

Deloitte.



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, and
49TH PARALLEL GROUP INC. dba WESTERN CRAFT ALLIANCE

Respondents

**SECOND REPORT OF THE
COURT-APPOINTED RECEIVER AND MANAGER OF
FIREWEED BREWING CORP.**

DATED FEBRUARY 25, 2022

PREPARED BY DELOITTE RESTRUCTURING INC.

ADDRESS FOR SERVICE AND
CONTACT INFORMATION OF
PARTY FILING THIS DOCUMENT

Counsel

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Receiver

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INTRODUCTION

- 1) On April 14, 2021, Fireweed Brewing Corp. ("**Fireweed**" or the "**Company**") made an assignment into bankruptcy for the general benefit of creditors pursuant to the provisions of the *Bankruptcy and Insolvency Act* ("**BIA**"). Deloitte Restructuring Inc. ("**Deloitte**") was appointed as Licensed Insolvency Trustee of the estate ("**Trustee**") and was affirmed as the Trustee at the first meeting of creditors held on April 30, 2021.
- 2) The Company's first ranking and registered secured creditor is Bank of Montreal ("**BMO**"). As of April 22, 2021, BMO was owed \$1,697,053 including accrued interest by Fireweed and its related guarantors pursuant to various credit facilities. BMO's debt is secured by, among other things, a Security Agreement and a General Security Agreement, each dated November 12, 2014. Pursuant to these security agreements, Fireweed granted to BMO a first ranking security interest (the "**BMO Security Interest**") charging all of the present and after-acquired real and personal property of Fireweed.
- 3) The Trustee retained independent legal counsel, Owen Bird Law Corporation ("**Owen Bird**"), to perform an independent review of the BMO Security Interest. Owen Bird has advised that the BMO Security Interest is valid and enforceable as against the estate and ranks in priority to the unsecured creditors of the estate.
- 4) On April 28, 2021 (the "**Date of Receivership**"), the Trustee entered into an Agency Agreement with BMO pursuant to which BMO appointed Deloitte to act as its agent to attend to the realization of BMO's secured collateral.
- 5) On May 6, 2021, Deloitte issued a statutory Notice and Statement of the Receiver for Fireweed pursuant to subsections 245(1) and 246(1) of the BIA (the "**Notice to Creditors**").
- 6) On July 2, 2021, BMO filed a petition with the Supreme Court of British Columbia (the "**Court**") seeking an order appointing Deloitte as the Court-appointed receiver and manager without security, of all the assets, undertakings and property of Fireweed (in such capacity, the "**Receiver**").
- 7) On August 18, 2021, the Receiver issued its first report to Court (the "**First Report**"). The First Report was filed in support of the Receiver's application filed on August 19, 2021 for an order (the "**Vesting and Distribution Order**") approving the sale of Fireweed's intellectual property rights ("**Fireweed IP**") to Big Rock Brewery Limited Partnership, by its general partner, Big Rock Brewery Operations Corp. ("**Big Rock**"), and vesting title free and clear in Big Rock (the "**Transaction**").
- 8) Pursuant to an Order (the "**Receivership Order**") of the Court dated September 3, 2021, Deloitte was appointed as Receiver. The Court proceedings in which the Receiver was appointed are referred to herein as the "**Receivership Proceedings**".
- 9) The Vesting and Distribution Order was also granted by the Court on September 3, 2021, authorizing the Receiver to complete the Transaction and pay the net proceeds to BMO after payment of the CRA Property Claim (as that term is hereinafter defined) and the Receiver's fees and disbursements.
- 10) This is the Receiver's second report to the Court (the "**Second Report**" or "**this Report**").
- 11) The Receivership Order, together with the Notice to Creditors, the First Report, Vesting and Distribution Order and other statutory documents pertaining to the Trustee's

administration of the bankruptcy estate, and the Receivership Proceedings, have been posted on Deloitte's website at <http://www.insolvencies.deloitte.ca/en-ca/Pages/Fireweed-Brewing-Corp.aspx>. This Second Report will also be posted to Deloitte's website after it has been filed with the Court.

- 12) Unless otherwise provided, all other capitalized terms not defined in this Report are as defined in the Receivership Order.

Purpose of the Second Report

- 13) The purpose of this Second Report is as follows:
- a) To report on the closing of the Transaction;
 - b) To provide the Court with an overview of the Receiver's activities since the First Report;
 - c) To provide the Court with the Receiver's statement of receipts and disbursements since the Date of Receivership to February 20, 2022 (the "**Receiver's R&D**"), a copy of which is attached hereto as Appendix "**A**"; and
 - d) To support the Receiver's application (to be filed) for an order:
 - i) approving the Receiver's activities as set out in the First Report and this Report;
 - ii) approving the Receiver's R&D;
 - iii) approving and authorizing the payment of the Receiver's fees and disbursements;
 - iv) approving and authorizing the payment of the fees and disbursements of Owen Bird; and
 - v) subject to the Receiver filing a certificate with the Court confirming that it has discharged its obligations pursuant to the Receivership Order (the "**Discharge Certificate**"), granting an order discharging the Receiver from any and all liability that Deloitte may have by reason of the acts and omissions of Deloitte while acting in its capacity as Receiver, save and except any liability arising out of fraud, wilful misconduct or gross negligence on the part of Deloitte.

Terms of reference

- 14) In preparing this Report, the Receiver has relied upon unaudited financial and other information prepared by the Company's former bookkeeper and accountants, the Company's books and records, and discussions with Mr. Todd Melnyk, the Company's former President and CEO.
- 15) The Receiver has not audited, reviewed or otherwise attempted to verify the accuracy or completeness of the information in a manner that would wholly or partially comply with Generally Accepted Assurance Standards pursuant to the *Chartered Professional Accountants Canada Handbook* and, accordingly, the Proposed Receiver expresses no opinion or other form of assurance in respect of this information.
- 16) All dollar amounts in this Report are in Canadian dollars, unless otherwise indicated.

BACKGROUND

- 17) Fireweed previously operated a craft brewery located at 1083 Richter Street, Kelowna, British Columbia ("**BC**"). Fireweed's brands include Tree Brewing, Kelowna Pilsner, Dukes Cider, Thirsty Beaver Amber Ale, and Shaftebury, among others.
- 18) The Company sold its various craft beers and ciders in BC and AB. Mr. Melnyk joined the Company in 2008, becoming the President and CEO with primary responsibility for running the operations of the Company. In 2015, Mr. Melnyk bought out the founding partners, becoming the majority beneficial owner of Fireweed.
- 19) In October 2018, Fireweed entered into license and manufacturing agreements (the "**IP Agreements**") with Big Rock granting, among other things, an exclusive license to the use of Fireweed's trademarks and other associated intellectual property. Pursuant to the IP Agreements, Big Rock was required to pay Fireweed monthly license and manufacturing fees based on the volume of beer and cider produced and sold by Big Rock through the term of the agreements.
- 20) Fees payable under the IP Agreements were not sufficient to service Fireweed's debts owing to BMO. As a result, the Company could not continue to pay its obligations as they fell due, and Mr. Melnyk assigned the Company into bankruptcy on April 14, 2021.
- 21) Subsequently, by Order pronounced September 3, 2021, the Honourable Mr. Justice Milman granted the Receivership Order.

CLOSING OF THE TRANSACTION

- 22) As set-out in the First Report, on September 3, 2021 the Receiver entered into an asset purchase agreement (the "**APA**") with Big Rock.
- 23) Pursuant to the APA, Big Rock agreed to purchase, and the Receiver agreed to sell, all of Fireweed's right, title and interest in and to the Fireweed IP, free and clear of all encumbrances, for cash consideration of \$500,000 plus applicable taxes (the "**Purchase Price**").
- 24) Following the granting of the Vesting and Distribution Order, the Receiver proceeded to close the Transaction on September 10, 2021. Proceeds of \$510,000 were paid to the Receiver representing the Purchase Price, plus a contribution of \$10,000 towards the Receiver's legal costs, as provided for by the APA.
- 25) On September 10, 2021, the Receiver filed with the Court a Certificate confirming that the Transaction as contemplated by the APA had been completed to the satisfaction of the Receiver.

RECEIVER'S ACTIVITIES

- 26) The Receiver has described its prior activities in the Receivership Proceedings in the First Report.

- 27) In addition to closing the Transaction, since the date of the First Report, the Receiver has, among other things:
- a) Liaised with Mr. Melnyk regarding the purported sale of certain brewing equipment prior to the Trustee's appointment.
 - b) Arranged for the sale by auction of certain ancillary brewing and other equipment (the "**Equipment**") that was located in a storage warehouse in Kelowna;
 - c) Pursuant to the Vesting and Distribution Order, made payment of the CRA Property Claim, as that term is hereinafter defined, and made payment of a distribution to BMO in the amount of \$374,000 in respect of the BMO Security Interest;
 - d) Liaised with and responded to enquiries from creditors; and
 - e) Corresponded with BMO regarding the administration of the estate and the Receiver's investigations.
- 28) With respect to the Receiver's investigation into the purported sale of certain brewing equipment prior to the Trustee's appointment, the Receiver notes that Mr. Melnyk has provided very limited information to support the purported sale transactions and did not respond to follow-up requests and enquiries made by the Receiver.
- 29) BMO is the primary secured creditor in these Receivership Proceedings and would stand to benefit from any recovery made and will incur the cost of funding any further activities of the Receiver and its counsel in continuing to pursue this investigation. Based on discussions between the Receiver, its legal counsel and BMO, and based on a cost-benefit assessment, it was decided not to pursue any further action in the Receivership Proceedings.

CREDITORS AND SECURED CHARGES

Charges and statutory interests

- 30) The BMO Security Interest is subject to certain prior ranking Court-ordered charges and statutory interests, which include:
- a) the Receiver's Charge (as that term is defined in the Proposed Receivership Order);
 - b) the Receiver's Borrowing Charge (as that term is defined in the Proposed Receivership Order); and
 - c) certain deemed trust and priority claims.
- 31) Pursuant to paragraph 20 of the Receivership Order, the Receiver and Owen Bird are the beneficiaries of the Receiver's Charge, which is a first-ranking charge over the property of Fireweed to secure payment of their fees and disbursements incurred in the Receivership Proceedings.
- 32) Pursuant to paragraph 23 of the Receivership Order, the Receiver is authorized to borrow up to \$200,000 without further approval of the Court for the purpose of carrying out its duties and powers. The Receiver has not required any borrowing facility.

CRA Claims

- 33) On May 3, 2021, Canada Revenue Agency ("**CRA**") submitted a proof of claim setting out the following claims:
- a) Property claim in the amount of \$33,039.70 in respect deemed trust payroll source deductions from 2018 (the "**CRA Property Claim**"). The CRA Property Claim ranks in priority to the BMO Security Interest; and
 - b) Unsecured claim in the amount of \$173,207 in respect of a combination of goods and services tax ("**GST**") for \$110,358, non deemed trust payroll source deductions of \$12,687, and corporation tax of \$50,162. As a result of the bankruptcy, all of these claims rank behind the BMO Security Interest.
- 34) The Receiver is also aware of a potential unsecured claim in the amount of \$265,621 in respect of Excise Duty, although no proof of claim has yet been received by the Trustee.
- 35) In January 2022, the Receiver made payment in full of the CRA Property Claim.

Vendor Take-Back Financing

- 36) The Receiver understands that approximately \$3.4 million is owing to Raw Energy Ltd., Robert Maitland, and Ronald Kisic (the "**VTB Creditors**") in respect of deferred consideration owing pursuant to a vendor take-back note for the sale of the equity of the Company to Mr. Melnyk in 2015.
- 37) On November 5, 2014, the VTB Creditors registered a security interest in the BC PPR and AB PPR in respect of all of the present and after acquired personal property (other than consumer goods) of Fireweed.

49th Parallel Group Inc.

- 38) Mr. Melnyk has advised that 49th Parallel Group Inc. dba Western Craft Alliance is owed approximately \$5,000, however, this creditor registered a writ of enforcement against the Company in the AB PPR in the amount of \$35,209 on November 14, 2019.

Dams Lease Ltd. and Canadian Western Bank

- 39) Dams Lease Ltd. and Canadian Western Bank have registered a purchase money security interest in a 2019 Ford Ranger truck. Mr. Melnyk advised the Trustee that he has recently transferred the lease liability and truck to himself personally. The Trustee has requested that Mr. Melnyk provide documentation confirming this transfer and details of the lease and amount remaining to be paid so it can be determined if there is any equity in the vehicle to the benefit of the estate. Mr. Melnyk has not provided any documentation to date.

Unsecured claims

- 40) Other than the unsecured portions of any secured indebtedness owing to the secured creditors noted above, the Statement of Affairs indicates additional unsecured creditors with claims totaling approximately \$82,449.
- 41) Given that BMO, the first-ranking secured creditor, will suffer a shortfall on its indebtedness, the Receiver has not reviewed the claims of the other creditors. The Receiver has, however, provided ad-hoc updates on the status of the Receivership Proceedings to certain creditors when it has been contacted.

STATEMENT OF RECEIPTS AND DISBURSEMENTS

- 42) Attached as Appendix "A" to this Second Report is the Receiver's R&D.
- 43) As at February 20, 2022, the Receiver's gross receipts amounted to \$513,252, and the Receiver has made disbursements totalling \$506,904. The net balance held by the Receiver totals \$6,349.
- 44) The more significant transactions included in the Receiver's R&D are as follows:
 - a) Collected \$500,000 in respect of the Transaction and \$10,000 as a contribution towards the costs of the Receiver's legal fees;
 - b) Collected \$3,118 from the auction of the Equipment;
 - c) Paid \$40,403 in respect of the Receiver's fees and disbursements;
 - d) Paid \$31,508 in respect of Owen Bird's fees and disbursements;
 - e) Paid \$19,657 to the Fireweed bankruptcy estate to fund payment of the Trustee's fees and disbursements incurred during the administration of the bankruptcy proceedings;
 - f) Paid \$33,040 in respect of the CRA Property Claim; and
 - g) Paid \$374,000 to BMO as a distribution in respect of the BMO Security Interest.

PROFESSIONAL FEES

- 45) The Receiver and its counsel, Owen Bird, have maintained detailed records of their professional time and costs throughout the Receivership Proceedings.
- 46) The Receiver's invoiced costs for the period from the Date of Receivership to September 30, 2021, includes fees in the amount of \$40,403 and GST in the amount of \$2,020. These costs are more fully described in Affidavit #1 of Jeff Keeble, to be sworn and filed in the Receivership Proceedings.
- 47) Owen Bird's invoiced costs for the period from the Date of Receivership to November 16, 2021, includes fees in the amount of \$30,690, plus disbursements in the amount of \$818, and GST/PST in the amount of \$3,716. These costs are more fully described in Affidavit #1 of Jonathan Williams, to be sworn and filed in the Receivership Proceedings.
- 48) The Receiver and Owen Bird estimate that they will incur further fees and disbursements of up to a total of \$6,500 (the "**Completion Costs**") to the completion of this matter, assuming the Receiver's application for discharge is not opposed.
- 49) The Receiver is of the view that the work performed by the Receiver and its legal counsel was necessary and appropriate in the circumstances of the receivership, and that the rates charged are reasonable and in keeping with the rates charged by other licensed insolvency trustees and lawyers in the market performing similar work.

DISTRIBUTIONS

- 50) Pursuant to the terms of the Vesting and Distribution Order, the Receiver has made the following distributions:
- a) Payment of the CRA Property Claim in the amount of \$33,039.70; and
 - b) Payment to BMO of \$374,000.00 in respect of BMO's Security Interest.
- 51) Following the distribution to BMO, there remains a shortfall on the amount owing to BMO of more than \$1,323,053.
- 52) The Receiver is currently holding funds in its trust account of \$6,349. Subject to the Court granting the relief sought by the Receiver, the Receiver proposes to pay out the funds it currently holds in its account in payment of the Completion Costs and any other remaining costs incidental to the Receiver concluding its administration of these Receivership Proceedings.

REMAINING MATTERS TO BE COMPLETED IN THE RECEIVERSHIP PROCEEDINGS

- 53) Subject to the Court granting the relief sought by the Receiver and the Receiver paying the Completion Costs, the Receiver will have completed its duties and obligations under the Receivership Order, save and except for other administrative matters incidental to the Receivership Proceedings, including the filing of the Receiver's report pursuant section 246(3) of the BIA.
- 54) The remaining matters are administrative in nature 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.
- 55) The Receiver also seeks an order releasing Deloitte from any liability that might arise in relation to its role as Receiver. In the Receiver's view, this relief is appropriate in the circumstances, and is consistent with the model receiver's discharge order, currently being used in the Province of BC.

CONCLUSIONS AND RECOMMENDATIONS

- 56) Based on the foregoing, the Receiver respectfully requests that the Court grant the order cited at paragraph 13(d) of this Report.

All of which is respectfully submitted at Vancouver, BC this 25th day of February, 2022.

DELOITTE RESTRUCTURING INC.

In its capacity as the Court-appointed Receiver and Manager of Fireweed Brewing Corp., and not in its personal capacity



Per: Jeff Keeble, CPA, CMA, CIRP, LIT
Senior Vice-President

Appendix "A"

Receiver's Statement of Receipts and Disbursements for the period from September 3, 2021 to February 20, 2022

In the Matter of the Receivership of
Fireweed Brewing Corp.

Receiver's Interim Statement of Receipts and Disbursements
For the Period of September 3, 2021 to February 20, 2022

Description	Total
Receipts	
Sale of intellectual property	\$ 500,000
Contribution to legal costs	10,000
Plant and equipment	3,118
Interest	135
Total receipts	\$ 513,252
Disbursements	
Filing fees to Receiver General	\$ 73
Bank charges	-
Receiver's fees	40,403
Legal fees	31,508
Advance to Trustee	19,657
Payments to secured creditors	374,000
Payment to CRA (Property Claim)	33,040
GST paid	3,629
PST paid	2,148
Rent	825
Auction fees	1,149
Transport	473
Total disbursements	\$ 506,904
Excess of receipts over disbursements	\$ 6,349