



No. S105562
Vancouver Registry

IN THE SUPREME COURT OF BRITISH COLUMBIA

BETWEEN:

SERVUS CREDIT UNION LTD. and
CONCENTRA FINANCIAL SERVICES ASSOCIATION
ASSOCIATION DE SERVICES FINANCIERS CONCENTRA

PLAINTIFFS

AND:

SQUAMISH JV LTD.

DEFENDANT

NOTICE OF APPLICATION

Name of applicant: MNP Ltd. (“MNP”), in its capacity as court-appointed receiver and manager (in such capacity, the “**Receiver**”) of the assets, undertakings and properties of Squamish JV Ltd. (“**Squamish JV**”, or the “**Company**”).

To: Servus Credit Union Ltd. (“**Servus**”).

And to: 2090782 Ontario Inc. (“**209**”).

TAKE NOTICE that an application will be made by the Receiver to the presiding judge at the courthouse at 800 Smithe Street, Vancouver, British Columbia on October 25, 2023 at 9:45 a.m. for the orders set out in Part 1 below.

Part 1: ORDER SOUGHT

1. The Receiver seeks a “**Fee Approval & Discharge Order**” substantially in the form attached hereto as Schedule “A”, among other things:
 - (a) approving the activities of: (i) MNP, in its capacity as court-appointed interim receiver of the Company (in such capacity, the “**Interim Receiver**”), as set forth in the Interim Receiver’s First, Second, and Third Reports to the Court filed, respectively, September 20, October 29, and dated November 8, 2010 (collectively,

the “**Interim Receiver’s Reports**”); and (ii) the Receiver, as set forth in the Receiver’s First, Second, Third, and Final Reports to the Court filed, respectively, March 22, 2011, April 11, 2011, February 29, 2012 (the “**Third Report**”) and September 28, 2023 (the “**Final Report**”) (collectively, the “**Receiver’s Reports**”);

- (b) approving the Receiver’s statement of receipts and disbursements dated August 28, 2023 (the “**Receiver’s SRD**”) and attached as Appendix “6” to the Final Report;
- (c) approving the: (i) Interim Receiver’s fees and disbursements for the period from August 31, 2010 to November 23, 2010 in the amount of \$136,579.51, including applicable taxes (the “**Interim Receiver’s Fees**”); and (ii) the Receiver’s fees and disbursements for the period from November 24, 2010 to June 30, 2023 (the “**Receiver’s Fee Period**”), in the amount of \$477,185.40, including applicable taxes (the “**Receiver’s Fees**”);
- (d) approving the Receiver’s estimated further fees and disbursements of approximately \$6,000.00, plus applicable taxes, for the period from July 1, 2023, to the completion of this matter (the “**Receiver’s Estimate**”);
- (e) approving the fees and disbursements of legal counsel to the Receiver:
 - (i) Duncan & Craig LLP (“**D&C**”), for the period from February 16 to May 20, 2011, in the amount of \$31,037.03 (“**D&C’s Fees**”); and
 - (ii) Fasken Martineau DuMoulin LLP (“**Fasken**”) for the period from November 24, 2010 to July 31, 2023 (“**Fasken’s Fee Period**”) in the amount of \$263,421.36, including applicable taxes (“**Fasken’s Fees**”);
- (f) approving Fasken’s estimated further fees and disbursements of approximately \$12,000, plus applicable taxes, for the period from August 1, 2023 to the completion of this matter (“**Fasken’s Estimate**”);

- (g) approving the Assignment Agreement (defined below), and authorizing the Receiver to enter into and execute it;
- (h) approving the Company Records Proposal (defined below) in respect of certain books and records in the Receiver's possession belonging to the Company that are no longer in use (collectively, the "**Company Records**");
- (i) authorizing the Receiver to make the Final Distribution (defined below) of the receivership estate to Servus after payment of the fees and disbursements to the Receiver and Fasken as set forth above;
- (j) effective upon the Receiver's filing of a certificate with this Court (the "**Discharge Certificate**"), discharging the Interim Receiver and Receiver of their duties and obligations arising under the Interim Receivership Order and Receivership Order (as defined below); and
- (k) releasing MNP from any and all liability that MNP now has, or may hereafter have, by reason of, or in any way related to, the acts or omissions of MNP while acting in its capacity as Interim Receiver or Receiver, save and except for gross negligence or wilful misconduct on the part of MNP.

Part 2: FACTUAL BASIS

1. The background to these receivership proceedings is set forth in detail in the Final Report. Capitalized terms used but not otherwise defined in this Notice of Application have the meanings given to them in the Final Report.

I. OVERVIEW

2. This receivership involved a Holiday Inn Express & Suites Hotel located in Squamish, British Columbia (the "**Hotel**"). The Company operated the Hotel through the grant of the Interim Receivership Order up until the grant of the Receivership Order in about November 2010. The Interim Receiver and Receiver were appointed by Servus, the Company's first-ranking secured creditor, and the Hotel was sold in about April 2011.

3. Between about 2012 and 2016, the Receiver initiated and concluded various court proceedings (the Related Proceedings, described below), which resulted in the recovery of substantial amounts owing to Servus and the resolution of all matters between Servus and the Guarantors pursuant to an omnibus settlement agreement (the “**Guarantor Settlement**”).
4. Notwithstanding these recoveries, after the Receiver’s discharge and final distributions, Servus will be expected to suffer a shortfall on account of the Servus Indebtedness in the amount of approximately \$531,000 (the “**Shortfall**”). In light of the Shortfall and the Guarantor Settlement, Servus is the only party (apart from the Receiver and its counsel) that may be affected by the orders sought on this application.
5. The Receiver acknowledges that a substantial amount of time has passed between the resolution of the Related Proceedings and this application (the “**Delay**”). The Delay appears to be attributable, at least in part, to the successive departures of counsel with primary conduct of this matter. While not ideal, for the reasons further described below, the Receiver’s position is that no stakeholder has been materially prejudiced by the Delay, and therefore the Fee Approval & Discharge Order should be granted as sought.

II. BACKGROUND

(i) Sale of the Hotel and Initial Distributions

6. Squamish JV was incorporated in Alberta on May 24, 2007, and extra-provincially registered in British Columbia on May 28, 2007. It was struck from the register of companies in both Alberta and B.C. in November 2012.¹
7. On about November 14, 2008, pursuant to a Floating Demand Loan Agreement of the same date (the “**Loan Agreement**”), Servus advanced a loan to the Company in the principal amount of \$8,896,550 (the “**Servus Loan**”). The Servus Loan was secured by, among other things, a first mortgage registered against title to the Hotel. Concentra Financial Services Association Association de Services Financiers Concentra (“**Concentra**”) did not advance

¹ Final Report, para. 6, Appendix “1”.

any funds to the Company, but held the first mortgage on behalf of Servus pursuant to an Out of Province Mortgage Agreement dated November 1, 2006.²

8. In about July 2010, the second mortgagee, 209, commenced foreclosure proceedings under Vancouver Registry action no. H-100866 (the “**Foreclosure**”). Along with the Company, the respondents to the Foreclosure included, among others, approximately 22 entities having registered claims of builders liens against the Hotel (collectively, the “**Lien Claimants**”).
9. On August 31, 2010, by order of this Court (the “**Interim Receivership Order**”) and on application by Servus, MNP (formerly Meyers Norris Penny Limited) was appointed Interim Receiver of the assets and undertakings of the Company (in such capacity, the “**Interim Receiver**”).
10. On November 24, 2010, by order of this Court (the “**Receivership Order**”), MNP was appointed receiver and manager of the assets and undertakings of the Company (in such capacity, the “**Receiver**”).
11. On April 13, 2011, by order granted in the Foreclosure (the “**Order Approving Sale**”), the Hotel was sold.³
12. By applications returnable March 14, 2012 (the “**Last Applications**”):
 - (a) the Receiver sought an order, among other things: (i) approving a statement of receipts and disbursements, as well as certain fees and disbursements of the Interim Receiver, the Receiver, D&C and Fasken incurred from the commencement of these proceedings (collectively, the “**Administrative Relief**”); and (ii) approving certain payments to CRA and WorkSafeBC on account of amounts owing by the Company (the “**Priority Payments**”); and

² Final Report, para. 8.

³ Final Report, para. 12; see also, the Third Report.

(b) Servus sought orders authorizing and directing the Receiver to: (i) distribute \$4,000,000 from the receivership estate to Servus; and (ii) distribute to Servus from time to time such additional monies as the Receiver may determine are not required to fund the receivership (together, the “**Servus Payments**”).

13. On March 14, 2012, by order of this Court (the “**Payment Order**”), the Servus and Priority Payments were approved and the Administrative Relief was adjourned generally.

14. In about March 2012, the Receiver made the Priority Payments and the \$4,000,000 payment to Servus pursuant to the Payment Order.

(ii) Intervening Period

15. Between March 2012 and September 2023 (the “**Intervening Period**”), the Receiver, D&C, and Fasken undertook the activities related to this Receivership further described below.

16. In general terms, the Receiver prosecuted and dealt with various proceedings in British Columbia and Alberta (the “**Related Proceedings**”) involving, among others, the Company and the guarantors of the Company’s obligations to Servus under the Loan Agreement (the “**Guarantors**”). The Related Proceedings were substantially concluded in about 2016, and resulted in:

(a) monies being brought into the Receivership estate totalling \$694,969.94, including the ABKB Court Proceeds (\$193,589.38) and dividends in the 113 AB Ltd. Bankruptcy (\$501,380.56); and

(b) the collection by Servus, directly, of amounts owing on account of the Servus Loan from the Guarantors (the “**Guarantor Payments**”), as well as the Guarantor Settlement.

(iii) This Application

17. Given the Delay, in order to promote continuity and to allow interested parties to participate in this application, in about beginning in about November 2022 and continuing through

2023, Fasken prepared the Updated Service List and served a Notice of Intention to Proceed dated November 18, 2022 (the “**2022 NOITP**”). Further details regarding the Updated Service List and proof of service of the 2022 NOITP are set out in the Affidavit #1 of Ashley Kumar filed in these proceedings on September 27, 2023 (“**Kumar #1**”).

18. The 2022 NOITP was covered by a letter inviting parties that wished to receive materials in support of this application to notify Receiver’s counsel. Only counsel for 209 responded to request such materials.⁴
19. Up until the 2022 NOITP, the grant of the Payment Order (March 14, 2012) was the last step taken in these proceedings.⁵
20. It appears that certain investors in the Company (the “**Investors**”) may have opposed the Administrative Relief at the Last Applications, which is why such relief was adjourned. Counsel for the Investors responded to the 2022 NOITP, but did not request to be provided with materials in support of this application.⁶

(iv) *Summary*

21. To summarize the background to this application:
 - (a) no orders have yet been made in these proceedings approving the activities or fees of the Interim Receiver, Receiver, or its counsel;
 - (b) in March 2012, the Receiver made the Priority Payments and a \$4,000,000 payment to Servus;
 - (c) pursuant to the *Supreme Court Civil Rules*, the 2022 NOITP was served on the Updated Service List, and only 209 requested materials for this application; and

⁴ Affidavit #1 of Ashley Kumar, made September 27, 2023 (“**Kumar #1**”), para. 24.

⁵ Final Report, para. 19, Appendix “3”.

⁶ Kumar #1, para. 14.

- (d) as mentioned above, on account of the Shortfall and the Guarantor Settlement, only the Receiver, its counsel, and Servus may be affected by the grant of the relief sought on this application.

III. INTERIM RECEIVER'S AND RECEIVER'S ACTIVITIES

22. Following are summaries of the various Interim and Receiver's Reports filed in these proceedings and the activities of the Interim Receiver and Receiver as described therein.

(i) Interim Receiver's First Report – September 15, 2010

23. This report covered the period from August 31, 2010 (i.e. the date of the Interim Receivership Order) to September 15, 2010.

24. During this time, the Interim Receiver, among other things: (a) attended and inspected the Hotel; (b) found that the Hotel was being managed by a group of the Company's minority investors; (c) learned that the Company was in breach of its license agreement and that substantial work would need to be done to correct the defaulting deficiencies; (d) prepared a cash flow projection for Hotel operations; (e) scrutinized diversions of cash to related companies including 113 AB Ltd.; and (f) reported that notice of the Interim Receivership Order was provided to the Company's creditors, including the Lien Claimants, and that the requisite statutory notices were also made and delivered.

(ii) Interim Receiver's Second Report – October 25, 2010

25. This report covered the period from about September 15 to October 25, 2010.
26. During this time, the Interim Receiver, among other things: (a) prepared an updated cash flow projection for Hotel operations to account for declining revenues since its appointment; (b) coordinated the opening of a payroll account with CRA, to which the Company had not previously made remittances; and (c) continued discussions with the minority investors managing the Company, including regarding how to address the deficiencies needing to be corrected in order to maintain the license to operate the Hotel.

27. In this report, the Interim Receiver concluded that in the absence of a cash injection from investors, the only other option would be for the Interim Receiver to obtain authorization to borrow funds to continue Hotel operations.

(iii) Interim Receiver's Third Report – November 8, 2010

28. This report covered the period from about October 25 to November 8, 2010, and appears to have been prepared in support of the Receivership Order.

29. During this time, the Interim Receiver, among other things: (a) prepared a further updated cash flow projection in respect of Hotel operations; (b) continued its investigations into amounts owing to the Company by related companies; and (c) in light of the foregoing and given that it had not received any proposals from the Company's investors to fund operational shortfalls, recommended to the Court that the Interim Receiver's powers be expanded to allow it to borrow funds, take over Hotel operations, and pursue collection of amounts owing to the Company, including by related companies.

(iv) First and Second Reports – March 22 and April 11, 2011

30. These reports covered the period from about November 8, 2010 to April 11, 2011, and were filed in support of the Receiver's application for the Order Approving Sale in the Foreclosure Proceedings.⁷

31. Among other things, the Receiver's First Report: (a) set out the key features of the proposed purchase and sale agreement (which was attached as an appendix); (b) set out the Receiver's comments on the providence of the sale, as well as the financial and other factors that recommended it; (c) reported that the Hotel continued to operate at a loss and that no proposal had been received from either Servus or the current management to continue to fund operations; and (d) concluded that, in light of the foregoing, the Receiver sought the Order Approving Sale.

⁷ The Receiver's First Report is undated, but was filed in the Foreclosure Proceedings under the Affidavit #2 of Sera Hallett filed March 22, 2010.

32. The Receiver's Second Report was filed to provide further details of the Hotel's financials after the Receiver heard from stakeholders who were under the impression that the Hotel was operating profitably. This report attached an updated cash flow projection that showed that, despite the recent uptick in business caused by an atypical rise in bookings, the Hotel would continue to lose money on a go-forward basis.

(v) *Third Report – February 24, 2012*

33. This report covered the period from about April 11, 2011 to about February 24, 2012, and was filed in support of the Receiver's application (one of the Last Applications) seeking the Administrative Relief and the Priority Payments.

34. Among other things, the Third Report: (a) reported on the completion of the sale of the Hotel; (b) reported on the status of the 113 AB Ltd. Bankruptcy, which at that time it was actively prosecuting; (c) set out the proposed Priority Payments; (c) attached an interim statement of receipts and disbursements for the period ending January 16, 2012; (d) stated that Fasken had conducted a review of Servus' security and concluded that it was valid and enforceable; and (e) described the Servus Payments, the D&C Fees, and the Receiver's and Fasken's fees as sought to be approved.

(vi) *Final Report – September 28, 2023*

35. The Final Report covered the Intervening Period and was filed in support of this application.

36. Among other things, the Final Report: (a) summarized the background of these proceedings as well as the most recent procedural history (i.e., the Last Applications and the 2022 NOITP); (b) described the proposed distribution of the receivership estate; (c) reported on the Related Proceedings, including: (i) the Venture Action (and the ABKB Court Proceeds); (ii) the Alberta Guarantee Actions (and the Guarantor Payments and Settlement); (iii) the Lien Claimant Action; and (iv) the 113 AB Ltd. Bankruptcy (and the dividends and costs recovered therefrom); and (d) summarized the D&C Fees, Fasken's Fees and the Interim Receiver's and Receiver's Fees (further described below).

37. The Final Report also reported on the proposed Assignment Agreement and Company Records Proposal. In summary in respect of each:

- (a) **Assignment Agreement:** In the Venture Action, the ABKB Court Proceeds were paid into the ABKB pursuant to the November 2010 Order, which proceeds were ordered: (i) to stand as security for the claims and interests of the creditors of the Company; and (ii) not to be paid out unless by agreement between Servus and Venture Ltd. or further court order. To allow for the Receiver's discharge, the Receiver has agreed to assign to Servus its interest, if any, in the ABKB Court Proceeds pursuant to the form of Assignment Agreement attached to the Final Report as Appendix "5".⁸
- (b) **Company Records Proposal:** The Receiver retains certain books and records belonging to the Company that are not the Company's minute book. Given that the Company was struck from the Alberta and B.C. registers in 2012, the Receiver proposes to deliver notice to the Former Directors to take possession of the Company Records within 30 days from the date of the grant of Fee Approval & Discharge Order, failing which the Receiver shall be authorized to destroy them.⁹

(vii) *Delay*

38. In preparation for this application, the Receiver and Fasken reviewed their files and, while they could not determine any particular reason for the Delay, such review showed that turnover of counsel may have contributed. In particular, Mr. Peerson, who had primary conduct of this matter from the grant of the Receivership Order through the Last Applications, took leave from Fasken in about October 2015. Thereafter, the matter was passed to successive timekeepers who departed the firm at various intervals between 2017 and 2022.¹⁰

⁸ Final Report, paras. 33 – 37.

⁹ Final Report, paras. 79 – 81.

¹⁰ Affidavit #1 of Rebecca Barclay Nguinambaye made September 27, 2023 (“Nguinambaye #1”), paras. 13, 14.

39. Regarding the Delay, the Receiver notes that: (a) as detailed in the Final Report and as summarized below, apart from an increase in fees for preparing for this application, professional fees incurred during the Intervening Period were relatively minimal, while recoveries to Servus during this time were comparatively great; and (b) no stakeholder (including Servus) ever raised any issue regarding the Delay, nor requested that the Receiver apply to be discharged.¹¹ Including for these reasons, the Receiver is of the view that no stakeholder has been materially prejudiced by the Delay.

IV. RECEIVER'S AND COUNSEL'S FEES

(i) Final Statement of Receipts and Disbursements

40. The Receiver's SRD for the period from August 31, 2010 through August 28, 2023, is attached as Appendix "6" to the Final Report. As set forth therein, as at August 28, 2023, the Receiver held receipts in excess of disbursements totalling \$51,902.48.

(ii) Interim Receiver's, Receiver's, and Fasken's Fees

41. The particulars of the Interim Receiver's Fees, the Receiver's Fees, and Fasken's Fees (collectively, the "**Fees**") are summarized in the Final Report, and are further detailed in the Affidavit #2 of Eric Sirrs made September 28, 2023 ("**Sirrs #2**") and the Affidavit #1 of Rebecca Barclay Nguinambaye made September 27, 2023 ("**Nguinambaye #1**").
42. The Interim Receiver was appointed from the grant of the Interim Receivership Order on August 31, 2010 through to the grant of the Receivership Order on November 24, 2010 (a period of approximately three months). The Interim Receiver's Fees totalled \$136,579.51.¹²
43. To the end of the Receiver's and Fasken's Fee Periods, inclusive of applicable taxes, the Receiver's Fees total \$477,185.40 and Fasken's Fees total \$263,421.36.¹³

¹¹ Final Report, paras. 53, 54.

¹² Final Report, para. 64; Sirrs #2, para. 7.

¹³ Final Report, paras. 66 and 71; Sirrs #2, para. 11; Nguinambaye #1, para. 6.

44. Following is a table summarizing the Receiver's and Fasken's Fees by the year.

Year	Fasken's Fees (\$)	Interim/ Receiver's Fees (\$)	TOTAL (\$)
2010	5,149.98	136,579.51	141,729.49
2011	127,359.57	368,617.06	495,976.63
2012	36,251.65	35,507.99	71,759.64
2013	7,347.62	8,793.68	16,141.30
2014	-	-	-
2015	2,770.00	-	2,770.00
2016	-	13,281.11	13,281.11
2017	9,271.36	14,348.88	23,620.24
2018	-	3,933.09	3,933.09
2019	-	5,520.91	5,520.91
2020	4,622.94	2,352.74	6,975.68
2021	1,741.60	8,526.69	10,268.29
2022	19,684.83	9233.6	28,918.43
2023	49,221.81	7,069.65	56,291.21
TOTAL	\$263,421.36	\$613,764.91	\$877,186.27

45. The Receiver has reviewed Fasken's invoices in respect of Fasken's Fees and concluded that they are reasonable and appropriate in the circumstances.¹⁴

46. Assuming this application is not opposed:

(a) The Receiver estimates that its fees and disbursements from the end of the Receiver's Fee Period to the conclusion of this receivership will amount to approximately \$6,000.00, plus applicable taxes (the Receiver's Estimate).¹⁵

(b) Fasken estimates that its fees and disbursements from the end of the Fasken Fee Period to the conclusion of this matter will amount to approximately \$12,000.00, plus applicable taxes (the Fasken Estimate).¹⁶

47. In the event that the Fee Approval & Discharge Order is granted as sought, prior to its filing the Discharge Certificate, the Receiver and Fasken will render final invoices for services rendered in relation to this matter (the "**Completion Invoices**").

¹⁴ Final Report, para. 77; Sirrs #2, para. 21.

¹⁵ Final Report, para. 68; Sirrs #2, para. 13.

¹⁶ Final Report, para. 73; Nguinambaye #1, para. 17.

(iii) D&C's Fees

48. Duncan & Craig LLP (“D&C”) was counsel for the Receiver between February 16 and May 20, 2011, in respect of the matters leading up to and including the 113 AB Ltd. Bankruptcy. The D&C Fees totalled \$31,037.03.¹⁷
49. As further detailed in the Final Report, the Receiver recovered funds totalling \$25,092.22 representing legal costs in respect of the 113 AB Ltd. Bankruptcy. These fees were taxed by the ABKB before being paid to the Receiver. The balance of the D&C Fees (\$5,944.81) include amounts for work done in the lead up to the 113 AB Ltd. Bankruptcy that were not taxable in that proceeding.
50. The Receiver has reviewed D&C’s invoices in respect of the D&C Fees and concluded that they are reasonable and appropriate in the circumstances.¹⁸

V. PROPOSED DISTRIBUTIONS

51. As detailed in the Final Report, even after the Servus Payments and Guarantor Payments, the outstanding balance of the Servus Indebtedness totals approximately \$760,000, which amount does not include interest and legal costs that have accrued.¹⁹
52. The Priority Payments were made in March 2012. Accordingly, the Receiver knows of no creditors having claims that rank ahead of that of Servus.
53. Upon payment of all expenses required to complete this receivership, including the Fees and the fees owing under the Completion Invoices, the Receiver anticipates that the final amount disbursed to Servus will be approximately \$33,902.48 (the “**Final Distribution**”). Accordingly, including the ABKB Court Proceeds, Servus will suffer the Shortfall on account of the Servus Indebtedness in the amount of approximately \$530,614.83.

¹⁷ Final Report, para. 74, Appendix “11”.

¹⁸ Final Report, para. 77 and 78.

¹⁹ Final Report, paras. 55 – 60.

VI. RELEASE AND DISCHARGE

54. If the Fee Approval & Discharge Order is granted, subject to the Receiver making the distributions contemplated above and pursuant thereto, the Interim Receiver and the Receiver will have completed its duties as set out in the Interim Receivership and Receivership Order, except for the following (the “**Concluding Matters**”):
- (a) executing the Assignment Agreement;
 - (b) destroying or returning the Company Records;
 - (c) preparing the final bank reconciliations and GST return on behalf of the Company and closing the Receiver’s bank account and the Company’s GST account; and
 - (d) preparing and issuing the Receiver’s final report in these proceedings pursuant to subsection 246(3) of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended (the “**BIA**”).²⁰
55. The Concluding Matters are administrative and the Receiver is of the view that it is appropriate to seek the Fee Approval & Discharge Order discharging the Interim Receiver and the Receiver, with its discharge to be effective upon the filing of the Discharge Certificate.
56. As a term of the Fee Approval & Discharge Order, the Interim Receiver and the Receiver is also seeking a release from the Court in respect of any and all claims and obligations arising as a result of the Interim Receiver and the Receiver acting in its respective capacities on behalf of the Company, excepting those claims and obligations arising as a result of gross negligence or willful misconduct.

²⁰ Final Report, para. 82.

Part 3: LEGAL BASIS

1. The Receiver relies on:
 - (a) the BIA;
 - (b) Rules 8-1 and 10-2 of the *Supreme Court Civil Rules*;
 - (c) the Interim Receivership and Receivership Orders;
 - (d) the inherent and equitable jurisdiction of this Court; and
 - (e) such further and other legal basis as counsel may advise and this Honourable Court may allow.
2. The work performed by the Interim Receiver, the Receiver, D&C and Fasken was done pursuant to, and in accordance with, the terms of the Interim Receivership Order, the Receivership Order, the other orders of the Court made in these proceedings and the provisions of the BIA.

I. APPROVAL OF THE INTERIM AND RECEIVER'S ACTIVITIES

3. The Court has inherent jurisdiction to review and approve or disapprove the activities of a court-appointed receiver. If the receiver has met the objective test of demonstrating that it has acted reasonably, prudently and not arbitrarily, the Court may approve the receiver's activities.²¹
4. The activities of the Interim Receiver and the Receiver are summarized in Part 2 herein, and are detailed in the Interim Receiver's Reports and Receiver's Reports. The Interim Receiver and the Receiver has acted responsibly in order to preserve and capture as much value as possible for the Company's stakeholders, including by pursuing the Related Proceedings. The activities of the Interim Receiver and the Receiver have all be necessary

²¹ *Leslie & Irene Dube Foundation Inc. v. P218 Enterprises Ltd.*, 2014 BCSC 1855, para. 54.

and were conducted in accordance with its powers under the relevant orders. Accordingly, the Interim Receiver and Receiver seek approval of its activities.

II. APPROVAL OF THE FEES

5. The Interim Receivership Order and the Receivership Order each expressly provide that its accounts be referred to a judge of this Honourable Court and that the passage of those accounts be heard on a summary basis.²²
6. There is no fixed rate or settled scale for determining a receiver's compensation. A receiver may either be allowed a percentage payment based on receipts, or a lump sum based on "the time, trouble and degree of responsibility involved". The governing principle is that a receiver's compensation should be measured by the "fair and reasonable" value of its services.²³
7. This principle was adopted by the British Columbia Court of Appeal in *Bank of Montreal v. Nican Trading Co.*, [1990] B.C.J. No. 340 (B.C. C.A.) [*"Nican"*]. The Court of Appeal went on to list "relevant considerations" in determining whether a receiver's compensation was fair and reasonable, including:
 - (a) the value of the assets;
 - (b) complications and difficulties encountered by the receiver;
 - (c) the degree of assistance provided by the debtor;
 - (d) time spent by the receiver;
 - (e) receiver's knowledge, experience and skill;
 - (f) diligence and thoroughness;
 - (g) responsibilities assumed;

²² Interim Receivership Order, para. 13; Receivership Order, para. 17.

²³ *Belyea v. Federal Business Development Bank*, [1983] N.B.J. No. 41 (N.B. C.A.) [*"Belyea"*], para. 3; see also: *Confectionately Yours Inc., Re*, [2002] O.J. No. 3569, para. 44.

- (h) results; and
 - (i) cost of comparable services.²⁴
8. Similar factors as considered on the assessment of a receiver's fees are also considered on the assessment of the accounts of legal counsel to a receiver, including, the:
- (a) time expended;
 - (b) complexity of the proceedings;
 - (c) degree of responsibility assumed by the lawyers;
 - (d) amount of money involved, including reference to the debt, amount of proceeds after realization and payments to the creditors;
 - (e) degree and skill of the lawyers involved;
 - (f) results achieved; and
 - (g) client's expectations as to the fee.²⁵
9. The Receiver submits that the Fees are fair and reasonable in the circumstances. In particular, with reference to the above considerations, the Receiver notes that:
- (a) it spent a considerable amount of time analyzing and assessing the viability of the Hotel's operations early on in the administration, as well as managing the Hotel operations prior to its sale;
 - (b) it was thorough in its pursuit of Company monies, including by initiating and completing the 113 AB Ltd. Bankruptcy;
 - (c) it took on a great deal of responsibility through its involvement in the Related Proceedings, which added to the complexity of these proceedings; and

²⁴ *Bank of Montreal v. Nican Trading Co.*, [1990] B.C.J. No. 340 (B.C. C.A.) [*"Nican"*], paras. 23 – 32.

²⁵ *Redcorp Ventures Ltd., Re*, 2016 BCSC 188, para. 33.

- (d) in spite of the Delay, achieved meaningful recoveries and therefore a reasonable result for the Company's stakeholders, including Servus, which stands to substantially recover the principal of the Servus Loan.
10. In respect of the Interim Receiver's and the Receiver's Fees, the Receiver submits that:
- (a) the Interim Receiver's and the Receiver's Fees were properly incurred, and commensurate with fees charged by other insolvency firms of a similar size for work of a similar nature and complexity in British Columbia;
 - (b) the work completed by the Interim Receiver and Receiver was delegated to the appropriate professionals with the appropriate seniority and hourly rates; and
 - (c) the Interim Receiver's and the Receiver's services were performed in a prudent and economical manner.
11. Similarly, the Receiver submits that Fasken's and D&C's Fees are fair and reasonable in the circumstances as:
- (a) Fasken's and D&C's professional fees and disbursements were properly incurred, and commensurate with fees charged by similar firms with the expertise and capacity to serve a matter of comparable size and complexity;
 - (b) the work completed by Fasken and D&C was delegated to the appropriate professionals with the appropriate seniority and hourly rates;
 - (c) Fasken's and D&C's services were performed in a prudent and economical manner; and
 - (d) Fasken's and D&C's invoices were provided to the Receiver when rendered, and all have been approved by the Receiver.
12. In light of the foregoing, the Receiver submits that the Fees should be approved, as the Receiver has substantially completed its mandate.

III. DISCHARGE OF THE INTERIM RECEIVER AND RECEIVER

13. The release sought by the Interim Receiver and the Receiver on this application includes the language set forth in the British Columbia model discharge order, modified to include the appropriate carve outs for any claims arising from gross negligence or wilful misconduct on the part of the Receiver.
14. Upon the filing of the Discharge Certificate, the Interim Receiver and the Receiver should be discharged.

Part 4: MATERIAL TO BE RELIED ON

1. Order, granted August 31, 2010 (Interim Receivership Order);
2. Order, granted November 24, 2010 (Receivership Order);
3. Receiver's Second Report to Court, dated April 11, 2011;
4. Receiver's Third Report to Court, filed February 29, 2012;
5. Affidavit #1 of Sera Hallett, filed March 22, 2012 (H-100866);
6. Affidavit #2 of Sera Hallett, filed March 22, 2012 (H-100866);
7. Affidavit #1 of Rebecca Barclay Nguinambaye, made September 27, 2023;
8. Affidavit #1 of Ashley Kumar, made September 27, 2023;
9. Affidavit #2 of Eric Sirrs, made September 28, 2023;
10. Receiver's Fourth and Final Report to Court, dated September 28, 2023; and
11. Such further/ other materials as counsel may advise and this Honourable Court may allow.

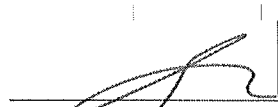
The applicant estimates that the application will take **30 minutes**.

- This matter is not within the jurisdiction of a master.

TO THE PERSONS RECEIVING THIS NOTICE OF APPLICATION: If you wish to respond to this Notice of Application, you must, within 5 business days after service of this Notice of Application or, if this application is brought under Rule 9-7, within 8 business days after service of this Notice of Application,

- (a) file an Application Response in Form 33,
- (b) file the original of every affidavit, and of every other document, that
 - (i) you intend to refer to at the hearing of this application, and
 - (ii) has not already been filed in the proceeding, and
- (c) serve on the applicant 2 copies of the following, and on every other party of record one copy of the following:
 - (i) a copy of the filed Application Response;
 - (ii) a copy of each of the filed affidavits and other documents that you intend to refer to at the hearing of this application and that has not already been served on that person;
 - (iii) if this application is brought under Rule 9-7, any notice that you are required to give under Rule 9-7(9).

Dated: 29-Sep-2023



 Glen Nesbitt
 Lawyer for MNP Ltd., in its capacity as
 Receiver of Squamish JV Ltd.

<i>To be completed by the court only:</i>	
Order made	
<input type="checkbox"/>	in the terms requested in paragraphs of Part 1 of this Notice of Application
<input type="checkbox"/>	with the following variations and additional terms:
Date:
Signature of <input type="checkbox"/> Judge <input type="checkbox"/> Master	

The Solicitors for MNP Ltd. are Fasken Martineau DuMoulin LLP, whose office address and address for delivery is 2900 - 550 Burrard Street, Vancouver, BC V6C 0A3 Telephone: +1 604 631 3131 (Reference: Glen Nesbitt/278733.00004)

APPENDIX

THIS APPLICATION INVOLVES THE FOLLOWING:

- discovery: comply with demand for documents
- discovery: production of additional documents
- other matters concerning document discovery
- extend oral discovery
- other matter concerning oral discovery
- amend pleadings
- add/change parties
- summary judgment
- summary trial
- service
- mediation
- adjournments
- proceedings at trial
- case plan orders: amend
- case plan orders: other
- experts
- OTHER

SCHEDULE "A"

Fee Approval & Discharge Order

to the Court filed October 29, 2010, and the Interim Receiver's Third Report to the Court dated November 8, 2010; and (b) the Receiver, as set out in the Receiver's First Report to the Court filed March 22, 2011, the Receiver's Second Report to Court dated April 11, 2011, the Receiver's Third Report to Court filed February 29, 2012, and the Final Report, are hereby approved.

2. The Receiver's statement of receipts and disbursements, in the form attached as Appendix "6" to the Final Report, is hereby approved.
3. The following fees and disbursements of the Interim Receiver, the Receiver, and its counsel, as set forth in the Final Report, Nguinambaye #1, and Sirrs #2, as applicable, are hereby approved:
 - (a) the Interim Receiver, in the amount of \$136,579.51;
 - (b) the Receiver, in the amount of \$477,185.40;
 - (c) the Receiver's legal counsel:
 - (i) Duncan & Craig LLP, in the amount of \$31,037.03; and
 - (ii) Fasken Martineau DuMoulin LLP ("Fasken"), in the amount of \$263,421.36.
4. The Receiver's estimated further fees and disbursements of approximately \$6,000.00, plus applicable taxes for the period of July 1, 2023, to the completion of this matter are hereby approved.
5. Fasken's estimated further fees and disbursements of approximately \$12,000, plus applicable taxes for the period of August 1, 2023, to the completion of this matter are hereby approved.
6. After payment of the fees and disbursements of the Receiver and Fasken as herein approved, the Receiver shall pay to the Plaintiff, Servus Credit Union Ltd. ("Servus"), all

funds remaining in its hands, subject to the Receiver maintaining sufficient funds to complete the administration of the receivership.

7. Upon payment of the amounts set out in paragraph 6 hereof, and upon the Receiver filing a certificate certifying that it has completed the remaining outstanding activities described in the Final Report, the Interim Receiver and Receiver shall be discharged as Interim Receiver and Receiver of the assets, undertakings and property of the Company, provided that, notwithstanding its discharge, the Receiver:
 - (a) shall remain Receiver for the performance of such incidental duties as may be required to complete the administration of the receivership; and
 - (b) shall continue to have the benefit of the provisions of all Orders made in this proceeding, including all approvals, protections and stays of proceedings in favour of MNP in its capacity as Interim Receiver and Receiver.

8. MNP, in its capacity as Interim Receiver and Receiver, shall incur no liability or obligation as a result of its appointment or the carrying out of the provisions of the Orders of the Honourable Justices Kelleher and Fenlon granted August 31, 2010 and November 24, 2010, respectively, appointing the Interim Receiver and Receiver, save and except for in respect of:
 - (a) any gross negligence or wilful misconduct on its part; or
 - (b) amounts in respect of obligations imposed specifically on receivers by applicable legislation.

Nothing in this Order shall derogate from the protections afforded to MNP, in its capacity as Receiver, by section 14.06 of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended (the “BIA”), or by any other applicable legislation.

9. The Assignment Agreement dated September 27, 2023 between the Receiver and Servus attached as Appendix “5” to the Final Report is hereby approved, and the Receiver is authorized to enter into and execute it.

10. The Receiver is authorized to carry out the Company Records Proposal, as set forth in the Final Report, in respect of certain books and records in the Receiver's possession belonging to the Company that are no longer in use.
11. Notwithstanding any provision herein, this Order shall not affect any person to whom notice of these proceedings was not delivered as required by the BIA and regulations thereto, any other applicable enactment or any other Order of this Court.
12. THIS COURT HEREBY REQUESTS the aid and recognition of any court, tribunal, regulatory or administrative body, wherever located, to give effect to this Order and to assist the Receiver and its agents in carrying out the terms of this Order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Receiver, as an officer of this Court, as may be necessary or desirable to give effect to this Order or to assist the Receiver and its agents in carrying out the terms of this Order.

THE FOLLOWING PARTIES APPROVE THE FORM OF THIS ORDER AND CONSENT TO EACH OF THE ORDERS, IF ANY, THAT ARE INDICATED ABOVE AS BEING BY CONSENT:

Signature of Glen Nesbitt
Lawyer for MNP Ltd.

BY THE COURT

REGISTRAR

