

COURT FILE NUMBER	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	THIRD REPORT OF THE RECEIVER, MNP LTD., DATED September 5, 2023
ADDRESS FOR SERVICE AND CONTACT INFORMATION OF PARTY FILING THIS DOCUMENT	Duncan Craig LLP 2800 Rice Howard Place 10060 Jasper Avenue Edmonton, AB T5J 3V9 Attention: Darren Bieganek, K.C. Telephone: (780) 441 - 4386 Facsimile: (780) 428 - 9683 Solicitors for the Receiver, MNP Ltd.

Introduction and Purpose of the Report

1. MNP Ltd. was appointed Receiver (the "**Receiver**") of Wolf Creek Golf Resort Ltd. ("**Wolf Creek**" or the "**Company**"), pursuant to an Order of the Court of King's Bench of Alberta on October 13, 2022 (the "**Receivership Order**").
2. Wolf Creek operated a thirty-six (36) hole golf course (the "**Golf Course**") and RV Park (the "**RV Park**") located in the vicinity of the Morningside, Alberta. Wolf Creek is also the registered owner of the real property from which it operated, on lands legally described as set out below:

- a) Meridian 4, Range 26, Township 42 Section 3, Quarter Southeast thereof: Plan 4300LZ Road 7.14 (17.64 acres), Plan 5777LZ Road 0.417 (1.03 acres) and Plan 1420102 Road 0.345 (0.85 acres);
- b) Meridian 4, Range 26, Township 41 Section 35, All that portion of the Northwest Quarter which lies Northwest of the road as shown on road plan 4159EU Excepting thereout: Plan 1420102 Road 0.513 (1.27 acres); and,
- c) Plan 0628446, Block A. Lot 1, Excepting thereout: Plan 0740337 Subdivision (17.10 acres), Plan 0823398 Subdivision (18.85 acres) and Plan 1420102 Road (3.23 acres)

(hereinafter referred to as the "**Lands**")

3. In accordance with a Corporate Registry Search conducted on August 22, 2022, Ryan Vold ("**Mr. Vold**"), Lori Vold and Cathy Wiancko are the directors and Ryan Vold (97%), Lori Vold (2.5%) and Cathy Wiancko (0.5%) are the shareholders of Wolf Creek.
4. This is the Receiver's Third Report to the Court (the "**Third Report**"). The Third Report should be read in conjunction with the Receiver's Second Report to Court (the "**Second Report**") dated February 13, 2023, and the Receiver's First Report to Court dated November 7, 2022 (the "**First Report**"). The purpose of the Third Report is to provide the Court with updates and recommendations on administrative matters with respect to the following:
 - a) Activities of the Receiver since the Second Report;
 - b) Priority and Secured Creditors;
 - c) Interim Statement of Receipts and Disbursements;
 - d) Proposed Allocation and Recommended Interim Distribution;
 - e) Proposed Claims Process; and,
 - f) Court approval sought.

Activities of the Receiver

5. Subsequent to filing the Second Report, the Receiver has carried out the following non-exhaustive list of activities:
 - a. Closed the sale transaction with Golf North Properties Inc. ("**Golf North**") and delivered the Receiver's Certificate to confirm closing on March 10, 2023 (filed March 17, 2023);

- b. Repaid the Receiver's borrowings, plus applicable interest;
- c. Completed the interim distributions as authorized by the February 23, 2023, Order;
- d. Corresponded with CRA to facilitate and finalize the trust examinations of the Company's accounts;
- e. Paid final payroll costs, and expenses related to the preservation of the Golf Course;
- f. Generated final payroll reports (e.g. T4 slips), and,
- g. Completed a review of the security documents of 1224512 Alberta Ltd.

Priority and Secured Creditors

Canada Revenue Agency

6. As set out in the Second Report, the Receiver, Canada Revenue Agency ("**CRA**") was in the process of completing its trust examination on the books and records of the Company for the purposes of asserting its deemed trust claim. CRA completed its trust exam and has submitted the following claims to the Receiver:
 - a) Payroll source deduction claim of \$75,409.77, of which \$51,114.29 represents the deemed trust portion; and,
 - b) GST claim of \$100,842.62, of which \$56,445.16 represents the deemed trust portion.
7. Based on the results of CRA's trust exam, a total of \$107,559.46 is due to CRA in priority to all other creditors (hereinafter referred to as the "**Deemed Trust Claim**").

Cobra Mortgage Services Ltd. ("Cobra")

8. As set out in the first report, the Receiver's counsel reviewed the security of Cobra and determined that they maintained a valid and enforceable first position charge over the assets of Wolf Creek. Cobra's debt has been retired in full from the sale of the Company's assets.

1224512 Alberta Ltd ("122")

9. 122 has a second position priority charge registered over title to the Lands. The Receiver's counsel has reviewed the following documents with a view of providing an opinion on the validity and enforceability of 122's security:

- a) Loan agreement between Wolf Creek Village Ltd. ("**Village**"), and Ryan Vold, dated February 10, 2015;
 - b) Guarantee granted by Wolf Creek to 122 respecting the debt of Village owed to 122, dated January 1, 2019 The "**Guarantee**";
 - c) Second Mortgage to 122 executed under corporate seal and registered against each of the titles to the Lands on February 4, 2019 (the "**Mortgage**");
 - d) Cashflow data or statement of account dated January 25, 2023;
 - e) Statement of claim filed April 14, 2022, in the within action; and,
 - f) Certificates of Title dated February 7, 2023, for the Lands.
10. According to a Corporate Registry Search conducted by legal counsel for the Receiver on September 27, 2022, Ryan Vold and Dawn Vold are directors of Village, Ryan owns 40% of the voting shares of Village, The remainder are held by Eleanor Vold (40%), Lori Vold (10%) and Cathy Wiancko (10%).
11. Upon review by the Receiver's counsel, while the documents themselves appear to be formally in order there were certain issues summarized with respect to the validity and enforceability of the Guarantee and Mortgage, mortgage, largely in respect of consideration for the giving of the Guarantee and Mortgage as follows:
- a) At the time the Guarantee and Mortgage were granted, Village had defaulted on the loan agreement. No payments appear to have been made between August 24 2015 and January 1, 2019 and more than two years had passed. No acknowledgement of the debt in writing was provided by 122. As a result, by January 1, 2019, 122 would have been faced with a limitations defence in bringing an action against Village for repayment of the debt.
 - b) However, a limitation defence on the debt does not extinguish the debt and the most likely result is that when Wolf Creek granted the Guarantee and Mortgage, it was guaranteeing the debt that still existed even though an action against Village could have been readily defended as the limitation period had passed;
 - c) The Guarantee signed by Wolf Creek contains the corporate seal but does not contain the words "signed, sealed and delivered", but rather only includes the words "signed and delivered". The Mortgage is also executed under corporate seal. While it suggests that Wolf Creek intended to provide a sealed instrument and be bound by the covenants therein, the instruments in question themselves do not provide a clear answer; and,
 - d) As it relates to a limitations issue in respect of enforcement of the Guarantee and Mortgage:

- i. Village made a further payment on the debt on August 1, 2020;
- ii. Based on the current circumstances, the limitation deadline for 122 to act against Wolf Creek was August 1, 2022;
- iii. On April 14, 2022, Cobra commenced this action;
- iv. Based on these set of facts, as Cobra started its foreclosure action prior to the limitations deadline of August 1, 2022, the law in Alberta stipulates that 122 was not required to start its own action as against the guarantor and could rely on the current action to enforce its Mortgage.

12. Upon careful review of the documents and circumstances related to the security of 122, the Receiver's counsel opined that in the circumstances 122 likely has a valid and enforceable claim to the balance of the proceeds of from the sale of the Lands and the Receiver is hereby seeking a declaration of the Court confirming such.
13. The Receiver and its counsel have also considered the impact of preference legislations and whether the granting of the Guarantee and Mortgage might be considered reviewable under the provisions of the Bankruptcy and Insolvency Act ("BIA"). Upon review, we note the following:
 1. 122 and Wolf Creek appear to be arm's length and there is no information which has been brought to the attention of the Receiver to suggest otherwise;
 2. The transaction took place in early 2019. The Guarantee is dated January 1, 2019, the Mortgage, January 25, 2019 approximately 3 years and 10 months prior to the Receivership Order and therefore beyond provincial limitations within which to bring a proceeding and outside the lookback period if there were a bankruptcy under the *BIA*;
 3. The Receiver has no information to suggest that Wolf Creek was insolvent at the time of the transaction or that the transaction rendered it so; and,
 4. Similarly, the Receiver has no information or indication to suggest that the granting of the Guarantee and Mortgage were done with intent to defeat, hinder or delay creditors of Wolf Creek.
14. Accordingly, if the Court confirms the validity of the security the Receiver does not see an avenue available to further review the transaction.

Professional Fees

15. Attached as **Schedule A** is a summary of the fees and disbursements incurred by the Receiver from the granting of the Receivership order to July 31, 2023, totaling \$151,957.00 (before GST). The Receiver is of the opinion that its fees and disbursements are fair and reasonable in the circumstances.
16. Attached as **Schedule B** is a summary of the fees and disbursements of the Receiver's counsel, Duncan Craig LLP, to January 31, 2023 totaling \$80,855.49 (including GST). The Receiver is of the opinion that these are fair and reasonable in the circumstances.
17. The Receiver is providing the above information in respect of its fees and the fees of its counsel for the benefit of the Court and the various stakeholders. It is not seeking to pass any accounts at this time.

Interim Statement of Receipts and Disbursements

18. Attached as **Schedule C** is the Receiver's Interim Statement of Receipts and Disbursements dated August 30, 2023. The balance available in the Receiver's trust account (excluding accruals for unpaid professional fees) is \$1,028,421.02.

Proposed Allocation and Recommended Interim Distributions

19. The allocation of the purchase price made by Golf North in its Asset Purchase Agreement set out in Table 1:

Table 1 – Purchase Price Allocation

Allocation Type	Amount (\$)
Lands	4,520,000.00
Equipment	500,000.00
Inventory	5,000.00
Total	5,025,000.00

20. In addition to the assets described above, the Receiver is also holding a sum of \$113,292.43 from the realization of other assets (GST refunds, accounts receivable, etc.) ("**Other Assets**").

21. The Receiver has made certain interim distributions, previously approved by the Court, to the following parties:

- a) Cobra in the sum of \$3,485,817.53 for repayment of the Receiver's borrowings and to satisfy the senior secured debt;
- b) John Deere in the sum of \$216,619.70 to payout in full the JD Lease;
- c) DLL in the sum of \$89,991.51 to pay out in full the DLL Lease; and,
- d) CWB in the sum of \$25,210.55 to pay out in full the CWB Lease

22. Based on the amounts set out above, a sum of \$173,178.24 remains available for distribution from the proceeds realized from the Equipment and Inventory (\$505,000 – \$216,619.71 - \$89,991.51 - \$25,210.55).

23. The Deemed Trust Claim must be satisfied in priority to all other creditors. The Receiver has allocated the total Deemed Trust Claim and the professional fees of the Receiver and the Receiver's Counsel to the three asset classes as a percentage of gross realization as set out in Table 2 below:

Table 2 – Allocation of Priority Payables

Asset Type	Gross Realization (\$)	Percent of Total Realization	Proportionate Share of Deemed Trust Claim	Proportionate share of Professional Fees
Lands	4,520,000.00	88%	94,652.32	204,874.99
Equipment and Inventory	505,000.00	10%	10,755.95	23,281.25
Other Assets	113,292.43	2%	2,151.18	4,656.25
Total	5,138,292.43	100%	107,559.45	232,812.49

24. For further clarity, the Receiver is holding a total of \$1,028,421.02 in trust which is comprised of the following:

- a) \$113,292.43 related to Other Assets;
- b) \$173,178.24 related to the sale of Equipment and Inventory; and,
- c) The balance, being \$968,535.21, is related to the sale of the Lands.

25. After application of the above proposed allocations (and subject to the security of 122 being declared valid), the Receiver recommends the following further interim distributions to be made at this juncture:

- a) Payment to CRA for the Deemed Trust Claim of \$107,559.45; and,
- b) Payment to the 122 of \$669,007.90 (\$968,535.21 - \$94,652.32 - \$204,874.99).

26. After the above distributions have been made, the Receiver will be holding a sum of \$221,853.67 which the Receiver proposes be used firstly to fund the remaining professional fees to conclude the administration and, secondly, to be distributed to the unsecured creditors through a proposed claims process which is set out in detail below.

Proposed Claims Process

27. As described above, a surplus of funds will remain after the proposed distributions to the various priority and secured creditors.

28. To administer the claims of the Company's unsecured creditors, the Receiver proposes to implement the following claims process (the "**Claims Process**"):

- i. MNP Ltd. to be appointed as the Claims Officer to administer the Claims Process and adjudicate any disputed claims;
- ii. Within ten days of the Claims Process Order being granted the Claims Officer shall send to the Director of the Company a list of all Known Claimants and the amounts believed or asserted to be due and owing by the Company;
- iii. Within ten days of receiving the list of Known Claimants the Director of the Company shall review and advise the Claims Officer of claims not disputed or challenged by the Company (the "**Known Claimant List**");
- iv. Within ten business days of receiving the Known Creditor List from the Director, the Claims Officer shall send a copy of the General Claims Package, and any other material considered appropriate to all Known Claimants;
- v. Within ten business days of the granting of the Claims Process Order, the Claims Officer shall post an advertisement in the Red Deer Advocate with the goal of informing any possible unknown Claimants of the Claims Process;
- vi. Within five business days of the granting of the Claims Process Order, the Receiver shall post a copy of the Claims Process Order and the General Claims Package to the Receiver's website;
- vii. A claims bar date of November 22, 2023, at 4:00 pm MST (the "**Claims Bar Date**") will be set providing Claimants with a reasonable period of time to complete a Proof of Claim;

- viii. After the Claims Bar Date, any Person who failed to deliver a Proof of Claim to the Claims Officer on or before the Claims Bar Date shall:
 - a. Be forever barred, estopped, and enjoined from asserting or enforcing any Claim against the Company and such Claim shall be forever extinguished;
 - b. Not be entitled to receive further notice with respect to the Claims Process; and,
 - c. Not be permitted to participate in any distribution made by the Receiver to Creditors of the Company.
 - ix. The Claims Officer and the Director of the Company shall review all Proof of Claims received on or before the Claims Bar Date. The Claims Officer shall accept, revise, or reject the claim;
 - x. If the Claims Officer disputes a claim (the "**Disallowed Claimant**"), the Receiver shall notify the Claimant and the Company by sending a Notice of Revision or Disallowance to the Claimant by no later than November 29, 2023.
 - xi. The Disallowed Claimant may dispute the Claims Officer's Notice of Revision or Disallowance by:
 - a. Delivering a completed Notice of Claimant's Dispute to the Claims Officer by the later of December 31, 2023, or such date as agreed upon by the Claims Officer; and,
 - b. Within ten days of delivery of the Notice of Dispute, file and serve on counsel to the Claims Officer and the Company a Notice of Application and supporting affidavits naming the Company as the respondent.
29. The Claims Officer is not obligated to send notice of the Claims Process to the transferee or assignee of claimants unless the Receiver has acknowledged the transfer or assignment in writing.
30. The Company may set-off any claims of any nature the Company may have against the creditor.
31. The Receiver believes the proposed Claims Process to be fair and equitable and in the best interest of all creditors and interested parties.
32. The Receiver respectfully requests that this Honourable Court grant an Order approving the Claims Process.

33. Distributions to be made to creditors in the Claims Process will be subject to further order of the court after accounting for all final costs of the Receivership Estate.

Conclusion

34. Based on the foregoing, the Receiver requests the Courts approval on the following:

- a) Activities of the Receiver as set out in the Third Report;
- b) Approval of the Receiver's Interim Statement of Receipts and Disbursements;
- c) Directions and a declaration with respect to the validity of the security of 122;
- d) Approval of the Proposed Allocation and Recommended Distributions; and,
- e) Approval of the Proposed Claims Process.

All of which is respectfully submitted this 5th day of September 2023.

MNP Ltd.

In its capacity as Receiver of the

Wolf Creek Golf Resort Ltd.

And not in its personal capacity



Per: Karen Aylward, CIRP, Licensed Insolvency Trustee
Vice President

SCHEDULE "A"

**In the Matter of the Receivership of Wolf Creek Golf Resort Ltd.
Receiver's Fees and Disbursements as at July 31, 2023**

FEE SUMMARY

Barbara Keylor	0.60	96.60
Cam Maclise	12.20	2,586.40
Comfort Uche	125.80	27,367.20
Eric Sirrs	7.20	5,220.00
Gabrielle VanGeerenstein	7.00	1,288.00
Glen Pettibone	7.25	1,537.00
Grant Bazian	0.20	125.00
Isobel smith	15.55	3,195.45
Jolene Reinhardt	3.50	486.50
Karen Aylward	161.80	85,961.00
Maha Shah	61.30	20,542.70
Megan Schafer	2.20	316.40
Rebecca Namiro	0.20	47.50
Shannon Massa	0.60	139.20
Tara Srikuruparan	14.10	1,649.70
Trent Schawalder	7.60	1,398.40
	<u>427.10</u>	<u>151,957.05</u>

TOTAL FEES Total Hours

427.10

151,957.05

DISBURSEMENT SUMMARY

travel	419.96
Misc. Disbursements	335.20
	<u>755.16</u>

TOTAL DISBURSEMENTS

755.16

Less Interim Billings

(147,847.71)

NET FEES AND DISBURSEMENTS

4,864.50

SCHEDULE "B"

SCHEDULE B- SUMMARY OF FEES AND DISBURSMENTS OF RECEIVER'S COUNSEL

Invoice Number	Invoice Date	Fees	DISBURSEMENTS AND GST	Total
363786	October 31, 2022	\$6,016.50	\$672.17	\$6,688.67
426827	November 22, 2022	\$9,250.00	\$1,366.91	\$10,616.91
427733	December 28, 2022	\$12,444.50	\$1,224.64	\$13,669.14
428420	January 31, 2023	\$16,155.50	\$1,595.96	\$17,751.46
TOTAL				\$42,037.51

SCHEDULE "C"

Wolf Creek Golf Course Ltd. - Receivership
Interim Statement of Receipts and Disbursements
For the period October 13, 2022 to August 30, 2023

	October 13, 2022 to January 25, 2023	Variance	October 13, 2022 to August 30, 2023
RECEIPTS:			
Cash on hand	1,006.00	68,897.17	69,903.17
Account Receivable	17,770.54	290.62	18,061.16
Receiver's Borrowings	355,000.00	-	355,000.00
Rental Income	3,000.00	1,380.00	4,380.00
Interest Allocation	544.69	15,374.95	15,919.64
Sale of Assets	-	5,011,673.69	5,011,673.69
GST Refunds	-	16,254.96	16,254.96
Insurance Refunds	-	9,074.14	9,074.14
TOTAL RECEIPTS:	377,321.23	5,113,871.39	5,491,192.62
DISBURSEMENTS:			
Filing fees paid to Official Receiver	72.82	-	72.82
GST paid on disbursements exclusive of fees	4,012.84	2,465.02	6,477.86
Gst charged on Trustee remuneration	-	7,392.39	7,392.39
GST on legal fees	318.51	3,904.29	4,222.80
Insurance	15,795.75	11,925.00	27,720.75
Appraisal fees	3,700.00	13,750.00	17,450.00
Receiver's fees and costs	-	147,847.71	147,847.71
Legal fees/disbursements	6,370.16	74,485.33	80,855.49
Utilities	18,637.95	12,407.42	31,045.37
Property Taxes	158,034.61	-	158,034.61
Payroll	56,528.42	11,963.03	68,491.45
Payroll Source Deductions	-	15,114.56	15,114.56
Operating Expenses (1)	71,623.49	4,700.95	76,324.44
Outside Consulting	-	4,082.27	4,082.27
Payments to Secured Creditors	-	3,817,639.08	3,817,639.08
TOTAL DISBURSEMENTS:	335,094.55	4,127,677.05	4,462,771.60
Excess of Receipts over Disbursements	42,226.68	986,194.34	1,028,421.02

Notes

(1) Operating expenses are in relation to plumbing and heating expenses, storage for golf carts, and inventory (chemicals) etc.