

COURT FILE NUMBER Q.B. No. 1455 of 2019

COURT OF QUEEN'S BENCH FOR SASKATCHEWAN

JUDICIAL CENTRE SASKATOON

IN THE MATTER OF SECTION 204 OF *THE BUSINESS CORPORATIONS ACT*, RSS 1978, c B-10

AND IN THE MATTER OF THE VOLUNTARY LIQUIDATION AND DISSOLUTION OF PRIMEWEST
MORTGAGE INVESTMENT CORPORATION

NOTICE OF APPLICATION

(Advice and Directions)

NOTICE TO RECIPIENTS LISTED ON THE SERVICE LIST FILED HEREWITH

This application is made against you. You are a respondent.

You have the right to state your side of this matter before the Court. To do so, you must be in Court when the application is heard as shown below:

Where: 520 Spadina Crescent East, Saskatoon, SK

Date: ***To be determined by direction of the Court.***

Time: ***To be determined by direction of the Court.***

(Read the Notice at the end of this document to see what else you can do and when you must do it.)

Definitions:

1. All capitalized terms used and not otherwise defined herein shall have the same meanings as defined in the Liquidation Plan (the "**Liquidation Plan**"), as appended as Schedule "A" to the Order of the Honourable Mr. Justice N.G. Gabrielson dated October 31, 2019, the Amended and Restated Order of the Honourable Mr. Justice N.G. Gabrielson dated November 25, 2019 (collectively, the "**Liquidation Order**"), and the Claims Process Order of the Honourable Mr. Justice N.G. Gabrielson dated January 10, 2020 (the "**Claims Process Order**").

Remedy claimed or sought:

2. The Applicant, KPMG Inc., in its capacity as liquidator (the "**Liquidator**") of PrimeWest Mortgage Investment Corporation, seeks an Order:
 - a. abridging the time for service of this Notice of Application and the materials filed in support thereof (to the extent required);
 - b. providing the Liquidator with advice and directions of the Court in the discharge of its powers pursuant to the Liquidation Order and the Claims Process Order and providing the Liquidator with assistance in carrying out the terms of the Liquidation Order and the Claims Process Order; and
 - c. declaring that the allegations against Dan Anderson, Tom Archibald, Francis Bast, et al. in Q.B. No. 1727 of 2018 (the "**Class Action**") constitute a Claim pursuant to and subject to the Claims

Process Order, and that all matters and issues in regard to the Action shall be determined in the Liquidation Proceedings in such manner and procedure as prescribed by further Order of this Honourable Court.

Grounds for making this application:

The Advice and Directions of the Court are Required to Assist and Enable the Liquidator to Carry Out Its Mandate

3. Merchant Law Group LLP (“**MLG**”) has, on several occasions and by diverse methods, purported to request this Honourable Court to declare that the Action is excluded from the Liquidation Proceedings (the “**Merchant Issue**”).
4. In particular, on January 30, 2020, MLG delivered to counsel for the Liquidator an Appearance Day Notice requesting that the Merchant Issue be heard via telephone conference by Mr. Justice Gabrielson. On February 4, 2020, counsel for the Liquidator wrote to the Local Registrar, indicating that, while the Liquidator took no issue with the Merchant Issue being placed before the Court for determination, it ought to be determined by way of a scheduled hearing, rather than an Appearance Day Notice. A hearing of the Merchant Issue was subsequently scheduled before Mr. Justice Gabrielson to be heard on March 19, 2020.
5. On March 17, 2020, two days prior to the hearing scheduled in regard to the Merchant Issue, Anthony Merchant, Q.C., sent a letter to the Local Registrar requesting an adjournment of the hearing “...until a date when we can appear before Mr. Justice Gabrielson in chambers”—presumably due to the Covid-19 pandemic and the imminent Court shutdown for non-urgent matters. Counsel to the Liquidator consented to the adjournment under the circumstances.
6. On May 7, 2020, Mr. Merchant, Q.C., sent a letter to the Local Registrar requesting that the Merchant Issue be “scheduled quickly for a half day argument”, which letter included a handwritten exhortation that “This qualifies for an immediate in person [sic] hearing...”—presumably to indicate that the matter qualified as “urgent” for the purposes of the directive of Chief Justice Popescul that hearings during the Covid-19 shutdown be restricted to urgent matters only.
7. In response to the May 7 request of MLG, on May 11, 2020, the Local Registrar wrote to all counsel (including counsel to the Defendants in the Action) to request counsel’s availability for a conference call with Justice Gabrielson—presumably to discuss scheduling matters. As at May 12, 2020, all counsel responded to the Local Registrar indicating their availability for the conference call, except for MLG. As at the date of this application, no response has been sent to the Local Registrar by MLG and, therefore, the status of the Merchant Issue, including in regard to scheduling and, moreover, whether the Merchant Issue is even properly before the Court, is “in limbo”.
8. The term “Claim” is defined at Article 1.1 of the Liquidation Plan, which definition was adopted in the Claims Process Order. A Claim includes “...any right of any Person against the Corporation in connection with any indebtedness, liability or obligation of any kind of the Corporation and any interest accrued thereon or costs payable in respect thereof, whether liquidated, unliquidated, reduced to judgment, fixed, contingent, matured, unmatured, disputed, undisputed, legal, equitable, secured, unsecured, present, future, known or unknown, by guarantee, surety or otherwise, and whether or not such right is executory or anticipatory in nature, including any claim made or asserted against the Corporation through any affiliate or associate or any right or ability of any Person to advance a claim for contribution or indemnity or otherwise with respect to any matter, action, cause or chose in action, whether existing at present or commenced in the future with respect to any matter, action, cause or chose in action; and any existing or future right of any Person against any one or more of the Directors which arose or arises as a result of such Director’s position, supervision, management or involvement as a Director or otherwise in any other capacity in connection with the Corporation, whether such right, or the circumstances giving rise to it, arose before or after the Effective Date and whether enforceable in any civil, administrative or criminal proceeding”.

9. Amongst the duties that the Liquidator must fulfil pursuant to the Claims Process Order is the requirement to review all Claims received on or before the Claims Bar Date (which was March 10, 2020), and then to accept, revise or reject each such Claim, in the case of a Claim against any of the Directors, no later than May 10, 2020, and, in the case of all other Claims, no later than June 11, 2020. Where the Liquidator deems that it is unable to accept, revise or reject a Claim summarily, then the Liquidator is required to refer such Claim to the Court.
10. The Liquidator has determined that the allegations contained in the Action constitute a Claim. The effect of such determination leaves the following matters "in limbo" and compels the Liquidator to seek the advice and direction of the Court, namely:
 - a. MLG has not filed a Claim in regard to the Action, notwithstanding that, as a matter of the Liquidator's interpretation of the Claims Process Order, it ought to have done so on or before the Claims Bar Date, being March 10, 2020;
 - b. the Defendants to the Action, i.e., certain former Directors and Ernst & Young Inc., each delivered Claims on or before the Claims Bar Date against the Corporation in regard to the Action; and
 - c. the Liquidator is required to address all Claims in regard to the Action in order to fulfil all of its duties under the Claims Process Order and, ultimately, its mandate in the Liquidation Proceedings.
11. Based on all of the foregoing, the Liquidator seeks the advice and directions of this Honourable Court in the form of the relief sought and described above.

Material or evidence to be relied on:

12. Notice of Application dated May 22, 2020;
13. Affidavit of Natasha Halvorson dated May 22, 2020;
14. Order (Advice and Directions);
15. Brief of Law;
16. The pleadings and proceedings herein; and
17. such further and other materials as this Honourable Court may allow.

Applicable Rules:

18. None.

Applicable Acts and Regulations:

19. *The Business Corporations Act*, RSS 1978, c B-10.

DATED at Saskatoon, Saskatchewan, this 22nd day of May, 2020.

THE W LAW GROUP LLP



Per: _____
Mike Russell and Nick Conlon,
Solicitors for the Applicant, KPMG Inc.

This Notice of Application was delivered by:

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TO: ALL RECIPIENTS LISTED ON THE SERVICE LIST