



Form 32 (Rule 8-1(4))

No. S196066  
Vancouver Registry

**IN THE SUPREME COURT OF BRITISH COLUMBIA**

BETWEEN:

CANADIAN IMPERIAL BANK OF COMMERCE

PLAINTIFF

AND:

VINCO HOLDINGS LTD.  
WATERWAY HOUSEBOATS LTD.

DEFENDANTS

IN THE SUPREME COURT OF BRITISH COLUMBIA  
IN BANKRUPTCY AND INSOLVENCY

IN THE MATTER OF THE RECEIVERSHIP OF  
VINCO HOLDINGS LTD. and WATERWAY HOUSEBOATS LTD.

**NOTICE OF APPLICATION**

**Name of applicant: Alvarez & Marsal Canada Inc., Receiver of Vinco Holdings Ltd. ("VHL") and Waterway Houseboats Ltd. ("WHL") (collectively, "Vinco" or the "Company") (the "Receiver")**

**To: Plaintiff and all Defendants, and their counsel**

TAKE NOTICE that an application will be made by the Receiver to the presiding Judge at the courthouse at 800 Smithe Street, Vancouver, BC V6Z 2E1 on August 18, 2020, at 9:45 a.m. for the order(s) set out in Part 1 below. *Via telephone*

**Part 1: ORDER(S) SOUGHT**

*Service*

1. An Order that service of notice of this Application and supporting materials is hereby declared to be good and sufficient, and no other person is required to have been served with notice of this Application, and time for service of this Application is abridged to that actually given.

*Approval Activities to Date*

2. An Order that:

- (a) the actions, conduct and activities of the Receiver since the first report of the Receiver dated December 4, 2019, (the "**First Report**") are approved and confirmed;
- (b) the Receiver's statement of receipts and disbursements is approved and confirmed;
- (c) the Receiver's fees and disbursements since the First Report are approved and confirmed; and
- (d) the Receiver's counsel's fees and disbursements since the First Report are approved and confirmed.

*Approval of Interim Distribution to CIBC*

- 3. An Order approving and authorizing the Receiver to make an interim distribution to the Canadian Imperial Bank of Commerce ("**CIBC**") in the amount of \$1,500,000 as partial payment of the indebtedness owing to CIBC by the Company (the "**Interim Distribution**"); and
- 4. Such further and other relief as counsel may advise and this Honourable Court may deem appropriate.

**Part 2: FACTUAL BASIS**

**Background**

- 1. The Company operated a houseboat rental business on Mara Lake in Sicamous, British Columbia, with a head office also located in Sicamous, British Columbia.
- 2. VHL owned three parcels of real property located in Sicamous, BC. Of these three properties, one is the Mervyn Road Property that served as the operating site for the houseboat rental business.
- 3. WHL, an affiliate of VHL, was the operator and owner of the houseboat rental business and contracted with third party houseboat owners (the "**Boat Owners**") to rent and maintain a fleet of 58 houseboats, which included 9 houseboats owned by WHL.
- 4. Pursuant to an Order pronounced on June 11, 2019, (the "**Receivership Order**") by the Honorable Mr. Justice Bundrett of the Supreme Court of British Columbia (the "**Court**"), upon application of CIBC, Alvarez & Marsal Canada Inc. (the "**Receiver**"). was appointed as the Receiver of the assets, undertakings and property of the Company.
- 5. The Receivership Order authorized the Receiver to solicit offers in respect of the Company's property and sell any parts thereof with approval of this Honourable Court for any transaction for which the aggregate purchase price exceeds \$1,000,000.

6. Pursuant to an Order pronounced on December 20, 2019, (the "**Sale Approval Order**"), the Court approved the sale of the movable property of the Company including the houseboats, pleasure and service crafts, equipment, vehicles and portable buildings (collectively, the "**Chattels**") and the 16-acre waterfront property (the "**Mervyn Road Property**") to Checkpoint Developments Ltd. ("**Checkpoint**") for a purchase price totaling \$2,600,000 (the "**Checkpoint SAVO**"). Of the \$2,600,000 purchase price, \$600,000 was allocated to the purchase of the Chattels and \$2,000,000 was allocated to the purchase of the Mervyn Road Property.
7. The Sale Approval Order authorized the Receiver to sell the Chattels and the Mervyn Road Property to Checkpoint for a purchase price of \$2,600,000.

#### **Outline of Receiver's Activities to Date**

8. Since the First Report, the Receiver:
  - (a) conducted ongoing discussions, meetings and communications with CIBC, other key stakeholders and creditors;
  - (b) maintained ongoing communications with the litigation counsel, Rush Has Hardwick LLP ("**Rush**"), regarding the status of the Court of Appeal proceedings further described in the First Report, and consulted with the Receiver's legal counsel, Gowling WLG (Canada) LLP ("**Gowling**"), and updated CIBC of same;
  - (c) attended to various communications with Checkpoint and its counsel, CIBC and Gowling, among others to advance and close the sale transaction approved in the Checkpoint SAVO;
  - (d) coordinated activities to transfer assets to Checkpoint including, but not limited to, closed and/or transferred utilities accounts, arranged transportation and storage of books and records; and provided documentation to ensure timely transfer of right, title and interest in the assets of the Company to Checkpoint;
  - (e) provided direction to Colliers International ("**Colliers**") on the continued marketing of the residual assets of the Company located at 1272 Titus Road, Sicamous, B.C. (the "**Titus Property**") and 1265 Monashee Frontage Road, Sicamous, B.C. (the "**Monashee Property**") (together, the "**Residual Properties**");
  - (f) collected rent and communicated with the tenant, 1937 Enterprises Inc. ("**1937**"), who continues to lease the building located on the Monashee Property;
  - (g) communicated with the Receiver's independent contractor on various site matters and received site monitoring updates on the Residual Properties;
  - (h) responded to enquiries from the former third-party houseboat owners (the "**Boat Owners**") that had contracted with Vinco to rent and maintain a fleet of 49 houseboats owned by the Boat Owners, which were subsequently released to the Boat Owners during the Receivership Proceedings;

- (i) reviewed invoices, made necessary payments and maintained a ledger of cash receipts and disbursements;
- (j) repaid the Receiver's borrowing of \$100,000 plus interest to CIBC; and
- (k) communicated with the Canada Revenue Agency, Minister of Finance and other regulatory bodies and fulfilled various statutory regulatory requirements.

*Update on the Sales Process*

9. In July 2019, the Receiver commenced marketing of the assets of the Company and undertook a sales process to solicit offers for the Mervyn Road Property and Chattels of the Company, which is further described in the First Report and second report of the Receiver dated December 19, 2019 (the "**Second Report**").
10. On or before the bid deadline on November 20, 2019, the Receiver received twenty offers for the various assets and subsequently filed an application to be heard on December 16, 2019 (the "**December 16 Hearing**") to seek Court approval of two offers totalling \$2,575,000 and comprised of the following:
  - (a) a \$2,000,000 conditional offer for the Mervyn Road Property that was submitted by the District of Sicamous Development Corporation and subject to a number of conditions being lifted by January 9, 2020; and
  - (b) a \$575,000 net minimum guarantee offer on the Chattels from Able Solutions Inc.
11. On December 13, 2019, prior to the December 16 Hearing, Checkpoint submitted to the Receiver a verbal offer of \$2,600,000 for the Mervyn Road Property and Chattels (the "**Checkpoint Offer**").
12. Given the timing of the Checkpoint Offer, the Receiver, in consultation with its legal counsel and CIBC, sought an adjournment of the December 16 Hearing to allow the Receiver to evaluate and negotiate the offers with the various bidders.
13. Following discussion with the various stakeholders, the sales process resulted in the Checkpoint SAVO being granted by this Honourable Court pursuant to which, the Receiver closed the sale transaction of the Mervyn Road Property and Chattels on March 11, 2020 (the "**Closing Date**").
14. Subsequent to the Checkpoint SAVO being granted, the Receiver undertook the following activities to advance and conclude the transaction by the Closing Date:
  - (a) attend to correspondence and meetings with the Receiver's legal counsel, CIBC, and Checkpoint and its legal counsel to discuss various matters relating to the sale;
  - (b) provide access to site for consultants retained by Checkpoint;

- (c) inform the insurance provider, utilities vendors and other stakeholders of the sale of the Mervyn Road Property and coordinate closure and/or transfer of accounts to Checkpoint;
- (d) attend to correspondence with the District of Sicamous and other regulators to coordinate payment of applicable taxes;
- (e) arrange, by and through the Receiver's legal counsel, transfer of the right, title and interest in the Mervyn Road Property and Chattels to Checkpoint; and
- (f) coordinate the transfer of certain of the books and records to Checkpoint while ensuring alignment to the requirements of the Personal Information Protection and Documents Act and Personal Information Protection Act.

#### *Residual Properties*

- 15. Colliers, under the direction of the Receiver and in consultation with CIBC, commenced marketing of the Titus Property, Monashee Property and Mervyn Road Property in July 2019. Solicitation of offers included direct marketing to Colliers' database of customers as well as posting the Residual Properties on the Multiple Listing Service ("**MLS**").
- 16. To date, there has not been an acceptable offer for the Residual Properties.
- 17. The Residual Properties were initially listed on the MLS for a combined sale price of \$995,000. Since then, there have been several separate offers on the Titus Property and Monashee Property and an offer on the combined Residual Properties, none of which were consistent with appraisal values nor acceptable to CIBC. Subsequently, in January 2020, the Receiver, in consultation with CIBC and Colliers, reduced the MLS listing for the Residual Properties to \$895,000.
- 18. The Residual Properties are currently being monitored several times a week by an independent contractor and reports are provided to the Receiver on a weekly basis.

#### *Litigation Proceedings*

- 19. As described in the First Report, the Receiver, in consultation with CIBC and the Receiver's legal counsel, had retained the Company's former litigation counsel, Rush, to appeal the Judgment (as defined in the First Report) (the "**Appeal**") which had awarded \$2,300,000 to the Company and Boat Owners for damages resulting from a flood in 2012.
- 20. In preparation for the Court of Appeal hearing held via video conference from June 17 to 19, 2020, Rush had prepared appellant and respondent factums, which were subject to review and comment by the Receiver and the Receiver's legal counsel, among other things.
- 21. A decision to the Appeal is expected in the coming months.

*Status of Priority Claims*

22. As at May 26, 2020, outstanding pre-receivership provincial sales taxes ("PST") totaled approximately \$6,561.28 of which \$3,521.90 relates to VHL and \$3,039.38 relates to WHL. Additionally, of the total \$6,561.28 PST owing to the Minister of Finance (the "**Minister**"), \$3,856.09 relates to penalties and interest.
23. The Receiver has been in contact with the Minister to discuss reducing and/or waiving the penalties and interest; however, it does not appear likely that the penalties or interest will be reduced and/or waived.
24. The Minister confirmed that interest and penalties will not accrue during the period March 23, 2020 to October 23, 2020 in order to provide relief to companies during the pandemic.

*Receiver's Interim Statement of Cash Receipts and Disbursements*

25. The Receiver's Statement of Receipts and Disbursements for the period of June 11, 2019, to June 19, 2020 (the "**June 19 R&D**") is summarized in the Receiver's Third Report. The Receiver held a closing cash balance at approximately \$1,882,051 and excludes potential recoveries that may be expected from the decision to the Appeal and sale of the Residual Properties.

*Professional Fees*

26. Attached as **Appendix "A"** to the Receiver's Third Report is a summary of the Receiver's professional fees and expenses incurred and paid during the period October 1, 2019 to April 30, 2020. The Receiver believes these expenses were necessarily incurred for the Receiver's time and effort spent completing the sales transaction pursuant to the Checkpoint SAVO, as well as preserving the Residual Properties and managing the Appeal matters; among various other activities.
27. Attached as **Appendix "B"** to the Receiver's Third Report is a summary of the legal fees and expenses incurred and paid during the period September 1, 2019 to May 31, 2020. The Receiver believes that the legal fees charged are reasonable given the scope of work, services provided, and the current market price of legal services in British Columbia.

*Interim Distribution*

28. Pursuant to paragraph 12 of the Receivership Order, all funds, monies, cheques, instruments, and other forms of payments received or collected by the Receiver from and after the making of the Receivership Order shall be held by the Receiver to be paid in accordance with the terms of the Receivership Order. Accordingly, the Receiver is seeking an order authorizing the Interim Distribution, where the Receiver is to make an interim distribution to CIBC in the amount of \$1,500,000 as partial payment of the indebtedness owing to CIBC by the Company.
29. Should this Honourable Court approve the Interim Distribution, the Receiver will have approximately \$382,051 remaining in its trust account to fund the administration of the



estate to its conclusion. The Receiver anticipates that costs to complete the administration of the estate will largely be comprised of professional fees of the Receiver and its legal counsel and the litigation counsel in respect of the litigation proceedings.

30. Given the uncertainty surrounding the timing and quantum of expected recoveries from the Appeal and the impact of COVID-19 on parties' appetites for purchasing real properties, the Receiver has not provided an estimated total recovery for the remaining assets. However, it is expected that following the Interim Distribution, the anticipated recoveries realized on the remaining assets will be sufficient to administer the estate to its conclusion.
31. Accordingly, the Receiver is respectfully of the view that it should be authorized to make a distribution to CIBC in the amount of \$1,500,000.

### **Part 3: LEGAL BASIS**

1. The Receivership Order, made in these proceedings;
2. The Sale Approval Order, made in these proceedings;
3. *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3;
4. *Law and Equity Act*, R.S.B.C. 1996, c. 250;
5. *Supreme Court Civil Rules*; and
6. The inherent jurisdiction of this Court.

### **Part 4: MATERIAL TO BE RELIED ON**

1. Receiver's First Report, dated December 4, 2019.
2. Receiver's Second Report, dated December 19, 2019.
3. Receiver's Third Report, dated August 4, 2020.
4. Such further and other materials as counsel may advise and this Honourable Court may permit

The Receiver's estimate that this application will take 30 mins.

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

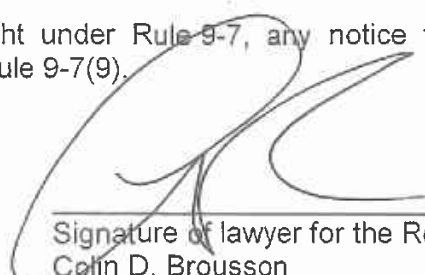
TO THE PERSONS RECEIVING THIS NOTICE OF APPLICATION: If you wish to respond to this notice of application, you must, within 5 business days after service of this notice of application or, if this application is brought under Rule 9-7, within 8 business days after service of this notice of application,

- (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 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:

Aug 4/2020

  
Signature of lawyer for the Receiver  
Colin D. Brousson  
Gowling WLG (Canada) LLP

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

#### 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

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