

Clerk's Stamp

COURT FILE NO. 2003 04652

COURT COURT OF KING'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 AND FOR DISCHARGE AND OTHER RELIEF**

ADDRESS FOR SERVICE AND CONTACT INFORMATION OF PARTY FILING THIS DOCUMENT

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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: April 28, 2023

Time: 10:00 a.m.

Where: Law Courts Building, Edmonton, Alberta

Before Whom: The Honourable Mr. Justice Neilson sitting on the Commercial List via Webex:
<https://albertacourts.webex.com/meet/virtual.courtroom86>

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 or Orders:
 - (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 accounts for the fees and disbursements of MNP Ltd. in its capacity as the Court appointed Receiver and Manager (the "Receiver") of the undertaking, property and assets of A.B.C. Afterschool Ltd. (the "Debtor") and of the Receiver's legal counsel, and dispensing with any further requirement for a formal passing of such accounts;
 - (c) approving the actions of the Receiver as set out in the Receiver's Second Report to the Court (the "Second Report"), and Confidential Addendum to the Second Report (the "Confidential Addendum"), and its prior reports;
 - (d) approving the FSCC Offer as described in the Confidential Addendum for the 102 Street Property (as defined below) and vesting title in the purchaser;
 - (e) authorizing the Receiver to conclude the sale 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 to the Second Report;
 - (g) directing the Registrar of Corporations for the Province of Alberta to revive the corporate existence of the Debtor and to continue its existence during the pendency of the Receivership proceedings herein until the Receiver files its Affidavit confirming the final tasks have been completed and that its discharge is effective;
 - (h) relieving the Receiver from filing future annual returns for the Debtor during the pendency of the Receivership proceedings;
 - (i) approving the Receiver's Interim Statement of Receipts and Disbursements as set out in the Second Report;
 - (j) approving the final distribution of funds;
 - (k) directing that upon the closing of the sale transaction with FSCC Offer, the final distribution of the funds and the Receiver filing an Affidavit confirming same, the Receiver be discharged with all ancillary relief pertaining thereto; and
 - (l) such further Orders, directions, and declarations, including declarations as to priority to proceeds, as may be necessary or appropriate to give effect to the relief so sought or as the Court considers appropriate in the circumstances.
2. Such further and other relief as counsel may advise and this Honourable Court permits.

Grounds for making this application:

3. On May 14, 2020, the Debtor 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 Debtor's

current and future assets, undertakings and properties of every nature and kind whatsoever, and wherever situate, including all proceeds thereof (the "Property").

Sale of 102 Street Property and Sealing of the Confidential Addendum

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 (the "101 Street Property"); and Lot 25A, Block 3, Plan 1322470, excepting thereout all mines and minerals (the "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") for both properties.
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. With approval of this Honourable Court the 101 Street Property was sold.
9. The 102 Street Property has been actively and publicly listed for sale since July 2020 for a total period of nearly 33 months (the "Listing Period"). In that time, the Receiver, in conjunction with and on the advice of NAI, has made consistent price reductions given the lack of market activity in the Fort Saskatchewan real estate market and lack of offers to purchase received in respect of the 102 Street Property.
10. NAI provided detailed market information which sets out that the market for other comparable properties remains very stagnant within the Fort Saskatchewan area. A total of 7 office and retail properties in the Fort Saskatchewan market have sold since January 2021. Only 1 of the total 7 sales was remotely comparable to the 102 Street Property, this being the 101 Street Property which was sold by this Receiver in these proceedings previously.
11. Throughout the whole of the Listing Period, the Receiver was presented with a total of four offers to purchase:
 - (a) November 26, 2021 - offer to purchase which was ultimately rescinded by the purchaser as the tenant to whom they were intending on leasing the subject property could not secure required government funding;
 - (b) March 21, 2022 - offer to purchase which was outright declined by the Receiver given the deviation from listing price;
 - (c) November 25, 2022 - offer to purchase which was countered by the Receiver with no further response from the purchaser; and,
 - (d) January 19, 2022- offer to purchase from Fort Saskatchewan Childcare Clinic, terms of which were ultimately negotiated and agreed to by the parties (the "FSCC Offer").
12. The FSCC Offer has been accepted by the Receiver subject to approval from this Honourable Court. Details regarding the proposed purchase price of the FSCC Offer as well as all other previously received offers are disclosed in the Confidential Addendum.
13. The FSCC Offer is now unconditional.

14. The Receiver recommends acceptance of the FSCC Offer for the following reasons:
- (a) The 102 Street Property was exposed to the open market through an experienced, professional commercial realtor;
 - (b) The 102 Street Property was marketed for a significant period;
 - (c) The sale process run was lengthy, fair and transparent to all potential purchasers;
 - (d) The Plaintiff, the senior secured lender, supports the sale;
 - (e) This is the best offer received to date, which as not rescinded by a potential purchaser;
 - (f) The Receiver engaged in a counteroffer process more particularly detailed the Confidential Addendum to ensure that the highest price possible was obtained from the purchaser;
 - (g) All conditions on the FSCC Offer, subject to Court approval, have been satisfied.
 - (h) the purchaser is an arm's length party to the Debtor and its related parties;
 - (i) the Receiver is of the opinion that closing the FSCC Offer is in the best interests of the parties; and
 - (j) the Receiver is of the opinion that further marketing of the 102 Street Property will not result in a better offer being received for them, especially since there is uncertainty in the real estate market due to the economic conditions in Alberta and the lingering effect of the COVID-19 pandemic.
15. 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 102 Street Property.
16. 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 102 Street Property in the event that the sale is not completed.

17. It is just and appropriate to temporarily seal the Confidential Addendum.

Revival of Debtor

18. During the pendency of the Receivership, the Debtor has been struck from the corporate registry for failing to file annual returns.
19. The Receivership was and is ongoing, and it is appropriate in the circumstances that the Debtor be revived for the limited time while the Receivership continues, and in order to collect funds being withheld by Canada Revenue Agency because of the Debtor's struck status.
20. It is just and appropriate to revive the Debtor for a limited period of time.

Final Distributions, Approval of Fees and Discharge

21. TD Bank holds valid and enforceable first position security over the assets and undertaking of the Debtor. The current balance owed to TD Bank as of April 13, 2023, is as follows:
- (a) A sum of \$160,143 related to the balance owed pursuant to Receiver's borrowings certificates; and
 - (b) A sum of \$2,090,038 related to the principal debt of the Debtor.
22. Based on the anticipated sales proceeds from the FSCC Offer, TD Bank will remain in a significant shortfall position even after the distributions proposed herein have been completed. As such, there will be no distribution to any other creditor of the Debtor.

23. Once the FSCC sale has closed, the Receiver is recommending the following distributions:
 - (a) a sum of \$160,143.00 (plus interest, if applicable) payable to TD Bank with respect to the repayment of the Receiver's borrowings;
 - (b) commission payable to NAI at the agreed upon rate of 3% of the gross purchase price (plus GST);
 - (c) a holdback for final fees and disbursements (including the current accrued and projected final fees and disbursements of the Receiver and its counsel) as well as direct disbursements (insurance, utilities, etc.) in the sum of \$85,000.00; and,
 - (d) the balance of funds held by the Receiver to be distributed to TD Bank, including any sums collected by the Receiver for miscellaneous refunds and any amounts from the holdback described above not required in completing the final tasks to complete the receivership.
24. The Receiver is of the opinion that the administration of this Receivership will be completed upon these final matters above being approved by the Court, and the anticipated final steps and distributions being completed, as set out in the Receiver's Second Report.
25. The fees and charges of the Receiver were incurred at MNP Ltd.'s standard hourly rates. Similarly, the charges and disbursements of its legal counsel were undertaken at standard hourly rates. In the circumstances, the Receiver is of the view that the actions taken, the accounts rendered, the time taken and the disbursements for each of itself and its legal counsel are just and appropriate in the circumstances.
26. The Receiver's professional fees and disbursements are reasonable, just and appropriate in the circumstances and ought to be approved.
27. The professional fees and disbursements of the Receiver's legal counsel are reasonable, just and appropriate in the circumstances and ought to be approved.
28. The Receivership is otherwise concluded, and the Receiver ought to be discharged.
29. Upon being granted a discharge, it is appropriate that the books and records of the Debtor be returned to directors of the Debtor if desired by such persons, failing which the Receiver will facilitate the destruction of the books and records of the Debtor.
30. Such further and other grounds as counsel may advise and this Honourable Court permits.

Material or evidence to be relied on:

31. Receivership Order granted in these proceedings.
32. The Second Report of the Receiver, filed.
33. The Confidential Addendum, unfiled.
34. Affidavit of Fees sworn by Karen Aylward.
35. The pleadings and proceedings taken in this matter.
36. Such further and other material as legal counsel for the Receiver may advise and this Honourable Court may permit.

Applicable rules:

37. Such further and other authority as counsel may advise and this Honourable Court may permit.
38. Part 1 and Rules 6.2, 6.3, 6.11, 6.28, 6.47(c), 11.27 and 13.5 of the Alberta *Rules of Court*, Alta Reg 124/2010.

Applicable Acts and Regulations:

39. *Business Corporations Act*, R.S.A. 2000, c. B-9, and in particular sections 99(a), 208 and 210 thereof.
40. *Judicature Act*, R.S.A. 2000, c. J-2, and in particular section 8 thereof.
41. *Personal Property Security Act*, R.S.A. 2000, c. P-7, and in particular sections 64 and 65(7) thereof.
42. *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, and in particular sections 47.2(3), 81.3(4), 81.4(4), 69(3), 243(1), 246(2), 247, 248, 249, 250 and 251 thereof.
43. *Bankruptcy and Insolvency General Rules*, CRC, c 368, and in particular Rules 79, 81, 81, 82 and 126.
44. Such further and other Acts and Regulations as counsel may advise and this Honourable Court permits.

Any irregularity complained of or objection relied on:

45. n/a

How the application is proposed to be heard or considered:

46. Via Webex, on the Commercial List before the Honourable Mr. Justice Neilson.

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.