



NO. H091522
VANCOUVER REGISTRY

IN THE SUPREME COURT OF BRITISH COLUMBIA

BETWEEN:

COAST CAPITAL SAVINGS CRÉDIT UNION

AND:

THE SYMPHONY DEVELOPMENT CORPORATION and others

NOTICE OF APPLICATION

Name(s) of Applicant(s): Malkit Singh Johal

To: Tejwant Kainth
0769932 B.C. Ltd.
Gurmel Kainth
Gurdeep Kainth
PricewaterhouseCoopers Inc., the Receiver herein

TAKE NOTICE that an application will be made by the applicant to the presiding judge at the courthouse at 800 Smithe Street, Vancouver, British Columbia on November 15, 2010, at 10:00 a.m. for the order set out in Part 1 below.

Part 1: ORDER(S) SOUGHT

1. SEE SCHEDULE "A".

Part 2: FACTUAL BASIS

1. This receivership arose out of a dispute between the two directors of The Symphony Development Corporation ("**Symphony**"), Gurmel Kainth ("**Kainth**") and Malkit Johal ("**Johal**") which resulted in Johal filing a petition (the "**Petition**") on December 22, 2009 in Supreme Court of British Columbia Action No. S- 099401 (the "**Johal Proceeding**") seeking various relief against Kainth and others, supported by extensive affidavit evidence. Responsive materials were filed by the Kainths.

2. Symphony is a company that was engaged in the business of acquiring and developing land in the Maple Ridge, B.C. area. During the relevant times, Symphony acquired and developed a 34 lot subdivision known as "Spencer's Ridge" and a three phase development known as "Albion Slopes". The three phases of the Albion Slopes development are:

- (a) Phase I – 41 single family building lots;
- (b) Phase II – zoned to consist of 134 Townhouses; and
- (c) Phase III – potential to become 37 single family building lots with a remainder parcel designated as Urban Reserve.

3. Coast Capital Savings Credit Union was foreclosing on Symphony's Albion Ridge properties and had been granted Order Nisi on November 30, 2009, with a redemption period that expired on May 30, 2010. Symphony's directors were concerned that the Albion Ridge properties needed to be sold to avoid Symphony being foreclosed out by Coast Capital.

4. Johal's affidavit in support of the application for the appointment of the Receiver herein (the "Receiver") indicated that a number of contentious issues had developed between the two directors which resulted in Symphony being incapable of carrying on its business. One example given of those differences was that mortgages had been placed against some or all of the Symphony lands which are disputed in some respects by, in some cases Johal, and in other cases by Kainth. The result was that they could not agree what should happen to sale proceeds from the Symphony Lands.

5. Johal's affidavit indicated that there had been a loss of trust between himself and Kainth to the extent that they could not agree on how Symphony should be operated at this time. However, they agreed that Symphony needed to be placed in the hands of a receiver manager who could sell the remaining 4 Spencer's Ridge lots and the Albion Ridge lands, pay off non-controversial secured creditors and hold the balance of the sale proceeds pending resolution of these contentious issues.

6. Both parties knew that contentious mortgages had been registered against Symphony's lands. The expectation of both parties was that the Receiver would sell Symphony's lands, pay off non-controversial mortgages and hold the balance of the sale proceeds pending resolution of these contentious issues.

7. The facts giving rise to the dispute between Johal and Kainth are summarized below, but are complex and are set out in detail in the Petition and supporting affidavits.

8. The Receiver was appointed on January 12, 2010 as a result of an application made jointly by Johal and Kainth each in their capacity as directors of Symphony. The complaints described in the Petition are extremely serious and involve large sums of money Johal says were improperly taken from Symphony by Kainth and his family and friends. The allegations go far beyond the validity of the mortgages which are the basis for the TK Claim and the 076 Claim.

9. The allegations contained in the Petition and supported by affidavit evidence include, among other things, the matters set out below.

BACKGROUND

10. At the relevant times, on a day-to-day basis the affairs of Symphony were conducted by Kainth and his son, Gurdeep Kainth (“**Gurdeep**”), along with Johal and initially his son Schminder Johal (“**Schminder**”) and later his other son, Jagdip Johal (“**Jagdip**”).

11. While Johal, Schminder and Jagdip participated in some of the day-to-day operations of Symphony, they did not have any ongoing access to financial records and were informed of the financial status of Symphony only through Kainth or Gurdeep.

12. In or about the fall of 2008, it came to the attention of the Johals that without their knowledge, Symphony had paid for season tickets for the Vancouver Canucks for two years. Johal became concerned that he was being deliberately kept in the dark with respect to Symphony’s financial affairs.

13. For approximately seven months Kainth refused to agree to the appointment of the Petitioner as a director of Symphony.

SPENCER’S RIDGE

14. In or about April of 2009, before the subdivision of the Spencer’s Ridge property had been registered, Kainth arranged for the purchase of thirteen of the thirty four proposed lots (the “**Sixteen Lots**”) at prices significantly below market value, by family members or close associates, including Tejwant Kainth (“**TK**”) (2 lots) and his daughter Kuljeet Dhaliwal (“**Kuljeet**”) (3 lots). Johal believes that no deposits or other payments were paid to Symphony for any of those sixteen lots other than modest deposits paid by Kuljeet.

15. After the Spencer’s Ridge subdivision had been registered and all lots were registered in Symphony’s name, Symphony arranged for sales of those lots. The re-acquisition by Symphony for sale of the Sixteen Lots required payment of significant assignment fees. The result of these assignment fees was that the actual proceeds of sale on the Sixteen Lots that were directed to Symphony were only the minimum amount required to secure a discharge from the holder of the first mortgage. The original “purchaser” of the property took the benefit of a significant assignment fee through an offset against the purchase price. Most of the profit on the sales of the Sixteen Lots was therefore taken from Symphony to the benefit of Kainth, his wife and daughter, or his close relatives or associates.

ALBION SLOPES – Finder’s Fee

16. In or about 2007, the Petitioner was made aware that Gurdeep or his company, Vencial Capital Corporation (“**Vencial**”), had earned a commission or finder’s fee (the “**Finder’s Fee**”) on the acquisition by Symphony of the Albion Slopes property. Johal was neither aware of nor did he approve the payment of the Finder’s Fee, the facts in relation to which are set out below.

17. A handwritten agreement (the “**Consultation Fee Agreement**”) indicates that 670206 B.C. Ltd. (“**670276**”), the holder of an option to purchase the Albion Slopes property, would pay

a consultation fee of \$350,000.00 to Deer Lake Enterprises Inc. (“**Deer Lake**”). Kainth is listed in the Companies Registry as the sole Director and President of Deer Lake.

18. An addendum to the Consultation Fee Agreement (the “**Addendum**”) names 670206 as the assignor and Vencial as the assignee, but does not indicate how Vencial came to be the assignee. The Addendum directs that the consultation fee be increased from \$350,000.00 to \$400,000.00 and that \$75,000.00 of the consultation fee be paid to Deer Lake and \$325,000.00 be paid to Surinder Jassal. Gurdeep is listed as the sole Director and President of Vencial.

19. Surinder Jassal denies that he was entitled to or was paid any type of consultation fee. Surinder Jassal is a relative of Kainth who had loaned \$300,000.00 to Kainth for a few months and was repaid by cheque in the amount of \$325,000.00 inclusive of interest.

ALBION SLOPES – 0769932 B.C. Ltd. Mortgage

20. The mortgage in favour of 0769932 B.C. Ltd. (the “**076 Mortgage**”) was registered against Symphony’s Albion Slopes property without the knowledge or approval of any of the Johals. Some of the facts surrounding the 076 Mortgage are set out below.

21. When the Johals asked Kainth about this mortgage, he first said that the mortgage had been placed to protect the interests of both families and to give both families priority over other creditors.

22. Later Kainth told the Johals that the money had not actually come from his wife but had come from local investors he referred to as “Surinder” and “Ali”. Kainth stated that they allowed him to use his wife’s name for the mortgage because they trusted him. The Johals had not been previously made aware of these investors and asked for the opportunity to meet them. Kainth told Johal that he could not meet them because they were not in fact local but lived overseas.

23. Kainth’s affidavit sworn on January 18, 2010 and filed in the proceedings commenced by the Petition, did not even mention the Loan Agreements discussed in the Receiver’s Report, but instead indicated that by December 2008, past events including Mr. Johal’s failure to deliver funds as required and the repeated failure of the Johals to respond to communications from him, caused Kainth to become nervous about funds that he had secured for Symphony, so he advised Johal that mortgages would be registered against the Spencer’s Ridge and Albion Slopes projects by TK and her company, 076.

ALBION SLOPES – \$355,000

24. Kainth also appears to have received \$355,000.00 that should have been paid to Symphony or shared with Johal. The facts related to that matter are set out below.

25. Symphony wished to purchase an extra one acre parcel of land adjacent to Albion Slopes. Although Symphony paid the purchase price for the property, it was registered in the name of

Kainth and Johal as a way to save taxes. Subsequently, Symphony needed to pay some bills and to make a deposit with City Hall. Kainth and Johal obtained a joint line of credit (the “**Line of Credit**”) in their names from the Bank of Nova Scotia and used the one acre as security for the Line of Credit.

26. The Line of Credit was opened by Kuljeet, (Kainth’s daughter) who was then employed by the Bank of Nova Scotia. Kuljeet told Johal that it was a joint line of credit in his name and Kainth’s name which required both signatures for signing cheques or making withdrawals.

27. The Line of Credit was used to pay Symphony’s bills and Symphony subsequently deposited \$500,000.00 to pay down the line of credit. At some point unknown to the Johals, Kainth transferred first \$350,000.00 and then \$5,000.00 from the Line of Credit account to a bank account held jointly in his name and that of his wife, TK. Johal believes the transfers were made with the assistance of Kuljeet, since they took place without his knowledge and without his signature on any bank documents.

28. Johal has learned subsequent to the date of the Petition that a person who purchased three of Symphony’s Spencer’s Ridge lots paid \$10,000 to Kainth for fill taken from Symphony’s Albion Slopes property. Kainth instructed this person not to mention this purchase to his partners or other builders at the site.

SUMMARY OF PETITION

29. At the root of the allegations in the Petition is a desire on Johal’s part for a determination of the proper amount, if any, of the obligations of Symphony to Kainth and his family members including the holders of the TK Mortgage and the 076 Mortgage, taking into account all appropriate offsets, together with a determination as to whether they are entitled to payment in priority over the unsecured creditors of Symphony, including Johal.

30. The Petition and supporting materials need to be considered when the court is determining whether it is in the interests of justice to conduct a hearing in relation to the TK Claim in isolation from these other allegations.

31. All of Symphony’s records held by its solicitor Timothy Lack must be produced so all evidence relating to transactions involving Symphony is available.

SIMILARITIES BETWEEN THE TK CLAIM AND THE 076 CLAIM

32. The facts surrounding the claim of Tejwan Kainth (the “**TK Claim**”) and the claim of 076 (the “**076 Claim**”) as described in the Receiver Manager’s Sixth Report (the “**Receiver’s Report**”) are very similar in the following respects:

33. all three of the loan agreements described below (the “**Loan Agreements**”) were alleged to have been signed before Symphony became insolvent. In the TK Claim

the alleged date was November 19, 2007. In the 076 Claim, the date was October 2, 2007. The Loan Agreements are:

- (a) dated November 19, 2007 attached as Exhibit "C", exhibit page 8, to the Affidavit #1 of Tejwant Kainth sworn on September 29, 2010; and
- (b) dated October 3, 2007 and April 2, 2008 and referred to in paragraphs 4 and 7 and attached as Appendix H.2 of the Receiver's Report.
- (c) both the TK Mortgage and the 076 Mortgage were registered when Symphony was insolvent, being December 8, 2008 indicated in the 076 Claim and December 16, 2008 indicated in the TK Claim.
- (d) all of the Loan Agreements were signed by Kainth on behalf of Symphony in favour of his wife or a company owned and controlled by his wife, at a time when he was the sole director and sole legal (but not beneficial) shareholder of Symphony;
- (e) none of the Johals nor the company's solicitor or accountant were aware of any of the Loan Agreements until after the claims were submitted to the Receiver.
- (f) the receiver could not locate a copy of any of any of the Loan Agreement within the hard copy records of Symphony that had been produced by the Johals, the Kainths, the company's solicitors and the company accountant;
- (g) as a result, the Receiver requested that the Kainths produce the computer at the Kainth residence. The Receiver determined, among other things, that the file containing the Loan Agreements for both loans had been created and printed on May 7, 2010, which was the claims bar date ordered by this Court. No explanation for this has been provided by the Kainths;
- (h) the same explanation for the information taken by the Receiver from the Kainths' computer was given by the Kainths in both claims.
- (i) the Receiver noted that there were 9 revisions to the file and the texts of those revisions were not available through the processes followed by the Receiver;
- (j) the Receiver was not able to confirm with certainty that any of the Loan Agreements were signed on the dates alleged by the Kainths. The Receiver indicated that it was constrained in that the scope of its investigatory powers under the Claims Process Order were intended to result in the summary disposition of the claims filed.

- (k) the Receiver noted in both cases that no process existed for the testing of controversial evidence through an adversarial process;
- (l) the Receiver noted that it was compelled to arrive at its conclusions respecting both the TK Claim and the 076 Claim without the benefit of a complete body of evidence.
- (m) the Receiver indicated that despite its misgivings about the timing of the creation of the files containing the Loan Agreements, it was unable to conclude with the requisite degree of certainty that the Loan Agreements were not signed on the dates alleged by the Kainths. It is for that reason that the Receiver allowed both the TK Claim and the 076 Claim.

34. With so many factual similarities, the factual and legal issues to be decided in relation to appeals of both claims are bound to be very similar if not identical. The two appeals should be heard together to avoid repetition and the possibility of inconsistent outcomes.

35. The Receiver's Report also indicates that the 076 Loan Agreements had been deleted from the Kainth's computer on July 30, 2010, the day the Receiver obtained the computer, as they were located in the "Recycle Bin" directory on the computer's hard drive and not on a regular data directory. No explanation is provided in the Receiver's Report.

36. As the Receiver's Report points out, credibility is squarely in issue in the allegations contained in the Petition and in the TK Claim and the 076 Claim. The most obvious issue is whether the three Loan Agreements were actually prepared, printed and signed on the date alleged by the Kainths, or at the time the mortgage was registered, or perhaps even on the deadline date for filing proofs of claim with the Receiver. Forensic examinations and assessments of the Kainths' computer and the memory stick must be allowed to ensure that all available information relating to this issue is available. Other documents and records of the Kainths must be made available and cross-examinations must be allowed if the appeal of the TK Claim and the 076 Claim are to be dealt with in accordance with the interests of justice.

37. Some of the Johal's complaints relate to the conduct of Kainth and members of his family in relation to the Spencer's Ridge properties owned by Symphony. The Johal complaints include allegations of self-dealing supported by documentation indicating that Kainth arranged bogus sales of lots to family members or friends of lots owned by Symphony where little money was paid by those family members, the transfers were not registered and the lots were acquired by Kainth's family and friends at reduced prices or were flipped to bona fide purchasers for higher prices than those indicated in the contracts for sale of those lots to Kainth's family members or friends. Full resort to the Rules of Court are needed to obtain all evidence relevant to these transactions and the transaction giving rise to the Finder's Fee.

38. This court should view with suspicion dealings between non-arm's length parties such as Kainth, his wife TK, their children and companies controlled by any of them.

39. It is submitted that for the purposes of this appeal, in the absence of clear evidence of the reasons to the contrary, TK and Kainth's children, or companies controlled by any of them, should not be distinguished from Kainth.

40. The determination of the TK Claim and the 076 Claim should not be made upon partial information regarding the conduct of the Kainths in relation to Spencer's Ridge, Albion Slopes and Symphony.

41. The procedure to be followed in determining the validity of the TK Claim and the 076 Claim should be the same. There can be no justification for applying different procedures to different mortgages where there are such strong similarities in the circumstances surrounding the mortgages.

Part 3: LEGAL BASIS

1. It is submitted that *Re Galaxy Sports Inc.* does not set down a rule that no evidence beyond that in the hands of the trustee at the time he disapproved the claim can ever be put into evidence on an appeal of the trustee's disallowance of a claim. *Galaxy* goes no further than to indicate the following:

- (a) if fresh evidence were to be adduced on appeal *as a matter of course*, much would be lost in the way of efficiency in the operation of the bankruptcy scheme generally;
- (b) if counsel applied to adduce "fresh evidence", the chambers judge would then be obliged to decide whether its admissibility was justified in the interests of justice or on some other principled basis.

Re Galaxy Sports Inc. at paras 41 and 42

2. It is submitted that all relevant evidence should be admitted in these appeals since such a determination is in the interests of justice. Alternatively, the admissibility of evidence is justified upon the basis that the proof of claim in this case was submitted by TK and 076, not Johal. The burden was upon TK and 076, not Johal. The party who submitted the claim is not appealing the Receiver's determination, as was the case in *Galaxy*. The appellant in this case has had no opportunity to present its position and to respond to the Receiver's determinations.

3. *Galaxy* deals with a monetary claim of a creditor, not with a claim that involves an allegation that a mortgage constitutes a fraudulent conveyance or preference.

4. The usual process a trustee in bankruptcy follows if he wishes to challenge an improper preference is to make an application to the court. It is rare for a trustee to attempt to deal with preference issues by denying the claim of the secured creditor. The following principles and authorities are stated in *The 2010 Annotated Bankruptcy and Insolvency Act*, Houlden and Morawetz, Carswell, at pages 541 – 542.

- (a) The court follows the procedures provided by the ordinary rules of procedure in civil matters: *Pratchler Agro Services Inc. (Trustee of) v. State Farm Mutual Automobile Service Co. of Canada* (2006) 26 C.B.R. (5th) 320 and Bankruptcy Rule 3.
- (b) The usual method for attacking a transaction alleged to be a preference is by notice of motion (within the bankruptcy proceeding). When a motion for an order under s. 95 is contested and affidavit evidence is filed by a respondent, the normal practice is to direct a trial of an issue so that a decision can be based on *viva voce* evidence rather than affidavits and attached exhibits: *Craig (Trustee of) v. Craig* (1989) 76 C.B.R. (N.S.) 256 (Man. C.A.); *Re Swan* (1991) 7 C.B.R. (3d) 186 (Sask. Q.B.);
- (c) The usual practice in Ontario is to direct a trial of the issue even where the respondent did not file an affidavit; *Re Jolie Femme Limited* (1977) 26 C.B.R. (N.S.) 108 (Ont. H.C.); leave to appeal refused 26 C.B.R. (N.S.) 108 (Ont. S.C.)
- (d) Where intent is an issue, a trial of the issue is preferable: *Durocher Simpson v. Memento Granite Memorials Ltd. (Trustee of)* (2003) 45 C.B.R. (4th) 199.

5. If *Galaxy* were applied in the case of a denial of a claim by a trustee on the basis that the mortgage is a fraudulent preference, the claimant may not even know that the trustee considers the mortgage constitutes a preference until after the claimant has seen the Trustee's reasons for denying the claim. To suggest that the claimant is then precluded from adducing evidence as to why the transaction is not a preference is unfair and contrary to the interests of justice.

6. There are many other reasons for distinguishing this claims process from that established pursuant to the *Bankruptcy and Insolvency Act* R.S.C. 1985, c B-3 (the "BIA"). This is not a bankruptcy and neither the TK Claim nor the 076 Claim was disallowed pursuant to section 135 of the BIA.

7. There is a structure surrounding the claims process under the BIA which results in the justification of the finality of the trustee's determination pursuant to BIA s. 135(4). That process is entirely absent in this receivership.

8. The Receiver had no power to examine the Kainths or the Johals under oath, as a bankruptcy trustee would have had pursuant to section 163 of the BIA;

9. The Receiver had no power or limited power to compel the production of all relevant documents from the Kainths, as a bankruptcy trustee would have had pursuant to s. 164 of the BIA.

10. The scope of the inquiries the Receiver was authorized to undertake was significantly narrower than that available to a trustee.

11. A Notice of Disallowance in a bankruptcy cannot result in a barred claim unless it is served on the secured creditor pursuant to BIA Rule 113.
12. *Galaxy Sports* is not a binding authority on this issue for the following reasons:
 - (a) This is not an appeal from a trustee's disallowance in a bankruptcy;
 - (b) *Galaxy* does not deal with disallowance of a claim, secured or otherwise, on the basis that the claim constitutes an improper preference under either the BIA or the Provincial legislation;
 - (c) *Galaxy* deals with allowance or disallowance of a claim for voting purposes in a proposal situation;
 - (d) this case does not deal with a statute that provides for an appeal, which is the basis for the Court of Appeal's decision at para. 40 of *Galaxy*; and
 - (e) the Claims Procedure Orders herein did not alert the stakeholders in this case that such a procedure would apply, so they did not know they had to provide the Receiver with all relevant evidence they would need on an appeal.

Bankruptcy and Insolvency Act R.S.C. 1985, c B-3, sections 135, 163, 164 and General Rules under the Bankruptcy and Insolvency Act (the "BIA Rules"), Rules 3, 113.

Part 4: MATERIAL TO BE RELIED ON

1. Such further and other materials as may be authorized by this Honourable Court.

The applicant(s) estimate(s) that the application will take one day.

X This matter is not within the jurisdiction of a master. Inherent jurisdiction is required.

TO THE PERSONS RECEIVING THIS NOTICE OF APPLICATION: If you wish to respond to the application, you must

- (a) file an application response in Form 33 within 5 days after the date of service of this notice of application or, if the application is brought under Rule 9-7 of the Supreme Court Civil Rules, within 11 days after the date of service of this notice of application, and
- (b) at least 2 days before the date set for the hearing of the application, serve on the applicant 2 copies, and on every other party one copy, of a filed copy of the

application response and the other documents referred to in Rule 9-7(12) of the Supreme Court Civil Rules.

Dated: November 3, 2010



Signature of Lawyer for Applicant
Alan H. Brown

This NOTICE OF APPLICATION is delivered by Alan H. Brown of Alan H. Brown Law Corporation on behalf of Boughton Law Corporation, whose place of business and address for delivery is PO Box 49290, 700 - 595 Burrard Street, Vancouver, BC V7X 1S8, 604-687-6789. (File No. 52935.449)

To be completed by the court only:

Order made

- in the terms requested in paragraph 1 of Part 1 of this notice of application
- with the following variations and additional terms:

Dated:

Signature of
 Judge Master

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"

NO. H091522
VANCOUVER REGISTRY

IN THE SUPREME COURT OF BRITISH COLUMBIA

BETWEEN:

COAST CAPITAL SAVINGS CREDIT UNION

AND:

THE SYMPHONY DEVELOPMENT CORPORATION, GURMEL SINGH
KAINTH and others

ORDER MADE AFTER APPLICATION

BEFORE THE HONOURABLE

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NOVEMBER 15, 2010

MR. JUSTICE WALKER

ON THE APPLICATION of Malkit Johal coming on for hearing at Vancouver, on this day and on hearing Alan H. Brown, lawyer for the Applicant, Robert A. Millar, counsel to Gurmel Kainth, Tejwan Kainth and 0769932 B.C. Ltd., Robin McFee, Q.C., counsel for Bassi Bros. Framing Ltd. and Steven Dvorak, counsel to the Receiver herein;

THIS COURT ORDERS that:

1. the allowance by the Receiver Manager (the "**Receiver**") herein of the claim of Tejwan Kainth for security (the "**TK Claim**") as set out in the Receiver Manager's Sixth Report (the "**Receiver's Report**") to Court dated October 4, 2010, be set aside.
2. the allowance by the Receiver herein of the claim of 0769932 B.C. Ltd. ("**076**") for security (the "**076 Claim**") as set out in the Receiver's Report, be set aside.
3. the appeals by Malkit Johal of the determinations of the Receiver in relation to the TK Claim and the 076 Claim, be heard at the same time.
4. the appeals by Malkit Johal of the claim of the TK Claim and the 076 Claim proceed by way of an application *de novo* or trial *de novo*; and all parties shall be at liberty to:
 - (a) utilize all pre-trial procedures available in any proceeding commenced by filing a notice of civil claim under the Rules of Court; and

- (b) adduce all evidence relevant to the TJ Claim and the 076 Claim and the appeals of the Receiver's allowance of those claims.
5. the issues to be determined upon the appeal of the TK Claim are:
- (a) The proper amount, if any, owing from Symphony to Tejwant Kainth, taking into account all set offs and all amounts directly or indirectly received by Tejwan Kainth, Gurmel Kainth, Gurdeep Kainth, Kuljeet Dhaliwal, Vencial Capital Corporation and Deer Lake Enterprises Inc. from Symphony or to which Symphony was entitled;
 - (b) Whether all amounts directly or indirectly received by Tejwan Kainth, Gurmel Kainth, Gurdeep Kainth, Kuljeet Dhaliwal, Vencial Capital Corporation, Deer Lake Enterprises Inc. and any other person or entity from Symphony or to which Symphony was entitled should be allowed as a set-off against the alleged balance owing on the TK mortgage; and
 - (c) whether the mortgage relied upon in the TJ Claim constitutes a voidable fraudulent conveyance pursuant to the *Fraudulent Conveyance Act*, R.S.B.C. 1996, c. 163 or a voidable preference pursuant to the *Fraudulent Preference Act*, R.S.B.C. 1996, c. 164.
6. that the issues to be determined upon the appeal of the 076 Claim are:
- (a) the proper amount, if any, owing from Symphony to 0769932 B.C. Ltd. ("076"), taking into account all set offs and all amounts directly or indirectly received by Tejwan Kainth, Gurmel Kainth, Gurdeep Kainth, Kuljeet Dhaliwal, Vencial Capital Corporation and Deer Lake Enterprises Inc. from Symphony or to which Symphony was entitled;
 - (i) whether all amounts directly or indirectly received by Tejwan Kainth, Gurmel Kainth, Gurdeep Kainth, Kuljeet Dhaliwal, Vencial Capital Corporation, Deer Lake Enterprises Inc. and any other person or entity from Symphony or to which Symphony was entitled should be allowed as a set-off against the alleged balance owing on the 076 Mortgage; and
 - (ii) whether the mortgage (the "076 Mortgage") relied upon in the 076 Claim constitutes a voidable fraudulent conveyance pursuant to the *Fraudulent Conveyance Act*, R.S.B.C. 1996, c. 163 or a voidable preference pursuant to the *Fraudulent Preference Act*, R.S.B.C. 1996, c. 164.
7. An accounting be conducted by the District Registrar to determine all amounts paid by or on behalf of Symphony to the following persons, or that was received by the following persons in circumstances where Symphony was entitled to such amounts:
- (a) Tejwant Kainth;
 - (b) Gurmel Kainth;

- (c) Gurdeep Kainth;
 - (d) Kuljeet Dhaliwal and/or Dave Dhaliwal;
 - (e) Vencial Capital Corporation; and
 - (f) Deer Lake Enterprises Inc.
8. PricewaterhouseCoopers Inc. deliver up or cause to be delivered up to the solicitors for Malkit Johal the image of the hard drive or hard drives and the image or copy of the memory stick or sticks or flash disk drive or drives or any other associated data storage device used by Symphony, Gurmel Kainth, Gurdeep Kainth, Tejwan Kainth, 0769932 B.C. Ltd. or any of them to create, edit, save, view, print, delete or otherwise deal with electronically in any manner whatsoever the loan agreements (the “**Loan Agreements**”):
- (a) dated November 19, 2007 attached as Exhibit “C”, exhibit page 8, to the Affidavit #1 of Tejwant Kainth sworn on September 29, 2010; and
 - (b) dated October 3, 2007 and April 2, 2008 and referred to in paragraphs 4 and 7 and attached as Appendix H.2 of the Receiver’s Report.
9. Gurmel Kainth, Gurdeep Kainth, Tejwant Kainth and 0769932 B.C. Ltd. deliver up or cause to be delivered up to the solicitors for Malkit Johal the hard drive or hard drives and memory stick or sticks or flash disk drive or drives or any other associated data storage device used by any or all of them to create, edit, save, view, print, delete or otherwise deal with electronically in any manner whatsoever the Loan Agreements.
10. the solicitors for Malkit Johal be and are hereby authorized to deliver to TCS Forensics Limited or such other similar businesss as counsel for Malkit Johal may choose the computer or computers and memory stick sticks or flash disk drive or drives delivered to them pursuant to the Order sought herein, for forensic analysis as to the timing of the creation, editing, contents and printing of the Loan Agreements.

11. Timothy Lack and LaVan and Company produce for inspection by Malkit Johal all books and records of Symphony in their possession or control, including but not limited to all documents, correspondence, e-mails relating to Symphony, together with all of his trust account records relating to Symphony.

THE FOLLOWING PARTIES APPROVE THE FORM OF THIS ORDER:

Signature of Lawyer for Malkit Johal
Alan H. Brown

By the Court

Registrar