



No. S-209076  
Vancouver Registry

IN THE SUPREME COURT OF BRITISH COLUMBIA

BETWEEN:

THE BANK OF NOVA SCOTIA

PETITIONER

AND:

KAMLOOPS CHRYSLER DODGE JEEP RAM LTD.

RESPONDENT

**IN THE MATTER OF THE RECEIVERSHIP OF  
KAMLOOPS CHRYSLER DODGE JEEP RAM LTD.**

**NOTICE OF APPLICATION**

**Name of applicant:**

**McEown & Associates Ltd., in its capacity as the court appointed Receiver of  
Kamloops Chrysler Dodge Jeep RAM Limited (the "Company")  
c/o: 1200 – 1075 West Georgia Street  
Vancouver, BC V6E 3C9  
Email: jwest@watsongoepel.com  
Tel: 604-642-5684**

**To: The Service List, attached as Schedule "A"**

TAKE NOTICE that an application will be made by telephone by the applicant, McEown & Associates Ltd. (the "Receiver") in its capacity as the court appointed Receiver of the Company to the presiding Judge at the courthouse located at 800 Smithe Street, Vancouver, British Columbia, on the 10th day of December, 2020, at 9:45 a.m. or as soon thereafter as counsel may be heard, for the orders set out in Part 1 below. *by telephone*

**Part 1: ORDERS SOUGHT**

1. An Order, substantially in the form attached hereto as **Schedule "B"** (the "Second Interim Distribution Order"), including orders:
  - a. abridging the time for service of this Notice of Application, such that the application is properly returnable on Thursday the 10th day of December,

2020 and dispensing with service upon any interested party other than those parties on the Service List maintained by the Receiver;

- b. authorizing and directing the Receiver to make further distributions from the Company assets to:
  - i. the Bank of Nova Scotia ("BNS") to fully pay out the Company's secured obligations; and
  - ii. Roynat Inc. ("Roynat") fully pay out the Company's secured obligations.

- 2. Such further and other orders as the court deems just.

#### **Part 2: FACTUAL BASIS**

- 3. 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 the Company (the "September 8, 2020 Order").
- 4. At all material times the Company operated a motor vehicle dealer dealership in Kamloops British Columbia (the "Dealership").
- 5. Prior to the September 8, 2020 Order the Receiver had been appointed (on March 9, 2020) proposal trustee of the Company (in accordance with the *Bankruptcy and Insolvency Act* (the "BIA")) in proceedings commenced in the Supreme Court of British Columbia In Bankruptcy, Vernon Registry, Court No. 56401 (the "Proposal Proceedings").
- 6. On September 3, 2020 Madam Justice Devlin made an order in the Proposal Proceedings approving the sale of the Dealership by the Company (the "Sale Transaction") and ancillary orders (the "Approval and Vesting Order").
- 7. The Sale Transaction was scheduled to complete on September 8, 2020 but did not complete on that date and the Company was deemed to have made an

assignment into bankruptcy on September 10, 2020. In addition to its appointment as Receiver, McEown & Associates Ltd. is the trustee in bankruptcy of the Company.

8. The September 8, 2020 Order appointing the Receiver expressly recognized and adopted as an Order in these proceedings, the Approval and Vesting Order thereby authorizing the Receiver to complete the Sale Transaction.
9. On September 9, 2020 the Sale Transaction completed and the Receiver received the sum of \$7,175,498.50 representing the sale proceeds from the Sale Transaction (the "Sale Proceeds").
10. After receiving the Sale Proceeds the Receiver attended to payment of certain payments including a commission payment (authorized by the court) and statutory employee obligations.

#### **Secured Claims**

11. As at the date of the September 8, 2020 Order and completion of the Sale Transaction various security interests were registered against the assets of the Company pursuant to the *Personal Property Security Act* RSBC 1996, Chapter 359 ("PPSA"). The security registrations can generally be divided into two separate categories being:

- a. general security agreements registered in the following priority:
  - i. Base Registration No. 96776K registered August 17, 2018 in favour of the BNS;
  - ii. Base Registration No. 994381K registered August 30, 2018 in favour of Roynat; and
  - iii. Base Registration No. 997933K registered August 31, 2018 in favour of Brian Johnson and James McManes Holdings Ltd.;
- b. serial number registrations for specific motor vehicles in favour of:

- i. BNS;
- ii. Roynat;
- iii. the Company;
- iv. Alberta Auto House Ltd.; and
- v. Fraser City Motors Ltd.

(together referred to as the "Security Registrations")

12. Particulars of the Security Registrations are appended to the Receiver's First Report dated October 19, 2020 (the "First Report").
13. At completion of the Sales Transaction vehicle inventory lists were prepared (the "Inventory Lists"). The Receiver has reviewed the Inventory Lists and determined that none of the vehicles which have serial number registrations in favour of Alberta Auto House Ltd. or Fraser City Motors Ltd. were sold in the Sales Transaction or were retained by the Company. Based on that review the Receiver is of the view that the third party serial number security in favour of Alberta Auto House Ltd. or Fraser City Motors Ltd. does not attach to any of the funds realized by the Receiver in these proceedings.
14. The Receiver and its counsel have received and reviewed copies of the security documents supporting the BNS and Roynat Security Registrations as a result of which the Receiver is of the view:
- a. that BNS has a first priority security interest in the Company assets; and
  - b. Roynat has a second priority security interest in the Company assets.
15. Based on the funds realized to date and the Receiver's review of the Company's secured liabilities it now appears likely that there will be funds available for distribution to the secured creditors who have third priority security registration. The Receiver has yet to receive or review the underlying security documents for

the PPR registration in favour of Brian Johnson and James McManes Holdings Ltd. but has requested copies of the security documents for the purposes of carrying out a security review. Based on the PPSA registration and subject to the receipt and review of the underlying security documents, the Receiver is of the view that Brian Johnson and James McManes Holdings Ltd likely have a third priority security interest in the Company assets.

16. Based on the Receiver's investigations, as at the September 8, 2020 Order the Company was also indebted to the Canada Review Agency ("CRA") and the Ministry of Finance, British Columbia in the following amounts:
  - a. CRA – payroll source deductions which based on the Receiver's discussions with the CRA could be as much as \$200,000 once the final reconciliation is completed;
  - b. CRA – GST of approximately \$75,000.00; and
  - c. Ministry of Finance – PST/EHT \$ \$652,877.97.
  
17. On October 7, 2020 Her Majesty the Queen in the Province of British Columbia filed a Proof of Claim for \$652,877.97 in the Bankruptcy proceedings for monies due and owing under the *Employer Health Tax Act* and the *Provincial Sales Tax Act* (the "Province Proof of Claim"). The Province Proof of Claim:
  - a. is an unsecured proof claim;
  - b. confirms that the Province does not hold assets of the Company as security; and
  - c. confirms that the Province is not claiming a right of priority for PST or EHT.
  
18. The payroll source deductions likely give rise to a deemed trust in favour of the CRA which has priority over the secured creditor claims.

19. **The Receiver has arranged for the filing of outstanding GST returns for the periods leading up to the bankruptcy.**
  
20. **As a result of the bankruptcy of the Company the Receiver is of the view that the CRA claim for GST may no longer have priority over the secured creditor claims. However, if the Second Interim Distribution Order is granted the Receiver is of the view that it will continue to hold sufficient funds in the estate to cover administration costs and to secure the source deductions and the potential GST claim (and others) pending final determination of those priorities.**

#### **Activities of the Receiver**

21. **Since the First Report the Receiver has undertaken a variety of activities including:**
  - a. **further collections of the Company's receivables;**
  - b. **reviewing and negotiating post-closing adjustments from the Sales Transaction with the Purchaser;**
  - c. **paying \$6,200,000 from the estate to the BNS and Roynat (the "First Interim Distribution"), representing a partial payment of their secured debts, in accordance with the Order of the Honourable Madam Justice Wilkinson made October 23, 2020 a copy of which is attached as Appendix "A";**
  - d. **arranging for payment of all wages due to Company employees for the period September 1 to September 9, 2020 and remittance of source deductions for this period;**
  - e. **communicating with former employees of the Company and the Canada Revenue Agency ("CRA") regarding the amount owing to CRA for unremitted employee source deductions;**
  - f. **arranging for the filing of outstanding GST and PST returns for all periods up to the date of bankruptcy;**



secured in favour of Roynat. As a result of that payment the amounts due and owing (as at November 24, 2020) under the secured facilities are as follows:

- a. BNS: \$443,418.84 (with *per diem* interest accruing on the outstanding principal) at a rate of \$16.79 per day of which \$10,000 (plus tax and disbursements) constitutes an estimate of legal fees which may be incurred in the event that BNS' legal fees (recoverable under the terms of the secured lending facility) are taxed pursuant to the *Legal Professions Act*; and
- b. Roynat: \$56,778.44 of which \$10,000 (plus tax and disbursements) constitutes an estimate of legal fees which may be incurred in the event that Roynat's legal fees (recoverable under the terms of the secured lending facility) are taxed pursuant to the *Legal Professions Act*.

26. Estimates for the legal fees for a taxation of the BNS and Roynat's legal fees under the *Legal Professions Act* have been included in the payout calculations as Mr. Lemieux previously advised the BNS and Roynat that he intended to tax their legal accounts. In the event that issues relating to the legal fees can be resolved without the need for a taxation, the Receiver understands that the amounts required to fully pay out the BNS and Roynat facilities (as set out above) will be reduced by approximately \$10,000 each. The Receiver proposes paying the entirety of the amounts due and owing as at the date of payment (including the estimates for legal fees) on the basis of an agreement with BNS and Roynat that in the event a taxation of their legal fees does not proceed they will return the estimated legal fees to the Receiver.
27. The secured facilities in favour of Roynat and BNS are continuing to accrue interest and other costs and, based on the Receiver's investigations, have first and second priority.



28. As at November 27, 2020 the Receiver held the sum of \$1,341,852.19 in trust accordance with the terms of the September 8, 2020 Order. In the event that the orders sought are granted the Receiver will continue to hold approximately \$800,000 which the Receiver is of the view is more than sufficient to cover the administration costs together with any potential claims which might have priority over those of the BNS and Roynat.

**Part 3: LEGAL BASIS**

29. The Receiver relies on the:
- a. Supreme Court Civil Rules;
  - b. *Bankruptcy and Insolvency Act*; and
  - c. Order made September 8, 2020.
30. The September 8, 2020 Order authorizes the Receiver to:
- a. collect and hold monies realized in the receivership (paragraph 13); and
  - b. to apply to the court for advice and directions (paragraph 36).
31. The Approval and Vesting Order which was expressly recognized and adopted in these proceedings (at paragraph 2 of the September 8, 2020 Order) specifically provides:
- a. that the Sale Proceeds would be held by the Receiver; and
  - b. the Sale Proceeds would stand in the place and stead of the assets disposed of in the Sale Transaction as security for any and all security interests, hypothesis, mortgages, trusts or deemed trusts, liens, executions, levies, charges, or other financial or monetary claims (the "Claims")

**Schedule "B" to the September 8, 2020 Order**

32. Based on the Receiver's review of the claims presently known to it and the security registrations particularized herein, the Receiver is of the view that BNS and Roynat are the first and second secured creditors of the Company.
33. The Receiver has realized sufficient funds to fully pay out the Company's secured indebtedness to the BNS and Roynat.
34. Based on the Receiver's present calculations, after making the payments to the BNS and Roynat it will continue to hold approximately \$800,000 which the Receiver is of the view should be more than sufficient to pay:
- a. administration costs of the estate;
  - b. source deduction payments due and owing to CRA which likely have priority; and
  - c. GST due and owing to CRA in the event that it is a priority claim notwithstanding the bankruptcy of the Company.

**Tax liabilities**

**Payroll source deductions**

35. Section 67(3) of the BIA provides that certain deemed trusts are deemed valid notwithstanding bankruptcy including deemed trusts under s. 227(4.1) of the *Income Tax Act*. Section 227(4) of the *Income Tax Act* creates a deemed trust in favour of the Crown over any amounts deducted under the Act and the deemed trust is given priority over any security interests.
36. Accordingly, the estimated \$200,000 in payroll source deductions due and owing by the Company will likely be impressed with a deemed trust in favour of the Crown which will have priority over secured creditors.

**GST**

37. Section 222(1) of the *Excise Tax Act* (ETA) creates a deemed trust in favour of the Crown for GST that is collected but not yet remitted.
38. Section 222(1.1) provides that the deemed trust does not apply at, or after, the time a person becomes a bankrupt within the meaning of the BIA for any amounts that were collected or became collectible before that time and s.86(1) of the BIA confirms that the Crown is only an ordinary creditor in a bankruptcy.
39. As a result it is likely that the deemed trusts in favour of the Crown for GST are not effective as a result of the Company's bankruptcy and the Crown is an unsecured creditor in respect of the unremitted GST liability.

***Canada v. Callidus Capital Corporation, 2015 FC 977 (aff'd 2018 SCC 47) para 20.***

**Part 4: MATERIAL TO BE RELIED ON**

40. Order Made after Application, September 8, 2020;
41. Order Made after Application, October 23, 2020;
42. Receiver's First Report dated October 19, 2020;
43. Receiver's Second Report dated November 30, 2020; and
44. Such further and other materials as counsel may advise.

The Applicant estimates that the Application will take 20m.

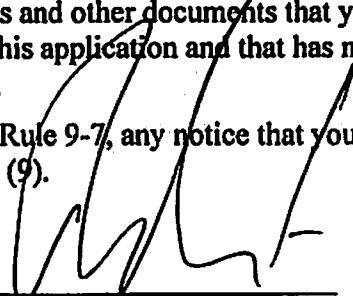
- This matter is within the jurisdiction of a master.
- This matter is not within the jurisdiction of a master.

**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: December 1, 2020



\_\_\_\_\_  
 Signature of Jeremy D. West  
 Counsel for McEown & Associates Ltd., in  
 its capacity as the court appointed Receiver  
 of the Company and not in its personal or  
 corporate capacity

<b>To be completed by the court only:</b>	
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

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**APPENDIX**

*[The following information is provided for data collection purposes only and is of no legal effect.]*

**THIS APPLICATION INVOLVES THE FOLLOWING:**

*[Check the box(es) below for the application type(s) included in this application.]*

- 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"****SERVICE LIST**

<p><b>Whitelaw Twining Law Corporation</b> 2400 - 200 Granville Street Vancouver, BC V6C 1S4</p> <p><b>John Fiddick</b> Email: <a href="mailto:JFiddick@wt.ca">JFiddick@wt.ca</a> Tel.: 604-891-7259</p> <p><b>Joseph Romanoski</b> Email: <a href="mailto:JRomanoski@wt.ca">JRomanoski@wt.ca</a> Tel.: 604-891-7220</p>	<p><b>Counsel for the Respondent, Kamloops Chrysler Dodge Jeep Ram Ltd.</b></p>
<p><b>McMillan LLP</b> 1500 - 1055 W. Georgia Street Vancouver, BC V6E 4N7</p> <p><b>Vicki Tickle</b> Email: <a href="mailto:Vicki.tickle@mcmillan.ca">Vicki.tickle@mcmillan.ca</a> Tel.: 236-826-3022</p>	<p><b>Counsel for the Petitioner, The Bank of Nova Scotia</b></p>
<p><b>McEown &amp; Associates Ltd.</b> 1140 - 800 West Pender Street Vancouver, BC V6C 2V6</p> <p><b>John McEown</b> Email: <a href="mailto:jmceown@boalewood.ca">jmceown@boalewood.ca</a> Tel.: 604-558-8012</p>	<p><b>NOI Trustee / Proposed Receiver</b></p>
<p><b>Watson Goepel LLP</b> 1200 - 1075 West Georgia Street Vancouver, BC V6E 3C9</p> <p><b>Jeremy West</b> Email: <a href="mailto:jwest@watsongoepel.com">jwest@watsongoepel.com</a> Tel.: 604-642-5684</p>	<p><b>Counsel for the Receiver</b></p>
<p><b>Bryan &amp; Co. LLP</b> 2900, 10180 - 101 Street Edmonton, Alberta, T5J 3V5</p> <p>Attention: Erin D. Oor Telecopier No. 780-428-6324 Email: <a href="mailto:edoor@bryanco.com">edoor@bryanco.com</a></p>	<p><b>Counsel for the Purchaser, 1261441 B.C. Ltd.</b></p>

<p><b>Brian Johnston and James McManes Holdings Ltd.</b></p> <p>c/o:</p> <p>Brian Johnston: <a href="mailto:bj@johnstonautomotivegroup.ca">bj@johnstonautomotivegroup.ca</a>  Jim McManes: <a href="mailto:jmcmannes@eastsidechrysler.ca">jmcmannes@eastsidechrysler.ca</a></p>	<p><b>Secured Creditors</b></p>
<p><b>CRA- Tax- Pacific</b></p> <p>Surrey National Verification and Collection Centre  9755 King George Blvd  Surrey BC V3T 5E1</p> <p>Fax No. (866) 219-0311  Email: <a href="mailto:cra-arc_tax-fisc_ins_t-f_g@cra-arc.gc.ca">cra-arc_tax-fisc_ins_t-f_g@cra-arc.gc.ca</a></p>	<p><b>Canada Revenue Agency</b></p>
<p><b>Ministry of Finance - PST - British Columbia</b>  Station Provincial Government  PO Box 9445  Victoria BC V8W 9V5</p> <p>Email: <a href="mailto:rmbtaxpayerinquiries@gov.bc.ca">rmbtaxpayerinquiries@gov.bc.ca</a></p>	<p><b>British Columbia Ministry of Finance</b></p>
<p><b>Office of the Superintendent of Bankruptcy Service</b></p> <p>Email: <a href="mailto:ic.osbservice-bsfservice.ic@canada.ca">ic.osbservice-bsfservice.ic@canada.ca</a></p>	<p><b>Office of Superintendent of Bankruptcy</b></p>
<p><b>Fraser City Motors, DBA Langley Chrysler</b>  19418 Langley By-Pass  Surrey, BC V3S 7R2</p>	
<p><b>Alberta Auto House Ltd.</b>  70 25015 TWP 544A  Sturgeon County, AB T8T 0B9</p>	

**SCHEDULE "B"**

No. S-209076  
Vancouver Registry

**IN THE SUPREME COURT OF BRITISH COLUMBIA**

**BETWEEN:**

**THE BANK OF NOVA SCOTIA**

**PETITIONER**

**AND:**

**KAMLOOPS CHRYSLER DODGE JEEP RAM LTD.**

**RESPONDENT**

**IN THE MATTER OF THE RECEIVERSHIP OF  
KAMLOOPS CHRYSLER DODGE JEEP RAM LTD.**

**ORDER MADE AFTER APPLICATION**

**BEFORE** ) **THE DAY OF DECEMBER, 2020**  
 )  
 )

**ON THE APPLICATION of McEown & Associates Ltd., in its capacity as the court appointed Receiver of Kamloops Chrysler Dodge Jeep RAM Limited (the "Company") coming on for hearing at Vancouver, British Columbia on the 10th day of December 2020 by teleconference and on hearing Jeremy D. West, counsel for the Receiver, and those other counsel listed on Schedule "A" hereto, AND UPON READING the material filed herein for the purposes of this application, AND pursuant to the to Section 243(1) of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended (the "BIA") and Section 39 of the *Law and Equity Act*, R.S.B.C. 1996 c. 253, as amended (the "LEA"), the British Columbia Supreme Court Civil Rules and the inherent jurisdiction of this Honourable Court;**

**THIS COURT ORDERS that:**

- 1. Terms and expressions not defined in this Order shall have the meanings attributed to them in the Order of this Court pronounced on September 8, 2020.**
- 2. The time for service of the Notice of Application dated December 10, 2020 is abridged such that the application is properly returnable on Thursday the 10<sup>th</sup> of day of December, 2020.**



3. **Service upon any interested party other than those parties on the service list maintained by the Receiver in this matter is hereby dispensed with.**
4. **Authorizing and directing the Receiver to make further distributions from the Company assets to:**
  - a. **the Bank of Nova Scotia ("BNS") to fully pay out the Company's secured obligations; and**
  - b. **Roynat Inc. ("Roynat") to fully pay out the Company's secured obligations.**
5. **Approval of counsel as to form listed in Schedule "A" hereto, except counsel for the Petitioner, 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:**

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**Signature of Jeremy West  
Solicitor for the McEown & Associates Ltd.,  
in its capacity as the court appointed Receiver of  
Kamloops Chrysler Dodge Jeep RAM Limited**

**By the Court.**

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**Registrar**

**Schedule "A"- List of Counsel Appearing**

<b>Jeremy D. West</b>	<b>Counsel for the Receiver, McEown and Associates Ltd.</b>