

IN THE COURT OF APPEAL FOR SASKATCHEWAN
ON APPEAL FROM THE COURT OF QUEEN'S BENCH,
JUDICIAL CENTRE OF SASKATOON

Q.B. No. 1401 of 2019

BETWEEN:

HARMON INTERNATIONAL INDUSTRIES INC.

PROPOSED APPELLANT
(Respondent)

AND:

HARDIE & KELLY INC. – Receiver of Harmon International Industries Inc.

PROPOSED RESPONDENT
(Applicant)

AND:

PILLAR CAPITAL CORP.

INTERESTED PARTY
(Initial Applicant)

RECEIVER

Hardie & Kelly Inc.
110, 5800- 2nd Street SW
Calgary, Alberta T2H 0H2

Attention: Kevin Meyler
Phone: 403-536-8526
Fax: 403-640-0591
Email: kmeyler@bdo.ca

RECEIVER'S COUNSEL

MLT AIKINS LLP
Saskatoon Square
1500, 410 – 22nd Street East
Saskatoon, Saskatchewan S7K 5T6

Attention: Jeff Lee / Paul Olfert
Phone: 306-975-7136 / 306-956-6970
Fax: 306-975-7145
Email: jmlee@mltaikins.com / polfert@mltaikins.com

**SECOND REPORT OF THE RECEIVER
HARDIE & KELLY INC.
JULY 17, 2020**

I N D E X

INTRODUCTION	3
ACTIVITIES OF THE RECEIVER.....	5
STATUS OF THE SALES PROCESS.....	6
STATUS OF THE PROPERTY CLAIMS PROCESS	7
LEAVE TO APPEAL APPLICATION	9
RECOMMENDATIONS.....	12

INTRODUCTION

1. On September 30, 2019, Pillar Capital Corp. (“**Pillar**”) applied to the Court of Queen’s Bench for Saskatchewan in Q.B. 1401 of 2019, Judicial Centre of Saskatoon (the “**Receivership Proceedings**”) for an Order appointing a Receiver of the assets, undertakings and properties (the “**Property**”) of Harmon International Industries Inc. (“**Harmon**” or the “**Company**”). Pillar’s application was adjourned from the original hearing date on October 3, 2019 and a Receivership Order appointing Hardie & Kelly Inc. (the “**Receiver**”) as Receiver of the Property of Harmon was ultimately granted by the Honourable Mr. Justice R.W. Elson on January 17, 2020 (the “**Receivership Order**”).
2. On May 27, 2020, the Receiver filed its first report in the Receivership Proceedings (the “**First Report**”), providing information to the Court of Queen’s Bench in relation to the Receiver’s application to that Court seeking the approval of, *inter alia*:
 - (a) an Order establishing a process to identify and authenticate potential ownership claims by third parties to personal property situated at or upon Harmon’s Saskatoon premises (the “**Harmon Property**”) and to facilitate a process to have such property removed on a timely basis (the “**Property Claims Process Order**”); and
 - (b) an Order establishing a sales process for the purpose of approving a listing agreement in respect of, soliciting interest in, and ultimately effecting a sale (subject to Court approval) of the Harmon Property (the “**Sales Process Order**”).
3. Also on May 27, 2020, the Receiver filed its Confidential Supplement to the First Report of the Receiver (the “**Confidential Supplement**”) providing confidential and commercially sensitive information with respect to:
 - (a) listing proposals received from two experienced real-estate brokerage firms who specialize in commercial real estate (the “**Listing Proposals**”);

- (b) information obtained from a review of two appraisals conducted by Brunson, Lawrek & Associates as of June 15, 2017 (the “**Brunson Appraisal**”) and Suncorp Valuations as of January 6, 2020 (the “**Suncorp Appraisal**”); and
 - (c) comments regarding the Receiver’s expectations of realizable value for the Harmon Property developed through representatives of the Receiver touring the Harmon Property, as well as a review of the Listing Proposals, the Brunson Appraisal and the Suncorp Appraisal.
- 4. On June 4, 2020, Calvin Moneo filed an Affidavit opposing the relief sought by the Receiver as described in its First Report as outlined above (the “**Moneo Affidavit**”).
- 5. The Receiver’s application was heard in the Court of Queen’s Bench. Harmon was represented by legal counsel at that application (Travis Kusch of the Saskatoon firm of Robertson Stromberg LLP). At the hearing, Harmon’s counsel did not object to the granting of the Property Claims Process Order and the Sales Process Order, but requested that the following modifications be made:
 - (a) in regard to the Property Claims Process Order, that the time period within which access would be provided to the Harmon Property for the purpose of identifying third party ownership claims should be increased from 21 days to 45 days, and that the parties seeking access should not have to make a separate request of the Receiver in respect of each day on which access is sought; and
 - (b) in regard to the Sales Process Order, that Coldwell Banker Signature Commercial (“**Coldwell Banker**”) should be substituted as listing agent rather than ICR Commercial Real Estate (“**ICR**”), and that an initial listing price of \$4,950,000 should be utilized in respect of that portion of the Harmon Property civically described as 2401 Millar Avenue, Saskatoon, Saskatchewan (the “**Millar Avenue Building**”), rather than ICR’s proposed listing price of \$3,800,000 for that portion of the Harmon Property.

6. Having heard the objections on behalf of Harmon, the Court of Queen's Bench did not give effect to them, and granted the Property Claims Process Order and the Sales Process Order in the respective forms sought by the Receiver.
7. On June 11, 2020, counsel to the Receiver received from Robertson Stromberg LLP:
 - (a) a Notice of Motion seeking leave to appeal the Property Claims Process Order and the Sales Process Order to this Court; and
 - (b) a Notice of Withdrawal of Lawyer of Record.

ACTIVITIES OF THE RECEIVER

8. Subsequent to the date of its First Report, the Receiver has, *inter alia*:
 - (a) Continued to instruct Mr. Hickman Parker, a former Harmon contractor, as the Receiver's representative to respond to operational matters at the Harmon Properties, including multiple apparent break-ins;
 - (b) Coordinated the attendance of environmental waste management firms to provide proposals to assist in the appropriate removal of approximately 266 barrels understood to potentially contain used paint, oils and/or other chemicals (the "**Environmentally Sensitive Materials**");
 - (c) Coordinated certain of the testing required to obtain an updated Phase 2 environmental assessment report in response to anticipated due diligence conditions arising from any offer to purchase, noting that certain of this testing cannot be completed until the Environmentally Sensitive Materials are removed from the Harmon Property;
 - (d) Engaged a property survey firm to move forward with a potential subdivision given that one of the individual land titles comprising the Harmon Property spans the Harmon Property such that a portion of both the Millar Avenue Building and the building civically described as 821 47th Street East, Saskatoon, Saskatchewan (the "**821 Building**") are contained on this land title;

- (e) Initiated the Property Claims Process as approved by this Honourable Court, including extensive discussions and correspondence with claimants, particularly Mr. Calvin Moneo, as it pertains to the submission of proof of claims in accordance with the Property Claims Process Order;
- (f) Instructed representatives of ICR in regard to the marketing of the property pursuant to the Listing Agreement, including the coordination of attendance of Calvin and/or Victor Moneo to facilitate the provision of claims pursuant to the Property Claims Process Order as discussed below;
- (g) Provided updates to stakeholders as required; and
- (h) Attended to various other administrative matters pertaining to the Receivership.

STATUS OF THE SALES PROCESS

9. Subsequent to the Court granting the Sales Process Order, the Receiver worked with ICR to finalize marketing materials in order for ICR to commence marketing the Harmon Property.
10. The Receiver has not included details in this report of commercially sensitive aspects of the marketing process, such as the number of interested parties who have toured the property, executed confidentiality agreements or who are in discussions with ICR with respect to potentially putting forward an offer on the Millar Avenue Building, the 821 Building, or both.
11. However, for purposes of providing an update on the non-commercially sensitive details of the marketing process, the Receiver has summarized certain salient details of the marketing process completed by ICR thus far. Further, and in particular, ICR has:
 - (a) Prepared a marketing brochure (the “**Property Brochure**”) for the Harmon Property;
 - (b) Sent out the Property Brochure to 58 commercially licensed agents in the city of Saskatoon and the Province of Saskatchewan;

- (c) Marketed the Harmon Property to approximately 65 individuals identified by ICR as having potential interest in Harmon Property;
 - (d) Conducted a commercial “open house” at the Harmon Property to coordinate potential buyers and their agents accessing the site; and
 - (e) Conducted follow-up tours and secondary attendances to multiple groups who have expressed interest in the Harmon Property.
12. Calvin Moneo has advised the Receiver that he is of the opinion that the list prices for the Harmon Property are too low. The Receiver has responded to Mr. Moneo that he is not precluded from putting forth his own offer to purchase the Millar Avenue Building and/or the 821 Building.
13. As of the date of this Second Report, the Receiver understands that Harmon is attempting to negotiate a settlement with Pillar to have the Harmon Property (or a portion thereof) removed from the Receivership Proceedings rather than submitting an offer through the receivership process.

STATUS OF THE PROPERTY CLAIMS PROCESS

14. The Property Claims Process Order provided that “[t]he Receiver may, during the twenty-one (21) days following the date of this Order, grant to certain persons, including, without limitation, Calvin Moneo and/or Victor Moneo, limited and prescribed access to the Premises for the purpose of inspecting the Property and identifying potential Claims (the “**Permitted Access**”), subject to the following:
- (a) the person(s) receiving the Permitted Access and the time, place and manner of the Permitted Access shall be specified in a written notice from the Receiver to such person(s) and counsel for Calvin Moneo and Victor Moneo (each, a “**Permitted Access Notice**”), a copy of which Permitted Access Notice shall be sent contemporaneously to counsel to Pillar; and
 - (b) no person, including without limitation, Calvin Moneo and Victor Moneo, shall enter upon or access the Premises in any manner whatsoever except as specifically provided in this Order or in a Permitted Access Notice.”

15. In the Moneo Affidavit, Calvin Moneo stated that he did not believe that 30 days was sufficient time to review the sheer volume of personal property. He suggested that 45 days would be a more reasonable time period, and requested that he be provided minimum access to the Harmon property Monday to Thursday from 9:30 to 4:30.
16. The Receiver originally entered into a Permitted Access Agreement with Mr. Moneo providing access to the Harmon Property Monday to Friday between June 5, 2020 and June 26, 2020, with such access ultimately extended to July 5th, including the following weekend times in response to Mr. Calvin Moneo's request:
 - (a) Saturday, June 20 between 9:30 – 4:30
 - (b) Sunday, June 21 between 9:30 – 4:30
 - (c) Saturday, June 27 between 8:30 – 5:30;
 - (d) Saturday, July 4 between 9:00 – 11:30;
 - (e) Sunday, July 5 between 9:00 – 4:30.

(The Receiver understands that there may have been several days in which neither Mr. Calvin Moneo or Mr. Victor Mono attended the Harmon Property, or only attended for a portion of the allowable time.)
17. During this Property Claims Process period, the Receiver issued formal notices to Calvin Moneo:
 - (a) not to attend the Harmon Property on June 18, 2020;
 - (b) restricting access to only between 12:30 and 4:30 on June 29, 2020; and
 - (c) restricting access only until 2:30 on July 2, 2020.
18. The Property Claims Process Order contemplated a “**Claims Bar Date**” of thirty (30) days after the date of the Property Claims Process Order, which would have been Sunday, July 5, 2020, which was therefore communicated by the Receiver to be Monday, July 6, 2020.

19. In response to a request by Calvin Moneo, in accordance with the Property Claims Process Order, the Receiver extended the Claims Bar Date to 10:00 p.m. on Tuesday, July 7, 2020.
20. The Receiver ultimately received nine proofs of claim from third parties claiming ownership of personal property located at or upon the Harmon Property. The Receiver is in the process of reviewing and responding to such claimants in accordance with the terms of the Property Claims Process Order.
21. The proofs of claim received can be summarized as follows:
 - (a) Two claims were submitted by arms-length parties, consisting of one former staff member/contractor and one former foundry customer;
 - (b) Two claims were submitted by entities understood to be controlled by Victor Moneo; and
 - (c) Five claims were submitted by individuals understood to be family members of Calvin and/or Victor Moneo, or corporate entities controlled by such persons.
22. No proofs of claim were submitted by Calvin Moneo or Victor Moneo in their personal capacity.
23. The substantiating documentation submitted as evidence of ownership for the majority of the property being claimed is not comprehensive or determinative. In fairness, given the nature of certain of the property being claimed (including many personal items), this was not unexpected.
24. The Receiver is in the process of reviewing and responding to the proofs of claim received in accordance with the Property Claims Process Order.

LEAVE TO APPEAL APPLICATION

25. The Receiver is advised by its legal counsel:
 - (a) that there is no automatic stay of execution in effect as a result of Harmon's application for leave to appeal the Property Claims Process Order and the Sales Process Order; but

- (b) in the event that the leave to appeal is granted, there would be an immediate stay of execution unless the Court of Appeal ordered otherwise.

26. The Receiver also understands from discussions with its counsel that, if leave were granted, it could take as much as 9 to 12 months for the appeal to be heard and determined (though it is also possible that, with the cooperation of the appellant, the hearing of the appeal could be expedited).

Impact of leave to appeal application on the Sales Process Order

27. The Receiver notes that a delay of several months in implementing the sales process contemplated in the Sales Process Order would have a significant negative impact upon the Receivership proceedings. The Receiver believes that this delay would very likely reduce the amount realized for the benefit of the receivership estate, including (without limitation) by reason of the following:

- (a) Based upon information provided by Pillar, it appears that interest is accruing on Harmon's indebtedness to Pillar at an approximate rate of \$3,616/day. If the appeal took 6 to 12 months to hear and determine, the resulting delay in the receivership would result in the accrual of additional interest of approximately \$ \$659,920 to \$1,319,840. These figures do not account for the additional interest accruing on the Receiver's Borrowings (by means of which the Receivership is being funded pursuant to the Receivership Order).
- (b) In addition to the interest costs, the accrual of ongoing additional professional fees (of the Receiver and its legal counsel), security and utility costs, and property taxes would result in a further erosion of estate value in the event of a prolonged receivership mandate.

- (c) Given the previous marketing of the Harmon Property and the Receiver's marketing efforts to date, ICR is hopeful that an offer on either the 821 Building and/or the Millar Avenue Building could be received within the next month, such that an indeterminate hold on the marketing process would likely lead to a negative impact on ultimate realization from the Harmon Property.
- (d) The Receiver is in the process of obtaining an updated Phase 2 environmental assessment, which some prospective purchasers will likely require be complete prior to making an unconditional offer. If the Receiver is prevented from marketing the Harmon Property in the coming months, there is a risk that marketing could not resume until the winter, which would be less conducive to showings and potential purchasers assessing the lands outside of the 821 Building and the Millar Avenue Building.

Impact of leave to appeal application on the Property Claims Process Order

- 28. As discussed, the Claims Bar Date pursuant to the Property Claims Process Order has passed and nine third party property claims have been submitted, including seven by members of the Moneo family or companies which they control. The Receiver is in the process of evaluating and deciding those claims. If any of the claimants disagrees with the Receiver's response to the claims, they have recourse to the Court of Queen's Bench for Saskatchewan. Once all claims are finally determined, the owners of the personal property will have twenty-eight (28) days from the Receiver's delivery of the Proof of Claim Response accepting a Claimant's Claim to remove their property from the Harmon Property.
- 29. There is a very large volume of personal property located on the Harmon Property, which is claimed to belong both to Harmon and third parties. The material source of recovery for the receivership estate is understood to be the real property, but the extensive personal property is, and is expected to continue to, reduce interest in the real property and reduce the amount of any offers if the buyer must take the Harmon Property "as is" (including the personal property located thereon).

30. Accordingly, in the Receiver's professional opinion, the best way to maximize the value of the Harmon Property is to clear out the personal property. As certain of that property may be owned by third parties, the first step is to ensure that any such property is returned to its rightful owner. The second step is for the Receiver to sell the remaining personal property on site, all of which will, by operation of the Property Claims Process Order, be deemed to belong to Harmon.
31. If the Property Claims Process Order is stayed for several months pending an appeal, the Harmon Property will very likely remain in its existing state, limiting interest from prospective purchasers and compromising the value available in the receivership estate.

Harmon's lack of representation by legal counsel

32. The Receiver's position is that Harmon must be represented by counsel in the Court of Appeal, pursuant to the applicable Rules of Court. Attached as **Appendix A** to this Second Report is a copy of correspondence from the Receiver's legal counsel sent to Harmon and Harmon's former legal counsel on June 11, 2020, stating, among other things, the Receiver's intention to take this position.

RECOMMENDATIONS

33. The Receiver respectfully recommends that this Honourable Court dismiss Harmon's application for leave to appeal the Property Claims Process Order and the Sales Process Order or, in the alternative, that this Court lift the stay of those Orders pending the hearing of any appeals.

All of which is respectfully submitted this 17th day of July, 2020.

Hardie & Kelly Inc.

In its capacity as Receiver of Harmon International Industries Inc.
and not in its personal or corporate capacity.

Per: 

Kevin Meyler, CA•CIRP
President

APPENDIX “A”

June 11, 2020

Via Email: t.kusch@rslaw.com

Via Email: harmon_intl@yahoo.ca

Robertson Stromberg LLP
Barristers & Solicitors
600, 105 – 21st Street East
Saskatoon, SK S7K 0B3

Harmon International Industries Inc.
2401 Millar Avenue
Saskatoon, SK S7K 2Y4

Attention: Mr. Travis K. Kusch

Dear Sirs:

**Re: Harmon International Industries Inc. (Appellant/Respondent) v. Pillar Capital Corp. (Respondent/Applicant)
Proposed July 8, 2020 Application for Leave to Appeal to the Court of Appeal for Saskatchewan**

We write to you in our capacity as counsel to Hardie & Kelly Inc., Court-appointed receiver of Harmon International Industries Inc. (the “**Receiver**”).

We have today been provided with a copy of your letter of June 11, 2020, together with application materials on behalf of Harmon International Industries Inc. (“**Harmon**”) in support of a proposed application for leave to appeal the Property Claims Process Order and the Sales Process Order of the Honourable Mr. Justice Elson of the Court of Queen’s Bench for Saskatchewan dated June 5, 2020 (the “**Subject Orders**”).

We note that the application by Harmon is returnable in Court of Appeal Chambers by video conference on July 8, 2020.

We have also been provided with your firm’s Notice of Withdrawal of Lawyer of Record.

The Receiver wishes to draw three points to the attention of Harmon.

First, the combined effect of Rule 72(1) of the *Court of Appeal Rules* and Rule 2-34(2) of *The Queen’s Bench Rules* is to require that, unless the Court of Appeal orders otherwise, Harmon must be represented at the July 8, 2020 court application by a lawyer.

For clarity, it is not open to non-lawyers (such as Calvin Moneo, Victor Moneo or other persons who are not licensed barristers and solicitors) to appear in Court at the July 8, 2020 hearing on behalf of Harmon.

Second, each of Harmon, Calvin Moneo and Victor Moneo are party to a June 1, 2020 Confidentiality and Non-Disclosure Agreement (copy enclosed for your reference). Pursuant to this agreement, each of Harmon, Calvin Moneo and Victor Moneo have agreed to hold in confidence the Confidential Supplement to the First Report of the Receiver dated May 27, 2020 (the “**Confidential Supplement**”).

As a result, the Confidential Supplement must not form part of any materials filed on behalf of Harmon in the Court of Appeal for Saskatchewan unless and until the party proposing to file same applies for and obtains an Order restricting public access to the Confidential Supplement pursuant to Court of Appeal Civil Practice Directive No. 6 (copy enclosed for your reference).

Finally, the Receiver emphasizes to Harmon, Calvin Moneo and Victor Moneo that no stay of proceedings in respect of the Subject Orders exists or is in effect until such time as an Order granting leave to appeal is obtained by Harmon and a Notice of Appeal is filed with the Court of Appeal by Harmon.

Accordingly, the Subject Orders remain in full force and effect and all parties (including Harmon, Calvin Moneo and Victor Moneo) are required to comply with the terms of the Subject Orders.

We trust that this letter states the position of the Receiver with clarity.

Yours truly,

MLT AIKINS LLP

Per: 
for: Jeffrey M. Lee, Q.C.

JML:crb

Enclosures

cc: W Law Group
Attn: Mike J. Russell and Kevin N. Hoy

cc: Hardie & Kelly Inc.
Attn: Kevin Meyler

cc: MLT Aikins
Attn: Paul Olfert