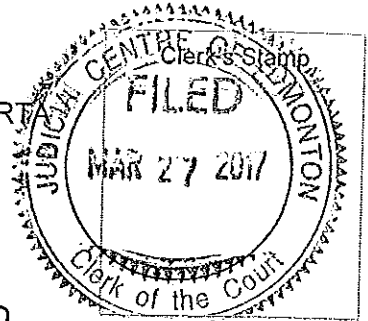


COURT FILE NUMBER 1403-13215  
COURT COURT OF QUEEN'S BENCH OF ALBERTA  
JUDICIAL CENTRE EDMONTON  
PLAINTIFF E CONSTRUCTION LTD.  
DEFENDANTS SPRAGUE-ROSSER CONTRACTING CO.  
LTD. and REGIONAL MUNICIPALITY OF  
WOOD BUFFALO



DOCUMENT APPLICATION (TRUST CLAIM PROCESS)

ADDRESS FOR SERVICE AND CONTACT INFORMATION OF PARTY FILING THIS DOCUMENT  
McCARTHY TÉTRAULT LLP  
Barristers & Solicitors  
Sean Collins / Walker W. MacLeod  
Suite 4000, 421 - 7<sup>th</sup> Avenue S.W.  
Calgary AB T2P 4K9  
Phone: 403-260-3531/ 403-260-3710  
Fax: 403-260-3501  
Email: scollins@mccarthy.ca / wmacleod@mccarthy.ca

**NOTICE TO RESPONDENT(S)**

This Application is made against you. You are a Respondent.  
You have the right to state your side of this matter before the Court.  
To do so, you must be in Court when the application is heard as shown below:

Date: April 6, 2017  
Time: 2:00 p.m.  
Where: Edmonton Law Courts  
Before Whom: The Honourable Madam Justice J.M. Ross

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

Remedy claimed or sought: Alvarez & Marsal Canada Inc. (the "Receiver"), in its capacity as court appointed receiver and manager of Sprague-Rosser Contracting Co. Ltd. (the "Debtor") pursuant to the order issued by the Honourable Justice J.B. Veit under the *Bankruptcy and Insolvency Act* (Canada) (the "BIA") on July 31, 2014, as subsequently amended and restated

on August 7, 2014 (the “**Receivership Order**”), applies for an order, substantially in the form attached as Schedule “**A**” hereto:

1. If necessary, abridging the time for service of this Application and declaring that service of this Application is good and sufficient.
2. Approving a trust claim process (the “**Trust Claim Process**”) in respect of the Funds (as defined herein) and authorizing and directing the Receiver to implement the Trust Claim Process and thereafter distribute the Funds to the persons entitled thereto.
3. Such further and other relief as counsel may advise.

**Grounds for making this application:** The grounds for the Application are as follows:

4. Pursuant to a consent order issued in the within proceedings on May 5, 2016 (the “**Consent Order**”), the solicitors for the Receiver were ordered to hold the sum of \$4,432,455, plus all accrued interest thereon (the “**Funds**”), as security pending determination as to the validity and enforceability of a builders’ lien (the “**Lien**”) registered by one of the Debtor’s trade creditors (the “**Trade Creditor**”).
5. On February 13, 2017, this Honourable Court issued Reasons for Judgment that, *inter alia*, declared the Lien to be invalid and unenforceable. The Trade Creditor has now asserted that there may be an alternative trust claim flowing from the trust conditions on which the Funds were held by the solicitors for the Debtor before being transferred to the Receiver’s counsel pursuant to the Consent Order.
6. The Receiver is applying to implement the Trust Claim Process so that:
  - (a) the Trade Creditor, all other trade creditors and any other interested persons, will have notice of the Trust Claim Process;
  - (b) the Trade Creditor, all other trade creditors and any other interested persons, will have an opportunity to prove a beneficial right and entitlement to the Funds; and
  - (c) the Funds can be immediately distributed to the persons properly entitled thereto.
7. The Trust Claim Process is fair, reasonable and in the best interests of the various stakeholders of the Debtor.

**Material or Evidence to be relied on:** The Receiver will rely on the following material:

8. The Ninth Report of the Receiver, dated March 27, 2017.
8. Such further and other material as counsel may advise;

**Applicable Rules:**

9. Rule 6.3 of the *Alberta Rules of Court*.
10. Such further and other rules as counsel may advise and this Honourable Court may allow.

**Applicable Acts and regulations:**

11. The *Bankruptcy and Insolvency Act*, RSC 1985, c B-3, as amended.
12. Such further and other acts and regulations as counsel may advise and this Honourable Court may allow.

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

13. There are no irregularities complained of or objections relied on.

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

14. The Receiver proposes that the Application be heard in person with one, some or all of the parties present.

**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 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"**

COURT FILE NUMBER 1403-13215  
COURT COURT OF QUEEN'S BENCH OF ALBERTA  
JUDICIAL CENTRE EDMONTON  
PLAINTIFF **E CONSTRUCTION LTD.**  
DEFENDANTS **SPRAGUE-ROSSER CONTRACTING CO.  
LTD. and REGIONAL MUNICIPALITY OF  
WOOD BUFFALO**



DOCUMENT **ORDER (TRUST CLAIM PROCESS)**

ADDRESS FOR SERVICE AND CONTACT INFORMATION OF PARTY FILING THIS DOCUMENT  
McCARTHY TÉTRAULT LLP  
Barristers & Solicitors  
Sean Collins / Walker W. MacLeod  
Suite 4000, 421 - 7<sup>th</sup> Avenue S.W.  
Calgary AB T2P 4K9  
Phone: 403-260-3531/ 403-260-3710  
Fax: 403-260-3501  
Email: scollins@mccarthy.ca / wmacleod@mccarthy.ca

DATE ON WHICH ORDER WAS PRONOUNCED: April 6, 2017  
NAME OF JUDGE WHO MADE THIS ORDER: Justice J.M. Ross  
LOCATION OF HEARING: Edmonton, Alberta

**UPON THE APPLICATION** of Alvarez & Marsal Canada Inc., in its capacity as court-appointed receiver and manager of Sprague-Rosser Contracting Co. Ltd. pursuant to the order issued by the Honourable Justice J.B. Veit under the *Bankruptcy and Insolvency Act* (Canada) on July 31, 2014, as subsequently amended and restated on August 7, 2014, to establish a trust claim process in respect of the Funds (as defined herein); **AND UPON** having read the Notice of Application, filed on ●, 2017 (the "**Application**") and the Ninth Report of the Receiver; **AND UPON** having read the Affidavit of Service of ● (the "**Service Affidavit**"); **AND UPON** hearing counsel for the Receiver and counsel present for other parties;

**IT IS HEREBY ORDERED AND DECLARED THAT:**

**SERVICE**

1. Service of the Application and the Ninth Receiver's Report in the manner described in the Service Affidavit is deemed to be good and sufficient and the Application is property returnable today.

**DEFINED TERMS**

2. For the purposes of this Order, the following terms shall have the following meanings:

- (a) **"Bridge Contract"** has the meaning ascribed to it in the Consent Order;
- (b) **"Bridge Project"** means the Improvement constructed pursuant to the Bridge Contract prior to the termination of the Bridge Contract by the Regional Municipality of Wood Buffalo on March 21, 2014;
- (c) **"Business Day"** means a day, other than a Saturday or a Sunday, on which banks are generally open for business in Calgary, Alberta;
- (d) **"Claim Provable"** has the meaning ascribed to it in the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c B-3, as amended;
- (e) **"Consent Order"** means the consent order issued by the Court on May 5, 2016 in the within proceedings;
- (f) **"Court"** means the Court of Queen's Bench of Alberta;
- (g) **"Debtor"** means Sprague Rosser Contracting Co. Ltd.;
- (h) **"Funds"** means the \$4,432,455, plus all accrued interest thereon, presently held by the solicitors for the Receiver pursuant to paragraph 29 of the Consent Order;
- (i) **"Improvement"** has the meaning ascribed to it in the *Builders' Lien Act* (Alberta);
- (j) **"July 17 Order"** means the order issued by the Court in the Receivership Proceedings on July 17, 2015, which, *inter alia*, declared the security of RBC to

be valid and enforceable and authorized distribution to be made to RBC subject only to the charges contained in the Receivership Order;

- (k) **“Instruction Letter”** means the letter regarding completion of a Trust Claim Application, which letter shall be substantially in the form attached hereto as Appendix **“A”**;
- (l) **“Known Creditors”** means Persons which the books and records of the Debtor disclose have a Claim Provable against the Debtor arising from, relating to or otherwise connected with the Bridge Project;
- (m) **“Newspaper Notice”** means the notice of the Trust Claim Process to be published in accordance with this Order in substantially the form attached hereto as Appendix **“B”**;
- (n) **“Ninth Receiver’s Report”** means the report filed by the Receiver in the within proceedings on ●, 2017;
- (o) **“Person”** shall be broadly interpreted and includes an individual, firm, partnership, joint venture, venture capital fund, limited liability company, unlimited liability company, association, trust, corporation, unincorporated association or organization, syndicate, committee, the government or a country or any political subdivision thereof, or any agency, board, tribunal, commission, bureau, instrumentality or department of such government or political subdivision, or any other entity, however designated or constituted, and the trustees, executors, administrators, or other legal representatives of any individual;
- (p) **“RBC”** means the Royal Bank of Canada;
- (q) **“Receiver”** has the meaning ascribed to it in the Receivership Order;
- (r) **“Receivership Order”** means the receivership order issued by the Court on July 31, 2014, and subsequently amended and restated on August 7, 2014, in the Receivership Proceedings;
- (s) **“Receivership Proceedings”** means the proceedings commenced by RBC on July 29, 2014 in Court File No. 1403-10990;

- (t) **“Trust Claim”** means the right or claim of any Person, other than the Debtor, to a beneficial interest in the Funds;
- (u) **“Trust Claim Application”** means a notice of application that asserts a Trust Claim to the Funds, substantially in the form attached hereto as Appendix **“C”**;
- (v) **“Trust Claim Filing Date”** means 5:00 p.m. (Mountain Time) on May 12, 2017 or such other date and time as may be ordered by the Court;
- (w) **“Trust Claim Package”** means the document package which shall include a copy of the Instruction Letter, the form of Trust Claim Application, this Order and such other materials as the Receiver considers necessary or appropriate; and,
- (x) **“Website”** means the website established by the Receiver in respect of the Debtor and located at <https://www.alvarezandmarsal.com/sprague>.

#### **NOTICE OF TRUST CLAIM PROCESS**

3. The Receiver shall cause a Trust Claim Package to be sent to each Known Creditor by regular prepaid mail, courier, facsimile or email on or prior to April 13, 2017.
4. The Receiver shall cause the Trust Claim Package to be posted on the Website on or prior to April 13, 2017.
5. The Receiver shall cause the Newspaper Notice to be published in the Fort McMurray Today, the Edmonton Journal and any other newspaper the Receiver consider advisable, on or prior to April 30, 2017.
6. The Receiver shall cause a copy of the Trust Claims Package to be sent to any Person requesting such material as soon as practicable.

#### **IDENTIFICATION AND RESOLUTION OF TRUST CLAIMS**

7. Any Person who wishes to assert a Trust Claim to the Funds shall, on or before the Trust Claim Filing Date:
  - (a) file a Trust Claim Application with the Court that is returnable at 10:00 a.m. on June 22, 2017;

- (b) either:
  - (i) file all supporting evidence relied upon in asserting the Trust Claim; or;
  - (ii) otherwise confirm to the Receiver and RBC that all evidence relied on in asserting the Trust Claim is contained in the Ninth Receiver's Report; and
- (c) serve the Trust Claim Application and all supporting evidence relied upon in asserting the Trust Claim on each of the Receiver and RBC.

8. In the event that either:

- (a) no Person complies with paragraph 7 of this Order; or,
- (b) all Trust Claim Applications that are filed in accordance with paragraph 7 of this Order are dismissed by the Court;

the Receiver shall immediately disburse the Funds pursuant to and in accordance with the terms of the July 17 Order and without any further order from the Court.

#### **NOTICE AND COMMUNICATION**

9. Except as otherwise provided herein, the Receiver may deliver any notice or other communication to be given under this Order to Known Creditors or other interested Persons by forwarding true copies thereof by ordinary mail, courier, personal delivery, facsimile or email to such Known Creditors at the address last shown on the books and records of the Debtor.

#### **GENERAL**

10. RBC shall be entitled to participate in any Trust Claim Application that is filed pursuant to paragraph 7 of this Order as an interested Person.

11. References in this Order to the singular shall include the plural, references to the plural shall include the singular and to any gender shall include the other gender.

12. Nothing in this Order shall operate to bar or extinguish any Claims Provable against the Debtor.



13. Notwithstanding the terms of this Claims Process Order, the Receiver, RBC or any Person who files a Trust Claim Application in accordance with paragraph 7 of this Order may apply to this Court from time to time for such further order or orders as it considers necessary or desirable to amend, supplement or modify this Order or to otherwise schedule a process for the efficient resolution and determination of any Trust Claim Applications that are filed and served in accordance with paragraph 7 of this Order.

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J.C.Q.B.A.

**APPENDIX "A"**

**INSTRUCTION LETTER FOR TRUST CLAIM PROCESS OF SPRAGUE ROSSER  
CONTRACTING CO. LTD. (THE "DEBTOR")**

**TO: [NAME AND ADDRESS OF KNOWN CREDITOR]**

On April 6, 2017 the Court issued an order providing for the identification and resolution of Trust Claims to the Funds (the "**Trust Claim Process Order**"). A copy of the Claim Process Order is enclosed herewith. Capitalized terms used herein and not otherwise defined shall have the meaning ascribed to them in the Trust Claim Process Order.

Pursuant to the Trust Claim Process Order, the Receiver is to send this Instruction Letter and the enclosed form of Trust Claim Application to Known Creditors and certain other Persons. The Trust Claim Process Order does not compromise or extinguish any Claims Provable against the Debtor. You should only file a Trust Claim Application if you believe that you have a beneficial right to or interest in the Funds presently held by the Receiver.

The Trust Claim Process Order provides that any Person who wishes to advance a Trust Claim to the Funds must, on or before 5:00 pm (MST) on May 12, 2017:

- (a) file a Trust Claim Application that is returnable at 10:00 a.m. on June 22, 2017;
- (b) either:
  - (i) file all supporting evidence relied in support of the Trust Claim Application; or
  - (ii) otherwise confirm to the Receiver and RBC that it relies only on evidence in the Ninth Receiver's Report in assert the Trust Claim; and
- (c) serve such Trust Claim Application and supporting evidence on each of the Receiver and RBC.

In the event that either no Trust Claim Applications are filed and served in accordance with the Trust Claim Order, or that all Trust Claim Applications that are filed are dismissed, the Funds shall be distributed by the Receiver pursuant to and in accordance with the terms of the July 17 Order and without any further order from the Court.

Dated the \_\_\_\_ day of \_\_\_\_\_, 2017.

**ALVAREZ & MARSAL CANADA INC., in its  
capacity as court-appointed receiver and  
manager of Sprague-Rosser Contracting Co.  
Ltd., and not in its personal or corporate  
capacity**

Per: \_\_\_\_\_  
Name:  
Title:

**APPENDIX "B"**

**NEWSPAPER NOTICE FOR THE TRUST CLAIMS PROCESS OF SPRAGUE ROSSER  
CONTRACTING CO. LTD. (THE "DEBTOR")**

On April 6, 2017 the Court issued an order providing for the resolution of Trust Claims to the Funds (the "**Trust Claim Process Order**"). Capitalized terms used herein and not otherwise defined shall have the meaning ascribed to them in the Trust Claim Process Order. A copy of the Trust Claim Process Order may be viewed at <https://www.alvarezandmarsal.com/sprague>.

The Trust Claim Process Order does not compromise or extinguish any Claims Provable against the Debtor. You should only file a Trust Claim Application if you believe that you have a beneficial right to or interest in the Funds presently held by the Receiver.

The Trust Claim Process Order provides that any Person who wishes to advance a Trust Claim to the Funds must, on or before 5:00 pm (MST) on May 12, 2017:

- (a) file a Trust Claim Application that is returnable at 10:00 a.m. on June 22, 2017;
- (b) either:
  - (i) file all supporting evidence relied in support of the Trust Claim Application; or
  - (ii) otherwise confirm to the Receiver and RBC that it relies only on evidence in the Ninth Receiver's Report in assert the Trust Claim; and
- (c) serve such Trust Claim Application and supporting evidence on each of the Receiver and RBC.

In the event that either no Trust Claim Applications are filed and served in accordance with the Trust Claims Order, or that all Trust Claim Applications that are filed are dismissed, the Funds shall be distributed by the Receiver pursuant to and in accordance with the terms of the July 17 Order and without any further order from the Court.

**APPENDIX "C"**

COURT FILE NUMBER	1403-13215	Clerk's Stamp
COURT	COURT OF QUEEN'S BENCH OF ALBERTA	
JUDICIAL CENTRE	EDMONTON	
PLAINTIFF	<b>E CONSTRUCTION LTD.</b>	
DEFENDANTS	<b>SPRAGUE-ROSSER CONTRACTING CO. LTD. and REGIONAL MUNICIPALITY OF WOOD BUFFALO</b>	
DOCUMENT	<b>NOTICE OF APPLICATION (ASSERTION OF TRUST CLAIM)</b>	
ADDRESS FOR SERVICE AND CONTACT INFORMATION OF PARTY FILING THIS DOCUMENT	<b>[Insert contact information for Applicant or its counsel]</b>	

**NOTICE TO RESPONDENT(S)**

This Application is made against you. You are a Respondent.

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

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

Date:	June 22, 2017
Time:	10:00 a.m.
Where:	Edmonton Court Center
Before Whom:	The Honourable Madam Justice J.M. Ross

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

**Remedy claimed or sought:**

1.     • (the "**Applicant**") applies for:
  - (a)    a declaration that it has a beneficial right and interest in the \$4,432,455, plus all accrued interest thereon (the "**Funds**"), presently held by the solicitors for Alvarez & Marsal Canada Inc. in its capacity as receiver and manager of

Sprague-Rosser Contracting Co. Ltd. (the “**Receiver**”), pursuant to paragraph 29 of the consent order issued in the within proceedings on May 5, 2016; and

- (b) an order that the Receiver immediately and forthwith disburse the Funds to the Applicant.

**Grounds for making this Application:**

- 2. **[Identify all grounds for asserting the beneficial right and interest in the Funds].**

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

- 3. **[File and serve all evidence relied on in asserting the beneficial right and interest in the Funds or otherwise confirm the only evidence relief on is in the Ninth Receiver’s Report].**

**Applicable Rules:**

- 4. **[Identify all Rules relied on in asserting the beneficial right and interest in the Funds].**

**Applicable Acts and Regulations:**

- 5. **[Identify all Acts and Regulations relied on in asserting the beneficial right and interest in the Funds].**

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

- 6. N/A.

**How the Application is proposed to be heard or considered:**

- 7. The Applicant proposes that the Application be heard in person with one, some or all of the parties present, and subject to any further direction from the Honourable Court in terms of scheduling similar applications in an efficient and convenient manner.

**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 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.**