

COURT FILE NUMBER 1301-01078
COURT COURT OF QUEEN'S BENCH OF ALBERTA
JUDICIAL CENTRE CALGARY
IN THE MATTER OF THE RECEIVERSHIP OF
KASCO CONSTRUCTION (ALTA) LTD.
PLAINTIFF PYX FINANCIAL GROUP OF CALGARY INC.
DEFENDANT KASCO CONSTRUCTION (ALTA) LTD.

DOCUMENT **SIXTH REPORT OF THE RECEIVER,
HARDIE & KELLY INC.
OCTOBER 19, 2015**

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**SIXTH REPORT OF THE RECEIVER
HARDIE & KELLY INC.
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INTRODUCTION

1. The within receivership proceedings concern a construction company that formerly carried on business in Calgary, Alberta, operating under the name Kasco Construction (ALTA) Ltd. (“Kasco” or the “Company”).
2. On January 29, 2013 (the “Receivership Date”), Pyx Financial Group of Calgary Inc. (“Pyx”) made application to the Court of Queen’s Bench of Alberta (the “Court”) for the appointment of a receiver and manager of the current and future assets, property and undertakings of Kasco.
3. The Court granted an Order on January 29, 2013 (the “Receivership Order”), which was consented to by the Company, appointing Hardie & Kelly Inc. as the receiver and manager (the “Receiver”) of Kasco.
4. Given Pyx’s familiarity with the Company’s accounts receivable (in its capacity as factor of Kasco’s accounts), the Receiver and Pyx determined that it would be more efficient and cost effective if Pyx collected the accounts receivable on the Receiver’s behalf. On February 27, 2013, the Receiver filed a report (the “First Report”) with the Court in advance of the Receiver’s application seeking the Court’s approval to appoint Pyx as the Receiver’s agent (the “Agent”) to collect Kasco’s accounts receivable.
5. On March 1, 2013, the Court granted an Order appointing Pyx as the Agent to collect Kasco’s accounts receivable (the “Agency Order”).
6. On April 17, 2013, the Receiver filed a report (the “Second Report”) in advance of the Receiver’s application seeking approval for the sale of certain of Kasco’s heavy equipment and vehicles (the “Equipment”).
7. On April 24, 2013, the Court granted an Order approving the sale of the Equipment and vesting title in the proposed purchaser.
8. On September 6, 2013, the Receiver filed a report (the “Third Report”) followed by a supplement to the Third Report on September 17, 2013 (the “Supplemental Report”) in response to an application by Kasco on behalf of itself and/or its principals with respect to the collection of accounts receivable.

9. On January 23, 2014, the Court granted an Order authorizing the Agent to pursue an action to enforce certain builders lines registered in British Columbia (the “January 23rd Order”).
10. On February 27, 2014, the Receiver filed a report (the “Fourth Report”) in advance of an application for an Order approving a cost allocation with respect to several of the lessors of Kasco’s equipment; however, this application was adjourned and not brought back forward.
11. On October 21, 2014, the Receiver filed a report (the “Fifth Report”) in order to provide an update to the Court and interested stakeholders as to the status of the collection of accounts receivable and with the details of the costs of the Receiver, its legal counsel, the Agent and the Agent’s legal counsel (collectively referred to as the “Interim Professional Fees”) in advance of an application seeking the Court’s approval of the Interim Professional Fees.
12. On November 3, 2014, the Court granted an Order approving the Interim Professional Fees.
13. The purpose of this report (the “Sixth Report”) is to provide the Court with:
 - an update as to the status of the collection of the Company’s accounts receivable and the Receiver’s recommendation with respect thereto;
 - an updated Statement of Receipts and Disbursements as at October 14, 2015 and the Receiver’s recommendation with respect to the distribution of the balance of the funds held in trust;
 - background information in respect of certain settlement agreements entered into between interested parties;
 - the Receiver’s recommendation with respect to the disposition of the Company’s pre-receivership records (the “Corporate Records”); and
 - the details of the balance of the costs of the Receiver, its legal counsel, the Receiver’s Agent and the Receiver’s Agent’s legal counsel in contemplation of the review and approval of the respective accounts and the Receiver’s discharge.

TERMS OF REFERENCE

14. In preparing this Sixth Report, the Receiver has relied upon unaudited financial information, records of the Company, reporting by the Agent and the Agent's legal counsel, discussions with certain of the Company's creditors and review of correspondence by and to the Receiver's solicitor.
15. Capitalized terms not expressly defined in this Sixth Report shall have the same meaning as those terms specifically defined in the Receivership Order, the First Report, the Second Report, the Third Report, the Supplemental Report, the Fourth Report and the Fifth Report of the Receiver.

SECURED AND PRIORITY CLAIMS

16. The application for the appointment of the Receiver was made by Pyx, who claimed to hold first position security over the current and future assets, property and undertakings of Kasco, by way of a general security agreement granted in its favour. Pyx also claimed to hold an ownership interest in Kasco's accounts receivable by virtue of various factoring agreements (the "Factoring Agreements").
17. Dr. Calvin Greene ("Dr. Greene") also claimed a security interest over the current and future assets, property and undertakings of Kasco by way of a general security agreement granted to him by Kasco, which was subject to a priority agreement between Pyx, Dr. Greene and Kasco.
18. One of the largest creditors of Kasco is Canada Revenue Agency ("CRA"), which claimed an interest in the property of the Company by way of deemed trust claims (\$763,100.34 in respect of unremitted source deductions and \$303,239.14 in respect of GST) over all of the assets of the Company that were not subject to PMSI security, specific equipment leases or the Factoring Agreements entered into with Pyx.
19. Workers' Compensation Board of Alberta ("WCB") has asserted a secured claim pursuant to s. 129(3) of the Alberta *Workers' Compensation Act*. WCB has agreed to accept \$28,580 as full and final settlement in respect of its claim, following discussions and certain negotiations as between WCB and the Receiver.

20. L'Unique General Insurance Inc. ("L'Unique"), as surety, issued a labour and material bond (the "Bond") associated with a project located in British Columbia in respect of which Kasco was the principal, which is the subject of a significant account receivable that is discussed below. L'Unique has claimed an interest in this particular account receivable on the basis that it has made payments under the Bond to unpaid subcontractors and suppliers of Kasco.
21. The Receiver's counsel reviewed and analyzed the loan and security documentation in support of the secured claims of Pyx and Dr. Greene and came to the conclusion that both parties have valid and enforceable security against the property of the Company.
22. Disputes arose between the creditors as to the validity, priority and effect of the claims of various parties. As a result, Pyx commenced an application on July 12, 2013 for certain declaratory orders. Such application was opposed by CRA, Dr. Greene and Mr. Yves Turmaine (a director of Kasco). The application was adjourned from time to time. CRA Pyx and Dr. Greene have now resolved their differences by way of certain agreements as discussed below.
23. Pyx and CRA reached an agreement in June 2014 which was aimed at limiting any claims by CRA to the Graham Receivable (as defined below) such that CRA would not make any claims against any of the other assets of Kasco, and Pyx agreed not to make any further property claims to the Graham Receivable.
24. Dr. Greene and Pyx in turn agreed that they will share between them the balance of the receivership funds remaining after payment of all known priority claims on a basis as to 20% for Dr. Greene and 80% for Pyx.

ACCOUNTS RECEIVABLE

25. In the Fifth Report, the Receiver advised that there were ongoing issues with respect to the collection of a significant account receivable (the "Graham Receivable") due from Graham Construction and Engineering ("Graham") in relation to establishing the final quantum of the account and the priority entitlement to the Graham Receivable. The Graham Receivable is the last of the Company's accounts receivable deemed to be collectible.

26. In the course of pursuing the Graham Receivable, liens had been registered against certain lands and interests in British Columbia by Kasco and the Receiver, immediately following the Receiver's appointment. As authorized by the January 23rd Order, Pyx in its capacity as the Agent commenced an action in the British Columbia Supreme Court against Graham and Teck Coal Limited ("Teck"), as owner. Graham has brought a counterclaim against Kasco, for amongst other things breach of contract.
27. Kasco, the Receiver, Pyx, CRA and L'Unique (the "Interested Parties") have all claimed an interest in the Graham Receivable. All of the Interested Parties have recently agreed to a global resolution of their claims concerning the Graham Receivable, and have executed a Mutual Release and Settlement Agreement (the "Settlement Agreement") providing for the following:
- Establishment of the final quantum of the Graham Receivable at \$907,639.02;
 - The Graham Receivable shall be paid into the Cranbrook Registry of the Supreme Court of British Columbia (the "Court Funds"). This payment was made on October 1, 2015;
 - All claims of lien that have been filed in relation to the Graham Receivable shall be cancelled; however, the benefits of the British Columbia lien provisions applicable to the lien claims shall continue to exist;
 - The claims and counterclaims that have been filed by the Interested Parties in the British Columbia Supreme Court associated with the Graham Receivable are discontinued; and
 - Of the Interested Parties, only CRA and L'Unique shall be entitled to assert a claim to the Court Funds (except for payment of the Agent's legal fees incurred in pursuing the Graham Receivable, which will be paid as a first priority payment from the Court Funds).
28. The Receiver was agreeable to the terms of the Settlement Agreement on the basis that with the quantum of the Graham Receivable having been established, the Receiver's ongoing involvement to resolve the Graham Receivable was not necessary in light of the priority dispute to the funds being between CRA and L'Unique.

29. In light of the execution of the Settlement Agreement, the Receiver is now in a position to make application for its discharge as well as the discharge of the Agent.

PROFESSIONAL FEES

30. Since the approval of the Interim Professional Fees, the Receiver has rendered one billing which remains outstanding in the amount of \$14,520, plus GST, covering the nine month period from September 2014 through to May 2015. The Receiver anticipates rendering a final billing in the amount of \$6,000 plus GST in respect of unbilled work in process and estimated costs to complete the administration of the estate.
31. The Receiver's legal counsel has rendered eight accounts totalling \$56,808.71 plus GST since the approval of the Interim Professional Fees covering the 12 month period of August 2014 through to August 2015. The Receiver's legal counsel anticipates rendering a final billing in the amount of \$8,000 plus GST in respect of unbilled work in process and estimated costs to complete the administration of the estate. Copies of the invoices rendered since the approval of the Interim Professional Fees in respect of the Receiver's and the Receiver's counsel's fees are available to this Honourable Court on request, and will be made available at the hearing of this application.
32. The Receiver has been advised that the Agent and the Agent's legal counsel are not looking to the Receiver for the payment of any further fees.
33. The Receiver has reviewed the details of the professional fees that are sought to be approved and is of the opinion that they are reasonable in the circumstances.
34. The Receiver respectfully requests that this Honourable Court approve the fees and disbursements of the Receiver and its counsel as described above.

STATEMENT OF RECEIPTS AND DISBURSMENTS

35. Attached as Appendix "A" is a statement of receipts and disbursements to October 19, 2015, which is a consolidated accounting of the funds held in trust by the Receiver and the funds held in trust by Borden Ladner Gervais LLP ("BLG") in its capacity as legal counsel for the Agent. As is evidenced therein, there is a total of approximately \$710,000 currently being held in trust.

36. Appendix "A" also includes provisions for the following estimated anticipated disbursements necessary to conclude the file:

- Payment to WCB in the amount of \$28,580 in full satisfaction of its secured claim;
- the Receiver's outstanding billing since the approval of the Interim Professional Fees and unbilled work in process and estimated costs to complete the administration of the estate estimated to be \$21,546; and
- the Receiver's legal counsel's outstanding billings, unbilled work in process and estimated costs to complete the administration of the estate including costs associated with the Receiver's discharge application estimated to total approximately \$68,049.15.

37. At this time, based on the above figures, the Receiver anticipates there will be approximately \$592,000 of residual funds available for distribution to Pyx and Dr. Greene in accordance with the percentages agreed between those parties (the "Residual Funds").

CORPORATE RECORDS

38. The Receiver continues to hold and maintain the Corporate Records of the Company. The Receiver is seeking the Court's authorization to destroy the remaining Corporate Records unless they are claimed by a former director of the Company within 30 days of the Receiver being discharged. The Receiver proposes to notify the former directors at the addresses listed on a search of the Alberta Corporation Registration System as at the Receivership Date.

RECOMMENDATIONS

39. The Receiver respectfully asks and recommends that this Honourable Court:

- approve the Receiver's and the Receiver's counsel's fees and disbursements;
- authorize the Receiver to pay from the funds being held by BLG and the Receiver such amounts as are necessary to settle the above referenced costs;
- authorize the Agent and BLG to give effect to any distribution Order this Court may make;

- pay the claim of WCB in the amount of \$28,580;
- pay the balance of the Residual Funds being held by the Receiver and/or BLG to Pyx and Dr. Greene in the percentages agreed to between Pyx and Dr. Greene;
- authorize the Receiver to destroy the Corporate Records being held by the Receiver unless a former director of Kasco takes possession of same within 30 days of the date of the Order discharging the Receiver; and
- the discharge of the Receiver and the Agent.

All of which is respectfully submitted this 19th day of October, 2015.

Hardie & Kelly Inc., in its capacity
as Court appointed Receiver of
Kasco Construction (ALTA) Ltd.
and not in its personal capacity

Per:



A. Ronald Hardie, CA, CIRP
President

APPENDIX “A”

Kasco Construction (Alta) Ltd.
Statement of Receipts and Disbursements
as at October 19, 2015

Receipts

Accounts Receivable	\$ 1,010,317.45
Sale of Assets	490,000.00
Cost Recovery	45,261.90
GST Collected	27,157.02
Equipment Sales	8,378.58
Interest	150.87
	1,581,265.82

Disbursements

Payments to Secured Creditors	221,040.95
Legal Fees	211,739.60
Receiver Fees	161,924.00
GST Paid	34,404.85
Agent fees	74,788.05
Agent's AB Counsel	45,140.18
Agent's BC Counsel	22,944.88
Applicant's legal fees	23,109.25
Stocktaking & Possession	21,271.71
Consulting Fees	16,162.28
Insurance	11,673.00
Appraisal	10,000.00
Yard Storage	4,771.75
Records Storage	6,740.00
Miscellaneous	4,311.65
Locks & Security	502.50
Mail Redirection	280.00
Filing Fees	70.00
	870,874.65

Funds on Hand		710,391.17
Less: estimated accruals		
- Workers' Compensation Board	28,580.00	
- Receiver's fees - outstanding, WIP and estimate to complete	21,546.00	
- Legal fees - outstanding, WIP and estimate to complete	68,049.15	
	118,175.15	
Estimated residual funds		592,216.02
Pyx @80% of residual funds	473,772.82	
Dr. Greene @20% of residual funds	118,443.20	
	592,216.02	
		\$ -

Reconciliation of Funds on Hand

Receiver's trust account	\$ 37,411.69
Agent's solicitor's trust account	672,979.48
	\$ 710,391.17