Action No's: 1703-12327
E-File Name: EVQ196667402
Appeal No.____________________

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

IN THE MATTER OF THE COMPANIES' CREDITORS ARRANGMENT 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 LIMITATION PERIOD HOLDINGS LTD.

P R O C E E D I N G S

Edmonton, Alberta
August 22, 2019

Transcript Management Services
Suite 1901-N, 601-5th Street SW
Calgary, Alberta T2P 5P7

Phone: (403) 297-7392 Fax: (403) 297-7034

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

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August 22, 2019	Morning Session
The Honourable Mr. Justice Hillier	Court of Queen's Bench of Alberta
C.P. Russell, Q.C.	For Canadian Western Bank
R. Trainer	For Canadian Western Bank
R. Quinlan	For the Monitor
B. Smith	For Jeff and Jackie Hadfield
G. Plester	For the Municipalities
D. McAllister	For 726 Group
S. Chimuk	For Great White Sand Tiger Lodging
K.T. Lenz, Q.C. (by telephone)	For Northland Mortgage & Investment Corp.
A. Poburan	For Weslease
J. Hocklin	For Aurora Lodging Inc.
M. O'Sullivan	Court Clerk

Discussion

THE COURT: Good morning everyone, please be seated. Mr. Russell?

MR. RUSSELL: Good morning, My Lord. Let me just introduce the parties. We have Mr. Lenz, on the phone, he's on for Northland, the mortgagee on two of the camps. Mr. Quinlan, of course, for the Monitor. Mr. Trainer, from our office. Mr. Plester, who acts for three of the municipalities. Mr. McAllister, who acts for 726 Remote Accommodations. Mr. Hocklin, who acts for Aurora. Mr. Smith, who acts for Hadfields. Ms. Poburan, who is here for Weslease.

THE COURT: Thank you.

MR. CHIMIUK: Sorry and Mr. Chimuk whose on for Sand Tiger, but there's no seats.

THE COURT: Thank you.

Submissions by Mr. Russell

MR. RUSSELL: So thank you, Sir, there are two applications by CWB, one was served about ten days ago and it's basically been superseded by the one that was served yesterday because the initial application had only covered the Bonnyville Settlement and related issues, whereas the application yesterday is to approve the three settlements that we've made with Bonnyville, Opportunity and Athabasca.

The affidavit number 8 of Justin Taha, has the agreements appended to them, the settlement agreements and I'll speak to Greenview after we've dealt with these three settlements, but the three agreements are attached. We do not yet have all of the signature from all of the parties, but the substance of the agreements has been agreed to by all of the interested parties.

In substance, Sir, I'll just take a moment to kind of give you the overall view of it and these three municipalities are all represented by Mr. Plester. So the municipalities have agreed to significantly discount levies, tax levies and penalties. They will take payments of some portion of the sales proceeds that each of the equipment lender derive from sale of their assets which are categorized as improvements on the various camp properties.

The municipalities are waiving some land penalties and agreeing to park the taxes on the lands until they are either sold or the municipalities take steps to collect, such as a tax sale or a foreclosure occurs and you'll recall, Sir, that there are three lenders involved on the real property. There's Northlands on two of them, CWB is first on the second of the Wabasca properties, Wesley's originally was first, but then their security was disallowed and the Hadfields are on for the last of the properties.

The Monitor is being asked to assist in implementing the settlements by releasing funds from the monies held in the Monitor's account in which the -- each of the lenders, equipment lenders who are contributing to the settlements are having monies that would otherwise have come to them at the end of this process being paid out as an interim distribution and the Monitor is to record the amounts that are being paid out in that way.

The lenders -- the equipment lenders liability to the municipalities is being prorated based on either the actual sales that have taken place of their equipment or the perceived potential sales that may come up later on.

Two lenders are going to front money for their share of the payments where the Monitor is not holding funs on their behalf. Sam Tiger is one and 726 Remote Accommodation is the other.

As a quid pro quo for the reductions of the municipalities are agreeing to -- we are agreeing that the municipalities will not be subject to the cost allocation process and although the taxes on the improvements are being capped even if there's no money yet to pay them entirely and the tax on the land portion is being capped and penalties forgiven and in some cases, levies forgiven, the municipalities will be able to impose further penalties should the taxes not be paid, the land taxes, as the next, you know, kind of go-around goes for penalties. So generally speaking, the municipalities impose penalties the first of January and the end of June and to the extent that real property has not been disposed of by the end of this calendar year then I would anticipate that the municipalities will assess some further penalties going forward.

THE COURT: Has there been discussion as to the risk in relation to that as to where it falls?

MR. RUSSELL: It would fall to the mortgagees, the land mortgagees who are looking to realize on their properties. To the extent that the land mortgagees either lose the property through tax sale or whatever else and do not generate proceeds, then the municipalities follow the loss.

THE COURT: I guess I'm asking you in a backhanded way about Mr. Lenz' issue in relation to the responsibility of the Monitor.

MR. RUSSELL: Yes and I will get to that --

THE COURT: Okay.

MR. RUSSELL: -- in fulsome detail when Mr. Lenz makes his comments, but as I see it, the only additional exposure that Northlands has, other than for the capped tax liability on the two properties --

THE COURT: Right --

MR. RUSSELL: -- is the penalty that would come on January 1, 2020 and quite frankly, we're hoping that the *CCAA* will be wound up not soon thereafter. So …

THE COURT: I don't think you're the only person that says that.

MR. RUSSELL: So that's really the -- that's really the risk --

THE COURT: Okay.

MR. RUSSELL: -- but the supplemental risk that I see Northlands having which has not already been capped and parked.

THE COURT: Right, I have it. Thank you.

MR. RUSSELL: So, Sir, the settlements were brought about as a result of compromise between four municipalities and I'll speak to Greenview, in a moment, and eight lenders all with diverse legal positions and financial positions and we're grateful that with the thoroughness of the briefs that the parties put in because it helped to spur discussions that might not otherwise have occurred.

The other aspect of the order, Sir, is that Aurora after they pay their $55,000 liability for taxes, will have the balance of the funds that the Monitor is holding on their behalf, released to them including interest and there's a minor change in the order from what you saw, because we have not referenced interest in the order that was appended to the application yesterday, we've added in those words.

THE COURT: Okay.

MR. RUSSELL: The interest is about $20,000. The Monitor has been holding Aurora's million dollars plus for quite some time and you may recall that Aurora have sold their camps and the Monitor, there was an agreement to have the proceeds held by the Monitor pending determination of entitlement. There will be no cost allocation to Aurora in connection with the *CCAA* proceedings. The Monitor was of the view that Aurora -- the dealings with Aurora have been significantly -- or insignificant enough that holding them to a cost allocation was probably counterproductive.

The other advantage, Sir, to the settlement is that it avoids the inevitable appeals that would've come from a decision because some of the issues that were live in this application, such as the ability of the municipalities to tax leased assets, would be fundamental to the municipalities, should they have not prevailed in those arguments and the other, flip the coin, would be that is the lessors lost that argument, they too would have a significant reason for appealing. So we are fortunate to avoid another CRA kind of scenario in this file.

With regard to Greenview and Sir, the terms of this settlement are still confidential and the town council meeting within the next week. I'm just going to hand up a consent order that has been signed by all of the parties that are involved with Greenview. And you'll recall that Greenview -- that's really the Simonette and Berwyn sale to the Nelson Brothers.

THE COURT: Anybody from Reynolds Mirth, I know that they had said that they knew this was being adjourned, but is there anybody here today?

MR. RUSSELL: No, I was advised -- I was asked to just speak on their behalf.

THE COURT: Thank you.

MR. RUSSELL: So, Sir, the consent order effectively -- and I don't go into the numbers --

THE COURT: Yes.

MR. RUSSELL: -- but similar to the process or the approach that we took on the main settlement the allocation of liability for the compromised tax payment is being apportioned as between CWB, Weslease and ECM, based on the percentage of proceeds of the Nelson Brothers sale attributable to improvements that were at Simonette and Berwyn, as amongst the three lenders.

And similarly, Greenview is not -- they're relieved of any liability for a cost allocation in these proceedings, given their compromise of their tax liability and the -- so the wording in this order follows the same sort of format that you will have seen on the main settlement order, except for paragraphs 7 and 8 and 9. Sorry, 7 is consistent with the prior orders where this is it for Greenview, they can't chase the lessors or the equipment lenders any further and you will recall, Sir, there's no real property involved in this particular camp.

So basically, out of convenience, Sir, what we were thinking is we would ask Your Lordship to sign this order, we would hold it in trust pending the termination or approval by City Council. If we don't get approval by City Council, we will be back to you and we won't be entering this order.

THE COURT: Is it being held by you?

MR. RUSSELL: Yes.

THE COURT: All right. I understand that.

MR. RUSSELL: So, Sir, aside from that, I will just hand up if I could, the order -- the main order. As I indicated there is a change in the reference to Aurora and the reference to Aurora getting all of their interest is found at 3(a), the end of 3(a), first line.

THE COURT: Including all …

MR. RUSSELL: Yes.

THE COURT: Okay.

MR. RUSSELL: The other change, Sir, is on the last page, subparagraph (g) and this deals with the Hadfields' exposure to liability for land taxes.

THE COURT: Yes.

MR. RUSSELL: The agreement -- the words in the fourth line, the words "or being less than 385,000 pursuant to clause 5(b)" were not there before. And basically the Hadfields exposure is being capped at 385,000, if a good -- more is collected from the equipment lenders than the 650,000 minus the 385,000; then the Hadfields get credit for the excess that's being collected from the equipment lenders.

THE COURT: I have that.

MR. RUSSELL: So, Sir, subject to any questions you may have for me, I would turn it over to other counsel.

THE COURT: Thank you very much then, Mr. Russell.

MR. RUSSELL: Thank you.

Submissions by Mr. Quinlan

MR. QUINLAN: Perhaps I'll speak next, Sir, for the Monitor. My understanding just so that we're clear, of what Mr. Russell's plan was, was to address these two orders for the settlements; if Your Lordship approves them, we would then let some of the counsel go and then anyone who wants to stay for Mr. Lenz' issue can then proceed on that, 'cause that's somewhat of a separate issue that can be hived off by way of a separate order. So I won't discuss that right now.

What I'll say is the Monitor, although not a party to these settlements, does support them. The Monitor reads them as reasonable settlements frankly, the municipalities is compromising some of what they say they're owed. The equipment lenders are bearing some of the risk, the mortgagees are bearing some of the risks. The Monitor is of the view that in all the circumstances, it sees no reason to interfere in the settlements in the agreements that have been made by the directly affected parties.

And like I said, it views even the amounts as reasonable 'cause they are based on the numbers that we are able to identify to date.

In respect of the narrow issue of Aurora receiving all of the money that the Monitor has been holding for them plus interest in accordance with a prior agreement from last year, as Mr. Russell alluded, the Monitor is of the view that it would be appropriate to not seek a cost allocation from Aurora. Frankly, the dealings between the Monitor and Aurora have been very prompt, they've been consensual and very little, if any, professional time has been spent on it. So in light of that and in fact -- the fact that Aurora is not a creditor of the applicants, which puts them in a slightly unique category, at least in this room today, that it would be appropriate to release the rest of the funds that we're holding for them after our office pays over their $55,000 share to the Town of Bonnyville.

Subject to any questions you have, Sir.

THE COURT: Okay. Have we got a batting order here?

Submissions by Mr. Plester

MR. PLESTER: Good morning, My Lady. Gregory Plester of Brownlee LLP, of course, we support the applications before the Court today, with the exception of the application being sought by Mr. Lenz, we take no position in that respect.

A few points that I wanted to just to essentially polish up. In respect to future remedies, one of the underlying assumptions here is that improvements will likely be dealt with in one way or another through the course of these proceedings, but that there's a real likelihood that the land will remain unsold through these proceedings or at least may be dealt with through some other forum.

So in terms of how the lands are sold, that is left unresolved at this point, but we have built in the possibility that it would be dealt with through some other means. By that I mean, I could see two possible alternatives to these proceedings. For example, there may be a foreclosure action, but also municipalities are afforded a self-help form of foreclosure themselves. But, we are essentially capping the taxes as of today to a certain amount would be recovered through one of those proceedings.

That dovetails into the next two points I have, Mr. Russell commented on future penalties, while future penalties will accrue, they don't all accrue on the same date. So in respect of the Town of Bonnyville, it is at -- penalty accrual date is December 31st, that's the next one, but they are not the same for the MD of Opportunity and Athabasca, which I don't have those dates, but they are set individually by municipalities in their respective bylaws and the understanding is that penalties will accrue in the normal course. Of course, bylaws could be amended so we're talking about whatever bylaw is in force will determine what penalties will accrue and that will only be in respect to the outstanding land balance, is the basis of the settlement, so that the amounts attributable to the improvements will not incur future penalties, that's a maximum amount.

The other issue I wanted to mention, particularly in respect to the lands, if they fester for years, they'll be ongoing assessments. So this settlement does not address ongoing settlements, ongoing assessments for future tax years. So, for example, the 2020 tax bill will come out and those will be added onto the amount outstanding in respect to each individual parcel.

The exception of that, is that is that the Bonnyville agreement includes a specific provision by which the lands are to be assessed as unimproved on a go-forward basis. That was specifically requested by Mr. Lenz, but also reflects the state of lands as of right now. They would've assessed as unimproved for the 2019 tax year. So barring any changes, addition of improvements to the lands they'll be assessed in the same manner going forward.

The Athabasca County lands are currently assessed as mostly unimproved and the MD of Opportunity lands were, for this year, assessed as improved. I should advise all the parties in the room that the condition date for determining an assessment is December 31st. So if they were to become unimproved lands before the end of the year would be Wabasca Camps Camp and the unimproved lands would be assessed as unimproved for the 2020 tax year.

The only other point I was going to raise is that I certainly do appreciate the efforts of everyone in this room, multi-party settlements are always complex and there's a lot of work that went into this and I appreciate the efforts of all and in particular, the efforts of Mr. Russell, who was very key in working out this arrangement, which is I think is a win/win for all the parties involved.

Unless you have any questions, My Lord, those are my submissions.

THE COURT: No, I'm grateful. Thank you Mr. Plester.

Submissions by Mr. Smith

MR. SMITH: Good morning, My Lord, I represent the Hadfields in this matter. Just a quick point of clarification, my friend Mr. Russell, mentioned that that Hadfields would be liable for the amounts remaining on the land. They're not actually the landowners at this point, it's 1371047 Alberta Limited, are the landowners and also Wandering River Property Limited. They hold the mortgage on that land and other than the municipalities, the remaining taxes owed to the municipality, I think they're next in line as far as secured creditors. I just wanted to point that out.

My clients have signed onto the agreement. I did receive a photo of the signing page from them. They live in a remote location and they didn't have immediate access to a scanner or a fax, but I have seen the signing page, so they have signed onto the agreement and with the one change that my friends were willing to make to the order, we support it.

THE COURT: The interest that you're referencing?

MR. SMITH: Correct and that would be in paragraph 5(g) of the proposed order. We just wanted to clarify that the maximum amount that my client -- or that the landowners would be liable for was 385,487.27.

THE COURT: Oh I see that's the other issue, yes.

MR. SMITH: Or it may be reduced by as much as 208,000 pursuant to the arrangement that is described in paragraph 5(b).

THE COURT: I have that. All right. Thanks very much.

MR. SMITH: And unless you have anything more for me, Sir.

THE COURT: No, I understand your position, as well. Thank you. Anyone else.

Submissions by Mr. Lenz

MR. LENZ: My Lord, Ken Lenz on behalf of Northland. Northland is in support of the orders.

THE COURT: All right. I'm grateful Mr. Lenz. Is there anyone else that wishes to speak in reference to either of the two orders that have been provided up to the Court as amended this morning, both in relation to the overall settlement and in relation to the confidential or to be held in trust terms that would go into an order held pending a Greenview vote? No others wishing to speak on that?

Decision

THE COURT: I've reviewed these, obviously not in reference to two amendments that Mr. Russell has drawn to the Court's attention. I'm satisfied that they do represent, not only effective remedies, but rather remarkable degree of consensus achieved. Those that have isolated Mr. Russell are being appropriately kind, but it takes all of you to see the benefits to your clients of having worked out these terms in the fashion that you have.

As late as Thursday, I believe, I was quite concerned by the dynamics that were at play here and what they may mean, not to me so much as the Court of Appeal, but I was just going to do my best, but knew as Mr. Russell quite properly points out that these are significant issues for the parties and would need at least the Court of Appeal's input moving forward.

So I have signed both of those orders, madam clerk, if you would give those to Mr. Russell knowing that one will be held as he has undertaken.

MR. RUSSELL: Thank you, My Lord and perhaps we could hear from Mr. Lenz next?

THE COURT: I think I'm going to excuse those how have been alerted. I take it that while that's happening, before we hear from Mr. Lenz, I could deal with the Monitor's request for the dealing of the 24th report. I take it as people are looking to depart, that there's no objections to that. I would alert you that these have been quite routinely provided having regard to the sensitivity of where things rest with various sales.

Thank you very much everyone, you are excused.

MR. PLESTER: Thank you My Lord. Good morning.

MR. SMITH: Thank you, My Lord.

MR. QUINLAN: Thank you, My Lord, just on that respect, I'll pass up the form of order. No changes have been made to the one that was submitted to you. I'm happy to give you some submissions on that but I -- hearing what you just said, I don't think I need to.

What I can advise Your Lordship of, just so you know for the benefit of the record, is that we did comply with the Notice to Profession, for May 2018, where it requires that we fill out an online notice before filing the application. We did do that. Unfortunately, we didn't get the email back from the clerk's office that I was required to file, so I had to get a fiat, but once the fiat was there, we filed the application. So our Notice of Profession has been satisfied.

THE COURT: Okay. There are some previous orders that presumably are now redundant in terms of the confidentiality. At some point, I'm going to want you to tidy all of that up.

MR. QUINLAN: Absolutely, My Lord. The reason -- so there are a number of reports that will contain information about assets still unsold, so we wouldn't want to do that yet.

THE COURT: Correct.

MR. QUINLAN: There are a number of reports that do contain just information about assets that were sold, but it's in the Monitor's view that we don't want those unsealed at this time, because frankly speaking a lot of those assets were similar in nature to other ones that are still for sale, so we did not necessarily want the market to know what we've accepted to date for similar items, My Lord. And that's the reason why we haven't done so yet.

THE COURT: Okay. All right. But, you recognize that's an important part of your to-do list?

MR. QUINLAN: We do, Sir.

THE COURT: All right.

MR. QUINLAN: Thank you.

THE COURT: Thanks very much. Mr. Lenz, I think everyone is having -- now my having signed the Monitor's request for sealing, we're in a position to take your submissions.

Submissions by Mr. Lenz

MR. LENZ: Thank you, My Lord. As indicated by Mr. Russell, we act for Northland Mortgage Corporation, which has a first mortgage on the Bonnyville lots, as well as lot 2 of the Opportunity or Wabasca lands, as they're referred to.

I think that, My Lord, you have a copy of our brief that we submitted, as well as the affidavit of Mr. Eikland.

THE COURT: Yes, I do.

Okay. Well, let me just say in my preamble, I think the brief and the affidavit sets out maybe in a little more concrete terms the degree of frustration that our client has had in the process. This process has been going on since July 5th, 2017 and in that time, you know, we've had this situation in which really we have taxes being assessed on improvements which aren't fixtures, which arguably we have no -- you know now right to on lands that were developed unbeknownst to us, with these improvements.

And so as you can see from the email chain from Mr. Eikland and the Monitor, there's been repeated, let's get this dealt with -- let's get this and to be fair to the Monitor, while there was title in issue and secondarily, even the municipal taxes, so it's hard to deal with. But, those issues have now been dealt with as of today and we know who owns what, we know what the taxes are, as of today and we still have property that doesn't belong to the company that owns the property situated on the property attracting, you know, preventing sales of the property and attracting municipal tax increases and assessment and that's where we sit today. And yes, we'd like this dealt with quickly, but I don't know how optimistic we are about that.

But, I think the background -- that background is important to acknowledge in the context of one more thing as a preamble, you know, had this proceeding not occurred, foreclosure proceedings would've commenced on July 5th, 2017 and we would've got that -- those trailers off the property if they weren't ours. Like it's not our -- it's not the mortgagees' problem that -- and it's really our problem only because of these proceedings, you know, they're both taxes for years and that would be a default under the mortgage, anyway …

Having said all that, we suffered some prejudice because of the proceedings and really this argument about additional prejudice over and above what a mortgagee would normally suffer. What we're seeking today is really compliance with 7(c) of the initial order, which requires payment of the municipal taxes, ninth in priority to a mortgagee. Our submission is, that is the quid pro quo for the stay of proceedings or part of the quid pro quo, I mean there's other parts of it too, there's a Monitor that's going to go quote on things and so on.

But, that is a fundamental right in these proceedings, it's something that's part of every initial order. As far as I'm aware, every initial order granted in the country for literally thousands of *CWAA's* or a thousand *CWAA*'s go ahead with the company paying these taxes, so the mortgagees aren't prejudiced.

There was a suggestion in the Monitor's position letter which is Exhibit B to Mr. Eikland's affidavit that somehow that requirement was abrogated by the extension of Monitor's powers ordered. My Lord, I don't see that in the extension of Monitor's powers ordered. It may be that, I think the most that could be said is the Monitor doesn't have personal liability for complying with that order but, you know, certainly every other aspect of the *CCAA* order stayed in effect and in particular and most significantly the (INDISCERNIBLE) --

THE COURT: I'm sorry, say that last part again?

MR. LENZ: Pardon me?

THE COURT: Could you say that last part again, it tailed off or at least I didn't hear it properly.

MR. LENZ: Yeah, so the part about -- sorry I was trying to keep my hands free, let me pick up my phone. Certainly every other aspect of the initial order stayed in effect to the extent its inconsistent -- or the only thing that happened with respect to that order expanding the Monitor's powers, the Monitor got additional powers to really act in place of the directors and officers. But, you know, nobody would suggest that somehow the stay of proceedings was somehow abrogated or lessened by that expansion or any of the charges in favour of the Monitor and ex-counsel or anything like that, were abrogated by the order.

That order, all it did was really give the power that was formerly on the directors and officers to the Monitor to move forward with this process *CCAA*. So our submission is, the requirement of these estates to pay the taxes continue unabated, you know, having said that you know, I'm conscious of the fact when you have -- that we had a bit of a mess, in terms of title disputes and tax issues and so on. But, as I said before, those are -- those are now resolved.

THE COURT: Well, actually they're not. If I may say, Mr. Lenz, they're addressed to the end of 2019, but they're live coming forward as a very real component of what happens where *CCAA* imposes on properties in respect of what you -- your clients, Northlands have interests moving forward. The issue still remains live, it's just a remedy in respect of it has been sorted out by the terms that have been addressed and we'll not revisit those parties for that period of time that's been addressed by this resolution.

MR. LENZ: Yes, exactly, My Lord, and that's -- that's what I was coming to, it's that prejudice that we suffered, or we're continually prejudiced in that there's going to be penalties and presumably interest assessed on these taxes if they're not paid, number 1. We drew a connection in the brief between the responsibility to pay taxes and the incentive of the company and the Monitor to engage in tax appeals, you know, we've been pushing for tax appeals because we think the assessed value is a multiple of the actual value.

And maybe that -- maybe there's something required to get those tax appeals to be successful like getting the trailers off the land, but again, that's something that we'd like to see happen, you know, two years ago, but if not two years this month and anyway there is a connection between those things and that's part of the reason the *CCAA* fits together in that you've got a -- you know -- there's a natural protection of the company have to pay taxes for the -- for a mortgagee and you know, they're going to have more of an incentive to deal with those properties as a real owner.

I would say we suffered prejudice in terms of these settlements, you know, when you're negotiating terms of a settlement, we -- you know, one of the terms of the settlement for example in the Bonnyville lands is we accepted that there's going to be a charge on those lands for the assessed value of the land, you know, it's all give and take, but certainly if we didn't have to get the other terms we wanted, we might've got those numbers down. So I mean we've had some prejudice even engaging in settlement and we'll certainly have prejudice if the taxes aren't paid before the end of the year.

And as it is we'll have prejudice if steps are not taken to either appeal or -- and also positioning for a more realistic appeal. In other words, if you got everything hooked up, it's probably -- and a bunch of trailers sitting there, it's probably going to be hard to appeal -- harder to appeal than it would be if you actually dealt with the stuff that's on the property.

Mr. Russell mentioned a couple of cases, the *Algoma* case and the *US Steel* case and I'll briefly speak to those. The *Algoma* case this is at tab 9 of Mr. Russell's brief, dealt first of all, with an ongoing reception, but clearly needed cash to continue. Here we don't have that. And incidentally the owner of the Bonnyville lands also owns what was called the Winterburn lands where we had a second mortgage, $1.3 million was withheld from the sale of the Winterburn lands rather than paying our client. Now, there's some that would rank ahead of us, you know, at the time of the sale maybe $400,000 or $500,000. but we would've been paid essentially, $600,000 or $700,000, which is being tied up because of this process and you know, maybe we'll be reduced to zero by the time further interest has accrued and the cost allocation is done.

Anyway, they have money to pay these taxes, which is the point. But, anyway in *Algoma* there was an ongoing restructure. They were about to get DIP financing and so if they were going to pay the municipalities that would be prior and it would write prior. They clearly didn't have the funds to pay unlike this situation and also the taxes in that case were under appeal so there was some question whether they'd have to pay the full amount at the end of the day. Completely different situation than the present liquidating *CCAA*.

And *US Steel* you get a similar -- which is at tab 11 of Mr. Russell's brief, you get a similar set of facts. They were trying to restructure the business in that case, they had proposed a comprehensive tax conservation plan, 'cause they didn't have the cash where they were going to suspend the payments to make up pension shortfalls, we all as municipal taxes and some other things.

So, in that case, the Court balanced the interest in the proceedings and the possibility of a restructuring and the fact that the company didn't have money and ordered that they didn't have to pay the municipal taxes. But, again, not the case here. We've got no restrictions going on, as far as I'm aware, the Monitor has the money in the companies that own the properties and in our submission, it's just not the same public policy interest that come to bear.

In summary, Sir, we're seeking that the order -- the initial order be complied with and that these municipal taxes be paid to eliminate at least that amount of prejudice to our client. The Monitor, in our submission, has the money in the accounts with respect to the companies that own them and they should pay the taxes.

Those are my submissions, Sir, subject to any comments.

THE COURT: Well I think I'll hear from Mr. Russell and then from the Monitor. Thank you.

Submissions by Mr. Russell

MR. RUSSELL: Thank you, My Lord. We're sympathetic obviously to Northland's situation. The reference that Mr. Lenz made to the sale of the other lands that they were second mortgagee on, with the holdback of $1.3, that was a holdback for a potential allocation of costs and I believe it was Your Lordship who made that order, that was before Mr. Lenz was involved in the file on behalf of Northland.

There's no doubt whatsoever that the continued presence of the CNC equipment on all of the properties has given the municipalities the ability to assess levies that they would not have otherwise have been able to assess. So, taking the Hadfields' properties, for example, these were farmlands. They paid $46,000 for them. The taxes that have been charged or accrued have arisen because these improvements have been there.

So clearly, what Mr. Lenz says with regard to that is correct. However, the reality is that during the course of the -- what was supposed to be a restructuring, which continued on until May of 2018, it would have been inappropriate to break down the units, haul them off and basically lose the ability to even consider having or canvass the market to have a going concern sale to the benefit of all creditors.

THE COURT: Well, it would have in effect have crystallized that there's no *CCAA* any longer, it's already failed. It would've just been a earlier date at which it fails.

MR. RUSSELL: Correct. Correct. So during that course from July 5, 2017 until May 2018, it does appear that the McCracken's did not pay the property taxes, but quite frankly that's water under the bridge at this juncture. The question, I think that Mr. Lenz is focussing in on more is, should the Monitor be doing something now, given that they have enhanced powers?

The Monitor has and this is Exhibit 2 to Mr. Eikland's affidavit and I'll let the Monitor comment on this directly, but, the Monitor has sent -- Mr. Quinlan had sent an email to Mr. Lenz, which built on an email that I had sent to Mr. Lenz, where the Monitor explains their position. CWB supports what the Monitor says in there, but again I'll let Mr. Quinlan speak to that.

Narrowing it down, the only money that's available to pay land taxes on Bonnyville and Wabasca is out of the money held on behalf of CWB and other equipment lenders from primarily the sale to Nelson (phonetic) Brothers, which is unrelated to either of these properties and to a much lesser extent, random sales from other locations.

There is no connection between the monies that the Monitor is holding and the taxes that are accruing on Bonnyville and Wabasca lands.

The Monitor never operated the camps at Bonnyville or Wabasca, so there was no operational revenue that Northland could look at and say, well there's the source of paying us. There's nothing like that, at all. You will recall, Sir, that when the -- that up until the time of Nelson sale, the accounts receivable and inventory that CWB had a first charge on was dissipated during the course of the attempts to restructure by the McCrackens. And at the point of the Bonnyville sale -- or sorry -- at the point of the Simonette and Berwyn sale to Nelson Brothers, millions of dollars of those proceeds, aside from the receivables and work in progress that had already been used up; millions of dollars of those proceeds were used in repaying the interim financing, which as I recall was around 3.5 million at that point. There was $600,000 or $700,000 of professional fees that had been unpaid, so that came out of the proceeds of Simonette and Berwyn, as did various other things, including CRA.

So in effect, CWB and the other equipment lenders whose assets were sold in the course of the Simonette and Berwyn sale have already funded all of those expenses and the reason that I'm raising this Sir, is that I just want to go through a weighing of the prejudice as between Northland and the equipment lenders. So the settlements that we just had approved, park the discounted tax liability on both the Bonnyville and the Wabasca lands, no payment is required until there is either a sale or a foreclosure.

So Northland cannot be compelled to write a cheque for a dollar. Northland is out of no money whatsoever in maintaining the status quo. Admittedly, future penalties can be levied, but those aren't going to be levied in 2019, perhaps December 31, 2019. But, again, those penalties don't have to be paid by Northland. They can simply sit back, see what happens with the land and see if it's worthwhile for them to pay them.

Northlands in their materials say that the Bonnyville lands, they attribute value to the Bonnyville lands of something less than $1.2 million. But, the land taxes on Bonnyville, have now been capped at 282,000. So Northlands has, by their own numbers, some $900,000 of value in that property. If they're afraid that the taxes should be paid so the penalties don't continue accrue, they're the ones with the monetary interest in doing so, not the equipment lenders.

Similarly, with Wabasca the land taxes have reduced to $38,000 in this settlement. The Northland mortgage on Wabasca is $750,000. If Northlands --

THE COURT: Sorry, take me back to the other -- the value on the Bonnyville lands is $1. -- what did you say?

MR. RUSSELL: Northlands says in their material it's worth less than $1.2 million.

THE COURT: Just a little bit less than $1.2.

MR. RUSSELL: Yes, $200,000 for each of the six lots.

THE COURT: Okay.

MR. RUSSELL: And the taxes --

THE COURT: And the taxes --

MR. RUSSELL: -- are capped at $282,000, that's where I got my

$900,000 of equity.

THE COURT: Yes. Okay. Sorry, now you're moving to?

MR. RUSSELL: Wabasca.

THE COURT: The Wabasca.

MR. RUSSELL: So the Wabasca taxes are capped at $38,000.

THE COURT: Yes.

MR. RUSSELL: And the Northland mortgage on Wabasca is $750,000.

THE COURT: Yes.

MR. RUSSELL: Now, we have no idea if those lands will ever be sold for $750,000 or $38,000 for that matter.

THE COURT: Right.

MR. RUSSELL: They may be unsaleable. But, the fact is that the tax liability on that property is so low currently that having penalties imposed going forward at the beginning of 2020 or even the middle of 2020 is going to be insignificant and if Northland doesn't see value in preserving their $750,000 mortgage then so be it.

I need to bring up the Hadfields, because this is going -- if Mr. Lenz succeeds in his application then it will have an impact on the Hadfields, we well. So the Hadfields, are mortgagees of Wandering River.

THE COURT: Yes.

MR. RUSSELL: Their liability is capped at 385,000 under the settlements and I'm suggesting that there would be no principled basis for saying to the Hadfields, you don't get paid -- your taxes don't get paid, if in fact, the Northland taxes, which total $320,000 are directed to be paid. So we're talking about a $700,000 problem here, not just a $320,000 problem here.

And the equipment lenders are the ones who would be out that $700,000. There's no other source of payment.

MR. LENZ: Mr. Russell, I hate to interrupt you, but maybe address the proceeds from the Winterburn lands so I don't surprise you in my rebuttal.

MR. RUSSELL: All right. Thank you Mr. Lenz. So what -- in fact what happened here, is that $700,000 of equipment lenders proceeds are being asked to be paid on real property taxes in order to save penalties that might accrue at the end of this year.

There is no way that the equipment lenders can recoup those amounts from either Northland or the Hadfields. Mr. Lenz suggests that a cost allocation is the answer but if, in fact, the hands aren't sold and the municipalities do a tax sale there's nothing to assess Northland and the Hadfields on in a cost allocation. They won't have received any proceeds.

So we would have a situation where the equipment lenders shell out $700,000 with no ability to claw back unless the Northlands and the Hadfields are able to sell their properties. So the cost allocation is not the answer to this.

Similarly, if Northlands or the Hadfields foreclose before there's a tax sale then there's not going to be any cash. We already know from representations made by counsel that acted for Northlands prior to this, that there are no monies available from Northlands. They don't have a source of money to fund ongoing issues because of the way that their affairs are structured.

You will recall that they have a number of senior citizens who have contributed $20,000 or $30,000 or something each to invest in these mortgages. And prior counsel have made it clear there was no money to write a cheque.

Similarly, if the Hadfields foreclose, there's going to be no money to write a cheque. These people have that land because they're farmers, they paid $46,000 for it and although they sold it to CNC for $1.4 that was 100 percent financed with the vendor takeback mortgage which has been largely unpaid. We're not talking about deep pockets here.

I'm assuming, sorry Sir --

THE COURT: Give me a minute.

MR. RUSSELL: I'm assuming that these proceedings are going to be wound up sometime in early 2020. I'm hoping. The reality is, before that happens if the Monitor isn't able to sell the remaining equipment to individual purchasers, they're going to have to conduct a liquidation sale. If the land hasn't sold, then presumably there's going to be a lifting of the stay to allow the lenders to foreclose when this is wound up and we will -- during that time period, we're also going to have to address the cost allocation which will not be an easy thing to address.

But, keep in mind, that while all of that is happening, nobody can compel Northland to write a cheque. They don't have to write -- they don't have to shell out a dollar.

The Court does have general discretion under section 11 to -- to basically do what's right in a *CCAA*. And I appreciate that unlike *SR* and *US Steel* this is not a restricting *CCAA*. It's a liquidation *CCAA*. And in the liquidation *CCAA* and those two cases, the debtors were -- sought suspension or deferral of the payment of taxes, knowing that post *CCAA* property taxes could not be compromised under section 19. So all they were asking for was a deferral pending the termination of the outcome of a plan of arrangement and the Court in those cases exercised its power under section 11 to defer the taxes.

But the problem here isn't one of trying to do a plan of arrangement. The problem here is robbing Peter to pay Paul. Taking money from the equipment lenders to pay property taxes that don't have to be paid.

And similar to the rationale that has been given by Justice Newbold and sorry -- I can't remember the -- in those two cases, the equity can be exercised by this Court to do what's right.

The last thing I would say, Sir, and I'm leaving it to the Monitor, but the Monitor -- the sale and vesting orders when these equipment sales have occurred, all have a provision preserving the rights -- the lender's priority was preserved in those orders in the cash that came from the proceeds of sale, similar to the priorities that they had in the equipment itself.

Those orders are res judicata. Two now suggest that those monies, that those orders can be ignored and the proceeds taken to pay something unrelated would have required opposition to those sale orders at the time or an appeal of them. But, it's too late to ask for this remedy, I suggest.

Mr. Lenz had asked that I address the sale of the Winterburn lands and My Lord, you will recall that there was a first mortgagee, I can't remember the name of them --

MR. TRAINER: It was Stavely, My Lord.

THE COURT: Yes.

MR. RUSSELL: So Stavely had a first mortgage of several million dollars and then Northland had a second mortgage. The lands were sold, an interim distribution was made to Stavely of some portion of their debt, but they didn't get paid out in full nor did Northlands get anything because of the holdback cost allocation.

So I'm not sure what Mr. Lenz is going to say in rebuttal with respect to this, but that isn't the solution to paying $700,000 of uncollectable money -- uncollectable obligations at this point. The 1.3 that was held back, was held back to cover the cost allocation that the Winterburn lands thought might be assessed against them, totally aside from taxes payable on any other properties.

THE COURT: Sorry, say that to me again.

MR. RUSSELL: So my --

THE COURT: The 1.3 holdback --

MR. RUSSELL: Yes, the !.3 million holdback was established in order to pay the cost allocation that Stavely and Northlands might owe in this estate generally.

THE COURT: Right.

MR. RUSSELL: There was no factor in that for paying taxes on any other property. So if that's -- and I'm guessing at what Mr. Lenz might be saying, but, if in fact that he's thinking that some part of the $1.3 might go to reimburse the lenders for their 700,000, then all that's doing is reducing the amount that might otherwise have been the responsibility of Northlands and Stavely on the Winterburn sale.

THE COURT: You're not saying this, but does it not follow from the position that you're taking that the complication, but nonetheless discretionary disposition of the cost matter could take into account the impact of the tax liability and that having been deferred, that having not been addressed in early proceedings, in terms of seeking to equitably address the consequences of the *CCAA* and its impact on the parties?

MR. RUSSELL: I think they're two separate issues. The cost allocation generally and you may recall from early proposals by the Monitor on what they might looks like; was proposing that the proceeds derived from the sale of assets during the course of this, to the extent that an equipment lender got a dollar of proceeds, then they would be taxed at a rate or assessed for cost at a rate twice the rate that a real property mortgagee would be assessed for the sale dollar.

So in other words, because real property isn't as complicated or time consuming to deal with as the equipment --

THE COURT: Right --

MR. RUSSELL: -- the real property people should pay at half rates and that -- even with those half rates, that's where the $1.3 came in. So the idea was, in the case of the $1.3 that's we were guessing they might actually have an exposure for just because they were real property owners on Winterburn.

THE COURT: Right.

MR. RUSSELL: Totally unrelated to being lenders on some other property where the taxes were not being paid. And again, as I said earlier, it Wabasca never sold then -- and is sold in a tax sale or whatever, but not foreclosed on by Northland or not sold to a third party, then Northland's going to subject to no cost allocation for that property.

So to now force other creditors to front the money in case they might get assessed, in case they might come into the money, is what I'm talking about in robbing Peter to pay Paul.

THE COURT: Oh I understood that part. If the Court adopted your position basically, dismissed the application of Mr. Lenz; asking it a different way, does this issue nonetheless raise its head, because it isn't just a straight formula of two versus one on matters; it's rather complicated. Not having yet received your submissions on this, but does this whole question of the tax liability and the impact on parties become part of the Court's exercise of discretion on cost allocation?

MR. RUSSELL: The Court has a broad discretion on cost allocation, no doubt.

THE COURT: Right.

MR. RUSSELL: If, in fact, Mr. Lenz was able to make the argument at the time of a cost allocation that they should get a discount on what otherwise might be their liability for Winterburn cost allocation, then that would be the -- because they didn't get their taxes paid on this property, that would be the time to argue that.

It is not the time to compel creditors to spend unrelated money to pay taxes that are stayed.

THE COURT: No, your second point is the one that I've got the best grasp of, okay? And as you bring me to that, that's sort of the immediacy. But, knowing that the cost allocation is out there and imposes itself on the aspiration to complete the *CCAA*, I am examining whether without determination of what effect it could have, whether if I dismiss Mr. Lenz' application, I do it without prejudice to his right to at least raise it in the cost allocation.

MR. RUSSELL: Oh certainly, Sir, I would have no problem with that whatsoever.

THE COURT: Okay.

MR. RUSSELL: Until we've seen a cost allocation in firm dollars --

THE COURT: Yes --

MR. RUSSELL: -- we don't -- we can only speculate on what it might look like, but I have no intention of trying to foreclose Mr. Lenz from arguing that they were somehow prejudiced over here and that should militate against costs being levied over here.

THE COURT: I have you position.

MR. RUSSELL: Thank you.

THE COURT: Thank you. Just give me a minute, Mr. Quinlan.

Submissions by Mr. Quinlan

MR. QUINLAN: Thank you, My Lord.

THE COURT: Just give me a minute.

MR. QUINLAN: Absolutely, Sir.

THE COURT: There is it. Go ahead.

MR. QUINLAN: I guess I would like to begin my submission by saying first, the Monitor of course, doesn't have any direct interest in this issue, 'cause what's at stake is really use of creditors' money and the Monitor is, of course, happy to accept as you might imagine, any direction that Your Lordship grants in respect of this issue.

So what I thought I would do, Sir, although I appreciate Mr. Lenz is not making too much of an issue about past decisions of the Monitor, I do want to address why the Monitor took the position it has till today's date and then address some of the things that have been said, also to assist Your Lordship with a go-forward plan.

The first here is that the Monitor certainly appreciates the position of Northland and it certainly appreciates that in the initial order there are directions made to the applicants albeit not to the Monitor who didn't have the power to pay the property tax in their behalf; that the property taxes would be maintained. Now, in the amended order approving the Winterburn sale which is dated April 30th, last year, which was sort of roughly called the expanded powers order, obviously the Monitor gets expanded powers.

It doesn't necessarily dictate that the Monitor is to pay property taxes, rather what it says is: (as read)

> In addition to the powers and duties of the Monitor set out in the initial order [which of course did not include the power to pay those taxes] and without altering in any way the limitations and obligations of the remaining applicants or prior orders …

I'm sort of paraphrasing here now, the Monitor is hereby empowered to carry out certain powers set out in paragraph 18 of that order "where the Monitor considers it necessary or desirable."

And frankly, Your Lordship, I think would agree given that you are a very experienced commercialist Justice, the powers in that order are basically receiver-like, albeit we're not a receiver.

And then more -- and then on May 12th of last year, there is a Monitor certificate filed and those expanded powers are triggered and it's at that point, Sir, that these proceedings shifted to a liquidating *CCAA* and frankly the whole context of the proceeding changed. And the Monitor has been mindful of that context in interpreting the court orders, both previously and since that date.

And as my friend, Mr. Russell, alluded to since that date, the various orders approving sale and vesting orders that have been granted in these proceedings, all generally indicate that the sale proceeds will stand in place instead of the assets in the same priorities as they had against the purchase assets.

So in other words, the sale proceeds belong to those creditors who assets were sold subject to the various super priority charges at play here.

Additionally, Sir, there is a direction in each of those approval and vesting orders that the sale proceeds are to be held in an interest bearing trust account by the Monitor. The same provisions exist with respect to the order, I believe you granted, on January 10th of this year, which gave the Monitor expanded powers to sell assets without court approval.

So -- and I can say, Sir, that the Monitor is consistently only provided distributions of sale proceeds to secured creditors of the applicants where expressly authorized to do so by court order. So the DIP charge, the CRA charge, professional fees, two mortgagees, so Stavely and First Island, you'll recall had interim distributions. Then of course today, Sir, the earlier order you granted this morning contemplates effectively the fact no interim distributions.

So that explains why the Monitor has taken the position on the property taxes it has to date. As I indicated to Mr. Lenz and that's in the email that he has put forward in his affidavit, given the liquidation context of these proceedings and the fact that there is still uncertainty as to what's going to happen with these lands ,which is a point I will come back to, I assure you My Lord. And frankly we are unsure what sales may be achieved in the course of these *CCAA* proceedings; the Monitor is of the view that unless Your Lordship is going to direct the payment of the property taxes or we have approval from the directly affected creditors, in this case we know CWB doesn't consent; the Monitor felt uncomfortable and was not going to pay out the property taxes absent consent of the parties or directions.

Now, I do want to make a few submissions on some points that were raised by Mr. Lenz in his brief and frankly some of the things that both Mr. Russell and Mr. Lenz have said today.

I guess the first thing I'll say is, Northlands own emails that are appended as Exhibit A to their most recent affidavit shows that they were aware that these property taxes were not paid in early 2018, so I don't think it can be said that they were caught off guard by them not being paid by the time the Monitor's expanded powers were triggered in May 2018.

And as you can see from the emails in the affidavit Northland also requested that the Monitor appeal the assessment of the Bonnyville lands. And while the Monitor's response is not included in Northland's affidavit and I pause here to note that Mr. Lenz was not counsel at that time and may not even have been aware that a response was provided by the Monitor; there is -- the Monitor did respond by way of email and I did send this to Mr. Lenz this morning. And I do have copies if you want to see it, but I'm summarize it: (as read)

On June 26, 2018, Dan Nakula (phonetic) on behalf of the Monitor wrote to Mr. Eikland saying:

> Good morning Mark,
>
> We've spoken to the town assessor and been advised of the following …

And then it lists some things they were advised of and then at the end it says: (as read)

> Based on what we were advised, we do not believe that an appeal [an appeal of assessments of Bonnyville at this point] we do not believe that an appeal would be justified as it's extremely unlikely to result in a reduction and would result in professional fees of the Monitor and its counsel. The Monitor is not willing to incur these costs with the low likelihood of success of appeal.
>
> However, if you wish the Monitor to appeal the assessment you will require an indemnity from Northland to cover all related fees and costs. Please advise if this is a course that you would like to pursue.

Now, I'm not aware, one way or the other if any response was received, but there was no indemnity given by Northlands. So the Monitor did say it would appeal the assessments if Northland was willing to essentially pay the cost of it, but that offer was not taken up.

I also want to briefly note that while Mr. Russell is entirely correct that pursuant to the settlements you approved this morning and Northland cannot be forced to write a cheque for a dollar until the lands are sold, I do want to point out that both of the Northland mortgages, they can pay the property taxes in their discretion if they want and such amounts would be added to the mortgages that would be secured.

So while they're not forced to by any stretch of the imagination, Northland can pay the property taxes and the amounts paid will be added to their mortgage. So they do have that option. I should also note, that notwithstanding that Mr. Smith is not taking part in this particular issue, I did look at the Hadfields mortgage this morning and can confirm it's the same. The Hadfields do have the option to pay the property taxes and to add it to the mortgage, though they're certainly not required to do so.

Now, let me talk about some facts, some other facts that may -- that have been discussed here that may assist Your Lordship in coming to a decision. In respect of your last question to Mr. Russell about allocation, though I'm certainly not going to suggest I have looked at any -- at every single case out there on allocation, we did have to look at this substantially earlier and while I can't say that I've seen a Court take consideration of what Your Lordship noted; I can say that the case law is very clear that the Court does have a significant discretion and is not only entitled to, but urged to consider all of the circumstances of the proceedings before the Court. So I certainly agree with Mr. Russell that you are in a position to be able to deny Mr. Lenz' application without prejudice to his right to raise it later.

Just following up on the Winterburn lands, Mr. Russell has sort of talked about the circumstances here and indeed you'll recall and that was Your Lordship's decision on the holdback, you'll also recall that Northland did apply that day for interim distribution, as well, which Your Lordship rejected. And Your Lordship said that $1.3 million should remain in trust pending further order of the Court. That's all been rehashed.

I think what I would caution Your Lordship about today in considering using any of those funds, is that Stavely whose the first mortgagee here, has not been paid out in full; they're still owed a significant amount of money and while I certainly appreciate that they and their counsel, or Stavely's counsel are on our service list, given that we weren't talking about municipal taxes in respect of their property, I'm not sure how much they pay attention to the filings to know that it's possible it was going to be considered that some of the money from the lands they had a first mortgage on would somehow be used to pay property taxes on another -- on other lands. So I'm not sure how much they paid attention to that and if they would feel prejudiced by not being here themselves.

In respect of the assets on these lands, I'll just summarize. Bonnyville we have not sold any of the equipment or dorms on there. You'll recall, that's in part because what was on those lands were Aurora dorms, so not ours; Sand Tiger dorms; not ours, although the small wares came up in Your Lordship's last decision. And then of course, the other dorms on there were 726 claimed dorms, so until Your Lordship determined that those were basically subject to a $16 million charge (INDISCERNIBLE) CWB, we couldn’t really sell them until that was dealt with. So we don't -- we haven't achieved any sales on that but the process has been very short.

Wabasca, we only recently sold our first assets, it's noted in our public brief and although in our confidential report, but I put this publicly so I'm not afraid to say it, there's recently $110,000 worth of sales. Most of the sales of assets have come from the other sites. So that would be HML, Wandering River, which would be the Hadfields and some other sites. The interest in lands set out in the confidential 24th report, but I'll summarize, not lovely, could be an understatement of the year.

So in terms of what the Monitor's current anticipated thinking is, is that there will probably be and there is some still occasional interest being expressed in various assets along the way, but if nothing concrete and significant occurs as noted in the confidential 24th report, the Monitor's plan is to explore liquidation proposals for both the assets and the lands.

Depending on what responses the Monitor gets will then determine probably where we go from there. If it's that we can't even get liquidation proposals on the lands and we can't achieve sales, the two other options which are not ruled out at this point and are still live considerations would be doing similar to what we did -- Your Lordship will recall on the farm, where the stay is lifted for the mortgagee to foreclose, so we did that, that was the First Island and where the mortgagee forecloses and some portion of the sale proceeds are held back for costs application purposes. Indeed that's exactly what we did on the farm in front of Your Lordship. Or, of course, turning it over to the municipality to do tax sales.

So either private sales, liquidation, lift stay for foreclosure, lift stay for tax sales; seem to be the four options that exist with respect to the lands.

I believe those were the heart of my submissions, My Lord, if you have any further questions, I'm happy to answer them or provide any further information, you think would be helpful for you.

THE COURT: The monies to be paid out to the Hadfields that have already been directed and the Aurora, is the only liquid source of funds being held by the Monitor in respect of the Winterburn property?

MR. QUINLAN: That would not be quite true. So we have the asset sales as you noted, we have some holdback from the Winterburn property. We have some holdback from the farm, as well.

THE COURT: There's the farm -- there's the farm as well, okay.

MR. QUINLAN: The -- you'll recall very, very, very early on in these proceedings the head office was also sold.

THE COURT: Yes.

MR. QUINLAN: But, the agreement and the court order contemplated paying out the BDC mortgage on that subject to them agreeing to potentially remit certain funds back for cost allocation purposes, so the Monitor's not holding back. There were -- I mean the Monitor has collected some receivables. I don't have the exact figure, but it has collected some receivables. There is -- and then the Nelson transaction which was essentially the submit Berwyn assets, so that is being distributed today and there were amounts paid per that transactions for -- some amounts were goodwill and the shares of DJ Catering and Camp Quote Canada. I don't have in front of me what they are they would've been in the confidential supplement to the 22nd report. But, there were additional amounts paid as part of that transaction, as well.

So I believe, to the best of my memory here, Sir, those are the various sources of -- would be cash that the Monitor was holding.

THE COURT: And recognizing I don't have it in affidavit form, but only in your reporting as an officer of the Court and particularly in your role on behalf of the Monitor, what was provided to Northlands as to there being limited, if any, merit in appealing because the prospects of any recovery or reductions was low; is there any information that would change that assessment that ought to be in front of this Court?

MR. QUINLAN: I'll tell you exactly what this is in that respect; so it says: (as read)

> We have spoken to the town assessor and have been advised of the following:

And then there's three bullet points. The first bullet point says: (as read)

> Changes to assessed value could only occur if the dorms were fully disconnected from utilities, locked and essentially ready for transport.

The second bullet point is: (as read)

> Potential assessed value would only be for 2018 forward and only if decommissioning of the dorms was completed prior to end of 2018.

The third bullet point says: (as read)

> That there would be no change to the taxes owed for preceding years unless a successful appeal.

And then goes onto say: (as read)

> The town has indicated the dorms are connected to services in essentially a turnkey state. They would not be willing to change their valuation. It would be a significant cost undertaken to decommission,

craning and blocking of the dorms, the cost of which we anticipate would negate the benefits of the appeal to the assessment.

So, if my understanding of the current state following the court orders this morning, are that the Aurora dorms were removed. I believe Sand Tiger is now permitted to remove their dorms from site, I mean they paid their share and (INDISCERNIBLE) -- so Sand Tiger can remove their doors; we're talking about Bonnyville here specifically right now.

And then all that's left would be the 726 CWB dorms, which as I say, the Monitor is hoping to sell or at least be part of a liquidation proposal coming up very shortly. If that's the case, Your Lordship is familiar with enough from your sitting on this Court, if they were to be auctioned off, usually the requirement for buying at an auction is that the purchaser decommission and remove assets within usually 10 to 14 days following purchase.

So it may very well be that, you know, if liquidation proposals are received and they're good enough and the Court approves them, it may very well be that the change will be that there are no more improvements on these lands and now they're just simply unimproved (INDISCERNIBLE).

THE COURT: Okay. Thanks very much.

MR. LENZ: I have no objection to passing that email up to His Lordship and His Lordship relying on it, I wasn't aware of it for today.

THE COURT: Well, with your approval then Mr. Lenz, recognizing it's not in affidavit form, I'm nonetheless going to receive it from counsel for the Monitor and treat it as information that the Court would use as part of its assessment of the circumstances and I'm grateful to you for your representations on that.

MR. QUINLAN: Sorry, My Lord, if I just may I will acknowledge for the benefit of Mr. Lenz, on the record, that I did not send this to him till about -- I think it was after 9 AM this morning and the reason for that is simply I forgot about it till that time.

THE COURT: Okay.

MR. QUINLAN: So I put that on the record for the benefit of Mr. Lenz that he's had very little time with that document.

THE COURT: Okay. Thanks very much.

MR. QUINLAN: If I may, My Lord, I believe Ms. Poburan wanted to make some brief submissions.

THE COURT: All right. Thanks very much.

MS. POBURAN: Thank you My Lord --

THE COURT: Just before I pass that to you, Ms. Poburan, I think I really need to mark this as an A for Identification, as to what it is that's been received by the Court. Do you have an extra copy for the clerk?

MR. QUINLAN: I sure do, My Lord.

THE COURT: Is that satisfactory, Mr. Lenz?

MR. LENZ: That is satisfactory -- I mean -- I think it's evidence as to what was said --

THE COURT: Yes --

MR. LENZ: -- none that was very (INDISCERNIBLE) --

THE COURT: Oh no, I quite understand. I just wanted a process by which what it is and its text is identified. Thank you.

EXHIBIT A - FOR IDENTIFICATION - Email Dated June 26, 2018

THE COURT: All right. Ms. Poburan.

Submissions by Ms. Poburan

MS. POBURAN: Thank you My Lord. I will be very brief. Weslease simply wants to essentially adopt the submissions of CWB in this respect. As one of those equipment lenders specifically on that Nelson transaction, we have some concerns about the prejudice of allocating the cost to essentially the Monitor to have them paid from those funds, among other funds. We submit it would be prejudicial to the rest of the creditors in this action.

THE COURT: Thanks very, very much.

MR. LENZ: My Lord, may I make a few points in reply?

THE COURT: Yes, of course, just give me a moment to finish my notes.

MR. LENZ: Thank you.

THE COURT: Go ahead please, Sir.

Submissions by Mr. Lenz (Reply)

MR. LENZ: Okay, I think my first point is that in my submission, counsel approached this as if there wasn't an order. There's an order that these taxes be paid. This isn't a situation where I'm a moving party looking for relief, this is just I'd like the order to be complied with.

I'd say in that context that it's my information this would be the first time in a liquidating *CCAA* that this provision of this order, a provision of this order would be changed or somehow not enforced.

Second, I think I heard counsel for the Monitor say that one of the reasons for the increases in taxes because of these trailers are on the property, so in other words for the last two years CWB had been using the property for its benefit and now doesn't pay the taxes and the incremental increases in the taxes are its responsibility. In my submission, there's a pretty direct link between CWB's security and maybe the Monitor should be charging CWB rent or something to keep those trailers parked on the property.

THE COURT: Let me with all respect -- just hold on for a minute, Mr. Lenz. I'm not too sure how much of this is borne out of your not being as fully engaged in this historically, but when you speak of CWB, the whole issue of claim on properties held on certain lands was a hugely contested matter that led to this Court's most recent decision and at no time was there any suggestion that CWB had any authority to be dealing with equipment of CNC that was under the *CCAA* proceedings, never mind that 726 was taking the position that it was owners.

So I have to alert you that your description of what the Monitor might've been able to do as against CWB in respect of assets that have yet to be removed from property such as Bonnyville, is simply not an accurate description of the dynamic since this became a liquidating *CCAA* proceeding in April of last year. Do you understand?

MR. LENZ: Understood, Sir, understood.

THE COURT: Okay.

MR. LENZ: I guess perhaps I put it incorrectly then. What I mean to say is that there's a direct link between CWB's "unrelated security" and the increase in taxes and this property. The property -- their security, their secured trailers are on this property. The fact that their on this property is the reason the taxes are being assessed at $5 million rather than $1 million for the values, and this isn't something that's not linked with either of these securities, this is something that's very much linked.

And as I submit, the entire proceedings are, but, you know, that there's as close a link to the taxes that you could get when you hear that actually what's on the property that's causing the outrageous tax bills, it's collateral that belongs -- you know CWB collateral. That's my point, Sir, that's all.

And what they could they do obviously -- no one could do anything while there's a stay in place. There's mention of the period between July 5th, 2017 and May 2018, yeah, it's water under the bridge, but you know, there was an order in place for that entire period of time that the taxes will be paid. My client relied on that order as did everyone else. It's not something that was, you know, it was something that the whole world was intended to rely on and I don't know why they weren't paid.

But, that I think ought to cause the Court some concern because you know, on the comeback application had it been reported that there was hundreds of thousands in taxes outstanding. I'm not sure that would've been continued. Anyway, it's water under the bridge.

THE COURT: Well, yes and no, it's also relevant to the way in which you're urging the Court to exercise its discretion because the Court isn't conducting an oversee on all of the potential benefits and prejudices that may attend on parties, such as your client, but responds to applications that are made. And if I dealt with last September when it was determined that everybody's claims needed to be crystalized, my recollection, bearing in mind the complexity of this file; was that no one at that time, Northland being fully aware that taxes were not being paid, was saying that the Court ought not to simply be receiving claims in affidavit form, but ought to be directing someone and more parties to be complying with what CNC is now no longer able to comply with because its effectively converted from a restructuring *CCAA* process to a liquidating *CCAA* process.

I have -- until your application this month, not been apprized that this was an issue that required immediate attention. And I'm not faulting you, I'm simply saying -- I'm not faulting you, but I'm simply saying that has to affect the whole question of the Court's factors to be considered in determining an outcome to what you're presenting here today.

It's not unlike the difficulties that 726 had with failure to crystalize at a much earlier stage the assertions that it was then making as to ownership of priority in respect of the assets that were in dispute at that time.

MR. LENZ: And My Lord, I don't mean in any manner to cast any kind of aspirations on the Court, I just wish to draw to your attention that now you know the *CCAA* that the Court's supported for nine months was in breach of the order. Now, we all know that and you didn't know that before, now you do, but my -- that's I think -- I'll repeat the point I made early, there are also some reasons and I'm trying to be as fair as I can, you know, we had an order attached still, with some questionable parts, that is whether penalties and interest can be assessed after the stay and so on.

But, all that's gone and now we know who owns everything, we know what the tax liabilities are. So I think we're in a different position today and it's a much easier decision today, if I may say, than it was before.

But, two or three more points. One, I think Mr. Russell made the point that he feels that my client somehow, while secured on Bonnyville, while it's a million-five mortgage and we are kind of eyeballing it saying most of these things are worth 200,000, they had six lots, that's if, you know, they're restored to saleable land which sounds like they're months, if not years away from that happening, there's still collateral from various secured creditors on there and God knows what else they've done to the lands. But the issue with where are we now on that -- that mortgage, you know, there's interest and so on, like we're not well secured on the land, not well secured on the mortgage. And before the settlement, virtually the entire value of the land was gone. My client was put in the position where it had a $900,000 tax liability plus, you know, whatever expenditures it had to look forward to, to get these people to remove the things on the land that it didn't even know were there. Plus, you know, sales costs and so on. Thank goodness we managed to get it reduced to 280, but it's not like -- it's not like, you know, they're gonna be repaid on their mortgage as they would've been but for these proceedings.

There's this argument about robbing Peter to pay Paul. I think that came up a couple times. I guess, My Lord, the practical reality is I don't -- I find it's been consistent that I've been in favour of these proceedings, lost that argument, but the whole of these proceedings have been primarily CWB. This is proceedings that they want, which they, you know, presumably perceive in their financial interest. That they're -- they're not --

THE COURT: It's unfortunate that you haven't been here from the outset, but I can tell you that of all the people that have been in my courtroom, Mr. Russell on behalf of CWB would have to stand out as the individual entity that did not want any part of these proceedings. And that's, as I say, regrettable, Mr. Lenz, that you've not been subjected to what the Court has been subjected to because it's remarkable. Everything that Mr. Russell complained about in resisting *CCAA* has come back in spades. Nobody for a moment can suggest that he's a wizard and he has certainly got a prescience about what was going to happen on this file, and he was right.

MR. LENZ: Well, My Lord, I haven't been, and I don't mean to --

THE COURT: I understand, you're doing a job for Northlands which is a bunch of people with whom we've got great sympathy.

MR. LENZ: But the liquidating *CCAA* is where we bring our biggest objection, and that is that process, as Your Lordship appreciates, that was a difficult one for a secured creditor over land because the costs of realization of land tend to be very small, the costs of realization in a *CCAA* tend to be very large.

With respect to the Winterburn lands, I haven't combed that order. If those monies are escrow in terms of they can't be used for other purposes, then I'm mistaken on that and whether the proceeds can be used. But let me say generally, when we're talking cost allocation, in my submission, the cost of these proceedings is complying with the order, and the costs of the proceedings is paying the property tax. And, ultimately, that will be allocated at the end of the day. That's not counsel costs, but it's as much a cost of the proceedings as securing the creditors and paying for auctions and all of the other things that aren't necessarily counsel costs. It's much as a cost to proceedings. And, at the end of the day, those costs are going to be allocated. But my submission is those be paid. Those are my submissions, Sir, subject to any questions or any other directions on my -- as a result of my late arrival to this case.

Ruling

THE COURT: I do not believe, for as much as this goes against the grain of 16 years on the bench, that I can frame this in a manner that will be erudite and solid for you. I am going to provide you with a decision now in respect of the outcome of this application because I think it does serve the best interests of everyone to know that this Court finds that the application of Northlands cannot succeed at this stage.

I will begin my remarks by extending what I believe was historically an acknowledgement of the difficulties faced by an entity comprised of interest holders in Northlands who are scooped into a process with very, very limited elbow room. Not the least of which includes a representation made in earlier proceedings that they have no capacity to be able to draw their own funds for the purposes of making any contribution towards strategies that might reduce their risk. So that when it is suggested that Northlands has the capacity to pay out tax liabilities and to add that into the mortgage, that standing on the language of the mortgage itself is a fair statement. But as known to me by representations of earlier counsel, the mechanism by which this investment instrument was structured precludes, I will not say forecloses, that would just be inappropriate, but it precludes being able to take the steps that the Monitor speaks of being available to other entities.

The language of the angst on behalf of Northlands captured in the emails to the Monitor is simply a reinforcement of the difficulties that this entity has found itself in both prior to, which is what was being written in late 2017 and early 2018, but also post the change in status of the *CCAA* proceedings, from a restructuring to a liquidation of assets.

Thirdly, it is a truism, as Mr. Lenz points out, that the costs in respect of recapture of security on land are significantly less than the costs in respect of liquidating a business collecting receivables, and most provocatively dealing with assets such as dorms and the property that has been the subject of significant dispute and professional fees to address and reconcile priorities.

That is unavoidable. It is just in the nature of *CCAA* which has a very significant public purpose to it insofar as offering a vehicle for commerce that does not oblige use of bankruptcy and insolvency and the inflexibility inherent in all of that.

It was a very rough tool, but inherent recognition of that cost differential that led to the formula by which the holdback on the sale proceeds on Winterburn was fashioned at twice the costs in relation to assets as against lands.

That is not determinative. Cost allocation is, as has been alluded to here, something for the future that will be addressed based on some very significant submissions at that stage.

What Mr. Lenz is urging on behalf of Northlands, quite appropriately in terms of being able to express that due diligence has been used by the entity on behalf of its membership or its shareholders, is that the original order as against CNC, (as I will use that term and have continued in other judgments to use collectively for the Canada North group of companies) as an ongoing entity. It was granted protection under *CCAA* with an ongoing responsibility to deal with its creditors, and to deal with its tax liabilities, and to deal with its municipal responsibilities going forward. Mr. Lenz is quite correct that that is standard language across the country and it is anticipated that, to the extent that those responsibilities are not properly discharged, there is a risk that the proceedings will be brought to an end as became apparent certainly by March and April of 2018 moving into a liquidation.

At that stage, the challenge for the Monitor, and indeed for all affected parties, is to provide for a reasonable and orderly assessment of what can be done most expeditiously, most cost effectively, and with the least amount of resistance. One of the issues that was clearly identified by all participants who appeared in my courtroom was that there was a tax liability for these various properties that was being asserted by a number of municipalities. And the *Virginia Hills* decision was recognized as a really significant, if not threshold, determination for what relative risks and pillars were going to be in place for the assertion of those claims under the municipal government -- *Municipal Taxation Act.*

The Court of Appeal's decision was not issued until February of this year and it was fundamentally agreed to by all parties that we would not deal with taxation issues in that context until we had *Virginia Hills.* And nobody, in making that determination and recommendation to the Court to defer that entire topic, raised a concern with respect to penalties or total quantum of tax; because it was understood at that time that those taxes were being asserted as against the various properties with questionable reliance upon the provisions of the *Act* allowing for claims for the placement of equipment, including dorms, as constituting improvements. Mr. Lenz quite properly points to the tax liability asserted in respect of Bonnyville property of $900,000. To have paid those taxes, or even to have appealed and taken steps seeking to address that, in this Court's assessment, with the benefit of hindsight, would have been an incurring of costs and an impacting of negotiation position that would have compromised what has been achieved here today.

No one can have known that, but the reality of being able to reduce that liability to $280,000 just on that aspect alone, speaks to there being a significant amount of uncertainty as to the strength of the claims of the municipalities, both in regards to the claims on improvements, claims on penalties, and the responsibility of parties to make contributions on those.

The settlements that have been achieved do not represent positions in law that will be binding on a go forward basis. They will be informative of counsel practicing in this area as to an approach that might well assist in resolving future issues. But they are not the law. And so the best that can be said at the present time is that we have a resolution to the end of December 2019 that not only neutralizes any responsibility of Northlands and other secured interests in property but minimizes the current risks in order to enable a further disposition of remaining assets.

It is pure speculation to anticipate whether that will be by way of private sales, public sales, foreclosure, or municipal taxation proceedings for liquidation. At some point, these properties have got to see the decommissioning of the assets that are on there, some of which, certainly in Northland's case, came onto those properties without Northland's direct involvement or awareness through CNC.

The claim that the Monitor must now stand in the stead of CNC to pay taxes is not something which this Court is prepared to direct in consequence of what has taken place. They have been fixed with responsibility, indeed power, to liquidate assets to the benefit of all parties and with the oversight of the Court for approval of transactions that the Court has determined require residual approval. That is to say there are some transactions which the Court has authorized be done without the Court having to monitor those.

But to say at the present time that funds must be acquired or drawn upon from within the overall estate of the monies being held in trust from different transactions, to pay certain municipal taxes, the quantum and the volume of which is unclear as we move into the year 2020, simply is not something which this Court is prepared to authorize.

I have a responsibility, not just the authority, but I have a responsibility to deal with the issues such as this under section 11 of the *CCAA,* having regard to the overall interests of all parties. I will not reiterate the sympathy that I expressed at the outset to the predicament that Northlands finds itself in, but it simply does not represent a fair and responsible response to the predicament of Northlands to say that other creditors on different properties affected by CNC's liquidation ought to be paying taxes moving forward. Quantum of which is difficult for this Court to determine as has been demonstrated by best efforts that each party has put into these negotiations.

I, however, as explored during the argument on this, dismissed this application expressly without prejudice to the rights of Northlands, and any other party who may seek a parallel treatment, to raise the issues that have been profiled in this application as part of the Court's exercise of discretion in the cost allocation applications.

I have not addressed in these rather rambling oral reasons the cases that have been raised. I am grateful to counsel for the briefs that you had; I have read the decisions that were provided to me. I acknowledge that the cases that were problematic on their face to Mr. Lenz's application as were cited by Mr. Russell in tabs 9 and 11 of his materials. You are lucky you cannot see me, Mr. Lenz, because I am fumbling through what I would have said was just a smaller portion of a grand pile of materials that were given to me but give me a moment and I will at least give you the name references. The *Algoma* case and the *U.S. Steel* decisions. They are obviously different on their facts as it relates to the continued status and restructuring and deferral, but the principles behind those cases can be seen to have been grounded in the pragmatism of not mixing the nature of the assets that would be impacted. And that is at the heart of this Court's determination that Mr. Lenz's application for Northlands is something that cannot succeed. And I will only revisit it to the extent of it perhaps informing some aspects of the Court's responsibilities on cost allocation.

Is there anything else that needs to be addressed here this morning?

MR. QUINLAN: I don't believe so from my perspective, My Lord.

MR. RUSSELL: No, Sir.

THE COURT: All right. In the circumstances, I will say that while the application has been dismissed, I am not going to award any costs; all right?

Thanks very much everyone.

MR. QUINLAN: Thank you, My Lord.

MR. RUSSELL: Thank you, My Lord.

PROCEEDINGS CONCLUDED

Certificate of Record

I, Morag O'Sullivan, certify that this recording is the record made of the evidence in the proceedings in Court of Queen's Bench, held in courtroom 516, at Edmonton, Alberta, on the 22nd day of August, 2019, and that I, Morag O'Sullivan, was the court official in charge of the sound-recording machine during the proceedings.

Certificate of Transcript

I, Su Zaherie, certify that

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

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

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Order Number: AL-JO-1003-8981
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