

COURT FILE NUMBER 643 of 2016

COURT QUEEN'S BENCH FOR SASKATCHEWAN
 IN BANKRUPTCY AND INSOLVENCY

JUDICIAL CENTRE SASKATOON

APPLICANTS 101133330 SASKATCHEWAN LTD. and
 101149825 SASKATCHEWAN LTD.

IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*,
RSC 1985, c. C-36, AS AMENDED

AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT
OF 101133330 SASKATCHEWAN LTD. and 101149825 SASKATCHEWAN LTD.

FOURTH SUPPLEMENTARY AFFIDAVIT OF JOHN ORR

I, JOHN ORR, of the City of Saskatoon, in the Province of Saskatchewan, businessman,
MAKE OATH AND SAY THAT:

1. I am the sole director, a shareholder, and the president of 101133330 Saskatchewan Ltd. ("**33330**") and 101149825 Saskatchewan Ltd. ("**825**") (33330 and 825 are sometimes hereafter referred to collectively as the "**Companies**"), such that I have personal knowledge of the facts and matters hereinafter deposed, except where stated to be on information and belief and, where so stated, I believe the same to be true.

2. Unless otherwise defined, capitalized terms in this affidavit shall have the meanings given to them in my Affidavits sworn May 12, 2016 (the "**First Affidavit**"), June 6, 2016 (the "**Second Affidavit**"), June 9, 2016 (the "**Third Affidavit**"), and August 12, 2016 (the "**Fourth Affidavit**") (collectively, the "**Previous Affidavits**"), as well as the Affidavits of David Calyniuk sworn August 12 (the "**First Calyniuk Affidavit**") and December 16, 2016 (the "**Second Calyniuk Affidavit**").

I. OVERVIEW

3. On May 20, 2016, the Companies sought and this Honourable Court granted:
 - (a) an Initial Order under the CCAA ordering, among other things, a stay of proceedings against the Companies until and including June 19, 2016; and
 - (b) a DIP Facility Order authorizing and empowering the Companies to obtain and borrow under a credit facility from Pillar Capital Corp.
4. Pursuant to the Order of the Honourable Justice Meschishnick dated June 13, 2016, the stay of proceedings granted by the Initial Order was extended until and including August 31, 2016.
5. On August 17, 2016, the Companies applied, and the Honourable Justice Meschishnick granted an order for:
 - (a) a second extension of the stay of proceedings until and including January 1, 2017 (the “**Second Extension**”); and
 - (b) authorizing and empowering the Companies to obtain and borrow additional funds under a credit facility from Staheli Construction Co. Ltd., which replaced the credit facility from Pillar.
6. Since the Second Extension, the Companies’ restructuring efforts have primarily involved:
 - (a) 825 and North Ridge working to conceptualize and develop a land use plan for the 825 Land in accordance with Dream’s overall Amended Willows Concept Plan; and
 - (b) 33330:
 - (i) completing necessary repairs to the Orr Centre’s roof-top HVAC units, roof, flashing, and drainage systems; and
 - (ii) working to retain an appropriate consultant to act as the Orr Centre Owner’s Consultant, for the purposes of providing advice and

direction in relation to the potential solutions for 33330's inability to service the present debt load, as well as the role the Orr Centre and Campus are to play in CCAA process moving forward.

7. This Affidavit provides an overview of the activities undertaken by the Companies since the Second Extension.

II. 825 LAND UPDATE

8. Since the Second Extension, 825, its counsel, and North Ridge have continued to provide written updates in respect of the 825 Land to Firm Capital, Pa, and Affinity. More recently, however, the parties have moved to scheduling conference calls with these parties, their counsel, and the monitor, during which Mr. Calyniuk has made himself available to explain the most recent developments in the process, outline the anticipated next steps, and directly address any questions advanced by these creditors.

9. A detailed discussion of the development and submission of the preliminary Amended Willows Concept Plan appears in the Second Calyniuk Affidavit. With the preliminary Amended Willows Concept Plan submitted to the City, an extension of the stay period is required to allow the same to make its way through the City's queue and be reviewed by the City's Planning and Development Department.

10. As explained by Mr. Calyniuk, North Ridge's experience is that the review period usually takes between six and eight months, and will likely entail requests for additional information and clarification, following which the sanitary and Remaining Studies will be completed and the Amended Willows Concept Plan will be presented for final approval.

11. The Companies are therefore seeking an extension to June 12, 2017 to allow the matter an appropriate amount of time to progress to the next phase of the development process. This date is also an appropriate extension because it coincides with the expiry of the extended forbearance period under the Forbearance Agreement with Firm Capital and Frank Pa.

III. THE ORR CENTRE AND CAMPUS

A. Necessary Repair Work

12. In paragraph 22 of the Third Affidavit, I identified a number of needed repairs to the Orr Centre and for which DIP funds had been earmarked. The “Repairs,” as they were defined, included:

- (a) roof-top HVAC units requiring replacement parts or specific repairs;
- (b) delamination issues affecting the roof of the main building; and
- (c) interior leaks and water damage arising from wear and tear to the flashing and drainage system.

13. The delamination issues, interior leaks, and water damage have largely been remedied, although these are ongoing maintenance issue with buildings of this age.

14. The HVAC units requiring servicing and replacement parts have had most of the necessary work completed, which included replacing the makeup air unit and its ductwork for the Orr Centre’s restaurant kitchen to comply with the fire code. The outstanding work to be completed on this front includes replacing one of the roof-top units servicing the Orr Centre theatre due to a cracked heat exchanger.

15. In addition to the foregoing, 33330 has replaced one of the Orr Centre’s boilers, and is planning a full-scale replacement of the remaining boilers.

B. The Orr Centre Owner’s Consultant

16. As indicated at paragraphs 27-29 of the Third Affidavit, the Monitor researched and recommended four Regina-based property management companies as being qualified to fulfill the function of the Orr Centre Owner’s Consultant, namely:

- (a) Harvard Property Management Inc. (“**Harvard**”);
- (b) Nicor Properties (“**Nicor**”);
- (c) Colliers International (“**Colliers**”); and
- (d) McCor Management (“**McCor**”).

17. The Companies’ legal counsel emailed each entity in advance of the Second Extension with an invitation to submit proposals for consideration.

18. After the Second Extension was granted, Harvard and Nicor declined, while McCor referred the matter to Avison Young Commercial Real Estate (Sask) Inc. (“**Avison Young**”), who, along with Colliers, expressed interest and more information.

19. With three candidates vying for the position and requesting additional information about the Orr Centre, Campus, and the role of the Orr Centre Owner’s Consultant, 33330 determined the most effective way to proceed would be to:

- (a) prepare and distribute general information packages containing:
 - (i) a description of the Campus, Orr Centre, existing tenants, revenues, and particulars of the existing debt;
 - (ii) the Conceptual Design of a Senior Apartment Project prepared by Wisehub Designs for 33330, which was obtained as part of 33330’s original plan to construct a seniors’ centre on the Campus, and is appended to the First Affidavit as Exhibit “I” (the “**Campus Seniors’ Concept**”); and
 - (iii) the Appraisal Report completed by Lawrek Johnson Bird Appraisals and Consulting Ltd., which is also appended to the First Affidavit as Exhibit “I”;
 (the “**Information Packages**”)
- (b) following distribution of the Information Packages, schedule meetings or conference calls to field questions and generally discuss how each entity would approach the project; and

- (c) have each entity tour the Campus and Orr Centre, following which formal proposals would be submitted.

20. The Information Packages were prepared by the Companies' legal counsel and distributed to Avison Young and Colliers for their consideration. Conference calls were subsequently scheduled with each entity in mid-October, during which it was emphasized that 33330 was not simply seeking validation of the Campus Seniors' Concept or guidance with respect to a wholesale liquidation of the real estate and personal property; rather, the overall goal was to obtain an opinion as to the realistic options for improving the Orr Centre and Campus for the benefit of stakeholders in the present circumstances thereby increasing their value and allowing 33330 to service a higher debt load.

21. On or about October 19, 2016, the Companies received a proposal from Nicor, which had previously declined the invitation to participate. Walkthroughs of the Orr Centre and Campus were conducted with Avison Young and Colliers on October 22, 2016. A representative of P21 Construction also toured the property that day. My understanding from speaking to the Companies' legal counsel is that my former mortgage broker, Peter Reed with Sherwood Mortgage Group, contacted Affinity on or about September 23, 2016, and advised that P21 Construction was working with a group of doctors potentially interested in purchasing a portion of Campus for the construction of a 250 bed seniors' care home.

22. At the conclusion of the walkthroughs, Avison Young and Colliers indicated that they would be making formal proposals within approximately two weeks' time but no proposals have been forthcoming from these entities to date.

23. In the course of this process, the Companies determined that any proposed approach that was overly focused on the property management and real estate perspective likely would not address the untapped potential and value of the Campus as a whole, such that the Companies would benefit from the advice of a company more experienced in development and construction.

24. In light of the extremely positive results achieved thus far with respect to the 825 Land, North Ridge was an obvious candidate, and a meeting was scheduled to determine whether there was any interest in taking on additional consulting duties in Regina, and if so, how North Ridge would approach the project, and its projected timelines for being able to present options to Affinity and the other creditors. 33330 was impressed with the logical, step-by-step approach that was outlined by North Ridge and ultimately instructed its legal counsel to draft a Regina specific consulting agreement, naming North Ridge as the Orr Centre Owner's Consultant.

C. North Ridge's Scope of Work and Projected Timelines

25. Pursuant to a Consulting Agreement dated November 8, 2016, North Ridge was retained as the Orr Centre Owner's Consultant. North Ridge's role has been defined as acting as 33330's sounding board and providing advice in relation to the Campus, as though it were a North Ridge Property. More specifically, the parties anticipate that North Ridge's services will include:

- (a) analyzing and opining on the feasibility of existing plans and specifications for improving the Orr Centre and Campus;
- (b) conceptualizing alternatives for the owner's consideration, including the anticipated costs of implementing the same; and
- (c) analyzing the Orr Centre's existing revenue streams, facilities, and lease arrangements, and making recommendations for improvements.

26. A comprehensive discussion of North Ridge's work to date, anticipated next steps in the process, and approximate dates for completion appears in the Second Calyniuk Affidavit. Any plans or strategies with respect to the Orr Centre and Campus referenced thus far in these proceedings, such as the negotiations with the seniors' home provider, Orange Tree, have been put on hold pending receipt of recommendations from North Ridge.

27. From the perspective of 33330, an extension of the present stay of proceedings is required in order to allow North Ridge to fully analyze and identify all realistic options for the Orr Centre and Campus. The Catterall & Wright Report has been received and the Companies are pleased that there appears to be capacity for further development.

28. Before circulating numbers and creating expectations among the stakeholders, however, 33330 proposes to obtain a fully-considered opinion from North Ridge that includes some initial site planning analysis and drafting. With respect to the latter, drafting is already underway, and as indicated in the Second Calyniuk Affidavit, the goal is to have a range of realistic options for the Orr Centre and Campus for further discussion with the stakeholders by the second week in January, and the outcome of those discussions will dictate the next steps and timing. If any of the options presented are agreeable to the stakeholders, North Ridge would then turn its attention to outlining the anticipated costs of implementing the same for further discussion and input from, for example, Affinity and its legal counsel.

29. In any event, the six month extension proposed on the 825 front is an appropriate length of time to allow this process to unfold. The Companies will have ongoing contact with the stakeholders during this time, and it may be that interim applications to this Honourable Court will be necessary during the stay period as matters develop.

IV. ADDITIONAL DIP FINANCING REQUIRED

30. The most recent cash flow projections for the Companies are appended to the Third Report of the Monitor. As detailed therein, the Companies require additional DIP Financing in order to meet the anticipated costs of:

- (a) professional fees;
- (b) utilities, further repairs to the Orr Centre and its mechanical equipment, and other basic expenses associated with keeping the Orr Centre operational; and

- (c) consulting fees.

31. The Applicants expect to secure a commitment for DIP Financing in the amount of \$2,000,000.00 from a lender satisfactory to the Applicants (the “**Proposed DIP Lender**”), to be advanced by the Proposed DIP Lender to the Applicants on the terms contained in the term sheet attached as Exhibit “A.”

32. As stated therein, the Companies are seeking to increase the loan amount from \$1 million to \$2 million. The present cash flow projections indicate that it will not be necessary to draw down the full amount of the facility, and the loan has accordingly been structured as a credit line, as opposed to a one-off advance, such that interest only accrues on the amounts that are actually drawn.

V. RELIEF REQUESTED

33. The Companies are seeking an extension of the current stay of proceedings until June 12, 2016, during which time:

- (a) Dream and North Ridge will respond to any City requests for clarification, further information, or revisions on the preliminary Amended Willows Concept Plan, complete the sanitary and Remaining Studies, and, ideally, obtain the City’s approval in respect of the same;
- (b) 33330 will complete the repairs to the Orr Centre’s HVAC units and replace the remaining boilers;
- (c) North Ridge will complete its analysis of the available options for the Campus and Orr Centre, which will be presented to the stakeholders for consideration, and, ideally, result in an approved plan for improving these assets and crystallizing their role in an overall plan of compromise and arrangement; and
- (d) continue to provide periodic updates to the Monitor and the stakeholders with respect to the 825 Land, Orr Centre, and Campus.

34. Since the issuance of the Initial Order, the First Extension, and the Second Extension, the Companies have continued to act in good faith and with due diligence,

taking the incremental steps deemed necessary to allow the Companies to prepare a proposal for presentation to their creditors, and ultimately exit the CCAA process.

35. I therefore swear this affidavit in support of the application that is presently before this Honourable Court.

SWORN (OR AFFIRMED) BEFORE ME)
at the City of Saskatoon, in the Province of)
Saskatchewan, this 16th day of December,)
2016.)


A COMMISSIONER FOR OATHS for
Saskatchewan - Being a Solicitor.


JOHN ORR

CONTACT INFORMATION AND ADDRESS FOR SERVICE:

Name of firm:	McDougall Gauley LLP
Name of lawyer in charge of file:	Ian A. Sutherland
Address of legal firm:	500-616 Main Street Saskatoon, SK S7H 0J6
Telephone / fax number:	(306) 665-5417 / (306) 652-1323
Email address (if any):	<u>isutherland@mcdougallgauley.com</u>

December 15, 2016

McDougall Gauley LLP
500-616 Main Street
Saskatoon SK
S7H 0J6

Attention: Mike Russell, McDougall Gauley LLP, Counsel for the Borrower

**Re: Term Sheet – Debtor in Possession Facility for 101133330 Saskatchewan Ltd. and
101149825 Saskatchewan Ltd.**

You have advised us that 101133330 Saskatchewan Ltd. and 101149825 Saskatchewan Ltd. (collectively, the "**Borrowers**") applied to the Court of Queen's Bench for Saskatchewan, Judicial Centre of Saskatoon in QB No. 643 of 2016 and were granted an order from Mr. Justice N.G. Gabrielson under the *Companies' Creditors Arrangement Act* (the "CCAA").

You have further advised us that it is the Borrowers' intention to remain in possession and control of their assets and business during the course of the CCAA proceedings. _____ (the "**Lender**") is pleased to offer its commitment to provide to the Borrower with the financing (the "**DIP Facility**") described herein during the CCAA proceeding, subject to the terms and conditions of this Term Sheet.

BORROWERS:	101133330 Saskatchewan Ltd. and 101149825 Saskatchewan Ltd.
PURPOSE OF FINANCING:	Up to CAD\$2,000,000, comprised of up to \$1,000,000 DIP financing to support working capital requirements and to repay existing DIP financing of \$1,000,000.
PROPOSED FINANCING:	Tranche #1 in the maximum principal amount of up to CAD\$1,000,000 to repay existing DIP facility and Tranche #2 in the maximum principal amount of CAD\$1,000,000 to be drawn down by the Borrowers from time to time as required (in the sole and absolute discretion of the Borrowers under the supervision of the CCAA Court and the Monitor).
INTEREST:	1.16% per month (14.00% per annum) calculated on the daily balance outstanding under the DIP Facility.
TERM:	The entire DIP Facility plus interest is due in full July 31, 2017, subject to renewal on mutually-satisfactory terms.
PAYMENT:	Interest only payments payable on the 1 st of each month with the principal due at maturity. The Borrowers may repay any or all of their obligations under the DIP Facility (including principal, interest, costs and any other amounts) at any time.

DOCUMENTATION AND SECURITY:

The Borrowers shall provide or cause to be provided, the security and agreements listed below, in form and substance satisfactory to the Lender, including, but not limited to:

1. DIP Financing Agreement, evidencing a perfected first priority court ordered charge (the "**Charge**") on all of the existing and after-acquired real and personal property, assets, and undertakings of the Borrowers, except that, in respect of all current and future assets, undertakings and property of any nature and kind whatsoever, and wherever situate, including all proceeds thereof, of 101149825 Saskatchewan Ltd. (collectively, the "**Saskatoon Property**"), the Charge shall rank behind the mortgage in favour of Firm Capital Mortgage Fund Inc., registered as Interest Register No. 121088167, and the mortgage in favour of Frank Pa, registered as Interest Register No. 121113155, and otherwise subject only to the Administration Charge granted by the Court up to maximum amount of \$150,000;
2. Promissory Note;
3. Borrowers to provide monthly reporting to the Lender;
4. Assignment of insurance; and
5. Such further security and other documentation that the Lender and its solicitor may reasonably require.

ASSIGNMENTS:

The Lender may assign or transfer or grant participations in its rights or obligations in whole or in part at any time without notice to or consent of the Borrowers.

ONGOING COVENANTS:

The Borrowers shall pay when due all statutory liens, trust and other Crown claims including employee source deductions, GST, PST, EHT, WEPPA and WSIB premiums.

CONDITIONS:

Availability of the DIP Facility is conditional upon, but not limited to:

1. Acceptance by the Borrowers of this Term Sheet;
2. The Borrowers obtaining an Order in form and content satisfactory to the Lender and Lender's Counsel, authorizing the borrowing under the DIP Facility;
3. An Order granting the Charge in favour of the Lender as security for repayment of the DIP Facility, and all interest, fees, expenses and other amounts payable by the Borrowers;
4. Delivery and registration of the security in a form acceptable to the Lender;
5. The Borrowers having paid statutory liens, trust and other Crown Claims including confirmation of paid property taxes on the subject property.

FACILITY FEE: \$20,000 (which amount shall become payable from Tranche #2 only upon draw down of the DIP Facility, and not in advance).

ACCEPTANCE: This Term Sheet must be accepted by the Borrowers.

Costs: The costs of all appraisals and environmental reports, the legal costs of the Lender, cost consultant and insurance consultant and all other out-of-pocket costs and expenses incurred in the approval and making of the DIP Facility and the preparation, execution, delivery, registration and discharge of the security or in the collection of any amount owing under the terms of the DIP Facility shall be for the account of the Borrowers and may be debited to advances to be made under the terms of the DIP Facility. Until paid, all such costs and expenses shall bear interest at the rate described under the Interest Rate section of this Agreement.

Yours truly,

Per:

On behalf of 101133330 Saskatchewan Ltd. and 101149825 Saskatchewan Ltd., I agree with the terms and conditions as stated above:

Per: John Orr

Date:
