

Form 27
[Rule 6.3]

CLERK OF THE COURT
FEB - 8 2011
CALGARY, ALBERTA

Clerk's stamp:

COURT FILE NUMBER: 1001-03215
COURT COURT OF QUEEN'S BENCH OF ALBERTA
JUDICIAL CENTRE CALGARY
PLAINTIFF: FIRST CALGARY SAVINGS & CREDIT UNION LTD.
DEFENDANTS: PERERA SHAWNEE LTD., PERERA DEVELOPMENT CORPORATION, DON L. PERERA and SHIRANIE M. PERERA
PLAINTIFFS BY COUNTERCLAIM PERERA SHAWNEE LTD., DON L. PERERA and SHIRANIE M. PERERA
DEFENDANTS BY COUNTERCLAIM FIRST CALGARY SAVINGS & CREDIT UNION LTD. and DELOITTE & TOUCHE LLP

DOCUMENT: APPLICATION BY DELOITTE & TOUCHE INC. in its capacity as Court-appointed receiver and manager of Perera Development Corporation ("PDC") and Perera Shawnee Ltd. ("PSL", or when reference is being made to PDC and PSL collectively, the "Debtor"), and not in its personal capacity (the "Receiver")

(Re: CondoSource Agreement)

OSLER, HOSKIN & HARCOURT LLP

Suite 2500, 450 – 1st Street SW
Calgary, AB T2P 5H1
Solicitor: Christa Nicholson
Telephone: (403) 260-7025
Facsimile: (403) 260-7024
File Number: 1121689

NOTICE TO THE RESPONDENTS

This application is made against you. You are a Respondent.
You have the right to state your side of this matter before the judge.

To do so, you must be in Court when the application is heard as shown below:

Date: Wednesday, February, 9, 2011
Time: 2:00 p.m.
Where: Calgary Courts Centre, 601-5th Street S.W., Calgary, Alberta
Before Whom: Honourable Madam Justice Eidsvik

Go to the end of this document to see what else you can do and when you must do it.

APPLICATION BY DELOITTE & TOUCHE INC.

(Re: CondoSource Agreement)

REMEDY CLAIMED OR SOUGHT:

1. An order substantially in the form attached hereto as Schedule “A” including:
 - (a) declaring that the time for service of this Application (the “**Application**”) is abridged, that the Application is properly returnable on February 9, 2011, that service of the Application and the Thirteenth Report of the Receiver, dated February 8, 2011 (the “**Thirteenth Receiver’s Report**”) on the persons listed in Schedule “B” to the Application and on CondoSource Inc. (“**CondoSource**”) (collectively, the “**Service List**”) is good and sufficient, and that no persons other than those on the Service List are entitled to notice of the Application;
 - (b) requiring CondoSource to immediately provide the Receiver with the names, contact and any other information including any database maintained by CondoSource in respect of each of the Prospects (as hereinafter defined) that are in CondoSource’s possession or within CondoSource’s knowledge or control;
 - (c) requiring CondoSource to immediately provide the Receiver with the Access Code and the Access Keys (as those terms are hereinafter defined);
 - (d) declaring that, given the circumstances outlined in the Thirteenth Receiver’s Report, and unless CondoSource otherwise satisfies the Court that it is licensed to trade in real estate as a real estate broker in Alberta pursuant to the *Real Estate Act*, R.S.A. 2000, c. R-5 (the “**Act**”):
 - (i) CondoSource is not licensed to trade in real estate as a real estate broker in Alberta pursuant to the Act and the Receiver is not obligated to continue with its application to the Court filed January 19, 2011 regarding the Approval of the Proposed Contract (as hereinafter defined) (the “**Approval Application**”) to have the Proposed Contract approved; and
 - (ii) the Receiver is authorized to withdraw the Approval Application; and

2. such further and other relief that the Receiver may seek and this Honourable Court may deem just.

GROUND FOR MAKING THIS APPLICATION:

General

3. On March 3, 2010, the Receiver was appointed as receiver and manager of the Debtor pursuant to an order issued by the Honourable Madam Justice A. Kent of the Court of Queen's Bench of Alberta (the "**Receivership Order**").
4. At the time that the Receivership Order was issued, PSL was in the process of constructing a condominium development in southwest Calgary known as the "Highbury" (the "**Project**"). The Project was planned to be completed in three separate phases including "**Phase One**".
5. There are a total of 70 units (plus parking stalls) in Phase One of the Project, 9 units of which have been listed for sale by the Receiver for some time through CondoSource (the "**Unsold Units**"). CondoSource was paid commissions of \$37,195 plus GST in respect of 2 units in Phase One that were recently sold (the "**Commissions**"). The Receiver had intended to continue to sell the Unsold Units, as well as any other units in Phase One that may become available for sale, through CondoSource.
6. The Receiver and CondoSource entered into an agreement dated December 27, 2010 respecting the marketing of units in Phase One (the "**CondoSource Agreement**"), including Schedule B thereto (the "**Proposed Contract**"), a copy of which is attached as Appendix "4" to the Twelfth Receiver's Report.

The Prospects, the Access Code & the Access Keys

7. Pursuant to Section 6.1 of the CondoSource Agreement, CondoSource is obligated to maintain a database of purchasers and potential purchasers (collectively, the "**Prospects**"), which database is the property of the Receiver, and is also obligated to provide the Receiver with a weekly report on the Prospects. In addition, pursuant to Section 7.1 of the CondoSource Agreement, CondoSource is obligated to design and set up the sales and marketing center (the "**Sales Center**"), which is located in a unit in

Phase One of the Project, and which is equipped with an internet connection. The internet connection is only accessible with an access code (the “**Access Code**”). The Receiver is obligated to pay all hard costs related to the Sales Center including, among other things, the costs related to Sales Center set-up and utility payments, further, an internet connection is important so that sales and marketing information can be provided to interested parties. Accordingly, the Receiver should have the Access Code. In addition, access to Phase One and the various units therein require door keys and a key FOB, which is a small hardware device that provides access to the underground garage and various access doors in Phase One, which belong to the Receiver (collectively, the “**Access Keys**”) and which were provide to CondoSource in April 2010. To date, CondoSource has not provided information with respect to the Prospects, the Access Code or the Access Keys to the Receiver.

The CondoSource Agreement & the Proposed Contract

8. Pursuant to the CondoSource Agreement, which expired on January 31, 2011, the Receiver agreed to apply to the Court to have the Proposed Contract approved. The Proposed Contract is subject to and conditional upon an order of this Honourable Court approving it and is effective only upon and not before such Court approval being obtained. Accordingly, on January 19, 2011 the Receiver filed the Approval Application.
9. Since the Approval Application was filed, counsel to Don L. Perera and Shiranie M. Perera (collectively, the “**Guarantors**”) asserted, through the Affidavit of Sanjeeva Perera sworn January 23, 2011 (the “**Sanjeeva Perera Affidavit**”), that CondoSource and its principals are not licensed under the Act.
10. In connection with marketing the units in Phase One for sale, the Receiver issued a request for proposals in March 2010, a copy of which is attached as Appendix “1” to the Thirteenth Receiver’s Report, to which CondoSource responded, and which required that the successful bidder be licensed to sell real estate in Alberta.
11. Since becoming aware of this issue, the Receiver has sent two with prejudice letters to CondoSource and has also engaged in without prejudice discussions. The Receiver’s review of the issue leads it to the view that CondoSource is not licensed to trade in real

estate as a real estate broker in Alberta pursuant to the Act. CondoSource has confirmed that it is not licensed, however, CondoSource's assertion is that it is legally able to sell real estate in Alberta.

12. In the circumstances, unless at the hearing of the Application CondoSource convinces the Court that it is licensed under the Act, the Receiver ought not be obligated to continue the Approval Application and should be authorized to withdraw it. Such an order would be without prejudice to any and all rights that the Receiver may have vis-à-vis CondoSource including the Receiver's right to claim, pursuant to the Act, repayment of the Commissions. Such an order would also be without prejudice to CondoSource's right to claim compensation with respect to (a) the work that CondoSource has undertaken in connection with sales of units in Phase One of the Project that resulted in the Commissions being paid or (b) the Prospects.

MATERIAL OR EVIDENCE TO BE RELIED ON:

13. The pleadings filed herein, including without limitation, the Twelfth Receiver's Report, the Thirteenth Receiver's Report, the Sanjeeva Perera Affidavit and the Receivership Order; and
14. such further and other materials as counsel for the Receiver may advise and this Honourable Court may permit.

APPLICABLE RULES:

15. *The Alberta Rules of Court*, Alta. Reg. 124/2010; and
16. such further and other rules as counsel for the Receiver may advise and this Honourable Court may permit.

APPLICABLE ACTS AND REGULATIONS:

17. *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3;
18. *Judicature Act*, R.S.A. 2000, c. J-2;
19. *Real Estate Act*, R.S.A. 2000, c. R-5, ss. 17, 21.1; and

20. such further and other acts and regulations as counsel for the Receiver may advise and this Honourable Court may permit.

HOW THE APPLICATION IS PROPOSED TO BE HEARD OR CONSIDERED:

21. Before the Honourable Madam Justice Eidsvik in Chambers at the Calgary Courts Centre, 601-5th Street S.W., at Calgary, Alberta, on Wednesday, February 9, 2011 at 2:00 p.m. or as soon thereafter as counsel may be heard.

AFFIDAVIT EVIDENCE IS REQUIRED IF YOU WISH TO OBJECT.

WARNING

If you do not come to court either in person or by your lawyer, the court may give the applicant what it wants in your absence. You will be bound by any order that the court makes, or another order might be given or other proceedings taken which the applicant is entitled to without any further notice of them to you. If you want to take part in this application, you or your lawyer must attend in court on the date and time shown above. If you intend to rely on an affidavit or other evidence when the originating application is heard or considered, you must reply by giving reasonable notice of that material to the applicant.

DATED at Calgary, Alberta on February 8, 2011.

OSLER, HOSKIN & HARCOURT LLP



Christa Nicholson
Counsel for the Receiver, Deloitte & Touche Inc.

TO: The Clerk of the Court
AND TO: The Service List (Schedule "B" hereto)

SCHEDULE "A" TO THE APPLICATION, DATED FEBRUARY 8, 2011

Clerk's stamp:

COURT FILE NUMBER: 1001-03215

COURT OF QUEEN'S BENCH OF
ALBERTA

JUDICIAL CENTRE OF CALGARY

PLAINTIFF: FIRST CALGARY SAVINGS & CREDIT UNION
LTD.

DEFENDANTS: PERERA SHAWNEE LTD., PERERA
DEVELOPMENT CORPORATION, DON L.
PERERA and SHIRANIE M. PERERA

PLAINTIFFS BY COUNTERCLAIM PERERA SHAWNEE LTD., DON L. PERERA and
SHIRANIE M. PERERA

DEFENDANTS BY COUNTERCLAIM FIRST CALGARY SAVINGS & CREDIT UNION
LTD. and DELOITTE & TOUCHE LLP

DOCUMENT: **ORDER**

(Re: CondoSource Agreement)

OSLER, HOSKIN & HARCOURT LLP

Barristers & Solicitors
Suite 2500, 450 – 1st Street SW
Calgary, AB T2P 5H1
Solicitor: Christa Nicholson
Telephone: (403) 260-7025
Facsimile: (403) 260-7024
File Number: 1121689

DATE ON WHICH ORDER WAS PRONOUNCED: Monday, February 9, 2011

NAME OF JUDGE WHO MADE THIS ORDER: Honourable Madam Justice Eidsvik

ORDER

(Re: CondoSource Agreement)

UPON the application, dated February 8, 2011 (the “**Application**”) of Deloitte & Touche Inc., in its capacity as Court-appointed receiver and manager of Perera Development Corporation (“**PDC**”) and Perera Shawnee Ltd. (“**PSL**”, or when reference is being made to PDC and PSL collectively, the “**Debtor**”), and not in its personal capacity (the “**Receiver**”); **AND UPON** noting the Order issued by Madam Justice A. Kent on March 3, 2010 (the “**Receivership Order**”); **AND UPON** noting the Affidavit of Service of ●, sworn February ●, 2011 (the “**Affidavit of Service**”); **AND UPON** noting the Confidential Second Receiver’s Report dated August 11, 2010; **AND UPON** noting the Confidential Fourth Receiver’s Report dated October 7, 2010; **AND UPON** reading the Twelfth Report of the Receiver, dated January 18, 2011 (the “**Twelfth Receiver’s Report**”), including the agreement entered into between the Receiver and CondoSource Inc. (“**CondoSource**”), dated December 27, 2010 respecting the marketing of units in “**Phase One**” of the condominium development in Southwest Calgary known as the “**Highbury**” (the “**Project**”) (the “**CondoSource Agreement**”), including Schedule B thereto (the “**Proposed Contract**”), a copy of which is attached as Appendix “4” to the Twelfth Receiver’s Report; **AND UPON** reading the Receiver’s application filed January 19, 2011 regarding the Approval of the Proposed Contract (the “**Approval Application**”); **AND UPON** noting the Order issued by Madam Justice A. Kent on January 24, 2011 adjourning the Approval Application to be heard by Madam Justice A. Kent on Monday, January 31, 2011; **AND UPON** noting that on Monday, January 31, 2011, Madam Justice A. Kent adjourned the Approval Application as it related to the Proposed Contract to be heard before Madam Justice Eidsvik on Wednesday, February 9, 2011 at 2:00 p.m.; **AND UPON** reading the Thirteenth Report of the Receiver, dated February 8, 2011 (the “**Thirteenth Receiver’s Report**”); **AND UPON** noting the Order (Re: Advice and Directions regarding Service) granted by Madam Justice A. Kent on October 29, 2010 (the “**Service Order**”); **AND UPON** hearing from counsel for the Receiver, [counsel for CondoSource] and counsel for any other persons present; **IT IS HEREBY ORDERED AND DECLARED THAT:**

1. The time for service of the Application and the Thirteenth Receiver’s Report is abridged, if necessary, the Application is properly returnable today, service of the Application and the Thirteenth Receiver’s Report on the persons listed in Schedule “**B**” to the Application

and on CondoSource (collectively, the “**Service List**”) in the manner described in the Affidavit of Service is good and sufficient, and service on any persons other than those on the Service List is dispensed with.

2. CondoSource is hereby required to immediately provide the Receiver with the names, contact and any other information including any database maintained by CondoSource in respect of each and every purchaser or potential purchaser of a unit in Phase One of the Project (collectively, the “**Prospects**”) that is in CondoSource’s possession or within CondoSource’s knowledge or control.
3. CondoSource is hereby required to immediately provide the Receiver with the access code to allow the Receiver to access to the internet connection in the sales center, which sales center is located in a unit in Phase One of the Project.
4. CondoSource is hereby required to immediately provide the Receiver with all keys, including key FOBs (which is a small hardware device that provides access to the underground garage and various access doors in Phase One) that provide access to the Project, including Phase One and any and all units or other areas of Phase One.
5. CondoSource is not licensed to trade in real estate as a real estate broker in Alberta pursuant to the *Real Estate Act*, R.S.A. 2000, c. R-5. The Receiver is not obligated to continue with the Approval Application to have the Proposed Contract approved, the Receiver is authorized to withdraw the Approval Application as it relates to the Proposed Contract, and the Receiver’s withdrawal of same is hereby confirmed.
6. This Order is made without prejudice to any and all rights that the Receiver may have vis-à-vis CondoSource including the Receiver’s right to claim, pursuant to the *Real Estate Act*, R.S.A. 2000, c. R-5, repayment of any commissions or other remuneration that it has paid to CondoSource (the “**Commissions**”).
7. This Order is made without prejudice to any rights that CondoSource may have to claim compensation with respect to (a) the work that CondoSource has undertaken in connection with sales of units in Phase One of the Project that resulted in the Commissions being paid or (b) the Prospects.

8. There shall be no costs of the Application or the Approval Application as it relates to the Proposed Contract.
9. Service of this Order in accordance with the Service Order to the persons listed on the Service List shall constitute good and sufficient service of this Order.

J.C.Q.B.A.

SCHEDULE "B" TO THE APPLICATION, DATED FEBRUARY 8, 2011

Clerk's stamp:

COURT FILE NUMBER: 1001-03215
COURT OF QUEEN'S BENCH OF
ALBERTA
JUDICIAL CENTRE OF CALGARY
PLAINTIFF: FIRST CALGARY SAVINGS & CREDIT UNION
LTD.
DEFENDANTS: PERERA SHAWNEE LTD., PERERA
DEVELOPMENT CORPORATION, DON L.
PERERA and SHIRANIE M. PERERA
PLAINTIFFS BY COUNTERCLAIM PERERA SHAWNEE LTD., DON L. PERERA and
SHIRANIE M. PERERA
DEFENDANTS BY COUNTERCLAIM FIRST CALGARY SAVINGS & CREDIT UNION
LTD. and DELOITTE & TOUCHE LLP
DOCUMENT: **SERVICE LIST**

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Barristers & Solicitors
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