

FORCE FILED



No. S229292
Vancouver Registry

IN THE SUPREME COURT OF BRITISH COLUMBIA

BETWEEN:

113 ROYAL INVESTMENTS LTD.

PETITIONER

AND:

GEYSER BRANDS INC.

RESPONDENT

NOTICE OF APPLICATION

Name of applicants: BDO Canada Limited in its capacity as court-appointed receiver of the Respondent (the “**Receiver**”)

To: Service List attached hereto as **Schedule “A”**

TAKE NOTICE that an application will be made by the applicant to the presiding judge or master at the courthouse at 800 Smithe Street, Vancouver on 09/FEB/2024 at 9:45am for the order(s) set out in Part 1 below.

Part 1: ORDER(S) SOUGHT

1. An order substantially in the form attached hereto as **Schedule “B”**:
 - (a) approving the Receiver’s activities;
 - (b) approving the Receiver’s and the Receiver’s counsel’s fees; and
 - (c) authorizing and directing the Receiver to make certain distributions.

Part 2: FACTUAL BASIS

A. Background

2. BDO Canada Limited was appointed as Receiver of the assets, undertakings and properties of Geysler Brands Inc. (the “**Company**”) pursuant to an Order made by the Supreme Court of British Columbia on December 16, 2022 (the “**Receivership Order**”). In conjunction with the Court Order, the Receiver was directed to commence a sales and solicitation process (the “**SISP**”). The terms of the SISP were included as part of the Receivership Order.

3. In the First Report to Court dated March 22, 2023 (the “**First Report**”), the Receiver outlined to the Court the details of the offer received from 113 Royal Investments Ltd. (“**113 Royal**”). This offer was accepted by the Receiver on February 27, 2023.
4. All of the Company’s assets have been sold as part of the receivership proceedings. The Supreme Court of British Columbia approved the sale of the assets on April 11, 2023, for \$1.3 million, paid by way of (a) forgiveness of any amounts loaned to the Receiver by 113 Royal, and secured by the Receiver’s borrowing charge; and (b) a credit bid for the remainder of the \$1.3 million purchase price, offsetting from the amount owing from Geyser to 113 Royal. The total balance owing to the secured creditor is approximately \$538,000 after the credit bid.

B. Receiver’s Fees and Activities

5. The Receiver seeks approval of its fees since the start of this receivership (the “**Receivership**”) and its activities (the “**Activities**”) as detailed in the First Report and the Receiver’s Second Report to Court dated January 29, 2024 (the “**Discharge Report**”) and together with the First Report, the “**Reports**”).
6. In the Reports, the Receiver details its Activities to date. By way of summary, the Receiver has:
 - (a) taken possession of the assets;
 - (b) terminated the sole employee;
 - (c) borrowed \$150,000.00 from 113 Royal, as authorized by paragraph 23 of the Receivership Order, as secured by the Receiver’s Borrowings Charge (as defined in the Receivership Order);
 - (d) obtained and reviewed information to be included in the virtual data room;
 - (e) carried out a sales process for the assets;
 - (f) held discussions and correspondence with various prospective purchasers;
 - (g) held discussions and correspondence with creditors and stakeholders;
 - (h) held discussions and correspondence with legal counsel;
 - (i) investigated legal actions against the Company and its subsidiaries;
 - (j) performed statutory duties as required pursuant to subsection 245(1) and 246(1) of the Bankruptcy and Insolvency Act (Canada) in relation to creditor and Official Receiver notification;
 - (k) attended the premises of the Company’s operating subsidiary in Port Coquitlam, British Columbia;

- (l) obtained Court approval for the sale of the Company's assets;
 - (m) worked with Canada Revenue Agency ("CRA") to facilitate a payroll trust audit; and
 - (n) reviewed and filed employee T4's and ROE's.
7. The Receiver now seeks approval of its fees and Activities as detailed in the Reports and the Second Affidavit of Chris Bowra made January 29, 2024 (the "**BDO Affidavit**").
8. From the start of the Receivership, the Receiver has incurred fees in the amount of \$65,061 and disbursements in the amount of \$3,314 (not including legal fees), plus taxes in the amount of \$3,582, in connection with the Activities, and projected fees and disbursements, inclusive of tax, of \$10,000 (not including legal fees), for a total of \$81,957.
9. The Receiver has affirmed its belief that the time expended and the fees charged by BDO Limited are reasonable in light of the services provided and prevailing market rates for services of this nature.

C. Farris' Fees and Activities

10. As further detailed in the First Affidavit of Tevia Jeffries made January 29, 2024 (the "**Farris Affidavit**"), and the invoices attached thereto (which have been redacted to protect solicitor-client privilege as between Farris and the Receiver). Farris has been counsel for the Receiver since November 2022. Farris has assisted the Receiver with the Activities. The legal fees of Farris are disbursements of the Receiver in the Receivership.
11. With respect to the Activities, and noting that the Receiver retains and has not waived solicitor-client privilege with respect to same, Farris has:
- (a) attended calls and meetings and corresponded with the Receiver regarding advice sought on various matters, including the sales process, tax matters, transaction issues, and operational issues;
 - (b) attended calls and meetings and corresponded with counsel to the Petitioner regarding various issues, including the purchase and sale agreement;
 - (c) drafted and revised documents, memoranda and pleadings, including the purchase and sale agreement and sale approval application; and
 - (d) attended hearing for approval of sale transaction.
12. Farris has had a significant role in the Receiver's Activities. Specifically, Farris has:
- (a) assisted the Receiver with all Activities, assisting in reviewing agreements associated with sales process, providing legal advice with respect to tax matters, preparing court materials, and attending court hearings;

- (b) assumed significant responsibility throughout these proceedings and has worked closely with the Receiver throughout;
 - (c) staffed its legal team with experienced insolvency lawyers and properly delegated legal tasks to members of the legal team that had the skills to complete each activity in a cost-effective manner;
 - (d) in working with the Receiver, helped the Receiver to address issues, and progress towards a transaction that would see the business of the Respondents continue; and
 - (e) been transparent regarding its fees and the Receiver believes that Farris' fees are reasonable in the circumstances.
13. The Receiver has affirmed that the services performed by Farris were at the Receiver's request and that the Receiver believes that the time expended and the fees charged by Farris are reasonable in light of the services provided and prevailing market rates for matters of this nature.

D. Distributions

14. The Receiver estimates that there will be approximately \$87,000 available for distribution after the payment of all remaining receivership costs and fees, as detailed in the Discharge Report.
15. The Receiver is aware of a GST credit to be claimed relating to the receivership period for approximately \$2,000. The Receiver will file the remaining GST returns before its discharge. If the Receiver is successful in obtaining this credit from CRA, \$89,000 will be available for discharge.
16. CRA conducted a payroll trust examination. The Receiver is not aware of any outstanding balance owing to CRA as a result of the examination.
17. 113 Royal has balance owing of approximately \$538,000 after the credit bid.
18. Prior to the receivership, the Director of Employment Standards issued a payroll assessment of approximately \$4,000 against Geyser and a related company. Although the assessment related to unpaid wages in the related company, the Director of Employment Standards had deemed Geyser and the related company to be one employer in respect of this assessment pursuant to the Employment Standards Act. The Receiver, in discussion with 113 Royal, determined that the claim was acceptable and remitted the \$4,000 to the Director of Employment Standards in full payment of the assessment.
19. At the time the Receiver was appointed, there was only one employee of the Company. This employee had no claim in the receivership.
20. The Company's records indicate there are unsecured creditors with total claims of \$218,030.

21. Given the known claims against the Company set out above and in the Discharge Report, the Receiver respectfully requests that the Court approve a distribution to 113 Royal of:
 - (a) the remaining funds on hand of approximately \$87,000; and
 - (b) any GST refund recovered, which is expected to be approximately \$2,000,for a total distribution of approximately \$89,000.
22. As stated in the First Report of the Receiver, there is no recovery anticipated for any unsecured creditors.

Part 3: LEGAL BASIS

A. Approval of Receiver's and Farris' Fees and Activities

1. Paragraph 22 of the Receivership Order provides that "the Receiver and its counsel shall pass their accounts from time to time, and for this purpose the accounts of the Receiver and its legal counsel are referred to a judge of the Supreme Court of British Columbia and may be heard on a summary basis."

Receivership Order, s. 22

2. Courts have provided direction as to the exercise a supervising court should undertake to approve receivers' fees and activities. This direction includes that it is not necessary to go through the supporting documentation for the fees, line by line, to determine what the appropriate fees are for a receivership. In addition, the supervising court's analysis should not involve second guessing the amount of time spent by a receiver unless it is clearly excessive or overreaching. Generally, courts have directed that supervising courts should consider all the relevant factors, and should award costs (or fees) in a holistic manner.

Bank of Nova Scotia v. Diemer, 2014 ONSC 365 ("Diemer") at para. 19
Re: Redcorp Ventures Ltd., 2016 BCsc 188 ("Redcorp") at para. 28.

3. A receiver must pass its accounts from time to time to allow interested parties to question the receiver's activities and conduct. In addition, the passing of accounts ensures that the supervising court is in a position to ascertain if the receiver's fees and disbursements are properly made and are fair and reasonable in the circumstances.

Redcorp, at para. 22.

4. Further, the Court has the inherent jurisdiction to approve the activities of a court appointed receiver. If the receiver has met the objective test of demonstrating that it has acted reasonably, prudently, and not arbitrarily, a court may approve the activities as set out in its reports.

Leslie & Irene Dube Foundation Inc. v. P218 Enterprises Ltd., 2014 BCSC 1855
at para. 54.

5. On application to approve a receiver's accounts and the accounts of its legal counsel:
- (a) the accounts should be verified by affidavit;
 - (b) the accounts should contain sufficient evidence to permit a court to conclude that what was incurred for services rendered was at the standard rate of charges of the receiver and of the receiver's counsel; and
 - (c) the accounts should provide a sufficient description of the services rendered to permit a court to determine whether the liability for fees was properly made or incurred.

Redcorp, at paras. 26 & 32.

6. The Receiver's accounts and those of its counsel have been verified by affidavit. The affidavits filed in support of this application, and the invoices appended thereto contain sufficiently detailed descriptions to, without waiving privilege, provide the Court with sufficient evidence to conclude that the fees incurred were at standard rates for the Receiver. Further, the affidavits and the invoices provide sufficient evidence for the Court to assess the Receiver's fees and its counsel's fees in relation to the factors for consideration identified in applicable case law, as set out in more detail below.

See BDO Affidavit and Farris Affidavit

7. Courts will consider the following non-exhaustive factors in assessing the reasonableness of a receiver's fees:
- (a) the nature, extent and value of the assets;
 - (b) the complications and difficulties encountered by the receiver;
 - (c) the time spent by the receiver;
 - (d) the receiver's knowledge, experience and skill;
 - (e) the diligence and thoroughness displayed by the receiver;
 - (f) the responsibilities assumed;
 - (g) the results of the receiver's efforts; and
 - (h) the cost of comparable services.

HSBC Bank Canada v. Maple Leaf Loading Ltd., 2014 BCSC 2245 ("*Maple Leaf Loading*") at para. 11.

8. As noted by the New Brunswick Court of Appeal:

There is no fixed rate or settled scale for determining the amount of compensation to be paid a receiver. He [the receiver] is usually allowed either a percentage upon his receipts or a lump sum based upon the time, trouble and degree of responsibility involved. The governing principle appears to be that the compensation allowed a receiver should be measured by the fair and reasonable value of his services and while sufficient fees should be paid to induce competent persons to serve as receivers, receiverships should be administered as economically as reasonably possible. Thus, allowances for services performed must be just, but nevertheless moderate rather than generous.

Belyea v. Federal Business Development Bank, 1983 CarswellNB 27 at para 3 (C.A.)

9. The Receiver submits its fees are fair and reasonable because:
- (a) the work undertaken was necessary for the Receiver to fulfil its duties, given the complexity of the assets and business of the Respondent;
 - (b) the Receiver has spent an appropriate amount of time and effort in taking possession of, preserving and marketing the assets, as well as in consulting with stakeholders, including the Petitioner;
 - (c) the Receiver has significant knowledge, experience and skill;
 - (d) the Receiver has displayed diligence and thoroughness in discharging its duties,
 - (e) the Receiver has taken on significant responsibilities in the Receivership;
 - (f) the Receiver has facilitated a sale of substantially all of the Respondent's assets; and
 - (g) the fees of the Receiver is in line with comparable services when performed in a prudent and economical manner.

BDO Affidavit, at paras. 6-17.

10. Similar factors are considered on the assessment of legal accounts of counsel to the Receiver, including:
- (a) the time expended;
 - (b) the complexity of the receivership;
 - (c) the degree of responsibility assumed by the lawyers;
 - (d) the amount of money involved, including the amount of proceeds after realization and the payments to the creditors;
 - (e) the degree and skill of the lawyers involved;

- (f) the results achieved; and
- (g) the client's expectations as to the fee.

Maple Leaf Loading, at para. 12.

11. The Receiver submits Farris' fees are fair and reasonable, because:

- (a) Farris has assisted the Receiver with all Activities, assisting in reviewing agreements associated with sales process, providing legal advice with respect to tax matters, preparing court materials, and attending court hearings;
- (b) Farris has assumed significant responsibility throughout these proceedings and has worked closely with the Receiver throughout;
- (c) Farris has staffed its legal team with experienced insolvency lawyers and properly delegated legal tasks to members of the legal team that had the skills to complete each activity in a cost-effective manner;
- (d) in working with the Receiver, Farris has helped the Receiver to address issues, and progress towards a transaction that would see the business of the Respondents continue; and
- (e) Farris has been transparent regarding its fees and the Receiver believes that Farris' fees are reasonable in the circumstances.

Farris Affidavit, at para. 14.

12. In addition, the evidence shows that:

- (a) the Receiver's professional fees and disbursements were properly incurred;
- (b) the work completed by the Receiver was delegated to the appropriate professionals with the appropriate seniority and appropriate hourly rates;
- (c) the Receiver's fees in this matter are consistent with fees charged by other insolvency firms of a similar size for work of a similar nature and complexity; and
- (d) the services were performed by the Receiver in a prudent and economical manner.

BDO Affidavit, at paras. 14-15

13. Similarly, the evidence shows that:

- (a) Farris' professional fees and disbursements were properly incurred;
- (b) the work completed by counsel was delegated to the appropriate professionals in each firm with the appropriate seniority and hourly rates;

- (c) counsel's fees in this matter are consistent with the market for similar firms with the capacity to handle a file of comparable size and complexity;
- (d) each of the invoices were reviewed for reasonableness at the time of;
- (e) invoices were provided to the Receiver when rendered and all have been approved by the Receiver; and
- (f) the services were performed by Farris and Cox Taylor in a prudent and economical manner.

Farris Affidavit, at para. 18.

Conclusion

- 14. The Receiver submits that the Activities of the Receiver and its counsel as detailed in the Discharge Report, the BDO Affidavit, and the Farris Affidavit were carried out pursuant to, and in accordance with, the Receivership Order and subsequent Orders of this Court. The Receiver submits that at all times it has acted reasonably, prudently, and not arbitrarily.
- 15. Further, the approval sought by the Receiver is not a general approval of its activities, but is the approval of the specific Activities taken by the Receiver as specifically detailed in the Report, and is linked to the fees and disbursements of the Receiver for which approval is also being sought.
- 16. The Receiver submits that Activities were necessary to progress this Receivership. The Receiver carried out all Activities in good faith.
- 17. Therefore, the Receiver submits that it is appropriate in these circumstances to approve the Receiver's fees, disbursements, and Activities as outlined in the Report, the BDO Affidavit, and the Farris Affidavit.

B. Distribution

- 18. Pursuant to paragraph 3 of the Receivership Order, the Receiver was empowered to take possession of and exercise control over the assets, undertakings and property of the Respondent, including cash held by the Respondent as of the date of appointment.

Receivership Order, s. 3
- 19. Pursuant to paragraph 13 of the Receivership Order, the Receiver is to hold monies collected from and after the making of the Receivership Order in the "Post Receivership Accounts", as defined in the Receivership Order. The Receiver is then to hold such funds to be paid in accordance with the terms of the Receivership Order or any further order of the Court.

Receivership Order, s. 13

20. Pursuant to paragraph 36 of the Receivership Order, the Receiver may apply to this Court for advice and directions in the discharge of its powers and duties.

Receivership Order, s. 36

21. Given the amounts remaining due to the Petitioner after closing of the credit bid sale transaction, the Receiver believes that making the Distribution is appropriate prior to discharging the Receiver and winding up these proceedings. The Receiver is in possession of funds in the Post-Receivership Accounts that are sufficient to pay these amounts.
22. To enable the discharge of the Receiver, the Receiver seeks this Court's authorization and direction to make the Distribution.

Part 4: MATERIAL TO BE RELIED ON

1. First Affidavit of Chris Bowra made December 8, 2022;
2. First Report of the Receiver dated March 22, 2023;
3. Second Report of the Receiver dated January 29, 2024;
4. Second Affidavit of Chris Bowra made January 29, 2024;
5. First Affidavit of Tevia Jeffries made January 29, 2024; and
6. Such other pleadings and materials previously filed herein as counsel may advise.

The applicant(s) estimate(s) that the application will take 15 minutes if unopposed.

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, within 5 business days after service of this notice of application or, if this application is brought under Rule 9-7, within 8 business days after service of this notice of application,

- (a) file an application response in Form 33,
- (b) file the original of every affidavit, and of every other document, that
 - (i) you intend to refer to at the hearing of this application, and
 - (ii) has not already been filed in the proceeding, and
- (c) serve on the applicant 2 copies of the following, and on every other party of record one copy of the following:
 - (i) a copy of the filed application response;
 - (ii) a copy of each of the filed affidavits and other documents that you intend to refer to at the hearing of this application and that has not already been served on that person;

(iii) if this application is brought under Rule 9-7, any notice that you are required to give under Rule 9-7(9).

Dated: January 30, 2024

Signature

Applicant

Lawyer for applicant

Tevia Jeffries

THIS NOTICE OF APPLICATION is prepared and delivered by Tevia Jeffries of the firm Farris LLP, Barristers & Solicitors, whose place of business and address for service is 2500 – 700 West Georgia Street, Vancouver, British Columbia, V7Y 1B3. Telephone: (604) 684-9151. Email: tjeffries@farris.com. **Attention: Tevia Jeffries.**

To be completed by the court only:

Order made

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

Dated:

Signature of

Judge **Master**

Appendix

[The following information is provided for data collection purposes only and is of no legal effect.]

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
- other

IN THE SUPREME COURT OF BRITISH COLUMBIA

BETWEEN:

113 ROYAL INVESTMENTS LTD.

PETITIONER

AND:

GEYSER BRANDS INC.

RESPONDENT

**SERVICE LIST
as of January 30, 2024**

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| <p>Farris LLP 2500-700 West Georgia Street Vancouver, BC V7Y 1B3</p> <p>Attention: Tevia Jeffries Email: tjeffries@farris.com; lferguson@farris.com</p> <p>Counsel for the Receiver: BDO Canada Limited</p> | <p>BDO Canada Limited, Receiver 1100-1055 West Georgia Street Vancouver, BC V6E 3P3</p> <p>Attention: Chris Bowra, Troy Chelsea E-mail: cbowra@bdo.ca; tchesley@bdo.ca</p> |
| <p>Owen Bird Law Corporation 2900-733 Seymour Street Vancouver, BC V6B 0S6</p> <p>Attention: Jonathan L. Williams, Heather A. Frydenlund Email: jwilliams@owenbird.com; hfrydenlund@owenbird.com</p> <p>Counsel for the Petitioner, 113 Royal Investments Ltd.</p> | <p>TSX Trust Company 301-100 Adelaide St. W Toronto, ON M5H 4H1</p> <p>Attention: Jodi Fraser Email: jodi.fraser@tmx.com</p> |

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| <p>Director of Employment Standards Justice, Health and Revenue Group Legal Services Branch, Ministry of Attorney General Attention: Aaron Welch Email: Aaron.Welch@gov.bc.ca; AGLSBRevTaxInsolvency@gov.bc.ca</p> | <p>Gabriele Jerousek 21438 124th Ave Maple Ridge, BC V2X 4H 3 Email: gabrielejerousek@gmail.com</p> |

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IN THE SUPREME COURT OF BRITISH COLUMBIA

BETWEEN:

113 ROYAL INVESTMENTS LTD.

PETITIONER

AND:

GEYSER BRANDS INC.

RESPONDENT

ORDER MADE AFTER APPLICATION

DISCHARGE ORDER

BEFORE THE HONOURABLE

[REDACTED]

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February 9, 2024

THE APPLICATION of BDO Canada Limited ("**BDO**"), in its capacity as Court-appointed **Receiver** (in such capacity, the "**Receiver**") of the assets, undertakings and properties of Geysler Brands Inc. (the "**Debtor**") coming on for hearing at Vancouver, British Columbia, on the 9th day of February, 2024; AND ON HEARING Tevia Jeffries, counsel for the Receiver, and those other counsel listed on Schedule "**A**" hereto; AND UPON READING the material filed, including the First Report of the Receiver dated March 22, 2023, and the Second Report of the Receiver dated January 29, 2024 (together, the "**Reports**"), and the Second Affidavit of Chris Bowra dated January 29, 2024, and the First Affidavit of Tevia Jeffries dated January 29, 2024 (together, the "**Fee Affidavits**");

THIS COURT ORDERS AND DECLARES THAT:

1. The activities of the Receiver, as set out in the Reports, are hereby approved.

2. The fees and disbursements of the Receiver and its counsel, as set out in the Reports and the Fee Affidavits, are hereby approved.
3. After payment of the fees and disbursements of the Receiver as herein approved, the Receiver shall pay all funds remaining in its hands to the Petitioner.
4. Upon payment of the amounts set out in paragraph 3 hereof and upon the Receiver filing a certificate certifying that it has completed the remaining outstanding activities described in the Report, the Receiver shall be discharged as Receiver of the assets, undertaking and property of the Debtor, provided that notwithstanding its discharge herein: (a) the Receiver shall remain Receiver for the performance of such incidental duties as may be required to complete the administration of the receivership herein; and (b) the Receiver shall continue to have the benefit of the provisions of all Orders made in this proceeding, including all approvals, protections and stays of proceedings in favour of BDO in its capacity as Receiver.
5. BDO is hereby released and discharged from any and all liability that BDO now has or may hereafter have by reason of, or in any way arising out of, the acts or omissions of BDO while acting in its capacity as Receiver herein. Without limiting the generality of the foregoing, BDO is hereby forever released and discharged from any and all liability relating to matters that were raised, or which could have been raised, in the within receivership proceedings.
6. Notwithstanding any provision herein, this Order shall not affect any person to whom notice of these proceedings not delivered as required by the *Bankruptcy and Insolvency Act* and regulations thereto, any other applicable enactment or any other Order of this Court. Endorsement of this Order by counsel appearing on this application, other than counsel for BDO, is hereby dispensed with.

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:

Signature of

Party

Lawyer for BDO Canada Limited

Tevia Jeffries

By the Court

Registrar