VANCOUVER
NOV 06 2020
REGISTRY

No. VLC-S-S-207422
Vancouver Registry

IN THE SUPREME COURT OF BRITISH COLUMBIA

BETWEEN:

ROYAL BANK OF CANADA

PLAINTIFF

AND:

2073944 ALBERTA LTD.

DEFENDANT

NOTICE OF APPLICATION

(Distribution, Fee Approval, and Receiver Discharge)

Name of applicant:	Grant Thornton Limited, in its capacity as court-appointed receiver of all of the current and future assets, undertakings and properties of 2073944 Alberta Ltd. (in such capacity, the "**Receiver**")
On notice to:	Royal Bank of Canada Satinder Pal Singh Nirmaljit Saini

TAKE NOTICE that an application will be made by the Receiver to the presiding Judge at the courthouse at the City of Vancouver, in the Province of British Columbia, on **November 19, 2020 at 9:45AM**, by telephone or Microsoft Teams (as the case may be), for the orders set out in Part 1 below.

PART 1: ORDERS SOUGHT

1. The Receiver seeks the following orders:

   (a) an order in substantially the form attached as **Schedule "A"** that, among other things:

      (i) approves the professional fees and accounts of the Receiver and those of its counsel, Borden Ladner Gervais LLP;

      (ii) approves the activities of the Receiver as set out in the Receiver's First Report to Court dated April 8, 2020 (the "**First Report**"), the Receiver's Second Report to Court dated September 22, 2020 (the "**Second Report**"), and the

Receiver's Third Report to Court dated November 3, 2020 (the "**Third Report**", and together with the First Report and Second Report, the "**Receiver's Reports**");

(iii) authorizes and directs a distribution of realization proceeds by the Receiver in the manner set out in the Third Report; and

(iv) discharges the Receiver in these proceedings; and

(b) such further and other orders, declarations, and directions as counsel may request and this Honourable Court deems to be just and convenient in the circumstances.

PART 2: FACTUAL BASIS

A. General Information

Background on Debtor

2. 2073944 Alberta Ltd. (the "**Debtor**") is a corporation existing under the laws of the Province of Alberta. The Debtor was in the business of owning and operating a licensed pub and liquor store known as the "Grapevine Pub and Bistro and Liquor Store" in Burns Lake, British Columbia (the "**Grapevine Pub**"), which the Receiver sold on April 27, 2020 with the approval of the Court. The Debtor also owned other real property situated in Sicamous, British Columbia (the "**Sicamous Lands**"), which the Receiver sold on October 19, 2020 with the approval of the Court.

3. Royal Bank of Canada ("**RBC**") is the sole secured creditor to the Debtor. Its security includes, among other things, a general security agreement from the Debtor in respect of all of its present and after-acquired personal property, for which a financing statement was registered in the Personal Property Registry of British Columbia (the "**PPR**"). The Debtor had also granted a mortgage and assignment of rents in favour of RBC in respect of the real property related to the Grapevine Pub, which was later discharged in connection with the court-approved sale of that property. Finally, RBC has a guarantee and postponement of claim from Nirmaljit Saini and Satinder Pal Singh, two of the three directors of the Debtor, that guarantees all debts and liabilities of the Debtor to RBC.

4. In addition to RBC, the Debtor is indebted to (among others):

(a) Canada Revenue Agency in respect to deemed trust claims for unremitted Goods and Services Tax ("**GST**") in the amount of $47,290.68;

(b) Canada Revenue Agency in respect of unremitted payroll source deduction claims in the anticipated amount of $7,410.76;

(c) Her Majesty the Queen in Right of the Province of British Columbia in respect of $3,291.13 unpaid Provincial Sales Tax ("**PST**"), for which a crown charge financing statement was filed against the Debtor in the PPR; and

(d) WorkSafeBC in respect of pre-receivership claims of $545.40.

Insolvency of Debtor and Receivership Order

5. On or about September 30, 2019, the Debtor ceased carrying on business as a result of having insufficient liquidity to fund ongoing operations.

6. By an order made on December 16, 2019 (the "**Receivership Order**"), the Receiver was appointed as the receiver of the assets, undertakings and property of the Debtor, from and after December 17, 2019, with authority to (among other things):

(a) market any or all of the Property (as defined in the Receivership Order, and which for greater certainty, includes all real property associated with the Grapevine Pub and the Sicamous Lands);

(b) sell the Property outside the ordinary course of business with approval of the Court; and

(c) apply for a vesting order or such other orders as necessary to convey the Property to a purchaser(s) free and clear of any liens or encumbrances.

7. The Receiver retained Borden Ladner Gervais LLP ("**BLG**") as counsel to the Receiver in these proceedings (the "**Receivership Proceedings**").

B. Activities of the Receiver

8. The activities of the Receiver in the course of the Receivership Proceedings are set out in detail in each of the Receiver Reports (in particular, the Third Report). The Receiver's activities included, among other things:

(a) attending the Grapevine Pub premises and taking possession of the Debtor's assets and operations;

(b) tending to various repairs of the Grapevine Pub, and engaging a service provider to perform remote monitoring of the security alarm system for the premises;

(c) engaging a property manager to oversee the Grapevine Pub premises and tend to various maintenance;

(d) completing various forms and documents with the Liquor and Cannabis Regulation Branch to maintain the Debtor's two liquor licenses;

(e) arranging for appraisals of the Grapevine Pub and Sicamous Lands, and engaging a broker to market the Grapevine Pub and another broker to market the Sicamous Lands for sale;

(f) coordinating the sale of the Grapevine Pub and Sicamous Lands (both of which concluded pursuant to a court-supervised sealed bidding process), and liquidating the other assets and property of the Debtor;

(g) various engagement with interested parties and stakeholders, including numerous discussions and other engagement with Nirmaljit Saini and Satinder Pal Singh, two of the three directors of the Debtor.

C. Professional Fees and Disbursements

9. From December 12, 2019 to October 25, 2020, the Receiver billed approximately 677.4 hours in connection with the Receivership Proceedings, representing total fees incurred by the Receiver at its standard rates and charges during the relevant period, inclusive of taxes, of $261,104.58, which consists of $242,106.99 in fees, $6,564.03 in disbursements, and $12,433.56 in applicable taxes.

10. The details of the Receiver's fees and disbursements in these proceedings are set out in Affidavit #1 of Mark E. R. Wentzell and the related exhibits, sworn on November 3, 2020. Details of the work required of the Receiver is set out in the Receiver's Reports.

11. From December 16, 2019 to October 27, 2020, BLG billed approximately 366.1 hours in connection with the Receivership Proceedings, representing total fees incurred by BLG at their standard rates and charges during the relevant period, inclusive of taxes, of $176,393.16, which consists of $155,397.50 in fees, $2,260.44 in disbursements, $7,857.37 in GST, and $10,877.85 in PST.

12. The details of BLG's fees and disbursements in these proceedings are set out in Affidavit #1 of Lisa C. Hiebert and the related exhibits, sworn on November 5, 2020.

D. Final Distribution

13. The Receiver has prepared a final statement of receipts and disbursements (the "**Final SRD**"), which is set out in the Third Report.

14. RBC is the sole secured creditor to the Debtor, and is therefore entitled to a distribution from the realization proceeds in priority to any unsecured creditors. As of November 20, 2020, the Debtor will owe $723,205.60 to RBC.

15. The Receiver proposes in the Final SRD to make additional distributions of realization proceeds to certain claimants that are potentially in priority to RBC's secured claim – namely, payment in full to:

(a) CRA regarding a $47,290.68 claim for unremitted GST, including $3,140.19 of penalties and interest;

(b) CRA regarding an anticipated $7,410.76 claim for unremitted payroll source deductions, including an as yet unknown amount for penalties and interest;

(c) the Ministry of Finance (BC) in respect of a claim of $3,291.13 for unremitted Provincial Sales Tax, including $379.73 of penalties and interest; and

(d) WorkSafe BC in respect of a claim of $545.40 for unremitted workers' compensation assessments,

(collectively, the "**Priority Claims**").

16. After payment of the above distributions to RBC and regarding Priority Claims, the Receiver expects there to be a significant surplus in the Debtor's estate of approximately $150,000 available for subsequent distribution to the Debtor's unsecured creditors. The Receiver proposes to deal with these remaining realization proceeds in a bankruptcy proceeding in respect of the Debtor (the "**Bankruptcy Proceeding**") to be initiated by the Receiver pursuant to the authority granted by this Court pursuant to the order of Madam Justice Fitzpatrick dated October 6, 2020.

E. Discharge of Receiver

17. The Receiver has now completed the liquidation of the Property (as defined in the Receivership Order), and the activities described in the Third Report represent the final activities of the Receiver to conclude its administration of the estate of the Debtor in the Receivership Proceedings. As such, the Receiver seeks to be discharged of its role as the receiver of the assets, property and undertaking of the Debtor, with the remaining administration of the Debtor's estate and distributions to unsecured creditors to be dealt with in the Bankruptcy Proceeding.

PART 3: LEGAL BASIS

A. Approval of Fees and Disbursements of the Receiver and its Counsel

18. The Court may appoint a receiver to take possession of an insolvent person's property, exercise any control that the Court considers advisable over that property, and take any other action that the Court considers advisable in the circumstances.

Bankruptcy and Insolvency Act, R.S.C. 1985 c. B-3, s. 243(1) [BIA].

19. The Court may make any order respecting the payment of fees and disbursements of the receiver and its legal counsel that it considers proper, provided the secured creditors who would be materially affected by the order were given reasonable notice and an opportunity to make representations.

BIA, s. 243(6).

20. In assessing whether the fees of a receiver and its counsel ought to be approved, the Court considers whether those fees and disbursements are "fair and reasonable", on the basis of evidence

verified by affidavit and disclosing: (i) the name of each person who rendered services; (ii) the dates on which the services were rendered; (iii) the time expended each day; (iv) the rate charged; and (v) the total charges for each of the categories of services rendered.

Re Redcorp Ventures Ltd., 2016 BCSC 188 at para. 22 [*Redcorp*].

Re Confectionately Yours Inc., 2002 CarswellOnt 3002 (ONCA) at paras. 37-42 [*Confectionately Yours*].

21. While it is necessary to review some description of the nature of services rendered and the standard rates and charges of professionals and counsel, a line-by-line review of the documentation for the fees is not required.

Canadian Imperial Bank of Commerce v. Rempel Copper Sky Development Ltd., 2015 BCSC 2183 at para. 84

22. In assessing whether the fees of a receiver and its counsel are fair and reasonable, the Court considers the "standard rates and charges" of a receiver and its counsel according to the standard billing format and practice of the profession in question. It is standard for the hourly rates of chartered accountants and court officers to exclude the cost of administrative or support staff.

Bank of Montreal v. Nican Trading Co., 1990 CarswellBC 397 at paras. 36-38.

Northland Bank v. G.I.C. Industries Ltd., 1986 CarswellAlta 426 at paras. 30-35.

23. The Court considers a number of factors in assessing whether the fees of a receiver are reasonable, including: (i) the nature, extent and value of the assets handled; (ii) the complications and difficulties encountered; (iii) the degree of assistance provided by the debtor; (iv) the time spent; (v) the receiver's knowledge, experience and skill; (vi) the diligence and thoroughness displayed; (vii) the responsibilities assumed; (viii) the results of the receiver's efforts; and (ix) the cost of comparable services when performed in a prudent and economical manner.

Re Hanfeng Evergreen Inc., 2017 ONSC 7161 at para. 31 [*Hangfeng*].

HSBC Bank of Canada v. Maple Leaf Loading Ltd., 2014 BCSC 2245 at para. 11 [*Maple Leaf*].

Redcorp at para. 23.

Confectionately Yours at paras. 42-45.

24. Similar factors are considered on the assessment of the fees and disbursements of legal counsel in insolvency proceedings, including: (i) the time expended; (ii) the complexity of the receivership; (iii) the degree of responsibility assumed by the lawyers; (iv) the amount of money

involved; (v) the degree of skill of the lawyers involved; (vi) the results achieved; and (vii) the client's expectations as to the fee.

Maple Leaf at para. 12.

Redcorp at para. 33.

25. The Receiver submits that its fees and the fees of its counsel are fair and reasonable in the circumstances and consistent with the market for legal services in British Columbia. The invoices of its counsel were provided to the Receiver when rendered. In this respect, the Receiver submits that the work completed was delegated to the appropriate professionals within the Receiver and BLG with the appropriate seniority and hourly rates, and the services were performed by the Receiver and its legal counsel in a prudent and economical manner.

26. The Receiver will satisfy all technical requirements for the approval of fees, including providing reasonable notice to all secured creditors who would be materially affected by the order and verifying the fees and disbursements to be approved by affidavit.

B. Approval of Receiver's Activities

27. The receiver must deal with the property of an insolvent person in a commercially reasonable manner.

BIA, s. 247(b).

28. The Court has the inherent jurisdiction to review the activities of a court-appointed receiver and, if satisfied that the receiver has acted reasonably, prudently and not arbitrarily, to approve the activities set out in the receiver's report. The assessment of whether the receiver has acted "reasonably, prudently and not arbitrarily" is made on an objective basis.

Leslie & Irene Dube Foundation Inc. v. P218 Enterprises Ltd., 2014 BCSC 1855 at para 54.

29. There are good policy and practice reasons for the Court to provide a level of protection for the receiver by approving its activities. However, the Court should limit the benefit of such approval to the receiver itself, and exercise caution in approving the receiver's reports and activities in a general sense.

Hanfeng at para. 17.

30. The Receiver has reported to the Court, and all interested parties and stakeholders, throughout these proceedings. The Receiver carried out a transparent, orderly and timely sales process in respect of the Debtor's assets. As outlined in the Receiver's Reports, the Receiver made all commercially reasonable efforts to maximize the value received for the Debtor's assets throughout these proceedings.

31. The Receiver respectfully submits that its activities since its appointment have been carried out in a reasonable, prudent and not arbitrary manner. Accordingly, the Receiver submits that an order approving its activities, as set out in the Receiver Reports, is appropriate.

C. <u>Distribution of Realization Proceeds</u>

32. Pursuant to section 64 of the *Law and Equity Act* (British Columbia), sections 64, 65, 66(1) and (3), 68(2) and 69(2) and (3) of the *Personal Property Security Act* (British Columbia) ("**PPSA**") are adopted for the purposes of a receivership of property to which the PPSA does not apply (which includes real property, such as the Grapevine Pub and Sicamous Lands).

Law and Equity Act, R.S.B.C. 1996, Ch. 253, s. 64

33. Pursuant to section 66(3) of the PPSA, unless a court orders otherwise, a receiver is required to comply with sections 59 and 60 of the PPSA where the receiver deals with the collateral of a debtor other than in the ordinary course of operating the business of a debtor.

PPSA, s. 66(3)

34. Pursuant to sections 59 and 60 of the *Personal Property Security Act* (British Columbia), a secured party (which includes the Receiver), may dispose of collateral, and apply the proceeds: (i) first to the reasonable expenses of seizing, repossessing, holding, repairing, processing or preparing for disposition and disposing of the collateral and any other reasonable expense of enforcing the security agreement incurred by the secured party; and (ii) second to the satisfaction of the obligation secured by the security interest of the party making the disposition. The surplus, if any, is to be paid first to any creditors with perfected, but subordinate, security interests.

PPSA, ss. 59 and 60

35. With respect to the Debtor's liquidated personal property, the residual priority rules set out in section 35 of the PPSA apply to determine the relative priorities among creditors. In general: (i) a creditor with a perfected security interest has priority over any unsecured creditors; and (ii) as between two creditors with perfected security interests in the same collateral, the creditor who perfects its security interest first has priority.

PPSA, s.35

36. RBC has a perfected security interest over all present and after-acquired personal property of the Debtor, and was the first creditor to perfect its security interest by way of registration in the PPR. As such, RBC has first priority over the realization proceeds derived from the Debtor's assets and property, subject to the Priority Claims.

37. With respect to the Debtor's liquidated real property, section 28 of the *Land Title Act* (British Columbia) establishes that where two or more charges appear entered on the register affecting the same land, the charges have, as between themselves, but subject to the contrary intention appearing from the instruments creating the charges, priority according to the date and time the respective applications for registration of the charges were received by the registrar.

38. Until the sale of the Grapevine Pub and Sicamous Lands, RBC was the only person with financial charges registered against those real properties. As such, RBC has first priority over the realization proceeds derived from the Debtor's assets and property, subject to the Priority Claims.

D. <u>Discharge of Receiver</u>

39. Upon the completion of its mandate, including the sale of all realizable assets and distribution of proceeds, a court-appointed receiver will typically seek a discharge order from the Court.

Ed Mirvish Enterprises Ltd. v. Stinson Hospitality Ltd., [2009] O.J. No. 4265 at Para 8 and 9.

E. <u>General</u>

40. In addition to the foregoing, the Receiver will rely on:

(a) the applicable *Supreme Court Civil Rules*;

(b) the applicable provisions of the *Bankruptcy and Insolvency Act* (Canada), *Personal Property Security Act* (British Columbia), and *Land Title Act* (British Columbia);

(c) the applicable provisions of the *Law and Equity Act* (British Columbia), in particular section 64; and

(d) the inherent jurisdiction of this Honourable Court.

PART 4: MATERIALS TO BE RELIED ON

41. The Applicant relies on:

(a) the pleadings and materials taken and filed herein;

(b) the Receiver's First Report to the Court dated April 8, 2020;

(c) the Receiver's Second Report to the Court dated September 22, 2020;

(d) the Receiver's Third Report to the Court dated November 3, 2020;

(e) the Affidavit of Lisa Hiebert, sworn November 5, 2020;

(f) the Affidavit of Mark E. R. Wentzell, sworn on November 3, 2020; and

(g) such further and other materials as counsel may advise and this Honourable Court may permit.

The Applicant estimates that the application will take **<u>15 minutes</u>**.

[ ] This matter is within the jurisdiction of a master.

[x] This matter is not 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 Applicants 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;

(iii) if this application is brought under Rule 9-7, any notice that you are required to give under Rule 9-7(9).

Date: November 5, 2020

____
Signature of Ryan Laity
☐ applicant ☑ lawyer for the Receiver

Borden Ladner Gervais LLP
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Ryan Laity
Tel: 604.632.3544
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To be completed by the court only:

Order made

☐ in the terms requested in paragraphs ________________ of Part 1 of this notice of application

☐ with the following variations and additional terms:

____

____

____

Date: ________________ _______________________________
Signature of ☐ Judge ☐ Master

APPENDIX

THIS APPLICATION INVOLVES THE FOLLOWING:

- ☐ discovery: comply with demand for documents
- ☐ discovery: production of additional documents
- ☐ other matters concerning document discovery
- ☐ extend oral discovery
- ☐ other matters concerning oral discovery
- ☐ amend pleadings
- ☐ add/change parties
- ☐ summary judgment
- ☐ summary trial
- ☐ service
- ☐ mediation
- ☐ adjournments
- ☐ proceedings at trial
- ☐ case plan orders: amend
- ☐ case plan orders: other
- ☐ experts
- ☑ other

Schedule "A"

Form of Order

Please see attached.

No. VLC-S-S-207422
Vancouver Registry

IN THE SUPREME COURT OF BRITISH COLUMBIA

BETWEEN:

ROYAL BANK OF CANADA

PLAINTIFF

AND:

2073944 ALBERTA LTD.

DEFENDANT

ORDER MADE AFTER APPLICATION

(FEE/ACTIVITY APPROVAL, DISTRIBUTION, AND DISCHARGE OF RECEIVER)

BEFORE THE HONOURABLE	)	THURSDAY, THE 19th DAY
	)	
______________________________	)	OF NOVEMBER, 2020

ON THE APPLICATION of Grant Thornton Limited (in its capacity as the court-appointed Receiver of the assets, property and undertakings of 2073944 Alberta Ltd. (the "**Debtor**")) coming on for hearing at Vancouver, British Columbia, on the 19th day of November, 2020, by telephone or Microsoft Teams (as the case may be); AND ON HEARING Ryan Laity, counsel for the Receiver and those other counsel listed on **Schedule "A"** hereto; AND ON READING the materials filed, including the Receiver's Third Report to Court dated November 3, 2020 (the "**Third Report**"), Affidavit #1 of Mark E. R. Wentzell dated November 3, 2020 (the "**Wentzell Affidavit**"), and Affidavit #1 of Lisa Hiebert dated November 5, 2020 (the "**Hiebert Affidavit**");

THIS COURT ORDERS AND DECLARES THAT:

1. The activities of the Receiver, as set out in the Receiver's First Report to Court dated April 28, 2020, the Receiver's Second Report to Court dated September 22, 2020, and the Third Report, are hereby approved.

2. The fees and disbursements of the Receiver and its counsel, Borden Ladner Gervais LLP ("**BLG**"), as described in the Wentzell Affidavit, the Hiebert Affidavit, and the Third Report, are hereby approved.

3. After payment of the fees and disbursements of the Receiver and BLG as herein approved, the Receiver is authorized and directed to distribute the funds remaining in its hands in the manner set out in the Third Report.

4. Upon payment of the amounts set out in paragraph 3 hereof, and upon the Receiver filing a certificate certifying that it has completed the remaining outstanding activities described in the Third Report, the Receiver shall be discharged as Receiver of the assets, property and undertaking of the Debtor, provided that notwithstanding its discharge herein: (a) the Receiver shall remain Receiver for the performance of such incidental duties as may be required to complete the administration of the receivership herein; and (b) the Receiver shall continue to have the benefit of the provisions of all Orders made in this proceeding, including all approvals, protections and stays of proceedings in favour of Grant Thornton Limited in its capacity as Receiver.

5. Notwithstanding any provision herein, this Order shall not affect any person to whom notice of these proceedings was not delivered as required by the *Bankruptcy and Insolvency Act* and regulations thereto, any other applicable enactment or any other Order of this Court.

6. Endorsement of this Order by counsel appearing on this application other than the Receiver is hereby dispensed with.

7. The time for service of the Notice of Application and supporting materials be and is hereby abridged such that this application is properly returnable today.

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 Ryan Laity
☐ Party ☑ Lawyer for the Receiver

BY THE COURT

____

REGISTRAR

SCHEDULE A

LIST OF COUNSEL

NAME OF COUNSEL	PARTY REPRESENTED
Ryan Laity	The Receiver, Grant Thornton Limited

No. VLC-S-S-207422
Vancouver Registry

BETWEEN:

ROYAL BANK OF CANADA

PLAINTIFF

AND:

2073944 ALBERTA LTD.

DEFENDANT

NOTICE OF APPLICATION

(ACTIVITIES AND FEE APPROVAL ORDER)

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