

Court File No. SJM 44 2024

IN THE COURT OF KING'S BENCH OF NEW BRUNSWICK

IN BANRUPTCY AND INSOLVENCY

JUDICIAL DISTRICT OF SAINT JOHN

IN THE MATTER OF THE RECEIVERSHIP OF ROYAL OAKS GOLF CLUB INC.

PURSUANT TO SECTION 33 OF THE *JUDICATURE ACT*, R.S.N.B. 1973, c. J-2, RULE 41 OF THE RULES OF COURT, N.B. REG 82-73 and SECTION 243 OF THE *BANKRUPTCY AND INCOLVENCY ACT*

BETWEEN:

CWB MAXIMUM FINANCIAL INC.,

Applicant

-and-

ROYAL OAKS GOLF CLUB INC.,

Respondent



**NOTICE OF APPLICATION
(FORM 16D)**

**AVIS DE REQUÊTE
(FORMULE 16D)**

TO: Royal Oaks Golf Club Inc. and the Service List at Schedule "A"

DESTINATAIRE: (*l'intimé susmentionné ou autre*)

LEGAL PROCEEDINGS HAVE BEEN COMMENCED BY FILING THIS NOTICE OF APPLICATION.

PAR LE DÉPÔT DU PRÉSENT AVIS DE REQUÊTE, UNE POURSUITE JUDICIAIRE A ÉTÉ EN-GAGÉE.

The applicant CWB Maximum Financial Inc. will make an application before the Court of King's Bench in Bankruptcy and Insolvency at 10 Peel Plaza, Saint John, New Brunswick on the 15 day of April, 2024 at 1:00 ~~a.m.~~ (or p.m.) for an Order as set out hereunder.

Le requérant présentera une requête à la Cour à 10 Peel Plaza, Saint John, Nouveau-Brunswick le _____, 2024, à _____ h _____ en vue d'obtenir l'ordonnance décrite ci-dessous.

If you wish to oppose this application you must appear at the hearing of the application at the

Si vous désirez contester cette requête, vous devrez comparaître à l'audition de la requête aux lieu, date et heure indiqués, soit en personne ou par l'intermédiaire

place, date and time stated, either in person or by a New Brunswick lawyer acting on your behalf.

d'un avocat du Nouveau-Brunswick chargé de vous représenter.

If you intend to appear on the hearing of the application and wish to present to the Court at that time affidavit or other documentary evidence to support your position, you must serve a copy of such evidence on the applicant or his lawyer and, with proof of such service, file it in this Court Office prior to the hearing of the application.

Si vous prévoyez comparaître à l'audition de la requête et désirez présenter à la Cour un affidavit ou une autre preuve littérale en votre faveur, vous devrez signifier copie de cette preuve au requérant ou à son avocat et la déposer, avec une preuve de sa signification, au greffe de cette Cour avant l'audition de la requête.

If you fail to appear on the hearing of the application AN ORDER WHICH MAY AFFECT YOU MAY BE MADE IN YOUR ABSENCE.

Si vous ne comparez pas à l'audition de la requête, UNE ORDONNANCE POUVANT VOUS CONCERNER POURRA ÊTRE RENDUE EN VOTRE ABSENCE.

You are advised that:

Sachez que:

- (a) you are entitled to issue documents and present evidence in the proceeding in English or French or both;
- (b) the applicant intends to proceed in ENGLISH the language; and
- (c) if you require the services of an interpreter at the hearing you must advise the clerk at least 7 days before the hearing.

- a) vous avez le droit dans la présente instance, d'émettre des documents et de présenter votre preuve en français, en anglais ou dans les deux langues;
- b) le requérant a l'intention d'utiliser la langue.....; et
- c) si vous avez besoin des services d'un interprète à l'audience, vous devez en aviser le greffier au moins 7 jours avant l'audience.

THIS NOTICE is signed and sealed for the Court of King's Bench by Pamela Bourque Clerk of the Court at Saint John, on the 26 day of March, 2024.

CET AVIS est signé et scellé au nom de la Cour du Banc du Roi par..... greffier de la Cour à ce 20.....

Original signed by / signé par
Pamela Bourque

Sceau de
la Cour

(greffier)

Court
Seal

(address of court office)

(adresse du greffe)

Saint John Law Courts
P.O. Box 5001
10 Peel Plaza
Saint John NB
E2L 3G6

SCHEDULE "A" to the NOTICE OF APPLICATION

1. HR Corporate Strategies Ltd.
George L. Cooper, K.C.
Cox & Palmer
Suite 500, Blue Cross Centre
644 Main Street
Moncton, NB E1C 1E2
Email: gcooper@coxandpalmer.com
2. Office of the Superintendent in Bankruptcy
Room 1605, Maritime Centre
1505 Barrington Street
Halifax, NS B3J 3K5
Email: osbservice-bsfservice@ised-isde.gc.ca
3. Canada Revenue Agency
100-145 Hobson's Lake Drive
Halifax, NS B3S 0J1
Attn: Maeve Baird
Email: maeve.baird@justice.gc.ca
4. TWI Oaks Inc.
Alana Waberski
Stewart McKelvey
Suite 601, Blue Cross Centre
644 Main Street
Moncton, NB E1C 1E2
Email: awaberski@stewartmckelvey.com
5. Sunset CRE Investments LCP
2 Antonini Court
Vaughn, ON L6A 4R2
6. Ford Credit Canada Company
PO Box 2400
Edmonton, AB T5J 5C7
7. Walter Steven Lunn
c/o Michael Brenton
Brenton Kean
75 Prince William Street
Saint John, NB E2L 2B2
Email: mdb@brentonkean.com

APPLICATION

On the hearing of this Application, the Applicant, CWB Maximum Financial Inc. ("CWB"), intends to apply for the following relief:

1. an Order, if necessary, for the abridgement of time for service of this application, excusing the lack of service of this application, or excusing the lack of service of the Applicant's record on the application pursuant to Rules 1.03, 2.01, 2.02, 3.02, and 41.04 of the *Rules of Court*.
2. an Order, substantially in the form of the draft Order attached hereto as Schedule "B" (the "Draft Receivership Order") appointing Deloitte Restructuring Inc. ("Deloitte" or the "Proposed Receiver") as receiver and receiver and manager over all the assts, properties and undertakings of Royal Oaks Golf Course Inc. ("Royal Oaks") without security, pursuant to section 33 of the Judicature Act, R.S.N.B. 1973, c J-2, Rule 41 of the *Rules of Court* and section 243 of the *Bankruptcy and Insolvency Act* (the "BIA"), with the power to do such acts and deeds set out in the Draft Receivership Order.
3. if the above Order is granted, a further Order, substantially in the form of the draft Order attached as Schedule "C" (the "Draft Sales Process Order") authorizing and approving Deloitte to proceed with the Sales Process as described in the First Report of the Proposed Receiver attached hereto as Schedule "D".
4. such further and other relief as the Applicant may advise the and this Honourable Court may allow.

The capacities of all persons who are parties to the proceeding are as follows:

5. CWB is an extra-provincial corporation registered pursuant to the *Business Corporations Act* and its registered office is in Saint John, New Brunswick.
6. Royal Oaks is a body corporate incorporated pursuant to the laws of New Brunswick with a registered office in Moncton, New Brunswick.

The grounds to be argued are set as follows:

7. CWB as creditor, and Royal Oaks as debtor entered into a promissory note, collateral mortgage, assignment of rent and general security agreement in November 2012;
8. CWB as creditor, and Royal Oaks as debtor, entered into a further promissory note and general security agreement in December 2017. The promissory note was amended in September 2022 and May 2023;
9. the collateral mortgage secured the promissory note entered in December 2017;
10. the amount outstanding as of September 22, 2023 was \$1,904,896.28;
11. on October 13, 2023, CWB forwarded demands and a notice of intention to enforce security both under section the *Bankruptcy and Insolvency Act* and the *Personal Property Security Act*;
12. Royal Oaks is in default of its obligations pursuant to the loan documents outlined herein;

Appointment of Receiver

13. the right to seek a Court appointed receiver over the assets and undertaking of Royal Oak is provided in CWB's security;
14. Royal Oaks has failed to meet their obligations as they become due;
15. Royal Oaks has secured and unsecured creditors;
16. Deloitte has been appointed Private Receiver;
17. the appointment of a receiver is necessary and is just and convenient in the circumstances to ensure the orderly management of Royal Oaks and/or their assets;

18. a Court appointed receiver is for the benefit of all interested parties and should be granted a charge against all of the property subject to the receivership as such is just and convenient in the circumstances;

Sale Process

19. The Proposed Receiver has sought appointment as receiver and receiver manager over all of the assets, properties, and undertakings of Royal Oaks, without security, pursuant to section 33 of the *Judicature Act, supra*, Rule 41 of the *Rules of Court, supra*, and section 243 of the *BIA*;
20. Royal Oaks operates a golf course which will begin its season this spring;
21. Royal Oaks assets consist primarily of the following:
 - a. The golf course property;
 - b. goodwill consisting of its knowledge and reputation operating a golf course;
 - c. capital assets including golf carts and equipment to maintain and operate a golf course and memberships; and
 - d. accounts receivable.

Proposed Sales Process

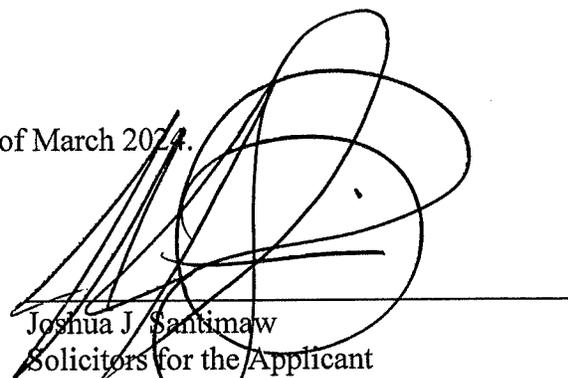
22. Royal Oaks is engaged in a shareholder dispute that does not allow it to satisfy the debt of CWB;
23. the Proposed Receiver will market the assets via advertisements in the *Globe & Mail*, *Insolvency Insider*, and a dedicated website for that purpose;
24. the proposed timeframe for the sale process would be 45 to 60 days for the open sale period with a closing to follow, subject to Court approval on any accepted offer within 30 to 45

days. The Proposed Receiver would complete appraisals of the asset classes to assess the offers, and would provide these valuations to the Court within the context of its report;

25. the Proposed Receiver has already identified several parties who may be interested in purchasing Royal Oaks assets;
26. the approach to be taken by the Proposed Receiver is flexible and will allow interested parties to submit a bid to acquire all or some of Royal Oaks assets;
27. the Proposed Receiver submits that the sale process provides a reasonable path to soliciting interest in Royal Oaks assets and that the timelines suggested are reasonable in the circumstances given there is a defined market of potential purchasers with specific market knowledge of the assets to be acquired.
28. CWB intends to rely upon the following statutory provisions:
 - a. the *Rules of Court*, *supra*, including Rule 1.02.1, 2.01, 2.02, 3.02(1), 38, 39, 41, 41.02(1), 41.06;
 - b. the *Judicature Act*, *supra*, including section 33; and
 - c. the *BIA*, *supra*, including sections 243, 244, 247 and 248.
29. The Bank will rely upon the following documentary evidence:
 - a. Affidavit of Rod Randall sworn March 19, 2024;
 - b. Affidavit of Douglas Schipilow sworn on March 25, 2024
 - c. Consent of Deloitte dated March 25, 2024;
 - d. First Report of the Proposed Receiver, dated March 25, 2024; and

e. such further and other documentary evidence as counsel may advise and this Honourable Court may permit.

DATED at Dartmouth, Nova Scotia, this 25th day of March 2024.

A large, stylized handwritten signature in black ink, consisting of several overlapping loops and lines, positioned above a horizontal line.

Joshua J. Santimaw
Solicitors for the Applicant
Whose address for service is:
BOYNECLARKE LLP
99 Wyse Road, Suite 600
Dartmouth, NS
B3A 4S5