

COURT FILE NUMBER Q.B. 1401 of 2019

**COURT OF QUEEN'S BENCH FOR SASKATCHEWAN
IN BANKRUPTCY AND INSOLVENCY**

JUDICIAL CENTRE SASKATOON

APPLICANT PILLAR CAPITAL CORP.

RESPONDENT HARMON INTERNATIONAL INDUSTRIES INC.

**IN THE MATTER OF THE RECEIVERSHIP
OF HARMON INTERNATIONAL INDUSTRIES INC.**

AFFIDAVIT OF STEVEN DIZEP

I, Steven Dizep of the City of Calgary Alberta, businessperson, MAKE OATH AND SAY AS FOLLOWS THAT:

1. I am President of Pillar Capital Corp. and, as such, I have personal knowledge of the facts and matters hereinafter deposed to, except where stated to be on information and belief, and whereso stated, I believe the same to be true.

2. Terms not otherwise defined herein have the meanings ascribed to them in my September 30, 2019, Affidavit.

I. Continued Default and Inaction of Harmon

3. As of January 6, 2020, Harmon remains in default of its obligations owing to Pillar. Pillar has received no payments whatsoever from Harmon, or any other party, in satisfaction of any of the Indebtedness owing by Harmon to Pillar under the Loan Agreement or other debt instruments relating thereto.

4. As of January 6, 2020, the amount of the Indebtedness owing by Harmon to Pillar is \$3,733,100.41, with interest accruing thereon at a *per diem* of \$1,835.55.

5. Attached and marked as Exhibit "A" to my Affidavit is a true copy of a January 2, 2020, search of the City of Saskatoon's tax database in regard to the Lands. I have determined from my review of Exhibit "A", and I believe it to be true, that Harmon has failed to pay its 2019 property

taxes for both properties, such that the current tax arrears for the 47th Street Building are \$12,015.91 and the tax arrears for the Millar Avenue Building are \$91,742.30.

6. Attached and marked collectively as Exhibit “B” are true copies of correspondence (collectively, the “**Correspondence**”) between the lawyers for Pillar, Mike Russell and Kevin Hoy, and the lawyer for Harmon, Jared Epp. I have determined from my review of the Correspondence, and I believe it to be true, that:

- a) on November 22, 2019, Mr. Russell wrote to Mr. Epp formally requesting:
 - i) access to the Millar Avenue Building for the purposes of conducting an inventory and to inspect the land and buildings;
 - ii) particulars as to efforts to sell land or personal property to repay Pillar;
 - iii) particulars regarding Harmon’s plans to repay Pillar or to enter into some kind of arrangement with Pillar prior to the return date of January 10, 2020; and
 - iv) confirmation that no personal property assets subject to Pillar’s security had been removed, disposed of or otherwise dealt with by Harmon without the written consent of Pillar;
- b) on November 28, 2019, Mr. Epp responded to Mr. Russell:
 - i) indicating that Harmon has been in regular communication with Pillar, such that “...Pillar should be well aware of the present state of the property as well as Harmon’s ongoing efforts to both sell the property and satisfy Pillar’s loan (including through the sale of Victor Moneo’s farmland)”;
 - ii) advising that “Harmon remains committed to satisfying this loan and has not improperly disposed of any personal property that is subject to Pillar’s security”;
- c) contrary to the statements contained in the November 28, 2019, correspondence from Mr. Epp to Mr. Russell, Pillar has not been provided with any substantial information regarding the state of the property, efforts to sell the property and satisfy the Indebtedness or evidence that Harmon is making efforts to address

the Indebtedness;

- d) on December 5, 2019, Mr. Russell again wrote to Mr. Epp, indicating that Pillar and its counsel had received reports that individuals appeared to have been engaged in the removal of personal property from the Millar Avenue Building. Mr. Russell requested confirmation that no articles of personal property had been removed or disposed of, and also requested a list of dates and times convenient for Harmon to have an appraiser attend at the Millar Avenue Building to conduct an appraisal;
- e) I have determined from my review of the Correspondence that no response was received in regard to the December 5, 2019 letter from Mr. Russell to Mr. Epp;
- f) on December 19, 2019, Mr. Russell again wrote to Mr. Epp:
 - i) requesting a response to the December 5 correspondence;
 - ii) advising that Pillar has retained Suncorp Valuations to conduct an appraisal of the Millar Avenue Building, and again requesting dates that Harmon is available to grant the appraiser access to the Millar Avenue Building;
 - iii) reminding Harmon of its contractual obligation to provide Pillar's agents with access to the Millar Avenue Building; and
 - iv) again requesting confirmation that no articles of personal property have been removed from the Millar Avenue Building;
- g) on December 20, 2019, Mr. Epp wrote to Mr. Russell, advising that:
 - i) Harmon would accommodate access to the Millar Avenue Building for the appraisal to be completed; and
 - ii) no personal property subject to Pillar's security has been removed from the Millar Avenue Building;
- h) on December 20, 2019, Mr. Hoy responded to Mr. Epp, advising that the appraiser would be available to attend at the Lands the week of December 30, 2019, in

response to which, Mr. Epp the same day advised that access could be granted by Harmon to the appraiser on January 2 or January 3, 2020;

- i) on December 30, 2019, Mr. Russell wrote to Mr. Epp:
 - i) advising that the appraiser would be attending at the site on January 2, 2020;
 - ii) providing written notice of the appraiser's attendance pursuant to the loan and security agreements; and
 - iii) providing written notice of Pillar's demand for certain financial information, including bank statements, financial statements and accounts payable/receivable;
- j) on December 31, 2019, Mr. Epp wrote to Mr. Hoy, advising that no one from Harmon would be available to grant access to the appraiser until January 6, 2020;
- k) in response, on January 1, 2020, Mr. Hoy wrote to Mr. Epp, advising that:

... [Pillar's] appraisers will be in attendance to conduct an inspection at the 2401 Millar Avenue property on the morning of January 2, as *per* the notice provided to you in our December 30 correspondence. We reiterate that Harmon is contractually obligated to provide full access to Pillar's agents at any reasonable time upon the provision of 24 hours' written notice. We have provided you with such notice and we trust you will agree that 9:00 a.m. on a business day is a reasonable time at which to conduct an inspection, especially in light of Harmon's previous commitment to provide access to its facility on January 2. Therefore, we would consider Harmon's failure to provide access to the interior of the facility a breach of its contractual obligations to Pillar.

- l) on January 2, 2020, Mr. Hoy wrote to Mr. Epp to advise that the appraiser had attended at the site that morning, but that no one from Harmon was at the Millar Avenue Building to facilitate access. Mr. Hoy then requested confirmation that a representative of Harmon would be available on January 6, 2020.

7. I am advised by Mr. Hoy, and I believe it to be true, that Mr. Epp has since indicated that a representative from Harmon will be at the Millar Avenue Building at 2 p.m. on January 6, 2020, to provide access to the appraiser.

8. I have determined from my review of the Correspondence and reports from Pillar's counsel, and I believe it to be true, that notwithstanding the repeated attempts on behalf of Pillar to preserve its security and enter into some type of arrangement with Harmon to address the Indebtedness and the ongoing default under the loan agreement and security, Harmon has refused, failed and/or neglected to respond in any material respect or otherwise cooperate with Pillar.

9. In particular, Pillar has obtained proposals from two auctioneers for the liquidation of the personal property located at the Millar Avenue Building and the 47th Street Building, and has proposed a forbearance arrangement to Harmon whereby Harmon would conduct a voluntary liquidation of the personal property and the Lands. Harmon has made no efforts to explore these opportunities to enter into an arrangement with Pillar, which has necessitated a return to Court to seek a receivership order against Harmon.

10. Attached and marked as Exhibit "C" to my Affidavit is a true copy of a listing advertisement by ICR Commercial Real Estate for the Lands. I have determined from my review of Pillar's file and Exhibit "C", and I believe it to be true, that the listing price of \$5,295,000.00 has never been reduced, notwithstanding that no offers have ever been received for the Lands (as set forth at paragraph 29 of my September 30, 2019, Affidavit).

II. Communications with Calvin Moneo

11. I have communicated directly with Calvin Moneo, one of Harmon's principals, at various times between November and December, 2019. Attached and marked collectively as Exhibit "D" are true copies of screenshots of text messages exchanged between Mr. Moneo and myself.


12. I have determined from my review of Exhibit "D", and I believe it to be true, that, although Mr. Moneo has on several occasions indicated that he is in the process of selling farmland to service the Indebtedness, he has offered no evidence to me that would indicate any progress or efforts in that regard. Moreover, Mr. Moneo has offered no evidence to demonstrate that any farmland has even been listed for sale.

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13. I make this Affidavit in support of Pillar's application seeking the appointment of Receiver over the assets of Harmon and for no other or improper purpose.

SWORN BEFORE ME at Calgary,)
Alberta, this 7th day of)
January, 2020.)


STEVEN DIZEP


A NOTARY PUBLIC)
in and for the Province of Alberta.)
(My commission expires 2024)
or Being a Solicitor.))

Alex Matthews
Barrister & Solicitor

CONTACT INFORMATION AND ADDRESS FOR SERVICE

| | |
|-----------------------------------|---|
| Name of firm: | The W Law Group LLP |
| Name of lawyer in charge of file: | Mike Russell and Kevin Hoy |
| Address of legal firms: | Suite 300, 110 – 21 st Street East Saskatoon, Saskatchewan S7K 0B6 |
| Telephone number: | (306) 244-2242 |
| E-mail address: | mrussell@wlawgroup.com / khoy@wlawgroup.com |

This is Exhibit "A" referred to in the
Affidavit of Steven Dizep
Sworn before me this 7th day of, January, 2020.



A Commissioner for Oaths for Alberta

My Appointment Expires _____.

-OR- Being a Solicitor

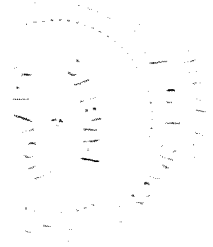
Alex Matthews
Barrister & Solicitor



This is Exhibit "B" referred to in the
Affidavit of Steven Dizap
Sworn before me this 7th day of, January, 2020.

A Matthews
A Commissioner for Oaths for Alberta
My Appointment Expires _____
-OR- Being a Solicitor

Alex Matthews
Barrister & Solicitor



This is Exhibit "C" referred to in the
Affidavit of Steven Dizep
Sworn before me this 7th day of, January, 2020.

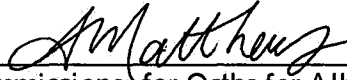
A Matthews

A Commissioner for Oaths for Alberta
My Appointment Expires _____
-OR- Being a Solicitor

**Alex Matthews
Barrister & Solicitor**



This is Exhibit "D" referred to in the
Affidavit of Steven Dizep
Sworn before me this 7th day of, January, 2020.



A Commissioner for Oaths for Alberta

My Appointment Expires _____.

-OR- Being a Solicitor

Alex Matthews
Barrister & Solicitor

