

COURT FILE NUMBER Q.B. 1401 of 2019

COURT 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.

DOCUMENT **FOURTH REPORT OF THE RECEIVER
HARDIE & KELLY INC.
SEPTEMBER 14, 2020**

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

**FOURTH REPORT OF THE RECEIVER
HARDIE & KELLY INC.
SEPTEMBER 14, 2020**

I N D E X

INTRODUCTION.....3
STATEMENT OF RECEIPTS AND DISBURSEMENTS WITH
ACCRUALS.....9

INTRODUCTION

1. On September 30, 2019, Pillar Capital Corp. (“**Pillar**”) applied to the Court of Queen’s Bench for Saskatchewan (the “**Court**”) for an Order appointing a Receiver of the assets, undertakings and properties 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. 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. Extensive materials have been filed with the Court in relation to the application described above, certain of which are defined below and referred to in the First Report of the Receiver dated May 27, 2020 (the “**First Report**”) or the Confidential Supplement thereto (the “**Confidential Supplement**”) as defined and discussed below:
 - (a) the Affidavit of Steve Dizep sworn on September 30, 2019 (the “**Initial Dizep Affidavit**”) and filed in support of Pillar’s application for the Receivership Order;
 - (b) the Affidavit of Calvin Moneo sworn on October 3, 2019 (the “**Initial Moneo Affidavit**”) and filed in response to Pillar’s application for a Receivership Order;
 - (c) the affidavit of Calvin Moneo sworn on October 8, 2019 and filed in response to Pillar’s application for a Receivership Order, which affidavit appended two valuations of the Harmon Property (as defined below), including:
 - i. an appraisal as of August 28, 2017; and
 - ii. an opinion of value as of September 4, 2018 (the “**Initial Kreutzwieser Value**”), the contents of which are addressed in the Kreutzwieser Affidavit (as defined below);

- (d) the affidavit of Steve Dizep sworn on January 7, 2020 and filed in support of Pillar’s application for the Receivership Order;
- (e) the affidavit of Keaton O’Brien sworn on January 7, 2020 and filed in support of Pillar’s application for the Receivership Order, including particulars with respect to Mr. O’Brien’s assessment of the Harmon Property arising from his attendance and, specifically, the extensive amount of equipment, scrap metal and miscellaneous items in or around the buildings on the Harmon Property;
- (f) the affidavit of Ken Kreutzwieser of ICR Commercial Real Estate (“**ICR**”) sworn on January 8, 2020 (the “**Kreutzwieser Affidavit**”) and filed by Pillar; which Affidavit provides additional context surrounding the preparation of the Initial Kreutzwieser Value and Mr. Kreutzwieser’s updated comments on potential list and transaction value subsequent to his touring and marketing the Harmon Property;
- (g) the affidavit of Kevin Hoy sworn on January 8, 2020 and filed by Pillar, appending an appraisal of the Harmon Property commissioned by Pillar’s legal counsel;
- (h) the affidavit of Andrew Maynard of ICR sworn on January 8, 2020 and filed by Pillar, providing details of Mr. Maynard’s communications with the Company relating to the marketing of the Harmon Property;
- (i) the affidavit of Calvin Moneo sworn on January 10, 2020 and filed in response to Pillar’s application for a Receivership Order.

3. On May 27, 2020, the Receiver filed its First Report, providing information to this Honourable Court with respect to, *inter alia* an application before this Honourable Court seeking the approval of, *inter alia*:

- (a) a process to identify and authenticate claims of third parties with property situated at the Harmon Property and to facilitate a process to have such property removed on a timely basis, with such efforts leading to the Receiver seeking an Order of the Court (the “**Property Claims Process Order**”) approving the terms of a proposed “**Property Claims Process**” as discussed and defined herein; and
 - (b) a sales agent and the proposed framework of a sales process for the purpose of soliciting interest in, and ultimately effecting a sale (subject to Court approval) of the Harmon Property (the “**Sales Process Order**”).
- 4. Also on May 27, 2020, the Receiver filed its Confidential Supplement to the First Report 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.
- 5. On June 4, 2020, Calvin Moneo filed an Affidavit (the “**Initial Moneo Opposition Affidavit**”) opposing the relief sought by the Receiver as described in its First Report as outlined above.

6. On June 5, 2020, upon hearing the Receiver's application and upon hearing for counsel for the Receiver, counsel for Pillar and counsel for Harmon, this Honourable Court granted the Property Claims Process Order and the Sales Process Order. The latter approved the listing for sale of the Harmon Lands through a Proposed Listing Agreement with ICR Commercial Real Estate (the "**Sales Process**").
7. On June 11, 2020, Robertson Stromberg LLP advised the Receiver that while it was withdrawing as counsel for the Company, it had assisted Harmon with filing a Notice of Motion for leave to appeal the Property Claims Process Order and the Sales Process Order to the Court of Appeal for Saskatchewan with an application set for July 8, 2020 (later amended to July 22, 2020).
8. On July 20, 2020, the Receiver filed its Second Report with the Court of Appeal for Saskatchewan (the "**Court of Appeal**"), for the limited purpose of providing information to that court in respect of:
 - (a) The status of the Sales Process;
 - (b) The status of the Property Claims Process; and
 - (c) The Receiver's comments on the impact of an appeal on both the sales process and the property claims process, together with the Receiver's recommendations therefrom.
9. On July 21, 2020, Mr. Calvin Moneo purported to deliver to the Court, through the Court of Appeal Registrar and the service list established in this matter with the following:
 - (a) An appraisal completed by Brunsdon Lawrek & Associates estimating market value as at June 15, 2020;
 - (b) An estimate of certain specified roof repairs provided by Korr Construction Limited; and
 - (c) A roof inspection report completed by Korr Construction Limited.

10. On July 22, 2020, the Court of Appeal adjourned Harmon’s application until July 24, 2020. As Harmon and/or Mr. Calvin Moneo were not represented by legal counsel, the Court invited the Receiver’s counsel to provide the Court with written submissions as to whether Harmon might have an appeal as of right.
11. On July 24, 2020, Ryan Pederson of Leland Kimpinski LLP was retained as counsel to Harmon. The hearing of Harmon’s application for leave to appeal was adjourned to Thursday, July 30, 2020.
12. On July 29, 2020, the Receiver filed its third report (the “**Third Report**”) in connection with an application held on August 4, 2020 seeking and obtaining an Order of the Court approving:
 - (a) An increase in the Receiver’s Borrowings Charge and the associated borrowing limit from \$250,000 to \$500,000; and
 - (b) The activities of the Receiver, the Receiver’s second interim statement of receipts and disbursements, and the professional fees of the Receiver and its legal counsel from May 1, 2020 through June 30, 2020.
13. On August 6, 2020, the Honourable Justice G. R. Jackson of the Saskatchewan Court of Appeal dismissed Harmon’s application for leave to appeal in its entirety.
14. On September 8, 2020, counsel for Harmon served on the service list:
 - (a) An Affidavit sworn by Mr. Calvin Moneo on September 8, 2020 stating that Mr. Moneo has had discussions with two parties with respect to arranging for a purchase and assignment of Pillar’s security that would pay out Pillar in full;
 - (b) A Notice of Application for a Court hearing scheduled for September 11, 2020 whereby Harmon would be seeking, *inter alia*:
 - i. a declaration that the interest rate payable to Pillar under the Loan Documents (as defined) is 18% per annum;

- ii. an Order requiring Pillar serve on Harmon a statement of its account for the mortgage amount arising from the Loan Documents, with the principal balance, interest and all other charges or fees numbered a consecutively.
- 15. On September 11, 2020, counsel for Pillar served on the service list:
 - (a) An Affidavit sworn by Kevin Hoy attaching, *inter alia*, a letter dated September 9, 2020 from Mike Russell as counsel to Pillar addressed to Ryan Pederson as counsel to Harmon, *inter alia*:
 - i. confirming that Pillar will, without prejudice to or waiver of any of its other rights under the Security Agreements, only be charging interest on the Indebtedness accruing at the 18% rate prescribed by the Security Agreements and that for greater certainty, Pillar would not be claiming the 30% post-maturity and default rate set out in the Security Agreements; and
 - ii. enclosing a statement outlining that as of September 9, 2020, the amount outstanding on the Pillar indebtedness was \$4,228,529.20, exclusive of legal costs incurred from late July, 2020 forward and the Receiver's Borrowing Charge.
- 16. The purpose of this Fourth Report of the Receiver (the "**Fourth Report**") is to provide information to the Court in respect of an updated statement of receipts and disbursements, including accruals for certain costs incurred, but not yet paid. The Receiver anticipates filing a further report providing a more detailed update of these proceedings, in particular, the results of Sales Process in due course.
- 17. Capitalized terms not defined in this Fourth Report shall bear the meanings ascribed to them in the Receivership Order, the Initial Dizep Affidavit, the First, Second or Third Report, the Property Claims Process Order or the Sales Process Order.
- 18. All references to currency are in Canadian dollars unless otherwise noted.

19. This document, together with other information regarding these proceedings, has been posted by the Receiver to its website at www.relieffromdebt.ca/harmon-international.

STATEMENT OF RECEIPTS AND DISBURSEMENTS WITH ACCRUALS

20. As previously advised, the Receiver has entered into a borrowings facility with Pillar with an original facility amount of \$250,000 which as noted above has been increased to \$500,000 pursuant to a subsequent Order of the Court.
21. The Receiver has provided below an interim statement of receipts and disbursements (the “**Third Interim SRD**”) for the Company for the period of its appointment to September 14, 2020, including accruals for certain amounts incurred, but not yet paid, together with some brief commentary on the material amounts contained therein:

RECEIPTS		Notes
Advance from secured creditor	375,000	(a)
Miscellaneous	378	
	<u>375,378</u>	
DISBURSEMENTS AND ACCRUALS		
Receiver's fees and disbursements	131,605	(b)
Environmental removal costs	107,487	(c)
Legal fees and disbursements	95,229	(d)
Utilities	26,966	
Sales process due diligence materials	33,400	
Outside consulting/security	19,960	
Insurance	13,505	
GST (net)	19,444	
Interest / facility fee	21,148	
Other	2,841	
Ascend fee	275	
Filing fee	70	
	<u>471,929</u>	
ESTIMATED DEFICIT	<u>(96,551)</u>	(e)

- a) The Receiver has drawn \$375,000 of the available Receiver’s Borrowings with the material usages as outlined below;
- b) Receiver’s fees and disbursements include fees and disbursements paid and accrued to August 31, 2020;

- c) Environmental removal costs relate to the cost of the removal of Environmentally Sensitive Materials as defined and discussed in the Third Report.
- d) Legal fees and disbursements include actual amounts paid to August 31, 2020 to both MLT Aikins LLP as legal counsel to the Receiver as well as approximately \$4,774 paid to McDougall Gauley LLP as proposed Amicus Curiae to the Court of Appeal;
- e) The estimated deficit is a timing issue, arising substantially through the deferral of the payment of professional fees, with such fees covered by the Receiver's Charge as provided for in the Receivership Order. As of the date of this Fourth Report, the Receiver has requested a further draw under the Borrowings Facility to cover such fees.

All of which is respectfully submitted this 14th day of September, 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