

COURT FILE NUMBER QB No. 1884 of 2019

COURT OF QUEEN'S BENCH FOR SASKATCHEWAN

JUDICIAL CENTRE SASKATOON

IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*, RSC 1985, c C-36,
AS AMENDED

AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF 101098672
SASKATCHEWAN LTD., MORRIS INDUSTRIES LTD., MORRIS SALES AND SERVICE LTD.,
CONTOUR REALTY INC., and MORRIS INDUSTRIES (USA) INC.

DOCUMENT **AFFIDAVIT OF SANDY HAYER SWORN MARCH 22, 2021.**

I, Sandy Hayer, of the City of Calgary, in the Province of Alberta, MAKE OATH AND
SAY THAT:

1. I am a Senior Manager, Special Accounts Management Unit at Bank of Montreal ("**BMO**" or the "**Lender**"). As such, I have personal knowledge of the matters deposed to herein, except where stated to be based on information and belief, in which case I verily believe the same to be true.
2. I have reviewed the business records of the Lender relevant to the Lender's application seeking the appointment of Alvarez & Marsal Canada Inc. ("**A&M**") as receiver and manager (in such capacity, the "**Receiver**") over all of the current and future assets, undertakings and property of Morris Industries Ltd. ("**Morris Industries**"), Morris Sales & Service Ltd. ("**S&S**"), 101098672 Saskatchewan Ltd. ("**672**") and Morris Industries (USA) Inc. ("**Morris USA**") (Morris Industries, S&S, 672 and Morris USA are together referred to as the "**Receivership Entities**"). I have satisfied myself that I am possessed of sufficient information and knowledge to swear this Affidavit on behalf of BMO.
3. Capitalized terms not otherwise defined herein have the meaning set forth in the Reports of the Monitor.

Contour Loan

Contour Loan Agreement

4. BMO extended credit facilities and additional advances to Contour Realty Inc. ("**Contour**") pursuant to a commitment letter dated August 29, 2013 (the "**Contour Loan Agreement**"), a copy of which is attached as Exhibit "M" to the First Affidavit of Kevin Adair, sworn January 3, 2020 and filed in these proceedings.
5. The Contour Loan Agreement is comprised of the following facilities:
 - (a) an \$8,000,000 non-revolving, reducing term loan shared on a pro-rata basis between BMO and Farm Credit Canada up to a maximum principal amount of \$8,000,000; and
 - (b) a treasury risk management facility subject to a limit of \$1,000,000.
6. As more particularly described below, as at March 22, 2021, Contour remains indebted to BMO in the amount of \$1,669,072.38 plus interest and fees, which continue to accrue in respect of funds borrowed under the Contour Loan Agreement (the "**Contour Indebtedness**").

Guarantees and Security of the Receivership Entities in Respect of the Contour Indebtedness

7. In addition to any direct indebtedness owing to BMO, each of the Receivership Entities has guaranteed repayment of the Contour Indebtedness to BMO pursuant to Unlimited Liability Guarantees each dated August 23, 2013 (collectively, the "**Guarantees**").
8. To secure all indebtedness at any time owing to BMO, including the Guarantees, each of the Receivership Entities granted security to BMO in the form of General Security Agreements (collectively, the "**GSAs**"), including but not limited to the following:
 - (a) Morris Industries granted GSAs pursuant to Saskatchewan and Manitoba law, respectively, dated June 5, 2007;
 - (b) S&S granted GSAs pursuant to Saskatchewan and Manitoba law, respectively, dated June 5, 2007, and a further GSA pursuant to Saskatchewan law on August 23, 2013;
 - (c) 672 granted a GSA pursuant to Saskatchewan law on August 23, 2013; and

- (d) Morris USA granted a GSA pursuant to Saskatchewan law on June 5, 2007, and a further GSA pursuant to Saskatchewan law on August 29, 2013.
9. True copies of the following documents are attached to my affidavit as the following corresponding exhibits:
- (a) **Exhibit "A"**— a March 22, 2021, payout statement confirming the Contour Indebtedness;
 - (b) **Exhibit "B"** — the Guarantees;
 - (c) **Exhibit "C"**—the GSAs; and
 - (d) **Exhibit "D"**—Alberta, Saskatchewan and Manitoba Personal Property Security Registry search result evidencing registration of the GSAs by BMO.

Default and Demands Under the Contour Loan Agreement

10. Contour is in default of the Contour Loan Agreement and all amounts owing to BMO under the Contour Loan Agreement are immediately due and payable. Contour's defaults include, but are not limited to:
- (a) a failure to make payments to BMO when due;
 - (b) committing an act of bankruptcy and becoming insolvent; and
 - (c) cross defaulting with other Contour debt agreements.
11. On or about January 4, 2020, BMO served a demand for repayment of the Contour Indebtedness pursuant to the Guarantees upon each of the Receivership Entities and concurrently therewith served a Notice of Intention to Enforce a Security pursuant to section 244(1) of the BIA, copies of which are attached collectively as Exhibit "A" to my Affidavit sworn July 23, 2020 and filed in these proceedings.

Sale of the Assets of the Receivership Entities and the Resulting Proceeds Held By the Monitor

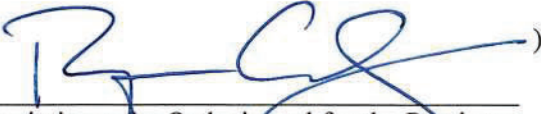
12. The assets of the Morris Group were marketed pursuant to a Sale and Investment Solicitation Process approved by Order of this Honourable Court on January 16, 2020.

13. On March 2, 2021, the Monitor, on behalf of the Receivership Entities (i.e. all Morris Group entities with the exception of Contour) executed an asset purchase agreement (the “**APA**”) with a purchaser nominee known as Morris Equipment Ltd. (“**MEL**”), a copy of which is attached as Confidential Appendix 2 to the Fifteenth Report of the Monitor. On March 5, 2021, this Court granted an Order approving the transaction contemplated by the APA (the “**MEL Transaction**”).
14. I have determined from my review of Confidential Appendix 2, and I believe it to be true, that the purchase price contemplated in the APA is insufficient to repay the Contour Indebtedness. As a result, notwithstanding the closing of the MEL Transaction, BMO will sustain a significant shortfall on recovery from the Receivership Entities of the Contour Indebtedness.
15. The MEL Transaction closed on March 18, 2021 (the “**Closing Date**”). On the Closing Date, funds sufficient to close the MEL Transaction (the “**Closing Funds**”) were paid to the Monitor’s counsel, MLT Aikins LLP (“**MLTA**”) in trust. I have determined from my review of the Fifteenth Report of the Monitor, and I believe it to be true that, between the Closing Date and March 19, 2021, the Monitor distributed a portion of the Closing Funds, including:
 - (a) \$6,595,635.99 to BMO as repayment of the amount outstanding under the Interim Lender’s Charge (as that term is defined in the Amended and Restated Initial Order dated January 16, 2020);
 - (b) \$130,000.00 to BMO’s counsel, Burnet, Duckworth & Palmer LLP (“**BD&P**”) with respect to legal fees; and
 - (c) \$555,098.97 to Contour as payment of a Union Settlement contemplated in a Letter of Understanding dated November 30, 2021, between Morris Industries and Contour.
16. I am informed by BD&P and I believe it to be true that, as at March 22, 2021, Closing Funds of \$3,263,266.04 remain in the trust account of MLTA. Due to, among other things, the fact that the Monitor has not yet distributed the entirety of the Closing Funds, the security held by BMO pursuant to the GSAs continues to attach to such Closing Funds in respect of the Receivership Entities and the indebtedness owing by the Morris Group has not been extinguished.


Appointment of Receiver

17. BMO is presently entitled to prosecute its legal remedies under the Guarantees and the GSAs described in this Affidavit, including the right to appoint or apply to this Honourable Court to appoint a receiver and manager over the property, assets and undertaking of all of the Receivership Entities, and BMO wishes to exercise that right at this time.
18. Further, I am informed by BD&P and I believe to be true that MLTA has delivered an opinion to the Monitor confirming that, subject to customary qualifications, the security granted by the Morris Group (including the Receivership Entities) in respect of the Contour Indebtedness is valid and enforceable.
19. I verily believe that the immediate appointment of a receiver and manager of all undertakings, property and assets of the Receivership Entities is just and convenient for the following reasons, regarding which I am informed by BD&P and verily believe to be true that:
 - (a) the receivership makes business sense from a cost and efficiency perspective, given the impending "wind-down" of the Monitor's role in these CCAA proceedings in respect of the Receivership Entities and that there will be no plan presented to the Receivership Entities' creditors;
 - (b) as BMO is also concurrently seeking a bankruptcy order in respect of the Receivership Entities and the appointment of A&M as trustee (in such capacity, the "**Trustee**"), the appointment of the Receiver will reduce the administrative burden on the Trustee and the inspectors; and
 - (c) the Receiver will be positioned to distribute the Receivership Entities' remaining assets and make distributions to creditors on a more efficient basis as no assets will vest in the Trustee.
20. I verily believe that A&M is qualified and prepared to act as receiver or receiver and manager of the Receivership Entities. A copy of a signed Consent to Act of Alvarez & Marsal Canada Inc. has been filed concurrently herewith.
21. I make this Affidavit in support of BMO's application for a receivership order in respect of the Receivership Entities.

SWORN BEFORE ME at the City of Calgary, in)
 the Province of Alberta this 22nd day of March,)
 2021.)



 A Commissioner for Oaths in and for the Province
 of Alberta
Ryan E. Algar
 Barrister and Solicitor



Sandy Hayer

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