

**ONTARIO
SUPERIOR COURT OF JUSTICE**

BETWEEN:

HARBOUREDGE MORTGAGE INVESTMENT CORPORATION

Applicant

and

CASABELLA SUBSIDIARY LIMITED PARTNERSHIP AND 7061358 CANADA INC.

Respondents

**FIRST REPORT OF MNP LTD., IN ITS
CAPACITY AS COURT APPOINTED RECEIVER OF
CASABELLA SUBSIDIARY LIMITED PARTNERSHIP AND 7601358 CANADA INC.**

MARCH 10, 2020

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INTRODUCTION AND BACKGROUND

1. 7061358 Canada Inc (“706 Inc.”) is a federally incorporated company with its registered office address located in Ottawa, Ontario
2. Casabella Subsidiary Limited Partnership (“Casabella”) is a limited partnership and the operating entity of 706 Inc. with its registered office address located in Ottawa, Ontario
3. 706 Inc. and Casabella (collectively, the “Companies”) are managed and controlled by Mr. Edward Sawaya (the “Director”). The Companies own and operated an 8 unit residential condominium project located at 4538, 4540, 4542, 4544, 4546, 4548, 4550 and 4552 Innes Road, Orleans, Ontario (the “Real Property”).
4. The Companies are indebted to Harbouredge Mortgage Investment Corporation (“Harbouredge” or the “Lender”), its senior secured creditor, with respect to certain credit facilities granted by the Lender pursuant to and under the terms of various credit and security agreements contained as Exhibits C, D, G, H and I to the Receivership Application Record (the “Application Record”) dated May 28, 2019 (the “Security”).
5. As reported in the Application Record, the Companies’ obligations to the Lender pursuant to the above loans and the Security (the “Indebtedness”) totaled \$7,620,803.59 as at April 1, 2019 (excluding the redemption of supporting security, interest and fees accrued since).
6. The Security provides for the appointment of a receiver in the event of default by the Companies under the Security.
7. The financial performance of the Companies began to deteriorate in 2017. On April 30, 2017, Harbouredge entered into a forbearance agreement with the Companies, which is contained at Exhibit F of the Application Record.
8. The Companies had not sold the Real Property as required by the forbearance agreement and Harbouredge agreed to extend the original forbearance agreement. The Companies and Harbouredge entered into an amended forbearance agreement dated October 20, 2017, which expired on February 28, 2018. A copy of the amended forbearance agreement is contained as Exhibit E of the Application Record.

9. By March 1, 2018, the full amount of the authorized principal in the amount of \$6,675,000 was drawn by the Companies.
10. The only time that the Companies made any direct payments to Harbouredge was on August 22, 2014 on account of interest in the amount of \$9,912.10. Since that date, the only other reduction of the Indebtedness was as a result of applying the balance of certain holdback funds on May 1, 2018 in the amount of \$33,652.01.
11. On August 4, 2015, a property owned by a company related to the Companies was sold and proceeds in the amount of \$439,270.72 were provided to Harbouredge as a payment to reduce the Indebtedness.
12. On October 16, 2018, Harbouredge made written demand for payment on the Companies to satisfy the Indebtedness, which demand is contained as Exhibit N of the Application Record.
13. On November 20, 2018, Harbouredge delivered to the Companies Notices of Intention to Enforce Security in accordance with s. 244 of the *Bankruptcy and Insolvency Act* (“BIA”), along with a notice of sale under the mortgage, which are contained as Exhibits P and Q of the Application Record.
14. On February 5, 2019, Harbouredge severed notices to attorn rents on the residential tenants occupying the Real Property.
15. On June 19, 2019, Harbouredge brought an application for the appointment of MNP Ltd. (“MNP”) as the receiver of the Companies for the protection of the interests of Harbouredge and other stakeholders.
16. By Order of this Honourable Court dated June 19, 2019 (the “Receivership Order”), MNP was appointed receiver (the “Receiver”), without security, of all of the assets, undertakings and properties of Companies used in relation to their businesses, including all proceeds thereof (the “Property”, which is taken to include the Real Property). A copy of the Receivership Order is attached at **Appendix “1”**.

PURPOSE OF THIS REPORT

17. The purpose of this first report of the Receiver to the Court (the “First Report”) is to:

- (a) report on the activities of the Receiver since its appointment pursuant to the Receivership Order;
- (b) seek the Court's approval of the activities and conduct of the Receiver and that of its legal counsel as described in the First Report;
- (c) seek the Court's approval of the Sales Agreement (as defined below) and of the Sales Transaction (as defined below) and the conveyance of the Real Property to the purchaser thereof and vesting title to the Real Property in the purchaser;
- (d) seek the Court's approval to seal certain confidential appendices to the First Report;
- (e) seek the Court's approval of the Receiver's Statement of Receipts and Disbursements; and
- (f) seek the Court's approval in respect of an interim distribution to Habouredge in the amount of \$1,900,000.00 on account of its first-ranking mortgage and secured claim.

18. All amounts referred to in the First Report are in Canadian dollars unless otherwise noted.

NOTICE TO READER

19. This First Report is prepared solely for the use of the Court, for the purpose of assisting the Court in making a determination of whether to approve the relief being sought.

20. In preparing this First Report, the Receiver has relied upon information from third party sources (collectively, the "Information"). Certain of the information contained herein may refer to, or be based on, the Information. As the Information has been provided by other parties or obtained from documents filed with the Honourable Court in this matter, the Receiver has relied on the Information and, to the extent possible, reviewed the Information for reasonableness. However, the Receiver has not audited or otherwise attempted to verify the accuracy and completeness of the Information in a manner that would wholly or partially comply with Generally Accepted Assurance Standards pursuant to the CPA Canada Handbook.

INITIAL RECEIVERSHIP ACTIVITIES

21. Immediately following the granting of the Receivership Order on June 19, 2019 (the “**Receivership Date**”), the Receiver attended at the Real Property to take possession of and secure the Property. The initial activities of the Receiver included:
- (a) notifying the property manager of MNP’s appointment as Receiver;
 - (b) obtaining a copy of the property management agreement;
 - (c) attending at the Real Property with the property manager;
 - (d) directing the property manager to advise tenants of the appointment of the Receiver and to continue to report to the property manager;
 - (e) obtaining insurance for the Real Property;
 - (f) providing copy of the Receivership Order to the Companies’ Director;
 - (g) requesting relevant information from the books and records of the Companies;
 - (h) responding to creditor inquiries; and
 - (i) preparing and issuing the prescribed notices and statements of the Receiver pursuant to ss. 245(1) and 246(1) of the BIA, which were sent to the Companies’ creditors. A copy of this notice is attached at **Appendix “2”**.

THE REAL PROPERTY, THE APPRAISALS AND THE LISTING

22. On the Receivership Date, six of the eight residential units were occupied and the relationship with the tenants was being managed by the property manager on behalf of Harbouredge who had attorned the rents. A copy of the agreement with the property manager is attached hereto at **Appendix “3”**.
23. As of the Receivership Date, there were no amounts outstanding from tenants.
24. On May 24, 2017, the Companies provided Harbouredge with an appraisal of the Real Property completed by Affiliated Property Group in order to support further advances from Harbouredge. This appraisal estimated the value for the completed units to be \$420,000.00 per unit. The appraisal was conducted prior to the completion of the construction and occupation of the 8 units and well before the Receivership Date.

25. As a result, on January 21, 2019, Harbouredge obtained an appraisal from Colliers International (the “**Colliers Appraisal**”). A copy of the Colliers Appraisal is attached as **Confidential Appendix “A”**.
26. On June 10, 2019, Harbouredge obtained an appraisal from Harman Appraisal Services (the “**Harman Appraisal**”). A copy of Harman Appraisal is attached at **Confidential Appendix “B”**.
27. The Receiver concluded that no other appraisals were required since the Colliers Appraisal and the Harman Appraisal were within months of the Receiver’s appointment. Further, the Receiver concluded that it could rely on the Colliers Appraisal and the Harman Appraisal since they were completed by reputable and licensed commercial real estate appraisers.
28. Harbouredge had retained Avison Young (“**Avison**”) to sell properties that were owned by corporations related to the Companies, but not subject to these receivership proceedings.
29. As a result, the Receiver requested a listing proposal from Avison to market and sell the Real Property.
30. On June 25, 2019, Avison provided the Receiver with a listing proposal, a copy of which is attached hereto as **Appendix “4”**.
31. Avison reports in the “**Pricing and Disposition Strategy**” of its listing proposal that the Companies had previously attempted to sell the real property units on an individual basis in the range of \$455,000.00 to \$525,000.00 per unit with no success.
32. The listing proposal set out the uniqueness of the Real Property and suggested that the location of the Real Property on a high traffic roadway could be a limiting factor.
33. The Receiver consulted with representatives of Harbouredge who expressed to the Receiver their support of the Receiver to entering into a listing agreement with Avison having a listing price of \$3,750,000.00 as recommended by Avison.
34. As a result and given the favourable terms contained in the listing agreement and that Avison is a reputable, competent and licensed commercial real estate broker, on June

28, 2019, the Receiver selected Avison to list and market the Real Property. A copy of the listing agreement is contained at **Appendix “5”**. The Real property was listed for sale at \$3,750,000.00.

35. When the Receiver took possession of the Real Property two units were vacant. Over the course of the summer and early fall two additional rental units became vacant because one spouse of each family passed away leaving the surviving spouse with limited income to manage the current monthly rent. The Receiver agreed to allow the tenants to terminate the leases without penalty.
36. The property manager continued to market the vacant units, however, the monthly rent and location of the Real Property did not make the units attractive to families with children and to those families who wanted green space.
37. The property manager was able to secure two new tenants who both entered a one-year leases in the fall of 2019.

MARKETING OF REAL PROPERTY AND RESULTS

38. The marketing flyer prepared by Avison was approved by the Receiver on July 8, 2019. A copy of this marketing flyer is attached at **Appendix “6”**.
39. The marketing process and the results of the marketing process are detailed in **Confidential Appendix “C”** and a redacted copy is attached at **Appendix “7”**.
40. Highlights of Avison’s marketing process in respect of the sale of the Real Property are as follows:
 - a) Avison went to market and asked all interested parties to submit offers to purchase on July 16, 2019;
 - b) 45 parties made inquiries, 12 of which were represented by other realtors, and there were 14 site visits (complete list of inquiries is attached in Avison’s report);
 - c) There were 1,137 direct hits on the Loopnet web site (a commercial real estate marketing site), and in Loopnet searches the listing had been presented 42,784 times;

- d) Three (3) offers were received during the marketing process, which initially expired on August 28, 2019;
- e) the Receiver rejected the offers and requested that parties resubmit offers. None of the parties provided any amended offers and advised they were maintaining their offers as submitted;
- f) in early October 2019, the listing price was therefore reduced to \$3,200,000.00 given the results of the first three offers and given that no other offers were presented;
- g) on October 9, 2019, one of the original bidders provided an amended offer to purchase, which Harbouredge supported, subject to the buyer's conditions;
- h) on December 9, 2019, the conditional period in the above offer expired, and the prospective purchaser submitted a new offer at a lower amount and wanted a further 60-day conditional period. The Receiver elected to allow the Real Property to remain open for offers and rejected the prospective purchaser's new offer to purchase the Real Property;
- i) on December 13, 2019, a new party submitted an offer to purchase the Real Property which Harbouredge confirmed it supported. The offer had a 30-day conditional period;
- j) on January 13, 2020, the prospective purchaser advised Avison that the property inspection identified key structural deficiencies that the City of Ottawa identified. Notwithstanding these deficiencies, the City of Ottawa issued the necessary completion permits without requiring the Companies to remedy the deficiencies; and
- k) the prospective purchaser requested a purchase price reduction of \$50,000.00 to allow for the remedial work to correct these structural deficiencies. The Receiver consulted with Harbouredge and it supported the proposed price reduction.

THE SALES AGREEMENT AND TRANSACTION

41. On February 11, 2020, the Receiver accepted the final offer to purchase (“**Sales Agreement**”), which is attached as **Confidential Appendix “D”** and as **Appendix “8”** (in which the purchaser’s identity and the purchase price were redacted). The Sales Agreement provides that it is unconditional, provides for a \$100,000.00 deposit and that it is binding, and that the closing (the “**Sales Transaction**”) is subject to approval of the Court.
42. The Receiver recommends that the Sales Transaction be approved by this Honourable Court for the following reasons:
 - a) the Real Property was exposed widely to the marketplace for approximately six months in a manner that is common for properties of this nature and was listed for sale with a professional and licensed commercial real estate broker that is well known in the market;
 - b) the Sales Agreement is unconditional, and the purchase price is in line with the average appraised value of the Real Property;
 - c) the purchase price is within a reasonable range of the Colliers Appraisal and the Harman Appraisal, and greater than the other offers received by the Receiver to date;
 - d) the Receiver does not believe that further marketing of the Real Property will result in a superior offer;
 - e) there are currently no other offers to consider; and
 - f) the Sales Transaction that is the subject of the Sales Agreement is provident and a favourable outcome for the estate and followed a thorough, impartial and fair sales process that fully tested the market.

RENTAL OPERATIONS

43. As of February 28, 2020, the total rental receipts from the Real Property residential leases were \$77,062.00, which has resulted in an operating surplus of \$29,458.00.

44. The Receiver did obtain an initial advance from Harbouredge and accordingly issued a Receiver's Certificate. The Receiver repaid the advance on January 20, 2020 and terminated the Receiver's Certificate.

ONGOING OPERATIONS

45. The Receiver will continue to operate the rental units with the assistance of the property manager until the Sales Transaction is closed.

PRIORITY AND SECURED CLAIMS

Priority Claims

46. The Receiver is not aware of any claims that would rank in priority to the secured creditors.

47. On February 4, 2020, representatives for Harbouredge received a letter from Canada Revenue Agency advising that the Companies had been assessed \$340,540.36 for HST. Attached at **Appendix "9"** is a copy of this letter issued by Canada Revenue Agency.

Secured Claims

48. The PPSA search results for Casabella dated March 2, 2020 report that the only secured creditor of Casabella's is Harbouredge. A copy of the PPSA search results is attached hereto at **Appendix "10"**.

49. The PPSA search results for 706 Inc. dated March 2, 2020 report that Harbouredge and the Guarantee Company of North America are the only registered secured creditors in respect of 706 Inc. A copy of the PPSA search results is attached hereto at **Appendix "11"**.

50. The City of Ottawa has not yet issued a property tax assessment from the period when the Real Property was development land converted to residential condominium rental units. The Receiver will need to holdback sufficient funds to ensure that property taxes at the date the Sales Transaction closes are paid. The Receiver will therefore holdback \$100,000.00 from the net closing funds to satisfy property taxes due.

51. The parcel registers for the Real Property confirm that Harbouredge registered a first-ranking charge on title of the Real Property on August 21, 2014. A copy of the parcel

registers for the Real Property dated February 28, 2020 is attached hereto at **Appendix “12”**. The parcel registers also confirm the following subsequent registrations on title to the Real Property (all of which are subordinate to Harbouredge’s mortgage security):

- a) Narinder Dev Uppal;
- b) Maurice Yelle Excavation Limited; and
- c) 1313779 Ontario Inc. and 7577010 Canada Inc.

52. Legal counsel for the Receiver has prepared and provided the Receiver with a legal opinion regarding the validity and enforceability of the security held by Harbouredge, a copy of which is attached hereto at **Appendix “13”**.

53. Based on the legal opinion, it appears that Harbouredge’s security is valid and enforceable as against the Real Property and creates a first ranking charge. Harbouredge’s mortgage is a first-ranking mortgage in the principal amount of \$6,750,00.00, which encumbers title to the Real Property.

54. Harbouredge provided the Receiver with an updated statement of account in respect of the Companies’ indebtedness to Harbouredge as of March 6, 2020. As of this date, the outstanding balance owing to Harbouredge was \$7,650,040.33 plus ongoing interest, and legal costs. The Harbouredge statement of account is attached at **Appendix “14”**.

55. In light of the foregoing, the Receiver will therefore be seeking the authorization of the Court to make an interim distribution to Harbouredge in the amount of \$1,900,000.00 to be applied against the Indebtedness.

FUNDS AVAILABLE FOR DISTRIBUTION

56. A copy of the Receiver’s Interim Statement of Receipts and Disbursements (“**Interim Statement**”) is attached hereto at **Appendix “16”**. It confirms that receipts exceed disbursements by \$29,458.00 to the date of this report.

57. Considering the foregoing, the Receiver recommends making a distribution to Harbouredge in the amount of \$1,900,000.00 and for the Receiver to hold the remaining amounts until the final report to the Court is filed.

PROFESSIONAL FEES

58. Pursuant to paragraph 16 of the Receivership Order, the fees and disbursements of the Receiver and its legal counsel form a first charge on the Property in priority to all security interests, trusts, liens, charges and encumbrances, statutory or otherwise, in favour of any person.
59. Pursuant to paragraph 18 of the Appointment Order, the Receiver is entitled to apply reasonable amounts out of the monies in its hands to satisfy its professional fees and disbursements and those of its counsel, and such amounts are to constitute advances against its remuneration and disbursements when and as approved by the Court.
60. The approval of fees and disbursements of the Receiver and that of its legal counsel will be sought in a further report to the Court.

COMPLETION OF THE RECEIVERSHIP

61. The Receiver will attempt to close the Sales Transaction and report back to Court upon its completion. In the event the Sales Transaction does not close, the Receiver will resume the liquidation of the Real Property and continue to manage the operations of the rental units.

SUMMARY AND RECOMMENDATIONS

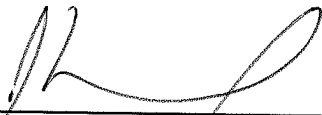
62. In the event the Sales Transaction is closed, it will provide a significant reduction to the Indebtedness.
63. For the reasons outlined above, the Receiver respectfully recommends that this Court grant the Receiver's request for an Order, amongst other things:
 - (a) If necessary, abridging the time for and validation of service of the Notice of Motion and Motion Record herein;
 - (b) Approving the Receiver's First Report, and the activities and conduct of the Receiver and of its legal counsel since its appointment, all as recited in the First Report;

- (c) Approving the Sales Agreement and Sales Transaction, and the conveyance of the Real Property to the purchase and vesting title of the Real Property in the purchaser;
- (d) Approving the sealing of the confidential appendices to the First Report pending the closing of the Sales Transaction or further Order of this Court;
- (e) Approving the Receiver's Interim Statement of Receipts and Disbursements; and
- (f) approving a distribution to Harbouredge in the amount of \$1,900,000.00

This First Report is respectfully submitted to the Honourable Court as of this 10th day of March 2020.

MNP LTD.,

In Its capacity as Court-Appointed Receiver of
Casabella Subsidiary Limited Partnership and 7061358 Canada Inc.
and not in its personal or corporate capacity
Per:



John P. Haralovich, CPA, CA, CIRP, CMA
Senior Vice President