



No. S235348
Vancouver Registry

IN THE SUPREME COURT OF BRITISH COLUMBIA

BETWEEN:

MCEOWN AND ASSOCIATES LTD. in its capacity as
RECEIVER OF 8655 GRANVILLE LIMITED PARTNERSHIP

Petitioner

AND:

RED BUFFALO 8655 HOLDINGS LTD.

Respondent

NOTICE OF APPLICATION

Name of applicant: McEown and Associates Ltd. (the “**Receiver**”) in its capacity as the receiver, appointed by Extraordinary Resolution dated April 18, 2023, of 8655 Granville Limited Partnership (the “**Limited Partnership**”), and in its capacity as Court appointed receiver of Red Buffalo 8655 Holdings Ltd. (“**8655 Holdings**”)

To: Canadian Western Bank
Red Buffalo 8655 Management Corp.
Canadian Red Bull Group Investment Management Ltd.
Sunshine Treasurehunt Development Ltd.
1146506 B.C. Ltd.
WJY 2015 Trust
Chang Xia Lv
Hu Wang
Hong Xu
1146503 B.C. Ltd.
1146812 B.C. Ltd.
1138555 B.C. Ltd.
Canada Redwood Education Group Ltd.
Core Concept Consulting Ltd.

TAKE NOTICE that an application will be made by the Receiver to the presiding judge or master at the courthouse at 800 Smithe Street, Vancouver, British Columbia, on the 5th day of December, 2023, at 9:45 a.m, or as soon thereafter as counsel may be heard for the orders set out in Part 1 below.

Part 1: ORDERS SOUGHT

1. An Order substantially in the form attached as Schedule “A” authorizing and directing the Receiver to:
 - a. complete the sale (the “**Transaction**”) of:
 - i. the vacant development property, being the lands and premises located at 8655 Granville Street, Vancouver, BC, (the “**Lands**”) more particularly described as:

Parcel Identifier: 009-430-105

Lot D Block F District Lot 318 Plan 21521
 - ii. in the alternative, all of the issued shares capital of Red Buffalo 8655 Holdings Ltd. (the “**Shares**”).
2. Such further and other relief as this Honourable Court deems just

Part 2: FACTUAL BASIS**Lands and Foreclosure**

3. The Lands are a vacant development property located at 8655 Granville Street, Vancouver, BC. They were formally the site of a gas station.
4. Canadian Western Bank (“**CWB**”) holds a first mortgage and assignment of rents registered against title to the Lands under registration numbers CA6653043 and CA6653044 (the “**CWB Mortgage**”).
5. CWB commenced foreclosure proceedings by petition filed on May 17, 2023.
6. On June 22, 2023, CWB obtained an *order nisi* in those proceedings. The amount required to redeem the Lands was \$10,271,511.26 as of April 26, 2023 (together with interest at a daily rate of \$2,292.21) and a redemption scheduled to expire December 22, 2023. The Receiver is advised by counsel for CWB that it intends to apply for conduct of sale on expiry of the redemption period.

Voluntary Winding Up and Receivership of the Limited Partnership

7. 8655 Holdings is the registered owner of the Lands and holds legal title to the Lands, for the sole benefit of Red Buffalo 8655 Management Corp. (“**8655 Management**”) in its capacity as general partner of the Limited Partnership,

- pursuant to the terms of a Bare Trust and Agency Agreement dated February 28, 2018.
8. The Limited Partnership is a limited partnership governed by a Limited Partnership Agreement dated February 21, 2018 (the “LP Agreement”).
 9. By Extraordinary Resolution dated April 18, 2023 (the “**Winding Up Resolution**”), certain limited partners holding in aggregate more than 75% of the aggregate number of outstanding units in the Limited Partnership resolved to wind up and dissolve the Limited Partnership, pursuant to Sections 10.14(b) and 12.1 of the LP Agreement.
 10. The Winding Up Resolution provided, among other things, that:
 - a. the Receiver be appointed as receiver of the Limited Partnership pursuant to Sections 12.3 and 12.4 of the LP Agreement;
 - b. the Receiver was authorized and directed to wind up the Limited Partnership in accordance with the procedure described at Sections 12.5 and 12.6 of the LP Agreement; and
 - c. the Receiver was authorized and directed, on behalf of the Limited Partnership, to execute and deliver all documents, instruments and other writings and to do all acts and things as the Receiver considered necessary or desirable in connection with the winding up and dissolution of the Limited Partnership, and the liquidation of the property of the Limited Partnership and the distribution of the proceeds thereof, pursuant to the terms of the LP Agreement.
 11. Pursuant to Section 12.5 of the LP Agreement, the Receiver was charged with, among other things:
 - a. winding up the affairs of the Limited Partnership and liquidating all its property in an orderly manner; and
 - b. managing and operating the property of the Limited Partnership (unless then sold) and exercising all powers and authority of the General Partner, 8655 Management, under the LP Agreement.
 12. On July 27, 2023 the Receiver, in its capacity as receiver of the Limited Partnership, commenced petition proceedings seeking to also be appointed as a court appointed receiver of 8655 Holdings, in BCSC Vancouver Registry No. S235348.

13. By Order pronounced August 3, 2023 (the “**Receivership Order**”), McEown was appointed as receiver of 8655 Holdings.
14. The Receivership Order authorizes and empowers (without obligation) the Receiver to, amongst other things:
 - a. paragraph 3(b). Sell, transfer, issue or cancel any of 8655 Holdings’ share capital;
 - b. paragraph 3(b). Market and negotiate terms and conditions of sale for the Lands;
 - c. paragraph 3(m). Sell, convey, or transfer any part of 8655 Holdings’ property, with court approval for any transactions exceeding \$200,000 in the aggregate.
15. Based on the information available to the Receiver 8655 Holdings is not insolvent and in the event that the Transaction is approved and completes, there will be funds available for distribution to the Limited Partnership (and then the limited partners) after payment of outstanding liabilities

Lands Listing History and Marketing

16. After its initial appointment as receiver of the Limited Partnership, the Receiver entered into negotiations with 8655 K Cube Project Limited Partnership by its general partner 1383990 B. C. Ltd. (together referred to as “**Cube**”) which had expressed an interest in acquiring the Lands. Cube is the proposed purchaser for the purposes of the Transaction.
17. During the course of those negotiations one of the limited partners disclosed to the Receiver their potential involvement in Cube as a lender and/or a lender with debt convertible into equity.
18. As a result of those negotiations the Receiver received an offer to purchase the Lands/Shares from Cube which, based on advice received as to value, the Receiver was desirous of accepting (the “**Initial Offer**”). The Initial Offer was for a purchase price greater than the Transaction and would not have incurred a real estate commission.
19. However, when the Receiver sought comment from some of the limited partners on the Initial Offer, concerns were raised about the terms of the Initial Offer (the purchase price) and the limited partners’ relationship with Cube. A demand was

also made of the Receiver to list the Lands for sale and threats of litigation were made.

20. On or about July 24, 2023 the Receiver, in its capacity as receiver of the Limited Partnership only, entered into an exclusive listing agreement with Cushman & Wakefield ULC (“**Cushman Wakefield**”) and CAH Realty Inc. as listing agent for the Lands. The Lands were initially listed for sale for a listing price of \$24,800,000 based on a request from one of the minority limited partners. The listing price was contrary to the recommendation of realtors.
21. The listing was subsequently amended to reflect McEown’s appointment as receiver of 8655 Holdings and to include the possibility of a sale of shares. In August 24, 2023 the Receiver entered into a MLS Listing Agreement with Cushman Wakefield to allow for the Lands to be listed with MLS.
22. The listing agreements:
 - a. incorporated terms expressly confirming the capacity in which the Receiver was acting;
 - b. provided that any offers to purchase must include a Sale Schedule addressing specific terms relating to the Receiver; and
 - c. addressed the possibility that the Lands or Shares may be purchased by a related buyer in which circumstances, a reduced commission would be payable.
23. Cushman Wakefield undertook a comprehensive marketing of the Lands. Unfortunately, as a result of weakening market conditions difficulties were experienced in securing offers for the Lands/Shares.

Development permit

24. The Lands are vacant property which have development potential. Prior to the appointment of the Receiver a Development Permit application was filed with the City of Vancouver which allows for a significant increase in the buildable area. In order to secure the Development Permit the City of Vancouver has demanded that various conditions be satisfied. As a result of dispute which led to the winding up of the Limited Partnership, few steps have been taken to satisfy those conditions
25. In September 2023 the Receiver became aware that the City of Vancouver had issued a notice of cancellation for the Development Permit application effective November 2, 2023. Based on advice received from realtors, the Receiver

determined that the cancellation of the Development Permit application would negatively affect the value of the Lands. As a result, the Receiver has retained consultants to assist in addressing the conditions and an extension has been negotiated with the City to January 31, 2023. The Receiver is of the view that the conditions would best be addressed by the ultimate purchaser.

Offers Received

26. In late September 2023 Cushman Wakefield received the following offers;
 - a. September 28, 2023.
 - i. \$18,500,000 purchase price;
 - ii. 90 day subject period;
 - iii. six-month closing date; and
 - iv. a vendor takeback mortgage.
 - b. September 29, 2023 from Cube.
 - i. \$17,600,000 purchase price;
 - ii. no conditions;
 - iii. \$1,000,000 deposit; and
 - iv. closing within 30 days of court approval.
27. Based on recommendations provided by realtors the Receiver entered into further negotiations with Cube with respect to the proposed purchase price and the form of offer and on October 31, 2023, the Receiver entered into a contract of purchase and sale for the Lands (with an option to acquire the Shares) which is the Transaction which the Receiver seeks approval of.
28. The Receiver has disclosed the terms of the Transaction to counsel for CWB and other interested parties including counsel for the limited partner which opposed the Initial Offer. The accepted contract is subject only to approval by the court.

Distribution of sale proceeds

29. The terms of the Transaction provide for the funds required to complete to be tendered by a combination of cash and a promissory note issued by one of the

limited partners in the Limited Partnership. The Receiver will be filing a companion application seeking directions with respect to the distribution of sale proceeds and the limited partners' entitlement which will be heard at the same time as this application.

Sealed bid protocol

30. Other parties have expressed an interest in purchasing the Lands and the realtor has been instructed to continue to market the Lands and inform interested parties of the opportunity to make competing bids at the hearing of this application and the process to do so.

Part 3: LEGAL BASIS

31. The Receiver relies on the:
- a. Receivership Order;
 - b. *Supreme Court Civil Rules*;
 - c. the *Bankruptcy and Insolvency Act* (the "BIA") and the Bankruptcy and Insolvency General Rules;
 - d. the original, auxiliary and ancillary jurisdiction in bankruptcy of this Honourable Court; and
 - e. the inherent and equitable jurisdiction of this Honourable Court.
32. Rule 13-5 of the *Supreme Court Civil Rules* [Sales by the Court] includes the following:

Court may order sale

(1) If in a proceeding it appears necessary or expedient that property be sold, the court may order the sale and may order a person in possession of the property or in receipt of the rents, profits or income from it to join in the sale and transfer of the property and deliver up the possession or receipt to the purchaser or person designated by the court.

Vesting order

(7) The person having conduct of the sale may apply to the court for a vesting order in favour of a purchaser.

33. When dealing with approval of a sale by a court-appointed receiver, relevant factors to consider are:
- a. whether the receiver has made a sufficient effort to get the best price and has not acted improvidently;
 - b. the interests of the parties;
 - c. the efficacy and integrity of the process by which offers are obtained; and
 - d. whether there has been unfairness in the working out of the process.

***Royal Bank of Canada v. Soundair Corp.* 1991 CarswellOnt 205, [1991] O.J. No. 1137**

34. The Receiver is of the view that the purchase price for the Lands is fair and commensurate with the market value and that the Transaction represents a provident sale of the following reasons:
- a. the realtors are of the view that the purchase price is commensurate with the Lands' market value and other equivalent properties;
 - b. although the Lands have only been listed for approximately four months, given the volatile market conditions the advice received from realtors indicates that they are of the view that the Lands have been sufficiently exposed to the market;
 - c. continuing to market the Lands will provide no guarantee that a higher purchase price will be achieved;
 - d. further the delay will result in:
 - i. continued holding costs (i.e. interest, insurance, maintenance, and property taxes);
 - ii. a real and substantial likelihood that CWB will seek exclusive conduct of sale for the Lands on expiry of the redemption period;
 - iii. increased costs in respect the Development Permit application and the risk of cancellation;
 - iv. increased professional fees in the receivership; and
 - v. the potential loss of Cube as a purchaser.

Part 4: MATERIAL TO BE RELIED ON

35. Affidavit #1 of John McEown made on the 27th day of July, 2023.

36. First Report to Court of the Receiver dated November 10, 2023.

37. Affidavit #1 of Craig Haziza made on the 10th day of November, 2023.

38. Order made August 3, 2023.

The Applicant estimates that the Application will take 20 minutes.

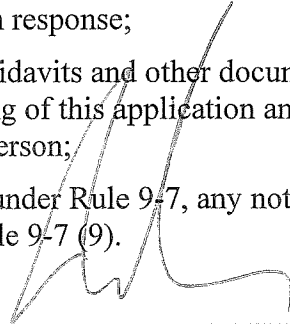
This matter is within the jurisdiction of a master.

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: November 10, 2023


 Signature of Jeremy D. West
 Counsel for Petitioner

| | |
|---|---|
| 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 | |

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
- none of the above

SCHEDULE "A"

No. S235348
Vancouver Registry

IN THE SUPREME COURT OF BRITISH COLUMBIA

BETWEEN:

MCEOWN AND ASSOCIATES LTD. in its capacity as
RECEIVER OF 8655 GRANVILLE LIMITED PARTNERSHIP

Petitioner

AND:

RED BUFFALO 8655 HOLDINGS LTD.

Respondent

**ORDER MADE AFTER APPLICATION
(VESTING ORDER)**

BEFORE) DECEMBER 5TH, 2023
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ON THE APPLICATION of McEown and Associates Ltd. (the "**Receiver**") in its capacity as the receiver, appointed by Extraordinary Resolution dated April 18, 2023, of 8655 Granville Limited Partnership (the "**Limited Partnership**"), and in its capacity as Court appointed receiver of Red Buffalo 8655 Holdings Ltd. ("**8655 Holdings**"), coming on for hearing at 800 Smithe Street, Vancouver, British Columbia, on this day, and on Jeremy West, appearing on behalf the Receiver, and [insert] appearing and upon reading the pleadings and proceedings filed herein;

THIS COURT ORDERS AND DECLARES that:

1. The sale of the following lands and premises legally described as:

Parcel Identifier: 009-430-105

Lot D Block F District Lot 318 Plan 21521

(the "Lands")

in the alternative, all of the issued shares capital of Red Buffalo 8655 Holdings Ltd. (the "**Shares**").

to 8655 K Cube Project Limited Partnership by its general partner 1383990 B. C. Ltd. (the “Purchaser”) on the terms and conditions set out in the contract of purchase and sale dated October 23, 2023, which is attached hereto as **Schedule “A”**, for \$18,800,000 plus applicable GST (the “Contract”) is approved

2. The purchase price of \$18,800,000, less the usual adjustments respecting the conveyance, be paid out without further Order as follows:
 - a. first, in payment of any outstanding taxes, utilities with respect to the Property, including any arrears, penalties and accrued interest;
 - b. second, in payment of the amounts due and owing as of closing date to Canadian Western Bank ; and
 - c. the balance remaining out of the proceeds of the sale, if any, be paid TBA.

4. Upon filing a certified copy of this order in the Vancouver Land Title Office, together with a letter from the the Receiver’s solicitor authorizing such registration, and subject to the terms of this Order, the Lands be conveyed to and vest in the Purchaser in fee simple, free and clear of any estate, right, title, interest, equity of redemption, and other claims of the parties, together with any other charges, liens, encumbrances, caveats, or certificates of pending litigation registered against the Lands, but subject to the reservations, provisos, exceptions, and conditions expressed in the original grants thereof from the Crown and subject to any existing tenancies.

5. For the purpose of issuing title in respect of the Lands, the following charges, liens, encumbrances, caveats, mortgages, and certificates of pending litigation, attached hereto as Schedule “B”, be cancelled insofar as they apply to the Lands:

| Chargeholder | Nature of Charge | Registration Nos. |
|---------------------|-------------------------|--------------------------|
| TBA | | |

together with any other charges, liens, encumbrances, caveats, or certificates of pending litigation registered against the Lands subsequent to the Judgement Creditor’s Certificate of Judgement.

6. The date for completion, adjustment, and possession be set at 30 days after the date of this Order. The completion date my, with the consent of the Receiver, be extended by 15 days without further court Order.

7. The Receiver deliver to the Purchaser vacant possession of the Lands at 5:00 p.m. on the possession date.
8. In default of possession being delivered as aforesaid, a Writ of Possession shall be issued without further order.
9. The parties may apply for such further direction as may be necessary to carry out this Order.
10. Endorsement of this Order by counsel appearing on this application other than counsel for the Receiver 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:

Signature of Jeremy D. West
Counsel for McEown and Associates Ltd.
in its capacity as the receiver of Red Buffalo 8655 Holdings Ltd.

By the Court

Registrar