



Affidavit #1 of Gary Powroznik
Sworn December 2, 2015

No. H-140638
Vancouver Registry

IN THE SUPREME COURT OF BRITISH COLUMBIA

BETWEEN

STARK BC VENTURE, LLC

PETITIONER

AND

MOUNT BALDY REAL ESTATE, ULC, WINTER RECREATION
ULC, MOUNT BALDY SKI CORPORATION, ROBERT BOYLE,
BRETT SWEEZY, BRENT ALAN BAKER ALSO KNOWN AS
BRENT BAKER, LAURA LESLIE BREUNINGER BAKER,
VANTAGE ONE CREDIT UNION, B.C. OPPORTUNITY FUND LLC,
ATTORNEY GENERAL OF CANADA, AS REPRESENTATIVE OF
THE CROWN IN RIGHT OF CANADA, THE OWNERS, STRATA
CORPORATION KAS1840

RESPONDENTS

AFFIDAVIT

I, **GARY POWROZNIK**, Chartered Accountant and Chartered Insolvency and Restructuring Professional, of 780-333 Seymour Street, Vancouver, British Columbia, MAKE OATH AND SAY AS FOLLOWS:

1. I am the Managing Director with G. Powroznik Group Inc. of G-Force Group, the Receiver and Manager (the "Receiver") for Mount Baldy Ski Corporation and Mount Bald Real Estates ULC (collectively "Mount Baldy") and the Applicant herein and as such I have personal knowledge of the facts and matters hereinafter deposed to save and except where the same are stated to be made on information and belief and whereso stated, I verily believe the same to be true based on the veracity of my informants.
2. The result of the adjournment of the November 30, 2015 hearing has been that:

- (a) in the absence of a qualified operator, there is no operating insurance in place and no assurance that it will be available due to the delay in starting by the operator. Insurance was obtained to secure and protect ("mothball") the Resort.
- (b) the prospective purchaser has advised that because of the opposition by BOC and the resulting delays associated with that opposition, it is not able to commit to operate this season. Accordingly, the Receiver will not be seeking approval for an operating agreement at this time;
- (c) the Receiver has no current letter of intent to purchase; and
- (d) in the absence of urgency to reopen the Resort for the current season, the Receiver will deal with offers in the normal course and will seek court approval of an asset purchase agreement for any purchaser with an acceptable offer.

3. The Receiver's fees and disbursements, including its legal fees, are still outstanding. The significant amount of those funds has been expended in negotiations with BOC and the Receiver will seek to Borrow to pay these amounts.

4. I now turn to responses to the points in the Affidavit of Fred Johnston. I refer to each of his paragraphs using the same number (in seriatum):

4. Stark needed satisfactory proof that BOC had financial capacity before it appointed a receiver. It was agreed that BOC would pay all receivership costs, including any shortfall from the 2014/15 ski operation. When it came to drafting the asset purchase agreement (the "APA"), BOC refused to include the full expenses of the receivership despite their prior agreement to do so.

5. This is misleading because it ignores the fact that Stark applied to Court after BCC raised two-thirds of the required financing. Stark had a commitment from

BCC to the three additional matters referred to in Par. 10 of the Receiver's report by the dates specified.

6. The denial of defaults is not supported. They are set out clearly in the letters of April 29, 2015 and May 15, 2105 by the Receiver's counsel.

7. This paragraph indicates that BOC intended to breach paragraph 16 of the Operating Agreement. In the Operating Agreement, BOC committed to pay the obligations of the business and to inject capital to fund them accordingly. The Receiver agreed to secure the funding on the security of the assets by Receivers certificates but the end obligation to fund was on BOC. BOC had an obligation to carry out the services in accordance with the budget ("Budget") in Schedule C to the Receiver's report, which included injecting funds to balance the Budget for all receivership costs. That is clear because the Budget for the operation was prepared by Fred Johnson and its last and 31st version is attached as Schedule C to the Receiver's report. On the last lines on page 2 of the Budget, it shows that there will be a \$515,000 Interim Loan which will be repaid out of the sale proceeds on discharge of the Receiver. The other important obligation was the obligation to pay a **Projected Additional Equity Investment Required to Cover Cash Deficit** of \$120,000 which BOC needed to pay on closing. BOC was the operator and its affiliate BCC was the purchaser. Between them, they had to pay the two items totaling \$720,000 under Purchase Price and Loan Repayment which would discharge the loans secured by Receiver's certificates and all expected costs of the receivership, including prior costs in preparation for the Receiver's appointment. On negotiation of the settlement of the APA in the spring and summer, they would not do so. That issue arose before it was clear that BOC did not have the funds to close a transaction.

8. There are clear funding obligations under the Operating Agreement. Given that the transaction permitted BOC to operate for a short term until they effected a purchase and that BOC was to pay the costs of the receivership, there was a clear agreement that BOC was operating on its own account in anticipation of taking over the assets through an ultimate sale. The commitment was to pay initial costs out of the

funds raised for the Receiver and injections of equity per version 31 of the Budget and then to provide the Receiver sufficient cash on closing to discharge all of its obligations.

9. BOC's commitment was to cover the costs through the funds which it raised for the Receiver and also by injections of equity per version 31 of the Budget. The assertion in paragraph 9 is inconsistent with the assertion in paragraph 10. The money from the Receiver's certificates was a loan only and was to be sourced by BOC under paragraphs 16 and 17 of the Operating Agreement by January 19, 2015. To the extent that there was inadequate funding, it was as a result of a breach by BOC of its obligations. The parties signed the Operating Agreement at the same time the Receiver was appointed. The Budget required \$515,000 in funding sourced by BOC but secured by the Receiver's certificates. Further funding by BOC of \$120,000 was committed to balance the Budget including the Receiver's costs.

10. This comment is completely untrue and he will not be able to provide any evidence for this because, we signed the Operating Agreement the same day we were appointed and the budget was attached that required \$515,000 in funding through the receiver that BOC was to arrange for the Receiver and the further funding by BOC of \$120,000 to balance the budget including covering the Receiver's costs.

11. The additional offer of \$100,000 was long after the defaults by BOC. The required amount for Receiver's fees and those of its counsel increased dramatically due to the defaults and actions by BOC which required a longer receivership process and increased costs due to BOC's and BCC's refusal to operate and purchase respectively, under the original agreements.

12. The last \$100,000 was needed by the Receiver to pay receivership costs which are still outstanding. But, the Receiver refused the last \$100,000 because BOC refused to allocate the money to Receiver's costs as was agreed. By that time, the sale had collapsed. BOC and BCC failed to provide an asset purchase agreement when due and there were other defaults including nonpayment of other operating

obligations by BOC, as is set out on page 3 of BFRST's letter to BOC's counsel of May 15, 2015. Further, the season end accounting indicated that BOC funded very little but withdrew over \$100,000 in management fees and expenses in less than the three months while it operated. We have no advice that BOC has an actual cash outlay into the Resort at all. It was not consistent with the Budget or the agreements for BOC to withdraw substantial management fees; to leave debt outstanding; to refuse to pay the receivership costs and then to ask the Receiver to borrow on the strength of the asset to repay the BOC outstanding operating debt that BOC had committed to pay.

13. There is no draft APA provided by BCC between the date of the Operating Agreement/Receiver's appointment and January 30, 2015 and we were not provided with any evidence that any step was taken in that regard before the APA was provided months later after the Operating Agreement was terminated. The commitment by BOC and BCC was to negotiate the terms and conditions of a definitive asset purchase agreement "to be concluded on or before 5:00pm on January 30, 2015". As a matter of objective fact, the negotiations were not commenced on that date and BOC only initiated discussions about an APA after the ski season was over. We received no communication before the season was over from the Osoyoos Indian Band or Resorts Branch on key conditions precedent required to conclude an APA so those important negotiations were not undertaken before January 30, 2015.

14 During the period before January 30, 2015, BOC did not negotiate in good faith or at all because it ignored earlier commitments under the Budget and continually tried to disclaim any responsibility for its commitments under the Operating Agreement.

15. The Receiver had nothing to do with the Amended MOU. On April 29, 2015, the Receiver provided notice of defaults under the Operating Agreement; Stark provided notice of defaults under the Amended MOU.

16. Lawson Lundell's response to the letter of June 9, 2015 is exhibited to Scott Stark's Affidavit.

17. The Receiver and Secured Creditor always acted in good faith and simply re-emphasized the original principles of the dealings with BOC/BCC under which they were to pay the receivership costs. Further, BOC was asking Stark to finance a large portion of the unpaid purchase price. It was expected by BOC that there were outstanding bills after the 2014/15 season that it had to pay according to the Budget. Stark quite reasonably requested a sound business plan for the purchaser and proof that BOC/BCC had the cash, none of which BCC was provided.

18. Funds to close was a prevailing issue as there was no assurance that BOC or BCC had funding. I don't believe the principle of the Amended MOU changed. Ultimately, Stark, at the request of BOC, reduced the price significantly in exchange for a much earlier payout.

19. The letter of June 22, 2015 attached as Exhibit "B" demonstrates that the negotiation of an APA was not concluded by January 30 as agreed. Nonetheless, Stark was prepared to start again and negotiate a sale which led to the discussions in September. There are at least two errors in Mr. Benson's letter: first, the first real draft of the APA was provided after the termination of the Operating Agreement. In March, a four page without prejudice draft agreement called asset purchase agreement was forwarded to Lawson Lundell. It was subject to broad conditions which were to be satisfied by April of 2015. It contained a break fee of \$500,000. It was not capable of acceptance. Second, that the draft APA he prepared did not, as he asserts, accurately document the terms and conditions of the December agreement. The agreement did not reflect the December terms and could not be accepted and presented to the court.

20. It is clear from all the agreements, supporting emails and verbal discussion with the Receiver and Marketing Agent, and between BOC and third party suppliers, that BOC had full responsibility for the costs of the operation. The December 19, 2014

transaction was designed to permit BOC to operate on its own account and then for BCC to agree to buy the assets. It operated for a season and then it failed to buy as it contracted to do. It now seeks to change the deal retroactively and disclaim responsibility for the operation of the Resort. That is not consistent with paragraphs 6, 7, 8, 9, 10, and 11 of the Operating Agreement, among others. As there was no sale the Receiver maintained control and a right to approve or disapprove a sale to any party. BOC generated draft financial statements for its operator as principal, a sample of which is attached hereto and marked as **Exhibit "A"** to this my Affidavit.

21(a) Overall reference to the Budget and paragraph 16 of the Operating Agreement shows \$515,000 in loans and payments to be provided by BOC to the Receiver and an additional equity injection by BOC.

21(b) Ownership was in the Receiver until title passed. BOC could not do work for itself on land it had not yet bought. It was clear from all discussions that the operations were conducted for the account of BOC and BCC, the intended purchaser, and they would get the works under an APA.

21(c) The Receiver maintained control of the money which was secured by Receiver's certificates as it has a duty to do. It required adherence to the Budget. Along the way, BOC had defaulted in providing the funding to the Receiver and it did not have enough to cover the costs. Among the defaults which caused the Receiver to terminate the Operating Agreement was the failure to provide documentation under paragraph 4(a), 4(b), 5, and 11(g) of the Operating agreement. See Exhibit "A" to the Affidavit #1 of Leah Jonak.

22. The invoice was submitted on May 27, 2015, a month after termination of the Operating Agreement and four months after BOC was to have agreed to purchase in the context of the potential sale. It is a cash deficiency and it should be paid by BOC out of the \$120,000 Projected Additional Equity required by the Budget and which BOC refused to pay. BOC refused to pay the \$120,000. It then invoiced the Receiver for \$65,032. Concurrently, it refused to pay a portion of

Receiver's fees, costs and expenses. Individual invoices were not submitted for approval as was required. It was delivered in the context of a termination for breach. The invoice is not due by the Receiver. It is BOC's responsibility because it was operating as a potential buyer.

23. The inability of BCC and BOC to honour their commitments to the Receiver and Secured Creditor are clear.

24. In May and June of 2015, BOC refused to pay the amounts which it had agreed to pay in December of 2014. These amounts were notionally included in the \$750,000 cash on closing in the October 5, 2015 terms. I say notionally because the overall price was lower by more than a million dollars. But then, in November of 2015, BOC refused to pay operating expenses and refused to prove that it could pay amounts required for closing when it had specifically committed to prove its capacity to pay on October 1, 2015. There was no agreement on the adjustments on closing.

25/26 BOC was in default of its obligations. The Receiver wished to sell the assets and still wishes to sell the assets. The Receiver in good faith revived its negotiation after breach and termination and Stark indicated it would accept a lower return in an effort to accommodate BOC. BOC simply did not have the capacity to close the sale; it would neither agree to the terms nor could it source the money.

27. As stated above, BCC failed to honour the principles of the December 2014 documents and could not produce any evidence of sufficient financing for the October 2015 proposed framework. More recently, based on my review of the document on November 4, 2015, BOC deliberately refused to honour its commitment made on October 1, 2015 to provide proof of funding. BOC did not ever produce evidence they had sufficient financing

28. The discussion on the needed financing related to BCC's ability to acquire the assets from the Receiver and payout the Receivership costs including the borrowings, totaled \$600,000 and the \$120,000. these amounts were included in the Budget to the Operating Agreement.

29. This statement indicates that BOC did not intend to honour its obligations under the Amended MOU.

30/31 If this is so, the delays were due to BOC trying to change the deal.

33/34 Stark lowered the amount he would accept on a sale by the Receiver. He agreed to finance a large portion of the purchase price by BCC. The terms are attached to his affidavit. The essential term was that no asset purchase agreement would be executed until there was proof that BOC had financing. Attached hereto and marked as **Exhibit "B"** to this my Affidavit is a true copy of an email dated October 7, 2015.

35 Ten days to complete the APA was ambitious. The first draft took 13 days so it was clearly not achievable. The first draft was long and contained copious Schedules, most of which were blank. It took the Receiver 17 days to respond. The responsive document was largely changed.

38. On receipt of the APA, its terms were not acceptable. The Receiver's counsel spent hours in reviewing the draft APA provided by BOC. In preparation, it contacted the strata counsel, considered the sale of the shares of a water utility, prepared a vesting order and delivered it to BOC counsel, reviewed the priorities and considered the role of the Credit Union as charge holder over the deposits held by Resorts Branch, searched titles, deleted an extra parcel of land from the conveyed assets, and considered the Benefits Agreement condition relative to the Osoyoos Indian Band. The Receiver considered with Stark the manner in which the security taken by the Receiver for the balance of the purchase price would be assigned to Stark. The Receiver's counsel advises me and I verily believe that he did the following:

19/10/2015	Revising asset purchase agreement re Form of asset purchase agreement; telephone to Bonita Lewis-Hand
20/10/2015	Bonita Lewis-Hand re asset purchase agreement
20/10/2015	re Form of asset purchase agreement; telephone to Bonita Lewis-

Hand
 re Form of asset purchase agreement; telephone to Bonita Lewis-
 20/10/2015 Hand
 21/10/2015 Revising asset purchase agreement
 21/10/2015 re asset purchase agreement
 23/10/2015 Drafting license of occupation and vesting order
 23/10/2015 Revising asset purchase agreement
 26/10/2015 re asset purchase agreement
 26/10/2015 Telephone conference with Terra Law and Lawson Lundell
 Review Operating Agreement and Sewer Agreement for Strata,
 Safekeeping Agreement re deposit at credit union; property tax
 searches; utility bills; Form 87 re outstanding creditors for
 adjustment; various conversations with G Force, Bonita Lewis-Hand
 and Reilly Pollard, consider lease obligations for arrears and 2% of
 27/10/2015 sales; revised price analysis
 Serve draft vesting order and reply to Benson; conference call with
 Gary Powroznik and Chris Sinclair - Sinclair to redraft agreement;
 30/10/2015 advise re Purchaser's change of position
 Telephone conference (x2) with Gary Powroznik re response; emails
 31/10/2015 and calls to Bonita Lewis-Hand re response to Russ Benson

Attached hereto and marked as **Exhibit "C"** to this my Affidavit is a true copy of an email dated October 26, 2015.

I am advised by our counsel and verily believe that he asked Mr. Benson repeatedly if BOC had arranged the necessary financing. Attached hereto and marked as **Exhibit "D"** to this my Affidavit is a true copy of an email from Mr. Fitzpatrick to Mr. Benson dated October 30, 2015 inquiring as to the financing. No proof was provided. On October 30, 2015, we delivered our APA. On that day, we were advised for the first time that there was a deadline of October 30, 2015 which we now know was relaxed. The Receiver was not told on October 30, 2015 that after production of an APA, his funder would only provide funding after completion of due diligence and board approval. This is what the Receiver had intended to avoid. The agreement with BOC is that they would have a letter of commitment before the APA was executed by the Receiver.

42. The Amended MOU was terminated on May 7, 2015 as it has been breached by BCC. It was otherwise superseded. BCC never had any agreement with the Receiver to acquire the assets.

43. The changes speak for themselves in evidence provided by the Receiver and Mr. Stark. Nonetheless, the drop dead offer bore little resemblance to the terms set out in Ms. Lewis-Hand's email of October 5, 2015 upon which the Receiver relied in attempting to reach an agreement which could be approved by the court.

44. This paragraph is inconsistent with the understanding that an APA would only be executed after there was proof of funding. No evidence has ever been produced that BCC has had the ability to close any purchase on terms acceptable to the Receiver or Secured Creditor; and to the best of my knowledge, the Receiver was never told there was proof of funding. Certainly, satisfactory proof was never provided to the Receiver. As to verbal confirmation, neither my staff nor I have had a conversation with Fred Johnson between October 1, 2015 and October 30, 2015 at all or where he indicated that he had financing. The terms as to the execution of the APA are set out in the October 5th email. Attached hereto and marked as **Exhibit "E"** to this my Affidavit is a true copy of an email dated October 31, 2015.

45. We deny receipt of advice that we ever were asked to take a conditional offer to court for approval which is inconsistent with the October 5th email.

46. BCC certainly kept all of the details of its financing confidential and did not disclose them to the Receiver until filing of Mr. Johnson's Affidavit of November 30, 2015.

47. These letters are expressions of interest to consider the financing and do not represent anything close to commitments.

48. Relative to a standard, as I review the material set out in paragraph 14 of Mr. Stark's affidavit, He has lost confidence in BOC and as a consequence, BOC may have to structure deals differently where BOC wants him to finance a portion

of the price. As to the amount of the price which is now payable to the Receiver, it will require some certainty. At no time has the Receiver relaxed the requirement that BOC provide proof of funding capability. Certainly, the Receiver is of the view that it has acted in good faith in extending negotiations with BOC in October 2015 after default. The Receiver will consider an offer which does not have unacceptable conditions or uncertain components in it which have delayed or avoided closings in the past.

49. The present offer is not for approval. It is to negotiate. The application for court approval should have the components in paragraph 49(a)-(d) while the amount of a break fee is negotiable and now seems to need prior court approval before the APA is signed; hence that portion of the application. The application for an appointment of an operator was included but should not offend BOC as they were able to operate before they had an APA. I am advised by counsel and verily believe we are waiting for new law on the break fee.

50. The letter of intent will not be the subject of an approval application until there is an offer.

51/52 The correspondence is clear that the Receiver did not approve of BOC's releases to the press. The Receiver never issued any press release about its negotiations with BCC except to confirm that BCC had not produced evidence of sufficient financing in response to BCC's public claim that it had.

53. The facts are clear from the press releases and interview comments that BOC was attempting to sway public opinion in the press releases and thereby gain an advantage in its negotiation with the Receiver.

54. The urgency was the operation of the current ski season which Fred acknowledges earlier in the Affidavit; however, the current operator is now unwilling to operate due to the time this application needs to be resolved. Accordingly, the Receiver is preparing to preserve the Resort for the winter without

operating. The result is that the local ski community will not have access to the Resort for the current ski season.

55. The ski operation insurance which was available to the Receiver for operations is not available without the certainty of an operator. The Receiver found a capable operator only days' earlier and the ski insurance packages are very limited and difficult to arrange for an insolvent operation.

56. BCC could not provide evidence that BCC could complete a deal. It now provides confirmation that its lenders needed due diligence and court approval.

57. BOC paid for insurance from monies it received from the Receiver who borrowed it on Receiver's certificates which still charge the assets. Accordingly, there was no cost to BOC for the insurance. BOC had help from the previous resort manager to arrange the insurance and it was BOC's responsibility under the Operating Agreement to do this. The premiums were not paid with money that BCC had provided, but from debt on Receiver's certificates which rank ahead of Stark, so in effect, Stark has paid for the premiums.

58. Despite that the Operating Agreement was signed on December 19, 2014 to enable the Resort to open late last year, Fred Johnston now swears that it is impossible to operate, yet in his paragraph 64, he swears that there is no urgency. That is not consistent with BOC opening last year for much of the season. Further, Fred Johnston has had only one abbreviated season of experience with ski operations at Baldy and is not necessarily qualified on what is possible with a properly funded and experienced team.

59. BCC has no standing on the administration by the Receiver, including how the Receiver pays for the costs of the receivership.

60. BCC can provide the Receiver with an offer at any time and the Receiver will present it to court when it is final, unconditional and capable of being funded. It should have Mr. Stark's approval before the Receiver will accept it if it does not

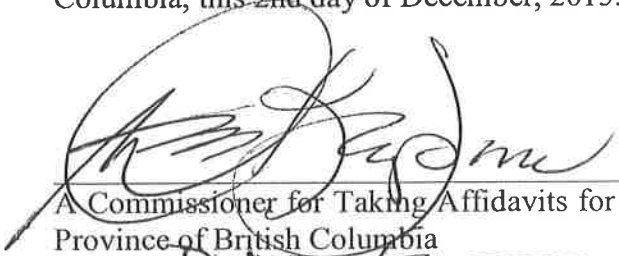
pay Stark in full promptly. We do not accept a process whereby an offer is presented in open court.

61. BCC has no position to request the Receiver to modify its application.

62. The Receiver has received no letter of intent from BOC. BCC has no authority to ask for this and the Court has no duty to ask the Receiver to do this.

64. The Receiver has chosen not to put BBC or BOC into possession as a result of funding deficiencies, the results of last year, and a year of failed negotiation and because Mr. Stark has lost confidence in him. Any agreement with the estate has to first submit to the Receiver and the Court.

SWORN BEFORE ME at the City of Vancouver, in the Province of British Columbia, this 2nd day of December, 2015.


A Commissioner for Taking Affidavits for the Province of British Columbia

DENNIS FITZPATRICK
BURNS, FITZPATRICK,
ROGERS, SCHWARTZ & TURNER LLP
Barristers & Solicitors
1400 - 510 BURRARD STREET
VANCOUVER, B.C. V6C 3A8
(604) 685-0121 FAX: (604) 685-2104



GARY POWROZNIK

2:51 AM
09/02/15
Accrual Basis

Baldy Operating Corporation
Profit & Loss
December 2014 through January 2015

This is Exhibit "A" referred to in the
affidavit of GARY POZORSKI
sworn before me this 2nd day of
December A.D. 2015
[Signature]

Dec. 14...Jan. 15

Ordinary Income/Expense	
Income	
General Sales	48,860.43
Total Income	48,860.43
Cost of Goods Sold	
Food & Beverage Costs	
Cafeteria COGS	5,903.70
Lounge COGS	1,373.11
Total Food & Beverage Costs	7,276.81
Total COGS	7,276.81
Gross Profit	41,583.62
Expense	
Accounting Fees	574.75
Accommodation Allowance - Mgmt	6,000.00
Administration & Management	60,000.00
Advertising Marketing and Promo	11,988.04
Courier Services	45.50
Diesel Gas & Propane	
Diesel	1,909.50
Gasoline	81.65
Propane	1,726.95
Total Diesel Gas & Propane	3,718.10
Insurance	24,455.35
Maintenance & Repairs	
Lift - Magic Carpet	426.39
Lift - Sugarlump	5,266.27
Snow Cat - Red	1,233.63
Snow Cat - Yellow	1,858.41
Other Equipment	226.02
Lodge Repairs	2,731.83
Total Maintenance & Repairs	11,742.55
Permits & Licenses	10,316.68
Office and Sundry Supplies	
Bank & Service Charges	250.38
Computer & Office Equip Parts	4,496.53
Office Supplies	2,926.73
Petty Cash	355.00
Total Office and Sundry Supplies	8,028.64
Snow Removal	2,861.00
Supplies (ropes etc)	1,400.73
Telephone - Land Lines	615.66
Travel & Accommodations	3,839.47
Wages	35,761.29
Total Expense	181,347.76
Net Ordinary Income	-139,764.14
Net Income	-139,764.14

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Baldy Operating Corporation
Profit & Loss
December 2014 through January 2015

	<u>Budget</u>	<u>Actual</u>	<u>Variance</u>
Income			
General Sales	75,730	48,860	26,870
Total Income	<u>75,730</u>	<u>48,860</u>	<u>26,870</u>
Cost of Goods Sold			
Food & Beverage COGS	8,250	7,277	973
Retail Sales COGS	0	0	0
Total Food & Beverage Costs	<u>8,250</u>	<u>7,277</u>	<u>973</u>
Total COGS	<u>8,250</u>	<u>7,277</u>	<u>973</u>
Gross Profit	67,480	41,584	25,896
Expenses			
Accounting Fees	0	575	575
Accommodation Allowance - Staff	0	0	0
Accommodation Allowance - Mgmt	3,000	6,000	3,000
Administration & Management	60,000	60,000	0
Advertising Marketing and Promo	45,000	11,988	33,012
Courier Services	400	46	355
Credit Card Fees	1,515	0	1,515
Diesel Gas & Propane	2,000	3,718	1,718
Electricity	4,000	0	4,000
Insurance	35,000	24,455	10,545
Internet	420	0	420
Land Lease (Crown)	1,148	0	1,148
Legal Fees	7,500	0	7,500
Maintenance & Repairs	45,000	11,743	33,257
Permits & Licenses	16,000	10,317	5,683
Property Taxes	0	0	0
Office Rent	2,000	0	2,000
Office and Sundry Supplies	800	8,029	7,229
Snow Removal	3,600	2,861	739
Supplies (ropes etc)	2,000	1,401	599
Sales Tax (Provincial Only)	3,787	0	3,787
Telephone - Cell	600	0	600
Telephone - Land Lines	500	616	116
Training & Education	1,000	0	1,000
Travel & Accommodations	2,800	3,839	1,039
Utilities - Sewer	3,600	0	3,600
Utilities - Water	2,200	0	2,200
Wages	<u>52,519</u>	<u>35,761</u>	<u>16,758</u>
Total Expense	<u>296,389</u>	<u>181,348</u>	<u>115,042</u>
Net Income	<u>-228,909</u>	<u>-139,764</u>	<u>89,145</u>
	<u>-228,909</u>	<u>-139,764</u>	<u>89,145</u>

12:50 AM
09/02/15
Accrual Basis

Baldy Operating Corporation
Profit & Loss
December 2014 through January 2015

Comments

Income

GeneLate Start (Jan 10)
Longer delays than anticipated
for Lift Permit, Food Permit,

Cost of Liquor License & Payment

FoodProcessing.
Retai

Gros:

Expens

AccoTotal budget is in April
Acco
AccoAll 4 months were prepaid
Adml
Adve
Cour
Credi
DiesPropane Tank Filled without Order
Elect
Insur
Inter
Land
Lega
Main
Perm
Prop
Offic
OfficUnexpected phone system
Snovand computer parts required
Supp
Sales
Telep
TelepInstall costs higher than planned
Train
TravdMore trips than anticipated
Utiliti
Utiliti
Wage
To

Loss lower than forecast due to
lower than forecast costs

2:53 AM
09/02/15
Accrual Basis


Baldy Operating Corporation
Balance Sheet
As of 9 February 2015

	<u>9 Feb 15</u>
ASSETS	
Current Assets	
Chequing/Savings	
Bank - TD Canada Trust	12,704.16
Bank - Till Float	1,450.00
Credit Cards to be Processed	32,371.57
Total Chequing/Savings	<u>46,525.73</u>
Total Current Assets	<u>46,525.73</u>
TOTAL ASSETS	<u><u>46,525.73</u></u>
LIABILITIES & EQUITY	
Liabilities	
Current Liabilities	
Accounts Payable	
Accounts Payable	28,195.83
Total Accounts Payable	<u>28,195.83</u>
Other Current Liabilities	
Receiver Loan	203,000.00
Payroll Liabilities	7,716.38
GST/HST Payable	-3,654.95
Total Other Current Liabilities	<u>207,061.43</u>
Total Current Liabilities	<u>235,257.26</u>
Total Liabilities	235,257.26
Equity	
Net Income	-188,731.53
Total Equity	<u>-188,731.53</u>
TOTAL LIABILITIES & EQUITY	<u><u>46,525.73</u></u>

This is Exhibit "B" referred to in the affidavit of GARY POWROZNIK 5

Dennis Fitzpatrick

From: Dennis Fitzpatrick
Sent: October-07-15 1:40 PM
To: 'fred.johnston@mercidian.com'
Cc: 'Griffin, Scott A.'; 'Russell Benson'; Gary Powroznik; 'Chris Sinclair'
Subject: RE: [Released by User action] RE: Mt Baldy re Meeting Last Week

sworn before me this 2 day of DECEMBER A.D. 2015


Fred;
In replying to you, I am acting on Scott Griffin's consent to the meeting Russ' advice to Bonita that we can speak to you directly. If your lawyers object they will let me know.

It seems the Receiver and Baldy did not issue a Press Release on the first event until it was complete, signed and the Court Order obtained. I see no reason to deviate from that practice. There are press releases from a few weeks ago from both sides and without acknowledging the propriety of these I suggest we let them season till there is a signed deal. Everyone who is showing an interest will have read them and I think the several day delay will have minimal impact on potential season ticket buyers. Even so we cannot publish until there is an unconditional deal.

As was clear at the meeting we don't think we have a deal until there is proof of the funds necessary to close. We expect you are working on that but from the receivers perspective it is a condition precedent which must be satisfied in full before there is an APA. As the Receiver is a Court Officer we must have all material conditions satisfied before we represent that there is a deal to the court or to the public.

Regards
Dennis

From: Fred Johnston [mailto:fred.johnston@mercidian.com]
Sent: October-07-15 7:32 AM
To: 'Bonita Lewis-Hand'; 'Russell Benson'
Cc: Dennis Fitzpatrick; 'Gillian Piggott'; 'Griffin, Scott A.'; 'Scott Stark'
Subject: [Released by User action] RE: Mt Baldy re Meeting Last Week

Bonita & Dennis,

We would like to issue the attached Information Release this afternoon in an effort to capture at least some of the seasons pass business for this season before it is too late. As a courtesy we are sending it to you for your input before we send it out to the media.

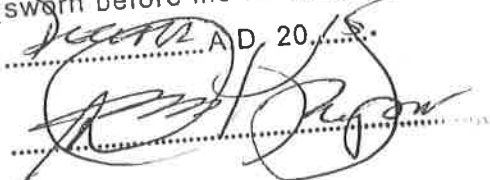
Regards,
Fred

From: Bonita Lewis-Hand [mailto:blewishand@lawsonlundell.com]
Sent: October 5, 2015 6:20 PM
To: Russell Benson <RBenson@terralawcorp.ca>
Cc: dfitzpatrick@bfrst.ca; Gillian Piggott <gpiggott@terralawcorp.ca>; Fred Johnston <fred.johnston@mercidian.com>; Griffin, Scott A. <SGRIFFIN@mccarthy.ca>
Subject: RE: Mt Baldy re Meeting Last Week

Perfect. Thanks for letting us know.
Bonita

Dennis Fitzpatrick

From: Dennis Fitzpatrick
Sent: October-26-15 10:59 AM
To: 'Bonita Lewis-Hand'; rbenson@terralawcorp.ca
Cc: Scott Stark; Chris Sinclair
Subject: RE: Issues of Concern

This is Exhibit "C" referred to in the affidavit of CAROL COIROENIC sworn before me this 2 day of DECEMBER A.D. 2015.


To All

The APA is with the receiver for comment. We are particularly concerned about deposits and adjustments. We expect that there is only one deposit and we have dealt with it in the price so it will not be adjusted. Gillian has advised that she is unaware of any others so we see no need for an adjustment for deposits. Fred will confirm that he knows of no other deposits.

We can get into court quickly as no one seems to have filed and appearance. Bonita can you confirm that.

It is beneficial if Fred will confirm that \$750,000 is in trust as discussed so that item will not create any delay.

The receiver was aware of the Break in. Matt indicated the loss may have been \$1-2k. We don't think this will alter the assets of the estate in any material way. Matt Koenig reported it to the Receiver during the attempted cancellation of the insurance policy so coverage was uncertain at the time. Matt confirmed that nothing of significance was taken. Matt advised that he thought no additional security measures were required at the time. He was asked if he thought we should change locks and he said no. Matt was informally reporting to the Receiver but he refused to take any definitive action for either the Receiver until his outstanding wages, as well as the outstanding accounts of other local suppliers relating to the 2015 ski season, were paid.

Please advise who said that the power is off? When Baldy Capital left the site there was an outstanding electrical bill. The Receiver has been making have been making regular \$2,000/mo payments to Fortis on account of the outstanding account incurred by Baldy Operating during the 2015 ski season. Fortis advised the Receiver that the account is now current with the last payment last week. It is a necessary adjustment under the APA. The receiver has sent an inquiry to Fortis Collections dept seeking info on Fred's inquiry this morning.

As set out above, much of our task in writing the APA is to identify adjustments. The taxes will be adjusted as discussed. Please have Fred make list of what he refers to as the bills for ... lease payments to the province and utilities both prior to and since the receiver was appointed which have not been paid or responded to. The Receiver is of the view that the lease payments for the 2015 season were not paid so it would be helpful if Fred could provide proof of payment of these. Was there accounting to the province for lift revenues for 2015? We will need to separate the pre receivership amounts from the 2015 season amounts. Notionally pre receivership amounts are a claim in the receivership.

I have a conference call at 11:00 but the rest of the day is clear.

-----Original Message-----

From: Bonita Lewis-Hand [mailto:blewishand@lawsonlundell.com]
Sent: October-25-15 3:21 PM
To: rbenson@terralawcorp.ca
Cc: Dennis Fitzpatrick; Scott Stark

Subject: Fwd: Issues of Concern

Rus

I am writing in response to Fred's email below. There is sufficient time to seek court approval and have the closing on Nov. 25, assuming your client has been moving forward with getting the Provincial consents. I expect the receiver's counsel will provide you with our comments on the revised APA shortly. I also expect that we'll be able to finalize the APA, and the temporary licence to occupy agreement this week so that your client can retain Mueller to begin the maintenance on the chair lifts next week.

Mr. Fitzpatrick will need to respond to the other points raised by your client regarding the break in, utilities and unpaid bills.

As your client indicated that we should return to more formal communications, I have not copied him with this email.

Regards
Bonita
Sent from my iPad

Begin forwarded message:

From: Fred Johnston <fred.johnston@skibaldy.com<mailto:fred.johnston@skibaldy.com>>
Date: October 25, 2015 at 1:36:20 PM PDT
To: Russell Benson <rbenson@terralawcorp.ca<mailto:rbenson@terralawcorp.ca>>
Cc: 'Bonita Lewis-Hand' <blewishand@lawsonlundell.com<mailto:blewishand@lawsonlundell.com>>, 'Fitzpatrick Dennis' <DFitzpatrick@bfrst.ca<mailto:DFitzpatrick@bfrst.ca>>
Subject: Issues of Concern
Reply-To: <fred.johnston@skibaldy.com<mailto:fred.johnston@skibaldy.com>>

Hi Russ,

Because the communication got a little bit informal while you were away (which by the way was very cordial and productive) I am copying Bonita and Dennis with this note. However, I believe it would probably be more appropriate protocol once again, from this point forward, to communicate through you rather than directly with Bonita or Dennis and I will make a point of doing that hereafter.

In any event I want to bring to light some matters of concern which have arisen over the past two weeks as I have been in Osoyoos attempting to organize for opening the ski hill this season, based on the proposed completion dates for execution of an APA and closing date with court approval derived from our October 1st meeting in Seattle.

Firstly, as it is now October 25th, we are significantly behind on our hoped for completion date for execution of the APA. Gauging where we are at to this point, a reasonable guestimate would be that it may take most of or all of this next week to complete this milestone. That being the case there are two critical path items which Scott Stark and the Receiver need to be aware of:

1. We have not yet been able to allow Mueller Lifts to begin the necessary maintenance on the ski lifts, as consent for access to the facilities prior to closing is included in the APA which is not yet executed.

2. It now appears unlikely, from what I know, that it will be possible to obtain court approval and discharge of the Receiver by the November 25th closing date anticipated and the December 1st deadline which we were informed last week by Gougeon, is a condition of renewal of the insurance coverage for Mt. Baldy. 8

With respect to the first point, we believe that we can still achieve the maintenance necessary if started no later than Monday November 2nd. Beyond that date, certification of the lifts in time to open for the Christmas break is very tenuous (and the Christmas break represents close to half the potential season income). With respect to the second point, if we cannot have court approval and discharge of the Receiver prior to December 1st, this will be a deal killer. We obviously cannot operate the ski resort without insurance and we would like to have Bonita's and Dennis's perspective on what, if anything, can be done to try to make this deadline.

In addition to these two points, while in Osoyoos this past 2 weeks I have been informed of three other issues of concern:

1. I am advised by residents on the mountain that there was a break-in and theft of some tools, an automotive battery and a truck winch which occurred at the shop on the mountain recently. Is the Receiver aware of this? What security was in place to protect the assets since April 30th? Was this an insured event and/or how are these items going to be replaced? (these items are required for the maintenance of the lifts)

2. I am advised by residents on the mountain that electricity has been turned off at one or more locations at the ski resort. Is the Receiver aware of this? What has been or can be done to ensure that power bills are paid and that the power is turned back on so that it will be available when maintenance of the lifts is ready to begin next week (ie. when the APA is executed)?

3. I am advised that there are numerous bills for property taxes, lease payments to the province and utilities both prior to and since the receiver was appointed which have not been paid or responded to. Will all of these be addressed so that they are either paid by the receiver or struck by the court prior to or upon closing?

Please let me know what can be done to mitigate these potential problems.

Best regards,
Fred

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Dennis Fitzpatrick

From: Dennis Fitzpatrick
Sent: October-30-15 2:22 PM
To: 'Russell Benson'
Subject: RE: Mt. Baldy

This is Exhibit "D" referred to in the
affidavit of CARY PROZNIK
sworn before me this 2 day of
DECEMBER A.D. 2015

The source for the payment will be \$850k paid by your client. Is that money in place now?

From: Russell Benson [<mailto:RBenson@terralawcorp.ca>]
Sent: October-30-15 10:31 AM
To: Dennis Fitzpatrick
Cc: Bonita Lewis-Hand; Fred Johnson (fred.johnston@mercidian.com); Gillian Piggott
Subject: Mt. Baldy

Dennis,

Following up on your comment in our call earlier this week about your proposed changes to the APA in regard to the distribution of funds by the Receiver, we wanted to make sure that those changes are not intended to affect the payout of the holders of the Receiver's Certificates. Can you confirm that they will be fully paid out on closing and let us know if there is anything that might erode the amount ultimately paid to them?

Regards,

Russ

Russell Benson*

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Canadian Lawyer Magazine, 2014

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Vancouver, British Columbia, Canada V6B 4N7
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Email: rbenson@terralawcorp.ca
T: 604.628.2800 F: 604.628.8999

*Law Corporation

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From: Dennis Fitzpatrick
Sent: October-31-15 3:49 PM
To: 'Russell Benson'
Cc: 'Bonita Lewis-Hand'
Subject: RE: Purchase and Sale Agreement - Mt Baldy (October 2015) (dkf 4)

This is Exhibit *E* referred to in the
affidavit of GARY BUROZNIK
sworn before me this 2 day of
December A.D. 2015.
[Signature]

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Russ

We have been consistent in our inquiry as to whether your client has the necessary \$750,000 or a commitment to provide it. We had never received any indication that the money was available. In our last conference call it was made clear that although your client was working on it he had neither the money nor any commitment to lend it. You know that the availability of that money is a precondition to execution of any agreement. As of yesterday, we have confirmation that there is no proof of the availability of those funds. So it is quite wrong to say it is the delay in getting the comments on the asset purchase agreement has pushed the time lines for completing pre-opening preparations. Our client was clear that there needed to be proof of capacity to purchase before there would be a licence of occupation in light of the way the last season ended.

Further we are aware that no material steps have been taken to get the provincial consents which are a precondition to the sale.

We have spent a lot of time on mechanics of closing; adjustments and priorities and administrative requirements for closing only to hear that your client is not interested in a purchase but may be able to operate.

That said our client is anxious to complete the deal. The Receiver is prepared to have a ten day delay while your client sources the money. It will agree to a further ten day extension of the proposed closing. The APA, as you say, is in a developed form and we will make ourselves available on short notice for further revisions. It could be signed next week. And, we will work toward getting insurance in place.

If your client is still unable to purchase after ten days then the receiver will look favourably on an operating plan on your clients account as we understand Mr Stark would be receptive to that. It would of course require that there is no risk to the estate as far as contractual liabilities, insurance and priorities (to name a few issues) are concerned.

Regards

Dennis

From: Russell Benson [<mailto:RBenson@terralawcorp.ca>]
Sent: October-30-15 5:25 PM
To: Bonita Lewis-Hand
Cc: Gillian Piggott; Dennis Fitzpatrick; Fred Johnson (fred.johnston@mercidian.com)
Subject: RE: Purchase and Sale Agreement - Mt Baldy (October 2015) (dkf 4)

Bonita,

The delay in receiving comments on the APA (which only just arrived, 17 days after the draft was provided even though largely the same draft document was provided on at least two prior occasions in the previous six months) and a draft license agreement (which has not yet arrived) has pushed the timeline for completing pre-opening preparations past the critical stage and has made the prospect of completing the transaction by the end of November doubtful if not impossible. As a result of this and other reasons discussed with you in our telephone conversations earlier today, Baldy Capital Corporation is not prepared to proceed with the purchase of the Mt. Baldy assets at this time.

I am also now instructed that it is not prepared to operate the ski hill this winter for this Receiver on any basis.

If there is a way for the Receiver to be discharged and for arrangements to be put into place in very short order for my client to operate the ski hill this season for Starkco or the owner directly, they are prepared to discuss that.

Regards,

Russell Benson*

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Canadian Lawyer Magazine, 2014

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*Law Corporation

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From: Bonita Lewis-Hand [<mailto:blewishand@lawsonlundell.com>]

Sent: Friday, October 30, 2015 5:22 PM

To: Dennis Fitzpatrick

Cc: Gary Powroznik (gpowroznik@g-forcegroup.ca); Chris Sinclair; Russell Benson; Gillian Piggott; Scott Stark (starksm64@gmail.com)

Subject: RE: Purchase and Sale Agreement - Mt Baldy (October 2015) (dkf 4)

Dennis

Thanks but I'm not going to review your changes in light of two calls from Rus this afternoon. During the first call, I was advised by Rus that the deal is dead; Fred is not prepared to proceed with the agreement we discussed on October 1. Therefore, it makes no sense to review your changes.

Rus advised that Fred would like our client to agree to a new operating agreement for the upcoming ski season. Initially, Fred contemplated that any such operations would be on my client's account. However, I indicated that would not be acceptable. Rus then obtained further instructions and advised that Baldy is prepared to operate the ski hill on its own account. There would be a tight timeline for completing any such agreement as Fred is insisting that it be in place by the close of business next Wednesday. I think that timeline is doable provided each of us obtains instructions quickly. Rus and I also discussed the concept of a right of first refusal being included in the operating agreement for the benefit of Baldy in case the Receiver obtains an offer from a third party during the ski season. Baldy would be expected to provide access to the site and business operations during the ski season so that it can be shown to prospective buyers, and Baldy would be expected to provide monthly operational/financial reports to the Receiver during the ski season. I also indicated that any new operating agreement would need to be conditional on Baldy agreeing to pay the \$65,000 owing to various suppliers with respect to last year's operations, and a mutual release being entered into between the various parties (i.e. Baldy Operating Co., Baldy Capital Corp, the Receiver and our client). Rus agreed to seek instructions on those two conditions.

I will be speaking with my client shortly about today's developments. I will let you (and Rus) know my client's position on today's developments shortly. Meanwhile, since any new operating agreement will need to be between the Receiver and Baldy please advise as to the Receiver's position on this matter.

Thanks

12

Bonita



BONITA LEWIS-HAND* | Partner
D 604.631.9157 | F 604.694.2959 | E blewishand@lawsonlundell.com
LAWSON LUNDELL LLP 1600 - 925 West Georgia Street, Vancouver, BC V6C 3L2
Vancouver | Calgary | Yellowknife
*Law Corporation

From: Dennis Fitzpatrick [<mailto:DFitzpatrick@bfrst.ca>]

Sent: Friday, October 30, 2015 4:47 PM

To: Russell Benson; Bonita Lewis-Hand (3157) - 17Flr; Reilly Pollard (3234) - 17Flr; Gillian Piggott

Cc: Gary Powroznik (gpowroznik@g-forcegroup.ca); Chris Sinclair

Subject: Purchase and Sale Agreement - Mt Baldy (October 2015) (dkf 4)

To All:

We enclose the next draft of the APA including some notes to draft and further receivers comments. We are anticipating comments from Lawson Lundell and further comments from the Receiver but we invite all of your comments on the draft and in particular the Notes to draft. We delivered the vesting order this morning and we anticipate being able to deliver the Licence of Occupation shortly.

Regards

Dennis

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