



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 via telephone at the courthouse at 800 Smithe Street, Vancouver, BC V6Z 2E1 on April 22, 2021, at 9:45 a.m. for the order(s) set out in Part 1 below.

Part 1: ORDER(S) SOUGHT

1. Approval of the Receiver's activities to date.
2. Approval for the Receiver to engage in the Land Exchange;
3. Approval for the Receiver to amalgamate a portion of Lot G with MGC lands;
4. An order vesting of the rights, title and interest of the land subject to the Land Exchange to Lot G Holdings and MGC, as required by the Land exchange;
5. Approval of the Receiver's Fees, Disbursements, and taxes as set out in Appendix "J" to the Receiver's Second Report dated April 16, 2021 (the "**Second Report**", and collectively with the Receiver's First Report dated September 24, 2019 (the "**First Report**"), the "**Reports**").

6. Approval of the Receiver's Counsel's Fees and Disbursements as set out in Appendix "L" and "M" to the Receiver's Second Report dated April 16, 2021, and in the Affidavit of Colin D. Brousson #2, sworn April 16, 2021.
7. Approval of the Receiver's Statement of Receipts and Disbursements as set out in Appendix "I" to the Receiver's Second Report dated April 16, 2021.
8. Authorization for the Receiver to increase borrowings to \$2,190,000.00, in order to:
 - (a) continue operation of Morningstar Golf Club Ltd. until a sale can be completed;
 - (b) settle unpaid operating losses and capital costs, receivership fees and counsel fees;
 - (c) continue the 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 ("**G-Force**") 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 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.
9. On October 4, 2019, Mr. Justice Brundrett of the Supreme Court of British Columbia granted an order that, *inter alia*, approved the activities and fees of the Receiver and the Receiver's counsel up to July 31, 2019, and increased the Receiver's borrowings to \$1,400,000 (the "**2019 Order**").

Outline of Receiver's Administration From September 24, 2019, to March 31, 2021

Summary of Receiver's Activities since September 24, 2019

10. Since September 24, 2019, the Receiver has undertaken the following activities, all of which are more fully particularized in the Second Report:
 - (a) engaged and hired new management, Wedgewood Golf Management ("**Wedgewood**") for Morningstar;
 - (b) transitioned management from the previous management to Wedgewood;
 - (c) provided oversight and support for Morningstar operations on material matters including:
 - (i) approvals for membership programs, new significant suppliers, systems, and technology upgrades, and
 - (ii) emergency unbudgeted expenditures including restoration, repairs and major maintenance.
 - (d) managed and paid out outstanding operational liabilities and professional costs;
 - (e) maintained operating accounts for the operating business and the Receiver, including banking, credit card processing, utilities, security, WorkSafeBC and Canada Revenue Agency;
 - (f) closed and opened operations in response to the COVID-19 Pandemic in line with provincial and local rules, regulations, and guidance from health officials;
 - (g) worked with management and staff to create and implement pandemic operating procedures;
 - (h) reviewed government programs providing financial assistance to employees and businesses during the Pandemic and successfully made applications for the Canada Emergency Wage Subsidy ("**CEWS**");

- (i) in coordination with management, developed programs and processes to build revenue and attain a break-even financial performance;
- (j) engaged an environmental consulting firm to undertake and complete remediation work for some limited soil contamination;
- (k) replaced fuel storage tanks at Morningstar;
- (l) retained a geotechnical engineering firm to assess and report on the irrigation dams, as ordered by the provincial authorities;
- (m) retained a renowned golf course designer to inspect and report on the current condition of the course;
- (n) corresponded and consulted with creditors, primarily focused on the two main secured creditors Realcor and CWB;
- (o) provided status updates on performance and operations to Realcor;
- (p) reviewed monthly operating and financial reports;
- (q) prepared and filed required reports under the *Bankruptcy and Insolvency Act*;
- (r) undertook marketing and public relations efforts to simultaneously build demand for Morningstar membership and entice potential purchasers;
- (s) pursued and developed an opportunity to sell MGC with some of the adjacent lands to increase the potential purchase price for the assets of MGC;
- (t) maintained and updated the Receiver's website and a data room for potential purchasers to conduct due diligence in furtherance of a purchase;
- (u) conducted protracted negotiations for a complex lease/purchase agreement with a potential purchaser that did not complete; and
- (v) pursued and developed the potential for a credit bid with Realcor as an alternative to a sale to a third party.

11. Since the start of the Receivership:

- (a) a significant investment had been made to bring Morningstar's golf experience and course condition to levels not experienced in many years;
- (b) there had been higher restructuring costs due to years of deterioration and high continuing operating losses; and
- (c) a much higher level of additional Receiver's borrowings was required than previously expected to cover the increased costs incurred in 2019 and the higher operating losses than budgeted since there was no pending sale from which these accumulated costs could be recovered.

12. Since September 24, 2019, the Receiver has prioritized:
 - (a) replacing Morningstar management to improve operations and golf experience;
 - (b) reaching a breakeven level of operating performance;
 - (c) Attract a strategic buyer for the MGC Assets willing to pay the improved fair market value for the assets and undertaking of MGC; and
 - (d) Minimizing the administrative costs of the receivership.
13. Wedgewood took over management of Morningstar in November of 2019.
14. Starting in December of 2019, and continuing throughout the first quarter of 2020, financial performance was improving, and Morningstar:
 - (a) created new marketing initiatives;
 - (b) secured and implemented a new point of sale and booking system; and
 - (c) was increasing membership and rounds played by daily golfers.
15. In early 2020, the COVID pandemic negatively impacted the operations of Morningstar and, more specifically, the onset of the pandemic:
 - (a) forced Morningstar to cease operations from March 23, 2020, until April 20, 2020;
 - (b) slowed membership renewal and discouraged new memberships;
 - (c) reduced the number of people permitted in the clubhouse and pro shop leading to decreased revenue;
 - (d) increased labour and cleaning costs;
 - (e) impaired the ability to secure leased golf carts due to supply chain disruptions;
 - (f) increased operating losses;
 - (g) added professional fees; and
 - (h) caused the sale solicitation process to lose momentum.
16. When Morningstar resumed operations, given the ability to socially distance and golf being generally safer than other activities during the pandemic, there was an increased demand for golf and membership at Morningstar, resulting in an improvement in a number of year over year financial indicators, such as a:
 - (a) 22.8% increase in revenue;
 - (b) 47% increase in memberships;

- (c) 20.6% increase in the number of rounds of golf played; and a
- (d) 6.8% reduction in costs.

Joint Marketing of MGC Lands and Lot G

- 17. 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.
- 18. On their own, golf courses are not usually profitable. Traditionally, golf courses are built as part of a residential or resort development.
- 19. Lot G is approximately 22.8 acres of vacant land, originally designated as agricultural land reserve ("**ALR**") administered by the Agricultural Land Commission ("**ALC**"), bordering the fairways and Holes 6 and 7 of Morningstar in two parts. Lot G is owned by Lot G Holdings.
- 20. The Receiver identified and assessed the feasibility of developing Morningstar in conjunction with Lot G. This issue was canvassed in detail in the Receiver's First Report.
- 21. It became the Receiver's view that the potential real estate development opportunities on MGC and adjacent lands like Lot G could add value directly or indirectly to the sale of MGC's assets. Realcor, Lot G Holdings and CWB agreed that Lot G and the assets of MGC should be jointly marketed.

Marketing and Sales Activities

- 22. Since September 2019, the Receiver has undertaken the following marketing and sales activities:
 - (a) Assisted Wedgewood to engage reporters to write periodic stories in local newspapers and in BC Golf publications regarding the initiatives by new management at Morningstar, the significant improvements to the course and the search for a suitable purchaser;
 - (b) Actively supported Wedgewood's efforts to advertise new golf programs at Morningstar;
 - (c) Maintained the listing of MGC's assets on LoopNet and coordinated with Lot G Holdings in listing Lot G to maximize the number of serious enquiries about the MGC Assets;
 - (d) Actively followed up with enquiries from potential purchasers, including those who were initially attracted only to Lot G;
 - (e) Maintained and updated marketing materials for distribution to prospects enquiring about the MGC assets;

- (f) Maintained contact with potential purchasers that emerged from the earlier marketing programs who continued to show interest in acquiring MGC Assets and in the progress made to improve MGC's operations;
 - (g) Prepared a confidentiality agreement ("**CA**") for potential purchasers to be able to access the data room maintained by the Receiver.
 - (h) Updated the data room with relevant materials for due diligence, and a draft Letter of Intent and a Draft Purchase and Sale Agreement; and
 - (i) Prepared and provided additional due diligence information to potential purchasers as requested or required.
23. The Receiver's efforts to market the assets of MGC, since October 2019, have resulted in significant online traffic to the LoopNet ad for MGC, on average between 2 and 4 enquiries per month from potential purchasers, and 14 parties that have been granted access to the data room for due diligence.
24. The Receiver has received three offers to purchase. Two of these offers were not pursued because the purchase price offer was too low and the pandemic interrupted and stalled negotiations.
25. The third offer was received in May 2020. The party, or their nominee who submitted the offer (the "**Potential Purchaser**") submitted a letter of intent to purchase the MGC assets for \$2.5 million subject to due diligence, including updated operating results following the shutdown, and budgets for fiscal years 2020 and 2021.
26. The Potential Purchaser also presented an offer to purchase Lot G to Lot G Holdings in early June. The offer was rejected.
27. In consultation with Realcor, the Receiver determined that the fair market value for the assets at that time was \$2.8 million and through negotiations received a Letter of intent from the Potential Purchaser for a transaction at that price.
28. The Receiver was aware of a number of encroachments and access issues to Holes 6 and 7. The issues were shared with the Potential Purchaser and are canvassed below under the heading "*Land Exchange*" and at paras 46 through 50 of the Second Report.
29. Addressing the issues with the lands would likely cause delays and costs for the contemplated transaction for an outright purchase. The Receiver and the Potential Purchaser investigated the option of delaying purchase and instead entering into a lease for Morningstar prior to outright sale.
30. Through negotiations the parties arrived at an Memorandum of Understanding that outlined the steps of the transaction. Ultimately the Potential Purchaser did not agree to complete the transaction on those terms and instead provided an offer for immediate purchase at \$2.8 million. The Receiver was of the view that the offer did not adequately deal with the Land Issues and a higher offer could likely be obtained if an outright sale was going to be considered at that time due to the improved operating results MGC was producing in 2021. The Receiver's view was bolstered after discussions with Realcor, when it became clear that Realcor would not support that offer at that time.

31. As the transactions with the Potential Purchaser did not proceed, the Receiver confirmed Realcor's intention to acquire the MGC Assets through a Credit Bid. Based upon Realcor's intention, the Receiver has undertaken a number of steps to further that possibility, including updated financial information, continuing to address the land and title issues, and worked with Realcor's counsel to develop a credit bid that can be brought before this Honourable Court.
32. The Receiver will shortly have a current value appraisal but expects that the appraisal will state the current market value at an amount that will be significantly lower than the amount of the first secured claim by Realcor, likely to now exceed \$4 million.
33. Additionally, **Appendix "G"** of the Second Report provides a summary of statutory priority claims totaling approximately \$180,000. These claims appear to rank in priority to Realcor's first secured claim. These amounts will need to be paid if Realcor submits a Credit Bid.
34. Whether MGC's assets are sold through a cash or credit sale, the value of Realcor's secured claims in relation to the current market value of the assets means that there will be no recovery for any creditor other than Realcor and the statutory priority claim holders.

Land Exchange and Amalgamation, and Encroachment Removal

35. Lot G Holdings has advanced applications with the Regional District of Nanaimo ("**RDN**") for approvals for subdivision and development of Lot G (the "**Applications**"). Lot G Holdings was seeking to subdivide Lot G into two parts:
 - (a) 9.83 acres that the ALC had previously conditionally approved to be removed from the ALR for residential development which would form a new Lot 1 ("**Lot 1**");
 - (b) 11.39 acres that would remain in the ALR and form a new Lot 2 ("**Lot 2**").
36. In response to the Applications, RDN advised Lot G Holdings that its support for zoning amendments to the Official Community Plan to allow for the creation of Lot 2 require an exchange with MGC of four parcels of land detailed. Attached as on **Appendix "C"** to the Second Report is a map of the parcels at issue. This transaction contemplates that:
 - (a) a long narrow parcel on the west of Lot G will be transferred from Lot G Holdings to MGC; and
 - (b) three small areas intruding from MGC's Holes 6 and 7 into the centre parcel of Lot G will be transferred from MGC to Lot G Holdings.(collectively the "**Land Exchange**").
37. Lot G Holdings and the Receiver have been advised by RDN that the Land Exchange will address road allowances, and rights of way put in place for a previous planned subdivision that never materialized and are no longer needed.
38. Lot G Holdings has agreed to proceed with the Land Exchange. The Receiver has also agreed in principle to the Land Exchange, noting that approximately 85% of the land

being exchanged will be for the benefit of MGC and the land parcel gained will provide Morningstar with direct access to Hole 6 from its existing lands without the need of an easement.

39. The ALC has advised Lot G Holdings that it will not agree to allow a 0.35 ha portion of Lot G (the "**Postage Stamp**") to leave the ALR and be used for residential purposes. The Postage Stamp is set out on a map found in **Appendix "D"** to the Second Report.
40. Based upon the ALC decision, the RDN has advised Lot G Holdings that it will require the Postage Stamp to be amalgamated with MGC lands ("**Postage Stamp Amalgamation**") as a condition of its support for the Applications. Lot G Holdings has asked MGC to take title to the Postage Stamp at no cost, except a reasonable sharing of the costs to effect the transfer. The Receiver has agreed in principle to the Postage Stamp Amalgamation.
41. Finally, there were two encroachments onto Lot G by MGC (the "**Encroachments**") which are to be rectified, specifically, a ditch and some portions of cart paths that need to be relocated. The Encroachments will need to be relocated by MGC.
42. In order to implement the Land Exchange and complete the Postage Stamp Amalgamation, the Receiver is seeking an order to confirm the Receiver's authority to enter into these transactions and a vesting order for the properties at issue.

Receiver's Borrowings

43. The Receiver is seeking an order increasing the Receiver's borrowings by \$790,000. This will increase the Receiver's overall borrowing capacity to \$2,190,000.
44. These new borrowings are required to cover accumulated costs and operating losses since the date of the Receiver's last report to the Court of September 24, 2019, to November 2020. The anticipated use of these additional borrowings is set out in greater detail at **Appendix "F"** to the Second Report.
45. The application to increase receiver's borrowing is supported by Realcor.

Receiver's Statement of Receipts and Disbursements

46. Attached as **Appendix "H"** to the Second Report is its Statement of Receipts and Disbursements for the Period June 1, 2018 to March 31, 2021, for its HSBC account used for managing the Receiver's borrowings, providing financing for operations as needed and payment of professional fees.
47. Attached as **Appendix "I"** to the Second Report is its Statement of Receipts and Disbursements for Morningstar's Operations for the period June 1, 2018 to March 31, 2021. The Receiver's operating account is maintained with BMO in Parksville and is co-managed with Wedgewood.

Fees and Disbursements of the Receiver

48. The Receiver's Statements of Fees, Disbursements and Taxes for the receivership to March 31, 2021, are included in **Appendix "J"** of the Second Report (the "**Receiver's Billings**"). The Receiver's Billings include \$606,757.90 in fees, \$14,720.51 in disbursements and \$30,940.66 for GST for total billings of \$652,419.07. All fees were charged at the Receiver's standard hourly rates from time to time.
49. **Appendix "K"** is a Summary of the Receiver's Time, totaling 1,599.10 hours, expended by the Receiver's staff in relation to the matters described in the Receiver's Billings included in **Appendix "J"** for the Period August 1, 2019, to March 31, 2021.

Fees and Disbursements of the Receiver's Counsel

50. The invoices for fees, disbursements and taxes of the Receiver's counsel, Gowlings, for the period August 1, 2019, to August 15, 2020, are included in **Appendix "L"** ("**Gowlings' Billings**"). Gowlings' Billings include \$26,168.00 in fees, \$1,485.91 in disbursements, \$3,196.67 in taxes, for total billings for Gowlings of \$30,850.58.
51. The Receiver has reviewed the accounts of Gowlings rendered in this matter and is satisfied that the work detailed therein was completed by Gowlings at the request of the Receiver and was necessary. In the Receiver's experience, the fees and rates charged by Gowlings in its invoices are consistent with those charged by other law firms for work of a similar nature and complexity in British Columbia.
52. The invoices for fees, disbursements and taxes of the Receiver's counsel, DLA Piper, for the period August 16, 2020, to February 28, 2021, are included in **Appendix "M"** ("**DLA Piper's Billings**"). DLA Piper's Billings include \$16,076.50 in fees, no disbursements, \$1,929.19 in taxes, for total billings for DLA Piper of \$18,005.69.
53. The Receiver has reviewed the accounts of DLA Piper rendered in this matter and is satisfied that the work detailed therein was completed by DLA Piper at the request of the Receiver and was necessary. In the Receiver's experience, the fees and rates charged by DLA Piper in its invoices are consistent with those charged by other law firms for work of a similar nature and complexity in British Columbia.
54. The Receiver expects to recover the GST paid for professional fees and disbursements as offset credits against GST collected in MGC's business and in refunds for tax credits.

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. Receiver's Second Report, dated April 15, 2021, and filed April 16, 2021.
3. Affidavit of Colin D. Brousson #2, sworn April 16, 2021.
4. Affidavit of Gary W. Powroznik #2, sworn April 16, 2021.
5. Such further and other materials as counsel may advise and this Honourable Court may permit

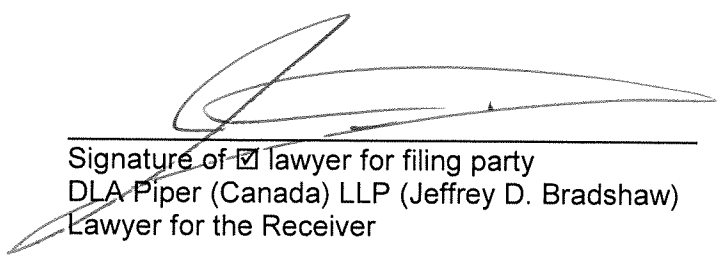
The Receiver estimates that the application will take 30 mins.

- 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).

April 16, 2021
Dated _____



Signature of lawyer for filing party
DLA Piper (Canada) LLP (Jeffrey D. Bradshaw)
Lawyer for the Receiver

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

The following information is provided for data collection purposes only and is of no legal effect.

THIS APPLICATION INVOLVES THE FOLLOWING:

- discovery: comply with demand for documents
- discovery: production of additional documents
- oral 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
- none of the above

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