

IN THE COURT OF KING'S BENCH OF NEW BRUNSWICK
IN BANKRUPTCY AND INSOLVENCY
JUDICIAL DISTRICT OF SAINT JOHN

IN THE MATTER OF THE RECEIVERSHIP OF ROYAL OAKS GOLF CLUB INC.

- and -

PURSUANT TO section 33 of the *Judicature Act*, RSNB 1973, c J-2, Rule 41 of the *Rules of Court*, NB Reg 82-73 and section 243 of the *Bankruptcy and Insolvency Act* RSC 1985 c B-3

BETWEEN:

CWB MAXIUM FINANCIAL INC.,

APPLICANT

- and -

ROYAL OAKS GOLF CLUB INC.,

RESPONDENT

PRE-HEARING BRIEF
On Behalf of the Receiver
Motion Returnable December 4, 2024 at 9:30 am

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INDEX

PART I – INTRODUCTION.....	4
PART II – FACTS.....	5
PART III – ISSUES.....	6
PART IV – LAW and ARGUMENT.....	7
PART V – RELIEF SOUGHT.....	14
PART VI – LIST OF AUTHORITIES.....	15

PART I – INTRODUCTION

1. Deloitte Restructuring Inc. (the “Receiver”) was appointed the Receiver and Receiver Manager of the assets, property and undertaking of Royal Oaks Golf Club Inc. (“**Royal Oaks**”) pursuant to an Order of the New Brunswick Court of King’s Bench dated April 15, 2024 (the “**Receivership Order**”).
2. On April 15, 2024, the Court issued a further order (the “**Sale Process Order**”) with the sale process of the assets of the Royal Oaks, as proposed by the Receiver.
3. On June 27, 2024, the Court issued a further order (the “**Sale Approval Order**”), approving the sale of Royal Oaks’ assets to Shizong Holdings Ltd.
4. On or about July 16, 2024, the Receiver completed the transaction transferring the property and assets of Royal Oaks to Shizong Holdings Ltd.
5. The Receiver now wishes to distribute proceeds from the sale to the Royal Oaks’ secured creditors, namely, CWB Maxium Financial Inc. (the “**CWB Maxium**”).
6. The Receiver now seeks the following:
 - a. An order approving the activities of the Receiver as per its reports and the conduct and activities of the Receiver to date, as described therein;
 - b. approving the fees and disbursements of the Receiver and its counsel and authorizing payment of same;
 - c. authorizing the interim distribution of the sale proceeds of Royal Oaks’ assets to the secured creditors as set out in the Receiver’s Third Report;
 - d. authorizing and approving the Non-related Party Claims Process, as proposed by the Receiver; and
 - e. authorizing and approving the payment of the remaining funds in the Receivership to the Court, as proposed by the Receiver.
7. The Receiver has submitted its Third Report to the Court in support of the Motion, as well as the Affidavit of Anthony S. Richardson and the Affidavit of James Foran.

PART II – FACTS

The Receivership

8. On April 15, 2024, CWB Maxium applied for an Order appointing Deloitte Restructuring Inc. as Receiver over all of Royal Oaks' assets, undertakings and properties.
9. On April 15, 2024, the Court appointed Deloitte Restructuring Inc. as the Receiver of all of the assets, undertakings and properties for or used in relation to the businesses carried on by the Royal Oaks (the "**Receivership Order**").

Sale of Royal Oaks Assets

10. The Royal Oaks Assets included real property, landscaping equipment, and various kitchen and golf course equipment.
11. On June 27, 2024, this Honourable Court issued a Sale Approval and Vesting Order with respect to Royal Oaks' assets as described in the Confidential Supplement to the Second Report of the Receiver. The sale transaction closed in or around July 2024.
12. CWB Maxium has a first ranking security interest in Royals Oaks' Assets and is entitled to receive the sale proceeds from the assets sale.

Part III – ISSUES

13. The Receiver respectfully submits that the issues before the Court are as follows:

- a. Whether this Honourable Court should validate the time and method for service of the Motion materials, including the Second and Third Report of the Receiver, such that the Receiver's motion is properly returnable;
- b. Whether this Honourable Court should approve the activities of the Receiver as per its prior Reports and the conduct and activities of the Receiver to date, as described therein;
- c. Whether this Honourable Court should approve the fees and disbursements of the Receiver and its counsel and authorizing the payment of same;
- d. Whether this Honourable Court should approve the interim distribution of the sale proceeds currently in the possession of the Receiver to the secured creditors of the Royal Oaks, namely CWB Maxium Financial Inc., as set out in the Receiver's Third Report;
- e. Whether this Honourable Court should exercise its discretion so as to approve the Non-Related Party Claims Process as outlined in the Third Report of the Receiver; and
- f. Whether this Honourable Court should exercise its discretion so as to approve and direct the Receiver to issue the surplus funds of the Receivership after the Non-Related Claims Process has been completed.

PART IV – LAW and ARGUMENT

A. Service and Notice

14. Service of the Motion documents will be effected pursuant to section 6 of the Bankruptcy and Insolvency General Rules, which states (in relevant part):

6(1) Unless otherwise provided in the Act or these Rules, every notice or other document given or sent pursuant to the Act or these Rules must be served, delivered personally, or sent by mail, courier, facsimile or electronic transmission.

(2) Unless otherwise provided in these Rules, every notice or other document given or sent pursuant to the Act or these Rules

(a) must be received by the addressee at least four days before the event to which it relates, if it is served, delivered personally, or sent by facsimile or electronic transmission; or

(b) must be sent to the addressee at least 10 days before the event to which it relates, if it is sent by mail or by courier.

15. The Receiver will serve all parties who have recorded security interests against Royal Oaks' assets and undertakings pursuant to the *Personal Property Security Act*, SNB 1993, c P-7.1. The Receiver will file an Affidavit of Service prior to the hearing of the Motion.

B. Approval of the Activities of the Receiver

16. The Receiver respectfully seeks approval of the activities of the Receiver as set out in each of the Receiver's reports to the Court.
17. The Receiver submits that it has conducted itself prudently and in a commercially reasonable manner since its appointment, that it has preserved and protected the value of Royal Oaks' assets pending liquidation, and that it has marketed and sold such assets in a skillful and diligent manner befitting of an officer of this Honourable Court.

C. Approval of the Fees and Disbursements of the Receiver and its Counsel

18. Paragraph 15 of the Receivership Order provides that all funds, monies, cheques, instruments, and other forms of payment received or collected by the Receiver from and after the making of the Receivership Order are to be held by the Receiver to be paid in accordance with the terms of the Receivership Order or any further Order of this Honourable Court.

19. Paragraph 20 of the Receivership Order confirms that the Receiver enjoys a first ranking charge on the Corporations' property subject to sections 14.06(7), 81.4(4) and 81.6(2) of the BIA. Paragraph 20 reads as follows:

20 The Receiver and counsel to the Receiver shall be paid their reasonable fees and disbursements, in each case at their standard rates and charges, and the Receiver and counsel to the Receiver shall be entitled to and are hereby granted a charge to a maximum of \$100,000.00 (the "Administrative Charge") on the Property, as security for such fees and disbursements, both before and after the making of this Order in respect of these proceedings, and the Administrative Charge shall form a first charge on the Property in priority to all security interests, trusts, liens, charges and encumbrances, statutory or otherwise, in favour of any Person, but subject to section 14.06(7), 81.4(4) and 81.6(2) of the BIA.

[Emphasis added].

20. Paragraph 22 of the Receivership Order provides the following power to the Receiver:

Prior to the passing of its accounts, the Receiver shall be at liberty from time to time to apply reasonable amounts, out of the monies in its hands, against its fees, expenses and disbursements, including legal fees and disbursements, incurred at the normal rates and charges of the Receiver or its counsel, and such amounts shall constitute advances against his remuneration and disbursements when and as approved in accordance with the preceding paragraph hereof.

21. The detailed accounts of the Receiver and its counsel appear as appendices to the Third Report and were filed in support of the within Motion.

D. Interim Distribution Order

22. As noted in the Receiver's Third Report, the Receiver estimates there will be \$4,573,698.00 available for distribution to creditors as a result of the sale of Royal Oaks' assets. CWB Maxium has a first ranking security over Royal Oaks' assets and is entitled to receive the sale proceeds. The Receiver proposes to allocate the sale proceeds to Royal Oaks' secured creditor, namely, CWB Maxium in the amount of \$2,394,177.00 plus accrued interest from November 1, 2024, at the daily rate of \$1,145.00.

23. Paragraph 15 of the Receivership Order provides as follows:

All funds, monies, cheques, instruments, and other forms of payment received or collected by the Receiver from and after the making of this Order from any source whatsoever, including without limitation the sale of all or any of the Property and collection of accounts receivable in whole or in part, whether in existence on the date of this Order or hereafter coming into existence, shall be deposited into one

or more new accounts to be opened by the Receiver (the "Post Receivership Accounts") and the monies standing to the credit of such Post Receivership Accounts from time to time, net of any disbursements provided for herein, shall be held by the Receiver to be paid in accordance with the terms of this Order or any further Order of this Court.

24. The Receiver has collected the sale proceeds and currently maintains them in its trust account. Required at this juncture is an Order directing their distribution, in accordance with the Receiver's Third Report.
25. Paragraph 30 of the Receivership Order provides that the Receiver may from time to time apply to this Honourable Court for advice and directions in the discharge of its powers and duties. This is a customary provision which is found in most Receivership Orders, which merely codifies Section 249 of the BIA, *supra*, which provides:

A Receiver may from time to time apply to the Court for advice and directions in the discharge of its powers and duties hereunder.

26. A receiver, being an officer of the Court, frequently requires judicial guidance in the exercise of its mandate. The Receiver submits that the obtaining of directions as regards to the interim distribution of the net proceeds from the completed asset sale amongst secured creditors falls within the ambit of section 249 of the BIA, *supra*, and was specifically envisaged by the Sale Approval and Vesting Order, by which the Proceeds were said to stand in lieu of the conveyed assets.
27. The Third Report refers to the security opinion delivered by the law firm of Lawson Creamer to the Receiver confirming that CWB Maxium has first ranking security over Royal Oaks' Sale Proceeds.
28. The Receiver submits that the proposed allocation of the funds available for distribution following the sale of Royal Oaks' assets is reasonable and appropriate in the circumstances.

E. Approval of Non-Related Claims Process

29. As noted in the Receiver's Third Report, the Receiver believes there will be sufficient distributable funds to fully address Royal Oaks creditor claims, such that there may be a recovery available for Royal Oaks equity holders.
30. In *Bul River Mineral Corporation (Re)*, 2014 BCSC 1732, the British Columbia Supreme Court has noted the importance of claims process orders in insolvency proceedings:

(...)

[31] Claims process orders are an important step in most restructuring proceedings. In *Timminco Limited (Re)*, 2014 ONSC 3393, Mr. Justice Morawetz reviewed the “first principles” relating to claims process orders and their purpose within CCAA proceedings:

[41] It is also necessary to return to first principles with respect to claims-bar orders. The CCAA is intended to facilitate a compromise or arrangement between a debtor company and its creditors and shareholders. For a debtor company engaged in restructuring under the CCAA, which may include a liquidation of its assets, it is of fundamental importance to determine the quantum of liabilities to which the debtor and, in certain circumstances, third parties are subject. It is this desire for certainty that led to the development of the practice by which debtors apply to court for orders which establish a deadline for filing claims.

[42] Adherence to the claims-bar date becomes even more important when distributions are being made (in this case, to secured creditors), or when a plan is being presented to creditors and a creditors’ meeting is called to consider the plan of compromise. These objectives are recognized by s. 12 of the CCAA, in particular the references to “voting” and “distribution”.

[43] In such circumstances, stakeholders are entitled to know the implications of their actions. The claims-bar order can assist in this process. By establishing a claims-bar date, the debtor can determine the universe of claims and the potential distribution to creditors, and creditors are in a position to make an informed choice as to the alternatives presented to them. If distributions are being made or a plan is presented to creditors and voted upon, stakeholders should be able to place a degree of reliance in the claims bar process

Reference: List of Authorities, Tabs A and B

31. In the *Bul River* decision, the court emphasized the requirement for the claims process to be fair and reasonable for all stakeholders:

[32] The overall objective of achieving certainty within the restructuring proceedings - for both debtor and creditor - is what drives this process. In this vein, counsel makes an effort to draft a claims process order to achieve these objectives. A claims bar date is typically set. The process is typically designed with some idea of the issues that either have arisen or might arise in the restructuring. My comments in *Steels Industrial Products Ltd. (Re)*, 2012 BCSC 1501 are apposite:

[38] Similar issues often arise in CCAA proceedings where counsel and the Court must be mindful of issues that may arise in relation to the determination of claims in that proceeding. There are no set rules, but care must be taken in the drafting of the claims process order to ensure that the process by which claims are determined is fair and reasonable to all stakeholders, including those who will be directly affected by the acceptance of other claims. In *Winalta Inc. (Re)*, 2011 ABQB 399, Madam Justice Topolniski stated that “[p]ublic confidence in the insolvency system is dependent on it being fair, just and accessible”.

[39] Many CCAA proceedings provide for an independently run claims process (for example, by the monitor), the cost of which again would be borne by the general body of creditors: see for example, *Pine Valley Mining Corp. (Re)*, 2008 BCSC 356. To this extent, the statutory procedure under the BIA and the claims process under the CCAA will have similar features, which is understandable since the overriding intention under both is to conduct a proper claims process: see *Century Services Inc. v. Canada (Attorney General)*, 2010 SCC 60 at paras. 24 and 47.

Reference: List of Authorities, Tabs A

32. Courts generally accept a claims process if it is created in accordance with fundamental insolvency principles. The main principles that the courts apply in reviewing a claims process are those of fairness, reasonableness, and certainty.
33. The Receiver submits that the Claims Process described in the Receiver's Third Report in the present case is in alignment with those fundamental principles, as illustrated by the following provisions:
- (a) The Receiver proactively sends notice of the Claims Process to all known claimants;
 - (b) The Receiver advertises notice of the Claims Process in the newspaper and posts notice of the Claims Process on its website.
 - (c) The Claims Process sets a claims bar date which provides the certainty needed for the distribution of the Sale Proceeds.
 - (d) The Claims Process provides full opportunity for claimants to submit their claims with respect to Royal Oaks.
 - (e) There is an independent review of claims by the Receiver, which provides a procedural safeguard for a proper review of the claims in a fair, reasonable and transparent manner.
 - (f) Claimants have full opportunity to appeal any disallowance of their claims to this Honourable Court.
 - (g) The Claims Process will allow for the most efficient, timely and cost-effective distribution of the Sale Proceeds to the non-related creditors of the Companies.

F. The Surplus Funds of the Receivership should be paid into Court

34. Rule 35 of the Rules of Court grants this Honourable Court the authority to preserve property and direct payment of funds in dispute into the Court. Particularly, Rule 35 provides:

(...)

35.03 Specific Fund

Where the right of a party to a specific fund is in dispute, the court may order the fund to be paid into court or otherwise secured on terms, if any, as may be just.

35. In *Morris v. Gilbert*, 2006 NBQB 140, Justice Creaghan described the test for having funds paid into court as follows:

[13] The authorities that relate to the Ontario Rule 45.02, which is essentially the same as our Rule 35.03, hold that the test for relief under the rule requires that the Plaintiff establish that:

- (a) the Plaintiff has a right to a specific fund;
- (b) there is a serious issue to be tried regarding the Plaintiff's claim to that fund;
- (c) the balance of convenience favours granting the relief sought by the Plaintiff."

As per Nordheimer, J. in *News Canada Marketing Inc. v. T.D. Evergreen*, [2000] O.J. 3705 at par. 14.

[14] Although I am reluctant to lay down tests specific to the application of Rules rather than to judiciously apply what is fair and reasonable in the circumstances of the particular case, I adopt the Ontario test as applicable to the Rules in this jurisdiction.

[15] From the Ontario authorities it may also be taken that a specific fund under the Rule refers to a reasonably identifiable fund earmarked to the litigation in issue. *Rotin v. Leckcier-Kimel*, [1985] O.J. No. 466.

Reference: List of Authorities, Tabs C, D and E

36. The Receiver submits that the surplus funds after the non-related creditor claims process are distributed, should be paid into this Honourable Court for the following reasons:

- (a) The Shareholders have a right to the equity funds remaining proceeds of the sale of Royal Oaks' assets and are identifiable and earmarked for the Shareholders;

- (b) There are ongoing and serious issues being tried in multiple legal proceedings between the Shareholders to resolve the dispute regarding the distribution of these surplus funds; and
- (c) the balance of convenience favours paying the Funds into court, it will prevent one party from escaping with the Funds and the Receiver seemingly agrees with such an order based on the proposed order (g) of the Motion.

PART V – RELIEF SOUGHT

37. The Receiver respectfully requests the following relief:

- (d) An order validating of the time and method of service of the Motion materials including the Second Report of the Receiver and the Supplemental Second Report of the Receiver, such that the Receiver's motion is properly returnable;
- (e) An order authorizing the interim distribution of \$2,500,000.00 to Bank of Montreal from the Sale of the LEG Group's assets;
- (f) An order authorizing and approving the fees and disbursements of the Receiver and its counsel and authorizing the payment of same;
- (g) An order authorizing and approving the activities of the Receiver as per its prior Reports and the conduct and activities of the Receiver to date, as described therein;
- (h) An order authorizing and approving the revised sale process of the remaining LEG Group asset by the Receiver as described in the Second Report of the Receiver;
- (i) An order authorizing and approving the sale of the remaining LEG Group asset to the Purchaser together with the appropriate vesting provisions; and
- (j) Such further and other relief as this Honourable Court deems just.

ALL OF WHICH is respectfully submitted at Fredericton, New Brunswick, this 29th day of November, 2024.



McInnes Cooper

Per: Anthony S. Richardson
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PART VI – LIST OF AUTHORITIES

- A. [Bul River Mineral Corporation \(Re\), 2014 BCSC 1732](#)
- B. [Timminco Limited \(Re\), 2014 ONSC 3393](#)
- C. [Morris v. Gilbert, 2006 NBQB 140](#)