



No. S202352
Vancouver Registry

IN THE SUPREME COURT OF BRITISH COLUMBIA

BETWEEN:

THE TORONTO-DOMINION BANK

PETITIONER

AND:

DDK VENTILATION PRODUCTS LTD.

RESPONDENT

NOTICE OF APPLICATION

Name of applicant: MNP Ltd. (“MNP”), in its capacity as court-appointed receiver (in such capacity, the “Receiver”) of all of the assets, undertakings and property (the “Property”) of DDK Ventilation Products Ltd. (the “Debtor”).

To: The Respondent and all parties on the Service List attached as Schedule “A” hereto.

TAKE NOTICE that an application will be made by the Receiver to the presiding judge at the courthouse at 800 Smithe Street, Vancouver, British Columbia on June 15, 2021 at 9:45 a.m. for the orders set out in Part 1 below. by telephone

Part 1: ORDER SOUGHT

1. The Receiver seeks an order substantially in the form of Order attached hereto as **Schedule “B”** (the “**Fee Approval and Discharge Order**”):
 - (a) approving the activities of the Receiver as set forth in the Second and Final Report of the Receiver dated May 28, 2021 (the “**Second Report**”);
 - (b) approving the Receiver’s statement of receipts and disbursements in these proceedings;
 - (c) approving the Receiver’s fees and disbursements for the period March 2, 2021 to April 30, 2021 (the “**Receiver’s Fee Period**”) in the amount of \$252,883.93, including applicable taxes (the “**Receiver’s Fees**”);
 - (d) approving the Receiver’s estimated further fees and disbursements of approximately \$8,500, plus applicable taxes, for the period from May 1, 2021 to the completion of this matter;

- (e) approving the fees and disbursements of the Receiver's legal counsel, Fasken Martineau DuMoulin LLP ("**Fasken**"), for the period from March 10, 2020 to March 31, 2021 ("**Fasken's Fee Period**"), in the amount of \$111,575.38, including applicable taxes ("**Fasken's Fees**");
- (f) approving Fasken's estimated further fees and disbursements of approximately \$11,200, plus applicable taxes, for the period from April 1, 2021 to the completion of this matter;
- (g) authorizing the Receiver to make certain distributions to Service Canada, the Ministry of Finance (the "**Ministry**"), Worksafe BC and the Toronto-Dominion Bank ("**TD**");
- (h) effective upon the filing of a certificate with the Court (the "**Discharge Certificate**"), discharging the Receiver of its duties and obligations arising under the Receivership Order; and
- (i) releasing MNP from any and all liability that MNP now has, or may hereafter have, by reason of, or in any way related to, the acts or omissions of MNP while acting in its capacity as Receiver, save and except for any gross negligence or wilful misconduct on the part of MNP.

Part 2: FACTUAL BASIS

1. Capitalized terms used herein and not otherwise defined have the same meanings as are ascribed to them in the Second Report.
2. The Debtor operated as a distributor of ventilation equipment, parts, and components to mechanical, sheet metal, and air conditioning contractors servicing commercial, light industrial and residential construction industries.

The Receiver's Second Report at para. 2.

3. Pursuant to the Receivership Order, the Receiver was appointed as receiver and manager of the Property of the Debtor.

The Receiver's Second Report at para. 1.

4. By Order made May 14, 2020, the Court approved the activities of the Receiver as set forth in the Receiver's First Report to Court dated May 12, 2020 (the "**First Report**").

The Receiver's Second Report at para. 9.

5. The Second Report details the activities of the Receiver following the First Report. In summary, these activities include:

- (a) completing the sale of the Tangible Assets and attending to the discharge of registrations in respect of the Tangible Assets in the B.C. Personal Property Registry;
- (b) entering into an Assignment Agreement dated April 29, 2021, which assigned DDK's interest in various equipment stored at a warehouse in China in exchange for payment of \$6,500;
- (c) arranging for the removal and shredding of over three hundred boxes of historical Company records stored at DDK's leased premises;
- (d) pursuing outstanding accounts receivable and providing instructions to Fasken to issue formal demand letters, file statements of claims, and register builder's liens pursuant to the British Columbia *Builders Lien Act*;
- (e) preparing and filing Goods and Services Tax ("GST") returns on behalf of the Receiver;
- (f) preparing and filing GST returns and other statutory returns on behalf of the Company and corresponding and exchanging information with the Canada Revenue Agency ("CRA") and other regulatory agencies in relation to amounts owed by DDK.
- (g) making an interim distribution to TD in the amount of \$1,300,000;
- (h) closing various utilities' accounts maintained by the Receiver;
- (i) communicating with creditors and other stakeholders on various matters; and
- (j) carrying out its statutory duties and obligations under the *Bankruptcy and Insolvency Act* (the "BIA").

The Receiver's Second Report at paras. 12-27.

Statement of Receipts and Disbursements

6. The Receiver's statement of receipts and disbursements for the period of March 2, 2020 to May 19, 2021 is attached as Appendix "A" to the Second Report. As set forth therein, the receipts total \$1,929,599.53, and the disbursements total \$1,706,251.64. The Receiver held \$223,347.89 in the Receivership trust account at that time.

The Receiver's Second Report at para. 40 and Appendix "A".

The Fees

7. The particulars of the Receiver's Fees and Fasken's Fees (collectively, the "Fees") are summarized in the Second Report, as well as the 1st Affidavit of Fergus McDonnell made on May 28, 2021 (the "McDonnell Affidavit") and the 1st Affidavit of Patty Wood made

on May 28, 2021 (the “**Wood Affidavit**”). To date, inclusive of applicable taxes, the Receiver’s Fees total \$252,883.93 and Fasken’s Fees total \$111,575.38.

The Receiver’s Second Report at paras. 41-53 and Appendices “B” and “D.”

The McDonnell Affidavit at Exhibits “A” to “H”.

The Wood Affidavit at Exhibit “A”.

8. The Receiver has reviewed Fasken’s invoices in respect of Fasken’s Fees and concluded that they are reasonable and appropriate in the circumstances.

The Receiver’s Second Report at para. 52.

9. The Receiver estimates its fees and disbursements from the end of the Receiver’s Fee Period to the conclusion of the receivership will amount to approximately \$8,500 plus applicable taxes.

The Receiver’s Second Report at para. 42 and Appendix “B”.

10. Fasken estimates its fees and disbursements from the end of Fasken’s Fee Period to the conclusion of the receivership will amount to approximately \$11,200 plus applicable taxes, assuming the Receiver’s application for discharge is not opposed.

The Receiver’s Second Report at para. 53 and Appendix “D”.

11. In the event that the Fee Approval & Discharge Order is granted as sought, prior to the filing of the Discharge Certificate, the Receiver and Fasken will render final invoices for services provided in relation to the conclusion of this matter (collectively, the “**Completion Invoices**”).

Proposed distributions

12. Based upon the claims known to the Receiver, pending Court approval, the Receiver intends to make the following distributions:
- (a) to Service Canada - \$14,351.54 in respect of a deemed trust claim representing amounts secured pursuant to section 81.4(4) of the *Bankruptcy and Insolvency Act*;
 - (b) to the Ministry of Finance- \$5,927.57 on account of unremitted provincial sales tax due under the *Provincial Sales Tax Act* and owed by DDK, and which has the benefit of a priority lien;
 - (c) to WorkSafe BC - \$1,179.27 on account of unremitted assessments due under the *Workers’ Compensation Act* and owed by DDK, and which has the benefit of a priority lien; and

- (d) payment of the Fees and the respective fees owing pursuant to the Completion Invoices; and
- (e) to TD – the remainder to be distributed on account of the TD Security.

The Receiver's Second Report at para. 54.

13. As detailed in the Second Report, the outstanding balance of TD's indebtedness as at April 1, 2021 was \$626,870.49 and interest and expenses, including legal costs which continue to accrue.

The Receiver's Second Report at para. 36.

Release and discharge of the Receiver

14. Subject to the Receiver making the distributions contemplated herein, the Receiver will have completed its duties and obligations under the Receivership Order, and accordingly the Receiver is seeking an order of the Court discharging the Receiver.

The Receiver's Second Report at para. 56.

15. The remaining matters are administrative and the Receiver is of the view that it is appropriate to seek the Fee Approval and Discharge Order discharging the Receiver, with the discharge to be effective upon the filing of the Discharge Certificate.

The Receiver's Second Report at para. 57.

16. As a term of the Fee Approval and Discharge Order discharging the Receiver, the Receiver is also seeking a release from the Court, releasing the Receiver from any and all claims and obligations arising as a result of the Receiver acting in its capacity as Receiver of the Company, excepting those claims and obligations that arise as a result of gross negligence or willful misconduct.

Part 3: LEGAL BASIS

1. The Receiver relies on:
- (a) the BIA;
 - (b) Rules 8-1 and 10-2 of the Supreme Court Civil Rules;
 - (c) the Receivership Order;
 - (d) the inherent and equitable jurisdiction of this Court; and
 - (e) such further and other legal basis as counsel may advise and this Honourable Court may allow.

2. The work performed by the Receiver and Fasken was done pursuant to, and in accordance with, the terms of the Receivership Order, the Sale Approval Order and the provisions of the BIA.

Approval of the Receiver's Activities

3. The Court has inherent jurisdiction to review and approve or disapprove the activities of a court-appointed receiver. If the Receiver has met the objective test of demonstrating that it has acted reasonably, prudently and not arbitrarily, the Court may approve the activities of the Receiver as set out in Part 2 herein and detailed in the Second Report.

Leslie & Irene Dube Foundation Inc. v. P218 Enterprises Ltd., 2014 BCSC 1855 at para. 54.

4. The Receiver has acted expeditiously and responsibly in order to preserve as much value as possible for the creditors of the Company. The activities of the Receiver have all been necessary and conducted in accordance with the Receiver's powers as granted in the Receivership Order and, thus, the Receiver seeks approval of its activities.

Approval of the Fees and Disbursements

5. The Receivership Order expressly provides that the accounts of the Receiver are referred to a judge of this Honourable Court and that the passage of those accounts may be heard on a summary basis.

Receivership Order at para. 22.

6. The governing principle in determining the amount of compensation to be paid to a receiver is that such compensation "must be fair and reasonable having regard to all of the material facts and circumstances of the particular case":

Federal Business Development Bank v. Belyea (1983) 46 C.B.R. (N.S.) 244 ("*Belyea*"), at para 12.

7. The principles identified in *Belyea* were adopted by the British Columbia Court of Appeal in *Bank of Montreal v. Nican Trading Co.* The Court of Appeal went on to list the relevant considerations of the Court in determining fair and reasonable compensation, including:
 - (a) the value of the assets;
 - (b) complications and difficulties encountered by the receiver;

- (c) the degree of assistance provided by the debtor;
- (d) time spent by the receiver;
- (e) receiver's knowledge, experience and skill;
- (f) diligence and thoroughness;
- (g) responsibilities assumed;
- (h) results; and
- (i) cost of comparable services.

Bank of Montreal v. Nican Trading Co. [1990] B.C.J. No. 340.

8. Similar factors as considered on the assessment of a Receiver's fees are considered on the assessment of the accounts of legal counsel to the Receiver, including, the:

- (a) time expended;
- (b) complexity of the proceedings;
- (c) degree of responsibility assumed by the lawyers;
- (d) amount of money involved, including reference to the debt, amount of proceeds after realization and payments to the creditors;
- (e) degree and skill of the lawyers involved;
- (f) results achieved; and
- (g) client's expectations as to the fee.

Redcorp Ventures Ltd. (Re), 2016 BCSC 188, paras. 26 and 32.

9. The Receiver submits that the Fees are fair and reasonable in the circumstances, particularly in light of the significant time and effort expended by the Receiver and Fasken in performing the activities detailed in the Receiver's Reports and advising the Receiver in regards to such activities.

10. In respect of the Receiver's Fees, the Receiver submits that the:

- (a) Receiver's Fees were properly incurred, and commensurate with fees charged by other insolvency firms of a similar size for work of a similar nature and complexity in British Columbia;
- (b) work completed by the Receiver was delegated to the appropriate professionals with the appropriate seniority and hourly rates; and

- (c) Receiver's services were performed in a prudent and economical manner.
11. Similarly, the Receiver submits that Fasken's Fees are fair and reasonable in the circumstances as:
- (a) Fasken's professional fees and disbursements were properly incurred, and commensurate with fees charged by similar firms with the expertise and capacity to serve a matter of comparable size and complexity;
 - (b) the work completed by Fasken was delegated to the appropriate professionals with the appropriate seniority and hourly rates;
 - (c) Fasken's services were performed in a prudent and economical manner; and
 - (d) Fasken's invoices were provided to the Receiver when rendered, and all have been approved by the Receiver.
12. In light of the foregoing, the Receiver submits that the Fees should be approved, as the Receiver has substantially completed its mandate.

Discharge of the Receiver

13. The release sought by the Receiver on this application includes the language set forth in the British Columbia model discharge order, modified to include the appropriate carve outs for any claims arising from gross negligence or wilful misconduct on the part of the Receiver.
14. Upon the filing of the Discharge Certificate, the Receiver should be discharged.

Part 4: MATERIAL TO BE RELIED ON

- 1. Receiver's First Report to the Court dated May 12, 2020;
- 2. Receiver's Second and Final Report to the Court dated May 28, 2021;
- 3. Affidavit #1 of Fergus McDonnell, affirmed May 28, 2021;
- 4. Affidavit #1 of Patty Wood, affirmed May 28, 2021;
- 5. Such further and other legal basis as counsel may advise.

The applicant estimates that the application will take 20 minutes.

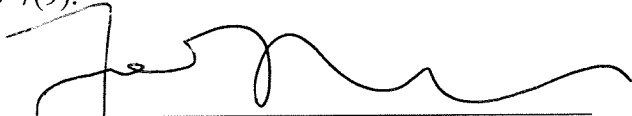
This matter is not within the jurisdiction of a master.

TO THE PERSONS RECEIVING THIS NOTICE OF APPLICATION: If you wish to respond to this Notice of Application, you must, within 5 business days after service of this Notice of

Application or, if this application is brought under Rule 9-7, within 8 business days after service of this Notice of Application,

- (a) file an Application Response in Form 33,
- (b) file the original of every affidavit, and of every other document, that
 - (i) you intend to refer to at the hearing of this application, and
 - (ii) has not already been filed in the proceeding, and
- (c) service on the applicant 2 copies of the following, and on every other party of record one copy of the following:
 - (i) a copy of the filed Application Response;
 - (ii) a copy of each of the filed affidavits and other documents that you intend to refer to at the hearing of this application and that has not already been served on that person;
 - (iii) if this application is brought under Rule 9-7, any notice that you are required to give under Rule 9-7(9).

Dated: 02-Jun-2021



 Signature of Fergus McDonnell
 Lawyer for the Applicant, MNP Ltd.

<i>To be completed by the court only:</i>	
Order made	
<input type="checkbox"/>	in the terms requested in paragraphs of Part 1 of this Notice of Application
<input type="checkbox"/>	with the following variations and additional terms:

Date:
	Signature of <input type="checkbox"/> Judge <input type="checkbox"/> Master

The Solicitors for MNP Ltd. are Fasken Martineau DuMoulin LLP, whose office address and address for delivery is 2900 - 550 Burrard Street, Vancouver, BC V6C 0A3 Telephone: +1 604 631 3131 (Reference: Fergus McDonnell/278733.00010

APPENDIX

THIS APPLICATION INVOLVES THE FOLLOWING:

- discovery: comply with demand for documents
- discovery: production of additional documents
- other matters concerning document discovery
- extend oral discovery
- other matter concerning oral discovery
- amend pleadings
- add/change parties
- summary judgment
- summary trial
- service
- mediation
- adjournments
- proceedings at trial
- case plan orders: amend
- case plan orders: other
- experts
- OTHER

SCHEDULE "A"

SERVICE LIST

SERVICE LIST

The Toronto-Dominion Bank	sbhura@harpergrey.com
DDK Ventilation Products Ltd.	rmorse@farris.com
Wilshire Investments	gg@gdlaw.ca
606381 Alberta Ltd. o/a Tradesman Manufacturing	Unrepresented David@tradesmanmfg.ca ; ar@tradesmanmfg.ca
The Carmen Sjodin Family Trust	csjodin@shaw.ca

SCHEDULE "B"

DRAFT ORDER

IN THE SUPREME COURT OF BRITISH COLUMBIA

BETWEEN:

THE TORONTO-DOMINION BANK

PETITIONER

AND:

DDK VENTILATION PRODUCTS LTD.

RESPONDENT

ORDER MADE AFTER APPLICATION

BEFORE) THE HONOURABLE) June 15, 2021
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ON THE APPLICATION OF MNP Ltd. (“**MNP**”), in its capacity as court-appointed receiver and manager (in such capacity, the “**Receiver**”) of all of the assets, undertakings and property (the “**Property**”) of DDK Ventilation Products Ltd. (“**DDK**” or the “**Debtor**”) coming on for hearing at Vancouver, British Columbia on this day and on hearing Fergus McDonnell, counsel for the Receiver; AND UPON READING the material filed, including the Receiver’s Second and Final Report to the Court dated May 28, 2021 (the “**Second Report**”);

THIS COURT ORDERS AND DECLARES THAT:

1. The activities of the Receiver as set out in the Second Report are hereby approved.
2. The Receiver’s statement of receipts and disbursements, in the form attached as Appendix “**A**” to the Second Report, is hereby approved.

3. The fees and disbursements of the Receiver in the amount of \$252,883.93, as summarized in the Second Report, and attached as Appendix “**B**” therein, are hereby approved.

4. The Receiver’s estimated further fees and disbursements of approximately \$8,500, plus applicable taxes, for the period of May 1, 2021 to the completion of this matter be and are hereby approved.

5. The fees and disbursements of the Receiver’s legal counsel, Fasken Martineau DuMoulin LLP (“**Fasken**”), in the amount of \$111,575.38, as set out in the Second Report and Affidavit #1 of Fergus McDonnell affirmed May 28, 2021, are hereby approved.

6. Fasken’s estimated further fees and disbursements of approximately \$11,200, plus applicable taxes, for the period of April 1, 2021 to the completion of this matter be and are hereby approved.

7. The Receiver is hereby authorized and directed to make the following distributions (collectively, the “**Priority Claims**”):

- (i) \$14,351.54 to Service Canada;
- (ii) \$5,927.57 to the Ministry of Finance; and
- (a) \$1,179.27 to WorkSafe BC.

8. After payment of (i) the Priority Claims, (ii) the fees of the Receiver as herein approved, and (iii) the fees and disbursements of Fasken as herein approved, the Receiver shall pay to the Petitioner all funds remaining in its hands, subject to the Receiver maintaining sufficient funds to complete the administration of the receivership.

9. Upon payment of the amounts set out in paragraph 8 hereof and upon the Receiver filing a certificate certifying that it has completed the remaining outstanding activities described in the Second Report, the Receiver shall be discharged as Receiver of the assets, undertakings and property of the Debtor, provided 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 MNP in its capacity as Receiver.

10. MNP, in its capacity as Receiver, shall incur no liability or obligation as a result of its appointment or the carrying out of the provisions of the Order of The Honourable Madam Justice Marzari made March 2, 2020, appointing the Receiver, save and except:

- (a) any gross negligence or wilful misconduct on its part; or
- (b) amounts in respect of obligations imposed specifically on receivers by applicable legislation.

Nothing in this Order shall derogate from the protections afforded MNP, in its capacity as Receiver, by section 14.06 of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended (the “**BIA**”), or by any other applicable legislation.

11. Notwithstanding any provision herein, this Order shall not affect any person to whom notice of these proceedings was not delivered as required by the BIA and regulations thereto, any other applicable enactment or any other Order of this Court.

12. THIS COURT HEREBY REQUESTS the aid and recognition of any court, tribunal, regulatory or administrative body, wherever located, to give effect to this Order and to assist the Receiver and its agents in carrying out the terms of this Order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Receiver, as an officer of this Court, as may be necessary or desirable to give effect to this Order or to assist the Receiver and its agents in carrying out the terms of this Order.

13. Endorsement of this Order by counsel appearing on this application, other than counsel for the Receiver, is hereby dispensed with.

THE FOLLOWING PARTIES APPROVE THE FORM OF THIS ORDER AND CONSENT TO EACH OF THE ORDERS, IF ANY, THAT ARE INDICATED ABOVE AS BEING BY CONSENT:

Signature of Fergus McDonnell
Lawyer for MNP Ltd.

BY THE COURT

REGISTRAR

No. S202352
Vancouver Registry

IN THE SUPREME COURT OF BRITISH COLUMBIA

BETWEEN:

THE TORONTO DOMINION BANK

Petitioner

AND:

DDK VENTILATION PRODUCTS LTD.

Respondent

ORDER MADE AFTER APPLICATION

FASKEN MARTINEAU DuMOULIN LLP

Barristers & Solicitors
2900 - 550 Burrard Street
Vancouver, B.C., V6C 0A3
604 631 3131

Counsel: Fergus McDonnell
Matter No: 278733.00010