

# IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: *SVC-Mountainside ULC (Re)*,  
2025 BCSC 517

Date: 20250124  
Docket: S249020  
Registry: Vancouver

**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

Before: The Honourable Mr. Justice Coval

## **Oral Reasons for Judgment**

In Chambers

Counsel for the Petitioners:

M. Grossell  
T. Jeffries  
S. Srikaruna

Counsel for the Attendee, BDO Canada  
LLP:

K. Jackson

Counsel for the Attendee, Executive Inn  
Inc.:

S. Stephens

Place and Date of Hearing:

Vancouver, B.C.  
January 23, 2025

Place and Date of Judgment:

Vancouver, B.C.  
January 24, 2025

[1] **THE COURT:** As explained in the submissions of counsel for the petitioners and the proposed administrator, this application seeks a somewhat unusual receivership arrangement under s. 39 of the *Law and Equity Act [LEA]*, in order to pursue a practical solution to the petitioners' difficult commercial situation.

[2] I accept the submissions that there is the jurisdiction to make the orders sought, and that they are commercially fair and reasonable in the circumstances particularly given the lack of apparent viable alternatives for the stakeholders.

**Background Facts**

[3] The petitioner, Shell Owners Association – Pacific, is a Delaware company.

[4] The petitioner, SVC-Mountainside ULC, is a Nova Scotia company.

[5] Both are extra-provincially registered in BC.

[6] Together, they own 56 residential lots in a resort strata building in the heart of the Whistler Village, operated and managed as a vacation lease and time-share business known as Shell Mountainside Lodge. The vacation lease business has approximately 1,300 members, and the time share approximately 430. These members have no ownership interest in the strata lands.

[7] The other arm's-length strata lot owners are: a numbered company that runs a hotel known as the Executive Inn, which owns 36 lots; and two other lots owned by the strata corporation itself, where it operates the front desk and a hallway in one lot and the other was run in the past as a restaurant.

[8] In brief, the reason for this petition is that the petitioners face a looming financial crisis consisting of unfunded capital expenditures, delinquency payment from their time-share and lease members, negative cash flow, and parent companies unwilling to continue to fund. They also face difficulties in selling their assets such that the only option appears to be a transparent court-supervised process that can provide a vesting order to a buyer.

[9] As mentioned, the proposed solution to this situation is a receivership order under s. 39 of the *Law and Equity Act*, appointing BDO Canada LLP as an administrator (or what counsel called a “soft receiver”), to assist the petitioners with the proposed sale and investment process (“SISP”) for the sale of their assets.

[10] The proposed administrator would also assist in communication with stakeholders, including the petitioners’ members, assisting with cash flow, and separating the petitioners’ accounts from those of their affiliates, as well of course as reporting to the court.

[11] The receivership application is not being brought under the more standard jurisdictions of the *Companies’ Creditors Arrangement Act*, R.S.C. 1985, c. C-36, or *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, because the petitioners do not yet satisfy the insolvency test under those statutes, though it appears they are heading in that direction.

[12] As I understand it, what is unusual about the proposal is for an administrator to be appointed under the s. 39 receivership provisions, but at the same time allow the petitioners to remain debtors in possession while continuing to run the time-share and lease business while the administrator conducts the court sale process. Also unusual for a receivership order are the proposed stays and charges, which I address below.

**Service**

[13] I am satisfied that all appropriate persons were notified of, and served with, the petitions in December 2024 and early January 2025.

[14] This included the union representing 19 employees of the petitioners who work at the lodge, the board that represents the time share members, the advisory committee that represents the lease members, and the other strata owners.

[15] There are no secured creditors to be served, and no one appears to oppose these initial orders, all of which were supported by the proposed administrator in its pre-filing report of January 22, 2025.

### **Analysis**

[16] I accept that the *status quo* is not a sustainable option for the petitioners to deal with their financial and commercial circumstances, and there is no other readily apparent viable option.

[17] I accept the petitioners, while not yet insolvent, are on the brink. They have approximately \$9 million of deferred capital expenditures, as supported by two engineering reports which are somewhat dated and therefore likely underestimate the overall required expenditures. They have significant delinquency in payments from their members of approximately \$8 million. Their financial records show \$1 million in cash or receivables, but their net negative cash flow suggests that that amount will be used up by February 2025.

[18] I accept that, on the evidence, an out-of-court standard sales process is not viable. The petitioners have tried that recently and it failed. This resulted in litigation with an affiliate of Executive Inn. The contracts with their members cannot be unilaterally terminated by the petitioners. This creates obstacles and risk for potential buyers. The court process that could terminate the contracts, with a claims process for members, may be the best way to maximize value while still being fair to any members who might oppose. Another complication is that the petitioners' accounting and financial records are complex and integrated with their affiliated companies.

[19] Turning to the specific relief in the proposed administrator appointment order, there is broad jurisdiction to appoint BDO as a soft receiver or administrator under s. 39 of the *Law and Equity Act*.

[20] I recognize that is considered an extraordinary remedy. But in this case I am satisfied it is just and convenient to make the order, considering the factors in *Maple Trade Finance Inc. v. CY Oriental Holdings Ltd.*, 2009 BCSC 1527.

[21] The evidence suggests there will be irreparable harm if the order is not made, due to the looming financial losses and insolvency of the petitioners and the lack of viable options. No stakeholders have as yet been identified who would be prejudiced by the orders, and most seem likely to benefit.

[22] This conclusion is supported by the decision in similar circumstances in *Carriage Hills Vacation Owners Association* and *Carriage Ridge Owners Association*, on May 15, 2020. That was also a time-share resort with an aging building and low cash reserves. An administrator was appointed to assist in that situation under the *Ontario Courts of Justice Act* because, as here, the applicants did not yet meet the insolvency test under the *CCAA* or *BIA*. Justice Conway from the Ontario Court said:

Having regard to all of the circumstances of the case, I am satisfied that it is just and convenient to appoint an administrator for the Applicants. Among other things, the Applicants have established that they will suffer irreparable harm in the further deterioration of their financial position if the order is not granted; the order will permit the Applicants to remain in possession of their assets and manage their affairs (subject as provided in the order); no stakeholder will be prejudiced; the order will enable the court to address any ongoing issues raised by any stakeholder; and the balance of convenience favours granting the order.

[Citations omitted.]

[23] The additional benefit from the proposal is that Executive Inn supports the receivership. As part of the order, it would discontinue its affiliate's litigation against the petitioners. Also, because the petitioners remain in possession and control of the business, the cost of the receivership is substantially less than it would be otherwise. The court terms required for this process are part of the model receivership order.

[24] Turning then to the additional terms beyond the appointment of BDO as administrator. The proposed order contains a stay of proceedings. I accept that as a useful and just aspect of the order under s. 39(2). Otherwise, suppliers and members, etc., could commence proceedings which might interfere with this complex sale process. Under the stay, they will not be permitted to do so unless

allowed by the court. In my view, that is a reasonable protection given the difficult commercial circumstances.

[25] Next, there are two charges sought: an administrative charge for the administrator and its counsel and for counsel for the petitioners, up to a total of \$500,000; and, a \$350,000 charge for director's liability not covered by their D&O insurance.

[26] The directors will continue to play active roles for the petitioners as they carry on business. The initial plan is that these fees will be paid from the petitioners' funds rather than via the charges, but the charges are there as a backstop in case needed.

[27] Given the financial circumstances and complexity of the situation, I think the benefits from this outweigh any potential prejudice. There is a carve-out from the D&O charge for gross negligence and willful misconduct. The amounts suggested have been recommended by the proposed administrator based on the petitioners' financials and, as mentioned, there are no secured creditors who are being prejudiced by these proposed charges.

[28] The second aspect of the application is the proposed SISF terms, including a "stalking horse agreement" with an affiliate of Executive Inn. Again, there is no opposition, and this is supported by the proposed administrator. Counsel appeared for Executive Inn and its affiliates, including the stalking horse buyer, and they of course support the orders.

[29] I am told there is also a tentative financing agreement between the affiliate of Executive Inn and the petitioners, which the administrator supports, for further funds to allow the petitioners to continue business to the end of this contemplated process.

[30] The stalking horse agreement is for a sale at \$12 million with \$180,000 or 1.5% break fee. I am told that percentage is low by market standards. I am satisfied that this is a reasonable initial price based on being advised that it is approximately the same value as: a 2023 petitioner appraisal; the estimated value from the realtor

listing agent in 2024; and, the value of a letter of intent reached with the affiliate of Executive Inn in 2021.

[31] For these reasons, I think it is in the best interests of the process in terms of seeking the highest value for the assets for it to include the stalking horse agreement. Again, there is no opposition to that.

[32] In terms of the SISP, in my view, it is a commercially prudent way to seek the highest market price. It includes a 60-day phase one for parties to provide non-binding LOIs. The administrator will then select the best buyer candidates, to participate in a 30-day phase two, which will include data room for their further due diligence. Offers will then be received. If there are offers superior to the stalking horse bid, there will be an auction process.

[33] The closing date target is for the end of May. I am told the agent has already begun preliminary steps in preparing to market the property. There is also a conference at Whistler happening this weekend, which potential purchasers are expected to attend.

[34] In sum, I accept counsel's submission that I have the jurisdiction to approve the SISP and the stalking horse under s. 39(2), and I am satisfied that it is a commercially competitive, fair, and prudent process to try to optimize value in these circumstances.

**Conclusion**

[35] Yesterday, I was taken through the orders, both the appointment order and the SISP approval order, in detail by counsel. I am satisfied and prepared to sign them.

“Coval J.”