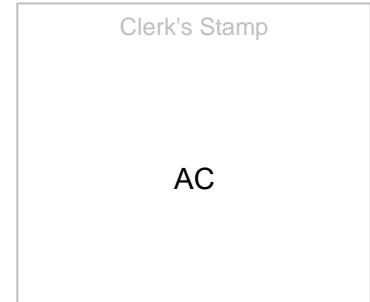


COURT FILE NO.: 2001-12759
COURT COURT OF QUEEN'S BENCH OF ALBERTA
JUDICIAL CENTRE CALGARY
PLAINTIFF ROYAL BANK OF CANADA



DEFENDANTS SWIMCO AQUATIC SUPPLIES LTD., SWIMCO PARTNERSHIP, BLUE CRUCH BIKINI & BOARDSHORT COMPANY LTD., LORI BACON HOLDINGS LTD., STEVE FORSETH HOLDINGS LTD., STEVE FORSETH ENTERPRISES LTD. and LORI JO HOLDINGS LTD. COM Feb 22 2021 205205

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
Email: dmarechal@cassels.com
File No.: 49073-8

Attention: Danielle Marechal

NOTICE TO THE RESPONDENTS: See Attached Schedule "A"

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

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

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

Date: Monday, February 22, 2021
Time: 3:00 p.m.
Where: Calgary Courts Centre (via WebEx)
Before Whom: The Honourable Madam Justice K.M. Eidsvik

Go to the end of this document to see what else 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 Second Report (the "**Second 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) approving the accounts of the Receiver for fees and disbursements as set out in the Second Report, without the necessity of a formal passing of accounts;
- (c) approving the accounts of the Receiver's legal counsel, Cassels Brock & Blackwell LLP, for fees and disbursements as set out in the Second Report, without the necessity of a formal passing of accounts;
- (d) approving and ratifying the conduct and activities of the Receiver, including the Final Statement of Receipts and Disbursements attached to the Second Report, provided that only the Receiver, in its personal capacity, and with respect to its own personal liability, shall be entitled to rely upon or utilize such approval;
- (e) declaring that the Receiver is authorized to make further distributions and holdbacks as outlined in paragraph 12 below;
- (f) discharging the Receiver as the court appointed receiver and manager of the assets, undertakings and properties of the Companies and the Holdcos (collectively, the "**Debtors**") and declaring that the Receiver has satisfied its obligations under and pursuant to the receivership order granted in the within proceedings, up to and including the date hereof;
- (g) declaring that the Receiver is not liable for any act or omission on its part, including without limitation, any act or omissions pertaining to the discharge of its duties in the within proceedings, save and except the unusual exclusions, and declaring that any claims against the Receiver in connection with the performance of its duties are stayed, extinguished and forever barred; and
- (h) such further and other relief as this Honourable Court deems just.

Grounds for making this application:

Background

2. 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.
3. 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.
4. 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**").

5. 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**”).

Discharge of Receiver and Final Distribution

6. Since its appointment, the Receiver has performed its mandate as receiver under the Receivership Order, including liquidation of the Companies’ assets, and there is no further property remaining to be realized upon.
7. Pursuant to an en bloc offer approved by this Honourable Court on December 15, 2020, D. Bacon Holdings Ltd. (“**DBH**”) purchased all of the Swimco Group’s assets (the “**En Bloc Sale**”).
8. The Receiver previously made an interim distribution to the primary secured creditor, Royal Bank of Canada, in the amount of \$3,038,910 in full satisfaction of the indebtedness owed to it by the Companies.
9. The En Bloc Sale also provided that \$650,000 of the Swimco Group’s cash would be held back and utilized by the Receiver to satisfy costs of the bankruptcy and receivership, as well as amounts owing to the Canada Revenue Agency (“**CRA**”), giving rise to a priority claim by DBH.
10. The Receiver is aware of the following other secured claims against the Debtors:
 - (a) a claim by Service Canada in the amount of \$78,800 for prior Wage Earner Protection Program (“**WEPP**”) payments; and
 - (b) an estimated statutory deemed trust claim by CRA in the amount of \$102,600.
11. The Receiver requested the CRA perform a trust audit to confirm potential amounts owing to the CRA, but was advised by CRA trust audits have been suspended as a result of the COVID-19 pandemic.
12. Based on the foregoing, the Receiver is recommending the following distributions and holdbacks:
 - (a) a distribution to Service Canada in the approximate amount of \$78,800 for the WEPP amounts;
 - (b) a holdback in the approximate amount of \$127,600 followed by a distribution to the CRA upon the CRA’s completion of their trust audit in the estimated amount of \$102,600 for statutory deemed trust claims; and
 - (c) a distribution to DBH of all residual funds held by the estate, after the payment of professional fees.
13. The Receiver has acted honestly and in good faith and has dealt with the Companies’ property and carried out the Receiver’s mandate in a commercially reasonable manner. Given that there are no further realizable assets remaining in the estates of the Companies, the Receiver is seeking its discharge.

Actions of the Receiver

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

Approval of Fees and Disbursements of the Receiver and its Legal Counsel

15. The accounts of the Receiver for the Division I Proposal, Bankruptcy, and Receivership total approximately \$226,090 after tax.
16. The accounts of the Receiver's legal counsel, Cassels Brock & Blackwell LLP, for the Division I Proposal, Bankruptcy, and Receivership total approximately \$166,667 after tax.
17. The accounts of the Receiver's legal counsel, Pitblado Law, for the Receivership total approximately \$10,828 after tax.
18. The invoices rendered by the Receiver and its counsel are reasonable and were validly incurred in accordance with the provisions of the Receivership Order.

Material or evidence to be relied on:

19. Receivership Order pronounced November 10, 2020;
20. First Report of the Receiver, dated December 7, 2020;
21. Confidential Supplement to the First Report of the Receiver, dated December 7, 2020;
22. Supplement to the Confidential First Report of the Receiver, dated December 14, 2020;
23. Approval and Vesting Order, pronounced December 14, 2020;
24. Sealing Order and Approving Interim Distribution, December 14, 2020;
25. Second Report of the Receiver dated February 16, 2021; and
26. Such further and other materials as counsel may advise and this Honourable Court may permit.

Applicable rules:

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

Applicable Acts and regulations:

29. *Bankruptcy and Insolvency Act*, RSC 1985, c B-3, as amended, and in particular section 243 thereof;
30. *Judicature Act*, RSA 2000, c J-2, as amended, and in particular section 13(2) thereof;
31. *Personal Property Security Act*, RSA 2000, c P-7; and
32. 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:

33. None.

How the application is proposed to be heard or considered:

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



DOCUMENT **DISCHARGE ORDER**

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

Attention: Danielle Marechal
Telephone: 403.351.2920
Facsimile: 403.648.1151
Email: dmarechal@cassels.com

File No.: 49073-8

DATE ON WHICH ORDER WAS PRONOUNCED: Monday, February 22, 2021

LOCATION WHERE ORDER WAS PRONOUNCED: Calgary, Alberta

NAME OF JUSTICE WHO MADE THIS ORDER: The Honourable Madam Justice K.M. Eidsvik

UPON THE APPLICATION of Deloitte Restructuring Inc. in its capacity as the Court-appointed receiver and manager (the "**Receiver**") if the undertaking, property and assets of Swimco Aquatic Supplies Ltd., Swimco Partnership, Blue Crush Bikini & Boardshort Company Ltd., Lori Bacon Holdings Ltd. and Steve Forseth Holdings Ltd. for an Order for the final distribution of proceeds, approval of the Receiver's fees and disbursements, approval of the Receiver's activities and discharge of the Receiver; **AND UPON** having read the Receiver's Second Report dated February 16, 2021 (the "**Receiver's Report**"); **AND UPON** hearing from counsel for the Receiver, counsel for the Debtor and counsel for various creditors; **AND UPON** being satisfied that it is appropriate to do so, **IT IS HEREBY ORDERED THAT:**

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.
2. The Receiver's accounts for fees and disbursements, as set out in the Receiver's Report are hereby approved without the necessity of a formal passing of its accounts.
3. The accounts of the Receiver's legal counsel Cassels Brock & Blackwell LLP, for its fees and disbursements, as set out in the Receiver's Report are hereby approved without the necessity of a formal assessment of its accounts.

4. The accounts of the Receiver's legal counsel Pitblado Law, for its fees and disbursements, as set out in the Receiver's Report are hereby approved without the necessity of a formal assessment of its accounts.
5. The Receiver's activities as set out in the Receiver's Report and in all of its other reports filed herein, and the Statement of Receipts and Disbursements as attached to the Receiver's Report, are hereby ratified and approved.
6. The Receiver is authorized and directed to make the following distributions and holdbacks:
 - (a) a distribution to Service Canada in the amount of \$78,800 for prior Wage Earner Protection Program payments ("**WEPPA Distribution**");
 - (b) a holdback in the approximate amount of \$127,600, followed by a distribution to Canada Revenue Agency ("**CRA**") in the estimated amount of \$102,600 ("**CRA Distribution**") upon the CRA's completion of their trust audit for statutory deemed trust claims; and
 - (c) a distribution to D. Bacon Holdings Ltd. of all residual funds held in the estate following the payment of the professional fees, the WEPPA Distribution and the CRA Distribution, which amount is currently estimated to be \$400,000.
7. On the evidence before the Court, the Receiver has satisfied its obligations under and pursuant to the terms of the Orders granted in the within proceedings up to and including the date hereof, and the Receiver shall not be liable for any act or omission on its part including, without limitation, any act or omission pertaining to the discharge of its duties in the within proceedings, save and except for any liability arising out of any in fraud, gross negligence or willful misconduct on the part of the Receiver, or with leave of the Court. Subject to the foregoing any claims against the Receiver in connection with the performance of its duties are hereby stayed, extinguished and forever barred.
8. No action or other proceedings shall be commenced against the Receiver in any way arising from or related to its capacity or conduct as Receiver, except with prior leave of this Court on Notice to the Receiver, and upon such terms as this Court may direct.
9. Upon the Receiver filing with the Clerk of the Court a Certificate of a licensed Trustee employed by the Receiver confirming that all matters set out in paragraph 6 of this Order have been completed, the Receiver shall be discharged as Receiver of the Debtor, provided however, that notwithstanding its discharge herein (a) the Receiver shall remain Receiver for the performance of such incidental duties as may be required to complete the administration of the receivership herein, and (b) the Receiver shall continue to have the benefit of the provisions of all Orders made in this proceeding, including all approvals, protections and stays of proceedings in favour of the Receiver in its capacity as Receiver.
10. 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.
11. Service of this Order on any party not attending this application is hereby dispensed with.