



No. S231107  
Vancouver Registry

**IN THE SUPREME COURT OF BRITISH COLUMBIA  
IN BANKRUPTCY AND INSOLVENCY**

IN THE MATTER OF THE RECEIVERSHIP OF

EXPLORER MARINE PARTNERS LTD.  
and BLUEWATER RIGGING LTD.

**NOTICE OF APPLICATION**

**Name of applicant: MNP Ltd., Court-appointed Receiver of Explorer Marine Partners Ltd.  
and Bluewater Rigging Ltd.**

**To: All Parties of Record**

TAKE NOTICE that an application will be made by the Receiver to the presiding Judge at the courthouse at 800 Smithe Street, Vancouver, BC V6Z 2E1 on Friday, March 10, 2023, at 9:45 a.m. for the order(s) set out in Part 1 below, and in substantially the same form as set out in Schedule "A" attached hereto.

**Part 1: ORDER(S) SOUGHT**

1. MNP Ltd., in its capacity as Court-appointed receiver (the "**Receiver**") of Explorer Marine Partners Ltd. ("**Explorer**") and Bluewater Rigging Ltd. ("**Bluewater**", and together with Explorer, the "**Debtors**"), seeks an Order substantially in the form attached hereto as **Schedule "A"**:
  - (a) declaring that the within Application is properly returnable and that service of this Application and supporting materials on the service list established in these proceedings is deemed good and sufficient;
  - (b) authorizing the Receiver to enter into an auction services agreement (the "**Auction Agreement**") with Able Solutions Inc. ("**Able Auctions**") on the terms set out in the Able Auctions proposal dated February 24, 2023 between Able Auctions and the Receiver, a copy of which is attached to the First Report of the Receiver dated March 2, 2023 (the "**First Report**");
  - (c) authorizing Able Auctions to conduct an auction in respect of certain of the Debtors' assets (the "**Auction Assets**") in accordance with the terms of the Auction Agreement (the "**Auction**");

- (d) notwithstanding the provisions of paragraph 3(l) of the Receivership Order granted in this proceeding by the Honourable Justice Power on February 16, 2023 (the "**Receivership Order**"), vesting in the purchaser(s) at such Auction the Debtors' right, title and interest in and to the Auction Assets free and clear of any claims and encumbrances;
- (e) approving the actions, conduct and activities of the Receiver as outlined in the First Report; and
- (f) such further and other relief as counsel may request and this Honourable Court may deem appropriate.

## **Part 2: FACTUAL BASIS**

1. Capitalized terms not defined herein have the meanings set out in the First Report.
2. On February 16, 2023 MNP Ltd. was appointed Receiver over the Property of the Debtors, by Order of the Honourable Justice Power.
3. The Debtors' primary business prior to the Receivership Order was providing mechanical, electrical and structural repair services in the marine industry. On or about January 3, 2023 the Debtors ceased operations and terminated their employees.
4. The Debtors operated their businesses from four locations: (1) Granville Island; (2) Shelter Island; (3) Campbell River; and (4) North Vancouver.
5. The Auction Assets consist primarily of parts, inventory and tools used for marine servicing and relate to the Debtors' locations at Granville Island, Campbell River and North Vancouver. The Auction Assets have an estimated liquidation value of between \$300,000 and \$400,000 pursuant to an appraisal conducted by Timeline Asset Services Ltd. dated January 23, 2023.
6. The Debtors owe approximately \$1.4 million plus accrued interest and legal costs to The Canadian Imperial Bank of Commerce ("**CIBC**"). CIBC is the fulcrum creditor of the Debtors.
7. As at the date of the Receivership Order certain of the Debtors' landlords including the Granville Island and Shelter Island locations, had already engaged a bailiff to seize and remove the Debtors' assets from their premises. The assets of the Debtors located at the Granville Island location were removed on February 16, 2023 and delivered to Able Auctions pursuant to the landlord's instructions with an auction originally scheduled to be held the week of March 6, 2023. As a result of the Receivership Order the auction for the Granville Island assets is now scheduled to be held on March 17, 2023.
8. The Debtors' assets located at the Campbell River location remain in place and an on-site auction is scheduled to be held on March 7, 2023 as the costs of removal and storage costs for these assets would have been significant. However, the landlord requires that the Debtors vacate the premises by on or before March 15, 2023.

9. The Debtors' assets located at the North Vancouver location were removed and are being stored at Able Auctions in advance of the proposed auction date of March 17, 2023.
10. As set out above, Able Auctions proposes to conduct an on-site auction at the Campbell River location on March 7, 2023 and on March 17, 2023 for the Granville Island and North Vancouver locations. Able Auctions will charge a selling commission of 25% and has agreed to waive all storage fees.
11. The Receiver recommends the Auction Agreement in respect of the Auction Assets as it will result in the monetization of the same in a timely manner. Able Auctions is familiar with the Auction Assets as a result of already being engaged by certain of the Debtors' landlords and in the event the within Application is not granted the Receiver will have to make alternate arrangements for the Auction Assets which will significantly impact the net recovery available to the Debtors' stakeholders.

### **Part 3: LEGAL BASIS**

1. The Receivership Order authorizes the Receiver to, among other things:
  - (a) market any or all of the Property (as defined in the Receivership Order), including advertising and soliciting offers in respect of the Property or any part or parts thereof and negotiating such terms and conditions of the sale as the Receivership Order considers appropriate;
  - (b) to sell, convey, transfer, lease or assign the Property or any part or parts thereof out of the ordinary course of business:
    - (i) without the approval of this Court in respect of any transaction not exceeding \$50,000, provided that the aggregate consideration for all such transactions does not exceed \$100,000; and
    - (ii) with the approval of this Court in respect of any transaction in which the purchase price or the aggregate purchase price exceeds the applicable amount set out in the preceding clause;and in each such case notice under subsection 60(8) of the *Personal Property Security Act*, RSA 2000, c. P-7 or any other similar legislation in any other province or territory shall not be required.
  - (c) to apply for any vesting order or other orders (including, without limitation, confidentiality or sealing orders) necessary to convey the Property or any part or parts thereof to a purchaser or purchasers thereof, free and clear of any liens or encumbrances affecting such Property; and
  - (d) to engage consultants, appraisers, agents, experts, auditors, accountants, managers, counsel and such other persons from time to time and on whatever basis, including on a temporary basis, to assist with the exercise of the Receiver's powers and duties, including, without limitation, those conferred by this Order.

2. In *Royal Bank of Canada v. Soundair Corp.* the Court identified several considerations that must be taken into account when deciding whether to approve a sale negotiated by a Court-appointed receiver, including:

- (a) whether the receiver made sufficient efforts to obtain the best price and did not act improvidently;
- (b) the interest of all parties;
- (c) the efficacy and integrity of the process by which offers were obtained; and
- (d) whether there has been any unfairness in the sale process.

*Royal Bank v. Soundair Corp.*, 1991 CarswellOnt 205 [*Soundair*], at para 16

3. Courts will defer to the expertise and judgment of a Court-appointed receiver in the method of sale of a debtor's assets.

*Soundair*, at paras 14-16; see also *Kruger v. Wild Goose Vintners Inc.*, 2021 BCSC 1408 at para 27

4. Only in exceptional circumstances will the Court intervene or proceed contrary to a receiver's recommendations to approve a sale if it is satisfied that the receiver acted reasonably, prudently, fairly and not arbitrarily.

*Soundair*, at para 58

5. The Receiver recommends the Auction Agreement for the following reasons, among others:

- (a) Able Auctions' commission is reasonable for a file of this nature having regard for the industry standard of between 25-30%;
- (b) Able Auctions is not charging storage fees for the Auction Assets held at their locations, which reduces the holding costs of the assets;
- (c) Able Auctions is familiar with the Debtors' assets;
- (d) The proposed Auction represents the most efficient process to liquidate the Debtors' assets and will result in the highest net recovery; and
- (e) An alternate process would be costly and time consuming and given that the Auction Assets are not unique, and would negatively impact the recovery available to the Debtors' stakeholders.

6. CIBC supports the within Application.

**Part 4: MATERIAL TO BE RELIED ON**

1. The Receivership Order granted February 16, 2023;
2. First Report of the Receiver, dated March 2, 2023; and
3. Such further and other materials as counsel may advise and this Honourable Court may permit

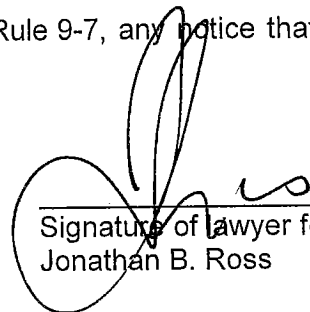
The Receiver estimates that this application will take 15 mins

- This matter is within the jurisdiction of a master.
- 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) serve on the applicant 2 copies of the following, and on every other party 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).

Date: March 6, 2023

  
\_\_\_\_\_  
Signature of lawyer for the Receiver  
Jonathan B. Ross

To be completed by the court only:

Order made

[ ] in the terms requested in paragraphs \_\_\_\_\_ of Part 1 of this notice of application

[ ] with the following variations and additional terms:

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

Date: \_\_\_\_\_ Signature of  Judge  Master

**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

SCHEDULE "A"

No. S231107  
Vancouver Registry

IN THE SUPREME COURT OF BRITISH COLUMBIA  
IN BANKRUPTCY AND INSOLVENCY

IN THE MATTER OF THE RECEIVERSHIP OF

EXPLORER MARINE PARTNERS LTD.  
and BLUEWATER RIGGING LTD.

ORDER MADE AFTER APPLICATION  
(APPROVAL OF AUCTION AGREEMENT)

BEFORE THE HONOURABLE

)  
)  
)  
)

MARCH 10, 2023

ON THE APPLICATION of MNP Ltd., in its capacity as Court-appointed Receiver and Manager (in such capacity, the "**Receiver**") of the undertaking, property and assets of Explorer Marine Partners Ltd. and Bluewater Rigging Ltd. (collectively, the "**Debtors**") for an Order, among other things: (i) authorizing the Receiver to enter into an auction agreement (the "**Auction Agreement**") with Able Solutions Inc. o/a Able Auctions (the "**Auctioneer**") on the terms set out in the Auctioneer's proposal dated February 24, 2023 between the Auctioneer and the Receiver, a copy of which is attached to the First Report of the Receiver dated March 2, 2023 (the "**First Report**"); (ii) authorizing the Receiver and Auctioneer to conduct an auction (the "**Auction**") in respect of the Debtors' assets recovered from the Granville Island and North Vancouver locations (the "**Auction Assets**") on March 17, 2023; and (iii) vesting in each purchaser at the Auctions (each, a "**Purchaser**") the Debtors' right, title and interest in and to such Auction Assets, or any portion thereof, free and clear of any claims and encumbrances, coming on for hearing this day at Vancouver, British Columbia.

AND ON READING the Receivership Order of the Honourable Justice Power, granted February 16, 2023; AND UPON READING the First Report; AND ON HEARING Jonathan B. Ross, Counsel for the Receiver and for the Canadian Imperial Bank of Commerce and other counsel as listed on Schedule "A" hereto, and no one else appearing, although duly served.

THIS COURT ORDERS AND DECLARES that:

**SERVICE**

1. The date for service of the Notice of Application herein and supporting materials is abridged to the date of actual service.

## APPROVAL OF AUCTION AGREEMENT

2. The Receiver is hereby authorized but not obliged to enter into the Auction Agreement between the Receiver and the Auctioneer and the Receiver and the Auctioneer are authorized to conduct the Auction.
3. The Receiver is hereby authorized and directed to take such additional steps and execute such additional documents as may be necessary or desirable for the completion of the Auctions.
4. Notwithstanding the provisions of paragraph 3(l) of the Receivership Order, upon:
  - (a) the Auctioneer completing a sale of the Auction Assets, or any portion thereof, to a Purchaser at the Auctions;
  - (b) receipt by the Auctioneer from such Purchaser of the purchase price determined at the Auctions for the Auction Assets, or any portion thereof; and
  - (c) delivery by the Auctioneer to such Purchaser of a bill of sale or similar documentary evidence of purchase and sale (the "**Purchaser's Bill of Sale**"),  
  
(each an "**Auction Transaction**" and collectively, the "**Auction Transactions**")

all of the Debtor's right, title and interest in and to the Auction Assets, or any portion thereof, purchased by such Purchaser at the Auctions and described in such Purchaser's Bill of Sale shall vest absolutely in the name of such Purchaser (or its nominee), free and clear of and from any and all caveats, security interests, hypothecs, pledges, mortgages, liens, trusts or deemed trusts, reservations of ownership, royalties, options, rights of pre-emption, privileges, interests, assignments, actions, judgments, executions, levies, taxes, writs of enforcement, charges, or other claims, whether contractual, statutory, financial, monetary or otherwise, whether or not they have attached or been perfected, registered or filed and whether secured, unsecured or otherwise (collectively, the "**Claims**") including, without limiting the generality of the foregoing:

- (a) any encumbrances or charges created by the Receivership Order; and
- (b) all charges, security interests or claims evidenced by registrations pursuant to the *Personal Property Security Act* (British Columbia) or any other personal property registry system;

and, for greater certainty, this Court orders that all of the encumbrances affecting or relating to the Auction Assets, or any portion thereof purchased by a Purchaser at the Auction and described in the Purchaser's Bill of Sale, are hereby expunged and discharged as against the Auction Assets, or the applicable portion thereof.

5. From and after the closing of each of the Auction Transactions (including the payment of the purchase price by the Purchaser to the Auctioneer), the Receiver or the Auctioneer are authorized to discharge from the Personal Property Registry any claim registered



against the Auction Assets or the portions thereof being purchased by the Purchaser, to the extent the security interest is registered against the interest of the Debtors.

6. Upon the completion of all of the Auction Transactions to the satisfaction of the Receiver, the Receiver shall file a certificate substantially in the form attached hereto as Schedule "B" certifying that the Auction Transactions have closed.
7. For the purposes of determining the nature and priority of Claims, the net proceeds from the sale of the Auction Assets at the Auction shall stand in the place and stead of the Auction Assets, and from and after the delivery of the Purchaser's Bill of Sale all Claims and Encumbrances shall attach to the net proceeds from the sale of the Auction Assets with the same priority as they had with respect to the Auction Assets immediately prior to their sale at Auction, as if the Auction Assets had not been sold and remained in the possession or control of the person having that possession or control immediately prior to the sale. Unless otherwise ordered (whether before or after the date of this Order), the Receiver shall not make any distributions to creditors of net proceeds from sale of the Auction Assets without further order of this Court, provided however the Receiver may apply any part of such net proceeds to repay any amounts the Receiver has borrowed for which it has issued a Receiver's Certificate pursuant to the Receivership Order.
8. The Purchaser (and its nominee, if any) shall, by virtue of the completion of the Auction Transaction, have no liability of any kind whatsoever in respect of any Claims against the Debtors.
9. The Debtors and all persons who claim by, through or under the Debtors in respect of the Auction Assets, and all persons or entities having any Claims of any kind whatsoever in respect of the Auction Assets, shall stand absolutely and forever barred, estopped and foreclosed from and permanently enjoined from pursuing, asserting or claiming any and all right, title, estate, interest, royalty, rental, equity or other Claim whatsoever in respect of or to the Auction Assets and, to the extent that any such persons or entities remain in possession or control of any of the Auction Assets, or any artifacts, certificates, instruments or other indicia of title representing or evidencing any right, title, estate, or interest in and to the Auction Assets, they shall forthwith deliver possession thereof to the Purchaser (or its nominee).
10. The Purchaser (or its nominee) shall be entitled to enter into and upon, hold and enjoy the Auction Assets for its own use and benefit without any interference of or by the Debtors, or any person claiming by or through or against the Debtors.
11. Notwithstanding:
  - (a) the pendency of these proceedings;
  - (b) any applications for a bankruptcy order now or hereafter issued pursuant to the *Bankruptcy and Insolvency Act* (Canada) in respect of the Debtors and any bankruptcy order issued pursuant to any such applications; and
  - (c) any assignment in bankruptcy made in respect of the Debtors,

the vesting of the Auction Assets, or any portion thereof, in the applicable Purchaser (or its nominee) pursuant to this Order shall be binding on any trustee in bankruptcy that may

be appointed in respect of the Debtors and shall not be void or voidable by creditors of the Debtor, nor shall it constitute nor be deemed to be a settlement, fraudulent preference, assignment, fraudulent conveyance, transfer at undervalue, or other reviewable transaction under the *Bankruptcy and Insolvency Act* (Canada) or any other applicable federal or provincial legislation, nor shall it constitute oppressive or unfairly prejudicial conduct pursuant to any applicable federal or provincial legislation.

12. The Receiver, the Purchaser (or its nominee) and any other interested party, shall be at liberty to apply for further advice, assistance and direction as may be necessary in order to give full force and effect to the terms of this Order and to assist and aid the parties in closing the Auction Transactions.

**13. MISCELLANEOUS**

14. This Honourable Court hereby requests the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or any of its provinces or territories or in any foreign jurisdiction, to act in aid of and to be complimentary to this Court in carrying out the terms of this Order, 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 the 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.

15. This Order must be served only upon those interested parties attending or presented 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.

16. Service of this Order on any party not attending this application is hereby dispensed with.

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

APPROVED BY:

\_\_\_\_\_  
Signature of Jonathan B. Ross  
Counsel for the Receiver

BY THE COURT

\_\_\_\_\_  
REGISTRAR

SCHEDULE "A"

SCHEDULE "A"  
To Form of Order  
OTHER COUNSEL

<u>Counsel</u>	<u>Appearing for</u>

**SCHEDULE "B"**

No. S231107  
Vancouver Registry

**IN THE SUPREME COURT OF BRITISH COLUMBIA  
IN BANKRUPTCY AND INSOLVENCY**

IN THE MATTER OF THE RECEIVERSHIP OF

EXPLORER MARINE PARTNERS LTD.  
and BLUEWATER RIGGING LTD.

**RECEIVER'S CERTIFICATE**

**RECITALS**

- A. Pursuant to an Order of the Supreme Court of British Columbia (the "**Court**") dated February 16, 2023 MNP Ltd. was appointed as the receiver (in such capacity, the "**Receiver**") without security, of the assets, undertakings and properties of Explorer Marine Partners Ltd. and Bluewater Rigging Ltd. (collectively, the "**Debtors**"), including all proceeds.
- B. Pursuant to an Order of the Court dated [NTD], 2023, the Court approved the auction proposal made as of February 24, 2023 (the "**Auction Agreement**") between the Receiver and Able Solutions Inc. o/a Able Auctions pursuant to which one or more auction transactions were authorized to be completed in accordance with the terms of the Auction Agreement (the "**Auction Transactions**").

**THE RECEIVER CERTIFIES THE FOLLOWING:**

1. The Auction Transactions have been completed to the satisfaction of the Receiver.

DATED the \_\_\_\_ day of \_\_\_\_\_, 2023.

MNP LTD., solely in its capacity as Receiver  
of Explorer Marine Partners Ltd. and  
Bluewater Rigging Ltd., and not in its personal  
capacity

Per: \_\_\_\_\_

Name:

Title:

No. S231107  
Vancouver Registry

**IN THE SUPREME COURT OF BRITISH COLUMBIA  
IN BANKRUPTCY AND INSOLVENCY**

IN THE MATTER OF THE RECEIVERSHIP OF  
EXPLORER MARINE PARTNERS LTD.  
and BLUEWATER RIGGING LTD.

---

**ORDER  
(APPROVAL OF AUCTION AGREEMENT)**

---

**GOWLING WLG (Canada) LLP**  
Barristers & Solicitors  
Suite 2300, 550 Burrard Street  
Vancouver, BC V6C 2B5  
**Attention: Jonathan B. Ross**

Tel. No. 604.683.6498  
Fax No. 604.683.3558

File No. H233382

JBR/msh

No. S231107  
Vancouver Registry

**IN THE SUPREME COURT OF BRITISH COLUMBIA  
IN BANKRUPTCY AND INSOLVENCY**

IN THE MATTER OF THE RECEIVERSHIP OF

EXPLORER MARINE PARTNERS LTD.  
and BLUEWATER RIGGING LTD.

---

**NOTICE OF APPLICATION**

---

**GOWLING WLG (Canada) LLP**  
Barristers & Solicitors  
Suite 2300, 550 Burrard Street  
Vancouver, BC V6C 2B5  
**Attention : Jonathan B. Ross**

Tel. No. 604.683.6498  
Fax No. 604.683.3558

File No. H233382

JRB/msh