

COURT FILE NUMBER: 2203-01087
COURT COURT OF KING'S BENCH OF ALBERTA
JUDICIAL CENTRE EDMONTON
PLAINTIFF TIMBERCREEK MORTGAGE SERVICING INC. and
2292912 ONTARIO INC.
DEFENDANT 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 No. 287823

NOTICE TO RESPONDENT(S):

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

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: February 29, 2024
Time: 2:00pm-3:00pm
Where: Edmonton Law Courts via WebEx
(see attached Appendix "A")
Before Whom: The Honourable Justice N. J. Whitling

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 ("**Receiver**") of Symphony Condominium Ltd. ("**Symphony**") 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 as described in the Fifth Report of the Receiver dated February 21, 2024 (the "**Fifth Report**") provided that only the Receiver, in its personal capacity and with respect to its own personal liability, shall be entitled to rely upon or utilize in any way such approvals;
 - (c) approving the Receiver's interim statement of receipts and disbursements for the period from April 7, 2022, to February 15, 2024, as further outlined in the Fifth Report;
 - (d) authorizing the Receiver to pay to Timbercreek Mortgage Servicing Inc. ("**Timbercreek**") from time to time one or more distributions from the net proceeds in the receivership estate, subject to such reasonable reserves of funds as the Receiver deems necessary for the ongoing administration of the receivership proceedings or to satisfy any priority claims that may be payable in priority to the Timbercreek Security (as defined below);
 - (e) directing the Registrar of the Alberta Land Titles Office ("**Land Titles Registrar**") to transfer two of the Symphony Units legally described herein to Condominium Corporation No. 192 0542 (the "**Condo Corp.**") pursuant to a Settlement and Mutual Release Agreement dated September 6, 2023 (the "**Settlement Agreement**") that was approved by the Court pursuant to an Order granted on September 14, 2023 (the "**September 14 Order**"); and
 - (f) approving the professional fees and disbursements of the Receiver and of McMillan LLP, legal counsel to the Receiver, for the period from August 1, 2023 to January 31, 2024, as further outlined in the Fifth Report.
2. Such further relief as counsel may request and this Honourable Court may grant.

Grounds for making this application:

A. Background

3. 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. ("**Symphony**" or "**Debtor**"). The Property was mainly comprised of real properties including various residential condominium units within the building known as the Symphony Tower, located at 9720 – 106 Street NW in Edmonton (the "**Symphony Condos**").
4. 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.
5. At the Filing Date, the Debtor held 34 Symphony Condos, 53 parking stalls and six storage units as well as the following properties:
 - (a) A three-story multi-residential building comprising 12 rental units located at 10612 97 Avenue NW in Edmonton, Alberta (the "**Parkview Apartments**"); and
 - (b) A single dwelling residence located at the base of the Symphony Tower (the "**Foote Residence**").
6. On May 18, 2022, on application by the Receiver, Justice G.S. Dunlop granted and order *inter alia*, approving the Sales Approval Process (as defined in the Fourth Report) for the sale of the Symphony Condos as well as a distribution process to Timbercreek from the net proceeds of the sale of the purchased assets (the "**Sale Process Order**").
7. As at the date of this report, the Symphony continues to hold 25 Symphony Condos, 38 parking stalls, three storage units and one common area unit (these remaining units will be referred to as the "**Symphony Units**"). The sales of the remaining Symphony Units, the Parkview Apartments and the Foote Residence were completed as previously approved by the Court.
8. The Receivership Order was granted following an application by Timbercreek and 2292912 Ontario Inc. At the Filing Date, Timbercreek was owed approximately \$23.4 million pursuant to a mortgage facility. Timbercreek holds several registrations against certain of the Property, including first registered mortgages against the Symphony Units, a general security agreement, and a general assignment of rents and leases in relation to the Foote Residence (collectively, the "**Timbercreek Security**").

9. At the Filing Date, Canada ICI Capital Corporation (“**Canada ICI**”) was owed approximately \$4.4 million pursuant to a mortgage facility. Canada ICI held registered mortgages, including a registered mortgage on the Foote Residence.
10. The Receiver has previously filed four reports and six confidential reports in the receivership proceedings. The most recent Fourth Report of the Receiver was dated September 8, 2024 (the “**Fourth Report**”).

B. Approval of Actions, Activities and Conduct

11. The activities of the Receiver and its independent legal counsel are described in detail in the Fifth Report.
12. 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 provided that only the Receiver, in its personal capacity and with respect to its own personal liability, shall be entitled to rely upon or utilize in any way such approvals.

C. Approval of Interim Statement of Receipts and Disbursements

13. The interim statement of receipts and disbursements of the Receiver from April 7, 2022 to February 15, 2024 is described in detail in the Fifth Report.
14. The Receiver submits that its interim receipts and disbursements were appropriate and necessary for administration of the receivership and ought to be approved by this Honourable Court.

D. Authorization to Assign Symphony into Bankruptcy

15. The Receiver is seeking an order authorizing the Receiver to assign Symphony into bankruptcy pursuant to the *Bankruptcy and Insolvency Act*, RSC 1985, c B-3 (the “**Bankruptcy Proceedings**”), with MNP Ltd. being appointed as the Licensed Insolvency Trustee of the bankrupt estate.
16. The Bankruptcy Proceedings are being contemplated to reverse the priority of a claim by Canada Revenue Agency for pre-filing goods and services tax for approximately \$64,900 (the “**Pre-Filing GST Claim**”). Having the Receiver initiate the bankruptcy proceedings will avoid the time and expense of Timbercreek, the primary secured lender, having to make an application for a Bankruptcy Order.

17. The Pre-Filing GST Claim will be relegated to an ordinary unsecured claim upon the initiation of the Bankruptcy Proceedings.
18. The Receiver submits that the authorization to assign Symphony into bankruptcy and proceed with the Bankruptcy Proceedings for the intended purpose is appropriate for the administration of the receivership estate and permissible at law.

E. Approval of Distribution of Sales Proceeds

19. On May 18, 2023, the Honourable Justice Dunlop granted the Sale Process Order whereby *inter alia* the Receiver and McMillan were each authorized to pay to Timbercreek from time to time one or more distributions from the net proceeds of the sale of the Symphony Units, subject to reasonable reserves to fund the ongoing administration of the receivership and satisfy any priority claims.
20. To the Receiver's knowledge, the Pre-Filing GST Claim is the only priority claim. The Sale Process Order did not authorize the ability for the Receiver to distribute general receipts in the receivership to Timbercreek.
21. The Receiver has now collected approximately \$628,000 from the return of a term deposit (the "**Term Deposit**") held by HSBC pursuant to a letter of credit held by Alberta Infrastructure and Transportation and the Justice and Solicitor General for the Government of Alberta related to an agreement to construct and maintain the pedway that links the Symphony Tower to the Alberta Legislature (the "**Pedway**"). The wording of the Sale Process Order does not currently contemplate a distribution to Timbercreek from the Term Deposit or other general receipts collected in the receivership.
22. McMillan completed an independent review of the Timbercreek Security and determined that the Timbercreek Security is, subject to the usual and customary assumptions and qualifications, valid and enforceable against Symphony.
23. The Receiver is therefore seeking an order authorizing the Receiver to make distributions from all receipts in the receivership to Timbercreek, subject to reasonable reserves to fund the ongoing administration of the receivership and to satisfy any priority claims.

F. Direction to Registrar Pursuant to Settlement Agreement

24. The Receiver on behalf of the Debtor and Condo Corp. agreed to settle various outstanding matters referred to and further elaborated on in the Fourth Report as

Settlement Matters by entering a settlement agreement dated September 6, 2023 attached as Schedule 2 to the Fourth Report (the “**Settlement Agreement**”).

25. On September 14, 2023, the Settlement Agreement was approved by the Honourable Justice Neilson pursuant to the September 14 Order.
26. The Settlement Agreement provided for, among other matters, the transfer of the condominium units legally described as the following free and clear of all encumbrances, except for permitted encumbrances, from Symphony to the Condo Corp.:

CONDOMINIUM PLAN 1920542
UNIT 345
AND 1 UNDIVIDED ONE TEN THOUSANDTH SHARES IN THE COMMON
PROPERTY EXCEPTING THEREOUT ALL MINES AND MINERALS

and

CONDOMINIUM PLAN 1920542
UNIT 239
AND 1 UNDIVIDED ONE TEN THOUSANDTH SHARES IN THE COMMON
PROPERTY EXCEPTING THEREOUT ALL MINES AND MINERALS

(collectively, the “**Settlement Units**”)

27. The Registrar at the Alberta Land Titles Office has indicated to McMillan that it may refuse to transfer the Settlement Units to the Condo Corp without specific direction from the Court. Accordingly, the Receiver is seeking an Order directing Land Titles to transfer the Settlement Units to the Condo Corp as set out in the Settlement Agreement.

G. Approval of Professional Fees and Disbursements of the Receiver

28. The Receiver incurred fees and disbursements of approximately \$107,300 plus GST of approximately \$5,400 for a total of approximately \$112,700 for the period from August 1, 2023 to January 31, 2024 (the “**Receiver’s Fees**”).
29. McMillan LLP incurred fees and disbursements of approximately \$56,100 plus GST of approximately \$2,800 for a total of approximately \$58,900 for the period from August 1, 2023 to January 31, 2024 (the “**Receiver’s Legal Fees** and collectively with the Receiver’s Fees, the “**Professional Fees**”).
30. The Professional Fees are described further in the Fifth Report.
31. 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.

Material or evidence to be relied on:

32. The Consent Receivership Order granted by the Honourable Justice M.J. Lema on April 7, 2022;
33. The Sales Process Order granted by the Honourable Justice G.S. Dunlop on May 18, 2022;
34. Order amending the Sales Process Order granted by the Honourable Justice J.T. Neilson on April 24, 2023;
35. The September 14 Order granted by the Honourable Justice J.T. Neilson on September 14, 2023;
36. The Fourth Report of the Receiver dated September 8, 2023;
37. The Fifth Report of the Receiver dated February 21, 2024; and
38. Such further evidence as counsel may advise and this Honourable Court may permit.

Applicable rules:

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

Applicable Acts and Regulations:

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

Any irregularity complained of or objection relied on:

44. None at this time.

How the application is proposed to be heard or considered.

45. Before the Honourable Justice N.J. Whitling 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.**

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



DOCUMENT **ORDER (ASSIGNMENT INTO
BANKRUPTCY, APPROVAL OF
ACTIVITIES, FEES, AND INTERIM SRD,
DISTRIBUTIONS, LAND TRANSFER)**

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: February 29, 2024
LOCATION WHERE ORDER WAS PRONOUNCED: Edmonton Law Courts
NAME OF JUSTICE WHO MADE THIS ORDER: The Honourable Justice Whitting

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 Fifth Report of the Receiver dated February 21, 2024 ("Fifth 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"), 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 the order amending the Sales Process Order granted by the Honourable Justice Neilson on April 24, 2023 (the "First Sale Amendment"); 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;

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.

APPROVAL OF ACTIVITIES AND SRD

2. The Receiver's actions, activities, and conduct in administering these receivership proceedings as set out in the Fifth Report, are hereby ratified and approved provided that only the Receiver, in its personal capacity and with respect to its own personal liability, shall be entitled to rely upon or utilize in any way such approvals.
3. The Receiver's interim statement of receipts and disbursements for the period from April 7, 2022, to February 15, 2024 as set out in the Fifth Report is hereby ratified and approved.

AUTHORIZATION TO ASSIGN SYMPHONY INTO BANKRUPTCY

4. The Receiver is hereby authorized, but not obligated, to assign Symphony Condominium Ltd. into bankruptcy, on such date as determined by the Receiver, for the general benefit of its creditors pursuant to section 49(1) of the *Bankruptcy and Insolvency Act*, RSC 1985, c B-3 ("BIA").
5. MNP Ltd. shall be appointed as the Licensed Insolvency Trustee of the bankrupt estate in the event that Symphony Condominium Ltd. is bankrupt.

APPROVAL OF DISTRIBUTION OF GENERAL RECEIPTS IN RECEIVERSHIP

6. The Receiver is hereby authorized to pay the to Timbercreek Mortgage Servicing Inc. one or more distributions from general receipts from this receivership, subject to reasonable reserves to fund the ongoing administration of the receivership and to satisfy any priority claims as determined by the Receiver.

DIRECTION TO LAND TITLES REGISTRAR TO TRANSFER COMMON PROPERTY

7. The Registrar of the Alberta Land Titles Office ("Land Titles Registrar") for the lands defined below shall and is hereby authorized, requested and directed to forthwith:
 - a. cancel existing Certificate of Title No. 192 043 232 +344 and Certificate of Title No. 192 043 232 +238 for those lands legally described as:

CONDOMINIUM PLAN 1920542
UNIT 345
AND 1 UNDIVIDED ONE TEN THOUSANDTH SHARES IN THE COMMON PROPERTY
EXCEPTING THEREOUT ALL MINES AND MINERALS

and

CONDOMINIUM PLAN 1920542
UNIT 239
AND 1 UNDIVIDED ONE TEN THOUSANDTH SHARES IN THE COMMON PROPERTY
EXCEPTING THEREOUT ALL MINES AND MINERALS

(collectively, the "Lands")

- b. issue a new Certificate of Title for each of the Lands in the name of Condominium Corporation No. 192 0542 (or its nominee);
 - c. transfer to the New Certificates of Title the existing instruments listed in Schedule "A", to this Order, and to issue and register against the New Certificate of Title such new caveats, utility rights of ways, easements or other instruments as are listed in Schedule "A" (the "Permitted Encumbrances"); and
 - d. discharge and expunge the encumbrances listed in Schedule "B" to this Order (the "Encumbrances") and discharge and expunge any Claims (as defined in the Fifth Report) including Encumbrances (but excluding Permitted Encumbrances) which may be registered against the existing Certificate of Title to the Lands;
8. Upon delivery of a copy of this Order, this Order shall be immediately registered and followed by the Land Titles Registrar notwithstanding the requirements of section 191(1) of the Land Titles Act, RSA 2000, c.L-7 and notwithstanding that the appeal period in respect of this Order has not elapsed. The Land Titles Registrar is hereby directed to accept all Affidavits of Corporate Signing Authority submitted by the Receiver in its capacity as Receiver of the Debtor and not in its personal capacity.
9. The Receiver is authorized and empowered to do such things, and executed and deliver such additional, related and ancillary documents and assurances governing or giving effect to this Order which, in the Receiver's discretion, are reasonably necessary or advisable to properly effect this Order.

PROFESSIONAL FEES

10. The Receiver's fees and disbursements for the period from August 1, 2023, to January 31, 2024 in the amount of approximately \$112,700 (inclusive of applicable sales taxes) are hereby ratified and approved; and

11. The fees and disbursements of McMillan LLP, as counsel to the Receiver, for the period from August 1, 2023, to January 31, 2024 in the amount of approximately \$58,900 (inclusive of applicable sales taxes) are hereby ratified and approved.

FILING

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

SERVICE

13. 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/symphony-condominium-ltd>.

and service on any other person is hereby dispensed with.

14. 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

SCHEDULE "A"**PERMITTED ENCUMBRANCES****Certificate of Title No. 192 043 232 + 344**

Instrument No.	Description
162 016 735	Agreement Re: Restrictive Covenant and Easement
192 043 229	Caveat Re: Encroachment Agreement Pursuant to Municipal Government Act
192 043 230	Caveat Re: Encroachment Agreement Pursuant to Municipal Government Act
192 064 491	Caveat Re: Encroachment Agreement Pursuant to Municipal Government Act

Certificate of Title No. 192 043 232 + 238

Instrument No.	Description
162 016 735	Agreement Re: Restrictive Covenant and Easement
192 043 229	Caveat Re: Encroachment Agreement Pursuant to Municipal Government Act
192 043 230	Caveat Re: Encroachment Agreement Pursuant to Municipal Government Act
192 064 491	Caveat Re: Encroachment Agreement Pursuant to Municipal Government Act

SCHEDULE "B"**ENCUMBRANCES****Certificate of Title No. 192 043 232 + 344**

Instrument No.	Description
192 012 146	Mortgage Mortgagee – Canada ICI Capital Corporation
192 012 147	Caveat Re: Assignment of Rents and Leases Caveator – Canada ICI Capital Corporation
222 157 271	Order in Favour of MNP Ltd.

Certificate of Title No. 192 043 232 + 238

Instrument No.	Description
192 012 146	Mortgage Mortgagee – Canada ICI Capital Corporation
192 012 147	Caveat Re: Assignment of Rents and Leases Caveator – Canada ICI Capital Corporation
192 166 289	Mortgage Mortgagee – 2292912 Ontario Inc.
192 166 290	Caveat Re: Assignment of Rents and Leases Caveator – 2292912 Ontario Inc.
192 166 301	Postponement
222 157 271	Order in Favour of MNP Ltd.