



COURT FILE NO. VLC-S-S-234019
VANCOUVER REGISTRY

IN THE SUPREME COURT OF BRITISH COLUMBIA

IN THE MATTER OF THE RECEIVERSHIP OF
BEYOND THE GRAPE ON PREMISE WINEMAKING LTD.

AND

BUSINESS DEVELOPMENT BANK OF CANADA

PLAINTIFF

BEYOND THE GRAPE ON PREMISE WINEMAKING LTD.
FRASER MILLS FERMENTATION COMPANY LTD.
IAN DONALD MACKERRICHER
MICHAEL EDWARD DRUCE
DANIEL JOSEPH PARENT
STEPHEN PAUL SHELDON
WARREN TODD BOYER

DEFENDANTS

NOTICE OF APPLICATION

Name of applicant:

BDO Canada Limited, in its capacity as court appointed receiver of all of the assets, undertakings and properties of Beyond the Grape On Premise Winemaking Ltd. (in such capacity, the "Receiver")

To: The Plaintiff and Defendants

TAKE NOTICE that an application will be made by the applicant to the presiding judge at the courthouse at 800 Smithe Street, Vancouver, BC on **June 21, 2024, at 9:45 a.m.** for the orders set out in Part 1 below.

The applicant estimates that the application will take 30 minutes.

This matter is not within the jurisdiction of an Associate Judge.

Part 1: ORDERS SOUGHT

1. An Order substantially in the form attached hereto as **Schedule “A”** discharging the Receiver, approving the Receiver’s activities and fees, and the fees of its counsel, and authorizing the final distribution of funds.

Part 2: FACTUAL BASIS

1. Beyond the Grape on Premise Winemaking Ltd. (the “**Company**”) owned and operated a licensed brewery and sold packaged beer to consumers. The Company operated its business from leased premises located at 3044 St Johns Street, Port Moody, BC.
2. Royal Bank of Canada (“**RBC**”) and Business Development Bank of Canada (“**BDC**”) are the senior secured creditors of the Company. RBC and BDC each hold General Security Agreements from the Company in respect of all its present and after acquired property.
3. Pursuant to a priority agreement between RBC and BDC, BDC’s security interest has priority over certain assets of the Company and RBC has priority over the remaining assets.
4. By an Order made on September 18, 2023 in this action, judgment was granted to BDC in the amount of \$752,374.71 against the Company.
5. By an Order made on May 19, 2023 in S.C.B.C. Kamloops Registry Action No. KAM-S-S-61640, judgment was granted to RBC in the amount of \$408,454.81 against the Company.
6. By an Order made on September 18, 2023 (the “**Receivership Order**”), the Receiver was appointed as the receiver of the assets, undertakings and property of the Company with authority to, among other things:
 - (a) Market any or all of the assets, undertaking and property;
 - (b) Sell the Property outside the ordinary course of business with approval of the Court; and
 - (c) Apply for a vesting order or such other orders as necessary to convey the Property to a purchaser free and clear of any liens or encumbrances.
7. By a Bankruptcy Order also made on September 18, 2023, the Debtor was adjudged bankrupt and BDO Canada Limited was appointed as the Licensed Insolvency Trustee of the estate of the Debtor in bankruptcy.
8. As set out in the Reports of the Receiver filed herein, the Receiver has completed its realization of the Company’s assets. The net proceeds are proposed to be paid to BDC and RBC, both of which will suffer a shortfall on their security.

9. The sales process that was conducted by the Receiver in respect of the Company's personal property is detailed in the Receiver's First Report to the Court filed October 20, 2023 (the "**First Report**").
10. Pursuant to the Approval and Vesting Order made on November 2, 2023, the court approved the sale of all of the Company's assets to Train Wreck Brewing Ltd.
11. The Receiver completed the sale of the personal property to Train Wreck Brewing Ltd. on November 21, 2023. The realization from the sale was the purchase price of \$201,013.
12. The First Report was prepared for the specific purpose of applying for the Approval and Vesting Order.
13. The activities of the Receiver since the date of the Receivership Order are summarized in the Receiver's Second Report to the Court filed in support of this application (the "**Final Report**") and include but are not limited to:
 - (a) securing and evaluating the assets of the Company;
 - (b) marketing the assets of the Company and soliciting auction proposals;
 - (c) reviewing auction proposals and offers and negotiating the sale of the assets;
 - (d) completing the sale of the assets and initiating the transfer of the liquor license;
 - (e) communicating with creditors/stakeholders including the Company's landlord;
 - (f) working with Canada Revenue Agency to facilitate a payroll trust audit.

Remaining Duties of the Receiver – Final Distribution of Funds

14. As set out in the Final Report, net sale proceeds available for distribution after receivership costs will be approximately \$70,000.
15. The distribution of net sale proceeds of \$67,000 to secured creditors will be as follows (numbers approximate):

Canada Revenue Agency (source deductions)	\$19,000
Employee claims (wages)	\$3,000
BDC	\$43,000
RBC	\$5,000
Total:	\$70,000

16. As both RBC and BDC will suffer significant shortfalls on their respective claims, there is no recovery for unsecured creditors.

Receiver's Fees and Disbursements

17. The Receiver's fees and administration costs incurred in this matter from the date of appointment to October 31, 2024 were \$57,184 (including applicable taxes).
18. The time and disbursements incurred by the Receiver in the course of its duties are fair and reasonable in a receivership of this nature. In the Receiver's opinion, the cost of this receivership is comparable to receivership assignments of similar scale and complexity.
19. The hourly rates charged by the Receiver are consistent with average hourly rates billed by the Receiver on its other engagements and, to the Receiver's knowledge, consistent with other insolvency firms of comparable size engaged in similar receivership matters.
20. The Receiver requests that the Court summarily approve the Receiver's costs incurred to date and approve additional fees, disbursements and taxes to a maximum of \$15,000 to complete the administration of the receivership. The estimated fees relate to work required to prepare for the discharge of the Receiver and other unbilled work in progress.

Receiver's Legal Counsel's Fees and Disbursements

21. The Receiver engaged McMillan Dubo Law Group ("MDLG") as its legal counsel. The total legal costs of MDLG in connection with the receivership to November 30, 2023 were \$19,665.
22. The Receiver has reviewed the invoices rendered to it by MDLG and believes them to be reasonable and proper. The legal services were necessary for the Receiver to fulfill its obligations in the proceeding.
23. The Receiver requests that the Court summarily approve the legal costs incurred to \$19,665.55 and approve additional fees, disbursements and taxes to a maximum of \$6,000 to complete the administration of the receivership. The estimated costs relate to work required in connection with the discharge of the Receiver and unbilled work in progress.

Part 3: LEGAL BASIS

24. The Receiver has largely completed its duties and upon the approval of the Court for the final distribution and completion of its remaining duties, the receivership proceedings will be concluded.
25. Pursuant to paragraph 21 of the Receivership Order, the Receiver and its legal counsel shall pass their accounts from time to time and for this purpose the accounts of the Receiver and its legal counsel are referred to a judge of the Supreme Court of British Columbia and may be heard on a summary basis.
26. The Receiver will rely on Rule 10-2(3) of the Supreme Court Civil Rules, paragraph 21 of the Receivership Order and the inherent jurisdiction of this Honourable Court.

Notice

27. The Receiver intends to serve this Application and the Final Report of the Receiver by posting a copy to the creditors' information website maintained by the Receiver in this matter and forwarding a copy to the Defendants in these proceedings.

Part 4: MATERIAL TO BE RELIED ON

- 1. The Applicant relies on:
 - (a) the Receivership Order dated September 18, 2023;
 - (b) the First Report of the Receiver to the Court dated October 20, 2023;
 - (c) the Final Report of the Receiver to the Court dated May 29, 2024;
 - (d) Affidavit #1 of C. Bowra;
 - (e) Blacklined Model Discharge Order; and
 - (f) Such other materials 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 this 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: June 6, 2024



Signature of Sherryl A. Dubo

applicant lawyer for applicant

To be completed by the court only:

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"/> Master

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

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DEFENDANTS

ORDER MADE AFTER APPLICATION

DISCHARGE ORDER

BEFORE THE HONOURABLE)
) _____, 2024
)
_____)

THE APPLICATION of BDO Canada Limited (the "Receiver") in its capacity as Court-appointed Receiver of the assets, undertakings and properties of Beyond the Grape On Premises Winemaking Ltd. coming on for hearing at Vancouver, British Columbia, on the 21st day of June, 2024; AND ON HEARING Sherryl Dubo, counsel for the Receiver, and those other counsel as

may be listed on **Schedule "A"** hereto; AND UPON READING the material filed, including the First Report of the Receiver dated October 20, 2023, the Final Report of the Receiver dated May 29, 2024 (the "**Report**") and the Affidavit #1 of Chris Bowra sworn and filed herein (the "**Affidavit**");

THIS COURT ORDERS AND DECLARES THAT:

1. The activities of the Receiver, as set out in the Report, are hereby approved.
2. The fees and disbursements of the Receiver and its counsel, as set out in the Report and the Affidavit, including the estimate of fees to conclude matters, are hereby approved.
3. After payment of the fees and disbursements of the Receiver as herein approved, the Receiver shall pay all funds remaining in its hands to Business Development Bank and Royal Bank of Canada in accordance with the distribution set forth in the Report.
4. Upon payment of the amounts set out in paragraph 3 hereof, the Receiver shall be discharged as Receiver of the assets, undertaking and property of the Debtor, provided that notwithstanding its discharge herein: (a) the Receiver shall remain Receiver for the performance of such incidental duties as may be required to complete the administration of the receivership herein; and (b) the Receiver shall continue to have the benefit of the provisions of all Orders made in this proceeding, including all approvals, protections and stays of proceedings in favour of BDO Canada Limited in its capacity as Receiver.
5. BDO Canada Limited is hereby released and discharged from any and all liability that BDO Canada Limited now has or may hereafter have by reason of, or in any way arising out of, the acts or omissions of BDO Canada Limited while acting in its capacity as Receiver herein. Without limiting the generality of the foregoing, BDO Canada Limited is hereby forever released and discharged from any and all liability relating to matters that were raised, or which could have been raised, in the within receivership proceedings.

6. Notwithstanding any provision herein, this Order shall not affect any person to whom notice of these proceedings was not delivered as required by the *Bankruptcy and Insolvency Act* and regulations thereto, any other applicable enactment or any other Order of this Court.

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 Sherryl Dubo
Counsel for the Receiver

BY THE COURT

REGISTRAR

Schedule A – List of Counsel

Counsel	Party

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FILE NO. 4701-107

SAD/lt

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