



Clerk's stamp:

COURT FILE NUMBER: 1001-03215

COURT OF QUEEN'S BENCH OF
ALBERTA

JUDICIAL CENTRE OF CALGARY

PLAINTIFFS: 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: **FOURTEENTH REPORT OF THE COURT APPOINTED RECEIVER
OF PERERA SHAWNEE LTD. AND PERERA DEVELOPMENT
CORPORATION, DATED FEBRUARY 10, 2011**

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INTRODUCTION

1. On March 3, 2010, Deloitte & Touche Inc. was appointed by the Court of Queen's Bench of Alberta, Judicial District of Calgary (the "**Court**"), as receiver and manager (the "**Receiver**"), without security, of all the current and future assets, undertakings and properties of every nature and kind whatsoever, and wherever situated, including all proceeds thereof of Perera Shawnee Ltd. ("**PSL**") and Perera Development Corporation ("**PDC**") (PSL and PDC are collectively referred to as "**Perera**") (the "**Receivership Order**").
2. The Receivership Order was the result of an application by First Calgary Savings & Credit Union ("**First Calgary**"), a secured creditor of Perera. Perera is a condominium real estate developer which has assets that consist of a three phase condominium real estate project located at 30 Shawnee Hill SW, Calgary, Alberta (the "**Project**").
3. Don L. Perera is the President of Perera ("**Mr. Perera**") and he and Shiranie M. Perera are guarantors of the loans from First Calgary (the "**Guarantors**").
4. PSL and PDC are bankrupt. Hardie & Kelly Inc. was appointed bankruptcy trustee of PSL and PDC (the "**Trustee**") pursuant to the Bankruptcy Orders granted by this Honourable Court on December 20, 2010.
5. The Project was planned to be completed in three separate phases ("**Phase One**", "**Phase Two**" and "**Phase 3**").
6. During the excavation of the Project, on or about February 14, 2008, a wall of soil, rock and debris fell upon a dump truck operated by Randy Williams and unfortunately took his life (the "**Collapse**"). As a result of the Collapse, a statement of claim was filed on

behalf of the Estate of Randy Williams, among others, against PSL, PDC and others in the Court (Action No. 1001-01401).

7. PSL and PDC also filed, in Action No. 1001-02443, a statement of claim (the “**Lalani Claim**”) against, among others, McIntosh Lalani Engineering Ltd. (“**McIntosh Lalani**”), a body corporate, duly incorporated pursuant to the laws of the Province of Alberta, who carries on business in the City of Calgary, in the Province of Alberta. At the time of the Collapse, McIntosh Lalani was apparently the geotechnical engineer of record for the Project. Other Defendants in the Lalani Claim are Nazim Lalani, John Doe I and John Doe II Professional Engineering Corporation. The Lalani Claim was filed on February 12, 2010 by McLeod and Company LLP (“**McLeod & Company**”) who was counsel to PSL and PDC prior to the Receiver being appointed. We understand that the Lalani Claim was not served on any of the Defendants.

NOTICE TO READER

8. This report constitutes the Fourteenth Report of the Court Appointed Receiver (the “**Fourteenth Receiver’s Report**” or this “**Report**”).

PURPOSE OF REPORT

9. The purpose of this Report is to seek the approval of the Court for the appointment of the Independent Litigation Supervisor (“**ILS**”) to prosecute certain claims against a certain additional defendant and to seek an order for substitutional service of the Amended Claim (as hereinafter defined), if required, upon certain defendants.

THE AMENDED LALANI CLAIMS

10. We are advised by counsel that the Lalani Claim and any amendments thereto must be served within one year from the date it was filed (on February 12, 2010) (the “**Service Deadline**”).
11. The Receiver only recently became aware of the Lalani Claim and only received the file relating to the Lalani Claim in late January 2011 from McLeod & Company. There was a delay in obtaining the file because the Guarantors requested that a without prejudice meeting to discuss the Lalani Claim precede provision of the file to the Receiver. Given the time frames for filing and serving, this left very little time for the Receiver’s counsel to amend the Lalani Claim. The Receiver and its counsel have been working diligently to understand the circumstances giving rise to the Lalani Claim and to identify additional causes of action and potential defendants.
12. After review of the file from McLeod & Company and discussions with independent engineers and other knowledgeable parties, the Receiver is of the view that other parties should be named as defendants in this matter, including NORR Architects Planners, Poon McKenzie Architects (Alberta) Inc., Poon McKenzie Holdings Inc., Bruce McKenzie and On Track Excavating Ltd., and the City of Calgary (the “**City**”). Accordingly, the Lalani Claim was amended, and the Receiver intends to file and serve, same today (the “**Amended Claim**”).

INDEPENDENT LITIGATION SUPERVISOR

13. An issue for the Receiver regarding the City has just come to its attention. The Receiver has consulted within its internal organization and has become aware that its firm has

certain business and client relationships with the City. In particular, Deloitte & Touche LLP is auditor of the City and also provides it with general professional advisory services. Deloitte & Touche LLP and the Receiver are closely related entities which are under common control. The Receiver is concerned about the actual or apparent conflict in which it finds itself with respect to that part of the lawsuit related to the claims against the City (the “**City Claims**”). The Receiver wishes to ensure that the best interests of the creditors and other stakeholders are met in pursuing the City Claims, and believes that it would be in the best interests of the creditors and stakeholders for an independent litigation supervisor to be appointed to manage, control, and oversee the City Claims. The Receiver is also aware of the timelines necessary for preserving the estate’s rights.

14. Accordingly, the Receiver seeks the approval of this Court to allow PSL and PDC to use the style of cause in the as yet unfiled, amended statement of claim substantially in the form of the attached Schedule “C” to the Application. The Receiver (once the ILS is indentified and has agreed with the Receiver on the terms of the delegation) will seek court approval of the proposed ILS.
15. Last night, the Receiver communicated with a party to determine its willingness to serve as ILS. However, this party declined on account of business conflicts.
16. Given that the purpose of this application is a result of an internal conflict of the Receiver, the costs of this application will not be charged to the receivership, but will be borne by Deloitte & Touche Inc. directly.

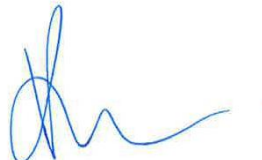
SUBSTITUTIONAL SERVICE

17. The Lalani Claim names Nazim Lalani and the Amended Claim adds Bruce McKenzie as individual defendants (the “**Individual Defendants**”). We are advised that statements of claim must be served on individuals by being left with the individual or being sent by recorded mail addressed to the individual. Given the time constraints to effect service, the Receiver is concerned that it may not be able to effect service in the aforementioned manner within the Service Deadline. While the Receiver will make all reasonable attempts to serve the Lalani Claim and the Amended Claim as aforementioned, the Receiver is seeking an order for substitutional service either by leaving a copy of the Lalani Claim and the Amended Claim at the Individual Defendants’ places of business, if such substitutional service becomes necessary.

CONCLUSION

18. The Receiver respectfully requests that the Court grant the relief set out in the Application, dated February 10, 2011.

DELOITTE & TOUCHE INC.,
In its capacity as Receiver and Manager of
Perera Shawnee Ltd. and Perera Development
Corporation and not in its personal capacity

Per: 

Victor P. Kroeger, CA • CIRP, CFE
Senior Vice President