

Court File No. BK-23-02961172-0031
Estate No.: 31-2961172

ONTARIO
SUPERIOR COURT OF JUSTICE
(IN BANKRUPTCY AND INSOLVENCY)
(COMMERCIAL LIST)

IN THE MATTER OF THE BANKRUPTCY OF
HUNTER BOOT (CANADA) INC. OF THE CITY OF TORONTO
IN THE PROVINCE OF ONTARIO

AIDE MEMOIRE

July 19, 2023

WEIRFOULDS LLP

66 Wellington Street West, Suite 4100
P.O. Box 35, Toronto-Dominion Centre
Toronto ON M5K 1B7

Wojtek Jaskiewicz
(LSO# 49809L)

Tel: (416) 365-1110
Fax: (416) 365-1876

**Lawyers for MNP LTD / MNP LTÉE, in
their capacity as trustee in the bankruptcy
for Hunter Boot (Canada) Inc.**

Law and Argument

I. *Soundair* Test Application

1. [Royal Bank of Canada v Soundair Corp](#) [1991] OJ No 1137, 83 DLR (4th) 76 (“*Soundair*”) sets out the factors that the Court must consider when assessing whether a receiver acted properly in selling property (the “**Soundair Principals**”):
 - (a) Whether the receiver has made a sufficient effort to get the best price and has not acted improvidently;
 - (b) The interests of all parties;
 - (c) The efficacy and integrity of the process by which offers are obtained; and
 - (d) Whether there has been unfairness in the working out of the process.¹
2. Courts have applied the *Soundair* Principals in the context of a bankruptcy.²
3. Courts have also applied the *Soundair* Principles to assess a transaction that was entered into before the appointment of a receiver but which the receiver seeks to approve and close.³

The Trustee has made sufficient efforts to get the best price and has not acted improvidently

4. On June 2, 2023, the Bankrupt’s ultimate parent company, Hunter Boot Limited (“**HBL**”) was placed in administration. Clare Kennedy and Daniel Imison (the “**Administrators**”) of AlixPartners UK LLP (“**AlixPartners**”) act jointly as the administrator.⁴
5. In 2020 HBL retained AlixPartners to conduct a sales process to identify a potential sale of HBL. After conducting the process, HBL opted to pursue a refinancing instead.⁵

¹ [Royal Bank of Canada v Soundair Corp](#), [1991] O.J. No. 1137, 83 DLR (4th) 76 (ON CA) at para 16. [*Soundair*].

² [Graham Mining Ltd., Re](#), 2001 CanLII 28466 (ON SC) at para 56; [Wagman, Re](#), 2006 CanLII 12435 (ON SC)

³ [8527504 Canada Inc. v Rev Sleep Corporation](#), 2013 ONSC 5862 at para 7; [Montrose Mortgage Corporation v Kingsway Arms Ottawa](#), 2013 ONSC 6905 at para 10.

⁴ First Report to the Court submitted by MNP Ltd., in its capacity as Licensed Insolvency Trustee of Hunter Boot (Canada) Inc. (the “**Report**”) at para 4

⁵ Report at para 14

6. In 2023 AlixPartners again undertook a sales process of HBL’s and its subsidiaries’ (together, the “**Hunter Group**”) business and assets.⁶

7. The 2023 sales process resulted in a sale of HBL’s intellectual property.⁷ This process did not involve the sale of the assets of other members of the Hunter Group, including the Bankrupt. Instead, the parties negotiated the Put Option Deed (which the Trustee seeks to approve on this motion) and similar agreements with the other entities in the Hunter Group.⁸ These agreements (including the Put Option Deed) gave each entity or its bankruptcy trustee the option to sell assets at a set price if the option was exercised by a certain date.⁹

8. The Confidential Aide Memoire compares the expected realization from the Put Option Deed to two appraisals obtained for the assets of the Bankrupt.

9. Courts have shown significant deference towards a receiver when deciding to accept an agreement. The Court should consider the conduct of the receiver in light of the information the receiver has when it agrees to accept an offer.¹⁰ In the case at hand, there are various factors that have led the Trustee to decide that exercising the transactions under the Put-Option Deed is the most desirable.¹¹

10. The Trustee is confident that the best price is found in the Put-Option Deed because instead of initiating an entire new sale of asset process, it is relying on a robust process that was already in place and agreed to between the parent company and the purchaser. If the Trustee was forced to engage in a new sale process, the costs would rise, without guarantee or certainty of a better result.

The interests of all parties have been taken into consideration

⁶ Report at para 15

⁷ Report at para 17

⁸ Report at para 18

⁹ Report at para 34 and 35

¹⁰ [Soundair](#) at para 18.

¹¹ Report at para 41

11. The primary interest is that of the creditors.¹² In this case, the inspectors support the transaction.¹³

12. In cases where a purchaser has bargained at some length and expense, their interests ought to be taken into consideration.¹⁴ In this case, the purchaser has already gone to some lengths to negotiate the Put Option Deed.

13. The Bankrupt closed its retail location in June 2020 and its ecommerce site in June 2023.¹⁵ There are no other persons, such as employees, whose interests the Court should consider.

The process was obtained with efficacy and integrity

14. While it is accepted that the primary concern of a receiver is protecting the interests of creditors, a secondary important consideration is the integrity of the process by which the sale is effected.¹⁶ The Court in *Soundair* recognized that courts must consider the fact there are various methods receivers could use in order to sell an asset.¹⁷

15. As set out above, an extensive sales process was run by AlixPartners. That sales process culminated in the Put Option Deed. All parties had the opportunity to participate in the process run by AlixPartners which supports the integrity of the process. Efficacy is supported by the Trustee not repeating a sales process which was already run by AlixPartners. In conducting the sales process that preceded the Bankrupt's bankruptcy, AlixPartners consulted not only HBL, but also members of the Hunter Group.

16. In addition, all the intellectual property was sold to the purchaser under the Put Option Deed prior to the bankruptcy. The result is that the most likely purchaser in any sales process that the Trustee would run would be the same purchaser.

There has been no unfairness in the process

¹² [Crown Trust Co v Rosenberg](#), 60 O.R. (2d) 87, 1986 CanLII 2760.

¹³ Report at para 41(f).

¹⁴ [Soundair](#) at para 36.

¹⁵ Report at para 11

¹⁶ [Soundair](#) at para 38.

¹⁷ [Soundair](#) at para 38.

17. As a general rule, the courts are reluctant to go into "the minutia of the process or of the selling strategy adopted by the receiver."¹⁸ However, the Court must still consider the fairness of the process.¹⁹

18. As set out above, the assets of the Bankrupt, and other members of the Hunter Group, were extensively marketed by AlixPartners. All interested parties had the opportunity to bid in that process. As such there is no unfairness in the process.

¹⁸ [Soundair](#) at para 43.

¹⁹ [Soundair](#) at para 43.

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Proceeding commenced at Toronto

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RCP-F 4C (September 1, 2020)

