



No. H240524  
Vancouver Registry

**IN THE SUPREME COURT OF BRITISH COLUMBIA**

BETWEEN:

ROYAL BANK OF CANADA

PETITIONER

AND:

WHITEWATER CONCRETE LTD.,  
WHITEWATER DEVELOPMENTS LTD.,  
ROBERT KYLE SMITH,  
CRAIG SMITH,  
KRYSTLE HOLDINGS LTD.,  
BASTIAN HOLDINGS LTD.,  
145 GOLDEN DRIVE LTD.,  
BARRY CHARLES HOLDINGS LTD.,  
BECISON HOLDING CORPORATION,  
G.I.H. PROPERTIES LTD.,  
MCVICAR & COMPANY HOLDINGS INC.,  
TNL DEVELOPMENTS LTD.,  
AMAN GILL,  
PETER CHAPPELL,  
SANDRA CHAPPELL and  
TERESA GAUTREAU

RESPONDENTS

**NOTICE OF APPLICATION**

**Name of Applicants:** Deloitte Restructuring Inc., Court Appointed Receiver (in such capacity, the “Receiver”) for Whitewater Concrete Ltd. and Whitewater Developments Ltd.

TAKE NOTICE that a **without notice** application will be made by the Applicants to the presiding judge at the Courthouse at 800 Smithe Street, in the City of Vancouver, in the Province of British Columbia on Monday, the 18<sup>th</sup> day of November, 2024 at ~~10:00~~ <sup>9:45 a.m.</sup> am for the orders set out in Part 1 below.

The Applicant estimates that the application will take 15 minutes.

This matter is within the jurisdiction of an Associate Judge.

X This matter is not within the jurisdiction of an Associate Judge.

**Part 1: ORDERS SOUGHT**

1. PCL Constructors Westcoast Inc. (“**PCL**”) be and is ordered to pay any and all funds (the “**Holdback Funds**”) due and owing to Trilogy Concrete 2021 Ltd. (“**Trilogy**”) to the Receiver to be held in trust on behalf of Trilogy pending the provision to the Receiver by Trilogy of satisfactory evidence establishing the entitlement of any third party subcontractor or creditor of Trilogy to any portion of the Holdback Funds, or further order of this Court.

2. Upon proof satisfactory to the Receiver, the Receiver is authorized to pay out any amount of the Holdback Funds to subcontractors or creditors of Trilogy.

3. Trilogy forthwith deliver to the Receiver any and all information in its possession or control relating to the new St. Paul’s Hospital construction project (the “**Project**”), including particulars and supporting documentation respecting the contract or sub-contract between PCL and Trilogy, or any replacement contract, including an accounting of all funds paid or to be paid by PCL to Trilogy pursuant thereto.

4. The Receiver be award cost of this application against Trilogy.

**Part 2: FACTUAL BASIS**

**The Receivership Order**

5. On July 2, 2024, this Court granted a receivership order (the “**Receivership Order**”) in these proceedings. The Receiver was appointed over, among other things, all of the current assets, claims and choses in action of the Operating Companies, including without limitation all accounts receivable, inventory, cash (including all funds on deposit at any bank) and pre-paid deposits.

Receivership Order, para. 2.

6. In addition, the Receivership Order requires all persons (other than governmental authorities) to advise the Receiver of the existence of any books, documents, securities,

contracts, orders, corporate and accounting records and information of any kind related to the business or affairs of the Debtors. Upon request by the Receiver, these persons are obliged to advise the Receiver of the existence of any such records in that person's possession or control and to allow the Receiver to obtain copies.

Receivership Order, paras. 5 and 7.

7. Further, the Petitioner, Royal Bank of Canada ("**RBC**") was granted judgment against various Respondents, including:

- (a) judgment against Whitewater Concrete Ltd. ("**Concrete**") in the amount of \$10,812,163.76 with interest at RBC's prime rate of interest plus 1.6% per annum from June 28, 2024;
- (b) judgment against Whitewater Developments Ltd. ("**Developments**" and together with Concrete, the "**Operating Companies**") in the amount of \$762,380.05 with interest at RBC's prime rate of interest plus 1.6% per annum from June 28, 2024;
- (c) judgment against 145 Golden Drive Ltd. ("**145**" and together with the Operating Companies, the "**Debtors**") in the amount of \$11,574,543.81 with interest at RBC's prime rate of interest plus 1.6% per annum from June 28, 2024;
- (d) judgment against each of Kyle Smith and Craig Smith (collectively, the "**Whitewater Principals**") in the amount of \$481,698.41, together with RBC's costs of and related to this proceeding;
- (e) joint and several judgment against the Whitewater Principals, Bastian Holdings Ltd. ("**Bastian**") and Krystle Holdings Ltd. ("**Krystle**") in the amount of \$107,044.10 together with RBC's cost of and related to this proceeding;
- (f) judgment against Bastian in the amount of \$1,070,440.89 together with RBC's cost of and related to this proceeding; and
- (g) judgment against Krystle in the amount of \$1,070,440.89 together with RBC's cost of and related to this proceeding.

Receivership Order, paras. 32 – 39.

### The Relevant Parties

8. Concrete is the main primary operating entity of the Operating Companies. The Operating Companies provide products and services for contractors and developers. Specifically, Concrete provides tower crane rentals and concrete forming equipment and services to multi-storey residential, commercial, and institutional projects and developers.

Keeble #1, para. 6.

9. 145 exists exclusively as a holding company for specific real estate.

Keeble #1, para. 5.

10. At the time of the Receivership Order was pronounced on July 2, 2024, Concrete had eight ongoing projects (the “**Concrete Projects**”) in various stages of completion, including the St. Paul’s Hospital project (the “**St. Paul’s Project**”) at 1002 Station Street in Vancouver. The St. Paul’s Project involves the construction of a new hospital to replace the existing St. Paul’s Hospital. PCL Constructors Westcoast Inc. (“**PCL**”) is the general contractor for the St. Paul’s Project. PCL’s website describes the St. Paul’s Project as follows:

PCL Construction is pleased to announce it has been awarded the \$1.7 billion design-build contract for the new St. Paul’s Hospital Project. This health care facility will be the most extensive hospital redevelopment in BC’s history and PCL’s largest Buildings division design-build in company history.

Keeble #1, para. 7.

### Relationship between Concrete and Trilogy

11. The Receiver understands that Concrete, in partnership with Syber Concrete Forming Ltd. (“**Syber**”), formed a related company named Trilogy Concrete Ltd. or Trilogy Concrete 2021 Ltd. (collectively, “**Trilogy**”) specifically to undertake the St. Paul’s Project. For instance, the corporate search for Syber indicates that the sole director of the company is Mr. Steve Beaton (“**Mr. Beaton**”). The corporate search for Trilogy shows that Mr. Beaton, together with the Whitewater Principals are the directors of Trilogy.

Keeble #1, para. 8, Ex. A.

12. On July 3, 2024, the Receiver met with the Whitewater Principals who advised the Receiver that accounts receivable owing to Concrete from Trilogy are the result of Concrete providing labour to Trilogy for the St. Paul’s Project pursuant to a contract with PCL. The

Whitewater Principals provided no information at that time that Trilogy and Concrete were in any way related companies. However, based on the Receiver's review of Concrete's books and records, the Receiver determined that as at May 31, 2024, approximately \$7 million of receivables were owing from Trilogy to Concrete, comprised of approximately \$3.7 million in accounts receivable and \$3 million of holdback funds.

Keeble #1, para. 9.

13. On July 8, 2024, the Receiver had a phone call with Janine Wolpert and Graham Sibbald from Wylie-Crump Ltd., the insurance broker for Concrete. They advised the Receiver that:

- (a) Concrete and Trilogy are co-insureds on a CGL insurance policy (the "**Policy**");
- (b) Trilogy was a "joint venture" between Concrete and Syber to construct St. Pauls Hospital and Concrete was the "managing partner on the administration side"; and
- (c) Trilogy's portion of the Policy premium was \$1,375 and Syber and Concrete own the equipment insured by the Policy.

Keeble #1, para. 10.

14. On July 16, 2024, the Receiver had a phone call with Craig Smith and David Winter, who was described to the Receiver as a former employee of Concrete. Craig Smith said that 270 people were provided to the St. Paul's Project by Concrete. In addition, he advised the Receiver that PCL requested a schedule acceleration on this job which cost \$6 million to accommodate and a change order of only \$1.8M was granted by PCL. Mr. Smith also said that four months were left on the contract. He also told the Receiver that Concrete was contracting with Trilogy and billing Trilogy on a time and materials basis but no written contract was ever provided and no recovery was expected from the receivables of Trilogy. Mr. Smith was vague with the details and indicated he would provide more details to the Receiver but he never provided any further information the Receiver.

Keeble #1, para. 11.

15. On November 15, 2024, the Operating Companies' external accountants, Pasman, Smith & Company Ltd., advised the Receiver that, based on tax information they had, Trilogy is

owned 25% by Bastian, 25% by Krystle and 50% by Steve Beaton Holdings (“**Beaton Holdings**”). The corporate searches for these entities reveal that the sole directors for Bastian and Krystle are the Whitewater Principals and the sole director of Beaton Holdings is Anna Horvath, an individual with the same mailing address as Mr. Beaton.

Keeble #1, para. 13, Ex. B.

16. Personal Property Registry search results for Trilogy indicate that four months prior to the Receivership Order, Trilogy, the Debtors and the Whitewater Principals collectively granted a security interest in their present and after acquired personal property in favour of various secured parties.

Keeble #1, para. 14, Ex. C.

17. Additionally, a slide deck from Buy Social Canada with respect to the St. Paul’s Project dated June 2022 explicitly notes Trilogy as being a subcontractor on the St. Paul’s Project, and that Trilogy is a “collaboration” between “Whitewater” and “Syber”.

Keeble #1, para. 15, Ex. D.

18. Further, a press release from St. Paul’s website titled “‘Topped Out’- New St. Paul’s Hospital Marks Major Milestone” contains a quote from an individual on behalf of Trilogy named Joseph Foley, who the Receiver understands was an employee of Concrete as at the date of the Receivership. The press release states:

Whitewater Concrete and Syber Concrete Forming came together to form Trilogy to take on this gigantic project because it was easier for us to combine efforts,” explains Joseph Foley with Trilogy. “There have been lots of long days and lots of hard work, but the end is in sight for our team as we wrap up our work over the next few months. Looking at the hospital now, I’m proud. This is an important building for the community and will serve many generations.”

Keeble #1, para. 16, Ex. E.

19. The Receiver reviewed a copy of the Policy issued by Northbridge Insurance effective June 30, 2024. Both Trilogy and Concrete are named as co-insured under the Policy.

Keeble #1, para. 17, Ex. F.

20. In addition to the foregoing, the Receiver understands that a substantial portion of the Operating Companies' assets, which are not located at project sites, are located at 27222 Lougheed Highway, which is the address for Trilogy noted in the Sub-Contract, as well as the address for WCL as noted in the WCL Letter (as later defined).

Keeble #1, para. 18.

### **Initial Correspondence**

21. The Receiver has made repeated requests to Trilogy and the Whitewater Principals for information, records or agreements relating to their involvement in the St. Paul's Project. Despite these numerous requests, Trilogy and the Whitewater Principals have provided no response, information or records relating to the St. Paul's Project. As a result, the Receiver has been unable to obtain information, records or agreements relating to the St. Paul's Project and only has a limited understanding of the relationship of the Debtors to both Trilogy and to the St. Paul's Project.

Keeble #1, para. 19.

22. In or around July 2024, the Receiver learned that the Whitewater Principals planned to provide a proposal for the Receiver's approval to form a new company to complete the Concrete Projects, including the St. Paul's Project. The Receiver advised the Whitewater Principals of terms it would require in relation to that proposal. After being told this, the Whitewater Principals appear to have decided not to cooperate with the Receiver and did not provide a proposal. Instead, they appear to have issued a letter dated July 29, 2024 (the "**WCL Letter**") to their partners, advising that they had incorporated a new entity, WCL Formwork Ltd. ("**WCL**"), to work on active projects, and that they have signed contracts under WCL.

Keeble #1, para. 20, Ex. 20.

23. WCL was an entity incorporated on June 28, 2024. The directors of WCL are the Whitewater Principals.

Keeble #1, para. 21, Ex. 21.

24. In response to the WCL Letter, the Receiver, through its counsel, wrote to various contractors with relationships to the Operating Companies, including Trilogy on August 16, 2024. The Receiver advised, among other things, that all accounts receivable in relation to the Concrete Projects are captured under the Receivership Order.

Keeble #1, para. 22, Ex. I.

25. On numerous occasions, the Receiver has sought from the Whitewater Principals, employees of the Operating Companies, and Trilogy information with respect to the St. Paul's Project and the relationship between the Operating Companies and Trilogy. To date, the Receiver has received no response to those requests from the Whitewater Principals, the Operating Companies or Trilogy.

Keeble #1, para. 23.

#### **The St. Paul's Project and the Holdback Funds**

26. Based on the information the Receiver does have, the Receiver understands that the concrete sub-contract (the "**Sub-Contract**") with respect to the St. Paul's Project is between Trilogy and PCL.

Keeble #1, para. 24.

27. In the course of its duties, the Receiver has worked to determine the status of the St. Paul's Project, which included obtaining an accounting of all payments made, or that may be made to Trilogy pursuant to the Sub-Contract. On or around November 7, 2024, the Receiver became aware that PCL was in the process of paying certain holdback funds (the "**Holdback Funds**") to Trilogy pursuant to the Sub-Contract.

Keeble #1, para. 25.



*November Correspondence with PCL and Trilogy*

28. Accordingly, by letter dated November 7, 2024 to PCL, the Receiver, through its counsel:

- (a) advised PCL that Trilogy and the Whitewater Principals had failed to provide any information to the Receiver respecting the St. Paul's Project;
- (b) advised PCL that the Receiver and/or RBC the Operating Companies' senior secured creditor, may have an interest in the Holdback Funds;
- (c) requested particulars and supporting documentation respecting the Sub-Contract, an replacement contract, including an accounting of all funds paid or to be paid pursuant thereto; and
- (d) requested that PCL not release the Holdback Funds until such time the Receiver had an opportunity to review the requested disclosure.

Keeble #1, para. 26, Ex. K.

29. On November 8, 2024, in-house counsel for PCL advised the Receiver's counsel that it would review the matter and, in the meantime, no holdback was payable by PCL to Trilogy at that time.

Keeble #1, para. 27.

30. On November 14, 2024, counsel for PCL provided the Receiver with a copy of the Sub-Contract, dated February 23, 2022, together with an "Invoice and Application for Payment" from Trilogy to PCL. The Invoice date range was for the period of October 16 to 31, 2024, and states that the gross value of the Sub-Contract is approximately \$72 million, with the Holdback Funds totalling just over \$7.1 million.

Keeble #1, para. 28, Ex. M.

31. On November 14, 2024, PCL's counsel advised the Receiver and its counsel by email that PCL would be releasing the Holdback Funds, in the amount of \$5.9 million, to Trilogy on Monday November 18, 2024. In response, the Receiver's counsel advised that it would be bringing an urgent application to Court to protect the Receiver's interest in the Holdback Funds.

Keeble #1, para. 29, Ex. N.

32. On November 14, 2024, the Receiver, through its counsel, advised PCL, Trilogy and Syber that it would be making an urgent application to court to protect the Receiver and/or RBC's interest in the Holdback Funds.

Keeble #1, para. 30, Ex. O.

33. On November 15, 2024 at 2:07 PM, the Receiver received an email from Mr. Beaton in response to the November 14, 2024 letters. Mr. Beaton claimed that Trilogy and Syber are not in partnership, that Trilogy is a limited liability company with corporate shareholders, and that Syber has no beneficial or legal interest in Trilogy. In addition, Mr. Beaton advised that Syber is a supplier of goods and services to the St. Paul's Project and is merely a sub-contractor of Trilogy who is not privy to any information the Receiver requested.

Keeble #1, para. 31, Ex. P.

34. To date, neither the Receiver, nor its counsel, have heard from any representatives of Trilogy regarding the Holdback Funds or the St. Paul's Project.

Keeble #1, para. 32.

### **Summary**

35. As a result of the failure of each of Trilogy, the Debtors and the Whitewater Principals to provide the Receiver with information respecting the St. Paul's Project and the Sub-Contract, the Receiver has been unable to analyze the matter and determine whether the Holdback Funds are captured under the Receivership Order.

Keeble #1, para. 33.

### **Part 3: LEGAL BASIS**

36. The Court's authority to grant an interlocutory injunction is derived from s. 39 of the *Law and Equity Act*, RSBC 1996, c. 253, s. 39. The Court has the discretion to issue an injunction "in all cases in which it appears to the court to be just or convenient that the order should be made", either unconditionally or on such terms and conditions as the Court thinks just.

*Tracy v. Instalogs Financial Solution Centres (B.C.) Ltd.*, 2007 BCCA 481 at paras. 30-33.

37. The fundamental question in each case is whether the granting of an injunction is just and equitable in all the circumstances of the case. The legal test requires an applicant to establish: (1) the threshold issue of a strong prima facie or good arguable case; and (2) in balancing the interests of the parties, to consider all the relevant factors, including (i) the existence of exigible assets by the defendant both inside and outside the jurisdiction, and (ii) whether there is evidence of a real risk of disposal or dissipation of those assets that would impede the enforcement of any favourable judgment to the plaintiff.

*Kepis & Pobe Financial Group Inc. v. Timis Corporation*, 2018 BCCA 420, para. 18.

38. The Court has authority to grant an injunction against a non-party. Non-parties may be included in injunctions where necessary to prevent dissipation of assets or to otherwise ensure that the court will be in a position to enforce its orders.

*Google Inc. v. Equustek Solutions Inc.* 2017 SCC 34, para. 38;  
*Pangaea Resources Limited v. Harder*, 2024 BCCA 286, para. 39.

39. Courts have granted injunctions insolvency in proceedings on applications where a Court-appointed officer, such as the Receiver in these circumstances, has requested such relief and has established the factors set out above. In such circumstances, undertakings as to damages may not be required.

*Original Traders Energy Ltd., (Re)*, 2024 ONSC 325, paras. 110 to 113.

40. In the present circumstances, there is a realistic prospect that funds captured by the terms of the Receivership Order (the Holdback Funds) will be paid out to a notional but related third party (Trilogy). Trilogy is controlled by the Whitewater Principals, its directors. There is a serious risk the Holdback Funds will be dissipated by Trilogy in defiance of the Receivership Order and before the Receiver is able to determine how much of the \$5.9 million is the property of Concrete.

41. The sole cause of this situation is the defiance of Trilogy, Concrete and the Whitewater Principals to provide relevant information and records to the Receiver as they are required to do pursuant to the Receivership Order. Further, the WCL Letter, dated July 29, 2024, creates a strong inference that the Whitewater Principals are conducting themselves in a manner intended to avoid the affect of the Receivership Order in the conduct of the business of

the Debtors. WCL is an entity that was incorporated after the date of the Receivership Order and is clearly being used to circumvent it.

*Original Traders, supra*, paras. 75 to 80.

42. For all these reasons, the Receiver has established a strong *prima facie* case of entitlement to the Holdback Funds. Further, the balance of convenience favours the granting of an injunction to preserve the Holdback Funds. The Holdback Funds are easily dissipated. The Debtor's have limited ability to repay their debts. The Holdback Funds represent a significant account receivable and would be material to the receivership.

*Original Traders, supra*, para.98 and 101.

43. The Whitewater Principals have conducted themselves in a way that suggests a real risk exists of the dissipation by Trilogy of the Holdback Funds. The incorporation of WCL and the dissemination of the WCL Letter, both events after the date of the Receivership Order, support this inference. Similarly, the refusal of the Whitewater Principals to provide information and records to the Receiver, as required under the Receivership Order, infers an intent by them to stymie the Receiver's efforts and avoid their financial obligations.

**Part 4: MATERIAL TO BE RELIED ON**

44. Receivership Order granted July 3, 2024.

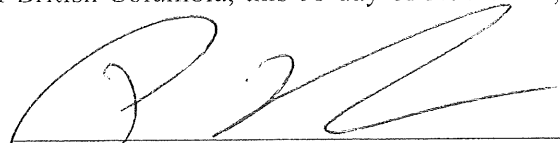
45. Affidavit # 1 of Jeff Keeble, sworn November 15, 2024.

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 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).

Dated at the City of Vancouver, in the Province of British Columbia, this 18 day of November, 2024.



Lawson Lundell LLP  
Solicitors for the Applicants

This Notice of Application is filed by Peter J. Roberts, K.C. and Noor Mann 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, e-mail address: [proberts@lawsonlundell.com](mailto:proberts@lawsonlundell.com) & [nmann@lawsonlundell.com](mailto:nmann@lawsonlundell.com); telephone number: 604-685-3456.

*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**

The following information is provided for data collection purposes only and is of no legal effect.

**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
- none of the above

