

COURT FILE NUMBER	2001-00425	Clerk's Stamp  \$50 COM Dec. 3, 2020 Justice Jones
COURT	COURT OF QUEEN'S BENCH OF ALBERTA	
JUDICIAL CENTRE	CALGARY	
APPLICANT	ROYAL BANK OF CANADA	
RESPONDENTS	MTK PROPERTIES LTD., MCARTHUR FURNITURE (ALBERTA) LTD., EDWIN POUND and THERESA POUND	
DOCUMENT	NOTICE OF APPLICATION – INTERIM DISTRIBUTION	
ADDRESS FOR SERVICE AND CONTACT INFORMATION OF PARTY FILING THIS DOCUMENT	Cassels Brock & Blackwell LLP Suite 3810, Bankers Hall West 888 3 rd Street SW Calgary, Alberta, T2P 5C5 Attention: Jeffrey Oliver/Danielle Marechal Telephone: 403-351-2921 Facsimile: 403-648-1151 Email: joliver@cassels.com / dmarechal@cassels.com File No. 43436-13	

NOTICE TO RESPONDENTS:

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

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

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

Date:	Thursday, December 3, 2020
Time:	2:00 p.m.
Where:	Calgary Law Courts – via Webex
Before Whom:	The Honourable Justice C.M. Jones – Commercial List via Webex

Go to the end of this document to see what you can do and when you must do it.

Remedy claimed or sought:

1. An Order substantially in the form of Schedule "A", attached hereto:

- (a) if necessary, abridging the time for service of this Application and supporting Second Report (the “**Report**”) of KPMG Inc. (“**KPMG**”) in its capacity as receiver and manager (in such capacity, the “**Receiver**”) of the assets, properties and undertakings of MTK Properties Ltd. (“**MTK**”) and McArthur Furniture (Alberta) Ltd. (“**McArthur**” and collectively with MTK, the “**Companies**”) and declaring service to be good and sufficient;
- (b) approving certain interim distributions to Royal Bank of Canada (“**RBC**”) and VIP Distributors Inc. (“**VIP**”);
- (c) approving the accounts of the Receiver for fees and disbursements as set out in the Report without the necessity of a formal passing of accounts;
- (d) approving the accounts of the Receiver’s legal counsel, Cassels Brock & Blackwell LLP, for fees and disbursements as set out in the Report, without the necessity of a formal passing of accounts;
- (e) approving the conduct and activities of the Receiver as set forth in the Report; and
- (f) such further and other relief as this Honourable Court deems just.

Grounds for making this application:

Background

- 2. On February 4, 2020, upon application by RBC, this Honourable Court granted an order (the “**Receivership Order**”) appointing KPMG as receiver and manager of the current and future assets, undertakings and properties of the Companies.
- 3. Pursuant to a subsequent order of this Honourable Court granted on February 4, 2020, the effective date of the Receivership Order was stayed until 12:00 PM on Tuesday, March 31, 2020.

Liquidation of Inventory

4. On May 8, 2020, the Receiver filed its first report (the “**First Report**”) which described, *inter alia*, the Companies’ primary assets and liabilities, the Receiver’s activities to date, and the Receiver’s proposed inventory liquidation plan.
5. As described in the First Report, the Receiver conducted an expedited sales process in April and May 2020 in relation to McArthur’s inventory and equipment (the “**McArthur Inventory**”). The bid submitted by GD Auctions & Appraisals Inc. (the “**Auctioneer**”) was determined to be the best bid and, on May 12, 2020, this Honourable Court granted an order, *inter alia*, approving the auction agreement (the “**Auction Agreement**”) between the Auctioneer and the Receiver.
6. The Auctioneer completed the liquidation of the McArthur Inventory in June 2020 in accordance with the Auction Agreement.
7. The gross and net proceeds from the liquidation of the McArthur Inventory totaled \$876,135.00 and \$654,175.00, respectively. Of those proceeds:
 - (a) net proceeds in the amount of \$69,662.00 are attributable to the VIP Inventory (as defined below); and
 - (b) net proceeds in the amount of \$584,513.00 are attributable to the remaining McArthur Inventory.

Approval of Interim Distribution

8. RBC is the primary secured creditor of the Companies and was owed approximately \$7.8 million by the Debtors as of the date of the Receivership Order. The amounts owing by MTK to RBC were guaranteed by McArthur and the amounts owing by McArthur to RBC were guaranteed by MTK up to the limited amount of \$1.15 million. As at November 2020, RBC continues to be owed a total of approx. \$2.7 million by MTK.
9. RBC’s security includes, *inter alia*, a General Security Agreement dated January 11, 2012 (the “**McArthur GSA**”), pursuant to which, McArthur granted to RBC a security interest in and to all of McArthur’s present and after-acquired personal property.

10. A security review performed by counsel to the Receiver determined that:
 - (a) the McArthur GSA constitutes a valid and enforceable obligation of McArthur, enforceable against McArthur in accordance with its terms;
 - (b) the McArthur GSA creates a valid security interest in favour of RBC in the personal property described in the McArthur GSA to secure the payment and performance of the obligations described as being secured by the McArthur GSA, except as qualified in paragraphs 11 and 12 below; and
 - (c) registration has been made under the PPSA where such registration is necessary to preserve and protect the security interest created by the McArthur GSA.
11. The security review also determined that VIP has a valid purchase-money security interest (the “**VIP PMSI**”) in the VIP Inventory, as that term is defined in paragraph 32 of the Report.
12. It is the view of the Receiver that the VIP PMSI has priority over any other security interest in the VIP Inventory given by McArthur, including without limitation the McArthur GSA.
13. As a result of the foregoing, the Receiver seeks authorization to make the following distributions:
 - (a) first to the repayment of the Receiver’s Borrowings (as that term is defined in the Receivership Order) in an amount sufficient to repay the current Receiver’s Borrowings in full;
 - (b) second to VIP Distributors Inc. in the amount of \$69,662.00; and
 - (c) third to the Royal Bank of Canada in the amount of \$130,000.

Approval of Professional Fees

14. The accounts of the Receiver for the period commencing March 31, 2020 and ending June 30, 2020 total approximately \$141,470.00, inclusive of GST.
15. The accounts of counsel to the Receiver for the period commencing March 31, 2020 and ending October 31, 2020 total approximately \$51,628.00, inclusive of GST.

16. The invoices rendered by the Receiver and its counsel are reasonable and were validly incurred in accordance with the provisions of the Receivership Order.

Actions of the Receiver

17. The Receiver has acted diligently since its appointment and has undertaken those activities described further in the Report, which actions are lawful, proper and consistent with the Receiver's powers and duties under the Receivership Order.

Material or evidence to be relied on:

18. The First Report of the Receiver dated May 8, 2020;
19. The Confidential Supplement to the First Report of the Receiver, dated May 8, 2020;
20. The Second Report of the Receiver dated November 23, 2020;
21. Receivership Order pronounced by the Honourable Justice G.A. Campbell on February 4, 2020;
22. Stay Order pronounced by the Honourable Justice G.A. Campbell on February 4, 2020; and
23. Such further and other materials as counsel may advise and this Honourable Court may permit.

Applicable rules:

24. The *Alberta Rules of Court*, including Rules 1.2, 1.3, 1.4, 6.1, 6.2, and 6.3; and

Applicable Acts and regulations:

25. *Bankruptcy and Insolvency Act*, RSC 1985, c B-3 (as amended);
26. *Business Corporations Act*, RSA 2000 c B-9;
27. *Judicature Act*, RSA 2000, c J-2;
28. *Personal Property Security Act*, RSA 2000, c P-7; and

29. Such further and other acts and regulations as counsel may advise and this Honourable Court may permit.

Any irregularity complained of or objection relied on:

30. None.

How the application is proposed to be heard or considered:

31. Via 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 time shown at the beginning of this 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.

COURT FILE NUMBER 2001-00425

COURT COURT OF QUEEN'S
BENCH OF ALBERTA

JUDICIAL CENTRE CALGARY

Clerk's Stamp

APPLICANT ROYAL BANK OF CANADA

RESPONDENTS MTK PROPERTIES LTD., MCARTHUR FURNITURE (ALBERTA)
LTD., EDWIN POUND and THERESA POUND

DOCUMENT **ORDER APPROVING INTERIM DISTRIBUTION AND
PROFESSIONAL FEES**

ADDRESS FOR
SERVICE AND
CONTACT
INFORMATION
OF PARTY
FILING THIS
DOCUMENT

Cassels Brock & Blackwell LLP
Suite 3810, Bankers Hall West
888 3rd Street SW
Calgary, Alberta, T2P 5C5

Attention: Jeffrey Oliver/Danielle Marechal
Telephone: 403-351-2921
Facsimile: 403-648-1151
Email: joliver@cassels.com / dmarechal@cassels.com
File No. 43436-13

DATE ON WHICH ORDER WAS PRONOUNCED: December 3, 2020

LOCATION OF HEARING: Calgary, Alberta

NAME OF JUDGE WHO MADE THIS ORDER: The Honourable Justice C.M. Jones

UPON THE APPLICATION of KPMG Inc. in its capacity as receiver and manager (in such capacity, the "**Receiver**") of the assets, properties and undertakings of MTK Properties Ltd. ("**MTK**") and McArthur Furniture (Alberta) Ltd. ("**McArthur**" and collectively with MTK, the "**Companies**") for an Order, among other things, (i) approving certain interim distributions; (ii) approving the professional fees and disbursements of the Receiver and its counsel; and (iii) approving of the Receiver's activities; **AND UPON HAVING READ** the Receivership Order granted by the Honourable Justice G.A. Campbell on February 4, 2020 (the "**Receivership Order**"), the Stay Order granted by the Honourable Justice G.A. Campbell on February 4, 2020, and the Second Report of the Receiver, dated November 23, 2020 (the "**Report**");

IT IS HEREBY ORDERED AND DECLARED THAT:

1. Service 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.

Interim Distribution

2. The Receiver is hereby authorized and empowered to make the following interim distributions:
 - (a) first to the repayment of the Receiver's Borrowings (as that term is defined in the Receivership Order) in an amount sufficient to repay the current Receiver's Borrowings in full;
 - (b) second to VIP Distributors Inc. in the amount of \$69,662.00; and
 - (c) third to the Royal Bank of Canada in the amount of \$130,000.

Professional Fees

3. The Receiver's accounts for fees and disbursements, as set out in the Receiver's Report are hereby approved without the necessity of a formal passing of its accounts.
4. The accounts of the Receiver's legal counsel, Cassels Brock & Blackwell LLP, for their fees and disbursements, as set out in the Receiver's Report are hereby approved without the necessity of a formal assessment of their accounts.

Approval of Actions of Receiver

5. The activities of the Receiver, as described in the Report, are hereby ratified and approved.
6. This Order must be served only upon those interested parties attending or presented at the within application and service may be effected by facsimile, electronic mail, personal delivery or courier. Service is deemed to be effected the next business day following the transmission or delivery of such documents.

7. Service of this Order on any party not attending this application is hereby dispensed with.

J.C.Q.B.A.