



Estate No. 11-1961335
Vernon Registry

IN THE SUPREME COURT OF BRITISH COLUMBIA
IN BANKRUPTCY AND INSOLVENCY

IN THE MATTER OF THE BANKRUPTCY OF
OGOPOGO BEACH RESORT LTD.

ORDINARY ADMINISTRATION

TRUSTEE'S PRELIMINARY REPORT TO CREDITORS

BACKGROUND

Ogopogo Beach Resort Ltd. ("OBR", the "Company") was initially incorporated in 1981 under the name of Fabbi Auto Parts (1981) Ltd. The name was changed in 1982 to its current name. Ermanno Barone was the Company's Director, Officer and shareholder until his death on February 5, 2014. Mr. Barone's Last Will appointed his ex-wife, Elaine Barone, as the executor of his Will and trustee of his Estate.

OBR is a joint venture partner, along with two other companies which developed a resort commonly known as the Barona Beach Lakefront Resort ("Barona Beach") located in West Kelowna, B.C. Barona Beach is a condominium development, and was completed in or around Summer 2008. Barona Beach has a physical address of 4026 Pritchard Drive, West Kelowna, BC and has a legal address of Strata Lots 1 to 159 District Lot 434 Osoyoos Division Yale District Strata Plan KAS 3267.

0718698 BC Ltd., a company controlled by Stewart Smith has a 50% interest in the joint venture, 0724555 BC Ltd. a company controlled by Elaine Barone has a 25% interest in the joint venture, and OBR has a 25% interest in the joint venture.

Happy Valley Resort Ltd. ("HVR") was incorporated for the purpose of the property development. HVR became the registered owner of the lands as bare trustee for the joint venture partners. All of the joint ventures partners have shareholdings in HVR in the same proportion as their respective interest in the joint venture. As such, OBR is a 25% shareholder of HVR.

A Joint Venture Agreement was executed between OBR, 0724555 BC Ltd., 0718698 BC Ltd., HVR, Ermanno Barone, Elaine Barone, Stewart Smith and Belco Holdings Inc. on September 23, 2005.

It is our understanding that a dispute arose between Mr. Smith and his companies (which includes Belco Holdings Inc.) and the Barones and their companies during the course of the property development, and as a result, the court appointed a receiver of HVR. In addition, arbitration proceedings were formally commenced with respect to the joint venture agreement. A Memorandum of Settlement was entered into on or about January 2010 which set out how various matters were to be resolved, how any future disputes would be dealt with, and how funds would be disbursed from the joint venture.

In 2012, sale proceeds of various strata lots were paid to Borden Ladner Gervais LLP ("BLG") in trust. BLG is legal counsel to HVR and who continues to hold funds in trust for HVR and the joint venture partners. In November 2014, there were funds totalling approximately \$958,000 in BLG's trust account. Of this total, approximately \$754,750 is held subject to a solicitor's understanding. This is discussed in more detail later in this report.

It is our further understanding that a number of other disputes arose which resulted in various litigation commenced against HVR, OBR, and its joint venture partners. This litigation is also discussed in more detail later in this report.

Assignment in Bankruptcy

Ultimately the Company was unable to meet its obligations, and in order to ensure its creditors were dealt with in an equitable way, the Company was assigned into bankruptcy effective February 16, 2015 and MNP Ltd. was appointed Trustee in Bankruptcy, subject to creditor affirmation at the First Meeting of Creditors.

ASSETS

According to the Statement of Affairs filed in the bankruptcy, the assets of OBR include:

Statement of Affairs

Cash	\$ 37,983
Accounts Receivable	285,915
Vehicle	6,000
Interest in Joint Venture	1
Interest in Latecomer Agreement	1
Shareholdings in Happy Valley Resort Ltd.	1
Shareholdings in Barone Entertainment Ltd.	1
Claim Against Trak Energy Corporation	1
Claim Against Jeffrey H. Maxwell	1
Total Assets	<u>\$ 329,904</u>

Cash on Hand

The Company maintained a bank account with the Bank of Montreal ("BMO") and funds on hand were forwarded to the Trustee in the amount of \$37,982.50. The Trustee wrote to BMO to request that the account be closed, and any further funds on hand in any other accounts be forwarded to the Trustee. As we understand that the Company did not maintain any other accounts, we do not anticipate receiving further funds.

Accounts Receivable

0876479 B.C. Ltd. ("BC Ltd.")

The Statement of Affairs indicates \$285,915 owing by BC Ltd. to the Company. BC Ltd. is controlled by Ermanno Barone's son, Robert Barone. It is our understanding that BC Ltd. is a holding company which owns real property. The real property is used by another company (also controlled by Robert Barone) which operates a water park located in the Okanagan region of British Columbia. It is our further understanding that the debt relates to a loan advanced in 2010.

The Trustee has written to BC Ltd. and requested that the funds owing to OBR be paid to the Trustee for the benefit of the unsecured creditors.

We have reviewed certain financial information of OBR, which indicate amounts owing by a number of additional related companies/parties:

- Barone Entertainment Ltd.: \$791,534
- Ermanno Barone: \$7,631
- 5611156 Manitoba Ltd.: \$3,503

Barone Entertainment Ltd.

Ogopogo owns 100% of the shares of Barone Entertainment Ltd. ("BEL"). Ermanno Barone was the Director of BEL at the date of his death. BEL owes OBR approximately \$791,534. We have reviewed the T2 Corporate Tax Return filed on behalf of BEL in relation to the fiscal year ending May 31, 2014. The tax return reported that the company had dividend income from related company, and reported a retained deficit of approximately \$47,671. We understand that BEL's main asset relates to advances to Forever Plaid Productions LLC. We are advised that this company does not have sufficient funds to repay BEL the approximate \$600,000 which was advanced. BEL also owns 90% of the shares of 5611156 Manitoba Ltd. From our very preliminary review, it does not appear likely that OBR will recover the full amount owing by BEL.

Ermanno Barone

It is our understanding that Ermanno Barone also owes approximately \$7,600 to OBR. As reported, Mr. Barone passed away on February 5, 2014. The Trustee will submit the claim on behalf of OBR to Mr. Barone's executor and Trustee of his Estate.

5611156 Manitoba Ltd. ("Manitoba")

As reported above, BEL owns 90% of the shares of Manitoba. Manitoba owes OBR approximately \$3,503. It is our understanding that Ermanno Barone was also the Director of Manitoba at the date of his death. We understand that Manitoba's assets include minimal cash on hand and amounts owing from or invested in, related parties.

Vehicle

The Company owns a 2005 Jaguar X-Type Sedan which was valued on the Statement of Affairs at \$6,000. The average retail black book value is \$6,507. The vehicle is currently located in a secured underground parkade in West Kelowna and has storage insurance which expires May 23, 2015. The Trustee was contacted by an individual who has expressed interest in purchasing the vehicle. The Trustee has received a written offer which will be reviewed with the Inspectors if appointed, or those present at the First Meeting of Creditors.

Interest in Joint Venture

As reported, OBR is a joint venture partner, along with two other companies which developed a resort commonly known as Barona Beach located in West Kelowna, B.C. OBR has a 25% interest in the joint venture.

HVR was incorporated for the purpose of the property development. HVR became the registered owner of the lands as bare trustee for the joint venture partners. All of the joint ventures partners have shareholdings in HVR in the same proportion as their respective interest in the joint venture. As such, OBR is a 25% shareholder of HVR.

A Joint Venture Agreement was executed between OBR, 0724555 BC Ltd., 0718698 BC Ltd., HVR, Ermanno Barone, Elaine Barone, Stewart Smith and Belco Holdings Inc. on September 23, 2005. A Memorandum of Settlement was executed on or about January 2010 after disputes arose between Mr. Smith and his companies and the Barones and their companies.

BLG is legal counsel to HVR. As reported, in November 2014 BLG held funds in trust for HVR and the joint venture partners totaling approximately \$958,000. Of this total, approximately \$754,750 is held subject to a solicitor's understanding. We have asked BLG to provide a copy of a current trust ledger to ascertain what is currently held in trust.

We understand that further funds may be paid to BLG in trust for the joint venture partners in relation to the following assets:

Strata Lot 126

It is our understanding that Strata Lot 126 remains unsold. This strata lot is also the subject of litigation commenced by The Owners, Strata Plan KAS 3267 (the "Strata"), who filed a claim in or around September 2010 seeking, amongst other relief, that the designation of limited common property of certain areas be removed and those areas be designated as common property for the benefit of the Strata.

We also understand that the Strata made an offer to purchase the strata lot for \$265,000 plus GST in early 2014 which was accepted, but subject to the lawsuit being settled and satisfactory financing being obtained by the Strata. However we understand that the Strata was not able to obtain financing at that time, and as such, the lawsuit was not settled and Strata Lot 126 remains unsold.

Landscaping Bond

Landscaping security in the amount of \$366,045 was deposited with the District of West Kelowna ("DWK") during the course of the development of Barona Beach. Legal counsel to HVR sought a release of a portion of the funds based on the work that had been completed and we were recently advised that DWK agreed to release the sum of \$183,022.50, being 50% of the amount deposited. These funds will be paid to BLG In Trust. Should all landscaping issues at Barona Beach be resolved, we expect that the balance of funds would then be released by DWK.

Cash Collateral

There is a \$75,000 cash collateralized line of credit currently held by CIBC as security for claims made under home warranty insurance required for new construction. We are advised that this is releasable in 2017 if there are no claims under the warranty insurance.

At this date, we are unsure what funds may ultimately become available to OBR in relation to its 25% interest in the joint venture.

Interest in Latecomer Agreement

We have reviewed a Latecomer Agreement dated October 31, 2013 (the "Agreement") which was executed between DWK and OBR and its joint venture partners.

It is our understanding that the Agreement was entered into because it was agreed amongst the parties that the water systems provided by Barona Beach would benefit surrounding lands around the development (as stipulated in the agreement). As such, DWK agreed that to the extent that charges are imposed to owners of the surrounding and benefiting lands and charges are collected by DWK, DWK will pay these amounts to the joint venture partners for a period of up to 15 years from June 23, 2011.

We are advised that a fee has been paid to date with respect to one surrounding development, and that there is potentially one other project in the planning phase that may also have to pay this fee in the future. We would anticipate that any further fees would be paid to BLG In Trust.

Shareholdings in HVR

As previously reported, HVR was incorporated for the purpose of the property development. HVR became the registered owner of the lands as bare trustee for the joint venture partners. OBR is a 25% shareholder of HVR.

Shareholdings in BEL

As previously reported, OBR owns 100% of the shares of BEL. Ermanno Barone was the Director of BEL at the date of his death. We have reviewed the T2 Corporate Tax Return filed on behalf of BEL in relation to the fiscal year ending May 31, 2014. The tax return reported that the Company had dividend income from a related company, and reported a retained deficit of approximately \$47,671. As such, it appears that the shares have no material realizable value.

Shareholdings in Barona Beach Rentals Ltd. ("BBR")

We are advised that OBR owns 25% of the shares of BBR. We are also advised that this company was incorporated to operate the rental component of Barona Beach.

The Memorandum of Settlement refers to a receivership proceeding under BC Supreme Court Action No S087795 Vancouver Registry. The Memorandum of Settlement also states that "following the discharge of the Receiver and payment of the that company's payables, the company will be wound up, amalgamated or restructured pursuant to other proceedings, as agreed by the parties." We are advised that the shares in BBR have no realizable value.

Counterclaim against Trak Energy Corporation ("Trak") and Jeffrey H. Maxwell ("Maxwell")

It is our understanding that Trak was retained to design and install a mechanical plumbing, heating, and HVAC system for Barona Beach, and disputes subsequently arose between the various parties. It is our further understanding that in or around July 2007, Trak initiated legal proceedings against HVR, OBR, and its joint venture partners claiming a debt owing of approximately \$862,000, and sought a judgment in that amount plus costs, damages, and loss of anticipated profit.

On or about August 2007, HVR and the joint venture partners filed a Statement of Defence and Counterclaim as against Trak and Maxwell. We understand that Maxwell is a professional engineer and the principal of Trak. On or about June 2013, an Amended Counterclaim was filed by HVR. The counterclaim and amended counterclaim included a claim for damages against Trak and Maxwell for overpayment and the remediation and completion of work. We understand this claim to be in the range of \$900,000.

OBR's interest in the counterclaim has now vested in the Trustee, which may be continued by the Estate, may be assigned to a third party for value, or assigned to one or more creditors pursuant to Section 38 of the *Bankruptcy and Insolvency Act*. Pursuant to this section, the Trustee shall assign its right and interest in a chose in action to a creditor who has obtained an Order, after the Trustee refuses or neglects to take a proceeding that, in their opinion, would be for the benefit of the Estate. Given the nature of the joint venture arrangement, any interested creditor would need to do their own investigations as to how funds resulting from a potential recovery would be paid to the joint venture partners.

PROVABLE CLAIMS

It is the duty of the Trustee to examine and satisfy itself as to the validity and priority of all claims filed in the Estate. Claims admitted by the Trustee to date are as follows:

	Statement of Affairs	Admitted
Secured creditors	\$ NIL	\$ NIL
Preferred creditors	\$ NIL	\$ NIL
Unsecured creditors	\$ 62,698	\$ NIL
Contingent creditors	<u>\$ 11,855,476</u>	<u>\$ 1.00</u>
Total	<u>\$ 11,918,174</u>	<u>\$ 1.00</u>

SECURED CREDITORS

Canada Revenue Agency ("CRA")

The Statement of Affairs does not report a debt owing to CRA in relation to unremitted payroll withholdings. CRA has a "deemed trust claim" or property claim equal to the amount of payroll deductions withheld from employees' compensation and not remitted to CRA. The deemed trust claim must be paid in full and in priority to the claims of all other creditors. The employer's portion of payroll deductions, and interest and penalties assessed form an unsecured claim. It is our understanding that OBR did not employ any individuals.

There may be amounts owing to CRA in relation to unremitted GST/HST but this debt would be an unsecured claim. CRA may also be owed a material amount in relation to corporate income taxes, but this matter is discussed later in this report under Contingent Creditors.

Claims of Wage Earners

Pursuant to Section 81.3(1) of the *Bankruptcy and Insolvency Act*, claims of employees who are owed wages in the six month period preceding the date of bankruptcy are secured, to the extent of \$2,000, over the Bankrupt's current assets.

As reported above, we do not believe OBR had employees, and as such, there should not be any secured claims of wage earners.

Other Secured Creditors

A search of the Personal Property Registry of British Columbia did not indicate any financing statements at the date of bankruptcy, and as such, we do not anticipate any claims of secured creditors.

PREFERRED CREDITORS

Employees and Landlords

Employees are afforded priority for wages and compensation that are not paid by virtue of Section 81 of the *BIA*. As previously reported, we do not anticipate any wage claims, and no proofs of claim have been filed at the date of this report.

Landlords are afforded priority for rent arrears in the three month period preceding the date of bankruptcy, and may claim accelerated rent to a maximum of three months as an unsecured claim, if provided for in the lease agreement. It is our understanding that OBR did not maintain an office or other premises prior to the date of bankruptcy.

UNSECURED CREDITORS

The Statement of Affairs reports total claims of unsecured creditors of approximately \$62,700.

Ultimately the amount of proven claims in the bankruptcy will be determined by the proofs of claims filed by creditors and admitted by the Trustee.

CONTINGENT CREDITORS

Contingent claims are claims that may, or may not, ultimately become a debt, based upon a future event.

Canada Revenue Agency ("CRA")

CRA is listed as a contingent creditor on the Statement of Affairs in the amount of \$1,099,476.52. It is our understanding that corporate income tax returns filed on behalf of OBR for the taxation years ending May 31, 2009, 2010 and 2011 were the subject of an audit. CRA issued a Notice of Reassessment dated November 23, 2012 which reported a balance owing of \$1,099,476.52. OBR filed a formal Notice of Objection in February 2013. This debt is listed as a contingent debt, given the current appeal of the reassessment.

The Owners, Strata Plan KAS 3267 (the "Strata")

Bluegreen Architecture Inc. (“Bluegreen”)
Rockingham Pool Consulting Inc. (“Rockingham”)
Royal & Sun Alliance Insurance Company of Canada and et al (“Royal”)
(collectively the “Plaintiffs”)

The Plaintiffs are listed as contingent creditors on the Statement of Affairs, each in the amount of \$2,500,000.

On or around May 2014, the Strata filed a claim against HVR, OBR and its joint venture partners as well as a number of other parties involved with the Barona Beach development. The claim alleges a number of defects in relation to the development's HVAC system, its building envelope, pool and hot tub, and fire lane. We understand that the Strata is claiming damages and costs in the range of \$2,500,000.

Bluegreen, Rockingham, and Royal filed third party claims against OBR and the various other defendants named in the Strata's claim.

A Statement of Defence was filed, and we are advised that OBR has sought insurance coverage with respect to these claims, and OBR's insurer, Intact Insurance Company of Canada, is currently considering the matter.

The Strata filed an initial claim in or around September 2010 against HVR, the joint venture partners, and their respective principals, seeking, in addition to other relief, that the designation of limited common property of certain areas be removed and those areas be designated as common property for the benefit of the Strata. We understand that this litigation affects Strata Lot 126, being the final unit to be sold.

The Trustee advised the Plaintiffs' legal counsel of the bankruptcy and the stay of proceedings which precludes creditors from continuing or commencing any action for recovery of a claim without the leave of court.

Trak Energy Corporation (“Trak”)

Trak is listed as a contingent creditor on the Statement of Affairs in the amount of \$756,000.

As previously reported, it is our understanding that Trak was retained to design and install a mechanical plumbing, heating, and HVAC system for the development, and disputes subsequently arose between the various parties. It is our further understanding that on or around July 2007, Trak initiated legal proceedings against HVR and the joint venture partners claiming a debt owing of approximately \$862,000, and at or around the same time, Trak filed a Builders Lien and Certificate of Pending Litigation against title to the real property owned by HVR on behalf of the joint venture partners which was unsold at that time. We are advised that an agreement was reached amongst the parties whereby the liens and charges were removed from title to allow the sale of the properties, on a solicitor's undertaking that BLG will not distribute those funds pending further agreement or court order. As reported, in November 2014, approximately \$754,750 was held by BLG in relation to this solicitor's undertaking.

The Trustee has reviewed an Assignment dated June 26, 2007 whereby a debt claimed by Trak as against HVR, OBR and its joint venture partners of \$721,211.00 appeared to be assigned to three companies in prescribed amounts and those companies then appear to assign their respective interest to Canada Revenue Agency.

On or about August 2007, HVR and the joint venture partners filed a Statement of Defence and Counterclaim as against Trak and Maxwell. We understand that Maxwell is a professional engineer and the principal of Trak. On or about June 2013, an Amended Counterclaim was filed by HVR. The counterclaim and amended counterclaim included a claim for damages against Trak and Maxwell for overpayment and remediation and completion of work. We understand this counterclaim to be in the range of \$900,000.

The Trustee also advised Trak's legal counsel of the bankruptcy and the stay of proceedings.

OTHER MATTERS

Books and Records

The Trustee has obtained copies of various banking and legal documents for OBR.

Legal Proceedings

The Trustee sought initial legal advice with respect to the matter of a claim previously filed by the Strata against HVR, the joint venture partners, and others involved in the Barona Beach development. The claim was filed in or around March 2012 and alleged that the Strata and the various owners of the strata lots incurred damages, loss and expenses caused by water damage which resulted from a burst pipe that leaked when water froze within the sprinkler system piping in November 2010. We are advised that the Strata's claim was in the range of \$230,000 plus costs.

The Trustee and its legal counsel determined that this claim had been settled by various parties including OBR, for \$165,000 and that HVR's contribution of \$65,000 on behalf of HVR and the joint venture partners had been substantively completed prior to the date of bankruptcy. As such, the settlement of the claim was not affected by the stay of proceedings which came into effect at the date of bankruptcy. The settlement funds were received by plaintiff's legal counsel under the sole undertaking to provide a Release to the various parties to the settlement. A Consent Dismissal Order was executed after the date of bankruptcy, with the Trustee's consent.

Insurance

As previously reported, the Trustee confirmed that the Company's vehicle is currently insured until May 23, 2015.

Conservatory and Protective Measures

As the Company did not maintain an office or other premises at the date of bankruptcy, there was no requirement for the Trustee to change locks or take other conservatory or protective measures.

Preferences, and Transactions at Under Value

The Trustee will review the books and records preceding the date of bankruptcy in order to ascertain whether or not any preferential payments and/or reviewable transactions have occurred within the last three months or, where related parties are involved, within the last twelve months.

Directive 16 – Third-Party Deposits and Guarantees

Prior to the date of bankruptcy, the Trustee entered into an engagement agreement whereby Elaine Barone and Robert Barone have guaranteed the Trustee's fees and costs of administration.

ESTIMATED REALIZATION

At the present time, the Trustee is unable to provide any meaningful estimates for a % dividend that the unsecured creditors may receive given the uncertainty as to the outcome of the various legal proceedings against OBR, the uncertainty of the tax appeal filed by OBR, and the current uncertainty as to what funds may be forthcoming from OBR's interest in the Barona Beach Joint Venture.

This concludes the Trustee's Preliminary Report.

DATED at the City of Vancouver, in the Province of British Columbia, this 5th day of March, 2015.

MNP Ltd.

In its capacity as Trustee In Bankruptcy
Ogopogo Beach Resort Ltd.
and not in its personal or corporate capacity

Per:  Patty E. Wood CGA CIRP
Senior Vice President