

CANADA)
PROVINCE OF SASKATCHEWAN)

Court No.: 22-2353460
Estate No.: 22-2353460

COURT QUEEN'S BENCH FOR SASKATCHEWAN
IN BANKRUPTCY AND INSOLVENCY

JUDICIAL CENTRE SASKATOON

APPLICANT S. WILSON CONSTRUCTION LTD.

IN THE MATTER OF THE NOTICE OF INTENTION TO MAKE A PROPOSAL
UNDER SECTION 50.4 OF THE *BANKRUPTCY AND INSOLVENCY ACT*,
RSC 1985, c. B-3, AS AMENDED, OF S. WILSON CONSTRUCTION LTD.

AFFIDAVIT OF BOYD WILSON

I, Boyd Wilson, of the Town of Rocanville, Saskatchewan, in the Province of Saskatchewan, MAKE OATH AND SAY THAT:

1. I am a director and the president of the applicant, S. Wilson Construction Ltd. ("**S. Wilson**"), 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.

I. INTRODUCTION AND OVERVIEW

2. S. Wilson was incorporated on May 5, 1978 by my parents, B. Stewart Wilson and Gail Wilson, and another couple, the Kasperskis, to carry on the road construction business the parties had previously operated as a partnership. My parents purchased the Kasperskis' shareholdings approximately seven years later.

3. I was named the vice president of S. Wilson on or about June 30, 1996, and became increasingly involved in the day-to-day operation of the business in the years that followed, becoming both a director and the president on or about October 12, 2013.

4. Since incorporation, the nature and scope of S. Wilson's business has expanded to more specifically include land clearing, excavating, rock crushing, aggregate hauling, and trenching services across Saskatchewan and Manitoba, utilizing a fleet of heavy equipment.

5. With the aforementioned expansion has come the incorporation of additional companies to create a more complex corporate structure comprised of the following entities:

- (a) 101292881 Saskatchewan Ltd. ("**Hold Co.**"), which is the sole shareholder of 10129883 Saskatchewan and S. Wilson;
- (b) 101292883 Saskatchewan Ltd. ("**Asset Co.**"), which owns the majority of the tangible business assets and leases the same to S. Wilson; and
- (c) S. Wilson, which acts as the Group's operating company.

6. S. Wilson's principal secured lenders are the Bank of Nova Scotia ("**Scotia**") and Roynat Inc. ("**Roynat**") (collectively, the "**Secured Creditors**"). The Secured Creditors have provided certain credit facilities to S. Wilson and Hold Co. and are cross-collateralized against the assets of each entity, as more particularly described below.

7. Over the last two years, a multitude of factors, including a slowdown in the potash industry and exceptionally poor weather in the 2016 construction season, led to an overall decline in S. Wilson's business revenues. At the end of 2016, the Secured Creditors expressed concern and took the position that S. Wilson had, among other things, exceeded its borrowing base.

8. This state of affairs led to two forbearance agreements with the Secured Creditors over the course of 2017, and, finally, an agreement (the "**Liquidation Agreement**") whereby Asset Co. agreed to facilitate the Secured Creditors' liquidation of the Equipment (as that term is defined below), with the said liquidation not to occur prior to June 1, 2018. The Liquidation Agreement was executed to forestall the Secured

Creditors' application to appoint a receiver over the assets and undertakings of Asset Co. returnable March 12, 2018 (the "**Receivership Application**"), which was adjourned indefinitely, but may be rescheduled in the event there is a breach of the Liquidation Agreement.

9. With no access to working capital and Asset Co.'s equipment pledged for sale, S. Wilson was unable to carry on business in the ordinary course or meet its obligations generally as they became due. The company was forced to abandon its ongoing construction projects (the "**Projects**") and lay off the majority of its employees.

10. A number of S. Wilson's subcontractors and suppliers proceeded to lien the Projects, as well as threaten or initiate legal proceedings for amounts owing, necessitating the filing of a notice of intention to file a proposal pursuant to section 50.4 of the *Bankruptcy and Insolvency Act*, RSC 1985, c. B-3 (the "**NOI**") to obtain the breathing room necessary to determine whether a viable proposal could be made to S. Wilson's unsecured creditors. A copy of the Official Receiver's Certificate of Filing the NOI dated March 9, 2018 is attached as Exhibit "**A**."

11. Since the filing of the NOI, S. Wilson has been working with the Secured Creditors' agent to retrieve Asset Co.'s equipment from the various worksites in Saskatchewan and Manitoba for sale in accordance with the Liquidation Agreement. In an effort to move forward and formulate a viable proposal for presentation to its remaining creditors, S. Wilson has:

- (a) listed its primary asset for sale;
- (b) worked with its legal counsel, McDougall Gauley LLP ("**Legal Counsel**"), and the proposal trustee, Deloitte Restructuring Inc. (the "**Proposal Trustee**"), to:
 - (i) prepare its cash flow projections;
 - (ii) conceptualize restructuring options;

- (iii) collect outstanding receivables on projects where there is a net balance owing to S. Wilson; and
- (iv) prepare requests for refinancing proposals for all or certain portions of the Equipment (the “**RFPs**”) and circulate the same to potential lenders.

12. S. Wilson is filing this motion to seek an order extending the time period within which the Proposal Trustee must file a proposal in respect of S. Wilson to May 23, 2018. If refinancing can be obtained pursuant to the RFPs, S. Wilson will be in a position to to make a viable proposal to its creditors. More time is, however, necessary.

II. CORPORATE STRUCTURE AND ASSETS

A. The 2016 Reorganization

13. 2015 was a particularly good year for S. Wilson, and the decision was made to undergo a corporate reorganization (the “**Reorganization**”) that entailed, among other things, the incorporation of Hold Co. to act as the parent company to S. Wilson, as well as the newly formed Asset Co.

14. S. Wilson subsequently entered into a Transfer of Debts and Assets Agreement dated February 1, 2016 (the “**Transfer Agreement**”) with Asset Co., whereby S. Wilson transferred all of its right, title, and interest in its construction assets and landholdings to Asset Co., and, among other things, assumed the secured debt obligations in relation to the same. S. Wilson then entered into a lease agreement with Asset Co. to allow it to utilize the construction assets and land to carry on business as the operating company.

B. Hold Co.

15. A corporate profile report for Hold Co. is attached as Exhibit “**B.**” As stated therein, Hold Co. was incorporated on November 23, 2015. My wife, Erin Wilson

(“Erin”), and I are the directors, as well as the president and vice-president, respectively. The shareholdings are as follows:

- (a) Boyd James Wilson – 5,800,991 Class E Preferred Shares;
- (b) Erin Kendra Wilson – 2,313,991 Class E Preferred Shares;
- (c) Stewart Wilson – 2,984,982 Class E Preferred Shares; and
- (d) Wilson Family Trust (2015) – 10 Class A Common Shares.

16. Aside from these specific (and other) shareholdings, Hold Co. does not have any assets. It was not party to any credit facilities with the Secured Creditors, and is not a party to these proceedings.

C. Asset Co.

17. A corporate profile report for Asset Co. is attached as Exhibit “C.” As stated therein, Asset Co. was incorporated on November 23, 2015. My wife, Erin Wilson (“Erin”), and I are the directors, as well as president and vice-president, respectively. The shareholdings are as follows:

- (a) Hold Co. – 10 Class A Common Shares;
- (b) Hold Co. – 6,514,760 Class E Preferred Shares.

18. In terms of personal property, Asset Co.’s assets consist of:

- (a) paving, crushing (the “**Crushing Equipment**”), and earthmoving equipment;
 - (b) vehicles and trailers; and
 - (c) shop tools and equipment.
- (collectively, the “**Equipment**”)

19. The substantial items comprising the Equipment are listed in the February 10, 2018 appraisal performed by Century Services attached as Exhibit “D.” Century Services’ has provided the following range of values depending on the circumstances of the sale:

- (a) \$10,327,300.00 based on the fair market value;
- (b) \$9,340,500.00 in an orderly liquidation scenario; and
- (c) \$8,124,700.00 in a forced liquidation.

20. The Crushing Equipment will be sold at an upcoming Ritchie Bros. Auctioneers (“**Ritchie Bros.**”) auction on April 9, 2018, which had been scheduled prior to the execution of the Liquidation Agreement in an effort to streamline S. Wilson’s ongoing business and address the Secured Creditors’ concerns with respect to S. Wilson’s borrowing base. Asset Co. has sought auction proposals from Ritchie Bros., Century Services, Maynards, McDougall Auctions, Michener Allen Auctioneering Ltd., and Osman Auction Inc. in respect of the balance of the Equipment, but Century Services is the only company to provide a proposal to date.

21. In addition, it has been determined that Asset Co. may be the beneficial owner of the following lands (and the buildings located thereon):

Surface Parcel #109310846
Reference Land Description: Blk/Par A Plan No 69R22296 Extension 0
As described on Certificate of Title 92R01261

Surface Parcel #111171585
Reference Land Description: NW 22 16 31 W 1 Blk/Par B Plan No 68R29836
Extension 2
As described on Certificate of Title 92R01261A, description 2

(collectively, the “**Real Property**”)

22. S. Wilson is the registered owner of the Real Property; however, following the filing of the NOI, Legal Counsel conducted a detailed examination of the Hold Co., Asset

Co., and S. Wilson minute books and determined that there are references to “Buildings,” “Land,” and “Buildings under Construction” included in the Transfer Agreement. Consequently, the mutual intention of S. Wilson and Asset Co. may have been to transfer the Real Property (and buildings located thereon) to the latter entity along with the Equipment and secured debt obligations as part of the Reorganization. This is consistent with my understanding of what was supposed to happen. Prior to seeing the land titles for the Real Property attached as Exhibit “E,” I myself believed that Asset Co. was the registered owner of the Real Property, and the internal financial statements and balance sheets have always shown that this was the case.

23. A March 28, 2017 appraisal prepared by Ema-Lyn Estate Appraisals and Consulting, a copy of which is attached as Exhibit “F,” valued the Real Property at \$1.659 million (as distinct from the net book value appearing in the First Report of the Proposal Trustee (the “**First Report**”)). As noted in the First Report, further analysis is presently underway to understand the full legal implications of this development.

D. S. Wilson

24. A corporate profile report for S. Wilson is attached as Exhibit “G.” As stated therein, S. Wilson was incorporated on May 5, 1978. My wife, Erin Wilson (“**Erin**”), and I are the directors, as well as president and vice-president, respectively, and my mother, Gail, still holds the office of treasurer. The shareholdings are as follows:

- (a) Hold Co. – 10 Class A Common Shares; and
 - (b) Hold Co. – 4,985,240 Class B Preferred Shares.
25. In terms of personal property, S. Wilson’s assets consist of:
- (a) accounts receivable in the amount of \$3,249,387.00 (the “**AR**”);
 - (b) inventory valued at \$1,775,509.00;

- (c) prepaid expenses in the amount of \$55,801.00;
- (d) equipment valued at \$286,998.00;
- (e) shareholder loans receivables in the amount of \$313,804.00; and
- (f) patronage equity valued at \$60,100.00.

26. The collection of S. Wilson's AR is complicated by the nature of the approximately \$4.7 million in accounts payable. The majority of this amount is owed to S. Wilson's subcontractors and suppliers in relation to the Projects that were at various stages of completion when S. Wilson lost access to its operating line of credit. Builders' liens and written notices of lien have been registered and served in relation to many of the Projects. For example, an application has been scheduled for April 10, 2018 in the judicial centre of Prince Albert by one of S. Wilson's customers (i.e., Richardson International (Saskatchewan) Limited) to pay the \$152,797.40 holdback amount owing to S. Wilson into court to vacate the builders' liens registered by S. Wilson's subcontractors against that project. Further proceedings of this nature are anticipated to follow.

27. S. Wilson's inventory includes items such as geotextiles, culverts, and equipment parts valued at approximately \$0.6 million that are available for liquidation. The balance of the inventory valued at approximately \$1.2 million consists of crushed aggregate, which is being stored at four gravel pits owned by third parties and the Real Property. With respect to the former, S. Wilson's various agreements with the landowners provide that S. Wilson may excavate, process, and sell aggregate removed from the land. In exchange, the landowners receive a royalty payment based on the total cubic yards of aggregate sold (e.g., \$4.00 per cubic yard), the amount of which differs from agreement to agreement. In addition, there are transportation costs and aggregate hauling rates imposed by the relevant rural municipalities, which must be paid to facilitate any individual sales. The net amount potentially available therefore remains to be determined.

28. Finally, the S. Wilson “equipment” noted above consists of small water pumps, hoses, generators, miscellaneous shop equipment, and hand tools, all of which are also available for liquidation.

III. LIABILITIES

29. Personal Property Registry search results for S. Wilson and Asset Co. are attached as Exhibits “H” and “I.”

A. Roynat

30. Pursuant to an Initial Offer of Finance dated April 23, 2015 (the “**Initial Offer**”), Roynat provided the following credit facilities to S. Wilson:

- (a) a term loan in the amount of \$5.3 million; and
- (b) a revolving term loan of \$1 million.

31. The Initial Offer was obtained to consolidate 69 different equipment leases and loans involving numerous vendors and financiers into one debt obligation.

32. The Initial Offer was subsequently amended by confirmation letters dated March 6 and May 4, 2017, the latter of which provided, among others, the following amendments:

As a result of the corporate restructuring and transfer of equipment assets from S. Wilson Construction Ltd. to 101292883 Saskatchewan Ltd., the following changes will be made to your file:

1. Amend the Borrower as follows:

From: S. Wilson Construction Ltd.
To: 101292883 Saskatchewan Ltd.

...

4. All references to the “Borrower” shall now state the combined results of 101292883 Saskatchewan Ltd., 101292881 Saskatchewan Ltd., and S. Wilson Construction Ltd.

33. The Initial Offer and amending letters are collectively referred to hereafter as the “**Roynat Credit Facility**,” and copies of the same are attached as Exhibit “**J**.”

34. The indebtedness owing pursuant to the Roynat Credit Facility is secured by, among other things, the following:

- (a) a \$6.3 million mortgage dated May 7, 2015 granting Roynat security against one of the parcels comprising the Real Property, namely:

Surface Parcel #109310846

Reference Land Description: Blk/Par A Plan No 69R22296 Extension 0

As described on Certificate of Title 92R01261

- (b) a \$6.3 million demand debenture dated May 7, 2015 granting Roynat a security interest in all of the present and future assets of S. Wilson;
- (c) a joint and several guarantee and indemnity dated May 15, 2015 executed by Boyd and Erin Wilson in respect of all amounts owed by S. Wilson to Roynat;
- (d) general security agreements dated April 4, 2017 granting Roynat security interests in all of the present and future assets of Asset Co. and Hold Co.; and
- (e) corporate guarantees:
 - (i) dated April 4, 2017 executed by Asset Co. and Hold Co. in respect of all amounts owed by S. Wilson to Roynat; and
 - (ii) dated June 2, 2017 executed by Hold Co. and S. Wilson in respect of all amounts owed by Asset Co. to Roynat.

(collectively, the “**Roynat Security**”)

35. Roynat provided an updated payout statement on March 6, 2018, a copy of which is attached as Exhibit “**K**.” As stated therein, Asset Co.’s indebtedness to Roynat totals \$4,699,852.13. Again, while the principal borrower under the Roynat Credit Facility is now Asset Co., the assets of S. Wilson remain subject to the Roynat Security.

B. Scotia

36. Further to a Commitment Letter dated September 8, 2016, a copy of which is attached as Exhibit “L,” S. Wilson is indebted to Scotia pursuant to the following agreements:

- (a) an Agreement Re: Operating Line dated September 8, 2016 in the amount of \$5 million;
- (b) a Lease dated May 20, 2016 to finance \$1,769,926.00 worth of equipment, as amended by the Amendment to the Lease Agreement dated April 4, 2017; and
- (c) a Scotiabank Visa Business Card Agreement dated June 2, 2015 with a \$250,000.00 credit limit.

37. The amounts owing pursuant to these agreements are secured by the following:

- (a) a \$1 million mortgage dated “March 2017” granting Scotia security against one of the parcels comprising the Real Property, namely:

Surface Parcel #109310846
Reference Land Description: Blk/Par A Plan No 69R22296 Extension 0
As described on Certificate of Title 92R01261
- (b) a general security agreement dated March 4, 2013 granting Scotia a security interest in all the present and after-acquired property of S. Wilson;
- (c) personal guarantees executed by Boyd and Erin Wilson dated March 4, 2013 and October 25, 2013, respectively, in respect of amounts owing by S. Wilson to Roynat;
- (d) general security agreements dated April 4, 2017 granting Scotia security interests in all the present and after-acquired property of Asset Co. and Hold Co.; and

- (e) corporate guarantees dated April 4, 2017 executed by Asset Co. and Hold Co. in respect of all amounts owed by S. Wilson to Scotia.

(the “**Scotia Security**”)

38. Scotia provided an updated payout statement on March 7, 2018, a copy of which is attached as Exhibit “M.” As stated therein, S. Wilson indebtedness to Scotia totals \$2,341,133.47.

C. Unsecured and Other Debt

39. As noted above, S. Wilson has accounts payable of nearly \$4.7 million, the majority of which is owed to unpaid subcontractors and suppliers on S. Wilson construction projects.

40. The names of the individual unsecured creditors appear in the list of creditors appearing in Exhibit A to the First Report.

41. S. Wilson’s payroll source deduction arrears totaling \$53,000.00 have been repaid since the filing of the NOI.

IV. REVENUE LOSS AND LIQUIDATION AGREEMENT

A. Contributing Factors to the Decline in Revenue

42. S. Wilson has been in business for nearly 40 years, during which time it has developed a reputation as a road construction and excavation specialist, and amassed a large fleet of heavy duty equipment, allowing it to execute multiple projects at any given time in Saskatchewan and Manitoba.

43. Since in or about 2012, however, S. Wilson’s experience the Saskatchewan construction industry can best be described as an ever increasing pool of companies,

many of which are from out of province, competing for less and less available work. In order to submit competitive bids and secure new projects, it was necessary to adjust S. Wilson's pricing to provide for smaller profit margins. The reduced profit margins were not accompanied by a decrease in S. Wilson's overall cost of doing business.

44. After experiencing a \$642,681.00 loss in 2014, S. Wilson recovered in 2015, with net earnings in excess of \$2.5 million. S. Wilson's net earnings declined to the \$1 million mark in 2016, before a disastrous 2017 that saw its overall revenue decline by over \$5.3 million and resulted in a net loss in excess of \$3.6 million.

45. Contributing factors in S. Wilson's declining revenues included, in addition to the market issues identified in paragraph 42 above, the following:

- (a) a significant decline in the available work at the K+S Potash Canada mine in Bethune, Saskatchewan (the "**K+S Mine**") and the Nutrien Potash mine north of Rocanville, Saskatchewan (the "**Rocanville Mine**"), each of which had, in the last few years, provided a substantial amount of S. Wilson's summer and winter revenue;
- (b) a water line installation project at the University of Saskatchewan that was scheduled to be completed over the course of 2016, but that was not completed until 2017 due to, among other things, lost days arising from a shared surveyor not contemplated by the tender documents, and which ultimately cost S. Wilson an additional \$278,600.00 in labour;
- (c) a gravel crushing job at the K+S Mine that began in or about March or April of 2016 and was scheduled to be completed within three months, but instead ran approximately 105 days over schedule on account of an extremely wet summer season and cost S. Wilson \$1.3 million more than what it bid on the project; and
- (d) a gravel crushing job for the Rural Municipality of Maryfield No. 91 that began in or about October of 2016 and was scheduled to be completed within two months, but instead took all of 2017 to complete and cost an additional \$344,568.00, the cause of which was the high moisture content from the torrential 2016 rains.

B. Resulting Forbearance Agreements

46. The Secured Creditors expressed concern over S. Wilson's declining revenues in last quarter of 2016, and took the position that S. Wilson had exceeded its borrowing base. The negotiations that followed resulted in a Forbearance Agreement dated March 24, 2017 (the "**Forbearance Agreement**") and additions to the Roynat Security and Scotia Security.

47. The Forbearance Agreement was scheduled to expire on July 31, 2017. Negotiations ensued as the date approached, which resulted in the execution of a Forbearance Extension Agreement dated August 1, 2017 and a second forbearance Extension Agreement dated September 16, 2017 (the "**Second Forbearance Extension**").

48. The Second Forbearance Extension provided that the forbearance period would expire on the earlier of March 31, 2018, or the occurrence of an event of default. The Secured Creditors took the position in late 2017 that S. Wilson had defaulted under the terms of the Second Forbearance Extension, the reasons for which largely flowed from S. Wilson's reduced operating line, contract proceeds that were immediately applied by Scotia to S. Wilson's indebtedness upon receipt, and the cost overruns on the aforementioned projects. As a result, S. Wilson was unable to pay its subcontractors, suppliers, third party mechanics, and, ultimately, was projecting that it may not be able to make its scheduled payments to the Secured Creditors. The Second Forbearance Extension was terminated by a letter dated January 5, 2018, and demand letters enclosing Notices of Intention to Enforce Security followed on January 26, 2018.

49. After a series of unsuccessful negotiations, the Secured Creditors prepared and served the Receivership Application. Ultimately, the matter was settled by way of the Liquidation Agreement, since which time S. Wilson has been working with the Secured Creditors' agent to facilitate the transportation of the Equipment back to the Real

Property to be prepared for auction. The parties have agreed that the auction will not occur before June 1, 2018 to allow for a potential refinancing.

V. POTENTIAL VIABLE PROPOSAL IF THE EXTENSION IS GRANTED

50. The total amount owing to the Secured Creditors is slightly in excess of \$7 million. Pursuant to the Liquidation Agreement, the Secured Creditors have:

- (a) consented to S. Wilson's filing of the NOI;
- (b) agreed to have no further involvement in the restructuring of S. Wilson;
- (c) waived their right to vote on any proposal ultimately filed by S. Wilson or oppose any additional applications made in the NOI proceedings; and
- (d) granted S. Wilson and/or Asset Co. the right to redeem any of the Equipment that has not yet been sold up to June 1, 2018.

51. With the Real Property valued at \$1.659 million and the Equipment valued at \$9,340,500.00 in an orderly liquidation scenario, S. Wilson is actively pursuing two potential refinancing options:

- (a) a wholesale refinancing of the entire business operation to pay out the Secured Creditors and fund a proposal; and
- (b) a smaller-scale refinancing aimed at allowing a restructured S. Wilson to:
 - (i) pay an initial tranche to the unsecured creditors in accordance with a proposal;
 - (ii) redeem key pieces of the Equipment or lease new equipment;
 - (iii) have access to a relatively small operating line; and
 - (iv) carry on business with a portion of the ongoing profits utilized to fund a subsequent tranche (or tranches) to the unsecured creditors to complete the proposal.

52. Although my personal preference would be to continue business within S. Wilson's primary area of expertise, road building contracts are extremely competitive and expensive to complete; furthermore, there is simply not enough work at this time. Consequently, in the event of either refinancing scenario, the business focus will need to change. To that end, there is a significant amount of available maintenance work for industrial and commercial properties (e.g., excavating and backfilling) similar to the services S. Wilson previously provided to the K+S Mine and Rocanville Mine. Contracts of this nature require less manpower, equipment, and overhead. With access to operating funds and proper equipment, S. Wilson has the contacts and experience to successfully bid on these types of contracts outside of the mining industry and generate proceeds on an ongoing basis to fund a proposal.

53. The RFPs are aimed at securing financing to pursue these objectives, and more time is needed to determine whether the same can be obtained. The RFPs have been provided to the following lenders:

- (a) Bank of Montreal;
- (b) Conexus Credit Union;
- (c) Staheli Construction Co. Ltd.;
- (d) Pillar Capital Corp.; and
- (e) the financing departments of:
 - (i) Ritchie Bros.;
 - (ii) Century Services; and
 - (iii) Maynards.

54. As a result of the forgoing, I believe that there are a number of options available, all of which make it likely S. Wilson will be able to fund a viable proposal if the extension sought is granted. Put simply, S. Wilson needs more time to explore these options with good faith and due diligence.

