

No. H200590
Vancouver Registry



IN THE SUPREME COURT OF BRITISH COLUMBIA

BETWEEN:

MCAP FINANCIAL CORPORATION

PETITIONER

AND:

MAIN STREET ARTS INVESTMENTS INC. et al.

RESPONDENTS

NOTICE OF APPLICATION

Name of applicants: The Bowra Group Inc. (the “**Receiver**”), the receiver of the assets, undertakings and properties of Main Street Arts Investments Inc., Port Capital Developments (Arts) Inc. and Main Street Arts Development Limited Partnership (collectively, the “**Companies**”) and the Petitioner;

To: The Respondents

And to: Their Solicitors

TAKE NOTICE that an application will be made by the applicants to the presiding judge or master at the courthouse via telephone or MS Teams at 800 Smithe Street, Vancouver, B.C. on April 27, 2021 at 9:45 a.m. for the order set out in Part 1 below.

Part 1 ORDERS SOUGHT

1. The Receiver seeks an order approving the sale of certain lands and premises which are the subject matter of this proceeding on the terms of the draft Order attached hereto as **Schedule “A”**.

Part 2 FACTUAL BASIS

1. Pursuant to the Order of Madam Justice Fitzpatrick made herein on January 8, 2021 (the “**Receivership Order**”), The Bowra Group Inc. was appointed the Receiver of all of the

assets, undertakings and property legally or beneficially owned by the Companies, including those lands which are the subject matter of this proceeding, more particularly described as:

Lot 1 Block 38 District Lot 200A Plan 197
PID: 010-136-576;

Lot 2 Block 38 District Lot 200A Plan 197
PID: 015-553-230; and

Lot 3 Block 38 District Lot 200A Plan 197
PID: 013-273-825

(the “**Development**”).

2. Order Nisi was also granted in this proceeding by Madam Justice Fitzpatrick on January 8, 2021.
3. The Receiver engaged Cushman Wakefield ULC (“**Cushman**”) to list the Development for sale and market the Development.
4. Cushman made efforts to sell the Development, which efforts are set forth in the marketing report attached as Exhibit “A” to the Affidavit #2 of Mario Mainella sworn herein on April 13, 2021.
5. On or about April 12, 2021, the Receiver entered into a contract of purchase and sale (the “**Contract of Purchase and Sale**”) with Jim Pattison Developments Ltd. (the “**Purchaser**”), pursuant to which the Receiver has agreed to sell, and the Purchaser has agreed to purchase, the Mortgaged Lands for the price of \$23,000,000.00.
6. The completion date under the Contract of Purchase and Sale is the first business day after which the Approval and Vesting Order becomes a final order.

Part 3 LEGAL BASIS

1. The factors governing the court’s determination of whether a receiver who has sold a property acted properly are as follows:
 - (a) Whether the receiver has made a sufficient effort to get the best price and has not acted improvidently;
 - (b) The interests of all parties;
 - (c) The efficacy and integrity of the process by which offers are obtained; and
 - (d) Whether there has been unfairness in the working out of the process.

Royal Bank v. Soundair Corp. [1991] O.J. No. 1137 at para. 16 (C.A.) per Galligan J.A.

2. The Contract of Purchase and Sale represents the highest and best offer received by the Receiver and the test for approval by this Court set out in *Soundair* has been satisfied.
3. The Receiver will rely on the *Law and Equity Act*, R.S.B.C. 1996, c. 253, ss. 15, 37 and 38 and Rules 13-5 and 21-7 of the Supreme Court Civil Rules.

Part 4 MATERIAL TO BE RELIED ON

1. Affidavit #2 of Mario Mainella sworn April 13, 2021;
2. Receivership Order of Madam Justice Fitzpatrick made January 8, 2021;
3. Order Nisi of Madam Justice Fitzpatrick made January 8, 2021;
4. all pleadings had and taken herein; and
5. such further and other material as counsel may advise and this Honourable Court deems admissible.

The applicant estimates that the application will take thirty minutes.

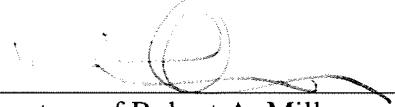
This matter is not within the jurisdiction of a master.

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 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).

Dated: 13-Apr-2021



 Signature of Robert A. Millar
 Lawyer for Applicants

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

The Solicitors for the Petitioner are Fasken Martineau DuMoulin LLP, whose office address and address for delivery is 550 Burrard Street, Suite 2900, Vancouver, BC V6C 0A3 Telephone: +1 604 631 3131 Facsimile: +1 604 631 3232. (Reference: Robert A. Millar/262051.00036)

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
- none of the above

Schedule "A"

No. H200590
Vancouver Registry

IN THE SUPREME COURT OF BRITISH COLUMBIA

BETWEEN:

MCAP FINANCIAL CORPORATION

PETITIONER

AND:

MAIN STREET ARTS INVESTMENTS INC.,
PORT CAPITAL DEVELOPMENT (ARTS) INC.,
MAIN STREET ARTS DEVELOPMENT LIMITED PARTNERSHIP,
PORT CAPITAL DEVELOPMENT INC.,
MACARIO TEODORO REYES and
SEA INVESTMENTS LTD.

RESPONDENTS

ORDER MADE AFTER APPLICATION

APPROVAL AND VESTING ORDER

BEFORE THE HONOURABLE)
) dd/mm/yyyy
)

THE APPLICATION of The Bowra Group Inc., in its capacity as Court-appointed Receiver and Manager (the "Receiver") of the assets, undertakings and properties of Main Street Arts Investments Inc., Port Capital Developments (Arts) Inc. and Main Street Arts Development Limited Partnership (collectively, the "Debtors") coming on for hearing at Vancouver, British Columbia, on the [●]day of April, 2021; AND ON HEARING Robert A. Millar, counsel for the Receiver and the Petitioner, and those other counsel listed on **Schedule "A"** hereto, and no one appearing for [●], although duly served; AND UPON READING the material filed, including the Affidavit #2 of Mario Mainella sworn [●], 2021; (the "**Mainella Affidavit**");

THIS COURT ORDERS AND DECLARES THAT:

1. The sale transaction (the "**Transaction**") contemplated by the Contract of Purchase and Sale dated April 8, 2021 (the "**Sale Agreement**") between the Receiver and Jim Pattison

Developments Ltd. (the “**Purchaser**”), a copy of which is attached as Exhibit “B” to the Mainella Affidavit, is hereby approved, and the Sale Agreement is commercially reasonable. The execution of the Sale Agreement by the Receiver is hereby authorized and approved, and the Receiver is hereby authorized and directed to take such additional steps and execute such additional documents as may be necessary or desirable for the completion of the Transaction and for the conveyance to the Purchaser (or its designated nominee or assignee) of the assets described in the Sale Agreement and enumerated in the attached **Schedule “B”** hereto (the “**Purchased Assets**”).

2. Upon delivery by the Receiver to the Purchaser (or its designated nominee or assignee) of a certificate substantially in the form attached as **Schedule “C”** hereto (the “**Receiver’s Certificate**”), all of the Debtor’s right, title and interest in and to the Purchased Assets described in the Sale Agreement and listed on Schedule “B” hereto shall vest absolutely in the Purchaser (or its designated nominee or assignee) in fee simple, free and clear of and from any and all security interests (whether contractual, statutory, or otherwise), hypothecs, mortgages, trusts or deemed trusts (whether contractual, statutory, or otherwise), liens, executions, levies, charges, or other financial or monetary claims, whether or not they have attached or been perfected, registered or filed and whether secured, unsecured or otherwise (collectively, the “**Claims**”) including, without limiting the generality of the foregoing: (i) any encumbrances or charges created by the Orders of this Court dated January 8, 2021; (ii) all charges, security interests or claims evidenced by registrations pursuant to the *Personal Property Security Act* of British Columbia or any other personal property registry system; and (iii) those Claims listed on **Schedule “D”** hereto (all of which are collectively referred to as the “**Encumbrances**”, which term shall not include the permitted encumbrances, easements and restrictive covenants listed on **Schedule “E”** hereto), and, for greater certainty, this Court orders that all of the Encumbrances affecting or relating to the Purchased Assets are hereby expunged and discharged as against the Purchased Assets.
3. Upon presentation for registration in the Land Title Office for the Land Title District of Vancouver/New Westminster of a certified copy of this Order, together with a letter from Fasken Martineau DuMoulin LLP, solicitors for the Receiver, authorizing registration of this Order, the British Columbia Registrar of Land Titles is hereby directed to:
 - (a) enter the Purchaser (or its designated nominee or assignee) as the owner of the Purchased Assets, as identified in Schedule “B” hereto, together with all buildings and other structures, facilities and improvements located thereon and fixtures, systems, interests, licenses, rights, covenants, restrictive covenants, commons, ways, profits, privileges, rights, easements and appurtenances to the said hereditaments belonging, or with the same or any part thereof, held or enjoyed or appurtenant thereto, in fee simple in respect of the Purchased Assets, and this Court declares that it has been proved to the satisfaction of the Court on investigation that the title of the Purchaser (or its designated nominee or assignee) in and to the Purchased Assets is a good, safe holding and marketable title and directs the BC Registrar to register indefeasible title in favour of the Purchaser (or its designated nominee or assignee) as aforesaid; and

- (b) having considered the interest of third parties, to discharge, release, delete and expunge from title to the Purchased Assets all of the registered Encumbrances except for those listed in Schedule "E".
4. The adjusted purchase price in respect of the sale may be distributed without further Order in the following manner:
 - (a) firstly, in payment of all items subject to adjustment in respect of the sale, including outstanding property taxes and utilities, and any penalties or interest on any such charges;
 - (b) secondly, in payment of the commission of the real estate agent who arranged the sale;
 - (c) thirdly the costs of the Receiver incurred as a result of its appointment in these proceedings;
 - (d) the balance in payment to the Petitioner on account of the amount required to pay the outstanding balance of its mortgages plus interest plus the Petitioner's legal fees; and
 - (e) the balance, if any, into court to the credit of this action or as may otherwise be agreed among the parties to this proceeding.
5. For the purposes of determining the nature and priority of Claims to the balance of the proceeds referred to in paragraph 4(e), if any, those net proceeds from the sale of the Purchased Assets shall stand in the place and stead of the Purchased Assets, and from and after the delivery of the Receiver's Certificate all Claims shall attach to the net proceeds from the sale of the Purchased Assets with the same priority as they had with respect to the Purchased Assets immediately prior to the sale, as if the Purchased Assets had not been sold and remained in the possession or control of the person having had possession or control immediately prior to the sale.
6. The Receiver is to file with the Court a copy of the Receiver's Certificate forthwith after delivery thereof.
7. Subject to the terms of the Sale Agreement, vacant possession of the Purchased Assets, including any real property, shall be delivered by the Receiver to the Purchaser (or its designated nominee or assignee) at 12:00 noon on the Completion Date (as defined in the Sale Agreement), subject to the permitted encumbrances as set out in the Sale Agreement and listed on Schedule "E".
8. The Receiver, with the consent of the Purchaser (or its designated nominee or assignee), shall be at liberty to extend the Completion Date to such later date as those parties may agree without the necessity of a further Order of this Court provided that the Completion Date be within 60 days of the Acceptance Date (as defined in the Sale Agreement).

9. Notwithstanding:

- (a) these proceedings;
- (b) any applications for a bankruptcy order in respect of the Debtor now or hereafter made pursuant to the *Bankruptcy and Insolvency Act* and any bankruptcy order issued pursuant to any such applications; and
- (c) any assignment in bankruptcy made by or in respect of the Debtor,

the vesting of the Purchased Assets in the Purchaser (or its designated nominee or assignee) pursuant to this Order shall be binding on any trustee in bankruptcy that may be appointed in respect of the Debtor and shall not be void or voidable by creditors of the Debtor, nor shall it constitute or be deemed to be a transfer at undervalue, fraudulent preference, assignment, fraudulent conveyance or other reviewable transaction under the *Bankruptcy and Insolvency Act* or any other applicable federal or provincial legislation, nor shall it constitute oppressive or unfairly prejudicial conduct pursuant to any applicable federal or provincial legislation.

10. THIS COURT HEREBY REQUESTS the aid and recognition of any court, tribunal, regulatory or administrative body, 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 courts, tribunals, regulatory and administrative bodies are hereby 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.
11. The Receiver or any other party have liberty to apply for such further or other directions or relief as may be necessary or desirable to give effect to this Order.

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:

Signature of Robert A. Millar
Lawyer for the Petitioners and the Receiver on this
application:

Signature of [●]
Lawyer for [●]

BY THE COURT

REGISTRAR

Schedule "A"
List of Counsel Appearing

Counsel	Appearing for

Schedule B – Purchased Assets

1. 206 6th Ave E, Vancouver, BC & 2202/2204/2206/2208 Main Street, Vancouver, BC V5T 3C7

PID

Legal Description

010-136-576

Lot 1 Block 38 District Lot 200A Plan 197

2. 2216 Main Street, Vancouver, BC V5T 3C7

PID

Legal Description

015-553-230

Lot 2 Block 38 District Lot 200A Plan 197

3. 2218 Main Street, Vancouver, BC V5T 3C7

PID

Legal Description

013-273-825

Lot 3 Block 38 District Lot 200A Plan 197

Schedule "C"
Receiver's Certificate

No. H200590
Vancouver Registry

IN THE SUPREME COURT OF BRITISH COLUMBIA

BETWEEN:

MCAP FINANCIAL CORPORATION

PETITIONER

AND:

MAIN STREET ARTS INVESTMENTS INC.
PORT CAPITAL DEVELOPMENT (ARTS) INC.,
MAIN STREET ARTS DEVELOPMENT LIMITED PARTNERSHIP,
PORT CAPITAL DEVELOPMENT INC.,
MACARIO TEODORO REYES and
SEA INVESTMENTS LTD.

RESPONDENTS

RECEIVER'S CERTIFICATE

Dated: _____

RECITALS

A. Whereas pursuant to an Order dated January 8, 2021, The Bowra Group Inc. was appointed receiver (the "**Receiver**") of certain assets of Main Street Arts Investments Inc., Port Capital Developments (Arts) Inc. and Main Street Arts Development Limited Partnership (collectively, the "**Debtors**");

B. Whereas pursuant to an Order dated April [●], 2021 (the "**Vesting Order**"), the Court approved the sale of certain assets (collectively, the "**Assets**") pursuant to Contract of Purchase and Sale dated April 8, 2021 (the "**Sale Agreement**") between Jim Pattison Developments Ltd.

(the “**Purchaser**”) and the Receiver (the purchase and sale of the Assets is hereafter referred to as the “**Transaction**”); and

C. The Assets are to vest in the Purchaser, or its nominee(s) or assignee(s), free and clear of all Claims (as defined in the Vesting Order) effective upon the delivery by the Receiver to the Purchaser of a certificate confirming that (i) the Receiver has received all purchase monies payable by the Purchaser pursuant to the Sale Agreement, and (ii) the Transaction has closed substantially in accordance with the terms of the Sale Agreement and Vesting Order;

NOW THEREFORE the Receiver certifies the following:

1. The Receiver has received all purchase monies payable by the Purchaser pursuant to the Sale Agreement.
2. All conditions to the closing of the Transaction have been satisfied or waived and the Transaction contemplated by the Sale Agreement has closed substantially in accordance with the terms of the Sale Agreement and the Vesting Order.

The Bowra Group Inc., in its capacity as Court appointed receiver of certain assets of Main Street Arts Investments Inc., Port Capital Developments (Arts) Inc. and Main Street Arts Development Limited Partnership

Per: _____

Name:

Title:

Schedule "D"
Claims to be deleted/expunged from title to Real Property

Nature of Legal Notation	Holder of Legal Notation	Registration No.
<u>As against all Purchased Assets</u>		
Notice of Interest, Builders Lien Act (S.3(2))	Main Street Arts Investments Inc.	CA6154795
Nature of Charge	Holder of Charge	Registration No.
<u>As against all Purchased Assets</u>		
Mortgage	MCAP Financial Corporation	CA6154587
Assignment of Rents	MCAP Financial Corporation	CA6154588
Mortgage	MCAP Financial Corporation	CA7661215
Assignment of Rents	MCAP Financial Corporation	CA7661216
Priority Agreement	Granting CA6154587 priority over CA7661215 and CA7661216	CA7663136
Priority Agreement	Granting CA6154588 priority over CA7661215 and CA7661216	CA7663137
Certificate of Pending Litigation	Sea Investments Ltd.	CA8642412
Certificate of Pending Litigation	MCAP Financial Corporation	CA8673628
<u>As against PIDs: 010-136-576 & 013-273-825</u>		
Judgment	Formosis Architecture Inc.	CA8687303

Schedule "E"
Permitted Encumbrances, Easements and Restrictive Covenants
related to Real Property

Nature of Legal Notation	Servient Lands	Registration No.
<u>As against PID: 010-136-576</u>		
Easement	The Common Property Strata Plan BCS4330	CA2384886
<u>As against PID: 015-553-230</u>		
Easement	The Common Property Strata Plan BCS4330	CA2384889
<u>As against PID: 013-273-825</u>		
Easement	The Common Property Strata Plan BCS4330	CA2384892
Easement	Lot A Block 38 Plan EPP38052	CA5104688
Nature of Charge	Holder of Charge	Registration No.
<u>As against PID: 010-136-576</u>		
Easement and Indemnity Agreement	City of Vancouver	D19071
Easement	Appurtenant to Strata Lots 1 to 251 and the Common Property Strata Plan BCS4330	CA2384887A
<u>As against PID: 015-553-230</u>		
Easement	Appurtenant to Strata Lots 1 to 251 and the Common Property Strata Plan BCS4330	CA2384890
<u>As against PID: 013-273-825</u>		
Easement and Indemnity Agreement	City of Vancouver	220291M

Easement	Appurtenant to Strata Lots 1 to 251 and the Common Property Strata Plan BCS4330	CA2384893A
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