

Clerk's Stamp:

COURT FILE NUMBER 2303 06910

COURT COURT OF KING'S BENCH OF ALBERTA

JUDICIAL CENTRE EDMONTON

PLAINTIFF **SERVUS CREDIT UNION LTD.**

DEFENDANTS

**CHATEAU INN LTD., BECA INTERNATIONAL LTD.,
ALBERT DAVID MESSIER, THE ESTATE OF
ALBERT DAVID MESSIER, and JOHN or JANE DOE
as the Litigation Representative for THE ESTATE
OF ALBERT DAVID MESSIER, deceased**



DOCUMENT

APPLICATION

ADDRESS FOR SERVICE AND CONTACT INFORMATION OF PARTY FILING THIS DOCUMENT

Dentons Canada LLP
2500 Stantec Tower
10220 – 103 Avenue NW
Edmonton, Alberta T5J 0K4
Ph. (780) 423-7284 Fx. (780) 423-7276
File No.: 415944-20
Attention: Dean A. Hitesman / Kurtis P. Letwin

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 Justice.

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

Date	February 7, 2024
Time	10:00 a.m.
Where	Edmonton Law Courts Building 1A Sir Winston Churchill Square Edmonton, Alberta Virtual Courtroom 86 https://albertacourts.webex.com/meet/virtualcourtroom86
Before Whom	The Honourable Justice T. Neilson

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

Remedy claimed or sought:

1. An Order:
 - (a) abridging the time for service of notice of this Application to the time actually given and an Order deeming service upon the parties served as good and sufficient notice, if necessary;

- (b) approving and ratifying the actions taken by Receiver, as defined herein, as set out in the Receiver's Second Report filed with the Court (the "**Second Report**");
- (c) approving and ratifying the Statement of Receipts and Disbursements as set out in the Second Report;
- (d) approving the proposed final distribution of funds to the Canada Revenue Agency ("**CRA**");
- (e) approving the proposed final distribution of funds to Service Canada ("**SC**");
- (f) approving the proposed final distribution of funds to Servus Credit Union Ltd. ("**Servus**") in respect to the amount(s) owed to Servus as the Debtor's primary secured creditor;
- (g) approving the passing of accounts for the fees and disbursements of the Receiver and its independent legal counsel, Dentons Canada LLP ("**Dentons**"), incurred as outlined in the Second Report and the anticipated fees and disbursements of the Receiver and Dentons to complete the Receivership as outlined in the Second Report;
- (h) authorizing the Receiver to provide the Director(s) of the Debtor, as defined herein, 30 days written notice to retrieve the books and records of the Debtor, failing which the Receiver shall be authorized to dispose of same; and
- (i) discharging the Receiver upon the Receiver filing with the Clerk of the Court a Receiver's Affidavit confirming that all matters have been completed;

in accordance with the proposed form of Order attached as Schedule "A" hereto.

2. Such further and other relief as may be sought and this Honourable Court deems just and appropriate.

Grounds for making this application:

1. MNP Ltd. (the "**Receiver**") was appointed receiver of Chateau Inn Ltd.'s (the "**Debtor**") current and future assets, undertakings, and properties of every nature and kind whatsoever, and where situate, including all proceeds thereof by Order of this Honourable Court dated April 28, 2023 (the "**Receivership Order**").
2. The Second Report sets out the activities of the Receiver since the Receiver's First Report dated August 31, 2023, and sets out the Receiver's manner of dealing with the Receivership. The Receiver seeks the approval of the Court for its activities set out in the Second Report.
3. The Receiver has completed realizing upon all the undertakings, properties, and assets of the Debtor.
4. The Receiver has substantially completed the administration of the Debtor's estate, with the exception of:
 - (a) payment of professional fees;
 - (b) distribution of residual estate proceeds;

- (c) submission of a final statutory report to the Office of the Superintendent of Bankruptcy pursuant to subsection 246(3) of the *Bankruptcy and Insolvency Act*;
 - (d) completing the final reconciliation of the Receiver's estate bank accounts;
 - (e) providing the Director(s) of the Debtor with the books and records of the Debtor, or disposing of same if they are not retrieved by the Director(s) of the Debtor; and
 - (f) filing the Receiver's Affidavit of discharge confirming all funds held by the Receiver have been distributed and all administrative matters have been concluded.
5. Attached as Exhibit "A" to the Affidavit of Eric Sirrs sworn January 22, 2024, are details of the Receiver's fees and expenses along with the Receiver's time docket. The Receiver believes that the accounts are fair and reasonable, taking into consideration the services that were provided, and seeks approval and a passing of these accounts in accordance with the terms of the Receivership Order.
6. Attached as Schedule 4 to the Second Report is a summary of the invoices submitted by the Receiver's independent legal counsel, Dentons, for legal services. The Receiver believes that the accounts are fair and reasonable, taking into consideration the services that were provided, and seeks approval and a passing of these accounts in accordance with the terms of the Receivership Order.

Canada Revenue Agency

7. CRA submitted a balance owing for payroll source deductions to the Receiver in respect to unpaid source deductions by the Debtor in the amount of \$19,070.33.
8. The Receiver is of the view that CRA's deemed trust source deduction claim is valid and appropriate.

Service Canada

9. The Receiver expects Service Canada to have a priority claim pursuant to section 81.4 of the *Bankruptcy and Insolvency Act* for outstanding vacation pay owed to the former employee(s) of the Debtor.
10. The Receiver estimates this claim to be less than \$5,000.00 as at January 22, 2024. However, Service Canada has not provided a statement of account as at the date of the filing of this application.
11. The Receiver is of the view that Service Canada's claim pursuant to section 81.4 of the *Bankruptcy and Insolvency Act* is valid and appropriate.

Servus Credit Union Ltd.

12. Servus is the primary secured creditor of the Debtor and the Receiver proposes to distribute funds in the amount of \$1,100,000.00 to Servus as the Debtor's primary secured creditor.

13. Dentons, independent legal counsel for the Receiver, has opined that the security granted by the Debtor to Servus is valid and enforceable.
14. The approximate debt owing to Servus is in excess of \$2.95 million.
15. As such, the Receiver is of the view that the distribution to Servus in the amount of \$1,100,000.00 is just and appropriate.

Proposed Actions

16. As outlined in the Second Report, the Receiver proposes to make the following distributions:
 - (a) Receiver's fees and disbursements up to and including January 19, 2024 and legal fees and disbursements of the Receiver's legal counsel, Dentons, up to and including December 31, 2023;
 - (b) Approval and distribution of anticipated Receiver's fees and disbursements and the anticipated fees and disbursements of the Receiver's independent legal counsel, Dentons, to a maximum collectively of \$15,000.00 to conclude the administration of the Receivership;
 - (c) \$20,000.00 to address any unforeseen remaining expenses relating to the administration of the estate of the Debtor;
 - (d) \$19,070.33 as the final payment to CRA in respect of CRA's deemed trust source deduction claim;
 - (e) Up to \$5,000.00, or such other amount proven by Service Canada, in relation to its claim pursuant to section 81.4 of the *Bankruptcy and Insolvency Act*;
 - (f) \$1,100,000.00, as payment to Servus as the primary secured creditor of the Debtor; and
 - (g) If any residual surplus funds remain after the distribution as contemplated in paragraph 15 herein, such residual surplus funds shall be payable to Servus.

(collectively, the "**Proposed Distributions**").
17. Based on the opinions provided to the Receiver by its independent legal counsel, Dentons Canada LLP, the Receiver recommends that the Court approve the Proposed Distributions.
18. The Receiver has performed its mandate as Receiver under the Receivership Order, including the liquidation of substantially all of the Debtor's assets and will complete the administration of the Debtor's estates.
19. It is just and appropriate that the Receiver's actions be approved and the Receiver be discharged.
20. Such further and other grounds as counsel for the Receiver may advise.

Material or evidence to be relied on:

1. The First Report of the Receiver, dated August 31, 2023.
2. The Second Report of the Receiver, dated January 26, 2024.
3. The Affidavit of Eric Sirrs sworn January 22, 2024.
4. The pleadings and documents in this Action.
5. Such further and other materials or evidence as counsel may advise and this Honourable Court may permit.

Applicable Rules:

1. Rules 6.3 and 13.5(2) of the *Alberta Rules of Court*, Alta Reg 124/2010, as amended.
2. *Bankruptcy and Insolvency General Rules*, CRC c 368.
3. Such further and other Rules as counsel may advise and this Honourable Court may permit.

Applicable Acts and Regulations:

1. *Bankruptcy and Insolvency Act*, RSC 1985, c B-3, as amended.
2. Such further and other Acts and Regulations as counsel may advise and this Honourable Court may permit.

Any irregularity complained of or objection relied on:

1. None.

How the Application is proposed to be heard or considered:

1. Via Webex in Virtual Courtroom 86 before the Honourable Justice T. Neilson, accessible at the link <https://albertacourts.webex.com/meet/virtual.courtroom86>

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 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"

FORM OF ORDER

See attached

Clerk's stamp:

COURT FILE NUMBER	2303 06910
COURT	COURT OF KING'S BENCH OF ALBERTA
JUDICIAL CENTRE	EDMONTON
PLAINTIFF	SERVUS CREDIT UNION LTD.
DEFENDANTS	CHATEAU INN LTD., BECA INTERNATIONAL LTD., ALBERT DAVID MESSIER, THE ESTATE OF ALBERT DAVID MESSIER, and JOHN or JANE DOE as the Litigation Representative of THE ESTATE OF ALBERT DAVID MESSIER
DOCUMENT	ORDER FOR 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	Dentons Canada LLP Barristers & Solicitors 2500 Stantec Tower 10220 – 103 Avenue NW Edmonton, Alberta T5J 0K4 Ph. (780) 423-7284 Fx. (780) 423-7276 File No.: 415944-20 Attention: Dean A. Hitesman / Kurtis P. Letwin

DATE ON WHICH ORDER WAS PRONOUNCED: February 7, 2024

LOCATION WHERE ORDER WAS PRONOUNCED: Edmonton, Alberta

NAME OF JUSTICE WHO MADE THIS ORDER: The Honourable Justice T. Neilson

UPON THE APPLICATION of MNP Ltd. in its capacity as the Court-appointed receiver (the "**Receiver**") of the undertaking, property and assets of Chateau Inn Ltd. (the "**Debtor**") for an Order for the final distribution of proceeds, approval of the Receiver's fees and disbursements, approval of the Receiver's activities, and discharge of the Receiver; AND UPON having read the Receiver's Second Report dated January 26, 2024 (the "**Receiver's Second Report**") and the Affidavit of Eric Sirrs sworn January 22, 2024; AND UPON hearing submissions from counsel for the Receiver and such other parties as may be present in person or by counsel; AND UPON being satisfied that it is appropriate to do so; IT IS HEREBY ORDERED THAT:

1. Service of notice of this application and supporting materials 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 Exhibit "A" to the Affidavit of Eric Sirrs sworn January 22, 2024, are hereby approved without the necessity of a formal passing of its accounts.

3. The accounts for fees and disbursements of the Receiver's legal counsel, Dentons Canada LLP ("**Dentons**"), as set out in Schedule 4 to the Receiver's Second Report is hereby approved without the necessity of a formal assessment of their respective accounts.
4. The Receiver is hereby authorized to withhold the amount of \$15,000.00 for anticipated fees and disbursements of the Receiver and for anticipated fees and disbursements of its legal counsel, Dentons, to conclude the administration of the Receivership.
5. The Receiver is hereby authorized to withhold the amount of \$20,000.00 for any unforeseen remaining expenses relating to the administration of the estate of the Debtor.
6. The Receiver's activities as set out in the Receiver's Second Report and in all of its other reports filed herein, including the proposed Statement of Receipts and Disbursements, as attached to the Receiver's Second Report, are hereby ratified and approved.
7. The Receiver is authorized and directed to make the following distributions:
 - (a) Receiver's fees and disbursements up to and including January 19, 2024 and the legal fees and disbursements of the Receiver's legal counsel, Dentons, up to and including December 31, 2023 as outlined in the Receiver's Second Report;
 - (b) Receiver's anticipated fees and disbursements and anticipated fees and disbursements of the Receiver's independent legal counsel, Dentons, to a maximum collectively of \$15,000.00 to conclude the administration of the Receivership;
 - (c) \$20,000.00 to address any unforeseen remaining expenses relating to the administration of the estate of the Debtor;
 - (d) \$19,070.33 as the final payment to CRA in respect of CRA's deemed trust source deduction claim;
 - (e) Up to \$5,000.00, or such other amount proven by Service Canada, in relation to its claim pursuant to section 81.4 of the *Bankruptcy and Insolvency Act*;
 - (f) \$1,100,000.00, as payment to Servus as the primary secured creditor of the Debtor; and
 - (g) If any residual surplus funds remain after the distribution as contemplated in paragraph 6(b) herein, such residual surplus funds shall be payable to Servus.
8. On the evidence before the Court, the Receiver has satisfied its 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 act or omission on its part including, without limitation, any 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 duties are hereby stayed, extinguished and forever barred.
9. 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.

10. 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 7 of this Order have been completed;
 - (b) returning all books and records to the Debtor that are not required for the administration of the Receivership to the principal of the Debtor, or alternatively, the Receiver has disposed of all books and records of the Debtor upon expiration of the required notice period (see paragraph 11 below); and
 - (c) the submission of a final statutory report to the Office of the Superintendent of Bankruptcy pursuant to section 246(3) of the *Bankruptcy and Insolvency Act*, RSC 1985, c B-3;
- (collectively, the “**Remaining Duties**”);

then the Receiver shall be discharged as Receiver of the Debtor, 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.

11. The Receiver shall provide the Director(s) of the Debtor 30 days' written notice to retrieve the books and records of the Debtor, after which time the Receiver shall be authorized to dispose of the said books and records without further notice.
12. This Order must only be served 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.
13. 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