

COURT FILE NO. 1703 12327

COURT COURT OF QUEEN'S BENCH OF ALBERTA

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

DOCUMENT **AFFIDAVIT OF KRISZTINA E. KISS**

ADDRESS FOR SERVICE
AND CONTACT
INFORMATION OF
PARTY FILING THIS
DOCUMENT

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File No.: 165813

AFFIDAVIT OF KRISZTINA E. KISS SWORN ON THE 2ND DAY OF JANUARY, 2019

I, KRISZTINA E. KISS, of the City of Edmonton, in the Province of Alberta, SWEAR AND SAY THAT:

1. I am an Assistant employed by McLennan Ross LLP, counsel for Canadian Western Bank.
2. Attached hereto and marked as Exhibit "A" is a further exchange of email correspondence in addition to those put into evidence by Gulnara Machitova on December 20, 2018.
3. Attached hereto and marked as Exhibit "B" is the transcript of the September 6, 2018 Application in relation to the above noted matter.

SWORN BEFORE ME at the
City of Edmonton,
in the Province of Alberta
the 2nd of January, 2019

A Commissioner for Oaths in and
for the Province of Alberta

KRISZTINA E. KISS

JACQUELYN MARIE WOODWARD

*id:- 4159-2629-0611 Commissioner for Oaths

in and for the Province of Alberta

My Commission Expires January 23, 2021.

This is **Exhibit "A"** referred to in the Affidavit of ,
Krisztina E. Kiss sworn before me on the 2nd of
January, 2019.



A Commissioner for Oaths in and
for the Province of Alberta

JACQUELYN MARIE WOODWARD

A Commissioner for Oaths
in and for the Province of Alberta
My Commission Expires January 23, 2021

Marco Marrelli

Subject:

FW: In the Matter of a Plan of Arrangement of 667402 Alberta Ltd. et al., Court File No. 1703 12327

From: Chuck Russell

Sent: Saturday, December 15, 2018 7:18 AM

To: Darren Bieganek <dbieganek@dcllp.com>; Christa Nicholson <nicholsonc@jssbarristers.ca>

Cc: Matt.McCulloch@ca.ey.com; dan.mcculloch@ca.ey.com; sdelblanc@bryanco.com; Darren Bieganek <dbieganek@dcllp.com>; Ryan Quinlan <rquinlan@dcllp.com>; joliver@casselsbrock.com; twarner@millerthomson.com; krowan@ogilvielaw.com; APoburan@ogilvielaw.com; hferris@lawsonlundell.com; wroberts@lawsonlundell.com; Erika Kiss <ekiss@mross.com>; lenzk@bennettjones.com; pstocco@brownleelaw.com; ndaprocida@shaw.ca; gplester@brownleelaw.com; mderendube@mltaikins.com; DNowak@mltaikins.com; DHutchison@mltaikins.com; cwebster@mltaikins.com; Steve Livingstone <slivingstone@mross.com>; pharnett@millerthomson.com; shelby@treeeater.ca; tfong@fasken.com; pwright@blackdiamondgroup.com; grace@securiguard.com; pearcemay@shaw.ca; thamelin@bmlp.ca; TAnderson@Aquatera.ca; jlawson@petersco.com; gerard.dale@gov.ab.ca; dmcallister@mcallisterllp.com; Rachel Clarke <clarker@jssbarristers.ca>; jjkueber@bryanco.com; don.cooper@dlapiper.com; nsmith@snyder.ca; ryan.flewelling@regentlaw.ca; Jamie Flanagan <jflanagan@mross.com>; sgraham@englaw.ca; johnfleming@shaw.ca; christcitycreative@gmail.com; bwhite@emeryjamieson.com; kkawanami@emeryjamieson.com; jstainton@mintzlaw.ca; mmccabe@rmrf.com; SFinlay@rmrf.com; JPawlyk@bmlp.ca; glen.staheli@gmail.com; brian.davison@dlapiper.com; susy.trace@dlapiper.com; jhockin@parlee.com; srohatyn@parlee.com; bsquibb@stikeman.com; davids@cimarroncamps.com; susan@cimarroncamps.com; philipharrison154@gmail.com; bradley@freedomlaw.ca; Jason@kmsc.ca; ErikC@kmsc.ca; lobay@lobaylaw.com; Zao Han <hanz@jssbarristers.ca>; CommercialCoordinator.QBEdmonton@albertacourts.ca

Subject: Re: In the Matter of a Plan of Arrangement of 667402 Alberta Ltd. et al., Court File No. 1703 12327

I agree with Darren. The September 6 application contained a clear direction to put all matters forward in the October 5 affidavits. Taha affidavit 6 made it clear that until CWB saw other affidavits they could not be explicit in their claims but they were claiming any collateral not the subject of a valid prior claim. When 726 failed to address the security interest Darren asked for an undertaking to provide evidence of release of the security which 726 has the onus to show but that undertaking was refused, leading to CWB filing it's application for a declaration. Darcy was present at the September 6 application for 726 even if you weren't. Chuck

Sent from my BlackBerry 10 smartphone on the Bell network.

From: Darren Bieganek

Sent: Friday, December 14, 2018 11:44 AM

To: Christa Nicholson

Cc: Matt.McCulloch@ca.ey.com; dan.mcculloch@ca.ey.com; sdelblanc@bryanco.com; Darren Bieganek; Ryan Quinlan; joliver@casselsbrock.com; twarner@millerthomson.com; krowan@ogilvielaw.com; APoburan@ogilvielaw.com; hferris@lawsonlundell.com; wroberts@lawsonlundell.com; Erika Kiss; lenzk@bennettjones.com; pstocco@brownleelaw.com; ndaprocida@shaw.ca; gplester@brownleelaw.com; mderendube@mltaikins.com; DNowak@mltaikins.com; DHutchison@mltaikins.com; cwebster@mltaikins.com; Steve Livingstone; pharnett@millerthomson.com; shelby@treeeater.ca; tfong@fasken.com; pwright@blackdiamondgroup.com; grace@securiguard.com; pearcemay@shaw.ca; thamelin@bmlp.ca; TAnderson@Aquatera.ca; jlawson@petersco.com; Chuck Russell; gerard.dale@gov.ab.ca; dmcallister@mcallisterllp.com; Rachel Clarke; jjkueber@bryanco.com; don.cooper@dlapiper.com; nsmith@snyder.ca; ryan.flewelling@regentlaw.ca; Jamie Flanagan; sgraham@englaw.ca;

johnfleming@shaw.ca; christcitycreative@gmail.com; bwhite@emeryjamieson.com; kkawanami@emeryjamieson.com; jstainton@mintzlaw.ca; mmccabe@rmrf.com; SFinlay@rmrf.com; JPawlyk@bmlp.ca; glen.staheli@gmail.com; brian.davison@dlapiper.com; susy.trace@dlapiper.com; jhockin@parlee.com; srohatyn@parlee.com; bsquibb@stikeman.com; davids@cimarroncamps.com; susan@cimarroncamps.com; philipharrison154@gmail.com; bradley@freedomlaw.ca; Jason@kmsc.ca; ErikC@kmsc.ca; lobay@lobaylaw.com; Zao Han; CommercialCoordinator.QBEdmonton@albertacourts.ca

Subject: RE: In the Matter of a Plan of Arrangement of 667402 Alberta Ltd. et al., Court File No. 1703 12327

Christa,

I note that you copied this e-mail to the Court Coordinator which I find inappropriate. I have, however, included them on this e-mail string simply to ensure that the communication chain remains unbroken. You also sent it to Mr. Russel's assistant, not him.

For the edification of the entire service list (which all of who are not involved in this application), I attach the e-mail I sent to you on Monday below arising out of your refusal to provide simple answers to simple factual questions by way of undertaking.

To make the Monitor's position abundantly clear: the issue of whether or not 726 acquired any interest in the Bonnyville Camp or Equipment free and clear of all encumbrances is an issue that is plain and obvious in the face of the bank security and has been before the court since the case management directions were made in September.

You advised the Court previously that you were acting on the "priority issue" and Mr. McAllister on the "ownership issue". No one heard you to say that your "priority issue" retainer was somehow restricted to very narrow issues.

While this is a long way of saying no to your request, to make the Monitor's position very clear, we will not be agreeing to any adjournment request.

You will be in receipt of our Brief today. We will not be providing the entirety of the materials to the Service List.

Yours truly,

Darren

Darren Bieganeck, LLB, QC
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Litigation
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From: Christa Nicholson <nicholsonc@jssbarristers.ca>

Sent: Thursday, December 13, 2018 11:38 PM

To: Erika Kiss <ekiss@mross.com>

Cc: Matt.McCulloch@ca.ey.com; dan.mcculloch@ca.ey.com; sdelblanc@bryanco.com; Darren Bieganek <dbieganek@dcllp.com>; Ryan Quinlan <rquinlan@dcllp.com>; joliver@casselsbrock.com; twarner@millerthomson.com; krowan@ogilvielaw.com; APoburan@ogilvielaw.com; hferris@lawsonlundell.com; wroberts@lawsonlundell.com; lenzk@bennettjones.com; pstocco@brownleelaw.com; ndaprocida@shaw.ca; gplester@brownleelaw.com; mderendube@mltaikins.com; DNowak@mltaikins.com; DHutchison@mltaikins.com; cwebster@mltaikins.com; Steve Livingstone <slivingstone@mross.com>; pharnett@millerthomson.com; shelby@treeeater.ca; tfong@fasken.com; pwright@blackdiamondgroup.com; grace@securiguard.com; pearcemay@shaw.ca; thamelin@bmlip.ca; TAnderson@Aquatera.ca; jlawson@petersco.com; gerard.dale@gov.ab.ca; dmcallister@mcallisterllp.com; Rachel Clarke <clarker@jssbarristers.ca>; jikueber@bryanco.com; don.cooper@dlapiper.com; nsmith@snyder.ca; ryan.flewelling@regentlaw.ca; Jamie Flanagan <jflanagan@mross.com>; sgraham@englaw.ca; johnfleming@shaw.ca; christcitycreative@gmail.com; bwhite@emeryjamieson.com; kkawanami@emeryjamieson.com; jstainton@mintzlaw.ca; mmccabe@rmrf.com; SFinlay@rmrf.com; JPawlyk@bmlip.ca; glen.staheli@gmail.com; brian.davison@dlapiper.com; susy.trace@dlapiper.com; jhockin@parlee.com; srohatyn@parlee.com; bsquibb@stikeman.com; davids@cimarroncamps.com; susan@cimarroncamps.com; philipharrison154@gmail.com; bradley@freedomlaw.ca; Jason@kmsc.ca; ErikC@kmsc.ca; lobay@lobaylaw.com; CommercialCoordinator.QBEdmonton@albertacourts.ca; Zao Han <hanz@jssbarristers.ca>

Subject: Re: In the Matter of a Plan of Arrangement of 667402 Alberta Ltd. et al., Court File No. 1703 12327

Dear Chuck and Darren,

This is further to my voicemail last evening to Darren requesting that he call me back.

Chuck, it would appear that with the filing of this CWB application below (the "Application") you have now done what we had previously, and since the cross-examinations last week, requested and expected and required be done, namely, that CWB put before the court the issues which are to be the subject of the applications to be heard on January 10 and 11, 2019.

As you know, we have requested that Justice Hillier urgently see us to address the fact that, until you filed CWB's a Application yesterday, the matters referenced in your client's Application were not before the court. As you know, we have not yet heard from Mr. Justice Hillier. You, too, were interested in seeing the Judge in respect of certain undertakings which you were seeking to have answered which were refused by Darcy McAllister and me on behalf of our client, including on the grounds of relevance (because no extant application was before the court when the cross-examinations and undertakings arising therefrom were requested).

Please be advised that I am currently seeking instructions with respect to whether my office is retained regarding the CWB Application. In the meantime, this Application needs to be and we require that it is forthwith adjourned *sine die* to be heard on a date beyond January 10 and 11, along with all matters relating thereto in connection with the Bonnyville assets and their ownership.

If we are retained, and we suspect we will be, we will require an opportunity to cross-examine Ms. Taha and Mr. McCracken in connection with this new CWB Application, as well as to potentially file our own evidence. Once all of the evidence is in, a hearing can fairly occur.

Accordingly, please confirm that the Application will be adjourned *sine die* and that the Brief of argument to be filed by the Monitor tomorrow will not argue the merits of this Application. This would be highly unfair and would result in the potential for significant thrown away costs to the extent that it is necessary for our client to attempt to address the Application at this time in circumstances where we are not yet retained, do not have instructions, and where the

Application was just filed yesterday and the evidence has not been tested and is not all in, when it could have and ought to have been brought long ago and in any event prior to the cross-examinations that took place last week.

Chuck and Darren, we look forward to hearing from you and to receiving the confirmation sought above.

Regards,

Christa

On Dec 12, 2018, at 1:36 PM, Erika Kiss <ekiss@mross.com> wrote:

Good afternoon all,

Please see the attached filed application for service upon you. The application is returnable January 10, 2019.

Thank you,

*Erika Kiss
Legal Assistant to Charles Russell, Q.C.*

 **Erika Kiss** | Legal Assistant | direct 780.482.9262 | toll free 1.800.567.9200 | fax 780.482.9100
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This e-mail may contain confidential information and be subject to solicitor-client privilege. If received in error, please delete and advise sender. Thank you.

<Application-filed Dec 12, 2018.pdf>

<Service list.pdf>

Christa Nicholson
Partner
Direct: 403 571 1053
Bio: Christa Nicholson

Jensen Shawa Solomon Duguid Hawkes LLP

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This is **Exhibit "B"** referred to in the Affidavit of ,
Krisztina E. Kiss sworn before me on the 2nd of
January, 2019.



A Commissioner for Oaths in and
for the Province of Alberta

JACQUELYN MARIE WOODWARD

A Commissioner for Oaths
in and for the Province of Alberta
My Commission Expires January 23, 2021.

Action No: 1703-12327
E-file Name: EVQ18667402ALBERTA
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 ARRANGEMENT OF
667402 ALBERTA LTD., 18592318 ALBERTA LTD., 816956 ALBERTA LTD.,
1370147 ALBERTA LTD., 1919209 ALBERTA LTD., AND
CANADA NORTH GROUP HOLDINGS LTD.

PROCEEDINGS

September 6, 2018
Edmonton, Alberta

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

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

3
4 September 6, 2018

Morning Session

5
6 The Honourable Mr. Justice Hillier

Court of Queen's Bench of Alberta

7
8 S.N. Finlay

For the MD of Greenview

9 A. Steen

For Northland Managers Investment Corp.

10 R.J. Wasylyshyn

For the Receiver for Income Growth Fund Ltd.

11 D. McAllister

For 726 Modular Financing Canada Ltd.

12 D. McAllister

For 726 Remote Accommodations Ltd.

13 B. Lawrence

For the Town of Bonnyville

14 B. Lawrence

For Athabasca County

15 C.P. Russell, Q.C.

For Canadian Western Bank

16 S. Rohatyn

For Aurora Lodging

17 R. Quinlan (by telephone)

For the Monitor, Ernst & Young

18 J. Oliver

For BDC

19 R. Flewelling

For Great White Sand Tiger Lodging Ltd.

20 T.M. Warner

For National Leasing Group & ECN Capital Corp.

21 N. Valji

Court Clerk

22
23
24 THE COURT:

Good morning, everyone. Please be seated.

25
26 Ms. Finlay.

27
28 **Submissions by Ms. Finlay**

29
30 MS. FINLAY:

Thank you, Sir. Thank you for hearing us this morning. The -- the reason that we're before you is set out in our brief that we forwarded to your office. I don't know if you've had a change to review that.

31
32
33
34 THE COURT:

I have your letter, and, yes, I do have the brief itself as well.

35
36
37 MS. FINLAY:

Okay. If you've had a chance to read it, I won't go through that, but perhaps I can just summarize briefly. We understood that an application had been set by the monitor for September 21st, and that the correspondence setting that date indicated that there would be municipal tax issues that would be dealt with at that hearing. In a subsequent email from Mr. Quinlan, he advised the parties as to

1 what those municipal tax issues would -- would be, which, in summary, was that -- and
2 this dealt with the town of Bonnyville, whether or not the town of Bonnyville, especially
3 for tax arrears applied in respect of the dorms and similar items located on the Bonnyville
4 camps on which there were outstanding property taxes.

5
6 That same issue arose in respect of our client's outstanding -- taxes that are outstanding
7 to my client upon some other camps that were buildings that were leased from a number
8 of other parties. In those proceedings dealing with the MD of Greenview, the parties had
9 agreed to put aside funds with respect to those taxes pending a determination in an -- in
10 an appeal that was recently heard on June 12th, entitled the *Virginia Hills* case, but in this
11 matter dealing with the MD of Bonnyville, the parties, I understand, wanted to bring that
12 -- an issue forward with respect to the effect of special maintenance priority on the 21st.

13
14 So two issues with that, one, it is a fairly significant matter, and we would suggest that if
15 that issue is going to be determined that all parties be required to bring their applications
16 and the matter be heard in a fulsome way, but primarily our position is that the *Virginia*
17 *Hills* matter does have the potential to impact matters in these proceedings, and,
18 therefore, our suggestion was that any municipal tax issues dealing with priority and the
19 existence of a special lien be adjourned until the -- an outcome -- a final outcome in the
20 *Virginia Hills* appeal.

21
22 I wanted to just discuss very briefly -- I wanted to highlight what the *Virginia Hills*
23 appeal deals with. Obviously I won't go into that in any detail, but the *Virginia Hills*
24 appeal involves an appeal of an order for advice and direction and distribution of funds,
25 funds that were held resulting from the sale of property, including easements, leases, and
26 wells and a number of other pieces of property that would be characterized as linear
27 property. The court declared in that case -- there was no written reasons. It was simply an
28 order -- that -- as part of the order that the pre-receivership linear tax claims of the
29 municipality were -- were only unsecured claims and did not form a secured claim, and
30 so the municipalities had no further claims to funds held by the receiver.

31
32 There were two arguments that were advanced in the -- in the appeal of that order by the
33 -- the receiver, or, sorry, there were three arguments that were advanced in that appeal
34 that it's my submission could touch on the issues arising in these matters. One, it was
35 argued that the municipalities are agents of the Crown, and, therefore, any priority or
36 realization on those special liens were subject to the rules that relate to statutory Crown
37 liens.

38
39 Secondly, they suggested that the removal of language in the -- the -- the acts that used to
40 apply to municipal taxes and special liens was called the *Municipal Taxation Act*, and in
41 the section that granted a security interest in that legislation had some additional

1 language, and the -- or the receiver argued in the *Virginia Hills* case that the removal of
2 that language made the special lien provision in the current *MGA*, section 348,
3 ambiguous with respect to what lands and improvements are being referred to. Thirdly,
4 they argued that a special lien only relates to taxes in respect of a parcel of land, and a
5 parcel of land under the *MGA* does not include improvements.

6
7 So those are the three issues that we suggest -- if the Court of Appeal is -- accepts those
8 arguments, those arguments would have an impact on determinations in these
9 proceedings on the scope and status and the existence of a special lien on the
10 improvements in this case.

11
12 THE COURT: Let me try and cut to the chase on all of this. In
13 your discussion with colleagues, including the monitor in respect of the Bonnyville issue,
14 what discord has there been as to the wisdom of your request for deferral to *Virginia Hills*
15 and the determination by the Court of Appeal that would inform the issues as
16 crystallized?

17
18 MS. FINLAY: I do not -- I do not -- I have had discussions
19 with my friends in Palliser and Mr. Hakanen (sic) --

20
21 MR. ROHATYN: Mr. Rohatyn from Parlee.

22
23 THE COURT: Thank you.

24
25 MS. FINLAY: And we've had discussions, and my
26 understanding is that they understand the issues that arise in *Virginia Hills*, but I don't
27 have a firm position from them on this adjournment today -- this adjournment request
28 today.

29
30 **Discussion**

31
32 THE COURT: Okay. Let me just alert you that if you're going
33 to be speaking principally on behalf of those who are opposed to the concern about
34 litigating a matter that's already been dealt with at Queen's Bench once largely, and I
35 recognize there may be distinctions, but I don't know the full import of those, then I want
36 to know what's the most efficient use of our time. If, having the players here together,
37 there's a way in which this can be dealt with, because there's some wisdom in not simply
38 rerunning the issues that overlap at cost to however many parties feel impacted by this,
39 then I am going to be very interested to know what those are, but I don't intend to spend a
40 whole lot of time here today with that, and I'm wondering if it doesn't make some sense
41 just to give you an opportunity to talk amongst yourselves, because I'm rather

1 predisposed to adjourn so that this matter is dealt with more effectively, once we've got
2 *Virginia Hills*.

3
4 MR. ROHATYN: Sir, if I could address that, there have been
5 some discussions, less so with Ms. Finlay, more so with counsel for the town of
6 Bonnyville, of Aurora Lodgings claimed ownership of dorms located on the Bonnyville
7 lands, so our discussions have been -- been mainly focussed with counsel for the town of
8 Bonnyville, and we've indicated to the town that in principle we don't -- we don't oppose
9 what is being sought today, which is an order setting aside these issues until *Virginia*
10 *Hills* can be determined, subject to some directions regarding scheduling once that
11 occurs.

12
13 THE COURT: Okay. So is there anybody that is objecting to
14 what Ms. Finlay is proposing here? Oh, my -- yes, Mr. Russell.

15
16 **Submissions by Mr. Russell**

17
18 MR. RUSSELL Thank you, My Lord. I'm -- I'm not -- CWB
19 isn't objecting to this.

20
21 THE COURT: Okay.

22
23 MR. RUSSELL: It -- it makes sense, I think, to have the issue put
24 over until we've seen what the Court of Appeal has to say. The only thing I would
25 suggest is that the creditors who have different security interests over property that are on
26 these various parcels of land, they have different kinds of problems. Some of them may
27 well be considered to be fixtures. Many of them would be serial-numbered goods,
28 manufactured homes. Some of them is rolling stock.

29
30 To the extent that the *Virginia Hills* Court of Appeal decision is -- is not going to
31 determine all of the issues in kind of a blanket way, for example, if the Court of Appeal
32 simply said, The municipalities have no charge over any personal property on -- on the
33 premises, if that was what the decision was, then it wouldn't be necessary for these
34 various creditors to be showing the Court or getting ready to show the Court what the
35 nature of their collateral is, but to the extent -- and -- and my friends are -- are in a much
36 better position to advise on this than I am, but to the extent that there is going to be some
37 factual premise that each of these creditors are going to have to deal with sooner or later,
38 I'd prefer that some direction be given by the Court that the -- the various creditors put in
39 affidavits giving a description of what their collateral is so that we know whose collateral
40 is purely rolling stock, whose collateral is something that may be more problematic for --
41 for the creditor.

1
2 THE COURT: And you're proposing that that would be as part
3 of today's order, if the Court grants the adjournment on the Bonnyville issue as it relates
4 to the 21st of September, pending *Virginia Hills*, that in all events creditors impacted be
5 obliged by a date specified to itemize or to particularize the nature of their claims.
6

7 MR. RUSSELL: Assuming that the *Virginia Hills* Court of
8 Appeal decision might not simply make all of that irrelevant, and -- and my friends would
9 be better off -- would be better able to answer that.
10

11 THE COURT: Well, I'm not so sure it's such a hardship for
12 that to be characterized, even in the absence. What I'm worried about is that if *Virginia*
13 *Hills* takes seven weeks to issue, just a hypothetical but not an unrealistic anticipated
14 timeframe, given that it was argued in June, and then after that all of those affidavits
15 being prepared, and I don't know how many there are, frankly, but then everybody's got
16 to bring themselves up to speed, whereas if they know if those were prepared within the
17 next three -- or whatever number seemed reasonable to those impacted by the Court's
18 direction -- weeks, then everybody would have at least some sense of what the landscape
19 was.
20

21 No, they don't know what the answer is in *Virginia Hills*, but they can then apply
22 *Virginia Hills*. If it eliminates most of the issues that would distinguish between some of
23 the natures of the claims, fine. There's no real hardship in having at least declared what
24 your interest is based on. That would be my first inclination.
25

26 MR. RUSSELL: And as -- yeah, and -- and, My Lord, that -- that
27 makes perfect sense to me. I suspect that most of the creditors are going to be able to put
28 in affidavits which simply append their proofs of claim that they have filed, which will
29 presumably have their security interests, append a PPR registration, which shows their
30 registration, either by serial number or not, and to the extent that it's not patently evident
31 that this is a motor vehicle, as opposed to something else, some explanation of that.
32

33 There are -- there are other issues, though, and I know Mr. Quinlan is intending to briefly
34 address this as well. For example, 726, Mr. McAllister's client, has an ownership claim
35 with regard to various assets that were at three of the limited partnership projects, and this
36 came as a surprise, I guess for lack of a better word, to CWB, as we had understood that
37 the McCracken's (phonetic) affidavits had indicated that -- assuming we're talking about
38 the same collateral, that that collateral was actually available for CNC, and if it wasn't,
39 then we need to know. You know, if there's a viable argument that it -- that it wasn't, that
40 it belongs to 726, then I think we also need to see what 726's claim is so that we can
41 assess the -- what arguments might have to be addressed in due course with regard to

1 that, and -- and, My Lord, I remind you that we also have October 23rd booked.

2
3 THE COURT: I had forgotten that because I know that Ms.
4 Hinz had been looking at a calendar date and a special assignment for me to sit
5 commercial in early December, which seemed like a more realistic date at which we may
6 be able to deal with at least outcome of *Virginia Hills*. We may not. We're beholden by
7 whatever is a fair timeline off of a decision issued from the Court of Appeal, but we were
8 trying to be as proactive as we could. What is on the October date?
9

10 MR. RUSSELL: Mr. Quinlan will be able to advice on that, but I
11 have anticipated that some of the creditors who are owners -- purported owners who want
12 to take their equipment back off site --
13

14 THE COURT: Right.
15

16 MR. RUSSELL: -- are going to want to be able to do so, so there
17 would be a question with regard to a cost -- you know, cost allocation, potential exposure
18 to the property taxes, and that -- those sorts of issues, totally aside from the legitimacy of
19 the ownership issues. So it -- so it seems to me that the first step is for all known creditors
20 who have collateral out there to be putting in their evidence with regard to their collateral,
21 and that those who have ownership claims doing the same, because then at least we've --
22 we've got some matrix to build on, and we may or may not be able to get things
23 substantively dealt with on October 23rd, but I know there will be issues aside from the
24 municipality issues that do have to be dealt with.
25

26 THE COURT: Do you know, or Mr. Quinlan may be in a better
27 position, but do you know -- I believe that that's probably in front of Justice Nielsen
28 because I am away in that period of time.
29

30 MR. RUSSELL: I -- I don't know.
31

32 THE COURT: So you may --
33

34 MR. RUSSELL: -- My Lord.
35

36 THE COURT: Okay. Okay.
37

38 MR. QUINLAN: Sorry, My Lord, the -- Mr. Quinlan --
39

40 THE COURT: Hi.
41

1 MR. QUINLAN: -- for the monitor. Yeah, that -- that date is
2 before Justice Nielsen.

3
4 THE COURT: Okay. That's why I'm not familiar with it.
5 Okay, fair enough.

6
7 Is there anything else from your perspective? I hear you on both the ownership and the --
8 the nature of claim, security clarifications or what your request would be for affidavits to
9 assert those on a timely basis. Anything else from your perspective?

10
11 MR. RUSSELL: No, My Lord. Once we've seen certainly the
12 property ownership claims --

13
14 THE COURT: Right.

15
16 MR. RUSSELL: -- once we've seen the evidence of that, we can
17 determine whether CWB sees an argument that they have a challenge to that. We may
18 want to have some questioning, but I suggest that we can, through counsel, try to get that
19 rolling, as long as we get the first step of the affidavits tabled.

20
21 THE COURT: Which is why I was saying that I don't think
22 that that should be held up by time in relation to *Virginia Hills* at all. I think we should be
23 moving ahead. Your point about questioning is something that I'm not going to speculate
24 on. I'm going to leave it to counsel. If you need directions, of course we'll give it to you,
25 but I rather anticipate you can get that done in an orderly fashion as well.

26
27 MR. RUSSELL: Yes.

28
29 THE COURT: Okay.
30 Mr. Quinlan, I think I'm going to turn to you as it relates to the lay of the land. Is there
31 anything further that you want to say on Ms. Finlay's request for adjournment on
32 Bonnyville and the taxation issue?

33
34 **Submissions by Mr. Quinlan**

35
36 MR. QUINLAN: No, My Lord. The monitor didn't object to that
37 adjournment. I mean, the monitor certainly booked the court application for the 21st. We
38 had a number of matters we thought might come before it, some of which won't be
39 proceeding due to events that have occurred since the booking, but we were -- all of you
40 are applying for advice and direction. We anticipated that both Sand Tiger and Aurora
41 would be bringing substantive applications to have those issues determined, so they were

1 really driving the bus. We were just getting it set on course.

2
3 With your -- the monitor's not opposed to that, in terms of what Mr. Russell's indicated. I
4 believe that the only party that these (INDISCERNIBLE) issues apply to are Aurora and
5 Tiger and 726. Aurora has dorms, which were sold and were the subject of a vesting --
6 prior vesting order by Mr. Justice Nielsen, so those dorms are already off site, and there's
7 money to be in the monitor's trust account pending determination of some of these issues.

8
9 As for Sand Tiger and 726, their dorms remain on site. I don't believe -- I believe all
10 those parties just had dorms. The monitor had received documentation from each of those
11 parties. I don't believe there's any rolling stock or any -- any other assets of that nature
12 that are subject of those ownership claims.

13
14 THE COURT: But you would agree with Mr. Russell as a
15 matter of due diligence it would make sense for the Court to make direction and
16 timeframes within which all of these claims, not just the notice of claims but the nature of
17 them, is itemized in affidavit form?

18
19 MR. QUINLAN: The monitor has no issue with that here. I -- I
20 can advise the Court that each party has been cooperative in providing the monitor with
21 their documentation, so we seen them, but I don't think it would be a problem or nor do I
22 think it would be a bad thing for the Court to have -- to direct that that evidence -- that
23 those documents be put in affidavit form and circulated to all the various creditors
24 involved in this matter through our server clubs.

25
26 THE COURT: I'm not sure. I understand that you are
27 volunteering to do that collectively. I might have thought that the nature of those claims
28 and the not posturing but the position being asserted was better in the hands of counsel in
29 respect of those claimants than for the monitor to act as a collective voice as to what it
30 interprets or understands from what's been received.

31
32 MR. QUINLAN: Sir, no, in the interests of adjudication I agree
33 with you. I believe it's those parties who'd be better served by putting their own
34 affidavits forward.

35
36 THE COURT: Okay.

37
38 MR. QUINLAN: I was just simply trying to advise that they have
39 provided the monitor with their documents already.

40
41 THE COURT: Sure, this is not a criticism --

1 MR. QUINLAN: (INDISCERNIBLE)

2
3 THE COURT: Sure, this Court's not criticizing anything that's
4 transpired to date. It is a matter of due diligence for the Court to have proper lay of the
5 land, to flesh out what it is that's going to be problematic, perhaps out of *Virginia Hills*,
6 but, in any event, it's an appropriate caution, and it may give rise to questioning if a party
7 takes a position that impacts some other claims or wasn't anticipated to be the position
8 taken by that party. Then others could initiate questioning and get that scheduled.

9
10 All right, is there any reason, since you have the Court's attention for the moment, Mr.
11 Quinlan, why there ought not to be a deadline set at the end of the first week of October
12 for those claims to be placed in affidavit form?

13
14 MR. QUINLAN: No, Sir. I think that would be an appropriate
15 date, given that -- well, the court hearing we have already scheduled for October 23rd.

16
17 THE COURT: Right.

18
19 MR. QUINLAN: Just so that if all affidavit evidence is in by the
20 first week of October, I think that would give the parties sufficient time so that whatever
21 other issues that are separate and apart from the fact issues can be considered and
22 determined on the 23rd, if that's the hearing.

23
24 **Decision**

25
26 THE COURT: All right. Then unless there's any other
27 objection, I'll make an almost imperceptible pause before I then declare that October the
28 5th will be the date for all filings to address claims by creditors, and I believe that Mr.
29 Russell makes a useful distinction. Those claims of ownership, to the extent that that's a
30 distinction with a difference, and I believe it is, are similarly to place their position in
31 affidavit form by the October 5th date as well.

32
33 MR. QUINLAN: My Lord, Mr. Quinlan here, just to clarify, is
34 October the 5th the date for any monitor's report as well for that October 23rd -- that --

35
36 THE COURT: No, I believe that the monitor, because of your
37 function, should have some delay period within which to prepare the monitor's report.
38 Given that this is for the 23rd, it would make some sense for your report to be in by the --
39 just give me a second to get back to that calendar -- by the 10th of October. Well, maybe
40 I need to give you the 11th since it looks like the 8th is a holiday. So the monitor's report
41 will be in by October the 11th, and you would follow the practice note in respect of filing

1 of briefs. I don't really want to try and case-manage Justice Nielsen's issues. Did he
2 provide directions as to timing for submissions for this October 23rd date?

3
4 MR. QUINLAN: No, Sir, he did not.

5
6 THE COURT: Well, then it seems to me, not knowing what the
7 full breadth of that is, that those applicants should have their materials in by October -- is
8 it October 23 that Justice Nielsen's hearing this?

9
10 MR. QUINLAN: Correct.

11
12 THE COURT: That the applications then would be in by the
13 12th and responses by the 17th of October. That's not exactly compliant with the practice
14 note, but it seems to me it gives Justice Nielsen a reasonable period of time within which
15 to make assessments.

16
17 Ms. Finlay.

18
19 MS. FINLAY: Thank you, Sir. Might I simply ask that the
20 order with respect to the filing of the affidavits also provide a direction that those
21 affidavits identify the municipality in which the property or assets are located?

22
23 THE COURT: I think that's a good caution, an appropriate
24 piece of due diligence, to alert those likely impacted by it.

25
26 MS. FINLAY: Thank you.

27
28 THE COURT: Mr. Russell.

29
30 MR. RUSSELL: My Lord, might I also ask that the affidavits in
31 the case of the creditors show the debt levels that they are claiming?

32
33 THE COURT: Quite so.

34
35 MR. RUSSELL: Okay.

36
37 THE COURT: That also makes complete sense.

38
39 Mr. Quinlan, are there any other matters that the direction for the 5th of October should
40 itemize?
41

1 MR. QUINLAN: No, Sir, I think -- I think Ms. Finlay and Mr.
2 Russell have sufficiently articulated the -- the two additional points beyond the
3 identification of the assets on the terms of the assets.
4

5 THE COURT: All right. Is there any feedback with respect to
6 the Court's proposed dates, recognizing that I'm really affecting the schedule for the
7 hearing contemplated in front of Justice Nielsen, as opposed to myself? Nothing else? All
8 right, then I will leave those dates. Who is preparing this order? Mr. Quinlan, will you
9 prepare it?
10

11 MR. QUINLAN: I think for the sake of brevity, My Lord, it
12 should be someone who is currently in town. I'm -- I'm in the mountains right now. I
13 won't be back until about Monday. Perhaps I can impose upon Ms. Finlay or Mr. Russell
14 to take the lead in drafting it.
15

16 THE COURT: Their body language tells me they're trying to
17 sort that out.
18

19 MS. FINLAY: Very subtle.
20

21 MR. RUSSELL: I'm pushing off the --
22

23 THE COURT: I can see that, Mr. Russell.
24

25 Ms. Finlay, how are you responding to this push?
26

27 MS. FINLAY: I'm happy to prepare the orders and circulate
28 them to counsel so that they make sure that I get it right. I was just saying to my friend,
29 Mr. Russell, that I propose to prepare two orders, one with respect to the -- unless you
30 direct otherwise -- one with respect to the October 23rd hearing and the filings that are
31 required with respect to that and then one with respect to the adjournment of simply the
32 municipal tax issues on the 12th of -- 21st, sorry, of September, so that if that date is -- is
33 necessary for any other matters, it stays open, but just adjourning those matters, subject to
34 a final determination in the *Virginia Hills* matter.
35

36 THE COURT: That makes complete sense, but it isn't just the
37 deadlines in respect of briefs by applicants. It's also the October 5 dates in respect of
38 ownership --
39

40 MS. FINLAY: Yes.
41

1 THE COURT: -- as well as creditor claims.
2
3 MS. FINLAY: Yes, I simply meant that --
4
5 THE COURT: Okay.
6
7 MS. FINLAY: -- there -- there --
8
9 THE COURT: Your own adjournment is a separate issue. I
10 quite agree.
11
12 MS. FINLAY: Yes, thank you, Sir.
13
14 THE COURT: A second order will be appropriate.
15
16 MS. FINLAY: Yes.
17
18 MR. RUSSELL: And -- and, My Lord, Mr. McCullough had just
19 suggested to me that it -- it might be helpful for creditors to describe not only what their
20 collateral is but where -- in which municipality it is -- the collateral is located to the best
21 of their knowledge. That will probably help the municipalities figure out whether there's
22 a fight with Wild Aven (phonetic) or not.
23
24 THE COURT: Quite so.
25
26 MS. FINLAY: Yes.
27
28 THE COURT: You understand that will be incorporated,
29 please, Ms. Finlay?
30
31 MS. FINLAY: Yes, and I will -- I will circulate those draft
32 orders to all counsel.
33
34 **Discussion**
35
36 THE COURT: Okay. Okay. Is there anything further, then, in
37 respect of the adjournment on *Virginia Hills* or the matter as to clarification of claims as
38 may impact -- well, and it wouldn't just be restricted by what Justice Nielsen may be
39 dealing with. I think it's a useful tool and backdrop moving forward for other matters. It
40 isn't just going to inform the October 23rd proceedings.
41

1 If not, then it seems to me that what I would like, Mr. Quinlan, is at least some verbal
2 update as to what September 21 looks like, and, indeed, I might suggest that the Court
3 has read the materials for First Aven (phonetic) Financial and Xenex (phonetic) that Ms.
4 Ferris (phonetic) has provided. I don't know that there is any dispute with respect to
5 either the appraisal or the proposed language of an order that would list. I don't know
6 how controversial all of that is and whether an order would be contemplated. I want to
7 know how we can make best use of the September 21st date, so I will invite you, Mr.
8 Quinlan, to speak to that.

9
10 MR. QUINLAN: Well, the -- the good part, My Lord, with --
11 with those issues being moved off that date to the October date, I -- I certainly don't think
12 we need the full day that was scheduled. The -- the two primary matters that I think
13 would be for Your Lordship on that day are Ms. Ferris's application for approval of the
14 sale of the farm. I think what might be a contentious issues is the amount that the monitor
15 will be asking for as a holdback from those (INDISCERNIBLE). The two dates that Your
16 Lordship were to bring the approval of that sale, so that issue, I think, will be live before
17 Your Lordship on that day.

18
19 I do -- I do not believe it's been filed yet, but I -- I understand from speaking to their
20 counsel yesterday that Staley Construction (phonetic), who was the first mortgagee in
21 respect of the Winterburn yard that's already been sold, is going to be bringing an
22 application for interim distribution of those sale proceeds, which are currently being held
23 by the monitor. Again, there would be that issue before the Court, and should Your
24 Lordship grant the interim distribution, there may be a contested issue with respect to,
25 again, how much the monitor will have as a holdback for those sales proceeds or any
26 final cost out they should -- which obviously will not be determined until the end of these
27 proceedings.

28
29 So with -- with those two things being heard, I think that everything else being moved
30 off, those are likely going to be the only issues before Your Lordship on that day. There
31 may -- they may (INDISCERNIBLE) be a sale going through as well. The monitors have
32 some ongoing negotiations with that, but I don't know if that will be concluded in time to
33 be heard on September 21.

34
35 THE COURT: I'm sorry, sale on what?

36
37 MR. QUINLAN: Oh, the sale of some assets on what we call the
38 Monea (phonetic) camp.

39
40 THE COURT: Okay, just --

41

1 MR. QUINLAN: So those negotiations are still ongoing, and I'm
2 not sure we'll be completed in time.

3
4 THE COURT: Okay.

5
6 MR. QUINLAN: But that may be added to the list last minute.

7
8 THE COURT: Okay, I'm not opposed to last-minute
9 attendance in court where matters are basically sorted out and therefore need Court
10 approval or fine-tuning in respect of an amount or a date or things of that sort. If there's a
11 substantive dispute, then I need to know what point of time that matter is intended to be
12 crystallized and presented to the Court so that the parties have materials that the Court
13 can review and effectively address on a prepared or informed basis.

14
15 So we've got Ms. Ferris's application. I don't have anything from your office in respect
16 of the issue of the holdback, if that's the only point in contention there, so that needs to
17 be addressed shortly. On the Staley Construction on Winterburn, once again, that needs to
18 be crystallized to know what the basis is for a proposed holdback and what the pushback
19 on that would be by Staley.

20
21 MR. QUINLAN: Yes, My Lord. I -- I -- can advise that it's our
22 intention to have our application document our monitor's report, confidential
23 supplemental monitor's report and our brief, all filed on Monday, within our normal
24 commercial list filing deadline.

25
26 THE COURT: Okay.

27
28 Mr. Russell.

29
30 MR. RUSSELL: And, My Lord, Mr. McCullough had also just
31 mentioned to me that there might be a few other cleanup issues that may be in the
32 application that haven't been mentioned here, but he had anticipated anything overly
33 contentious.

34
35 THE COURT: Okay. Okay, well, you've got my overview of
36 things. I don't mind dealing with matters in the nature of housekeeping. Let's make sure
37 that we are moving forward and have court direction for those things that the parties have
38 sorted out, but particularly where it's quite obvious and it has been throughout the past 15
39 months that no one judge is able to give you a seamless audience on issues, it's really
40 important that the difference between housekeeping or let's remain current items and
41 contentious issues needs to be well-planned and addressed on a timely basis.

1 So in that I haven't made any direction of course for questioning in respect of the October
2 5 affidavits, you're going to need to do that on a prompt and timely basis, all right?

3
4 Ms. Finlay?

5
6 MS. FINLAY: Sir, it occurred to me that -- so we're going to
7 have affidavits prepared by creditors that disclose the nature of their claim and then any
8 ownership issues. Those will identify the municipalities in which those items are located.
9 Will you be looking for -- will it assist the Court then to have municipalities, after the
10 October 5th date, then particularize their claims based on the affidavits that they receive,
11 because I think the whole purpose was to be able to try to bring at least to a head people's
12 various interests that they're claiming in these items.

13
14 Now, municipalities would only be claiming an interest or a special lien on items that fall
15 within the definition of obviously the lands but also the improvements. For that, we will
16 need to rely on the affidavits. Now, maybe we don't need to deal with that in such a
17 formal way. We may be able to deal with that by discussion, but if we're going to have a
18 time where all -- all of the property is going to be identified and people's claims
19 identified, does it make sense to set a date by which the municipalities would review
20 those things and identify the items that they -- they assert a special lien on.

21
22 THE COURT: I think that again makes eminent sense in
23 crystallizing people's thought processes. I have alerted you and it's not anything that's
24 going to get formalized in today's directions, but we have set up a special commercial
25 sitting that isn't just accommodating Canada North, of course, but for the week of
26 December the 5th, so with that in mind, it seems to me that impacted municipalities, in
27 reviewing the October 5 affidavits that identify property within their jurisdictions, should
28 be responding and placing evidence that would support their entitlement, irrespective of
29 or setting aside what the Court may interpret of section -- is it 341? I've forgotten now.

30
31 MS. FINLAY: Section -- section 348.

32
33 THE COURT: Eight.

34
35 MS. FINLAY: Yes.

36
37 THE COURT: 348, thank you, of the *MGA* that there be a date
38 set for those to be expressed, and I might suggest that that be not later than October the
39 26th. Is there any pushback against that date? It will be right after Justice Nielsen's, so
40 everybody will have had at least a couple of breakfasts post that process to finalize
41 positions.

1 Ms. Finlay, any reaction to 26th?

2

3 MS. FINLAY: No, Sir, that date is fine for us.

4

5 THE COURT: Okay. I will have you, if you would, capture
6 that in that same order.

7

8 MS. FINLAY: Yes, I will, Sir.

9

10 THE COURT: All right, superb.

11

12 MR. RUSSELL: My Lord, would it be appropriate for us to book
13 a day in the week of December 5th so we have something for whatever falls out of the
14 October 23rd?

15

16 THE COURT: I believe that that's prudent.

17

18 MR. RUSSELL: All right.

19

20 THE COURT: Bearing in mind that, of course, Ms. Hinz
21 should be alerted that in the event the *Virginia Hills* isn't decide, then we're going to
22 have to adjourn because that's a central piece as to not only whether the matter can be
23 argued, because we're awaiting that decision, but the scope or time allotment to it. You
24 should get a full day, I believe, unless counsel think it should be even longer. I don't
25 know. I don't know how many municipalities there are, how similar or dissimilar their
26 positions may be.

27

28 You people will assess that. It is a fresh commercial sitting, so she will give you that
29 amount of time that you collectively determine would be needed for this, on the basis that
30 in the event you don't have *Virginia Hills* that you may not be able to make use of it, and
31 that's unfortunate.

32

33 MR. RUSSELL: My Lord, perhaps what we could do after --
34 after we -- you've adjourned, we could have counsel stay on the phone and just
35 collectively discuss what -- what might work then.

36

37 THE COURT: I think that makes complete sense.

38

39 Ms. Finlay, anything further?

40

41 MS. FINLAY: No, is -- the courtroom available?

1 THE COURT CLERK: Yeah, it is.
2
3 MS. FINLAY: Okay.
4
5 THE COURT: Oh, you're so good, dear, then.
6
7 MS. FINLAY: Okay.
8
9 THE COURT: All right. Is there anything else? Do I have Ms.
10 Ferris on the phone or Ms. Ferris's office? All right, then I will just leave it with you,
11 Mr. Quinlan, to have due diligent discussions with Ms. Ferris as to holdback. That seems
12 to be the only live issue on her application and to alert the Court about the best use of the
13 September 21st date, all right?
14
15 MR. QUINLAN: Understood, My Lord.
16
17 THE COURT: Okay. Anything else this morning?
18
19 MS. FINLAY: Nothing, Sir.
20
21 THE COURT: Thanks, everyone, for attending. We are
22 adjourned.
23

24
25 PROCEEDINGS CONCLUDED
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1 **Certificate of Record**

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3 I, Nelin Valji, certify that this recording is the record made of the evidence in the
4 proceedings in Court of Queen's Bench, held in courtroom 611, at Edmonton, on the 6th
5 day of September, 2018, and I, Nelin Valji, was the court official in charge of the sound-
6 recording machine during the proceedings.
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1 **Certificate of Transcript**

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3 I, Kaye Garner, certify that

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

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

11
12 Kaye Garner, Transcriber

13 Order Number: AL-JO-1002-1178

14 Dated: December 11, 2018
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