

Vancouver

06-Jul-21

REGISTRY

**Court No. S-209076
Vancouver Registry**

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

**IN THE MATTER OF THE RECEIVERSHIP OF
0043660 B.C. LTD.
(FORMERLY NAMED KAMLOOPS CHRYSLER DODGE JEEP RAM LTD.)**

**THIRD REPORT TO COURT
MCEOWN AND ASSOCIATES LTD.**

JULY 6, 2021

TABLE OF CONTENTS

A. INTRODUCTION	2
B. DISCLAIMER AND TERMS OF REFERENCE	3
C. ACTIVITIES OF THE RECEIVER SINCE THE SECOND REPORT	4
D. UPDATE ON SECURED AND OTHER PRIORITY CREDITORS	5
E. RECEIPT AND DISBURSEMENT OF FUNDS	8
F. PROPOSED FURTHER DISTRIBUTIONS	9
G. CONCLUSIONS AND RECOMMENDATIONS	10

Appendices

- A. Letter dated July 2, 2001 from Nixon Wenger LLP with particulars of amounts due and owing Brian Johnson and James McManes Holdings Ltd. as at June 30, 2021.**
- B. Statement of Receipts and Disbursements as at June 30, 2021**

A. INTRODUCTION

1. By Order made September 8, 2020 McEown & Associates Ltd. (the “Receiver”) was appointed receiver, without security, of all of the assets, undertakings and property of Kamloops Chrysler Dodge Jeep Ram Limited (the “Company”).
2. On September 10, 2020 the Company was deemed to have made an assignment into bankruptcy as a result of which, McEown & Associates Ltd. is the trustee in bankruptcy of the Company in addition to its appointment as Receiver.
3. To date, the Receiver has filed the following reports reporting on various matters including the Receiver’s activities since being appointed, the priority of certain claims against the assets of the Company and its recommendations to the court regarding proposed distributions:
 - a. Receiver’s First Report to court dated October 19, 2020 (the “First Report”); and
 - b. Receiver’s Second Report to court dated November 30, 2020 (the “Second Report”).
4. The purpose of this report is to provide the Court and the parties with an update on the Receiver’s activities since the Second Report, including but not limited to the following:
 - a. the activities of the Receiver;
 - b. payments and outstanding liabilities with respect to secured and other priority creditor claims;
 - c. receipt and disbursement of funds realized by the Receiver;
 - d. further proposed distribution to creditors; and
 - e. conclusions and recommendations.

5. This report should be read in conjunction with the First Report and the Second Report.
6. Except as expressly provided herein the Receiver has utilized the definitions contained within the previous Reports for ease of reference.

B. DISCLAIMER AND TERMS OF REFERENCE

7. Except as specified, in preparing this report the Receiver has obtained and relied upon unaudited, draft and/or internal information provided by the Company and its director who advise that they have been compiled from the Company's books and records. Where available, the Receiver has reviewed external records and documentation including post-filing banking records, corporate searches and financial statements.
8. Except as otherwise described in this report:
 - a. the Receiver has not audited, reviewed or otherwise attempted to verify the accuracy or completeness of the information which has been provided in a manner that would wholly or partially comply with Generally Accepted Assurance Standards pursuant to the Chartered Professional Accountant Canada Handbook;
 - b. the Receiver has not conducted an examination or review of any financial forecast and projections in a manner that would comply with the procedures described in the Chartered Professional Accountant Canada Handbook; and
 - c. this Report has been prepared solely for the purpose described and readers are cautioned that it may not be appropriate for other purposes.

C. ACTIVITIES OF THE RECEIVER SINCE THE SECOND REPORT

9. In the First Report and Second Report the Receiver reported on its activities to November 30, 2020. Since the Second Report the Receiver has undertaken a variety of activities with respect to the Company including but not limited to the following:
 - a. pursuing collection of the Company's outstanding receivables which has resulted in further collections totaling approximately \$54,000;
 - b. arranging final payout of Bank of Nova Scotia and Roynat secured debt;
 - c. arranging for the preparation and sending out of employee T-4's and T-4 Summaries;
 - d. communicating with CRA and providing information requested by CRA in connection with the payroll and excise tax audits;
 - e. preparing and filing of Receiver reports with the Office of the Superintendent of Bankruptcy; and
 - f. preparing the 3rd Receiver's Report to Court.

10. The Receiver anticipates the following steps will be required to finalize the administration of the Receivership:
 - a. continue efforts to collect outstanding receivables, however, most of the remaining receivables are likely not collectible;
 - b. review and pay CRA's revised trust claim; and
 - c. prepare Final Report to Court and payout remaining funds to the priority creditors.

D. UPDATE ON SECURED AND OTHER PRIORITY CREDITORS

11. In the previous Reports the Receiver provided a review of the security registrations against the Company as at September 8, 2020. In addition to the specific PPSA registrations, the Receiver identified other claims which potentially have statutory priority.
12. The Receiver has distributed (in accordance with the Orders made October 23, 2020 and December 10, 2020) the sum of \$6,657,283.25 to the Bank of Nova Scotia (“BNS”) and Roynat Inc. (“Roynat”) who were the senior secured creditors. As a result, the Company’s indebtedness to those creditors is now extinguished.
13. Based on its investigations of other possible priority creditors of the Company, the Receiver can confirm the following:
 - a. The Canada Revenue Agency (“CRA”) has recently completed an audit of the Company’s payroll source deduction obligations (the “Payroll Audit”). As a result of this audit CRA will be amending its deemed trust claim which the Receiver expects to receive in the next few days.

Section 67(3) of the *Bankruptcy and Insolvency Act* (“BIA”) provides that certain deemed trusts remain valid notwithstanding bankruptcy including deemed trusts under s. 227(4.1) of the *Income Tax Act* which includes source deduction obligations.

- b. CRA has also recently completed an audit of the Company’s excise tax obligations (the “GST Audit”). As a result of this audit CRA will be amending its GST claim which the Receiver expects to receive in the next few days.

The GST obligations of the Company would typically give rise to a deemed trust in favour of the Crown for GST that is collected but not yet remitted in accordance with s.222(1) of the *Excise Tax Act* (ETA). However, s. 222(1.1) of the ETA specifically provides that the deemed trust does not apply at, or after, the time a person becomes a bankrupt for any amounts that were collected or became collectible before the date of bankruptcy and s.86(1) of the BIA confirms that the Crown is an unsecured creditor in a bankruptcy for GST claims. The initial Proof of Claim filed by the CRA for GST did not assert a priority and for the aforementioned reasons the Receiver is of the view that the outstanding GST debt is not a priority claim.

- c. Based on the information provided to the Receiver by the CRA it is expected that following will be claimed by way of an updated Proof of Claim from the CRA:

Account	Amount	Remarks
<u><i>Unsecured Claim</i></u>		
GST RT0001	136,048.72	Principal + penalties & interest
Corp. Tax RC0001	56,067.67	Principal + penalties & interest
Payroll RP0001	8,437.79	Penalties & Interest (non-deemed trust)
Payroll RP0002	52,613.27	Principal Tax Owing
Payroll RP0002	18,701.00	Penalties & Interest (non-deemed trust)
Total Unsecured Claim	271,868.45	

<i>Property Claim</i>		
Payroll RP0002	188,085.82	Deemed Trust (Property Claim)
Total CRA Claim	459,954.27	

- d. Based on the receipts and disbursements to date, it appears likely that there will be sufficient funds available to make a distribution to the creditors which have what was initially, a third priority security interest over the assets of the Company. In the First Report (at paragraph 30) the Receiver commented on the PPSA registration in favour of Brian Johnson and James McManes Holdings Ltd. (together referred to as “BJJM Holdings”) under Base Registration No. 997933K.

On August 31, 2018 BJJM Holdings registered a Financing Statement in the British Columbia Personal Property Registry (the “BJJM Holdings Registration”). At the request of the Receiver BJJM Holdings provided documents, including the following, supporting the BJJM Holdings Registration:

- i. promissory note dated August 31, 2018 with a principal amount of \$2,000,000.00 issued by Lemieux Auto Inc. in favour of BJJM Holdings;
- ii. guarantee dated August 31, 2018 executed by the Company as security for the promissory note; and
- iii. general security agreement dated August 31, 2018 between BJJM Holdings (as secured party) and the Company (as debtor) (the “BJJM Holdings GSA”).

The Receiver understands that the promissory note, guarantee and BJJM Holdings GSA arise as a result of a vendor take back loan at the time the Dealership was acquired.

Based on the Receiver's (and its counsel) review of the BJJM Holdings security documents the Receiver is of the view that:

- i. BJJM Holdings has a perfected security interest over the Company assets including the net sale proceeds; and
 - ii. as a result of the payments made to the BNS and Roynat BJJM Holdings security has priority over the balance of the claims against the Company other than the Payroll Source Deduction Claims and the administration costs of the receivership.
14. In addition to the Company, the obligations to BJJM Holdings were also guaranteed by Guy Lemieux (the former director of the Company) and Suckdev Manhas. As a result of the failure of the Company, Mr. Lemieux has made an assignment in bankruptcy in his personal capacity.
 15. The Receiver has recently been contacted by Mr. Manhas who has advised that BJJM Holdings is in the process of pursuing recovery from Mr. Manhas under the terms of the guarantee which he executed.
 16. Mr. Mann has requested that the Receiver consider making an interim distribution to BJJM Holdings as the debt is continuing to accrue interest and other costs.

E. RECEIPT AND DISBURSEMENT OF FUNDS

17. The Receiver's Statement of Receipts and Disbursement as at June 30, 2021 is attached hereto as **Appendix "B"**.

18. The net receipts currently held in the Receiver's trust account as at June 30, 2021 total \$927,126.14.

F. PROPOSED FURTHER DISTRIBUTIONS

19. On October 26, 2020 the Receiver made the First Interim Distribution of \$6,200,000 which was applied as follows:
- a. \$4,019,650.41 to the BNS; and
 - b. \$2,180,349.59 to Roynat.
20. On December 14, 2020 the Receiver made the Second Interim Distribution of \$457,283.25 which was applied as follows:
- a. \$421,930.76 to the BNS; and
 - b. \$35,352.49 to Roynat.
21. As a result of those payments the Company's indebtedness to BNS and Roynat is extinguished.
22. Based on the Receiver's investigations the assets of the Company which have been realized will be entirely utilized for payment of:
- a. the balance of the administration costs of the receivership;
 - b. the Payroll Source Deduction Claims; and
 - c. a partial payment of the amount due and owing to BJJM Holdings.
23. On July 2, 2021 counsel for BJJM Holdings delivered a statement setting out the amount due and owing to BJJM Holdings which was \$1,015,137.55 as at June 30,

2021 (see **Appendix “A”**). Interest continues to accrue at a *per diem* of \$158.50 per day from June 30, 2021.

24. Based on the funds currently on hand, the Receiver is of the view that there are sufficient funds available to make an interim distribution of \$500,000 to BJJM Holdings while still holding back sufficient funds to pay the estimated balance of the administration costs of the receivership and the estimated Payroll Source Deduction Claims.
25. The Receiver is of the view that it is appropriate to make such payment in order to:
 - a. reduce the interest accumulating against the BJJM Holdings debt;
and
 - b. reduce the ongoing interest and costs obligations of the guarantor, Suckdev Manhas, for the BJJM Holdings debt.

G. CONCLUSIONS AND RECOMMENDATIONS

26. The Receiver currently has funds totaling approximately \$927,126.14 and is seeking directions to distribute \$500,000 to BJJM Holdings as a partial payment against its secured claim.
27. The Receiver will continue to take steps to realize on the remaining assets of the Company, confirm amounts owed to priority creditors and complete the receivership as outlined above.
28. The Receiver hereby requests the Court’s approval to make an interim distribution in the amount of \$500,000 to BJJM Holdings.

DATED at the City of Vancouver, British Columbia, this 6th day of July 2021.

McEown and Associates Ltd.

Receiver of all of the assets, undertakings
and property of 0043660 B.C. Ltd.



Per: John D. McEown, CPA, CA, CIRP, LIT

APPENDIX A

**Letter dated July 2, 2001 from Nixon Wenger LLP with
particulars of amounts due and owing Brian Johnson and James
McManes Holdings Ltd. as at June 30, 2021**

Our File Reference: 25122-003/AAP
Direct Email: Andrew.Powell@nixonwenger.com

July 2, 2021

VIA EMAIL: jwest@watsongoepel.com

Watson Goepel LLP
1200 – 1075 West Georgia Street
Vancouver, BC V6E 3C9

Attention: Jeremy D. West

Dear Sir:

**RE: In the Matter of the Receivership of Kamloops Chrysler Dodge Jeep Ram Ltd.
Supreme Court Vancouver Registry No. 209076**

Further to your email request of June 30, 2021, we advise that the balance due and owing as of June 30, 2021, is \$1,015,137.55. Interest accumulates at \$158.50 per day from June 30, 2021. We enclose an amortization schedule for your reference.

We look forward to hearing from you.

Yours truly,

NIXON WENGER LLP

Per:



ANDREW A. POWELL
/smk

cc. Client

25122-003

Interval : Monthly

Nominal Annual Rate : 5.700 %

CASH FLOW DATA

Event	Date	Amount	Number	Period	End Date
1 Loan	09/08/2020	969,752.98	1		
2 Payment	10/08/2020	0.00	9	Monthly	06/08/2021
3 Payment	06/30/2021	0.00	1		
4 Payment	07/01/2021	0.00	1		

AMORTIZATION SCHEDULE - Canadian, Odd Days Straight-line, Semiannual

	Date	Payment	Interest	Principal	Balance
Loan	09/08/2020				969,752.98
1	10/08/2020	0.00	4,552.56	4,552.56-	974,305.54
2	11/08/2020	0.00	4,573.93	4,573.93-	978,879.47
3	12/08/2020	0.00	4,595.41	4,595.41-	983,474.88
2020 Totals		0.00	13,721.90	13,721.90-	
4	01/08/2021	0.00	4,616.98	4,616.98-	988,091.86
5	02/08/2021	0.00	4,638.65	4,638.65-	992,730.51
6	03/08/2021	0.00	4,660.43	4,660.43-	997,390.94
7	04/08/2021	0.00	4,682.31	4,682.31-	1,002,073.25
8	05/08/2021	0.00	4,704.29	4,704.29-	1,006,777.54
9	06/08/2021	0.00	4,726.37	4,726.37-	1,011,503.91
10	06/30/2021	0.00	3,475.14	3,475.14-	1,014,979.05
11	07/01/2021	0.00	158.50	158.50-	1,015,137.55
2021 Totals		0.00	31,662.67	31,662.67-	
Grand Totals		0.00	45,384.57	45,384.57-	

25122-003

An open balance of 1,015,137.55 still remains.

APPENDIX B

Statement of Receipts and Disbursements as at June 30, 2021

District of British Columbia
 Division No. 03 - Vancouver
 Court No. S-209076
 Estate No. 11-254285

**In the matter of the Receivership of
 0043660 B.C. LTD.
 Form 12
 Interim Statement of Receipts and Disbursements**

Interim

RECEIPTS

1. Asset Realization		
Cash in bank	282,000.00	
Accounts receivable	228,654.01	
Sale of assets en bloc	7,017,998.50	7,528,652.51
2. Tax Refund		
GST refund	5,935.63	5,935.63
3. Miscellaneous		
Interest allocation	2,631.89	
Other/trust funds	46,854.69	
Refunds- miscellaneous	2,425.00	
Canada Emergency Wage Subsidy	266,881.95	
Holiday Pay adjustment	22,998.43	
Insurance Settlement	42,000.00	383,791.96
TOTAL RECEIPTS		7,918,380.10

DISBURSEMENTS

4. Fees Paid		
To official receiver	71.54	71.54
5. Notice of first meeting		
Local paper	442.29	442.29
6. Other notices and reports		
Postage	119.52	119.52
7. Federal and Provincial taxes		
GST paid on disbursements exclusive of fees	2,488.94	
QST paid on disbursements exclusive of fees	0.66	2,489.60
8. Payments to secured creditors		
Payments	6,657,283.25	6,657,283.25
9. Miscellaneous		
Search Fees	8.50	
Bank charges	117.00	
Photocopies	878.50	
Telephone	9.46	
Payroll deductions	36,642.71	
Courier	273.75	
Wages	104,692.33	
Legal fees/disbursements	51,530.89	
Receiver's fees and costs	53,856.76	
Registration of receivership	20.00	
Advance to Trustee	23,473.65	
Ascend License Fee	275.00	
Consultant Fees	7,396.25	
Group RRSP	6,126.83	
GST on Ascend License Fee	13.75	
GST on Receiver's fees and cost	2,692.85	
PST on Ascend License Fee	19.25	
Union Dues	3,000.28	
Vehicle Lien Payout	39,820.00	330,847.76

District of British Columbia
Division No. 03 - Vancouver
Court No. S-209076
Estate No. 11-254285

**In the matter of the Receivership of
0043660 B.C. LTD.**
Form 12 — Concluded
Interim Statement of Receipts and Disbursements

Interim

TOTAL DISBURSEMENTS 6,991,253.96

Note: How much of the total disbursements was paid for services provided by persons related to the trustee? 0.00

Amount available for distribution 927,126.14

10. Levy payable under section 147 of the Act 0.00

11. Secured creditors

 Proved claims of 6,657,283.25

12. Unsecured creditors

 Proved claims of 0.00

13. Amount retained in the Trust account by the Trustee: 927,126.14

Dated at the city of Vancouver in the Province of British Columbia, this 6th day of July 2021.

McEown and Associates Ltd. - Licensed Insolvency Trustee
Per:

John McEown - Receiver
110 - 744 West Hastings Street
Vancouver BC V6C 1A5
Phone: (604) 558-8020 Fax: (604) 558-8021