

"JR"
COURT FILE NUMBER

³
1401-13215

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 (Approval of E Construction
Settlement Agreement)

ADDRESS FOR SERVICE
AND CONTACT
INFORMATION OF PARTY
FILING THIS DOCUMENT

McCarthy Tétrault LLP
Barristers & Solicitors
Sean F. Collins / Walker W. MacLeod /
Theodore Stathakos
4000, 421 – 7th Avenue S.W.
Calgary, Alberta T2P 4K9

Telephone: 403-260-3500
Facsimile: 403-260-3501
Email: scollins@mccarthy.ca
wmacleod@mccarthy.ca

DATE ON WHICH ORDER WAS PRONOUNCED:

October 23, 2017

LOCATION WHERE ORDER WAS PRONOUNCED:

Edmonton, Alberta

NAME OF JUSTICE WHO MADE THIS ORDER:

Justice J.M. Ross

UPON THE APPLICATION of Alvarez & Marsal Canada Inc., in its capacity as the court-appointed receiver and manager (in such capacity, the "**Receiver**") and trustee in bankruptcy (in such capacity, the "**Trustee**") Contracting pursuant to the Receivership Order (the "**Application**"); **AND UPON** noting that Contracting and E Construction entered into a construction contract dated May 9, 2012 and pertaining to the construction of a road and bridge project in the RMWB (the "**E Construction Contract**"); **AND UPON** noting that E Construction has advanced an action against Contracting in the within proceedings alleging, *inter alia*, a breach of the E Construction Contract by Contracting (the "**E Construction Action**"); **AND UPON** noting that Contracting commenced an action against E Construction in Court File No. 1401-08353 on July 31, 2014 alleging, *inter alia*, a breach of the E Construction Contract by E Construction (the "**Contracting Action**"); **AND UPON** noting the consent order issued by the



I hereby certify that the above is a true and correct copy of the original as filed in the Court.
Clerk of the Court

Honourable Justice J. M. Ross, dated May 5, 2016, in the within proceedings (the "**Consent Order**"); **AND UPON** noting the order issued by the Honourable Justice J. M. Ross, dated February 13, 2017, in the within proceedings that, *inter alia*, declared the E Construction Lien to be invalid and unenforceable (the "**E Construction Lien Order**"); **AND UPON** being advised that E Construction has appealed the E Construction Lien Order to the Court of Appeal of Alberta pursuant to a Notice of Appeal dated March 9, 2017 in Court of Appeal File No. 1703-0069AC (the "**E Construction Appeal**"); **AND UPON** reviewing the trust claim process order issued by the Honourable Justice J. M. Ross, dated April 6, 2017, in the within proceedings (the "**Trust Claim Order**") and the order issued on the application of E Construction on May 4, 2017 that, *inter alia*, extended certain of the deadlines as specified in the Trust Claim Order; **AND UPON** noting that the only Persons who made trust claims pursuant to the Trust Claims Order were Pioneer Truck Lines Ltd. ("**Pioneer**"), filed on May 12, 2017 (the "**Pioneer Application**") and E Construction, filed on June 2, 2017 (the "**E Construction Application**"); **AND UPON** having read the Affidavit of Dave Manchakowski, sworn May 2, 2017 and the Affidavit of Jack Farrar, sworn on June 2, 2017; **AND UPON** having read the sixth report of the Receiver, dated November 10, 2015, the ninth report of the Receiver, dated March 27, 2017 (the "**Ninth Report**"), the first supplement to the Ninth Report, dated April 20, 2017, the second supplement to the Ninth Report, dated May 23, 2017 and the tenth report of the Receiver, dated October 13, 2017 (the "**Tenth Report**"); **AND UPON** having read the written brief of E Construction, dated June 9, 2017, the written briefs of the Receiver and RBC, each dated June 16, 2017, and the reply written brief of E Construction, dated August 25, 2017, in respect of the E Construction Application; **AND UPON** hearing oral submissions on June 22, 2017 and September 5, 2017 in respect of the E Construction Application; **AND UPON** reading the affidavit of service of Katie Doran, sworn October 16, 2017 (the "**Service Affidavit**"); **AND UPON** hearing submissions from the Receiver, RBC, E Construction and Pioneer;

IT IS HEREBY ORDERED AND DECLARED THAT:

1. Service of the Application and the Tenth Report in the manner described in the Service Affidavit is good and sufficient and no Persons other than those listed on the service list attached as an exhibit to the Service Affidavit (the "**Service List**") are entitled to receive notice of the Application or service of the Tenth Report.
2. All capitalized terms used herein and not otherwise defined shall have the meaning ascribed to them in the Consent Order.

3. The Receiver's solicitors are authorized, empowered and directed to immediately and forthwith disburse and deal with the Funds (as such term is defined in the Trust Claim Order) pursuant to and in accordance with the terms of this Order.

4. The Receiver's solicitors shall hold the amount of ~~\$80,229~~ ^{\$120,000} of the Funds (the "**Pioneer Funds**") as security for the claim asserted by the Pioneer pursuant to the Pioneer Application. In the event that:

- (a) the Pioneer Claim is allowed, the Receiver's solicitors shall continue to hold the Pioneer Funds pending any further order of this Honourable Court; and
- (b) if the Pioneer Claim is dismissed, the Receiver's solicitors shall forthwith disburse the Pioneer Funds and any interest accrued thereon to the Receiver without any further order of this Honourable Court and the Receiver is authorized and empowered to make disbursement of the Remaining Funds pursuant to and in accordance with the terms of the July 17 Order.

5. The Receiver's solicitors shall immediately and forthwith disburse the sum of \$400,000 of the Funds (the "**E Construction Settlement Funds**") to E Construction upon the issuance of this Order. Upon receipt of the E Construction Settlement Funds:

- (a) Contracting shall discontinue the Contracting Action on a without costs basis and E Construction shall consent to the discontinuance of the Contracting Action on a without costs basis;
- (b) E Construction shall discontinue the E Construction Appeal on a without costs basis and each of the Receiver and RBC shall consent to the discontinuance of the E Construction Appeal on a without costs basis; and
- (c) the E Construction Application is deemed to be withdrawn and E Construction shall no longer advance the E Construction Application or any claim made therein.

6. The Receiver's solicitors shall immediately and forthwith disburse the remaining balance of the Funds, including any interest accrued on the Funds (the "**Remaining Funds**") to

Contracting (in care of the Receiver) upon the issuance of this Order and, upon receipt of the Remaining Funds, the Receiver is authorized and empowered to make disbursement of the Remaining Funds pursuant to and in accordance with the terms of the July 17 Order. Without limitation and for greater certainty it is hereby declared that, subject only to the charges created in the Receivership Order, RBC has a valid and enforceable first-lien charge on the Remaining Funds and no other Person (including, without limitation, any Person who is a creditor of Contracting or claiming by, through or under Contracting or a creditor of Contracting by way of subrogation or for contribution and indemnity) has any Claim (as defined herein) to the Remaining Funds other than a Claim that is postponed and subordinate to the Claims of RBC and the charges created in the Receivership Order to the Remaining Funds.

7. The E Construction Settlement Funds and the Remaining Funds (collectively, the **"Disbursed Funds"**) are unconditionally and indefeasibly releasable to each of E Construction and Contracting (in care of the Receiver) pursuant to and in accordance with the terms of this Order. The legal and equitable interest in the Disbursed Funds shall vest absolutely in each of E Construction and Contracting (in proportion to their entitlement to receive the Disbursed Funds pursuant to and in accordance with the terms of this Order), free and clear of and from any and all Trust Claims (as such term is defined in the Trust Claim Order), security interests (whether contractual, statutory, or otherwise), hypothecs, caveats, mortgages, trusts or deemed trusts (whether contractual, statutory, or otherwise), liens, executions, levies, charges, or other financial or monetary claims, whether or not they have attached or been perfected, registered or filed and whether secured, unsecured, advanced pursuant to the Trust Claim Order or otherwise (collectively, the **Encumbrances"**). For greater certainty all Encumbrances affecting or relating to the Disbursed Funds are hereby expunged and discharged as against the Disbursed Funds, but provided that nothing in this paragraph 7 shall prevent or restrict RBC from asserting a Claim to the Remaining Funds or any other Person from asserting a Claim against Contracting or its assets, properties or undertakings that is postponed and subordinate to the Claims of RBC and the charges created in the Receivership Order.

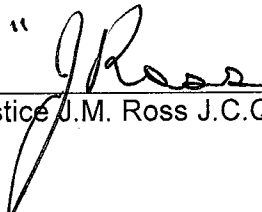
8. Upon the Receiver's solicitors disbursing the E Construction Settlement Funds and the Remaining Funds in accordance with this Order, each of Contracting, the Receiver, the Trustee and E Construction (for the purposes of this paragraph each of the foregoing a **"Party"** and collectively, the **"Parties"**), on behalf of themselves and each of their predecessors, successors and assigns (each of the Parties and each of the additional Persons identified a **"Released**

Party" and collectively, the "**Released Parties**") hereby release, remise, acquit, and forever discharge each of the other Released Parties and each of their respective officers, directors and employees from any and all actions and causes of action, Trust Claims, judgments, executions, suits, debts, claims, demands, liabilities, obligations, damages and expenses of any and every character, known or unknown, direct or indirect, at law or in equity, of whatsoever kind or nature (collectively, the "**Claims**"), for or because of any manner or things done, omitted or suffered to be done by any of the Released Parties prior to and including the date hereof, and in any way directly or indirectly arising out of or in any way connected to the Consent Order, the E Construction Contract, the Contracting Action, the E Construction Action, the E Construction Lien Order, the E Construction Appeal, the E Construction Application, the Funds, the Bridge Contract (as such term is defined in the Settlement Agreement attached as Schedule "A" to the Consent Order), the Bridge Project (meaning all of the works, services and materials associated with the Bridge Contract) or the Trust Claim Order (collectively, the "**Released Matters**"). Without limiting the generality of the foregoing, this Order is intended to fully and finally satisfy any and all alleged losses, injuries or damages occurring to any Released Party that are connected with or related to the Released Matters and no Person, whether a Released Party or a Person claiming by, through or under a Released Party or another Person by way of subrogation or for contribution and indemnity, shall have or be able to advance any Claims against any Released Party or the Disbursed Funds for anything directly or indirectly arising out of or in any way connected to the Released Matters. For greater certainty this Order, the declaration that RBC has a valid and enforceable first-lien charge on the Remaining Funds subject only to the charges created in the Receivership Order as provided by paragraph 6 herein, the unconditional and indefeasible release of the Disbursed Funds free and clear of all Encumbrances as provided by paragraph 7 herein and the release and discharge of all Claims against the Released Parties that arise out of or are in way connected to the Released Matters as provided by this paragraph 8, shall be and remain binding and effective on all Persons notwithstanding the issuance of judgment or reasons in either the Pioneer Application or the E Construction Application, as applicable, but again provided that nothing in this paragraph 8 shall prevent or restrict:

- (a) RBC from asserting a Claim to the Remaining Funds that is postponed and subordinate to the charges created in the Receivership Order; or

- (b) E Construction from asserting a Claim against any Person who is not a Released Party including, without limitation, a Claim that relates or pertains to any Released Matter.

9. Only Persons listed on the Service List are entitled to be served with a copy of this Order and service of this Order shall be effective on all Persons on the Service List by shall be effective by facsimile, electronic mail, personal delivery or courier.

"  "

Justice J.M. Ross J.C.Q.B.A.