



No. S105562
Vancouver Registry

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. (formerly known as Meyers Norris Penny Limited), interim receiver, and subsequently the receiver and manager appointed in Supreme Court of British Columbia Action No. S105562, Vancouver Registry (with such Court action hereinafter referred to as "Proceeding S105562" and with MNP Ltd. in such capacities hereinafter referred to as the "Interim Receiver" and the "Receiver")

To: **All Parties identified in Schedule "A" (Application List) to this Notice of Application;**

TAKE NOTICE that an application will be made by the applicant to the presiding judge or master at the Courthouse at 800 Smithe Street, Vancouver, British Columbia on 14 March , 2012 at 9:45 a.m. for the orders set out in Part 1 below.

Part 1 ORDERS SOUGHT

1. Order approving:
 - (a) the Receiver's Interim Statement of Receipts and Disbursements, attached as Appendix B to the Receiver's Third Report to the Court;
 - (b) the Interim Receiver's fees, disbursements and administrative expenses with respect to the time period from August 31, 2010 to November 24, 2010, as set out in Appendix C to the Receiver's Third Report to the Court;
 - (c) the Receiver's fees, disbursements and administrative expenses with respect to the time period from November 24, 2010 to October 31, 2011, as set out in Appendix D to the Receiver's Third Report; and
 - (d) the Receiver's counsel's fees and disbursements with respect to the time period from November 24, 2010 to October 31, 2011, as set out in Appendices G and H to the Receiver's Third Report;

2. Order approving the Receiver's payment, from the Receiver's borrowings or as applicable from the proceeds of the sale of the property previously subject of these proceedings:
 - (a) of the Interim Receiver's, the Receiver's and the Receiver's counsel's fees, disbursements and administrative expenses as aforesaid;
 - (b) to Canada Revenue Agency ("CRA") of such amounts as CRA advises the Receiver are owed by Squamish JV Ltd. to CRA on account of unremitted payroll source deductions (under the *Income Tax Act* and other statutes which deal with employment source deductions) which have the benefit of deemed trust priority under the *Income Tax Act*;
 - (c) to CRA of such amounts as CRA advises the Receiver are owed by Squamish JV Ltd. to CRA on account of unpaid GST and/or HST obligations which have the benefit of deemed trust priority under the *Excise Tax Act*; and
 - (d) to WorkSafeBC of such amounts as WorkSafeBC advises the Receiver is owed by Squamish JV Ltd. to WorkSafeBC on account of assessments under the *Workers' Compensation Act*,

all in the form of Order attached as Schedule "B".

Part 2 FACTUAL BASIS

1. By an Order made in Proceeding S105562 on August 31, 2010, Meyers Norris Penny Limited (now known as MNP Ltd.) was appointed as an interim receiver with respect to Squamish JV Ltd. (the "Interim Receiver Order").
2. By an Order made in Proceeding S105562 on November 24, 2010 (the "Receiver Order"), Meyers Norris Penny Limited (now known as MNP Ltd.) was appointed as receiver and manager of the assets, undertakings and properties of Squamish JV Ltd.
3. The property subject of these proceedings was a hotel in Squamish, British Columbia. By an Order granted on April 13, 2011 in Supreme Court of British Columbia Action No. H100866 Vancouver Registry ("Proceeding H100866"), that property was ordered to be sold to Northland Properties Corporation. That sale closed on May 3, 2011 and the Receiver received, after closing adjustments, the sum of \$5,663,762.32 in relation to that sale.
4. In accordance with the terms of the April 13, 2011 Order the Receiver:
 - (a) applied some of the sale proceeds monies in repayment of its prior borrowings, being the sum of \$450,000.00, plus accrued interest; and
 - (b) is holding the balance of the sale proceeds monies subject to the same claims as the sold assets and pending further Order of the Court in Proceeding S105562 or in Proceeding H100866.

Remaining matters to be dealt with in the receivership

5. The following matters remain to be dealt with as summarised in the Receiver's Third Report. The Receiver's Third Report sets out more details, but in summary:
 - (a) substantial amount of funds advanced by the Plaintiff Credit Union to Squamish JV Ltd. was diverted to other ventures. This included an apparent diversion of approximately \$1,700,000.00 to 1135096 Alberta Ltd. 1135096 Alberta Ltd. is bankrupt (with MNP Ltd. as the bankruptcy trustee). The Receiver has agreed to indemnify the trustee in the bankruptcy of 1135096 Alberta Ltd. for that trustee's reasonable fees and disbursements in order to protect the interests of Squamish JV Ltd. as a creditor of that bankrupt estate. The Receiver has filed an unsecured claim in the 1135096 Alberta Ltd. bankruptcy in the amount of \$1,701,542.26. Several parties have asserted priority claims against the net proceeds from the sale of 1135096 Alberta Ltd.'s assets. The issues surrounding the claims in the bankruptcy of 1135096 Alberta Ltd. remain unresolved;
 - (b) the Receiver has identified several priority and potential priority claims against the Squamish JV Ltd. assets (which assets have now been sold and which claims now apply against the proceeds of such sale). The claims include Canada Revenue Agency claim for unremitted payroll source deductions (a little over \$59,000.00), Canada Revenue Agency claim with respect to unremitted Goods and Services Tax and/or Harmonized Sales Tax (a little over \$23,000.00) and assessment claims by WorkSafeBC against Squamish JV Ltd. (approximately \$5,500.00). The Receiver seeks authority to pay these claims from the sale proceeds;
 - (c) the Receiver currently holds in excess of \$4,700,000.00 from the sale of the hotel which was the subject of this proceeding, and does not require the bulk of these moneys for the conduct of the receivership. The Receiver understands that the Plaintiff will make a concurrent application for some of these funds to be paid to the Plaintiff; and
 - (d) discharge of the Receiver once all matters have been dealt with.

Fees and disbursements

6. With respect to the fees and disbursements of the Interim Receiver and of the Receiver:
 - (a) the Interim Receiver's fees and disbursements, and the time expended, with respect to the time period from August 31, 2010 to November 24, 2010, are summarised in Appendices C and E to the Receiver's Third Report. During that time period, the Interim Receiver's employees billed 285.70 hours, representing fees of \$113,597.20, the Interim Receiver's specific disbursements were \$2,541.84 and the Interim Receiver's administrative expenses were \$5,806.95 (all exclusive of recoverable taxes); and

- (b) the Receiver's fees and disbursements, and the time expended, with respect to the time period from November 24, 2010 to October 31, 2011, are summarised in Appendices D and F to the Receiver's Third Report. During that time period, the Receiver's employees billed 1,066.30 hours, representing fees of \$311,497.40, the Receiver's specific disbursements were \$1,952.49 and the Receiver's administrative expenses were \$15,672.49 (all exclusive of recoverable taxes).
- 7. With respect to the fees and disbursements of the Receiver's legal counsel Fasken Martineau DuMoulin LLP ("Fasken"):
 - (a) Fasken's fees and disbursements, and the time expended, with respect to the time period from November 24, 2010 to October 31, 2011, are summarised in Appendices G and I to the Receiver's Third Report. During that time period, the lawyers and employees of the Receiver's counsel billed 230.68 hours, representing fees of \$113,890.90, and disbursements of \$3,701.18 (all exclusive of recoverable taxes).
- 8. With respect to the fees and disbursements of Duncan & Craig LLP ("Duncan & Craig"):
 - (a) Duncan and Craig's fees and disbursements, and the time expended, with respect to the time period from February 16, 2011 to May 20, 2011, are summarised in Appendices H and J to the Receiver's Third Report. During that time period, the lawyers and employees of Duncan & Craig LLP billed 79.60 hours, representing fees of \$26,250.00, and disbursements of \$3,422.89 (all exclusive of recoverable taxes)

Proposed distribution of funds

- 9. As per the Notice of Civil Claim dated the 9th day of August, 2010 and filed in Proceeding S105562, as at July 14, 2010, the Plaintiff was owed by the Defendant Squamish JV Ltd.:
 - (a) the sum of \$8,902,219.37, with interest accruing on the principal balance of \$8,794,127.00 from and after the last mentioned date at the Plaintiff's prime rate of interest plus 1%; and
 - (b) the sum of \$9,985.69, with interest accruing on the principal balance of \$9,985.69 from and after the last mentioned date at the Plaintiff's prime rate of interest plus 3%.
- 10. The Receiver:
 - (a) will seek the Orders referenced in Part 1 of this Notice of Application with respect to a portion of the monies held by the Receiver; and
 - (b) understands that prior to, or concurrently with, the application by the Receiver for the Orders referenced in Part 1 of this Notice of Application, the Plaintiff will apply to the Court for an Order for a declaration of the amount owing to and secured in favour of the Plaintiff and a direction for some of the monies held by

the Receiver to be distributed to the Plaintiff. The Receiver will deal with the monies in accordance with such Order.

Part 3 LEGAL BASIS

1. Supreme Court Civil Rules: Rules 22-1.
2. Order granted in Proceeding S105562 on August 31, 2010 (the "Interim Receiver Order").
3. Order granted in Proceeding S105562 on November 24, 2010 (the "Receiver Order").
4. Order granted in Proceeding H100866 on April 13, 2011 (the "Sale Approval Order").

Part 4 MATERIAL TO BE RELIED ON

1. The Interim Receiver Order.
2. The Receiver Order.
3. The Sale Approval Order.
4. Receiver's Report #3 dated February 24, 2012.

The applicant estimates that the application will take 20 Minutes.

- This matter is within the jurisdiction of a master.
 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) service 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-Feb-2012



Signature of Marcel J. Peerson
Lawyer for Applicant

To be completed by the court only:

Order made

in the terms requested in paragraphs of Part 1 of this Notice of Application

with the following variations and additional terms:

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Date:

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Signature of Judge Master

The Solicitors for Meyers Norris Penny Limited, the Receiver appointed in Supreme Court of British Columbia Action No. S105562, are Fasken Martineau DuMoulin LLP, whose office address and address for delivery is 2900 - 550 Burrard Street, Vancouver B.C. V6C 0A3 Telephone: 604 631 3131 Facsimile: 604 631 3232. (Reference: 278733.00004/MJP)

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
- receivership

Schedule "A"

List of Parties to whom notice of the application is given

Application List

Tab	Party Name	Claim Reference	Address for Delivery
1	Squamish JV Ltd. (Defendant in Proceeding S105562)	(Owner)	Paul J. Pidde Walsh Wilkins Creighton LLP
1	Guarantors of Squamish JV Ltd.'s obligations	Guarantors	James Murphy Burnet, Duckworth & Palmer LLP
1A	Concentra Financial Services Association / Servus Credit Union Ltd. (Plaintiff in Proceeding S105562)	Mortgage BB922399 Assignment of Rents BB922400 Personal Property Registration 803641E	William Roberts Lawson Lundell LLP
2	2090782 Ontario Inc. (Petitioner in Proceeding H100866)	Mortgage BB922401 Certificate of Pending Litigation BB1170078	Shawn A. Poisson Koffman Kalef LLP
3	Olympic Roofing Ltd. (Respondent in Proceeding H100866)	Claim of Builders Lien BB1454198	David K. Plunkett Whitelaw Twining Law Corporation
4	Blueline Drywall (Whistler IV) Ltd. (Respondent in Proceeding H100866)	Claim of Builders Lien BB1149113	Peter J. Goodwin Goodwin & Mark
5	Allmar Distributors Ltd. dba Allmar International (Respondent in Proceeding H100866)	Claim of Builders Lien CA1489918	Philip Di Tomaso McKechnie & Company
6	Otis Canada Inc. (Respondent in Proceeding H100866)	Claim of Builders Lien BB45667	George A. Jones Burke & Jones
7	Rona Revy Inc. (Respondent in Proceeding H100866)	Claim of Builders Lien BB1457844	David A. McMillan

Tab	Party Name	Claim Reference	Address for Delivery
8	Pipeline Mechanical Inc. (Respondent in Proceeding H100866)	Claim of Builders Lien BB1250465 Certificate of Pending Litigation BB1464172	Perry A. Mazzone DuMoulin Boskovich LLP
9	7 Star Security Services Inc (Respondent in Proceeding H100866).	Claim of Builders Lien BB1459867 Certificate of Pending Litigation BB1475828	Pir Indar P.S. Sahota Sahota Law Office
10	Colter Developments Ltd. doing business as Colter Developments (Respondent in Proceeding H100866)	Claim of Builders Lien CA1509517	Donald A. Thompson Jenkins Marzban Logan LLP
11	Northwest Sheet Metal Inc. (Respondent in Proceeding H100866)	Claim of Builders Lien CA1512217 Certificate of Pending Litigation BB1742013	Adnan N. Habib Baker Newby LLP
12	Stuart Oldale doing business as Oldale & Sons	Claim of Builders Lien BB48410	Stuart Oldale Oldale & Sons
13	635913 BC Ltd. (Respondent in Proceeding H100866)	Claim of Builders Lien BB1255130	G. Stephen Hamilton Hammerberg Altman Beaton & Maglio LLP
14	Alpine Paving (1978) Ltd. (Respondent in Proceeding H100866)	Claim of Builders Lien BB1462763	Eamonn P. Morris Kane Shannon & Weiler
15	Gordon Mackenzie Architect Inc. (Respondent in Proceeding H100866)	Claim of Builders Lien BB1463101	Benjamin La Borie Heenan Blaikie LLP
16	Black Diamond Steel Products Ltd. (Respondent in Proceeding H100866)	Claim of Builders Lien BB1661144 Certificate of Pending Litigation BB1671079	Robert Doran
17	C & E Building Products Inc. (Respondent in Proceeding H100866)	Claim of Builders Lien CA1649332	Daniel Tim C & E Building Products Inc.
18	Neon Sales and Service, division of Signcorp. Investments Ltd.	PPSA Notice BB41274	Neon Sales and Service, division of Signcorp Investments Ltd.

SCHEDULE "B"

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

ORDER MADE AFTER APPLICATION

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BEFORE))	/ /2012
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ON THE APPLICATION OF MNP Ltd. (formerly known as Meyers Norris Penny Limited), the interim receiver appointed in these proceedings pursuant to an Order granted on August 31, 2010 (the "Interim Receiver") and the receiver and manager appointed in these proceedings pursuant to an Order granted on November 24, 2010 (the "Receiver")

- coming on for hearing at Vancouver on this day and on hearing counsel for the Receiver, and those counsel and persons listed in the attached Schedule "A", and no one else appearing;

THIS COURT ORDERS AND DECLARES THAT:

1. the Receiver's interim statement of receipts and disbursements, attached as Appendix "B" to the Receiver's 3rd Report, as filed herein, is hereby approved;
2. the Interim Receiver's fees, disbursements and administrative expenses for the time period from August 31, 2010 to November 24, 2010, in the amounts of \$113,517.20, \$2,541.84

and \$5,806.95 respectively, as summarised in Appendix "C" to the Receiver's 3rd Report, as filed herein, are hereby approved;

3. the Receiver's fees, disbursements and administrative expenses for the time period from November 29, 2010 to October 31, 2011, in the amounts of \$311,497.40, \$1,952.49 and \$15,672.49 respectively, as summarised in Appendix "D" to the Receiver's 3rd Report, as filed herein, are hereby approved;

4. the Receiver's counsel's fees and disbursements for the time period from November 24, 2010 to October 31, 2011 in the amounts of \$140,050.90 and \$7,124.07 respectively, as summarised in Appendices G and H to the Receiver's 3rd Report, as filed herein, are hereby approved;

5. the payments by the Receiver, from the Receiver's borrowings or as applicable from the proceeds of the sale of the property previously subject of these proceedings:

- (a) of the Interim Receiver's, the Receiver's and the Receiver's counsel's fees, disbursements and administrative expenses as aforesaid;
- (b) to Canada Revenue Agency ("CRA") of such amounts as CRA advises the Receiver are owed by Squamish JV Ltd. to CRA on account of unremitted payroll source deductions (under the *Income Tax Act* and other statutes which deal with employment source deductions) which have the benefit of deemed trust priority under the *Income Tax Act*;
- (c) to CRA of such amounts as CRA advises the Receiver are owed by Squamish JV Ltd. to CRA on account of unpaid GST and/or HST obligations which have the benefit of deemed trust priority under the *Excise Tax Act*; and
- (d) to WorkSafeBC of such amounts as WorkSafeBC advises the Receiver is owed by Squamish JV Ltd. to WorkSafeBC on account of assessments under the *Workers' Compensation Act*,

are hereby approved.

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 Marcel J. Peerson
 Lawyer for Meyers Norris Penny Limited,
Interim Receiver and Receiver

BY THE COURT

REGISTRAR

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

FASKEN MARTINEAU DuMOULIN LLP

Barristers & Solicitors
2900 - 550 Burrard Street
Vancouver, B.C., V6C 0A3
604 631 3131

Counsel: Marcel J. Peerson
Matter No: 278733.00004