



Form 33 (Rule 8-1(10))

No. S174308
Vancouver Registry

IN THE SUPREME COURT OF BRITISH COLUMBIA

BETWEEN:

INDUSTRIAL ALLIANCE INSURANCE AND FINANCIAL
SERVICES INC.

PLAINTIFF

AND:

WEDGEMOUNT POWER LIMITED PARTNERSHIP
WEDGEMOUNT POWER (GP) INC.,
WEDGEMOUNT POWER INC.
THE EHRHARDT 2011 FAMILY TRUST
POINTS WEST HYDRO POWER LIMITED PARTNERSHIP
by its general partner POINTS WEST HYDRO (GP) INC.
CALAVIA HOLDINGS LTD.
SWAHEALY HOLDINGS LIMITED
BRENT ALLAN HARDY
DAVID JOHN EHRHARDT
28165 YUKON INC.
PARADISE INVESTMENT TRUST
SUNNY PARADISE INC.

DEFENDANTS

APPLICATION RESPONSE

Application response of: Industrial Alliance Insurance and Financial Services Inc. ("IA"), (the "application respondent")

THIS IS A RESPONSE TO the notice of application of British Columbia Hydro and Power Authority ("BCH") filed April 3, 2018.

Part 1: ORDERS CONSENTED TO

The application respondent consents to the granting of the orders set out in the following paragraphs of Part 1 of the notice of application on the following terms: 1.

Part 2: ORDERS OPPOSED

The application respondent opposes the granting of the orders set out in paragraphs 2 of Part 1 of the notice of application.

Part 3: ORDERS ON WHICH NO POSITION IS TAKEN

The application respondent takes no position on the granting of the orders set out in paragraphs NONE of Part 1 of the notice of application.

Part 4: FACTUAL BASIS

1. IA adopts and relies on the facts set out in Part 4 of its Application Response dated March 22, 2018. Capitalized terms used but not defined herein shall have the meaning ascribed to them in the Application Response dated March 22, 2018.

Part 5: LEGAL BASIS

1. The Receivership Order was made pursuant to Section 243(1) of the Bankruptcy and Insolvency Act, R.S.C. 1985, c. B-3, as amended (the "**BIA**") and Section 39 of the Law and Equity Act, R.S.B.C. 1996, c.253, as amended (the "**LEA**").
2. The Receiver seeks the declaration under both the terms of the Receivership Order and the *BIA*.
3. The Receivership Order expressly empowers and authorizes the Receiver to:
 - (a) "initiate, prosecute and continue the prosecution of any proceedings ... with respect to the Wedgemount Entities, the Property or the Receiver..." (paragraph 2(a));
 - (b) "market any or all of the Property, including advertising and soliciting offers in respect of the Property or any part or parts thereof and negotiating such terms and conditions of sale as the Receiver in its discretion may deem appropriate" (paragraph 2(k));
 - (c) "report to, meet with and discuss with such affected Persons ... as the Receiver deems appropriate on all matters relating to the Property and the receivership and to share information, subject to such terms as to as the Receiver deems advisable (paragraph 2(n)); and
 - (d) "take any steps reasonably incidental to the exercise of these powers or the performance of any statutory obligations" (paragraph 2(s)); and
 - (e) provides that "[f]he Receiver may from time to time apply to this Court for advice and directions in the discharge of its powers and duties hereunder".
4. The Receiver relies on Part IX of the *BIA*, including sections 247, 248 and 249, which state:

247. Good faith, etc.

A receiver shall

- (a) act honestly and in good faith; and

(b) deal with the property of the insolvent person or the bankrupt in a commercially reasonable manner.

248(1) Powers of court

Where the court, on the application of the Superintendent, the insolvent person, the trustee (in the case of a bankrupt), a receiver or a creditor, is satisfied that the secured creditor, the receiver or the insolvent person is failing or has failed to carry out any duty imposed by sections 244 to 247, the court may make an order, on such terms as it considers proper,

(a) directing the secured creditor, receiver or insolvent person, as the case may be, to carry out that duty, or

(b) restraining the secured creditor or receiver, as the case may be, from realizing or otherwise dealing with the property of the insolvent person or bankrupt until that duty has been carried out,

or both.

...

249. Receiver may apply to court for directions

A receiver may apply to the court for directions in relation to any provision of this Part, and the court shall give, in writing, such directions, if any, as it considers proper in the circumstances.

5. The Applicant BCH relies on s. 15 of the *Arbitration Act*, R.S.B.C. 1996, c. 55 (the "*Arbitration Act*") to call on this Honourable Court to grant a stay of the Receiver's application until such time as arbitration proceedings can be commenced, conducted and an arbitration decision rendered.
6. The *Arbitration Act* is a provincial statute and the *BIA* is a federal statute and no party challenges the validity of either act.
7. When the operational effects of provincial legislation are incompatible with federal legislation, the federal legislation must prevail and the provincial legislation is rendered inoperative to the extent of the incompatibility.

Canadian Western Bank v. Alberta, 2007 SCC 22 at para. 69

8. Further, to apply the statutory stay found in the *Arbitration Act* would frustrate the first purpose of the *BIA*, namely, the single proceeding model. Any contracts that make up an insolvent person's estate that contain an arbitration clause would therefore be removed from the single proceeding, leading to inefficiency and chaos. Under the doctrine of federal paramountcy, federal legislative purposes cannot be frustrated by provincial laws.

Alberta (Attorney General) v. Maloney, 2015 SCC 51

9. The Receivership Order contemplates and empowers the Receiver to return to court in order to be given directions in fulfilling its duties and powers. The Receiver was appointed by, and is an officer of, this Honourable Court. A court appointed receiver derives their authority both from the court appointment and the directions given to them by the court.

Ostrander v. Niagara Helicopters Ltd. et al. (1973), 1 O.R. (2d) 281, followed in *Royal Bank of Canada v. Vista Homes Ltd.* (1984), 58 B.C.L.R. 354.


Part 6: MATERIAL TO BE RELIED ON

1. Order of the Honourable Mr. Justice Steeves made May 12, 2017.
2. Affidavit #1 of Bruce Chow, made on January 19, 2018.
3. Affidavit #2 of Luc Fournier, made on March 13, 2018.
4. Affidavit #1 of Melinda Mckie, made on March 12, 2018.
5. Affidavit #1 of Paul Chambers, made on March 13, 2018.
6. Affidavit #1 of Michael Potyok, made on March 13, 2018.
7. Affidavit #1 of Stefanie Leduc, made on March 13, 2018.
8. Affidavit #1 of Maxime Durivage, made on made on March 13, 2018.
9. Affidavit #1 of Michele Hay, made on March 12, 2018.
10. Affidavit #2 of Melinda McKie, made on April 2, 2018.
11. First Report of the Court Appointed Receiver and Manager dated April 2, 2018.
12. Confidential Supplement to the First Report of the Court Appointed Receiver and Manager dated April 2, 2018 (to be filed under seal).
13. Such further and other material as counsel may advise and this Honourable Court may permit.

The application respondent(s) estimate(s) that the application will take 1 hour.

- The application respondent has filed in this proceeding a document that contains the application respondent's address for service.
- The application respondent has not filed in this proceeding a document that contains an address for service. The application respondent's ADDRESS FOR SERVICE is:

Date: April 5, 2018



Signature of lawyer for application respondent IA
Colin D. Brousson

THIS APPLICATION RESPONSE was prepared by Colin D. Brousson, of the firm of Gowling WLG (Canada) LLP, Barristers & Solicitors, whose place of business and address for delivery is 2300 - 550 Burrard Street, Vancouver, B.C. V6C 2B5, Telephone: 604-683-6498; Fax: 604-683-3558.