



NO. FOS-S-S-24867
FORT ST. JOHN REGISTRY

IN THE SUPREME COURT OF BRITISH COLUMBIA

BETWEEN:

THE BANK OF NOVA SCOTIA

PETITIONER

AND:

GRABHERS LAST STAND BISON RANCH LTD., DWAYNE GRABHER AND CHELSEA GRABHER ALSO KNOWN AS CHELSEA FOILLARD, JODY GRABHER, DAVID CRAMER, 1050311 BC LTD , NORTHERN TRUSS LTD., PEACE RIVER COUNTRY ELECTRIC LTD. and PEACE RIVER BUILDING PRODUCTS LTD.

RESPONDENTS

NOTICE OF APPLICATION

NAME OF APPLICANT: Deloitte Restructuring Inc. (the “**Receiver**”), in its capacity as receiver and manager of the assets and undertakings of Grabhers Last Stand Bison Ranch Ltd., and the assets of Dwayne Grabher and Chelsea Grabher (collectively, the “**Debtors**”) appointed by the Order of the Honourable Mr. Justice Branch, made on February 3, 2020 in the Supreme Court of British Columbia.

To: The Petitioner

AND TO: The Service List

TAKE NOTICE that an application will be made by the applicant to the presiding master in Chambers via teleconference at the courthouse at **J.O. Wilson Square, 250 George Street, Prince George , B.C.** on **November 23, 2020** at **9:45 a.m. VIA TELEPHONE CONFERENCE** for the order(s) set out in Part 1 below.

PART 1: ORDER(S) SOUGHT

1. And Order:

(a) approving the activities and accounts of the Receiver and its counsel, and

(b) Approving a distribution,

substantially in the form attached as Schedule “A”.

PART 2: FACTUAL BASIS

Background

2. The Respondents, Grabbers Last Stand Bison Ranch Ltd. (“**GLS**”) Dwayne Gordon Grabher and Chelsea Dawn Fouillard, were the owners of lands that are used by GLS in the operation of a bison ranch (the “**Ranch Property**”).
3. Dwayne Grabher (“**Mr. Grabher**”) acted as the sole director of GLS and managed the Ranch Property. GLS employed approximately eight people who were terminated on or around November 30, 2019. From that date forward, Mr. Grabher was solely responsible for the operations of the Ranch Property.
4. In early 2019, GLS began to experience financial difficulties due to, amongst other things, a decline in bison prices. In June 2019, GLS failed to remit payment on its credit facilities and was in default of its loan agreements with the Petitioner, the Bank of Nova Scotia (“**BNS**”).
5. In September 2019, Mr. Grabher attempted, unsuccessfully, to refinance GLS’ credit facilities. Throughout October and November 2019, Mr. Grabher failed to provide information to BNS related to the inventory of bison, assets held by GLS and other related financial information. In addition, based upon investigations conducted by the Receiver, there is reason to investigate and pursue various transactions entered into by Mr. Grabher during this period of time as they are potentially fraudulent transactions relating to the bison and the assets owned by GLS.
6. On November 26, 2019, BNS demanded payment of the obligations under its loan agreements with GLS. On December 31, 2019, Mr. Grabher, on behalf of GLS applied for protection pursuant to subsection 5(1)(b) of the *Farm Debt Mediation Act* (“**FDMA**”).
7. On January 3, 2020, BNS wrote to the administrator of the GLS FDMA application and requested the stay of proceeding be terminated immediately due to the conduct of Mr. Grabher.
8. On January 22, 2020, the stay of proceedings was terminated and BNS sought an order appointing a receiver to take possession of all of the assets, undertakings and property of GLS, as well as all of the assets Mr. Grabher and Chelsea Grabher acquired for, or used in connection with any business carried on by GLS, including the proceeds thereof, with such lands being listed on Schedule A” of the Receivership Order, and being included in the definition of Lands as set out above.
9. Accordingly, the Receivership Order was pronounced on February 3, 2020 and the Receiver was appointed to take possession of the Ranch Property.

10. Pursuant to paragraph 2.1 of the Receivership Order, the Receiver has the power to, among other things, take and maintain possession and control of the Property, the power to manage, operate and carry on the business of GLS and the power to market and sell the Property (subject to Court approval if any one transaction exceeds \$1,200,000 or if the aggregate of transactions exceeds \$2,500,000, and commence and prosecute actions.
11. In accordance with that order, and as set out in the materials filed to date including the Receiver's First Report to the Court and the Receiver's Second Report to the Court, to date the Receiver and/or its counsel as necessary have:
 - (a) Retained Lawson Lundell LLP ("**Lawsons**") as its counsel;
 - (b) sold, through private sales or auctions, the animals making up the bison herd, and equipment subject to BNS's security interest, and with the consent of BNS;
 - (c) Investigated realization options with respect to the Ranch Property, which included investigations into the partially built home on the Lands, and considering the impact of the *Homeowner Protection Act*, ultimately negotiating with a contractor to ensure that New Home Warranty coverage remained in place so that a sale could occur;
 - (d) entered into a co-listing agreement with NAI Commercial and RE/MAX Action Realty Inc. with respect to the Ranch Property, and assisted with marketing the Ranch Property including by way of its own advertisements;
 - (e) negotiated with various offerors with respect to the Ranch Property and, upon one offer collapsing, reviving interest so as to obtain a viable offer;
 - (f) sold the Ranch Property for the sale price of \$1,850,000, with the sale being approved by court order pronounced August 10, 2020, and completing the conveyance of same, including meeting with the debtors to ensure that a declaration was provided under s. 116 of the *Income Tax Act*, to avoid any withholdings from the purchase price;
 - (g) Organized the removal of certain third-party owned household effects, and equipment from the Ranch Property to deliver up vacant possession;
 - (h) Liaised with Plateau Pipeline Ltd. to collect certain pipeline lease revenue and arrange for the assignment and novation of related agreements to the Purchaser;
 - (i) Arranged for the extension of insurance coverage related to the Ranch Property to provide coverage until possession was taken by the purchasers;

- (j) Arranged for the sale of miscellaneous scrap pipe, realizing proceeds of \$4,157 exclusive of goods and services tax (“**GST**”);
 - (k) Continued investigations as to the existence and location of the Company’s assets and bison which had been transferred to related parties at a time when the debtors were or appeared to be insolvent. As a result of those investigations, the Receiver has filed a Notice of Civil Claim as against Mrs. Judy Grabher (Dwayne Grabher’s mother) and GWG Trucking, a proprietorship operated by her, claiming damages arising from the transfers. The Notice of Civil Claim is in the process of being served.
 - (l) Liaised with and responded to enquiries of the Trustee in Bankruptcy of Mr. Grabher’s personal bankruptcy estate;
 - (m) Corresponded with legal counsel for a party who asserted an ownership interest in and to some of the bison subject to the sales;
 - (n) Prepared and filed GST returns.
12. The above activities are detailed in the Receivers First Report to the Court and the Second Report to the Court.
13. In terms of the accounts of the Receiver and its counsel, those can be summarized as follows:

Receiver's Invoices

Invoice No.	Date	Fees	Disbursements	GST	Total
80001082756	Mar 24, 2020	\$ 83,605.00	\$ 7,526.67	\$ 4,556.58	\$ 95,688.25
80001120535	Apr 12, 2020	14,903.00	5,489.36	1,019.62	21,411.98
80001279313	Jul 16, 2020	24,187.50	-	1,209.38	25,396.88
80001359930	Sep 14, 2020	24,208.00	-	1,210.40	25,418.40
80001429863	Oct 29, 2020	6,003.00	-	300.15	6,303.15
		\$ 152,906.50	\$ 13,016.03	\$ 8,296.13	\$ 174,218.66

Receiver's counsel Invoices

Date	Invoice No.	Fees	Disbursements	GST	PST	Total Invoice
9-Mar-20	679017	\$5,817	\$203.16	\$297.08	\$407.19	6,724.43
3-Apr-20	680999	\$4,429.00	\$17.90	\$222.35	\$310.03	\$4,979.28
6-May-20	683314	\$1,880.00	\$0.00	\$94.00	\$131.60	\$2,105.60
8-Jun-20	685945	\$950.00	\$0.00	\$47.50	\$66.50	\$1,064.00
7-Jul-20	687807	\$1,000.00	\$12.60	\$50.63	\$70.00	\$1,133.23
18-Aug-20	691782	\$10,605.00	\$1,032.38	\$573.49	\$742.35	\$12,953.22
10-Sep-20	693725	\$4,412.00	\$123.50	\$225.93	\$308.84	\$5,070.27
29-Oct-20	697289	\$1,569.00	\$480.90	\$82.03	\$109.83	\$2,241.76
TOTALS:		\$30,662.00	\$1,870.44	\$1,593.01	\$2,146.34	\$36,271.79

14. Given the milestones achieved to date, including the realization upon the majority of the assets, the Receiver now seeks an order approving its activities and accounts, including those of its counsel to date.

PART 3: LEGAL BASIS**Approval of the Receiver's Activities**

15. In *Target Canada Co. (Re)*, 2015 ONSC 7574 (CanLII), Morawetz RSJ discussed the process for approval of the reports of a court officer. In that case the court dealt with a Receiver under the CCAA. However, the same principles apply in a receivership.

Hanfeng Evergreen Inc. 2017 ONSC 7161

16. Specifically, approval of the Receivers' activities will:
- (a) allow the Receiver, the Petitioner, and other stakeholders to move forward confidently with the next steps in the proceeding;
 - (b) bring the Receiver's activities in issue before the court, providing an opportunity for the concerns of the court, the Petitioner, and/or other stakeholders to be addressed, and any problems to be rectified in a timely way;
 - (c) provide certainty and finality in these proceedings and activities undertaken by the Receiver, while providing an opportunity for the Petitioner and the stakeholders to raise specific objections and concerns in real time;

- (d) enables the court, tasked with supervising these proceedings, to satisfy itself that the Receiver's court-mandated activities have been conducted in a prudent and diligent manner;
- (e) provides protection for the Receiver, not otherwise provided by statute; and
- (f) protects creditors from delay.

Target Canada Co (Re), 2015 ONSC 7574, at paras 12 and 23
Hanfeng Evergreen Inc., *supra*, at para 17

17. In addition, the approval sought by the Receiver is not a general approval of its activities to-date, but is the approval of the specific activities taken by the Receiver to-date, all of which are detailed in the Receiver' Reports.

Passing the Receiver and its Counsel's Accounts:

18. By virtue of the Receivership Order, the Receiver has been granted a charge on the Property as security for payment of its fees and disbursements, including its legal accounts. Pursuant to paragraph 21:

21. The Receiver and its legal counsel shall pass their accounts from time to time, and for this purpose the accounts of the Receiver and its legal counsel are referred to a judge of the Supreme Court of British Columbia and may be heard on a summary basis.

19. The ultimate question in passing accounts is whether the fees are fair and reasonable in all the circumstances, ensuring that the court's officer is fairly compensated while safeguarding the integrity of the process.
20. Accordingly, courts will consider the following non-exhaustive factors in assessing the reasonableness of a Receiver's fees:
- (a) the nature, extent and value of the assets;
 - (b) the complications and difficulties encountered by the Receiver;
 - (c) the degree of assistance provided by the debtor;
 - (d) the time spent by the Receiver;
 - (e) the Receiver's knowledge, experience and skill;
 - (f) the diligence and thoroughness displayed by the Receiver;
 - (g) the responsibilities assumed;

- (h) the results of the Receiver's efforts; and
- (i) the cost of comparable services.

Bank of Nova Scotia v Diemer, 2014 ONCA 851, at para 33
Belyea v Federal Business Development Bank (1983), 44 NBR (2d) 248 (CA), at para 9

21. As noted by the New Brunswick Court of Appeal:

There is no fixed rate or settled scale for determining the amount of compensation to be paid a receiver. He is usually allowed either a percentage upon his receipts or a lump sum based upon the time, trouble and degree of responsibility involved. The Governing principle appears to be that the compensation allowed a receiver should be measured by the fair and reasonable value of his services and while sufficient fees should be paid to induce competent persons to serve as receivers, receiverships should be administered as economically as possible. Thus allowances for services must be just, but nevertheless moderate rather than generous.

Belyea v Federal Business Development Bank, supra, at para 3

22. It is not necessary to go through the supporting documentation for the fees, line by line, in order to determine what the appropriate fees are. Nor is the court to second-guess the amount of time spent by a receiver unless it is clearly excessive or overreaching.

Bank of Nova Scotia v Diemer, 2014 ONSC 365, at para 19

23. Similar factors are considered on the assessment of the legal accounts of counsel to the Receiver, including:

- (a) the time expended;
- (b) the complexity of the proceeding;
- (c) the degree of responsibility assumed by the lawyers;
- (d) the amount of money involved, including the amount of proceeds after payments to the creditors;
- (e) the degree and skill of the lawyers involved;
- (f) the results achieved; and
- (g) the client's expectations as to the fee.

Redcorp Ventures Ltd. (Re), 2016 BCSC 188, at para 33
(see also: Bennett on Receiverships 3rd ed (Toronto: Carswell, 2011), at page 600)

24. On an application to approve a Receiver's accounts and the accounts of its legal counsel:
- (a) the accounts should be verified by affidavit;
 - (b) the accounts should contain sufficient evidence to permit this Honourable Court to conclude that what was incurred for services rendered was at the standard rate of charges of the Receiver and of the Receiver's counsel; and
 - (c) the accounts should provide a sufficient description of the services rendered to permit this Honourable Court to determine whether the liability for fees was "properly... made or incurred".

Redcorp Ventures Ltd. (Re), supra, at paras 26 and 32

25. The Receiver submits that its fees, including its estimate of the completion costs, are fair and reasonable in the circumstances, particularly in light of the significant time and effort expended by the Receiver Receiver in performing the activities detailed in the First and Second Report.
26. In this respect, the Receiver submits
- (a) that its professional fees and disbursements were properly incurred;
 - (b) the work completed by the Receiver was delegated to the appropriate professionals with the appropriate seniority and appropriate hourly rates;
 - (c) the Receiver's fees in this matter are consistent with fees charged by other insolvency firms of a similar size for work of a similar nature and complexity in British Columbia; and
 - (d) the services were performed by the Receiver in a prudent and economical manner.
27. Similarly, the Receiver submits that the fees and disbursements of its counsel, Lawsons, are fair and reasonable as:
- (a) Lawsons' professional fees and disbursements were properly incurred;
 - (b) the work completed by Lawsons was delegated to the appropriate professionals in Lawsons with the appropriate seniority and hourly rates;

- (c) Lawsons' fees in this matter are consistent with the market for similar firms with the capacity to handle a file of comparable size and complexity;
- (d) Lawsons' invoices were provided to the Receiver when rendered, and all have been approved by the Receiver; and
- (e) the services were performed by Lawsons in a prudent and economical manner.

Distribution Order

- 28. The Receiver has satisfied itself as to the priority of claims in and to amounts recovered to it and forming part of the estate, specifically as to the lien in favour of Worksafe BC, and the General Security of the Petitioner, including by way of it obtaining a securing opinion in respect of the Petitioner's security under the *Personal Property Security Act*.
- 29. On the basis of its review of the claims made by Worksafe BC and the Petitioner, and in the absence of any other claim being made and unresolved, the Receiver suggests that estate funds be distributed as follows:
 - (a) To the Petitioner, the sum of \$2,687,000;
 - (b) To WorkSafe BC on account of its lien, the sum of \$1,375.77 plus any accrued interest or recoverable costs associated with the lien; and
 - (c) The remainder to be held by the Receiver pending completion of its duties.

PART 4: MATERIAL TO BE RELIED ON

- 30. Order appointing Receiver pronounced February 3, 2020 by the Honourable Mr. Justice Branch in the within proceedings.
- 31. The Receiver's First Report to the Court dated July 28, 2020,
- 32. The Receiver's Second Report to the Court dated November 2, 2020
- 33. Fee Affidavit of Melinda McKie sworn November 2, 2020
- 34. Fee Affidavit of Kimberley Robertson, sworn November 2, 2020

The applicant(s) estimate(s) that the application will take **10 minutes**.

- This matter is within the jurisdiction of a Master.
- This matter is not within the jurisdiction of a Master as it involves inherent jurisdiction

TO THE PERSONS RECEIVING THIS NOTICE OF APPLICATION: If you wish to respond to this Notice of Application, you must, within 5 business days after service of this Notice of

Application or, if this application is brought under Rule 9-7, within 8 business days after service of this Notice of Application:

- (a) file an Application Response in Form 33,
- (b) file the original of every affidavit, and every other document, that
 - (i) you intend to refer to at the hearing of this application, and
 - (ii) has not already been filed in the proceeding, and
- (c) serve on the applicant 2 copies of the following, and on every other party of record one copy of the following:
 - (i) a copy of the filed Application Response;
 - (ii) a copy of each of the filed affidavits and other documents that you intend to refer to at the hearing of this application and that has not already been served on that person;
- (d) if this application is brought under Rule 9-7, any notice that you are required to give under Rule 9-7(9).

Dated at the City of Vancouver, in the Province of British Columbia, this 2nd day of November, 2020



Kimberley A. Robertson
Lawson Lundell LLP
Solicitors for the Applicant

This Notice of Application is filed by the law firm of Lawson Lundell LLP, whose place of business and address for delivery is 1600 – 925 West Georgia Street, Vancouver, British Columbia, V6C 3L2.

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 Master

APPENDIX

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

THIS APPLICATION INVOLVES THE FOLLOWING:

Other –Administration of an Insolvency Matter

SCHEDULE “A”

NO. FOS-S-S-24867
FORT ST. JOHN REGISTRY

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BETWEEN:

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PETITIONER

AND:

GRABHERS LAST STAND BISON RANCH LTD., DWAYNE
GRABHER AND CHELSEA GRABHER ALSO KNOWN AS CHELSEA
FOILLARD, JODY GRABHER, DAVID CRAMER, 1050311 BC LTD ,
NORTHERN TRUSS LTD., PEACE RIVER COUNTRY ELECTRIC
LTD. and PEACE RIVER BUILDING PRODUCTS LTD.

RESPONDENTS

ORDER MADE AFTER APPLICATION

BEFORE THE HONOURABLE)
) MONDAY, THE 23rd DAY OF
)
) NOVEMBER, 2020

THE APPLICATION of Deloitte Restructuring Inc. in its capacity as Court-appointed Receiver (the “**Receiver**”) of the assets and undertakings of Grabhers Last Stand Bison Ranch Ltd., and the assets of Dwayne Grabher and Chelsea Grabher (collectively, the “**Debtors**”) with such assets as enumerated in the Order under which it was appointed, coming on for hearing at Prince George, British Columbia, on the 10th day of August 2020; AND ON HEARING Kimberley Robertson, counsel for the Receiver, and those other counsel listed on **Schedule “A”** hereto, and no one appearing for the remaining parties although duly served; AND UPON READING the material filed, including the:

- (a) Report #1 of the Receiver dated July 28, 2020;
- (b) Report #2 of the Receiver, dated November 2, 2020;

(the “**Reports**”);

THIS COURT ORDERS AND DECLARES THAT:

1. The service of this Application is good and sufficient service on the service list, and time for notice is abridged, to this date.
2. The activities of the Receiver as set out in the Reports are hereby approved.
3. The Receiver's statement of receipts and disbursements for the period from its appointment to October 29, 2020 and that of its counsel, as set out in the Fee Affidavits of Melinda McKie and Kimberley Robertson, both sworn November 2, 2020 are hereby approved.
4. The Receiver be at liberty to distribute the following amounts to the following creditors:
 - (a) To the Petitioner, the sum of \$2,687,000; and
 - (b) To WorkSafe BC on account of its lien, the sum of \$1,375.77 plus any accrued interest or recoverable costs associated with the lien.
5. Approval as to form of order of parties other than the Receiver's counsel is dispensed with.

THE FOLLOWING PARTIES APPROVE THE FORM OF THIS ORDER AND CONSENT TO EACH OF THE ORDERS, IF ANY, THAT ARE INDICATED ABOVE AS BEING BY CONSENT:

Kimberley Robertson
COUNSEL FOR THE RECEIVER

BY THE COURT

REGISTRAR

SCHEDULE "A"

Schedule A – List of Appearing Parties

<p>Counsel for the Receiver, Deloitte Restructuring Inc. Applicant</p>	<p>Kimberley Robertson Lawson Lundell LLP Suite 1600 Cathedral Place 925 West Georgia Street Vancouver, BC V6C 3L2</p> <p>Telephone: (604) 685-3456 Fax: (604) 669-1620 E-mail: krobertson@lawsonlundell.com</p>
<p>Counsel for the Bank of Nova Scotia Respondent</p>	<p>William E.J. Skelly MLT Aikins LLP Suite 2600 1066 West Hastings Street Vancouver, BC V6E 3X1</p> <p>Telephone: (604) 682-7737 Fax: (604) 682-7131 E-mail: wskelly@mltaikins.com</p>
<p>Counsel for the Farm Credit Canada Respondent</p>	<p>David Archibold Sharek Logan & van Leenen LLP #2100 Scotia Place 10060 Jasper Avenue NW Edmonton, AB, T5J 3R8</p> <p>Telephone: (780) 413-3179 Fax: (780) 413-3152 E-mail: darchibold@sharekco.com</p>

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GRABHERS LAST STAND BISON RANCH LTD.,
DWAYNE GRABHER AND CHELSEA GRABHER also
known as CHELSEA FOILLARD ET AL

RESPONDENTS

ORDER



Barristers & Solicitors
1600 Cathedral Place
925 West Georgia Street
Vancouver, British Columbia
V6C 3L2
Phone: (604) 685-3456
Attention: Kimberley Robertson

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RANCH LTD., DWAYNE
GRABHER AND CHELSEA
GRABHER also known as CHELSEA
FOILLARD

RESPONDENTS

NOTICE OF APPLICATION



Barristers & Solicitors
1600 Cathedral Place
925 West Georgia Street
Vancouver, British Columbia
V6C 3L2
Phone: (604) 631-9145
Attention: Kimberley A. Robertson