

2018

Hfx No. 474742



IN THE SUPREME COURT OF NOVA SCOTIA  
(In Bankruptcy and Insolvency)

BETWEEN:

**FIRST NATIONAL FINANCIAL GP CORPORATION and  
FIRST NATIONAL FINANCIAL LP**

Applicants

-and-

**3291735 NOVA SCOTIA LIMITED**

Respondent

**AMENDED NOTICE OF APPLICATION IN CHAMBERS**

**TO: 3291735 Nova Scotia Limited**

1021 Beaufort Avenue  
Halifax NS B3H 3Y1  
Attn: E. David Bryson, President  
By Email: [davidbryson77@gmail.com](mailto:davidbryson77@gmail.com)

**To: Canadian Western Trust Company**

c/o Cyril Randall BoyneClarke LLP  
99 Wyse Road, Suite 600 Dartmouth  
Nova Scotia, B3A 4S5  
By Email: [crandall@boyneclarke.ca](mailto:crandall@boyneclarke.ca)

**To: N. L. Bryson**

1021 Beaufort Avenue  
Halifax NS B3H 3Y1

**To: Halifax County Condominium Corporation No. 412**

1021 Beaufort Avenue Halifax NS B3H 3Y1  
Attn: E. David Bryson, President  
By Email: [davidbryson77@gmail.com](mailto:davidbryson77@gmail.com)

2040795

**To: KSV Kofman Inc.**

150 King Street West, Suite 2308  
Toronto ON M5H 1J9  
Attn: Noah Goldstein, Managing Director  
By Email: [ngoldstein@ksvadvisorv.com](mailto:ngoldstein@ksvadvisorv.com)  
And: Robert Kofman, President  
By Email: [bkofman@ksadvisory.com](mailto:bkofman@ksadvisory.com)

**To: The Office of the Superintendent of Bankruptcy Canada**

Room 1605, Maritime Centre  
1505 Barrington Street  
Halifax, Nova Scotia B3J 3K5  
By Email: [ic.osbhalifax-bsfhalifax.ic@canada.ca](mailto:ic.osbhalifax-bsfhalifax.ic@canada.ca)

**The Applicants, First National Financial GP Corporation and First National LP request and Order, and the Applicant (proposed) Receiver, KSV Kofman Inc., also requests an Order as set forth below**

**Application No. 1**

**TAKE NOTICE THAT** the Applicants, First National Financial GP Corporation and First National Financial LP (collectively, "First National"), make application for an Order appointing KSV Kofman Inc. (the "Receiver") as Receiver of all of the property, assets, and undertaking of the Respondent 3291735 Nova Scotia Limited (the "Company").

(hereinafter, the "Receivership Order")

**Application No. 2**

**AND TAKE NOTICE THAT,** should the Receivership Order be granted, the Receiver shall immediately move for an Order approving its proposed process for the sale of the Respondent's properties situate at 1017-1021 Beaufort Avenue, Halifax, Halifax Regional Municipality, Nova Scotia, being PIO Nos. 41457615; 41457623; 41457631; 41457649; 41457656; and 41457664.

(hereinafter, the "Sale Process Order")

First National started this application by filing this notice on the date certified by the Prothonotary.

## **Grounds for Order**

First National is applying for the Receivership Order, and the Receiver is applying for the Sale Process Order on the following grounds:

See **Schedule "A"** attached.

## **Evidence Supporting Applications**

First National offers the following Affidavits in support of the Application for the Receivership Order:

- (i) Affidavit of Chris Sebben; and
- (ii) Affidavit of Stephen Kingston.

A copy of each Affidavit is to be delivered to you with this notice, and further Affidavits may be delivered before the deadlines provided in Civil Procedure Rule 5 - Application.

## **You may participate**

You may file with the Court a notice of contest and any Affidavits upon which you rely, no more than 5 days after this notice is delivered to you or you are otherwise notified of the Applications. Filing the notice of contest entitles you to notice of further steps in the Applications, including notice of, further Affidavits.

## **Time, date, and place**

The Applications are to be heard by the judge in chambers at **9:30 am on Friday, May 11, 2018** in the Law Courts, 1815 Upper Water Street, Halifax, Nova Scotia. You have the right to be present and to be represented by counsel or to act on your own. If you are not present, the judge may proceed without you.

First National and the Receiver have set these two (2) matters for hearing in a total of a half-hour or less in Chambers. First National and the Receiver say that the Applications will not require more time.

## **Possible Orders against you**

The judge may grant a final Order on the Application without further notice to you if you fail to deliver your notice of contest on time, or if you or your counsel fails to appear in Chambers at the above time, date, and place.

## Filing and delivering documents

Any documents you file with the court must be filed at the office of the Prothonotary 1815 Upper Water Street, Halifax, Nova Scotia (telephone No. 902-424-4900).

When you file a document you must immediately deliver a copy of it to First National, the Receiver and each other party entitled to notice, unless the document is part of an *ex parte* motion, the parties agree delivery is not required, or a judge orders it is not required.

### Contact information

First National and the Receiver designate the following address:

D. Bruce Clarke, Q.C.  
Burchells LLP  
1800-1801 Hollis Street  
Halifax NS B3J 3N4

Documents delivered to this address are considered received by the Applicants. Further contact information is available from the Prothonotary.

### Signature

Signed May 3, 2018




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D. Bruce Clarke, Q.C.  
Burchells LLP  
1800-1801 Hollis Street  
Halifax NS B3J 3N4  
Tel: (902) 423-6361  
Fax: (902) 420-9326  
Email: [bclarke@burchells.ca](mailto:bclarke@burchells.ca)

Counsel for First National Financial GP Corporation and First National Financial LP, and KSV Kofman Inc. as prospective Court Appointed Receiver for 3291735 Nova Scotia Limited

### Prothonotary's Certificate

I certify that this Amended Notice of Application in Chambers was filed with the Court on May 3, 2018.




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Prothonotary

**JESSICA BOUTILIER**  
Deputy Prothonotary

## SCHEDULE "A"

1. The Applicants, First National Financial GP Corporation and First National Financial LP (collectively, "First National") are bodies corporate and are registered to carry on business in the Province of Nova Scotia.
2. The Respondent 3291735 Nova Scotia Limited (the "Company") is a body corporate incorporated pursuant to the laws of the Province of Nova Scotia.
3. The Company is indebted to First National pursuant to a Letter of Offer dated October 19, 2015 as amended by Letters dated January 5, 2016 and April 29, 2016 (collectively "the Commitment Letter"), each of which was accepted by the Company.
4. The Company's obligations to First National pursuant to the Commitment Letter are secured by:
  - (i) A Mortgage (the "Mortgage") granted by the Company to First National dated May 17, 2016 and recorded at the Land Registration Office for Halifax County (the "Registry") as Doc. No. 109006891. The Mortgage by its terms secures a principal debt of \$3,225,000.00 as against the Company's properties at 1017- 1021 Beaufort Avenue, Halifax, Nova Scotia (being PIO Nos. 00052357; 00052340; and 40259095 (the "Properties")). The Properties now comprise Units 1 – 6 of Halifax County Condominium Corporation No. 412, being PIO Nos. 41457615; 41457623; 41457631; 41457649; 41457656; and 41457664;
  - (ii) A Security Agreement (the "GSA") dated October 26, 2015, a Financing Statement for which was recorded pursuant to the *Personal Property Security Act* on May 20, 2016 as Reg. No. 25978636;
  - (iii) A General Assignment of Rents dated May 17, 2016, recorded at the Registry on May 27, 2016 as Doc. No. 109006907;
  - (iv) The joint and several Guarantees of E. David Bryson and E.B.F. Manufacturing Limited, each dated October 26, 2015;
  - (v) A General Assignment Of Material Contracts dated October 26, 2015;
  - (vi) An Assignment of All Present and Future Agreements of Purchase and Sale, dated October 26, 2015; and
  - (vii) A Cost Overrun and Completion Guarantee Agreement dated October 26, 2015. (collectively, the "Security").

5. The Company's outstanding debt to First National totalled **\$2,870,520.62** as of February 26, 2018 and interest accrues thereafter at the daily rate of **\$486.51**. These figures do not include First National's costs on enforcement, which are separate charges.
6. The Company has defaulted in its obligations to First National pursuant to the Commitment Letter, and the Company's principal has advised First National that it is not able to make further payments.
7. On February 26, 2018, First National issued a demand for payment to the Company as regards its indebtedness, as well as a Notice of Intention to Enforce Security pursuant to s. 244(1) of the *Bankruptcy and Insolvency Act* (Canada) (BIA).
8. The deadline for payment as stated in First National's demand for payment upon the Company has expired, without result. The deadline specified in the Notice of Intention to Enforce Security has likewise expired.
9. First National seeks the appointment of KSV Kofman Inc. as Receiver to market the Properties in an orderly fashion to the benefit of all stakeholders and pursuant to the supervision of this Honourable Court. Any eventual sale(s) of the Properties, either *en bloc* or individually, would be subject to the approval of this Honourable Court.
10. First National believes that the appointment of the Receiver is both just and convenient in the current circumstances.
11. First National shall rely upon the following legislation, rules or points of law in respect of the Application:
  - (i) BIA s.243;
  - (ii) Section 43(9) of the *Judicature Act*, R.S.N.S. 1989, c. 240; and
  - (iii) The criteria used by this Honourable Court to assess the merits of Applications made by secured creditors seeking the Court appointment of Receivers.
12. In the *event* that the Court grants the Receivership Order is granted, the Receiver seeks approval of its proposed sale process for the Properties, as set out in the Report to be filed by KSV Kofman Inc. as prospective Receiver in advance of the Application.