



No. S235026
Vancouver Registry

IN THE SUPREME COURT OF BRITISH COLUMBIA

IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*, R.S.C.
1985, c. C-36

AND

IN THE MATTER OF THE CANADA BUSINESS CORPORATIONS ACT, R.S.C. 1985
c. C-44 and THE BUSINESS CORPORATIONS ACT, S.B.C. 2002, c. 57

AND

IN THE MATTER OF THE JOSEPH RICHARD HOSPITALITY GROUP LTD.
AND THOSE PARTIES LISTED ON SCHEDULE "A"

PETITIONERS

NOTICE OF APPLICATION
re Distribution Order

Name of applicants: The Joseph Richard Hospitality Group Ltd. and those other parties listed on
Schedule "A" (the "**Petitioners**")

To: the Service List

And to:

CW Persona Developments Inc
c/o Tyler R. Fulkerth
270 Highway 33 W
Kelowna, BC V1X 1X7

Super Save Fence Rentals Inc.
c/o Super Save Group of Companies
19395 Langley Bypass
Surrey, BC V3S 6K1

PMC Prestige Mechanical Contracting
Limited
c/o James L. Davidson & Company Law
Corporation
Barristers and Solicitors
#5 -15243 91 Avenue
Surrey, BC V3R 8P8

TAKE NOTICE that an application will be made by the Petitioners to the Justice Fitzpatrick at the courthouse at 800 Smithe Street, Vancouver on 09/MAY/2024 at 10:00 a.m. for the order set out in Part 1 below.

The applicants estimate that the application will take 1 day.

This matter is not within the jurisdiction of an associate judge. Justice Fitzpatrick is seized of these CCAA proceedings but granted leave for applications to be made before another presider in her absence.

Part 1: ORDER SOUGHT

1. An Order substantially in the form attached hereto as Schedule “**B**” (the “**Distribution Order**”), which, among other things, provides for the distribution of certain proceeds of sale of the Roosters Building (as defined below).

Part 2: FACTUAL BASIS

2. Pursuant to an order of the Court made on July 17, 2023 (the “**Initial Order**”), the Petitioners were granted protection under the CCAA and Ernst & Young Inc. (“**EY**”) was appointed monitor of the Petitioners (in such capacity, the “**Monitor**”).
3. Pursuant to the terms of the Initial Order, the Court, among other things:
 - (a) granted a stay of proceedings until July 27, 2023, and set July 27, 2023, as the date for the comeback hearing in these proceedings; and
 - (b) granted the following charges over the property of the Petitioners as security for the obligations of the Petitioners to the beneficiaries of such charges:
 - (i) the Administration Charge, up to a maximum of \$200,000, to secure the fees and disbursements of counsel for the Petitioners, the Monitor, and counsel for the Monitor; and
 - (ii) the D&O Charge, up to a maximum of \$300,000 in favour of the directors and officers of the Petitioners.
4. On July 27, 2023, this Court granted an amended and restated initial order (the “**ARIO**”), which, among other things:
 - (a) granted a stay of proceedings until September 29, 2023;
 - (b) increased the amount of the Administration Charge to a maximum of \$400,000 and elevated the priority of the charge over all secured creditors;
 - (c) increased the amount of the Directors’ Charge to a maximum of \$1,000,000 and elevated the priority of the charge over all secured creditors; and

- (d) granted an Intercompany Charge in priority over all secured creditors, ranking second to the Administration Charge.
5. At the comeback hearing, this Court also granted a claims process order.
6. On August 30, 2023, this Court granted an order approving interim financing and granting an “Interim Financing Charge” to a maximum of \$500,000 (the “**DIP Order**”). The DIP Order also reduced the amount of the Administration Charge to a maximum of \$250,000.
7. As of the DIP Order, the priority and amounts of the various court-ordered charges are as follows:
 - (a) First: Administration Charge (to a maximum amount of \$250,000);
 - (b) Second: Interim Financing Charge (to a maximum amount of \$500,000 plus interest and all applicable fees, costs and other amounts payable under the Interim Financing Credit Agreement);
 - (c) Third: Intercompany Charge; and
 - (d) Fourth: Directors' Charge (to a maximum amount of \$1,000,000).
8. On September 28, 2023, this Court granted a stay of proceedings until November 30, 2023, which was extended on that date to December 22, 2023.
9. On December 14, 2023, this Court granted an order (the “**Meeting Order**”), that, *inter alia*:
 - (a) extended the Stay Period up to and including March 8, 2024;
 - (b) accepted the Plan for filing and authorized the Petitioners to present the Plan to their creditors; and
 - (c) approved the Meeting Materials and set various timelines and guidelines in respect of the Meeting.
10. On March 8, 2024, this Court extended the Stay Period until May 8, 2024.
11. Since the hearing on March 8, 2024, further communications with Canadian Western Bank (“**CWB**”) and Canada Revenue Agency (“**CRA**”) made clear that the plan filed by the Petitioners in December 2023 is not achievable. However, discussions with CWB and Bank of Montreal (“**BMO**”) in respect of an alternative investment transaction and marketing process have been proceeding.
12. At a hearing on May 1, 2024, this Court extended the Stay Period to May 9, 2024, at which time it was anticipated that applications to substitute the Monitor and commence a marketing process would be made.

13. Concurrently with this notice of application, the Petitioners filed a notice of application for a substitution order, which, among other things, extends the stay of proceedings and substitutes the Monitor and an order approving a sales process (the “**Substitution Application**”), and together with this notice of application, the “**Notices of Application**”).
14. If the Substitution Application is granted, MNP Ltd. will be substituted as court-appointed monitor in these proceedings and Ernst & Young Inc. will be discharged.

Sale of Roosters and Proposed Distribution

15. The Court-approved sale of the strata property in Pitt Meadows, British Columbia with a civic address of 19040 Lougheed Highway, Pitt Meadows, BC (the “**Roosters Building**”) closed on April 12, 2024.
16. After payment of conveyancing fees, commission, and property taxes, \$2,927,942.57 (the “**Sale Proceeds**”) was transferred to the Monitor’s trust account, to be held pending a distribution order. These proceeds were net of conveyancing fees of Farris LLP, but not net of all legal and professional fees required to obtain court approval of the transaction and proceed to final closing.
17. The claims against the vendor that attach to the Sale Proceeds include, among others, (a) the CCAA Charges (as defined in the ARIO); (b) amounts owing to Canadian Western Bank (“**CWB**”) secured by a mortgage and assignment of rents registered on title to the Roosters Building on April 29, 2020, with registration numbers CA8161880 and CA8161881, and modified by CB168564 (the “**CWB Mortgage**”); and (c) amounts owing in respect of certain builder’s liens registered in 2022 and 2024 (the “**Builder’s Liens**”).
18. The CWB Mortgage secures indebtedness of approximately \$13,095,000 in principal amount plus interest and costs. The CWB Mortgage was originally registered on or about April 29, 2020, securing a principal amount of \$12,000,000, and was modified on or about August 19, 2022, to increase the principal amount to \$13,095,000.
19. The Builder’s Liens comprise:
 - (a) Claim of builder’s lien, registration number CB226584, registered September 16, 2022, by Super Save Fence Rentals Inc.;
 - (b) Claim of builder’s lien, registration number CB1173768, registered February 21, 2024, by PMC Prestige Mechanical Contracting Limited; and
 - (c) Claim of builder’s lien, registration number CB1188933, registered February 29, 2024.
20. A lien was also filed with respect to unpaid strata fees. The amounts in respect of this strata lien were paid on closing.
21. As a result of the cash flow challenges noted in the Substitution Application, the Petitioners fell behind in paying the professionals assisting with these proceedings. Given the

availability of the Sale Proceeds, the Petitioners would like to resolve these post-filing arrears.

22. The Petitioners are seeking the following distribution of the Sale Proceeds:
- (a) first, to EY in trust for distribution to the Petitioners' counsel, EY, and EY's counsel (collectively, the "**Administration Charge Beneficiaries**"):
 - (i) \$250,000 on account of unpaid invoices of the Administration Charge Beneficiaries issued prior to May 1, 2024, in final satisfaction of all amounts secured by the Administration Charge; and
 - (ii) the amount required to pay the fees and expenses of the Administration Charge Beneficiaries incurred in relation to the Notices of Application;
 - (b) second, subject to a holdback of \$400,000 to be held in trust by EY (the "**Holdback**") the remaining funds to CWB on account of the secured pre-filing indebtedness of 1164312 B.C. Ltd. to CWB.

(collectively, the "Distributions"), provided however that nothing in this Order shall detract from the obligation of EY and its legal counsel to pass their accounts pursuant to paragraph 36 of the ARIO.
23. The Petitioners propose that the Holdback would be distributed by EY pursuant to agreement among CWB and the Administration Charge Beneficiaries concerning the payment of any outstanding professional fees (after the distribution of \$250,000 as contemplated by paragraph 22 hereof) or further order of the Court.
24. The Builder's Liens were registered after the CWB Mortgage.
25. In addition, given the remaining assets of the Petitioners, it is expected that CWB will face a shortfall in its recovery, irrespective of how much of the Sale Proceeds are paid to CWB in respect of pre- or post-filing indebtedness. In other words, if all proceeds of sale of all the Petitioners' property, including the Sale Proceeds, were paid to CWB without deduction for costs of sale, professional fees, etc., CWB would not be paid in full.

Part 3: LEGAL BASIS

26. The Petitioners rely on:
- (a) the CCAA and, in particular, ss. 11, and 36;
 - (b) the *Supreme Court Civil Rules*, BC Reg 168/2009 and in particular Rules 8-1 and 22-4;
 - (c) the inherent and equitable jurisdiction of this Honourable Court; and

- (d) such further and other legal bases and authorities as counsel may advise and this Honourable Court may permit.
- 27. The professionals assisting with the Petitioners' restructuring, namely Farris LLP, EY, and Bennett Jones LLP, benefit from the Administration Charge.
- 28. Further, CWB is senior in respect of the interim facility and its pre-filing credit facilities on the Roosters Property. CWB is secured up to almost \$14 million in respect of the Roosters Building, and as a result, there is no scenario where creditors junior to CWB would be entitled to Sale Proceeds.
- 29. Consequently, the Petitioners seek this Court's approval to distribute the Sale Proceeds as proposed.

Part 4: MATERIAL TO BE RELIED ON

- 30. Affidavit #1 of Andre Joseph Bourque, made on July 16, 2023, with only Exhibit J
- 31. Affidavit #2 of Ryan Richard Moreno, made on March 5, 2024;
- 32. Affidavit #3 of Ryan Richard Moreno, made on April 29, 2024;
- 33. Seventh Report of the Monitor, dated April 30, 2024;
- 34. Eighth Report of the Monitor, to be filed; and
- 35. Such further and other material as counsel may advise and this Honourable Court may allow.

TO THE PERSONS RECEIVING THIS NOTICE OF APPLICATION: If you wish to respond to the 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: May 6, 2024

Signature

Lawyer for applicants

Rebecca M. Morse/Tevia R.M. Jeffries

THIS NOTICE OF APPLICATION is prepared and delivered by the firm Farris LLP, Barristers & Solicitors, whose place of business and address for service is 2500 – 700 West Georgia Street, Vancouver, British Columbia, V7Y 1B3. Telephone: (604) 684-9151. Facsimile: (604) 661-9349. **Attention: Rebecca Morse/Tevia Jeffries.**

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:

Dated:

Signature of

Judge **Associate Judge**

SCHEDULE "A" - LIST OF PETITIONERS

1138279 B.C. Ltd.
1164312 B.C. Ltd.
Ad Prolem Capital Investments Ltd.
Clover 67 Private Dining Room Ltd.
Edith & Arthur Public House Ltd.
Joseph Bourque Investments Ltd.
Joseph Richard Hospitality Group Ltd.
Joseph Richard Investments Ltd
Joseph Richard IP Holdings Ltd.
Joseph Richard Management Ltd.
JRG Canteen Virtual Kitchen Ltd.
JRG Clover Station LRS Ltd.
JRG Cloverdale Holdings Ltd.
JRG Cloverdale Ventures Ltd.
JRG Foodhall (Vancouver) Ventures Ltd.
JRG Glass House Estates Winery Ltd.
JRG Ledgeview Holdings Ltd.
JRG Steveston Hotels Ltd.
JRG Systems Ltd.
JRG Whiskey Charlie Cafe, Pitt Meadows Ltd.
Livelyhood Public House Ltd.
Micky's Investments (Coquitlam) Ltd.
Monkey See Tiki Bar Ltd.
Oak & Thorne Public House Ltd.
Oceanside Yacht Club And Public House Ltd.
S & L Kitchen & Bar Holdings Abbotsford Ltd.
S & L Kitchen & Bar Holdings Langley Ltd.
S & L Kitchen & Bar Holdings South Surrey Ltd.
Steveston Hospitality Services Ltd.
Sudo Asian Kitchen Holdings (Langley) Ltd.
The Italian Osteria and Cheese Bar Ltd.
The Phat Bird Public House Ltd.
The Study Public House Ltd.
Townhall Holdings (Abbotsford) Ltd.
Townhall Holdings (Chilliwack) Ltd.
Townhall Holdings (Coquitlam) Ltd.

Townhall Holdings (Maple Ridge) Ltd.
Townhall Holdings (South Surrey) Ltd.
Townhall Holdings Ltd.
Whiskey Charlie Holdings Ltd.

Non-Petitioner Entities:

Blank Canvas Catering Ltd.
JRG Queens LRS Ventures Ltd.
JRG Chilliwack Holdings Ltd.
JRG Growth Ventures Ltd.
JRG Published Holdings Ltd.
JRG Whip Holdings Ltd.

SCHEDULE "B" – DRAFT ORDER

IN THE SUPREME COURT OF BRITISH COLUMBIA

**IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*, R.S.C.
1985, c. C-36**

AND

**IN THE MATTER OF THE CANADA BUSINESS CORPORATIONS ACT, R.S.C. 1985
c. C-44 and THE BUSINESS CORPORATIONS ACT, S.B.C. 2002, c. 57**

AND

**IN THE MATTER OF THE JOSEPH RICHARD HOSPITALITY GROUP LTD.
AND THOSE PARTIES LISTED ON SCHEDULE "A"**

PETITIONERS

ORDER MADE AFTER APPLICATION

(DISTRIBUTION)

))
))
))
BEFORE)	THE HONOURABLE JUSTICE)
)	FITZPATRICK)
))
))

MAY 9, 2024

THE APPLICATION of the Petitioners coming on for hearing at Vancouver, British Columbia, on the 9th day of May, 2024; AND ON HEARING Tevia Jeffries, counsel for the Petitioners, and those other counsel listed on Schedule "B" hereto; AND UPON READING the material filed, including the Third Affidavit of Ryan Richard Moreno, made April 29, 2024, and the Seventh Report of Ernst & Young Inc. ("EY"), in its capacity as Monitor of the Petitioners; AND pursuant to the *Companies' Creditors Arrangement Act*, R.S.C. 1985 c. C-36 as amended (the "CCAA"), the *British Columbia Supreme Court Civil Rules*, and the inherent jurisdiction of this Honourable Court;

THIS COURT ORDERS AND DECLARES THAT:

1. The time for service and filing of the Notice of Application is hereby abridged and validated such that this Notice of Application is properly returnable today and hereby dispenses with further service thereof.

2. The Petitioners and EY are hereby authorized to distribute the net sale proceeds of sale of the Purchased Assets (as defined in the Approval and Vesting Order granted by this Court on March 8, 2024) as follows:

- (a) first, to EY in trust for distribution to Farris LLP, EY, and Bennett Jones LLP (collectively, the “**Administration Charge Beneficiaries**”):
 - (i) \$250,000 on account of unpaid invoices of the Administration Charge Beneficiaries issued prior to May 1, 2024 in final satisfaction of all amounts secured by the Administration Charge (as defined in the Amended and Restated Initial Order granted by this Court on July 27, 2023 (the “**ARIO**”); and
 - (ii) the amount required to pay the fees and expenses of the Administration Charge Beneficiaries incurred in relation to the applications for this order and the orders of even date substituting the Monitor and approving a sale process;
- (b) second, subject to a holdback of \$400,000 to be held in trust by EY (the “**Holdback**”) the remaining funds to Canadian Western Bank (“**CWB**”) on account of the secured pre-filing indebtedness of 1164312 B.C. Ltd. to CWB.

(collectively, the “**Distributions**”), provided however that nothing in this Order shall detract from the obligation of EY and its legal counsel to pass their accounts pursuant to paragraph 36 of the ARIO.

3. The Holdback shall be distributed by EY pursuant to agreement among CWB and the Administration Charge Beneficiaries concerning the payment of any outstanding professional fees (after the distribution of \$250,000 as contemplated by paragraph 2(a)(i) hereof) or further order of this Court.

4. Notwithstanding:

- (a) the pendency of these proceedings;
- (b) any assignment in bankruptcy or any petition for a bankruptcy order now or hereafter issued pursuant to the Bankruptcy and Insolvency Act (the "BIA") and any order issued pursuant to any such petition;
- (c) any application for a receivership order; or
- (d) any provisions of any federal or provincial legislation;

the Distributions contemplated by this Order shall be made free and clear of any Claims and Encumbrances, shall be binding on any trustee in bankruptcy or receiver that may be appointed, and shall not be void or voidable nor deemed to be a preference, assignment, fraudulent conveyance, transfer at undervalue or other reviewable transaction under the BIA or any other applicable federal or provincial legislation, as against the Petitioners, EY, and any party receiving payments, distributions, and disbursements pursuant to this Order, and shall not constitute oppressive or unfairly prejudicial conduct pursuant to any applicable federal or provincial legislation.

5. Without limiting the protections afforded to EY pursuant to orders made in these proceedings, under the CCAA or at law, EY shall not incur any liability nor obligation as a result of authorizing or making the Distributions pursuant to this Order.

GENERAL

6. THIS COURT REQUESTS the aid and recognition of other Canadian and foreign Courts, tribunal, regulatory or administrative bodies, including any Court or administrative tribunal of any

federal or State Court or administrative body in the United States of America, to act in aid of and to be complementary to this Court in carrying out the terms of this Order where required. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Petitioners and to the Monitor, as an officer of this Court, as may be necessary or desirable to give effect to this Order, to grant representative status to the Monitor in any foreign proceeding, or to assist the Petitioners and the Monitor and their respective agents in carrying out the terms of this Order.

7. Endorsement of this Order by counsel appearing on this application 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

Lawyer for Petitioners

Tevia Jeffries

By the Court

Registrar

SCHEDULE "A" - LIST OF PETITIONERS

1138279 B.C. Ltd.
1164312 B.C. Ltd.
Ad Prolem Capital Investments Ltd.
Clover 67 Private Dining Room Ltd.
Edith & Arthur Public House Ltd.
Joseph Bourque Investments Ltd.
Joseph Richard Hospitality Group Ltd.
Joseph Richard Investments Ltd
Joseph Richard IP Holdings Ltd.
Joseph Richard Management Ltd.
JRG Canteen Virtual Kitchen Ltd.
JRG Clover Station LRS Ltd.
JRG Cloverdale Holdings Ltd.
JRG Cloverdale Ventures Ltd.
JRG Foodhall (Vancouver) Ventures Ltd.
JRG Glass House Estates Winery Ltd.
JRG Ledgeview Holdings Ltd.
JRG Steveston Hotels Ltd.
JRG Systems Ltd.
JRG Whiskey Charlie Cafe, Pitt Meadows Ltd.
Livelyhood Public House Ltd.
Micky's Investments (Coquitlam) Ltd.
Monkey See Tiki Bar Ltd.
Oak & Thorne Public House Ltd.
Oceanside Yacht Club And Public House Ltd.
S & L Kitchen & Bar Holdings Abbotsford Ltd.
S & L Kitchen & Bar Holdings Langley Ltd.
S & L Kitchen & Bar Holdings South Surrey Ltd.
Steveston Hospitality Services Ltd.
Sudo Asian Kitchen Holdings (Langley) Ltd.
The Italian Osteria and Cheese Bar Ltd.
The Phat Bird Public House Ltd.
The Study Public House Ltd.
Townhall Holdings (Abbotsford) Ltd.
Townhall Holdings (Chilliwack) Ltd.
Townhall Holdings (Coquitlam) Ltd.

Townhall Holdings (Maple Ridge) Ltd.
Townhall Holdings (South Surrey) Ltd.
Townhall Holdings Ltd.
Whiskey Charlie Holdings Ltd.

Non-Petitioner Entities:

Blank Canvas Catering Ltd.
JRG Queens LRS Ventures Ltd.
JRG Chilliwack Holdings Ltd.
JRG Growth Ventures Ltd.
JRG Published Holdings Ltd.
JRG Whip Holdings Ltd.

Schedule "B"

(List of Counsel)

Counsel	Party

Appendix

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

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
- other