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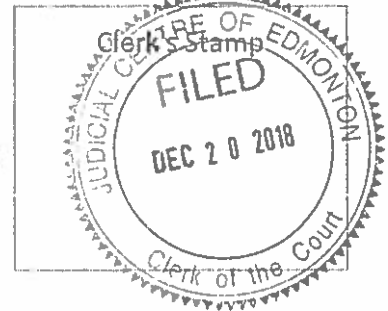
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COURT

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

**NOTICE OF AMENDED APPLICATION BROUGHT BY 726 REMOTE
ACCOMMODATIONS, LTD., 726 MODULAR FINANCE LTD. AND
RELIANT ASSET MANAGEMENT, LLC FOR A DECLARATION OF
OWNERSHIP AND PRIORITY IN RESPECT OF CERTAIN EQUIPMENT**

ADDRESS FOR SERVICE AND
CONTACT INFORMATION
OF PARTY FILING THIS
DOCUMENT

**Jensen Shawa Solomon Duguid Hawkes LLP
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File: 11396-384**

NOTICE TO RESPONDENT(S):

This Application is made against you. You are a Respondent.

You have the right to state your side of this matter before the Justice.

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

Date: January 10 and 11, 2019 or as such other date as may be set
by the Court
Time: At such time of day as the Court may Set
Where: Law Courts, 1A Sir Winston Churchill Square, Edmonton,
Alberta T5J 0R2

Before Whom: Mr. Justice Ken G. Nielsen

Go to the end of this document to see what else you can do and when you must do it.

REMEDY CLAIMED OR SOUGHT:

The Applicants, 726 Remote Accommodations, Ltd. ("**726**"), 726 Modular Finance Ltd. ("**726 Finance**"), and Remote Asset Management, LLC ("**RAM**"); (each of RAM, 726 Finance and 726 are collectively hereinafter referred to as, the "**726 Group**" or the "**Applicants**") seek the following relief:

1. All capitalized terms have the meanings ascribed to them below including in paragraphs 9 to 24 hereof.
 - 1.a. An Order abridging the time for service of this Application to the time given and deeming service thereof to be good and sufficient;
2. With respect to the Bonnyville Equipment, Bonnyville Ancillary Equipment the Peace Ancillary Equipment and the Kilometer Ancillary Equipment, an Order declaring that it is owned by 726 or the 726 Group;
3. An Order declaring that the Leased Equipment (which is the subject of the Leases between 726 as lessor and each of the Lessee LPs):
 - (a) is the subject of a true lease and it, is owned by 726 or the 726 Group, and not CNC or any of the LPs; and
 - (b) is not the subject of a security interest pursuant to the purported security granted by the LPs in favour of CNC by virtue of the GSAs.
4. Further, or in the alternative, an Order declaring that the GSAs are invalid, void, voidable, should be set aside, and/ or are otherwise unenforceable;

5. Further, or in the further alternative, an Order declaring that the security granted by the LPs in favour of CWB does not create a security interest in the Leased Equipment, or alternatively, that it is otherwise invalid and/or unenforceable;
6. Further, or in the alternative, an Order declaring that the deemed security interest in respect of the Leased Equipment in favour of 726 has priority over all the claims of CNC and CWB;

Further, an Order declaring that the deemed security interest in respect of the Leased Equipment in favour of 726 has priority over any other claims, including those of any Municipalities; ~~and~~

- 7.a Further, or in the alternative, the 726 Group is a bailor and the LPs are bailees with respect to certain assets;
- 7.b Further, or in the alternative, if the CNC GSAs are valid and enforceable, they ought to be rectified to reflect the actual agreement between the parties to the effect that GSAs were to encumber only the LPs' receivables;
- 7.c Further, or in the alternative, 726 seeks relief from forfeiture; and
8. Such further and other relief as may be sought by the Applicants and this Court may grant.

GROUND FOR MAKING THIS APPLICATION:

9. 726 is a subsidiary of RAM, and an affiliate of 726 Finance. Each of RAM, 726 Finance and 726 from time to time purchase equipment and the 726 Group is at all times the owner of equipment, which 726 is entitled to lease to third parties as lessor.
10. 726 is also a limited partner in each of the following limited partnerships: Bonnyville Lodge LP ("**Bonnyville LP**"), Wandering River Lodge LP ("**Wandering LP**"), Peace River

Lodge LP ("**Peace LP**") and Kilometer 147 LP ("**Kilometer LP**" and together with Bonnyville LP, Wandering LP and Peace LP, collectively the "**LPs**").

11. Further, 726 along with 1851239 Alberta Ltd., formerly, Canada North Camps Inc. ("**CNC**") (and in some cases others) is a shareholder of each of the general partners of the LPs, namely: Bonnyville Lodge GP Ltd. ("**Bonnyville GP**"), Wandering River Lodge GP Ltd. ("**Wandering GP**"), Peace River Lodge GP Ltd. ("**Peace GP**"), Kilometer 147 GP Ltd. ("**Kilometer GP**" and together with Bonnyville GP, Wandering GP and Peace GP, the "**GPs**") which are the general partners of Bonnyville LP, Wandering LP, Peace LP and Kilometer LP, respectively.
12. Each of Bonnyville GP, Wandering GP, Peace GP and Kilometer GP are governed by a unanimous shareholders agreement (each a "**USA**" and collectively, the "**USAs**").
13. As part of its commitment to the limited partnerships, pursuant to each of their limited partnership agreements (each an "**LPA**" and collectively, the "**LPAs**"):
 - (a) 726 leased equipment (the "**Leased Equipment**") owned by one of the entities in 726 Group to each of Wandering LP, Peace LP and Kilometer LP (the "**Lessee LPs**", and their general partners the "**Lessee GPs**"). All such leasing occurred pursuant to lease agreements, as follows:
 - (i) Lease between 726 and Wandering LP, dated December 24, 2014 (the "**Wandering Lease**"), with a minimum lease term of 42 months and no option to purchase; and
 - (ii) Lease between 726 and Peace LP, dated January 19, 2015 (the "**Peace Lease**"), with a minimum lease term of 45 months and an option to purchase provided Peace LP made all 45 lease payments in a timely fashion; and
 - (iii) Lease between 726 and Kilometer LP, dated January 12, 2015, with a minimum lease term of 45 months and an option to purchase provided

Kilometer LP made all 45 lease payments in a timely fashion (the “**Kilometer Lease**”, and together with the Wandering Lease and the Peace Lease, the “**Leases**”); and

- (b) 726 provided equipment to Bonnyville LP which it would transfer to Bonnyville LP upon receipt of payment of certain distributions (the “**Bonnyville Equipment**”).

14. To date:

- (a) The Lessee LPs have failed to pay the totality of their respective lease obligations;
- (b) Peace LP and Kilometer LP have not sought to exercise their respective options to purchase under the Leases; and
- (c) Bonnyville LP has failed to make the required distributions and, accordingly, 726 has not transferred the Bonnyville Equipment to Bonnyville LP.

15. Accordingly, the Leased Equipment and the Bonnyville Equipment remains the personal property of the 726 Group.

16. At no time did the Leased Equipment become the personal property of the Lessee LPs, and at no time did the Bonnyville Equipment become the personal property of Bonnyville LP.

17. Further, 726 Group also owns certain ancillary equipment that is in the possession of each of Bonnyville LP, Peace LP and Kilometer LP, which is subject to a claim by 726, respectively the “**Bonnyville Ancillary Equipment**”, the “**Peace Ancillary Equipment**” and the “**Kilometer Ancillary Equipment**”.

18. 726 Group claims ownership of the Bonnyville Ancillary Equipment, Peace Ancillary Equipment and the Kilometer Ancillary Equipment.

19. Subsequent to each of the Leases, on March 29, 2017, each of the Lessee LPs purportedly granted a general security agreement in favour of CNC as continuing security for the payment in full of all indebtedness of each Lessee LP to CNC (each a “GSA” and collectively the “GSAs”).
- 19.a During cross-examination, Mr. McCracken admitted that the CNC GSAs were not meant to secure the entirety of the LP’s assets; rather, the purpose of the GSAs was to secure the LPs accounts receivables.
20. The GSAs do not create a security interest in the Leased Equipment, which is personal property of the 726 Group.
21. Subsequent to execution of each of the Leases, on July 30, 2015, Peace LP and Kilometer LP, and on October 2, 2015 Bonnyville LP (the “**Purported Guarantors**”, their general partners the “**Purported Guarantors’ GPs**”) purportedly granted full liability guarantees (the “**Purported Guarantees**”) in favour of Canadian Western Bank (“CWB”) in respect of CNC’s indebtedness and liability to CWB.
22. The Purported Guarantees include a grant of limited security in favour of CWB to secure payment of the debts and liabilities owing by CNC to the Purported Guarantors; the Purported Guarantees do not create a security interest in the Leased Equipment.
23. On March 29, 2017 CNC registered its security interest under the GSAs (the “**CNC Registrations**”) against each of the Lessee LPs at the personal property registry (the “PPR”). Mr. McCracken testified that he is unaware of how or by whom the GSAs were registered against Leased Assets.
24. On November 27, 2018, 726 registered its interest as lessor of the Leased Equipment at the PPR (the “**726 Registrations**”).
25. The following grounds apply specifically in respect of the (alternative) relief set out at paragraph 4, 7.b hereof:

- (a) For lack of consideration, the GSAs are invalid and otherwise unenforceable and therefore did not create any security interests in favour of CNC in the Lessee LPs;
- (b) Alternatively:
 - (i) the GSAs and Purported Guarantees were not properly authorized, as follows:
 - A. The GSAs were executed for the Lessee LPs by the Lessee GPs. Paul McCracken ("**McCracken**") was the one who signed the GSAs on behalf of the Lessee GPs;
 - B. The Purported Guarantees were executed by each of the Purported Guarantors and the Purported Guarantors' GPs. McCracken was the one who signed the Purported Guarantees on behalf of each of the Purported Guarantors and the Purported Guarantors' GPs; and
 - C. The execution of the GSAs and Purported Guarantees was contrary to the relevant LPAs and USAs;
 - (ii) Contrary to requirements, the Lessee LPs and Purported Guarantors never issued unanimous resolutions of the limited partners in respect of the GSAs and the Purported Guarantees;
 - (iii) As shareholder of each of the Lessee GPs and Purported Guarantors' GPs, 726 was required to provide its authorization for the Lessee GPs and Purported Guarantors' GPs to enter into the GSAs and Purported Guarantees on behalf of the Lessee LPs and Purported Guarantors; the Lessee GPs and Purported Guarantors' GPs never issued unanimous resolutions of the shareholders in respect of the GSAs and the Purported Guarantees;

- (iv) McCracken was aware that he never had authority to execute the GSAs and Purported Guarantees on behalf of the Lessee LPs and Purported Guarantors;
- (v) Given McCracken's actions, all without 726's knowledge, 726 was denied of its right to have a direct say in whether the Lessee LPs and Purported Guarantors should grant and whether the Lessee GPs and Purported Guarantors' GPs should cause the Lessee LPs and Purported Guarantors to take the purported security and grant the GSAs in favour of CNC and Purported Guarantees in favour of CWB;
- (vi) McCracken therefore caused the Lessee GPs and Purported Guarantors' GPs to effect a result that wrongfully favours CNC and/or is oppressive or unfairly prejudicial to or that unfairly disregards the interests of 726 as shareholder of each of the Lessee GPs and Purported Guarantors' GPs;
- (vii) Further, to the extent that 726's claim is as a secured creditor of the Lessee LPs:

A. The interests of any creditor claim of CNC were intentionally or effectually preferred by McCracken over those of 726, including insofar as the GSAs constituted a conveyance of an interest that had the intent or effect of defeating or hindering 726's secured claim against the Lessee LPs; and

B. Given that CNC was a shareholder of the Lessee GPs at the time that the GSAs were executed, and CNC received the benefit of the GSAs, the GSAs were merely a strategy to secure a benefit for CNC with knowledge by CNC of the intent or effect of defeating or hindering 726's security interest in the Lessee LPs; and

(viii) The GSAs were not meant to secure anything other than the LPs accounts receivables; and

(c) Such further and other grounds as may be advanced at the hearing of the Application.

AFFIDAVIT OR OTHER EVIDENCE TO BE USED IN SUPPORT OF THIS APPLICATION:

- 26. The pleadings and materials filed in the within proceedings, including those referred to below, as well as such further and other material as this Honourable Court may permit;
- 27. Affidavit of B. Roman, sworn on October 2, 2018;
- 28. Affidavit # 6 of Jessie Taha, sworn on October 3, 2018;
- 29. Affidavit of B. Roman, sworn on November 27, 2018;
- 30. Order for advice and direction, granted by Hillier J. on September 26, 2018;
- 31. Monitor's Seventeenth Report, filed on September 10, 2018;~~and~~
- 32. Monitor's Eighteenth Report, filed on October 11, 2018;and
- 32.a Affidavit of G. Machitova sworn December 20, 2018 and filed concurrently with this Amended Application.

APPLICABLE ACTS, REGULATIONS AND RULES:

- 33. *Alberta Rules of Court*, Alta Reg 124/2010
- 34. *Bankruptcy and Insolvency Act*, RSC, 1985, c B-3
- 35. *Business Corporations Act*, RSA 2000, c B-9
- 36- *Fraudulent Preferences Act*, RSA 2000, c F-24
- 37- *Statute of Fraudulent Conveyances*, 1571, 13 Eliz 1, c 5

38.a Personal Property Security Act, RSA 2000, c. P-7

38.b Partnership Act, RSA 2000, c. P-3

38.c Judicature Act, RSA 2000, c. J-2

39. Any applicable acts and regulations as counsel may advise and this Honourable Court may permit.

ANY IRREGULARITY COMPLAINED OF OR OBJECTION RELIED ON:

40. None.

HOW THE APPLICATION IS PROPOSED TO BE HEARD OR CONSIDERED:

41. Before the Honourable Mr. Justice Ken G. Nielsen sitting on the Commercial List.

WARNING

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