

COURT FILE NO. 1603 02755

COURT COURT OF QUEEN'S BENCH OF ALBERTA

JUDICIAL
CENTRE EDMONTON

IN THE MATTER OF THE COMPANIES'
CREDITORS ARRANGEMENT ACT,
R.S.C. 1985, c. C-36, AS AMENDED

AND IN THE MATTER OF 632738 ALBERTA LTD.

DOCUMENT AFFIDAVIT OF IAN MCKINLEY – NINTH CCAA EXTENSION

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AFFIDAVIT OF IAN MCKINLEY

Sworn on April 20, 2021

I, Ian McKinley, Businessman, of the City of St. Albert, in the Province of Alberta, SWEAR AND SAY THAT:

1. I am the Corporate Controller for 632738 Alberta Ltd. ("632"), and Thompson Contractors Inc. ("Thompson"), and the Thompson Bros. Corporate Group, and as such, the matters hereinafter deposed to are based on my personal knowledge or are based on the books and records maintained by 632 in the ordinary course of its business, entries in which books and records are made reasonably, contemporaneously with their business transactions as they occur. To the extent any matters herein are expressed to be based on information and belief, I do verily believe the same to be true.
2. This Affidavit should be read in conjunction with the Affidavits of Paul Sturt ("Mr. Sturt") sworn on January 4, 2016 in matter 24-2066170 ("First Affidavit in BIA Proceedings") and Mr. Sturt's previous Affidavits sworn in these proceedings along with each of my previously sworn and filed affidavits in these proceedings dated October 16, 2017, April 23, 2018, October 18, 2018, August 15, 2019, and June 22, 2020.

History of Proceedings

3. As noted in Mr. Sturt's prior Affidavits, 632 was reassessed for Income Tax on October 13, 2015, as a result of an audit of its T2 Corporation Income Tax Return for the Tax Year

ended December 31, 2011. As a result of the audit, CRA reallocated an additional sum of \$77,892,210.00 of Partnership Income to 632.

4. In the result:

- (a) CRA reassessed 632 for tax in the amount of \$15,440,605.71; and
- (b) The Province of Alberta has reassessed 632 for tax in the amount of \$9,267,591.44.

5. On February 19, 2016, the Honourable Justice J.B. Veit granted an order (the "Initial Order") which, among other things, permitted 632's proceedings commenced under Part 3 of the Bankruptcy and Insolvency Act, RSC 1985, c B-3 ("BIA Proceedings") to be continued under the Companies' Creditors Arrangement Act, R.S.C. 1985, c. C-36 ("CCAA"). The Initial Order also stayed all proceedings or enforcement processes against 632 until March 20, 2016 (the "Stay Period").

6. Eight extensions to the Stay Period set out in the Initial Order have been granted:

- (a) The first extension was granted on March 21, 2016 by the Honourable Justice J.M. Ross, extending the Stay Period until August 15, 2016;
- (b) The second extension was granted on August 12, 2016 by the Honourable Justice J.M. Ross, extending the Stay Period until March 31, 2017 (the "Second Extension Order");
- (c) The third extension was granted on March 28, 2017 by the Honourable Justice J. Gill, extending the stay period until October 31, 2017 (the "Third Extension Order"); and
- (d) The fourth extension was granted on October 25, 2017 by the Honourable Justice R.A. Graesser, extending the stay period until April 30, 2018 (the "Fourth Extension Order");
- (e) The fifth extension was granted on April 30, 2018 by the Honourable Justice J.E. Topolniski, extending the stay period until October 31, 2018 (the "Fifth Extension Order");
- (f) The sixth extension was granted on October 31, 2018 by the Honourable Justice J.H. Goss, extending the stay period until August 30, 2019 (the "Sixth Extension Order");
- (g) The seventh extension was granted on August 30, 2019 by the Honourable Mr. Justice J. Gill, extending the stay period until June 23, 2020 (the "Seventh Extension Order"); and
- (h) The eighth extension was granted on June 22, 2020 by the Honourable Mr. Justice J. Gill, extending the stay period until April 30, 2021 (the "Eighth Extension Order").

Primary Business Purpose of Transaction

7. As outlined in Mr. Sturt's Affidavit sworn on January 4, 2016 in respect of the First Extension in the BIA Proceedings, the Thompson Contractors Partnership ("TCP Partnership") was established, in part, for the purpose of providing services in the nature of construction workers, administrative personnel and human resources consultants to Thompson Bros. (Constr.) Limited Partnership, the active member of the Thompson Bros Corporate Group which is primarily involved in the earth moving, highway construction and oil sands construction industries.
8. The primary business purpose behind the entire transaction was to facilitate the movement of the employees into that partnership.

Present Status of 632

9. The assets and liabilities status of 632 have not changed materially. 632 continues to have no physical assets nor does it have present cash flow. The only assets maintained in 632 are investments in, or loans to, affiliated and wholly owned companies.
10. 632 does not presently have any employees. It does not owe CRA for unremitted source deductions or GST. 632's only ongoing obligations are in relation to professional fees for insolvency and tax proceedings which are generally being funded by an entity related to 632.
11. I refer to Mr. Sturt's Second Affidavit sworn in the BIA Proceedings respecting NBD Investments Ltd. ("NBD"). I am informed by Mr. Richard Kirby, one of the directors of NBD, and do verily believe it to be true, that HSBC Bank Canada ("HSBC") no longer holds a security interest in respect of 632 in relation to any debts or obligations owing to it by NBD. NBD has refinanced its business operations and as a result of that financing 632 is no longer required to provide a Guarantee or security.
12. 632 does, however, still hold one-third of the shares of NBD which does, in turn, hold an interest in an active business enterprise.

Plan to Creditors, Need for Extension of the Stay of Proceedings under the CCAA

13. As noted in both prior Affidavits, CRA has identified 632 as a large corporation under section 225.1(8) of the Income Tax Act ("ITA"). I am informed by 632's legal counsel and do verily believe that where a large corporation is assessed in an amount under the ITA, CRA can take action to collect one half of the amount of the assessed tax even in the face of an objection.
14. These proceedings were taken as a result of CRA's ability to collect up to 50% of the tax assessed. 632 needed to take steps to protect its interests and therefore originally filed the necessary documentation to commence the BIA Proceedings.
15. Prior to 632 commencing its BIA Proceedings, CRA had not taken any steps in attempt to collect the re-assessed tax amount. However, an ongoing stay is needed in order to preserve 632's present position to:

- (a) Preserve the status quo. It is noted in Mr. Sturt's First Affidavit in the BIA Proceedings, the Limited Partnership from which 632 is allocated income and the basis of the reassessments has been dissolved;
 - (b) 632 disputes CRA's reallocation of the income as the primary business behind the entirety of the transaction was to facilitate the creation of an entity to provide employment and human resources services to the main business enterprise and to facilitate the movement of the employees out of the main business enterprise to the TCP Partnership;
 - (c) 632's assets consist primarily of monies owing to it by related entities and shares held in NBD and Thompson Contractors Inc. ("Thompson"). Each of NBD and Thompson are active business entities. Thompson is a partner in TCP Partnership, the entity created to hold the employees. Presently, there are approximately 700 people employed by it providing services to Thompson Bros. Corporate Group. If CRA is allowed to take steps to collect the indebtedness those entities will be indirectly and adversely affected and may be forced to close if CRA either:
 - (i) Appoints a Receiver or bankrupts 632 and thereafter attempts to realize on those shareholders' loans; or
 - (ii) Attempts to sell or dispose of the shares held by those entities.
16. What is more, attempts to enforce payment from NBD may cause its lender to take steps to call the loans against NBD thereby adversely affecting its ability to conduct business.
17. Accordingly, if CRA is allowed to take steps, it will have a chain reaction on the entirety of the Thompson Bros Corporate Group which is already experiencing some difficulty due to the significant downturn in the Alberta economy.
18. The Second Extension Order required 632 to:
- (a) Provide proof of the filing of its appeal with the Tax Court of Canada no later than 12:00 noon, Edmonton time on Friday, September 2, 2016 to the Department of Justice Canada ("DOJ");and
 - (b) File its 2015 corporate tax return no later than Friday, September 30, 2016.
19. 632, through its tax counsel, Felesky Flynn LLP, filed its appeal with the Tax Court of Canada and provided proof of same to the DOJ by the time stipulated in the Second Extension Order. The 2015 corporate tax return was also filed as required.
20. The corporate tax return for 2016 was filed and a Notice of Assessment for 2016 was received from CRA on or about July 7, 2017. The corporate tax return for 2017 was filed and a Notice of Assessment for 2017 was received on or about July 3, 2018. The corporate tax return for 2018 was filed on or about June 29, 2019 and a Notice of Assessment was received on or about August 7, 2019. The corporate tax return for 2019 was filed on or about June 29, 2020 and the Notice of Assessment was received on or about July 23, 2020.

21. With respect to the ongoing appeal:
- (a) Examinations for discovery were conducted by both parties on October 11 and 12, 2017;
 - (b) At the conclusion of the examinations for discovery, the Crown brought a motion to the Tax Court requesting leave to examine a different corporate nominee, which leave was granted by Order dated February 14, 2018;
 - (c) In addition to granting leave for the Crown to examine an alternative corporate nominee, the Tax Court varied its Timetable Order in this matter as follows:
 - (i) The date for the completion of examinations for discovery is extended to May 31, 2018;
 - (ii) The date for the satisfaction of any undertakings given is extended to July 31, 2018; and
 - (iii) The date by which the parties are required to report to the Court as to the status of the appeal is extended to September 28, 2018;
 - (d) The Crown has since amended their pleadings to abandon their original position upholding the assessment and now pleads on a different basis for upholding the assessment. 632 has brought a motion to the Tax Court asking the Court to opine on whether the Crown's new position is statute-barred. The procedure requires two separate hearings. The first hearing to determine whether the Court should hear the substantive motion, was heard on March 7, 2019. Follow-up submissions were provided to the Court on March 21, 2019;
 - (e) On October 19, 2019, the Tax Court issued reasons on 632's application. The initial application was dismissed. 632 appealed that dismissal to the Federal Court of Appeal;
 - (f) On March 4, 2021, the Federal Court of Appeal issued its decision and reasons dismissing 632's appeal. The time to seek leave to appeal to the Supreme Court of Canada has not yet passed however the parties are currently preparing for questioning of 632's witness.
22. 632 continues to act in good faith and with due diligence. 632 remains of the belief that the reassessment was issued incorrectly.
23. In the circumstances, 632 requests an extension of the stay of proceedings to April 29, 2022 by which time it will be in a position to update the Court with the status of its tax proceedings and whether the matter is capable of resolution or requires a trial.
24. In the circumstances, I do verily believe that 632 is taking steps to protect its interests and in doing so is acting in good faith and with due diligence in the first steps in attempting to restructure and reorganize its affairs.

25. I make this Affidavit in support of the relief sought in the Notice of Application filed concurrently with this Affidavit.

SWORN BEFORE ME at Edmonton, Alberta,)
this 20th day of April, 2021)



Darren R. Bieganski, QC)
Barrister and Solicitor, Commissioner for)
Oaths in and for Alberta)



Ian McKinley