

COURT FILE NUMBER 2022 19336

COURT COURT OF KING'S BENCH OF ALBERTA

JUDICIAL CENTRE EDMONTON

PLAINTIFFS MIKE PRIESTNER REAL ESTATE INC. and
MPRE GP DEV INC.

DEFENDANTS 2399430 ALBERTA LTD., 2399449
ALBERTA LTD., TURNIP HOMES INC. and
HENOK KASSYE

DOCUMENT **APPROVAL AND VESTING ORDER
(Sale by Receiver)**

Clerk's Stamp

ADDRESS FOR SERVICE AND
CONTACT INFORMATION OF PARTY
FILING THIS DOCUMENT

MCLENNAN ROSS LLP
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Edmonton, AB T5N 3Y4

Lawyer: Ryan Trainer
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File No.: 20230841

DATE ON WHICH ORDER WAS PRONOUNCED: May 1,
2023

LOCATION WHERE ORDER WAS PRONOUNCED: Edmonton,
Alberta

NAME OF JUSTICE WHO MADE THIS ORDER: Justice N.J.
Whitling

UPON THE APPLICATION by MNP Ltd. ~~[Receiver's Name]~~ in its capacity as the Court-appointed ~~[receiver/receiver and manager]~~ (the "Receiver") of the undertakings, property and assets of 2399430 Alberta Ltd., ("430 Alberta") and 2399449 Alberta Ltd. ~~Debtor]~~ (collectively the "Debtors") for an order approving the sale transaction (the "Transaction") contemplated by ~~the eOffer to purchase and Real Estate Purchase Agreement~~ an agreement of purchase and sale (the "Sale Agreement") between the Receiver and Union Bank Holdings Inc. ~~[Name of Purchaser]~~ (the "Purchaser") dated March 31, 2023 ~~[Date]~~ and appended to the Confidential Appendices to the Second ~~_____~~ Reports of the Receiver dated April 24, 2023 ~~[Date]~~ (the "Second Report"), and vesting in the Purchaser (or its nominee)[†] ~~the Debtor's~~ 430 Alberta's right, title and interest in and to the assets described in the Sale Agreement (the "Purchased Assets");

[†] ~~Ensure that there are no legal obstacles to the vesting of assets in a nominee (for example competition and anti-trust law). Should land be transferred and vested in a nominee, the Registrar of Land Titles requires the Purchaser to complete a Certificate of Nomination (which needs to be signed under seal if the Purchaser is a corporation. If the Purchaser is an individual, the signature needs to be witnessed with an affidavit of execution completed.)~~

AND UPON HAVING READ the Receivership Order dated December 13, 2022~~{Date}~~ (the “**Receivership Order**”), the Report and the Affidavit of Service; **AND UPON HEARING** the submissions of counsel for the Receiver, ~~and all other parties in attendance; the Purchaser [Names of other parties appearing], no one appearing for any other person on the service list, although properly served as appears from the Affidavit of Service, filed;~~

IT IS HEREBY ORDERED AND DECLARED THAT:

SERVICE

1. Service of notice of this application and supporting materials is hereby declared to be good and sufficient, no other person is required to have been served with notice of this application and time for service of this application is abridged to that actually given.²

APPROVAL OF TRANSACTION

2. The Transaction is hereby approved³ and execution of the Sale Agreement by the Receiver is hereby authorized and approved, with such minor amendments as the Receiver may deem necessary. The Receiver is hereby authorized and directed to take such additional steps and execute such additional documents as may be necessary or desirable for completion of the Transaction and conveyance of the Purchased Assets to the Purchaser (or its nominee).

VESTING OF PROPERTY

3. ~~[Subject only to approval by the Alberta Energy Regulator (“Energy Regulator”) of transfer of any applicable licenses, permits and approvals pursuant to section 24 of the Oil and Gas Conservation Act (Alberta) and section 18 of the Pipeline Act (Alberta)]⁴ Upon delivery of a Receiver’s certificate to the Purchaser (or its nominee) substantially in the form set out in **Schedule “A”** hereto (the “**Receiver’s Closing Certificate**”), all of the 430 Alberta’s Debtor’s~~

² ~~Ensure that the application and supporting materials are served on all affected parties including those whose interests will be vested off.~~

³ ~~In some cases, notably where this Order may be relied upon for proceedings in the United States, a finding that the Transaction is commercially reasonable and in the best interests of the Debtor and its stakeholders may be necessary. Evidence should be filed to support such a finding. If supported by evidence, the following sentence could be added at the beginning of paragraph 2: “The Transaction and Sale Agreement are commercially reasonable and in the best interest of the Debtor and its stakeholders.”~~

⁴ ~~This bracketed clause, paragraph 4(b) and the bracketed words at the end of paragraph 6 are included when the Purchased Assets include mineral interests in land.~~

right, title and interest in and to the Purchased Assets [listed in **Schedule “B”**⁵-hereto] shall vest absolutely in the name of the Purchaser (or its nominee),- free and clear of and from any and all caveats, security interests, hypothecs, pledges, mortgages, liens, trusts or deemed trusts, reservations of ownership, royalties, options, rights of pre-emption, privileges, interests, assignments, actions, judgements, executions, levies, taxes, writs of enforcement, charges, or other claims, whether contractual, statutory, financial, monetary or otherwise, whether or not they have attached or been perfected, registered or filed and whether secured, unsecured or otherwise (collectively, “**Claims**”)⁶ including, without limiting the generality of the foregoing:

- (a) any encumbrances or charges created by the Receivership Order;
- (b) any charges, security interests or claims evidenced by registrations pursuant to the *Personal Property Security Act* (Alberta) or any other personal property registry system;
- (c) any liens or claims of lien under the *Builders’ Lien Act* (Alberta); and
- (d) ~~those all those~~ Claims listed in **Schedule “C”** hereto ~~(all of which are collectively referred to as the “Expunged Encumbrances”, which term shall not include the permitted encumbrances, caveats, interests, easements, and restrictive covenants other than the encumbrances, caveats, interests, easements, and restrictive covenants listed in **Schedule “CD”** (collectively, “**Permitted Encumbrances**”))~~

and for greater certainty, this Court orders that all Claims including ~~E~~ncumbrances other than Permitted Encumbrances, affecting or relating to the Purchased Assets are hereby expunged, discharged and terminated as against the Purchased Assets.

4. Upon delivery of the Receiver’s Closing Certificate, and upon filing of a certified copy of this Order, together with any applicable registration fees, all governmental authorities including those referred to below in this paragraph (collectively, “**Governmental Authorities**”) are hereby authorized, requested and directed to accept delivery of such Receiver’s Closing Certificate and certified copy of this Order as though they were originals and to register such transfers, interest

⁵~~To allow this Order to be free standing (and not require reference to the Court record and/or the Sale Agreement), it may be preferable that the Purchased Assets be specifically described in a Schedule B.~~

⁶~~The “Claims” being vested out may, in some cases, include ownership claims, where ownership is disputed and the dispute is brought to the attention of the Court. Such ownership claims may, in some cases, continue as against the net proceeds from sale of the claimed assets. In other cases, the ownership claimant may object to its ownership interest being vested out of the claimed assets. For example, it not clear that vesting orders can vest out overriding royalties or restrictive covenants which are interests in land. (In *Third Eye Capital Corp. v Dianor Resources Inc.*, 2018 ONCA 253 at paragraphs 108-130 the Ont. C.A. requested further argument regarding whether an overriding royalty which is an interest in land may nevertheless be vested out.) Similarly, other claimed rights, titles or interests may potentially be vested out if the Court is advised what rights are being affected and the affected persons are served. The Committee agrees with the view of the Ontario Committee that a non-specific vesting out of “rights, titles and interests” is vague and therefore undesirable.~~

authorizations, discharges and discharge statements of conveyance as may be required to convey to the Purchaser or its nominee clear title to the Purchased Assets subject only to Permitted Encumbrances. Without limiting the foregoing:

(a)⁷ the Registrar of Land Titles (“**Land Titles Registrar**”) for the lands defined below shall and is hereby authorized, requested and directed to forthwith:

(i) cancel existing Certificates of Title No. 222 105 236 for those lands and premises municipally described as 10053 Jasper Avenue Edmonton, AB T5J 1S5, and legally described as:

PLAN F
LOT 6
(the “Lands”)

(ii) issue a new Certificate of Title for the Lands in the name of the Purchaser (or its nominee), namely, Union Bank Holdings Inc.*;

(iii) transfer to the New Certificate of Title the existing instruments listed in **Schedule “CD”**, to this Order, and to issue and register against the New Certificate of Title such new caveats, utility rights of ways, easements or other instruments as are listed in **Schedule “CD”**; and

(iv) discharge and expunge ~~the any Encumbrances listed in Schedule “C” to this Order and discharge and expunge any or~~ Claims ~~including Encumbrances~~ (but excluding Permitted Encumbrances) which may be registered after the date of the Sale Agreement against the existing Certificate of Title to the Lands;

~~(b)⁸—Alberta Energy (“Energy Ministry”) shall and is hereby authorized, requested and directed to forthwith:~~

~~(v) —cancel and discharge these Claims including builders’ liens, security notices, assignments under section 426 (formerly section 177) of the Bank Act (Canada) and other Encumbrances (but excluding Permitted Encumbrances) registered (whether before or after the date of this Order) against the estate or interest of the Debtor in and to any of the Purchased Assets located in the Province of Alberta; and~~

⁷ Paragraph 4(a) is included when the Purchased Assets include titled lands.

⁸ Paragraph 4(b) is included when the Purchased Assets include mineral interests in land.

- ~~(vi) — transfer all Crown leases listed in Schedule “E” to this Order standing in the name of the Debtor, to the Purchaser (or its nominee) free and clear of all Claims including Encumbrances but excluding Permitted Encumbrances;~~
- (c) the Registrar of the Alberta Personal Property Registry (the “**PPR Registrar**”) shall and is hereby directed to forthwith cancel and discharge any registrations at the Alberta Personal Property Registry (whether made before or after the date of this Order) claiming security interests (other than Permitted Encumbrances) in the estate or interest of the 430 Alberta Debtors in any of the Purchased Assets which are of a kind prescribed by applicable regulations as serial-number goods.
5. In order to effect the transfers and discharges described above, this Court directs each of the Governmental Authorities to take such steps as are necessary to give effect to the terms of this Order and the Sale Agreement. Presentment of this Order and the Receiver’s Closing Certificate shall be the sole and sufficient authority for the Governmental Authorities to make and register transfers of title or interest and cancel and discharge registrations against any of the Purchased Assets of any Claims including ~~E~~ncumbrances but excluding Permitted Encumbrances.
6. No authorization, approval or other action by and no notice to or filing with any governmental authority or regulatory body exercising jurisdiction over the Purchased Assets is required for the due execution, delivery and performance by the Receiver of the Sale Agreement, ~~[other than any required approval by the Energy Regulator referenced in paragraph 3 above.]~~⁹
7. Upon delivery of the Receiver’s Closing Certificate together with a certified copy of this Order, this Order shall be immediately registered by the Land Titles Registrar notwithstanding the requirements of section 191(1) of the *Land Titles Act*, RSA 2000, c.L-7 and notwithstanding that the appeal period in respect of this Order has not elapsed. The Land Titles Registrar is hereby directed to accept all Affidavits of Corporate Signing Authority submitted by the Receiver in its capacity as Receiver of 430 Alberta~~the Debtor~~ and not in its personal capacity.
8. For the purposes of determining the nature and priority of Claims, net proceeds¹⁰ from sale of the Purchased Assets (to be held in an interest bearing trust account by the Receiver) shall stand in the place and stead of the Purchased Assets from and after delivery of the Receiver’s Closing Certificate and all Claims including ~~E~~ncumbrances (but excluding Permitted Encumbrances) shall not attach to, encumber or otherwise form a charge, security interest, lien, or other Claim

⁹~~The bracketed words in this paragraph are included when the Purchased Assets include mineral interests in land.~~

¹⁰~~The Report should identify the disposition costs and any other costs which should be paid from the gross sale proceeds, to arrive at “net proceeds”.~~

against the Purchased Assets and may be asserted against the net proceeds from sale of the Purchased Assets with the same priority as they had with respect to the Purchased Assets immediately prior to the sale, as if the Purchased Assets had not been sold and remained in the possession or control of the person having that possession or control immediately prior to the sale. Unless otherwise ordered (whether before or after the date of this Order), the Receiver shall not make any distributions to creditors of net proceeds from sale of the Purchased Assets without further order of this Court, provided however the Receiver may apply any part of such net proceeds to repay any amounts the Receiver has borrowed for which it has issued a Receiver's Certificate pursuant to the Receivership Order.

9. ~~Except as expressly provided for in the Sale Agreement or by section 5 of the Alberta Employment Standards Code, t~~The Purchaser (or its nominee) shall not, by completion of the Transaction, have liability of any kind whatsoever in respect of any Claims against ~~430 Alberta~~~~the Debtor.~~¹¹
10. Upon completion of the Transaction, ~~430 Alberta~~~~the Debtors~~ and all persons who claim by, through or under the ~~430 Alberta~~~~Debtors~~ in respect of the Purchased Assets, and all persons or entities having any Claims of any kind whatsoever in respect of the Purchased Assets, save and except for persons entitled to the benefit of the Permitted Encumbrances, shall stand absolutely and forever barred, estopped and foreclosed from and permanently enjoined from pursuing, asserting or claiming any and all right, title, estate, interest, royalty, rental, equity of redemption or other Claim whatsoever in respect of or to the Purchased Assets, and to the extent that any such persons or entities remain in the possession or control of any of the Purchased Assets, or any artifacts, certificates, instruments or other indicia of title representing or evidencing any right, title, estate, or interest in and to the Purchased Assets, they shall forthwith deliver possession thereof to the Purchaser (or its nominee).¹²
11. The Purchaser (or its nominee) shall be entitled to enter into and upon, hold and enjoy the Purchased Assets for its own use and benefit without any interference of or by the ~~430 Alberta~~~~Debtors~~, or any person claiming by, through or against the ~~430 Alberta~~~~Debtors~~.

¹¹ ~~Successor employer liability is governed by section 5 of the Employment Standards Code, RSA 2000 c. E-9 as amended. Inclusion of the words "or by statute" in paragraph 9 ensures that paragraph 9 does not purport to abrogate statutory successor employee liability.~~

¹² ~~Not all sale agreements require, nor do the terms of the Debtor's possession of human resources and payroll information always permit, disclosure and transfer of such information to the Purchaser. If disclosure and transfer of such information to the Purchaser is not required or permitted, then Section 10 of this Order should be deleted.~~

12. Immediately upon closing of the Transaction, holders of Permitted Encumbrances shall have no claim whatsoever against the Receiver.¹³
13. The Receiver is directed to file with the Court a copy of the Receiver's Closing Certificate forthwith after delivery thereof to the Purchaser (or its nominee).
14. Pursuant to clause 7(3)(c) of the *Personal Information Protection and Electronic Documents Act* (Canada) and section 20(e) of the *Alberta Personal Information Protection Act*, the Receiver is authorized and permitted to disclose and transfer to the Purchaser (or its nominee) all human resources and payroll information in the 430 Alberta's Debtors' records pertaining to the 430 Alberta's Debtors' past and current employees. The Purchaser (or its nominee) shall maintain and protect the privacy of such information and shall be entitled to use the personal information provided to it in a manner which is in all material respects identical to the prior use (of such information) to which the 430 Alberta Debtors ~~was~~ is entitled.

MISCELLANEOUS MATTERS

15. Notwithstanding:
 - (a) the pendency of these proceedings and any declaration of insolvency made herein;
 - ~~(b) the pendency bankruptcy of any applications for a bankruptcy order now or hereafter issued pursuant to the Bankruptcy and Insolvency Act, R.S.C. 1985, c.B-3, as amended (the "BIA"), in respect of the Debtors', and any bankruptcy order issued pursuant to any such applications;~~
 - ~~(c) any assignment in bankruptcy made in respect of the Debtors'; and~~
 - ~~(d) the provisions of any federal or provincial statute:~~

the vesting of the Purchased Assets in the Purchaser (or its nominee) pursuant to this Order shall be binding on any trustee in bankruptcy that may be appointed in respect of the 430 Alberta Debtors and shall not be void or voidable by creditors of the 430 Alberta Debtors, nor shall it constitute nor be deemed to be a transfer at undervalue, settlement, fraudulent preference, assignment, fraudulent conveyance, or other reviewable transaction under the Bankruptcy and Insolvency Act, R.S.C. 1985, c. B-3, as amended BIA or any other applicable federal or provincial legislation, nor shall it constitute oppressive or unfairly prejudicial conduct pursuant to any

¹³ ~~The terms of the Permitted Encumbrance and Sale Agreement should be reviewed to determine whether an encumbrance also constitutes a charge against other assets not being sold (in addition to the Purchased Assets.) In that circumstance, absent agreement of the encumbrancer to the contrary, the Debtor may not be fully discharged so the encumbrancer does not lose its charge over the other assets it holds as security. Do not add the words "or the Debtor" to the end of paragraph 12 if an encumbrancer's claim against the Debtor should be reserved.~~

applicable federal or provincial legislation.

16. The Receiver, the Purchaser (or its nominee) and any other interested party, shall be at liberty to apply for further advice, assistance and direction as may be necessary in order to give full force and effect to the terms of this Order and to assist and aid the parties in closing the Transaction.
17. This Honourable Court hereby requests the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or in any of its provinces or territories or in any foreign jurisdiction, to act in aid of and to be complimentary to this Court in carrying out the terms of this Order, to give effect to this Order and to assist the Receiver and its agents in carrying out the terms of this Order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such order and to provide such assistance to the Receiver, as an officer of the Court, as may be necessary or desirable to give effect to this Order or to assist the Receiver and its agents in carrying out the terms of this Order.
18. Service of this Order shall be deemed good and sufficient by:
 - (a) Serving the same on:
 - (i) the persons listed on the service list created in these proceedings;
 - (ii) any other person served with notice of the application for this Order;
 - (iii) any other parties attending or represented at the application for this Order;
 - (iv) the Purchaser or the Purchaser's solicitors; and
 - (b) Posting a copy of this Order on the Receiver's website at:
<https://mnpdebt.ca/en/corporate/corporate-engagements/2399430-alberta-ltd-and-2399449-alberta-ltd>

and service on any other person is hereby dispensed with.

19. Service of this Order may be effected by facsimile, electronic mail, personal delivery or courier. Service is deemed to be effected the next business day following transmission or delivery of this Order.

Schedule "A"

Form of Receiver's Certificate

COURT FILE NUMBER	<u>2022 19336</u>	Clerk's Stamp
COURT	COURT OF KING QUEEN'S BENCH OF ALBERTA	
JUDICIAL CENTRE	<u>EDMONTON</u>	
PLAINTIFFS	<u>MIKE PRIESTNER REAL ESTATE INC. and MPRE GP DEV INC.</u>	
DEFENDANTS	<u>2399430 ALBERTA LTD., 2399449 ALBERTA LTD., TURNIP HOMES INC. and HENOK KASSYE</u>	
DOCUMENT	RECEIVER'S CERTIFICATE	
ADDRESS FOR SERVICE AND CONTACT INFORMATION OF PARTY FILING THIS DOCUMENT	<u>MCLENNAN ROSS LLP</u> <u>#600 McLennan Ross Building</u> <u>12220 Stony Plain Road</u> <u>Edmonton, AB T5N 3Y4</u>	<u>Lawyer: Ryan Trainer</u> <u>Telephone: (780) 482-9153</u> <u>Email: ryan.trainer@mross.com</u> <u>File No.: 20230841</u>

RECITALS

- A. Pursuant to an Order of the Honourable Justice J.T. Nielson~~[Name]~~ of the Court of Queen's Bench of Alberta, Judicial District of Edmonton_____ (the "Court") dated December 13, 2022~~[Date of Order]~~, MNP Ltd.~~[Name of Receiver]~~ was appointed as the receiver (the "Receiver") of the undertakings, property and assets of 2399430 Alberta Ltd. ("430 Alberta") and 2399449 Alberta Ltd. [Debtor] (the "Debtors").
- B. Pursuant to an Order of the Court dated May 1, 2023~~[Date]~~, the Court approved the agreement of purchase and sale made as of March 31, 2023~~[Date of Agreement]~~ (the "Sale Agreement") between the Receiver and Union Bank Holdings Inc.~~[Name of Purchaser]~~ (the "Purchaser") and provided for the vesting in the Purchaser of the 430 Alberta Debtor's right, title and interest in and to the Purchased Assets, which vesting is to be effective with respect to the Purchased Assets upon the delivery by the Receiver to the Purchaser of a certificate confirming (i) the payment by the Purchaser of the Purchase Price for the Purchased Assets; (ii) that the conditions to Closing as set out in section *14 of the Sale Agreement have been satisfied or waived by the Receiver and the Purchaser; and (iii) the Transaction has been completed to the satisfaction of the Receiver.

- C. Unless otherwise indicated herein, capitalized terms have the meanings set out in the Sale Agreement.

THE RECEIVER CERTIFIES the following:

1. The Purchaser (or its nominee) has paid and the Receiver has received the Purchase Price for the Purchased Assets payable on the Closing Date pursuant to the Sale Agreement;
2. The conditions to Closing as set out in section 14* of the Sale Agreement have been satisfied or waived by the Receiver and the Purchaser (or its nominee); and
3. The Transaction has been completed to the satisfaction of the Receiver.
4. This Certificate was delivered by the Receiver at _____ [Time] on _____
_____ [Date].

MNP Ltd. [Name of Receiver], in its capacity as Receiver of the undertakings, property and assets of 2399430 Alberta Ltd. and 2399449 Alberta Ltd. [Debtor], and not in its personal capacity.

Per; _____

Name: Kristin Gray

Title: Senior Vice President

Schedule "B"

PURCHASED ASSETS

Legal Description:

PLAN F
LOT 6

Along with all furniture located on the Lands.

Schedule "C"

PERMITTED ENCUMBRANCES

1. Instrument No. 1251 MI – Caveat

2. Instrument No. 912 239 538 – Encroaching Agreement

3. Instrument No. 972 046 791 – By-law Under The Historical Resources Act

4. Instrument No. 972 116 332 – Agreement

5. Instrument No. 122 292 603 - Caveat