

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
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Attention: Preet Saini
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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: June 23, 2022
Time: 10:00 am
Where: Edmonton Law Courts via WebEx (see attached Appendix "A")
Before Whom: The Honourable Justice K. Feth

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. An Order, substantially in the form attached hereto as Schedule "A":
 - (a) approving the waiver and third amending agreement dated May 31, 2022 between the Purchaser and the Receiver ("**Waiver and Third Amending Agreement**");

- (b) varying the sale approval and vesting order of Justice G.S. Dunlop granted May 18, 2022 (“SAVO”) to give effect to the Waiver and Third Amending Agreement; and
 - (c) sealing Third Confidential Report of the Receiver dated June 17, 2022 (the “**Third Confidential Report**”) on the same terms as the First Confidential Report (as defined in the SAVO).
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 Queen’s Bench of Alberta granted a consent receivership order (the “**Receivership Order**”) appointing MNP Ltd. (the “**Receiver**”) 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 consisting of:
- (a) 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**”)
 - (b) a 3.5 story apartment building known as the “**Parkview Apartments**”, consisting of 12 residential rental units, located at 10612 97 Avenue NW, in Edmonton, AB; and
 - (c) a single-dwelling residence known as the Foote Residence, also located at 9704 – 106th Street NW in Edmonton, Alberta.
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. The Receivership Order was granted following an application by Timbercreek and 2292912 Ontario Inc. Timbercreek holds several registrations against the Property, including a first registered mortgage the Parkview Apartments, a general security agreement and a general assignment of rents and leases over the Parkview Apartments.
6. Canada ICI Capital Corporation (“**Canada ICI**”) also holds a registered mortgage over the Parkview Apartments, among other registrations against the Property.

B. Procedural History

7. On May 18, 2022, on application by the Receiver, Justice G.S. Dunlop granted the SAVO *inter alia*, approving the sale agreement between the Receiver and Vedran Jakovljevic (the “**Purchaser**”) made as of April 22, 2022 (“**Sale Agreement**”) and the transaction contemplated therein (the “**Transaction**”).
8. Following granting of the SAVO, the Purchaser has agreed to waive the Purchaser’s Conditions (as defined in the Second Report of the Receiver dated June 17, 2022) subject to court approval of the Waiver and Third Amending Agreement.
9. The Receiver and the Purchaser have each executed the Waiver and Third Amending Agreement.

10. The Waiver and Third Amending Agreement amends the purchase price and possession date contained in the Sale Agreement. An unredacted copy of the Waiver and Third Amending Agreement is attached as Schedule 2 to the Receiver's Third Confidential Report.
11. The Waiver and Third Amending Agreement is subject to court approval.
12. Timbercreek has indicated that it is supportive of court approval of the Waiver and Third Amending Agreement.
13. The Receiver is of the view that it is unlikely that a superior offer on the Parkview Apartments would be received in the near or medium term.

C. **Temporary Sealing**

14. The Receiver seeks to seal the Third Confidential Report on the same terms as the First Confidential Report (as defined in the SAVO):
 - (a) sealing of the Third Confidential Report is necessary in order to prevent a serious risk in the event that the sale of the Parkview Assets does not close considering the commercially sensitive information contained in the Third Confidential Report;
 - (b) reasonable alternative measures will not prevent the risk; and
 - (c) 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.

Material or evidence to be relied on:

15. The Receivership Order;
16. The First Report of the Receiver;
17. The First Confidential Report of the Receiver;
18. The Second Report of the Receiver;
19. The Third Confidential Report of the Receiver; and
20. Such further evidence as counsel may advise and this Honourable Court may permit.

Applicable rules:

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

Applicable Acts and Regulations:

23. *Bankruptcy and Insolvency Act*, R.S.C. 1985 c. B-3, as amended;
24. This Court's equitable and inherent jurisdiction; and

25. Such further authority as counsel may advise and this Honourable Court may permit.

Any irregularity complained of or objection relied on:

26. None at this time.

How the application is proposed to be heard or considered.

27. Before the Honourable Justice K. Feth 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

Counsel: Please ensure that all relevant parties have received 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"

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.
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DOCUMENT	ORDER
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 – 7 th Avenue S.W. Calgary, AB T2P 4K9
	Attention: Adam Maerov Telephone: 403-215-2752 Facsimile: 403-531-4720
	Attention: Preet Saini Phone: 403-531-4716 Facsimile: 403-531-4720 File No. 287823

DATE ON WHICH ORDER WAS PRONOUNCED: JUNE 23, 2022

LOCATION WHERE ORDER WAS PRONOUNCED: EDMONTON

NAME OF JUSTICE WHO MADE THIS ORDER: THE HONOURABLE JUSTICE K. FETH

UPON THE APPLICATION by **MNP Ltd.** in its capacity as the Court-appointed receiver and manager (the "**Receiver**") of the undertakings, property and assets of Symphony Condominium Ltd. (the "**Debtor**"); **AND UPON** having reviewed the sale approval and vesting order granted by Justice G.S. Dunlop on May 31 2022 ("**SAVO**") approving the sale transaction and the execution of the purchase agreement between the Receiver and Vedran Jakovljevic (the "**Purchaser**") made as of April 22, 2022;

AND UPON HAVING READ the Receiver's Second Report dated June 17, 2022 the Receiver's Third Confidential Report dated June 17, 2022, and the waiver and third amending agreement dated May

31, 2022 between the Purchaser and the Receiver (“**Waiver and Third Amending Agreement**”) AND **UPON HEARING** the submissions of counsel for the Receiver, counsel for the Purchaser, counsel for Timbercreek Mortgage Servicing Inc., and any other counsel or other parties present;

IT IS HEREBY ORDERED AND DECLARED THAT:

1. The execution of the Waiver and Third Amending Agreement is hereby authorized and approved, with such minor amendments as the Receiver may deem necessary.
2. The Sale Agreement and Transaction (each term as defined in the SAVO) shall be varied to include the amendments provided for in the Waiver and Third Amending Agreement.
3. All terms of the SAVO shall remain in full force and effect.
4. Division 4 of Part 6 of the *Alberta Rules of Court* does not apply to this application.
5. The Third Confidential Report shall, until the filing of the Receiver’s Closing Certificate (as defined in the SAVO), be sealed and kept confidential, to be shown only to a Justice of the Court of Queen’s Bench of Alberta, and accordingly, shall be filed with the Clerk of the Court who shall keep the Third Confidential Report in a sealed envelope, which shall be clearly marked “SEALED PURSUANT TO THE ORDER OF THE HONOURABLE JUSTICE K. FETH DATED JUNE 23, 2022.”

Justice of the Court of Queen’s Bench of Alberta