



No. S186288
Vancouver Registry

IN THE SUPREME COURT OF BRITISH COLUMBIA

BETWEEN:

REALCOR MORTGAGE CORP.

PETITIONER

AND:

MORNINGSTAR GOLF CLUB LTD.
CANADIAN WESTERN BANK
NATIONAL LEASING GROUP INC.
ROYNAT INC.
ICE CUBE LEASING INC.

RESPONDENTS

NOTICE OF APPLICATION

Name of applicant: G. Powroznik Group Inc. of G-Force Group., Receiver of Morningstar Golf Club Ltd. (the "Receiver")

To: Petitioner and all Respondents, and their counsel

TAKE NOTICE that an application will be made by the Receiver to the presiding Judge at the courthouse at 800 Smithe Street, Vancouver, BC V6Z 2E1 on October 4, 2019, at 9:45 a.m. for the order(s) set out in Part 1 below.

Part 1: ORDERS AND DECLARATIONS SOUGHT

1. Approval of the Receiver's activities to date.
2. Approval of the Receiver's Fees, Disbursements, and taxes as set out in Appendixes "AB" and "AC" to the Receiver's First Report dated September 24, 2019.
3. Approval of the Receiver's Counsel's Fees and Disbursements as set out in Appendix "AB" to the Receiver's First Report dated September 24, 2019, and in the Affidavit of Colin D. Brousson #1, sworn September 26, 2019.
4. Approval of the Receiver's Statement of Receipts and Disbursements dated September 24, 2019.
5. Authorization for the Receiver to increase borrowings to \$1,400,000.00, in order to:
 - (a) continue operation of Morningstar Golf Club Ltd. until sale can be completed; including covering operating losses;

- (b) settle unpaid operating and capital costs, receivership fees and counsel fees;
- (c) continue marketing and sale process; and
- (d) continue maintenance and upkeep of course facility.

Part 2: FACTUAL BASIS

Background

1. Pursuant to an Order pronounced on June 1, 2018, (the “**Receivership Order**”) by Madam Justice MacNaughton of the Supreme Court of British Columbia, G. Powroznik Group Inc. of G-Force Group was appointed as the Receiver of the assets, undertakings and property of Morningstar Golf Club Ltd. (“**MGC**”).
2. MGC’s primary asset is a golf course located at 525 Lowry’s Road, Parksville, B.C. (“**Morningstar**”). MGC’s owners are Paul and Shayne McCracken (the “**McCrackens**”) of Edmonton. The McCrackens purchased the Assets in early 2010 from the Petitioner Realcor Mortgage Corp. (“**Realcor**”).
3. Realcor, who holds real estate assets for the Pension Fund of the International Union of Operating Engineers Local 115 (the “**OEPP**”), provided a vendor take-back mortgage to the McCrackens to enable them to purchase Morningstar.
4. Realcor developed a portion of development land adjacent to Morningstar but continued to hold a smaller remainder portion, referred to as (“**Lot G**”). Lot G is now legally owned by Lot G Holdings Ltd. on behalf of the OEPP.
5. The McCrackens also controlled several Alberta companies, including Canada North Group Inc., which became insolvent. The Canadian Western Bank (“**CWB**”) was a primary lender to Canada North Group and registered a second mortgage against MGC.
6. The McCrackens were unable to manage or support MGC and, in mid-May 2018, resigned as directors and disclaimed any further interest in MGC.
7. Realcor appointed G-Force Group as Receiver to preserve the going-concern business of Morningstar which was rapidly deteriorating.
8. Since appointment, the Receiver has worked to preserve (and where possible, increase) the asset value, attract a qualified buyer to purchase the assets at a competitive price, and, ultimately, increase the recovery for the creditors.

Outline of Receiver’s Administration From May 15, 2018 To July 31, 2019

Summary of Receiver’s Initial Activities after its Appointment

9. Upon its appointment, the Receiver:

- (a) took possession of the assets and operations and notified the public of the appointment;
 - (b) informed the non-union employees of their termination and the basis upon which they would be hired back in order to avoid as little interruption to the business as possible;
 - (c) paid the outstanding net pay to the remaining employees;
 - (d) recorded the inventories of food, beverage, and equipment;
 - (e) established and maintained all essential accounts for the Receiver;
 - (f) prepared and filed Form 87 as required under Section 246(2) of the *Bankruptcy and Insolvency Act*;
 - (g) corresponded and dealt with the creditors, including:
 - (i) CRA for employee withholdings;
 - (ii) CRA for GST;
 - (iii) Service Canada and former employees for claims under Section 81.4 of the *BIA* (*WEPPA* claims);
 - (iv) Ministry of Finance for British Columbia for property taxes;
 - (v) WorkSafeBC
 - (h) requested an independent assessment from its counsel, Gowling WLG (Canada) LLP ("**Gowling WLG**") on various leases, employment issues, and other security interests that may exist over the assets of MGC;
 - (i) attempted to obtain access to Company's management information (that was primarily located in Edmonton with the McCrackens);
 - (j) contacted key suppliers to inform them of the Receivership;
 - (k) obtained an assessment of Morningstar's operations; and
 - (l) developed marketing materials and conducted campaigns to increase awareness of the opportunity to purchase the assets.
10. Overall, controlling MGC was more complicated and required more time than expected because:
- (a) at the date of receivership, MGC was a dysfunctional operation and needed substantial cash resources, additional staffing, direction, and management control;
 - (b) much of the management and control of documents and information of MGC was previously conducted out of Edmonton and local employees were of limited assistance to the Receiver in many cases; and
 - (c) the General Manager who looked after the local accounting and administration quit just prior to the receivership and there was no other administrative staff that could assist, or supply the necessary background information required to efficiently deal with operational issues.

11. It became apparent very early on that specialized assistance would be needed to help with the operations and management of Morningstar.

IHM Operations and Management Assessment of Morningstar

12. The Receiver engaged Integrated Hospitality Management (“IHM”) to provide an assessment of Morningstar’s operations and identify opportunities to improve the golf experience. IHM also agreed to take on the management of Morningstar. After consultation with Realcor, the Receiver retained IHM to provide an experienced general manager by June 14, 2018.
13. In its assessment, IHM provided some comments about the state of Morningstar’s operations and assets, including that there were “signs of deferred maintenance are everywhere...the first impression is that this asset has been neglected”; and “the business is clearly broken; operational deficiencies are apparent in every department.”
14. In order to address these issues, IHM’s made recommendations and developed plans for a number of aspects of Morningstar’s operation, including:
 - (a) accounting and administration;
 - (b) human resources;
 - (c) sales and marketing of memberships, golf rounds and other services;
 - (d) golf course operations including irrigation, personnel and machinery & equipment;
 - (e) Pro Shop, rental clubs, golf lessons;
 - (f) food & beverage; and
 - (g) several other major strategic issues.
15. IHM’s immediate goals were to retain Morningstar’s current (but low) membership base, attract day golfers during the summer, and regain MGC’s historical golfer and revenue levels.
16. IHM delivered a number of semi-monthly reports to the Receiver that summarized its priorities, activities and the results, including a summary of operating results and comparison to budget for both the month, and on a year to date basis; a detailed profit and loss statement for the month; and a balance sheet for the operation as at the month end. The Receiver periodically shared these reports with the secured creditors to keep them apprised of the operating issues and solutions.
17. It became apparent to the Receiver through the IHM reports that there were several other issues that had been ignored by MGC for some years prior to the receivership including:
 - (a) the loss of the use of recycled water from the Regional District of Nanaimo’s treatment plant to augment the water supply in the summer months;
 - (b) preparation of the Dam Emergency Plan;

- (c) preparation of the Dam Operational, Maintenance and Surveillance Plan;
- (d) Dam maintenance; and
- (e) secondary pond overflow restoration.

These projects needed to be addressed as safety risks and to avoid potential price discounts by a buyer. In particular, the recycled water matter had to be rectified for Morningstar to appeal to golfers in the hot summer months when the course was very dry and had poor playing conditions.

- 18. As the volume of golf play began its seasonal decline in September, the Receiver involved any available staff to address these legacy issues.
- 19. The Receiver also directed operations staff to perform annual fall maintenance and other deferred maintenance projects. The annual fall maintenance of seeding, fertilizing and aerating the fairways, greens and tee boxes was a priority because the owners did not undertake this crucial fall maintenance work the previous year. In addition to more routine maintenance, substantial work was required on long-overdue repairs to the cart paths and to culling dead trees.

Real Estate Asset

- 20. Under the Receivership Order, the Receiver is authorized to market and sell any or all MGC's property and to negotiate such terms and conditions of sale as the Receiver, in its discretion, may deem appropriate, subject to the approval of the Court.
- 21. On their own, golf courses are not usually profitable. Traditionally, golf courses are built as part of a residential or possibly resort development. The Receiver identified and assessed the feasibility of developing Morningstar in conjunction with Lot G. Attached as **Appendix "D"** of the Receiver's Report is a memorandum entitled *Report on the Assessment of Preliminary Real Estate Development Options for Morningstar Golf Club, including Lot G* (the "**Options Memo**").
- 22. Lot G is approximately 22.8 acres of vacant land bordering the fairways and Holes 6 and 7 of Morningstar in two parts.
- 23. The Options Memo sets out why the assets of MGC and Lot G should be marketed jointly for sale, but in general, the integration of the golf course with the development potential of Lot G could attract a wider range of potential buyers for the options of buying 1) the MGC Assets or 2) Lot G or 3) both combined. Buying them combined would enhance the value of the MGC Assets and Lot G.
- 24. In order to ensure access to Morningstar in the event that Lot G sold alone, easements in favour of MGC would be required to be placed on the Lot G title prior to any sale. In order to obtain these easements, the Receiver:
 - (a) worked with Morningstar operations management to determine the most appropriate and efficient routes for hole access and location of the utility lines;
 - (b) retained McElhanney to conduct a survey and prepare a plan for the Easements;

- (c) asked Gowling WLG to prepare the legal documents for the Easements and register them at the BC Land Titles Office on Lot G; and
 - (d) worked with Lot G Holdings to obtain final agreements for the Easements.
25. The Easement's project resulted in third party and Receiver's professional costs that were not previously budgeted, but the Easements had to be completed prior to any sale of MGC or Lot G.
26. A separate arrangement was needed with Lot G Holdings to market the properties together. The Receiver acquired the requisite consents and the marketing of both properties together, beginning in late summer 2018 and continuing through 2019.

Marketing Strategy for Real Estate Assets

27. Although there was still significant work to do to improve the operations of MGC, address the deferred maintenance issues, and complete the studies to determine Lot G's full development potential, the Receiver launched a marketing and sale program in mid-September/October 2018, to test the market.
28. In order to market the MGC Assets, the Receiver:
- (a) identified and reached out to an extensive prospect list including developers from B.C. and Alberta, companies specializing in hospitality and development, investors and operators of golf courses, private equity, foreign investors, lawyers specializing in real estate, and other influencers (e.g. accountants) with clients that could be interested in the Assets;
 - (b) widely market the Assets and actively encouraged real estate brokers to bring forward potential buyers;
 - (c) issued press releases beginning in in June 2018 to all major print media outlets on Vancouver Island (and select ones in Vancouver);
 - (d) engaged local reporters in the hopes they would write supportive articles to help increase the positive media coverage about the improvements and progress being made at MGC in the hopes of bringing golfers back to MGC, attract new prospects, and maintain market awareness of the improving investment opportunity;
 - (e) collected names of prospects who learned of the opportunity through Press Releases, news articles, contact with members, etc. and expressed interest of to acquire the MGC Assets and Lot G prior to the formal launch of the marketing program;
 - (f) prepared a marketing teaser to summarize the offering of MGC's Assets and Lot G ("**Teaser**") and emailed it to approximately 300 prospects;
 - (g) published the Teaser on the G-Force Group website;
 - (h) prepared marketing brochures in English and Chinese;
 - (i) prepared a Confidentiality Agreement for each Prospect who expressed an interest in acquiring MGC's Assets;

- (j) gave operational tours of Morningstar to potential purchasers;
 - (k) created a secure, password-protected, electronic data room hosted on a third-party website (the "**Data Room**"). The Receiver placed relevant information in the Data Room to assist the serious prospects perform their due diligence and submit an offer to acquire the MGC assets;
 - (l) prepared a detailed Confidential Information Memorandum ("**CIM**") to summarize the key information about the receivership, the Assets, the sale process and limited available information about Lot G;
 - (m) prepared and provided additional due diligence information on MGC's operations, Assets, Lot G, options to consider for real estate development and on steps to take in making an offer;
 - (n) drafted and disseminated a Letter of Intent and a Draft Purchase and Sale Agreement. This information was placed in the Data Room; and
 - (o) ultimately corresponded and met with several prospects who expressed interest in MGC Assets.
29. The 2018 Marketing Program generated 23 serious prospects:
- (a) seventeen for both MGC and Lot G; and
 - (b) two for MGC only and four for Lot G only.
30. The Receiver did not receive any offers for MGC Assets in 2018, but early in 2019, one of the prospects generated in 2018 contacted the Receiver to make an offer on behalf of a group of potential purchasers. A Letter of Intent was submitted to the Receiver on March 6, 2019. The Receiver discussed the price with Realcor and determined that the price was too low, and the offer was rejected.
31. The Receiver informed the prospect that it should reassess the opportunity. The offeror submitted a second offer on April 23, 2019, only with a modest increase over its initial very low offer. The new offer was also rejected by the Receiver, after consultation with Realcor.
32. Following the 2018 marketing cycle, the Receiver deferred further significant time or cost on marketing until spring of 2019, and focused on the following priority issues:
- (a) renewing the flow of recycled water for irrigation of Morningstar;
 - (b) addressing safety issues and environmental concerns; and
 - (c) improving the operating results of Morningstar and growing memberships.
33. After ensuring that there was some progress on the priority issues, the Receiver launched a new marketing campaign in April/May of 2019. Generally, there had been an improvement in the course conditions and that brought new memberships. These gains however were not enough to achieve the budget forecasts and halt operating losses.
34. In 2019, the Receiver continued the marketing of the assets and undertook the following activities:

- (a) updated marketing materials prepared for the 2018 sales process where necessary to show the progress made in restructuring and improving Morningstar's operations and assets;
 - (b) maintained contact with the serious prospects that emerged from the 2018 sales process who continued to show interest in acquiring MGC Assets and advised them of the progress made to improve MGC's operating results;
 - (c) broadened the scope of marketing by identifying more strategic prospects and canvassed a wider geographical search for Prospects;
 - (d) worked to have the recycled water needed for irrigation flowing again;
 - (e) launched the 2019 sales process in April and:
 - (i) produced an electronic brochure for the listing on LoopNet and CoStar, online marketplaces for commercial properties;
 - (ii) updated the Confidential Information Memorandum for MGC on June 11, 2019;
 - (iii) updated the Data Room with the new information;
 - (iv) retained Les Furber, the Canadian designer of over 100 new and redesigned golf courses, including Morningstar, to inspect the course, provide his assessment and meet members;
 - (v) contacted all serious prospects to provide them updated information and alert them to the additional information in the Receiver's Data Room;
 - (vi) actively engaged two serious prospects who are considered attractive strategic buyers;
 - (f) monitored the operating results as compared to forecast budgets to determine the most positive messaging for prospects; and
 - (g) kept the secured creditors informed about the results for operations, resolution of the recycled water problem and responses from existing and new prospects.
35. While the Receiver had hoped that a number of the priority issues would be addressed, and marketing could be undertaken to show progress, the major issue of the recycled water was not resolved until August, leaving little time to show course improvements to prospective golfers (in order to increase membership and day golfers for revenue) and potential purchasers (in order to increase curb appeal and showcase operational turnaround of the business).
36. The marketing efforts in 2019 resulted in the following:
- (a) 724 click views on LoopNet, generating 8 potential buyers who contacted the Receiver, and 7 serious prospects;
 - (b) including those LoopNet prospects, an additional 6 prospects, making 13 in total, have been identified through other marketing efforts with 10 being interested in

Morningstar and Lot G, 3 with interest only in Lot G, and 1 with interest in only Morningstar;

- (c) one prospect has made an attractive offer on Lot G only, and another two (one who represents a group of buyers) are interested in both Morningstar and Lot G. Negotiations continue with these prospects.

Current Issues Affecting Restructuring

37. There are a number of issues that are affecting the restructuring of MGC, namely:

- (a) the Receiver was finally able to restart the recycled water but much later than expected and five years of dry conditions have already done noticeable damage to the course. The Receiver can report that the system appears to be fully functioning and provides Morningstar with sufficient water supply to properly maintain the golf course through the summer heat;
- (b) IHM reported significant negative variances in revenues and resulting operating losses for both June and July 2019. The negative variance from budget forecasts on revenue for June and July was \$123,000 collectively. The August shortfall was \$89,700 for a total revenue shortfall of \$213,700 for three of the highest expected revenue months of the year;
- (c) there were unexpected capital and deferred maintenance expenditures during the Receivership totaling \$131,000. Many of these projects required significant MGC management time and Receiver's time to complete. Many of these are one-time costs brought on by extended periods of neglect. They also resulted in higher Receiver's costs to deal with these important projects on a timely basis (such as solving the recycled water problem, dealing with dam safety issues, obtaining the Easements, etc.).

38. The Receiver summarizes the current status of the administration of the receivership as follows:

- (a) a significant investment has been made to bring Morningstar's golf experience and course condition to commendable levels;
- (b) there have been higher restructuring costs and higher continuing operating losses because MGC could not reach the budget forecast levels of revenue for the peak golf season;
- (c) a much higher level of additional Receiver's borrowings is required to cover both the increased costs incurred in recent months (e.g. for resolving the recycled water problem and managing the creation of the Easements over Lot G) and the increased operating losses;
- (d) there is no pending sale from which these accumulated costs can be soon be recovered;
- (e) discussions continue with the two serious prospects to consider all options to increase revenue for Morningstar and justify a purchase;
- (f) there remain issues that need attention prior to a sale of the Assets; and

- (g) the Receiver will work with Realcor and CWB to determine options of how to assist a strategic buyer who may help to conclude a purchase prior to December 31, 2019.
39. The application to increase receiver's borrowing is supported by Realcor, the only party who is affected by the increased borrowing.

Receiver's Statement of Receipts and Disbursements

40. Attached as **Appendix "Z"** to the Receiver's Report is its Statement of Receipts and Disbursements for the Period June 1, 2018 to July 31, 2019 for its HSBC account used for managing the Receiver's borrowings, providing financing for operations as needed and payment of professional fees.
41. Attached as **Appendix "AA"** to the Receiver's Report is its Statement of Receipts and Disbursements for Morningstar's Operations for the period June 1, 2018 to July 31, 2019. The Receiver's operating account is maintained with BMO in Parksville and is co-managed with IHM.

Fees and Disbursements of the Receiver

42. The Receiver's Statements of Fees, Disbursements and Taxes for the receivership to July 31, 2019 are included in **Appendix "AB"** of the Receiver's Report (the "**Receiver's Billings**"). The Receiver's Billings include \$648,314.32 in fees, \$23,854.82 in disbursements and \$33,438.46 for GST for total billings of \$705,233.16. All fees were charged at the Receiver's standard hourly rates from time to time.
43. Appendix "AC" of the Receiver's Report is a Summary of the Receiver's Time, totaling 1,992.34 hours, expended by the Receiver's staff in relation to the matters described in the Receiver's Billings included in **Appendix "AB"** for the Period May 15, 2018 to July 31, 2019.

Fees and Disbursements of the Receiver's Counsel

44. The invoices for fees, disbursements and taxes of the Receiver's counsel, Gowling WLG, for the period May 30, 2018 to July 31, 2019, are attached as **Appendix "AD"** of the Receiver's Report ("**Gowling WLG's Billings**"). Gowling WLG's Billings include \$37,777.50 in fees, \$198.15 in disbursements, \$4,542.90 in taxes for total billings for Gowling WLG of \$42,518.55.
45. The Receiver has reviewed the accounts of Gowling WLG rendered in this matter and is satisfied that the work detailed therein was completed by Gowling WLG at the request of the Receiver and was necessary. In the Receiver's experience, the fees and rates charged by Gowling WLG in its invoices are consistent with those charged by other law firms for work of a similar nature and complexity in British Columbia.

Part 3: LEGAL BASIS

1. The Receivership Order.

2. *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3;
3. *Law and Equity Act*, RSBC 1996, c. 250;
4. Supreme Court Civil Rules, B.C. Reg. 168/2009 ; and
5. The inherent jurisdiction of this Court.

Part 4: MATERIAL TO BE RELIED ON

1. Receiver's First Report, dated September 24, 2019, and filed September 26, 2019.
2. Affidavit of Colin D. Brousson #1, sworn September 26, 2019.
3. Affidavit of Gary W. Powroznk #1, sworn September 25, 2019.
4. Such further and other materials as counsel may advise and this Honourable Court may permit

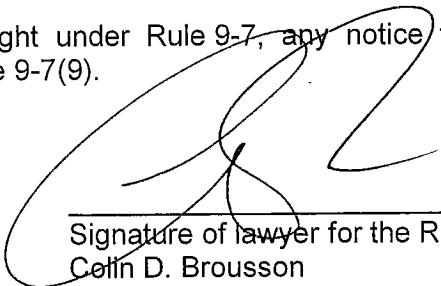
The Receiver's estimate that this application will take 20 mins.

- This matter is within the jurisdiction of a master.
- This matter is not within the jurisdiction of a master.

TO THE PERSONS RECEIVING THIS NOTICE OF APPLICATION: If you wish to respond to this notice of application, you must, within 5 business days after service of this notice of application or, if this application is brought under Rule 9-7, within 8 business days after service of this notice of application,

- (a) file an application response in Form 33,
- (b) file the original of every affidavit, and of every other document, that
 - (i) you intend to refer to at the hearing of this application, and
 - (ii) has not already been filed in the proceeding, and
- (c) serve on the applicant 2 copies of the following, and on every other party one copy of the following:
 - (i) a copy of the filed application response;
 - (ii) a copy of each of the filed affidavits and other documents that you intend to refer to at the hearing of this application and that has not already been served on that person;
 - (iii) if this application is brought under Rule 9-7, any notice that you are required to give under Rule 9-7(9).

Date: Sept 27/19



Signature of lawyer for the Receiver
Colin D. Brousson
Gowling WLG (Canada) LLP

To be completed by the court only:

Order made

[] in the terms requested in paragraphs _____ of Part 1 of this notice of application

[] with the following variations and additional terms:

Date: _____ Signature of Judge Master

APPENDIX

THIS APPLICATION INVOLVES THE FOLLOWING:

- discovery: comply with demand for documents
- discovery: production of additional documents
- other matters concerning document discovery
- extend oral discovery
- other matter concerning oral discovery
- amend pleadings
- add/change parties
- summary judgment
- summary trial
- service
- mediation
- adjournments
- proceedings at trial
- case plan orders: amend
- case plan orders: other
- experts

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