



No. B-210198
Estate No. 11-2716201
Province of British Columbia
Bankruptcy Division
Vancouver Registry

**IN THE SUPREME COURT OF BRITISH COLUMBIA
IN BANKRUPTCY AND INSOLVENCY**

**IN THE MATTER OF THE PROPOSAL OF
BEAR CREEK CONTRACTING LTD.**

NOTICE OF APPLICATION

Name of applicant: Bear Creek Contracting Ltd. (“BCC”, or the “Applicant”)

To: The Service List, a copy of which is attached hereto as Schedule “A”

AND TO: Her Majesty the Queen in right of Canada as represented by the Minister of National Revenue

AND TO: Kon Kast Products (2005) Ltd.

TAKE NOTICE that an application will be made by the Applicant to the presiding judge **by telephone** at the courthouse at 800 Smithe Street, Vancouver, British Columbia at 9:45 a.m. on July 26, 2021 for the orders set out in Part 1 below.

Part 1: ORDER SOUGHT

1. The Applicant seeks:

- (a) an order pursuant to subsection 65.13 of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3 (“BIA”) in substantially the form of draft order attached hereto as Schedule “B” (the “**Approval and Vesting Order**”), approving the Contract of Purchase and Sale dated May 10, 2021 (the “**Sale Agreement**”) among the Applicant, as vendor, and 1303526 B.C. Ltd. (the “**Purchaser**”), as purchaser, and vesting title to the Lands (defined below) as described therein free and clear of all Encumbrances (defined below); and

- (b) a declaration (the “**Source Deduction Declaration**”) that the Applicant owes no amount to the Canada Revenue Agency (“**CRA**”) on account of unremitted source deductions pursuant to either the *Income Tax Act*, R.S.C. 1985, c. 1 (5th Supp.) (the “**ITA**”) or the *Employment Insurance Act*, S.C. 1996, c. 23 (the “**EIA**”).

Part 2: FACTUAL BASIS

A. Overview

1. The Applicant seeks court approval of the Sale Agreement whereby it proposes to sell all of its real property assets to the Purchaser for the purchase price of \$3.80 million. The purchase price is consistent with the most recent appraised value of the Lands (defined below), and the Proposal Trustee is supportive of the Sale Agreement.
2. The Applicant seeks to pay the net proceeds from the sale of the Lands to Accord Small Business Finance Corp. (“**Accord**”), the first and second mortgagee. The Proposal Trustee has previously vetted Accord’s security and determined that it is valid and enforceable, and there is no party with a claim against the Lands ranking in priority to that of Accord.
3. On June 24, 2021, the Applicant filed a proposal to its creditors (the “**Proposal**”) in these proceedings (the “**Proposal Proceedings**”). While the Sale Agreement will have no impact on distributions to the Applicant’s creditors under the Proposal, the use of the net proceeds to pay amounts owing to Accord will substantially reduce the Applicant’s interest expense on a go-forward basis and free up additional room on its borrowing line so as to ensure the Applicant has access to sufficient capital to carry on operations through to the completion of the Proposal Proceedings and thereafter.
4. The Applicant seeks the Source Deduction Declaration because, as at the Filing Date (defined below), it owed certain amounts on account of unremitted source deductions under the ITA and ETA that have since been paid, and the Applicant has been unsuccessful in its attempts to have CRA acknowledge same.

B. Procedural History

5. On February 26, 2021 (the “**Filing Date**”), the Applicant filed a Notice of Intention to Make a Proposal with the Office of the Superintendent of Bankruptcy Canada (the “**OSB**”) pursuant to Section 50.4 of the BIA, and Crowe MacKay & Company Ltd. (in such capacity, the “**Proposal Trustee**”) was appointed trustee of the Applicant in relation to these Proposal Proceedings.¹
6. On March 15, 2021, the Honourable Mr. Justice Punnnett granted an order (the “**Initial Relief Order**”) whereby, among other things:
 - (a) the Proposal Trustee, its counsel, and counsel for the Applicant were granted the benefit of a charge on the Applicant’s assets, property and undertakings, such charge not exceeding the aggregate amount of \$200,000 (the “**Administration Charge**”), as security for their respective fees and disbursements incurred in relation to these Proposal Proceedings;
 - (b) the Applicant was permitted to market and dispose of redundant or non-material assets in accordance with the provisions set forth in the Initial Relief Order; and
 - (c) the time for filing a proposal pursuant to subsection 50.4(9) of the BIA was extended to May 12, 2021.
7. On April 6, 2021, Mr. Justice Punnnett granted an order whereby, among other things:
 - (a) the stay of proceedings arising in these Proposal Proceedings pursuant to Section 69(1) of the BIA (the “**Stay**”) would no longer operate in respect of certain related actions (collectively, the “**Pretium Actions**”), but only to the extent necessary to permit the Pretium Actions to continue unimpeded by the Stay; and
 - (b) these Proposal Proceedings were transferred from the Prince Rupert Registry to the Vancouver Registry for all purposes.

¹ Proposal Trustee’s Report on the Proposal, dated June 24, 2021 (the “**Proposal Report**”), para. 2.

8. On May 12, 2021, Mr. Justice Walker granted an order extending the time for filing a proposal to June 25, 2021.
9. On June 24, 2021, the Applicant filed the Proposal with the OSB pursuant to subsection 62(1) of the BIA.²

C. The Proposal

10. Capitalized terms not otherwise defined in this section have the meanings ascribed to them in the Proposal, which is attached as Appendix “A” to the Third Report of the Proposal Trustee dated July 13, 2021 (the “**Third Report**”).
11. The Applicant’s claims that are the subject of the Pretium Actions (the “**Pretium Claims**”) are the Applicant’s single most significant asset. The Proposal is intended to allow the Applicant to continue its core business as a going concern while monetizing redundant assets while it pursues the Pretium Claims to an adjudicated or negotiated resolution and, from the proceeds thereof:
 - (a) retiring a portion of its indebtedness to its senior secured lender (i.e. the Accord Group); and
 - (b) making distributions to the Affected Creditors in full and final satisfaction of all of the Affected Creditors’ Proven Claims.³
12. While the Affected Creditors’ recoveries under the Proposal will vary depending on the net proceeds received by the Applicant in relation to the Pretium Claims, the Applicant reasonably expects to recover between \$6 million and \$15 million therefrom. This would translate into the Affected Creditors receiving between \$0.10 and \$0.35 for every \$1.00 of their Proven Claims.⁴

² Proposal Report, para. 6, Appendix “C”.

³ Proposal Report, para. 112.

⁴ Proposal Report, Appendix “H”.

D. The Lands

13. The Applicant is the registered owner of four contiguous parcels of land (collectively, the “**Lands**”) located in Terrace, British Columbia, adjacent to the parcel upon which its main office and administrative headquarters are located, namely:
 - (a) **Heli-Pad Parcel:** PID 011-597-496; this parcel comprises approximately 3.86 acres and contains a helicopter pad and a hangar;
 - (b) **Warehouse Parcel:** PID 014-296-055; this parcel comprises approximately 2.74 acres and contains office buildings and storage structures;
 - (c) **Corner Parcel:** PID 011-268-298; this parcel comprises approximately 0.58 acres of vacant lands at the intersection of Highway 16 and Crescent Street; and
 - (d) **Vacant Parcel:** PID 011-069-821; this parcel comprises approximately 1.21 acres of vacant lands.⁵
14. Appraisals of the Lands completed in May 2019 and May 2020 estimate their value to be \$3.80 million.⁶ The Lands have 2021 BC Assessment values (the “**BC Assessment Values**”) totalling \$2.48 million.⁷
15. The Applicant does not use the Lands to carry on its core business. Although in the past the Applicant used certain facilities on the Lands to store equipment, this equipment has been relocated.⁸
16. In or about June 2020, the Applicant listed the Lands on the Multiple Listing Service (“**MLS**”) and marketed them for sale with the assistance of a licensed real estate agent. At that time, the Applicant had been exploring restructuring options for approximately

⁵ Third Report of the Proposal Trustee dated July 13, 2021 (the “**Third Report**”), Appendix “C” and “D”.

⁶ Third Report, Appendix “D”.

⁷ Third Report, Appendix “E”.

⁸ Affidavit #3 of Ian Munson, made July 13, 2021 (“**Munson #3**”), para. 8.

six months and had entered into discussions with Accord regarding refinancing its obligations to its then-primary secured lender, Royal Bank of Canada (“**RBC**”).⁹

17. By letter agreement dated August 19, 2020 among Accord and the Applicant, among others (the “**Refinancing Agreement**”), Accord agreed to purchase the loans and security then existing between RBC and the Applicant and its related entities. Those agreements included a covenant by the Applicant to take immediate steps to dispose of certain heavy equipment and real property assets, including the Lands.¹⁰
18. In about the fall of 2020, Accord communicated to the Applicant the urgent need to dispose of the Lands pursuant to the Refinancing Agreement. Since then, in addition to marketing efforts by its real estate agent, the Applicant has aggressively marketed the Lands by reaching out through industry and local business contacts. In about the spring of 2021, the Applicant’s listing agreement expired and was not renewed, and the Lands were de-listed from MLS.¹¹

E. The Sale Agreement

19. On May 10, 2021, the Applicant and the Purchaser entered into the Sale Agreement, the material terms of which include, among others, that:
 - (a) the Purchaser shall purchase the Lands for the purchase price of \$3.80 million (the “**Purchase Price**”), which shall be allocated to the parcels comprising the Lands on a *pro rata* basis according to the BC Assessment Values;
 - (b) the Purchaser shall pay to its solicitor in trust a deposit totalling \$100,000 (the “**Deposit**”) in two installments: (i) \$50,000 within two business days of the Applicant’s acceptance of the Sale Agreement (the “**First Installment**”); and (ii) \$50,000 within two business days of removal of the conditions precedent (the “**Second Installment**”);

⁹ Munson #3, para. 9.

¹⁰ Munson #3, para. 10.

¹¹ Munson #3, para. 11.

- (c) all conditions precedent to the Sale Agreement shall be satisfied or waived by no later than June 28, 2021;
 - (d) the Applicant shall deliver title to the Lands free and clear of all financial encumbrances;
 - (e) the Applicant shall assign to the Purchaser certain existing leases of buildings and storage facilities located on the Heli-Pad and Warehouse Parcels; and
 - (f) the Sale Agreement shall complete on July 28, 2021.¹²
20. On May 14 and June 28, 2021, the Purchaser paid the First and Second Installments comprising the Deposit to its solicitor in trust.¹³
21. On about June 28, 2021, the Purchaser delivered to the Applicant written confirmation that the conditions precedent to the Sale Agreement had been removed.¹⁴
22. The Sale Agreement is not conditional on court approval; however, it is recognized that court approval is required, including because: (a) the sale of the Lands is not in the ordinary course of the Applicant's business; and (b) a vesting order is required in order for the Applicant to convey the Lands to the Purchaser free and clear of all encumbrances.

F. Encumbrances Registered Against the Lands

23. Following are the financial encumbrances registered against title to the Lands in order of their registration (collectively, the "**Encumbrances**"): ¹⁵
- (a) mortgages in favour of RBC under registration numbers BB680925 and CA8147733 (together, the "**RBC Mortgages**");

¹² Munson #3, Exhibits "A".

¹³ Munson #3, para. 13.

¹⁴ Munson #3, Exhibit "B".

¹⁵ Third Report, Appendix "C".

- (b) mortgage and assignment of rents in favour of Accord under registration numbers CA8150488 through CA8150491 (together, the “**Accord Mortgage**”);
 - (c) judgment in favour of Gitga’at Matrix Workforce Services Ltd. (“**Matrix**”) under registration number CA8489587 (the “**Matrix Judgment**”); and
 - (d) judgment in favour of Kon Kast Products (2005) Ltd. (“**Kon Kast**”) under registration number CA8655290 (the “**Kon Kast Judgment**” and together with the Matrix Judgment, the “**Judgments**”).
24. As set forth above, in or about August 2020, Accord acquired the Applicant’s indebtedness to RBC, together with all of RBC’s security in respect of same including the RBC Mortgages.¹⁶ Accordingly, Accord holds both the first and second mortgages registered on title to the Lands. As at the date of the Proposal Report, the Applicant owed Accord the sum of approximately \$7.20 million as primary obligor and \$11.3 million in total, taking into account the Applicant’s liability as guarantor of certain related companies’ indebtedness to Accord.¹⁷

G. The Source Deduction Declaration

25. As at the Filing Date, the Applicant was indebted to CRA in the amount of approximately \$284,984.14 (the “**Principal Amount**”) in respect of unremitted source deductions pursuant to the EIA and the ITA.¹⁸
26. In or about the end of April 2021, the Applicant paid the Principal Amount with funds received through the Canada Emergency Wage Subsidy (“**CEWS**”) program and from a related company that made a partial payment on account of intercompany debt. Since that time, the Applicant has been: (a) diligently following up with CRA to confirm that the Principal Amount has been paid in full (the “**CRA Confirmation**”), but has yet to receive any such confirmation from CRA; and (b) assessed penalties and interest in

¹⁶ Proposal Report, paras. 18 and 19.

¹⁷ Proposal Report, para. 77.

¹⁸ Munson #3, para. 16.

respect of the late payment of the Principal Amount in the amount of approximately \$29,000 (the “**Penalty Amount**”).¹⁹

27. Article 3.2 of the Proposal provides that Crown Claims, which as therein defined includes the Penalty Amount, shall be paid in their entirety within six months of court approval of the Proposal.
28. During these Proposal Proceedings the Applicant sold several redundant vehicles and pieces of equipment pursuant to the Initial Relief Order, netting sale proceeds totalling \$164,865 (the “**Equipment Proceeds**”). The Proposal Trustee has been holding the Equipment Proceeds in trust pending receipt of the CRA Confirmation.²⁰
29. In light of the foregoing, the Applicant seeks the Source Deduction Declaration, as it will enable the Proposal Trustee to disburse the Equipment Proceeds to the appropriate creditors without further delay.

Part 3: LEGAL BASIS

A. The Approval and Vesting Order should be granted

1. The Applicant seeks approval of the Sale Agreement. Subsection 65.13(1) of the BIA provides that an insolvent person in respect of whom a proposal has been filed under subsection 62(1) may sell or otherwise dispose of assets outside the ordinary course of business provided that it obtain court approval of the proposed sale and give notice of the application for court approval to secured creditors likely to be affected by same.²¹
2. In deciding whether to grant approval of the sale, the court is to consider the factors set forth under subsection 65.13(4) of the BIA, including, among others:
 - (a) whether the process leading to the proposed sale was reasonable in the circumstances;

¹⁹ Proposal Report, para. 76; Munson #3, para. 17.

²⁰ Proposal Report, para. 89.

²¹ BIA, subsection 65.13(1)

- (b) whether the proposal trustee has approved the process leading to the proposed sale;
 - (c) whether the proposal trustee filed with the court a report stating that in their opinion the sale would be more beneficial to the insolvent person's creditors than a sale or disposition under a bankruptcy;
 - (d) the effects of the proposed sale on the insolvent person's creditors and other interested parties; and
 - (e) whether the consideration to be received for the asset is reasonable and fair, taking into consideration its market value.²²
3. The Applicant submits that the foregoing factors all favour the granting of the Approval and Vesting Order, including on the following bases:
- (a) The Purchase Price under the Sale Agreement (i.e. \$3.80 million) is consistent with the most recent appraised value of the Lands, and is more than \$1.30 million greater than BC Assessment Values.
 - (b) The Lands were listed on MLS and marketed for sale by a licensed real estate agent for over eight months, which is longer than the appropriate exposure time to obtain appraised value (i.e. six months).
 - (c) While the Proposal Trustee was not involved in the process leading to the Sale Agreement, it has reviewed same and determined the Purchase Price to be reasonable.²³
 - (d) The Proposal Trustee has filed the Third Report stating that, in its opinion, the sale of the Lands under the Sale Agreement would be more beneficial to the Applicant's creditors than a sale or disposition under a bankruptcy, including because the resulting net sale proceeds will reduce the amount owing by the

²² BIA, subsection 65.13(4).

²³ Third Report, paras. 25 and 26.

Applicant to Accord, thus substantially reduce its interest expense on a go-forward basis and ensuring that the Applicant has access to sufficient funding to carry on business through the proposal process and afterwards.²⁴

- (e) The Sale Agreement will have no negative effect on the Applicant's creditors or other interested parties, including because: (i) since Accord is the Applicant's first-ranking secured creditor it would receive the net proceeds from the sale of the Lands regardless of whether sold under the Sale Agreement or in a bankruptcy scenario; (ii) it will have no impact on the Affected Creditors under the Applicant's Proposal; and (iii) as further detailed in the following section, the Judgment-holders are treated as unsecured creditors under the BIA.

B. The Lands shall vest in the Purchaser free and clear of all Encumbrances

- 4. Subsection 65.13(7) of the BIA provides that a court may authorize a sale or disposition of an insolvent person's assets free and clear of any security, charge, or other restriction, and, if it does, shall also order that the proceeds of the sale or disposition be subject to a charge in favour of the creditor whose charge is to be affected by the order.²⁵
- 5. A judgment creditor holding an unsatisfied judgment is treated as an unsecured creditor under the BIA; it is immaterial that their judgment is registered against specific lands belonging to the bankrupt.²⁶
- 6. As set forth above, the Encumbrances include the RBC Mortgages, the Accord Mortgage, and the Judgments. Accord, which holds the RBC Mortgages and Accord Mortgage as first and second mortgagee, is supportive of the Sale Agreement.²⁷
- 7. The Judgment-holders (i.e. Matrix and Kon Kast) will not be affected by the vesting off of the Judgments pursuant to the Approval and Vesting Order because: (a) given the

²⁴ Third Report, para. 26.

²⁵ BIA, subsection 65.13(7).

²⁶ *Gazeta Inc., Re*, [2005] O.J. No. 3052, para. 9; *Morgan & Partners Inc. v. Summit Credit Corp.*, 2010 ONSC 731, para. 9.

²⁷ Munson #3, para. 15.

Purchase Price and the amount owing to Accord secured by the first and second mortgages, there is no equity in the Lands secured by the Judgments; and (b) more significantly, since the Judgments are unsatisfied the Judgment-holders are treated as unsecured creditors under the BIA and their registration against title to the Lands is immaterial.

C. The Applicant is entitled to the Source Deduction Declaration

8. The ITA and EIA provide that, where an employer has deducted an amount from an employee's wages pursuant to these acts and not remitted it to the Receiver General, then, notwithstanding the BIA, the employer's property (including property subject to a security interest) is deemed to be held in trust by the employer for Her Majesty to the extent of the unremitted amount, and any proceeds from the disposition of the employer's property are to be paid to the Receiver General to satisfy same in priority to all security interests.²⁸
9. The deemed trust that arises to protect unremitted source deductions is similar in principle to a floating charge over all of the tax debtor's assets in favour of Her Majesty. Property sold by the tax debtor to a *bona fide* third party purchaser is released from the trust, but the proceeds of the disposition of the property are captured by it. The trust has priority in respect of property that is subject to a security interest regardless of when the security interest arose.²⁹
10. The deemed trust provisions of the ITA and EIA apply to the principal amount owing for unremitted source deductions only; they do not extend to penalties and interest.³⁰
11. At the Filing Date, the Applicant was indebted to the CRA in the Principal Amount on account of unremitted source deductions under the ITA and EIA. At that time, a deemed trust arose over all of the Applicant's assets to the extent of the Principal Amount.

²⁸ ITA, Section 153, 227(4) and 227(4.1); EIA, Subsections 86(2) and 86(2.1).

²⁹ *First Vancouver Finance v. Minister of National Revenue*, 2002 SCC 49, paras. 3-5, 28.

³⁰ *San Diego Catering Ltd., Re*, [1995] B.C.J. No. 654, para. 6; citing *Canadian Asbestos Services Ltd. v. Bank of Montreal* (1993), 21 C.B.R. (3d) 120.

However, by about the end of April 2021, the Applicant had paid the Principal Amount in full, and has since been awaiting the CRA Confirmation.

12. The Applicant is entitled to the Source Deduction Declaration because the Principal Amount has been paid in full. The deemed trust that arose under the ITA and EIA to the extent of the Principal Amount dissolved upon the Applicant's payment thereof, and does not apply to the Penalty Amount.
13. The Applicant submits that the granting of the Source Deduction Declaration, while not essential to direct the payment of net sale proceeds of the Lands to Accord under the Approval and Vesting Order, is necessary to enable the Proposal Trustee to pay out the Equipment Proceeds (and any future sale proceeds received from the sale of redundant assets under the Initial Order) in the absence of the CRA Confirmation.

Part 4: MATERIAL TO BE RELIED ON

1. Order Made After Application, granted March 15, 2021;
2. Order Made After Application, granted March 31 2021 (KEL-S-S-120384);
3. Order Made After Application, granted April 6, 2021;
4. Order Made After Application, granted May 12, 2021;
5. Proposal Trustee's Report on the Proposal, dated June 24, 2021 (i.e. the Proposal Report);
6. Third Report of the Proposal Trustee dated July 13, 2021 (i.e. the Third Report);
7. Affidavit #3 of Ian Munson, made July 13, 2021 (i.e. Munson #3);
8. Blackline to Model Approval and Vesting Order; and
9. Such further and other material as counsel may advise and as this court deems admissible.

The Applicant estimate that the application will take **40 minutes**.

This matter is NOT within the jurisdiction of a master.

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 of 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;
 - (iii) if this application is brought under Rule 9-7, any notice that you are required to give under Rule 9-7(9).

Dated: 14-Jul-2021

DocuSigned by:

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Signature of Lawyer for Applicant
Kibben Jackson

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

The Solicitors for the Applicant are Fasken Martineau DuMoulin LLP, whose office address and address for delivery is 550 Burrard Street, Suite 2900, Vancouver, BC V6C 0A3 Telephone: +1 604 631 3131 Facsimile: +1 604 631 3232. (Reference: KXJ/322707.00001)

APPENDIX

THIS APPLICATION INVOLVES THE FOLLOWING:

- discovery: comply with demand for documents
- discovery: production of additional documents
- other matters concerning document discovery
- extend oral discovery
- other matter concerning oral discovery
- amend pleadings
- add/change parties
- summary judgment
- summary trial
- service
- mediation
- adjournments
- proceedings at trial
- case plan orders: amend
- case plan orders: other
- experts

SCHEDULE “A”

Service List

No. B-210198
Estate No. 11-2716201
Province of British Columbia
Bankruptcy Division
Vancouver Registry

IN THE SUPREME COURT OF BRITISH COLUMBIA
IN BANKRUPTCY AND INSOLVENCY

IN THE MATTER OF THE NOTICE OF INTENTION TO MAKE A
PROPOSAL OF BEAR CREEK CONTRACTING LTD.

SERVICE LIST
(Current to: May 12, 2021)

<p>Fasken Martineau DuMoulin LLP 2900 – 550 Burrard Street Vancouver, BC V6C 0A3</p> <p>Attention: Kibben Jackson Glen Nesbitt</p> <p>Tel: 604.631.4786 (K. Jackson) 604.631.4833 (G. Nesbitt)</p> <p>Email: kjackson@fasken.com gnesbitt@fasken.com svolkow@fasken.com misobe@fasken.com</p> <p><i>Counsel for Bear Creek Contracting Ltd.</i></p>	<p>Bear Creek Contracting Ltd.</p> <p>Attention: Ian Munson Savanna Noel</p> <p>Email: imunson@bearcreekgroup.onmicrosoft.com snoel@bearcreekgroup.onmicrosoft.com</p> <p><i>Bear Creek Contracting Ltd.</i></p>
<p>Cassels Brock & Blackwell LLP 2200 – 885 West Georgia Street Vancouver, BC V6E 3C8</p> <p>Attention: H. Lance Williams Forrest Finn</p> <p>Tel: 604.691.6112 (L. Williams) 604.630.5455 (F. Finn)</p> <p>Email: lwilliams@cassels.com ffinn@cassels.com sdanielisz@cassels.com</p> <p><i>Counsel for Proposal Trustee</i></p>	<p>Crowe MacKay & Company Ltd. 1100 – 1177 West Hastings Street Vancouver, BC V6E 4T5</p> <p>Attention: Derek Lai</p> <p>Tel: 604.697.5257</p> <p>Email: Derek.Lai@crowemackay.ca</p> <p><i>Proposal Trustee</i></p>

<p>SHK Law Suite 700 – 555 Burrard Street Vancouver, BC V7X 1M8</p> <p>Attention: Seema Lal</p> <p>Tel: 604.408.2026</p> <p>Email: slal@shk.ca jcroberge@shk.ca</p> <p><i>Counsel for Gitga'at Matrix Workforce Services Ltd.</i></p>	<p>Lawson Lundell LLP Suite 1600 Cathedral Place 925 West Georgia Street Vancouver, BC V6C 3L2</p> <p>Attention: Thomas D. Boyd William L. Roberts Marko Vesely Craig A.B. Ferris, Q.C.</p> <p>Tel: 604.631.9132 (T. Boyd)</p> <p>Email: tboyd@lawsonlundell.com wroberts@lawsonlundell.com mvesely@lawsonlundell.com cferris@lawsonlundell.com</p> <p><i>Counsel for Pretium Exploration Ltd.</i></p>
<p>Daniel Le Dressay #1010 – 736 Granville Street Vancouver, BC V6Z 1G3</p> <p>Tel: 604.739.0017</p> <p>Email: dan@ledressay.com</p> <p><i>Counsel for More Core Diamond Drilling Services Ltd.</i></p>	<p>McQuarrie Hunter LLP 1500 – 13450 102 Avenue Surrey, BC V3T 5X3</p> <p>Attention: Douglas J. Conolly Ashley Dhaliwal</p> <p>Tel: 604.580.7066</p> <p>Email: dconolly@mcquarrie.com adhaliwal@mcquarrie.com asalak@mcquarrie.com</p> <p><i>Counsel for Blue Max Drilling Inc.</i></p>
<p>Ministry of Attorney General (British Columbia) Legal Services Branch PO Box 9290 Stn Prov Govt Victoria, BC V8W 9J7</p> <p>Email: AGLSBRevTaxInsolvency@gov.bc.ca Aaron.Welch@gov.bc.ca Cindy.Cheuk@gov.bc.ca</p> <p><i>Secured Creditor</i></p>	<p>Northbridge General Insurance Corporation Societe D'Assurance Generale Northbridge 105 Adelaide Street West Toronto, ON M5H 1P9</p> <p>Attention: Iqbal Bhinder James Choleas</p> <p>Email: iqbalbhinder@unitedsurety.ca James.Choleas@nbfc.com info@nbfc.com</p> <p><i>Secured Creditor</i></p>

<p>Accord Small Business Finance Corp. c/o Alexander Holburn Beaudin & Lang LLP 2700 – 700 West Georgia Street Vancouver, BC V7Y 1B8</p> <p>Attention: David Garner James Jang</p> <p>Tel: 604.484.1708 (D. Garner)</p> <p>Email: dgarner@ahbl.ca jjang@accordfinancial.net</p> <p><i>Senior Secured Creditor</i></p>	<p>Arundel Capital Corporation Suite 420, 5119 Elbow Drive SW Calgary, AB T2V 1H2</p> <p>Attention: Vik Ghosh</p> <p>Fax: 403.287.9847</p> <p>Email: vghosh@arundelcapital.com</p> <p><i>Equipment Financers</i></p>
<p>Current Financial Corp. Tower 1 2020, 10060 Jasper Avenue Edmonton, AB T5J 3R8</p> <p>Attention: Maya Winfrey</p> <p>Fax: 780.665.4901</p> <p>Email: mwinfrey@currentfinancial.com</p> <p><i>Equipment Financers</i></p>	<p>Dynamic Capital Equipment Finance Inc. 208, 1824 Gordon Drive Kelowna, BC V1Y 0E2</p> <p>Attention: Dustin White</p> <p>Fax: 877.521.9273</p> <p>Email: dwhite@dynamic-capital.ca</p> <p><i>Equipment Financers</i></p>
<p>Ford Credit Canada Company PO Box 2400 Edmonton, AB T5J 5C7</p> <p>Tel: 877.636.7346 Fax: 780.443.5352</p> <p>Email: n/a</p> <p><i>Equipment Financers</i></p>	<p>Terrace Totem Ford Sales Ltd. 4631 Keith Avenue Terrace, BC V8G 1K3</p> <p>Tel: 855.908.2929 Fax: n/a</p> <p>Email: Mitch@totemford.net</p> <p><i>Equipment Financers</i></p>
<p>DLA Piper (Canada) LLP Suite 2800 – 666 Burrard Street Vancouver, BC V6C 2Z7</p> <p>Attention: Jeffrey Bradshaw Taryn Urquhart</p> <p>Tel: 604.643.2941 (J. Bradshaw) 604.642.2942 (T. Urquhart)</p> <p>Email: jeffrey.bradshaw@dlapiper.com taryn.urquhart@dlapiper.com</p> <p><i>Counsel for John Deere Financial</i></p>	<p>Burrard Law LLP 1320 – 355 Burrard Street Vancouver, BC V6C 2G8</p> <p>Attention: David Plunkett</p> <p>Tel: 604.235.3205</p> <p>Email: dplunkett@burrardlaw.com</p> <p><i>Counsel for Pomerleau Inc.</i></p>

Rick Bandstra
Bandstra Transportation Systems
Smithers, BC

Tel: 250.847.6456

Email: rickbandstra@bandstra.com

SCHEDULE "B"

Approval and Vesting Order

**IN THE SUPREME COURT OF BRITISH COLUMBIA
IN BANKRUPTCY AND INSOLVENCY**

IN THE MATTER OF THE PROPOSAL OF
BEAR CREEK CONTRACTING LTD.

ORDER MADE AFTER APPLICATION
(APPROVAL & VESTING ORDER)

BEFORE)
) THE HONOURABLE)
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JULY 26, 2021

ON THE APPLICATION OF Bear Creek Contracting Ltd. (the “**Applicant**”), coming on for hearing **by telephone** at Vancouver, British Columbia on this day, and on hearing Glen Nesbitt, counsel for the Applicant, and those counsel listed in Schedule “A” attached hereto, and with no one appearing for Gitga’at Matrix Workforce Services Ltd. and Kon Kast Products (2005) Ltd., although duly served; AND UPON READING the material filed, including the Proposal Trustee’s Report on the Proposal dated June 24, 2021, and the Third Report of the Proposal Trustee dated July 13, 2021 (the “**Third Report**”);

THIS COURT ORDERS AND DECLARES that:

1. The sale transaction (the “**Transaction**”) contemplated by the Contract of Purchase and Sale dated May 10, 2021 (the “**Sale Agreement**”) between the Applicant, as vendor, and 1303526 B.C. Ltd. (the “**Purchaser**”), as purchaser, a copy of which is attached as Appendix “B” to the Third Report, is hereby approved, and the Sale Agreement is commercially reasonable. The execution of the Sale Agreement by the Applicant is hereby authorized and approved, and the Applicant is hereby authorized and directed to take such additional steps and execute such additional documents as may be necessary or desirable for the completion of the Transaction and for the conveyance to the Purchaser

of the lands described in the Sale Agreement and identified in Schedule “B” hereto (the “**Lands**”).

2. Upon payment of the purchase price under the Sale Agreement, which is to be allocated to the parcels comprising the Lands in accordance with the calculations set forth in Schedule “C” hereto, all of the Applicant’s right, title and interest in and to the Lands shall vest absolutely in the Purchaser in fee simple, free and clear of and from any and all security interests (whether contractual, statutory, or otherwise), hypothecs, mortgages, trusts or deemed trusts (whether contractual, statutory, or otherwise), liens, executions, levies, charges, or other financial or monetary claims, whether or not they have attached or been perfected, registered or filed and whether secured, unsecured or otherwise (collectively, the “**Claims**”) including, without limiting the generality of the foregoing: (i) any encumbrances or charges created by the Order of this Court dated March 15, 2021; (ii) all charges, security interests or claims evidenced by registrations pursuant to the *Personal Property Security Act* of British Columbia or any other personal property registry system; and (iii) those Claims listed on Schedule “D” hereto (all of which are collectively referred to as the “**Encumbrances**”, which term shall not include the permitted encumbrances, easements and restrictive covenants listed on Schedule “E” hereto, all of which are collectively referred to as the “**Permitted Encumbrances**”), and, for greater certainty, this Court orders that all of the Encumbrances affecting or relating to the Lands are hereby expunged and discharged as against the Lands.
3. Upon presentation for registration in the Land Title Office for the Land Title District of Price Rupert of a certified copy of this Order, together with a letter from Fasken Martineau DuMoulin LLP, solicitors for the Applicant, authorizing registration of this Order, the British Columbia Registrar of Land Titles is hereby directed to:
 - (a) enter the Purchaser as the owner of the Lands, together with all buildings and other structures, facilities and improvements located thereon and fixtures, systems, interests, licenses, rights, covenants, restrictive covenants, commons, ways, profits, privileges, rights, easements and appurtenances to the said hereditaments belonging, or with the same or any part thereof, held or enjoyed or appurtenant thereto, in fee simple in respect of the Lands, and this Court declares

that it has been proved to the satisfaction of the Court on investigation that the title of the Purchaser in and to the Lands is a good, safe holding and marketable title and directs the BC Registrar to register indefeasible title in favour of the Purchaser as aforesaid; and

- (b) having considered the interest of third parties, to discharge, release, delete and expunge from title to the Lands all of the registered Encumbrances except for those listed in Schedule “D” (i.e. the Permitted Encumbrances).
4. For the purposes of determining the nature and priority of Claims, the net proceeds from the sale of the Lands shall stand in the place and stead of the Lands, and from and after the delivery of the Proposal Trustee’s Certificate all Claims shall attach to the net proceeds from the sale of the Lands with the same priority as they had with respect to the Lands immediately prior to the sale, as if the Lands had not been sold and remained in the possession or control of the person having had possession or control immediately prior to the sale.
 5. The Applicant is hereby authorized and directed to pay the net proceeds from the sale of the Lands to Accord Small Business Finance Corp.
 6. Subject to the terms of the Sale Agreement, vacant possession of the Lands shall be delivered by the Applicant to the Purchaser at 12:00 noon on July 28, 2021, or such earlier date as the Applicant and the Purchaser may agree (the “**Closing Date**”), subject to the Permitted Encumbrances.
 7. The Applicant and the Purchaser are at liberty to extend the Closing Date to such later date as those parties may agree without the necessity of a further Order of this Court.
 8. Notwithstanding:
 - (a) these proceedings;
 - (b) any application for a bankruptcy order in respect of the Applicant now or hereafter made pursuant to the *Bankruptcy and Insolvency Act* and any bankruptcy order issued pursuant to any such applications; and

(c) any assignment in bankruptcy made by or in respect of the Applicant,

the vesting of the Lands in the Purchaser pursuant to this Order shall be binding on any trustee in bankruptcy that may be appointed in respect of the Applicant and shall not be void or voidable by creditors of the Applicant, nor shall it constitute or be deemed to be a transfer at undervalue, fraudulent preference, assignment, fraudulent conveyance or other reviewable transaction under the *Bankruptcy and Insolvency Act* 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.

9. The Applicant, the Proposal Trustee or any other party affected by this Order have liberty to apply for such further or other directions or relief as may be necessary or desirable to give effect to this Order.
10. As at this date, the Applicant owes no amounts to the Canada Revenue Agency on account of unremitted source deductions pursuant to either the *Income Tax Act*, R.S.C. 1985, c. 1 (5th Supp.) or the *Employment Insurance Act*, S.C. 1996, c. 23.
11. Endorsement of this order by counsel appearing, other than counsel for the Applicant, is hereby 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.

Signature of Glen Nesbitt
Lawyer for the Applicant

BY THE COURT

REGISTRAR

SCHEDULE "A"

List of Counsel Appearing

Name of Party	Counsel Name

SCHEDULE "B"

Lands

PID: 011-597-496

Lot 1, District Lot 373, Range 5, Coast District, Plan 4414 Except Plans 6426 and 5259

PID: 011-069-821

Lot 16, Block 5, District Lot 373, Range 5, Coast District, Plan 3218

PID: 014-296-055

Lot 1, District Lots 372 and 373, Range 5, Coast District, Plan 12376

PID: 011-268-298

Lot 7, Block 2, District Lot 372, Range 5, Coast District Plan 3218 Except Plan 5250

SCHEDULE "C"

Purchase Price Allocation

PID	2021 BC Assessment Value	Calculation	Allocated Purchase Price
011-597-496	\$966,000.00	$\$3,800,000 \times (\$966,000/\$2,483,600)$	\$1,478,015.78
011-069-821	\$180,700.00	$\$3,800,000 \times (\$180,700/\$2,483,600)$	\$276,477.69
014-296-055	\$1,237,000.00	$\$3,800,000 \times (\$1,237,000/\$2,483,600)$	\$1,892,655.82
011-268-298	\$99,900.00	$\$3,800,000 \times (\$99,900/\$2,483,600)$	\$152,850.70
Total:	\$2,483,600.00		\$3,800,000.00

SCHEDULE "D"

Encumbrances

Nature: MORTGAGE
Registration Number: BB680925
Registration Date and Time: 2008-06-26 10:54
Registered Owner: ROYAL BANK OF CANADA
Remarks: INTER ALIA, MODIFIED BY CA8147732, EXTENDED BY CA814733

Nature: MORTGAGE
Registration Number: CA8147733
Registration Date and Time: 2020-04-20 15:59
Registered Owner: ROYAL BANK OF CANADA
Transfer Number: CA8147733 TRANSFERRED TO LB569822
Registered Owner: ACCORD SMALL BUSINESS FINANCE CORP. INCORPORATION NO. BC0924892
Transfer Number: LB569822
Remarks: EXTENSION OF BB680925, MODIFIED BY CA8147732

Nature: MODIFICATION
Registration Number: CA8147732
Registration Date and Time: 2020-04-20 15:59
Remarks: INTER ALIA, MODIFICATION OF BB680925

Nature: MORTGAGE
Registration Number: CA8150488
Registration Date and Time: 2020-04-22 11:15
Registered Owner: ACCORD SMALL BUSINESS FINANCE CORP. INCORPORATION NO. BC0924892, ACCORD SMALL BUSINESS LEASING CORP. INCORPORATION NO. BC0852495
Remarks: INTER ALIA

Nature: ASSIGNMENT OF RENTS
Registration Number: CA8150489
Registration Date and Time: 2020-04-22 11:15
Registered Owner: ACCORD SMALL BUSINESS FINANCE CORP. INCORPORATION NO. BC0924892, ACCORD SMALL BUSINESS LEASING CORP. INCORPORATION NO. BC0852495
Remarks: INTER ALIA

Nature: MORTGAGE
Registration Number: CA8150490
Registration Date and Time: 2020-04-22 11:15
Registered Owner: ACCORD SMALL BUSINESS FINANCE CORP. INCORPORATION NO. BC0924892, ACCORD SMALL BUSINESS LEASING CORP. INCORPORATION NO. BC0852495

Remarks: INTER ALIA

Nature: ASSIGNMENT OF RENTS

Registration Number: CA8150491

Registration Date and Time: 2020-04-22 11:15

Registered Owner: ACCORD SMALL BUSINESS FINANCE CORP. INCORPORATION NO. BC0924892, ACCORD SMALL BUSINESS LEASING CORP. INCORPORATION NO. BC0852495

Remarks: INTER ALIA

Nature: JUDGMENT

Registration Number: CA8489587

Registration Date and Time: 2020-10-13 11:41

Registered Owner: GITGA'AT MATRIX WORKFORCE SERVICES LTD. INCORPORATION NO. BC1231925

Remarks: INTER ALIA

Nature: JUDGMENT

Registration Number: CA8655290

Registration Date and Time: 2020-12-17 11:15

Registered Owner: KON KAST PRODUCTS (2005) LTD.

Remarks: INTER ALIA

SCHEDULE "E"

Permitted Encumbrances

1. The reservations, limitations, provisos and conditions expressed in the original grant thereof from the Crown of any of the Lands and the statutory exceptions to title currently applicable to the Lands;
2. A claim of right, title or jurisdiction which may be made or established by any indigenous peoples by virtue of their status as indigenous peoples to or over any Lands;
3. The encumbrances listed below with respect to the Lands:
 - (a) Undersurface and Other Exc & Res, No. TC11870; and
 - (b) Statutory Right of Way, No. CA2996850.

No. B-210198
Estate No. 11-2716201
Province of British Columbia
Bankruptcy Division
Vancouver Registry

**IN THE SUPREME COURT OF BRITISH COLUMBIA
IN BANKRUPTCY AND INSOLVENCY**

IN THE MATTER OF THE
PROPOSAL OF
BEAR CREEK
CONTRACTING LTD.

**ORDER MADE AFTER APPLICATION
(APPROVAL AND VESTING ORDER)**

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Counsel: Kibben Jackson
Matter No: 322707.00001