



No. S144832  
Vancouver Registry

IN THE SUPREME COURT OF BRITISH COLUMBIA

BETWEEN:

BANK OF MONTREAL

PETITIONER

AND:

KATZIE COAST MARINE SERVICES INC.  
KATZIE COAST MARINE OPERATIONS (2009) INC.  
COAST MARINE SERVICES 2004 LTD.  
0818987 B.C. LTD.  
COAST MARINE SERVICES INC.  
KATZIE FIRST NATION BAND

RESPONDENTS

**NOTICE OF APPLICATION**

**Name of applicant:** Deloitte Restructuring Inc. (the “Receiver”), in its capacity as the Court-appointed receiver and manager of all of the assets, undertakings and properties of the Respondents Katzie Coast Marine Services Inc. (“**Katzie Services**”), Katzie Coast Marine Operations (2009) Inc., Coast Marine Services 2004 Ltd. (“**Coast 2004**”), 0818987 B.C. Ltd. and Coast Marine Services Inc. (“**Coast Marine**”) (collectively, the “**Debtors**”).

**To:** All parties of record and their solicitors

TAKE NOTICE that an application will be made by the Receiver to the presiding judge or master at the courthouse at 800 Smithe Street, Vancouver, British Columbia on Friday, September 26, 2014 at 9:45 a.m. for the orders set out in Part 1 below.

## Part 1 ORDERS SOUGHT

1. The Receiver seeks an order in substantially the same form of Order attached hereto as **Schedule "A"**:
  - (a) abridging the time for service of this Notice of Application and the materials filed in support hereof such that the application is properly returnable on September 26, 2014.
  - (b) approving the transaction (the "**Transaction**") contemplated by the agreement of purchase and sale (the "**Agreement**") between Gisbourne Marine Services Ltd. (the "**Purchaser**") and the Receiver dated August 20, 2014;
  - (c) vesting in the Purchaser all of Katzie Services' right title and interest in and to the Vessel Assets (as defined and described in the Agreement), including without limitation that certain tugboat named "Katzie Pride" and having an Official Number of 188220 (the "**Vessel**"), free and clear of all encumbrances; and
  - (d) approving of the Receiver's activities to date as set forth in the Receiver's first report to the Court dated September 19, 2014 (the "**First Report**").

## Part 2 FACTUAL BASIS

1. The Debtors are a group of companies that, prior to the commencement of these receivership proceedings, operated in the Lower Mainland of British Columbia providing water taxi, tug and barging services. The group was headquartered at 89 Rogers Street, Vancouver, British Columbia (the "**Property**").
2. By Order of the Honourable Mr. Justice Savage dated June 26, 2014 (the "**Receivership Order**"), the Receiver was appointed receiver and manager of all of the Debtors' assets, undertakings and properties.

### Receiver's Activities to Date

3. Since its appointment, as set forth in greater detail in the First Report, the Receiver has, among other things:
  - (a) taken steps to identify, determine the location of and secure the Debtors' assets, including a number of tug boats and barges;
  - (b) sought to take possession of the books and records of the Debtors, noting that in many cases those books and records were significantly out of date or co-mingled with the books and records of entities not subject to these receivership proceedings;
  - (c) delivered statutory notices to all known creditors of the Debtors and, on July 3, 2014, published notice of these receivership proceedings in The Province newspaper;

- (d) arranged for insurance coverage for all of the Debtors' assets, including vessels;
- (e) reviewed and pursued an existing insurance claim relating to one of the vessels, the "Miller 309";
- (f) initiated a process for the marketing and sale of the Debtors' assets, including engaging an appraiser for the Debtors' vessels and a broker to market and sell the vessels;
- (g) arranged with the landlord for ongoing occupation of the Property;
- (h) initiated discussions with Vancouver Sand and Gravel Inc. ("**VSG**") regarding the sale of the barge ramp located at the Property (the "**Rogers Barge Ramp**"), the use and occupation of the Property and the rights of the Receiver in relation to a settlement agreement entered into among VSG, Coast Marine, Coast 2004 and several other entities;
- (i) liaised with Canada Revenue Agency ("**CRA**") regarding the claims of CRA against the Debtors, including any deemed trust claims; and
- (j) sold three vessels and a barge ramp for sale proceeds totalling \$68,500 plus applicable taxes, and entered into an agreement for the purchase and sale of another vessel, subject to court approval (see below).

#### Sale of the Katzie Pride

4. Pursuant to paragraph 2(1) of the Receivership Order, the Receiver is authorized to, among other things, sell any of the Debtors' property:
  - (a) without the approval of the Court in respect of any transaction not exceeding \$250,000, provided that the aggregate consideration for all such transactions does not exceed \$2,000,000; and
  - (b) with the approval of the Court in respect of any transaction in which the purchase price or the aggregate purchase price exceeds the applicable amount exceeds the applicable amount set out in the preceding clause.
5. The Receiver has entered into an agreement of purchase and sale dated August 20, 2014 (the "**Agreement**") with Gisbourne Marine Services Ltd. (the "**Purchaser**") in respect of a vessel owned by Katzie Services, the "Katzie Pride" (the "**Vessel**") and certain related assets as described in the Agreement (together with the Vessel, the "**Vessel Assets**").
6. Hereafter, unless otherwise defined herein, all capitalized terms shall have the meanings ascribed to them in the Agreement, a copy of which is attached as Appendix "C" to the First Report.
7. The Purchase Price for the Vessel Assets is \$320,000 plus applicable taxes, and the Closing Date is September 30, 2014. It is a condition precedent to the completion of the

sale of the Vessel Assets that by no later than September 26, 2014 the Receiver obtain an order of this Court vesting the Vessel Assets in the Purchaser free and clear of all financial encumbrances.

8. The Receiver has recommended that the Court approve the sale of the Vessel Assets to the Purchaser in accordance with the Agreement.
9. On July 3, 2014, the Receiver engaged Harlow Marine International Inc. (“**Harlow**”) to conduct an independent appraisal of the Debtors’ vessels, excluding the Miller 309 and the Rogers Barge Ramp. The Vessel was appraised by Harlow at between \$300,000 and \$400,000.
10. The Vessel was marketed for sale (without success) by a broker engaged by the Debtors from August 15, 2013 through to June 25, 2014. Following its appointment, in August 2014, the Receiver jointly engaged Harlow and Accurate Effective Bailiffs Ltd. (together, the “**Broker**”) to market all of the Group’s vessels for sale.
11. The Broker placed an advertisement in the Western Mariner Magazine and has listed the vessels on its website. The Broker also sent an email blast to known potential interested parties on August 15, 2014 advertising the Debtors’ vessels for sale.
12. On August 18, 2014, the Broker received an initial offer for the Vessel from the Purchaser in the amount of \$310,000 plus applicable taxes. On August 19, 2014, the Receiver countered that offer at \$350,000. Following further negotiations, a final offer was made by the Purchaser in the amount of \$320,000. This offer was accepted and the Agreement was subsequently entered into. No other offers for the Vessel have been received.
13. The Receiver is of the view that, given Harlow’s appraisal of the Vessel, and considering the extensive marketing efforts undertaken both prior to and after the Receiver’s appointment, the Purchase Price for the Vessel is sufficient.

### **Part 3 LEGAL BASIS**

1. Part XI of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3 as amended, including section 247(b) thereof;
2. Sections 37 and 38 of the *Law and Equity Act*, R.S.B.C. 1996, c. 253 as amended;
3. Rule 13-5 of the *Supreme Court Civil Rules*; and
4. The inherent jurisdiction of this Honourable Court.

### **Part 4 MATERIAL TO BE RELIED ON**

1. The Receivership Order;
2. Receiver’s First Report to the Court dated September 19, 2014; and

3. Such further and other materials as counsel may advise and this Honourable Court may permit.

The Receiver estimates that the application will take 15 minutes.

This matter is within the jurisdiction of a master

TO THE PERSONS RECEIVING THIS NOTICE OF APPLICATION: If you wish to respond to this Notice of Application, you must, within 5 business days after service of this Notice of Application or, if this application is brought under Rule 9-7, within 8 business days after service of this Notice of Application,

- (a) file an Application Response in Form 33,
- (b) file the original of every affidavit, and of every other document, that
  - (i) you intend to refer to at the hearing of this application, and
  - (ii) has not already been filed in the proceeding, and
- (c) service on the applicant 2 copies of the following, and on every other party of record one copy of the following:
  - (i) a copy of the filed Application Response;
  - (ii) a copy of each of the filed affidavits and other documents that you intend to refer to at the hearing of this application and that has not already been served on that person;
  - (iii) if this application is brought under Rule 9-7, any notice that you are required to give under Rule 9-7(9).

Dated: 22-Sep-2014

DANIEL TOIGO  
FOR Signature of Kibben Jackson  
Lawyer for the Receiver

***To be completed by the court only:***

Order made

in the terms requested in paragraphs ..... of Part 1 of this Notice of Application

with the following variations and additional terms:

.....  
.....  
.....

Date:

.....  
Signature of  Judge  Master

The Solicitors for the Receiver are Fasken Martineau DuMoulin LLP, whose office address and address for delivery is 2900 - 550 Burrard Street, Vancouver, BC V6C 0A3 Telephone: +1 604 631 3131 Facsimile: +1 604 631 3232. (Reference: Kibben Jackson/242587.00098)

## APPENDIX

### THIS APPLICATION INVOLVES THE FOLLOWING:

- discovery: comply with demand for documents
- discovery: production of additional documents
- other matters concerning document discovery
- extend oral discovery
- other matter concerning oral discovery
- amend pleadings
- add/change parties
- summary judgment
- summary trial
- service
- mediation
- adjournments
- proceedings at trial
- case plan orders: amend
- case plan orders: other
- experts

SCHEDULE "A"

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RESPONDENTS

ORDER MADE AFTER APPLICATION

BEFORE ) )  
) )  
) ) September 26, 2014  
) )  
) )

ON THE APPLICATION OF Deloitte Restructuring Inc. (the "**Receiver**"), in its capacity as Court-appointed receiver and manager of the assets, undertakings and properties of Katzie Coast Marine Services Inc. ("**Katzie Services**"), coming on for hearing at Vancouver, British Columbia on Friday, September 26, 2014 and on hearing Kibben Jackson, counsel for the Receiver, and those counsel listed in Schedule "A" hereto; AND UPON READING the material filed, including the Receiver's First Report to the Court dated September 19, 2014 (the "**First Report**");



THIS COURT ORDERS AND DECLARES that:

1. The time for service of the Notice of Application and the materials filed in support thereof be and is hereby abridged and the application is properly returnable today.
2. The activities of the Receiver as set forth in the First Report are hereby approved.
3. The sale transaction (the "**Transaction**") contemplated by the agreement of purchase and sale dated August 20, 2014 (the "**Agreement**") between the Receiver and Gisbourne Marine Services Inc. (the "**Purchaser**"), a copy of which is attached as Appendix "C" to the First Report, is hereby approved, and the Agreement is commercially reasonable. The execution of the Agreement by the Receiver is hereby authorized and approved, and the Receiver is hereby authorized and directed to take such additional steps and execute such additional documents as may be necessary or desirable for the completion of the Transaction and for the conveyance to the Purchaser of the Vessel Assets, as defined and described in the Agreement, including without limitation that certain tugboat named "Katzie Pride" and having an Official Number of 188220 (the "**Vessel**").
4. Upon delivery by the Receiver to the Purchaser of a certificate substantially in the form attached as Schedule "B" hereto (the "**Receiver's Certificate**"), all of Katzie Services' right, title and interest in and to the Vessel Assets shall vest absolutely in the Purchaser, free and clear of and from any and all security interests (whether contractual, statutory, or otherwise), liens, executions, levies, charges, or other financial or monetary claims, whether or not they have attached or been perfected, registered or filed and whether secured, unsecured or otherwise (collectively, the "**Claims**") including, without limiting the generality of the foregoing: (i) any encumbrances or charges created by the Receivership Order; (ii) all charges, security interests or claims evidenced by registrations pursuant to the *Personal Property Security Act* of British Columbia or any other personal property registry system; and (iii) that certain mortgage registered against the Vessel in favour of Bank of Montreal and shown as Mortgage "E" in the Transport Canada Transcript of Registry in respect of the Vessel (all of which are collectively referred to as the "**Encumbrances**"), and, for greater certainty, this Court orders that all of the Encumbrances affecting or relating to the Vessel Assets are hereby expunged and discharged as against the Vessel Assets.
5. For the purposes of determining the nature and priority of Claims, the net proceeds from the sale of the Vessel Assets shall stand in the place and stead of the Vessel Assets, and from and after the delivery of the Receiver's Certificate all Claims shall attach to the net proceeds from the sale of the Vessel Assets with the same priority as they had with respect to the Vessel Assets immediately prior to the sale, as if the Vessel Assets had not been sold and remained in the possession or control of the person having had possession or control immediately prior to the sale.
6. The Receiver is to file with the Court a copy of the Receiver's Certificate forthwith after delivery thereof.

7. Subject to the terms of the Agreement, vacant possession of the Vessel Assets shall be delivered by the Receiver to the Purchaser at 12:00 noon on the Closing Date (as defined in the Agreement).
8. The Receiver, with the consent of the Purchaser, shall be at liberty to extend the Closing Date to such later date as those parties may agree without the necessity of a further Order of this Court.
9. Notwithstanding:
  - (a) these proceedings;
  - (b) any applications for a bankruptcy order in respect of Katzie Services now or hereafter made pursuant to the *Bankruptcy and Insolvency Act* and any bankruptcy order issued pursuant to any such applications; and
  - (c) any assignment in bankruptcy made by or in respect of Katzie Services,the vesting of the Vessel Assets in the Purchaser pursuant to this Order shall be binding on any trustee in bankruptcy that may be appointed in respect of Katzie Services and shall not be void or voidable by creditors of Katzie Services, nor shall it constitute or be deemed to be a transfer at undervalue, fraudulent preference, assignment, fraudulent conveyance or other reviewable transaction under the *Bankruptcy and Insolvency Act* or any other applicable federal or provincial legislation, nor shall it constitute oppressive or unfairly prejudicial conduct pursuant to any applicable federal or provincial legislation.
10. THIS COURT HEREBY REQUESTS the aid and recognition of any court, tribunal, regulatory or administrative body, wherever located, to give effect to this Order and to assist the Receiver and its agents in carrying out the terms of this Order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Receiver, as an officer of this Court, as may be necessary or desirable to give effect to this Order or to assist the Receiver and its agents in carrying out the terms of this Order.
11. The Receiver or any other party having an interest in the Transaction shall be at liberty to apply for such further or other orders, directions or other relief as may be necessary or desirable to give effect to this Order.
12. Endorsement of this Order by counsel appearing on this application, other than counsel for the Receiver, is hereby dispensed with.

THE FOLLOWING PARTIES APPROVE THE FORM OF THIS ORDER AND CONSENT TO EACH OF THE ORDERS, IF ANY, THAT ARE INDICATED ABOVE AS BEING BY CONSENT:

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Signature of Kibben Jackson  
Lawyer for Deloitte Restructuring Inc.

BY THE COURT

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REGISTRAR

**SCHEDULE "A"**

**List of Counsel**

<b>Name of Counsel</b>	<b>Party</b>

**SCHEDULE "B"**

**Form of Receiver's Certificate**

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**RECEIVER'S CERTIFICATE**

**RECITALS**

A. Pursuant to an Order of the Supreme Court of British Columbia (the "**Court**") dated June 26, 2014, Deloitte Restructuring Inc. (the "**Receiver**") was appointed as the receiver and manager of all of the assets, undertakings and properties of Katzie Coast Marine Services ("**Katzie Services**").

B. Pursuant to an Order of the Court dated September 26, 2014 (the "**Vesting Order**"), the Court approved the agreement of purchase and sale dated August 20, 2014 (the "**Agreement**") between the Receiver and Gisbourne Marine Services Ltd. (the "**Purchaser**") and provided for the vesting in the Purchaser of all of Katzie Services' right, title and interest in and to the Vessel Assets (as defined and described in the Agreement).

C. Unless otherwise indicated herein, capitalized terms have the meanings set out in the Agreement.

D. Pursuant to the Vesting Order, the vesting of the Vessel Assets in the Purchaser free and clear of all Encumbrances (as defined in the Vesting Order) is to be effective upon the delivery by the Receiver to the Purchaser of this certificate confirming: (i) the payment by the Purchaser of the Purchase Price in accordance with the Agreement; (ii) that the conditions precedent to closing as set out in Article 8.1 of the Agreement have been satisfied or waived by the Receiver and the Purchaser; and (iii) the Transaction has completed to the satisfaction of the Receiver.

THE RECEIVER HEREBY CERTIFIES as follows:

1. The Purchaser has paid and the Receiver has received the Purchase Price in accordance with the Agreement;
2. The conditions to Closing set out in Article 8.1 of the Agreement have been satisfied or waived by the Receiver and the Purchaser; and
3. The Transaction has completed to the satisfaction of the Receiver.

This Certificate was delivered by the Receiver at \_\_\_\_\_ [TIME] on \_\_\_\_\_, 2014 [DATE].

**DELOITTE RESTRUCTURING INC., in its capacity as Receiver of the assets, undertakings and properties of Katzie Coast Marine Services Inc., and not in its personal capacity**

Per: \_\_\_\_\_  
Name:  
Title:

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**ORDER MADE AFTER APPLICATION**

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Matter No: 242587.00098