



No. S-1710510
Vancouver Registry

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

AND

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

BETWEEN:

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

PETITIONER

AND:

0744860 B.C. LTD.

RESPONDENT

NOTICE OF APPLICATION

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

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

TAKE NOTICE that an application will be made by the applicant to the presiding Judge or Master at the courthouse at 800 Smithe Street, Vancouver, British Columbia, on the 2nd day of May, 2018, at ~~10:00~~ ^{9:45} a.m, for the orders set out in Part 1 below.

Part 1: ORDER(S) SOUGHT

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

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

Part 2: FACTUAL BASIS

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

PID: 015-131-696

Lot 10, Block 140, District Lot 274

Plan 879

(the "Property")

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

10. The OTP incorporated three conditions precedent in favour of Boale Wood:
 - a. a requirement that a right of first refusal, contained in a lease agreement between the Company and Victor Anderson's Pharmacy (1997) Ltd. a.k.a. Anderson's Pharmacy (1977) LTD ("Victor Anderson") be waived (the "RFR Condition");
 - b. a requirement that court approval be granted (the "Approval Condition"); and
 - c. a condition requiring the vendor to terminate the lease for certain premises at the Property with Victor Anderson (the "Tenancy Condition").
11. Subsequent to the payment of the additional deposit Boale Wood entered into negotiations with Victor Anderson for the purposes of the RFR Condition and Tenancy Condition which ultimately led to the surrender of the Victor Anderson lease and the right of first refusal.
12. As a result, on April 24, 2018 executed a notice waiving the RFR Condition and Tenancy Condition.
13. In order for the OTP to be binding, Boale Wood requires court approval as provided for in paragraph 3(l) of the Order.
14. In accordance with paragraph 3(m) of the Order, Boale Wood also applies for a vesting and related orders necessary to convey the Property to the Purchaser in accordance with the terms of the OTP.
15. Notice of this application will be provided to the Purchaser together with all parties with security encumbrances registered against title to the Property.

Part 3:LEGAL BASIS

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

17. The leadings case on assessing whether a sale negotiated by a receiver should be approved is the *Royal Bank of Canada v. Soundair Corp.*, which sets out the following elements for consideration:
 - a. whether the receiver has made a sufficient effort to get the best price and has not acted improvidently;
 - b. the efficacy and integrity of the process by which offers were obtained;
 - c. whether there has been unfairness in the working out of the process; and
 - d. the interests of all parties.

18. The proposed vesting order process is specifically contemplated by the Order and provides the most practical means of completing the sale and providing certainty to parties with security encumbrances registered against title to the Property.

Part 4: MATERIAL TO BE RELIED ON

19. Receivership Order, made November 20, 2017;
20. Affidavit #1 of Stephen Boale, made on November 9, 2017;
21. Affidavit #2 of Stephen Boale, made on April 27, 2018; and
22. Such further and other materials as counsel may advise.

The Applicant estimates that the Application will take 20 minutes.

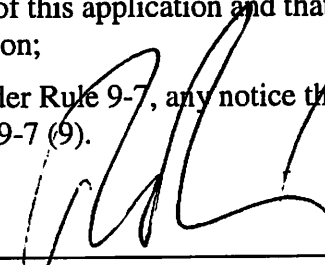
This matter is within the jurisdiction of a master.

This matter is not within the jurisdiction of a master.

TO THE PERSONS RECEIVING THIS NOTICE OF APPLICATION: If you wish to respond to this notice of application, you must, within 5 business days after service of this notice of application or, if this application is brought under Rule 9-7, within 8 business days after service of this notice of application:

- (a) file an application response in Form 33;
- (b) file the original of every affidavit, and of every other document, that:
 - (i) you intend to refer to at the hearing of this application, and
 - (ii) has not already been filed in the proceeding, and
- (c) serve on the applicant 2 copies of the following, and on every other party of record one copy of the following:
 - (i) a copy of the filed application response;
 - (ii) a copy of each of the filed affidavits and other documents that you intend to refer to at the hearing of this application and that has not already been served on that person;
 - (iii) if this application is brought under Rule 9-7, any notice that you are required to give under Rule 9-7 (9).

Date: April 27, 2018



Signature of Jeremy D. West
Counsel for the Petitioner

To be completed by the court only:

Order made
 in the terms requested in paragraphs _____ of Part 1 of this notice of application

with the following variations and additional terms:

Date: _____

Signature of Judge Master

APPENDIX

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

THIS APPLICATION INVOLVES THE FOLLOWING:

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

- discovery: comply with demand for documents
- discovery: production of additional documents
- extend oral discovery
- other matter concerning oral discovery
- amend pleadings
- add/change parties
- summary judgment
- summary trial
- service
- mediation
- adjournments
- proceedings at trial
- case plan orders: amend
- case plan orders: other
- experts

SCHEDULE "A"

Receiver's Certificate

RECITALS

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

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

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Plan 879

(the "**Property**")

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

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

THE RECEIVER CERTIFIES the following:

1. The condition set out in the Vesting Order has been satisfied.
2. The Purchaser has paid and the Receiver has received the Purchase Price for the Property payable on the Closing Date pursuant to the Sale Agreement.
3. The Transaction has completed to the satisfaction of the Receiver.

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

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

Per: _____
Stephen Boale

SCHEDULE "B"

IN THE SUPREME COURT OF BRITISH COLUMBIA

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

BETWEEN:

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

PETITIONER

AND:

0744860 B.C. LTD.

RESPONDENT

SERVICE LIST

(as of April 27, 2018)

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

Schedule "A"

No. S-1710510
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IN THE SUPREME COURT OF BRITISH COLUMBIA
IN THE MATTER OF THE *BANKRUPTCY AND INSOLVENCY ACT*,
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in its capacity as TRUSTEE IN BANKRUPTCY OF
MARIA YUEN-MAI KWONG a.k.a. MARIA KWONG

PETITIONER

AND:

0744860 B.C. LTD.

RESPONDENT

ORDER MADE AFTER APPLICATION

APPROVAL AND VESTING ORDER

BEFORE THE HONOURABLE) THE ____ DAY OF MAY, 2018
)
____ JUSTICE _____)

ON THE APPLICATION of the Petitioner, coming on for hearing at Vancouver, British Columbia, on the 2nd day of May, 2018, and on hearing Jeremy D. West, counsel for the Petitioner, and those other counsel listed on **Schedule "A"** hereto, AND UPON READING the materials filed herein.

THIS COURT ORDERS AND DECLARES THAT:

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

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

2. The sale transaction (the "**Transaction**") contemplated by the Offer to Purchase dated March 28, 2018 (the "**Sale Agreement**") between the Receiver and Beacon Pacific Properties Ltd. (the "**Purchaser**"), a copy of which is attached as Exhibit "B" to the Affidavit #2 of Stephen Boale sworn on April 27, 2018, is hereby approved, and the Receiver is hereby authorized and directed to take such additional steps and execute such additional documents as may be necessary or desirable for the completion of the Transaction and for the conveyance to the Purchaser of the real property located at 111 3rd Street West, North Vancouver, British Columbia, V7M 1E7 more particularly described as;

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(the "**Property**")

described in the Sale Agreement.

3. Upon delivery by the Receiver to the Purchaser of a certificate substantially in the form attached as Schedule "A" (the "Receiver's Certificate), all of 0744860 B.C. Ltd.'s (the "Company") right, title and interest in and to the Property described in the Sale Agreement shall vest absolutely in the Purchaser in fee simple, subject to the permitted encumbrances, easements and restrictive covenants listed in Schedule "A" to the Sale Agreement, but otherwise free and clear of and from any and all security interests (whether contractual, statutory, or otherwise), hypothecs, mortgages, trusts or deemed trusts (whether contractual, statutory, or otherwise), liens, executions, levies, charges, or other financial or monetary claims, whether or not they have attached been perfected, registered or filed and whether secured, unsecured or otherwise (collectively, the "**Claims**") including, without limiting the generality of the foregoing: (i) any encumbrances or charges created by the

Orders of this Court dated November 20, 2017; (ii) all charges, security interests or claims evidence by registrations pursuant to the *Personal Property Security Act* of British Columbia or any other personal property registry system; (all of which are collectively referred to as the “**Encumbrances**”, which term shall not include the permitted encumbrances, easements and restrictive covenants listed in Schedule “A” to the Sale Agreement), and, for greater certainty, this Court orders that all of the Encumbrances affecting or relating to the Purchased Assets are hereby expunged and discharged as against the Purchased Assets.

4. Upon representation for registration in the Land Title Office for the Land Title Survey Authority, New Westminster District of a certified copy of this Order, together with a letter from Jeremy D. West, counsel for the Receiver, authorizing registration of this Order, the British Columbia Registrar of Land Titles is hereby directed to:

- a. enter the Purchaser as the owner of the Property, together with all buildings and other structures, facilities and improvements located thereon and fixtures, systems, interests, licenses, rights, covenants, restrictive covenants, commons, ways, profits, privileges, rights easements and appurtenances to the said hereditaments belonging, or with the same or any part thereof, held or enjoyed or appurtenant thereto, in fee simple in respect of the Property, and this Court declares that it has been proved to the satisfaction of the Court on investigation that the title of the Purchaser in and to the Property has good, safe holding and marketable title and directs the BC Registrar to register indefeasible title in favour of the Purchaser as aforesaid; and
- b. having considered the interest of third parties, to discharge, release, delete and expunge from title to the Property all of the registered Encumbrances except for those permitted encumbrances, easements and restrictive covenants listed in Schedule “A” to the Sale Agreement.

5. For the purposes of determining the nature and priority of Claims, the net proceeds from the sale of the Property shall stand in the place and stead of the Property, and from and after the delivery of the Receiver's Certificate all Claims shall attach to the net proceeds from the sale of the Property with the same priority as they had with respect to the Property immediately prior to the sale, as if the Property had not been sold and remained in the possession or control of the person having had possession or control immediately prior to the sale.
6. The Receiver is to file with the Court a copy of the Receiver's Certificate forthwith after delivery thereof.
7. The Receiver, with the consent of the Purchaser, shall be at liberty to extend the Closing Date to such later date as those parties may agree without the necessity of a further Order of this Court.
8. Notwithstanding:
 - a. these proceedings;
 - b. any applications for a bankruptcy order in respect of the Respondent now or hereafter made pursuant to the *Bankruptcy and Insolvency Act* and any bankruptcy order issued pursuant to any such applications; and
 - c. any assignment in bankruptcy made by or in respect of the Respondent, the vesting of the Property in the Purchaser pursuant to this Order shall be binding on any trustee in bankruptcy that may be appointed in respect of the Respondent and shall not be void or voidable by creditors of the Respondent, nor shall it constitute or be deemed to be a transfer at undervalue, fraudulent preference, assignment, fraudulent conveyance or other reviewable transaction under the *Bankruptcy and Insolvency Act* or any other applicable federal or provincial legislation, nor shall it constitute oppressive or unfairly prejudicial conduct pursuant to any applicable federal or provincial legislation.

9. The Receiver or any other party have liberty to apply for such further or other directions or relief as may be necessary or desirable to give effect to this Order.

10. Endorsement of this Order by counsel appearing on this application other than counsel for the Receiver is hereby dispensed.

THE FOLLOWING PARTIES APPROVE THE FORM OF THIS ORDER AND CONSENT TO EACH OF THE ORDERS, IF ANY, THAT ARE INDICATED ABOVE AS BEING BY CONSENT:

Signature of Jeremy D. West
Solicitor for the Receiver

By the Court.

Registrar

Schedule "A"