



COURT FILE NUMBER 1701-03799

COURT COURT OF QUEEN'S BENCH OF ALBERTA

JUDICIAL CENTRE CALGARY

PLAINTIFF ROYAL BANK OF CANADA

DEFENDANTS GABRIEL CONSTRUCTION LTD., GABRIEL CONSTRUCTION (ALBERTA) LTD. and SASKALTA ENVIRONMENTAL SOLUTIONS INC.

DOCUMENT **THIRD REPORT OF THE COURT-APPOINTED RECEIVER AND MANAGER OF GABRIEL CONSTRUCTION LTD., GABRIEL CONSTRUCTION (ALBERTA) LTD. and SASKALTA ENVIRONMENTAL SOLUTIONS INC.**

DATED JUNE 12, 2018

PREPARED BY DELOITTE RESTRUCTURING INC.

ADDRESS FOR SERVICE AND CONTACT INFORMATION OF PARTY FILING THIS DOCUMENT

Counsel:

Torys LLP
525 – 8th Avenue SW
46th Floor
Eighth Avenue Place East
Calgary, AB T2P 1G1

Attention: Kyle Kashuba

Telephone/Facsimile: 403-776-3744 / 403-776-3800

Email: kkashuba@torys.com

Receiver and Manager:

Deloitte Restructuring Inc.
700, 850 – 2nd Street SW
Calgary, AB T2P 0R8

Attention: Jeff Keeble

Telephone/Facsimile: 403-503-1458 / 403-718-3681

Email: jkeeble@deloitte.ca

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INTRODUCTION

- 1) Pursuant to an Order (the "**Receivership Order**") of the Court of Queen's Bench of Alberta (the "**Court**") dated March 21, 2017 (the "**Date of Receivership**"), Deloitte Restructuring Inc. was appointed as receiver and manager (the "**Receiver**"), without security, of all assets, undertakings and properties (the "**Property**") of Gabriel Construction Ltd. ("**GCL**"), Gabriel Construction (Alberta) Ltd. ("**GCAL**") and SaskAlta Environmental Solutions Inc. ("**SaskAlta**") (collectively, the "**Companies**" or the "**Group**"). The Court proceedings in which the Receiver was appointed are referred to herein as the "**Receivership Proceedings**".
- 2) The Receivership Order was granted as a result of an application by Royal Bank of Canada ("**RBC**"), which was owed approximately \$2.6 million by the Group at the Date of Receivership (the "**RBC Indebtedness**"). RBC holds various registered security over all of the Group's present and after-acquired real and personal property, along with various personal guarantees (collectively, the "**RBC Security**"). The Receiver's independent legal counsel, Torys LLP ("**Torys**"), has conducted an independent review of the validity and enforceability of the RBC Security and has advised that it is valid and enforceable and forms a first charge over the Group's Property, ranking in priority to the unsecured creditors of the Group and to any subsequently appointed trustee in bankruptcy (the "**Security Opinion**").
- 3) On June 1, 2017, the Receiver filed its first report to Court (the "**First Report**") to support its application heard on June 7, 2017 (the "**June 7 Application**") to, among other things, seek the Court's approval of the proposed sale of the Group's construction related equipment/inventory and office furniture/equipment (collectively, the "**Equipment**") via an auction process with Maynards Industries Canada Ltd. (the "**Maynards Proposal**"). A confidential supplement to the First Report (the "**First Confidential Report**"), which included the Maynards Proposal, was filed in support of the June 7 Application and was sealed in the Court File. Pursuant to the June 7 Application, the Court granted an order (the "**June 7 Order**") approving, among other things, the Maynards Proposal, the interim distribution of funds to RBC pursuant to the RBC Security and Security Opinion, the sealing of the First Confidential Report, and the actions of the Receiver as reported in the First Report.
- 4) On August 22, 2017, the Receiver filed its second report to Court (the "**Second Report**") to support its application heard on September 6, 2017 (the "**September 6 Application**") to, among other things, seek the Court's approval authorizing and approving a declaration stating that the Spring Water property at Camp Bay Road, Roatan, Honduras (the "**Honduras Property**"), registered in the name of Construcciones Gabriel, S.A. ("**Gabriel S.A.**") formed part of the Property of GCAL, and was subject to these Receivership Proceedings and the Receiver's powers and authority respecting the same. Pursuant to the September 6 Application, the Court granted a consent order (the "**Honduras Property Order**") approving, among other things, that the principal of the Companies, Mr. Gabriel Grenier, make himself available for questioning on his affidavits concerning the September 6 Application prior to September 9, 2017, that any undertakings during the questioning be responded to within 21 days of the questioning, and that the hearing of the application concerning the Honduras Property shall take place on October 24, 2017. As a result of the questioning, the October 24, 2017 application did not take place for reasons outlined later in this report.

- 5) This is the Receiver's third report to Court (the "**Third Report**" or "**this Report**"). Unless otherwise provided, all other capitalized terms not defined in this Third Report are as defined in the First Report, the Second Report and the Receivership Order.
- 6) In addition to this Third Report, the Receiver has prepared a confidential supplement to the Third Report dated June 12, 2018 (the "**Second Confidential Report**") which the Receiver is seeking be sealed in the Court file. The First Report, First Confidential Report, Second Report, Third Report and Second Confidential Report are collectively referred to herein as the "**Reports**".
- 7) The Receivership Order, together with the Notices to Creditors, Court application materials and First Report and Second Report have been posted on the Receiver's website at <http://www.insolvencies.deloitte.ca/en-ca/Pages/Gabriel>.

Purpose

- 8) The purpose of this Third Report is to:
 - a) Provide the Court with an update on the Receiver's activities since the Second Report;
 - b) Provide the Court with the Receiver's statement of receipts and disbursements since the Date of Receivership to June 4, 2018 (the "**Receiver's R&D**"); and
 - c) Respectfully recommend that the Court:
 - i. Approve the reported activities of the Receiver as set out herein and in the Second Report in respect of administering the Receivership Proceedings;
 - ii. Approve the Receiver's R&D, a copy of which is attached hereto as **Appendix "A"**;
 - iii. Approve an order approving the sale of the property located at 234 11th Avenue East, Regina, Saskatchewan (the "**Regina Property**") and authorizing the Receiver to complete the Regina Property sale transaction (the "**Regina Property Transaction**") as contemplated in the agreement of purchase and sale between the Receiver and 624987 Saskatchewan Ltd. (the "**Purchaser**") dated May 18, 2018 (the "**Regina Property PSA**") and vesting in the Purchaser (or its nominee) all of GCL's right, title and interest in the Regina Property; and
 - iv. Approve an order sealing the Second Confidential Report in the Court file.

Terms of Reference

- 9) In preparing this Report, the Receiver has relied upon unaudited financial and other information prepared by the Group, the Group's books and records, and discussions with the Group's former employees and various third parties with knowledge of the Companies and their assets and operations. The Receiver has not audited, reviewed or otherwise attempted to verify the accuracy or completeness of the information in a manner that would wholly or partially comply with Generally Accepted Assurance Standards pursuant to the Chartered Professional Accountants Canada Handbook and, accordingly, the Receiver expresses no opinion or other form of assurance in respect of this information. The Receiver may refine or alter its observations as further information is obtained or brought to its attention after the date of this Report.

- 10) The Receiver assumes no responsibility or liability for any loss or damage occasioned by any party as a result of the circulation, publication, reproduction, or use of this Report. Any use which any party makes of this Report, or any reliance or decision to be made based on this Report, is the sole responsibility of such party.
- 11) All dollar amounts in this Report are in Canadian dollars, unless otherwise indicated.

POWERS OF THE RECEIVER

- 12) The Receiver's powers are detailed in paragraph 3 of the Receivership Order and include, among others, the power to take and maintain possession and control of the assets of the Group; the power to manage, operate and carry on the business of the Group; and, the power to market and sell the assets of the Companies (subject to Court approval if any one transaction exceeds \$100,000 or if the aggregate of transactions exceed \$200,000).

RECEIVER'S ACTIVITIES SINCE THE SECOND REPORT

- 13) Since the date of the Second Report, the Receiver has, among other things:
 - a) Continued to market for sale the Regina Property, dealt with related environmental issues and site cleanup, and liaised with the Receiver's appointed listing broker, Colliers International ("**Colliers**"), in respect of the marketing process (further details of which are included later in this Report);
 - b) Continued settlement discussions and negotiated agreements related to the collection of outstanding accounts receivable and the settlement of deficiency claims with respect to several of the Group's construction projects;
 - c) Continued its investigations into Gabriel S.A. and the Honduras Property, obtained the Honduras Property Order and questioned Mr. Gabriel pursuant thereto, and took further steps with respect to the Honduras Property as outlined later in this Report;
 - d) Coordinated the completion of trust audits by the Canada Revenue Agency ("**CRA**") and paid the related priority claims;
 - e) Liaised with employees and other creditors in regards to their claims and the status of the Receivership Proceedings;
 - f) Liaised with various creditors, subcontractors and bonding companies relating to the Group's outstanding liabilities and the unfinished construction contracts and those with outstanding accounts receivable (collectively, the "**Unfinished Contracts**");
 - g) Provided written and verbal updates to RBC and other stakeholders; and
 - h) Continued to manage the Receiver's trust accounts, process the various receipts and disbursements, and complete the monthly bank reconciliations.

REMAINING ASSET REALIZATIONS

Regina Property and Related Sales Process

- 14) The Regina Property is comprised of four separate legal lots, a main building which was constructed in 1960 and includes approximately 4,800 sq. ft. of office/warehouse/workshop space, and a large gated and fenced yard of approximately 0.44 acres.
- 15) On May 15, 2017, the Receiver appointed Colliers as listing broker and listed the Regina Property for \$840,000. The Receiver understands that Colliers undertook the following sales and marketing activities for the Regina Property:
 - a) Created a brochure for the Regina Property and uploaded the brochure to the Colliers website;
 - b) Added the Regina Property on the Colliers website which has produced approximately 850 page views and 110 PDF views to date from over 600 contacts, of which 550 were based in Saskatchewan;
 - c) Posted a large 4' x 8' tripod "For Sale" sign at the Regina Property;
 - d) Sent targeted email notifications to approximately 30 external agents and 40 Colliers agents in Saskatchewan; and
 - e) Contacted approximately 70 parties directly to determine their potential interest in the Regina Property and conducted approximately 50 showings to date.
- 16) In August 2017, the Receiver received an offer for the Regina Property (the "**First Offer**") that was contingent on, among other things, the completion of a phase I environmental site assessment ("**Phase I ESA**"). The Receiver arranged for a Phase I ESA to be undertaken in September 2017 and the report indicated that the Regina Property building had traces of zonalite insulation in the exterior concrete block walls, and appeared to have asbestos insulation in the ceiling of the rear warehouse area and in the exterior walls of the main building. As a result of the Phase I ESA, the Receiver commissioned a hazardous material survey in October 2017 which confirmed the existence of asbestos and zonalite in the building. In November 2017, the Receiver obtained a quote to remediate the asbestos and zonalite, and replace the impacted insulation in the building for approximately \$75,000 (the "**Environmental Remediation Costs**"). Colliers advised the Receiver that it did not recommend undertaking the remediation work and incurring the Environmental Remediation Costs, but rather to allow interested parties to adjust their offers accordingly so that any new purchaser could undertake the work to their own specifications and requirements. Therefore, the remediation work has not been undertaken to date. As a result of the Phase I ESA and related Environmental Remediation Costs, the First Offer did not advance.
- 17) In February 2018, the list price for the Regina Property was reduced to \$756,000 in order to stimulate further interest in the subject property.
- 18) During the period from May 15, 2017 to May 16, 2018 Colliers received nine (9) separate offers (some of which are from the same parties at different points in time).

A discussion around the offers received for the Regina Property is included in more detail in the Second Confidential Report.

- 19) Over the course of the Receivership Proceedings, the Receiver has worked with and considered several offers that have not advanced for various reasons. Ultimately, the Regina Property PSA was received from the Purchaser in May 2018. The Regina Property PSA is now only subject to Court approval and is scheduled to close on June 27, 2018. The terms of the Regina Property PSA are more fully described in the Second Confidential Report, and a copy of the Regina Property PSA is appended thereto.
- 20) The Receiver is recommending the acceptance of the Regina Property PSA for the reasons outlined in the Second Confidential Report.
- 21) The Receiver has shared and discussed the Regina Property PSA with RBC, as described in the Second Confidential Report, and RBC is in agreement with Regina Property Transaction, subject to the approval of this Honourable Court.

Unfinished Contracts

- 22) As outlined in the Receiver's previous Reports, the Group was engaged on several bonded and non-bonded Unfinished Contracts at the Date of Receivership and the Receiver has entered into settlement discussions and agreements related to outstanding accounts receivable and deficiency claims, and has completed some of the work with an outside contractor.
- 23) As at the Date of Receivership, the Group had accounts receivable of approximately \$2.4 million and holdbacks receivable of approximately \$0.7 million. Since the Second Report, the Receiver has realized a further \$68,500 in accounts receivable. In total and since the Date of Receivership, the Receiver has realized approximately \$333,600 in accounts receivable.
- 24) Further realizations will be contingent on the number and dollar value of liens filed, ongoing negotiations and potential profits in respect of the Unfinished Contracts. Future recoveries are not expected to be significant.

Inventory, Construction and Office Equipment

- 25) As outlined in the Second Report, most of the Equipment owned by the Group was sold via auction pursuant to the Maynards Proposal at the Cremona Property and the Regina Property in July 2017. The auctions achieved gross sale proceeds of approximately \$1.1 million inclusive of the buyer's premiums.
- 26) As outlined in the Second Report, the Receiver has also sold certain of the Equipment by private sale at various of the Companies' project sites where the sale price was within the range of appraised values when accounting for the costs of hauling the Equipment and additional storage costs which were avoided by entering into the private sales. Since the Second Report, the Receiver has realized a further \$18,500 from the Miette Trailer Sale. In total and since the Date of Receivership, the Receiver has realized approximately \$1.3 million in gross proceeds from the Equipment.
- 27) The Receiver is not aware of any remaining unrealized Equipment.

Honduras Property

- 28) As outlined in prior Reports of the Receiver, the Receiver understands that the purchase and development of the Honduras Property was funded, in whole or in part, through \$2.1 million of funds that were advanced without any formal written agreements over several years from GCAL to Gabriel S.A., a company incorporated in the Republic of Honduras for the purposes of holding the Honduras Property.
- 29) The Receiver and Torys, along with counsel for RBC, have reviewed various banking and other information and have performed searches and investigations around Gabriel S.A. and the Honduras Property and its related ownership and financial status, as detailed in the Second Report. In the course of this review, the information provided to the Receiver with respect to the Honduras Property has been limited, inconsistent, and in some cases contradictory. Further, the Receiver has had general difficulty, since the Date of Receivership, in reaching Mr. Grenier to discuss the Honduras Property and matters relating to the Receivership Proceedings. This lack of access and cooperation contributed to the necessity of the September 6 Application being brought by the Receiver.
- 30) The review and analysis around the Honduras Property has been ongoing since the Second Report and, pursuant to the September 6 Application and the resulting Honduras Property Order, Mr. Grenier was questioned by Torys on September 7, 2017. The questioning of Mr. Grenier did not materially assist in providing the Receiver with any new substantial or helpful information around the Honduras Property and its ownership as Mr. Grenier indicated that his memory was limited and related documents and emails were not available.
- 31) In an effort to try to better understand and review options with respect to realizing on the Honduras Property, the Receiver recently engaged in discussion with a Honduras law firm, GUFA Law. GUFA Law has provided new searches related to the Honduras Property and Gabriel S.A. and the Receiver engaged GUFA Law to assist in its efforts to realize on the debt owing to GCAL from Gabriel S.A.
- 32) The Receiver has been continuing to monitor the activity around the rental and potential sale of the Honduras Property online and notes that the Honduras Property was scheduled to be sold by auction on May 31, 2018 by RE/MAX Bay Islands in Honduras ("**RE/MAX**"). GUFA Law was instructed by the Receiver to send letters to RE/MAX and Gabriel S.A. to abstain voluntarily from continuing to try and sell the Honduras Property until the debt owing to GCAL from Gabriel S.A. was resolved. GUFA Law sent the letters on May 31, 2018 and Torys also sent a similar letter to Mr. Grenier's legal counsel in Alberta. On June 4, 2018, the Companies' legal counsel filed a Notice of Withdrawal of Lawyer of Record in these proceedings. The Receiver is not certain if the Honduras Property was sold at the auction.
- 33) The Receiver and Torys will continue to work with GUFA Law to try to realize on the debt owing to GCAL from Gabriel S.A. in regards to the Honduras Property.

CREDITORS AND SECURED CHARGES

- 34) The RBC Security is subject to certain prior ranking Court-ordered charges and statutory interests, which include:
 - a) the Receiver's Charge (as that term is defined in the Receivership Order);
 - b) the Receiver's Borrowing Charge (as that term is defined in the Receivership Order); and
 - c) certain deemed trust and priority claims as described in paragraphs 37 and 38 below.
- 35) Pursuant to paragraph 17 of the Receivership Order, the Receiver and Torys are the beneficiaries of the Receiver's charge, which is a first-ranking charge over the Property to secure payment of their fees and disbursements incurred in the Receivership Proceedings.
- 36) Pursuant to paragraph 20 of the Receivership Order, the Receiver is authorized to borrow up to \$100,000 without further approval of the Court for the purpose of carrying out its duties and powers (the "**Borrowing Facility**"). The Receiver borrowed \$100,000 under the Borrowing Facility, but this has now been repaid and no borrowings are outstanding.
- 37) CRA has completed its trust audits and filed its priority claims (the "**CRA Priority Claims**") in relation to the outstanding payroll source deductions and goods and services tax ("**GST**") owing by the Group. The Receiver has paid approximately \$42,700 and \$18,000 for the priority payroll source deduction and GST claims, respectively.
- 38) The Receiver has also reviewed and processed the priority claims in respect of the *Wage Earner Protection Program Act (Canada)* ("**WEPPA**") and has paid approximately \$11,000 to Service Canada as a priority claim ranking ahead of the RBC Security.
- 39) As noted previously, RBC is the principal secured creditor of the Companies, and was owed approximately \$2.6 million at the Date of Receivership. Pursuant to the June 7 Order, the Receiver made an interim distribution of \$400,000 to RBC as a partial repayment of its indebtedness. Based on the estimated remaining realizations, RBC will suffer a substantial shortfall on the RBC Security and there will be no funds available to any unsecured creditors of the Companies.
- 40) The Receiver is also aware of an amended statement of claim dated August 24, 2013 filed against GCAL and ISL Engineering and Land Services Ltd. by the Town of Westlock and Westlock Regional Water Services Commission (the "**ToW Action**"). The plaintiffs in the ToW Action are suing for breach of contract and negligence. The ToW Action is seeking damages of \$1.63 million plus costs. The Receiver has not yet reviewed the facts or merits of the ToW Action and has not received a legal opinion regarding the validity or quantum of any potential claim. However, the Receiver has consented to the Receivership Order being lifted in respect of the ToW Action subject to the provisions of the Consent Order dated May 23, 2017. The Receiver understands that the ToW Action is presently in the document discovery phase.

STATEMENT OF RECEIPTS AND DISBURSEMENTS

- 41) Attached as Appendix "**A**" to this Third Report is the Receiver's R&D.
- 42) As at June 4, 2018, the Receiver's gross receipts, including the draw on the Receiver's Borrowing Facility, amounted to approximately \$1,763,000 and the Receiver continues to hold approximately \$260,880 in trust.

- 43) The more significant transactions included in the Receiver's R&D since the Second Report are as follows:
- a) Collected a further \$68,500 in accounts receivable;
 - b) Collected the Miette Trailer sale proceeds for \$18,500;
 - c) Paid \$26,000 to an external contractor in order to complete projects and collect accounts receivable;
 - d) Paid post-receivership GST of \$16,500;
 - e) Paid \$140,200 in Receiver's fees;
 - f) Paid \$121,900 in legal fees to Torys;
 - g) Paid \$60,600 for the CRA Priority Claims;
 - h) Paid \$400,000 to RBC as an interim distribution; and
 - i) Paid \$100,000 to RBC as a repayment of the Receiver's Borrowings.

CONCLUSIONS AND RECOMMENDATIONS

- 44) Based on the foregoing, the Receiver respectfully requests that the Court grant the relief requested in paragraph 8)c) of this Third Report.

All of which is respectfully submitted at Calgary, Alberta this 12th day of June, 2018.

DELOITTE RESTRUCTURING INC.

In its capacity as Court-Appointed Receiver and Manager of Gabriel Construction (Alberta) Ltd., Gabriel Construction Ltd. and SaskAlta Environmental Solutions Inc. and not in its personal or corporate capacities



Jeff Keeble, CPA, CA, CIRP, LIT, CBV
Senior Vice-President

Appendix "A"

Receiver's Interim Statement of Receipts and Disbursements for the Period from March 21, 2017 to June 4, 2018

Gabriel Construction (Alberta) Ltd., Gabriel Construction Ltd., and
SaskAlta Environmental Solutions Inc., all in Receivership

Interim Statement of Receipts and Disbursements
For the Period March 21, 2017 to June 4, 2018

Description	Gabriel Construction (Alberta) Ltd.	Gabriel Construction Ltd.	SaskAlta Environmental Solutions Inc.	Total	Notes
Receipts					
Collections of accounts receivable	\$ 97,956	\$ 216,212	\$ 19,402	\$ 333,570	
Equipment rental income	28,571	-	-	28,571	
GST and PST collected	5,204	8,920	-	14,124	
Interest	1,409	358	1,219	2,986	
Receiver borrowings from RBC	100,000	-	-	100,000	1
Transfer of funds from GCAL	(60,000)	40,000	20,000	-	1
Sale of equipment/inventory	516,844	352,351	404,110	1,273,304	
WCB and other refunds	5,816	4,295	381	10,492	
Total receipts	695,799	622,136	445,112	1,763,047	
Disbursements					
Appraisal fee	-	20,000	-	20,000	
Auctioneer's commissions and costs	57,601	49,803	46,626	154,030	
Contractor services	5,786	51,056	-	56,843	
Filing fees	70	70	70	210	
Fuel and utilities	3,015	12,444	3,638	19,097	
GST/PST paid	14,448	26,521	347	41,317	
Insurance premiums	21,733	24,361	13,596	59,691	
Lease payouts	56,651	44,260	4,040	104,951	
Property taxes and property reports	-	13,834	-	13,834	
Receiver's fees to Oct 31, 2017	102,521	89,706	64,076	256,303	2
Receiver's legal fees to Dec 31, 2017	68,682	60,096	42,926	171,704	2
Security	-	6,115	-	6,115	
Storage fees and clean up costs	-	9,250	-	9,250	
Transportation costs	-	16,440	-	16,440	3
WCB priority claim	1,078	-	-	1,078	
CRA priority claims for payroll source deductions	18,028	24,658	-	42,686	
CRA priority claims for GST	6,435	11,498	-	17,932	
Wage Earner Protection Program priority claim	-	10,691	-	10,691	
Interim distribution to RBC	150,000	-	250,000	400,000	
Repayment of Receiver borrowings to RBC	100,000	-	-	100,000	1
Total disbursements	606,048	470,805	425,319	1,502,172	
Excess of receipts over disbursements	\$ 89,751	\$ 151,331	\$ 19,793	\$ 260,876	

Notes:

- 1 The Royal Bank of Canada provided \$100,000 in Receiver borrowings. The borrowings have now been fully repaid from net realizations.
- 2 Receiver fees and legal fees have been allocated to each company based on the total receipts to June 8, 2018.
- 3 Paid to Winch-It by GCL on behalf of SaskAlta.