

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.

SECOND 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 "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").

I. BACKGROUND TO THE PRESENT APPLICATION

3. Following the swearing of the Initial Affidavit and serving the Companies' application materials to have the BIA proceedings taken up and continued under the CCAA, I instructed the Companies' legal counsel, McDougall Gauley LLP, to engage in discussions with counsel for Affinity, Firm Capital, and Pa with a view to negotiating a

form of order that would be agreeable to these stakeholders.

4. Negotiations ensued, and after much back and forth, the Companies and Affinity ultimately consented to the revised form of the Companies' initial order drafted by Firm Capital and Pa's legal counsel (the "**Miller Thomson Order**"), which revisions, the Companies' legal counsel informs me, were made to specifically address Firm Capital and Pa's requirements that:

- (a) the Companies' assets remain separate and apart from one another;
- (b) the Administrative Charge not have priority to the Firm Capital and Pa's mortgages against the 825 Land;
- (c) any debtor-in-possession financing not have priority to the 825 Firm Capital Mortgage or the Pa Mortgage; and
- (d) Firm Capital be permitted to continue taking interest payments against the Firm Capital Loan from the Firm Capital Reserve Deposit.

5. The Miller Thomson Order was formally served upon all parties on the service list and subsequently filed with the Court on May 19, 2016. The following documents are attached for ease of reference:

- (a) Exhibit "A" – Miller Thomson LLP's covering letter to the Saskatchewan Court of Queen's Bench dated May 19, 2016 filing the Miller Thomson Order;
- (b) Exhibit "B" – a clean version of the Miller Thomson Order;
- (c) Exhibit "C" – a blacklined version of the Miller Thomson Order compared against the Companies' initial draft order.

6. The form of the Miller Thomson Order was subsequently approved and granted by the Order of the Honourable Justice Gabrielson dated May 20, 2016 (the "**Initial Order**").

7. The Companies' legal counsel advises me that, on May 24, 2016, it received the

letter attached as Exhibit “D” from Miller Thomson LLP, indicating that, despite having instructed their counsel to draft, serve, and file the form of order that ultimately became the Initial Order, Firm Capital and Pa were no longer prepared to be stayed from enforcing against the 825 Land.

8. I am not aware of any material change in circumstances with respect to the 825 Land that occurred between May 20 and May 24, 2016 (being the following business day) or in the subsequent weeks. Further, and as will be described in more detail in the next sections of this Affidavit, 825 has already expended resources by retaining Stantec to begin the scope of work outlined in the proposal attached to Exhibit “E” of the Initial Affidavit (the “**Stantec Proposal**”). For ease of reference, the Stantec Proposal is attached hereto as Exhibit “E.”

9. As detailed in the 825 Land Appraisal attached as Exhibit “D” to the Initial Affidavit, the 825 Land is estimated to be worth as much as \$19 million if subdivided into two discrete parcels and rezoned to accommodate medium-density multi-family development and urban institutional uses.

10. At present, the 825 Land is zoned as DAG 1 – Agricultural 1 District such that the first step in implementing any plan to increase its value necessarily entails a rezoning application; however, as will be described in more detail below, there a number of additional issues that need to be addressed as part of the overall rezoning and eventual development applications arising from the manner in which the 825 Land came to be part of the City.

11. Accordingly, 825’s immediate efforts since the granting of the Initial Order have focused on researching and retaining the appropriate professional consultants to assist 825 in moving forward with the rezoning application, and laying the groundwork for the eventual development of the 825 Land, both of which are prerequisites to obtaining the value estimated in the 825 Land Appraisal for the benefit of not just the secured creditors, but also the unsecured creditors.

12. If the 825 Land is sold as is, the potential to utilize this additional equity for the benefit of all of the Companies' stakeholders, as originally contemplated by the Companies in making their applications to have the BIA proceedings taken up and continued under the CCAA, will be irrevocably lost.

II. REZONING THE 825 LAND

A. The Community Plan Bylaw and Concept Plans

13. I understand from my personal experiences as an engineer and developer that municipalities, such as the City, are required by law to have an Official Community Plan, which governs, among other things, the City's residential, commercial, and industrial land use designations and policies. The City's Official Community Plan is contained in Bylaw No. 8769 (the "**Community Plan Bylaw**").

14. In furtherance of the Community Plan Bylaw, the City may then adopt Concept Plans (and, on an even smaller scale, Neighbourhood, Utilities, and Transportation Concept Plans) to specifically govern the zoning, subdivision, and overall development of individual areas of the City in accordance with the overarching perimeters set by the Community Plan Bylaw.

B. Zoning

15. Zoning in the City is regulated by Zoning Bylaw No. 8770 (the "**Zoning Bylaw**"), and any proposed change to a zoning designation requires an application to amend the Zoning Bylaw. The Zoning Bylaw amendment process can involve either an amendment to the:

- (a) existing Zoning Bylaw Map, thereby changing the zoning designation of a parcel or area to allow for a development of a land use not permitted by the existing designation; and/or

- (b) text of the Zoning Bylaw itself in order to add a specific land use designation to an existing zoning district, or change the existing development standards.

16. My understanding is that an application to rezone an area is unlikely to succeed unless the designation sought is consistent with the Community Plan Bylaw and any existing Concept Plan for the area to be rezoned.

C. The 825 Land's Use and Zoning Particulars

17. The Community Plan Bylaw includes an Official Community Plan Land Use Map, a copy of which is attached as Exhibit "F" (the "**Land Use Map**"). The 825 Land has been circled for ease of reference. As per the Land Use Map's legend, the 825 Land's existing use is identified as "Under Control of the Corman Park – Saskatoon Planning District."

18. Attached as Exhibit "G" is an excerpt from the Zoning Bylaw's Zoning Address Map. The 825 Land has again been circled for ease of reference. As detailed therein, the 825 Land's existing zoning designation is DAG 1 – Agricultural 1 District ("**DAG – 1**").

19. The 825 Land was part of the Rural Municipality of Corman Park No. 344 (the "**RM**") until annexed by the City on September 1, 2015. Likely as a consequence of the fact that the annexation was relatively recent, I do not believe the 825 Land has yet been given a formal land use designation, while the DAG – 1 zoning designation is effectively a hangover from the Corman Park – Saskatoon Planning District Zoning Bylaw.

20. I understand that, at the time of annexation, the representation made to City Council was that the purpose of the same was to accommodate eventual multifamily and/or institutional development. However, the City has yet to formulate and approve a Concept Plan for the area.

D. Concept Plan Report

21. In the absence of a pre-existing Concept Plan for an area, private developers are required to put together their own concept plan submissions for the City's consideration, which submissions must include a Concept Plan Report outlining, among other things, the land's:

- (a) existing features, such as existing use and ownership, adjacent land uses, airport zoning regulations, and existing utilities;
- (b) physical characteristics, such as topography, soil types and erosion, vegetation, wetlands, wildlife and natural areas, historical and archaeological resources, ground water, and potential site constraints;
- (c) proposed commercial and/ or residential uses; and
- (d) transportation and servicing issues, such as the anticipated transportation impact, and proposed transit routes and stops, water and water reservoirs, sanitary and storm sewers, overhead electrical, and solid waste disposal.

22. The proponent must also provide the following documents as appendices to the Concept Plan Report:

- (a) Natural Area Screening (Vegetation, Wildlife, Wetlands);
- (b) Multi-Modal Transportation Impact Study;
- (c) Phase 1 Environmental Site Assessment;
- (d) Historical and Archaeological Review;
- (e) Phase 1 Hydro-Geotechnical Analysis;
- (f) Ground Water Impact Evaluation;
- (g) Pedestrian and Bicycle Circulation Plan;
- (h) Preliminary Park Design; and
- (i) Digital Information Plan (Neighbourhood Survey Boundary).

23. An exhaustive list of the application requirements for a proponent's Concept Plan submission is contained in the City publication attached as Exhibit "H."

E. The Stantec Concept Plan and Serviceability Study

24. The scope of work outlined in the Stantec Proposal relates to the creation of a Concept Plan and Serviceability Study that will serve as, among other things, 825's Concept Plan Report for the City's consideration, which will propose that the 825 Land be rezoned to accommodate multi-family residential and institutional development (the "**825 Concept Plan**").

25. Following the issuance of the initial order, Stantec was formally retained to begin working on the 825 Concept Plan. A progress report dated June 6, 2016 is attached as Exhibit "I," which details the work performed by Stantec to date.

26. At present, it is estimated that Stantec will be 80% complete the 825 Concept Plan by August 31, 2016, at which time 825 will be in a position to estimate when it will be submitted to the City for consideration along with 825's application to have the 825 Land rezoned to accommodate the desired residential development.

27. The City's approval of the 825 Concept Plan is the key to increasing the 825 Land's value as estimated in the 825 Land Appraisal, thereby unlocking the equity for the benefit of the Companies' collective stakeholders, including 33330's significant pool of unsecured creditors.

III. GROUNDWORK FOR EVENTUAL DEVELOPMENT OF THE 825 LAND

28. A copy of the City of Saskatoon New Neighbourhood Design and Development Standards Manual (the "**Manual**") is attached as Exhibit "J." As outlined therein, in order to have the 825 Land best situated for development when the City approves the 825

Concept Plan as eventually anticipated, 825 will need to formulate and submit a number of additional plans and agreements for the City's consideration, including:

- (a) Neighbourhood Concept Plan(s);
- (b) Utility and Transportation Plans;
- (c) Application for Subdivision;
- (d) Servicing Agreement;
- (e) Easement Agreement(s); and
- (f) Detailed design documents.

29. In order to successfully move forward on this front, I believe it is necessary to access the experience and expertise of a professional land developer to act as the owner's consultant. Ideally, the owner's consultant would have knowledge of the City's planning, design, and proposal process, and the necessary management skills to deal with the civic administration, consultants, and stakeholders. In my view, the retention of such a consultant will maximize the chances of successfully developing the 825 Land, as well as minimize the time that is required to obtain the necessary approvals from the City.

30. My hope is that the involvement of a reputable land developer will have the additional benefit of making the project more attractive to potential investors willing to either lend to (or perhaps, alternatively, purchase 825 or the land itself) based on the 825 Land's development potential and anticipated increase in value. This would not only create the potential for the creditors to be repaid much earlier than initially contemplated, but also give the Companies an additional avenue to come to a plan of arrangement with the creditors and exit the CCAA process.

31. The scope of services to be provided by the owner's consultant could potentially include:

- (a) having discussions with civic administration to determine how to

effectively develop the project within the context of the Concept Plan, if accepted;

- (b) making recommendations on engineering, design and scope, contract issues, budget and actual cost status, proposed changes, schedule changes, project expansions, and problem resolutions; and
- (c) recommending, working with, as well as reviewing the reports of, the consulting engineers, planners, surveyors, and utility companies, as may be required, with the ultimate objective of preparing the project for development and sale in as expeditious manner as may be feasible and with a view to maximizing the return to the creditors and stakeholders.

32. In order to gauge the interest in the professional development community, I instructed the Companies' legal counsel to contact the following companies, whom I consider to be the pre-eminent local land development companies with the requisite experience and resources to fulfill this role:

- (a) Karina Developments Ltd. ("**Karina**");
- (b) North Ridge Development Corporation ("**North Ridge**");
- (c) Boychuk Construction Corporation ("**Boychuk**");
- (d) Riverbend Developments Ltd. ("**Riverbend**");
- (e) Harvard Developments Inc. ("**Harvard**");
- (f) North Prairie Developments Ltd. ("**North Prairie**");
- (g) Meridian Development Corp. ("**Meridian**"); and
- (h) Dream Development ("**Dream**").

33. Each of Karina, North Ridge, Boychuk, Riverbend, Harvard, North Prairie, and Dream all replied within two business days either requesting additional information about the 825 Land, or expressing outright interest in being the owner's consultant.

34. Accordingly, I instructed the Companies' legal counsel to provide these developers with a description of the anticipated scope of work, and request that they

submit proposals for 825's consideration before the close of business on June 3, 2016. We requested that, as part of their proposals, these companies consider alternative fee options (e.g., whether they would accept a percentage fee based on the results achieved in increasing the value of the 825 Land) in order to lower the month-to-month costs for the benefit of the stakeholders.

35. We received proposals from North Ridge and Boychuk by the deadline. North Prairie declined, but indicated that it wanted to be notified in the event the 825 Land came up for sale. In order to proceed on this front, 825 requires additional time to follow up with North Ridge and Boychuk, evaluate their competing offers, and negotiate a form of agreement that will maximize the successful bidder's incentive to increase the value of the 825 Land for the benefit of the stakeholders.

IV. ACTIONS TAKEN TO IMPROVE THE ORR CENTRE

36. The actions taken to improve the Orr Centre's financial situation since the Initial Order have focused on continuing to reduce operating costs and otherwise address the Operational Challenges, filling the vacant residential and commercial space, and maximizing the potential to increase the use of the Orr Centre as an event centre.

37. The staff is now down to four full-time employees, one of whose day-to-day responsibilities have been increased to accommodate the termination of the Orr Centre's manager. The response from the Orr Centre's tenants has been positive. Attached as Exhibits "K" and "L" are two letters from Orr Centre tenants describing the improvement in management from their perspective subsequent to the termination of the former manager.

38. In terms of new tenants, 33330 has:

- (a) negotiated a new lease with INtouch Career College and engaged in preliminary discussions with two other potential commercial tenants; and

- (b) engaged in discussions with:
 - (i) a present tenant, Queen City Collegiate High School, about having its students from China utilizing some of the dorms next year;
 - (ii) some of our existing dorm tenants about promoting the available spaces to their fellow union members involved in construction shutdowns at the Regina Co-op Refinery Complex and EVRAZ Regina Steelmaking & Rolling Mill; and
 - (iii) a seniors' housing provider in Regina who would be interested in entering a long-term lease arrangement for one of the presently shuttered dorm buildings in the event the same could be renovated to meet their requirements.

39. A copy of the Orr Centre's schedule of upcoming events is appended as Exhibit "M." In exploring possible ways to increase this aspect of the Orr Centre's business, I have had discussions with Paquin Artists Agency, a Division of Paquin Entertainment Group (the "**Agency**") about not only potential bookings for its existing roster of artists, but also developing a referral relationship and putting a manager onsite to help in the marketing and operation of the theatre and event business. The Agency advises, and I verily believe it to be true, that it is currently working on a proposal outlining the terms. This matter is still developing, but has the possibility of significantly increasing the revenue from the Orr Centre.

V. SUBDIVIDING AND SELLING A PORTION OF THE CAMPUS

40. When 825 sent out its initial inquiry to with respect to the owner's consultant position, one of the developers instead expressed an interest in having further discussions and obtaining additional information about the Orr Centre as a potential purchase, or, alternatively, the possibility of subdividing the Campus so that the developer could purchase a portion of the bare land.

41. In previous discussions with that developer prior to 33330's present financial difficulties, this developer had indicated that its specific interest in the Campus was building a nursing home on a portion of the Campus; consequently, there may be

potential to either sell the Orr Centre and Campus, or at least subdivide and sell a portion of the Campus.

42. In the past, 33330 has had preliminary discussions with the City of Regina Planning and Development Branch about the potential to subdivide and develop the Campus in a similar manner, as this was 33330's original intent in purchasing the Campus. More time is necessary to properly evaluate the full scope of work that would be required, as well as the estimated timeframe for completion.

VI. OTHER EFFORTS

43. As described in paragraphs 61 to 68 of the Initial Affidavit, 33330 is also the registered owner of two condominium units located in Prince Albert, Saskatchewan, while I own a third in my personal capacity (the "**PA Condos**"). The intention is to proceed with having the PA Condos listed as soon as reasonably practicable, and see whether a sale can be concluded and the equity utilized in these proceedings, which, to be clear, would include any proceeds from the condo I own in my personal capacity. I have already contacted Colliers International in this regard.

44. Finally, as described in paragraphs 80 to 84 of the Initial Affidavit, I am sole director of Third Avenue Christian Centre Inc. (the "**Christian Centre**"), a non-profit corporation that owns a single asset, namely, the Third Avenue Christian Centre located at 304 3rd Avenue in the City of Saskatoon (the "**Church**"). The Christian Centre is indebted to 33330, and 33330 is presently working with legal counsel to determine whether there is an available mechanism to bring the Church within the ambit of these proceedings in order to enhance the pool of assets available to address the claims of the various stakeholders. I understand that additional time, and potentially a further court application, may be required.

VII. STATUS OF THE DIP FINANCING

45. Pursuant to a second Order of the Honourable Justice Gabrielson on May 20, 2016, the Companies were authorized to, among other things, borrow under a credit facility (the “**DIP Credit Facility**”) from Pillar Capital Corp. (“**Pillar**”). A copy of the final agreement with Pillar in this respect is attached as Exhibit “N.”

46. The funds contemplated by the DIP Credit Facility have been advanced to the Companies.

VIII. RELIEF REQUESTED

47. The Companies have instructed their legal counsel to seek an extension of the stay of proceedings granted by the Initial Order to August 31, 2016, which will allow:

- (a) Stantec to bring the 825 Concept Plan towards completion;
- (b) 825 to evaluate the proposals received and ultimately retain either Boychuk or North Ridge as the owner’s consultant to further assist in improving the prospects of increasing the 825 Land’s value as expeditiously as possible;
- (c) 33330 time to consider and potentially perform further remediation work to the Orr Centre, explore the possibility of subdividing the Campus, and continue to increase tenancies and revenues; and
- (d) the Companies to further consider an overall plan of arrangement, which may result in a Court-approved sales process for certain of the Companies’ assets.

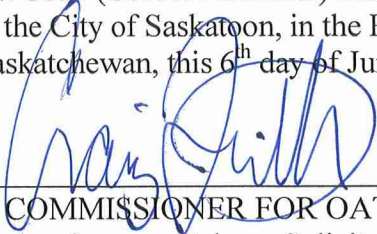
48. Since the issuance of the Initial Order, the Companies have continued to act in good faith and with due diligence, taking the incremental steps deemed necessary to allow the Companies to prepare a proposal for presentation to their creditors.

49. The Companies require more time to complete these efforts for the benefit of the

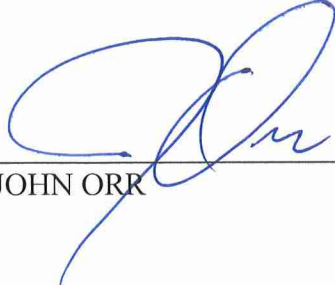
stakeholders.

50. I therefore swear this affidavit 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 6th day of June, 2016.)



A COMMISSIONER FOR OATHS for
Saskatchewan - Being a Solicitor.



JOHN ORR

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