

COURT FILE NO. 2203 05923

COURT Court of King's Bench of Alberta

JUDICIAL CENTRE Edmonton

PLAINTIFF(S) COBRA MORTGAGE SERVICES LTD.

DEFENDANT(S) WOLF CREEK GOLF RESORT LTD., WOLF CREEK VILLAGE LTD. AND RYAN VOLD

DOCUMENT **APPLICATION BY RECEIVER FOR SALE APPROVAL AND VESTING TITLE**

ADDRESS FOR SERVICE AND CONTACT INFORMATION OF PARTY FILING THIS DOCUMENT

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Clerk's Stamp

**NOTICE TO RESPONDENT:**

This application is made against you. You are a Respondent. You have the right to state your side of this matter before the Justice.

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

Date: February 23, 2023  
Time: 2:00 PM  
Where: Law Courts Building, 1A Sir Winston Churchill Square,  
Edmonton, Alberta  
<https://albertacourts.webex.com/meet/virtual.courtroom86>  
Before Whom: The Honourable Justice Dunlop

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:

- (a) declaring service of this application and its supporting material and sufficient, and if necessary, abridging the time for notice of this Application to the time actually given;
  - (b) approving the sale transaction (the "Transaction") contemplated by an agreement of purchase and sale (the "Sale Agreement") between MNP Ltd. in its capacity as Court-appointed receiver and manager ("Receiver") of the undertakings, property and assets of Wolf Creek Golf Resort Ltd. (the "Debtor") and GolfNorth Properties Inc. (the "Purchaser") dated February 10, 2023, and vesting title in the name of the Purchaser (or its nominee), the Debtor's rights, title, interest in and to the assets described in the Sale Agreement (the "Purchased Assets") free and clear of all encumbrances and claims including tenancies and licences of occupation all in substantially the form of the Sale Approval and Vesting Order attached hereto as Schedule A;
  - (c) authorizing the Receiver to conclude the transaction contemplated by the Neighbourly APA and to take all such steps and execute all such documents as reasonably be necessary to complete the transaction contemplated therein;
  - (d) temporarily sealing the Confidential Supplement to the Second Report of the Receiver by way of a Restricted Court Access Order; and
  - (e) approving the interim distributions referenced and recommended in the Confidential Addendum
2. Such further and other relief as counsel may advise and this Honourable Court may permit.

**Grounds for making this application:**

- 3. Pursuant to an Order of the Court of King's Bench of Alberta granted October 13, 2022 (the "Receivership Order"), MNP Ltd. was appointed as receiver manager of all current and future assets, undertakings, and properties of every nature of kind whatsoever of Wolf Creek Golf Resort Ltd.
- 4. Since the First Report, the Receiver has primarily focused its efforts on preparing for and initializing its SISP in relation to the sale of the Lands, Golf Course and the RV Park (hereinafter referred to collectively as the "**Wolf Creek Assets**").
- 5. The Receiver prepared an Information Summary (the "**Information Summary**") providing a brief overview of the Wolf Creek Assets and the SISP which was distributed via email to a curated list of 258 prospective purchasers on November 17, 2022. The Information Summary was also distributed by email to approximately 400 partners of the Receiver within Western Canada and Ontario.
- 6. Highlights from the Information Summary included:
  - (a) Instructions to prospects to obtain access to an online Data Room (the "**Data Room**") prepared by the Receiver for the benefit of potential purchasers, upon execution of a Confidentiality Agreement;

- (b) Instructions for accessing additional information about the Wolf Creek Assets and the SISP through the Receiver's Confidential Information Package ("CIP"); and,
  - (c) Timelines for the SISP, including the deadline to make an offer to purchase and instructions on scheduling in person inspections of the Wolf Creek Assets.
7. In addition to distribution of the Information Summary as set out above, marketing of the Wolf Creek Assets also included advertising on LinkedIn over a specified period which resulted in 24,598 advertisement impressions and 113 direct clicks.
8. The Receiver's Data Room included, in part, the following:
- (a) accountant prepared and in-house financial statements for the past five years;
  - (b) operational reports including number of golf rounds played, revenue distribution (by category), and demographics and details on Wolf Creek's clients and memberships;
  - (c) consultant reports in relation to Golf Course infrastructure, including copies of permits, soil surveys, ground water reports;
  - (d) maintenance and repair schedules and costs;
  - (e) detailed list of inventories and equipment;
  - (f) equipment lease details;
  - (g) property tax details;
  - (h) relevant real property agreements; and,
  - (i) customer lease details in relation to the RV Park.
9. As a result of the SISP and Receiver's marketing efforts:
- (a) A total of 48 prospective purchasers and/or their associates and representatives signed and returned the Confidentiality Agreement and were provided access to the Receiver's Data Room; and,
  - (b) 8 prospective purchasers physically inspected the Wolf Creek Assets.
  - (c) The SISP was open to prospective purchasers for approximately 8 weeks and the bid deadline closed at 5:00 PM on Wednesday January 11, 2023.
  - (d) At the bid deadline, 5 parties submitted an offer to purchase. Details on the offers to purchase, including the purchase price and any relevant conditions, are set out in the Confidential Supplement to the Receiver's Second Report (the "**Confidential Supplement**").

10. In preparation for its SISP, the Receiver engaged qualified appraisers to commission appraisals on the Wolf Creek Assets, as follows:
  - (a) Mirterra Industrial Appraisers and Auctioneers ("**Mirterra**") to appraise the Company's equipment and inventory on a Forced Sale Value ("**FSV**") basis (the "**Mirterra Appraisal**"); and,
  - (b) Altus Group to appraise the Company's assets as a "going concern golf facility" and "land value" basis (the "**Altus Appraisal**").
11. The Mirterra Appraisal and the Altus Appraisal are attached to the Confidential Addendum as Schedule B.
12. The 5 offers to purchase submitted to the Receiver consisted of a range of values. Based on the offers received, the Receiver accepted the offer to purchase from GolfNorth Properties Inc. ("**Golf North**") (the "**Golf North Offer**"), subject to execution of an Asset Purchase Agreement ("**APA**") and this Court's approval. Specifics on the Golf North Offer, including a copy of the Golf North Offer, are attached as Schedule C to the Confidential Supplement. The Receiver and Golf North entered into the APA on February 10, 2023 (the "**Golf North APA**"). A copy of the Golf North APA is attached as Schedule D to the Confidential Supplement.
13. Given the robust marketing process undertaken by the Receiver and the wide range of offers received as a result, the Receiver is of the opinion that the Wolf Creek Assets have been properly and wholly marketed. Further, as it is evident that the Golf North Offer provides for the highest and best realization for the Receivership estate, the Receiver recommends that the court approve the Golf North Offer as set out in the Golf North APA.
14. The senior secured lender has also provided the Receiver confirmation that it supports the acceptance of the Golf North Offer.
15. Golf North does not wish to assume the lease obligations in respect of the RV Sites.
16. Prior to the appointment of the Receiver, none of the RV Site Holders had registered Caveats against the Wolf Creek Property in respect of their lease interests. The lease interests range in term from 1 to 35 years.
17. Each of the leases was entered into subsequent to the date of the original loan and mortgage advance made by the Plaintiff to Wolf Creek. The mortgage of the Plaintiff enjoys priority to those interests pursuant to the provisions of the *Land Titles Act* (Alberta) and the RV lease sites are therefore subject to vesting off.
18. With respect to the Temporary Sealing Order:
  - (a) The names of the bidders and the details of their bids including pricing and conditions are included within the Confidential Supplement;
  - (b) The Receiver's analysis with respect to those bids is also included in the Confidential Supplement;

- (c) Each of the bidders that submitted to the process signed Non-Disclosure Agreements before they received access to the data in the Receiver's Data Room;
  - (d) A Temporary Sealing Order is necessary in order to preserve the commercial interests of the Receiver, bidders, creditors and stakeholders in ensuring a fair sale and marketing process is carried out with all the bidders on a level playing field particularly if the Golf North Transaction does not close;
  - (e) The proposed Order is to seal the Confidential Supplement only until 10 days following the closing of the Transaction if it closes.
19. The Receiver's activities to date are reasonable and appropriate.
20. Such further and other grounds as counsel may advise and the Court permit.

**Material or evidence to be relied on:**

- 21. The Second Report of the Receiver, filed;
- 22. The Confidential Addendum to the Second Report of the Receiver, not filed;
- 23. The pleadings and proceedings taken in this Action to date;
- 24. Such further and other materials as counsel may advise and this Honourable Court permit.

**Applicable rules:**

- 25. *Alberta Rules of Court*, and in particular Rules 1.3, 1.5, 6.11, 6.28, 6.47(c), 11.27 and 13.5.

**Applicable Acts and regulations:**

- 26. *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended, and in particular sections 81.3(4), 81.4(4), 69(3), 243(1), 246(2), 247, 248, 249 and General Rule 126;
- 27. *Judicature Act*, R.S.A. 2000, c. J-2, and in particular section 8 thereof;
- 28. *Land Titles Act*, R.S.A. 2000, c. L-4, and in particular section 14(3) thereof;
- 29. Such further and other provisions and statutes as counsel may advise.

**Any irregularity complained of or objection relied on:**

- 30. Abridgement of time for service to time given, if necessary.

**How the application is proposed to be heard or considered:**

- 31. Before the Honourable Justice Dunlop by way of Webex.

**WARNING**

If you do not come to Court either in person or by your lawyer, the Court may give the Applicant(s) 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 give evidence in response to the application, you must reply by filing an affidavit or other evidence with the Court and serving a copy of that affidavit or other evidence on the Applicant(s) a reasonable time before the application is to be heard or considered.