

SUPREME COURT OF YUKON

Citation: *Royal Bank of Canada v. Crocus Glen
Developments Inc.*, 2020 YKSC 13

Date: 20200505
S.C. No. 17-A0127
Registry: Whitehorse

BETWEEN

ROYAL BANK OF CANADA

PETITIONER

AND

CROCUS GLEN DEVELOPMENTS INC., GREY WOLF BUILDERS INC., DAVID
STEPHEN ROBERTSON AND LARRY DEAN TURNER

RESPONDENTS

Before Madam Justice E.M. Campbell

Appearances:

Mark Wallace

David Stephen Robertson

Counsel for the petitioner and the Receiver

Appearing on his own behalf

REASONS FOR JUDGMENT

INTRODUCTION

[1] On December 13, 2017, Gower J. appointed Grant Thornton Limited as Receiver (the “Receiver”), without security, of all of Crocus Glen Developments Inc.’s (“Crocus Glen”) and Grey Wolf Builders Inc.’s (“Grey Wolf”) current and future assets, undertakings and properties of every nature and kind whatsoever, and wherever situated. Gower J. also approved the sale and vesting order for Crocus Glen’s residential units.

[2] Both Crocus Glen and Grey Wolf consented to the appointment of the Receiver and to the vesting order.

[3] This is an application by the Receiver for the approval of its interim accounts regarding Crocus Glen and Grey Wolf.

[4] The Receiver seeks an order for the approval of:

1. Its first report to the court in the receivership of Crocus Glen and Grey Wolf;
2. Its conduct and activities in the receivership of Crocus Glen and Grey Wolf from December 13, 2017, to October 21, 2019;
3. Its Interim Statement of Receipts and Disbursements for the receivership of Crocus Glen for the period of December 13, 2017, to September 30, 2019;
4. Its Interim Statement of Receipts and Disbursements for the receivership of Grey Wolf for the period of December 13, 2017, to September 30, 2019;
5. Its fees and disbursements for services rendered in the amount of \$112,860 plus applicable taxes for the receivership of Crocus Glen for the period of December 13, 2017, to September 30, 2019;
6. Its fees and disbursements for services rendered in the amount of \$45,733 plus applicable taxes for the receivership of Grey Wolf, for the period of December 13, 2017, to September 30, 2019;
7. The fees and disbursements for Lawson Lundell LLP, the Receiver's legal counsel in the amount of \$75,874.57 plus applicable taxes, for the receivership of Crocus Glen and Grey Wolf for the period of December 13, 2017, to September 30, 2019; and

8. The fees and disbursements for Austring, Fairman & Fekete, the Receiver's Yukon legal counsel in the amount of \$15,437 plus applicable taxes, for the receivership of Crocus Glen and Grey Wolf for the period of December 13, 2017, to September 30, 2019.

[5] Crocus Glen, a company incorporated in the Yukon, was a residential property developer established to develop a parcel of land located in Whitehorse. The development consisted of a number of single-family home lots and two multi-family lots. Single-family homes were at various stages of construction on a number of lots when Crocus Glen was placed in receivership.

[6] David Stephen Robertson ("Mr. Robertson") and Larry Dean Turner ("Mr. Turner") were the two directors and each owned 50% of Crocus Glen. Both Mr. Robertson and Mr. Turner are named respondents in this matter.

[7] Grey Wolf was a residential home builder providing contracting services to Crocus Glen for all its operations. Essentially, Grey Wolf was Crocus Glen's general contractor, and, according to Mr. Robertson, its sole supplier.

[8] Mr. Turner owned 100% of Grey Wolf and was its sole director.

[9] Mr. Robertson appeared at the hearing of this application. Mr. Turner did not.

[10] Mr. Robertson raised a number of issues with respect to the conduct of the Receiver in this matter. He also raised issues regarding the reasonableness, accuracy and attribution of the Receiver's fees and expenses; as well as the reasonableness, accuracy and attribution of the Receiver's counsel fees.

[11] Despite his initial protestations, at the end of the day, Mr. Robertson, while still voicing concerns about the Receiver's conduct, stated that, for the purpose of the

Receiver's application before the Court, he did not dispute that the Receiver and its lawyers had performed the work described in the affidavit(s) filed in support of the application. However, he continued to dispute the accuracy and attribution of those fees to Crocus Glen instead of Grey Wolf.

ISSUE

[12] Should this Court approve the Receiver's first report to the court in this matter along with the other relief sought by the Receiver in this application?

ANALYSIS

[13] Mr. Robertson is not opposed to this Court approving the Receiver's first report. He also conceded that there is no evidence before me on this application upon which I could refuse to approve the conduct and activities of the Receiver in the receivership of Crocus Glen. However, Mr. Robertson submits that by treating Crocus Glen's account and Grey Wolf's account as one, the Receiver and its legal counsel's firms wrongly attributed to Crocus Glen fees that should have been attributed to Grey Wolf.

[14] Mr. Robertson also pointed out that the Receiver used incorrect hourly rates to calculate its professional fees for the month of July 2019 and overcharged Crocus Glen's account by a number of hours for the month of September 2019. Mr. Robertson submits that this Court should decrease the Receiver's claimed fees accordingly.

[15] Counsel for the Receiver submitted that Grey Wolf's and Crocus Glen's business activities and receivership's accounts were truly interconnected. Counsel pointed to the fact that both companies went into receivership at the same time and under the same order as evidence of that interconnection. Counsel for the Receiver submitted that the Receiver thoroughly reviewed the attribution of its fees and services as well as the fees

of its legal counsel as a result of this Court's questions in that regard and that this Court should rely on the answers provided by Mr. Wentzell, the Receiver's representative, in his second affidavit filed in support of the Receiver's application.

The Attribution of the Receiver's Professional Fees

[16] At the hearing, as part of his submissions, Mr. Robertson provided to the Court a list of 77 entries appearing in the Receiver's report, which, he submits, should have been attributed to Grey Wolf's account instead of Crocus Glen's account. Those entries total a gross amount of \$26,110.25. Mr. Robertson recognizes that this gross amount does not take into account the 10% discount offered by the Receiver on its professional fees, the 5% the Receiver adds to its invoices for its administration and technology fees, and the applicable taxes.

[17] Counsel for the Receiver noted that Mr. Robertson included the total amount of time associated with each entry he identified, whereas only part of that time was spent on Grey Wolf's account. He also pointed out that some of those entries were properly attributed in their entirety to Crocus Glen's account.

[18] Counsel for the Receiver reiterated that this Court should rely on the answers provided by Mr. Wentzell, in his second affidavit, with respect to the appropriate attribution of the Receiver's professional fees, as he worked on the two accounts. The result of Mr. Wentzell's analysis was that approximately \$4,927 of the Receiver's professional fees could be reallocated from Crocus Glen to Grey Wolf and that approximately \$1,813 of the Receiver's professional fees could be reallocated from Grey Wolf to Crocus Glen. However, I note that Mr. Wentzell did not identify, in his

affidavit, the specific entries that, in his opinion, could be reallocated from one company's account to the other's account.

[19] Mr. Robertson conceded that some of the entries he included in his list were mixed, but that the Receiver's description of the work it performed was not specific enough to allow him to break them down. The total amount of time associated to those mixed entries was therefore included in his list.

[20] I undertook to review and did review all the entries identified by Mr. Robertson in the document he provided to the Court at the hearing, in light of the evidence filed on this application with respect to Grey Wolf's and Crocus Glen's respective business activities, assets and liabilities, such as the builder's liens registered on Crocus Glen's residential units. I also considered the results of the review performed by Mr. Wentzell and the information contained in his two affidavits. As a result, I find that an amount of \$15,012.98 in professional fees plus applicable taxes was incorrectly attributed to Crocus Glen's account, and should have been attributed to Grey Wolf's account. I arrive at this amount based on my conclusion that a number of the Receiver's employees worked the following hours on the Grey Wolf file instead of on the Crocus Glen file: 22.25 hours for Mr. Chan; 3 hours for Mr. Palacios; 8.6 hours for Ms. Tse; and 15.40 hours for Mr. Wentzell. The total amount to which I arrive takes into consideration the hourly rate increase applied by the Receiver, as of October of 2018, for the work performed by its employees; the deduction of 10% usually granted by the Receiver on the gross amount of its professional fees; and the 5% the Receiver adds to its invoices for its administration and technology fees.

[21] Considering the fact that the Receiver considered the Crocus Glen file and the Grey Wolf file to be interconnected, and the fact that work on the Grey Wolf file was mistakenly charged to the Crocus Glen file, I am of the view that I may infer, to a certain extent, that work on the Crocus Glen file may also have been mistakenly charged to the Grey Wolf file. While Mr. Wentzell did not identify the specific entries which, in his view, could be reallocated from the Grey Wolf's account to the Crocus Glen's account, I am nonetheless of the view, that I should, in all fairness, factor that amount (\$1,813) in my analysis. In addition, the evidence does not persuade me that the Receiver deliberately overcharged its Crocus Glen's account in order to ensure that its fees on the Grey Wolf file stay below the amount it negotiated with the Canada Revenue Agency. ("CRA"). At the time Grey Wolf went in receivership, it had GST and source deduction obligations to CRA. CRA's claim, in that regard, has priority over the Receiver's claim regarding its fees and disbursements. However, the Receiver and CRA entered into an agreement whereby the Receiver's reasonable fees and expenses up to \$50,000 would not be subject to that priority. As pointed out by the Receiver's counsel, nothing prevents the Receiver from negotiating a new agreement with CRA that takes into account the Receiver's actual fees and disbursements instead of its projected fees if its actual fees are higher than the \$50,000 agreed upon.

[22] As a result, I find that an amount of \$13,199.98 (\$15,012.98 – \$1,813) plus applicable taxes should be reallocated from Crocus Glen's account to Grey Wolf's account.

Lawson Lundell's Legal Fees

[23] In its original report, all of the legal fees incurred by the Receiver with respect to Crocus Glen's and Grey Wolf's receivership were attributed to Crocus Glen's account. I note that all of Lawson Lundell's invoices attached to the Receiver's report were issued under their Crocus Glen file.

[24] In response to this Court's question with respect to those legal fees, Mr. Wentzell stated in its second affidavit that he understood that Lawson Lundell only had one file for both Grey Wolf and Crocus Glen matters. He further stated that he understood that the majority of the time spent by Lawson Lundell on that file related to Crocus Glen matters. He also stated that he understood that the total amount of time expended by Lawson Lundell for Grey Wolf matters was less than \$5,000 and closer to \$3,000.

[25] At the hearing, Mr. Robertson expressed scepticism with respect to the small amount of legal fees identified by Mr. Wentzell that could be attributed to legal work performed on the Grey Wolf file. Mr. Robertson pointed out a number of specific entries in Lawson Lundell's invoices which, he submitted, clearly describe legal work performed on Grey Wolf matters. However, as Lawson Lundell's invoices do not break down the amount of time spent by each lawyer on each particular legal task they performed, he is unable to quantify the work actually performed on Grey Wolf matters.

[26] After review, I agree with counsel for the Receiver that the vast majority of the entries listed in Lawson Lundell's invoices relate to legal work performed on Crocus Glen matters, such as the legal issues surrounding the builder's liens registered on Crocus Glen residential units, and that those entries could reasonably correspond to the \$3,000 to \$5,000 range identified by Mr. Wentzell. However, I must say that I find the

lack of precise timekeeping for each individual tasks performed by Lawson Lundell's lawyers problematic in this case. I am therefore of the view that the highest amount identified by Mr. Wentzell, which corresponds to \$5,000 out of a total of over \$75,000 in legal fees, should be reallocated from Crocus Glen's account to Grey Wolf's account.

Austring, Fairman and Fekete's Legal Fees

[27] Mr. Robertson identified in Austring, Fairman and Fekete's invoices a few entries totalling \$202.50 in legal fees, which, he submitted, should be reallocated from Crocus Glen to Grey Wolf. Counsel for the Receiver does not take issue with Mr. Robertson's submission. As a result, I am of the view that this amount should be attributed to Grey Wolf's account.

The Receiver's Professional Fees for July and September 2019.

[28] Mr. Robertson correctly pointed out that the hourly rates charged for the work of a number of the Receiver's employees in July 2019 and the total number of hours charged for September 2019 are incorrect.

[29] In July 2019, the Receiver charged an hourly rate of \$805 for the work performed by managers/associates, whereas the hourly rate for that group of employees amounts to \$290 an hour, according to the Receiver's report. Also, the work performed by certain associates was charged at an hourly rate of \$720 when it should have been \$135 an hour. Also, the Partners/Trustees worked for 1.5 hours on Crocus Glen's account instead of the 1.8 hours charged.

[30] As a result, when the correct hourly rates and number of hours are applied, as well as the usual 10% deduction and the 5% addition, I find that the Receiver's

professional fees for the month of July 2019 on the Crocus Glen file amount to \$972.88 plus applicable taxes instead of \$1,596.11 plus applicable taxes.

[31] In September 2019, the Receiver overcharged the Crocus Glen file for its professional services. The record shows that one of the Receiver's partners/trustees spent two hours on Crocus Glen's account instead of 3.10 hours. Also, one of the Receiver's associates/technicians spent 0.6 hour on Crocus Glen's account instead of 1 hour.

[32] As such, when the correct number of hours is applied, the Receiver's professional fees for the month of September 2019 amount to \$1,198.26 plus applicable taxes instead of \$1,821.02 plus applicable taxes.

[33] As a result, I find that an amount of \$1,245.99 should be deducted from the amount claimed by the Receiver for its professional fees and disbursements on the Crocus Glen file.

[34] Finally, Mr. Robertson noted that the Receiver seeks professional fees in relation to work it performed prior to December 13, 2017 (but after December 1, 2017), which the order granted by Gower J. on December 13, 2017 permits. Mr. Robertson and counsel for the Receiver agree that the order sought by the Receiver should reflect that reality.

CONCLUSION

[35] Based on the findings that I have made on this application, I am prepared to grant the Receiver's application on the following terms. I therefore order that:

1. The first report to the court of Grant Thornton Limited, Receiver of Crocus Glen Developments Inc. and Grey Wolf Builders Inc., is approved;

2. The conduct and activities of Grant Thornton Limited, in the receivership of Crocus Glen Developments Inc. and Grey Wolf Builders Inc. from December 1, 2017, to October 21, 2019, are approved;
3. Grant Thornton Limited's Interim Statement of Receipts and Disbursements for the receivership of Crocus Glen Development Inc. for the period of December 1, 2017, to September 30, 2019, is approved;
4. Grant Thornton Limited's Interim Statement of Receipts and Disbursements for the receivership of Grey Wolf Builders Inc. for the period of December 1, 2017, to September 30, 2019, is approved;
5. Grant Thornton Limited's fees and disbursements for services rendered in the amount of \$98,414.03 (\$112,860 – \$13,199.98 – \$1,245.99) plus applicable taxes for the receivership of Crocus Glen Development Inc. for the period of December 1, 2017, to September 30, 2019, are approved;
6. Grant Thornton Limited's fees and disbursements for services rendered in the amount of \$58,932.98 (\$45,733 + \$13,199.98) plus applicable taxes for the receivership of Grey Wolf Builders Inc., for the period of December 1, 2017, to September 30, 2019, are approved;
7. The fees and disbursements for Lawson Lundell, Grant Thornton Limited's Legal Counsel in the amount of \$70,874.57 plus applicable taxes, for the receivership of Crocus Glen Developments Inc. and \$5,000 plus applicable taxes for the receivership of Grey Wolf Builders Inc. for the period of December 1, 2017, to September 30, 2019, are approved; and

8. The fees and disbursements for Austring, Fairman & Fekete, Grant Thornton Limited's Yukon legal counsel in the amount of \$15,234.50 plus applicable taxes, for the receivership of Crocus Glen Developments Inc. and of \$202.50 plus applicable taxes for the receivership of Grey Wolf Builders Inc. for the period of December 1, 2017, to September 30, 2019 are approved.

CAMPBELL J.