

COURT FILE NUMBER 2001-12759 Clerk's Stamp

COURT COURT OF QUEEN'S BENCH OF ALBERTA

JUDICIAL CENTRE CALGARY

APPLICANT ROYAL BANK OF CANADA

RESPONDENTS SWIMCO AQUATICS SUPPLIES LTD., SWIMCO PARTNERSHIP, BLUE CRUSH BIKINI & BOARDSHORT COMPANY LTD., LORI BACON HOLDINGS LTD. and STEVE FORSETH HOLDINGS LTD.

DOCUMENT **NOTICE OF APPLICATION**

ADDRESS FOR SERVICE AND CONTACT INFORMATION OF PARTY FILING THIS DOCUMENT Cassels Brock & Blackwell LLP
Suite 3810, Bankers Hall West
888 3rd Street SW
Calgary, Alberta, T2P 5C5

Telephone 403-351-2920
Facsimile 403-648-1151

File No. 49073-7

Attention: Jeffrey Oliver/Danielle Marechal

NOTICE TO RESPONDENTS:

This application is made against you. You are a respondent.

You have the right to state your side of this matter before the judge.

To do so, you must be in Court when the application is heard as shown below:

Date: Tuesday, December 14, 2020

Time: 3:00 PM

Where: Calgary Law Courts – Via Webex

Before Whom: The Honourable Justice A.D. Macleod – Commercial List

Go to the end of this document to see what you can do and when you must do it.

Remedy claimed or sought:

1. An Order substantially in the form of Schedule "A" hereto:
 - (a) if necessary, abridging the time for service of this Application and supporting First Report (the "**Report**") of Deloitte Restructuring Inc. ("**Deloitte**") in its capacity as receiver and manager (in such capacity, the "**Receiver**") of the assets, properties and undertakings of Swimco Aquatics Supplies Ltd. ("**SAS**"), Swimco Partnership ("**SP**" and together with SAS the "**Companies**" or the "**Swimco Group**"), Blue Crush Bikini & Boardshort Company Ltd. ("**Blue Crush**"), Lori Bacon Holdings Ltd. ("**LBH**") and Steve Forseth

- Holdings Ltd. ("**SFH**" and together with Blue Crush and LBH the "**Holdcos**") and declaring service to be good and sufficient;
- (b) subject to the approval of the En Bloc Offer (defined below), approving a distribution to Royal Bank of Canada ("**RBC**");
 - (c) sealing the confidential supplement to the Report (the "**Confidential Supplement**"); and
 - (d) approving the conduct and activities of the Trustee (as defined below) and Receiver as set forth in the Report.
2. Subject to no Superior LOI (defined below) being received by the Receiver on or before 4:00 pm MT on December 11, 2020 (the "**Bid Deadline**"), an Order substantially in the form of Schedule "B" hereto:
- (a) if necessary, abridging the time for service of this Application and support Report and declaring service to be good and sufficient;
 - (b) approving an Offer to Purchase and Agreement of Purchase and Sale (the "**En Bloc Offer**") between the Receiver and D. Bacon Holdings Ltd. (the "**Purchaser**" or "**DBH**");
 - (c) vesting all of the Companies' right, title and interest in and to the purchased assets pursuant to the En Bloc Offer in the name of the Purchaser free and clear of all encumbrances, subject only to permitted encumbrances; and
 - (d) authorizing and directing the Receiver to take such further steps, as necessary, to complete the sale transaction contemplated by the En Bloc Offer (the "**Transaction**").
3. Such further and other relief as this Honourable Court deems just.

Grounds for making this application:

- 1. The Companies are private retail companies that sold swimwear and accessories across Canada through in-store retail locations and online ecommerce. The Holdcos are each corporate partners of SP.
- 2. On June 11, 2020, SAS and SP each filed a Notice of Intention to Make a Proposal (the "**NOI**") pursuant to section 50.4(1) of the *Bankruptcy and Insolvency Act*, RSC 1985, c B-3 (the "**BIA**"). Deloitte consented to act as proposal trustee under the NOIs.
- 3. On October 10, 2020, the Companies were deemed to have made an assignment in bankruptcy. Deloitte was appointed as trustee in bankruptcy of each of the Companies' estates (in such capacity, the "**Trustee**").
- 4. On November 10, 2020, the Court issued an order (the "**Receivership Order**") appointing Deloitte as receiver and manager over all of (*inter alia*) the Companies' assets, undertakings and properties (the "**Property**").

En Bloc Offer and Sales Process

- 5. D. Bacon Holdings Ltd. ("**DBH**") submitted the En Bloc Offer to the Receiver to purchase all of the Purchased Assets (as defined in the En Bloc Offer).
- 6. DBH is related to the Swimco Group as:

- (a) DBH is the sole voting shareholder of Blue Crush and Blue Crush is one of the partners of SP;
 - (b) Blue Crush is a 33.33% voting shareholder of SAS; and
 - (c) Dave Bacon is the sole director of Blue Crush and a director of SAS.
7. The Receiver agreed to conditionally accept the En Bloc Offer, on the following conditions:
- (a) The Receiver would simultaneously conduct a brief sales process (the “**Sales Process**”) to solicit interest from non-related parties prior to the application date of December 14, 2020 (the “**Application**”);
 - (b) The Sales Process would specifically target certain parties that had reached out to the Companies, the Trustee or the Receiver during the last six months to express an interest in the Property;
 - (c) The Receiver can disclose the general quantum of the offer price under the En Bloc Offer to any parties interested in submitting an offer on the Property, provided that such interested party(ies) sign a non-disclosure agreement;
 - (d) In the event that a non-binding letter of intent (“**LOI**”) is received on or before the Bid Deadline that is superior to the En Bloc Offer (the “**Superior LOI**”), the Receiver will adjourn the Application for 30 – 45 days in an attempt to finalize the Superior LOI and / or have a form of auction or other competitive process between the prospective purchasers; and
 - (e) The En Bloc Offer remains subject to the approval of this Honourable Court.
8. In accordance with the foregoing, on November 30, 2020, the Receiver invited 13 non-related interest parties to submit bids on some or all of the Property. The deadline for the submission of bids is the Bid Deadline.
9. As the Bid Deadline has not yet passed, the Receiver will submit a supplemental report to his Honourable Court after the Bid Deadline to detail the results of the Sales Process.
10. Unless a superior offer to the En Bloc Offer is received prior to the Bid Deadline, the Receiver is seeking the approval of the En Bloc Offer and the vesting of all of the Companies’ right, title and interest in and to the Purchased Assets in the name of the Purchaser free and clear of all encumbrances, subject only to permitted encumbrances

Approval En Bloc Offer

11. Should no Superior LOIs be received by the Receiver, the En Bloc Offer represents the highest and best offer for the Purchased Assets.
12. The key terms of the En Bloc Offer are as follows:
- (a) The En Bloc Offer includes a credit bid amount plus a cash payment in the amount required to repay the secured indebtedness owing to RBC (the “**RBC Indebtedness**”) in full, which RBC Indebtedness is in the amount of approximately \$3.02 million;
 - (b) The En Bloc Offer provides for a holdback by the Receiver for the payment of all priority payables, including any priority deemed trust claims and WEPPA amounts, as well as fees and disbursements of the Trustee, the Receiver and their legal counsel (collectively, the “**Priority Payables**”);

- (c) To the extent that the holdback is not sufficient to pay the Priority Payables, the En Bloc Offer provides that DBH will forthwith pay the Receiver the amount required to satisfy such Priority Payables;
 - (d) The En Bloc Offer includes the purchase of all the Property; and
 - (e) The En Bloc Offer is on an “as is, where is” basis and is subject only to Court approval.
13. Subject to obtaining a Superior LOI on or before the Bid Deadline, it is the view of the Receiver that the En Bloc Offer is the highest and best offer for the Purchased Assets and that a superior offer is unlikely to be obtained following a more fulsome sales process as a result of the following (among other things):
- (a) During these restructuring proceedings, 13 parties have explicitly expressed an interest in some portion of the Swimco Groups’ assets. However, none of these parties have expressed an interest in purchasing the Building (as defined in the En Bloc Offer) and/or all of the Property;
 - (b) The additional time and professional cost required for the Receiver to conduct a longer sales process will be unlikely to yield a superior offer due to the currently distressed retail market conditions and the following:
 - (i) The specialized nature of the Swimco Group’s inventory and the fact that such inventory is seasonal;
 - (ii) The fact that the end customers are unable to travel in the short term due to the travel bans from the COVID-19 pandemic and accordingly demand for swimwear in Canada is very limited;
 - (c) The retail stores are shuttered and all of the inventory is located at the warehouse;
 - (d) The real estate market for industrial buildings, especially in Alberta, is currently distressed;
 - (e) There is general uncertainty in the retail market due to the COVID-19 pandemic;
 - (f) Independent opinion letter and appraisal report provided to the Receiver indicate that the En Bloc Offer is reasonable in these circumstances;
 - (g) Significantly increased professional costs would be incurred through undertaking several different sale transactions as opposed to completing one en bloc transaction;
 - (h) RBC, who is the primary secured creditors of the Companies, will be paid out in full under the En Bloc Offer and is supportive of the Transaction; and
 - (i) The Receiver is making good faith efforts to solicit offers from non-related parties between November 30, 2020 and the Bid Deadline.
14. As a result of the foregoing, among other things, the Receiver is of the view that the Sales Process is fair and reasonable in the circumstances.

Approval of Interim Distribution

15. Should the En Bloc Offer be approved by this Honourable Court, the Receiver seeks authorization to make a distribution to RBC up to the maximum amount required to repay the RBC Indebtedness (the “**RBC Distribution**”).

16. RBC is the primary secured creditors of the Companies. Receiver's counsel has undertaken a review of the RBC security and has advised the following (subject to the standard assumptions and qualifications):
 - (a) RBC holds a valid and enforceable security interest in and to all of the present and after acquired personal property of the Swimco Group, which security interest has been properly perfected in British Columbia, Alberta, Saskatchewan, Manitoba and Ontario; and
 - (b) The collateral mortgage held by RBC in the principal amount of \$2.14 million and registered against title the Building creates a first priority financial charge in favour of RBC with respect to the Building.
17. As a result of the foregoing, and in accordance with the terms of the En Bloc Offer, the Receiver seeks authorization to make the RBC Distribution to RBC upon closing of the En Bloc Offer should this Honourable Court approve the En Bloc Offer.

Sealing Order

18. A Sealing Order directing the sealing of the Confidential Supplement is necessary due to the risk that the public disclosure of the unredacted contents of En Bloc Offer and appraisals contained therein may prejudice any future attempt to sell the property should the Transaction not be completed. There are no reasonable alternative measures, and the benefits of a sealing order would outweigh any negative effects on the interests of the public.

Actions of the Receiver

19. The Trustee and Receiver have acted diligently since their appointment and have undertaken those activities described further in the Report, which actions are lawful, proper and consistent with the BIA and the Receiver's powers and duties under the Receivership Order.

Material or evidence to be relied on:

20. Receivership Order pronounced on November 10, 2020;
21. First Report of the Receiver dated December 7, 2020;
22. Confidential Supplement to the First Report of the Receiver dated December 7, 2020; and
23. Such further and other materials as counsel may advise and this Honourable Court may permit.

Applicable rules:

24. The *Alberta Rules of Court*, including Rules 1.2, 1.3, 1.4, 6.1, 6.2, 6.3 and 6.47; and
25. Such further and other rules as counsel may advise and this Honourable Court may permit.

Applicable Acts and regulations:

26. *Bankruptcy and Insolvency Act*, RSC 1985, c B-3, as amended, and in particular section 243 thereof;
27. *Judicature Act*, RSA 2000, c J-2, as amended, and in particular section 13(2) thereof; and
28. Such further and other acts and regulations as counsel may advise and this Honourable Court may permit.

Any irregularity complained of or objection relied on:

29. None.

How the application is proposed to be heard or considered:

30. Via Webex.

WARNING

If you do not come to Court either in person or by your lawyer, the Court may give the applicant(s) what they want in your absence. You will be bound by any order that the Court makes. If you want to take part in this application, you or your lawyer must attend in Court on the date and time shown at the beginning of this form. If you intend to give evidence in response to the application, you must reply by filing an affidavit or other evidence with the Court and serving a copy of that affidavit or other evidence on the applicant(s) a reasonable time before the application is to be heard or considered.

SCHEDULE "A"

COURT FILE NO.: 2001-12759
COURT COURT OF QUEEN'S BENCH OF ALBERTA
JUDICIAL CENTRE CALGARY
APPLICANT ROYAL BANK OF CANADA



RESPONDENTS SWIMCO AQUATICS SUPPLIES LTD., SWIMCO PARTNERSHIP,
BLUE CRUSH BIKINI & BOARDSHORT COMPANY LTD., LORI
BACON HOLDINGS LTD. and STEVE FORSETH HOLDINGS LTD.

DOCUMENT **ORDER – SEALING AND APPROVING INTERIM DISTRIBUTION**

ADDRESS FOR SERVICE AND CONTACT INFORMATION OF PARTY FILING THIS DOCUMENT
Cassels Brock & Blackwell LLP
Suite 3810, Bankers Hall West
888 3rd Street SW
Calgary, Alberta, T2P 5C5
Telephone: (403) 351-2920
Facsimile: (403) 648-1151
File No.: 49073-7

Attention: Jeffrey Oliver/Danielle Marechal

DATE ON WHICH ORDER WAS PRONOUNCED: December 14, 2020
NAME OF JUSTICE WHO MADE THIS ORDER: The Honourable Justice A.D. Macleod
LOCATION OF HEARING: Calgary, Alberta

UPON THE APPLICATION of Deloitte Restructuring Inc. in its capacity as receiver and manager (in such capacity, the "**Receiver**") of the assets, properties and undertakings of Swimco Aquatics Supplies Ltd. ("**SAS**"), Swimco Partnership ("**SP**" and together with SAS the "**Companies**"), Blue Crush Bikini & Boardshort Company Ltd., Lori Bacon Holdings Ltd. and Steve Forseth Holdings Ltd. for an Order, among other things: (i) approving an Offer to Purchase and Agreement of Purchase and Sale between the Receiver and D. Bacon Holdings Ltd.; (ii) approving an interim distribution to Royal Bank of Canada ("**RBC**"); (iii) approving of the activities of the Trustee (as defined in the Report) and the Receiver; and (iv) sealing the Confidential Supplement to the First Report of the Receiver dated December 7, 2020 (the "**Confidential Supplement**"); **AND UPON HAVING** read the Receivership Order granted by the Honourable Madam Justice B.E.C. Romaine on November 10, 2020, the First Report of the Receiver dated December 7, 2020 (the "**Report**"), the Confidential Supplement and the Supplemental

Report of the Receiver dated December 1, 2020; **AND UPON HEARING** counsel for the Receiver, counsel for RBC, counsel for the Companies and all other interested parties present;

IT IS HEREBY ORDERED THAT:

Service

1. Service of this Application and supporting materials is hereby declared to be good and sufficient, and no other person is required to have been served with notice of this application, and time for service of this application is abridged to that actually given.

Interim Distribution

2. The Receiver is hereby authorized, empowered and directed to make a distribution to RBC up to the maximum amount required to repay the indebtedness owing by the Companies to RBC under RBC's secured facilities in full.

Sealing Order

3. Division 4 Part 6 of the *Alberta Rules of Court* does not apply to this Application.
4. The Confidential Supplement shall, until the discharge of the Receiver, or until further order of this Honourable Court, be sealed and kept confidential, to be shown only to a Justice of the Court of Queen's Bench of Alberta, and accordingly, shall be filed with the Clerk of the Court who shall keep the Confidential Supplement in a sealed envelope, which shall clearly be marked "SEALED PURSUANT TO THE ORDER OF THE HON. JUSTICE A.D. MACLEOD DATED DECEMBER 14, 2020".
5. Any party may apply to set aside paragraph 4 of this order upon providing the Receiver and all other interest parties with five (5) days notice of such application.

Approval of Actions of Receiver

6. The activities of the Trustee and the Receiver, as described in the Report, are hereby ratified and approved.
7. This Order must be served only upon those interested parties attending or presented at the within application and service may be effected by facsimile, electronic mail, personal delivery or courier. Service is deemed to be effected the next business day following the transmission or delivery of such documents.

8. Service of this Order on any party not attending this application is hereby dispensed with.

J.C.Q.B.A

SCHEDULE "B"

COURT FILE NUMBER 2001-12759
COURT COURT OF QUEEN'S BENCH OF ALBERTA
JUDICIAL CENTRE CALGARY
PLAINTIFF ROYAL BANK OF CANADA
DEFENDANT SWIMCO AQUATIC SUPPLIES LTD.,
SWIMCO PARTNERSHIP, BLUE CRUSH
BIKINI & BOARDSHORT COMPANY LTD.,
STEVE FORSETH HOLDINGS LTD., STEVE
FORSETH ENTERPRISES LTD., AND LORI
JO HOLDINGS LTD.

Clerk's Stamp

DOCUMENT **APPROVAL AND VESTING ORDER
(Sale by Receiver)**

ADDRESS FOR SERVICE AND CONTACT INFORMATION OF PARTY FILING THIS DOCUMENT Cassels Brock & Blackwell LLP
Suite 3810, Bankers Hall West
888 3rd Street SW
Calgary, Alberta, T2P 5C5

Telephone 403-351-2920
Facsimile 403-648-1151

File No. 49073-7

Attention: Jeffrey Oliver/Danielle Marechal

DATE ON WHICH ORDER WAS PRONOUNCED: Monday, December 14, 2020

LOCATION WHERE ORDER WAS PRONOUNCED: Calgary Courts Centre, 601 – 5 Street SW, Calgary, Alberta

NAME OF JUSTICE WHO MADE THIS ORDER: The Honourable Justice A. D. Macleod

UPON THE APPLICATION by Deloitte Restructuring Inc. in its capacity as the Court-appointed receiver and manager (the "**Receiver**") of the undertakings, property and assets of Swimco Aquatic Supplies Ltd., Swimco Partnership, Blue Crush Bikini & Boardshorts Ltd., Lori Bacon Holdings Ltd. and Steve Forseth Holdings Ltd. (collectively the "**Debtors**") for an order approving the sale transaction (the "**Transaction**") contemplated by an offer to purchase and agreement of purchase and sale (the "**Sale Agreement**") between the Receiver and D. Bacon Holdings Ltd. (the "**Purchaser**") dated December 7, 2020 and appended in redacted form to the First Report of the Receiver dated December 7, 2020 (the "**First Report**") as Appendix "C", and vesting in the Purchaser (or its nominee) the Debtors' right, title and interest in and to the Property, as described and defined in the Sale Agreement (the "**Purchased Assets**"); **AND UPON HAVING READ** the Receivership Order dated November 10, 2020 (the "**Receivership Order**"), the Report, the First Confidential Report of the Receiver, dated December 7,

2020 (the "**Confidential Report**") and the Affidavit of Service; **AND UPON HEARING** the submissions of counsel for the Receiver, and counsel for all other interested parties;

IT IS HEREBY ORDERED AND DECLARED THAT:

SERVICE

1. Service of notice of this application and supporting materials is hereby declared to be good and sufficient, no other person is required to have been served with notice of this application and time for service of this application is abridged to that actually given.

APPROVAL OF TRANSACTION

2. The Transaction is hereby approved and execution of the Sale Agreement by the Receiver is hereby authorized and approved, with such minor amendments as the Receiver may deem necessary. The Receiver is hereby authorized and directed to take such additional steps and execute such additional documents as may be necessary or desirable for completion of the Transaction and conveyance of the Purchased Assets to the Purchaser (or its nominee).

VESTING OF PROPERTY

3. Upon delivery of a Receiver's certificate to the Purchaser (or its nominee) substantially in the form set out in **Schedule "A"** hereto (the "**Receiver's Closing Certificate**"), all of the Debtors' right, title and interest in and to the Purchased Assets shall vest absolutely in the name of the Purchaser (or its nominee), free and clear of and from any and all caveats, security interests, hypothecs, pledges, mortgages, encumbrances, liens, trusts or deemed trusts, reservations of ownership, royalties, options, rights of pre-emption, privileges, interests, assignments, actions, judgements, executions, levies, taxes, writs of enforcement, charges, or other claims, whether contractual, statutory, financial, monetary or otherwise whatsoever, whether or not they have attached or been perfected, registered or filed and whether secured, unsecured or otherwise (collectively, "**Claims**") including, without limiting the generality of the foregoing:
 - (a) any encumbrances or charges created by the Receivership Order;
 - (b) any charges, security interests or claims evidenced by registrations pursuant to the *Personal Property Security Act* (Alberta) or any other personal property registry system;
 - (c) any liens or claims of lien under the *Builders' Lien Act* (Alberta); and
 - (d) those Claims listed in **Schedule "B"** hereto (all of which are collectively referred to as the "**Encumbrances**", which term shall not include the permitted encumbrances, caveats, interests, easements, and restrictive covenants listed in **Schedule "C"** (collectively, "**Permitted Encumbrances**"),

and for greater certainty, this Court orders that all Claims including Encumbrances other than Permitted Encumbrances, affecting or relating to the Purchased Assets are hereby expunged, discharged and terminated as against the Purchased Assets

4. Upon delivery of the Receiver's Closing Certificate, and upon filing of a certified copy of this Order, together with any applicable registration fees, all governmental authorities including those referred to below in this paragraph (collectively, "**Governmental Authorities**") are hereby authorized, requested and directed to accept delivery of such Receiver's Closing Certificate and certified copy of this Order as though they were originals and to register such transfers, interest authorizations, discharges and discharge statements of conveyance as may be required to convey to the Purchaser or its nominee clear title to the Purchased Assets subject only to Permitted Encumbrances. Without limiting the foregoing:
- (a) the Registrar of Land Titles ("**Land Titles Registrar**") for the lands defined below shall and is hereby authorized, requested and directed to forthwith:
- (i) cancel existing Certificate of Title No. 991 153 510 for those lands and premises municipally described as 6403 Burbank Road SE, Calgary, Alberta, and legally described as:
- PLAN 1310LK
BLOCK 1
LOT 6
EXCEPTING THEREOUT ALL MINES AND MINERALS
AREA 0.465 HECTARES (1.15 ACRES) MORE OR LESS
- (the "**Lands**")
- (ii) issue a new Certificate of Title for the Lands in the name of the Purchaser, namely, D. Bacon Holdings Ltd., or any nominee designated in writing by the Purchaser;
- (iii) transfer to the New Certificate of Title the existing instruments listed in Schedule "C", to this Order; and
- (iv) discharge and expunge the Encumbrances listed in Schedule "B" to this Order and discharge and expunge any Claims including Encumbrances (but excluding Permitted Encumbrances) which may have been registered either before or after the date of the Sale Agreement or before or after the date of this Order against the existing Certificate of Title to the Lands;
- (b) the Registrar of the Alberta Personal Property Registry (the "**PPR Registrar**") shall and is hereby directed to forthwith cancel and discharge any registrations at the Alberta Personal Property Registry (whether made before or after the date of this Order) claiming

security interests (other than Permitted Encumbrances) in the estate or interest of the Debtors in any of the Purchased Assets which are of a kind prescribed by applicable regulations as serial-number goods.

5. In order to effect the transfers and discharges described above, this Court directs each of the Governmental Authorities to take such steps as are necessary to give effect to the terms and intent of this Order and the Sale Agreement. Presentment of this Order and the Receiver's Closing Certificate shall be the sole and sufficient authority for the Governmental Authorities to make and register transfers of title or interest and cancel and discharge registrations against any of the Purchased Assets of any Claims including Encumbrances but excluding Permitted Encumbrances.
6. No authorization, approval or other action by and no notice to or filing with any governmental authority or regulatory body exercising jurisdiction over the Purchased Assets is required for the due execution, delivery and performance by the Receiver of the Sale Agreement.
7. Upon delivery of the Receiver's Closing Certificate together with a certified copy of this Order, this Order shall be immediately registered by the Land Titles Registrar notwithstanding the requirements of section 191(1) of the *Land Titles Act*, RSA 2000, c.L-7 and notwithstanding that the appeal period in respect of this Order has not elapsed. The Land Titles Registrar is hereby directed to accept all Affidavits of Corporate Signing Authority submitted by the Receiver in its capacity as Receiver of the Debtors and not in its personal or corporate capacity.
8. For the purposes of determining the nature and priority of Claims, net proceeds from sale of the Purchased Assets (to be held in an interest bearing trust account by the Receiver) shall stand in the place and stead of the Purchased Assets from and after delivery of the Receiver's Closing Certificate and all Claims including Encumbrances (but excluding Permitted Encumbrances) shall not attach to, encumber or otherwise form a charge, security interest, lien, or other Claim against the Purchased Assets and may be asserted against the net proceeds from sale of the Purchased Assets with the same priority as they had with respect to the Purchased Assets immediately prior to the sale, as if the Purchased Assets had not been sold and remained in the possession or control of the person having that possession or control immediately prior to the sale. Unless otherwise ordered (whether before or after the date of this Order), the Receiver shall not make any distributions to creditors of net proceeds from sale of the Purchased Assets without further order of this Court, provided however the Receiver may apply any part of such net proceeds to repay any amounts the Receiver has borrowed for which it has issued a Receiver's Certificate pursuant to the Receivership Order.

9. Except as expressly provided for in the Sale Agreement or by section 5 of the Alberta *Employment Standards Code*, the Purchaser (or its nominee) shall not, by completion of the Transaction, have liability of any kind whatsoever in respect of any Claims against the Debtors.
10. Upon completion of the Transaction, the Debtors and all persons who claim by, through or under the Debtors in respect of the Purchased Assets, and all persons or entities having any Claims of any kind whatsoever in respect of the Purchased Assets, save and except for persons entitled to the benefit of the Permitted Encumbrances, shall stand absolutely and forever barred, estopped and foreclosed from and permanently enjoined from pursuing, asserting or claiming any and all right, title, estate, interest, royalty, rental, equity of redemption or other Claim whatsoever in respect of or to the Purchased Assets, and to the extent that any such persons or entities remain in the possession or control of any of the Purchased Assets, or any artifacts, certificates, instruments or other indicia of title representing or evidencing any right, title, estate, or interest in and to the Purchased Assets, they shall forthwith deliver possession thereof to the Purchaser (or its nominee).
11. The Purchaser (or its nominee) shall be entitled to enter into and upon, hold and enjoy the Purchased Assets for its own use and benefit without any interference of or by the Debtors, or any person claiming by, through or against the Debtors.
12. Immediately upon closing of the Transaction, holders of Permitted Encumbrances shall have no claim whatsoever against the Receiver.
13. The Receiver is directed to file with the Court a copy of the Receiver's Closing Certificate forthwith after delivery thereof to the Purchaser (or its nominee).
14. Pursuant to clause 7(3)(c) of the *Personal Information Protection and Electronic Documents Act* (Canada) and section 20(e) of the Alberta *Personal Information Protection Act*, the Receiver is authorized and permitted to disclose and transfer to the Purchaser (or its nominee) all human resources and payroll information in the Debtors' records pertaining to the Debtors' past and current employees. The Purchaser (or its nominee) shall maintain and protect the privacy of such information and shall be entitled to use the personal information provided to it in a manner which is in all material respects identical to the prior use (of such information) to which the Debtors were entitled.

MISCELLANEOUS MATTERS

15. Notwithstanding:
 - (a) the pendency of these proceedings and any declaration of insolvency made herein;
 - (b) the pendency of any applications for a bankruptcy order now or hereafter issued pursuant to the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c.B-3, as amended (the "BIA"), in

respect of the Debtors, and any bankruptcy order issued pursuant to any such applications;

- (c) any assignment in bankruptcy made in respect of the Debtors; and
- (d) the provisions of any federal or provincial statute:

the vesting of the Purchased Assets in the Purchaser (or its nominee) pursuant to this Order shall be binding on any trustee in bankruptcy that may be appointed in respect of the Debtors and shall not be void or voidable by creditors of the Debtors, nor shall it constitute nor be deemed to be a transfer at undervalue, settlement, fraudulent preference, assignment, fraudulent conveyance, or other reviewable transaction under the BIA or any other applicable federal or provincial legislation, nor shall it constitute oppressive or unfairly prejudicial conduct pursuant to any applicable federal or provincial legislation.

- 16. The Receiver, the Purchaser (or its nominee) and any other interested party, shall be at liberty to apply for further advice, assistance and direction as may be necessary in order to give full force and effect to the terms of this Order and to assist and aid the parties in closing the Transaction.
- 17. This Honourable Court hereby requests the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or in any of its provinces or territories or in any foreign jurisdiction, to act in aid of and to be complimentary to this Court in carrying out the terms of this Order, to give effect to this Order and to assist the Receiver and its agents in carrying out the terms of this Order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such order and to provide such assistance to the Receiver, as an officer of the Court, as may be necessary or desirable to give effect to this Order or to assist the Receiver and its agents in carrying out the terms of this Order.
- 18. Service of this Order shall be deemed good and sufficient by:
 - (a) Serving the same on:
 - (i) the persons listed on the service list created in these proceedings;
 - (ii) any other person served with notice of the application for this Order;
 - (iii) any other parties attending or represented at the application for this Order;
 - (iv) the Purchaser or the Purchaser's solicitors; and
 - (b) Posting a copy of this Order on the Receiver's website at:
 - www.insolvencies.deloitte.ca/en-ca/swimco

and service on any other person is hereby dispensed with.

- 19. Service of this Order may be effected by facsimile, electronic mail, personal delivery or courier. Service is deemed to be effected the next business day following transmission or delivery of this Order.

Justice of the Court of Queen's Bench of Alberta

Schedule "A"

Form of Receiver's Certificate

COURT FILE NUMBER	2001-12759	Clerk's Stamp
COURT	COURT OF QUEEN'S BENCH OF ALBERTA	
JUDICIAL CENTRE	CALGARY	
PLAINTIFF	ROYAL BANK OF CANADA	
DEFENDANT	SWIMCO AQUATIC SUPPLIES LTD., SWIMCO PARTNERSHIP, BLUE CRUSH BIKINI & BOARDSHORT COMPANY LTD., STEVE FORSETH HOLDINGS LTD., STEVE FORSETH ENTERPRISES LTD., AND LORI JO HOLDINGS LTD.	
DOCUMENT	RECEIVER'S CERTIFICATE	
ADDRESS FOR SERVICE AND CONTACT INFORMATION OF PARTY FILING THIS DOCUMENT	Cassels Brock & Blackwell LLP Suite 3810, Bankers Hall West 888 3rd Street SW Calgary, Alberta, T2P 5C5 Telephone 403-351-2920 Facsimile 403-648-1151 File No. 49073-7 Attention: Jeffrey Oliver/Danielle Marechal	

RECITALS

- A. Pursuant to an Order of the Honourable Madam Justice B.E.C. Romaine of the Court of Queen's Bench of Alberta, Judicial District of Calgary (the "**Court**") dated November 10, 2020, Deloitte Restructuring Inc. was appointed as the receiver and manager (the "**Receiver**") of the undertakings, property and assets of Swimco Aquatic Supplies Ltd., Swimco Partnership, Blue Crush Bikini and Boardshorts Ltd., Lori Bacon Holdings Ltd. and Steve Forseth Holdings Ltd. (collectively, the "**Debtors**").
- B. Pursuant to an Order of the Court dated December 14, 2020, the Court approved the agreement of purchase and sale made as of December ●, 2020 (the "**Sale Agreement**") between the Receiver and D. Bacon Holdings Ltd. (the "**Purchaser**") and provided for the vesting in the Purchaser of the Debtors' right, title and interest in and to the Purchased Assets, which vesting is to be effective with respect to the Purchased Assets upon the delivery by the Receiver to the Purchaser of a certificate confirming (i) the payment by the Purchaser of the Purchase Price for the Purchased Assets; (ii) that the conditions to Closing as set out in Article ● of the Sale

Agreement have been satisfied or waived by the Receiver and the Purchaser; and (iii) the Transaction has been completed to the satisfaction of the Receiver.

- C. Unless otherwise indicated herein, capitalized terms have the meanings set out in the Sale Agreement.

THE RECEIVER CERTIFIES the following:

1. The Purchaser (or its nominee) has paid and the Receiver has received the Purchase Price for the Purchased Assets payable on the Closing Date pursuant to the Sale Agreement;
2. The conditions to Closing as set out in Article ● of the Sale Agreement have been satisfied or waived by the Receiver and the Purchaser (or its nominee); and
3. The Transaction has been completed to the satisfaction of the Receiver.
4. This Certificate was delivered by the Receiver at **[Time]** on **[Date]**.

Deloitte Restructuring Inc., in its capacity as Receiver and Manager of the undertakings, property and assets of Swimco Aquatic Supplies Ltd., Swimco Partnership, Blue Crush Bikini and Boardshorts Ltd., Lori Bacon Holdings Ltd. and Steve Forseth Holdings Ltd., and not in its personal or corporate capacity.

Per; _____

Name:

Title:

Schedule "B"**Encumbrances**

Registration No.	Date	Description
111 310 587	11/10/2018	MORTGAGE MORTGAGEE – ROYAL BANK OF CANADA. 180 WELLINGTON ST W, 3 FLOOR TORONTO ONTARIO M5J1J1 ORIGINAL PRINCIPAL AMOUNT: \$2,137,500
111 310 588	11/10/2018	CAVEAT RE : ASSIGNMENT OF RENTS AND LEASES CAVEATOR – ROYAL BANK OF CANADA. ATTN: MANAGER, COMMERCIAL FINANCIAL SERVICES 411 – 58 AVE SE CALGARY ALBERTA T2H0P5 AGENT – HARPREET NAHAL

Schedule "C"**Permitted Encumbrances**

<u>Instrument No.</u>	<u>Date</u>	<u>Description</u>
6895LJ	05/10/1972	RESTRICTIVE COVENANT

AND

1. ANY REGISTRATIONS BY OR ON BEHALF OF THE PURCHASER;
2. THOSE IMPLIED BY LAW.