

COURT FILE NUMBER KBG-RG-00909-2023
COURT OF KING'S BENCH FOR SASKATCHEWAN
JUDICIAL CENTRE REGINA
APPLICANT
(RESPONDENT) AFFINITY CREDIT UNION 2013
RESPONDENT
(APPLICANT) F & L CONCRETE SERVICES LTD.
THIRD PARTY
(RESPONDENT) MNP LTD.

IN THE MATTER OF THE RECEIVERSHIP OF F & L CONCRETE SERVICES LTD.

**SASKATCHEWAN TEMPLATE
DRAFT SALE APPROVAL AND VESTING ORDER**

EFFECTIVE AS OF SEPTEMBER 29, 2023

Before the Honourable Mr. Justice Peter Bergbusch in chambers the 29th day of September 2023.

On the application of F & L CONCRETE SERVICES LTD. and with consent of MNP LTD. in its capacity as the Court-appointed Receiver (the "**Receiver**") of the assets, undertakings and properties of F & L CONCRETE SERVICES LTD. (the "**Debtor**") pursuant to the Order of this Court made * (the "**Receivership Order**"); and upon hearing from counsel for the Debtor and the Receiver and upon reading the Notice of Application dated September 19, 2023, the Report of the Receiver (the "**Receiver's Report**"), and a proposed Draft Order, all filed and the pleadings and proceedings having taken herein:

Upon the court ordering that the Receiver MNP Ltd. is terminated the Court Orders:

SERVICE

1. Service of the Notice of Application on behalf of the **Debtor** and the materials filed in support thereof (collectively, the "**Application Materials**") shall be and is hereby deemed to be good and valid and, further, shall be and is hereby abridged, such that service of such Application Materials is deemed to be timely and sufficient.¹

APPROVAL OF TRANSACTION

2. The sale transaction (the "**Land Transaction**") contemplated by an agreement of purchase and sale (the "**Land Sale Agreement**") between the Receiver and **CHRIS FICHTER HOLDINGS LIMITED** (the "**Land Purchaser**") dated **September 14, 2023** for the sale to the Purchaser (or its nominee)² of the Debtor's right, title and interest in and to the assets described in the Sale Agreement (the "**Purchased Land**") is declared to be commercially reasonable and in the best

interests of the Debtor and its creditors and other stakeholders³ and is hereby authorized and approved, with such minor amendments as the Receiver may deem necessary.

3. The sale transaction (the "**Equipment Transaction**") contemplated by an Proposal (the "**Proposal**") between the Receiver and **RITCHIE BROS. AUCTIONEERS** (the "**Equipment Purchaser**") dated **September 12, 2023** for the sale to the Purchaser (or its nominee) of the Debtor's right, title and interest in and to the assets described in the Sale Agreement (the "**Purchased Equipment**") is declared to be commercially reasonable and in the best interests of the Debtor and its creditors and other stakeholders and is hereby authorized and approved, with such minor amendments as the Receiver may deem necessary.
4. The Receiver is hereby authorized and directed to take such additional steps and execute such additional documents as may be necessary or desirable (including any steps necessary or desirable to satisfy and/or comply with any applicable laws, regulations or orders of any courts, tribunals, regulatory bodies or administrative bodies in any jurisdiction in which the **Purchased Land and Purchased Equipment** (collectively the "**Purchased Assets**") may be located) for the completion of the Transaction or for the conveyance of the Purchased Assets to the Purchaser (or its nominee), subject to such amendments as the Receiver and the Purchaser may agree upon, provided that any such amendments do not materially affect the Purchase Price.

VESTING OF PROPERTY

5. Upon the Receiver determining that the Proposed Sale has closed to its satisfaction and on terms substantially as approved by this Honourable Court pursuant to this Order, the Receiver shall deliver to the Purchaser (or its nominee) a Receiver's certificate substantially in the form set out in **Schedule "A"** hereto (the "**Receiver's Certificate**").
 6. The Receiver may rely on written notices from the Purchaser regarding fulfillment or, if applicable, waiver of conditions to closing of the Proposed Sale under the Sale Agreement and shall have no liability with respect to the delivery of the Receiver's Certificate.
 7. Upon delivery of the Receiver's Certificate all of the Debtor's right, title and interest in and to the Purchased Assets described in the Sale Agreement and listed on **Schedule "B"** hereto shall, save and except for the encumbrances listed in **Schedule "C"** hereto (the "**Permitted Encumbrances**"), vest absolutely in the name of the Purchaser (or its nominee), free and clear of and from any and all security interests (whether contractual, statutory, or otherwise), hypothecs, interests, mortgages, trusts or deemed trusts (whether contractual, statutory, or otherwise), liens, judgments, enforcement charges, levies, charges, or other financial or monetary claims (collectively, "**Encumbrances**") and all rights of others, whether or not they have attached or been perfected, registered or filed and whether secured, unsecured or otherwise (collectively, the "**Claims**")⁴ including, without limiting the generality of the foregoing:
 - (a) any encumbrances or charges created by the Receivership Order;
 - (b) all charges, security interests or claims evidenced by registrations pursuant to *The Personal Property Security Act, 1993* SS 1993, c P-6.2, or any other personal property registry system; and
 - (c) those Encumbrances listed in **Schedule "D"** hereto;
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and, for greater certainty, this Court orders that all of the Encumbrances (save and except for the Permitted Encumbrances) affecting or relating to the Purchased Assets are hereby expunged and discharged as against the Purchased Assets.

8. Upon delivery of the Receiver's Certificate to the Purchaser, the Receiver shall be and is hereby authorized to effect such discharges or revisions in the Saskatchewan Personal Property Registry as may be reasonably required to conclude the Transaction.
9. Pursuant to section 109 of *The Land Titles Act, 2000*, SS 2000, c L-5.1 and section 12 of *The Queen's Bench Act, 1998*, SS 1998, c Q-1.01 the Saskatchewan Registrar of Titles shall be and is hereby directed:

- (a) to accept an application (the "**Land Titles Application**") to surrender the existing title to the real property legally described as:

Blk/Par P Plan No 101969871 Extension 0

(collectively, the "**Real Property**")

and to set up a new title to such Real Property in the name of the Purchaser (or its nominee) as owner free and clear of any and all Encumbrances, save and except for the Permitted Encumbrances as set out in Schedule "C"; and

- (b) for greater certainty, to discharge all interests described in Schedule "D" hereto.⁵
10. Any and all registration charges and fees payable in regard to the Land Titles Application shall be to the account of the Purchaser.⁶
11. For the purposes of determining the nature and priority of the Encumbrances:

⁵ Consideration must be given as to whether it is appropriate, at law, for the Order to require that any particular interest be vested off title.

For instance, property tax liens require special consideration as a result of section 12 of *The Tax Enforcement Act*, RSS 1978, c T-2 ("**TEA**"). In most cases, property tax liens will be listed as a Permitted Encumbrance and paid from the net sale proceeds. If an applicant seeks to have a property tax lien included in Schedule "D" for discharge, consider (a) whether that discharge needs to take a form of a direction to the municipal "treasurer" rather than to the Registrar of Titles; or (b) in national receiverships pursuant to section 243 of the *Bankruptcy and Insolvency Act*, RSC 1985, c B-3, whether the Court has the jurisdiction to order the discharge notwithstanding section 12 of the TEA, by invoking the doctrine of federal paramountcy.

As another example, it will generally not be appropriate for a Sale Approval and Vesting Order to vest off interests which are registered subsequent to the granting of the Order. If there is a concern regarding registrations subsequent to the Order in a particular case, the procedure for having the Court deal with such interests will need to be considered.

⁶ This is only required where land is to be transferred, and is not intended to bind the Registrar of Titles. (That is, practically speaking, the party submitting the transfer packet to the Registrar will be responsible to ensure that any applicable transfer fee is paid.)

- (a) the net proceeds⁷ from the sale of the Purchased Assets (the "**Net Sale Proceeds**") shall stand in the place and stead of the Purchased Assets; and
 - (b) from and after the delivery of the Receiver's Certificate to the Purchaser, all Encumbrances and all rights of others shall attach to the Net Sale Proceeds from the sale of the Purchased Assets with the same priority as they had with respect to the Purchased Assets immediately prior to the sale,⁸ as if the Purchased Assets had not been sold and remained in the possession or control of the person having that possession or control immediately prior to closing of the Transaction.
- 12. The Purchaser (and its nominee, if any) shall, by virtue of the completion of the Transaction, have no liability of any kind whatsoever in respect of any Claims against the Debtor.
 - 13. The Debtor and all persons who claim by, through or under the Debtor in respect of the Purchased Assets, save and except for the persons entitled to the benefit of the Permitted Encumbrances, shall stand absolutely barred and foreclosed from all estate, right, title, interest, royalty, rental and equity of redemption of the Purchased Assets and, to the extent that any such person remains in possession or control of any of the Purchased Assets, they shall forthwith deliver possession thereof to the Purchaser (or its nominee).
 - 14. The Purchaser (or its nominee) shall be entitled to enter into and upon, hold and enjoy the Purchased Assets for its own use and benefit without any interference of or by the Debtor, or any person claiming by or through or against the Debtor.
 - 15. Immediately after the closing of the Transaction, the holders of the Permitted Encumbrances shall have no claim whatsoever against the Receiver or the Debtor.
 - 16. Forthwith after the delivery of the Receiver's Certificate to the Purchaser (or its nominee), the Receiver shall file a copy of the Receiver's Certificate with the Court, and shall serve a copy of the Receiver's Certificate on the recipients listed in the Service List maintained with respect to these proceedings.
 - 17. Pursuant to clause 7(3)(c) of the *Personal Information Protection and Electronic Documents Act*, SC 2000, c 5, the Debtor and the Receiver are hereby authorized and permitted to disclose and transfer to the Purchaser all human resources and payroll information in the Debtor's records pertaining to the Debtor's past and current employees. The Purchaser shall maintain and protect the privacy of such information and shall be entitled to use the personal information provided to it in a manner which is in all material respects identical to the prior use of such information by the Debtor.
 - 18. Notwithstanding:
 - a) the pendency of these proceedings;

⁷ It may be desirable for the Receiver's Report to identify disposition and other costs to be deducted from the sale price to arrive at the Net Sale Proceeds.

⁸ This provision crystallizes the date as of which the Claims will be determined. If a sale occurs early in the insolvency process, or potentially secured claimants may not have had the time or the ability to register or perfect proper claims prior to the sale, this provision may not be appropriate, and should be amended to remove this crystallization provision.

- b) any applications for a bankruptcy order now or hereafter issued pursuant to the *Bankruptcy and Insolvency Act (Canada)* in respect of the Debtor and any bankruptcy order issued pursuant to such applications;
- c) any assignment in bankruptcy made in respect of the Debtor; and
- d) the provisions of any federal statute, provincial statute or any other law or rule of equity,

the vesting of any of the Purchased Assets in the Purchaser (or its nominee) pursuant to this Order and the obligations of the Debtor under the Sale Agreement, shall be binding on any trustee in bankruptcy that may be appointed in respect of the Debtor 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*, RSC 1985, c B-3 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.

- 19. The Transaction is exempt from any requirement under any applicable federal or provincial law to obtain shareholder approval and is exempt from the application of any bulk sales legislation in any Canadian province or territory.

MISCELLANEOUS MATTERS

- 20. The Receiver, the Purchaser (or its nominee) and any other interested party, shall be at liberty to apply for further advice, assistance and directions 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 Transaction, including, without limitation, an application to the Court to deal with interests which are registered against title to the Real Property after the time of the granting of this Order.
- 21. This Court hereby requests the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or in the United States 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 as to provide such assistance to the Receiver, as an officer of this 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.
- 22. Service of this Order on any party not attending this application is hereby dispensed with. Parties attending this application shall be served in accordance with the Electronic Case Information and Service Protocol adopted in the Receivership Order.⁹

ISSUED at Saskatoon, Saskatchewan, this _____ day of September 2023.

(Deputy) Local Registrar

CONTACT INFORMATION AND ADDRESS FOR SERVICE

This Order is consented to this _____ day of
September 2023.

NYCHUK & COMPANY

Per: _____

Nicolas L. Brown

Lawyer for F & L CONCRETE SERVICES
LTD.

This Order is consented to this _____ day of
September 2023.

Per: _____

Kim Anderson, K.C.

Lawyer for MNP LTD.

This document was prepared by:
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IN THE MATTER OF THE RECEIVERSHIP OF F & L CONCRETE SERVICES LTD.

RECEIVER'S CERTIFICATE

RECITALS

- A. Pursuant to an Order of the Honourable Mr. Justice Peter Bergbusch of the Court of Queen's Bench of Saskatchewan (the "**Court**") dated **August 4, 2023**, **MNP Ltd.** was appointed as the receiver (the "**Receiver**") of the assets, undertakings and property of **F & L CONCRETE SERVICES LTD.** (the "**Debtor**").
- B. Pursuant to an Order of the Court dated **September 22, 2023**, the Court approved the agreement of purchase and sale made as of **September 14, 2023** (the "**Sale Agreement**") between the Receiver and **CHRIS FICHTER HOLDINGS LIMITED** (the "**Purchaser**") and provided for the vesting in the Purchaser of the Debtor's right, title and interest in and to the Purchased Assets, which vesting is to be effective with respect to the Purchased Assets upon the delivery by the Receiver to the Purchaser of a certificate confirming (i) the payment by the Purchaser of the Purchase Price for the Purchased Assets; (ii) that the conditions to Closing as set out in section * of the Sale Agreement have been satisfied or waived by the Receiver and the Purchaser; and (iii) the Transaction has been completed to the satisfaction of the Receiver.
- C. Pursuant to an Order of the Court dated **September 22, 2023**, the Court approved the agreement of proposal made as of **September 12, 2023** (the "**Proposal**") between the Receiver and **Ritchie Bros. Auctioneers** (the "**Purchaser**") and provided for the vesting in the Purchaser of the Debtor's right, title and interest in and to the Purchased Assets, which vesting is to be effective with respect to the Purchased Assets upon the delivery by the Receiver to the Purchaser of a certificate confirming (i) the payment by the Purchaser of the Purchase Price for the Purchased Assets; (ii) that the conditions to Closing as set out in section * of the Sale Agreement have been satisfied or waived by the Receiver and the Purchaser; and (iii) the Transaction has been completed to the satisfaction of the Receiver.
- D. Unless otherwise indicated herein, terms with initial capitals have the meanings set out in the Sale Agreement.

THE RECEIVER CERTIFIES the following:

1. The Purchaser (or its nominee) has paid and the Receiver has received the Purchase Price for the Purchased Assets payable on the Closing Date pursuant to the Sale Agreement and Proposal;
2. The conditions to Closing as set out in section * of the Sale Agreement have been satisfied or waived by the Receiver and the Purchaser (or its nominee);
3. The Transaction has been completed to the satisfaction of the Receiver; and
4. This Certificate was delivered by the Receiver at **[Time]** on **[Date]**.

[Name of Receiver], in its capacity as Receiver of the undertaking, property and assets of [Debtor], and not in its personal capacity.

Per; _____
Name:
Title:

SCHEDULE "B"
PURCHASED ASSETS

SCHEDULE "C"
PERMITTED ENCUMBRANCES

SCHEDULE "D"
ENCUMBRANCES TO BE DISCHARGED