

COURT FILE NUMBER 1603 09140
COURT COURT OF QUEEN'S BENCH OF ALBERTA
JUDICIAL CENTRE EDMONTON
PLAINTIFF ROYAL BANK OF CANADA
DEFENDANT GRAHAM BROTHERS CONSTRUCTION GROUP LTD.
DOCUMENT **ORDER**



ADDRESS FOR SERVICE AND CONTACT INFORMATION OF PARTY FILING THIS DOCUMENT
Ogilvie LLP
1400, 10303 Jasper Avenue
Edmonton AB T5J 3N6
Attention: Kentigern A. Rowan, Q.C.
Phone: 780.429.6236
Fax: 780.429.4453
File No.: 3089.57
Service will be accepted by delivery or fax. No other form of service will be accepted.

DATE ON WHICH ORDER WAS PRONOUNCED: August 17, 2016

NAME OF MASTER/JUDGE WHO MADE THIS ORDER: Madam Justice J. Ross

LOCATION WHERE THE ORDER WAS PRONOUNCED: Edmonton, Alberta

ORDER

UPON THE APPLICATION of Deloitte Restructuring Inc. ("Deloitte") in its capacity as Court-Appointed Receiver of the property of Graham Brothers Construction Group Ltd. ("Graham Brothers"); AND UPON noting that Graham Brothers had previously filed a Notice of Intention to Make a Proposal under the *Bankruptcy and Insolvency Act* (the "NOI") at which time Deloitte was named as Proposal Trustee of Graham Brothers; AND UPON noting that while Graham Brothers was operating under the NOI, an Order was granted in Bankruptcy and Insolvency Action No. 24-2101043 (the "NOI Proceedings") on April 19, 2016 (the "April 19 Order") giving Graham Brothers leave to sell some of its property, which property was subject to the claims of secured creditors; AND UPON noting that the April 19 Order further authorized

Deloitte, on behalf of Graham Brothers, to enter into a lease agreement with Mortenson Canada Corporation ("Mortenson") (the "Mortenson Lease") whereby Mortenson would lease certain equipment in the possession of Graham Brothers and remit the lease proceeds to Deloitte; AND UPON noting that Graham Brothers failed to make a proposal and was deemed bankrupt on May 17, 2016; AND UPON noting that by way of Order dated May 25, 2016 in this Action, Deloitte was appointed Receiver over the property of Graham Brothers, and the Orders granted in the NOI Proceedings were transitioned into this Action;

AND UPON noting that this Honourable Court granted an Order on June 23, 2016 (the "June 23 Order") authorizing Deloitte as Receiver to disburse proceeds from the sales of Graham Brothers' Assets to certain secured creditors as more fully particularized in the Supplemental Third Report of the Receiver, filed June 22, 2016; AND UPON noting that the June 23 Order further directs Deloitte to hold back the following funds which were received from the sale of assets secured by the following creditors until an assessment of the validity of their security interests could be performed:

- In favour of Roynat Inc. ("Roynat") sale proceeds in the amount of \$21,184.00 (the "Roynat Holdback Funds");
- In favour of National Leasing Group Inc. ("National") sale proceeds in the amount of \$155,355.00 (the "National Holdback Funds"); and
- In favour Lease Plus Financial Services Inc. ("Lease Plus") sale proceeds in the amount of \$57,521.00 (the "Lease Plus Holdback Funds") (collectively, the "Held Back Funds");

AND UPON being advised that Meridian OneCap Credit Corp ("Meridian") has sworn an Affidavit in these proceedings indicating that Roynat has assigned all of its interest in the assets of Graham Brothers to Meridian; AND UPON being advised that Lease Plus has no claim against the assets of Graham Brothers, and that Diamond International Trucks Ltd. ("Diamond") has asserted a priority interest in the assets which were sold to create the Lease Plus Holdback Funds; AND UPON noting that Deloitte and its counsel have now performed an assessment of Meridian, National, and Diamond's security interests and wish to disburse the Held Back Funds;

AND UPON noting that the Roynat Holdback Funds exceed the amounts claimed to be owing by Meridian as assignee of Roynat's security interests; AND UPON noting that the First

National Lease and Second National Lease, as those terms are defined in the Fourth Report of the Receiver, do not contain cross-collateralization clauses; AND UPON noting that the National Holdback Funds exceed the amounts claimed to be owing by National in respect of some of the secured assets, and are deficient to satisfy the claim advanced by National for the remaining assets; AND UPON noting that the Lease Plus Holdback Funds exceed the amounts claimed to be owing by Diamond as the secured party with priority in respect of the assets sold which proceeds comprise the Lease Plus Holdback Funds; AND UPON being advised that the Held Back Funds exceed the total amounts claimed by and payable to Meridian, National, and Diamond, and the surplus after the disbursement of the Held Back Funds totals approximately \$96,000.00 (the "Surplus Funds"); AND UPON noting that a Goods and Services Tax Refund in favour of Graham Brothers totalling \$211,082.00 (the "GST Refund") was collected by the Receiver prior to the June 23 Order; AND UPON noting that the GST Refund is not subject to any security which may be claimed by the creditors of Graham Brothers; AND UPON noting that subsequent to the June 23 Order Deloitte has received further funds comprised of:

- the amount of \$600,701.88 from a further auction of Graham Brothers' assets;
- a federal income tax refund in favour of Graham Brothers totalling \$2,025,016.54;
- provincial tax refund in favour of Graham Brothers totalling \$1,295,386.24; and
- a number of lease payments made under the Mortenson Lease totalling \$574,191.03 (collectively with the Surplus Funds and GST Refund, the "Residual Funds");

AND UPON noting that Caterpillar Financial Services Ltd. ("CFSL") and Ford Credit Canada Limited ("Ford") have advised Deloitte that they may advance claims for lease payments received by Deloitte pursuant to the Mortenson Lease in the amounts of \$23,600.00 and \$9,480.00 respectively (the "Lease Claim Amounts"); AND UPON noting that CFSL has further advised Deloitte that it may advance a claim for the difference between the net and gross sale proceeds from certain pieces of equipment which were secured by CFSL in the amount of \$19,592.00 (the "Auction Claim Amounts"); AND UPON being advised that Deloitte wishes to set aside the Lease Claim Amounts and Auction Claim Amounts until such a time as those claims are dealt with; AND UPON noting that Deloitte has received an affidavit from Ford Credit Canada Limited ("Ford") outlining its security in respect of equipment secured by Ford (the "Ford Claim"), and that none of the assets secured by Ford have yet been sold; AND UPON noting that Deloitte has not had the opportunity to review the affidavit of Ford and determine its priority in respect of the security claimed; AND UPON being advised that it is Deloitte's belief that, with

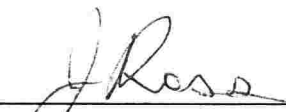
the exception of the Ford Claim, and the claims which may be advanced in respect of the Lease Claim Amounts and the Auction Claim Amounts, all of the secured claims which rank in priority to Graham Brothers general creditors (the "Priority Claims") have been dealt with pursuant to the directions of this Court; AND UPON being advised that it is the opinion of Deloitte that, with the exception of any amounts which may be payable pursuant to the Ford Claim, and the claims which may be advanced in respect of the Lease Claim Amounts and the Auction Claim Amounts, Royal Bank of Canada ("RBC") holds the first, valid security interest in respect of all of Graham Brothers' remaining assets; AND UPON noting that RBC has advanced a claim in the amount of \$2,169,103.62 representing the balance remaining owing to it by Graham Brothers;

AND UPON reviewing the Receiver's Fourth Report; AND UPON reviewing the Affidavits of Service of notice of this Application and the Receiver's Fourth Report; AND UPON hearing counsel for Deloitte; IT IS HEREBY ORDERED AND ADJUDGED THAT:

1. Service of notice of this Application and supporting materials including, but not limited to, the Receiver's Fourth Report in the manner described in the Affidavits of Service is hereby deemed good and sufficient and time for service is abridged as required.
2. Deloitte be and is hereby at liberty to pay and administer the Held Back Funds as follows:
 - (a) Pay to Meridian from the Roynat Holdback Funds the sum of \$6,380.45 plus applicable interest charges from May 17, 2016 to the date of payment in satisfaction of its claim in respect of those assets secured by the Second Meridian Lease as defined in the Receiver's Fourth Report;
 - (b) Pay to National from the National Holdback Funds, in partial satisfaction of its claim, the net proceeds from the sale of those assets described in the First National Lease, as that lease is defined in the Receiver's Fourth Report, which net sale proceeds total \$104,500.00;
 - (c) Further pay to National from the National Holdback Funds the sum of \$21,421.22 plus applicable interest charges from June 1, 2016 to the date of payment in satisfaction of its claim in respect of those assets secured by the Second National Lease as defined in the Receiver's Fourth Report; and

- (d) Pay to Diamond from the Lease Plus Holdback Funds the sum of \$4,405.85 in satisfaction of its claim in respect of those assets secured by the Diamond Lease as defined in the Receiver's Fourth Report.
3. Deloitte is authorized to release to Meridian those assets secured by the First Meridian Lease as defined in the Receiver's Fourth Report in satisfaction of its claim to those assets.
 4. The following amounts shall be held back by Deloitte until further Order of this Court, and shall not form part of the Residual Funds:
 - a. the amount of \$23,600.00 representing payments received by Deloitte pursuant to the Mortenson Lease in respect of assets secured by CFSL;
 - b. the amount of \$9,480.00, and all future amounts received by Deloitte pursuant to the Mortenson Lease in respect of assets secured by Ford;
 - c. the amount of \$19,592.00 representing the difference between the net and gross sale proceeds on equipment which was secured by CFSL which have been sold by way of auction; and
 - d. the amount of \$211,082.00 representing the GST Refund issued in favour of Graham Brothers.
 5. The remaining funds available after the amounts held back from the Residual Funds described in paragraph 4 shall comprise the Available Funds (the "Available Funds").
 6. RBC is declared to hold the first charge over those remaining assets of Graham Brothers which are not the subject of the hold backs described in paragraph 4, the Priority Claims or the Ford Claim.
 7. Deloitte is at liberty to disburse from the Available Funds the sum of \$2,169,103.62 to RBC, plus financing charges subsequent to July 29, 2016, plus reasonable adjustments to the accrued legal fees of RBC for the closure of their file, in satisfaction of RBC's claim.
 8. Deloitte shall maintain the balance of the Available Funds after paying out RBC, and shall not distribute or disburse the same except in accordance with the Orders already granted in this Action and in the NOI Proceedings, including the Receivership Order dated May 25, 2016, or until further order of this Court.

9. The Receiver's Fourth Report is hereby accepted and approved by this Honourable Court.



J.C.Q.B.A.