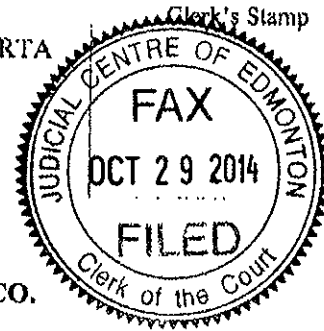


Form 27  
[Rules 6.3 and 10.52(1)]

COURT FILE NUMBER 1403-10990  
COURT COURT OF QUEEN'S BENCH OF ALBERTA  
JUDICIAL CENTRE EDMONTON  
APPLICANT ROYAL BANK OF CANADA



ENTERED  
by EC

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

DOCUMENT APPLICATION BY  
WESTERN SURETY COMPANY  
TO LIFT THE STAY OF  
PROCEEDINGS AND RELATED  
RELIEF

ADDRESS FOR SERVICE AND CONTACT INFORMATION OF PARTY FILING THIS DOCUMENT  
Josef Kruger, Q.C. / Robyn Gurofsky  
Borden Ladner Gervais LLP  
1900, 520 3<sup>rd</sup> Ave. S.W.  
Calgary, AB T2P 0R3  
Telephone: (403) 232-9774  
Facsimile: (403) 266-1395  
Email: [RGurofsky@blg.com](mailto:RGurofsky@blg.com)  
File No. 013722-000054

**NOTICE TO RESPONDENTS:** Alvarez & Marsal (Canada) Inc. in its capacity as Receiver of the Sprague-Rosser entities, the Owners of the Bonded Contracts, and the Service List as established in the Sprague-Rosser Receivership

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

You have the right to state your side of this matter before the Judge.

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

Date	November 20, 2014
Time	2:00 p.m.
Where	Edmonton Law Courts, 1A Sir Winston Churchill Square, Edmonton, AB
Before Whom	The Honourable Justice B.R. Burrows

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. An Order, substantially in the form attached hereto, including but not limited to the following relief:
  - (a) A declaration that pursuant to the terms of the Amended and Restated Receivership Order dated August 7, 2014 (the "Receivership Order"), Western Surety Company ("Western Surety") is not stayed from pursuing any and all set-off claims with respect to the Bonded Contracts (as defined in the Receivership Order);
  - (b) Alternatively, an order lifting the stay of proceedings to allow Western Surety to pursue any and all set-off claims with respect to the Bonded Contracts;
  - (c) Directing that the Receiver not take any steps to collect payment of any monies from the Owners named in the Bonded Contracts;
  - (d) Directing the Owners named in the Bonded Contracts to make all payments under the Bonded Contracts to Western Surety;
  - (e) Authorizing Western Surety to enforce its rights with respect to the Bonded Contracts, including but not limited to:
    - (i) setting-off the amounts it expends or has expended to complete the Bonded Contracts against any amounts payable under the Bonded Contracts; and
    - (ii) exercising all rights of the Owners named on the Bonds and Bonded Contracts as equitable subrogee; and
2. Such further and other remedy or relief as counsel may advise and this Honourable Court permit.

**Grounds for making this application:**

3. Sprague-Rosser was the general contractor in respect of the Bonded Contracts, listed as follows:
  - Bond No. 371,583 - R.M. of Wood Buffalo - Abasand Heights;
  - Bond No. 371,597 - Alberta Infrastructure - Rainbow Creek Drive;
  - Bond. No. 390,225 - R.M. of Wood Buffalo - Saline Creek - Phase 1;
  - Bond No. 390,231 - City of Saskatoon - Marquis Pond;
  - Bond No. 390,274 - Saline Creek - Contract #3;

(The "Completed Bonded Contracts")

  - Bond No. 404,688 - City of Edmonton - South East Industrial
  - Bond No. 404,736 - City of Saskatoon - Aspen Ridge (the "Aspen Ridge Project")
  - Bond No. 412,549 - City of Saskatoon - Elk Point (the "Elk Point Project")
  - Bond No. 412,552 - Luck Lake Irrigation District (the "Luck Lake Project")

(the "Ongoing Bonded Contracts")
4. The Receiver has given notice to Western Surety and to the owners named in the Ongoing Bonded Contracts (the "Owners") that the Receiver does not intend to cause Sprague-Rosser to complete the Ongoing Bonded Contracts.
5. As a result of the Receiver's decision not to complete the Ongoing Bonded Contracts, it is anticipated, and in some cases has already occurred, that the Owners will terminate the relevant contracts and call on Western Surety to comply with its obligations under the Bonds with respect to the Ongoing Bonded Contracts.
6. Once Western Surety is called upon to comply with its obligations under the Bonds and with respect to the Ongoing Bonded Contracts it will be subrogated to the rights of the beneficiaries – i.e. the Owners - under the Bonds.
7. To the extent that Western Surety may be called upon to comply with any obligations it may have under the Completed Bonded Contracts, Western Surety will similarly be subrogated to the rights of the beneficiaries under the Bonds.

8. As subrogee of the rights of the Owners, Western Surety has certain rights, including but not limited to:
  - (a) The right to suspend further payments to the Debtor through the Receiver or otherwise; and
  - (b) The right to set-off any and all amounts it expends or has expended in the completion of the Bonded Contracts.
9. Further, one of the obligations under certain Bonded Contracts is the obligation of Western Surety to ensure the sub-contractors are paid for work done with respect to the Bonded Contracts.
10. Despite this obligation and in an attempt to better protect the sub-contractors' rights to payment for work done on the Bonded Contracts, some sub-contractors have already filed liens on projects for which Bonded Contracts are in place.
11. It is equitable that this Honourable Court declare that the stay is lifted and the Receivership Order is varied with respect to the Bonds and Bonded Contracts because the completion of and the payments made with respect to the Bonds and the Bonded Contracts will assist the Owners, the sub-contractors and Western Surety in completing and finalizing all matters with respect to the Bonded Contracts.
12. The Regional Municipality of Wood Buffalo made an in trust payment of approximately \$4.84 million to Burstall Winger with respect to the Saline Creek Phase I Project. The Regional Municipality of Wood Buffalo made a further in trust payment of approximately \$5 million to Burstall Winger with respect to a payment intended for E.O.S. Pipeline & Facilities Incorporated.
13. Western Surety has made a number of requests for information, which it understands is contained in Burstall Winger's file currently in the possession of the Receiver, but has yet to receive any file documentation, despite its requests. Western Surety requires such information to enable it to protect its rights as surety.

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

14. The Affidavit of J. Paul Bourassa, sworn October 16, 2014;
15. The Pleadings and Proceedings had and taken in this action;
16. The Receivership Order; and

17. Such further and other material or evidence as counsel may advise and this Honourable Court permit.

**Applicable rules:**

18. 1.4, 4.34, 6.3 and such further and other Rules as counsel may advise and this Honourable Court permit.

**Applicable Acts and regulations:**

19. *The Bankruptcy and Insolvency Act*, RSC 1985, c B-3, as amended;
20. *The Judicature Act*, R.S.A. 2000, c. J-2;
21. *The Builders' Lien Act*, R.S.A. 2000, c. B-7; and
22. Such further and other acts and regulations as may be applicable.

**Any irregularity complained of or objection relied on:**

23. None.

**How the application is proposed to be heard or considered:**

24. In person, on affidavit evidence.

**WARNING**

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 give evidence in response to the application, you must reply by filing an affidavit or other evidence with the Court and serving a copy of that affidavit or other evidence on the applicant(s) a reasonable time before the application is to be heard or considered.