



No. VLC-S-S-249020  
Vancouver Registry

**IN THE SUPREME COURT OF BRITISH COLUMBIA**

IN THE MATTER OF THE *LAW AND EQUITY ACT*, R.S.B.C. 1996, c. 253, AS AMENDED

**AND IN THE MATTER OF THE PROCEEDINGS OF SVC-MOUNTAIN SIDE ULC  
AND SHELL OWNERS ASSOCIATION – PACIFIC**

**PETITIONERS**

**NOTICE OF APPLICATION**

**Name of applicant:** BDO Canada Limited (“**BDO**”) in its capacity as administrator (in such capacity, the “**Administrator**”) of SVC-Mountain Side ULC and Shell Owners Association – Pacific (together, the “**Companies**”).

To: The Service List attached hereto as Schedule “A”

TAKE NOTICE that an application will be made by the applicant to the Honourable Mr. Justice Coval at the courthouse at 800 Smithe Street, Vancouver, B.C. on May 8, 2025 at 9:00 a.m. for the orders set out in Part 1 below.

The applicant estimates that the application will take 15 minutes.

X This matter is not within the jurisdiction of an associate judge.

**Part 1 ORDER SOUGHT**

1. An order (the “**Fee Approval Order**”), substantially in the form attached hereto as Schedule “B”, among other things, seeking approval of:
  - (a) the activities of the Administrator, as set forth in the Reports (as defined herein);  
and
  - (b) the fees and disbursements of: (i) BDO, in respect of its engagement by the Petitioners prior to the commencement of these proceedings, (ii) BDO, in its capacity as Administrator from the date of the Appointment Order (defined below)

to April 18, 2025; and (iii) its counsel, Fasken Martineau DuMoulin LLP (“**Fasken**”) from May 23, 2024 to April 24, 2025.

## **Part 2 FACTUAL BASIS**

### **Background**

1. On January 24, 2025, upon the application of the Companies, the Supreme Court of British Columbia (the “**Court**”) granted the following orders:
  - (a) an order (the “**Appointment Order**”) pursuant to section 39 of the *Law and Equity Act*, R.S.B.C. 1996 c. 253 (the “**LEA**”), among other things, appointing BDO as Administrator of the Companies; and
  - (b) an order (the “**SISP Order**”), among other things, approving the sale and investment solicitation process (the “**SISP**”) in respect of the sale of the Companies’ property (the “**Property**”) and approving the stalking horse agreement dated as of December 16, 2024 (the “**SHA**”), as between the Companies, as vendors, and Executive Mountainside Holdings Ltd., as purchaser, as a stalking horse bid.

### **Administrator’s Activities**

2. The details of the work carried out by the Administrator in relation to these proceedings, including activities prior to the granting of the Appointment Order, and for which the Court’s approval is sought at this time, are set forth in the Reports of the Administrator to the Court (collectively, the “**Reports**”) prepared and filed by the Administrator in these proceedings, namely, the: (a) Proposed Administrator’s Pre-Filing Report dated January 22, 2025; and (b) Administrator and Proposed Receiver’s Report, to be filed.
3. The Reports collectively detail the activities of the Administrator, which include, but are not limited to, the following:
  - (a) assisting the Petitioners with preparing for the commencement of these proceedings, including the SISP, the SHA, the restructuring support agreement, developing cash flow projections and attending to stakeholder communications;
  - (b) conducting a review accounting of the Companies’ accounting and cash management systems for the benefit of the Court and the stakeholders;

- (c) attending to various inquiries in relation to the SISP and the Property generally;
- (d) supervising and completing the SISP in accordance with the SISP Order;
- (e) responding to various stakeholder inquiries throughout these proceedings;
- (f) preparing the Reports for use by this Court;
- (g) monitoring the cash flow of the Petitioners; and
- (h) gathering and reviewing the Companies' records and books to resolve potential claims.

#### **Administrator's and Fasken's Fees**

4. Pursuant to the Appointment Order, the Administrator and its counsel are to be paid their reasonable fees and disbursements, in each case at their standard rates and charges, whether incurred before or after the making of the Appointment Order. The Appointment Order further provides that the Administrator and its counsel will pass their accounts from time to time, with such accounts referred to a judge of this Court for determination (which may be by hearing before the judge on a summary basis).
5. The particulars of the fees for: (i) BDO, in respect of its engagement by the Petitioners prior to the commencement of these proceedings, (ii) BDO, in its capacity as Administrator, and (iii) its counsel, Fasken (collectively, the "**Fees**"), are summarized in Affidavit #1 of Dylan Chochla made April 25, 2025 (the "**Chochla Affidavit**") and Affidavit #1 of Matthew Marchand made April 25, 2025 (the "**Marchand Affidavit**").
6. During their respective fee periods, inclusive of applicable taxes, the Administrator's fees and disbursements total \$448,216.13 (the "**Administrator's Fees**") and Fasken's fees and disbursements total \$153,375.29 ("**Fasken's Fees**")
7. The Administrator's Fees are summarized in the table below and further detailed in the Marchand Affidavit:

<b>Invoice #</b>	<b>Invoice Date</b>	<b>Fees (\$)</b>	<b>Disbursements (\$)</b>	<b>Taxes (\$)</b>	<b>Total (\$)</b>
CINV33352 10	March 28, 2025	201,105.00	0.00	10,055.25	211,160.25
CINV33808 15	April 25, 2025	225,517.50	250.00	11,288.38	237,055.88
<b>TOTAL</b>		<b>426,622.50</b>	<b>250.00</b>	<b>21,343.63</b>	<b>448,216.13</b>

8. Fasken's Fees are summarized in the table below and further detailed in the Chochla Affidavit:

<b>Invoice #</b>	<b>Invoice Date</b>	<b>Fees (\$)</b>	<b>Disb's (\$)</b>	<b>Taxes (\$)</b>	<b>Total (\$)</b>
2097514A	March 27, 2025	54,919	397.40	6,609.80	61,926.20
2114488	March 27, 2025	14,779	-	1,773.48	16,552.48
2123568	April 22, 2025	23,001	850.76	2,765.60	26,617.36
2126167	April 25, 2025	42,955.50	166.76	5,156.99	48,279.25
<b>TOTAL</b>		<b>135,654.50</b>	<b>1,414.92</b>	<b>16,305.87</b>	<b>153,375.29</b>

9. The Administrator has reviewed Fasken's invoices in respect of the above and concluded that they are reasonable and appropriate in the circumstances.

10. The Administrator submits that its fees and the fees of its counsel are fair and reasonable in the circumstances, and that the time spent was necessary and the work was delegated to the appropriate professionals within each firm. Accordingly, the Administrator seeks the Fee Approval Order approving its activities, the Administrator's Fees and Fasken's Fees.

### **Part 3 LEGAL BASIS**

1. The Administrator relies on:

- (a) the *LEA*;
- (b) Rules 8-1 and 10-2 of the *Supreme Court Civil Rules*;
- (c) the Appointment Order;
- (d) the inherent and equitable jurisdiction of this Court; and

- (e) such further and other legal basis as counsel may advise and this Honourable Court may allow.

Approval of the Administrator's Activities

2. The work performed by the Administrator and Fasken was done pursuant to, and in accordance with, the terms of the Appointment Order, the other orders of the Court made in these proceedings and the provisions of the *LEA*.
3. The Court has inherent jurisdiction to review the activities of a court-appointed officer and, if satisfied that the Administrator has acted reasonably, prudently and not arbitrarily, to approve the activities set out in the Reports. The assessment of whether a court-appointed officer has acted “reasonably, prudent and not arbitrarily” is made on an objective basis.<sup>1</sup>
4. There are good policy and practice reasons for the Court to provide a level of protection for the Administrator by approving its activities, provided the benefit of the approval is limited to the Administrator itself.<sup>2</sup>
5. The activities of the Administrator are summarized in Part 2 and are detailed in the Reports. The Administrator has reported to the Court, all interested parties and stakeholders throughout these proceedings. The Administrator carried out a transparent, orderly and timely sale process for the Property, in accordance with the SISP Order, and acted reasonably to preserve and capture as much value as possible for the Company's stakeholders. The activities of the Administrator have all been necessary and were conducted in accordance with its powers under the relevant orders.
6. The Administrator respectfully submits that its activities, as described in the Reports, have been carried out in a reasonable, prudent and not arbitrary manner and, accordingly, seeks approval of its activities.

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<sup>1</sup> *Leslie & Irene Dube Foundation Inc. v. P218 Enterprises Ltd.*, 2014 BCSC 1855, para. 54.

<sup>2</sup> *Hanfeng Evergreen Inc. (Re)*, 2017 ONSC 7161 at para. 17.

### Approval of the Fees

7. The Appointment Order expressly provides that the Administrator's accounts be referred to a judge of this Honourable Court and that the passage of those accounts be heard on a summary basis.<sup>3</sup>
8. The appointment of the Administrator under the Appointment Order is akin to the appointment of a receiver under a receivership order and the Administrator submits the factors for the Court to consider in the circumstances are analogous.
9. There is no fixed rate or settled scale for determining a court officer's compensation. A receiver may either be allowed a percentage payment based on receipts, or a lump sum based on "the time, trouble and degree of responsibility involved". The governing principle is that a court officer's compensation should be measured by the "fair and reasonable" value of its services.<sup>4</sup>
10. This principle was adopted by the British Columbia Court of Appeal in *Bank of Montreal v. Nican Trading Co.*, [1990] B.C.J. No. 340 (B.C. C.A.) ["*Nican*"]. The Court of Appeal went on to list "relevant considerations" in determining whether a receiver's compensation was fair and reasonable, including:
  - (a) the value of the assets;
  - (b) complications and difficulties encountered by the receiver;
  - (c) the degree of assistance provided by the debtor;
  - (d) time spent by the receiver;
  - (e) receiver's knowledge, experience and skill;
  - (f) diligence and thoroughness;

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<sup>3</sup> Appointment Order, para. 30.

<sup>4</sup> *Belyea v. Federal Business Development Bank*, [1983] N.B.J. No. 41 (N.B. C.A.) ["*Belyea*"], para. 3; see also: *Confectionately Yours Inc., Re*, [2002] O.J. No. 3569, para. 44.

- (g) responsibilities assumed;
  - (h) results; and
  - (i) cost of comparable services.<sup>5</sup>
11. Similar factors as considered on the assessment of a receiver's fees are also considered on the assessment of the accounts of legal counsel to a receiver, including, the:
- (a) time expended;
  - (b) complexity of the proceedings;
  - (c) degree of responsibility assumed by the lawyers;
  - (d) amount of money involved, including reference to the debt, amount of proceeds after realization and payments to the creditors;
  - (e) degree and skill of the lawyers involved;
  - (f) results achieved; and
  - (g) client's expectations as to the fee.<sup>6</sup>
12. In respect of the Administrator's Fees, the Administrator submits that:
- (a) the fees were properly incurred, and commensurate with fees charged by other insolvency firms of a similar size for work of a similar nature and complexity;
  - (b) the work completed by the Administrator was delegated to the appropriate professionals with the appropriate seniority and hourly rates; and
  - (c) the Administrator's services were performed in a prudent and economical manner.

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<sup>5</sup> *Bank of Montreal v. Nican Trading Co.*, [1990] B.C.J. No. 340 (B.C. C.A.) [*"Nican"*], paras. 23 – 32.

<sup>6</sup> *Redcorp Ventures Ltd., Re*, 2016 BCSC 188, para. 33.

13. Similarly, the Administrator submits that Fasken's Fees are fair and reasonable in the circumstances as:
  - (a) Fasken's professional fees and disbursements were properly incurred, and commensurate with fees charged by similar firms with the expertise and capacity to serve a matter of comparable size and complexity;
  - (b) the work performed by Fasken involved considerable complexity, including considerations of the jurisdictional foundations for the orders sought herein, including the Appointment Order;
  - (c) the work completed by Fasken was delegated to the appropriate professionals with the appropriate seniority and hourly rates;
  - (d) Fasken's services were performed in a prudent and economical manner; and
  - (e) Fasken's invoices were provided to the Administrator when rendered, and all have been approved by the Administrator.
  
14. In light of the foregoing, the Administrator submits that the Administrator's Fees and Fasken's Fees are reasonable in the circumstances and seeks approval of same.

**Part 4 MATERIAL TO BE RELIED ON**

1. The Appointment Order, made by Justice Coval in these proceedings on January 24, 2025;
2. Affidavit #1 of Dylan Chochla made April 25, 2025;
3. Affidavit #1 of Matthew Marchand made April 25, 2025
4. Proposed Administrator's Pre-Filing Report dated January 22, 2025
5. Administrator's First Report to the Court, to be filed; and
6. The other pleadings and materials filed in these proceedings and such further and other material as counsel may advise and this Honourable Court may permit.

TO THE PERSONS RECEIVING THIS NOTICE OF APPLICATION: If you wish to respond to this Notice of Application, you must, within 5 business days after service of this Notice of Application or, if this application is brought under Rule 9-7, within 8 business days after service of this Notice of Application,

- (a) file an Application Response in Form 33,
- (b) file the original of every affidavit, and of every other document, that
  - (i) you intend to refer to at the hearing of this application, and
  - (ii) has not already been filed in the proceeding, and
- (c) serve on the applicant 2 copies of the following, and on every other party of record one copy of the following:
  - (i) a copy of the filed Application Response;
  - (ii) a copy of each of the filed affidavits and other documents that you intend to refer to at the hearing of this application and that has not already been served on that person;
  - (iii) if this application is brought under Rule 9-7, any notice that you are required to give under Rule 9-7(9).

Dated: 25-Apr-2025

  
 Signature of Mishaal Gill  
 Lawyer for BDO Canada Limited, in its  
 capacity as Administrator

<b><i>To be completed by the court only:</i></b>	
Order made	
<input type="checkbox"/>	in the terms requested in paragraphs ..... of Part 1 of this Notice of Application
<input type="checkbox"/>	with the following variations and additional terms: ..... ..... .....
Date:	.....
Signature of <input type="checkbox"/> Judge <input type="checkbox"/> Associate	

Judge

The Solicitors for the Applicant are Fasken Martineau DuMoulin LLP, whose office address and address for delivery is 550 Burrard Street, Suite 2900, Vancouver, BC V6C 0A3 Telephone: +1 604 631 3131 Facsimile: +1 604 631 3232. (Reference: Kibben Jackson/285937.00017)

## APPENDIX

### THIS APPLICATION INVOLVES THE FOLLOWING:

- discovery: comply with demand for documents
- discovery: production of additional documents
- other matters concerning document discovery
- extend oral discovery
- other matter concerning oral discovery
- amend pleadings
- add/change parties
- summary judgment
- summary trial
- service
- mediation
- adjournments
- proceedings at trial
- case plan orders: amend
- case plan orders: other
- experts
- none of the above

**SCHEDULE "A"**  
**SERVICE LIST**

**SCHEDULE "A"**

No. S-249020  
Vancouver Registry

**IN THE SUPREME COURT OF BRITISH COLUMBIA**

IN THE MATTER OF THE *LAW AND EQUITY ACT*, R.S.B.C. 1996, c. 253, AS AMENDED

**AND IN THE MATTER OF THE PROCEEDINGS OF  
SVC-MOUNTAINSIDE ULC AND SHELL OWNERS ASSOCIATION – PACIFIC**

**PETITIONERS**

**SERVICE LIST  
(as at April 24, 2025)**

<p><b>THORNTON GROUT FINNIGAN LLP</b> TD West Tower, Toronto-Dominion Centre 100 Wellington Street West, Suite 3200 Toronto, ON M5K 1K7</p> <p>Attention: <b>Mitchell W. Grossell</b> <b>Adam Driedger</b> <b>Shurabi Srikaruna</b> <b>Andrew Nesbitt</b></p> <p>Email: <a href="mailto:mgrossell@tgf.ca">mgrossell@tgf.ca</a> <a href="mailto:adriedger@tgf.ca">adriedger@tgf.ca</a> <a href="mailto:ssrikaruna@tgf.ca">ssrikaruna@tgf.ca</a> <a href="mailto:anesbitt@tgf.ca">anesbitt@tgf.ca</a></p> <p><i>Co-Counsel for the Petitioners</i></p>	<p><b>FARRIS LLP</b> PO Box 10026, Pacific Centre South 25th Floor, 700 W Georgia Street Vancouver, BC V7Y 1B3</p> <p>Attention: <b>Tevia R.M. Jeffries</b></p> <p>Email: <a href="mailto:tjeffries@farris.com">tjeffries@farris.com</a></p> <p><i>Co-Counsel for the Petitioners</i></p>
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<p><b>OWEN BIRD LAW CORPORATION</b> Vancouver Centre II 2900 – 733 Seymour St., PO Box 1, Vancouver, BC V6B 0S6</p> <p><b>Attention: Scott H. Stephens Paul A. Brackstone James H. McBeath</b></p> <p>Email: <a href="mailto:sstephens@owenbird.com">sstephens@owenbird.com</a> <a href="mailto:pbrackstone@owenbird.com">pbrackstone@owenbird.com</a> <a href="mailto:jmcbeath@owenbird.com">jmcbeath@owenbird.com</a></p> <p><i>Lawyers to the DIP Lender and Stalking Horse Purchaser</i></p>	<p><b>MOUNTAINSIDE LODGE MEMBERS ASSOCIATION</b> Mountainside Lodge 4417 Sundial Place Whistler, BC V8E 1G8</p> <p><b>Attention: Blain Redfern</b></p> <p>Email: <a href="mailto:blaine.redfern@wyn.com">blaine.redfern@wyn.com</a></p>
<p><b>THE OWNERS STRATA PLAN VR 1026</b></p> <p><b>Attention: Blain Redfern</b></p> <p>Email: <a href="mailto:blaine.redfern@wyn.com">blaine.redfern@wyn.com</a></p>	<p><b>L &amp; R LAND CORPORATION</b> 1342 Hornby Street Vancouver BC V6Z 1W5</p> <p><b>Attention: Jahan Khazali</b></p> <p>Email: <a href="mailto:jahan@live.ca">jahan@live.ca</a></p>
<p><b>UNIFOR LOCAL3000</b> 326 12th St. New Westminster BC Vancouver, BC V3M 4H6</p> <p><b>Attention: Jennifer Moreau Adrian Burnett Michael Windeyer</b></p> <p>Email: <a href="mailto:jennifer.moreau@unifor.org">jennifer.moreau@unifor.org</a> <a href="mailto:adrian@unifor3000.org">adrian@unifor3000.org</a> <a href="mailto:michael@unifor3000.org">michael@unifor3000.org</a></p>	<p><b>WILLIAM AND HEATHER BEAMISH</b> P.O. Box 476 218 Bay St. Daajing Giids, BC V0T 1S0</p> <p>Email: <a href="mailto:heatherb370@hotmail.com">heatherb370@hotmail.com</a></p>

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**SCHEDULE "B"**  
**DRAFT FEE APPROVAL ORDER**

**SCHEDULE “B”**

No. VLC-S-S-249020  
Vancouver Registry

**IN THE SUPREME COURT OF BRITISH COLUMBIA**

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**AND IN THE MATTER OF THE PROCEEDINGS OF SVC-MOUNTAINSIDE ULC  
AND SHELL OWNERS ASSOCIATION – PACIFIC**

**PETITIONERS**

**ORDER MADE AFTER APPLICATION**  
**(FEE AND ACTIVITY APPROVAL)**

BEFORE ) THE HONOURABLE )  
          ) MR. JUSTICE COVAL ) May 8, 2025  
          ) )

ON THE APPLICATION OF BDO Canada Limited (“**BDO**”) in its capacity as administrator of the Petitioners (in such capacity, the “**Administrator**”), coming on for hearing at Vancouver, British Columbia on May 8, 2025, AND ON HEARING Kibben Jackson and Mishaal Gill, counsel to the Administrator, and those other counsel listed in Schedule “A” hereto, AND NO ONE ELSE APPEARING, although duly served; AND UPON READING the materials filed, including the Proposed Administrator’s Pre-Filing Report dated January 22, 2025 and the Administrator and Proposed Receiver’s Report, to be filed (together, the “**Reports**”);

THIS COURT ORDERS that:

1. The time for service of the Notice of Application filed April 25, 2025 and supporting materials is hereby abridged such that the Notice of Application is properly returnable today and service thereof upon any interested party other than those parties on the service list maintained by the Administrator in this proceeding be and is hereby dispensed with.
2. The activities of the Administrator as described in the Reports are hereby approved, provided however that only BDO in its personal capacity and only with respect to its own personal liability shall be entitled to rely upon such approval.

3. The accounts for professional fees and disbursements of: (i) BDO, in respect of its engagement by the Petitioners prior to the commencement of these proceedings, and (ii) BDO, in its capacity as Administrator, to April 18, 2025, in the amount of \$448,216.13, inclusive of applicable taxes, are hereby approved.
4. The accounts for professional fees and disbursements of the Administrator's legal counsel, Fasken Martineau DuMoulin LLP, to April 24, 2025, in the amount of \$153,375.29, inclusive of applicable taxes, are hereby approved.
5. Endorsement of this Order by counsel appearing, other than counsel for the Administrator, is hereby dispensed with.

THE FOLLOWING PARTIES APPROVE THE FORM OF THIS ORDER AND CONSENT TO EACH OF THE ORDERS, IF ANY, THAT ARE INDICATED ABOVE AS BEING BY CONSENT.

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Mishaal S. Gill  
Lawyer for the Administrator

BY THE COURT

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REGISTRAR

**SCHEDULE "A"**

**List of Counsel**
