

Form 3-49  
(Rule 3-49)

COURT FILE NUMBER KBG-SA- 755 -2023

COURT OF KING'S BENCH FOR SASKATCHEWAN  
IN BANKRUPTCY AND INSOLVENCY

JUDICIAL CENTRE SASKATOON

APPLICANT THE TORONTO-DOMINION BANK

RESPONDENT ABILITY SOCIETY OF ALBERTA

IN THE MATTER OF THE RECEIVERSHIP OF ABILITY SOCIETY OF ALBERTA

ORIGINATING APPLICATION

(Receivership Order)

NOTICE TO RECIPIENTS LISTED IN THE PRELIMINARY SERVICE LIST

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

You have the right to state your side of this matter before the Court. To do so, you must be in Court when the application is heard as shown below:

|       |   |
|-------|---|
| Where | Court House, 520 Spadina Crescent East<br>Saskatoon, Saskatchewan |
| Date  | Thursday, July 6, 2023  |
| Time  | 1:30 p.m.   |

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

**The applicant seeks the following remedy or order:**

1. An Order pursuant to section 243 of the *Bankruptcy and Insolvency Act*, RSC 1985, c B-3 (the "BIA"), section 64(8) of *The Personal Property Security Act*, 1993, SS 1993, c P-6.2, and section 65(1) of *The Queen's Bench Act*, 1998, SS 1998, c Q-1.01, appointing MNP Ltd. ("MNP") as Receiver of the real property legally described as Surface Parcel #104091195, Lot A Blk/Par 5 Plan No 84MJ01102 Ext. 0 (the "Mortgaged Lands") and the personal property owned by the Ability Society of Alberta (the "Debtor") situated at or upon the Mortgaged Lands (the "Personal Property Collateral", and together with the Mortgaged Lands, the "Collateral").
2. Such further and other relief as counsel may request and this Honourable Court may allow.

**The material facts and the applicant's grounds for making this application are:**

Background, Loans and Security

3. The Debtor is an Alberta non-profit corporation that is extra-provincially registered to carry on business in Saskatchewan. The Debtor carried on the operation of the Chez Nous Senior Citizens Home ("**Chez Nous**") at the premises comprising the Mortgaged Lands in Moose Jaw, Saskatchewan.
4. Pursuant to a Letter of Agreement dated September 12, 2022 (the "**Letter Agreement**"), Toronto-Dominion Bank ("**TD Bank**") made credit available and advanced funds to the Debtor in the form of an operating line, a term loan, and a Visa Account.
5. The Debtor's performance of its obligations to TD Bank under the Letter of Agreement are secured by the following security (together, the "**Security**"):
  - (a) a Collateral Mortgage dated March 10, 2017 in the principal amount of \$3,979,000.00, pursuant to which the Debtor mortgaged to and in favour of TD Bank all of its estate and interest in the Mortgaged Lands;
  - (b) a General Assignment of Rents and Leases dated March 10, 2017, pursuant to which the Debtor assigned to and created a security interest in favour of TD Bank in all of its right, title, benefit, and interest in the leases and rents from the Mortgaged Lands; and
  - (c) a General Security Agreement dated March 10, 2017, pursuant to which the Debtor granted to TD Bank a security interest in all of its present and after-acquired personal property.
6. As of June 26, 2023, the obligations owed by the Debtor to TD Bank pursuant to the Letter of Agreement totalled \$3,698,751.54 (the "**Indebtedness**").

Appointment of Administrator Over Chez Nous

7. On or about May 30, 2023, the Debtor advised the Saskatchewan Ministry of Health (the "**Ministry**") that it was no longer able to provide safe and appropriate care to the residents of Chez Nous. Further, and in particular, the Debtor advised the Ministry that it was no longer solvent, that it would not be able to meet its payroll obligations by June 9, 2023, and that it would not be able to purchase groceries for the residents of Chez Nous. As a result, the Debtor requested the Ministry to appoint an administrator over Chez Nous pursuant to *The Personal Care Homes Act*, SS 1989-90, c P-6.01.
8. On May 30, 2023, the Saskatchewan Minister of Health appointed an administrator over Chez Nous for a period commencing May 30, 2023 and ending June 30, 2023.

9. The administrator operated Chez Nous on an interim basis while alternative care arrangements could be arranged for the forty-five residents living at Chez Nous. All of the residents of Chez Nous were relocated and Chez Nous business operations were effectively wound down on or about June 28, 2023.

#### Default and Demand

10. The Debtor has been default of its obligations to TD Bank since at least May of 2023. In particular, by May of 2023, the Debtor was in default of its obligations to TD Bank by reason of, *inter alia*, the following breaches of the Letter of Agreement:
- (a) failing to make certain loan payments as they became due;
  - (b) suspending its business operations; and
  - (c) TD Bank's determination that there was a material adverse change in the financial condition and business operations of the Debtor.
11. On June 30, 2023, TD Bank (through its legal counsel) demanded that the Debtor make repayment in full of the Indebtedness. The Debtor has failed, neglected, or refused to make any payment to TD Bank in response to the demand. The Debtor has consented to immediate enforcement by TD Bank of its security in the collateral.

#### Appointment of Receiver

12. TD Bank has a reasonable apprehension that its security in the Collateral is in jeopardy in light of the vacancy of the Mortgaged Lands, the Debtor's insolvency and inability to maintain the Collateral, and the prospects of the Collateral potentially becoming uninsurable shortly after the June 30, 2023 renewal date. Accordingly, TD Bank seeks to enforce the Security by obtaining an Order of this Honourable Court appointing a receiver over the Collateral.
13. MNP is a licensed insolvency trustee and has consented to being appointed as receiver of the Collateral.

#### **In support of this application, the applicant relies on the following material or evidence:**

14. This Originating Application, with proof of service;
15. Affidavit of David Quinn sworn June 30, 2023;
16. Draft Consent Receivership Order;

17. Redline of Draft Consent Receivership Order to Saskatchewan Template Receivership Order;
18. Consent to Appointment of MNP Ltd.; and
19. Such further and other materials as counsel may advise and this Honourable Court may allow.

DATED at Saskatoon, Saskatchewan, this 30<sup>th</sup> day of June, 2023.

**MLT AIKINS LLP**

Per: 

Jeffrey M. Lee, K.C. and Shay Brehm  
Solicitors for the Applicant, Toronto-Dominion Bank

This application is issued at the above-noted judicial centre on the 30<sup>th</sup> day of June, 2023.

**JACKIE FREEBORN**  
**DEPUTY LOCAL REGISTRAR**

(Deputy) Local Registrar

*Seal*

#### NOTICE

You are named as a respondent because you have made or are expected to make an adverse claim with respect to this originating application. If you do not come to Court either in person or by your lawyer, the Court may make an order declaring you and all persons claiming under you to be barred from taking any further proceedings against the applicant and against all persons claiming under the applicant. You will be bound by any order the Court makes, or another order might be given or other proceedings taken, which the applicant is entitled to make without any further notice to you. If you want to take part in the application, you or your lawyer must attend in Court on the date and at the time shown at the beginning of this form.

The rules require that a party moving or opposing an originating application must serve any brief of written argument on each of the other parties and file it at least 3 days before the date scheduled for hearing the originating application.

If you intend to rely on an affidavit or other evidence when the originating application is heard or considered, you must serve a copy of the affidavit and other evidence on the originating applicant at least 10 days before the originating application is to be heard or considered.

#### CONTACT INFORMATION AND ADDRESS FOR SERVICE:

|                           |  |
|---------------------------|--|
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| Lawyer in charge of file: | Jeffrey M. Lee, K.C. and Shay Brehm                      |
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| File No:                  | 152.3794   |