

SUPREME COURT
OF BRITISH COLUMBIA
VANCOUVER REGISTRY

APR 14 2022

ENTERED



IN THE SUPREME COURT OF BRITISH COLUMBIA

No. S-217202
Vancouver Registry

BETWEEN

THE BANK OF NOVA SCOTIA

PETITIONER

AND

COMMUNITY MARINE CONCEPTS LTD., VICTORIA INTERNATIONAL MARINA LTD.,
ETERNALAND YUHENG INVESTMENT HOLDING LTD., AND 0736657 B.C. LTD.

RESPONDENTS

ORDER MADE AFTER APPLICATION

BEFORE THE HONOURABLE

MR. JUSTICE GROVE

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14/04/2022

THE APPLICATION of Huai Yin (Alyssa) Zhang (the "**Applicant**"), coming on for hearing at Vancouver, British Columbia, on the 14th day of April, 2022 AND ON HEARING Glen Forrester, counsel for the Applicants, Tevia Jeffries, counsel for Alvarez & Marsal Canada Inc., in its capacity as Court-appointed Receiver, (the "**Receiver**") of the assets, undertakings and properties of the Respondents Community Marine Concepts Ltd., Victoria International Marina Ltd., Eternaland Yuheng Investment Holding Ltd. and 0736657 B.C. Ltd. (the "**Debtors**"), Peter Bychawski, counsel for The Bank of Nova Scotia ("**BNS**"), and those other counsel listed on Schedule "A" hereto, AND UPON READING the material filed;

THIS COURT ORDERS AND DECLARES THAT:

Redemption Date

1. Subject to paragraph 2 of this Order, and notwithstanding any other paragraph of this Order:
 - (a) If the Receiver's Certificate (as defined in paragraph 10 of this Order) is filed on or before April 29, 2022 (the "**Redemption Date**");
 - i. the Receiver shall be discharged as Receiver of the assets, undertaking and property of the Debtors (the "**Property**"), provided that notwithstanding its discharge herein: (i) 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 (ii) the Receiver shall continue to have the benefit of

the provisions of all Orders made in this proceeding, including all approvals, protections, charges and stays of proceedings in favour of Alvarez & Marsal Canada Inc. in its capacity as Receiver;

- ii. the stay of proceedings against or in respect of the Debtors or the Property set out in paragraph 9 of the Consent Receivership Order shall terminate;
 - iii. Alvarez & Marsal Canada Inc. shall be released and discharged from any and all liability that Alvarez & Marsal Canada Inc. now has or may hereafter have by reason of, or in any way arising out of, the acts or omissions of Alvarez & Marsal Canada Inc. while acting in its capacity as Receiver herein, save an except for any liability resulting from gross negligence or willful misconduct of Alvarez & Marsal Canada Inc. Without limiting the generality of the foregoing, upon filing the Receiver's Certificate, Alvarez & Marsal Canada Inc. shall be 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; and
 - iv. the Debtors expressly assume any and all claims or liabilities attributable to the Debtors or the Property, whether arising before or after the date of the Consent Receivership Order, to the extent such claims and liabilities have not been fully satisfied prior to filing of the Receiver's Certificate.
- (b) If the Receiver's Certificate is not filed on or before the Redemption Date, the Receiver shall be at liberty to sell, convey, transfer or assign the Property or any part or parts thereof subject only to the approval of this Court. the Receiver or by further Order of this Court made on or before the Redemption Date.
2. The Redemption Date may be extended by written agreement of the Applicant, BNS, the Receiver or by further Order of this Court made on or before the Redemption Date.

The \$6 Million Payment to BNS

3. BNS is hereby authorized and directed to apply the funds in the amount of \$6,000,000, provided to it by way of the February 4, 2022, Royal Bank of Canada bank draft and delivered to the BNS branch located at #1576 West 41st Avenue, Vancouver B.C on February 28, 2022 as a partial payment against the Debtors' loan and financial obligations to BNS (the "**RBC Draft Payment**") as of the date of the RBC Draft Payment.

Distribution Order Re Funds paid to account of Community Marine

4. The distribution of \$4,000,000 of funds held by the Receiver in trust for the Debtors to BNS, to be applied as a partial payment against the Debtors' loan and financial obligations to BNS as of the date of distribution, is hereby approved, and the Receiver is hereby authorized and directed to make that distribution to BNS (the "**Interim Distribution**").

The \$5,000,000 1129057 B.C. Ltd. Loan

5. The \$5,000,000.00 loan (the "**First Loan**") by 1129057 B.C. Ltd. (the "**First Lender**") to 0736657 B.C. Ltd. and Community Marine Concepts Ltd. as borrowers as set out and described in the commitment letter issued by Amber Financial Services Corp. on behalf of

the First Lender to Community Marine Concepts Ltd. c/o the Applicant dated February 25, 2022 (the "**1129057 Commitment Letter**"), a copy of which is attached as **Exhibit "8"** to the Affidavit #1 of Alyssa Zhang, sworn April 4, 2022 (the "**Zhang Affidavit**"), and the borrowing of the First Loan by 0736657 B.C. Ltd. and Community Marine Concepts Ltd. in accordance with the terms of the 1129057 Commitment Letter, is hereby approved.

6. The execution of the 1129057 Commitment Letter and the First Loan security and other loan documents as set out in or contemplated by the 1129057 Commitment Letter or otherwise required by the First Lender in connection with the First Loan transaction, by the Applicant as a director of and on behalf of the Debtors, is hereby authorized and approved, and the Applicant as a director and on behalf of the Debtors is hereby authorized and directed to take such additional steps and execute such additional documents as may be necessary or desirable for the completion of the First Loan transaction.

The \$5,000,000 Amber Mortgage Loan

7. The \$5,000,000.00 loan (the "**Second Loan**") by Amber Mortgage Investment Corp. (the "**Second Lender**") to 0736657 B.C. Ltd., and Community Marine Concepts Ltd. as borrowers as set out and described in the commitment letter issued by the Second Lender to Community Marine Concepts Ltd. c/o the Applicant dated March 1, 2022 (the "**Amber Mortgage Commitment Letter**"), a copy of which is attached as **Exhibit "12"** to the Zhang Affidavit, and the borrowing of the Second Loan by 0736657 B.C. Ltd. and Community Marine Concepts Ltd. in accordance with the terms of the Amber Mortgage Commitment Letter, is hereby approved.
8. The execution of the Amber Mortgage Commitment Letter and the Second Loan security and other loan documents as set out in or contemplated by the Amber Mortgage Commitment Letter or otherwise required by the Second Lender in connection with the Second Loan transaction, by the Applicant, as a director of and on behalf of the Debtors, is hereby authorized and approved, and the Applicant as a director and on behalf of Debtors is hereby authorized and directed to take such additional steps and execute such additional documents as may be necessary or desirable for the completion of the Second Loan transaction.

Distribution of the Proceeds of the First Loan and Second Loan

9. Upon satisfaction or waiver of all conditions to the First Loan transaction and the Second Loan transaction, in each case in accordance with the terms of the 1129057 Commitment Letter and the Amber Mortgage Commitment Letter, as applicable, the First Lender and the Second Lender are hereby authorized and directed to pay the net proceeds of the First Loan and the Second Loan to, ~~firstly~~, BNS in such amounts as are required to repay the balance of all amounts owing to BNS by the Debtors, as confirmed in a payout statement to be provided by BNS to the First Lender, in the first instance, and to the Second Lender, with respect to the balance of the Debtors' loan and financial obligations to BNS after receipt by BNS of the RBC Draft Payment, the Interim Distribution, and payment by the First Lender in accordance with this paragraph 9 (collectively, the "**Loan Distributions**").

Receiver's Certificate

10. The Receiver shall deliver to the Applicant and BNS, and file with this Court, a certificate substantially in the form attached as Schedule "B" hereto (the "**Receiver's Certificate**"), certifying that:
- (a) The First Loan transaction and the Second Loan transaction, described in the 1129057 Commitment Letter and the Amber Mortgage Commitment Letter respectively, have closed and the Loan Distributions have been made to BNS;
 - (b) All amounts owing by the Debtors to BNS have been paid in full, as confirmed by writing by BNS, inclusive of all principal, interest, fees, costs (including but not limited to legal and financial advisor fees), and payment-in-kind interest owing by the Debtors, jointly and severally, to BNS pursuant to or in connection with the Commitment Letter, Mortgage, GSAs, Guarantees, Financial Advisor Agreement, and CEBA Loans (in each case as defined in Affidavit #1 of Beatriz Martinez sworn in this proceeding on August 9, 2021) and any other documents, instruments, and agreements executed pursuant thereto or in connection therewith;
 - (c) The Receiver and its legal counsel have passed their accounts in accordance with paragraph 22 of the Consent Receivership Order dated November 1, 2021 (the "**Consent Receivership Order**"), and the activities of the Receiver, as described in any Reports to Court filed by the Receiver prior to the date of the Receiver's Certificate, have been approved; and
 - (d) The Receiver has made all distributions of funds authorized and directed by this Court prior to the date of the Receiver's Certificate, including such distributions described in First Report of the Receiver dated [April 11], 2022.
11. The distributions and payments made pursuant to this Order, including but not limited to the RBC Draft Payment, the Interim Distribution, and the Loan Distributions, shall be deemed to be made free and clear of and from any and all security interests (whether contractual, statutory, or otherwise), hypothecs, mortgages, trusts or deemed trusts (whether contractual, statutory, or otherwise), liens, executions, levies, charges, or other financial or monetary claims, whether or not they have attached or been perfected, registered or filed and whether secured, unsecured or otherwise.
12. Notwithstanding:
- (a) the pendency of these proceedings;
 - (b) the assignment in bankruptcy or any petition for a bankruptcy order now or hereafter issued pursuant to the *Bankruptcy and Insolvency Act* (Canada) (the "**BIA**") and any order issued pursuant to such petition; or
 - (c) any provisions of any federal or provincial legislation,

the distributions and payments permitted by this Order, including but not limited to the RBC Draft Payment, the Interim Distribution, and the Loan Distributions, and the completion of the First Loan Transaction and the Second Loan Transaction pursuant to this Order, shall be binding on any trustee in bankruptcy or receiver that may be appointed and shall not be void or voidable nor deemed to be a preference, assignment, fraudulent conveyance, transfer at undervalue or other reviewable transaction under the BIA or any

other applicable federal or provincial legislation, nor shall they constitute oppressive or unfairly prejudicial conduct pursuant to any applicable federal or provincial legislation.

13. The Applicants, the Receiver, BNS, 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:

Glen Forrester, Lawyer for the Applicants

Tevia Jeffries, Lawyer for the Receiver

Peter Bychawski, Lawyer for The Bank of Nova Scotia

BY THE COURT



REGISTRAR

Schedule A – Service List

Schedule B – Receiver's Certificate

No. S-217202
Vancouver Registry

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PETITIONER

AND

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RESPONDENTS

RECEIVER'S CERTIFICATE

The undersigned hereby certifies for the purposes of the Order made on the ____ day of April, 2022 (the "**Order**", all capitalized terms used but not defined herein have the meaning ascribed to them in the Order) in the within matter that:

1. The loan transactions described in the 1129057 Commitment Letter and the Amber Mortgage Commitment Letter have closed;
2. All amounts owing by the Debtors to BNS have been paid in full inclusive of all principal, fees, costs (including but not limited to legal and financial advisor fees), and payment-in-kind interest owing by the Debtors, jointly and severally, to BNS pursuant to or in connection with the Commitment Letter, Mortgage, GSAs, Guarantees, Financial Advisor Agreement, and CEBA Loans (in each case as defined in Affidavit #1 of Beatriz Martinez sworn in this proceeding on August 9, 2021) and any other documents, instruments, and agreements executed pursuant thereto or in connection therewith; *interest, ②*
3. The Receiver and its legal counsel have passed their accounts in accordance with paragraph 22 of the Consent Receivership Order, and the activities of the Receiver, as described in the Receiver's First Report to Court, dated _____, 2022, have been approved; and
4. The Receiver has made all distributions of funds authorized and directed by this Court prior to the date hereof, including such distributions described in First Report of the Receiver dated [April 11], 2022.

Dated at Vancouver, British Columbia, this ____ day of _____, 2022.

ALVAREZ & MARSAL CANADA INC.,
in its capacity as Receiver of Community

Marine Concepts Ltd., Victoria International
Marina Ltd., Eternaland Yuheng Investment
Holding Ltd., and 0736657 B.C. Ltd.

Per:

Name:

Title:

SCHEDULE A

No.: S-217202
Vancouver Registry

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PETITIONER

AND:

COMMUNITY MARINE CONCEPTS LTD., VICTORIA INTERNATIONAL
MARINA LTD., ETERNALAND YUHENG INVESTMENT HOLDING LTD. AND
0736657 B.C. LTD.

RESPONDENTS

SERVICE LIST

Blakes, Cassels & Graydon LLP Suite 2600 – 595 Burrard St. Vancouver, BC V7X 1L3 Attention: Peter Bychawski / Claire Hildebrand Tel: (604) 631-3300 Email: peter.bychawski@blakes.com claire.hildebrand@blakes.com <i>Counsel for the Petitioner</i>	Forrester & Company 300 – 171 Water Street Vancouver, BC V6B 1A7 Attention : Crystal Law / Glen Forrester Tel : (604) 682-1066 Email : claw@forresterbarristers.ca gforrester@forresterbarristers.ca <i>Counsel for the Respondents</i>
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<p>Dentons Canada LLP 20th Floor – 250 Howe Street Vancouver, BC V6C 3R8</p> <p>Attention: John Sandrelli / Emma Newbery</p> <p>Tel: (604) 443-7132 Email: john.sandrelli@dentons.com emma.newbery@dentons.com sarah.howes@dentons.com avic.arenas@dentons.com</p> <p><i>Counsel for Court-Appointed Receiver (Alvarez & Marsal Canada Inc.)</i></p>	<p>Alvarez & Marsal Canada Inc. Cathedral Place Building 925 West Georgia Street, Suite 902 Vancouver, BC V6C 3 L2</p> <p>Attention: Todd Martin / Pinky Law</p> <p>Tel : (604) 638-7440 Email: tmartin@alvarezandmarsal.com pinky.law@alvarezandmarsal.com</p> <p><i>Court-Appointed Receiver</i></p>
<p>Fasken Martineau DuMoulin LLP 2900 – 550 Burrard Street Vancouver, BC V6C 1A3</p> <p>Attention: Kibben Jackson</p> <p>Tel: (604) 631-3131 Email: kjackson@fasken.com</p> <p><i>Counsel for Ed Scripps</i></p>	<p>JFK Law Corporation 816 – 1175 Douglas Street Victoria BC V8W 2E1</p> <p>Attention: Robert Janes, QC</p> <p>Tel: 1-250-405-3460 Email: rjanes@jfkclaw.ca; krose@jfkclaw.ca</p> <p><i>Counsel for Songhees First Nation</i></p>
<p>Allen / McMillan Litigation Counsel 1625 – 1185 West Georgia St. Vancouver, BC V6E 4E6</p> <p>Attention: Wes McMillan</p> <p>Tel: 604-282-3980 Email: wes@amlc.ca / thea@amlc.ca</p> <p><i>Counsel for Blue Water Systems Ltd.</i></p>	<p>Justice Health and Revenue Legal Services Branch Ministry of Attorney General PO Box 9280 Stn Prov Govnt Victoria, BC V8W 9J7</p> <p>Attention: Aaron Welch / Cindy Cheuk</p> <p>Tel: 1-250-387-6121 Email: AGLSBRevTaxInsolvency@gov.bc.ca Aaron.Welch@gov.bc.ca Cindy.Cheuk@gov.bc.ca</p> <p><i>Ministry of Attorney General</i></p>

<p>Pearlman Lindholm 201 – 19 Dallas Road Victoria, BC V8V 5A6</p> <p>Attention: Mikaila Mauro</p> <p>Tel: 1-250-388-4433 Email: mmauro@pearlmanlindholm.com Email: adahl@pearlmanlindholm.com</p> <p>Counsel for Andrea Guyon</p>	
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