

Form 6-5
(Subrule 6-5(1))

COURT FILE NUMBER QB No _____ of 2014

COURT QUEEN'S BENCH FOR SASKATCHEWAN

JUDICIAL CENTRE SASKATOON

APPLICANT BUSINESS DEVELOPMENT BANK OF CANADA

RESPONDENT ASSINIBOIA RUBBER RECYCLING INC.

NOTICE OF APPLICATION

NOTICE TO RESPONDENTS – ALL PERSONS NAMED ON THE SERVICE LIST FOR THESE PROCEEDINGS ATTACHED as SCHEDULE “A” HERETO (THE “SERVICE LIST”)

This application is made against you. You are a respondent. You have the right to state your side of this matter before the Court.

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

WHERE: Court House, 520 Spadina Crescent East, Saskatoon, SK.

DATE: Friday, July 11, 2014

TIME: 1:00 p.m.

REMEDY CLAIMED OR SOUGHT:

1. To the extent necessary, an order abridging time for service of this Notice of Application and materials filed in support thereof and validating service or, in the alternative dispensing with service;
2. An order pursuant to section 243(1) *The Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, section 65 of *The Queen's Bench Act, 1998*, S.S. 1998, C. Q-1.01, and section 64(8) of *The Personal Property Security Act, 1993*, S.S. 1993, c.P-6.2 appointing

- Ernst & Young Inc. (“E&Y”) as receiver, without security, over the assets, undertakings, and properties of the Respondent, Assiniboia Rubber Recycling Inc. (the “Debtor”), acquired for or used in relation to the business of the Debtor, including all proceeds thereof (the “Property”) in the form of the Draft Receivership Order filed in support of this application; and
3. Such further and other relief as counsel for the Applicant, Business Development Bank of Canada (“BDC”), may advise and this Honourable Court may permit.

GROUND FOR MAKING THIS APPLICATION:

(Defined terms not otherwise specified herein shall have the same meanings ascribed to them in the Affidavit of Travis Gu)

A. The Indebtedness

1. BDC has provided financing to the Debtor pursuant to a Credit Agreement. As of July 3, 2014, the outstanding indebtedness owed to BDC by the Debtor pursuant to the Credit Agreement was \$ 1,780,455.62 plus interest at the prescribed rate (the “Indebtedness”).

B. The BDC Security

(i) Personal Property Security

2. Pursuant to a duly registered General Security Agreement, dated July 17, 2009 (the “Security Agreement”), BDC is the primary secured creditor and holder of a first ranking security interest in all present and after acquired property of the Debtor, except for:
- (a) The Debtor’s Inventory and Accounts Receivable, which are subject to a Priority Agreement, dated August 10, 2009 between BDC and the Toronto-Dominion Bank (“TD”) that provides TD with priority in relation to the Debtor’s Inventory and Accounts Receivable (as those terms are defined in the Priority Agreement); and
- (b) Provided that the claimants can establish that they hold valid purchase money

security interests, certain serial numbered goods and/or equipment, which appear from the Personal Property Registry search results to be subject to (or potentially subject to) purchase money security interests in favour of other secured parties.

(ii) Real Property Security

- (c) BDC holds a first and valid charge against the lands, buildings and improvements that comprise the Plant and the Painting Facility pursuant to two mortgages (the “**Mortgages**”).

C. Demand for Repayment

- 3. BDC has demanded repayment of the Indebtedness and served the requisite notices. BDC is currently entitled to realize upon the Security, and both the Security Agreement and Mortgages permit BDC upon a default of the Debtor to seek the court appointment of a receiver over the Property.

D. History of Defaults

- 4. The Debtor is in default of its various obligations to BDC as contained in the Credit Agreement, Security Agreement, and/or the Mortgages, which acts of defaults include, *inter alia*, the following:
 - (a) Failing to make scheduled payments to BDC and to repay the Indebtedness pursuant to BDC’s lawful demand such that the full Indebtedness is due and owing;
 - (b) Failing and/or refusal to provide sufficient financial reporting to BDC, or at all;
 - (c) Ceasing to carry on with its business operations in the normal course of business, or at all;

- (d) Failing to provide updated and/or current proof that the Plant, and other collateral, is insured or properly insured; and
- (e) Permitting the Plant and the Painting Facility to be and to remain vacant.

E. Court Appointed Receiver is Just and Convenient

5. The granting of an Order appointing a Receiver is just and convenient for the following reasons:

- (a) The Debtor has become insolvent as evidenced by, *inter alia*, the following:
 - (i) The Debtor has ceased to meet its liabilities as they become due, including by defaulting on its obligations to repay the Indebtedness to the BDC;
 - (ii) The Debtor has ceased all operations such that no further revenues are being generated in order to meet its financial obligations to BDC or its other creditors.
- (b) There is a significant risk that irreparable harm will be suffered by BDC if a Receiver is not appointed for, *inter alia*, the following reasons:
 - (i) The Debtor is no longer conducting business and has abandoned the Plant, inventory and remaining scrap tires and may have also abandoned the Painting Facility. BDC has been unable to verify that the Plant or the Painting Facility are properly insured which is a significant concern given the fire hazard posed by the abandoned tire and rubber inventory and the risk to BDC's security from other perils such as theft and vandalism.
 - (ii) A Receiver is required in order to take possession and control of the assets in order to prevent further waste from occurring and to implement

measures to monitor and safeguard the Property;

- (iii) There is a history of environmental issues at the Plant. Approximately 4 years have elapsed since the last environmental assessment was completed and it is unknown what condition the Plant (and the lands) are currently in and whether any environmental issues have arisen since the last assessment. A Receiver can assess the current situation to determine if there are any environmental issues or potential environmental issues. If there are environmental issues, a Receiver is best positioned to report to the appropriate authorities if required, assess whether it is economically viable to remediate and, if so, to implement and oversee the remediation;
- (c) The appointment of a Receiver is required in the circumstances in order to balance the interests of all parties, including the Debtor and creditors alike, and to maximize value from the Property for the benefit of all stakeholders through a court-supervised sale of assets and organized claims process. The business previously being operated by the Debtor is a specialized one and the pool of parties that may be interested in bidding for all or part of the operation is small and a Receiver is best positioned to determine the manner in which the assets will be realized upon, and to implement that process in an organized fashion, as opposed to having the various creditors seizing and selling assets in a piecemeal manner; and
- (d) Such further and other grounds as counsel may advise and this Honourable Court may allow.

MATERIAL OR EVIDENCE TO BE RELIED ON:

1. This Notice of Application with proof of service thereof;
2. Proposed form of draft Receivership Order;
3. Blacklined version of the draft Receivership Order comparing it to the Saskatchewan Template Receivership Order;

4. Affidavit of Travis Gu, sworn July 7, 2014;
5. Affidavit of Proposed Receiver;
6. Brief of Law on behalf of the Applicant, Business Development Bank of Canada; and
7. Such further and other material as counsel may advise and this Honourable Court may allow.

APPLICABLE RULES:

1. None

APPLICABLE ACTS AND REGULATIONS:

1. *The Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, section 243(1)
2. *The Queen's Bench Act, 1998*, S.S. 1998, C. Q-1.01, section 65
3. *The Personal Property Security Act, 1993*, S.S. 1993, c.P-6.2, section 64(8)

DATED at the City of Saskatoon, in the Province of Saskatchewan, this 7th day of July, 2014.

McDougall Gauley LLP

Per: _____

Ian Sutherland, Solicitor for the Applicant,
Business Development Bank of Canada

NOTICE

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

CONTACT INFORMATION AND ADDRESS FOR SERVICE

If prepared by a lawyer for the party:

Name of firm:	McDougall Gauley LLP
Name of lawyer in charge of file:	Ian A. Sutherland
Address of legal firm:	701 Broadway Avenue SASKATOON, SK. S7N 1B3
Telephone number:	(306) 665-5417
Fax Number:	(306) 652-1323
Email:	isutherland@mcdougallgauley.com
File No.	502544.42

SCHEDULE "A"

SERVICE LIST

Party	Representative for Service	Contact Information	Manner of Service Requested
Ernst & Young Inc		Neil Narfason Ernst & Young Tower, 1000, 440 2nd Avenue S.W., Calgary, AB T2P 5E9 Neil.Narfason@ca.ey.com	
Assiniboia Rubber Recycling Inc.		Registered Office McKercher LLP 800-1801 Hamilton St. Regina, Sask S4P 4B4	
The Toronto-Dominion Bank		3140 Dufferin Street Toronto, Ontario M6A 2T1 Attention: Ms. Nina Sicilia Tel: (416) 785-2576 Fax: (416) 785-5068 Email: nina.sicilia@td.com	Counsel for The Toronto-Dominion Bank MacPherson Leslie & Tyerman LLP 1500-410-22 nd St. E. Saskatoon, SK S7K 5T6 Attention: Jeff Lee and Mike Russell email: jmlee@mlt.com mrussell@mlt.com
South Central Community Futures Development Corporation		88 Saskatchewan St. E. Moose Jaw, Sask. S6H 0V4	
De Lage Landen Financial Services Canada		3450 Superior Court Unit 1 Oakville, Ontario L6L 0C4	
Ministry of Economy		200 – 3085 Albert St. Regina, Sask S4S 0B1	
Les Brookton Inc.		23501 Cinco Ranch Blvd., B-225 Katy, Texas 77494 United States of America	

As of July 7, 2014