

COURT FILE NUMBER 2203-01087
COURT COURT OF QUEEN'S BENCH OF ALBERTA
JUDICIAL CENTRE EDMONTON
APPLICANTS TIMBERCREEK MORTGAGE SERVICING INC. and 2292912
ONTARIO INC.
RESPONDENTS SYMPHONY CONDOMINIUM LTD., ROCKWOOD
MANAGEMENT LTD. and ALLEN WASNEA
DOCUMENT **APPLICATION**
APPLICANT MNP LTD. IN ITS CAPACITY AS THE COURT-APPOINTED
RECEIVER AND MANAGER OF SYMPHONY CONDOMINIUM
LTD.

ADDRESS FOR SERVICE AND CONTACT INFORMATION OF PARTY FILING THIS DOCUMENT **McMillan LLP**
1700, 421 – 7th Avenue S.W.
Calgary, AB T2P 4K9

Attention: Adam Maerov
Telephone: 403-215-2752
Facsimile: 403-531-4720

Attention: Preet Saini
Telephone: 403-531-4716
Facsimile: 403-531-4720
File Number: 287823

NOTICE TO RESPONDENTS

This application is made against you. You are the respondents.

You have the right to state your side of this matter before the judge.

To do so, you must be in Court when the application is heard as shown below:

Date: April 24, 2023
Time: 2:00 pm
Where: Edmonton Law Courts via WebEx (see attached Appendix "A")
Before Whom: The Honourable Justice J.T. Neilson

Go to the end of this document to see what else you can do and when you must do it.

Remedy claimed or sought:

1. The Applicant, MNP Ltd. as receiver and manager of Symphony Condominium Ltd. (the “**Receiver**”) seeks an order in the form attached hereto as Schedule “A”:
 - (a) abridging the time for service of this Application, if necessary, and declaring that this Application is properly returnable and that further service of this Application is hereby dispensed with;
 - (b) approving the activities, actions, and conduct of the Receiver and the Receiver’s interim receipts and disbursements in administering these receivership proceedings as described in the Third Report of the Receiver dated April 19, 2023 (the “**Third Report**”);
 - (c) approving the professional fees and disbursements of the Receiver and of McMillan LLP, legal counsel to the Receiver, for the period ended March 31, 2023, as further outlined in the Third Report;
 - (d) varying the sale approval process (the “**Sale Approval Process**”) in the order granted by the Honourable Justice G.S. Dunlop on May 18, 2022 (the “**Sale Process Order**”);
 - (e) confirming that the Unit 707 Sale (as defined in the Third Report) falls within the parameters of the Sale Approval Process (as varied) and accordingly is approved;
 - (f) sealing the Receiver’s Fourth Confidential Report dated April 19, 2023 (the “**Fourth Confidential Report**”) until such time as sales of the Symphony Units (as described below) have closed;
2. In the alternative, an approval and vesting order approving the Unit 707 Offer (as defined in the Third Report).
3. Such further relief as counsel may request and this Honourable Court may grant.

Grounds for making this application:

A. Background

4. On April 7, 2022, the Court of King’s Bench of Alberta granted a consent receivership order (the “**Consent Receivership Order**”) appointing MNP Ltd. as Receiver over all of the assets, undertakings and property (the “**Property**”) of the Debtor, Symphony Condominium Ltd. including certain real property fully described in the First Report including 34 residential condominium units, 53 parking stalls and six storage units within the building known as the Symphony Tower; located at 9704 – 106 Street NW in Edmonton, Alberta (collectively, the “**Symphony Units**”).
5. The Debtor operated as a real estate developer and was incorporated in the province of Alberta for the purpose of constructing and selling the Symphony Units.

B. Amendment to Sale Approval Order

6. On May 18, 2022, on application by the Receiver, Justice G.S. Dunlop granted the Sales Process Order *inter alia*, approving the Marketing Process and Sales Approval Process (as defined in the First Report) for the sale of the Symphony Units, among other property.
7. The marketing process undertaken by Sotheby's (the "**Marketing Process**") includes postings on the Multiple Listing Service, social media, email, Sotheby's new development landing page, onsite signage and a themed sales event, which was held in October 2022. Most recently Symphony developed a lifestyle video for the Symphony Units that was circulate via social media.
8. The Marketing Process was approved on the basis that it would provide sufficient market exposure to ensure the best possible recovery for the Symphony Units in a reasonable period and at a reasonable cost. The Sale Approval Process was also approved on the basis that it would provide a streamlined and cost-effective process for realizing on the Symphony Units by limiting the need for additional Court applications. Specifically, the Sale Approval Process allowed for the sale of the Symphony Units to proceed, without further Court approval, provided the following criteria were met:
 - (a) The purchase price for the relevant Symphony Unit was within or above the range of values (market value, orderly liquidation value and forced sale value) provided for each of the Symphony Units in the Symphony Appraisal; and
 - (b) The purchase price for the relevant Symphony Unit and the remaining terms of any offer to purchase were approved by both the Receiver and by Timbercreek, acting reasonably.
9. Since the Marketing Process was implemented, only three Symphony Condos have been sold and two additional sales are pending (including the Unit 707 Sale). The most significant challenges in selling the Symphony Condos are as follows:
 - (a) Downtown Edmonton's high-rise supply levels are significantly higher than buyer demand suggesting a significant inventory imbalance, which leads to increased competition for sales and pricing pressure;
 - (b) Rapid inflation, which is causing consumers to factor in higher general costs of living when making purchase decisions; and
 - (c) Increased mortgage rates.
10. The Receiver is seeking an amendment to the Sale Approval Process contemplated in the Sales Process Order to facilitate future sales of the Symphony Condos and limit the number of Court applications that will be required. The amendment being sought is to allow for the sale of the Symphony Units to proceed, without further Court approval, provided the following criteria are met:

- (a) The purchase price for the relevant Symphony Unit is ninety-five percent or more of the forced sale value provided for each of the Symphony Units in the Symphony Appraisal; and
 - (b) The purchase price for the relevant Symphony Unit and the remaining terms of any offer to purchase are approved by both the Receiver and by Timbercreek, acting reasonably (the “**Sales Process Amendment**”).
11. The Receiver consulted Newmark with regard to the Sales Process amendment, who have confirmed that, in their view, sales at ninety-five percent or more of the forced sale values reflected in the Symphony Appraisal are reasonable given current market conditions in the greater Edmonton area and the length of market exposure for the Symphony Units.
12. The Receiver is supportive of the Sale Process Amendment for the following reasons:
- (a) it is reflective of current market conditions in the greater Edmonton area;
 - (b) it will facilitate the Marketing Process by providing increased pricing flexibility;
 - (c) it will make the Sale Process more cost effective by limiting the need for future Court applications; and
 - (d) Timbercreek Mortgage Servicing Inc. has indicated that it is supportive of the Sale Process Amendment.

C. Approval of Actions, Activities and Conduct

13. The activities of the Receiver and its independent legal counsel are described in detail in the Third Report.
14. The Receiver submits that its actions, activities and conduct and those of its independent legal counsel were appropriate and necessary for the administration of the receivership and ought to be approved by this Honourable Court.

D. Approval of Interim Fees and Disbursements

15. The interim fees and disbursements of the Receiver from April 7, 2022 to April 15, 2023 are described in detail in the Third Report.
16. The Receiver submits that its interim fees and disbursements were appropriate and necessary for administration of the receivership and ought to be approved by this Honourable Court.

E. Approval of Unit 707 Sale

17. The Receiver seeks to confirm that the Unit 707 Offer is approved following the Sale Process Amendment.

18. The Unit 707 Offer does not comply with the existing Sale Approval Process in that the purchase price is outside of the range established by the Sale Process Order.
19. If the Sale Process Amendment is granted, the Unit 707 Offer will fall within the parameters of the Sale Approval Process (as varied).
20. The Receiver notes as follows with respect to the Unit 707 Offer:
 - (a) An initial deposit has been paid and is being held in trust by Ogilvie LLP, who is representing the Receiver with respect to the sale of the Symphony Units;
 - (b) The closing date under the Unit 707 Offer is April 27, 2023, immediately following Court approval;
 - (c) The Unit 707 Offer was originally subject to conditions, including financing, home inspection, review of condominium documents and approval of a parking stall (the “**Purchaser Conditions**”).
 - (d) All of the Purchaser Conditions included in the Unit 707 Offer have now been waived and it is now only conditional upon Court approval;
 - (e) Commission will be payable to Sotheby’s in accordance with the Listing Agreement; and
 - (f) The sale is being completed on an “as is, where is” basis with no surviving representations or warranties being made by the Receiver.

F. Approval of Professional Fees and Disbursements of the Receiver

21. The Receiver incurred fees and disbursements of \$346,116 plus GST for a total of \$363,422 for the period ending March 31, 2023 (the “**Receiver’s Fees**”).
22. McMillan LLP incurred fees and disbursements of **\$159,743** plus GST for a total of **\$167,696** for the period ending March 31, 2023 (the “**Receiver’s Legal Fees** and collectively with the Receiver’s Fees, the “**Professional Fees**”).
23. The Professional Fees are described further in the Third Report.
24. The Receiver respectfully submits that the Professional Fees accurately reflect the work done by the Receiver and McMillan LLP for such period, and are fair and reasonable in the circumstances and justified in the circumstances. The Professional Fees were charged by the Receiver and its counsel at their standard hourly rates and, in the Receiver’s experience, are comparable to the standard rates of other providers of similar services in Alberta.

G. Temporary Sealing

25. The Fourth Confidential Report contains commercially sensitive information and confidential information being an unredacted copy of the Unit 707 Offer disclosing the purchase price and the appraised values of CONDOMINIUM PLAN 1920542, UNIT 31 and UNIT 280 and INCLUSIVE AND ALL THE APPLICABLE UNDIVIDED ONE TEN THOUSANDTH SHARE IN THE COMMON PROPERTY EXCEPTING THEREOUT ALL MINES AND MINERALS (collectively referred to as “Unit 707”) (the “Confidential Information”).
26. The relief sought for temporary sealing is necessary and appropriate with respect to the Fourth Confidential Report as:
- (a) disclosure of the Confidential Information would be detrimental to any subsequent marketing efforts that may be required should the sale of Unit 707 not be completed or the other Symphony Units given the disclosure of appraisal information;
 - (b) if the requested sealing order is not granted, creditor recoveries may be reduced should a subsequent marketing process be required;
 - (c) reasonable alternative measures will not prevent the risk; and
 - (d) the benefits of the sealing order to the process and all stakeholders outweigh the deleterious effects on the rights and interests of the public in accessing this information at this time.

H. Alternative Relief: Sale Approval and Vesting Order

27. In the alternative, the Receiver is seeking a sale approval and vesting order approving the sale of Unit 707 to Ton Foon Investments Ltd. as purchaser should the Sales Process Amendment not be granted.
28. The Receiver has made commercially reasonable efforts to obtain the highest realizations for Unit 707 and has not acted improvidently, the Unit 707 Offer is the highest and best price received, the sale process is one characterized by efficacy and integrity, and there was no unfairness in working out of the sale process.

Material or evidence to be relied on:

29. The Consent Receivership Order granted by the Honourable Justice M.J. Lema on April 7, 2022;

30. The Sales Process Order granted by the Honourable Justice G.S. Dunlop on May 18, 2022;
31. The First Report of the Receiver dated May 11, 2022;
32. The Second Confidential Report of the Receiver dated May 11, 2022;
33. The Third Report of the Receiver dated April 19, 2023;
34. The Fourth Confidential Report of the Receiver dated April 19, 2023; and
35. Such further evidence as counsel may advise and this Honourable Court may permit.

Applicable rules:

36. Rules 6.47, 6.9, 9.14, 9.15, 11.27 and 13.5 of the *Alberta Rules of Court*; and
37. Such further material as counsel may advise and this Honourable Court may permit.

Applicable Acts and Regulations:

38. *Bankruptcy and Insolvency Act*, R.S.C. 1985 c. B-3, as amended;
39. This Court's equitable and inherent jurisdiction; and
40. Such further authority as counsel may advise and this Honourable Court may permit.

Any irregularity complained of or objection relied on:

41. None at this time.

How the application is proposed to be heard or considered.

42. Before the Honourable Justice J.T. Neilson in chambers by WebEx.

WARNING

If you do not come to Court either in person or by your lawyer, the Court may give the applicants what they want in your absence. You will be bound by any order that the Court makes. If you want to take part in this application, you or your lawyer must attend in Court on the date and at the time shown at the beginning of the form. If you intend to rely on an affidavit or other evidence when the application is heard or considered, you must reply by giving reasonable notice of the material to the applicant.

APPENDIX “A” – WEBEX INFORMATION

Virtual Courtroom 86 has been assigned for the above noted matter:

Virtual Courtroom Link: <https://albertacourts.webex.com/meet/virtual.courtroom86>

Instructions for Connecting to the Meeting

1. Click on the link above or open up Chrome or Firefox and cut and paste it into your browser address bar.
2. If you do not have the Cisco Webex application already installed on your device, the site will have a button to install it. Follow installation instructions. Enter your full name and email address when prompted
3. Click on the **Open Cisco Webex Meeting**.
4. You will see a preview screen. Click on **Join Meeting**.

Key considerations for those attending:

1. Please connect to the courtroom **15 minutes prior** to the start of the hearing.
2. Please ensure that your microphone is muted and remains muted for the duration of the proceeding, unless you are speaking. Ensure that you state your name each time you speak.
3. If bandwidth becomes an issue, some participants may be asked to turn off their video and participate by audio only.
- 4. Note: Recording or rebroadcasting of the video is prohibited.**
- 5. Note: It is highly recommended you use headphones with a microphone or a headset when using Webex. This prevents feedback.**

If you are a non-lawyer attending this hearing remotely, **you must** complete the undertaking located here: <https://www.albertacourts.ca/qb/resources/announcements/undertaking-and-agreement-for-non-lawyers>

For more information relating to Webex protocols and procedures, please visit: <https://www.albertacourts.ca/qb/court-operations-schedules/webex-remote-hearings-protocol>

You can also join the meeting via the “Cisco Webex Meetings” App on your smartphone/tablet or other smart device. You can download this via the App marketplace and join via the link provided above.

SCHEDULE "A"

Form of Order

COURT FILE NUMBER 2203-01087
COURT COURT OF KING'S BENCH OF ALBERTA
JUDICIAL CENTRE EDMONTON
PLAINTIFFS TIMBERCREEK MORTGAGE SERVICING
INC. and 2292912 ONTARIO INC.
DEFENDANTS SYMPHONY CONDOMINIUM LTD.,
ROCKWOOD MANAGEMENT LTD. and
ALLEN WASNEA

Clerk's Stamp

DOCUMENT **ORDER (VARY SALE PROCESS ORDER,
APPROVAL OF FEES, ACTIVITES, SRD,
AND SEALING)**

ADDRESS FOR SERVICE AND
CONTACT INFORMATION OF PARTY
FILING THIS DOCUMENT

McMillan LLP
TD Canada Trust Tower
#1700, 421-7th Avenue SW
Calgary, Alberta T2P 4K9

Attention: Adam Maerov
Telephone: 403-215-2752
Facsimile: 403-531-4720

Attention: Preet Saini
Telephone: 403-531-4716
Facsimile: 403-531-4720
File Number: 287823

DATE ON WHICH ORDER WAS PRONOUNCED: April 24, 2023
LOCATION WHERE ORDER WAS PRONOUNCED: Edmonton Law Courts
NAME OF JUSTICE WHO MADE THIS ORDER: The Honourable Justice J.T. Neilson

UPON THE APPLICATION of MNP Ltd., in its capacity as court-appointed receiver and manager (the "Receiver") of Symphony Condominium Ltd. ("Debtor"); AND UPON reviewing the Third Report of the Receiver dated April 19, 2023 ("Third Report"), the Fourth Confidential Report of the Receiver dated April 19, 2023 ("Fourth Confidential Report"), the First Report of the Receiver dated May 11, 2022 ("First Report") and the Second Confidential Report of the Receiver dated May 11, 2022 ("Second Confidential Report"); AND UPON reviewing the consent receivership order granted by the Honourable Justice Lema on April 7, 2022 appointing the Receiver as receiver and manager of Symphony Condominium Ltd. ("Receivership Order") and the order approving marketing process, sale approval process, activities, distributions and sealing granted by the Honourable Justice Dunlop on May 18, 2022 contained therein (the "Sales Process Order"); AND UPON reviewing the Affidavit of Service confirming service on the service list contained therein ("Service List"); AND UPON hearing counsel for the Receiver and any other

interested parties present;

AND UPON being advised that the Receiver seeks an order temporarily sealing the Fourth Confidential Report, varying the Sales Process Order, approving the Receiver's fees and disbursements and approving the Receiver's activities;

AND UPON reviewing paragraph 4 of the Sales Process Order that authorizes and empowers the Receiver to apply to this Court to amend, vary, or seek any advice or directions with respect to the Marketing Process or the Sale Approval Process;

AND UPON being advised that the Receiver seeks approval of a sale transaction contemplated by an offer to purchase (the "Offer to Purchase") between the Receiver and Ton Foon Investment Ltd. ("Purchaser") dated April 19, 2023 and appended to the Third Report and vesting in the Purchaser (or its nominee) the Debtor's right, title and interest in and to the assets described in the Offer to Purchase;

IT IS HEREBY ORDERED AND DECLARED THAT:

SERVICE

1. Service of notice of this application and supporting materials is hereby declared to be good and sufficient, no other person is required to have been served with notice of this application and time for service of this application is abridged to that actually given.

AMENDMENT TO SALES PROCESS ORDER AND APPROVAL OF 707 UNIT SALE

2. Paragraph 3(a) of the Sales Process Order is varied to read as follows:
 - a. the purchase price for the relevant Symphony Unit is greater than 95% of the forced sale value provided for each of the Symphony Units in the Symphony Appraisal (as defined in the Second Confidential Report of the Receiver dated May 11, 2022) and the purchase price for the Foote Residence is within or above the applicable Value Range (as defined in the First Report of the Receiver dated May 11, 2022);
3. All other terms of the Sales Process Order shall remain in full force and effect.
4. The Offer to Purchase is hereby approved pursuant to the Sales Process Order (as varied by this Order).

APPROVAL OF ACTIVITIES AND SRD

5. The Receiver's actions, activities, and conduct as set out in the Third Report, are hereby ratified and approved.
6. The Receiver's interim statement of receipts and disbursements for the period from April 7, 2022 to April 17, 2023 as set out in the Third Report are hereby ratified and approved.

PROFESSIONAL FEES

7. The Receiver's fees and disbursements for the period ended March 31, 2023 in the amount of \$363,422 (inclusive of applicable sales taxes) are hereby ratified and approved; and
8. The fees and disbursements of McMillan LLP, as counsel to the Receiver, for the period ending March 31, 2023 in the amount of \$167,696 (inclusive of applicable sales taxes) are hereby ratified and approved.

TEMPORARY SEALING

9. The Fourth Confidential Report shall, until the filing of all of the Receiver's Closing Certificate in respect of the last Symphony Unit and the Foote Residence (each as defined in the Sales Process Order) or upon further order of this Honourable Court, be sealed and kept confidential, to be shown only to a Justice of the Court of King's Bench of Alberta, and accordingly, shall be filed with the Clerk of the Court who shall keep the Confidential Report in a sealed envelope, which shall be clearly marked "SEALED PURSUANT TO THE ORDER OF THE HONOURABLE JUSTICE NEILSON DATED April 24, 2023."

FILING

10. The Clerk of the Court is directed to file this Order forthwith and return it to McMillan LLP for further handling.

SERVICE

11. Service of this Order shall be deemed good and sufficient by:
 - a. Serving the same on:
 - (i) the persons listed on the service list created in these proceedings;
 - (ii) any other person served with notice of the application for this Order;
 - (iii) any other parties attending or represented at the application for this Order;

- b. Posting a copy of this Order on the Receiver's website at:
<https://mnpdebt.ca/en/corporate/corporate-engagements/fmpc>

and service on any other person is hereby dispensed with.

- 12. Service of this Order may be effected by facsimile, electronic mail, personal delivery or courier. Service is deemed to be effected the next business day following transmission or delivery of this Order.

Justice of the Court of King's Bench of Alberta