

6-5
(Rule 6-5)

FILED IN THE OFFICE OF THE
LOCAL REGISTRAR ON THE
10th DAY OF March 2020

A. BREEN

Received by DEBILITY LOCAL REGISTRAR
Judicial Centre of Saskatoon

COURT FILE NUMBER Q.B. of 2020

COURT OF QUEEN'S BENCH FOR SASKATCHEWAN

JUDICIAL CENTRE SASKATOON

PLAINTIFF CANADIAN MORTGAGE SERVICING CORPORATION

DEFENDANT KORF PROPERTIES LTD.

NOTICE OF APPLICATION

This application is made against you. You are a respondent. You have the right to state your side of this matter before the Court.

To do so, you must be in Court when the application is heard as shown below:

Where	Court House 520 Spadina Crescent East Saskatoon, Saskatchewan S7K 3G7
Date	Tuesday, March 17, 2020
Time	10:00 a.m.

Remedy claimed or sought:

1. To the extent necessary, an Order abridging the time for service of this Notice of Application and the materials filed in support thereof (collectively, the "**Application Materials**"), such that service of the Application Materials on the parties on the attached Service List shall be deemed to constitute good, valid and timely service of the Application Materials in regard to a hearing of this application to be held on March 17, 2020.
2. An Order pursuant to section 243 of the *Bankruptcy and Insolvency Act*, RSC 1985, c B-3 (the "**BIA**"), section 64(8) of *The Personal Property Security Act*, 1993, SS 1993, c P-6.2 (the "**PPSA**"), and section 65(1) of *The Queen's Bench Act*, 1998, SS 1998, c Q-1.01 (the "**QB Act**"), appointing MNP Ltd. of Regina, Saskatchewan as Receiver, without security, of all of the assets, undertakings and properties of the Defendant, Korf Properties Ltd. ("**the Debtor**"), including all proceeds thereof (the "**Property**").

3. Such further and other relief as counsel may request and this Honourable Court may allow.

Grounds for making this application:

Financing Advanced to the Debtor

4. Atrium Mortgage Investment Corporation ("**Atrium**") advanced financing to the Debtor in the original principal amount of \$18,500,000.00 (the "**Loan**") pursuant to a Mortgage between Atrium and the Debtor originally dated December 1, 2014 and extended on February 23, 2017 to January 15, 2018 (the "**Mortgage**"). As more particularly described below, Atrium was the predecessor in title to the Plaintiff, Canadian Mortgage Servicing Corporation ("**CMSC**"), in regard to the indebtedness owed by the Debtor which is the subject matter of this action.

5. In order to secure the repayment by KPL to Atrium of the amounts advanced by Atrium to KPL pursuant to the Mortgage, as well as the repayment of other amounts owing by KPL to Atrium pursuant to the Loan (collectively, the "**Indebtedness**"), KPL granted to Atrium the following security in the assets of KPL, namely:

(a) KPL granted the Mortgage to and in favour of Atrium of all right, title and interest of KPL in or to twelve (12) properties owned by KPL (collectively, the "**Properties**") and more particularly described as follows:

- i. seventy-three (73) multi-family units contained within five (5) low rise apartment buildings located in the City of Estevan, Saskatchewan;
- ii. approximately 58,200 square feet of industrial warehouse space located within five (5) buildings located in the City of Estevan, Saskatchewan;
- iii. approximately six (6) acres of serviced heavy industrial zoned land located in the City of Estevan, Saskatchewan;
- iv. one light industrial building comprising approximately 33,000 square feet on a 3.5 acre property outside the City of Regina located in the Rural Municipality of Sherwood No. 159, Saskatchewan (the "**RM of Sherwood**"); and
- v. one industrial building comprising approximately 17,600 square feet on a 20 acre property located in the County of Vermillion River, Alberta (the "**County of Vermillion River**");

(b) a General Assignment of Leases and Rents dated December 1, 2014 (the "**Assignment of Leases and Rents**") whereby KPL assigned to Atrium as security for

the Indebtedness all of the right, title and interest of KPL in or to certain leases and rents pertaining to the Properties;

- (c) a Security Agreement dated December 1, 2014 (the "**Security Agreement**") whereby KPL assigned to Atrium an interest in all property described therein;
 - (d) an Assignment of Insurance dated December 1, 2014 (the "**Assignment of Insurance**") executed by KPL in favour of Atrium; and
 - (e) an Assignment and Postponement of Shareholder Loans made effective on December 1, 2014 (the "**Assignment and Postponement**") by Kordel Korf, Do All Industries Ltd., P & O Assets Ltd., P & O Assets XEG Ltd., Korf Aviation Ltd., Sightcutting and Forming Ltd., Korf Farms Ltd., Korf Holdings Ltd., Do All Industries USA Ltd., South East Electric Ltd., Korf Developments Ltd., Korf Family Trust, Korf Family Trust II and Metigoshe Recreational Holdings Ltd. in favour of Atrium as security for the Loan.
6. The Mortgage, the Assignment of Leases and Rents, the Security Agreement, the Assignment of Insurance and the Assignment and Postponement are hereinafter collectively described as the "**Security**".
7. By means of a Mortgage and Security Assignment Agreement made effective as of the 26th day of February, 2020, Atrium irrevocably assigned and transferred to and in favour of CMSC all right, title and interest of Atrium in or to the Loan, the Indebtedness, the Properties, the Assignment of Leases and Rents, the Security Agreement, the Assignment of Insurance, the Assignment and Postponement and the Security.

Default by The Debtor

8. The Debtor has committed various acts of default on its obligations to Atrium under the Loan and the Security. Further, and in particular:
- (a) the Debtor failed to make required monthly interest payments on the Loan which were due to be paid by KPL to Atrium on each of:
 - i. August 15, September 15, October 15, November 15 and December 15 of 2017;
 - ii. the fifteenth (15th) day of each month in 2018;
 - iii. the fifteenth (15th) day of each month in 2019; and

- iv. January 15 and February 15, 2020;
 - (b) the Debtor has failed, neglected or became unable to pay municipal property taxes owing against the Properties, thereby positioning the City of Estevan, the RM of Sherwood and the County of Vermillion River to initiate tax enforcement proceedings to acquire title to the Properties and/or to charge penalties and interest on municipal property tax arrears owed to such municipalities by the Debtor; and
 - (c) the Debtor has become insolvent and has ceased to meet its liabilities generally as they become due, which conduct amounts to acts of bankruptcy by the Debtor pursuant to section 42 of the BIA.
9. As a result of the events of default by the Debtor described above, by letter dated December 1, 2017, Atrium demanded payment of the Indebtedness in its entirety and served upon the debtor a Notice of Intention to Enforce Security under section 244 of the BIA.
10. The Indebtedness matured on January 15, 2018 and became due and payable by the Debtor in its entirety to Atrium.

2018 Forbearance Agreement between Atrium and the Debtor

11. Atrium has the contractual right under the Security to appoint a receiver of the property, assets and undertaking of the Debtor.
12. Following the December 1, 2017 demand upon the Debtor made by Atrium for payment of the entirety of the Indebtedness and the subsequent maturity of the Loan, Atrium took steps to apply to this Honourable Court for an Order appointing a Receiver of the rents and profits of the Properties. Atrium viewed the appointment of a Receiver of the rents and profits of the Properties as just and convenient because, *inter alia*:
- (a) Kordel Korf, the controlling mind of the Debtor ("**Mr. Korf**"), resides outside of the Province of Saskatchewan (and not in a community where any of the Properties are located);
 - (b) the sole person engaged by the Debtor to manage the Properties at the time was an employee of Mr. Korf who lacked the qualifications required to manage a portfolio of residential and industrial real estate properties and who lacked knowledge of the condition of the Properties and the details of the management and administration of the Properties;

- (c) the real estate agent engaged by the Debtor at the time to market and lease the Properties expressed frustration that he continued to receive instructions from the Debtor to market and/or lease the Properties at unrealistically high sale and lease prices which were reflective of 2013 market conditions (rather than 2018 market conditions). As a result, the Debtor had very little success in leasing the Properties to satisfactory levels;
 - (d) under the management of the Debtor, the Properties accumulated very significant municipal property tax arrears which Atrium learned about from its own communications directly with the municipalities (not having been informed of such tax arrears by the Debtor), as a result of which Atrium was required to cause hundreds of thousands of dollars to be paid to such municipalities on behalf of the Debtor on short notice prior to the 2017 calendar year-end, in order to avoid the imposition by the municipalities of punitive penalties for such tax arrears;
 - (e) one or more persons interested in purchasing the Properties had to resort to running a public record title search on the Properties and calling Atrium directly because they could not communicate with or get a call back from the Debtor, its in-house property manager or its real estate agent;
 - (f) prior to entering into the Forbearance Agreement, Atrium did not receive timely reporting or financial information from the Debtor regarding the management and administration of the Properties. Moreover, the Debtor did not co-operate in promptly providing this information to Atrium when requested to do so; and
 - (g) when the Debtor did provide financial information or reporting to Atrium, it was most commonly delivered after repeated demands for same from Atrium or after Atrium made formal demand for payment of the Loan. In other circumstances, the Debtor did deliver such information in conjunction with a request by the Debtor to Atrium for an extension or renewal of the Loan, a forbearance arrangement, an amendment to the Guarantee to limit the liability of Mr. Korf or a partial discharge of the Mortgage over one or more of the Properties.
13. Atrium prepared draft Receivership materials (the “**2018 Draft Receivership Materials**”) and provided the same to the Debtor’s counsel on January 26, 2018. Upon receipt of the Draft Receivership Materials, the Debtor acknowledged that the Indebtedness was entirely due and payable by the Debtor to Atrium and requested that Atrium forbear from the enforcement of the Security. Atrium agreed to the Debtor’s request and entered into a forbearance agreement dated April 1, 2018 (the “**Forbearance Agreement**”).

14. The Forbearance Agreement was amended and extended on September 1, 2018 and again on April 1, 2019.

The Appointment of a Receiver Is Just and Convenient

15. The Forbearance Agreement expired on December 31, 2019.
16. As at January 31, 2020, the amount of the Indebtedness owing by the Debtor to Atrium was \$23,103,873.95, with interest accruing at the per diem rate of \$4,843.18 from and after January 31, 2020.
17. Particulars of the continuing default on the part of the Debtor include, *inter alia*:
 - (a) the Properties continue to accumulate significant municipal property tax arrears in respect of which Atrium was required to pay significant amounts to such municipalities on behalf of the Debtor in order to avoid the imposition by the municipalities of punitive penalties for such tax arrears;
 - (b) prior to the execution of the Forbearance Agreement, the Debtor neglected to complete basic repairs and maintenance or to undertake urgent repairs necessary to preserve the Properties. Following execution of the Forbearance Agreement, certain property managers (the "**Property Managers**") were engaged to repair, maintain and manage the Properties;
 - (c) the Debtor has repeatedly failed to identify in a timely or proactive manner unresolved maintenance and repair items required in order to preserve the Properties (which repeated failure has resulted in further deterioration of the condition of the Properties);
 - (d) Mr. Korf, the controlling mind of the Debtor, continues to reside outside of the Province of Saskatchewan (and not in a community where any of the Properties are located) and has no direct interaction with the Property Managers which is required in order to provide deferred maintenance direction needed to preserve and repair the Properties;
 - (e) communication with the Property Managers regarding maintenance issues respecting the Properties (and necessary approvals for same required from the Debtor) is handled by the Debtor's legal counsel and by an employee of Mr. Korf (and not by Mr. Korf himself). Such persons:
 - (i) have failed or been unable to provide proactive direction or active assistance to the Property Managers or leasing agents for the Properties which is required for efficient and effective management and leasing of the Properties;

- (ii) do not have the qualifications required to manage a portfolio of residential and industrial real estate properties; and
 - (iii) lack knowledge of the condition of the Properties and the details of the management and administration of the Properties;
- (f) during an onsite inspection of the Properties in August of 2019, Atrium learned that the Debtor was illegally occupying one of the industrial properties in Estevan, Saskatchewan. Upon being requested by the Property Manager to vacate, the Debtor refused to do so until receiving a demand from Atrium's legal counsel to vacate the premises; and
- (g) the Property Managers have had difficulty obtaining insurance for the Properties, with the result that several of the Properties are currently uninsured and at risk.
18. By reason of the facts and matters described above and the additional facts and matters set forth in the Affidavit of Marianne Dobslaw sworn on March 9, 2020, it is appropriate, just and convenient that a receiver of the Properties be appointed pursuant to section 243 of the *Bankruptcy and Insolvency Act*, RSC 1985, c B-3, section 65(1) of *The Queen's Bench Act*, 1998, SS 1998, c Q-1,01, and section 64(8) of *The Personal Property Security Act*, 1993, SS 1993, c P-6.2.

Material or evidence to be relied on:

19. The Applicant relies upon:
- (a) the Statement of Claim commencing this action;
 - (b) this Notice of Application;
 - (c) the Affidavit of Marianne Dobslaw sworn on March 9, 2020;
 - (d) a proposed form of Receivership Order (redlined against the Saskatchewan Template Receivership Order);
 - (e) Brief of Law on behalf of Atrium;
 - (f) Consent to Act as Receiver executed by the proposed Receiver; and
 - (g) such further and other material as counsel may request and this Honourable Court may allow.

Applicable Acts and regulations:

20. *Bankruptcy and Insolvency Act*, RSC 1985, c B-3, section 243.
21. *The Personal Property Security Act, 1993*, S.S. 1993, c. P-6.2, section 64(8); and
22. *The Queen's Bench Act, 1998*, SS 1998, c Q-1.01, section 65(1).

DATED at Saskatoon, Saskatchewan, this 10th day of March, 2020.

MLT AIKINS LLP



Per: _____

Jeffrey M. Lee, Q.C. and K. James
Rose, counsel to the Plaintiff, Canadian
Mortgage Servicing Corporation

NOTICE

If you do not come to Court either in person or by your lawyer, the Court may give the applicant(s) what they want in your absence. You will be bound by any order that the Court makes. If you want to take part in this application, you or your lawyer must attend in Court on the date and at the time shown at the beginning of the form. If you intend to rely on an affidavit or other evidence when the application is heard or considered, you must reply by giving reasonable notice of the material to the applicant.

CONTACT INFORMATION AND ADDRESS FOR SERVICE

If prepared by a lawyer for the party:

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Lawyers in charge of file:	Jeffrey M. Lee, Q.C. and K. James Rose
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SERVICE LIST

<p align="center">NAME, ADDRESS EMAIL ADDRESS AND FAX NUMBER</p>	<p align="center">COUNSEL FOR (OR ON BEHALF OF)</p>
<p align="center">SERVICE BY EMAIL</p>	
<p>MLT AIKINS LLP 1500, 410 22nd Street East Saskatoon, SK S7K 5T6 Fax: 306.975.7145</p> <p>Jeffrey M. Lee, Q.C. 306.975.7136 jmlee@mltaikins.com</p> <p>K. James Rose 306.347.8420 jrose@mltaikins.com</p>	<p align="center">Canadian Mortgage Servicing Corporation</p>
<p>Miles Davison LLP 900, 517 – 10th Avenue S.W. Calgary, Alberta T2R 0A8</p> <p>Daniel K. Jukes 403.298.0327 djukes@milesdavison.com</p>	<p align="center">Korf Properties Ltd. and Kordel Korf</p>
<p>PARTIES WITHOUT COUNSEL</p>	
<p>MNP Ltd., Proposed Receiver 900 - 2010 – 11th Avenue Regina, Saskatchewan S4P OJ9</p> <p>Ian Schofield 306.790.7904 Ian.Schofield@mnp.ca</p> <p>Patty Wood 604.637.1535 Patty.Wood@mnp.ca</p>	
<p>Estevan Power Supply Rentals Ltd. 81 Escana Street PO Box 698 Estevan, SK S4A 2A6</p> <p>Bobs.electric@sasktel.net</p>	

SCHEDULE "A"

Apartment Building Properties

Property #1

Surface Parcel #107365361

Reference Land Description: Lot 1 Blk/Par 1 Plan No. I3279, Extension 0
As described on Certificate of Title 72R00027

Mineral Parcel #131988213 (all mines and minerals)

Reference Land Description Lot 1 Blk/Par 1 Plan No. I3279, Extension 0
As described on Certificate of Title 72R00027

Surface Parcel #107365372

Reference Land Description: Lot 2 Blk/Par 1 Plan No. I3279, Extension 0
As described on Certificate of Title 72R00027

Mineral Parcel #131988224 (all mines and minerals)

Reference Land Description: Lot 2 Blk/Par 1 Plan No. I3279, Extension 0
As described on Certificate of Title 72R00027

Surface Parcel #107365383

Reference Land Description: Lot 3 Blk/Par 1 Plan No. I3279, Extension 0
As described on Certificate of Title 72R00027

Mineral Parcel #131988235 (all mines and minerals)

Reference Land Description: Lot 3 Blk/Par 1 Plan No. I3279, Extension 0
As described on Certificate of Title 72R00027

Property #2

Surface Parcel #107367576

Reference Land Description: Lot 1 Blk/Par 2 Plan No. I 3279, Extension 0
As described on Certificate of Title 72R00027

Surface Parcel #107367587

Reference Land Description: Lot 2 Blk/Par 2 Plan No. I3279, Extension 0
As described on Certificate of Title 72R00027

Surface Parcel #131988246

Reference Land Description: Lot 22 Blk/Par 2 Plan No. 101324292, Extension 5
As described on Certificate of Title 72R00027, description 5

Property #3

Surface Parcel #107375700

Reference Land Description: Lot 8 Blk/Par 61 Plan No. B4225, Extension 0
As described on Certificate of Title 86R24210

Property #4

Surface Parcel #112267920

Reference Land Description: Lot H Blk/Par 28 Plan No. 76R51959, Extension 1
As described on Certificate of Title 93R28786F

Surface Parcel #112267931
Reference Land Description: Lot J Blk/Par 28 Plan No. 76R51959, Extension 2
As described on Certificate of Title 93R28786F

Surface Parcel #112267942
Reference Land Description: Lot Q Blk/Par 28 Plan No. 101282475, Extension 20
As described on Certificate of Title 93R28786F, description 20

Property #5

Surface Parcel #107400912
Reference Land Description: Lot 16 Blk/Par 52 Plan No. 12675, Extension 0
As described on Certificate of Title 85R14992

Mineral Parcel #114331283 (all mines and minerals)
Reference Land Description: Lot 16 Blk/Par 52 Plan No. 12675, Extension 0
As described on Certificate of Title 85R14992

SCHEDULE "B"
Industrial Properties

- Property #1 Surface Parcel #162105982
Reference Land Description: Lot 18 Blk/Par 2 Plan No. 101909033, Extension 0
- Property #2 Surface Parcel #110859789
Reference Land Description: Lot 1 Blk/Par S Plan No. 79R05960, Extension 0
As described on Certificate of Title 79R05960
- Property #3 Surface Parcel #107379186
Reference Land Description: Blk/Par B Plan No. 60A01773, Extension 0
As described on Certificate of Title 01SE21503
- Property #4 Surface Parcel #107379210
Reference Land Description: Blk/Par E Plan No. 59A01215, Extension 0
As described on Certificate of Title 01SE21503A
- Property #5 Surface Parcel #107415907
Reference Land Description: Lot 6 Blk/Par 4 Plan No. 59A01748, Extension 0
As described on Certificate of Title 99SE29735F
- Surface Parcel #107415895
Reference Land Description: Lot 7 Blk/Par 4 Plan No. 59A01748, Extension 0
As described on Certificate of Title 99SE29735F
- Surface Parcel #107416559
Reference Land Description: Lot 19 Blk/Par 4 Plan No. 98SE09285, Extension 0
As described on Certificate of Title 99SE29735
- Surface Parcel #107399100
Reference Land Description: Lot 20 Blk/Par 4 Plan No. 98SE09285, Extension 0
As described on Certificate of Title 99SE29735A
- Surface Parcel #107416526
Reference Land Description: Lot 23 Blk/Par 4 Plan No. 98SE09285, Extension 0
As described on Certificate of Title 99SE29735D
- Surface Parcel #107416571
Reference Land Description: Lot 24 Blk/Par 4 Plan No. 98SE09285, Extension 0
As described on Certificate of Title 99SE29735E
- Surface Parcel #164779161
Reference Land Description: Lot 27 Blk/Par 4 Plan No. 102019788, Extension 0
- Property #6 Plan 9722537
Lot 1
Excepting Thereout All Mines And Minerals
Area: 8.09 Hectares (19.99 Acres) More or Less
- Property #7 Surface Parcel #135928705
Reference Land Description: Lot 18 Blk/Par 2 Plan No. 89R21476, Extension 0
As described on Certificate of Title 89R21476A

Surface Parcel #107417965
Reference Land Description: Lot 19 Blk/Par 2 Plan No. 89R21476, Extension 0
As described on Certificate of Title 89R21476B