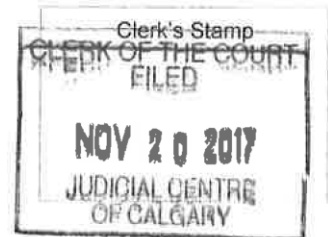


COURT FILE/ESTATE NUMBER 25-2218907



COURT COURT OF QUEEN'S BENCH OF ALBERTA  
IN BANKRUPTCY

JUDICIAL CENTRE CALGARY

**IN THE MATTER OF THE BANKRUPTCY OF SUN  
COUNTRY MORTGAGE INVESTMENT  
CORPORATION**

DOCUMENT FOURTH REPORT OF THE TRUSTEE  
VOL I IMF 1 OF 2

ADDRESS FOR SERVICE AND  
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## APPENDICES

- Appendix A** Caplink Financial Corporation secured claims submitted May 8, 2017 on behalf of Crossroads – DMD Mortgage Investment
- Appendix B** Secured Claim Summary
- Appendix C** Trustee's Notice of Disallowance issued July 5, 2017
- Appendix D** May 8, 2017 email from Maureen Macdonald
- Appendix E** The Mah Schedule
- Appendix F** Schedule of Crossroads - DMD Mortgage Investment Corporation Claim Calculations based on Mah Schedule

## INTRODUCTION AND BACKGROUND

1. Sun Country Mortgage Investment Corporation (“Sun Country” or the “Bankrupt”) was a mortgage investment corporation and was assigned into bankruptcy pursuant to a Resolution of its sole director, Mr. Gerry Macdonald, (“Mr. Macdonald”) authorizing Axxess Capital Advisors Inc. (the Bankrupt’s Investment Fund Manager) to complete the assignment and execute the statement of affairs, which it did on February 15, 2017, naming MNP Ltd. as Trustee in Bankruptcy (the “Trustee”). A Certificate of Appointment was issued by the Office of the Superintendent of Bankruptcy on February 16, 2017, which was amended on March 1, 2017.
2. The Trustee’s appointment was affirmed at the First Meeting of Creditors which took place on March 8, 2017 and the creditors appointed a Board of Inspectors (the “Inspectors”) on that date.
3. As a mortgage investment corporation, the Bankrupt would use investor funds to purchase residential mortgages in Alberta.
4. Various investment properties had been foreclosed on by the Bankrupt and at the date of bankruptcy, the Bankrupt was a titled owner or co-owner of eight residential real estate properties.
5. In preparing the Fourth Report and making comments herein, the Trustee has been provided with, and has relied upon, certain unaudited, draft and/or internal financial information of the Bankrupt, books and records of the Bankrupt, and information from other third-party sources (collectively, the “Information”). The Trustee has not audited, reviewed or otherwise attempted to verify the accuracy or completeness of the Information in a manner that would wholly or partially comply with generally accepted assurance standards or other standards established by the Chartered Professional Accountants of Canada.
6. Copies of the relevant documents relating to these proceedings will be available on the Trustee’s website at [www.mnpdebt.ca/suncountry](http://www.mnpdebt.ca/suncountry).

## PURPOSE OF THE REPORT

7. The Trustee is seeking the support of the Court in relation to:
  - a. Upholding the Trustee’s disallowance of the secured claims submitted by Crossroads – DMD Mortgage Investment Corporation (“Crossroads”);
  - b. An Order to have the Crossroads mortgages declared statute barred and discharged by the Land Titles office from each of the titles of the Bankrupt’s properties;
  - c. Directing that Miles Davison LLP forward the net proceeds from 123 Forest Crescent to the Bankrupt’s estate for the general benefit of the creditors; and
  - d. Directing that the trust funds held by the Trustee from the net proceeds from 55 Heenan Place, 104 Erin Drive and 164 Somerglen become property of the Bankrupt’s estate for the general benefit of the creditors.

## CROSSROADS – DMD MORTGAGE INVESTMENT CORPORATION APPEAL

8. The Trustee received secured claims provided by Caplink Financial Corporation (“Caplink”) in its capacity as Investment Fund Manager of Crossroads on May 8, 2017. The Trustee

issued its Notices of Disallowance on all of the Secured Claims (as described and defined below) on July 5, 2017. Crossroads appealed the Trustee's disallowance and it was heard in Masters' Chambers on October 10, 2017. Pursuant to the Order granted by Registrar Farrington, the Trustee was requested to provide further information, background and support with respect to the Notices of Disallowance that it issued.

9. Mr. Macdonald filed an affidavit in these proceedings on September 8, 2017 (the "Macdonald Affidavit").
10. In Exhibit P of the Macdonald Affidavit, an audit confirmation letter dated June 25, 2015 (the "Audit Confirmation Letter") was issued by Crossroads to the Bankrupt, in which Mr. Macdonald is seeking confirmation of the Bankrupt's debt to Crossroads to be provided to Crossroads' auditors. The Audit Confirmation Letter indicated that the Bankrupt owed Crossroads \$227,782.
11. The Bankrupt amended the amount indicated to be owing to Crossroads to \$423,909.20 and the Audit Confirmation Letter was signed by M. Macdonald on behalf of the Bankrupt. "M. Macdonald" is identified in the Macdonald Affidavit as Maureen Macdonald. Mr. Macdonald, in paragraph 57 of the Macdonald Affidavit, states that this amount was not subject to a mortgage and this amount is reported in Note 7 of the Bankrupt's December 31, 2014 Management Prepared Financial Statements in Exhibit H of the Macdonald Affidavit as an Amount due to Crossroads-DMD MIC.
12. The Trustee agrees with Mr. Macdonald's assessment that this amount is an unsecured claim as against the Bankrupt. The Trustee fails to see how this reference supports the Secured Claims as Crossroads has not provided proper support to refute the Trustee's position that the Secured Claims should be deemed to be statute barred.
13. In his decision, Registrar Farrington may have relied on the Audit Confirmation Letter, which applied solely to unsecured amounts due to Crossroads by the Bankrupt, as also affirming secured mortgage amounts. The Audit Confirmation Letter was acknowledged by Mr. Macdonald as not being subject to a mortgage or other secured claim. The Audit Confirmation Letter did not address or affirm any secured claim that Crossroads may have had against the Bankrupt.

#### **CROSSROADS – DMD MORTGAGE INVESTMENT CORPORATION SECURED CLAIMS (THE "SECURED CLAIMS")**

14. Caplink is the current Investment Fund Manager ("IFM") of Crossroads. According to the Management Agreement between the parties, Caplink took over this role on November 30, 2016. All mortgage investment corporations require an IFM.
15. In February 17, 2017, the Trustee sent notice of the bankruptcy to all creditors of record, including Crossroads and Caplink. On May 8, 2017, Caplink, on behalf of Crossroads delivered a binder of 10 secured mortgage claims totaling \$4,017,558.10 (the "Secured Claims") and one unsecured claim totaling \$20,000.00. A copy of the Secured Claims provided is attached hereto as "Appendix "A".
16. The Trustee accepts the unsecured claim of Crossroads in the amount of \$20,000.00.
17. Each of the Secured Claims submitted by Caplink included a Bankruptcy and Insolvency Act form 31/36 proof of claim form for each property, a cashflow data schedule that calculates, based on the advances claimed and interest calculated on those advances, the amount

being claimed, various copies of bank statements to show fund advances identified in the cashflow data, copies of signed mortgage documents and historical land title documents to confirm the registration of the mortgage against the title of the respective property.

18. The Secured Claims are summarized in Appendix "B" and outline advances made in 2012, 2013, 2014 and 2015. The total amounts advanced by Crossroads to the Bankrupt total \$2,375,208.39. Total interest claimed by Crossroads on those advances total \$1,642,349.71.
19. In all cases, the Trustee has not been provided with evidence that Crossroads took any steps to preserve or realize on its secured position since granting and registering the mortgages. In all mortgage agreements, monthly interest payments are required. From the information provided by Crossroads and/or Caplink, in the Secured Claims and from the Trustee's review of the financial information of the Bankrupt, no full or partial interest payments were paid.
20. Each mortgage document attached to each of the Secured Claims provided for a payout date that was 12 months after the mortgage document was signed. Paragraph 3 of each mortgage document states that the agreement can be extended in writing. No written extensions have been provided by Caplink or Crossroads nor located in the records of the Bankrupt. From the information provided by Crossroads and/or Caplink in the Secured Claims and from the Trustee's review of the financial information of the Bankrupt, no full or partial payouts of principal were paid.

#### TRUSTEE EXAMINATION OF CROSSROADS SECURED CLAIMS

21. The Trustee received security opinions from Torys LLP (the "Estate Solicitor") for each mortgage and the Estate Solicitor advised that the Secured Claims appeared to be statute – barred in whole or in part, specifically, if Crossroads could not provide evidence that the mortgages had not become unenforceable. Repeated requests to Crossroads and Caplink did not result in the evidence needed.
22. The Estate Solicitor provided insight into the Limitations Act for the Province of Alberta and outlined the provisions of reaffirming debts. An excerpt of section 9 of the Limitations Act is below:

**9(1)** An agreement and an acknowledgment must be in writing and signed by the person adversely affected....

...(3) An acknowledgment or a part payment made by or to an agent has the same effect as if it were made by or to the principal.

**(4)** A person has the benefit of an agreement, an acknowledgment or a part payment only if it is made

- (a) with or to the person,
- (b) with or to a person through whom the person derives a claim, or
- (c) in the course of proceedings or a transaction purporting to be pursuant to the *Bankruptcy and Insolvency Act* (Canada)... [emphasis added]

23. The Trustee requested additional information from Caplink to address the Section 9

requirements. No further information was provided by Caplink or Crossroads.

24. The Trustee recommended to the Inspectors, who unanimously agreed, that the Secured Claims be disallowed on the basis that the mortgages were statute-barred.
25. On July 5, 2017, the Trustee issued notices of disallowances (the "Disallowances") against each of the Secured Claims, as each of the Secured Claims presented were statute-barred. Copies of the Disallowances are attached as Appendix "C".

#### **POST CLAIM DOCUMENTATION**

26. Crossroads appealed the Disallowances and filed the Macdonald Affidavit.
27. Mr. Macdonald was at all material times the President, a director and voting shareholder of Crossroads, the Bankrupt and other related parties. Mr. Macdonald outlined various business arrangements between Crossroads and the Bankrupt and others in paragraphs 61 through 65 of the Macdonald Affidavit. Paragraph 62 of the Macdonald Affidavit states that, "[i]t was understood and agreed that Crossroads would not collect installment payments on those loans but would instead wait until the property securing Crossroads' mortgage sold. Proceeds from the sale would then be used to pay Crossroads both interest and principal owing". This statement is contrary to the mortgage documents that Mr. Macdonald signed.
28. Mr. Macdonald also did not provide any written proof supporting the business practices outlined in paragraphs 61 – 65 of the Macdonald Affidavit.
29. In Exhibit H of the Macdonald Affidavit, "Management Prepared December 31, 2014, December 31, 2015 and March 31, 2016 financial statements (the "Financial Statements") of the Bankrupt are attached. GK Mah & Co. ("Mah"), the Bankrupt's external auditor, advises that for various reasons, final audited financial statements of the Bankrupt for the 2014, 2015 or 2016 year-ends were never issued.
30. The Financial Statements indicate the Crossroads mortgage amounts at \$2,877,363 and \$1,452,346 for 2014 and 2015 year-ends, respectively. The March 31, 2016 financial statements of the Bankrupt report a balance of Crossroads mortgages at a gross amount of \$1,896,857.12 for 9 properties as summarized in Note 5 of the March 31, 2016 financial statements.
31. In the Financial Statements, the Bankrupt reported 9 Crossroads mortgaged properties. This did not include any mortgages on 55 Heenan Cres and 86 Marbrooke Circle NE that are included in the Secured Claims. Since March 31, 2016, the Bankrupt sold and repaid the Crossroads mortgage on 153 Applemead, which mortgage was included in the Bankrupt's March 31, 2016 financial statements.
32. Miles Davison LLP is holding \$281,761.31 in trust from the net proceeds of the sale of 123 Forest Cres. SE, which is identified in Appendix C as Property 2. The net proceeds are being held until it is determined to whom these monies are to be released to.
33. The Trustee was also advised that the properties in Appendix C identified as Properties 6, 7 and 8 were sold after the March 31, 2016 financial statements were released. McLeod Law LLP provided the net proceeds for each property, \$159,794.84 for 104 Erin Road SE, \$142,471.31 for 164 Somerglen, and \$122,563.74 for 55 Heenan Cres to the Trustee. The Trustee holds these funds in trust pending a determination as to entitlement to these funds.
34. As outlined above in Appendix C of this Report, Crossroads now claims to be owed

\$4,017,531.10. Since March 31, 2016, no new mortgages were granted by the Bankrupt to Crossroads and five properties were sold.

35. Paragraph 59 of the Macdonald Affidavit states that "Ms. Macdonald... updated the loan balances to account for any differences between related loans in each set of accounting records".
36. Crossroads has argued that the Secured Claims are valid because the mortgages were never in default and that, if the mortgages were in default, the Financial Statements and Audit Confirmation Letter are an acknowledgement in writing of the amounts owed in the event the limitation period had commenced. As outlined in this Report, the Audit Confirmation Letter did not affirm any mortgage amounts as stated by Mr. Macdonald and the amounts reported in the Financial Statements are significantly different from the Secured Claims provided to the Trustee. In addition, the Trustee's office received an email from Maureen Macdonald ("the Maureen Macdonald Email") on May 8, 2017 that states that Crossroads had in fact been trying to collect on its mortgages prior to the date of bankruptcy. The email is attached as Appendix "D".
37. Based on the Maureen Macdonald Email, Crossroads knew the mortgages were in default and had, in fact, been seeking repayment of the mortgages. However, Crossroads did not take steps to foreclose on the properties, issue demands for repayment, ask the Bankrupt to sell the properties, consent to a foreclosure in favor of Crossroads, acknowledge the mortgage debt like the unsecured debt was acknowledged, refinance the properties, or take other steps to collect on its mortgages prior to the date of bankruptcy.
38. The Trustee contacted Mah and obtained a schedule of Crossroads mortgage balances (the "Mah Schedule") for the years ending December 31, 2014, 2015 and March 31, 2016. The Mah Schedule is attached as Appendix "E".
39. The amounts for 2016 of the Mah Schedule are included in Appendix C of this Report, in the column labeled Mah Schedule March 31, 2016 Balance and totals \$1,896,857.12, which reconciles to the Financial Statement amount for the same period. Mah advised that the Mah Schedule was provided to his office by Maureen Macdonald.
40. The Trustee prepared calculations of the March 31, 2016 Balance amounts and calculated the estimated balance of the Crossroads mortgage balances at the Date of Bankruptcy which totaled \$2,064,640.19 and as of the date of this Report which totaled \$2,304,545.26. (the "Schedule of Crossroads - DMD Mortgage Investment Corporation Claim Calculations based on Mah Schedule"). The Schedule of Crossroads - DMD Mortgage Investment Corporation Claim Calculations based on Mah Schedule is attached as Appendix "F".
41. The Trustee, using the March 31, 2016 mortgage balance indicated in the Mah Schedule, multiplied the March 31, 2016 mortgage balance at a rate of 15% compounded semi-annually for 321 days to calculate the Balance at the Date of Bankruptcy amounts.
42. The Trustee, on the same mathematical basis as used in Paragraph 41, also calculated the Mortgage Balance as at the Date of the Report rounded to November 20, 2017. The total value of the Crossroads mortgages from the Mah Schedule amounts to \$2,304,545.26. Each property calculation does not take into account that the value of the mortgage would be limited to the sale proceeds once the properties are sold and closing costs of the sale paid.
43. Appendix F shows the funds being held in trust by Miles Davison LLP and by the Trustee for

properties that were discussed in paragraphs 32 and 33 that have sold since March 31, 2016 that have not been paid out.

44. The Mah Schedule reported third party mortgages, Crossroads DMD mortgages and Crossroads DMD P-Notes payable amounts. The Trustee noted the secured claim for Property 10 in Appendix C includes an amount for a second advance of \$436,913.72, which is not included in the Mah Schedule March 31, 2016 Balance amounts. There is an amount of \$450,918.90 in the Crossroads DMD P. Notes account that references 243109 Paradise Road. This amount was presented in the Financial Statements as a promissory note, and was not a mortgage, and is therefore not secured.

#### CONCLUSION

45. Based upon the foregoing, the Trustee seeks the Court's approval of the following:
- a. Uphold the disallowance of the Crossroads secured claims;
  - b. An Order declaring the Crossroads Mortgages statute barred and directing the Land Titles office to discharge the Crossroads Mortgages on each of the Bankrupt's properties;
  - c. Directing that Miles Davison LLP forward the net proceeds from 123 Forest Crescent to the Bankrupt estate for the general benefit of the creditors; and
  - d. Directing that the trust funds held by the Trustee from the net proceeds from 55 Heenan Place, 104 Erin Drive and 164 Somerglen shall become property of the Bankrupt estate for the general benefit of the creditors.

ALL OF WHICH IS RESPECTFULLY SUBMITTED THIS 20th day of November 2017.

#### MNP Ltd.

In its capacity as Trustee of the Estate of  
**Sun Country Mortgage Investment Corporation,**  
a **bankrupt**, and not in its personal capacity



Victor P. Kroeger CPA, CA, CIRP, LIT, CFE  
Senior Vice President