

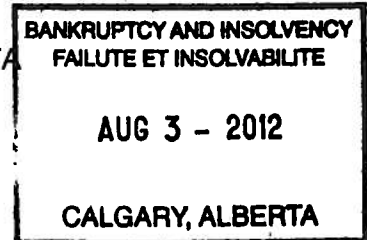
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COURT FILE NO./ ESTATE NO. 25-1475756
25-1475756

COURT COURT OF QUEEN'S BENCH OF ALBERTA
IN BANKRUPTCY AND INSOLVENCY

JUDICIAL CENTRE CALGARY

IN THE MATTER OF THE BANKRUPTCY
OF IONA CONTRACTORS LTD.



APPLICANT ERNST & YOUNG INC., in its
capacity as Receiver and Manager, and
Trustee in Bankruptcy, of
IONA CONTRACTORS LTD.

RESPONDENT THE GUARANTEE COMPANY OF NORTH
AMERICA

DOCUMENT **APPLICATION**
(Advice and Directions)

ADDRESS FOR SERVICE AND CONTACT INFORMATION OF PARTY FILING THIS DOCUMENT

Norton Rose Canada LLP
400 3rd Avenue SW, Suite 3700
Calgary, Alberta T2P 4H2

Phone: +1 403.267.8222
Fax: +1 403.264.5973

Attention: Howard A. Gorman / Kyle D. Kashuba
File No. 269971

NOTICE TO RESPONDENT(S):

This application is made against you. You are a respondent.

You have the right to state your side of this matter before the judge.

To do so, you must be in Court when the application is heard as shown below:

Date: Tuesday, August 21, 2012

Time: 10:00 a.m.

Where: Calgary Courts Centre

Before Whom: The Honourable Mr. Justice A.D. Macleod, of the Commercial List

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

Remedy claimed or sought:

1. An Order abridging, if necessary, the time for service of this Application and deeming service to be good and sufficient.
2. An Order in substantially the same form as that attached as Schedule "A" to this Application, granting the following:
 - 2.1 declaring that the funds in the amount of \$997,716.00 plus any accrued interest (the "**Funds**") currently being held by The Guarantee Company of North America ("**GCNA**"), on behalf of Calgary Airport Authority, shall be released by GCNA to Ernst & Young Inc. ("**E&Y**") in its capacity as receiver and manager (the "**Receiver**"), and trustee in bankruptcy (the "**Trustee**"), of Iona Contractors Ltd. ("**Iona**");
 - 2.2 authorizing and directing E&Y to pay to Alberta Treasury Branches ("**ATB**") the Funds, as an interim distribution in partial repayment of outstanding amounts owed to ATB by Iona, as ATB's security over all of the property of Iona is good, validly registered and perfected, and in particular, has priority over GCNA with respect to the Funds; and
 - 2.3 granting leave to E&Y to apply to this Court for advice and directions as may be necessary to carry out the terms of the Order sought.
3. Such further and other relief, advice and directions as counsel may advise and this Honourable Court may deem just and appropriate.

Grounds for making this application:

4. ATB and Iona executed a commitment letter dated August 9, 2010 (the "**Commitment Letter**"), such that amended and restated pre-existing commitment letter agreements between ATB and Iona, under which ATB agreed to make certain credit facilities available to Iona.

5. ATB holds security over all of Iona's present and after acquired personal property under a General Security Agreement dated May 13, 2008 (the "**GSA**"). The Bank registered a financing statement against Iona dated May 16, 2008.
6. ATB advanced funds to Iona from time to time pursuant to the Commitment Letter.
7. On December 14, 2010, Iona together with a number of related companies (collectively the "**Envision Group**") made a successful initial application in the Ontario Superior Court of Justice (the "**Ontario Court**") for protection under the *Companies' Creditors Arrangement Act*, RSC 1985, c C-36, as amended ("**CCAA**"). RSM Richter Inc., a predecessor to Ernst & Young Inc. (together, RSM Richter Inc. and Ernst & Young Inc. are referred to herein as "**E&Y**") was appointed the Monitor in the Ontario CCAA proceeding. It was acknowledged that ATB was the first position priority creditor over Iona and the Envision Group.
8. The Respondent, GCNA, registered a financing statement against Iona on December 14, 2010.
9. The Ontario Court refused a request to further extend the CCAA stay of proceedings at an application held January 14, 2011.
10. On January 14, 2011, ATB privately appointed E&Y as receiver and manager over the assets and undertakings of Iona.
11. Iona filed an assignment in bankruptcy on March 16, 2011, which was accepted by the Official Receiver on March 18, 2011.
12. E&Y, in its capacity as Receiver and Trustee, has obtained a legal opinion that has determined that ATB's security over all of the property of Iona is good, validly registered and perfected.
13. At the time of the commencement of the CCAA proceeding, the Calgary Airport Authority ("**Airport**") held the Funds, in respect of work that was performed and materials that were supplied to the Airport by Iona.
14. By way of an agreement between the Airport, GCNA and E&Y, in August 2011, the Airport provided the Funds, in trust, to counsel to GCNA, for distribution pending the determination to entitlement.

15. ATB claims entitlement to the Funds pursuant to its security, including under the GSA.
16. GCNA has made a claim to the Funds pursuant to the terms of the bond provided to Iona by GCNA.
17. E&Y, in its capacity as Receiver and Trustee, has brought this Application to have the entitlement to funds determined by this Court.
18. Such further and other grounds as counsel may advise and this Honourable Court may permit.

Material or evidence to be relied on:

19. All pleadings, proceedings and reports filed in the CCAA, the receivership, and the bankruptcy proceedings of Iona.
20. The Affidavit of Robert J. Taylor, sworn August 3, 2012.
21. The form of Order attached hereto as Schedule "A" to this Application.
22. The inherent jurisdiction of this Honourable Court to control its own process.
23. Such further and other material and evidence as counsel may advise and this Honourable Court may permit.

Applicable Rules:

24. *Bankruptcy and Insolvency General Rules*, CRC 1985, c 368, as amended, and in particular Rule 11 thereof.

Applicable Acts and Regulations:

25. *Bankruptcy and Insolvency Act*, RSC 1985, c B-3, the *Judicature Act*, RSA 2000, c J-2, and the *Companies' Creditors Arrangement Act*, RSC 1985, c C-36, as amended, and such further and other Rules, Acts and Regulations as counsel may advise and that this Honourable Court may permit.

Any irregularity complained of or objection relied on:

26. None.

How the application is proposed to be heard or considered:

27. Oral submissions by counsel at an application in Justice Chambers as scheduled by counsel.

AFFIDAVIT EVIDENCE IS REQUIRED IF YOU WISH TO OBJECT.

WARNING

If you do not come to Court either in person or by your lawyer, the Court may give the applicant(s) what they want in your absence. You will be bound by any order that the Court makes. If you want to take part in this application, you or your lawyer must attend in Court on the date and at the time shown at the beginning of the form. If you intend to rely on an affidavit or other evidence when the application is heard or considered, you must reply by giving reasonable notice of the material to the applicant.

Schedule "A"

COURT FILE NO./ ESTATE NO. 25-1475756 Clerk's Stamp
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DOCUMENT **ORDER**

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400 3rd Avenue SW, Suite 3700
Calgary, Alberta T2P 4H2

Phone: +1 403.267.8222
Fax: +1 403.264.5973

Attention: Howard A. Gorman / Kyle D. Kashuba
File No. 269971

DATE UPON WHICH ORDER WAS PRONOUNCED: Tuesday, August 21, 2012

NAME OF JUSTICE WHO MADE THIS ORDER: The Honourable Mr. Justice A.D. Macleod

ORDER **(Advice and Directions)**

UPON THE APPLICATION of counsel to Ernst & Young Inc. ("E&Y") in its capacity as receiver and manager (the "**Receiver**") and trustee in bankruptcy (the "**Trustee**") of Iona Contractors Ltd. ("**Iona**"); **AND UPON** having read the pleadings, proceedings, orders and other materials filed in this action, including the Affidavit of Robert J. Taylor sworn August 3,

2012; **AND UPON** hearing counsel for E&Y in its capacity as Receiver and Trustee, The Guarantee Company of North America ("**GCNA**"), Alberta Treasury Branches ("**ATB**") and/or their counsel, and from any other interested parties who may be present; **AND UPON** it appearing that all interested and affected parties have been served with notice of this Application; **AND UPON** it appearing that the relief requested is just, fair and appropriate in all the circumstances and in the best interests of the administration of the Iona bankruptcy and receivership estate;

THE COURT IS CONVINCED AND HEREBY ORDERS AND DECLARES THAT:

1. Service of the notice of this Application and supporting materials is hereby declared to be good and sufficient, no other person is required to have been served with notice of this Application, and the time for service of this Application is abridged to that actually given.
2. The funds in the amount of \$997,716.00 plus any accrued interest (the "**Funds**"), currently being held by GCNA on behalf of Calgary Airport Authority, shall be released to E&Y in its capacity as Receiver.
3. E&Y is hereby authorized and directed to pay to ATB the Funds, as an interim distribution in partial repayment of outstanding amounts owed to ATB by Iona, as ATB's security over all of the property of Iona is good, validly registered and perfected, and in particular, ATB has priority over GCNA with respect to the Funds.
4. E&Y is at liberty and is hereby authorized and empowered to apply to any Court, tribunal, regulatory or administrative body, wherever located, for the recognition of this Order and for advice, assistance and direction as may be necessary to give full force and effect to, and in carrying out the terms of, this Order.

Justice of the Court of Queen's Bench of Alberta