

\$50.00

Clerk's Stamp

Inv#023825



COURT FILE NUMBER 1803 - 09581

COURT COURT OF QUEEN'S BENCH OF ALBERTA

JUDICIAL CENTRE EDMONTON COM

PLAINTIFF BANK OF MONTREAL

DEFENDANT LADACOR AMS LTD., NOMADS PIPELINE CONSULTING LTD., 2367147 ONTARIO INC., and DONALD KLISOWSKY

DOCUMENT **APPLICATION BY ALVAREZ & MARSAL CANADA INC. LIT, IN ITS CAPACITY AS RECEIVER AND MANAGER OF LADACOR AMS LTD., NOMADS PIPELINE CONSULTING LTD. AND 2367147 ONTARIO INC.**

ADDRESS FOR SERVICE AND CONTACT INFORMATION OF PARTY FILING THIS DOCUMENT BLAKE, CASSELS & GRAYDON LLP  
3500, 855 – 2<sup>nd</sup> Street S.W.  
Calgary, AB T2P 4J8

Attn: Kelly Bourassa / James Reid  
Telephone: 403-260-9697 / 403-260-9731  
Facsimile: 403-260-9700  
Email: [kelly.bourassa@blakes.com](mailto:kelly.bourassa@blakes.com)  
[james.reid@blakes.com](mailto:james.reid@blakes.com)

File Ref.: 99766/12

## NOTICE TO RESPONDENT

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	<u>September 16, 2020</u>
Time	<u>2:00 p.m.</u>
Where	<u>Edmonton Law Courts (via Webex)</u>
Before Whom	<u>The Honourable Madam Justice D.L. Shelley</u>

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. Alvarez & Marsal Canada Inc. LIT, in its capacity as Court-appointed receiver and manager (the "**Receiver**") of the assets, undertakings and properties of Ladacor AMS Ltd., Nomads

Pipeline Consulting Ltd. ("**Nomads**") and 2367147 Ontario Inc. (collectively, the "**Debtors**"), seeks a Consent Order substantially in the form attached hereto as Schedule "**A**":

- (a) abridging the time for service of this application (the "**Application**") and declaring that this Application is properly returnable on the day heard, if necessary, and further service of this Application is hereby dispensed with;
- (b) dismissing the action of Hawk Electric (Northern) Inc. ("**Hawk**"), being Court of Queen's Bench of Alberta Action Number 1804-00155 (the "**Hawk Action**"), in its entirety;
- (c) declaring that the dismissal of the Hawk Action shall have the same force and effect as if it had been pronounced as a decision of this Honourable Court after a full and complete trial of the Hawk Action on the merits;
- (d) directing from the money paid into Court pursuant to the Cash Security Order granted by the Honourable Justice K.G. Neilsen on October 10, 2018 that:
  - (i) the sum of \$35,000.00 (Thirty-Five Thousand Dollars) be released and paid directly to legal counsel for Hawk, Gurevitch Burnham Law Office; and
  - (ii) the remaining sum of \$18,236.34 (Eighteen Thousand Two Hundred Thirty-Six Dollars and Thirty-Four Cents) be released and paid directly to the Receiver to be distributed to the Trustee of Nomads' estate; and
- (e) such further and other relief as counsel may request and this Honourable Court may deem appropriate.

**Grounds for making this application:**

2. In September 2017, Hawk entered into an express or implied contract (the "**Contract**") with Nomads providing for the supply of certain materials and performance of electrical work (the "**Work**") by Hawk on land (the "**Land**") legally described as:

PLAN 5417NY, BLOCK 14, LOT 2  
EXCEPTING THEREOUT ALL MINES AND MINERALS  
AREA: 0.567 HECTARES (1.4 ACRES) MORE OR LESS  
ESTATE: FEE SIMPLE, ATS REFERENCE: 4;25;52;34;W  
MUNICIPALITY: CITY OF EDMONTON  
REFERENCE NUMBER: 962 282 754

(the "**Project**").

3. A dispute arose between Nomads and Hawk relating to unpaid amounts pursuant to the Contract and on December 11, 2017, Hawk registered a builders' lien against the Land for the amount of \$86,180.00 as Instrument No. 172 335 044 (the "**Lien**").
4. Nomads made partial payments to Hawk on January 8, 2018, and February 14, 2018, in the aggregate amount of \$39,888.33 in respect of the amounts owing by Nomads under the Contract.
5. On March 6, 2018, Hawk registered a Certificate of Lis Pendens against the Land and commenced the Hawk Action in which Hawk sought judgment against Nomads in the amount of \$46,292.47, plus costs and interest, which represented the remaining unpaid amounts due and owing to Hawk (the "**Unpaid Amounts**").
6. On May 18, 2018, pursuant to an order of the Court of Queen's Bench of Alberta (the "**Receivership Order**"), the Receiver was appointed receiver and manager, without security, of all of the current and future assets, undertakings and properties of every nature and kind whatsoever, and wherever situate, including all proceeds thereof in respect of Nomads.
7. On October 10, 2018, upon the application of the Receiver, the Honourable Justice K.G. Neilsen granted a Cash Security Order (the "**Cash Security Order**"), which authorized the Receiver to pay into Court the amount of \$53,236.34 (the "**Funds**"), inclusive of costs and interest to June 16, 2017, as security for the Lien pursuant to section 48 of the *Builders' Lien Act*, RSA 2000, c B-7.
8. In accordance with the Cash Security Order, the Receiver paid the Funds into Court on October 29, 2018, which is currently being held by the Clerk of the Court pending further Order of this Court.
9. On January 24, 2020, Nomads was assigned into bankruptcy by the Receiver, and Alvarez & Marsal Canada Inc. LIT was appointed as Licensed Insolvency Trustee ("**Trustee**") of Nomads.
10. During an Inspector's Meeting on July 1, 2020, the Inspectors of Nomads' estate advised the Trustee to direct that the Receiver negotiate and settle the Lien in the Receivership proceedings.

11. Hawk and the Receiver, on behalf of Nomads, reached a mutual settlement with respect to all matters arising out of or in any way related to the Project, the Contract, the Work, the Lien, the Hawk Action, the Unpaid Amounts, the Cash Security Order, and/or the Funds.
12. Hawk and the Receiver have executed the form of Consent Order attached hereto as Schedule "A" for the dismissal of the Hawk Action and the release of the Funds out of Court.

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

13. The Receiver intends to rely upon the following materials:
  - (a) the Receivership Order;
  - (b) the First Report of the Receiver, dated October 2, 2018, filed;
  - (c) the Cash Security Order, filed;
  - (d) the Form 50 (Money Paid Into Court) filed October 29, 2018;
  - (e) the Third Report of the Receiver dated December 10, 2018, filed;
  - (f) the Fourth Report of the Receiver dated September 4, 2019, filed;
  - (g) the Sixth Report of the Receiver dated March 2, 2020, filed
  - (h) such further and other materials as counsel may advise and this Honourable Court may permit.

**Applicable rules:**

14. The Receiver will rely upon and refer to the *Alberta Rules of Court*, Alta Reg 124/2010 during the making of the Application.

**Applicable Acts and Regulations:**

15. The Receiver will rely upon and refer to the provisions of the:
  - (a) *Bankruptcy and Insolvency Act*, RSC 1985, c B-3, as amended; and
  - (b) *Builders' Lien Act*, RSA 2000, c B-7, including section 48.

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

16. None.

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

17. Oral submission by counsel at an application to be heard via Webex before the Honourable Madam Justice D.L. Shelley at 2:00 p.m. on September 16, 2020.

**AFFIDAVIT EVIDENCE IS REQUIRED IF YOU WISH TO OBJECT.**

**WARNING**

If you do not come to Court either in person or by your lawyer, the Court may give the applicant 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 rely on an affidavit or other evidence when the application is heard or considered, you must reply by giving reasonable notice of the material to the applicant.

**Schedule "A"**

**Consent Order**

(see attached)

Clerk's Stamp

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COURT COURT OF QUEEN'S BENCH OF ALBERTA  
JUDICIAL CENTRE EDMONTON  
PLAINTIFF BANK OF MONTREAL  
DEFENDANT LADACOR AMS LTD., NOMADS PIPELINE CONSULTING LTD., 2367147 ONTARIO INC., and DONALD KLISOWSKY  
DOCUMENT **CONSENT ORDER**

ADDRESS FOR SERVICE AND CONTACT INFORMATION OF PARTY FILING THIS DOCUMENT BLAKE, CASSELS & GRAYDON LLP  
3500, 855 - 2<sup>nd</sup> Street S.W.  
Calgary, AB T2P 4J8

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[james.reid@blakes.com](mailto:james.reid@blakes.com)

File Ref.: 99766/12

**DATE ON WHICH ORDER WAS PRONOUNCED:** August \_\_\_\_, 2020  
**LOCATION WHERE ORDER WAS PRONOUNCED:** Edmonton Law Courts  
**NAME OF JUSTICE WHO MADE THIS ORDER:**

**UPON THE APPLICATION** by Alvarez & Marsal Canada Inc. LIT ("**A&M**") in its capacity as Court-appointed receiver and manager (the "**Receiver**") of the undertaking, property and assets of Nomads Pipeline Consulting Ltd. ("**Nomads**"); **AND UPON** noting the consent of the Hawk Electric (Northern) Inc. ("**Hawk**"); **AND UPON HEARING** the submissions of counsel for the Receiver and any other counsel in attendance at the Application;

**IT IS HEREBY ORDERED THAT:**

1. Service of this Application is hereby abridged, if necessary, and the Application is properly returnable today and any requirement for service of the Application upon any party not served is hereby dispensed with.

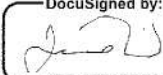
2. The action of Hawk, being Court of Queen's Bench Action Number 1804-00155 (the "**Hawk Action**"), is dismissed in its entirety, all issues having been consensually resolved between the parties.
3. The within dismissal of the Hawk Action shall have the same force and effect as if it had been pronounced as a decision of this Honourable Court after a full and complete trial of the Hawk Action on the merits.
4. From the money paid into Court pursuant to the Cash Security Order granted by the Honourable Justice K.G. Neilsen on October 10, 2018:
  - (a) the sum of \$35,000.00 (Thirty-Five Thousand Dollars) shall be released and paid directly to legal counsel for Hawk, Gurevitch Burnham Law Office; and
  - (b) the remaining sum of \$18,236.34 (Eighteen Thousand Two Hundred Thirty-Six Dollars and Thirty-Four Cents) shall be released and paid directly to the Receiver to be distributed to the estate of Nomads.
5. This Order may be consented to in counterpart and by facsimile or other electronic means.
6. There shall be no costs associated with the Hawk Action or this Application.

\_\_\_\_\_  
Justice

**DATED** at the City of \_\_\_\_\_, Province of Alberta, this \_\_\_\_\_ day of \_\_\_\_\_, 2020.

Consented to this 31 day of August, 2020 on a without costs basis

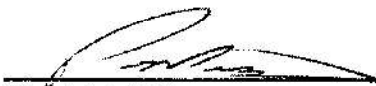
**BLAKE, CASSELS & GRAYDON LLP**

DocuSigned by:  
  
4E343FD8EDEF04CC

Kelly Bourassa / James Reid  
Counsel for Alvarez & Marsal Canada Inc.,  
LIT in its capacity as court-appointed  
receiver and manager of Nomads Pipeline  
Consulting Ltd. and not in its personal or  
corporate capacity

Consented to this 11 day of August, 2020 on a without costs basis

**GUREVITCH BURNHAM**

  
\_\_\_\_\_  
Patrick L. Wilson  
Counsel for the Defendant, Hawk Electric  
(Northern) Inc.