

SUPREME COURT
OF BRITISH COLUMBIA
VANCOUVER REGISTRY

FEB 14 2019

ENTERED



No. S1813807
Vancouver Registry

IN THE SUPREME COURT OF BRITISH COLUMBIA
IN BANKRUPTCY AND INSOLVENCY

IN THE MATTER OF THE PART XIII OF THE
BANKRUPTCY AND INSOLVENCY ACT, R.S.C. 1985, C. B-6,
AS AMENDED

AND

IN THE MATTER OF MASAHIKO NISHIYAMA,
BANKRUPT UNDER THE LAWS OF JAPAN

ORDER MADE AFTER APPLICATION

BEFORE THE HONOURABLE

MR. JUSTICE VOITH

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)

THURSDAY, THE 14TH DAY

OF FEBRUARY, 2019

ON THE APPLICATION of Hiroshi Morimoto, Foreign Representative in these proceedings (the "**Trustee**") for an Order pursuant to Section 272(1) of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended (the "**BIA**") appointing Alvarez & Marsal Canada Inc. as Receiver (in such capacity, the "**Receiver**") without security, of all or any of the assets, undertakings and property in Canada of Masahiko Nishiyama (the "**Debtor**"), coming on for hearing this day at Vancouver, British Columbia.

AND ON READING the Affidavits #1 and #2 of Hiroshi Morimoto sworn December 20, 2018 and February 6, 2019 respectively and the consent of Alvarez & Marsal Canada Inc. to act as the Receiver; AND ON HEARING Colin D. Brousson, Counsel for the Applicant and other counsel as listed on Schedule "A" hereto, and no one else appearing, although duly served.

THIS COURT ORDERS AND DECLARES that:

APPOINTMENT

1. Pursuant to Section 272(1) of the BIA Alvarez & Marsal Canada Inc. is appointed Receiver, without security, of all or any of the assets, undertakings and property legally or beneficially owned by the Debtor in Canada, including all proceeds (the "**Property**").
2. The term of this appointment shall continue until further order of this Court.

RECEIVER'S POWERS

3. The Receiver is empowered and authorized, but not obligated, to act at once in respect of the Property and, without in any way limiting the generality of the foregoing, to do any of the following where the Receiver and the Trustee consider it necessary or desirable:
 - (a) to take possession of and exercise control over the Property and any and all receipts and disbursements arising out of or from the Property, including, but not limited to the contents of the safety deposit box of the Debtor located at the Royal Bank of Canada, Transit 10, Royal Centre, 1025 West Georgia Street, Vancouver, BC, V6E 3N9 (the "**SDB**") notwithstanding an order made November 30, 2018 in connection with the SDB in an action commenced by The Resolution and Collection Corporation ("**RCC**") against the Debtor in the Vancouver Registry of this Court, Action No. S162298 (the "**RCC Action**");
 - (b) to receive, preserve and protect the Property, or any part or parts thereof, including, but not limited to, changing locks and security codes, relocation of Property, engaging independent security personnel, taking physical inventories and placing insurance coverage;
 - (c) to engage consultants, appraisers, agents, experts, auditors, accountants, managers, counsel and such other persons from time to time and on whatever basis, including on a temporary basis, to assist with the exercise of the Receiver's powers and duties (including but not limited to the engagement of independent legal counsel to review all Records (as defined below) for solicitor client privilege), including, without limitation, those conferred by this Order;

- (d) to purchase or lease such any equipment, supplies, premises or other assets to receive, preserve and protect the Property, or any part or parts thereof;
- (e) to receive and collect all monies and accounts now owed or hereafter owing to the Debtor and to exercise all remedies of the Debtor in collecting these amounts, including, without limitation, enforcement of any security held by the Debtor;
- (f) to execute, assign, issue and endorse documents of whatever nature in respect of any of the Property, whether in the Receiver's name or in the name and on behalf of the Debtor, for any purpose pursuant to this Order;
- (g) to market any or all of the Property, including advertising and soliciting offers in respect of the Property or any part or parts thereof and negotiating such terms and conditions of sale as the Receiver considers appropriate;
- (h) to sell, convey, transfer, lease or assign the Property or any part or parts thereof and in each such case notice under Section 59(10) of the *Personal Property Security Act*, R.S.B.C. 1996, c. 359 shall not be required;
- (i) to apply for any vesting order or other orders necessary to convey the Property or any part or parts thereof to a purchaser or purchasers, free and clear of any liens or encumbrances;
- (j) to report to, meet with and discuss with such affected Persons (as defined below) as the Receiver considers appropriate on all matters relating to the Property and the receivership, and to share information, subject to confidentiality terms as the Receiver considers appropriate and as permitted by law;
- (k) to register a copy of this Order and any other Orders in respect of the Property against title to any of the Property;
- (l) to exercise any shareholder, partnership, joint venture or other rights which the Debtor may have; and

- (m) to take any steps reasonably incidental to the exercise of these powers or the performance of any statutory obligations,

and in each case where the Receiver takes any such actions or steps, it shall be exclusively authorized and empowered to do so, to the exclusion of all other Persons (as defined below), including the Debtor, but excluding the Trustee, and without interference from any other Person.

DUTY TO PROVIDE ACCESS AND CO-OPERATION TO THE RECEIVER

4. Each of (i) the Debtor; (ii) all of the Debtor's current and former agents, accountants, legal counsel, and all other persons acting on its instructions or behalf; and (iii) all other individuals, firms, corporations, governmental bodies or agencies, or other entities having notice of this Order (collectively, "**Persons**" and each a "**Person**") shall forthwith advise the Receiver of the existence of any Property in such Person's possession or control, shall grant immediate and continued access to the Property to the Receiver, and shall deliver all such Property (excluding Property subject to liens the validity of which is dependent on maintaining possession) to the Receiver upon the Receiver's request.
5. All Persons, other than governmental authorities, shall forthwith advise the Receiver of the existence of any books, documents, securities, contracts, orders, corporate and accounting records, and any other papers, records and information of any kind related to the Property or affairs of the Debtor, and any computer programs, computer tapes, computer disks, or other data storage media containing any such information (collectively, the "**Records**") in that Person's possession or control. The Records shall include all of the contents of the SDB. Upon request, governmental authorities shall advise the Receiver of the existence of any Records in that Person's possession or control.
6. Upon request, all Persons shall provide to the Receiver or permit the Receiver to make, retain and take away copies of the Records and grant to the Receiver unfettered access to and use of accounting, computer, software and physical facilities, provided however that nothing in paragraphs 4, 5 or 6 of this Order shall require the delivery of Records, or the granting of access to Records, which may not be disclosed or provided to the Receiver due to solicitor client privilege or statutory provisions prohibiting such disclosure.

7. If any Records are stored or otherwise contained on a computer or other electronic system of information storage, whether by an independent service provider or otherwise, all Persons in possession or control of such Records shall forthwith give unfettered access to the Receiver for the purpose of allowing the Receiver to recover and fully copy all of the information contained therein whether by way of printing the information or making copies of computer disks or such other manner of retrieving and copying the information as the Receiver in its discretion deems expedient, and shall not alter, erase or destroy any Records without the prior written consent of the Receiver. Further, for the purposes of this paragraph, all Persons shall provide the Receiver with all such assistance in gaining immediate access to the information in the Records as the Receiver may require including, without limitation, providing the Receiver with instructions on the use of any computer or other system and providing the Receiver with any and all access codes, account names and account numbers that may be required to gain access to the information.
8. The Receiver shall take reasonable steps to protect any solicitor client privilege claimed or claimable by the Debtor with respect to any Records and, in particular, the contents of the SDB.
9. The Receiver is authorized to provide RCC with access to any Records and to the contents of the SDB that are requested by RCC, and any implied undertaking of confidentiality of the part of the Receiver is waived in respect of the Records and to the contents of the SDB, provided that the Receiver shall not provide any records or other documents that are or may be subject to solicitor client privilege without further order of the Court.

NO PROCEEDINGS AGAINST THE RECEIVER

10. No proceeding or enforcement process in any court or tribunal (each, a "**Proceeding**"), shall be commenced or continued against the Receiver except with the written consent of the Receiver or with leave of this Court.

RECEIVER TO HOLD FUNDS

11. All funds, monies, cheques, instruments, and other forms of payments received or collected by the Receiver from and after the making of this Order from any source whatsoever including, without limitation, the SDB, the sale of all or any of the Property

and the collection of any accounts receivable, in whole or in part, whether in existence on the date of this Order or hereafter coming into existence, shall be deposited into one or more new accounts to be opened by the Receiver (the "**Post-Receivership Accounts**") and the monies standing to the credit of such Post-Receivership Accounts from time to time, net of any disbursements provided for herein, shall be held by the Receiver to be paid in accordance with the terms of this Order or any further order of this Court.

PERSONAL INFORMATION

12. Pursuant to Section 7(3)(c) of the *Personal Information Protection and Electronic Documents Act*, S.C. 2000, c. 5 or Section 18(1)(o) of the *Personal Information Protection Act*, S.B.C. 2003, c. 63, the Receiver may disclose personal information of identifiable individuals to prospective purchasers or bidders for the Property and to their advisors, but only to the extent desirable or required to negotiate and attempt to complete one or more sales of the Property (each, a "**Sale**"). Each prospective purchaser or bidder to whom such personal information is disclosed shall maintain and protect the privacy of such information and limit the use of such information to its evaluation of the Sale, and if it does not complete a Sale, shall return all such information to the Receiver, or in the alternative destroy all such information. The purchaser of any Property shall be entitled to continue to use the personal information provided to it, and related to the Property purchased, in a manner which is in all material respects identical to the prior use of such information by the Debtor, and shall return all other personal information to the Receiver, or ensure that all other personal information is destroyed.

LIMITATION ON ENVIRONMENTAL LIABILITIES

13. Nothing in this Order shall require the Receiver to occupy or to take control, care, charge, possession or management (separately and/or collectively, "**Possession**") of any of the Property that might be environmentally contaminated, might be a pollutant or a contaminant, or might cause or contribute to a spill, discharge, release, or deposit of a substance contrary to any federal, provincial or other law relating to the protection, conservation, enhancement, remediation or rehabilitation of the environment or relating to the disposal of waste or other contamination (collectively "**Environmental**

Legislation”), provided however that nothing herein shall exempt the Receiver from any duty to report or make disclosure imposed by applicable Environmental Legislation.

14. The Receiver shall not, as a result of this Order or anything done in pursuance of the Receiver’s duties and powers under this Order, be deemed to be in Possession of any of the Property within the meaning of any Environmental Legislation, unless the Receiver is actually in possession.
15. Notwithstanding anything in federal or provincial law, the Receiver is not personally liable in that position for any environmental condition that arises or environmental damage that occurred:
 - (a) before the Receiver’s appointment; or,
 - (b) after the Receiver’s appointment, unless it is established that the condition arose or the damage occurred as a result of the Receiver’s gross negligence or wilful misconduct.
16. Notwithstanding anything in federal or provincial law, but subject to paragraph 13 of this Order, where an order is made which has the effect of requiring the Receiver to remedy any environmental condition or environmental damage affecting the Property, if the Receiver complies with the BIA section 14.06(4), the Receiver is not personally liable for the failure to comply with the order and is not personally liable for any costs that are or would be incurred by any Person in carrying out the terms of the order.

LIMITATION ON THE RECEIVER’S LIABILITY

17. The Receiver shall incur no liability or obligation as a result of its appointment or the carrying out the provisions of this Order, save and except:
 - (a) any gross negligence or wilful misconduct on its part; or
 - (b) amounts in respect of obligations imposed specifically on receivers by applicable legislation.

Nothing in this Order shall derogate from the protections afforded the Receiver by Section 14.06 of the BIA or by any other applicable legislation.

RECEIVER'S ACCOUNTS

18. The Receiver will be paid by the Trustee in respect of these proceedings based upon its standard rates for fees and disbursements, whether incurred before or after the making of this Order. The Receiver will be at liberty to apply for a charge as security for payment of its fees and disbursements as against the Property if it sees fit to do so in the future.
19. The Receiver may pass its accounts from time to time, and for this purpose the accounts of the Receiver are referred to a judge of the Supreme Court of British Columbia and may be heard on a summary basis, however the Receiver will not be obligated to pass their accounts if they have been approved by the Trustee.
20. Prior to the passing of its accounts, the Receiver shall be at liberty from time to time to apply reasonable amounts, out of any monies in its hands, against its fees and disbursements if these accounts are not already paid directly by the Trustee.

SERVICE AND NOTICE OF MATERIALS

21. An order that the time for service of this Notice of Application and the materials referred to herein pertaining to this Order and the service thereof is deemed to be good and sufficient.
22. Any Person who is served with a copy of this Order and that wishes to be served with any future application or other materials in these proceedings must provide to counsel for each of the Receiver and the Applicant a demand for notice in the form attached as Schedule B (the "**Demand for Notice**"). The Receiver and the Applicant need only provide further notice in respect of these proceedings to Persons that have delivered a properly completed Demand for Notice. The failure of any Person to provide a properly completed Demand for Notice releases the Receiver and the Applicant from any requirement to provide further notice in respect of these proceedings until such Person delivers a properly completed Demand for Notice.
23. The Receiver shall maintain a service list identifying all parties that have delivered a properly completed Demand for Notice (the "**Service List**").

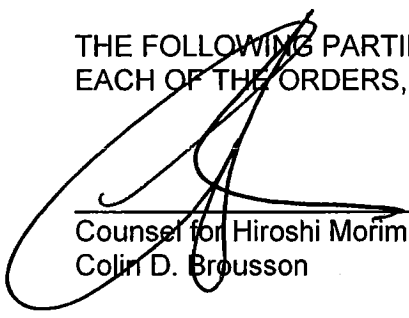
24. Any interested party, including the Receiver, may serve any court materials in these proceedings by facsimile or by emailing a PDF or other electronic copy of such materials to the numbers or addresses, as applicable, set out on the Service List. Any interested party, including the Receiver, may serve any court materials in these proceedings by mail to any party on the Service List that has not provided a facsimile number or email address, and materials delivered by mail shall be deemed received five (5) days after mailing.

GENERAL

25. Any interested party may apply to this Court to vary or amend this Order on not less than seven (7) clear business days' notice to the Service List and to any other party who may be affected by the variation or amendment, or upon such other notice, if any, as this Court may order.
26. The Receiver may from time to time apply to this Court for advice and directions in the discharge of its powers and duties hereunder.
27. This Court requests the aid, recognition and assistance of any court, tribunal, regulatory or administrative body having jurisdiction, wherever located, to give effect to this Order and to assist the Receiver and its agents in carrying out the terms of this Order. All such courts, tribunals and regulatory and administrative bodies are respectfully requested to make such orders and to provide such assistance to the Receiver, as an officer of this Court, as may be necessary or desirable to give effect to this Order or to assist the Receiver and its agents in carrying out the terms of this Order.
28. The requirements for the Receiver to file accounts pursuant to Supreme Court Rule 10-2(4) is hereby waived.
29. Nothing in this Order affects the ability of The Owners, Strata Plan BCS4016 to continue its proceedings in this Court, Vancouver Registry Action No.S1810083.

30. Nothing in this Order affects the ability of RCC to continue its proceedings in the RCC Action.

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:



Counsel for Hiroshi Morimoto, Trustee
Colin D. Brousson

BY THE COURT


REGISTRAR





Schedule "A"
COUNSEL LIST

Name of Counsel	Representing:
Robert W. Richardson	Resolution and Collection Corporation Tokyo

Schedule "B"

Demand for Notice

TO: Hiroshi Morimoto, Trustee and Foreign Representative
c/o Gowling WLG (Canada) LLP
Attention: Colin D. Brousson
Email: colin.brousson@gowlingwlg.com

AND TO: Alvarez & Marsal Canada Inc.
c/o Alvarez & Marsal Canada Inc.
Attention: Anthony Tillman
Email: atillman@alvarezandmarsal.com

Re: In the matter of the Receivership of Masahiko Nishiyama in Supreme Court of British Columbia Action No. S1813807, Vancouver Registry

I hereby request that notice of all further proceedings in the above Receivership be sent to me in the following manner:

1. By email, at the following address (or addresses):

OR

2. By facsimile, at the following facsimile number (or numbers):

OR

3. By mail, at the following address:

Name of Creditor: _____

Name of Counsel (if any): _____

Creditor's Contact Address: _____

Creditor's Contact Phone Number: _____

No. S1813807
Vancouver Registry

**IN THE SUPREME COURT OF BRITISH COLUMBIA
IN BANKRUPTCY AND INSOLVENCY**

IN THE MATTER OF THE PART XIII OF THE
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C. B-6, AS AMENDED

AND

IN THE MATTER OF MASAHIKO NISHIYAMA,
BANKRUPT UNDER THE LAWS OF JAPAN

RECEIVERSHIP ORDER

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JDB/msh