



FORCE FILED

NO. S-210184
VANCOUVER REGISTRY

IN THE SUPREME COURT OF BRITISH COLUMBIA

**IN THE MATTER OF BRYN GWYRDD HOLDINGS INC. and
MYNDDOEDD HOLDINGS INC.**

PETITIONERS

NOTICE OF APPLICATION

Name of applicant: MNP Ltd., in its capacity as the court-appointed liquidator (in such capacity, the "**Liquidator**") of Bryn Gwyrdd Holdings Inc. ("**BGHI**") and Mynddoedd Holdings Inc. ("**MHI**" and, together with BGHI, the "**Petitioners**")

TO: Farris LLP, as counsel for the Receivers (as defined below)

TAKE NOTICE that an application will be made by the applicant to the presiding judge at the courthouse at 800 Smithe Street, Vancouver, British Columbia on Friday the 18th day of February, 2022 at 9:45 a.m. for the order set out in Part 1 below.

PART 1: ORDER(S) SOUGHT

1. Order substantially in the form attached hereto as **Schedule "A"**, *inter alia*, approving the payment of the BGHI Invoices (as defined below), approving the dissolution of BGHI, and discharging the Liquidator.
2. Such further and other relief as counsel may advise and this Court may allow.

PART 2: FACTUAL BASIS

The English Proceedings

3. On or about November 13, 2007, the Crown Court of England and Wales pronounced a confiscation order (the "**Confiscation Order**") against Dr Gerald Martin Smith ("**Smith**") that, *inter alia*, ordered Smith pay £40,956,911.

First Report of Liquidator to Court, dated February 14,
2022 at para 2 ("**First Report**")

4. Smith did not comply with the Confiscation Order and, as a result, on April 7, 2008, the High Court of England and Wales (the "**High Court**") pronounced an order (the "**April 2008 Order**") appointing Finbarr O'Connell and Jeremy Outen of KPMG LLP (now known as Interpath Advisory in the United Kingdom) as enforcement receivers.

First Report at para 3

5. On May 29, 2013, the High Court pronounced an order substituting Messrs O'Connell and Outen with David Standish and John Milsom (the "**Receivers**").

First Report at para 3

6. In December 2017, the High Court varied the April 2008 Order and extended the Receivers' appointment over the shares, securities, and membership rights in a number of companies, including the Petitioners.

First Report at para 4

The Petitioners

7. BGHI's shares are wholly owned by PR Realisations 1 Limited ("**PR Realisations**"), a company registered in the British Virgin Islands.

First Report at para 6

8. Immediately prior to the granting of the Liquidation Order (as defined below), MHI's shares were owned by Litigation Capital Limited ("**LCL**"), a company registered in the Marshall Islands. On March 1, 2021, LCL transferred the MHI shares to PR Realisations.

First Report at para 7

9. PR Realisation's shares are wholly-owned by the Receivers and the Receivers are also directors of both of the Petitioners.

First Report at para 6

The Liquidation Proceedings

10. On March 4, 2021, this Court pronounced an order (the “**Liquidation Order**”) that, among other things, the Petitioners be liquidated and dissolved pursuant to section 324 of the *Business Corporations Act*, SBC 2002, c 57 (the “**BCA**”). The Liquidation Order also appointed MNP Ltd as the Liquidator and empowered the Liquidator to, *inter alia*:
- (a) take possession of and exercise control over the assets, property, and undertakings of the Petitioners, including the Petitioners’ bank accounts (the “**Property**”);
 - (b) determine, approve the payment of, or compromise any or all of the Petitioners’ liabilities, and determine the adequacy of the Property for discharging such liabilities; and
 - (c) in the Liquidator’s own discretion, realise the assets of the Petitioners and distribute the proceeds among the Petitioners’ creditors and then to the Receivers.

First Report at para 8

The Liquidator’s Activities

11. Since its appointment as the Liquidator, the Liquidator has:
- (a) attended to various statutory duties pursuant to the *BCA*, including filing notices of appointment of liquidator and liquidation reports, and publishing notices of the Proceedings in the Gazette and the Vancouver Sun newspaper;
 - (b) exchanged various correspondence and participated in discussions with the Receivers and the Receivers’ legal counsel;
 - (c) participated in discussions with an external accountant to BGHI, reviewed historical financial information and tax returns, and provided instructions regarding various tax accounts of BGHI;
 - (d) prepared and filed corporate income tax returns on behalf of MHI;

- (e) participated in numerous discussions with the Canada Revenue Agency ("**CRA**") and provided information and documents to CRA; and
- (f) made arrangements for the vast majority of funds held in MHI trust account to be deposited in a Guaranteed Investment Certificate in order to earn interest income.

First Report at paras 15 - 20

The Petitioners' Assets

- 12. After the pronouncement of the Liquidation Order, the Receiver's transferred the following funds to the Liquidator:
 - (a) \$3,708,282.92 held in trust for BGHI (the "**BGHI Funds**"); and
 - (b) \$2,807,904.57, held in trust for MHI (the "**MHI Funds**" and, together with the BGHI Funds, the "**Funds**").

First Report at paras 13, 14

- 13. The Liquidator holds the Funds in trust accounts maintained for BGHI and MHI respectively.

The BGHI Funds

- 14. The BGHI Funds comprised the net sale proceeds from the sale of real property located at 3552 Falcon Crescent, Whistler, British Columbia (the "**Whistler Property**"), which remained after the payment of certain creditors and expenses of BGHI.

First Report at para 22

- 15. Prior to this sale, 3552 Falcon Property Inc ("**3552 Inc**"), a wholly-owned subsidiary of BGHI, was the registered owner of the Whistler Property. Pursuant to a Declaration and Bare Trust and Agency Agreement, 3552 Inc held the Whistler Property as nominee, agent, and bare trustee for BGHI as the beneficial owner.

First Report at paras 22, 23

16. 3552 Inc was voluntarily dissolved in June 2020 and the Whistler Property was sold. The proceeds from the sale of the Whistler Property were paid to BGHI as the BGHI Funds.

First Report at para 24

17. The Liquidator has not identified and is not aware of any other assets of BGHI other than the BGHI Funds.

First Report at paras 25, 40, 41

The MHI Funds

18. The MHI Funds comprised the net sale proceeds from the sale of land owned by MHI and located in Princess Louisa Inlet in British Columbia after the payment of certain expenses of MHI.

First Report at para 27

19. Other than the MHI Funds, the Liquidator has not identified and is not aware of any other assets of MHI.

First Report at para 28

The Petitioners' Liabilities

Crown Claims

20. The Petitioners do not have active payroll tax accounts registered with CRA and there are no amounts owing to CRA in respect of unremitted payroll source deductions.

First Report at paras 29, 33

21. In addition, the Petitioners do not owe any amounts for unremitted Goods and Service Tax ("GST"). The Liquidator has arranged for a final GST return to be filed on behalf of BGHI and for BGHI's GST account to be closed. MHI's GST account was closed on December 31, 2015.

First Report at paras 30, 34

22. The Liquidator filed a corporate income tax return for BGHI for the December 6, 2021 fiscal year-end, which reported no balance owing or refundable by or to BGHI.

First Report at para 32

23. The Liquidator prepared and filed NIL corporate income tax returns for MHI for the years ending May 31, 2015 through May 31, 2021 inclusive. The Liquidator has received notices of assessment from CRA for each of these tax periods confirming that there is no balance owing to CRA.

First Report at para 35

Other Claims

24. The Receivers reviewed BGHI's records and prepared a list of BGHI's creditors based on certain invoices (the "**BGHI Invoices**"). The Liquidator has reviewed this list and the BGHI Invoices and, as further explained below, has only conducted a limited investigation of these claims.

First Report at paras 36, 37, 42

25. The BGHI Invoices were rendered between August 2016 and February 2018 and were issued to SMA Investments Ltd, Timothy Power, Andiamo Ltd, and 3552 Inc. None of the BGHI Invoices were issued to BGHI. In addition, the Liquidator noted that the BGHI Invoices appeared to be for goods and services provided in relation to the Whistler Property.

First Report at para 38

26. The Receivers are of the view that the Whistler Property was beneficially owned by BGHI and, consequently, that the BGHI Invoices should be paid by the Liquidator from the BGHI Funds.

First Report at para 39

27. The Receivers are the beneficiary of the totality of BGHI's assets. In addition, the Liquidator did not receive any written notices from additional claimants of the Petitioners within the two-month period, or, indeed, at any other time, after publication of the notices

in the Gazette. The Liquidator also conducted searches in the British Columbia Personal Property Registry for both of the Petitioners, which searches did not report any registrations filed against either of the Petitioners. Consequently, because the Receivers are the only parties with an interest in the BGHI Funds, and they would like the BGHI Invoices paid, the Liquidator has not undertaken a comprehensive investigation to determine whether BGHI is legally obligated to pay the BGHI Invoices.

First Report at paras 39, 40

Payments and Distributions to the Shareholder

BGHI

28. The Receivers have also requested that the Liquidator pay certain accounts of their legal counsel, Farris LLP (the "**BGHI Legal Accounts**"), which accounts had been rendered to BGHI.

First Report at para 48

29. Accordingly, the Receivers executed and provided to the Liquidator a Direction and Undertaking (the "**Direction**") authorising and directing the Liquidator to, *inter alia*, pay the BGHI Legal Accounts on account of PR Realisations. The Direction also included: (i) an acknowledgment by the Receivers that the liquidation of BGHI was not yet complete; and (ii) an undertaking that the Receivers would repay, or cause to be repaid, to the Liquidator all or any portion of the funds distributed to Farris LLP on account of the Direction upon the Liquidator's request.

First Report at para 49

30. In accordance with the Direction, the Liquidator distributed \$8,350 from the BGHI Funds to Farris LLP in payment of the BGHI Legal Accounts.

First Report at para 50

31. The Receivers also requested that the Liquidator make an interim distribution to BGHI's sole-shareholder, PR Realisations. Accordingly, the Liquidator paid \$3,570,000 to PR Realisations, and currently maintains a balance of approximately \$85,800 of the BGHI Funds in trust.

First Report at para 51

MHI

32. The Receivers have requested that the Liquidator pay certain legal accounts of their legal counsel, Farris LLP, which accounts had been rendered to MHI (the "**MHI Legal Accounts**").

First Report at para 52

33. In accordance with the Direction, the Liquidator distributed \$8,100 from the MHI Funds to Farris in respect of the MHI Legal Accounts.

First Report at para 53

34. The Liquidator currently maintains a total balance of approximately \$2,777,400 in trust for MHI. As the Liquidator is not aware of any creditors of MHI, the Liquidator will proceed to distribute available funds to PR Realisations, prepare the Liquidator's final accounts, and issue the requisite notice pursuant to section 341 of the *BCA*.

First Report at paras 53, 54

PART 3: LEGAL BASIS

Payment of the BGHI Invoices

1. The Liquidation Order provides, *inter alia*, that:

3. The Liquidator shall have all of the powers and authorities as provided under the *BCA* and such powers shall include (not necessarily be limited to) the following:

(f) to, in the Liquidator's own discretion, realize the assets of the Petitioners and distribute those assets among the Petitioners' creditors and then to John Milsom and David Standish as Receivers of Dr Gerald Martin Smith;

Liquidation Order at para 3(f)

2. The Liquidation Order also provides that the Liquidator may "apply for orders or directions in the course of the liquidation and dissolution of the Petitioners".

3. Section 325 of the *BCA* provides that this Court may “make any order it considers appropriate”, including:

(m) an order

(i) approving the payment, satisfaction or compromise of any or all of the liabilities of the company and the retention of assets for that purpose, or

(ii) determining the adequacy of provisions for the payment or discharge of the liabilities of the company;

BCA, s 325(3)(m)

Masala Bites Enterprises Ltd v Sohal,
2018 BCSC 1 at para 58

4. The BGHI Invoices were not rendered directly to BGHI and the Liquidator has not undertaken a comprehensive investigation to determine whether BGHI is legally responsible to pay the BGHI Invoices.
5. However, the Liquidator has not identified any other creditors of BGHI. Therefore, absent the payment of the BGHI Invoices, the Receivers are the beneficiary of the totality of BGHI's assets and, pursuant to subparagraph 3(f) of the Liquidation Order, are entitled to the residue of the BGHI Funds. Accordingly, no other creditors of BGHI would be prejudiced by the orders sought.
6. Moreover, the Whistler Property was beneficially owned by BGHI and that the BGHI Invoices should be paid by the Liquidator from the BGHI Funds. Consequently, the Receivers would also not be prejudiced by the payment of the BGHI Invoices.
7. Accordingly, payment of the BGHI Invoices is appropriate in the circumstances.

Accounts of the Liquidator and its Counsel

8. The Liquidation Order provides that:

8. Unless the Petitioners otherwise consent, the Liquidator and its legal counsel shall pass their accounts from time to time, and for

this purpose, the accounts of the Liquidator and its legal counsel are referred to a judge of the Supreme Court of British Columbia and may be heard on a summary basis.

Liquidation Order at para 8

9. The Receivers have consented to the Liquidator and its legal counsel dispensing with the passing of their accounts rendered to December 31, 2021. Accordingly, the Liquidator is not seeking approval of the accounts of the Liquidator and its legal counsel before this Court.

Dissolution of BGHI and Discharge of the Liquidator

10. The Liquidator's administration of BGHI has been substantially completed with the exception of the following matters:
- (a) distribution of the remaining amounts of the BGHI Funds and closing the Liquidator's trust account for BGHI; and
 - (b) preparing and filing of BGHI's final corporation income tax return to dissolution.

11. The Liquidation Order further provides that:

11. The Liquidator remains at liberty to apply for orders or directions in the course of the liquidation and dissolution of the Petitioners.

Liquidation Order at para 11

12. Section 341 of the *BCA* further provides that:

Completion of liquidation

341 (1) Within 3 months after making the distribution to shareholders required by section 330 (m), a liquidator must

- (a) prepare the final accounts of the liquidation showing how it has been conducted and how the assets of the company have been disposed of,
- (b) deposit those final accounts in the liquidation records office, and
- (c) send to each shareholder of the company a notice

(i) setting out the mailing address and the delivery address of the liquidation records office,

(ii) stating that the final accounts have been prepared and deposited in the liquidation records office,

(iii) stating that the final accounts will be open for inspection at the liquidation records office during statutory business hours for a period of at least 3 months after the date of the notice, and

(iv) stating that a shareholder of the company is entitled, on making a request within the 3 month period and without charge, to receive a copy of the final accounts from the liquidator.

(2) A liquidator must ensure that the final accounts referred to in subsection (1) (a) of this section are retained at the liquidation records office for at least 3 months after the date of the notice and must, without charge,

(a) permit each shareholder to inspect the final accounts during statutory business hours within the 3 month period, and

(b) send, to each shareholder who requests it within the 3 month period, promptly after the liquidator's receipt of the request, a copy of the final accounts.

(3) The liquidator must not apply for dissolution of the company under section 343 until the expiry of the 3 month period referred to in subsection (2) of this section.

[...]

BCA, s 341

13. In addition to complying with the obligations set out in section 341 of the *BCA*, the Liquidator must apply for an order of this Court approving the dissolution and, on such an application, this Court "may make any order it considers appropriate", including an order:

(a) approving the dissolution,

(b) respecting the custody or disposal of records referred to in section 351 (1) (a), and

(c) that the liquidator be discharged effective on the dissolution of the company, or at any other time ordered by the court, and, if the liquidator is discharged under this paragraph, section 350 (3) and (4) applies.

BCA, ss 341, 342

14. Accordingly, the Liquidator is seeking an order of this Court approving the dissolution of BGHI and authorising the Liquidator, after the expiry of the 3 month period set out in section 341(2) of the *BCA*, to file an application with the registrar for dissolution of BGHI.

PART 4: MATERIAL TO BE RELIED ON

1. First Report of the Liquidator to the Court dated February 14, 2022.
2. Such further and other materials as counsel may advise and this Court may permit.

The applicant estimates that the application will take 20 minutes.

This matter is 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 of record 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).

DATED: February 14, 2022



Counsel for MNP Ltd., in its capacity as
the court-appointed liquidator of Bryn
Gwyrdd Holdings Inc. and Mynddoedd
Holdings Inc.
McCarthy Tétrault LLP
(Forrest Finn)

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:

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DATED: _____ 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
- none of the above

SCHEDULE "A"

NO. S-210184
VANCOUVER REGISTRY

IN THE SUPREME COURT OF BRITISH COLUMBIA
IN THE MATTER OF BRYN GWYRDD HOLDINGS INC. and
MYNDDOEDD HOLDINGS INC.

PETITIONERS

ORDER MADE AFTER APPLICATION

BEFORE THE HONOURABLE

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)
)

FRIDAY THE 18TH DAY
OF FEBRUARY, 2022

ON THE APPLICATION of MNP Ltd., in its capacity as the court-appointed liquidator (in such capacity, the "**Liquidator**") of Bryn GwyRDD Holdings Inc. ("**BGHI**") and Mynddoedd Holdings Inc. (together with BGHI, the "**Petitioners**") coming on for hearing at Vancouver, British Columbia, on Friday, the 18th day of February, 2022.

AND ON READING the First Report of the Liquidator dated February 14, 2022 (the "**Report**");
AND ON HEARING Forrest Finn and Luke Morassut, articulated student, counsel for the Liquidator, and those other counsel listed on Schedule "A" hereto, and no one else appearing, although duly served.

THIS COURT ORDERS AND DECLARES THAT:

1. The activities of the Liquidator, as set out in the Report, are approved.
2. The Liquidator is authorized and directed to pay \$35,474.12 from the funds it holds in trust for BGHI to those parties and in the manner and amounts set out in Appendix "A" of the Report.

3. The dissolution of BGHI by the Liquidator following the 3 month notice period referred to in section 341 (2) of the *Business Corporations Act*, SBC 2002, c 57 is approved without further order.
4. Upon dissolution, the Liquidator is discharged as liquidator of BGHI.
5. The time for service of the application of the Liquidator is hereby abridged and deemed good and sufficient such that it is properly returnable today.
6. Endorsement of this Order by counsel appearing, other than counsel for the Liquidator, is hereby dispensed with.

THE FOLLOWING PARTIES APPROVE THE FORM OF THIS ORDER AND CONSENT TO EACH OF THE ORDERS, IF ANY, THAT ARE INDICATED ABOVE AS BEING BY CONSENT:

Signature of Lawyer for MNP Ltd., in its
capacity as the court-appointed liquidator of
Bryn Gwyrdd Holdings Inc. and Mynddoedd
Holdings Inc.
McCarthy Tétrault LLP
(Forrest Finn)

BY THE COURT

REGISTRAR

SCHEDULE "A"
LIST OF COUNSEL

NAME	PARTY REPRESENTED

No. S-210184
Vancouver Registry

IN THE SUPREME COURT OF BRITISH COLUMBIA

**IN THE MATTER OF BRYN GWYRDD HOLDINGS INC. and
MYNDDOEDD HOLDINGS INC.**

ORDER MADE AFTER APPLICATION

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Barristers & Solicitors
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