

COURT FILE NUMBER	QBG 1076 of 2021
COURT	COURT OF QUEEN'S BENCH OF SASKATCHEWAN IN BANKRUPTCY AND INSOLVENCY
JUDICIAL CENTRE	SASKATOON
IN THE MATTER OF THE DIVISION I PROPOSAL OF	LORI RUNZER AND DEAN RUNZER
DOCUMENT	TRUSTEE'S SECOND SUPPLEMENTAL REPORT TO COURT FOR APPROVAL OF PROPOSAL
ADDRESS FOR SERVICE AND CONTACT INFORMATION OF PARTY FILING THIS DOCUMENT	W Law LLP Attention: Mike Russell Suite 300, 110 21 st St. E Saskatoon, SK S7K 0B6 Phone: 306.244.2242 Counsel to the Proposal Trustee, MNP Ltd.

Introduction and Purpose of the Report

1. Lori Runzer and Dean Runzer (the "**Runzers**") filed a Notice of Intention to Make a Proposal on September 30, 2021, and MNP Ltd. consented to act as proposal Trustee for each. The Trustee issued a copy of the NOI to all known creditors on October 1, 2021.
2. The Trustee has prepared this Second Supplemental Report to Court (the "**Second Supplemental Report**") in respect of the application to approve the Runzers' joint Division I Proposal (the "**Proposal**"). The Second Supplemental Report is intended to address the following:
 - a. The requirement for the Runzers' Proposal to provide reasonable security in accordance with Section 59(3) of the *Bankruptcy and Insolvency Act* ("**BIA**").
3. All terms not otherwise defined in this Second Supplemental Report shall have the meanings ascribed to them in the Proposal.

Requirement for Reasonable Security

4. The Runzers' Proposal was comprised of the following contributions to the Proposal Fund:
 - a. a sale of the Runzers residential property located in Sherwood Park, Alberta (the "**Residential Property**"), and contribution of the net proceeds (if any), after payment of secured and priority claims; and
 - b. \$5,000 in cash contributions.
5. As security for performance of the Proposal in accordance with the Section 59(3) of the BIA, the Runzers agreed to register a charge on title to the Residential Property.
6. On October 27, 2022, the Runzers obtained court approval to accept an offer to purchase the Residential Property. The subject matter of the sale was set out in detail in the Trustee's Sixth Report to Court in the within proceedings. The sale has been completed, but proceeds have not yet been distributed pending the filing of a consent order amongst the affected parties.

7. Based on the terms of the sale and the Trustee's review of the draft statement of receipts and disbursements, the Residential Property sale will not yield enough value to provide any equity towards the Proposal.
8. The Proposal did not contain a clause requiring a minimum or specified amount to be contributed from the Residential Property (in a situation where no equity was available based on the sale price).
9. The foregoing facts lead the Trustee to conclude that because the Residential Property has been sold:
 - a. the charge on title securing the Runzers' obligations to provide reasonable security pursuant to 59(3) of the BIA is no longer sufficient to satisfy such requirement; and
 - b. the total amount due under the Proposal in order for the terms of the Proposal to be fully satisfied is \$5,000.
10. The requirement for reasonable security has, in practice, often been viewed as evidence that the debtor can likely perform the obligations set out in the Proposal.
11. In reviewing relevant case law on the issue, counsel for the Trustee notes the following:
 - I. In *Wandler (Proposal)* [2007 ABQB 153](#), the court reviewed the jurisprudence concerning the mandate for performance security under s. 59(3) of the BIA and its predecessor provisions, as well as parallel legislation in the United Kingdom. The application judge held, at para. 24, that performance security must be meaningful and the onus of proof rests on the debtor. The court held, at para. 32, that the prohibition against approving a proposal where any of the s. 173 facts have been proved against the debtor unless the debtor provides reasonable security for the payment serves to protect not only the interests of creditors but also the public's interest in commercial morality.
 - II. The courts have accorded significant deference to the majority vote of creditors at a meeting of creditors and courts have also accorded deference to the recommendation of the proposal trustee: *Kitchener Frame Limited (Re)* [2012 ONSC 234](#) at para. 21 in approving a proposal under s. 59(2). However, at para. 26 of *Wandler*, the court held that "[t]he s. 59(3) requirement for performance security is designed to further the interests of creditors and the public. It is a requirement that, in my view, is additional to the requirements enunciated in s. 59(2). As compared to the s. 59(2) requirements, which apply to all proposals, the requirement under s. 59(3) for performance security applies only in a specified circumstance; where the debtor's situation or past conduct is blameworthy, falling within s. 173". In other words, sections 59(2) and 59(3) are to be read disjunctively.
 - III. At para. 36 of *Wandler*, the court observed that, while the lack of any performance security is fatal to a proposal, the court may exercise its discretion to reduce the percentage of security required, at least in extraordinary circumstances. This does not mean that the amount of the performance security can be reduced to zero: "I prefer the view taken in Houlden and Morawetz that if no performance security is offered under a proposal, the court cannot approve it since s. 59(3) requires that there be a percentage of fifty cents on the dollar and zero is not a percentage of fifty cents. In any event, there must be some evidence presented to justify the court exercising its discretion to lower the percentage of performance security, and here there was none other than the creditors' approval of the Proposal, which alone is insufficient".
 - IV. It appears that "reasonable security" does not mean such security as would be reasonable for a prudent person to invest money in, but only that there should be a reasonable probability that the amount required to be paid under the proposal will be paid having regard to the debtor's state of affairs as presented to the creditors. If the proposal

is favourable to creditors and has been accepted by them, the court should take a broad view of the words "reasonable security": *Re P.F. Murray; Ex parte the Debtor v. Official Receiver*, [1969] 1 All E.R. 441 (Ch.D).

Conclusion

12. Based on the information set out above, the Trustee has notified the Runzers that the Trustee recommends that the Runzers pay to the Trustee, in advance of Court Approval, a sum of \$1,000 which equates to 20% of the total Proposal Fund.
13. The Trustee is of the opinion that a performance security deposit in the amount of 20% of the Proposal Fund is sufficient in the circumstances to satisfy the requirements of 59(3) of the BIA.

All of which is respectfully submitted on this 15th day of March 2023.

MNP Ltd.

In its capacity as Trustee in the Division I Proposal of
**Canadian Development Strategies Inc., 1143402 Alberta Ltd., Oak and Ash Farms Ltd.,
2061778 Alberta Ltd., Lori Runzer and Dean Runzer**
and not in its personal capacity



Per: Karen Aylward, CIRP, Licensed Insolvency Trustee
Vice President