

COURT FILE NUMBER: 2301-04941

COURT COURT OF KING'S BENCH
OF ALBERTA

JUDICIAL CENTRE CALGARY

PLAINTIFF BANK OF MONTREAL

COM

DEFENDANTS WESTMOUNT PROJECTS INC., 2218923
ALBERTA LTD., 1975847 ALBERTA LTD.,
ANDERSON & ASSOCIATES FINANCIAL
CORP., IRONCLAD PROJECTS LTD., GORDAN
D. ANDERSON, and DENI MARIO DANIEL
ECHINO

DOCUMENT

INTERIM RECEIVER OF RENTS ORDER

ADDRESS FOR SERVICE AND
CONTACT INFORMATION OF
PARTY FILING THIS DOCUMENT

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Attention: Ryan Zahara/Catrina Webster

File: 0000948.00573/574

I hereby certify this to be a true copy of

the original Order

Dated this 2 day of May 2023

Hermosa Goh
for Clerk of the Court

DATE ON WHICH ORDER WAS PRONOUNCED: APRIL 27, 2023

LOCATION OF HEARING OR TRIAL: EDMONTON, ALBERTA

NAME OF JUSTICE WHO MADE THIS ORDER: JUSTICE M.J. LEMA

UPON the application of Bank of Montreal (the “**Applicant**” or “**BMO**”) in respect of Westmount Projects Inc., 2218923 Alberta Ltd. and 1975847 Alberta Ltd. (collectively, the “**Debtors**”); **AND UPON** having read the Application, the Affidavit of Trevor Bauer sworn and filed on April 17, 2023, the Affidavit of Amber Rapley sworn on April 27, 2023, Affidavit of Gordon Anderson sworn on April 27, 2023, and the Affidavit of Service of Joy Mutuku sworn on April 27, 2023; **AND UPON** noting the consent of Deloitte Restructuring Inc. to act as interim rent receiver of the Debtors, filed; **AND UPON** hearing from counsel for BMO, counsel for the Defendants Westmount Projects Inc., 2218923 Alberta Ltd. and 1975847 Alberta Ltd., counsel for Deloitte Restructuring Inc., and other counsel and interested parties present;



IT IS HEREBY ORDERED AND DECLARED THAT:

SERVICE

1. The time for service of the notice of application for this order (the “**Order**”) is hereby abridged and deemed good and sufficient and this application is properly returnable today.

APPOINTMENT

2. Deloitte Restructuring Inc. is hereby appointed as interim receiver of rents (the “**Rent Receiver**”) pursuant to section 13(2) of the *Judicature Act*, RSA 2000, c J-2, without security, to collect rents from the properties legally described as follows:

Westmount Projects Inc.

PLAN B1
BLOCK 35
LOT 12

being 303 23rd Ave SW, Calgary, Alberta,

and

PLAN 4479P
BLOCK 9
LOTS 18 TO 20 INCLUSIVE

being 1538 27th Ave SW, Calgary, Alberta,

- and -

CONDOMINIUM PLAN 2011798
UNIT 1
AND 2500 UNDIVIDED ONE TEN THOUSANDTH SHARES IN THE COMMON
PROPERTY EXCEPTING THEREOUT ALL MINES AND MINERALS

- and -

CONDOMINIUM PLAN 2011798
UNIT 2
AND 2500 UNDIVIDED ONE TEN THOUSANDTH SHARES IN THE COMMON
PROPERTY EXCEPTING THEREOUT ALL MINES AND MINERALS

- and -

CONDOMINIUM PLAN 2011798
UNIT 3

AND 2500 UNDIVIDED ONE TEN THOUSANDTH SHARES IN THE COMMON
PROPERTY EXCEPTING THEREOUT ALL MINES AND MINERALS
- and -

CONDOMINIUM PLAN 2011798
UNIT 4
AND 2500 UNDIVIDED ONE TEN THOUSANDTH SHARES IN THE COMMON
PROPERTY EXCEPTING THEREOUT ALL MINES AND MINERALS

2218923 Alberta Ltd.

PLAN 6293JK
BLOCK 3
EXCEPTING THEREOUT ALL MINES AND MINERALS
AND THE RIGHT TO WORK THE SAME
AREA: 2.01 HECTARES (4.96 ACRES) MORE OR LESS

-and-

1975874 Alberta Ltd.

PLAN 0113682
BLOCK 2
LOT 5
EXCEPTING THEREOUT ALL MINES AND MINERALS

(collectively, the “**Property**”).

RENT RECEIVER'S POWERS

3. The Rent Receiver is hereby empowered and authorized, but not obligated, to act at once in respect of the Property, as follows:
 - (a) to use commercially reasonable efforts to take possession of and exercise control over the rent proceeds arising from the Property, without limitation including all rent proceeds, receipts and receivables (collectively, the “**Rent Proceeds**”) arising out of or from the Property;
 - (b) to determine, assess and pay from the Rent Proceeds, in the Rent Receiver’s absolute discretion, such costs and expenses associated with the Property as are deemed by the Rent Receiver to be necessary for basic maintenance and preservation of the Property, including, for example and without limitation, utility amounts;

- (c) to receive and collect all monies and accounts now owed or hereafter owing to the Debtors in respect of Rent Proceeds and to exercise all remedies of the Debtors in collecting Rent Proceeds, including, without limitation, to enforce any covenants, rights and security held by the Debtors;
- (d) to report to, meet with and discuss with such affected Persons (as defined below) as the Rent Receiver deems appropriate for all matters relating to collecting the Rent Proceeds and to share information, subject to such terms as to confidentiality as the Rent Receiver deems advisable;
- (e) to report from time to time to the Court in matters relating to the collecting and use of the Rent Proceeds,

and in each case where the Rent Receiver takes any such actions or steps, it shall be exclusively authorized and empowered to do so, to the exclusion of all other Persons, including the Debtors, and without interference from any other Person (as defined below).

DUTY TO PROVIDE ACCESS AND CO-OPERATION TO THE RECEIVER

- 4. (i) The Debtors, (ii) all of their current and former directors, officers, employees, agents, accountants, legal counsel and shareholders, and all other persons acting on their instructions or behalf, and (iii) all other individuals, firms, corporations, governmental bodies or agencies, or other entities having notice of this Order (all of the foregoing, collectively, being “**Persons**” and each being a “**Person**”) shall forthwith advise the Rent Receiver of the existence of any Rent Proceeds in such Person's possession or control, shall grant immediate and continued access to the Rent Proceeds to the Receiver.
- 5. In order to allow the Rent Receiver to collect the Rent Proceeds, all Persons shall forthwith advise the Rent Receiver of the existence of any books, documents, securities, contracts, orders, corporate and accounting records, and any other papers, records and information of any kind related to the business or affairs of the Debtors, and any computer programs, computer tapes, computer disks or other data storage media containing any such information (the foregoing, collectively, the “**Records**”) in that Person's possession or control, and shall provide to the Rent Receiver or permit the Receiver to make, retain and take away copies thereof and grant to the Rent Receiver unfettered access to and use of accounting, computer, software and physical facilities relating thereto, provided however that nothing in this paragraph or in paragraph 6 of this Order shall require the delivery of

Records, or the granting of access to Records, which may not be disclosed or provided to the Rent Receiver due to the privilege attaching to solicitor-client communication or documents prepared in contemplation of litigation or due to statutory provisions prohibiting such disclosure.

6. If any Records are stored or otherwise contained on a computer or other electronic system of information storage, whether by independent service provider or otherwise, all Persons in possession or control of such Records shall forthwith give unfettered access to the Rent Receiver for the purpose of allowing the Rent Receiver to recover and fully copy all of the information contained therein whether by way of printing the information onto paper or making copies of computer disks or such other manner of retrieving and copying the information as the Rent Receiver in its discretion deems expedient, and shall not alter, erase or destroy any Records without the prior written consent of the Rent Receiver. Further, for the purposes of this paragraph, all Persons shall provide the Rent Receiver with all such assistance in gaining immediate access to the information in the Records as the Rent Receiver may in its discretion require including providing the Rent Receiver with instructions on the use of any computer or other system and providing the Rent Receiver with any and all access codes, account names, and account numbers that may be required to gain access to the information.

NO PROCEEDINGS AGAINST THE RECEIVER

7. No proceeding or enforcement process in any court or tribunal (each, a “**Proceeding**”), shall be commenced or continued against the Rent Receiver except with the written consent of the Rent Receiver or with leave of this Court.

NO INTERFERENCE WITH THE RECEIVER

8. No Person shall accelerate, suspend, discontinue, fail to honour, alter, interfere with, repudiate, terminate or cease to perform any right, renewal right, contract, agreement, licence or permit in respect of the Property in favour of or held by the Debtors, except with the written consent of the Rent Receiver, or leave of this Court.

RECEIVER TO HOLD FUNDS

9. All funds, monies, cheques, instruments, and other forms of payments received or collected by the Rent Receiver in respect of the Rent Proceeds from and after the making

of this Order from any source whatsoever, whether in existence on the date of this Order or hereafter coming into existence, shall be deposited into one or more new accounts to be opened by the Rent Receiver (the “**Post Rent-Receivership Accounts**”) and the monies standing to the credit of such Post Rent-Receivership Accounts from time to time, net of any disbursements provided for herein, shall be held by the Rent Receiver to be paid in accordance with the terms of this Order or any further order of this Court.

LIMITATION ON ENVIRONMENTAL LIABILITIES

10. (a) Notwithstanding anything in any federal or provincial law, the Rent Receiver is not personally liable in that position for any environmental condition that arose or environmental damage that occurred:
 - (i) before the Rent Receiver's appointment; or
 - (ii) after the Rent Receiver's appointment unless it is established that the condition arose or the damage occurred as a result of the Rent Receiver's gross negligence or wilful misconduct.
- (b) Nothing in sub-paragraph (a) exempts a Rent Receiver from any duty to report or make disclosure imposed by a law referred to in that sub-paragraph.
- (c) Notwithstanding anything in any federal or provincial law, but subject to sub-paragraph (a) hereof, where an order is made which has the effect of requiring the Rent Receiver to remedy any environmental condition or environmental damage affecting the Property, the Rent Receiver is not personally liable for failure to comply with the order, and is not personally liable for any costs that are or would be incurred by any person in carrying out the terms of the order,
 - (i) if, within such time as is specified in the order, within 10 days after the order is made if no time is so specified, within 10 days after the appointment of the Rent Receiver, if the order is in effect when the Rent Receiver is appointed, or during the period of the stay referred to in clause (ii) below, the Rent Receiver:
 - A. complies with the order, or

- B. on notice to the person who issued the order, abandons, disposes of or otherwise releases any interest in any real property affected by the condition or damage;
- (ii) during the period of a stay of the order granted, on application made within the time specified in the order referred to in clause (i) above, within 10 days after the order is made or within 10 days after the appointment of the Rent Receiver, if the order is in effect when the Rent Receiver is appointed, by,
 - A. the court or body having jurisdiction under the law pursuant to which the order was made to enable the Rent Receiver to contest the order; or
 - B. the court having jurisdiction in bankruptcy for the purposes of assessing the economic viability of complying with the order; or
- (iii) if the Rent Receiver had, before the order was made, abandoned or renounced or been divested of any interest in any real property affected by the condition or damage.

LIMITATION ON THE RECEIVER'S LIABILITY

- 11. Except for gross negligence or wilful misconduct, as a result of its appointment or carrying out the provisions of this Order the Rent Receiver shall incur no liability or obligation that exceeds an amount for which it may obtain full indemnity from the Property. Nothing in this Order shall derogate from any limitation on liability or other protection afforded to the Rent Receiver under any applicable law, including, without limitation, Section 14.06, 81.4(5) or 81.6(3) of the *BIA*.

RECEIVER'S ACCOUNTS

- 12. The Rent Receiver and counsel to the Rent Receiver shall be paid their reasonable fees and disbursements, in each case, incurred at their standard rates and charges. The Rent Receiver and counsel to the Rent Receiver shall be entitled to the benefits of and are hereby granted a charge (the "**Rent Receiver's Charge**") on the Rent Proceeds and Property as security for their professional fees and disbursements incurred at the normal rates and charges of the Rent Receiver and such counsel, both before and after the making of this Order in respect of these proceedings, and the Rent Receiver's Charge

shall form a first charge on the Rent Proceeds and Property in priority to all security interests, trusts, deemed trusts, liens, charges and encumbrances, statutory or otherwise, in favour of any Person but subject to section 14.06(7), 81.4(4) and 81.6(2) of the *BIA*.

13. The Rent Receiver and its legal counsel shall pass their accounts from time to time.
14. Prior to the passing of its accounts, the Rent Receiver shall be at liberty from time to time to apply reasonable amounts, out of the Rent Proceeds and other monies in its hands, against its fees and disbursements, including the legal fees and disbursements, incurred at the normal rates and charges of the Rent Receiver or its counsel, and such amounts shall constitute advances against its remuneration and disbursements when and as approved by this Court.

ALLOCATION

15. Any interested party may apply to this Court on notice to any other party likely to be affected, for an order allocating the Rent Receiver's Charge amongst the various assets comprising the Rent Proceeds and Property.

GENERAL

16. The Rent Receiver may from time to time apply to this Court for advice and directions in the discharge of its powers and duties hereunder.
17. Notwithstanding Rule 6.11 of the *Alberta Rules of Court*, unless otherwise ordered by this Court, the Receiver will report to the Court from time to time, which reporting is not required to be in affidavit form and shall be considered by this Court as evidence. The Rent Receiver's reports shall be filed by the Court Clerk notwithstanding that they do not include an original signature.
18. Any interested party may apply to this Court to vary or amend this Order on not less than 7 days' notice to the Rent Receiver and to any other party likely to be affected by the order sought or upon such other notice, if any, as this Court may order.
19. Service of this Order shall be deemed good and sufficient by
 - (i) serving the same on the persons listed on the service list created in these proceedings or otherwise served with notice of these proceedings;

- (ii) any other person served with notice of the application for this Order;
- (iii) any other parties attending or represented at the application for this Order.

A handwritten signature in black ink, appearing to read "M. J. Hanna". The signature is written in a cursive, flowing style with a large initial "M" and a long, sweeping underline.

Justice of the Court of King's Bench of Alberta