

No. S-201130

Vancouver Registry

IN THE SUPREME COURT OF BRITISH COLUMBIA

**IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*,
R.S.C. 1985, c. C-36, AS AMENDED**

AND

IN THE MATTER OF 1034179 B.C. LTD.

PETITIONER

MONITOR'S FOURTH REPORT TO COURT

January 28, 2021

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R.S.C. 1985, c. C-36, AS AMENDED**

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I. PURPOSE OF REPORT

1. The Bowra Group Inc. was appointed as monitor (the “**Monitor**”) under the *Companies’ Creditors Arrangement Act* (“**CCAA**”) of 1034179 B.C. Ltd (the “**Company**”) pursuant to the Order of Mr. Justice Masuhara of the British Columbia Supreme Court (the “**Court**”) granted February 4, 2020 (the “**Initial Order**”).
2. The purpose of this report is to:
 - Provide an update of the Monitor’s activities since the last report dated May 4, 2020;
 - Request the summary approval of the Monitor’s activities and fees incurred to date, plus additional fees, disbursements and taxes to a maximum of \$20,000 to complete the duties of the Monitor;
 - Request the summary approval of the accounts the Monitor’s legal counsel to date plus additional fees, disbursements and taxes to a maximum of \$14,000;
 - Request the approval of the distribution of the remaining funds in the estate to Mayfair Properties Ltd. and Chelsea Properties Ltd. (the “**Second Secured Creditor**”) after payment of outstanding expenses relating to the administration of the estate and additional Monitor and legal fees, disbursements and taxes; and,
 - Request the discharge of the Monitor.
3. This is the Monitor’s Fourth Report to Court and should be read in conjunction with its previous reports.

II. BACKGROUND AND TERMS OF REFERENCE

Background

4. The Company is the registered owner of the lands located at 22325 St. Anne Avenue in Maple Ridge, British Columbia (the “**Lands**”). The Lands are being developed as a four

storey 66-unit multifamily project (the “**Development**”) for rental purposes which is a permitted use under the zoning.

5. There has been no construction activity since September 2019. The Development is approximately 70% complete.
6. On February 13, 2020, the Company sought, and the Court granted an amended and restated Initial Order (the “**ARIO**”) that, among other things:
 - Authorized the Company to borrow under an interim lending facility in an amount not to exceed \$500,000 until further Order of the Court (the “**Interim Financing**”); and
 - Authorized and directed the Monitor to initiate a sales and marketing process (the “**Sales Process**”) to offer the Development for sale on both on an “as is where is” and “as completed” basis.
7. A copy of the ARIO is attached as **Appendix A**.
8. The Monitor engaged Cushman & Wakefield ULC (“**Cushman**”) to facilitate the Sales Process on February 20, 2020. Cushman had 41 interested parties and 9 parties that performed a site visit of the Development.
9. On April 1, 2020, the Company sought, and the Court granted an order (the “**Order for Sealed Bids**”) that, among other things, provided that:
 - prospective purchasers would have until 12:00 p.m. on May 1, 2020 (the “**Bid Date**”) to submit an offer to purchase the Development; and,
 - the purchase and sale agreement dated March 30, 2020 (the “**Mayfair Sales Agreement**”) of the Second Secured Creditor to purchase the Development on an “as is where is” basis for \$11.7 million was approved subject to Court approval of any other offers that may provide better recovery to creditors (the “**Bid Process**”).
10. A copy of the Order for Sealed Bids is attached as **Appendix B**.

11. On the Bid Date, the Monitor received one offer from 1248525 B.C. Ltd. (“**124**”) to purchase the Development on an “as is where is” basis for \$11 million (the “**124 PSA**”). The Court granted an order approving the 124 PSA (the “**Approval and Vesting Order**”) on May 6, 2020. A copy of the Approval and Vesting Order is attached as **Appendix C**.
12. The sale of the Development completed on June 29, 2020 and the administration of the CCAA proceeding is complete.

Terms of Reference

13. In preparing this report, the Monitor has been provided with, and in making the comments herein relied upon information received from the Company including quantity surveyor reports, and financial information prepared by the Company, none of which has been audited. Further, the Monitor has relied upon discussions with the Company, its legal counsel, legal counsel to the mortgagees, the general contractor and its counsel and various trades. The Monitor has not audited, reviewed or otherwise attempted to verify the accuracy or completeness of such information and, accordingly, the Monitor expresses no opinion or other form of assurance in respect of such information contained in this report.
14. Certain information referred to in this report consists of forecasts and projections. The Monitor has not audited, reviewed or otherwise attempted to verify the accuracy or completeness of the information in a manner that would wholly or partially comply with Generally Accepted Assurance Standards pursuant to the Chartered Professional Accountants Canada Handbook and, accordingly, the Monitor expresses no opinion or other form of assurance in respect of the information.
15. Future oriented financial information referred to in this report was prepared based on estimates as provided by the Company, general contractor, and quantity surveyor, and probable and hypothetical assumptions. Readers are cautioned that, since projections are based upon assumptions about future events and conditions that are not readily and currently ascertainable, the actual results will vary from the projections, even if the assumptions materialize, and the variations could be material.
16. This report has been prepared for the use of this Honourable Court and the Company’s stakeholders as general information relating to the restructuring proceedings.

Accordingly, the reader is cautioned that this report may not be appropriate for any other purpose. The Monitor assumes no responsibility or liability for losses incurred by the reader as a result of the circulation, publication, reproduction or use of this report contrary to the provisions of this paragraph.

III. UPDATE ON MONITOR'S ACTIVITIES TO DATE

17. Since the date of the Monitor's Third Report to Court, the Monitor concluded the Sales Process and facilitated the sale of the Development on an "as is where is" basis to 124 for \$11 million.
18. The completion date of the 124 PSA was June 29, 2020 or approximately two months after the Court approved the 124 PSA. Accordingly, the Monitor continued to liaise with suppliers and TBS Procurement Interface Inc. ("**TBS**") and paid the monthly holding costs until the completion date. On June 29, 2020, the Monitor held numerous discussions with 124, TBS and suppliers to facilitate the transfer of ownership of the Development.
19. In addition, the Monitor contacted the City of Maple Ridge (the "**City**") to request that the City release the security deposits held by the City of \$622,025 (the "**Security Deposit**"). On October 2, 2020, \$587,525 of the Security Deposit was paid to the Company's legal counsel for distribution to the Second Secured Creditor. The remaining balance of \$34,500 was not paid as TBS informed the Monitor that \$34,500 of the \$622,025 was paid directly by TBS for a highway use permit (the "**Highway Use Deposit**"). Both TBS and the Second Secured Creditor were claiming the right to the Highway Use Deposit. Based on numerous discussions with the City, it was determined that the Highway Use Deposit would be held by the City until the legal rights were determined. On December 18, 2020 the Monitor received a release letter from the City confirming that the Highway Use Deposit was released to TBS.
20. The Monitor successfully facilitated the sale of the Development for gross proceeds of \$11 million and the administration of the CCAA proceeding is complete.
21. The Monitor currently holds approximately \$45,097 in its trust account.

22. The Monitor anticipates that there will be approximately \$11,097 remaining in the estate after payment of estimated professional fees and additional expenses of completion the administration of the estate. The Monitor proposes to pay any remaining funds in the estate to the Second Secured Creditor after payment of all outstanding expenses relating to the administration of the estate and additional Monitor and legal fees, disbursements and taxes.

IV. SUMMARY OF THE MONITOR'S ACTIVITIES

23. The Monitor administered the CCAA proceedings over a period of approximately 12 months. A summary of the main categories of the Monitor's work during this period is as follows:
- i. Performed the general duties of the Monitor;
 - ii. Prepared an analysis of the cost to complete the Development;
 - iii. Prepared an analysis of the options available to sell the Development; and,
 - iv. Facilitated the Sales Process to offer the Development for sale on both on an "as is where is" basis and "as completed" basis.

General Duties

24. The Monitor performed the following general duties during the CCAA period:
- Held numerous meetings and correspondence with the Company, its legal counsel, and Second Secured Creditor's legal counsel to discuss:
 - Interim financing;
 - Costs to complete;
 - Cash flow forecast; and,
 - Options available to the Company.
 - Held various discussions and correspondence with numerous creditors of the Company;

- Established and maintained a case website with materials as required by the ARIO;
- Reviewed the interim financing agreements and conditions;
- Reviewed and processed invoices for ongoing expenses;
- Liaised with the City, Company, general contractor and various consultants to extend the completion date of the heritage house which forms a part of the Development;
- Held numerous discussions with the City with respect to Security Deposit posted with the City; and,
- Prepared Reports to Court.

Analysis of cost to complete

25. The Company did not provide a reliable estimate of the cost to complete when the Monitor was appointed. The most recent quantity surveyor's report dated October 31, 2019 (the "**QS Report**") estimated the Development to be 80% complete and that it would cost approximately \$3.3 million to complete the construction.
26. The Monitor attended the site and conducted its own assessment of the work in place and costs to complete. In conducting its analysis, the Monitor used the QS Report estimate of \$3.3 million as a baseline for the cost to complete and made adjustments to those amounts based upon its discussions with current trades and consultants and upon visual inspection of the work in place.
27. The Monitor determined that it would cost between \$6.6 million to \$7.5 million to complete the Development depending on the amount of the liens that needed to be paid to re-start construction.

Options Available to Sell Development

28. The Company was exploring options to sell the Development which included:
 - i. Sale on an "as is where is" basis;

- ii. Sales on an “as completed” basis as a rental property; and,
 - iii. Sale as individual units after obtaining a strata plan.
29. The Monitor prepared an analysis of the options with a view towards maximizing recovery for stakeholders based on the estimated cost to complete and appraisal commissioned by Canadian Western Bank (“**CWB**”).
30. Both the Second Secured Creditor and TBS preferred that the Company sell the project on an “as is where is” basis.
31. Based on the Monitor’s experience, sale of an incomplete development project generally results in a lower recovery, however, to satisfy all stakeholders and to ensure prejudice to stakeholders was minimized, the Monitor recommended that the Court approve a dual track marketing process where the Development was marketed on both on an “as is where is” and “as completed” basis.
32. On February 13, 2020 the Court granted the ARIO which authorized the Monitor to initiate a sale and marketing process of the Development on an “as is where is” and “as completed” basis.

Sales Process

33. The Monitor engaged Cushman to market and sell the Development on an “as is where is” and “as completed” basis on February 20, 2020.
34. During the Sales Process, the Monitor held numerous discussions with Cushman to prepare marketing brochures, maintain the data room, arrange site access and communicate with interested parties and provide updates regarding interested parties.
35. Cushman had 41 interested parties and 9 parties that performed a site visit of the Development.
36. On March 25, 2020, the Second Secured Creditor provided to the Company’s legal counsel a draft of the Mayfair Sales Agreement which contemplated the sale of the Development on an “as is” basis to the Second Secured Creditor. The Company agreed to seek court approval of the Mayfair Sales Agreement.

37. The purchase price of the Mayfair Sales Agreement was higher than the appraisal value commissioned by CWB. The Monitor was supportive of an application to approve the Mayfair Sales Agreement provided that prospective purchasers had an opportunity submit offers to purchase the Development through a bid process.
38. On April 1, 2020, the Company sought, and the Court granted the Order for Sealed Bids which provided that:
 - prospective purchasers would have until May 1, 2020 to submit an offer to purchase the Development; and,
 - the Mayfair Sales Agreement was approved subject to Court approval of any other offers that may provide better recovery to creditors.
39. On the Bid Date, the Monitor received one offer from 124 to purchase the Development on an “as is where is” basis for \$11 million. Further, the Company’s legal counsel indicated that it had been advised that one additional party may submit a bid after the Bid Date.
40. CWB was expected to be repaid in full under both the Mayfair Sales Agreement and 124 PSA. The Second Secured Creditor was expected to have a shortfall on their loan balance of approximately \$7.7 million. Accordingly, the Second Secured Creditor was the creditor that would realize the benefit of any increase in the sale price.
41. The Second Secured Creditor informed the Monitor that it would likely support the 124 PSA and that it was not in favour of extending the Bid Date for prospects of additional offers.
42. On May 6, 2020, the Court approved the 124 PSA and the sale of the Development completed on June 29, 2020.

Payment to Creditors

43. The Monitor completed the sale of the Development on an “as is where is” basis to 124 for gross proceeds of \$11 million and the following distributions were made to creditors from the sale proceeds:

- Payment to CWB of \$6.61 million to satisfy their claim in full; and,
 - Payment to the Second Secured Creditor of \$3.86 million not including the security deposit.
44. The Monitor estimates that a final distribution of approximately \$11,097 will be paid to the Second Secured Creditor after payment of all outstanding fees and expenses for the administration of the CCAA proceeding.

V. STATEMENT OF RECEIPTS AND DISBURSEMENTS

45. The Monitor's statement of receipts and disbursements for the period February 4, 2020 to December 29, 2020 is attached as **Appendix D** which is summarized as follows:

	\$000's
Receipts	
Gross proceeds from sale of the Development ¹	11,000
Interim Financing	500
	<u>11,500</u>
Disbursements	
Legal fees	250
Realtor commissions ¹	220
Contractor costs	191
Monitor's fees	142
Municipal taxes ¹	87
GST and PST paid	45
Interim financing work fee	40
Administrative disbursements	7
Other miscellaneous disbursements	1
	<u>983</u>
Excess of receipts over disbursements	<u>10,517</u>
Payments to Secured Creditors ¹	
Payment to Canadian Western Bank	6,610
Payment to Mayfair Properties Ltd. and Chelsea Properties Ltd.	3,862
Total Payments to Secured Creditors	<u>10,472</u>
Funds in Monitor's Account	<u>45</u>
Notes:	
1) The proceeds from the sale of the Development was paid to Fasken Martineau DuMoulin LLP in trust and distributed as per the Approval and Vesting Order.	

VI. PROFESSIONAL FEES

Summary of Monitor's Accounts

46. The Monitor rendered accounts to the Company for approval. For the period January 14, 2020 to June 30, 2020, the total of these accounts is as follows:

	\$
Fees	141,683
Disbursements	7,387
GST	7,454
Total	<u>156,524</u>

47. A summary of the accounts rendered by invoice and copies of the Monitor's invoices are attached as **Appendix E**.
48. The full particulars of the Monitor's fees and disbursements are outlined in the fee affidavit #1 sworn by Mario Mainella.

Monitor's Staffing and Hours

49. During the CCAA period Mario Mainella, Licensed Insolvency Trustee and President of The Bowra Group Inc. had primary responsibility for the work carried out by the Monitor. Where appropriate this work was delegated to other staff within The Bowra Group Inc. A summary of the time spent on this assignment by members of the staff within The Bowra Group Inc. is as follows:

Name	Title	Hours	Average Hourly Rate (\$)
Mainella	President	149.30	550
Davies	Manager	31.05	350
Koo	Senior Associate	188.70	235
Busch	Associate	3.50	175
Administration		27.25	137
		<u>399.80</u>	

50. In the Monitor’s opinion, the time and disbursements incurred by the Monitor in the course of its duties are fair and reasonable in this proceeding described herein. In the Monitor’s opinion, the cost of this CCAA is comparable to CCAA assignments of similar scale and complexity.
51. The hourly rates charged by the Monitor are consistent with the average hourly rates billed by the Monitor on its other engagements and, to the Monitor’s knowledge, consistent with other accounting firms of comparable size engaged on similar CCAA matters.
52. The Monitor requests that the Court summarily approve the Monitor’s fees incurred to date and approve additional fees, disbursements and taxes to a maximum of \$20,000 to complete its duties and discharge. The estimated fees relate to work required to prepare for the discharge of the Monitor and other unbilled work in process.

Legal Fees

53. The Monitor engaged Lawson Lundell LLP (“**Lawson**”) as its legal counsel. The total legal fees of Lawson were \$39,682 and disbursements were \$349 as summarized in the table below:

Lawson Lundell	\$'s
Fees	39,682
Disbursements	349
GST	2,002
PST	2,778
Total	<u>44,811</u>

54. A summary of Lawson’s legal fees by invoice is attached as **Appendix F**.
55. The full particulars of Lawson’s fees and disbursements are outlined in the fee affidavit #1 sworn by Scott Andersen.
56. The Monitor has reviewed the invoices rendered by Lawson and believes them to be reasonable and proper. The legal services provided to the Monitor were necessary to fulfill its obligations in the proceeding.

57. The Monitor requests that the Court summarily approve the legal fees incurred to date and approve additional fees, disbursements and taxes to a maximum of \$14,000 to complete the administration and discharge of the Monitor. The estimated fees related to work required to complete the discharge of the Monitor and unbilled work in process.

VII. CONCLUSION

58. The Monitor facilitated the sale of the Development for gross proceeds of \$11 million and the administration of the CCAA proceeding is complete.

59. The Monitor currently holds \$45,097 in its account which will be distributed in conjunction with its discharge. The Monitor estimates that additional costs of up to \$34,000 will be required to pay professional fees and outstanding expenses for the completion of the administration of the estate. The Monitor proposes to pay the remaining funds to the Second Secured Creditor.

60. The Monitor requests that the Court approve:

- The activities and the accounts of the Monitor and its legal counsel;
- Additional professional fees, disbursements and taxes of the Monitor to a maximum of \$20,000 and of its legal counsel to a maximum of \$14,000 to conclude the CCAA proceedings;
- A final distribution to the Second Secured Creditor of the funds remaining in the estate after payment of additional professional fees as set out above; and,
- The discharge of the Monitor on the terms set out in the proposed form of Discharge Order appended to the Monitor's Notice of Application filed concurrently with this report.

All of which is respectfully submitted to the Honorable Court this 28th day of January 2021.

The Bowra Group Inc., LIT

in its capacity as Monitor of 1034179 B.C. Ltd.

Per: 

Mario Mainella, CPA, CA, CIRP