

COURT FILE NUMBER 25-1859192
ESTATE NO. 25-1859192
COURT COURT OF QUEEN'S BENCH OF ALBERTA
IN BANKRUPTCY AND INSOLVENCY
JUDICIAL CENTRE CALGARY

Clerk's Stamp

PROCEEDING **IN THE MATTER OF THE PROPOSAL OF
3 EAU CLAIRE DEVELOPMENTS INC.**

DOCUMENT **THIRD AFFIDAVIT OF ANDREW SEONG-JIN LEE**

ADDRESS FOR SERVICE AND CONTACT INFORMATION OF PARTY FILING THIS DOCUMENT
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File No.: 190822.0003

THIRD AFFIDAVIT OF ANDREW SEONG-JIN LEE

Sworn on July 15, 2014

I, ANDREW SEONG-JIN LEE, of the City of Calgary, in the Province of Alberta, SWEAR AND SAY THAT:

1. I am the Project Administrator and Jr. Project Manager of 3 Eau Claire Developments Inc. ("**3 Eau Claire**") and, as such, have personal knowledge of the facts and matters hereinafter deposed to except where stated to be based upon information and belief, and where so stated, I verily believe the same to be true. I am authorized to swear this Affidavit on behalf of 3 Eau Claire.
2. 3 Eau Claire filed Notice of Intention to Make a Proposal on April 11, 2014 (the "**NOI**"). On May 8, 2014, Justice Horner granted an Order extending of the time for filing a Proposal for 45 days to June 25, 2014 (the "**First Extension Order**"). The First

Extension Order also granted an Administrative Charge secured as a first charge against all property and assets of 3 Eau Claire for professional fees in the maximum amount of \$50,000 (the "**Administrative Charge**"). On June 25, 2014, Justice Streckfurther extended the time for filing a Proposal for three weeks to July 16, 2014.

3. I deposed an Affidavit in support of an application to extend the stay of proceedings on May 5, 2014 ("**First Lee Affidavit**"), a Confidential Affidavit on May 5, 2014 containing appraisal information which was sealed pursuant to the Sealing Order granted by Justice Horner on May 8, 2014, a Second Affidavit on June 19, 2014 in support of a further stay of proceedings, and a Second Confidential Affidavit on June 25, 2014 containing the letters of intent received from parties interested in the Project. All capitalized terms not otherwise defined herein, shall have the same meanings as are ascribed thereto in the First Lee Affidavit.

3 EAU CLAIRE

4. 3 Eau Claire owns Lands in the Eau Claire district of downtown Calgary and had commenced development of a 652,788 square foot ("sf.") building comprised of 273,562 sf. of office space contained in the first 12 levels of the building and 446 residential condominium units in 379,226 sf. of residential space located in two towers above the office space (the "**Project**").
5. 3 Eau Claire has purchase agreements in place for 260 on the condominium units. All of the deposits paid by the condominium purchasers are being held in trust by Miller Thomson LLP.
6. In early 2013, 3 Eau Claire determined that it needed a partner to develop the Project. 3 Eau Claire and Bosa Properties (Eau Claire) Inc. ("**Bosa**") entered into a Co-Ownership Agreement for the Project. The Co-Ownership Agreement was conditional upon the office space being fully leased. Bosa was involved in and eventually took over negotiations with Shaw Cablesystems Limited ("**Shaw**") to fully lease the office space. During this time, Bosa advanced funds to the Project through the payment of various costs, but required that promissory notes and mortgage security be provided for the advances.
7. In February 2014 both Shaw and Bosa withdrew from the Project. Bosa issued formal demand for repayment of the amount owing under its mortgage in early April.

CREDITORS

- 8. To date, 3 Eau Claire owes its secured creditors with mortgages registered on title to the Lands approximately \$44.7 million, and owed its unsecured and trade creditors approximately \$1.8 million. All creditor claims are subject to review and verification.
- 9. The secured creditors of 3 Eau Claire are as follows:

Mortgage Holder	Amount Owing
Korea Exchange Bank ("KEB")	Principal and interest of approximately \$8,500,000
Computershare	Principal of \$20,800,000 plus interest of approximately \$6,000,000 (indebtedness is in Korean Won and is subject to prevailing exchange rates)
Shorebrook Capital Inc.	Principal of \$326,000
Bosa Properties (Eau Claire) Inc.	Principal of \$4,522,386.52 and interest of \$244,637.31
MMP Structural Engineers Ltd.	Principal of \$646,000
PM Rec Holdings Inc.	Principal of \$450,000
1713744 Alberta Ltd.	Principal of \$3,400,000

EFFORTS OF 3 EAU CLAIRE

- 10. 3 Eau Claire is committed to complete the Project which will result in the most favourable outcome for its creditors and stakeholders.
- 11. Since filing the NOI 3 Eau Claire has:
 - (a) retained and worked closely with Avison Young to market the Project in an effort to locate a new development partner or alternatively, a purchaser for the Lands and Project;
 - (b) received letters of intent from 3 parties, two of which are interested in a straight purchase of the Lands or of the Lands and the Project, and the other which is interested in entering into a joint venture with 3 Eau Claire for the development of the Project;

- (c) 3 Eau Claire and its counsel has been responding the inquiries of various creditors, condominium purchasers, and other stakeholders on a regular basis; and
- (d) 3 Eau Claire has met and corresponded regularly with the Trustee, to review cash flows and to seek the input of the Trustee in relation to the ongoing Proposal Proceedings.

PARKING OPERATIONS

- 12. 3 Eau Claire's main source of income is parking revenues. Prior to the last extension application 3 Eau Claire had an issue with it's original parking operator and terminated the its agreement with that operator for non-payment of rent. 3 Eau Claire entered into a Management Agreement with Imperial Parking Canada Corporation for parking operations on the Lands on June 6, 2014. The Management Agreement is structured as a revenue sharing arrangement whereby 3 Eau Claire will receive parking revenues after costs and management fees are paid. 3 Eau Claire has been receiving revenue as required by the agreement.

MOST RECENT PRIOR COURT APPLICATION

- 13. At the most recent court application on June 25, 2014, 3 Eau Claire advised the Court that it intended to continue its discussions with the entities that have provided letters of intent with a view to entering into a binding agreement (subject to court approval) with one of them by the end of July.
- 14. The Court granted a three week extension to allow 3 Eau Claire to do that.

BINDING LOI WITH JV PARTNER

- 15. 3 Eau Claire has entered into a binding letter of intent with a potential joint venture partner ("**JV Partner**") to complete the development of the Project. A copy of the letter of intent is attached to my Third Confidential Affidavit (the "**LOI**").
- 16. The LOI contains valuation information regarding the Land and the Project that could compromise a future sales process in the event that the LOI is not completed as contemplated and accordingly, 3 Eau Claire is seeking to have my Third Confidential Affidavit sealed.

17. Some of the highlights of the LOI which can be disclosed are as follows:
- (a) 3 Eau Claire and the JV Partner will form a joint venture;
 - (b) 3 Eau Claire will contribute the planning and development work that has been undertaken and the development site to the joint venture;
 - (c) the JV Partner will pay to 3 Eau Claire an initial capital investment to the joint venture which funds will be used to pay creditor claims and fund 3 Eau Claire's proposal;
 - (d) 3 Eau Claire will retain a minority interest in the Project;
 - (e) the initial capital investment will be paid by the JV Partner in three tranches as follows:
 - (i) initial deposit was paid into trust upon the execution of the LOI;
 - (ii) a further significant deposit will be paid into trust 10 days following creditor approval of 3 Eau Claire's proposal, the deposits will be releaseable to 3 Eau Claire at the conclusion of the due diligence period, upon the parties entering into a formal joint venture agreement, and upon court approval of 3 Eau Claire's proposal;
 - (iii) the remainder of the initial capital investment will be paid in accordance with the formal joint venture agreements and/or order of the Court.
 - (f) the deposit will be held in trust by counsel for the JV Partner;
 - (g) the JV Partner will arrange all financing required to commence and complete the development and will be responsible for the funding of the ongoing costs of the Project; and
 - (h) profits of the joint venture after payment of costs shall be shared between 3 Eau Claire and the JV Partner on a pari passu basis.

COMPUTERSHARE MORTGAGE

18. Computershare Trust Company of Canada which is holding the second mortgage on the Lands, is the designated trust company for the Hyundai Wise Calgary Private Investment Trusts who originally loaned 3 Eau Claire the funds to acquire the Lands.
 19. The funds were loaned in Korean Won (Korean currency) by a syndicate of 4 Korean savings banks. The fund manager for the syndicate is Wise Asset Management Co. Ltd.
 20. All four of the Korean banks in the syndicate are under the control of the Korea Deposit Insurance Corporation (“**KDIC**”) pursuant to legislation in Korea. Essentially, KDIC is now the second secured creditor of 3 Eau Claire and is, by far, the largest creditor.
 21. KDIC has a formal approval process for any decisions regarding loans under its control will likely take at least 30 days to obtain.
 22. At the time that 3 Eau Claire entered into the co-ownership agreement, with its previous development partner, Bosa, 3 Eau Claire had proposed an arrangement to KDIC for its loan which would have seen KDIC refinance the indebtedness as follows:
 - (a) payment to KDIC of 13,000,000,000 Korean Won; and
 - (b) balance of principal debt plus interest to be charged against the Lands by way of caveat which would be postponed to the construction financing, second mortgage and a caveat pursuant to the co-ownership agreement between Bosa and 3 Eau Claire.
- Attached hereto and marked as **Exhibit “A”** to this my Affidavit is a true copy of a letter from Wise Asset Management Co., Ltd. dated September 30, 2013 confirming the arrangement.
23. Now that the LOI has been executed, 3 Eau Claire will be making a formal submission to KDIC to enter into a similar arrangement with KDIC in order to allow 3 Eau Claire to make a proposal to its creditors and proceed with a joint venture with the JV Partner in order to complete the Project.
 24. 3 Eau Claire has had verbal discussions with KDIC and its representatives regarding this matter. KDIC is not opposing the extension of time for 3 Eau Claire to make a proposal

to its creditors and is open to receiving KDIC's formal submission for refinancing of the KDIC indebtedness.

25. 3 Eau Claire is optimistic that a refinancing arrangement may still be available from KDIC. Attached hereto and marked as **Exhibit "B"** to this my Affidavit is a true copy of a letter from 3 Eau Claire's lawyer in Korea explaining the status of KDIC. As the letter is written in Korean, I have included a translation of the letter to English.

POTENTIAL PROPOSAL

26. Now that 3 Eau Claire has a binding agreement in place and knows that the proposal will involve a joint venture and completion of the Project, it is in a position to develop a proposal to its creditors.
27. The joint venture would allow 3 Eau Claire to continue to operate and, subject to KDIC agreeing to refinance its loan, would allow for a distribution to KEB and to those parties with mortgage security registered subsequent to the Computershare mortgage upon the closing of the joint venture agreement. It would also allow for a distribution to the ordinary unsecured creditors in the form of cash and/or shares.
28. This will result in a higher return to all stakeholders in the project than would a straight sale of the Lands. Under a straight sale of the lands, it is likely that only KEB and KDIC would see any recovery.
29. 3 Eau Claire is seeking a 45 day extension (to the end of August) to:
- (a) finalize the agreement with the JV Partner;
 - (b) make the formal submission to KDIC; and
 - (c) make a Proposal to its creditors

We believe that the potential upside to 3 Eau Claire's stakeholders outweighs any potential prejudice due to the extension of time. The full 45 days will be required to complete these steps.

INCREASE TO ADMINISTRATIVE CHARGE

- 30. 3 Eau Claire has been attempting to pay its professional costs from the cash flow and has made payments to Deloitte and Miller Thomson, however, the amount of work that will be required in the next 45 days will exceed the amount that 3 Eau Claire can pay in from parking revenue. Further, we are advised that the Trustee has now fully retained independent legal counsel to assist with respect to the next steps to be taken in this matter.
- 31. Accordingly, we are seeking to increase the maximum amount of the Administrative Charge to \$100,000 to ensure that the professional fees are secured. Without this charge, 3 Eau Claire will be unable to obtain the assistance of professionals and will be unable to make a proposal to its creditors.
- 32. Given the value of the Lands and the amount of the indebtedness in this matter, the increase is not unreasonable and does not unduly prejudice the creditors.

CONCLUSION

- 33. 3 Eau Claire has, in good faith, been diligently pursuing activities aimed at the presentation of a proposal to its creditors under the BIA.
- 34. To the best of my knowledge, information and belief, none of the 3 Eau Claire's creditors will be materially prejudiced if the Court grants the relief being sought by the 3 Eau Claire.
- 35. I make this Affidavit in support of an application to the Court for an Order extending the time for 3 Eau Claire to file a Proposal for an additional 45 days, increasing the Administrative Charge and for an Order sealing the Third Confidential Affidavit of Andrew Seong-Jin Lee.

SWORN BEFORE ME at the City of)
 Calgary, in the Province of Alberta, this)
15 day of July, 2014.)

_____)
 A Commissioner for Oaths in and for the)
 Province of Alberta)


 _____)
 ANDREW SEONG-JIN LEE)

NICOLE T. TAYLOR-SMITH
 Barrister & Solicitor

Wise Asset Management Co., Ltd.

This is Exhibit "A"
Referred to in the affidavit of
Andrew Seong-Jin Lee
Sworn before me this 15
day of July, A.D. 2014

[Signature]
A Commissioner for Oaths in and
For the Province of Alberta

NICOLE T. TAYLOR-SMITH
Barrister & Solicitor

Date: 2013.09.30
To: 3 Eau Claire Developments Inc (the "Borrower")
Attention: Andrew SJ Lee
James Park, CC
Brett Sandler, CC

RE: Letter of Intent – '3 Eau Claire' Re-Payment & Postponement of Remaining Security

Dear Mr. Lee,

Further to Loan Statement from NongHyup Bank(the "Lender") dated September 16, 2013, we, Wise Asset Management Co., Ltd.(the "Fund managing company"), are hereby confirming the repayment & postponement of CALGARY REAL ESTATE PRIVATE FUND (Fund Reg. No: A25005, A25006, A25004) outstanding debt, which we have discussed with the Borrower for the past few months.

Loan Amount: ₩19,765,600,000 (principal amount, except a interest payable)

Re-payment Amount: ₩13,000,000,000

Remaining Balance: ₩6,995,600,000 (not including the interest payable above)

Security: The remaining balance of ₩6,995,600,000 and the interest payable will be charged against the land by a Caveat, pursuant to the Debt Acknowledgement Agreement to be entered into by and between the Lender and the Borrower (the "DA Agreement").

Subordination: The Caveat will subordinate to Construction Financing, Second Mortgage, and Bosa / 3 Eau Claire Caveat, and understand that we will be required to provide "stand still" agreements (to facilitate construction financing) and partial discharges on sales in the development.

Please acknowledge, however, that the Lender will release its security rights such as the Land Mortgage only if a Caveat under the DA Agreement, which shall have the same effect as the Land Mortgage in terms of security interest and priority, is effectively executed and perfected in a form and substance satisfactory to the Lender under the relevant laws and regulations.

In addition, it is acknowledged that specific terms and conditions agreed to in this Letter of Intent are subject to obtaining all necessary internal credit approvals (including prior consent of beneficiaries) and the execution of mutually satisfactory documentation between the Lender and the Borrower.

We trust that this Letter of Intent outlines and confirms our conversations up to date. Please let us know if you have further questions regarding this subject matter.

Kind regards,

Wise Asset Management Co., Ltd



This is Exhibit " B "
Referred to in the affidavit of
Andrew Seong Jin Lee
Sworn before me this 15
day of July, A.D. 2014

A Commissioner for Oaths in and
For the Province of Alberta

To whom it may concern and 3 Eau Claire,

NICOLE T. TAYLOR-SMITH
Barrister & Solicitor

저는 한국에서 법무법인 정진의 대표변호사로서 활동하고 있는 정혁진 변호사입니다. 저는 한국에서 가장 큰 기업인 삼성그룹의 수석변호사, 대한민국 국방부의 법무실장, 그리고 한국의 숭실대학교 법과대학 교수 등으로 일한 바 있습니다. 위와 같은 경험을 바탕으로 저는 그동안 3 Eau Claire의 해외 프로젝트에 관한 법률 컨설팅을 맡아왔습니다. 동 프로젝트 성공을 위해 상당한 검토를 해왔고 KDIC는 물론 관련 채권자들과도 계속 접촉과 협의를 해 왔습니다.

본 프로젝트를 위하여 당초 한국의 4개 저축은행은 와이즈에셋이 운용하는 펀드에 약 200억원(현재 환율기준 약21백만 캐나다 달러)의 자금을 대여하였고, 동 펀드는 3 Eau Claire에 대해 토지 매입자금을 공여한 바 있습니다. 그리고 이와 별도로 캐나다 외환은행은 850만 캐나다 달러를 대출하였습니다. Computershare mortgage는 와이즈에셋의 위임을 받아 매입된 토지를 담보로서 관리하게 된 것입니다.

그런데 한국의 4개 저축은행들은 정부로부터 영업정지명령을 받았고, 한국의 예금자보호법에 따라 위 저축은행들은 곧 KDIC의 통제 하에 들어가게 되었습니다. 그리하여 3 Eau Claire에 대한 4개 저축은행 대출금의 최종 처리권한도 현재 KDIC가 갖고 있습니다.

KDIC는 이 건 프로젝트에 대해 대출원금 중 상당액을 즉시 상환하고 원금의 일부는 프로젝트 완성시까지 상환을 연기해 주되 그 이자로서 연 5.2%를 받는 것으로 원칙적 결정을 한 바 있습니다. 물론 정부기관으로서 관련 위원회의 검토 및 의결 등 필요한 상당한 절차를 거쳐 이루어진 결정이었습니다.

저는 이 건 프로젝트가 Tri-Win과의 Joint Venture로 다시 시작되면 KDIC 측에 공식적인 안을 제시하고 협의할 임무를 3 Eau Claire로부터 부여받고 있습니다. 아마도 KDIC의 정부기관으로서의 성격에 비추어 볼 때, 이전에 결정하였던 자금상환 구조를 채무자에게 더 불리하게 변경하지는 않을 것입니다. 다만, 이번에는 자신들이 결정한 대로 얼마나 확실하게 실행될 것인가, 믿을 수 있을 것인가에 대해 자세히 점검하고자 할 것입니다.

따라서 이번에 다시 시작하게 되면 최종 결정에 이르는 소요시간도, 그 실행의 확실성만 보장한다면, 상당한 시간이 소요되었던 지난 번 보다는 많이 단축될 수 있을 것입니다. 따라서 얼마나 확실한 내용을 가지고 협의에 임하는냐가 보다 중요할 것입니다. 이 일을 맡아온 변호사로서 이상과 같은 의견을 말씀드립니다.

2014년 7월 11일

법무법인 정진

대표변호사 정혁진



To Whom it may concern and 3 Eau Claire,

I am Hyukjin Jeong, Representative Lawyer of JeongJinlaw firm. I've been working at Samsung group, the largest group in Korea as a chiefattorney and working at the Ministry Defense as a General Attorney and also working at Sungsiluniversity as a professor in law. Based on my experiences, I've been working for 3 Eau Claire as a Legal advisory council for overseas project. I've been involved in the project formany years and contacting and discussing with all related creditors as well as KDIC.

At the beginning of the project, four Korean Savings Bank formed a syndicate fund with about W20,000,000,000Kwon (about \$21,000,000CAD at current exchange rate)put into one of the Wise Asset Management Funds, and this fund was lent to the 3 Eau Claire for the purchase of the property in Calgary. Besides, Canada-local Korea Exchange Bank has also lent 3 Eau Claire about \$8,500,000CAD. The Computershare is the trustee of the Mortgage assigned by Wise Asset for the registration of the mortgage.

As the all four Savings bank became suspended of their business, they went into the control of KDIC by the Depositor Protection Act. Now, KDIC holds the final right of settling the loan lent to 3 Eau Claire.

Previously, KDIC had agreed on the 3 Eau Claire's proposal of being paid certain portion of the principal and postponing the rest until completion of project with accrued interest of 5.2% per year. Thatdecision was made through a thorough and comprehensive procedures and reviews amongst all related committees because KDIC is one of government organizations.

Once this project is re-configured as a Joint Venture with Tri-Win, I will submit the formal proposal and discuss with KDIC. Taking the nature of KDIC as a government organization into consideration, I believe that they won't change their existing decisionof restructuring the payment schedule to be any worse to the debtor. But they will closely reviewthe proposal from the point of how reliably and feasibly this proposal being executed as they decided.

When the discussion restarted, it won't take that long as they spent for the exiting one as long as the proposal is feasible and executable. What's the most important thing is to discuss with KDIC with the certainty and substantiality of the content of proposal. I express my opinion here as a dedicated lawyer of the projectfor 3 Eau Claire.

July 11th 2014

Representative Lawyer Hyukjin Jeong

JeongJin Law firm