C.C.S.M. c. C225

The Corporations Act

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PART VIII

RECEIVERS AND RECEIVER-MANAGERS

Functions of receiver

89 A receiver of any property of a corporation may, subject to the rights of secured creditors, receive the income from the property and pay the liabilities connected with the property and realize the security interest of those on behalf of whom he is appointed, but, except to the extent permitted by a court, he may not carry on the business of the corporation.

Functions of receiver-manager

90 A receiver of a corporation may, if he is also appointed receiver-manager of the corporation, carry on any business of the corporation to protect the security interest of those on behalf of whom he is appointed.

Directors' powers cease

91 If a receiver-manager is appointed, by a court or under an instrument, the powers of the directors of the corporation that the receiver-manager is authorized to exercise may not be exercised by the directors until the receiver-manager is discharged.

Duty to act

92 A receiver or receiver-manager appointed by a court shall act in accordance with the directions of the court.

Duty under instrument

93 A receiver or receiver-manager appointed under an instrument shall act in accordance with that instrument and any direction of a court given under section 95.

Duty of care

94 A receiver or receiver-manager of a corporation appointed under an instrument shall

(a) act honestly and in good faith; and

(b) deal with any property of the corporation in his possession or control in a commercially reasonable manner.

Directions given by court

95 Upon an application by a receiver or receiver-manager, whether appointed by a court or under an instrument, or upon an application by any interested person, a court may make any order it thinks fit including, without limiting the generality of the foregoing,

(a) an order appointing, replacing or discharging a receiver or receiver-manager and approving his accounts;

(b) an order determining the notice to be given to any person or dispensing with notice to any person;

(c) an order fixing the remuneration of the receiver or receiver-manager;

(d) an order requiring the receiver or receiver-manager, or a person by or on behalf of whom he is appointed, to make good any default in connection with the receiver's or receiver-manager's custody or management of the property and business of the corporation, or to relieve the person from any default on such terms as the court thinks fit, and to confirm any act of the receiver or receiver-manager;

(e) an order giving directions on any matter relating to the duties of the receiver or receiver-manager.

Duties of receiver and receiver-manager

96(1) A receiver or receiver-manager shall

(a) immediately notify the Director of his appointment or discharge;

(b) take into his custody and control the property of the corporation in accordance with the court order or instrument under which he is appointed;

(c) open and maintain a bank account in his name as receiver or receiver-manager of the corporation for the moneys of the corporation coming under his control;

(d) keep detailed accounts of all transactions carried out by him as receiver or receiver-manager;

(e) keep accounts of his administration and have the accounts available during usual business hours for inspection by the directors of the corporation;

(f) prepare at least once in every six-month period after the date of his appointment financial statements of his administration as far as is practicable in the form required by section 149; and

(g) upon completion of his duties, render a final account of his administration in the form adopted for interim accounts under clause (f).

Liability of receiver for wages

96(2) Where, under the provisions of a security of a body corporate secured by a floating charge or by a charge that includes a floating charge upon the property of the body corporate, a receiver or receiver-manager of the property is appointed or possession of any of the property is taken by or on behalf of a holder of the security, there shall be paid out of any assets secured by the floating charge but not subject to a fixed charge that comes into the hands of the receiver or receiver-manager or holder, in priority to any claim for payment under the security the unpaid wages for a period not exceeding three months of all clerks, labourers, servants, apprentices and other wage earners in the employ of the body corporate as at the date the receiver or receiver-manager is appointed or the holder takes possession, or so much of those wages as may be realized out of those assets.

Receiver subrogated

96(3) A receiver or receiver-manager or holder making payment under subsection (2) is subrogated, to the extent of the amount of the payment, to the rights that the person receiving payment has under section 114 but subject to the person's prior right to enforce payment under that section of any balance of wages due to and not received by him under subsection (2).

Rights of director who pays receiver

96(4) Where a receiver or receiver-manager or holder receives payment from a director of the body corporate under subsection (3), the director is entitled to any preference that the person to whose rights the receiver or receiver-manager or holder was subrogated would have, or, if a judgment has been recovered for the amount paid by the director, the director is entitled to an assignment of the judgment.

S.M. 1988-89, c. 11, s. 5.