

Court File No.: VLC-S-H-240524
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
TNL DEVELOPMENTS LTD.
AMAN GILL
PETER CHAPPELL
SANDRA CHAPPELL
TERESA GAUTREAU

RESPONDENTS

NOTICE OF APPLICATION

Name(s) of applicant(s): Business Development Bank of Canada

To: The Petitioner and the Respondents

TAKE NOTICE that an application will be made by the Applicant to the Honourable Justice Stephens at the Courthouse at 800 Smithe Street, Vancouver, British

Columbia, on Friday, September 26, 2025 at 10:00 a.m. for the Order(s) set out in Part 1 below.

The Applicant estimates that the application will take approximately one full day.

[Check the correct box]

- ☐ This matter is within the jurisdiction of an associate judge.
- ☒ This matter is not within the jurisdiction of an associate judge.

Part 1: ORDER(S) SOUGHT

1. An Order allocating the costs of the receivership herein as between the two pools of assets set out in the Order appointing the Receiver dated July 2, 2024.
2. An order that the receiver forthwith transfer or pay the sum of \$353,427 (defined in the Second Report of the Court Appointed Receiver as the Concrete Transfers) to the Golden receivership trust account and forthwith distribute those funds to BDC.
3. An order that the receiver forthwith pay to BDC the full amount of the holdback from the Interim Distribution, being the sum of \$650,000;
4. If necessary, an Order abridging the time for service of this Notice of Application to the time actually given.
5. Such further and other relief as counsel may advise and this Honourable Court may deem just.

Part 2: FACTUAL BASIS

1. On July 2, 2024, an Order (the “**Receivership Order**”) was made appointing Deloitte Restructuring Inc. (“**Deloitte**”) as Receiver without security of the following assets:
 - (a) 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 (“**Asset Pool One**”); and
 - (b) those lands with a legal description of:

Parcel Identifier No.: 023-895-128
Lot 3 District Lot 67 Group 1 New Westminster District Plan LMP35071 (“**Asset Pool Two**”, also the “**Lands**” and, together with Asset Pool One, the “**Property**”)
2. The Operating Companies are defined in the Receivership Order as Whitewater Concrete Ltd. and Whitewater Developments Ltd.
3. On or about the 3rd day of July, 2025, a sale of the Lands was approved by this Honourable Court.

Second Report of the Receiver, Page 2, Paragraph 10

4. The sale of the Lands completed on or about the 30th day of July, 2025, generating total sale proceeds of \$21,218,000 (the “**Sale Proceeds**”).

Second Report of the Receiver, Page 4, Paragraph 26

5. The Net Sale Proceeds were \$21,171,918, being the Sale Proceeds adjusted by deducting from the Sale Proceeds the listing and selling commissions of \$200,510 (inclusive of taxes), a July 2025 rent adjustment in favour of 070 for \$2,482, and utilities owed to the City of Coquitlam for \$117. These adjustments were offset by prepaid 2025 property taxes in favour of the Receiver for \$149,250 and interest income of \$7,777 earned on the initial deposit.

Second Report of the Receiver, Page 4, Paragraph 27

6. The net cash balance held by the receiver from the sale of the Lands as at August 19, 2025 was \$21,639,966 (the “**Current Cash on Hand**”).

Second Report of the Receiver, Page 6, Paragraph 47

7. By Order (the “**Interim Distribution Order**”) dated September 4, 2025, the Court approved an interim distribution of the sale proceeds to BDC.
8. The Interim Distribution Order was granted without prejudice to the rights of BDC to argue with respect to the proper allocation of the costs and expenses of the receivership.
9. The amount of the Interim Distribution was \$20,989,966.00.

Second Report of the Receiver, Page 6, Paragraph 48

10. The amount of the Interim Distribution was arrived at by deducting from the Current Cash on Hand the sum of \$650,000 related to the following hold backs (the “**Hold Back Funds**”), described in Paragraph 48 of the Second Report of the Court Appointed Receiver as follows:

a) \$500,000 to cover the obligations secured by the Receiver's Charge which are estimated to be the current work in process and estimated remaining professional fees and costs for ongoing known and potential unknown matters that need to be addressed in the Receivership Proceedings. These matters include, among other things, the pursuit of Concrete's claim to its entitled portion of the Trilogy Holdback Funds, a more detailed investigation into the related party transactions and interactions amongst the Debtors and the Related Companies, the pending bankruptcy of 145, and the Receiver's discharge;

b) \$100,000 for any amounts incurred or that may hereafter be incurred by the Receiver in respect of its ordinary course post-appointment obligations, including the Current Post Receivership GST Debt; and

c) \$50,000 for any amounts required to be remitted to CRA for PSD (which is currently nil) or GST, including the Pre-Receivership GST Debt.

11. None of the Hold Back Funds are properly allocable to the sale of the Lands and ought not to be held back from the Interim Distribution to BDC.
12. All of the costs for the work described by the receiver in paragraph 48 of its Second Report are properly allocable to Asset Pool One, and ought to be funded either by the proceeds of the sale of those assets, or by RBC.
13. Put another way, if the receiver and its legal counsel have to wait until the end of the receivership to get paid, then they should do that. It shouldn't be BDC's money that is used in the interim until the receiver is either funded by RBC or is made whole through the sale of assets from Asset Pool One. BDC should not be deprived of the proceeds from the sale of the Lands that are properly

charged by BDC's security, just because it seems convenient to use their funds simply because those funds are there and available, even if they clearly come from a different asset pool and are charged by a different secured creditor (BDC).

14. So far there have been two reports of the court appointed receiver – the First Report filed May 27, 2025 and the Second Report filed August 26, 2025
15. In both of those Reports the receiver has stated that it will be issuing a report in regard to Whitewater at a later date.
16. No Whitewater report has been issued to date.
17. The costs and expenses of the receivership to date are detailed in Appendix "A" to the Second Report of the Court Appointed Receiver filed in these proceedings August 26, 2025 (and attached hereto) and outlined in that Report at paragraphs 48 (above) and 45 as follows:

[45] During the same period, the Receiver made disbursements totalling \$781,674, including the following more significant amounts:

- a) \$353,427 in transfers from the Golden receivership trust account to the Concrete receivership trust account to cover the unfunded professional fees and costs related to the Whitewater receiverships (the "**Concrete Transfers**");
- b) \$190,962 for realtor commissions related to the sale of the Golden Property;
- c) \$123,142 for legal fees invoiced to August 5, 2025; and
- d) \$74,414 for the Receiver's fees invoiced to June 30, 2025.

[48] The Receiver has received the BDC Security Opinion and is seeking an order to make an initial distribution to BDC of \$20,989,966 (the "First BDC Distribution") from the Current Cash on Hand of \$21,639,966 less \$650,000 related to the following holdbacks:

- a) \$500,000 to cover the obligations secured by the Receiver's Charge which are estimated to be the current work in process and estimated remaining professional fees and costs for ongoing known and potential unknown matters that need to be addressed in the Receivership Proceedings. These matters include, among other things, the pursuit of Concrete's claim to its entitled

portion of the Trilogy Holdback Funds, a more detailed investigation into the related party transactions and interactions amongst the Debtors and the Related Companies, the pending bankruptcy of 145, and the Receiver's discharge;

b) \$100,000 for any amounts incurred or that may hereafter be incurred by the Receiver in respect of its ordinary course post-appointment obligations, including the Current PostReceivership GST Debt; and

c) \$50,000 for any amounts required to be remitted to CRA for PSD (which is currently nil) or GST, including the Pre-Receivership GST Debt.

18. The Concrete Transfers were made at the request of RBC, which told the Receiver that the Whitewater costs should be funded from the Golden receivership estate in order to avoid paying interest on the funds and having a borrowing charge ahead of BDC on the Lands.

Affidavit #2 of S. Riley, Exhibit "A"

19. It has always been the Receiver's position (as understood and agreed to by BDC) that "...at the end of the receivership there will be an allocation exercise..." and "...net funds (after any priority claims) are expected to be available to cover the costs in the Whitewater receivership estate..."

Affidavit #2 of S. Riley, Exhibit "A"

20. That is, from Asset Pool One.

21. The receivers position as articulated to BDC has also been that the transfer of funds from the Golden Trust account to cover that Receivers fees and legal costs in the Whitewater estates would be "...returned in due course".

Affidavit #2 of S. Riley, Exhibit "B"

22. That has not happened, but it ought to occur immediately.

23. It is unfair and inequitable that the proceeds from the sale of the Lands (BDC's asset) be used to fund the activities of the receiver with respect to activities other than the management and sale of the Lands (which is now complete) and for the sole benefit of another secured creditor.
24. If the Receiver wishes to continue the activities described in its Report 2 [Page 6, Paragraph 48(a)] including as set out below, then those pursuits should be funded by RBC, the priority secured creditor over the assets of the Operating Companies (see the priority agreement attached as Exhibit "C" to Affidavit #2 of S. Riley):

These matters include, among other things, the pursuit of Concrete's claim to its entitled portion of the Trilogy Holdback Funds, a more detailed investigation into the related party transactions and interactions amongst the Debtors and the Related Companies, the pending bankruptcy of 145, and the Receiver's discharge.
25. If RBC won't fund those activities then the receiver must consider whether to continue to act as receiver in the hopes of generating funds to cover the costs, or to apply for a discharge.
26. The Receivership Order provides at paragraph 25 that "Any interested party may apply to this Court on notice to any other party likely to be affected for an order allocating the Receiver's Charge and the Receiver's Borrowings Charge amongst the Property."

Part 3: LEGAL BASIS

1. An allocation of costs in circumstances such as this involves an exercise of judicial discretion.
2. Although there are many different methods of allocating expenses (pro-rata, value based etc.), at the end of the day it is what is fair.

3. And what is fair in this instance is that *all* of the proceeds of realization from the administration of the Lands (including the sale of the Lands) ought to be paid forthwith to the first priority creditor in respect of those Lands, BDC.

[34] Allocation is an exercise in judicial discretion. The overall result must be one that is fair and equitable. This does not necessarily equate to equality. Usually, there will be some who do better than the average and other who do not.

[35] There are numerous approaches and methodologies to allocations. In some areas professional careers have been built in propounding allocation methodologies.

[36] A summary of the general principles governing the allocation of receiver's costs was recently provided in *Royal Bank of Canada v. Atlas Block Co.*, 2014 ONSC 1531 at para. 43 by Justice D.M. Brown as follows:

- (a) The allocation of such costs must be done on a case-by-case basis and involves an exercise of discretion by a receiver or trustee;
- (b) Costs should be allocated in a fair and equitable manner, one which does not readjust the priorities between creditors, and one which does not ignore the benefit or detriment to any creditor;
- (c) A strict accounting to allocate such costs is neither necessary nor desirable in all cases. To require a receiver to calculate and determine an absolutely fair value for its services for one group of assets vis-à-vis another likely would not be cost-effective and would drive up the overall cost of the receivership;
- (d) A creditor need not benefit "directly" before the costs of an insolvency proceeding can be allocated against that creditor's recovery;
- (e) An allocation does not require a strict cost/benefit analysis or that the costs be borne equally or on a pro rata basis;
- (f) Where an allocation appears prima facie as fair, the onus falls on an opposing creditor to satisfy the court that the proposed allocation is unfair or prejudicial.

HSBC Bank of Canada v Maple Leaf Loading Ltd., 2016 BCSC 361 (CanLii) at paragraphs 34-36

4. See also *Bennett on Receiverships*, 3rd Edition, at page 391.

In the case where the receiver controls many assets that are secured by different creditors, allocating the costs of the overall realization can be a difficult problem raising several issues as to the proper allocation of costs. As a general rule, the receiver applies a standard percentage of the sale price received from the asset and allocates that amount to the interest of the secured creditor whose asset was sold. However, where the costs of the sale of a specific asset can be directly attributed to the asset, such a percentage does not apply. Further, depending upon the percentage amount, this factor may not take into consideration the receiver's general costs in the administration of the receivership. In determining how to apportion costs amongst the creditors, the following principles apply:

- (1) the allocation of costs ought to be fair and evenhanded amongst all creditors on an objective basis of allocation;
- (2) the fairest basis of allocation would be a uniform percentage of the sale price received for the asset over which the paying creditor had a realizable security interest;
- (3) the costs are not limited to the realization but also cover all receivership costs whether direct or indirect;
- (4) exceptions to a uniform cost allocation should not be lightly granted; and
- (5) such exceptions should only be made where the requirement for a variation is reasonably articulable.

Part 4: MATERIAL TO BE RELIED ON

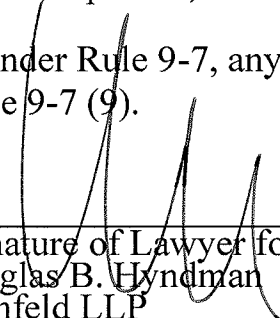
- 1. the materials and pleadings filed herein;
- 2. the Receivership Order granted July 2, 2024;
- 3. the First Report of the Court Appointed Receiver filed May 27, 2025 herein;
- 4. the Second Report of the Court Appointed Receiver filed August 26, 2025 herein;
- 5. Interim Distribution Order dated September 4, 2025;
- 6. affidavit #2 of S. Riley;
- 7. *HSBC Bank of Canada v Maple Leaf Loading Ltd.*, 2016 BCSC 361 (CanLii)
- 8. *Bennett on Receiverships*, 3rd Edition, at page 391; and
- 9. such further or other material as counsel may advise and this Honourable Court permit.

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).

Dated: September 19, 2025.



Signature of Lawyer for the Applicant
Douglas B. Hyndman
Kornfeld LLP

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:

[Check the box(es) below for the application type(s) included in this application.]

- ☐ discovery: comply with demand for documents
- ☐ discovery: production of additional documents
- ☐ oral 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

Appendix "A"

In the Matter of the Receivership of 145 Golden Drive Ltd.

Receiver's Interim Statement of Receipts and Disbursements For the Period of July 2, 2024 to August 19, 2025

Description	Amount (CDN)
Receipts	
Gross sale proceeds	\$ 21,218,000
Rent and operating expense reimbursements	974,826
Property tax adjustment on sale closing	153,578
GST on rental income	47,955
Transfer from pre-receivership bank account	15,649
Interest and other receipts	11,633
Total receipts	22,421,640
Disbursements	
Transfers to the Whitewater Concrete Ltd. receivership estate	353,427
Realtor commissions	190,962
Legal fees and costs to August 5, 2025	123,142
Receiver's fees and costs to June 30, 2025	74,414
GST on disbursements	18,365
Insurance	9,843
PST on disbursements	8,674
Other misc. disbursements and bank charges	2,549
Mail forwarding costs	297
Total disbursements	781,674
Excess of receipts over disbursements	\$ 21,639,966