Clerk's Stamp

JUDICIAL CENTRE OF EDMONTON
FILED DIGITALLY
2103 04643
Jun 9, 2022
9:27 AM
CLERK OF THE COURT

COURT FILE NUMBER	2103-04643
COURT	COURT OF QUEEN'S BENCH OF ALBERTA
JUDICIAL CENTRE	EDMONTON
PLAINTIFF	ROYAL BANK OF CANADA
DEFENDANT	1465770 ALBERTA LTD.
DOCUMENT	**SUPPLEMENT TO THE RECEIVER'S THIRD REPORT** **JUNE 8, 2022**
ADDRESS FOR SERVICE AND CONTACT INFORMATION OF PARTY FILING THIS DOCUMENT	**RECEIVER** ERNST & YOUNG INC. 10423 - 101 Street, Suite 1400 PO Box 44 Edmonton, Alberta T5H 0E7 Attention: Matt McCulloch / Dan McCulloch Telephone: 780-638-6642 / 780-441-4695 Fax: 780-428-8977 Email: matt.mcculloch@parthenon.ey.com dan.mcculloch@parthenon.ey.com **COUNSEL** DLA PIPER (CANADA) LLP Suite 2700 10220 - 103rd Avenue NW Edmonton, Alberta T5J 0K4 Attention: Jerritt Pawlyk Telephone: 780-429-6835 Fax: 780-670-4329 Email: jerritt.pawlyk@dlapiper.com

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PURPOSE OF THE REPORT

1. The purpose of this Supplement to the Receiver's Third Report (the **"Supplement"**) is to provide the Court with support in relation to the following:

   a) the postponement of Husky Oil Operations Limited's ("**HOOL**") mortgage interest registered against the Real Property of 1465770 Alberta Ltd. ("**Westlake Husky**") in favour of the Royal Bank of Canada ("**RBC**");

   b) HOOL's acceptance and acknowledgement of service of the Discharge Order; and,

   c) HOOL's acknowledgement that it has no interest in the proceeds distributed pursuant to the Discharge Order.

DISCLAIMER

2. In preparing this Supplement, the Receiver has relied upon Westlake Husky's unaudited financial information, Westlake Husky's books and records, certain financial information prepared by Westlake Husky, and discussions with Management. The Receiver has not audited, reviewed or otherwise attempted to verify the accuracy or completeness of the information provided. Accordingly, the Receiver expresses no opinion or other form of assurance on the information contained in this Supplement or relied upon in its preparation. Future oriented financial information reported or relied on in order to prepare this Supplement (if any) is based on Management's assumptions regarding future events; actual results will vary from forecast, and such variations may be material.

3. This Supplement should be read in conjunction with the Receiver's Third Report and any other materials previously filed with the Court. All reports and Orders, save for items directed to be sealed for confidentiality purposes, are available on the Receiver's website established for these proceedings, located at https://documentcentre.ey.com/#/detail-engmt?eid=466.

4. Capitalized terms used herein, not otherwise defined, are as defined in the Receiver's reports previously filed with the Court.

POSTPONEMENT OF HOOL'S MORTGAGE INTEREST

5. The Receiver advises that there are mortgages registered against the Real Property of Westlake Husky by RBC and HOOL.

6. On January 16, 2020, HOOL agreed to postpone its mortgage interest in favour of RBC. Attached as **Schedule "A"** is the Postponement of Mortgage ("**Postponement**") document. The Postponement was not detailed in prior reports to the Court, so a copy of the Postponement is being provided to the Court as confirmation that the agreement between HOOL and RBC exists.

ACKNOWLEDGEMENT OF SERVICE

7. The Receiver advises that on June 6, 2022, service of the Discharge Order was effected by the Receiver's counsel on HOOL. Attached as **Schedule "B"** is a copy of an email confirming that legal counsel for HOOL has accepted and acknowledged service of the Discharge Order.

NO INTEREST IN PROCEEDS DISTRIBUTED

8. The Receiver advises that, following service of the Discharge Order, legal counsel for HOOL acknowledged that HOOL has no interest in the proceeds distributed pursuant to the Discharge Order. Attached as **Schedule "C"** is a copy of an email confirming HOOL's acknowledgement.

Respectfully submitted this 8th day of June, 2022.

Ernst & Young Inc.
In its capacity as Receiver of
1465770 Alberta Ltd.
and not in its Personal Capacity

Per:

Dan McCulloch, CIRP, LIT
Vice President

Schedule "A"

ALBERTA GOVERNMENT SERVICES
LAND TITLES OFFICE

IMAGE OF DOCUMENT REGISTERED AS:

202016482

ORDER NUMBER: 44526947

FORM 17

LAND TITLES ACT
(Section 107)
POSTPONEMENT OF MORTGAGE

Husky Oil Operations Limited, the mortgagee in the mortgage registered in the Land Titles Office as instrument number 142271326 hereby agrees to the postponement of its rights in the following land:

PLAN 1124353
BLOCK 46
LOT 56
EXCEPTING THEREOUT ALL MINES AND MINERALS

to the rights in and to that land of the mortgagee in the following instrument:

Mortgage - Royal Bank of Canada registration number 192 280 881.

In witness whereof I have hereunto subscribed ~~my name this~~ 16th Day of January, 2020

SIGNED by the above named)
)
in the presence of:)

Witness

Lawrence Richler
Vice President
Marketing

AFFIDAVIT OF EXECUTION

CANADA)	I, Jessica Bird
PROVINCE OF ALBERTA)	of Calgary, in the Province of Alberta
TO WIT:)	MAKE OATH AND SAY THAT:

1. I was personally present and did see Lawrence Richler named in the within instrument who is personally known to me to be the person named therein, duly sign and execute the same for the purposes named therein.

2. The same was executed at Calgary, in the Province of Alberta and I am the subscribing witness thereto.

3. I know the said person and he/she is in my belief of the full age of eighteen (18) years.

SWORN BEFORE ME at the City)
of Calgary, in the Province of)
Alberta this 16 day of)
January, 2020)

A COMMISSIONER FOR OATHS for Alberta

Jessica Bird
Contracts Advisor - Real Estate
Marketing

TRACEY ELIZABETH BARDEN
A Commissioner for Oaths
in and for Alberta
My Commission Expires May 19, 2021

Post# 121 122 819

AFFIDAVIT VERIFYING POWER OF ATTORNEY

I, LAWRENCE RICHLER, of the City of Calgary, in the Province of Alberta,

SOLEMNLY AFFIRM THAT:

1. I am the authorized attorney of HUSKY OIL OPERATIONS LIMITED (the "Corporation") named in the within instrument.

2. I am authorized by the Corporation, under power of attorney, to execute the instrument without affixing a corporate seal.

AFFIRMED BEFORE ME at the City of Calgary, in the Province of Alberta, this 2 day of December.	
A COMMISSIONER FOR OATHS in and for the Province of Alberta	LAWRENCE RICHLER
KRISTIN PHILIPS *Barrister & Solicitor*	Lawrence Richler Vice President Marketing

7

202016482

202016482   REGISTERED 2020 01 22
POST - POSTPONEMENT
DOC 1 OF 1 DRR#: A0E9111 ADR/LMACMILL
LINC/S: 0034927566

Schedule "B"

Daniel Pintaric

From:	Hoy, Kevin <kevin.hoy@ca.dlapiper.com>
Sent:	June 7, 2022 8:51 AM
To:	kevin.hoy@dlapiper.com
Subject:	FW: [EXTERNAL] Receivership of 1465770 Alberta Ltd.

From: Bramwell, Dave <Dave.Bramwell@cenovus.com>
Sent: Tuesday, June 07, 2022 8:37 AM
To: Hoy, Kevin <kevin.hoy@ca.dlapiper.com>
Cc: Pawlyk, Jerritt <jerritt.pawlyk@ca.dlapiper.com>
Subject: RE: [EXTERNAL] Receivership of 1465770 Alberta Ltd.

Thanks for the explanation Kevin. Makes sense to me. I confirm that Cenovus has no interest in Receivership estate and will not be making a claim.

Regards

Dave Bramwell
Director – Legal, Canadian Downstream
Office: 1.403.750.1831 | Cell: 1.403.461.1299
dave.bramwell@cenovus.com
Calgary, AB
cenovus ENERGY

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Sent: Monday, June 6, 2022 5:21 PM
To: Bramwell, Dave <Dave.Bramwell@cenovus.com>
Cc: Pawlyk, Jerritt <jerritt.pawlyk@dlapiper.com>
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Hi Dave,

Thanks for the quick reply.

Loop Funding Inc. was only the ranking lender on non-PMSI personal property (which was limited to convenience store inventory and fuel left in the tanks at the time of the Receiver's appointment).

RBC was the senior lender ranking first against real property, the sales proceeds of which constituted the vast majority of the total funds brought into the Receivership. I would have to check back on the Receiver's analysis to confirm what math led to the allocation of distributions on net proceeds from personal property sales as between Loop and RBC. However, for present purposes, I believe that may be something a moot point, given that HOOL's only security registered against Westlake Husky was its mortgage security. I have just double-checked the PPR dating from the time of Westlake Husky's entry into receivership and I can confirm that HOOL does not appear as a registered holder of security in personal property.

Given that RBC first on title as a result of HOOL's subordination by postponement of its mortgage, the net land sale proceeds, which were insufficient to clear debts owing to RBC, were allocated to RBC. As I see it, HOOL would only have been entitled to any distributions out of the Receivership estate if the Receiver had realized on sufficient value to retire the entirety of amounts owed to RBC.

If this answers your question, or you determine that no amount was actually owing to HOOL in any event, please let me know if we have your confirmation of HOOL's acknowledgment of no interest in the Receivership estate.

Alternatively, if you would like me to look into this further, please let me know what additional information you require to confirm that you are satisfied that HOOL had no entitlement to receive a distribution.

Best,
Kevin Hoy
Associate

T +1 403.698.8738
F +1 403.776.8861
E kevin.hoy@dlapiper.com

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I see that your office eventually received an electronic copy of the service package in the Receiver's Application for Discharge, which was heard on May 26. Unfortunately, our paper service package to the address for Husky Oil Operations Ltd. ("**HOOL**") was returned to our office on May 25, meaning we were unable to prove service on HOOL for the May 26 application. I understand that mail is no longer being accepted at this address.

Our proposed Discharge Order included provisions authorizing the distribution of land sale proceeds realized by the Receiver. *Per* a prior Order of the Court, interests previously appearing on title, including a mortgage in favour of HOOL (the "**HOOL Mortgage**") remained impressed against sale proceeds. The HOOL Mortgage was registered on title prior to the mortgage of RBC, the senior secured lender to Westlake Husky. Though the HOOL mortgage was registered first in time, HOOL had postponed the HOOL Mortgage to the mortgage of RBC, such that HOOL's interest was subordinate to RBC. I have attached the Postponement of Mortgage obtained from Land Titles.

The Court declined to grant the Order originally sought by the Receiver in the absence of service on HOOL, given that it involved the distribution of proceeds that could theoretically be encumbered by the HOOL Mortgage. In lieu of adjourning the matter to late June, the Court Ordered that the Receiver constitute a holdback in the amount of $100,000 and that HOOL be provided with leave to seek a further Order of the Court varying the distribution scheme prescribed by the Discharge Order.

Please see attached the Discharge Order.

I draw your attention to paragraphs 1.1 to 1.3 of the Discharge Order, which provide that the same must be served on HOOL and that HOOL is entitled to apply to the Court within 21 days from the pronouncement of the Order seeking a variance of the Order (which would include the distribution scheme).

As is set out in the Third Report of the Receiver, the Receiver's view is that HOOL has no entitlement to any of the proceed brought into the Receivership Estate from the sale of real property encumbered by the HOOL Mortgage; there was a deficiency in paying out the RBC mortgage, which ranked in priority to the HOOL Mortgage in light of the attached Postponement.

Our chief issue at this juncture is service of the Discharge Order on HOOL. As stated, the Receiver is required by the terms of the Discharge Order to effect service of that Order on HOOL. As we believe we may no longer be able to serve HOOL at the address previously listed under its mortgage registration, it may be necessary for us to apply to Court to seek a further Order validating attempted service or authorizing service at a different address. Obviously, we wish to avoid that course of action in the interest of efficiency.

It would be of great assistance if you could: (a) confirm that you accept and acknowledge service of the attached Discharge Order on behalf of HOOL; and (b), confirm that HOOL acknowledges that it has no interest in any of the funds referred to in the Discharge Order and that it does not intend to avail itself of its right to apply to the Court for a variance of the Discharge Order pursuant to paragraph 1.1.

Please do not hesitate to get in touch with me if you wish to discuss the above. I can be reached at 403.698.8738.

Best regards,
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Associate

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