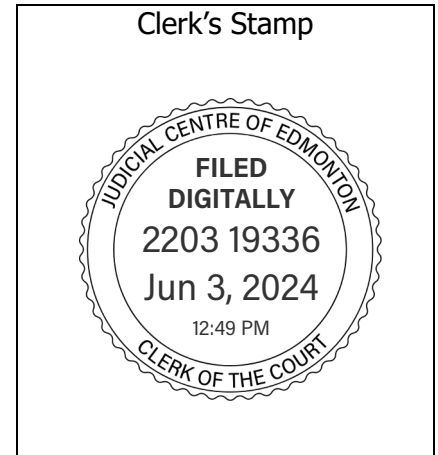


COURT FILE NO. 2203 19336

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 KASSAYE

DOCUMENT **BRIEF OF MNP LTD., IN ITS CAPACITY AS RECEIVER OF 2399430 ALBERTA LTD. AND 2399449 ALBERTA LTD.**

ADDRESS FOR SERVICE AND CONTACT INFORMATION OF PARTY FILING THIS DOCUMENT McLennan Ross LLP
#600 McLennan Ross Building
12220 Stony Plain Road
Edmonton, AB T5N 3Y4

Lawyer: Ryan Trainer
Telephone: 780.482.9153
Fax: 780.733.9790
Email: ryan.trainer@mross.com
File No.: 20230841

TABLE OF CONTENTS

INTRODUCTION.....	1
ORDER APPROVING SALE AND VESTING TITLE.....	2
RESTRICTED COURT ACCESS ORDER.....	4
RECEIVER'S FEES	5
CONCLUSION	6

Introduction

1. This Bench Brief is submitted on behalf of MNP Ltd. in its capacity as court-appointed receiver (the "**Receiver**") of 2399430 Alberta Ltd. ("**430**") and 2399449 Alberta Ltd. ("**449**") and collectively the "**Debtors**") in support of an application by the Receiver for:
 - (a) an Order abridging the time for service of notice of the Application, if necessary;
 - (b) an Order approving the sale of and vesting title in the lands municipally located at 10507 Saskatchewan Drive NW, Edmonton, Alberta and any personal property located thereon (collectively the "**Purchased Assets**") of 449 pursuant to an Offer to Purchase and Real Estate Purchase Agreement ("**OTP**") between the Receiver and Academy of Healthcare Services Inc. (the "**Purchaser**"), which is appended to the Confidential Appendices to the Receiver's Fifth Report to the Court dated May 31, 2024 (the "**Fifth Report**");
 - (c) an Order approving, *inter alia*, the Receiver's fees and disbursements, including the fees and disbursements of its legal counsel;
 - (d) an Order approving, *inter alia*, the Receiver's activities, conduct and actions as set out in the Fifth Report;
 - (e) an Order approving an interim distribution to MPRE upon the closing of the Transaction;
 - (f) an Order amending paragraph 18 of the Receivership Order granted December 12, 2022 to increase the Receiver's Charge, as defined therein, from \$300,000.00 to \$450,000.00.
 - (g) an Order sealing the Confidential Appendices to the Receiver's 5th Report to the Court; and
 - (h) an Order granting such other and further relief as the circumstances may require and as this Honourable Court shall deem appropriate.

2. All capitalized terms not otherwise defined in this Brief have the meanings ascribed thereto in the Fifth Report.
3. A detailed background of this matter and the Receiver's activities leading up to this application are more fulsomely described in the Fifth Report, filed concurrently.

Order Approving Sale and Vesting Title

4. The *Bankruptcy and Insolvency Act*, RSC 1985, c B-3 ("**BIA**") permits the 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
5. 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
6. The Ontario Court of Appeal decision of *Royal Bank v Soundair Corp.* sets out the criteria to be applied when considering the 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

¹ *Bankruptcy and Insolvency Act*, RSC 1985, c B-3 ("**BIA**"), s 243(1), *Bankruptcy and Insolvency Act, RSC 1985, c B-3*

² BIA, s 247

- (d) Whether there has been unfairness in the working out of the process.³
7. The *Soundair* criteria have been incorporated into Alberta insolvency law, and confirmed by the Alberta Court of Appeal in *Bank of Montreal v River Rentals Group Ltd.*, and *1905393 Alberta Ltd. v Servus Credit Union Ltd.*^{4 5}
8. If the Court is satisfied that the receiver has acted providently in its efforts to sell the debtor's assets, 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 in the receivership, thereby compromising both the integrity of the sales process, and undermining commercial certainty.^{6 7 8}
9. 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].⁹

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

⁴ *Bank of Montreal v River Rentals Group Ltd.*, 2010 ABCA 16 [*River Rentals*] at para 12, *Bank of Montreal v River Rentals Group Ltd.*, 2010 ABCA 16

⁵ *PricewaterhouseCoopers Inc. v 1905393 Alberta Ltd.*, 2019 ABCA 433 [*Servus*] at para 10, *PricewaterhouseCoopers Inc. v 1905393 Alberta Ltd.*, 2019 ABCA 433

⁶ *Soundair* at para 14 and 43

⁷ *River Rentals* at paras 18 and 19

⁸ *Servus* at paras 10, and 12-14

⁹ *Soundair* at para 72

Restricted Court Access Order

10. 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*.¹⁰
11. 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 in granting sealing orders and publication bans. Justice Iacobucci of the Supreme Court of Canada 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.¹¹
12. The Supreme Court of Canada further confirmed in *Sherman Estate v Donovan*, 2021 SCC 25, that the "core prerequisites" to establish to obtain a sealing order include:
 - (a) court openness poses a serious risk to an important public interest;
 - (b) the sealing order sought is necessary to prevent the serious risk to the identified interest because reasonably alternative measures will not prevent this risk; and
 - (c) as a matter of proportionality, the benefits of the sealing order outweigh its negative effects.¹²

¹⁰ *Alberta Rules of Court*, AR 124/2010, Division 4 of Part 6 including Rule 6.28, *Alberta Rules of Court*, AR 124/2010

¹¹ *Sierra Club of Canada v Canada (Minister of Finance)*, 2002 SCC 41 at para 45, *Sierra Club of Canada v Canada (Minister of Finance)*, 2002 SCC 41

¹² *Sherman Estate v. Donovan*, 2021 SCC 25, at para. 38, *Sherman Estate v. Donovan*, 2021 SCC 25

13. In the insolvency context, it is common when assets are 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 is required should the contemplated offer falls through.^{13 14}
14. 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.¹⁵
15. In *Alberta Treasury Branches v Elaborate Homes Ltd.*, 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 assets of an insolvent corporation be kept confidential until after the sale is completed pursuant to a court order.¹⁶

Receiver's Fees

16. With respect to the approval of the Receiver's fees and that of its counsel, the Ontario Court of Appeal in *Bank of Nova Scotia v Diemer*, and followed by this Court in *Servus Credit Union Ltd. v Trimove Inc.*, held that in determining whether to approve the fees of a receiver and its counsel, the court should consider whether the remuneration and disbursements incurred in carrying out the receivership were fair and reasonable. The focus of the fair and reasonable assessment should be on what was accomplished, not on how much time it took. The following factors constitute a useful guideline but are not exhaustive:
 - (a) the nature, extent and value of the assets;

¹³ *Romspen Investment Corporation v Hargate Properties Inc.*, 2012 ABQB 412 at paras 2, 11, and 13, *Romspen Investment Corporation v Hargate Properties Inc.*, 2012 ABQB 412

¹⁴ *Look Communications Inc. v Look Mobile Corporation*, 2009 CarswellOnt 7952 at para 17, *Look Communications Inc. v Look Mobile Corporation*, 2009 CarswellOnt 7952

¹⁵ *887574 Ontario Inc. v Pizza Pizza Ltd.*, 1994 CarswellOnt 1214 at para 6, *887574 Ontario Inc. v Pizza Pizza Ltd.*, 1994 CarswellOnt 1214

¹⁶ *Alberta Treasury Branches v Elaborate Homes Ltd.*, 2014 ABQB 350 at para 54, *Alberta Treasury Branches v Elaborate Homes Ltd.*, 2014 ABQB 350

- (b) the complications and difficulties encountered; the degree of assistance provided by the Debtor;
- (c) the time spent;
- (d) the receiver's knowledge, experience, and skill;
- (e) the diligence and thoroughness displayed;
- (f) the responsibilities assumed;
- (g) the results of the receiver's efforts; and
- (h) the cost of comparable services when performed in a prudent and economical manner.^{17 18}

Conclusion

17. Based upon the materials filed and foregoing submission, the Receiver respectfully requests an Order:
- (a) Approving the sale of the Assets and vesting title in the Purchaser;
 - (b) Approving an interim distribution to MPRE;
 - (c) Sealing the Confidential Appendices to the Fifth Report to the Court until October 11, 2024;
 - (d) Approving the activities and the accounts of the Receiver and its legal counsel;
 - (e) Increasing the Receiver's Charge to \$450,000.00;
 - (f) Approving the activities, conduct and actions of the Receiver; and

¹⁷ *Bank of Nova Scotia v Diemer*, 2014 ONCA 851, 2014 CarswellOnt, at paras 33 and 45, *Bank of Nova Scotia v Diemer*, 2014 ONCA 851, 2014 CarswellOnt

¹⁸ *Servus Credit Union Ltd. v Trimove Inc.*, 2015 ABQB 745, at para 6, *Servus Credit Union Ltd. v Trimove Inc.*, 2015 ABQB 745

(g) Such 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 31st day of May, 2024.

McLennan Ross LLP



Per:

Ryan Trainer, Solicitor for MNP Ltd., the
Court-Appointed Receiver of 2399430
Alberta Ltd. and 2399449 Alberta Ltd.

TABLE OF AUTHORITIES

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

Alberta Rules of Court, AR 124/2010, Division 4 of Part 6 **TAB 5**

Sierra Club of Canada v Canada (Minister of Finance), 2002 SCC 41 **TAB 6**

Sherman Estate v. Donovan, 2021 SCC 25 **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**

Bank of Nova Scotia v Diemer, 2014 ONCA 851, 2014 CarswellOnt **TAB 12**

Servus Credit Union Ltd. v Trimove Inc., 2015 ABQB 745..... **TAB 13**