



District of British Columbia
Division No. 03 – Vancouver
Court No. B-180368
Estate No. 11-2375063

**IN THE SUPREME COURT OF BRITISH COLUMBIA
IN BANKRUPTCY AND INSOLVENCY**

**IN THE MATTER OF THE BANKRUPTCY OF
JIZHE YANG**

**IN THE MATTER OF THE RECEIVERSHIP OF
PE CONSULTING LTD.**

NOTICE OF APPLICATION

NAME OF APPLICANT: Ernst & Young Inc., in its capacity as the receiver and receiver manager (and in such capacity, the “**Receiver**”) of all of the assets, undertakings and property of PE Consulting Ltd. (the “**Company**”)

TO: Service List (attached hereto as **Schedule “A”**)

TAKE NOTICE that an application will be made by the applicant to the presiding judge, by telephone, at **9:45 a.m. on December 17, 2020**, at the courthouse at 800 Smithe Street, Vancouver, BC, or at such other date and or time as the court may order, for the orders set out in Part 1 below.

Part 1: ORDERS SOUGHT

1. An Order affirming the disallowance of the Yang Claim, for the reasons set out in the Yang NORD (as such terms are defined below).

Part 2: FACTUAL BASIS

Introduction

Appointment of the Receiver

1. On June 8, 2018, G. Powroznik Group Inc. (“**GPGI**”), in its capacity as the former trustee of the bankruptcy estate of Jizhe (Mary) Yang (“**Yang**”), a bankrupt, who was the sole director of the Company, sought and obtained an order (the “**Original Receivership Order**”) pursuant to which GPGI was appointed as receiver and receiver manager (in such capacity, the “**Former Receiver**”), without security, of all of the assets, undertakings and property of the Company (the “**Property**”).
2. Pursuant to paragraphs 34-38 of the Original Receivership Order, the Former Receiver was authorized to conduct a claims process (the “**Original Claims Process**”).

3. On December 10, 2018, Prima Technology, Inc. sought and obtained an order (the "**Amended and Restated Receivership Order**") pursuant to which Ernst & Young Inc. was substituted in place of GPGL as the receiver and receiver manager of the Property.
4. Pursuant to paragraph 39 of the Amended and Restated Receivership Order, the Original Claims Process was suspended, as at the time the Amended and Restated Receivership Order was pronounced, there were no available funds to distribute to the Company's creditors.

Remediation and sale of the Highview Property

5. The Company's primary asset consisted of a personal residence located at 2791 Highview Place, West Vancouver, BC, V7S 0A4 (the "**Highview Property**").
6. Following the granting of the Amended and Restated Receivership Order, the Receiver took possession of the Highview Property and shortly thereafter engaged Upward Construction and Renovation Ltd. to remediate extensive water damage at the Highview Property (the "**Remediation Services**").
7. As further detailed in the First Report of the Receiver, the Remediation Services were performed during the period of December 21, 2018 to August 30, 2019.
8. Following the completion of the Remediation Services, the Receiver engaged Sophia Zhou of Pacific Evergreen Realty Ltd. and Leo Zheng of Coldwell Banker Prestige Realty to assist in the marketing, staging, and sale of the Highview Property.
9. On September 24, 2019, the Receiver accepted an offer to purchase the Highview Property for \$5.26 million.
10. On October 29, 2019, this Honourable Court granted a Sale Approval and Vesting Order (the "**SAVO**") approving the Sale Transaction.

Net Sale Proceeds

11. The Sale Transaction closed on November 5, 2019, generating \$5,095,081.32 in proceeds (the "**Net Sale Proceeds**").
12. Paragraphs 9-10 of the SAVO authorized the Receiver to make the following interim distributions (the "**Distributions**") from the Net Sale Proceeds:
 - (a) in such amounts as the Receiver deems advisable from the net proceeds of the Property to pay the amounts owing pursuant to the Receiver's Certificate secured by the Receiver's Borrowings Charge (each as defined in the Amended and Restated Receivership Order); and
 - (b) in such an amount sufficient to pay to the Bank of Montreal ("**BMO**") all outstanding amounts owed by the Company and secured by the mortgage in favour of BMO and registered against title to the Lands under Registration No. CA3233157.

13. Upon completion of the Sale Transaction, the Receiver directed and authorized its counsel to make the Distributions, prior to transferring the remaining proceeds (the **"Remaining Proceeds"**) to the Receiver, which consisted of the following:
 - (a) payment to Robert J. Ellis, in trust for BMO, the sum of \$2,250,356.00, for all outstanding amounts owed by the Company and secured by the mortgage in favour of BMO and registered against title to the lands under registration number CA3233157;
 - (b) payment to the Corporation of the District of West Vancouver the sum of \$1,412.00, comprised of outstanding property taxes, utilities, and municipal tickets;
 - (c) payment to the Receiver's legal counsel in the amount of \$500.00, held in trust for final payment of utilities up to the completion date; and
 - (d) payment to the Receiver's legal counsel for \$41,200.00, held in trust for payment of speculation and vacancy tax incurred on the property for the 2018 taxation year.
14. On November 8, 2019, the Remaining Proceeds of \$2,801,612.61 were paid to the Receiver.

The Claims Process

15. Pursuant to paragraph 4 of the SAVO, for the purposes of determining the nature and priority of Claims (as defined in the SAVO): (i) the Net Proceeds stood in place of the Highview Property; and (ii) all Claims attached to the Net Proceeds "with the same priority as they had with respect to the [Highview Property] immediately prior to the sale".
16. Accordingly, and on July 29, 2020, the Receiver subsequently applied for and obtained an order (the **"Claims Process Order"**), *inter alia*:
 - (a) approving the Claims Process, including a claims bar date of August 27, 2020 (the **"Claims Bar Date"**), for the purposes of determining the nature and extent of the Claims against the Company and the Remaining Proceeds; and
 - (b) authorizing the Receiver to administer the Claims Process, including by, *inter alia*, reviewing all proofs of claim (each a **"POC"**) received on or before the Claims Bar Date and accepting, revising, or disallowing each POC, as the case may be.
17. As at the Claims Bar Date, the Receiver received the following POCs:
 - (a) an POC, in the prescribed form, filed by T&E Holdings in the amount of \$300,000.00; and
 - (b) an email from Yang (the **"Yang Email"**) asserting that the Company is indebted to her parents in the amount of \$500,378.83 (the **"Yang Claim"**).

18. Pursuant to paragraph 17 of the Claims Process Order, the Receiver reviewed the T&E Claim and the Yang Claim, and the material provided in support thereof, and made the following determinations:
- (a) the T&E Claim was accepted in its entirety, and is therefore an Allowed Claim (as such term is defined in the Claims Process Order); and
 - (b) the Yang Claim was disallowed in its entirety, and the Receiver issued a Notice of Revision or Disallowance (the “**Yang NORD**”) to Yang in respect of the Yang Claim, the details of which are set out below.

The Yang Claim

19. The Yang Claim is not in the form prescribed by the Claims Process Order and consists of:

- (a) the Yang Email, which asserts that the bank drafts attached thereto (the “**Bank Drafts**”) reflect payments made by her parents to British Pacific Enterprise Limited (“**BPEL**”) as a loan to, and on behalf of, the Company to fund construction of the Highview Property;
- (b) copies of the following Bank Drafts:
 - (i) \$46,135.54, dated May 20, 2014, addressed to British Pacific Enterprise Limited (“**BPEL**”), in Trust;
 - (ii) \$415,219.74, dated May 20, 2014, addressed to BPEL; and
 - (iii) \$39,023.55, dated May 20, 2014, addressed to the Company.

20. The Yang Email states the following with respect to the Bank Drafts:

There is money belongs to my parents to acquire the land and build the [Highview Property] more than 10 years ago. And it helps [the Company] to pay the...builder British Property Enterprise Limited during the entire development of the project. From my understanding, they should be the creditors of [the Company].

However, I experienced hard time during all these processes and do not know how to help them ask back what belongs to them.

I attached the most recent payment record from my parents’ account for your consideration with some specific entries...

As you may understand my parents are elderly do not speak English and cannot make a claim on their own. So any contact or other claim information would be my information...

21. On August 27, 2020, and after reviewing the contents of the Yang Email, the Receiver sent a further email (the “**August 27 Email**”) stating, *inter alia*, that Yang:

- (a) was required to submit a Proof of Claim in the prescribed form;
 - (b) was required to provide the Receiver with supporting documentation to substantiate that the payments, as allegedly reflected in the Bank Drafts, were advanced by her parents as a loan to the Company; and
 - (c) would need to provide further documentation to the Receiver in order to support Yang's claim that the Bank Drafts originated from bank accounts held by Yang's parents.
22. The Receiver did not receive a response to the August 27 Email from Yang or at all.
23. Accordingly, and on September 24, 2020, despite the fact that Yang did not submit a Proof of Claim in the prescribed form, the Receiver issued a notice of revision or disallowance to Yang (the "**Yang NORD**") pursuant to which the Receiver disallowed the Yang Claim in its entirety for the following reasons:
- (a) Yang had provided insufficient evidence to the Receiver to support the existence of any agreement, contract or loan between the Company and the purported creditors of the Company, as alleged or at all;
 - (b) Yang had provided insufficient evidence to the Receiver to enable the Receiver to determine the identity of the purported creditors, as alleged or at all;
 - (c) the documents provided by Yang did not identify the purported creditors, as alleged or at all;
 - (d) the documents provided by Yang did not identify the purpose for which the Bank Drafts were issued, as alleged or at all;
 - (e) two of the Bank Drafts were issued directly to BPEL, not to the Company, and Yang provided insufficient evidence and/or documentation to the Receiver to support Yang's claim that these amounts are owed by the Company to the purported creditors, as alleged or at all;
 - (f) Yang had not provided sufficient evidence to the Receiver to substantiate Yang's claim that the Bank Drafts originated from bank accounts belonging to the purported creditors, as alleged or at all; and
 - (g) the Yang Claim was not in the prescribed form and Yang had provided insufficient evidence to support Yang's authority to assert a claim on behalf of the purported creditors, being her parents, as alleged or at all.
24. On October 5, 2020, the Receiver received an email from Yang disputing the Yang NORD (the "**Purported Yang NOD**"). Though this email is not in the prescribed "Notice of Dispute" form approved by the Claims Process Order, Yang purports to dispute the Yang NORD for the following reasons:
- (a) Yang's parents gave her a power of attorney to invest their savings in Canada;

- (b) the Company borrowed money from her parents that was paid directly to BPEL in order to construct the Highview Property;
 - (c) the Bank Drafts came from her parents' savings account and constituted a loan (which did not bear interest) to the Company to pay the invoices issued by BPEL to the Company; and
 - (d) when the Former Receiver took possession of the Highview Property, Yang assumed that the Former Receiver had already verified the information with respect to the Yang Claim.
25. The Purported Yang NOD did not provide copies of any documents in support of the above bases for disputing the Yang NORD, or at all.
26. On October 5, 2020, and shortly after receiving the Yang NOD, the Receiver both emailed and called Yang to explain that Yang was required to submit the Yang NOD in the prescribed form.
27. Despite these discussions, the Receiver has not received a notice of dispute from Yang in the prescribed form. However, it is clear that Yang intends to dispute the Yang NORD, and the Receiver has therefore sought further information from Yang and the Former Receiver in order to assist it in its review and determination of same.
28. To date, and despite these requests, Yang has not provided the Receiver with any documentation, beyond the Bank Drafts, to support the Yang Claim and/or the Purported Yang NOD.
29. On October 19, 2020, the Receiver contacted the Former Receiver to inquire about the Yang Claim and the Yang NOD, and whether Yang had provided the Former Receiver with any information to support her claim that there was an "unsecured loan from [Yang's] parents to [the Company].
30. On October 19, 2020, and in response to the Receiver's inquiry, the Former Receiver advised that, during the period of its appointment and despite having made several requests for such evidence, Yang had not provided any evidence to support her assertions that certain of her family members had claims against the Company and/or the Yang Estate.
31. Accordingly, and based on all of the foregoing, the Receiver now seeks an order affirming the Yang NORD.

Part 3: LEGAL BASIS

1. The *Bankruptcy and Insolvency Act*, RSC 1985, c B-3 (the "**BIA**") is clear that the onus is on a creditor to prove its claim:

Creditors shall prove claims

124 (1) Every creditor shall prove his claim, and a creditor who does not prove his claim is not entitled to share in any distribution that may be made.

BIA, s 124(1)

2. While the creditor is not required to establish certainty, it must provide relevant and probative evidence to substantiate its claim as set out in section 124(4) of the *BIA*:

Shall refer to account

(4) The proof of claim shall contain or refer to a statement of account showing the particulars of the claim and any counter-claim that the bankrupt may have to the knowledge of the creditor and shall specify the vouchers or other evidence, if any, by which it can be substantiated.

BIA, s 124(4)

3. As the party asserting the Yang Claim, Yang bears the onus of proving the Yang Claim. As detailed above, Yang has failed to discharge this onus, including by, *inter alia*, failing to provide documentation or other evidence to corroborate Yang's unsubstantiated claims in the Yang Email and the Yang NOD, as requested by the Receiver.
4. In addition, the Claims Process Order establishes that, where the Receiver receives a notice of dispute, it may either attempt to consensually resolve the dispute or bring a motion before this Honourable Court to determine the disputed claim. Where the Receiver brings such a motion, this Honourable Court shall resolve the dispute "as a true appeal in the nature of an appeal of the decision of a licenced insolvency trustee under the [*BIA*], and not as a hearing de novo."

Claims Process Order at para 19

5. In *Re Galaxy Sports Inc*, the British Columbia Court of Appeal (the "**BCCA**") held that an appeal of a decision by an insolvency trustee in a claims process must be confined to whether the trustee made a reviewable error of fact, of law or of procedure.

Galaxy Sports Inc (Re), 2004 BCCA 284 at paras 40 - 42

6. In addition, in *Galaxy Sports*, the BCCA held that alleged creditors should not be allowed to introduce fresh evidence in such an appeal as a matter of course since "much would be lost in the way of efficiency in the operation of the bankruptcy scheme generally." The BCCA further found that:

[41] ... Creditors who neglected to file proofs of claim in compliance with the requirements of s. 124 would suffer no practical consequences if, in Farley J.'s phrase, they could expect to "cooper up" their proofs at a later date in court; and the business now conducted at creditors' meetings by trustees (who are generally supervised by inspectors under the *BIA*) would be largely co-opted to courts of law, with all the attendant expense, delay and formality.

Galaxy Sports at para 41

American Corporate Suites (Canada) Inc (Re), 2005 BCSC 1925 at para 25

7. Therefore, in considering an appeal of a decision to reject a proof of claim, this Court has limited itself to a consideration of the same material that was submitted by the creditor with the creditor's proof of claim.

American Corporate Suites at para 25

8. As detailed above, Yang failed to provide:
 - (a) the required information in the prescribed form in Yang's proof of claim with respect to the Yang Claim;
 - (b) the information requested by the Receiver in the August 27 Email; and
 - (c) a notice of dispute in the prescribed form, including the relevant information requested by the Receiver, despite express instructions from the Receiver to do so.
9. It is respectfully submitted that Yang has not discharged her onus of proving the Yang Claim and that it would be inappropriate for Yang to introduce such evidence at this late stage. Consequently, the Receiver requests that the Yang NORD be upheld and affirmed by this Honourable Court.

Part 4: MATERIAL TO BE RELIED ON

1. Affidavit #1 of Carly Beatty, affirmed February 20, 2019;
2. Affidavit #2 of Susan Danielisz, sworn September 18, 2020;
3. Third Report of the Receiver, dated December 4, 2020;
4. the pleadings and other material filed herein; and
5. such further and other materials as counsel may advise and this Honourable Court may permit.

The Applicant estimates that the Application will take 10 minutes.

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 4, 2020



Signature of Lawyer for the Applicant
Cassels Brock & Blackwell LLP
(Jared Enns and Forrest Finn)

To be completed by the Court only:

Order made

- ☐ in the terms requested in paragraphs _____ of Part 1 of this Notice of Application
- ☐ with the following variations and additional terms:

Date: _____

Signature of ☐ Judge ☐ Master

APPENDIX

THIS APPLICATION INVOLVES THE FOLLOWING:

- ☐ discovery: comply with demand for documents
- ☐ discovery: production of additional documents
- ☐ other matters concerning document discovery
- ☐ 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
- ☒ other

SCHEDULE "A"

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PE CONSULTING LTD.

SERVICE LIST (RE: PE CONSULTING LTD.)

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