

COURT FILE NUMBER Q.B. 572 of 2021

COURT OF QUEEN'S BENCH FOR SASKATCHEWAN
IN BANKRUPTCY AND INSOLVENCY

JUDICIAL CENTRE SASKATOON

PLAINTIFF AFFINITY CREDIT UNION 2013

DEFENDANT RITCHIE INDUSTRIES INC. and DUCK MOUNTAIN
ENVIRONMENTAL LTD.

IN THE MATTER OF THE RECEIVERSHIP OF RITCHIE INDUSTRIES INC. and DUCK
MOUNTAIN ENVIRONMENTAL LTD.

AND IN THE MATTER OF THE BANKRUPTCY OF RITCHIE INDUSTRIES INC. and
DUCK MOUNTAIN ENVIRONMENTAL LTD.

NOTICE OF APPLICATION
(Sale Approval & Vesting Order, Miscellaneous Approvals)

NOTICE TO: Those Parties Identified on the Attached Service List

This application is made against you. You are a respondent. You have the right to state your side of this matter before the Court.

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

Where	520 Spadina Crescent East, Saskatoon, Saskatchewan
Date	Thursday, March 10, 2022
Time	2:00 p.m.

Due to the health risks posed by the COVID-19 pandemic, all chambers applications will be heard by telephone unless the presiding judge has decided otherwise. To confirm the telephone number where you can be reached on the date of the application, you must immediately contact the office of the local registrar at (306) 787-8363 and provide your telephone number. You must remain available by telephone at that number on that date until your matter is heard.

(Read the Notice at the end of this document to see what else you can do and when you must do it.)

Remedy claimed or sought:**In Respect of the Sale of the DME Property and Vacant Lot:**

1. An Order:
 - (a) Approving and authorizing MNP Ltd. (the "**Receiver**"), in its capacity as Receiver and Manager and Trustee in Bankruptcy of the assets, undertakings and properties of Ritchie Industries Inc. ("**Ritchie**") and Duck Mountain Environmental Ltd. ("**DME**") pursuant to *inter alia* the Receivership Order of the Honourable Madam Justice A.R. Rothery issued June 29, 2021 (the "**Receivership Order**") to enter into and complete the transaction contemplated in the Contract of Purchase and Sale dated December 22, 2021, Counter Offer to Commercial Contract of Purchase and Sale dated December 23, 2021 and Amendment Agreement dated March 1, 2022 (the "**Sale Agreement**") between the Receiver and Mayrand Equipment Leasing Ltd. (the "**Proposed Purchaser**") as outlined in the Second Report of the Receiver in Relation to Duck Mountain Environmental Ltd. dated March 3, 2022 ("**DME Second Report**") in Schedules 1-3 which has the effect of selling the lands and buildings more particularly described in, and subject to the terms and conditions set forth in the Sale Agreement, for the purchase price plus applicable taxes identified in the Sale Agreement;
 - (b) Vesting the Proposed Purchaser with all right, title, and interest in and to, the assets described in the Sale Agreement, free and clear of all liens, charges, and encumbrances except as provided in the proposed Sale Approval and Vesting Order filed in these proceedings;
 - (c) Approving the Receiver's activities as described within the DME Second Report and the fees and disbursements of the Receiver and its legal counsel; and
 - (d) Such further and other relief as counsel may request and this Honourable Court may allow.

In Respect of the Distribution of Proceeds of the DME Equipment Sale:

2. An Order:

- (a) Approving and authorizing the Receiver to distribute a portion of the proceeds of the DME equipment as outlined in the proposed Approval and Distribution Order filed in these proceedings.

Grounds for making this application:

3. The Receiver makes this application pursuant to sections 3 of the Receivership Order, which permits the Receiver to, with approval of this Honourable Court, sell the assets of the Ritchie and DME and apply for any Order(s) necessary to do so. Section 12 of the Receivership Order permits the Receiver to, with approval of this Honourable Court, distribute funds collected by the Receiver from a sale transaction and apply for any Order(s) necessary to do so.

4. This application concerns the proposed sale of a commercial building and vacant lot located at 437 Queen Elizabeth Boulevard E in Kamsack, Saskatchewan ("**DME Property and Vacant Lot**"). Prior to these proceedings, the DME Property and Vacant Lot was owned by DME.

5. Further, this application concerns the approval and distribution of the net sale proceeds from the sale of DME equipment (the "**DME Equipment Sale**").

Sale of the DME Property and Vacant Lot

6. On August 26, 2021, the Receiver initiated an *en bloc* sales process for the assets of DME with a deadline for the submission of Offers to Purchase being September 8, 2021. Following this brief sales process, nine different parties signed Confidentiality Agreements and were granted access to the online data room and Confidential Information Package. A total of three Offers to Purchase and/or Proposals were submitted to the Receiver by the above deadline.

7. The Receiver was not satisfied by the offer received in the sales process and determined that the best method of sale was to list the DME Property and Vacant Lot with a commercial realtor. The DME Property and Vacant Lot was listed with Century 21 Fusion on September 20, 2021.

8. The Receiver received several verbal offers to purchase the DME Property and Vacant Lot from the Proposed Purchaser. The Receiver negotiated a purchase price with the Proposed Purchaser that represents 80.5% of the combined market value.

9. Overall, the Receiver is of the view that the sale of the DME Property and Vacant Lot represents good value for the estate of DME as the aggregate purchase price is the highest offer it has obtained from prospective purchasers. The primary secured creditor, Affinity Credit Union 2013 is supportive of the sale.

10. The Receiver is of the view that the above sale of the DME Property and Vacant to the Proposed Purchaser is commercially reasonable and that:

- (a) the Receiver made sufficient effort to get the best price and has not acted improvidently in its efforts;
- (b) the proposed sales are in the interests of all parties and stakeholders;
- (c) the sales process was marked by both efficacy and integrity; and
- (d) there has not been unfairness in the working out of the process.

The Proposed Distribution of Proceeds from the DME Equipment Sale

11. The Receiver has not completed a security review as of the date of this application and, as such, no distribution of the proceeds from the sale of the DME Property and Vacant Lot is proposed at this time.

12. This Honourable Court issued a Sale Approval and Vesting Order on November 18, 2021 approving the DME Equipment Sale. The Receiver now seeks an Approval and Distribution Order to distribute a portion of the net sale proceeds from the DME Equipment Sale.

13. As set out in the Approval and Distribution Order filed herewith, the Receiver proposes to distribute the net sales proceeds from the DME Equipment Sale as follows:

- (a) to pay Kempenfelt, (a division of Bennington Financial Corp.) the net buyout price for the 2005 Kenworth T300 Vac Truck and Vac Pump;
- (b) to pay Wells Fargo Equipment Finance Company the net buyout price plus accrued interest for the 2008 Western Star 4900 Vacuum Truck;

- (c) finally, to hold the balance of the remaining proceeds under the DME Equipment Sale in reserve until further order of the Court.

Material or evidence to be relied on:

1. This Notice of Application with proof of service;
2. The draft Sale Approval and Vesting Order;
3. The draft Approval and Distribution Order;
4. The Second Report of the Receiver in Relation to Duck Mountain Environmental Ltd. dated March 3, 2022;
5. A Brief of Law; and
6. Such further and other material as this Honourable Court may allow.

Applicable Acts, Regulations, and Jurisprudence:

1. *The Queen's Bench Act, 1998*, SS 1998, c Q-1.01, s. 12.
2. *The Bankruptcy and Insolvency Act*, RSC, 1985, c B-3, ss. 243, 247 and 249.
3. *The Personal Property Security Act*, 1993, SS 1993, c P-6.2, ss. 63-64.

DATED at Regina, Saskatchewan, this 4 day of March, 2022.

KANUKA THURINGER LLP

Per: _____


Solicitors for MNP Ltd.

CONTACT INFORMATION AND ADDRESS FOR SERVICE

Lawyer in Charge of File:
Diana K. Lee, Q.C.

KANUKA THURINGER LLP
Barristers and Solicitors
1400 - 2500 Victoria AVE
Regina SK S4P 3X2

Tel: 306.525.7200
Fax: 306.359.0590
Email: dlee@kanuka.ca
25120-0048/no DM 3202811 v3