

This is the 1st affidavit of Christopher Sinclair
made on November 27, 2015

COURT NO. H-140638
ESTATE NO. 11-253839
VANCOUVER REGISTRY

**IN THE SUPREME COURT OF BRITISH COLUMBIA
IN BANKRUPTCY AND INSOLVENCY**

**IN THE MATTER OF THE RECEIVERSHIP OF
MOUNT BALDY SKI CORPORATION AND MOUNT BALDY REAL ESTATE, ULC**

AFFIDAVIT

I, **CHRISTOPHER SINCLAIR**, Chartered Accountant and Chartered Insolvency and Restructuring Professional, of #780-333 Seymour Street, Vancouver, British Columbia, SWEAR (OR AFFIRM) THAT:

1) I am a Senior Manager with G. Powroznik Group Inc. of G-Force Group, the Receiver and Manager (“Receiver”) for Mount Baldy and Mount Baldy Real Estate, ULC (collectively, “Mount Baldy”) and the Applicant herein and as such I have personal knowledge of the facts and matters deposed to in this affidavit, except where stated to be made on information and belief, in which case I verily believe those facts and matters to be true.

INSURANCE AND OPERATIONS

2) The Receiver is currently an Additional Named Insured on the insurance policies (collectively, “Baldy Insurance”) of Baldy Capital Corporation and Baldy Operating Corporation (collectively, “Baldy Operating”) which was placed by Baldy Operating prior to its operation of the 2014-15 ski season at Mount Baldy Ski Resort (“Resort”). The Baldy Insurance includes separate policies for property, crime, commercial general liability, directors and officers liability, boiler and machinery, and accidental death and dismemberment. The Baldy Insurance was placed through Gougeon Insurance Brokers (“Gougeon”), an experienced Canadian broker with a dedicated ski insurance program.

- 3) On August 25, 2015, Gougeon notified Baldy Operating by registered and regular mail (the "Gougeon Letter"), with copy to the Receiver and to Stark BC Venture LLC ("Stark"), that the Baldy Insurance would not be renewed by the insurers effective 12:01am on Tuesday, December 1, 2015. A copy of the Gougeon Letter is attached hereto as **Exhibit "A"**.
- 4) The Receiver has made additional attempts to discuss with Gougeon whether the insurers' position of non-renewal of the Baldy Insurance could be reversed or somehow altered. Gougeon confirmed verbally to the Receiver as recently as Friday, November 13 that the position of non-renewal would not be changed.
- 5) During the period which is approximately one month prior to the date of this affidavit, the Receiver has attempted to find an alternate source of insurance for Mount Baldy and its assets. The Receiver has consulted with Integro Group ("Integro"), an international insurance brokerage with locations in Canada, the United States of America ("USA"), Bermuda and the United Kingdom, in this regard. The Receiver has also consulted with Shaw Sabey, a Vancouver-based insurance brokerage, with respect to attempting to source insurance policies for Mount Baldy's assets.
- 6) Integro, on behalf of the Receiver, has been attempting to obtain an insurance quotation for the Mount Baldy assets from MountainGuard ("MountainGuard"), a USA-based insurance broker, who, like Gougeon, has a dedicated ski insurance program in North America. Integro has advised the Receiver that it believes MountainGuard is the best available comprehensive solution in terms of insurance for the Mount Baldy assets.
- 7) Integro has been working with MountainGuard to help it understand the assets and risks of underwriting Mount Baldy insurance. Although it has made significant progress, especially in the last week, Integro has identified the main areas of MountainGuard's concerns to the Receiver which include uncertainty around the status of the assets and ski operation, the existence of the receivership itself, and uncertainty surrounding a future purchaser for Mount Baldy and uncertainty surrounding the Receiver's court application scheduled for November 30, 2015. As of the date of this affidavit, Integro advises the Receiver that MountainGuard has not yet provided a cost quotation for Mount Baldy insurance because of the uncertainties summarized above.

- 8) As of the date of this affidavit, the Receiver does not have a binding commitment from MountainGuard, or any other insurer(s), to underwrite at least the Mount Baldy property liability and commercial general liability which in the Receiver's view are the two main areas of coverage required.

- 9) I am advised by Mr. Tim Jaggs of Integro, and verily believe, that the most likely party to underwrite comprehensive insurance coverage for the Mount Baldy assets is MountainGuard. However, I am advised by Integro that MountainGuard sees a high degree of current uncertainty for Mount Baldy. Integro advises that MountainGuard is very unlikely to underwrite prior to 12:01am on Tuesday, December 1, 2015 unless the Receiver's Court application on Monday, November 30, 2015 proceeds and MountainGuard has certainty that one of two outcomes from that application will occur:
 - i) The Resort will not operate this year and the Receiver will mothball the assets for the winter, in which case MountainGuard will not provide insurance and the Receiver will be forced to find piecemeal insurance coverage for the assets which will likely be far more expensive than a comprehensive MountainGuard insurance package; or
 - ii) The plan for the new Prospective Purchaser, as defined in the Receiver's First Report dated November 25, 2015, will move forward which will include the Prospective Purchaser performing pre-season maintenance and ultimately aiming to open the Resort for the winter, in which case MountainGuard has the assurance that there is an operational plan moving forward from an experienced operator that will limit its risk in underwriting the insurance.

- 10) Attached hereto as **Exhibit "B"** is a copy of an e-mail sent by Mr. Tim Jaggs of Integro to the Receiver on November 27, 2015 which includes his advice with respect to this matter.

- 11) The Receiver must obtain insurance coverage prior to 12:01am on December 1, 2015, or the Mount Baldy assets in its custody pursuant to the receivership order will be without insurance coverage, leaving the Receiver and the primary secured creditor, Stark, directly at risk.

- 12) The receivership order was made on December 19, 2014 and an Operating Agreement was immediately thereafter entered into by the Receiver and Baldy Operating. It took Baldy Operating from that date until approximately January 10, 2015 to complete its preparation of

the Resort for the start of operations. Furthermore, additional pre-season maintenance and preparation work had been commenced prior to the receivership. Based on efforts made last year, which included my involvement, it is my opinion that each day that the Prospective Purchaser is delayed in starting its pre-season maintenance activities for this ski season will prejudice and delay the ability of the Resort to be open for the holiday season. Furthermore, based on my recent communications with various members of the local South Okanagan community, I verily believe the residents of the community are very anxious to see the Resort re-opened in time to operate a viable 2015-16 ski season and would support the Resort once it re-opens. It is my understanding that, generally, revenues from skier visits during the holiday season constitute a very significant portion of the annual revenues generated by a ski resort.

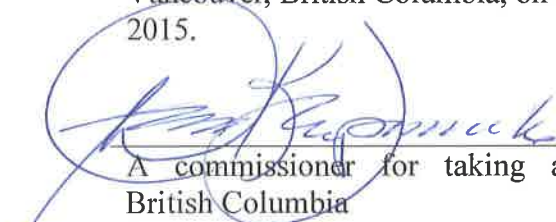
MEDIA RELEASES

- 13) Attached hereto as **Exhibit "C"** is a copy of a media release posted by Baldy Operating to the www.skibaldy.com website on November 26, 2015.
- 14) Attached hereto as **Exhibit "D"** is a copy of the Receiver's press release dated November 27, 2015. The Receiver's press release was distributed to over thirty-five media outlets primarily in the Okanagan and across British Columbia generally.

DEFAULT

- 15) Attached hereto as **Exhibit "E"** is a copy of a letter dated May 15, 2015 sent from the Receiver's counsel, BFRST LLP, to McCarthy Tetrault LLP, then-counsel for Baldy Operating.

SWORN (OR AFFIRMED) BEFORE ME at)
Vancouver, British Columbia, on November 27,)
2015.)



A commissioner for taking affidavits for)
British Columbia)



CHRISTOPHER SINCLAIR

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



Head Office
120 Larch Street
Sudbury, Ontario
P3E 1C2
Tel: 1 705 673 2000
1 800 461 1106
Fax: 1 705 675 7461
www.gougeoninsurance.com

Western Office
#203, 301-14 Street NW
Calgary, Alberta
T2N 2A1
Tel: 1 800 461 1106
Fax: 1 587 316 7495

REGISTERED AND REGULAR MAIL

August 25, 2015

Baldy Capital Corporation
a/o Baldy Operating Corporation
Box 1499
Oliver, British Columbia V0H 1T0

This is Exhibit "A" referred to in the affidavit of CHRIS SINCLAIR sworn before me this 27 day of

NOVEMBER A.D. 2015


RECEIVED
AUG 31 2015

Dear Fred:

**RE: Baldy Capital Corporation a/o Baldy Operating Corporation
Insurance policies expiring December 1, 2015**

- Property Insurance Policy #81064199-293 (Aviva Insurance Company of Canada, Ecclesiastical Insurance Office, plc, Intact Insurance Company and Northbridge General Insurance Corporation)
- Crime Insurance Policy #81220107 (Canadian Hospitality Specialists Association and AVIVA Insurance Company of Canada)
- Accidental Death and Dismemberment – Volunteers Insurance Policy #9906-79-74 (Chubb Insurance Company of Canada)
- Directors and Officers Liability Insurance Policy #NP-443583 (Encon Group Inc.)
- Boiler & Machinery Insurance Policy #97502175 (Boiler Inspection and Insurance Company of Canada)
- Commercial General Liability Policy #C1800086 (Lloyd's Underwriters)

Regretfully we have been advised by the above noted Insurers that they are not prepared to offer renewal terms and therefore, all coverages provided under the aforementioned policies will **CEASE on December 1, 2015 at 12:01 am Standard Time** at the location of the properties insured by these policies. After this date you must make alternative arrangements for your insurance requirements.

Yours truly,



Jody Elliott, CIP, CAIB, CRM
Account Manager / Risk Manager
Gougeon Insurance Brokers

Cc: Stark BC Venture LLC
G. Powroznik Group Inc.

Dennis Fitzpatrick

From: Jaggs, Tim (Client Service, Vancouver) [Tim.Jaggs@integrogrou.com]
Sent: November-27-15 6:57 PM
To: Chris Sinclair
Cc: Gary Powroznik
Subject: Mount Baldy

This is Exhibit ^v**B** referred to in the affidavit of CHRIS SINCLAIR sworn before me this 27 day of NOVEMBER A.D. 2015

Chris,

As discussed, MountainGuard are who we would strongly recommend to insure Mount Baldy as an operating ski hill; they have been successfully insuring Canada's ski hills for over 50 years. The only realistic alternative was Gougeon Insurance, who I understand have repeatedly said they will not insure Mount Baldy after 30th November.

As we have also discussed however, MountainGuard is concerned that there is still a great deal too much uncertainty around the current prospects for Mount Baldy. For this reason, with the season's opening so close, MountainGuard will not offer coverage on 1st December unless your application on Monday proceeds. This is because MountainGuard need to see that the plan for the new Prospective Purchaser, as defined in the Receiver's First Report dated November 25, 2015, will move forward. This in turn will mean that MountainGuard can be confident that the Prospective Purchaser will perform the necessary pre-season maintenance and ultimately, because the operational plan moving forward will then be undertaken by an experienced operator, the season will be managed in such a way as to limit MountainGuard's risk in underwriting the insurance.

If the application is delayed, MountainGuard are unlikely to have any interest in insuring Mount Baldy. Partly, this will be because the season's opening will, after the delay, be much closer with potentially too little time to get ready for the season. In addition, insurers generally do not like to abut gaps in coverage because of the potential for disputes about what happened or was 'known' during the gap. But delaying bringing in MountainGuard is a non-starter anyway because, if we wait to introduce MountainGuard once the delay is resolved, there will have been a gap in coverage because the current insurers have declined to either extend or renew coverage.

If the delay means Mount Baldy cannot operate this year, we will find another insurer to provide coverage that will assume no ski related operations of any kind. This coverage will be available but putting it in place to prevent a gap in insurance will ensure MountainGuard won't come back to the table - because the to and fro will convince them that they were right about the uncertainty facing Mount Baldy and they will avoid offering any coverage accordingly. This would leave Mount Baldy either dealing with an insurer unable to cover ski hill operations at all or dealing with an insurer with no experience of insuring ski hills; neither is an attractive scenario, explaining why we recommend MountainGuard in the first place.

I hope this provides clarity of the situation as I see it?

Please let me know if you need anything more.

Tim.

Tim Jaggs
Senior Vice President



777 Hornby Street, Suite 1460
Vancouver, BC V6Z 1S4
Tel: +1 (250) 818-9323
Email: Tim.Jaggs@integrogroup.com

3

*** Coverage cannot be altered or bound via E-mail, Fax or Voicemail without confirmation. ***

This e-mail, including all attachments, may contain information that is protected by law as privileged and/or confidential information. The information is intended only for use by the addressee(s) named herein. If you are not the intended recipient, you are hereby notified that any use, dissemination, copying or retention of this e-mail or the information contained herein is strictly prohibited. If you have received this e-mail in error, please immediately notify the sender by telephone or reply e-mail, and permanently delete this e-mail from your computer system along with any copy or printout thereof. Privacy is very important to Integro (Canada) Ltd..

*** Veuillez noter que toutes instructions de couverture ou de modifications d'assurance reçues par boîte vocale, par télécopieur ou par courriel ne seront pas acceptées sans confirmation. ***

Ce courriel, et toute pièce qui lui est jointe, peut contenir de l'information qui est protégée par la loi comme étant privilégiée et/ou confidentielle. L'information est destinée seulement à la personne à qui est adressé ce courriel. Si vous n'êtes pas le destinataire de ce courriel, vous êtes par les présentes avisé que tout usage, distribution, copie ou conservation de ce courriel, ou de l'information qu'il contient est strictement interdit. Si vous avez reçu ce courriel par mégarde, veuillez svp aviser immédiatement l'émetteur par téléphone ou répondre à ce courriel, et l'effacer de façon permanente de votre système informatique avec toute copie imprimée. Le respect des renseignements personnels est très important pour Integro (Canada) Ltd.

4

This is Exhibit ^C referred to in the affidavit of CHRIS SINCLAIR sworn before me this 27 day of November, A.D. 2015.

[Handwritten signature]

[NEWS](#)

[LIFT TICKET PRICING](#)

[CONTACT US](#)



News

2015/Nov/26

We regret to announce that we have reached the point where the window of opportunity has now closed in order for us to be able to complete the acquisition of Mt. Baldy Ski area and perform the lift maintenance and certification necessary to open the ski hill for this season.

We are VERY disappointed that we are unable to open the hill with the programs and improvements that we had planned for this season but we intend to stay the course with our plans and commitments for next year.

Although, regrettably, we have no certainty as to the outcome on the horizon for our acquisition of the ski

area, we will be continuing to work on the plans and initiatives which will be necessary in order to open the resort successfully next year, if at all possible.

We will be unable to comment further in much detail going forward, as matters are now before the court.

For further information please contact:

Baldy Capital Corporation

fred.johnston@skibaldy.com

(250) 498-4086

6

Exhibit 1 referred to in the
it of CHRIS SINCLAIR
before me this 27 day of
November A.D. 2015

[Handwritten signature]

For Immediate Release

Contact:
Gary Powroznik
778-370-0003
gpowroznik@g-forcegroup.ca

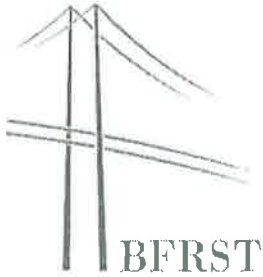
Mount Baldy Ski Resort – New Offer Received

Vancouver, B.C., November 27, 2015 - G. Powroznik Group Inc., of G-Force Group, was appointed Receiver-Manager of Mount Baldy Ski Resort Corporation and related companies ("Receiver") by the Supreme Court of British Columbia on December 19, 2014. The Receiver's primary objective was to find a buyer who would be able to operate the resort for the 2014/15 season and acquire the assets. Since a potential purchaser and operator had already been found, the Receiver promptly entered into an operating agreement with the prospect to operate the ski resort for the 2014/15 season. Unfortunately this initial prospect has been unable to follow up with an acceptable offer to acquire the assets or provide for an acceptable plan to operate the resort for this season.

However, the Receiver has pursued several other interested parties in an effort to attract a buyer/operator to acquire the Mount Baldy Ski Resort in time for the 2015/2016 season. The Receiver has recently received an offer from another party. Both parties are actively making a great deal of effort to complete a deal as soon as possible.

Although it is late in the season to reopen the ski resort, one of the benefits this prospective party sees is the significant support demonstrated to the Receiver and in the media from the local communities who support Mount Baldy including skiers, local nearby home owners, businesses, former employees and the OIB.

New enquiries or further information is available from Patricia Foster: Telephone (778) 370-0003, Email pfoster@g-forcegroup.ca



**BURNS
FITZPATRICK
ROGERS
SCHWARTZ &
TURNER LLP**
Barristers and Solicitors

DARRELL E. BURNS
DENNIS K. FITZPATRICK *
SAMUEL D. HYMAN *
OLIVER L. WILSON
SAM DE GROOT
SARA PEDLOW

SUITE 1400
510 BURRARD STREET
VANCOUVER BC V6C 3A8

JOHN E. ROGERS (Retired)
STEPHEN Z. SCHWARTZ *
SCOTT A. TURNER *
NORMAN Q. CHOW *
NEAL KANSY

* Denotes Law Corporation

Tel: 604.685.0121
Fax: 604.685.2104
www.bfrst.ca

Email: dfitzpatrick@bfrst.ca
Direct Line: 604.602.5001

File No. 018498

May 15, 2015

McCarthy Tétrault
Suite 1300, 777 Dunsmuir Street
Vancouver BC V7Y 1K2
Attention: Mr. Scott Griffin

This is Exhibit [✓]E referred to in the
affidavit of CHRIS SINCLAIR

sworn before me this 27 day of

November A.D. 2015.

Dear Mmes. and Messrs.:

Re: Amended Memorandum of Understanding between Stark BC Venture, LLC and Baldy Capital Corporation ("BCC") dated December 18, 2014 (the "MOU")

Operating Agreement between G. Powroznik Group Inc. and Baldy Operating Corporation ("BOC") dated December 19, 2014 (the "Operating Agreement")

We have your letter of May 14, 2015 for response. In our client's view your client has breached the agreements; hence the termination.

We cannot accept your assertion that fundamental problems which would need to be resolved were contrary to the expectations of Baldy Capital Corporation ("BCC") when the following are disclosed and included in the works as set out in Schedule "A" to the Operating Agreement:

- (i) that pre season maintenance had not been done;
- (ii) that damage and safety assessment must be undertaken after a long period of non use;
- (iii) that buildings and structures must be returned to "working order";
- (iv) that food and bar service needed to be repaired;
- (v) that your client was to "arrange for and obtain all necessary licenses and permits to operate the ski resort for any services provided including; food service permit(s) including food safety, liquor license(s) and BC Safety Authority operating/mechanical permits for Ski Lifts";

- (vi) your client was to liaise with the Receiver to ensure sufficient and appropriate insurance coverage under six different headings considering the insurance requirements of the provincial government to commence operations; and
- (vii) your client was to obtain supplier accounts in its own name for telephone, cellular, electricity, fuel, propane and internet.

The provisions set out above are not exhaustive and reflect a clear understanding of what needed to be done to open the operations by BOC as reflected in the budget; and in discussions with Matt Koenig, the previous resort manager who consulted with Fred Johnston in late October 2014. Accordingly, they set out what might reasonably have been expected by your client for a non-operational ski hill in receivership. In fact it was these very deficiencies which permitted your client to walk into an enterprise without investment (except loans on Receiver's certificates in first place ahead of existing secured creditors) with the expectation of taking it over for existing debt and the costs of operation for one season. The startup problems were openly discussed between the receiver, StarkCo and your client.

We are instructed that the original time frames did not pass with our client's approval. Default discussions and correspondence were initiated by the receiver with your client at least as early as January 23, 2015.

As we understand it, your client improved the budget on reduced sales and reduced cost, such that the overall effect was to reduce the loss forecast by your client. Looking back to the application whereby the Receiver took your client's offer to court; paragraphs 12 -14 of the filed marketing report provided by the Receiver, make it clear that the BCC proposal was preferred because BCC would be responsible for operating the ski resort.

Your client generated a cash flow budget, the final version of which was labelled "v31", copy enclosed, which contains the following elements, all of which are based on a sale closing at the end of April 2015:

- (i) a projected net loss before income taxes and depreciation of (\$324,161);
- (ii) that interest and Receiver's costs and remaining pre-receivership realization costs would be paid along the way;
- (iii) after interim loans and advances there would be negative cash flow of (\$196,613);
- (iv) the negative cash flow was to be satisfied by payment of \$720,000 by your client made up: first \$600,000 of cash which would repay the Receiver's certificates leaving \$85,000 to be applied to negative cash flow and a "**Projected Additional Equity Investment Required to Cover Cash Deficit**" of \$120,000 assuming closing in April 2015; and
- (v) on the basis of your client's numbers, there would be a final surplus of \$8,387.

Your client's projections were not realized for the following reasons:

- (vi) first, they did not present an Asset Purchase Agreement by January 30, 2015. The approval process is such that this would have been required for Closing on April 30, 2015. So, the effect is to prolong the receivership by three months with the existing costs associated with that delay; and

- (vii) second, your client did not contribute the **Projected Additional Equity Investment Required to Cover Cash Deficit** of \$120,000 as it was required to do.

It also appears that they did not arrange the required financing for the Receiver to cover either the additional operations costs incurred by your client or the additional receivership costs being mainly receiver's fees and costs, including its legal costs. Instead, your client offered to purchase the assets three months after it had promised to do so without paying the required cash injection of \$120,000 and on the basis that the increased administrative costs of the delay were not its responsibility.

Concurrently, it took the position that the remaining projected Receiver's borrowing of \$100,000 should be allocated to your clients contractual obligations thereby reducing its cost and while leaving the Receiver's fees (which were required to be paid in the projections but increased by the delay) outstanding. The use of the Receiver's certificates for your client's payables would erode the Secured Creditor's position for the benefit of your client's cash flow leaving the Receiver's costs outstanding. As we understand it, your client has payables of approximately \$69,000, consisting of trade payables and payroll liabilities, which it incurred in operations.

But, the overall result is that there is simply not enough cash to close on the basis of your client's numbers. As we understand it, your client has purported to justify its reduced offer on the basis that it is not responsible for the increased Receiver's fees and that it will not inject the **Projected Additional Equity Investment Required to Cover Cash Deficit**. Despite my inquiry of Mr. Benson, he had no suggestion of how to satisfy the cash deficit except to say the secured creditor should absorb it. That was clearly not the transaction as negotiated by your client with the secured creditor or the Receiver. The basis for obtaining the secured creditor's support for your client's purchase of the assets and operation of the 2014/15 ski season was negotiated with the secured creditor which provided its commitment to roll a significantly discounted amount of its debt into BCC upon completion of the purchase. We attach a spreadsheet generated by the Receiver which, at January 7, 2015, allocates the receivership and marketing agent's costs. Mr. Johnston confirms that the calculation is accurate as reflected in his budget

As of the end of April 2015, the Receiver has recalculated the estimated cash required on closing on a sale in July 2015 to be \$679,554, copy enclosed. When one adds the payables, which we are told are outstanding, it is close to the \$720,000 which your client originally projected. Accordingly, the Asset Purchase Agreement tendered by your client does not comply with the negotiated terms for the following reasons, for which your client makes no apology:

- (i) it is more than three months late causing extra cost; and
- (ii) it is \$120,000.00 short of what was agreed.

Based on my discussion with Russell Benson, the omission of the \$120,000 **Projected Additional Equity Investment Required to Cover Cash Deficit** was intentional.

The structure of the Receiver's certificates was chosen for interim financing. It is clear that the operations were to be on your client's account because the Receiver's certificates were to be repaid out of the purchase price which your client was to pay on the closing of the sale. On that date, your client projected a small cash surplus after all expenses were paid.

The notion that time is not of the essence is unlikely on two levels: first, on a practical level as the costs of the Receiver continue, and interest accrues and both were to be paid out of operations; it was intended

for the sale to be binding well before the end of the ski season and to close (as the cash flow indicates) on April 30, 2015. That is consistent with the filed report of the Marketing Agent dated November 3, 2014 which indicates that the Asset Purchase Agreement will be submitted by January 31, 2015. Your client only got its offer out after May 1, 2015 on the prompting of the Receiver. If your client takes the position that time is not of the essence, then it must bear the cost of the delay which it has refused to do.

In addition to the failure to deal with the cash deficiency, your client's Asset Purchase Agreement did not provide the Secured Creditor with a charge on chattels from the operating corporation; did not deal appropriately with deposits; and contains a \$480,000 Break Fee which is unprecedented in my experience.

A historical review reveals the following:

Under the Memorandum of Understanding, BCC agreed to fund the realization costs and the 2014/15 ski season in order get an agreement to undertake the operations and assume the existing debt of the Secured Creditor at a discount of \$4.2 million.

Under the Operating Agreement, BCC committed to acquire the assets for an agreed upon price (\$4.2 million plus the receivership and budgeted operations costs). It agreed to arrange the interim financing for the Receiver to cover the receivership costs until it could complete the purchase and pay out the Receiver's loans and other costs. It was recognized that all the Receiver's borrowings were coming out ahead of StarkCo's security. That is why there was a short time fuse for the completion of the sale. Until the sale is completed, BCC's money is not at risk. It is the Secured Creditor which has suffered a reduction in its collateral in the amount of the Receiver's certificates. Your client has not injected its cash yet. That effectively gave BCC the benefit of the 2014/15 ski season, and the burden only to the extent that it advanced money outside the funding it would receive from the receiver on loans it would receive as a result of BCC's actions. We are instructed that the \$500,000 was to be injected by January 19, 2015 (this was in fact reported in the Marketing Agent's Supplemental Report to the Court dated December 18, 2014). It was not invested on time such that receivership expenses did not get paid. When it was proposed by your clients in April to advance it, Mr. Johnston stated that he would not allocate funds to receiver's costs.

The Operating Agreement in paragraph 9 clearly shows that BOC is responsible for the liabilities and not the Receiver. BCC was to arrange sufficient financing for the Receiver to cover BOC's net operating expenses for the 2014/15 ski season and the ongoing receivership costs until a sale was completed, which would require a further \$120,000 in contributions by your client to complete. Your client would not put money at risk until it completed the purchase in a manner whereby it did not satisfy its obligation to discharge the cash deficit. Also, when BCC defaulted, the Receiver had no cash to cover the accrued and anticipated Receiver fees and expenses, which BCC agreed with StarkCo and the Receiver to pay.

Effectively the Operating Agreement gave BCC the benefit of the assets in exchange for arranging the funding of the costs on the basis that it could acquire the assets for the amount of the receivership costs and the \$4.2 million roll-over of debt owed to StarkCo. Here are items in the Operating Agreement that show that Baldy had the primary risk:

- (i) paragraph 1 –right to use and possess the assets;

- (ii) the Receiver was to pay expenses based upon the Approved Budget which Fred Johnston prepared and showed additional funds required over and above the \$600K in the MOU because the deal had dragged on 2 months beyond original expectations;
- (iii) paragraph 6 – BOC solely responsible for hiring employees;
- (iv) paragraph 8 – BOC required getting permits in its own name that didn't already exist;
- (v) paragraph 9 – many of the expenses had to be incurred in BOC's name...WCB, employee deductions, GST, PST etc.
- (vi) paragraph 10 – insurance had to go in BOC's name; and
- (vii) paragraph 11(h) – BOC to carry out the Works and Services in its name and not the Receiver;

Many terms in the Operating Agreement allowed the Receiver to re-take possession if BOC or BCC defaulted and could not complete.

Any offer is subject to court approval in any event and we will seek instructions as to the offer which should be approved by the court. I think the correspondence which you have delivered can be placed before the court. However, you must be in a position to advise the court if your client puts a further offer forward why its offer should be considered in light of the fact that it does not meet the requirements of the initial agreement with the Secured Creditor or the Receiver.

Your client has placed the Receiver in a position where it had no choice but to terminate, as its expenses were not paid and your client presented an Asset Purchase Agreement which is not capable of acceptance. To mitigate, the Receiver will need to look for purchasers elsewhere.

Yours truly,

BURNS, FITZPATRICK, ROGERS, SCHWARTZ & TURNER LLP

Per:



Dennis K. Fitzpatrick

DKF/lj
Enclosure