

COURT FILE NUMBER 1001-03215

COURT COURT OF QUEEN’S BENCH OF ALBERTA

JUDICIAL CENTRE CALGARY

PLAINTIFF FIRST CALGARY SAVINGS & CREDIT UNION LTD.

DEFENDANTS PERERA SHAWNEE LTD. AND PERERA
DEVELOPMENT CORPORATION, DON L. PERERA
AND SHIRANIE M. PERERA

DOCUMENT **APPLICATION**
**(Approval of Accounts and Activities, Distribution of
Remaining Funds, and Discharge of Receiver)**

ADDRESS FOR SERVICE AND CONTACT INFORMATION OF PARTY FILING THIS DOCUMENT Osler, Hoskin & Harcourt LLP
Suite 2500, TransCanada Tower
450 – 1st Street SW
Calgary, Alberta T2P 5H1

Solicitors: Emily Paplawski
Phone: 403.260.7071
Fax: 403.260.7024
Email: EPaplawski@osler.com
Matter: 1121689

Clerk's Stamp

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 Justice.

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

Date: October 14, 2020

Time: 10:00 a.m.

Where: Calgary Courts Centre, 601 – 5th Street SW, Calgary, AB (by Webex)

Before Whom: The Honourable Madam Justice B. Romaine

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

Orders Sought:

1. Deloitte Restructuring Inc. (“**Deloitte**”), formerly Deloitte & Touche Inc., (the “**Receiver**”), in its capacity as receiver and manager of Perera Shawnee Ltd. (“**PSL**”) and Perera Development Corporation (“**PDC**”) (together with PSL, “**Perera**”) is seeking an Order (the “**Discharge Order**”) substantially in the form attached hereto as **Schedule “A”**:
 - a. abridging the time for service of this Application, if necessary, and declaring that this Application is properly returnable today, and that further service of this Application other than to those listed on the Service List established in these proceedings is hereby dispensed with;
 - b. approving the Receiver’s Statement of Receipts and Disbursements for the period from March 3, 2020 to September 29, 2020, as set out in the Seventy-Fifth Report Report of the Receiver, dated October 5, 2020 (the “**Seventy-Fifth Report**”);
 - c. approving the disbursement of \$8,280 for the Receiver’s fees related to the period from November 1 to 30, 2018 (the “**Final Receiver’s Fees**”);
 - d. approving the actions, conduct and activities of the Receiver as described in the Seventy-Fifth Report filed by the Receiver in these proceedings;
 - e. declaring that the Receiver has duly and properly discharged its duties, responsibilities, and obligations as Receiver;
 - f. upon the filing of the Receiver’s Certificate attached at Schedule “A” to the Discharge Order (the “**Receiver’s Certificate**”), discharging and releasing the Receiver from any and all further obligations as Receiver and any and all liability in respect of the discharge of the Receiver’s duties as court-appointed receiver of Perera, save and except for any liability arising out of fraud or gross negligence or wilful misconduct on the part of the Receiver;
 - g. authorizing and directing McLeod Law LLP to release to the Receiver for the benefit of Perera’s estate the deposit paid by Jane O’Neil and Luther Cutts (the “**Purchasers**”) pursuant to an Offer to Purchase and Agreement of Purchase and Sale, dated June 20, 2007 (the “**Purchase Agreement**”), which at the date of this

Receivership, totalled \$23,590, plus all accrued interest (the “**Remaining Deposit**”);

- h. striking the Amended Statement of Claim (the “**Amended Statement of Claim**”) filed against the Receiver by the Purchasers on November 28, 2017 (the “**Remaining Deposit Action**”) in Alberta Court of Queen’s Bench Action No. 1601-16029;
- i. after payment of the Final Williams Invoice and reimbursement of Deloitte for the Williams Payment and the Osler Payment (as each of those terms is defined below), directing and authorizing the Receiver to distribute all remaining funds to Connect First Credit Union (“**Connect**”);
- j. authorizing and directing the Receiver to destroy or dispose of corporate records in the possession and control of the Receiver relating to Perera; and
- k. granting such further and other relief as counsel may request and this Honourable Court may deem just.

Grounds for making this application:

Approval and Discharge of Receiver

- 2. On March 3, 2010, the Receiver was appointed Receiver, without security, of all of the current and future assets, undertakings and properties of every nature and kind whatsoever and wherever situate of Perera, including all proceeds thereof (the “**Receivership Order**”).
- 3. The realization of the Property (as that term is defined in the Receivership Order) is complete. Apart from attending to minor administrative matters, including final payment of an outstanding invoice owing to Williams Engineering Ltd. (“**Williams**”) in the amount of \$696 (the “**Final Williams Invoice**”), reimbursing Deloitte for the payment made by the Receiver to Williams of an outstanding invoice in the amount of \$11.826 from funds sourced from Deloitte (the “**Williams Payment**”), and for the payment to be made by the Receiver to Receiver’s counsel, Osler Hoskin & Harcourt LLP (“**Osler**”) of an outstanding invoice in the amount of \$1,057.04 from funds sourced from Deloitte (the “**Osler**”).

Payment”), and other minor administrative matters, the Receiver has performed its mandate as Receiver under the Receivership Order.

4. It is appropriate that the Receiver be discharged as Receiver of Perera upon filing of the Receiver’s Certificate.

The Remaining Deposit

5. As at the date of the Receivership Order, McLeod Law LLP held \$23,590 of the Remaining Deposit previously paid by the Purchasers pursuant to the terms of the Purchase Agreement. The Receiver has been attempting to reach a settlement with the Purchasers in respect of the Remaining Deposit since February 2013. Over the past 7.5 years, the Receiver has made numerous settlement proposals to the Purchasers, all of which have been rejected or ignored.
6. The Receiver’s position is that the Purchasers were required to close the transactions under the Purchase Agreement on the closing date. The Purchase Agreement provided that if the Purchasers canceled or in any way attempted to terminate the Purchase Agreement other than in accordance with section 16(b) or (c) thereof, the Deposit would be absolutely forfeited. Neither of the conditions provided in sections 16(b) or (c) existed at the time the Purchasers failed or refused to close the Purchase Agreement.
7. The Purchasers knew by December 2010 that that the Receiver was of the position that the Purchasers had breached the Purchase Agreement and that a return of the Deposit was not forthcoming. If the Purchasers were of the view that PSL had breached the Purchase Agreement entitling them to a return of the Deposit, they could have commenced an Action for breach of contract. They did not do so until sometime in 2016 (discussed further below) – far outside the applicable limitation period.
8. The Receiver is accordingly requesting that the Court approve and authorize McLeod Law LLP to release 100% of the Remaining Deposit to the Receiver.

The Remaining Deposit Action

9. On November 28, 2017, without leave of the Court or the written consent of the Receiver, the Purchasers filed the Amended Statement of Claim against the Receiver as part of the

Remaining Deposit Action. The Remaining Deposit Action alleges misrepresentation, and breach of fiduciary duty, among other things, against the Receiver. The Purchasers seek damages against the Receiver for the full Deposit, including the portion spent by PSL pre-receivership.

10. The Purchasers have no cause of action against the Receiver for the reasons discussed in the Seventy-Fifth Report, among other things. In addition, the Purchasers have not suffered any damages as the entirety of the Remaining Deposit which was held by McLeod Law LLP at the time of the Receivership Order remains held by McLeod Law LLP.
11. Notwithstanding that almost three years have passed since the filing of the Statement of Claim against the Receiver, and notwithstanding the serious allegations made against the Receiver, the Purchasers have not taken any steps to seek leave of the Court to sue the Receiver or bring an application for a lifting of the stay of proceedings in the Receivership Order. The Receiver is accordingly seeking that the Remaining Deposit Action be dismissed against it.
12. Such further and other grounds as counsel may recommend and this Honourable Court may permit.

Affidavit or other Evidence and Materials to be used in Support of this Application:

13. The Seventy-Fifth Report of the Receiver, dated October 5, 2020;
14. Evidence and Reports of the Receiver previously filed in this Action; and
15. Such further and other evidence or materials as counsel may advise and this Honourable Court may permit.

Applicable Rules:

16. The *Alberta Rules of Court*, Alta Reg. 124/2010.

Applicable Acts and Regulations:

17. The *Bankruptcy and Insolvency Act*, RSC 1985, chap. B-3, as amended.

18. The *Judicature Act*, RSA 2000, c J-2, as amended.

Any Irregularity Complained of or Objection Relied On:

19. None.

How the Application is Proposed to be Heard or Considered:

20. By Webex before the Honourable Madam Justice B. Romaine on October 14, 2020 at 10:00 a.m.

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 at the time shown at the beginning of the 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 NUMBER 1001-03215

COURT COURT OF QUEEN'S BENCH OF ALBERTA

JUDICIAL CENTRE CALGARY

PLAINTIFF FIRST CALGARY SAVINGS & CREDIT UNION LTD.

DEFENDANTS PERERA SHAWNEE LTD. AND PERERA
DEVELOPMENT CORPORATION, DON L. PERERA
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DOCUMENT **ORDER**
**(Approval of Accounts and Activities, Distribution of
Remaining Funds, and Discharge of Receiver)**

ADDRESS FOR
SERVICE AND
CONTACT Osler, Hoskin & Harcourt LLP
Suite 2500, TransCanada Tower
450 – 1st Street SW
INFORMATION OF
PARTY FILING THIS
DOCUMENT Calgary, Alberta T2P 5H1

Solicitors: Emily Paplawski
Phone: 403.260.7071
Fax: 403.260.7024
Email: EPaplawski@Osler.com
Matter: 1121689

Clerk's Stamp

DATE ON WHICH ORDER WAS PRONOUNCED: October 14, 2020

LOCATION WHERE ORDER WAS PRONOUNCED: Calgary, Alberta

NAME OF JUSTICE WHO MADE THIS ORDER: The Honourable Madam Justice B.
Romaine

UPON THE APPLICATION of Deloitte Restructuring Inc. ("**Deloitte**"), formerly Deloitte & Touche Inc., (the "**Receiver**") of Perera Shawnee Ltd. ("**PSL**") and Perera Development Corporation (together with PSL, "**Perera**"); **AND UPON** reviewing the Seventy-Fifth Report of the Receiver, dated October 5, 2020 (the "**Seventy-Fifth Report**") and other Reports previously filed by the Receiver in this Action; **AND UPON** hearing from counsel for the Receiver and counsel for any other interested party appearing at the hearing of the Application; **AND UPON** reviewing the Affidavit of Service of Elena Pratt, sworn October ____, 2020;

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, 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.

APPROVAL OF RECEIPTS, DISBURSEMENTS AND ACCOUNTS

2. The Receiver's final account of \$8,280 for fees related to the period from November 1 to 30, 2018 (the "**Final Receiver's Fees**") is hereby approved.
3. The Receiver's Statement of Receipts and Disbursements, as set out in the Seventy-Fifth Report, is hereby approved.
4. After: (a) payment of an outstanding invoice owing to Williams Engineering Ltd. ("**Williams**") in the amount of \$696, (b) reimbursement of Deloitte for the payment made by the Receiver to Williams of an outstanding invoice in the amount of \$11,826 from funds sourced from Deloitte, and (c) reimbursement of Deloitte for the payment to be made by the Receiver to Receiver's counsel, Osler Hoskin & Harcourt LLP, of an outstanding invoice in the amount of \$1,057.04 from funds sourced from Deloitte, the Receiver is authorized and directed to distribute all remaining funds to Connect First Credit Union.

DISCHARGE OF THE RECEIVER

5. As of the date of the Seventy-Fifth Report and based on the evidence before this Honourable Court:
 - a. The Receiver has acted honestly and in good faith, and has dealt with the Property (as that term is defined in the Receivership Order granted in these proceedings on March 3, 2010 (the "**Receivership Order**")) in a commercially reasonable manner;
 - b. The actions and conduct of the Receiver are approved and the Receiver has satisfied all of its duties and obligations as receiver of the Property;

- c. The Receiver shall not be liable for any act or omission pertaining to the discharge of the Receiver's duties as court-appointed receiver of the Property, save and except for any liability arising out of fraud or gross negligence or wilful misconduct on the part of the Receiver; and
 - d. Any and all claims against the Receiver arising from, relating to or in connection with the performance of the Receiver's duties and obligations as court-appointed receiver of the Property, save and except for claims based on fraud or gross negligence or wilful misconduct on the part of the Receiver, shall be forever barred and extinguished.
6. No action or proceeding arising from, relating to, or in connection with the performance of the Receiver's duties and obligations in respect of the Property may be commenced or continued without the prior leave of this Honourable Court, on notice to the Receiver and on such terms as this Honourable Court may direct.
7. The Receiver is hereby authorized and permitted to destroy or dispose of corporate records in the possession and control of the Receiver relating to Perera.
8. Upon the filing of the Receiver's Certificate attached hereto as Schedule "A" confirming, among other things, that the Receiver has completed administration of the receivership proceedings as described in the Seventy-Fifth Report, the Receiver shall be absolutely and unconditionally discharged as Receiver of the Property and shall have no further duty, liability or obligation with respect to the Property, provided however, that notwithstanding its discharge, the Receiver shall:
 - a. remain Receiver for the performance of such incidental duties as may be required to complete the administration of the receivership; and
 - b. shall continue to have the benefit of the provisions of this Order and all Orders granted in these proceedings, including all approvals, protections and stays of proceedings in favor of the Receiver in its capacity as Receiver.

REMAINING DEPOSIT

9. McLeod Law LLP is hereby authorized and directed to release to the Receiver for the benefit of Perera's estate the deposit paid by Jane O'Neil and Luther Cutts (the "Purchasers") pursuant to an Offer to Purchase and Agreement of Purchase and Sale, dated June 20, 2007, which at the date of this Receivership, totaled \$23,590, plus all accrued interest.

REMAINING DEPOSIT ACTION

10. The Amended Statement of Claim filed against the Receiver by the Purchasers on November 28, 2017 in Alberta Court of Queen's Bench Action No. 1601-16029 shall and is hereby struck as against the Receiver.

MISCELLANEOUS

11. The Receiver has leave to reapply to this Honourable Court for such further advice and directions as may be necessary.
12. This Order must be served only upon those interested parties attending or represented 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.
13. Service of this Order on any party not attending this application is hereby dispensed with.

J.C.Q.B.A.

Schedule "A"

COURT FILE NUMBER 1001-03215

COURT COURT OF QUEEN'S BENCH OF ALBERTA

JUDICIAL CENTRE CALGARY

PLAINTIFF FIRST CALGARY SAVINGS & CREDIT UNION LTD.

DEFENDANTS PERERA SHAWNEE LTD. AND PERERA
DEVELOPMENT CORPORATION, DON L. PERERA
AND SHIRANIE M. PERERA

DOCUMENT **RECEIVER'S CERTIFICATE**

ADDRESS FOR
SERVICE AND
CONTACT Osler, Hoskin & Harcourt LLP
Suite 2500, TransCanada Tower
450 – 1st Street SW
INFORMATION OF
PARTY FILING THIS
DOCUMENT Calgary, Alberta T2P 5H1

Solicitors: Emily Paplawski
Phone: 403.260.7071
Fax: 403.260.7024
Email: EPaplawski@osler.com
Matter: 1121689

Clerk's Stamp

This Receiver's Certificate is the certificate referred to in paragraph 8 of the Order (Approval of Accounts and Activities, Distribution of Remaining Funds, and Discharge of Receiver) of the Honourable Madam Justice Romaine, granted October 14, 2020 (the "Order").

Capitalized terms not otherwise defined herein shall have the meanings given to those terms in the Order.

Deloitte Restructuring Inc. ("Deloitte"), formerly Deloitte & Touche Inc., (the "Receiver") of the Property (as that term is defined in the Receivership Order) and not in its personal or corporate capacity, hereby certifies that:

1. The administration of the receivership proceedings as described in the Seventy-Fifth Report has been completed.

Dated this ___ day of _____, 2020.

**Deloitte Restructuring Inc., in its
capacity as Receiver of the undertakings,
property and assets of Perera Shawnee
Ltd. and Perera Development
Corporation**

NAME:

TITLE: