

COURT FILE NUMBER Q.B. No. 1884 of 2019

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

JUDICIAL CENTRE SASKATOON

IN THE MATTER OF THE COMPANIES' CREDITORS ARRANGEMENT ACT, RSC 1985, c C-36, AS  
AMENDED (the "CCAA")

AND IN THE MATTER OF A PROPOSED PLAN OF ARRANGEMENT FOR THE CREDITORS OF  
CONTOUR REALTY INC.

AND IN THE MATTER OF THE RECEIVERSHIP OF 101098672 SASKATCHEWAN LTD., MORRIS  
INDUSTRIES LTD., MORRIS SALES AND SERVICE LTD., and MORRIS INDUSTRIES (USA) INC.

**NOTICE OF APPLICATION**

**(Extension of Stay of Proceedings, Sale Approval and Vesting Orders, Director and Officer Claims  
Process, and Allocation of Costs)**

**NOTICE TO RESPONDENTS: All parties listed in the enclosed Service List**

This application is made against you. You are a respondent. You have the right to state your side of this matter before the Court.

To do so, you must be in Court when the application is heard as shown below:

Where: Court House, 520 Spadina Crescent East  
Saskatoon, Saskatchewan

Date: Friday, June 18, 2021

Time: 10:00 a.m.

**NOTE: Due to the health risks posed by the COVID-19 pandemic, all Chambers applications will be heard by telephone unless the presiding judge has decided otherwise. Dial-in particulars may be obtained upon request by contacting MLT Aikins LLP, counsel for the Monitor.**

*(Read the Notice at the end of this document to see what else you can do and when you must do it.)*

**Remedy claimed or sought:**

1. An Order in substantially the form of the proposed draft Sale Approval and Vesting Order (Virden Lands) (the "**Virden SAVO**") approving, authorizing and directing Alvarez & Marsal Canada Inc. (the "**Monitor**"), the Court-appointed Monitor of Contour Realty Inc. ("**Contour**") to complete the proposed purchase and sale transaction (the "**Virden Transaction**") respecting certain assets owned by Contour (the "**Virden Lands**"), as more particularly described in an Offer to Purchase (the "**Virden OTP**") between Contour, by the Monitor, on one hand, and NE20 Developments Ltd.

(the "**Virден Purchaser**"), on the other, dated March 23, 2021, a copy of which Virден OTP is Confidential Appendix 1 to the Seventeenth Report of the Monitor, in accordance with the Virден OTP, and vesting in the Virден Purchaser all right, title and interest of Contour to the Virден Lands, free and clear of all liens, charges, and encumbrances.

2. An Order in substantially the form of the proposed draft Sale Approval and Vesting Order (Yorkton East Lands) (the "**Yorkton East SAVO**") approving, authorizing and directing the Monitor to complete the proposed purchase and sale transaction (the "**Yorkton East Transaction**") respecting certain assets owned by Contour (the "**Yorkton East Lands**"), as more particularly described in an Offer to Purchase (the "**Yorkton East OTP**") between Contour, by the Monitor, on one hand, and the City of Yorkton (the "**Yorkton East Purchaser**"), on the other, and vesting in the Yorkton East Purchaser all right, title and interest of Contour to the Yorkton East Lands, free and clear of all liens, charges, and encumbrances.
3. An Order in substantially the form of the proposed draft Order (Director and Officer Claims Process), establishing a process by which parties having claims against any of the former directors and officers of 101098672 Saskatchewan Ltd., Morris Industries Ltd., Morris Sales and Service Ltd., Contour Realty Inc., or Morris Industries (USA) Inc. (collectively, the "**Morris Group**") must bring forward such claims for adjudication or else have such claims be extinguished and forever barred.
4. An Order in the form of the proposed draft Order (Sale Process) approving the "**Proposed Auction Process**" (as that term is defined in the Seventeenth Report of the Monitor dated June 15, 2021 (the "**Seventeenth Report**")) in respect of Contour's remaining real property in Yorkton, Saskatchewan, comprising a proposed auction process to be conducted by McDougall Auctioneers Ltd. ("**McDougall**").
5. An Order in substantially the form of the proposed draft Order (Extension of Stay and Other Relief) filed herewith:
  - (a) extending the term of the Amended and Restated Initial Order of the Honourable Mr. Justice R.S. Smith granted in these proceedings on January 16, 2020 (the "**ARI Order**"), and the stay of proceedings provided for therein, to the extent that the same pertain to Contour, to 11:59 p.m. Saskatchewan time on September 30, 2021;
  - (b) approving the actions, activities and conduct of Alvarez & Marsal Canada Inc., as Monitor of Contour, from March 23, 2021 to and including June 18, 2021, as more particularly described in the Seventeenth Report;

- (c) approving the actions, activities and conduct of Alvarez & Marsal Canada Inc., as Receiver of 101098672 Saskatchewan Ltd., Morris Industries Ltd., Morris Sales and Service Ltd., and Morris Industries (USA) Inc., from March 26, 2021 to and including June 18, 2021, as more particularly described in the Seventeenth Report;
  - (d) approving the professional fees and disbursements of Alvarez & Marsal Canada Inc. and its legal counsel, MLT Aikins LLP, from March 27, 2021 to and including May 31, 2021, as more particularly described in the Seventeenth Report; and
  - (e) Sealing the Confidential Appendices to the Seventeenth Report of the Monitor on the Court file.
6. An Order in the form of the proposed draft Order (Allocation of Costs) allocating the costs of these proceedings pursuant to the CCAA and receivership proceedings among certain creditors of Morris Sales & Service Ltd.; namely, Kubota Canada Inc. ("**Kubota**") and De Lage Landen Financial Services Canada Inc. ("**DLL**").
7. Such further and other relief as counsel may request and this Honourable Court may allow.

**Grounds for making this application:**

8. Alvarez & Marsal Canada Inc. (whether as Monitor, Receiver, or both, "**A&M**") is:
- (a) Monitor in respect of Contour ("**Monitor**"), pursuant to the Amended and Restated Initial Order granted in these proceedings by the Honourable Mr. Justice R.S. Smith on January 16, 2020 (the "**ARI Order**") and extended by various Orders of the Court since that time; and
  - (b) Receiver in respect of 101098672 Saskatchewan Ltd., Morris Industries Ltd., Morris Sales and Service Ltd., and Morris Industries (USA) Inc. ("**Receiver**"), pursuant to the Receivership Order granted in these proceedings by the Honourable Mr. Justice R.W. Elson on March 26, 2021.
9. There are no remaining directors or officers of Contour. Accordingly, the Monitor is responsible for all management and oversight of Contour pursuant to paragraph 3(d) of the Order (Enhancement of Monitor's Powers) granted by the Honourable Mr. Justice R.W. Elson on February 18, 2020.

Sale Approval and Vesting Order (Virden)

10. One of the outstanding items of business for the Monitor in relation to Contour is the sale of the Virden Lands.

11. As more particularly described in the Seventeenth Report and the Confidential Appendix 1 thereto, the Virden Transaction represents the best realizable value for the Virden Lands.
12. The Monitor respectfully requests that the Virden Transaction be approved, and the Virden SAVO granted, pursuant to section 36 of the CCAA.

#### Sale Approval and Vesting Order (Yorkton East)

13. Another of the outstanding items of business for the Monitor in relation to Contour is the sale of the Yorkton Plant in Yorkton, Saskatchewan which were formerly the site of one of two manufacturing facilities previously operated by the Morris Group.
14. The Monitor has not yet obtained an acceptable offer to purchase the lands upon which the main Yorkton Plant building itself is situated. However, the Monitor expects to receive a favourable offer from the City of Yorkton to purchase certain lands across the railway tracks to the east of the main building (portions of which small parcels were used as overflow parking), possibly before the hearing scheduled for June 18.
15. As more particularly described in the Seventeenth Report and Confidential Appendix 2 thereto, the Yorkton East Transaction (if entered into in the form currently contemplated) represents the best realizable value for the Yorkton East Lands.
16. If the Yorkton East OTP is signed in time for the hearing on June 18, the Monitor will respectfully request that the Yorkton East Transaction be approved, and the Yorkton East SAVO granted, pursuant to section 36 of the CCAA.

#### Director and Officer Claims Process Order

17. All of the directors and officers of the Morris Group had resigned by February of 2020. However, paragraph 22 of the ARI Order still provides for a Directors' Charge in the amount of \$175,000.00.
18. In light of the amount of time which has passed since all of the directors and officers have resigned, it is unlikely that any parties have viable claims against the former directors and officers of the Morris Group. However, prior to vacating the Directors' Charge, it is necessary to give any such parties a chance to bring their claims forward (failing which such claims will be extinguished and forever barred). If there are no such claims, or if there are such claims which do not approach the amount of the Directors' Charge, A&M will apply to vacate the Directors' Charge in whole or in part so that the proceeds of the sale of the Morris Group's assets can be distributed to creditors without being subject to any holdback on account of the Directors' Charge.

### Sale Process Order

19. As more particularly discussed in the Seventeenth Report, the Monitor has considered a number of options in order to attract interest in the potential sale of Contour's remaining lands in Yorkton, Saskatchewan after the Yorkton East Lands are sold (the "**Remaining Yorkton Lands**").
20. The Monitor has selected, and recommends to the Court, an auction process to be conducted by McDougall as the best way to maximize the sale value of the Remaining Yorkton Lands for the benefit of all stakeholders.

### Extension of Stay of Proceedings and Other Relief

21. The ARI Order and the stay of proceedings provided for thereunder are scheduled to expire at 11:59 p.m. on Friday, July 30, 2021.
22. In addition to working to close the Virden Transaction and the Yorkton East Transaction, A&M (as Monitor of Contour) is still working to sell the land and buildings at Yorkton, Saskatchewan which were formerly the site of the Morris Group's main manufacturing plant.
23. The Monitor is accordingly seeking a further extension of the ARI Order, and the stay of proceedings provided thereby, until September 30, 2021.
24. As more particularly detailed in the Seventeenth Report:
  - a) A&M's mandate has at all times been carried out with efficiency and integrity and with due regard for the interests of all parties; and
  - b) the professional fees and disbursements of A&M and its legal counsel are fair and reasonable in the circumstances.
25. Accordingly, the Monitor seeks approval of its actions, activities and conduct from March 26, 2021 (the date upon which its activities were last approved) to June 18, 2021, as well as approval of the fees and disbursements of the Monitor and its legal counsel from March 27, 2021 to and including May 31, 2021.
26. The Confidential Appendix to the Seventeenth Report of the Monitor will contain commercially sensitive and private information, including the Virden OTP and the draft Yorkton East OTP, which specifies the purchase price being paid thereunder.

27. Publicly disclosing this commercially sensitive and private information prior to the closing of the Virden Transaction and/or the Yorkton East Transaction would be prejudicial to any future sales in the event that this Honourable Court does not grant the either of the Sale Approval and Vesting Orders sought or if either transaction does not close for any reason.
28. The Monitor has given notice to the media of its intention to seek a sealing order, as required by General Application Practice Directive #3.

#### Allocation of Costs

29. Certain providers of purchase-money financing to MSS, which formerly operated an equipment dealership in Virden, Manitoba; namely, Kubota and DLL, are entitled to be paid in a priority basis.
30. The Monitor is proposing a cost allocation methodology which allocates the cost of realizing upon Kubota's and DLL's respective security, and distributes the remaining net proceeds to them.
31. Such further or other grounds as counsel may advise and this Honourable Court may allow.

#### **Material or evidence to be relied on:**

32. This Notice of Application, with proof of service;
33. Seventeenth Report of the Monitor dated June 15, 2021;
34. Confidential Appendix to the Seventeenth Report of the Monitor
35. First Report of the Receiver dated June 15, 2021;
36. A form of draft Sale Approval and Vesting Order (Virden Lands);
37. A redline document showing the changes made in the proposed Sale Approval and Vesting Order (Virden Lands) from the Saskatchewan Template Sale Approval and Vesting Order;
38. A form of draft Sale Approval and Vesting Order (Yorkton East Lands);
39. A redline document showing the changes made in the proposed Sale Approval and Vesting Order (Yorkton East Lands) from the Saskatchewan Template Sale Approval and Vesting Order;
40. A form of draft Order (Director and Officer Claims Process);
41. A redline document showing the changes in the proposed Order (Director and Officer Claims Process) from the working draft of the Saskatchewan Template Claims Process Order;

42. A form of draft Order (Sale Process);
43. A form of Draft Order (Extension of Stay of Proceedings and Other Relief);
44. Proof of compliance with General Application Practice Directive #3;
45. A form of Draft Order (Allocation of Costs); and
46. Such further and other materials as counsel may advise and this Honourable Court may allow.

**Applicable Acts and regulations:**

47. *Companies' Creditors Arrangement Act*, RSC 1985, c C-36, including s 36.

DATED at Saskatoon, Saskatchewan, this 15th day of June, 2021.

**MLT AIKINS LLP**

Per: 

Jeffrey M. Lee, Q.C. and Paul Olfert  
Counsel for the Monitor, Alvarez & Marsal Canada  
Inc.

**NOTICE**

If you do not come to Court either in person or by your lawyer, the Court may give the applicant(s) what they want in your absence. You will be bound by any order that the Court makes. If you want to take part in this application, you or your lawyer must attend in Court on the date and at the time shown at the beginning of the form. If you intend to rely on an affidavit or other evidence when the application is heard or considered, you must reply by giving reasonable notice of the material to the applicant.

**CONTACT INFORMATION AND ADDRESS FOR SERVICE:**

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|---------------------------|--|
| Name of firm:             | MLT Aikins LLP   |
| Lawyer in charge of file: | Jeffrey M. Lee, Q.C. and Paul Olfert                                 |
| Address of firm:          | Suite 1201, 409 – 3 <sup>rd</sup> Avenue South, Saskatoon SK S7K 5R5 |
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