



No. H230802
Vancouver Registry

IN THE SUPREME COURT OF BRITISH COLUMBIA
IN BANKRUPTCY AND INSOLVENCY

BETWEEN

BANK OF MONTREAL

PETITIONER

AND

HARO-THURLOW STREET PROJECT LIMITED PARTNERSHIP, HARO AND THURLOW GP LTD., 1498280 B.C. LTD., 1104227 B.C. LTD., CLOUDBREAK HOLDINGS LTD., CM (CANADA) ASSET MANAGEMENT CO. LTD., FORSEED HARO HOLDINGS LTD., 1115830 B.C. LTD., TERRAPOINT DEVELOPMENTS LTD., KANG YU ZOU, WEI DONG, WEI ZOU, XIA YU AND TREASURY BAY HK LIMITED

RESPONDENTS

NOTICE OF APPLICATION

Name of applicant: Deloitte Restructuring Inc., in its capacity as the Court-Appointed Receiver and Manager of Haro-Thurlow Street Project Limited Partnership ("HTLP"), Haro and Thurlow GP Ltd. (the "GP"), and 1498280 B.C. Ltd. ("Residual Co.", and together with HTLP and the GP, the "Debtors"), and not in its personal capacity (the "Receiver")

To: The Service List

TAKE NOTICE that an application will be made by the applicant to the presiding judge or associate judge at the courthouse at 800 Smithe Street, Vancouver, BC, on December 18, 2024 at 9:45 a.m. for the order(s) set out in Part 1 below.

The Receiver estimates that the application will take 30 minutes.

This matter is not within the jurisdiction of an associate judge. Justice Fitzpatrick is seized of this matter.

Part 1: ORDER SOUGHT

1. The Receiver seeks a **"Fee Approval and Discharge Order"**, substantially in form attached as **Schedule "A"**, which shall:

- (a) approve the activities of the Receiver set out in the Second Report to the Court dated November 26, 2024 (the **"Second Report"**);

- (b) approve the Receiver's fees and disbursements of the Receiver and its legal counsel, Blake, Cassels and Graydon LLP ("**Blakes**") in these Receivership Proceedings;
- (c) authorize and direct the Receiver to pay all remaining funds (the "**Receiver's Remaining Funds**") to Fasken Martineau DuMoulin LLP ("**Fasken**"), counsel for the Bank of Montreal, to be held in trust on a without prejudice basis with respect to all parties' legal rights and interests, pending further Court order; and
- (d) discharge the Receiver in these Receivership Proceedings.

Part 2: FACTUAL BASIS

Activities of the Receiver

2. On January 12, 2024 (the "**Date of Receivership**"), the Receiver was appointed over the business and assets of HTLP, the GP, and Harlow Holdings Ltd. by Order of this Court dated January 11, 2024 (the "**Receivership Order**").

3. The activities of the Receiver from the commencement of its appointment until August 16, 2024 are described in detail in the First Report of the Receiver dated August 16, 2024 (the "**First Report**", together with the Second Report and the Confidential Supplement to the First Report dated August 22, 2024 (the "**Confidential Supplement**"), the "**Receiver's Reports**"). These activities were approved by this Court on August 23, 2024.

4. The activities of the Receiver since the filing of the First Report are described in detail in the Second Report and include the following (with defined terms as in the Second Report):

- (a) updating the Receiver's Website for stakeholders to access the various information related to the Receivership Proceedings;
- (b) corresponding with the Receiver's counsel, Blakes, regarding all aspects of this mandate;
- (c) preparing correspondence to the Debtors and their affiliates, including Intracorp and First Service, regarding closing activities and the Transaction;
- (d) arranging to maintain the insurance coverage until the closing of the Transaction;
- (e) corresponding extensively and attending several meetings with First Service regarding the management of the Property, communication with tenants regarding the Receivership and the Transaction;
- (f) reviewing and approving certain payments and corresponding with First Service regarding same;
- (g) reviewing information provided by First Service including information with respect to, among other things, monthly financial reporting, receipts and disbursements, and tenants;

- (h) coordinating the preparation of the financial statements and the filing of the outstanding information, tax, and partnership returns for the Debtors with the external accountants;
- (i) contacting the Canada Revenue Agency to review goods and services tax accounts to facilitate filings for the period after the Date of Receivership;
- (j) responding to information and other requests from the Partners and their counsel and providing updates on the Receivership Proceedings when requested;
- (k) corresponding with various creditors and other stakeholders and providing updates on the Receivership Proceedings;
- (l) reviewing and updating the statement of adjustments for the Transaction and supporting details and transactions and corresponding with First Service and the Purchaser regarding same;
- (m) reviewing, finalizing and signing all closing documents for the Transaction;
- (n) completing the BMO Initial Distribution;
- (o) drafting the Second Report and reviewing all materials filed in connection with the Receiver's application; and
- (p) addressing other matters pertaining to the administration of the Receivership Proceedings and the Transaction.

5. Blakes, in its capacity as independent legal counsel to the Receiver, advised the Receiver on all legal aspects of the activities described in the Receiver's Reports.

6. In connection with these activities and those described in the First Report and the Confidential Supplement, the Receiver has incurred professional fees and disbursements up to October 31, 2024, in the amount of \$261,927.56, including taxes and disbursements.

7. In advising the Receiver in connection with these activities and those described in the Receiver's Reports, Blakes has incurred professional fees and disbursements up to October 31, 2024, in the amount of \$425,763.01, including taxes and disbursements.

Part 3: LEGAL BASIS

Approval of Fees and Activities

8. The Receivership Order authorizes the Receiver and its counsel to pass their accounts from time to time and, for this purpose, refers such accounts to this Court to be heard on a summary basis.

9. This Court has referenced with approval the following relevant factors when considering whether the fees of a court-appointed officer in an insolvency proceeding are fair and reasonable in the circumstances:

- (a) the nature, extent, and value of the assets;
- (b) complications and difficulties encountered by the court officer;
- (c) degree of assistance provided by the petitioner;
- (d) time spent by the court officer;
- (e) the court officer's knowledge, experience, and skill;
- (f) the court officer's diligence and thoroughness;
- (g) responsibilities assumed;
- (h) results of the court officer's efforts; and
- (i) cost of comparable services when performed in a prudent and economical manner.

Redcorp Ventures Ltd. (Re), 2016 BCSC 188 at para 23 [*Redcorp*], citing *Bank of Montreal v. Nican Trading Co.* (1990), 1990 CanLII 454 (BC CA). *Re Nortel Networks Corporation et al*, 2017 ONSC 673 at para. 14 [*Nortel*].

10. Similar factors are considered in the assessment of the legal accounts of counsel to the court officer, including:

- (a) the time expended;
- (b) the complexity of the proceeding;
- (c) the degree of responsibility assumed by the lawyers;
- (d) the amount of money involved, including the amount of proceeds after payments to the creditors;
- (e) the degree and skill of the lawyers involved;
- (f) the results achieved; and
- (g) the client's expectations as to the fee.

Redcorp at para 33.

11. In applying the above factors, it is not necessary for the Court to go through the supporting documentation for the fees "line by line" to determine what the appropriate fees are. The value provided should pre-dominate the consideration of what a fair and reasonable amount is appropriate.

Nortel at para. 21

12. To provide the court with a proper evidentiary basis for assessing the fees subject to the approval application, the accounts subject to the approval application should:

- (a) be verified by affidavit;
- (b) contain sufficient evidence to permit the court to conclude that the fees incurred for services rendered were at the standard rate of charges of the receiver and of the receiver's counsel; and
- (c) provide a sufficient description of the services rendered to permit the court to determine whether the liability for fees was "properly incurred".

Redcorp at paras 26 and 32

13. In the circumstances, the Receiver submits:

- (a) that its professional fees and disbursements were properly incurred;
- (b) the services were performed by the Receiver in a prudent and economical manner and that the resulting fees charged by the Receiver are fair and reasonable in all of the circumstances;
- (c) the work completed by the Receiver was delegated to the appropriate professionals within Deloitte with the appropriate seniority and appropriate hourly rates; and
- (d) the Receiver's fees in this matter are consistent with fees charged by other insolvency firms of a similar size for work of a similar nature and complexity.

14. Similarly, the Receiver submits:

- (a) Blakes' professional fees and disbursements were properly incurred at Blakes' standard rates;
- (b) the services were performed by Blakes in a prudent and economical manner and the resulting fees charged by Blakes are fair and reasonable in all of the circumstances;
- (c) the work completed by Blakes was delegated to the appropriate professionals within Blakes with the appropriate seniority and hourly rates;
- (d) Blakes' fees in this matter are consistent with the market for similar firms with the capacity to handle a file of comparable size and complexity; and
- (e) Blakes' invoices were provided to the Receiver when rendered, and all have been approved by the Receiver.

Payment of Receiver's Remaining Funds into Fasken's Trust Account

15. The Receiver is holding a balance of \$902,000 in trust as of November 25, 2024, before any remaining accrued interest (the "**Remaining Funds**").

16. Following payment of the costs required to complete these Receivership Proceedings, the Receiver understands there will be competing claims to the Remaining Funds (the "**Competing Claims**");

- (a) a claim by Forseed Haro Holdings Ltd. ("**Forseed**") in relation to the ongoing litigation brought by Forseed against the Bank of Montreal, the remaining Partners (as defined in the Second Report), and others, which remains ongoing (the "**Ongoing Litigation**");
- (b) the Bank of Montreal's claim to cover the Syndicate Contingency (as defined in the Second Report);
- (c) the Partners' claims pursuant to a second-ranking mortgage registered against the Property in October 2018; and
- (d) the Debtors' former legal counsel, Mr. Scott Turner of Miller Thomson LLP, pursuant to a claim of solicitor's lien.

17. In light of the Competing Claims and the Ongoing Litigation, the Receiver is not in a position to make a final distribution of funds to stakeholders.

18. Therefore, subject to the Court granting the order sought by the Receiver, the Receiver proposes to pay out the Receiver's Remaining Funds as follows:

- (a) payment of any remaining costs incidental to the Receiver concluding its administration of these Receivership Proceedings; and
- (b) after payment of the fees and disbursements as approved, payment of any remaining funds to Fasken to be held in trust and, on a without prejudice basis with respect to all parties' legal rights and interests at the time of the Receiver's discharge, to permit the Competing Claims to the Receiver's Remaining Funds to be resolved by the Debtors' stakeholders, including through resolution of the Ongoing Litigation.

19. The Receiver takes no position with respect to the Competing Claims over the Receiver's Remaining Funds.

The Discharge Order Should be Granted

20. This Court has the jurisdiction to discharge the Receiver and include a provision in the order effecting that discharge that protects court-appointed receivers, who are officers and instruments of the Court, from claims arising from the discharge of their duties in that role.

21. The Receiver submits that the discharge and release sought in the proposed Fee Approval and Discharge Order (which has been limited to exclude wilful misconduct or gross negligence) are appropriate and reasonable in the circumstances.

22. The Receiver further relies on the *Bankruptcy and Insolvency Act*, the *Supreme Court Civil Rules*, and the inherent jurisdiction of this Honourable Court.

Part 4: MATERIAL TO BE RELIED ON

1. Affidavit #1 of Peter L. Rubin, made November 27, 2024;
2. Affidavit #1 of Jeff Keeble, made November 26, 2024;
3. First Report of the Receiver dated August 16, 2024;
4. Confidential Supplement to the First Report dated August 22, 2024;
5. Second Report of the Receiver dated November 26, 2024;
6. Such further materials as counsel may advise.

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) serve 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).

Date: November 28, 2024



Signature of Claire Hildebrand, counsel to 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 ☐ Associate Judge

APPENDIX

THIS APPLICATION INVOLVES THE FOLLOWING:

- ☐ discovery: comply with demand for documents
- ☐ discovery: production of additional documents
- ☐ 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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HARO-THURLOW STREET PROJECT LIMITED PARTNERSHIP, HARO AND THURLOW GP LTD., 1498280 B.C. LTD., 1104227 B.C. LTD., CLOUDBREAK HOLDINGS LTD., CM (CANADA) ASSET MANAGEMENT CO. LTD., FORSEED HARO HOLDINGS LTD., 1115830 B.C. LTD., TERRAPOINT DEVELOPMENTS LTD., KANG YU ZOU, WEI DONG, WEI ZOU, XIA YU AND TREASURY BAY HK LIMITED

RESPONDENTS

ORDER MADE AFTER APPLICATION

BEFORE) THE HONOURABLE JUSTICE FITZPATRICK) December 18, 2024
))

ON THE APPLICATION of Deloitte Restructuring Inc., in its capacity as Court-appointed Receiver ("**Deloitte**" or the "**Receiver**") of the assets, undertakings and properties (the "**Property**") of Haro-Thurlow Street Project Limited Partnership, Haro and Thurlow GP Ltd, and 1498280 B.C. Ltd. (collectively, the "**Debtors**"), coming on for hearing at Vancouver, BC on December 18, 2024, and on hearing Claire Hildebrand, counsel for the Receiver, and those other counsel listed on **Schedule "A"** hereto; AND UPON READING the material filed, including Affidavit #1 of Peter L. Rubin, sworn November 26, 2024 (the "**Counsel Affidavit**"), Affidavit #1 of Jeff Keeble, made on November 26, 2024 (the "**Receiver Affidavit**"), the first report of the Receiver, dated August 16, 2024 (the "**First Report**"), the first confidential report of the Receiver dated August 22, 2024, and the second report of the Receiver dated November 26, 2024 (the "**Second Report**"),

THIS COURT ORDERS that:

1. The activities of the Receiver, as set out in the Second Report, are hereby approved; provided, however, that only the Receiver, in its personal capacity and with respect to its own personal liability, shall be entitled to rely upon or utilize in any way such approval.
2. The fees and disbursements of the Receiver and its counsel, as set out in the Second Report, the Receiver's Affidavit and the Counsel Affidavit, are hereby approved.

3. After payment of the fees and disbursements of the Receiver as herein approved, the Receiver shall pay all funds remaining in its hands to Fasken Martineau DuMoulin LLP ("**Fasken**"), to be held by Fasken in trust and on a without prejudice basis with respect to all parties' legal rights and interests, pending further order of this Court.

4. Upon payment of the amounts set out in paragraph 3, the Receiver shall be discharged as Receiver of the Property as defined in the Receiver Order dated January 11, 2024) of the Debtors, provided that notwithstanding its discharge therein: (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 stay of proceedings in favour of Deloitte in its capacity as Receiver.

5. Deloitte is hereby released and discharged from any and all liability that Deloitte now has or many 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, the Receiver 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 for and except in the event of any gross negligence or willful misconduct of Deloitte in its capacity as Receiver herein.

6. 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.

7. Endorsement of this Order by counsel appearing on this application, other than counsel to the Receiver, is hereby dispensed with.

8. 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 Claire Hildebrand
Lawyer for the Receiver

BY THE COURT.

Registrar

SCHEDULE "A"

Counsel List

Counsel Name	Party Represented