

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

BETWEEN:

THE MANUFACTURERS LIFE INSURANCE COMPANY

Applicant

- and -

RIVERSIDE PROFESSIONAL CENTRE INC.

Respondent

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

**FACTUM of the RESPONDENT  
(Application returnable SEPTEMBER 20, 2021)**

LERNERS LLP  
225 King Street West, Suite 1500  
Toronto, ON M5V 3M2

Domenico Magisano LS#: 45725E  
dmagisano@lerners.ca  
Tel: 416.601.4121

Spencer Jones LS#: 77350U  
sjones@lerners.ca  
Tel: 416.601.2358

Lawyers for the Respondent

TO: THE ATTACHED SERVICE LIST

SERVICE LIST

<p>AND TO:</p>	<p>MILLER THOMSON LLP          Scotia Plaza          40 King Street West, Suite 5800          P.O. Box 1011          Toronto, ON M5H 3S1</p> <p>David S. Ward LSO#: 33541W          Tel: 416.595.8625          dward@millerthomson.com</p> <p>Erin Craddock LSO #: 62828J          Tel: 416.595.8631          ecraddock@millerthomson.com</p> <p>Lawyers for the Applicant</p>
<p>AND TO:</p>	<p>FASKEN MARTINEAU DuMOULIN LLP          Bay Adelaide Centre          333 Bay Street, Suite 2400          P.O. Box 20          Toronto, ON M5H 2T6</p> <p>Dylan A. Chochla          Tel: 416.868.3425          dchochla@fasken.com</p> <p>Counsel for the Proposed Receiver</p>
<p>AND TO:</p>	<p>MNP LTD.          111 Richmond Street West          Suite 300          Toronto, ON M5H 2G4</p> <p>Sheldon Title, CPA, CA, CIRP, LIT          Sheldon.title@mnp.ca</p> <p>Proposed Receiver</p>
<p>AND TO:</p>	<p>BORDEN LADNER GERVAIS          World Exchange Plaza          100 Queen Street, Suite 1300          Ottawa, ON K1P 1J9</p> <p>David Sherriff-Scott          Tel: 613.787.3527          DSherriff-Scott@blg.com</p> <p>Counsel for The Ottawa Hospital</p>

AND TO:	STUART BUDD & SONS LTD. 2454 South Service Road W Oakville, ON L6L 5M9
AND TO:	ATTORNEY GENERAL OF CANADA Department of Justice Canada Ontario Regional Office, Tax Law Section 120 Adelaide Street West, Suite 400 Toronto, ON M5H 1T1  Diane Winters Tel: 647.256.7459 Diane.winters@justice.gc.ca  Lawyers for the Minister of National Revenue
AND TO:	MINISTRY OF FINANCE (ONTARIO) Legal Services Branch 777 Bay Street, 11th Floor Toronto, ON M5G 2C8  insolvency.unit@ontario.ca

7203246.1

## **PART I - INTRODUCTION**

1. The Applicant, The Manufacturers Life Insurance Company ("**Manulife**"), commenced an application to appoint MNP Ltd., as the receiver and manager of the assets, undertaking and property of Riverside Professional Corporation Inc. ("**Riverside**").

2. This responding factum is submitted in support of Riverside's request for an adjournment so that it may complete its refinancing efforts.

## **PART II - THE FACTS**

### **A. Background**

3. Riverside owns a medical office building (the "**Building**") located at 1919 Riverside Drive, Ottawa, Ontario (the "**Property**"). The Building is leased to medical professionals and is connected to The Ottawa Hospital.<sup>1</sup>

4. The Building is situated on the Property, which is owned by The Ottawa Hospital and leased to Riverside pursuant to a ground lease dated September 1, 1989 (the "**Ground Lease**"). The term of the Ground Lease is 49 years with an automatic option to renew for a further 49 years.<sup>2</sup>

---

<sup>1</sup> Application Record of the Respondent Riverside, returnable September 20, 2021 ("**Responding Record**"), Tab 1, Affidavit of Lawrence Bontje, sworn September 18, 2021 ("**Bontje Affidavit**"), p 2, para 5; Application Record of Manulife, returnable September 20, 2021 ("**Application Record**"), Tab 2, Affidavit of Robert Amos, sworn September 14, 2020 ("**Amos Affidavit**"), paras 3-4

<sup>2</sup> Responding Record, Tab 1, Bontje Affidavit, p 2, paras 6-7, & Exhibit "A"

**B. Loan from Manulife**

5. Pursuant to a commitment letter dated December 15, 2011, Manulife advanced a loan of \$7,500,000 to Riverside (the “**Loan**”).<sup>3</sup>

6. Security for the Loan consists of:

(a) a charge against Riverside’s leasehold interest in the Building, registered on title to the Property;

(b) a general security agreement dated February 16, 2012, providing Manulife with a general security interest over all of Riverside’s personal property and undertaking; and

(c) a general assignment of all leases and rent dated February 16, 2012.<sup>4</sup>

7. The Loan is set to mature on February 1, 2022.<sup>5</sup>

**C. Parking Dispute with The Ottawa Hospital**

8. The Ground Lease provides that Riverside is entitled to up to 250 parking spots for its operations. In 2015, Riverside began experiencing issues with available parking due to decisions made by The Ottawa Hospital related to parking spot distribution and allocation.<sup>6</sup> Specifically, The Ottawa Hospital began directing their staff to park in the

---

<sup>3</sup> Responding Record, Tab 1, Bontje Affidavit, p 3, para 10; Application Record, Tab 2, Amos Affidavit, para 11, & Exhibit “B”

<sup>4</sup> Responding Record, Tab 1, Bontje Affidavit, p 3, paras 11-12; Application Record, Tab 2, Amos Affidavit, paras 13, 16-17, & Exhibits “D”, “F”, and “G”

<sup>5</sup> Responding Record, Tab 1, Bontje Affidavit, p 3, para 15

<sup>6</sup> Responding Record, Tab 1, Bontje Affidavit, p 4, para 18; Application Record, Tab 2, Amos Affidavit, para 23, & Exhibit “J”

parking lot that had been allocated to Riverside such that there was insufficient parking for Riverside's tenants and their patients.

9. Due to insufficient parking at the Building, existing tenants declined to renew their leases, and prospective tenants intimately, decided against leasing in the Building. This significantly affected Riverside's operations by reducing tenant occupancy and creating cash flow issues.<sup>7</sup>

10. On September 29, 2017, Riverside commenced an action against The Ottawa Hospital seeking, amongst other relief, damages related to the parking issues described above (the "**Parking Litigation**").

11. During the course of the Parking Litigation, and specifically, in 2019, The Ottawa Hospital reversed its 2015 decision and directed its staff not to park in the spaces that had been allocated to Riverside. While this was a welcome change, tenants had already vacated and prospective tenants had chosen other premises to lease. As a result, in 2019 Riverside and its representatives began the long process of re-educating existing and prospective tenants about the Building's parking availability with a view to keeping existing tenants and securing new tenants. While the process has been slow tenant renewals have increased (with some taking additional space) while some new tenants are leasing in the Building.<sup>8</sup>

12. The Parking Litigation proceeded to summary judgment, however with The Ottawa Hospital's 2019 change in position regarding parking allocation, this was no longer a

---

<sup>7</sup> Responding Record, Tab 1, Bontje Affidavit, p 4, para 18

<sup>8</sup> Responding Record, Tab 1, Bontje Affidavit, p 5, para 24

seminal issue. Nonetheless, Riverside's action was dismissed, however, in the Court's decision, it reaffirmed Riverside's entitlement to up to 250 parking spots as per the Ground Lease, and noted that The Ottawa Hospital decision in 2019 appeared to resolve the issue.<sup>9</sup>

13. The decision in the Parking Litigation has been appealed as has the subsequent cost award made against Riverside. The appeal is scheduled to be heard in 2022.<sup>10</sup>

#### **D. Property Tax Arrears**

14. Due to the negative impact resulting from The Ottawa Hospital's decision to restrict parking access to the Building, Riverside's cash flow became strained and while it remained current on all of its other obligations (including its obligations under the Loan and the Ground Lease), it was unable to keep its municipal property taxes current. As a result, property tax arrears of approximately \$624,853.58, inclusive of interest and penalties, have accrued (the "**Property Tax Arrears**").<sup>11</sup>

15. Beginning on May 1, 2021, Riverside began to pay Manulife a monthly payment to be held in escrow, which was to be remitted as property taxes become due (the "**Monthly Tax Payment**"). The Monthly Tax Payment is remitted to Manulife in escrow, and remitted by Manulife to the taxing authority so as to ensure 2021 property tax obligations are current.<sup>12</sup>

---

<sup>9</sup> Responding Record, Tab 1, Bontje Affidavit, p 4, para 21

<sup>10</sup> Responding Record, Tab 1, Bontje Affidavit, p 4, para 22

<sup>11</sup> Application Record, Tab 2, Amos Affidavit, para 5

<sup>12</sup> Responding Record, Tab 1, Bontje Affidavit, p 6, para 29; Application Record, Tab 2, Amos Affidavit, para 31

**E. Manulife Demands on the Loan**

16. On October 22, 2020, counsel for Manulife advised Riverside that the Property Tax Arrears constituted a default under the Loan, however, Manulife did not issue a notice of intention to enforce security at that time.

17. Between October 2020, and May 2021, Riverside and Manulife engaged in negotiations relating to amending and/or extending the term of the Loan. The parties were not able to negotiate mutually agreeable terms, and on May 6, 2021, Manulife advised that it would not be renewing the Loan.<sup>13</sup>

18. On June 11, 2021, Manulife served Riverside with its notice of intention to enforce security (the "**244 Notice**").<sup>14</sup> The 244 Notice expired, however, Riverside and Manulife continued to negotiate terms relating to either an extension of the Loan, or alternatively, execution of a long term forbearance.<sup>15</sup>

19. On July 28, 2021, the parties executed a standstill agreement to provide them with additional time to negotiate an extension of the Loan or a longer term forbearance. While the standstill agreement expired without a formal agreement between the parties on how to proceed, negotiations continued between the parties and there was no suggestion of an imminent receivership application.<sup>16</sup>

---

<sup>13</sup> Responding Record, Tab 1, Bontje Affidavit, p 6, para 30; Application Record, Tab 2, Amos Affidavit, para 43, & Exhibit "V"

<sup>14</sup> Responding Record, Tab 1, Bontje Affidavit, p 6, para 32; Application Record, Tab 2, Amos Affidavit, para 50, & Exhibit "Z"

<sup>15</sup> Responding Record, Tab 1, Bontje Affidavit, pp 6-7, paras 33-34

<sup>16</sup> Responding Record, Tab 1, Bontje Affidavit, p 7, para 35



20. On September 13, 2021, Riverside's corporate finance counsel was advised by Manulife's counsel of the possibility of a receivership application as early as September 20, 2021. Following the September 13, 2021 conversation, the following events occurred:

(a) on September 14, 2021, Manulife's counsel delivered to Riverside draft receivership application material;<sup>17</sup>

(b) on September 15, 2021, Riverside delivered a term sheet it had received from Pillar Financial Corp ("**Pillar**") which provided sufficient funding to repay both the Loan and the Tax Arrears. In the accompanying email, Manulife was invited to contact Riverside and discuss the term sheet;<sup>18</sup>

(c) Riverside was not contacted by Manulife about the term sheet, or at all. Instead, on September 16, 2021, at 11:19 a.m., Manulife served its application record, with a return date of September 20, 2021<sup>19</sup>; and,

(d) on September 17, 2021, Riverside retained insolvency counsel to seek an adjournment of the short served receivership application.<sup>20</sup>

### **PART III - ISSUES AND THE LAW**

21. There is one issue to be determined at this motion: whether Manulife's application should be adjourned until October 18, 2021.

---

<sup>17</sup> Responding Record, Tab 1, Bontje Affidavit, p 7, para 39

<sup>18</sup> Responding Record, Tab 1, Bontje Affidavit, p 8, para 43

<sup>19</sup> Responding Record, Tab 1, Bontje Affidavit, p 8, para 44

<sup>20</sup> Responding Record, Tab 1, Bontje Affidavit, p 1, para 3

22. The facts militate in favour of the requested adjournment:

(a) In this proceeding there is no allegation of malfeasance or improper conduct on the part of Riverside. Further, Riverside is managed by PAR-Med Property Services Ltd. a highly regarded commercial and medical office property manager.

(b) Riverside is current on its obligations (including its obligations under the Loan and the Ground Lease), save for the Property Tax Arrears. Since May 2021, Riverside has made the Monthly Tax Payments to Manulife who is now responsible for remitting these amounts to the taxing authority. As a result, Riverside's tax obligations in 2021, and going forward, should be current.

(c) While the Property Tax Arrears constitute a default under the Ground Lease, and The Ottawa Hospital issued a default letter on May 4, 2021, that default letter was disputed by Riverside in a letter dated May 19, 2021. Specifically, Riverside takes the position that the Property Tax Arrears were the result of The Ottawa Hospital's failure to provide adequate parking as required under the Ground Lease from 2015 to 2019. This issue, amongst others, are the subject of the above referenced appeal scheduled to be heard in 2022. In any event, The Ottawa Hospital has not responded to Riverside's May 19, 2021 letter and has not taken any further steps to enforce on the purported default on the Ground Lease.

(d) Riverside has received a *bona fides* term sheet from Pillar, and Pillar has commenced its due diligence, by amongst other things, reviewing historical environmental reports for the Property, and retaining Colliers Macaulay Nicolls Inc., to provide an appraisal of the Ground Lease value. Riverside expects due

diligence to be complete and loan documents to be finalized before the week of October 18, 2021; and,

(e) Manulife served its application material less than two business days before the return date.

23. Manulife served its issued application materials on September 16, 2021.

24. Rule 38 of the *Rules of Civil Procedure*<sup>21</sup> is clear that a Notice of Application shall be served at least 10 days before the date of the hearing of the application.<sup>22</sup> Further, the materials that the applicant intends to rely on shall be filed with the Court at least 7 days before the date of the hearing of the application.<sup>23</sup> Even under the *Bankruptcy and Insolvency Act General Rules*, C.R.C. c. 368, materials must be served with at least four business days notice.<sup>24</sup>

25. As mentioned above, the application record was not served until 2 business days before the hearing of the application. Further, Riverside had not retained insolvency counsel at that time and was still hopeful that a forbearance or refinancing could occur. In fact, it hoped that the Pillar term sheet would provide some comfort to Manulife.

26. Given the short service of this application, insolvency counsel has not had an opportunity to be fully briefed. Given the rather serious remedies being sought, Riverside should be afforded the opportunity to fully respond.

---

<sup>21</sup> R.R.O., 1990, Reg. 194 (“**Rules**”)

<sup>22</sup> Rules, 38.06(3)

<sup>23</sup> Rules, 38.06(4)

<sup>24</sup> *Bankruptcy and Insolvency Act General Rules*, C.R.C. c. 368, Rules 5 & 6

27. Further, it is just and equitable for Riverside to be granted an adjournment so that they can try to complete a refinancing with Pillar pursuant to the term sheet. Riverside has acted with diligence in seeking alternative financing and, it should be noted, that prior to September 13, 2021, it believed that Manulife would entertain an extension of the Loan or, failing that, a longer term forbearance agreement.

28. It is respectfully submitted that short service in these circumstances was unnecessary and an adjournment on this ground alone is appropriate.

29. To the extent that short service is the result of Manulife's concern that The Ottawa Hospital will terminate the Ground Lease in the face of Riverside's pending appeal, we note that pursuant to section 106 of the *Courts of Justice Act*, the Court has the authority to impose a stay of proceedings on such terms that are just.<sup>25</sup>

30. An adjournment will prevent undue prejudice against Riverside, and ensure that the parties do not incur significant costs on needless litigation. For the reasons outlined above, Manulife's application should be adjourned until October 18, 2021.

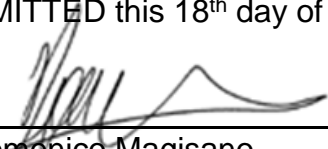
---

<sup>25</sup> R.S.O. 1990, c. C.43

**PART IV - ORDER REQUESTED**

31. The Respondent requests that the application be adjourned until October 18, 2021.

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 18<sup>th</sup> day of September, 2021.



---

Domenico Magisano  
Lerners LLP

Lawyer for the Respondent

**SCHEDULE “A”  
RELEVANT STATUTES**

***Courts of Justice Act***

s. 106. A court, on its own initiative or on motion by any person, whether or not a party, may stay any proceeding in the court on such terms as are considered just.

***Rules of Civil Procedure***

38.06(3). The notice of application shall be served at least ten days before the date of the hearing of the application, except where the notice is served outside Ontario, in which case it shall be served at least twenty days before the hearing date.

38.06(4). The notice of application shall be filed with proof of service at least seven days before the hearing date in the court office where the application is to be heard.

***Bankruptcy and Insolvency General Rules***

5(1) Subject to subsection (2), a notice or other document that is received by a Division Office outside of its business hours is deemed to have been received

(a) on the next business day of that Division Office, if it was received

(i) between the end of business hours and midnight, local time, on a business day, or

(ii) on a Saturday or holiday; or

(b) at the beginning of business hours of that Division Office, if it was received between midnight and the beginning of business hours, local time, on a business day.

(2) Subsection (1) does not apply to documents related to proceedings under Part III of the Act that are filed by facsimile.

6 (1) Unless otherwise provided in the Act or these Rules, every notice or other document given or sent pursuant to the Act or these Rules must be served, delivered personally, or sent by mail, courier, facsimile or electronic transmission.

(2) Unless otherwise provided in these Rules, every notice or other document given or sent pursuant to the Act or these Rules

(a) must be received by the addressee at least four days before the event to which it relates, if it is served, delivered personally, or sent by facsimile or electronic transmission; or

(b) must be sent to the addressee at least 10 days before the event to which it relates, if it is sent by mail or by courier.

(3) A trustee, receiver or administrator who gives or sends a notice or other document shall prepare an affidavit, or obtain proof, that it was given or sent, and shall retain the affidavit or proof in their files.

THE MANUFACTURERS LIFE  
INSURANCE COMPANY  
Applicant

and

RIVERSIDE PROFESSIONAL CENTRE  
INC.  
Respondent

Court File No.: CV-21-00668726-00CL

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

Proceeding commenced at **TORONTO**

**FACTUM of the RESPONDENT  
(Application returnable  
SEPTEMBER 20, 2021)**

LERNERS LLP  
225 King Street West, Suite 1500  
Toronto, Ontario M5V 3M2

Domenico Magisano LS#: 45725E  
dmagisano@lerners.ca  
Tel: 416.601.4121

Spencer Jones LS#: 77350U  
sjones@lerners.ca  
Tel: 416.601.2358

Lawyers for the Respondent