

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.

**FIFTEENTH 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 "Applicants"), 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:

- (a) my Affidavits sworn May 12, 2016, June 6, 2016, June 9, 2016, August 12, 2016, December 16, 2016, May 24, 2017, May 31, 2017, December 15, 2017, December 19, 2017, May 29, 2018, August 27, 2018, February 19, 2019, February 20, 2019, April 23, 2019, and April 25, 2019; and
- (b) the Affidavits of David Calyniuk sworn August 12, 2016, December 16, 2016, May 23, 2017, December 15, 2017, and May 29, 2018.

## I. OVERVIEW

3. The Initial Order was granted on May 20, 2016, since which time it has been extended by the following orders of the Honourable Justice Meschishnick:

- (a) June 13, 2016;
- (b) August 17, 2016;
- (c) December 22, 2016;
- (d) May 31, 2017;
- (e) December 20, 2017;
- (f) June 1, 2018;
- (g) August 30, 2018;
- (h) February 22, 2019; and
- (i) April 26, 2019 (the “**Ninth Extension Order**”).

4. As discussed in more detail below, the Transaction contemplated by the Ninth Extension Order has been unable to close due to 33330’s inability to comply with one of the Pinnacle APA’s condition precedents. With the matter to be resolved as of May 31, 2019, an extension of the stay of proceedings is necessary to complete the Transaction and additional actions contemplated by the Ninth Extension Order.

## II. THE RESIDENTIAL TENANCIES ISSUE

5. As explained in the previous affidavits filed in these proceedings, there are five dormitory buildings located on the Campus. Until in or about December of 2017, the rooms in two of the dormitories were rented to a number of residential tenants, one of whom was the Orr Centre’s groundskeeper and janitor, as well as the individual responsible for looking after the dormitories themselves (the “**Tenant**”). It was a term of the Tenant’s employment agreement that he be permitted to live onsite.

6. 33330 terminated the employment agreement at the end of February of this year, and the Tenant was expected to vacate the dormitory within a reasonable timeframe thereafter, which he unfortunately did not do. With the Tenant still resident onsite, the Purchaser negotiated the inclusion of the following term into the Pinnacle APA:

8.3 General conditions Precedent to the Performance by Buyer

The obligation of the Buyer to consummate the Transaction is subject to the fulfillment, at or before the Closing, of the following conditions, any one or more of which may be waived by the Buyer in its sole discretion:

...

- (d) there shall be no individuals residing in or on the Purchased Assets as of the Closing Date, and the Seller shall have taken all necessary steps to lawfully terminate any residential tenancies in respect of the Purchased Assets.

[Emphasis in original.]

7. After executing the APA on April 9, 2019, 33330 therefore delivered a Form 8 Notice to Vacate – Employee (the “**Notice to Vacate**”) to the Tenant, as contemplated by *The Residential Tenancies Act, 2006* (the “**RTA**”), and heard nothing further from the Tenant until April 24, 2019, when I was advised by Colliers that the Tenant had executed the portion of the form required to dispute the landlord’s claim to end the tenancy, and posted the same on the door of the Orr Centre. 33330 instructed its legal counsel, McDougall Gauley LLP, to advise the Purchaser’s legal counsel as to what had occurred, which it did on April 24, 2019.

8. 33330 subsequently attempted to negotiate a settlement with the Tenant to avoid initiating proceedings through the Office of the Residential Tenancies (the “**ORT**”) to formally evict the Tenant and allow the Transaction to close. By May 1, 2019, the Tenant had not responded, such that a settlement appeared unlikely. 33330 therefore applied for an eviction hearing on the basis that the Tenant’s residence in the dormitory was a term of his employment, which had ended. The ORT subsequently scheduled the hearing for 11:00 a.m. on May 13, 2019.

9. 33330 was advised by its legal counsel (and verily believes it to be true) that, because the Notice to Vacate was served on April 9, 2019 (as opposed to March 31, 2019), the ORT was liable to find that the Notice to Vacate was not effective until May 31, 2019; consequently, rather than simply wait for the hearing date, 33330 made an Access to Information Request to the Regina Police Service to determine whether there may be additional grounds for an immediate eviction (e.g., suspected criminal activity).

10. The police reports 33330 received in response to its request were heavily redacted in accordance with various provisions of *The Local Authority Freedom of Information and Protection of Privacy Act*. Despite the redactions, the police reports nevertheless provided evidence of suspected criminal activity in relation to the dormitories, and 33330 therefore made an application for an immediate eviction hearing, which was subsequently scheduled for May 15, 2019.

### **III. OUTCOME AND NEXT STEPS**


11. 33330 completed both hearings before the ORT, with the Tenant only participating in the second. In the interests of achieving a certain outcome, 33330 opted to enter into a settlement agreement with the Tenant that allowed the ORT to issue a Writ of Possession to 33330 on a consent basis in exchange for a cash payment to the Tenant to assist with securing a new residence. The Writ of Possession is enforceable in the event the Tenant does not provide vacant possession to 33330 by 11:59 p.m. on May 30, 2019.

12. The Purchaser has been advised of the settlement and the parties have set a tentative closing date of June 7, 2019. With the stay of proceedings set to expire at 11:59 p.m. on May 31, 2019, an extension is necessary in order to close the Transaction and allow for the distribution of the Net Proceeds as contemplated by the Ninth Extension Order.

13. I swear this affidavit in support of the application before this Honourable Court.

SWORN BEFORE ME at the City of )  
Saskatoon, in the Province of Saskatchewan, )  
this 23<sup>rd</sup> day of May, 2019. )  
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A COMMISSIONER FOR OATHS for  
Saskatchewan - Being a Solicitor.

  
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JOHN ORR

**CONTACT INFORMATION AND ADDRESS FOR SERVICE:**

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