

Court of Queen's Bench of Alberta



Citation: 1305402 Alberta Inc v 0774238 B.C. Ltd, 2019 ABQB 982

**Date: 20191219
Docket: 1801 07295
Registry: Calgary**

Between:

1305402 Alberta Inc.

Applicant

- and -

0774238 B.C. Ltd., Dymi Investments Ltd., D & C Atlantic Investments Inc., A & C Pacific Enterprises Inc., The United Teaming Development Co. Ltd., Innet Enterprises Inc., Hung Yip International Development Co. Ltd., Augustan Enterprises Ltd., Fireland Development Ltd., Canapoint Development Inc., 0792065 B.C. Ltd., DNP Enterprises Ltd., Soon Enterprises Ltd., Sammei Enterprises Ltd., Canada and America Enterprises Ltd., Y Zhan Enterprises Corp., 0752868 B.C. Ltd. and Zhanda Investment Ltd.

Respondents

**Endorsement
of
J.R. Farrington, Master in Chambers**

[1] This is an application by MNP Ltd. (as a British Columbia Court appointed receiver of two individuals and several corporations) to have funds in the amount of \$281,711.11 paid to it in its capacity as receiver. For the reasons that follow, the application is dismissed.

[2] The British Columbia Securities Commission (the "Securities Commission") made substantial enforcement orders against Siu Mui "Debbie" Wong, Siu Kon "Bonnie" Soo, 1300302 Alberta Inc. and D & E Arctic Investments Inc. (the "Debtors"). The total fines exceeded nine million dollars between the various persons and entities. They arose from the

Debtors having secured real estate investments without a prospectus and other securities violations.

[3] The Securities Commission sought, and was granted, a Receivership Order in the Supreme Court of British Columbia on October 3, 2019. The Debtors are the named subjects of the Receivership Order. In addition, Wheatland Industrial Park Inc. was a named debtor and a subject of the Receivership Order.

[4] On the face of the Receivership Order, it is difficult to tell whether any other parties were served with notice of the proceeding. The preamble indicates that an appearance list is contained in Schedule A to the order, but Schedule A is a form of Receiver's Certificate to be used in securing funding of the receivership. I mention this because counsel for MNP Ltd. argues that certain findings that were made in the Receivership Order dictate the result on this application. As a result, it would have been helpful to know whether the objecting party to this application had any ability to raise any objections to any finding in the receivership proceeding. That may affect *res judicata* or issue estoppel arguments made by the receiver. In the end, the record is not sufficient to determine those issues now.

[5] Schedule B to the Receivership Order lists the subject land and the money in this action as property under the receiver's appointment.

[6] Of note, however, is that paragraph 1(c) of the Receivership Order says:

1. Pursuant to section 152 of the Securities Act, MNP Ltd. is appoint Receiver, without security, of the following assets, undertakings and property of the Debtors, including all proceeds therefrom:

...

- c) **Any of the Debtors' interests** in the securities and corporations identified on Schedule B hereto, whether legal or beneficial, and whether held singly or jointly with any other person.

(Emphasis added)

[7] The funds in Court are surplus proceeds from a sale or foreclosure in Alberta on land known to the parties as the "Rocky View Lands". There was a consent order for foreclosure in the foreclosure action giving the lender title so it is not readily apparent how surplus proceeds were generated for the registered owner, but presumably there is an explanation which will emerge at some point.

[8] Proceeds were then paid into Court on the application of the former registered owner 1305402 Alberta Inc. In support of the application, the affidavit of Kwok Kie Soo sworn May 11, 2018 appended a Trust Agreement dated May, 2007 which on its face provides that 1305402 Alberta Inc. held the subject lands in trust for nineteen different investors. If the agreement is authentic, that would appear to be a strong place to begin with a trust agreement. The supporting affidavit also included a Joint Venture Agreement.

[9] Paragraph 5 of the Order of Master J. Hanebury, QC granted on July 3, 2018 provided:

5. Any of the respondents or other interested parties may apply to this Court to have a portion of the sale proceeds released. Any such application shall be made on notice to all the respondents.

[10] The receiver had not been appointed at the time of Master Hanebury's Order. It is unclear if the Securities Commission had notice of the application.

[11] One of the named investors (0792065 B.C. Ltd.) objects to payment of the funds to MNP Ltd. arguing that entitlement should be determined in Alberta. It also argues that commingling of the funds with other receivership funds exposes funds that may properly be investor trust funds to the potential for receivership expenses pursuant to the receiver's charge in the Receivership Order and to other claims in the receivership. MNP Ltd. argues that it can determine priorities as needed in the ordinary course of the receivership proceedings, and that it is entitled to the funds.

[12] I find that MNP Ltd.'s claim to the funds is not sufficiently clear at this point to summarily direct that the funds be paid to it as sought.

[13] The registered owner of the lands appears to have been 1305402 Alberta Inc. That entity is not a named debtor in the Receivership Order. Neither are the other investors named in the Trust Agreement. It is not clear that the Debtors have any interest in the funds and MNP Ltd. must derive its interest through them. While MNP Ltd. may establish that they have an interest after full argument, it is premature to direct that the funds be paid to it now. The many corporate searches submitted by MNP Ltd. are not sufficient on their own to determine the matter on its merits.

[14] The suggestion by MNP Ltd. that the Receivership Order somehow conclusively determined that the funds belonged in the receivership is not persuasive. At best, the Receivership Order extended to enforcing any claims of the named Debtors to the funds. It does not, on its face, purport to determine substantively any other claims to the funds. Further, the list of parties who were served with the receivership proceedings, and who appeared on the receivership proceedings is not clear so the Court cannot evaluate any *res judicata* or issue estoppel effects at this stage.

[15] The Receivership order has a typical "assistance" clause seeking assistance from other courts and tribunals in recognizing the receivership proceedings. This Court is certainly prepared to provide whatever assistance and comity it reasonably can provide in relation to recognition of the Receivership Order. Having said that, given that the Receivership Order does not extend on its face to the property of 1305402 Alberta Ltd. being the party that was on title to the subject lands, or to the investors, the claim of MNP Ltd. to the funds will need to be properly proven. Prior to the commencement of the Receivership Order proceedings there was already a forum in this action to apply for substantive relief in relation to entitlement to the funds. MNP Ltd. is fully able to participate in any application regarding the funds. Any claim which it wishes to make to the funds should be made in a substantive way demonstrating a proven interest of the Debtors in the receivership funds, rather than in the more general way sought here where it simply seeks to receive the funds because it is a receiver, regardless of who is ultimately entitled to them.

[16] I emphasize that any comments that I have made on the merits have been made on the very limited record before me and they are not meant to be binding or conclusive on a later application to determine entitlement to the funds in Court.

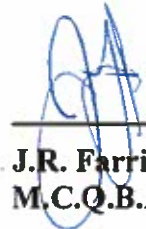
[17] For the foregoing reasons, MNP Ltd.'s application for payment of the funds in Court to it is dismissed. The objecting party 0792065 BC Ltd. is presumptively entitled to costs to be assessed, but if the parties wish to argue that the costs result should be different, they may speak to costs by appointment within 60 days of the filing of these reasons.

[18] I would encourage the parties to discuss logistics and time frames for an application regarding to entitlement to the funds on the merits. Any Master will be able to provide assistance in Chambers on any points in dispute.

[19] Thank you very much to the parties for their very able submissions.

Heard on the 17th day of December, 2019.

Dated at the City of Calgary, Alberta this 19th day of December, 2019.



J.R. Farrington
M.C.Q.B.A.

Appearances:

Lawson Lundell LLP

Kyle Gardiner

for the Applicant (on this application) MNP Ltd.

Anderson James McCall Barristers

Brad J. Findlater

for the Respondent (on this application) 0792065 B.C. Ltd.