



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 December 16, 2019, at 9:45 a.m. for the order(s) set out in Part 1 below.

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 set out in the First Report are approved and confirmed;
 - (b) the Receiver's statement of receipts and disbursements as set out in the First Report are approved and confirmed.
 - (c) the Receiver's fees and disbursements as set out in the First Report are approved and confirmed; and
 - (d) the Receiver's counsel's fees and disbursements as set out in the First Report are approved and confirmed.

Approval of Able Solutions Agreement

3. An Order:
 - (a) approving the execution and completion of the Auction and Liquidation Services agreement with Able Solutions Inc. ("**Able**") attached as **Appendix "D"** to the First Report of the Receiver dated December 4, 2019 (the "**Able Solutions Agreement**") concerning the sale of movable property including the houseboats, pleasure and service crafts, equipment, vehicles and portable buildings (collectively, the "**Chattels**") to Able;
 - (b) vesting of all of the Company's right, title and interest in Able, free and clear from any and all security interests, hypothecs, mortgages, trusts or deemed trusts, liens, executions, levies, charges or other financial or monetary claims; and
4. Such further and other relief as counsel may advise and this Honourable Court may deem appropriate.

Part 2: FACTUAL BASIS

Background

1. 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 the Canadian Imperial Bank of Commerce ("**CIBC**"), Alvarez & Marsal Canada Inc. was appointed as the Receiver of the assets, undertakings and property of Vinco Holdings Ltd. ("**VHL**") and Waterway Houseboats Ltd. ("**WHL**") (collectively, "**Vinco**" or the "**Company**").
2. The Company operated a houseboat rental business on Mara Lake in Sicamous, British Columbia, with a head office also located in Sicamous, British Columbia.

3. VHL owns three parcels of real property located in Sicamous, BC. Of these three properties, one is a 16-acre waterfront property (the "**Mervyn Road Property**") that served as the operating site for the houseboat rental business.
4. 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.
5. The Receivership Order authorizes 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.

Outline of Receiver's Activities to Date

6. Beginning on June 11, 2019, the Receiver:
 - (a) secured the premises of the real property and took possession of the real property and personal property over which it was appointed, undertook various conservatory and protective measures and prepared an inventory of all the assets;
 - (b) arranged for the locks and key codes to be changed for all building units including storage sheds and storage containers;
 - (c) coordinated the release of the 49 houseboats owned by the Boat Owners;
 - (d) opened trust accounts;
 - (e) issued notices to financial institutions to freeze accounts and transfer balances to the Receiver's trust accounts;
 - (f) opened new utility accounts;
 - (g) retained trade professionals to resolve issues relating to the facilities;
 - (h) took possession of the books and records of the Company, performed an inventory, and arranged redundant back-ups of all computer and electronic records;
 - (i) maintained and updated the Service List and the Receiver's website for the receivership proceedings at www.alvarezandmarsal.com/waterway;
 - (j) notified the Company's insurer of the Receivership Order and requesting that the Receiver be added as named insured and loss payee on the insurance policies;
 - (k) notified 1937 Enterprises Ltd. of the Receivership Order and arranged for payments of rent to the Receiver;
 - (l) arranged for the winterizing of the Company-owned houseboats, service and pleasure crafts, equipment and facilities;

- (m) attended to various statutory duties including preparing a Notice and Statement of Receiver which was sent to all known creditors identified in the books and records of the Company as required by the *Bankruptcy and Insolvency Act*, and attended to filing requirements pursuant to the *Wage Earner Protection Program Act* ("**WEPPA**");
- (n) prepared and mailed notices to 52 former employees pursuant to WEPPA;
- (o) submitted Trustee Information Forms to Services Canada and attended to correspondence with former employees and Service Canada; and
- (p) dealt with government reporting matters, including determining status of the Company's payroll remittances, GST and other filings and notifying the Worksafe BC in respect of the Receivership Proceedings.

Former Management, Employees, and Contractors

- 7. The Company was operating when the Receivership Order was granted. As of the date of the Receivership Order, 52 full-time and part-time employees were staffed to manage the start of the 2019 sailing season with the first sailing commencing in May, 2019.
- 8. The Receiver conducted an initial meeting with former management and remaining employees on June 11, 2019, to advise them of the Receivership Order and related matters.
- 9. The Receiver retained 11 former employees of the Company on a contract basis to assist with the administration of the Receivership.
- 10. The Receiver responded to employee queries regarding severance and the WEPPA entitlements.
- 11. The Receiver retained an on-site contractor to uphold insurance policy security requirements, maintain the site, and manage other matters at site.

Real Property

- 12. The Company owns three (3) parcels of real property located in Sicamous, British Columbia.
- 13. Specifically, VHL owns and operated from real property located at 1 Mervyn Road, Sicamous, BC, V0E 2V0 ("**Mervyn Road Property**"). A marina and movable buildings are located on the Mervyn Road Property, which served as the operating site for the houseboat rental business.
- 14. The Company also owns two parcels of real property located at 1265 Monashee Frontage Road, Sicamous BC, V0E 2V0 and 1272 Titus Road, Sicamous BC, V0E 2V0 (collectively, the "**Monashee Property**"), which up until 2008, was used primarily for the construction of houseboats. Currently, a building on the Monashee Property is leased to 1937 Enterprises Inc., a related party.

15. The Receiver had the real property appraised and obtained a market valuation report for each of the three parcels of property. The Receiver entered into Multiple Listing Contracts with Colliers International. The listing prices, as set out below, are based on the appraisals, market valuations, and the current tax assessment values
 - (a) Mervyn Road Property: \$4,500,000 (plus separate bid for the Chattels); and
 - (b) Monashee Property: \$995,000.

Chattels

16. The Company's Chattels consists of 58 houseboats, 11 pleasure and service crafts, 5 vehicles, various heavy equipment, computer equipment, portable buildings, and thousands of furniture and parts inventory, among other things.

Secured Claims

17. As of the date of the Receivership Order, the Company had a total of approximately \$8,000,000 of secured debt owing to CIBC, which holds a first ranking charge on the majority of the Company's assets.
18. CIBC's security included:
 - (a) a Security Agreement dated November 29, 2010, granting CIBC security in all of Vinco's present and after-acquired personal property and Crown license of Occupation 344093 (the "**Vinco GSA**");
 - (b) a Mortgage and Assignment of Rents dated November 29, 2010, granting CIBC security in the amount of \$7,000,000 in the Mervyn Road Property;
 - (c) a Mortgage of License and Occupation dated November 29, 2010, granting CIBC security in Vinco's interest in Crown License of Occupation 344093; and
 - (d) a Security Agreement dated November 29, 2010, granting CIBC security in all of Waterway Houseboat's present and after-acquired personal property (the "**Waterway Houseboats GSA**").

Unsecured Claims

19. There is approximately \$5,400,000 worth of unsecured debt owing to the following unsecured creditors:
 - (a) Approximately 680 customers that had fully prepaid or paid deposits to reserve houseboat vacation rentals for the 2019 season and select 2020 bookings;
 - (b) approximately 50 Boat Owners that were owed houseboat rental revenues;
 - (c) approximately 100 trade creditors; and
 - (d) approximately 50 full-time and part-time staff owed severance.

Consultation and Communications with Stakeholders and Other Parties

20. The Receiver undertook various measures to consult and communicate with stakeholders and other parties, including the following:
- (a) setting up a dedicated email address and telephone hotline to streamline consultation and communication with customers, Boat Owners, creditors and other stakeholders;
 - (b) cooperating with Consumer Protection B.C. including gathering and providing materials in respect of customer deposits for reserved, but unfulfilled houseboat rental vacations;
 - (c) attending meetings and discussions with Boat Owners regarding outstanding claims, relocation of houseboats, insurance and other matters;
 - (d) dealing with the former owner of the Company to arrange retrieval of a boat that is 50%-owned by the Company;
 - (e) attending to multiple discussions with the Province of British Columbia regarding the status of the Company's foreshore lease, go-forward steps, and timing required for renewal; and
 - (f) communicating with the Canada Revenue Agency, Minister of Finance and other regulatory bodies and fulfilling various statutory regulatory requirements.

Sales Process Undertaken

21. The Receiver, in consultation with CIBC, retained Colliers to market the Real Property and Chattels through the Multiple Listing Service ("**MLS**") and set up a data room containing a confidential information memorandum ("**CIM**") and due diligence materials, which were made available to potential purchasers subsequent to executing a confidentiality agreement.
22. Mostly due to the significant costs associated with securing and maintaining the Chattels, coupled with the lack of viable offers for all assets, on October 22, 2019, the Receiver commenced a parallel process to sell the Chattels separately from the Real Property and set a deadline to submit offers by November 20, 2019, at 5pm Pacific Time (the "**Bid Deadline**").
23. The Receiver obtained appraisals of the Mervyn Road Property, Monashee Property and Chattels to assist in the marketing of the assets for sale.
24. To prepare the process to market and sell the Chattels, the Receiver undertook the following activities:
- (a) prepared inventory listings and an asset information package ("**AIP**") of the assets located across the Mervyn Road Property and Monashee Property, a copy of which is attached as **Appendix "A"** to the First Report of the Receiver dated December 3, 2019 (the "**Receiver's First Report**");

- (b) reviewed the appraisal completed by Able Auctions Ltd. ("**Able Auctions**") and the books and records of the Company;
- (c) advertised the Chattels for sale in the Globe & Mail on October 24, 2019, a copy of which is attached as **Appendix "B"** to the Receiver's First Report;
- (d) prepared and disseminated confidentiality agreements to 129 potentially interested parties that responded to Colliers' initial marketing of the Real Property;
- (e) distributed electronic copies of the AIP to 64 parties upon execution of a confidentiality agreement; and
- (f) coordinated multiple site visits with 17 interested parties during the period from October 22, 2019, to November 20, 2019.

Proposed Sale of Real Property and Chattels

- 25. The offers were due on November 20, 2019, and the Receiver received a total of nineteen offers and one offer through Colliers, comprised of the following:
 - (a) two bids for the Real Property and the Chattels;
 - (b) one bid for the Mervyn Road Property and the Chattels;
 - (c) five bids for all Chattels, four of which were from liquidators and included an auction of the Chattels in January and February 2020; and
 - (d) twelve bids for certain lots.
- 26. A summary of the offers received prior to the Bid Deadline with names of parties anonymized are attached as **Appendix "C"** to the Receiver's First Report.
- 27. Interest has been received from a number of parties and the Receiver has recently accepted a conditional offer for the Mervyn Road Property that, subject to lifting of conditions, will be presented to Court for approval in early 2020.
- 28. The highest and best offer for all Chattels was submitted by Able Auctions which formed the basis of the Able Solutions Agreement, which the Receiver has accepted subject to Court approval.
- 29. The material terms of the Able Solutions Agreement are as follows:
 - (a) the purchase price is a net minimum guarantee of \$575,000 plus sharing of any additional net proceeds exceeding \$650,000 to be split between the Receiver (75%) and Able (25%) (the "**Able Offer**");
 - (b) Court approval is the only condition precedent;
 - (c) Able Auctions will assume all costs of liquidation and marketing and expects to complete the liquidation by February 28, 2020;

- (d) a copy of the auction agreement is attached as **Appendix "D"** to the Receiver's First Report.
30. The Receiver's review of the bids included consideration of the following:
- (a) the extent to which the highest price was achieved for the Chattels;
 - (b) the appraisal of the Chattels completed by Able Auctions on June 27, 2019, which suggested values of \$961,000 and \$1,200,000 under forced liquidation and orderly liquidation scenarios, respectively;
 - (c) the estimated operating expenses to be incurred in the event a transaction is not concluded in a timely manner;
 - (d) the overall execution risk associated with the bidders including the reputation and financial wherewithal of bidders to complete the transaction; and
 - (e) the proposed timing to complete the liquidation process.
31. Based on the considerations above, the Receiver is of the view that the Able Offer is superior to other offers for the Chattels and is fair and commercially reasonable. The Receiver is also of the view that the Receiver's efforts to solicit bids were conducted in a fair and reasonable manner, and that the sales process was conducted over a sufficient period of time to allow adequate marketing of the assets and all bidders to perform due diligence and submit offers.
32. The Receiver recommends that the Court approve the Able Solutions Agreement such that Able Auctions can conduct a liquidation of the Chattels in accordance with its terms.
33. It is the Receiver's understanding that CIBC, the senior secured creditor in these proceedings, also recommends approval of the Able Solutions Agreement.

Receiver's Interim Statement of Cash Receipts and Disbursements

34. The Receiver's Statement of Receipts and Disbursements for the period ending November 26, 2019 is summarized in the Receiver's First Report. The Receiver held a closing cash balance at approximately \$78,726 and excludes further realizations anticipated from the sale of the Chattels, which is forecast to provide sufficient liquidity though the remainder of the Receivership Proceedings.

Professional Fees

35. Attached as **Appendix "E"** to the Receiver's First Report is a summary of the Receiver's professional fees. The Receiver believes these expenses were necessarily incurred for the Receiver's time and effort spent securing and marketing the assets; attending to the enquiries of nearly 900 creditors and stakeholders; and dealing with 49 Boat Owners and coordinating the release of their house boats; among various other activities.
36. Attached as **Appendix "F"** to the Receiver's First Report is a summary of the legal invoices paid to date. 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.

Part 3: LEGAL BASIS

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

Part 4: MATERIAL TO BE RELIED ON

1. Receiver's First Report, dated December 4, 2019.
2. 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.

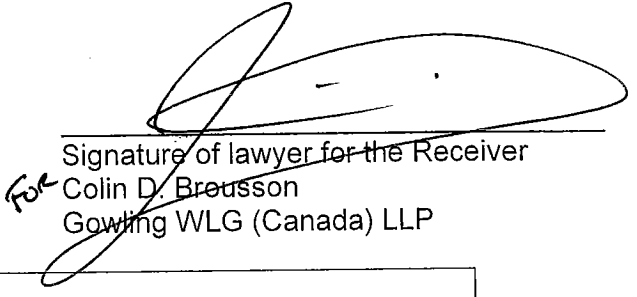
- ☐ This matter is within the jurisdiction of a master.
- ☒ This matter is not within the jurisdiction of a master.

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: December 4, 2019


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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