

**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 December 10, 2012)**

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., CMC Fraser Ltd., and 1624452 Ontario Limited (collectively, the “**Related Companies**”, and together with Peopledge, the “**Debtors**”) acquired for, or used in relation to a business carried on by Peopledge and the Related Companies, makes a motion to a judge presiding over the Commercial List on December 10, 2012 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:**

- (a) an order, substantially in the form of the order attached as Tab 4 to the motion record of the Receiver:
  - (i) if necessary, abridging the time for, and validating service of, this notice of motion and the materials filed in support of this motion and dispensing with further service thereof such that this motion is properly returnable on December 10, 2012;
  - (ii) authorizing and directing Bank of Montreal (“**BMO**”) to transfer and release to the Receiver all funds still held in any accounts held with BMO in the name of Peopledge or the Related Companies;
  - (iii) declaring that in effecting the transfer of funds as described in paragraph (a)(ii) hereof, BMO shall have no liability for and shall be released from any and all claims, including any trust or other claims by Canada Revenue Agency, in connection with the release and delivery of funds to the Receiver;
  - (iv) authorizing and directing the Receiver to 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, (i) provided such deposit was actually received on or after October 29, 2012, (ii) provided such deposit has not already been returned, and (iii) only to the extent such deposit has not been processed, in

whole or in part, by way of scheduled payroll payments or third party remittances;

- (v) approving the agreement dated November 2, 2012 and made between the Receiver and Labatt Breweries of Canada LP, by its general partner Labatt Brewing Company Inc;
- (vi) authorizing and directing the Receiver to file assignments in bankruptcy on behalf of each of the Debtors and authorizing the Receiver to sign such documents (including the Debtors' Statement of Affairs) in the name of the Debtors as may be required to effect same;
- (vii) directing that the administration of the bankruptcy estate of each of the Debtors by the trustee (including, without limitation, notices to be delivered by the trustee and the calling and holding of first meetings of creditors) shall be suspended until further order of the Court and directing that the assignments in bankruptcy have no effect on the Appointment Order and the Receiver's administration of the property and assets of Peopledge and have no effect on the claims of any persons against the Debtors;
- (viii) authorizing that BDO Canada Limited be appointed as trustee in bankruptcy of each of the Debtors in the assignments in bankruptcy to be filed, subject to affirmation or substitution at any first meeting of creditors or further order of the Court;

- (ix) approving the first report of the Receiver dated November 5, 2012 (the “**First Report**”), together with the conduct and activities as described therein; and
- (x) approving the second report of the Receiver dated December 3, 2012 (the “**Second Report**”), together with the conduct and activities described therein;
- (b) an order, substantially in the form of the order attached as Tab 5 to the motion record of the Receiver, approving a claims process to be established by the Receiver as described in detail in the Second Report; and
- (c) 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 (the “**Receivership Order**”);
- (b) the applicant, Bonnie Cummings, in her capacity as estate executrix of the Estate of the Late John Cummings (the “**Cummings Estate**”), is the majority shareholder of Peopledge, and the sole shareholder of the Related Companies;
- (c) as provided for in the Receivership Order, the Receiver is required to set down a motion date on notice to all parties within 30 days of the issuance of the Receivership Order to report to the Court and to seek additional relief as appropriate (the “**Comeback Motion**”);

- (d) this is the Receiver's Comeback Motion;
- (e) Peopledge conducted business as a provider of payroll processing, human resources, and benefits services;
- (f) as part of its administration of customer payrolls, Peopledge's customers arranged to deliver to Peopledge funding for payrolls, comprised of customer's employee payrolls, payroll taxes and other remittances, and the payroll processing fees earned by Peopledge (collectively, the "**Payroll Funds**");
- (g) Payroll Funds were deposited into one of two "**Consolidated Payroll Accounts**";
- (h) as described in detail in the Second Report, as funds were deposited into the two Consolidated Payroll Accounts, they became co-mingled with all other funds received and deposited therein, including funds from other customers and Peopledge's own funds (collectively, the balance of all co-mingled funds held in the Consolidated Payroll Accounts at any given time is called the "**Float**");
- (i) Peopledge did not maintain any records which distinguished between streams of funds entering and leaving the Consolidated Payroll Accounts;
- (j) based on the Receiver's preliminary review and analysis, it appears that:
  - (i) there may be approximately \$10.4 million in claims by customers in relation to Payroll Funds deposited with Peopledge prior to the receivership which were not processed;

- (ii) of that amount, (i) approximately \$1.4 million relates to unprocessed employee payroll; (ii) approximately, \$4.47 million relates to unremitted deductions owing to CRA, (iii) approximately \$2.23 million relates to unremitted benefits plan payments, and (iv) approximately \$1.7 million relates to other third party remittances not made;
  - (iii) in addition, customers appear to have provided advanced deposits with Peopledge for future unspecified payroll in the amount of approximately \$617,000; and
  - (iv) Peopledge may have approximately \$99,000 of its own employee related liabilities, which may include unremitted source deductions to CRA;
- (k) the current funds available in the Peopledge estate are approximately CDN\$3,128,995.87 and US\$149,286.05 (without accounting for receivership fees and costs but also not accounting for additional claims that may be available to the estate to recover additional funds);
- (l) of those funds, approximately \$387,769.90 relate to customer deposits made post-receivership which the Receiver is recommending that the Court grant an order authorizing and directing the release of the remaining funds to the applicable depositing customer for the reasons discussed in the Second Report;
- (m) as a result of the above, the Receiver is of the view that an orderly, but efficient, process be conducted to determine the universe and nature of claims against

Peopledge in order to develop a streamlined and coordinated manner of resolving claims and ultimately distributing funds to the entitled parties;

- (n) finally, as discussed in detail in the Second Report, the Cummings Estate's investigation into Peopledge's business revealed that approximately \$3.400 million had been diverted from the Float to an account only described as the "High Yield Account";
- (o) the "High Yield Account" cannot be located, and only less than \$120,000 has been successfully traced in and to accounts held by the Related Companies;
- (p) as directed by the Court, the Receiver has not undertaken or commenced any detailed forensic investigation, and, as requested by the Court, the Receiver has prepared an overview as to a possible forensic investigation in respect of such transfers and related activities funds;
- (q) however, the Receiver is of the view that it is prudent for assignments in bankruptcy to be filed for Peopledge and each of the Related Companies in order to preserve any applicable review periods, but for the administration of the bankruptcy estates to be suspended until further order of this Court to avoid unnecessary costs;
- (r) the further grounds as set out in the First Report and the Second Report; and
- (s) such further grounds as are just.

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

- (a) the First Report, without appendices;
- (b) the Second Report, with appendices; and
- (c) such further materials as is just.

December 3, 2012

**CASSELS BROCK & BLACKWELL LLP**  
2100 Scotia Plaza  
40 King Street West  
Toronto, ON M5H 3C2

**Joseph J. Bellissimo LSUC #46555R**  
Tel: 416.860.6572  
Fax: 416.642.7150  
jbellissimo@casselsbrock.com

**Eleonore L. Morris LSUC #57518B**  
Tel: 416.869.5352  
Fax: 416.640.3166  
emorris@casselsbrock.com

Lawyers for BDO Canada Limited,  
in its capacity as Receiver

TO: THE SERVICE LIST ATTACHED



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Court File No. CV 12-9896-00CL

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PROCEEDING COMMENCED AT  
TORONTO

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**Cassels Brock & Blackwell LLP**  
2100 Scotia Plaza  
40 King Street West  
Toronto, ON M5H 3C2

**Joseph J. Bellissimo LSUC #46555R**  
Tel: 416.860.6572  
Fax: 416.642.7150  
jbelissimo@casselsbrock.com

**Eleonore L. Morris LSUC #57518B**  
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