

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.

NOTICE OF APPLICATION
(Tenth Extension and Partial Discharge of the Monitor)

NOTICE TO RESPONDENTS: All parties listed on the Service List

This application is made against you. You are a respondent. You have the right to state your side of this matter before the Court. To do so, you must be in Court when the application is heard as shown below:

Where: Court of Queen's Bench for Saskatchewan
Judicial Centre of Saskatoon
520 Spadina Crescent East
Saskatoon, SK S7K 3G7

Date: May 27, 2019

Time: 2:00 p.m.

Go to the end of this document to see what you can do and when you must do it.

Remedy claimed or sought:

1. The Applicants seek an order pursuant to the *Companies' Creditors Agreement Act*, R.S.C. 1985 c. C-36, as amended (the "CCAA"):

- (a) deeming service of this notice of application and materials in support thereof timely and sufficient;
- (b) providing that the Initial Order, including the stay of proceedings in favour of the Applicants contained therein, as extended by the subsequent Orders

of this Honourable Court, shall be extended to and including 11:59 p.m. (Saskatchewan Time) on July 5, 2019;

- (c) approving of all activities, actions and proposed courses of action of the Monitor to date in relation to its duties and mandate as Monitor of 101149825 Saskatchewan Ltd. (“825”) pursuant to the Orders of the Court made, and the reports of the Monitor filed, in these proceedings;
- (d) terminating the proceedings under the CCAA in respect of 825;
- (e) discharging the Monitor under the CCAA proceedings in respect of 825;
- (f) adjudging and declaring that based on the evidence before this Honourable Court:
 - (i) the Monitor has acted honestly and in good faith and carried out the Monitor’s Mandate in a commercially reasonable manner;
 - (ii) the Monitor has satisfied all of its duties and obligations pursuant to the Monitor’s Mandate;
 - (iii) the Monitor shall not be liable for any act or omission arising from, relating to or in connection with its discharge of the Monitor’s Mandate, save and except for any liability arising out of fraud, gross negligence or willful misconduct on the part of the Monitor;
 - (iv) the Monitor has never had and shall not in the future have any liability in regard to any act or omission of 825, including, without limitation, in relation to the business of 825, payment of and/or accounting for any taxes (including, without limitation, goods and services tax) on revenues earned or any indebtedness or obligations whatsoever or howsoever incurred by 825;
 - (v) no person shall commence an action or proceeding asserting a claim against the Monitor arising from, relating to or in connection with its discharge of the Monitor’s Mandate without first obtaining an Order of this Honourable Court (on notice to the Monitor) granting such person leave to commence such action or proceeding, and any such action or proceeding commenced without such leave being obtained is a nullity; and
 - (vi) except as contemplated by the Order sought, any claims against the Monitor in connection with the Monitor’s Mandate are hereby stayed, extinguished and forever barred;
- (g) approving the fees and disbursements of the Monitor for the period of

April 3, 2019 to April 26, 2019 and those of its legal counsel, MLT Aikins LLP, for the period of March 28, 2019 to April 26, 2019, as more particularly described in the Twelfth Report of the Monitor; and

- (h) granting such other and further relief as the circumstances may require and this Honourable Court deems appropriate.

Grounds for making this application:

2. Capitalized terms not otherwise defined herein shall have the meanings given to them in the Orders of this Honourable Court made, and affidavits filed, in these proceedings.

3. The stay of proceedings granted by the Initial Order was most recently extended by the Order of the Honourable Mr. Justice G.A. Meschishnick dated April 26, 2019 (the “**Ninth Extension Order**”), and expires on Friday, May 31, 2019, at 11:59 p.m. Saskatchewan time.

4. The Ninth Extension Order also approved a sale transaction respecting the Campus, Orr Centre, and the Orr Centre lease agreements (the “**Transaction**”) between 33330, Pinnacle Developments Inc. (the “**Purchaser**”), and the Monitor, since which time 33330 has been diligently working in good faith to fulfill the following general condition precedent to the Purchaser’s obligation to complete the Transaction:

8.3 General conditions Precedent to the Performance by Buyer

The obligation of the Buyer to consummate the Transaction is subject to the fulfillment, at or before the Closing, of the following conditions, any one or more of which may be waived by the Buyer in its sole discretion:

...

- (d) there shall be no individuals residing in or on the Purchased Assets as of the Closing Date, and the Seller shall have taken all necessary steps to lawfully terminate any residential tenancies in respect of the Purchased Assets.

[Emphasis in original.]

5. The lone remaining tenant in the dormitories located on the Campus disputed his eviction, which necessitated two hearings before the Office of Residential Tenancies on May 13 and 15, 2019 and resulted in 33330 obtaining a Writ of Possession for the dormitories that will become enforceable on May 31, 2019. An extension of the stay of proceedings is therefore necessary to close the Transaction and allow the Monitor to distribute the Net Sale Proceeds as contemplated by the Ninth Extension Order.

6. The first mortgagee in respect of the 825 Land, Firm Capital Mortgage Fund Inc. (“**Firm Capital**”), has commenced foreclosure proceedings seeking a judicial sale of the 825 Land, such that it is appropriate to terminate the CCAA proceedings and discharge the Monitor in relation to 825.

Material or evidence to be relied on:

- (a) this Notice of Application and proof of service;
- (b) the Fifteenth Supplementary Affidavit of John Orr;
- (c) the Twelfth Report of the Monitor;
- (d) draft Order; and
- (e) such further and other material as counsel may advise and this Honourable Court may permit.

Applicable rules:

- 7. The Applicants rely on Rules 12-1(1) and 13-7(2).

Applicable Acts and Regulations:

- 8. The Applicants rely on the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended, and, in particular, sections 11, 11.02(2) and (3).

NOTICE

If you wish to oppose the application, you or your lawyer must prepare an affidavit in response, serve a copy at the address for service given at the end of this document, and file it in the court office, with proof of service, at least 7 days before the date set for hearing the application. You or your lawyer must also come to court for the hearing of the application on the date set.

AND FURTHER TAKE NOTICE that if you do not appear at the hearing an order may be made in your absence and enforced against you. YOU WILL NOT RECEIVE FURTHER NOTICE OF THIS APPLICATION.

Dated at the City of Saskatoon, in the Province of Saskatchewan this 23rd day of May, 2019.

McDOUGALL GAULEY LLP

Per: 

Solicitors for the applicants,
101133330 Saskatchewan Ltd., and
101149825 Saskatchewan Ltd.

CONTACT INFORMATION AND ADDRESS FOR SERVICE

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