

COURT FILE NUMBER: 2203 04647

COURT COURT OF KING'S BENCH OF ALBERTA

JUDICIAL CENTRE EDMONTON

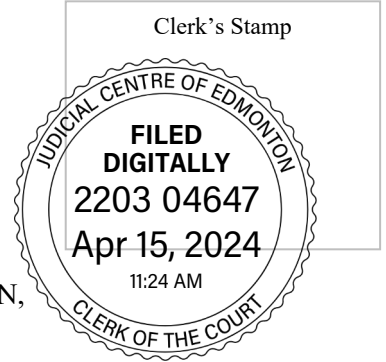
PLAINTIFF ROYAL BANK OF CANADA

DEFENDANTS 1692260 ALBERTA LTD.,
BIRKILL HOLDINGS LTD.,
R. BIRKILL PROFESSIONAL CORPORATION,
1015314 ALBERTA LTD., and
RICHARD BIRKILL

APPLICANT MNP LTD., in its capacity as the Court-Appointed
Receiver of 1692260 ALBERTA LTD. and
BIRKILL HOLDINGS LTD.

DOCUMENT **APPLICATION
(Final Distribution, Approval of Receiver's Fees
and Disbursements, Approval of Receiver's
Activities, and Discharge of Receiver)**

ADDRESS FOR SERVICE AND CONTACT
INFORMATION OF PARTY
FILING THIS DOCUMENT MLT Aikins LLP
Barristers and Solicitors
2200 - 10235 -101st Street
Edmonton, Alberta T5J 3G1
Phone: (780) 969-3500
Fax: (780) 969-3549
Attention: Dana M. Nowak
File: 151290.1
Counsel for the Court-Appointed Receiver,
MNP Ltd.



NOTICE TO RESPONDENTS: (Service List Appended hereto as Schedule "A"):

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

You have the right to state your side of this matter before the Judge.

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

Date: April 22, 2024
Time: 2:00 p.m.
Where: Virtual - <https://albertacourts.webex.com/meet/virtual.courtroom86>
Before Whom: The Honourable Justice Lema In Chambers

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 abridging the time for service of notice of this Application and deeming service of this notice of Application and materials in support thereof good, valid, timely and sufficient.
2. An Order substantially in the form attached hereto as **Schedule “B”** approving, *inter alia*:
 - a. a final distribution of proceeds;
 - b. the receiver’s fees and disbursements, including the fees and disbursements of its legal counsel;
 - c. the receiver’s activities; and
 - d. the receiver’s discharge upon the performance of the duties incidental to the completion of these proceedings,

in respect of the receivership of 1692260 Alberta Ltd. (“**169 AB Ltd.**”) and Birkill Holdings Ltd. (“**Birkill**”, and together with 169 AB Ltd., the “**Debtors**”) as recommended by MNP Ltd., Court-Appointed Receiver (the “**Receiver**”) of the Debtors.
3. An Order granting such other and further relief as the circumstances may require and as this Honourable Court shall deem appropriate.

Grounds for Making the Application:

Background

4. By way of a Receivership Order granted by Justice M.E. Burns on March 24, 2022 (the “**Receivership Order**”), the Receiver was appointed as receiver over all of the Debtors’ current and future assets, undertakings, and properties of every nature and kind whatsoever, and wherever situate, including all proceeds thereof, except in respect of the Servus Property (as defined below) for which Servus Credit Union Ltd. (“**Servus**”) is the senior secured lender.

5. The Debtors' assets were primarily comprised of six real properties, which the Receiver has previously referred to as follows:
 - a. Wandering River Property, being a group of cabins located in the Hamlet of Wandering River, Alberta and legally described as NE 37-71-17 W4, Plan 8721985, Block 2, Lot 1A (**“Wandering River Property”**);
 - b. Grassland Motel Property, being a motel located in the Hamlet of Grassland, Alberta and legally described as Plan 581HW, Block 2, Lots 9 and 10 (**“Grassland Motel Property”**);
 - c. 5-Plex Property, being a 5-plex residential property located in the Hamlet of Lac La Biche, Alberta and legally described as Plan 4313BF, Block 10, Lot 24 (**“5-Plex Property”**);
 - d. Victoria Property, being a 24 unit apartment building located in the Hamlet of Lac La Biche, Alberta and legally described as Plan 9924859, Block 27, Lot 4 (**“Victoria Property”**);
 - e. Car Wash Property, being a car wash facility located in the Hamlet of Lac La Biche, Alberta and legally described as Plan 0624001, Block 2, Lot 2 (**“Car Wash Property”**); and
 - f. Grassland Apartment Property, being a 15 unit apartment building with one commercial unit located in the Hamlet of Grassland, Alberta and legally described as Plan 581HW, Block 1, Lots 4 to 6 (**“Grassland Apartment Property”**, together with the Wandering River Property, Grassland Motel Property, 5-Plex Property, Victoria Property, and Car Wash Property being the **“Properties”**).
6. Starting in April of 2022 and continuing through to the fall of 2023, the Receiver conducted a sale process with respect to all of the Properties.

Court Approval of Sales of the Properties

7. By way of a Sale Approval and Vesting Order granted by Justice K. Feth on May 25, 2022, the Court approved the sale of the Wandering River Property to CLS Holdings Ltd.

8. By way of Sale Approval and Vesting Orders granted by Justice J.S. Little on September 29, 2022, the Court approved the sale of:
 - a. the Grassland Motel Property to Ekaterina Gostevskyh; and
 - b. the 5-Plex Property to Syed Zeeshan Hasan.
9. By way of Sale Approval and Vesting Orders granted by Justice G.S. Dunlop on August 22, 2023, the Court approved the sale of:
 - a. the Victoria Property to 102154877 Saskatchewan Inc.; and
 - b. the Car Wash Property to Ian Cloutier or their nominee.
10. By way of a Sale Approval and Vesting Order granted by Justice N.J. Whitling on November 28, 2023, the Court approved the sale of the Grassland Apartment Property to 2269848 Alberta Ltd.
11. The Receiver has closed all of the court approved sales regarding the Properties.

Other Material Information

12. Certain real property legally described as Plan 4313BF, Block 14, Lot 6 and East ½ of Lot 7 (“**Servus Property**”) was excluded from these receivership proceedings and subject to enforcement proceedings by Servus. The Servus Property has been sold and there is potential surplus equity, after payment of secured interests and costs, to be paid to the receivership estate of 169 (“**Servus Potential Surplus Equity**”). The Servus Potential Surplus Equity is understood to be nominal and the final value is not yet determined. If the Servus Potential Surplus Equity is remitted to the Receiver in respect of the Servus Property, then the Receiver recommends that it be remitted to Agricultural Financial Services Corporation (“**AFSC**”) based on the Receiver’s determination that AFSC holds a valid and enforceable first-ranked security interest in the personal property of 169 pursuant to a general security agreement dated September 6, 2013 which was registered at the Alberta Personal Property Registry on September 9, 2013 as registration number 13090934028.
13. The Receiver has collected two (2) of the three (3) payments in relation to the ALB Settlement Agreement, which is defined at paragraph 12 of the Receiver’s Fourth Report and appended to the Receiver’s Fourth Report as Schedule 2. The final payment of \$21,666.00 in accordance with the ALB Settlement is due on July 31, 2024 (“**ALB Final Payment**”).

Discharge of the Receiver

14. The Receiver has executed its duties pursuant to the Receivership Order, subject to the following tasks:
 - a. disbursement of all funds held in the Receiver's trust account, per the scheme of distribution described in the Fifth Report of the Receiver, dated April 15, 2024 (the "**Fifth Report**");
 - b. collection and disbursement of the Servus Potential Surplus Equity, if any;
 - c. collection of the ALB Final Payment and disbursement of the settlement proceeds received pursuant to the ALB Settlement Agreement; and
 - d. closing of the Receiver's trust account.
15. It is appropriate to approve the Receiver's activities as set out in the Fifth Report, as the Receiver's activities are reasonable and the Receiver has satisfied its obligations pursuant to the Receivership Order.
16. All fees and disbursements incurred by the Receiver and its legal counsel during the course of the administration of the within proceeding are reasonable and have been validly incurred in connection with the conduct of the Receiver's obligations as set out in the Fifth Report and the Affidavit of Eric Sirrs of MNP, sworn on April 15, 2024.
17. The following final distribution proposed by the Receiver is fair and reasonable:
 - a. payment of \$136,429.23 to the Royal Bank of Canada;
 - b. payment of \$60,505.24 to Alberta Financial Services Corporation;
 - c. payment in an amount not to exceed \$7,500 to the Receiver in respect of finalizing its administration of these receivership proceedings, including in respect of its costs regarding the seeking of this order; and
 - d. payment in an amount not to exceed \$5,000 to MLT Aikins LLP in respect of assisting the Receiver in finalizing its administration of these receivership proceedings, including in respect of MLT Aikins LLP's costs regarding the seeking of this order.
18. Such further and other grounds as counsel may advise and this Honourable Court may permit.

Material or Evidence To Be Relied Upon:

- (a) This notice of Application, submitted for filing;
- (b) The First Report of the Receiver, filed on May 16, 2022;
- (c) The Second Report of the Receiver, filed on September 26, 2022;
- (d) The Third Report of the Receiver, filed on August 16, 2023;
- (e) The Fourth Report of the Receiver, filed on November 20, 2023;
- (f) The Fifth Report, dated April 15, 2024, submitted for filing;
- (g) The Affidavit of Eric Sirrs of MNP in respect of the Receiver's fees and disbursements, sworn on April 15, 2024, submitted for filing;
- (h) The Receivership Order, filed on March 24, 2022;
- (i) All other orders granted in this Receivership proceeding;
- (j) The inherent jurisdiction of this Honourable Court to control its own process; and
- (k) Such further and other material as counsel may advise and this Honourable Court may permit.

Applicable Rules:

- (a) Rules 11.27 and 13.5 and Part 6, Division 4 of the Alberta *Rules of Court*.

Applicable Acts and Regulations:

- (a) The *Judicature Act*, RSA 2000, c. J-2, as amended, specifically section 8.
- (b) The *Bankruptcy and Insolvency Act*, RSC 1985, c. B-3, specifically section 249.
- (c) The *Personal Property Security Act*, RSA, c. P-7, specifically subsection 65(7)(b).

How the Application is Proposed to be Heard or Considered:

- (a) Virtually via Webex before the Honourable Justice K. Lema in Chambers (booked on the Commercial List).

WARNING TO THE RESPONDENT:

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.

SCHEDULE “A”
(to Application)
SERVICE LIST
(as at April 12, 2024)

PARTY	CONTACT
Dentons Canada LLP 2500 Stantec Tower 10220-103 Ave NW Edmonton, AB T5J 0K4 Counsel for Royal Bank of Canada	Dean Hitesman: dean.hitesman@dentons.com Nicholas Williams: Nicholas.williams@dentons.com
Duncan Craig LLP Suite 2800, 10060 Jasper Ave Edmonton, AB T5J 3V9 Counsel for Agriculture Financial Services Corporation	Ryan Quinlan: rquinlan@dcllp.com
Miller Thomson LLP #2700, 10155 102 Street Edmonton, AB T5J 4G8 Counsel for Servus Credit Union Ltd.	Rick Reeson, KC: rreeson@millerthomson.com Bryan Hosking: bhosking@millerthomson.com
MLT Aikins LLP 10235 101 Street NW Suite 2200 Edmonton, AB T5J 3G1 Counsel for the Court-Appointed Receiver	Dana Nowak: dnowak@mltaikins.com
MNP Ltd 10235 101 Street NW Suite 1300 Edmonton, AB T5J 3G1 Court-Appointed Receiver	Eric Sirrs: eric.sirrs@mnp.ca Karen Aylward: karen.aylward@mnp.ca

SCHEDULE "B"

(to Application)

PROPOSED FORM OF ORDER

COURT FILE NUMBER **2203 04647**

COURT COURT OF KING'S BENCH OF ALBERTA

JUDICIAL CENTRE EDMONTON

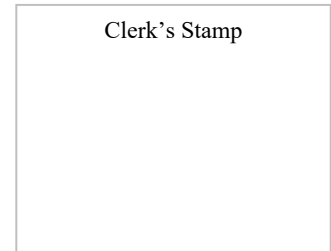
PLAINTIFF ROYAL BANK OF CANADA

DEFENDANTS 1692260 ALBERTA LTD.,
 BIRKILL HOLDINGS LTD.,
 R. BIRKILL PROFESSIONAL CORPORATION,
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 RICHARD BIRKILL

APPLICANT MNP LTD., in its capacity as the Court-
 Appointed Receiver of 1692260 ALBERTA
 LTD. and BIRKILL HOLDINGS LTD.

DOCUMENT **ORDER**
 (Final Distribution, Approval of Receiver's Fees
 and Disbursements, Approval of Receiver's
 Activities and Conditional Discharge of Receiver)

ADDRESS FOR SERVICE MLT Aikins LLP
AND CONTACT Barristers and Solicitors
INFORMATION OF PARTY 2200 - 10235 -101st Street
FILING THIS DOCUMENT Edmonton, Alberta T5J 3G1
 Phone: (780) 969-3500
 Fax: (780) 969-3549
 Attention: Dana M. Nowak
 File: 31617.38
 Counsel for the Court-Appointed Receiver,
 MNP Ltd.



DATE ON WHICH ORDER WAS PRONOUNCED: **April 22, 2024**

LOCATION OF HEARING OR TRIAL: **Edmonton, Alberta**

NAME OF JUDGE WHO MADE THIS ORDER: **The Honourable Justice M.J. Lema**

UPON THE APPLICATION by MNP Ltd. in its capacity as the Court-appointed receiver (the “**Receiver**”) of the undertakings, property and assets of 1692260 Alberta Ltd. and Birkill Holdings Ltd. (the “**Debtors**”) for an Order for the final distribution of proceeds, approval of the Receiver’s fees and disbursements, approval of the Receiver’s activities, and conditional discharge of the Receiver; **AND UPON** having read the Receiver’s First Report to Court dated May 16, 2022, the Receiver’s Second Report to Court, dated September 26, 2022, the Receiver’s Third Report to Court dated August 14, 2022, the Receiver’s Fourth Report to Court dated November 20, 2023, the Receiver’s Supplemental Fourth Report to Court dated November 22, 2023, and the Fifth Report of the Receiver, dated April 15, 2024 (the “**Fifth Report**”), filed, the Affidavit of Eric Sirrs, sworn April 15, 2024 (the “**Fees Affidavit**”), and the Affidavit of Service of Crystal Topilko, to be filed; **AND UPON** hearing from counsel for the Receiver, and counsel for all other parties present; **AND UPON** being satisfied that it is appropriate to do so,

IT IS ORDERED THAT:

1. Service of notice of this application and supporting materials (collectively the “**Application**”) is hereby declared to be good and sufficient, and 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. The Receiver’s accounts for fees and disbursements as set out in the Receiver’s Fifth Report are hereby approved without the necessity of a formal passing of its accounts.
3. The accounts of the Receiver’s legal counsel, MLT Aikins LLP, for its fees and disbursements as set out in the Receiver’s Fifth Report are hereby approved without the necessity of a formal assessment of its accounts.
4. The Receiver’s activities as set out in the Receiver’s Fifth Report and in all of its other reports filed herein, and the Statement of Receipts and Disbursements as attached to the Receiver’s Fifth Report, are hereby ratified and approved.
5. The Receiver is authorized and directed to make the following distributions:
 - a. payment of \$136,429.23 to Royal Bank of Canada;
 - b. payment of \$60,505.24 to Alberta Financial Services Corporation;
 - c. payment in an amount not to exceed \$7,500 to the Receiver in respect of finalizing its administration of these receivership proceedings, including in respect of its costs regarding the seeking of this order; and
 - d. payment in an amount not to exceed \$5,000 to MLT Aikins LLP in respect of assisting the Receiver in finalizing its administration of these receivership proceedings, including in respect of MLT Aikins LLP’s costs regarding the seeking of this order.

6. On the evidence before the Court, the Receiver has satisfied its reported obligations under and pursuant to the terms of the Orders granted in the within proceedings up to and including the date hereof, and the Receiver shall not be liable for any reported act or omission on its part including, without limitation, any reported act or omission pertaining to the discharge of its duties in the within proceedings, save and except for any liability arising out of any in fraud, gross negligence or willful misconduct on the part of the Receiver, or with leave of the Court. Subject to the foregoing, any claims against the Receiver in connection with the performance of its reported duties are hereby stayed, extinguished and forever barred.
7. No action or other proceedings shall be commenced against the Receiver in any way arising from or related to its capacity or conduct as Receiver, except with prior leave of this Court on Notice to the Receiver, and upon such terms as this Court may direct.
8. Upon the Receiver filing with the Clerk of the Court a sworn Affidavit of a licensed Trustee employed by the Receiver confirming that:
 - a. all matters set out in paragraph 5 of this Order have been completed;
 - b. the Receiver has collected all amounts owing by Alberta Lithium Battery Company Ltd. (“ALB”) pursuant to a settlement agreement between ALB and the Receiver dated November 15, 2023 and distributed same to the Alberta Financial Services Corporation in accordance with the Receiver’s proposed final distribution of proceeds which is appended to the Receiver’s Fifth Report as Schedule 5;
 - c. either: (i) no surplus funds will be received by the Receiver in respect of Servus Credit Union Ltd.’s enforcement of the lands legally described as Plan 4313BF, Block 14, Lot 6 and East ½ of Lot 7 (the “**Servus Property**”), or (ii) surplus funds have been received and distributed to Agricultural Financial Services Corporation in respect of the Servus Property; and
 - d. the Receiver’s trust account has been closed;

then the Receiver shall be discharged as Receiver of the Debtors, provided however, that notwithstanding its discharge herein (a) the Receiver shall remain Receiver for the performance of such incidental duties as may be required to complete the administration of the receivership herein, and (b) the Receiver shall continue to have the benefit of the provisions of all Orders made in this proceeding, including all approvals, protections and stays of proceedings in favour of the Receiver in its capacity as Receiver.

9. This Order must be served only upon those interested parties attending or represented at the within Application and service may be effected by Facsimile, electronic mail, personal delivery or courier. Service is deemed to be effected the next business day following the transmission or delivery of such documents.

10. Service of this Order on any party not attending this Application is hereby dispensed with.

Justice of the Court of King's Bench of Alberta