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.

AFFIDAVIT OF JONATHAN MAIR

I, Jonathan Mair, of Toronto, Ontario, Vice-President, MAKE OATH AND SAY AS FOLLOWS:

1. I am a Vice-President of Firm Capital Mortgage Fund Inc. ("FCMF"), such that I have personal knowledge of the facts and matters deposed to herein, except where stated to be on information and belief, and where so stated I believe the same to be true. I am also Chief Financial Officer of Firm Capital Corporation ("FCC"), which has had involvement in these matters.

2. FCC has been involved in the mortgage lending business for over 25 years and FCMF for over 16 years. Typically, FCC acts as loan originator and servicer for FCMF.

3. FCC was approached by John Orr with a request that FCC provide financing to enable Orr to acquire lands near Saskatoon, Saskatchewan legally described as Blk/Par A Plan No 101456197 Extension 76, Surface Parcel # 136165091 (the "Saskatoon Lands"). The Saskatoon Lands were located close to the Willows golf course and at the time were part of the R.M. of Corman Park. The Saskatoon Lands were owned by 101149825 Saskatchewan Ltd. ("825"). John Orr advised FCC that the Saskatoon Lands were close to being annexed into the City of Saskatoon. He also advised FCC that his intent was to develop the Saskatoon Lands and to commence the rezoning process immediately upon closing the purchase of the land.

4. FCC issued a Mortgage Loan Commitment with 825 c/o John Orr dated June 23, 2015, accepted by 825 as borrower and Orr as Guarantor on June 29, 2015, a true copy of which is attached to this Affidavit as Exhibit "A" (the "First Commitment"). The First Commitment contemplated a $3.5 million loan with an interest rate at the greater of (a) 9.0% per annum and (b) TD Canada Trust Prime from time to time plus 5.0% per annum.

5. FCC came to understand that the initial proposed structure with 825 as borrower was not very feasible. 825 owned the Saskatoon Lands and John Orr held no interest in 825. Rather, John Orr had entered into agreements with shareholders of 825 to purchase the shares of 825, such that 825 would continue to own the Saskatoon Lands and John Orr would be its sole shareholder.

6. As detailed further below, FCC further determined that it would require additional security beyond the Saskatoon Lands. John Orr also was a shareholder in, and controlled, 1011133330 Saskatchewan Ltd. ("330"), which, among other assets, owned the Orr Centre property in Regina (the "Regina Lands").

7. Various conditions precedent to funding and various other terms of the First Commitment were not satisfied by the Borrower. As the Borrower still wished to proceed with first mortgage financing, FCC issued an Amendment to the Mortgage Loan Commitment dated August 4, 2015 (the "Amended Commitment") to amend the First Commitment. The Amended Commitment contemplated that John Orr and 330 would be the joint borrowers, with 825 as guarantor. It added a second mortgage on the Regina Lands as required additional security for the loan. John Orr, 330 and 825 accepted the Amended Commitment on or about August 12, 2015 (the First Commitment, as amended by the Amended Commitment, referred to hereinafter as the "Loan Agreement"). A true copy of the Amended Commitment is attached as Exhibit "B".

8. The core terms of the Loan Agreement are as follows (note that the FCMF ultimately took on the role of lender, so the remaining loan and security documents were granted to it; the loan was syndicated to FCMF as permitted in the Loan Agreement):

(a) The loan amount would be $3.5 million loan (the "Loan") with an interest rate at the greater of (a) 9.0% per annum and (b) TD Canada Trust Prime from time to time plus 5.0% per annum.

(b) The term of the Loan was 12 months.

(c) The Loan was advanced in October 2015 and matures on November 1, 2016. Payments during the term were to be interest only

(d) The Loan is secured by a variety of covenants and security, including (but not limited to) the following (all dated September 23, 2015, except as specified):

  (i) Guarantee granted by 825, a true copy of which is attached as Exhibit "C";

  (ii) Mortgage in the amount of $3,500,000 granted by 825 over the Saskatoon Lands, a true copy of which is attached as Exhibit "D" (the "825 Mortgage");

  (iii) General Security Agreement granted by 825, a true copy of which is attached as Exhibit "E";

  (iv) Cash Pledge Agreement granted by 825, a true copy of which is attached as Exhibit "F" (the "Cash Pledge");

  (v) Mortgage in the amount of $3,500,000 granted by 330 in September 2015 in respect of the Regina Lands, a true copy of which is attached as Exhibit "G" (the "330 Mortgage");

(e) An interest reserve account (the "Interest Reserve"), with a starting balance of $300,000, was established to fund the interest payment obligations during the term. The Interest Reserve was further secured by the Cash Pledge.

9. While the loan and security documentation contemplated by the Loan Agreement was being put into place, the Saskatoon Lands were annexed into the City of Saskatoon on or about September 1, 2016.

10. The 825 Mortgage is the first ranking mortgage registered against the title to the Saskatoon Lands. It is followed by a second mortgage in favour of Frank Pa in the amount of $2,100,000.

11. The 330 Mortgage is the second ranking mortgage registered against the titles to the Regina Lands. It is followed by a third mortgage in favour of Frank Pa in the amount of $2,100,000.

12. The interest payments on the Loan were drawn by FCMF from the Interest Reserve on a monthly basis until FCMF was advised that a stay of proceedings was in place pursuant to the proposal made by 825 under the *Bankruptcy and Insolvency Act* (the "BIA"). As of May 26, 2016, accrued interest was at $21,575.34, and the balance of the Interest Reserve was $142,841.00.

13. FCC and FCMF had no knowledge that 825 or 330 were experiencing financial difficulties until April 18, 2016, when it was notified by the City of Regina that 330's participation in the TIPPS program had been cancelled because of NFS payments. At that time, FCMF instructed its solicitor, David Gerecke of Miller Thomson LLP, to write to 330 and its solicitor to advise that the failure to make the property tax payments was a breach under the 330 mortgage and needed to be remedied.

14. The next indication of a problem was on April 26, 2016, when the current solicitors for 825, McDougall Gauley LLP, wrote to advise that on April 20, 2016, 825 had filed a Notice of Intention to Make a Proposal under the BIA. In that letter, McDougall Gauley demanded that the Interest Reserve be paid to it, which FCMF refused to do.

15. Also on April 26, 2016, McDougall Gauley advised David Gerecke that 330 had also filed a Notice of Intention to Make a Proposal.

16. On May 5, 2016, McDougall Gauley advised David Gerecke that 825 and 330 (collectively, the "Debtors") would be making an application for an Order under the Companies' Creditors Arrangement Act (the "CCAA"), with a return date of May 20, 2016. Materials for the CCAA application were served on May 12, 2016. Mr. Gerecke was in Toronto on May 12 and 13, and was unable to begin reviewing the application materials in depth until May 16, 2016.

17. At no point did FCMF wish to be subject to a stay of proceedings in respect of either 825 or 330, but particularly 825. 825's assets consisted of the Saskatoon Lands, which were undeveloped bare land. In its initial discussions with 825 and its legal counsel (and counsel for Affinity Credit Union ("Affinity") and the Monitor), FCMF focused on an approach of "ring-fencing" the two companies, to ensure that assets of 825 could not be transferred to 330 and to prevent or minimize the extent to which FCMF's priority would be impaired by any charges (administrative or DIP) ordered in the CCAA proceedings.

18. FCMF's position from the start was that the appropriate realization method on a non-operating single asset land holding company was for the mortgagees to not be made subject to a stay of proceedings, but rather to be permitted to enforce their security. Nevertheless, in light of the short time frames, and given that an initial order could provide only for a 30 day stay, FCMF made a decision that it would focus its resources on attempting to negotiate amendments to the Initial Order that would provide for the "ring-fencing" concepts. It would have been difficult to concurrently carry on those negotiations and prepare materials to oppose the CCAA application. Ultimately, agreement was reached on a form of Initial Order on the afternoon of May 19, 2016 and the Initial Order granted by the Court on May 20, 2016 was substantially in that form.

19. I am advised by David Gerecke that during the Court proceedings on May 20, 2016, reference was made by Mr. Justice Gabrielson to the "Miller Thomson Order" (being the form of Order being granted) or something to that effect. Mr. Gerecke advises me that, once agreement was reached on the form of Order on May 19, 2016, he was asked by Mr. Sutherland if he would circulate the amended form of Initial Order, and he did so. At no point did Firm Capital desire that 825 become subject to CCAA proceedings or that it become subject to a stay with respect to 825, and not beyond June 17, 2016. Mr. Gerecke was being courteous and helpful with respect to the process.

20. On May 20, 2016, Mr. Gerecke consented to the granting of the Initial Order on behalf of FCMF.

21. On the afternoon of May 20, 2016, the matters involving the Debtors came to the attention of FCMF's CEO, Eli Dadouch. Mr. Dadouch contacted Mr. Gerecke and emphasized that a stay beyond June 17, 2016 was unacceptable, and that beyond June

17, 2016 FCMF did not wish to remain subject to a stay of proceedings in respect of 825 for reasons set out below.

22. The reasons that FCMF believes that the stay against it with respect to 825 should not continue past June 17, 2016 are as follows:

(a) John Orr's affidavit had put forward highly troubling information with respect to the Regina Lands. The Regina Lands, which FCMF had relied on as collateral security, were worth far less than had been represented to FCMF and appear to be worth far less than is owed to Affinity. The Orr Centre, based on John Orr's affidavit, had been badly mismanaged. As a result, the value of FCMF's collateral security from 330 is likely diminished to zero and FCMF must rely on recovery under its security on the Saskatoon Lands.

(b) While it was understandable that a stay of proceedings was needed in respect of 330, to ensure that the power was not cut off which would displace its many tenants including the College of Nursing, the situation concerning 825 was vastly different. 825 is a non-operating company that owns a single asset – a parcel of bare land. Its situation had no urgency. It had no creditors that had threatened any action against it who would need to be stayed. There are no operations or employees associated with the Saskatoon Lands. 825 did not even have its own bank account. With respect to FCMF, there existed an interest reserve that would cover interest payments for several more months.

(c) Mr. Orr's $5 million estimate of value for the Saskatoon Lands is over $600,000 less than the amount owed on the first and second mortgages, suggesting a very substantial deficiency. Between the first (FCMF) and second (Frank Pa) mortgages, the encumbrances on the Saskatoon Lands total $5.6 million plus interest, such that a significant shortfall appears likely with respect to the Saskatoon Lands. The Interest Reserve will quickly be depleted and there is no longer and interest reserve in place for Frank Pa, so his interest arrears are already mounting at over $24,000 per month. The interest payable to FCMF is over $26,000 per month. Thus, the monthly interest cost of the two mortgages on the Saskatoon Lands exceeds $50,000 per month.

The accruing interest will likely never be recovered by the Mortgage Lenders from the Saskatoon Lands, which John Orr has valued at $5,000,000, and as outlined further later herein, will not increase significantly in value by advancing the rezoning work.

(d) Even though the Loan, along with Frank Pa's loan, was advanced in October 2015, essentially no progress had been made toward starting development work on the Saskatoon Lands other than to obtain a proposal from Stantec Engineering to prepare a concept plan. That proposal encompassed five different parcels, only one of which appears to be controlled by John Orr or 825.

(e) Based on the mismanagement of the Orr Centre, the lack of any progress made on developing the Saskatoon Lands since the Loan had funded, and the lack of experience of John Orr as a land developer, FCMF could no longer have any confidence in John Orr's ability to lead the development of the Saskatoon Lands. A stay to provide an inexperienced developer with time to advance the rezoning process, especially given that he did not advance it at all since the funding of the FCMF loan, is not appropriate. In fact, Mr. Orr confirmed in his Second Supplementary Affidavit that "in order to successfully move forward on this front, I believe it is necessary to access the experience and expertise of a professional land developer to act as the owner's consultant". Mr. Orr does not have the expertise and experience to manage the rezoning process. Further, as detailed later herein, advancing the rezoning process does not add significant value to the Saskatoon Lands.

(f) The stated purpose of including both 825 and 330 in the same CCAA proceedings was to attempt to "unlock" equity in the Saskatoon Lands, which could then flow to benefit 330. There will only be marginal added value through the advancement of the rezoning process, for the following reasons:

(i) In my experience, the notion that taking initial steps to rezone and subdivide the Saskatoon Lands (which would likely take many months at a minimum) will result in a substantial increase in the value of the Saskatoon Lands is fundamentally flawed. That scenario inevitably must contemplate sale to a developer – the CCAA process cannot continue indefinitely and if it were permitted to do so then interest arrears on the Saskatoon Lands would increase rapidly. Any developer, knowing the circumstances of the Saskatoon Lands, will not attribute significant value to the milestones of rezoning and subdivision having occurred. Developers who might be potential purchasers would be capable of advancing those processes on their own, and would know well what the time and costs involved would be. They can easily factor those in. Further, they might have their own concepts on how to subdivide, such that subdivision obtained by 825 might impair the flexibility (and thus the population) of potential purchasers. Thus, it seems highly unlikely that the steps contemplated by the Debtors will significantly increase the value of the Saskatoon Lands.

(ii) The initial step to advancing the rezoning is the completion of the area concept plan for the property (the "Concept Plan"). The Debtor has obtained a proposal from Stantec Consulting Ltd. confirming that the professional fees to complete the Concept Plan is $150,084.90 and that they estimate it can be completed by October, 2016. Any developer purchasing the Saskatoon Land can retain Stantec or another firm to obtain the Concept Plan. They will know the cost of doing so is approximately $150,000 and as such would not pay much more than $150,000 more for the land with the Concept Plan completed than for the land with the Concept Plan not completed. For example, a purchaser would not pay $500,000 more for land because it has a Concept Plan completed, knowing they could complete it themselves for a cost of $150,000. The cost and timeframe for completing a Concept Plan are not significant to a developer and as such completion of same adds insignificant value. There is no risk of the outcome of such plan as it just needs to be completed, so its completion does not add value by removing zoning uncertainty for a buyer.

(iii) The Stantec proposal states in section 1.2.8 that the completion time frame for the Concept Plan is 8 -12 months. The accruing mortgage interest and potential decline in land values will clearly far outweigh the value added of completing the $150,000 Concept Plan.

(iv) Upon completion of the Concept Plan, the rezoning of the lands would then have to be completed, which would take another 8 – 12 months. Again the value added from completing the full rezoning will be in the magnitude of the professional fees required to complete same. The increase in value that can be "unlocked" would be far less than the accruing interest and potential market value decline in land. The two year time frame to rezone the land would far exceed any proposed CCAA stay period, and still would not result in a value increase in excess of the accruing interest. The land value as per Mr. Orr is already $600,000 below the first and second mortgage amounts, before taking into account realization costs.

(v) A significant factor that affects the value of the Saskatoon Lands is the lack of sewer services to the site. Attached as Exhibit "H" is a Sanitary Sewer Servicing Report that was prepared in 2012 (the "Sewer Servicing Report"). It was provided to FCC by John Orr. The Sewer Servicing Report confirms that there is no existing City sanitary capacity available for the Saskatoon Lands.

The Sewer Servicing Report indicates that one option for dealing with the issue would be to construct sewer treatment facilities on site was an option. However, I am advised by an appraiser at Suncorp Valuations (from whom FCMF is obtaining an appraisal of the Saskaton Lands as discussed below) that, following completion of the Sewer Servicing Report in 2012, the City disallowed the creation of such treatment facilities so that option is no longer available. The Stantec proposal obtained by the Debtors in May, 2016, in section 1.2.6 confirms that "it is known that the existing sanitary system is very near capacity....and cannot service the proposed population density normal peak flow conditions".

The lack of availability of sewer capacity has a major impact on the Saskatoon Lands value and is an issue that cannot be solved in the short term. Solving this issue would have far more impact on a value increase than the completion of the Concept Plan, which is just an exercise to be completed by a consulting firm. An experienced developer would certainly have a better chance of success in solving the issue than would the inexperienced Debtor.

(g) The Debtors' concept that there is equity in the Saskatoon Lands to be "unlocked" is predicated entirely on an appraisal attached by John Orr to his first Affidavit as Exhibit "D" that estimates a value of $19 million for the Saskatoon Lands (the "Hypothetical Appraisal"). The value suggested by the Hypothetical Appraisal is not reliable. The Hypothetical Appraisal is fundamentally flawed in several respects. It was made subject to what was described as an Extraordinary Assumption, which was comprised of several assumptions as follows:

(i) The property has been annexed into the City of Saskatoon (this has occurred); and

(ii) The property has been subdivided into two separate parcels and zoned to accommodate medium density multi-family development and urban institutional uses.

The Hypothetical Appraisal does not factor in the fact that there is no sewer capacity available to the Saskatoon Lands. It utilizes comparables of fully zoned, service ready, <u>small land</u> parcels. The sales they select as comparable sales are in fact not comparable at all, even if the Saskatoon Lands were zoned and had services available to it. Further, with no rationale provided, the appraiser determined that the Saskatoon Lands should be valued at the top end of the range of sales.

(h) Given the unreliability of the Hypothetical Appraisal, which FCC recognized at the time, a more appropriate valuation of the lands was obtained by the Debtor from the same appraiser that produced the Hypothetical Appraisal. It arrived at a value of $6,330,000 on an "as is" basis and was dated June 25, 2015 (the "As Is Appraisal"), the same date as the Hypothetical Appraisal. A true copy of the As Is Appraisal is attached as Exhibit "I". The variance in values, resulting from the appraiser's assumption of a few limiting conditions, indicates how far off the Hypothetical Appraisal valuation was. Further, no one can know whether those Extraordinary Assumptions are capable of being met until the City decides whether to approve the Concept Plan and rezoning to multi-unit residential, which is an entirely discretionary decision on the part of City Council.

(i) I have consulted with several developers with significant local involvement over the past week concerning the Saskatoon Lands. Each developer I spoke with advised me that in their view, the land value is well below $5,000,000, completing the Concept Plan and the zoning would not add significant value, and that sewer capacity is not available to the lands.

(j) FCMF has ordered a new appraisal on the property from a Suncorp Valuations, a respected third party appraiser in Saskatoon. The appraisal report will not be completed until mid-June, 2016. However, based on research completed by the appraiser to date, the appraiser has indicated the following to me:

(i) Sewer capacity is not available to the lands in the existing system;

(ii) Completion of the Concept Plan will not add material value to the lands;

(iii) The comparable sales range in a per acre value of $30,000 to $300,000 (the Saskatoon Lands are comprised of approximately 15.84 acres). The appraiser's work during the next week will determine where the Saskatoon Lands value falls within the $30,000 and $300,000 acre range. At the highest end of the range the value would be approximately $4,200,000.

(iv) A good indication of a fully zoned site, ready for servicing, with full service availability was a recent sale in Stonebridge area of Saskatoon at a sale price of $400,000 per acre (for a 10 acre site). Were the Saskatoon lands to be fully zoned with full service capacity (which they are not), this comparable sale would suggest a value of $5,600,000.

(k) Attached as Exhibit "J" is a true copy of the most recent Housing Market Outlook report produced by CMHC for Saskatoon (spring 2016). The report notes that housing starts (both multi-unit and single detached) declined significantly in Saskatoon in 2015 (about 35%), with a flattening projected for 2016 and 2017. The report notes "elevated new home inventory" on page 2. More specific data is provided on pages 2 and 3: single detached and multi-unit new inventory levels are dramatically higher than the five and ten year averages. Neither the Hypothetical Appraisal nor the As Is Appraisal communicated a recognition that Saskatoon residential construction market was declining. Rather, on page 7 of the Hypothetical Appraisal, the emphasis was on recent growth of the City (perhaps understandable given the timing).

(l) If the Saskatoon Lands have decreased in value from approximately $6.3 million (per the "As Is Appraisal") in June 2015 to $5 million or less now as a result of a weakening real estate market, it makes no sense to require secured lenders to wait through a CCAA process while the value may be continuing to deteriorate.

23. The materials now before the Court set out time frames that would be entirely unacceptable to any secured creditor in the position of FCMF. With respect to those time frames, assuming that 825 is able to obtain the zoning it hopes for, the best case scenario is probably along the lines of the following:

(a) Completion of the Concept Plan by October or November 2016.

(b) Approval from the City of the Concept Plan and rezoning could reasonably be expected to be completed by the end of 2017. In that respect, I have reviewed the City's website and it indicates that the City will not start processing an application until the application is complete. I have not investigated whether the subdivision could proceed concurrently.

(c) The next stage would presumably be to refinance or sell the Saskatoon Lands in order to generate funds to pay out the Mortgage Lenders. The Hypothetical Appraisal contemplates a six to twelve month exposure of the property to achieve a sale. If it is six months, that would take things to mid-2018.

That is probably the best case scenario for timing, and likely does not allow for the time that would be needed to develop a plan to address the sewer capacity problem, which might need to be resolved before the City will consider the application to be complete. It would mean holding FCMF under a stay for over two years, without knowing whether there would be any substantial enhancement of the value, at least until the City makes its determination on approval of the Concept Plan and rezoning. In the meantime, without having run detailed calculations, interest arrears of over $1.2 million owing to the Mortgage Lenders would have accrued (at over $50,000 per month before compounding) so it would take over $6.8 million at that point to pay out FCMF and Frank Pa.

When that is the plan before the Court – tying up creditors for two years or more in the hopes of a speculative return in the future – that is incredibly unfair and prejudicial to FCMF and to Frank Pa.

24. The Loan is in default and FCMF wishes to realize on its security as soon as possible and in as efficiently a manner as possible. Therefore FCMF is asking that the Court not extend the stay against it with respect to 825, so that it may take action to enforce its mortgage. FCMF is not requesting, although it would not oppose, the complete removal of 825 from the CCAA proceedings.

25. I understand that the Debtors and/or the Monitor may take the view that FCMF has altered its position from having agreed to the Initial Order on May 19 and 20, 2016. In anticipation of that position, I would make several points.

26. First, the stay under an initial order could only be up to June 17, 2016. The Debtors were always going to have to justify an extension.

27. Second, the time frames in such insolvency proceedings are always short and positions can be fluid. The Debtors started with the BIA proposal process and less than two weeks later had pivoted to working towards a CCAA order. Up until shortly before May 20, 2016, our understanding was that the Debtors would not be asking the Court to approve DIP financing on that day, but the exigencies of time resulted in them requesting, and obtaining, an order approving DIP financing on May 20.

28. Third, while FCMF did participate in discussions about the form of Initial Order, and did consent to the Initial Order, at no time did FCMF want a CCAA Order. Rather, we were attempting to get the parties to agree to a form of order that prejudiced FCMF as little as possible. At no point was it suggested that if FCMF opposed 825's inclusion, or a stay being ordered against FCMF, that the CCAA application would not be made, or that the Debtors would agree to 825 not being protected by a stay. Rather, it was apparent that the application would have been made irrespective of whether it was consented to or opposed by FCMF, and the best way for FCMF to obtain an Initial Order that prejudiced us as little as possible was to follow the process that we followed.

29. Fourth, many facts have come to light since May 20, particularly surrounding zoning, the time frames that would be necessitated by the Debtors' plan, and the lack of value that would be created by their plan. The Stantec proposal has confirmed the relatively minor costs of obtaining a Concept Plan, and made it apparent that completing this step will not add significant land value given it is an easily achievable step with zero risk of obtaining the outcome.

30. It is not, in our view, unreasonable or inconsistent for FCMF to negotiate the best possible form of Order in on the initial hearing date, and then to later ask the Court to lift the stay as against it (in respect of 825 only).

31. If the stay is lifted by the Court, FCMF would then intend to enforce its mortgage as expeditiously as possible, likely by way of judicial sale.

32. I make this Affidavit in opposition to the request by 825 for an extension of its stay of proceedings as against FCMF and Frank Pa.

SWORN BEFORE ME at Toronto, in the Province of Ontario, this 8th day of June, 2016.	)))	
A Commissioner of Oaths/Notary Public in and for the Province of Ontario. My Appointment Expires: or being a Solicitor LADISLAV KOVAC	))	Jonathan Mair

18581974.3

This Affidavit was delivered by:

MILLER THOMSON LLP
15-23 Street East
Saskatoon, SK S7K 0H6

whose address for service is same as above.
Lawyer in charge of file: David Gerecke
Telephone Number: (306) 667.5615
Facsimile: (306)652.1586
email:dgerecke@millerthomson.com