

2023

Hfx No.

Supreme Court of Nova Scotia
In Bankruptcy and Insolvency

In the Matter of the Receivership of Stone Brothers Plumbing & Heating Limited

Between:

Business Development Bank of Canada

Applicant

- and -

Stone Brothers Plumbing & Heating Limited

Respondent

Sale Approval and Vesting Order

**Sale of Real Property at 609 Keltic Drive, Coxheath, Nova Scotia,
PID 15221642 to 4374300 Nova Scotia Limited**

Before the Honourable _____ in chambers:

UPON MOTION of MNP Ltd. (the “Receiver”) in its capacity as Court-appointed receiver of all of the assets, undertakings and properties of Stone Brothers Plumbing & Heating Limited (the “Company”) for an Order:

- (i) abridging the time for service, to the extent required, so that this application is properly returnable on August 16, 2023;
- (ii) approving the sale transaction (the “Transaction”) contemplated by an agreement of purchase and sale dated June 6, 2023 (the “APS”) between the Receiver and 4374300 Nova Scotia Limited (the “Purchaser”) and transferring to the Purchaser all of the Company’s and the Receiver’s right, title and interest in and to certain real property described in the APS, located at 609 Keltic Drive, Coxheath, Nova Scotia property identification (PID) number 15221642, more particularly described in Scheduled “A” hereto (the “Purchased Assets”); and
- (iii) vesting and transferring the Company’s and the Receiver’s right, title and interest in and to the Purchased Assets in the Purchaser or the Purchaser’s assignee, nominee or designate, as the case may be, free and clear of all Claims as defined below.

AND UPON READING the affidavits of Michelle Bursey, Senior Account Manager with BDC, Eric Findlay, Senior Vice President of MNP Ltd., and Marc Dunning, counsel for BDC, and other material on file herein;

IT IS HEREBY ORDERED THAT:

1. The time for service of the Notice of Application is hereby abridged, to the extent required, and validated so that this application is properly returnable today and further service thereof is hereby dispensed with.
2. Unless otherwise indicated or defined herein, capitalized terms used in this Order shall have the meanings given to them in the APS.
3. The Transaction is hereby approved and the execution and delivery of the APS by the Receiver is hereby authorized and approved, with such minor amendments as the Receiver and the Purchaser may agree to. The Receiver is hereby authorized and directed to take such additional steps and execute such additional documents, including a deed, bill of sale, assignment or general conveyance document, as may be necessary or desirable for the completion of the Transaction and for the conveyance of the Purchased Assets to the Purchaser or its assignee, nominee or designate, as the case may be, pursuant to the APS.
4. Upon the delivery of a Receiver's Deed and Receiver's Certificate, substantially in the form attached as Schedule "B" hereto (the "Receiver's Certificate"), to the Purchaser or its assignee, nominee or designate as the case may be, and closing the Transaction in accordance with the APS, all of the Company's and the Receiver's right, title and interest in and to the Purchased Assets shall vest absolutely in the Purchaser or its assignee, nominee or designate as the case may be, free and clear of and from any and all security interests (whether contractual, statutory or otherwise), liens, executions, levies, charges or other financial or monetary claims whether or not they have attached or been perfected, registered or filed and whether secured, unsecured or otherwise including, without limiting the generality of the foregoing any encumbrances or charges created by the Receivership Order issued by this Honourable Court in this proceeding, and all charges, security interests or claims evidenced by registrations pursuant to the *Personal Property Security Act* (Nova Scotia), *Land Registration Act* (Nova Scotia) or any other personal or real property registry system (all of which are collectively referred to as the "Claims").

5. With respect to the Purchased Assets as more particularly described in Schedule "A" hereto:

- (i) the interests of the Company and the Receiver shall vest in the Purchaser subject to any applicable permitted encumbrances, easements or restrictive covenants listed in Schedule "C" hereto and any obligations or liabilities assumed by the Purchaser or its assignee, nominee or designate pursuant to the APS; and
- (ii) upon the registration of a Form 24 attaching a certified copy of this Sale Approval and Vesting Order and the Receiver's Certificate, with an applicable certificate of legal effect from the recording solicitor, in the applicable Land Registration Office, the Registrar for that Registration District shall remove and release all applicable registered Encumbrances listed in Schedule "D" hereto, leaving in place only those permitted encumbrances, easements and restrictive covenants listed on Schedule "C" hereto.

6. For the purposes of determining the nature and priority of any Claims by operation of this Order, the net proceeds from the sale of the Purchased Assets shall stand in the place and stead of the Purchased Assets, and from and after the closing of the Transaction, all Claims shall attach to the net proceeds from the sale of the Purchased Assets with the same priority as they had with respect to the Purchased Assets immediately prior to the closing of the Transaction. Without limiting the generality of the foregoing, the Receiver shall pay to the Cape Breton Regional Municipality from the net proceeds of the Transaction property taxes owing pursuant to the *Municipal Government Act*, sections 123-127.

7. Notwithstanding the pendency of these proceedings, the entering into of the APS, the transfer of the Purchased Assets to the Purchaser or its assignee, nominee or designate as the case may be, and the vesting of the Purchased Assets in the Purchaser, or its assignee, nominee or designate as the case may be, pursuant to this Order, shall be binding on any trustee in bankruptcy appointed in respect of the Company and shall not be void or voidable by creditors of the Company, nor shall it constitute nor be deemed to be a fraudulent preference, assignment, fraudulent conveyance, transfer at undervalue, or other reviewable transaction under the BIA, any other applicable federal or provincial legislation or otherwise at law or equity, nor shall it constitute oppressive or unfairly prejudicial conduct pursuant to any applicable federal or provincial legislation.

8. This Court hereby requests the aid and recognition of any court, tribunal,

registrar, regulatory or administrative body having jurisdiction in Canada or in the United States to give effect to this Order and to assist the Receiver and its agents in carrying out the terms of this Order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Receiver as an officer of this Court as may be necessary or desirable to give effect to this Order or to assist the Receiver and its agents in carrying out the terms of this Order.

ISSUED at Halifax, Province of Nova Scotia, this ___ day of August, 2023.

Prothonotary

Schedule "A"
Purchased Assets

PID 15221542

All that certain lot, piece or parcel of land situate, lying and being on the south western side of the North Sydney Road between Coxheath and Ball's Creek, in the County of Cape Breton, in the Province of Nova Scotia, and being more particularly described as follows:

BEGINNING at a point on the south western boundary line of the Sydney - North Sydney Highway between Coxheath and Ball's Creek said point being the intersection of the south western boundary line of the said Sydney - North Sydney highway and the north western side of lot of land deeded by Walter W. McKinlay et ux to Annie Lewis McDonald by deed dated the 13th of August 1942, said deed being recorded in the Registry of Deeds Office, Sydney, Nova Scotia, in book 396, at pages 746 et seq;

THENCE south westerly along said north western side of said lot of Annie Lewis McDonald a distance of four hundred and sixteen (416') feet;

THENCE north easterly a distance of four hundred and eight (408') feet more or less to a point on the south western boundary line of said Sydney and North Sydney Highway to a point eighty (80') feet southerly from the place of beginning;

THENCE northerly along the south western boundary of said highway a distance of eighty (80') feet to the place of beginning;

Note: the above lot being a portion out of the north eastern part of a lot of land deeded by Walter W. McKinlay to Annie Lewis McDonald by deed dated the 13th day of August, 1942, said deed being recorded in the Registry of Deeds Office, Sydney, Nova Scotia, in book 396, page 746 et seq.

Reg. Ref: 1676/813

*** Municipal Government Act, Part IX Compliance ***

Compliance:

The parcel originates with an instrument (registration details below) and the subdivision is validated by Section 291 of the Municipal Government Act

Registration District: CAPE BRETON COUNTY

Registration Year: 1952

Book: 541 Page: 182 Document Number: 1247

Schedule "B"
Receiver's Certificate

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- and -

Stone Brothers Plumbing & Heating Limited

Respondent

Receiver's Certificate

RECITALS:

A. Pursuant to an Order of the Supreme Court of Nova Scotia issued in the within proceeding dated August __, 2023 (the "Receivership Order"), MNP Ltd. (the "Receiver") was appointed receiver of all of the assets, undertakings and properties of Stone Brothers Plumbing & Heating Limited (the "Company");

B. The Receiver and 4374300 (the "Purchaser") have entered into an accepted agreement of purchase and sale dated June 6, 2023 (the "APS") in respect of certain real property owned by the Company at 609 Keltic Drive, Coxheath, Nova Scotia, property identification (PID) number 15221542 (the "Purchased Assets"); and

C. The Order of this Court issued on August __, 2023, provided for the sale of the Purchased Assets to the Purchaser (hereinafter the "Grantee"), vesting the right, title and interest of the Receiver and the Company in the Purchaser or its assignee, nominee or designate, as the case may be, free and clear of all claims to be effective with respect to the Purchased Assets upon delivery by the Receiver to the Grantee of a certificate in this form.

THE RECEIVER CERTIFIES as follows:

1. Grantee has paid and the Receiver (or its agent) has received the purchase price for the Purchased Assets payable pursuant to the APS.
2. The conditions to closing the sale of the Purchased Assets as set out in the APS have been satisfied or waived by the Receiver and the Grantee.
3. The sale of the Purchased Assets as contemplated by the APS has been completed to the satisfaction of the Receiver.

Dated the __ day of _____, 2023

MNP Ltd. in its capacity as Court-appointed
Receiver of Stone Brothers Plumbing &
Heating Limited and not in its personal capacity
Per

Name:

Title:

Schedule "C"
Permitted Encumbrances

As against PID 15221542:

<u>Interest Holder</u>	<u>Type</u>	<u>Date Registered</u>	<u>Document #</u>
None			

Schedule "D"
Encumbrances to be Discharged as Against the Purchased Assets

Land Registration Act (Nova Scotia)

As against PID 15221542:

<u>Interest Holder</u>	<u>Type</u>	<u>Date Registered</u>	<u>Document #</u>
Business Development Bank of Canada	Mortgage	April 27, 2017	110660173
Ambrose Stone, Joseph Stone, Jean Frost-Stone, Jeannie Stone, Joseph Stone Family Trust (2005) and Ambrose Stone Family Trust (2005)	Mortgage	April 28, 2017	110669596
Canada Revenue Agency	Judgment	August 12, 2022	121118138
MNP Ltd.	Receivership Order	Yet to be registered	Yet to be registered