

COURT FILE NO. 1701-04209

COURT COURT OF KING'S BENCH OF ALBERTA

JUDICIAL CENTRE CALGARY

IN THE MATTER OF THE RECEIVERSHIP OF DMD
III MORTGAGE INVESTMENT CORPORATION

PLAINTIFF AXCESS CAPITAL ADVISORS INC.

DEFENDANTS DMD MORTGAGE INVESTMENT CORPORATION,
DMD II MORTGAGE INVESTMENT
CORPORATION and DMD III MORTGAGE
INVESTMENT CORPORATIONAPPLICANT MNP LTD. in its capacity as Court-appointed Receiver and
Manager of the assets, undertakings and properties of
DMD III MORTGAGE INVESTMENT
CORPORATIONDOCUMENT **APPLICATION**
(Order for Final Distributions, 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

Torys LLP
4600 Eighth Avenue Place East
525 - Eighth Ave SW
Calgary, AB T2P 1G1
Attention: Kyle Kashuba
Telephone: +1 403.776.3744
Fax: +1 403.776.3800
Email: kkashuba@torys.com
File No. 34004-2004

NOTICE TO RESPONDENT(S):

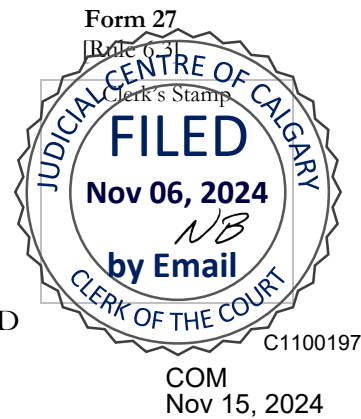
This Application is made against you. You are a Respondent.

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:	Friday, November 15, 2024
Time:	3:00 p.m.
Where:	Calgary Courts Centre, via Webex videoconference (See Schedule "A")
Before Whom:	Mr. Justice C.C.J. Feasby, presiding on the Commercial Duty List

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. MNP Ltd. in its capacity as Court-appointed receiver and manager (the “**Receiver**”) of the assets, undertakings and properties (collectively, the “**Property**”) of DMD III Mortgage Investment Corporation (“**DMD III**” or the “**Debtor**”), seeks an Order, in substantially the form of the proposed Order attached hereto as **Schedule “C”** to this Application, granting relief including but not limited to:
 - 1.1 declaring that the time for service of the within Application and supporting materials be abridged if necessary, that the Application is properly returnable on the scheduled date and that service of the Application on the Service List attached hereto as **Schedule “B”** is validated and deemed to be good and sufficient, and that further service of the Application be dispensed with;
 - 1.2 authorizing and directing the Receiver to make certain distributions to creditors, as set out and described in the Fifth Report of the Receiver dated November 4, 2024 (the “**Fifth Report**”);
 - 1.3 approving the Receiver’s previously undertaken and go-forward actions, conduct and activities and those of the Receiver’s legal counsel, and the Receiver’s statement of receipts and disbursements, as set out and described in the Fifth Report;
 - 1.4 discharging MNP as Receiver of certain of the Property of DMD III, upon the conclusion of the remaining specified and administrative duties as described in the Fifth Report;
 - 1.5 granting leave to the Receiver to apply or reapply to this or any court or administrative body in any province of Canada for advice, assistance and directions as may be necessary to carry out the terms of the Order sought; and
 - 1.6 approving the actions, activities and conduct of the Receiver, and the fees and disbursements of the Receiver and its counsel, Torys LLP, as set out and described in the Fifth Report of the Receiver.
2. Such further and other relief, advice and directions as counsel may advise and this Honourable Court may deem just and appropriate.

Grounds for making this Application:

3. On April 4, 2017, upon the Application of Axxess Capital Partners Inc., MNP Ltd. was appointed by order of the Honourable Justice A.D. Macleod (the “**Receivership Order**”) as Receiver, without security, of all of the current and future assets, undertakings and properties of every nature and kind whatsoever, and wherever situate including all proceeds thereof (the “**Property**”) of DMD III in the within action (the “**Receivership Proceedings**”), and was tasked with amongst other things, identifying claims against the Debtor and their Property.

i. Distributions to Creditors

4. Pursuant to the Claims Process Order granted by Madam Justice B.E.C. Romaine on July 24, 2024, the Receiver was authorized and permitted to conduct a claims procedure in order to canvass, assess and determine the validity, nature and quantum of any creditor claims against DMD III.
5. Following the Court-approved claims process, the Receiver concluded that certain creditor claims out to be permitted, and the Receiver's assessment and conclusions in this regard are set out in the Fifth Report.
6. The Receiver intends to make certain distributions to the proven creditors of DMD III, if approved by the Court, and the terms of the proposed form of Order attached hereto as **Schedule "C"** are necessary to effect these distributions.

ii. Approval of Actions, Conduct and Fees

7. The efforts of the Receiver in relation to the matters discussed and more particularly set out in the Receiver's Fifth Report, have been or will be duly undertaken as part of the Receiver's Court-ordered mandate in these proceedings.
8. All of the actions, conduct and activities in respect of the fees and disbursements incurred by the Receiver and its legal counsel during the course of the administration of the within proceedings as reported in the Receiver's Fifth Report are reasonable and necessary, and have been validly undertaken and incurred in connection with the conduct of the Receiver's obligations herein in relation to the Debtor's Property.

iii. Discharge Order

9. The Receiver has now completed, or is about to complete, all aspects concerning the administration of the within Receivership Proceedings as relates to DMD III.
10. The Receiver is not aware of any reason that it should be required for any further purposes herein, and should be discharged as Receiver of the DMD III Property upon the conclusion of the remaining specified and other administrative duties as described in the Fifth Report.
11. The discharge of the Receiver as proposed is just, appropriate and in the best interest of the administration of the receivership estate and the stakeholders affected thereby.
12. The terms as set out in the proposed form of Order attached hereto as **Schedule "C"** are necessary to effect the discharge of the Receiver.
13. Such further and other grounds as counsel may advise and this Honourable Court may permit.

Material or evidence to be relied on:

14. All pleadings, proceedings, orders, affidavits, reports and other materials filed in Alberta Court of King's Bench Action No. 1701-04209, and the Receivership Order granted by Justice A.D. Macleod on April 4, 2017.
15. The Fifth Report of the Receiver, to be filed.

16. The Affidavit of Service, to be filed.
17. The proposed form of Order attached as Schedule “C” to this Application.
18. The inherent jurisdiction of this Honourable Court to control its own process.
19. Such further and other material and evidence as counsel may advise and this Honourable Court may permit.

Applicable rules:

20. Part 6, Division 7, and in particular Rules 3.2 and 6.47(e) and (f), and such further and other Rules as counsel may advise and that this Honourable Court may permit.

Applicable Acts and Regulations:

21. *Bankruptcy and Insolvency Act*, RSC 1985, c B-3, as amended, the *Judicature Act*, RSA 2000, c J-2, as amended, and such further and other Acts and Regulations as counsel may advise and that this Honourable Court may permit.

Any irregularity complained of or objection relied on:

22. None.

How the Application is proposed to be heard or considered:

23. Oral submissions by counsel at an Application in Commercial List Justice Chambers as agreed and scheduled by counsel, scheduled to be heard on Friday, November 15, 2024 at 3:00 p.m. before the Honourable Mr. Justice C.C.J. Feasby, of the Commercial List.

AFFIDAVIT EVIDENCE IS REQUIRED IF YOU WISH TO OBJECT.

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 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”

Webex Information

SCHEDULE “A”

Webex Information

The above booking is Confirmed

File #(s) : 1701 04209

Style of Cause: AXCESS CAPITAL ADVISORS INC v. DMD MORTGAGE INVESTMENT CORP.; I-III

Date/Duration:

Nov 15, 2024 03:00 PM

Total: 60 Minute(s)

Booking Type/List: Commercial

Purpose of Hearing: Commercial Hearing

Counsel: Kyle David Kashuba;

Special Requirements:

Requirements: Courtroom Required

Equipment: Video Conferencing

Notes: CCM

Counsel: Please ensure that all relevant parties have received Webex information.

Virtual Courtroom 60 has been assigned for the above noted matter:

Virtual Courtroom Link:

<https://albertacourts.webex.com/meet/virtualcourtroom60>

Instructions for Connecting to the Meeting

1. Click on the link above or open up Chrome or Firefox and cut and paste it into your browser address bar.
2. If you do not have the Cisco Webex application already installed on your device, the site will have a button to install it. Follow installation instructions. Enter your full name and email address when prompted
3. Click on the Open Cisco Webex Meeting.
4. You will see a preview screen. Click on Join Meeting.

Key considerations for those attending:

1. Please connect to the courtroom 15 minutes prior to the start of the hearing.
2. Please ensure that your microphone is muted and remains muted for the duration of the proceeding, unless you are speaking. Ensure that you state your name each time you speak.
3. If bandwidth becomes an issue, some participants may be asked to turn off their video and participate by audio only.
4. Note: Recording or rebroadcasting of the video is prohibited.
5. Note: It is highly recommended you use headphones with a microphone or a headset when using Webex. This prevents feedback.

For more information relating to Webex protocols and procedures, please visit:

<https://www.albertacourts.ca/qb/court-operations-schedules/webex-remote-hearings-protocol>

You can also join the meeting via the “Cisco Webex Meetings” App on your smartphone/tablet or other smart device. You can download this via the App marketplace and join via the link provided above.

SCHEDULE “B”

Service List

COURT OF KING'S BENCH OF ALBERTA
COURT FILE NO. 1701-04209

IN THE MATTER OF THE RECEIVERSHIP OF DMD MORTGAGE INVESTMENT
CORPORATION, DMD II MORTGAGE INVESTMENT CORPORATION And DMD III
MORTGAGE INVESTMENT CORPORATION

Service List
(Updated on May 23, 2024)

Party	Mode of Service	Representing
Torys LLP 525 - 8th Avenue SW, 46th Floor, Eighth Avenue Place East Calgary, AB T2P 1G1 Attn: Kyle Kashuba	Email: kkashuba@torys.com	Counsel to the Receiver and Trustee
MNP Ltd. 1500, 640 – 5th Avenue SW Calgary, AB T2P 3G4 Attn: Rick Anderson/ Victor Kroeger	Email: rick.anderson@mnp.ca victor.kroeger@mnp.ca	Receiver and Manager of DMD, DMD II and DMD III Mortgage Investment Corporation, and Trustee of Sun Country Mortgage Investment Corporation
Axcess Capital Advisors Inc. Suite 210, 221 – 62nd Ave SE Calgary, AB Canada T2H 0R5 Attn: Bill Buterman	Email: bill@axcesscapital.com	Axcess Capital Advisors Inc.
Durum Capital Inc. 110 9 Ave SW Suite 1000 Calgary, AB T2P 0T1 Attn: Jeff Lindskog	Email: jeff@durum.ca	Interested Party
Joe Martincic	Joe Martincic Cell: 250-215-0654 Ph: 250-766-2891 E-mail: joemartincic@yahoo.com	Interested Party
Mark Martincic	Mark Martincic Cell 250-575-0087 E-mail: mark_martincic@yahoo.com	Interested Party
Bishop & McKenzie LLP 2200, 555 – 4 Avenue SW Calgary, AB T2P 3E7 Attn: Francis N.J. Taman	Email: ftaman@bmlp.ca	Counsel to Crossroads-DMD Mortgage Investment Corporation
Peter Stanton	Email: pete46@shaw.ca	Interested Party

SCHEDULE “C”

Form of proposed Order

(Order for Final Distributions, Approval of Receiver’s Fees and Disbursements, Approval of Receiver’s Activities, and Discharge of Receiver)

COURT FILE NO. 1701-04209

Clerk's Stamp

COURT COURT OF KING'S BENCH OF ALBERTA

JUDICIAL CENTRE CALGARY

IN THE MATTER OF THE RECEIVERSHIP OF DMD
III MORTGAGE INVESTMENT CORPORATION

PLAINTIFF AXCESS CAPITAL ADVISORS INC.

DEFENDANTS DMD MORTGAGE INVESTMENT CORPORATION,
DMD II MORTGAGE INVESTMENT
CORPORATION and DMD III MORTGAGE
INVESTMENT CORPORATION

APPLICANT MNP LTD. in its capacity as Court-appointed Receiver and
Manager of the assets, undertakings and properties of
DMD III MORTGAGE INVESTMENT
CORPORATION

DOCUMENT **ORDER**
**(Order for Final Distributions, 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

Torys LLP
4600 Eighth Avenue Place East
525 - Eighth Ave SW
Calgary, AB T2P 1G1

Attention: Kyle Kashuba
Telephone: +1 403.776.3744
Fax: +1 403.776.3800
Email: kkashuba@torys.com
File No. 34004-2004

DATE UPON WHICH ORDER WAS PRONOUNCED: November 15, 2024

NAME OF JUSTICE WHO MADE THIS ORDER: Mr. Justice C.C.J. Feasby

LOCATION OF HEARING: Calgary, Alberta

UPON THE APPLICATION by MNP Ltd., in its capacity as Court-appointed receiver and manager (the “**Receiver**”) of the assets, undertakings and properties of DMD III Mortgage Investment Corporation (“**DMD III**”) for an Order for a final distribution of proceeds, approval of the Receiver’s fees and disbursements, approval of the Receiver’s activities, and the discharge of the Receiver; **AND UPON HAVING READ** the Application, the Fifth Report of the Receiver filed November 4, 2024 (the “**Fifth**

Report”), the Affidavit of Service of Samantha Hawley, sworn and filed November 4, 2024 (the “**Affidavit of Service**”) and any other material and evidence filed to date in the within proceedings; **AND UPON HEARING** the submissions of counsel for the Receiver, and from any other interested parties who may be present, with no one appearing for any other person on the service list, although properly served as appears from the Affidavit of Service; **AND UPON IT APPEARING** that all interested and affected parties have been served with notice of this Application;

IT IS HEREBY ORDERED AND DECLARED THAT:

SERVICE

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.

DISCHARGE OF THE RECEIVER

2. The Receiver is hereby authorized to have all of the Debtor’s remaining books and records destroyed.
3. The previously undertaken and go forward actions, conduct and activities of the Receiver and of the Receiver’s counsel as reported in the Receiver’s Fifth Report and in all other reports of the Receiver, are hereby authorized and approved.
4. The Receiver’s accounts for fees and disbursements, as set out in the Receiver’s Fifth Report and other reports filed herein are hereby approved without the necessity of a formal passing of its accounts.
5. The accounts of the Receiver’s legal counsel, Torys LLP, for its fees and disbursements, as set out in the Receiver’s Report and other reports filed herein are hereby approved without the necessity of a formal assessment of those accounts.
6. The Receiver is hereby authorized to pay any remaining professional fees up to the discharge of the Receiver, particulars of which are set out in the Receiver’s Fifth Report.

7. The Receiver's activities as set out in the Receiver's Fifth Report and any other reports filed herein, and the Statement of Receipts and Disbursements as attached to the Receiver's Fifth Report, are hereby ratified and approved.
8. The Receiver is authorized and directed to make the distributions to creditors as set out and described in the Receiver's Fifth Report.
9. 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 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.
10. No action or other proceeding 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 the Court may direct.
11. Upon the Receiver filing with the Clerk of the Court a sworn Affidavit of a licensed Trustee employed by the Receiver, substantially in the form attached hereto as Schedule "A", confirming that:
 - (a) the matters set out in the Receiver's Fifth Report have been completed; and
 - (b) all other minor administrative tasks required of the Receiver have been taken,

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.

MISCELLANEOUS

12. The Receiver is at liberty to apply or reapply to this or any court or administrative body in any province of Canada for further advice, assistance and direction as may be necessary to give full force and effect to, and in carrying out the terms of, this Order.
13. 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.
14. 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

Schedule “A”

Affidavit (Confirming Discharge of the Receiver)

COURT FILE NO. 1701-04209

COURT COURT OF KING'S BENCH OF ALBERTA

JUDICIAL CENTRE CALGARY

Clerk's Stamp

IN THE MATTER OF THE RECEIVERSHIP OF DMD
III MORTGAGE INVESTMENT CORPORATION

PLAINTIFF AXCESS CAPITAL ADVISORS INC.

DEFENDANTS DMD MORTGAGE INVESTMENT CORPORATION,
DMD II MORTGAGE INVESTMENT
CORPORATION and DMD III MORTGAGE
INVESTMENT CORPORATION

APPLICANT MNP LTD. in its capacity as Court-appointed Receiver and
Manager of the assets, undertakings and properties of
DMD III MORTGAGE INVESTMENT
CORPORATION

DOCUMENT **AFFIDAVIT**
(Confirming Discharge of the Receiver)

ADDRESS FOR SERVICE AND CONTACT
INFORMATION OF
PARTY FILING THIS
DOCUMENT

Torys LLP
4600 Eighth Avenue Place East
525 - Eighth Ave SW
Calgary, AB T2P 1G1
Attention: Kyle Kashuba
Telephone: +1 403.776.3744
Fax: +1 403.776.3800
Email: kkashuba@torys.com
File No. 34004-2004

AFFIDAVIT OF RICHARD ANDERSON

Sworn on [■], 2024

I, Rick Anderson, of the City of Calgary, in the Province of Alberta, SWEAR AND SAY THAT:

1. I am a Licenced Insolvency Trustee, and a Vice President with MNP Ltd., which is the Court-appointed receiver and manager (the “**Receiver**”) of the assets, undertakings and properties of DMD III Mortgage Investment Corporation (the “**Debtor**”).

2. Pursuant to the Order granted by the Honourable Justice A.D. MacLeod of the Court of King's Bench of Alberta (the "**Court**") dated April 4, 2017, MNP Ltd. was appointed as the Receiver over the assets, undertakings and properties of the Debtor.

3. Pursuant to an Order (Approval of Receiver's Fees, Disbursements and Activities, and Discharge of Receiver) granted by Justice C.C.J. Feasby dated November 15, 2024 (the "**Discharge Order**"), the Court approved the discharge of the Receiver, subject to the filing an Affidavit in the within form confirming that the Receiver had completed certain other administrative activities required to complete its administration of the Debtor's receivership proceedings in relation to the assets, undertakings, and properties of the Debtor.

4. This will confirm that the Receiver has completed all other activities required to complete its administration of the Debtor's receivership proceedings, including, without limitation, all matters set out in the Receiver's Final Report.

5. I make this Affidavit further to the requirements of the Discharge Order, and understand that upon the filing of this Affidavit, MNP Ltd. will be fully and finally discharged from its capacity as the Receiver of the Debtor.

6. I make this Affidavit for no other or improper purpose.

SWORN before me at the City of)
 Calgary, in the Province of Alberta,)
 this ____ day of [■], 2024)

 A Commissioner for Oaths in and)
 for the Province of Alberta)

 Name: Richard Anderson, LIT