

COURT FILE NO. 2303-07739

COURT COURT OF KING'S BENCH OF ALBERTA

JUDICIAL CENTRE EDMONTON

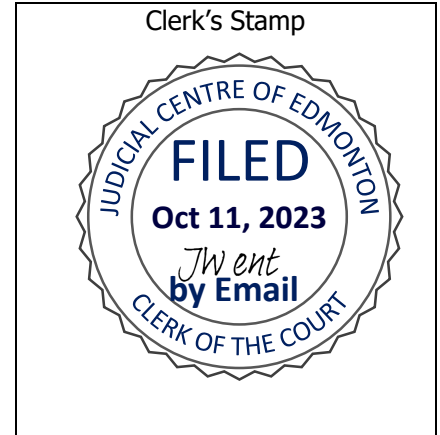
PLAINTIFF ADDENDA CAPITAL INC

DEFENDANTS 112 STREET NW EDMONTON PARTNERS LP by its general partner 112 STREET NW EDMONTON PARTNERS GP INC., 112 STREET NW EDMONTON PARTNERS GP INC., and CANDEREL ENTERPRISES INC.

DOCUMENT **BENCH BRIEF OF MNP LTD., THE COURT APPOINTED RECEIVER 112 STREET NW EDMONTON PARTNERS LP BY ITS GENERAL PARTNER 112 STREET NW EDMONTON PARTNERS GP INC. AND 112 STREET NW EDMONTON PARTNERS GP INC.**

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Introduction

1. This Brief is submitted on behalf of MNP Ltd. in its capacity as court-appointed receiver and manager (the "**Receiver**") of 112 Street NW Edmonton Partners LP by its general partner 112 Street NW Edmonton Partners GP Inc., and 112 Street NW Edmonton Partners GP Inc. (collectively the "**Debtors**") in support of an application by the Receiver for an order:
 - (a) abridging the time for service of notice of the Application, if necessary;
 - (b) approving the Offer to Purchase and Real Estate Purchase Agreement made as of September 20, 2023 (the "**Sale Agreement**") between the Receiver and Prosperity Investments (Canada) Inc. (the "**Purchaser**") and providing for the vesting in the Purchaser of the Debtors' right, title and interest in and to the assets described in the Sale Agreement (the "**Assets**") which is appended as Appendix 3 to the Confidential Appendices to the Receiver's First Report to the Court dated October 10, 2023 (the "**First Report**");
 - (c) sealing the Confidential Appendices to the First Report;
 - (d) approving, *inter alia*, the Receiver's fees and disbursements, including the fees and disbursements of its legal counsel as included in the First Report and Fee Affidavit of Kristin Gray;
 - (e) approving, *inter alia*, the Receiver's activities, conduct and actions as set out in the First Report; and
 - (f) granting such other and further relief as the circumstances may require and as this Honourable Court shall deem appropriate.
2. This Application has been brought in accordance with paragraphs 3(k), 3(l) and 3(m) of the Receivership Order, which authorizes the Receiver to, among other things, execute, assign, issue and endorse documents of whatever nature in respect of the Assets (as defined in the Receivership Order), to market any and all of the Assets, including advertising and soliciting offers in respect of the Assets, to sell the Assets or any parts thereof, and apply for any vesting order necessary to convey the Assets or any parts thereof, free and clear of any and all encumbrances.
3. All capitalized terms not otherwise defined in this Brief have the meanings ascribed thereto in the First Report.

4. A detailed background of this matter and the Receiver's activities leading up to this Application are more fulsomely described in the First Report, filed concurrently.

Order Approving Sale and Vesting Title ("SAVO")

5. The *Bankruptcy and Insolvency Act*, RSC 1985, c B-3 (the "**BIA**") permits this Honourable Court to appoint a receiver to do any of the following:
 - (a) take possession of all or substantially all of the property of an insolvent person used in relation to the business carried on by the insolvent person;
 - (b) exercise any control that the Court considers advisable over the property and over the insolvent corporation's business; and
 - (c) take any other action that the Court considers advisable.¹
6. Section 247(b) of the BIA provides that a receiver shall "act honestly and in good faith" and "deal with the property of the insolvent person or the bankrupt in a commercially reasonable manner."²
7. The Ontario Court of Appeal decision of *Royal Bank v Soundair Corp.* sets out the criteria to be applied when considering approval of a sale or the sales process of a receiver. When considering whether an offer accepted by a receiver should be approved and ratified by the Court, the Court is to consider and determine:
 - (a) Whether the receiver made sufficient effort to get the best price and has not acted improvidently;
 - (b) The interests of all the parties;
 - (c) The efficacy and integrity of the process by which offers were obtained; and
 - (d) Whether there has been unfairness in the working out of the process.³

¹ *Bankruptcy and Insolvency Act*, RSC 1985, c B-3 [BIA], s 243(1). [TAB 1]

² *Ibid*, s 247. [TAB 1]

³ *Royal Bank v Soundair Corp.*, 1991 CarswellOnt 205 [Soundair] at para 16. [TAB 2]

8. The *Soundair* criteria have been incorporated into Alberta law, and confirmed by the Alberta Court of Appeal in *River Rentals Group Ltd. v Hutterian Brethren Church of Codesa*, and *1905393 Alberta Ltd. v Servus Credit Union Ltd.*⁴
9. If the Court is satisfied that a receiver has acted providently in its efforts to sell the debtor's property, the case law instructs that the Court should approve the sale, and give deference to the Court-appointed receiver, assuming that the receiver's course of action and recommendation is appropriate and nothing to the contrary is shown. To order otherwise improperly calls into question the receiver's expertise and authority, thereby compromising both the integrity of the sales process, and commercial certainty.⁵
10. The Court in *Soundair* also emphasized the importance of respecting a fair process as follows:

It is most important that the integrity of procedures followed by court-appointed receivers be protected in the interests of both commercial morality and the future confidence of business persons in their dealings with receivers. Consequently, in all cases, the court should carefully scrutinize the procedure followed by the receiver to determine whether it satisfies the [four-part test].⁶
11. In the present case, the Receiver submits that it has engaged in a fair, provident, and impartial sales process, which resulted in the Receiver executing the Sale Agreement with the highest and best offer received.

Order Dismissing Lease Caveats

12. Without restating the facts and background contained in the First Report, Compass Place is made up of four separate legal titles and is currently encumbered by eight lease caveats. The Receiver does not propose to dismiss the Canderel Caveat as part of the SAVO since the Receiver is assigning its interest in the Canderel lease to the Purchaser. Subordinate to the Mortgage are lease caveats registered by the secured lender Addenda, IDP Education (Canada) Limited and Laurence Zalmanowitz Psychology Services Ltd., which are to be dismissed in the ordinary course of a court-

⁴ *River Rentals Group Ltd. v Hutterian Brethren Church of Codesa*, 2010 ABCA 16 [*River Rentals*] [TAB 3] at para 12; *PricewaterhouseCoopers Inc. v 1905393 Alberta Ltd.*, 2019 ABCA 433 [*Servus*] at para 10. [TAB 4]

⁵ *Soundair*, *supra* note 3 at paras 14 and 43; *River Rentals*, *supra* note 4 at paras 18 and 19; *Servus*, *supra* note 4 at paras 10, and 12-14. [TABS 2, 3, and 4]

⁶ *Soundair* *supra* note 3 at para 72. [TAB 2]

ordered enforcement sale, if the SAVO is granted. That leaves four lease caveats that the Receiver respectfully requests be dismissed as part of the SAVO, despite being registered in advance to the Mortgage, those being the lease caveats of:

- (a) LRCA;
- (b) CCSW;
- (c) Spicer PC and
- (d) Magathan PC.

13. LRCA and CCSW are no longer tenants of the building and the caveators ought to have taken steps to discharge their respective lease caveats upon termination of their leases. As detailed in the First Report, the Receiver has taken steps to discharge those caveats but as of the date of the First Report, the LRCA Caveat and CCSW Caveat remain registered against some or all of the titles.
14. The Spicer Lease had a commencement date of February 1, 2013 and expired on January 31, 2023. The Spicer Lease was not renewed by the Debtors and Spicer PC prior to the appointment of the Receiver and Spicer PC remains in Compass Place as an overholding tenant.⁷
15. Section 11.05 of the Spicer Lease permits registration of a notice or caveat against title during the term of the Spicer Lease. However, the Spicer Caveat must be removed forthwith upon termination of the Spicer Lease. The portion of this section regarding removal reads:

The Tenant shall ensure that such notice or caveat of lease is removed from title to Lands, at its expense, forthwith upon the termination of this Lease and this obligation shall survive the expiry or termination of this Lease.⁸

16. The Magathan Lease had a commencement date of May 1, 2013 and expired on April 30, 2023. The Magathan Lease was also not renewed by the Debtors and Magathan PC prior to the appointment of the Receiver and Magathan PC remains in Compass Place as an overholding tenant.⁹

⁷ Confidential Appendix 6 to the First Report.

⁸ *Ibid.*

⁹ Confidential Appendix 7 to the First Report.

17. The Magathan Lease has identical language to the Spicer Lease and states at clause 11.05 that the Tenant shall ensure that such notice or caveat is removed from title to the lands forthwith upon termination of the lease.¹⁰

18. Section 101 of the *Land Titles Act* (the "**LTA**") states:

101(1) Any person claiming to be interested in any land for which a certificate of title has been granted may apply to a court for an order discharging any lease or demise registered pursuant to this Act the term of which has expired, and the court, on being satisfied that the term of the lease or demise in respect of which the application is made has expired, may grant an order to that effect.¹¹

19. As the registered owner of Compass Place, the Debtors (and the Receiver on the Debtors' behalf) is entitled to apply for the removal of the LRCA and CCSW Caveats under the Act. As the LRCA and CCSW are no longer tenants of the building, the Receiver submits that there is no reason for their respective caveats to remain registered against title and ask that they be discharged.

20. While a lapse of caveat has been submitted for the CCSW Caveat, the registration has not yet been authorized. The Receiver therefore asks that the Court now grant removal of the CCSW Caveat. The Statutory Declaration contained in Schedule "G" to the First Report confirms that a Notice to take Proceeding was served in compliance with section 138(1) of the LTA and that the 60-day period referred to therein expired without CCSW commencing proceedings or filing a certificate of *lis pendens*.¹² Thus, discharge of the CCSW Caveat is also authorized by this section of the LTA.

21. With respect to the LRCA Caveat, the submitted discharge of caveat only discharged the LRCA Caveat from one of four titles. It remains registered against the three remaining titles. It is clear that the intention of the LRCA was to discharge the LRCA Caveat, despite only having filed a discharge of caveat as against one of the titles. The Receiver requests that the SAVO discharge the LRCA Caveat.

22. As the terms of both the Spicer Lease and the Magathan Lease have expired, section 101 of the LTA also applies to these tenants.

¹⁰ *Ibid.*

¹¹ RSA 2000, c L-4. [TAB 5]

¹² *Ibid.* [TAB 11]

23. Per section 101(2) of the LTA, where the tenant remains in possession despite expiry of the lease term, the Court is not to grant the discharge unless the lessee is given notice of the application.¹³ Both Spicer PC and Magathan PC were provided notice of this application, confirmation of which will be included in the filed Affidavit of Service of Shauna Trueman. This Honourable Court is thus entitled to grant relief under section 101 for the PC Caveats.
24. Additionally, both Spicer PC and Magathan PC are contractually obligated to discharge their lease caveats pursuant to their respective lease agreements. The Receiver therefore submits that these tenants should not be permitted to disrupt the sale process and have a contractual obligation to discharge their respective caveats. The Receiver requests that this Honourable Court grant relief under section 101 and Order the discharge of the PC Caveats.
25. The Receiver seeks removal of four lease caveats from titles to Compass Place: the LRCA Caveat, PC Caveats and CCSW Caveat, all of which are registered in priority to the Mortgage.

Restricted Court Access Order

26. The Court's authority to grant Restricted Court Access Order is contemplated under Rule 6.28 and Division 4 of Part 6 of the Alberta *Rules of Court*.¹⁴
27. This Court has the jurisdiction to order that certain materials filed with the Court be sealed on the Court file. The Supreme Court of Canada decision of *Sierra Club of Canada v Canada (Minister of Finance)* provides the guiding principles to granting sealing orders and publication bans and accepted that these types of orders could be granted when:
 - (a) Such an order is necessary in order to prevent a serious risk to an important interest, including a commercial interest, in the context of litigation because reasonable alternative measures will not prevent that risk; and
 - (b) The salutary effects of the confidentiality order outweigh its deleterious effects, including the effects on the right to free expression, which includes public interest in open and accessible court proceedings.¹⁵

¹³ *ibid.* [TAB 5]

¹⁴ *Alberta Rules of Court*, AR 124/2010, Division 4 of Part 6 including Rule 6.28. [TAB 6]

¹⁵ *Sierra Club of Canada v Canada (Minister of Finance)*, 2002 SCC 41 at para 45. [TAB 7]

28. In the insolvency context, it is common when property is being sold through a court process to seal various bids and other commercially sensitive material, such as valuations, and sale price, in case a further listing or sales process is required should the contemplated sale and or sales process falls through.¹⁶
29. Sealing orders in this context are granted to maintain fair play so that competitors and potential purchasers do not obtain an unfair advantage by obtaining such information, while others have to rely on their own resources.¹⁷
30. In *Alberta Treasury Branches v Elaborate Homes Ltd.*, the Honourable Mr. Justice K.G. Nielsen (as he then was) accepted the reasons and rationale of the Ontario Courts and acknowledged that it is common practice in the insolvency context that information relating to the sale of the property of an insolvent corporation be kept confidential until after the sale or the sales process is completed pursuant to a Court order.¹⁸
31. The Receiver respectfully requests that this Honourable Court seal the Confidential Appendices to the First Report until April 19, 2023.

Conclusion

32. Based upon the materials filed and foregoing submission, the Receiver respectfully requests an Order:
 - (a) Approving the Sale Agreement and vesting title in the Assets in the Purchaser;
 - (b) Approving the actions, conduct and activities of the Receiver to-date;
 - (c) Approving the fees and disbursements of the Receiver, including the fees and disbursements of its independent legal counsel McLennan Ross LLP
 - (d) Sealing the Confidential Appendices to the Receiver's First Report to the Court until April 19, 2023; and

¹⁶ *Romspen Investment Corporation v Hargate Properties Inc.*, 2012 ABQB 412 at paras 2, 11, and 13 [TAB 8]; *Look Communications Inc. v Look Mobile Corporation*, 2009 CarswellOnt 7952 at para 17. [TAB 9]

¹⁷ *887574 Ontario Inc. v Pizza Pizza Ltd.*, 1994 CarswellOnt 1214 at para 6. [TAB 10]

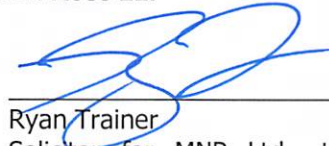
¹⁸ *Alberta Treasury Branches v Elaborate Homes Ltd.*, 2014 ABQB 350 at para 54. [TAB 11]

(e) Such further and other relief as this Honourable Court may deem just and appropriate.

ALL OF WHICH IS RESPECTFULLY SUBMITTED at the City of Edmonton, in the Province of Alberta, this 10th day of October, 2023.

MCLENNAN ROSS LLP

Per:



Ryan Trainer

Solicitor for MNP Ltd., the Court Appointed Receiver of 112 Street NW Edmonton Partners LP by its general partner 112 Street NW Edmonton Partners GP Inc. and 112 Street NW Edmonton Partners GP Inc.

TABLE OF AUTHORITIES

Bankruptcy and Insolvency Act, RSC 1985, c B-3, s 243(1) and 247..... **TAB 1**

Royal Bank v Soundair Corp., 1991 CarswellOnt 205 **TAB 2**

Bank of Montreal v River Rentals Group Ltd., 2010 ABCA 16..... **TAB 3**

PricewaterhouseCoopers Inc. v 1905393 Alberta Ltd., 2019 ABCA 433..... **TAB 4**

Land Titles Act, RSA 2000, c L-4..... **TAB 5**

Alberta Rules of Court, AR 124/2010, Division 4 of Part 6..... **TAB 6**

Sierra Club of Canada v Canada (Minister of Finance), 2002 SCC 41 **TAB 7**

Romspen Investment Corporation v Hargate Properties Inc., 2012 ABQB 412 **TAB 8**

Look Communications Inc. v Look Mobile Corporation, 2009 CarswellOnt 7952 **TAB 9**

887574 Ontario Inc. v Pizza Pizza Ltd., 1994 CarswellOnt 1214 **TAB 10**

Alberta Treasury Branches v Elaborate Homes Ltd., 2014 ABQB 350..... **TAB 11**