute to a discharge, release or deposit of substance contrary to environmental protection, status or regulations in any jurisdiction;
18. The Former Trustee, Comprehensive Financial Services Ltd., Comprehensive Financial Holdings Inc., Comprehensive Financial Development Corp., River Ranch Resort Corp., Prospero Entertainment Group Inc., and all other persons who have received any

05/30/02 17:29 FAX

property, real or personal, tangible or intangible, directly or indirectly, from the Trust shall forthwith upon the reasonable request of the Judicial Trustee from time to time provide to the Judicial Trustee a reconciliation of receipts and dispositions of Trust Property, provide copies of all documents, books and records (including without limitation, banking records, accounting ledgers, including those in electronic or other storage format) evidencing the direct or indirect receipt or disbursement of Trust Property or which may reasonably be required by the Judicial Trustee in evaluating the manner in which Trust Property has been dealt with in the past or in assessing the fair market value of Trust Property; and if such person is a corporate body or a person carrying on business, that person shall within seven days of the request of the Judicial Trustee, or such further time as the Judicial Trustee may allow, provide the Judicial Trustee with such financial statements and interim internal statements as may be existing, from the date any Trust Property was directly or indirectly received by that person;

19. The Judicial Trustee shall investigate the status and financial affairs of the Trust and shall within sixty days of its appointment provide a report to the parties, and to all owners of units in the Trust according to the latest available records, with respect to, inter alia:
- a. The property, assets and undertaking which comprise the Trust and Trust Property;
  - b. All transactions or dealings between the Trust and any person directly or indirectly related to any party hereto and any officers and directors thereof, and any other company, partnership, individual or other legal entity affiliated or related directly or indirectly to the said companies, officers or directors;
  - c. All remuneration paid; directly or indirectly, to any party hereto, and any officers and directors thereof, and any other company, partnership, individual or other legal entity affiliated or related directly or indirectly to the said companies, officers or directors;
  - d. The status and recoverability of the assets, property and undertaking which comprise the Trust;
  - e. The status of the Trust's books, accounts and records and its financial statements;
  - f. Any recommendations with regard to the protection, preservation, management or administration of the Trust or Trust Property which may require an enlargement or

variation of this Honourable Court's Order;

g. Full particulars of any person who has failed to cooperate with the Judicial Trustee with respect to the production of information required in relation to the preparation of its report or as otherwise required to be produced under this Order;

20. Any party affected by this Order is at liberty to apply to have this Order set aside or varied on 4 clear days' notice.

BY THE COURT

*Deputy Registrar*  
DISTRICT REGISTRAR

APPROVED AS TO FORM:

*Anthony Morfuss*  
Counsel for the Plaintiffs

*M. S. C. Hill*  
Counsel for the Defendant, Capital Financial Securities Inc.

*P.P.F.*

**ENTERED**  
MAY 30 2002  
VANCOUVER REGISTRY  
VOL 5997 FOL 41

# **APPENDIX B**

**SUPREME COURT OF BRITISH COLUMBIA ORDER DATED  
November 30, 2011**



No. S022876  
Vancouver Registry

IN THE SUPREME COURT OF BRITISH COLUMBIA  
IN THE MATTER OF THE TRUSTEE ACT R.S.B.C. 1996 c. 464

BETWEEN:

257955 B.C. LIMITED, BRENDA BENNETT, PETER  
HIEBERT and KIM HIEBERT

PLAINTIFFS

AND:

STRATEGIC CONCEPTS INVESTMENT TRUST

DEFENDANT

ORDER MADE AFTER APPLICATION

BEFORE )  A JUDGE OF THE COURT )  
 ) or ) November 30, 2011  
 )  A MASTER OF THE COURT )  
 ) or )  
 )  A REGISTRAR )

ON THE APPLICATION of the Plaintiffs, dated November 28, 2011

coming on for hearing at Vancouver, British Columbia on Wednesday, November 30, 2011 and on hearing Daniel S. Parlow, Counsel for the Plaintiffs and Heather B. Ferris, Counsel for the Judicial Trustee, Campbell Saunders Limited;

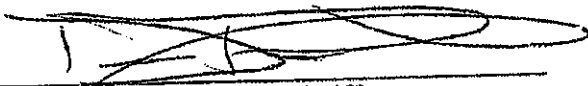
THIS COURT ORDERS that:

1. Boale, Wood & Company Ltd., of the City of Vancouver, Province of British Columbia, be appointed to replace Campbell Saunders Limited as Judicial Trustee of all the real and personal, tangible and intangible property, assets, businesses, undertaking, estate, books and records, and effects of Strategic Concepts Investment Trust (the "Trust"), whatsoever and wheresoever, present and future (the "Trust Property") with the powers to act as the trustee of the Trust, all as set out and provided and subject in all respects to the terms of the Order of the Honourable Mr. Justice Parrett pronounced May 30, 2002 (the "2002 Order");



2. The Statement of Receipts and Disbursements as attached as Schedule "A" hereto, and the accounts of Campbell Saunders Limited and its legal counsel, Lawson Lundell LLP as detailed therein, are hereby taxed and approved summarily without reference to the District Registrar of this Honourable Court;
3. All outstanding accounts of Campbell Saunders Limited and its legal counsel, Lawson Lundell LLP shall be paid forthwith from the funds held by McBride Forest Industries Ltd.; and
4. Campbell Saunders Limited, forthwith upon delivery of a copy of this Order, be discharged as Judicial Trustee of the Trust, that it cease to exercise any rights or powers in relation to its role as trustee under the Trust and that it immediately give up possession and control of the Trust and Trust Property to Boale, Wood & Company Ltd.

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 Lawyer for Plaintiffs  
Kornfeld Mackoff Silber LLP  
*[Daniel S Parlow]*

By the Court.

Digitally signed by  
Berg, Mellani

\_\_\_\_\_  
Registrar

*T. M. ...*



# **APPENDIX C**

**COURT APPLICATION BY INVESTORS IN TRUST DATED  
FEBRUARY 14, 2012**



No. S022876  
Vancouver Registry

**IN THE SUPREME COURT OF BRITISH COLUMBIA**  
**IN THE MATTER OF THE TRUSTEE ACT R.S.B.C. 1996 c. 464**

BETWEEN:

257955 B.C. LIMITED, BRENDA BENNETT, PETER  
HIEBERT and KIM HIEBERT

PLAINTIFFS

AND:

STRATEGIC CONCEPTS INVESTMENT TRUST

DEFENDANT

**NOTICE OF APPLICATION**

**Name(s) of applicant(s):** Plaintiffs

To: Boale, Wood & Company, Judicial Trustee for Strategic Concepts Investment Trust

And to: Its solicitors, Webster Hudson & Coombe LLP

And to: 599768 British Columbia Ltd.

TAKE NOTICE that an application will be made by the applicant(s) to the presiding judge or master at the courthouse at 800 Smithe Street, Vancouver, B.C., V6Z 2E1 on Wednesday, February 22, 2012 at 9:45 a.m. for the order(s) set out in Part 1 below.

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

1. An Order in the form attached as Schedule "A".

**Part 2: FACTUAL BASIS**

2. This is application for the purpose of quantifying amounts owing to Strategic Concepts Investment Trust (the "Trust") which its original trustee, the former defendant Capital Financial Securities Inc. (the "Original Trustee") caused to be paid by way of loan to 599768 B.C. ("599768"), a company in which the Original Trustee did not deal at arm's-

length. This Court has previously determined that the issuance of certain insider shares in connection with this funding was in breach of the Original Trustee's fiduciary duty in favour of the Trust.

### **Background**

3. This action was commenced by Writ and Statement of Claim on May 24, 2002.
4. Since before this action was commenced, through to inception of the judicial trusteeship and thereafter, the Plaintiffs have been the beneficiaries of the Trust primarily involved in attempts to recover assets of the Trust. The Plaintiffs are, by far, collectively the largest beneficiaries of the Trust, having invested approximately \$1,025,000 of the total \$3,282,000 invested by all Trust beneficiaries.

*Affidavit #1 of J. Hiebert, para. 7*

5. On May 30, 2002 and based on evidence of misfeasance by the Original Trustee, the Honourable Mr. Justice Parrett ordered (the "2002 Order"), among other things, that:
  - (a) the Original Trustee be replaced by Campbell Saunders Limited as Judicial Trustee;
  - (b) the Judicial Trustee investigate the status and financial affairs of the Trust and prepare a report to the parties and to all owners of units in the Trust with respect to certain matters prescribed in the Order.

*Order of Mr. Justice Parrett, May 30, 2002*

6. The 2002 Order was made based on evidence that the Judicial Trustee had, *inter alia*:
  - (a) paid most of the Trust's investor funds to its related companies as loans, most of which were unrecoverable;
  - (b) caused large blocks of shares of 599768 to be issued to itself and a related company, the former defendant, Comprehensive Financial Services Ltd., although investment funds were provided only by the Trust;

and upon evidence (which was never contradicted) that the Plaintiffs had been unaware of the issuance of such shares.

*Affidavit #1 of J. McEown, generally*

7. David Gray and John McEown, chartered accountants and insolvency specialists, worked together on this file on behalf of the Judicial Trustee. Mr. Gray authored, and caused to be filed with the Court, the original Judicial Trustee's report dated Aug. 14, 2002 (the "Judicial Trustee Report"), and Mr. McEown has been intensively involved since that time in efforts to recover Trust property. Mr. Gray has since retired and Mr. McEown continues to be the representative of the Judicial Trustee, which was recently changed to Mr. McEown's new firm, Boale, Wood & Company Ltd.

*Affidavit #3 of D. Gray, Exhibit B*

8. Among other things, Mr. Gray in the Judicial Trustee Report concluded:
- (a) that the Trust had raised \$3,282,000 from investors, including the Plaintiffs, by use of offering memoranda and subscription agreements;
  - (b) that the Original Trustee had made loans or advanced funds from the Trust to six entities related to the Original Trustee, including 599768, none of which had been paid back;
  - (c) that of the six related parties who received funds, three, including the Original Trustee and Services, were no longer operating;
  - (d) that the Original Trustee had caused the Trust to pay \$620,152.16 in remuneration and fees to the Original Trustee and parties related to the Original Trustee, to which the Original Trustee had not proved its entitlement;
  - (e) that the main potential source of recovery to the Trust was from 599768 which owned 100% of the shares of an operating company, McBride Forest Services Ltd. ("McBride") that had been purchased from a third party, West Fraser Timber Ltd., in June 2000 using only Trust funds.

*Judicial Trustee Report, pp. 8 – 19; Gray affidavit, para. 3 et seq.*

**Service and Directors' Actual and/or Technical Conflicts of Interest**

9. Since May 30, 2007, the sole directors of 599768 have been Jake Hiebert, who is principal of the Plaintiff 257955 B.C. Ltd., and John McEown, who is representative of the Judicial Trustee. The minute book is maintained at Kornfeld Mackoff Silber LLP, solicitors for the Plaintiffs.

*Affidavit #7 of K. Apan*

10. The Plaintiffs have accordingly served Mr. McEown with notice of this application. They understand that Mr. McEown will file a report to the court prior to this hearing. All former Defendants, other than the Trust, have either since been dissolved or have otherwise ceased to be parties.
11. As the principal of a Plaintiff, Mr. Hiebert is interested in maximizing the amount due by 599768 to the Trust. Accordingly he is in a conflict of interest in acting as director of 599768 in respect of the subject matter of this application and Mr. Hiebert hereby discloses this fact to this Honourable Court.
12. As Mr. McEown represents the Judicial Trustee, he is charged with the responsibility of calling in the assets of the Trust as set out in the 2002 Order. It might be argued that his position as representative of the Judicial Trustee places him in a conflict of interest in acting as a director of 599768 with regard to the subject matter of this application. The Plaintiffs wish to disclose this arguable conflict to this Honourable Court.
13. On the other hand, Mr. McEown has no personal interest in the Trust, has a duty to be fair in his capacity as an officer of the Court, and accordingly any conflict may be said to be technical only.
14. Mr. McEown's position is that he considers it fair and reasonable for the Plaintiffs to have been paid interest on the 599768 Loan at the then market rate which, as an unsecured loan, ought to be at least as favourable as the interest rate on the secured

vendor take-back loan granted in favour of West Fraser Timber at virtually the same time, namely, upon the purchase of McBride which was funded by the Trust. The rate paid to West Fraser Timber was 10% and 12% per annum, respectively, for the two tranches, to which the 599768 Loan was subordinate. This evidence is set out below in further detail.

### **Previous Court Orders and Securities Commission Order re Trust Transactions**

15. On Oct. 15, 2004 the Honourable Madam Justice Boyd declared that the 255 class A shares in the capital stock of 599768 which had been registered in the name of the Original Trustee's related company, Services, had at all material times been held in trust for the Trust, and ordered and directed that 599768 cancel Services' shares and reissue them to the Trust. Her Ladyship made that order having come to the conclusion that "there was no consideration whatsoever on Services' part for the issuance of those shares", all of the funds having been paid by the Trust. A later application by Services to set aside that order was dismissed.

*Order and reasons for judgment of Boyd J.*

16. The said 2004 Order allowed the Judicial Trustee to gain effective control over 599768 and its subsidiary, McBride, which was attempting to refinance its operations.
17. On June 16, 2005, the Honourable Mr. Justice Pitfield similarly declared that the 20,500 class D shares in the capital stock of 599768 which had been registered in the name of the Original Trustee had at all material times been held in trust for the Trust, and ordered and directed that 599768 cancel the Original Trustee's shares and reissue them to the Trust.

*Order and reasons for judgment of Pitfield J.*

18. At paras 13 et seq of his reasons for judgment, his Lordship held as follows:

[13] I reach that conclusion on the following basis. There appear to be no resolutions of 599768 B.C. Ltd. which would identify cash as having been provided by Capital Financial Securities Inc., nor any resolution affording property and

services provided by that entity of value equal to the paid-up capital of the Class D shares issued to that company.

[14] The financial statements of 599768 British Columbia Limited for the period ending October 31, 2001 indicate that the only assets of that company include an investment in McBride Forest Products (sic) Industries Limited in a total amount of \$1,750,874.

[15] The same financial statements show a modest account payable of \$1,500; an amount due to Strategic Concepts Investment Trust of \$1,750,086; and share capital of \$1,995 resulting in a deficit of \$2,707. The balance sheet numbers do confirm in substance to the affidavit evidence of Mr. Grey (sic) on behalf of the judicial trustee, which has the effect of satisfying me that all funds applied for any purpose in relation to the acquisition of shares of McBride Forest Industries Limited by 599768 British Columbia Limited originated with Strategic Concepts Investment Trust ...

[16] ...In the absence of any evidence to indicate that any property and services were provided which have been properly valued by the company, I am prepared to conclude that all shares in the company were issued for cash consideration provided by Strategic Concepts Investment Trust.

[17] It follows that, to the extent any shares have been issued and registered in the name of Capital Financial Securities Inc., they have been so issued in breach of the former trustee's fiduciary duty to Strategic Concepts Investment Trust and they are in fact and in law the property of Strategic Concepts Investment Trust, and not the property in any manner whatsoever of Capital Financial Securities Inc.

19. By Decision No. 2003 BCSECCOM 347 of the British Columbia Securities Commission issued May 25, 2003 pursuant to Section 161 of the *Securities Act*, RSBC 1996, c.

418 (the "Act"), the Securities Commission ordered that:



- (a) Mark Cramer and Michael Cramer are prohibited from trading in securities, holding any office or directorship, or engaging in investor relations activities, except as specifically provided therein, all for a period of 12 years;
- (b) The Former Trustee and Services are prohibited from trading in securities or engaging in investor relations activities.

*Affidavit #2 of David Gray, para. 28 et seq*

20. In the related Settlement Agreement, it was agreed by, among others, Mark Cramer, Michael Cramer, the Former Trustee and Services:

- (a) At para. 22, that some of the securities of the Trust were distributed in amounts of less than \$25,000; and that those securities were distributed in contravention of section 61 of the Act because the exemptions under subsection 74(2)(4) of the Act and section 128 of the Rules were not available for those distribution.
- (b) At para. 28, that Mark Cramer and Michael Cramer sold securities of (among other issuers) the Trust to clients without a proper understanding of client needs or risk tolerance and when some clients were suited to making low-risk investments, contrary to sections 14 and 48 of the Rules.
- (c) At para. 38, that securities of (among other issuers) the Trust were risky, illiquid, and speculative; that some of the clients of Mark Cramer were unsophisticated investors who relied heavily on his professional advice and judgment; that some of these clients had low-risk tolerance and a need for short-term income, but had an unsuitably high percentage of the securities of (among other issuers) the Trust in their portfolios; and that Mark Cramer knew, or should have known; these investments were unsuitable and failed to convey this information to his clients, contrary to sections 14 and 48 of the Rules;
- (d) At para. 42, that (among others) Mark Cramer, the Trust, the Former Trustee and Services were connected parties within the meaning of section 75 of the Rules,

which states, among other things, that a registrant and a person that has any relationship with the registrant are connected parties, if such a relationship would lead a reasonable prospective purchaser to question whether the registrant and the person were independent of each other; and that in particular, Mark Cramer was a directing mind of (among others) the Trust, the Former Trustee and Services during the period when the Trust's securities were sold to investors;

- (e) At para. 43, that by exercising control of (among others) the Trust while continuing to act as agent in the sale of its securities, Mark Cramer put himself in a position where his interests were in conflict with his duties to his clients and to (among others) the Trust, the Former Trustee and Services; and that he did not adequately resolve the conflicts contrary to section 14 of the Rules and the public interest;
- (f) At paras. 45 to 54, that Michael Cramer committed and participated in similar breaches of the Act and the Rules.

*Affidavit #2 of David Gray, para. 28 et seq*

- 21. Pursuant to the Settlement Agreement the parties further agreed that the monetary portion of the sanction that otherwise would have applied in this case would have included the commissions earned by Mark Cramer in the amount of \$142,000 and by Michael Cramer in the amount of \$112,000, together with the agreed upon amounts of \$50,000 each.

*Affidavit #2 of David Gray, para. 32*

### **The 599768 Loan**

- 22. On the annual financial statements of the Trust dated Dec. 31, 2000 after most of the funds had been advanced, the 599768 Loan is characterized as an "unsecured advance, non-interest-bearing no specific terms" of \$1,660,601. The statements were audited by Schmitz & de Grace, chartered accountants on the instructions of the Original Trustee.

*Judicial Trustee Report, Appendix F*

23. To similar effect, the financial statements of 599768 for the year ended October 31, 2001 show a liability of \$1,750,086 as owing to the Trust. These statements, prepared by the same accountants Smith & de Grace, do not indicate the terms of this liability.

*Judicial Trustee Report, Appendix K*

24. As seen in the Judicial Trustee Report, the 599768 Loan funds were traced directly to the purchase by 599768 of the McBride Subsidiary from West Fraser Timber and advanced to its subsidiary, McBride. The purchase price was \$2,057,448 including \$1,100,000 payable over two years. After dealing with the share issuance, Mr. Gray summarized these transactions in his affidavit #2:

- (a) a \$150,000 deposit was paid by the Trust to Lang Michener, solicitors for West Fraser, which was released on the instructions of 599768.
- (b) a further \$879,081.09 was paid by the Trust to Hope Heinrich who acted as solicitors for 599768 in the transaction. \$801,448.02 was later released to Lang Michener with the balance being used to pay expenses including security for forest licences;
- (c) Hope Heinrich's materials show that \$723,000 was advanced directly by the Trust to McBride ... there is no documentation showing the reason for these monies to be paid by the Trust to McBride. These amounts are not shown as loans on the McBride financial statements.

Mr. Gray concluded: "In summary, the financial records show total debt of \$1,750,086 owing by the McBride Parent to the Trust which is roughly consistent with the Trust funds advanced in connection with McBride."

*Gray affidavit #2, para. 14-15*

25. In the Judicial Trustee Report, Mr. Gray noted that "there is no documentation showing on what basis the deposit or other funds were advanced and no indication of who was acting for the Trust in the transaction."

*Gray affidavit #3, Judicial Trustee Report, p. 13*

26. Appendix E-13 to the Judicial Trustee's Report shows the dates from Mar 2, 2000 to Jan 17, 2001 that the payments by the Trust were made. These total \$1,761,581.09.
27. The Plaintiffs accept that the sum of \$1,750,086 constitutes the principal outstanding balance of the 599768 Loan.
28. After noting the various conflicts of interest, the Judicial Trustee in its report then recommended that "security for the funds advanced with respect to 599768 and McBride be restructured so that McBride is jointly responsible for the debt of 599768 to the Trust and provides collateral security for the debt."

*Gray affidavit #3, Judicial Trustee Report, p. 15*

29. This has never occurred and, if the orders now sought are granted, will be unnecessary.

**599768's subsidiary, McBride Forest Industries Ltd.**

30. Following the 2002 Order, Mr. McEown was appointed as a director of McBride and of 599768 in order to give the Judicial Trustee greater involvement and control in the operation of what all knew to be the primary (if not the only) remaining asset of the Trust which had potential to result in some distribution to the Trust.

*Hiebert affidavit #2, para. 8*

31. Over the next several years, Mr. McEown worked closely with the Plaintiffs' representatives, Jake and Peter Hiebert, also directors, to manage McBride through very difficult financial times. Mr. McEown was involved intensively in all aspects of the business and attended meetings in McBride, B.C. on numerous occasions.

*Hiebert affidavit #2, para. 9*

32. In or about October 2006, McBride was forced by financial hardship to shut down its operations and, in late 2006, it filed a Notice of Intention to Make a Proposal under the *Bankruptcy and Insolvency Act*. Ultimately, McBride was able to sell its forest licence to

Carrier Lumber Ltd. and McBride's secured and trade debts were paid from the proceeds of sale.

*Hiebert affidavit #2, para. 10*

33. In late 2007, David Gray left Campbell Saunders Limited and did not continue to work as a trustee in bankruptcy. Since Mr. McEown had been the main representative on the file for years, he continued with all required work himself on behalf of the Judicial Trustee.

*Hiebert affidavit #2, para. 11*

34. Also in 2007, shortly after buying McBride's forest licence Carrier Lumber Ltd. commenced legal proceedings against McBride and others in B.C. Supreme Court, Vancouver Registry No. S074154 alleging that the price at which Carrier had bought McBride's forest licence had resulted from an improper disclosure to another prospective buyer of confidential information relating to the price at which Carrier had initially offered to purchase the licence. There were extensive legal proceedings both leading up to and following the final acquisition by Carrier, during which time there were no distributions to the Trust due to a claim by Carrier of constructive trust.

*Hiebert affidavit #2, para. 12*

35. The Carrier proceedings were vigorously contested. The case was finally resolved before trial in early 2011, and a Consent Dismissal Order entered.

*Hiebert affidavit #2, para. 13*

36. At the time, and until today, most if not all of the work required of Mr. McEown was done in his capacity of director of McBride and 599768 and, in particular, in maximizing the assets and minimizing the liabilities of McBride.

*Hiebert affidavit #2, para. 15*

37. Mr. McEown has also been involved in consideration of McBride's environmental obligations in respect of the site owned by it and on which its former mill and yard are situate, and in many discussions on the possible sale of those assets. To date, the real property and certain mill equipment remains unsold and the environmental issues remain unresolved.

*Hiebert affidavit #2, para. 9*

**Other Contemporaneous Loans by the Trust**

38. The other loans made by the Original Trustee with Trust funds in 1999-2000 were documented. These included:

- (a) Loan to River Ranch Resort Corp. in the sum of \$457,848.90 bore interest at 12% per annum and was secured by convertible debenture;
- (b) Loan to 557515 B.C. Ltd. in the sum of \$54,127.85, bore interest at 12% per annum;
- (c) Convertible debenture evidencing loan to Comprehensive Financial Services Ltd. in the sum of \$17,150.00, bore interest at 12% per annum;

*Gray affidavit #2, Ex. B*

- (d) Loan to AFP Securities Ltd. in the sum of \$7,783.61, bore interest at 12% per annum.
- (e) Convertible debentures evidencing loans to Prospero Entertainment Group Inc. in the aggregate sum of \$369,000 bore interest at 18% per annum.

*Apan affidavit #7, Ex. D*

39. All of these loans and their terms were reported on by Mr. Gray at pages 15-16 of the Judicial Trustee Report.
40. The loan to River Ranch was secured by a subordinated mortgage over certain real property, and eventually \$174,000 was recovered in foreclosure which was applied to professional fees and disbursements.

41. The other four loans were secured by the recipients' personal property but never registered in the Personal Property Security Registry. The loans were all made to entities related to the Original Trustee. No funds were ever recovered.
42. It is submitted that it was in the Original Trustee's interests, and contrary to those of the Trust, for the Loan to have been issued on an interest-free basis. In the same period, the Original Trustee was issued a large block of Class D shares, and its related company Comprehensive Financial Services Ltd. was issued a large block of Class A shares of 599768. As seen above, these shares were later held by this Court to have been issued in breach of fiduciary duty and declared Trust property. There is no other evidence of any reason for the failure to record interest on, or otherwise document, the Loan.

#### **Provisions of Other Trust Documents**

43. The Offering Memorandum for the Trust filed at the B.C. Securities Commission on June 14, 1999 specifies under "Summary of Trust Agreement" that "the business of the Trust is to raise funding for investing in Eligible Canadian Businesses". Under "Taxation of Trusts" it states: "The sole undertaking of the Trust is investment. As such it is anticipated that its income would be comprised of interest, dividends and capital gains net of capital losses." There is no suggestion that moneys might be loaned on any basis other than market rates.
44. The Trust Agreement dated November 11, 1998 specifically includes in para. 5.09(a) a prohibition against making loans to, or to guaranteeing the obligations and liabilities of the Trustee or an "Affiliate". This provision was simply ignored by the Original Trustee and indicates that the 599768 Loan was not only made in a conflict of interest and ancillary to the issuance of shares already held to have been in breach of trust, but that the making of the 599768 Loan in any form was made in direct breach of an express term of the Trust Agreement. Furthermore, para. 5.09(d) of the Trust Agreement confirms the Original Trustee's duty at law to act "in the best interests of the Business and the Trust".

45. In the Judicial Trustee Report, p. 7, amounts totalling \$1,761,581.09 are confirmed as having been paid to "599768 BC Ltd. (McBride) ... as detailed in Appendix E". This is about \$10,000 above the face value of the 599768 Loan to account for share capital.
46. The 2002 Order contemplates that the Judicial Trustee should take charge of Trust assets and that Mr. McEown should be able to execute documents on behalf of other companies for the purpose of remedying problems resulting from the then alleged – and later proven - breaches of Trust. Specifically, the 2002 Order provides at para. 10 that "the Judicial Trustee be and it is hereby authorized and empowered to do all or any of the following acts and things with respect to the Trust and Trust Property forthwith and from time to time: ...
- a. to carry on such aspects of the business and affairs of the Trust and Trust Property, to perform or not perform any agreement made by the Trust and to enter into any new agreements which the Judicial Trustee deems necessary, advisable or beneficial for the Trust;
  - b. to execute, assign, issue or endorse and deliver such deeds... or other documents which the Judicial Trustee deems necessary, advisable or beneficial for its management, possession, preservation, administration and control of the Trust and Trust Property;
  - c. to exercise any and all ownership powers in relation to the Trust Property including the power to exercise its rights as a shareholder to vote for directors and officers of any company whose shares are owned by the Trust ... and to have a member of the Judicial Trustee act as a director or officer of any company in which the Trust has an interest.

#### **Contemporaneous Loan by 599768 to West Fraser Timber**

47. As noted above, the 599768 Loan funds were traced directly to the purchase by 599768 of McBride from West Fraser Timber and advances to McBride. The purchase price was \$2,057,448 including \$1,100,000 payable over two years in two tranches.



48. The Share Purchase Agreement dated April 19, 2000 and amendment letter dated May 25, 2000 are found at Appendix J to Judicial Trustee's report. Pursuant to para. 3 of the amendment letter, the purchase price was to be paid, inter alia, as follows:
- (a) \$947,448.02 at Closing;
  - (b) \$500,000 with interest calculated at 10% per annum from Aug. 1, 2000, in monthly instalments as set out in the attached Schedule under "Tranche No. 1";
  - (c) \$600,000, together with interest calculated at 12% per annum from the Closing Date, in monthly instalments as set out in the attached Schedule under "Tranche No. 2".

*Judicial Trustee Report, App. J*

49. Pursuant to para. 4, these loans were secured by the guarantee of McBride as well as a second mortgage over its land and premises, subject only to a first mortgage granted to McBride's bank to secure borrowings under its operating loan facility to finance net working capital.
50. In the amendment letter, West Fraser also secured a condition precedent, under clause 6(c), that West Fraser must be satisfied that McBride has \$900,000 in available cash to fund post-closing operations, and that McBride has sufficient operating financing available to operate its facilities on a commercially viable basis for at least two years.

*Judicial Trustee Report, App. J*

51. Of the 599768 Loan funds, \$723,000 was passed directly to McBride to meet its working capital needs on dates from June 19, 2000 to Jan. 17, 2001. This amount was treated by 599768 and McBride as an investment by the former in the latter.

*Judicial Trustee Report, App. E-13*

52. In summary, all other loans during the relevant 1999-2000 time period, whether non-arm's length or arm's-length, were subject to interest payments from 10% to 18% per annum and were all secured. The loan from West Fraser Timber was divided into two tranches, the first paying 10% and the second paying 12% interest, both secured by

McBride's guarantee and a second mortgage over McBride's real property, with covenants to ensure that there would be sufficient working capital to meet McBride's needs over the term of the loan. The non-arm's-length loans all paid 12% or 18% interest, and were also secured either by the borrower's personal property or (in the case of River Ranch) by its real property.

53. It is submitted that the Plaintiffs' claim for a Declaration that 12% interest is payable on the unsecured 599768 Loan, compounded annually, is a fair and reasonable equitable remedy in connection with these advances to flow from the Original Trustee's breach of trust.

#### **Plaintiffs' Legal Fees**

54. This court has previously granted to Plaintiffs a priority in respect of unreimbursed legal fees and disbursements incurred herein, in the following amount. Such orders were made by the Honourable Mr. Justice Romilly on Dec. 8, 2004 and by the Honourable Mr. Justice Pitfield on Jun. 16, 2005.
55. In the latter's reasons for judgment, special costs were granted as against the Original Trustee since it was a case involving breach of fiduciary duty and, to the extent that the same may not be recoverable against the Original Trustee, that they should be payable by and recoverable from the Trust. "The basis for that order is that these plaintiffs are acting for the benefit of all beneficiaries."
56. The Judicial Trustee's fees and disbursements, incurred for similar reasons namely to preserve, protect and call in Trust funds from the persons to whom they were paid, have been paid directly from the relevant sources, ie the recovery from River Ranch and from McBride.
57. The Plaintiffs respectfully seek an Order that the following accounts be reimbursed from the funds held to the account of McBride, namely:
- (a) Accounts of the plaintiffs' solicitor, Karen Tamaki in the sum of \$10,539.20;
  - (b) Kornfeld Mackoff Silber LLP account dated Dec. 1, 2011 in the sum of \$9,278.92, in respect of time spent from October 11 to November 30, 2011; and

- (c) Kornfeld Mackoff Silber LLP account in respect of all other steps from September 23 to October 6, 2011 and from December 1, 2011 to and including this application in the estimated sum of \$17,920.00.

*Affidavit #7 of K. Apan.*

**Part 3: LEGAL BASIS**

1. The making of the 599768 Loan, contrary to the terms of the Trust Agreement and without interest, security or any evidence of consent by the beneficiaries to such terms, amounted to a breach of trust.
2. This Honourable Court has previously made remedial Declarations to the effect that the 599768 shares issued to the Original Trustee in respect of these payments by the Trust are in fact Trust property.
3. A fair and reasonable rate of interest to ascribe to the 599768 Loan is 12% per annum, compounded annually, having regard to the terms of other loans involving these parties which were made at or near the same time as the 599768 Loan. Continuation of the judicial trusteeship by Campbell Saunders Limited would, for the reasons set out herein, be impractical.
4. The inherent jurisdiction of this Honourable Court.
5. Rule 6-2(7) governs the addition of 599768 as a party to these proceedings.

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

1. Order of Parrett, J. dated May 30, 2002;
2. Order of Pitfield, J. dated June 16, 2005;
3. Oral Reasons for Judgment of Pitfield, J. dated June 16, 2005;
4. Corrigendum to Oral Reason for Judgment of Pitfield, J. dated June 16, 2005
5. Order of Boyd, J. dated August 12, 2004;
6. Oral Reasons for Judgment of Boyd, J. dated August 12, 2004;
7. Order of Romilly, J. dated December 8, 2004;
8. Order of McEwan, J. dated November 30, 2011;
9. Affidavit #1 of J. Hiebert made May 24, 2002;
10. Affidavit #2 of D. Gray made July 21, 2004;
11. Affidavit #3 of D. Gray made November 29, 2005;
12. Affidavit #1 of J. McEown made April 10, 2007;
13. Affidavit #2 of J. Hiebert made October 28, 2011;
14. Affidavit #6 of K. Apan made November 28, 2011; and
15. Affidavit #7 of K. Apan made February 10, 2012.
16. Affidavit #1 of K. Tamaki made May 24, 2002 (*see separate binder*).

he applicants estimates that the application will take 1 hour.

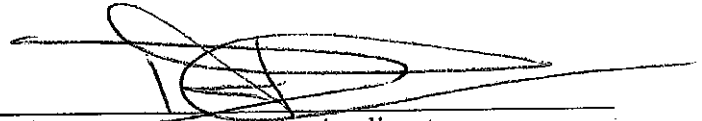
- This matter is within the jurisdiction of a master.
- This matter is not within the jurisdiction of a master.

**TO THE PERSONS RECEIVING THIS NOTICE OF APPLICATION:** If you wish to respond to the 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: February 13, 2012



Signature of Lawyer for Applicants  
Kornfeld Mackoff Silber LLP

*[Daniel S. Parlow]*

This **Notice of Application** is filed by Daniel S. Parlow of the firm of Kornfeld Mackoff Silber LLP whose place of business and address for service is 1100 One Bentall Centre, 505 Burrard Street, Box 11, Vancouver, British Columbia, Canada V7X 1M5 (604-331-8300) (File No. H1E002CAP111).

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:

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Date \_\_\_\_\_

Signature of  Judge  Master

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**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
- other 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

SCHEDULE "A"

No. S022876  
Vancouver Registry

**IN THE SUPREME COURT OF BRITISH COLUMBIA**  
**IN THE MATTER OF THE TRUSTEE ACT R.S.B.C. 1996 c. 464**

BETWEEN:

257955 B.C. LIMITED, BRENDA BENNETT, PETER  
HIEBERT and KIM HIEBERT

PLAINTIFFS

AND:

STRATEGIC CONCEPTS INVESTMENT TRUST

DEFENDANTS

**ORDER MADE AFTER APPLICATION**

BEFORE	)	<input checked="" type="checkbox"/>	A JUDGE OF THE COURT	)	
	)		or	)	_____ , 2012
	)	<input type="checkbox"/>	A MASTER OF THE COURT	)	
	)		or	)	
	)	<input type="checkbox"/>	A REGISTRAR	)	

ON THE APPLICATION of the Plaintiffs, dated February 13, 2012

coming on for hearing at Vancouver, British Columbia on Wednesday, February 22, 2012; and on hearing Daniel S. Parlow, Counsel for the Plaintiffs, and Daniel Nugent, Counsel for the Judicial Trustee, Boale, Wood & Company Ltd. (the "Judicial Trustee"); and upon the directors of 599768 B.C. Ltd. having been duly served and having disclosed to the court that they have or may have a conflict of interest in the subject matter of this application;

THIS COURT ORDERS AND DECLARES as follows:

1. This court orders that 599768 British Columbia Ltd. ("599768") be added as a defendant herein;



2. This court declares that the loan by Strategic Concepts Investment Trust (the "Trust") to 599768 in the principal sum of \$1,750,086 bears interest at the rate of twelve (12%) percent per annum, compounded annually, from January 17, 2001 to the date of this Order;
3. This court declares that the outstanding balance of principal and interest under the Loan is 6,159,814.08 to Feb. 22, 2012 (the "Outstanding Balance");
4. This court orders that the Judicial Trustee shall forthwith direct McBride Forest Industries Ltd. to indemnify the Plaintiffs in the sum of \$36,914.22 for their unreimbursed legal accounts herein;
5. This court further orders that, immediately following such payment, the Judicial Trustee shall direct the payment by McBride Forest Industries Ltd. of the sum of \$1,750,086 to the persons who are listed in Schedule "A" to this Order (the "Unitholders"), pro-rata according to their respective net investment amounts in the Trust as shown in the said schedule, such payment to be applied in reduction of the Outstanding Balance;
6. This court orders that, without prejudice to the Plaintiffs' right to make application for further payments, the Judicial Trustee may direct to be paid from the Outstanding Balance to the Unitholders pro-rata, such further sums as the Judicial Trustee may consider appropriate from time to time, in its discretion and without further order of the court;
7. This court orders that that the necessity to amend the Statement of Claim and to bring the pleadings herein into compliance with the new Rules of Court be and it is hereby dispensed with.

By the Court.

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Registrar

## SCHEDULE "A"

**STRATEGIC CONCEPTS INVESTMENT TRUST**  
**List of Investors**

<u>Investor Name</u>	<u>Invested Amounts</u>
257955 B.C. Ltd. (Hiebert)	\$ 275,000.00
Anderson, John	15,000.00
Arkerly, Terry	14,000.00
Armstrong, David	30,000.00
Arnett, Richard & Margaret	50,000.00
Arthurs, Colin	20,000.00
Arthurs, Hazel	20,000.00
Banman, Cameron	25,000.00
Barata, Tony	25,000.00
Bertschi, Albert	100,000.00
Boyer, Harvey	50,000.00
Bush, Donna	25,000.00
Buyse, Richard	30,000.00
Cedroff, Eileen	35,000.00
Connell, Glen	40,000.00
Craigie, Robert	13,000.00
Crough, Peggy	25,000.00
Eaket, Charlie	50,000.00
Earles, Terry	25,000.00
Ellsworth, Glen	12,000.00
Emerson, Theresa (formerly Theresa Underwood)	100,000.00
Ernst, Peter	25,000.00
Farrow, Terry & Sharon	32,000.00
Flynn, Ruth	50,000.00
Funk, Cynthia	15,000.00
Gutwillinger, Dan	12,500.00
Helmut, Schulz	25,000.00
Henly, Janice/Ralph	50,000.00
Hiebert, Jacob (Bennett, Brenda)	250,000.00
Hiebert, Kim	250,000.00
Hiebert, Peter	250,000.00
Hope, Brian	25,000.00
Hotte, Dennis	25,000.00
Jackman, Mikel	13,000.00
Jensen, Michael	25,000.00
June, Terry	25,000.00
Kirkpatrick, Wallace	15,000.00
Kobyika, Judy	10,000.00
Lecher Holdings Ltd.	25,000.00
Leroux, Karen	10,000.00
Liebaert, Rene	25,000.00
Little, Robert	10,000.00
Ludwig, Paul	14,000.00
Ludwig, Peggy	15,000.00
Lyle, Robert	100,000.00
Maki, Priscilla Marie	25,000.00
Marquardt, Alice	25,000.00

**STRATEGIC CONCEPTS INVESTMENT TRUST**  
**List of Investors**

<u>Investor Name</u>	<u>Invested Amounts</u>
Martyres, Zemira	25,000.00
Miners, Donald	25,000.00
Morrison, David	15,000.00
Neels, Darlene	50,000.00
Neels, John	50,000.00
Nielsen, Steven	25,000.00
Papineau, Michelle	17,000.00
Parke, Kelli	50,000.00
Penner, Jeff	13,000.00
Perry, Glen	15,000.00
Prazma, Anthony	35,000.00
R.B. Hatchard Contracting Ltd.	25,000.00
Reade, Warren	50,000.00
Recchi, Ron	15,000.00
Rykes, Anthony	25,000.00
Salway, Robert	40,000.00
Sauter, Constance	15,000.00
Schindler, Calvin	25,000.00
Schindler, Irene	25,000.00
Sedgewick, Kent & Susan	25,000.00
Serko, Paul	12,000.00
Skinner, Danny	19,000.00
Skinner, Janice	16,000.00
Smith, Richard	25,000.00
Soles, Sheila	25,000.00
Steinhauser, Werner	20,000.00
Thompson, Eric	12,500.00
Twizeli, William (Bill)	20,000.00
Valenta, Robert	12,500.00
Vasvary, Paul	50,000.00
Veldhuis, Kerry	30,000.00
Wanner, James	50,000.00
Whebell, Yvonne	25,000.00
Zilinsky Masonry Ltd.	75,000.00
	<hr/>
	<b><u>\$ 3,282,500.00</u></b>