



Form 39.08

2023

Supreme Court of Nova Scotia
In Bankruptcy and Insolvency

Hfx No.

5 2 5 6 2 2

In the Matter of the Receivership of Stone Brothers Plumbing & Heating Limited

Between:

Business Development Bank of Canada

Applicant

- and -

Stone Brothers Plumbing & Heating Limited

Respondent

Affidavit of J. Eric Findlay

I, J. Eric Findlay, of the community of Grand Lake, in the Province of Nova Scotia, make oath and say that:

1. I am a Licensed Insolvency Trustee and a Senior Vice President with MNP Ltd. ("MNP").
2. I have knowledge of the facts and matters hereinafter deposed to by me, except where stated to be based upon information and belief and where so stated I do verily believe the same to be true.
3. By letter of appointment from Business Development Bank of Canada ("BDC") dated April 18, 2023, MNP was appointed as private receiver (the "Receiver") of Stone Brothers Plumbing & Heating Limited (the "Company"). A copy of the letter of appointment is attached as Exhibit "A".
4. As at July 21, 2023, the Company owes BDC approximately \$214,000 on account of two outstanding loans (the "Loans") advanced by BDC to 32985601 Nova Scotia Limited ("329") that were guaranteed by the Company, together with estimated enforcement costs.
5. As security for the guarantee the Company granted BDC a real property mortgage over the Company's lands at 609 Keltic Drive, Coxheath, Nova Scotia, PID 15221542 (the "Real Property") and a general security agreement over the Company's personal property. These security documents give BDC the right to appoint a receiver in certain events of default of the borrower.

6. A Notice and Statement of the Receiver has been prepared and sent to known creditors in accordance with section 245 and 246 of the *Bankruptcy and Insolvency Act*. The receiver's statement is attached hereto as Exhibit "B".
7. The Company previously operated a plumbing and heating business in Cape Breton and stored its materials and supplies at a building warehouse located on the Real Property.
8. The Company is owned by 329; 329 is owned by Jeffrey McDonald and Marc Lamarche.
9. On or about April 18, 2023, I made telephone calls to both Mr. McDonald and Mr. Lamarche. I was able to reach Mr. McDonald but did not reach Mr. Lamarche. I left a message at Mr. Lamarche's home telephone but my call was not returned.
10. During my call with Mr. McDonald, he advised me that neither the Company nor 329 had operated in quite some time and since the business closure, both he and Mr. Lamarche had taken employment positions with other organizations within their respective communities.
11. I enquired with Mr. McDonald as to the state of the Company's warehouse and he advised me that there were no issues with the building or property and that it was generally in good condition and was securely locked.
12. Mr. McDonald further advised me that he and Mr. Lamarche had been trying to sell the building for some time without success.
13. I requested the Company's books and records from Mr. McDonald but have not received them as of yet.
14. Michelle Bursey, Senior Account Manager with BDC, provided me with a copy of an appraisal report issued to BDC by G. Ratchford & Associates Appraisers Inc., made by Mr. Gregory Ratchford AACI, P.App., and dated February 1, 2023 (the "Appraisal").
15. The Appraisal estimates the fair market value of the Real Property whereas, in my experience, a forced liquidation value report would normally be used in the context of a receivership proceeding.
16. The Appraisal concludes that the likely fair market value of the Real Property is \$155,000.
17. On or about April 28, 2023, I received an unsolicited telephone call from Dwight Rudderham, a lawyer with McInnes Cooper in Sydney Nova Scotia.
18. Mr. Rudderham advised me that he was aware that MNP was appointed as Receiver over the Real Property and that he was representing 4374300 Nova Scotia Limited

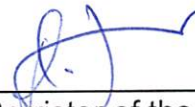
("437") and Mr. Neil MacSween who wished to purchase the Real Property. Mr. Rudderham advised me that his clients were willing to pay up to \$119,000 for the Real Property.

19. I advised Mr. Rudderham that I would need to further research the Real Property before responding to his client's offer.
20. During the first week of May 2023, I spoke to Sydney, Nova Scotia based commercial realtor Joe MacDonald and enquired about the possibility of the Receiver engaging him to market the Real Property. Mr. MacDonald advised me that he was very familiar with the Real Property and in his opinion, it would likely sell in the range of \$150,000 - \$160,000.
21. BDC advised me that, prior to MNP's appointment, there had been an offer for \$120,000 that it rejected.
22. During the second week of May, 2023 I spoke with Mr. Rudderham and advised him that his client's offer of \$119,000 was not acceptable and that the Receiver was considering engaging a commercial realtor to market the Real Property in hope of receiving a higher offer.
23. Mr. Rudderham advised me that his clients were willing to increase their offer to \$129,000 which I also refused.
24. On May 9, 2023, I received a draft agreement of purchase and sale wherein 437 offered to purchase the Real Property from the Receiver for \$150,000.
25. I considered whether the Receiver should either publicly advertise the Real Property for sale by tender, engage the services of Joe MacDonald's commercial realty, or accept the private offer from 437.
26. I discussed these possibilities with BDC and their counsel.
27. Public sale options are routinely used by receivers and in my experience can carry significant costs.
28. We considered the minimal value of the Real Property and the fact that BDC is the first priority secured creditor and is owed considerably more than that value.
29. We considered that the offer received from 437 was in agreement with the fair market value noted in the Appraisal and that it was also in agreement with Mr. MacDonald's opinion of value.
30. We concluded that if the Real Property were advertised publicly, it was unlikely that there would be any higher recovery compared to the 437 offer and that it would be


more likely that recoveries would be significantly less due to the costs associated with running a public sale process.

- 31. I also considered what the other guarantors of 329's debt to BDC, including Mr. McDonald and Mr. Lamarche, would think of 437's offer.
- 32. I spoke to Mr. McDonald and he told me that he thought 437's offer was very fair and should be accepted. I was not able to reach Mr. Lamarche.
- 33. With the above noted considerations in mind, the Receiver decided to proceed with 437's offer. Terms and conditions within the draft purchase and sale agreement were edited and revised several times by the Receiver and reviewed with BDC's legal counsel. Once a finalized agreement was prepared it was presented to BDC for their review and with the Receiver's recommendation that it be accepted.
- 34. On June 5, 2023, BDC advised me that they were agreeable to the offer from 437 and on June 6, 2023 the offer was executed by the Receiver. The 437 offer is attached as Exhibit "C".
- 35. MNP consents to being appointed by this Honourable Court as receiver of all of the assets, undertakings and properties of the Company.
- 36. I make this affidavit *bona fide* in support of an application to appoint MNP as receiver of all of the assets, undertakings and properties of the Company and for a sale approval and vesting order to allow the Receiver to sell the Real Property to 437 for \$150,000.

SWORN TO at Halifax, Halifax Regional)
 Municipality, Province of Nova Scotia,)
 this 25th day of July, 2023, before me)


 _____)
 A Barrister of the Supreme Court of)
 Nova Scotia)
)

MARC L.J. DUNNING
 A Barrister of the Supreme
 Court of Nova Scotia

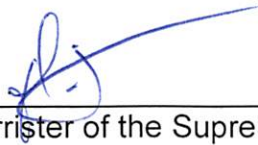

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 J. Eric Findlay)
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Index to Exhibits

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June 6, 2023 agreement of purchase and sale	C	4

A

This is Exhibit "A" to the affidavit of
J. Eric Findlay, sworn before me
this 25th day of July, 2023



A Barrister of the Supreme Court
of Nova Scotia

MARC L.J. DUNNING
A Barrister of the Supreme
Court of Nova Scotia

APPOINTMENT OF RECEIVER

RE: All security granted by 3298501 Nova Scotia Limited and Stone Brothers Plumbing & Heating Limited in favour of the Business Development Bank of Canada, including without limitation, the security agreements set out below.

TO WHOM IT MAY CONCERN:

Business Development Bank of Canada ("BDC")'s security agreements with 3298501 Nova Scotia Limited and Stone Brothers Plumbing & Heating Limited (the "Companies") are in default and enforceable in accordance with their terms. BDC does hereby appoint, pursuant to its security, MNP Ltd., of Suite 1400 – 1801 Hollis Street, Halifax, Nova Scotia, B3J 3N4 to be the receiver (the "Receiver") of all assets, property, and undertakings of Stone Brother Plumbing & Heating Limited (the "Assets") pursuant to the terms of its security.

The security is as follows:

- a) Real property mortgage dated the 27th day of April 2017 and recorded in the Nova Scotia land registry for the county of Cape Breton as Document #110660173
- b) General Security Agreement, dated April 27, 2017
- c) Guarantee, dated April 27, 2017

BDC does hereby vest in the Receiver all powers and discretions contained in its security as provided for, including without limitation but not obligated, the power to:

- a) Take possession, preserve, and protect the Assets;
- b) Market and realize on the Assets;
- c) Pay BDC the net proceeds from the realization of the Assets.

Business Development Bank of Canada

Michelle Bursey

Michelle Bursey
Senior Account Manager

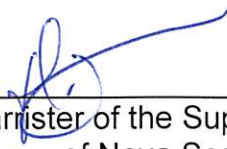
Business Development Bank of Canada

Brigitte Dupuis

Brigitte Dupuis
Analyst, Special Accounts

B

This is Exhibit "B" to the affidavit of
J. Eric Findlay, sworn before me
this 25th day of July, 2023



A Barrister of the Supreme Court
of Nova Scotia

MARC L.J. DUNNING
A Barrister of the Supreme
Court of Nova Scotia

FORM 87**NOTICE AND STATEMENT OF THE RECEIVER**
(Subsections 245(1) and 246(1) of the Act)**IN THE MATTER OF THE RECEIVERSHIP OF
STONE BROTHERS PLUMBING AND HEATING LIMITED****THE RECEIVER GIVES NOTICE AND DECLARES THAT:**

1. On the 18th day of April 2023, MNP Ltd. became the Receiver (the "Receiver") in respect of certain of the assets of Stone Brothers Plumbing and Heating Limited. (the "Company") that is described below:

Description	Value	
Real property and building, PID#15221542	\$114,700	Note 1
All personal property, except consumer goods	\$1.00	Note 2

Note 1 – the value noted herein is the municipal tax assessed value as reported on Nova Scotia Property Online. The Receiver is in possession of a real estate appraisal, dated February 1, 2023 however, publicly disclosing the contents of the appraisal could undermine a competitive bidding process.

Note 2 – the realizable value of the personal property is not yet known

2. MNP Ltd. became the Receiver of the assets described above by virtue of being appointed by: The Business Development Bank of Canada ("BDC") pursuant to:
- a. General Security Agreement dated April 27th, 2017 and registered under the Nova Scotia Personal Property Security Act
 - b. Real property mortgage executed on April 27, 2017 and registered in the land parcel registry for Cape Breton County on April 27, 2017 as document number 110660173.
3. The following information relates to the Receivership:
- a. Registered Address: 43 Cossitt Heights Dr., Unit 4, Sydney, Nova Scotia, B1P 7B5
 - b. Principal line of business: Plumbing and Heating
 - c. Locations of business:
 - 609 Keltic Drive, Sydney, Nova Scotia, B1L 1B6
 - d. Amount owed to each creditor who holds a security interest in the Company's property

Creditor	Value
BDC	\$240,000.00
Bank of Nova Scotia	unknown
The Queen in Right of Canada, as represented by the Minister of National Revenue (CRA)	\$227,131.57

Ambrose Stone	Unknown
Joseph Stone	Unknown
Jean Frost-Stone	Unknown
Jeannie Stone	Unknown
Joseph Stone Family Trust (2005)	Unknown
Ambrose Stone Family Trust (2005)	Unknown

- e. The list of other creditors and the amount owed to each creditor is not yet available.
- f. The intended plan of action of the Receiver during the receivership, to the extent that such a plan has been determined, is described below.
- The Receiver will realize on the assets subject to BDC's security agreement noted above.
- g. Contact person for Receiver: Eric Findlay, Eric.Findlay@mnp.ca, (902) 407-3237.
4. Interim reports regarding the status of the Receivership will be prepared in accordance with Section 246(2) of the Act approximately once every six months. Creditors who wish to receive a copy of the interim report or the final report may request a copy by writing to the Receiver at the address set out below.
5. Further information with respect to the Receivership proceedings will be posted to the Receiver's website (www.mnpdebt.ca/en/corporate) under the "Corporate Engagements" heading as it becomes available. Should creditors not have access to the internet, copies of other materials can be requested by contacting the Receiver's office at 902.482.2000
6. Please take notice that the Receiver is providing this document to all known creditors for information purposes only. As a creditor, you are not required to submit anything to our office supporting the amounts owing to you at this time. If a claims process is undertaken in the future, you will be contacted.

Dated at the City of Halifax, in the Province of Nova Scotia, this 7th day of July, 2023.

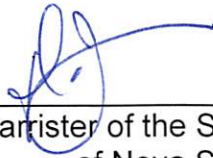
MNP Ltd.
Receiver of Stone Brothers Plumbing and Heating Limited
Per:



J. Eric Findlay, CIRP, LIT, CPA
Senior Vice President
1801 Hollis Street, Suite 1400
Halifax, NS B3J 3N4
Phone: (902) 407-3237
Fax: (902) 701-3690

C

This is Exhibit "C" to the affidavit of
J. Eric Findlay, sworn before me
this 25th day of July, 2023



A Barrister of the Supreme Court
of Nova Scotia

MARC L.J. DUNNING
A Barrister of the Supreme
Court of Nova Scotia

THIS AGREEMENT made this 6th day of June, 2023.

BETWEEN:

MNP LTD. in its capacity as receiver of Stone Brothers Plumbing & Heating Ltd. and not in its personal or corporate capacity

(hereinafter called the "Vendor")

OF THE ONE PART

- and -

4374300 NOVA SCOTIA LIMITED a body corporate under the laws of the Province of Nova Scotia

(hereinafter called the "Purchaser")

OF THE OTHER PART

NOW THEREFORE In consideration of the mutual covenants contained in this Agreement, the parties, each intending to be legally bound, agree as follows:

Purchase and Sale

1. The Vendor agrees to sell and the Purchaser agrees to purchase those lands located at 609 Keltic Drive, Coxheath, Sydney, Nova Scotia, being PID 15221542, (the "Property").

Purchase Price

2. The total purchase price for the Property shall be \$150,000.00 plus HST and subject to adjustment only for property taxes (the "Purchase Price"). The Purchaser shall provide a deposit in the amount of \$7,500.00 to the Vendor, which deposit is to be credited to the Purchaser on closing.
3. The deposit shall be forfeited to the credit of the Vendor should the Purchaser fail to meet its obligations hereunder in the timeframes herein permitted, unless an extension is agreed to in writing by the Vendor.
4. The Purchase Price shall be payable by solicitor's trust cheque, bank draft or certified cheque on closing subject to the adjustments for municipal taxes or grant in lieu of municipal taxes, between the parties as of the Closing Date.

Harmonized Sales Tax

5. The Purchaser acknowledges that this transaction is subject to HST. The Purchaser shall "self-assess" for HST pursuant to the provisions of the *Excise Tax Act* and provide an HST Certificate to the Vendor on the Closing Date confirming and indemnifying Vendor with respect to same.

Title

6. The Vendor confirms that title to the Property has been migrated the land registration system under the *Land Registration Act* of Nova Scotia. The Purchaser shall be allowed five (5) business days from the date of acceptance of this offer to investigate the title to

the Property at its own expense. If within that time any valid objection to title to the Property or any part or parcel thereof is made in writing to the Vendor, which the Vendor shall be unable or unwilling to remove, and which the Purchaser will not waive, this Agreement, notwithstanding any intermediate acts or negotiations in respect of such objections, shall be null and void. Except as to any valid objection so made within such time, the Purchaser shall be conclusively deemed to have accepted the title of the Vendor to the Property.

7. This Agreement shall be subject to the title to the Property being free and clear from all encumbrances except as to any conditions and reservations expressed in the original grant from the Crown, and except as to any registered rights-of-way or registered easements, restrictions or covenants that run with the land, provided that the same are complied with and do not materially affect the Purchaser's intended use of the property and except as to any restrictions and covenants presently affecting the lots being purchased herein.
8. The Vendor shall not be required to furnish any abstract of title, deeds, copies of deeds or evidence of title not in its possession or control. The deed shall be drawn at the expense of the Vendor and shall be a deed without covenants conveying the Vendor's interest in the Property.

Risk of Loss

9. The Property being purchased hereby shall be and remain at the risk of the Vendor until Closing. Pending completion of the sale.

"As is" Basis

10. The Purchaser acknowledges that the Property is sold on an "as is" basis without covenants or representations of any kind from the Vendor.
11. The Purchaser acknowledges that no chattels are being sold, transferred or conveyed hereunder. Further, the Purchaser acknowledges that the Vendor is not responsible for the removal from the Property of any chattels thereon. Should any chattels be located on the Property, the Vendors makes no warranty whatsoever as to the title or condition of the chattels.
12. The Vendor makes no representation as to whether or not any of the fixtures, equipment, and/or chattels, including but not limited to furnaces and waters heaters, are leased, financed or owned. The Purchaser accepts the Property, "as is/where is", including all the equipment, fixtures, and chattels contained thereon with no representation as to title, fitness, or state of repair from the Vendor.
13. The Vendor has no knowledge and makes no representation whatsoever as to whether the Property has been insulated with Urea Formaldehyde Foam Insulation or asbestos insulation, or whether the Property contains any other substances, liquid gasses or materials which may be hazardous or toxic, including those within the meaning of provincial or federal environmental protection or similar legislation.

Closing

14. The purchase shall be completed **within 10-days of the receiver's receipt of a Sale**

Approval and Vesting Order from the Supreme Court of Nova Scotia, such date within the 10-day period being mutually agreeable to both Vendor and Purchaser (the "Closing Date"), when vacant possession of the lands shall be given to the Purchaser in exchange for the payment by the Purchaser of the balance of the Purchase Price.

15. The Property will be conveyed by the Vendor to the Purchaser by way of a Receiver's deed without covenants, together with a Receiver's Certificate and a true copy of a Sale Approval and Vesting Order respecting the Property.
16. Any tender of documents and money hereunder may be made upon the solicitor acting for the party on whom the tender is required and it shall be sufficient that a negotiable, certified cheque may be tendered in lieu of cash or currency.

General

17. Each party shall be responsible for its own legal fees relating to the sale and purchase of the Property.
18. This offer, when accepted, shall constitute a binding Agreement of Purchase and Sale, subject to and conditional upon the Supreme Court of Nova Scotia approving the sale and granting a Sale Approval and Vesting Order, and time shall be of the essence of this Agreement. In the event the Court does not grant such order this agreement of purchase and sale shall automatically be null and void, the Vendor shall return the deposit to the Purchaser and neither party shall be liable for any costs or damages incurred by the other party as a result of such termination.
19. This Agreement shall not be assigned in whole or in part by the Purchaser without the prior written consent of the Vendor.
20. The Purchaser shall be responsible for confirming that its intended use of the Property is in compliance with all applicable laws. The Purchaser shall be solely responsible for obtaining any necessary permits or government approvals required for its intended use of the Property. Following the Closing, the Purchaser shall be responsible for all federal, provincial and municipal taxes and charges levied in respect of the Property.
21. This Agreement shall enure to the benefit of and be binding upon the parties hereto and their respective successors and permitted assigns.
22. This Agreement shall be governed by and construed in accordance with the laws of the Province of Nova Scotia.

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF the Vendor and Purchaser have duly signed this Agreement of Purchase and Sale as of the date first set out above.

SIGNED, SEALED AND DELIVERED in the presence of:

Paul Pettigrew

- Paul Pettigrew

Witness

Neil Donald MacSween

Witness

MNP LTD, in its capacity as Receiver of Stone Brothers Plumbing & Heating Ltd and not in its personal or corporate capacity

Per: Eric Findlay

Name Eric Findlay
Title Senior Vice President

4374300 NOVA SCOTIA LIMITED

Per: Neil Donald MacSween

Name Neil Donald MacSween
Title President