

COURT FILE NO. 2203 05923

COURT Court of King's Bench of Alberta

JUDICIAL CENTRE Edmonton

PLAINTIFF COBRA MORTGAGE SERVICES LTD.

DEFENDANTS WOLF CREEK GOLF RESORT LTD., WOLF CREEK VILLAGE LTD. AND
RYAN VOLD

DOCUMENT **APPLICATION**

ADDRESS FOR
SERVICE AND
CONTACT
INFORMATION OF
PARTY FILING THIS
DOCUMENT

Darren R. Bieganeck, KC
Barrister & Solicitor
Phone: 780.441.4386
Fax: 780.428.9683
Email: dbieganeck@dcllp.com
File # 204- -212857

DUNCAN CRAIG LLP
LAWYERS MEDIATORS
2800 Rice Howard Place
10060 Jasper Avenue
Edmonton, Alberta Canada T5J 3V9

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: September 13, 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 James 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. 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) an order in the nature of advice and directions declaring that the second mortgage of 1224512 Alberta Ltd. ("122") registered against the real estate of Wolf Creek Golf Resort Ltd. ("Wolf Creek" or the "Debtor") is valid and enforceable and an order directing further distributions to Canada Revenue Agency and 122 in accordance with that declaration all as set forth in the order attached hereto and marked as Schedule "A";
 - (c) an order approving the Claims Process on the terms and conditions of the order set forth in the order attached hereto and marked as Schedule "B"; and
 - (d) an order approving the Receiver's activities as outlined in the Receiver's Third Report to the Court.
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 and manager of all current and future assets, undertakings, and properties of every nature of kind whatsoever of Wolf Creek.
- 4. The Receiver undertook a sales and investment solicitation process (the "SISP") in respect of the lands of the lands, golf course and the RV park (hereinafter referred to collectively as the "Wolf Creek Assets").
- 5. The SISP resulted in a successful sale of the Wolf Creek Assets in an amount sufficient to retire the outstanding debts and obligations owing to the Plaintiff in this proceeding and to pay out the lenders holding first charge security on the equipment forming part of the Wolf Creek Assets.
- 6. There is a surplus of sale proceeds allocated to the real estate and a small surplus of proceeds allocated to the personal property of Wolf Creek.
- 7. 122 has a claim against the remaining proceeds arising from the real estate in accordance with its second mortgage security registered against the real estate (the "Mortgage") given in support of a Guarantee provided by Wolf Creek in respect of the debts and obligations owing by Wolf Creek Village Ltd. ("Village") to 122.
- 8. There are no other claimants except Canada Revenue Agency in respect of a Deemed Trust Claim and unsecured creditors with entitlement to receive funds in respect of the remaining proceeds derived from the sale of the equipment.
- 9. With respect to the Guarantee and Mortgage:
 - a) The documents contain no facial defects which impact their enforceability;

- b) However, the Guarantee and Mortgage were given by Wolf Creek on or about January 1, 2019. The original loan agreement signed between 122 and Village pursuant to which advances were made by 122 to Village was made on February 10, 2015. When the Guarantee and Mortgage were granted, no payments had been made to 122 by Village for a period of in excess of three years;
 - c) As a matter of law, while 122 may not have been in a position to enforce the loan due to the expiry of a limitation period, the debt itself was not extinguished (*HOOPP Realty Inc. v. Guarantee Realty Company of North America Inc.*, 2019 ABCA 443);
 - d) Notwithstanding that the limitation for enforcement against Village may have expired, Wolf Creek granted the Guarantee and Mortgage and Village made a further payment to 122 on or about August 1, 2020;
 - e) The Plaintiff in this matter commenced its action against Wolf Creek on April 14, 2022;
 - f) On the authority of *Community Futures Lesser Slave Lake Region v. Alberta Indian Investment Corporation*, 2014 ABCA 232, in such circumstances, 122 did not have to commence an action to enforce its Mortgage if it could have validly started an action for foreclosure at the time the Plaintiff commenced its action; and
 - g) It is the Receiver's opinion that a reasonable conclusion, based on all the circumstances, is that 122 likely has a valid and enforceable claim to the proceeds from the sale of the lands pursuant to the Mortgage..
10. With respect to the surplus of proceeds available from the remaining Wolf Creek Assets, the Receiver requires creditors to prove their claims to ensure that proper distribution of those proceeds can be made.
 11. Such further and other grounds as counsel may advise and this Honourable Court may permit.

Material or evidence to be relied on:

12. The Third Report of the Receiver, filed;
13. The pleadings and proceedings taken in this Action to date including all previously filed Receiver's Reports; and
14. Such further and other materials as counsel may advise and this Honourable Court permit.

Applicable rules:

15. *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:

16. *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;
17. *Judicature Act*, R.S.A. 2000, c. J-2, and in particular section 8 thereof; and

18. Such further and other provisions and statutes as counsel may advise.

Any irregularity complained of or objection relied on:

19. Abridgement of time for service to time given, if necessary.

How the application is proposed to be heard or considered:

20. Before the Honourable Justice James T. Neilson 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.