

Clerk's Stamp

COURT FILE NO. 2003 04652

COURT COURT OF QUEEN'S BENCH OF ALBERTA

JUDICIAL CENTRE EDMONTON

PLAINTIFF THE TORONTO DOMINION BANK

DEFENDANTS A.B.C. AFTERSCHOOL LTD., ANN'S DAY CARE LTD., ROBERT JOESPH LAVOY, ANN L. LAVOY AND COREY ROBERT LAVOY

DOCUMENT **APPLICATION BY RECEIVER FOR APPROVAL AND VESTING ORDER**

ADDRESS FOR SERVICE AND CONTACT INFORMATION OF PARTY FILING THIS DOCUMENT	Ryan F.T. Quinlan Barrister & Solicitor Phone: 780.441.4336 Fax: 780.428.9683 Email: rquinlan@dcllp.com	File #445-205512 DUNCAN CRAIG LLP LAWYERS MEDIATORS 2800 Scotia Place 10060 Jasper Avenue Edmonton, Alberta Canada T5J 3V9
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NOTICE TO RESPONDENTS

This application is made against you. You are a respondent.

You have the right to state your side of this matter before the master/judge.

To do so, you must be in Court when the application is heard as shown below:

Date:	October 23, 2020
Time:	2:00 p.m.
Where:	Law Courts Building, Edmonton, Alberta
Before Whom:	The Honourable Mr. Justice Mah sitting on the Commercial List

Go to the end of this document to see what else you can do and when you must do it.

Remedy claimed or sought:

1. An Order:
 - (a) deeming service of notice of this Application and all materials in support to be good and sufficient and abridging the time for service to the time actually given;
 - (b) approving the late filing of the Notice and Statement of Receiver;
 - (c) approving the activities of the Receiver and the sales process as described in the First Report of the Receiver (the "First Report") and Confidential Addendum to the First Report (the "Confidential Addendum");
 - (d) approving the Revised Richardson Offer as described in the Confidential Addendum for the 101 Street Property (as defined below) and vesting title in the purchaser;
 - (e) authorizing the Receiver to conclude the transaction contemplated by the Purchase Agreement and to take all such steps and execute all such documents as reasonably be necessary to complete the transaction contemplated therein;
 - (f) temporarily sealing the Confidential Addendum attached to the First Report; and
 - (g) approving the interim distributions as referenced in paragraph 33 of the First Report to the realtor and to Toronto Dominion Bank ("TD").
2. Such further and other relief as counsel may advise and this Honourable Court permit.

Grounds for making this application:

3. On May 14, 2020, A.B.C. Afterschool Ltd. (the "Company") was placed into receivership pursuant to an Order (the "Receivership Order") issued by the Court of Queen's Bench of Alberta (the "Court"). MNP Ltd. (the "Receiver") was appointed as receiver and manager, without security, of all of the Company's current and future assets, undertakings and properties of every nature and kind whatsoever, and wherever situate, including all proceeds thereof (the "Property").
4. The Receiver circulated a request for listing proposals to three commercial realtors in Edmonton, Alberta to list each of the 101 Street Property and the 102 Street Property for sale. For reference, the real property is legally described as follows: SE ½ of Lot 2, Lots 3-5, and N ½ Lot 6, Block 3, Plan O, excepting thereout all mines and minerals ("101 Street Property"); and Lot 25A, Block 3, Plan 1322470, excepting thereout all mines and minerals ("102 Street Property").
5. On expiry of the proposal process, three listing proposals were presented to the Receiver.
6. The Receiver entered into a listing agreement on June 29, 2020 with NAI Commercial Real Estate ("NAI").
7. The Realtor advertised the Properties for sale through each of Realtor.ca, CoStar, LoopNet, Spacelist, NAI Edmonton and NAI Global websites and all known commercial realtors in the Edmonton, Fort Saskatchewan and surrounding areas. Signage was installed at each property and marketing brochures with virtual tour capabilities were made available to all prospective purchasers.
8. On August 4, 2020 an offer to purchase the 101 Street Property was presented to the Receiver. After detailed discussions with the Realtor and a counteroffer process with the prospective buyer, the Receiver accepted an offer to purchase from Greg Richardson and/or Nominee, subject to the Court Approval, on August 7, 2020 (the "Revised Richardson Offer").

9. The 101 Street Property was exposed to the open market through an experienced, professional commercial realtor, and the sale process run was lengthy, fair and transparent to all potential purchasers.
10. The Receiver has made significant efforts to obtain the best price for the 101 Street Property and has pursued offers to the best of its abilities.
11. The Receiver is recommending acceptance of the Revised Richardson Offer, and reasonably believes that further marketing efforts for the 101 Street Property will not result in higher net realization for the estate.
12. The Revised Richardson Offer is in line with the range of appraisal values, and is otherwise fair and reasonable.
13. The factors set out in *Royal Bank of Canada v. Soundair* are satisfied. It is just and appropriate to approve the recommended offer for the 101 Street Property.
14. The Confidential Addendum contains sensitive information that should not be released to the public at this time. As such, the Receiver is of the reasonable opinion that the Confidential Addendum should be temporarily sealed in order to preserve any further sales activity for the 101 Street Property in the event that the sale is not completed.
15. It is just and appropriate to temporarily seal the Confidential Addendum.
16. Such further and other grounds as counsel may advise and this Honourable Court may accept.
17. In accordance with the March 11, 2020 Affidavit of Katriana Morrison of TD Bank, the total approximate balance outstanding to TD Bank from ABC (not including costs and interest accrued) was \$2,163,194.69 as of February 11, 2019.
18. The Receiver's counsel has reviewed the documents relevant to TD Bank's security and determined its security to be valid and enforceable thereby giving it a first position secured charge over the Properties, subject to any unknown outstanding CRA amounts or property taxes.
19. The Receiver is not aware of any other priority creditors at this time.
20. The Receiver is recommending the following interim distributions:
 - (a) \$128,000.00 (plus interest, if applicable) payable to TD Bank with respect to the repayment of the Receiver's borrowings;
 - (b) the commission payable to the NAI; and,
 - (c) an interim distribution in the sum of \$505,000.00 payable to TD Bank.
21. As is more particularly set out in the Confidential Addendum, after accounting for the above distributions, there will remain sufficient sales proceeds that would be retained in the Receivership estate, which the Receiver estimates will be sufficient to fund the balance of the Receiver's activities, including the sale of the 102 Street Property (and associated holding costs), payment of accrued and future professional fees of the Receiver and its counsel.
22. As a result, the Receiver is of the opinion that it is safe to make such interim distributions.
23. Such further and other grounds as counsel may advise and this Honourable Court may accept.

Material or evidence to be relied on:

24. Receivership Order granted in these proceedings.
25. The First Report of the Receiver, filed.
26. The Confidential Addendum, unfiled.
27. The pleadings and proceedings taken in this matter.
28. Such further and other material as legal counsel for the Receiver may advise and this Honourable Court may permit.

Applicable rules:

29. Rules 1.3, 1.5, 6.11, 6.28, 6.47(c), 11.27 and 13.5 of the *Alberta Rules of Court*.
30. Such further and other authority as counsel may advise and this Honourable Court may permit.

Applicable Acts and Regulations:

31. *Business Corporations Act, (Alberta)* R.S.A. 2000, c. B-9 and in particular section 99 thereof.
32. *Judicature Act*, R.S.A. 2000, c. J-2, and in particular section 8 thereof.
33. *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended, sections 81.3(4), 81.4(4), 69(3), 243(1), 246(2), 247, 248, 249 and General Rule 126.
34. Such further Acts and Statutes as counsel may advise.

Any irregularity complained of or objection relied on:

35. n/a

How the application is proposed to be heard or considered:

36. Via Webex, on the Commercial List before the Honourable Mr. Justice Mah.

WARNING

If you do not come to Court either in person or by your lawyer, the Court may give the applicant(s) what they want in your absence. You will be bound by any order that the Court makes. If you want to take part in this application, you or your lawyer must attend in Court on the date and at the time shown at the beginning of the form. If you intend to rely on an affidavit or other evidence when the application is heard or considered, you must reply by giving reasonable notice of the material to the applicant.