

10-Sep-26

REGISTRY

No. S262220
Vancouver Registry

IN THE SUPREME COURT OF BRITISH COLUMBIA

BETWEEN:

OPTRUST JOYCE FINANCING CORP.

PETITIONER

AND:

5055 JOYCE HOLDINGS INC. and 5055 JOYCE PROPERTY INC.

RESPONDENTS

APPLICATION RESPONSE

Application response of: Rivas Painting Ltd. [**"Rivas"**]
Hans Demolition & Excavating Ltd. [**"Hans"**]

THIS IS A RESPONSE TO the Notice of Application of AlixPartners Restructuring, Inc., filed September 4, 2026 [the **"Application"**].

Rivas estimates that the application will take 1 hour.

Part 1: ORDERS CONSENTED TO

NONE

Part 2: ORDERS OPPOSED

ALL

Part 3: ORDERS ON WHICH NO POSITION IS TAKEN

NONE

Part 4: FACTUAL BASIS

1. At all material times, 5055 Joyce Property Inc. [**"5055 JP"**] was the registered legal owner of the lands and improvements located at 5083 Joyce Street, Vancouver BC, and legally described as:
024-143-111
Lot 1 Block 17 District Lot 51 Group 1 New Westminster District Plan LMP37967
[the **"Lands"**].
2. On or about January 7, 2022, Rivas and with 5055 Joyce Holdings Inc. [**"5055 JH"**] entered into a written agreement [the **"Contract"**] whereby 5055 JH engaged Rivas to perform painting and wall covering works [the **"Rivas Work"**] for a 360 unit residential development project situated on the Lands [the **"Improvement"**].

3. At all material times, Hans and 5055 JH entered into an agreement whereby 5055 JH engaged Hans to perform mold inspection and median works in relation to the Improvement [the “**Hans Work**”].

The Liens

4. On April 30, 2026, Hans caused a claim of lien to be registered pursuant to the *Builders Lien Act*, SBC 1997, c. 45 [the “**BLA**”], under number CB2767534 against the Lands in the amount of \$84,265.13, representing the sum of the amount due and owing to Hans on account of the Hans Work [the “**Hans Lien**”].
5. On May 8, 2026, Rivas caused a claim of lien to be registered against the Lands under registration number CB2783849 in the amount of \$553,135.34, representing the sum of the invoices due and owing to Rivas on account of the Rivas Work done pursuant to the Contract [the “**Rivas Lien**”].
6. Rivas further claims that the holdback retained, or required to be retained, by 5055 JH and 5055 JP pursuant to the *BLA* is charged with payment of \$553,135.34 to Rivas.
7. The Applicant's materials disclose an apparent shortfall of approximately \$895,280.70 between the recorded holdback obligations and the funds maintained in the holdback account.

Receivership Order

8. Pursuant to a receivership order granted on April 27, 2026, KSV Restructuring Inc. was appointed receiver and manager of 5055 JH and 5055 JP. Further, on June 1, 2026, AlixPartners Restructuring Inc. [the “**Receiver**”] was substituted as receiver by further order of the Court.

Timing of Service and Procedural Prejudice

9. The Notice of Application and supporting materials were served around 4:30pm on Friday, September 4, 2026, immediately prior to the Labour Day long weekend.
10. As a practical matter, effective service occurred on Tuesday, September 8, 2026, being the first business day following the long weekend.
11. On September 9, 2026, the Receiver filed its application index notwithstanding that affected creditors had not yet had a meaningful opportunity to review the materials, investigate the relief sought, prepare responding evidence, or file responsive materials.
12. On September 9, 2026, counsel for Rivas and Hans attempted to contact counsel for the Receiver to discuss the application and the relief sought.
13. The application is scheduled to be heard on September 11, 2026, only three business days following effective service and two business days after the first opportunity for affected parties to respond. The compressed timetable has materially prejudiced the ability of affected stakeholders to assess the proposed payments and holdback distributions and to prepare a complete response to the relief sought.

Part 5: LEGAL BASIS

1. Rivas and Hans plead and rely on:
 - a. Rule 8-1 (1) to (9) and 8-5 (1) to (8) of the *Supreme Court Civil Rules*, BC Reg 168/2009;
 - b. the *BLA*, in particular, ss. 4, 5, 6, 10, 11'
 - c. the case law as set out below; and
 - d. such further and other case law and statute as counsel may advise.

Pre-Filing Payments

2. The relief sought is broad, vague, and ambiguous.
3. Unlike proceedings under the *Companies' Creditors Arrangement Act*, the *Bankruptcy and Insolvency Act* [the "*BIA*"] does not establish a statutory regime for the designation or preferential treatment of "critical suppliers". The proposed order would effectively create a class of preferred creditors based solely on the Receiver's assessment of their importance to completion of the Project, notwithstanding the absence of any such classification in the *BIA*.
4. The proposed order would permit the Receiver to pay selected suppliers, consultants, contractors, subcontractors, and other creditors for amounts owing before the Receivership Order, up to \$3 million, where the Receiver considers payment necessary for operations, preservation of the Property, or completion of the Improvement.
5. While courts may grant relief to facilitate a restructuring and preserve the continued supply of critical goods or services, the designation of a creditor as a "critical supplier" does not, without more, justify preferential payment of that creditor's pre-filing indebtedness. Courts have declined to authorize such payments where doing so would clearly prefer one creditor over others and be detrimental to other stakeholders absent sufficient justification.

Soccer Express Trading Corp. (Re), 2020 BCSC 749 at paras. 82-84

6. The proposed order does not provide for payment of all creditors with pre-receivership claims, nor does it establish a *pro rata* process or objective distribution scheme. Instead, it permits discretionary payments to creditors selected as "Critical Suppliers," based on factors including the remaining work, replacement-trade availability, and the possible effect on completion costs and timing, without providing any of those particulars within the application.
7. The Receiver fails to provide identification of the proposed payees or corresponding payment amounts, and has adduced no recipient-specific evidence demonstrating why any particular pre-receivership claim warrants payment in priority to others.
8. Further, the materials do not explain whether the proposed \$3 million in payments is to be funded from the holdback account, from general receivership funds, or from some combination thereof. Nor does the application explain whether recipients of pre-receivership payments may also receive holdback distributions, or how the two forms of relief are intended to operate together.

9. The Receiver's proposed discretion is too broad because it permits payments based on an undefined necessity standard, without requiring prior court approval for each recipient or establishing disclosure, notice, or review mechanisms.
10. Accordingly, the proposed pre-filing payment order should be refused or narrowed to objectively demonstrated post-receivership preservation and completion expenses.

Distribution of Holdbacks

11. The Receiver seeks authority to make holdback distributions only to selected "Critical Suppliers" without explaining how those distributions affect other contractors with equivalent holdback entitlements, particularly where the Receiver acknowledges a historical holdback shortfall.
12. The application further provides no explanation as to how such selective distributions accord with the rights of all persons asserting claims against the holdback fund, or how the proposed payments comply with the statutory holdback and trust regime established by the *BLA*.
13. Section 5 of the *BLA* requires an owner to establish a holdback account and provides that all amounts deposited into the account are charged with payment of all liens arising under the contractor from whom the holdback was retained.
14. Section 6 of the *BLA* states the following:

Prohibited application of holdback
6 (1) *If a contractor or subcontractor defaults under a contract or subcontract, the required holdback must not be applied to the completion of the contract or subcontract, or for the payment of damages, or for any other purpose until the possibility of any lien arising under the person in default is exhausted.*

(2) *A payment applied contrary to this section does not reduce the liability under this Act of the person making the payment.*

(3) *This section does not apply to money held in excess of the required holdback.*
15. Sections 5(2)(b) and 10 of the *BLA* impress the funds with a trust for the persons engaged in connection with the improvement, and prohibit appropriation or conversion of trust funds until all beneficiaries have been paid.
16. The foregoing provisions demonstrate that holdback funds are not ordinary assets available for discretionary distribution by the Receiver. Rather, the funds are impressed with a statutory trust and must be administered in accordance with the trust obligations and distribution scheme established by the *BLA*. The Receiver cannot distribute trust funds to a selected group of beneficiaries based on commercial or operational considerations while disregarding the rights of other persons with equivalent claims to the same fund.

17. The proposed holdback distributions are inconsistent with the scheme of the *BLA*. The *BLA* does not authorize the selective distribution of holdback funds to a subset of claimants based on their designation as "Critical Suppliers". The statutory holdback regime exists for the benefit of all persons entitled to claim against the holdback fund, and any shortfall in available holdback funds must be addressed in accordance with the priorities and distribution scheme established by the *BLA*.
18. If sufficient funds exist to satisfy holdback claims, there is no evident basis for limiting distributions to selected contractors. Conversely, if insufficient funds exist to satisfy all holdback claims, payment of only certain contractors necessarily risks preferring those claimants over others asserting equivalent rights against the holdback fund.
19. The Receiver's own evidence discloses an apparent holdback shortfall. In those circumstances, the Court should not authorize the selective distribution of trust funds absent clear evidence demonstrating how all beneficiaries of the statutory trust will be treated and ensuring that no claimant receives preferential treatment contrary to the scheme of the *BLA*.
20. Absent a complete accounting of the proposed recipients, the amounts to be distributed, the remaining holdback claims, and the impact of the proposed distributions on other persons asserting entitlement to the holdback fund, the Court cannot properly assess whether the relief sought would unfairly prejudice other stakeholders or result in an unjustified preference among similarly situated claimants.
21. Accordingly, the proposed holdback distribution order should be refused. It would effectively authorize the Receiver to depart from the statutory trust and holdback regime established by the *BLA* and to make distributions to preferred claimants without demonstrating that the rights of all persons entitled to claim against the holdback fund have been fully protected.

Evidentiary Concerns

22. The Receiver's materials expressly state that the financial information relied upon has been obtained from the Debtors' books and records, information provided by third parties, and other sources, and has not been audited or otherwise independently verified in accordance with Canadian Auditing Standards. Accordingly, the Receiver provides no opinion or assurance regarding the accuracy or completeness of that information.
23. This limitation reinforces the need for a proper evidentiary foundation before the Court authorizes selective pre-receivership payments and holdback distributions. In the absence of independently verified financial information, the Court should require disclosure identifying the proposed recipients, the amounts to be paid, competing claims, and the anticipated effect of the proposed distributions on other stakeholders.

Safeguards and Disclosure Requirements

24. At a minimum, the Receiver should be required to disclose the confidential schedule identifying the proposed recipients of the pre-receivership payments and holdback distributions, together with a complete accounting of the holdback account, identification of all known holdback claimants, and particulars of the competing claims asserted against the holdback fund.

25. The Receiver should also be required to undertake that no holdback distribution will reduce the funds available to satisfy valid holdback claims pending further order of the Court.
26. If the Court is inclined to authorize any pre-receivership payments or holdback distributions, then Rivas and Hans should be included on the same basis as any selected trade, supplier, contractor, or subcontractor. Both assert valid lien and holdback claims arising from work performed in connection with the Improvement, and the application provides no evidentiary basis upon which they should be treated differently from the proposed recipients.
27. Alternatively, the Court should direct that sufficient funds be reserved to satisfy the asserted holdback claims of Rivas and Hans, and require that any distribution of holdback funds occur pursuant to an equitable process consistent with the *BLA* and applicable statutory priorities, rather than through selective distributions to a preferred group of claimants.

Part 6: MATERIAL TO BE RELIED ON

1. Pleadings and materials filed herein.
2. Affidavit #1 of A. Salak, sworn September 10, 2026.
3. Such further and other materials as counsel may advise.

Rivas and Hans have not filed in this proceeding a document that contains an address for service.

Rivas and Hans' address for service:

McQuarrie Hunter LLP
Barristers & Solicitors
1500, 13450 -- 102 Avenue
Surrey BC V3T 5X3
Phone: 604-581-7001
Attn: Douglas J. Conolly

Fax number for service:

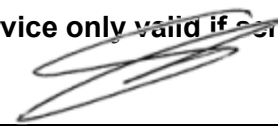
NONE

E-mail address for service:

service.dc@mcquarrie.com &
asalak@mcquarrie.com

(service only valid if served to both)

Date: September 10, 2026


McQUARRIE HUNTER LLP

Signature of ☒ Lawyer for Rivas and Hans

This Application Response was prepared by the law firm **McQuarrie Hunter LLP** located at Suite 1500 – Central City Tower – 13450 102nd Avenue, Surrey BC [Phone: 604.581.7001].