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COURT OF KING'S BENCH OF ALBERTA



JUDICIAL CENTRE

CALGARY

APPLICANTS

ATB FINANCIAL

COM
July 18, 2023
Justice Sidnell

RESPONDENTS

ALBERTA FOOTHILLS PROPERTIES LTD.

DOCUMENT

FIFTH REPORT OF FTI CONSULTING CANADA INC., IN ITS CAPACITY AS RECEIVER OF ALBERTA FOOTHILLS PROPERTIES LTD.

July 10, 2023

ADDRESS FOR SERVICE AND CONTACT INFORMATION OF PARTY FILING THIS DOCUMENT

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FIFTH REPORT OF THE RECEIVER

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INTRODUCTION

1. On May 17, 2021 (the “**Date of Appointment**”), FTI Consulting Canada Inc. (“**FTI Consulting**”) was appointed as receiver and manager (the “**Receiver**”) of all the assets, undertakings and properties (the “**Property**”) of Alberta Foothills Properties Ltd. (“**AFPL**” or the “**Company**”) pursuant to an Order of the Honourable Justice K.M. Eidsvik (the “**Receivership Order**”) pronounced in the Court of King’s Bench of Alberta Court File Number 2101-06388 (the “**Receivership Proceedings**”).
2. The Receivership Order authorized the Receiver, among other things, to manage, operate and carry on the Business of the Company, to market any or all of the Property including advertising and soliciting offers to purchase the Property, and to make such arrangements or agreements as deemed necessary by the Receiver.
3. The Receiver’s reports and other publicly available information filed in connection with the Receivership Proceedings can be found on the Receiver’s website at <http://cfcanda.fticonsulting.com/AFPL>.

BACKGROUND

4. AFPL’s primary asset comprises approximately 145 acres of land located at NW 16-20-29 W4M in Okotoks, Alberta (the “**Lands**”).
5. At an application on September 29, 2021, the Receiver sought advice and directions from this Honourable Court as to whether the Town of Okotoks (the “**Town**”) could enact Bylaws 19-21 and 20-21 (the “**Proposed Bylaws**”), which collectively rescinded the Area Structure Plan in place for the Lands and rezoned the Lands from Traditional Neighbourhood District and Neighbourhood Core District to Agriculture and Land holding, or whether the Proposed Bylaws were in contravention of the terms of the Receivership Order.

6. On October 21, 2021, this Honourable Court released its reasons for decision with respect to the Proposed Bylaws, holding there was nothing preventing the Town from enacting the Proposed Bylaws.
7. On March 10, 2023, this Honourable Court granted an Order (the “**Approval and Vesting Order**”) which, among other things, authorized and approved the sale transaction (the “**Transaction**”) contemplated by an agreement of purchase and sale (the “**Sale Agreement**”) between the Receiver and Big Rock Foothills Holdings Ltd. (the “**Purchaser**”) dated March 30, 2023.
8. On June 8, 2023, pursuant to the Approval and Vesting Order, the Receiver delivered the Receiver’s Certificate, certifying that the Transaction had been completed in accordance with the terms of the Sale Agreement.
9. The purpose of this report (“**Fifth Report**”) is to provide this Honourable Court with:
 - (a) the activities of the Receiver since the fourth report of the Receiver dated May 2, 2023 (the “**Fourth Report**”);
 - (b) the Receiver’s statement of receipts and disbursements from the Date of Appointment to July 10, 2023 (the “**Statement of Receipts and Disbursements**”);
 - (c) a summary of the Receiver’s fees and expenses (the “**Receiver’s Fees**”), the Receiver’s Counsel’s fees and disbursements (the “**Receiver’s Counsel’s Fees**”) and the Receiver’s Conflict Counsel’s fees and disbursements (the “**Receiver’s Conflict Counsel’s Fees**”);
 - (d) details of the secured and potential priority claims in the Receivership Proceedings; and

- (e) a summary of the estimated net proceeds available for distribution and remaining tasks to complete the administration of the Receivership Proceedings.
10. On July 10, 2023, the Receiver filed a Notice of Application seeking the following relief from this Honourable Court:
- (a) ratification and approval of the Receiver’s activities as set out in this Fifth Report, and the Receiver’s Statement of Receipts and Disbursements;
 - (b) approval of the Receiver’s Fees, the Receiver’s Counsel’s Fees and the Receiver’s Conflict Counsel’s Fees without the necessity of a formal passing of accounts or a formal assessment of accounts;
 - (c) authorization to hold back certain funds to complete the administration of these Receivership Proceedings and make a distribution to ATB Financial (“ATB”), as set out in paragraph 39 below;
 - (d) authorization for the Receiver to destroy the Company’s corporate books and records if unclaimed by any of the current or former directors of the Company within 30 days of the Receiver providing such notice; and
 - (e) discharging the Receiver as Receiver of AFPL upon the Receiver filing with the Court a sworn Affidavit of a Licensed Insolvency Trustee employed by the Receiver.

TERMS OF REFERENCE

11. In preparing this Fifth Report, the Receiver has relied upon audited and unaudited financial information, other information available to the Receiver and, where appropriate, the Company's books and records and discussions with various parties (collectively, the "**Information**").
12. Except as described in this Fifth Report:
 - (a) the Receiver has not audited, reviewed or otherwise attempted to verify the accuracy or completeness of the Information in a manner that would comply with Generally Accepted Assurance Standards pursuant to the *Chartered Professional Accountants of Canada Handbook*; and
 - (b) the Receiver has not examined or reviewed financial forecasts and projections referred to in this Fifth Report in a manner that would comply with the procedures described in the *Chartered Professional Accountants of Canada Handbook*.
13. Future oriented financial information reported or relied on in preparing this Fifth Report is based on assumptions regarding future events. Actual results may vary from forecasts and such variations may be material.
14. The Receiver has prepared this Fifth Report in connection with the Receiver's Application on July 18, 2023. This Fifth Report should not be relied on for other purposes.

15. Information and advice described in this Fifth Report that has been provided to the Receiver by its legal counsel, MLT Aikins LLP (the “**Receiver’s Counsel**”), was provided to assist the Receiver in considering its course of action and is not intended as legal or other advice to, and may not be relied upon by, any other person.
16. Unless otherwise stated, all monetary amounts contained herein are expressed in Canadian Dollars.

ACTIVITIES OF THE RECEIVER

17. Since the date of the Fourth Report the Receiver has, among other things:
 - (a) Resolved a dispute in connection with funds held in escrow by MLT Aikins LLP (in its capacity as escrow agent);
 - (b) completed the Transaction and collected the proceeds therefrom;
 - (c) provided periodic updates to the stakeholders of AFPL, including ATB in its capacity as first lien lender to AFPL; and
 - (d) prepared this Fifth Report.

ESCROW DISPUTE

18. As more fully described in the second report of the Receiver dated September 29, 2022, a dispute arose over approximately \$300,000 (the “**Escrow Funds**”) that AFPL had deposited with MLT Aikins LLP in its capacity as escrow agent (in such capacity, “**MLT**” or the “**Escrow Agent**”) pursuant to an Escrow Agreement dated November 7, 2019 between Barbican Capital Partners, LLC (“**Barbican**”) and AFPL.

19. The Receiver applied to this Honourable Court for advice and directions with respect to the Escrow Funds and on May 12, 2023, the endorsement of the Honourable Justice R.A. Neufeld ordered that the Receiver was entitled to recover the Escrow Funds for distribution pursuant to the priority scheme set out in the *Bankruptcy and Insolvency Act*.
20. On June 30, 2023, the Escrow Agent paid the remaining Escrow Funds of approximately \$250,000 to the Receiver (\$300,000 less the expense notice Barbican issued to the Escrow Agent to pay \$50,000 from the Escrow Funds to Barbican, which funds were paid to Barbican by MLT).

STATEMENT OF RECEIPTS AND DISBURSEMENTS

21. The Receiver's Statement of Receipts and Disbursements is summarized as follows:

Interim Statement of Receipts and Disbursements for the period of May 17, 2021 to July 10, 2023	
CAD \$	Cumulative
Receipts	
Transaction proceeds	\$ 2,199,802
Escrow Funds	250,000
Other receipts	25,594
GST collected	518
Interest	8
Total - Receipts	2,475,922
Disbursements	
Receiver's fees and costs	195,740
Legal fees and disbursements	169,079
Other professional fees	68,257
Sales commission	60,500
GST paid	26,119
Insurance	5,800
Appraisal fees	4,232
Property tax	3,843
Bank fees and other	283
Total - Disbursements	533,853
Net Cash on Hand	\$ 1,942,069

- (a) Transaction proceeds collected pursuant to Sale Agreement;
- (b) Escrow Funds received from the Escrow Agent;
- (c) other receipts including account refunds from utility providers;
- (d) Receiver's fees and costs paid to date in connection with the administration of the Receivership Proceedings;
- (e) legal fees and disbursements paid to date the Receiver's Counsel and the Receiver's Conflict Counsel in respect of legal advice in connection with the Receivership Proceedings;
- (f) other professional fees including amounts paid for financial advisory services provided to ATB in connection pursuant to the Loan Agreement and a cost award paid to counsel to the Town of Okotoks pursuant to an Order of this Honourable Court;
- (g) sales commission paid to Avison Young Commercial Real Estate Services, LP in its capacity as listing agent;
- (h) insurance relates to insurance costs including general liability and property insurance;
- (i) appraisal fees paid to Avison Young Valuation & Advisory Services;
- (j) property taxes paid to Town of Okotoks including arrears owing for pre-receivership periods; and
- (k) bank fees and other include wire payment fees, and other miscellaneous monthly fees.

22. As at July 10, 2023, the Receiver holds approximately \$1.9 million of cash on hand.

PROFESSIONAL FEES

23. Invoices for professional services rendered and costs for the Receiver from the Date of Appointment to May 31, 2023, total \$195,740, exclusive of GST.

24. Invoices for professional services rendered and disbursements for the Receiver's Counsel from the Date of Appointment to May 31, 2023, total \$100,687, exclusive of GST.

25. Invoices for professional services rendered and disbursements for the Receiver's Conflict Counsel from the Date of Appointment to May 31, 2023, total \$68,392, exclusive of GST.

26. Invoices for the Receiver's Fees, the Receiver's Counsel's Fees and the Receiver's Counsel's Fees can be made available upon request of this Honourable Court.

27. The Receiver is recommending a hold back for the Receiver's Fees and the Receiver's Counsel's Fees of approximately \$35,000 for additional time attending to the final administrative matters of the Receivership Proceedings, including the costs of this Application any remaining costs and expenses prior to the completion of the Receivership Proceedings.

28. The Receiver is of the opinion that the Receiver's Fees, the Receiver's Counsel's Fees and the Receiver's Conflict Counsel's Fees are reasonable and appropriate in the circumstances, and in particular, given the length of the Receivership Proceedings, the work required to deal with the various Court appearances associated with the Receiver's application for advice and directions in connection with the Proposed Bylaws, the time required to complete the sales process, attend Court multiple times to obtain the Approval and Vesting Order (as amended), resolve the dispute over the Escrow Funds and close the Transaction.

DETAILS OF SECURED CLAIMS

29. The Receiver is aware of the following secured claims, charges that are owed by AFPL, either pursuant to statute, or which have been registered against the Property.
30. As more fully described in the Affidavit of John Sullivan sworn on May 11, 2021, ATB Financial ("**ATB**") was owed approximately \$13.8 million, plus interest and fees (the "**Secured Debt**"), pursuant to an amended and restated commitment letter dated September 29, 2017, between ATB and AFPL (the "**Loan Agreements**").
31. The Loan Agreement is secured by a General Security Agreement, a Collateral Mortgage, as amended, a General Assignment of Sales Agreements, a Specific Assignment of Constructions Contracts, and a Specific Assignment of Development Agreements, each dated August 17, 2015, between AFPL and ATB (the "**ATB Security**").
32. 1367809 Alberta Ltd., in its capacity as second lien lender, was owed approximately \$4.3 million as at June 30, 2021.
33. Given the realization of the Property is substantial complete, ATB is the fulcrum creditor in these proceedings.

Security Review

34. The Receiver's Counsel reviewed the Loan Agreements and the ATB Security and determined that, subject to the standard qualifications and assumptions, ATB has a valid and enforceable security over the Property securing the Secured Debt.
35. Other than those parties referenced above, no other party has contacted the Receiver nor the Receiver's Counsel asserting a claim in priority to ATB and the Receiver is not aware of any party asserting priority to the ATB, or any party that would be entitled to do so.

PROPOSED DISTRIBUTION

36. As described above, the Receiver has received an opinion from the Receiver's Counsel that the Secured Debt and ATB Security are, subject to the usual assumptions, validly authorized, executed, issued and registered. Given the realization of the Property is substantially complete, the Receiver does not anticipate the recoveries will be sufficient to repay the Secured Debt in full. Accordingly, in the Receiver's view ATB is the fulcrum creditor in the Receivership Proceedings.
37. As detailed above, the Receiver has approximately \$1.9 million of cash on hand. The table below presents a summary of the Receiver's proposed holdback to be retained by the Receiver on account of the following:
 - (a) a holdback for professional fees to complete the administration of the Receivership Proceedings;
 - (b) the remaining costs to complete the administration of these Receivership proceedings including the cost of storage and destruction of records; and

- (c) contingency to complete the remaining administrative tasks.

Estimated Holdback CAD \$	
Holdback	
Professional fees (estimated to completion)	35,000
Remaining administrative costs	10,000
Contingency	7,069
Total - Holdback	52,069

(collectively, the “Holdback”).

38. As at July 10, 2023, the total amount owed to ATB pursuant to the Loan Agreement was in excess of \$16.2 million, plus fees and other expenses.
39. The Receiver is seeking authorization to distribute \$1,890,000 as set out below plus any residual funds to ATB which will be significantly below the amount of the Secured Debt and there are no other secured creditors with secured claims against the Company that rank ahead of, or potentially rank ahead of, the Secured Debt.

Estimated Distribution CAD \$	
Cash on Hand	1,942,069
Holdback	(52,069)
Total - Distribution	1,890,000

TERMINATION OF THE RECEIVERSHIP PROCEEDINGS

40. As described in this Fifth Report, the administration of these Receivership Proceedings is substantially complete, with the exception of certain matters that are administrative in nature. To avoid the additional costs associated with subsequent Court appearances, and with the support of ATB, the Receiver is seeking an Order terminating the Receivership Proceedings and discharging the Receiver of its duties and obligations under the Receivership Order upon filing a sworn Affidavit of a licensed Trustee employed by the Receiver (the “**Receiver’s Completion Affidavit**”) with this Honourable Court certifying that all remaining administrative matters have been concluded.

CORPORATE BOOKS AND RECORDS

41. The Company’s corporate books and records are currently located at an offsite storage facility. The Receiver is seeking the approval of this Honourable Court to destroy the remaining corporate books and records, except those required by statute, unless claimed by any of the current or former directors of the Company within 30 days of the Receiver providing written notification of the same. The Receiver has no further need to retain these books and records.
42. The Receiver will use the addresses listed on an Alberta Corporate Registry search as the addresses at which to notify the current or former directors.

RECEIVER’S RECOMMENDATIONS

43. The Receiver respectfully requests that this Honourable Court grant the following relief:
- (a) Ratifying and approving the Receiver’s activities as set out in this Fifth Report, and the Statement of Receipts and Disbursements;

- (b) approving the Receiver's Fees and the Receiver's Counsel's Fees without the necessity of a formal passing of accounts or a formal assessment of accounts;
- (c) authorizing the Receiver to retain the Holdback to complete the administration of these Receivership Proceedings and distribute any residual funds to ATB, as set out in paragraph 39 above;
- (d) authorizing the Receiver to destroy the Company's corporate books and records if not claimed by any of the current or former directors of the Company within thirty (30) days of the Receiver providing written notification of the same; and
- (e) discharging the Receiver as Receiver of AFPL upon the Receiver filing with the Court the Receiver's Completion Affidavit.

All of which is respectfully submitted this 10th day of July 2023.

FTI Consulting Canada Inc.
in its capacity as Receiver of Alberta Foothills
Properties Ltd., and not in its personal or
corporate capacity,



Name: Deryck Helkaa, CPA, CA, CIRP, LIT
Title: Senior Managing Director,
FTI Consulting Canada Inc.



Name: Brett Wilson, CFA
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