

COURT FILE NUMBER	KBG-RG-00909-2023
COURT	COURT OF KING'S BENCH FOR SASKATCHEWAN IN BANKRUPTCY AND INSOLVENCY
JUDICIAL CENTRE	REGINA
APPLICANT	AFFINITY CREDIT UNION 2013.
RESPONDENT	F & L CONCRETE SERVICES LTD.

**FIRST REPORT OF THE RECEIVER,  
MNP LTD., DATED AUGUST 15, 2023**

### **Introduction and Purpose of the Report**

1. MNP Ltd. was appointed Receiver (the "**Receiver**") of F & L Concrete Services Ltd. ("**F&L**" or the "**Company**"), pursuant to an Order of the Court of King's Bench of Alberta granted on August 3, 2023 (the "**Receivership Order**").
2. F&L provides residential, industrial, and commercial concrete solutions to customers in southeastern Saskatchewan, Estevan, and surrounding areas.
3. In accordance with a Corporate Registry Search conducted on April 19, 2023, Norman Fichter and Christopher Fichter are each listed as the sole directors and officers of the Company while Norman Fichter is listed as the sole shareholder. A copy of the April 19, 2023, Corporate Registry Search is attached as **Schedule "A"**.
4. Since its appointment, the Receiver has primarily dealt with Christopher Fichter in his capacity as a director and officer of the Company. The Receiver also understands that Christopher Fichter has been managing the day-to-day operations for a period of time. For the purposes of the First Report, any reference to "**Mr. Fichter**" will refer to Christopher Fichter.
5. This is the Receiver's First Report to Court (the "**First Report**") and its purpose is to inform the Court with respect to the following matters:
  - the activities of the Receiver since its appointment;
  - asset location and identification; and
  - conduct issues encountered with management;
6. In preparing the First Report and making comments herein, the Receiver has been provided with, and has relied upon, certain unaudited, draft and/or internal financial information of the Company, the Company's books and records, and information from other third-party sources (collectively, the "**Information**"). The Receiver has not audited, reviewed or otherwise attempted to verify the accuracy or completeness of the Information in a manner that would wholly or partially comply with generally accepted assurance standards or other standards established by the Chartered Professional Accountants of Canada.

## Activities of the Receiver

### *Discussions surrounding potential ongoing operations*

7. On August 8, 2023, three employees of the Receiver attended the business premises of F&L located at 101 Claman Drive in Estevan Saskatchewan (the "**Business Premises**"). Upon arrival, the Receiver initially met with the controller, Mr. Kurt Schmidt ("**Mr. Schmidt**"). Mr. Fichter was not immediately present during the Receiver's initial meeting at the Business Premises. For the purposes of the First Report, any reference to "**Management**" will refer collectively to Mr. Fichter and Mr. Schmidt.
8. Upon the Receiver's arrival, the Company was operating as it normally would with employees and equipment spread out at various sites in or around Estevan, Saskatchewan.
9. The immediate discussion posed to the Receiver surrounded that of the possibility of continued operations of the Company. During those discussions the Receiver advised Mr. Schmidt that in order to appropriately consider ongoing operations it would require detailed financial information to determine if continued operations would be economical in the circumstances.
10. The Receiver further advised Mr. Schmidt that, provided the financial detail was immediately obtained, the Receiver would require adequate time to review the financial records to properly assess whether ongoing operations would be in the best interest of the Receivership estate. In the interim, the Receiver communicated that its approach would be to halt operations until such time that the financial information was provided, and an appropriate decision could be made.
11. In order to assess the viability of operations, the Receiver made requests of Mr. Schmidt for (among other things) copies of contracts, copies of work orders, details, on a job-by-job basis, of the estimated revenue to be collected and costs to be incurred and copies of projected or historical cash flow statements and financial statements;
12. In response to the request for financial information, Mr. Schmidt advised the Receiver that:
  - a) Most work was quoted verbally based on proposed rates, so copies of customer quotes were not available;
  - b) The Company had not prepared historical or projected cashflow statements since prior to the Covid-19 Pandemic;
  - c) The Company's records were only recently submitted to its accountant and financial statements were not current;
  - d) The Company could not accurately state with certainty the amount of work left to completed pursuant to ongoing customer contracts as invoicing had not been completed since June 30, 2023;
  - e) The data could all be mined from the Company's QuickBooks file and compiled by the Receiver; and,
  - f) The Receiver should assume the company is working in good faith and rely on the representations of Management in making the decision to operate.
13. Mr. Fichter also briefly met with the Receiver on the afternoon of August 8, 2023. Following discussions with Mr. Fichter and Mr. Schmidt, the Receiver consented to certain work being performed on Wednesday, August 9, 2023, which was limited to work on three specific job sites known and referred to by the Company as Tundra, Anova, and Vermillion. The Receiver allowed this work to move forward as Mr. Fichter advised that it was a particularly lucrative day (approxiamtely

\$55,000 of revenue) and since this work was pursuant to a purchaser order (i.e., not a contract), the likelihood of accounts receivable collection was high.

14. The Receiver explained to Mr. Schmidt and Mr. Fichter that it would not be in a position to authorize any further work without the required financial data outlined above as evidence that the Company was profitable and that there was certainly that operations would result in a net positive benefit to the Receivership Estate.
15. Neither Mr. Schmidt nor Mr. Fichter provided or was able to provide the Receiver with any of the requested financial detail which would allow the Receiver to expeditiously and properly assess the viability of ongoing operations.
16. Ultimately, the Receiver determined that it was appropriate in the circumstances to cease operations and terminate the staff for the following reasons:
  - a) Firstly, the Receiver is authorized but not obligated to carry on operations of a business where there is no clear and compelling information that doing so is in the best interest of stakeholders;
  - b) The Company's records were not in a state where the Receiver was able to readily retrieve the required data to make an informed operating decision and Management was unable to produce records to substantiate that ongoing operations would result in a net benefit to the Receivership estate;
  - c) The Receiver is not an entrepreneur and does not operate under a risk model that has the potential to cause significant losses to the Receivership estate and to the Company's stakeholders;
  - d) The costs to operate the Company are significant such that operating blindly, even for a few days, could be detrimental. For example, Mr. Schmidt advised that the payroll cost for the current two week pay period was approximately \$80,000 and that fuel costs were "up to \$20,000 per day"; and,
  - e) Further, as set out in more detail below, the Receiver has serious concerns about the Management's conduct and ability to work in good faith in the ongoing management of the operations of the Company.
17. On Wednesday, August 9, 2023, the Receiver met with the Company's staff and notified them of the Receivership proceedings and the intent to halt operations at the end of the working day. The Receiver also informed the staff that only those who were scheduled to work at either Tundra, Vermillion or Anova were authorized by the Receiver to work on August 9<sup>th</sup> and that all equipment would be required to be returned to F&L's yard at the Business Location (the "**Yard**") by the end of the workday.
18. Where staff was not present, the Receiver phoned each employee to notify of the Receivership proceedings and the resulting termination.

#### *Possession and Preservation of Assets*

19. In addition to the activities above, the Receiver has also taken the following (non-exhaustive) steps in an effort to locate, retrieve and secure the Company's assets:
  - a) engaged the services of a locksmith to change the locks to the Business Premises, the Yard and the associated exterior building(s):

- b) installed new locks to secure a separate F&L owned location, not originally disclosed to the Receiver, and known as the "Wash Plant";
- c) conducted a photo and physical inventory of all equipment and assets located at the Business Premises, Yard and Wash Plant.
- d) contacted the insurance company to confirm the status of the existing insurance policy and payment of monthly premiums and arranged to carry on existing insurance coverage;
- e) contacted each of Royal Bank of Canada ("RBC") and Canadian Imperial Bank of Commerce ("CIBC") to request the bank accounts to be set to deposit only status.
- f) Made arrangements with RBC directly to allow the pre-receivership payroll to clear the Company's bank account so that staff would be paid on Friday, August 11th as scheduled;
- g) Obtained time-sensitive financial reports and a back-up from the Company's QuickBooks accounting program;
- h) Collected relevant physical books and records of the Company required for the administration of the Receivership;
- i) Arranged to continue utility services for the Business Premises;
- j) Engaged a former employee to complete remaining accounts receivable invoicing, employee T4's, Records of Employment, and final payroll calculations;
- k) Engaged McDougall Auctions to assist the Receiver with locating and securing equipment;
- l) Engaged Cavers Investigations & Bailiff Services Inc. ("Cavers") to assist in locating and securing assets where locations were unknown and/or undisclosed;
- m) Engaged overnight static security guard services at the Business Premises for the initial 10 days or the Receiver's appointment;
- n) Engaged a property manager to commence security checks at the business premises (following the release of the static guard services) for both preservation and insurance purposes; and,
- o) prepared and issued its Notice and Statement of Receiver in accordance with Section 245 of the Bankruptcy and Insolvency Act ("BIA").

#### *Identification of Assets*

20. The Receiver compiled a baseline listing of the assets currently owned (or thought to be owned) by the Company. In doing so, the Receiver has relied on information contained in the material filed by the Company in the within action, a search conducted of the Personal Property Registry, an asset listing supplied by Management and the schedule(s) of assets identified in the Company's insurance policy.
21. In addition to physical assets and equipment, F&L also holds title to several parcels of lands which are legally described as:
- a) Lot 19-Blk/Par 80-Plan C3929 Ext 0;
  - b) Lot 19-Blk/Par 102- Plan C3929 Ext 0;
  - c) Blk/Par P-Plan 10196871 Ext 0;

- d) SW-18-02-07-2 Ext 2; and,
  - e) Blk/Par A-Plan 101546108 Ext 18.
22. A copy of land title search in the name of the Company dated August 10, 2023, is attached as **Schedule "B"**.
23. The Receiver also understands that the Company owns a significant quantity of aggregate located in various pits in or around southeastern Saskatchewan. Despite repeated requests, the Receiver has not been given specific locations by the Company, however, the Receiver continues to work with third parties to locate the aggregate.

### **Conduct of Management**

24. As noted above, the Receiver met with Management during its initial attendance at the Business Premises on August 9<sup>th</sup>. Immediately, the Receiver was met with resistance, particularly when the Receiver explained that in absence of complete and compelling financial analysis provided by the Company, operations would not carry on as usual.
25. Since its appointment, the Receiver has experienced several issues that led the Receiver to believe that Management has not been acting in good faith and has, in some instances, taken deliberate actions with appear to have the effect of deceiving the Receiver and concealing the Company's assets.
26. The following instances summarize the lack of cooperation and difficulties the Receiver has encountered in carrying out its mandate in accordance with the Receivership Order:
- a) On August 9, 2023, despite only authorized by the Receiver to work on a limited number of projects, Management appears to have instructed its employees to carry operations as normal, which included the use of the Company assets at undisclosed job sites;
  - b) On August 9, 2023, when Company equipment was due to be returned to the Yard, four of the Company's employees advised the Receiver that it could not return the semi-units they were driving as they were either broken down or stuck on job sites needing to be towed. The employees also refused to confirm the location of the broken-down vehicles with the Receiver;
  - c) The Wash Plant location was not originally disclosed to the Receiver, however after obtaining a copy of the land title search at the Business Premises the Receiver questioned Mr. Schmidt about the use of the lands was advised by Mr. Schmidt that it was a location of non-importance.
  - d) The Receiver attended the Wash Plant on the evening of August 9<sup>th</sup> where it located a large quantity of assets (including the four semi-trucks mentioned in paragraph 26. b) above) that had allegedly been broken down at job sites);
  - e) Despite repeated requests, Management has still not provided the Receiver with the coordinates of any/all sites where aggregate is stored;
  - f) Despite repeated requests, Management has not confirmed to the Receiver which equipment is currently on rent to customers;
  - g) Despite repeated requests, Management has not responded to the Receiver's request for full disclosure on the Company's assets, including those identified by the Receiver from the books and records but not physically located; and,

- h) The Receiver has concerns that the Company and/or Management may be operating in some capacity while utilizing the Company's equipment. The Receiver has sought confirmation on this but has received no substantive response to date.
27. In addition to the issues outlined above, the Receiver has encountered significant resistance in adherence to the terms Receivership Order. Based on the content of correspondence between the Receiver's counsel and Counsel to the Company and/or Mr. Fichter, the Receiver has received multiple threats of impending actions for gross negligence and misinterpretations of the Receiver's powers under the Order, which has had the effect of increasing the cost of proceedings and creating inefficiencies in the Receiver's work. Attached as **Schedule "C"** is a copy of the following correspondence:
- a) Two letters dated August 8, 2023, from Fisher & Schmidt Law Office ("**Company's Counsel**") to Robertson Stromberg LLP ("**Receiver's Counsel**").
  - b) A letter response dated August 8, 2023, from the Receiver's counsel to Company's Counsel;
  - c) A letter dated August 10, 2023 from the Company's Counsel to the Receiver's counsel;
  - d) A letter response dated August 10 from the Receiver's Counsel to the Company's Counsel;
  - e) A letter dated August 10, 2023, from the Company's Counsel to the Receiver's Counsel;
  - f) A letter response dated August 11, 2023, from the Receiver's Counsel to the Company's Counsel; and,
  - g) A letter response dated August 15, 2023, from the Receiver's Counsel to the Company's Counsel
28. It is clear based on the content of the letters set out in Schedule C that the Company and the Company's counsel have misinterpreted the terms of the Receivership Order, including the powers within which the Receiver is authorized by the Court to carry out its mandate.
29. It is also evident in the correspondence that the Company has not provided any substantive responses to the questions posed by the Receiver.
30. Due to the lack of cooperation and refusal to comply with the Order, the Receiver has had to engage Cavers and utilize other resources to attempt to identify, locate and preserve the assets of the Company.
31. The Receiver believes that Mr. Fichter may be in possession of certain property owned by the Company which is stored at his personal residence located at NW-14-3-8-W2 in the regional municipality of Estevan.
32. In the event that Mr. Fichter does not voluntarily comply, the Receiver intends to seek an order of the Court which would allow Cavers to attend to and access Mr. Fichter's premises for the purposes of locating and retrieving Company assets.

### **Conclusion**

33. Based on the foregoing, the Receiver intends to bring application to seek an order of the Court for the following:
- a) approval of the Activities of the Receiver as set out in the First Report; and,

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- b) approval of an order authorizing Cavers Investigations & Bailiff Services Inc. access to the personal residence of Mr. Fichter for the purposes of locating and securing Company assets.

All of which is respectfully submitted this 15<sup>th</sup> day of August 2023.

**MNP Ltd.**

In its capacity as Receiver of the  
**F & L Concrete Services Ltd.**  
And not in its personal capacity



Per: Karen Aylward, CIRP, Licensed Insolvency Trustee  
Vice President

ADDRESS FOR SERVICE AND  
CONTACT INFORMATION OF  
PARTY FILING THIS DOCUMENT

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