

Court File No 1803-09581
Court Court of Queen's Bench of Alberta
Judicial Centre Calgary
Plaintiff(s) (*Applicant(s)*) Bank of Montreal
Defendant(s) *Respondent(s)* Ladacor AMS Ltd., Nomads Pipeline Consulting Ltd.,
2367147 Ontario Inc., and Donald Klisowsky



Document **APPLICATION BY DONALD KLISOWSKY, DEFENDANT**

Address for service and
contact information of party
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NOTICE TO RESPONDENTS:

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

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

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

Date: September 13, 2019
Time: 2:00 p.m.
Where: Edmonton Law Courts
Before Whom: The Honourable Justice J.E. Topolniski

Go to the end of this document to see what else you can do and when you must do it.

Remedy claimed or sought:

1. Donald Klisowsky, (the "**Defendant**") seeks an Order:
 - a. abridging the time for service of this notice of application and declaring that this Application is properly returnable on the day heard, if necessary, and further service of this Application, other than to those listed on the Service List is hereby dispensed with;
 - b. directing Alvarez & Marsal Canada Inc. LIT ("**A&M**"), in its capacity as Court-appointed receiver and manager (the "**Receiver**") of the assets, undertakings and properties of Ladacor AMS Ltd. ("**Ladacor**"), Nomads Pipeline Consulting Ltd. ("**Nomads**") and 2367147 Ontario Inc. ("**236 Inc.**") (sometimes, the

“Debtors”) to provide to the Court a complete and accurate list of accounts receivable of Nomads, and to provide proof of its insolvency;

- c. adjourning the pending application of the Receiver, also returnable today;
- d. staying any action proposed by the Receiver to assign Nomads into bankruptcy, until the Receiver has completed all required necessary actions set out in this application;
- e. such further and other relief as counsel may request and this Honourable Court may deem appropriate.

Grounds for making this application:

- 2. Pursuant to the Receivership Order, A&M was appointed as Receiver over all of the current and future assets, undertakings and properties of the Debtors of every nature and kind whatsoever, and wherever situate, including all proceeds thereof.
- 3. By way of the Receivers’ various reports, it is demonstrated that the receiver is not dealing with the property of Nomads in a commercially reasonable manner;
- 4. The Receiver has had access to the assets of 236 and Nomads in order to pay out all amounts owing to the Debtors' senior secured lender in full;
- 5. There are no debts owed by Nomads to its creditors in that
 - a. the Remaining Nomads' Assets (as defined and described in the Fourth Report) are properly the property of Nomads, as the realization of all assets and property of the Debtors is otherwise complete;
 - b. there are no further assets to be realized upon or recovered; and
 - c. the Receiver has paid.
- 6. All the known creditors of either Ladacor or Nomads are listed on the Receiver’s Schedule “A” and “B” of its Fourth report, but the Receiver has mistakenly or unreasonably included Ladacor creditors on Schedule “B”, and listed them as Nomads creditors.
- 7. There is no explanation for allocation of claims against Nomads from Alberta Finance, or Liberty Mutual;
- 8. All other just debts of Nomads can be resolved, and claims maintained, at a far lower cost than that of a bankruptcy;
- 9. Such further and other grounds as counsel may advise and this Honourable Court may permit.

Material or evidence to be relied on:

- 10. The Defendant intends to rely upon the following materials:

- a. the Affidavit of Donald Klisowsky, sworn September 7, 2019;
- b. the Receiver's Reports, and Affidavit of Fees, filed;
- c. a Brief of Law, to be filed;
- d. such further and other materials as counsel may advise and this Honourable Court may permit.

Applicable rules:

11. The Receiver will rely upon and refer to rule 6.1 the *Alberta Rules of Court*, Alta Reg 124/2010 during the making of the application.

Applicable Acts and regulations:

12. The Defendant will rely upon and refer to sections 247 and 248 of the *Bankruptcy and Insolvency Act*, RSC 1985, c B-3, as amended, and section 20 of the *Judicature Act*, RSA 2000.

Any irregularity complained of or objection relied on:

13. None.

How the application is proposed to be heard or considered:

14. Oral submission by counsel at an application before the Honourable Madam Justice J.E.Topolniski at 2:00 p.m. on September 13, 2019.

WARNING

If you do not come to Court either in person or by your lawyer, the Court may give the applicant(s) what they want in your absence. You will be bound by any order that the Court makes. If you want to take part in this application, you or your lawyer must attend in Court on the date and at the time shown at the beginning of the form. If you intend to give evidence in response to the application, you must reply by filing an affidavit or other evidence with the Court and serving a copy of that affidavit or other evidence on the applicant(s) a reasonable time before the application is to be heard or considered.