

COURT FILE NUMBER      **Q.B. 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 (the "CCAA")**

**AND**

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

**NOTICE OF APPLICATION**

**NOTICE TO THOSE PARTIES IDENTIFIED ON THE ATTACHED SERVICE LIST**

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:

Where	Court of Queen's Bench 520 Spadina Crescent East Saskatoon, Saskatchewan OR by telephone conference
Date and Time	Unspecified, in accordance with the March 19, 2020 Practice Directive, although we note that this matter is returnable on or before May 8, 2020.

*(Read the Notice at the end of this document to see what else you can do and when you must do it.)*

**Remedy claimed or sought:**

1. An Order granting:

- (a) Leave for 1742009 Alberta Inc. (dba AgriTerra Equipment) (“**AgriTerra**”) to file its application disputing the March 9, 2020 Notice of Revision or Disallowance (the “**NORD**”) of AgriTerra’s Proof of Claim from the Monitor, Alvarez and Marsal Canada Inc. (the “**Monitor**”), outside of the time period provided for in the Claims Process Order of the Honourable Mr. Justice R.S. Smith dated January 16, 2020 (the “**Order**”);
- (b) Leave for AgriTerra to have its application heard by the court; and
- (c) An Order that \$303,801.00 of funds now in the hands of MIL shall be and are hereby impressed with a trust in favour of AgriTerra and hence do not form part of the estate of MIL or the Morris Group and shall be paid to AgriTerra immediately.

**Grounds for making this application:**

**(a) Leave to File the Application**

1. AgriTerra filed its Proof of Claim evidencing its secured Claim of \$485,021.58 with the Monitor on or about February 27, 2020 (the “**Claim**”).
2. The Claim included amounts for Volume Bonuses (as defined below), Warranty Credits, Parts Credits, and Program Discounts which AgriTerra believed were to be set aside by MIL for AgriTerra’s benefit.
3. Due to a decision to allow for offset credits, only the outstanding Volume Bonuses are at issue in this application.
4. Following filing of its Claim, AgriTerra received the NORD on or about March 9, 2020 from the Monitor.
5. AgriTerra filed its Notice of Dispute with the Monitor on or about March 18, 2020.

6. AgriTerra was unable to locate and retain Saskatchewan counsel following the Provincial State of Emergency being declared by the Government of Saskatchewan on March 18, 2020. As such, it had requested an extension from the Monitor to file its application.

7. The Monitor indicated it would not oppose AgriTerra filing its application outside of the timelines set by the Order.

8. No prejudice would be felt by the Morris Group, the Monitor or any creditors by allowing AgriTerra's application to be determined.

**(b) The Application**

9. AgriTerra is a dealer of MIL agricultural equipment. As such, it sells and performs maintenance work on MIL product at nine dealerships in Alberta and Saskatchewan.

10. It has served as a dealer of Morris equipment since 2013.

11. In its work selling and maintaining MIL equipment with customers, MIL was obligated to provide AgriTerra with compensation for Volume Bonuses. The essence of this program saw a bonus owed to AgriTerra by MIL for its volume of purchases of MIL equipment in a fiscal year (September 1 to August 31) (the "**Volume Bonuses**").

12. As of April 16, 2020, the total outstanding amount of the Volume Bonuses for the 2018-19 fiscal year owing to AgriTerra is \$303,801.00.

13. AgriTerra understood that MIL would hold the Volume Bonuses for AgriTerra's benefit until the numbers were agreed to and paid out after each fiscal year.

14. For the fiscal 2018-19 year, MIL had continued to act in a manner which led AgriTerra to believe that their commercial relationship would continue as it had for years previous.

15. MIL was aware of its actual or impending insolvency and did not advise AgriTerra of its financial distress both during and after the 2018-19 fiscal year.

16. After MIL agreed to the final Volume Bonus numbers in December, 2019, it failed to pay AgriTerra such amounts.

17. By refusing to pay the Volume Bonus funds it held in trust for AgriTerra, disregarded the interests of AgriTerra as its creditor in an unfair and unjust manner and MIL was unjustly enriched.

18. As such, this court should order that \$303,801.00 of funds now in the hands of MIL shall be and are hereby impressed with a trust in favour of AgriTerra and hence do not form part of the estate of MIL or the Morris Group and should be repaid immediately.

19. The creditors of MIL will not be prejudiced by this relief as:

- (a) AgriTerra would have paid sums to MIL net of the Volume Bonuses;
- (b) The secured creditors were likely aware that any amounts received by MIL during the course of the 2018-19 fiscal year were subject to the Volume Bonuses and the secured creditors likely benefitted from MIL not repaying the Volume Bonuses; and
- (c) As the funds never comprised part of the estate of MIL or the Morris Group, they were never available for distribution to creditors.

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

- 1. This Notice of Application with proof of service;
- 2. Affidavit of Brian Taschuk sworn May 4, 2020;
- 3. Draft Orders;
- 4. Brief of Law; and
- 5. Such further and other material as this Honourable Court may allow.



**Applicable rules:**

1. *The Queen's Bench Rules*, Rule 1-5 and 1-6.

**Applicable Acts and Regulations:**

1. *Companies Creditors Arrangement Act*, RSC 1985, c C-36.

DATED at Regina, Saskatchewan, this 4<sup>th</sup> day of May, 2020.

KANUKA THURINGER LLP

Per:   
Solicitors for 1742009 Alberta Inc. (dba  
AgriTerra Equipment)

**NOTICE**

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.

**CONTACT INFORMATION AND ADDRESS FOR SERVICE**

KANUKA THURINGER LLP  
Barristers and Solicitors  
1400 - 2500 Victoria Avenue  
Regina, Saskatchewan  
S4P 3X2

Address for Service: Same as above  
Telephone: (306) 525-7200  
Fax: (306) 359-0590  
Email address: [jehmann@ktllp.ca](mailto:jehmann@ktllp.ca)  
Lawyer in Charge of File: James S. Ehmann, Q.C.  
41500-0001/jfh  
DM 2488530 v4