



Court File No. **VLC-S-B-230317**

FORM 66 (RULES 16-1(2) AND 21-5(14))

Bankruptcy Division -03
No. B 230317
Estate No. _11-254505
VANCOUVER REGISTRY

**IN THE SUPREME COURT OF BRITISH COLUMBIA
IN BANKRUPTCY AND INSOLVENCY**

**IN THE MATTER OF THE BANKRUPTCY OF BEYOND THE GRAPE ON PREMISE
WINEMAKING LTD. DOING BUSINESS AS FRASER MILLS FERMENTATION.**

PETITION TO THE COURT

THIS IS THE PETITION OF:

Royal Bank of Canada (the “Applicant Creditor”)
c/o Fulton & Company LLP
300-350 Lansdowne Street
Kamloops, BC V2C 1Y1

ON NOTICE TO:

**Beyond the Grape on Premise Winemaking Ltd. doing business as Fraser Mills
Fermentation (the “Debtor”)**
Head Office and Registered Office
590 Carlsen Place
Port Moody, British Columbia V3H 3Z8

BDO Canada Limited
Attn: Jervis Rodrigues
1100 -1055 West Georgia Street
Vancouver, British Columbia V6E 3P3

Office of the Superintendent of Bankruptcy
300 Georgia Street W, Suite 2000
Vancouver, British Columbia V6B 6E1

**This proceeding has been started by the Petitioner for the relief set out in Part 1
below.**

1.	The address of the registry is: Vancouver Registry
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	800 Smithe Street Vancouver, BC V6Z 2E1
2.	The ADDRESS FOR SERVICE of the Petitioner is: c/o Fulton & Company LLP 300-350 Lansdowne Street Kamloops, BC V2C 1Y1 Fax number address for service (if any) of the Petitioner: (250) 851-2300 E-mail address for service (if any) of the Petitioner: Email service will not be accepted.
3.	The name and office address of the Petitioner's lawyer is: Fulton & Company LLP 300-350 Lansdowne Street Kamloops, BC V2C 1Y1 Attention: Hal Hicks

CLAIM OF THE PETITIONER

Part 1: ORDERS SOUGHT

1. The Debtor be adjudged bankrupt and that a receiving order be made in respect of the property of the Debtor.
2. BDO Canada Limited be appointed as Trustee of the Estate of the Debtor.
3. Costs of the Applicant Creditor be paid out of the estate of the bankrupt on taxation of the estate.
4. Such further relief as the circumstances may require and as this Honourable Court deems appropriate.

Part 2: FACTUAL BASIS

Grounds for the Petition

1. The Petitioner, Royal Bank of Canada is a Chartered Bank.
2. The Debtor is a company duly incorporated under the laws of British Columbia and has a registered office at 590 Carlsen Place, Port Moody, British Columbia, V3H 3Z8.
3. The Debtor is an insolvent company within the meaning of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, and has at some time during the six months preceding the filing of this Petition, carried on business at or near the City of Port Moody, in the Province of British Columbia, within the jurisdiction of this Honourable Court.

4. The Debtor has committed an act of bankruptcy within the six months preceding the filing of the application in that the Debtor ceased to meet its liabilities generally as they became due.
5. The Applicant Creditor is a secured creditor and estimates the value of its security to be \$79,350.00. The Debtor has unsecured debts owing to the Applicant Creditor in an amount in excess of \$1,000.00.

The Agreements

6. The Debtor is indebted to the Applicant Creditor pursuant to an RBC Credit Agreement dated June 10, 2019, an RBC Royal Bank Loan Agreement – *Canada Small Business Financing Act* dated June 6, 2019, and an RBC Visa business card Agreement dated June 6, 2019 (the “**Lending Documents**”).

The Default and the Demand

7. The Debtor is in default under the Lending Documents in that it has failed to make required payments when due.
8. The Debtor is justly and truly indebted to the Applicant Creditor in the sum of \$408,454.81 as of May 19, 2023, plus interest on that sum and costs.
9. The Applicant Creditor made demand for payment and issued a Notice of Intention to Enforce Security pursuant to section 244 of the *Bankruptcy and Insolvency Act* R.S.C. 1985, c. B-3 on or about January 10, 2023 (the “**Demand**”).
10. Despite the Demand, the Debtor has failed to provide payment to the Applicant Creditor for the amounts owing under the Lending Documents.

The Indebtedness

11. Following the default and the Demand, the Applicant Creditor commenced proceedings to collect on the amount owing by the Debtor to the Applicant Creditor.
12. The Applicant Creditor commenced proceedings on February 2, 2023, in the Kamloops Registry of the Supreme Court under action no. KAM-S-S-61840 (the “**Kamloops Proceedings**”).
13. The Applicant Creditor obtained default judgment against the Debtor in the Kamloops Proceedings, in the amount of \$408,454.81 on May 19, 2023 (the “**Judgment**”).
14. The full amount of the Judgment owing remains due and owing by the Debtor to the Applicant Creditor.

Value of Applicant Creditor's Security

15. On August 28, 2019, the Applicant Creditor entered into a priority agreement (the "Priority Agreement") with the Business Development Bank of Canada ("BDC") wherein it was agreed that BDC would have priority over the Applicant Creditor with respect to certain personal property of the Debtor.
16. On February 6, 2023, the Applicant Creditor obtained an appraisal of all or substantially all of the Debtor's personal property and the appraiser opined that the liquidation value of these assets is approximately \$201,250.00.
17. The estimated value of the personal property subject to the Priority Agreement is \$121,900.00.
18. Therefore the value of the Applicant Creditor's security is approximately \$79,350.00.

Other Creditors

19. The Debtor has other creditors and debts which are due and payable.
20. On June 1, 2023, BDC filed a notice of civil claim in the Vancouver Registry against the Debtor for debts owing in the amount of \$738,780.19 under court file no. VLC-S-S-234019.
21. The Debtor also has outstanding amounts owing to the Canada Revenue Agency ("CRA") estimated as follows:
 - a. \$16,000.00 for payroll remittances from the 2022 year;
 - b. \$10,000.00 for excises from the 2022 year; and
 - c. \$29,000.00 for GST from the 2020 year.
22. Based on these estimates, the Debtor owes the CRA approximately \$55,000.00.

Acts of Bankruptcy

23. The Debtor has committed acts of bankruptcy within the six months preceding the filing of this Petition by failing to meet its liabilities as they become due.
24. Despite the debts owed to the Applicant Creditor, BDC, and the CRA, the Debtor has failed to pay the amounts owed.

Consent of License Trustee in Bankruptcy to Act as Trustee

25. Jervis Rodrigues of BDO Canada Limited, 1100 – 1055 West Georgia Street, Vancouver, British Columbia V6E 3P3 is a person qualified to act as trustee of the

property of the Debtor and has agreed to act as such and is acceptable to the Applicant Creditor.

Part 3: LEGAL BASIS

1. Rule 2-1(2) of the *Supreme Court Civil Rules*.
2. *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, Sections 42 and 43.
3. *Bankruptcy and Insolvency General Rules*, C.R.C. 1978, Rules 11, 69-72 and 74-76.
4. If it is shown that the debtor has failed to pay the debt due to the applicant creditor, the onus is on the debtor to prove that it is able to pay the debts and financial accounts, or statements must be submitted.

Bankruptcy of Ken Min Man Chung, 2004 BCSC 1669 at para 17 citing
Re Hayes (1979) 34 C.B.R. (N.S.) 280 (B.C.S.C.)

5. Cessation of meeting obligations does not have to commence in the six month period preceding the filing of the application, it is sufficient that the cessation occurred at some time and continued during the six month period referred to in the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B – 3.

Czepil v. J.W. Bison Ranch Ltd., 2008 BCSC 366 at para 26

6. A judgment is a continuing demand for payment, and there is no necessity for a judgment creditor to make demands for payment in the six-month period in order to comply with s. 43(1)(b) of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B – 3.

Bankruptcy of Matthew Gray Knight, 2003 BCSC 205 at para 22 citing
Platt v. Malmstrom, 2001 CanLII 24037 (ON CA)

7. The fact that a secured creditor invokes the provisions of the Bankruptcy Act to establish its priority in accordance with the scheme of distribution provided by that Act cannot constitute a “sufficient cause” for refusing a receiving order.

Bank of Montreal v. Scott Road Ent. Ltd., 1989 CanLII 2726 (BC CA) at para 26

8. The court is not involved in an exercise of fixing values, it need only determine that the estimate of a secured creditor’s security is neither a sham or absurdly low. It is an exercise of good faith. Appraisal reports presented by way of hearsay are permitted when used solely for the purpose of determining that the estimate was made in good faith and was not a sham or absurdly low. A secured creditor need not obtain a formal appraisal of its security.

Re C. Tokmakjian Ltd.(Bankruptcy), 2003 CanLII 17288 (ON SC)
at paras 41 and 42

Part 4: MATERIAL TO BE RELIED ON

1. Affidavit #1 of Howard Wang made July 17, 2023; and
2. Affidavit #1 of Rianne Jeeves made July 11, 2023.

The Petitioner estimates that the hearing of the petition will take 15 minutes.

Date: July 21, 2023



Signature of Hal R. Hicks

Petitioner lawyer for Petitioner

Issued at the City of Vancouver in the Province of British Columbia, this day of 25th July, 2023.

Registrar in Bankruptcy

To be completed by the court only:

Order made

in the terms requested in paragraphs _____ of Part 1
of this petition

with the following variations and additional terms:

Date: _____

Signature of Judge Master

Bankruptcy Division
No. _____
Estate No. _____
VANCOUVER REGISTRY

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PETITION TO THE COURT

FILE NO. 67095-61

AMK/HRH/rjb

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