



Form 27
[Rules 6.3 and 10.52(1)]



Clerk's stamp:

\$50
COM
Sept 8 2020
Justice D.B Nixon

COURT FILE NUMBER	1901-12274
COURT	COURT OF QUEEN'S BENCH OF ALBERTA
JUDICIAL CENTRE	CALGARY
PLAINTIFF	ATB FINANCIAL (FORMERLY ALBERTA TREASURY BRANCHES)
DEFENDANTS	1963843 ALBERTA LTD., PENHOLD CROSSING PLAZA LTD., ASHWANI AWASTHI, SWARNJIT SINGH HOONER, SUKHIBIR NAIN, OM ACAYOT ABHOY and ANURAG SUMAN
DOCUMENT	<u>Application to Vary Order and Approve Agreement and Sales Process</u>
ADDRESS FOR SERVICE AND CONTACT INFORMATION OF PARTY FILING THIS DOCUMENT	Dentons Canada LLP Bankers Court 15 th Floor, 850 - 2 nd Street S.W. Calgary, Alberta T2P 0R8 Attn: John Regush Ph. (403) 268-7086 Fx. (403) 268-3100 File No.: 131079-102

NOTICE TO RESPONDENTS: Service List attached as Schedule "A"

This application is made against you. You are a respondent.

You have the right to state your side of this matter before the master/judge.

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

Date:	September 8, 2020
Time:	2:00 p.m.
Where:	Calgary Courts Centre VIA WEB-EX
Before Whom:	The Honourable Justice D.B. Nixon

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. Ernst & Young Inc. ("**EY**"), in its capacity as Court-appointed receiver and manager ("**Receiver**") of the assets, properties, and undertakings of 1963843 Alberta Ltd. ("**196 Alberta**") and Penhold Crossing Plaza Ltd. ("**Penhold Crossing**", collectively with 196 Alberta, "**Debtors**") pursuant to an Order granted November 6, 2019 ("**Receivership Order**") respectfully seeks an Order, substantially in the form attached as Schedule "B":
 - (a) abridging the time for service of this application and deeming service good and sufficient;
 - (b) ratifying and approving the actions of EY in its capacity as Receiver of the Debtors, including as described in the Receiver's Reports;
 - (c) amending the Receivership Order to remove the prohibition on the Receiver accepting an offer to purchase the assets of Penhold Crossing;
 - (d) approving and authorizing the Receiver entering into a listing agreement with Liang Commercial Century 21 Bravo Realty (the "**Listing Agreement**");
 - (e) approving and authorizing the sales process outlined in the Second Report of the Receiver of Penhold Crossing and Second Report of the Receiver of 196 Alberta; and
 - (f) granting such further and other relief as counsel may advise and this Honourable Court may permit.

Grounds for making this application:

Background

2. Penhold Crossing owns certain real property in Penhold, Alberta (the "**Penhold Property**"), comprised of a strip mall and gas station.
3. 196 Alberta operates the gas station located at the Penhold Property on a portion of the property leased from Penhold Crossing pursuant to a lease agreement (the "**Gas Station Lease**"). 196 Alberta sub-leases a portion of the property it leases from Penhold Crossing pursuant to the Gas Station Lease to a Tim Hortons franchise.
4. There is some common ownership between Penhold Crossing and 196 Alberta.
5. There is a dispute between certain stakeholders of Penhold Crossing and ATB Financial ("**ATB**") regarding the validity of a cross-guarantee of 196 Alberta provided in favour of ATB (the "**Guarantee Dispute**").
6. In light of this dispute, when the Receivership Order was granted, certain provisions were inserted in the Receivership Order that limit the scope of the Receiver's powers pending resolution of the Guarantee Dispute, require the Receiver to allocate time and costs incurred proportionately between the Debtors, and require the Receiver to make separate reporting for each of the Debtors.
7. A special application to resolve the Guarantee Dispute has been partially heard by the Court, however the balance of the hearing is yet to be concluded and has been delayed due to the impacts of the novel coronavirus on Court operations.
8. Since its appointment, the Receiver has been continuing to operate the business of 196 Alberta and Penhold Crossing, taking such prudent steps as have been necessary to preserve the ongoing business operations and value of the property of 196 Alberta and Penhold Crossing.

9. There are currently no other tenants at the Penhold Property.

Removal of Prohibition on Sale and Listing Agreement

10. The Receiver has been approached, unsolicited, by seven parties inquiring as to when the Debtors' property will be listed for sale.
11. One party provided a conditional offer to purchase all of the assets of the Debtors, however the Receiver could not effectively pursue this offer based on the prohibition in the Receivership Order preventing the Receiver from accepting any offer to purchase the assets of Penhold until a decision is rendered regarding the Guarantee Dispute (the "**Sale Prohibition**").
12. Given the nature of the property, and particularly as at least one party has expressed interest in buying the assets of both Debtors, the Receiver views that marketing the property of the Debtors concurrently is likely to be accretive to the value of the property of each of the Debtors.
13. An effective marketing of the Penhold Crossing property cannot occur in light of the Sale Prohibition, as the Receiver needs to be in a position to accept an offer for the assets of Penhold Crossing should a satisfactory offer be received by the listing agent in the marketing process.
14. In order to ensure that the listing can proceed effectively, the Receiver respectfully requests that the Receivership Order be amended to remove the Sale Prohibition.

Approval of Listing Agreement

15. Based on the interest expressed in the Property, the Receiver is of the view that the Property should be listed for sale with a listing agent forthwith to capitalize on apparent interest in the property and maximize the value of realizations for all affected stakeholders of the Debtors.
16. Additionally, effecting a sale of the property of the Debtors would obviate the need for the Receiver to incur ongoing costs and expenses associated with operating the businesses of the Debtors.
17. The Receiver sent out a request for proposal ("**RFP**") to 18 commercial real estate brokerages and consulting firms ("**Brokers**") to act as sales agent ("**Selling Agent**") for the Property.
18. The Receiver received responses from 8 parties, and after reviewing the responses determined that Liang Commercial Century 21 Bravo Realty should be retained as Selling Agent.
19. The Receiver has negotiated an agreement with the Selling Agent (the "**Listing Agreement**"), which it is prepared to enter into with the Selling Agent if such agreement is approved by this Honourable Court.

Approval of Sales Process

20. The Receiver, in consultation with the Selling Agent and ATB Financial, has also put forward a proposed sales process to market and sell the Property of the Debtors (the "**Sales Process**").
21. The proposed Sales Process, described more particularly in the Receiver's Second Reports, provides a fair and transparent process for participants and is designed to maximize value for stakeholders.
22. The Receiver respectfully requests that the Sales Process be approved by this Honourable Court.
23. Such further and other grounds as counsel may advise.

Material or evidence to be relied on:

24. First Reports of Ernst & Young Inc., Court-appointed receiver and manager of 1963843 Alberta Ltd. and Penhold Crossing Plaza Ltd. dated July 17, 2020.
25. Second Reports of Ernst & Young Inc., Court-appointed receiver and manager of 1963843 Alberta Ltd. and Penhold Crossing Plaza Ltd. dated August 31, 2020.
26. The pleadings and proceedings in this Action.
27. Such further and other materials and evidence as counsel may advise.

Applicable Rules:

28. Rules 1.2, 1.3, 6.2, 6.3, 6.9, 6.10, Part 9 Division 3 of the *Alberta Rules of Court*, Alta Reg 124/2010.
29. Such further and other Rules as counsel may advise.

Applicable Acts and regulations:

30. *Alberta Rules of Court*, Alta Reg 124/2010, as amended.
31. *Bankruptcy and Insolvency Act*, RSC 1985 c B-3.
32. Such further and other Acts and regulations as counsel may advise.

Any irregularity complained of or objection relied on:

33. None.

How the application is proposed to be heard or considered:

34. Via Web-Ex, before the presiding Justice.

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.

Schedule "A" to the Application
SERVICE LIST
 ATB Financial (Formerly Alberta Treasury Branches) v 1963843 Alberta Ltd., et al

<u>Party</u>	<u>Role</u>
Dentons Canada LLP 1500, 850-2 nd Street SW Calgary, Alberta T2P 0R8 Attention: Derek Pontin / John Regush Email: derek.pontin@dentons.com, john.regush@dentons.com	<i>Counsel to Ernst & Young Inc., Court-appointed Receiver of 1963843 Alberta Ltd. and Penhold Crossing Plaza Ltd.</i>
Ernst & Young Inc. 2200, 215 2 nd Street SW Calgary, Alberta T2P 1M4 Attention: Peter Chisholm / Evan MacKinnon Email: peter.chisholm@ca.ey.com, evan.mackinnon@ca.ey.com	<i>Court-appointed Receiver of 1963843 Alberta Ltd. and Penhold Crossing Plaza Ltd.</i>
MLT Aikins LLP 2100 Livingstone Place 222 3 Ave SW Calgary, Alberta T2P 0B4 Attention: Ryan Zahara / Catrina Webster Email: rzahara@mltaikins.com, cwebster@mltaikins.com	<i>Counsel to ATB Financial</i>
Llewellyn Law 2440 Kensington Road NW Calgary, Alberta T2N 3S1 Attention: Clive Llewellyn / Aryan Sadat Email: cllewellyn@llewellynlaw.net, asadat@llewellynllp.com	<i>Counsel to Sukhbir Nain and Om Abhoy</i>
Meridian Onecap Credit Corp. Suite 1500, 4710 Kingsway Burnaby, BC V5H 4M2	<i>PPR Registrant (1963843 Alberta Ltd.)</i>

Bodkin Capital Corporation 102-1465 North Service RD E Oakville, ON L6H 1A7	<i>PPR Registrant (1963843 Alberta Ltd.)</i>
Matthysz Trading Company 13404 62 Street NW Edmonton, Alberta T5A 0V7	<i>PPR Registrant (1963843 Alberta Ltd.)</i>
Superior Buildings & Designs Ltd. C/O PO Box 76009 Southgate Edmonton, Alberta T6H 5Y7 Fax : 780 438 42923 With a copy to: Miller Thomson LLP 2700, Commerce Place 10155-102 Street Edmonton, Alberta T5J 4G8 Attention: Daniel C.P. Stachnik, QC Email: dstachnik@millerthomson.com	<i>PPR Registrant (1963843 Alberta Ltd.)</i>
Regency Innovations Inc. C/O Maple Legal Services LLP 5105 55 Ave Edmonton, Alberta T6B 3V1	<i>Land Titles Registrant (Builder's Lien)</i>
Adjust Climate Control Inc. 182 Cree Road Sherwood Park, Alberta T8A 3X8	<i>Land Titles Registrant (Builder's Lien)</i>
AGLC Attention: Cathy Pytel Email : cathy.pytel@aglc.ca	AGLC

Canada Revenue Agency Insolvency Intake Group Fax: 1-866-219-0311	<i>Canada Revenue Agency, Insolvency Intake Group</i>
Email List derek.pontin@dentons.com, john.regush@dentons.com, peter.chisholm@ca.ey.com, evan.mackinnon@ca.ey.com, rzahara@mltaikins.com, cwebster@mltaikins.com, cllewellyn@llewellynlaw.net, asadat@llewellynllp.com, dstachnik@millerthomson.com, cathy.pytel@aglc.ca	

Schedule "B" to the Application

Clerk's Stamp:

COURT FILE NUMBER	1901-12274
COURT	COURT OF QUEEN'S BENCH OF ALBERTA
JUDICIAL CENTRE	CALGARY
PLAINTIFF	ATB FINANCIAL (FORMERLY ALBERTA TREASURY BRANCHES)
DEFENDANTS	1963843 ALBERTA LTD., PENHOLD CROSSING PLAZA LTD., ASHWANI AWASTHI, SWARNJIT SINGH KOONER, SUKHBIR NAIN, OM ACAYOT ABHOY, AND ANURAG SUMAN
DOCUMENT	ORDER FOR APPROVAL OF RECEIVER'S FEES AND DISBURSEMENTS, APPROVAL OF RECEIVER'S ACTIVITIES, AND INCREASE IN RECEIVER'S BORROWING CHARGE
ADDRESS FOR SERVICE AND CONTACT INFORMATION OF PARTY FILING THIS DOCUMENT	Dentons Canada LLP Bankers Court 15 th Floor, 850 - 2 nd Street S.W. Calgary, Alberta T2P 0R8 Attention: John Regush Ph. (403) 268-7086 Fx. (403) 268-3100 File No.: 131079-102

DATE ON WHICH ORDER WAS PRONOUNCED: September 8, 2020

LOCATION WHERE ORDER WAS PRONOUNCED: Calgary, Alberta

NAME OF JUDGE WHO MADE THIS ORDER: The Honourable Justice D.B. Nixon

UPON THE APPLICATION of Ernst & Young Inc. in its capacity as the Court-appointed receiver (the "**Receiver**") of the undertaking, property, and assets of 1963843 Alberta Ltd. ("**196**") and Penhold Crossing Plaza Ltd. ("**Penhold Crossing**", collectively with 196 the "**Debtors**") for an Order approving the Receiver's activities, amending the Order granted by the Honourable Justice C.M. Jones on November 6, 2019 in the within Action to remove the restriction on accepting an offer to purchase the assets of Penhold Crossing, approving and directing the Receiver to enter into the listing agreement ("**Listing**

Agreement") with Liang Commercial Century 21 Bravo Realty ("**Selling Agent**"), a copy of which is attached as Appendix "A" to the Second Report of the Receiver regarding 196 and the Second Report of the Receiver regarding Penhold Crossing (collectively, the "**Receiver's Reports**"), and approving the Sales Process as described in the Receiver's Reports; **AND UPON** hearing counsel for the Receiver and counsel for any other interested parties who may be present; **AND UPON** being satisfied that it is appropriate to do so;

IT IS ORDERED AND DECLARED THAT:

Service

1. Service of notice of this application and supporting materials is hereby declared to be good and sufficient, and no other person is required to have been served with notice of this application, and time for service of this application is abridged to that actually given.

Approval of Activities

2. The Receiver's activities as set out in the Receiver's Reports are hereby approved.

Amendment to Receivership Order

3. Paragraphs 33, 34, and 35 of the Order granted by the Honourable Justice C.M. Jones on November 6, 2019 in the within Action are amended by deleting the paragraphs in their entirety and inserting in their place the following:

33. The Receiver shall make its best efforts to keep track of the time it spends on each of the estates of 196 and Penhold. The Receiver will use its best efforts to allocate the time and costs incurred by the Receiver on each of 196 and Penhold in proportion to the time spent on each estate. In accordance with section 24 of this Order any party may apply to allocate the costs associated with the Receiver's Charge or the Receiver's Borrowings Charge amongst the Property of 196 and Penhold.

34. For the purposes of reporting to the Court regarding the Debtors the Receiver shall file separate reports for each of 196 and Penhold until such time as a hearing has been heard and a decision rendered regarding the validity and enforceability of the cross-guarantee provided by Penhold of the debt owed to ATB by 196 on June 27, 2019, a copy of which is attached to the September 3, 2019 Affidavit of Rehman Mulji as Exhibit "K-2".

Approval of Listing Agreement

4. The Listing Agreement is hereby approved.
5. The execution and delivery of the Listing Agreement by the Receiver, with such minor amendments as the Receiver may deem necessary, is approved and the Receiver is authorized, empowered and directed to take all steps and actions in respect of, and to comply with all of its obligations pursuant to, the Listing Agreement.

Approval of Sales Process

6. The Sales Process outlined in the Receiver's Reports is approved.
7. The Receiver and Selling Agent, and their respective affiliates, partners, directors, employees, advisors, agents, shareholders and controlling persons shall have no liability with respect to any losses, claims, damages or liability of any nature or kind to any person in connection with or as a result of the Sales Process or the conduct thereof, except to the extent of such losses, claims, damages or liabilities resulting from the gross negligence or wilful misconduct of any of the foregoing in performing their obligations under the Sales Process.

Service of this Order

8. Service of this Order may be effected on all interested parties by posting a copy of this Order to the Receiver's website for these proceedings, and service in such manner is deemed to be effected the next business day following such posting.

Justice of the Court of Queen's Bench of Alberta