

COURT FILE NUMBER 1801-17912

COURT COURT OF QUEEN'S BENCH OF ALBERTA

JUDICIAL CENTRE CALGARY

PLAINTIFF ATB FINANCIAL (FORMERLY ALBERTA TREASURY BRANCHES)

DEFENDANTS HUGHSON TRUCKING INC., LEROY CHRISTIAN HUGHSON, DARREN JAMES HUGHSON, and JUSTIN LEE HUGHSON



DOCUMENT **ORDER (Sale Approval and Vesting Order)**

ADDRESS FOR SERVICE AND CONTACT INFORMATION OF PARTY FILING THIS DOCUMENT: McCarthy Tétrault LLP
4000, 421 – 7th Avenue SW
Calgary, Alberta T2P 4K9
Attention: Sean Collins / Pantelis Kyriakakis
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Email: scollins@mccarthy.ca / pkyriakakis@mccarthy.ca

I hereby certify this to be a true copy of the original *Didi*

Dated this *13* day of *March 2020*
[Signature]
for Clerk of the Court

DATE ON WHICH ORDER WAS PRONOUNCED: **March 13, 2020**

LOCATION OF HEARING OR TRIAL: **Calgary, Alberta**

NAME OF JUDGE WHO MADE THIS ORDER: **Honourable Justice P.R. Jeffrey**

UPON the application (the "**Application**") of Ernst & Young Inc. (the "**Receiver**"), in its capacity as the court-appointed receiver and manager of the undertakings, property, and assets of Hughson Trucking Ltd. (the "**Debtor**") for an order approving the transactions (collectively, the "**Transaction**") contemplated by Asset Purchase Agreement, dated February 19, 2020 (the "**APA**"), between the Debtor, by and through the Receiver, in its capacity as the court-appointed receiver and manager of the Debtor, and 1010307 Alberta Ltd. (the "**Purchaser**"), as purchaser, attached as Confidential Appendix "B" to the Third Report of the Receiver, dated March 4, 2020 (the "**Third Receiver's Report**"), and vesting in the Purchaser (or its nominee), all of the Debtor's right, title, and interest in and to the assets described in the APA (collectively, the "**Assets**");

AND UPON HAVING READ the Receivership Order, dated December 19, 2018 (the "**Receivership Order**"), the Third Receiver's Report, and the Affidavit of Service of Katie Doran, sworn on March 9, 2019 (the "**Service Affidavit**"), all filed; AND UPON having read Confidential Appendices "A" and "B" to the Third Receiver's Report (collectively, the "**Confidential**");

Appendices”), unfiled; **AND UPON HEARING** the submissions of counsel for the Receiver and for any other parties who may be present;

IT IS HEREBY ORDERED AND DECLARED THAT:

SERVICE

1. The time for service of the Application and the Third Receiver’s Report is abridged, the Application is properly returnable today, service of the Application and the Third Receiver’s Report on the service list, in the manner described in the Service Affidavit, is good and sufficient, and no other persons, other than those listed on the service list (the “**Service List**”) attached as an exhibit to the Service Affidavit, are entitled to service of the Application or the Third Receiver’s Report.

APPROVAL OF THE TRANSACTION

2. The Transaction is commercially reasonable and in the best interests of the Debtor, creditors, and its stakeholders. The Transaction is hereby approved, and the execution of the APA by the Receiver is hereby authorized, ratified, confirmed, and approved, with such minor amendments as the Receiver may deem necessary. The Receiver is hereby authorized and directed to complete the Transaction, subject to the terms of the APA, to perform its obligations under the APA and any ancillary documents related thereto, and to take such additional steps and execute such additional documents as may be necessary or desirable for the completion of the Transaction or for the conveyance of the Assets to the Purchaser (or its nominee).

VESTING OF THE ASSETS

3. Upon the delivery of a Receiver’s certificate to the Purchaser (or its nominee) substantially in the form set out in Schedule “**A**” hereto (the “**Receiver’s Certificate**”), subject only to the Permitted Encumbrances (as defined below), all of the Debtor’s right, title, and interest in and to the Assets, as described in the APA, shall vest absolutely, exclusively, and entirely in the name of the Purchaser (or its nominee), free and clear of and from any and all caveats, security interests, hypothecs, pledges, mortgages, liens, trusts or deemed trusts, reservations of ownership, privileges, interests, assignments, actions, judgements, executions, levies, taxes, writs of enforcement, charges, or other claims, whether contractual, statutory, financial, monetary, or otherwise, whether or not they have attached or been perfected, registered or filed and whether secured, unsecured or otherwise (collectively, “**Claims**”) including, without limiting the generality of the foregoing:

- (a) any encumbrances or charges created by the Receivership Order;
- (b) all charges, security interests or claims evidenced by registrations pursuant to:
 - (i) the *Personal Property Security Act* (Alberta) or any other personal property registry system; and, (ii) the *Land Titles Act*, RSA 2000, c L-7 (the "**Land Titles Act**");
- (c) any liens or claims of lien under the *Builders' Lien Act* (Alberta); and
- (d) those Claims listed in Schedule "**B**" hereto (all of which are collectively referred to as the "Encumbrances", which term shall not include the permitted encumbrances, caveats, interests, easements, and restrictive covenants listed in Schedule "**C**" (collectively, "**Permitted Encumbrances**"));

and for greater certainty, this Court orders that all Claims, including the Encumbrances but excluding the Permitted Encumbrances, affecting or relating to the Assets are hereby expunged, discharged and terminated as against the Assets.

4. Upon delivery of the Receiver's Certificate, and upon filing of a certified copy of this Order, together with any applicable registration fees, all governmental authorities including those referred to below in this paragraph (collectively, "**Governmental Authorities**") are hereby authorized, requested, and directed to accept delivery of such Receiver's Certificate and certified copy of this Order as though they were originals and to register such transfers, interest authorizations, discharges and discharge statements of conveyance as may be required to convey to the Purchaser or its nominee clear title to the Assets, subject only to Permitted Encumbrances. Without limiting the foregoing:

- (a) the Registrar of Land Titles ("**Land Titles Registrar**") for the lands defined below shall and is hereby authorized, requested, and directed to forthwith:
 - (i) cancel existing Certificates of Title No. 961 043 858 and 961 043 875 for those lands and premises municipally described as 116 8th Avenue NW, Milk River, Alberta and 124 8th Avenue NW, Milk River, Alberta, and legally described as:

PLAN 7410759
BLOCK 37

LOT 17
EXCEPTING THEREOUT ALL MINES AND MINERALS

(**"Parcel 1"**)

AND

PLAN 7410759
BLOCK 37
LOT 18
EXCEPTING THEREOUT ALL MINES AND MINERALS

(**"Parcel 2"** Parcel 2 and Parcel 1 are collectively, the **"Lands"**).

- (ii) issue new Certificates of Title for the Lands in the name of the Purchaser (or its nominee);
 - (iii) transfer to the new Certificates of Title the existing instruments listed in Schedule "C", to this Order, and to issue and register against each of the new Certificates of Title such new caveats, utility rights of ways, easements or other instruments as are listed in Schedule "C"; and
 - (iv) discharge and expunge the Encumbrances listed in Schedule "B" to this Order and discharge and expunge any Claims including Encumbrances (but excluding Permitted Encumbrances) which may be registered after the date of the APA against the existing Certificate of Title to the Lands;
- (b) the Registrar of the Alberta Personal Property Registry (the **"PPR Registrar"**) shall and is hereby directed to forthwith cancel and discharge any registrations at the Alberta Personal Property Registry (whether made before or after the date of this Order) claiming security interests (other than Permitted Encumbrances) in the estate or interest of the Debtor in any of the Assets which are of a kind prescribed by applicable regulations as serial-number goods.

5. In order to effect the transfers and discharges described above, this Court directs each of the Governmental Authorities to take such steps as are necessary to give effect to the terms of this Order and the APA. Presentment of this Order and the Receiver's Certificate shall be the sole and sufficient authority for the Governmental Authorities to make and register transfers of title or interest and cancel and discharge registrations against any of the Assets of any Claims including the Encumbrances but excluding Permitted Encumbrances.

6. No authorization, approval or other action by and no notice to or filing with any governmental authority or regulatory body exercising jurisdiction over the Assets is required for the due execution, delivery and performance by the Receiver of the APA.

7. Upon delivery of the Receiver's Certificate together with a certified copy of this Order, this Order shall be immediately registered by the Land Titles Registrar notwithstanding the requirements of section 191(1) of the *Land Titles Act*, RSA 2000, c.L-7 and notwithstanding that the appeal period in respect of this Order has not elapsed. The Land Titles Registrar is hereby directed to accept all Affidavits of Corporate Signing Authority submitted by the Receiver in its capacity as Receiver of the Debtor and not in its personal capacity.

8. For the purposes of determining the nature and priority of Claims, the net proceeds from the sale of the Assets (to be held in an interest bearing trust account by the Receiver) shall stand in the place and stead of the Assets from and after delivery of the Receiver's Certificate and all Claims including the Encumbrances (but excluding Permitted Encumbrances) shall not attach to, encumber, or otherwise form a charge, security interest, lien, or other Claim against the Assets and may be asserted against the net proceeds from sale of the Assets with the same priority as they had with respect to the Assets immediately prior to the sale, as if the Assets had not been sold and remained in the possession or control of the person having that possession or control immediately prior to the sale.

9. Except as expressly provided for in the APA or by section 5 of the *Alberta Employment Standards Code*, the Purchaser (or its nominee) shall not, by completion of the Transaction, have liability of any kind whatsoever in respect of any Claims against the Debtor.

10. Upon completion of the Transaction, the Debtor and all persons who claim by, through or under the Debtor in respect of the Assets, and all persons or entities having any Claims of any kind whatsoever in respect of the Assets, save and except for persons entitled to the benefit of the Permitted Encumbrances, shall stand absolutely and forever barred, estopped and foreclosed from and permanently enjoined from pursuing, asserting, or claiming any and all right, title, estate, interest, royalty, rental, equity of redemption or other Claim whatsoever in respect of or to the Assets, and to the extent that any such persons or entities remain in the possession or control of any of the Assets, or any artifacts, certificates, instruments or other indicia of title representing or evidencing any right, title, estate, or interest in and to the Assets, they shall forthwith deliver possession thereof to the Purchaser (or its nominee).

11. The Purchaser (or its nominee) shall be entitled to enter into and upon, hold and enjoy the Assets for its own use and benefit without any interference of or by the Debtor, or any person claiming by, through or against the Debtor.

12. Immediately upon closing of the Transaction, holders of Permitted Encumbrances shall have no claim whatsoever against the Debtor or the Receiver.

13. The Receiver is directed to file with the Court a copy of the Receiver's Certificate forthwith after delivery thereof to the Purchaser (or its nominee).

14. Pursuant to clause 7(3)(c) of the *Personal Information Protection and Electronic Documents Act* (Canada) and section 20(e) of the *Alberta Personal Information Protection Act*, the Receiver is authorized and permitted to disclose and transfer to the Purchaser (or its nominee) all human resources and payroll information in the Debtor's records pertaining to the Debtor's past and current employees. The Purchaser (or its nominee) shall maintain and protect the privacy of such information and shall be entitled to use the personal information provided to it in a manner which is in all material respects identical to the prior use (of such information) to which the Debtor was entitled.

MISCELLANEOUS MATTERS

15. Notwithstanding:

- (a) the pendency of these proceedings and any declaration of insolvency made herein;
- (b) the pendency of any applications for a bankruptcy order now or hereafter issued pursuant to the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c.B-3, as amended (the "**BIA**"), in respect of the Debtor, and any bankruptcy order previously issued;
- (c) any assignment in bankruptcy made in respect of the Debtor; and
- (d) the provisions of any federal or provincial statute:

the vesting of the Assets in the Purchaser (or its nominee) pursuant to this Order shall be binding on any trustee in bankruptcy that may be appointed in respect of the Debtor and shall not be void or voidable by creditors of the Debtor, nor shall it constitute nor be deemed to be a transfer at undervalue, settlement, fraudulent preference, assignment, fraudulent conveyance, or other reviewable transaction under the BIA or any other

applicable federal or provincial legislation, nor shall it constitute oppressive or unfairly prejudicial conduct pursuant to any applicable federal or provincial legislation.

16. The Receiver, the Purchaser (or its nominee), and any other interested party, shall be at liberty to apply for further advice, assistance and direction as may be necessary in order to give full force and effect to the terms of this Order and to assist and aid the parties in closing the Transaction.

17. This Honourable Court hereby requests the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or in any of its provinces or territories or in any foreign jurisdiction, to act in aid of and to be complimentary to this Court in carrying out the terms of this Order, to give effect to this Order and to assist the Receiver and its agents in carrying out the terms of this Order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such order and to provide such assistance to the Receiver, as an officer of the Court, as may be necessary or desirable to give effect to this Order or to assist the Receiver and its agents in carrying out the terms of this Order.

18. Service of this Order shall be deemed good and sufficient by:

(a) Serving the same on:

- (i) the persons listed on the Service List created in these proceedings;
- (ii) any other person served with notice of the Application for this Order;
- (iii) any other parties attending or represented at the Application for this Order;
- (iv) the Purchaser or the Purchaser's solicitors; and

(b) Posting a copy of this Order on the Receiver's website at:
<https://documentcentre.eycan.com/Pages/Main.aspx?SID=1442>

and service on any other person is hereby dispensed with.

19. Service of this Order may be effected by facsimile, electronic mail, personal delivery or courier. Service is deemed to be effected the next business day following transmission or delivery of this Order.


Justice of the Court of Queen's Bench of Alberta

**SCHEDULE "A" TO THE ORDER (SALE APPROVAL AND VESTING ORDER)
RECEIVER'S CERTIFICATE**

Clerk's Stamp

COURT FILE NUMBER	1801-17912
COURT	COURT OF QUEEN'S BENCH OF ALBERTA
JUDICIAL CENTRE	CALGARY
PLAINTIFF	ATB FINANCIAL (FORMERLY ALBERTA TREASURY BRANCHES)
DEFENDANTS	HUGHSON TRUCKING INC., LEROY CHRISTIAN HUGHSON, DARREN JAMES HUGHSON, and JUSTIN LEE HUGHSON
DOCUMENT	RECEIVER'S CERTIFICATE
ADDRESS FOR SERVICE AND CONTACT INFORMATION OF PARTY FILING THIS DOCUMENT:	McCarthy Tétrault LLP 4000, 421 – 7th Avenue SW Calgary, Alberta T2P 4K9 Attention: Sean Collins / Pantelis Kyriakakis Tel: 403-260-3531 / 3536 Fax: 403-260-3501 Email: scollins@mccarthy.ca / pkyriakakis@mccarthy.ca

RECITALS

- A. Pursuant to an Order of the Honourable Justice K.M. Eidsvik of the Court of Queen's Bench of Alberta, Judicial District of Calgary (the "**Court**"), dated December 19, 2018, Ernst & Young Inc., was appointed as the receiver and manager (the "**Receiver**") of the undertakings, property, and assets of Hughson Trucking Inc. (the "**Debtor**").
- B. Pursuant to an Order of the Court, dated March 13, 2020 (the "**Sale Approval Order**"), the Court approved the Asset Purchase Agreement, dated February 19, 2020 (the "**APA**"), between the Debtor by and through the Receiver, in its capacity as the court-appointed receiver and manager of the Debtor and 1010307 Alberta Ltd. (the "**Purchaser**"), as purchaser, and provided for the vesting in the Purchaser of the Debtor's right, title, and interest in and to the Assets, which vesting is to be effective with respect to the Assets upon the delivery by the Receiver to the Purchaser of a certificate confirming: (i) the payment by the Purchaser of the Purchase Price for the Assets; (ii) that all conditions to

the closing of the APA have been satisfied or waived by the Receiver and the Purchaser; and, (iii) the Transaction has been completed to the satisfaction of the Receiver.

- C. Unless otherwise indicated herein, all capitalized terms have the meanings set out in the Sale Approval Order.

THE RECEIVER CERTIFIES the following:

1. The Purchaser (or its nominee) has paid and the Receiver has received the purchase price for the Assets, in accordance with and as contemplated by the terms of the APA;
2. The conditions to the closing of the APA have been satisfied or waived by the Receiver and the Purchaser (or its nominee); and,
3. The Transaction has been completed to the satisfaction of the Receiver.

This Certificate was delivered by the Receiver at [Time] on [Date].

ERNST & YOUNG INC., in its capacity as receiver and manager of the undertaking, property and assets of **HUGHSON TRUCKING INC.**, and not in its personal or corporate capacity.

Per: _____

Name:

Title:

**SCHEDULE "B" TO THE ORDER (SALE APPROVAL AND VESTING ORDER)
ENCUMBRANCES**

Parcel 1

REGISTRATION NUMBER	DATE	PARTICULARS
991 146 362	27/05/1999	MORTGAGE – ALBERTA TREASURY BRANCHES. 319 – 6 TH STREET SOUTH LETHBRIDGE ALBERTA T1J2C7 ORIGINAL PRINCIPAL AMOUNT: \$165,000
071 205 109	28/04/2007	AMENDING AGREEMENT AFFECTS INSTRUMENT: 991146362
101 181 399	17/06/2010	AMENDING AGREEMENT AMOUNT: \$250,000 AFFECTS INSTRUMENT: 991146362
131 185 657	31/07/2013	AMENDING AGREEMENT AMOUNT: \$500,000 AFFECTS INSTRUMENT 991146362
161 058 078	03/03/2016	MORTGAGE MORTGAGEE – 1010307 ALBERTA LTD. BOX 149 MILK RIVER ALBERTA T0KIM0 ORIGINAL PRINCIPAL AMOUNT: \$1,005,972
201 010 525	15/01/2020	WRIT CREDITOR – PRO-TECH TELEBELT SERVICES LTD. PO BOX 8340 COLD LAKE ALBERTA T9M1N2 DEBTOR – HUGHSON TRUCKING INC. PO BOX 219 STATION MAIN LETHBRIDGE ALBERTA T9E0J2 AMOUNT: \$82,815 AND COSTS IF ANY ACTION NUMBER: 1914-00039

Parcel 2

REGISTRATION NUMBER	DATE	PARTICULARS
991 146 362	27/05/1999	MORTGAGE – ALBERTA TREASURY BRANCHES. 319 – 6 TH STREET SOUTH LETHBRIDGE ALBERTA T1J2C7 ORIGINAL PRINCIPAL AMOUNT: \$165,000
071 205 109	28/04/2007	AMENDING AGREEMENT AFFECTS INSTRUMENT: 991146362
101 181 399	17/06/2010	AMENDING AGREEMENT AMOUNT: \$250,000 AFFECTS INSTRUMENT: 991146362
131 185 657	31/07/2013	AMENDING AGREEMENT AMOUNT: \$500,000 AFFECTS INSTRUMENT 991146362
161 058 078	03/03/2016	MORTGAGE MORTGAGEE – 1010307 ALBERTA LTD. BOX 149 MILK RIVER ALBERTA T0KIM0 ORIGINAL PRINCIPAL AMOUNT: \$1,005,972
201 010 525	15/01/2020	WRIT CREDITOR – PRO-TECH TELEBELT SERVICES LTD. PO BOX 8340 COLD LAKE ALBERTA T9M1N2 DEBTOR – HUGHSON TRUCKING INC. PO BOX 219 STATION MAIN LETHBRIDGE ALBERTA T9E0J2 AMOUNT: \$82,815 AND COSTS IF ANY ACTION NUMBER: 1914-00039

**SCHEDULE "C" TO THE ORDER (SALE APPROVAL AND VESTING ORDER)
PERMITTED ENCUMBRANCES**

NONE.