

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

THE HONOURABLE MR.

)

MONDAY, THE 10TH

JUSTICE CAMPBELL

)

DAY OF DECEMBER, 2012

)

**BONNIE CUMMINGS IN HER CAPACITY AS ESTATE EXECUTRIX
OF THE ESTATE OF THE LATE JOHN CUMMINGS**

Applicant

- and -

**PEOPLEGE HR SERVICES INC., WINSTON PARK FINANCIAL SERVICES LTD.,
CMC FRASER LTD. AND 1624452 ONTARIO LIMITED**

Respondents



CLAIMS PROCESS ORDER

THIS MOTION made by BDO Canada Limited, in its capacity as the court-appointed receiver, without security, of all of the assets, undertakings and properties of Peopledge HR Services Inc., Winston Park Financial Services Ltd., CMC Fraser Ltd. and 1624452 Ontario Limited acquired for, or used in relation to a business carried on by each of the Companies, was heard this day at 330 University Avenue, Toronto, Ontario.

ON READING the Notice of Motion and the Second Report of the Receiver dated December 3, 2012 (the "Second Report") and on hearing the submissions of counsel for the Receiver, counsel for Bank of Montreal, counsel for Activpayroll Ltd., counsel for Labatt Brewing Company Inc., counsel for Celergo LLC, no one else appearing although being served as evidenced by the Affidavit of Service of Deborah Ferguson sworn December 4, 2012 filed,

*counsel for Fronius Canada Ltd.,
ALCo*

SERVICE

1. THIS COURT ORDERS that the time for service of the notice of motion and the motion record be and is hereby abridged and that the motion is properly returnable today and further that the requirement for service of the notice of motion and motion record upon interested parties, other than those served, is hereby dispensed with and that the service of the notice of motion and motion record as effected by the Receiver is hereby validated in all respects.

DEFINITIONS

2. THIS COURT ORDERS that the following terms in this Order shall have the following meanings ascribed to them:

- (a) “Applicant” means Bonnie Cummings in her capacity as Estate Executrix of the Estate of the Late John Cummings;
- (b) “Appointment Date” means October 29, 2012;
- (c) “Appointment Order” means the Order of the Honourable Mr. Justice Newbould dated October 29, 2012, as amended, restated or varied from time to time;
- (d) “Business Day” means a day, other than a Saturday or a Sunday or statutory holiday, on which banks are generally open for business in Toronto, Ontario;
- (e) “Claimant” means any Person (including, without limitation, any customer, supplier, service provider, independent contractor or employee of the Companies) with a Claim and, if the context requires, includes an assignee of a Claim, or a trustee, interim receiver, receiver, receiver and manager, liquidator, or other Person acting on that Person’s behalf;
- (f) “Claims” means General Claims and/or Customer Deposit Claims;
- (g) “Claims Bar Date” means 5:00 p.m. (Eastern Standard Time) on Friday, January 18, 2013, or such later date as may be ordered by this Court;

- (h) “Claims Package” means the document package to be sent to Claimants pursuant to this Order, which shall include a copy of this Order, the Notice to Claimants, the Instruction Letter, a Proof of General Claim form, a Proof of Customer Deposit Claim form and such other materials as the Receiver considers necessary or appropriate;
- (i) “Claims Process” means the process outlined in this Order in connection with the assertion of Claims against the Companies;
- (j) “Companies” means, collectively or individually as the context requires, Peopledge, Winston Park Financial Services Ltd., CMC Fraser Ltd. and 1624452 Ontario Limited;
- (k) “Court” means the Ontario Superior Court of Justice (Commercial List) sitting in Toronto, Ontario;
- (l) “Customer Deposit Claim” means any right or claim (in whole or in part) of any Person who was, on or before the Appointment Date, a customer of Peopledge (whether directly or through an intermediary) which had advanced, remitted, deposited, transferred or provided cash in any form to Peopledge prior to the Appointment Date (the “**Customer Funding**”) for the purpose of funding payroll services to be provided by Peopledge for that customer (including, without limitation, remittances to third parties on behalf of the customer or the customer’s employee) for which Peopledge did not complete the payroll or remittance processing and payment in whole or in part. For greater certainty, Customer Deposit Claim shall only refer to that portion of the Customer Funding that was not used by Peopledge to fund payroll for employees and/or third party remittances pursuant to the authorization and direction provided by the customer pursuant to the Customer Funding;

All Customer Deposit Claims shall be made in the currency in which the Customer Funding to Peopledge was made and was to be held and disbursed by Peopledge on behalf of the customer;

- (m) “General Claim” means any right or claim of any Person against the Companies (or any one or more of them), whether or not asserted, in connection with any indebtedness, liability or obligation of any kind whatsoever of any of the Companies, and any accrued interest thereon and costs payable in respect thereof, whether or not such right or claim is reduced to judgment, liquidated, unliquidated, fixed, contingent, matured, unmatured, disputed, undisputed, legal, equitable, secured, unsecured, perfected, unperfected, present, future, known, or unknown, by guarantee, surety or otherwise, and whether or not such right is executory or anticipatory in nature, including the right or ability of any Person to advance a claim for contribution or indemnity or otherwise with respect to any matter, action, cause or chose in action, whether existing at present or commenced in the future,
- (i) which indebtedness, liability or obligation is based in whole or in part on facts existing prior to the Appointment Date or which would have been claims provided in bankruptcy had the companies become bankrupt on the Appointment Date; or
 - (ii) arising after the Appointment Date where such indebtedness, liability or obligation arises from or was caused by, directly or indirectly, the implementation of any action taken pursuant to the Appointment Order, including without limitation, that which arises from or is caused by the termination of any contract or the cessation of the business of the Companies,

but a General Claim shall not include any Customer Deposit Claim;

If entitled under any applicable contract, Claimants may make General Claims for interest which has accrued on their General Claims prior to the Appointment Date, but no General Claim shall be made by a Claimant for interest after the Appointment Date;

Any General Claim denominated in any currency other than Canadian dollars shall, for the purposes of this Order, be converted to and shall constitute obligations in Canadian dollars, such calculation to be effected using the Bank of Canada noon spot rate of exchange for exchanging such currency on October 29, 2012 (US\$1 = CDN \$1.0004) (UK.£1 = CDN\$1.6031);

- (n) “Instruction Letter” means the instruction letter in substantially the form annexed as Schedule “B” hereto;
- (o) “Notice to Claimants” means the notice substantially in the form annexed as Schedule “A” hereto;
- (p) “Peopledge” means Peopledge HR Services Inc.;
- (q) “Person” means any individual, partnership, firm, joint venture, trust, entity, corporation, limited or unlimited liability company, association, unincorporated organization, court-appointed representative, government or any agency, officer or instrumentality thereof or similar entity, or any other entity howsoever designated or constituted exercising executive, legislative, judicial, regulatory or administrative functions in Canada or any other country;
- (r) “Proof of Customer Deposit Claim” means the Proof of Customer Deposit Claim substantially in the form annexed in Schedule “D” hereto;
- (s) “Proof of General Claim” means the form of Proof of General Claim substantially in the form annexed as Schedule “C” hereto; and
- (t) “Receiver” means BDO Canada Limited, in its capacity as court-appointed receiver of the Companies pursuant to the Appointment Order, acting solely in its capacity as receiver and not in its personal or corporate capacity.

CLAIMS PROCESS

3. THIS COURT ORDERS that the Claims Process be and is hereby approved.

4. THIS COURT ORDERS that the Receiver be and is hereby directed and empowered to administer the Claims Process and to take such steps or actions as may be necessary or desirable to administer or complete the Claims Process.

NOTICE TO CLAIMANTS

5. THIS COURT ORDERS that for the purpose of facilitating the identification of all Claims against the Companies:

- (a) on or before December 14, 2012 the Receiver shall send a Claims Package by ordinary mail, express post, courier, facsimile transmission or electronic mail to each known potential Claimant at the address for such Claimant listed in the books and records of the Companies in the possession of the Receiver;
- (b) the Receiver shall send by ordinary mail, express post, courier, facsimile transmission or electronic mail as soon as reasonably possible following receipt of a request therefor, a Claims Package to any Person requesting the same, provided such request is received prior to the Claims Bar Date;
- (c) the Receiver shall, on or before December 14, 2012, cause the Notice to Claimants to be published in the *Globe and Mail* (National Edition) and USA Today; and
- (d) the Receiver shall, on or before December 12, 2012, make a copy of the Claims Package available on the Receiver's website at www.bdo.ca/peopledge.

6. THIS COURT ORDERS that compliance by the Receiver with the provisions of paragraph 5 shall constitute good and sufficient service upon the Claimants of notice of these proceedings, this Order, the Claims Bar Date, and the related deadlines and procedures set forth herein and no other form of service or notice need be made by the Receiver to any Person and no other document or material need be provided to any Person in respect of the Claims Process.

7. THIS COURT ORDERS that the form and substance of the Notice to Claimants, Instruction Letter, Proof of General Claim and Proof of Customer Deposit Claim, substantially in the form set out in Schedules "A", "B", "C" and "D", respectively, to this Order be and are

hereby approved. Despite the foregoing, the Receiver may, from time to time, make minor changes to such forms as the Receiver considers necessary or desirable.

8. THIS COURT ORDERS that the delivery of a Claims Package to a Claimant shall not constitute an admission of any liability of the Companies to any Person.

FILING OF PROOFS OF CLAIM

9. THIS COURT ORDERS that any Person asserting a General Claim shall set out its General Claim in a Proof of General Claim and deliver that Proof of General Claim so that it is actually received by the Receiver in accordance with paragraph 20 of this Order by the Claims Bar Date or such later date as the Receiver may agree to in writing, or as the Court may otherwise order.

10. THIS COURT ORDERS that each Claimant shall specify in its Proof of General Claim against which one or more of the Companies the Claimant asserts a General Claim.

11. THIS COURT ORDERS that any Person asserting a Customer Deposit Claim shall set out its Customer Deposit Claim in a Proof of Customer Deposit Claim and deliver that Proof of Customer Deposit Claim so that it is actually received by the Receiver in accordance with paragraph 20 of this Order by the Claims Bar Date or such later date as the Receiver may agree to in writing, or as the Court may otherwise order.

12. THIS COURT ORDERS that each Claimant shall specify in its Proof of Customer Deposit Claim each payroll deposit being claimed, the amount and date of such deposit, the proportion that such deposit related to payroll or employee withholdings, and whether such payroll or employee withholding was processed and paid by Peopledge.

13. THIS COURT ORDERS that any Proof(s) of General Claim filed by a governmental agency (including, without limitation, the Canada Revenue Agency) in relation to unremitted employer withholdings or deductions shall break down the Claim on an employer-by-employer basis to the extent reasonably possible.

14. THIS COURT ORDERS that any Claimant that fails to deliver or fails to have delivered on the Claimant's behalf a completed Proof of General Claim or Proof of Customer Deposit Claim, as applicable, to the Receiver in accordance with paragraphs 9 to 13 (inclusive) hereof:

- (a) shall be and is hereby forever barred from making or enforcing any Claim against any of the Companies and all such Claims shall be forever extinguished and released; and
- (b) shall not be entitled to receive any further notice in respect of the Claims Process or these receivership proceedings, or receive any distribution in relation to the estate or assets of the Companies.

15. THIS COURT ORDERS that, notwithstanding anything else contained in this Order, the following Claims shall not be extinguished or affected by this Order:

- (a) Claims by the Receiver and counsel to the Receiver for fees and disbursements payable in accordance with the Appointment Order;
- (b) Claims by the Applicant and counsel to the Applicant for fees and disbursements payable in accordance with the Appointment Order, subject to such further Order of this Court; and
- (c) Claims by any one of the Companies against any one or more of the other Companies.

REVIEW OF PROOFS OF CLAIM

16. THIS COURT ORDERS that the Receiver is hereby authorized and directed to use reasonable discretion as to the adequacy of compliance as to the manner in which Proofs of Claim are completed and executed and may, where satisfied that a Claim has been adequately proven, waive strict compliance with the requirements of this Order as to the completion and the execution of a Proof of Claim.

17. THIS COURT ORDERS that the Receiver shall review all Claims filed and seek to validate, including resolving any discrepancies with the applicable Claimant, the quantum of such Claims. All time incurred by the Receiver in reviewing, validating and resolving any discrepancies with each Claimant shall be tracked on an individual Claimant basis and, subject to further order of this Court, all fees and disbursements associated with such review and resolution of individual Claims shall be allocated to and payable from any future distribution to such Claimant following completion of the Claims Process set out herein.

18. THIS COURT ORDERS that on or before February 15, 2013, the Receiver shall deliver to every Claimant that has filed a Proof of General Claim or Proof of Customer Deposit Claim by the Claims Bar Date in accordance with this Order and file with the Court a report setting out a summary of the Claims received in accordance with this Order.

19. THIS COURT ORDERS that the Receiver shall schedule with the Court a hearing on February 22, 2013 (or such alternative date that may be reasonably necessary in the circumstances) for further advice and directions from this Court with respect to the Claims Process.

NOTICES AND COMMUNICATION

20. THIS COURT ORDERS that any notice or other communication to be given under this Order by the Receiver to a Claimant shall be in writing in substantially the form, if any, provided for in this Order. Such notice or other communication will be sufficiently given to a Claimant if given by prepaid ordinary mail, express post, courier, facsimile transmission or electronic mail to the Claimant to such address, facsimile number or electronic mail address for such Claimant as may be recorded in the books and records of the Companies in the possession of the Receiver or

to such other address, facsimile number or electronic mail address as such Claimant may request by notice to the Receiver given in accordance with this Order. Any such notice or other communication, (i) if given by prepaid ordinary mail, shall be deemed received on the third Business Day after mailing, (ii) if given by courier or delivery shall be deemed received on the next Business Day following dispatch, (iii) if given by facsimile transmission or electronic mail before 5:00 p.m. (Eastern Standard Time) on a Business Day shall be deemed received on such Business Day; and (iv) if given by facsimile transmission or electronic mail after 5:00 p.m. (Eastern Standard Time) on a Business Day shall be deemed received on the next following Business Day.

21. THIS COURT ORDERS that any notice or other communication (including, without limitation, Proofs of General Claim and Proofs of Customer Deposit Claims) to be given under this Order by a Claimant to the Receiver shall be in writing in substantially the form, if any, provided for in this Order and will be sufficiently given only if given by ordinary mail, courier, delivery, facsimile transmission or electronic mail addressed to:

BDO Canada Limited
1 City Centre Drive, Suite 1040
Mississauga, ON L5B 1M2
Canada

Attention: Peter Naumis
Fax: (905) 615-1333
Email: pnaumis@bdo.ca

Any such notice or other communication by a Claimant shall be deemed received only upon actual receipt thereof during normal business hours on a Business Day.

22. THIS COURT ORDERS that if during any period during which notices or other communication are being given pursuant to this Order a postal strike or postal work stoppage of general application should occur, such notices or other communications then not received or deemed received shall not, absent further Order of this Court, be effective and notices and other communications given hereunder during the course of any such postal strike or work stoppage of general application shall only be effective if given by courier, delivery, facsimile transmission or electronic mail in accordance with this Order.

TRANSFER OF CLAIMS

23. THIS COURT ORDERS that if the holder of a Claim transfers the whole of such Claim to another Person after the Appointment Date, the Receiver shall not be obligated to give notice or otherwise deal with the transferee of such Claim in respect thereof unless and until actual notice of transfer, together with satisfactory evidence of such transfer, shall have been received and acknowledged by the Receiver in writing and thereafter such transferee shall for the purposes hereof constitute the Claimant in respect of such Claim. Any such transferee of a Claim shall be bound by any notices given or steps taken in respect of such Claim in accordance with this Claims Process Order and any other orders in these proceedings prior to receipt and acknowledgment by the Receiver of satisfactory evidence of such transfer. A transferee of a Claim takes the Claim subject to any rights of set-off to which the Companies may be entitled with respect to such Claim. Reference to a transfer of Claim in this Order includes a transfer or assignment, whether absolute or intended as security.

24. THIS COURT ORDERS that if the holder of the whole of a Claim transfers the whole of such Claim to more than one Person or part of such Claim to another Person after the Appointment Time, such transfer shall not create a separate Claim and such Claim shall continue to constitute and be dealt with as a single Claim. Notwithstanding such transfer, the Receiver shall not be bound to recognize or acknowledge any such transfer and shall be entitled to give notices to and otherwise deal with such Claim only as a whole and only to and with the Person last holding such Claim in whole as the Claimant in respect of such Claim, provided such Claimant may, by notice in writing to the Receiver in accordance with the preceding paragraph and subject to the provisions of the preceding paragraph, direct the subsequent dealings in respect of such Claim, but only as a whole, shall be with a specified Person and in such event, such transferee of the Claim and the whole of such Claim shall be bound by any notices given or steps taken in respect of such Claim in accordance with this Order and any other orders in these proceedings.

MISCELLANEOUS

25. THIS COURT HEREBY REQUESTS the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada, the United States or any other