

COURT FILE NUMBER 2201-01016

COURT COURT OF KING'S BENCH OF ALBERTA
IN BANKRUPTCY AND INSOLVENCY

JUDICIAL CENTRE CALGARY

IN THE MATTER OF THE RECEIVERSHIP
OF ROBUS RESOURCES INC.

APPLICANT PAMOCO RESOURCES LTD.

DOCUMENT **APPLICATION**

ADDRESS FOR
SERVICE AND
CONTACT
INFORMATION OF
PARTY FILING THIS
DOCUMENT MILLER THOMSON LLP
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Calgary, AB, Canada T2P 3V4
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File No.: 0273785.0001

NOTICE TO RESPONDENT(S):

This application is made against you. You are a respondent.

You have the right to state your side of this matter before the application judge / judge.

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

Date	<u>January 18, 2023</u>
Time	<u>10:00 a.m.</u>
Where	<u>Edmonton Law Courts Building, Edmonton, AB (via Webex)</u>
Before Whom	<u>The Honourable Justice M.E. Burns</u>

Go to the end of this document to see what else you can do and when you must do it.

Remedy claimed or sought:

1. Pamoco Resources Ltd. ("**Pamoco**") seeks an order substantially in the form attached hereto:
 - (a) if necessary, abridging the time for service of this application and supporting materials, and declaring service to be good and sufficient;

- (b) declaring that the Tangibles (as defined below) were properly purchased by Pamoco from Robus Resources Inc. (the "**Debtor**") pursuant to the Tangibles Transaction (defined below);
- (c) declaring that the Tangibles are the property of Pamoco and are not subject to the interests of the Debtor's creditors, and that such property does not form part of the estate of the Debtor for sale or distribution in this proceeding;
- (d) in the alternative, declaring that Pamoco is entitled to be repaid the amounts advanced for or on behalf of the Debtor as consideration for the Tangibles in the amount of \$103,800 from the estate of the Debtor, in priority to any other creditor, including the Secured Lender (defined below); and
- (e) such further and other relief as Pamoco may request and this Honourable Court may deem appropriate.

Grounds for making this application:

The Purchase Agreement

- 2. The Debtor entered into an agreement of purchase and sale made as of December 9, 2016 (the "**Purchase Agreement**"), with Enerplus Corporation, as vendor, and the Debtor, as purchaser.
- 3. The Purchase Agreement was for the sale of, among other things, certain petroleum and natural gas rights located near Camrose, Alberta, and related property.
- 4. The Purchase Agreement was amended pursuant to two amending agreements and the transaction pursuant to the Purchase Agreement, as amended, closed on November 17, 2017.
- 5. Pursuant to the Purchase Agreement, in addition to the Debtor purchasing petroleum and natural gas rights from Enerplus Corporation, the Debtor acquired certain facilities, pipelines and other depreciable property located on or within the vicinity of the properties where the petroleum and natural gas rights were located (collectively, the "**Tangibles**").
- 6. The Tangibles are defined in the Purchase Agreement to include, among other things, gas plants, pumps, tanks, compressors, and production equipment.

7. The Purchase Agreement, as amended, provides that all the assets subject to the transaction were acquired for consideration from the Debtor to Enerplus Corporation totalling \$1,000,000, consisting of a \$100,000 cash purchase price and \$900,000 in respect of certain pre-paid expenditures.
8. Of the \$100,000 purchase price for the assets purchased under the Purchase Agreement, \$20,000 of this amount was allocated as consideration from the Debtor to Enerplus Corporation for the Tangibles.

The Pamoco and O'Connor Loans

9. Between November 2018, and June 2019, Pamoco made a total of four loans to the Debtor in the aggregate principal amount of \$753,934.21 (the "**Pamoco Loans**"). The purpose of the Pamoco Loans was to allow the Debtor to fund its operations.
10. Each of the Pamoco Loans were evidenced by demand promissory notes executed by the Debtor. The Pamoco Loans were secured against the assets of the Debtor pursuant to a general security agreement.
11. In addition to the Pamoco Loans, on March 24, 2017, and January 28, 2019, the general manager of Pamoco, Terry O'Connor ("**Mr. O'Connor**"), issued two personal loans to the Debtor in the aggregate principal amount of \$2,075,378.88 (the "**O'Connor Loans**"). The purpose of the O'Connor Loans was to provide funds for the Debtor to complete the transaction with Enerplus Corporation and for the Debtor to fund its operations.
12. The O'Connor Loans were documented by a Bridge Loan Agreement dated December 9, 2016, and a wire transfer. The O'Connor Loans were secured against the assets of the Debtor pursuant to, among other things, a general security agreement.
13. On February 21, 2020, the Pamoco Loans and the O'Connor Loans were paid out in full, with interest. In exchange for the repayment of the Pamoco Loans and the O'Connor Loans, Pamoco and Mr. O'Connor discharged their respective security registrations at the Alberta Personal Property Security Registry against the Debtor.

The Tangibles Transaction

14. Separate and apart from the Pamoco Loans and the O'Connor Loans, which were paid out and discharged as noted above, between May 2018, and August 2018, the Debtor's principal, Ernest Methot ("**Mr. Methot**"), on behalf of the Debtor, requested from Mr.

O'Connor that he assist the Debtor with acquiring share interests in certain other petroleum and natural gas producer companies (the "**Acquisition Advances**"). Mr. O'Connor agreed and authorized Pamoco to pay the Acquisition Advances, which totalled \$36,000.

15. Between January 2019, and April 2019, the Debtor again approached Pamoco for funds separate and apart from the Pamoco and O'Connor Loans. This time the Debtor was requesting that Pamoco pay certain of its accounts payable owing by the Debtor to third parties (the "**Robus AP Payments**"). Mr. O'Connor advised the Debtor that he and Pamoco were not willing to extend any more credit to the Debtor to make the Robus AP Payments.
16. As a result, at the request of the Debtor, in exchange for Pamoco agreeing to make the Robus AP Payments, and in settlement of the Acquisition Advances, Robus offered to sell, and Pamoco agreed to purchase, the Tangibles (the "**Tangibles Transaction**").
17. Pursuant to the agreement for the Tangibles Transaction, on January 4, 2019, the Debtor, as vendor, and Pamoco, as purchaser, entered into a general conveyance agreement (the "**General Conveyance Agreement**"). The General Conveyance Agreement purported to sell and transfer to Pamoco, among other things, all of the Debtor's "right, title, estate and interest" in, among other things, the Tangibles.
18. Between February 2019, and March 2019, after entering into the General Conveyance Agreement, Pamoco took inventory of the purchased Tangibles.
19. Since the Debtor still required use of certain of the Tangibles to operate, at the request of the Debtor, Pamoco did not remove the Tangibles from the Debtor's leased lands. Instead, Pamoco took possession of its property by affixing signage identifying its ownership interests to certain of the property, including on the gates of certain wells and on some of the larger pieces of equipment. In addition, Pamoco took the step of applying a square QR identity code to each piece of the Tangibles.
20. In accordance with the Tangibles Transaction, between January 2019, and April 2019, Pamoco made three Robus AP Payments for the benefit of the Debtor in the total aggregate amount of \$67,800, in respect of accounts payable owing by the Debtor.

21. On April 16, 2019, Mr. Methot became aware of an error in the General Conveyance Agreement, in that the document purported to convey to Pamoco the Debtor's petroleum and natural gas interests in addition to the Tangibles.
22. As a result, at the request of the Debtor, Pamoco had a revised document prepared titled Conveyance of Tangibles, which remedied the error (the "**Conveyance of Tangibles**"). The Conveyance of Tangibles was provided to the Debtor to replace the General Conveyance Agreement and to correctly set out the terms of the Tangibles Transaction. To date, an executed copy of the Conveyance of Tangibles from the Debtor has not been located.

The Debtor's Further Dealings in the Tangibles

23. In January 2021, Pamoco became aware of the Debtor attempting to enter into contracts for the sale of, among other things, the Tangibles to potential third party purchasers, despite the Tangibles having been previously sold to Pamoco pursuant to the Tangibles Transaction.
24. As a result of the Debtor's purported dealings with the Tangibles, on January 8, 2021, Pamoco registered its ownership interest in the Tangibles with the Alberta Personal Property Registry pursuant to the *Sale of Goods Act* (Alberta) (the "**Pamoco Registration**").
25. In addition, on January 14, 2021, corporate counsel to Pamoco wrote a letter to the Debtor demanding that the Debtor cease and desist from conducting any further dealings in Pamoco's purchased property.

This Receivership Proceeding

26. On April 12, 2022, a consent receivership order was granted by the Court, and Alvarez & Marsal Canada Inc. (the "**Receiver**") was appointed receiver over all of the assets, undertakings, and properties of the Debtor.
27. In a meeting between the Receiver and Mr. O'Connor, among others, on May 4, 2022, Mr. O'Connor advised the Receiver of the Tangibles Transaction and Pamoco's assertion of ownership over the Tangibles.

28. Between May 2022, and June, 2022, the Receiver's counsel and Pamoco's corporate counsel exchanged correspondences in respect of the Receiver's requests for information pertaining to the Tangibles Transaction.
29. On June 17, 2022, the Receiver's counsel advised Pamoco's corporate counsel that the Receiver was of the view the Conveyance of Tangibles did not transfer title in the Tangibles to Pamoco due to a lack of consideration. The Receiver also advised that even if title to the Tangibles was transferred from the Debtor to Pamoco, the Tangibles are subject to the security of the Debtor's senior secured lender, Robus Services LLC (the "**Senior Lender**"), which was registered at the Alberta Personal Property Registry on February 13, 2020, prior to the Pamoco Registration.
30. At the time of the Receiver making its findings, and up until the filing of this application, the Receiver has not had the benefit of seeing or reviewing the evidence of payment in respect of the Acquisition Advances and Robus AP Payments, which form the consideration for the Tangibles Transaction.
31. In addition, at the time of the Receiver making its findings, and up until the filing of this application, the Receiver was not made aware of the inventory and ownership tagging that Pamoco has made to the Tangibles following the Tangibles Transaction.
32. On December 14, 2022, the Court granted the Receiver's application for, among other things, an order approving a sale process and stalking horse term sheet (the "**Sale Process Order**").
33. The Sale Process Order contemplates a process for the sale of, among other things, the Tangibles to a third party purchaser or the stalking horse bidder, which is a nominee related party to the Senior Lender.
34. As a result of the sale process being undertaken by the Receiver, the Court directed in the Sale Process Order that Pamoco bring this application for a determination as to Pamoco's ownership claim to the Tangibles on or before January 20, 2023.
35. Pamoco understands that as of the time of filing this application, the Tangibles have not been delivered or transferred to the Senior Lender, any nominee of the Senior Lender, or any other third party.

Material or evidence to be relied on:

- 36. Affidavit of Terry O'Connor sworn January 9, 2023, filed.
- 37. Brief of Law of Pamoco, to be filed.
- 38. Such further and other materials as counsel may advise and this Honourable court may permit.

Applicable rules:

- 39. *Alberta Rules of Court*, Alta Reg 124/2010, including rules 1.2 – 1.4, and 6.1 – 6.3.

Applicable Acts and regulations:

- 40. *Bankruptcy and Insolvency Act*, RSC 1985, c B-3.
- 41. *Personal Property Security Act*, RSA 2000, c P-7, including sections 24 and 30.
- 42. *Sale of Goods Act*, RSA 2000, c P-7, including section 26.

Any irregularity complained of or objection relied on:

- 43. None.

How the application is proposed to be heard or considered:

- 44. On the Commercial List, via Webex before the Honourable Justice M.E. Burns.

WARNING

If you do not come to Court either in person or by your lawyer, the Court may give the applicant what it wants 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.

SCHEDULE "A"

Proposed Form of Order

COURT FILE NUMBER 2201-07148

Clerk's Stamp

COURT COURT OF KING'S BENCH OF ALBERTA

JUDICIAL CENTRE CALGARY

IN THE MATTER OF THE RECEIVERSHIP OF
ROBUS RESOURCES INC.

APPLICANT PAMOCO RESOURCES LTD.

DOCUMENT **ORDER**

ADDRESS FOR
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INFORMATION OF
PARTY FILING THIS
DOCUMENT

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E-mail: jwreid@millerthomson.com
File No.: 0273785.0001

DATE ON WHICH ORDER WAS PRONOUNCED: January 18, 2023
NAME OF JUDGE WHO MADE THIS ORDER: The Honourable Justice M.E. Burns
LOCATION OF HEARING: Edmonton, Alberta (via Webex)

UPON the application (the "**Application**") of Pamoco Resources Ltd. ("**Pamoco**") for an Order declaring that the Tangibles were properly purchased by Pamoco from the Debtor and that such property does not form part of the estate of the Debtor for sale or distribution in this proceeding;

AND UPON HAVING read the Application, Affidavit of Terry O'Connor sworn January 9, 2023, and the Brief of Law of Pamoco;

AND UPON HEARING from counsel to Pamoco, counsel to Alvarez & Marsal Canada Inc. in its capacity as receiver in this proceeding, counsel to Robus Services LLC (the "**Secured Lender**"), counsel to Robus Resources Inc. (the "**Debtor**"), and any other interested party in attendance;

IT IS HEREBY ORDERED AND DECLARED THAT:

1. All capitalized terms not otherwise defined in this Order shall have the meaning ascribed to them in the Affidavit of Terry O'Connor sworn January 9, 2023, as applicable.

Service

2. The time for service of the Application and supporting materials are hereby declared to be good and sufficient, and time for service of the Application and supporting materials is hereby abridged to that actually given.

General

3. The Application is granted.
4. Pamoco purchased the Tangibles from the Debtor pursuant to the Tangibles Transaction.
5. The Tangibles are the property of Pamoco and are not subject to the interests of the Debtor's creditors.
6. The Tangibles do not form part of the estate of the Debtor for sale or distribution in this proceeding.
7. Service of this Order may be effected by facsimile, electronic mail, personal delivery or courier. Service is deemed to be effected the next business day following transmission or delivery of this Order.

Justice of the Court of King's Bench of Alberta