



FORCE FILED

No. S-238711
Vancouver Registry

IN THE SUPREME COURT OF BRITISH COLUMBIA

BETWEEN

CANADIAN WESTERN BANK

PETITIONER

AND

QUARRY ROCK DEVELOPMENTS (MCALLISTER) INC., QUARRY ROCK DEVELOPMENTS
(MCALLISTER) LIMITED PARTNERSHIP, LAWSON ACQUISITIONS LTD., WILLIS
DEVELOPMENTS INC., AND QUARRY ROCK DEVELOPMENTS INC.

RESPONDENTS

NOTICE OF APPLICATION

Name of applicant: the Receiver

TAKE NOTICE that an application will be made by the applicant to Justice Fitzpatrick at the
courthouse at 800 Smithe Street, Vancouver, BC, V6Z 2E1 on November 20, 2024 at ^{10:00}~~9:45~~ a.m.
for the orders set out in Part 1 below.

The applicant estimates that the application will take 10 minutes.

This matter is not within the jurisdiction of an Associate Judge.

Part 1: ORDER(S) SOUGHT

1. An Order that the Confidential Supplement to the Receiver's First Report (the "**Confidential Report**") of Alvarez & Marsal Canada Inc. ("**A&M**") be filed under seal pending further order of this Court.
2. Such further and other relief as this Honourable Court may deem just and necessary.

Part 2: FACTUAL BASIS

1. On April 2, 2024, Canadian Western Bank ("**CWB**") filed the Consent to Act as Receiver by A&M with the Supreme Court of British Columbia (the "**Court**") and pursuant to the Consent Order dated February 22, 2024 (the "**Consent Order**"), A&M was appointed

receiver (in such capacity, the “**Receiver**”) without security, of all the assets, undertakings and property of Quarry Rock Developments (McAllister) Inc. (“**McAllister Inc.**”), Quarry Rock Developments (McAllister) Limited Partnership (“**McAllister LP**” and collectively with McAllister Inc., the “**Debtors**”) acquired for, or used in relation to a business carried on by the Debtors (these proceedings are hereinafter referred to as the “**Receivership Proceedings**”).

2. The other respondents, Quarry Rock Developments Inc., Lawson Acquisitions Ltd. and Willis Developments Inc., are guarantors of the financing between the Debtors and CWB and are hence excluded from these Receivership Proceedings.
3. McAllister Inc., which was incorporated on April 18, 2017, acts as the general partner for McAllister LP, which is a limited partnership that was formed in respect to a development project (the “**Project**”) located in the City of Port Coquitlam.
4. McAllister LP was registered on November 16, 2017, for the purpose of acquiring lands in respect of the Project and the development of the Project.
5. The Project property is legally described as: Lot 1 District Lot 379 Group 1 New Westminster District Plan EPP107096, PID: 031-366-708 and its municipal address is: 2245 McAllister Avenue, Port Coquitlam, B.C. V3C 2A9.
6. Due to a number of factors including construction delays and rising costs of borrowing, the Debtors did not have sufficient access to capital to fund ongoing obligations as they became due.
7. On November 17, 2023, CWB issued a Notice of Intention to Enforce Security pursuant to section 244 of the *Bankruptcy and Insolvency Act*, RSC 1985, c B-3, as amended.
8. On February 22, 2024, the Court Granted the Consent Order and A&M was appointed as Receiver on April 2, 2024.
9. On November 7, 2024, the Receiver served its application (the “**Sale Approval Application**”) for the approval of a sale agreement (the “**NorthStar PSA**”) with NorthStar Acquisitions Ltd. (“**NorthStar**”).

10. As described in further detailed in the Sale Approval Application, the NorthStar PSA was the result of an extensive marketing process conducted by Colliers Macaulay Nicolls Inc. since April 2024.
11. Pursuant to the Supreme Court of British Columbia PD-62, *Sealed Bid Process for Foreclosures and Other Matters Involving Sales of Land*, any person interested in making an offer to complete against the NorthStar PSA had until 4:00 p.m. on November 18, 2024 to send its competing offer to the Receiver's counsel. NorthStar would then have until 10 p.m. on November 19, 2024 to revise the NorthStar PSA.
12. The Receiver has received one or more sealed bid(s) as a result of the sealed bid process (the "**Sealed Bid(s)**").
13. The Confidential Report seeks to summarize the Sealed Bid(s) for consideration of this Honourable Court.

Part 3: LEGAL BASIS

1. The Receiver will rely on:
 - (a) The Supreme Court Civil Rules;
 - (b) The inherent and equitable jurisdiction of this Honourable Court; and
 - (c) Such further and other legal bases and authorities as counsel may advise and this Honourable Court may permit.

Sealing Order

2. The Court has jurisdiction to order that certain materials filed with the Court be sealed in the Court file. The Supreme Court of Canada has stated that such order can be granted where:
 - (a) such an order is necessary in order to prevent serious risk to an important interest, including a commercial interest, in the context of litigation because reasonably alternative measures will not prevent the risk; and

- (b) the salutary effects of the confidentiality order, including the effects on the right of civil litigants to a fair trial, outweigh its deleterious effects, including the effects on the right to free expression, which in this context includes the public interest in open and accessible court proceedings.

Sierra Club of Canada v. Canada (Minister of Finance), 2002 SCC 41 at para. 53 (“**Sierra Club**”).

- 3. In *Sherman Estate*, the Supreme Court found that the *Sierra Club* test rests upon three core prerequisites that a person seeking such a limit must show:

- (a) court openness poses a serious risk to an important public interest;
- (b) the sealing order sought is necessary to prevent the serious risk to the identified interest because reasonably alternative measures will not prevent this risk; and
- (c) as a matter of proportionality, the benefits of the sealing order outweigh its negative effects.

Sherman Estate v. Donovan, 2021 SCC 25 at para. 38.

- 4. The information sought to be sealed fit squarely within the test established by *Sierra Club* and meets the core prerequisites as set out in *Sherman Estate*.
- 5. The Confidential Report contains a summary of the Sealed Bid(s) and copy(ies) thereof, which must be kept under seal in order to protect the integrity of the Court-supervised sealed bid process.
- 6. The Receiver submits that the deleterious effects are minimal and outweighed by the benefits of the proposed Sealing Order.
- 7. The procedure to be followed in British Columbia for seeking a sealing order is set out in the Supreme Court of British Columbia PD-58, *Sealing Orders in Civil and Family Proceedings* (effective February 10, 2020), which the Receiver intends to comply with.

PART 4: MATERIAL TO BE RELIED ON

- 1. Notice of Application (Approval of Sale), filed November 8, 2024;

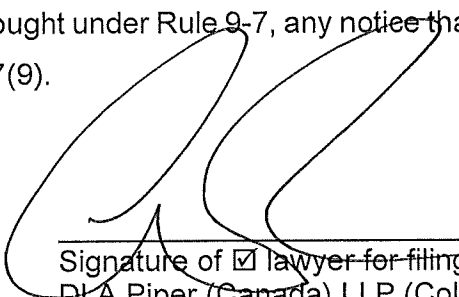
2. First Report of the Receiver, dated November 7, 2024;
3. Confidential Supplement to the Receiver's First Report, to be filed;
4. Such further material this Honourable Court may allow.

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 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).

November 20, 2024

Date



Signature of ☒ lawyer for filing party
DLA Piper (Canada) LLP (Colin D. Brousson)
Lawyers for the Receiver

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:

Date: _____

Signature of Judge Master/

Associate

Judge

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
oral 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
none of the above

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ROCK DEVELOPMENTS INC.

RESPONDENTS

NOTICE OF APPLICATION

DLA Piper (Canada) LLP
Barristers & Solicitors
Suite 2700
1133 Melville Street
Vancouver, BC V6E 4E5
Tel. No. 604.687.9444
Fax No. 604.687.1612

File No.: 076334-00014

CDB/day