



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, 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

ORDER MADE AFTER APPLICATION

BEFORE))
) THE HONOURABLE JUSTICE) 04/May/2016
) KELLEHER)
))

ON THE APPLICATION of G. Powroznik Group Inc. (the "Receiver") coming on for hearing at Vancouver on 04/May/2016 and on hearing Dennis K. Fitzpatrick, counsel for the Receiver, Bonita Lewis-Hand, counsel for the Petitioner, Fred Johnston, appearing on his own behalf and on behalf of Baldy Operating Corporation, Baldy Capital Corporation., Mercurian Management Corporation, Equity Development Inc. (collectively, the "Johnston Respondents") and no one else appearing although duly served;

AND UPON the Johnston Respondents making the following representations to the Receiver and to the Court:

- (a) that all paper accounting records including invoices, statements, reports, estimates and correspondence (the "Paper Files") for the ski resort at Baldy Mountain (the "Resort") are located at the office rented by Baldy Operating Corporation ("BOC") from 0960015 BC

Ltd and Nathan Ondrus at Unit #4-100 Cougar Road, Oliver, B.C. (the "Cougar Office"), previously rented by the Johnston Respondents;

- (b) the computer server ("Hercules Server") described in paragraph (a) of Exhibit "Z" to the Affidavit #2 of Gary Powroznik, sworn April 19 2016, contains the accounting records of the resort and it is located in the Cougar Office;
- (c) the P.O.S. server ("POS Server") described in paragraph (c) of Exhibit "Z" to the Affidavit #2 of Gary Powroznik, sworn April 19 2016, are located in the Cougar Office;
- (d) the laptop ("Identicam Laptop") described in paragraph (c) of Exhibit "Z" to the Affidavit #2 of Gary Powroznik, sworn April 19 2016, and the Mount Baldy Laptop which contains the seasons pass program information are located at #236, 15 Park Place Osoyoos, B.C. (the "Osoyoos Office");
- (e) The accounting records to April of 2015 are located on a computer known as "Gail's computer, a black desktop now located (based on the advice of Randall Smith) in the Waterworks building at Mount Baldy;
- (f) That the Johnston Respondents no longer have possession or control of the computers or financial records of the Resort;
- (g) That Fred Johnston has no knowledge of the passwords for the Instagram, Twitter or Pinterest accounts described below; and
- (h) Fred Johnston has discarded all keys which he had in his possession for the Resort.

THIS COURT ORDERS that:

1. the Receiver is authorized and directed to take such steps as are, in the opinion of the Receiver, necessary or incidental for the recovery of the property from the Johnston Respondents , wherever situate, owned by Mount Baldy Ski Corporation and Mount Baldy Real Estate, ULC (collectively, the "Resort" or "Mount Baldy") including property previously located on the Resort property at 2680 Mount Baldy Rd, Oliver, B.C. and in particular, the Osoyoos Office and the Cougar Office.
2. the Johnston Respondents have no right title or possessory interest in and shall grant immediate possession to the Receiver of the following documentation and property forthwith at its office at 250-750 West Pender Street or to a location specified below or otherwise in accordance with a direction of the Receiver:
 - (a) all documents accounting records, invoices, estimates, repair records, correspondence for the Resort now located in the Cougar office or wherever situate but primarily at the Cougar Office, whether in paper or electronic form;

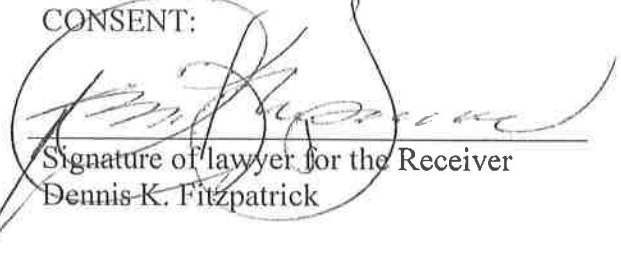
- (b) the Hercules Server and the POS Server now located in the Cougar Office and the Mount Baldy Laptop and the Indenticam Laptop which contains the season pass information and program, now located in the Osoyoos Office;
 - (c) any furniture, computers, printers, and equipment belonging to the Resort, including any that may now be located in the Osoyoos Office;
 - (d) any computer equipment passwords and keys, software licences and operating instructions related to the Resort determined hereafter to be currently or previously in the care and control of the Johnston Respondents;
 - (e) all rights to the website on the internet under URL "www.skibaldy.com" (the "Website"), the email addresses including mail@skibaldy.com and the domain name "skibaldy.com" (the "Domain Name"), (i) together with the website infrastructure including the content management system used for the Website; (ii) copies of all information which was posted on the Website; and (iii) all related source code, object code, URLs, content, files, user names or passwords, images, data, databases, domain names, configuration, emails, documents or records, marketing materials, training materials, whether electronic or written;
 - (f) All internet rights including the Facebook page at www.facebook.com/skibaldy ("Facebook"), Pinterest page at www.pinterest.com/skibaldy ("Pinterest"), instagram.com/skibaldy ("Instagram") and Twitter account at twitter.com/skibaldy ("Twitter"); and
 - (g) all point of sale equipment, passwords (within Fred Johnston's knowledge) and operating instructions.
3. the Johnston Respondents shall cease using any email address using the name 'skibaldy' or Mount Baldy or Mt Baldy any variants of that name and shall effect the cancellation of the following email account addresses, forthwith: (i) fred.johnston@skibaldy.com; (ii) gail.saunders@skibaldy.com; and shall release the email (iii) mattk@skibaldy.com to the Receiver.
4. The Johnston Respondents shall provide to the Receiver forthwith upon entry of this Order all documentation in their possession relation to:
- (a) the *Employment Standards Act* claim referred to in paragraph 23(b) of the Factual Basis of the Notice of Application;
 - (b) all documentation and an explanation of the terms which were entered into between BOC and Nathan Ondrus and 0960015 B.C. Ltd relative to the tenancy for the Cougar Office and what rents were payable by BOC and all correspondence and emails to that landlord;

- (c) the claim of Canada Revenue Agency referred to in paragraph 23(c) of the Factual Basis of the Notice of Application;
 - (d) all faxes in possession of the Johnston Respondents relevant to Mount Baldy;
 - (e) the terms of the Benefit Agreement entered into with the Osoyoos Indian Band;
 - (f) all correspondence relative to the liquor licence;
 - (g) documentation regarding insurance for the Resort where not already provided to the Receiver;
 - (h) a copy of the Seasons End Budget Versus Actual Analysis where not already provided to the Receiver; and
 - (i) all applications to the Province of British Columbia regarding the Resort and correspondence related thereto where not already provided to the Receiver.
5. this court declares that Mount Baldy Ski Corporation, by its Receiver, G. Powroznik Group Inc., shall on entry of this order be the sole legal and beneficial owner of the Domain Name and that the Receiver is entitled to have the domain "skibaldy" hosted by Hostmonster in the manner it shall determine, in its sole discretion, and that the Receiver shall have the right to appoint persons who are authorized to instruct Hostmonster and FastDomain to grant or refuse access to the site by the Johnston Respondents, to control content on the site at that domain, or to sell the site and the domain.
 6. upon service of a copy of this Order by email to legal@hostmonster.com and abuse@hostmonster.com, FastDomain Inc. and Hostmonster are authorized and directed to change the owner of the Domain Name from "Meridian Management Corporation" to "Mount Baldy Ski Corporation by its Receiver-Manager G. Powroznik Group Inc." or to any assignee or transferee directed by the Receiver.
 7. the Johnston Respondents shall release and transfer to the Receiver any documentation, interest, EPP Code, authority or other right which they now exercise over the Domain Name and the Website forthwith on approval of the terms of this Order by Johnston including the content management system access to Wordpress. If the EPP code will not effect the change of name for the website, then Fred Johnston will take all reasonable steps to effect the change of Domain name and transfer of the current content of the website to the Receiver
 8. Osoyoos Shoreline Development Ltd., as landlord, and any current tenant of the Osoyoos Office is authorized and directed to provide access to the Receiver to enter into the business office of BOC for the Resort located at #236, 15 Park Place Osoyoos, B.C. to recover any property that the Johnston Respondents have located therein including the Identicam Computer and the Mount Baldy Laptop.

9. 0960015 BC Ltd and Nathan Ondrus., as landlord, is authorized and directed to provide access to the Receiver to enter into the business office of BOC for the Resort located at Unit #4-100 Cougar Road, Oliver, B.C. to recover any property and business records that the Johnston Respondents have located therein including the Hercules Server and the POS Server.
10. the Johnston Respondents and any of them are restrained, enjoined and prohibited from publishing, circulating, drafting, printing or communicating in any manner with the public or any individual on radio, television, internet, print media, or any online communication: (i) using the names "Baldy", "Ski Baldy", "Baldy Mountain", "Baldy Ski Hill", or "Baldy Ski Resort" in any manner whatsoever; or (ii) representing that any member of the Johnston Respondents has acquired or will acquire any interest in the Resort property or has reached an agreement for the acquisition of any interest in the Resort; (iii) soliciting business for the Resort including seasons passes; or (iv) otherwise representing that the Johnston Respondents are authorized by the Resort.
11. the Receiver may serve a copy of this Order on any person connected with, , agency for , employee, licensor, contractor, registrar, landlord of Baldy Operating Corporation and Baldy Capital Corporation and and such person is authorized and directed to provide information, documentation, particulars of ownership or registration and records including computer records and passwords to the Receiver relating to the operation of the Resort during the 2014/15 season.
12. the Receiver may serve this Order on the Johnston Respondents at the following email: fred.johnston@mercidian.com.
13. leave is granted to 0960015 B.C. Ltd. and Nathan Ondrus to apply to the court to vary or set aside this Order on notice to the Receiver within the time period prescribed by the rules of Court.
14. the Receiver shall provide 8 days notice to the Johnston Respondents of any application to approve the sale of the Resort.
15. in the event that any of the representations being untrue in whole or in part, or on refusal to comply with a term of this Order, the Receiver shall have leave to apply to the Court for further relief on five (5) days notice to the Johnston Respondents.
16. the Johnston Respondents will render assistance reasonably required to implement the Order and/or recover records and property of the Resort described herein on request by the Receiver.

17. the approval of the parties as to form, except counsel for the Receiver, is hereby dispensed with.

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



Signature of lawyer for the Receiver
Dennis K. Fitzpatrick

By the Court



Registrar

