



Clerk's stamp:

COURT FILE NUMBER 1801-17912

COURT COURT OF QUEEN'S BENCH OF ALBERTA, IN
BANKRUPTCY

JUDICIAL CENTRE CALGARY

IN THE MATTER OF THE *BANKRUPTCY AND
INSOLVENCY ACT*, RSC 1985, c B-3, AS AMENDED

AND IN THE MATTER OF HUGHSON TRUCKING
INC.

APPLICANT ATB FINANCIAL (FORMERLY ALBERTA
TREASURY BRANCHES)

DOCUMENT **APPLICATION (BANKRUPTCY ORDER)**

ADDRESS FOR SERVICE AND
CONTACT INFORMATION OF
PARTY FILING THIS DOCUMENT **BLAKE, CASSELS & GRAYDON LLP**
3500, 855 – 2nd Street S.W.
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File No.: 81518/158

NOTICE TO RESPONDENT

This application is made against you. You are a respondent.

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

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

Date: January 25, 2019

Time: 2:00 p.m.

Where: Calgary Courts Centre, Justice Chambers

Before Whom: The Honourable Justice B.E.C. Romaine

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

REMEDY CLAIMED OR SOUGHT:

1. ATB Financial (“**ATB**”), in its capacity as creditor of Hughson Trucking Inc. (“**Hughson**”), is seeking a Bankruptcy Order substantially in the form attached hereto as **Schedule “A”**:

- (a) adjudging Hughson bankrupt;
- (b) appointing Ernst & Young Inc. LIT (“**EY**”) as trustee of the bankrupt estate of Hughson;
- (c) directing that the costs of the within Application be paid out of the bankrupt estate of Hughson; and
- (d) such further and other relief as this Honourable Court considers just in the circumstances.

GROUND FOR MAKING THIS APPLICATION:

The Outstanding Indebtedness and the Receivership Order

2. ATB has advanced certain credit facilities to Hughson (the “**Facilities**”), which, as of December 12, 2018, had an outstanding balance of \$5,525,554.12 (the “**Outstanding Indebtedness**”). The Facilities are repayable by Hughson on demand from ATB.

3. Interest continues to accrue on the Outstanding Indebtedness at a contractual rate set out in the applicable credit documents (the “**Credit Documents**”). Hughson is also contractually obligated to pay all legal and other costs and expenses incurred by ATB in respect of the Credit Documents.

4. As security for the Outstanding Indebtedness, Hughson granted ATB a demand fixed-rate debenture and a general security agreement (collectively, the “**Security**”). The current value of the Security is estimated to be less than the Outstanding Indebtedness, and the deficiency in value totals at least \$1,000.00.

5. On November 19, 2018, as part of the Forbearance Agreement made effective on that same date, ATB sent Hughson a demand letter and a notice of intention to enforce its security (the “**Demand**”) in accordance with section 244 of the *Bankruptcy and Insolvency Act*, RSC 1985, c B-3 (“**BIA**”). The Demand required full payment of the Outstanding Indebtedness together with a form to facilitate Hughson's waiver of the 10-day notice period under section 244(2) of the BIA.

6. Hughson subsequently breached the Forbearance Agreement by committing certain Terminating Events pursuant to that Agreement. As a result, on December 14, 2018, ATB filed an application seeking to appoint EY as receiver (the “**Receiver**”) over the current and future assets, undertakings, and properties of Hughson (the “**Receivership Application**”).

7. On December 19, 2018, Eidsvik J. granted the Receivership Application and appointed EY as Receiver pursuant to section 243 of the BIA and the terms of the consent receivership order, as amended (the “**Receivership Order**”).

The Bankruptcy Application

8. Hughson is unable to pay the Outstanding Indebtedness that is due and owing to ATB. The failure of Hughson to pay amounts owed to ATB when due and owing is an Event of Default pursuant to the terms of the Credit Documents and the Security.

9. Hughson no longer has any credit available under the Facilities and does not have the funds available to continue any remaining operations or pay debts generally as they become due. Hughson has also ceased operations, terminated its employees, and is in the process of liquidating its remaining assets.

10. Further, during the month of November 2018, Hughson failed to remit source deductions to the Canada Revenue Agency (the “**CRA**”) and has thereby created a substantial priority claim in favour of the CRA. Towards that end, on December 19, 2018, the CRA served an Enhanced Requirement to Pay on Ryan Zahara of Blake, Cassels & Graydon LLP (“**Blakes**”), ATB’s counsel, seeking payment of \$287,178.92 owed by Hughson to the CRA out of certain funds held in trust by Blakes.

11. As a result of the foregoing, Hughson, within the six months preceding the date of the filing of this Application, has committed an act of bankruptcy. Specifically, Hughson has ceased to meet its liabilities generally as they become due.

12. EY, in its capacity as Receiver, has consented to lift the stay of proceedings in accordance with paragraph 8 of the Receivership Order for the purpose of bringing this Application.

13. EY, as a person qualified to act as trustee in bankruptcy of Hughson's estate, has also consented to act as such and is acceptable to ATB.

MATERIAL OR EVIDENCE TO BE RELIED ON:

14. The evidence upon which ATB intends to rely includes the following:

- (a) the Affidavit of Rehman Mulji, sworn on December 14, 2018;
- (b) the Affidavit of Rehman Mulji, sworn on January 14, 2019; and
- (c) such further and other material as counsel may advise and this Honourable Court may permit.

APPLICABLE RULES:

15. ATB will rely upon and refer to the provisions of the *Alberta Rules of Court*, Alta Reg 124/2010, including without limitation Rule 6.3.

APPLICABLE ACTS AND REGULATIONS:

16. The Applicant will rely upon and refer to:

- (a) the *Bankruptcy and Insolvency Act*, RSC 1983, c B-3, including without limitation sections 42 and 43;
- (b) the *Bankruptcy and Insolvency General Rules*, CRC, c 368; and
- (c) such further and other statutes, regulations, rules, and authorities as counsel may provide and this Honourable Court may permit.

ANY IRREGULARITY COMPLAINED OF OR OBJECTION RELIED ON:

17. None.

HOW THE APPLICATION IS PROPOSED TO BE HEARD OR CONSIDERED:

18. Oral submissions by counsel at an application in front of the Honourable Justice B.E.C. Romaine, as scheduled.

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 at the 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.

SCHEDULE "A" – BANKRUPTCY ORDER

Clerk's stamp:

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COURT	COURT OF QUEEN'S BENCH OF ALBERTA, IN BANKRUPTCY
JUDICIAL CENTRE	CALGARY
	IN THE MATTER OF THE <i>BANKRUPTCY AND INSOLVENCY ACT</i> , RSC 1985, c B-3, AS AMENDED
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DATE ON WHICH ORDER WAS PRONOUNCED: January 25, 2019

LOCATION WHERE ORDER WAS PRONOUNCED: Calgary Courts Centre

NAME OF JUSTICE WHO MADE THIS ORDER: Justice B.E.C. Romaine

UPON the application (the “**Application**”) of ATB Financial (“**ATB**”); **AND UPON** having read the Affidavit of Rehman Mulji, sworn on December 14, 2018, and the Affidavit of Rehman Mulji, sworn on January 14, 2019; **AND UPON** being satisfied that Hughson Trucking Inc. (“**Hughson**”) and all interested and affected parties have been served with notice of the within Application; **AND UPON** being satisfied that Hughson has committed an act of bankruptcy in the six months preceding the filing of the within Application, specifically that Hughson has ceased to meet its liabilities generally as they become due; **AND UPON** noting the consent of Ernst & Young Inc. LIT (“**EY**”), the court-appointed receiver of Hughson (the “**Receiver**”); **AND UPON** noting the consent of EY to be appointed as trustee of the bankrupt estate of Hughson in the within proceedings and being satisfied that it is a person qualified to act; **AND UPON** hearing from counsel for ATB, counsel for the Receiver, and any other interested party appearing at the Application;

IT IS HEREBY ORDERED AND DECLARED THAT:

1. Service of notice of the Application and materials filed in support thereof is hereby validated and deemed good and sufficient.
2. Hughson is hereby adjudged bankrupt by virtue of this Order being made on this date.
3. EY is appointed as trustee of the bankrupt estate of Hughson (the “**Trustee**”) without the requirement to give security under the *Bankruptcy and Insolvency Act*, and the Trustee is authorized to take all necessary steps to take possession of the deeds, books, records, and documents and all property of the bankrupt and to administer the bankrupt estate of Hughson.

4. The costs of and incidental to the Application and bankruptcy order shall be paid to the Applicant out of the assets of the bankrupt's estate after taxation of the accounts.

J.C.Q.B.A