

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

THE HONOURABLE MADAM) FRIDAY, THE 17th
JUSTICE CONWAY) DAY OF APRIL, 2015



BETWEEN:

BUSINESS DEVELOPMENT BANK OF CANADA

Applicant

- and -

AVENTURA II PROPERTIES INC., PAVILION SPORTS CLUBS INC.,
PAVILION SPORTS ICE INC., PAVILION SPORTS FOOD AND BEVERAGE INC.
and PAVILION AQUATIC CLUB INC.

Respondents

APPLICATION UNDER SUBSECTION 243(1) OF THE BANKRUPTCY AND
INSOLVENCY ACT, R.S.C. 1985, c. B-3, AS AMENDED AND SECTION 101 OF THE
COURTS OF JUSTICE ACT, R.S.O. 1990, c. C.43, AS AMENDED

ORDER RE SUBSTITUTION OF RECEIVER

THIS MOTION, made by DUCA Financial Services Credit Union Ltd. (“**DUCA**”) for an Order substituting Pollard & Associates Inc. (“**Pollard**”) for Collins Barrow Toronto Limited (“**CBTL**”) as court appointed receiver and manager of the property, assets and undertaking (“**Property**”) of the Respondents, as well as of Pavilion Clubs Inc., 1887722 Ontario Ltd., 1688902 Ontario Inc. and Forza Fitness Ltd. (collectively, the “**Debtors**”) was heard this day at 330 University Avenue, 8th Floor, Toronto, Ontario.

ON READING the Affidavit of Timothy R. Dunn sworn April 13, 2015 and on hearing the submissions of counsel for DUCA and CBTL, CBTL not opposing the relief sought, no one else appearing although duly served as reflected on the Affidavit of Service of Karen Fox sworn April 13, 2015, and on reading the Consent of Pollard,

SUBSTITUTION OF POLLARD FOR CBTL

1. THIS COURT ORDERS that, effective as at the date of this Order, and pending the approval of the activities, fees and disbursements of CBTL as will be described in the final reports of CBTL and CBTL obtaining its final discharge as Monitor and Receiver:

- (a) Pollard be and is hereby substituted and appointed as receiver and manager of all the Property of the Debtors, for and in place of CBTL, and shall be subject to the terms of the Receivership Order of the Honourable Mr. Justice McEwan in this matter dated September 8, 2014 (the “**Receivership Order**”),
- (b) Pollard is substituted, for and in place of CBTL with respect to any duties and responsibilities of CBTL under all other Orders of this Court granted in relation to the Debtors and persons and entities related to the Debtors , including the Receivership Order and the Order of the Honourable Mr. Justice Brown in this matter dated October 24, 2013 appointing CBTL as Monitor (the “**Monitorship Order**”) (collectively, the “**Orders**”);

- (c) Pollard shall have all of the duties, responsibilities and powers, as well as the benefit of all protections, previously granted to CBTL under the terms of any of the Orders, including under the terms of the Receivership Order;
- (d) Notwithstanding the substitution of Pollard for CBTL under the terms of the Orders, including as Receiver and Manager under the terms of the Receivership Order, all protections granted to CBTL under the terms of any of the Orders, including but not limited to those protections described in paragraphs 7, 9, 13, 14, 15, 16, 17, 18, 19, 20, 25 and 31 of the Receivership Order shall continue to apply and extend to CBTL until such time as CBTL has been finally discharged as Receiver and Monitor under the Monitorship Order (the “**Monitor**”) by further Order of this Court, in accordance with the schedule described below.

TRANSITIONAL ISSUES

2. THIS COURT ORDERS that CBTL shall forthwith deliver up possession to Pollard of the Property of the Debtors in its possession and control, save and except for any funds remaining in any accounts established by the Receiver for the Receivership of the Debtors.
3. THIS COURT ORDERS that CBTL shall deliver up possession of any funds remaining in any accounts established by the Receiver for the Receivership after a reconciliation of the accounts is completed by CBTL and after payment of the accounts of the Monitor and the Receiver and its counsel up to January 12, 2015, subject to taxation, and after the final discharge of CBTL is obtained (the “**Remaining Funds**”).

4. THIS COURT ORDERS that the Receiver shall, as soon as possible, deliver up to Pollard possession of all books and records of the Debtors, and all books and records and other documentation obtained under the terms of any of the Orders, now in the possession of the Receiver, to be held by Pollard under the same terms and conditions as CBTL (the “**Books and Records**”).

5. THIS COURT ORDERS that CBTL and its counsel, Pallett Valo LLP (“PV”) shall retain the benefit of the Receiver’s Charge granted pursuant to paragraph 17 of the Receivership Order as security for the payment of any fees and disbursements of CBTL and PV, including those fees and disbursements incurred with respect to the implementation of this Order, the transition of the receivership to Pollard and CBTL’s motion for the approval of its activities, fees and disbursements, until approval and payment of these fees and disbursements and the final discharge of CBTL as Receiver and Monitor.

6. THIS COURT ORDERS that Pollard shall be substituted as the borrower, and CBTL is hereby released from any obligations as the borrower, under the terms of the Receiver’s Certificates No. 1 (dated September 16, 2014), No. 2 (dated September 16, 2014), No. 3 (dated November 27, 2014) and No. 4 (dated November 27, 2014) issued by the Receiver, as well as under the provisions of the Receiver’s Borrowing Charge granted in Paragraphs 20 - 22 of the Receivership Order.

7. THIS COURT ORDERS that the Receiver’s Borrowing Charge contained in paragraph 20 – 22 of the Receivership Order be and is hereby increased from \$500,000.00 to \$1,000,000.00 to enable Pollard to act as Receiver and that Pollard be and is hereby authorized to borrow funds and issue Receiver’s Certificates for and in place of CBTL.

8. THIS COURT ORDERS that Pollard be substituted as the Vendor in connection with all of the duties and obligations of the Vendor set out in an agreement of purchase and sale and any ancillary agreements entered into by CBTL as Receiver for the sale of all or substantially all of the Property (the “**Sale Agreement**”).

9. THIS COURT ORDERS that upon the payment to Pollard or Pollard’s legal counsel, of any funds or other security deposited with CBTL by the purchaser under the terms of the Sale Agreement, CBTL shall be released of any further duties and any and all existing and future liability arising from, and in connection with, any duties and obligations imposed upon CBTL, pursuant to the Sale Agreement (and any ancillary agreements), or under any Sale Process described in any of the Orders.

10. THIS COURT ORDERS that Pollard be substituted as the contracting party in connection with all of the duties and obligations of CBTL as Receiver with respect to any other agreements entered into by the Receiver after the date of its appointment relating to the administration of the Property (collectively the “**Agreements**”) and that CBTL shall be released of any further duties under, and any and all existing and future liability arising from, and in connection with, any duties and obligations imposed upon CBTL, pursuant to the Agreements.

11. THIS COURT ORDERS that Pollard shall be substituted for and in place of CBTL in respect of any and all insurance policies in place for the Debtors and the Property, and that Pollard is authorized and directed to take all such steps as are necessary to effect such substitution with the insurers.

12. THIS COURT ORDERS that, notwithstanding the substitution of Pollard for CBTL as Receiver of the Debtors and the Property, CBTL shall remain as Receiver for the purposes of

maintaining the Liquor Sales Licence issued to CBTL for Tap's Bar & Grill on or about on September 18, 2014 (the "**Liquor Sales Licence**"), until the Liquor Sales Licence is transferred to Pollard, or a new Liquor Sales Licence is issued in the name of Pollard.

13. THIS COURT ORDERS that DUCA shall indemnify and hold CBTL harmless in respect of any liability which CBTL may incur in respect of CBTL maintaining the Liquor Sales Licence from and after the date of this Order, until the transfer of the Liquor Sales Licence to Pollard, or the issuance of a new Liquor Sales Licence in the name of Pollard.

14. THIS COURT ORDERS that upon the delivery of the Property, Remaining Funds and Books and Records by CBTL to Pollard, and the transfer of the Liquor Sales Licence to Pollard or the obtaining of a new Liquor Sales License by Pollard, CBTL shall be discharged and relieved from any further rights, powers, obligations, liabilities, responsibilities or duties in its capacity as Receiver of the Debtors and the Property, including in relation to the Liquor Sales Licence.

15. THIS COURT ORDERS that CBTL shall have no liability for any of the acts or activities of Pollard as Receiver from and after the date of this Order.

16. THIS COURT ORDERS that CBTL shall apply for its final discharge and release in accordance with the following schedule:

- (a) Service of Final Report of CBTL as Receiver and as Monitor under the Monitorship Order, and the affidavits of CBTL and PV, on or before May 15, 2015 or such other date as may be agreed between DUCA and CBTL;
- (b) Following service of the Final Report, the parties shall agree to a schedule for the remaining steps required to obtain the discharge of CBTL as

Receiver and Monitor and the approval of the activities and fees of CBTL and its counsel;

- (c) Failing agreement, any party may arrange a 9:30 Court appointment for the setting of a schedule.

ENTERED AT / INSCRIT A TORONTO
ON / BOOK NO:
LE / DANS LE REGISTRE NO.:



APR 17 2015



BETWEEN

BUSINESS DEVELOPMENT BANK OF CANADA

-and-

AVENTURA II PROPERTIES INC., et al.

Applicant

Respondents

Court File No. CV-13-10285-00CL

**ONTARIO
SUPERIOR COURT OF JUSTICE
Commercial list**

Proceeding commenced at Toronto

ORDER

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