

SUPREME COURT
OF BRITISH COLUMBIA
VANCOUVER REGISTRY

FEB 09 2011

ENTERED



129

NO. H091522
VANCOUVER REGISTRY



IN THE SUPREME COURT OF BRITISH COLUMBIA

BETWEEN:
REGISTRY
COAST CAPITAL SAVINGS CREDIT UNION

PETITIONER

AND:

THE SYMPHONY DEVELOPMENT CORPORATION, GURMEL SINGH KAINTH, SHMINDER JOHAL, 497308 B.C. LTD., 0769932 B.C. LTD., EMCO CORPORATION, PACIFIC UTILITY CONTRACTING LTD., UNLIMITED EXCAVATING & LANDSCAPING LTD., JACK CEWE LTD., C&C TRUCKING (1988) LTD., OCEAN CONSTRUCTION SUPPLIES LIMITED, NORA ROSALIE MARVIN, BASSI BROTHERS FRAMING LTD., UNITED RENTALS OF CANADA INC., MCRAE'S ENVIRONMENTAL SERVICES LTD., GRAESTONE READY MIX INC., VALLEY GEOTECHNICAL ENGINEERING SERVICES LTD., D.K. BOWINS & ASSOCIATES INC., VANCOUVER CITY SAVINGS CREDIT UNION and MALKIT SINGH JOHAL and TEJWANT KAUR KAINTH

RESPONDENTS

NOTICE OF APPLICATION

Name(s) of applicant(s): PricewaterhouseCoopers Inc., the Receiver of The Symphony Development Corporation

TAKE NOTICE that a without notice application will be made by the applicant to the presiding Judge at the courthouse at 800 Smithe Street, Vancouver, British Columbia on 15/Nov/2010 at 10:00 a.m. for the order(s) set out in Part 1 below.

Part 1: ORDER(S) SOUGHT

1. To vary the form of Order as granted by Mr. Justice Walker on 08/Jul/2010 and entered on 13/Oct/2010 by deleting in its entirety paragraph 1 and inserting the following:
 1. the Order of the Honourable Mr. Justice Walker pronounced March 25, 2010 and entered July 8, 2010 be varied by deleting paragraphs 18 and 19 in their entirety and substituting the following:

Claim Disputes

18. (1) Upon completion of its review of each Proof of Claim and its determination of the validity and value of the Claims in accordance with paragraph 15 hereof, the Receiver shall prepare a Report to the Court (the "Report") summarizing all Claims it has determined to accept as submitted ("Accepted Claims"), all claims it has determined to accept in an amount other than as submitted ("Revised Claims"), and all claims it has determined to reject ("Disallowed Claims"), and shall deliver a copy of the Report to all parties via email to the electronic addresses contained in Schedule "A" hereto, and such delivery shall be deemed to be effective service upon the date of such delivery.
18. (2) The Receiver shall, within 3 business days of service of the Report, publish upon its website <http://www.pwc.com/ca/en/car/symphony-development> a copy of the Report and copies of all Accepted Claims and Revised Claims, together with all documents filed in connection with such Accepted Claims and Revised Claims.
18. (3) Any Creditor who disputes the revision or disallowance of its Claim as set forth in a Notice of Revision or Disallowance shall, within 30 days after the date of service of the Report, seek a determination by the Court of the validity and/or value of its Claim by serving a Notice of Application together with other documents upon which the Creditor intends to rely, upon the Receiver.
18. (4) Any Creditor who is a party of record and who has filed a claim with the Receiver on or before the Claims Bar Date and any party of record (the "Disputing Creditor") who disputes the determination of the Receiver to accept or revise the Claim of any other Creditor (a "Disputed Claim") shall, within 30 days after the date of service of the Report, seek a determination by the Court of the validity and/or value of the Disputed Claim by serving a Notice of Application upon the Receiver and the Creditor whose Accepted Claim or Revised Claim is disputed by the Disputing Creditor.
19. Any Creditor who fails to serve a Notice of Application in connection with any Claim within the deadline set forth in paragraphs 18. (3) or 18. (4) hereof shall be deemed to accept the acceptance, revision and/or disallowance of such Claim, and any Claim that is not disputed within the deadline set forth in paragraphs 18. (3) or 18. (4) hereof shall constitute a Proven Claim.

Part 2: FACTUAL BASIS

1. An application was made by counsel for the Respondent Malkit Singh Johal seeking to vary the Claims Process as set out in Mr. Justice Walker's Order granted 25/Mar/2010. A draft of the Order proposed was attached to the application.
2. The language for the Order was circulated prior to the hearing and all counsel were satisfied with the form.
3. The application was heard 08/Jul/2010. At the hearing, counsel for the Respondent Tejwant Kaur Kainth proposed a further change to the Order to allow parties who were not creditors to also have the right to dispute any allowance, disallowance or revision of a claim, and to remove the requirement for affidavit material in support. After discussion, Mr. Justice Walker ordered that the Order would be approved as circulated, with the addition of the new language as suggested by counsel for Tejwant Kaur Kainth.
4. Counsel for Malkit Singh Johal circulated a form of Order following the hearing, and arranged for the entry of the Order. However, after entry it was discovered that the Order signed and entered was in fact the initial format of the Order, not the modified format of the Order as specified by Mr. Justice Walker, that had been formally entered, in error.
5. Counsel for Malkit Singh Johal has now been replaced, and the Receiver has determined that its counsel should make the necessary application to correct the record.

Part 3: LEGAL BASIS

1. The Applicant relies upon Rule 13-1(17) of the Supreme Court Civil Rules

Part 4: MATERIAL TO BE RELIED ON

1. 6th Affidavit of Cinda Ferguson, sworn 08/Nov/2010

The applicant(s) estimate(s) that the application will take 5 minutes..

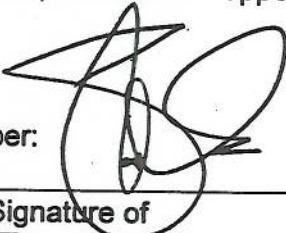
- This matter is within the jurisdiction of a master.
- This matter is not within the jurisdiction of a master.

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 dates 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.

Bull, Housser & Tupper LLP

per: 

Date: 08/Nov/2010

Signature of
 applicant lawyer for applicant(s)

Steven D. Dvorak

SUPREME COURT
 OF BRITISH COLUMBIA
 VANCOUVER REGISTRY

FEB 09 2011


RECORDED

To be completed by the court only:

Order made

in the terms requested in paragraphs 1 of Part 1 of this notice of application

with the following variations and additional terms:

Date: Feb 8 2011 

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

In the Supreme Court of British Columbia

Between

COAST CAPITAL SAVINGS CREDIT UNION
PETITIONER

and

THE SYMPHONY DEVELOPMENT
CORPORATION and Others

RESPONDENTS

NOTICE OF APPLICATION

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SDD/PUB

Matter# 10-2231