

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

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

Applicant

- and -

PEOPLEPledge HR SERVICES INC., WINSTON PARK FINANCIAL SERVICES LTD., CMC
FRASER LTD., 1624452 ONTARIO LIMITED

Respondents

MOTION RECORD
(returnable May 9, 2013)

April 5, 2013

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in its capacity as Receiver

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TAB 1

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

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

Applicant

- and -

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

Respondents

**NOTICE OF MOTION
(returnable May 9, 2013)**

BDO Canada Limited, in its capacity as the court-appointed receiver (the “**Receiver**”), without security, of all of the assets, undertakings and properties of Peopledge HR Services Inc. (“**Peopledge**”) and each of Winston Park Financial Services Ltd. (“**WPFS**”), CMC Fraser Ltd. (“**CMC**”), and 1624452 Ontario Limited (“**162**”) (collectively, WPFS, CMC and 162 together with Peopledge, the “**Debtors**”) acquired for, or used in relation to a business carried on by the Debtors, makes a motion to a Judge presiding over the Commercial List on May 9, 2013 at 10:00 a.m., or as soon after that time as the motion can be heard, at the court house, 330 University Avenue, 8th Floor, Toronto, Ontario, M5G 1R7.

PROPOSED METHOD OF HEARING: The motion is to be heard orally.

THE MOTION IS FOR an order:

- (a) authorizing the Receiver to complete the Claims Process in accordance with the proposed process set out in paragraph 54 of the Receiver's Fourth Report to the Court dated April 5, 2013 (the "**Fourth Report**");
- (b) approving and authorizing the Receiver's recommendations with respect to Claimants' entitlements to distributions of assets as described and set out in paragraph 83 of the Fourth Report;
- (c) authorizing and directing the Receiver to complete the Proposed Interim Distributions (as defined in the Fourth Report) as described in paragraphs 84 – 88 of the Fourth Report, in an amount not to exceed: (i) 37% of Proven Canadian Customer Deposit Claims (as defined in the Fourth Report); and (ii) 62% of Proven US Customer Deposit Claims (as defined in the Fourth Report);
- (d) consolidating the Debtors' estates for administrative convenience and efficiency but without prejudice to the Court's approval of the distribution of assets by the Receiver;
- (e) authorizing and directing the Receiver to undertake the Phase 1 Forensic Investigation as described in paragraphs 104 – 109 of the Fourth Report;
- (f) approving the Third Report to the Court dated February 15, 2013 (the "**Third Report**"), which was filed with this Honourable Court on February 15, 2013 and attached without the Appendices thereto as Appendix "E" to the Fourth Report, along with the conduct and activities of the Receiver as described therein;
- (g) approving the Fourth Report, along with the conduct and activities of the Receiver as described therein;
- (h) approving the Receiver's interim consolidated statement of receipts and disbursements (the "**R&D Statement**") for the period from October 29, 2012 to March 31, 2013 attached as Appendix "J" to the Fourth Report;

- (i) approving the fees and disbursements of the Receiver for services rendered for the period ending March 31, 2013 in the aggregate amount of \$310,113.18 plus HST as detailed in the Affidavit of Eugene Migus sworn April 4, 2013 (the “**Migus Affidavit**”); and
- (j) approving the fees and disbursements of the Receiver’s legal counsel, Cassels Brock & Blackwell LLP, for the period ending March 31, 2013 in the aggregate amount of \$206,962.16 plus HST as detailed in the Affidavit of Marc Mercier sworn April 4, 2013 (the “**Mercier Affidavit**”); and
- (k) such further relief as is just.

THE GROUNDS FOR THE MOTION ARE:

- (a) the Receiver was appointed by order of the Honourable Mr. Justice Newbould dated October 29, 2012 to, among other things, oversee the orderly wind-down of the business of Peopledge;
- (b) on December 10, 2012, the Honourable Mr. Justice Campbell granted a Claims Process Order directing and empowering the Receiver to administer the Claims Process as described therein;
- (c) in accordance with the Claims Process Order, on February 15, 2013, the Receiver filed its Third Report in connection with the Receiver’s obligation to report to Claimants (as defined in the Fourth Report) on the Receiver’s initial findings in respect of the claims of Claimants and the Claims Process;
- (d) on March 21, 2013, the Honourable Mr. Justice Brown scheduled this motion to be brought by the Receiver for directions from the Court with respect to the entitlement of creditors to the funds in the estates of the Debtors and other matters relating to the receivership estates;
- (e) this motion was scheduled to be heard on May 3, 2013, but at the request of the Court staff has since been changed to May 9, 2013 to accommodate certain court scheduling issues;

- (f) the Receiver submits its Fourth Report which sets out (i) the activities of the Receiver for the period from December 3, 2012 to April 5, 2013; (ii) the results of the Claims Process and the Receiver's recommendations in respect of final determination of claims against the Debtors; and (iii) the Receiver's recommendations with respect to entitlements of Claimants to any distribution of assets and the Proposed Interim Distributions by the Receiver; and (iv) the general status of the receivership and the continuing obligations of the Receiver in this regard;
- (g) the Receiver's R&D Statement has been prepared for the period ending March 31, 2013;
- (h) the Receiver is seeking approval of the Third Report and Fourth Report and the Receiver's activities as set out therein;
- (i) the Receiver and its counsel have accrued fees and expenses in their capacity as either Receiver or counsel, which fees and expenses are fair and reasonable in the circumstances;
- (j) the further grounds as set out in the Third Report and the Fourth Report; and
- (k) such further grounds as are just.

THE FOLLOWING DOCUMENTARY EVIDENCE will be used at the hearing of the motion:

- (a) the Third Report, together with the Appendices thereto;
- (b) the Fourth Report, together with the Appendices thereto;
- (c) the Migus Affidavit, together with the Exhibits thereto;
- (d) the Mercier Affidavit, together with the Exhibits thereto; and
- (e) such further materials as is just.

April 5, 2013

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Lawyers for BDO Canada Limited,
in its capacity as Receiver as the Respondent
Companies

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

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

-and-

Applicant

Respondents
Court File No. CV 12-9896-00CL

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

PROCEEDING COMMENCED AT
TORONTO

**NOTICE OF MOTION
(returnable May 9, 2013)**

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Lawyers for BDO Canada Limited,
in its capacity as Receiver of the Respondent
Companies

TAB 2

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

BETWEEN:

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

**FOURTH REPORT OF BDO CANADA LIMITED
RECEIVER OF PEOPLEGE HR SERVICES INC.,
WINSTON PARK FINANCIAL SERVICES LTD., CMC FRASER LTD.
AND 1624452 ONTARIO LIMITED**

April 5, 2013

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- Appendix B Second Report of the Receiver dated December 3, 2012 (without Appendices)
- Appendix C Directions Order of the Honourable Mr. Justice Campbell dated December 10, 2012
- Appendix D Claims Process Order of the Honourable Mr. Justice Campbell dated December 10, 2012
- Appendix E Third Report of the Receiver dated February 15, 2013 (without Appendices)
- Appendix F Endorsement of the Honourable Mr. Justice Brown dated March 21, 2013
- Appendix G Certificate of Assignment in Bankruptcy for each of the Debtors
- Appendix H Claims Registry Summarizing the Customer Deposit Claims
- Appendix I Claims Registry Summarizing the General Claims
- Appendix J Receiver's Consolidated Statement of Receipts and Disbursements for the period ending March 31, 2013
- Appendix K Estimated Interim Distribution Scenario Analyses
- Appendix L Cost Analyses - two variations of Scenario 4 from the Receiver's Interim Distribution Scenario Analyses
- Appendix M Appraisal from Canam-Appraiz Inc. dated November 1, 2012

INTRODUCTION

1. BDO Canada Limited was appointed as receiver (the “**Receiver**”) pursuant to section 101 of the *Courts of Justice Act* R.S.O. 1990 C. c.43, as amended, over all of the assets, undertakings, and properties owned and/or administered by (a) Peopledge HR Services Inc. (“**Peopledge**”) and by (b) Winston Park Financial Services Ltd. (“**WPFS**”), CMC Fraser Ltd. (“**CMC**”) and 1624452 Ontario Limited (“**162**”) (collectively, the “**Related Companies**”, and together with Peopledge, the “**Debtors**”) pursuant to the Order of the Honourable Mr. Justice Newbould dated October 29, 2012 (the “**Receivership Order**”). A copy of the Receivership Order, together with the Endorsement of Mr. Justice Newbould, is attached as **Appendix “A”**.
2. Peopledge’s former business operations and the history of the receivership are described in detail in the Second Report of the Receiver dated December 3, 2012 (the “**Second Report**”), a copy of which is attached, without the Appendices thereto, as **Appendix “B”**.
3. The Receivership Order provided that the Receiver shall set down a date within 30 days to report to the Court and to seek additional relief as appropriate, including the implementation of a claims process for claims against the Debtors (the “**Comeback Motion**”). The Comeback Motion was heard on December 10, 2012.
4. As part of the relief granted at the Comeback Motion, the Honourable Mr. Justice Campbell granted an order (the “**Directions Order**”) authorizing and directing, among other things:
 - (a) that Bank of Montreal (“**BMO**”) transfer to and release to the Receiver all funds still held in any account held with BMO in the name of any of the Debtors;
 - (b) that, subject to certain conditions, the Receiver return to the applicable customer(s) any deposits into the Canadian Consolidated Account (as defined in the Second Report) that were scheduled to be deposited on or after October 29, 2012; and

- (c) that the Receiver file assignments in bankruptcy for the Debtors, provided that the general administration of the bankruptcy estates be suspended until further order of the Court and that the assignments in bankruptcy shall have no effect on the claims of any persons against the Debtors or their property and assets without further order of the Court.
5. As part of the relief granted at the Comeback Motion, the Honourable Mr. Justice Campbell also granted an order (the “**Claims Process Order**”) directing and empowering the Receiver to administer the Claims Process (as defined therein). The Claims Process Order required that, *inter alia*: (a) on or before February 15, 2013, the Receiver deliver a report setting out a summary of the claims received in accordance with the Claims Process Order to every person that filed a Proof of General Claim or Proof of Customer Deposit Claim (collectively, the “**Claims**”) by 5:00 p.m. (Eastern Standard Time) on Friday, January 18, 2013 (the “**Claims Bar Date**”) (collectively, all such persons, the “**Claimants**”); and (b) the Receiver schedule a hearing on February 22, 2013 for advice and directions from the Court with respect to the Claims Process (the “**February Directions Hearing**”).
 6. A copy of the Directions Order is attached as **Appendix “C”**. A copy of the Claims Process Order is attached **Appendix “D”**.
 7. The Receiver filed its Third Report to the Court dated February 15, 2013 (the “**Third Report**”) in connection with its obligation to report to Claimants on the Claims Process as provided in the Claims Process Order. The Third Report set out the Receiver’s summary of the Claims received and is attached as **Appendix “E”** without the Appendices thereto.
 8. In order to allow the Claimants sufficient time to consider the Receiver’s preliminary findings in the Third Report and allow the Receiver to meet and consult with the major stakeholders with respect to the administration of the claims and entitlements of creditors, the Receiver did not seek any substantive relief at the February Directions Hearing. Accordingly, on February 22, 2013, the Honourable Mr. Justice Brown directed the

Receiver to schedule a 9:00 a.m. appointment during the week of March 18, 2013 to set a date for any required motion by the Receiver.

9. The Receiver attended before the Honourable Mr. Justice Brown on March 21, 2013 to schedule a motion to be brought by the Receiver for directions from the Court with respect to the entitlement of creditors to the funds in the estates of the Debtors and other matters relating to the receivership estates (the "**May Directions Motion**").
10. The May Directions Motion was scheduled to be heard on May 3, 2013, but at the request of the Court staff has since been changed to May 9, 2013 to accommodate certain court scheduling issues. The schedule for delivery of materials to be relied upon by all parties at the May Directions Motion is set out in the Endorsement of the Honourable Mr. Justice Brown dated March 21, 2013, a copy of which is attached hereto as **Appendix "F"**.
11. This is the Receiver's Fourth Report to the Court (the "**Fourth Report**") which is filed in connection with the May Directions Motion. Any party that wishes to file any court materials in connection with the May Directions Motion, including in response to this Fourth Report, must do so by April 19, 2013.

PURPOSE OF REPORT

12. The purpose of this Fourth Report is to report to the Court with respect to: (i) the activities of the Receiver for the period from December 3, 2012 to April 5, 2013; (ii) the results of the Claims Process and the Receiver's recommendations in respect of final determination of Claims against the Debtors; (iii) the Receiver's recommendations with respect to entitlement of Claimants to any distribution of estate funds and a proposed interim distribution by the Receiver; and (iv) the general status of the receivership and the continuing obligations of the Receiver in this regard.
13. In particular, this Fourth Report is filed in support of the Receiver's motion for an order:
 - (a) authorizing the Receiver to complete the Claims Process in accordance with the proposed process set out in paragraph 54 below;