

COURT FILE NUMBER

1403 10990

COURT

COURT OF QUEEN'S BENCH OF ALBERTA

JUDICIAL CENTRE

EDMONTON

APPLICANT

ROYAL BANK OF CANADA

RESPONDENTS

SPRAGUE-ROSSER CONTRACTING CO. LTD., SPRAGUE-ROSSER DEVELOPMENTS INC., PACIFIC FEDERATION EQUITY GROUP INC., JEFFERY JESSAMINE, DANIEL EDWARDS and MATTHEW MACKAY

DOCUMENT

AFFIDAVIT

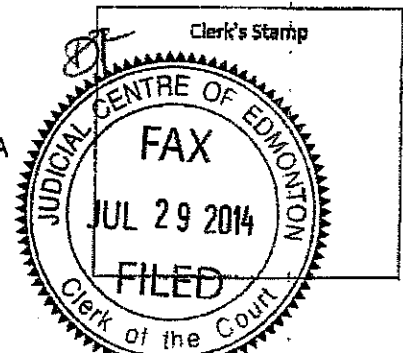
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File No. 01100375-0590



**AFFIDAVIT OF GARY IVANY  
SWORN JULY 29<sup>th</sup>, 2014**

I, Gary Ivany, of the Town of Pickering, in the Province of Ontario, swear and say that:

**INTRODUCTION**

1. I am a Senior Manager in the Group Risk Management department at the Royal Bank of Canada (the "Bank") and as such have personal knowledge of the facts and matters hereinafter deposed to except where stated to be based on information and belief and where so stated I do verily believe the same to be true.
2. I am currently directly involved with the Sprague-Rosser Contracting Co. Ltd. (the "Borrower") account and have also had the opportunity to review the business records of the Bank relevant to the Borrower's account and the within proceedings and Application and have satisfied myself that I am possessed of sufficient information and knowledge to swear this Affidavit on behalf of the Bank.

### **BUSINESS OF THE SPRAGUE-ROSSER GROUP**

3. The Borrower, and its affiliates, carry on the business of heavy construction work primarily in Western Canada with its head offices being located in the City of Edmonton, in the Province of Alberta.
4. Attached hereto and marked as Exhibit "A" are current corporate searches with respect to the Borrower and its affiliates, Sprague-Rosser Developments Inc. ("Developments") and Pacific Federation Equity Group Inc. ("Pacific") (collectively the "Corporate Guarantors").
5. The individual Defendants, Jeffery Jessamine ("Jessamine"), Daniel Edwards ("Edwards") and Matthew Mackay ("Mackay") (collectively the "Individual Guarantors") are each involved in the management of the Borrower and its affiliates.

### **LOAN INDEBTEDNESS**

6. The Bank, as Lender, provided various secured loans to the Borrower. The current prevailing loan agreements include the following:
  - a. an Offering Letter from the Bank to the Borrower dated April 25, 2013, a true copy of which is attached hereto and marked as Exhibit "B" to this my Affidavit;
  - b. a series of Letter Amending Agreements dated May 14, 2014, June 11, 2014, June 27, 2014 and July 7, 2014 (which Letter Amending Agreements are collectively attached hereto and marked as Exhibit "C" to this my Affidavit).
7. The Offering Letter and Letter Amending Agreements marked as Exhibits "B" and "C" hereto are collectively referred to as the "Loan Agreements".
8. Under the terms of the Loan Agreements, the Bank agreed to provide the Borrower with various credit facilities, all on the terms set out in the Loan Agreements and all related documents (the "Credit Facilities").
9. In accordance with the terms of the Loan Agreements, the Bank advanced various loans to the Borrower from time to time.
10. The series of Letter Amending Agreements (Exhibit "C") included the provision of various overage accommodations at the request of the Borrower as it was unable to operate within the maximum loan amounts set out under the Credit Facilities.
11. It was an express term of the Loan Agreements that the Credit Facility indebtedness owing by the Borrower was repayable to the Bank upon demand or upon an event of default.

### **GUARANTEES**

12. The Corporate Guarantors have each provided to the Bank unlimited guarantees in support of the Borrower's debt to the Bank each being dated May 14, 2014, copies of which are collectively attached hereto and marked as Exhibit "D" to this my Affidavit. These guarantees were provided supplemental to prior limited guarantees provided to the Bank by the Corporate Guarantors.
13. The Individual Guarantors have each provided to the Bank limited guarantees in support of the Borrower's debt to the Bank in the following limited amounts:

Individual Guarantor	Limited Amount of Guarantee
Jessamine	\$5,100,000.
Jessamine	\$ 595,000.
Edwards	\$1,190,000.
Mackay	\$1,615,000.

Copies of the limited guarantees provided by the Individual Guarantors are collectively attached hereto and marked as Exhibit "E" to this my Affidavit.

#### GRANTING OF SECURITY

14. As security for the amounts advanced pursuant to the Loan Agreements as guaranteed by the Corporate Guarantors, the Borrower and the Corporate Guarantors each provided to the Bank a series of General Security Agreements, which General Security Agreements are collectively attached hereto and marked as Exhibit "F" to this my Affidavit.
15. Each of the General Security Agreements included in Exhibit "F" specifically provide in paragraph 13 for the remedies of the Bank, which remedies include the appointment of a Receiver or Receiver and Manager.

#### DEMAND FOR REPAYMENT

16. As noted above, the Borrower has been unable to operate within the maximum borrowings allowed under the Loan Agreements even with the temporary overage accommodations provided by the Bank and is currently over \$2,000,000. in excess of the maximum amount under the Credit Facilities.
17. In an update to the Bank dated July 11, 2014 (a copy of which is attached hereto and marked as Exhibit "G" to this my Affidavit), the Borrower provided an update of the significant issues it is currently facing and concluded by requesting yet a further overage that was not acceptable to the Bank advising:

"At \$17.5M or \$19.5M Sprague is faced with not being able to continue operations as funds are not available for payroll and the Company credit on major vendor accounts has been extinguished due to non-payments."
18. In light of the foregoing, on July 18, 2014, the Bank through its legal counsel delivered to the Borrower and each of the Guarantors a demand (the "Demands") and Notice of Intention to Enforce Security (the "Notices") pursuant to Section 244(1) of the *Bankruptcy and Insolvency Act* which Demands and Notices are collectively attached hereto and marked as Exhibit "H" to this my Affidavit.
19. The Borrower subsequently advised the Bank that it believed it could operate and make payroll within the \$19,500,000.00 now expired borrowing overage or could reduce the Credit Facilities to the current, but for the Demands' \$17,500,000.00 maximum by selling certain real property (Maple Ridge) that is subject to the Security in a related party transaction. The Bank declined to support this related party transaction that would have eroded its Security position.
20. The Borrower has advised the Bank that its payroll service distributed an approximately \$175,000.00 payroll in error and that it had to be rectified. The Borrower's cash flow projections identified a further approximately \$475,000 payroll due the week of July 21, 2014. Despite

repeated requests, the Bank does not know if those payrolls have been rectified/paid or from what source they may have been paid.

21. The Borrower had also provided cash flow projections that showed over \$1,300,000.00 in receivables (including from the City of Saskatoon, the RM of Luck Lake and Pentagon settlement funds) being recovered by July 31 or earlier plus an \$83,000.00 cheque they had in hand, all of which is subject to the Security and none of which have been deposited with the Bank. I am verily concerned that these receivables may have been diverted away from the Bank.
22. Counsel for the Bank has forwarded requests to the Borrower's prior and current counsel related to the payroll and receivable issues and other relevant cash flow and security issues, copies of which are collectively attached as Exhibit "I" to this my Affidavit. As at the swearing of this Affidavit, the Bank has not received any satisfactory reply from the Borrower.
23. Since issuing the Demands and Notices, the Bank has not been repaid the indebtedness owing under the Loan Agreements and Credit Facilities.

#### **PRIORITY AGREEMENT**

24. BDC Capital Inc. ("BDCC") is also a secured lender to the Borrower and Corporate Guarantors. Attached hereto and marked as Exhibit "J" to this my Affidavit is a copy of the Priority Agreement amongst the Bank, BDCC, the Borrower and the Corporate Guarantors. Counsel to the Bank has copied the Demands, Notices and will copy the Receivership Application to BDCC.

#### **RECEIVER AND MANAGER**

25. In all of the circumstances, I do verily believe that the appointment of a Receiver and Manager or, alternatively, a Receiver, of the undertakings, property and assets of the Borrower and the Corporate Guarantors, is necessary and appropriate to protect the interests of the Bank and to preserve the realize upon the security.
26. I do verily believe that Alvarez & Marsal Canada Inc. ("Alvarez") is competent to and prepared to act and has consented to be appointed as Receiver and Manager of any or all of the Borrower and Corporate Guarantors. Attached hereto and marked as Exhibit "K" to this my Affidavit is a true copy of the Consent to Act executed by Alvarez.
27. Alvarez has the benefit of certain knowledge of the Borrower's assets and operations. Pursuant to a May 14, 2014 engagement letter, the Bank, with the consent of the Borrower, engaged Alvarez to investigate and report upon the Borrower's assets, liabilities and operations. From approximately May to the present, Alvarez has performed such services with the knowledge and co-operation of the Borrower. Under this engagement letter, the Borrower specifically agreed that the engagement would not prevent Alvarez from being appointed as a Trustee, Receiver or Receiver and Manager.

#### **CONCLUSION**

28. I am authorized to swear this Affidavit on behalf of the Bank.
29. I make this Affidavit for no improper purposes.
30. I make this Affidavit in support of an Application to the Court to appoint Alvarez as Receiver and

Manager of the undertakings, property and assets of the Borrower and the Corporate Guarantors and for such other and related relief as may be sought.

SWORN before me at the City of Toronto,  
in the Province of Ontario, this 29<sup>th</sup> day of  
July, 2014)

A Notary Public in and for the Province  
Of Ontario:

**Gary Ivany**