

IN THE QUEEN'S BENCH
JUDICIAL CENTRE OF REGINA

BETWEEN:

MORBANK FINANCIAL INC.,

PLAINTIFF

- and -

LIBERTY MANOR DEVELOPMENTS LTD., DEDRIC J. ROBINSON, D. ROBINSON ASSETS INC., D. ROBINSON & ASSOCIATES INC., PATTISON MGM ARCHITECTURAL SERVICES LTD., KONSCIOUS CORP., G & J GP INC., QUOREX CONSTRUCTIONAL LTD., 1488098 ALBERTA LTD., DANIEL CHAREST, SUZANNE CHAREST, DENIS GAGNON, LORRAINE GAGNON, PAUL ROCHON, WINNIE ROCHON, PAUL GUENETTE, MICHELINE GUENETTE, RICHARD GUINDON, CARMEN GUINDON, RICHARD BOUVIER, ALICE BOUVIER, MICHEL WOLFE, KAREN WOLFE, WILLIE COUTURE, RAYN COUTURE, AURELE DORAN, ISABELLE DORAN, GUY GOSSELIN, THERESE GOSSELIN, MARCEL ROY, SANDRA ROY, GARY DORAN, JOCELYNE DORAN, JEAN NICOLET, ELAINE NICOLET, ROGER COUILLARD, LOUISE COUILLARD, GERARD MAURE, LOUIS HEBERT, YVONNE HEBERT, ALFRED TOEWS, DORIS TOEWS, NORMAN DUFRESNE, LUCIE DUFRESNE, RAYMOND DALLAIRE, GISELE DALLAIRE, LEO ROBY, LORRAINE ROBY, NORMAN ROCHON, LINA ROCHON, RENE BOISVERT, RAYMOND BOISVERT, LORRRRAINE BOISVERT, EDNA BOISVERT, MICHAEL PARADIS, LISE PARADIS, CHARLES BOUCHARD, ROMEO LAVOIE, ROBERT LAMBERT, CECILE LAMBERT, TRACEY BEAUDETTE, MICHEL BLAIS, NOBEL GABRIEL, REGINALD BOUCHARD, ANNETTE BOUCHARD, DANIEL LAVOIE, SIMON LAVOIE, LAURENT LAVOIE, GABRIEL BENOIT, LORRAINE BENOIT, 1020590 ALBERTA LTD., 966567 ALBERTA LTD. AND 1360109 ALBERTA LTD.,

DEFENDANTS

FIRST SASKATCHEWAN REPORT OF THE INTERIM RECEIVER

A. PURPOSE OF THE REPORT

Meyers Norris Penny Limited ("MNP") is submitting its First Saskatchewan Report to the Court to:

1. Request an Order in aid and recognition of the Interim Receivership Order of Mr. Justice G.A. Verville of the Court of Queen's Bench of Alberta dated July 20, 2010 (the "**Interim Receivership Order**"), whereby MNP was appointed the Interim Receiver of the Debtor, as defined in the said Interim Receivership Order (which Debtor includes Liberty Manor Developments Ltd., the mortgagor in the within foreclosure action);
2. Request that the Order Nisi for Judicial Sale in the within action include recognition of MNP's first charge on the mortgaged land in priority to all security interests, trusts, liens, charges and encumbrances, statutory or otherwise, in favour of any Person; and
3. Provide the Court with background information, including an existing Offer to Purchase on the property located at 510 University Park Drive, Regina legally described as Block G Plan 101875530 (the "**Mortgaged Land**") and certain environmental issues respecting the Mortgaged Land.

B. BACKGROUND

1. MNP was appointed Interim Receiver of the Debtor, including the mortgagor, Liberty Manor Developments Ltd. (formerly known as 101130281 Saskatchewan Ltd.) (the "**Mortgagor**"). A copy of the Interim Receivership Order is attached as Schedule "A". In the said Interim Receivership Order the Debtor is referred to as "**LibertyGate**".
2. The application in Edmonton, Alberta for the appointment of the Interim Receiver, returnable on May 7, 2010, was served upon the following parties (amongst others):

- (a) Morbank Financial Inc. (“Morbank”), who was represented by MacPherson Leslie & Tyerman LLP;
 - (b) Pattison MGM Architectural Services Ltd;
 - (c) G & GP Inc;
 - (d) Konscious Corp.; and
 - (e) Quorex Construction Ltd.
3. In accordance with the terms of the Interim Receivership Order (paragraph 3), the Receiver is empowered to:
- (a) Receive and control all proceeds arising out of the Property;
 - (b) Take steps to preserve, protect and maintain control of the Property;
 - (c) Receive and collect all monies and accounts now owed and exercise all remedies in collecting such monies; and
 - (d) Investigate the affairs of the Debtor.
4. All actions and remedies against the Debtor are stayed except certain foreclosure actions, including the within foreclosure action (paragraph 10).
5. In carrying out its duties, the MNP is empowered to engage legal counsel (paragraph 3(e)).

C. INTERIM RECEIVER’S FIRST CHARGE

1. Paragraph 17 of the Interim Receivership Order states:

Any expenditure or liability which shall properly be made or incurred by [MNP], including the fees of [MNP] and the fees and disbursement of its legal counsel, incurred at the standard rates and charges of [MNP] and its counsel, shall be allowed to it in passing its accounts and shall form a first charge on the Property [including the Mortgaged Land] in priority to all security interests, trusts, liens, charges and

encumbrances, statutory or otherwise, in favour of any Person (the “Interim Receiver’s Charge”).

(Emphasis added)

2. MNP does assert the Interim Receiver’s Charge as set out in the Interim Receivership Order.

3. MNP has retained Saskatchewan counsel, being Kanuka Thuringer LLP (“Kanuka”), on Thursday October 7, 2010.

4. To participate in the within foreclosure action, make representations on behalf of MNP and monitor the judicial sale process, Kanuka has estimated its fees to be in the range of \$7,000 to \$12,000. To gather information and advise on the *prima facie* validity and enforceability of the claims against the mortgaged land, other than the claim of Morbank Financial Inc., Kanuka estimates its fees to be in the range of a further \$3,000 to \$6,000. According to a Land Titles search effective as of March 27, 2010, a copy of which is attached and marked Schedule “B”, there are nine (9) claims other than the utility easements.

5. A major part of MNP’s duties under Interim Receivership Order, is to:

(a) investigate the affairs of the Debtor (the “Forensic Review”) respecting certain matters, all as defined in the Interim Receivership Order, including:

(i) The raising of funds pursuant to the Offering Memorandums issued for the Limited Partnership Defendants and certain of the Corporate Defendants;

(ii) The use and/or whereabouts of the Solicited Funds, including, without restriction, whether any of the Solicited Funds were paid to off-shore accounts; and

- (iii) Whether any funds were received or assets purchased and acquired by the Debtor, their directors, officers, employees, or agents, arising from the Solicited Funds;
 - (b) prepare an accounting and a reconciliation of the Solicited Funds for each Limited Partnership Defendant and/or Corporate Defendant; and
 - (c) recommend a course of action for the ongoing business operation of the Debtor, including whether the assets of the Debtor should be liquidated and proceeds distributed and whether the Limited Partnership Defendants are viable.
6. The Forensic Review involves the review and reconciliation of the historical financial transactions within nineteen (19) different corporate/partnership entities which has proven to be time consuming to date.
7. MNP has only recently received a majority of the required banking information required to complete the Forensic Review resulting in a considerable amount of time yet to be spent completing the Forensic Review.
8. MNP's Fees and Disbursements from July 20, 2010 to October 8, 2010 total \$35,592.55. Attached as Schedule "C" is MNP's Interim Statement of Receipts and Disbursements for the period July 20, 2010 to October 19, 2010.
9. Estimated additional MNP's Fees and Disbursements to complete the administration of the estate are approximately \$60,000.
10. The total estimated Fees and Disbursements, including the estimated legal fees of Kanuka is \$113,000.

11. MNP requests the aid and recognition of the Saskatchewan Court of Queen's Bench to:

- (a) give effect to the Interim Receivership Order as it pertains to Saskatchewan;
- (b) assist MNP in carrying its duties under the said Interim Receivership Order; and
- (c) have the Interim Receiver's Charge recognized in the Order Nisi for Judicial Sale.

D. EXISTING OFFER TO PURCHASE AND POTENTIAL ENVIRONMENTAL ISSUES

1. On April 22, 2010, prior to the appointment of MNP as Interim Receiver, the Mortgagor accepted an Offer to Purchase (the "Offer to Purchase") the Mortgaged Land from a third party (the "Purchaser").

2. The Offer to Purchase was subject to conditions, including the Purchaser's right to investigate environmental issues. The time within which the conditions were to be lifted was forty-five (45) days of acceptance of the said Offer to Purchase.

3. The Purchaser requested extensions of the time to remove the conditions of the said Offer to Purchase to allow the Purchaser time to complete additional due diligence. Extensions were agreed to by the Mortgagor and later MNP, on behalf of the Mortgagor. Attached as Schedule "D" are true copies of the Offer to Purchase and the extensions of time.

4. With the agreement to the last extension of time to complete additional due diligence, MNP discussed with the realtor the within foreclosure action and requested that the Purchaser be made aware that if the mortgagee was successful in obtaining an Order Nisi, which application was scheduled for October 12, 2010, the authority to sell the Mortgaged Land would be governed by the Court process. Further, the realtor had reviewed and was critical of the Appraisal filed in the foreclosure action, being an appraisal for \$5.1 million done by B.R. Gaffney & Associates Ltd. ("Gaffney"). In his view, the purchase price in the Offer to Purchase was above the current market value and the Appraisal was not reflective of the current market value.

5. MNP was aware that there was buried concrete and an underlying water table issue on the Mortgaged Land that inhibited development.

6. On October 21, 2010, MNP received material from the Purchaser's solicitors, McDougall Gauley LLP, raising environmental issues. The following are attached and marked Schedule "E":

- (a) Letter from the City of Regina dated April 14, 2005;
- (b) Letter from the City of Regina dated September 15, 2009;
- (c) Letter from Ground Engineering Ltd dated September 23, 2010 (Proposal for Environmental Site Assessment);
- (d) Letter from Ground Engineering Ltd dated September 23, 2010 (Delineation of Concrete Washout);
- (e) Property sketch showing the .87 acre concrete washout area; and
- (f) Phase One Environmental Site Assessment dated November 17, 2008.

7. Environmental issues are specifically excluded from the Gaffney Appraisal.

E. SASKATCHEWAN FORECLOSURE ACTION

1. In relation to the Saskatchewan Foreclosure Action, MNP takes no position on the request by certain of the Defendants in the foreclosure action for a Judicial Sale.

2. A Judicial sale would be consistent with MNP's duty, as Interim Receiver, to preserve the Property of the Debtor (including the Mortgagor), and its duty to receive any proceeds from the Property (including the Mortgaged Land), and have the proceeds retained in court for distribution only on further Order of the Court.

3. The terms of the draft Judicial Sale Order presented to the Interim Receiver would allow potential purchasers, such as the existing Purchaser, to pursue a purchase of the Mortgaged Land.

4. The Interim Receiver has not reviewed the claims of the Defendants in the Saskatchewan Foreclosure Action in order to take any position on the validity of those claims.

5. MNP submits that any proceeds from a Judicial Sale should be distributed as follows :

- (a) First to the Costs of the Judicial Sale;
- (b) Second to Land taxes;

- (c) Third to the estimated Interim Receiver's Charge of \$113,000 (for deposit in a MNP trust account to be drawn on as allowed by paragraph 19 of the Interim Receivership Order);
- (d) Fourth to Morbank's claim (subject to the Interim Receiver's review of the validity of Morbank's claim);
- (e) Fifth to the Interim Receiver's Charge, if the estimate was insufficient;
- (f) Lastly to claimants determined to be entitled to a part of the proceeds, as ordered by the Court.

Dated at the City of Edmonton, in the Province of Alberta, this 22nd day of October, 2010.

Respectively Submitted,

MEYERS NORRIS PENNY LIMITED
In its capacity as Interim Receiver of
LibertyGate et al
And not in its personal capacity

Per: 

Eric Sirrs, CIRP, Trustee
Vice President

LibertyGate - Interim Receivership
Interim Statement of Receipts and Disbursements
For the Period July 20, 2010 to October 19, 2010

RECEIPTS:

Proceeds of Sale	\$ 43,559.43	
Cash on Hand	8,907.65	\$ 52,467.08

TOTAL RECEIPTS:**DISBURSEMENTS:**

Filing Fees Paid to Official Receiver	70.00	
Insurance	520.00	<u>590.00</u>

TOTAL DISBURSEMENTS:

Net Proceeds before Receivers Fees and Disbursements 51,877.08

RECEIVER'S FEES AND DISBURSEMENTS

Receiver's Fees	32,070.40	
GST on Receiver's Fees	1,603.52	33,673.92
Courier and Postage	9.76	
Administrative Fee	1,586.73	
Mileage	47.09	
Software License Fee	150.00	
Search Fees	125.05	<u>1,918.63</u>

TOTAL RECEIVER'S FEES AND DISBURSEMENTS

35,592.55

Excess funds available after Receiver's Fees and Disbursements

\$ 16,284.53

Notes

1. The proceeds of sale represent funds held in a lawyers trust account from the sale of property prior to the appointment of the Interim Receiver. Counsel for a realtor has advised the Interim Receiver that they hold an interest in the amount of \$43,341.78 for the commissions from the sale of the property.
2. The Receiver's Fees and Disbursements represent costs to date and have not been paid from the estate.