

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, VANTAGEONE 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

NOTICE OF APPLICATION

Name of applicant: G Powroznik Group Inc. (the "Receiver")

To: The Respondents and their Solicitors
And To: Baldy Operating Corporation ("BOC"), Baldy Capital Corporation.
("BCC), Meridian Management Corporation ("MCC"), Equity
Development Inc. ("Equity") and Fred Johnston (collectively, the
"Johnson Respondents" are Johnston and BOC, BCC, MCC and Equity)

And On Notice To: Osoyoos Indian Band ("OIB")

TAKE NOTICE that an application will be made by the applicant to the presiding judge or master at the courthouse at 800 Smithe Street, Vancouver, British Columbia on June 27, 2016 at 9:45 a.m. for the orders set out in Part 1 below.

Part 1: ORDERS SOUGHT

1. An order that the lands premises known and described as Parcel Identifiers (a) 027-328-759 Lot 1 District Lot 2708 Similkameen Division Yale District Plan KAP85510; (b) 026-938-081 Lot 13 District Lot 100S Similkameen Division Yale District Plan KAP82817; (c) 026-938-201 Lot 25 District Lot 100S Similkameen Division Yale District Plan KAP82817; and (d) 027-507-106 Block C of District Lot 100S Similkameen

Division Yale District (collectively, the “Lands”), which are the subject matter of these proceedings, together with the inventory ski equipment, fixed equipment located on the Lands used to transport skiers, all mobile equipment used in the operation of the Resort at Baldy Mountain, the goodwill (including the website ‘skibaldy.com’) and undertaking of the ski business (the “Chattels”) and 10 Class “A” Common Shares of Mt. Baldy Waterworks Inc. (the “Shares”) charged by the personal property security held by the Petitioner, be sold and vested by private sale, free and clear of all encumbrances.

2. An order that the sale contemplated by the Asset Purchase Agreement, dated the 11th day of March, 2016 (the “Agreement”) between Mount Baldy Real ULC and Mount Baldy Ski Corporation (the “Vendors”) by their Receiver and 1063205 B.C. Ltd. (the “Purchaser”), a copy of which is attached as Exhibit “A” to the Affidavit #4 of Gary Powroznik, sworn the 15th day of June, 2016, be approved at a sale price of Three Million Four Hundred Thousand Dollars (\$3,400,000.00) in lawful money of Canada plus one serviced lot with an estimated value of \$300,000.
3. An order that the Agreement is commercially reasonable and that the execution of the Agreement by the Receiver be authorized and approved, and the Receiver be authorized and directed to take such additional steps and execute such additional documents as may be necessary or desirable for the completion of the Transaction and for the conveyance to the Purchaser of the Lands, Chattels and Shares.
4. An order that all of the Vendors right, title and interest in and to the Lands, Chattels and Shares described in the Agreement shall vest absolutely in the Purchaser, its successors and assigns, in fee simple, free and clear of and from any and all security interests (whether contractual, statutory, or otherwise), hypothecs, mortgages, trusts or deemed trusts (whether contractual, statutory, or otherwise), liens, executions, levies, charges, or other financial or monetary claims, whether or not they have attached or been perfected, registered or filed and whether secured, unsecured or otherwise (collectively, the “Claims”) including, without limiting the generality of the foregoing: (i) any encumbrances or charges created by the Orders of this Court; and (ii) all charges, security interests or claims evidenced by registrations pursuant to the *Personal Property Security Act* of British Columbia or any other personal property registry system (all of which are collectively referred to as the “Encumbrances”), and, for greater certainty, that all of the Encumbrances affecting or relating to the Lands and Chattels are hereby expunged and discharged as against the Lands and Chattels.
5. An order that upon acceptance for registration by the Kamloops Land Title Office of a certified copy of this Order and a letter from the solicitor for the Petitioner herein releasing that certain Certificate of Pending Litigation registered on the 4th day of June, 2014 in the Kamloops Title Office under Number LB529567 and authorizing the registration of the Order requested herein, the Registrar of Land Titles is directed to enter the Purchaser as registered owner of the Lands, and all buildings, fixtures, existing appliances, commons, ways, profits, privileges, rights, easements and appurtenances hereto and the estate, right, title and interest of the Respondent, Mount Baldy Real Estate,

ULC, incorporation number C840031, free and clear of any interest of the Johnston Respondents, subject nevertheless to the reservations, limitations, provisos and conditions expressed in the original grant thereof from the Crown, if any, forever, free and clear of the following encumbrances:

Charge	Date	Titles Affected
Mortgage LB293389 Brent Alan Baker and Laura Leslie Breuninger Baker	2009-03-25	026-938-081, 026-938-201 027-507-106
Priority Agreement over Mortgage LB293389 CA2066362/3 Stark BC Venture, ULC	2011-06-22	026-938-081, 026-938-201 027-507-106
Judgment CA3032489 VantageOne Credit Union	2013-03-14	027-328-759, 026-938-081 026-938-201, 027-507-106
Mortgage and Assignments of Rents CA3520108/9 B.C. Opportunity Fund LLC	2013-12-20	027-328-759, 026-938-081 026-938-201, 027-507-106
Judgment CA3722298 The Owners, Strata Corporation KAS1840	2014-05-13	027-328-759, 026-938-081 026-938-201, 027-507-106
Certificate of Pending Litigation LB529567 Stark BC Venture, ULC	2014-06-04	027-328-759, 026-938-081 026-938-201, 027-507-106
Judgment Renewal (CA3722298) CA5155230 The Owners, Strata Corporation KAS1840	2016-05-02	027-328-759, 026-938-081 026-938-201, 027-507-106

6. An order granting leave to the Receiver to assign Mount Baldy Ski Corporation into Bankruptcy.
7. An order that the net proceeds (subject to all necessary adjustments including, without limitation, deposits held for leases and licences and other assigned rights) of the said sale shall be paid into the trust account of Burns Fitzpatrick Rogers Schwartz & Turner LLP, solicitors for the Receiver, or any such other law firm as they may direct, to be distributed without further order of this Honourable Court, as follows
 - (a) first pay any outstanding obligations of the Debtors which are not Assumed Obligations but which following a bankruptcy have priority over the Petitioner's Security including, without limitation, any monies owing to Canada Revenue Agency for employee source deductions;

- (b) next, to pay the amounts due to the Receiver and its counsel under the Receivers Charge as defined in, and with the priority, set out in paragraph 16 of the order of Mr. Justice Sewell entered December 19, 2014 (the "Receivership Order");
 - (c) next, to repay the Third Party Loans in the principal amount of \$466,248.51 plus interest under the Receiver's Certificates issued to secure the Third Party Loans pursuant to the Receivers Borrowing Charge as defined in and with the Priority set out in paragraph 19 of the Receivership Order;
 - (d) next, to pay the outstanding fees and expenses of G Force Real Estate Inc., Marketing Agent in accordance with the terms of the Order for Conduct of Sale;
 - (e) next, to pay the actual fees and expenses of the Bankruptcy Trustee to a maximum of \$15,000, provided that any excess over the taxable fees and disbursements of the trustee will be paid to the Secured Creditor in accordance with subparagraph (f);
 - (f) the remainder to counsel for the Petitioner for distribution to the Secured Creditor in accordance with the Charge in the Order Nisi;
 - (g) finally, the balance ("Balance"), if any, to be paid into the trust account of Burns Fitzpatrick Rogers Schwartz & Turner LLP, solicitors for the Receiver, to be paid out upon further order of this Honourable Court.
8. An order that upon receipt of a certified copy of this Order in the Kamloops Land Title Office, together with a letter releasing in part the Petitioner's Certificate of Pending Litigation and authorizing registration of the Order herein, all persons claiming possession by, through or under the Petitioner or the Respondents or any of them, shall deliver forthwith to the Purchaser vacant possession of the Lands.
 9. An order that the Receiver shall be authorized and directed to take such steps as are necessary to transfer the Shares to the Purchaser.
 10. An order that the Receiver shall have leave to assign all material contracts, leases, water licences and licences for the Resort to the Purchaser.
 11. An order that the approval of the form of this order by the Respondents shall not be required.

Part 2: FACTUAL BASIS

1. No Respondent has filed a Response to Petition. The Johnston Respondents have been served in accordance with the May 4, 2016 Order Made After Application.

2. Order Nisi was granted on July 14, 2014 with judgment for the Petitioner.
3. The business has not operated since the abbreviated 2014/15 ski season.
4. On July 14, 2014, the court gave the Petitioner conduct of sale and in accordance with that order for conduct of sale, the Petitioner appointed G-Force Real Estate Inc. as Marketing Agent for the Resort.
5. On December 19, 2014, the Petitioner appointed G. Powroznik Group Inc. of G-Force Group as Receiver.
6. The debt to the Petitioner is \$4,402,249 as at the date of the Order Nisi and no recovery has been made to reduce that debt while fees and disbursements of the Receiver and Petitioner's counsel, and interest on the debt have increased it.
7. Prior serious expressions of interest from two other parties have failed to result in acceptable offers which would be presented to the court for approval.
8. The Purchaser's offer is the best proposal received by the Receiver to date, for the following reasons:
 - (a) it is the only offer received that was acceptable to the Receiver and to the Petitioner;
 - (b) the proceeds of the sale, with the exception of the Lot Consideration, are all cash and do not require the Petitioner to carry any financing and there is no "subject to financing" condition;
 - (c) the Receiver has received confirmation of substantial funding from the Purchaser to support its obligation under the APA, including \$360,000 placed in a trust account which will become a non-refundable deposit at the time the Purchaser removes its subject conditions;
 - (d) by the time the Receiver appears in Court with respect to the sale approval application, the Purchaser is expected to have placed the total purchase price in trust;
 - (e) the Purchaser has agreed to replace deposits and letters of credits with various government bodies (i.e. Resorts Branch and BC Liquor Branch) without adjustment to the Receiver;
 - (f) the Purchaser is anxious to close the sale quickly, possibly by June 30, 2016, depending on the timing of Resorts Branch sign-off and the Court's approval of the sale;

- (g) the Purchaser has already agreed to and executed a Benefits Agreement with the Osoyoos Indian Band (“OIB”) who is a key stakeholder in this process. Having the Resort open and operating again will provide ongoing economic and social benefits to the OIB, where there have been none recently due to the Resort facing insolvency and being closed;
 - (h) there are no other terms or adjustments that are prejudicial to the Receiver or the Petitioner in the Asset Purchase Agreement, beyond what would normally be expected in a receivership sale. The offer is made on an “as is, where is” basis; and
 - (i) the offer supports payment of the following items in the receivership;
 - (i) all outstanding professional costs;
 - (ii) payment in full of all Receiver’s Certificates including interest; and
 - (iii) payment of a deemed trust claim for outstanding payroll deductions to Canada Revenue Agency.
9. The Petitioner supports the offer because it is expected to receive an estimated net cash recovery of CDN\$1.6-1.8 million on closing, subject to final calculations of professional costs and interest on Receiver’s Certificates and the anticipated bankruptcy of Mount Baldy Ski Corporation, plus a serviced lot.

Part 3: LEGAL BASIS

1. The Petitioner has a valid and enforceable first mortgage, duly registered as a first charge on the title to the Lands.
2. The Petitioner has a first charge in the Personal Property Registry.
3. The Petitioner is entitled to seek conveyance and vesting in accordance with the mortgage. The terms of the order appointing the Receiver contemplate the sale.
4. The Petitioner will rely on Rules 21-7 and 13-5 and sections 243-245 of the *Bankruptcy and Insolvency Act*.

Part 4: MATERIAL TO BE RELIED ON

1. Affidavit #4 of Gary Powroznik, sworn 15/Jun/2016
2. Order of Mr. Justice Kelleher, made 04/May/2016
3. Affidavit # 2 of Gary Powroznik, sworn 19/Apr/2016
4. Affidavit #1 of Gary Powroznik, sworn 02/Dec/2015
5. First Report of the Receiver, made 25/Nov/2015

6. Affidavit #2 of Scott Stark, sworn 24/Nov/2015
7. Supplemental Report to the Marketing Report, made 22/Dec/2014
8. Order Appointing Receiver, made 19/Dec/2014
9. Marketing Report, made 04/Nov/2014
10. Order Nisi, made 14/Jul/2014
11. Order for Conduct of Sale, made 14/Jul/2014
12. Report in Support of Appointment, made 10/Jul/2014

The applicant estimates that the application will take ten (10) minutes.

This matter is within the jurisdiction of a master.

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

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

Date:

15 Jun/2016



Signature of
 lawyer for applicant(s)
Dennis K. Fitzpatrick