

COURT FILE NUMBER QBG 1076 of 2021

COURT OF QUEEN'S BENCH FOR SASKATCHEWAN
IN BANKRUPTCY AND INSOLVENCY

JUDICIAL CENTRE SASKATOON



IN THE MATTER OF THE NOTICE OF INTENTION TO MAKE A PROPOSAL OF
CANADIAN DEVELOPMENT STRATEGIES INC.

AND

IN THE MATTER OF THE NOTICE OF INTENTION TO MAKE A PROPOSAL OF
CROSSROADS ONE INC.

AND

IN THE MATTER OF THE NOTICE OF INTENTION TO MAKE A PROPOSAL OF
OAK AND ASH FARM LTD.

AND

IN THE MATTER OF THE NOTICE OF INTENTION TO MAKE A PROPOSAL OF
1143402 ALBERTA LTD.

AND

IN THE MATTER OF THE NOTICE OF INTENTION TO MAKE A PROPOSAL OF
2061778 ALBERTA LTD.

AND

IN THE MATTER OF THE NOTICE OF INTENTION TO MAKE A PROPOSAL OF
1216699 ALBERTA LTD.

AND

IN THE MATTER OF THE NOTICE OF INTENTION TO MAKE A PROPOSAL OF
DEAN RUNZER

AND

IN THE MATTER OF THE NOTICE OF INTENTION TO MAKE A PROPOSAL OF
LORI RUNZER

ORDER
(Winding up Trust and Vesting Trust Property in Beneficiary)

Before the Honourable Mr. Justice N.G. Gabrielson in Chambers the 22nd day of December, 2021.

Upon the application by Jeffrey M. Lee, Q.C. and Dana Nowak, counsel on behalf of 1143402 Alberta Ltd., Canadian Development Strategies Inc., Crossroads One Inc., Oak and Ash Farm Ltd., 1216699 Alberta Ltd., 2061778 Alberta Ltd., Dean Runzer, and Lori Runzer (collectively, the "**FireSong Group**") and Benjamin Runzer, and upon hearing from Mike Russell of the law firm of W Law of Saskatoon, Saskatchewan ("**Trustee's Counsel**"), legal counsel to MNP Ltd., the proposal trustee of the FireSong Group (the "**Trustee**"), and upon reading the Notice of Application returnable on December 20, 2021, the Affidavit of Lori Runzer sworn October 21, 2021, the Affidavit of Lori Runzer sworn on December 6, 2021, the Affidavit of Lori Runzer sworn on December 17, 2021 (the "**Third Runzer Affidavit**"), the First Report of the Proposal Trustee dated October 21, 2021, the Second Report of the Proposal Trustee dated December 6, 2021, the Third Report of the Proposal Trustee dated December 17, 2021, the Order (Draft Order), and Brief of Law on Behalf of the Applicant, all filed; and the pleadings and proceedings herein;

The Court orders:

SERVICE

1. Service of the Notice of Application on behalf of the FireSong Group, including 1143402 Alberta Ltd. ("**114**") and Benjamin Runzer, and the materials filed in support thereof (collectively, the "**Application Materials**") shall be and is hereby deemed to be good and valid and, further, shall be and is hereby abridged, such that service of such Application Materials is deemed to be timely and sufficient.

WINDING UP TRUST AND VESTING TRUST PROPERTY IN BENEFICIARY

2. Subject to paragraphs 3, 4 and 5 hereof, the Registrar of the Kootenay Land District (the "**Kootenay Land District Registrar**") shall be and is hereby directed to register title to that property legally described as Lot 25, District Lots 10353 and 10354 Kootenay District Plan 14398 (the "**Property**") in the name of Benjamin Warren Runzer ("**Benjamin**") and Dallas Marie Runzer, as joint tenants, subject only to the following encumbrances, namely:
 - (a) the proposed mortgage in favour of Pioneer West Acceptance Corporation in the amount of \$600,000; and
 - (b) the Trustee's Charge (as defined below).
3. 114, Benjamin and Dallas Marie Runzer (Benjamin and Dallas Marie Runzer are hereinafter collectively referred to as the "**Runzers**") shall be and are hereby authorized, ordered and directed to take all steps necessary to enter into and perform their respective obligations under the mortgage commitment contract with Pioneer West Acceptance Corporation ("**Pioneer**") dated December 6, 2021 (the "**Pioneer Mortgage Commitment Contract**") and to facilitate the advance of financing by Pioneer directly to Trustee's Counsel in the net amount of \$563,000 (the "**Pioneer Financing**").
4. Forthwith upon its receipt of the proceeds of the Pioneer Financing, Trustee's Counsel shall deliver a letter to the Runzers (and/or British Columbia conveyancing legal counsel acting on behalf of the Runzers) confirming that Trustee's Counsel has received the proceeds of the Pioneer Financing (the "**Confirmation of Receipt of Financing Letter**").
5. The sole persons authorized or permitted to submit this Order to the Kootenay Land District Registrar shall be the Runzers (and/or British Columbia conveyancing legal counsel acting on behalf of the Runzers). Further, and in particular, the Runzers (and/or British Columbia conveyancing legal counsel acting on behalf of the Runzers) shall not be authorized or permitted to submit this Order to the Kootenay Land District Registrar until such time as the Runzers or their counsel have received from Trustee's Counsel the Confirmation of Receipt of Financing Letter.

6. Subject to paragraph 13 hereof, the proceeds of the Pioneer Financing shall be held in trust by Trustee's Counsel, and shall not be paid to any party with the exception of any amounts owing to the municipality in respect of outstanding property taxes, inclusive of interest and penalties owing respecting the Property (the "**Outstanding Property Taxes**") and the reasonable costs incurred by the Runzers in closing the Pioneer Financing (the "**Closing Costs**"), and such Outstanding Property Taxes and Closing Costs may be paid from and out of the proceeds of the Pioneer Financing without further Order of this Honourable Court.
7. Subject to the Trustee's Charge, the Pioneer Financing shall stand in place and stead of the Property and the Hoeller Mortgage (as hereinafter defined) and any claim that could have been raised against the Property may be asserted against the Pioneer Financing with the same priority as it had with respect to the Property immediately prior to the closing of the Pioneer Commitment Contract and as if the Property had not been transferred to Benjamin and Dallas Marie Runzer and remained in the possession or control of the person having that possession or control immediately prior to the transfer.
8. The Trustee shall be and is hereby directed, upon satisfactory receipt by the Trustee of the requisite Records in accordance with paragraph 15 hereof (in the sole discretion of the Trustee):
 - (a) to review the circumstances surrounding the creation of the trust declaration dated May 16, 2008 (the "**Trust Declaration**") whereby 114 (as trustee) agreed to hold legal title to the Property in trust for Benjamin;
 - (b) to review such other matters and issues as the Trustee deems advisable;
 - (c) to engage Trustee's Counsel to assist the Trustee in its review; and
 - (d) to prepare a report to the Court (the "**Trustee's Report**") on:
 - i. the validity of the Trust Declaration; and
 - ii. whether and to what extent (if any) 114 has a financial interest in the Property.
9. The Trustee shall instruct Trustee's Counsel to review the mortgage currently registered against title to the Property (the "**Hoeller Mortgage**") in favour of Yvonne Hoeller and to provide the Trustee with an independent legal opinion (the "**Hoeller Mortgage Opinion**") regarding:
 - (a) the validity and enforceability of the Hoeller Mortgage;
 - (b) whether and to what extent Yvonne Hoeller has dealt with 114, Canadian Development Strategies Inc., Crossroads One Inc., Oak and Ash Farm Ltd., 1216699 Alberta Ltd., 2061778 Alberta Ltd., Dean Runzer, Lori Runzer, Benjamin Runzer and Dallas Runzer "at arm's length", within the meaning of that phrase in section 4(5) of the *Bankruptcy and Insolvency Act*, RSC 1985, c B-3 (the "**BIA**"); and
 - (c) whether and to what extent any facts have come to the attention of the Trustee which indicate to the Trustee that the Hoeller Mortgage may constitute a preference or transfer at undervalue in accordance with sections 95 and 96 of the BIA or equivalent provincial legislation.
10. Upon its receipt of the Hoeller Mortgage Opinion, the Trustee shall prepare and file with this Court a report summarizing the substance of the Hoeller Mortgage Opinion insofar as it pertains to the questions set out in paragraphs 9(a), (b) and (c) of this Order, in such a manner as to maintain whatever solicitor-client privilege (if any) the Trustee claims in regard to the Hoeller Mortgage Opinion (the "**Trustee's Hoeller Mortgage Report**").

11. For greater clarity, the professional fees and disbursements of the Trustee and its legal counsel to carry out the tasks described above in paragraphs 8, 9 and 10 above are for the account of, and shall be paid by, Benjamin.
12. There shall be and is hereby created a charge on the Property and on the proceeds of the Pioneer Financing in favour of the Trustee (the "**Trustee's Charge**") in order:
 - i. to secure the payment of the professional fees and disbursements of the Trustee and Trustee's Counsel for work performed pursuant to this Order, including, without limitation, in relation to the Trustee's Report and the Trustee's Hoeller Mortgage Report; and
 - ii. to ensure that any remaining equity in the Property subsequent to title to the Property being vested in the name of the Runzers is preserved for the benefit of 114 and its creditors pending the preparation and delivery of the Trustee's Report and the Trustee's Hoeller Mortgage Report.
13. Subsequent to its filing with this Honourable Court of the Trustee's Report and the Trustee's Hoeller Mortgage Report, the Trustee shall promptly schedule a hearing before this Court (on notice to 114, Benjamin, the Trustee and the parties on the Service List in these proceedings) in order for this Honourable Court to decide:
 - (a) whether and to what extent it is appropriate for Trustee's Counsel to cause the proceeds of the Pioneer Financing to be utilized to pay out the balance owing on the Hoeller Mortgage in its entirety;
 - (b) whether and to what extent it is appropriate for Trustee's counsel to cause the remainder of the proceeds of the Pioneer Financing (subsequent to the payout of the Hoeller Mortgage in its entirety) to be paid to the order of the Runzers;
 - (c) whether and to what extent it is necessary or appropriate for the Trustee's Charge to be maintained on title to the Property or to be discharged from title to the Property;
 - (d) the validity of the Hoeller Mortgage; and
 - (e) the validity of the Trust Declaration.
14. This Court hereby requests the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or in any foreign jurisdiction to give effect to this Order and to assist in the carrying out of the terms of this Order.

MISCELLANEOUS MATTERS

15. All persons having notice of this Order (including, without limitation, 114, Benjamin and the Runzers) shall forthwith advise the Trustee 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 114, Benjamin or any other person in relation to the Trust Declaration 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 Trustee or permit the Trustee to make, retain and take away copies thereof and grant to the Trustee unfettered access to and use of accounting, computer, software and physical facilities relating thereto provided, however, that nothing in this paragraph shall require the delivery of Records, or the granting of access to Records, which may not be disclosed or provided to the Trustee due to the privilege attaching to solicitor-client communication or documents prepared in contemplation of litigation or due to statutory provisions prohibiting such disclosure.

16. The Trustee shall have leave to apply to this Court for advice and directions in relation to this Order on seven days notice to those parties who were served with this Order in accordance with paragraph 17 hereof.
17. Service of this Order on any party not attending this application is hereby dispensed with.

ISSUED at Saskatoon, Saskatchewan, this 22nd day of December, 2021.



(Deputy) Local Registrar

NOTICE

Take notice that, unless the order is consented to by the respondent or a person affected by the order or unless otherwise authorized by law, every order made without notice to the respondent or a person affected by the order may be set aside or varied on application to the Court. You should consult your lawyer as to your rights.

CONTACT INFORMATION AND ADDRESS FOR SERVICE

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