

COURT FILE NUMBER Q.B. No. 61 of 2018

COURT OF QUEEN'S BENCH FOR SASKATCHEWAN

JUDICIAL CENTRE SWIFT CURRENT

PLAINTIFF / APPLICANT **INNOVATION CREDIT UNION**

DEFENDANTS /  
RESPONDENTS **SWIFT HOTELS GROUP LTD., BRIAN OSTRANDER,  
OSTRANDER FAMILY HOLDINGS LTD., PHILIP  
KRAUN, PRIMEWEST MORTGAGE INVESTMENT  
CORPORATION,  
SWIFT MOTEL LTD., and BRUNSDON LAWREK &  
ASSOCIATES**

**IN THE MATTER OF THE RECEIVERSHIP OF SWIFT HOTELS GROUP LTD.**

**NOTICE OF APPLICATION**

**(Receivership Order)**

**NOTICE TO RECIPIENTS LISTED IN THE SERVICE LIST**

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	Court of Queen's Bench 121 Lorne Street West Swift Current, SK S9H 0J4
Date	November 28, 2019
Time	9:00 AM by conference call

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

**Remedy claimed or sought:**

1. An Order pursuant to section 243 of the *Bankruptcy and Insolvency Act*, RSC 1985, c B-3 (the "BIA"), section 65(1) of *The Queen's Bench Act, 1998*, SS 1998, c Q-1.01, and section 64(8) of *The Personal Property Security Act, 1993*, SS

1993, c P-6.2, appointing Deloitte Restructuring Inc. as Receiver of all assets, undertakings, and properties of Swift Hotels Group Ltd. (the "Debtor"), acquired for, or used in relation to the business carried on by the Debtor, including all proceeds thereof (the "Property").

**Grounds for making this application:**

Background, Loan and Security

2. Swift Hotels Group Ltd. ("Swift Hotels") is an Alberta business corporation which is engaged in the business of operating a hotel located in Swift Current, Saskatchewan. At all material times, Swift Hotels has been extra-provincially registered and authorized to carry on business in the Province of Saskatchewan.
3. Pursuant to an Offer to Finance letter dated October 9, 2009, and accepted by Swift Hotels on October 14, 2009, Innovation Credit Union ("Innovation") agreed to loan the sum of \$7,210,000.00 to Swift Hotels for the purpose of an asset/share purchase of Swift Motel Ltd. in Swift Current.
4. Swift Hotels subsequently executed a Business Application for Credit with Innovation dated November 6, 2009, confirming the purpose of the loan, the loan amount of \$7,210,000.00 and the loan repayment terms and conditions. Loan #800102760148 for the sum of \$7,210,000.00 ("Loan 8001"), was then granted by Innovation and advanced to Swift Hotels, and has been subsequently amended by Swift Hotels from time to time.
5. Swift Hotels' performance of its obligations to Innovation under Loan 8001 are currently secured by:
  - (a) A Mortgage in the sum of \$7,210,000.00, together with interest thereon at the rate of 4.69% per annum, over the land legally described as Surface Parcel #144225750 Blk/Par A, Plan No DX1385 Extension 0;
  - (b) An Assignment of Rents as Collateral to Mortgage granted by Swift Hotels to Innovation on November 6, 2009;
  - (c) A General Security Agreement granted by Swift Hotels to Innovation on November 6, 2009 for a security interest in all of Swift Hotels' present and after-acquired personal property both for current indebtedness and future

advances, which was thereafter registered in the Saskatchewan Personal Property Registry as against Swift Hotels;

- (d) Personal guarantees from defendants in the within legal action, Brian Ostrander, Ostrander Family Holdings Ltd., and Philip Krahn; and
- (e) Amendment Agreement – Mortgage dated May 25, 2016 confirming the outstanding balance of Loan 8001 was \$9,086,017.59.

6. Swift Hotels is also indebted to Innovation in respect of a Farm/Business Line of Credit Agreement dated February 15, 2014 ("Line of Credit"). The Line of Credit was limited to the sum of \$350,000.00 and payable upon demand. Swift Hotels' performance of its obligations to Innovation pursuant to the Line of Credit is secured by personal guarantees of Brian Ostrander, Ostrander Family Holdings Ltd. and Philip Krahn.

7. As at November 13, 2019, the indebtedness owed by Swift Hotels to Innovation was as follows:

(a) Loan 8001

Principal in Arrears	\$9,274,400.33
Interest in Arrears	<u>\$967,015.29</u>
Total Outstanding	\$10,241,415.62

(b) Line of Credit

Balance:	\$348,155.79
Interests Accrued:	<u>\$883.67</u>
Total Outstanding:	\$349,039.46

Default on Loan 8001 and Line of Credit

8. Default has occurred under Loan 8001 in respect to the terms of the mortgage, as amended, and pursuant to requirements of the original Offer to Finance and subsequent Offers to Finance executed by Swift Hotels. The defaults include, but are not limited to the following:

- (a) Swift Hotels has failed to make the required regular installment payments on Loan 8001;
- (b) Non-payment of municipal property taxes with respect to the mortgaged property as and when due, causing a tax lien to be registered on the

mortgaged property by the City of Swift Current. As of November 6, 2019, the outstanding taxes owing to the City of Swift Current total approximately \$685,000.00;

(c) Swift Hotels has moved its operating account from Innovation contrary to the conditions set out in the Offers to Finance executed by Swift Hotels from time to time and is no longer using Innovation as its primary financial institution as required by the terms of Loan 8001;

(d) Swift Hotels is in arrears with respect to its GST remittances owing to Canada Revenue Agency ("CRA") and an Enhanced Requirement to Pay issued by CRA on September 13, 2019, states that Swift Hotels owes \$188,825.95;

(e) Swift Hotels is also in arrears with respect to employee source deductions owing to CRA. A Statement of Account issued by CRA on September 9, 2019, indicates the arrears at that time totalled \$554,760.99;

(f) Swift Hotels is in arrears with respect to its PST remittances owing to Saskatchewan Ministry of Finance in the sum of \$68,776.74 as of October 1, 2019.

9. As a result of the various defaults by Swift Hotels, the immediate payment of Loan 8001 and the Line of Credit was demanded by letter sent on or about October 4, 2017 and enclosed with the letter was a Notice of Intention to Enforce Security pursuant to section 244(1) of *The Bankruptcy and Insolvency Act*. Swift Hotels has failed to repay Loan 8001 and the Line of Credit.

#### Appointment of Receiver

10. Innovation seeks to enforce its security interest in the Property of Swift Hotels by obtaining an Order of this Honourable Court appointing a Receiver thereof. It is just and convenient that a Receiver be appointed over the Property of Swift Hotels.
11. Swift Hotels is unable to meet its liabilities as they become due. Swift Hotels has failed to propose a reasonable plan to ensure repayment of its indebtedness to

Innovation or other secured and unsecured creditors. Specifically, Swift Hotels is unable to make regular mortgage payments to Innovation or repay arrears owing to the City of Swift Current, CRA, and Sask Finance. The CRA and property tax arrears continue to accrue penalties and interest which will greatly diminish the value of the security held by Innovation.

12. Information obtained from the Interim Receiver also confirms:
  - a. Swift Hotels is owed approximately \$3,884,948.00 from related entities;
  - b. Since the appointment of the Interim Receiver, Swift Hotels has made payments to its owners and to related entities in priority over its repayment to Innovation;
  - c. Swift Hotels has made payments to other creditors since the appointment of the Interim Receiver in priority over its repayment obligations to Innovation despite Innovation's mortgage security position, including repayment to Federated Advance for a cash advance and payment to its legal counsel; and
  - d. Innovation has lost confidence in the management of Swift Hotels and expects to encounter difficulty with enforcing any of its rights under its security.
  
13. Deloitte Restructuring Inc. of Winnipeg, Manitoba, is a licensed insolvency trustee and has consented to being appointed as Receiver of the Property of Swift Hotels.

**Material or evidence to be relied on:**

14. This Notice of Application and all previous pleadings filed;
15. Affidavit of Bradley Appel, sworn August 20, 2019, Supplementary Affidavit of Bradley Appel, sworn October 9, 2019, and Second Supplementary of Bradley Appel sworn November 13, 2019;
16. Draft Receivership Order;
17. Redline version of Draft Receivership Order against Saskatchewan Template Order;
18. Consent to appointment of Deloitte Restructuring Inc.;
19. Second Report of the Interim Receiver, to be filed;
20. Brief of Law on behalf of the Applicant, to be filed; and

21. Such further and other materials as counsel may advise and this Honourable Court may allow.

**Applicable Rules:**

22. N/A

**Applicable Acts and regulations:**

23. The *Bankruptcy and Insolvency Act*, RSC 1985, c B-3, s. 243;  
24. The *Queen's Bench Act, 1998*, RSS 1998, c Q-1.01, s. 65(1).  
25. The *Personal Property Security Act, 1993*, SS 1993, c P-6.2, s. 64(8).

DATED at Regina, Saskatchewan, this 14<sup>th</sup> day of November, 2019.

OLIVE WALLER ZINKHAN & WALLER LLP

Per: 

Lawyers of Record for the Applicant,  
Innovation Credit Union

**NOTICE**

If you do not come to Court either in person or by your lawyer, the Court may give the applicant(s) what they want in your absence. You will be bound by any order that the Court makes. If you want to take part in this application, you or your lawyer must attend in Court on the date and at the time shown at the beginning of the form. If you intend to rely on an affidavit or other evidence when the application is heard or considered, you must reply by giving reasonable notice of the material to the applicant.

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**IN THE MATTER OF THE RECEIVERSHIP OF SWIFT HOTELS GROUP LTD.**

**SERVICE LIST**

Updated November 12, 2019

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