

No. 47736
Vernon Registry

In the Supreme Court of British Columbia

Between

JOHN NEIL FRISBY

Plaintiff

and

DANIEL KELSEY LEPOIDEVIN,
JOAN MARTHA ROBERTINE HUSSEY AND
CARIBOO CURB & GUTTER LTD.

Defendants

and

CARIBOO CURB & GUTTER (2011) LTD.

Defendant by Counterclaim

ORDER MADE AFTER APPLICATION

BEFORE MR. JUSTICE COLE } DECEMBER 14, 2011

ON THE APPLICATION of the Defendants, Daniel Kelsey LePoidevin and Joan Martha Robertine Hussey,

[x] coming on for hearing at Vernon, British Columbia, on the 14th day of December, 2011, and on hearing KENT G. BURNHAM, lawyer for the Defendants, Daniel Kelsey LePoidevin and Joan Martha Robertine Hussey and M. SHANE DUGAS, lawyer for the Plaintiff, John Neil Frisby;

THIS COURT ORDERS that:

1. The Defendant Company, Cariboo Curb and Gutter Ltd., (the "Company") be wound up.
2. MNP LLP. be appointed as liquidator (the "Liquidator") of the Company pursuant to section 325 of the *Business Corporations Act*, SBC 2002, c. 57 and pursuant to the terms of this Order.
3. Pursuant to s. 325(3) of the *Business Corporations Act*:
 - a) the Liquidator be appointed without security;

- b) the Liquidator be entitled to reasonable remuneration and if the parties cannot agree on the remuneration to be received by the Liquidator, that it be set by the Court;
 - c) in the nature of the terms of s. 325(3)(j), that the Liquidator investigate and determine the duties or liabilities of any past or present director, officer, receiver, receiver manager, liquidator, shareholder or beneficial owner of shares of the Company to the Company, or for an obligation of the Company since January 1, 2009;
 - d) in the nature of the terms of s. 325(3)(k), that the Liquidator examine into the conduct of any person who has taken part in the formation or promotion of the Company, or of any past or present director, officer, receiver, receiver manager, liquidator, shareholder or beneficial owner of shares of the Company, if it appears that that person has misapplied, retained or become liable or accountable for any property, rights or interests of, or has been guilty of any breach of trust in relation to, the Company;
 - e) in the nature of the terms of s. 325(3)(l), that the Liquidator determine, and propose to the Court as set out herein, whether a person referred to in paragraph (d) above, do one or both of the following:
 - (i) repay or restore all or any part of the property, rights and interests that the person misapplied or retained, or for which the person is liable or accountable, with interest at the rate the Court considers appropriate; or
 - (ii) contribute the sum that the Court considers appropriate to the assets of the Company by way of compensation for the conduct complained of.
4. The Liquidator is hereby empowered and authorized, but not obligated, to act at once in respect of the equipment, machinery, inventory, supplies and any other assets of the Company (the "Property") and, without in any way limiting the generality of the foregoing, the Liquidator is hereby expressly empowered and authorized to do any of the following where the Liquidator considers it necessary or desirable:
- (a) take possession and control of the Property and any and all proceeds, receipts and disbursements arising out of or from the Property;
 - (b) receive, preserve, protect and maintain control of the Property, or any part or parts thereof, including, but not limited to, changing of locks and security codes, relocating of Property to safeguard it, engaging

of independent security personnel, the taking of physical inventories and placement of such insurance coverage as may be necessary or desirable;

- (c) manage, operate and carry on the business of the Company, including the powers to enter into any agreements, incur any obligations in the ordinary course of business, or cease to perform any contracts of the Company;
- (d) engage consultants, appraisers, agents, experts, auditors, accountants, managers, counsel and such other persons from time to time and on whatever basis, including on a temporary basis, to assist with the exercise of the powers and duties conferred by this Order;
- (e) purchase or lease machinery, equipment, inventories, supplies, premises or other assets to continue the business of the Company or any part thereof;
- (f) receive and collect all monies and accounts now owed or hereafter owing to the Company and to exercise all remedies of the Company in collecting such monies, including, without limitation, to enforce any security held by the Company;
- (g) settle, extend or compromise any indebtedness owing to or by the Company;
- (h) execute, assign, issue and endorse documents of whatever nature in respect of any of the Property, whether in the Liquidator's name or in the name and on behalf of the Company for any purpose pursuant to this Order;
- (i) undertake environmental or workers' health and safety assessments of the Property and operations of the Company;
- (j) initiate, prosecute and continue the prosecution of any and all proceedings and to defend all proceedings now pending or hereafter instituted with respect to the Company, the Property or the Liquidator, and to settle or compromise any such proceedings. The authority hereby conveyed shall extend to such appeals or applications for judicial review in respect of any order or judgment pronounced in any such proceeding, provided that nothing in this Order shall authorize the Liquidator to defend or settle the action(s) in which this Order is made unless otherwise directed by this Court;
- (k) market any or all the Property, including advertising and soliciting offers in respect of the Property or any part or parts thereof and negotiating such terms and conditions of sale as the Liquidator in its discretion may deem appropriate;

- (l) sell, convey, transfer, lease, assign or otherwise dispose of the Property or any part or parts thereof out of the ordinary course of business:
 - a. without approval of this Court for any amount that is not less than 80% of the appraised value of the part or parts of the Property as set out in the appraisal of the Property provided by Richie Bros; or
 - b. with approval of this Court for any amount that is less than 80% of the appraised value of the part or parts of the Property as set out in the appraisal of the Property provided by Richie Bros, and any other Property of the Company unless with the consent of the Plaintiff and Defendant Daniel Lepoidevin, with such consent not to be unreasonably withheld;

and in each such case notice under Section 59(10) of the *Personal Property Security Act*, R.S.B.C. 1996, c. 359 shall not be required;

- (m) report to, meet with and discuss with such affected Persons (as defined below) as the Liquidator deems appropriate on all matters relating to the Property and the receivership, and to share information with such Persons, subject to such terms as to confidentiality as the Liquidator deems advisable;
- (n) register a copy of this Order and any other Orders in respect of the Property against title to any of the Property;
- (o) apply for any permits, licences, approvals or permissions and any renewals thereof as may be required by any governmental authority for and on behalf of and, if considered necessary or appropriate by the Liquidator, in the name of the Company;
- (p) enter into agreements with any trustee in bankruptcy appointed in respect of the Company, including, without limitation, the ability to enter into occupation agreements for any property owned or leased by the Company;
- (q) exercise any shareholder, partnership, joint venture or other rights which the Company may have; and
- (r) take any steps reasonably incidental to the exercise of these powers,

and in each case where the Liquidator takes any such actions or steps, it shall be exclusively authorized and empowered to do so, to the exclusion of all other Persons (as defined below), including the Company, and without interference from any other Person.

**DUTY TO PROVIDE ACCESS AND
COOPERATION TO THE LIQUIDATOR**

5. (i) the Company, (ii) all of the Company's current and former directors, officers, employees, agents, accountants, legal counsel and shareholders, and all other persons acting on its instructions or behalf, and (iii) all other individuals, firms, corporations, governmental bodies or agencies, or other entities having notice of this Order (all of the foregoing, collectively, being "Persons" and each being a "Person") shall forthwith advise the Liquidator of the existence of any Property in such person's possession or control, shall grant immediate and continued access to such property to the Liquidator, and shall deliver all such property (excluding Property subject to liens the validity of which is dependent on maintaining possession) to the Liquidator upon the Liquidator's request.
6. All Persons shall forthwith advise the Liquidator of the existence of any books, documents, securities, contracts, orders, corporate and accounting records, and any other papers, records and information of any kind related to the business or affairs of the Company, and any computer programs, computer tapes, computer disks, or other data storage media containing any such information (the foregoing, collectively, the "Records") in that Person's possession or control, and shall provide to the Liquidator or permit the Liquidator to make, retain and take away copies thereof and grant to the Liquidator unfettered access to and use of accounting, computer, software and physical facilities relating thereto, provided however that nothing in this paragraph 6 or in paragraph 7 of this Order shall require the delivery of Records, or the granting of access to Records, which may not be disclosed or provided to the Liquidator due to the privilege attaching to solicitor-client communication or documents prepared in contemplation of litigation or due to statutory provisions prohibiting such disclosure.
7. If any Records are stored or otherwise contained on a computer or other electronic system of information storage, whether by an independent service provider or otherwise, all Persons in possession or control of such Records shall forthwith give unfettered access to the Liquidator for the purpose of allowing the Liquidator to recover and fully copy all of the information contained therein whether by way of printing the information onto paper or making copies of computer disks or such other manner of retrieving and copying the information as the liquidator in its discretion deems expedient, and shall not alter, erase or destroy any Records without the prior written consent of the Liquidator. Further, for the purposes of this paragraph, all persons shall provide the Liquidator with all such assistance in gaining immediate access to the information in the Records as the Liquidator may in its discretion require, including, without limitation, providing the Liquidator with instructions on the use of any computer or other system and providing the Liquidator with any and all

access codes, account names and account numbers that may be required to gain access to the information.

NO PROCEEDINGS AGAINST THE LIQUIDATOR

8. No proceedings or enforcement process in any court or tribunal (each a "Proceeding"), shall be commenced or continued against the Liquidator except with the written consent of the Liquidator or with leave of this Court.

NO INTERFERENCE WITH THE LIQUIDATOR

9. No Person shall discontinue, fail to honour, alter, interfere with, repudiate, terminate or cease to perform any right, renewal right, contract, agreement, licence or permit in favour of or held by the Company, without written consent of the Liquidator or leave of this Court. Nothing in this Order shall prohibit any party to an "eligible financial contract" (as defined in Section 65.1 of the *BIA*) with the Company from terminating such contract or exercising any rights of set-off, in accordance with its terms.

CONTINUATION OF SERVICES

10. All Persons having oral or written agreements with the Company or statutory or regulatory mandates for the supply of goods and/or services, including without limitation, all computer software, communication and other data services, centralized banking services, payroll services, insurance, transportation services, utility or other services of any kind to the Company are hereby restrained until further Order of this Court from discontinuing, altering, interfering with or terminating the supply of such goods or services as may be required by the Liquidator, and that the Liquidator shall be entitled to the continued use of the Company's current telephone numbers, facsimile numbers, internet addresses and domain names, provided in each case that the normal prices or charges for all such goods or services received after the date of this Order are paid by the Liquidator as may be agreed upon by the supplier or service provider and the Liquidator, or as may be order by this Court.

LIQUIDATOR TO HOLD FUNDS

11. All funds, monies, cheques, instruments, and other forms of payments received or collected by the Liquidator from and after the making of this Order from any source whatsoever, including, without limitation, the sale

or disposition of all or any of the Property and the collection of any accounts receivable in whole or in part, whether in existence on the date of this Order or hereafter coming into existence, shall be deposited into one or more new accounts to be opened by the Liquidator (the "Post-Liquidation Accounts") and the monies standing to the credit of Post-Liquidation Accounts from time to time, net of any disbursements provided for herein, shall be held by the Liquidator to be paid in accordance with the terms of this Order or any further Order of this Court.

EMPLOYEES

12. Subject to the right of employees to terminate their employment notwithstanding paragraph 10, all employees of the Company shall remain the employees of the Company until such time as the Liquidator, on the Company's behalf, may terminate the employment of such employees. The Liquidator shall be liable for any employee-related liabilities, including wages, severance pay, termination pay, vacation pay and pension or benefit amounts relating to any employees that the Liquidator may hire.
13. Pursuant to Section 7(3)(c) of the *Personal Information Protection and Electronic Documents Act*, S.C. 2000, c. 5 or Section 18(1)(o) of the *Personal Information Protection Act*, S.B.C. 2003, c. 63, the Liquidator may disclose personal information of identifiable individuals to prospective purchasers or bidders for the Property and to their advisors, but only to the extent desirable or required to negotiate and attempt to complete one or more sales or dispositions of the Property (each, a "Sale").
14. Each prospective purchaser or bidder to whom such personal information is disclosed shall maintain and protect the privacy of such information and limit the use of such information to its evaluation of the Sale, and if it does not complete the Sale, shall return all such information to the Liquidator, or in the alternative destroy all such information. The purchaser of any property shall be entitled to continue to use the personal information provided to it, and related to the Property purchased, in a manner which is in all material respects identical to the prior use of such information by the Company, and shall return all other personal information to the Liquidator, or ensure that all other personal information is destroyed.

LIMITATION ON ENVIRONMENTAL LIABILITIES

15. Nothing in this Order shall require the Liquidator to occupy or to take control, care, charge, possession or management (separately and/or collectively, "Possession") of any of the Property that might be environmentally contaminated, might be a pollutant or a contaminant, or

might cause or contribute to a spill, discharge, release, or deposit of a substance contrary to any federal, provincial or other law relating to the protection, conservation, enhancement, remediation or rehabilitation of the environment or relating to the disposal of waste or other contamination including, without limitation, the *Canadian Environmental Protection Act*, 1999, S.C. 1999, c. 33, the *Fisheries Act*, R.S.C. 1985, c. F-14, the *Environmental Management Act*, R.S.B.C. 1996, c. 118 [Editor's note: now S.B.C. 2003, c. 53] and the *Fish Protection Act*, S.B.C. 1997, c. 21 and regulations thereunder (collectively "Environmental Legislation"), provided however that nothing herein shall exempt the Liquidator from any duty to report or make disclosure imposed by applicable Environmental Legislation. The Liquidator shall note, as a result of this Order, or anything done in pursuance of the Liquidator's duties and powers under this Order, be construed to be in Possession of any of the Property within the meaning of any Environmental Legislation, unless the Liquidator is actually in Possession.

LIMITATION ON THE LIQUIDATOR'S LIABILITY

16. The Liquidator shall incur no personal liability or obligation as a result of its appointment or the carrying out of the provisions of this Order, save and except for any gross negligence or wilful misconduct on its part. Nothing in this Order shall derogate from the protections afforded the Liquidator by Section 14.06 of the *B/A* or by any other applicable legislation.

LIQUIDATOR'S ACCOUNTS

17. Any expenditure or liability which shall properly be made or incurred by the Liquidator, including the fees of the Liquidator and the fees and disbursements of its legal counsel, incurred at the standard rates and charges of the Liquidator and its counsel, shall be allowed to it in passing its accounts and shall form a first charge on the Property in priority to all security interests, trusts, liens, charges and encumbrances, statutory or otherwise, in favour of any Person (the "Liquidator's Charge").
18. The Liquidator and its legal counsel shall pass their accounts from time to time, and for this purpose the accounts of the Liquidator and its legal counsel are hereby referred to a judge of the Supreme Court of British Columbia and may be heard on a summary basis.
19. Prior to the passing of its accounts, the Liquidator shall be at liberty from time to time to apply reasonable amounts, out of the monies in its hands, against its fees and disbursements, including legal fees and disbursements, incurred at the normal rates and charges of the Liquidator

or its counsel, and such amounts shall constitute advances against its remuneration and disbursements when and as approved by this Court.

FUNDING OF THE LIQUIDATION

20. John Frisby and Daniel Lepoidevin shall prepare and sign a cheque drawn on the Company Account in the amount of \$20,000 in favour of MNP, LLP by way of retainer for the services herein contemplated (the "Retainer"). The parties may increase the Retainer by agreement or, failing that, by application to the Court on usual notice.
21. MNP, LLP shall have a first charge on the Company Account for Liquidator's fees.

GENERAL

22. The Liquidator may from time to time apply to this Court for advice and directions in the discharge of its powers and duties hereunder.
23. Nothing in this Order shall prevent the Liquidator from acting as a trustee in bankruptcy of the Company.
24. This Court requests the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction, wherever located, to give effect to this Order and to assist the Liquidator and its agents in carrying out the terms of this Order.
25. The Liquidator be at liberty and is hereby authorized and empowered to apply to any court, tribunal or regulatory or administrative body, wherever located, for recognition of this Order and for assistance in carrying out the terms of this Order and all such courts, tribunals and regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Liquidator as an officer of this Court, as may be necessary or desirable to give effect to this Order or to assist the Liquidator and its agents in carrying out the terms of this Order.
26. Any interested party may apply to this Court to vary or amend this Order on not less than two (2) clear business days' notice to the Liquidator and to any other party likely to be affected by the order sought or upon such other notice if any, as this Court may order.
27. The Liquidator determine if there are missing documents.
28. The Liquidator provide an opinion with regard to a reasonable charge-out rate for the equipment belonging to the Corporate Defendant but used by

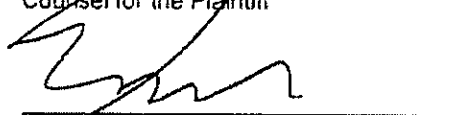
the Plaintiff, directly or indirectly, since Mr. Justice Rogers' Order of May 24, 2011 to today's date, and apply that rate with respect to the equipment used by the Plaintiff in contravention of Mr. Justice Rogers' Order.

- 29. The Liquidator determine if there is any money owed as between shareholders, for any reason, from January 1, 2009 to the present.
- 30. The Liquidator propose a division of the net proceeds of the Company.
- 31. If there is a dispute as to the determinations of the Liquidator, there will be a reference to the Registrar who will produce a certificate.
- 32. The application to strike the Statement of Claim is adjourned, and the Defendant has liberty to reset the application with appropriate notice.
- 33. The Plaintiff is put on notice that he must comply with all previous Orders.
- 34. Counsel for the Plaintiff shall provide to counsel for the Defendant the documents concerning the Williams Lake Credit Union account in the name of Cariboo Curb & Gutter and the Defendants, LePoidevin and Hussey; and Counsel for the Defendants shall provide to counsel for the Plaintiff authorizations allowing access to and in respect of said Credit Union account.
- 35. Costs for the application for liquidation are for the Defendants in any event of the cause; the balance of the application is adjourned.

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:



M. SHANE DUGAS,
Counsel for the Plaintiff



KENT G. BURNHAM,
Counsel for the Defendants,
Daniel Kelsey LePoidevin and
Joan Martha Robertine Hussey

By the Court,

.....
Registrar



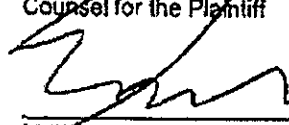
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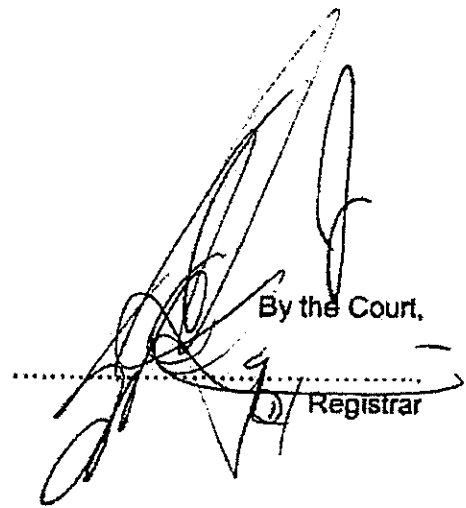


M. SHANE DUGAS,
Counsel for the Plaintiff



KENT G. BURNHAM,
Counsel for the Defendants,
Daniel Kelsey LePoidevin and
Joan Martha Robertine Hussey

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By the Court,
Registrar