

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.

DOCUMENT **THIRD REPORT OF THE RECEIVER,  
HARDIE & KELLY INC.  
SEPTEMBER 6, 2013**

ADDRESS FOR SERVICE AND CONTACT INFORMATION OF PARTY FILING THIS DOCUMENT  
Norton Rose Fulbright Canada LLP  
3700 Devon Tower  
400 Third Avenue SW  
Calgary, Alberta T2P 4H2  
Phone: 403-267-8399  
Fax: 403-264-5973  
[Kyle.Kashuba@nortonrosefulbright.com](mailto:Kyle.Kashuba@nortonrosefulbright.com)  
Attention: Kyle D. Kashuba

**THIRD REPORT OF THE RECEIVER  
HARDIE & KELLY INC.  
SEPTEMBER 6, 2013**

**I N D E X**

INTRODUCTION .....	1
TERMS OF REFERENCE .....	1
RESPONSE TO APPLICATION.....	2
RESPONSE TO AFFIDAVIT.....	3
OBSERVATIONS AND RECOMMENDATIONS.....	4

## **INTRODUCTION**

1. 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 Construction (ALTA) Ltd. ("Kasco" or the "Company").
2. 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.
3. 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 Agent to collect Kasco's accounts receivable.
4. On March 1, 2013, the Court granted an Order appointing Pyx as the Receiver's Agent to collect Kasco's accounts receivable.
5. 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.
6. On April 24, 2013, the Court granted an Order approving the sale of certain of Kasco's equipment and vehicle assets and vesting title in the purchaser.
7. The purpose of this report (the "Third Report") is to provide the Court with a response to the Application filed by Kasco together with the Affidavit of Howard Ames ("Ames") sworn and served September 4, 2013 (the "Ames Affidavit").

## **TERMS OF REFERENCE**

8. In preparing this Third Report, the Receiver has relied upon unaudited financial information, records of the Company, discussions with the Company's former management and certain of its former employees, reporting by its Agent, discussions with certain of the Company's creditors and review of correspondence by and to the Receiver's solicitor.
9. Capitalized terms not expressly defined in this Third Report shall have the same meaning as those terms specifically defined in the Receivership Order, the First Report and the Second Report of the Receiver.

**RESPONSE TO APPLICATION**

10. In its application dated September 4, 2013 (returnable September 6, 2013), Kasco is the named Applicant. It is not clear on what basis Kasco is bringing the application, nor is it clear whether or not they have the necessary standing to do so.
11. In the said application, Kasco states that the grounds for making the application are that there are significant differences between the amount of accounts receivable reported by the Receiver in its First Report, and the amount of accounts receivable reported by the Receiver's Agent in the July 5, 2013 Affidavit of Cassandra Consiglio (the "Consiglio Affidavit"), such that was filed in support of the Pyx application to have the priority to the accounts receivable determined. The relief sought in the Kasco application materials includes an accounting of all accounts receivable outstanding as at the Receivership Date, as at the date of the appointment of the Receiver, as at the date of the appointment of the Agent, as at the date of the Consiglio Affidavit and as at the current date. The relief also includes requiring the Receiver to pay into court the difference between the book value of the accounts receivable as at the date of receivership and the date of the Consiglio Affidavit.
12. While there have been some discussions between the Receiver and Ames with respect to the differences between the two amounts (i.e. that amount indicated as the book value of the accounts receivable as at the Receivership Date and the amount indicated in the Consiglio Affidavit), there has been no formal request for an accounting of these differences. There has also been no evidence provided in the Ames Affidavit to suggest any impropriety on the part of either the Receiver or its Agent as to justify the relief sought with respect to immediate payment of funds into court.
13. Attached as Appendix A to this Third Report is a summary of the book values of the accounts receivable as compared to the values of the accounts receivable reported in the Consiglio Affidavit.
14. The Receiver has been advised by Pyx that the amount identified in the July 5, 2013 Consiglio Affidavit was the Agent's best estimate of the value of the collectable accounts receivable based upon their knowledge of the Kasco business, the accounts, and their research into the accounts receivable since their appointment as Agent. When preparing their application, Pyx advises the Receiver that they did not include non-factored amounts. There was no consideration of book values in these amounts.

15. The Receiver agrees that there ultimately needs to be an accounting for the differences between the amounts reported in the books of the Company and the amounts ultimately collected by the Receiver and/or its Agent. This accounting will be completed, and was at all times intended to be. The most appropriate time for this accounting would be upon finalizing collections of accounts receivable.
16. Irrespective of that, on a review of the accounts reported in Appendix A, it will become apparent what some of the differences are. For example, the accounts of Stelmack Paving Inc. and Scott Builders Inc., while not identified as outstanding accounts receivable on the books of Kasco, were identified and ultimately collected in the amounts of \$23,000 and \$34,307.99, respectively, by the Agent. An ongoing payment agreement exists for the balance of the Stelmack Paving Inc. receivable. The Scott Builders Inc. account was identified on the Kasco books as ADM Milling. This is some indication of the reliability of the Kasco accounting records
17. Similarly, while the Company has not identified any amount recoverable from Mc D's Enterprises Ltd., Pyx has determined through discussions with the account holder that approximately \$260,000 may ultimately be recoverable.
18. The \$207,000 difference in the ALSA Paving account represented an amount that had not been factored by Kasco.
19. The \$44,000 difference in the Stonecroft account represents credit notes that Pyx believes need to be issued and invoices that had been paid in early January 2013.
20. While there are other amounts that have been reconciled and amounts that still need to be investigated, the Receiver is satisfied that accounts are being followed and that the explanations being provided are credible. The Receiver expects that all of these items will be fully investigated and explained in the fullness of time.

#### **RESPONSE TO AFFIDAVIT**

21. On August 23, 2013, the Receiver's counsel, as indicated in the Affidavit of Ames, received a request from counsel for Kasco asking for an accounting of the accounts receivable. As the Court is aware, the collection of accounts receivable is being handled by Pyx, as the Court authorized Agent to the Receiver pursuant to an Order granted March 1, 2013. Accordingly, the Receiver's counsel responded to counsel for Kasco on April 24, 2013, indicating that that the accounting would ultimately have to be provided by Pyx and that the requests for information had been directed to their counsel. The Receiver's

counsel also invited counsel for Kasco to contact him directly should he have any concerns.

22. On August 24, 2013, counsel for Kasco did send a letter to counsel for the Receiver attempting to lecture the Receiver on its responsibilities, and also requested additional information with respect to receivables. The Receiver is well aware of its responsibilities; however, the Receiver cannot be expected to provide information on the basis of unilaterally imposed deadlines and should be entitled to rely on its Agent to provide the information to the Receiver upon reasonable requests. For the Receiver to maintain separate and duplicate information on its own defeats the rationale for the appointment of the Agent and is not cost effective to all of the creditors and the Kasco estate.
23. On August 30, 2013, counsel for Kasco did write to counsel for the Receiver requesting an accounting of accounts receivable and again imposing a unilateral deadline of September 3, 2013. Unfortunately, the letter was not received by counsel for the Receiver until after the close of business, prior to the long weekend. Nonetheless, further requests for the accounting were made immediately to the Agent.
24. On September 3, 2013, counsel for the Receiver did write to counsel for Kasco with respect to their August 30, 2013 letter indicating that reports had been received from the Receiver's Agent and that the reports were being reviewed by the Receiver. Counsel again invited counsel for Kasco to contact him directly should he have any concerns.
25. On September 4, 2013, after reviewing the updated materials provided by Pyx, counsel for the Receiver did provide to counsel for Kasco a copy of a report summarizing accounts receivable collections to date.
26. The Receiver is of the view that, on its own accord and through its counsel, it has been responsive to all of the demands of Kasco and their counsel, on a timely basis.

#### **OBSERVATIONS AND RECOMMENDATIONS**

27. The Receiver takes the allegations and innuendo contained in the application filed by Kasco very seriously. As an officer of this Court, the Receiver believes it has conducted itself at all times in an appropriate manner and has responded to requests from creditors, the Company and its principals in a timely manner. The Receiver believes that in this Report, it has demonstrated that it has responded to the requests and unilateral ultimatums of the Company in a timely and respectful fashion.

28. The Receiver also believes that it has demonstrated that the information sought by the Company, while important, will and should be reported in due course and as collections of accounts receivable proceeds.
29. The demands and ultimatums made by the Company and the Company's counsel and agents have put the Receiver through significant additional expense to the detriment of the Receivership Estate and ultimately the creditors.
30. It appears that while the Company initially consented to the Receivership Order and took no position with respect to the appointment of Pyx as Agent to the Receiver, the principals became much more active and obstructionist once Pyx applied for a determination as to ownership and entitlement to the outstanding accounts receivable, such that an application that appeared to possibly involve a determination of a priority dispute between creditors has expanded beyond that.
31. Clearly there is mistrust and animosity between the Company and a significant secured creditor. There may now also be tensions between competing creditors, although the Receiver has not received any other negative correspondence nor comment in this regard.
32. Accordingly, and while the Receiver recognises that this may involve increased costs in the Receivership, the Receiver will be consulting with counsel and affected creditors to determine if it would be appropriate to terminate the Agency arrangement and take over control of account receivable collections.
33. The Receiver is of the view that the Company is being obstructionist, is seeking relief to which it is only entitled to as a courtesy, and as a consequence, is eroding the recovery of all creditors and negatively impacting the stakeholders of the receivership estate.
34. The Receiver recommends that the application filed by Kasco be struck with costs to the Receiver as against both the Company and its principals personally.

All of which is respectfully submitted this 6<sup>th</sup> day of September, 2013.

**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

**KASCO CONSTRUCTION (ALTA) LTD.**

**THIRD REPORT**

**APPENDIX A**



## Kasco Construction (Alta) Ltd. AR Summary

	Per S246(1)	Per Pyx (July 2013)	Difference
Acciona Infrastructure Canada Inc.	349,450.62	1,124,441.00	- 774,990.38
ADM Milling	43,384.32	-	43,384.32
Alsa Paving	552,766.32	345,487.00	207,279.32
Atco Gas - Hourly	1,671.60	-	1,671.60
Bird Construction	132,641.97	78,722.00	53,919.97
Cannex Contracting	27,931.06	27,931.00	0.06
City Scape Landscaping Contr.Ltd.	2,965.94	-	2,965.94
Cove Properties	53,898.97	1,921.00	51,977.97
Dawson Wallace Construction Ltd.	0.79	-	0.79
Finning Cat	3,170.37	-	3,170.37
Graham Construction	1,821,358.36	1,533,049.00	288,309.36
ISL Enginnering	375,228.01	-	375,228.01
Kasco Construction - Gravel Pit	468,707.89	-	468,707.89
Kowal Construction	3,685.52	49,426.00	- 45,740.48
Lear Construction Management Ltd.	97,556.94	16,549.00	81,007.94
Mansfield Construction	75,416.97	3,923.00	71,493.97
McD's Enterprises Ltd.	-	259,638.00	- 259,638.00
Northern Dynasty	18,086.25	-	18,086.25
PCL	16,116.64	-	16,116.64
Roy Copithorne	976.50	-	976.50
Sarcee Gravel Pits	9,464.75	-	9,464.75
Scott Builders Inc.	-	35,904.00	- 35,904.00
Stelmack Paving Inc.	-	91,320.00	- 91,320.00
Solid Rock Crushing	21,828.22	-	21,828.22
Stoncroft	75,385.84	30,556.00	44,829.84
Volker Stevin Contracting	551,081.41	283,784.00	267,297.41
West Track Equipment Rentals	59,499.30	-	59,499.30
<b>Total</b>	<b>4,762,272.98</b>	<b>3,882,651.00</b>	<b>879,621.98</b>