COURT FILE NUMBER	**1701-03460**	Clerk's Stamp
COURT	COURT OF KING'S BENCH OF ALBERTA	
JUDICIAL CENTRE	CALGARY	
APPLICANT	**GRANT THORNTON LIMITED**	
RESPONDENTS	**LEXIN RESOURCES LTD., 1051393 B.C. LTD., 0989 RESOURCE PARTNERSHIP, LR PROCESSING LTD., and LR PROCESSING PARTNERSHIP**	
DOCUMENT	**BENCH BRIEF OF THE APPLICANT - GRANT THORNTON LIMITED**	
ADDRESS FOR SERVICE AND CONTACT INFORMATION OF PARTY FILING THIS DOCUMENT	Kevin E. Barr / Farrukh Ahmad Borden Ladner Gervais LLP 1900, 520 – 3rd Avenue SW Calgary, AB T2P 0R3 Telephone: (403) 232-9786/9480 Facsimile: (403) 266-1395 Email: kbarr@blg.com / faahmad@blg.com	

JUDICIAL CENTRE OF CALGARY
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May 24, 2024
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CLERK OF THE COURT

BENCH BRIEF OF THE APPLICANT GRANT THORNTON LIMITED
IN SUPPORT OF APPLICATION FOR THE REAPPOINTMENT OF A RECEIVER

TO BE HEARD BY THE HONOURABLE MR. JUSTICE R.A. NEUFELD
May 28, 2024 at 3:00 P.M.

TABLE OF CONTENTS

I. INTRODUCTION

1. This Bench Brief is submitted by Grant Thornton Limited (“**GTL**”) in support of its application for its reappointment as Receiver and Manager (the “**Receiver**”) of the property of Lexin Resources Ltd. (“**Lexin**”), 1051393 B.C. Ltd. (“**105**”), 0989 Resource Partnership (“**0989**”), LR Processing Ltd. (“**LR Ltd**”) and LR Processing Partnership (“**LR Partnership**” and collectively with Lexin, 105, 0989, and LR Ltd the “**Lexin Group**”), and related relief.

2. The application follows previous court-sanctioned receivership proceedings (the “**Proceedings**”) and seeks to address emerging circumstances. GTL was previously discharged as Receiver of the Lexin Group by the order of this Honourable Court on July 11, 2019.

3. GTL seeks, among other things, revival of the Proceedings, reappointment as Receiver over the property of the Lexin Group, revival of certain Lexin Group corporations that are no longer active, and this Honourable Court’s approval to file an application under section 48 of the *Unclaimed Personal Property and Vested Property Act*, SA 2007, c U-1.5 (“***UPPVPA***”).[1]

II. ISSUES

4. The issues before this Honourable Court are:

   (a) whether GTL should be re-appointed as Receiver of the Lexin Group;

   (b) whether Lexin, 105, and LR Ltd should be revived;

   (c) what is the effect of the Renunciation Notice on the Mazeppa Lands; and

   (d) whether GTL should be given the authority to file an application under Section 48 of the *UPPVPA*.

III. FACTUAL BACKGROUND

5. On March 20, 2017, this Honourable Court approved the Alberta Energy Regulator’s (“**AER**”) application to appoint GTL as the Receiver for Lexin. The Proceedings were expanded on

[1] *Unclaimed Personal Property and Vested Property Act*, SA 2007, c U-1.5, s 48 [**TAB 1**].

June 13, 2017, to include 105, 0989, LR Ltd, and LR Partnership, following a subsequent application by the AER.

6. During the Proceedings and with approval from this Honourable Court, the Receiver commenced a comprehensive sales and solicitation process to market the assets of the Lexin Group. As part of that process, the Receiver concluded that it would be too cost intensive to market and sell a LR Ltd owned gas plant in Mazeppa, Alberta (the "**Mazeppa Land**"). On December 19, 2018, this Honourable Court issued a partial discharge order that relieved the Receiver of responsibilities pertaining to the Mazeppa Land.

7. On July 11, 2019, this Honourable Court approved the Receiver's activities, including the sale and transfer of several assets from the Lexin Group, and subsequently issued a discharge order (the "**Discharge Order**") relieving the Receiver of its responsibilities towards the Lexin Group.

8. The Mazeppa Land was later seized and sold due to unpaid municipal taxes. Subsequently, the Crown escheated the proceeds under the *UPPVPA*. In April 2024, the Orphan Wells Association (the "**OWA**") informed GTL that the net proceeds from the sale amounted to approximately $1.1 million (the "**Land Sale Proceeds**").

9. The Alberta Treasury Board & Finance (the "**ATB&F**") and the AER were consulted by the OWA, and it was determined that the best approach to manage the Land Sale Proceeds would be for GTL to file an application to claim the escheated Land Sale Proceeds under section 48 of the *UPPVPA*.

10. LR Ltd was struck from the Alberta corporate registry on January 16, 2020. Correspondingly, both 105 and Lexin were dissolved in the British Columbia corporate registry on March 25, 2019 and July 6, 2020, respectively.

11. During the initial phase of the Proceedings, a 2014 Leroy Somers 3.6MW genset package (the "**Genset**") owned by Lexin was unaccounted for and remained missing. In early 2024, the Genset was discovered by the OWA as being advertised for sale in Edson, Alberta by 1046533 B.C. Ltd. ("**104 BC**"). The ownership of the Genset is currently unclear and will be investigated further should GTL be re-appointed as Receiver of the Lexin Group.

12. As a result of the discovery of the Genset and the Land Sale Proceeds, the OWA, as a primary stakeholder, requested that GTL seek reappointment from this Honourable Court as the Receiver for Lexin to assess and possibly capitalize on the estate's assets. This reappointment will enable GTL to investigate claims against the Genset and manage the escheated proceeds in accordance with applicable law.

IV. LAW AND ARGUMENT

A. Re-appointment of GTL as Receiver of Lexin Group

13. Under section 243(1) of the *Bankruptcy and Insolvency Act*, RSC 1985, c B-3 (the "***BIA***"), this Honourable Court may appoint a receiver over the property of an "insolvent person" if it considers that it is "just and convenient" to do so.[2]

14. Considering the fact that the Lexin Group is no longer in business, it falls within the "insolvent person" criteria.

15. This Honourable Court has the authority to reappoint a receiver "in appropriate circumstances."[3] In *West Face*, the Court spoke about its discretion for reappointing a receiver and stated that:

> In my view, the court does have the jurisdiction to reappoint a receiver in appropriate circumstances. The question is whether I should exercise my discretion to include a provision in the Revised Discharge Order that could result, at some future date, in a motion for the appointment or re-appointment of the receiver.[4] [Emphasis added]

16. It is GTL's respectful submission that its prior appointment as Receiver, its familiarity with the Lexin Group's affairs, and the need for continuity justifies its reappointment to ensure the maximization of recoveries and the proper administration of remaining and discovered assets.

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[2] *Bankruptcy and Insolvency Act*, RSC 1985, c B-3, s 243(1) [**TAB 2**].
[3] *Environmental Waterproofing Inc v Huron Tract Holdings Inc*, 2023 ONSC 405 at para 67 [**TAB 3**].
[4] *West Face Capital Inc v Chieftain Metals Inc*, 2020 ONSC 5161 at para 30 [***West Face***] [**TAB 4**].

17. In all the circumstances, and based on the record before this Honourable Court, GTL submits that a reappointed Receiver is the most fair, balanced, just, and reasonable remedy, and ought to be granted.

B. Revival of Lexin, 105, and LR Ltd

18. The revival of Lexin, 105, and LR Ltd is a crucial step to address and resolve the outstanding claims and legal matters stemming from their previous operations. The revival process is governed by section 210 of the Alberta *Business Corporations Act*, RSA 2000 c B-9 ("***ABCA***") and section 360 of the British Columbia *Business Corporations Act*, SBC 2002 c 57 ("***BCCA***").[5]

19. In order for a revival of LR Ltd under section 210 of the *ABCA* to occur, GTL must first be designated by this Honourable Court as an "interested person" under section 206.1(d) of the *ABCA*.[6] The Alberta Registrar has advised that it has no objection to GTL obtaining an Order to temporarily revive LR Ltd.

20. The requirements for revival under the *BCCA* are more cumbersome and will require additional time to fulfill. In the event that this Honourable Court grants the request to revive Lexin and 0989, GTL will make all reasonable efforts to fulfill the applicable requirements.

21. GTL respectfully submits that the Land Sale Proceeds related to the Mazeppa Land provides the legal standing necessary to justify revival of the Lexin Group. Furthermore, the potential claims regarding the discovered Genset asset require a legal entity to assert ownership or pursue recovery, tasks that are unmanageable without the corporate revival of the involved parties.

C. Renunciation of the Mazeppa Lands and the Genset

22. On April 2, 2019, the Receiver issued a renunciation notice (the "**Renunciation Notice**") that declared that any assets not explicitly listed therein were renounced by the Receiver. At that time, the Receiver had already been discharged with respect to the Mazeppa Lands and they were not listed as retained assets in the Renunciation Notice. Moreover, real property was not included in the definition of renounced assets in the Renunciation Notice.

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[5] *Business Corporations Act*, RSA 2000 c B-9, s 210 [**TAB 5**]; *Business Corporations Act*, SBC 2002 c 57, s 360 [**TAB 6**].
[6] *ABCA*, *supra* note 5 s 206.1(d).

23. Similarly, the Genset, which was still missing at the time, was not listed in the Renunciation Notice. Should this application be granted, GTL intends to further evaluate the applicability of the Renunciation Notice to the Genset.

D. Authority to file an application under Section 48 of the *UPPVPA*

24. Section 48 of the *UPPVPA* provides a mechanism for claims to escheated property by interested parties. This provision ensures that assets not claimed within a specific timeframe, and hence turned over to the Crown, can be reclaimed under certain conditions.[7] GTL's reappointment as Receiver and court-approved authorization to bring a section 48 application are pivotal for initiating claims under this statute.

25. The escheated Land Sale Proceeds, amounting to approximately $1.1 million, are crucial in addressing the substantial abandonment and reclamation obligations that exceed this amount. These obligations were incurred by the Lexin Group as part of their operational activities and remain outstanding.

26. This Honourable Court's authorization to file a section 48 application will facilitate GTL's ability to manage these funds effectively. This relief will also assist the OWA in mitigating the environmental and financial impact resulting from the Lexin Group's operations.

V. RELIEF REQUESTED

27. In light of the foregoing, GTL respectfully request that this Honourable Court grant the relief set out in the application.

ALL OF WHICH IS RESPECTFULLY SUBMITTED at Calgary, Alberta this 24th day of May, 2024.

BORDEN LADNER GERVAIS LLP

Per: Kevin E. Barr / Farrukh Ahmad
Counsel for the Applicant,
Grant Thornton Limited

[7] *UPPVPA*, *supra* note 1 s 48.

VI. LIST OF AUTHORITIES AND OTHER ATTACHMENTS

TAB NO.	DOCUMENT DESCRIPTION
1.	*Unclaimed Personal Property and Vested Property Act*, SA 2007, c U-1.5
2.	*Bankruptcy and Insolvency Act*, RSC 1985, c B-3
3.	*Environmental Waterproofing Inc v Huron Tract Holdings Inc*, 2023 ONSC 405
4.	*West Face Capital Inc v Chieftain Metals Inc*, 2020 ONSC 5161
5.	*Business Corporations Act*, RSA 2000 c B-9
6.	*Business Corporations Act*, SBC 2002 c 57

TAB 1

Most Recently Cited in: 663073 Alberta Ltd. v. Alberta (Treasury Board), 2021 ABCA 368, 2021 CarswellAlta 2834, 338 A.C.W.S. (3d) 173, 95 Admin. L.R. (6th) 32, [2021] A.W.L.D. 4766 | (Alta. C.A., Nov 10, 2021)

S.A. 2007, c. U-1.5, s. 48

s 48. Ownership claims

Currency

48.Ownership claims

48(1) Subject to subsection (8), if under this Act or another enactment unclaimed personal property or vested property has been paid, transferred or delivered to the Minister, or an amount has been paid to the Minister as equivalent value for unclaimed personal property or vested property, a person, governmental organization or other entity who asserts a claim to that unclaimed personal property or vested property or amount may claim that unclaimed personal property or vested property or amount by filing with the Minister a claim in the form required by the Minister that includes

(a) the full name and address of the claimant,

(b) the basis on which the claim is made, and

(c) any other information required by the Minister in support of the claim.

48(2) The Minister must, within 120 days after a claim is filed under subsection (1), consider the claim and

(a) must allow the claim if the Minister is satisfied that the claimant is the owner of the property or amount,

(b) may allow the claim,

(i) if the Minister is satisfied that the claimant has a valid entitlement to the property or amount but is prevented from asserting full rights as owner to that property or amount because of a procedural impediment to the claimant assuming those ownership rights, including, without limitation, in the case of an entitlement arising under an estate, the fact that probate or administration has not yet been granted in respect of the estate, or

(ii) subject to the regulations, if the Minister is satisfied that the claimant is an individual of the 5th or greater degree of relationship to an individual who died intestate and is prevented by section 67(2) of the *Wills and Succession Act* from sharing in the intestate estate,

and

(c) may deny the claim if the Minister is not satisfied under clause (a) or (b).

48(3) Notwithstanding subsection (2), the Minister may

(a) request additional information from, or disclose information to, a claimant for the purpose of resolving the claim, or

(b) extend the time referred to in subsection (2) if additional time is required to consider the claim.

48(4) If the Minister allows a claim filed under subsection (1), the Minister must, within 30 days after the claim is allowed, do one of the following:

(a) if the unclaimed personal property or vested property is to be returned in its original form and there are no amounts owing pursuant to section 39(6) or (8) in respect of it, return the property to the claimant;

(b) subject to clause (d), if the unclaimed personal property or vested property is to be returned in its original form and there are amounts owing pursuant to section 39(6) or (8) in respect of it, provide the claimant with a summary of the amounts that must be paid before the property is returned;

(c) subject to section 39(7), if the unclaimed personal property or vested property has been disposed of, pay to the claimant the net proceeds from the disposition of the unclaimed personal property or vested property less the expenses and administration fees charged pursuant to section 39(4);

(d) subject to section 39(7), if the unclaimed personal property or vested property was received by the Minister in the form of money, pay to the claimant the net amount of the unclaimed personal property or vested property less the expenses and administration fees charged pursuant to section 39(4).

48(5) On receipt of the amount payable by the claimant referred to in subsection (4)(b), the Minister must within 30 days return the property to the claimant.

48(6) If a claimant has not within 120 days paid the amount required pursuant to subsection (4)(b) or served an objection in respect of it on the Minister in accordance with subsection (11), the Minister

(a) may sell the property, and

(b) if the property is sold, must within 30 days from the date of sale pay to the claimant the net proceeds from the sale less the amount payable by the claimant pursuant to subsection (4)(b).

48(7) If vested property that is subject to a claim under subsection (1) has been leased or otherwise encumbered under this Act or another enactment,

(a) the property when paid, delivered or transferred to the claimant remains subject to the lease or encumbrance, and

(b) the lease or encumbrance, if issued as an agreement under the *Mines and Minerals Act* in respect of a mineral, must be administered by the Minister responsible for that Act until the agreement is cancelled, expires or is terminated.

48(8) Subject to section 10(3)(b), a claim under this section may not be brought more than 10 years after the date on which the property or an amount as equivalent value for it was paid, transferred or delivered to the Minister.

48(9) If no claim in respect of unclaimed personal property or vested property has been made within the claim period specified in subsection (8), any right of an owner, an apparent owner or a former owner in relation to the property, whether legal or equitable, is extinguished.

48(10) Notwithstanding subsections (8) and (9), the Minister may, in the circumstances prescribed in the regulations, consider and allow or deny a claim made after the expiry of the claim period specified in subsection (8).

48(11) A claimant who objects to a decision of the Minister under subsection (2)(c) or to the amount stated to be owing in respect of the property under subsection (4)(b) or payable to the claimant in respect of the property under subsection (4)(c) may within 120 days serve on the Minister a written objection in the form required by the Minister setting out the basis on which the claimant objects to the decision or the amount.

48(12) An objection served by a claimant under subsection (11) must be resolved in accordance with section 59.

48(13) The Minister may apply to the Court of King's Bench in accordance with the regulations for advice or direction with respect to a claim or competing claims or any matter under this section.

48(14) A claimant may, in the form required by the Minister, authorize another person to make a claim under this section on the claimant's behalf.

48(15) For the purposes of subsection (3)(a), information disclosed by the Minister may include relevant personal information, including names or identifiers, of the claimant or other claimants.

Amendment History
2010, c. W-12.2, s. 124(b); Alta. Reg. 217/2022, s. 248(2)

Currency
Alberta Current to Gazette Vol. 120:2 (January 31, 2024)

End of Document

TAB 2

Most Recently Cited in: Podollan v. Trustee of Estate of David Podollan, 2024 BCCA 173, 2024 CarswellBC 1247 | (B.C. C.A., May 3, 2024)

R.S.C. 1985, c. B-3, s. 243

s 243.

Currency

243.
243(1) Court may appoint receiver
Subject to subsection (1.1), on application by a secured creditor, a court may appoint a receiver to do any or all of the following if it considers it to be just or convenient to do so:

(a) take possession of all or substantially all of the inventory, accounts receivable or other property of an insolvent person or bankrupt that was acquired for or used in relation to a business carried on by the insolvent person or bankrupt;

(b) exercise any control that the court considers advisable over that property and over the insolvent person's or bankrupt's business; or

(c) take any other action that the court considers advisable.

243(1.1) Restriction on appointment of receiver
In the case of an insolvent person in respect of whose property a notice is to be sent under subsection 244(1), the court may not appoint a receiver under subsection (1) before the expiry of 10 days after the day on which the secured creditor sends the notice unless

(a) the insolvent person consents to an earlier enforcement under subsection 244(2); or

(b) the court considers it appropriate to appoint a receiver before then.

243(2)Definition of "receiver"
Subject to subsections (3) and (4), in this Part, **"receiver"** means a person who

(a) is appointed under subsection (1); or

(b) is appointed to take or takes possession or control — of all or substantially all of the inventory, accounts receivable or other property of an insolvent person or bankrupt that was acquired for or used in relation to a business carried on by the insolvent person or bankrupt — under

(i) an agreement under which property becomes subject to a security (in this Part referred to as a "security agreement"), or

(ii) a court order made under another Act of Parliament, or an Act of a legislature of a province, that provides for or authorizes the appointment of a receiver or receiver-manager.

243(3)Definition of "receiver" — subsection 248(2)
For the purposes of subsection 248(2), the definition "receiver" in subsection (2) is to be read without reference to paragraph (a) or subparagraph (b)(ii).

243(4)Trustee to be appointed
Only a trustee may be appointed under subsection (1) or under an agreement or order referred to in paragraph (2)(b).

243(5)Place of filing
The application is to be filed in a court having jurisdiction in the judicial district of the locality of the debtor.

243(6)Orders respecting fees and disbursements
If a receiver is appointed under subsection (1), the court may make any order respecting the payment of fees and disbursements of the receiver that it considers proper, including one that gives the receiver a charge, ranking ahead of any or all of the secured creditors, over all or part of the property of the insolvent person or bankrupt in respect of the receiver's claim for fees or disbursements, but the court may not make the order unless it is satisfied that the secured creditors who would be materially affected by the order were given reasonable notice and an opportunity to make representations.

243(7)Meaning of "disbursements"
In subsection (6), **"disbursements"** does not include payments made in the operation of a business of the insolvent person or bankrupt.

Amendment History
1992, c. 27, s. 89(1); 2005, c. 47, s. 115; 2007, c. 36, s. 58

Judicial Consideration (8)

Currency
Federal English Statutes reflect amendments current to April 24, 2024
Federal English Regulations Current to Gazette Vol. 158:7 (March 27, 2024)

TAB 3

2023 ONSC 405
Ontario Superior Court of Justice

Environmental Waterproofing Inc. v. Huron Tract Holdings Inc.

2023 CarswellOnt 528, 2023 ONSC 405, 16 P.P.S.A.C. (4th) 77, 2023 A.C.W.S. 243

IN THE MATTER OF the Construction Lien Act, R.S.O. 1990, c. C. 30

Environmental Waterproofing Inc. and Randy Wilson c.o.b. Maple Hill Electric (Creditors) and Huron Tract Holdings Inc. (Debtor) and Jokey Plastics North America Inc. (Garnishee)

Spencer Nicholson J.

Heard: September 20, 2022
Judgment: January 16, 2023
Docket: CV-10-2087

Counsel: M. Cook, for Creditors
D. Swift, S. Zeitz, for Interested Party, Libro Credit Union

Related Abridgment Classifications
Civil practice and procedure
VII Limitation of actions
VII.4 Actions in contract or debt
VII.4.a Statutory limitation periods
VII.4.a.ii Which limitation period applies
Equity
II Maxims of equity
II.2 Equity follows the law
Personal property security
IV Priority of security interest
IV.6 Security interests versus other interests
IV.6.d Judgment creditors
Personal property security
VII Practice and procedure
VII.7 Miscellaneous
Restitution and unjust enrichment
I General principles
I.2 Requirements for unjust enrichment
I.2.a Conferral of benefit
Restitution and unjust enrichment
I General principles
I.2 Requirements for unjust enrichment
I.2.b Deprivation corresponding to enrichment

Headnote
Personal property security --- Priority of security interest — Security interests versus other interests — Judgment creditors
Credit union provided financing to debtor secured by General Security Agreement registered under Personal Property Security Act (PPSA), debtor defaulted, and receiver was appointed — Debtor's debenture granted by guarantor provided for income participation to be payable to debtor if guarantor had positive taxable income in any given tax year, but condition was not

other than a list of enumerated claims. "Claims" is defined to mean a claim to remedy an injury, loss or damage that occurred as a result of an act or omission.

61 The basic limitation period is two years from the date on which the claim was discovered. Under s. 5, a claim is discovered on the earlier of the date on which the person with the claim first knew that the loss had occurred, that the loss was caused by an act or omission, that the person against whom the claim is made was responsible for the act or omission and that a proceeding would be an appropriate means to seek to remedy the loss.

62 Subsection 5(3) makes it clear that in relation to a demand obligation, the limitation period commences on the first day on which there was a failure to perform the obligation once a demand for performance was made.

63 It is important to point out that the expiration of a limitation period does not extinguish a party's substantive rights, but merely acts procedurally to prevent a party from asserting those rights through court proceedings. Typically, courts require a defendant to assert that the limitation period has expired. The failure to plead the limitation period is fatal to relying upon it.

64 I note that the GSA provided a security interest in all existing and *future* indebtedness. Further, under the section of the GSA addressing Receivables, the GSA granted a security interest in all debts including those that may "*at any time hereafter*" be due and owing. In light of that language, it seems anomalous that the secured creditor's security interest in the Debenture could be extinguished before it ever became realizable.

65 Environmental argues that the order discharging the receiver in 2013 terminated the proceedings. Environmental relies upon *West Face Capital Inc. v. Chieftain Metals Inc.*, 2020 ONSC 5161, a decision of Morawetz C.J. That case involved a court appointed receiver of the assets, undertakings and property of Chieftain Metals. At issue was whether the order discharging the receiver should include a provision requiring West Face to bring a motion to seek an order for a new receiver within two years. Environmental argues that the case stands for the proposition that the termination of a receivership proceedings triggers the requirement for a new receivership proceeding. In its submission, UCCU had to reserve its right within the order to initiate a second receivership proceeding, failing which it would be out of time and prevented from taking further action.

66 In my view, that case does not assist Environmental. The issue before Chief Justice Morawetz was whether the court had the jurisdiction to reappoint a receiver in appropriate circumstances. He states at para. 30, as follows:

> [30] In my view, the court does have the jurisdiction to reappoint a receiver in appropriate circumstances. The question is whether I should exercise my discretion to include a provision in the Revised Discharge Order that could result, at some future date, in a motion for the appointment or reappointment of the receiver.
>
> Later, Morawetz C.J. describes, in para. 38, that:
>
> "...West Face does not want a termination of the Receivership Proceedings. *It is conceivable that there may be limitation period consequences* to West Face if this course of action is implemented and West Face wanted to initiate a second receivership proceeding."
>
> (my emphasis)

67 Thus, Morawetz C.J. actually held that the court can reappoint a receiver in appropriate circumstances, and he did *not* hold that in order to do so, the court had to specifically provide in the order for reappointment. He was simply asked to impose a time limit when the request for the reappointment for a receiver could be made so that the other parties would not be held hostage forever while West Face attempted to find a buyer for the project in question.

68 At best, Chief Justice Morawetz contemplated that there could be a limitation period issue. He did not, in my view, hold that steps had to be taken within two years or West Face would necessarily be out of time. Ultimately, Morawetz C.J. included a provision permitting West Face to bring a motion to seek the re-appointment of a receiver in these proceedings within two years. Note, that if West Face was going to be *prima facie* barred by the passage of a limitation period, then there would have been no need to impose a time limit on West Face's ability to bring a motion to request the re-appointment of the Receiver.

TAB 4

2020 ONSC 5161
Ontario Superior Court of Justice

West Face Capital Inc. v. Chieftain Metals Inc.

2020 CarswellOnt 14600, 2020 ONSC 5161, 324 A.C.W.S. (3d) 18, 85 C.B.R. (6th) 151

WEST FACE CAPITAL INC., AS AGENT and CHIEFTAIN METALS INC. AND CHIEFTAIN METALS CORP.

Geoffrey B. Morawetz C.J. Ont. S.C.J.

Heard: August 11, 2020
Judgment: October 8, 2020
Docket: CV-16-11511-00CL

Counsel: Mark Laugesen, Danish Afroz, for Receiver, Grant Thornton Limited
Roger Jaipargas, for West Face Capital Inc., as Agent
Colby Linthwaite, Aaron Welch, for Her Majesty the Queen in right of the Province of British Columbia
Robin Dean, Robert Janes, for Taku River Tlingit First Nation
Erin Gray, for Rivers Without Borders

Related Abridgment Classifications
Bankruptcy and insolvency
IV Receivers
IV.4 Miscellaneous

Headnote
Bankruptcy and insolvency --- Receivers — Miscellaneous
Receiver of bankrupt company claimed that company should be discharged from bankruptcy — Receiver also sought relief including approval of statements, reports, and fees — After discussions with private creditor and provincial government, receiver revised request for discharge — Revised request allowed private creditor to move for appointment of receiver — Receiver moved for discharged under revised request — Motion granted — Granting of motion was without prejudice to private creditor's right to bring motion — There was no opposition to requested relief — There was precedent to reappoint receivers in certain situations — Time limit on potential relief was needed, to allow for finality in litigation — Any reappointment motion was to be brought no later than two years after hearing date.

Table of Authorities
Cases considered by *Geoffrey B. Morawetz C.J. Ont. S.C.J.*:
Bank of Nova Scotia v. Freure Village on Clair Creek (1996), 40 C.B.R. (3d) 274, 1996 CarswellOnt 2328 (Ont. Gen. Div. [Commercial List]) — considered
Grand Valley Railway, Re (1933), [1933] O.W.N. 704 (Ont. C.A.) — considered

Statutes considered:
Bankruptcy and Insolvency Act, R.S.C. 1985, c. B-3
Generally — referred to

s. 40 — considered

s. 41 — considered

s. 41(10) — considered

s. 41(11) — considered

notwithstanding the discharge, the trustee remains trustee of the estate for the performance of such duties as may be incidental to the full administration of the estate.

27 There are no corresponding provisions to sections 40 and 41 in Part XI of the BIA which deals with secured creditors and receivers, other than perhaps, s. 247(b) which requires the receiver to deal with the property of the insolvent person or the bankrupt in a commercially reasonable manner.

28 In my view, the authorities referenced by counsel to West Face which reference s. 41(11) of the BIA and the realization and distribution of assets are of limited assistance.

29 However, I am satisfied that it is open to the court to consider provisions in a discharge order that would provide for the re-appointment of a receiver in certain circumstances. I arrive at this conclusion for two reasons. First, *Grand Valley Railway, Re*, [1933] O.J. No. 151 (Ont. C.A.), at para. 19 a decision of the Court of Appeal for Ontario, provided for the re-appointment of a receiver. Second, there is no express prohibition in the BIA that would prevent the court from re-appointing a receiver.

30 In my view, the court does have the jurisdiction to reappoint a receiver in appropriate circumstances. The question is whether I should exercise my discretion to include a provision in the Revised Discharge Order that could result, at some future date, in a motion for the appointment or re-appointment of the receiver.

31 The Province submits that if West Face is granted an unlimited time within which to move for the re-appointment of a receiver for the purpose of selling the Project, the Province will be required to run an unlimited risk that any costs it incurs and resources it expends with respect to the remediation of the Project will (i) be made redundant, or (ii) be for the benefit of West Face. The Province contends that West Face is content for the Province to solve the problem, while it retains its rights forever. In such circumstances, the re-appointment of a receiver, at some future time for the purpose of completing a sale of the Project would be convenient for West Face, but it would certainly not be just.

32 Counsel to the Province references *Bank of Nova Scotia v. Freure Village on Clair Creek* (1996), 40 C.B.R. (3d) 274 (Ont. Gen. Div. [Commercial List]) for the proposition that the "just or convenient" question becomes one of the Court determining, in the exercise of its discretion, whether it is more in the interests of all concerned to have the receiver appointed by the Court or not. This involved an examination of all the circumstances, including the potential costs, the relationship between the debtor and the creditors, the likelihood of maximizing the return on and preserving the subject property and the best way of facilitating the work and duties of the receiver-manager.

33 The Province submits that in this case, the "potential cost" to the Province is the time, effort and money expended upon work towards the development and implementation of a final remediation and closure plan that is ultimately for the benefit of West Face and its buyer.

34 The Province contends that there should be some time limit imposed on West Face's ability to bring a motion to request the re-appointment of the Receiver and that the issue to be determined is what time limit should be imposed. The Province contends that it should be no longer than two years and that the consent of the Province should be a precondition to bring such a motion.

35 Counsel to the TRTFN detailed that since the 1990s, the TFTFN has taken considerable steps to protect its lands and that the protection and stewardship of the TRTFN territory is fundamental to the TRTFN way of life. The TRTFN is opposed to the project as it views the Project as a threat to their lands and waters as well as to their way of life.

36 With respect to the issue of the discharge of a Receiver, counsel to TRTFN submits that the BIA makes no provision for without prejudice discharge of a receiver and if there is any authority to make an order granting an unlimited period of time to move for the re-appointment of a receiver in this proceeding, it lies in the discretionary power of the court in managing insolvency proceedings. I agree.

37 Accordingly, in the exercise of its discretion, counsel submits that the court should take into account all interests of innocent third party such as the TRTFN. The TRTFN submits that permitting West Face to move for the re-appointment of

TAB 5

Most Recently Cited in: Canada (Attorney General) v. 18335898 Alberta Ltd (Whitecap Energy Inc), 2023 ABKB 357, 2023 CarswellAlta 1543, [2023] A.W.L.D. 2531, 2023 A.C.W.S. 2562, [2023] 5 C.T.C. 52 | (Alta. K.B., Jun 14, 2023)

R.S.A. 2000, c. B-9, s. 206.1

s 206.1 Definition

Currency

206.1Definition

In this Part, **"interested person"** means

(a) a shareholder, a director, an officer, an employee and a creditor of a dissolved corporation,

(b) a person who has a contractual relationship with a dissolved corporation,

(c) a trustee in bankruptcy for a dissolved corporation, or

(d) a person designated as an interested person by an order of the Court.

Amendment History

2005, c. 8, s. 48

Currency

Alberta Current to Gazette Vol. 120:2 (January 31, 2024)

Most Recently Cited in: Canada (Attorney General) v. 18335898 Alberta Ltd (Whitecap Energy Inc), 2023 ABKB 357, 2023 CarswellAlta 1543, [2023] A.W.L.D. 2531, 2023 A.C.W.S. 2562, [2023] 5 C.T.C. 52 | (Alta. K.B., Jun 14, 2023)

R.S.A. 2000, c. B-9, s. 210

s 210. Revival

Currency

210.Revival
210(1) Any interested person may apply to the Court within 10 years after the date of dissolution for an order reviving a body corporate dissolved under this Part.

210(1.1) A body corporate may not be revived after the expiry of 10 years from the date of dissolution.

210(1.2) [Repealed 2021, c. 18, s. 52(c).]

210(2) An applicant under subsection (1) shall give notice of the application to the Registrar and the Registrar is entitled to appear and be heard in person or by counsel.

210(3) An order under subsection (1) may revive the body corporate for the purpose of carrying out particular acts specified in the order and the order shall state that the revival remains in effect for a specific time limited by the order.

210(4) In an order under subsection (1), the Court may

(a) give directions as to the holding of meetings of shareholders, the appointment of directors and meetings of directors,

(b) [Repealed 2021, c. 18, s. 52(e).]

(c) [Repealed 2021, c. 18, s. 52(e).]

(d) change the name of the body corporate to a number designated or name approved by the Registrar, and

(e) give any other directions the Court thinks fit.

210(5) Where a person seeks the approval of the Registrar under subsection (4)(d), the person shall provide to the Registrar documents relating to corporate names that are prescribed by the regulations.

210(6) [Repealed 2021, c. 18, s. 52(f).]

210(7) A body corporate revived by an order under this section is dissolved on the expiration of the time limited by the order.

210(8) If an order is made under this section, the applicant shall forthwith send a certified copy of the order to the Registrar who shall file it and restore the body corporate to the register under the *Companies Act*.

210(9) A body corporate is revived on the making of an order under this section and, subject to the terms imposed by the order and to rights acquired by any person prior to the revival, the body corporate is deemed to have continued in existence as if it had not been dissolved.

Amendment History

2005, c. 8, s. 49; 2007, c. U-1.5, s. 68(3); 2021, c. 18, s. 52

Currency

Alberta Current to Gazette Vol. 120:2 (January 31, 2024)

End of Document

TAB 6

Most Recently Cited in: British Columbia v. The Administrator of the Ship-source Oil Pollution Fund, 2019 BCCA 232, 2019 CarswellBC 1820, 94 B.L.R. (5th) 232, 26 B.C.L.R. (6th) 270, [2020] 3 W.W.R. 279, 434 D.L.R. (4th) 735, 306 A.C.W.S. (3d) 753 | (B.C. C.A., Jun 26, 2019)

S.B.C. 2002, c. 57, s. 360

s 360. Applications to the court for restoration

Currency

360.Applications to the court for restoration
360(1) A person may apply to the court to restore a company.

360(2) An application may be made under subsection (1)

(a) for a full restoration, by a related person, or

(b) for a limited restoration, by any person.

360(3) An applicant must

(a) provide to the registrar notice of the application and a copy of any record filed in the court registry in support of it, and

(b) obtain the registrar's consent to the restoration.

360(4) On an application under subsection (1), the applicant must provide to the court

(a) the information required under section 357 or, in the case of an unlimited liability company,

(i) the information required under section 357(a), (b), (d), (e) and (f), and

(ii) the name reserved for the company and the reservation number given for it, or a statement that the name by which the company is to be restored is the name created by adding "B.C. Unlimited Liability Company" after the incorporation number of the company,

(b) the registrar's consent to the restoration, including any terms and conditions that the registrar considers appropriate, and

(c) any other information and records required by the court.

360(5) Subject to subsection (8), on an application under subsection (1), the court may, if it is satisfied that it is appropriate to restore the company, make an order, on the terms and conditions, if any, the court considers appropriate, that the company be restored.

360(6) Without limiting subsection (5), in an order made under that subsection, the court may give directions and make provisions it considers appropriate for placing the company and every other person in the same position, as nearly as may be, as if the company had not been dissolved.

360(7) Subject to section 368, unless the court orders otherwise, an order under subsection (5) of this section is without prejudice to the rights acquired by persons before the restoration.

360(8) An order under subsection (5) must reflect any terms and conditions referred to in subsection (4)(b).

Amendment History
2008, c. 39, s. 16; 2012, c. 12, s. 18; 2015, c. 18, s. 278

Currency
British Columbia Current to Gazette Vol. 66:11 (July 4, 2023)