

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
(COMMERCIAL LIST)**

THE HONOURABLE )  
 ) MONDAY, THE 28<sup>TH</sup>  
MR. JUSTICE HAINEY )  
 ) DAY OF SEPTEMBER, 2020

B E T W E E N:

**1711423 ONTARIO LIMITED**

Applicant

- and -

**OLD MILL MARINA (KAWAGAMA) LIMITED**

Respondent

APPLICATION UNDER Section 243(1) of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, and Section 101 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43

**ORDER**

**(Re: Interim Distribution, Receiver's Conduct, Fees and Sealing)**

**THIS MOTION**, made by MNP Ltd. in its capacity as the Court-appointed receiver and manager (and in such capacities, the "**Receiver**") without security, of all the assets, undertakings, and properties of Old Mill Marina (Kawagama) Limited (the "**Debtor**") for an order, among other things, approving the Report of the Receiver dated September 22, 2020 (the "**Report**") and the actions of the Receiver set out therein, sealing the Confidential Appendices to the Report, authorizing the Receiver to make an interim distribution, and approving the fees and disbursements of the Receiver and its counsel as shown in the Fee Affidavits (as hereinafter defined) was heard this day at 330 University Avenue, Toronto, Ontario.

**ON READING** the Report, including the Fee affidavits of Jerry Henechowicz for the Receiver and S. Fay Sulley for Torkin Manes LLP (collectively, referred as the “**Fee Affidavits**”) and on hearing the submissions of counsel for the Receiver, no one appearing for any other person on the service list, although properly served pursuant to the applicable Commercial List service and filing protocols, as appears from the Proof of Service of Josset Johnson, filed:

1. **THIS COURT ORDERS** that the time for service of the Notice of Motion and Motion Record is hereby abridged and validated so that this motion is properly returnable today and hereby dispenses with further service thereof.

2. **THIS COURT ORDERS** that the Report and the conduct and activities of the Receiver as described in the Report are hereby approved.

3. **THIS COURT ORDERS** that, following the completion of the sale transaction approved herein, the Receiver is hereby authorized and directed to make the following distributions from the proceeds of the realization of the real property of the Debtor, in the following order of priority:

- (a) The sum of \$80,702.50, plus any additional interest to the date of payment, to Kirkfield Holdings Limited to repay the funds advanced to the Receiver by way of Receiver’s Certificate;
- (b) The amounts shown on the Fee Affidavits for the fees and disbursements of the Receiver and its counsel, as approved by this Honourable Court herein;
- (c) A holdback (the “**Holdback**”) in the amount of \$269,017.15 representing the amount of the potential claim shown in the letter dated March 20, 2020 (the “**March 5, 2020 Letter**”) addressed to the Debtor from Canada Revenue Agency (“**CRA**”), pending a determination by the Receiver as to any amounts that may be owing to CRA in connection with the March 5, 2020 Letter, such determination to be communicated to all affected parties and such determination to be subject to further order of the Court should any party dispute the receiver’s determination;
- (d) The sum of \$863,333.62 in favour of 1711423 Ontario Limited, plus per diem interest at the applicable rate to the date of distribution, in full satisfaction of the indebtedness secured by the first mortgage registered as Instrument Number HA44419 against title to the Real Property described in Schedule “A”;
- (e) The sum of \$82,576.70 in favour of Haliburton County Development Corporation, plus per diem interest at the applicable rate from the day

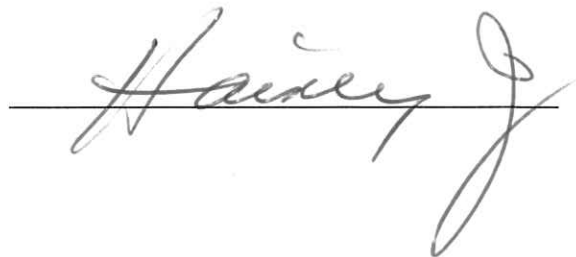
immediately following this date of this Order to the date of distribution, in full satisfaction of the indebtedness secured by the first mortgage registered as Instrument Number HA21205 against title to the Real Property described in Schedule "A";

4. **THIS COURT ORDERS** that the payments indicated in items (d) and (e) above are subject to availability of funds, and in the event the proceeds of the liquidation of the property of the Debtor are insufficient to fund the above-noted distributions, the Receiver shall make the distributions in the order of priority above, to the extent possible, and shall be authorized to make such partial payments to the above-note creditors and stakeholders as may be necessary to give effect to this Order.

5. **THIS COURT ORDERS THAT** in the event any creditor holding a valid mortgage against title to the Property shown on Schedule "A" receives no payment or a partial payment pending finalization of the CRA potential liability, such mortgage creditor shall maintain its priority ranking as against the proceeds of sale, in such amounts as remain to be paid to that creditor in the event that the Holdback or any portion thereof is released for distribution to creditors.

6. **THIS COURT ORDERS** that Confidential Appendices to the Report shall be sealed, kept confidential and not form part of the public record, but rather shall be placed separate and apart from all contents of the Court file, pending the earlier of (a) further Order of this Court; or (b) the expiry of 60 days following the date of the completion of the transaction(s) approved in this Order.

7. **THIS COURT ORDERS** that the fees and disbursements of the Receiver and its counsel, Torkin Manes LLP, as set out in the Report and the Fee Affidavits are hereby approved.

A handwritten signature in cursive script, appearing to read "Harvey J.", is written over a horizontal line. The signature is written in dark ink and is positioned in the lower right quadrant of the page.

## **SCHEDULE A**

### **Legal Description and Municipal Address of Real Property**

PT LT 16 CON 12 SHERBORNE AS IN H87622 EXCEPT PT 1, 2, 3 19R1733 AND EXCEPT PT 2 19R5130; S/T H87622; TOWNSHIP OF ALGONQUIN HIGHLANDS, being all of PIN 39115-0241 (LT), municipally known as 1652 and 1676 Russell Landing Road, Township of Algonquin Highlands.

1711423 ONTARIO LIMITED  
Applicant

-and- OLD MILL MARINA (KAWAGAMA) LIMITED  
Respondent

Court File No. CV-20-00637615-00CL

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

PROCEEDING COMMENCED AT  
TORONTO

**ORDER  
(Re Interim Distribution, Receiver's Conduct, Fees  
and Sealing)**

**TORKIN MANES LLP**  
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Lawyers for the Receiver, MNP Ltd.