

DEC 12 2022



S-229856

No. _____
Vancouver Registry

IN THE SUPREME COURT OF BRITISH COLUMBIA

BETWEEN:

CPL INVESTMENTS LLC and ULOO PARTNERS LLC

PETITIONERS

AND:

BLOOM HEALTH PARTNERS INC.

RESPONDENT

PETITION TO THE COURT

ON NOTICE TO:

Bloom Health Partners Inc.
Suite 2200, HSBC Building, 885 West Georgia Street
Vancouver, B.C., V6C 3E8

This proceeding has been started by the petitioner for the relief set out in Part 1 below.

If you intend to respond to this petition, you or your lawyer must

- (a) file a response to petition in Form 67 in the above-named registry of this court within the time for response to petition described below, and
- (b) serve on the petitioner
 - (i) 2 copies of the filed response to petition, and
 - (ii) 2 copies of each filed affidavit on which you intend to rely at the hearing.

Orders, including orders granting the relief claimed, may be made against you, without any further notice to you, if you fail to file the response to petition within the time for response.

TIME FOR RESPONSE TO PETITION

A response to petition must be filed and served on the petitioner,

- (a) if you were served with the petition anywhere in Canada, within 21 days after that service,
- (b) if you were served with the petition anywhere in the United States of America, within 35 days after that service,
- (c) if you were served with the petition anywhere else, within 49 days after that service, or
- (d) if the time for response has been set by order of the court, within that time.

(1) The address of the registry is:	800 Smithe Street, Vancouver
(2) The ADDRESS FOR SERVICE of the petitioner is:	c/o Farris LLP
Fax number address for service (if any) of the petitioner	
E-mail address for service (if any) of the petitioner:	
(3) The name and office address of the petitioner's lawyer is:	Farris LLP Barristers & Solicitors 2500 - 700 West Georgia Street Vancouver, British Columbia V7Y 1B3 Attention: Tevia Jeffries
Fax number address for service of the petitioner lawyer is:	None
E-mail address for service (if any) of the petitioner:	tjeffries@farris.com

CLAIM OF THE PETITIONER

Part 1: ORDER(S) SOUGHT

1. An Order substantially in the form attached hereto as Schedule "A", appointing BDO Canada Limited as the Receiver over all of the undertakings, property and assets of Bloom Health Partners Inc. ("Bloom Health"); and
2. Such other relief as the Court may deem just.

Part 2: FACTUAL BASIS

1. The Petitioner, CPL Investments LLC ("CPL"), is a limited liability company with an office at 1920 McKinney Avenue, 8th Floor, Dallas, TX 75201.
2. The Petitioner, Uloo Partners LLC ("Uloo", and together with CPL, the "Sellers"), is a limited liability company with an office at 3311 Drexel Dr., Houston, TX, 77027.
3. The Respondent, Bloom Health, is a corporation organized pursuant to the laws of the Province of British Columbia, with a registered and records office at Suite 2200, HSBC

Building, 885 West Georgia Street, Vancouver, B.C., V6C 3E8, and a former business name Maitri Health Technologies Corp.

4. Bloom Health is a public company listed on the Canadian Securities Exchange;
5. The Respondent wholly owns Bloom Health Holdings Corp. (the "**Buyer**"), a Delaware Corporation, with a registered and records office at 838 Walker Road Suite 21-2, Dover, DE 19904.
6. The Sellers entered into a Purchase Agreement (defined below) with the Buyer, Bloom Health, Bloom Health Capital Corp. ("**Bloom Capital**"), and Round Hill Health Partners, LLC ("**Round Hill**"). Generally, as a result of the transaction, the Buyer acquired the COVID-19 testing services or business of Round Hill.
7. Bloom Capital is a Delaware corporation with a registered and records office at 838 Walker Road Suite 21-2, Dover, DE 19904. The Buyer owns all of the Class A Voting Shares of Bloom Capital and the Sellers own all of the outstanding Class B Non-Voting Shares of Bloom Capital.
8. Round Hill is a Texas limited liability company corporation with a registered and records office at 860 Hebron Parkway, Suite 501, Lewisville, TX 75057.

Background

9. This proceeding concerns that certain Membership Interest Purchase and Contribution Agreement, dated as of June 29, 2021 (as subsequently amended, the "**Purchase Agreement**") entered into among the Sellers, as sellers, the Buyer, as buyer, Bloom Health, Bloom Capital, and Round Hill. As elaborated below, the Buyer has defaulted under the Purchase Agreement. Further the board of directors of Bloom Health, the Buyer's parent, has resigned, which has given rise to this request for the appointment of a receiver to assist Bloom Health in winding down its subsidiaries, including enabling Round Hill in satisfying certain ongoing contractual obligations to maximize value for stakeholders.

Purchase Agreement

10. Pursuant to the Purchase Agreement, the Buyer acquired from the Sellers 88% of the issued and outstanding membership interests of Round Hill (the “**Purchased Membership Interests**”), and the Sellers contributed to Bloom Capital the remaining 12% of the membership interests of Round Hill (the “**Contributed Membership Interests**”).
11. In consideration for the sale of the Purchased Membership Interests, the Buyer was to pay or cause to be paid to the Sellers an aggregate of US\$12,250,000 (the “**Cash Consideration**”).
12. The Cash Consideration was to be paid in quarterly installments tied to Round Hill’s EBITDA, with the full aggregate Cash Consideration being paid on or before December 31, 2023.
13. In consideration for the contribution of the Contributed Membership Interests, each of the Sellers received its pro rata share of 2,803 of Class B Shares in the capital of Bloom Capital (the “**Equity Consideration**”).
14. Until December 31, 2023, the Sellers each have the right to nominate an individual to serve on Bloom Health’s board of directors.
15. There are certain provisions of the Purchase Agreement in respect of which Bloom Health would be a direct obligor of the Sellers, including with respect to certain indemnification provisions. However, no demand has been made of Bloom Health in respect of same.
16. On or about July 14, 2021, the parties to the Purchase Agreement entered into an amendment to clarify certain terms of the agreement and to waive certain closing conditions to enable closing to occur on July 14, 2021.
17. On or about March 15, 2022, the parties to the Purchase Agreement entered into a second amendment to defer the payment obligations of the Buyer with respect to the quarters

ending September 30 and December 31, 2021, to June 30, 2022 (the “**Second Amendment**”).

Breaches of the Purchase Agreement and Demand

18. On or about October 28, 2022, counsel for the Sellers sent a letter (the “**Demand Letter**”) to Bloom Health, the Buyer, Bloom Capital and Round Hill to formally notify them of the Buyer’s repeated material breaches of the Purchase Agreement.
19. Specifically, the Buyer repeatedly failed to make payments owed to Sellers and has not yet made a single timely and full payment of its quarterly payment obligations of the Cash Consideration.
20. As of the date of the Demand Letter, the Buyer owed the Sellers US\$3,179,760 for the quarters ending September 30, 2021, December 31, 2021, and March 31, 2022 as set forth in more detail in the Demand Letter.
21. On July 20, 2022, the Buyer made a partial payment of US\$1,500,000 to the Sellers in respect of the amounts due and deferred pursuant to the Second Amendment.
22. As of the date of the Demand Letter, the Buyer still owed US\$1,990,661 to the Sellers for the quarter ending September 30, 2021, US\$716,591, for the quarter ending December 31, 2021, and US\$458,636 for the quarter ending March 31, 2022, with interest on these amounts continuing to accrue at 6% per annum.
23. In addition to failing to make timely payments of the Cash Consideration, the Buyer breached other obligations under the Purchase Agreement, including providing the Sellers with reasonable calculations of EBITDA within sixty (60) days of the end of each fiscal quarter.
24. By the Demand Letter, the Sellers demanded that the Buyer (1) immediately pay the Sellers US\$3,179,760 for the amounts owed to date, and (2) provide the Sellers with a calculation of EBITDA for the quarter ending June 30, 2022.

25. The Demand Letter stated that if the breaches were not remedied by November 4, 2022, the Sellers would have no choice but to take legal action.
26. Since issuing the Demand Letter, the Buyer provided the Sellers with a calculation as of October 28, 2022, for the quarter ending June 30, 2022. This calculation increased the amount owing to the Sellers to US\$1,917,389 in principal and US\$8,825 in interest.
27. The Sellers have received US\$1,350,000 further payments in respect of the Cash Consideration or the Demand Letter, since the Demand Letter was sent.
28. As of the date of this affidavit, the Buyer continues to be in breach of its obligations under the Purchase Agreement including owing at least the amount of US\$3,221,580 to the Sellers, plus interest that continues to accrue.
29. Over the past year or so, I was advised by representatives of the Bloom Health Group of various payments from the Buyer or Round Hill on behalf of the Buyer to Bloom Health. Cumulatively, Bloom Health received at least US\$1.1 million in loans or dividends since November 2021.
30. I was also advised by the now-former CEO of Bloom Health of a private placement several months ago by which Bloom Health raised US\$1.6 million.
31. When the Buyer failed to pay amounts owing to the Sellers, I asked the now-former CFO of Bloom Health for payment. The now-former CFO informed me that funds could not be advanced from the Buyer because funds were not available.
32. After the Demand Letter was sent, the now-former CFO reported to the board of the Buyer and to me regarding finances of Bloom Health. This reporting showed that, notwithstanding having no ongoing operations or significant expenses, and while obligations to creditors of the Buyer remained unpaid, Bloom Health appeared to have dissipated the US\$1.6 million from the private placement and the US\$1.1 million received in loans or dividends from the Buyer or Round Hill (the "**Dissipated Funds**").

Recent Events

33. Since the issuance of the Demand Letter, the Sellers and the Buyer have been in discussions regarding payment of the outstanding amounts of the Cash Consideration and the future operations of the Buyer and its subsidiaries.
34. On or about November 18, 2022, the interim CEO of Bloom Health informed the Sellers that the board of directors of Bloom Health had resigned and the public company no longer had any directors and that the likely path of the Buyer and its subsidiaries was an orderly wind down of their operations.
35. Round Hill historically provided COVID-19 testing services to various organizations, including state school systems and the film industry. Currently, it has an ongoing contract in its Hawaii facility that should complete by the end of 2022.
36. Round Hill also provides COVID-19 testing for the Texas Department of State Health Services in a contract that will be completed on or about July 31, 2023 (the “**Texas State Health Contract**”).
37. Further, the Texas State Health Contract was entered into by Round Hill as part of Texas State and Federal initiatives regarding the safe return to in-person schooling for children, faculty and staff. Funding for the testing program comes from Federal grant money from the US Center for Disease Control. To the best of my knowledge, Round Hill is one of five contractors that cover the entire State of Texas.
38. The back-to-school season after the upcoming winter holidays is particularly busy, as was the period after American Thanksgiving.
39. Thousands of students, faculty, and staff depend on Round Hill to provide testing on a weekly basis.
40. Also, dozens of employees and contractors depend on Round Hill and the work flowing from the Texas State Health Contract.

41. The Sellers continue to work with the Buyer and Bloom Health towards a resolution of the liabilities to the Sellers and a workable path forward.
42. The Buyer intends to facilitate the liquidation of assets not needed for current contracts as soon as possible, and to liquidate assets currently in use, as those contracts are completed.
43. To the best of the Sellers' knowledge, they are by far the largest creditor of the Buyer and the critical party necessary to reach a resolution with the Buyer and Bloom Health to wind them down in an orderly fashion.
44. As part of the discussions with the Buyer and Bloom Health, the interim CEO advised that she required additional direction and governance support at the Bloom Health level to support implementation of the wind down plan. She then advised that she was herself resigning from the role of interim CEO, leaving no management or governance at Bloom Health.
45. Bloom Health is a public company, and as a result, holding a meeting of shareholders to appoint new directors requires time and resources. The statutorily required notice periods would delay getting a board in place.
46. Additionally, directors willing to serve would have to be identified. As the business of the group is winding down, it is not clear that replacement directors could be found, and how much time and effort would be required to locate them. No new directors willing to serve have been identified to date.
47. Before she resigned, the interim CEO of Bloom Health informed a representative of the Seller that she would not be opposed to the appointment of a receiver of Bloom Health to act in place of a board of directors. Given the interim CEO's resignation, a receiver is also needed to act as management for Bloom Health.
48. Continued operations until the end of the contract between Round Hill and the Texas Department of State Health Services, coordinated with an orderly wind down and sale of redundant assets would benefit numerous stakeholders, including Round Hill's contract counterparties and employees.

49. Without the appointment of a receiver at the Bloom Health level, the ability of the entities to continue to operate past the end of the year is at risk.
50. Given the resignation of the interim CEO, there is urgency to having a receiver in place. The receivership, and the stay of proceedings that accompanies it, would be needed only until either a shareholders' meeting is called and a new board of directors is elected, or the company is wound up in some way, whether by a bankruptcy or some other process.
51. A search of the British Columbia Personal Property Registry shows no registered secured creditors of Bloom Health.

BDO's Consent to Act as Receiver

52. BDO Canada Limited has consented to act as the receiver over the assets, property and undertaking of Bloom Health.

Part 3: LEGAL BASIS

Statutory Basis for Application

1. CPL and Uloo bring this application for appointment of a receiver pursuant to section 39 of the *Law and Equity Act*, R.S.B.C. 1996, c. 253 (the "LEA").
2. Section 39 of the LEA provides:

39(1) An injunction or an order in the nature of mandamus may be granted or a receiver or receiver manager appointed by an interlocutory order of the court in all cases in which it appears to the court to be just or convenient that the order should be made.

(2) An order made under subsection (1) may be made either unconditionally or on terms and conditions the court thinks just.

[...]

It is Just and Convenient that a Receiver Be Appointed

3. Under the test for the appointment of a receiver, the court is required to review the matter holistically and decide whether, on the whole of the circumstances, it is just and convenient to appoint a receiver.

Maple Trade Finance Inc. v CY Oriental Holdings Ltd., 2009 BCSC 1527 at para 25.

4. There are a number of factors the court may consider in exercising its discretion to appoint a receiver, including:

- (a) whether irreparable harm might be caused if no order were made;
- (b) the nature of the property;
- (c) the preservation and protection of the property;
- (d) the balance of convenience to the parties;
- (e) whether a creditor has the right to appoint a receiver under its loan or contractual documentation;
- (f) the effect of the order upon the parties;
- (g) the conduct of the parties;
- (h) the length of time that a receiver may be in place;
- (i) the cost to the parties;
- (j) the likelihood of maximizing return to the parties; and
- (k) the goal of facilitating the duties of the receiver.

Maple Trade Finance Inc. v CY Oriental Holdings Ltd., 2009 BCSC 1527 at para 25.

Bank of Montreal v Gian's Business Centre Inc., 2016 BCSC 2348 at paras 23-24.

5. An examination of these factors demonstrates that it is just and convenient to appoint a receiver in all of these circumstances.
6. There is real risk of irreparable harm to CPL and Uloo if a receiver is not appointed. Given the lack of a board of directors at the Bloom Health level and the potential loss of the interim CEO by the end of the year, there is no governance or senior management in place to assist the group in liquidating redundant assets and performing its existing contracts. These two activities – asset sales and contract performance – are the only sources of funds that can be used to pay down the Buyer's debt to the Sellers.
7. The nature of the property of Bloom Health is shares in the Buyer, and as such, the receiver would not be taking control of assets to operate the business. However, the receiver would perform a crucial governance and management function in enabling the group to maximize return to stakeholders.
8. The receiver's role would be to maximize the value of the assets of Bloom Health's subsidiaries, and thus can be seen as preservation and protection of the property of Bloom Health.
9. The balance of convenience favours appointment of a receiver, as such relief is supported – insofar as Bloom Health has the legal ability to support it – by the Respondent.
10. The Sellers do not have a contractual right to appoint a receiver, but that is not determinative of the application. Rather the circumstances as a whole must be assessed.
11. The order will have a positive impact on Bloom Health, as it will enable Bloom Health to maximize stakeholder value, while the group's wind down plans are implemented.
12. The receivership is naturally time limited given the length of the ongoing contracts of Round Hill. Once those contracts are over, the receiver would only need to be in place until any final assets are sold. By that time, the assets of the group will have been maximized for the benefit of stakeholders, and a receiver would no longer be required.
13. Finally, while a receivership carries with it some added costs, in the circumstances, the added cost is necessary to effectively protect CPL's and Uloo's position, and is further

justified by the benefits to Bloom Health's other stakeholders including Round Hill's contract counterparties, including the Texas Department of State Health Services, as well as employees, contractors, Texas school faculty, staff, students, and others.

14. Although not a common occurrence, there is precedent in Canada for the appointment of an equitable receiver where a company does not have enough board members to reach quorum and effectively govern the company.

Goodwood Inc. v. Cathay Forest Products Corp., 2012 ONSC 3548 [*Goodwood*]

15. In *Goodwood*, the Ontario Superior Court found that appointment of a receiver under s. 247 of the *Canada Business Corporations Act* was a necessary and proportionate step where a company no longer has enough board members to reach quorum. The Court recognized the benefit of appointing an interim receiver to provide management to deal with the daily needs of an operating company, especially one that may be moving towards insolvency. The Court noted that having such a receiver in place enabled the company to deal situations where some actions, such as asset sales, may be outside the ordinary course of business, and would otherwise require court approval.

Goodwood Inc. v. Cathay Forest Products Corp., 2012 ONSC 3548 paras 69-71

16. Similarly, in *Re Royal Oak Mines Inc.* 2001 CanLII 23997 (ON CA), during the course of CCAA proceedings, an order was made appointing an interim receiver under s. 47 of the BIA, in circumstances, as acknowledged by the Ontario Court of Appeal, where debtor's "management had disappeared". The Court recognized that the appointment of the interim receiver would be beneficial to the management of operations and guide the debtor company including in the sale of mines.

Re Royal Oak Mines Inc. 2001 CanLII 23997 at para 12 (ON CA)

17. These are similar situations to Bloom Health. Bloom Health has no directors and no management. At the same time, Bloom Health's subsidiaries are going through a period where some actions are within the ordinary course, and some actions, such as liquidating assets, are not. While it is not clear that court approval would be required for such

actions, there is no board of directors to make that determination or direct counsel. There are stakeholders who would benefit from the appointment of a receiver. The appointment would be time limited. Even if the shareholders do not appoint a new board of directors, the longest a receiver would need to stay in place would be the summer of 2023, when the final existing contract of Round Hill is completed. And if the shareholders do appoint a new board, the receiver may be discharged sooner.

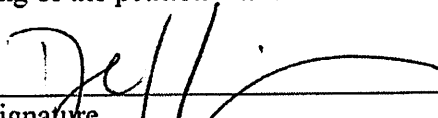
- 18. In light of the foregoing facts, the Petitioners submit that it is just and convenient to appoint a receiver under the LEA to provide necessary governance and management for Bloom Health to manage an orderly wind down.

Part 4: MATERIAL TO BE RELIED ON

- 1. The Affidavit #1 of Cole Lysaught made December 8, 2022.
- 2. The materials filed herein.

If unopposed, the petitioner estimates that the hearing of the petition will take 15 minutes.

Dated: December 12, 2022



 Signature
 Petitioner
 Lawyer for petitioner(s)
Tevia Jeffries

To be completed by the court only:	
Order made	
<input type="checkbox"/>	in the terms requested in paragraphs _____ of Part 1 of this notice of application
<input type="checkbox"/>	with the following variations and additional terms:
Date: _____	Signature of _____
	<input type="checkbox"/> Judge <input type="checkbox"/> Master