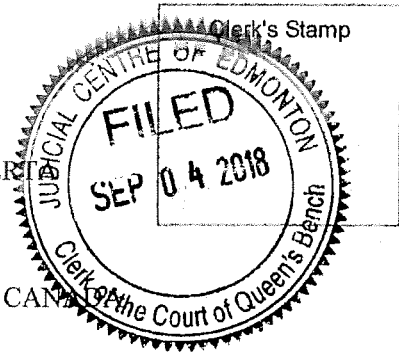


COURT FILE NUMBER 1603-16670
COURT COURT OF QUEEN'S BENCH OF ALBERTA
JUDICIAL CENTRE EDMONTON
APPLICANT BUSINESS DEVELOPMENT BANK OF CANADA
RESPONDENT 1219358 ALBERTA LTD.



IN THE MATTER OF THE RECEIVERSHIP OF
1213958 ALBERTA LTD.

HARDIE & KELLY INC., in its capacity as Court-appointed
Receiver of the assets, undertakings and property of 1219358
ALBERTA LTD.

DOCUMENT **SECOND REPORT OF THE RECEIVER,
HARDIE & KELLY INC.
SEPTEMBER 4, 2018**

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**SECOND REPORT OF THE RECEIVER
HARDIE & KELLY INC.
SEPTEMBER 4, 2018**

I N D E X

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INTRODUCTION

1. On September 23, 2016, Business Development Bank of Canada (“BDC”) made an application to the Court of Queen’s Bench of Alberta (the “Court”) for the appointment of a receiver (the “Receiver”) of the current and future assets, undertakings and property of 1219358 Alberta Ltd. (“121” or the “Company”).
2. The Honourable Mr. Justice B.R. Burrows of this Court granted an Order (the “Receivership Order”) on September 23, 2016 (the “Receivership Date”), appointing Hardie & Kelly Inc. as the Receiver.
3. On March 6, 2017, the Receiver filed a report with the Court in advance of its application seeking to increase the borrowing capacity limit of the Receiver.
4. On March 15, 2017, the Court granted an Order (the “Amending Order”) providing for an increase in the Receiver’s borrowing powers from \$150,000 to \$750,000.
5. The purpose of this report (the “Second Report”) is to provide the Court with:
 - a. An update as to the status of the administration of the proceedings since the date of the First Report;
 - b. An updated statement of receipts and disbursements since the Receivership Date; and
 - c. Information in respect of the Receiver’s upcoming application to seek a further increase in the limit of borrowing capacity available to the Receiver as provided for by paragraph 20 of the Receivership Order.

STATUS OF ADMINISTRATION

Sale of Real Estate

6. The Company owns a 20,000 square foot, three-storey office and shop facility located on approximately five acres of land in an industrial area in Edmonton (the “Premises”). The Premises comprise two parcels of land described in separate legal titles.

7. In the First Report, we advised that the Receiver had entered into a listing agreement with Cushman & Wakefield (“C&W”) to market the Premises for sale. C&W commenced its public marketing campaign in January 2017.
8. The Premises were initially listed for sale at \$5.9 Million. On October 17, 2017, with the concurrence of BDC given its standing as the fulcrum secured creditor, the Receiver reduced the list price to \$5.4 Million. Since that time, the Receiver entered into two Purchase and Sale Agreements (the “PSA’s”) with proposed purchasers which were each subject to certain conditions precedent in favour of the respective prospective purchasers. However, in both instances, the prospective purchasers were ultimately unable to satisfy the conditions each had established.
9. The second of the above referenced PSA’s was only recently terminated on August 28, 2018. Consequently, the Receiver intends on reviewing potential alternative courses of actions in respect of the disposition of the Premises in the near future.

Legal Action

10. In the First Report, the Receiver advised that in October of 2012, the Company and Capital Steel Inc. (“Capital Steel”), a related company, had jointly commenced an action in the Court against former legal counsel to the Company comprising claims for, among other things, solicitor's negligence in regard to a real estate transaction involving the Premises (the “Action”).
11. The Receiver assumed carriage of the Action and retained the Company’s former litigation counsel (the “Litigation Counsel”) to continue to prosecute the Action. The Action has now been set down for trial in May of 2019 and the Receiver’s Litigation Counsel continues to prosecute the Action to take it to trial.

Capital Steel Inc.

12. Prior to the Receivership Date, 121 had been renting the Premises and its equipment, consisting of steel fabricating equipment, vehicles and office furniture (collectively referred to as the “Equipment”), to Capital Steel.

13. On September 26, 2016, Capital Steel made an assignment in bankruptcy. Deloitte Restructuring Inc. (“Deloitte”) was appointed as the trustee of the bankrupt estate of Capital Steel. We understand that Deloitte was also appointed as agent by Canadian Western Bank (“CWB”) in respect of CWB’s security interest over the assets of Capital Steel.
14. In the First Report, we advised that the Receiver had entered into a month-to-month lease of the Premises and the Equipment to 1938890 Alberta Ltd. (“19 Steel”) a company owned by Ms. Joy Toop, one of the former principals of 121 and Capital Steel. 19 Steel had entered into an arrangement with Capital Steel’s bonding company to complete certain of Capital Steel’s work-in-process.
15. 19 Steel vacated the Premises in the spring of 2017. At that time, the Receiver then requested auction proposals for the disposition of the Equipment. In July 2017, the Equipment was disposed of at an auction held on the Premises administered by Maynards Industries Canada Inc. on behalf of the Receiver.

Priority Creditors

16. In the First Report, we advised that BDC is owed approximately \$4.9 Million and holds general security interests over all of the assets of 121 as well as a mortgage over the Premises. BDC has also now advanced approximately \$748,000 to the Receiver pursuant to Receiver Certificates to fund the administration of the receivership estate.
17. We understand that the Company’s obligation to CWB, of approximately \$200,000, was satisfied in full from the assets of Capital Steel such that 121 has no remaining obligation to CWB.
18. As 121 did not have any employees, there are no employee claims or source deduction arrears owing by the Company.
19. The available financial records indicate a GST liability of approximately \$26,000. However, Canada Revenue Agency has not advanced any form of claim against 121 to date.

STATEMENT OF RECEIPTS AND DISBURSEMENTS & RECEIVER'S BORROWINGS

20. The Receiver's updated Statement of Receipts and Disbursements (the "R&D") is attached as Appendix "A" to this Report. The R&D indicates that the Receiver maintains approximately \$5,000 in its trust account as of August 31, 2018.
21. As noted above, the Receiver has borrowed approximately \$748,000 from BDC by way of the issuance of Receiver Certificates. As set out in the R&D, the largest disbursement relates to the Receiver having paid approximately \$695,000 to the City of Edmonton on account of pre-receivership property tax arrears and penalties relating to 2015 and 2016 and on account of property taxes for 2017 and 2018.
22. Over the past several months, the Receiver had been hopeful that the most recent PSA with which it was working with would result in the successful closing of a sale of the Premises leading to the receipt of sufficient sales proceeds to repay the Receiver's borrowings and make a significant distribution to BDC. However, in light of the recent rumination of that PSA, the Receiver will require access to additional funds in order to pay accrued and anticipated future expenses including insurance premiums, utilities, security and professional fees.
23. The Amending Order increased the Receiver's maximum borrowing capacity to \$750,000. In order to have access to sufficient funds to address the above noted expenses, including the legal costs associated with the trial of the Action and in contemplation of the Receiver potentially being responsible for payment of the 2019 property taxes, the Receiver is seeking to have the Receiver's borrowing limit increased to \$1,250,000.
24. We can advise that BDC is agreeable with the increased limit proposed by the Receiver.

RECOMMENDATION

25. The Receiver is seeking approval of and recommends to this Honourable Court that the limit of the Receiver's borrowing powers as provided for by paragraph 20 of the Receivership Order be increased from \$750,000 to \$1,250,000.

All of which is respectfully submitted this 4th day of September 2018.

Hardie & Kelly Inc.,
in its capacity as Receiver of 1219358 Alberta Ltd.
and not in its personal capacity

Per:



Marc Kelly
Senior Vice President

APPENDIX "A"

1219358 Alberta Ltd., in receivership
Statement of Receipts and Disbursements
as at August 31, 2018

Receipts		
Receiver Certificates *	\$	695,375.50
Rental income		110,432.60
Auction proceeds		85,016.56
Non-refundable deposit		10,000.00
Miscellaneous refund		6,669.25
Cash in bank		5,854.29
GST collected		5,523.15
Interest		76.64
		<u>918,947.99</u>
Disbursements		
Property taxes		628,254.77
Legal fees		105,990.52
Receiver's fees		51,515.00
Utilities		45,094.26
Repairs and maintenance		21,408.60
Insurance		19,910.00
Locks and security measures		17,513.95
GST paid		11,205.63
Engineering consultant		5,997.78
Environmental assessment		3,800.00
Real property report		2,296.00
Miscellaneous		942.95
		<u>913,929.46</u>
Cash on hand	*	<u><u>\$ 5,018.53</u></u>

* Excludes \$52,936.91 advanced towards the payment of legal fees by way of Receiver's Certificate #1 which flowed through the Receiver's legal counsel's account.