

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
(Ninth Extension, Sale Approval, Vesting, and Distribution Order)

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: April 26, 2019

Time: 1:00 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 May 31, 2019;
- (c) approving, authorizing, and directing 101133330 Saskatchewan Ltd. (“33330”) to complete the proposed purchase and sale transaction (the “**Transaction**”) respecting the property of 33330 (the “**Purchased Assets**”) more particularly described in the asset purchase agreement (the “**Agreement**”) between 33330, Pinnacle Developments Inc. (the “**Purchaser**”), and the Monitor, a copy of which is attached to the Confidential Supplement to the Eleventh Report of the Monitor (the “**Confidential Supplement**”);
- (d) vesting in the Purchaser all of 33330’s right, title, and interest in and to the Purchased Assets free and clear of all liens, charges, security interests, and other encumbrances;
- (e) approving the:
 - (i) Eleventh Report of the Monitor (the “**Eleventh Report**”), and the conduct and activities of the Monitor described therein; and
 - (ii) fees and disbursements of the Monitor for the period of February 5, 2019 to April 2, 2019, and its legal counsel, MLT Aikins LLP, for the period of January 31, 2019 to March 31, 2019;
- (f) authorizing and directing the Monitor to make the distributions of the proceeds of the Transaction (the “**Proceeds**”) recommended in the Eleventh Report;
- (g) providing that the Confidential Supplement shall be sealed until:
 - (i) further order of the Court;
 - (ii) the filing of the Monitor’s Certificate contemplated by the draft Order filed herein; or
 - (iii) the Applicants or Monitor providing written notice to the Court that the Transaction is unable to close;
- (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 February 22, 2019 (the “**Eighth Extension Order**”), and expires on Monday, May 6, 2019, at 11:59 p.m. Saskatchewan time.

4. The Stalking Horse Sale Process contemplated by Schedule “B” to the Eighth Extension Order resulted in a Qualified Bid constituting a Superior Offer, as determined by the Monitor, which 33330 accepted subject to obtaining this Honourable Court’s approval on the within application.

5. As more particularly described in the materials filed in support of this application, the Applicants submission is that the Transaction meets the requirements of ss. 36(3) of the CCAA, namely, that:

- (a) the Stalking Horse Sale Process was previously approved by both the Court and the Monitor and is reasonable in the circumstances;
- (b) the Eleventh Report to be filed in support of this application opines that the completion of the Transaction would be more beneficial to the creditors than a sale under a bankruptcy;
- (c) the primary secured creditor in the CCAA proceedings, Affinity, was consulted and supports the approval of the Transaction;
- (d) because Affinity supported 33330’s efforts to improve the Purchased Assets for the benefit of the creditors as a whole throughout these proceedings, Affinity’s interest in having the Transaction approved and Proceeds distributed accordingly outweighs any claims of prejudice by the other creditors; and

- (e) the consideration to be received for the Purchased Assets is reasonable and fair in light of the collective efforts to sell the same.

6. If the Transaction is approved, an extension of the stay of proceedings is necessary to ensure that there is adequate time to close the Transaction and make the recommended distributions.

7. An Order sealing the Confidential Supplement to the Eleventh Report in the interim is necessary, as the same contains sensitive commercial information, the disclosure of which is liable to prejudice any future attempts to sell the Purchased Assets in the event the Court does not approve the Transaction or the Transaction does not close.

Material or evidence to be relied on:

- (a) this Notice of Application and proof of service;
- (b) the Twelfth Supplementary Affidavit of John Orr sworn;
- (c) the Eleventh Report of the Monitor and the Confidential Supplement to the Eleventh Report;
- (d) proof of compliance with General Application Practice Directive #3;
- (e) Brief of Law;
- (f) draft Order; and
- (g) such further and other material as counsel may advise and this Honourable Court may permit.

Applicable rules:

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

Applicable Acts and Regulations:

9. 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), and 36.

NOTICE

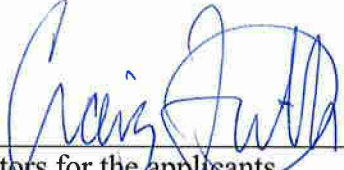
If you wish to oppose the application, you or your lawyer must prepare an affidavit in response, serve a copy at the address for service given at the end of this document, and file it in the court office, with proof of service, at least 7 days before the date set for hearing the application. You or your 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 12th day of April, 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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