



Vancouver Registry
Estate No. 11-1602931
Court No. B-120334

IN THE SUPREME COURT OF BRITISH COLUMBIA

IN BANKRUPTCY

IN THE MATTER OF THE PROPOSAL OF

TYAM CIVIL CONSTRUCTORS LTD.

ORDER

BEFORE) WEDNESDAY, THE 30TH DAY OF
THE HONOURABLE Madam) MAY, 2012
JUSTICE Brown

UPON THE APPLICATION of the Tyam Civil Constructors Ltd. (“TCC”) coming on for hearing at Vancouver, British Columbia, on this day; AND UPON hearing Magnus C. Verbrugge and Dirk H. Laudan, counsel for Tyam Civil Constructors Ltd., and those other counsel listed in Schedule “A” hereto, AND UPON reading the Affidavit #3 of Gary Powroznik filed on May 24, 2012, and the pleadings and other materials filed herein; AND PURSUANT TO Sections 50, 50.4, 69, 124, 127, 128, 135, 147, 149, 183 and 187 of the *Bankruptcy and Insolvency Act*, R.S.C., 1985, c. B-3 (the “BIA”), Sections 10 and 23 of the *Builders Lien Act*, S.B.C. 1997, c. 45 (the “BLA”), Section 10 of the *Law and Equity Act*, RSBC 1996, c. 253, and Rule 11 of the *Bankruptcy and Insolvency Act General Rules*, and the inherent jurisdiction of This Honourable Court.

THIS COURT ORDERS AND DECLARES THAT:

1. The time for service of the Notice of Application and the materials herein be and it is hereby abridged and that the application is properly returnable today and that further service thereof be and is hereby dispensed with.

2. The process ("**Trust Claim Settlement Program**") developed by G. Powroznik Group Inc. of G-Force Group (the "**Proposal Trustee**"), as an officer of the court, to

- (a) process trust claims relating specifically to work contracts of TCC for which funds (collectively, the "**Potential Trust Funds**") are payable to TCC that could, pursuant to Section 10 of the BLA, upon receipt by TCC be impressed with a trust in favour of certain trust claimants ("**Trust Claimants**"); and
- (b) process lien claims arising from projects where TCC performed work or supplied materials, asserted by lien claimants ("**Lien Claimants**"),

as set out in this Order, is hereby authorized and approved, and shall govern the adjudication of claims to the Potential Trust Funds and Holdbacks as set out and defined herein, in both the proposal proceedings of TCC and any potential subsequent bankruptcy of TCC.

3. Subject to any right of set-off (save and except as prohibited by Section 6 of the BLA), and subject to paragraph 18, all amounts owing to TCC under each contract, including Potential Trust Funds shall be paid to the Proposal Trustee by all "owners" and "contractors" (as such terms are defined in the BLA) who engaged TCC and pursuant to which TCC or any of TCC's "subcontractors" or "material suppliers" performed "work" or supplied "materials" in relation to an "improvement" (as such terms are defined in the BLA) (collectively, the "**Owners and Contractors**" unless otherwise agreed in writing

by the Proposal Trustee. Any such payment of such amounts to the Proposal Trustee in accordance with this Order (except for the Holdbacks, as hereafter defined) will be deemed to have been actually received by TCC for all purposes;

4. The Proposal Trustee shall hold all Potential Trust Funds as an officer and representative of the Court, in trust for persons entitled to valid claims of trust under the BLA, subject to further Order of this Court;

5. The sending by the Proposal Trustee of the letters and packages of materials contained in Exhibit "A", Exhibit "B", "Exhibit "C", and "Exhibit "D" attached to the Affidavit #3 of Gary Powroznik to certain creditors, clients and customers of TCC is hereby authorized and approved;

6. The form of proof of trust or lien claim developed by the Proposal Trustee (the "**Trust Claim Form**"), attached as Schedule "B" to this Order, is hereby authorized and approved for use in the Trust Claim Settlement Program within the Proposal proceedings of TCC and any potential subsequent bankruptcy of TCC;

7. Notwithstanding the preceding paragraph of this Order, where a Lien Claimant is not also a Trust Claimant ("**Third Party Lien Claimant**"), the form to be used by such Third Party Lien Claimant for purposes of this Order shall be the proof of lien claim form ("**Proof of Lien Claim**") attached as Schedule "C" to this Order, which is hereby authorized and approved for use on the basis set out in the preceding paragraph of this Order.

8. The Proposal Trustee is authorized and directed to send to all Lien Claimants and Trust Claimants who have not completed and delivered a Trust Claim Form to the Proposal Trustee, including either a trust claim lien addendum (“**TC Addendum**”) or Proof of Lien Claim, as appropriate, by registered mail to their last known addresses in TCC’s records, a notice (the “**Notice to Prove**”), the form of which is attached as Schedule “D” to this Order, and which shall attach a Trust Claim Form, and a TC Addendum or Proof of Lien Claim (as appropriate);

9. All persons asserting a claim against TCC or to the Potential Trust Funds or Holdbacks (as hereafter defined), including creditors, Lien Claimants and Trust Claimants, are authorized and directed to deliver a proof of claim or a Trust Claim Form, or both, as the case may be, or in the case of a Third Party Lien Claimant, a Proof of Lien Claim, to the Proposal Trustee following receipt of a Notice to Prove;

10. If any Lien Claimant or Trust Claimant does not deliver to the Proposal Trustee, by registered mail or by personal service, a Trust Claim Form and a TC Addendum or Proof of Lien Claim (as appropriate), all properly completed and executed within 30 days after delivery to it by the Proposal Trustee of a Notice to Prove, and provided all relevant periods for filing a claim of lien against title in connection with each contract with TCC have expired, the Proposal Trustee shall be at liberty to apply to the Court for approval and authorization to make a distribution of Potential Trust Funds or Holdback (as hereinafter defined) as the case may be without such Trust Claimant or Lien Claimant having any entitlement to such distribution;

11. Claims of Lien Claimants and Trust Claimants to the Holdback (as hereafter defined) or Potential Trust Funds, shall be determined in accordance with this Order;

12. The Proposal Trustee, as officer of the court and in consultation with TCC, is hereby authorized to allow in whole or in part, or disallow in whole or in part, the claims of Lien Claimants and Trust Claimants, within the proposal proceedings of TCC, or any potential bankruptcy of TCC, in conjunction and together with the review and adjudication of all other claims of creditors of TCC. The Proposal Trustee is authorized to request further information from Lien Claimants and Trust Claimants in the adjudication of claims to the Potential Trust Funds and Holdback (as hereinafter defined);

13. The Proposal Trustee, as officer of the court and in consultation with TCC, is authorized to rely upon the provisions of the BLA with respect to the adjudication of the claims of Lien Claimants and Trust Claimants;

14. If the Proposal Trustee, as officer of the court and in consultation with TCC, makes a determination to disallow, in whole or in part, a claim of a Lien Claimant or Trust Claimant to the Potential Trust Funds or Holdback (as hereafter defined) asserted pursuant to a completed Trust Claim Form, TC Addendum or Proof of Lien Claim, the Proposal Trustee shall deliver to such Lien Claimant or Trust Claimant, at the address of the Lien Claimant or Trust Claimant as set out in the completed Trust Claim Form, TC Addendum or Proof of Lien Claim, and in the manner provided for herein, a notice (a "**Notice of Disallowance**"), the form of which is attached as Schedule "E" to this Order, within 40 days after the Proposal Trustee receives the completed and executed

Trust Claim Form, TC Addendum or Proof of Lien Claim or, in the case of a completed and executed Trust Claim Form that has been delivered to the Proposal Trustee prior to the date of this Order, within 40 days of the date of this Order;

15. If the Proposal Trustee delivers a Notice of Disallowance to a Lien Claimant or Trust Claimant, then the Notice of Disallowance shall be final and conclusive unless such Lien Claimant or Trust Claimant appeals the decision of the Proposal Trustee to the Court within a 30-day period after the date on which the Notice of Disallowance is delivered, or within such further time as the Court may allow upon an application within the original 30-day period;

16. Any appeal brought by a Lien Claimant or Trust Claimant from a Notice of Disallowance shall be adjudicated upon by this Court in accordance with s.135(4) of the BIA;

17. Any payment or distribution made by the Proposal Trustee to a Lien Claimant or Trust Claimant as a result of the Trust Claim Settlement Program and this Order shall not be subject to the levy provided for in Section 147 of the BIA;

18. Each of the Owners and Contractors shall (unless otherwise agreed in writing by the Proposal Trustee) pay to the Proposal Trustee, in its capacity as an officer of the Court, funds in the full amount of the statutory holdback under the BLA for their respective contracts with TCC (the "**Holdback**"). Payment to the Proposal Trustee of the Holdback shall have the same effect as payment into court pursuant to Section 23 of the BLA;

19. The Proposal Trustee, each of the Owners and Contractors, and each Lien Claimant, are hereby authorized to apply to this Court in this proceeding to determine the amount of the applicable Holdback, to obtain cancellation from land title of all claims of builders lien and certificates of pending litigation filed by TCC or persons engaged by or under TCC, and/or to obtain any and all other relief which could be available under Section 23 or 24 of the BLA. All applications made pursuant to this paragraph shall be made on notice to the Proposal Trustee, the applicable Owner and Contractor, and any Lien Claimant in respect of the applicable contract with TCC. The Proposal Trustee shall provide to such applicant, on request, a list of all Lien Claimants to the applicable Holdback;

20. The Proposal Trustee shall hold all Holdbacks as an officer and representative of the court, in trust for persons entitled to valid claims of lien against the improvements for which each Holdback was maintained, or valid claims against each of the Holdbacks themselves, subject to further Order of this Court;

21. The Proposal Trustee is authorized and directed to deliver all materials to Lien Claimants and Trust Claimants in connection with the Trust Claim Settlement Program to the last known address for the Lien Claimants and Trust Claimants according to TCC's records, by email, facsimile, or registered mail (except for the Notice to Prove and Notice of Disallowance, which shall be sent by way of registered mail), as deemed appropriate in the circumstances by the Proposal Trustee (and in the case of Third Party Lien Claimants, all such materials may be delivered to the formal address for delivery set out in the claim of such Third Party Lien Claimant), and to give notice of the Trust Claim

Settlement Program in the business section of *The Vancouver Sun* on two consecutive business days, within seven business days of the date of this Order;

22. Any person claiming a lien against a Holdback may deliver notice of that lien in writing to the Proposal Trustee. Once delivered to the Proposal Trustee, such notice shall have the same effect for purposes of Section 8(4) of the BLA as the filing of a claim of lien or the commencement of an action to enforce a lien against the Holdback. Following receipt by the Proposal Trustee of such notice or notices, the Proposal Trustee shall, on behalf of all persons who have claimed a lien, deliver written notice to the respective Owner or Contractor of such claim or claims of lien;

23. The Proposal Trustee shall incur no liability or obligation as a result of its appointment or the carrying out of the provisions of this Order, save and except in respect of any gross negligence or wilful misconduct on its part;

24. No proceeding or enforcement process in any court or tribunal shall be commenced or continued against the Proposal Trustee except with the written consent of the Proposal Trustee or with leave of this Court;

25. Nothing in this Order shall derogate from the protections afforded the Proposal Trustee by Section 14.06 of the BIA or by any other applicable legislation;

26. The Proposal Trustee and its legal counsel shall be entitled to and are hereby granted a charge ("**Proposal Trustee's Charge**") on the Potential Trust Funds and the Holdback, as security for their reasonable legal fees and disbursements incurred, both before and after the making of this Order, in respect of the Trust Claim Settlement

Program, and the Proposal Trustee's Charge shall form a first charge on the Potential Trust Funds and Holdback in priority to all security interests, trusts, liens, charges and encumbrances, statutory or otherwise, in favour of any creditor of TCC, Trust Claimant or Lien Claimant, but subject to Section 14.06(7) of the BIA;

27. Any security documentation evidencing, or the filing, registration or perfection of the Proposal Trustee's Charge shall not be required, and the Proposal Trustee's Charge shall be effective against the Potential Trust Funds and Holdback and shall be valid and enforceable for all purposes, including as against any right, title or interest filed, registered or perfected subsequent to the Proposal Trustee's Charge coming into existence, notwithstanding any failure to file, register or perfect any such charge;

28. The Proposal Trustee and its legal counsel shall pass their accounts from time to time, and for this purpose the accounts of the Proposal Trustee and its legal counsel are hereby referred to a judge of the Supreme Court of British Columbia and may be heard on a summary basis;

29. Prior to passing of its accounts, the Proposal Trustee shall be at liberty from time to time to apply reasonable amounts, out of the Potential Trust Funds and Holdback in its hands, against its fees and disbursements, including legal fees and disbursements, incurred at the normal rates and charges of the Proposal Trustee or its counsel, and such amounts shall constitute advances against its remuneration and disbursements when and as approved by this Court;

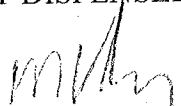
30. Any creditor of TCC, Trust Claimant or Lien Claimant may apply to this Court on notice to the Proposal Trustee and to any other party likely to be affected, for an order allocating the Proposal Trustee's Charge amongst the various contracts with TCC, the Potential Trust Funds and Holdback;

31. The Proposal Trustee may from time to time apply to this Court for advice and directions arising from the terms of this Order or generally with respect to the administration of the Trust Claim Settlement Program;

32. Nothing in this Order shall prevent the Proposal Trustee from acting as a trustee in bankruptcy of TCC;


33. In the event of any subsequent bankruptcy of TCC, the Proposal Trustee shall continue to administer and adjudicate the Trust Claim Settlement Program in accordance with this Order.

THE APPROVAL OF COUNSEL SET OUT IN SCHEDULE "A" OF THIS ORDER IS HEREBY DISPENSED WITH:




Signature of Magnus C. Verbrugge

party lawyer for
Tyam Civil Constructors Ltd.



Signature of Michael Morgan

party lawyer for
G. Powroznik Group Inc.


By the Court.

Registrar



SCHEDULE "A"

Name of Party:

Counsel Name:

G. Powroznik Group Inc.

Michael Morgan

Tyam Construction Ltd.

Marcel Peerson

~~Polygon Red Maple Park Homes Ltd.
and Polygon Mayfair Place Homes Ltd.~~

~~Jordan Schultz~~

SCHEDULE "B"

G. Powroznik Group Inc. of G-Force Group
#780 - 333 Seymour St., Vancouver BC V6B 5A6
Telephone: (778) 370-0003; Fax (778) 370-0043
mail@g-forcegroup.ca

PROOF OF TRUST CLAIM

Tyam Civil Constructors Ltd. - Trust Claim Settlement Program

All notices or correspondence regarding this claim must be forwarded to the following address:

In the matter of the Trust Claim Settlement Program of Tyam Civil Constructors Ltd. (the "Debtor") of the City of Langley in the Province of British Columbia and the trust claimant of _____, Creditor.

I, _____ (name of Creditor or representative of the Creditor), of the City of _____ in the Province of _____, do hereby certify:

1. That I am a trust claimant of the above named Debtor (or I am _____ (position/title) of _____, Creditor) as contemplated under s. 10 of the Builders Lien Act.
2. That I have knowledge of all the circumstances connected with the trust claim referred to below.
3. That the Debtor is indebted to the Creditor in the sum of \$ _____, as specified in the statement of account (or affidavit) attached and marked Schedule "A", after deducting any counterclaims to which the Debtor is entitled. (The attached statement of account or affidavit must be supported by individual vouchers, invoices, purchase orders or other evidence in support of the claim that the direct supply of materials, labour and/or equipment was made to the site referred to in paragraph 4)
4. I hereby declare that I/we have a trust claim in the amount of:

\$ _____
and that in respect of this debt, the Creditor was engaged in connection with the Improvement(s) (as defined in s. 10 of the Builders Lien Act) by the Debtor as contractor or subcontractor for the following contract/project: _____

(specific address/location of project site)

G. Powroznik Group Inc. of G-Force Group
#780 - 333 Seymour St., Vancouver BC V6B 5A6
Telephone: (778) 370-0003; Fax (778) 370-0043
mail@g-forcegroup.ca

TRUST CLAIM LIEN ADDENDUM

Tyam Civil Constructors Ltd. - Trust Claim Settlement Program

This appendix relates to and is filed with, or for purposes of, the Proof of Trust Claim form of the following creditor of Tyam Civil Constructors Ltd. (the "Debtor").

(Name of Creditor)

I, _____ (name of Creditor or representative of the Creditor), of the City of _____ in the Province of _____, do hereby further certify:

7. That the information contained in the Proof of Trust Claim form submitted for the Creditor is and remains correct;
8. That the Creditor hereby asserts a lien against the holdback retained from the Debtor in connection with the Improvement as required by s. 4 of the Builders Lien Act (British Columbia) (the "Holdback"), for the sum of \$ _____, which sum does not include interest or charges other than those relating strictly to the price of work or materials supplied to the Improvement, as set out in the attached statement of account (or the statement of account attached to the Proof of Trust Claim), and the Creditor hereby declares that it is entitled to a claim of lien in the said amount. (The statement of account and other evidence submitted in association with the Proof of Trust Claim may be sufficient, if they set out and support the amounts referred to in this paragraph.)
9. The Creditor hereby authorizes and appoints G-Force Group as its agent to deliver a notice in writing of the Creditor's lien against the Holdback, on the Creditor's behalf, to the owner of the Improvement. (It is also recommended also that the Creditor deliver a copy of this document to the owner of the Improvement as soon as possible.)

Dated at _____, this _____ day of
(City, Province) (Date)

(Month) (Year)

SCHEDULE "C"

G. Powroznik Group Inc. of G-Force Group
#780 - 333 Seymour St., Vancouver BC V6B 5A6
Telephone: (778) 370-0003; Fax (778) 370-0043
mail@g-forcegroup.ca

**PROOF OF LIEN CLAIM
AGAINST THE HOLDBACK – FOR THIRD PARTY LIEN CLAIMANTS**

Tyam Civil Constructors Ltd. - Trust Claim Settlement Program

Note: This form is for use by persons without a direct contract with Tyam Civil Constructors Ltd. ("TCC"). Persons with a direct contract with TCC should use the "Proof of Trust Claim" form, including the Trust Claim Lien Addendum. All notices or correspondence regarding this claim must be forwarded to the following address:

In the matter of the Trust Claim Settlement Program of Tyam Civil Constructors Ltd. ("TCC") of the City of Langley in the Province of British Columbia and the trust claimant of _____, Lien Claimant.

I, _____ (name of Lien Claimant or representative of the Lien Claimant), of the City of _____ in the Province of _____, do hereby certify:

1. That I am a lien claimant in connection with a project where TCC was a contractor or subcontractor (a "Project") (or I am _____ (position/title) of _____, Lien Claimant) as contemplated under s. 10 of the Builders Lien Act.
2. That I have knowledge of all the circumstances connected with the lien claim referred to below.
3. I was engaged by a person engaged by or under TCC in connection with one or more Projects and I am owed the sum of \$ _____ in connection with that Project(s), as specified in the statement of account (or affidavit) attached and marked Schedule "A", after deducting any valid counterclaims. (The attached statement of account or affidavit must be supported by individual vouchers, invoices, purchase orders or other evidence in support of the claim that the direct supply of materials, labour and/or equipment was made to the site referred to in paragraph 4)
4. I was engaged for the Project or Projects by _____ (attach subcontract, purchaser order or other sufficient proof of engagement)
5. I hereby declare that I/we have a lien claim in the amount of:
\$ _____

SCHEDULE "D"

NOTICE REQUIRING PERSON TO PROVE CLAIM

In the matter of the Proposal of Tyam Civil Constructors Ltd. ("TCC")

TAKE NOTICE that the Proposal Trustee in the above matter is developing and co-ordinating a Trust Claim Settlement Program and that if you do not prove your claim on or before ___ day of _____ 2012 or within such further time as the Court may allow, we shall proceed to finalize the determination of the Trust Claims against monies owed on TCC's projects and the development of a Settlement Plan for the Court's approval without regard to claims which have not been filed.

Dated at Vancouver, British Columbia, this ___ day of _____, 2012.

G. Powroznik Group Inc., Proposal Trustee

Per: _____

Name of Creditor

Last Known Address of Creditor in TCC's Records

Registered Mail

SCHEDULE "E"

Notice of Disallowance of Claim

[Name of Creditor]

[Address of Creditor in Trust Claim Form / TC Addendum / Proof of Lien Claim]

Take notice that:

As Proposal Trustee acting in the matter of the proposal of Tyam Civil Constructors Ltd. ("TCC"), and in consultation with TCC, I have disallowed your trust claim to Potential Trust Funds (*and/or* your lien claim to the Holdbacks) in whole (*or* to the extent of \$ _____), pursuant to the provisions of the *Builders Lien Act*, for the following reasons:

(Set out the reasons for the disallowance.)

And further take notice that if you are dissatisfied with my decision in disallowing your claim(s) in whole or in part, you may appeal to the court within the 30-day period after the day on which this notice is served, or within such other period as the court may, on application made within the same 30-day period, allow.

Dated at _____, this _____ day of _____.

Proposal Trustee

Estate No. 11-1602931
Court No. B-120334
Vancouver Registry

IN THE SUPREME COURT OF BRITISH COLUMBIA
IN BANKRUPTCY
IN THE MATTER OF THE PROPOSAL OF
TYAM CIVIL CONSTRUCTORS LTD.

ORDER

MCV

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Client/Matter 545180/000000