

Court File No. CV-119430-00CL
Court File No. 31-1553272
Court File No. 31-1553274

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

B E T W E E N:

**BRIAN JOSEPH TUCKER, SANDRA TUCKER AND THE
BRIAN JOSEPH TUCKER FAMILY TRUST (TRUSTEE OF)**

Plaintiffs

and

**SEAQUEST CAPITAL CORPORATION, SEAQUEST CORPORATION, DAVID
BURNS HOLDEN, ROSA HOLDEN, VINCE JAMES BULBROOK, ANTONIO MARIO
COSENTINO, EDMOND CHIN-HO SO (AKA EDMOND SO), JEFFREY ALAN
PHIPPS, SEAQUEST GLOBAL CORPORATION (#1), SEAQUEST GLOBAL
CORPORATION (#2), TONYCOS INVESTMENTS LTD., HARRIS BROWN
CORPORATION, AND HARRIS BROWN AND PARTNERS LIMITED**

Defendants

AND

IN THE MATTER OF THE PROPOSAL OF SEAQUEST CORPORATION

AND

IN THE MATTER OF THE PROPOSAL OF SEAQUEST CAPITAL CORPORATION

AMENDED NOTICE OF MOTION
(Motion returnable on December 2, 2011)

BDO Canada Limited (“**BDO**”) in its capacity as court-appointed interim receiver (the “**Interim Receiver**”) of the assets, properties and undertakings of Seaquest Corporation and Seaquest Capital Corporation (collectively, the “**Companies**”) and proposal trustee of the Companies (the “**Proposal Trustee**”) will make a motion to a judge presiding over the Commercial List, on Friday, the 2nd day of December, 2011, at 10:00 a.m. or as soon after that time as the motion can be heard at 330 University Avenue, Toronto, Ontario.

THE PROPOSED METHOD OF HEARING: This motion will be heard orally.

THE MOTION IS FOR:

1. An Order in the form attached as Schedule “A” hereto, *inter alia*:
 - (a) if necessary, abridging the time for service of this Notice of Motion and the Motion Record herein, and dispensing with further service thereof;
 - (b) approving the first report to the Ontario Superior Court of Justice (Commercial List) (the “**Court**”) of the Proposal Trustee dated November 1, 2011 (the “**First Report**”) and the activities of the Proposal Trustee as set out therein;
 - (c) approving the first report to Court of the Interim Receiver and the second report to Court of the Proposal Trustee dated November 21, 2011 (the “**November 21 Report**”) and the activities of the Interim Receiver and Proposal Trustee as set out therein;
 - (d) approving the second report to Court of the Interim Receiver and the third report to Court of the Proposal Trustee dated November 29, 2011 (the “**Final Report**”) and the activities of the Interim Receiver and Proposal Trustee as set out therein;
 - (e) approving the fees and disbursements (together with the fees and disbursements of Dickinson Wright LLP detailed below, the “**Fees and Disbursements**”) of BDO as Interim Receiver and Proposal Trustee and its legal counsel, Fraser Milner Casgrain LLP (“**FMC**”), as set out in the Final Report, the Affidavit of Ken Pearl sworn November 29, 2011 (the “**Pearl Affidavit**”) and the Affidavit of Jane Dietrich sworn November 29, 2011 (the “**Dietrich Affidavit**”);
 - (f) approving the fees and disbursements of Dickinson Wright LLP, as legal counsel to the Companies, as set out in the Affidavit of Michael Weinczok

sworn November 29, 2011, and approving the fees and disbursements of Dickinson Wright LLP for legal services provided to the Interim Receiver as set out in the Supplementary Final Report of the Interim Receiver dated November 30, 2011 and the Supplementary Affidavit of Michael Weinczok sworn November 30, 2011;

- (g) waiving any requirements of Rule 79 of the *Bankruptcy and Insolvency General Rules* (the “**BIA Rules**”);
- (h) upon payment of the funds in its hands in respect of the Fees and Disbursements and upon the Interim Receiver filing a certificate certifying that it has completed the other activities described in the Final Report, despite any provision of the *Bankruptcy and Insolvency Act* (the “**BIA**”) and the BIA Rules, discharging BDO as Interim Receiver, and releasing and discharging BDO from any and all liability that BDO now has or may hereafter have by reason of, or in any way arising out of, the acts or omissions of BDO while acting in its capacity as Interim Receiver;
- (i) discharging BDO as Proposal Trustee, and releasing and discharging BDO from any and all liability that BDO now has or may hereafter have by reason of, or in any way arising out of, the acts or omissions of BDO while acting in its capacity as Proposal Trustee;
- (j) preserving, despite BDO’s discharge as Interim Receiver and Proposal Trustee, the Receiver’s Charge, as defined in paragraph 19 of the Order of the Court appointing BDO as Interim Receiver dated November 3, 2011 (the “**Receivership Order**”) and authorizing BDO to enforce same;
- (k) preserving, despite the CRO’s discharge and bankruptcy of the Companies the Administration Charge as defined in paragraph 33 of the Receivership Order; and
- (l) such further and other relief as to this Honourable Court seems just.

THE GROUNDS FOR THE MOTION ARE:

1. BDO became Proposal Trustee under a Notice of Intention to Make a Proposal filed by each of the Companies pursuant to the BIA on October 24, 2011.
2. The First Report was filed by the Proposal Trustee in support of the Companies' motion to *inter alia* appoint BDO as Interim Receiver and appoint Greg MacLeod as Chief Restructuring Officer (the "CRO").
3. Pursuant to the Receivership Order, the Interim Receiver was appointed Interim Receiver of the assets, property and undertaking of the Companies with a mandate to, *inter alia*, receive, preserve, protect and dispose of the Companies' assets. In granting the Receivership Order, Justice Newbould directed the Interim Receiver to report to the Court within 30 days;
4. BDO delivered the November 21 Report in support of the motion by the CRO seeking advice and directions regarding the extension of the time in which the Companies' had to file a proposal;
5. On November 23, 2011 the Honourable Mr. Justice Brown declined to extend the time in which the Companies were required to file a proposal and the Companies were deemed bankrupt on November 24, 2011 with BDO becoming the trustee in bankruptcy of each of the Companies;
6. In accordance with section 47.1(1.1) of the BIA, the appointment of the Interim Receiver expired when the Companies were deemed bankrupt. The role of the Proposal Trustee is also now at an end. As a result, a discharge is sought by the Interim Receiver and Proposal Trustee;
7. The Fees and Disbursements of BDO as the Interim Receiver and Proposal Trustee and its legal counsel, FMC, are set out in the Final Report, the Pearl Affidavit, and the Dietrich Affidavit and BDO is of the view that such amounts are reasonable and appropriate in the circumstances;

8. The fees and disbursements of Dickinson Wright LLP for services provided as legal counsel to the Companies, and for services provided to assist the Interim Receiver, are set out in the Supplementary Final Report of the Interim Receiver dated November 30, 2011 (the “Supplementary Final Report”) and the Affidavits of Michael Weinczok sworn November 29, 2011 and November 30, 2011, and BDO is of the view that such amounts are reasonable and appropriate in the circumstances.
9. Following the making of the payment in respect of the Fees and Disbursements (to the extent of such funds in BDO’s possession), the administration of the estate of the Companies will be complete and therefore BDO seeks its discharge as both Interim Receiver and Proposal Trustee;
10. The facts as set out in the Final Report and Supplementary Final Report;
11. The BIA and Rules 1.04, 2.03, 3.02 and 37 of the *Rules of Civil Procedure*; and
12. Such further and other grounds as counsel may advise and this Honourable Court may permit.

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

1. The First Report, the November 21 Report, the Final Report and the Supplementary Final Report; and
2. Such further and other materials as counsel may advise and this Honourable Court may permit.

November 30, 2011

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Corporation and Sequest Capital Corporation

To: SERVICE LIST

BRIAN JOSEPH TUCKER, et al.

Plaintiffs

- and -

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CAPITAL CORPORATION

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COMMERCIAL LIST**

PROCEEDING COMMENCED AT
TORONTO

AMENDED NOTICE OF MOTION
(returnable on December 2, 2011)

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