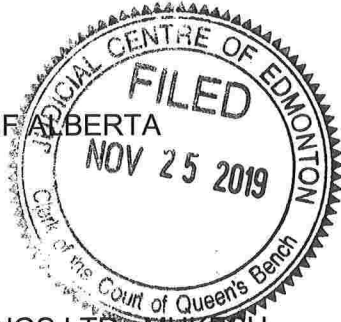


COURT FILE NUMBER 1903-21508
COURT COURT OF QUEEN'S BENCH OF ALBERTA
JUDICIAL CENTRE EDMONTON
PLAINTIFF ATB FINANCIAL
DEFENDANTS KAKKAR REAL ESTATE HOLDINGS LTD., MUKESH
KAKKAR, and PRITIBHA KAKKAR
APPLICANT MNP LTD. in its capacity as the Court-appointed
Receiver of KAKKAR REAL ESTATE HOLDINGS LTD.



DOCUMENT

APPLICATION

ADDRESS FOR SERVICE AND
CONTACT INFORMATION OF
PARTY FILING THIS DOCUMENT

MLT AIKINS LLP
Barristers and Solicitors
2100, 222 3rd Avenue S.W.
Calgary, Alberta T2P 0B4
Phone: 403.693.5420/4347
Fax: 403.508.4349
Attention: Ryan Zahara/Catrina Webster
File: 031617-0023

NOTICE TO RESPONDENT(S):

This application is made against you. You are the respondent.

You have the right to state your side of this matter before the Judge.

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

Date: December 5, 2019
Time: 10:00 a.m.
Where: Court of Queen's Bench of Alberta, Edmonton Law Courts,
1A Sir Winston Churchill Square, Edmonton, Alberta
Before Whom: The Honourable Justice M.J. Lema In Chambers
(Booked on the Commercial List)

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. An abridgement, if necessary, of the time for service of this Application and materials in support thereof, and an Order declaring service of same to be good and sufficient.
2. An Order:
 - (a) approving the sale of lands of Kakkar Real Estate Holdings Ltd. ("**Kakkar**") legally described as:

Plan 7922166
Block 5
Lot 27A
Excepting Thereout All Mines and Minerals

Plan 1494AC
Block 5
Lots 22 to 24
Excepting Thereout All Mines and Minerals

Plan 1494AC
Block 5,
Lots 18 and 19
Excepting Thereout All Mines and Minerals

Plan 1494AC
Block 5
Lot 25
Excepting Thereout All Mines and Minerals

Plan 1494AC
Block 5
Lot 20
Excepting Thereout All Mines and Minerals

Plan 1494AC,
Block 5
Lot 26
Excepting Thereout All Mines and Minerals

Plan 1494AC
Block 5
Lot 21
Excepting Thereout All Mines and Minerals

(collectively, the "**Lands**") in accordance with the Offer to Purchase dated November 13, 2019 (the "**Purchase Agreement**") between MNP Ltd. in its

capacity as the Court-appointed receiver ("**MNP**" or the "**Receiver**") of Kakkar and 2071106 Alberta Ltd. ("**207 Alberta**" or the "**Purchaser**");

- (b) authorizing and directing the Receiver to take all steps reasonably required to carry out the terms of the Purchase Agreement;
- (c) vesting title to the Lands to the Purchaser, or its nominee, free and clear of all encumbrances save for the Permitted Encumbrances (as such term is defined in the Purchase Agreement) upon the fulfillment and waiver of the respective conditions, and closing of the transaction contemplated, in accordance with the terms of the Purchase Agreement.

3. An Order:

- (a) approving the Receiver's Interim Statement of Receipts and Disbursements dated November 20, 2019, attached as Schedule E to the First Report of the Receiver dated November 25, 2019 (the "**First Report**");
- (b) approving the actions of the Receiver taken in these Receivership proceedings as outlined in the First Report and the Confidential Appendix to the First Report (the "**Confidential Appendix**"); and
- (c) authorizing the Receiver to make an interim distribution of funds in the matter proposed in the First Report.

4. An Order approving the sealing of the Confidential Appendix until such time as the transaction contemplated by the Purchase Agreement has closed.

5. An Order granting leave to the Receiver to apply to this Court for advice and directions as may be necessary to carry out the terms of any Order granted at the within application.

6. An Order granting such other and further relief as the circumstances may require and as this Honourable Court shall deem appropriate.

Grounds for Making the Application:

A. Listing of the Lands for Sale

- (a) On October 23, 2019, MNP Ltd. was appointed the receiver and manager over all of the current and future assets, undertakings and properties of every nature and kind whatsoever, and wherever situate, including all proceeds thereof of Kakkar by Order of the Honourable Justice M.J. Lema of the Alberta Court of Queen's Bench (the "**Receivership Order**").
- (b) Kakkar is a company incorporated pursuant to the laws of Alberta, with its registered office located in Edmonton, Alberta. Kakkar owns and operate4s the Howard Johnson Hotel in Edson, Alberta (the "**Hotel**"), and to the best of MNP's knowledge, owing and operating the Hotel make up the entirety of Kakkar's business operations.
- (c) On October 2, 2018, ATB obtained appraisals of the Lands which, due to their confidential and commercially sensitive nature, are included in the Confidential Appendix to the First Report dated November 22, 2019 (the "**Confidential Appendix**").
- (d) On November 8, 2019, the Receiver entered into a listing agreement with NAI Commercial Real Estate Inc. ("**NAI**") for the listing of the Lands for sale.
- (e) The Receiver received an Offer to purchase from 207 Alberta dated November 13, 2019 (the "**207 Alberta Offer**").
- (f) On November 19, 2019, the Receiver executed the 207 Alberta Offer with the Purchaser.
- (g) As a result of the Receiver accepting the 207 Alberta Offer, the Receiver brings the within application before this Honourable Court for an Order approving the sale of the Lands to 207 Alberta.
- (h) Kakkar, and subsequently the Receiver, have attempted to sell the Land for approximately 13 months. It is unlikely that additional time and effort will result in a sale that is materially greater than the Purchase Price provided under the Purchase Agreement.
- (i) ATB Financial, the senior secured lender in this matter, supports the approval of the Purchase Agreement.

- (j) The Receiver is of the view that the Lands have been exposed for sale to the market for a significant amount of time and that the transaction contemplated by the Purchase Agreement represents the highest realization value to stakeholders which is available in the circumstances.

B. Sealing of Confidential Appendix

- (k) The Confidential Appendix contains confidential information with respect to the purchase price under the Purchase Agreement, and the proposed purchase price for other offers made for the Lands by other interested purchasers, as well as information with respect to the appraisal the Receiver obtained regarding the appraised value of the Lands. The Confidential Appendix thus contains commercially sensitive information and documentation.
- (l) There will be a negative impact and significant potential prejudice to stakeholders in the event such confidential information and documentation were disclosed to the public and the transaction contemplated by the Purchase Agreement were to not close and the sales process regarding the sale of the Lands were resumed.

C. Approval of Activities of the Receiver to Date

- (m) All of the actions of the Receiver and its legal counsel in the course of the administration of the receivership of Kakkar are reasonable and appropriate in the circumstances.

D. Approval of the Proposed Interim Distribution of the Proceeds of the Sale of the Lands

- (n) The Receiver has had independent legal counsel conduct a review of the security of ATB Financial against the assets of Kakkar, which review determined that the security of ATB Financial is valid and enforceable.
- (o) The distribution proposed by the Receiver in the First Report is reasonable and appropriate in the circumstances.
- (p) Such further and other grounds as counsel may advise and this Honourable Court may permit.

Material or Evidence To Be Relied Upon:

- (a) The First Report of the Receiver dated November 25, 2019;
- (b) The Confidential Addendum to the First Report of the Receiver dated November 25, 2019;
- (c) The Receivership Order granted by the Honourable Justice M.J. Lema on October 23, 2019;
- (d) The Temporary Sealing Order granted by the Honourable Justice M.J. Lema on October 23, 2019;
- (e) All pleadings, affidavits and other materials filed in this action;
- (f) The inherent jurisdiction of this Honourable Court to control its own process; and
- (g) Such further and other material as counsel may advise and this Honourable Court may permit.

Applicable Rules:

- (a) Rules 6.47 (a), (d), (e) and (f), 11.27 and 13.5 of the *Alberta Rules of Court*.

Applicable Acts and Regulations:

- (a) The *Bankruptcy and Insolvency Act*, R.S.C. 1985 c. B-3, as amended;
- (b) The *Judicature Act*, R.S.A. 2000, c. J-2, as amended;
- (c) The *Business Corporations Act*, R.S.A. 2000, c. B-9, as amended; and
- (d) The *Personal Property Security Act*, R.S.A. 2000, c. P-7, as amended.

How the Application is Proposed to be Heard or Considered:

- (a) In person before the Honourable Mr. Justice M.J. Lema, in Chambers.

WARNING TO THE RESPONDENT:

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.