



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. (“**Deloitte**”) in its capacity as the Court-appointed receiver and manager (the “**Receiver**”) of all of the assets, undertakings and properties of the Respondents Katzie Coast Marine Services Inc. (“**Katzie Services**”), Katzie Coast Marine Operations (2009) Inc. (“**Katzie Operations**”), Coast Marine Services 2004 Ltd. (“**Coast 2004**”), 0818987 B.C. Ltd. (“**081**”) and Coast Marine Services Inc. (“**Coast Marine**”) (collectively, the “**Group**”).

To: All parties of record and their solicitors

TAKE NOTICE that an application will be made by the Receiver to the presiding judge at the courthouse at 800 Smithe Street, Vancouver, British Columbia on Thursday, November 5, 2015 at 9:45 a.m. for the orders set out in Part 1 below.

Part 1: ORDER SOUGHT

1. The Receiver seeks an order in substantially the form of Order attached hereto as **Schedule “A”** discharging the mortgage registered in favour of Allied Shipbuilders Ltd. (“**Allied**”) from title to the vessel named “Transporter No. 2” and having an Official Vessel Number of 323228.
2. The Receiver seeks an order in substantially the form of Order attached hereto as **Schedule “B”**:

- (a) approving the activities of the Receiver as set forth in the Third Report of the Receiver dated October 21, 2015 (the “**Third Report**”);
- (b) approving the Receiver’s statement of receipts and disbursements in these proceedings;
- (c) approving the Receiver’s fees for the period June 26, 2014 to July 17, 2015 in the amount of \$84,796.95 (including applicable taxes), plus unbilled fees and disbursements in the amount of \$4,000.00 (together, the “**Receiver’s Costs**”);
- (d) approving the fees and disbursements of the Receiver’s legal counsel Fasken Martineau DuMoulin LLP (“**FMD**”) for the period June 3, 2014 to September 30, 2015 in the amount of \$101,782.34 (including applicable taxes), plus unbilled fees and disbursements in the amount of \$2,000 (together, the “**FMD Fees and Disbursements**”);
- (e) authorizing the Receiver to make certain distributions to Canada Revenue Agency (“**CRA**”) and Bank of Montreal (“**BMO**”);
- (f) effective upon the filing of a certificate with the Court (the “**Discharge Certificate**”), discharging the Receiver of its duties and obligations arising under the Receivership Order; and
- (g) releasing Deloitte from any and all liability that Deloitte now has, or may hereafter have, by reason of, or in any way related to, the acts or omissions of Deloitte while acting in its capacity as Receiver, save and except for any gross negligence or wilful misconduct on the part of Deloitte.

Part 2: FACTUAL BASIS

1. Capitalized terms used herein and not otherwise defined have the same meanings as are ascribed to them in the Third Report.
2. The Group previously operated in the Lower Mainland of British Columbia providing water taxi, tug and barging services. The head office of the Group was at 89 Rogers Street, Vancouver, B.C. (the “**Leased Premises**”).
3. Pursuant to the Receivership Order, the Receiver was appointed as receiver and manager of the Property of the Group.
4. By Order made October 3, 2014, the Court approved the activities of the Receiver as set forth in the First Report.
5. By Order made January 28, 2015, the Court approved the activities of the Receiver as set forth in the Second Report.
6. The Third Report details the activities of the Receiver following the Second Report. In summary, these activities include:

- (a) completing the sale of a number of the Group's assets, including the vessel known as the Malaspina Straits;
- (b) liaising with Vancouver Sand and Gravel Inc. in relation to the sale of the Rogers Barge Ramp located at the Leased Premises;
- (c) carrying out extensive negotiations and entering into the Revised Settlement Agreement with respect to a fee related to the Leased Premises;
- (d) reviewing an insurance claim relating to the Miller 309 and liaising with the claims adjustor during the claim investigation process;
- (e) liaising with various marinas to ensure the security and moorage of the Group's vessels;
- (f) communicating with creditors and other stakeholders on various matters;
- (g) arranging for the extension of insurance coverage for the Group's assets; and
- (h) carrying out its statutory duties and obligations under the *Bankruptcy and Insolvency Act* (the "BIA").

Discharge of the Allied Mortgage

7. The Allied Mortgage is registered against Transporter No. 2. Allied has confirmed with the Receiver's legal counsel that no amounts are owing to Allied by the Group and Allied consents to the discharge of the Allied Mortgage. However, as the originally signed Allied Mortgage is not available, Transport Canada refused to accept the executed Allied Mortgage discharge and accordingly the Receiver seeks an Order discharging the Allied Mortgage from title to the Transporter No. 2.

Approvals of fees and disbursements

8. The Receiver's statement of receipts and disbursements for the period of June 26, 2014 to October 20, 2015 is attached as Appendix B to the Third Report. As set forth therein, the receipts total \$1,563,002, and the disbursements total \$529,924.
9. From June 23, 2014 to July 17, 2015, the Receiver's invoiced \$80,759 in fees, plus GST in the amount of \$4,037.95, for a total of \$84,796.95. The Receiver has also incurred disbursements in these proceedings, which the Receiver has not invoiced for.
10. The Receiver has also incurred, but not billed, fees in the amount of approximately \$4,000 (not including GST).
11. From June 3, 2014 to September 30, 2015, FMD's invoiced \$88,791.50 in fees, plus disbursements in the amount of \$2,244.96 and taxes in the amount of \$10,745.88, for a total of \$101,782.34.

12. FMD has also incurred, but not billed, fees and disbursements in the amount of approximately \$2,000.00 (exclusive of applicable taxes).
13. Each of the Receiver and FMD estimate they will incur further fees and disbursements of approximately \$2,500 (exclusive of applicable taxes) (the “**Completion Costs**”) to the completion of this matter, assuming the Receiver's application for discharge is not opposed. These amounts will only be paid to the Receiver and FMD if such amounts are properly incurred.
14. The fees incurred by the Receiver and FMD were reasonable and necessary, and the hours and rates charged are fair and reasonable given the circumstances and the issues dealt with in the Receivership Proceedings.
15. As detailed in the Third Report, BMO is expected to suffer a shortfall of approximately \$871,000 on the amount owing to it by the Group.

Proposed distributions

16. CRA has deemed trust claims against Katzie Services and Katzie Operations for unremitted GST. The claim against Katzie Services is for \$22,768.11 and the Receiver is proposing to pay this claim in its entirety from the proceeds generated by the sale of the Coast VII (the “**Deemed Trust Claim Payment**”). The claim against Katzie Operations is for \$352,984.43, however, the Receiver is not aware of any assets owned by Katzie Operations at the Date of Appointment and, accordingly, there are no funds available to pay the amounts owing to CRA by Katzie Operations.
17. Following payment of the Receiver's Costs and the FMD Fees and Disbursements (which, for certainty, do not include the Completion Costs) and payment of the Deemed Trust Claim Payment, the remaining proceeds held by the Receiver will be approximately \$990,000. These funds are secured by the BMO Security and BMO has priority to these funds. Accordingly, subject to the Receiver holding back sufficient funds to complete the administration of the receivership and pay the Completion Costs, the Receiver proposes to pay the balance of the funds to BMO.

Release and discharge of the Receiver

18. Subject to the Receiver making the distributions contemplated herein, the Receiver will have completed its duties and obligations under the Receivership Order, save and except for the following remaining matters:
 - (a) payment of the Completion Costs, to the extent such costs are properly incurred;
 - (b) payment of the final GST remittance, resulting from the Revised Settlement Agreement; and
 - (c) other administrative matters incidental to the Receivership Proceedings, including the filing of the Receiver's report pursuant to section 246(3) of the BIA.

19. The remaining matters are administrative and the Receiver is of the view that it is appropriate to seek an order of the Court discharging the Receiver, with the discharge to be effective upon the filing of the Discharge Certificate.
20. The Receiver is seeking that the Court grant Deloitte a release from any liability arising in connection with Deloitte carrying out its duties as Receiver. This relief is appropriate in the circumstances, given that (i) the state of the vessels which the Receiver was appointed over and sold were generally in a state of poor repair and (ii) the Miller 309 remains submerged near Mosquito Creek Marina in North Vancouver which, notwithstanding the Receiver's disclaimer of any interest in the Miller 309 (as discussed in the Third Report), could result in parties seeking to take action against Deloitte.

Part 3: LEGAL BASIS

1. Rules 8-1 and 10-2 of the Supreme Court Civil Rules.
2. The inherent jurisdiction of this Court.
3. The governing principle in determining the amount of compensation to be paid to a receiver is that such compensation “must be fair and reasonable having regard to all of the material facts and circumstances of the particular case”:

Federal Business Development Bank v. Belyea (1983) 46 C.B.R. (N.S.) 244 (“*Belyea*”), at para 12

4. The principles identified in *Belyea* were adopted by the British Columbia Court of Appeal in *Bank of Montreal v. Nican Trading Co.* The Court of Appeal went on to list the relevant considerations of the Court in determining fair and reasonable compensation, including:
 - (a) the value of the assets;
 - (b) complications and difficulties encountered by the receiver;
 - (c) the degree of assistance provided by the debtor;
 - (d) time spent by the receiver;
 - (e) receiver’s knowledge, experience and skill;
 - (f) diligence and thoroughness;
 - (g) responsibilities assumed;
 - (h) results; and
 - (i) cost of comparable services.

Bank of Montreal v. Nican Trading Co. [1990] B.C.J. No. 340

5. In the circumstances, the Receiver submits that its fees, and the fees and disbursements of FMD, are fair and reasonable, particularly given:
 - (a) the complexities of the receivership, which were contributed to by the poor state of the Group's assets, the relative lack of cooperation from the Group, the insurance claim regarding the Miller 309 and the extensive negotiations regarding the Revised Settlement Agreement; and
 - (b) the fact that the fees and disbursements charged by the Receiver and its legal counsel are equal to or less than their standard hourly rates, and are comparable to those rates charged by other insolvency related firms in Vancouver.

Part 4: MATERIAL TO BE RELIED ON

1. Receiver's First Report to the Court dated September 19, 2014;
2. Receiver's Second Report to the Court dated January 14, 2015;
3. Receiver's Third Report to Court dated October 21, 2015;
4. Affidavit of Lawrence Chipman, sworn June 17, 2014;
5. Affidavit #1 of Huey Lee, sworn October 22, 2015;
6. Affidavit #1 Kibben Jackson, affirmed October 22, 2015;
7. Such further and other legal basis as counsel may advise.

The applicant estimates that the application will take 30 minutes.

This matter is not 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: 23-Oct-2015

DT

Signature of Danielle Toigo
 Lawyer for the Applicant, Deloitte Restructuring Inc.

<i>To be completed by the court only:</i>	
Order made	
<input type="checkbox"/>	in the terms requested in paragraphs of Part 1 of this Notice of Application
<input type="checkbox"/>	with the following variations and additional terms:
Date:
	Signature of <input type="checkbox"/> Judge <input type="checkbox"/> Master

The Solicitors for Deloitte Restructuring Inc. 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 (Reference: Danielle Toigo/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" - DRAFT ORDER

No. S144832
Vancouver Registry

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AND:

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COAST MARINE SERVICES 2004 LTD.
0818987 B.C. LTD.
COAST MARINE SERVICES INC.
KATZIE FIRST NATIONS BAND

RESPONDENTS

ORDER MADE AFTER APPLICATION

BEFORE))
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ON THE APPLICATION OF Deloitte Restructuring Inc. in its capacity as Court-appointed receiver and manager (the "**Receiver**") of the assets, undertakings and properties of Katzie Coast Marine Services Inc., Katzie Coast Marine Operations (2009) Inc., Coast Marine Services 2004 Ltd., 0818987 B.C. Ltd. and Coast Marine Services, coming on for hearing at Vancouver, British Columbia on this day and on hearing Danielle Toigo, counsel for the Receiver, and those counsel listed in **Schedule "A"** hereto; AND UPON READING the material filed, including the Receiver's Third Report to the Court dated October 21, 2015;

THIS COURT ORDERS AND DECLARES that:

1. That certain mortgage registered against the vessel named Transporter No. 2 and having an Official Vessel Number of 323228 (the "**Vessel**") in favour of Allied Shipbuilders Ltd. and shown as Mortgage "H" (the "**Mortgage**") in the Transport Canada Transcript

of Registry in respect of the Vessel is hereby expunged and discharged as against the Vessel.

2. Upon presentation for registration at the Vessel Registry of a certified copy of this Order, together with a letter from Fasken Martineau DuMoulin LLP, solicitors for the Receiver, authorizing registration of this Order, the Vessel Registry is hereby directed to discharge, release, delete and expunge the Mortgage from title to the Vessel.
3. 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:

Signature of Danielle Toigo
Lawyer for Deloitte Restructuring Inc.

BY THE COURT

REGISTRAR

SCHEDULE "A"

LIST OF COUNSEL

Name of Party	Counsel Name

No. S144832
Vancouver Registry

IN THE SUPREME COURT OF BRITISH COLUMBIA

BETWEEN:

BANK OF MONTREAL

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AND:

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ORDER MADE AFTER APPLICATION

FASKEN MARTINEAU DuMOULIN LLP
Barristers and Solicitors
2900 - 550 Burrard Street
Vancouver, BC, V6C 0A3
+1 604 631 3131

Counsel: Danielle Toigo
Matter No: 242-587.00098

SCHEDULE "B" - DRAFT ORDER

No. S144832
Vancouver Registry

IN THE SUPREME COURT OF BRITISH COLUMBIA

BETWEEN:

BANK OF MONTREAL

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RESPONDENTS

ORDER MADE AFTER APPLICATION

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ON THE APPLICATION OF Deloitte Restructuring Inc. ("**Deloitte**") in its capacity as Court-appointed receiver and manager (the "**Receiver**") of the assets, undertakings and properties of Katzie Coast Marine Services Inc., Katzie Coast Marine Operations (2009) Inc., Coast Marine Services 2004 Ltd., 0818987 B.C. Ltd. and Coast Marine Services (collectively, the "**Group**") coming on for hearing at Vancouver, British Columbia on this day and on hearing Danielle Toigo, counsel for the Receiver, and those counsel listed in **Schedule "A"** hereto; AND UPON READING the material filed, including the Receiver's Third Report to the Court dated October 21, 2015 (the "**Third Report**");

THIS COURT ORDERS AND DECLARES THAT:

1. The activities of the Receiver as set out in the Third Report are hereby approved.
2. The Receiver's statement of receipts and disbursements, in the form attached as Appendix B to the Third Report, is hereby approved.
3. The fees and disbursements of the Receiver in the amount of \$88,796.95, as set out in the Third Report and Affidavit #1 of Huey Lee sworn October 22, 2015, are hereby approved.
4. The fees and disbursements of the Receiver's legal counsel, Fasken Martineau DuMoulin LLP ("FMD"), in the amount of \$103,782.34, as set out in the Third Report and Affidavit #1 of Kibben Jackson affirmed October 22, 2015, are hereby approved.
5. The Receiver is hereby authorized and directed to remit to Canada Revenue Agency the amount of \$22,768.11 (the "**Deemed Trust Claim Payment**").
6. After payment of (i) the Deemed Trust Claim Payment, (ii) the fees of the Receiver as herein approved, and (iii) the fees and disbursements of FMD as herein approved, the Receiver shall pay to the Petitioner all funds remaining in its hands, subject to the Receiver maintaining sufficient funds to complete the administration of the receivership.
7. Upon payment of the amounts set out in paragraph 6 hereof and upon the Receiver filing a certificate certifying that it has completed the remaining outstanding activities described in the Third Report, the Receiver shall be discharged as Receiver of the assets, undertaking and property of the Group, provided that notwithstanding its discharge herein: (a) the Receiver shall remain Receiver for the performance of such incidental duties as may be required to complete the administration of the receivership herein; and (b) the Receiver shall continue to have the benefit of the provisions of all Orders made in this proceeding, including all approvals, protections and stays of proceedings in favour of Deloitte Restructuring Inc. in its capacity as Receiver.
5. Deloitte is hereby released and discharged from any and all liability that it now has or may hereafter have by reason of, or in any way arising out of, the acts or omissions of Deloitte while acting in its capacity as Receiver herein. Without limiting the generality of the foregoing,

Deloitte is hereby forever released and discharged from any and all liability relating to matters that were raised, or which could have been raised, in the within receivership proceedings, save and except any claim or liability arising out of fraud, willful misconduct or gross negligence on the part of the Deloitte while acting in its capacity as the Receiver.

8. Notwithstanding any provision herein, this Order shall not affect any person to whom notice of these proceedings was not delivered as required by the *Bankruptcy and Insolvency Act* and regulations thereto, any other applicable enactment or any other Order of this Court.

9. 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.

10. 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:

Signature of Danielle Toigo
Lawyer for Deloitte Restructuring Inc.

BY THE COURT

REGISTRAR

SCHEDULE "A"
LIST OF COUNSEL

Name of Party	Counsel Name

No. S144832
Vancouver Registry

IN THE SUPREME COURT OF BRITISH COLUMBIA

BETWEEN:

BANK OF MONTREAL

Petitioner

AND:

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COAST MARINE SERVICES 2004 LTD.
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COAST MARINE SERVICES INC.
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Respondents

ORDER MADE AFTER APPLICATION

FASKEN MARTINEAU DU MOULIN LLP
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Vancouver, B.C., V6C 0A3
604 631 3131

Counsel: Danielle Toigo
Matter No: 242587.00098