

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.

REPLY 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 "**Companies**"), 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 my Affidavit sworn May 12, 2016 (the "**Initial Affidavit**") and Second Supplementary Affidavit sworn June 6, 2016 (the "**Second Supplementary Affidavit**").

3. I have read the Affidavit of Jonathan Mair sworn June 8, 2016 (the "**Mair Affidavit**"), and swear this affidavit in response to the new issues raised therein by Mr. Mair.

II. THE 825 LAND SEWAGE CAPACITY ISSUE

A. The Sewer Capacity Issue Generally

4. The Mair Affidavit argues and/or speculates in a number of paragraphs (e.g., paragraphs 22(f), 22(f)(v) 22(g), 22(i), 22(j), 23(c), and 29) that there will not be a significant increase in value to the 825 Land as a result of moving forward with the rezoning process due to a lack of existing sewer services to the site, and/or the lack of capacity in the City's existing infrastructure to accommodate discharge from the 825 Land.

5. I do not dispute that, at present, there is no existing sewer services for the 825 Land. The same could be said for many other parcels of bare land adjacent to the City that are initially proposed for development. It will therefore be necessary, as part of the development process, to construct a network of gravity sewer mains to collect wastewater from the 825 Land. This is not unusual for a new development.

6. The perceived problem affecting the land value arises from the fact that the collected wastewater needs to be transported to a treatment facility before being discharged into the environment. On behalf of Firm Capital, Mr. Mair argues that there is no capacity in the existing City infrastructure, which would transport the 825 Land's wastewater to an existing treatment facility. As will be described in more detail below, the issue is actually more nuanced, and Stantec has developed a solution to that issue in consultation with the City and the Saskatchewan Water Security Agency ("WSA") that demonstrates there is sewer capacity in the existing City infrastructure. Stantec's design will be submitted for approval as part of the 825 Concept Plan.

7. The sewer capacity issue is not a recent discovery, but rather something of which both Firm Capital and I were aware prior to my purchase of 825 and the advancement of the Firm Capital Loan. Further, the sewer capacity issue relates solely to the level of development that could be approved on the 825 Land (e.g., low versus medium density

residential). Even if the issue could not be resolved, the 825 Land could nevertheless be developed as low density residential, which the existing City infrastructure is capable of accommodating in its current iteration.

B. The 825 Land Value

8. Prior to my purchase of 825, my understanding was that the 825 Land was generally known in the local land development community to have been “on the market” for a number of years. In passing discussions with other developers, I have heard one such individual claim to have been offered the 825 Land for well below the price that I eventually paid to acquire 825, but that they passed on the opportunity due to a perceived inability to address the lack of sewer capacity in the existing City infrastructure to accommodate discharge from the 825 Land for anything above the requirements for low-density residential development. This appeared to be a significant limiting factor on the 825 Land’s future development potential, and the value was estimated accordingly.

9. As described in more detail below, Stantec has developed a solution to this problem that is explicitly referenced in the Stantec Proposal. However, as a professional engineer, I, myself, was aware prior to approaching Firm Capital and Pa for financing and ultimately purchasing 825 that the sewer capacity issue likely could be resolved through the design of a mechanism that would store the 825 Land’s wastewater during the City’s peak flow times, and discharge the wastewater to the City’s system during a non-peak time when there was capacity. Consequently, from my perspective, there was a realistic, achievable solution to the problem limiting the 825 Land’s potential value, such that the purchase price I ultimately paid for 825 was, in my view, a bargain.

C. Firm Capital’s Prior Knowledge of the Sewer Capacity Issue

10. I refute the suggestion in the Mair Affidavit that the sewer capacity issue is a matter of which Mr. Mair and Firm Capital have only recently become aware.

11. To the contrary, it was something that was explicitly brought to his attention in the course of negotiating the Firm Capital Loan. Attached as Exhibit “A” is a letter from 825’s former consultant, AODBT Architecture and Interior Design, dated July 11, 2015 and addressed to Mr. Mair’s attention the “**AODBT Letter**”). The fourth paragraph of the AODBT Letter reads:

This kind of development could be expected to yield densities ranging from 30-70 units/acre meaning that this land parcel could potentially accommodate as many as 1200 units. The limiting factors will be the cities (*sic*) willingness to accommodate higher rise buildings and the capacity of sewer and water infrastructure.

12. Firm Capital knew in advance of making the Firm Capital Loan that the sewer capacity issue was a potential limiting factor with respect to the 825 Land’s value and development potential. With respect to the latter specifically, the As Is Appraisal itself opines that a conservative estimate of the 825 Land’s value would be \$6.3 million, assuming it was developed as low-density residential (pg. 2).

13. From my perspective, Firm Capital therefore made the Firm Capital Loan with full knowledge of this potential limitation.

D. The Willow Wedge Sanitary Sewer Servicing Pre-design Report

14. Turning to the materials referenced in the Mair Affidavit, I respectfully disagree that the Willow Wedge Sanitary Sewer Servicing Pre-design Report attached as Exhibit “H” to the Mair Affidavit (the “**Sewer Servicing Report**”) “confirms” or otherwise opines that there is no existing City sanitary capacity available for the 825 Land, as suggested in paragraph 22(f)(v) of the Mair Affidavit.

15. What the Servicing Report confirms is that, again, much like other bare, undeveloped land adjacent to the City, the 825 Land requires a means of collecting and treating the wastewater generated by the community in the event of development. The Sewer Servicing Report then goes on to explain that:

- (a) at the time the report was drafted, there were two potential sanitary wastewater options worth considering in the author's opinion, namely, constructing a new sewage treatment facility, or, alternatively, connecting to the City's existing sanitary sewer system (pg. 2);
- (b) the nearest City sewage collection system to the 825 Land is the gravity sewer system along the west end of Melville Street (pg. 4);
- (c) the sewage in this portion of the City collects at the Jasper Avenue sewage pumping station (pg. 5);
- (d) there are two characteristic consumption periods that are normally recognized as being critical factors in the design and operation of mechanical facilities – namely peak day and peak hour rates (pg. 6); and
- (e) while discharge to the existing City infrastructure would require City approval and possible connection fees, the long term operation and maintenance costs of doing so would be significantly lower than maintaining and operating a waste water treatment plant (pg. 12).

16. In consultation with Stantec, 825's plan has been to pursue tying into the City's existing infrastructure in order to meet the 825 Land's waste water disposal needs. This will involve a connection to the existing gravity sewer system, with the waste water to be gathered at the Jasper Avenue sewage pumping station, as referenced in paragraphs 6(b) and (c) above, respectively.

17. I understand from my experience as a professional engineer that the "peak day" and "peak hour" rates in paragraph 6(d) above refer to days of the year where the flow will increase due to other events, such as heavy rains, and certain morning and evening hours of an average day, where the demands on the disposal system will be highest due to the average person's daily schedule (e.g., showers, washing dishes, etc.), respectively. This is the crux of the capacity issue.

C. Stantec's Solution to the Sewer Capacity Issue

18. While there is indeed a capacity issue with respect to discharging waste water from the 825 Land to the existing City infrastructure for anything in excess of the flows

created by a low density residential development, it needs to be understood that this limitation only exists if the discharge from the 825 Land occurs *during peak hours of the day*. That is to say that, outside of peak hours, there *is* capacity in the existing City infrastructure capable of supporting a higher density development on the 825 Land.

19. To explain, the existing City infrastructure that would service the 825 Land has pumps that are sized to handle 250 litres per second (“**lps**”) of wastewater. The pumps service 23,000 residents, who produce on average 78 lps of wastewater throughout the course of the day. During peak flow times (i.e., certain hours of the morning and evening), the lift station needs its entire 250 lps of capacity to handle the flows; however, at other times of the day (i.e., late at night), there is almost no flow such that is estimated that the system is actually capable of handling an additional 50,000 people, which is far greater than the demands of a medium density development. It is therefore possible for the existing infrastructure to service a higher density development on the 825 Land, as long as the wastewater is not being discharged at peak times.

20. The quoted portion from section 1.2.6 of the Stantec Proposal appearing at paragraph 22(f)(v) of the Mair Affidavit reads as though Stantec has concluded there is no ability to address the capacity issue, which is not the case. For ease of reference, the complete text of the relevant paragraph from section 1.2.6 of the Stantec Proposal reads:

The existing City sanitary sewer collection/transmission system will be modeled with the addition of the SDA [defined as “South Development Area”]. Based on coordination with the developer and City, it is known that the exiting City sanitary system is very near capacity for peak flow conditions, and cannot service the proposed population density normal peak flow conditions of the lands closest to The Willows. The model will include the collection and transmission systems for the SDA including an offpeak pumping system capable of storing sanitary peak flows and pumping during daily off-peak times for the property adjacent to The Willows. The servicing strategy will address odour control in the narrative discussion and graphical figures.

[Emphasis added.]

21. As part of the 825 Concept Plan, Stantec is designing a gravity sewage collection system for the 825 Land, which will discharge to an onsite holding tank equipped with a pumping system and forcemain. The holding tank will be designed to store the sewage

and discharge the same to the City system during off-peak hours, when there is capacity, thereby alleviating the issue entirely.

22. Attached as Exhibit “B” is a memorandum prepared by Stantec describing its interactions with the City with respect to the proposed solution to the sewage capacity issue, which would allow for medium density development on the 825 Land. A similar design was constructed and approved in the Regina, Saskatchewan Harbour Landing development.

23. Attached as Exhibit “C” is an email from Ryan Evans at the WSA dated October 19, 2015 indicating that the WSA had no concern with the proposed solution in principle, and that any subsequent issues, such as odour control, could be dealt with at the design stage.

24. Consequently, in response to Mr. Mair’s assertion at paragraph 22(f)(v) of the Mair Affidavit solving that the sewer capacity issue “would have far more impact on a value increase than the completion of the [825] Concept Plan...,” I agree, and state that:

- (a) this limiting factor has been known all along and resolved from a conceptual perspective in consultation with the City and the WSA; and
- (b) the design of the holding tank and lift station mechanisms will be completed as part of the 825 Concept Plan, thereby demonstrating the existing system’s capacity to support medium density development.

25. I therefore respectfully disagree that the completion of the 825 Concept Plan has no potential to significantly increase the 825 Land’s value, as it is a step towards the requisite rezoning and higher density development which will definitely increase that value in and of itself.

26. Furthermore, any appraisal or opinion of value Firm Capital obtains that does not take into account that the solution to the sewer capacity issue that has already been formulated in consultation with the City and WSA is based on a flawed premise, and

therefore of no assistance in these proceedings.

II. TIMING

27. At paragraph 22(f)(iv) of the Mair Affidavit, Mr. Mair argues that, upon completion of the 825 Concept Plan, it will still take another eight to twelve months to have the actual rezoning application considered.

28. The representations made by the City to date have indicated that it is prepared to consider and potentially approve the additional plans and agreements that must accompany 825's rezoning application, such as those summarized at paragraphs 28 of the Second Supplementary Affidavit, on a conditional basis pending receipt and approval of the 825 Concept Plan, which will minimize and/or eliminate any additional delay with respect to the approval of the zoning application itself.

29. As explained in paragraph 29 of the Second Supplementary Affidavit, I believe the retention of a reputable land developer to act as the owner's consultant will bring the additional benefit of minimizing any time required to obtain the necessary approvals from the City in this regard, given the credibility and experience such an individual would bring to the process through his or her skill set and reputation.

30. I can further advise that, since the swearing of the Second Supplementary Affidavit, Mr. Wally Mah of North Ridge has agreed to function in this capacity, and to assist in providing progress reports to the court and the stakeholders going forward. Mr. Mah has extensive experience and contacts acquired through actively developing property in and around the City for the past several decades.

31. In any event, the present application before this Honourable Court requests extension of the stay until August 31, 2016 to move matters forward. The Initial Order was only granted 20 days ago, and more time is needed to further develop a potential plan of arrangement.


III. REPRESENTATIONS MADE PRIOR TO THE INITIAL APPLICATION

32. Contrary to the representations made in paragraphs 17-20 and 25-29 of the Mair Affidavit, the position of Firm Capital in advance of the Initial Application was that, as long as the Companies consented to the ring-fencing approach to the Companies' assets proposed in the Miller Thomson Order, Firm Capital was willing to support the development of the 825 Land, and willing to offer DIP Financing in relation thereto.

33. Attached as Exhibit "D" is a copy of an email exchange between the Companies' legal counsel and Miller Thomson dated May 18, 2016, which email was received during the course of the negotiations referred to in paragraph 4 of the Second Supplementary Affidavit. The relevant portions have been highlighted.

34. I swear this affidavit in response to the new matters raised in the Mair Affidavit and in support of the application that is presently before this Honourable Court.

SWORN (OR AFFIRMED) BEFORE ME)
at the City of Saskatoon, in the Province of)
Saskatchewan, this 9th day of June, 2016.)
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A COMMISSIONER FOR OATHS for)
Saskatchewan - Being a Solicitor.)



JOHN ORR

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