

Court File No. CV-20-00642256-00CL

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

APPLICATION UNDER SECTION 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

IN THE MATTER OF THE ADMINISTRATION OF THE  
VERT RESIDUAL ASSET TRUST

**FACTUM OF THE TRUSTEE  
(DISCHARGE OF THE TRUSTEE)**

May 2, 2024

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**PART I - OVERVIEW**

1. This motion is brought by KSV Restructuring Inc. ("**KSV**"), formerly the Court-appointed receiver (the "**Receiver**") of all the assets, undertakings and properties of Vert Infrastructure Ltd. ("**Vert**" or the "**Company**") and currently acting as the Court-appointed trustee (the "**Trustee**") of the Vert Residual Asset Trust (the "**Trust**") pursuant to an order of this Court dated June 8, 2021 ("**June 8 Order**"). Capitalized terms used but not defined herein have the meanings given to them in the Report (defined below).

2. This factum is filed in support of the Trustee's motion seeking the following orders from this Court:

- (a) Approving the activities of the Receiver and Trustee as set out in the first report of the Trustee dated April 24, 2024 (the "**Report**");

- (b) Approving the fees and disbursements of the Receiver and Trustee and its counsel along with the accrued fees of the Trustee and its counsel, as set out in the Report;
- (c) Authorising the Trustee to distribute the shares in RoccaVerde Wellness Corporation ("**RoccaVerde**"), together with all other remaining residual assets and ownership interests which were vested in the Trust, in kind to KW Capital Partners Limited ("**KW**") as agent for the Secured Lenders (as defined in the Report), or as KW may direct ("**Proposed Distributions**"); and
- (d) Discharging KSV as the Trustee subject to the filing of a discharge certificate with this Court confirming that final distributions have been made to the Secured Lenders ("**Discharge Certificate**") and releasing KSV from any and all liability in any way arising from its capacity as Receiver and Trustee save and except for any gross negligence or wilful misconduct.

3. The Trustee is presently unaware of any opposition to the requested relief.

## **PART II - BACKGROUND AND FACTS**

4. Vert was a publicly traded holding company engaged in the business of raising capital which it used to incorporate subsidiaries in the United States for the stated purpose of developing and operating licensed cannabis and hemp businesses. Vert's assets were principally in the nature of interests in various limited liability companies established in the United States. Vert also owns 5,000,000 common shares in RoccaVerde – a private company that is currently dormant and not operational.

5. Between February and June 2019, Vert issued secured convertible debentures in favour of its Secured Lenders—including KW. Upon Vert’s repeated defaults in making the stipulated quarterly payments under the debentures, KW applied to this Court seeking the appointment of KSV as the Receiver of Vert’s assets, property and undertakings. The order for appointment of KSV as the Receiver was granted by this Court on June 16, 2020.

6. In May 2021, the Receiver and Emprise Capital Corp. (“**Emprise**”) negotiated an agreement for Emprise to acquire the Company’s public listing for consideration. Pursuant to the June 8 Order, this Court approved the acquisition of Vert’s public listing by Emprise and the transfer of Vert’s assets and liabilities to the Trust. Further, KSV was appointed as the Trustee for the purpose of administration of the Trust, such that the Receivership Order would apply *mutatis mutandis* to the Trust, and the Trustee was authorized and directed to perform its functions and fulfill its obligations in accordance with the same obligations imposed on the Receiver pursuant to the Receivership Order.

7. As set out in detail in the Report, since its appointment, the Trustee has to the extent reasonably possible, monetized the Trust’s assets, except those with nominal value. In spite of the additional distributions made by the Trustee, the Secured Lenders have suffered a shortfall on the realization of their advances to Vert.

### **PART III - ISSUES**

8. The issues on this motion are whether this Court should:

- (a) Approve the activities and actions of the Receiver and Trustee as set out in the Report;

- (b) Approve the fees of the Receiver and Trustee and its counsel;
- (c) Approve the Proposed Distributions; and
- (d) Discharge KSV as the Trustee upon filing of the Discharge Certificate.

## **PART IV - LAW AND ARGUMENT**

### **A. Approval of the Activities and Actions of the Trustee**

9. The Trustee is seeking approval of its activities and actions and those of the Receiver as set out in the Report.

10. All activities and actions of the Receiver and Trustee described in the Report were reasonable and undertaken in good faith pursuant to the Receiver's and Trustee's duties and powers set out in this Court's orders.

11. The Court has the statutory discretion to approve the activities of a court-appointed officer. If the officer has met the objective test of demonstrating that it has acted reasonably, prudently and not arbitrarily, a court may approve the activities as set out in its reports.<sup>1</sup>

### **B. The Fees of the Receiver and Trustee and its Counsel should be Approved**

12. The Receivership Order, which was made applicable to the Trustee in terms of the June 8 Order, provides among other things that the "*Receiver and counsel to the Receiver*

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<sup>1</sup> [\*Leslie & Irene Dube Foundation Inc. v. P218 Enterprises Ltd.\*, 2014 BCSC 1855 at para 54](#), *Bank of America Canada v. Willann Investments Ltd.*, [1993] O.J. No. 1647 (Ont. Gen. Div.) at paras. 3-5.



*shall be paid their reasonable fees and disbursements, in each case at their standard rates and charges unless otherwise ordered by the Court on the passing of accounts.”<sup>2</sup>*

13. The fees and disbursements of the Receiver and the Trustee as set out in the Report are fair and reasonable under the circumstances at rates consistent with those of other Toronto accounting firms providing insolvency and restructuring services.

14. The standard to be applied is whether the compensation sought is “*fair and reasonable*”, with an emphasis on the value provided and what was accomplished.<sup>3</sup> The Trustee has reviewed the fees and disbursements of its counsel as set out in the Report and has confirmed that the services reflected therein have been duly authorized and duly rendered and are reasonable in the Trustee’s opinion.

15. KW (who is acting as the agent of the Secured Lenders who has suffered a shortfall on the realization of its advances to the Company in these proceedings) does not oppose the approval of the Receiver’s and Trustee’s activities or the approval of the fees and disbursements of the Receiver and Trustee and its counsel as set out in the Report.

16. Based on the foregoing, it is respectfully submitted that the Receiver’s and Trustee’s fees, and those of its counsel, should be approved by this Court.

### **C. Discharge and Release of the Trustee**

17. All of the assets of the Trust have been sold and all related post-closing matters have been dealt with, with the exception of the Trust’s shares held in RoccaVerde – a

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<sup>2</sup> Receivership Order, para. 18.

<sup>3</sup> [Bank of Nova Scotia v. Diemer, 2014 ONCA 851 at paras. 44-45.](#)

private company incorporated in British Columbia that is currently inoperative – and certain other remaining residual assets and ownership interests with nominal value.

18. The only remaining task for the Trustee is to file a discharge certificate with the Court confirming that final distributions have been made to the Secured Lenders.

19. This Court has statutory discretion to discharge a Court-appointed receiver upon the completion of its mandate. In this case, the Trustee is acting under the aegis of the Receivership Order coupled with the June 8 Order. When exercising such jurisdiction, this Court has held that a release in favour of the Court-appointed receiver, “should issue”, provided that there is no evidence of improper conduct or negligence on the part of the receiver.<sup>4</sup>

20. As stated above, under the June 8 Order, the Trustee was directed and authorized to perform its functions and fulfill its obligations in accordance with the same obligations imposed on the Receiver under the Receivership Order. The Receiver and Trustee have acted honestly and in good faith and have dealt with the property of the Company and the Trust in a commercially reasonable manner.

21. Under the circumstances, the Trustee submits that it is appropriate for this Court to exercise its jurisdiction to discharge and release KSV, given that: (i) the proposed release is customary and included in the Court’s model discharge order; and (ii) continuing to hold back funds or having to conduct a claims bar process would

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<sup>4</sup> [Pinnacle Capital Resources Ltd. v. Kraus Inc., 2012 ONSC 6376 at para 47.](#)

unnecessarily delay a final distribution to the Secured Lenders who have suffered a shortfall on the realization of their advances to the Company.

**D. Approval of the Proposed Distributions**

22. The Trustee is seeking this Court's authorisation to simply distribute the Trust's shares held in RoccaVerde and other remaining residual assets and ownership interests in-kind to KW, acting as agent for the Secured Lenders, or as KW may direct, in case the shares can be monetized in the future. Such distribution will ensure that the Trust has no remaining assets to administer and remain with only liabilities with no available recovery. Orders authorizing distributions are routinely granted by courts in insolvency proceedings, including receiverships and the Court's authority to grant such distributions is well established. In the current case, the Trustee was also specifically authorized to make any distributions or payments under the June 8 Order.<sup>5</sup>

23. This Court has the jurisdiction to authorize the Trustee to make the Proposed Distributions pursuant to section 243(1)(c) of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3 ("**BIA**") which provides this Court with the jurisdiction to allow a receiver to "*take any other action that the court considers advisable*" if just or convenient to do so. Section 243(1)(c) has been interpreted broadly and found to grant Canadian courts jurisdiction to do what "*justice dictates*" and "*practicality demands*".<sup>6</sup>

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<sup>5</sup> June 8 Order, MR, Tab 2, Appendix A at Para 10.

<sup>6</sup> [\*Third Eye Capital Corporation v Ressources Dianor Inc./Dianor Resources Inc\*, 2019 ONCA 508 at paras 52 and 57.](#)

**PART V - ORDER REQUESTED**

24. For the reasons set forth herein and in the Report, the Trustee respectfully requests the granting of the orders contained in the form of the draft order included at Tab three of the Trustee's Motion Record.

**ALL OF WHICH IS RESPECTFULLY SUBMITTED** this 2<sup>nd</sup> day of May, 2024.



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Robin B. Schwill

Lawyers for the Receiver,  
KSV Restructuring Inc.

**SCHEDULE “A”**

1. *Bank of America Canada v. Willann Investments Ltd.*, [1993] O.J. No. 1647 (Ont. Gen. Div.)
2. [\*Bank of Nova Scotia v. Diemer\*, 2014 ONCA 851](#)
3. [\*Leslie & Irene Dube Foundation Inc. v. P218 Enterprises Ltd.\*, 2014 BCSC 1855](#)
4. [\*Pinnacle Capital Resources Ltd. v. Kraus Inc.\*, 2012 ONSC 6376](#)
5. [\*Third Eye Capital Corporation v. Ressources Dianor Inc./Dianor Resources Inc.\*, 2019 ONCA 508](#)

**SCHEDULE "B"  
STATUTES RELIED ON**

***Bankruptcy and Insolvency Act, R.S.C. 1985, c. B-3***

**Court may appoint receiver**

**243. (1)** Subject to subsection (1.1), on application by a secured creditor, a court may appoint a receiver to do any or all of the following if it considers it to be just or convenient to do so:

(a) take possession of all or substantially all of the inventory, accounts receivable or other property of an insolvent person or bankrupt that was acquired for or used in relation to a business carried on by the insolvent person or bankrupt;

(b) exercise any control that the court considers advisable over that property and over the insolvent person's or bankrupt's business; or

(c) take any other action that the court considers advisable.

**Good faith, etc.**

**247.** A receiver shall

(a) act honestly and in good faith; and

(b) deal with the property of the insolvent person or the bankrupt in a commercially reasonable manner.

**Receiver may apply to court for directions**

**249.** A receiver may apply to the court for directions in relation to any provision of this Part, and the court shall give, in writing, such directions, if any, as it considers proper in the circumstances.

**Right to apply to court**

**250.** An application may be made under section 248 or 249 notwithstanding any order of a court as defined in subsection 243(1).

***Rules of Civil Procedure***

**Extension or Abridgment**

**3.02 (1)** Subject to subrule (3), the court may by order extend or abridge any time prescribed by these rules or an order, on such terms as are just. R.R.O. 1990, Reg. 194, r. 3.02 (1).

**(2)** A motion for an order extending time may be made before or after the expiration of the time prescribed. R.R.O. 1990, Reg. 194, r. 3.02 (2).

**Jurisdiction of Judge**

37.02 (1) A judge has jurisdiction to hear any motion in a proceeding. R.R.O. 1990, Reg. 194, r. 37.02 (1).

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Proceeding commenced at Toronto

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