

COURT FILE NO. 2203-13202

COURT COURT OF KING'S BENCH OF ALBERTA

JUDICIAL CENTRE EDMONTON

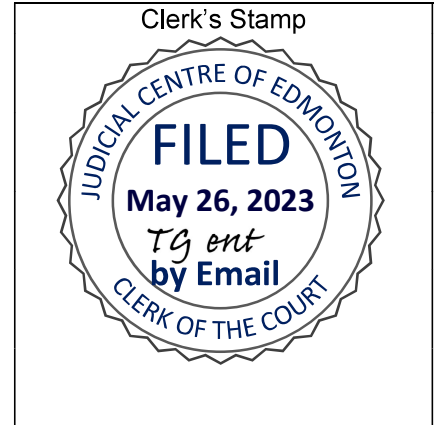
PLAINTIFF MOSKOWITZ CAPITAL MORTGAGE FUND II INC.

DEFENDANTS 1631807 ALBERTA LTD., RADIANT TECHNOLOGIES INC., and RADIANT TECHNOLOGIES (CANNABIS) INC.

DOCUMENT **BENCH BRIEF OF MNP LTD., THE COURT APPOINTED RECEIVER OF CERTAIN PERSONAL PROPERTY OF 1631807 ALBERTA LTD. AND RADIANT TECHNOLOGIES INC.**

ADDRESS FOR SERVICE AND CONTACT
INFORMATION OF PARTY FILING THIS DOCUMENT
McLennan Ross LLP
#600 McLennan Ross Building
12220 Stony Plain Road
Edmonton, AB T5N 3Y4

Lawyer: Ryan Trainer
Telephone: 780.482.9153
Fax: 780.733.9790
Email: ryan.trainer@mross.com
File No.: 20230959



Introduction

1. Pursuant to the Limited Receivership Order, granted by the Honourable Mr. Justice D.R. Mah on March 21, 2023, MNP Ltd. was appointed receiver (the “**Receiver**”) without security of certain personal property of 1631807 Alberta Ltd. and Radiant Technologies Inc. (collectively described as the “**Debtors**”), described in Exhibit “L” to the Affidavit of Brian Moskowitz dated March 13, 2023, together with any other personal property of the Debtors as may be agreed upon by the Receiver and the Debtors, including all proceeds thereof (the “**Property**”).

2. The Receiver applies for the following relief:
 - (a) An Order abridging the time for service of notice of the Application, if necessary;
 - (b) An Order approved the auction proposal made by Workingman Capital Corp. in respect of the auction sale (the “**Auction Sale**”) of the Property, as described in the Receiver’s First Report to the Court (the “**Receiver’s Report**”) and the confidential appendices thereto (the “**Confidential Appendices**”) and such further and other ancillary Orders that may be necessary to give effect to the Auction Sale, including vesting provisions respecting title of sold Property;
 - (c) An Order authorizing the Receiver to discharge all registered encumbrances over the Property in order to transfer the Property free and clear to the purchaser or purchasers;
 - (d) An Order approving the activities of the Receiver as set out in the Receiver’s Report;
 - (e) An Order declaring that Division 4 of Part 6 of the *Rules of Court* does not apply to this Application and the Confidential Appendices be temporarily sealed until October 23, 2023, or in the alternative, a temporary Restricted Court Access Order pursuant to Rule 6.28 of the *Alberta Rules of Court* sealing the Confidential Appendices until October 30, 2023 or until further Order of the Court; and
 - (f) Such further and other relief as this Honourable Court deems just and appropriate in the circumstances.

3. This Application has been brought in accordance with paragraphs 3(g), 3(h), and 3(i) of the Limited Receivership Order, which authorizes the Receiver to, among other things, execute, assign, issue and endorse documents of whatever nature in respect of the Property (as defined in the Limited Receivership Order), to market any and all of the Property, including advertising and

soliciting offers in respect of the Property, to sell the Property or any parts thereof, and apply for any vesting order necessary to convey the Property or any parts thereof, free and clear of any and all encumbrances.

4. All capitalized terms not otherwise defined in this Bench Brief have the meanings ascribed thereto in the Receiver's Report.
5. A detailed background of this matter and the Receiver's activities leading up to this Application are more fulsomely described in the Receiver's Report, filed concurrently.

Order Approving Sale and Vesting Title

6. The *Bankruptcy and Insolvency Act*, RSC 1985, c B-3 (the "BIA") permits this Honourable Court to appoint a receiver to do any of the following:
 - (a) take possession of all or substantially all of the property of an insolvent person used in relation to the business carried on by the insolvent person;
 - (b) exercise any control that the Court considers advisable over the property and over the insolvent corporation's business; and
 - (c) take any other action that the Court considers advisable.¹
7. Section 247(b) of the BIA provides that a receiver shall "act honestly and in good faith" and "deal with the property of the insolvent person or the bankrupt in a commercially reasonable manner."²
8. The Ontario Court of Appeal decision of *Royal Bank v Soundair Corp.* sets out the criteria to be applied when considering approval of a sale or the sales process of a receiver. When considering whether an offer accepted by a receiver should be approved and ratified by the Court, the Court is to consider and determine:
 - (a) Whether the receiver made sufficient effort to get the best price and has not acted improvidently;
 - (b) The interests of all the parties;

¹ *Bankruptcy and Insolvency Act*, RSC 1985, c B-3 [BIA], s 243(1). [TAB 1]

² *Ibid.*, s 247. [TAB 1]

- (c) The efficacy and integrity of the process by which offers were obtained; and
- (d) Whether there has been unfairness in the working out of the process.³
9. The *Soundair* criteria have been incorporated into Alberta law, and confirmed by the Alberta Court of Appeal in *River Rentals Group Ltd. v Hutterian Brethren Church of Codesa*, and *1905393 Alberta Ltd. v Servus Credit Union Ltd.*⁴
10. If the Court is satisfied that a receiver has acted providently in its efforts to sell the debtor's property, the case law instructs that the Court should approve the sale, and give deference to the Court-appointed receiver, assuming that the receiver's course of action and recommendation is appropriate and nothing to the contrary is shown. To order otherwise improperly calls into question the receiver's expertise and authority, thereby compromising both the integrity of the sales process, and commercial certainty.⁵
11. The Court in *Soundair* also emphasized the importance of respecting a fair process as follows:
- It is most important that the integrity of procedures followed by court-appointed receivers be protected in the interests of both commercial morality and the future confidence of business persons in their dealings with receivers. Consequently, in all cases, the court should carefully scrutinize the procedure followed by the receiver to determine whether it satisfies the [four-part test].⁶
12. In the present case, the Receiver submits that it has engaged in a fair, provident, and impartial sales process, and the Receiver will obtain the maximum value that is reasonably expected for the Property.

³ *Royal Bank v Soundair Corp.*, 1991 CarswellOnt 205 [*Soundair*] at para 16. **[TAB 2]**

⁴ *River Rentals Group Ltd. v Hutterian Brethren Church of Codesa*, 2010 ABCA 16 [*River Rentals*] **[TAB 3]** at para 12; *PricewaterhouseCoopers Inc. v 1905393 Alberta Ltd.*, 2019 ABCA 433 [*Servus*] at para 10. **[TAB 4]**

⁵ *Soundair*, *supra* note 3 at paras 14 and 43; *River Rentals*, *supra* note 4 at paras 18 and 19; *Servus*, *supra* note 4 at paras 10, and 12-14. **[TABS 2, 3, and 4]**

⁶ *Soundair* *supra* note 3 at para 72. **[TAB 2]**

Restricted Court Access Order

13. The Court's authority to grant Restricted Court Access Order is contemplated under Rule 6.28 and Division 4 of Part 6 of the Alberta *Rules of Court*.⁷
14. This Court has the jurisdiction to order that certain materials filed with the Court be sealed on the Court file. The Supreme Court of Canada decision of *Sierra Club of Canada v Canada (Minister of Finance)* provides the guiding principles to granting sealing orders and publication bans and accepted that these types of orders could be granted when:
 - (a) Such an order is necessary in order to prevent a serious risk to an important interest, including a commercial interest, in the context of litigation because reasonable alternative measures will not prevent that risk; and
 - (b) The salutary effects of the confidentiality order outweigh its deleterious effects, including the effects on the right to free expression, which includes public interest in open and accessible court proceedings.⁸
15. In the insolvency context, it is common when property is being sold through a court process to seal various bids and other commercially sensitive material, such as valuations, and sale price, in case a further listing or sales process is required should the contemplated sale and or sales process falls through.⁹
16. Sealing orders in this context are granted to maintain fair play so that competitors and potential purchasers do not obtain an unfair advantage by obtaining such information, while others have to rely on their own resources.¹⁰
17. In *Alberta Treasury Branches v Elaborate Homes Ltd.*, the Honourable Mr. Justice K.G. Nielsen (as he then was) accepted the reasons and rationale of the Ontario Courts and acknowledged that it is common practice in the insolvency context that information relating to the sale of the

⁷ *Alberta Rules of Court*, AR 124/2010, Division 4 of Part 6 including Rule 6.28. [TAB 5]

⁸ *Sierra Club of Canada v Canada (Minister of Finance)*, 2002 SCC 41 at para 45. [TAB 6]

⁹ *Romspen Investment Corporation v Hargate Properties Inc.*, 2012 ABQB 412 at paras 2, 11, and 13 [TAB 7]; *Look Communications Inc. v Look Mobile Corporation*, 2009 CarswellOnt 7952 at para 17. [TAB 8]

¹⁰ *887574 Ontario Inc. v Pizza Pizza Ltd.*, 1994 CarswellOnt 1214 at para 6. [TAB 9]

property of an insolvent corporation be kept confidential until after the sale or the sales process is completed pursuant to a Court order.¹¹

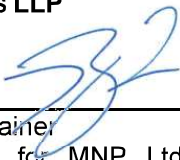
Conclusion

18. For the reasons described above, the Receiver requests that this Honourable Court grant an Order to:
- (a) Approve the Receiver's acceptance of the Workingman Capital Corp. auction proposal and vest title in the Property to the ultimate purchaser or purchasers of the Property through the auction sale and to approve the related auction agreement;
 - (b) Approve the actions, conduct and activities of the Receiver to-date;
 - (c) Seal the Confidential Appendices to the Receiver's First Report to the Court until October 30, 2023; and
 - (d) Such further and other relief as this Honourable Court may deem just and appropriate.

ALL OF WHICH IS RESPECTFULLY SUBMITTED at the City of Edmonton, in the Province of Alberta, this 23rd day of May, 2023.

MCLENNAN ROSS LLP

Per:



Ryan Trainer
Solicitor for MNP Ltd., the Court Appointed
Receiver of certain personal property of
1631807 Alberta Ltd. and Radient Technologies
Inc.

¹¹ *Alberta Treasury Branches v Elaborate Homes Ltd.*, 2014 ABQB 350 at para 54. **[TAB 10]**

TABLE OF AUTHORITIES

<i>Bankruptcy and Insolvency Act</i> , RSC 1985, c B-3, s 243(1) and 247	TAB 1
<i>Royal Bank v Soundair Corp.</i> , 1991 CarswellOnt 205	TAB 2
<i>Bank of Montreal v River Rentals Group Ltd.</i> , 2010 ABCA 16	TAB 3
<i>PricewaterhouseCoopers Inc. v 1905393 Alberta Ltd.</i> , 2019 ABCA 433	TAB 4
<i>Alberta Rules of Court</i> , AR 124/2010, Division 4 of Part 6	TAB 5
<i>Sierra Club of Canada v Canada (Minister of Finance)</i> , 2002 SCC 41	TAB 6
<i>Romspen Investment Corporation v Hargate Properties Inc.</i> , 2012 ABQB 412	TAB 7
<i>Look Communications Inc. v Look Mobile Corporation</i> , 2009 CarswellOnt 7952	TAB 8
<i>887574 Ontario Inc. v Pizza Pizza Ltd.</i> , 1994 CarswellOnt 1214	TAB 9
<i>Alberta Treasury Branches v Elaborate Homes Ltd.</i> , 2014 ABQB 350.....	TAB 10