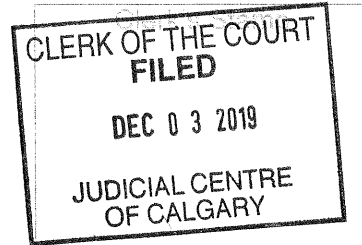


COURT FILE NUMBER 1901-10871
COURT COURT OF QUEEN'S BENCH OF ALBERTA
JUDICIAL CENTRE CALGARY
APPLICANT THE BANK OF MONTREAL
RESPONDENT UWAMS SUPPORTIVE LIVING LTD., MAXWELL UWAGA and CAROL UWAGA
DOCUMENT **NOTICE OF APPLICATION**
ADDRESS FOR SERVICE AND CONTACT INFORMATION OF PARTY FILING THIS DOCUMENT
Cassels Brock & Blackwell LLP
Suite 3810, Bankers Hall West
888 3rd Street SW
Calgary, Alberta, T2P 5C5
Telephone 403-351-2921
Facsimile 403-648-1151



File No. 33336-389

Attention: Jeffrey Oliver

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 10, 2019

Time: 10:00 AM

Where: Edmonton Law Courts

Before Whom: The Honourable Mr. Justice D.R. Mah

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 attached hereto as Schedule "A" (the "**Second Continuation Order**");

- (a) if necessary, abridging the time for service of this Application and supporting materials, to the time actually given and deeming service of notice of this Application and supporting materials good and sufficient;
- (b) declaring that the appointment of Deloitte Restructuring Inc. ("**Deloitte**") as interim receiver (the "**Interim Receiver**"), without security, of all of the assets, undertakings and properties of every nature and kind whatsoever, and wherever situate, including all proceeds thereof (the "**Property**") of UWAMS Supportive Living Ltd. (the "**Debtor**") pursuant to the Interim Receivership Order dated October 11, 2019 (the "**Appointment Order**") shall continue in full force and effect until the earliest of:
 - (i) the taking of possession of the Property by a receiver, within the meaning of subsection 243(2) of the *Bankruptcy and Insolvency Act*, RSC 1985 c B-3 (the "**BIA**");
 - (ii) the taking of possession of the Property by a trustee in bankruptcy;
 - (iii) 11:59 p.m. on January 24, 2020; or
 - (iv) further Order of the Court of Queen's Bench of Alberta (the "**Court**") extending such appointment;
- (c) awarding costs of this Application on a solicitor and client basis; and
- (d) granting such further and other relief, advice and directions as counsel may advise and this Honourable Court may deem just and appropriate.

Grounds for making this application:

The Facility

2. On August 6, 2015, the Bank of Montreal ("**BMO**") provided a credit facility (the "**Facility**") in the total authorized amount of \$620,000 to the Debtor to assist with the construction and expansion of a property located in Calgary, Alberta and legally described as Plan 577 JK, Block 45, Lot 24, excepting thereout all mines and minerals (the "**Lands**"), which Lands were used by the Debtor to operate a supportive care facility (the "**Care Facility**").
3. On July 31, 2017, BMO increased the amount of the Facility to a total authorized amount of \$907,500, which amount included any previous draws already made.
4. The Facility is governed by a commitment letter dated August 5, 2015 and a commitment letter dated July 31, 2017 (collectively, the "**Commitment Letters**").
5. Pursuant to the Commitment Letters, BMO made certain advances to the Debtor. As of December 2, 2019, the total amount advanced by BMO to the Debtor that remains due, owing and unpaid is \$1,051,689.82, inclusive of interest and some legal fees up to December 2, 2019 but exclusive of fees, other chargeable costs and interest continuing to accrue (the "**Indebtedness**"), further particulars of which are as follows:

Principal Balance	\$961,486.76
Accrued Interest to December 2, 2019* (per diem \$255.93)	\$90,203.06
<hr/>	
Total Balance as at December 2, 2019	\$1,051,689.82

*Interest rate is calculated at BMO's prime lending rate as established from time to time plus 5.00% per annum.

- In accordance with the terms of the Commitment Letters, the Facility is payable in whole or in part on demand by BMO.

The Security

- The Facility was secured by, among other things, general security agreements signed by the Debtor, a joint and several guarantee in the limited amount of \$1,200,000 granted by Carol and Maxwell Uwaga (the "**Guarantors**"), and a collateral mortgage in the amount of \$1,200,000 registered against the Lands (collectively, the "**Security Documents**").
- BMO's security interest created under the Security Documents was perfected through registrations with the Alberta Personal Property Registry and Alberta Land Titles, where appropriate. Further background regarding BMO's credit facilities and security is provided in the Application for the appointment of the Interim Receiver, filed on October 3, 2019.

Forbearance Agreements, Demand Letters and Default Notices

First Forbearance Agreement

- On October 1, 2017, the Debtor, the Guarantors and BMO entered into a Restated Commitment Letter and Forbearance Agreement (the "**First Forbearance Agreement**") pursuant to which BMO agreed to forbear from enforcing its rights and remedies under the Commitment Letter and Security until the close of business on April 30, 2018 on the terms and conditions set out therein.

Demand Letters and Notice of Intention to Enforce Security

- On May 11, 2018, following the expiry of the First Forbearance Agreement, BMO sent a letter to the Debtor demanding repayment in full of the Indebtedness together with a notice of intention to enforce security.
- On May 11, 2018, following the expiry of the First Forbearance Agreement, BMO sent a letter to the Guarantors demanding repayment of the Indebtedness pursuant to the Guarantee.

Second Forbearance

- On August 24, 2018, the Debtor, the Guarantors and BMO entered into a second Restated Credit and Forbearance Agreement (as amended, the "**Second Forbearance**")

Agreement") pursuant to which BMO agreed to forbear from enforcing its rights and remedies under the Commitment Letter and Security until April 30, 2019 on the terms and conditions set out therein.

13. The Debtor and the Guarantors defaulted under the terms of the Second Forbearance Agreement by (among other things) failing to effect the settlement of certain liens registered against the Lands on or before October 31, 2018.
14. As a result of the above noted default, on November 8, 2018, the Debtor, the Guarantors and BMO entered into an amending agreement to the Second Forbearance Agreement (the "**Amendment to the Second Forbearance Agreement**") pursuant to which BMO agreed to forbear from enforcing its rights and remedies under the Commitment Letter and Security until April 30, 2019 on the amended terms and conditions set out therein, which included providing the Debtor until November 21, 2018 to effect the settlement of the liens registered against the Lands.
15. On or about January 24, 2019, BMO advanced additional funds in the amount of \$60,600 in order to effect the discharge of the liens from title to the Lands.
16. The forbearance period under the Second Forbearance Agreement expired on April 30, 2019.

Additional Default Notices

17. On January 31, 2019, counsel to BMO sent a letter to the Debtor and the Guarantors advising that additional defaults had occurred under the terms of the Second Forbearance Agreement.
18. On July 3, 2019, counsel to BMO sent a letter to the Debtor and Guarantors advising that additional events of default had occurred and that BMO required a proposal from the Debtor on or before July 31, 2019 setting out a proposal for the repayment of the Facility on or before July 31, 2019.
19. On August 1, 2019, counsel to BMO sent a letter to counsel to the Debtor and the Guarantors advising that no proposal has been received by BMO as requested in the July 3, 2019 correspondence and that BMO had scheduled time on the Commercial List on August 16, 2019 at which time BMO intended to bring an application appoint a receiver over the assets, undertakings and properties of the Debtor.

Failure to Repay Indebtedness

20. The 10-day notice period under s. 244 of the *Bankruptcy and Insolvency Act* (Canada) expired on or about May 21, 2018.
21. Since the expiry of the Second Forbearance Agreement, BMO has received the following payments towards the Indebtedness.
 - (a) \$30,000 on July 30, 2019; and
 - (b) \$4,000 on October 30, 2019.

22. As at December 2, 2019, the Debtor has failed or neglected to provide BMO with a proposal for the repayment of the Facility. However, the Debtor has advising that proposal for the repayment of the Facility will be provided on or before January 13, 2020.
23. The Debtor and the Guarantors have failed to comply with the demand letters and, as of December 2, 2019, the total amount advanced by BMO to the Debtor that remains due, owing and unpaid is \$1,051,689.82, inclusive of interest and some legal fees up to December 2, 2019 but exclusive of fees, costs, expenses and interest continuing to accrue.

Other Indebtedness

24. In addition to the amounts due and owing under the Facility, there is a current unpaid tax account balance in the amount of \$8,047.02 relating to the Lands and the City of Calgary has registered a tax notification against title to the Lands (the "**Tax Notification**").

Appointment of Interim Receiver

25. By application filed August 6, 2019, BMO sought the appointment of Deloitte as receiver over the Property of the Debtor. As described in the Second Affidavit of Trevor Bauer sworn August 14, 2019 and filed with the Court (the "**Second Bauer Affidavit**"), the application for the appointment of a receiver was modified to an application for the appointment of an interim receiver for the following reasons (among others):
 - (a) BMO and Deloitte want to ensure that quality care to the residents of the Care Facility is maintained upon the potential appointment of a receiver and the resulting transition of management;
 - (b) Deloitte required additional information with respect to the Care Facility, the Debtor and its operations in order to satisfy itself that it will be able to deliver consistent quality care to residents of the Care Facility;
 - (c) an appointment as Interim Receiver will allow existing management of the Debtor to continue to operate the Care Facility (under the supervision of the Interim Receiver), which should minimize disruption to residents;
 - (d) the Interim Receiver will initially be in their role for 30 days, which will allow it time to review and understand the business of the Debtor and the Care Facility; and
 - (e) the initial 30-day period will allow the Debtor additional time in which to potentially find refinancing alternatives or other forms of solutions that may be acceptable to BMO.
26. On October 11, 2019, on application by BMO as a secured creditor of the Debtor, this Honourable Court granted the Appointment Order.
27. Among other things, the Appointment Order:

- (a) appointed the Interim Receiver over the Property of the Debtor and declared a stay of proceedings against the Debtor and the Property;
 - (b) provided the Interim Receiver with certain powers to monitor the Debtor's business and the Property, but it did not authorize the Interim Receiver to operate, manage, or carry on the Debtor's business or employ any of the Debtor's employees;
 - (c) required that the Debtor and all of its current and former directors, officers, employees, agents, accountants, legal counsel and shareholders (among others) assist the Interim Receiver in its efforts to understand any and all applicable requirements relating to the licensing and transfer or addition of residents into or out of the Debtor's care (the "**Transfer Requirements**"); and
 - (d) limits the Interim Receiver's appointment until the earliest of (i) the appointment of a receiver, (ii) the appointment of a trustee in bankruptcy, and (iii) 11:59 p.m. (MST) on November 10, 2019.
28. The inclusion of the section in the Appointment Order requiring the Debtor and its officers, directors and employees (among others) to assist the Interim Receiver in its efforts to understand the Transfer Requirements was an essential component of the Appointment Order as Deloitte has indicated that it is not comfortable accepting an appointment as receiver over the Property without a clear understanding of the Transfer Requirements so that Deloitte can ensure that quality care to the residents of the Care Facility is maintained upon the potential appointment of a receiver and the resulting transition of management.
29. Between the date of the Appointment Order and November 10, 2019, the Debtor and/or its officers and directors had only provided the Interim Receiver with a limited amount of information relating to the Transfer Requirements.

First Continuation of Interim Receiver

30. On November 8, 2019, on application by BMO as a secured creditor of the Debtor, this Honourable Court granted an Order (the "**First Continuation Order**"). The First Continuation Order, among other things:
- (a) continued the Interim Receiver's appointment until the earliest of (i) the appointment of a receiver, (ii) the appointment of a trustee in bankruptcy, and (iii) 11:59 p.m. (MST) on December 10, 2019;
 - (b) ordered that on or before November 29, 2019, Maxwell Uwaga provide the Interim Receiver with a detailed plan for the transfer of all of the residents, parties, or other persons (collectively, the "**Residents**") under the care of the Debtor to appropriate alternate care facilities (the "**Plan**"); and
 - (c) authorized and empowered the Interim Receiver to engage in discussions with, and obtain information from, Alberta Health Services with respect to the process for having Residents transferred from the care of the Debtor to alternate care facilities.

31. Maxwell Uwaga provided the Interim Receiver with the Plan on November 29, 2019.

Continuing the Interim Receivership

32. The Debtor has advised that they are working with West Grove Capital in order to try to obtain alternate financing to payout and replace BMO. As part of these efforts, the Debtor has requested that BMO refrain from applying to appoint a receiver until the week of January 20, 2020.

33. The conditions that necessitated the appointment of the Interim Receiver in the first instance are continuing. These conditions include, without limitation:

- (a) the protection of the Debtor's estate and the protection of the interests of BMO, particularly in light of the Tax Notification, the Debtor's failure to make payments to BMO, the fact that the revenue generated from the Debtor's business is insufficient to meet arrears owing and/or ongoing payment obligations to BMO, and the Debtor's use of funds generated from the business being operated on the Lands to pay a mortgage held by Calvert Homes Mortgage, which mortgage is not registered against the Lands;
- (b) the fact that the current patient rental rates being charge by the Debtor are not sufficient to payout the Debtor's creditors in a timely manner and that there is no certainty that the subsidy being sought by the Debtor will be provided;
- (c) the fact that Debtor has failed or neglected to provide BMO with a proposal for the repayment of the Facility, notwithstanding ample opportunity to do so; and
- (d) the need to ensure the continuation of quality care for the residents of the supportive care facility, including the need to understand the Transfer Requirements so that residents can be transferred to alternate care facilities, if required.

34. BMO remains gravely concerned about the erosion of its security position. In the event that the Interim Receiver's appointment lapses on December 10, 2019, as is currently scheduled under the First Continuation Order, BMO will no longer have the benefit of a Court-appointed officer to monitor the Property and to obtain information relating to the Transfer Requirements and/or the refinancing of the Facility.

35. In the circumstances, BMO now seeks the Second Continuation Order to allow the terms of the Appointment Order (as continued by the First Continuation Order) to continue for a further period of time.

Second Continuation Order Sought

36. The proposed Second Continuation Order extends the terms of the Appointment Order (as continued by the First Continuation Order) until the earlier of:

- (a) the taking of possession of the Property by a receiver, within the meaning of subsection 243(2) of the BIA;

- (b) the taking of possession of the Property by a trustee in bankruptcy;
 - (c) 11:59 p.m. on January 24, 2019; or
 - (d) further Order of the Court extending such appointment;
37. The proposed Second Continuation Order does not otherwise change any of the terms of the Appointment Order or the First Continuation Order. Should the Second Continuation Order be granted, Debtor will remain in control of its operations during the proposed continuation period. The Interim Receiver will continue to monitor the Property and fulfil its other mandated responsibilities.
38. The proposed Second Continuation Order balances the necessity of safeguarding BMO's security with the Debtor's ability to provide quality care for the residents of the supervised care facility.
39. The Debtor has consent to the Second Continuation Order.

Material or evidence to be relied on:

- 40. Affidavit of Trevor Bauer, sworn August 12, 2019, filed;
- 41. The Second Bauer Affidavit, sworn August 14, 2019, filed;
- 42. Third Affidavit of Trevor Bauer, sworn October 3, 2019, filed;
- 43. First Report of the Interim Receiver dated October 30, 2019;
- 44. Second Report of the Interim Receiver dated December 2, 2019;
- 45. The Consent to Act as Interim Receiver executed by Deloitte Restructuring Inc., and
- 46. Such further and other materials as counsel may advise and this Honourable Court may permit.

Applicable rules:

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

Applicable Acts and regulations:

- 49. *Bankruptcy and Insolvency Act*, RSC 1985, c B-3, as amended, and in particular section 47 thereof;
- 50. *Judicature Act*, RSA 2000, c J-2, as amended, and in particular section 13(2) thereof; and
- 51. 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:

- 52. None.

How the application is proposed to be heard or considered:

- 53. In person.

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"

Clerk's Stamp:

COURT FILE NUMBER 1901-10871

COURT COURT OF QUEEN'S BENCH OF ALBERTA

JUDICIAL CENTRE OF CALGARY

APPLICANT: THE BANK OF MONTREAL

RESPONDENTS: UWAMS SUPPORTIVE LIVING LTD., MAXWELL UWAGA
and CAROL UWAGA

DOCUMENT **CONTINUATION ORDER**

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

Attention: Jeffrey Oliver

Telephone 403-351-2921
Facsimile 403-648-1151
Email: JOliver@cassels.com

File No. 33336-389

DATE ON WHICH ORDER WAS PRONOUNCED: Tuesday, December 10, 2019

NAME OF JUDGE WHO MADE THIS ORDER: The Honourable Mr. Justice D.R. Mah

LOCATION OF HEARING: Edmonton Law Courts

UPON the application of The Bank of Montreal ("**BMO**") in respect of UWAMS Supportive Living Ltd. (the "**Debtor**"); **AND UPON** having read the Application, the Affidavit of Trevor Bauer, sworn August 12, 2019, filed, the Affidavit of Trevor Bauer, sworn August 14, 2019, filed, the Affidavit of Trevor Bauer, sworn October 3, 2019, filed, the First Report of the Interim Receiver dated October 30, 2019, the Second Report of the Interim Receiver dated December 2, 2019, the Affidavit of Service of Richard Comstock, sworn November 4, 2019, filed, the Affidavit of Service of Richard Comstock sworn December ●, 2019, filed, the Affidavit of Maxwell Uwaga, sworn November 7, 2019, filed, the Interim Receivership Order pronounced by the Honourable Justice R.A. Neufeld on October 11, 2019 (the "**Appointment Order**") and the Continuation Order pronounced by the Honourable Justice C.M. Jones on November 8, 2019 (the "**First Continuation Order**"); **AND UPON** hearing counsel for BMO, counsel for Deloitte Restructuring Inc., counsel for the Debtor, and any other counsel or other interested parties present; **IT IS HEREBY ORDERED AND DECLARED THAT:**

DEFINED TERMS

1. Terms not otherwise defined herein shall have the meaning ascribed to them in the Appointment Order.

SERVICE

2. The time for service of the notice of application for this order (the "**Order**") is hereby abridged and deemed good and sufficient and this application is properly returnable today.

CONTINUATION OF INTERIM RECEIVERSHIP

3. The appointment of Deloitte Restructuring Inc. as interim receiver (the "**Interim Receiver**"), without security, of all of the assets, undertakings and properties of every nature and kind whatsoever, and wherever situate, including all proceeds thereof (the "**Property**") of UWAMS Supportive Living Ltd. (the "**Debtor**") pursuant to the Appointment Order and the First Continuation Order shall continue in full force and effect until the earliest of:
 - (a) the taking of possession of the Property by a receiver, within the meaning of subsection 243(2) of the *Bankruptcy and Insolvency Act*, RSC 1985 c B-3;
 - (b) the taking of possession of the Property by a trustee in bankruptcy;
 - (c) 11:59 p.m. on January 24, 2020; or
 - (d) further Order of the Court of Queen's Bench of Alberta extending such appointment.

4. Any interested party may apply to this Court for advice and direction in relation to this Order on not less than seven (7) days' notice to any other party likely to be affected by the application or upon such other notice, if any, as this Court may order.
5. BMO shall have its costs of this application, up to and including entry and service of this Order, provided for by the terms of BMO's security or, if not so provided by BMO's security, then on a substantial indemnity basis, including legal costs on a solicitor-client full indemnity basis, to be paid by the Interim Receiver from the Debtor's estate with such priority and at such time as this Court may determine.
6. 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 or otherwise served with notice of 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; and
 - (b) posting a copy of this Order on the Interim Receiver's website in respect of these proceedingsand service on any other person is hereby dispensed with.
7. 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