



Clerk's stamp:

COURT FILE NUMBER **1901-18029**

COURT **COURT OF QUEEN'S BENCH OF ALBERTA**

JUDICIAL CENTRE **CALGARY**

IN THE MATTER OF AN APPLICATION UNDER SECTION 47(1) OF THE BANKRUPTCY AND INSOLVENCY ACT, RSC 1985, C B-3

APPLICANTS **SUN LIFE ASSURANCE COMPANY OF CANADA AND THOSE OTHER APPLICANTS SET OUT IN SCHEDULE "A.1" OF THE INTERIM RECEIVERSHIP ORDER DATED DECEMBER 20, 2019**

RESPONDENTS **SUNDANCE PLACE II LTD., SUNDANCE PLACE II 1000 LIMITED PARTNERSHIP BY ITS GENERAL PARTNER SUNDANCE PLACE II LTD., AND THOSE OTHER RESPONDENTS SET OUT IN SCHEDULE "A.2" OF THE INTERIM RECEIVERSHIP ORDER DATED DECEMBER 20, 2019**

DOCUMENT **AFFIDAVIT**

ADDRESS FOR SERVICE AND CONTACT INFORMATION OF PARTY FILING THIS DOCUMENT
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AFFIDAVIT OF MICHELLE SCHOP
SWORN JANUARY 22, 2020

I, **MICHELLE SCHOP**, of the City of Calgary, in the Province of Alberta, **MAKE OATH AND SAY THAT:**

1. I am a Legal Assistant with Dentons Canada LLP, Barristers and Solicitors, counsel to Alvarez & Marsal Canada Inc., the Receiver in this Action. As such, I have knowledge of the matters herein deposed to save where stated to be based upon information and belief and where so stated I do verily believe the same to be true.

THIS IS EXHIBIT "A"
REFERRED TO IN THE AFFIDAVIT OF
MICHELLE SCHOP

Sworn before me this 22nd day of January, 2020



A COMMISSIONER FOR OATHS IN AND
FOR THE PROVINCE OF ALBERTA

TERRY TROJANOSKI
A Commissioner for Oaths
in and for the Province of Alberta
My Commission expires June 6, 2021
Appointee No. 0736887

Action No.: 1901-17453
E-File No.: CVQ20IECLTD
Appeal No.: _____

IN THE COURT OF QUEEN'S BENCH OF ALBERTA
JUDICIAL CENTRE OF CALGARY

IN THE MATTER OF

COMPANIES' CREDITORS ARRANGEMENT OF IEC LTD.,
AUDEAMUS CAPITAL CORP.,
and THOSE OTHER APPLICANTS OF IEC LTD.,
AUDEAMUS CAPITAL CORP.
and THOSE OTHER APPLICANTS SET OUT IN SCHEDULE A

P R O C E E D I N G S

Calgary, Alberta
December 20, 2019

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1 Proceedings taken in the Court of Queen's Bench of Alberta, Calgary Courts Centre,
2 Calgary, Alberta

3
4 December 20, 2019

Morning Session

5
6 The Honourable Madam Justice Horner

Court of Queen's Bench of Alberta

7
8 S.F. Collins

For the CCAA Applicants

9 W.W. MacLeod

For the CCAA Applicants

10 P. Kyriakakis

For the CCAA Applicants

11 C.J. Popowich

For Some Applicants/Respondents

12 C.A. Murray

For Some Applicants/Respondents

13 J.G. Kruger, QC

For Bank of Montreal, ATB Financial,
14 Industrial Alliance Insurance and Financial
15 Services, RBC Investor Services Trust
16 c/o CMLS Financial Ltd., ACM Advisors and
17 Terrapin Mortgage Corp.

18 R. Gurofsky

For Bank of Montreal, ATB Financial,
19 Industrial Alliance Insurance and Financial
20 Services, RBC Investor Services Trust c/o
21 CMLS Financial Ltd., ACM Advisors and
22 Terrapin Mortgage Corp.

23 P.T. McCarthy, QC

For Bank of Montreal, ATB Financial,
24 Industrial Alliance Insurance and Financial
25 Services, RBC Investor Services Trust c/o
26 CMLS Financial Ltd., ACM Advisors and
27 Terrapin Mortgage Corp.

28 J.R. Maslen

For Bank of Montreal, ATB Financial,
29 Industrial Alliance Insurance and Financial
30 Services, RBC Investor Services Trust c/o
31 CMLS Financial Ltd., ACM Advisors and
32 Terrapin Mortgage Corp.

33 D.T. Madsen, QC

For Bank of Montreal, ATB Financial,
34 Industrial Alliance Insurance and Financial
35 Services, RBC Investor Services Trust c/o
36 CMLS Financial Ltd., ACM Advisors and
37 Terrapin Mortgage Corp.

38 G. Finegan

For Bank of Montreal, ATB Financial,
39 Industrial Alliance Insurance and Financial
40 Services, RBC Investor Services Trust c/o
41 CMLS Financial Ltd., ACM Advisors and

1		Terrapin Mortgage Corp.
2	K. Kashuba	For Connect First Credit Union Ltd.
3	T.P. Lysak	For Fiera Properties Debt Strategies Ltd.
4	W.L. Roberts	For Vancity Community Investment Bank and
5		Centurion Mortgage Capital Corporation
6	B.C. Gibbons (by phone)	For Vancity Community Investment Bank and
7		Centurion Mortgage Capital Corporation
8	B.P. Maruyama	For Equitable Life
9	H.A. Gorman, QC	For Hardie & Kelly Inc.
10	A. Stephenson	For Hardie & Kelly Inc.
11	C.P. Russell, QC	For Canadian Western Bank
12	A.C. Maerov	For The Royal Bank of Canada
13	K. Rylands	For The Royal Bank of Canada
14	J.L. Oliver	For MCAP Financial Corporation and
15		Business Development Bank Canada
16	J. Bornstein	For MCAP Financial Corporation and
17		Business Development Bank Canada
18	R.S. Van de Mosselaer	For Telus Co-Owners
19	T. Sandler	For Telus Co-Owners
20	E. Paplawski	For Telus Co-Owners
21	M.T. Coombs	For Canada ICI Capital Corporation and
22		SBI Canada Bank
23	K.J. Bourassa	For Sun Life Assurance Company of Canada
24		and Equitable Bank
25	J. Reid	For Sun Life Assurance Company of Canada
26		and Equitable Bank
27	A. Manasterski	For Sun Life Assurance Company of Canada
28		and Equitable Bank
29	C.E. Hanert	For CIBC Mortgage Inc. and Canadian Imperial
30		Bank of Canada
31	M. Konyukhova (by phone)	For Institutional Mortgage Capital Canada Inc.
32		and Computershare Trust Company of Canada
33	K.T. Lenz, QC	For Trez Capital
34	K. Cameron	For Trez Capital
35	A. Naveed	For Proposed Receiver
36	D.S. Nishimura	For Aviva Condominium Corporation
37	D. Hutchison	For Concentra Financial Services Association
38	A.P. Frank	For The City of Calgary
39	S. Hussein (by phone)	For The City of Edmonton
40	K. O'Brien	Court Clerk
41		

- 1
2 THE COURT: Thank you. Please be seated. Okay. So I think
3 we left off last evening with Ms. Bourassa was going to be next?
4
- 5 MR. KRUGER: Yes, My Lady. If I could ask for indulgence
6 just to correct one thing which, in the rush yesterday, I misstated. You will recall that
7 Mr. Collins and that you -- the *League Asset* decision --
8
- 9 THE COURT: Yes. Yeah.
10
- 11 MR. KRUGER: -- which I quickly scanned as he was arguing.
12 And based on what was said in paragraph 2, the definition of League Group and then
13 paragraph 8 that the League Group was applying, I assumed it was the whole structure.
14
- 15 THE COURT: It is not, in fact.
16
- 17 MR. KRUGER: Yes.
18
- 19 THE COURT: Yeah. They had white boxes there.
20
- 21 MR. KRUGER: Correct. And what I would point out though,
22 those in the white boxes were either shell companies or financial information had been
23 provided that they were solvent, and on that basis, they were not -- they were not
24 included.
25
- 26 THE COURT: Well, and I thought another significant
27 distinguishing factor of that case was that the secured lenders there were -- were up to
28 date --
29
- 30 MR. KRUGER: Correct.
31
- 32 THE COURT: -- and in fact were going to be paid from the dip
33 lending which is what Justice Fitzpatrick was considering, not whether or not the stay
34 should be continued.
35
- 36 MR. KRUGER: Correct. This was an application to put in the
37 funding.
38
- 39 THE COURT: Okay.
40
- 41 MR. KRUGER: Thank you, My Lady.

1
2 THE COURT: Thank you. Okay.

3
4 **Submissions by Ms. Bourassa**

5
6 MS. BOURASSA: Good morning, My Lady. Madam clerk has
7 asked us to state our name. It's Kelly Bourassa for the record.

8
9 We act for Sun Life Assurance Company of Canada who is the mortgagee on
10 Sundance Place 1000 property. As you will know -- because you were scheduled to hear
11 our receivership application on Tuesday afternoon -- the Sundance mortgage matured on
12 November 1st and Sun Life had commenced issuing a statement of claim and a
13 receivership application, and that was all filed the day before the initial order was
14 granted.

15
16 Before I get into those submissions, I do just want to make note of one other client that
17 we represent who is Equitable Bank. Equitable Bank has four different properties that
18 they are involved with Strategic. None of them are *CCAA* debtors, and so I don't intend
19 to go into detail on that today. But I would note that one of the projects is in the Atlantic
20 provinces and is part of that Strategic Atlantic who are non-applicant --

21
22 THE COURT: Stay.

23
24 MS. BOURASSA: -- stay parties. And so they're not debtors, but
25 they're subject to the stay. We haven't spent a lot of time. We will rely solely on the
26 materials that were already filed by the company and, in particular, Mr. Mamdani's first
27 affidavit with respect to the facts relating to those mortgages including to the fact that,
28 I think, five or six of the nine Equitable Bank mortgages have matured, and that's set out
29 in Mr. Mamdani's affidavit.

30
31 To the extent Your Ladyship is prepared to continue the *CCAA* proceedings,
32 Equitable Bank would like the stay lifted with respect to those parties, but given the
33 broad support of mortgagees to have the *CCAA* terminated, that will just flow from it. So
34 I won't spend time on that unless we get to that point.

35
36 And I did, just as a housekeeping matter, want to note that there are two sealing orders
37 that we will need to get from you today. One is with respect to an exhibit to
38 Mr. Estrada's (phonetic) affidavit in support of the receivership that my friend
39 Mr. Collins noted contains confidential information, and so we would seek to have
40 essentially the affidavit filed on the court file given back to us and replace it with one that
41 doesn't have the confidential exhibit.

1
2 And then we'll also be seeking a sealing order with respect to exhibit A to Mr. Estrada's
3 supplemental affidavit which was filed in these proceedings, but again I assume we can
4 deal with all the housekeeping matters at the end.
5

6 THE COURT: Yeah. That would be fine as long as we don't
7 forget.
8

9 MS. BOURASSA: Yes. Absolutely, and that was why I thought I
10 would note it now, and we can deal with it then.
11

12 THE COURT: Thank you. And Mr. Oliver also has an
13 application for a sealing order. Are there any other applications for sealing orders?
14 Those are the ones I'm aware of.
15

16 MR. COLLINS: Yeah. If we can set up one with respect to the
17 (INDISCERNIBLE) schedule, My Lady.
18

19 THE COURT: Yes. Of course. Thank you.
20

21 MS. BOURASSA: So, My Lady, what I have tried to do in
22 preparing or re-preparing my notes for today was to try not to have you reaching for a lot
23 of documents. I knew what you had handy yesterday, and to the extent there's anything
24 we need to refer to, I think it'll be in those materials. But of course, you do have the
25 originating -- sorry -- the Statement of Claim, the application, and the affidavit in support
26 of the receivership that was filed on December 9th as --
27

28 THE COURT: I do, and let me just put those before me if
29 you're going to be referring to them?
30

31 MS. BOURASSA: I don't think I'll be referring to them.
32

33 THE COURT: No?
34

35 MS. BOURASSA: I just wanted --
36

37 THE COURT: Okay. I do have them.
38

39 MS. BOURASSA: -- just for clarity those have been filed and were
40 delivered to your office. There's also the supplemental affidavit and a very short brief
41 that we filed on --

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THE COURT: Yes.

MS. BOURASSA: -- Wednesday, I think it was.

THE COURT: Yes. And I have those, and I have reviewed those.

MS. BOURASSA: Perfect. So obviously being mindful of your comments yesterday at the end of the day, I don't intend to repeat anything that Mr. Kruger addressed and as you requested what I will try to do is simply focus in on specific facts in respect of Sun Life that go to the arguments as to why the stay should be -- well, why the *CCAA* should not be permitted is not appropriate in the circumstances and why an interim receiver should be appointed instead.

As noted yesterday, this is a de novo hearing, and we have 60 individual properties that are all set out in exhibit 1 to Mr. Mamdani's first affidavit, and I have a very marked up copy that I keep as my Bible. The only reference I will make to that is to note for the Court that every single first mortgagee who is listed on that schedule has signed on to the form of interim receivership order being sought.

So there is not a single first secured lender in all of the 60 properties who is not supporting the interim receivership application which I think is a relevant fact for today. And as you heard yesterday, there was nobody opposing -- or sorry -- there was nobody supporting Mr. Collins' application, and Mr. Lenz was taking no position on behalf of his client who is a third mortgagee on some properties.

The last thing I would just note before going into my specific facts is Mr. Kruger's comment yesterday about any way you slice or dice this, it is the mortgage lenders who are funding these proceedings. And so our view is that significant regard should be had to their views. I will speak in my submissions to some of Mr. Collins' comments yesterday relating to secured lenders in the case of operating companies and how that's distinguishable from this case.

So here are the key facts. The one fact that we have that is a bit different than some of the other mortgagees is that our mortgage matured on November 1st -- 42.5 million owing. But one thing that I think is important to note is that we issued our demands on November 1st. Then on November 5th, the company retracted the last mortgage payment. So the last mortgage payment just under \$300,000 had been "made" or it was in the processing, but it was retracted after our demands were issued.

1 And over the course of the month of November, the Strategic Group did not respond in
2 any way to the demands that had been issued. The first contact we had from the
3 Strategic Group was after the December rents had been attained as a result of Sun Life's
4 assignment of rents that they exercised.

5
6 So on December -- in and around December 1st, Sun Life received approximately
7 \$740,000 which is the monthly rent payable. I will note -- because it's relevant later, and
8 it's in particular in Mr. Estrada's supplemental affidavit -- we talk about the fact that yes,
9 there is a lease, and the tenant continues to pay the lease, but the tenant is not in the
10 building. And there is -- so essentially, the building is substantially vacant, and the
11 current lease expires in -- I believe it's in March, but in any event, it's in 2021.

12
13 THE COURT: Yes.

14
15 MS. BOURASSA: The other fact I would point you to -- and this
16 might be worth turning to if you have Mr. Estrada's supplemental affidavit, which is the
17 skinny one from Wednesday, is exhibit B there, and maybe hold that handy because I
18 will, at least by reference, refer to the -- to exhibit A, the confidential exhibit.

19
20 THE COURT: Okay. Just give me a minute. I have ... Nope.

21
22 MS. BOURASSA: My Lady, if you can't lay your --

23
24 THE COURT: I've got it.

25
26 MS. BOURASSA: Oh, okay.

27
28 THE COURT: I just --

29
30 MS. BOURASSA: I was going to say if you can't lay your hands on
31 it, I can very -- it's a very small point.

32
33 THE COURT: Yeah. No. I've got it.

34
35 MS. BOURASSA: I simply wanted to refer to exhibit B which is a
36 letter from Strategic's general counsel on December 4th, and this is where I say the first
37 contact we had was after the December rents were taken --

38
39 THE COURT: Okay.

40
41 MS. BOURASSA: -- and the Strategic Group was looking to

1 Sun Life to fund operating costs for the month of December. And the point of this
2 exhibit is simply to say that the rents, as I mentioned, were approximately \$740,000 a
3 month. In November in addition to receiving that amount, Strategic did not make the
4 final mortgage payment of just under \$300,000, and the operating costs are
5 approximately 200,000 a month.

6
7 THE COURT: I see that.

8
9 MS. BOURASSA: So essentially, they received 740 November 1st.
10 Their costs for November -- assuming they're the same as December -- would be
11 approximately 200,000. Their op costs for December -- approximately 200,000 -- which
12 if they had held on to the rental payments November 1st and not moved them around the
13 structure, as we'll come to, there would have been plenty of money to pay both November
14 and December operating costs, but we're in a situation which I will speak to in a moment
15 where the *CCAA* proposal is that our property be an inter-entity borrower.

16
17 THE COURT: Yeah. I saw significantly.

18
19 MS. BOURASSA: Yes.

20
21 THE COURT: Yeah.

22
23 MS. BOURASSA: And so our -- well, I -- significant -- it's only the
24 one month, but the point is it should never be.

25
26 THE COURT: Okay.

27
28 MS. BOURASSA: And we'll come to the numbers on that. But it
29 is Sun Life's position that the retraction of the final payment on November 5th and the
30 failure to engage with Sun Life in any way until December 4th after we had attorned
31 rents, as was our right at the beginning of December, shows a complete lack of good faith
32 on the part of the applicant companies.

33
34 Mr. Collins indicated yesterday that nothing could have been done to gain consensus with
35 the mortgagees. I would submit that that's a very simply statement to make when no
36 efforts were made. We were out there, we were matured, and in fact, we were expecting
37 to be contacted. But clearly, the Strategic Group was in the process of preparing these
38 proceedings, and did not speak to their lenders, and were effectively hoarding cash so that
39 they could fund going into the proceeding.

40
41 And as I mentioned -- so I mentioned the significant surplus, and you don't need to turn to

1 it, but I'll maybe just make -- give you the reference which is paragraph 374 of
2 Mr. Mamdani's first affidavit. In that paragraph, he indicates that municipal property
3 taxes had not paid on our building.

4
5 THE COURT: I see that.

6
7 MS. BOURASSA: And so we say, where did the money go?
8 When --

9
10 THE COURT: What are the taxes?

11
12 MS. BOURASSA: Pardon me?

13
14 THE COURT: What are the taxes? These are the taxes for
15 2019?

16
17 MS. BOURASSA: They are the taxes for 2019. I'm not sure if that
18 is in the record or not, My Lady. It probably is somewhere.

19
20 THE COURT: I don't recall. I know the -- one of the charts in
21 Mr. Mamdani's second affidavit is supposed to be net of property tax accruals, but I'm not
22 sure if they're ever set out. I don't think so.

23
24 MS. BOURASSA: And I'm -- I certainly do not specifically know
25 the answer to that.

26
27 THE COURT: Okay. All right.

28
29 MS. BOURASSA: But we can --

30
31 THE COURT: But significant, one would think, given the
32 value of the property.

33
34 MS. BOURASSA: Well --

35
36 THE COURT: We're guessing. Okay.

37
38 MS. BOURASSA: -- we have issues on value as well, right?

39
40 THE COURT: Okay. Yes. Okay. But given what the
41 minimum value must be.

1
2 MS. BOURASSA: The point I would think -- they're clearly
3 something --
4
5 THE COURT: Yeah.
6
7 MS. BOURASSA: -- and the point is that there was over
8 \$500,000 --
9
10 THE COURT: They weren't paid. Okay.
11
12 MS. BOURASSA: -- a month surplus, yet property taxes are not
13 paid.
14
15 THE COURT: Yeah. Yeah. So assuming -- yeah --
16 extrapolating out of the year, they would have had \$3 million surplus and yet a significant
17 payable has --
18
19 MS. BOURASSA: I think it's 6 million. Five hundred thousand --
20
21 THE COURT: Sorry. Six. Sorry.
22
23 MS. BOURASSA: Yeah. And that's -- that is my point.
24
25 THE COURT: Okay. Got it.
26
27 MS. BOURASSA: If there was a \$6 million surplus on this
28 property, why were taxes not paid, and why is this property an inter-entity borrower?
29
30 THE COURT: Well, I think we can guess why they weren't
31 paid. The question is: Where did the money go?
32
33 MS. BOURASSA: Absolutely. Absolutely that is the question.
34
35 So I think I've made my point without turning to the exhibit, so I won't belabour the fact.
36 Let me just ... I think the summary here is it's our view that there's clearly an issue with
37 these unauthorized inter-entity transactions, and what we would say is it's been
38 mismanagement of the -- of the funds to our detriment, and this is one of the reasons that
39 there's a, you know, loss of confidence, loss of faith, loss of trust -- were all the different
40 words yesterday -- but this is supportive of that in respect of Sun Life specifically.
41

1 And now I do want to turn to -- it's the -- it's that exhibit I've been referring to that shows
2 we're inter-entity borrower. So it's exhibit either 1 or A to the second Mr. Mamdani
3 affidavit.

4

5 THE COURT: Yeah.

6

7 MS. BOURASSA: Yeah. Exhibit 1. And now I'd like to speak to
8 prejudice. I'm trying to be real quick here, My Lady --

9

10 THE COURT: Okay.

11

12 MS. BOURASSA: -- because I know there are a lot of people
13 behind me. I'm not rushing you.

14

15 THE COURT: No, no, no, no.

16

17 MS. BOURASSA: I'm just saying --

18

19 THE COURT: That's fine.

20

21 MS. BOURASSA: -- I'm going to just cut to the -- cut to the
22 arguments. I think the law and everything else was covered yesterday.

23

24 THE COURT: Okay.

25

26 MS. BOURASSA: If we look at that exhibit A, you will see our
27 property is first in line --

28

29 THE COURT: Right.

30

31 MS. BOURASSA: -- which makes it a lot easier to find other than
32 the small print.

33

34 THE COURT: Right.

35

36 MS. BOURASSA: But if you look at that column that says
37 "restructuring costs" --

38

39 THE COURT: Right.

40

41 MS. BOURASSA: -- so that's the sixty-four six.

1
2 THE COURT: Right.

3
4 MS. BOURASSA: So sixty-four and a half thousand dollars per
5 month because this is December, and when I look to January, it's the same. I'm not going
6 to -- it's the same in February, but I'm not going to go further than that because the point
7 here is that that is approximately \$129,000 of restructuring costs that are based on the
8 IFRS valuation. That's what the affidavit says that how they attributed the restructuring
9 costs was based on that IFRS valuation which was a confidential exhibit, I believe, to the
10 first affidavit.

11
12 We were provided with the particular one for Sun Life, and the note I would make here is
13 if you look at confidential exhibit A to Mr. Estrada's supplemental affidavit, the value
14 that Sun Life would put on the property is less than half of the value.

15
16 My Lady, I've just passed a note to clarify -- so let me just finish my thought. It's -- our
17 value is less than half the value in the IFRS --

18
19 THE COURT: Yeah.

20
21 MS. BOURASSA: -- and that's the value that goes to attributing the
22 restructuring costs. That really is to point to prejudice to us, and then I will come to the
23 restructuring costs as well, but I will clarify one point. I've had a note passed to me that
24 in fact the Strategic Group's GC did reach out to us on November 27th.

25
26 THE COURT: Okay.

27
28 MS. BOURASSA: So I had mentioned December 4. It's actually
29 November 27. December 4 was the letter with respect to the operating costs.

30
31 The further point I wanted to make about the restructuring costs though -- and this goes to
32 prejudice, and Mr. Kruger referred to it yesterday -- this is approximately \$129,000 over
33 December and January for a company that should have had \$500,000 sitting in its bank
34 account on December 1st at least, and that is more than 20 percent of the proposed
35 receiver's charge. And so there is a significant funding difference between what is being
36 proposed in the interim receivership and what is being proposed in these *CCAA*
37 proceedings.

38
39 In addition, interest continues to accrue over the course of the proceedings at
40 approximately \$114,000 a month. As I mentioned, we don't know what has happened to
41 the money. We don't know where it has gone. But it clearly hasn't been used for our

1 property, to our detriment, which goes to loss of confidence.

2
3 I have noted about the existing tenant, and I would just conclude by saying that there are
4 legitimate concerns that Sun Life security will continue to erode over the course of these
5 proceedings, and it shouldn't be prejudiced by being stopped from enforcing its rights,
6 particularly in a circumstance where the stream of revenues will end in 2021. And as
7 Mr. Kruger said yesterday and as I think we all understand, this is not going to be a short
8 process.

9
10 So then to my last factor on the *CCAA* which is, you know, there is no business here to
11 restructure. There's been a complete lack of transparency, as Mr. Kruger noted. There
12 has been this cherry picking of who will be filed and who will not be filed. And
13 Mr. Kruger took you to the two charts in Mr. Mamdani's first affidavit yesterday which
14 very visually show that.

15
16 Additionally, there is a reference to 350 employees, 310 of which are listed as being
17 employed by the three entities that are not part of the *CCAA* proceedings. In respect to
18 that issue being raised, my friend Mr. Collins says, well, let's just throw them in. He's
19 trying to throw the employees in to give himself an argument that there's something to
20 restructure and that there is a business here. And we say there isn't. There are
21 60 different buildings with different complements of mortgagees and equitable interest
22 owners.

23
24 Lastly in terms of this cherry picking, my friend Mr. Collins referred to this as being an
25 integrated business. What it looks like to me is that we have two Hold Co's effectively,
26 being IEC and Audeamus, and then we have 60 buildings that are independent debtors to
27 their creditors. If it truly were integrated, we would have seen the entire structure filed.

28
29 My friend took some time yesterday -- Mr. Collins that is -- on the fact that in operating
30 businesses, we often see senior secured lenders stayed by a stay of proceedings. And
31 while I would note that we often see special carve outs and we often see that happening
32 where the senior secured lender and the debtor company come to court hand in hand, the
33 big difference is, as I said, this is not an operating business.

34
35 An operating business, if you take the analysis of -- call it an oilfield services company.
36 If you look at an energy industry versus this company, there you have contracts, and you
37 have a going concern value. Here, you have a bunch of rental properties that each have
38 their own independent sources of revenue. The break-up value, I would submit, is no
39 different than the going concern value. There is no going concern. And that is one of the
40 reasons that mortgagees, I think, often and generally are treated differently.

41

1 A couple of the cases that my friends refer to where stays of proceedings were provided
2 in respect of real estate entities, like *League Assets* or like *Walton*, both of those cases
3 had either retail or other investors across the group, whereas here have 60 buildings with
4 mortgagees, mortgage lenders. And while we learned yesterday that there is unsecured
5 debt -- which was new information to, I think, all of us on, what Mr. Kruger calls, this
6 side of the room, but I think it's most of the room but for a small carve out -- it is
7 relatively small unsecured debt compared to the secured debt.

8
9 So that was -- that was my point on the difference here. It's just that there isn't -- there
10 isn't an operating -- there isn't a going concern.

11
12 THE COURT: Okay.

13
14 MS. BOURASSA: We have a bunch of buildings.

15
16 THE COURT: Understood. Can I just take you back to your
17 first point about all of the first secured lenders --

18
19 MS. BOURASSA: Yes.

20
21 THE COURT: -- standing opposition to the granting of the
22 stay?

23
24 MS. BOURASSA: Yes.

25
26 THE COURT: Do -- aside from your client -- the Equitable
27 Bank who are lenders on the non-applicant but stay parties -- are there any other counsel
28 for lenders of that nature in the room?

29
30 MS. BOURASSA: Being parties that are not *CCAA* debtors?

31
32 THE COURT: Right. Parties who have been stayed for
33 non-applicants.

34
35 MS. BOURASSA: (NO AUDIBLE RESPONSE)

36
37 THE COURT: No. Okay. I just wanted to make sure you were
38 the --

39
40 MS. BOURASSA: Yeah. I'm not sure.

41

- 1 THE COURT: -- that Equitable Bank was the only ones.
2
- 3 MS. BOURASSA: I think Duncan were the other ones, and I'm not
4 sure that there's anyone, other than obviously Telus has -- oh, here we have --
5
- 6 THE COURT: No. Mr. Coombs?
7
- 8 MR. COOMBS: Canada ICI is on that one as well. So ...
9
- 10 THE COURT: Okay. Are you here representing them in any
11 capacity with respect to that?
12
- 13 MR. COOMBS: Not with respect to that.
14
- 15 THE COURT: No.
16
- 17 MR. COOMBS: Our position will be the same as Ms. Bourassa's
18 on that.
19
- 20 THE COURT: Okay. No. I appreciate that from your affidavit
21 that your -- that Ms. Redecopp (phonetic) filed. I'm just wondering if there's anybody
22 else for those lenders here.
23
- 24 MR. KRUGER: Industrial Alliance, which we represent, is also
25 on one (INDISCERNIBLE) properties.
26
- 27 THE COURT: Okay.
28
- 29 MR. KRUGER: So companies. Yeah.
30
- 31 THE COURT: Thank you. Just trying to get the facts. Okay.
32
- 33 MS. BOURASSA: So, My Lady, the position of Sun Life is that
34 this -- there is loss of confidence, loss of faith in management, and there are facts to
35 support that loss of confidence. There is extreme prejudice to Sun Life as there is to
36 other mortgagees in these proceedings being continued, and additionally, it is just
37 inconvenient in the circumstances to have a receiver appointed.
38
- 39 Now, I had the -- had the pen on the proposed form of interim receivership order. I'm not
40 proposing to take you through that now as I think that would be premature, but just to
41 note that I will be prepared to take you through later if that is an order that you are

1 inclined to consider making. And I --

2

3 THE COURT: Okay. Is this the form that's attached to your
4 affidavit -- or excuse me -- to your application or filed --

5

6 MS. BOURASSA: It is. Yes. Yes.

7

8 THE COURT: Okay. It's the same form?

9

10 MS. BOURASSA: Yeah.

11

12 THE COURT: Okay.

13

14 MS. BOURASSA: Ms. Gurofsky and I worked cooperatively to try
15 and cobble that together --

16

17 THE COURT: Put it all together. Okay. All right.

18

19 MS. BOURASSA: -- cobble that together. And I would also
20 note --just since we were talking about the -- my comment relating to all of the first
21 mortgagees being signed onto that order, Equitable Life, which is not my client but is
22 Mr. Maruyama's client from Parlee McLaws -- Mr. Maruyama was here yesterday. He
23 had to leave. He did ask us to indicate to the Court that they are signed onto that order,
24 and they continue to support it.

25

26 THE COURT: Okay.

27

28 MS. BOURASSA: So, My Lady, my other submissions are really
29 about why a receiver is more appropriate in the circumstances. I can make those now, or
30 I can sit down and let others say their peace --

31

32 THE COURT: It's really up to you.

33

34 MS. BOURASSA: -- on the *CCAA*.

35

36 THE COURT: If you feel that they -- that they belong in your
37 submissions with respect to opposing the stay, then let's hear them.

38

39 MS. BOURASSA: Sure. I'll just quickly say that we obviously
40 submit that the *CCAA* is not appropriate, that it's just inconvenient for Sun Life to be able
41 to continue its enforcement proceedings. There is no operating business, as I mentioned,

1 which may weigh in favour in some circumstances.

2
3 And yesterday we talked about the case law that talks about you have to look at the
4 specific circumstances in every case, and that's where I say, this is not a case that lends
5 itself to a *CCAA*. Mr. Kruger spoke yesterday about the fact that there will be a very
6 orderly approach.

7
8 There has been a lot of work done by both the mortgagees and Telus as both mortgagee
9 and equitable -- and holding an ownership interest in these properties. We are proposing
10 an orderly approach with what -- though the order is perhaps thick -- what is a very
11 targeted response. There is no power of sale in the interim receivership order. The idea
12 is to allow the mortgagees a situation where they have the ability and the transparency to
13 see what is going on and to make a determination as to the best way to enforce upon their
14 security. These are sophisticated parties.

15
16 With respect to the Sundance properties, I would specifically note that all of the first
17 mortgagees -- the second mortgagee on our property, who is represented by Mr. Kruger,
18 and the 65 percent co-owner all support the appointment of a receiver.

19
20 THE COURT: Okay.

21
22 MS. BOURASSA: So I have nothing further at this time, My Lady,
23 unless you have any questions.

24
25 THE COURT: I do not. Thank you.

26
27 **Submissions by Mr. Van de Mosselaer**

28
29 MR. VAN DE MOSSELAER: Good morning, My Lady. For the record,
30 Van de Mosselaer, initials R.S., from the Osler firm. I'm here today with my partner
31 Ms. Sandler and my associate Ms. Paplawski. And as you will know, we are counsel to a
32 number of co-owners on various *CCAA* properties, and those co-owners are owned by
33 collectively the Telus Pensions Master Trust, and I'm going to refer to our clients -- the
34 holding companies collectively as the Telus co-owners.

35
36 And as you know, we have filed and provided the Court and the parties with an affidavit
37 of David Lawson which was sworn on December the 18th, and you will have seen from
38 his affidavit that the Telus co-owners are supportive of the lenders' application to oppose
39 the *CCAA* extension and to appoint a receiver. I want to point out that Telus itself is not
40 an applicant here today, but we are standing shoulder to shoulder with the mortgage
41 lenders who are standing shoulder to shoulder with each other.

1
2 And our affidavit was prepared to oppose Strategic's application and support the lenders
3 and to really to do three things: Firstly, to outline the full relationship between the
4 Telus co-owners and the Strategic co-owners, which is something that was not done in
5 the applicant's original materials and only gave a partial snapshot of the relationship.
6 Secondly, to provide an explanation to the Court that -- as to how the Telus co-owners are
7 prejudiced by this filing, and by the continuation of the *CCAA* proceedings, and the relief
8 being sought. And thirdly, to demonstrate why the Telus co-owners are supportive of the
9 discontinuance of the *CCAA* proceedings and the appointment of the receiver.

10
11 I'm going to next, My Lady, take you to some of the highlights of the affidavit. I don't
12 think you need to look at the affidavit, but I think it's important that we understand the
13 co-ownership structure because it is quite complex.

14
15 THE COURT: And I have the affidavit and have read it --

16
17 MR. VAN DE MOSSELAER: Thank you.

18
19 THE COURT: -- cover to cover.

20
21 MR. VAN DE MOSSELAER: So the overview of the structure is critical to
22 understanding how it is that Telus is prejudiced by these proceedings. And in the first
23 Mamdani affidavit, he describes that there are 25 co-owned properties with
24 Telus co-owners, but that's only, as I said, a partial picture.

25
26 The Telus co-owners have co-ownership interests with Strategic in 95 commercial and
27 residential multi-family residential properties across the country in BC, Alberta, and the
28 Atlantic provinces. Only 25 of those 95 properties are subject to these proceedings.

29
30 But the important point to understand is that the Telus co-owners' interest in these
31 properties is beneficial. The Strategic general partner of each of the limited partnerships
32 which owns the properties -- the general partner holds title in trust for Telus as well as for
33 the Strategic limited partnerships. So title to each of the co-owned properties that is
34 subject to the *CCAA* is held by the Strategic GP in trust for the co-owners. There's a
35 single title for each property.

36
37 So for purposes of mortgage financing, the parties -- Telus and Strategic -- would have
38 had to agree as between themselves how the properties will be managed, how they'll be
39 financed, how the revenue streams will be managed and allocated, and how to divide up
40 responsibilities as between them because the mortgages that my friends represent -- the
41 mortgage lenders -- their registration is against 100 percent of the title.

1
2 You will know there are three types of mortgage financing. This is described in our
3 affidavit, and I believe that a sample of the co-owners' agreement between Telus and
4 Strategic is attached to the confidential affidavit which was filed by the applicants.
5 I won't -- I'm not going to go into details on these, but I'm going to highlight them 'cause
6 I'm going to talk about the third type in a moment.

7
8 The three types of mortgage financing that are at play in these properties are called
9 existing financing, permitted financing, and co-owner separate financing. And it's that
10 last category which is particularly important. But all three types of mortgage financing,
11 which are permitted under the co-owners' agreements, are registered against the title
12 which is held in trust for the co-owners including Telus's interest.

13
14 And we note in our affidavit, My Lady, that of the 25 properties that are subject to these
15 proceedings, Strategic and Telus are liable in various percentages for financing on 14 of
16 those 25, and Strategic is 100 percent liable on 11 of those 25. But that is just a question
17 of who is liable on the covenant. So on 11 of the 25 properties, Strategic is not liable on
18 the covenant under the mortgage, but their property interest still stands as security for that
19 mortgage.

20
21 THE COURT: Sorry. Did you mean to say Strategic is not
22 liable?

23
24 MR. VAN DE MOSSELAER: Sorry. Did I say --

25
26 THE COURT: I think you meant to say the co-owners are not
27 liable --

28
29 MR. VAN DE MOSSELAER: I misspoke.

30
31 THE COURT: -- on 11.

32
33 MR. VAN DE MOSSELAER: Telus is not liable on --

34
35 THE COURT: On the 11.

36
37 MR. VAN DE MOSSELAER: -- on the covenant on 11.

38
39 THE COURT: Right.

40
41 MR. VAN DE MOSSELAER: But its title still stands as security for --

1
2 THE COURT: Yes.

3
4 MR. VAN DE MOSSELAER: -- for the mortgage. The title is fully charged
5 by the mortgage lenders, and the revenue stream from those properties is charged by the
6 mortgage lenders.

7
8 Moreover -- and I'm going to come back now to the co-owner separate financing that I
9 mentioned a moment ago -- the co-owners' agreements permit the parties to place what's
10 called co-owner separate financing. So permitted in existing financing is financing which
11 is used to purchase or fund the property, and the parties have agreed how they're going to
12 split up responsibility for those mortgages.

13
14 But co-owner separate financing is specific financing that a co-owner can take out that it
15 is solely responsible for on the covenant, and the agreements provide that a co-owner is
16 only entitled to place co-owner separate financing up to 80 percent of the value of its
17 interest. Again, the important point is that even co-owner separate financing is secured
18 against the single unified title.

19
20 Telus has not taken out any co-owner separate financing, but Strategic has. And that
21 co-owner separate financing that has been taken out by Strategic is registered against the
22 title which is held in trust by Strategic for the co-owners. The result of this structure is
23 that in a market where property values have declined, as has been the case in Calgary,
24 and in a circumstance where amounts that are owing under the mortgages are increasing
25 due to non-payment of principal and interest and due to various other defaults, which is
26 our case here -- and we have how many lawyers in the courtroom, all of whom are going
27 to be including their costs in the mortgages which are registered against Telus's
28 interests -- Telus's title.

29
30 So where property values are declining, mortgage amounts are increasing, and especially
31 where Strategic has obtained co-owner separate financing, as it has done on 6 of the
32 25 properties in this filing, in those situations which -- all of which have occurred, the
33 amount of Strategic debt on each property threatens to exceed the value of its equity
34 interest.

35
36 And it begins therefore because it's a single unified title -- where that happens it starts to
37 eat into Telus's equity interest in the properties, and that has important implications for
38 these *CCAA* proceedings and particularly for the cash management structure that is being
39 sought by the applicants.

40
41 Mr. Lawson notes very clearly and specifically in his affidavit that Strategic is

1 overleveraged. We admit that we do not have up-to-date performance information or
2 appraisals, and that is because getting information from Strategic, as you've heard from
3 the other respondents, is an ongoing challenge.

4
5 We don't have fulsome and timely and complete reporting. We can't, therefore, reliably
6 and specifically estimate what equity Strategic has in these properties, but Telus is able to
7 undertake its own analysis based on what information it has. And based on that analysis,
8 Mr. Lawson has sworn that: (as read)

9
10 Strategic has little to no equity in the Telus co-owned properties
11 and that any net equity that Strategic does have is nominal.

12
13 And that's a quote from his affidavit at paragraph 57.

14
15 Now I want to point out, My Lady, that, as you know, yesterday morning Mr. Mamdani
16 swore and filed his affidavit number three, and we don't need to look at it because I'm
17 going to tell you what's not in his affidavit. He -- in his affidavit, he takes some issue
18 with some of the things we've said in Mr. Lawson's affidavit. He takes issue with our
19 suggestions with respect to reporting, our suggestions with respect to imaging -- and I'm
20 going to come to those things.

21
22 But he takes no issue with our repeated suggestion that Strategic has little to no equity in
23 these properties -- not a mention of it, not a single word, not even a mere denial. And
24 that, My Lady, I submit, is telling. And yet Mr. Collins yesterday in his submissions took
25 you to Mr. Lawson's sworn evidence on these points and had the -- frankly the temerity to
26 suggest that the Court should simply ignore that evidence.

27
28 It's a shocking position for a company who is bringing a *CCAA* application to take, and
29 it's inappropriate, in my submission, to suggest that a major stakeholder -- like Telus who
30 is in real time providing its best available information to the Court in a circumstance
31 where we have an information deficit -- for the company to stand up and say that the
32 evidence should be ignored when the applicant himself can't be bothered to deny it.

33
34 So the result of all of this, My Lady, is that given the ownership structure, given the fact
35 that we're dealing with beneficial interests under a unified title, and the lack of Strategic
36 equity in these properties and the co-owned properties that are subject to the *CCAA*, the
37 reality is that this structuring, if it's permitted to continue, will be done on the back of
38 Telus's equity. It would simply mean that Telus's interests in these properties is bearing
39 the costs of the charges and the restructuring costs that are being sought by the applicant.

40
41 Mr. Collins suggested yesterday that -- you'll recall that there was some discussion at the

1 initial filing -- initial application that the definition of property would clearly only include
2 Strategic's interests in a property -- would not include Telus's interest in the property.
3 All well and good.

4
5 And Mr. Collins therefore yesterday suggested that when he's talking about the charges
6 and particularly the inter-equity -- inter-entity charges that those charges would only
7 attach to Strategic's interest to the property. That would be a neat trick because that's
8 impossible, or at least if it's possible, it's a difference without a distinction because let's
9 think about this for a moment.

10
11 We're talking about a single unified title, each of which is encumbered by one or more
12 mortgages, and if the applicants are successful in getting their charges which then attach
13 to the title -- even if we say hypothetically it only attaches to Strategic's interest because
14 it's priority charge, all that does is push the secured charges -- the secured debt down into
15 Telus's equity. It makes no difference to Telus. It's still additional debt load going into
16 our equity. So it's impossible. What they suggest is simply an impossibility.

17
18 Moreover, we have escalating costs under the mortgage. We have a roomful of lawyers
19 here, all of which are ultimately going to -- the costs of which are going to come to bear
20 on the mortgages and on Telus's equity in the properties. Strategic is not paying principal
21 and interest. Costs are increasing. Instead, it's using its cash flow to fund its
22 restructuring efforts. Of course when you stop paying your secured debt, the organization
23 cash flow is fairly isolated.

24
25 But all of that -- all of that is serving to erode Telus's equity. The situation is intolerable,
26 and Telus is not prepared to have its equity continue to be gored and eroded away to pay
27 for a restructuring plan which is clearly doomed to fail and which will cost Telus millions
28 of dollars along the way.

29
30 Let me address for a moment then some of the issues about the relationship -- we've
31 talked about the structure. Now I want to talk about the relationship between Telus and
32 Strategic. First of all, they're governed -- the two main documents which govern the
33 relationships -- the co-owners' relationships on the various properties are called a
34 co-owners' agreement and a property management agreement, and there are various and
35 numerous contractual obligations between the parties as to how they conduct themselves,
36 how financing works, how obligations flow back and forth.

37
38 But I want to pause for a moment to make what I think is a very important point. Telus is
39 here today in a unique position -- obviously unique because we are a co-owner whereas
40 the other respondents are lenders. We're a lender, too, on some properties, but primarily,
41 we're here as a co-owner.

1
2 But more important than that is the fact that Telus is unique from the mortgage lenders
3 who are here today because our -- the mortgage lenders are here in a debtor-creditor
4 relationship. They have a contractual relationship, and our relationship with Strategic of
5 course is also contractual. They have a number of contractual obligations to us.
6

7 But in addition to a contractual relationship -- in addition to having contractual
8 obligations, Strategic is our trustee. Strategic holds our property in trust. Strategic holds
9 our revenue stream in trust. So in addition to contractual obligations, Strategic owes
10 Telus fiduciary obligations. They have obligations of the highest duty of loyalty and
11 honesty and transparency. They have an obligation to manage the assets prudently and
12 responsibly. They have an obligation to communicate with us because they are our
13 trustee.
14

15 And it is in this context that Strategic's position that they are taking on this application
16 with respect to reporting to us the way that cash has managed historically is
17 incomprehensible and shocking. And I want to make three points in particular: The first
18 is the movement of money amongst various Strategic accounts which they admit they
19 have done. The second is lack of fulsome and timely reporting. And then third is our
20 efforts to try and obtain information from the company, and this is the imaging issue that
21 I'll touch on briefly.
22

23 Firstly, the movement of money. We've heard a lot over the last several hours about the
24 finances of the company and things we don't know about the finances of the company,
25 and Mr. Kruger and Ms. Bourassa spent some time talking about that. There is a
26 shocking lack of transparency, but there are some things we do know.
27

28 We know that the company's accounting records are a mess and are not up to the standard
29 that one would expect to see in a typical *CCAA* filing. And as a result to a large extent,
30 the monitors had to reconstruct the books and records, and the company and the monitor
31 have struggled mightily just to compare the cash flow statements.
32

33 The company has admitted in its initial affidavit to moving cash around amongst its
34 various entities on an as-needed basis. And very troublingly, the company can't even tell
35 us where the money has gone, or how much has been moved around, or what it's been
36 used for.
37

38 And Mr. Lawson says at paragraphs 70 and 71 of his affidavit that our trustee -- the
39 company charged with the fiduciary obligation to manage our property and our cash --
40 can't even confirm that our revenue has not been diverted. I would have thought that's
41 pretty low-hanging fruit, My Lady, but they can't even confirm that.

1
2 And I want to take you, My Lady, to paragraph 70 and 71 of Mr. Lawson's affidavit if
3 you have that handy.

4
5 THE COURT: I'm there. Page 35.

6
7 MR. VAN DE MOSSELAER: And at the bottom on -- paragraph 70, bottom of
8 page 34, I won't take you through the whole paragraph. But at -- you'll see the sentence
9 at the second last line which reads: (as read)

10
11 At that point --

12
13 And this was a discussion that was had just a few days ago: (as read)

14
15 At that point, it was unclear what other movement of
16 co-ownership funds had occurred. Strategic was not able to
17 provide confirmation that Telus's proportionate interest in such
18 funds --

19
20 So this is -- these are the rental incomes, and Telus has a -- owns a percentage of those:
21 (as read)

22
23 -- was not able to confirm that Telus's proportionate interest in
24 such funds had not been diverted to cover Strategic's share of
25 funding requirements on other co-owned properties.

26
27 They couldn't confirm that.

28
29 And paragraph 71 is a related but different point: (as read)

30
31 Strategic was also not able to confirm to Telus whether funds
32 generated from co-owned properties had been diverted to meet
33 the operating or other funding requirements of non-co-owned
34 properties.

35
36 They couldn't tell us that either.

37
38 Now, Mr. Collins yesterday took you to paragraph 49 of Mr. Mamdani's first affidavit.

39
40 THE COURT: Okay. I'm there. Page 19.

41

1 MR. VAN DE MOSSELAER: Yes. Page 20, paragraph 49?
2
3 THE COURT: Forty-nine of the first affidavit?
4
5 MR. VAN DE MOSSELAER: Yeah. It's paragraph -- it's page 20 of my --
6 maybe it's a printing issue.
7
8 THE COURT: Okay. In any event, paragraph 49.
9
10 MR. VAN DE MOSSELAER: Anyway, this is paragraph 49 which begins --
11
12 THE COURT: Beginning "attached hereto" --
13
14 MR. VAN DE MOSSELAER: -- "the IEC (INDISCERNIBLE) financial
15 statements"? That -- that paragraph?
16
17 THE COURT: No. Hang on a second. I had a draft delivered
18 on the Friday before, and I had another ...
19
20 MR. VAN DE MOSSELAER: I'm trying to locate another copy for you,
21 My Lady.
22
23 THE COURT: No, no. I have it.
24
25 MR. VAN DE MOSSELAER: You have it?
26
27 THE COURT: Yeah.
28
29 MR. VAN DE MOSSELAER: Okay. Paragraph 49?
30
31 THE COURT: Just give me -- just give me a minute to get to
32 the right page. Okay. Forty-nine, page 20.
33
34 MR. VAN DE MOSSELAER: So just to -- again what Mr. Lawson says at
35 paragraphs 70 and 71 is two things. He says Strategic couldn't confirm to us that
36 co-owned money wasn't used -- our co-owned money wasn't used to meet Strategic's
37 co-owned obligations. That's the first thing. And the second thing is they couldn't
38 confirm that our co-owned money wasn't used to --
39
40 THE COURT: Yeah.
41

1 MR. VAN DE MOSSELAER: -- meet non-co-owned obligations. And
2 yesterday, Mr. Collins took you to this paragraph to say, well, there's just a contradiction
3 in the evidence. And it's the sentence which begins at the end of the third line which
4 says: (as read)

5
6 The applicants heretofore have utilized a central cash
7 management system that facilitated the movement of funds
8 between entities on an as-needed basis.

9
10 And then in parentheses: (as read)

11
12 To be clear, transfers in respect of co-owned properties have
13 occurred as between the same co-owner Hold Co's.

14
15 THE COURT: "Have only," I think --

16
17 MR. VAN DE MOSSELAER: Have only.

18
19 THE COURT: -- is what you want to emphasize.

20
21 MR. VAN DE MOSSELAER: Sorry. I misspoke. Yes. Good catch.
22 Thank you: (as read)

23
24 -- have only occurred as between the same co-owner Hold Co's.

25
26 Now, I have a few observations on that. First of all, Strategic is expecting us and this
27 Court to take comfort from a single parenthetical phrase stuck into the middle of this
28 paragraph with not a shred of corroborating documentation. Secondly and I think equally
29 importantly, this doesn't address at all the question that Mr. Lawson swears to in
30 paragraph 70, in other words whether Telus's co-owned money is being used to pay
31 Strategic's co-owned obligations.

32
33 And I want to -- if you have Mr. Mamdani's third affidavit, which was filed yesterday
34 morning, My Lady --

35
36 THE COURT: Right here.

37
38 MR. VAN DE MOSSELAER: -- you may recall -- and it's at paragraph 18 --

39
40 THE COURT: I'm there.

41

1 MR. VAN DE MOSSELAER: -- Mr. Mamdani takes issue with Mr. Lawson's
2 evidence at paragraph 28 of his affidavit, and it's -- paragraph 28 of Mr. Lawson's
3 affidavit essentially says that the -- under the co-ownership agreements and under the
4 property management agreements, the money from each property was supposed to be
5 deposited into separate accounts and kept separate. And we say -- and Mr. Lawson says
6 it hasn't done, and Mr. Mamdani takes issue with that.

7
8 The problem is not the separate accounts. The separate accounts are set up. The problem
9 is that they weren't kept separate. They admit to having moved money around contrary to
10 Strategic's contractual and fiduciary obligations. So the separateness of the accounts
11 wasn't maintained. It doesn't do much good to have separate accounts if you're just going
12 to co-mingle the funds.

13
14 And what the applicants say -- the only thing they say in response to all of that is, well,
15 this was all done at Telus's request. Well in response to that, My Lady, I say the
16 following.

17
18 First of all, Telus has no information about that. There's not a shred of paper
19 corroborating Strategic's assertion in this regard. Strategic has contractual and fiduciary
20 obligations to manage our funds, to keep them in separate accounts, and yet they suggest
21 that those contractual and fiduciary obligations, by which incidentally Strategic is
22 entrusted with millions of dollars of Telus's money, were varied apparently without any
23 supporting documentation. We submit, My Lady, that the Court ought to be very careful
24 about accepting such bald unsupported suggestions about such important matters.

25
26 The second issue is the reporting issue which is similar to the first. Strategic has
27 contractual and fiduciary obligations to report to us as our trustee, and if they're asking
28 this Court to believe that those important contractual and fiduciary obligations were
29 varied apparently without the slightest shred of paper.

30
31 Which brings me to the attempt that we've been undertaking to obtain information to
32 figure out what's happened with our money. Given the sorry state of Strategic's books
33 and records and given the lack of timely and fulsome reporting, Telus engaged PwC to
34 attempt to obtain information so that we could do our own accounting and figure out what
35 happened with our funds.

36
37 I pause for a moment just to observe that Mr. Collins suggested that there's no legal
38 obligation for them to have done this, and I hasten to disagree, given the fiduciary nature
39 of the relationship and the fact that they are in charge of our money. I think it's entirely
40 legitimate for us to say, we want to see what you've done with our money, please.
41 Thank you very much.

1
2 I'm not going to spend a lot of time on this point because, frankly, it's a bit of a
3 distraction, and it's a little bit unseemly, but I have to reply to some of the suggestions
4 that my friend Mr. Collins made yesterday. We take significant issue with some of the
5 comments that Mr. Mamdani made at paragraph 11 to 16 of this third affidavit, if I can
6 ask you to turn to that, My Lady.
7

8 THE COURT: Okay. Sorry. Eleven to 16?
9

10 MR. VAN DE MOSSELAER: Yes. So this is the whole issue of the provision
11 of information since the initial order. This has to do with our request to image their
12 servers so that we can get access to their books and records.
13

14 THE COURT: Yeah.
15

16 MR. VAN DE MOSSELAER: Paragraph 13 -- the requested imaging -- the
17 requested -- the important word here is "requested:" (as read)
18

19 The requested imaging was completed on December 16th, 2019.
20

21 That is untrue. Paragraph 15 -- it ends with the phrase: (as read)
22

23 The co-owners were informed that the co-owners requested
24 imaging had been completed.
25

26 That is similarly untrue.
27

28 And it's untrue for the following reasons -- and I'm going to give you a chronology that
29 will outline why the requested imaging has not been completed. It was not completed on
30 December 16th; it has not been completed as we stand here today insofar as we are
31 aware.
32

33 At 7:07 PM on December the 16th, PricewaterhouseCoopers wrote to the company's
34 counsel and asked for the status of the imaging, and they specifically asked whether the
35 company that had been engaged to do the imaging was imaging the books and records
36 that the company -- that reside outside the platform. There was additional books and
37 records that had not been imaged, and the request was, are you going to image those, and
38 if so when? And the reply came back that the technicians had arrived, and there was a --
39 2.5 terabytes of information that was being imaged, and they'll get back to us.
40

41 The next day -- the afternoon of December the 17th, there was a call between

1 PricewaterhouseCoopers, the company, and the monitor where the company commented
2 that there was some difficulty because the company didn't understand the
3 IT infrastructure that would allow them to do that additional imaging, and they were
4 going to have to set up a call with a company IT person by the name of Randy Ferguson
5 in order to do that. That was on December the 17th.

6
7 That meeting hasn't happened. The additional requested information has not been imaged
8 insofar as we're aware. So to say that the requested imaging was completed on
9 December the 16th ignores the fact that we've requested additional books and records to
10 be imaged which have not yet been imaged. We advised company's counsel of our
11 disagreement with those provisions of the affidavit yesterday morning.

12
13 So in summary, My Lady, the bottom line here is that Strategic has clearly and admittedly
14 flaunted its reporting and cash management obligations which it has both under our
15 contracts as well as pursuant to its obligations as our trustee. And Telus is being
16 prejudiced by this and can't even find out where its money went.

17
18 I want to address the proposed cash management plan by the companies and really what
19 this amounts to is simply moving money around between various entities, and Telus
20 opposes that for a number of reasons. First, the proposal would be implemented without
21 any regard for whether Strategic actually has any equity in any of the properties which
22 are being forced to be lenders.

23
24 And if I can -- if you have the first Mamdani affidavit, My Lady, it's -- the formula is at
25 paragraph 14. Whoops, that's not right.

26
27 THE COURT: Page 10?

28
29 MR. VAN DE MOSSELAER: Where is that? Oh, the second -- I'm sorry,
30 My Lady. It's the second Mamdani affidavit.

31
32 THE COURT: Yeah.

33
34 MR. VAN DE MOSSELAER: So it's a pretty straightforward example that to
35 the extent that an amount of money is going to be required, it'll be shared amongst the
36 property based on the IFRS value which is the market value of the property. It's simply
37 an allocation method. But the problem is that this totally ignores the question of
38 whether -- whether Strategic has any equity in the properties that are going to be subject
39 to this charge.

40
41 So in the example set out in paragraph 14: (as read)

1
2 A property would be compelled to lend to another property in the
3 group an amount equal to its proportionate share that its market
4 value bears to the overall market value of the group.
5

6 Whether or not Strategic has equity in that property. And if that's the case, Telus is being
7 forced to be a lender. Telus doesn't want to be a lender. Telus isn't interested in having
8 its equity eroded any more than has already been the case.
9

10 And finally, it's worth noting that this is all out of cash flow and the roll ups, which are
11 exhibits 1 and 2 to the second Mamdani affidavit --
12

13 THE COURT: Yeah.

14
15 MR. VAN DE MOSSELAER: -- those are gross values; those are gross
16 revenues. And to the extent they are any of the co-owned properties, at least some of that
17 money is Telus's.
18

19 THE COURT: Sorry. The which properties?
20

21 MR. VAN DE MOSSELAER: The co-owned.
22

23 THE COURT: The co-owned. Yes. Of course.
24

25 MR. VAN DE MOSSELAER: So Telus is here this morning primarily as an
26 equity holder, and as I have mentioned, we are supporting the termination of the *CCAA*
27 proceedings and the applications for a receiver, which at first blush might seem a bit
28 unusual for an equity holder to be hoping that these companies go into receivership.
29

30 And why is that? Well, because we have concluded that that is the best and most
31 economical way to protect our equity in the co-owned properties. For the reasons that are
32 explained in Mr. Lawson's affidavit, we believe that the current *CCAA* process
33 jeopardizes our equity and that Strategic has effectively no equity in the co-owned
34 properties put at risk.
35

36 And my friend Mr. Collins yesterday suggested a number of times that a *CCAA* would be
37 preferable to individual enforcement actions, but that's not what we're talking about.
38 We're not talking about a free-for-all individual enforcement action. We're talking about
39 a highly coordinated and developed plans -- plan that the lenders have developed which
40 will see the properties properly managed once they're put into receivership and in a way
41 that will address health and safety concerns as well as the operations of the properties

1 going forward.

2
3 A large and reputable property manager has been lined up to take -- take on those
4 responsibilities, will work with Strategic's property management group to undertake an
5 orderly transition, and its process supported by the vast majority of lenders who have
6 agreed to work in a cooperative way.

7
8 I pause to note that Mr. Collins yesterday started out talking about lack of consensus.
9 I disagree. There's a large degree of consensus, just not with the companies.

10
11 The order that is being proposed by the applicants is an interim order which is designed
12 to avoid the chaos which might otherwise result from not simply extending the stay or
13 appointing the full receiver, and Telus is fully supportive of the lenders' efforts in order to
14 protect our equity and to provide clarity on the process and the costs going forward.

15
16 There's no restructuring here to be done. There's no germ of a plan that could possibly
17 garner the lenders' support. All there is is a process which will result in the companies
18 spending a lot of Telus's money.

19
20 We had not planned on -- we haven't filed a brief, and we had not planned on taking you
21 to any law, My Lady, but -- until yesterday when Mr. Collins handed up *League Assets*.
22 Now, I'm finished my submissions unless you have any questions, but what I would
23 propose -- because my partner Ms. Sandler was counsel to the monitor on *League Assets*,
24 and we think that that is a very instructive case for this Court because of what happened
25 in that case, and Ms. Sandler will speak to that if that's acceptable to you.

26
27 THE COURT: That's fine. I mean, Mr. Kruger alluded
28 yesterday that he had a colleague that had looked it up. In fact, I don't know if
29 Mr. Sentali's (phonetic) here, but he was one of the parties on it. In any event,
30 Mr. Kruger indicated it ended up not being successful. I do understand that.

31
32 MR. VAN DE MOSSELAER: But there's -- I think there's some -- some --

33
34 THE COURT: Some nuances?

35
36 MR. VAN DE MOSSELAER: -- some nuances --

37
38 THE COURT: Sure.

39
40 MR. VAN DE MOSSELAER: -- to that.

41

1 THE COURT: Sure. All right.

2

3 MR. VAN DE MOSSELAER: Ms. Sandler might be able to bring ... So unless
4 you have any questions, My Lady --

5

6 THE COURT: No, I don't.

7

8 MR. VAN DE MOSSELAER: -- those are all my submissions.

9

10 THE COURT: No, I don't. Thank you, Mr. Van de Mosselaer.

11

12 MR. VAN DE MOSSELAER: Thank you. Ms. Sandler, whenever you're
13 ready. I have the decision in front of me somewhere.

14

15 **Submissions by Ms. Sandler**

16

17 MS. SANDLER: Good morning, My Lady. Tracy Sandler from
18 Osler, Hoskin. I thought you might be interested to know it's minus 21 with the
19 wind chill in Toronto today.

20

21 Mr. Collins raised the case of *League* yesterday as a real estate restructuring case
22 supporting continuation of Strategic's *CCAA* and as my colleague -- my partner
23 mentioned, we acted for PwC as a court-appointed monitor in that matter before
24 Madam Justice Fitzpatrick, and I did want to make a couple of brief observations for this
25 Court. It's already been said that that was a different case for the complexity of it,
26 including a rete and a fund and 2,500 retail investors, et cetera. So I'm not going to talk
27 about that.

28

29 But for our purposes today, *CCAA* continued beyond the comeback because the mortgage
30 lenders signed up for that by the comeback. And that is because the monitor and the
31 company as it was at the time worked tirelessly in the days immediately following the
32 *CCAA* filing to convince the mortgage lenders -- a large and disparate group like the one
33 today -- to support the filing. And Strategic has failed to do that.

34

35 The monitor and the company in *League* managed to convince the mortgage lenders to
36 support the *CCAA* by doing the following: Firstly, it was clear that nobody trusted the
37 founders, so they were removed. Strategic has not done that. PwC became a
38 super monitor to ensure full control, comfort around cash, and direction as to where it
39 was to go, and in many respects, we would say it was essentially a receivership by
40 another name.

41

1 The monitor did substantial due diligence on the in the *CCAA* entities and the out of the
2 *CCAA* entities, referred to in that case as the yellow box and white box entities, to give
3 everyone involved comfort that the split was appropriate. And that important homework
4 was done before the filing, knowing that transparency in this regard was essential to
5 achieving mortgage lender support. Strategic has not done this work, and we have no
6 comfort. And with respect, neither the monitor, nor the consultant appear to have the
7 capacity to do this.

8
9 And in *League*, a detailed package of information regarding all properties and lenders
10 was delivered to the mortgagee so that everyone, including the Court, had a full picture of
11 the situation. And it was preliminary, but the mortgage lenders got full transparency on
12 everything. And as Mr. Kruger so eloquently noted yesterday, there is no such
13 transparency or planning from Strategic here.

14
15 And because this information showed material equity, the professional advisors and the
16 monitor were prepared to put their money where the analysis was and collectively
17 subordinated the charges to the mortgagees as clear evidence of good faith on the
18 go forward path.

19
20 So from Telus's perspective, the *League* case is a very different situation but quite
21 instructive for the Court and these debtors in that it provides a terrific example of how to
22 work with a large group of lenders to build support and consensus in immediate days of a
23 filing -- and if not before -- and how to best preserve value for the lenders as well as
24 equity. And Strategic has not done that here, as has been noted, but what remains is
25 consensus among the lenders and Telus that a receivership order should issue on a highly
26 coordinated and organized fashion.

27
28 Thank you, My Lady.

29
30 THE COURT: Thank you. Thank you, Ms. Sandler. Okay.
31 It's not obvious who should speak next. Mr. Gorman, did you want to add anything on
32 behalf of the monitor, or speak later, or not speak at all?

33
34 MR. GORMAN: I didn't know if any other lender wanted to
35 speak for the monitor.

36
37 THE COURT: I am sure that there are many. I'm about to take
38 a morning break, so I just wondered will you be -- will you be making submissions,
39 Mr. Gorman at the end of --

40
41 MR. GORMAN: Five minutes or less, My Lady.

1
2 THE COURT: Okay. Well, could we have them now or ...

3
4 MR. GORMAN: Certainly.

5
6 THE COURT: Thank you.

7
8 **Submissions by Mr. Gorman**

9
10 MR. GORMAN: My Lady, I act on behalf of the ill-described
11 small shop with limited resources monitor who have been working in conjunction with
12 the part-time one-man band CRO all working with (INDISCERNIBLE) in considering
13 and preparing the *CCAA* proceedings. The monitors typically issue reports and extension
14 applications, which we did on Tuesday, and these are one of the new 10-day comebacks
15 as opposed to the 30-day comebacks after receiving the Mamdani affidavit number two
16 but before the dozen or so lender opposition affidavits and three lender briefs.

17
18 In all those affidavits and briefs, I saw nothing criticizing the monitor or his abilities or
19 capacities nor the availability of the CRO. Hardie & Kelly has four certified trustees
20 available to assist on this file. I'm not sure of any shop in town that has more certified
21 trustees.

22
23 Of course, I noted the odd paragraph 40 in the brief of the lenders which provided,
24 "We submit that the Court should not tolerate such bad faith," following two relatively
25 vague paragraphs of discussion of bad faith which seemed to be that there was no
26 unsecured creditors listed in that everyone was mortgagees. I don't know how that leads
27 to bad faith, although we did get a bit of a hint: "Particularly when drastic and prejudicial
28 relief was asked for by way of an ex parte application."

29
30 Now on behalf of the monitor and without retainer or instructions as it may impact the
31 CRO -- but I was involved in the planning and execution of the (INDISCERNIBLE)
32 initial *CCAA*, and to some extent, my comments will cover Mr. McCarthy's team of
33 Mr. Collins and all -- I strenuously object to the submissions made by Mr. Kruger
34 yesterday during his oral submissions of any bad faith in the *CCAA* proceedings
35 themselves.

36
37 Mr. Mamdani's affidavit -- Mr. Collins may choose to deal with pre-*CCAA* allegations of
38 bad faith, relationships with Telus and the co-lenders, but the comments of my friend
39 yesterday cannot go unchallenged.

40
41 The understood three main criticisms of lack of good faith in the *CCAA* proceedings are,

1 as section 38 noted: We proceeded ex parte other than with the co-owners who attended
2 the application with the voluminous affidavits, which ex parte application went over an
3 hour and was very fulsome. The other complaint was we did not in the filing include all
4 related Strategic entities, and we did not at the filing nor today's comeback application
5 have details of all inter-company transactions.

6
7 The ongoing *Walton CCAA* in this court was referenced on numerous occasions
8 yesterday. By coincidence, my friend Mr. Kruger was counsel for the monitor when he
9 still had his full orchestra working with him, and Mr. Simard at Bennett Jones was on for
10 the *Walton* and company.

11
12 Many, many counsel in this room were -- acted for various lenders. *Walton* got its initial
13 order on an ex parte basis without giving notice to anyone other than HSBC, Mr. Lysak,
14 and Mr. Grieve. Anyone in the room, including Mr. Kruger, wanted to convince me
15 otherwise that it was an ex parte application -- didn't think so.

16
17 The conscious decision was made as to which *Walton* entities would be included. Not all
18 of them were -- several were not -- but many were. That decision was made by the
19 company, the monitor, and, I presume, their advisors. Exactly what the allegations of
20 bad faith are in this case.

21
22 There were numerous intercompany accounts and a sources and uses report was provided
23 to give details with respect to those accounts 9 months after the filing -- not 9 days --
24 9 months.

25
26 I heard no allegations of bad faith by the company or the monitor or the counsel in
27 *Walton*, and I agree with that. There was no bad faith in that case. I'm sure Mr. Kruger
28 can convince the Court that I'm wrong in my generous oversight of his actions, but it's
29 wrong. The allegations yesterday of an impropriety in the *CCAA* are wholly
30 inappropriate, and again, it's a bell that cannot be unrung.

31
32 Similarly in *Calpine*, Mr. Kruger was again on for the monitor. On an ex parte
33 application, my client's \$1 billion in debt was affected much more significantly than the
34 skinny order we obtained from you 10 days ago. We have no charges in it; we had no --
35 none of the typical items involved in the template order, yet the allegation is that we on
36 an ex parte basis got very drastic relief. We couldn't have been more restrained. We
37 could not have been more restrained.

38
39 What happened in *Calpine* -- the monitor's famous fifth report finally explained what
40 happened to my client's billion dollars through numerous intercompany transactions and
41 the 5 or \$600 million of other creditors. By the way, both *Walton* and *Calpine* ultimately

1 were successfully restructured, and there was no criticism -- and rightly so -- no criticism
2 of the *CCAA* filings, notwithstanding them starting *ex parte*, notwithstanding not having
3 details of the intercompany accounts, and notwithstanding having not every company in
4 the organization included.

5
6 Now by happenstance today, a leading Canadian insolvency publication,
7 *Insolvency Insider*, had an article. It was somehow to the front row, and my colleague
8 Mr. Stephenson has additional copies.

9
10 THE COURT: Is this the one on the amendments --

11
12 MR. GORMAN: Yes, My Lady.

13
14 THE COURT: -- and good faith? Yeah, I read it.

15
16 MR. GORMAN: Okay. And, My Lady, you may have seen the
17 paragraph which could have been written after yesterday's application on the next to last
18 page starting at the bottom. And I highlighted a portion, but I'll -- I refer to the opening
19 sentence.

20
21 THE COURT: Let's hope there are not table scraps here,
22 Mr. Gorman.

23
24 MR. GORMAN: (as read)

25
26 The real eye opening amendments that are on their face could
27 cause mischief are the new provisions with respect to good faith
28 in the *BIA* and *CCAA*.

29
30 And then it does -- you saw the table scraps comment, My Lady: (as read)

31
32 What these amendments seem to have overlooked is that
33 insolvency proceedings are always and inevitably composed of
34 bitter stakeholders fighting over table scraps. Many, if not most,
35 stakeholders in such proceedings enter them with a jaundiced
36 perception that everyone else is trying to eat their lunch. This
37 kind of environment is ripe for subjectively sincere but
38 misguided accusations of bad faith.

39
40 I think that's what we had yesterday afternoon, My Lady. "Subjectively sincere but
41 misguided accusations of bad faith." And then it goes on to talk about having an

1 additional procedure is not going to help matters.

2
3 With that, My Lady, I'll move to what the monitors typically do with these applications --

4
5 THE COURT: Okay.

6
7 MR. GORMAN: -- talk about the first report that was issued
8 December 17th. It is relatively brief with the 10-day update. Paragraph 7 deals with the
9 activities in the interim period. Paragraph 11 is descriptions with respect to the cash
10 management system. An amendment was discussed over the last few days that the parties
11 would not like the cash management system, then the existing mortgagees can fund if the
12 order is extended. The -- paragraphs 26 to 39 talk about various charges -- the DNO
13 charge \$2 million was reduced if the CRO is protected by the court order so that the DNO
14 only is GST, not anything further. The keep order was adjourned.

15
16 And paragraphs 36 and 37 discuss basically the *raison d'etre* -- why it was thought that a
17 *CCAA* might not meet the vehement opposition that came in the subsequent 24 hours, and
18 its management continues to believe an order of restructuring planned and formulated in
19 conjunction with the applicant's various stakeholders would achieve a more favourable
20 result and the possibility of a sudden influx of numerous properties on the market could
21 negatively affect third parties not currently associated with the proceedings where
22 properties are listed for sale. And I suggest that's -- the third party be property owners in
23 Calgary, not limited to the Strategic properties.

24
25 The monitor concluded that the company and their advisors were acting diligently.
26 We've heard complaints about computer imaging. We've heard complaints about
27 additional information being requested. Mr. Collins and his team could not have been
28 more diligent. I hasten to guess how many hours of sleep they've each had over the last
29 10 days. I know a guy couldn't watch a 49ers game in peace without his email ringing
30 constantly.

31
32 Based upon that, My Lady, the monitor and the CRO are ready, able, and sufficiently
33 staffed if the *CCAA* order is extended to continue their duties as your court-appointed
34 monitor.

35
36 THE COURT: Thank you. Okay. We'll take the morning
37 break. I am hoping -- and this could be a vain hope -- that I will finish with the balance
38 of the mortgagee submissions and Mr. Collins' rebuttal by 1:00. Does that seem feasible?

39
40 Is that -- I will be back here in 10 minutes, and then we'll have another almost hour and
41 20 minutes. Okay. Let's see what we can do. Thank you.

1
2 (ADJOURNMENT)

3
4 THE COURT: Thank you. Please be seated. All right. Who
5 has been nominated to speak next?

6
7 You know, I have come down without my glasses, Mr. Russell. Can you give me a few
8 moments --

9
10 MR. RUSSELL: Sure.

11
12 THE COURT: -- to just go back up and get them? I'll be right
13 back.

14
15 (ADJOURNMENT)

16
17 THE COURT: My apologies, counsel. Okay. Again, Please be
18 seated. Mr. Russell, will I need your client's affidavit?

19
20 **Submissions by Mr. Russell**

21
22 MR. RUSSELL: No, My Lady. Thank you, My Lady. Russell,
23 initial 'C', for the record. We act for Canadian Western Bank. They have six projects in
24 the *CCAA* with about 50 million outstanding. They have a number of projects outside of
25 the *CCAA* with a greater dollar amount outstanding. Two of those are projects that are
26 still under construction: the Marda Loop project and a project called The One on --

27
28 THE COURT: Sorry, which one?

29
30 MR. RUSSELL: The One.

31
32 THE COURT: T-H-E?

33
34 MR. RUSSELL: T-H-E and then O-N-E.

35
36 THE COURT: Thank you.

37
38 MR. RUSSELL: It's a fairly large project. I have no particulars
39 on the nature of it, but the bank in conjunction with its co-lender, Equitable Bank,
40 advanced roughly \$5 million yesterday by way of construction -- an interim construction
41 advance, and the intention on that project is to continue to advance through the course of

1 completion of the building which is expected in the next 4 or 5 months. The reason I
2 bring this up, My Lady, is that the bank is supportive -- clearly supportive of the skinny
3 receivership with regard to the six entities that -- or the six projects that it has in there.
4

5 My only comment in addition to the comments that Mr. Kruger made yesterday is with
6 respect to the 354 employees because clearly these employees are not going to be
7 unemployed on Christmas Eve. The businesses, the service entities that employ them are
8 going to be continuing on with the non-*CCAA* companies, and we're just not -- I think it's
9 an exaggeration to put a significant level of concern at the potential of unemployment of
10 individuals.
11

12 THE COURT: And would it be fair to say to put a significant
13 level of concern based on the information that I have?
14

15 MR. RUSSELL: Yes. Yes. So, My Lady, the only other thing
16 that I wanted to say is that CWB has the majority of the bank accounts, both for the
17 *CCAA* entities and the non-*CCAA* entities. My friends had suggested in their materials a
18 form of waiver of set-off agreement in order to keep those accounts open. We are going
19 to have to deal with either Hardie & Kelly or Alvarez in determining how best to go
20 about this. We had a couple of comments to my friends, but I'm sure we'll be able to
21 work that out in either case.
22

23 And lastly, My Lady, I was asked by an Edmonton lawyer yesterday to speak to a matter
24 that he had originally taken a retainer on and then discovered he had a conflict. The
25 client is Servus Credit Union. They are a first mortgagee. I understand it's a smaller
26 loan, but I have no particulars on what the loan is other than it's a first mortgagee within
27 the *CCAA*. They have not been invited to the table with the other lenders probably
28 because nobody had -- had noticed it. And so the first that Servus knew about the
29 banding together of the lenders was when the originating application was served. And so
30 obviously, they are not a participant in it. I was asked to convey on behalf of Servus that
31 had been asked, they would have been supportive of the skinny receivership.
32

33 THE COURT: Okay.
34

35 MR. RUSSELL: Those are all my comments, My Lady.
36

37 THE COURT: Thank you very much, Mr. Russell.
38

39 MR. RUSSELL: Thank you.
40

41 THE COURT: Who might be next? Mr. Oliver, do I need to

1 put your material before me?

2
3 MR. OLIVER: No. Thank you, My Lady.

4
5 THE COURT: Thank you.

6
7 **Submissions by Mr. Oliver**

8
9 MR. OLIVER: My Lady, for the record, Jeffrey Oliver on
10 behalf of MCAP Financial Corporation and Business Development Bank of Canada.
11 Notwithstanding seemingly missing the seating plan, I -- our client to do support and the
12 termination of the proceedings and the appointment of an interim receiver.

13
14 Collectively, our clients are owed approximately \$35 million. MCAP has advanced
15 mortgages on three properties that are the subject of the proceedings which are
16 926 Parallel Centre and Centre Eleven. They're owed roughly \$28.9 million. Of those
17 mortgages, two of them have matured. The 926 property matured approximately 3 weeks
18 ago. The Centre Eleven property matured approximately 10 weeks ago. The other
19 mortgage is in default. It is cross-collateralized with one of the mature mortgages.

20
21 With respect to BDC, it has a mortgage loan with respect to the property referred to as the
22 411 property in the materials. That's the Calfrac building. They are owed approximately
23 \$6.76 million, and that mortgage is in default.

24
25 There's three elements that are somewhat unique to our circumstances that I just wish to
26 bring to the Court's attention. The first is just the fact that we had two mortgages due
27 with respect to the MCAP property -- or mature, I should -- I should say. In our
28 submission, that clearly indicates that there's no benefit to a restructuring. The bargain
29 with the borrowers in that case was for payout now. Nothing over the longer term.

30
31 Second with respect to the BDC property, the unique circumstance we have is there is
32 one tenant in the 411 (INDISCERNIBLE). That lease is expiring August 31 of 2020. So
33 from a timing perspective, action is needed quickly, in our submission, either to ensure
34 that that property is not in a position in September where it can't service any debt at all
35 because it's empty.

36
37 The third and final point I wish to make relates to valuations. Unfortunately, a
38 circumstance that's shared by both of our clients are concerns that their mortgages may be
39 under water. You may have seen affixed to the affidavits were some municipal tax
40 searches, which I realize are not necessarily perfect tools, but they are a tool, and they
41 would indicate that the mortgages are under water.

1
2 There's also a confidential affidavit of Mr. Mahjoory (phonetic) which we have provided
3 to you. Affixed is some evidence of some Class B sales in recent years, and perhaps the
4 most troubling affixes the IFRS calculation that our client received which indicates that
5 the -- between December and -- sorry -- between the valuation date and now, the rent roll
6 has declined 56 percent. So the basis of that valuation, in our respectful submission, is
7 not justifiable.
8

9 THE COURT: And that was 2018 to 2019.

10
11 MR. OLIVER: Yes.

12
13 THE COURT: That goes over a year --

14
15 MR. OLIVER: That's correct. Yes.

16
17 THE COURT: -- to be clear. Okay.

18
19 MR. OLIVER: Correct. Thank you. I guess finally, My Lady,
20 we have the sealing order application now. I am happy to speak to that, or we can do
21 them all at once.
22

23 THE COURT: Yeah. Let's do that at the conclusion of this
24 morning's oral submissions. We'll --

25
26 MR. OLIVER: Thank you very much.

27
28 THE COURT: -- deal with all of those at that time. Okay.

29
30 MR. OLIVER: Thank you.

31
32 THE COURT: Thank you. Mr. Roberts?
33

34 **Submissions by Mr. Roberts**
35

36 MR. ROBERTS: Good morning, My Lady. We act for
37 Vancity Community Investment Bank. We have -- we are the first mortgagee on
38 five properties; aggregate loans of about 65 million. We have co-lenders on
39 two represented in this room. And -- sorry -- Telus is co-owner on two, co-lenders on
40 two. We adopt the submissions of the other mortgagees, particularly Mr. Kruger. We
41 share their concerns about cash managements, property tax accruals.

1
2 And one issue I haven't heard about and I don't know the answer to are security deposits.
3 With the number of tenants in place, the liability for security deposits if they have not
4 been held separate and apart is going to be significant, and that is going to affect
5 adjustments on any sale.

6
7 Our properties have five separate -- or there's five separate buildings. We have no
8 cross guarantees and no cross collateralization between all of our borrowers. They are
9 completely and utterly siloed out. We wish it was otherwise. We have what appears to
10 be two or three very solvent buildings and then a couple that aren't. We would love it if
11 the equity in some should -- could shore up the deficiencies in others or the cash flow in
12 some could shore up the deficiencies in others. But the way this was structured by these
13 borrowers is completely siloed.

14
15 I would suggest that if this were an enterprise, each of the lenders in this room would
16 have risk rated their loans differently. If you were loaning into an enterprise and you
17 were only taking a portion of the collateral of that enterprise, you risk rate your loans
18 differently, and you inter-lender priority and standstill agreements as between the
19 co-lenders. We have none with anyone in this room because everything is siloed. This
20 is -- this is factually incorrect to say that this is in any way an enterprise except now when
21 convenient.

22
23 Vancity was blindsided by this filing. Ironically, the primary source of our information
24 has been from the Telus group, not from the borrower group or the monitor. I would
25 suggest it was not inevitable that we ended up in the position today where 99 percent of
26 the room was opposing, but that's where we are. But what I do say is inevitable is that
27 with 99 percent of the room opposing, we are not going to have a successful
28 restructuring. There's too much opposition here today to make it all efficient to try and
29 restructure in the face of however many lawyers here are going to be fighting and
30 opposing it every step.

31
32 What you have instead is the vast majority of economic stakeholders supporting first an
33 interim step -- the skinny and temporary receiver -- to get us through the holidays and to
34 get us to the point in mid to late January when we can all make submissions to you about
35 how this should move forward as efficiently as possible, and any concerns there are about
36 the non-economic stakeholders -- effectively the market -- are we putting 80 properties to
37 market? You will control that. In the same way you will control that in the *CCAA*, you
38 will control that when we come back in January, and you can decide if that is a factor that
39 you should weigh in deciding what should happen next.

40
41 And so again, we support that application.

1
2 THE COURT: Okay. Thank you.

3
4 MR. ROBERTS: Thank you.

5
6 THE COURT: Good morning.

7
8 **Submissions by Mr. Maerov**

9
10 MR. MAEROV: Good morning, My Lady. My name is Maerov,
11 first initial 'A', for the record. I'm here with McMillan LLP, and we are counsel for
12 Royal Bank of Canada. I'm here with my colleague Ms. Kourtney Rylands.

13
14 RBC holds mortgages on what I referred to in the materials as the 2020 property and the
15 Petro West property, and I can say that you won't need to refer to our client's affidavit this
16 morning.

17
18 THE COURT: Thank you.

19
20 MR. MAEROV: You may wish to refer to exhibit 1, or I will
21 refer to exhibit 1 of the second Mamdani affidavit.

22
23 I'd like to take just a very few minutes of the Court's time to speak to the 2020 property,
24 and I'm doing that because I think it's illustrative of one of the concerns raised by
25 Mr. Kruger yesterday, by Ms. Bourassa today, and that is the cherry picking of assets for
26 reasons that appear to be unrelated to their solvency or insolvency.

27
28 RBC is out approximately \$42 million with respect to the 2020 property. It's the sole
29 mortgage holder, and it's the sole secured creditor registered in the PPR. And now is
30 when I'd like, if it's helpful, to perhaps refer you to exhibit 1 of the second Mamdani
31 affidavit which is the case management plan.

32
33 THE COURT: I am there.

34
35 MR. MAEROV: Okay.

36
37 THE COURT: Which page?

38
39 MR. MAEROV: You can look at -- to start with the first page,
40 and approximately almost halfway down the page, you'll see the line related to the
41 2020 property.

1
2 THE COURT: Yeah.
3
4 MR. MAEROV: Okay. And if you look across that line to
5 approximately to the middle of the page, you'll see a reference to the restructuring costs
6 for that property for the month of September on the front page.
7
8 THE COURT: Yeah.
9
10 MR. MAEROV: And that's \$83,337?
11
12 THE COURT: Yeah.
13
14 MR. MAEROV: I would respectfully submit that that is a very
15 large number for a single property relative to what the charge would be in an alternative
16 proceeding. Ms. Bourassa alluded to this morning the fact that the proposed receiver's
17 charge in the interim receivership order is a total of \$500,000. So at that rate, that one --
18 if you compare, our client would be bearing a massive cost in the *CCAA* proceeding
19 relative to what it would presumably bear in the interim receivership.
20
21 THE COURT: Is that -- does that figure remain constant in
22 the -- in the 4 months outlined on exhibit 1?
23
24 MR. MAEROV: It does, My Lady.
25
26 THE COURT: Okay.
27
28 MR. MAEROV: It does not go down.
29
30 THE COURT: Okay.
31
32 MR. MAEROV: It's greater than any other single property in
33 these proceedings. If -- I won't make you look through it now but by my --
34
35 THE COURT: No. I think yours was the leader with
36 Ms. Bourassa's the second.
37
38 MR. MAEROV: Exactly.
39
40 THE COURT: Yeah.
41

- 1 MR. MAEROV: Approximately 20,000 a month behind.
2
- 3 THE COURT: Right.
4
- 5 MR. MAEROV: So that's a pretty big gap. It's one property. It's
6 almost 10 percent of the total restructuring costs that are forecast in this management
7 plan.
8
- 9 THE COURT: Okay.
10
- 11 MR. MAEROV: It's not a loan. It's not repayable like the
12 intercompany proposed in our company advances. It won't be repaid. It's not proposed to
13 be repaid. And so of course, there's no intercompany charge to secure.
14
- 15 THE COURT: Well, I haven't looked at the RBC security, but
16 I'm sure that enforcement costs of that nature are included in their -- I mean, in the event
17 there's sufficient equity in the property, it would be added to the (INDISCERNIBLE) --
18
- 19 MR. MAEROV: Exactly, My Lady.
20
- 21 THE COURT: -- but it's not collectible as a prime charge.
22
- 23 MR. MAEROV: Correct, My Lady.
24
- 25 THE COURT: Okay.
26
- 27 MR. MAEROV: Correct. Based on the information that's been
28 provided and that's before you, it doesn't appear that the 2020 property or the entity that
29 owns it would be insolvent at all but for the fact that the company decided not to make its
30 interest payment -- its mortgage payment -- sorry --
31
- 32 THE COURT: Okay.
33
- 34 MR. MAEROV: -- beginning of December and decided to file
35 under the *CCAA*. It generates a substantial positive cash flow, and it's sufficient to pay
36 my client's mortgage payments. It's ample if it chose to do so.
37
- 38 It might very well, as my friend Mr. MacLeod said yesterday, meet the technical
39 definition of insolvency because it has ceased -- it has chosen to cease paying its
40 obligation. But as you are aware, the nature of *CCAA* relief is highly discretionary, it's
41 extraordinary, and I don't think it's at all sufficient to meet the technical definition.

1
2 My Lady, this is just one of many reasons -- and you've heard from others -- but this is
3 just one of many reasons that our client's lost confidence in management and wants to
4 proceed in an alternative process that does not leave existing management in control.

5
6 THE COURT: Okay.

7
8 MR. MAEROV: Subject to any questions, those are my
9 submissions.

10
11 THE COURT: I don't have any questions. Thank you,
12 Mr. Maerov.

13
14 MR. MAEROV: Thank you, My Lady.

15
16 THE COURT: Anybody wish to speak next?

17
18 Okay. Well, that went more quickly than I had anticipated. Then perhaps we can have
19 the -- we can move on to the sealing order applications with -- starting with yours,
20 Mr. Collins? Oh, I'm going to -- my proposal is that I would deal with those, and then
21 we'll take a break.

22
23 **Submissions by Mr. Collins (Other)**

24
25 MR. COLLINS: The sealing order on behalf of the applicants is
26 with respect to the confidential keep schedule, My Lady. That schedule, as you will have
27 seen, contains --

28
29 THE COURT: Yeah.

30
31 MR. COLLINS: -- personal details with respect to the proposed
32 keep employees --

33
34 THE COURT: Yeah.

35
36 MR. COLLINS: -- their salary, and proposed entitlement. And
37 beyond that of course that application has been adjourned, and so that document will not
38 be operative in any event, at least for the time being on the basis of the *Sierra Club* test.
39 It's submitted that it would be appropriate to seal that.

40
41 THE COURT: Okay. I have no difficulty with that. Is -- I

1 mean, I can't -- and was notice given in accordance --

2

3 MR. COLLINS: It was.

4

5 THE COURT: Okay. Okay.

6

7 MR. COLLINS: Yes. We gave notice to the media --

8

9 THE COURT: Okay.

10

11 MR. COLLINS: -- on the night before -- 2 days before.

12

13 **Ruling (Other)**

14

15 THE COURT: I don't see anybody here. All right. That
16 sealing order is granted. Thank you.

17

18 MR. COLLINS: Would you like the order to sign, My Lady,
19 or --

20

21 THE COURT: I think so. Let's get that done, and then I'll call
22 on Ms. Bourassa, and then back to Mr. Oliver. And then I misspoke, Mr. Collins. I'll
23 have your rebuttal comments. Can I? Yeah? Can we get the rebuttal --

24

25 MR. COLLINS: Oh, do you want them now, or do you want
26 them after the sealing applications?

27

28 THE COURT: After the sealing applications.

29

30 MR. COLLINS: Yes. Of course.

31

32 THE COURT: I think I had indicated to you we'd take a break,
33 but I misspoke. I meant after your submissions.

34

35 Thanks. Okay. The formal order -- the form of order is approved, and the order is
36 granted. Thank you --

37

38 MR. COLLINS: Thank you, My Lady

39

40 THE COURT: -- Mr. Collins. And then Ms. Bourassa, did you
41 have a form of order prepared?

1
2 MS. BOURASSA: Yeah. Mr. Reid will bring them up.

3
4 THE COURT: Thank you. Mr. Reid?

5
6 MS. BOURASSA: I haven't actually reviewed them myself.

7
8 **Submissions by Mr. Reid (Other)**

9
10 MR. REID: Thank you, My Lady. Reid, first initial 'J'. As
11 Ms. Bourassa mentioned, we're seeking two sealing orders today. The first is with
12 respect to exhibit F in the affidavit in support of the receivership application that we filed
13 on December 9th.

14
15 As Mr. Collins rightfully pointed out, that document does contain -- it is an agreement in
16 purchase and sale which contains a purchase price of Telus with respect to the entire
17 Sundance enterprise.

18
19 THE COURT: Right.

20
21 MR. REID: And so that does contain some confidential
22 information. Because it is filed on the court record, we do have an extra provision built
23 into the standard form sealing order asking that --

24
25 THE COURT: The return.

26
27 MR. REID: -- the Court actually remove it and -- yeah --
28 return it.

29
30 THE COURT: Okay. Fair enough.

31
32 MR. REID: The other sealing order we seek is with respect
33 to exhibit A to the supplemental affidavit that was filed in the *CCAA* style of cause --

34
35 THE COURT: Right.

36
37 MR. REID: -- and that is an informal valuation that was put
38 on the --

39
40 THE COURT: That's Mr. Estrada's supplemental affidavit?
41

1 MR. REID: That's -- that's correct.

2
3 THE COURT: Okay.

4
5 MR. REID: So I'll pass up copies of those. And so it's on
6 the record, we did provide notice to the media in accordance with the practice note.

7
8 THE COURT: Good. Thank you.

9
10 **Ruling (Other)**

11
12 THE COURT: Okay. That's the Estrada affidavit sealing order,
13 and then this is the replacement of exhibit F to his original affidavit. Thank you.

14
15 MR. REID: Thank you, My Lady. Mr. Oliver?

16
17 **Submissions by Mr. Oliver (Other)**

18
19 MR. OLIVER: Thank you, My Lady. MCAP is -- has made an
20 application for a sealing order with respect to the confidential affidavit of Mr. Mahjoory.
21 The confidential affidavit contains detailed information with respect to the rents of the
22 MCAP properties which was provided on a confidentiality undertaking. Public
23 disclosure of the information could potentially prejudice a future sales process from our
24 perspective and represents a serious risk to MCAP's interest as the property's only
25 mortgagee. So we therefore respectfully submit that the *Sierra Club* test is met.

26
27 Notice to the media was given on Wednesday which was the earliest that was possible in
28 the circumstances.

29
30 THE COURT: All right. That's fine. Thank you, Mr. Oliver.

31
32 MR. OLIVER: Thank you.

33
34 THE COURT: If I could see the form of order?

35
36 MR. OLIVER: My Lady, my colleague has just pointed out that
37 in paragraph 2 which references the date of the order -- it references yesterday as opposed
38 to today. So --

39
40 THE COURT: I'll make a handwritten change?

41

1 MR. OLIVER: Thank you.

2

3 THE COURT: I just don't see the date quickly on page 2,
4 Mr. Oliver.

5

6 MR. OLIVER: In the indented language --

7

8 THE COURT: Ah, there. Yes.

9

10 MR. OLIVER: -- as to what the envelope sources say. Yes.

11

12 **Ruling (Other)**

13

14 THE COURT: Done. Thank you.

15

16 MR. OLIVER: Thank you very much.

17

18 THE COURT: Okay. Mr. Collins.

19

20 **Submissions by Mr. Collins (Response)**

21

22 MR. COLLINS: Thank you, My Lady. Again for the record,
23 Collins, initial 'S', on behalf of the *CCAA* applicants. This is by way of reply, My Lady,
24 to the submissions made by the mortgagees and Telus. I propose to deal primarily with
25 the submissions made by lead counsel to the mortgagees yesterday and then deal with
26 other matters either sprinkled in through the reply or following on, and I do expect,
27 My Lady, that we will meet Your Ladyship's objective of concluding by 1 PM.

28

29 THE COURT: Okay.

30

31 MR. COLLINS: Dealing with then first with what we've been
32 referring to as the mortgagees, those submissions yesterday, My Lady, quite simply were
33 replete with inaccuracies, misstatements, and submissions that are not supported by
34 evidence on the record including, My Lady, importantly unfounded allegations of bad
35 faith or at least the allegations of bad faith were purportedly supported by matters that are
36 not on the record.

37

38 The applicants, My Lady, submit that the mortgagees have improperly attempted to
39 characterize the applicant's commencement of these proceedings. It is a deliberate and
40 bad faith attempt to divert funds from their security for their own purposes. This is not
41 supported by the evidence, My Lady. Many statements made by counsel to the

1 mortgagee yesterday that were used to substantiate a theory of bad faith again were not in
2 evidence.

3
4 What the record discloses, My Lady, is that this is a business that has done its best to
5 weather the headwinds occasioned by this generational decline in property values and
6 high vacancy rates in the class of space that it operates. So both in terms of skyrocketing
7 vacancy and plummeting values, you've heard 40 percent of the West End, 23 percent of
8 Beltline vacancy, and average rental rates were upping by 50 percent.

9
10 There was no other alternative, My Lady, given that prevailing macroeconomical
11 conditions and the state of the Calgary market than for these entities to attempt to avail
12 themselves of the *CCAA*. That, in and of itself, My Lady, is not bad faith. It's an attempt
13 to deal with economic realities that present including the fact the bottom has fallen out of
14 the market, and, according to Mamdani's affidavit at least in his view, it's not coming
15 back any time soon.

16
17 With that, I wish to address certain of the following submissions that were made. The
18 first is that these proceedings were in works for a long time and that that somehow
19 underscores the nefarious intent behind them. There's no evidence of that, My Lady, on
20 the record of all.

21
22 What is in evidence, My Lady, is that on November 1st, as you've heard this morning,
23 Sun Life's mortgage on Sundance 1000 matured. It was \$42 million, and it could not be
24 repaid. What also is on the record, My Lady, is Mr. Mamdani's evidence contained in his
25 first affidavit at paragraphs 458, 459, and 460 speaking of the liquidity crisis and the fact
26 that the applicants determined that this course of action was the most advisable course of
27 action.

28
29 Mr. Narfason's engagement letter which is in evidence, My Lady -- it was dated
30 November 18th. What is not in evidence, My Lady, but I don't expect that it would be
31 much controversy is my letter to the commercial list seeking to book this application on
32 November 19th. This was not a devious strategy many, many months in the making,
33 My Lady. In the period between mid-November and beyond, the advisors worked closely
34 with the company to devise a strategy -- a strategy that is designed to in good faith satisfy
35 the objectives of the *CCAA*.

36
37 Counsel to the mortgagee yesterday said a few times that the applicants only open their
38 kimono when asked. He suggested that there's sort of a nefarious attempt and that the
39 applicants were being secret -- secretive. My Lady, there's been no engagement, and we
40 had this discussion yesterday about both the process and the systemic reasons for that.

41

1 I heard from counsel for the mortgagee on Tuesday to advise me that he had been
2 retained by his clients and that they were taking the position that they were taking. We
3 saw their materials on Wednesday. I don't want to repeat the submissions that I made in
4 the main, but this wasn't a situation where it's aha, we caught you; give us more
5 information. It was a situation where we assimilated in a very short period of time
6 legitimate concerns being raised by stakeholders and attempted to deal with them. But to
7 suggest that the applicants were being secretive is false. It's not supported by the
8 evidence, My Lady.

9
10 You heard from counsel to the monitor with respect to entities outside and submissions
11 on *Walton*, for example, that there were no entities outside. I won't repeat that, My Lady.

12
13 With respect to co-mingling, counsel to the mortgagees said instead of keeping separate
14 funds, they've been co-mingled. That's not the case, My Lady. It's not in evidence.
15 In fact, the opposite is in evidence that the applicants maintained separate accounts for
16 each property. And that was a fundamental underpinning of the statement that the
17 mortgagees have lost faith in management, have lost faith in Strategic.

18
19 As well, My Lady, we have this notion of unauthorized interco loans -- prohibited
20 inter-company advances. This is the pre-filing matters that the mortgagees speak of,
21 My Lady. They did not direct the Court's attention to any contractual prohibition on the
22 entities making inter-entity loans. I quickly skimmed the mortgagees' documentation. I
23 did not find, save potentially with respect to ATB Financial, any negative covenant that
24 would have prevented these entities from making inter-entity advances. So again, we
25 had -- we had numerous submissions yesterday that the corporate -- corporate lines had
26 been jumped and crossed and the like, but it simply isn't borne out by the evidence that
27 there was a prohibition against that.

28
29 THE COURT: Sir, you make that position with respect to the
30 first secured mortgagees who are represented here but not with respect to Telus.

31
32 MR. COLLINS: Well, Telus is -- Telus is a different situation.
33 Right?

34
35 THE COURT: Yes, they are.

36
37 MR. COLLINS: It is --

38
39 THE COURT: I just wanted to make sure --

40
41 MR. COLLINS: Yeah. Yeah.

1
2 THE COURT: -- you were making that distinction.
3
4 MR. COLLINS: Yeah. Correct.
5
6 THE COURT: Okay.
7
8 MR. COLLINS: And we'll get to that -- we'll get to that in a
9 moment.

10
11 So, My Lady, if just you look in real times environments *CCAA*, we relaxed the rules in
12 NCO, and certainly, it's a benefit to all of us in this room. But there has to be a line, and
13 when a party's credibility is being brought into question, there must be evidence on the
14 record that supports those submissions. That was not done here.

15
16 Then we deal with, My Lady, submissions that the applicants say are not entirely
17 supported by the evidence. The first is that the receivership is a far cheaper process than
18 what was referred to as a bloated process here. It's partly argument; it's partly borne out
19 by the record, My Lady. There is no evidence on the record as to what the alternative
20 process will cost. Again, I don't want to get into it detail because it was made in my main
21 submissions yesterday, but you'll recall those professional fees are paid out of cash flow.
22 The inter-entity lending is \$781,000.

23
24 Counsel for the mortgagees said, where is the dip? I think it's the first time that I had
25 ever been criticized on behalf of applicants in a debtor situation for not having a dip.
26 And we were very clear at the initial application that there was -- and it's in the materials
27 that there was no dip ever contemplated on IEC. We thought maybe a small dip for
28 Audeamus, and that has been solved.

29
30 Creating a specter of lengthy and protracted proceedings -- I don't know, My Lady. I find
31 that this community is much more nimble than it was, you know, many, many years ago,
32 and I think that we can be much more efficient than in the days of yore.

33
34 A concern expressed -- I believe the turn of phrase was Strategic guarding the hen house
35 with respect to the money. There's no evidence, My Lady, that Strategic has acted in a
36 fashion so as to disentitle it from running the cash management if these proceedings are
37 to continue with the oversight of the monitor which is contemplated.

38
39 Counsel for the monitor has addressed the comments made with respect to the monitor's
40 capabilities and with respect to the CRO's capabilities. I simply echo and amplify those
41 comments, My Lady. There's no evidence on the record that would support the

1 contention that the monitor is a small shop or in any way unable to deal with monitoring
2 this matter.

3
4 With respect to the (INDISCERNIBLE), again the suggestion was made yesterday that it
5 would be the applicants making the decision. It's incorrect. It will be the Court that will
6 ultimately make that determination.

7
8 With respect to municipal property taxes, I took the mortgagees' counsel's submission to
9 be that those were not being dealt with. They are not due. The cash flows clearly, clearly
10 indicate that they will be accrued in the cash management plan.

11
12 There was a suggestion -- again a complaint -- of significant priming. Again, the fees are
13 out of cash, and the DNO charge is \$50,000. And that's it. The admin charge is a million
14 dollars, but again, the cash flows demonstrated that it will be paid.

15
16 Going to be a *Shire* situation, and that's in reference to the *Shire* decision, My Lady. This
17 is nothing like what happened in *Shire*. I brought along the Alberta Securities
18 Commission sanction order on *Shire*. I don't know if you want me to share it or not. But
19 what happened in *Shire* -- again we were dealing with the situation where there were
20 investors done pursuant to exemption regulations and non-brokered private placements,
21 and the principal of *Shire* was found to be in contravention of securities laws, and that
22 was the factor that came to light over the course of the *CCAA* proceedings and that the
23 valuations were unreliable. We're not dealing with that situation here.

24
25 The complaint about the financial statements -- let's distinguish firstly between financial
26 statements and the cash flows because this process has to be about what's going to happen
27 in the future, My Lady, and not what has happened necessarily in the past. And the cash
28 flow statements that have been developed on a go forward basis are impeccable. I was
29 going to pull one out --

30
31 THE COURT: We could.

32
33 MR. COLLINS: -- randomly, but again, it's a massive, massive
34 undertaking to develop cash flow statements for these buildings with tenants, My Lady.
35 And on a go forward basis, they've been signed off by the monitor. The fidelity of those
36 is not or ought not to be in dispute.

37
38 With respect to the financial records of the applicants as it stands today, Mr. Mamdani
39 testified in his first affidavit that they are presently working assiduously to develop the
40 LP financial statements. They are not done. We would expect that they will be done
41 shortly, My Lady, and in processes like these -- and counsel to the monitor today referred

1 to the famous *Calpine* fifth report. That was the rationale for asking the monitor to weigh
2 in on the intercompany advances.

3
4 There was much made then about the strategy that brings us here yesterday, and again, it
5 grounded the allegations of bad faith. And I think, you know, part of it starts with a bit of
6 an animus that's developed in these proceedings. In the mortgagees' brief, you know, it
7 stated the mortgagees, and we understand the other mortgage lenders and co-owner Telus
8 all have no interest in negotiating with the applicants. They have no interest in reaching
9 any consensus with the applicants that involves the *CCAA* process.

10
11 And counsel to the mortgagee yesterday had an interesting turn of phrase -- negotiate
12 with the ones who can kill you. To me, it just sort of underscores, you know, where we
13 are at in this process and why it is difficult to negotiate in the initial 9 days that have -- or
14 now 10 days that have elapsed. With time, we would expect that we would be able to at
15 least engage with the -- with the lenders.

16
17 In terms of the filing strategy, it is not uncommon at all for entities to file without telling
18 their stakeholders first, particularly when you have stakeholders that are diverse and
19 many as there is in this case, My Lady. If through a situation were to work through each
20 of the mortgage lenders prior to the filing, you're going to them, and you're admitting that
21 you're in default or potentially going to be in default of your credit. And then, you know,
22 by the next day, you're trying to get with someone else. It just simply isn't practicable in
23 these situations, we would submit, to be able to have done so without jeopardizing the
24 underlying entity.

25
26 Now with respect to the submissions made to counsel for Telus, My Lady, the point on
27 the -- whether there's equity value or not is that we don't know, and it's clear from the
28 evidence that parties don't know. I don't think it's telling at all that Mr. Mamdani didn't
29 respond to an assertion that's based on, we don't have the value, but we think that there is
30 not equity value.

31
32 The contention that getting information is an ongoing challenge is disputed, My Lady.
33 Since advising the co-owner Telus of its intention to commence these proceedings, the
34 Strategic applicants, the monitor, the proposed monitor, and the financial advisor have
35 made themselves available, and have been delivering information to Telus.

36
37 On the issue of prejudice with respect to whether Strategic has equity and Telus's
38 contention that you're priming our equity, that is what it is, and it will be the same in a
39 receivership that it is here, My Lady.

40
41 The suggestion made that the proceedings are clearly doomed to fail. I'm not sure there's

1 evidence on that point. That this will cost Telus millions of dollars along the way --
2 again, I don't see any evidence of that point.

3
4 The statement that it's incomprehensibly shocking that the fiduciary would come here
5 today before this Court to advise as to what the arrangements are without providing
6 backup of that, to me is likewise incomprehensively shocking. Mr. Mamdani has set out
7 in his affidavit a very detailed agreement between Telus and Strategic that he says was
8 requested by Telus. And we haven't had the chance to either test the evidence of Telus's
9 affiant nor have they had the ability to test what Mr. Mamdani has said. But in the
10 circumstances, My Lady, what the applicants would ask you to do is take cognizance of
11 the detailed reporting structure that Mr. Mamdani set out in his affidavit and ask yourself
12 if really, given what's at stake here and the relationship, that that was not truthful.

13
14 That applies as well with respect to the netting arrangements, My Lady, that are set out in
15 Mr. Mamdani's affidavit number three. I took you to those yesterday.

16
17 With respect to this imaging issue, My Lady -- and I think there is obviously a difference
18 of opinion as to what imaging is. So let's start with the request for imaging of the hard
19 drives arose on a telephone call, and it was just that: We'd like you to image the hard
20 drives.

21
22 Imaging is a forensic exercise to preserve evidence. The servers are all there. The
23 information is all there. The purpose of imaging, as I understand it, My Lady, is from up
24 to the date of filing -- or up to the date of filing, what Strategic has done, as outlined in
25 the affidavit, is -- has made an image or a copy of its servers with respect to all of its
26 financial data, and then that has been deposited in a secure evidence locker at our firm.

27
28 THE COURT: Yeah. That's what I understood you to say
29 yesterday.

30
31 MR. COLLINS: Yeah.

32
33 THE COURT: I think from what Mr. Van de Mosselaer had
34 said this morning that the miscommunication seems to be over the word "requested." I
35 think we're talking about a series of requests that Strategic believes with the mirroring
36 that you've just described -- they met the request of the telephone call December 7th. But
37 I think Mr. Van de Mosselaer is talking about requests for additional information and
38 preservation since then that have not been done. I don't know.

39
40 MR. COLLINS: I don't -- and it may be conflating though
41 imaging with respect to the information is there because the submission made by counsel

1 for Telus was that I said that Strategic was under no legal obligation to provide the
2 information. That's absolutely not what the submission was. The submission was, look,
3 we're in the middle of preparing for a comeback hearing, and in and around that, we've
4 arranged to have technicians come in and image 2.5 terabytes of data.
5

6 THE COURT: Okay. Understood.

7
8 MR. COLLINS: The -- and again, you have my submissions
9 yesterday with respect to the impact of this cash management plan. It is Strategic's net
10 operating income, My Lady, that goes to payment of restructuring costs. It is only
11 Strategic's net operating income that it's dealt with in respect of inter-entity lending. We
12 understand the point that if it should subsequently be the case that there was insufficient
13 equity in the property that Telus is primed, but that's the same circumstance as it is with
14 the first mortgagees as well, My Lady.
15

16 Now, with respect to the submissions made by counsel to Sun Life this morning, again
17 echoing some of the submissions made by Mr. Kruger although admittedly in evidence,
18 the submission was made that the retraction of a mortgage payment on November was
19 bad faith. The mortgage had matured, My Lady, and so legal theory -- there is no
20 mortgage payment of principal and interest due on November 1st. The entire balance was
21 due.
22

23 Again, the suggestion that there's been unauthorized inter-entity lending, we've dealt with
24 that.
25

26 I think, My Lady, then what we have to turn to is the alternative that's being put forward.
27 Just make no mistake, My Lady, this is not designed to be a coordinated proceeding by
28 the mortgage lenders. They are going to issue 244s, and then they wish to be in a
29 position to elect to enforce or not early in the new year.
30

31 And so when we get down to it again, the broad policy objective of: Are the
32 circumstances today in existence that make it appropriate to grant the continued relief
33 under the *CCAA* present? And the applicants say, of course they are, My Lady. We are
34 dealing with a situation where there are 54 properties that, notwithstanding the
35 submissions made by various of the mortgagees today, are going to be in a free fall if
36 their relief with respect to appointing an interim receiver is granted today.
37

38 And I'd like to turn to that if -- I think the applications are set up to be consecutive,
39 My Lady. But I think before we go there, it might be useful to talk a bit about the
40 receivership and what I see -- what the applicants perceive to be difficulties with them but
41 also including -- including an allegation of conflict of interest with respect to Colliers

1 acting as the property manager.

2

3 THE COURT: Okay.

4

5 MR. KRUGER: Well really, My Lady, that should come once
6 the application has been made.

7

8 THE COURT: Well, I did allow Ms. Bourassa to make
9 submissions with respect to broad strokes with respect to the receivership. So I'm sure
10 Mr. Collins will be brief, but if there is a problem with Colliers, I think -- at least alleged
11 by the Strategic Group, we're all then -- it's in everyone's benefit to hear about it earlier
12 on than later, I think, if necessary. Mr. Collins.

13

14 MR. COLLINS: Yeah. So let's -- the draft receivership order in
15 paragraph 15 has a direction --

16

17 THE COURT: Okay. Let me get it. Okay. Is this the
18 originating application?

19

20 MR. COLLINS: I think so.

21

22 THE COURT: Yeah. Okay. I've got schedule D to this is
23 the --

24

25 MR. COLLINS: Yeah.

26

27 THE COURT: -- interim receiver.

28

29 MR. COLLINS: I'm looking at paragraph 15.

30

31 THE COURT: One five. Thanks.

32

33 MR. COLLINS: Yes.

34

35 THE COURT: Okay. I'm there.

36

37 MR. COLLINS: (as read)

38

39 Strategic Real Estate Management, Strategic Maintenance Ltd.,
40 Strategic Team Partnership, and their affiliates, and the debtors
41 shall cooperate fully with the property manager and the receiver.

1
2 No quarrel with that if that's the way this is going to go, My Lady.

3
4 THE COURT: Okay.

5
6 MR. COLLINS: The difficulty comes in the next statement, but I
7 think it also underscores the fact that there hasn't been given adequate consideration as to
8 whether there is a measure short of receivership to allow -- to prevent the inevitable
9 free fall: (as read)

10
11 And shall continue to provide property management and other
12 services to the receiver in accordance with existing agreements
13 with the debtors until such time as the receiver no longer requires
14 their services.

15
16 Listen, again if it's to go this way, it is in everybody's best interest to ensure that these
17 properties are continued to be serviced and are -- but -- but without access to the cash
18 flow and the cash management plan, there can be no assurances, My Lady, that Strategic
19 Real Estate Management, Maintenance Ltd., and Team Partnership will have the means
20 to be able to comply with that provision.

21
22 Three and a half million square feet of the portfolio will no longer be under Strategic --
23 the applicants -- applicant's control, My Lady, and with that and as testified by
24 Mr. Mamdani in affidavit number three yesterday, paragraph 28, there will not be
25 sufficient work to retain all employees as a result of the extent of the service entities no
26 longer providing landlord services. They'll have to right size, My Lady.

27
28 So this provision that's -- and I'm not sure of the jurisdiction to force someone to continue
29 to provide services in a receivership. Again, no quarrel with that, but to me, it
30 underscores the fact that in reality 54 properties, hundreds of tenants going into the
31 Christmas season that what this is inviting, My Lady, quite simply is chaos.

32
33 THE COURT: Okay.

34
35 MR. COLLINS: Now with respect to Colliers, I'm going to pass
36 up affidavit number four of Mr. Mamdani, My Lady, and Mr. Kiricacus (phonetic) is
37 making copies of this affidavit available to those in the courtroom. It's a brief affidavit.
38 When it was -- when it came to light in court yesterday that Colliers was the proposed
39 property manager, the applicants wished to draw the following to Your Ladyship's
40 attention. At paragraph 3, Mr. Mamdani --

41

1 THE COURT: Okay. I'm there.

2

3 MR. COLLINS: (as read)

4

5 In December 2019, I was informed by two of the current tenants
6 of the *CCAA* parties that an individual or individuals from
7 Colliers were attempting to solicit certain current and valued
8 tenants of the *CCAA* properties. Attached hereto is an email
9 correspondence from Victoria Assen forwarding an email from
10 Colliers Jared Rafrews (phonetic) wherein Mr. Rafrews
11 specifically states that he is willing to analyze Stratus's --

12

13 The tenant: (as read)

14

15 -- current lease to see what restrictions and obligations are in
16 place and if there is a possibility of moving out of either building.

17

18 And that building is a *CCAA* property. And on December 13th, 2019, Mr. Mamdani
19 received an email from Sheldon Wolf where it was identified that Colliers had also
20 reached out to him and potentially other tenants of the *CCAA* parties in an attempt to
21 move them out *CCAA* properties.

22

23 And we can turn to those, My Lady, and exhibit A is a tenant forwarding the email from
24 Colliers that they had received, and the email starts with some information around the
25 *CCAA* process and perhaps helpfully indicates that parties -- tenants should contact their
26 lawyers but on the second page -- and we highlighted it: (as read)

27

28 If you'd like, I can analyze your current lease to see what
29 restrictions and obligations are in place and if there is a
30 possibility of moving out of either building.

31

32 And then an email from Sheldon Wolf at Empire Citi: (as read)

33

34 Hi, Riaz. Just to give you the heads up. There is a kid from
35 Colliers aggressively creeping all of the tenants in your buildings
36 trying to move them into slate buildings. This literally happened
37 the same day as the recently PR.

38

39 I take that to be a press release: (as read)

40

41 I thought it was rather cheeky given that I know you do other

1 business with them.

2
3 So, My Lady, Strategic is concerned obviously and -- to use the mortgagees' counsel turn
4 of phrase -- to have the fox in the hen house as the property manager when, on the basis
5 of this evidence, it appears as if Colliers is looking at this as an opportunity to utilize
6 Strategic's current unfortunate circumstances to move tenants into other buildings. We
7 would expect -- we would expect that this would be of concern, My Lady, to the
8 mortgage lenders as well.

9
10 THE COURT: I don't know that I can infer that they're trying
11 to take advantage of Strategic's unfortunate situation which wasn't press released, I think,
12 until last week. And these appear to be sometime --

13
14 MR. COLLINS: This is December 12th.

15
16 THE COURT: -- well, one's December 12th.

17
18 MR. COLLINS: Yeah.

19
20 THE COURT: And when's Mr. Wolf's note? December 13th.
21 Okay. So just --

22
23 MR. COLLINS: Yeah. This is post-filing.

24
25 THE COURT: Yeah.

26
27 MR. COLLINS: This is post-filing.

28
29 THE COURT: Okay. Very concurrent.

30
31 MR. COLLINS: Yeah.

32
33 THE COURT: Okay. Thank you.

34
35 MR. COLLINS: So again, we've put *BG*, the Court of Appeal of
36 Alberta, in the materials in our brief where again the Court of Appeal says, you know,
37 receivership is an extraordinary remedy and that every avenue short of receivership
38 should be explored before going that way. And that's a black matter of law from the
39 Court of Appeal in this province, My Lady.

40
41 And -- so to the extent that the Court is inclined to go that way, you know, I don't know if

1 it's now or later, we would suggest that we have other alternatives that will at least satisfy
2 the concerns of the lenders with respect to management of cash but also deal with
3 management of the assets in a coordinated and ongoing fashion as opposed to having, as I
4 say, on this day -- the Friday before the Christmas break -- Alvarez & Marsal coming
5 along and attempting to take possession of 54 buildings.

6
7 THE COURT: Okay. All right. Thank you.

8
9 MR. COLLINS: Thank you, My Lady.

10
11 THE COURT: Thank you, Mr. Collins. Mr. Kruger, did you
12 want a limited surrebuttal, or are you fine?

13
14 MR. KRUGER: No. I think I won't say any more than that I
15 played racquet for many years, and I always knew if you were losing the game, play the
16 man, not the wall.

17
18 THE COURT: Okay. I'll have to -- I'll have to think about that
19 for a moment, Mr. Kruger. Okay. Give me a moment. I just want to gather some of
20 the -- what I consider to be the more relevant documents I have.

21
22 Okay. I'm going to try to give you a decision today on whether or not the applicants have
23 persuaded me that the circumstances that they have been acting in good faith and due --
24 I think the due diligence is not in contention -- and whether or not the circumstances exist
25 to continue the stay to the suggested period of March of 2020.

26
27 I will not be able to give super cogent reasons today, but I will try to give you a decision
28 at 3:00 if we can reconvene at that time, and obviously dependent upon my decision,
29 there may be further submissions to be made at that time. All right? Thank you.

30
31
32
33 PROCEEDINGS ADJOURNED UNTIL 3:00 PM
34
35
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40
41

Certificate of Record

I, Katherine O'Brien, certify that this recording is the record of the evidence made in the Court of Queen's Bench Court, held in courtroom 1702, at Calgary, Alberta on the 20th day of December 2019, and that I was the court official in charge of the sound-recording machine during the proceedings.

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1 **Certificate of Transcript**

2
3 I, Konnie Schreiner, certify that

4
5 (a) I transcribed the record, which was recorded by a sound-recording machine, to the
6 best of my skill and ability and the foregoing pages are a complete and accurate transcript
7 of the contents of the record, and

8
9 (b) the Certificate of Record for these proceedings was included orally on the record and
10 is transcribed in this transcript.

11
12 Exceldo Projects Ltd.
13 Order Number: AL-JO-1004-6894
14 Dated: January 12, 2020

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1 Proceedings taken in the Court of Queen's Bench of Alberta, Calgary Courts Centre,
2 Calgary, Alberta

3
4 December 20, 2019

Afternoon Session

5
6 The Honourable Madam Justice Horner

Court of Queen's Bench of Alberta

7
8 S.F. Collins

For the CCAA Applicants

9 W.W. MacLeod

For the CCAA Applicants

10 P. Kyriakakis

For the CCAA Applicants

11 C.J. Popowich

For Some Applicants/Respondents

12 C.A. Murray

For Some Applicants/Respondents

13 J.G. Kruger, QC

For Bank of Montreal, ATB Financial,
14 Industrial Alliance Insurance and Financial
15 Services, RBC Investor Services Trust
16 c/o CMLS Financial Ltd., ACM Advisors and
17 Terrapin Mortgage Corp.

18 R. Gurofsky

For Bank of Montreal, ATB Financial,
19 Industrial Alliance Insurance and Financial
20 Services, RBC Investor Services Trust c/o
21 CMLS Financial Ltd., ACM Advisors and
22 Terrapin Mortgage Corp.

23 P.T. McCarthy, QC

For Bank of Montreal, ATB Financial,
24 Industrial Alliance Insurance and Financial
25 Services, RBC Investor Services Trust c/o
26 CMLS Financial Ltd., ACM Advisors and
27 Terrapin Mortgage Corp.

28 J.R. Maslen

For Bank of Montreal, ATB Financial,
29 Industrial Alliance Insurance and Financial
30 Services, RBC Investor Services Trust c/o
31 CMLS Financial Ltd., ACM Advisors and
32 Terrapin Mortgage Corp.

33 D.T. Madsen, QC

For Bank of Montreal, ATB Financial,
34 Industrial Alliance Insurance and Financial
35 Services, RBC Investor Services Trust c/o
36 CMLS Financial Ltd., ACM Advisors and
37 Terrapin Mortgage Corp.

38 G. Finegan

For Bank of Montreal, ATB Financial,
39 Industrial Alliance Insurance and Financial
40 Services, RBC Investor Services Trust c/o
41 CMLS Financial Ltd., ACM Advisors and

1		Terrapin Mortgage Corp.
2	K. Kashuba	For Connect First Credit Union Ltd.
3	T.P. Lysak	For Fiera Properties Debt Strategies Ltd.
4	W.L. Roberts	For Vancity Community Investment Bank and
5		Centurion Mortgage Capital Corporation
6	B.C. Gibbons (by phone)	For Vancity Community Investment Bank and
7		Centurion Mortgage Capital Corporation
8	B.P. Maruyama	For Equitable Life
9	H.A. Gorman, QC	For Hardie & Kelly Inc.
10	A. Stephenson	For Hardie & Kelly Inc.
11	C.P. Russell, QC	For Canadian Western Bank
12	A.C. Maerov	For The Royal Bank of Canada
13	K. Rylands	For The Royal Bank of Canada
14	J.L. Oliver	For MCAP Financial Corporation and
15		Business Development Bank Canada
16	J. Bornstein	For MCAP Financial Corporation and
17		Business Development Bank Canada
18	R.S. Van de Mosselaer	For Telus Co-Owners
19	T. Sandler	For Telus Co-Owners
20	E. Paplawski	For Telus Co-Owners
21	M.T. Coombs	For Canada ICI Capital Corporation and
22		SBI Canada Bank
23	K.J. Bourassa	For Sun Life Assurance Company of Canada
24		and Equitable Bank
25	J. Reid	For Sun Life Assurance Company of Canada
26		and Equitable Bank
27	A. Manasterski	For Sun Life Assurance Company of Canada
28		and Equitable Bank
29	C.E. Hanert	For CIBC Mortgage Inc. and Canadian Imperial
30		Bank of Canada
31	M. Konyukhova (by phone)	For Institutional Mortgage Capital Canada Inc.
32		and Computershare Trust Company of Canada
33	K.T. Lenz, QC	For Trez Capital
34	K. Cameron	For Trez Capital
35	A. Naveed	For Proposed Receiver
36	D.S. Nishimura	For Aviva Condominium Corporation
37	D. Hutchison	For Concentra Financial Services Association
38	A.P. Frank	For The City of Calgary
39	S. Hussein (by phone)	For The City of Edmonton
40	K. O'Brien	Court Clerk
41	N. Arevalo	Court Clerk

1
2
3 THE COURT: Okay. Well, as you can imagine, this is hot off
4 the press.

5
6 **Reasons for Judgment**

7
8 THE COURT: This proceeding was first before this Court for
9 an ex parte initial 10-day stay order on December 10th, 2019, which order was granted.
10 The initial order granted nothing further than a stay with auxiliary relief such as priming
11 charges, et cetera, left for this comeback hearing which was then made on notice to all
12 stakeholders.

13
14 The parties agreed that the onus of this hearing for the stay to continue or indeed be
15 granted -- depending on the terminology you want to use -- and any additional relief to be
16 granted to the applicants remains on the applicants and is governed by section 11 of the
17 *CCAA* and the attendant jurisprudence.

18
19 It's clear it is a two-pronged test. The applicants must demonstrate that they have acted in
20 good faith and with due diligence, and even if that is so, they must also persuade the
21 Court that a continuation of a stay is appropriate in the circumstances. What the
22 appropriate circumstances are varies from case to case and is specific to the
23 circumstances of each case and can be unique.

24
25 As the *Century Services* decision instructs at paragraph 70, appropriateness is assessed by
26 the Court inquiring into whether the order sought advances the policy objectives
27 underlying the *CCAA*. That is primarily the remedial purpose to avoid the social and
28 economic losses resulting from liquidation of an insolvent company.

29
30 The inquiry does not end there. Even if the remedial purposes can be met,
31 appropriateness also applies to the means a stay order employs to achieve such
32 avoidance. Appropriateness in part extends to treating the stakeholders as
33 advantageously and fairly as the circumstances permit.

34
35 The facts here from a high level are these: The applicants are comprised of a portion of
36 the Strategic Group's rental portfolio, the whole of which is not at this time known. The
37 structure of the ownership of the approximate 60 properties covered by these proceedings
38 is that there are two corporations, IEC and Audeamus, who act as limited partners to
39 50 different Limited Partner Stay Parties.

40
41 The GP applicants are each special purpose corporate entities that own 0.001 percent in

1 each Limited Partner Stay Party. The other 99.999 percent interest in each LP Stay Party
2 is held by either IEC or Audeamus. The General Partner Applicants hold legal title to the
3 underlying property. There are 48 General Partner Applicants and 4 General Partner
4 Hold Co's and the Limited Partners. Audeamus and IEC are not applicants at this time,
5 but Strategic Group has volunteered that if I see fit to continue the stay, they will be
6 added as applicants.

7
8 In the proceedings, there are 60 properties with, as best as I can count, 21 different
9 first mortgagees, some with different first position mortgages on more than 1 property.
10 The aggregate of the first mortgages outstanding, according to the Strategic Group
11 evidence, is \$606 million with second mortgagees at \$43.5 million for a total of \$650
12 million.

13
14 The underlying value of the properties is, of course, what each would sell for in an open
15 market to a willing buyer. The Strategic Group presents its own values in a confidential
16 exhibit as at January 1st, 2019. After net off of all of the mortgage outstanding debt,
17 co-owner unsecured debt, limited partner unsecured debt, and unsecured trade payables,
18 the Strategic Group estimates equity of roughly \$347 million over the 60 properties.

19
20 Twenty-five of the 60 properties are co-owned with the Telus group. The co-ownership
21 relationship is complex and extends over an additional 70 properties not currently
22 involved in these proceedings. The Telus group is not only a beneficial owner in 25 of
23 the 60 properties, it is also a lender or co-lender on 4 of the properties in these
24 proceedings and is also a lender or co-lender on 6 other properties not before this Court.

25
26 The Applicants maintain that the remedial purpose of the legislation is engaged here as
27 related but non-applicant service companies employ 353 people that spend their workday
28 or a part thereof servicing these 60 properties. Of course, I infer they also service the
29 other Strategic Group properties as well.

30
31 Mr. Mamdani's affidavit states that the 60 properties are all in Calgary and comprise
32 5 percent of Downtown B and C class buildings, 5.5 percent of Beltline office buildings,
33 and 6.7 percent of suburban office buildings of such properties in Calgary. The total
34 square footage of office space involved is approximately 3.5 million square feet and that
35 to allow these to be dissipated or sold in a chaotic and mismanaged process would, it
36 alleges, wreak havoc on the commercial marketplace.

37
38 Instead, the Applicants put forward a request for an additional 3.5-month stay during
39 which they will develop a plan for an orderly sales process whereby all stakeholders will
40 benefit. Two key components of their plan are a cash management system and a
41 restructuring cost allocation using a formula based on the above noted property

1 valuations.

2
3 Additionally, they seek to maintain Hardie & Kelly as the monitor for the group and for
4 the group to appoint as the chief restructuring officer Neil Narfason, a well-known and
5 nationally respected insolvency professional. The estimated restructuring costs just to
6 March 31st of 2020 are approximately \$4 million to be spread among the properties as
7 estimated. Doubtless, they would continue past that date and would continue to increase.

8
9 The cash management system would see lending and borrowing between the Applicant
10 entities in a magnitude of just under \$800,000 over the period. Again, those cash positive
11 Applicant properties would bear the burden of supporting the Applicant cash negative
12 properties in the short term, and the loans would further erode or possibly erode the
13 equity available to creditors on the already struggling properties. The cash management
14 system negates the need for debtor in possession financing and thus foregoes the fees for
15 such borrowing with its typically enhanced rates.

16
17 20 out of 21 of the Respondent first mortgagee groups appeared here, and all
18 21 unanimously oppose the stay. The Telus group vigorously opposes the stay. Broadly
19 stated, all Respondents say their opposition coalesces around three main reasons: 1. Any
20 plan is doomed to fail; 2. They have lost confidence in Strategic Group; and 3. The plan
21 will prejudice their position.

22
23 I will deal with each of them in turn.

24
25 Doomed to fail.

26
27 This is not necessarily fatal, but the level of opposition and the degree of cooperation
28 among the lender group and Telus is solid. They state they will not be court ordered to
29 negotiate and compromise. They unanimously say they are sophisticated, they know the
30 market, and they will exercise their enforcement rights responsibly.

31
32 Confidence in Strategic Group.

33
34 Many grounds were variously submitted for the Respondents having lost confidence in
35 Strategic Group: first, lack of transparency and information flow. I appreciate that
36 Strategic Group's response has been that they have been working night and day and
37 tirelessly since at least somewhere towards the end of November to put these proceedings
38 before the Court and to, since December 10th, respond to requests for information.

39
40 Telus particularly considers itself to be most egregiously wronged with respect to lack of
41 information flow as their contracts would have required, at a minimum, information to

1 have been flowing to them since the end of September which they have not yet received.

2
3 There is the Fiera situation where it is submitted that a mortgage was taken out by the
4 underlying GPLP structure just in October of this year, that being \$3.7 million with the
5 first mortgage payment being due in November and was missed. And here they are; they
6 find themselves less than two months later before this Court in arrangement proceedings.

7
8 There is the November 4th, 2019, claw back of the Sun Life mortgage payment. There is
9 the alleged default on the Sun Life and RBC properties when surplus of rentals were
10 available to make the payments. It has been suggested that it is suspicious that thriving
11 entities have been co-joined with non-thriving entities just to fund the resulting
12 arrangement proceedings through the cash management system.

13
14 The lack of reliable financial statements for the Limited Partners and for IEC and
15 Audeamus are again -- part of the picture is missing and the Respondent first mortgage
16 corporations make the allegation that the Court can infer something nefarious as a result.

17
18 Further, the likely dated and inflated valuations for the properties point to much less
19 equity than presented, and I refer to the affidavit of Mr. Oliver's client, MCAP, with
20 respect to that as well as the evidence put forward in confidential valuations presented by
21 Sun Life, Ms. Bourassa's client as well as Mr. Lawson's affidavit.

22
23 Prejudice.

24
25 The Respondent first mortgage lenders say they lent to specific corporations over specific
26 properties, and they are now being asked to pool their assets and be primed to save or
27 support properties they know nothing about. Telus states that with respect to their 25
28 properties, they will be the most prejudiced of all as their equity will likely be eroded in
29 favour of Strategic Group creditors.

30
31 The Respondents state that there is no going concern here to save. There are just
32 standalone entities that have been created by Strategic Group for their own purposes and
33 on purpose. Some of the 353 employees may eventually lose their jobs, but with a sales
34 process, that is likely inevitable, and as an offset, there will be other jobs created, albeit
35 likely a lower number and for a shorter term.

36
37 I have concluded that to grant or continue the stay would not further the remedial
38 purposes of the *CCAA* legislation, nor would it treat the lender group or their co-owners
39 advantageously or fairly. They are asked to forego interest payments and lend rental
40 revenue to others against their will on properties they know nothing about and to pay the
41 whole of the restructuring costs, all the while not being in control of the proceedings or in

1 full control of the revenue.

2
3 As is typical, this application comes down to who should control the proceedings. Here,
4 the largest stakeholders are the first lending group and should be in control. While I have
5 the jurisdiction to grant the relief sought by the Strategic Group, I decline to do so. There
6 is no going concern here to foster. I am uncertain as to job loss. The equity numbers are,
7 as admitted, unknown. While the Court can and will use its power to override contractual
8 remedies, these facts do not support such a decision being made here.

9
10 So having said that, the stay terminates today, and I would entertain the first lending
11 group's application for the appointment of a receiver.

12
13 Now what do I need to put in front of me?

14
15 **Submissions by Ms. Gurofsky**

16
17 MS. GUROFSKY: Thank you, My Lady. The only thing that I will
18 likely refer to is the first Mamdani affidavit --

19
20 THE COURT: Okay.

21
22 MS. GUROFSKY: -- although I am somewhat in your hands. For
23 the record, it's Robyn Gurofsky from Borden Ladner Gervais, and we represent the
24 Bank of Montreal, ATB Financial, Industrial Alliance, CMLS, ACM, and Terrapin who
25 each filed affidavits in these proceedings.

26
27 The alternative relief sought today is sought by all of the lenders, save and except for one,
28 and Mr. Russell made submissions earlier on behalf of a colleague from Edmonton who
29 formally represented Servus. I understand, My Lady, that Servus Credit Union or its
30 former counsel was in contact with Ms. Bourassa's office earlier, and Servus has been
31 added to the application and the proposed form of order that was done yesterday.

32
33 THE COURT: Okay.

34
35 MS. GUROFSKY: The relief sought, My Lady, is the appointment
36 of an interim receiver, pursuant to section 47 of the *BIA*, section 13(2) of the
37 *Judicature Act*, section 49 of the *Law of Property Act*. And the reason for this -- some of
38 the stakeholders have issued 244 notices; others have not. Hence, the relief being sought
39 under various statutes.

40
41 The relief is narrow, and it's designed to limit the powers of the proposed interim receiver

1 to deal with conservatory measures associated with the properties. This includes the
2 collection of rents and the payment of operating expenses, managing the properties, and
3 dealing with imminent safety issues.

4
5 It's designed for a short period of time, at least at the outset, to allow the lenders an
6 opportunity over the holiday season and beyond to consider their position and to consider
7 what is best for their individual interests. These interests vary, My Lady. Some parties
8 may be satisfied to remain in the receivership; others may wish to pursue other options;
9 others may say, look, my property is cash flow positive, and I think it's appropriate to
10 appoint a property manager and continue running this in that manner. There's also Telus
11 here who has a co-ownership interest, and there may be opportunities to pursue with
12 them.

13
14 My Lady, Alvarez & Marsal has consented to act as receiver, they have signed a Consent
15 to Act that was filed yesterday, and, as Mr. Kruger indicated yesterday, that firm is ready,
16 willing, and able to step in right away. They have -- or they are in the process of
17 engaging Colliers to take an assessment of each of the properties and put in property
18 managers where appropriate. I know Mr. Collins has taken issue and raised an issue with
19 respect to a perceived conflict.

20
21 If you look at the email -- and my apologies. I will now refer to Mr. Mamdani's fourth
22 affidavit.

23
24 THE COURT: Okay. Give me a moment.

25
26 MS. GUROFSKY: Thank you.

27
28 THE COURT: I have it. This is the first or second email?

29
30 MS. GUROFSKY: It is the first -- yeah -- the first email, exhibit A.

31
32 THE COURT: Yeah.

33
34 MS. GUROFSKY: And I just want to take you to the email
35 signature. It's a junior broker from Colliers who's reaching out who sees an opportunity
36 to assist and step in after hearing about the *CCAA* filing. I suspect this is not the only
37 party in the property management business who's reached out to parties. There's no
38 evidence of any engagement here.

39
40 The proposed receiver is in discussions with senior members of Colliers. They've raised
41 no issues with conflict. And if the appointment is granted and Colliers is engaged, this

1 will not be pursued at all. So I would submit that this is not a conflict, My Lady. It's a
2 junior party who reached out to express an interest to assist.

3
4 THE COURT: Well, it's not a conflict. It's commercial reality.
5 But Colliers is willing to give the Court an undertaking that while they are the
6 court-appointed receiver and manager with regard to these properties, there will not be
7 any efforts made by their -- their employees or consultants -- junior or senior -- to any of
8 the tenants to attempt to persuade them to move elsewhere.

9
10 MS. GUROFSKY: I don't have those instructions, but I will tell the
11 Court that we will be speaking to the receiver, and the receiver will be speaking to
12 Colliers, and we'll say, this engagement will not be executed if you don't provide this type
13 of undertaking.

14
15 THE COURT: Okay. In written form and filed with the Court.

16
17 MS. GUROFSKY: Thank you.

18
19 THE COURT: Okay.

20
21 MS. GUROFSKY: My Lady, many of the arguments in favour of
22 the appointment of a receiver today are the same arguments that you've heard for the last
23 two days, and you've outlined some of those facts in your reasons with respect to the
24 *CCAA*. I don't intend to go into detail into those. You've heard them ad nauseam.

25
26 There are three main reasons why this must now proceed by way of a receivership instead
27 of simply letting things run in the ordinary course now that the *CCAA* has terminated.
28 First and foremost, as you've indicated, the lenders have collectively lost confidence in
29 management. There's a number of reasons for that. One is mismanagement that's been
30 alleged, and Ms. Bourassa took you through that. Mr. Kruger discussed at length
31 co-mingling of funds involving single purpose entities with their own unique capital
32 structure and stakeholder group.

33
34 Mr. Collins says, well, there's no evidence of co-mingling on the record, but if you go to
35 Mr. Mamdani's first affidavit at paragraph 49 --

36
37 THE COURT: Yeah. I was taken there previously.

38
39 MS. GUROFSKY: Yes. It says, starting at the second sentence:
40 (as read)

41

1 The applicants have utilized a central cash management system
2 that facilitated the movement of funds between entities on an
3 as-need basis.
4

5 You might call it a central cash management system. We call it a co-mingling of funds.
6 We say there is no authority to do that, and while the mortgagees may not have taken
7 issue with that prior, they didn't know, firstly. Secondly, they were being paid. When the
8 December 1st payments were not made, either because funds weren't available or because
9 an intentional default was manufactured, the music stops, and now everyone's asking:
10 Where's the money? Why am I looking at cash flows with a starting cash balance that's
11 negative when I know that these properties were cash flow positive even when the debt
12 was serviced?
13

14 So Ms. Bourassa asked where's the money? I think Your Ladyship asked where's the
15 money? It's our submission that we need a third party in there to ensure that the
16 co-mingling stops and that the parties can protect their interests.
17

18 The *CCAA* materials have provided some insight into the back office functions of the
19 corporations. I would call the light financial statements that were appended to
20 Mr. Mamdani's first affidavit offer no real insight into the financials of the corporation,
21 and I would submit this is indicative of the fact that these companies don't have the
22 ability currently to operate in a responsible manner with appropriate financials with
23 understanding where money is going. Again, another reason why a receiver should be
24 appointed.
25

26 There's been a loss of confidence associated with the manner in which these proceedings
27 were commenced. I don't need to get into the details of that. But the apparent strategy to
28 lump the unprofitable entities with the profitable entities so that the profitable entities
29 could fund the other entities did not help to build that confidence.
30

31 Lastly -- and I think Your Ladyship noted -- you have a letter like Terrapin who as set out
32 in Mr. McLay's affidavit advanced their loan on the Mayfield property on October 15th
33 and whose first payment, due on December 1st, was not made. Mr. Kruger took you
34 through those details.
35

36 So you've got first a loss of confidence in management. Second, which relates to the
37 first, is concerns with respect to third party controlling the cash flows and managing the
38 operations. Third, again there's a tsunami of support for the relief by the lenders who
39 each have their own security agreements with the Strategic entities that permit the lenders
40 to appoint a receiver in circumstances of a default. And we recognize, of course, that just
41 because the right is there does not mean it needs to be exercised. But in these

1 circumstances, My Lady, the interim relief sought is not only just and convenient is the
2 only reasonable alternative to protect the lenders' interests.

3
4 It was not easy to get a disparate group of lenders to agree on a single order designed
5 again really as a conservation measure. But as Justice Kent noted in the
6 Daundeb (phonetic) case, the lenders did build consensus and support of the appointment
7 of a receiver there. In that case, Mr. Kruger advised it was set -- approximately
8 75 percent support. Here, according to my calculations, there's about 96 percent support
9 for the appointment of a receiver.

10
11 I will touch very briefly on the just and convenience test. I don't intend to get into the
12 minute detail of that. Your Ladyship is well aware. But the test really involves a
13 balancing of rights of both the applicants and the respondents, and one of the main
14 questions the Court must ask is: What are the relative risks to the parties?

15
16 And I would submit from Strategic's perspective, of course they don't want to lose control
17 of their operations, but they filed for a *CCAA* proceeding, admitted insolvency. That's
18 been terminated. And they have not demonstrated that they have the ability to operate in
19 a responsible fashion. I would submit the real prejudice is at the stakeholder level, the
20 majority being the secured lenders.

21
22 And from the lenders' perspective, again mismanagement of the Board orders operations
23 coupled with circumstances where management has failed to consult with the majority of
24 the lenders where information is not being readily shared, either because it may not be
25 readily available or because it was provided in a staged approach and where the tsunami
26 of support is by the lenders and a co-owner who had the contractual right -- at least the
27 lenders -- the contractual right to appoint a receiver and who stand to lose the most.

28
29 And all of this is in the backdrop of a weak real estate market. The balance of
30 convenience, I would submit, My Lady, favours the lenders, and we submit it is not only
31 just and convenient but appropriate to grant the order.

32
33 The lenders represent the majority of stakeholders, and the interim receivership order
34 being proposed represents a more efficient process designed to protect security, prevent
35 immediate chaos following the immediate termination of the *CCAA* proceedings, and will
36 the lenders -- will allow the lenders to exercise their rights.

37
38 For these reasons, My Lady, we submit it's just and convenient and appropriate to grant
39 the order.

40
41 THE COURT:

Okay. Do you want to take me through the

1 order?

2

3 MS. GUROFSKY: Yes. And Ms. Bourassa was going to do that.
4 So I will accede the podium to her.

5

6 THE COURT: Okay. Thank you. So what I am putting in
7 front of me is tab D to the amended originating application?

8

9 **Discussion**

10

11 MS. BOURASSA: Sure, My Lady. I will pass you up the copy we
12 would propose to have signed if you are inclined (INDISCERNIBLE) with the last time.
13 And the blackline, My Lady, is to the Alberta template recognizing that's for a full
14 receiver. Ms. Gurofsky addressed the service -- Servus Credit Union point, and they are
15 included in this order, and I know Mr. Russell spoke on their behalf today. And -- so I'll
16 just take you through the blackline, if I could, just because then we see where we're at
17 least differing from the template.

18

19 THE COURT: Okay.

20

21 MS. BOURASSA: And so we get into the appointment language.
22 You'll see the statues which we've referred to. And then because we're dealing with an
23 appointment over particular buildings, what we have is the lands, which are described in
24 the schedule, and also all of the property -- the personal property present there. And so
25 that is then what we determined as -- what we've defined as the property for the
26 remainder of the order.

27

28 THE COURT: Okay.

29

30 MS. BOURASSA: Three is to make clear that while we have
31 one application and we have one order, each of these, as the mortgagees have been saying
32 throughout these proceedings, are individuals. So this is not intended to be a substantive
33 consolidation, and we have in particular a direction to the receiver that the receiver shall
34 maintain separate accounting and bank accounts for each of the lands and the related
35 collateral.

36

37 So then we get into the receiver's powers, and here you'll see that we have taken out some
38 of the typical full receiver powers. We've made some clarity in C. In E, there is a
39 specific direction in terms of collecting rents.

40

41 And then you'll see in a few of the paragraphs -- G being one of them -- it's always

1 difficult paring back these orders because you look at the powers and you're, like, well,
2 will they need this? Will they not need this? We want it to be narrow as possible. So
3 you'll see in G that we've included the words "as are imminently required to modify the
4 execute, assign issue, and endorse documents."

5
6 We've done that a few places because to the extent there's something to be signed or
7 something that needs to be done, we do want the receivers to be able to do that without
8 returning to court, but we are also mindful that this an interim order and not intended to
9 be a full receivership.

10
11 You will see that we've taken out both the ability to initiate proceedings and also to
12 market and sell the properties. And then H, I guess, is another one -- it comes up on the
13 next page -- that's again where we've added in the "imminently required" with respect to
14 environmental and workers' health and safety matters.

15
16 We've got the regular reporting but included the fact that they will also report to the
17 mortgage lenders and the co-owners which of course would, in addition to Telus, include
18 the Strategic Group.

19
20 L, again, we've narrowed, and then we've taken out some other provisions there in the
21 powers. The view was that these were the powers needed just to manage the properties
22 and make sure that nothing should happen in the interim period.

23
24 THE COURT: Okay.

25
26 MS. BOURASSA: Five is simply the typical provision in terms of
27 access and cooperation. There is an inclusion there though to make sure that given not
28 the entire entity was filed, given we don't understand exactly how they inter-relate with
29 the -- in *CCAA* versus out of *CCAA*, we've got the debtor and their affiliates and
30 specifically we've included the Strategic managers which is defined to be -- it's defined
31 later in the document, but it's the three Strategic entities that my friend spoke of earlier
32 which do the property management --

33
34 THE COURT: The service companies essentially.

35
36 MS. BOURASSA: Yes.

37
38 THE COURT: Okay.

39
40 MS. BOURASSA: And then we've included in terms of what will
41 be turned over -- the data imaging that has been discussed. In 7, we have again narrowed

1 or modified the receiver's powers that they'll -- they'll only be to the extent necessary to
2 fulfill its mandate under the order.

3
4 And then I think the next place we get into something that's a bit different is in
5 paragraph 10, you'll see we've added paragraphs -- subparagraphs (d) and (e), and those
6 mirror provisions that are in the *CCAA* initial order relating to co-owners being able to
7 file caveats, notwithstanding the stay of proceedings.

8
9 THE COURT: Okay.

10
11 MS. BOURASSA: Then we get into some changes. We have
12 13 which is in respect of the applicant mortgage lenders which is subject to 18.
13 Eighteen is the collection of rents. Subject to 18, nothing contained in this order prevents
14 the applicant mortgage lenders from taking steps or exercising rights under their security,
15 the idea being to the extent people want to issue demands, and if they do determine to
16 take their properties out of the receivership, they want to be teed up to do so essentially.

17
18 We have the property manager provisions which we've discussed the intention to engage
19 Colliers. I heard the exchange between Your Ladyship and Ms. Gurofsky with respect to
20 the written undertaking, and I am sure all of the mortgage lenders have taken note of that
21 and your expectations there.

22
23 The property manager is authorized and directed to report to the mortgage lenders and
24 any co-owners in respect of their specific lands. The receiver is authorized to release
25 funds in accordance with the direction of the property manager without independent
26 verification and without liability.

27
28 That sentence I'll spend a minute on. The point there is there were significant discussions
29 among the lender group about ensuring that there is no overlap of duties. If we're going
30 to have a property manager engaged or someone to oversee the property management
31 function, we didn't want the receiver duplicating those efforts. And so the idea here is
32 that if Colliers is dealing directly with the service providers to the various properties and
33 then provides a list to the receiver and says, these are the people who have done the work;
34 please pay them, the receiver won't spend additional time doing its own verification, but
35 by virtue of not doing that, it won't be opening itself up to any liability.

36
37 This is the paragraph 16 where the "Strategic managers" are defined, and that's simply
38 that they will cooperate with the property manager and continue to provide property
39 management services. My friend Mr. Collins made some comment on that provision
40 earlier in his submissions, but my view of that is that his submission was somewhat
41 circular. So long as the position in the Mamdani affidavit was that if the property -- we

1 call them the Strategic managers -- if the Strategic managers are not looking after the
2 properties, they will need to downsize, and so therefore, they won't be able to comply.
3 But if they are looking after the properties in accordance with the order and because
4 they've been retained by the property manager -- and we've spoken about the fact that
5 there will be a time period of transitioning and whatever else.

6
7 And I think there were submissions yesterday -- perhaps by Mr. Kruger -- that the
8 intention is not to completely cut ties with the parties that do the work. The receiver's
9 view is if there's someone doing the work and they're doing it at market rates, why would
10 we bother with that? Like, let's leave that be. So so long as they're being engaged to do
11 the work, there's no need to downsize. So I think there's a period of time over which this
12 will happen.

13
14 THE COURT: Okay. And I thought Mr. Collins' concern was
15 that they were -- really they were being asked to continue the work for free. That's not
16 the intention?

17
18 MS. BOURASSA: Absolutely not.

19
20 THE COURT: Right.

21
22 MS. BOURASSA: Absolutely not. And I think it says in
23 accordance with existing agreements. So that again is something that the receiver will
24 have to determine. If the receiver goes in and says, okay, I don't like this agreement; I'll
25 contract with you on these terms --

26
27 THE COURT: Right.

28
29 MS. BOURASSA: -- then they can decide whether they want to
30 contract on those terms or not.

31
32 THE COURT: Okay. Understood. So there's a -- there is the
33 ability to resile from contracts.

34
35 MS. BOURASSA: There is, and I believe that's in the powers
36 because it's a typical provision. I'll just have to track it down here.

37
38 THE COURT: Well, we'll get there, Ms. Bourassa. It's a
39 corollary to what you are saying.

40
41 MS. BOURASSA: I think we've passed it was my point.

1
2 THE COURT: Yeah. Okay.
3
4 MS. BOURASSA: Yeah. Okay.
5
6 THE COURT: And could we just back up again to
7 paragraph 13: (as read)
8
9 Nothing in the order prevents or limits the applicant mortgage
10 lenders from taking any steps.
11
12 You had explained that to mean that in the event once they decide to opt out of the
13 receivership proceedings, they are ready to go. So they might to serve notices or
14 whatever. This is much more broadly worded than that.
15
16 MS. BOURASSA: Well, we've -- I'm not sure because we have
17 18 which says --
18
19 THE COURT: Eighteen --
20
21 MS. BOURASSA: -- 18 says that the receiver collects the rents. So
22 if a mortgagee has an ability to attorn rents, they're --
23
24 THE COURT: Ah, okay.
25
26 MS. BOURASSA: -- prohibited from doing that.
27
28 THE COURT: All right.
29
30 MS. BOURASSA: And because the properties are in the
31 receivership and they can't take them out of the receivership, then it's not as though they
32 can get another order, for example --
33
34 THE COURT: Right.
35
36 MS. BOURASSA: -- like an order of foreclosure.
37
38 THE COURT: Right. There's no point. Okay.
39
40 MS. BOURASSA: But they could file any statutory notices. They
41 could file materials. They could have a court date so that when you get to later in the

1 proceeding, this is all set up so that we have a period of stability to January 31st.

2
3 THE COURT: Right.

4
5 MS. BOURASSA: The idea of 13 is so if there are mortgage
6 lenders who determine that they would like to do a foreclosure that they would like --
7 well, "foreclosure" -- let's use that example --

8
9 THE COURT: Yeah.

10
11 MS. BOURASSA: -- because that's a different court process.

12
13 THE COURT: Okay.

14
15 MS. BOURASSA: They would be prepared to go into court on
16 February 1st because they would be in a position to do everything that needed to be
17 done --

18
19 THE COURT: Prior to there, too. Okay.

20
21 MS. BOURASSA: -- during the stay.

22
23 THE COURT: My only concern was that it seemed very
24 broadly worded, but as you've explained, they're limited because of other clauses.

25
26 MS. BOURASSA: That's --

27
28 THE COURT: Okay.

29
30 MS. BOURASSA: -- that's my view of it. Yes.

31
32 THE COURT: All right. Fair enough.

33
34 MS. BOURASSA: And I would just say at that point when we get
35 to the -- to the kind of limitation on this, part of this limitation was set up because we
36 wanted the stability.

37
38 And I think Ms. Gurofsky referred to it: Some lenders may wish to go down the pure
39 foreclosure route. Some lenders may want to continue a receiver, and then we probably
40 have to come back and get a broader receivership order that would include powers of
41 sale, for example. Some mortgage lenders may be prepared to enter into new agreements

1 or different agreements with the existing owners because they have a mortgage that,
2 notwithstanding the defaults, has not actually matured, and if it's a cash flowing company
3 and a company that is --

4
5 THE COURT: Oh, there may be redemptions.

6
7 MS. BOURASSA: That also.

8
9 THE COURT: Right.

10
11 MS. BOURASSA: Yeah. So anyways, then we're on page 17.
12 I guess I should just say at the end of -- I don't want to skip over 16. So we talked about
13 the first part of 16.

14
15 The second part of 16 is just making it clear that neither the Strategic managers nor the
16 debtors have power or authority to make any discretionary decisions in respect of
17 property management or authority to alter any contractual arrangements -- contractual
18 obligations, and they don't have any powers in respect of banking or credit authorization.
19 Those were -- those were a few hot button issues for some of the lenders.

20
21 Into 17, we've taken out the whole continued use of premises telephone numbers because
22 again each of these is a property. There -- 18 we've spoken about. In 20, I just want to
23 note that the -- what we have deleted is the provisions with respect to the receiver being
24 able to terminate employees --

25
26 THE COURT: Right.

27
28 MS. BOURASSA: -- because of course, this is --

29
30 THE COURT: There aren't any.

31
32 MS. BOURASSA: -- a limited receivership.

33
34 THE COURT: Yeah.

35
36 MS. BOURASSA: But we do clarify that any debtor -- any
37 employees, to the extent there are any in respect of any of the properties, continue to be
38 the debtor's employees.

39
40 THE COURT: Okay.

41

1 MS. BOURASSA: They're not the receiver's.
2
3 THE COURT: My understanding was that there is no per se
4 employees --
5
6 MS. BOURASSA: That is --
7
8 THE COURT: -- for property, but we'll see.
9
10 MS. BOURASSA: -- that is our understanding as well, but we --
11
12 THE COURT: Just to make --
13
14 MS. BOURASSA: -- don't know what we don't know.
15
16 THE COURT: Yeah. Okay.
17
18 MS. BOURASSA: The (INDISCERNIBLE) paragraph came out
19 because again there's no sales process. It didn't seem to make sense. The limitations on
20 environmental liability and limitations on liability are not changed from the template.
21 Neither is the receiver's accounts, and we have discussed the charge of 500,000.
22
23 As far as the actual receiver's accounts -- so the fees and disbursements of the receiver
24 and its counsel -- the view is that they will be dealt with in the ordinary way which is any
25 party can come and speak to allocation. So let's just get into the process. Let's see how it
26 works. But with respect to receiver's borrowings, we've been more careful.
27
28 THE COURT: Okay.
29
30 MS. BOURASSA: And that's in 27 -- the funding of the
31 receivership. And what we've added in there is, first of all, that the power to borrow is in
32 consultation with the mortgage lenders and the co-owners.
33
34 THE COURT: M-hm.
35
36 MS. BOURASSA: It is only as is imminently required to safeguard
37 the property. It is limited to a maximum of \$100,000 in respect of any particular
38 property. And the related charge only charges that property, and it then also can only be
39 paid out of that property or proceeds of that property. So that's kind of what we've done
40 in 27 through 31 to ring fence matters.
41

1 THE COURT: Right.

2
3 MS. BOURASSA: So that's why in the allocation, we've deleted
4 the receiver's borrowing charge, and we only have the receiver's charge that will
5 ultimately be spoken to. The general provisions -- most of them are, I hazard to say,
6 boilerplate. They are necessary but necessary regardless.

7
8 THE COURT: Yeah.

9
10 MS. BOURASSA: In 38, that again is the standard template
11 language, but we've made it clear that it's only in respect of the particular property that
12 any applicant has a right.

13
14 Thirty-nine is the -- is the -- "opt out" is one of the terms that we used when we were
15 discussing it among the lender group. So the idea is after January 31st -- and we had
16 discussions within the group as to whether this should be requiring an application or
17 otherwise, and people didn't want the additional court time. So we've structured it very
18 similarly to how we would structure a receiver's discharge in a circumstance where you
19 come for the discharge application, and there is still some ancillary things to be
20 completed. And we say the discharge is effective when the receiver files the discharge
21 certificate.

22
23 So here what we've said is that after January 31, any of the applicants can file with the
24 clerk a termination certificate advising that they wish to terminate the receivership in
25 respect of the specific property in which they hold their security. And when you look at
26 the termination certificate, it kind of has a box that says, these are my debtors, and this is
27 my land.

28
29 And then the receiver -- effective 12:01 AM on the date of filing, the receiver is
30 discharged in respect of that particular property but notwithstanding remains receiver for
31 incidental duties -- so essentially the transition to whatever it is that the mortgagee is
32 doing -- and continues to have the benefit of the provisions of the order.

33
34 THE COURT: Okay.

35
36 MS. BOURASSA: And then we've got a cooperation provision
37 there which is both the receiver and the respective debtor will cooperate with any
38 applicants who opt out.

39
40 We've taken out the e-service guide. We've included the website. And then what you see
41 in schedule A is the applicants and the respondents, and we've set them up so that they

1 are side by side so we see who --

2

3 THE COURT: Yeah.

4

5 MS. BOURASSA: -- how it relates to whom.

6

7 THE COURT: Right.

8

9 MS. BOURASSA: We've included effectively a service list in place
10 of what would typically be on the first page. And then when you get to schedule C,
11 which is the lands, you will see that we have all of the various lands involved. And then I
12 had mentioned there is the borrowing certificate which is generally the standard form --
13 schedule D. Schedule E is the termination certificate if you wanted to take a look at that.

14

15 And what I will note for you is that over the -- I think the original form of order that was
16 attached to the originating application that Ms. Gurofsky's office filed, there were a
17 couple parties who asked to be added after the fact. Equitable Life Insurance Company is
18 one of them with respect to a property on Kensington Road. And then the other is -- and
19 their counsel, which is Mr. Maruyama who was here yesterday and I mentioned about
20 him this morning --

21

22 THE COURT: Right.

23

24 MS. BOURASSA: -- and including their lands. So that -- that is
25 the only thing that was added from the version that you had originally seen to the extent
26 you delved into that level of detail.

27

28 THE COURT: Okay. And oh, just a quick comment. The
29 termination certificate refers to an order dated yesterday. So it would be -- it would have
30 to be changed. It talks about an order --

31

32 MS. BOURASSA: Oh, yes.

33

34 THE COURT: Yeah.

35

36 MS. BOURASSA: Thank you.

37

38 THE COURT: Okay.

39

40 MS. BOURASSA: We changed the date on the order but --

41

1 THE COURT: Not that.
2

3 MS. BOURASSA: -- didn't see that.
4

5 THE COURT: Yeah.
6

7 MS. BOURASSA: And I did have one other point I wanted to
8 raise. Mr. Lenz mentioned to me his client --
9

10 THE COURT: Trez.
11

12 MS. BOURASSA: -- is not an applicant mortgagee. Of course he
13 said that they were taking no position on --
14

15 THE COURT: Right.
16

17 MS. BOURASSA: -- Mr. Collins' application. But what he did say
18 to me just before the break was that he would seek clarification that where we talk about
19 the applicants and the applicant mortgagees in this order that that would include any
20 successor. The idea being is somebody comes in and purchases one of the applicant's
21 mortgages, they should have the benefits of the order.
22

23 I did not take any issue with that. I know Ms. Gurofsky was there, and I don't think she
24 took any issue, but I don't know that anybody had any client instructions. The entire
25 group of the courtroom here has not necessarily had a chance to hear that, but I wanted to
26 raise it. It, to me, makes sense. I think Mr. Lenz's view was that if it was on the record,
27 he didn't need the order to be actually changed.
28

29 THE COURT: Right.
30

31 MS. BOURASSA: So I just thought I would mention that.
32

33 THE COURT: Okay. Thank you. Did you want to speak to
34 that, Mr. Lenz?
35

36 MR. LENZ: No. My Lady, it's been correctly stated. As
37 second mortgagee, we will likely be looking at taking up some of the first, and if we do,
38 we want the opportunity to opt out or not. That's all.
39

40 THE COURT: Okay. Well, that -- yeah. I mean -- yeah.
41 Okay. Understood. All right. Mr. Collins.

1
2 MR. COLLINS: Thank you, My Lady. I'm wondering if we may
3 have a moment to --
4
5 THE COURT: Yes.
6
7 MR. COLLINS: -- just to take some instructions from the client.
8
9 THE COURT: Certainly.
10
11 MR. COLLINS: But like in the first instance a very brief
12 moment, and then -- and then it may be that we can come back and deal with things more
13 quickly but --
14
15 THE COURT: Sure.
16
17 MR. COLLINS: Yeah.
18
19 THE COURT: Okay. Madam clerk, how is your time? Can
20 you stay past 4:30 --
21
22 THE COURT CLERK: Yeah.
23
24 THE COURT: -- today? Okay. All right. Well then, what
25 would you like, Mr. Collins?
26
27 MR. COLLINS: Well, like I said, in the first instance, just a few
28 moments.
29
30 THE COURT: Okay.
31
32 MR. COLLINS: And then -- and then, you know, that will
33 inform, I guess, the position to be taken on the receivership application.
34
35 THE COURT: Right. And we -- so we just don't know.
36 All right.
37
38 MR. COLLINS: Okay.
39
40 THE COURT: Ten minutes?
41

1 MR. COLLINS: Sure, My Lady. Thank you.
2
3 THE COURT: Okay. I mean, it's really it's up to you. Okay.
4
5 (ADJOURNMENT)
6
7 THE COURT: Thank you. Please be seated. Mr. Gorman?
8
9 MR. GORMAN: Good afternoon, My Lady. With your
10 indulgence, I was trying to explain some concerns I had to Mr. Collins, and we thought
11 I'd perhaps raise them and have the two orders fit together, and then he can deal with his
12 client's instructions that he got during the break.
13
14 THE COURT: Okay.
15
16 MR. COLLINS: Which to be clear, My Lady, I do not oppose
17 the granting of the order but to deal with some of the provisions.
18
19 THE COURT: Okay. Thank you.
20
21 MR. GORMAN: My Lady, I don't know if you have a copy of
22 your December 10th order handy or --
23
24 THE COURT: I do not.
25
26 MR. GORMAN: -- can I pass one up?
27
28 THE COURT CLERK: What was your name?
29
30 MR. GORMAN: Gorman.
31
32 THE COURT: I mean, I'm sure I have it somewhere here, but
33 this is simpler.
34
35 MR. GORMAN: Okay.
36
37 THE COURT: Okay.
38
39 MR. GORMAN: Okay, My Lady. If you put the interim
40 receivership order on one side and the *CCAA* initial order next to it --
41

- 1 THE COURT: Okay.
2
- 3 MR. GORMAN: -- the appointment under the interim
4 receivership under paragraph 2 is the lands and premises legally described in schedule C
5 hereto which are the lands and premises of the persons who were described in schedule A
6 of the initial *CCAA* order.
7
- 8 THE COURT: Okay.
9
- 10 MR. GORMAN: Okay. It does not include Audeamus. It does
11 not include IEC.
12
- 13 THE COURT: Right. And it doesn't include all the properties,
14 I don't think, either because the schedule I looked at at the receivership order just at the
15 break lists 57 properties and the exhibit 1 to the first affidavit or second affidavit of
16 Mr. Mamdani lists 60 properties.
17
- 18 MR. GORMAN: I am not sure if there's three properties missing
19 or if some of them are described. If there's two titles, it's described as one.
20
- 21 THE COURT: Oh, I see. Okay. I don't know.
22
- 23 MR. GORMAN: That exercise can be gone through.
24
- 25 THE COURT: Okay. But that's a different point. Your point
26 is that --
27
- 28 MR. GORMAN: Well, my first point is it's not everyone for
29 sure --
30
- 31 THE COURT: Right.
32
- 33 MR. GORMAN: -- because it's not Audeamus and IEC.
34
- 35 THE COURT: Okay.
36
- 37 MR. GORMAN: Okay? It is -- with respect to the schedule A
38 parties, it is not necessarily all of their property. It is the lands --
39
- 40 THE COURT: No.
41

- 1 MR. GORMAN: -- and it is the debtors present and after required
2 property situated on the lands or which at any time was the next two comprised pertaining
3 or related to or used in connections with the lands including all bank accounts, books, and
4 records associated with such property lands. I don't know today that that is all of the
5 property of all of the schedule A properties.
6
- 7 THE COURT: Okay.
8
- 9 MR. GORMAN: Okay? What I do not believe it would cover,
10 for example, is if there was a \$10 million mortgage on a property and the Alvarez &
11 Marsal in conjunction with the landowners sold it for 20 million, there's \$10 million in
12 equity in the schedule A entity once the interim receiver lands are gone.
13
- 14 THE COURT: Right.
15
- 16 MR. GORMAN: There may be value. It may be speculative, but
17 we don't know that today.
18
- 19 THE COURT: Okay.
20
- 21 MR. GORMAN: Over the last two days, that's one thing I think
22 we've all agreed on. We're not sure with respect to the value.
23
- 24 THE COURT: Right.
25
- 26 MR. GORMAN: So if a mortgage was paid off, the equity, one
27 would think, would go back to the owner company.
28
- 29 THE COURT: It goes back to the mortgagor. Right.
30
- 31 MR. GORMAN: If with Telus happily mortgages or paid in full,
32 perhaps 35 percent equity is available --
33
- 34 THE COURT: Right.
35
- 36 MR. GORMAN: -- to these companies. We don't know today.
37
- 38 THE COURT: Right. We don't know.
39
- 40 MR. GORMAN: Okay. So I deal with that with respect to the
41 concept of the skinny monitor does not necessary cover everything that was caught in the

1 initial order.

2

3 THE COURT: Okay.

4

5 MR. GORMAN: With respect to today's application, it was an
6 application by the company to amend the initial order including extending.

7

8 THE COURT: Okay.

9

10 MR. GORMAN: We all heard you loud and clear. No extension.

11

12 THE COURT: Okay.

13

14 MR. GORMAN: I take that to mean there's no amendment you're
15 not giving us today -- priming charge, anything else.

16

17 THE COURT: Right.

18

19 MR. GORMAN: The rest of the order still exists.

20

21 THE COURT: Okay. Okay.

22

23 MR. GORMAN: Hardie & Kelly is still the monitor of these
24 companies.

25

26 THE COURT: Okay.

27

28 MR. GORMAN: Maybe not for long. This might be something
29 that gets addressed in January, or maybe by then, we'll determine there is some value
30 there. Hardie & Kelly is still the monitor until they are sought to be discharged 'cause
31 nobody sought to set this order aside. They opposed it being amended and addended.

32

33 The order is still extant including in matters like the protections to the monitor at
34 paragraph 19 continue and paragraph 20 which provides the applicants or pay the
35 monitor -- counsel to the monitor and counsel to the applicants. We have not
36 (INDISCERNIBLE). Hardie & Kelly had initially a hundred thousand dollar retainer at
37 the time they were giving consulting advice.

38

39 The cash flows that we obtained in the December 10 order provided that we would be
40 paid at month end. It was projected that Hardie & Kelly in our offices collectively would
41 be 400,000. We will be less than 200. But provision in the order is extant. The

1 applicants are to pay up and pay the fees.

2

3 THE COURT: Okay.

4

5 MR. GORMAN: And you might say, why didn't we pay
6 ourselves in advance? Because on an ex parte application to this Court, we provided cash
7 flows that we wouldn't be paid till after today and heaven forbid somebody alleges we're
8 acting in bad faith by paying ourselves yesterday or last week. That did not occur. It
9 should occur.

10

11 THE COURT: Okay.

12

13 MR. GORMAN: The applicants are directed by this order which
14 is still extant to pay the fees.

15

16 I would think also employees who have worked for the last 10 days should be paid, and
17 expenses incurred over the time of the *CCAA* should be paid. And that is where these
18 two orders are going to have to work together because they are still extant with each other
19 hand in hand the moment you sign the interim receivership -- the skinny interim
20 receivership order -- the *CCAA* order still exists.

21

22 And that is something that the smart accountants from Alvarez and the smart accountants
23 from Hardie & Kelly are going to have to work during the break. They're already talking
24 about where accounts are, where monies are, et cetera. But I thought it was important to
25 note the *CCAA* order hasn't been discharged or vacated. It just hasn't been amended or
26 extended.

27

28 THE COURT: Well, the stay is over today, is it not at
29 midnight?

30

31 MR. GORMAN: The stay is over not because you amended the
32 stay. You didn't extend it.

33

34 THE COURT: Right.

35

36 MR. GORMAN: So it's over.

37

38 THE COURT: Sorry. It terminates as of the -- as of the terms
39 of the order but not the order. Understood, Mr. Gorman.

40

41 MR. GORMAN: The rest of the order doesn't.

1
2 THE COURT: Yeah. Okay.
3
4 MR. GORMAN: Two paragraph disappear --
5
6 THE COURT: Right.
7
8 MR. GORMAN: -- at the expiration of the stay date. The rest of
9 the order is still outstanding until appealed, amended, or set aside.
10
11 THE COURT: Okay.
12
13 MR. GORMAN: And that has not occurred, and nobody raised it
14 before today. And I apologize. When Ms. Gurofsky was helpfully going through the
15 terms of the order with Ms. Bourassa that the skinny component of their appointment
16 struck me as not replacing the *CCAA* order which nobody has sought to replace.
17
18 THE COURT: Okay. I think Mr. Kruger's about to do that.
19
20 MR. KRUGER: Yeah, My Lady. That's just dead wrong. For
21 the reasons which we've set out in our brief, this is why we were at pains to spell out what
22 happens on a comeback date when you've taken an ex parte order which says people are
23 going to be paid this and they're going to get paid that. The first lender should never have
24 notice of that order. They never agreed to that.
25
26 What happens is there a de novo hearing, and that's why we were at pains to refer you to
27 all those cases attached to our brief. What happens is it is as if that order was never
28 granted, as far as we are concerned. It's a total neutral afresh hearing. And what happens
29 is if the party who's applying for this relief, de novo cannot make up the case which it
30 was required to make up that it's entitled to *CCAA* protection -- and not just the stay -- the
31 *CCAA* protection. Then this order automatically gets discharged.
32
33 The initial order and the lowest hearing -- we didn't need to bring applications. We were
34 in a position where we're saying this thing should never have been granted. You've now
35 heard everybody. You've decided that they don't qualify for *CCAA*. So the initial order
36 should be discharged in hope.
37
38 And the fact that there were directions about payments, that goes out the door as well.
39 Today they were applying for charges. They're not going to get those charges because
40 they did not qualify for *CCAA*. Their Strategic empire which will pay those fees but it's
41 not going to come out of the skin of any of our clients who got zero value from this

1 massive undertaking to get *CCAA* (INDISCERNIBLE). The order should be discharged.
2 This is not two orders which continue to live, and we have to be married to each other.
3 We've seen enough of these strange marriages in these proceedings.
4

5 THE COURT: Okay. I am not in the position at 20 to 5 on
6 Friday, December 20th to decide this issue. I am going to -- as I've said earlier in these
7 proceedings, I've got a commercial week -- the week of December 6th.
8

9 So there should be an issue, Mr. Kruger. Maybe your office could take out an
10 application. The issue framed would be the effect of the failure of the applicants to
11 succeed in having the stay continued. We'll have some argument -- maybe a half day.
12 Check -- I haven't checked the external website --
13

14 MR. KRUGER: Yeah.

15
16 THE COURT: --recently, but I know there's some time there,
17 and we'll deal with that at that time. In the interval --
18

19 MR. KRUGER: Yeah.

20
21 THE COURT: -- the parties can try to work together
22 potentially. It may be an issue; it may not. As you say --
23

24 MR. KRUGER: Yeah.

25
26 THE COURT: -- the applicants are there. They have funds.
27

28 MR. KRUGER: Yeah.

29
30 THE COURT: They -- they may --
31

32 MR. KRUGER: Yeah. The applicants should --
33

34 THE COURT: -- this may be an issue; it may not be.
35

36 MR. KRUGER: Yeah.

37
38 THE COURT: I don't know.
39

40 MR. KRUGER: Yeah. The applicants should pick up that
41 application. I don't see my clients wanting me to spend the money to do so.

1
2 THE COURT: Okay. Fine. The applicants can take out the
3 application. I'm sure you'll be there, Mr. Kruger, or somebody in your -- in the capacity
4 of representative of the first mortgagees. Okay?
5
6 MR. COLLINS: I am mindful of what you said of the hour,
7 My Lady. It's just I think Your Ladyship's order was not to extend the stay.
8
9 THE COURT: Well, I -- you know --
10
11 MR. COLLINS: Okay.
12
13 THE COURT: -- I wasn't parsing my words.
14
15 MR. COLLINS: Okay.
16
17 THE COURT: We didn't have -- it's clear from Mr. Kruger's
18 brief that he argued for there to be essentially a de novo hearing and no order. That's
19 why -- I think I said in my reasons, you know, it's either a failure to extend or a failure to
20 grant. I didn't realize what was going to fall out of that.
21
22 MR. COLLINS: Sure. Okay.
23
24 THE COURT: Okay?
25
26 MR. COLLINS: All right. Then some other things -- and we
27 haven't unfortunately had a chance to discuss with the lenders, but we will try to deal
28 with here quickly. I mean, one that, I think, is not controversial is the Airdrie Creekside
29 Capital Corp. mortgage was paid out.
30
31 THE COURT: Sorry. This -- I'm looking now at schedule to
32 the --
33
34 MR. COLLINS: Schedule --
35
36 THE COURT: -- draft.
37
38 MR. COLLINS: -- 8.1.
39
40 THE COURT: I am looking at the redline copy of the order --
41

1 MR. COLLINS: I don't have the redline.
2
3 THE COURT: -- and in particular the schedule attached that
4 lists the entities and the buildings -- schedule C? I think what you're trying to tell me is
5 one of them should not be included here?
6
7 MR. COLLINS: One of them should not be included -- the
8 Canada ICI Capital Corporation, Airdrie Creekside Capital Corp. --
9
10 THE COURT: Okay.
11
12 MR. COLLINS: -- and Airdrie Creekside Limited.
13
14 THE COURT: It seems to be alphabetical, so it's -- I don't see
15 it under the Cs.
16
17 MR. COLLINS: It's under A.1 -- Canada ICI.
18
19 THE COURT: Sorry. You said the entity was Creekside?
20
21 MR. COLLINS: Airdrie -- Airdrie --
22
23 THE COURT: Airdrie. My apologies.
24
25 MR. COLLINS: -- Airdrie Creekside Capital.
26
27 THE COURT: Thank you. Yes. Now, I'm honing in on it.
28 Airdrie -- I've got Airdrie -- I've got -- I'm looking at schedule C.
29
30 MR. COLLINS: Yeah.
31
32 THE COURT: So I've got Airways Business Plaza, Aqua --
33
34 MR. COLLINS: Schedule C.
35
36 THE COURT: -- Arriva, Aura, Avenida, but no Airdrie.
37
38 MR. COLLINS: I'm looking at schedule A.1 -- the applicants.
39
40 THE COURT: Sorry. Schedule -- okay.
41

1 MR. COLLINS: Eight point one.
2
3 THE COURT: Okay. But the receivership order is my
4 concern. So that's what I'm looking at.
5
6 MR. COLLINS: And I'm looking at the receivership order as
7 well.
8
9 THE COURT: Okay. So schedule C -- the lands?
10
11 MR. COLLINS: Eight point one -- the applicants.
12
13 THE COURT: Sorry.
14
15 MR. COLLINS: Unless I'm --
16
17 MR. KRUGER: Schedule A.
18
19 MR. COLLINS: Schedule A.
20
21 THE COURT: Oh, schedule A. Sorry. Okay. Sorry.
22 Canada ICI, you said?
23
24 MR. COLLINS: Yes.
25
26 THE COURT: Airdrie Gateway block 2. Okay.
27
28 MR. COLLINS: Airdrie Creekside Capital Corp.
29
30 THE COURT: Okay. Yes. My apologies. Finally, I am there
31 Mr. Collins. Yes?
32
33 MR. COLLINS: Okay. So that -- that should come out of the
34 schedule.
35
36 THE COURT: Because?
37
38 MR. COLLINS: Because it's not -- it's not a debtor, and it's --
39 there's no money owing to the mortgagee --
40
41 THE COURT: By that company.

1
2 MR. COLLINS: -- by that company.
3
4 THE COURT: Okay. Does that -- can -- Mr. Coombs, do you
5 agree?
6
7 MR. COOMBS: I am just trying to confirm with my client. I
8 think I have something from them saying that they -- that's also cross collateralized with
9 one of the other loans. So I'm trying to get some details on that information.
10
11 THE COURT: Okay. I think I have to leave it in until we hear
12 from --
13
14 MR. COOMBS: Yeah.
15
16 THE COURT: -- Mr. Coombs's client.
17
18 MR. COLLINS: I think that's fine, My Lady --
19
20 THE COURT: Yeah. Yeah.
21
22 MR. COLLINS: -- 'cause I think it's bare land in any event.
23
24 THE COURT: Yeah. It's on the record. You've identified that
25 it's been paid out.
26
27 MR. COLLINS: Yeah.
28
29 MR. COOMBS: We can sort those issues out and --
30
31 MR. COLLINS: Yeah.
32
33 MR. COOMBS: -- shortly.
34
35 THE COURT: Okay.
36
37 MR. COOMBS: And so we'll take that information. I can get a
38 hold of Mr. Collins.
39
40 THE COURT: Okay. Thank you.
41

- 1 MR. COLLINS: Okay. Data imaging, My Lady.
2
- 3 THE COURT: Yes.
4
- 5 MR. COLLINS: The data imaging does -- is more than the
6 property over which Alvarez & Marsal has been appointed interim receiver. We think
7 that provision should come out.
8
- 9 THE COURT: Okay. Where is it?
10
- 11 MR. COLLINS: So that's top of -- paragraph 6: (as read)
12
13 Which is including all data imaging completed during the
14 proceedings under action number 1901-17453.
15
- 16 THE COURT: Okay.
17
- 18 MR. COLLINS: That would be -- it's not property that's covered
19 by this order. And again, it's -- we have undertaken to hold that --
20
- 21 THE COURT: It's not property that's covered by any of the
22 security agreements would be your position.
23
- 24 MR. COLLINS: Yes. Or by this order. It's --
25
- 26 THE COURT: Yeah.
27
- 28 MR. COLLINS: -- some of --
29
- 30 THE COURT: Well, they -- sorry -- by the original order, you
31 mean, or by --
32
- 33 MR. COLLINS: By the -- by the interim receivership order.
34
- 35 THE COURT: Okay. Well, they -- at paragraph 6, they are
36 trying to make it part of it.
37
- 38 MR. COLLINS: Well, they're saying there -- yes. So they're
39 saying all persons shall -- yeah -- business affairs of the debtors.
40
- 41 THE COURT: Right.

1
2 MR. COLLINS: And some of it is and some of it isn't. But the
3 point is this is --
4
5 THE COURT: Right.
6
7 MR. COLLINS: -- Alvarez & Marsal is going to get access to the
8 property.
9
10 THE COURT: Right.
11
12 MR. COLLINS: That's form subject matter of this order. There's
13 servers -- there's two servers in Calgary; there's servers in Edmonton; it's all in the Cloud.
14 This is an image as at a date --
15
16 THE COURT: Right.
17
18 MR. COLLINS: -- which we are holding in a secure evidence
19 locker.
20
21 THE COURT: Okay.
22
23 MR. COLLINS: Okay? And so it would be overreaching at this
24 point, we would submit, to have to turn over the image. It's there if Alvarez & Marsal
25 says, oh goodness, there was data corruption, or some such thing.
26
27 THE COURT: Yeah.
28
29 MR. COLLINS: Like we have --
30
31 THE COURT: Or the -- or the lenders come back and argue,
32 based on their security agreements, that it somehow is charged -- it exists, and it is
33 charged with their security, and they want it or whatever. But --
34
35 MR. COLLINS: Yeah.
36
37 THE COURT: -- your point being your client resists it. It's
38 clearly not part of the real property.
39
40 MR. COLLINS: Correct.
41

1 THE COURT: It was done in good faith in -- for the purposes
2 of the *CCAA* proceedings, not -- and not given to anyone -- just held -- so that it was there
3 in the event -- in the event that a dispute erupted, particularly with the parties who called
4 for it, which was the Telus group.
5

6 MR. COLLINS: Telus. Yeah.
7

8 THE COURT: Okay.
9

10 MR. COLLINS: Precisely.
11

12 THE COURT: All right.
13

14 MR. COLLINS: And again, at the risk of repeating, it's safe.
15 It's -- it's at McCarthy Tetrault.
16

17 THE COURT: Yeah. Okay. So we have your solicitor's
18 undertaking --
19

20 MR. COLLINS: Yeah.
21

22 THE COURT: -- in open court --
23

24 MR. COLLINS: Yeah.
25

26 THE COURT: -- on the record that it's not going anywhere.
27

28 MR. COLLINS: Correct, My Lady.
29

30 THE COURT: You're not returning it to your client at their
31 request.
32

33 MR. COLLINS: Yeah. Yeah.
34

35 THE COURT: It is going to be held by McCarthys until the
36 completion of these proceedings.
37

38 MR. COLLINS: That was the basis upon which --
39

40 THE COURT: Can I say that?
41

1 MR. COLLINS: -- it was -- it was done.
2
3 THE COURT: Okay.
4
5 MR. COLLINS: We said we will hold it and only release it on
6 order of the Court.
7
8 THE COURT: Okay.
9
10 MR. COLLINS: Okay?
11
12 THE COURT: All right. Well, there may be -- you know, the
13 counterparties may want a little more -- you know, they may want some direction in the
14 subsequent order with respect to --
15
16 MR. COLLINS: Understood.
17
18 THE COURT: -- exactly the terms in which it's held. But I am
19 with you, Mr. Collins --
20
21 MR. COLLINS: Yeah. Yeah.
22
23 THE COURT: -- on that, subject to hearing --
24
25 MR. KRUGER: Yeah. Well, I think it's more a Telus issue,
26 My Lady.
27
28 THE COURT: Yeah.
29
30 MR. KRUGER: My clients don't care.
31
32 UNIDENTIFIED SPEAKER: Well, we're still very interested in that.
33
34 THE COURT: Sure.
35
36 UNIDENTIFIED SPEAKER: Now, we're not an applicant to this -- to the
37 receivership application.
38
39 THE COURT: Right.
40
41 UNIDENTIFIED SPEAKER: As long as the material is still there --

1
2 THE COURT: Right.
3
4 UNIDENTIFIED SPEAKER: -- we can --
5
6 THE COURT: Right. Exactly. It doesn't serve your client
7 potentially to have it turned over to Alvarez & Marsal either.
8
9 UNIDENTIFIED SPEAKER: No. That's right.
10
11 THE COURT: Maybe. Who knows. All right.
12
13 UNIDENTIFIED SPEAKER: We'll have to have a discussion with what
14 happens to that.
15
16 THE COURT: Okay.
17
18 MR. COLLINS: When we get to paragraph 16, the concern
19 with --
20
21 THE COURT: So -- sorry -- just so we're clear --
22
23 MR. COLLINS: Sorry. Yeah.
24
25 THE COURT: -- I will be deleting "including all data imaging
26 completed --
27
28 MR. COLLINS: Yes, My Lady.
29
30 THE COURT: -- during the proceedings under action
31 number 1901" -- blah blah blah -- to the end of the word "person." But leaving in the
32 bracketed "the foregoing, collectively the records."
33
34 MR. COLLINS: Yes.
35
36 THE COURT: Okay. But I leave it open to parties to bring an
37 application before me to argue whether or not it should be turned over.
38
39 MR. COLLINS: Yeah. Yes. I think -- I think on proper
40 evidence and --
41

1 THE COURT: Sure.

2

3 MR. COLLINS: -- right. Precisely.

4

5 THE COURT: Okay.

6

7 MR. COLLINS: With respect to paragraph 16 then, there's a
8 couple of things. The "and their affiliates" in terms of continuing to provide property
9 management services to the receiver --

10

11 THE COURT: Okay.

12

13 MR. COLLINS: -- should be qualified in some fashion in our --
14 in our submission because the parties that are providing the property management
15 services today are SRMC, SNL, and Strategic Team Partnership.

16

17 THE COURT: Yeah. And I can't -- I don't believe in the
18 org chart that I got in Mr. Mamdani's first affidavit there were any affiliates of these
19 companies, at least not listed or mentioned.

20

21 MR. COLLINS: At least not mentioned. There -- you know,
22 I mean, there likely are affiliates, you know, loosely defined.

23

24 THE COURT: Loosely. Yeah.

25

26 MR. COLLINS: Yeah. The -- and then again, these entities are
27 pleas to continue to provide services, but they need to be funded in order to do so.

28

29 THE COURT: Right.

30

31 MR. COLLINS: Right? Because they have employees that they
32 have to pay and --

33

34 THE COURT: Well, they're providing a service.

35

36 MR. COLLINS: Yeah. Yeah.

37

38 THE COURT: It's quantumary (INDISCERNIBLE), if nothing
39 else.

40

41 MR. COLLINS: Yeah.

1
2 THE COURT: Right?
3
4 MR. COLLINS: No but -- precisely -- but it relates then to you
5 can't simply just sort of stop after -- you know, on day 5 because they've incurred
6 obligations for the month. So what they'd like to see is that they're paid on January 1st
7 for the month in accordance with the cash flow if the receiver determines to engage them.
8
9 THE COURT: Right. But that's -- that's the "if," right?
10
11 MR. COLLINS: Yeah.
12
13 THE COURT: So the receiver's got to make that decision this
14 weekend, I guess.
15
16 MR. COLLINS: I -- yeah -- because -- because if not, then other
17 decisions have to be made --
18
19 THE COURT: Sure.
20
21 MR. COLLINS: -- because these -- these entities again without
22 the cash flow, as evidenced in the cash flows in our application, are unable to pay
23 everyone.
24
25 THE COURT: Yeah. If I recall, they are a cash flow company.
26 They are cash neutral. They don't generate income. They have none. So there would
27 need to be built in something about the receiver making a decision by -- I'm in anybody's
28 hands -- December 24th noon as to whether or not they're going to retain the services of
29 these companies, and in that event, they commit to paying for their services for the
30 balance of the month plus the month of January?
31
32 MR. COLLINS: Yes, My Lady. That would --
33
34 THE COURT: Because you're just saying, look, we're not
35 going to bridge you for 3 or 4 days 'cause it's not worth our time.
36
37 MR. COLLINS: Well, that and -- and we incur obligations on the
38 other end that we may not be able to meet.
39
40 THE COURT: Okay.
41

1 MR. COLLINS: Yeah.
2
3 THE COURT: Anybody on behalf of the receivership -- or the
4 lenders' group want to deal with this one?
5
6 MR. KRUGER: My Lady, it sounds like a good solution --
7
8 THE COURT: It sounds reasonable.
9
10 MR. KRUGER: -- for it.
11
12 THE COURT: Yeah.
13
14 MR. KRUGER: And then, you know, certainly the receiver is
15 not going to be suddenly bound --
16
17 THE COURT: Nobody's looking to stiff anybody.
18
19 MR. KRUGER: -- by this. There's going to the negotiation, and
20 it can always come back if they feel a grief.
21
22 THE COURT: Okay.
23
24 UNIDENTIFIED SPEAKER: Okay. Mr. Narfason said it must be the
25 morning of the 23rd.
26
27 THE COURT: It must be the morning of the 23rd. Okay.
28 All right. That -- okay. Fair enough.
29
30 Is the -- so we need to build something into the order like the Colliers' needs to advise --
31 it's a lot of properties but of the 57 properties, which properties they are continuing the
32 services of -- I'm just going to call them the service companies -- and in the event it elects
33 to retain their services, they will pay them from today 'cause they'll -- they'll continue to
34 manage over the weekend -- they'll pay them from today -- oh, at midnight. They'll pay
35 them from tomorrow, the 21st of December, to the 31st of January 2020. Okay. That's
36 the obligation you're looking at --
37
38 MR. COLLINS: All right.
39
40 THE COURT: -- if they so elect. Something like that.
41

1 MR. COLLINS: I see conversations are already ongoing.
2 I mean --
3
4 THE COURT: Yeah. There's going to be some -- okay.
5
6 MR. COLLINS: Yeah.
7
8 THE COURT: Anyways, next? Sorry. Mr. Gabor?
9
10 MR. GABOR: Yes, My Lady. I'm on for the receiver. I'm
11 wondering if we can have potentially 5 minutes when Mr. Collins is done speaking 'cause
12 we do have a little bit of concerns just in terms of mechanics --
13
14 THE COURT: Okay.
15
16 MR. GABOR: -- for having to advise the Court -- having
17 Colliers staff to advise the Court by Monday --
18
19 THE COURT: No. Not advise me. Advise -- advise the
20 service companies.
21
22 MR. GABOR: Advise the service companies by Monday. And
23 we're also -- Colliers also has to give an undertaking filed with the Court before it can
24 be --
25
26 THE COURT: I didn't give a deadline for that. I was going to
27 say by December 27th.
28
29 MR. GABOR: Okay. I think we're okay. I just confirmed with
30 Mr. Konowalchuk. I think we're okay.
31
32 THE COURT: Okay. We may break anyway just in case. I
33 haven't finished -- does that complete your comments, Mr. Collins? No.
34
35 MR. COLLINS: I just want to check. We're running on the fly
36 here.
37
38 THE COURT: Oh, you go ahead and check. Go ahead.
39
40 MR. COLLINS: Clarification if it's not clear that it's a
41 prepayment, My Lady.

1
2 THE COURT: Oh, it's a prepayment.
3
4 MR. COLLINS: Yeah.
5
6 THE COURT: That was not clear.
7
8 MR. COLLINS: Yeah. Okay. Sorry.
9
10 THE COURT: Okay. Well, you'll have to let -- why would it
11 be a prepayment? Colliers isn't going anywhere. The first lending group isn't going
12 anywhere. They have the ability to borrow -- to issue certificate for a hundred thousand
13 dollars. I haven't had no evidence before me that there's lack of trust or lost confidence of
14 the first lenders' group.
15
16 MR. COLLINS: I would have thought it was a cash flow issue in
17 respect of these entities, My Lady.
18
19 THE COURT: I don't know what you mean by that,
20 Mr. Collins.
21
22 MR. COLLINS: But they -- but they -- yeah -- they have cash
23 requirements on January 1st.
24
25 THE COURT: Right.
26
27 MR. COLLINS: But --
28
29 THE COURT: Well, their current management agreement
30 requires them to be paid in advance?
31
32 UNIDENTIFIED SPEAKER: Yes.
33
34 MR. COLLINS: Yeah.
35
36 THE COURT: Yes?
37
38 MR. COLLINS: Apparently it does, yes.
39
40 THE COURT: Okay. So they're paid to December 31st then.
41

1 UNIDENTIFIED SPEAKER: They must be.
2
3 THE COURT: Yes.
4
5 MR. COLLINS: Yes. Yes, they are.
6
7 THE COURT: Okay. So we're talking about January 1st.
8
9 MR. COLLINS: January 1st.
10
11 THE COURT: Okay.
12
13 MR. COLLINS: Okay.
14
15 THE COURT: Well, that's the magnitude. That's the decision
16 Colliers needs to make. So there needs to be -- if it isn't already in the material -- and I
17 don't recall that it is -- what their fee per property is needs to be communicated ASAP --
18
19 MR. COLLINS: Yeah.
20
21 THE COURT: -- so that Colliers can make that decision.
22
23 MR. COLLINS: It's in the individual cash flows.
24
25 THE COURT: It is in the individual?
26
27 MR. COLLINS: Yes.
28
29 THE COURT: Okay. Separated out as a --
30
31 MR. COLLINS: Yes. Yes.
32
33 THE COURT: -- as a management fee?
34
35 MR. COLLINS: Yes.
36
37 THE COURT: Okay. So that's there somewhere.
38
39 MR. COLLINS: That's the --
40
41 MR. KRUGER: Then we just pay (INDISCERNIBLE) in

1 exactly what goes into the -- the order to Colliers.
2
3 MR. COLLINS: Sure.
4
5 MR. KRUGER: So I'm not sure I have followed exactly what --
6
7 MR. COLLINS: I think we were saying by --
8
9 THE COURT: Okay. By 9 AM Monday, December 23rd,
10 Colliers must indicate to one or other of the service companies or all three that it is
11 retaining their services to manage and maintain the building to January 31st and commits
12 to prepay Jan 1 for the month of January --
13
14 MR. KRUGER: Thank you.
15
16 THE COURT: -- 'cause they've been paid for December.
17
18 MR. KRUGER: Thank you. That's good.
19
20 THE COURT: Okay.
21
22 MR. COLLINS: Thank you.
23
24 THE COURT: And if they don't -- if you don't hear from
25 Colliers on a building by 9 AM December 23rd, they don't want you. Can we say that?
26
27 UNIDENTIFIED SPEAKER: My Lady, I'm just getting a request from the
28 proposed inter-receiver, and they're just requesting if we can have 3 minutes of time.
29 I know Mr. Konawalchuk is speaking with Mr. Narfason outside, and we're just trying to
30 make sure the mechanics worked out properly --
31
32 THE COURT: Okay. Yeah.
33
34 UNIDENTIFIED SPEAKER: -- before the court order's in issue.
35
36 THE COURT: I'll give -- I'm going to give you that time after
37 we finish all of the comments from the respondents from the -- or *CCAA* applicants.
38 Then I'll give you -- I'll give you 15 or 20 minutes. Okay?
39
40 UNIDENTIFIED SPEAKER: Thank you.
41

1 THE COURT: Or whatever you need. Okay. Mr. Collins then.
2
3 MR. COLLINS: I have no further comments.
4
5 THE COURT: No further comments.
6
7 MR. COLLINS: Yeah.
8
9 THE COURT: Okay. It appears to be -- anybody anything else
10 before we break again?
11
12 Okay. Don't take too long. I'll let madam clerk -- let madam clerk know when you'd like
13 me to back. How about that?
14
15 UNIDENTIFIED SPEAKER: Yes. Thank you, My Lady.
16
17 THE COURT: Okay.
18
19 (ADJOURNMENT)
20
21 THE COURT: Thank you. Please be seated. Ms. Bourassa.
22
23 MS. BOURASSA: Thank you for your patience, My Lady, and
24 particularly for madam clerk's patience so late. Our biggest problem was getting
25 something for you to sign as opposed to agreeing to it.
26
27 THE COURT: Okay.
28
29 MS. BOURASSA: But -- and so now we have half and half. So
30 this is what we are going to ask you to sign, and I am just going to have to -- oh actually,
31 I'm going to need to get you to initial because we don't have -- why don't I walk you
32 through the changes --
33
34 THE COURT: Okay.
35
36 MS. BOURASSA: -- and then explain what the -- what the issue is.
37
38 THE COURT: Okay.
39
40 MS. BOURASSA: And maybe madam clerk -- because she has the
41 soft copy -- maybe I can get her to print the relevant pages and make this problem go

1 away.

2

3 THE COURT: Okay.

4

5 MS. BOURASSA: So there are two changes to this form, and I
6 suppose we do have a blackline that (INDISCERNIBLE) here.

7

8 UNIDENTIFIED SPEAKER: Thank you.

9

10 THE COURT: Thank you.

11

12 MS. BOURASSA: So the changes are these: Paragraph 6 is the
13 first change, and in that paragraph, we have deleted the words "including all data imaging
14 completed during the proceedings under action number" et cetera "the CCAA" --

15

16 THE COURT: Okay.

17

18 MS. BOURASSA: -- "by the debtor's counsel or any other person."

19

20 THE COURT: Okay.

21

22 MS. BOURASSA: And then what we have done in 16 -- and I will
23 read them out, and this is where the blackline differs from what we're asking you to sign,
24 and this is the slip-sheeting issue.

25

26 THE COURT: Okay.

27

28 MS. BOURASSA: What we have proposed here is: The receiver
29 shall on or before -- and I believe it says 12 PM prevailing Mountain Time?

30

31 THE COURT: This says 9 AM. The one I'm reading --

32

33 MS. BOURASSA: I know it does.

34

35 THE COURT: Yeah. But it should say 12 PM?

36

37 MS. BOURASSA: It should say 12 PM. That was -- that was the
38 disconnect between the versions that were being run over and the version that we printed.

39

40 THE COURT: Okay.

41

- 1 MS. BOURASSA: It should say 12 PM prevailing Mountain Time
2 on December 23, 2019.
3
- 4 THE COURT: Okay.
5
- 6 MS. BOURASSA: So the receiver shall advise Strategic Real
7 Estate Management, Strategic Maintenance Limited, Strategic Team Partnership -- and
8 we've deleted "and their affiliates" --
9
- 10 THE COURT: Okay.
11
- 12 MS. BOURASSA: -- we've defined those as the Strategic managers
13 -- whether or not it shall retain the services of the Strategic managers and in respect of
14 which lands for the month of January 2020.
15
- 16 THE COURT: Okay.
17
- 18 MS. BOURASSA: If the receiver -- oh, the "as applicable" should
19 be struck out, My Lady, there 'cause we --
20
- 21 THE COURT: Okay.
22
- 23 MS. BOURASSA: -- made some changes -- so elects. It shall
24 prepay out of rents received on January 1, 2020 the Strategic managers in respect of those
25 services in accordance with existing agreements as set out in the cash flow forecasts
26 appended as exhibits 3 through 57 of affidavit number two of Riaz Mamdani, filed
27 December 17, 2019, in action number -- being the *CCAA*.
28
- 29 And then we've just added 16(a) which was the old 16 because I didn't want to have to
30 change all the page numbers.
31
- 32 THE COURT: Okay.
33
- 34 MS. BOURASSA: And so what -- what that means is the version I
35 have for you to sign says 12 PM.
36
- 37 THE COURT: Right.
38
- 39 MS. BOURASSA: And if you can just strike out the "as applicable"
40 after "if the receiver."
41

1 THE COURT: Yeah. Done.
2

3 MS. BOURASSA: And then we will have to either pass up other
4 pages for you to true up or maybe madam clerk could make a photocopy? How does that
5 work, madam clerk?
6

7 THE COURT CLERK: I will make a photocopy.
8

9 MS. BOURASSA: Perfect.
10

11 THE COURT: Okay.
12

13 MS. BOURASSA: So we're good with that then.
14

15 THE COURT: We're good? And the rest is the same.
16

17 MS. BOURASSA: And then the -- the rest is the same. The only
18 other point I wanted to make is the receiver is being asked -- well, the receiver and the
19 Strategic Group are all being asked to do this very quickly in terms of making this
20 decision. And of course, the receiver has no money, and that is why we've added in this
21 language about they will prepay out of rents.
22

23 THE COURT: From the rent. Right.
24

25 MS. BOURASSA: If the rents don't come in, there's no money.
26

27 THE COURT: Right.
28

29 MS. BOURASSA: That's a different situation.
30

31 THE COURT: Okay.
32

33 MS. BOURASSA: And so I know the receiver was concerned
34 about making sure that point was on the record. I don't know if Mr. Gabor wants to make
35 it more succinctly than I have, but that's why that language is in there.
36

37 THE COURT: Well, either -- either the parties will extend their
38 services on money to come, or whoever the secured lender of the property in particular
39 that we're hypothetically speaking of can decide to fund in advance, or whatever. I'm
40 content. It's on the record. I'm content the parties will be able to work that out when and
41 if January 1st rolls around and there aren't sufficient rents, if that in fact happens on any

1 one of the properties. Okay?

2

3 MR. GABOR: That's fine.

4

5 THE COURT: Thank you, Mr. Gabor. All right? So --

6

7 MS. BOURASSA: And so I have nothing further, My Lady.
8 Thank you.

9

10 **Decision**

11

12 THE COURT: Okay. The order is signed. Thank you for the
13 high degree of cooperation.

14

15 MR. KRUGER: My Lady, may I, on behalf of everybody here,
16 thank you for two days sitting like reading this massive documents. It's truly, truly
17 appreciated.

18

19 THE COURT: Thank you. Thank you.

20

21 MS. BOURASSA: Yes.

22

23 UNIDENTIFIED SPEAKER: I echo that, My Lady.

24

25 THE COURT: Best of the season to everyone. Thank you.

26

27 MS. BOURASSA: Thank you.

28

29

30

31 PROCEEDINGS ADJOURNED

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Certificate of Record

I, Nancy Arevalo, certify that this recording is the record made of the evidence in the proceedings in the Court of Queen's Bench, held in courtroom 1702, at Calgary, Alberta on the 20th day of December 2019, and that Katherine O'Brien and myself were the court official in charge of the sound-recording machine during the proceedings.

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1 **Certificate of Transcript**

2
3 I, Konnie Schreiner, certify that

4
5 (a) I transcribed the record, which was recorded by a sound-recording machine, to the
6 best of my skill and ability and the foregoing pages are a complete and accurate transcript
7 of the contents of the record, and

8
9 (b) the Certificate of Record for these proceedings was included orally on the record and
10 is transcribed in this transcript.

11
12 Exceldo Projects Ltd.
13 Order Number: AL-JO-1004-6894
14 Dated: January 12, 2020

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