

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



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

C1000165

PLAINTIFF AXCESS CAPITAL ADVISORS INC.

DEFENDANTS (RESPONDENTS) 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 MORTGAGE INVESTMENT CORPORATION, DMD II MORTGAGE INVESTMENT CORPORATION and DMD III MORTGAGE INVESTMENT CORPORATION

DOCUMENT **APPLICATION** (Approval of Receiver's Actions, Conduct and Fees, and Discharge Order)

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
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Email: kkashuba@torys.com
File No. 34004-2004

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:	October 13, 2023
Time:	10:00 a.m.
Where:	Calgary Courts Centre, via WebEx videoconference
Before Whom:	The Honourable Justice Richard A. Neufeld

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. A Discharge Order in substantially the same form as that attached as Schedule “A” to this Application, granting the following relief and directions (the “**Order**”):
 - 1.1 abridging, if necessary, the time for service of this Application and deeming service good and sufficient;
 - 1.2 authorizing and directing MNP Ltd., in its capacity as Court-appointed receiver and manager (the “**Receiver**”) of certain of the assets, undertakings and properties (collectively, the “**Property**”) of DMD Mortgage Investment Corporation (“**DMD I**”), and DMD II Mortgage Investment Corporation (“**DMD II**”) (together, for the purposes of this Application, the “**Debtors**”) as set out and described in the two Reports of the Receiver dated October 2, 2023 (the “**Receiver’s Final DMD and DMD II Reports**”);
 - 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 Receiver’s Final DMD I and DMD II Reports;
 - 1.4 discharging MNP as Receiver of certain of the Property, specifically the assets, undertakings and properties of DMD I and DMD II (collectively, the “**Subject Property**”), upon the conclusion of the remaining specified and administrative duties as described in the Receiver’s Final DMD I and DMD II Reports in connection with the Subject Property; and
 - 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.
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, following the Application of Axxess Capital Advisors Inc., MNP was appointed as Receiver over the Property of the Debtors, by Order of the Honourable Justice A.D. MacLeod (the “**Consent Receivership Order**”) (the subject proceedings referred to herein as the “**Receivership Proceedings**”).

i. Approval of Actions, Conduct and Fees

4. The efforts of the Receiver in relation to the matters discussed and more particularly set out in the Receiver’s Final DMD I and DMD II Reports, have been or will be duly undertaken as part of the Receiver’s Court-ordered mandate in these proceedings.
5. All of the actions and conduct 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 Final DMD I and DMD II Reports 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 Subject Property.

ii. Discharge Order

6. The Receiver has now completed, or is about to complete, all aspects concerning the administration of the within Receivership Proceedings as relates to DMD I, DMD II and the Subject Property.
7. There are certain funds remaining in the receivership estate, which the Receiver intends on using to pay outstanding obligations of the receivership estate and the estimated costs to complete the administration of the estate related to DMD I and DMD II.
8. All of the actions 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 are reasonable, have been validly incurred in connection with the conduct of the Receiver’s obligations herein, and have now been or are about to be completed.
9. 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 Subject Property upon the conclusion of the remaining specified and other administrative duties as described in the Receiver’s Final DMD I and DMD II Reports.

10. For certainty, the Receiver is not seeking approval of professional fees or to be discharged over the assets, undertakings and property of DMD III Mortgage Investment Corporation.
11. The discharge of the Receiver in connection with the Subject Property 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 Discharge Order attached hereto as Schedule "A" are necessary to effect the discharge of the Receiver.

iii. Miscellaneous

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 and other materials filed in the within action, including the Consent Receivership Order.
15. The Receiver's Final DMD I and DMD II Reports.
16. The proposed form of Order attached as Schedule "A" to this Application.
17. The inherent jurisdiction of this Honourable Court to control its own process.
18. Such further and other material and evidence as counsel may advise and this Honourable Court may permit.

Applicable rules:

19. Part 6, Division 7, and in particular Rules 1.3, 3.2, 6.3(1), 6.47(e) and (f), 6.9(1)(b), 11.27, 11.29, and 13.5, and the *Bankruptcy and Insolvency General Rules*, CRC 1985, c 368, as amended, and in particular Rule 11 thereof and such further and other Rules as counsel may advise and that this Honourable Court may permit.

Applicable Acts and Regulations:

20. *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 Rules, Acts and Regulations as counsel may advise and that this Honourable Court may permit.

Any irregularity complained of or objection relied on:

21. None.

How the Application is proposed to be heard or considered:

22. Oral submissions by counsel at an Application in Commercial List Justice Chambers as agreed and scheduled by counsel, before the Honourable Justice Richard A. Neufeld, at the Calgary Courts Centre, on October, 13, 2023, at 10:00 a.m. or as soon thereafter as counsel may be heard.

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"
Proposed Form Of Discharge Order

[See attached]

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

PLAINTIFF AXCESS CAPITAL ADVISORS INC.

DEFENDANTS DMD MORTGAGE INVESTMENT CORPORATION, DMD II
(RESPONDENTS) 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 MORTGAGE
INVESTMENT CORPORATION, DMD II MORTGAGE
INVESTMENT CORPORATION and DMD III MORTGAGE
INVESTMENT CORPORATION

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

ADDRESS FOR SERVICE Torys LLP
AND CONTACT 4600 Eighth Avenue Place East
INFORMATION OF PARTY 525 - Eighth Ave SW
FILING THIS DOCUMENT 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: October 13, 2023

NAME OF JUSTICE WHO MADE THIS ORDER: Justice Richard A. Neufeld

LOCATION OF HEARING: Calgary, Alberta

UPON THE APPLICATION of MNP Ltd., in its capacity as the Court-appointed receiver and manager (the “**Receiver**”) of DMD Mortgage Investment Corporation and DMD II Mortgage Investment Corporation (together, the “**Debtors**”), for an Order for 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 Consent Receivership Order dated April 4, 2017, the two Reports of the Receiver, dated October 2, 2023 (the “**Receiver’s Final DMD I and DMD II Reports**”), and the Affidavit of Service of Jamie Welsh (the “**Affidavit of Service**”); **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** being satisfied that it is appropriate to do so:

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 Debtors’ 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 Final DMD I and DMD II Reports 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 Final DMD I and DMD II Reports 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 Final DMD I and DMD II Reports 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 Final DMD I and DMD II Reports.
7. The Receiver's activities as set out in the Receiver's Final DMD I and DMD II Reports and any other reports filed herein, and the Statement of Receipts and Disbursements as attached to the Receiver's Final DMD I and DMD II Reports, are hereby ratified and approved.
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 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 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.
10. 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 Final DMD I and DMD II Reports 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 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.

11. For certainty, the Receiver is not discharged as Receiver over the assets, undertakings and properties of DMD III Mortgage Investment Corporation.

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"

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COURT COURT OF KING'S BENCH OF ALBERTA

JUDICIAL CENTRE CALGARY

Clerk's Stamp

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PLAINTIFF ACCESS CAPITAL ADVISORS INC.

DEFENDANTS (RESPONDENTS) DMD MORTGAGE INVESTMENT CORPORATION, DMD II
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INVESTMENT CORPORATION

DOCUMENT **AFFIDAVIT** (Confirming 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

AFFIDAVIT OF VICTOR P. KROEGER

Sworn on [■], 2023

I, Victor P. Kroeger, of the City of Calgary, in the Province of Alberta, SWEAR AND SAY THAT:

1. I am a Licenced Insolvency Trustee, and a Senior Vice President with MNP Ltd., which is the Court-appointed receiver and manager (the “**Receiver**”) of the assets, undertakings and properties of DMD Mortgage Investment Corporation and DMD II Mortgage Investment Corporation (together, the “**Debtors**”).
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 Debtors.
3. Pursuant to an Order (Approval of Receiver’s Fees, Disbursements, and Activities and Discharge of Receiver) granted by Justice Richard A. Neufeld dated October 13, 2023 (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 Debtors’ receivership proceedings in relation to the assets, undertakings, and properties of the Debtors.
4. This will confirm that the Receiver has completed all other activities required to complete its administration of the Debtors’ receivership proceedings, including, without limitation, all matters set out in the Receiver’s Final DMD I and DMD II Reports.
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 Debtors, but not as Receiver of DMD III Mortgage Investment Corporation.
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 _____, 2023

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A Commissioner for Oaths in and
for the Province of Alberta

Name: Victor P. Kroeger, LIT