

Court File No.: CV-24-00715153-00CL

**ONTARIO**  
**SUPERIOR COURT OF JUSTICE – COMMERCIAL LIST**

B E T W E E N :

EXPORT DEVELOPMENT CANADA

Applicant

- and -

ANTAMEX INDUSTRIES ULC

Respondent

**RESPONDING MOTION RECORD OF**  
**ANTAMEX INDUSTRIES ULC**  
**(Motion returnable February 27, 2024)**

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Lawyers for the Respondent

TO: **The Service List**

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**AFFIDAVIT OF RYAN SPURGEON  
(Sworn FEBRUARY 26, 2024)**

I, Ryan Spurgeon, of the Township of Severn, Ontario, MAKE OATH AND SAY:

1. I am the President of the Respondent, Antamex Industries ULC (“**Antamex**”). I have held that role for more than five years. As such, I have personal knowledge of the matters described below, except where otherwise stated in which case I have set out the source of my information and believe it to be true.
2. I swear this affidavit in support of Antamex’s request for a two-week adjournment of this Application for the appointment of a receiver. If granted, the adjournment would permit Antamex time to secure further funding for its work on several construction projects for the benefit of its stakeholders and without material prejudice to the Applicant, Export Development Canada (“**EDC**”).
3. I have read the affidavit of Adam Smith sworn February 21, 2024 (the “**Smith Affidavit**”) in support of the Application. As Mr. Smith described at paragraph 64 of his affidavit, Antamex continued to make its scheduled, ordinary course payments in

accordance with the EDC Loan Documents prior to the filing of this Application and has sufficient liquidity to continue these payments for the requested two-week adjournment period. Presently, Antamex has approximately CAD\$3 million in its bank accounts less approximately CAD\$200,000 in outstanding cheques.

4. Further, in the next two weeks, the most significant disbursements that Antamex will make relate to employee payroll, statutory remittances and critical payments to vendors. I believe these payments are necessary to preserve value for all stakeholders, including the Applicant, EDC. As such, and for further reasons described below, I do not believe that the requested adjournment will cause material prejudice to the Applicant or any stakeholder.

5. Mr. Smith sets out only part of the context for this Application. As described at paragraph 61 of the Smith Affidavit, Antamex had marketed the company for sale toward the end of 2023. That process did not result in a transaction acceptable to EDC. Further, Antamex canvassed several lenders in connection with a financing transaction as described in paragraph 63 of the Smith Affidavit. In addition, however, I explored a potential management buyout with financing from a private lender.

6. Discussions with the private lender were at advanced stages. However, when the lender became aware last week that EDC had commenced this Application, the lender lost interest. It was not amenable to funding a distressed business with a publicly tarnished brand.

7. Upon being served with EDC's Application Record and the prospects for the sought-after management buyout transaction falling away, Antamex engaged McMillan

LLP as its restructuring counsel last week and turned to what it viewed as its last potential funding option: the surety companies bonding certain of Antamex's obligations under its various subcontracts.

8. Antamex has several subcontracts and engagements for the design, engineering, manufacturing and installation of highly engineered modular façade systems which clad the exterior of multi-story buildings across multiple geographies, currently, but not limited to, Ontario, British Columbia, Nova Scotia, Massachusetts, Ohio, Pennsylvania and California. Antamex's subcontracts cover a broad array of mission critical construction and infrastructure sectors, currently, but not limited to, Ontario Hospitals, Residential, Life Sciences and Institutional.

9. Antamex has construction bond contracts with Euler Hermes North America Insurance Company, Aviva Insurance Company of Canada and Nationwide Mutual Insurance Company (collectively, the "Sureties") which serve to guarantee certain of Antamex's obligations to its customers in accordance with the terms of the relevant bonds. Each of the Sureties has material exposure under their respective bonds if Antamex's work is not completed. In addition to the normal costs of completion, the Sureties can expect a material increase in costs owing to escalation in raw material prices as compared to the prices when Antamex's contracts were entered into, premium time for manufacturing and installation, exposures to delay claims and additional costs to move Antamex's contracts to another supplier.

10. Antamex reached out to the Sureties on Thursday, February 22, 2024, the day it was served with the Application Record. Antamex requested that the Sureties consider funding for Antamex.

11. The Sureties took Antamex's request very seriously and immediately took steps to commit resources to evaluate and respond to the request. I am advised by Jeffrey Levine, a Partner at McMillan LLP, lawyers for Antamex, that on a call at 5pm on February 23, 2024 with representatives of each of the Sureties and their lawyers, the Sureties advised that they had retained an consultant to commence a books and records and project review to evaluate the funding requests. The Sureties' experts have been in consistent communication with me over the weekend, and we have established needs and a data room which was extensively populated by Antamex by end of day Sunday, February 25, 2024. In connection with that request, the Sureties' consultant has already commenced its work at Antamex's offices. The Sureties further advised that they need at least two weeks to complete their initial assessment.

12. As described above, given Antamex's current liquidity I do not believe that EDC would be materially prejudiced during this two-week period absent the appointment of a receiver. On the other hand, a receivership in the current circumstances would be detrimental to the going-concern prospects of the business, the completion of its projects and to Antamex's other stakeholders, including its employees (unionized and non-unionized), suppliers and customers.

13. With respect to employees, Antamex has approximately 180 full time employees on its payroll and approximately 40 unionized employees on its payroll that are not full

time. Last year, Antamex's payroll obligations totaled approximately CAD\$19 million and approximately USD\$2 million. I am very concerned that a receivership would put these employees' jobs in jeopardy.

14. With respect to suppliers, each of Antamex's projects are in various stages of completion. Antamex estimates that its suppliers have accounts payable and work in progress of in excess of approximately CAD\$15 million.

15. With respect to customers, general contractors and project owners naturally suffer from the delay and added expense associated with any change in control of a sub-contractor like Antamex, particularly if Antamex does not carry on as a going concern through the receivership.

16. As described in the Smith Affidavit, an independent Antamex affiliate in Norwich, Connecticut named Naverra LLC ("**Naverra**") fell into financial difficulty last spring. Naverra is not a subsidiary of Antamex and Antamex does not control Naverra. Antamex leases equipment to Naverra on an arms-length basis for use in its Norwich facility (the "**Norwich Equipment**") and the equipment forms part of EDC's collateral. I understand that EDC is concerned about the erosion of the value of the Norwich Equipment.

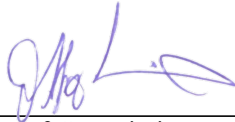
17. Naverra's landlord evicted Naverra and now controls access to the Norwich Equipment, but as described in the landlord's letter to EDC attached as Exhibit "DD" to the Smith Affidavit, the landlord accepts that EDC has a right to remove the collateral. As lessor of the Norwich Equipment, Antamex has previously committed and is prepared to work with EDC to secure the Norwich Equipment. The nature of the equipment is that



having it sit indoors, unused, for two further weeks will not have any material impact on its value.

**SWORN BEFORE ME:**                     in person     by video conference  
by Ryan Spurgeon at the Township of Severn before me at the City of Toronto on  
February 26, 2024 in accordance with O. Reg. 431/20, Administering Oath or  
Declaration Remotely.

Commissioner for Taking Affidavits (*or as may be*)



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Signature of Commissioner (*or as may be*)  
Jeffrey Levine, Barrister and Solicitor,  
LSO#55582H

**Ryan C.  
Spurgeon**

Digitally signed by Ryan C. Spurgeon  
DN: cn=Ryan C. Spurgeon, o=ANTAMEX Industries ULC, email=rspurgeon@antamex.com, c=CA  
Date: 2024.02.26 16:00:57 -05'00'

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Ryan Spurgeon

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COMMERCIAL LIST**

Proceeding commenced at Toronto

**AFFIDAVIT OF RYAN SPURGEON  
(SWORN FEBRUARY 26, 2024)**

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Lawyers for the The Respondent

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