



NO. *Court File No. VLC-S-S-216272*
VANCOUVER REGISTRY

IN THE SUPREME COURT OF BRITISH COLUMBIA

BETWEEN:

BANK OF MONTREAL

PETITIONER

AND:

FIREWEED BREWING CORP.
RAW ENERGY LTD.
RONALD KISIC
ROBERT MAITLAND
HER MAJESTY THE QUEEN IN RIGHT OF CANADA
HER MAJESTY THE QUEEN IN RIGHT OF THE PROVINCE OF BRITISH
COLUMBIA
49TH PARALLEL GROUP INC. dba WESTERN CRAFT ALLIANCE

RESPONDENTS

PETITION TO THE COURT

Form 11

**ENDORSEMENT ON ORIGINATING PROCESS
FOR SERVICE OUTSIDE BRITISH COLUMBIA**

The petitioner claims the right to serve this Petition on the respondents, or any of them, outside British Columbia on the ground that the proceeding is brought to enforce, assert, declare, or determine proprietary or possessory rights or a security interest in property in British Columbia, pursuant to Rule 4-5(1) and s. 10(a) of the *Court Jurisdiction and Proceedings Transfer Act*.

ON NOTICE TO:

FIREWEED BREWING CORP. c/o Deloitte Restructuring Inc. 939 Granville Street, Vancouver British Columbia V6Z 1L3	RAW ENERGY LTD. c/o Registered Office 25130 Escarpment Ridge View Calgary, Alberta T3Z 3M7
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RONALD KISIC 620, 407 – 2 nd Avenue SW Calgary, Alberta T2P 2Y3	ROBERT MAITLAND 53 Beddington Gardens NE Calgary, Alberta T2P 2Y3
HER MAJESTY THE QUEEN IN RIGHT OF CANADA c/o 9755 King George Boulevard, Surrey, British Columbia V3T 5E1	HER MAJESTY THE QUEEN IN RIGHT OF THE PROVINCE OF BRITISH COLUMBIA 1802 Douglas Street, Victoria, British Columbia V8T 4K6
49TH PARALLEL GROUP INC. DBA WESTERN CRAFT ALLIANCE c/o Bison Credit Solutions #5 – 3402 8 th Street SE, Calgary, Alberta T2G 5S7	

This proceeding is brought for the relief set out in Part 1 below by the Bank of Montreal.

If you intend to respond to this Petition, you or your lawyer must

- a) file a Response to Petition in Form 67 in the above-named registry of this court within the time for Response to Petition described below, and
- b) serve on the Petitioner
 - i. 2 copies of the filed Response to Petition; and
 - ii. 2 copies of each filed affidavit on which you intend to rely at the hearing.

Orders, including orders granting the relief claimed, may be made against you, without any further notice to you, if you fail to file the Response to Petition within the time for response.

Time for Response to Petition

A Response to Petition must be filed and served on the Petitioner,

- a) if you were served with the Petition anywhere in Canada, within 21 days after that service,
- b) if you were served with the Petition anywhere in the United States of America, within 35 days after that service
- c) if you were served with the Petition anywhere else, within 49 days after that service, or
- d) if the time for Response has been set by order of the court, within that time.

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The address of the Registry is: 800 Smithe Street, Vancouver, British Columbia.

The ADDRESS FOR SERVICE of the Petitioner is: c/o Lawson Lundell LLP, 1600 – 925 West Georgia Street, Vancouver, British Columbia V6C 3L2.

Fax number for delivery is: N/A

Email address for delivery is: bgibbons@lawsonlundell.com

The name and office address of the Petitioner’s solicitor is: Lawson Lundell LLP, 1600 - 925 West Georgia Street, Vancouver, British Columbia, V6C 3L2 (Attention: Bryan C. Gibbons).

CLAIM OF PETITIONER

Part 1: **ORDERS SOUGHT**

1. An Order appointing Deloitte Restructuring Inc. (“**Deloitte**”) as Receiver over certain property of the Respondent Fireweed Brewing Corp. (“**Fireweed**”) substantially in the form attached hereto.
2. If necessary, an Order shortening the period for notice pursuant to Rule 22-4 of the *Supreme Court Civil Rules*.

Part 2: **FACTUAL BASIS**

The Parties

3. The Petitioner Bank of Montreal (the “**Bank**”) is a chartered bank of Canada having an office in the Province of British Columbia and having an address for service for the purpose of these proceedings at 1600 – 925 West Georgia Street, Vancouver, British Columbia.
4. The Respondent Raw Energy Ltd. (“**Raw Energy**”) is a company incorporated in the Province of Alberta and having an address for service for the purpose of these proceedings at 25130 Escarpment Ridge View, Calgary, Alberta.
5. The Respondent Ronald Kusic (“**Ronald**”) is an individual residing in the Province of Alberta and having an address at 620, 407 – 2nd Avenue SW, Calgary, Alberta.

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6. The Respondent Robert Maitland (“**Robert**”) is an individual residing in the Province of Alberta and having an address at 53 Beddington Gardens NE Calgary, Alberta.
7. The Respondent 49th Parallel Group Inc., dba Western Craft Alliance (“**49th Parallel**”), is a Partnership registered in the Province of Alberta with an address at c/o Bison Credit Solutions, #5 – 3402 8th Street SE, Calgary, Alberta.
8. The Bank and the Respondents Raw Energy, Ronald, Robert, Her Majesty the Queen in Right of Canada and Her Majesty the Queen in Right of the Province of British Columbia all have security interests registered in the British Columbia Personal Property Registry against the personal property of Fireweed.
9. The Bank and the Respondents Raw Energy, Ronald, and Robert have security interests registered in the Alberta Personal Property Registry against the personal property of Fireweed.
10. The Respondent 49th Parallel has a Writ of Enforcement registered against Fireweed in the Alberta Personal Property Registry in the amount of \$34,808.53.

Bankruptcy of Fireweed and Appointment of Deloitte as Instrument-Appointed Receiver

11. Fireweed made an assignment in bankruptcy with the Office of the Superintendent of Bankruptcy (“**OSB**”) on April 14, 2021.
12. As of April 22, 2021, Fireweed was indebted to the Bank in the amount of \$1,697,053.20 (the “**Indebtedness**”). The Indebtedness is secured by, among other things a Security Agreement, and a General Security Agreement, each dated November 12, 2014 (collectively, the “**Security Agreement**”).
13. Pursuant to the terms of the Security Agreement, Fireweed granted to the Bank a first ranking security interest (the “**Security Interest**”) charging all of Fireweed’s present and after acquired personal property.
14. Pursuant to the Security Agreement, the Bank appointed Deloitte as instrument-appointed receiver over the property, assets and undertakings of Fireweed.

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15. The assets of Fireweed are insufficient to pay out the Bank of Montreal, much less other creditors.

Assets of Fireweed and Proposed Sale of the Intellectual Property to Big Rock

16. Fireweed is the owner of certain intellectual property rights (the “**Intellectual Property**”), including all goodwill, applications, registrations, and renewals connected thereto. The Intellectual Property is subject to the Security Interest.
17. Pursuant to a certain license agreement dated October 17, 2018, Fireweed licensed the Intellectual Property to Big Rock Brewery Limited Partnership (“**Big Rock**”). Subject to the license agreement, Big Rock has the exclusive use of the Intellectual Property until December 31, 2024 and also has the option to purchase the Fireweed IP.
18. In late 2018, with the exception of the Intellectual Property, Fireweed sold most of its assets to Big Rock.
19. In late 2020, Fireweed and Big Rock negotiated the purchase and sale of the Intellectual Property for a purchase price of \$530,000, payable in monthly instalments until December 31, 2024 (the “**Proposed Sale**”). Fireweed and Big Rock were unable to complete the Proposed Sale because Fireweed was unable to obtain the required discharges from all of the Respondents herein who have registered security interests in the British Columbia and Alberta Personal Property Security Registries.
20. As a result of Fireweed’s assignment into bankruptcy, Deloitte has concluded that a sale of the Intellectual Property to Big Rock, on substantially the same terms as the Proposed Sale, represents the best possible recovery with respect to the assets of Fireweed. With the exception of a bottling line and storage tanks which the Trustee has been unable to locate and value to date, the Intellectual Property represents the only other known remaining asset of Fireweed.
21. Big Rock remains ready, willing and able to purchase the Intellectual Property on similar terms to the Proposed Sale other than making a lump sum payment of \$500,000 versus monthly instalments over the remaining term of the license agreement. However, Big

Rock's purchase of the Intellectual Property is contingent upon obtaining a Vesting Order pronounced by this Honourable Court.

22. On the basis of the foregoing, the Bank brings this Petition to this Honourable Court to appoint Deloitte as Court appointed Receiver over the property, assets and undertakings of Fireweed.

Proposed Receivership

23. The appointment of Deloitte as receiver of Fireweed is necessary to realize on Fireweed's assets in a fair and reasonable manner that balances the interest of all parties and Respondent stakeholders.
24. If appointed, Deloitte has consented to act as Receiver.

Part 3: LEGAL BASIS

25. The Bank pleads and relies upon the following:
- a) Sections 69.1(5), 69.3(2) and 243 of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended;
 - b) Section 66 of the *Personal Property Security Act*, R.S.B.C. 1996, c. 359 as amended;
 - c) Section 39 of the *Law and Equity Act*, R.S.B.C. 1996, c. 253 as amended; and
 - d) Rules 10-2, 16-1 and 22-4 of the *Supreme Court Civil Rules*.
26. The Honourable Mr. Justice Burnyeat held, on multiple occasions, that where a receivership order is sought by a secured creditor, and default of security is proven, the receivership order should be granted as a matter of course unless there are other compelling reasons why the order should not be made.

United Savings Credit Union v. F & R Brokers Inc., 2003 B.C.S.C. 640; Canadian Imperial Bank of Commerce v. Can-Pacific Farms Inc., 2012 B.C.S.C. 437

27. This Honourable Court has also previously held that there are a number of factors that figure into the determination of whether it is appropriate to appoint a receiver including, among other things:

- a) the fact that the creditor has the right to appoint a receiver under the documentation provided for the loan;
- b) the consideration of whether a court appointment is necessary to enable the receiver to carry out its' duties more efficiently; and
- c) the goal of facilitating the duties of the receiver.

Maple Trade Financing Inc. v. CY Oriental Holdings Ltd., 2009 B.C.S.C. 1527; Textron Financial Canada Limited v. Chetwynd Motels Ltd., 2010 B.C.S.C. 477

28. The Honourable Madam Justice Fitzpatrick acknowledges that there is some divergence in the Court concerning the test to be applied in respect of appointing a receiver, and held that:

Both of these decisions are to the effect that while it is not necessary for a secured creditor to show jeopardy before a receiver is appointed, no such presumption of appointment should be made; rather, the court should review the matter holistically and decide whether on the whole of the circumstances it is, in fact, just and convenient to appoint a receiver [emphasis added].

Bank of Montreal v. Gian's Business Centre Inc., 2016 B.C.S.C. 2348 at para 23; Cascade Divide Enterprises, Inc. v. Laliberte, 2013 B.C.S.C. 263 at para 77

29. In this matter, Fireweed's assignment into bankruptcy with the OSB constitutes a clear default, and pursuant to the Security Agreement, the Bank is entitled to appoint a receiver.

30. Further, the appointment of Deloitte as receiver is just and convenient. The Intellectual Property is Fireweed's only known remaining significant asset, which asset Deloitte is

likely unable to realize upon without a Vesting Order pronounced by this Honourable Court.

31. Based on the foregoing, a Court appointed receivership is the only meaningful way to realize upon the Intellectual Property and the only way to preserve the prospect of any recovery for the benefit of the Bank and other secured creditors of Fireweed.

Part 4: MATERIAL TO BE RELIED ON

32. Affidavit of Steven Lum, sworn June __, 2021.

The Petitioner estimates that the hearing of the Petition will take 30 minutes

Dated at the City of Vancouver, in the Province of British Columbia, this 2nd day of July, 2021.



Lawson Lundell LLP
Solicitors for the Petitioner

This Petition to the Court is filed by Bryan c. Gibbons, of the law firm of Lawson Lundell LLP, whose place of business and address for delivery is 1600 – 925 West Georgia Street, Vancouver, British Columbia V6C 3L2.

To be completed by the court only:

Order made

in the terms requested in paragraphs _____
of Part 1 of this Petition

with the following variations and additional terms:

Date:

Signature of Judge Master

NO.
VANCOUVER REGISTRY

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RESPONDENTS

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1600 Cathedral Place
925 West Georgia Street
Vancouver, British Columbia
V6C 3L2

Phone: (604) 685-3456
Attention: Bryan C. Gibbons

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