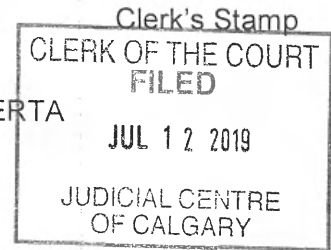


COURT FILE NO. 1601-06131  
COURT COURT OF QUEEN'S BENCH OF ALBERTA  
JUDICIAL CENTRE CALGARY



APPLICANT IN THE MATTER OF THE COMPANIES'  
CREDITORS ARRANGEMENT ACT,  
R.S.C. 1985, c. C-36, AS AMENDED

AND IN THE MATTER OF A PLAN OF  
COMPROMISE OR ARRANGEMENT OF  
CONNACHER OIL AND GAS LIMITED

DOCUMENT BENCH BRIEF OF THE APPLICANT  
(RETURN OF PROPERTY ORDER)

HEARING July 16, 2019

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## I. PART ONE - INTRODUCTION

1. This Bench Brief is submitted on behalf of Connacher Oil and Gas Limited (“**Connacher**”) in support of Connacher’s Application (Return of Property Order) returnable on July 16, 2019 (the “**Application**”).<sup>1</sup>
2. On the Application, Connacher seeks an order in the form attached as Schedule “A” to the Application (the “**Return of Property Order**”), *inter alia*:
  - (a) declaring that service of the Application and supporting documents is good and sufficient, that the time for notice is abridged to the time provided, and dispensing with further service;
  - (b) declaring that the sum of \$728,183.99 or such lesser amount as remains in the following account in The Toronto-Dominion Bank (“**TD**”):

Institution #: 004

Transit # 02532

Account #: 5237438 (the “**Account**”)

together with any interest that has accrued thereon since June 19, 2019 is the Property of Connacher, as such term is defined in the Initial Order dated May 17, 2016 (the “**Initial Order**”); and
  - (c) requiring that within 30 days of the date of the Return of Property Order, TD return the Property to Connacher by bank draft.
3. The Monitor, the First Lien Agent, and the Consenting First Lien Lenders support the Application. TD does not oppose the Application.

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<sup>1</sup> Terms used but not defined herein shall have the meanings ascribed to such terms in the Affidavit of Merle Johnson sworn on July 9, 2019, filed (the “**Johnson Affidavit**”).

II. **PART TWO - OVERVIEW**

4. Connacher has been the subject of an attempted fraud, which has resulted in certain funds being mistakenly transferred to the Account, which is a TD account registered in the name of 5002483 Ontario Inc. ("**5002483**").

Johnson Affidavit at paras 14-15

5. On June 11, 2019, Connacher received an email which purported to be from Plains Midstream Canada ("**Plains**"), a service provider to Connacher. That email (the "**First Scam Email**") purported to change the wire transfer information for future payments by Connacher to Plains (the "**New Transfer Particulars**"). Unbeknownst to Connacher, the New Transfer Particulars were not for a Plains account but for the Account of 5002483 at TD.

Johnson Affidavit at paras 8, 10, 14

6. On June 19, 2019, Connacher received a second email (the "**Second Scam Email**") which purported to be from Plains, following up to ensure that Connacher had received the New Transfer Particulars. Connacher had no indication that the First Scam Email or the Second Scam Email originated from anywhere other than Plains.

Johnson Affidavit at paras 11-12

7. On June 19, 2019, in reliance on the New Transfer Particulars, Connacher transferred \$728,183.99 to the Account, believing that it was being paid to Plains for services provided. Fortunately, TD flagged the transaction, confirmed that 5002483 was not the proper payee on Connacher's electronic funds transfer ("**EFT**"), and has frozen the funds in the Account. Plains confirmed that it did not receive a payment from Connacher and had not sent the First Scam Email or the Second Scam Email.

Johnson Affidavit at paras 13-16

8. Connacher has filed a report of these events with the Calgary Police Service.

Johnson Affidavit at para 17

9. 5002483 is an Ontario corporation holding the business name registration of "Buddy's Towing", with a registered office address in Toronto. Connacher has done no business with 5002483, any business called "Buddy's Towing", or any business located at the registered office address of 5002483 and does not owe any of them any money.

Johnson Affidavit at para 18

10. On July 8, 2019, a Connacher-retained process server attended at 5002483's registered office address and served a letter upon a mechanic named Mitko, an adult person who appeared to be in control or management for 5002483 at the registered office address. The letter advised 5002483 that Connacher had scheduled this Application for the return of its Property.

Johnson Affidavit at para 19

Affidavit of Service of Rajwinder Singh, sworn July 8, 2019, at para 1

11. On July 10, 2019, a Connacher-retained process server attended at 5002483's registered office address to serve the Application and Johnson Affidavit. As detailed in the Affidavit of Service of Christopher O'Rourke sworn July 10, 2019, this process server attempted to serve the Application and Johnson Affidavit upon 5002483 but there was nobody present at the premises (despite it being in the middle of a business day) and the front door had been boarded up with a wooden panel. On July 11, 2019 a Connacher-retained process server attended at the address of the sole director of 5002483 and served the Application and Johnson Affidavit upon the sole director by leaving a copy with Shiva Beddi, friend/roommate, at the director's address.

Affidavit of Service of Christopher O'Rourke, sworn July 10, 2019, at para 2

Affidavit of Service of Christopher O'Rourke, sworn July 11, 2019, at para 1

12. Connacher has not received any communications from 5002483 since serving them with the July 8, 2019 letter.

13. TD has advised Connacher that due to the quantum of funds at issue, TD requires a Court order to disburse the funds back to Connacher. TD does not oppose this Application.

Johnson Affidavit at paras 20, 22

14. On June 19, 2019, Connacher held meetings of its affected creditors to vote on Connacher's Plan of Compromise and Arrangement dated May 6, 2019 (the "**2019 CCAA Plan**"). The 2019 CCAA Plan was approved unanimously by the affected creditors in each class of creditors that voted in person or by proxy at the creditors' meetings. Connacher is seeking the Court's sanction of the 2019 CCAA Plan and anticipates that an order sanctioning the 2019 CCAA Plan will be granted shortly.

Johnson Affidavit at para 7

### III. PART THREE - ISSUES

15. The key issue on this Application is as follows:

(a) Is the return of Connacher's Property appropriate in the circumstances?

### IV. PART FOUR - LAW AND ARGUMENT

#### A. The Return of the Property is Appropriate in the Circumstances

16. Connacher is the debtor company in an over three-year *Companies' Creditors Arrangement Act* ("**CCAA**") proceeding supervised by this Honourable Court. The Initial Order granted on May 17, 2016 (the "**Initial Order**") requires Connacher to remain in possession and control of all of its assets and to carry on its business in a manner consistent with the preservation of its property. In particular, the Initial Order states:

4. The Applicant shall:

(a) remain in possession and control of its current and future assets, undertakings and other properties of every nature and kind whatsoever, and wherever situate including all proceeds thereof (the "Property");

(b) subject to further order of this Court, continue to carry on business in a manner consistent with the preservation of its business (the "Business") and Property;

...

In the Matter of Connacher Oil and Gas Limited, Court of Queen's Bench Action No. 1601-06131, Initial Order granted on May 17, 2016, at para 4(a), (b)

*Companies' Creditors Arrangement Act*, RSC 1985, c. C-36, as amended (the "CCAA")

17. These provisions contemplate that Connacher, and no other person, is to control its Property and that the Property is to be preserved.
18. The Court has broad jurisdiction under the CCAA to make orders in respect of a debtor company. Section 11 of the CCAA states:

General power of court

11 Despite anything in the *Bankruptcy and Insolvency Act* or the *Winding-up and Restructuring Act*, if an application is made under this Act in respect of a debtor company, the court, on the application of any person interested in the matter, may, subject to the restrictions set out in this Act, on notice to any other person or without notice as it may see fit, make any order that it considers appropriate in the circumstances.

CCAA at section 11 [TAB 1]

19. In *Canada North Group Inc. (Companies' Creditors Arrangement Act)*, this Honourable Court stated, "CCAA s 11 cloaks the Court with broad discretionary power to make any order it considers appropriate in the circumstances, subject to the restrictions set out in the Act. However, as the Supreme Court of Canada observed in *Century Services*, there are limits on the exercise of inherent judicial authority in a CCAA restructuring."

*Canada North Group Inc. (Companies' Creditors Arrangement Act)*, 2017 ABQB 550 ("**Canada North**"), at para 22 [TAB 2]

20. The Court then quotes from the Supreme Court of Canada's decision in *Ted Leroy Trucking (Century Services) Ltd., Re*, explaining:

The general language of the CCAA should not be read as being restricted by the availability of more specific orders. However, the requirements of appropriateness, good faith and due diligence are baseline considerations that a court should always bear in mind when exercising CCAA authority. Appropriateness under the CCAA is assessed by inquiring whether the order

sought advances the policy objectives underlying the CCAA. The question is whether the order will usefully further efforts to achieve the remedial purpose of the CCAA – avoiding the social and economic losses resulting from liquidation of an insolvent company. I would add that appropriateness extends not only to the purpose of the order, but also to the means it employs. Courts should be mindful that chances for successful reorganizations are enhanced when participants achieve common ground and all stakeholders are treated as advantageously and fairly as the circumstances permit.

*Canada North*, at para 23, citing from *Ted Leroy Trucking (Century Services) Ltd., Re*, 2010 SCC 60, at para 70 [TAB 2]

21. Connacher has been victimized by a cyber-fraud. It is the rightful owner of the Property, and none of 5002483 or “Buddy’s Towing” have any right to possession or ownership of the Property.

Johnson Affidavit at paras 15, 18

22. The Property is within the control of TD, who, upon identifying the fraudulent transaction, alerted Connacher to the problem and caused the funds in the Account to be frozen. However, due to the quantum of the Property at issue, TD requires a Court order to disburse the funds back to Connacher.

Johnson Affidavit at paras 16, 20

23. In the context of the ongoing CCAA proceeding, the return of the Property to Connacher is appropriate in the circumstances, as:
- (a) Connacher is operating its business in the ordinary course subject to the terms of the Initial Order during the CCAA proceeding. The Property is important in the context of Connacher’s cash flow and would otherwise be used to make payments on Connacher’s other proper obligations;
  - (b) Connacher has suffered damage in being required to expend time, effort and resources to resolve this issue, including the cost and expense of bringing this Application, to the ultimate detriment of its creditors;
  - (c) Connacher’s 2019 CCAA Plan was unanimously approved by the affected creditors who voted at creditors’ meetings held on June 19, 2019 (incidentally, the same day that the EFT was sent to the Account). Connacher is seeking the

Court's sanction of the 2019 CCAA Plan and anticipates that an order sanctioning the 2019 CCAA Plan will be granted shortly. As the 2019 CCAA Plan contemplates a going concern transaction in furtherance of the purposes of the CCAA, the return of the Property is important to Connacher and its stakeholders, including the Consenting First Lien Lenders whose consent is required to implement the 2019 CCAA Plan, subject to its sanction by this Honourable Court.

Johnson Affidavit at paras 7, 23

24. The CCAA process is intended to be a central forum for the resolution of all claims in respect of a debtor company. It is in the interests of all of Connacher's stakeholders that the Property be returned to Connacher in the most efficient manner possible, so that Connacher may have access to the Property for use in its operations, and so that it may avoid expending additional costs and resources recovering the Property in any other forum or proceeding.

Johnson Affidavit at para 23(b)

25. 5002483 is not a stakeholder in the CCAA proceeding. It is, at best, an unknowing accomplice to a cyber-fraud, and, at worst, the perpetrator thereof. In any event, 5002483 has no legitimate claim to or interest in the Property. It is in the interests of justice that the Property be returned to its rightful owner.

Johnson Affidavit at para 24

26. Connacher respectfully submits that for the foregoing reasons, the return of the Property pursuant to the Return of Funds Order is appropriate in the circumstances.

V. PART FIVE - CONCLUSION AND RELIEF SOUGHT

27. Connacher respectfully requests that this Honourable Court grant the requested relief substantially in the form of the Return of Property Order attached to the Application.

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 12th day of July, 2019.

CASSELS BROCK & BLACKWELL LLP

Per: "Cassels Brock & Blackwell LLP"  
Ryan Jacobs/ Timothy Pinos/  
Danielle Maréchal/ Benjamin  
Goodis  
Solicitors for the Applicant

## TABLE OF AUTHORITIES

### Legislation

1. *Companies' Creditors Arrangement Act*, RSC 1985, c. C-36, as amended, section 11.

### Jurisprudence

1. *Canada North Group Inc. (Companies' Creditors Arrangement Act)*, 2017 ABQB 550.