COURT FILE NUMBER Q.B.G. 77 of 2020

COURT OF QUEEN'S BENCH FOR SASKATCHEWAN
IN BANKRUPTCY AND INSOLVENCY

JUDICIAL CENTRE MELFORT

and

COURT FILE NUMBER Q.B.G. 211 of 2020

COURT OF QUEEN'S BENCH FOR SASKATCHEWAN
IN BANKRUPTCY AND INSOLVENCY

JUDICIAL CENTRE YORKTON

IN THE MATTER OF THE RECEIVERSHIP OF
VOYAGER RETIREMENT II LP AND ITS GENERAL PARTNER, VOYAGER RETIREMENT II GENPAR INC. and of VOYAGER RETIREMENT III LP AND ITS GENERAL PARTNER, VOYAGER RETIREMENT III GENPAR INC.

And

COURT FILE NUMBER Q.B. 880 OF 2021

COURT OF QUEEN'S BENCH FOR SASKATCHEWAN
IN BANKRUPTCY AND INSOLVENCY

JUDICIAL CENTRE OF SASKATOON

IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*
RSC 1985, c.C-36, AS AMENDED

AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF VOYAGER RETIREMENT II GENPAR INC., VOYAGER RETIREMENT II LP, VOYAGER RETIREMENT III GENPAR INC., AND VOYAGER RETIREMENT III LP

BRIEF OF LAW ON BEHALF OF CONEXUS CREDIT UNION 2006

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BRIEF OF LAW ON BEHALF OF CONEXUS CREDIT UNION 2006

A. INTRODUCTION AND FACTS

1. This Brief of Law is submitted on behalf of Conexus Credit Union 2006 ("**Conexus**") in support of the application (the "**Application**") by Conexus for an Order appointing MNP LLP as receiver over the property, assets and undertaking of the Defendant, Voyager Retirement II LP and its general partner, Voyager Retirement II Genpar Inc. (collectively, "**Voyager II**") and the Defendant, Voyager Retirement III LP and its general partner, Voyager Retirement III Genpar Inc. (collectively, "**Voyager III**" and together with Voyager II, the "**Voyagers**") for the purpose of securing, preserving and disposing of the property, assets and undertakings of Voyager II and Voyager III. This Brief of Law is also submitted in opposition to the application by the Voyagers for an Initial Order under the *Companies' Creditors Arrangement Act* (the "**CCAA**").

2. We will attempt to minimize repetition with other documents filed in support of the Application, including the Affidavits of Terry Wrishko.

3. Voyager II owns and operates a senior's residence (the "**Voyager II Residence**") located in Tisdale, Saskatchewan. The Voyager II Residence is part of a condominium project that was constructed by Voyager II with construction being completed in or about 2012. The Voyager II Residence has 94 residential units and at the present time, Voyager II owns 67 of those residential units.

4. Voyager III owns and operates a senior's residence (the "**Voyager III Residence**") located in Melville, Saskatchewan. The Voyager III Residence is part of a condominium project that was constructed by Voyager III with construction being completed in or about 2012. The Voyager III Residence has 94 residential units and at the present time, Voyager III owns 64 of those residential units. The Voyager II Residence and the Voyager III Residence are collectively referred to as the "**Residences**".

5. Each of Voyager II and Voyager III entered into Management Agreements with Caleb Management Ltd. ("**Caleb Management**") for Caleb Management to operate the Residences and provide the services to the residents of the Residences. The term of these Management Agreements are to December 31, 2158. The Voyagers and Caleb Management do not deal with each other at arm's length. Each of them are in the end controlled by Sirous Tosh.

6. As set out in the Affidavits of Terry Wrishko, Conexus has been a lender to each of Voyager II and Voyager III since they each commenced the construction of their own Residences. Conexus is the senior secured lender to each of Voyager II and Voyager III, with security over the personal property and the real property of each of the Voyagers. Voyager II owed Conexus $6,319,561.26 as at July 5, 2021. Voyager III owed Conexus $5,968,421.99 as at July 5, 2021.

7. The Voyagers each received 5 year periods from the City of Melville and the Town of Tisdale where no property taxes were payable. Those periods expired at the end of 2017. But for a few payments at the end of 2019 and first couple of months of 2020 and some recent payments this past few months, no payments of property taxes have been made by either of the Voyagers. The amounts owing for property taxes and arrears (including significant amounts of interest and penalties for non-payment) are in excess of $730,000 for each of Voyager II and Voyager III. Each of the Municipalities have registered tax liens. Melville has taken steps to proceed to the final step of the tax enforcement proceedings. Tisdale has advised that it will be doing the same (Exhibit "C" to the Supplemental Affidavit of Terry Wrishko. Conexus does wish to advise that the last sentence of Paragraph 7 of that Supplemental Affidavit of Terry Wrishko does contain an error. The was a letter sent to Voyager III from the Provincial Mediation Board dated July 22, 2021 and that letter was copied to Conexus (and its counsel). The letter does advise that the PMB "requires a monthly payment of $26,935.00 in order to bring the arrears current within our allowed three year time frame. These payments must begin in August 2021." We apologize for that error as Conexus did receive a copy of this communication (but we do not have time to provide a further affidavit in respect of this point).

8. The following matters are important in respect of these competing applications (being the now single application for the appointment of a receiver and the application by the Voyagers under the CCAA) :

   (a) No payments have been made to Conexus on the loans that Voyager II and Voyager II have since January, 2019. Prior to that, there were periods when interest only was being allowed as the Voyagers were unable to meet the required payments. As at July 5, 2021, the amounts owing to Conexus by Voyager II are $6,319,561.26 and the amounts owing by Voyager III are

$5,968,421.99. These amounts do not include any costs that have been incurred by Conexus.

(b) Communication between counsel for Conexus and for the Voyagers began in August of 2019 and at that time Conexus had a number of requirements for the Voyagers to address (Exhibit "A" to Supplemental Affidavit of Terry Wrishko). None of those requirements were met. Chief among those were re-commencing depositing to Conexus accounts (as required under the loan agreements) and development and presentation of a plan by which each of the Voyagers would work towards remedying the property tax and loan defaults.

(c) Demand for payment and BIA notices were delivered in January, 2020 (Exhibit B to the Supplemental Affidavit of Terry Wrishko).

(d) Statements of Claim were issued on December 15, 2020 (Voyager II) and December 8, 2020 (Voyager III).

(e) Appraisals were obtained in April, 2021. The conclusion was that if the condo units owned by Voyager II were sold as a block, the value was be $4,150,000 (page 42 of Exhibit "F" to Affidavit of Terry Wrishko in QBG No. 77 of 2020 – JC of Yorkton). The conclusion on the same basis in respect Voyager III was that the value was $4,500,000 (page 34 of Exhibit "F") to Affidavit of Terry Wrishko). Based upon these values, and factoring in the property tax arrears and the amounts owing to Conexus, it is apparent that Conexus will suffer significant losses in recovery of the amounts it is owed.

(f) On July 9, counsel for the Voyagers and Caleb Management, when being advised of the intention of Conexus to proceed with a receivership application in respect of both Voyagers, stated that Caleb Management intended to attempt to find a buyer for the Residences as well as three other seniors residences in Saskatchewan that Caleb Management was involved in. This had not been made known to Conexus prior to that date. Efforts to find an agreement that would allow such efforts to proceed were not successful.

9. Each of the Voyagers are insolvent. That is admitted.

10. The defaults by the Voyagers have been ongoing since 2017. Conexus took some steps in 2017 and 2018 to provide some "relief" to the Voyagers in the form of revised payment

obligations, such as interest only payments. Starting in or around August, 2019 requests, perhaps more properly considered to be demands perhaps, were made of the Voyagers to address the defaults and outline a plan to deal with the defaults. Nothing was done and nothing was communicated to Conexus. The assertions in the fall of 2019 that the reorganization of the Limited Partnerships that made up Voyager II and Voyager III would better enable the Limited Partnerships to raise capital from limited partners and start to resolve the defaults proved to be ineffective and resulted in no changes to the matters whatsoever.

11. It was only in the face of being advised that applications for appointment of a receiver were under way was it said to Conexus, through counsel, that the plan was for there to be a sale of five Residences, including the Voyagers.

12. The Mortgage provided by each of the Voyagers expressly state that Conexus take steps to appoint a receiver in the event of any default (paragraph 12(f) of each mortgage, found at Exhibit "A" to each of the initial Affidavits of Terry Wrishko). Similar provision is made at paragraph 12(d) of the Security Agreements granted by each of the Voyagers (which are Exhibit "B" to the Affidavits of Terry Wrishko). In these circumstances, the appointment is sought from the Court given some of the issues with the delivery of the management and resident services that are done by Caleb Management as referred to above.

13. The Voyagers have applied to have an Initial Order made under the CCAA that in effect places the Voyagers under the CCAA. The Originating Notice seeking that relief was served on August 19, 2021. In some earlier discussions between counsel and the Honourable Justice Elson, this was referred to as a "counter-application" to the applications by Conexus for the appointment of a receiver.

B. ISSUE – RECEIVERSHIP OR CCAA

14. The central issue before this Honourable Court is whether the Initial Order under the CCAA as requested by the Voyagers ought to be granted or whether this Court should appoint a receiver over the Voyagers as requested by Conexus. It is acknowledged that this Court has a fairly broad discretion to grant either of the requested relief, but it is respectfully submitted that the CCAA Order should not be granted but rather should be dismissed, and the Court should grant the requested Receivership Order. Put another way, as Mr. Justice Scherman in *Affinity Credit Union 2013* v. *Vortex Drilling Ltd.* 2017

SKQB 228 ("***Vortex***") framed the question, the issue is whether the appropriate order is the grant of an initial order and a stay of proceedings under the CCAA or to grant the application for the appointment of a Receiver.

C. ARGUMENT

15. The Court can grant the Receivership Order if it considers it just and appropriate to do so. Each of section 243(1) of the BIA, section 65(1) of the QB Act and section 64(8) of the PPSA provide the Court with jurisdiction to appoint a receiver. The primary source of jurisdiction is section 243(1) of the *Bankruptcy and Insolvency Act* (the "BIA"), which permits appointment of a receiver of the property of an insolvent person if it is considered "just and convenient to do so". It is that provision that we will focus on.

16. In the *Vortex* decision, Mr. Justice Scherman summarized the principles and requirements relating to a CCAA application (at paragraphs 17 to 18):

> **The Law Respecting *CCAA* Applications**
>
> [17] Jurisprudence establishes that the following principles are applicable to *CCAA* applications:
>
> a. The legislative purpose of the *CCAA* is to permit qualifying debtors to carry on business and where possible avoid the social and economic costs of liquidating its assets: See *Century Services Inc. v Canada (Attorney General)*, 2010 SCC 60 at para 15, [2010] 3 SCR 379 [*Century*].
>
> b. The remedial purpose of the *CCAA* is to facilitate the making of a compromise or arrangement between an insolvent debtor company and its creditors to the end that the company is able to continue in business: See *Chef Ready Foods Ltd. v Hongkong Bank of Canada* [1991] 2 WWR 136.
>
> c. The requirements of appropriateness, good faith and due diligence are baseline considerations that a court should always bear in mind when exercising *CCAA* jurisdiction: *Century* at para 70.
>
> d. Appropriateness is assessed by inquiring whether the order sought advances the remedial purpose of the *CCAA*: *Century* at para 70
>
> e. Section 11.02(3)(a) of the *CCAA* states that the court shall not grant a stay of proceedings unless:
>
> > (a) the applicant satisfies the court that circumstances exist that make the order appropriate…
>
> [18] I proceed on the basis that a *CCAA* applicant bears the burden of establishing each of the requirements of appropriateness, good faith and due diligence.

17. Mr. Justice Scherman then went on the summarize the principles applicable to the appointment of a receiver:

> **The Law Respecting Receivership Applications**
>
> [19] In a previous unreported decision in *Golden Opportunities Fund Inc. v Phenomenome Discoveries Inc.* (25 February 2016) Saskatoon, QB 1639 of 2015 (Sask QB), I summarized jurisprudence with respect to applications to appoint a receiver under s. 243 of the BIA. I repeat here that summary, which I view as remaining accurate:
>
> 5. Under s. 243(1) of the BIA this court can, on application of a secured creditor, appoint a receiver where it considers it just and convenient to do so. Instructive decisions on the factors relevant to the court's determination of whether it is "just and convenient" include *Bank of Montreal v. Carnival National Leasing Ltd.* 2011 ONSC 1007 and *Kasten Energy Inc. v. Shamrock Oil & Gas Ltd.* 2013 ABQB 63.
>
> 6. In Carnival the court said the following regarding the just and convenient criteria at para 24 of its reason:
>
> > In *Bank of Nova Scotia v. Freure Village on Clair Creek* (1996), 40 C.B.R. (3d) 274 (Ont. Gen. Div. [Commercial List]), Blair J. (as he then was) dealt with a similar situation in which the bank held security that permitted the appointment of a private receiver or an application to court to have a court appointed receiver. He summarized the legal principles involved as follows:
> >
> > > 10 The Court has the power to appoint a receiver or receiver and manager where it is "just or convenient" to do so: the Courts of Justice Act, R.S.O. 1990, c. 43, s. 101. In deciding whether or not to do so, it must have regard to all of the circumstances but in particular the nature of the property and the rights and interests of all parties in relation thereto. The fact that the moving party has a right under its security to appoint a receiver is an important factor to be considered but so, in such circumstances, is the question of whether or not an appointment by the Court is necessary to enable the receiver-manager to carry out its work and duties more efficiently; see generally *Third Generation Realty Ltd. v. Twigg* (1991) 6 C.P.C. (3d) 366 at pages 372- 374; *Confederation Trust Co. v. Dentbram Developments Ltd.* (1992), 9 C.P.C. (3d) 399; *Royal Trust Corp. of Canada v. D.Q. Plaza Holdings Ltd.* (1984), 54 C.B.R. (N.S.) 18 at page 21. It is not essential that the moving party, a secured creditor, establish that it will suffer irreparable harm if a receiver-manager is not appointed: *Swiss Bank Corp. (Canada) v. Odyssey Industries Inc.*(1995), 30 C.B.R. (3d) 49.
>
> 7. In *Kasten* the court said the following:
>
> > 13 Both parties agree that the factors that may be considered in making a determination whether it is just and convenient to appoint a Receiver are listed in a non- exhaustive manner in *Paragon Capital Corp. v. Merchants & Traders Assurance Co.*, 2002 ABQB 430 (Alta. Q.B.) at para 27, (2002), 316 A.R. 128 (Alta. Q.B.) [Paragon Capital], citing from Frank Bennett, Bennett on Receiverships, 2nd ed (Toronto: Thompson Canada Ltd, 1995) at 130] to include:
> >
> > a) whether irreparable harm might be caused if no order were made, although it is not essential for a creditor to establish irreparable

harm if a receiver is not appointed, particularly where the appointment of a receiver is authorized by the security documentation;

b) the risk to the security holder taking into consideration the size of the debtor's equity in the assets and the need for protection or safeguarding of the assets while litigation takes place;

c) the nature of the property;

d) the apprehended or actual waste of the debtor's assets;

e) the preservation and protection of the property pending judicial resolution;

f) the balance of convenience to the parties;

g) the fact that the creditor has the right to appoint a receiver under the documentation provided for the loan;

h) the enforcement of rights under a security instrument where the security-holder encounters or expects to encounter difficulty with the debtor and others;

i) the principle that the appointment of a receiver is extraordinary relief which should be granted cautiously and sparingly;

j) the consideration of whether a court appointment is necessary to enable the receiver to carry out its duties more efficiently;

k) the effect of the order upon the parties;

l) the conduct of the parties;

m) the length of time that a receiver may be in place;

n) the costs to the parties;

o) the likelihood of maximizing returns to the parties;

p) the goal of facilitating the duties of the receiver.

See also, *Lindsey Estate v. Strategic Metals Corp.*, 2010 ABQB 242 (Alta. Q.B.) at para 32, aff'd 2010 ABCA 191 (Alta. C.A.); and *Romspen Investment Corp. v. Hargate Properties Inc.*, 2011 ABQB 759 (Alta. Q.B.) at para 20.

[20] Consistent with my view that a CCAA applicant bears the burden of establishing each of the requirements of appropriateness, good faith and due diligence, I am of the view that an applicant under s. 243 of the BIA bears the burden of satisfying the Court that it would be just and convenient to appoint a receiver in the circumstances.

A. The CCAA Order

18. It is submitted that a CCAA Order is not appropriate because:

- There is no doubt here that the end game will be the disposition of each of the Residences. There is no element of enabling the Voyagers to continue to carry on business, other than during a sales process, and that will also occur in the receivership. Similarly, there is no social and economic or social costs of liquidation, that is going to occur in either the CCAA or the receivership.

- There is no suggestion that there will be any discussions between Conexus and the Voyagers about compromise. As matters stand, there is not even a suggestion at this point that a Plan of Arrangement will be put before the creditors for consideration. As noted, if a Plan of Arrangement was developed that focused on a sale process by the Voyagers in a CCAA context, based upon the matters as known to Conexus, it would not be supported by Conexus.

- It is submitted that the Voyagers have not acted in good faith and with due diligence. Property taxes have been virtually ignored since 2018. Tax enforcement is underway by both Municipalities. Tax liens were registered by Melville in May, 2019. The final application for title (in which a municipality through the Provincial Mediation Board gives an enforcement notice) was given October 26, 2020. On July 22, 2021 the PMB sent a letter that it is presumed is the basis on which Voyager III is asserting that an arrangement is in place. That is the first indication that anything had been done to deal with these tax arrears and Melville's enforcement. The existence of such an arrangement will likely disappear if payments are not made as required.

- Efforts by the Voyagers to address the payment arrears and the property tax arrears have been at the very best superficial. There has been little or no effort to provide a plan to revitalize the operations (as flagged in August 2019 as one of the requirements Conexus listed). The general response to requests to sell units to pay down taxes and debt is answer with the reference to the business plan to sell approximately 1/3 and hold the other 2/3 as rental units.

- The problems with the operations are not COVID bases. The high vacancy rates and lack of an apparent plan have been apparent since the Residences opened. It is not a depressed market, it is an inability or failure to rent out more of the units and that problem certainly has been apparent since 2017

and 2018. The Voyagers have done very little to address that resulting in huge property tax arrears and a complete neglect or disregard for payments of those and the debt.

- There is clearly a difference of opinion on the question of how the call between the parties on July 21 went. But Conexus is quite clear that it did not go well and that it does not feel that it can work with Sirous Tosh.

- Broadly speaking the CCAA Order is not appropriate for the above reasons and because:

    - There is no advantage or benefit to Conexus in the CCAA.

    - A CCAA proceeding is very expensive. In the first 13 weeks, there will be DIP funding of $400,000, $380,000 of which is to pay for the professional costs (Voyagers' lawyers, the monitor and monitor's counsel) during that period. That will all be borne in the end by Conexus as the charges will dilute the value of the Conexus security. No contribution is made by the Voyagers nor by Caleb Management. Conexus is the only party with an economic stake in the proceedings. The materials filed by the Voyagers is silent on how long the sale process is likely to take. The expectation is that it will be for very many months and the costs will escalate throughout.

    - It is clear that the process will involve the sale of the condominium units to another party. The other party would hopefully carry on a services function for the properties, but that may not be the case. At is root, this will be the sale of real property. There are no complications or exceptional circumstances for that. A CCAA in those circumstances is too expensive and too time consuming and unfairly impacts the real property security that Conexus was granted as part of the loans it made.

B. The Receivership

19. As the issue for the Court here is a choice between a CCAA Initial Oder and a Receivership Order, many of the above considerations related to receivership applications become mostly irrelevant. Before we address those, we do point out that Conexus has the right to appoint a receiver in the agreements with the Voyagers, that Conexus has been exceedingly patient in allowing the Voyagers to continue this long

without making any payments and while allow property tax arrears to reach the huge amounts that they are now (and will continue to grow if something is not done). In respect of the factors that our outlined in *Vortex*, we submit the following specific issues are those that remain relevant (using the paragraph numbers from the *Kasten* decision relied upon in *Vortex*):

(a) Irreparable harm will continue if steps are not taken to dispose of the Residences and pay the property taxes. As those accrue, the value that Conexus has in its security deteriorates.

(b) There is no debtor equity in either of the Voyager residences. Similarly, there is no amounts available to apply to the mortgage held by Caleb Management over some of the condo units. If there might be, the natural expectation would be for Caleb Management to propose to buy out the Conexus debt or otherwise provide something of value in the process.

(d) As stated elsewhere, the recoverable value from the Residences will be eroded with additional costs and longer time periods that will see higher taxes and penalties.

(g) Already addressed.

(h) and (j) It is unclear even now what Caleb Management will do respecting the employees that provide the labour for the management and the lifestyle services. The needs of the residents need to be addressed and a receiver is best able to complete that task if there is going to be a change.

(i) The grant of the requested appointment is justified (and just and appropriate) in these circumstances. Conexus has a right to enforce its remedies in the face of such significant and continuing breaches and the impact such have had on the loans and the security held by Conexus. There is no other recourse available to Conexus other than the Residences themselves.

(k) A receiver will be able to take steps, if Caleb Management refuses to continue under the Management Agreements, to retain staff to provide these services in as seamless a manner as can be achieved.

(l) We have commented on conduct of the Voyagers above in dealing with the CCAA principles.

(m) There is no evidence that in the debtor driven CCAA that the Voyagers are seeking that the time period for that will be any different than the time period for a receivership sale. It is submitted that there will be little difference between the competing processes.

(n) As discussed above, it is generally observed that CCAA proceedings are quite expensive. This is more than borne out in the 13 week cashflow projections where the costs are projected to be a total of $360,000 (at $180,000 for each of Voyager II and Voyager III).

(o) On the point of maximizing returns, the only benefit that the Voyagers (and Sirous Tosh) can point to is that they say the sales of the Residences will be better if he is allowed to run the sale process(es). Conexus is not convinced that such will be the case and equally problematic, is not satisfied that the extra cost of a CCAA proceeding will not more than offset a difference in price that could be obtained in the CCAA. The examples of other sales that have been completed is not compelling with the little information that was provided in support of the CCAA application.

20. A competition between a receivership application and a company driven CCAA application was before the Ontario Superior Court of Justice in *BCIMC Construction Fund Corporation et al v. The Clover on Yonge Inc.*, 2020 ONSC 1953. Justice Koehnen considered a number of factors in finding that a receivership was preferable to a CCAA proceeding, including a deteriorating relationship between the lender and the borrower. The learned Judge also stated (at paragraph 43):

> [43[Although receivership is generally considered to be an extraordinary remedy, there is ample authority for the proposition that its extraordinary nature is significantly reduced when dealing with a secured credit who has the right to a receivership under its security arrangements.

21. Justice Koehnen also in *Clover on Yonge* listed factors that were raised in argument on the question of whether the receivership or a CCAA proceeding was the preferred path. At paragraph 61, it was stated:

> [61] The factors addressed in argument relevant to this exercise were as follows:
> (a) Payment of the Receivership Applicants

(b) Reputational damage
(c) Preservation of Employment
(d) Speed of the process
(e) Protection of all stakeholders
(f) Cost
(g) Nature of the business

We have dealt with a number of these factors, and others in this case. Costs, payment of the Conexus debt and the interests of stakeholders given the overall deficiency that exists now.

22. We also reference the receivership application made in *Pillar Capital Corp. v. Harmon International Industries Inc.*, 2020 SKQB 19. As noted in *Harmon*, there are two primary findings the Court must make in a receivership application: that the subject borrower is an "insolvent person" within the meaning of section 2 of the BIA, and that it is just or convenient that a receiver be appointed. We mention the Harmon case as there are at least a few similarities. There, as here, the borrower wanted time to try to sell the properties itself (although there was no consideration of a CCAA proceeding in *Harmon*. The Court recognized that no one factor (of those listed in cases like *Kasten*) no one factor is determinative. The Court also stated that the court appointment of a receiver does not have to be the "essential" one, the question is whether it is the preferable one (paragraph 37). For the reasons outlined herein, the receivership is preferable to the CCAA proceeding.

23. It is also worth noting that the CCAA application by the Voyagers was not made on its own merit. It was made as a "counter" to the application for the appointment of a receiver. It is quite likely that had Conexus not made a decision to pursue enforcing its rights upon these very serious defaults at this time, matters with the Voyagers would not have changed at all. Property taxes would continue to be left unpaid (except to the extent that Conexus had required some efforts be made which only Voyager III could perform) and there would be no payments to come to the Conexus debt. It is not even clear whether the stated objective of selling these Residences (with or without the other three) would have been communicated.

24. At its heart, the message with the CCAA application is that a sale process is the right thing under these rather desperate circumstances, but the difference is that the Voyagers, and in particular Sirous Tosh, do not want the receiver to be in control of the sales process. The Voyagers and Sirous Tosh want Sirous Tosh to be in control of the sales process. Efforts were made during July and August to come to an agreement on

how a sale process might work for both Conexus and the Voyagers. While the details of such negotiations are of course confidential, it is clear that no agreement could be reached even in the face of a pending receivership application.

25. Conexus is therefore entitled to the remedy that it seeks, unless the factors governing appointment of a receiver clearly weigh against it. In our respectful submission this is clearly a case where the Court should exercise its discretion to appoint a receiver.

26. Conexus seeks a Receivership Order that accords with the Template that was approved by this Honourable Court.

C. CONCLUSION

27. In the discussion above, and in the materials filed in this application, we have established:

(a) the requisite notices under section 244(1) of the BIA have been served;

(b) each of the Voyagers is insolvent and cannot meet its ongoing obligations;

(c) the assets are deteriorating in value as tax arrears, interest and penalties escalate and the taxes go unpaid; and

(d) a concerted and structured effort to complete a sale of the Residences is required;

(e) the CCAA option is too costly, does not really envision a plan at all but rather just a sales process;

(f) the sale process run under the CCAA by the debtor companies is opposed by Conexus and if it were to form the basis of a Plan of Arrangement, Conexus would vote against it;

(g) the interest of the residents will be well protected through a receivership even if Caleb Management walks away from the role it plays in those services.

28. It is therefore respectfully submitted that it would be just, appropriate and reasonable in this case for the Court to exercise the discretion granted to it under the BIA, section 65(1) of the QB Act and section 64(8) of the PPSA, to grant an Order for the

appointment of MNP Ltd. as receiver over the property, assets and undertakings of each of the Voyagers and to dismiss the CCAA application made by the Voyagers.

ALL OF WHICH IS RESPECTFULLY submitted this 26th day of August, 2021.

MILLER THOMSON LLP
Per: _____
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