

FORM 1 (Rule 2 (1))

SUPREME COURT OF BRITISH COLUMBIA

NOTICE OF APPLICATION

(CAMPBELL RIVER - Criminal Proceedings)

BETWEEN:

Capt. E. G. da Costa Duarte

(Applicant)

and

HER MAJESTY THE QUEEN

CAMPBELL RIVER HARBOUR AUTHORITY (CRHA)

(Respondents)

TAKE NOTICE that an application will be made by Capt. E. G. da Costa Duarte, the applicant, to the court at ____ a.m./p.m. on the ____ day of _____, 2010, at Courtroom no. _____, at Campbell River, for an order granting;

ORDER FOR WINDING-UP OF THE CAMPBELL RIVER HARBOUR AUTHORITY

Grounds for the Application are:

- 1) The Minister of Industry granted a charter by Letters Patent under the provisions of Part II of the Canada Corporations Act on **July 8, 1997** to a not-for-profit Corporation #3390764 BN #878395995RC0001, named, **The Campbell River Harbour Authority (CRHA)**. A CORPORATION WITHOUT SHARE CAPITAL UNDER PART II OF THE CANADA CORPORATIONS ACT.
- 2) The Supreme Court of the Province of British Columbia exercises jurisdiction over the following Acts of Parliament: Canada Corporations Act, Canada Business Corporations Act and the Winding-up and Restructuring Act. The following are relevant excerpts originating from sections of the previously mentioned Acts of Parliament;

"court" means

(a) in Ontario, Nova Scotia, British Columbia and Newfoundland, the Supreme Court,

Grounds for winding-up company

5.6 (1) Where a company

(a) carries on a business that is not within the scope of the objects set forth in its letters patent or supplementary letters patent,

(b) exercises or professes to exercise any powers that are not truly ancillary or reasonably incidental to the objects set forth in its letters patent or supplementary letters patent,

Neglect to keep books

113. *Every company that neglects to keep any book or books required by this Part to be kept by the company, is guilty of an offence and liable on summary conviction to a penalty not exceeding twenty dollars for each day that such neglect continues. R.S., 1952, c. 53, s. 111.*

Books of account and accounting records

117. *(1) Every company SHALL cause to be kept proper accounting records with respect to all financial and other transactions of the company, and, without limiting the generality of the foregoing, shall cause records to be kept of*

(a) all sums of money received and disbursed by the company and the matters in respect of which receipt and disbursement take place;

(b) all sales and purchases by the company;

(c) all assets and liability of the company; and

(d) all other transactions affecting the financial position of the company.

Referring to section 117, two images, taken by a CRHA member, captured a large shredding truck destroying CRHA financial documents, a few days after the Applicant met with RCMP Sergeant Craig Massey, Campbell River Detachment over fraud concerns. Specifically, on April 20, 2010, a Mobile Paper Shredding Truck, R&R (250) 287-9880, was contracted by CRHA Directors and/or staff, to shred a large number of documents originating from the CRHA Head office located at 705 Island Highway, Campbell River, BC. An assurance that no past financial or other evidence exists at the CRHA head office.

Records to be kept at head office

(2) The accounting records SHALL be kept at the head office of the company or at such other place in Canada as the directors think fit, and shall at all times be open to inspection.

Appointment of auditor at first general meeting

130. *(1) The shareholders (members) of a company at their first general meeting SHALL APPOINT one or more auditors to hold office until the close of the next annual meeting, and, if the shareholders (members) fail to do so, the directors shall forthwith make such appointment or appointments.*

Annual appointment of auditor

(2) The shareholders (members) of a company at each annual meeting SHALL APPOINT one or more auditors to hold office until the close of the next annual meeting, and, if an appointment is not so made, the auditor in office continues in office until a successor is appointed.

Annual returns

133. *(1) Every company SHALL, on or before the 1st day of June in every year, make a summary as of the 31st day of March preceding, specifying the following particulars:*

(a) the corporate name of the company;

(b) the manner in which the company is incorporated and the date of incorporation;

(c) the complete postal address of the head office of the company;

(d) the date upon which and the place where the last annual meeting of the shareholders of the company was held;

(e) the names and complete postal addresses of the persons who at the date of the return are the directors of the company; and

(f) the name and complete postal address of the auditor of the company.

Summary to be filed, signed and certified

(2) The summary mentioned in subsection (1) shall be completed and filed in duplicate in the Department on or before the 1st day of June aforesaid, and each of the duplicates shall be signed and certified by a director or an officer of the company.

Defaults

(3) A company that makes default in complying with any requirement of this section is guilty of an offence and is liable on summary conviction to a fine of not less than twenty dollars and not more than one hundred dollars for each day during which the default continues; and every director or officer who knowingly authorized, permitted or acquiesced in any such default is guilty of an offence and is liable on summary conviction to a like fine.

Evidence of by-laws

140. A copy of any by-law of the company under its seal and purporting to be signed by any officer of the company shall, as against any shareholder (member) of the company, be received in evidence as prima facie proof of such by-law in all courts in Canada. R.S., 1952, c. 53, s. 131.

WINDING-UP ORDER - Cases where winding-up order may be made

10. A court may make a winding-up order in respect of a company

(a) where the period, if any, fixed for the duration of the company by the Act, charter or instrument of incorporation of the company has expired, or where an event, if any, has occurred, on the occurrence of which it is provided by the Act, charter or instrument of incorporation that the company is to be dissolved;

(b) where the company at a special meeting of shareholders called for the purpose has passed a resolution requiring the company to be wound up;

(c) when the company is insolvent; (d) when the capital stock of the company is impaired to the extent of twenty-five per cent thereof, and when it is shown to the satisfaction of the court that the lost capital will not likely be restored within one year; or (e) when the court is of opinion that for any other reason it is just and equitable that the company should be wound up.

APPLICATION FOR ORDER - Application for winding-up order

11. An application for a winding-up order may

(a) in the cases mentioned in paragraphs 10(a) and (b), be made by the company or by a shareholder (member) of the company;

3) The Campbell River Harbour Authority (CRHA) is not the proprietor of the property located at 705 Island Highway Campbell River, B.C. V9W 2C2. Rather, the said property is owned by Her Majesty The Queen in right of Canada, represented by the Minister of Fisheries and Oceans and acting through the Regional Director. Further, the said property, is leased and managed by the CRHA Board of Directors on behalf of its membership, as per the Letters Patent under the provisions of Part II of the Canada Corporations Act, signed on July 8, 1997; Corporation #3390764 BN #878395995RC0001. The CRHA is governed by its objects of the Corporation, By-Laws and Lease Agreement.

4) The Applicant, Capt. E. G. da Costa Duarte, received a membership card in 2009 by paying a one dollar fee during a CRHA Annual Meeting. No Corporate membership list exists contrary to the provisions of the Canada Corporations Act and Canada Business Corporations Act. The Campbell River Harbour Authority, the Board of Directors of the Campbell River Harbour Authority (CRHA) located at 705 Island Highway, Campbell River, BC, V9W 2C2, between February 18, 2010 and October 14, 2010, persistently and neglectful in their duties as Directors of the CRHA, failed to furnish a membership list when formally requested (verbal and written) to do so by Capt. E. G. da Costa Duarte and several other members of the CRHA, contrary to section 111.1 (1) and (4) of the Canada Corporations Act.

- 5) Campbell River Harbour Authority, the Board of Directors of the Campbell River Harbour Authority (CRHA) located at 705 Island Highway, Campbell River, BC, V9W 2C2, between March 31, 1998 and October 14, 2010, knowingly authorized, permitted and acquiesced the production of false statements on box "G", FORM 3, ANNUAL SUMMARY (Under Section 133 of the Canada Corporations Act). Box "G" of the said FORM 3, states that MOELLER & Company were the Auditors of the CRHA Corporation, when **NO AUDIT** was ever carried out by **MOELLER & COMPANY or any other Auditor**, contrary to section 133 (1) and (3) of the Canada Corporations Act.
- 6) Campbell River Harbour Authority, the Board of Directors of the Campbell River Harbour Authority (CRHA) located at 705 Island Highway, Campbell River, BC, V9W 2C2, between March 31, 1998 and October 14, 2010, failed to comply with section 117 (1) (a) (b) (c) (d) and 117 (2) of the Canada Corporations Act; by neglecting to be kept proper accounting records with respect to all financial and other transactions of the company. Further, to the prejudicial "Rights of CRHA Membership", the CRHA Board of Directors implemented rules and regulations contrary to and/or omitted from the CRHA by-laws; namely the creation of the **Berthage Agreement and the Live-a-board Agreement**. The practice of intimidation, to the prejudicial "Rights of CRHA Membership", extended to the fabrication of false written documents demanding a member's resignation; without membership approval as per the CRHA By-laws;

CRHA By-Laws, Section 8; "Any member may be required to resign from the Corporation by a vote exceeding three quarters (3/4) of the members present at a general meeting".

And, false written documents denying a member's lawful "Rights", contrary to the provisions of the CRHA Letters Patent, By-laws and section 149 of the Canada Corporations Act. For example, the letter (Criminal Case No. 36999, Exhibit M) dated March 4, 2010, signed by Tom Forge, CRHA President, addressing a written request for financial details (Criminal Case No. 36999, exhibit J), fails reasoning and meets the criminal practices of the CRHA Board of Directors. The last paragraph of the letter states the following; **"Even if you were a member, you would not be entitled to review the accounting records asked for..."** This statement alone and in a "nut shell" presents a relaxed mannerism at criminal activity. Certainly, a statement demonstrating a flagrant disregard for the governing Acts of Parliament, namely the Canada Corporations Act and Canada Business Corporations Act?

- 7) The Lease Agreement between the Ministry of Fisheries and Oceans and CRHA, states the following, addressed by relevant section numbers;
- 4. The Harbour Authority shall pay the Lessor each year in advance rent in the amount of \$1.00. The rent is due and payable on June 30th of each year.**
- Accounting Records and Audit;**
- 11. (1) During the term of the Lease the Harbour Authority must keep full, true and accurate books and records that adhere to sound accounting practice of all costs, whether direct or indirect, relating to its operations and of all its revenues All such records must be kept either on the Leased Area or at the Harbour Authority's principal office.**
- (2) All accounting records kept by the Harbour Authority must be in a form acceptable to the Regional Director in his sole discretion.**
- Compliance with Law;**
- 17. The Harbour Authority must comply with all applicable federal, provincial and territorial laws, regulations and rules and all municipal bylaws.**
- Annoyance Nuisance and Disturbance;**

19. The Harbour Authority shall not do, cause or permit any act on the Leased Area to be or to become an annoyance, disturbance or nuisance to anyone. Whether anything is or may become an annoyance, disturbance or nuisance to anyone is a decision that only the Lessor may make. The Lessor's decision is binding on the Harbour Authority.

Certainly, the low rent is a reflection that the CRHA facility is to be enjoyed by the community, rather than a tool to defraud the CRHA membership of their rights to a public facility. Further, the Applicant, brings forth the missing lumber planks, showing the removal of all new Fir wood planks nailed to new dock extensions (fingers 5,4, etc...), early 2009, and its replacement with new Cedar planks, sometime during the Summer of 2009. CRHA Director Dave Christian, together with his daughter, removed all the new Fir planks from the noted fingers and replaced them with new Cedar planks. The Applicant, along with several other members, saw CRHA Director, Dave Christian, load it all on a trailer and remove the said lumber from the CRHA premises. A conservative estimate of the cost for treated Fir planks surpasses five thousand dollars. When the totality of Fir planks is considered, the missing Fir planks is theft, taking place in plain day light. The missing Fir planks, a lack of financial accountability, and the creation of self-interest CRHA rules with no regard for the provisions of the above-mentioned Parliament Acts and CRHA By-laws, establishes criminal intent to use the CRHA Corporation to serve the interest of the CRHA Directors not its membership and the community. Given that payments to contractors are never shown to the membership, how much did Director Dave Christian receive? Yet, this is a not-for-profit Corporation accountable to its membership".

- 8) Rule 2 (6) of the Criminal Rules of the Supreme Court of British Columbia states that "the judge hearing an application may receive viva voce evidence in addition to or in lieu of affidavit evidence".

It is expected that approximately 2 hours will be needed for the hearing of this application. However, the Applicant has not set a limit of 2 hours to present the application, it is only an estimate in good faith.

Dated at Campbell River, this ____ day of _____, 2010

Captain E. G. da Costa Duarte

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