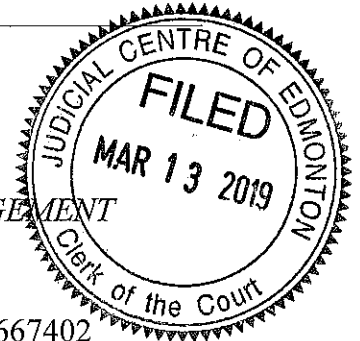


Action No.: 1703-12327
E-File No.: EVQ19COMPANIES
Appeal No.: _____

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

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 ARRANGMENT OF 667402
ALBERTA LTD., 18512398 ALBERTA LTD., 816956 ALBERTA LTD.,
1371047 ALBERTA LTD., 1919209 ALBERTA LTD. and
CANADA NORTH GROUP LP HOLDINGS LTD.



PROCEEDINGS

Edmonton, Alberta
January 11, 2019

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

TABLE OF CONTENTS

Description	Page
January 11, 2019	Morning Session
Discussion	1
Ruling	10
Submissions by Mr. Bieganek	16
Certificate of Transcript	39
January 11, 2019	Afternoon Session
Discussion	40
Decision	45
Certificate of Record	49
Certificate of Transcript	50

EXHIBITS

No.	Description	Page
A	For Identification - Answers to Undertakings of Mr. Roman	9
B	For Identification - Letter Dated January 11, 2019	9
C	For Identification - Undertakings of Mr. McCracken, Responses from Ms. Barnhouse and Letter Dated January 11th, 2019 from Bryan & Company	9
D	For Identification - Unfiled Affidavit of Barry Roman Dated January 11, 2019	10

Proceedings taken in the Court of Queen's Bench of Alberta, Law Courts, Edmonton, Alberta

January 11, 2019

Morning Session

The Honourable Mr.
Justice Hillier

Court of Queen's Bench
of Alberta

D. Bieganeck

For the Monitor

R. Quinlan

For the Monitor

C. Russell

For Canadian Western Bank

Z. Han

For 726 Alberta Ltd.

C. Nicholson

For 726 Alberta Group

D. McAllister

For 726 Alberta Group

B. Smith

For Mr. and Ms. Hadfield

S. Delblanc

For Mr. McCracken

S. Delblanc

For Mr. McCracken

D. Borman

Court Clerk

Discussion

MR. BIEGANEK:
yesterday.

A couple of housekeeping matters arising out of

THE COURT:

Thank you.

MR. BIEGANEK:

And I think everybody will speak to it. I'm just waiting for Mr. Quinlan to attend from downstairs, he's filing answers to undertakings that we did receive from Ms. Nicholson this morning. With -- which deal with the two outstanding requests regarding the review of the stipend of the file. The answers simply are no search was made and no written request was made of CWB to waive or provide a letter of no interest in respect of the matter, and we'll hand these up in a moment. Ms. Nicholson provided a list of written interrogatories to Mr. Russell, I'll let him speak to that. Ms. Nicholson has handed to us this morning, a short affidavit of Barry Roman (phonetic) which I'll address during the course of argument, I'm not going to ask for any time to address it. I think the matter is addressable based on the -- what the actual test -- legal tests are. And we do have some answers from Ms. Barnhouse (phonetic), we're just getting those printed and we'll provide those to the Court shortly. So, that's it from a housekeeping perspective. The Monitor is not looking to have the matter further adjourned vis-à-vis Bonnyville, but we're prepared to address it today.

1 THE COURT: All right, thank you.

2
3 MS. NICHOLSON: My Lord, with respect -- just one further matter
4 to add. We inquired of Mr. McCracken's counsel who's in court today, as to whether they
5 -- it -- he -- Mr. McCracken, would be prepared to provide some answers to what the
6 ordinary course of business of CNC is, because that's material to the late filed application
7 of CWB. And the response that we received was that -- that Mr. McCracken is willing to
8 cooperate and I -- and my friends are in the courtroom so I don't want to misstate what
9 they've said, but I believe they said that he would be willing to provide evidence, but we're
10 looking for the Court to, you know, direct that if the Court wishes to receive it.

11
12 MR. DELBLANC: Maybe, My Lord, if it is appropriate, I wouldn't
13 mind just addressing that. I was -- we got an e-mail last night from Ms. Nicholson, while
14 I was on the squash court, but Mr. McCracken has been questioned or cross-examined, and
15 we don't mind -- I just don't -- I didn't want to provide a bunch of answers, perhaps contrary
16 to the spirit of what's going on here. We will certainly cooperate, but I -- I felt it proper to
17 have a direction from the Bench on that point. So if she provides interrogatories -- I didn't
18 want my friends to be blindsided or anything like this, not that they would be, but he's been
19 questioned or cross-examined, and that was by this order of this Court. And I presume --
20 I've heard the submissions and your queries from the Bench about, we've had the
21 opportunity to do this, to do this and so I did not want to run afoul of anything. So if you
22 so direct, My Lord, we absolutely will comply with everything, but I want to stay within
23 the four corners of what's being done here and I don't want to be outside of that, that's all.

24
25 THE COURT: If the Court was mindful of getting a response,
26 what's the most expeditious way? I intend to proceed today.

27
28 MR. DELBLANC: I haven't seen the interrogatories. I would make
29 the comment of whether something's in the normal course, is going to be something for
30 this Bench to decide.

31
32 THE COURT: Exactly.

33
34 MR. DELBLANC: And for Mr. McCracken to say this is our normal
35 course of -- it might not be. So that's just a legal argument. If she has some questions,
36 we'll deal with them right away, but as we sit here, if that's what you want. I mean we'll -
37 - we'll go out and --

38
39 THE COURT: Right, I understand.

40
41 MR. DELBLANC: We -- we spoke with Mr. McCracken this

1 morning on the Barnhouse materials, we had been working on those, but we needed his
2 permission to waive the privilege as -- of course, and we got that this morning. And so that
3 my friends have and Mr. Delblanc has -- we've e-mailed those and my friends did not have
4 time to copy them because I think they came to them while they were in transit, fine, we
5 have them now. But with regard to the interrogatories, if my friend -- if you do so direct,
6 My Lord, and if she has them prepared, we'll -- we'll deal with them as quickly as we can.

7
8 MR. BIEGANEK:

I'd like to comment on that piece, My Lord. If I

9 may.

10
11 THE COURT:

Just give me a minute. Go ahead, Mr. Bieganek.

12
13 MR. BIEGANEK:

Okay. As we mentioned yesterday, we don't tend
14 to litigate by installment. This proceeding in its present form, has been ongoing since June
15 of 2017. And the -- when the initial order was first granted. Throughout the proceedings,
16 it's been abundantly clear that one entity of the applicants that's no longer an applicant, that
17 would have been CAMPCORP entity, manufactured and sold camp trailers. It's biggest
18 customer at one point was Canada North. But, there has been no evidence throughout the
19 proceedings to suggest that Canada North Camps or the Canada North Group, were in the
20 business regularly, of selling camps, either individually or in bulk, as part of their ongoing
21 business. Certainly they swapped out units or sold them as they became obsolete, whereas
22 they started to wind down their operations as part of their restructuring.

23
24 So, my concern of course is that we're now, again, ex post facto backfilling the evidence
25 based on positions that have been put forward and articulated for close to a month, and
26 with -- on the auspices of -- or under the auspices of a "late filed" application of the bank,
27 which I think was filed primarily to placate counsel for 726, so they understood exactly
28 what the bank's position was even though it was, in my view, obvious throughout.

29
30 So, I'm a little concerned with now -- like I can deal with the Roman (phonetic) affidavit
31 because he's provided subjective evidence on an objective test, and that's going to be for
32 you to decide, I'm not so fussed by that. I am, as I expressed yesterday, somewhat
33 concerned with Mr. McCracken being asked yet again, to come in and provide further
34 testimony this time in the form of written interrogatories, that -- that in circumstances
35 where his credibility is clearly in issue. And that would be my concern. So I -- I voiced
36 that, and voiced the concern that this litigating by installment is -- is, well, frustrating
37 certainly for counsel, I'm sure it is for the Court. And ought not to be acceded to.

38
39 THE COURT:

Mr. Russell.

40
41 MR. RUSSELL:

Thank you, My Lord. If I might also -- I support

1 the position of the Monitor, but also I remind Your Lordship, yesterday I took you through
2 the December 31, 2014 financial statements, and pointed out the level of assets that this
3 company had. Just as a reminder, the netbook value at that year-end of the land and all of
4 the equipment, was 56 million. I can't conceive that a sale of \$20 million of 56 million
5 could ever be considered to be in the ordinary course of business, and Sir, I would suggest
6 that you have the ability to take judicial notice of that. Thank you, Sir.

7
8 THE COURT:

Ms. Nicholson.

9
10 MS. NICHOLSON:

Thank you, My Lord. We obviously think that
11 what Mr. McCracken has to say in terms of the regularity with which these kinds of
12 transactions took place, is material. And we would like, and ask the Court to direct, that
13 Mr. McCracken answer, and if -- I would also open it up to my friends to the extent that
14 they have any questions that they wish to ask Mr. McCracken by way of interrogatory, that
15 they be permitted to do that as well. And so that you would get the benefit of his
16 information. And so -- and -- and I don't have -- I don't have those prepared, presently,
17 but even if they came in after these submissions, you would then have the benefit of
18 knowing, at least having his evidence on that point. On -- on -- on matters that we think
19 are material. That is assuming you're not going to --

20
21 THE COURT:

You know, this has been clearly indicated by
22 other counsel, that the question of whether something is in the ordinary course of business,
23 is a determination by the Court.

24
25 MS. NICHOLSON:

Understood --

26
27 THE COURT:

And --

28
29 MS. NICHOLSON:

-- and so that wouldn't be the question that would
30 be asked.

31
32 THE COURT:

Oh.

33
34 MS. NICHOLSON:

Of course. That would be asking the -- the
35 question the Court needs to decide.

36
37 THE COURT:

Quite. But the question of a transaction of -- in
38 the order of 20 million or even 10 million off of a 56 thousand -- sorry, \$56 million in
39 assets, being conducted in the course of dealings since Canadian Western Bank first began
40 to finance this corporation, what -- what does that do to assist me?
41

1 MS. NICHOLSON: I -- I would have thought it would be a piece of
2 evidence, but if Your Lordship is not interested --

3
4 THE COURT: It's a piece of evidence, but you've already heard
5 the Court's perspective on installments; if it was something that was being relied upon, then
6 it ought to have been presented to the Court.

7
8 MS. NICHOLSON: Just to go back to installments, again, like from
9 our perspective, the letter that you received from Mr. Bieganek, I mean, that is not -- and
10 as you know from our submissions, proper notice about an application. So that's -- you
11 know, we feel that we are being prejudiced and I know that the Court feels otherwise, and
12 feels that our -- the letter that was sent by Mr. Bieganek, put us on notice, of the positions
13 and the relief that was being sought in the Court, and we continue to have a different view
14 of that. So --

15
16 THE COURT: Okay, let me back up. I would say that the
17 September application which Mr. McAllister was present, put everyone on notice that the
18 questions of ownership, claims, priorities, were all matters that had to be crystallized and
19 determined. They were to make their claims, not later than October the 4th. That was all
20 clearly set out. Mr. Bieganek's letter was simply confirmation that the questions of
21 priorities and ownership, were very live. And it's not for this Court to inquire whether your
22 clients were more concerned about the leases on the three other camps, than they were
23 about the Bonnyville ownership and where the security of Canadian Western Bank -- that's
24 not for the Court to decide what the parameters were of your client's concerns. The issues
25 were in front of the Court as of September. So the clarification in November was simply
26 a reinforcement that I read into the record so that everyone recognized that the Court's
27 perspective on this, has not changed.

28
29 MS. NICHOLSON: No, and I -- and I appreciate that, and My Lord,
30 with the greatest of respect, I'm -- your position is that the matters are before the Court
31 because there's evidence in -- in the record. My position is of course, that matters are before
32 the Court properly when applications have been filed seeking relief. And my position has
33 been that just because this is a CCAA proceeding, doesn't need people who seek relief, or
34 the Court needs to have before it, applications proper so that the parties can know what
35 they have -- the case they have to meet. But I understand that your -- your assessment is
36 that because the affidavits were to be filed and were filed, that the matters were in your
37 perspective, properly before the Court, and I've said that our client respectfully has a
38 different view on the requirement about what is properly before the Court, but --

39
40 THE COURT: Do you have any case law that helps you with
41 this, Ms. Nicholson? Because I recognize that my history on the Bench does not extend

1 15 years' worth of commercial litigation, but it is absolutely the first time in which the idea
2 of priorities and ownership has to be subdivided when indeed, that's the whole purpose of
3 the Monitor trying to address what -- with or without an opinion, what ought to be the
4 disposition, particularly once we get to -- to liquidation.

5
6 MS. NICHOLSON: Quite so, My Lord, that is what the Court is
7 called to do. It is called to receive all applications and all claims that need to be properly
8 brought in accordance with the *Rules*. Just because it's the CCAA proceedings, doesn't
9 mean we throw out the ordinary *Rules* which is if the Court -- if somebody is asking the
10 Court to make declarations that affect other people's rights, those matters need to be
11 advanced properly in accordance with the *Rules*, in our submission. Otherwise, it's -- it's
12 not a fair process. And just -- and the CCAA and the Monitor being here and the fact that
13 you've got a court officer, he's acting now, as a litigant. And that's been my concern. And
14 so --

15
16 THE COURT: Is that your concern actually?

17
18 MS. NICHOLSON: No, that a litigant needs -- that the litigant needs
19 to comply with the ordinary course rules, in order for the process to be fair to the
20 participants, that's all. And the CCAA doesn't take the *Rules of Court* and rip them up. It
21 says, this Court is hearing all these matters on a summary basis, please bring them forward,
22 and that's what CWB has done by filing its application. And that -- that's our -- our
23 perspective on what is properly before the Court, and that's, in our view, what we are trying
24 to avoid, is litigation by installment. And that's -- was the -- the basis of the -- of the desire
25 for the opportunity to put in -- to put in the evidence now that much of which is before you,
26 with the exception of information that Mr. McCracken may have that may bear on this
27 topic. Which is the reason we would ask that the -- everyone be given the opportunity
28 (INDISCERNIBLE).

29
30 THE COURT: Mr. Bieganek.

31
32 MR. BIEGANEK: Sir, Ms. Nicholson put in at tab 1 of the Book of
33 Authorities, Rule 6.3 -- 6.3(2) reads -- and this is dealing with applications generally, it
34 begins with:

35
36 Unless the Court otherwise permits, an application to the Court must

37
38 In my respectful submission, by your order of September 6th, the Court otherwise
39 permitted. And that is not an unusual or exemplary practice in insolvency proceedings.

40
41 What -- what Ms. Nicholson is essentially asking for, Sir, is a -- an adjournment. She's

1 continuing her application for an adjournment. And that's -- if -- I mean -- we don't accede
2 to that. The only way that -- that Mr. McCracken's evidence could be properly assessed
3 from a credibility perspective, would be to put him in a box and have that done live. But,
4 I'm not asking for that opportunity.

5
6 THE COURT: Okay.

7
8 MR. DELBLANC: My Lord, it's highly inappropriate for me to stand
9 up because I don't have standing, but I do take the credibility assertions against Mr.
10 McCracken seriously. There's always two sides to a story. There may or may not be
11 explanations and whatever this Honourable Court rules, is what it's going to rule. But it
12 should not be based on Mr. McCracken's credibility or lack of it, because what is likely
13 sought is just a factual exercise, give me a history of your sales, presumably he would be
14 asked these questions, how many times have you sold something of this magnitude, was
15 all -- were all the assets on the Bonnyville camp actually yours or did you have to pay
16 somebody out for them, did they belong to someone else? So, 21 million might be larger
17 than it is. My point is, I -- I feel compelled to stand up, and Mr. McCracken's credibility
18 (a) might have an explanation and (b), I don't think is relevant for the search that's going
19 to take place if you so order.

20
21 THE COURT: I'm not going to deal with that issue for the
22 immediate, I want to know what the balance of the materials, because that's not what I
23 contemplated yesterday in my adjournment, I didn't need evidence, I'm not sure I still do,
24 but I need to determine that. But I do want to know that evidence which I did give
25 opportunity to be assembled, what it has to say.

26
27 MR. BIEGANNEK: Okay, so here is -- I've -- I only printed a few
28 copies, but here's the answers to undertakings of Mr. Roman. If -- I think everybody's got
29 copies, I simply appended Ms. Nicholson's -- she e-mailed to the group, to that. We do
30 have a copy of the Bonnyville GSA that I can provide you, but I will provide that to you in
31 the course of argument. The -- Mr. Russell has the written interrogatories from the bank.

32
33 MR. DELBLANC: I guess, My Lord -- and I also have brought with
34 me, should you wish to see it, the interrogatories that Ms. Nicholson sent me on December
35 2, and my response to those which then went to the affidavit number 7, which was filed
36 December 4. Would you like to see those or not? I --

37
38 THE COURT: I'll ask you as an officer of the court, do those
39 really get subsumed by the affidavit?

40
41 MR. RUSSELL: Yes, they do.

1
2 THE COURT: Then I will need to see that they assist this Court.
3
4 MS. NICHOLSON: I concur with that.
5
6 THE COURT: Okay.
7
8 MR. BIEGANEK: And Ms. Nicholson will have to provide you
9 with the affidavit.
10
11 THE COURT: Before I receive that one, is it agreed by counsel
12 that -- so that this record is clear, the items being provided to me, I'm going to mark just
13 for identification. The undertakings probably don't need to because they are now filed.
14
15 MR. BIEGANEK: M-hm.
16
17 THE COURT: But, so that it's clear what is being provided to
18 me out of yesterday's adjournment, is well recognized. I will ask the clerk to mark as an
19 exhibit for me, the answers to undertakings as item number 1.
20
21 MR. DELBLANC: Is that of Mr. McCracken, Sir, or --
22
23 MR. BIEGANEK: Those are Barry Roman's.
24
25 MR. DELBLANC: Barry --
26
27 THE COURT: No, this is Mr. Roman so far. Secondly, that the
28 letter January 11, 2019, two page with three page attachments, written interrogatories, be
29 marked as Exhibit 2.
30
31 THE COURT CLERK: (INDISCERNIBLE) 'A', 'B', 'C'
32 (INDISCERNIBLE).
33
34 THE COURT: I don't -- is there a reason for that?
35
36 THE COURT CLERK: (INDISCERNIBLE)
37
38 THE COURT: Okay, well then that's fine, I don't care, I just
39 simply want it identifiable. So it's Exhibit 'A' for identification, Exhibit 'B' --
40
41 THE COURT CLERK: 'B'.

1
2 THE COURT: -- for identification?
3
4 **EXHIBIT A FOR IDENTIFICATION - Answers to Undertakings of Mr. Roman**
5
6 **EXHIBIT B FOR IDENTIFICATION - Letter Dated January 11, 2019**
7
8 MR. BIEGANEK: Okay.
9
10 THE COURT: And then you were about to pass me up --
11
12 MR. BIEGANEK: This is the further answers to the undertakings of
13 Mr. McCracken. These are the responses from Ms. Barnhouse. A letter dated January
14 11th, 2019 from Bryan & Company.
15
16 THE COURT CLERK: And that (INDISCERNIBLE) 'C', Sir?
17
18 THE COURT: That would be 'C', thank you.
19
20 **EXHIBIT C FOR IDENTIFICATION - Undertakings of Mr. McCracken, Responses**
21 **from Ms. Barnhouse and Letter Dated January 11th, 2019 from Bryan & Company**
22
23 THE COURT: I'm going to take ten minutes to review these
24 materials.
25
26 MR. BIEGANEK: Thank you, Sir.
27
28 THE COURT CLERK: Order in the court.
29
30 MS. NICHOLSON: Oh -- My Lord? I'm -- I'm sorry. In --
31
32 THE COURT CLERK: Oh, sorry.
33
34 MS. NICHOLSON: If -- if -- I think -- we -- we just wanted to bring
35 to your attention as well the sworn affidavit of Mr. Roman. That --
36
37 MR. BIEGANEK: You'll have to determine whether it's admissible
38 or not, Sir, but --
39
40 THE COURT: I guess I've got to read it to determine that.

1
2 MR. BIEGANEK: Yeah.
3
4 MS. NICHOLSON: That's what I --
5
6 THE COURT: So Ms. Nicholson is quite correct, I should take
7 a look at it as well.
8
9 MR. BIEGANEK: Yeah.
10
11 MS. NICHOLSON: Does --
12
13 THE COURT: But it's not being marked.
14
15 THE COURT CLERK: Oh okay.
16
17 THE COURT: Okay?
18
19 THE COURT CLERK: Thank you, Sir.
20
21 MS. NICHOLSON: Thank you.
22
23 THE COURT: Thanks.
24
25 (ADJOURNMENT)
26
27 THE COURT: Thanks everyone, please be seated. Madam
28 clerk, just to further clarify the record, I'd ask that the unfiled affidavit of Mr. Roman,
29 January 11th, today's date, be marked as Exhibit for Identification 'D'.
30
31 THE COURT CLERK: Thank you, Sir.
32
33 **EXHIBIT D FOR IDENTIFICATION - Unfiled Affidavit of Barry Roman Dated**
34 **January 11, 2019**
35
36 **Ruling**
37
38 THE COURT: From my review, I consider each of 'A', 'B' and
39 'C' for Identification, be properly responses to the opportunity given in yesterday's request
40 for adjournment, by 726. I granted that to further clarify the -- the positions of the parties
41 and there was no objection to the Monitor, to those matters being provided to the Court,

1 and in particular, the Monitor as an officer of the court, has indicated that with that
2 information, the Monitor would be able to proceed in achieving the purpose of the hearing.

3
4 I deny the request to submit the affidavit of Mr. Roman. And further, the request to make
5 inquiries of Mr. McCready (phonetic), as to the scope of business or the ordinary course of
6 business of CNC. I find that to be a legal determination, that was identified yesterday, it
7 is my determination, reconfirmed yet this morning, that it is important to not be receiving
8 further evidence by installment on matters that are not directly tied to the way in which the
9 issues have been identified in your briefs, as to which the Court has the evidence that was
10 gathered by the parties and not by installment.

11
12 The parties will be aware that the opportunity that was accorded for 726 to supplement the
13 evidence, was in this Court's assessment, part of a process for completion and not
14 adjourning the issues surrounding the Bonnyville ownership and priority issues separate
15 and apart from the balance of the matters that are before the Court. As I have stated on
16 various occasions, the purpose of this hearing was and is, to identify those claims that were
17 contemplated in the directions given at the September 6th hearing. That hearing
18 contemplated that there would be decisions rendered on ownership and priorities. It did
19 not direct or contemplate any additional need for each respective complainant or claimant
20 rather, to file applications. All submissions, proof of claim, were to be based on assertions
21 in affidavits to be filed at the date prescribed. In the case of 726, extension was granted
22 for further material to be submitted as I will return to in a moment.

23
24 It was the intent in September 6th direction, that the matters of ownership and priorities
25 would be determined as to enable this Court with advice from the Monitor, to deal on a
26 timely and orderly basis, with the disposition of this estate. Although it wasn't easy to point
27 to -- sorry, although it really was easy to point to the sequential importance of resolving
28 the ownership and priority issues, because those would later inform the risks of parties as
29 to municipal tax contributions, these are equally important to the matters effecting
30 continued liquidation, including the management of contingencies and the reduction of the
31 number of parties, presenting issues in this complex matter.

32
33 The argument of 726 has been largely predicated on alleged unfairness of the late filing as
34 726 describes it, by Canadian Western Bank in its December 12 application. As to which
35 I have already granted leave in the same fashion as I have granted leave to 726 for its late
36 application.

37
38 Circumstances from the perspective of 726 are set out fully in its written brief. 726 alleges
39 that the dispute of ownership of the Bonnyville equipment arose only laterally in the course
40 of questioning with a number of consequential issues. Firstly that no party had filed any
41 supporting application until the recent submission by CWB on December the 12th.

1 Secondly that the issue is not within the purview of CCAA proceedings. Thirdly that
2 further evidence was required, and fourthly the retainer for counsel to argue the issue
3 requires formal instructions. I acknowledge that two of those grounds as to jurisdiction
4 and the retainer have not been pursued, but they do inform the Court's assessment of the
5 adjournment request and I will address them briefly.

6
7 Counsel filed an administrative affidavit, and the stream of communications between
8 counsel regarding the appropriateness of the adjournment, and the need for directions from
9 the Court. Nothing indicates that any consultation was made with Ms. Hins (phonetic), she
10 is the officer responsible for the commercial list and the scheduling. As earlier expressed,
11 it's regrettable that the parties didn't receive the Court's response once the request was
12 brought to my attention, for a pre-hearing conference. Confirmed it was at the busiest time
13 of the Court's calendar. However, I do acknowledge that there was no follow up to the
14 request that was made either with Ms. Hins or anyone assisting this Court during the month
15 of December.

16
17 More importantly however, there was no request made for Ms. Taha (phonetic) of CWB,
18 to clarify any points as to CWB's position on the Bonnyville transaction. I refer to that in
19 the context of earlier written interrogatories which led to Mr. Russell's agreement to simply
20 file a further affidavit, to address concerns raised by Ms. Nicholson, and acknowledged
21 here this morning that the affidavit subsumed the written interrogatories and Ms. Nicholson
22 takes no objection that there's no need for this Court to see either the written interrogatories
23 or any correspondence associated with it.

24
25 As contemplated, I have received fulsome, written and oral submissions on the request for
26 the adjournment, and I'm going to deal with each of the points that were raised.

27
28 As to any delay, to clarify the scope of retainer, I acknowledge as I said, that this was not
29 pursued, but I find there to be no merit whatever, from the outset in this particular concern.
30 I note that the Monitor's reply brief accurately captures the chronology of the involvement
31 of 726 dating back to July of 2017. And the confirmation of the CCAA proceedings.

32
33 Secondly, counsel for 726 has appeared in these proceedings at various times, including
34 December 12th, 2017 to obtain a stay of proceedings on the claim by Kingdom Properties
35 that was alleged to be related to the CCAA proceedings.

36
37 Secondly in April of 2018 when it became apparent that no proposal from CNC would be
38 possible in the circumstances and liquidation proceedings commenced.

39
40 Third, September 6th, 2018 where the Court directed all secured creditors. This ownership
41 of priority claims, other than the municipal tax claims, file affidavits of claim by October

1 the 4th, 2018. 726 did that with amendment.

2
3 September 18, 2018 when counsel for the Monitor wrote to the Court and to the service
4 list, to identify a number of issues, seeking direction. Including property and ownership
5 claims that were made by 726 and perhaps others in respect of certain assets, as well as the
6 priority issues in respect of certain assets between 726 and CNC.

7
8 September 21, Mr. McAllister attended in court on a number of matters that affected the
9 question of payout and the reserve on contingencies. The issue of holdback was addressed
10 at some length. Claims of 726 were included as part of the risks in the contingency
11 discussions. I will come back to that application.

12
13 October 23rd, 2018, the stay of proceedings between Kingdom Properties and 726 was
14 specifically placed in front of Justice Nielsen. He lifted the stay that he had earlier imposed,
15 noting that Mr. McCracken's time was no longer required on a plan of arrangement. The
16 parties were directed to prepare a litigation plan including the prospects of the summary
17 judgment application. Ownership issues between the parties were also specifically raised
18 as matters to be addressed at the December hearings, that was all part of the October 23rd
19 hearing.

20
21 Chronologically I repeat that the November 15 Monitor's counsel's letter is germane to
22 clarifying scope contemplated in resolution of the claims directed by this Court, in the
23 September order. I won't repeat the language of that which I have read to counsel, but the
24 Monitor identified, with reluctance, the need to identify the December hearing dates, in
25 order to accommodate Ms. Nicholson's retainer as an experienced securities counsel, for
26 726, on issues affecting priorities and ownership, collectively with co-counsel, Mr.
27 McAllister. I've been further advised by Mr. Bieganeck as an officer of the court, that both
28 Ms. Nicholson and Mr. McAllister edited that letter.

29
30 November 21, 2018, dealt with the deferral of the municipal tax matters, and it focused on
31 the 726 ownership issues. Mr. McAllister with Ms. Nicholson on the telephone, explained
32 their dual roles in dealing with ownership and priority issues. Counsel sought and obtained
33 leave to amend and supplement the application and evidence in support of the claim of 726,
34 noting various errors that have been made in preparation of the earlier affidavit material.
35 Court granted the adjournment, it accommodated the application of 726, to provide
36 supplemental materials, subject always to costs in respect of the delay. Court further set
37 deadlines for questioning and the filing of briefs.

38
39 November 28, 2018, 726 did file its application for declaration of ownership of the
40 Bonnyville assets. I note the obvious, that if there was no dispute regarding those assets,
41 as would have been well within the purview of the Monitor to confirm the issues of

1 ownership, that have been resolved, the parties would not have needed these proceedings.
2 The parties were clearly aware that ownership and priorities in relation to each of the four
3 camps, including Bonnyville, was at issue.
4

5 On December 3rd of course, 2018, Ms. Taha provided a further affidavit as I've described,
6 which subsumed written interrogatories sought by 726.
7

8 December 4, already knew that the Court was dealing with other CNC issues, in court,
9 nothing related to 726 was raised, in respect of pending questioning of Mr. Roman and Mr.
10 McCracken. I note that 726 considered that the September 6th directions to file claims,
11 should have inspired CWB to seek a formal remedy. That is not within the contemplation
12 nor the practice of the Court, in respect of Rule 6, and in particular, the language
13 contemplated by Rule 6.3 as to the Court otherwise permitting. Nonetheless, it could
14 equally have been said of 726, arising out of the September hearings, and it wasn't until
15 late November that request was made and authorized for the filing of the specific
16 application.
17

18 In reviewing the October 3 affidavit of Ms. Taha, the concerns of CWB, it's quite obviously
19 dependent upon review of supporting materials from parties as may assert an interest in
20 priority to CWB. From a review of the file, the Monitor was similarly unclear as to the
21 position, certainly of 726, up until the application November 28, 2018 was filed.
22

23 The jurisdictional argument, as I've alluded to, in respect of ownership, has properly been
24 abandoned. The issues here are for disposition in these commercial proceedings, not for
25 another day and other proceedings so that CWB may wish to advance, as was attested in
26 the written brief.
27

28 I reject the argument that an adjournment is justified because counsel for 726 did not
29 appreciate the import of questions that were put to Mr. McCracken and to Mr. Roman, as
30 affecting a claim to priority by CWB as a secured creditor. As experienced counsel, it was
31 more than just a hint that the issues related to the general security agreements were very
32 live, very much in need of determination by the Court. Counsel for 726 was certainly
33 entitled to re-examine those deponents, after having already put questions to them. In the
34 face of all of that, 726 sought further adjournment instead.
35

36 Based on the concerns that were raised yesterday, I did accommodate the position of 726
37 yet again, to allow it to exercise further due diligence. In considering the element of delay
38 that's inherent in a further request to adjourn, I reflected on other disputes on this file, which
39 risked the fair and orderly handling of property, as well as concerns to keep this file moving
40 in the best interests of all parties.
41

1 Counsel will recall that in September, I dealt in an oral decision, with CWB's request for
2 deferral of directions, to obtain a clearer picture of the assets and ownerships, including the
3 claim on the Bonnyville equipment. In denying that adjournment, I noted at least three
4 factors.

5
6 Firstly, the changes in the landscape affecting the assets, need to be recognized as very real
7 by the Court, and that included, as I referenced, the Bonnyville assets. I acknowledged
8 that a number of contingent risks may not be fully quantified. Nonetheless, to keep matters
9 moving for all parties, I declined deferral and I authorized dispositions as being
10 appropriately prepared and presented by the Monitor for approval. That didn't please all
11 participants, but it did close out an aspect of the file that was impeding progress. The
12 parties simply needed an answer to move forward.

13
14 I cited a number of factors as supporting the exercise of the Court's discretion. Not to
15 simply defer, because more information could potentially be gathered, but that a decision
16 needed to be made. In addition to timing and structure for the sales, I expressed concern
17 about firstly, the effect on secured creditors; secondly, the impact on the CCAA
18 proceedings moving forward; thirdly, the magnitude of the risks as had been quantified,
19 and that those were difficult to further parse or break down in quantification; and fourth
20 and finally, perhaps the most significant, considerations of additional terms that could be
21 provide further flexibility for the Court, when it comes to costs allocation.

22
23 I see this most recent request to adjourn, albeit by a different party, in a more
24 confrontational circumstance, being contrary to the responsibility of the Court to avoid
25 unnecessary delay, and my responsibility to provide you with timely answers.

26
27 Out of yesterday's adjournment, I have those matters which have been marked as Exhibits
28 'A', 'B' and 'C' for Identification. Counsel for 726, urges that this Court receive further
29 information from Mr. McCracken and Mr. Roman as to the ordinary course of business of
30 CNC. I regard this as entirely litigation by further installment. I acknowledge I may not
31 have a totally detailed picture, that is not uncommon as parties make decisions about the
32 best way to present their case, I'm satisfied that I have a full appreciation of the context of
33 the disputes on ownership and priorities. All counsel have prepared their evidence, they
34 have questioned witnesses, and they have put together very extensive briefs. I'm satisfied
35 that their oral arguments will assist this Court in reaching decisions on ownership and
36 priorities.

37
38 I recognize that the dollar amounts in issue are significant, that has been the case since
39 these CCAA proceedings commenced in July of 2017. I also recognize that Bonnyville is
40 different than the other three camps. And that counsel have worked diligently to profile
41 those differences.

1
2 The positions taken by the Monitor and by CWB, remain consistent with the earlier
3 expressions by them as to uncertainty as to what the nature of the claim, as supported by
4 documents would be, by 726. Each counsel expressly reserved the right, based on further
5 clarification of evidence, as to the import and effect of the GSA's on ownership and
6 priorities.

7
8 The questions that were put to witnesses as to the steps taken by legal counsel, were always
9 relevant to the admittedly broad application of the Monitor, to deal with ownership,
10 priorities and risks including in relation to municipal tax claims. I find nothing to be gained
11 in asking Mr. McCracken about the ordinary course of business of CNC, regardless of
12 which corporate entity might be used. As reported to CWB, Canada North Camps owned
13 the equipment. The sale was for \$20 million. The Court is satisfied that it has sufficient
14 evidence to allow it to deal with the criteria set out in the legislation.

15
16 As to onus, it has always been for 726 to establish it's claim in these proceedings, on
17 ownership and priority, and that's not changed since 2017. I'm in a position to hear your
18 respective submissions on the remaining issues that have been presented to the Court for
19 determination. Have you discussed how you're going to proceed?

20
21 MR. BIEGANEK: I think the -- consistent with how we've done it
22 in the past, I haven't heard any objection, I would -- I would start and (INDISCERNIBLE)
23 Monitor's position on everything, then you would likely hear from Canadian Western Bank,
24 then 726, and hopefully we can get through that today.

25
26 THE COURT: Thank you, I'd be grateful for your submissions.

27
28 **Submissions by Mr. Bieganek**

29
30 MR. BIEGANEK: Right. Sir, I should have outlined this yesterday,
31 but in terms of the material that the Court has, we've provided -- the Monitor has provided
32 and I've actually put it on a buff-coloured material just for discrepancy purposes, a brief
33 and a book of authorities. We also provided the Court with three binders, a book of
34 documents which is largely, My Lord -- I've pulled exhibits from the various affidavits or
35 -- or documents to try and make it a little easier to deal with, because as you can appreciate,
36 there is a large volume. I don't think I captured all of them, but we've got most of them; a
37 binder of exhibits including -- well not including two confidential exhibits which were
38 provided in an envelope, I -- I trust Your Lordship has those, and then the binder of
39 transcripts which appended to them, the answers to undertakings, in each; and then there's
40 the further, obviously, the Monitor's reply brief.
41

1 For 726, we received their amended application, their latest affidavit which was gone
2 through yesterday, their brief and book of authorities. We've already dealt with the
3 Santager (phonetic) material.
4

5 On behalf of Canadian Western, we have their -- their brief and their reply brief. And
6 obviously there's the affidavit of Ms. Kiss (phonetic) which included the transcript of the
7 September 6th proceedings. So that was the bulk of the material.
8

9 I don't intend to go ad nauseum through the facts, but I do believe, and I appreciate that
10 Your Lordship has had an opportunity to review the material, and -- and knowing Your
11 Lordship, I -- I do know that you've done that.
12

13 One of the things though that I -- not one -- key -- key elements in this are the document
14 matrix. I -- and I think if you -- as you can glean from the material, while we have what
15 I'll call four separate transactions with respect to the four camps, Bonnyville, Wandering
16 River, Peace River, and kilometer 147 or Manaus (phonetic), they all took place at or
17 around the same time. So December 14 -- December 2014 and January of 2015.
18

19 And so it's -- it appears, looking at it from 30,000 feet, that there was one sort of
20 understanding that we've -- that the parties were to enter into arrangements and that they
21 would be four separate arrangements, and that is how they would be set up. And the setup
22 would include a limited partnership, and that's set forth in limited partnership agreements.
23 Each limited partnership obviously had a -- a general partner, and there was unanimous
24 shareholders agreement for each of those. In addition, each partnership had entered into
25 two agreements with Canada North Camps, it was a service agreement and an operating
26 agreement. The essence of the combination of those four documents, is that each party
27 would provide certain things, to the partnership, but it was clear that the full operation of
28 each camp was delegated in its entirety by the general partner, to Canada North. Canada
29 North was to receive and control all revenue and pay all expenses. They were entitled to
30 receive money for the services they were providing, but they were essentially funding the
31 shortfall to the extent that the revenue generated from each of those camps, was insufficient
32 to cover the expenses.
33

34 Now, aside from the -- those four agreements, in respect of the Wandering River, Peace
35 River and Manaus camps, there were lease agreements. Those lease agreements are -- are
36 going to be important, I'll need to take you through those. The importance in those is
37 largely to address issues raised by 726 that they're entitled to ownership of smallwares
38 (phonetic), and additional ancillary equipment. As we can see from the supplementary
39 affidavit that Mr. Roman swore on November 27th, they're claiming in essence, entitlement
40 to, certainly in the case of Bonnyville and Peace River, to receive all of the equipment that
41 is on those sites. And they rely upon their leases to support that contention.

1
2 What you will see as I take you through those, is that the leases themselves are very
3 specific. They're not in the nature of general security, they do not include proceeds or what
4 I would call (INDISCERNIBLE) or sundry language. So (INDISCERNIBLE) to that, we'll
5 need to look at it. And I think -- well again, I hesitate to take a lot of time to go through
6 the documents, I think it's imperative because the document matrix here is key. And the
7 Monitor can't stress the importance of that enough.

8
9 Because as I read the material, and certainly the arguments of my friend, and I'm sure I --
10 we -- you may hear otherwise, they're supported, but 726 relies on the documents, and
11 largely for the assertion that the GSAs that were signed by Mr. McCracken in favour of
12 Canada North were not authorized, and are therefore unenforceable. And we'll address that
13 in the course of argument today. But they otherwise ask the Court largely to infer implied
14 terms, some of which are inconsistent with these documents, or critically rectify them to
15 reflect what they say is the actual agreement. So I think it's -- it's key in this instance, that
16 we look at the documents which were done contemporaneously with that transaction or
17 those series of transactions, to gain an appreciation of what the parties actually agreed to
18 and we're used to writing. And as Your Lordship is well aware, both parties had two very
19 large law firms acting on their behalf, to help pay for these transactions.

20
21 Now, the partnership agreements, are found at, I'll say the first one is the Bonnyville Lodge
22 one -- the Bonnyville Lodge one that was appended to Mr. Roman's affidavit, was actually
23 not the one that was used, it -- there was an amended and restated one entered later, it's at
24 Exhibit D-16 which is tab 20 of the exhibit book, and I apologize for that, as I was looking
25 through this, I see that we did mark one exhibit, just to clarify, My Lord, why the tab
26 numbers are different than the exhibit numbers. We -- we marked one exhibit as Exhibit
27 11 has I think 'A', 'B', 'C', 'D' associated with it, so it's otherwise made numbering of the
28 tabs a little difficult. Where's the exhibit binder? Oh there it is, good, okay.

29
30 So -- and the -- the -- each -- each limited partnership agreement has slight nuances to it in
31 terms of the commitments of each partner, but they are otherwise generally consistent with
32 and the same throughout. And I want to -- perhaps if we could just use the D-16 at tab 20,
33 just to give the Court some feel for what needs to be looked at. The key articles from -- in
34 my submission, would be first of all, article 11, which outlines the powers of the general
35 partner. Article 14 in each agreement, speaks to the relative contributions of each limited
36 partner. And keep in mind that the limited partner here was Canada North Group Holdings.
37 Not Canada North Camps. That -- that party was lately added to the proceedings after the
38 Monitor powers were expanded. Article --

39
40 THE COURT: So when you ask me to keep that in mind, I -- I
41 respect that there's a corporate distinction and --

1
2 MR. BIEGANEK: Right.
3
4 THE COURT: -- for various reasons, but I have in general, in
5 examining the matters, still used as an acronym at least, the CNC.
6
7 MR. BIEGANEK: Okay.
8
9 THE COURT: Now, am I going to have to subdivide in my
10 analysis of this?
11
12 MR. BIEGANEK: I think you'll -- you'll simply have to
13 acknowledge that they're two separate entities. But Group Holdings -- well let me get --
14 Exhibit D-5, My Lord, is -- in the book, is the corporate structure, it's a big -- and we've
15 copied it large and it's in colour, and that gives you the -- the corporate structure, the
16 (INDISCERNIBLE) chart, so when you're considering this, excuse me, you'll have that in
17 front of you and we can -- we can differentiate.
18
19 THE COURT: Well it's not that I'm --
20
21 MR. BIEGANEK: Yeah.
22
23 THE COURT: -- incapable, I -- that might be a --
24
25 MR. BIEGANEK: Oh, no, no, no, no, no.
26
27 THE COURT: That might be a separate matter.
28
29 MR. BIEGANEK: Does it make a difference? Does --
30
31 THE COURT: That's what I want to know.
32
33 MR. BIEGANEK: Ultimately, I -- I'm going -- you're going to hear
34 me say I don't believe it does, okay? And -- and for reasons which I hope can become
35 apparent. But, it does go to knowledge of Mr. McCracken on the validity piece. But I'll -
36 - I'll speak to that when -- when the time comes, but I think ultimately, as you can see from
37 your chart, those two entities are controlled by Canada North Group Inc., and the directors
38 are the same.
39
40 The other additional articles that the Court will need to be mindful of or keep in mind as
41 we go through this argument today, is article 17, which deals with borrowing, and particular

1 article 17.2, and I'm sure you'll hear from Ms. Nicholson about that. What that speaks to
2 is that where the partnership requires funds from time-to-time, they can borrow funds --
3 borrow, keep that word in mind, because the restriction is only on borrowing, where there's
4 approval by extraordinary resolution which is defined as a unanimous among the limited
5 partners. And that extends to the granting of security in respect of assets, to secure the
6 borrowing.

7
8 THE COURT: Sorry, I was just shuffling papers when you said
9 that's in what section?

10
11 MR. BIEGANEK: That is 17.2.

12
13 THE COURT: Of.

14
15 MR. BIEGANEK: The limited partnership agreement.

16
17 THE COURT: Right, okay. Which is found?

18
19 MR. BIEGANEK: That's the same -- on these points, the LPAs are
20 all the same.

21
22 THE COURT: Okay.

23
24 MR. BIEGANEK: Except at paragraph -- article 14 is the primary
25 differentiator and --

26
27 THE COURT: Yes.

28
29 MR. BIEGANEK: -- to the extent there are differences, I'll point
30 them out to you as we roll through today. The other two articles that the Court should keep
31 in mind when looking at these matters is article 20 which speaks to dissolution, And also
32 article 22 which speaks to dissolution and liquidation. Article 20 -- and I'm making a
33 general statement here, indicates that assets that are provided by each of the limited partners
34 first go to them, if there are those assets. And then article 22 deals with the normal types
35 of, what I'll call dissolution and liquidation provisions you'd see in a limited partnership
36 agreement, outlines the circumstances and then deals with the -- the waterfall of payments
37 that must be made on liquidation, so creditors get paid first, and then we move down the
38 chain to what I'll call the equity holders or the limited partnership. The -- the normal law
39 that followed events.

40
41 Now, the USAs, the unanimous shareholders agreements, again are similar, not necessarily

1 identical, in each case, and in that, I would have the Court refer to the book of documents,
2 tab 5, and this is the amended and restated one for kilometer 1-4-7, but a key piece of this
3 - excuse me - that you'll -- you'll hear about -- excuse me. It's article 4. Pardon me, I'm
4 referring to the limited partnership agreement. Yes. Tab 7, My Lord, pardon me. This is
5 the Wandering River one, the -- this is article 4 and in particular, 4.1(i) and (j). it's the
6 same paragraphs in each unanimous shareholders' agreement. It would be page 12 of the
7 agreement.

8
9 THE COURT:

Thanks, I've got it now (INDISCERNIBLE).

10 Okay.

11
12 MR. BIEGANEK:

So it's subparagraphs, for this one, I guess from -
13 - from the bank's perspective, it would (h) and then we've got (i) and (j) as well. From
14 CNC's perspective, it's (i) and (j). Those provisions indicate -- and as I said, there will be
15 nuances between them and I'll point those out to Your Lordship as we go. But in respect
16 of entering into agreements, witnessing capital expenditures are in -- in continuing
17 indebtedness in excess of \$100,000, and incumbering the assets of the general partner or
18 applicable partnership, except as may be necessary to secure loans or advances authorized
19 by subparagraph -- and if you look at this, it's hard to differentiate about whether that says
20 (j) or (i), I think (INDISCERNIBLE) (i), and that's what the parties have proceeded on the
21 basis of, but in either event, any event, there is a unanimous resolution of the -- the board
22 of directions that's required for that -- those to take place.

23
24 Now, we do know from our questionings, and from some review of documents, that with
25 respect to the partners and their general partners, there does not appear to have been any
26 meetings of the partners or these enterprises once they were established. So we don't have
27 any resolutions authorizing the -- well, we do not have resolutions that authorize, first of
28 all, the entering into of the operating agreements or service agreements, I know they're
29 clearly contemplated, and were put into effect. We don't have resolutions authorizing the
30 entering into of the CNC GSAs that were granted by each of the partnerships, and we don't
31 -- we have certified --

32
33 THE COURT:

Sorry, what else -- before you got to the GSA,
34 you say there was no authorization to enter into the -- the operation agreements?

35
36 MR. BIEGANEK:

Right.

37
38 THE COURT:

Yes.

39
40 MR. BIEGANEK:

They're -- but I mean they're contemplated -- my
41 -- my position on that is quite clearly the partner -- partnerships clearly contemplated it,

1 but --

2
3 THE COURT: Right.

4
5 MR. BIEGANEK: -- if we're looking at it from a pure procedural
6 standpoint, the procedure wasn't followed for those either.

7
8 THE COURT: Right.

9
10 MR. BIEGANEK: Right? If -- it also wasn't followed in the case of
11 Wandering River for the entering into of the master lease agreement with 726 which is a
12 fairly onerous document, the rent on that is about 193,000 a month plus tax, so I mean there
13 was money paid on that, so -- so the point being, factually as we go through this, Your
14 Lordship will see that the niceties of corporate or partnership procedure, were generally
15 not followed (INDISCERNIBLE). What flows from that is something you're going to be
16 asked to consider, but I think it's fair from the evidence, that -- that clearly the -- the
17 corporate procedures were not followed, period.

18
19 All right, turning then to more specific transactions, as we went through yesterday, starting
20 with Bonnyville, that partnership was established in December of 2014. At the time of that
21 transaction according to the evidence, the Bonnyville camp was already set up and
22 operating. With the exception of the Jack-and-Jill dorms which are -- I'll address later, that
23 were to be installed and included amongst the consideration to be paid -- or that was paid,
24 the \$20 million plus GST, included a \$3 million sum that was to -- was advanced to enable
25 CNC to move those units to the -- to the camp to set up.

26
27 The -- as we've noted in our brief, at the time of that purchase, Canada North Camps' assets
28 were the subject of CWB security interests, that was obtained by the bank pursuant to a
29 GSA that was granted in favour of CWB, we do have in evidence, Sir, in Ms. Taha's first
30 affidavit, a GSA from 2011, and in the latest set of material from the answers of Ms.
31 Barnhouse, another one from 2013. It's our understanding as Monitor, that the bank did
32 not have a serial number registration at PPR in respect of those units, but did have a
33 perfected interest in the assets of Canada North Camps, on a general basis.

34
35 THE COURT: Sorry, say that last part again, it had a?

36
37 MR. BIEGANEK: It -- it had registered its all present and after
38 acquired personal property registration, but did not specifically list serial number items.
39 Now, the -- if you have the book of documents in front of you, I'll just draw the Court's
40 attention to material dealing with the - excuse me - the Bonnyville transaction, that's at tab
41 10. This was exhibit 'B' to Mr. Roman's affidavit sworn October 2nd. The last document

1 in that bundle is the bill of sale made effective as of December 30th, 2014.

2
3 THE COURT: I'm sorry, the last?

4
5 MR. BIEGANEK: The last document in that bundle.

6
7 THE COURT: Yes.

8
9 MR. BIEGANEK: Is the bill of sale.

10
11 THE COURT: In this tab?

12
13 MR. BIEGANEK: In tab 10.

14
15 THE COURT: The last folio that I have on it shows -- oh, maybe
16 I'm just coming to the last page of that, it's the bill of sale?

17
18 MR. BIEGANEK: That's the last page. Yeah.

19
20 THE COURT: Yes, all right, I have it.

21
22 MR. BIEGANEK: So if you go 1, 2 --

23
24 THE COURT: Yes.

25
26 MR. BIEGANEK: Six pages.

27
28 THE COURT: Yes, no I found it.

29
30 MR. BIEGANEK: And actually for -- if you want -- a discreet copy
31 is at tab 1-B of the transcript book as well. That was provided in answer to Mr.
32 McCracken's undertakings.

33
34 So, you'll note from this document, that the purchaser is acquiring the equipment
35 installation setup and startup costs, more particularly described on schedule 'A', that's the
36 equipment. And sub (1)(b), the equipment's free from any charge, lien claim mortgage,
37 security interest or encumbrance of any kind. That's what's noted there. And I think it's
38 certainly important, My Lord, that you look at this schedule, and you will see that it only
39 lists specific equipment, all of which is -- we'll call them well sites generally, but they're -
40 - they're trailer units or dorms. All of which have serial numbers. And -- and on the last
41 page of the document, you'll see installation setup and startup costs, but there's no listing

1 of smallwares, there is no listing of ancillary equipment. And I think that's important
2 because as we see from the items that they're claiming, they include all of the walkways,
3 the electrical plug-ins, the sewage treatment -- well I think in Bonnyville, it's attached to
4 municipal services, but all of the other sundry ancillary equipment, and this is outlined in
5 Mr. -- Mr. Roman's supplementary affidavit, they claim all of the supplementary equipment
6 as needed to effectively operate the camp.

7
8 But if you -- I don't know that I need to take you to it now, you just to make a note, that if
9 you look at the amended and restated Bonnyville Lodge limited partnership agreement,
10 that is exhibit D-16 at tab 20 of the exhibit book, and in particular, article 14, there is no
11 mention there, of ancillary equipment being supplied by 726, it's actually very specific
12 equipment and it refers to the numbers generally that are mentioned in schedule 'A' to the
13 bill of sale. Notwithstanding that, Mr. Roman's evidence is that all the sundry equipment
14 formed part and parcel of the quote, installation setup and startup costs, so that's his
15 evidence.

16
17 Now, we've eliminated the need to look at an adverse inference. The evidence that we do
18 have before the Court, is that in the case of the asset acquisition, both Ms. Barnhouse and
19 the (INDISCERNIBLE) have -- or review of the (INDISCERNIBLE) file and the
20 (INDISCERNIBLE) themselves, have confirmed that first, that there was no release of
21 interest received, from CWB, and there does not appear to have been a PPR search
22 conducted of the -- of CNC in respect of the transaction.

23
24 As we note in this material, there was no additional or ancillary documents provided, there
25 is no lease between 726 and the partnership, the position of 726 is that they acquired it and
26 provided these assets to the partnership for the purpose of fulfilling their obligations under
27 the limited partnership agreement. I'll get to --

28
29 THE COURT: Sorry, you -- but you said that there was no lease
30 between 726 and the limited partnership?

31
32 MR. BIEGANEK: Correct.

33
34 THE COURT: Okay. As distinct from --

35
36 MR. BIEGANEK: The other three camps --

37
38 THE COURT: Oh, for Bonnyville when you --

39
40 MR. BIEGANEK: -- where there were leases provided.

41

1 THE COURT:

Yes, yes, of course.

2
3 MR. BIEGANEK:

Right. Okay. Now, I'm just going to grab this
4 glass of water, Sir, I started fighting a cold this -- the last couple of days. Thank you,
5 madam clerk.
6

7 Now, I'm going to move on to deal with, again, this is furtherance of the document review,
8 the Wandering River partnership. This is a sub-partnership of the Heart Lake limited
9 partnership and you'll recall that there was some litigation or some arguments made by the
10 bank regarding receivables in respect of -- arising out of that earlier in the proceedings.
11 The -- the partnership did include some other parties, in this case, the Canada North Group
12 provided a 50 percent interest in some of its land, but there was also here, as with the others,
13 an operating agreement and a services agreement.
14

15 The -- in this particular case, there were payments made by 726 Remote -- or pardon me,
16 726 Group and 726 Modular, for equipment which was acquired by them, and then placed
17 on lease with the partnership. The master lease is between 726 Remote and the partnership,
18 however invoicing for the equipment acquired by the 726 generally was provided to RAM
19 (phonetic), which was the -- the parent company, but all payments for the equipment appear
20 to have been made by the other entity, 726 Modular, not 726 Remote. I'm not sure
21 ultimately, if much turns on that, Mr. Roman's evidence was that a lot of these things were
22 handled internally and on ledger sheets, but the -- the point is that there's no real
23 documentary connection between the two, other than perhaps on 726's internal accounting
24 records.
25

26 Now, the master lease of 726 and -- and I think I'll -- I'll take Your -- Your Lordship to
27 these leases, because this is -- the master leases and the schedules are key to understanding
28 how the documents -- the lease documents work. In the case of this particular lease -- yes,
29 that is -- if you have the exhibit binder, it's exhibit D-9 at tab 9. And that's the schedule.
30 Here, let me start with this, Sir, a little bit better, this is -- this is the exhibit schedule. But
31 if you turn to the next exhibit, and this -- I'm just taking you to the form, this is the master
32 equipment lease agreement for Peace River. So, I'll go back to the Wandering River in a
33 sec, this general statement is as follows.
34

35 In each particular instance, how this worked from the paper perspective, is there's a master
36 equipment lease agreement that outlines the terms, and then there's general terms and
37 conditions which are attached to it. The master equipment lease agreement is the envelope,
38 we'll call it the RELA (phonetic) document, and it provides that from time-to-time in the -
39 - the second main paragraph, the lessee, in this case the limited -- or in each limited partner
40 case, would propose to lease and the lesser would elect to lease to the lessee from time-to-
41 time, work force housing modules, trailers and/or relocated modular and/or prefabricated

1 structures, including various appurtenances such as stairs, railings, furniture, kitchen
2 equipments, security systems and the like. And that's defined as equipment, pursuant to
3 these covenants. And then you'll see under -- as you go down the -- the page to item number
4 1, is the equipment schedule.

5
6 So in each case, they would take an equipment schedule or a series of equipment schedules,
7 which would outline two things. Number 1 -- well more than two, probably three. Number
8 1, the equipment that is to be leased or put on the lease, and that is normally would be
9 looked at as schedule 'A' to each schedule. And then schedule 'B' to each schedule is the
10 value attributed to that equipment, and the schedule would also outline the total value and
11 the rental payments to be paid.

12
13 THE COURT: Sorry that would be in 'B' as well?

14
15 MR. BIEGANEK: No, it's in the -- the face of the document.

16
17 THE COURT: Oh.

18
19 MR. BIEGANEK: I'll -- if you -- so if you scroll -- or -- or flip to 1,
20 2, 3, 4, 5, 6, page 7 of that bundle, you'll see equipment schedule number 1.

21
22 THE COURT: Yes.

23
24 MR. BIEGANEK: Right? And there's an equipment value middle
25 of the page.

26
27 THE COURT: Yes.

28
29 MR. BIEGANEK: And then a rate per month and the term about two
30 thirds of the way down. And then if you look to schedule 'A' to that document, again this
31 is Peace River, you'll see the equipment listed. And then the schedule 'B' to that particular
32 document, shows the equipment value. And that's how they were generally set up for each
33 LP.

34
35 THE COURT: Okay.

36
37 MR. BIEGANEK: In the master equipment lease agreement, if you
38 still have that at B-10, and they're all the same, the general terms and conditions at least,
39 are all the same. If you look at paragraph 16 of those general terms and conditions, you'll
40 see that in (b) there's an entire agreement clause in those general terms. Okay.
41

1 THE COURT: Have it.
2
3 MR. BIEGANEK: Now, if we turn back to exhibit D-9 and I go back
4 to the Wandering River piece, this is the equipment schedule number 1, which to my
5 recollection, is the only equipment schedule for the Wandering River partnership.
6
7 THE COURT: Sorry, just give me a second, the entire
8 agreement is in what portion?
9
10 MR. BIEGANEK: It's in the general --
11
12 THE COURT: It's in the generals, but I -- did you have the
13 number?
14
15 MR. BIEGANEK: Oh yeah, it's paragraph 16.
16
17 THE COURT: In miscellaneous then, I just haven't found it yet.
18
19 MR. BIEGANEK: Yeah.
20
21 THE COURT: Okay.
22
23 MR. BIEGANEK: And (b).
24
25 THE COURT: Thank you, got it now.
26
27 MR. BIEGANEK: Okay.
28
29 THE COURT: Go ahead, now you're --
30
31 MR. BIEGANEK: Okay. Now, Wandering River is the -- pardon
32 me, exhibit D-9 was the equipment schedule number 1 to the Wandering River master
33 lease. If you look at that document, Sir, you will see that it includes certainly rights, and
34 then equipment which is listed in this instance, as schedule 'B', it's probably incorrect from
35 that -- from a documentary perspective, but the importance of this is, you'll see that the
36 assets listed, are only the trailer units, the -- the modular units. Well we'll have a discussion
37 about whether smallwares are included, there's no indication in that document, that any
38 ancillary equipment was subject to that lease.
39
40 THE COURT: Sorry, you're saying something about
41 smallwares?

1
2 MR. BIEGANEK: Well there's -- there's three components to the
3 726 claim in all respects.
4
5 THE COURT: Yes, no I understand the --
6
7 MR. BIEGANEK: There's -- right.
8
9 THE COURT: -- three in their claims, there's the smallwares,
10 there's the ancillary and then there's the --
11
12 MR. BIEGANEK: The main.
13
14 THE COURT: Yes, the main --
15
16 MR. BIEGANEK: Yeah.
17
18 THE COURT: -- equipment.
19
20 MR. BIEGANEK: Yeah.
21
22 THE COURT: But, what are you saying here? That's there's nil
23 in reference --
24
25 MR. BIEGANEK: There's no -- there's no --
26
27 THE COURT: -- to ancillary or --
28
29 MR. BIEGANEK: Smallwares.
30
31 THE COURT: -- in respect to smallwares, both?
32
33 MR. BIEGANEK: Right.
34
35 THE COURT: Okay. I have it.
36
37 MR. BIEGANEK: Okay. Now, we do know from the evidence, that
38 726 -- this is -- this is a lease for 42 months, so it's a lease for a term of more than one year,
39 is they are in business of leasing, that is their only business, and they did not effect the
40 registration of a financing statement of PPR until November 27th of this past year, 2018.
41 And as I've pointed out to you in our general -- my general overview, there's no evidence

1 here that there was an extraordinary resolution entered into by the partners, although this
2 lease is contemplated by paragraph -- article 14 of this particular limited partnership
3 agreement, and there's no evidence of a unanimous director's resolution of the general
4 partner under the terms of their USA. And in this particular case, the minimum rental per
5 month was \$193,800 plus tax. So, we have that.

6
7 Now, with respect to Peace River, this agreement was entered into at the end of January of
8 2015.

9
10 THE COURT: Sorry, where am I seeing the rate of 198 (sic) a
11 month?

12
13 MR. BIEGANEK: Oh, if you --

14
15 THE COURT: Oh, is that 2-97? It's just -- it's
16 (INDISCERNIBLE)

17
18 MR. BIEGANEK: Yeah, no if you -- it's hard to read. So schedule
19 'A' attached, so it's 297-600 per month --

20
21 THE COURT: Oh, and 193 is at the bottom part?

22
23 MR. BIEGANEK: Right.

24
25 THE COURT: Okay.

26
27 MR. BIEGANEK: Right, but no -- no less than 193,800.

28
29 THE COURT: I have it, thank you.

30
31 MR. BIEGANEK: And I think how it worked out is, they were
32 paying 193,800. And there were payments made. In Peace River, the LP agreement was
33 entered into in January of 2015. In each case there, again, the Peace -- I'll just refer Your
34 Lordship to it, it's exhibit D-15, that's the amended and restated -- or pardon me, that's the
35 signed document, it's at tab 19 of the exhibit book. In this particular instance, Canada
36 North Group was providing obviously its proportionate share of initial working capital.
37 Startup -- startup losses, installation and setup costs and equipment, linens and disks, we're
38 not sure what that means, etcetera, plus equipment referenced on schedule 'A' to their
39 master lease agreement, between CNC and the partnership dated effective January 23,
40 2015, 726 was to provide its proportionate share of the working capital, the equipment on
41 its master lease, all costs associated with transportation, site work, installation, pilings,

1 utilities, etcetera. And upon expiry of the lease, was to sell the equipment to the partnership
2 for a dollar.

3
4 A couple of points here. Unlike the other USAs, if this -- this particular unanimous
5 shareholders' agreement was entered at exhibit 26, which is tab 30 of the exhibit book. Oh,
6 pardon me, that's the master -- pardon me, the -- the USA contemplates in this that there
7 are qualified leases, which exclude it from -- which exclude the -- eliminate the need for a
8 unanimous resolution of directors, okay? And the USA for the Peace River Lodge limited
9 partnership is found at tab 8 of the book of documents. Okay.

10
11 THE COURT: Exhibit 30's not relevant, I've got to go to the
12 other binders.

13
14 MR. BIEGANEK: Right, I'll go to Exhibit 3 in a moment --

15
16 THE COURT: Right.

17
18 MR. BIEGANEK: -- that the -- it's got to be in the binder.

19
20 THE COURT: Okay.

21
22 MR. BIEGANEK: And it's again at page 12. And you'll see there in
23 (f), there is borrow money on the credit of the corporation or the limited partnerships. Other
24 than pursuant to the equipment lease between limited partnership and 726 dated the blank
25 day of January, 2015, or any equipment lease or land lease including any renewals or
26 extensions thereof, approved by the board of directors of the corporation and entered into
27 between a limited partner and the limited partnership, on or following the date hereof, and
28 that's referred to as a qualified lease. Okay? And you'll see that in (i) a qualified lease is
29 excluded from the requirement, if you read (i) and (j) together.

30
31 THE COURT: So you're saying the net effect of that is what?
32 That this is unique obviously, to Peace River, but --

33
34 MR. BIEGANEK: Yeah. I'm going to take you to --

35
36 THE COURT: Okay.

37
38 MR. BIEGANEK: If -- the next document you need to flip to is at
39 tab 4 of the book, which you have in front of you. Which is the Peace River Lodge limited
40 partnership agreement. And if you look at article 14 of that document, there's a reference
41 there to an equipment lease between CNC and the partnership.

1
2 THE COURT: In article 12?
3
4 MR. BIEGANEK: 14.1(c).
5
6 THE COURT: Fourteen, yes.
7
8 MR. BIEGANEK: Do you have that, My Lord?
9
10 THE COURT: I've got article 14, tell me what specific
11 reference.
12
13 MR. BIEGANEK: Point 1, (c).
14
15 THE COURT: So the equipment referenced on (a) and dated --
16
17 MR. BIEGANEK: Schedule 'A' to equipment lease between CNC -
18 - that one's blank, we did get a -- there is a signed document with the blank filled in, entered
19 as an exhibit.
20
21 THE COURT: Okay.
22
23 MR. BIEGANEK: The date on it's January 23rd, 2015, I'll give you
24 the exhibit number in a moment. But there's a master lease in that instance with CNC, and
25 the limited partnership. Okay. That master equipment lease is at tab 30 of the exhibit
26 book, that's D-26. And it isn't for any equipment, it -- but it is for a number, approximately
27 1.7 million US, and it's in respect of foregone profit on the construction of the camp. And
28 the acknowledged understanding was that Canada North would be entitled to receive
29 payment under that lease, from the partnership, as matters progressed.
30
31 As with the other partnerships, there was also a service agreement and an operating
32 agreement entered into with CNC. And in terms of the lease agreement that was entered
33 into between the partnership and 726 Remote, that's found at tab 10, exhibit 10 of the
34 exhibit book.
35
36 THE COURT: Okay.
37
38 MR. BIEGANEK: You have that? Okay. This -- I want to take you
39 through this a little bit more because this -- this camp was constructed over a period of
40 time. So it looks to me like how I would describe it in a -- in a vernacular sense, is that on
41 this particular piece, 726 was essentially providing funding to get the camp set up. Okay?

1 So they were using a lease to secure themselves for the funding, but they were providing
2 cash to build and -- and establish the camp. And we have -- the master lease agreement is
3 the first document in that bundle, and then if we go to 1, 2 -- 7 pages in, we have equipment
4 schedule number 1. Do you have that in front of you?

5
6 THE COURT: Well I have schedule 'A' equipment.

7
8 MR. BIEGANEK: Yeah, no, a few pages back. And there's a
9 document in -- that's attached to exhibit schedule number 1.

10
11 THE COURT: I have it now.

12
13 MR. BIEGANEK: Excellent, okay. So that outlines the equipment
14 value, attaches schedule 'A' and notes that it's a minimum lease term of 45 months. And
15 you'll see in schedule 'A' which you did have before you, the equipment that's listed.

16
17 THE COURT: I have that.

18
19 MR. BIEGANEK: Okay. And then schedule 'B' shows the value
20 that's attributed -- or that will be -- what I'll call, put on lease. And that includes not just
21 the units purchased from Camp Corp, but also site setup that you see there, right? All
22 included in the value, for a net total equipment value as they call it, of 10 million 677 and
23 change. Now there were further equipment schedules, and this gets us into the -- or if you
24 flip the next page after that value, you'll see equipment schedule number 2.

25
26 THE COURT: All right.

27
28 MR. BIEGANEK: All right. This shows equipment value here of
29 2.3 million. With additional monthly payments. And a minimum lease term again of 45
30 months. But the critical piece here is to flip the page, My Lord. Now, you'll see it says at
31 the top, schedule 'A' to equipment schedule number 1, by and between 726 Remote
32 Accommodations as lessor and Peace River Lodge as lessee. None.

33
34 But you look at (b) or schedule 'B' and it says to equipment schedule number 2, by and
35 between 726 Remote as lessor and Peace River Lodge as lessee, various site and setup
36 work at Peace River Lodge in Peace River as detailed in invoice number 11, dated January
37 12, 2015, attached hereto. And attached to that, is support for what's noted as draw number
38 6.

39
40 There is a listing of items here including some service invoices, but also some equipment
41 and so forth, for additional, what I'll call value of 2.422 million. 726, notwithstanding the

1 wording of schedule 'A', claims entitlement to these assets as forming part of its lease. Our
2 position, which we'll get to, is that this invoice was used to attribute additional value to the
3 original equipment, but by its very terms, it's clear, the equipment's not included, it's just
4 there for value. So if those assets are anybody's assets, they remain the partnership's assets.

5
6 Again --

7
8 THE COURT: You're saying schedule 'B' is again, consistent
9 with the pattern that they used in attribution of value?

10
11 MR. BIEGANEK: Correct.

12
13 THE COURT: But that the import of the language of the
14 agreement itself is that there's no claim attached to them, it's just a valuation.

15
16 MR. BIEGANEK: Right.

17
18 THE COURT: I understand.

19
20 MR. BIEGANEK: That's not the position they're taking now, but --

21
22 THE COURT: No, I realize.

23
24 MR. BIEGANEK: -- that's what the documents -- yeah.

25
26 THE COURT: But as to what the document says.

27
28 MR. BIEGANEK: Yeah.

29
30 THE COURT: Okay.

31
32 MR. BIEGANEK: This lease is for a term of 45 months as I've said.
33 There's a dollar option to purchase at the end of it. Again, there's no evidence -- well, the
34 evidence is, 726 Remote did not register its interest by way of financing statement of PPR
35 at the time, they have done so now, just a couple of months ago.

36
37 THE COURT: I'm just noticing the time, how are you managing
38 this in your own mind?

39
40 MR. BIEGANEK: Well, if I can -- why don't I finish with the -- the
41 last partnership now and then we can break --

1
2 THE COURT: Okay.
3
4 MR. BIEGANEK: -- for a while, and then come back and -- My
5 Lord, I can't -- well, I don't guarantee that we'll get done today.
6
7 THE COURT: I understand that.
8
9 MR. BIEGANEK: So -- okay, but we'll do -- I'll do my level best.
10 The next partnership is kilometer 1-4-7, again this one similar to all the others, the master
11 lease agreement here is at -- starts at 11, D-11 in the exhibit book. And this one we entered
12 a series of documents, so it'll be tabs 11, 12, 13 and 14 are relevant to this discussion. And
13 this is the - excuse me - the one camp where we have the equipment swap. So the -- the
14 primary lease -- or the master lease is D-11-A, that's at tab 11. The 11-B at tab 12, is the
15 equipment schedule number 1 which lists the equipment. And that includes the F-X dorms
16 that were referred to yesterday. And schedule 'B' is the -- the value attribution and the title
17 of that is schedule 'B' Manaus Lodge summary of 726 investment.
18
19 The additional -- there was never any amendment made to this master lease agreement. So
20 there is in Mr. Roman's affidavit, an e-mail from the -- his supplementary affidavit, an e-
21 mail from Canada North saying, we shipped yours -- your rec units to Wandering River,
22 did you want to make changes to the invoices and the lease? There's no response to that.
23 And there's been no change to the invoice or the lease. And Mr. Roman confirmed that I
24 his questioning at page 62, lines 4 to 24 of the --
25
26 THE COURT: Sorry that was what? Can you say it again?
27
28 MR. BIEGANEK: Page 62.
29
30 THE COURT: Yes.
31
32 MR. BIEGANEK: And it's lines 4 to 24 of his transcript. Now, as
33 we outline in the brief, in this case -- well, before I take you to that, My Lord, if you look
34 at the remainder of the equipment schedules, you'll see is equipment schedule number 3,
35 there is no additional equipment that's added to the lease, it's all just notations of attribution
36 of value. And again, it goes to the question of whether or not the ancillary equipment that
37 they removed from the camp under the (INDISCERNIBLE) order, is properly theirs under
38 their lease agreement and we say it's not.
39
40 If you --
41

- 1 THE COURT: Just a moment.
- 2
- 3 MR. BIEGANEK: Yeah.
- 4
- 5 THE COURT: Okay. Are you able to help me? I -- I still
6 haven't digested how the exclusion of any equipment, but the attribution of values, what is
7 the purpose of that structure, using O-3 for example or --
- 8
- 9 MR. BIEGANEK: What's the purpose of that -- well, I can only
10 surmise, My Lord, but from -- it appears to me as I've said, that 726 utilized lease
11 documentation for the purpose of evidencing the obligations that the various partnerships
12 had to get.
- 13
- 14 THE COURT: Right.
- 15
- 16 MR. BIEGANEK: It didn't utilize any other type of lending
17 documentation to -- like a -- a master loan agreement or --
- 18
- 19 THE COURT: Right.
- 20
- 21 MR. BIEGANEK: -- anything like that. So my -- my conclusion,
22 and it's only mine, but I think --
- 23
- 24 THE COURT: Yes.
- 25
- 26 MR. BIEGANEK: -- it's reasonable from the paperwork, is that their
27 -- their method of putting on paper, was to, if we're going to give -- say -- let's just use an
28 example, okay we're going to put \$10 million worth of equipment on this site, or we're
29 going to advance \$10 million to set up this camp, a certain portion of that is related
30 specifically to equipment that's being purchased and put on site, a certain portion of that is
31 paying Canada North to set up the camp, but all of that value or all of that dollar amount,
32 is going to have as security for it, only the assets listed on schedule 'A'. So it's -- it would
33 be like - we don't use them much anymore - but taking a promissory note for an advance
34 under a general security agreement if we're -- we're doing a specific equipment loan, we're
35 taking one security agreement, but we've got three loans underlying it, here's a -- here's a
36 promissory note (INDISCERNIBLE) for loan 1, here's a promissory note for loan 2, here's
37 a promissory note for loan 3, all covered by the security. 726 uses the same as it's means
38 of -- of doing it, it's -- it's imperfect, but that's how it's structured.
- 39
- 40 THE COURT: But I'm still not sure that that allows me to grasp
41 why -- okay, so your first schedule lists the equipment in 'A'.

1
2 MR. BIEGANEK: Right.
3
4 THE COURT: Why is it your -- we are seeing a breakout in 'B'
5 of different valuations? What is -- what's being accomplished by that? If it's tax then I
6 don't really care, you know, but --
7
8 MR. BIEGANEK: Yeah, I -- I don't have the answer --
9
10 THE COURT: I see.
11
12 MR. BIEGANEK: -- for you, Sir. I don't have an answer for you.
13 But it could be tax related, it could be -- I think it's just primarily to provide an accounting
14 to the parties that are to the agreement of this is the value we're providing for which
15 purposes, this is to equipment, this is to pay your invoices for site setup, this is for other
16 sundries, this is for the tax, we put it all under this piece and we charge you monthly rent
17 for it in repayment.
18
19 THE COURT: Okay.
20
21 MR. BIEGANEK: If we -- to finish up on this piece, if you turn to
22 tab 40 of the exhibit book, and exhibit D-34. The highlighted units on that e-mail, this is
23 an e-mail exchange between Mr. Roman and the Monitor, asking for the whereabouts about
24 certain missing equipment, as it turns out, 726 has possession of it, they removed it from
25 the Manaus camp, but the highlighted items are -- do not appear anywhere on the lease
26 agreement between 726 and kilometer 1-4-7. Yet they claim they're entitled to those units.
27
28 Sir, that -- I'll finish on this piece, and on this review of the facts by doing the following,
29 again, this lease was for a term of more than one year, there was no financing statement
30 registered PPR until November of last year. And that's it for the kilometer 1-4-7 piece.
31
32 In terms of amounts owing to CNC by the partnerships, the -- what we've entered as
33 exhibits, it's tabs 31 to 34 of the exhibit book, some general ledger statements shows that
34 Wandering River Lodge owes CNC \$159,123.46; Peace River owes 1.1 million.
35 Bonnyville owes 842,000; and kilometer 1-4-7 owes 1.2 million; those are outlined at
36 paragraph 72 of the brief.
37
38 THE COURT: Is there any controversy in respect of those
39 figures as such?
40
41 MR. BIEGANEK: Well, Mr. McCracken confirmed those were the

1 figures.
2
3 THE COURT: Right, okay.
4
5 MR. BIEGANEK: The Monitor's not had -- is -- understands there's
6 backup for all of it.
7
8 THE COURT: Okay.
9
10 MR. BIEGANEK: But the backup has not been produced.
11
12 THE COURT: The paragraph number from your brief was?
13
14 MR. BIEGANEK: Seventy-two.
15
16 THE COURT: Two? Thank you.
17
18 MR. BIEGANEK: All right. I think now is an appropriate time to
19 break.
20
21 THE COURT: Okay. I want you to discuss the implications of
22 our time and where we go from here.
23
24 MR. BIEGANEK: Okay.
25
26 THE COURT: Because the inability to finish impacts the
27 reasoning that the Court provided.
28
29 MR. BIEGANEK: Yes.
30
31 THE COURT: And I leave it for counsel to have the first
32 opportunity to -- to examine what this does for the continuation.
33
34 MR. BIEGANEK: Okay.
35
36 THE COURT: All right?
37
38 MR. BIEGANEK: Yeah, thank you, My Lord.
39
40 THE COURT: Thank you very much.
41

1 THE COURT CLERK: Sorry, My Lord, are we starting at 1:30 or 2?
2
3 THE COURT: I don't know that an extra half an hour in --
4
5 MR. BIEGANEK: No.
6
7 THE COURT: I'll take your guidance --
8
9 MR. BIEGANEK: 2:00.
10
11 THE COURT: 2:00 is fine?
12
13 MR. BIEGANEK: Yeah.
14
15 THE COURT: -- from your standpoint?
16
17 MR. BIEGANEK: Yeah.
18
19 THE COURT: All right, let's do that.
20
21 MR. BIEGANEK: Thank you.
22

23
24 PROCEEDINGS ADJOURNED UNTIL 2 PM

25
26
27
28
29
30
31
32
33
34
35
36
37
38
39
40
41

1 **Certificate of Transcript**

2
3 I, Shari Lynch, certify that

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

8
9 (b) the Certificate of Record for these proceedings was not included orally on the record
10 and is not transcribed in this transcript.

11
12
13
14
15
16
17 Shari Lynch, Transcriber
18 Order No.: AL-JO-1002-2984
19 Date: January 27, 2019

Proceedings taken in the Court of Queen's Bench of Alberta, Law Courts, Edmonton, Alberta

January 11, 2019

Afternoon Session

The Honourable Mr.
Justice Hillier

Court of Queen's Bench
of Alberta

(No Counsel)

For the Monitor

R. Quinlan

For the Monitor

C. Russell

For Canadian Western Bank

Z. Han

For 726 Alberta Ltd.

C. Nicholson

For 726 Alberta Group

D. McAllister

For 726 Alberta Group

B. Smith

For Mr. and Ms. Hadfield

S. Delblanc

For Mr. McCracken

S. Delblanc

For Mr. McCracken

D. Borman

Court Clerk

THE COURT:

Afternoon, everyone, please be seated.

MR. QUINLAN:

Good afternoon, My Lord.

THE COURT:

Mr. Quinlan.

Discussion

MR. QUINLAN:

Over the lunch break, unfortunately Mr. Bieganek's illness took a fairly swift turn, and has had to go home for lack of a better term. So over the break and in consultation with my friends here, today, we propose to break for the rest of the day and continue on with some rescheduled dates. We have spoken, you are next sitting on the commercial list near the end of March. It looks and appears as if you have March 20th and 22nd completely free, you are not -- there is no availability on the 21st. So we have proposed to continue the hearing on those two days. I have sent an e-mail to the commercial coordinator's office to -- just to confirm that we can still pre-book those two days. I haven't received a response yet but we're hoping they're still free.

And we have discussed as between ourselves and set out some other preliminary steps and deadlines, which should assist the parties in knowing the arguments going forward, as well as yourself, because in their original brief, 726 did not address any substantive arguments in respect of Bonnyville, the parties have agreed - of course this is all subject to Your

1 Lordship's confirmation - that 726 shall file a written argument by February 19th, 2018,
2 limited to --

3
4 UNIDENTIFIED SPEAKER: 2019.

5
6 MR. QUINLAN: Sorry 2019, thank you. The -- the Bonnyville
7 issues and any arguments they have on rectification for relief from forfeiture, as none of
8 those items were -- none of those arguments were particularly set out in their brief. The
9 Monitor and CWB and any other party who wishes to, can file a reply brief on or before
10 February 28th, 2019. The parties have agreed that no new evidence will be filed, there's
11 not going to be new evidence as part of this process. And if Your Lordship is agreeable to
12 all this, I would reduce this to a form of written order, circulate it to my friends here and
13 then send it to Your Lordship for execution.

14
15 MR. RUSSELL: My Lord, might I just make an additional
16 comment? Excuse me. I realize this is an unfortunate turn of events, and quite frankly, it
17 flies in the face of Your Lordship's desire to keep this moving on a prompt basis. The
18 problem is, I know that Mr. Bieganek has spent literally days preparing for the -- for the
19 oral argument, and it -- from what I understand of the argument, is at a point would be very
20 difficult, if not impossible for Mr. Quinlan to pick up and run with himself.

21
22 THE COURT: Oh, I'm not second-guessing that we can't go
23 ahead this afternoon, thanks very much on that aspect, Mr. Russell.

24
25 MR. RUSSELL: Thank you, Sir.

26
27 THE COURT: There are two components to this. One relates -
28 - I mean obviously we couldn't have anticipated that Mr. Bieganek would have a turn in
29 his health, and maybe that stands alone, but the question of costs occasioned by not getting
30 to the merits of this thing earlier, is something which I would invite input on, and I want
31 clarification, so I think I really want Ms. Nicholson to -- to help the Court with respect to
32 the framework that Mr. Quinlan has just laid out. I know you've obviously been involved,
33 you've had input on it, but I just want your input, thank you.

34
35 MS. NICHOLSON: My Lord, I support this. Obviously. I -- are you
36 asking me to speak to costs, Sir?

37
38 THE COURT: That's the second point -- point of it, but I've got
39 four points that have been raised, the -- the most germane of which is the agreement that
40 there'll be no new evidence that's provided.

- 1 MS. NICHOLSON: Yes, My Lord, I -- I understand why you'd like
2 to know my perspective on that. I -- I -- I don't have instructions, but I would -- I -- I --
3 you have not permitted the two pieces of evidence as -- as we've spoken about today that
4 we tried to bring forward, the Roman material, and we just -- by the way, this was just
5 raised about no new evidence just now, but --
6
- 7 THE COURT: Sorry, do you want to consult amongst counsel?
8 I thought it had been, that's what I wrote down.
9
- 10 MS. NICHOLSON: Sorry, it was -- I don't mean to say it was sprung
11 on is, we -- we had a very short two-second comment about it, in -- fair?
12
- 13 UNIDENTIFIED SPEAKER: (INDISCERNIBLE)
14
- 15 MS. NICHOLSON: Yeah.
16
- 17 UNIDENTIFIED SPEAKER: Sure.
18
- 19 THE COURT: Do you want some time to talk? What do you
20 mean sure?
21
- 22 UNIDENTIFIED SPEAKER: Is that what you're asking?
23
- 24 MS. NICHOLSON: No, no I -- I don't -- I don't need time to talk, I -
25 - I just probably on that point, I don't have instructions, but I could get them quickly, and
26 I -- I think I could get them quickly. And -- but it would be -- that would be the only issue
27 that I would like to get instructions on, apart --
28
- 29 THE COURT: As in if I adjourn now for five minutes, you can
30 get your client on the phone, get instructions and then that would firm up these four points?
31
- 32 MS. NICHOLSON: I think maybe if I could have ten minutes maybe?
33
- 34 THE COURT: Okay, sorry, I didn't mean (INDISCERNIBLE).
35 This watch is an old watch and it's just fine, that's not my point.
36
- 37 MS. NICHOLSON: Yes, that would -- that would assist for sure.
38
- 39 THE COURT: All right. And then it seems to me, consistent
40 with really what happened on the 21st, I can recollect that the -- the impact of the further
41 delay would be simply something that would be assessed ultimately in the attribution of

1 costs.

2
3 MR. RUSSELL:

I would think that would be appropriate, My Lord. The -- the reality is that the -- you know, obviously the Monitor has in mind, something with regard to the costs that would otherwise have not been incurred, but I don't think until we kind of see the global picture, that we can say anything more than that.

7
8 THE COURT:

You see but that's a separate point. If -- if there had not been this application, that's one matter is to what -- what would not have been incurred. But if there is some aspects of this that were down to the benefit of 726, then the application is absolutely necessary, but was it necessary in two stages or not, or what are the implications? I believe that simply remains open for determination another day, and that's all that's been done on costs in relation to this in September, is that we have heard representations that 726 ought to be accorded an opportunity to amend its affidavits, to file its applications, to not appear for the December hearings, but that there are costs associated with that.

17
18 MR. RUSSELL:

And, My Lord, I suggest that what you've just expressed be put into the order as well if we could.

20
21 THE COURT:

All right, okay, I have that.

22
23 MR. QUINLAN:

I'm agreeable to that, Sir, I'll put that in the order as well, thank you.

25
26 THE COURT:

Okay, that's probably the best case scenario for your clients on costs, but you probably should take instructions that if this is by agreement, that that fifth item, that costs are adjourned to -- to --

29
30 MS. NICHOLSON:

To --

31
32 THE COURT:

-- another determination, okay?

33
34 MS. NICHOLSON:

Thank you, My Lord, I'll --

35
36 THE COURT:

All right.

37
38 MS. NICHOLSON:

-- I'll --

39
40 THE COURT:

So we'll adjourn for ten minutes. Is there anything else I need --

1
2 MR. QUINLAN: Maybe while Ms. Nicholson steps out, I can just
3 deal --
4
5 MS. NICHOLSON: Sure.
6
7 MR. QUINLAN: -- with you on these two orders that you granted
8 yesterday, and then we can adjourn?
9
10 THE COURT: No difficulty leaving this to the rest of your
11 company?
12
13 MS. NICHOLSON: That's -- I -- yes, thank you, My Lord.
14
15 THE COURT: All right, thanks very much.
16
17 MR. QUINLAN: So, pursuant to our conversation yesterday, My
18 Lord, about me redoing the two orders you granted yesterday, one with respect to the
19 approval and vesting of the WRC assets and second, with respect to the expanded Monitor's
20 power for sale, I have done that. I'm passing up the form of order. This first one is the
21 vesting and approval order. Sir, I can advise that I've made no changes to that form of
22 order except removing the Monitor's power section, so this was -- this is otherwise the form
23 of order that was circulated to all my friends and Your Lordship.
24
25 And is otherwise in the standard court template, the exception of paragraph 6 and 7 are
26 added. Paragraph 6 just says, the purchase price allocated to each of the assets, is what
27 we'll apply to it. And seven of course, permits the Monitor to discharge any PPR
28 registration -- serial number PPR registrations if the parties themselves don't. Otherwise,
29 this is in the standard template with the exception of the sealing provision in paragraphs 15
30 and 16, and the approval provision at paragraph 17.
31
32 THE COURT: Right. I signed that order, Mr. Quinlan.
33
34 MR. QUINLAN: Thank you very much. And I'll pass up the
35 second form of order. Relating to the expanded powers of the Monitor, Sir. What I do
36 want to draw to your attention, and to my friends' attention, is that these are the same
37 provisions, substantive provisions, one deals with capitalized terms and two deals with
38 service. Paragraphs 3, 4 and 5 were what was in the existing -- or the draft that was
39 circulated for those -- for this section. What I have added is the last paragraph in here
40 overnight, and that's just confirming that if the Monitor completes any sales, basically the
41 sale proceeds stand in place of the property and in the same priority, just confirming that

1 so that it's clear for all parties.

2
3 THE COURT: I think the law imposes that but it's good for the
4 parties to know that the Court's confirmed that's the way it will stand.

5
6 MR. QUINLAN: I just thought in light of Mr. Smith's comments
7 yesterday --

8
9 THE COURT: Yes.

10
11 MR. QUINLAN: -- that might be helpful to include, My Lord.

12
13 THE COURT: No, I think that's likely so.

14
15 MR. QUINLAN: So subject to that, I have nothing further to add
16 if you want to now take an adjournment to let Ms. Nicholson complete her call.

17
18 THE COURT: Let's do that. Okay. Thanks very much.

19
20 MR. QUINLAN: Thank you.

21
22 (ADJOURNMENT)

23
24 THE COURT: Thanks everyone, please be seated. Ms.
25 Nicholson.

26
27 MS. NICHOLSON: Yes, My Lord. I was able to obtain instructions
28 on the terms that we've discussed, with respect to an order.

29
30 **Decision**

31
32 THE COURT: All right, Mr. Quinlan will prepare that order
33 then for circulation. Just so that I'm clear, it's a five -- five point order in terms of
34 rescheduling for March 20th and 22nd. I think presumptively, that's what it's going to be,
35 but I would ask you to speak directly to confirm with Ms. Hins, I just tried to get her myself,
36 without success, so you ought not to feel too slighted by the fact that you couldn't, if a
37 judge can't and he's sitting in commercial court, you know she's unavailable. But, I would
38 do whatever I can with my schedule, I had looked at some other dates that didn't necessarily
39 engage that commercial week, and I don't know if there are impacts, I think there is
40 certainly on Ms. Nicholson, of a stagger where there's a -- a day break as opposed to two
41 days that are contiguous. So we're going to look to dates, and I'm wondering in that respect,

1 whether you're already feeling an impact or whether you might be able to advance by a
2 week for example, the -- the filing deadlines that you've set for yourselves.

3
4 MS. NICHOLSON: My Lord --

5
6 THE COURT: And I say that on the basis that I'm looking that I
7 might be able to make available, either -- well no it's really only -- no, I have two
8 possibilities. What was -- yes. No, I have one, sorry, March 14 and 15. So if that's not
9 workable with counsel, then fine, but I will canvas with Ms. Hins because it doesn't conflict
10 with anybody else's schedule, it is just my free -- my unassigned time.

11
12 MR. MCALLISTER: I can tell you those dates do work for me.

13
14 THE COURT: Do work for you? Thank you, Mr. McAllister.

15
16 MS. NICHOLSON: And they do for me, My Lord as well.

17
18 MR. RUSSELL: I'll make it work.

19
20 MR. QUINLAN: We'll make it work as well, My Lord, if
21 necessary. Or if -- if available.

22
23 MR. DELBLANC: Should be fine. We'll make it work as well.

24
25 THE COURT: Okay. All right. Because that then doesn't
26 impact the commercial week, I think that's maybe the safer route to go, is for me to set that
27 and all we require then is a courtroom and I will just confirm with Ms. Hins. So let's have
28 your order changed from 20th and 22nd, because they are not contiguous and I prefer that
29 everybody have the advantages of two days back-to-back, and watch, we'll just find that
30 that doesn't work, I -- best laid -- laid plans, but -- so February 12th, let's just be sure, I
31 have a feeling that's a Family Day.

32
33 MS. NICHOLSON: My Lord, the Family Day is --

34
35 THE COURT: Oh, it's the following one, it was --

36
37 MS. NICHOLSON: The following week, yes. But is it -- is it --

38
39 THE COURT: I don't know if the Court --

40
41 MS. NICHOLSON: Do you need -- do you need the brief on -- a week

1 before then -- before the 19th?

2
3 THE COURT: That's what I'm going to suggest is that --

4
5 MS. NICHOLSON: I was -- I was praying for it with my friends that
6 they would give me to the 19th and they've acceded that, but --

7
8 THE COURT: Okay. Okay, well then -- and I respect that.

9
10 MS. NICHOLSON: But I -- but I -- but I don't --

11
12 THE COURT: Let me see --

13
14 MS. NICHOLSON: I understand your schedule as well, My Lord, so
15 --

16
17 THE COURT: Right, so --

18
19 MS. NICHOLSON: -- I don't want to --

20
21 THE COURT: Yes, thank you.

22
23 MS. NICHOLSON: -- hamstring you.

24
25 MR. RUSSELL: Sir, I suspect that we can easily do our rebuttal
26 briefs in the nine days between the 19th and the 28th and then that would give Your
27 Lordship two full weeks with the -- with all the materials.

28
29 THE COURT: Okay.

30
31 MR. RUSSELL: Does that work?

32
33 THE COURT: All right, let's leave the dates then as they've been
34 said -- stated, February the 19th and February the 28th. It'll be for the Court then to address
35 March 14 and 15, okay? No new evidence, costs deferred. I'm not sure if you had standard
36 language in an earlier order that dealt with that costs matter, but everybody understands
37 what I'm saying, it -- it remains live and extant.

38
39 MR. QUINLAN: I believe everyone understands that, My Lord.

40
41 THE COURT: Okay. All right, is there anything else that needs

clarification this afternoon?

MR. QUINLAN:

I don't believe so, My Lord, no.

THE COURT:

All right, thanks very, very much.

MR. QUINLAN:

Thank you.

MS. NICHOLSON:
accommodating us.

And thank you, My Lord, again, for

THE COURT:
books, thank you.

This is not the easiest file that we've got on the

PROCEEDINGS ADJOURNED

Certificate of Record

I, Devyn Borman, certify that this recording is a record made of the evidence in the proceedings in the Court of Queen's Bench, held in courtroom 516, at Edmonton, Alberta, on the 11th day of January, 2019, and that I was the court official in charge of the sound-recording machine during the proceedings.

1 **Certificate of Transcript**

2
3 I, Shari Lynch, certify that

4
5 (a) I transcribed the record, which was recorded by a sound-recording machine, to the best
6 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 is
10 transcribed in this transcript.

11
12
13
14 Shari Lynch, Transcriber
15 Order No: AL-JO-1002-2984
16 Date: January 27, 2019
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32
33
34
35
36
37
38
39
40
41