



FORCE FILED

NO. S-217202
VANCOUVER REGISTRY

IN THE SUPREME COURT OF BRITISH COLUMBIA

BETWEEN:

THE BANK OF NOVA SCOTIA

PETITIONER

AND:

COMMUNITY MARINE CONCEPTS LTD., VICTORIA INTERNATIONAL
MARINA LTD., ETERNALAND YUHENG INVESTMENT HOLDING LTD. AND
0736657 B.C. LTD.

RESPONDENTS

NOTICE OF APPLICATION

Name of applicant: Alvarez & Marsal Canada Inc. (“**A&M**”), in its capacity as court appointed Receiver of the Respondents (the “**Receiver**”).

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

TAKE NOTICE that an application will be made by the applicant to the presiding judge at the courthouse at 800 Smithe Street, Vancouver, BC on November 16, 2022 for the orders set out in Part 1 below.

Part 1: ORDERS SOUGHT

- 1. An order approving the Receiver’s and the Receiver’s counsel’s fees.

Part 2: FACTUAL BASIS

A. Background of the Debt and Refinancing

- 1. On or about November 1, 2021, upon application of the Bank of Nova Scotia (“**BNS**”), Justice Groves granted an order (the “**Receivership Order**”), under which Alvarez & Marsal Canada Inc. (“**A&M**”) was appointed as receiver (the “**Receiver**”) effective as of December 13, 2021 (the “**Appointment Date**”) in respect of all the assets, undertakings and property of Community Marine Concepts Ltd., Victoria International Marina Ltd.,

Eternaland Yuhon Investment Holdings Ltd., and 0736657 B.C. Ltd. (collectively, the “**Companies**”).

A&M First Report, s. 1.1.

2. Prior to the Appointment Date, the Companies’ shareholder group (the “**Shareholder**”) was working with certain third party financiers to arrange for refinancing efforts to repay BNS in full.

A&M First Report, s. 7.1.

3. On or about December 14, 2021, the date after the Appointment Date, the Shareholder deposited \$5.95 million into the Companies’ BNS account (the “**CMC Deposit**”).

A&M First Report, s. 7.2.

4. In February 2022, the Shareholder delivered a \$6.0 million bank to BNS (the “**Bank Draft**”) and presented the Receiver with a loan agreement draft from Yeakon Minoru Blvd Holdings Ltd., as lender, for a loan of \$6.0 million (the “**Yeakon Loan Agreement**”).

A&M First Report, s. 7.3.

5. In and around this time, the Shareholder also presented the Receiver with commitment letters from 1129057 B.C. Ltd. and Amber Mortgage Investment Corp., as lenders, each with a commitment of \$5 million, totaling \$10 million together (the “**1129 Loan Agreement**”).

A&M First Report, s. 7.6.

6. At this time, BNS was owed approximately \$16,139,715.70 with interest accruing at \$1,225.09 per diem.

A&M First Report, s. 8.1.

7. Between the CMC Deposit, Bank Draft, and the 1129 Loan Agreement, the Shareholder had arranged for approximately \$21.9 million in refinancing (the “**Refinancing**”).

Therefore, if the Shareholder was able to solidify and close all the Refinancing facilities, BNS could be repaid in full.

A&M First Report, s. 8.2.

B. Procedural Background

8. Given the plan for Refinancing, the Shareholder brought an application to this Court to apply certain funds from the Refinancing to the Companies debts. On April 14, 2022, this court granted an order (the “**Distribution Order**”), to, among other things:

- (a) apply certain funds obtained under the Refinancing to pay the BNS debt in full,
- (b) apply certain funds obtained under the Refinancing to other debts of the Companies, and
- (c) to have the Receiver discharged upon the Receiver bringing an application to approve the distribution with respect to certain priority obligations, approve the Receiver’s and the Receiver’s counsel’s fees and activities and the filing of the receiver’s certificate (the “**Receiver’s Certificate**”).

9. The Receiver’s Certificate could be filed once the Receiver was satisfied that:

- (a) all the Refinancing transactions closed;
- (b) the Companies’ obligations to BNS were paid in full;
- (c) the Receiver and its counsel passed their accounts and had their activities approved; and
- (d) the Receiver made all distributions of funds as authorized and directed by the Court, including certain priority distributions.

A&M First Report, s. 9.2.

10. In accordance with the Distribution Order, on April 22, 2022, the Receiver brought an application to approve its fees and activities and its counsel’s fees, as well as to hold back certain funds for payment of certain priority distributions (the “**Holdback Funds**”).

11. On April 22, 2022, this Court granted the orders (the “**First Approval Order**”) sought by the Receiver:
 - (a) approving the Receiver’s fees and activities from the period of the Appointment Date to March 31, 2022 (the “**First Period**”), plus a projected \$50,000 in estimated fees to complete the receivership (“**Receiver’s Fee Estimate**”);
 - (b) approving the Receiver’s counsel’s fees for the First Period, plus a projected \$20,000 in estimated fees to complete the receivership (the “**Dentons’ Fee Estimate**”); and
 - (c) authorizing the Receiver to holdback funds in the Receiver’s “Post-Receivership Accounts” (as defined in the Receivership Order) (the “**Holdback**”) for a period of 6 months. The Receiver was authorized to use the Holdback funds to pay any fees and disbursements of the Receiver and its counsel that are approved by this Court and to pay any claims or liabilities sought from the Receiver with respect to the Companies.

12. The Receiver filed the Receivership Certificate on May 16, 2022, certifying that:
 - (a) all the Refinancing transactions closed;
 - (b) BNS was paid in full;
 - (c) the Receiver and its counsel had pass their accounts for the First Period; and
 - (d) the Receiver has made all distributions as authorized and directed by the Court.

13. Since the time of the Receivership Order, the Receiver has attended to post-receivership matters, specifically with respect to CRA requests. The Receiver, on behalf of the Companies, has made \$211,480.00 in payments to CRA (the “**CRA Payments**”).

A&M Affidavit at para. 3.

14. The Receiver believes that the CRA Payments are sufficient, but understands that CRA is still completing its trust audit. The Receiver is not certain when this audit may be completed.

A&M Affidavit at para. 3.

15. At this time, the Receiver holds \$662,298.00 in Holdback Funds. In accordance with the First Approval Order, the Receiver must return these Holdback Funds to the Companies within 6 months following its discharge. As such, the Receiver must return the Holdback Funds November 16, 2022.

A&M Affidavit at para. 2.

16. Under the First Approval Order, the Court approve the Receiver's Estimated Fees to carry out the balance of the Receivership. The Receiver has applied this estimate to outstanding fees, but still has \$33,024.73 in fees which have not been approved by this Court. The Receiver does not anticipate any additional fees above what has already been incurred and as such has not built a further estimate into the approval order sought herein.

A&M Affidavit at paras. 8 and 11.

17. The Receiver now seeks to have its fees and its counsel's fees approved for the balance of its work in the receivership, for the period of May 1, 2022 to October 15, 2022 (the "**Second Period**") so the Receiver can pay its fees and its counsel's fees prior to remitting the Holdback Funds.

C. The Receiver's Fees

18. The Receiver's fees of the Second Period are detailed in the Second Affidavit of Todd Martin (the "**A&M Affidavit**").
19. For the Second Period, the Receiver has incurred fees in the amount of \$30,652.50 and disbursements in the amount of \$799.62 (not including legal fees), plus taxes in the amount of \$1,572.61, for a total of \$33,024.73.

A&M Affidavit at para. 8.

20. The Receiver has affirmed its belief that the time expended and the fees charged by A&M are reasonable in light of the services provided and prevailing market rates for services of this nature.

A&M Affidavit at para. 15.

D. Dentons' Fees

21. As further detailed in the First Affidavit of Jordan Schultz (the "**Dentons Affidavit**"), and the invoices attached thereto (which have been redacted to protect solicitor-client privilege as between Dentons and the Receiver), Dentons Canada LLP ("**Dentons**") has been counsel for the Receiver since December 2021.

Dentons' Affidavit at para. 5.

22. For the period from April 1, 2022 to November 8, 2022, Dentons has incurred fees in the amount of \$35,266.00 and disbursements in the amount of \$80.00, plus taxes in the amount of \$4,231.94, for a total of \$39,577.94.

Dentons' Affidavit at para. 8.

23. Under the First Approval Order, the Court approved the Dentons' Estimated Fees to carry out the balance of the Receivership. The Receiver's counsel has applied this estimate to outstanding fees, but still has \$17,177.94 in fees which have not been approved by this Court.

Dentons' Affidavit at para. 13.

24. The Receiver's counsel anticipates a further \$5,600.00 in fees to complete this receivership, including time to bring this application to approve the Receiver and its counsel's fees, which has been built into the order sought herein. Therefore, the Receiver is seeking approval of a total of \$45,177.94 in fees.

Dentons' Affidavit at para. 8 and 10.

25. The Receiver has affirmed its belief that the time expended and the fees charged by its counsel are reasonable in light of the services provided and prevailing market rates for services of this nature.

A&M Affidavit at paras. 17-19.

Part 3: LEGAL BASIS

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. 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. 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.

5. 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 A&M Affidavit and Dentons Affidavit.

6. 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 at para. 11.

- 7. 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.).

- 8. The Receiver submits its fees are fair and reasonable because:

- (a) the assets and business of the Respondents are complex;
- (b) the Receiver has spent significant time and effort in dealing with concluding the receivership and communicating with CRA;
- (c) the Receiver has facilitated progressing the Refinancing, while simultaneously progressing preservation and marketing efforts;
- (d) the Receiver has significant knowledge, experience and skill;
- (e) the Receiver has displayed diligence and thoroughness in discharging its duties, and has taken on significant responsibilities in the Receivership;
- (f) a full repayment of the Respondents' obligations to the Companies and continued operation of the Respondents business is a positive result to the Receivership; and

- (g) the fees of the Receiver is in line with comparable services when performed in a prudent and economical manner.

Report, s., 3.1-8.9. and A&M Affidavit at paras. 14-15.

9. 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.

10. The Receiver submits Dentons' fees are fair and reasonable, because:

- (a) Dentons has assisted the Receiver with concluding this receivership and communicating with CRA and attending court hearings;
- (b) Dentons has assumed significant responsibility throughout these proceedings and has worked closely with the Receiver throughout;
- (c) Dentons 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, Dentons has helped the Receiver and stakeholders to resolve disputes, and progress towards a transaction that would see creditors paid and the business of the Respondents continue; and
- (e) Dentons has been transparent regarding its fees and the Receiver believes that Dentons' fees are reasonable in the circumstances.

Dentons Affidavit, at para. 14.

11. 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.

A&M Affidavit, at paras. 17-19.

12. Similarly, the evidence shows that:

- (a) Dentons' 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 billing;
- (e) invoices were provided to the Receiver when rendered and all have been approved by the Receiver; and

(f) the services were performed by Dentons in a prudent and economical manner.

Dentons Affidavit, at paras. 17-19.

13. The Receiver submits that based on the above, this Court should approve the Receiver and its counsels' fees as outlined in the A&M and Dentons Affidavits.

Part 4: MATERIALS TO BE RELIED ON

1. Receiver's Report to the Court dated April 11, 2022
2. Affidavit #1 of Jordan Schultz, sworn November 8, 2022;
3. Affidavit #2 of Todd Martin, sworn November 8, 2022;
4. Receivership Order, filed November 1, 2021;
5. Distribution Order, filed April 14, 2022;
6. First Approval Order, filed April 22, 2022; and
7. Receiver's Certificate, filed May 16, 2022.
8. Such other pleadings and materials previously filed herein as counsel may advise.

The applicant(s) estimate(s) that the application will take 10 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 this Notice of 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 of 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).

Date: November 8, 2022


Signature of lawyer for filing party
Emma Newbery

To be completed by the court only:	
Order made	
<input type="checkbox"/>	Part 1: 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	

APPENDIX

Part 3: 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. S-217202
VANCOUVER REGISTRY

IN THE SUPREME COURT OF BRITISH COLUMBIA

BETWEEN:

THE BANK OF NOVA SCOTIA

PETITIONER

AND:

COMMUNITY MARINE CONCEPTS LTD., VICTORIA INTERNATIONAL MARINA
LTD., ETERNALAND YUHENG INVESTMENT HOLDING LTD. AND 0736657 B.C.
LTD.

RESPONDENTS

SERVICE LIST

(as at April 6, 2022)

NAME OF COUNSEL:	NAME OF PARTY(IES):
Blakes, Cassels & Graydon LLP Suite 2600 – 595 Burrard St. Vancouver, BC V7X 1L3 Attention: Peter Bychawski / Claire Hildebrand Tel: (604) 631-3300 Email: peter.bychawski@blakes.com claire.hildebrand@blakes.com	<i>Counsel for the Petitioner, The Bank of Nova Scotia</i>

<p>Forrester & Company 300 – 171 Water Street Vancouver, BC V6B 1A7</p> <p>Attention : Crystal Law / Glen Forrester</p> <p>Tel : (604) 682-1066</p> <p>Email: gforrester@forresterbarristers.ca jchiang@forresterbarristers.ca</p>	<p><i>Counsel for the Respondents, Community Marine Concepts Ltd., Victoria International Marina Ltd., Eternaland Yuheng Investment Holding Ltd. and 0736657 B.C. Ltd.</i></p>
<p>Dentons Canada LLP 20th Floor – 250 Howe Street Vancouver, BC V6C 3R8</p> <p>Attention: John Sandrelli / Emma Newbery</p> <p>Tel: (604) 443-7132</p> <p>Email: john.sandrelli@dentons.com emma.newbery@dentons.com avic.arenas@dentons.com lee.ngo@dentons.com</p>	<p><i>Counsel for Court-Appointed Receiver (Alvarez & Marsal Canada Inc.)</i></p>
<p>Alvarez & Marsal Canada Inc. Cathedral Place Building 925 West Georgia Street, Suite 902 Vancouver, BC V6C 3 L2</p> <p>Attention: Todd Martin / Pinky Law</p> <p>Tel : (604) 638-7440</p>	<p><i>Court-Appointed Receiver</i></p>

<p>Email: tmartin@alvarezandmarsal.com pinky.law@alvarezandmarsal.com</p>	
<p>Fasken Martineau DuMoulin LLP</p> <p>2900 – 550 Burrard Street Vancouver, BC V6C 1A3</p> <p>Attention: Kibben Jackson</p> <p>Tel: (604) 631-3131</p> <p>Email: kjackson@fasken.com; svolkow@fasken.com</p>	<p><i>Counsel for Ed Scripps</i></p>
<p>JFK Law Corporation</p> <p>816 – 1175 Douglas Street</p> <p>Victoria BC V8W 2E1</p> <p>Attention: Robert Janes, QC</p> <p>Tel: 1-250-405-3460</p> <p>Email: rjanes@jfklaw.ca; krose@jfklaw.ca</p>	<p><i>Counsel for Songhees First Nation</i></p>
<p>Allen / McMillan Litigation Counsel</p> <p>1625 – 1185 West Georgia St.</p> <p>Vancouver, BC V6E 4E6</p>	<p><i>Counsel for Blue Water Systems Ltd.</i></p>

<p>Attention: Wes McMillan</p> <p>Tel: 604-282-3980</p> <p>Email: wes@amlc.ca; thea@amlc.ca</p>	
<p>Justice Health and Revenue</p> <p>Legal Services Branch</p> <p>Ministry of Attorney General</p> <p>PO Box 9280 Stn Prov Govnt</p> <p>Victoria, BC V8W 9J7</p> <p>Attention: Aaron Welch / Cindy Cheuk</p> <p>Tel: 1-250-387-6121</p> <p>Email: AGLSBRevTaxInsolvency@gov.bc.ca; Aaron.Welch@gov.bc.ca; Cindy.Cheuk@gov.bc.ca</p>	<p><i>Ministry of Attorney General</i></p>
<p>Pearlman Lindholm</p> <p>201 – 19 Dallas Road</p> <p>Victoria, BC V8V 5A6</p> <p>Attention: Mikaila Mauro</p>	<p><i>Counsel for Andrea Guyon</i></p>

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<p>Richards Buell Sutton LLP 700 - 401 West Georgia Street Vancouver, BC V6B 5A1</p> <p>Attention: Daniel Nugent / Winsome Glover</p> <p>Tel: 604-595-9917</p> <p>Email: dnugent@rbs.ca; wglover@rbs.ca; dramsey@rbs.ca</p>	<p><i>Counsel for Amber Mortgage Investment Corp.</i></p>

<p>Lawson Lundell LLP</p> <p>1600 - 925 West Georgia Street Vancouver, BC V6C 3L2</p> <p>Attention: Brenda Lightbody</p> <p>Tel: 604-631-9165</p> <p>Email: blightbody@lawsonlundell.com; ldavis@lawsonlundell.com</p>	<p><i>1129057 BC Ltd.</i></p>
<p>Legal Services City of Victoria 1 Centennial Square Victoria BC V8W 1P6</p> <p>Attention: Tom Zworski</p> <p>Tel: 1 (250) 361-0528</p> <p>Email: tzworski@victoria.ca; srasmussen@victoria.ca</p>	<p><i>The City of Victoria</i></p>
<p>Canada Revenue Agency British Columbia Regional Office Department of Justice 900 - 840 Howe Street Vancouver, BC V6Z 2S9</p> <p>Tel: 604-666-2061</p> <p>Fax No. 604-666-2760</p>	<p><i>Canada Revenue Agency</i></p>

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