



COURT FILE NUMBER 1901-05010

COURT COURT OF QUEEN'S BENCH OF ALBERTA

JUDICIAL CENTRE CALGARY

PLAINTIFF 1056420 ALBERTA LTD.

DEFENDANT HEAVY NORTH CONSTRUCTION LTD.

DOCUMENT **ORDER**

(Approval of Accounts and Activities, Distribution of Remaining Funds, and Discharge of Receiver)

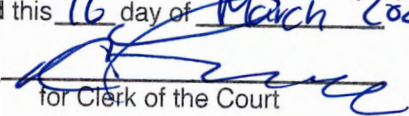
ADDRESS FOR
SERVICE AND
CONTACT
INFORMATION OF
PARTY FILING THIS
DOCUMENT

Osler, Hoskin & Harcourt LLP
Suite 2500, TransCanada Tower
450 – 1st Street SW
Calgary, Alberta T2P 5H1

I hereby certify this to be a true copy of
the original ORDER

Dated this 16 day of March 2020

Solicitors: Randal Van de Mosselaer
Phone: 403.260.7060
Fax: 403.260.7024
Email: RVandemosselaer@osler.com
Matter: 1182059


for Clerk of the Court

DATE ON WHICH ORDER WAS PRONOUNCED: February 26, 2020

LOCATION WHERE ORDER WAS PRONOUNCED: Calgary, Alberta

NAME OF JUSTICE WHO MADE THIS ORDER: The Honourable Madam Justice M. A. Hollins

UPON THE APPLICATION of KPMG Inc., in its capacity as receiver and manager (the “**Receiver**”) of Heavy North Construction Ltd. (the “**Debtor**”); **AND UPON** reviewing the Third Report of the Receiver, dated February 14, 2020 (the “**Third Report**”) and other Reports previously filed by the Receiver in this Action; **AND UPON** hearing from counsel for the Receiver and counsel for any other interested party appearing at the hearing of the Application, including counsel for N.P.A. Ltd. operating as Wapiti Gravel Suppliers (“**Wapiti**”) and counsel for 1056420 Alberta Ltd.; **AND UPON** reviewing the Affidavit of Service of Elena Pratt, sworn February 26, 2020; **AND UPON** reviewing the Affidavit of Mark Breakell sworn December 3, 2019; **AND UPON** reviewing the Affidavit of Service of Dominique Huber, sworn February 25 2020;

IT IS HEREBY ORDERED AND DECLARED THAT:

SERVICE

1. Service of notice of this Application and supporting materials is hereby declared to be good and sufficient, and no other person is required to have been served with notice of this Application, and time for service of this Application is abridged to that actually given.

APPROVAL OF RECEIPTS, DISBURSEMENTS AND ACCOUNTS

2. The Receiver's accounts and the accounts of its independent counsel, Osler, Hoskin & Harcourt LLP ("**Osler**"), as set out in the Third Report, are hereby approved.
3. The Receiver's Statement of Receipts and Disbursements, as set out in the Third Report, is hereby approved.
4. The Receiver is directed and authorized to maintain a holdback of \$150,000 (the "**Holdback**") to cover: (i) professional fees of the Receiver and Osler to complete the administration of the Receivership and the Debtor's ongoing bankruptcy proceeding; and (ii) a potential trust claim which may be asserted by the Canada Revenue Agency ("**CRA**") in respect of unpaid source deductions (collectively, the "**Holdback Expenses**").
5. The Receiver is authorized and directed to distribute all remaining funds apart from the Holdback to 1056420 Alberta Ltd.
6. In the event any residual funds remain in the Holdback following payment of the Holdback Expenses, the Receiver is authorized and directed to distribute any such residual funds to 1056420 Alberta Ltd.

DISCHARGE OF THE RECEIVER

7. As of the date of the Third Report and based on the evidence before this Honourable Court:
 - a. The Receiver has acted honestly and in good faith, and has dealt with the Property (as that term is defined in the Receivership Order granted in these proceedings on April 16, 2019) in a commercially reasonable manner;

- b. The actions and conduct of the Receiver are approved and the Receiver has satisfied all of its duties and obligations as receiver of the Property;
 - c. The Receiver shall not be liable for any act or omission pertaining to the discharge of the Receiver's duties as court-appointed receiver of the Property, save and except for any liability arising out of fraud or gross negligence or wilful misconduct on the part of the Receiver; and
 - d. Any and all claims against the Receiver arising from, relating to or in connection with the performance of the Receiver's duties and obligations as court-appointed receiver of the Property, save and except for claims based on fraud or gross negligence or wilful misconduct on the part of the Receiver, shall be forever barred and extinguished.
8. No action or proceeding arising from, relating to, or in connection with the performance of the Receiver's duties and obligations in respect of the Property may be commenced or continued without the prior leave of this Honourable Court, on notice to the Receiver and on such terms as this Honourable Court may direct.
9. The Receiver is hereby authorized and permitted to deliver to the Debtor's Bankruptcy Trustee copies of any corporate records in the possession and control of the Receiver relating to the Debtor.
10. Upon the filing of the Receiver's Certificate attached hereto as Schedule "A" confirming, among other things, that the Receiver has: (i) finalized payment of all Receivership costs and expenses as set out in the Third Report including, but not limited to, payment of the Holdback Expenses; (ii) distributed all remaining funds in accordance with paragraphs 5 and 6 of this Order; and (iii) completed all other minor administrative matters, the Receiver shall be absolutely and unconditionally discharged as Receiver of the Property and shall have no further duty, liability or obligation with respect to the Property, provided however, that notwithstanding its discharge, the Receiver shall:
- a. remain Receiver for the performance of such incidental duties as may be required to complete the administration of the receivership; and

- b. shall continue to have the benefit of the provisions of this Order and all Orders granted in these proceedings, including all approvals, protections and stays of proceedings in favor of the Receiver in its capacity as Receiver.

STAY OF ORDER

- 11. This Order shall be stayed until close of business on March 27, 2020.
- 12. Wapiti shall, as soon as practicable, advise counsel for the Receiver and counsel for 1056420 Alberta Ltd. if Wapiti intends to conduct a questioning for cross-examination of Mark Breakell on his affidavit sworn on December 3, 2019 and filed in this proceedings on December 5, 2019 (the “**December Breakell Affidavit**”), and any such questioning by Wapiti shall be conducted by not later than March 27, 2020.
- 13. If Wapiti indicates its intention to conduct such questioning for cross-examination, Mark Breakell shall attend such questioning at such time and place as may be agreed amongst counsel, and shall attend with such books and records as may be relevant to the matters deposited to in the December Breakell Affidavit and any questioning thereon.
- 14. The costs of such questioning for cross-examination shall be borne by each party, subject to further Order of this Court. Any application to this Court for re-allocation of such costs must be filed and served by Wapiti by not later than March 27, 2020, and must be scheduled to be heard by Madam Justice Hollins on the first date when Madam Justice Hollins is available to hear such application, and which date is convenient for counsel for Wapiti, 105 and the Receiver.
- 15. If Wapiti conducts such cross-examination of Mark Breakell on the December Breakell Affidavit, Wapiti shall have leave to bring an application to vary paragraphs 5 and 6 of this Order (the “**Application to Vary**”) based on evidence it may obtain from such cross-examination. Any such Application to Vary must be filed and served by Wapiti by not later than March 27, 2020, and must be scheduled to be heard by Madam Justice Hollins on the first date when Madam Justice Hollins is available to hear such Application to Vary, and which date is convenient for counsel for Wapiti, 105 and the Receiver.

16. If an application to vary this Order with respect to distribution of the remaining funds to 105 is commenced, the parties to that application shall have leave to speak to costs of that application and of the application heard February 26, 2020. For certainty, any award of costs shall be in the discretion of the Court.

MISCELLANEOUS

17. The Receiver has leave to reapply to this Honourable Court for such further advice and directions as may be necessary.
18. This Order must be served only upon those interested parties attending or represented at the within application and service may be effected by facsimile, electronic mail, personal delivery or courier. Service is deemed to be effected the next business day following the transmission or delivery of such documents.
19. Service of this Order on any party not attending this application is hereby dispensed with.

"M.H. Hollins"
J.C.Q.B.A.

APPROVED AS TO FORM AND CONTENT:

KELSEY MEYER
Bennett Jones LLP
Counsel to 1056420 Alberta Ltd.

GREG PLESTER
Brownlee LLP
Counsel to N.P.A. Ltd. operating as Wapiti
Gravel Suppliers

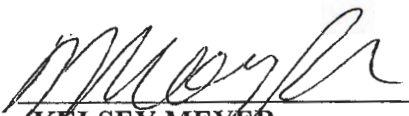
16. If an application to vary this Order with respect to distribution of the remaining funds to 105 is commenced, the parties to that application shall have leave to speak to costs of that application and of the application heard February 26, 2020. For certainty, any award of costs shall be in the discretion of the Court.

MISCELLANEOUS

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18. This Order must be served only upon those interested parties attending or represented at the within application and service may be effected by facsimile, electronic mail, personal delivery or courier. Service is deemed to be effected the next business day following the transmission or delivery of such documents.
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J.C.Q.B.A.

APPROVED AS TO FORM AND CONTENT:



KELSEY MEYER
Bennett Jones LLP
Counsel to 1056420 Alberta Ltd.

GREG PLESTER
Brownlee LLP
Counsel to N.P.A. Ltd. operating as Wapiti
Gravel Suppliers

16. If an application to vary this Order with respect to distribution of the remaining funds to 105 is commenced, the parties to that application shall have leave to speak to costs of that application and of the application heard February 26, 2020. For certainty, any award of costs shall be in the discretion of the Court.

MISCELLANEOUS

17. The Receiver has leave to reapply to this Honourable Court for such further advice and directions as may be necessary.
18. This Order must be served only upon those interested parties attending or represented at the within application and service may be effected by facsimile, electronic mail, personal delivery or courier. Service is deemed to be effected the next business day following the transmission or delivery of such documents.
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J.C.Q.B.A.

APPROVED AS TO FORM AND CONTENT:

KELSEY MEYER
Bennett Jones LLP
Counsel to 1056420 Alberta Ltd.



GREG PLESTER
Brownlee LLP
Counsel to N.P.A. Ltd. operating as Wapiti
Gravel Suppliers

Schedule "A"

COURT FILE NUMBER	1901-05010	Clerk's Stamp
COURT	COURT OF QUEEN'S BENCH OF ALBERTA	
JUDICIAL CENTRE	CALGARY	
PLAINTIFF	1056420 ALBERTA LTD.	
DEFENDANT	HEAVY NORTH CONSTRUCTION LTD.	
DOCUMENT	RECEIVER'S CERTIFICATE	
ADDRESS FOR SERVICE AND CONTACT INFORMATION OF PARTY FILING THIS DOCUMENT	Osler, Hoskin & Harcourt LLP Suite 2500, TransCanada Tower 450 – 1st Street SW Calgary, Alberta T2P 5H1 Solicitors: Randal Van de Mosselaer Phone: 403.260.7060 Fax: 403.260.7024 Email: RVandemosselaer@osler.com Matter: 1182059	

This Receiver's Certificate is the certificate referred to in paragraph 10 of the Order (Approval of Accounts and Activities, Distribution of Remaining Funds, and Discharge of Receiver) of the Honourable Madam Justice Hollins, granted February 26, 2020 (the "Order").

Capitalized terms not otherwise defined herein shall have the meanings given to those terms in the Order.

KPMG Inc., solely in its capacity as Court-appointed receiver (the "Receiver") of the Property (as that term is defined in the Receivership Order) and not in its personal or corporate capacity, hereby certifies that:

1. All Receivership costs and expenses as set out in the Third Report including, but not limited to, the Holdback Expenses, have been paid.
2. All remaining amounts have been distributed in accordance with paragraphs 5 and 6 of the Order
3. The administration of the receivership proceedings as described in the Third Report have been completed.

Dated this ____ day of _____, 2020.

**KPMG Inc., in its capacity as Receiver of
the undertakings, property and assets of
Heavy North Construction Ltd.**

NAME:

TITLE: