



No. S-229607

VANCOUVER REGISTRY

IN THE SUPREME COURT OF BRITISH COLUMBIA

BETWEEN:

MITSUBISHI HC CAPITAL CANADA INC.

PETITIONER

AND:

VIC VAN ISLE CONSTRUCTION LTD., VVI CONSTRUCTION LTD., AND LORTAP ENTERPRISES LTD.

RESPONDENT

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

**IN THE MATTER OF THE RECEIVERSHIP OF
VIC VAN ISLE CONSTRUCTION LTD., VVI CONSTRUCTION LTD., AND
LORTAP ENTERPRISES LTD.**

NOTICE OF APPLICATION

Name of applicant: BDO Canada Limited, in its capacity as Court-appointed receiver and manager (the "**Receiver**") of Vic Van Isle Construction Ltd., VVI Construction Ltd., and Lortap Enterprises Ltd. appointed by the Order of Justice Fleming made April 11, 2023

To: The Service List

TAKE NOTICE that an application will be made by the applicant to the presiding judge at the courthouse at 800 Smithe Street in Vancouver, British Columbia on September 19, 2023 at 9:45 am for the order set out in Part 1 below.

Part 1: ORDERS SOUGHT

1. An order substantially in the form attached to this Application as **Schedule "A"** approving an interim distribution to Mitsubishi HC Capital Canada Inc. in an amount not to exceed \$1,200,000.00.
2. Such further and other relief as counsel may request and this Court finds to be just and convenient in the circumstances.

Part 2: FACTUAL BASIS

Background

3. On April 11, 2023 (the "**Date of Appointment**"), BDO Canada Limited was appointed as Receiver of all the assets, undertakings, and properties (collectively, the "**Property**") of Vic Van Isle Construction Ltd. ("**Vic Van Isle**"), VVI Construction Ltd. ("**VVI Ltd.**"), and Lortap Enterprises Ltd. ("**Lortap**") pursuant to an Order of the Honourable Justice Fleming (the "**Receivership Order**"). Vic Van Isle, VVI Ltd. and Lortap are collectively referred to as the "**Debtors**".

4. Vic Van Isle and VVI Ltd.'s primary business prior to the Date of Appointment was providing general contractor and design build services to construction projects located in interior British Columbia, Alberta and Ontario. Lortap's primary business prior to the Date of Appointment was millwork and cabinetry manufacturing.

5. At the Date of Appointment, the Debtors' operations had been shut down and its respective employees were recently terminated.

6. The Receiver estimates total receipts from the sale of assets and equipment of the Debtors, estimated accounts receivable collected, and rental income to be in the approximate aggregate amount of \$2,000,000.00.

7. On June 6, 2023, the Honourable Justice Tammen, granted an Order approving an Auction Service Agreement, thereby approving an auction sales process with respect to certain assets of Vic Van Isle (the "**Auction**").

8. On June 6, 2023, the Honourable Justice Tammen, granted a further Order approving an asset purchase agreement with respect to certain assets of Vic Van Isle and/or VVI.

9. The relevant facts regarding the sales process that was conducted by the Receiver is detailed in the Receiver' First Report to the Court dated May 24, 2023.

10. As set out in the Second Report of the Receiver filed herein, the Receiver has completed the Auction.

11. The Debtors owe approximately \$1,700,0000 plus accrued interest and legal costs to Mitsubishi HC Capital Canada Inc. (the "**Senior Secured Lender**"). The Debtors also owe approximately \$75,000.00 to various former employees in respect of Wage Earner Protection

Program claims (the "WEPP Claims"), and have reported unremitted employee source deductions due to Canada Revenue Agency (the "CRA") of approximately \$450,000.00 (the "Estimated CRA Deemed Trust Claim").

12. CRA has not completed its trust audit for the Debtors, and therefore, the exact amount of the CRA claim is not known at this time.

13. On or about July 19, 2023, the Receiver assigned Vic Van Isle and Lortap into bankruptcy in accordance with Paragraph 3(S) of the Receivership Order.

Interim Distribution to Mitsubishi HC Capital Canada Inc.

14. The Receiver's independent legal counsel has reviewed the security granted to the Senior Secured Lender and has provided an opinion, subject to standard qualifications and assumptions, that the security is valid and enforceable.

15. The Senior Secured Lender's secured claim against the Debtors is in the approximate aggregate amount of \$1,700,000.00 plus accrued interest and legal costs. The Receiver is of the opinion that there will be insufficient proceeds recovered from the assets of the Debtors to satisfy the Senior Secured Lender's claim.

16. The Receiver is seeking an Order approving an interim distribution to the Senior Secured Lender in an amount not to exceed \$1,200,000.00, subject to amounts owing to CRA in respect of any deemed trust claim arising as a result of the *Income Tax Act*, RSC 1985, c 1 (5th Supp), *Employment Insurance Act*, SC 1996, c 23, *Canada Pension Plan*, RSC 1985, c C-8 and any analogous provincial legislation, and subject to amounts owing for the WEPP Claim.

17. The Receiver is of the view that the interim distribution is just and appropriate.

Part 3: LEGAL BASIS

18. The Receiver has realized upon the majority of the assets of the Debtors and is of the view that the only claims ranking in priority to the claim of the Senior Secured Lender are the WEPP Claims and the Estimated CRA Deemed Trust Claim, and the Senior Secured Lender will suffer a shortfall.

19. The Receiver will rely upon the Receivership Order, the *Bankruptcy and Insolvency Act*, R.S.C. 1985, including without limitation s.87, the *Personal Property Security Act*, RSBC 1996, c 359, and the inherent jurisdiction of this Honourable Court.

Part 4: MATERIAL TO BE RELIED ON

20. Second Report of the Receiver dated August 19, 2023;
21. First Report of the Receiver dated May 24, 2023.
22. The Receivership Order.
23. Such further and other material as counsel may advise and this Honourable Court may consider.

The applicant estimates that the application will take 20 minutes.

This matter is not within the jurisdiction of a master.

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).

Date: August 22, 2023



Signature of Susy M. Trace
Lawyer for the Receiver

MILLER THOMSON LLP
Barristers and Solicitors

2700 Commerce Place
10155 - 102 Street
Edmonton, Alberta T5J 4G8

Susy M. Trace
Phone: (780) 429-9713
File No.: 0267850.0001

To be completed by the court only:

Order made

in the terms requested in paragraphs _____ of Part 1 of this notice of application

with the following variations and additional terms:

Date: _____

Signature of Judge Master

APPENDIX

THIS APPLICATION INVOLVES THE FOLLOWING:

- discovery: comply with demand for documents
- discovery: production of additional documents
- 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

SCHEDULE "A"

No. S-229607

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PETITIONER

AND:

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RESPONDENT

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ORDER MADE AFTER APPLICATION

APPROVAL OF INTERIM DISTRIBUTION

BEFORE THE HONOURABLE

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_____, 2023

THE APPLICATION of BDO Canada Limited, in its capacity as Court-appointed receiver (the "Receiver") of the assets, undertakings and properties of Vic Van Isle Construction Ltd., VVI Construction Ltd., and Lortap Enterprises Ltd. (collectively, the "Debtors") coming on for hearing at the Courthouse at 800 Smithe Street, Vancouver, British Columbia, on the [X]th day of [X], 2023;

AND ON HEARING Susy M. Trace, counsel for the Receiver, and those other counsel listed on Schedule "A" hereto;

AND UPON READING the material filed, including the Second Report of the Receiver dated August 15, 2023 (the "Second Report of the Receiver");

THIS COURT ORDERS AND DECLARES THAT:

1. Service of notice of this Application and supporting materials is hereby declared to be good and sufficient, no other person is required to have been served with notice of this application and time for service of this application is abridged to that actually given.

2. The Receiver is hereby permitted to make a distribution, from the receipts held by the Receiver; to Mitsubishi HC Capital Canada Inc. in an amount not to exceed \$1,200,000.00, subject to amounts owing to Canada Revenue Agency ("CRA") in respect of any deemed trust claim arising as a result of the *Income Tax Act*, RSC 1985, c 1 (5th Supp), *Employment Insurance Act*, SC 1996, c 23, *Canada Pension Plan*, RSC 1985, c C-8 and any analogous provincial legislation, and subject to amounts owing pursuant to the Wage Earner Protection Program ("WEPP").
3. **THIS COURT HEREBY REQUESTS** the aid and recognition of any court, tribunal, regulatory or administrative body, wherever located, to give effect to this Order and to assist the Receiver and its agents in carrying out the terms of this Order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Receiver, as an officer of this Court, as may be necessary or desirable to give effect to this Order or to assist the Receiver and its agents in carrying out the terms of this Order.
4. The Receiver or any other party have liberty to apply for such further or other directions or relief as may be necessary or desirable to give effect to this Order.

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:

Signature of Susy M. Trace
Lawyer for the Receiver

BY THE COURT

Registrar

**SCHEDULE A
TO APPROVAL OF INTERIM DISTRIBUTION
COUNSEL LIST**

Counsel Name	Party Represented

No. S-229607
Vancouver Registry

IN THE SUPREME COURT OF BRITISH COLUMBIA
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