

COURT FILE NUMBER Q.B.G. No. 945 of 2020

COURT OF QUEEN'S BENCH FOR SASKATCHEWAN

JUDICIAL CENTRE REGINA

APPLICANT ELK RIDGE GOLF & CONFERENCE CENTRE INC. and ARNE
PETERSEN

**IN THE MATTER OF THE RECEIVERSHIP OF
ELK RIDGE GOLF & CONFERENCE CENTRE INC.**

NOTICE OF APPLICATION
(Sale Approval and Vesting Order)

NOTICE TO: Those Parties Identified on the Attached Service List

This application is made against you. You are a respondent. You have the right to state your side of this matter before the Court.

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

| | |
|-------|---|
| Where | Court House, 2425 Victoria Avenue, Regina, Saskatchewan |
| Date | 10:00 AM |
| Time | Friday, October 30, 2020 |

Remedy claimed or sought:

1. An Order:
 - (a) Approving and authorizing MNP Ltd. (the "**Receiver**") in its capacity as Receiver of Elk Ridge Golf & Conference Centre Inc. ("**Elk Ridge**") pursuant to the Receivership Order of the Honourable Madam Justice M.R. McCreary issued June 5, 2020 (the "**Receivership Order**") accepting, and authorizing the Receiver to complete, the Offer to Purchase (the "**Resort Sale**") from 102074934 Saskatchewan Ltd. (the "**Purchaser**"), as outlined in the Confidential Addendum (the "**Confidential Addendum**") attached to the First Report of the Receiver dated October 9, 2020, (the "**Receiver's Report**");
 - (b) Approving, authorizing and directing the Receiver to enter into a sale of all or substantially all of the real property, fixtures, chattels, good will, and other

assets more particularly described in, and subject to the terms and conditions set forth in the Asset Purchase Agreement dated October 23, 2020, between the Purchaser and the Receiver, a copy of which have been filed as Schedule "F" of the Confidential Addendum, for the purchase price identified in such Asset Purchase Agreement;

- (c) Vesting the Purchaser with all right, title, and interest in and to, the assets described in the Asset Purchase Agreement, free and clear of all liens, charges, and encumbrances except as provided in the Asset Purchase Agreement;
- (d) Authorizing the Receiver to distribute the sale proceeds as outlined in paragraph 84 of the Receiver's Report;
- (e) Approving the Receiver's activities as described within the First Report and the Second Report (as defined herein) including but not limited to the sales processes, the disbursements of the Receiver, and those of the Receiver's legal counsel as set out herein;
- (f) Authorizing the Receiver to provide the Director of Elk Ridge (Arne Petersen) with 30 days notice to remove any books and records from the Elk Ridge premises and approval for the Receiver to destroy any records not retained by the Director or required by CRA to complete the trust exams;
- (g) Sealing the Confidential Addendum, filed in relation to this matter on the court file; and
- (h) Such further and other relief as counsel may request and this Honourable Court may allow.

2. An Order:

- (a) Approving and authorizing MNP Ltd. in its capacity as Receiver of Elk Ridge pursuant to the Receivership Order accepting, and authorizing the Receiver to complete, the Counter Offer (the "**Under-Developed Land Sale**") made to Trevor and Joanna Peters (the "**Peters**"), as outlined in the Second Report of the Receiver dated October 19, 2020, (the "**Second Report**");
- (b) Approving, authorizing and directing the Receiver to enter into a sale of the lands more particularly described in, and subject to the terms and conditions set forth in, the Counter Offer dated October 14, 2020, between the Peters and

- the Receiver, a copy of which have been filed as Schedule “B” of the Second Report, for the purchase price identified in the identified in such Counter Offer;
- (c) Vesting the Peters with all right, title, and interest in and to, the lands described in the Counter Offer, free and clear of all liens, charges, and encumbrances except as provided in the draft order in respect of the Under-Developed Land Sale; and
 - (d) Such further and other relief as counsel may request and this Honourable Court may allow.

Grounds for making this application:

1. The Receiver makes this application pursuant to section 3 of the Receivership Order of the Honourable Madam Justice M.R. McCreary issued June 5, 2020, which permits the Receiver to, with approval of this Honourable Court, sell the assets of Elk Ridge and apply for any Order(s) necessary to do so.
2. This application concerns two distinct groups of assets of Elk Ridge which comprise all or substantially all of its property.
3. The first is the main Resort property. The Resort Sale (as defined above) concerns these Resort assets. They include all of the operations of the golf course, the restaurant, the hotel, the Conference Centre, and 34 condominiums owned by Elk Ridge.
4. The second group of property, namely four parcels of land located some distance from the resort which are currently not being used commercially, are being sold in the Under-Developed Lands Sale. The Receiver listed four surface parcels located in the R.M. of Buckland with a licensed real estate agent. These under-developed lands were not used in conjunction with the Resort portion of Elk Ridge’s property and as such, were not marketed together with the Resort assets. The Receiver now moves to approve this sale following these assets being listed.
5. In respect of the Resort Sale, prior to the Receiver’s appointment, the Resort portion of Elk Ridge’s property was listed by Colliers International (“**Colliers**”) from September, 2019. Overall, this process resulted in a total of four (4) offers.

6. After its appointment in June, 2020, the Receiver received an offer through the main secured creditor, Conexus Credit Union 2006 (“**Conexus**”). After receipt of this offer, the Receiver solicited further bids from previous bidders to gauge whether more value could be had by recovering a portion of the 2020 golf and holiday season.

7. After two prospective offers failed to materialize, the Receiver embarked on the sales process on or about July 15, 2020, concluding on August 7, 2020 (the “**Sales Process**”). A total of five (5) offers were received through this Sales Process.

8. Following the Sales Process, the Receiver ultimately accepted the bid from New Source Cathodic Inc. (on behalf of 102074934 Saskatchewan Ltd., its affiliate) and negotiated an Asset Purchase Agreement.

9. In addition, CWB National Leasing Inc., the secured creditor/lessor of 100 golf carts used by the golf course, is being paid out their remaining amounts owing pursuant to their leases of the golf carts by the Receiver upon closing of the transaction contemplated herein.

10. The Receiver is of the view that entering into the Asset Purchase Agreement with the Purchaser for the resort assets is commercially reasonable and that:

- (a) the Receiver made sufficient effort to get the best price and has not acted improvidently in the Sales Process;
- (b) the proposed sale is in the interests of all parties and stakeholders;
- (c) the Sales Process was marked by both efficacy and integrity; and
- (d) there has been unfairness in the working out of the process.

11. The particulars of the Sales Process, the accepted offer, and the Asset Purchase Agreement are contained in the Confidential Addendum to the First Report of the Receiver dated October 9, 2020 (the “**Confidential Addendum**”).

12. As such, the Confidential Addendum contains information respecting the market value of the Resort property, and other details of proposed offers to purchase the assets of Elk Ridge. Publicly disclosing this highly sensitive information would be prejudicial to any future

sales process within these proceedings, particularly in the event that the proposed transaction contemplated in this application does not close (for whatever reason).

13. In accordance with the recognized principles governing sales in insolvency proceedings and in accordance with standard practice in Saskatchewan, an order sealing the Confidential Addendum is necessary and appropriate in the circumstances.

Material or evidence to be relied on:

1. This Notice of Application with proof of service;
2. A Draft Sale Approval and Vesting Order in respect of the Resort Sale;
3. A Draft Sale Approval and Vesting Order in respect of the Under-Developed Lands Sale;
4. The First Report of the Receiver dated October 9, 2020 and the Confidential Addendum thereto;
5. The Second Report of the Receiver dated October 19, 2020;
6. The Affidavits of Heather Strendin and Jazmine Colliness sworn October 26, 2020;
7. A Brief of Law;
8. Proof of Compliance with General Application Practice Directive #3 (to be filed); and
9. Such further and other material as this Honourable Court may allow.

Applicable Acts, Regulations, and Jurisprudence:

1. *The Queen's Bench Act, 1998*, SS 1998, c Q-1.01, s. 12.
2. *The Bankruptcy and Insolvency Act*, RSC, 1985, c B-3, ss. 243, 247 and 249.
3. *The Personal Property Security Act*, 1993, SS 1993, c P-6.2, ss. 63-64.

DATED at Regina, Saskatchewan, this 27th day of October, 2020.

KANUKA THURINGER LLP

Per: 

Solicitors for MNP Ltd.

CONTACT INFORMATION AND ADDRESS FOR SERVICE

KANUKA THURINGER LLP

Lawyer in Charge of File: Alexander K.V. Shalashniy
1400 - 2500 Victoria Avenue, Regina, Saskatchewan S4P 3X2

Telephone: 306.525.7200

Fax: 306.359.0590

Email: ashlashniy@kanuka.ca

25120-0045/no
DM 2584443 v1