

COURT FILE
NUMBER 1401-00089

COURT COURT OF QUEEN'S BENCH OF ALBERTA

JUDICIAL CENTRE CALGARY

APPLICANTS IN THE MATTER OF THE *BANKRUPTCY AND
INSOLVENCY ACT*, R.S.C. 1985, c-B-3 as
amended

AND IN THE MATTER OF THE
RECEIVERSHIP OF DO ALL INDUSTRIES
AND P&O ASSETS LTD.

DOCUMENT **SIXTH REPORT OF THE RECEIVER**

June 30, 2014

ADDRESS FOR
SERVICE AND
CONTACT
INFORMATION OF
PARTY FILING THIS
DOCUMENT

RECEIVER
ALVAREZ & MARSAL CANADA INC.

Bow Valley Square 1
Suite 750, 202 – 6th Avenue SW Calgary,
Alberta T2P 2R9
Tim Reid
Phone: (403) 538-4756
Email: treid@alvarezandmarsal.com

COUNSEL
MCCARTHY TETRAULT
Barristers and Solicitors
Sean Collins/Walker Macleod
3300 421 7th Avenue SW
Calgary, AB T2P 4K9

Phone: (403) 260-3710
Fax: (403) 260-3501
Email: wmacleod@mccarthy.ca
File No. 213575-460654

Clerk's Stamp

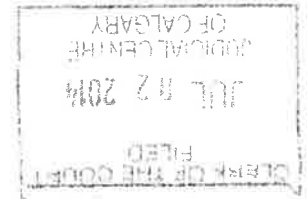


TABLE OF CONTENTS

INTRODUCTION	1
TERMS OF REFERENCE.....	2
BACKGROUND	2
RECEIPTS AND DISBURSMENTS AND ESTIMATED REALIZATIONS	3
PROPOSED DISTRIBUTION OF FUNDS TO NBC	5
SUBROGATION OF P&O TO NBC SECURITY	6
P&O CLAIM PROCESS	7
RECEIVER'S AND ITS COUNSEL'S ACCOUNTS	7
RECEIVER'S CONCLUSIONS AND RECOMMENDATIONS	8
APPENDICES	
APPENDIX "A"	LEGAL OPINION
APPENDIX "B"	SUMMARY OF PROFESSIONAL FEES

INTRODUCTION

1. Effective February 6, 2014 (the "**Receivership Date**"), pursuant to an order of the Honourable Justice A.D. Macleod (the "**Receivership Order**"), Alvarez & Marsal Canada Inc. ("**A&M**") was appointed as receiver and manager (the "**Receiver**"), without security, of all of the current and future assets, undertakings and properties of every nature and kind whatsoever, and wherever situated including all proceeds thereof (the "**Property**") of Do All Industries Ltd ("**Do All**") and P&O Assets Ltd. ("**P&O**") (collectively, the "**Do All Group**" or the "**Companies**") pursuant to section 243(1) of the Bankruptcy and Insolvency Act, R.S.C. 1985, c. B-3, as amended (the "**BIA**") in the within action (the "**Receivership Proceedings**").
2. The Receivership Order authorizes the Receiver, among other things, to take possession of and exercise control over the Property and any and all proceeds, receipts and disbursements arising out of or from the Property and directs the Receiver to hold all funds, monies, cheques, instruments, and other forms of payments received or collected by the Receiver from and after the making of the Receivership Order from any source whatsoever, including without limitation the sale of all or any of the Property and the collection of any accounts receivable in whole or in part, whether in existence on the date of the Receivership Order or hereafter coming into existence, shall be deposited into one or more new accounts to be opened by the Receiver (the "Post Receivership Accounts") and the monies standing to the credit of such Post Receivership Accounts from time to time, net of any disbursements provided for herein, shall be held by the Receiver to be paid in accordance with the terms of the Receivership Order or any further order of this Court.
3. Subsequent to the Receivership Order and upon an application by a creditor a Bankruptcy Order was issued against Do All on February 26, 2014. Alvarez & Marsal Canada Inc. was appointed as trustee in bankruptcy by the official receiver and affirmation of the creditors was received at the First Meeting of Creditors on March 26, 2014.
4. The purpose of this Sixth report of the Receiver (the "**Sixth Report**" or this "**Report**") is to:

- i) approve the distribution of funds previously directed by this Honourable Court to be held back pending the Receiver's review of priority to the funds between National Bank of Canada and certain lien holders;
 - ii) approve the accounts to date of the Receiver and its counsel; and
 - iii) declare that P&O as guarantor of the Do All loans to National Bank are subrogated to the security of National Bank and for that purpose the security of National Bank remain in place notwithstanding the National Bank loans are repaid in full.
5. Capitalized terms not defined in this Sixth Report are as defined in the Initial Order and the First through the Fourth Reports of the Receiver.
6. All references to dollars are in Canadian currency unless otherwise noted.

TERMS OF REFERENCE

7. In preparing this Sixth Report, the Receiver has relied upon unaudited financial information, company records and discussions with management of the Do All Group. The Receiver has not performed an audit, review or other verification of such information. An examination of the financial forecast as outlined in the Canadian Institute of Chartered Accountants ("CICA") Handbook has not been performed. Future oriented financial information relied upon in this Report is based on management's assumptions regarding future events and actual results achieved will vary from this information and the variations may be material.

BACKGROUND

8. Do All and P&O are privately-held sister companies. Do All was engaged in the fabrication of drilling rigs and related oil field equipment and operated out of premises owned by P&O. P&O is a real estate holding company and leased its property exclusively to Do All. The assets are geographically located in Estevan, Saskatchewan and Nisku, Alberta.
9. The National Bank of Canada ("**NBC**") is the primary secured creditor of Do All and P&O. NBC is also the most significant creditor and has security over all of the assets

of the Do All Group. The Receiver's independent legal counsel previously completed a security review of the NBC security and concluded that NBC has valid and enforceable security against Do All and P&O. The priority of the lien holders' claim in P&O was not previously addressed by the Receiver's counsel and funds were held back from distribution pending a review of that issue.

10. Do All is the borrower and P&O is a guarantor to NBC of the Do All loans from NBC. The assets of Do All will not be sufficient to satisfy the debt to NBC. Substantially all of the proceeds from the sale of P&O asset will (if the lien hold back is distributed as recommended) be distributed to NBC.
11. Korf Properties Ltd, ("KP") a related party has advised the Receiver it has security over the assets of Do All. The records of Do All indicate a liability to KP of \$2.65 million.
12. The Receiver has completed and the Court has approved the sale of substantially all of the assets of the Do All Group and the Court has approved distribution of proceeds from those sales to NBC.
13. Further background on the Do All Group and their operations are contained in the materials filed in seeking the Receivership Order. Information on the activities of the Receiver is contained in previous reports of the Receiver. The application material and previous reports have been posted by the Receiver on its website at: www.amcanadadocs.com/doall.

RECEIPTS AND DISBURSMENTS AND ESTIMATED REALIZATIONS

14. The table below provides a summary of the Receivers receipts and disbursements for the period from inception of the receivership to June 30, 2014

Do All Industries Ltd.		
Statement of Receipts and Disbursements		
For The Period from February 6, 2014 to June 30, 2014		
(\$000's)		
Receipts		
Cash in Bank at date of Receivership	\$	168
Accounts receivable collections		1,168
Sale of inventory and equipment		10,717
Sale of land and buildings		18,778
GST refund		27
Other receipts		9
Total Receipts		30,866
Disbursements		
Wages and contractor payments		189
Utilities and services		181
Insurance		168
Professional fees		763
Wages Arrears		509
Other disbursements		36
Tax remittances		358
Receiver's borrowings interest and fees		10
Debt repayment		25,200
Total Disbursements	\$	27,414
Receipts in excess of disbursements	\$	3,452
Opening Cash Position		-
Closing Cash Position		3,452

15. There are outstanding Receiver and legal fees and other commitments and contingencies of the Receiver that are not included in the statement of receipts and disbursements. Additionally, there is further Property available for the Receiver to sell and recover additional funds. The Receiver does not require the entirety of the current cash balance for future operations and commitments and will payout surplus funds to NBC as the priority creditor as previously authorized by the Court. Remaining estimated realizations and funds potentially available for distribution to creditors after payout of NBC are as follows:

Do All Industries Ltd. Estimated Funds Available for Distribution As at June 30, 2014 (\$000's)		
	Estimated Net Realizable Value	
	Low	High
Assets:		
Do All Industries Ltd. (CAN)		
Accounts receivable	\$ 200	\$ 300
Twilight receivable	2,000	2,000
Tough Enough receivable	Unknown	2,700
Income taxes receivable	1,000	1,500
Innisfail assets	280	2,100
Due from Related Parties	1,000	3,000
Sub-total	4,480	11,600
Estimated realizable value of assets before priority claims and realization costs	4,480	11,600
Less: statutory claims that may rank in priority to NBC		
WEPPA employee priority claims	20	10
Canada Revenue Agency for payroll source deductions	9	9
Canada Revenue Agency for GST	250	225
	279	244
Less professional fees and other realization costs	250	200
Less contingency	600	100
Estimated realizable value of assets after priority claims and potential realization costs	3,351	11,056
Funds in Receiver's trust account	3,452	3,452
Less final loan payment to National Bank	1,800	1,800
Sub-total	1,652	1,652
Estimated funds available for distribution	5,003	12,708

PROPOSED DISTRIBUTION OF FUNDS TO NBC

16. The Receiver proposes to distribute the funds previously held back for builders' liens registered against the lands and discharged by the Vesting Order in the approximate amount of \$1.85 million.
17. The Receiver has received an opinion from its independent legal counsel that NBC has valid and enforceable security over the Property of Do All and P&O. The certificate of title discloses six liens aggregating \$1.85 million registered against title to

lands described in Parcels C, D, F and G of the Estevan En Bloc Offer. The liens are registered subsequent to the mortgage of NBC the Receiver has requested and received an opinion from independent Saskatchewan counsel that NBC has priority over the lien claimants. The opinion received by the Receiver is attached as Appendix "A" hereto.

18. The remaining indebtedness owed to NBC is approximately \$1.75 million and distribution of the majority of the holdback will payout NBC in full.
19. The Receiver after the proposed distribution to NBC, will have approximately \$1.6 million in its trust account. These funds together with realizations from remaining Property described below should be sufficient to satisfy professional fees, other costs of the administration of the estate or other potential priority claims.
20. The Receiver previously held back approximately \$1.85 million (which represented the value of the builders' liens registered against the lands being conveyed) from the distribution of funds from the Maynards Estevan En Bloc Offer. The funds held back stood in the place of the assets being conveyed. The Receiver has received an opinion from its independent counsel indicating NBC has priority over the builder's lien claims. Therefore, it is appropriate to distribute \$1.75 million to NBC to payout their loans.

SUBROGATION OF P&O TO NBC SECURITY

21. The Court has previously approved the sale of Property of P&O and distribution of proceeds therefrom to NBC.
22. Proceeds from the sale paid to NBC by P&O will aggregate approximately \$19.0 million including distribution of the lien holdback discussed herein.
23. There are no further material assets remaining in P&O.
24. P&O as a guarantor has paid the loans of Do All and the Receiver is advised by its counsel that P&O, by operation of law are subrogated to the rights and security of NBC. Accordingly, any recoveries from the sale of Property or collection of receivables (up to \$19.0 million) in Do All should be firstly paid to the creditors of P&O and the residual to P&O. KP, a secured creditor of Do All claims priority to the assets in Do All after NBC is paid in full. The Receiver, at this time has not reviewed the

validity or priority of KP's security as it is not likely there will be recoveries in excess of the \$19.0 million due to P&O as guarantor.

P&O CLAIM PROCESS

25. The Receiver is aware of approximately \$1.85 million of builder's lien claims in P&O.
26. In addition there are other potential creditors, including Canada Revenue Agency and Saskatchewan Finance for provincial sales taxes.
27. It appears there will be monies available for the creditors of P&O creditors.
28. Accordingly the Receiver believes a claims process is required to solicit for and determine and quantify claims in P&O. A claims process will be appropriate at a later date and after additional recoveries in the estates are confirmed.

RECEIVER'S AND ITS COUNSEL'S ACCOUNTS

29. Attached as Appendix "B" hereto is a summary of the Receiver's and its counsel's accounts up to June 30, 2014:
 - i) the Receiver advises the Court that the accounts are calculated based on time spent at standard rates and in the Receiver's view are appropriate in the circumstances. The accounts are available from the Receiver if the Court or any interested party wishes to review the invoices; and
 - ii) the Receiver requests the Court approve the accounts of the Receiver and its counsel.

Receiver's on going activities and future course of action

30. The Receiver's next steps include:
 - i) continued collection efforts of all outstanding accounts receivables which mainly includes pursuing existing litigation for the collection of a \$2.7 million receivable from Tough Enough Drilling Ltd
 - ii) collection of the remaining \$2.0 million promissory note from Twilight Drilling Ltd.;

- iii) pursue collection of receivables from and investments in a number of related party (non-receivership debtor) corporations;
- iv) continue preparation and finalization of tax filings to pursue recovery of \$1.0 million plus in income taxes paid by Do All in prior years; and
- v) follow up on action items from the inspectors in the Do All bankruptcy estate regarding possible reviewable transactions.

RECEIVER'S CONCLUSIONS AND RECOMMENDATIONS

- 31. The Receiver is satisfied that NBC has a priority claim over lien holders to the proceeds from the Estevan En Bloc Offer and surplus cash from other Property sold by the Receiver to date and that it is commercially reasonable and prudent for the Receiver to disburse funds as soon as practically possible to pay out the loans of NBC.
- 32. The Receiver recommends that this Honourable Court approve the application for an order:
 - i) directing the remaining net proceeds from the Maynard's Sale be distributed by the Receiver to NBC as the priority secured creditor entitled to the funds;
 - ii) directing that the P&O creditors are subordinate to the security of NBC; and
 - iii) approving the accounts of the Receiver and its counsel.

All of which is respectfully submitted this 30th day of June, 2014.

ALVAREZ & MARSAL CANADA INC.,
In its capacity as court-appointed Receiver
of Do All Industries Ltd. and P&O Assets
Ltd.

A handwritten signature in dark ink, appearing to read 'Tim Reid', is written over a horizontal line.

Per: _____
Tim Reid, CA
Senior Vice-President

APPENDIX “A”



BARRISTERS AND SOLICITORS

William F.J. Hood, Q.C.
Beaty F. Beaubier, Q.C.
Terry J. Zakreski, B.A., LL.B. ♦
Janet L. Stevens, B.A., LL.B.
Karen M. Crellin, LL.B.
Kimberly D. Clark, B.A., LL.B.
Zeke E. Zimonick, B.Sc., J.D.
Gregory A. Kirzinger, B. Comm., J.D.
Brett A. Stevenson, B. Comm., J.D.

Robert F. Thornton, Q.C.
Timothy W. Hodgson, LL.B.
William P. Langen, B.A., LL.B.
Michael J. Deobald, B. Comm., LL.B.
Amanda S.A. Doucette, B.A., LL.B.
Kirsten J. Remarchuk, B.Sc., M.Sc., J.D.
Michael R. Scharfstein, B. Comm., J.D.
Faith Baron, B.A. (Hons), M.A., J.D.

Kenneth A. Stevenson, Q.C. ~ Counsel
♦ Reg. Trademark Agent

Our File: 42,255
E-mail: rthornton@SHTB-law.com

July 2, 2014

Alvarez & Marsal Canada Inc.
Bow Valley Square I
570 202 – 6th Avenue SW
Calgary, AB T2P 2R9

Dear Madams/Sirs:

**Re: Opinion on the priority of the Mortgage granted by P & O Assets Ltd. to
National Bank of Canada and the Builders' Liens**

We are independent Saskatchewan counsel to Alvarez & Marsal Canada Inc. in its capacity as court appointed receiver and manager of P & O Assets Ltd. (the "Receiver") pursuant to the receivership order issued by the Court of Queen's Bench of Alberta under the *Bankruptcy and Insolvency Act* (the "BIA") on February 6, 2014.

You have asked us, in your capacity as Receiver, for our opinion with respect to the issue as to whether the mortgage granted by P&O Assets Ltd. to National Bank of Canada has priority over the builders' liens registered against the lands described herein.

I. DOCUMENTS REVIEWED

For the purposes of this opinion, we have reviewed the following documents (collectively the "Documents"):

1. Mortgage dated January 28, 2013 granted by P & O Assets Ltd. ("P & O") in favour of National Bank of Canada (the "Mortgage");
2. Guarantee dated January 28, 2013 granted by P & O Assets Ltd. in favour of National Bank of Canada (the "Guarantee");
3. Credit Agreement dated January 28, 2013 (the "Credit Agreement") between Do All Industries Ltd. ("Do All") as Borrower and National Bank of Canada and Those Other Financial Institutions Which Hereafter Become Lenders Under This Agreement as Lenders and National Bank of Canada as Agent ("NBC");
4. Copies of title prints from the Saskatchewan Land Titles Registry to the following described lands (collectively the "Lands") as of May 8, 2014 (see Schedule "A" hereto):

Surface Parcel #135629039

Reference Land Description: Blk/Par A Plan No 101176703 Extension 0
("Parcel A")

Surface Parcel #161594006

Reference Land Description: Blk/Par E Plan No 101888950 Extension 0
("Parcel E")

Surface Parcel #107376576

Reference Land Description: Lot 13 Blk/Par 306 Plan No 80R43931
Extension 0

As described on Certificate of Title 01SE29417

Surface Parcel #153966651

Reference Land Description: Lot 28 Blk/Par 306 Plan No 101858643
Extension 0

Surface Parcel #107376677

Reference Land Description: Lot 12 Blk/Par 306 Plan No 80R43931
Extension 0

As described on Certificate of Title 99SE30107

Surface Parcel #107376633

Reference Land Description: Lot 17 Blk/Par 306 No 80R43931
Extension 0

As described on Certificate of Title 95R64805

Surface Parcel #107400642

Reference Land Description: Lot 11 Blk/Par 306 Plan No 80R43931
Extension 0

As described on Certificate of Title 99SE30107

Surface Parcel #107376644

Reference Land Description: Lot 16 Blk/Par 306 Plan No 80R43931
Extension 0

As described on Certificate of Title 95R64805

5. Copies of the following Claims of Lien (the "Claims of Lien") pursuant to *The Builders' Lien Act* (Saskatchewan) (see Schedule "B" hereto):

- (a) Hirsch Construction Ltd. registered as Interest Register #119283093;
- (b) Turnbull Excavating Ltd., Interest Register #119331097;
- (c) Johnson Plumbing and Heating Ltd., Interest Register #119789331;
- (d) Day Construction Ltd., Interest Register #119835603;
- (e) Glen Peterson Construction Ltd., Interest Register #119303388.

The foregoing entities are collectively referred to herein as the "Lien Claimants" or the "Contractors";

6. The Titles Affidavit of Value (the "Affidavit of Value") dated May 29, 2014 submitted to Saskatchewan Land Titles Registry with the Order dated May 14, 2014 of The Honourable Justice G.A. Campbell (the "Vesting Order");
7. A letter from Kowalishen Law Firm Corp. to Alvavrez & Marsal Canada Inc. dated April 11, 2014.

II. ASSUMPTIONS AND RELIANCES

In conducting our examinations of the Documents and in giving the opinions hereinafter expressed, and without independent investigation or verification:

- (a) we have relied upon the accuracy, currency and completeness of the indices and filing systems maintained by public offices where we have searched or inquired or have caused searches or inquiries to be made and upon such information and advice as provided to us by appropriate governmental, regulatory or other like authorities with respect to those matters referred to herein;
- (b) with respect to the Documents examined by us, we have assumed the genuineness of all signatures, the legal capacity of individuals signing the Documents and the conformity to authentic original documents of the Documents submitted to us as certified, conformed, telecopied, photocopies or electronically transmitted copies;
- (c) the Documents constitute all of the documents or writings between NBC or any of the other lenders referred to therein and Do All or P & O with respect to the matters upon which we express opinions herein and that are no verbal agreements, acknowledgments, understandings or arrangements between the foregoing entities with respect to the matters upon which we express opinions herein;
- (d) we have assumed that the facts set forth in the Documents, the facts set out in Part III below and the information provided to us are complete, true, accurate and current and that there are no facts, information or circumstances material to the opinions expressed herein that have not been disclosed to us;
- (e) to the extent that any of the Documents relied upon by us for the purposes of this opinion has been dated prior to the date of this opinion we have assumed that the information contained in such Document continues to be valid, complete, true, accurate and current as of the date of this opinion letter;
- (f) we have relied upon the opinions expressed in our opinion letter dated May 8, 2014 concerning the validity, enforceability and registration of the Mortgage and our opinions herein are subject to the assumptions, reliances, qualifications and limitations contained in the said letter of opinion;
- (g) we have assumed that the Guarantee, which is governed by the laws of the Province of Alberta, is a legal, valid and binding obligation of P & O enforceable against P & O in accordance with its terms;

- (h) we have assumed that from June 24, 2013 the value of the Lands was \$9.9 million and that the amount of the indebtedness of Do All to NBC was not reduced below the value of the Lands.

III. FACTS

1. P&O Assets Ltd. ("P&O") granted the Mortgage in favour of National Bank of Canada ("NBC") on January 28, 2013.
2. Section 2.1(a) of the Mortgage, states that the Mortgage is "general and continuing collateral security for the full, timely and proper payment and performance by the Mortgagor of the Obligations".
3. "Obligations" is defined on page 4 of the Mortgage as "all present and future obligations, liabilities and indebtedness (absolute or contingent...) of the Mortgagor to the Mortgagee and other Lenders under, pursuant or relating to the Credit Agreement and the other Documents..."
4. Under Section 4.1(b) of the Credit Agreement the "Security" includes "a guarantee from each Loan Party." The definition of "Loan Parties" in Schedule "A" of the Credit Agreement includes P&O.
5. Under Section 2 of the Guarantee, P&O guarantees payment and performance "of any or all indebtedness, liabilities and obligations" which the Borrower, Do All Industries Ltd. ("Do All"), "has from time to time incurred or is under or may hereafter incur" to NBC "in connection with or with respect to the Credit Documents". Under Section 1 of the Guarantee, the "Credit Documents" include the Credit Agreement.
6. The Mortgage was registered on January 30, 2013 in the Saskatchewan Land Titles Registry against the titles to the Lands as Interest Register #118943860 indicating a value of \$35 million.
7. The Mortgage was in the principal amount of \$35 million.
8. As the Mortgage was in support of the Guarantee, there were no advances directly under the Mortgage to P & O.
9. There were advances to Do All under the Credit Facilities which by definition in Schedule "A" to the Credit Agreement mean the Revolving Facility, the Term Facility, the CAPEX Facility (which is also a revolving credit facility), and Ancillary Facilities.
10. The Term Facility was \$13 million, the Revolving Facility was \$12 million, the CAPEX Facility was \$5 million and the Ancillary Facilities was \$1.1 million as set out in Schedule "B" to the Credit Agreement.
11. As of June 24, 2013, the Do All indebtedness to NBC was \$28.7 million and no further advances to Do All were being made.

12. On June 27 or 28, 2013 the sum of \$600,000.00 was advanced to Do All to cover payroll.
13. As of July 3, 2013, a forbearance agreement was entered into and a further \$2.0 million was agreed to be advanced on a revolving basis including the said \$600,000.00 advanced on June 27 or 28. It is not known whether any other portion of the \$2.0 million was drawn upon.
14. Builders' liens (collectively the "Builders' Liens") pursuant to *The Builders' Lien Act* (Saskatchewan) ("BLA") (see Schedules "A" and "B" hereto) were registered against Parcel E of the Lands by the following Lien Claimants on the following dates:
 - (a) Hirsch Construction Ltd – July 5, 2013;
 - (b) Turnbull Excavating Ltd. – July 25, 2013;
 - (c) Johnson Plumbing and Heating Ltd – February 14, 2014;
 - (d) Day Construction Ltd. – March 13, 2014.

A builder's lien was registered against Parcel A of the Lands by Glen Peterson Construction Ltd. on July 15, 2013.

15. No written notices of a lien pursuant to the BLA were given by the Lien Claimants.
16. The value of the Lands from June 24, 2013 was \$9.9 million based on the Affidavit of Value dated May 29, 2014.
17. The amount of the Do All debt to NBC was not reduced below the value of the Lands after the registration of the first Builders' Lien or any written notice of a lien at any time prior to the sale of the Lands.
18. None of the advances made to Do All under the Credit Facilities were specifically advanced to finance the construction of an improvement on the Lands.
19. The amount of the debt under the Credit Facilities as at the date of the commencement of an improvement to the Lands to the date of the sale of the Lands always exceeded the value of the Lands even in the event of application to such debt of moneys, if any, in the hands of Do All or received by Do All for payment under a contract, if any, with a contractor.
20. P & O did not receive any amounts to be used in the financing of the improvements to the Lands. P & O did not provide its own capital for payment under the contracts with the Contractors and no amounts were in the hands of P & O or received by P & O for payment under the said contracts.
21. Do All was not owed amounts and did not receive amounts on account of the contract price of an improvement to the Lands.

IV. ISSUE

Does the Mortgage have priority over the Builders' Liens?

V. OPINION

A. Section 73(1) of The Builders' Lien Act

Pursuant to Subsection 27(2) of *The Land Titles Act, 2000* (Saskatchewan), S.S. 2000 c. L-5.1 ("LTA") (Schedule "C"), the registration of an interest based on a mortgage for a specific principal sum has priority according to the time assigned to such registration at the Land Titles Registry for all advances and obligations secured pursuant to the terms of the mortgage, notwithstanding that the advances and obligations are made or incurred after the registration of any other interest.

Pursuant to Subsection 27(3) of the LTA, registration of an interest based on a mortgage that provides for readvances of credit up to a specific principal sum has priority according to the time assigned to the mortgage at the Land Titles Registry for all advances, readvances and obligations secured pursuant to the terms of the mortgage, notwithstanding that the advances are made or incurred after the registration of any other interest and at any time during the term of the mortgage there may not have been any advances to be secured.

However, Subsection 27(4) of the LTA provides that Subsections 27(2) and 27(3) of the LTA do not affect any right acquired pursuant to *The Builders' Lien Act*.

Section 71(1) of *The Builders' Lien Act*, S.S. 1984-85-86 c. B-7.1 ("BLA") (Schedule "D") provides that "liens arising from an improvement have priority over all mortgages... registered after a claim of lien is registered".

Section 71(3) of the BLA (Schedule "D") provides that subject to Part II (which are the trust provisions of the BLA) a lien has priority in respect of all advances made on account of any mortgage after written notice of a lien has been given to a person making the advances or after a claim of lien is registered. This was held in *Scotia Mortgage Corp. v. Fraser et al.* (1989) 73 Sask. R.130 (Q.B.) (Schedule "E").

While there were no advances directly under the P & O Mortgage due to its nature of being a mortgage in support of a guarantee, the guarantee was a guarantee of payment and performance of all indebtedness, liabilities and obligations which Do All had incurred or may thereafter incur.

No Saskatchewan Court decisions have been found which have addressed this situation where the mortgage is one in support of a guarantee rather than a mortgage pursuant to which advances were made directly to the registered owner.

The decision in *Toronto-Dominion Bank v. Setter-Donaldson Mechanical Ltd. et al.*, (B.C.C.A.) 1977 Carswell BC 14 ("Schedule "F") dealt with the situation where a mortgage was granted in support of a guarantee and builders' liens were subsequently registered against the mortgaged lands.

In that case the British Columbia Court of Appeal was dealing with Section 7.(1) of the Mechanics' Lien Act, R.S.B.C. 1960 c.238, which stated:

7.(1) A registered mortgage has priority over a lien to the extent of mortgage-moneys bona fide secured or advanced in money prior to the filing of the claim of lien.

In coming to its decision, the Court found that at the time of the filing of the lien, the principal debtor owed the bank approximately \$900,000.00 which was the amount referred to in the mortgage. It further found that the \$900,000.00 remained outstanding on the loan and was more than the value of the property.

The Court found that the mortgage granted to secure the mortgagor's guarantee of the debt of the principal debtor had priority over the liens by reason of the said section 7.(1).

If this decision were to be followed in Saskatchewan, then we anticipate the Saskatchewan Court would determine what amount had been advanced on the loans to Do All at the time of the registration of the first lien or first notice of a lien and whether that amount remained outstanding from that time and was more than the value of the Lands from that time.

We are informed that the Credit Facilities under the Credit Agreement had been advanced to the sum of \$28.7 million dollars on June 24, 2013 which was prior to the registration of the first builders' lien on July 5, 2013 or any written notice of a lien.

We have assumed that the value of the Lands throughout was \$9.9 million as set out in the Affidavit of Value (for the Vesting Order registration).

We have assumed that the indebtedness of Do All to NBC was not reduced below the value of the Lands.

If the amount of the debt under the Credit Facilities exceeded the value of the Lands prior to the registration of the first Builders' Lien or any written notice of a lien and continued to exceed such value, there would be no equity in the Lands to which the Builders' Liens could attach.

Conclusion

Therefore, based on the debt owing to NBC being advanced prior to the registration of the first Builders' Lien or any written notice of a lien and such debt always exceeding the value of the Lands, the Mortgage would have priority over the Builders' Liens.

B. Trust Provisions of the BLA

Subsection 71(3) of the BLA commences with the proviso that it is "Subject to Part II". Part II contains the trust provisions of the BLA. (See Schedule "G" hereto).

Owner's Trust

Section 6(1) of Part II provides that all amounts received by an owner to be used in the financing of an improvement constitute, subject to the payment of the purchase price of the land and prior encumbrances, a trust fund for the benefit of the contractor.

Section 6(2) states that where the owner provides his own capital and where amounts become payable under a contract to a contractor, the moneys in the hands of the owner or received by him for payment under the contract at any time thereafter constitute a trust fund for the benefit of the contractor.

The foregoing trusts are herein collectively referred to herein as the "Owner's Trust".

Therefore, P&O as owner would be a trustee of such amounts for the Contractors with which it was in contract.

P&O did not receive amounts to be used in the financing of the improvements to the Lands. Therefore, a trust fund did not arise pursuant to Section 6(2).

P & O did not provide its own capital and there were no moneys in the hands of P & O or received by it for payment under the contracts with the Contractors. Therefore, a trust fund did not arise pursuant to Section 6(2).

Certain of the Contractors have in their Builders' Liens claimed against the estate or interest of Do All, as well as P & O, in the land described in the lien. Also, according to the April 11, 2014 letter from Kowalishen Law Firm Corp. to Alvarez & Marsal Canada Inc., Hirsch Construction Ltd. has sued Do All.

Under Section 2(1)(k) of the BLA, "owner" includes a person having an estate or interest in land, other than an encumbrance, at whose request, express or implied, and on whose credit, on whose behalf, with whose privity and consent or for whose direct benefit, an improvement is made to the land. (Schedule "H").

If Do All had an estate or interest in the land and requested the improvement or consented to it or for whose direct benefit the improvement was made, then Do All may be a trustee of a trust fund for the benefit of the Contractors pursuant to Section 6 of the BLA.

None of the advances made to Do All under the Credit Facilities were specifically advanced to finance the construction of an improvement on the Lands. Do All does not appear to have received amounts to be used in the financing of an improvement and therefore there would not be a trust fund under Section 6(1) with respect to Do All.

If Do All was an owner and was providing its own capital then moneys in its hands or received by it for payment under any contract with the Contractors could constitute a trust fund for the benefit of the Contractors under Section 6(2).

However, the amount of the debt under the Credit Facilities as at the date of the commencement of an improvement to the Lands to the date of the sale of the Lands always exceeded the value of the Lands even in the event of application to such debt of moneys, if any, in the hands of Do All or received by Do All for payment under a contract, if any, with a contractor. Therefore, the NBC mortgage would have priority.

Under 6(3) of the BLA, where the owner's interest in an improvement is sold by the owner, an amount equal to the positive difference between: (a) the value of the consideration received by the owner as a result of the sale; and (b) the reasonable expenses arising from the sale and the amount, if any, paid by the vendor to discharge any encumbrances which are entitled to priority under the BLA; constitutes a trust fund for the benefit of the contractor.

As the amount paid to discharge the NBC Mortgage, which is entitled to priority by Section 71(3) (see above), will presumably exceed the value of the consideration received then there should be no "positive difference" and therefore no trust fund under Section 6(3) of the BLA.

Contractor's Trust

Pursuant to Section 7 of the BLA, all amounts owing to a contractor or received by it on account of the contract price constitute a trust fund for the benefit of its subcontractors. If Do All was in contract with the Contractors and in receipt of amounts on account of the contract prices, then it would be a trustee of trust funds for the Contractors (the "Contractor's Trust").

As Do All was not owed amounts or did not receive amounts on account of the contract price of an improvement to the Lands, there would be no trust fund pursuant to Section 7 of the BLA.

Conclusion

For the reasons indicated above the trust provisions of the BLA would not affect the priority of the NBC Mortgage pursuant to Section 71(3) of the BLA.

Priorities between Beneficiaries of a Trust and Third Parties

Under Section 15 of the BLA, in addition to any other priority which a beneficiary of a trust constituted by Part II may have at law, a beneficiary has priority over all general or special assignments, security interests, judgments, seizures, attachments, garnishments and receiving orders whenever received, granted, issued or made, of or in respect of the contract or subcontract price or any portion thereof.

Therefore, the Contractors as beneficiaries of the Owner's Trust or Contractor's Trust described above would have priority over any assignment, security interest or receiving order with respect to the contract or subcontract price or any portion thereof.

Other Relevant Part II Provisions

It should be noted that under Section 11 of the BLA, subject to the requirement to maintain a holdback, a trustee who pays for services or materials provided to an improvement or pays a beneficiary pursuant to the contract or subcontract out of money that is not subject to a trust under Part II, may retain from the trust funds an amount equal to that paid by him.

It should also be noted that under Section 12 of the BLA, subject to the requirement to maintain a holdback, where a trustee pays for services or materials provided to an improvement or pays a beneficiary of the trust out of money that is lent to him, trust funds may be applied to discharge the loan to the extent that the lender's money was so used by the trustee.

No Opinion with Respect to Dealing with Trust Funds

We have not been requested to comment on, nor have we been provided with information as to, the matter of any dealings by anyone with any monies that may constitute trust funds under the BLA. We therefore do not express any opinion concerning such matter.

VI. QUALIFICATIONS AND LIMITATIONS

The opinions set forth with respect to the matters referred to above are subject to the following qualifications, limitations and reservations:

1. The opinions set forth above are based on and limited by the facts and the assumptions and reliances set out above and on the Documents examined.
2. The facts set out in Part III above are complete, true, accurate, and current and there are no facts, information, or circumstances material to the opinions expressed herein that have not been disclosed to us.
3. Our examinations have been confined to the Documents and to the records referred to herein. Our opinion is based on the accuracy and completeness of the Documents and records and to the extent that the matters referred to herein are affected or diminished at law or in equity by any matter which has not been disclosed to us, our opinions are qualified accordingly.
4. The opinions set forth in this letter are given only as of the date of this letter and are limited to the facts known to us and the law as it exists at the date of this letter and we disclaim any obligations or undertakings to advise the addressee hereof or any other person of any change in fact or law which may come to our attention after the date hereof.
5. As we have relied upon the opinions expressed in our opinion letter dated May 8, 2014 to you concerning the validity, enforceability and registration of the Mortgage, our opinions herein are subject to the assumptions, reliances, qualifications, and limitations contained in the said letter of opinion.
6. We are solicitors qualified to carry on the practice of law in the Province of Saskatchewan only, and therefore express no opinion as to any laws, or matters governed by any laws, other than the laws of the Province of Saskatchewan and the federal laws of Canada applicable therein.
7. This opinion is rendered solely for the benefit of the addressee and may not be used, quoted, referred to, disclosed to, or relied upon, in whole or in part, by any other person or for any other purpose without our prior written consent, other than in connection with the addressee's reporting obligations to the Court of Queen's Bench, Judicial Centre of Calgary, in Court File Number 1401-00889.

Yours truly,

STEVENSON HOOD THORNTON BEAUBIER LLP

Stevenson Hood Thornton Beaubier LLP

Schedule "A"
Title Prints of Lands

**Province of Saskatchewan
Land Titles Registry
Title**

Title #: 138158084 **As of:** 08 May 2014 09:02:23
Title Status: Active **Last Amendment Date:** 15 Jul 2013 08:56:21.013
Parcel Type: Surface **Issued:** 25 Sep 2009 15:47:25.303
Parcel Value: \$3,329,000.00 CAD
Title Value: \$3,329,000.00 CAD **Municipality:** RM OF ESTEVAN NO. 005
Converted Title: 00SE30893 / 00SE35942
Previous Title and/or Abstract #: 113146860

P & O ASSETS LTD. is the registered owner of Surface Parcel #135629039

Reference Land Description: Blk/Par APlan No 101176703 Extension 0

This title is subject to any registered interests set out below and the exceptions, reservations and interests mentioned in section 14 of *The Land Titles Act, 2000*.

Registered Interests:

Interest #:
148934582

CNV Easement

Value: N/A
Reg'd: 16 Jul 1954 00:17:40
Interest Register Amendment
Date: N/A
Interest Assignment
Date: N/A
Expiry Date: N/A

Holder:

Saskatchewan Power Corporation
N/A, Saskatchewan, Canada
Client #: 100871063
Int. Register #: 100612257
Converted Instrument #: AK1060

Interest #:
148934593

CNV Easement

Value: N/A
Reg'd: 30 Oct 1985 02:22:33
Interest Register Amendment
Date: 05 Apr 2010 12:06:09
Interest Assignment
Date: N/A
Expiry Date: N/A

Converted Instrument # 85R58217

Holder:

Saskatchewan Telecommunications

13th Floor, 2121 Saskatchewan Drive
Regina, Saskatchewan, Canada S4P 3Y2
Client #: 100006861
Int. Register #: 100612268
Converted Instrument #: 85R52817
Feature #: 100038226

Interest #:
148934605

CNV Easement

Value: N/A
Reg'd: 28 Apr 1992 02:33:40
Interest Register Amendment
Date: N/A
Interest Assignment
Date: N/A
Expiry Date: N/A

Holder:
Saskatchewan Telecommunications
13th Floor, 2121 Saskatchewan Drive
Regina, Saskatchewan, Canada S4P 3Y2
Client #: 100006861
Int. Register #: 100612279
Converted Instrument #: 92R20254
Feature #: 100045044

Interest #:
148934616

Power Corporation Act Easement
(s.23)

Value: N/A
Reg'd: 17 Feb 2009 14:13:13
Interest Register Amendment
Date: 13 Dec 2010 15:53:13
Interest Assignment
Date: N/A
Expiry Date: N/A

Holder:
SASKATCHEWAN POWER CORPORATION
2025 VICTORIA AVE
REGINA, SK, Canada S4P 0S1
Client #: 100307618
Int. Register #: 115226535
Feature #: 100205110

Interest #:
161691925

Mortgage

Value: \$35,000,000.00 CAD
Reg'd: 30 Jan 2013 13:07:20
Interest Register Amendment
Date: N/A
Interest Assignment
Date: N/A
Expiry Date: N/A

Holder:
NATIONAL BANK OF CANADA
9 Sir Winston Churchill Square

Edmonton, AB, Canada T5J 5B5

Client #: 128307821**Int. Register #:** 118943860**Interest #:****163460448**

Builders' Lien

Value: \$66,396.30 CAD**Reg'd:** 15 Jul 2013 08:56:21**Interest Register Amendment****Date:** N/A**Interest Assignment****Date:** N/A**Expiry Date:** N/A**Holder:**

GLEN PETERSON CONSTRUCTION LTD.

314-6TH STREET

ESTEVAN, SK, Canada S4A 2V7

Client #: 100830406**Int. Register #:** 119303388**Addresses for Service:****Name****Address****Owner:**

P & O ASSETS LTD.

#1400 - 2002 VICTORIA AVENUE REGINA, SK, Canada
S4P 0R7

Client #: 123899451

Notes:

Parcel Class Code: Parcel (Generic)

Back

Province of Saskatchewan Land Titles Registry Title

Title #: 138756156 **As of:** 08 May 2014 09:01:36
Title Status: Active **Last Amendment Date:** 13 Mar 2014 09:20:21.957
Parcel Type: Surface **Issued:** 11 Jan 2010 08:51:00.050
Parcel Value: \$459,672.00 CAD
Title Value: \$459,672.00 CAD **Municipality:** RM OF ESTEVAN NO. 005
Converted Title: 00SE30893 / 00SE35942
Previous Title and/or Abstract #: 131976759 / 131976771

P & O ASSETS LTD. is the registered owner of Surface Parcel #161594006

Reference Land Description: Blk/Par EPlan No 101888950 Extension 0

This title is subject to any registered interests set out below and the exceptions, reservations and interests mentioned in section 14 of *The Land Titles Act, 2000*.

Registered Interests:

Interest #:
150167022 CNV Easement

Value: N/A
Reg'd: 16 Jul 1954 00:17:40
Interest Register Amendment
Date: N/A
Interest Assignment
Date: N/A
Expiry Date: N/A

Holder:
Saskatchewan Power Corporation
N/A, Saskatchewan, Canada
Client #: 100871063
Int. Register #: 100612257
Converted Instrument #: AK1060

Interest #:
150167033 CNV Easement

Value: N/A
Reg'd: 30 Oct 1985 02:22:33
Interest Register Amendment
Date: 05 Apr 2010 12:06:09
Interest Assignment
Date: N/A
Expiry Date: N/A

Converted Instrument # 85R58217

Holder:
Saskatchewan Telecommunications

13th Floor, 2121 Saskatchewan Drive
Regina, Saskatchewan, Canada S4P 3Y2
Client #: 100006861
Int. Register #: 100612268
Converted Instrument #: 85R52817
Feature #: 100038226

Interest #:
150167044

CNV Easement

Value: N/A
Reg'd: 28 Apr 1992 02:33:40
Interest Register Amendment
Date: N/A
Interest Assignment
Date: N/A
Expiry Date: N/A

Holder:
Saskatchewan Telecommunications
13th Floor, 2121 Saskatchewan Drive
Regina, Saskatchewan, Canada S4P 3Y2
Client #: 100006861
Int. Register #: 100612279
Converted Instrument #: 92R20254
Feature #: 100045044

Interest #:
161691936

Mortgage

Value: \$35,000,000.00 CAD
Reg'd: 30 Jan 2013 13:07:20
Interest Register Amendment
Date: N/A
Interest Assignment
Date: N/A
Expiry Date: N/A

Holder:
NATIONAL BANK OF CANADA
9 Sir Winston Churchill Square
Edmonton, AB, Canada T5J 5B5
Client #: 128307821
Int. Register #: 118943860

Interest #:
163384207

Builders' Lien

Value: \$1,391,372.36 CAD
Reg'd: 05 Jul 2013 11:12:31
Interest Register Amendment
Date: N/A
Interest Assignment
Date: N/A
Expiry Date: N/A

Holder:
Hirsch Construction Ltd.
c/o MacPherson Leslie & Tyerman LLP #1500 - 1874 Scarth Street
Regina, SK, Canada S4P 4E9
Client #: 128785034

Int. Register #: 119283093**Interest #:**
163596662

Builders' Lien

Value: \$28,014.19 CAD
Reg'd: 25 Jul 2013 09:19:13
Interest Register Amendment
Date: N/A
Interest Assignment
Date: N/A
Expiry Date: N/A**Holder:**Turnbull Excavating Ltd.
Box 788
Esteran, SK, Canada S4A 2A6
Client #: 124300279
Int. Register #: 119331097**Interest #:**
166017674

Builders' Lien

Value: \$163,907.80 CAD
Reg'd: 14 Feb 2014 15:39:24
Interest Register Amendment
Date: N/A
Interest Assignment
Date: N/A
Expiry Date: N/A**Holder:**JOHNSON PLUMBING AND HEATING LTD.
1017 THIRD STREET
ESTEVAN, SK, Canada S4A 0R4
Client #: 100506709
Int. Register #: 119789331**Interest #:**
166250268

Builders' Lien

Value: \$152,659.50 CAD
Reg'd: 13 Mar 2014 09:20:22
Interest Register Amendment
Date: N/A
Interest Assignment
Date: N/A
Expiry Date: N/A**Holder:**DAY CONSTRUCTION LTD.
P.O. BOX 700
CARNDUFF, SK, Canada S0C 0S0
Client #: 100247453
Int. Register #: 119835603**Addresses for Service:****Name****Address****Owner:**

P & O ASSETS LTD.

#1400 - 2002 VICTORIA AVENUE REGINA, SK, Canada
S4P 0R7

Client #: 123899451

Notes:

Parcel Class Code: Parcel (Generic)

Back

Province of Saskatchewan Land Titles Registry Title

Title #: 138158174 **As of:** 08 May 2014 09:04:13
Title Status: Active **Last Amendment Date:** 14 Apr 2014 13:49:51.993
Parcel Type: Surface **Issued:** 25 Sep 2009 15:47:32.400
Parcel Value: \$688,000.00 CAD
Title Value: \$688,000.00 CAD **Municipality:** CITY OF ESTEVAN
Converted Title: 01SE29417
Previous Title and/or Abstract #: 109960959

P & O ASSETS LTD. is the registered owner of Surface Parcel #107376576

Reference Land Description: Lot 13Blk/Par 306Plan No 80R43931
Extension 0
As described on Certificate of Title 01SE29417.

This title is subject to any registered interests set out below and the exceptions, reservations and interests mentioned in section 14 of *The Land Titles Act, 2000*.

Registered Interests:

Interest #:
148934773

CNV Easement

Value: N/A
Reg'd: 24 Apr 1981 02:15:17
Interest Register Amendment Date: N/A
Interest Assignment Date: N/A
Expiry Date: N/A

N'ly 20 feet

Holder:

Canadian Pacific Limited
N/A, Saskatchewan, Canada

Client #: 100971109

Int. Register #: 103770851

Converted Instrument #: 81R17166

Interest #:
161691903

Mortgage

Value: \$35,000,000.00 CAD
Reg'd: 30 Jan 2013 13:07:20
Interest Register Amendment Date: N/A
Interest Assignment Date: N/A
Expiry Date: N/A

Holder:

NATIONAL BANK OF CANADA
9 Sir Winston Churchill Square
Edmonton, AB, Canada T5J 5B5

Client #: 128307821

Int. Register #: 118943860

Addresses for Service:**Name****Address****Owner:**

P & O ASSETS LTD.

#1400 - 2002 VICTORIA AVENUE REGINA, SK, Canada
S4P 0R7

Client #: 123899451

Notes:

Parcel Class Code: Parcel (Generic)

[Back](#)

**Province of Saskatchewan
Land Titles Registry
Title**

Title #: 138158095 **As of:** 08 May 2014 09:04:51
Title Status: Active **Last Amendment Date:** 14 Apr 2014 13:49:52.023
Parcel Type: Surface **Issued:** 25 Sep 2009 15:47:26.900
Parcel Value: \$975,000.00 CAD
Title Value: \$975,000.00 CAD **Municipality:** CITY OF ESTEVAN
Converted Title: 95R64805
Previous Title and/or Abstract #: 128575783

P & O ASSETS LTD. is the registered owner of Surface Parcel #153966651

Reference Land Description: Lot 28Blk/Par 306Plan No 101858643
Extension 0

This title is subject to any registered interests set out below and the exceptions, reservations and interests mentioned in section 14 of *The Land Titles Act, 2000*.

Registered Interests:

Interest #:
148934627

CNV Easement

Value: N/A
Reg'd: 28 Jul 1995 02:38:58
Interest Register Amendment
Date: N/A
Interest Assignment
Date: N/A
Expiry Date: N/A

NE' ly 30 feet

Holder:

Canadian Pacific Limtied
N/A, Saskatchewan, Canada

Client #: 105955982

Int. Register #: 103338570

Converted Instrument #: 95R37637

Interest #:
148934638

Planning and Development Act -
Interest Protecting Agreement (s.
215)

Value: N/A
Reg'd: 08 Jul 2002 14:45:09
Interest Register Amendment
Date: N/A
Interest Assignment
Date: N/A
Expiry Date: N/A

Holder:
CITY OF ESTEVAN
1102 Fourth Street
Estevan, SK, Canada S4A 0P2
Client #: 100004241
Int. Register #: 104035823

Interest #:
161691914

Mortgage

Value: \$35,000,000.00 CAD
Reg'd: 30 Jan 2013 13:07:20
Interest Register Amendment
Date: N/A
Interest Assignment
Date: N/A
Expiry Date: N/A

Holder:
NATIONAL BANK OF CANADA
9 Sir Winston Churchill Square
Edmonton, AB, Canada T5J 5B5
Client #: 128307821
Int. Register #: 118943860

Addresses for Service:

Name	Address
Owner: P & O ASSETS LTD.	#1400 - 2002 VICTORIA AVENUE REGINA, SK, Canada S4P 0R7
Client #: 123899451	

Notes:

Parcel Class Code: Parcel (Generic)

Back

Province of Saskatchewan Land Titles Registry Title

Title #: 138158163 **As of:** 08 May 2014 09:03:38
Title Status: Active **Last Amendment Date:** 02 Apr 2013 08:16:57.870
Parcel Type: Surface **Issued:** 25 Sep 2009 15:47:31.633
Parcel Value: \$636,000.00 CAD
Title Value: \$636,000.00 CAD **Municipality:** CITY OF ESTEVAN
Converted Title: 99SE30107
Previous Title and/or Abstract #: 136703033

P & O ASSETS LTD. is the registered owner of Surface Parcel #107376677

Reference Land Description: Lot 12Blk/Par 306Plan No 80R43931
Extension 0
As described on Certificate of Title 99SE30107.

This title is subject to any registered interests set out below and the exceptions, reservations and interests mentioned in section 14 of *The Land Titles Act, 2000*.

Registered Interests:

Interest #:
148934751

Easement Mutual
(Dominant)

Value: N/A
Reg'd: 03 Dec 2008 10:39:45
Interest Register Amendment
Date: N/A
Interest Assignment
Date: N/A
Expiry Date: N/A

Holder:
The Current Dominant Tenement
n/a, Saskatchewan, Canada S4P 3V7
Client #: 100009099
Int. Register #: 115059270

Interest #:
148934762

Restrictive Covenant - Mutual
(Dominant)

Value: N/A
Reg'd: 03 Dec 2008 10:39:46
Interest Register Amendment
Date: N/A
Interest Assignment
Date: N/A
Expiry Date: N/A

Holder:
The Current Dominant Tenement

n/a, Saskatchewan, Canada S4P 3V7
Client #: 100009099
Int. Register #: 115059304

Interest #:
161691891

Mortgage

Value: \$35,000,000.00 CAD
Reg'd: 30 Jan 2013 13:07:20
Interest Register Amendment
Date: N/A
Interest Assignment
Date: N/A
Expiry Date: N/A

Holder:
NATIONAL BANK OF CANADA
9 Sir Winston Churchill Square
Edmonton, AB, Canada T5J 5B5
Client #: 128307821
Int. Register #: 118943860

Addresses for Service:

Name

Address

Owner:

P & O ASSETS LTD.

#1400 - 2002 VICTORIA AVENUE REGINA, SK, Canada
S4P 0R7

Client #: 123899451

Notes:

Parcel Class Code: Parcel (Generic)

Back

**Province of Saskatchewan
Land Titles Registry
Title**

Title #: 138158130 **As of:** 08 May 2014 09:06:02
Title Status: Active **Last Amendment Date:** 02 Apr 2013 08:16:57.777
Parcel Type: Surface **Issued:** 25 Sep 2009 15:47:29.587
Parcel Value: \$78,000.00 CAD
Title Value: \$78,000.00 CAD **Municipality:** CITY OF ESTEVAN
Converted Title: 95R64805
Previous Title and/or Abstract #: 130718875

P & O ASSETS LTD. is the registered owner of Surface Parcel #107376633

Reference Land Description: Lot 17Blk/Par 306Plan No 80R43931
Extension 0
As described on Certificate of Title 95R64805.

This title is subject to any registered interests set out below and the exceptions, reservations and interests mentioned in section 14 of *The Land Titles Act, 2000*.

Registered Interests:

Interest #:
148934694

CNV Easement

Value: N/A
Reg'd: 28 Jul 1995 02:38:58
Interest Register Amendment
Date: N/A
Interest Assignment
Date: N/A
Expiry Date: N/A

NE' ly 30 feet

Holder:

Canadian Pacific Limtled
N/A, Saskatchewan, Canada

Client #: 105955982

Int. Register #: 103338570

Converted Instrument #: 95R37637

Interest #:
161691879

Mortgage

Value: \$35,000,000.00 CAD
Reg'd: 30 Jan 2013 13:07:20
Interest Register Amendment
Date: N/A
Interest Assignment
Date: N/A
Expiry Date: N/A

Holder:

NATIONAL BANK OF CANADA
9 Sir Winston Churchill Square
Edmonton, AB, Canada T5J 5B5

Client #: 128307821

Int. Register #: 118943860

Addresses for Service:**Name****Address****Owner:**

P & O ASSETS LTD.

#1400 - 2002 VICTORIA AVENUE REGINA, SK, Canada
S4P 0R7

Client #: 123899451

Notes:

Parcel Class Code: Parcel (Generic)

Back

**Province of Saskatchewan
Land Titles Registry
Title**

Title #: 138158152 **As of:** 08 May 2014 09:03:01
Title Status: Active **Last Amendment Date:** 02 Apr 2013 08:16:57.840
Parcel Type: Surface **Issued:** 25 Sep 2009 15:47:30.163
Parcel Value: \$636,000.00 CAD
Title Value: \$636,000.00 CAD **Municipality:** CITY OF ESTEVAN
Converted Title: 99SE30107
Previous Title and/or Abstract #: 136702919

P & O ASSETS LTD. is the registered owner of Surface Parcel #107400642

Reference Land Description: Lot 11Blk/Par 306Plan No 80R43931
Extension 0
As described on Certificate of Title 99SE30107.

This title is subject to any registered interests set out below and the exceptions, reservations and interests mentioned in section 14 of *The Land Titles Act, 2000*.

Registered Interests:

Interest #:
148934728

Easement Mutual
(Dominant)

Value: N/A
Reg'd: 03 Dec 2008 10:39:45
Interest Register Amendment
Date: N/A
Interest Assignment
Date: N/A
Expiry Date: N/A

Holder:
The Current Dominant Tenement
n/a, Saskatchewan, Canada S4P 3V7
Client #: 100009099
Int. Register #: 115059270

Interest #:
148934739

Restrictive Covenant - Mutual
(Dominant)

Value: N/A
Reg'd: 03 Dec 2008 10:39:46
Interest Register Amendment
Date: N/A
Interest Assignment
Date: N/A
Expiry Date: N/A

Holder:
The Current Dominant Tenement

Interest #:
148934740

n/a, Saskatchewan, Canada S4P 3V7
Client #: 100009099
Int. Register #: 115059304

Power Corporation Act Easement
(s.23)

Value: N/A
Reg'd: 04 Feb 2009 08:15:25
Interest Register Amendment
Date: 01 Oct 2009 15:34:22
Interest Assignment
Date: N/A
Expiry Date: N/A

Holder:
SASKATCHEWAN POWER CORPORATION
2025 VICTORIA AVE
REGINA, SK, Canada S4P 0S1
Client #: 100307618
Int. Register #: 115200807
Feature #: 100201150

Interest #:
149812555

Power Corporation Act Easement
(s.23)

Value: N/A
Reg'd: 04 Dec 2009 14:54:53
Interest Register Amendment
Date: 30 Sep 2011 13:35:58
Interest Assignment
Date: N/A
Expiry Date: N/A

Holder:
SASKATCHEWAN POWER CORPORATION
2025 VICTORIA AVE
REGINA, SK, Canada S4P 0S1
Client #: 100307618
Int. Register #: 116025353
Feature #: 100216864

Interest #:
161691880

Mortgage

Value: \$35,000,000.00 CAD
Reg'd: 30 Jan 2013 13:07:20
Interest Register Amendment
Date: N/A
Interest Assignment
Date: N/A
Expiry Date: N/A

Holder:
NATIONAL BANK OF CANADA
9 Sir Winston Churchill Square
Edmonton, AB, Canada T5J 5B5
Client #: 128307821
Int. Register #: 118943860

Addresses for Service:**Name****Address****Owner:**

P & O ASSETS LTD.

#1400 - 2002 VICTORIA AVENUE REGINA, SK, Canada
S4P 0R7

Client #: 123899451

Notes:

Parcel Class Code: Parcel (Generic)

Back

**Province of Saskatchewan
Land Titles Registry
Title**

Title #: 138158129 **As of:** 08 May 2014 09:05:27
Title Status: Active **Last Amendment Date:** 02 Apr 2013 08:16:57.720
Parcel Type: Surface **Issued:** 25 Sep 2009 15:47:28.680
Parcel Value: \$78,000.00 CAD
Title Value: \$78,000.00 CAD **Municipality:** CITY OF ESTEVAN
Converted Title: 95R64805
Previous Title and/or Abstract #: 130718853

P & O ASSETS LTD. is the registered owner of Surface Parcel #107376644

Reference Land Description: Lot 16Blk/Par 306Plan No 80R43931
Extension 0
As described on Certificate of Title 95R64805.

This title is subject to any registered interests set out below and the exceptions, reservations and interests mentioned in section 14 of *The Land Titles Act, 2000*.

Registered Interests:

Interest #:
148934672

CNV Easement

Value: N/A
Reg'd: 15 Jul 1994 02:37:17
Interest Register Amendment Date: N/A
Interest Assignment Date: N/A
Expiry Date: N/A

Lot 16
Holder:
Canadian Pacific Limited
N/A, Saskatchewan, Canada
Client #: 100971109
Int. Register #: 103338581
Converted Instrument #: 94R37355

Interest #:
148934683

CNV Easement

Value: N/A
Reg'd: 28 Jul 1995 02:38:58
Interest Register Amendment Date: N/A
Interest Assignment Date: N/A
Expiry Date: N/A

NE' ly 30 feet

Holder:

Canadian Pacific Limited
N/A, Saskatchewan, Canada

Client #: 105955982**Int. Register #:** 103338570**Converted Instrument #:** 95R37637**Interest #:****161691868**

Mortgage

Value: \$35,000,000.00 CAD**Reg'd:** 30 Jan 2013 13:07:20**Interest Register Amendment****Date:** N/A**Interest Assignment****Date:** N/A**Expiry Date:** N/A**Holder:**

NATIONAL BANK OF CANADA
9 Sir Winston Churchill Square
Edmonton, AB, Canada T5J 5B5

Client #: 128307821**Int. Register #:** 118943860**Addresses for Service:****Name****Address****Owner:**

P & O ASSETS LTD.

#1400 - 2002 VICTORIA AVENUE REGINA, SK, Canada
S4P 0R7

Client #: 123899451

Notes:

Parcel Class Code: Parcel (Generic)

Back

Schedule “B”
Builders’ Liens


Search Results

Search By: Interest Register
With Criteria: As Of Date = 21-May-2014 13:54:12
 Interest Register Number = 119283093

Interest Register Information

▼ Number: 119283093 Category: Interest
 Type: Builders' Lien Status: Active
 Value: \$1,391,372.36 CAD Judgment Registry Number: N/A
 Interest Register Effective Date: 05-Jul-2013 11:12:31 Scheduled Expiry Date: N/A
 Interest Register Amendment Date: N/A
 Feature Number: N/A Audit: 
 Description: N/A

Attachments (1)

 Document Number: 101473826 Type: Transactional Document
 Effective Date: 05-Jul-2013 11:12:31

Standard Documents (0)

Interests (1)

 Number: 163384207 Type: Builders' Lien
 Dominant: N/A Benefiting Party: N/A
 Registration Date: 05-Jul-2013 11:12:31 Parcel:  161594006
 Assignment Date: N/A
 Holder(s):
 Hirsch Construction Ltd. , c/o MacPherson Leslie & Tyerman LLP, #1500 - 1874 Scarth Street, Regina, SK, Canada, S4P4E9

Back to Search

Back to top

Text Size: **Normal** About ISC

Signed In: priel | Client # 100008894 | Sign Out | My Account

ISC Signed-In Home > ISCGeneric

[Printer Friendly](#)**Online Services****Land Registry**[Online Submission \(OLS\)](#)[Map Search](#)[Quick Search](#)[Search](#)[Grant Search](#)[General Record Search](#)[Packet Quick Check](#)[Packet Detailed Check](#)[Image Request Search](#)[Document Storage Library](#)**Survey Plans**[Plan Submissions Online](#)[Plan Search](#)[Change Order Search](#)[Support Document Search](#)[Field Book Search](#)[Request Status Check](#)**Personal Property Registry**[SPPR Application](#)**Judgment Registry**[Judgment Search](#)**Corporate Registry**[Corporate Registry Online](#)[Business Registrations](#)[Saskatchewan](#)**☐ Search Results ☐**

Search By: Attachment
With As Of Date = 21-May-2014 13:54:12
Criteria: Attachment Document Number = 101473826

☐ Attachment Information ☐

☐ Document Number: 101473826 Type: Transactional Document
Status: active **Effective Date:** 05-Jul-2013 11:12:31.473
Attachment Description: N/A
View Image: ☐ **Request Output:** ☐
☐ **Interest Register (1)**

Search

[Back to top](#)

Part A

Name of lien claimant: Hirsch Construction Ltd.

Address of lien claimant: c/o MacPherson Leslie & Tyerman LLP, 1500, 1874
Scarth Street, Regina, Saskatchewan, S4P 4E9.

Address for service: As above

Name of owners: P & O Assets Ltd.

Claim of lien is made against the interest or estate of: P & O Assets Ltd.

Address of owner: #1400 - 2002 Victoria Avenue, Regina, SK S4P 0R7

Name of person for whom the services or materials have been provided: P & O Assets Ltd.

Address of person for whom the services or materials have been provided: 501, 6th Street, Estevan, SK S4A 1A5

Name of Assignor: n/a

Short description of the services or materials that have been provided: Sale and supply of building/construction materials

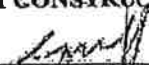
The amount claimed in respect of services or materials that have been provided: \$1,391,372.36 (invoices 18737 and 19369)

A description of the land: Surface parcel #161394006; Title #138736156;
Blk/Par E Plan 101888950 Ext 0

Dated this 2nd day of July, 2013.


Witness

HIRSCH CONSTRUCTION LTD.

Per: 
Garry M. Hirsch, President

Warning:

1. Your claim of lien cannot include a claim for interest.
2. The Builders' Lien Act prohibits the filing of claims which are exaggerated or non-existent and a person making such a claim is liable to any person who suffers loss or damages as a result.
3. A claim of lien against the estate or interest of the Crown should be given to the appropriate Crown agency in accordance with section 32 of The Builders' Lien Act and not registered in a Land Titles Office.

Affidavit of Verification

I, Garry M. Hirsch, hereby make oath and say that the facts set out in the claim of lien in Part A are true.

SWORN BEFORE ME at the City)
of Estevan, in the Province of Saskatchewan,)
this 2nd day)
of July, 2013.)

Joseph Joseph)
A Commissioner for Oaths)
in and for the Province of Saskatchewan.

Garry M. Hirsch
Garry M. Hirsch.

~~Being a Solicitor -~~

- or - My Commission expires December 31, 2013

~~Commissioner for Oaths~~
~~Commissioner for Oaths~~
~~(Saskatchewan)~~
~~Not a Commissioner for Oaths~~

PROVINCE OF SASKATCHEWAN)

TO WIT:)

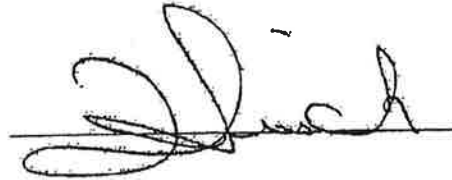
I, Trena Hirsch of the City of Estevan, in the Province of Saskatchewan, Canada MAKE OATH AND SAY AS FOLLOWS:

1. THAT I was personally present and did see Garry M. Hirsch named in the within document, who is personally known to me to be the person named therein, duly sign and execute the same for the purposes named therein;
2. THAT the same was executed at the City of Estevan, in the Province of Saskatchewan and that I am the subscribing witness thereto;
3. THAT I know the said Garry M. Hirsch and he is in my belief eighteen years of age or more.
4. THAT Garry M. Hirsch is the President of Hirsch Construction Ltd. and has the authority to sign the annexed instrument

SWORN BEFORE ME at the)
City of Estevan, in the Province of)
Saskatchewan, this 2nd day of)
July, 2013.)

Joseph J. Apple
A COMMISSIONER FOR OATHS in and
for the Province of Saskatchewan.

~~Being a Solicitor~~ By
(or) My Commission expires: December 31, 2013



~~Notary Public for Saskatchewan~~
~~(Signature)~~
~~My Commission Expires: 31. 07. 2013~~

WRITTEN NOTICE OF A LIEN
(CLAUSE 2(1)(F) OF THE BUILDERS' LIEN ACT)

Name of lien claimant: Hirsch Construction Ltd.

Address of lien claimant: c/o MacPherson Leslie & Tyerman LLP, 1500, 1874
304th Street, Regina, Saskatchewan, S4P 4E9.

Address for service As above

Name of owners: P & O Assets Ltd.

Claim of lien is made against the interest or estate of: P & O Assets Ltd.

Address of owner: #1400 ~ 2002 Victoria Avenue, Regina, SK S4P 0R7

Name of person for whom the services or materials have been provided: P & O Assets Ltd.

Address of person for whom the services or materials have been provided: 501, 6th Street, Estevan, SK S4A 1A5


Name of Assignor: n/a

Short description of the services or materials that have been provided: Sale and supply of building/construction materials

The amount claimed in respect of services or materials that have been provided: \$1,391,372.36 (invoices 18737 and 19369)

A description of the land: Surface parcel #161594006; Title #138756156;
Blk/Par E Plan 101888950 Ext 0

Dated this 2nd day of July, 2013.

Witness 

HIRSCH CONSTRUCTION LTD.


Per: 
Garry M. Hirsch, President

Interest Register:


Search Results

Search By: Interest Register
With Criteria: As Of Date = 21-May-2014 13:58:00
Interest Register Number = 119331097

Interest Register Information




▼ Number: 119331097 Category: Interest
Type: Builders' Lien Status: Active
Value: \$28,014.19 CAD Judgment Registry Number: N/A
Interest Register Effective Date: 25-Jul-2013 09:19:13 Scheduled Expiry Date: N/A
Interest Register Amendment Date: N/A
Feature Number: N/A Audit: 
Description: N/A

Attachments (1)

 Document Number: 101480368 Type: Transactional Document
Effective Date: 25-Jul-2013 09:19:13

Standard Documents (0)

Interests (1)

 Number: 163596662 Type: Builders' Lien
Dominant: N/A Benefitting Party: N/A
Registration Date: 25-Jul-2013 09:19:13 Parcel:  161594006
Assignment Date: N/A
Holder(s):
 Turnbull Excavating Ltd. , Box 788, Estevan, SK, Canada, S4A2A6

[Back to Search](#)

[Back to top](#)

Text Size: Normal About ISC

Signed In: priel | Client # 100006644 | Sign Out | My Account

ISC Signed-In Home > ISCGeneric

Printer Friendly

Online Services**Land Registry**[Online Submission \(OLS\)](#)[Map Search](#)[Quick Search](#)[Search](#)[Grant Search](#)[General Record Search](#)[Packet Quick Check](#)[Packet Detailed Check](#)[Image Request Search](#)[Document Storage Library](#)**Survey Plans**[Plan Submissions Online](#)[Plan Search](#)[Change Order Search](#)[Support Document Search](#)[Field Book Search](#)[Request Status Check](#)**Personal Property Registry**[SPPR Application](#)**Judgment Registry**[Judgment Search](#)**Corporate Registry**[Corporate Registry Online](#)[Business Registrations](#)[Saskatchewan](#)**Search Results**

Search By: Attachment
With As Of Date = 21-May-2014 13:58:00
Criteria: Attachment Document Number = 101480368

Attachment Information

☐ **Document Number:** 101480368 **Type:** Transactional Document
Status: active **Effective Date:** 25-Jul-2013 09:19:13.490
Attachment Description: N/A
View Image: ☐ **Request Output:** ☐
☐ **Interest Register (1)**

Search

[Back to top](#)

SASKATCHEWAN
THE BUILDER'S LIEN ACT
Form E

CLAIM OF LIEN
(Subsection 50(3))

PART A

Name of lien claimant: **Turnbull Excavating Ltd.**

Address of lien claimant: Box 788
Estevan, SK
S4A 2A6

Address for Service of lien claimant: Box 788
Estevan, SK
S4A 2A6

Name of Owner: P & O Assets Ltd.

Claim of lien is made against the estate or interest of:

P & O Assets Ltd. and Do All Industries Ltd.

Address of Owner: 501 – 6th Street
Estevan, Saskatchewan
S4A 1A5

Address of person for whom services or materials were provided:

501 – 6th Street
Estevan, Saskatchewan
S4A 1A5

Registered Office address of person for whom services or materials were provided:

#1400 – 2002 Victoria Avenue
Regina, Saskatchewan
S4P 0R7

Name of Assignor: N/A

Short description of services or materials that have been provided:

All labour, equipment and material supplied in connection with hauling equipment to the land; supplying and installing concrete sewage holding tank, brass curb stop and drain, box and rod, poly pipe, rail ballast, and gravel; and related services as described in invoice number 51139 dated 31/10/2012.

Amount claimed as owing in respect of services or materials that have been provided:


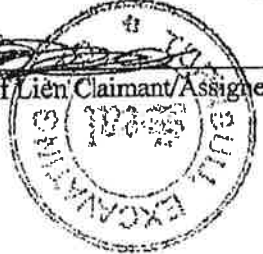
\$28,014.19

Description of land:

Parcel E, Plan 101888950, Ext 0
Surface Parcel #161594006.

TURNBULL EXCAVATING LTD.

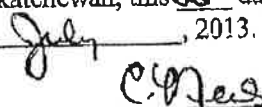
20/07/2013
Day/Month/Year


Signature of Lien Claimant/Assignee/Agent


PART B

I, **EDWARD TURNBULL**, of Estevan, in the Province of Saskatchewan, hereby make oath and say that the facts set out in the claim of lien in Part A are true.

SWORN before me at the City of
Estevan, in the Province of
Saskatchewan, this 20th day of
July, 2013.


A COMMISSIONER FOR OATHS for
Saskatchewan.

My commission expires: November 30, 2013



EDWARD TURNBULL

Interest Register:


Search Results

Search By: Interest Register
 With Criteria: As Of Date = 21-May-2014 13:59:24
 Interest Register Number = 119789331

Interest Register Information




▼ Number: 119789331 Category: Interest
 Type: Builders' Lien Status: Active
 Value: \$163,907.80 CAD Judgment Registry Number: N/A
 Interest Register Effective Date: 14-Feb-2014 15:39:24 Scheduled Expiry Date: N/A
 Interest Register Amendment Date: N/A
 Feature Number: N/A Audit: 
 Description: N/A

Attachments (1)

 Document Number: 101543296 Type: Transactional Document
 Effective Date: 14-Feb-2014 15:39:24

Standard Documents (0)

Interests (1)

 Number: 166017674 Type: Builders' Lien
 Dominant: N/A Benefitting Party: N/A
 Registration Date: 14-Feb-2014 15:39:24 Parcel:  161594006
 Assignment Date: N/A
 Holder(s):
 JOHNSON PLUMBING AND HEATING LTD. , 1017 THIRD STREET, ESTEVAN, SK, Canada, S4A0R4

[Back to Search](#)
[Back to top](#)

Text Size: Normal About ISC

Signed In: priol | Client # 100008894 | Sign Out | My Account

ISC Signed-In Home > ISCGeneric

Printer Friendly

Online Services**Land Registry**[Online Submission \(OLS\)](#)[Map Search](#)[Quick Search](#)[Search](#)[Grant Search](#)[General Record Search](#)[Packet Quick Check](#)[Packet Detailed Check](#)[Image Request Search](#)[Document Storage Library](#)**Survey Plans**[Plan Submissions Online](#)[Plan Search](#)[Change Order Search](#)[Support Document Search](#)[Field Book Search](#)[Request Status Check](#)**Personal Property Registry**[SPPR Application](#)**Judgment Registry**[Judgment Search](#)**Corporate Registry**[Corporate Registry Online](#)[Business Registrations](#)[Saskatchewan](#)**Search Results**

Search By: Attachment
With As Of Date = 21-May-2014 13:59:24
Criteria: Attachment Document Number = 101543296

Attachment Information

Document Number: 101543296 **Type:** Transactional Document
Status: active **Effective Date:** 14-Feb-2014 15:39:23.740
Attachment Description: N/A
View Image: **Request Output:**
Interest Register (1)

Search

[Back to top](#)

FORM E
(Subsection 50(3) of The Builders' Lien Act)

Claim of Lien
PART A

Name of lien claimant: Johnson Plumbing & Heating Ltd.

Address of lien claimant: 1037 Fifth Street, Estevan, Saskatchewan, S4A 0Z3

Address for Service of lien claimant: c/o Billesberger Law Firm, Barrister and Solicitor,
1017 Third Street, Estevan, Saskatchewan, S4A 0R4

Name of Owner: P & O Assets Ltd.

Claim of lien is made against the estate or interest of: P & O Assets Ltd.

Address of Owner: 1400 – 2002 Victoria Avenue, Regina, Saskatchewan
S4P 0R7

Name of person for whom services or materials were provided: P & O Assets Ltd.

Address of person for whom services or materials were provided: 1400 – 2002 Victoria Avenue, Regina, Saskatchewan
S4P 0R7

Name of Assignor:

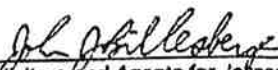
Short description of services or materials that have been provided: Supply and labour and materials for plumbing and heating systems

Amount claimed as owing in respect of services or materials that have been provided: \$163,907.80

Description of land: Block E, Plan No. 101888950, Extension 0,
Surface Parcel #161594006

BILLESBERGER LAW FIRM

12/02/2014
Day/Month/Year


Solicitors and Agents for Johnson Plumbing & Heating Ltd.
Signature of Lien Claimant/Assignee

FORM E

PART B

Affidavit of Verification

I, JOHN J. BILLESBERGER, hereby make oath and say that the facts set out in the claim of
lien in Part A are true.

SWORN before me at the City)
of Estevan, in the Province of)
Saskatchewan, this 12th day of)
February, 2014.)

John J. Billesberger

Chellabergen
A Commissioner for Oaths in and for
the Province of Saskatchewan.
~~Being a Solicitor, CA~~

My Comm. Exp. Sept 30, 2016


Interest Register:

Page 1 of 1


Search Results

Search By: Interest Register
With Criteria: As Of Date = 21-May-2014 14:01:12
Interest Register Number = 119835603

Interest Register Information




▼ **Number:** 119835603 **Category:** Interest
Type: Builders' Lien **Status:** Active
Value: \$152,659.50 CAD **Judgment Registry Number:** N/A
Interest Register Effective Date: 13-Mar-2014 09:20:22 **Scheduled Expiry Date:** N/A
Interest Register Amendment Date: N/A
Feature Number: N/A **Audit:** 
Description: N/A

Attachments (1)

 **Document Number:** 101549385 **Type:** Transactional Document
Effective Date: 13-Mar-2014 09:20:22

Standard Documents (0)

Interests (1)

 **Number:** 166250268 **Type:** Builders' Lien
Dominant: N/A **Benefitting Party:** N/A
Registration Date: 13-Mar-2014 09:20:22 **Parcel:**  161594006
Assignment Date: N/A
Holder(s):
 DAY CONSTRUCTION LTD. , P.O. BOX 700, CARNDUFF, SK, Canada, S0C0S0

[Back to Search](#)

[Back to top](#)

Text Size: Normal About ISC[ISC Signed-In Home > ISCGeneric](#) [Printer Friendly](#)**Online Services****Land Registry**[Online Submission \(OLS\)](#)[Map Search](#)[Quick Search](#)[Search](#)[Grant Search](#)[General Record Search](#)[Packet Quick Check](#)[Packet Detailed Check](#)[Image Request Search](#)[Document Storage Library](#)**Survey Plans**[Plan Submissions Online](#)[Plan Search](#)[Change Order Search](#)[Support Document Search](#)[Field Book Search](#)[Request Status Check](#)**Personal Property Registry**[SPPR Application](#)**Judgment Registry**[Judgment Search](#)**Corporate Registry**[Corporate Registry Online](#)[Business Registrations
Saskatchewan](#)**Search Results**

Search By: Attachment
With As Of Date = 21-May-2014 14:01:12
Criteria: Attachment Document Number = 101549385

Attachment Information

Document Number: 101549385 **Type:** Transactional Document
Status: active **Effective Date:** 13-Mar-2014 09:20:21.950
Attachment Description: N/A
View Image: ☐ **Request Output:** ☐
Interest Register (1)

[Back to top](#)

SASKATCHEWAN
THE BUILDER'S LIEN ACT
Form E

CLAIM OF LIEN
(Subsection 50(3))

PART A

Name of lien claimant: **Day Construction Ltd.**

Address of lien claimant: Box 700
Carnduff, SK
S0C 0S0

Address for Service of lien claimant: Box 700
Carnduff, SK
S0C 0S0

Name of Owner: P & O Assets Ltd.

Claim of lien is made against the estate or interest of:

P & O Assets Ltd.

Address of Owner: 501 – 6th Street
Estevan, Saskatchewan
S4A 1A5

Address of person for whom services or materials were provided:

501 – 6th Street
Estevan, Saskatchewan
S4A 1A5

Registered Office address of person for whom services or materials were provided:

#1400 – 2002 Victoria Avenue
Regina, Saskatchewan
S4P 0R7

Name of Assignor: N/A

Short description of services or materials that have been provided:

All labour, equipment and material supplied in connection with hauling equipment to the land; grading, supplying, loading, hauling, and moving gravel, rock, and concrete; pushing up, loading, moving and hauling clay, earth and snow; packing gravel and base; rolling geo tec.; digging ditches; pumping water; and related services as described in invoice number 16965 dated 30/10/2012 in the amount of \$52,069.50, invoice number 16966 dated 16/11/2012 in the amount of \$74,833.50, and invoice number 16967 dated 18/12/2012 in the amount of 25,756.50.

Amount claimed as owing in respect of services or materials that have been provided:

\$152,659.50

Description of land:

Parcel E, Plan 101888950, Ext 0
Surface Parcel #161594006.


March 10/14
Day/Month/Year


DAY CONSTRUCTION LTD.
Signature of Lien Claimant/Assignee/Agent

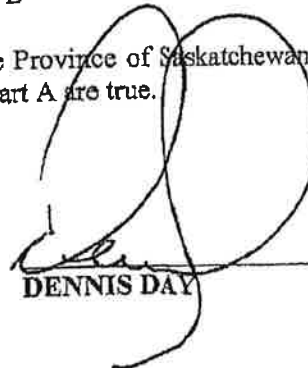
PART B

I, **DENNIS DAY**, of the Town of Carnduff, in the Province of Saskatchewan, hereby make oath and say that the facts set out in the claim of lien in Part A are true.

SWORN before me at the City of)
Estevan, in the Province of)
Saskatchewan, this 10 day of)
March, 2014.)


A COMMISSIONER FOR OATHS for
Saskatchewan.


My commission expires:
Being a Solicitor


DENNIS DAY

Search Results

Search By: Interest Register
With Criteria: As Of Date = 21-May-2014 14:05:08
 Interest Register Number = 119303388

Interest Register Information

Number: 119303388 **Category:** Interest
Type: Builders' Lien **Status:** Active
Value: \$66,396.30 CAD **Judgment Registry Number:** N/A
Interest Register Effective Date: 15-Jul-2013 08:56:21 **Scheduled Expiry Date:** N/A
Interest Register Amendment Date: N/A
Feature Number: N/A **Audit:** 



Description: N/A

Attachments (1)

Document Number: 101476516 **Type:** Transactional Document
Effective Date: 15-Jul-2013 08:56:21

Standard Documents (0)

Interests (1)

Number: 163460448 **Type:** Builders' Lien
Dominant: N/A **Benefitting Party:** N/A
Registration Date: 15-Jul-2013 08:56:21 **Parcel:**  135629039
Assignment Date: N/A
Holder(s):
 GLEN PETERSON CONSTRUCTION LTD. , 314-6TH STREET, ESTEVAN, SK, Canada, S4A2V7

[Back to Search](#)

[Back to top](#)

Text Size: Normal About ISC[ISC Signed-In Home > ISCGeneric](#) [Printer Friendly](#)**Online Services****Land Registry**[Online Submission \(OLS\)](#)[Map Search](#)[Quick Search](#)[Search](#)[Grant Search](#)[General Record Search](#)[Packet Quick Check](#)[Packet Detailed Check](#)[Image Request Search](#)[Document Storage Library](#)**☐ Search Results ☐**

Search By: Attachment
With As Of Date = 21-May-2014 14:05:08
Criteria: Attachment Document Number = 101476516

☐ Attachment Information ☐

☐ Document Number: 101476516 **Type:** Transactional Document
Status: active **Effective Date:** 15-Jul-2013 08:56:21
Attachment Description: N/A
View Image: ☐ **Request Output:** ☐
☐ Interest Register (1)

Search[Back to top](#)**Survey Plans**[Plan Submissions Online](#)[Plan Search](#)[Change Order Search](#)[Support Document Search](#)[Field Book Search](#)[Request Status Check](#)**Personal Property Registry**[SPPR Application](#)**Judgment Registry**[Judgment Search](#)**Corporate Registry**[Corporate Registry Online](#)[Business Registrations
Saskatchewan](#)[About ISC](#) | [Privacy Statement](#) | [Legal](#) | [Contact Us](#)

SASKATCHEWAN
THE BUILDER'S LIEN ACT
Form E

CLAIM OF LIEN
(Subsection 50(3))

PART A

Name of lien claimant: **GLEN PETERSON CONSTRUCTION LTD.**

Address of lien claimant: 314 – 6th Street
Estevan, Saskatchewan
S4A 2V7

Address for Service of lien claimant: 314 – 6th Street
Estevan, Saskatchewan
S4A 2V7

Name of Owner: P & O Assets Ltd.

Claim of lien is made against the estate or interest of:

Do All Industries Ltd. and P & O Assets Ltd.

Address of Owner: 501 – 6th Street
Estevan, Saskatchewan
S4A 1A5

Name of person for whom services or materials were provided:

Do All Industries Ltd.

Address of person for whom services or materials were provided:

501 – 6th Street
Estevan, Saskatchewan
S4A 1A5

Registered Office address of person for whom services or materials were provided:

#1400 – 2002 Victoria Avenue
Regina, Saskatchewan
S4P 0R7

Name of Assignor: N/A

Short description of services or materials that have been provided:

All labour, equipment and material supplied in connection with crushing and supply of gravel material and related services as described in the following invoices:

Invoice No.: 5193 dated 01/08/2012
Invoice No.: 5287 dated 13/08/2012
Invoice No.: 5226 dated 14/08/2012
Invoice No.: 5341 dated 11/09/2012
Invoice No.: 5403 dated 25/09/2012
Invoice No.: 5397 dated 28/09/2012
Invoice No.: 5497 dated 22/10/2012
Invoice No.: 5531 dated 01/11/2012
Invoice No.: 5629 dated 12/12/2012
Invoice No.: 5636 dated 14/12/2012
Invoice No.: 5860 dated 25/04/2013
Invoice No.: 5990 dated 14/06/2013
Invoice No.: 6011 dated 24/06/2013
Invoice No.: 6032 dated 27/06/2013
Invoice No.: 6060 dated 04/06/2013

Amount claimed as owing in respect of services or materials that have been provided:

\$66,396.30

Description of land:

Parcel A, Plan 101176703, Ext 0
Surface Parcel #135629039

10/July/2013
Day/Month/Year

GLEN PETERSON CONSTRUCTION LTD.

Sam Peterson.
Signature of Lien Claimant/Assignee/Agent

PART B

I, SAM PETERSON, of Estevan, in the Province of Saskatchewan, hereby make oath and say that the facts set out in the claim of lien in Part A are true.

SWORN before me at the City of)
Estevan, in the Province of)
Saskatchewan, this 10th day of)
July, 2013.)

Sam Peterson
SAM PETERSON

Eileen Ingerbach)

A COMMISSIONER FOR OATHS for
Saskatchewan. ~~Being a Solicitor or~~ 6

My commission expires: Dec. 31/2015.

Schedule “C”

Section 27 of *The Land Titles Act, 2000* (Saskatchewan)

DIVISION 2
Registration and Priority

Registration required

25(1) Except as against the person making it, an instrument purporting to transfer, assign, charge, deal with or affect any title, interest, or land for which title has issued, does not operate to create or convey any title or interest until an application for registration of a transfer of title or an application for registration of an interest based on that instrument is registered in accordance with this Act.

(2) An instrument mentioned in subsection (1) confers on every person benefited by the instrument, and on every person claiming through or under the person benefited, whether by descent, purchase or otherwise, the right to apply for registration of a transfer of title or for registration of an interest based on that instrument.

(3) Registration against one title to a surface parcel, mineral commodity or condominium unit does not effect a registration against all titles to that surface parcel, mineral commodity or condominium unit.

2000, c.L-5.1, s.25.

When registration effected

26 Registration of a transfer or an interest is effective from the time assigned to it at the land titles registry.

2000, c.L-5.1, s.26.

Priority

27(1) Transfers or interests that are registered with respect to or affecting the same title or interest have priority, the one over the other, according to the time assigned to them at the land titles registry, and not according to:

- (a) the date of execution of the instrument;
- (b) the date of execution of the application;
- (c) the time of submission of the application to the land titles registry; or
- (d) the order in which they appear on title

(2) The registration of an interest based on a mortgage for a specific principal sum has priority in accordance with subsection (1) for all advances and obligations secured pursuant to the terms of the mortgage, notwithstanding that the advances and obligations are made or incurred after the registration of any other interest.

(3) The registration of an interest based on a mortgage that provides for readvances of credit up to a specific principal sum has priority in accordance with subsection (1) for all advances, readvances and obligations secured pursuant to the terms of the mortgage notwithstanding that:

- (a) the advances, readvances and obligations are made or incurred after the registration of any other interest; and
- (b) at any time during the term of the mortgage there may not be any outstanding advances, readvances or obligations to be secured.

(4) Subsections (2) and (3) do not affect any right acquired pursuant to *The Builders' Lien Act* or *The Personal Property Security Act, 1993*.

(5) If the Registrar makes a correction pursuant to section 97 reinstating the registration of an interest against a title or against another interest, the reinstated interest has the same priority that it had on its original registration, notwithstanding the manner in which registration of the reinstated interest appears in the land titles registry.

2000, c.L-5.1, s.27; 2002, c.51, s.7; 2004, c.69, s.4.

PART IV Registration Procedures

Application for registration

28(1) Any person who wishes to do any of the following shall apply to the Registrar in the prescribed manner:

- (a) to have title issue on the basis of a Crown grant;
- (b) to register a transfer;
- (c) to register an interest;
- (d) to otherwise deal with a registered interest;
- (e) to otherwise add, change or remove information in the land titles registry.

(2) No person shall apply pursuant to subsection (1) unless authorized at law to do so.

(3) On receipt of a request made in the prescribed manner, the Registrar may permit an applicant to withdraw an application submitted pursuant to subsection (1) before it is registered.

2000, c.L-5.1, s.28; 2004, c.59, s.5.

Electronic registration

29(1) No person, other than a prescribed person or a person who is a member of a prescribed category of persons, shall submit to the Registrar an application for registration in electronic format.

(2) No person, other than the Registrar or a prescribed person or a person who is a member of a prescribed category of persons, shall electronically register a document in the land titles registry.

(3) Where a person mentioned in subsection (2), other than the Registrar, electronically registers a document in the land titles registry, that person is deemed to do so on behalf of the Registrar.

(4) No person mentioned in subsection (2), other than the Registrar, shall electronically register a document in the land titles registry before successfully completing the prescribed training for electronic registration.

2000, c.L-5.1, s.29.

Schedule “D”

Section 71 of *The Builders' Lien Act* (Saskatchewan)

c. B-7.1**BUILDERS' LIEN****Priority of liens over executions, etc.**

70(1) The liens arising from an improvement have priority over all judgments, seizures, executions, attachments, garnishments and receiving orders except those executed or recovered on before the first lien arose in respect of the improvement.

(2) No assignment by a contractor or subcontractor of any moneys that may be or become payable under or in respect of any contract or subcontract to which this Act applies is valid as against any lien arising under this Act.

1984-85-86, c.B-7.1, s.70; 2010, E-9.22, s.144.

Priorities between mortgages, etc., and liens

71(1) The liens arising from an improvement have priority over all mortgages, conveyances or other agreements registered after a claim of lien is registered.

(2) In the case of an agreement for sale of land where the purchase money or part of the purchase money is unpaid and no transfer of title for the parcel of land has been made to the purchaser, for the purposes of this Act the purchaser shall be deemed to be a mortgagor and the seller a mortgagee whose mortgage was registered on the date of the agreement for sale.

(3) Subject to Part II:

(a) a lien has priority in respect of all payments or advances made on account of any conveyance or mortgage after written notice of a lien has been given to the person making the payments or advances or after a claim of lien is registered; and

(b) if no written notice of a lien is given or if no claim of lien is registered, all of the payments or advances have priority over the lien.

1984-85-86, c.B-7.1, s.71; 2000, c.L-5.1, s.219.

Persons who comprise class

72 All persons having a lien who have provided services or materials to the same payer comprise a class, and a person who has provided services or materials to more than one payer is a member of each class to the extent to which his lien relates to that class.

1984-85-86, c.B-7.1, s.72.

Priority between and within class

73 Except as otherwise provided by this Act:

(a) no person having a lien is entitled to any priority over another member of the same class;

(b) all amounts available to satisfy the liens in respect of an improvement shall be distributed rateably among the members of each class according to their respective rights; and

(c) the lien of every member of a class has priority over the lien of the payer of that class.

1984-85-86, c.B-7.1, s.73.

Schedule “E”

Scotia Mortgage Corp. v. Fraser et al.
(1989) 73 Sask. R. 130 (Q.B.)

the defendants. This is particularly so in light of the Act, its purpose, the presumption, the significance of the report and the onus.

[10] The plaintiff's application is granted but not with respect to the homestead of the defendants. There will be no order as to costs. I have considered the defendants' request for costs and decline to meet it.

Order accordingly.

Editor: Reginald W. Curtis
njl

SCOTIA MORTGAGE CORPORATION (plaintiff)
v. PETER GARTH FRASER, DOREEN ANNE
FRASER, GRAYWOLF LUMBERMART LTD.,
DARRELL LIGHT, ANDREW SKULMOSKI,
DAVID GRAYSON, SASKATCHEWAN WHEAT POOL
AND AGRICULTURAL CREDIT CORPORATION OF
SASKATCHEWAN (defendants)
(No. 54 A.D. 1988)

INDEXED AS: SCOTIA MORTGAGE CORP.
v. FRASER et al.

Saskatchewan Court of Queen's Bench
Judicial Centre of Moosomin
McIntyre, J.
January 19, 1989.

Summary:

A mortgagee agreed to loan the funds on the condition that the money would be advanced after construction was completed. The mortgage was registered and construction began. Three liens were registered against the land during construction. Following construction, the mortgagee advanced the funds which were used to pay off the bank loan which was used to finance the construction. The lienholders claimed that they had a prior claim to the mortgage funds.

The Saskatchewan Court of Queen's Bench found for the lienholders. The court held that under s. 71(3)(a) of the Builders' Lien Act, a lien registered after a mortgage has priority in

respect to advances made after the registration of the lien.

Mechanics' Liens - Topic 6304

Priorities - Between lienholder and mortgagees - Mortgage advances after construction - A mortgagee agreed to loan the funds on the condition that the money would only be advanced when construction was completed - Three liens were registered on the property between the time the mortgage was registered and the funds were advanced - The funds were used to pay off the bank loan used to finance the construction - The lienholders claimed that they had priority to the funds - The Saskatchewan Court of Queen's Bench upheld the lienholder's claim - The court held that under s. 71(3)(a) of the Builders' Lien Act, a lien registered after a mortgage had priority in respect to advances made subsequent to the registration of the lien - See paragraph 14.

Mortgages - Topic 988

Priorities - Mechanics' liens - Registered subsequent to mortgage - [See Mechanics' Liens - Topic 6304 above].

Cases Noticed:

United Dominion Investments Limited v. Hospitality Inns Ltd. et al., [1982] 1 W.W.R. 154 (Sask. Q.B.), fold. [para. 11].

First National Mortgage Co. Ltd. v. Realistic Homes Ltd., [1981] 3 W.W.R. 1 (Sask. Q.B.), refd to. [para. 12].

Overhead Door Company of Regina (1973) Ltd. v. Saskatchewan Economic Development Corporation et al. (1987), 64 Sask. R. 42 (C.A.), refd. to [para. 13].

Statutes Noticed:

Builders' Lien Act, S.S., 1984-85, c. B-7.1, ss. 6(1), 6(4) [para. 9]; 12 [paras. 6, 9]; 69, 71(1) [para. 8]; 71(3) [paras. 8, 9].

Counsel:

Diana K. Lee, for the plaintiff;
Donald J. Osman, for the defendants
Andrew Skulmoski, Graywolf Lumber-
mart Ltd. and Darrell Light.

es made after the
lien.

Topic 6304

een lienholder and
gage advances after
mortgages agreed to

the condition that
only be advanced
was completed

registered on the
the time the mortg
ed and the funds
he funds were used

bank loan used to
uction - The liens
it they had prior

- The Saskatchewan
Bench upheld the

- The court held

(a) of the Builders'
lien registered

had priority in
made subsequent

of the lien - See

lcs' liens - Regist

mortgage. - [See
Topic 6304 above].

Investments Limited
me Ltd. et al.

154 (Sask. Q.B.)

gage Co. Ltd.

Ltd., [1981] 4 Q.B.), refd to

Q.B.), refd to

pany of Regist

atchewan Economic
ration et al.

42 (C.A.), refd to

S.S., 1984-85, c.

(4) [para. 9]; 12

71(1) [para. 8]

plaintiff;

or the defendants

Graywolf Lumber
-l Light.

This application was heard by McIntyre, J., of the Saskatchewan Court of Queen's Bench, Judicial Centre of Moosomin, who delivered the following judgment on January 19, 1989.

[1] McIntyre, J.: Peter Garth Fraser and Doreen Anne Fraser are, and were, the registered owners of Lot 1, Block 95, in Moosomin, Saskatchewan, Plan 68841591, Minerals included, and they borrowed money from the plaintiff to finance the construction of a prefabricated home on the lot. Scotia Mortgage Corporation approved a mortgage of \$60,000.00 to finance construction but a condition of the granting of the mortgage was that 100 per cent of construction had to be completed prior to the advancement of any mortgage money. The mortgage was registered in the Land Titles Office in Moosomin for the amount of \$61,800.00 on July 30, 1986, as Instrument No. 86R40589.

[2] When construction of the house was completed the mortgage monies were advanced as follows:

August 23, 1987	\$50,363.93
August 26, 1987	\$ 9,636.07
Total	\$60,000.00

[3] The advanced mortgage monies were applied by counsel for the Frasers to the retirement of \$60,000.00 in interim financing received by the Frasers from the Scotia Bank to finance the construction.

[4] The Frasers failed to pay the amounts owing under the mortgage and the mortgagees applied for, and leave was granted to commence action for foreclosure on August 25, 1988, and a statement of claim was issued on September 20, 1988.

[5] The parties named on the duplicate certificate of title were all noted for default in late October 1988; and in early November 1988 an application was made by the plaintiff for an order nisi for foreclosure.

[6] Mr. Osman appeared on the application for an order nisi for foreclosure

on behalf of three lien claimants, Andrew Skulmoski, Graywolf Lumbermart Ltd. and Darrell Light and he submitted that the lien claimants should have priority over advances made under the mortgage after the liens were registered. The position taken by the solicitor for the plaintiff is that pursuant to the case law it has met and strictly complied with the criteria involved in the Builders' Lien Act, particularly s. 12, and that the plaintiff is entitled to priority over the lien claimants.

[7] Substantial briefs were filed on behalf of the parties and it was necessary to do a substantial amount of research on the relevant provisions of the Builders' Lien Act which can be described as a relatively new statute. It would appear that a lien claimant has priority over a mortgagee in the following two situations:

(a) where the lien claim was registered prior to the mortgage; and

(b) where the lien claim was registered subsequent to the mortgage but prior to advances made under the mortgage after the registration of the lien.

[8] The relevant provisions of the Builders' Lien Act, S.S. 1984-85, c. B-7.1 are:

"69 Where a claim of lien is registered, the person entitled to the lien is considered a purchaser pro tanto.

"71(1) The liens arising from an improvement have priority over all mortgages, conveyances or other agreements registered after a claim of lien is registered.

.....

"(3) Subject to Part II:

(a) a lien has priority in respect of all payments or advances made on account of any conveyance or mortgage after written notice of a lien

has been given to the person making the payments or advances or after a claim of lien is registered; and

(b) if no written notice of a lien is given or if no claim of lien is registered, all of the payments or advances have priority over the lien."

[9] Section 71(3) makes reference to Part II of the Act which deals with trust provisions. The following monies are constituted trust monies in the owner's hands for the contractor or others in a direct contractual relationship with the owner:

"6(1) All amounts received by an owner, other than the Crown, that are to be used in the financing of an improvement, including the purchase price of the land and the payment of prior encumbrances, constitute, subject to the payment of the purchase price of the land and prior encumbrances, a trust fund for the benefit of the contractor.

* * * * *

"(4) The owner is the trustee of the trust fund created by subsections (1) to (3), and he shall not appropriate or convert any part of the trust fund to his own use or to any use inconsistent with the trust until the contractor is paid all amounts related to the improvement owed to him by the owner."

The owner may use trust monies to discharge loans obtained to finance the improvement where:

"12 Subject to the requirement to maintain a holdback, where a trustee pays in whole or in part for services or materials provided to an improvement, or pays a beneficiary pursuant to the contract or subcontract, as the case may be, out of money that is lent to him, trust funds may be applied to discharge the loan to the extent that the lender's money was so used by the trustee." (emphasis added)

[10] It would seem to follow that the owner may only use trust monies to discharge loans to the extent that he has paid for services or materials supplied to the improvement. That is, it would be a breach of trust for the owner to use trust monies to discharge a loan where beneficiaries of the trust remain unpaid, to the extent of that nonpayment.

[11] Thus, priority is determined strictly on the basis of the date of registration and the date advances are made. (*United Dominion Investments Limited v. Hospitality Inns Ltd. et al.*, [1982] 1 W.W.R. 154 (Sask. Q.B.)). This is particularly so in a Torrens land registration system because persons dealing with the land are entitled to rely upon the face of the title and the issue of when the lien arose is irrelevant to a determination of priority as between a lien claimant and a mortgagee.

[12] A lien is registered when a memorandum is entered upon the certificate of title and not upon the assignment of a registration number. (*First National Mortgage Co. Ltd. v. Realistic Homes Ltd.*, [1981] 3 W.W.R. 1 (Sask. Q.B.)) and other similar cases.

[13] Banks are presumed to be familiar with the trust provisions of the Act (*Overhead Door Company of Regina (1973) Ltd. v. Saskatchewan Economic Development Corporation et al.* (1987), 64 Sask. R. 42 (C.A.)).

[14] I am required to determine if the three lien claims registered prior to any advances being made under the mortgage have priority despite the prior registration of the mortgage. I am satisfied that the three lien claimants have priority over the monies advanced under the mortgage and that all three lien claims were registered in the Land Titles Office before the monies were advanced. This then brings me to the position as to the order I should make in this case.

[15] The order nisi for foreclosure will issue subject to the lien claim of

Gray
of
Dart
and
in
of
the
mor

[16
also
inc:
on
an
bas:
a g
and
suc:
pay:
\$30

Edi
njl

FAS
OF
ME
LI
SI
SAS
HAF
LI

CO
MAJ

S

Sum
Tt
the
mor

follow that the trust monies to a extent that he as or materials vement. That is, of trust for the lies to discharge ties of the trust : extent of that

is determined of the date of ate advances are ion Investments y Inna Ltd. et 54 (Sask. Q.B.)) so in a Torrens tem because per- land are entitled of the title and e lien arose is mination of pri- in claimant and a

istered when a upon the certifi- upon the assign- a number. (First Ltd. v. Realistic W.W.R. 1 (Sask. r cases.

d to be familiar sions of the Act of Regina (1973) Economic Develop- al. (1987), 66

determine if the istered prior to made under the ty despite the the mortgage. the three lie y over the monie ortgage and that were registered fice before the This then bring to the order se.

for foreclosure the lien claim

Graywolf Lumbermart Ltd. in the amount of \$7,481.07 to the lien claim of Darrell Light in the amount of \$600.00 and to the lien claim of Drew Skulmoski in the amount of \$1,555.00 in that all of these liens were registered prior to the advances being made under the mortgage.

[16] The solicitor for the mortgagee also asked that the costs of and incidental to this application be costs on a solicitor and client basis but I am not prepared to grant costs on that basis. I am satisfied that counsel did a good deal of work on this novel point and as the three lien claimants were successful, I award them their costs payable by the plaintiff which I fix at \$300.00 plus proper disbursements.

Order accordingly

Editor: Reginald W. Curtis
pjl

FARM CREDIT CORPORATION (plaintiff) v. ORVILLE LEROY WELLS, and JUDY WELLS, MELFORT TRENCHING & EXCAVATING LTD., LITTLE'S REDI-MIX LTD., JAMES EVERETT Sisson, GEORGE BALONE, EDWARD STOBBE, SASKATCHEWAN WHEAT POOL, INTERNATIONAL HARVESTER CREDIT CORPORATION OF CANADA LIMITED, SELMAC SALES LTD., FARMWEST MANAGEMENT LTD., THE BEERLAND CO-OPERATIVE ASSOCIATION LIMITED, HER MAJESTY THE QUEEN, BANK OF NOVA SCOTIA (defendants)
(No. 106 A.D. 1988)

INDEXED AS: FARM CREDIT CORP. v. WELLS et al.

Saskatchewan Court of Queen's Bench
Judicial Centre of Melfort
Goldenberg, J.
December 14, 1988.

Summary:

The mortgagee wanted to foreclose on the mortgagors' farm. The farm was the mortgagors' homestead. The mortgagee

obtained an order under s. 9 of the Farm Land Security Act stating that ss. 7 and 8 of the Act did not apply to the mortgage. The mortgagee then commenced foreclosure proceedings. However, s. 9(1)(f)(i) of the Saskatchewan Farm Security Act of 1988 vacated the order given under s. 9 of the Farm Land Security Act. The mortgagee then applied to the court to have an order issued under s. 11 of the Saskatchewan Farm Security Act stating that the provisions of s. 9(1)(f)(i) of that Act did not apply to the mortgage. The mortgagee also wanted the court to issue an order nisi for foreclosure.

The Saskatchewan Court of Queen's Bench dismissed the application.

Mortgages - Topic 7748

Mortgagee's remedies - Statutory suspension - Mortgagors protected - Farmers - The mortgagee wanted to foreclose on the mortgagors' farm - The farm was the mortgagors' homestead - The mortgagee obtained an order under s. 9 of the Farm Land Security Act, stating that ss. 7 and 8 of the Act did not apply to the mortgage, and began to prepare for the sale - However, s. 9(1)(f)(i) of the Saskatchewan Farm Security Act of 1988 vacated the order given under s. 9 of the Farm Land Security Act - The mortgagee applied to the court for an order under s. 11 of the Saskatchewan Farm Security Act stating that s. 9(1)(f)(i) did not apply to that mortgage - The Saskatchewan Court of Queen's Bench held that it had no authority to make that order - See paragraph 12.

Statutes Noticed:

Farm Land Security Act, S.S. 1984-85-86, c. F-8.01, ss. 7; 8 [para. 2]; 9 [paras. 1, 9, 10].
Saskatchewan Farm Security Act, S.S. 1988, c. S-17.1, ss. 2(1)(h) [para. 6]; 9(1)(d) [paras. 1, 8]; 9(1)(f) [paras. 1, 8, 9, 11, 12]; 11 [paras. 1, 12]; 11(1)(a) [para. 11]; 11(1)(b) [paras. 9, 10, 11]; 12 [paras. 1, 13]; 21(1) [para. 11].

Schedule "F"

Toronto-Dominion Bank v. Setter-Donaldson Mechanical Ltd. et al,
(B.C.C.A.) 1977 Carswell BC 14

1977 CarswellBC 14, 2 B.C.L.R. 67, 75 D.L.R. (3d) 744

C

1977 CarswellBC 14, 2 B.C.L.R. 67, 75 D.L.R. (3d) 744

Toronto-Dominion Bank v. Setter-Donaldson Mechanical Ltd.

Toronto-Dominion Bank v. Setter-Donaldson Mechanical Ltd. et al.

British Columbia Court of Appeal

Seaton, McIntyre and Carrothers JJ.A.

Judgment: February 15, 1977

Docket: Vancouver

© Thomson Reuters Canada Limited or its Licensors (excluding individual court documents). All rights reserved.

Counsel: *H. G. Ladner*, for appellant.

P. W. Butler, for respondent Toronto-Dominion Bank.

Subject: Contracts; Corporate and Commercial

Construction Law --- Construction and builders' liens --- Priorities --- Between types of creditors --- Prior mortgagees and lienholders --- Bona fide mortgage monies

Mechanics' liens --- Priority of mortgage over --- "Mortgage-moneys" need not be due, merely secured --- "Mortgage-moneys" includes guarantee secured by mortgage --- The Mechanics' Lien Act, R.S.B.C. 1960, c. 238, s. 7(1).

The defendant Setter-Donaldson was a lien claimant against certain property. The corporate owner of the property had placed a second mortgage with the plaintiff bank which secured money the owner had guaranteed for one of its related companies. On foreclosure proceedings on the first mortgage the bank assumed the first mortgage position, was made plaintiff in new foreclosure proceedings, and a final date for redemption was fixed. The defendant asked for an enlargement of the redemption period on the ground that there would be no opportunity to contest priorities if there was a foreclosure. The application was refused and the defendant appealed arguing that, firstly, the owner was not liable under the mortgage until default and until it was liable there were no "mortgage-moneys secured", and, secondly, it was the guarantee and not "mortgage-moneys" which were secured. *Held*, the mortgage had priority and the appeal

1977 CarswellBC 14, 2 B.C.L.R. 67, 75 D.L.R. (3d) 744

was dismissed. Section 7 did not limit the term "mortgage-moneys" to amounts due; they need only to have been secured. Further, the term "mortgage-moneys" included any sums secured by a mortgage and therefore included the guarantee.

Cases considered:

Miller v. Lavoie (1966), 63 W.W.R. 359, 60 D.L.R. (2d) 495 (B.C.); *Casson v. Westmorland Investments Ltd.* (1961), 35 W.W.R. 521, 27 D.L.R. (2d) 674 (B.C.C.A.) — followed

The judgment of the court was delivered by Seaton J.A.:

1 On 12th March 1975 the appellant filed a claim of lien for \$15,666.87 under The Mechanics' Lien Act, R.S.B.C. 1960, c. 238, arising out of mechanical work it had done on a motel complex at Cranbrook. Pacific Yacht Co. Ltd., which borrowed from the respondent bank to finance the construction of the complex, owned 50 per cent of the issued shares of Cal-Pac Ventures Inc. Cal-Pac Ventures Inc. was the prime contractor on the job and its wholly-owned subsidiary, Stage Inns (Cranbrook) Ltd., was the owner.

2 At the time of the filing of the claim of lien there were two mortgages registered against the property. The first mortgage was in favour of three Cranbrook businessmen in the amount of \$100,000. No one disputes its priority. The second mortgage was granted by the owner to the respondent bank on 11th December 1974 to secure the owner's guarantee of Pacific Yacht Co. Ltd.'s line of credit with the bank. At the time of the filing of the lien Pacific Yacht Co. Ltd. owed the bank about \$900,000 and that is the amount referred to in the mortgage. At that time the bank loan was not in default and no demand had been made of the owner on its guarantee. The \$900,000 remains outstanding and that amount is more than the value of the property. The appellant says that its lien has priority over the second mortgage.

3 On 25th June 1975 these foreclosure proceedings were commenced with respect to the first mortgage. Accounts were taken and a time for redemption was fixed. On the application of the bank an order for sale was made with the bank to have conduct of the sale. On the eve of the expiry of the redemption period, no sale having been made, the bank paid the amount certified by the registrar into court and assumed the first mortgage position. The bank was then made plaintiff in this foreclosure action, the foreclosure was opened and a new final date for redemption was fixed. On the day so fixed the appellant filed an application returnable two weeks later asking for a sale with the appellant to have its conduct and asking that there be an enlargement of the redemption period. The application was refused and this appeal is from that refusal.

4 Mr. Ladner says that if the redemption period is not extended both the second mortgage and the lien will stand foreclosed and there will be no opportunity to contest, in the mechanics' lien proceedings, the priorities as between the lien and the second mortgage. Mr. Butler says that the respondent, as holder of the first mortgage, ought not to be held up any longer; and that in any event nothing should be done to preserve the mechanics' lien proceedings in which the respondent, in its role as second mortgagee, is bound to prevail.

5 At the conclusion of his reasons for judgment the learned chambers judge said:

In all the circumstances, I do not think this is an appropriate case for a further extension of the redemption period.

[1977 CarswellBC 14, 2 B.C.L.R. 67, 75 D.L.R. (3d) 744

Accordingly, the application is dismissed.

6 Some of the circumstances that he might have had in mind are these: had the appellant proceeded promptly with its lien action it might have been concluded before the expiry of the second redemption period; the appellant took no step in these proceedings to raise the issue of priorities until the end of the second redemption period; the respondent bank has never been made a party to the lien proceedings and there is no claim in the lien action that the second mortgage is not to have priority. Notwithstanding that the appellant's dilatory conduct would have justified denying the relief claimed, the learned chambers judge dealt with the question of priorities and I feel obliged to do the same.

7 The question is whether the mortgage to secure the owner's guarantee of the debt of Pacific Yacht Co. Ltd. has priority over liens. The answer must be found in the first few words of s. 7(1) of the Act:

7.(1) A registered mortgage has priority over a lien to the extent of the mortgage-moneys bona fide secured or advanced in money prior to the filing of the claim of lien.

8 There is no suggestion of lack of bona fides.

9 The appellant's position is that the owner was not liable until default or demand and that until it was liable there were no "mortgage-moneys ... secured". In addition, it argues that if anything is secured it is not mortgage-moneys but a guarantee. There is nothing in the section to limit the term "mortgage-moneys" to amounts due. They need only be secured. *Miller v. Lavoie* (1966), 63 W.W.R. 359, 60 D.L.R. (2d) 495 (B.C.), points out that to argue the contrary one must disregard the word "secured". Nor is there anything to suggest that the term "mortgage-moneys" is to be used so narrowly as to exclude a debt of another if it is secured by the mortgage.

10 I think that each of the appellant's arguments is answered by *Casson v. Westmorland Investments Ltd.* (1961), 35 W.W.R. 521, 27 D.L.R. (2d) 674, particularly at pp. 523-24 where Tysoe J.A. for this court said:

The learned trial judge was of opinion the expression 'mortgage-moneys' in subsec. (1) means moneys advanced under a mortgage and secured thereby and does not extend to past debts subsequently secured by mortgage; but the words in subsec. (1) are 'mortgage-moneys bona fide secured or advanced in money prior to the filing of the claim of lien.'

Mr. Farris contended that the moneys secured by the mortgage in question are not 'mortgage-moneys' within the meaning of those words in subsec. (1). He submitted that they are bank loans and he referred to sec. 75(1)(d) of the *Bank Act*, 1953-54, ch. 48, which contains a prohibition against a bank lending money on the security of real property. However, s. 78 of that Act permits a bank where a debt or liability has been incurred to subsequently take such security for such debt or liability. Mr. Farris further submitted that the expression 'mortgage-moneys' does not include past indebtedness collaterally secured.

My opinion is that the expression 'mortgage-moneys' in subsec. (1) means moneys owing under the mortgage. The moneys may have originally been owing for goods sold and delivered, or for work done, or for loans made, or

)
1977 CarswellBC 14, 2 B.C.L.R. 67, 75 D.L.R. (3d) 744

for any number of other things, but once they become secured by a mortgage they assume the character of and become 'mortgage-moneys.'

11 It is my view that the advances to Pacific Yacht Co. Ltd. by the respondent bank guaranteed by the owner constituted "mortgage-moneys bona fide secured ... prior to the filing of the claim of lien". It follows that the second mortgage has priority over the lien claim.

12 I would dismiss the appeal.

END OF DOCUMENT

Schedule "G"

Part II of *The Builders' Lien Act* (Saskatchewan)

c. B-7.1

BUILDERS' LIEN

When contract deemed complete

4 For the purposes of this Act, a contract is deemed to be completed when the total price of the following is not more than 1% of the contract price:

- (a) completion;
- (b) correction of a known defect;
- (c) last provision of services or materials.

2014, c.1, s.4.

Application of Act to Crown

5(1) Except as otherwise provided, the Crown is bound by this Act.

(2) This Act does not apply where services or materials are provided:

- (a) in connection with a contract entered into under or pursuant to *The Highways and Transportation Act*; or
- (b) in connection with the construction or improvement of a street or highway owned by the Crown.

(3) Notwithstanding subsection (2), this Act applies where services or materials are provided in connection with the construction or improvement of a bridge owned by the Crown other than a bridge constructed or improved under or pursuant to *The Highways and Transportation Act*.

1984-85-86, c.B-7.1, s.5.

PART II

Trust Provisions

Owner's trust

6(1) All amounts received by an owner, other than the Crown, that are to be used in the financing of an improvement, including the purchase price of the land and the payment of prior encumbrances, constitute, subject to the payment of the purchase price of the land and prior encumbrances, a trust fund for the benefit of the contractor.

(2) Where the owner provides his own capital or where the owner is the Crown, and where amounts become payable under a contract to a contractor, the moneys in the hands of the owner or received by him for payment under the contract at any time thereafter constitute a trust fund for the benefit of the contractor.

(3) Where the owner's interest in an improvement is sold by the owner, an amount equal to the positive difference between:

- (a) the value of the consideration received by the owner as a result of the sale; and
- (b) the reasonable expenses arising from the sale and the amount, if any, paid by the vendor to discharge any encumbrances which are entitled to priority under this Act;

constitutes a trust fund for the benefit of the contractor.

BUILDERS' LIEN

c. B-7.1

(4) The owner is the trustee of the trust fund created by subsections (1) to (3), and he shall not appropriate or convert any part of the trust fund to his own use or to any use inconsistent with the trust until the contractor is paid all amounts related to the improvement owed to him by the owner.

1984-85-86, c.B-7.1, s.6.

Contractor's trust

7(1) All amounts;

- (a) owing to a contractor, whether or not due or payable; or
- (b) received by a contractor;

on account of the contract price of an improvement constitute a trust fund for the benefit of:

- (c) subcontractors who have subcontracted with the contractor and other persons who have provided materials or services to the contractor for the purpose of performing a contract; and
- (d) labourers who have been employed by the contractor for the purpose of performing the contract.

(2) The contractor is the trustee of the trust fund created by subsection (1) and he shall not appropriate or convert any part of the trust fund to his own use or to any use inconsistent with the trust until all persons for whose benefit the trust is constituted are paid all amounts related to the improvement owed to them by the contractor.

1984-85-86, c.B-7.1, s.7.

Subcontractor's trust

8(1) All amounts:

- (a) owing to a subcontractor, whether or not due or payable; or
- (b) received by a subcontractor;

on account of the subcontract price of an improvement constitute a trust fund for the benefit of:

- (c) subcontractors who have subcontracted with the subcontractor and other persons who have provided materials or services to the subcontractor for the purpose of performing the subcontract; and
- (d) labourers who have been employed by the subcontractor for the purpose of performing the subcontract.

(2) The subcontractor is trustee of the trust fund created by subsection (1) and he shall not appropriate or convert any part of the trust fund to his own use or to any use inconsistent with the trust until all persons for whose benefit the trust is constituted are paid all amounts related to the improvement owed to them by that subcontractor.

1984-85-86, c.B-7.1, s.8.

c. B-7.1

BUILDERS' LIEN

Trust for insurance proceeds

9 Where an improvement is wholly or partly destroyed or damaged, any amount received or receivable by reason of insurance on the property by a trustee mentioned in section 6, 7 or 8, or a prior mortgagee:

- (a) takes the place of the improvement so destroyed or damaged to the extent of the value of the improvement as part of the contract price; and
- (b) constitutes, after satisfying the claim of any mortgagee which is otherwise entitled to priority, a trust fund for the benefit of the beneficiaries mentioned in sections 6, 7 or 8, as the case may be;

and the trustee shall not appropriate or convert any part of the trust fund to his own use or to any use inconsistent with the trust until the beneficiaries for whose benefit the trust is created are paid all amounts related to the improvement owed to them by the trustee.

1984-85-86, c.B-7.1, s.9.

Where consideration not money

10 Where any part of the consideration of a contract between an owner and a contractor, or a subcontract between a contractor and a subcontractor, does not consist of money, the value of the part of the consideration that does not consist of money is deemed to be money owing from the owner to the contractor, or from the contractor to the subcontractor, as the case may be, for the benefit of the persons for whom the trust is constituted pursuant to subsections 6(4), 7(2) and 8(2), respectively.

1984-85-86, c.B-7.1, s.10.

Where trustee pays for services, etc.

11 Subject to the requirement to maintain a holdback, a trustee who pays in whole or in part for services or materials provided to an improvement or pays a beneficiary pursuant to the contract or subcontract out of money that is not subject to a trust under this Part may retain from trust funds an amount equal to that paid by him.

1984-85-86, c.B-7.1, s.11.

Where trustee pays for services, etc., out of borrowed money

12 Subject to the requirement to maintain a holdback, where a trustee pays in whole or in part for services or materials provided to an improvement, or pays a beneficiary pursuant to the contract or subcontract, as the case may be, out of money that is lent to him, trust funds may be applied to discharge the loan to the extent that the lender's money was so used by the trustee.

1984-85-86, c.B-7.1, s.12.

BUILDERS' LIEN

c. B-7.1

Sot off by trustee

13 Subject to the requirement to maintain a holdback, a trustee may, retain from trust funds an amount that, as between himself and the person he is liable to pay under a contract or subcontract related to the improvement, is equal to the balance in the trustee's favour of all outstanding debts, claims or damages, that are related to the improvement.

1984-85-86, c.B-7.1, s.13.

When trustee discharged

14 Subject to the requirement to maintain a holdback, every payment made by a trustee to a person whom he is liable to pay for services or materials provided to an improvement discharges, to the extent of the payment made by him, the trust of that trustee and his obligations and liabilities as trustee to all beneficiaries of the trust.

1984-85-86, c.B-7.1, s.14.

Priorities between beneficiaries and third parties

15 In addition to any other priority which a beneficiary of a trust constituted by this Part may have at law, a beneficiary has priority over all general or special assignments, security interests, judgments, seizures, attachments, garnishments and receiving orders, whenever received, granted, issued or made, of or in respect of the contract or subcontract price or any portion of the contract or subcontract price.

1984-85-86, c.B-7.1, s.15; 2010, c.E-9.22, s.143.

Liability for breach of trust by corporation

16(1) Where a corporation is constituted a trustee by this Part, in addition to the persons who are otherwise liable in an action for breach of trust:

- (a) every director or officer of the corporation; and
- (b) any person, including an employee or agent of the corporation who has effective control of the corporation or its relevant activities;

who assents to, or acquiesces in, conduct that he knows or reasonably ought to know amounts to breach of trust by the corporation is liable for the breach of trust.

(2) The question of whether a person has effective control of a corporation or its relevant activities is one of fact and, in determining that question, the court may disregard the form of any transaction and the separate corporate existence of any participant.

(3) All persons who are found liable or have admitted liability for a particular breach of trust under this Part are jointly and severally liable.

(4) A person who is found liable, or who has admitted liability, for a particular breach of a trust under this Part is entitled to recover contribution from any other person also liable for the breach in an amount to be determined by the court.

1984-85-86, c.B-7.1, s.16.

c. B-7.1

BUILDERS' LIEN

Summary disposition of dispute concerning trust money

17(1) An application for directions may be made to the court where a dispute arises:

- (a) respecting the claim of a person for whose benefit a trust is constituted under this Part; or
- (b) respecting the administration of the trust fund.
- (2) An application under subsection (1) may be made by:
 - (a) the person with respect to whose claim the dispute has arisen;
 - (b) any person for whose benefit the trust fund is created by this Part; or
 - (c) the trustee.

1984-85-86, c.B-7.1, s.17.

Offence and penalty

18(1) Every person who is a trustee under this Part and who knowingly appropriates or converts any moneys constituting a trust under this Part to or for his own use or to or for any use inconsistent with the trust is guilty of an offence.

(2) Every director or officer of a corporation who knowingly assents to or acquiesces in an offence by the corporation under subsection (1) is guilty of an offence.

(3) Every person who is guilty of an offence under subsection (1) or (2) is liable to a fine of not more than \$50,000, to imprisonment for a term of not more than two years or to both such fine and imprisonment.

(4) A director or officer of a corporation may be charged with an offence under this section whether or not the corporation has been charged or convicted of the offence.

(5) The time limit for laying an information under this section is two years from the time when the offence occurred.

1984-85-86, c.B-7.1, s.18.

When trust expires and limitation period

19(1) On the expiry of two years after the contract is completed or abandoned:

- (a) a person who is a trustee under this Part is discharged from his obligations as trustee; and
- (b) no action to enforce the trust may be commenced.

(2) Subsection (1) does not affect the ability to commence and maintain a prosecution.

1984-85-86, c.B-7.1, s.19, 2004, c.L-16.1, s.35;
2014, c.1, s.5.

Trust not affected

20 The trust is not affected by the fact that the time for registering a claim of lien under this Act has expired.

1984-85-86, c.B-7.1, s.20.

BUILDERS' LIEN

c. B-7.1

Payment pursuant to Act not breach of trust

21 Payment from or retention of trust funds when authorized or required to be made by this Act is not a breach of trust.

1984-85-86, c.B-7.1, s.21.

PART III
The Lien

Lien on land and materials and extension re minerals

22(1) A person who provides services or materials on or in respect of an improvement for an owner, contractor or subcontractor, has, except as otherwise provided in this Act, a lien on the estate or interest of the owner in the land occupied by the improvement, or enjoyed therewith, and on the materials provided to the improvement for as much of the price of the services or materials as remains owing to him.

(2) Where services or materials are provided:

- (a) preparatory to;
- (b) in connection with; or
- (c) for an abandonment operation in connection with;

the recovery of a mineral, then, notwithstanding that a person holding a particular estate or interest in the mineral concerned has not requested the services or materials, the lien given by subsection (1) is also a lien on:

- (d) all the estates or interests in the mineral concerned, other than the estate in fee simple in the mines and minerals, unless the person holding that fee simple has expressly requested the services or materials;
- (e) the mineral when severed and recovered from the land while it is in the hands of the owner, and to the proceeds of the mineral and to the amounts to be paid in lieu of the proceeds of the mineral to the owner by a person that operates the mine, oil well or gas well;
- (f) the interest of the owner in the fixtures, machinery, tools, appliances and other property in or on the mines, mining claim or land, oil or gas well and the appurtenances thereto;

but, in all other respects, this Act applies to the lien existing by virtue of this subsection notwithstanding that the lien extended by clauses (e) and (f) is a lien on an interest in personal property.

1984-85-86, c.B-7.1, s.22.

23 Repealed. 1989-90, c.29, s.4.

No lien under \$100

24 No lien exists for a claim less than \$100.

1984-85-86, c.B-7.1, s.24.

Schedule “H”

Section 2(1)(k) of
The Builders’ Lien Act (Saskatchewan)

CHAPTER B-7.1

An Act respecting Liens in the Construction Industry

PART I Title and Interpretation

Short title

1 This Act may be cited as *The Builders' Lien Act*.

Interpretation

2(1) In this Act:

- (a) “**architect**” means an architect registered pursuant to *The Architects Act, 1996* and includes a corporation licensed to practise architecture pursuant to the bylaws of The Saskatchewan Association of Architects;
- (a.1) “**contract**” means the contract between the owner and contractor and includes any amendment to that contract;
- (b) “**contractor**” means a person contracting with or employed directly by the owner or his agent to provide services or materials to an improvement, but does not include a labourer;
- (c) “**court**” means Her Majesty’s Court of Queen’s Bench for Saskatchewan;
- (d) “**Crown**” means:
 - (i) Her Majesty in right of Saskatchewan;
 - (ii) an agent of Her Majesty in right of Saskatchewan, including The Workers’ Compensation Board;
 - (iii) a board, local authority or municipal corporation that is created by or under:
 - (A) *The Cities Act*;
 - (A.1) *The Conservation and Development Act*;
 - (B) *The Drainage Act*;
 - (C) *The Education Act*;
 - (C.01) **Repealed.** 2002, c.R-8.2, s.71.
 - (C.1) **Repealed.** 2002, c.R-8.2, s.115.
 - (D) *The Irrigation Districts Act*;
 - (D.1) **Repealed.** 2002, c.R-8.2, s.71.
 - (E) *The City of Lloydminster Act*;
 - (F) *The Northern Municipalities Act, 2010*;
 - (F.1) section 85 of *The Public Health Act*;

- (F.2) *The Regional Health Services Act*;
- (G) *The Municipalities Act*;
- (H) **Repealed.** 2001, c.23, s.7.
- (H.1) *The Saskatchewan Water Corporation Act*;
- (H.2) *The Saskatchewan Watershed Authority Act*;
- (H.3) *The Water Security Agency Act*;
- (I) **Repealed.** 2002, c.R-8.2, s.71.
- (J) **Repealed.** 2002, c.R-8.2, s.71.
- (K) **Repealed.** 2002, c.R-8.2, s.71.
- (L) *The University of Regina Act*;
- (M) *The University of Saskatchewan Act*;
- (N) **Repealed.** 2005, c.M-36.1, s.417.
- (N.1) **Repealed.** 2002, c.R-8.2, s.71.
- (O) **Repealed.** 2002, c.S-35.02, s.97.
- (P) *The Water Users Act*;
- (Q) *The Watershed Associations Act*;

(iv) the Saskatchewan Cancer Agency continued pursuant to *The Cancer Agency Act*;

(d.1) **"engineer"** means a professional engineer, as defined in *The Engineering and Geoscience Professions Act*, and includes the holder of a certificate of authorization granted pursuant to section 22 of that Act;

(e) **"estate or interest in land"** includes a statutory right given or reserved to the Crown to enter any lands or premises for the purpose of doing any work, construction, repair or maintenance in, on, through, over or under any such lands or premises;

(f) **"general lien"** means a lien mentioned in section 29;

(g) **"holdback"** means the amount required to be withheld from payment in section 34;

(h) **"improvement"** means a thing constructed, erected, built, placed, altered, repaired, improved, added to, dug or drilled or intended to be constructed, erected, built, placed, altered, repaired, improved, added to, dug or drilled on or into, land, except a thing that is not affixed to the land or intended to become part of the land and includes:

- (i) landscaping, clearing, breaking, excavating, digging, drilling, tunnelling, filling, grading or ditching of, in, on or under land;
- (ii) the demolition or removal of any building, structure or works or part thereof;
- (iii) services provided by an architect, engineer or land surveyor;

and **"improved"** has a corresponding meaning;

BUILDERS' LIEN

c. B-7.1

(i) **"labourer"** means a person who is employed for wages to perform labour of any kind, whether employed under a contract of service or not;

(i.1) **"land surveyor"** means a Saskatchewan land surveyor or professional surveyor who is licensed to practise in accordance with *The Land Surveyors and Professional Surveyors Act*;

(j) **"materials"** means every kind of movable property that becomes or is intended to become, part of the improvement, or that is used to facilitate directly the making of the improvement;

(k) **"owner"** includes a person having an estate or interest in land, other than an encumbrance, at whose request, express or implied, and:

- (i) on whose credit;
- (ii) on whose behalf;
- (iii) with whose privity and consent; or
- (iv) for whose direct benefit;

an improvement is made to the land;

(l) **"payer"** means the owner, contractor or subcontractor who is liable to pay for the services or materials provided to an improvement under a contract or subcontract;

(m) **"payment certifier"** means an architect, engineer or any other person on whose certificate payments are made under a contract or subcontract;

(n) **"prescribed"** means prescribed in the regulations;

(o) **"registered"** means:

- (i) in the case of a claim of lien mentioned in section 50 and in the case of any other registrable interest, registered as an interest pursuant to *The Land Titles Act, 2000* or filed in the Abstract Directory pursuant to that Act where no title has been issued for the parcel of land affected;
- (ii) in the case of a claim of lien mentioned in section 51, filed with the Records Officer, Department of Energy and Mines;
- (iii) in the case of a claim of lien mentioned in section 52, given to the Crown;

and **"registering"** and **"registration"** have corresponding meanings;

(p) **"registrar"** means the Registrar of Titles as defined in *The Land Titles Act, 2000*;

(q) **"services"** means any labour done or service performed on or in respect of an improvement and includes the rental of equipment and the wages of any operator provided with the equipment;

(r) **"services or materials"** includes both services and materials;

APPENDIX “B”

Do All Industries Ltd.
Summary of Professional Fees for the Receiver and its Legal Counsel
For The Period from February 6, 2014 to June 30, 2014

Firm	Invoice No.	Fees	Disbursements	HST/GST	Total
A&M	Pre	18,850.00	302.87	957.64	20,110.51
	#1	367,440.00	19,893.22	19,366.66	406,699.88
	#2	138,104.52		6,905.23	145,009.75
	#3	88,835.00	5,344.93	4,709.00	98,888.93
Total		\$ 613,229.52	\$ 25,541.02	\$ 31,938.53	\$ 670,709.07
McCarthy Thetrault					
	2688145	20,921.00	129.55	1,052.03	22,102.58
	2692407	10,408.00	143.60	524.88	11,076.48
	2692317	32,773.00	657.58	1,663.38	35,093.96
	2701521	20,047.00	2,758.54	1,037.73	23,843.27
Total		\$ 84,149.00	\$ 3,689.27	\$ 4,278.02	\$ 92,116.29
Total Professional Fees		\$ 697,378.52	\$ 29,230.29	\$ 36,216.55	\$ 762,825.36