

Clerk's Stamp

COURT FILE NUMBER 1901-03824  
COURT QUEEN'S BENCH OF ALBERTA  
JUDICIAL CENTRE CALGARY

IN THE MATTER OF THE RECEIVERSHIP OF SURFACE PRO SERVICES INC., ATKINS KUNTZ CONSTRUCTION GROUP INC. and 2049829 ALBERTA INC.

PLAINTIFF ROYAL BANK OF CANADA

DEFENDANTS SURFACE PRO SERVICES INC., ATKINS KUNTZ CONSTRUCTION GROUP INC., 2049829 ALBERTA INC., DOUGLAS ATKINS, DAVID KUNTZ AND ROGER LEADER

DOCUMENT **AFFIDAVIT**

ADDRESS FOR SERVICE AND CONTACT INFORMATION OF PARTY FILING THIS DOCUMENT  
Scott Venturo Rudakoff LLP  
Barristers and Solicitors  
1500, 222 3 Avenue SW  
Calgary, AB T2P 0B4

Attention: Eugene J. Bodnar / Lukas Frey  
Phone: (403) 231-8209 / (403) 261-9043  
Fax: (403) 265-4632  
Solicitors for the Plaintiff  
File No: 68949.001

**AFFIDAVIT OF DOUGLAS ATKINS**

**SWORN ON AUGUST 26, 2019**

I, DOUGLAS ATKINS, of the Hamlet of De Winton, in the Province of Alberta, SWEAR AS FOLLOWS:

1. I am a Defendant in this action and the founder, president and a director of the Defendants Surface Pro Services Inc. ("SPS"), Atkins Kuntz Construction Group Inc. ("AKC") and 2049829 Alberta Inc. ("204"), collectively referred to in this affidavit as the "Companies". As such, I have personal knowledge of the facts and matters deposed to herein, except where stated to be based on information, in which case I believe the same to be true.
2. I have worked in the landscape construction industry for 42 years, and have operated the Companies and their predecessor and related companies for the

majority of that time. Prior to the Receivership Order, the Companies carried on the business of landscape construction services, irrigation and concrete work.

3. At the time of the Receivership Order, the Companies had approximately 80 full-time employees and more than 80 additional part-time, temporary and contracted workers. Included among the Companies' employees were four of my daughters and two of my brothers. In 2018, the Companies had aggregate revenues of over \$12,000,000. Over the years, the Companies have done work for clients such as Ledcor, Ellis Don, the City of Calgary, Jayman Homes, Homes by Avi, Knightsbridge Homes, CANA, Centron Construction, Statesman Corporation, Streetside Corporation and many others.
4. I have reviewed the First Report of the Receiver dated August 19, 2019 in this matter (the "Receiver's Report"). In this affidavit, I will address and clarify certain statements made in the Receiver's Report. I will utilize the defined terms set out in the Receiver's Report unless specifically indicated to the contrary.
5. It has been my intention to make an *en bloc* offer to purchase the assets of the Defendant Companies since early in the receivership process. In April, 2019 I retained Sarah Hawco of Hawco Peters & Associates to provide me with assistance in putting such an offer together. Later that month, Ms. Hawco and I contacted Deloitte to advise them of our intention to proceed in this fashion. We had further communications with Deloitte in May, 2019 and my lawyer, Eugene Bodnar of Scott Venturo Rudakoff LLP, also was in communication with Torys during this timeframe.
6. In order to source financing for an offer to purchase the assets of the Companies, Ms. Hawco and I approached Century to obtain a forced liquidation value appraisal of the equipment owned by the Companies. However, Century indicated that they had already conducted such an appraisal for the Receiver and would have to obtain the Receiver's consent in order to conduct an appraisal of the same assets for us. Century subsequently indicated that the Receiver had refused their request to provide them with such consent.
7. Accordingly, Mr. Bodnar requested a copy of the Century appraisal report from Torys. Although that request initially was refused, the Receiver ultimately agreed to provide me with a copy of the Equipment Appraisal on the condition that I sign a

confidentiality agreement and pay for half the cost of the report. I agreed to do so and on June 27, 2019 Torys provided Mr. Bodnar with a copy of the Equipment Appraisal on that basis.

8. After that date, I continued to actively source financing through Ms. Hawco for an *en bloc* offer to purchase the assets of the Companies out of receivership. Unfortunately this task was unnecessarily difficult as a result of certain misinformation which was put out into the market by *Insolvency Insider* shortly after the Receivership Order. Attached hereto and marked as Exhibit "A" to this affidavit is a true copy of the notice that was issued by *Insolvency Insider* in this regard.
9. The *Insolvency Insider* notice is clearly based on the affidavit of Josh Coonan sworn March 12, 2019, on which RBC relied in obtaining the Receivership Order. One of the statements made in this notice is that I attempted to deposit personal cheques totaling \$50.0M into SPS' bank account drawn from the RBC account of my deceased father, over which RBC had no record of me having any executorship or authority. This same statement is made by Mr. Coonan in paragraph 28(a) of his affidavit. In paragraph 30 of his affidavit, Mr. Coonan goes on to say that my conduct of issuing cheques from an account for which I had no signing authority caused the bank great concern.
10. Between February 28 and March 8, 2019 I and others with the Companies had numerous communications with Mr. Coonan regarding the situation of the Companies with respect to their loans with RBC. Copies of emails during this timeframe are attached at Exhibits "E" and "F" to my affidavit sworn March 15, 2019. Unfortunately our exchanges grew progressively more antagonistic as Mr. Coonan made baseless accusations of fraud against me. With respect to the issue of the cheques that had been written on my father's account, I advised Mr. Coonan that I was the executor of my father's estate. However, he never asked me to provide him with any records to substantiate this.
11. Approximately 3 years prior to the Receivership Order, I had accompanied my father to the RBC branch where he had his account and we provided them with a copy of a power of attorney executed by my father, which authorized me to deal with his bank accounts. I also believe that the Companies' previous account manager at RBC, Jeff

Biers, was aware of the power of attorney and the fact that I was the executor of my father's estate.

12. Given the foregoing, I believe it was improper and misleading for Mr. Coonan to swear an affidavit in which he purported to express concern that I had issued cheques from an account for which RBC had no record of me having any executorship or other authority, and for RBC to rely on that evidence in applying for and obtaining the Receivership Order.
13. At the time of RBC's application for the Receivership Order, I was self-represented and the Companies had no representation as our lawyer had abruptly ceased to act for us on or about March 14, 2019. John Cameron, a contractor of AKC, appeared in court at RBC's application for the Receivership Order and although he asked the Judge for some time to cross-examine Mr. Coonan on his affidavit, that request was denied.
14. Attached hereto and marked as Exhibit "B" to this affidavit is a true copy of the transcript from the court session at which the March 15, 2019 Order was granted. That Order was entered without the necessity of approval on behalf of the Companies or myself.
15. Attached hereto and marked as Exhibit "C" to this affidavit is a true copy of the transcript from the court session at which the Receivership Order was granted.
16. The *Insolvency Insider* notice also states that the Companies had been unable to fund their payroll obligations since early March, 2019. This also is untrue. Although significant deposits were made into the Companies' accounts for purposes of payroll in early March, RBC allocated those funds to the payment of loan balances instead.
17. Given that the Companies were engaged in the business of landscape construction services, irrigation and concrete work, the winter months historically were their slowest months. Accordingly, payroll tended to be tight in the winter months, but business always would pick up in the spring and the Companies had significant work in progress in early 2019. Although Mr. Biers and others at RBC were aware of this, it did not appear to matter to Mr. Coonan. Attached hereto and marked as Exhibit "D" to this affidavit is a true copy of a list of the Companies' work in progress in early

2019, which had been provided to RBC and would have been available to Mr. Coonan.

18. The *Insolvency Insider* notice also states that the Companies had not been forthcoming with RBC about the status of any priority obligations owed by CRA. This also is untrue. As will be seen from the transcript at Exhibit "C" to this affidavit, the Companies' CRA obligations were disclosed to RBC and the Court to the best of our abilities at the time of RBC's application for the Receivership Order.
19. The problems I have encountered as a result of the misinformation contained in Mr. Coonan's affidavit and the *Insolvency Insider* notice have been compounded by additional misinformation contained in the Receiver's Report. In particular, the Receiver states in paragraph 13(aa) of the Receiver's Report that it intervened when I and others attempted to remove Assets from the Premises. This is untrue. At no time after the Receivership Order did I ever attempt to remove any Assets from the Premises without the authorization of the Receiver. The only items I ever removed were largely items of a personal nature that I was expressly permitted to remove by Joseph Sithole and Dana Gaspar of Deloitte.
20. In paragraph 41 of the Receiver's Report, the Receiver states that it wrote to my lawyer and demanded that I provide it with all Class "A" Common Shares that were issued to me by Camber on the basis that those shares should have been issued to SPS and not me personally. As my lawyer has advised Torys, Camber issued the shares to me personally as opposed to SPS as a form of "finder's fee" for introducing the parties and putting the deal together.
21. Under the Camber Loan Agreement, SPS and I were collectively designated as the "Noteholder", which agreed to loan the funds to Camber in consideration for (i) the payment of interest at a rate of 14% per annum, and (ii) the issuance of Camber shares. This consideration was allocated as between SPS and myself such that the interest was payable to SPS and the shares were issued to myself.
22. In any event, I understand that Camber is presently in dire financial straits and that the shares I was issued have little if any value at present.

- 23. Both prior to and during the receivership process, I cooperated with RBC and the Receiver to the best of my ability. Shortly after the Receivership Order, I voluntarily provided the Receiver with a copy of the Real Property Appraisal.
- 24. Despite the challenges that have been encountered in sourcing financing for an offer, as referred to above, Ms. Hawco has now been able to arrange for financing sufficient to pay out the Companies' loans with RBC and acquire their assets. Attached hereto and marked as Exhibit "E" to this affidavit is a true copy of a term sheet dated August 25, 2019. This will be subject to due diligence and I am informed by Ms. Hawco and a representative of the lender that a period of 2-3 weeks likely will be required for this. Accordingly, I am seeking an adjournment of the Receiver's application to allow for this process to occur.
- 25. I make this affidavit in opposition to the Receiver's application filed August 19, 2019 and in support of an application for adjournment of that application pending the finalization of financing for purposes of acquiring the Companies' assets.

SWORN BEFORE ME at the City of  
Calgary, in the Province of Alberta,  
this 26<sup>th</sup> day of August, 2019

\_\_\_\_\_  
Commissioner for Oaths in and for the  
Province of Alberta

**Eugene J. Bodnar**  
**Barrister & Solicitor**

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\_\_\_\_\_  
DOUGLAS ATKINS





## Surface Pro Surfaces

Surface Pro Surfaces, a Calgary, Alberta-based landscape contractor, as well as two related companies, were placed in receivership on March 19 on application by RBC, owed approximately \$3.3MM. Since early March, the companies have been unable to fund their payroll obligations. In the same month, RBC discovered that Atkins, one of the companies' directors, attempted to deposit personal cheques totaling \$50.0M into Surface Pro Surfaces' bank account drawn from the RBC account of his deceased father. The cheques were returned because RBC had no record of Atkins having any executorship or authority over this account. It was also discovered that an employee had attempted to negotiate cheques payable to Surface Pro Surfaces in the accounts of other related companies over which RBC does not have security. The companies have also not been forthcoming with RBC about the status of any priority obligations owing to CRA. Deloitte was appointed receiver. Counsel is BLG for the applicant and Torys for the receiver.

🕒 March 19, 2019

Action No.: 1901-03824  
E-File No.: CVQ19ROYAL  
Appeal No.: \_\_\_\_\_

IN THE COURT OF QUEEN'S BENCH OF ALBERTA  
JUDICIAL CENTRE OF CALGARY

BETWEEN:

ROYAL BANK OF CANADA

Plaintiff

- and -

SURFACE PRO SERVICES INC., ATKINS KUNTZ  
CONSTRUCTION GROUP INC., 2049829 ALBERTA INC.,  
DOUGLAS ATKINS, DAVID KUNTZ and ROGER LEADER

Defendants

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PROCEEDINGS

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Calgary, Alberta  
March 15, 2019

Transcript Management Services  
Suite 1901-N, 601-5th Street SW  
Calgary, Alberta T2P 5P7  
Phone: (403) 297-7392 Fax: (403) 297-7034

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1 Proceedings taken in the Court of Queen's Bench of Alberta, Calgary Courts Centre,  
2 Calgary, Alberta

3  
4 March 15, 2019

Afternoon Session

5  
6 The Honourable Mr.  
7 Justice Yamauchi

Court of Queen's Bench of Alberta

8  
9 R. Gurofsky

For Royal Bank of Canada

10 T. Bennett

11 (Student-at-Law)

For Royal Bank of Canada

12 (No Counsel)

For Surface Pro Services Inc., Atkins Kuntz  
13 Construction Group Inc., 2049829 Alberta  
14 Inc., Douglas Atkins, David Kuntz and Roger  
15 Leader

16 K. Kashuba

For the Proposed Receiver

17 D. Richardson

Court Clerk

18  
19  
20 **Discussion**

21  
22 THE COURT:

Thank you. Please be seated. Ms. Gurofsky.

23  
24 MS. GUROFSKY:

My Lord, for the record it's Robyn Gurofsky  
25 from Borden Ladner Gervais. I'm appearing today on behalf of the Applicant Royal  
26 Bank of Canada. With me is Ms. Bennett, a student-at-law from our office. And behind  
27 her is Mr. Kashuba who's --

28  
29 THE COURT:

Mr. Kashuba.

30  
31 MS. GUROFSKY:

-- counsel for the proposed interim Receiver.

32  
33 With us today as well is Mr. Atkins and Mr. Cameron from the companies --

34  
35 THE COURT:

Good afternoon.

36  
37 MS. GUROFSKY:

-- as well as representatives of their family in  
38 the gallery.

39  
40 THE COURT:

Okay.

41

1 MS. GUROFSKY: Mr. Cronin (phonetic), the affiant on behalf of  
2 RBC in the gallery, as well as Ms. Poon (phonetic) from the office of Deloitte, the  
3 proposed interim Receiver.  
4

5 THE COURT: Okay. Thank you.  
6

7 MS. GUROFSKY: This is an application by RBC for the  
8 appointment of an interim Receiver pursuant to Section 47 of the BIA. RBC is a secured  
9 creditor of each of Surface Pro Services Inc. or SPS, Atkins Kuntz Construction Group  
10 Inc. or AKC, and 2049829 Alberta Inc. or 204 as I may refer to it throughout my  
11 submission. These are the Defendants in the style of cause who I propose to be placed  
12 into receivership today.  
13

14 Sir, you've been provided with unfiled copies of the application and the affidavit of Mr.  
15 Cronin. We also delivered today to yourself and to Mr. Atkins a supplemental affidavit  
16 of Mr. Cronin which outlines where the accounts are as of yesterday. Things have been  
17 moving so we wanted a sort of current picture of where things are, as well as an affidavit  
18 of my legal assistant Ms. Kim (phonetic) which attaches correspondence between myself  
19 and Mr. Atkins.  
20

21 THE COURT: Right. I have received all of this and I have  
22 read all of it --  
23

24 MS. GUROFSKY: Thank you.  
25

26 THE COURT: -- up to the point of even reading the -- the  
27 affidavits I received --  
28

29 MS. GUROFSKY: Okay.  
30

31 THE COURT: -- moments ago actually.  
32

33 MS. GUROFSKY: Okay. As I mentioned, these materials were  
34 provided to the Defendants concurrently with being provided to Your Lordship  
35

36 You'll recall from the correspondence that we sent to you that we were going to have a  
37 meeting yesterday in an attempt to resolve these issues to discuss possible alternative  
38 solutions. The meeting did not happen. Counsel for the companies advised yesterday --  
39 it was faxed in, so they advised yesterday that they would no longer be acting.  
40

41 There -- there was -- you'll have seen from the affidavit of Ms. Kim, communication

1 between myself and Mr. Atkins. However, the information provided was not sufficient to  
2 convince the bank to adjourn the application today.

3  
4 We ask for permission to include some additional documentation that Mr. Atkins had  
5 provided to us in an affidavit so we could ensure everything was before the Court. We  
6 did not get that permission so as a result, we didn't include that in the supplemental  
7 materials.

8  
9 Some of the additional information requested included, for example, the status of CRA  
10 remittances for 2019. These things again were requested, not provided, and that's  
11 reflected in the affidavit of Ms. Kim.

12  
13 The loans and security are outlined in the affidavit of Mr. Cronin. Just very briefly, Sir,  
14 these include for Surface Pro, a revolving line, a Visa facility, a chequing account, all of  
15 which is secured by a GSA.

16  
17 For AKC, a revolving line, a chequing account and credit cards, again secured by a GSA.  
18 We understand that Surface and AKC are involved in construction and landscaping  
19 business. And 204, the numbered company, is effectively, we understand, a holding  
20 company who owns property who granted a mortgage to the bank. It was a mortgage  
21 loan secured on real property. Surface Pro and AKC guaranteed the 204 mortgage loan  
22 but 204 did not in turn guarantee the Surface Pro or AKC loans.

23  
24 Defaults originally included generally, you know, failing to repay amounts when due and  
25 owing. I want to just take you through briefly the supplemental affidavit of -- of Mr.  
26 Cronin which provides a snapshot of the debtors' accounts as of yesterday. And what  
27 this shows, Sir, at Exhibit 'A' is that the -- Surface Pro revolver facility has about  
28 \$15,000 of availability as of yesterday but the credit card is overdrawn by \$40,000 and  
29 the chequing account is overdrawn by about \$1700.

30  
31 AKC's chequing account you'll see at Exhibit 'B' to the supplemental affidavit. That's  
32 overdrawn by about 27 -- \$27,000. It's two credit cards, each with limits of \$25,000 over  
33 their limit at around 26,000 each, and the revolver is over \$100,000 of its limit -- over  
34 \$100,000. So fairly significant overdrawn, but I think perhaps more importantly and the  
35 larger concerns of the bank relate to what's happened more recently in the last week-and-  
36 a-half or so.

37  
38 First, there was a payroll on March 1st, 2019. We understand the payroll is about  
39 \$100,000 for both AKC and Surface Pro, although we don't have any visibility into how  
40 many employees there are or how much of that is for Surface Pro and how much of that is  
41 for AKC.

1  
2 There was a bit of a panic, Sir, on February 28th that there wouldn't be sufficient funds to  
3 make payroll. I understand Mr. Atkins ultimately came back to the bank and said we'll  
4 cover it personally. But I would say there -- as outlined in Mr. Cronin's original  
5 affidavit, there was some creative cheque writing -- I think perhaps a more accurate  
6 description might be kiting -- including attempts to deposit NSF cheques totaling -- three  
7 cheques totaling about \$56,000 into a separate related entities -- the related entity is  
8 called Underworld. That account -- those cheques were NSF, but immediately trying to  
9 take out the funds to make payroll from that account.

10  
11 There were attempts to write cheques out of accounts of a deceased party -- we  
12 understand it's Mr. Atkins' father -- where there was no authority and insufficient funds  
13 in that account. And there were attempts to deposit cheques in the name of Surface Pro  
14 into the Underworld account and Mr. Cronin notes in his affidavit, the bank has no  
15 security over the Underworld account. So all of these things combined cause the bank  
16 with significant concerns in addition to the company's inability to meet payroll.

17  
18 THE COURT: Bottom line, payroll was not met.

19  
20 MS. GUROFSKY: Well, we understand that some cheques went  
21 through but in the supplemental affidavit we understand 15 of the payroll cheques were  
22 returned, insufficient funds.

23  
24 The bank has repeatedly asked for the status of the CRA remittances for 2019. No such  
25 proof of those remittances have been provided.

26  
27 One of the things that has been requested of Mr. Atkins but has not been provided is  
28 confirmation that the companies have funds to meet the next payroll which we  
29 understand to be today. So I think Mr. Atkins might say we have a number of contracts  
30 underway. We have a number of new contracts and there's millions of dollars to be  
31 earned by these companies in the next 12 months. And that's all very well and good and  
32 promising, but when you don't have employees to -- to run the contracts, it's difficult for  
33 the bank to understand how the company will continue as a going concern. If you don't  
34 pay CRA, you're significantly prejudging the bank by putting their security at risk and  
35 eroding their position.

36  
37 The bank has advised that it's not prepared to accept cheques unless they're certified or  
38 funds that are certified to demonstrate payroll can be met today, given what transpired in  
39 around March 1st, notwithstanding there's no evidence of any funds have been provided  
40 to the bank with respect to upcoming payroll.

41



1 Sir, demands were issued on March 5th so we are technically still within the 10-day  
2 period which expires today, and we're applying pursuant -- on behalf of the bank  
3 pursuant to Section 47. The bank has significant concerns about eroding security, given  
4 potential non-payment to CRA and the ability of companies to continue, given the payroll  
5 issue. Further, the bank's trust in management has been eroded, given what transpired  
6 with respect to the cheques.

7  
8 This is not a decision the bank takes lightly. The bank understands there are significant  
9 impacts on people's lives, livelihoods, their jobs and the Court's decision really as to  
10 whether or not to grant this application we know will be exercised with considerable  
11 caution as a result. But where the facts of the co -- of the case support the appointment of  
12 an interim Receiver to protect the state -- the estate for the benefit of creditors, it's  
13 appropriate to grant the appointment.

14  
15 There's a case I'd like to refer you to. It's oft cited. There's nothing significant or new  
16 arising out of this case. I'll pass it up to you, Sir, but I -- I'm referring to it because the  
17 facts are similar. This is the case of *Royal Bank v. Canadian Print Music Distributors*  
18 out of Ontario. In that case, the Court determined it was appropriate to grant an interim  
19 Receiver where most of the accounts of the corporate group were in an overdraft position.  
20 A number of similar instances of transactions involving cheques with insufficient funds  
21 being deposited into accounts of related parties with attempts to pay back the following  
22 day were made. That's referenced at paragraph 7 of the decision.

23  
24 There was some evidence that other companies were being used to sustain others in  
25 meeting payrolls and that there was an inability to meet payroll, similar to what we've  
26 seen with the Underworld account here. That's referenced at paragraph 12 of the  
27 decision. And in that case the Court found that the bank had established a strong prima  
28 facie case to show that the Respondents could not meet their liabilities generally, and  
29 found there was sufficient evidence to justify the appointment of a Receiver. That's at  
30 paragraph 14 of the case.

31  
32 Now, in that case PWC was appointed informally to conduct a look-see although it was  
33 given very little information and no such opportunity was given to the bank here. I don't  
34 think that turns on anything in terms of factual differences between the case. I think this  
35 case is analogous to the situation here and the evidence strongly suggests that the bank  
36 has lost trust in management to operate. That the companies are not meeting their  
37 obligations generally to the bank or to the employees, and the companies have not  
38 demonstrated their ability to make payroll today or to pay CRA, the effect of which  
39 erodes the bank's position.

40  
41 For these reasons, Sir, we submit the appointment sought is appropriate in the

1 circumstances. It's limited to a 30-day period. The proposed Receiver is not given  
2 powers of sale that one would typically see in a receivership order. It's essentially to  
3 maintain and protect the assets and the business.

4  
5 There is an exception for sales if the property is perishable or likely to depreciate rapidly  
6 in value. The bank is not aware of any such property but we put it in there out of an  
7 abundance of caution in the event there is, in order to avoid the need to incur the cost of  
8 coming back to court.

9  
10 Subject to any matters raised by Mr. Atkins and questions from Your Lordship, those are  
11 my submissions.

12  
13 THE COURT: Is the objective to basically put kind of a  
14 standstill in place, like just to prote -- to cage the assets just to make sure they are  
15 protected during this interim period and allow the Receiver to investigate what is going  
16 on?

17  
18 MS. GUROFSKY: Exactly.

19  
20 THE COURT: What -- what is going to happen with the  
21 ongoing contracts and with the employees?

22  
23 MS. GUROFSKY: Well, there is no intention to terminate  
24 employees at this point in time. The intention is to maintain the status quo. If there are  
25 contracts being operated, they would continue to be operated and the Order allows for  
26 that.

27  
28 THE COURT: How are they going to get paid?

29  
30 MS. GUROFSKY: The -- well, the Receiver is going to have to  
31 make that determination.

32  
33 THE COURT: Well --

34  
35 MS. GUROFSKY: If there's funds available -- there -- there might  
36 be a contract analysis to say we know that these five contracts -- and I say five, I don't  
37 know the number -- but these five contracts are underway. We know that there's 'X'  
38 dollars owing out of these contracts. We estimate it will cost 'Y' to -- to complete.  
39 That's the kind of analysis that needs to be undertaken here.

40  
41 THE COURT: Okay, but I mean, the reason you are here I

1 suspect, Ms. Gurofsky, is because there is an immediate need because payroll is not  
2 going to be met.  
3  
4 MS. GUROFSKY: That's right.  
5  
6 THE COURT: -- today, I am guessing.  
7  
8 MS. GUROFSKY: That's right.  
9  
10 THE COURT: So if that is the case, how is payroll going to be  
11 met today? And is that dealing with the borrowing party on the part of the Receiver --  
12  
13 MS. GUROFSKY: The -- there is that power in the order.  
14  
15 THE COURT: Okay.  
16  
17 MS. GUROFSKY: There's availability -- some availability on the  
18 line, although not much. And again, a decision is going to have to be made once there is  
19 some visibility into what's happening in the company.  
20  
21 THE COURT: Right. Okay. Thank you. Mr. Atkins or Mr. --  
22 is it Cameron?  
23  
24 MR. CAMERON: Mr. Cameron, yes.  
25  
26 THE COURT: Mr. Cameron, yes.  
27  
28 MR. ATKINS: Thank you.  
29  
30 THE COURT: Yes.  
31  
32 MR. CAMERON: We have an affidavit, Your Honour.  
33  
34 THE COURT: Okay.  
35  
36 MR. ATKINS: Have you got a copy there?  
37  
38 MR. CAMERON: No, he doesn't.  
39  
40 MR. ATKINS: This is our first time with the -- the big guys.  
41

1 THE COURT: I beg your pardon?  
2

3 MR. ATKINS: This is our first time having to deal with the big  
4 guys here. We've been --  
5

6 THE COURT: First time dealing with what?  
7

8 MR. ATKINS: The big guys over here, RBC.  
9

10 THE COURT: Oh, okay.  
11

12 MR. ATKINS: We've been --  
13

14 THE COURT: Okay, just -- just give me --  
15

16 MR. ATKINS: Okay, sorry.  
17

18 THE COURT: -- one second, okay. I just need to look at this  
19 very quickly.  
20

21 All right. You are going to have to -- I mean, I -- a lot of the information, I have  
22 summaries of this information from the bank's affidavit --  
23

24 MR. ATKINS: Right.  
25

26 THE COURT: -- but I obviously do not have this level of detail  
27 with respect to what they have provided to me, okay.  
28

29 MR. ATKINS: Okay, Sir. Just to start off, we've been a  
30 customer of RBC since 2012 and we had a wonderful relationship all the way through.  
31 And the (INDISCERNIBLE) establishes -- its prosperity, you know, for the most part --  
32 you know, the economy in Alberta has changed a little bit, but at the same time our trust  
33 and relationship with these guys has too.  
34

35 Our original commercial manager, he moved on probably mid-summer sometime, Jeff  
36 Beers (phonetic) and we had a new one come in and fairly -- fairly green, I'd say, 'cause  
37 he wasn't potentially a big -- or you know, she wasn't -- no sense of urgency. So  
38 anyways, there's been a rocky communication on their part. I tried to --  
39

40 THE COURT: Okay. You are speaking way too quickly. I can  
41 barely hear it --

1  
2 MR. ATKINS: I'm sorry.  
3  
4 THE COURT: -- barely understand what you're saying.  
5  
6 MR. ATKINS: Yeah, I'm sorry. I'm a little nervous I guess,  
7 but --  
8  
9 THE COURT: That is okay, do not be nervous. I am just  
10 asking you to just --  
11  
12 MR. ATKINS: Yeah.  
13  
14 THE COURT: -- speak a little more clearly.  
15  
16 MR. ATKINS: Okay.  
17  
18 THE COURT: You do not have to speak into the microphone.  
19  
20 MR. ATKINS: Okay.  
21  
22 THE COURT: I can hear you.  
23  
24 MR. ATKINS: Okay, good.  
25  
26 THE COURT: Yes, okay.  
27  
28 MR. ATKINS: Anyways, towards the fall, you know, we're  
29 working and everything and we had lines established of \$500,000 for loc for AK and  
30 500,000 for SPS and they call it a (INDISCERNIBLE) when it's at 500,000 and then it  
31 will reduce for four months at the 250 and then 350 for AK, which talking to some of the  
32 managers, is that it's too low because the volume of business we are doing is 12,000,000  
33 last year in gross sales. And we said, well let's -- but we'll talk about that as time goes  
34 on. So I tried setting up appointments to talk about it and they're busy and they can't do  
35 this, can't do that and -- and then the only time there's a conversation is when they  
36 needed us to do something. And then if we needed the money and we're -- the  
37 (INDISCERNIBLE) came off, they set us up with a TAR, I guess it's temporary access to  
38 resources or something.  
39  
40 THE COURT: Okay, sorry. I am having trouble understanding  
41 what you are saying.



1  
2 MR. ATKINS: Okay.  
3  
4 THE COURT: You are mumbling a little bit.  
5  
6 MR. ATKINS: Yeah, I'm sorry.  
7  
8 THE COURT: Just -- could you just slow down your speech --  
9  
10 MR. ATKINS: Okay.  
11  
12 THE COURT: -- and just talk a little bit more clearly.  
13  
14 MR. ATKINS: All right.  
15  
16 THE COURT: Maybe it is me, I do not know, but --  
17  
18 MR. ATKINS: No, it's probably me. Everybody says that.  
19  
20 THE COURT: Okay, but I need -- I need to understand  
21 everything you are saying --  
22  
23 MR. ATKINS: All right.  
24  
25 THE COURT: -- okay.  
26  
27 MR. ATKINS: Okay. I feel that we're being railroaded for  
28 these reasons. Is that we have a great relationship until our manager leaves and then I  
29 don't think the other people have the same connection of some sort or they don't have the  
30 same understanding of our -- our industry because we're basically construction services.  
31  
32 So this 204 when they bought the warehouse, they bought it about a year ago and we had  
33 15 percent down on a 2.6 million dollar pro -- purchase, so about 450,000 in cash. And  
34 he said well, normally we want 15 percent. The bank will take 75 percent and you have  
35 to get 10 percent financing from another source, like maybe BDC, Business Development  
36 Corporation. But then Jeff Beers, our commercial manager at that time, he talked to his  
37 boss, Frank -- I forget his last name -- and he said these guys are golden -- golden clients.  
38 RBC will take 85 percent and he says I've only done that twice in my career. So that  
39 spoke volumes of us, right. He says -- I think that year we had almost \$1,000,000 profit  
40 on about a 6 1/2 million dollar revenue that year. So we had, you know, things rolling.  
41 And about -- about that time I -- I had cancer again for the second time. It was a bladder

1 cancer and my dad passed away. But anyways, I kind of lost a bit of focus and I put a lot  
2 of emphasis on my family and my health, right, but I'm the steel guy. I'm the guy that  
3 drives the thing, right. Once I got past 73, I'm pretty good now. I've gotten back into it  
4 firmly about five-six months ago and I know what's going on.

5  
6 These guys, there's lots of value in the building. There's lots of value in the vehicles we  
7 have and we have about six -- over \$6,000,000 worth of contracts that are located in -- in  
8 Oliver, B.C. in a winery. It's a Chinese family that come over here, they've got a budget  
9 of 200,000,000 and they're going to pay cash. So when they pay cash there's no  
10 financing involved. And we have another job for about a million two up in Fort  
11 McMurray and all the other work takes place around the Calgary area.

12  
13 So my question would be to counsel is there's no way a Receiver is going to be able to  
14 manage all this. All they're going to do is -- is decide -- the Receiver is going to say this  
15 isn't working. They're going to kick everybody out of -- out of the jobs. There's going  
16 to be -- you know, there's 75,000 people working downtown now because of the  
17 economy. They're going add another 85 to 100 people to it? For what?

18  
19 You see, a lot of this stuff has been fabricated because Mr. Cronin here, he has arbitrarily  
20 moved our lines around and you can see from his emails at Exhibit -- where's -- Exhibit  
21 'E' -- or 'F' I should say. It's -- he's -- he's kept insulting us by the way he talks to us,  
22 but that's fine.

23  
24 And as far as the payroll being met for March 1st as they say, it was met but the problem  
25 is Mr. Cronin, he has a freeze on all our accounts. So when something comes in as you  
26 looked at on Exhibit 'J', that March 1st, look how much money went into the bank  
27 account that day. \$108,000 -- well, \$117,000 so that day. So they're saying we couldn't  
28 -- we couldn't afford our payroll. They grabbed the money. So they put me in a position  
29 where my people are -- at 5:00 he still hadn't pro -- for the payroll, he said he was going  
30 to try and do but he had that money from us already in the bank. So -- and I'm the -- the  
31 power of attorney and I'm also the -- what's the guy that does everything else? The  
32 Executor of my father's Will, and in that will it specifically says I have access to  
33 anything I want to do with that money. Because my mother's still alive so it's not a debit  
34 account. It does have chequing privileges because I have it -- they say I don't have  
35 chequing privilege but there's cheques that are printed in my office that I usually  
36 (phonetic) for all my mother's stuff and you know, nurses, need stuff for supplies in the  
37 nursing home. Like, what kind of people are these? Like, I do everything I can to  
38 provide for my family but anyways, I said all that.

39  
40 If you looked at Exhibit 'J', we found a lender that's going to -- it's (INDISCERNIBLE)  
41 out of our world and we're --

- 1  
2 MR. CAMERON: Flip the page, Your Honour.  
3
- 4 MR. ATKINS: I'm sorry, page -- and I'd like to get an  
5 extension from the Court for at least 60 days to let -- get this thing into place and get  
6 (INDISCERNIBLE) to stay away from our bank accounts because he's -- he's gone into  
7 other accounts and doesn't even have any authority over it. He freezes deposits and cash  
8 and certified cheques. I don't know what that's all about but he -- I think their intention  
9 is to ruin us and throw all of these people out of work for no reason because what  
10 (INDISCERNIBLE) payments he gets involved, he freezes accounts.  
11
- 12 THE COURT: Who is -- who is FTI Capital?  
13
- 14 MR. ATKINS: They're a firm here in Calgary. His name is --  
15
- 16 THE COURT: Sure. No, but the question is, when did you go  
17 and see these folks?  
18
- 19 MR. ATKINS: Just the last few days.  
20
- 21 THE COURT: Beg your pardon?  
22
- 23 MR. ATKINS: The last few days. You know, because  
24 obviously, you know -- yeah, we just received this this morning actually. I talked to them  
25 yesterday or the day before.  
26
- 27 THE COURT: What is going to happen with today's payroll,  
28 Mr. Atkins?  
29
- 30 MR. ATKINS: I've got -- we've got the money but we can't  
31 deposit it, Sir, because they freeze it. They take the money. We cannot deposit any of  
32 our money into these accounts unless we get a special order from you to allow us to have  
33 the payroll there and not -- not use anything in their line anymore, don't increase it. Just  
34 to leave the financing in place --  
35
- 36 THE COURT: But what -- where is this money come from  
37 again, Sir?  
38
- 39 MR. ATKINS: Our jobs we're doing.  
40
- 41 THE COURT: Beg your pardon?

1  
2 MR. ATKINS: The different jobs we've got 80 people working,  
3 right.  
4  
5 THE COURT: I know, but -- no, the point I am making is, to  
6 meet payroll, the past payroll and the current payroll --  
7  
8 MR. ATKINS: We have the money.  
9  
10 THE COURT: -- I am guessing is probably in the  
11 neighbourhood of maybe a couple hundred thousand dollars?  
12  
13 MR. ATKINS: Yeah, it would be about one -- 170.  
14  
15 THE COURT: Yes, yes, yes. So where is that coming from?  
16 You keep saying we have got the money but I have got to --  
17  
18 MR. ATKINS: I know, but Sir --  
19  
20 THE COURT: -- know where it is coming from.  
21  
22 MR. ATKINS: -- look at -- look at Exhibit -- look at Exhibit  
23 'J'.  
24  
25 THE COURT: No, I have already looked at it.  
26  
27 MR. ATKINS: I know, but if I deposit the money in there --  
28  
29 THE COURT: Yes.  
30  
31 MR. ATKINS: -- they take it for themselves and we don't --  
32 they'll make the cheques go sideways. And if we deposit the money in another account,  
33 like they're saying I'm being fraudulent or whatever, I'm not. I own all the companies.  
34 So if I have to pay somebody out of the reach of these guys, I have to find a resource  
35 somewhere because they will not honor it. And even if they say they honor it, they will --  
36 they will freeze it and send it back because I have one fellow here, he received a cheque  
37 last Friday and it was returned to him on the following Thursday somehow. Because  
38 there's only (INDISCERNIBLE) it can be done right, he says. They do that arbitrarily.  
39 They just go around finding whatever they can find and they send it back, whether it's  
40 reasonable or not. And it's --  
41

1 THE COURT: Okay, but just a second. Please answer the  
2 question --  
3

4 MR. ATKINS: Okay.  
5

6 THE COURT: -- and answer me clearly.  
7

8 MR. ATKINS: Yeah.  
9

10 THE COURT: Where is this money coming from, the -- the  
11 \$180,000? Where is it coming from? What is the source of that money?  
12

13 MR. ATKINS: The source is revenue from our businesses. We  
14 get cheques. They pay by cheque, right?  
15

16 THE COURT: So are you sitting on a bunch of cheques right  
17 now?  
18

19 MR. ATKINS: Yeah.  
20

21 THE COURT: How much?  
22

23 MR. ATKINS: Right now we've got 128 but we've already  
24 paid the payroll from before. March 1st, all of those guys have been paid.  
25

26 THE COURT: They have been paid?  
27

28 MR. ATKINS: Yeah.  
29

30 THE COURT: And where is the source -- where was the  
31 source of that money?  
32

33 MR. ATKINS: That source was from the jobs we've done that  
34 was deposited into another company I had called Underworld Environment, they're a  
35 (INDISCERNIBLE) truck because there's no connection to these guys for a line of credit.  
36 But (INDISCERNIBLE) can go through all the worlds of banking and find accounts that  
37 have my name on it.  
38

39 THE COURT: Okay.  
40

41 MR. ATKINS: So there's money in there but he returned



1       cheques that had money in the accounts because my father was dead or the cow flew over  
2       the moon or whatever.

3

4       THE COURT:                                                So the plan of attack then, sir, is to -- if I -- if I  
5       am hearing you correctly --

6

7       MR. ATKINS:                                                Yes.

8

9       THE COURT:                                                -- is to meet payroll today by depositing  
10       somewhere this -- these cheques from work, from your jobs --

11

12       MR. ATKINS:                                                Yeah.

13

14       THE COURT:                                                -- and then taking that money and -- and making  
15       payroll with it.

16

17       MR. ATKINS:                                                That's right.

18

19       THE COURT:                                                Okay. And then on a go forward basis, the  
20       intention is to try to refinance the company and buy out Royal Bank, is that right?

21

22       MR. ATKINS:                                                That's right.

23

24       THE COURT:                                                And -- and what kind of timing -- I mean,  
25       obviously I have not had a chance to read this. What --

26

27       MR. ATKINS:                                                Well -- yeah.

28

29       THE COURT:                                                -- kind of timing are you looking at?

30

31       MR. ATKINS:                                                Well, I'd like to -- 60 days would be preferable.

32

33       THE COURT:                                                But the problem that we are running into is we  
34       also have payroll at the end of this month and --

35

36       MR. ATKINS:                                                And we will have money for that.

37

38       THE COURT:                                                -- then we have payroll on the 15th of next --

39

40       MR. ATKINS:                                                Yeah.

41

1 THE COURT: -- month. And so I do not want the Royal Bank  
2 and Ms. Gurofsky coming back here every 15 days saying we have got another problem.

3  
4 MR. ATKINS: Okay. If I can deposit cheques and have access  
5 to that money fairly, we have no problem. We paid Royal Bank almost a million dollars  
6 in the last two months working down their lines. This page alone, Exhibit 'J', that's  
7 \$190,000 just in 14 days that we paid them back plus made payroll.

8  
9 THE COURT: Okay.

10  
11 MR. ATKINS: And when they -- when they say that we're over  
12 the line, like the credit card for SPS, we paid them off on Thur -- on Friday when we had  
13 500,000 on a line of credit. The line of credit has moved down to 250 conveniently and  
14 then the cheques were returned on the Tuesday saying NSF.

15  
16 See, they're playing games with me, Sir, and I -- I'm not big enough to fight that game. I  
17 need a -- I need somewhere where I can operate and prove that we're viable because our  
18 assets are way higher than what we owe them. They say we owe them 3.3 million. We  
19 have a building that was just appraised last week for 2.8 million. It's got an extended life  
20 of 40 years and I want to make sure that's clear. It's not going to deteriorate. We're a  
21 construction company. Why would we have a building that we're going to let  
22 deteriorate? It would be like (INDISCERNIBLE) with paint peeling off the walls. It  
23 would be embarrassing.

24  
25 THE COURT: Okay.

26  
27 MR. ATKINS: And we've got -- we've got so much maturity.  
28 He's a journeyman carpenter, he's an expert landscaping --

29  
30 THE COURT: Yes, yes, fine. Okay.

31  
32 MR. ATKINS: You know.

33  
34 THE COURT: Okay, just have a seat for a second.

35  
36 MR. ATKINS: Okay, thank you.

37  
38 THE COURT: Ms. Gurofsky.

39  
40 MS. GUROFSKY: Thank you, Sir. I'm going to be very brief and I  
41 just to clarify a few facts on the record.

1  
2 The accounts were not frozen. Rather, when cheques were deposited, they were held  
3 until they cleared. And so when they didn't clear, that's when they were returned NSF.  
4 So for Mr. Atkins to say that he's sitting on a number of cheques, he -- he should go out  
5 and get them certified if he wants to deposit them and immediately cut cheques from  
6 those accounts.

7  
8 Secondly, he's indicated that -- I think first he admitted that March 1st payroll hadn't  
9 completely been met but then he said he has the money and it's paid, but the only  
10 evidence that we have is that 15 of -- of the payroll cheques were returned NSF. So  
11 again, payroll has not been met.

12  
13 The comments about the value of the real property, that's all very well and good. The  
14 bank's only security and the bank's only debt is the 2.2 million dollar mortgage over that  
15 property owned by 204. So it -- while there were attempts to discuss a forbearance  
16 agreements and other things, that -- that didn't go anywhere.

17  
18 And -- and lastly, I would -- I would continue to emphasize --

19  
20 THE COURT: Was -- were there discussions with respect to a  
21 forbearance agreement?

22  
23 MS. GUROFSKY: There were discussions very briefly. We need  
24 information. I wasn't privy to all of them but there was information that was never  
25 provided, including very importantly, CRA. And -- and we still have no evidence of  
26 status of payments for CRA for January, February and March of 2019.

27  
28 THE COURT: I do not think that information is in here either.

29  
30 MS. GUROFSKY: I haven't seen it.

31  
32 THE COURT: No, it is not in here.

33  
34 MS. GUROFSKY: There was some information provided to us for  
35 2018, CRA with respect to Surface Pro. Not with respect to AKC. There was a  
36 suggestion from CRA that there might be a credit and they needed to work out -- but  
37 that's not before the Court. That was one of the documents that was provided to us that I  
38 suggested be put before the Court and didn't have consent to do so.

39  
40 THE COURT: Okay.

41

1 Where is all this missing information that they are seeking? CRA --

2  
3 MR. ATKINS: Well, we're -- we received a document in the  
4 mail on -- stamped March 5th that said that we had a \$86,000 credit for SPS. So I said to  
5 Dave, our administrator in the office, Dave -- I said I don't think that's right. You should  
6 contact them and get an updated statement. We haven't got one yet because the CRA  
7 doesn't really move super fast but we're waiting for that -- that document.

8  
9 And I know we did make one -- one payment to CRA but it was returned because it must  
10 have been held until it went -- the bulge went down on our account.

11  
12 And these 15 NSF cheques that they're referring to, they were from my personal account  
13 which I signed the cheque and Mr. Cronin told me that you're not allowed to deposit  
14 personal cheques into a corporation. But if the corporation requests another corporation  
15 to have the shareholders put money in, I think they'd accept a personal cheque then,  
16 wouldn't they?

17  
18 MS. GUROFSKY: That wasn't the advice given by the bank. The  
19 advice was that you can't deposit one corporation's cheque into another corporation's  
20 account.

21  
22 MR. ATKINS: Well, then why did they return my parents'  
23 cheques that I signed? That's a good question though. There's money in the bank then.  
24 What they're doing is they -- they play games. They move things, they move things  
25 around and --

26  
27 THE COURT: Well, but -- you are saying they are playing  
28 games but there is also cheques being bounced and -- and funds not being available and  
29 that is a concern of mine. I mean, you have to understand something, sir, and that is in  
30 the -- in the bigger picture, this is just one file that the bank is dealing with. It is not the  
31 only file that -- that the bank is dealing with. And so they do not -- they are not focusing  
32 in on saying we are going to do our best to try to put these folks out of business. That is  
33 not their goal. Their goal is to make money and their goal is to ensure that what they  
34 have in terms of their security is -- is secure. And the problem I guess that I am hav -- a  
35 little bit of the problem I am having with what is being presented to me is that there are --  
36 you are -- you are telling me that things are going into the bank and that the bank is  
37 freezing the amounts, but there is no assurance that those cheques are good. And there  
38 are just other things that could have been done to satisfy the bank that what is going on  
39 here is -- is sound business practice. And I know that you have got a business that is  
40 moving forward and -- and it sounds as though it is a relatively successful business, but  
41 things are starting to unravel a little bit.

1  
2 MR. ATKINS: And if I could tell you.  
3  
4 THE COURT: And -- and -- and the problem that the bank is  
5 having is that they have just lost faith in -- in you and it is their money. It is their money  
6 and if they want it back, they can ask for it back. That is the right that you gave them in  
7 the loan documentation and the general security agreements that you provided to them.  
8 They have that right. It is their money and so that is what is sort of underlying this whole  
9 thing.  
10  
11 MR. ATKINS: Sir, I understand that and I was fine with the  
12 bank until February 28th. I -- I wasn't dealing with the special accounts -- they told me  
13 on the 28th -- there's a document saying they're going to be spec -- dealing with special  
14 accounts now just because they can maybe help advise you on something that you do.  
15  
16 THE COURT: No, no, you have got to understand, Sir.  
17 Special accounts is not because you are special.  
18  
19 MR. ATKINS: No, I know. I'm not special.  
20  
21 THE COURT: Or because this account is not special.  
22  
23 MR. ATKINS: No.  
24  
25 THE COURT: Special accounts is because there is a concern  
26 within the bank --  
27  
28 MR. ATKINS: I know that now but at the time that's not what -  
29 - wasn't transparent to me, right?  
30  
31 THE COURT: Sorry, I didn't understand a word that you just  
32 said.  
33  
34 MR. ATKINS: That's -- that what I wasn't told at the time.  
35 They said they're doing me a favour but just moving over there and they'll help me with  
36 the account. I said okay, well, whatever. But then last night I went on line to look at  
37 integrity with RBC and they say lots of good things in here. But what's been happening  
38 from -- I don't know what happens when I have one conversation with Mr. Cronin on  
39 February 28th and March 5th we -- we were sent orders for insolvency. He told me I'm  
40 very insolvent and bankrupt. I don't know how that's even possible.  
41

1 THE COURT: Well, you are insolvent in a definitional sense.  
2

3 MR. ATKINS: Right, okay. Well, that's not explained to me.  
4 I'm just a -- like I have absolutely the best people at work and we do very well and we  
5 want to get as far from these guys as possible away, and do them a favour too by getting  
6 financing from this other -- other source.  
7

8 THE COURT: Well look, I mean, the bottom line from -- you -  
9 - you have to understand how this system works.  
10

11 MR. ATKINS: I -- I think I do.  
12

13 THE COURT: No, I am not sure you do and I am going to  
14 explain it to you now.  
15

16 MR. ATKINS: Okay.  
17

18 THE COURT: What happens is when you have a receivership,  
19 everybody kind of thinks all of a sudden there is a Receiver in place and the Receiver is  
20 put in there to liquidate our business, to put us out of business.  
21

22 MR. ATKINS: That's what I thought?  
23

24 THE COURT: Right?  
25

26 MR. ATKINS: Yeah.  
27

28 THE COURT: That is what everybody thinks.  
29

30 MR. ATKINS: Yeah, that's what we thought.  
31

32 THE COURT: But I am going to tell you what a receivership  
33 is. They -- they are coming in on a 30-day basis and we do not see this often. This is not  
34 something that we see frequently. They call it an interim Receiver. They just want to get  
35 in there to make sure, they want to have a look at the books and records. They want to  
36 look at the contracts. They just want to make sure everything is running appropriately.  
37

38 MR. ATKINS: Right.  
39

40 THE COURT: The objective, and the objective is always in a  
41 receivership to get the business back operating. That's always the objective and I -- I'm

1       sure that any -- any insolvency lawyer in this town should tell you that but they probably  
2       do not --

3  
4       MR. ATKINS:                               They don't.

5  
6       THE COURT:                               -- because that is not how the system is thought  
7       to work, but I am telling you that that is the objective of a receivership. The receivership  
8       is in there to make sure that, for example, in this case the bank finds a way that it is going  
9       to get paid out and that is either by looking at the business and saying yes, business looks  
10      good, we are -- we are satisfied with it. We are going to let it carry on and we are  
11      discharging the Receiver and let it carry on. These are the -- these are the business  
12      practices that we want put in place from this point forward, okay. That is step one, if that  
13      is possible.

14  
15      If they do not see any benefit in this corporation carrying forward, that is when we jump  
16      into second mode and the second mode is -- is liquidation.

17  
18      MR. ATKINS:                               Who -- who makes that decision?

19  
20      THE COURT:                               And that is when you start winding up the  
21      business.

22  
23      MR. ATKINS:                               But who makes that decision? Them?

24  
25      THE COURT:                               The business -- the decision is made by -- in  
26      this case it would be the Receiver in consultation with the bank.

27  
28      MR. ATKINS:                               Is the Receiver independent though?

29  
30      THE COURT:                               Because -- just a minute.

31  
32      MR. ATKINS:                               Okay.

33  
34      THE COURT:                               The Receiver is -- is a court-appointed  
35      Receiver.

36  
37      MR. ATKINS:                               Okay.

38  
39      THE COURT:                               It is not an agent of the bank.

40  
41      MR. ATKINS:                               Okay.

1  
2 THE COURT: The Receiver is my agent.  
3  
4 MR. ATKINS: Good.  
5  
6 THE COURT: I am the Court, the Receiver reports to me and -  
7 - and both counsel in here have heard me scolding Receivers if they are not doing things  
8 that -- the way I want it done because they happen to be my agent. They happen to be --  
9  
10 MR. ATKINS: Right.  
11  
12 THE COURT: -- an officer of the Court.  
13  
14 Now, the Royal Bank has the right under the General Security Agreement to appoint a  
15 Receiver privately, which means then that it is their agent. And then the -- the bank at  
16 that point is driving the bus. They are the ones that decide the direction that the  
17 receivership will take. That is not what occurs here. I am the one that directs who drives  
18 the bus --  
19  
20 MR. ATKINS: Okay.  
21  
22 THE COURT: -- and how it is driven. And so if I do not like  
23 what the Receiver is doing, I will discharge them or I will ask them to report to me why  
24 they are doing things the way they are doing them.  
25  
26 MR. ATKINS: Okay.  
27  
28 THE COURT: And the Receiver is required to report to the  
29 Court. They will be providing us with a report very shortly after they are appointed to let  
30 us know what -- what does this business look like? What is going on here? So they will  
31 provide a report to us.  
32  
33 Now, there is a cost factor in that and guess who get -- guess who pays the costs?  
34  
35 MR. ATKINS: Probably me.  
36  
37 THE COURT: You got it.  
38  
39 MR. ATKINS: Yeah, good.  
40  
41 THE COURT: So there is a cost factor involved. And so the



1 Receiver is going to go in there, going to do an analysis of your business. Going to do an  
2 analysis of your contracts. Going to see how this Court -- how this business is going to  
3 move forward on a -- on a go forward basis financially if they can do so. And in the  
4 meantime, your job might be to go and talk to BTI or whoever this is and try to see if you  
5 can secure the financing on this, bearing in mind that what you are going to do is pay the  
6 bank out all accrued interest and costs to this -- to that point.

7  
8 MR. ATKINS: Yeah.

9  
10 THE COURT: That's what's going to have to happen.

11  
12 MR. ATKINS: Yeah.

13  
14 THE COURT: But what we're doing here, Sir, is a protective  
15 aspect because the bank is concerned, okay.

16  
17 MR. ATKINS: And we're concerned too.

18  
19 THE COURT: Of course you are.

20  
21 MR. ATKINS: Because they've -- they've ruined our  
22 reputation with a lot of our suppliers and like I say, I -- I'm not confident when we  
23 deposit these cheques that we don't lose all the money out of it unless we get some  
24 guarantee of some sort that we can actually pay our people with money that we've earned  
25 to keep the thing going.

26  
27 THE COURT: Well, you have -- you say you have got a bunch  
28 of op -- cheques from operations.

29  
30 MR. ATKINS: Yeah.

31  
32 THE COURT: Correct?

33  
34 MR. ATKINS: Yeah.

35  
36 THE COURT: That money is going to go into the bank and  
37 when they clear, then that money goes into your account. I mean -- but if you can get  
38 those things certified and get them over to the bank, all the better.

39  
40 MR. ATKINS: Okay, I'll contact --

41

- 1 THE COURT: The payroll is covered.  
2
- 3 MR. ATKINS: And some of these things come out of  
4 Vancouver, like Ledcor, Jayman. Our list of clientele is not people that you go run  
5 around and certify the cheques. The money is good. It's always good.  
6
- 7 THE COURT: Well, if you are telling me it is Ledcor and --  
8
- 9 MR. ATKINS: Jayman and --  
10
- 11 THE COURT: -- Jayman --  
12
- 13 MR. ATKINS: Bosa, people like that.  
14
- 15 THE COURT: Yes.  
16
- 17 MR. ATKINS: What do you call it -- like I say, a lot of those  
18 clients are like that, right. They're very well to do --  
19
- 20 THE COURT: Is that what -- do you have the cheques right  
21 now?  
22
- 23 MR. ATKINS: No, they're at our office. I can get the -- them  
24 to take pictures of them and send them in.  
25
- 26 THE COURT: Well, I am --  
27
- 28 MR. ATKINS: We don't -- we're not really professional  
29 lawyers. They're good, we're not.  
30
- 31 THE COURT: Okay. What do you want to do, Ms. Gurofsky?  
32
- 33 MS. GUROFSKY: There's just one thing -- well, a few things I'd  
34 like to add for the record and I said this before and I'll say it -- say it again. RBC did --  
35 does not make this decision lightly. The reason why unfiled materials were provided to  
36 Your Lordship and to my friends were -- or to Mr. Atkins were an attempt to -- we were  
37 expecting to meet to get information and see if we could work out a resolution without  
38 making this matter public. And -- and so that's just an indication of how RBC was  
39 thoughtful in -- in the way it conducted itself with the companies.  
40
- 41 The Fit Capital Solutions document which is dated today's date is -- is interesting. What

1 it appears to be is a commitment to go out to the market to look for financing. It would  
2 have been nice to have this earlier and have some sort of commitment but I don't think  
3 this changes the circumstance again with the eroding position in respect of CRA. Thank  
4 you.

5  
6 THE COURT: Okay.

7  
8 MR. ATKINS: That meeting was supposed to take place at 10  
9 a.m. yesterday. I came downtown to go to the meeting and when we got there, the Royal  
10 Bank had cancelled. So I don't know --

11  
12 THE COURT: The Royal Bank had what?

13  
14 MR. ATKINS: Well, if it was my lawyer -- you told me, I  
15 thought.

16  
17 MS. GUROFSKY: We did not cancel the meeting.

18  
19 MR. ATKINS: Well, I didn't either. I went down there to meet  
20 you guys.

21  
22 THE COURT: Who cancelled the meeting?

23  
24 MR. BENNETT: I don't know.

25  
26 THE COURT: What happened?

27  
28 MS. GUROFSKY: I received a call from Mr. Lysak at Fasken's  
29 indicating that he was no longer acting and there would be no meeting. We continued to  
30 communicate with Mr. Atkins via email requesting documentation and information in an  
31 attempt to see if there was something here that we could adjourn and didn't get anything  
32 that convinced the co -- the bank sufficiently that it was appropriate to adjourn today.

33  
34 THE COURT: Okay.

35  
36 MR. ATKINS: Miscommunication.

37  
38 THE COURT: What happened with Mr. Lysak? You do not  
39 have to breach solicitor --

40  
41 MR. ATKINS: Okay.

1  
2 THE COURT: -- and client privilege. I am just asking you if  
3 you want to tell me what happened with Mr. Lysak.  
4  
5 MR. ATKINS: Oh, nothing. It -- I went down there. I talked to  
6 -- because we had engaged Peter -- what's his name -- Chisholm from E -- EY and they  
7 had their guy come in for a day or so just in our office a couple days ago. So he was  
8 there to meet with me and Lysak yesterday and I said where's RBC, and he says I told  
9 them not to come because now --  
10  
11 THE COURT: Okay, you are speaking way too fast.  
12  
13 MR. ATKINS: I'm sorry. Anyways, we met down at his office,  
14 Mr. Lysak --  
15  
16 THE COURT: You met in Lysak's office?  
17  
18 MR. ATKINS: Yeah, with Peter Chisholm from EY.  
19  
20 THE COURT: Yeah.  
21  
22 MR. ATKINS: Ernest Young.  
23  
24 THE COURT: What time?  
25  
26 MR. ATKINS: 9:30.  
27  
28 THE COURT: Okay.  
29  
30 MR. ATKINS: And I said when -- RBC is on their way and he  
31 said no, we cancelled the meeting just 'cause I don't know if we had anything really to  
32 talk about, you know, 'cause you're not going to win anything there. I said okay. He  
33 says -- then I said then I'll just go myself to the Court but we're not on unfriendly terms.  
34 I still talk to him and Steve and Scott Sangster, his partner.  
35  
36 THE COURT: But why isn't -- why isn't Lysak here?  
37  
38 MR. ATKINS: I don't know.  
39  
40 THE COURT: No, no, why isn't he here?  
41

1 MR. ATKINS: He told me --  
2  
3 THE COURT: I am asking the question.  
4  
5 MR. ATKINS: No, he told me he wouldn't be providing a real  
6 service.  
7  
8 THE COURT: So you are done with him?  
9  
10 MR. ATKINS: He hasn't sent me a bill or provide any more  
11 work so --  
12  
13 THE COURT: Okay, sorry, say that again.  
14  
15 MR. ATKINS: He hasn't provided me with his bill or decided  
16 he's not going to do or not do any work. It was a surprise to me. I just went down to the  
17 meeting.  
18  
19 THE COURT: Well, it would have been nice to have Mr.  
20 Lysak here.  
21  
22 MR. ATKINS: That's what I think, yeah.  
23  
24 THE COURT: Well, but again, the question is why is he not  
25 here?  
26  
27 MR. ATKINS: Maybe he had a previous commitment, I don't  
28 know.  
29  
30 THE COURT: Well no, I mean he -- he -- is he not being  
31 retained by you on this matter?  
32  
33 MR. ATKINS: He is retained but he said there's no sense in  
34 him coming to this Court.  
35  
36 THE COURT: Why not?  
37  
38 MR. ATKINS: He didn't really say. He says -- he said that  
39 basically he didn't think there was much benefit he could bring to it.  
40  
41 THE COURT: Say that -- much benefit what?

1  
2 MR. ATKINS: For him to be here, to bring any resolution to  
3 this I guess. I don't know, I just -- I was just given Scott Sangster's name.  
4  
5 THE COURT: Well, Scott Sangster is not a litigator.  
6  
7 MR. ATKINS: Oh okay. I don't know who he is.  
8  
9 THE COURT: Scott Sangster does -- does the commercial  
10 work probably.  
11  
12 MR. ATKINS: Okay.  
13  
14 THE COURT: But -- but Mr. Lysak is in here -- he was in here  
15 before me yesterday. He is here all the time.  
16  
17 MR. ATKINS: Oh, well he wasn't going to be here I guess. I  
18 don't know what happened.  
19  
20 MS. GUROFSKY: Mr. Lysak advised me that he was not retained  
21 on this.  
22  
23 THE COURT: Fine.  
24  
25 MR. ATKINS: Okay.  
26  
27 THE COURT: Okay.  
28  
29 MR. ATKINS: Okay, never mind. I -- I guess I misunderstood.  
30  
31 THE COURT: Okay.  
32  
33 MR. ATKINS: But he did represent me on a bunch of things  
34 here so I don't know what happened.  
35  
36 THE COURT: Okay. I do not know if you are planning to file  
37 this so I will give that back to you, okay.  
38  
39 What is the plan, Ms. Gurofsky?  
40  
41 MS. GUROFSKY: Sir, this is a limited appointment for 30 days.

1 We need someone to go in and see what the cash situation is, what the employee situation  
2 and the contract situation is. If at the end of those 30 days it's apparent that there's no  
3 Receiver necessary, we will not be coming to extend -- to extend the appointment to full  
4 receivership. If that's not the case, we will come back hopefully with a much better  
5 understanding and some transparency into the company about the status of these  
6 contracts, the state of receivables, payables, all of that and have a Receiver go in and  
7 complete what is necessary or what is from a cost benefit analysis in the money, if you  
8 will, to repay RBC.  
9

10 THE COURT: Okay. Let me see your order.

11  
12 MS. GUROFSKY: I'm handing up -- this is the same version of the  
13 order that was appended to the application.  
14

15 THE COURT: Thank you.  
16

17 MS. GUROFSKY: And I'm also handing up a black line -- to the  
18 black line against the template of the general order. And I'll point out that again, it's --  
19 it's an appointment pursuant to Section 47 of the Bankruptcy and Insolvency Act. The  
20 sale provisions found on page 5 which is Section 3(k) to (m) of the standard receivership  
21 order are deleted and replaced with, as I indicated before, just the ability to summarily  
22 dispose of perishable property or property that may rapidly decline in value.  
23

24 The other -- otherwise, it's a fairly --  
25

26 THE COURT: Okay, so just to be clear --  
27

28 MS. GUROFSKY: Yes.  
29

30 THE COURT: -- and I want -- I want this to be clear on the  
31 record. The Receiver is not going in to torch the place. It is not going in to liquidate this  
32 company.  
33

34 MS. GUROFSKY: Not -- it can't liquidate in 30 days.  
35

36 THE COURT: I know, that is -- that is the point I am making.  
37

38 MS. GUROFSKY: That's right. That's right.  
39

40 THE COURT: That is the point I am making.  
41

1 MS. GUROFSKY: Now, we're --  
2  
3 THE COURT: Its objective -- sorry.  
4  
5 MS. GUROFSKY: Yes.  
6  
7 THE COURT: Its objective is not to go in and shut down the  
8 business. That is not its objective. I just want that clear on the record --  
9  
10 MS. GUROFSKY: It's not --  
11  
12 THE COURT: -- at this moment.  
13  
14 MS. GUROFSKY: -- its objective at this moment. It cannot  
15 liquidate. However, if there is no money to pay employees, it's going to have to make a  
16 decision.  
17  
18 THE COURT: Of course.  
19  
20 MS. GUROFSKY: So that's the only caveat I would put on that  
21 comment.  
22  
23 The other point, I indicated this was a limited order. It -- that's found at paragraph 34 on  
24 page 16 --  
25  
26 THE COURT: Page --  
27  
28 MS. GUROFSKY: -- of the black line.  
29  
30 THE COURT: Just one second please.  
31  
32 MS. GUROFSKY: Sure.  
33  
34 THE COURT: I am flipping through here. Okay.  
35  
36 MS. GUROFSKY: So you will see at page 34, it is the expiry  
37 provision which says the order expires 30 days after the day on which pronounced, unless  
38 otherwise ordered by the Court and then you have your standard service provisions. So  
39 no fi -- no substantive changes to the template order other than the sale provisions and the  
40 expiry.  
41



1 THE COURT: Okay. And just as a matter of interest, maybe  
2 Mr. Kashuba can answer this although it is maybe premature, and that is with respect to  
3 reporting.  
4

5 MR. KASHUBA: My Lord, the Receiver once appointed, if  
6 appointed, will be reporting back to the Court as soon as possible. If there is improper  
7 transactions or in the Receiver's opinion not a viable business, we will be back to you  
8 next week.  
9

10 THE COURT: All right.

11

12 MR. CAMERON: Your Honour?

13

14 THE COURT: Yes.

15

16 MR. CAMERON: Before you make your decision, can I have a  
17 couple of moments just to --  
18

19 THE COURT: Yes.

20

21 MR. CAMERON: -- summarize?

22

23 THE COURT: Yes. And what is your position, Mr. Cameron?

24

25 MR. CAMERON: Senior estimator, Sir. I am not --  
26

27 THE COURT: Senior Estimator?

28

29 MR. CAMERON: Estimator, yes.  
30

31 THE COURT: Okay.

32

33 MR. CAMERON: Yes.  
34

35 THE COURT: Okay, yes.  
36

37 MR. CAMERON: I'm not a shareholder, just an employee  
38 although I have known Doug for almost 40 years now. As I say, I'm just an employee.  
39 However, a couple things have come up and obviously there's -- we have issue with  
40 various of the other factual allegations made in the various affidavits. I'm not going to  
41 belabor those, I'm not going to address those at all. We do right now have tentative

1 financing according to the agreement that -- that we received just this morning from --

2  
3 THE COURT: From FTI.

4  
5 MR. CAMERON: Yes.

6  
7 THE COURT: Yes.

8  
9 MR. CAMERON: It strikes me, and I understood exactly what you  
10 were saying regarding the Court-appointed Receiver. However, I think just the mere  
11 presence of a Receiver will do harm to SPS/AK's reputation in the industry. I -- I think  
12 that's unavoidable.

13  
14 If we could simply get an extension of time, if the situation hasn't improved, if we don't  
15 have ultimate financing -- the Royal Bank's objective as you rightly pointed out is simply  
16 to be made whole on the money that they loaned us. If we are able to do that in a timely  
17 fashion, get them whole, that achieves what they're after with the Receiver and it avoids  
18 damaging AK and SPS's reputation in the industry. That reputation is essential for future  
19 and ongoing business. We have, as Doug mentioned, four or \$5,000,000 of on the books  
20 contracts signed. I myself have been in meetings in the last three weeks with numerous  
21 clients with what we call big clarification meetings. Those are meetings where they  
22 examine our bid and make sure we've got everything in and we are looking good on it.  
23 Couldn't guarantee but that's another \$3,000,000 worth of work roughly speaking.

24  
25 All we're asking for is a little bit of time to allow our alternate financing to get its ducks  
26 in a row. Then we can pay off the Royal Bank. We avoid incurring additional liabilities  
27 to a Court-appointed Receiver and we avoid the damage to AK/SPS's reputation in the  
28 industry, allowing us to continue.

29  
30 THE COURT: My real concern, Mr. Cameron, and my real  
31 concern is real, is payroll today. That is my real and genuine concern and because if  
32 payroll is not met today, you are going to have employees walking or maybe not. Maybe  
33 they will be working for free. I do not know how many employees work for free. I  
34 mean, we have seen it in many, many of these files that I have dealt with, that employees  
35 continue working even though they are not being paid but it is not very often that you see  
36 that. And we have got to make sure that they get paid and I have not got -- gotten any  
37 assurance at this moment that they are going to get paid today.

38  
39 MR. CAMERON: Fair enough and I have very much the same  
40 concern because as I said, I am an employee.

41

- 1 THE COURT: You are one of them.  
2
- 3 MR. CAMERON: I am one of those guys, I'm one of those people  
4 so I very much hear your concerns on a very personal level. I'm 62 years old. Chances  
5 of me finding another job despite 40 years experience, kind of limited. I have a further  
6 complication in my personal life. I have an 11-year-old daughter and I am a single father  
7 and she lives with me full-time. This is vital to me that this company survive. All I'm  
8 asking for, 30 days.  
9
- 10 THE COURT: But 30 days is 30 days worth of payroll.  
11
- 12 MR. ATKINS: Payroll's covered today, Sir, guaranteed.  
13
- 14 MR. CAMERON: If -- if we come back next week and payroll has  
15 not been covered today, feel free. Appoint -- appoint the Receiver. Let us prove that that  
16 can be done and if that can be done -- if we hold off on this application for 30 days,  
17 Royal Bank's position won't degrade in that -- that timeframe.  
18  
19 Their -- their chief bit of security is the building and that's not going anywhere. So you  
20 know, 30 days from now the Royal Bank, their remedies are still intact. There's been --  
21 whatever guarantees are in place now, they'll still be in place then. If we are unable to  
22 make payroll and to satisfy our employees today, by all means next week, you know,  
23 bring the Receiver in because we failed to do what we said we could do. Give us that  
24 chance and if we -- if we cross that hurdle, give us 30 days.  
25
- 26 MS. GUROFSKY: Sir, I appreciate the personal stories of -- of Mr.  
27 Cameron and Mr. Atkins. I think there's no evidence before you of any ability to pay.  
28 Certainly the evidence suggests otherwise. Mr. Atkins admitted before this Court that  
29 CRA has not been paid for 2019. That's a gross payroll obligation.  
30
- 31 MR. ATKINS: I didn't say that.  
32
- 33 MS. GUROFSKY: Well, I had understood when -- when Your  
34 Lordship asked Mr. Atkins whether CRA had been paid, he indicated there was one  
35 payment made and returned because the cheque was NSF.  
36
- 37 MR. ATKINS: We had a credit March 5th of \$86,000.  
38
- 39 THE COURT: Okay. So do not debate this right now.  
40
- 41 MS. GUROFSKY: Okay.

1  
2 THE COURT: Okay, go ahead.  
3  
4 MS. GUROFSKY: So with that eroding security position with CRA  
5 and no evidence to make payments -- we've been asking for this evidence for the la -- for  
6 the last week and there's --  
7  
8 THE COURT: Okay, here is what we are going to do.  
9  
10 MS. GUROFSKY: Yeah.  
11  
12 THE COURT: Here is what we are going to do. I do not know  
13 where this money is coming from. If you can meet payroll today --  
14  
15 MR. ATKINS: Yes.  
16  
17 THE COURT: -- and if you can get that information from CRA  
18 to Ms. Gurofsky --  
19  
20 MR. ATKINS: I can't do it today if we're here but I can do the  
21 payroll for sure.  
22  
23 THE COURT: No, but when can you get the information for  
24 Ms. Gurofsky? She has been asking for it for --  
25  
26 MR. ATKINS: I -- my guy -- my guy's waiting for them. They  
27 haven't -- they -- they -- the one girl was on holidays for --  
28  
29 THE COURT: Stand up please.  
30  
31 MR. ATKINS: Sorry. That's not my department but I've been  
32 on these guys to get me that information. So all they do is contact CRA and the CRA  
33 does whatever they do and then they will get back to them with a report, and maybe  
34 they've got it this afternoon or maybe they'll get it Monday morning. I don't know.  
35  
36 MS. GUROFSKY: We just need proof that he has paid CRA. He  
37 can access his own records to find that information and this is --  
38  
39 MR. ATKINS: Yeah.  
40  
41 MS. GUROFSKY: -- the problem.

1  
2 THE COURT: Okay.  
3  
4 MR. ATKINS: Okay, well we can do that then.  
5  
6 THE COURT: Okay. Here is -- here is what -- here is what we  
7 are going to do.  
8  
9 MR. ATKINS: Okay.  
10  
11 THE COURT: You meet payroll today.  
12  
13 MR. ATKINS: Yeah.  
14  
15 THE COURT: If you do not meet payroll today --  
16  
17 MR. ATKINS: Yeah.  
18  
19 THE COURT: -- you are coming back in here, Ms. Gurofsky,  
20 Tuesday morning, okay, if you -- if you are available. I do not know what your con -- or  
21 calendar looks like. You are going to be back here on Tuesday morning and if you have  
22 not met payroll --  
23  
24 MR. ATKINS: Yeah.  
25  
26 THE COURT: -- and if you have not provided Ms. Gurofsky  
27 with the information with respect to CRA, I am signing the order and I am seizing myself  
28 with this particular matter, okay. Tuesday morning. You have got --  
29  
30 MR. ATKINS: So we can just -- so I'm clear. Make payroll  
31 today --  
32  
33 THE COURT: You have got to meet payroll today and you  
34 have got to get the CRA payment information to Ms. Gurofsky --  
35  
36 MR. ATKINS: Absolutely.  
37  
38 THE COURT: -- by close of business on Monday.  
39  
40 MR. ATKINS: Okay. So where -- where do I deposit my  
41 cheques?

1  
2 THE COURT: Beg your pardon?  
3  
4 MR. ATKINS: Where do I deposit the cheques for payroll?  
5  
6 THE COURT: I do not know.  
7  
8 MR. ATKINS: Am I allowed to do that?  
9  
10 THE COURT: Well, just -- I will talk to --  
11  
12 MR. ATKINS: Because the last time we did that, Sir, they just  
13 took the money.  
14  
15 THE COURT: Well, here is the problem. The difficulty we  
16 have here, Sir, is that the bank may not clear the cheques so that is why they are saying  
17 get them certified.  
18  
19 MR. ATKINS: Okay.  
20  
21 THE COURT: And if you are dealing with Ledcor, Bosa or  
22 some of those other corporations, you just walk over to their -- the main branch of the  
23 Bank of Montreal or wherever they are banking, they will certify it right then and there.  
24  
25 MR. ATKINS: Okay.  
26  
27 MS. GUROFSKY: Mr. Cronin points out that they're overdrawn on  
28 their accounts.  
29  
30 THE COURT: Yes.  
31  
32 MS. GUROFSKY: And so to the extent that payroll is made, it will  
33 still be overdrawn on their account.  
34  
35 MR. ATKINS: Is that SPS?  
36  
37 THE COURT: But if they -- if he has got the money --  
38  
39 MS. GUROFSKY: To make that whole?  
40  
41 THE COURT: -- to make that -- to make the payroll whole. In

1 other words, it is overdrawn now --

2

3 MS. GUROFSKY: Yes.

4

5 THE COURT: -- but if he owes \$170,000 in payroll, he  
6 deposits \$170,000 and then withdraws that to meet payroll, there is -- you are still going  
7 to be short on the -- on the line but so what. He has put the money in, it is going out.  
8 You are still going to be in exactly the same situation --

9

10 MR. ATKINS: But -- but we aren't short on SPS though.

11

12 THE COURT: -- that you are right now.

13

14 MS. GUROFSKY: Right.

15

16 THE COURT: Do you understand? So what I am saying to  
17 you is if he gets those cheques certified, gets them deposited, I am telling you do not  
18 touch those cheques. Let him meet payroll and then we will be back here on Tuesday.

19

20 MS. GUROFSKY: And -- and he needs to provide proof that CRA  
21 remittances are all current.

22

23 THE COURT: I have already -- I have already made that order.

24

25 MR. ATKINS: Status of it, yeah.

26

27 MS. GUROFSKY: Thank you.

28

29 THE COURT: CRA is current with respect to source  
30 deductions --

31

32 MR. ATKINS: Yeah.

33

34 THE COURT: -- and any other amounts owing to CRA. Get  
35 your accounting people to look at that.

36

37 MR. ATKINS: Yeah. Have that -- have that report and then the  
38 cheques --

39

40 THE COURT: Monday, close of business to Ms. Gurofsky's  
41 office.

1  
2 MR. ATKINS: Perfect.  
3  
4 THE COURT: The cheques that he is getting certified today  
5 will be deposited and I am -- I am ask -- I am telling the bank they are not going to touch  
6 those cheques. They are going to allow those cheques to clear to meet payroll. You  
7 better live up to your obligation, sir --  
8  
9 MR. ATKINS: I always do, Sir.  
10  
11 THE COURT: -- because I am going to -- I am going to be  
12 back here on Tuesday.  
13  
14 MR. ATKINS: For 40 years I've had businesses. I only missed  
15 one payment with -- this last March 1st and my people know that.  
16  
17 THE COURT: Okay. Sir, I am cutting you some slack. Do not  
18 -- do not push it too far, okay.  
19  
20 MR. ATKINS: I appreciate your slack --  
21  
22 THE COURT: Okay.  
23  
24 MR. ATKINS: -- but still.  
25  
26 THE COURT: Ms. Gurofsky?  
27  
28 MS. GUROFSKY: What time on Tue -- on Tuesday?  
29  
30 THE COURT: Well, I think 10:00. Can we do it 10:00? Oh,  
31 Jeffrey. What does Jeffrey got on 10:00?  
32  
33 THE COURT CLERK: Will it be before you or before Justice Jeffrey?  
34  
35 THE COURT: Jeffrey is doing commercial next week.  
36  
37 MS. GUROFSKY: Yes.  
38  
39 THE COURT: Okay. We better -- we better make it -- I did  
40 not bring my calendar with me --  
41



1 MS. GUROFSKY:

Okay.

2

3 THE COURT:

-- so maybe I will just run upstairs and see what

4 I have got because they give us case management so --

5

6 MS. GUROFSKY:

Sure.

7

8 THE COURT:

-- let me just run upstairs. I will be two minutes

9 and I will just let you know, okay.

10

11 MS. GUROFSKY:

Thank you.

12

13 (ADJOURNMENT)

14

15 THE COURT:

All right, please be seated.

16

17 Okay, I have my List. As well, I have Justice Jeffrey's List and he is sitting commercial  
18 next week. So I see you are not sitting -- you are not -- neither of you are in front of him  
19 on Tuesday.

20

21 MS. GUROFSKY:

No.

22

23 THE COURT:

Right? So I -- I think I can meet Tuesday

24 morning. What is most convenient for you -- for everybody? I could do 9:00 if you  
25 want.

26

27 MS. GUROFSKY:

That's fine for me, Sir.

28

29 THE COURT:

Everybody, 9:00?

30

31 MR. ATKINS:

That's good.

32

33 THE COURT:

9:00? 9:00 Tuesday morning and I am going to

34 -- I am just going to hold on to all of this stuff. I am going to return this right now and  
35 you can give it back to me, okay, if need be, Ms. Gurofsky.

36

37 MS. GUROFSKY:

Thank you.

38

39 THE COURT:

Oh sorry, you can give this back to her too. All

40 right. But I am going to hold on to the -- the filed materials --

41

- 1 MS. GUROFSKY: Right.
- 2
- 3 THE COURT: -- or the unfiled materials as the case may be  
4 and -- okay.
- 5
- 6 MS. GUROFSKY: Mr. Defoe (phonetic) has been provided with  
7 filed copies just so you're aware. And then I just spoke with Mr. Cronin. He had some  
8 ideas that might make this easier and perhaps more expeditious for everyone.
- 9
- 10 If Mr. Atkins could provide a list of the cheques that he has, Mr. Cronin can then say  
11 which cheques need to be certified and which not. If there's a cheque from Ledcor, it  
12 doesn't need to be certified.
- 13
- 14 THE COURT: Of course.
- 15
- 16 MS. GUROFSKY: So if we could ask for that. And then as well,  
17 Mr. Cronin's going to have to push through the employee payroll cheques personally. So  
18 if he could get a list of the employees and the payroll. So a list of the cheques that need  
19 to be pushed through, that's what we'll need to sort of move this forward efficiently.
- 20
- 21 THE COURT: Okay, something is coming forward right now.  
22 You know what, I do not have --
- 23
- 24 MS. GUROFSKY: Sir, we can -- we can talk about that --
- 25
- 26 THE COURT: I do not have to sit and watch him doing that.
- 27
- 28 MS. GUROFSKY: -- after so I -- I'll draft an order reflecting what  
29 Your Lordship said today. And will the Court invoke Rule 9.4(2)(3)?
- 30
- 31 THE COURT: Yes.
- 32
- 33 MS. GUROFSKY: Thank you.
- 34
- 35 THE COURT: (2)(c).
- 36
- 37 MS. GUROFSKY: Sub -- yes, thank you.
- 38
- 39 THE COURT: Yes, (2)(c), yes.
- 40
- 41 MS. GUROFSKY: (c).

1  
2 THE COURT: And I mean, I am -- I am going to Justice  
3 Hughes' swearing in in about 40 minutes so if you can get it -- if you want to get it to me  
4 before that or I am in first thing Monday morning.  
5  
6 MS. GUROFSKY: Okay, I will have it to you for Monday  
7 morning.  
8  
9 THE COURT: Yes, okay. I will be in -- well, it does not  
10 matter where I will be. I am going to be doing bail first thing Monday morning if you  
11 want to find me there.  
12  
13 MS. GUROFSKY: Okay.  
14  
15 THE COURT: You know where criminal courts are, don't  
16 you?  
17  
18 MS. GUROFSKY: Yes.  
19  
20 THE COURT: Yes, okay.  
21  
22 MS. GUROFSKY: Okay.  
23  
24 THE COURT: All right.  
25  
26 MR. ATKINS: Those cheques?  
27  
28 THE COURT: Well, you can --  
29  
30 MS. GUROFSKY: We will talk about it after.  
31  
32 THE COURT: You can deal with that and yes, let us do this  
33 efficiently, okay. All right, thank you.  
34  
35 MS. GUROFSKY: Thank you.  
36  
37 THE COURT: We will see you Tuesday morning. We will see  
38 you Tuesday morning either way, I think.  
39  
40 MS. GUROFSKY: Yes.  
41

---

1  
2 PROCEEDINGS ADJOURNED UNTIL 9:00 A.M., MARCH 19, 2019

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1 **Certificate of Record**

2  
3 I, Daryl Richardson, certify that this recording is the record made of the evidence in the  
4 proceedings in Queen’s Bench, held in Courtroom 1702 at Calgary, Alberta, on the 15th day  
5 of March, 2019, and that I was the court official in charge of the sound-recording machine  
6 during the proceedings.  
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1 **Certificate of Transcript**

2  
3 I, Wendy Gretzinger, certify that

4  
5 (a) I transcribed the record, which was recorded by a sound-recording machine, to the  
6 best of my skill and ability and the foregoing pages are a complete and accurate  
7 transcript of the contents of the record, and

8  
9 (b) the Certificate of Record for these proceedings was included orally on the record and  
10 is transcribed in this transcript.

11  
12 Wendy Gretzinger, Transcriber  
13 Order AL-JO-1003-4220  
14 June 21, 2019

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Action No.: 1901-03824  
E-File Name: CVQ19SURFACEPRO  
Appeal No.: \_\_\_\_\_

IN THE COURT OF QUEEN'S BENCH OF ALBERTA  
JUDICIAL CENTRE OF CALGARY

IN BANKRUPTCY AND INSOLVENCY

BETWEEN:

ROYAL BANK OF CANADA

Applicant

- and -

SURFACE PRO SERVICES INC., ATKINS KUNTZ CONSTRUCTION GROUP INC.,  
2049829 ALBERTA INC., DOUGLAS ATKINS, ET AL.

Respondents

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PROCEEDINGS

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Calgary, Alberta  
March 19, 2019

Transcript Management Services  
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1 Proceedings taken in the Court of Queen's Bench of Alberta, Calgary Courts Centre, Calgary,  
2 Alberta

3

4 March 19, 2019

Morning Session

5

6 The Honourable Justice Yamauchi

Court of Queen's Bench of Alberta

7

8 R. Gurofsky

For Royal Bank of Canada

9 T. Bennett

For Royal Bank of Canada

10 J. Cameron

For Surface Pro Services Inc.

11 J. Cameron

For Atkins Kuntz Construction Group Inc.

12 K. Kashuva

For Deloitte

13 P. Zavala

Court Clerk

14

15

16 **Discussion**

17

18 THE COURT:

Good morning. Please be seated. Ms. Gurofsky?

19

20 MS. GUROFSKY:

Thank you, sir. For the record, Robyn Gurofsky

21 from Borden Ladner Gervais appearing on behalf of RBC, the applicant. With me again is

22 Ms. Bennett. Mr. Cameron is here --

23

24 THE COURT:

Mr. Cameron.

25

26 MS. GUROFSKY:

-- on behalf of the companies, and Mr. Kashuva

27 is here --

28

29 THE COURT:

Mr. Kashuva.

30

31 MS. GUROFSKY:

-- on behalf of the proposed receiver. We were

32 before you on Friday. We signed a form of order. Or you signed a form of order, sorry.

33

34 THE COURT:

Yes.

35

36 **Submissions by Ms. Gurofsky**

37

38 MS. GUROFSKY:

There has been a flurry of activity since Friday

39 between the bank and the companies. We now have additional information. While there is

40 still a lot of questions and perhaps some holes from the bank's perspective, the companies

41 have provided substantial information. The information provided demonstrates that the

1 companies are hopelessly insolvent and that the bank's greatest concerns with respect to  
2 CRA's obligations and eroding the bank's position have been confirmed.

3  
4 The bank has sworn a second supplemental affidavit this morning. Madam clerk has a copy  
5 for you. We sent to Mr. Atkins an unsworn copy at around 7:30 this morning. The sworn  
6 copy was sent just after it was sworn, and I have provided a hard copy to him as well. This  
7 is intended to reflect sort of a chronology of events since Friday and the exchange of  
8 information. What I would propose to do is walk you through it.

9  
10 THE COURT: Please do, yes.

11  
12 MS. GUROFSKY: This doesn't consist of the entire correspondence  
13 between the parties. I selected what I believe is the most relevant, and we'll focus on the  
14 financial information.

15  
16 MR. CAMERON: Sir, may I say something before we get too far  
17 along here? I received this this morning at 7:41 in my office by e-mail. I had enough time  
18 to print it and then drive down here. I have not had an opportunity to review it any more  
19 than a simple skim of the contents. I understand that this affidavit is being filed in support  
20 of a revised motion to apply for not just an interim receiver, as you discussed on Friday,  
21 but to apply for an actual receiver, which would mean the basic end of SPS, AK, et cetera.

22  
23 My understanding -- correct me if I'm wrong -- the affidavit is filed in support of a motion  
24 that the plaintiffs plan to bring. Are we entitled to examine Mr. Coonan on his affidavit to  
25 ascertain the accuracy?

26  
27 THE COURT: We'll get to that.

28  
29 MR. CAMERON: Thank you, sir.

30  
31 THE COURT: All right. Go ahead, Ms. Gurofsky.

32  
33 MS. GUROFSKY: And I did advise Mr. Cameron and Mr. Atkins  
34 this morning, when I provided the second supplemental affidavit, that the bank would be  
35 seeking the appointment of a receiver as opposed to an interim receiver today, given the  
36 fact that we are outside of the ten-day period and now we have transparency with respect  
37 to CRA, or some transparency.

38  
39 The images of document cheques -- of the deposit cheques were provided to the bank on  
40 Friday. Those were the cheques that Mr. Atkins had advised he had been holding that would  
41 be sufficient to cover payroll. That e-mail attaching the images of the deposit cheques is

1 Exhibit "A". It's an e-mail from Mr. Renton to Mr. Coonan on Friday at 4:56 PM.

2  
3 You'll recall, My Lord, that we indicated if these cheques were provided to the bank, the  
4 bank could review them and say which cheques needed to be certified so that not all of the  
5 cheques had to be certified. You'll recall the concern with respect to the March 1st payroll  
6 was that there were cheques being cashed with insufficient funds, and the bank had  
7 indicated that it would be prepared to allow the payroll cheques to go through, provided  
8 there were sufficient funds. So certified funds were required. The bank reviewed the eight  
9 deposit cheques provided, which are set out in Exhibit "A". Of the eight deposit cheques,  
10 which totaled about \$90,000, the bank indicated that only two required certification.

11  
12 Exhibit "B" to the affidavit is the e-mail from Mr. Coonan advising which of the two  
13 cheques required certification. This was a cheque from Paleco Inc. in the amount of  
14 approximately \$26,000. The company banked at HSBC, so the bank couldn't see if there  
15 were funds certified. And the second cheque was a cheque whose payor was Westman  
16 Village Journey Club Inc. in the amount of \$16,000, and that was a Bank of Montreal  
17 cheque.

18  
19 Mr. Coonan prepared a spreadsheet for his own purposes setting out the cheques that were  
20 provided and which required certification. That is Exhibit "C" to Mr. Coonan's affidavit.  
21 Mr. Coonan was advised shortly thereafter that the cheques could not be certified as they  
22 had already been deposited. Mr. Coonan advised the company that he would have to think  
23 about whether he could let them go. He was concerned that they were fairly large and he  
24 didn't have any exposure into whether there were funds available. And on Monday, Mr.  
25 Coonan advised the company that he would have to wait for the bank to clear those cheques  
26 to make sure there were funds available. So as of now, there is a total of \$47,000 cleared  
27 in the account, and 42,000 is on hold subject to clearing.

28  
29 Later on in the evening of March 15th, Mr. Coonan was provided a payroll cheque list for  
30 AKC and SPS. That list is found at Exhibit "D" to Mr. Coonan's affidavit. And I'll just take  
31 you there, sir, because you'll see the lists provided the evening of March 15th just listed  
32 cheque numbers and values. They didn't include employee names or anything to do with  
33 payroll, other than the title at the top, which said AK payroll or SPS payroll, March 15th.

34  
35 The cheque totals for these payroll cheques listed at Exhibit "D" were approximately  
36 \$89,000. As the spreadsheets did not contain the requisite detail, e-mails were exchanged  
37 the following day between Mr. Coonan and the companies setting out -- in which Mr.  
38 Coonan set out what he would require in terms of information to ensure that these were  
39 proper payroll cheques. And that e-mail exchange is at exhibit -- excuse me, Exhibit "F" to  
40 Mr. Coonan's affidavit. And Mr. Coonan wrote: (as read)

41

1 Charli, what I need is the actual payroll register from your system  
2 showing names, gross pay, net pay, and cheque numbers. The  
3 order is clear that we need to make payroll, and I need sufficient  
4 evidence that this is what I'm clearing. Since this is just a  
5 manually-produced Excel spreadsheet, it could be anything. I  
6 appreciate your help on this.  
7

8 Mr. Renton replies to that e-mail, which is at the top of Exhibit "F", to say: (as read)  
9

10 As discussed, we will send the full cheque registries on Monday.  
11 And I did want to clarify that as part of our payroll, we include  
12 employee banked hours and/or submitted expenses on a different  
13 cheque, so a few employees have more than one cheque. This is  
14 our standard payroll procedure.  
15

16 So the bank has not taken issue with that, and it did wait for the employee detail lists that  
17 were, in fact, provided on Monday. I did not include those lists in the affidavit, given that  
18 it includes employees' names, and that's confidential information. What was not clear to  
19 the bank is whether these amounts cover the NSF payroll cheques from March 1st, so that  
20 is still a question that remains.  
21

22 Now, with respect to employee payroll cheques, there was an issue at a branch on Saturday,  
23 that Mr. Coonan details in his affidavit, with an employee attempting to cash a cheque. The  
24 branch manager at the branch looked at the accounts for the payor. I can't recall if it was  
25 SPS or AKC, but the branch manager noted that the accounts were in overdraft, and so the  
26 branch manager contacted Mr. Coonan. Mr. Coonan had his work phone forwarded to his  
27 cell phone over the weekend so he could handle those matters. Unfortunately, he missed  
28 the call, and it took about an hour and 45 minutes for the two of them to connect. Mr.  
29 Coonan called him back immediately, but it took an hour and 45 minutes for them to  
30 connect and resolve the issue.  
31

32 The issue was resolved in that time period. The cheque was allowed to go through. And  
33 Mr. Coonan ensured that there was a note put on the system that in the event that employees  
34 went to other branches, that it would be clear that the payroll cheques could go ahead and  
35 be cleared notwithstanding that Mr. Coonan didn't have all of the employee information  
36 yet. So it was important to the bank that the employee payroll cheques be allowed to go  
37 through. Also -- so I noted that the additional employee information was provided  
38 yesterday.  
39

40 Also yesterday, the companies provided their CRA information. And this is critical. While  
41 the information isn't entirely clear, there's still some questions, what is clear is that the CRA

1 has effectively gone unpaid for source deductions for 2019. Mr. Coonan calculates about  
2 \$154,000 in source deductions owing and about \$1,000 in GST. The company disputes  
3 those numbers. Part of the issue -- and I'll take you to --

4

5 THE COURT: Sorry, give me those numbers again.

6

7 MS. GUROFSKY: Yeah. Mr. Coonan calculates approximately  
8 \$154,000 in source deductions unpaid for 2019.

9

10 THE COURT: Okay.

11

12 MS. GUROFSKY: And around \$1,000 in GST -- GST.

13

14 I'll take you to Exhibit "H", sir, which is the e-mail setting out the CRA information  
15 provided by Mr. Cameron yesterday via e-mail. The first page is the e-mail. The second  
16 page is a cover letter. The third page starts with the SPS payroll remittance summary. This  
17 is exactly the documents provided in that e-mail, other than the handwriting at the top is  
18 my own, the "SPS payroll remittance summary". I wanted it to be clear, given that we were  
19 putting this together quickly, what documents we were looking at.

20

21 So this is the spreadsheet that we understand was put together by the company, and it shows  
22 the payroll remittance summary for Surface Pro. Mr. Atkins referenced a CRA credit on  
23 Friday. I think he said it was about \$86,000. And he said in court he didn't think it was  
24 accurate. In fact, the credit is about \$116,000, and the CRA has written to the company to  
25 clarify the discrepancy. So it still seems to be an unresolved issue.

26

27 The other issue that we note is that the March 1st payroll for both SPS -- and when we go  
28 to AKC, you'll see the same thing in the spreadsheet provided. There is no remittance  
29 amount that is indicated as owing for the March 1st pay period. Now, we understand from  
30 the company that that's because of the dates on which payroll falls; there is no remittance  
31 for that period, which doesn't really make sense when you look at the supporting  
32 documentation included in this.

33

34 So -- and so I should tell the Court that when Mr. Coonan calculates \$154,000, he has -- he  
35 has included an amount for this March 1st pay period that is not included by the company.  
36 Now, the bank thought maybe it's because another company provided the funds to make  
37 payroll, but these are still employees of SPS and AKC, and it's a payroll obligation. So  
38 what Mr. Coonan did was he averaged out the numbers between the prior pay period and  
39 the subsequent pay period to come to an estimate for that March 1st pay period. And I'm  
40 sure we'll hear from the company as to why they think that amount is not owing. But it's  
41 hard to wrap one's head around.

1  
2 After the spreadsheet is this letter from the CRA detailing the discrepancy in the filings  
3 and this \$116,000 difference marked as a credit. So we understand from the company that  
4 they're dealing with the CRA on that, but after those pages are what are called tax liability  
5 reports for each pay period. And these tax liability reports list the amounts that are due for  
6 each pay period. And so you've got the January 1st to January 15th, 2019 pay period. Do  
7 you see that, sir?

8  
9 THE COURT: Yes.

10  
11 MS. GUROFSKY: And that number, the entire amount of the federal  
12 taxes, that corresponds to the first line item in the spreadsheet for the SPS payroll  
13 remittance summary created by the company.

14  
15 The second page of the tax liability report shows a pay period of January 16th to 31st.  
16 Again, it's an amount of \$20,000, approximately, that has not been paid. The February 1st  
17 to 15th report shows an amount of \$41,000, again, not paid. Here's where it gets confusing.  
18 You've got the February 16th to February 28th pay period. We know that employees were  
19 working then and were to have been paid on March 1st. There is apparently no taxes  
20 selected for that period, so it's unclear as to why. Because the second -- or the page after  
21 that doesn't include that period. It's March 1st to March 15th, for \$46,000. So that's Surface  
22 Pro.

23  
24 Now, what the company told us this morning -- and I do have a spreadsheet provided by  
25 the company this morning. It's not -- it didn't make it in time. We didn't receive it in time  
26 to put it into the affidavit. But according to the company, they say, Your calculations are  
27 wrong, there's no amounts due for that period given where the payment falls due. And  
28 they've provided us two scenarios. One is -- assumes that CRA's credit is correct, the  
29 116,000 should be credited. The company says, In that case, there's only \$50,000 of past  
30 due taxes primarily related to AKC. And if you include the taxes due by March 25th, which  
31 is another \$30,000, there is about \$80,000 -- just over \$80,000 in past due taxes that -- as  
32 of March 25th.

33  
34 The company also says to us, Look, if the CRA credit is incorrect and there is an adjustment  
35 there, the company's evidence is that the past due amount is \$132,000. And if you include  
36 the March 25th amounts due, it's actually \$200,000. There's \$64,000 due by March 25th,  
37 according to the company.

38  
39 THE COURT: Well, I mean, the bottom line is there is money  
40 owing to CRA for source deductions.  
41

1 MS. GUROFSKY: Significant sums.

2

3 THE COURT: So --

4

5 MS. GUROFSKY: And the bank -- so --

6

7 THE COURT: So even on the company's --

8

9 MS. GUROFSKY: That's right.

10

11 THE COURT: -- allegation.

12

13 MS. GUROFSKY: That's right. And so I can walk you through the  
14 AKC payroll remittance summary. It's similar, but those are the numbers from the  
15 company. So there is still some lack of clarity in respect of the numbers, but that's the  
16 company's own evidence.

17

18 So we have a situation here, now, where the company is clearly in default of its obligations  
19 to the bank. It's been having difficulty making payroll. For the March 1st payroll, we know  
20 it had to use other accounts. There was improper handling of cheques and cheque cutting  
21 in and around the March 1st pay period. And the companies have been allowing obligations  
22 to CRA to accumulate to the detriment to the bank's position.

23

24 Keep in mind how the security structure works here, sir. AKC and SPS are secured by  
25 general security agreements. These are companies that have contracts, and so the  
26 companies and the bank will largely rely upon accounts receivable, significant amounts of  
27 which will now have to go to pay the CRA before the bank gets paid. There may be some  
28 equipment. It's likely encumbered. There's not a lot of transparency there. So, again, this  
29 will be a recovery that's largely reliant upon receivables. And so if this is allowed to  
30 continue, the bank's position will continue to erode, and CRA's obligations will continue  
31 to accrue. There has been no plan, viable or otherwise, put forward by the companies to  
32 restructure or get out of this situation.

33

34 On March 15th, they provided that term sheet from Fit Capital. That's not a term sheet to  
35 provide funding. It's a term sheet for a company to go out into the market pursuant to an  
36 offering memorandum and see who's interested, see what third parties are interested to fund  
37 the company. It will be difficult to find funding when you've got CRA wracking up  
38 obligations that would immediately rank in priority to that entity, whatever lender.

39

40 So we have a situation. The bank is significantly prejudiced by allowing management to  
41 continue operating. The ten-day notice period has expired. The demands have expired.



1 There's no money forthcoming. And it would be entirely appropriate now for the Court to  
2 say, While I might have been prepared to grant an interim receivership order, we're now  
3 past that period and a receivership order is appropriate. We need a receiver to go in and  
4 analyze these contracts and figure out which contracts are profitable and which are not.  
5 And we need to make sure this thing is wound down efficiently, or, if there is a buyer who  
6 wants to step in, the receiver would certainly entertain that. But we can't give the company  
7 more time to figure that out on their own.

8  
9 Sir, I have an amended application to make sure that, you know, we're not asking for  
10 something that's not properly papered. I have a form of order. Perhaps if you have any  
11 questions for me, I will -- unless you have any questions for me, I will see the floor to Mr.  
12 Cameron and --

13  
14 THE COURT: What do you say about Mr. Cameron's request to  
15 examine Mr. Coonan on the affidavit?

16  
17 MS. GUROFSKY: Mr. Coonan's affidavit does not contain any  
18 substantive --

19  
20 THE COURT: Opinion evidence.

21  
22 MS. GUROFSKY: -- evidence -- opinion evidence. This is all sort  
23 of, Here is the correspondence. Now, Mr. Coonan does state in his affidavit, Based on my  
24 calculations, I believe CRA to be 'X'. But we already know from the company's own  
25 evidence provided to us this morning that CRA is owed significant sums.

26  
27 THE COURT: Yes, whether it's \$64,000 or \$154,000 --

28  
29 MS. GUROFSKY: Right.

30  
31 THE COURT: -- it's still a lot of money that's owed to --

32  
33 MS. GUROFSKY: Correct.

34  
35 THE COURT: -- CRA. Okay. Thank you, Ms. Gurofsky.

36  
37 MS. GUROFSKY: Thank you.

38  
39 THE COURT: Mr. Cameron?

40  
41 **Submissions by Mr. Cameron**

1  
2 MR. CAMERON: Thank you, Your Honour. Not surprisingly,  
3 there's a lot of things that were just stated that I object to or take exception to. First, I  
4 certainly didn't and I don't believe anyone from the companies made any representations  
5 that we were current with CRA. As to the amount that's past due, it's a question. There is  
6 obviously something, you know, be it in the range of \$50,000 or be it in the range of  
7 \$133,000, as we -- as we show.

8  
9 THE COURT: Or 154. I mean, 64, 133, or 154 --

10  
11 MR. CAMERON: Yeah.

12  
13 THE COURT: -- it's still lots of money.

14  
15 MR. CAMERON: Agreed, sir. Agreed. We are anticipating fairly  
16 significant receivables this month. Obviously they will be going for CRA and for payroll,  
17 as a first step.

18  
19 Mr. Coonan's calculations are in error. As I understand it -- and I haven't looked into the  
20 details personally, so I can't attest to it personally, just my best information. The way the  
21 CRA determines, payroll remittances are to be paid twice monthly. And the amount that  
22 you pay depends on the pay period cutoffs. And apparently, sometimes, particularly when  
23 the pay period cutoffs come close to the end of the month, for whatever reason, the CRA  
24 moves that liability to the later period, which is why the March 10th entries are zero,  
25 because the pay period related to those March 10th entries fell within the CR -- in other  
26 words, the CRA's cutoff times don't always sync with a company's cutoff times.

27  
28 Consequently, you know, from CRA due-date period to CRA due-date period, there is  
29 some fluctuation in the amount that's owing. It would seem to make sense that it would be,  
30 you know, more or less consistent, if your payroll is more or less consistent, but it's not, so  
31 I'm advised. Our records are in accordance with their payment time frames; therefore, Mr.  
32 Coonan adding an estimate of what he suggests was due on March 10th is inaccurate.  
33 Nevertheless, as I've said, and we agree, there is a sizable outstanding to CRA. That sizable  
34 outstanding can be handled with the receivables we are participating this month.

35  
36 With respect to GST -- and bear in mind that these -- we provided this information as per  
37 your order yesterday, before the close of business. At 6:10 last night, I received an e-mail  
38 from Mr. Coonan asking a variety of questions, some of which I was able to respond to in  
39 some detail this morning, obviously not in complete detail. I didn't have the time nor the  
40 facility. But I believe that I answered his various questions that he posed yesterday, or at  
41 least the most serious of them. They speak about GST, and he was raising concerns

1 how -- how come our GST actually shows credits for January and February. Simply  
2 because GST gets attracted to sales.

3  
4 On one of these reports, the report actually shows sales and other revenue. Apparently,  
5 that -- and that report is generated by QuickBooks (INDISCERNIBLE). Apparently it  
6 accumulates a bunch of stuff in that number, only some of which attracts GST. So you can't  
7 just simply take that number and multiply it by 5 percent and say, ah, there's your GST  
8 liability. You have to drill down a little bit. I was unable to, again, tell the system that drill-  
9 down to satisfy Mr. Coonan. Certainly it can be done. I don't know how to drive the  
10 machine.

11  
12 I noticed that counsel for the RBC made a fairly good point, that the RBC's recovery would  
13 be largely reliant on receivables. I think I quoted that accurately. If a receiver is appointed,  
14 as I alluded to on Friday, AK and SPS's reputation in the industry will be, I would suggest,  
15 irreparably damaged.

16  
17 Right now we are sitting on a number of contracts, sitting on -- we are doing a number of  
18 contracts. We have active work on the go. All of our contracts -- or perhaps I should say  
19 most of our contracts, the vast majority of our contracts will have a clause in there that  
20 permits the -- our client to terminate our contract should we end up in receivership. I expect  
21 that once that becomes public knowledge, the majority of our ongoing contracts will be  
22 terminated, preventing any future work. I expect that any potential work that we may  
23 have -- and as I've mentioned on Friday, I have been in several meetings where upwards of  
24 \$3 million worth of work looked like it might be coming our way. No guarantees, of course,  
25 but quite optimistic about those meetings -- we will not get those contracts.

26  
27 As far as any outstanding receivables from the other side, our client, or ex-client by this  
28 point, will simply say, I can't pay you anything because, A, now I have to find another  
29 contractor to take over from AK or SPS, as the case may be. That stand-in contractor will  
30 quote me a price which will no doubt be higher than whatever the value of the contract was  
31 left. Whenever you take over a job halfway through, you end up with the situation where  
32 you're inevitably higher than the previous contractor. Consequently, I would expect that  
33 most of those receivables that are currently outstanding and will be paid to SPS and AK  
34 will be, at the very least, held up for a significant period of time, and decreased with a  
35 variety of back charges and claims, you know -- and to be fair to them, rightfully forwarded  
36 claims that the work that is left to be done is more expensive than what their  
37 outstanding -- or what the balance of the contract to SPS or AK would have been, if you  
38 understand what I'm saying, sir.

39  
40 So I think that placing us in receivership will irreparably damage SPS and AK, and rather  
41 than helping RBC, I think it will hurt RBC in terms of their recovery. Counsel for RBC is

1 correct, that document that we have from Fit Capital is, in fact -- and I didn't have a chance  
2 to read it. I got it last week literally as I was hopping in the vehicle to drive down here. So  
3 I really didn't know what was in it. I did read it more thoroughly, and it is just an  
4 engagement to seek financing. However, we have been in contact with and contacted back  
5 by two other financing opportunities, competitors to the RBC, and they are quite interested.  
6 However, you know, given the fact that it takes the banks five days to clear a cheque, it's  
7 going to take them quite a bit longer to, you know, evaluate a situation. They are aware of  
8 our situation with CRA.

9  
10 And I understand the importance. I understand where CRA ranks in the scheme of things.  
11 They get first bite of the apple. RBC gets second bite. Suppliers and subs get third bite, I  
12 presume. Employee, whatever is left, I assume. So there are at least two potential financing  
13 opportunities that would take us some time to put in place.

14  
15 THE COURT: What happens in the meantime? In the  
16 meantime, Royal Bank's security continues to erode?

17  
18 MR. CAMERON: I believe the Royal Bank's security doesn't erode.  
19 If we don't put a receiver in, then our position in the industry remains as it is right now.  
20 The contracts that we have --

21  
22 THE COURT: But it's been eroding for the last two weeks.

23  
24 MR. CAMERON: It's been eroding with certain parties. It's been  
25 eroding with CRA, but it hasn't been eroding with our clientele.

26  
27 THE COURT: Or with your employees?

28  
29 MR. CAMERON: Well, yes, they're angry. You know, I  
30 understand.

31  
32 THE COURT: Of course they are.

33  
34 MR. CAMERON: I understand completely.

35  
36 THE COURT: They're not getting paid.

37  
38 MR. CAMERON: I understand completely. But everybody, as far  
39 as I know, has been paid up to date, as far as I know. I have been.

40  
41 THE COURT: Okay. I think you're wrong, but anyway.

1  
2 MR. CAMERON: Okay. Well, I believe they have been. At least  
3 that's my understanding. I'm not going to tell you something I don't know.  
4

5 But I think that the way forward is to basically put this in abeyance, hold off for the time  
6 being. We draw no more down on RBC's lines. We can't. We're over them. Whatever  
7 expenses we must address, we address simply with whatever is coming in the door. If the  
8 first one is CRA, I mean, RBC is going to have to deal with them anyhow. If we deal with  
9 them or if they deal with them, same situation, as you pointed out last week. They're in no  
10 worse position if we do it or if they do it. As a matter of fact, they might be in a better  
11 position if we do it, because if we wait for them to do it, it's going to be further down the  
12 road. So there's that.  
13

14 And as far as examining Mr. Coonan on his affidavit, it's not all just pure facts. There is  
15 some reference to some phone calls and discussions in there, which we're getting his  
16 understanding of what transpired there. I think that examining him on the affidavit and his  
17 calculations and his understanding of the materials that we did provide is important before  
18 adjudicating on their application for a receiver, knowing full well a receiver means the end  
19 of SPS, the end of AK, the end of my employment, the end of lots of people's employment.  
20

21 THE COURT: Okay. Thank you, Mr. Cameron. Mr. Kashuva,  
22 do you have anything to say about Mr. Cameron's thoughts concerning the contracts and  
23 what will the receiver be doing on a go-forward basis? I think he needs to know this.  
24

25 **Submissions by Mr. Kashuva**  
26

27 MR. KASHUVA: Yeah. So our submission would be under the  
28 terms of the standard form receivership order, there are prohibitions against counter-parties  
29 breaching or terminating those contracts. Even if they do have the terms that Mr. Cameron  
30 references, those contracts cannot be unilaterally terminated in a receivership. So there is  
31 still the ability for the receiver to complete the contract, especially if it's contracting the  
32 money to bring more funds into the estate.  
33

34 THE COURT: Well, and the other point I think that is important  
35 is if it requires employees to be retained, that the receiver will retain those employees for  
36 those short terms to complete the contract so that the money comes into the door.  
37

38 MR. KASHUVA: That's correct, My Lord. The receiver, in the  
39 standard course operating procedure, would be retaining employees most likely from the  
40 companies, the other companies, to complete those jobs. They have the hands-on  
41 experience, the particular contract experience, and they would be valuable, where a

1 contract is in the money, to complete that job and bring the funds into the estate.

2

3 THE COURT: And but more importantly, for the folks sitting in  
4 the back of the courtroom, they will get paid for the work they are doing.

5

6 MR. KASHUVA: That's correct, My Lord.

7

8 THE COURT: Thank you. Ms. Gurofsky, anything further?

9

10 **Submissions by Ms. Gurofsky (Reply)**

11

12 MS. GUROFSKY: Just very briefly, sir. Mr. Kashuva dealt with the  
13 contract issues, so I won't touch on that. With respect to CRA, Mr. Cameron's admitted that  
14 there is a sizable amount outstanding. Yes, there were questions with respect to GST. The  
15 GST amount is negligible. It's the source deductions that are the most concern. Mr.  
16 Cameron speaks about financing opportunities. There is no evidence of that. And it's, at  
17 this point in time, too little, too late.

18

19 With respect to the request to examine on the affidavit, the portion of the affidavit that Mr.  
20 Cameron refers to describing a conversation, a telephone conversation, is found at  
21 paragraph 3(c) of the affidavit. And it's a phone call Mr. Coonan describes with Mr. Renton  
22 in which the conversation about the cheques not being certified or not being able to be  
23 certified took place, because they had already been deposited; and Mr. Coonan's advice,  
24 on Monday, that -- that those cheques would continue to be held until the funds were  
25 available.

26

27 That portion of the affidavit, it doesn't go to -- to the heart of the issue that's before the  
28 Court right now. So if the Court was concerned that there -- that there was any sort of  
29 discrepancy in evidence there, which the bank's position that there's not, it's not necessarily  
30 relevant to the issue here, which is CRA is unpaid for significant funds, and the company  
31 has provided no evidence of its ability to get out of this and protect the bank.

32

33 THE COURT: All right. Thank you.

34

35 MS. GUROFSKY: Thank you.

36

37 **Decision**

38

39 THE COURT: Ms. Gurofsky made reference to something  
40 being too late. It's too late. Mr. Cameron referred to the fact that the receivables that are  
41 going to be coming into the corporations or that he anticipates coming into the corporations

1 will be able to cover things like payroll, amounts owing to CRA, and other amounts owing  
2 by the corporation, including perhaps getting the bank into a flush position again. My  
3 response -- and I've written it down. I wrote it down before Ms. Gurofsky even said it. It's  
4 too late.

5  
6 These things should have been handled 30 days ago, chasing this money down to ensure  
7 that CRA and the bank was made flush, to ensure that payroll was being met on a timely  
8 basis.

9  
10 The reason that this came to me in the first instance last week is because of the payroll  
11 issue. And Ms. Gurofsky actually wrote me a letter saying, We've got a payroll issue. We  
12 want to come and see you on an emergent basis. And on that basis, I said, Yes, come and  
13 see me. Payroll was an issue on Friday, when I met with the parties, and so I gave the  
14 corporation until Friday to sort of figure out what's going on with its payroll and to assure  
15 me that payroll would be met, not only current payroll, but the NSF cheques dealing with  
16 payroll. Again, some of those amounts were covered, some of them were not. If receivables  
17 are going to cover those, again, too late.

18  
19 Before I was -- before I took this job, I had been practicing in the area in which Ms.  
20 Gurofsky and Mr. Kashuva are practicing, and I would act for receivers and trustees, for  
21 banks. But more importantly, I did a lot of work for corporations, debtor corporations. And  
22 in my experience over 25, 30 years of practicing law was that corporations -- corporations  
23 always came into my office with rose-coloured glasses. And frankly, that's a good thing.  
24 That's a good thing for our business, for industry, and for our economy and for corporations  
25 to have rose-coloured glasses. But there comes a time when you have to take off those  
26 glasses and realize the reality of the situation and stop looking through the rose-coloured  
27 glasses, and this is one of those situations.

28  
29 The Royal Bank of Canada's situation is being eroded. Any further delay in this matter  
30 would be prejudicial to the Royal Bank of Canada. CRA is not getting paid. The  
31 corporation acknowledges readily that there are amounts owing to CRA. Whether it's  
32 \$64,000 or \$154,000, it doesn't matter. There are amounts owing to CRA. And the  
33 receivables may cover those amounts, the receivables may not, but as each day goes  
34 forward, the amount owing to CRA increases, and the Royal Bank of Canada's security is  
35 being eroded.

36  
37 As a result of that, I am going to sign whatever order you put in front of me. Let me have  
38 a look at it to make sure I am satisfied with it, all right, Ms. Gurofsky.

39  
40 MS. GUROFSKY:

Thank you, sir. So I'm handing up a receivership

41 order.

1  
2 THE COURT: Thank you.  
3  
4 MS. GUROFSKY: It's the standard form receivership order. I'm  
5 handing up a blackline as well.  
6  
7 THE COURT: All right.  
8  
9 MS. GUROFSKY: And this is very similar to the interim order in  
10 terms of, you know, the numbers associated with the borrowings and that. The difference  
11 is, of course, this receivership order has powers of sale. And thresholds for the powers of  
12 sale are set out on page 5, paragraph 3(1), the thresholds for sales without Court approval  
13 in the singular and in the aggregate.  
14  
15 THE COURT: Yes.  
16  
17 MS. GUROFSKY: The borrowing power -- I'm just walking through  
18 the blackline. Again, no significant changes. The borrowing powers are found on page 13,  
19 paragraph 18. There's a receiver's charge of \$250,000 --  
20  
21 THE COURT: Okay.  
22  
23 MS. GUROFSKY: -- and funding of \$250,000.  
24  
25 THE COURT: Okay. I want to make something clear here.  
26  
27 MS. GUROFSKY: Yeah.  
28  
29 THE COURT: Part of the receiver's borrowing power could be  
30 to cover wages and salaries of --  
31  
32 MS. GUROFSKY: That's right.  
33  
34 THE COURT: -- ongoing employees. And that's important for  
35 people to realize, that the borrowing power is not just to pay legal fees and receiver's fees,  
36 it's to make sure that the employees are paid. Now, receivables may cover that. That would  
37 be great. But if the receivables aren't going to cover it, the employees have to get paid for  
38 the work that they are doing, and the receiver is entitled to borrow so that they can pay the  
39 employees.  
40  
41 MS. GUROFSKY: Because the receiver is obligated to do so --



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THE COURT:

Absolutely.

MS. GUROFSKY:

-- if it -- if it retains the employees.

THE COURT:

Yes.

MS. GUROFSKY:

There is no other real changes. The paragraph 34 includes Deloitte's website. We removed the E-service guide paragraph. That's new and hasn't been developed, as far as I know, yet.

THE COURT:

Right.

MS. GUROFSKY:

So that's the form of order that we are seeking today on behalf of the bank.

**Submissions by Ms. Gurofsky (Fiat)**

MS. GUROFSKY:

There is also another administrative request that I have, and that is when these materials were originally filed last week, sir, the court runner took the application and the affidavit but did not take the Statement of Claim, and they filed it. And the clerk accepted the application as an originating application. I understand the fees are the same for both. We have prepared a Statement of Claim, and that is relevant because there is other parties who are part of this action who want part of the receivership. Rather than filing a second Statement of Claim and having two parallel actions, what I'm proposing is that the Court execute a fiat on the Statement of Claim --

THE COURT:

Yeah.

MS. GUROFSKY:

-- directing the clerk -- the court to file it -- or the clerk to file it.

THE COURT:

Okay.

MS. GUROFSKY:

Thank you.

MR. CAMERON:

Have we been provided with a copy of that Statement of Claim?

THE COURT:

You'll get a copy once it's filed.

- 1 MS. GUROFSKY: I can give you an unfiled copy now.  
2
- 3 MR. CAMERON: Your Honour?  
4
- 5 THE COURT: Yes?  
6
- 7 MR. CAMERON: As I said, I just received this order this morning  
8 and haven't had much of a chance to go through it, but I am looking for these guarantees  
9 you speak of where my employees will get paid. I'm reading article 14 here, and it  
10 references various sections of the BIA and the *Wage Earner Protection Program* --  
11
- 12 THE COURT: Correct.  
13
- 14 MR. CAMERON: -- obviously which I'm not familiar with. I  
15 assume that's where our guarantees lie for those employees that will be staying, working  
16 for the benefit of RBC?  
17
- 18 THE COURT: No. No. There's a different -- there's a difference  
19 here. The employees that are let go will have a right to have their past wages paid, and  
20 that's where the *Wage Earner Protection Program* comes into play.  
21
- 22 MR. CAMERON: Okay.  
23
- 24 THE COURT: The employees that are going to be continuing on  
25 will be paid directly by the receiver.  
26
- 27 MR. CAMERON: Will in fact be terminated from whomever, hired  
28 by Deloitte?  
29
- 30 THE COURT: Correct. That's how that works, yeah.  
31
- 32 MR. CAMERON: Very good.  
33
- 34 THE COURT: Okay. I mean, look, from my perspective, Mr.  
35 Cameron, at this point, the corporation -- whatever happens with the corporation will be in  
36 the hands of the receiver. What happens to the employees, I'm concerned about. And I'm  
37 concerned about them getting their past wages, as far as statutorily they are entitled to get  
38 their past wages. They are not entitled to everything, but they are entitled to a certain  
39 portion of their past wages. As well, they are entitled to their wages on a go-forward basis,  
40 and that is of concern to me, and that's why I asked Ms. Gurofsky to direct my attention to  
41 the borrowing powers of the receiver.

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MR. CAMERON:  
employees.

And I do appreciate your concern for the

**Decision (Fiat)**

THE COURT:

Okay. Ms. Gurofsky, here is the order. I have signed a fiat. I've dated it as well. Instead of filling up the filing boxes, I'm giving you back all of these --

MS. GUROFSKY:

Thank you.

THE COURT:

-- and you can have your associate carry them back for you. All right. Is there anything else? Ms. Kashuva, anything else?

MR. KASHUVA:

Nothing further, My Lord.

THE COURT:

All right. Thank you.

MS. GUROFSKY:

Nothing here, sir.

THE COURT:

Thank you for coming back in. I appreciate it.

And thank you, Mr. Cameron.

---

PROCEEDINGS CONCLUDED

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1 **Certificate of Record**

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3

I, Paulina Zavala, certify that this recording is a record made of the evidence in the Proceedings in Court of Queen's Bench held in Court Room 1601 at Calgary, Alberta, on the 19th day of March, 2019, and that I was the court official in charge of the sound-recording machine during the proceedings.

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1 **Certificate of Transcript**

2

3 I, Sheryl Menzies, certify that

4

5 (a) I transcribed the record, which was recorded by a sound-recording machine, to the  
6 best of my skill and ability and the foregoing pages are a complete and accurate transcript  
7 of the contents of the record, and

8

9 (b) the Certificate of Record for these proceedings was included orally on the record and  
10 is transcribed in this transcript.

11

12

13 Sheryl Menzies, Transcriber

14 Job No.: AL-JO-1003-4235

15 Dated: June 24, 2019

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<b>SPS Work in Progress 2019</b>					
<b>Job Number</b>	<b>Customer Name</b>	<b>Address</b>	<b>Contract Value</b>	<b>Invoiced to date</b>	<b>Amount remaining</b>
SP16067	Genesis	Ashbury (377 Saddlemont Blvd NE)	289,075.00	289,075.00	-
SP16068	Stuart Olson Construction Ltd	CBE Elbow Park Elementary (721 38th Ave SW)	104,753.00	104,753.00	-
SP17001	Jayman Westman	Westman Village	1,532,898.75	1,532,898.75	-
SP17003	Ledcor	DFC Phase 2.2	1,814,905.00	1,814,905.00	-
SP17007	Golden Triangle	Mahogany K - 6 School	105,000.00	84,630.00	20,370.00
SP17017	Laurels by Genesis Inc	Laurels (70 Saddlestone Dr NE)	501,116.25	489,550.00	11,566.25
SP17023	Isbister, Brad & Tamara	3617 8A St SW	28,802.40	23,900.96	4,901.44
SP17038	Ledcor	DFC Ph 2.4	398,542.00	398,542.00	-
SP17052	Bird Construction	Imperial Oil - 505 Quarry Park Blvd	293,406.86	285,749.62	7,657.24
SP18001	Genesis Builders Group	Newport at Canals - 115 Sagewood Dr SW	325,934.68	119,705.53	206,229.15
SP18002	Axiom	Alberta Boot Condos	1,588,479.41	1,588,479.41	-
SP18003	Village Centre Amenity Inc. c/o Simco Managen	Westman Village - interior Garden Maintenance	26,870.00	25,750.32	1,119.68
SP18004	Ledcor	DFC Ph 2.3			-
SP18005	Hines	EAP - 2018 Interior & Exterior Maintenance, +15 Planters	91,294.00	66,232.00	25,062.00
SP18006	Mansfield Construction	Redstone C15-05	60,000.00	19,900.00	40,100.00
SP18007	Jayman Westman	Reflections Pavers	507,723.50	267,617.10	240,106.40
SP18011	Brookfield Properties	Brookfield Tower Maintenance (225 6th Ave SW)	36,119.75	36,119.75	-
SP18012	Jayman Westman	Westman Pavers NW1 (Calligraphy)	62,840.48	62,840.48	-
SP18013	Jayman Westman	Westman Pavers SW1 (Lyric)	66,215.74	66,215.74	-
SP18015	Hines	EAP - Tree Lift	8,500.00		8,500.00
SP18020	Hines	First Tower Planting & Maintenance (411 1 St SE)	9,447.00	8,281.00	1,166.00
SP18023	Jayman	Granite - Playground			-
SP18024	Ledcor	Northlands - Landscape CIBC and Wall	135,055.00	38,539.27	96,515.73
SP18026	Rusnack, Miles	89 Cranford Gardens SE	24,795.00	8,475.00	16,320.00
SP18027	Albert, Craig & Kim	71 Bay View Drive SW	12,550.00		12,550.00
SP18030	Professional Excavators	Ranchlands - Loam Pathways	73,444.00	57,844.80	15,599.20
SP18033	JLL Whirlpool Warehouse Maintenance	283080 Logistics Parkway, Rockyview County	30,600.00	11,340.00	19,260.00
SP18035	Hilton	Hampton Inn	66,145.00	17,201.00	48,944.00
SP18037	Graham	Okotoks K-9 School	197,000.00		197,000.00
SP18039	Jayman - Westman Calligraphy	Westman Village Install Clean Fill	300,000.00	148,183.00	151,817.00
SP18041	Gibraltar Projects	Point Trotter (7307 106 Ave SE)	83,863.50		83,863.50
SP18046	Augusta	Harmony Villas	223,395.22	223,395.22	-
SP18047	Ledcor	Phantom Creek Winery - Oliver BC	1,468,920.00	133,363.88	1,335,556.12
SP18048	City of Calgary Snow Removal	Ralph Klein Park & Inglewood Bird Sanctuary (MONTHLY)	85,000.00	46,732.25	38,267.75

SP18049	Summit Property	2018/2019 Carewest Snow Removal sites (PER TIME)	75,000.00	47,175.50	27,824.50
SP18050	Rockyview County	Prince of Peace - 243207 Garden Road NE (MONTHLY)	12,000.00	11,325.00	675.00
SP18051	Petex Developments	Misc Sanding Sites (ON CALL)			-
SP18052	JLL Whirlpool Warehouse Maintenance	Whirlpool Warehouse Snow Removal	45,000.00	42,080.76	2,919.24
IR18053	ULS Maintenance and Landscaping Inc	Grand Seton Village	70,000.00	30,750.00	39,250.00
SP18054	Touchdown	Touchdown Snow Removal	1,000.00	950.00	50.00
SP18055	Blue Grass		55,000.00	53,618.00	1,382.00
SP18056	LR Landscaping	Snow Removal	200.00	190.00	10.00
SP18057	ADEPT Landscape Inc	Snow Removal			-
SP19001	Brookfield Properties	Brookfield Tower Maintenance (225 6th Ave SW)	5,000.00	4,026.25	973.75
SP19002	Hines	EAP - 2017 Interior & Exterior Maintenance, +15 Planters - 525 8th A	4,000.00	2,375.00	1,625.00
SP19003	Brookfield Properties	New Trees in Planters			-
SP19004	Condo Corp Plan #0810229	#1 440 20 Ave NE, Calgary, AB T2E 1R2 Snow Removal			-
SP19005	CBRE	Whirlpool Warehouse Maintenance - 283080 Logistics Parkway, Rockyview County			-
SP19006	Giles Family	Giles family home Fort McMurray	1,000,000.00	-	1,000,000.00

**Total** **10,819,891.54**      **8,162,710.60**      **3,657,180.95**

Maintenance
Snow
Complete
BC
Irrigation





**SUMMARY OF TERMS FOR SENIOR SECURED CREDIT FACILITY  
(DISCUSSION PURPOSES)**

**DATE:** August 25, 2019

**TO:** 2213107 Alberta Ltd.  
31 Heritage Cove  
Heritage Pointe, AB, T1S 4J1

**FROM:** Shaka Miller  
Vice President  
Maynbridge Capital Inc.  
Suite 2500, 645 7<sup>th</sup> Avenue SW  
Calgary, AB T2P 4G8

We are pleased to provide this Loan Proposal for 2213107 Alberta Ltd. outlining the terms and conditions under which Maynbridge Capital Inc. would consider the proposed financing of the senior secured facility as set out herein.

*This summary of terms and conditions is for convenience of reference only and shall not be considered to be exhaustive as to the final terms and conditions of the Credit Facility, which shall be set out in the Credit Financing Agreement (as defined below). In the event of a conflict between the provision of this summary and the Credit Financing Agreement, the latter shall govern.*

**Borrower:** 2213107 Alberta Ltd. (the "Borrower")

**Guarantors:** Mr. Doug Atkins & Mrs. Dianne Atkins (the "Guarantors")

**Lender:** Maynbridge Capital Inc. (the "Lender")

**Purpose:** Loan Facility: senior secured 1<sup>st</sup> lien credit facility of up to CDN \$3,200,000.00 (the "Credit Facility").

**Maximum Availability:** The Credit Facility amount shall not exceed at any time the maximum of (i) CDN \$3,200,000.00, or (ii) 65% of the Forced Liquidation Value of the acquired equipment and commercial real estate assets as approved by the Lender.

**Eligible Assets:** "Eligible Assets" means a 1<sup>st</sup> position lien on all equipment assets that are owned by the Borrower supported by clear evidence title and ownership and located in Canada or pre-approved jurisdictions; and as otherwise approved by the Lender.

**Documentation:** Any commitment by the Lender in respect of the Credit Facility would be subject to the negotiation, execution and delivery of a credit agreement containing the terms and conditions outlined herein, as well as standard representations and warranties, conditions precedent, affirmative and negative covenants, events of default, and other clauses usual and customary for a financing of this nature (the "Credit Facility Agreement") and such other



documents as are customary for a financing of this nature, including without limitation, guarantees and security documents.

**Availability:** Subject to the Maximum Availability, and provided that no Default or Event of Default has occurred and is then continuing, on and after the date on which the Conditions Precedent (as defined below) shall have been satisfied, the Borrower may request the advancement under the Credit Facility.

**Termination Date:** The maturity of the Credit Facility (the "Termination Date") shall be:

- i. 12 months from the date of restructuring;

**Renewal:** Subject to the terms and conditions in the Credit Facility Agreement and receipt of 2.0% of the Credit Facility amount, the Credit Facility may be renewed for another 12 months from the Termination Date outlined above, at the satisfaction of the Lender.

**Closing Date:** The date on which the Conditions Precedent shall have been satisfied (the "Closing Date"). The commitment (if any) of the Lender to provide the Credit Facility shall expire and terminate if the Closing Date has not occurred on or before September 30th, 2019, or such a later date as the Lender may approve.

**Permitted Uses of Proceeds:** The Credit Facility may only be used for the following purposes:

- i. for restructuring of the current term and operating debt;
- ii. for approved working capital, capital expenditures, and other ordinary course expenditures of the Borrower; and
- iii. to pay Permitted Fees and Expenses;

"Permitted Fees and Expenses" means, collectively, (i) the Credit Facility Expenses (as hereinafter defined), (ii) all recoverable fees, expenses and costs incurred by the Lender in connection with the Credit Facility; and (iii) the fees and expenses of the Borrower associated with the Credit Facility.

**Interest Rate:** 15.00 % per annum.

**Fees:** **Commitment Fee** - the Borrower shall pay a one-time Borrower commitment fee of 2.0% (\$64,000.00) of the Maximum Availability Amount. Of this commitment fee, \$20,000 is to be paid in advance on acceptance of this Credit Facility proposal ("Good Faith Deposit") and will be credited towards the Commitment Fee due and payable on funding, or may be financed in addition to the Maximum Available amount detailed above. Should the Lender, upon completion of its due diligence, decide in its sole discretion not to provide the Borrower with a commitment substantially in the form outlined herein, the Lender will return the Good Faith Deposit to the Borrower net of any costs incurred.

**Payments:** The Credit Facility will be serviced by:

- 12 monthly payments of principal and interest of CDN\$56,000;
- followed by remaining principal plus accrued interest;

**Security:**

- The obligations of the Borrower under the Credit Facility Agreement are to be subject to a fully perfected first-ranking specific charge on all equipment (the "Collateral"), evidenced by applicable PPSA registrations, pursuant to the definitive Credit Facility Agreement;
- 2<sup>nd</sup> charge on all Accounts Receivable and Inventory;
- 1<sup>st</sup> Collateral Mortgage charge over the subject real estate;

- Continuing personal guarantees of Mr. Doug Atkins and Mrs. Dianne Atkins;

**Covenants:**

The Credit Facility Agreement would contain affirmative, negative and financial covenants, including without limitation, the following:

- i. The Borrower shall not undertake any actions with respect to their business operations and/or capital structure which would, in the determination of the Lender, have a material adverse effect on the Borrower;
- ii. The Borrower shall not incur, create or suffer to exist any lien on any Collateral now owned or hereafter acquired other than (i) Permitted Encumbrances;
- iii. Without the prior written consent of the Lender, the Borrower shall not declare or any dividends, or make any other distributions (whether by reduction of capital or otherwise) with respect to any of their issue and outstanding shares or other equity interest;
- iv. The Borrower shall pay all recoverable fees, expenses and costs incurred by the Lender, in connection with the Credit Facility;

**Conditions Precedent to Closing:**

- Physical inspection by Maynards Industries Ltd. supporting a minimum Forced Sale Valuation of at least \$2,061,000.00 on all equipment;
- Physical inspection by Colliers Intl. supporting a minimum appraised value with a 3 month exposure time, of \$2,800,000 on the real estate;
- Execution of the Credit Facility Agreement;
- Perfected security interests in the Collateral with the priorities described above, together with the execution and delivery of security documentation and perfection filing from the Lender by the Closing Date;
- Satisfactory completion of the collateral review with respect to all equipment assets;
- Receipt by the Lender, of an initial monthly cash flow forecast for the upcoming 12-month period (the "Cash Flow Forecast"), satisfactory to the Lender;
- The Borrower shall have paid all fees then owing to the Lender.

**Reporting:**

The Credit Facility Agreement would contain regular monthly reporting requirements, including without limitation, the following:

- Monthly financial statements including profit & loss, balance sheet, schedule of accounts receivable and accounts payable.
- Monthly statement of account from the Receiver General supporting all priority payables are in good standing and up to date.

**Representations and Warranties:**

Standard Representations and Warranties for a Loan transaction of this nature

**Events of Default:**

Standard Events of Default for a Loan transaction of this nature

**Transaction Expenses:**

From the date of acceptance of this Loan Proposal, the Borrower will be responsible for all reasonable third party expenses incurred by the Lender in connection with the transaction, including, but not limited to, legal fees (on a solicitor and own client full indemnity basis), appraisals, due diligence and physical inspections.

**Assignability:** The Borrower and the Guarantors may not assign any of their rights or obligations. The Lender may assign or transfer, in whole or in part, its rights or pledge its rights thereunder without the Borrower's consent.

**No Obligation Created:** By executing this Loan Proposal, you acknowledge that it represents a proposed transaction and does not constitute an offer or a commitment.

**Confidential:** This Loan proposal is being provided to you on the further condition that its existence and contents will be kept confidential and will not be disclosed without the Lender's prior written consent except to those individuals who have a need to know as a result of their being specifically involved in the proposed transaction.

**Governing Law:** This Loan Proposal is governed by and interpreted in accordance with the laws of the Province of Alberta and the Borrower and the each of the Guarantors hereby irrevocably attorn to the jurisdiction of the courts of the Province of Alberta.

**Counterpart Execution:** This Loan proposal and all other documents related thereto or arising there from may be executed in any number of counterparts (including by facsimile transmission) and by different parties in separate counterparts, each of which when so executed will be deemed to be an original and all of which taken together will constitute one and the same instrument.

This Loan proposal will expire on August 30<sup>th</sup>, 2019.

Please feel free to contact the undersigned if you have any questions or concerns.

Yours truly,

**MAYNBRIDGE CAPITAL INC.**

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**Shaka Miller**  
**Vice President**

ACCEPTED this \_\_\_\_\_ day of \_\_\_\_\_, 2019.

**2213107 Alberta Ltd.**

**2213107 Alberta Ltd.**

By: \_\_\_\_\_

By: \_\_\_\_\_

Name:  
Title:

Name:  
Title:

*I have authority to bind the corporation*

*I have authority to bind the corporation*