

THE KING'S BENCH
Winnipeg Centre

IN THE MATTER OF: THE APPOINTMENT OF A RECEIVER
PURSUANT TO SECTION 243 OF THE
BANKRUPTCY AND INSOLVENCY ACT, R.S.C.
1985, c. B-3, AS AMENDED AND SECTION 55 OF
THE COURT OF KING'S BENCH ACT, C.C.S.M.
c. C280

BETWEEN:

FIRST NATIONAL FINANCIAL GP CORPORATION,

Applicant.

- and -

5684995 MANITOBA LTD., 6315402 MANITOBA LTD. and
K&P PROPERTIES INC.,

Respondents.

AFFIDAVIT OF: PATRICK PENNER
AFFIRMED: October 21st, 2023

SMITH NEUFELD JODOIN LLP
Barristers and Solicitors
#85 PTH 12 North, Steinbach, Manitoba, R5G 1A7
GRANT M. DRIEDGER
Phone No. (204) 326-3442
EMAIL: gdriedger@snj.ca
File No. 107064-23/GMD

File No. CI 23-01-43002

THE KING'S BENCH
Winnipeg Centre

IN THE MATTER OF: THE APPOINTMENT OF A RECEIVER
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K & P PROPERTIES INC.

Respondents.

AFFIDAVIT OF PATRICK PENNER

I, PATRICK PENNER, of the City of Winnipeg in the Province of Manitoba,

AFFIRM AND SAY THAT:

1. I am a director of 5684995 MANITOBA LTD, which is a Manitoba corporation and a Respondent in the above action. I am also the sole director of K & P PROPERTIES INC., which is a Manitoba corporation and a Respondent in this action. As such I have personal knowledge of the facts and matters

hereinafter deposed to by me save and except where same are stated to be based upon information and belief, in which case I verily believe them to be true.

BACKGROUND

2. The Respondents are the legal and beneficial owners of certain real property, located at 737 - 743 Sargent Avenue, in the City of Winnipeg, and referred to as "the Property" in the Affidavit of Sonia Pacheco, sworn September 27, 2023. I agree with Ms. Pacheco's description of the Property as an apartment complex with 46 residential units.
3. I have no ownership interest in regards to the third Respondent, 6315402 MANITOBA LTD. ("631"). As noted in Ms. Pacheco's Affidavit, Mr. Doug Thiessen was the director and officer of 631. It is my understanding that Mr. Thiessen has made an assignment into bankruptcy.

CONTRACTUAL AGREEMENTS

4. I accept the information set out by Ms. Pacheco as to the contractual agreements between the Applicant and the Respondents.
5. The first approximately eight years in the history of the relationship between the Applicant and the Respondents were largely positive. The Property was first acquired and the loan agreements were entered into in August of 2011. Between then and 2019 payments were regularly made.

PAYMENT HISTORY

6. Though circumstances arose which led to some interruptions in the payment schedule in 2019, as set out in Ms. Pacheco's Affidavit, it is important to highlight that there was a lengthy history of orderly payments. It is also important to note that during the period of time from entering into the Forbearance Agreement in 2020 until May of 2022 the payments were generally made. The time period of difficulty with payment has been relatively short.
7. In reply to paragraph 37, the August 1st mortgage payment was made. Payments had always been made by Montrose taking payments directly out of a bank account. It was the same account for a long period of time, an account at the Steinbach Credit Union Ltd in the name of the Respondent K & P Properties. Funds were in the account for the September payment, as shown in the statement attached as Exhibit "A" to this Affidavit. Montrose simply did not take the payment. I do not know why they did not take it, no explanation was given to me. A short time after that payment was not taken I received the demand for payment in full of all amounts owed.

STATE OF THE PROPERTY

8. Ms. Pacheco's Affidavit raised concerns about the status of the Property. Those concerns were based primarily upon one newspaper article ("the Article") published in August of 2023.
9. At no time after the Article was published did anyone from the Applicant contact me to ask me about the status of the Property. The Article contained several inaccuracies. Rather than itemizing the inaccuracies, I will set out the status of the Property, with supporting documentation.
10. It is accurate that the City of Winnipeg issued a declaration requiring the Property be vacated. Since that was issued I have worked diligently to address the concerns, and bring the Property back into a condition that tenants can return, which would enable it to generate an income stream again. I believe it would be in the best interests of all stakeholders with an interest in the Property for the issues to be rectified, and for it to be rentable again. I am intimately familiar with the issues, and with the local contractors and local community. I believe that I am much more likely than an appointed Receiver to be able to do this in a timely manner.
11. Since the Property was vacated, I have hired security services to prevent vandalism and damage to the Property. The Property is in a rough neighbourhood. If it is vacant and unsupervised it will quickly deteriorate, and lose value.

12. I have hired a local individual, Ryan Fenwick, who knows the neighbourhood and is known in the neighbourhood, to monitor and secure the Property overnight. Attached as Exhibit B are a sampling of the reports from this individual. These cover the time period from August 21st to September 7th. I have similar reports for dates beyond that.
13. I have also hired a second individual, Dave Blundell, to provide security at times when Mr. Fenwick was not available. Between the two of them they have been effective in preserving the Property, which is not an easy thing to do in the inner city.
14. I have taken steps to attend to the issues raised by the City of Winnipeg. I have hired fire safety professionals who have been working on repairing the issues raised in regards to fire safety, the concerns identified in Ms. Pacheco's Affidavit. Attached at Exhibit C are two letters from "Pyrene Fire Security" outlining the deficiencies which have been corrected.
15. The Respondents have continued to maintain insurance on the Property. I have an active insurance claim in regards to the fire that occurred in August. Mr. Kevin Maryniuk from ClaimsPro has been appointed to adjust the claim. My expectation is that the insurance proceeds should generate revenue which would enable the Respondents to resume making payments until the Property is rented out again.

COMMUNICATIONS

16. In reply to the comments by Ms. Pacheo that I have not communicated with the Applicant, I would agree that has been true in recent months. However, that is not because I have not attempted to, or wanted to. During earlier periods of time I regularly communicated with Ms. Pacheo directly. Since the foreclosure process started Ms. Pacheo told me she cannot comment on properties that are subject to foreclosure, and therefore she could not communicate with me about this Property.

CONCERNS WITH APPOINTMENT OF RECEIVER

17. My concerns with having a receiver appointed is in regards to the cost of such a process, the speed at which a receiver may be able to rectify the City of Winnipeg's issues, and the overall efficiency and effectiveness of such a process.

18. As noted above, this Property is in a difficult neighbourhood. I am familiar with the area, having managed several properties (together with my wife) in the neighbourhood for a number of years. My local knowledge is an asset that a third party receiver simply does not possess.

19. I am also well aware of the issues that need to be fixed with the Property. I have been working on rectifying the fire safety issues, while also completing

the repairs needed as a result of the fire. I am hopeful that the Property can be open and rented out again by some point in December.

20. I was present in court on October 4th, 2023, when Mr. McFayden, counsel for the Applicant, made reference to other receivership applications which involved other properties that I had an interest in. One of the properties he referred to was a building located at 485 Furby, in Winnipeg, the other was at 480 Young, also in Winnipeg. Both of these are in the same general area, with similar local conditions, to the Property that is the subject of this proceeding.

21. The court appointed MNP as the Receiver of those properties, over my objections. I continue to pass by both of those properties regularly, several times per week, as I continue to manage other properties nearby. Since the Receiver was appointed the condition of both of those properties have declined.

22. In regards to 480 Young, I have driven and walked by that property several times each week in the months since MNP was appointed. It is a 24 unit building. At the time the receiver, MNP, was appointed, there were approximately 12 tenants occupying units. I have observed that it is not as safe as it was when we operated it. I have noted that the front door does not appear to be fixed, which makes it easy for anyone to come in. Tenants have

continued to communicate with me and my wife, from our history of working with them. They have expressed fears to us about the state of the building.

23. In regards to 485 Furby, I have driven and walked by that property several times each week in the months since MNP was appointed. Since MNP has been appointed it has deteriorated significantly. Tenants from a building I manage across the street regularly inform me of issues at 485 Furby. I have observed, or have been told, the following:

- a. The building remains vacant. It does not appear to have a security presence.
- b. There is graffiti, and it is not dealt with, which makes it clear to the public that it is vacant. Graffiti is a regular problem in this neighbourhood, but it is important to paint over it or remove it as quickly as possible.
- c. I have been told by people in the neighbourhood that copper wire and plumbing have been stolen from the interior of the building. I have fielded inquiries as to whether I would be interested in purchasing it back. People in the neighbourhood have told me that there is no copper left in the building.
- d. Individuals were living in and next to 485 Furby in September. I could see that people were living in the building. There were mattresses



outside of the building, and it was apparent that people were entering and exiting the building. I contacted MNP, and told them of that.

Several days later, the mattresses were removed, and the openings in the building were boarded up. Some time after the boards have been removed again, and people are able to freely enter and exit the building.

24. I say this not to criticize MNP. I accept that MNP is as qualified as any other potential third party receiver. However, I know how difficult it is to maintain and manage properties in inner city Winnipeg. Crime, vandalism and arson have become more severe in recent years. A property manager operating from a distant office struggles to stay on top of all the things that may occur. The knowledge of the local neighbourhood is a significant asset.

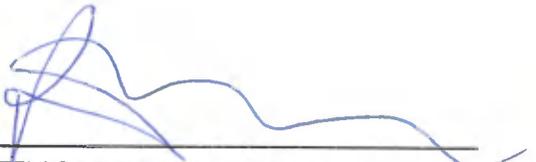
25. My fear is that this Property will deteriorate in the same way that 485 Furby has, and will then lose substantially all of its value.

26. The cost of appointing a receiver is also substantial. I believe the costs that the Receiver has incurred in regards to 480 Young and 485 Furby has been in the tens of thousands, if not over \$100,000.00. Those costs only serve to

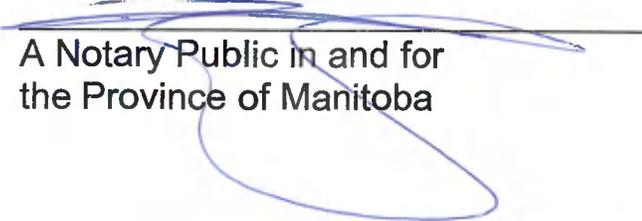
diminish the amount that is left over to pay the Applicant, and adds to the debts of the Respondents.

27. I make this Affidavit *bona fide* in opposition of the appointment of a receiver.

Affirmed before me at the
City of Steinbach, in the Province of Manitoba,
this 21st day of October, 2023.



PATRICK PENNER



A Notary Public in and for
the Province of Manitoba

Account Transactions

Select an account

737 743 Sargent
110474699664
-\$0.50

Sep 01, 2023 To Sep 01, 2023

Show All statement item

From Sep 01, 2023

To

Sep 01, 2023

Reset

Filter

Date	Description	Amount	Balance
Sep 01, 2023	Deposit Transfer from 110474780191	\$17,000.00	\$18,841.50

This is Exhibit "A" referred
to in the Affidavit of

Grant M. Driedger
Sworn/Affirmed before me this
21 day of Oct A.D. 2023



GRANT M. DRIEDGER
MANITOBA PRACTISING LAWYER
85 PTH 12N
STEINBACH, MANITOBA
R5G 1A7

Monday August 21/3023

Start : 530pm

Finish : 9am Tuesday morning

Gaurds :

Aaron

Ryan

This is Exhibit "B" referred
to in the Affidavit of

Grant M. Driedger
~~Sworn~~/Affirmed before me this
21 day of Oct A.D. 2023



GRANT M. DRIEDGER
MANITOBA PRACTISING LAWYER
85 PTH 12N
STEINBACH, MANITOBA
R5G 1A7

530pm - clear

630pm - clear

730pm - clear

830pm - little annoying dude complaining
and was trying doors left without incident

930pm - clear

1030pm - clear

1130pm - clear

1230am - clear

130am - clear

230am - clear

330am - clear

430am - clear

530am - clear

630am - clear

730am - clear

830am - clear

9am - clear

Hours for Monday night:

Aaron - 15

Ryan - 15

Tuesday August 22/2023

Start - 5pm

Finish - 9am Wednesday morning

Gaurds :

Aaron

Ryan

5pm - clear

6pm - clear

7pm - call from Karin concerning apartment 106. No one in suite or even was. Door was left unlocked by someone and a girl got in.. Incident done without any confrontation.

8pm - clear

9pm - clear

10pm - clear

11pm - clear

12am - clear

1am - clear

2am - clear

3am - clear

4am - clear

5am - clear

6am - clear

7am - clear

8am - clear

Tuesday August 22/23 to Wednesday

morning August 23/23 end of watch :

Ryan - 15

Aaron - 15

Wednesday August 23/2023

Start : 5pm

Finish : 8am

Gaurds :

Ryan fenwick

Arron syberg

5pm - clear

6pm - clear

7pm - clear

8pm - clear

9pm - clear

10pm - clear

1030pm - emergency call to police as
someone was in building not supposed to
be

11pm - clear

12am- clear

1am - clear

2am - clear

3am - clear

4am - clear

5am - clear

6am - clear

7am - clear

8am - clear

Hours for Wednesday night watch :

Aaron - 12

Ryan - 15

Thursday August 24/2023

Start time - 5pm

Finish - 8am Friday morning of August
25/2023

Gaurds :

Ryan - 15

Aaron 15

5pm - clear

6pm - clear

7pm - clear

8pm - clear

9pm - police came by for substance called
on ground from door to garbage .

Concerning citizen(s) had called.

10pm - clear

11pm - clear

12am - clear

1am - clear
2am - clear
3am - clear
4am - clear
5am - clear
6am - clear
7am - clear
8am - clear

Total hours for Thursday August 24/2023 :

Ryan - 15

Aaron - 15

Total hours for sargent watch as follows :
August 21/2023 -Thursday August 25/2023

Total hours for Ryan - 60

Total hours for Aaron - 57

Total = 117/hrs @ 40/hr = \$ 4,680.00

Invoiced August 25/2023 due on

August 25/2023

Start time : 5pm

Finish time : 8am

Gaurd(s)

Ryan

5pm - clear

6pm - clear

7pm - clear

8pm - clear

9pm - clear

10pm - clear

11pm - clear

12am - clear

1am - clear

2am - clear

3am - clear

4am - clear

5am - clear

6am - clear

7am - clear

8am - clear

Hours - 15

August 26 2023

Start time : 5pm

Finish time : 8am

Gaurd(s)

Ryan

5pm - clear

6pm - clear

7pm - clear

8pm - clear

9pm - clear

10pm - clear

11pm - clear

12am - clear

1am - clear

2am - clear

3am - clear

4am - clear

5am - clear

6am - clear

7am - clear

8am - clear

Hours - 15

August 27 2023

Start time : 5pm

Finish time : 8am

Gaurd(s) :

Ryan

5pm - clear

6pm - clear

7pm - clear

8pm - clear

9pm - clear

10pm - clear

11pm - clear

12am - clear

1am - clear

2am - clear

3am - clear

4am - clear

5am - clear

6am - clear

7am - clear

8am - clear

Hours - 15

August 28 2023

Start time : 5pm

Finish time : 8am

Gaurd(s)

Ryan

5pm - clear

6pm - clear

7pm - clear

8pm - clear

9pm - clear

10pm - clear

11pm - clear

12am - clear

1am - clear

2am - clear

3am - clear

4am - clear

5am - clear

6am - clear

7am - clear

8am - clear

Hours - 15

August 29 2023

Start time : 5pm

Finish time : 8am

Gaurd(s)

Ryan

5pm - clear

6pm - clear

7pm - clear

8pm - clear

9pm - clear

10pm - clear

11pm - clear

12am - clear

1am - clear

2am - clear

3am - clear

4am - clear

5am - clear

6am - clear

7am - clear

8am - clear

Hours - 15

August 30 2023

Start time : 5pm

Finish time : 8am

Gaurd(s)

Ryan

5pm - clear

6pm - clear

7pm - clear

8pm - clear

9pm - clear

10pm - clear

11pm - clear

12am - clear

1am - clear

2am - clear

3am - clear

4am - clear

5am - clear

6am - clear

7am - clear

8am - clear

Hours - 15

August 31 2023

Start time : 5pm

Finish time : 8am

Gaurd(s)

Ryan

5pm - clear

6pm - clear

7pm - clear

8pm - clear

9pm - clear

10pm - clear

11pm - clear

12am - clear

1am - clear

2am - clear

3am - clear

4am - clear

5am - clear

6am - clear

7am - clear

8am - clear

Hours - 15

September 1 2023

Start time : 5pm

Finish time : 8am

Gaurd(s)

Ryan

5pm - clear

6pm - clear

7pm - clear

8pm - clear

9pm - clear

10pm - clear

11pm - clear

12am - clear

1am - clear

2am - clear

3am - clear

4am - clear

5am - clear

6am - clear

7am - clear

8am - clear

Hours - 15

September 2 2023

Start time : 5pm

Finish time : 8am

Gaurd(s)

Ryan

5pm - clear

6pm - clear

7pm - clear

8pm - clear

9pm - clear

10pm - clear

11pm - clear

12am - clear

1am - clear

2am - clear

3am - clear

4am - clear

5am - clear

6am - clear

7am - clear

8am - clear

Hours - 15

September 3 2023

Start time : 5pm

Finish time : 8am

Gaurd(s)

Ryan

5pm - clear

6pm - clear

7pm - clear

8pm - clear

9pm - clear

10pm - clear

11pm - clear

12am - clear

1am - clear

2am - clear

3am - clear

4am - clear

5am - clear

6am - clear

7am - clear

8am - clear

Hours - 15

September 4 2023

Start time : 5pm

Finish time : 8am

Gaurd(s)

Ryan

5pm - clear

6pm - clear

7pm - clear

8pm - clear

9pm - clear

10pm - clear

11pm - clear

12am - clear

1am - clear

2am - clear

3am - clear

4am - clear

5am - clear

6am - clear

7am - clear

8am - clear

Hours - 15

September 5 2023

Start time : 5pm

Finish time : 8am

Gaurd(s)

Ryan

5pm - clear

6pm - clear

7pm - clear

8pm - clear

9pm - clear

10pm - clear

11pm - clear

12am - clear

1am - clear

2am - clear

3am - clear

4am - clear

5am - clear

6am - clear

7am - clear

8am - clear

Hours - 15

September 6 2023

Start time : 5pm

Finish time : 8am

Gaurd(s)

Ryan

5pm - clear

6pm - clear

7pm - clear

8pm - clear

9pm - clear

10pm - clear

11pm - clear

12am - clear

1am - clear

2am - clear

3am - clear

4am - clear

5am - clear

6am - clear

7am - clear

8am - clear

Hours - 15

September 7 2023

Start time : 5pm

Finish time : 8am

Gaurd(s)

Ryan

5pm - clear

6pm - clear

7pm - clear

8pm - clear

9pm - clear

10pm - clear

11pm - clear

12am - clear

1am - clear

2am - clear

3am - clear

4am - clear

5am - clear

6am - clear

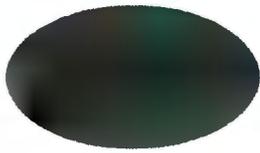
7am - clear

8am - clear

Total hours for Sargent watch September 1
to September 7 2023:

105

Total invoice amount : \$1500



PYRENE FIRE SECURITY MAN.

16 Mazenod Road, Unit # 6, Winnipeg, Manitoba R2J 4H2 Tel: (204) 783-0470 Fax: (204) 783-1130

6330780 Manitoba Ltd. o/a Harpenn Construction Inc.
P.O. Box 285, 971 Corydon Avenue
Winnipeg, Manitoba
R2M 3S7

pkharpenn@shaw.ca

Attention: Patrick Penner

Subject: Adnac Apartments, 737-743 Sargent Avenue

The following deficiencies have been corrected as of October 10, 2023 from the annual emergency lighting systems inspection report dated August 24, 2023:

(6.5.1.6. 2) b) Master units as listed on the individual device record failed duration test; recommend battery replacement. (NBC 3.2.7.4. 1) a) Master units 743 Sargent main floor by front door, 737 Sargent 3rd floor by stairs and 737 Sargent storage center west are damaged; recommend replacement. (MFC 6.5.1.6. 1)) Master unit 737 Sargent storage room west is missing; recommend replacement.

If you have any questions, please do not hesitate to contact our office, or e-mail Andrew Palyszniuk at apalyszniuk@pyrene.ca

Yours truly,

Andrew Palyszniuk
Fire Alarm Division Manager

This is Exhibit "C" referred
to in the Affidavit of

Grant M. Driedger
Sworn/Affirmed before me this
21 day of October A.D. 2023

GRANT M. DRIEDGER
MANITOBA PRACTISING LAWYER
85 PTH 12N
STEINBACH, MANITOBA
R5G 1A7



PYRENE FIRE SECURITY MAN.

16 Mazenod Road, Unit # 6, Winnipeg, Manitoba R2J 4H2 Tel: (204) 783-0470 Fax: (204) 783-1130

6330780 Manitoba Ltd. o/a Harpenn Construction Inc.
P.O. Box 285, 971 Corydon Avenue
Winnipeg, Manitoba
R2M 3S7

pkharpenn@shaw.ca

Attention: Patrick Penner

Subject: Adnac Apartments, 737-743 Sargent Avenue

The following deficiencies have been corrected as of October 10, 2023 from the annual fire alarm system inspection report dated August 24, 2023:

(5.7.1.3) Heat detector 743 Sargent hot water tank room is missing; recommend replacement. (5.7.1.1 a) Devices 743 Sargent 2nd floor center hall, 737 Sargent 3rd floor top of stairs and 743 Sargent 3rd floor north are damaged; recommend replacement. (5.7.1.1 c) Devices 737 Sargent 3rd floor top of stairs, 737 Sargent basement southwest and 737 Sargent 2nd floor north are improperly mounted; recommend re-mounting. (5.7.1.1 b) Manual pull station 743 Sargent main floor by front door and horn 743 Sargent 3rd floor south are painted; recommend replacement.

If you have any questions, please do not hesitate to contact our office, or e-mail Andrew Palyszniuk at apalyszniuk@pyrene.ca

Yours truly,

Andrew Palyszniuk
Fire Alarm Division Manager