

Clerks Stamp:

COURT FILE NUMBER 24-2806908

COURT COURT OF QUEEN'S BENCH OF ALBERTA IN
BANKRUPTCY AND INSOLVENCY

JUDICIAL CENTRE EDMONTON

IN THE MATTER OF THE *BANKRUPTCY AND
INSOLVENCY ACT*, R.S.C. 1985, C. B-3, AS
AMENDED

AND IN THE MATTER OF THE NOTICE OF
INTENTION TO MAKE A PROPOSAL OF 915245
ALBERTA LTD. o/a PRAIRIE TECH OILFIELD
SERVICES

APPLICANT 915245 ALBERTA LTD. o/a PRAIRIE TECH
OILFIELD SERVICES

RESPONDENTS 1635623 ALBERTA INC. o/a ADRENALINE
DIESEL and BONNIE'S EQUIPMENT SERVICES
LTD.

DOCUMENT **APPLICATION FOR DECLARATION AND
REPLEVIN ORDER**

ADDRESS FOR
SERVICE AND
CONTACT
INFORMATION
OF PARTY FILING
THIS DOCUMENT **DLA Piper (Canada) LLP**
2700, 10220-103 Ave NW
Edmonton, AB T5J 0K4
Attention: Jerritt R. Pawlyk / Kevin Hoy
Phone: 780.426.5330
Email: jerritt.pawlyk@dlapiper.com /
kevin.hoy@dlapiper.com
File No.108761-00001

NOTICE TO RESPONDENTS

This application is made against you. You are a respondent.

You have the right to state your side of this matter before the Master/Judge.

To do so, you must be in Court when the application is heard as shown below:

Date	Wednesday, April 6, 2022
Time	10:00 AM

Where **Edmonton Courts via WebEx**
Virtual Courtroom 86
<https://albertacourts.webex.com/meet/virtual.courtroom86>

Before Whom **The Honourable Justice Lema**

Remedy claimed or sought:

1. The Applicant, 915245 Alberta Ltd. O/A Prairie Tech Oilfield Services (the “**Company**”), seeks an order or orders, pursuant to section 11 of the *Judicature Act*, RSA 2000, c J-2 (the “**Judicature Act**”) Rules 6.49 and 6.50 of the Alberta Rules of Court, Alta Reg. 124/2010 (the “**Rules**”), and the inherent jurisdiction of this Honourable Court:
 - a) abridging time for service of this Application and deeming service good and sufficient, if necessary;
 - b) validating service this Application;
 - c) declaring that:
 - i. 1635623 Alberta Inc. (O/A as Adrenaline Diesel) (“**Adrenaline Diesel**”) maintains a lien against a tractor-trailer unit bearing VIN: 1NPXD49X9GD305583 (the “**Peterbilt**”) in the amount of \$27,086.54 pursuant to the section 2 of the *Garage Keepers’ Lien Act*, RSA 2000, c G-2 (the “**GKLA**”);
 - ii. the Respondent, Adrenaline Diesel did not take possession of the Peterbilt for the purpose of realization prior to February 22, 2022, within the meaning of section 69(2)(a) of the *Bankruptcy and Insolvency Act*, RSC 1985, c B-3 (the “**BIA**”);
 - iii. Adrenaline Diesel is stayed from pursuing any remedy against the Peterbilt pursuant to section 69(1)(a) of the *BIA*;
 - iv. The purported seizure of the Peterbilt by Adrenaline Diesel on March 21, 2022, is invalid and is of no force and effect;

- v. the Respondent, Bonnie's Equipment and Service Ltd. ("**Bonnie's**") maintains liens pursuant to section 2 of the GKLA against four oil trailers bearing VINs: 2H9AEBHG4CT002827, 2H9AEBHG4DT002635, 2H9AEBHG8BT002229, and 2H9AEBHG6BT002939 (collectively, the "**Oil Trailers**") for the amounts of \$6,101.77, \$7,634.08, \$4,353.49, and \$1,054.99, respectively; and
 - vi. Bonnie's did not take possession of the Oil Trailers for the purpose of realization prior to February 22, 2022, within the meaning of section 69(2)(a);
- d) alternatively, in the event that the Court should find that Bonnie's does not maintain a lien under the *GKLA* in the Oil Trailers, an Order declaring that:
- i. Bonnie's maintains a possessory lien pursuant to section 2 of the *Possessory Liens Act*, RSA 2000, c P-19 (the "**PLA**"), in the Oil Trailers for the amounts specified in paragraph 1(c)(v) above; and
 - ii. that Bonnie's remains in constructive possession of the Oil Trailers, notwithstanding that the same may be returned to the Company during the pendency of the Company's restructuring proceedings;
- e) compelling the replevin of the Peterbilt and the Oil Trailers;
- f) prohibiting the Company from selling, transferring, surrendering, or otherwise disposing of the Peterbilt and the Oil Trailers without the further Order of this Honourable Court; and
- g) such further and other relief as this Honourable Court may deem appropriate or necessary.

Grounds for making this application:

2. On February 22, 2022, the Company filed a Notice of Intention to Make a Proposal (the "**NOI**") pursuant to section 50.4 of the *BIA*. The stay of proceedings imposed under the *BIA*, as well as the timeline for the filing of the Company's proposal to its creditors, were extended to May 5, 2022, pursuant to an Order of this Honourable Court dated March 22, 2022.

The Company's Entitlement to Seek Declaratory Relief

3. Section 11 of the *Judicature Act* entitles the Company to apply to this Honourable Court seeking a declaration, with or without consequential. It is submitted that the broad discretion afforded to this Court to grant procedural orders pursuant to Rule 1.4 of the *Rules* empowers this Court to hear the Company's Application for declaratory relief within the context of the ongoing proceedings commenced in relation to the Company's NOI restructuring.

The Company's Right to the Peterbilt

4. The Respondent, Adrenaline Diesel, operates an automotive repair shop in Edmonton, Alberta. In or about July of 2021, the Company left the Peterbilt with Adrenaline Diesel and provided Adrenaline Diesel with authorization to complete certain necessary repairs to the Peterbilt. The Peterbilt is a tractor-trailer propelled by a diesel engine.
5. The Company was unable to pay accounts rendered by Adrenaline Diesel in relation to repairs made to the Peterbilt due to the Company's insolvency. The Peterbilt has remained at Adrenaline Diesel's place of business since it was left there by the Company in July of 2021. At no point prior to the filing of the Company's NOI did Adrenaline Diesel purport to seize the Peterbilt.
6. On March 17, 2022, subsequent to receiving notice of these proceedings, Adrenaline Diesel issued a Warrant instructing a civil enforcement agency to effect the seizure of the Peterbilt. A civil enforcement agency purported to effect constructive seizure of the Peterbilt on March 21, 2022.
7. Adrenaline Diesel satisfies the criteria necessary to maintain a claim of lien against the Peterbilt pursuant to the *GKLA*. However, as of February 22, 2022, Adrenaline Diesel was, by virtue of the general stay of proceedings imposed against the Company's creditors pursuant to section 69(1) of the *BIA*, prohibited from commencing or continuing any action, execution, or proceedings against the Company's property.
8. Adrenaline Diesel is not entitled to avail itself of the exceptional provisions for secured creditors set out in section 69(2)(a) of the *BIA*, as Adrenaline Diesel did not take

possession of the Peterbilt for the “purpose of seizure” within the meaning of that section of the *BIA* prior to February 22, 2022.

9. In light of the foregoing, the Company respectfully submits that this Honourable Court should issue an Order declaring that:
 - a) Adrenaline Diesel is entitled to a claim of lien against the Peterbilt pursuant to section 2 of the *GKLA* for the value of accounts rendered for repairs completed to the Peterbilt;
 - b) notwithstanding the validity of its lien, Adrenaline Diesel is not entitled to rely on section 69(2)(a) of the *BIA* to commence or carry on enforcement proceedings against the Peterbilt or the Company; and
 - c) the purported seizure of the Peterbilt on March 21, 2022, is of no force and effect.
10. Rules 6.48 to 6.50, collectively, empower this Court to grant a Replevin Order in respect of property unlawfully detained. Should this Honourable Court find that section 69(2)(a) of the *BIA* is not operative in respect of the Peterbilt, it is submitted that due to section 69(1) of the *BIA*, Adrenaline Diesel is not permitted to retain possession of the Peterbilt and that such continued possession constitutes unlawful detention within the meaning of Rule 6.48(a) of the *Rules*. The Company submits that it satisfies the criteria set out in the *Rules* for a Replevin Order in respect of the Peterbilt and that it is entitled to a Replevin Order for the same.

The Company’s Right to the Oil Trailers

11. The Respondent, Bonnie’s, operates an equipment repair shop in Bonnyville, Alberta. Between October of 2021 and February of 2022, the Company left the Oil Trailers at Bonnie’s place of business and provided Bonnie’s with authorization to complete certain necessary repairs to each of the Oil Trailers. The Oil Trailers are
12. The Company was unable to pay accounts rendered by Bonnie’s in relation to repairs made to the Oil Trailers due to the Company’s insolvency. The Oil Trailers have remained at Bonnie’s place of business since they were left there by the Company between October of 2021 and February of 2022. At no point prior to the filing of the Company’s NOI did Bonnie’s purport to seize any of the Oil Trailers.

13. The trailers are “motor vehicles” within the meaning of section 1(e) of the *GKLA* as they are vehicles propelled by power other than muscular power. Alternatively, it is submitted that the trailers are “parts of motor vehicles” within the meaning of section 2(1)(a) of the *GKLA*.
14. Bonnie’s, therefore, satisfies the criteria to maintain claims of lien against the Oil Trailers pursuant to section 2 of the *GKLA*. For the reasons stated in paragraphs 7 and 8 above, Bonnie’s is stayed from taking commencing or continuing any enforcement steps against the Oil Trailers.
15. In light of the foregoing, the Company respectfully submits that this Honourable Court should issue an Order declaring that:
 - a) Bonnie’s is entitled to claims of lien against the Oil Trailers pursuant to section 2 of the *GKLA* in the respective amounts of the accounts rendered by Bonnie’s in connection with repairs made to the Oil Trailers; and
 - b) notwithstanding the validity of its liens, Bonnie’s is not entitled to rely on section 69(2)(a) of the *BIA* to commence or carry on enforcement proceedings against the Oil Trailers or the Company.
16. Alternatively, in the event that the Court should determine that Bonnie’s is not entitled to maintain claims of lien against the Oil Trailers pursuant to the *GKLA*, it is submitted that Bonnie’s maintains claims of lien against the Oil Trailers pursuant to *PLA*.
17. Section 5 of the *PLA* expressly allows for perfection of a claim of lien under the *PLA* by way of a lien claimant’s constructive possession of property. It is submitted that
18. Therefore, in the alternative to the declaratory Order described at paragraph 15 above, it is submitted that this Honourable Court should issue an Order declaring that:
 - c) Bonnie’s is entitled to claims of lien against the Oil Trailers pursuant to section 2 of the *PLA* in the respective amounts of the accounts rendered by Bonnie’s in connection with repairs made to the Oil Trailers;

- d) Notwithstanding the validity of its liens, Bonnie's is not entitled to rely on section 69(2)(a) of the *BIA* to commence or carry on enforcement proceedings against the Oil Trailers or the Company; and
 - e) that Bonnie's remains in constructive possession of the Oil Trailers, notwithstanding that the same may be returned to the Company during the pendency of the Company's restructuring proceedings.
19. Rules 6.48 to 6.50, collectively, empower this Court to grant a Replevin Order in respect of property unlawfully detained. Should this Honourable Court find that section 69(2)(a) of the *BIA* is not operative in respect of the Oil Trailers, it is submitted that due to section 69(1) of the *BIA*, Bonnie's is not permitted to retain possession of the Oil Trailers and that such continued possession constitutes unlawful detention within the meaning of Rule 6.48(a) of the *Rules*. The Company submits that it satisfies the criteria set out in the *Rules* for a Replevin Order in respect of the Oil Trailers and that it is entitled to a Replevin Order for the same.

Material or evidence to be relied on:

- 20. First Affidavit of Dwayne Vogel, dated March 15, 2022; Second Affidavit of Dwayne Vogel, dated March 30, 2022;
- 21. Bench Brief, to be filed; and
- 22. Such further and other material as counsel may advise.

Applicable rules:

- 23. Rules 1.4, 6.3(1), 6.9(1), 6.48, 6.49, and 6.50 of the *Alberta Rules of Court*, Alta Reg. 124/2010.

Applicable Acts and regulations:

- 24. *Bankruptcy and Insolvency Act*, RSC 1985, c. B-3.
- 25. *Garage Keepers' Lien Act*, RSA 2000, c G-2.
- 26. *Possessory Liens Act*, RSA 2000, c P-19.

Any irregularity complained of or objection relied on:

27. Not applicable to this Application.

How the application is proposed to be heard or considered:

28. Via WebEx, in Virtual Courtroom 86, before the Honourable Justice Lema.

WARNING

If you do not come to Court either in person or by your lawyer, the Court may give the applicant(s) what they want in your absence. You will be bound by any order that the Court makes. If you want to take part in this application, you or your lawyer must attend in Court on the date and at the time shown at the beginning of the form. If you intend to rely on an affidavit or other evidence when the application is heard or considered, you must reply by giving reasonable notice of the material to the applicant.