

COURT FILE NUMBER

1403-13215

COURT

COURT OF QUEEN'S BENCH OF ALBERTA

JUDICIAL CENTRE

EDMONTON

PLAINTIFF

E CONSTRUCTION LTD.

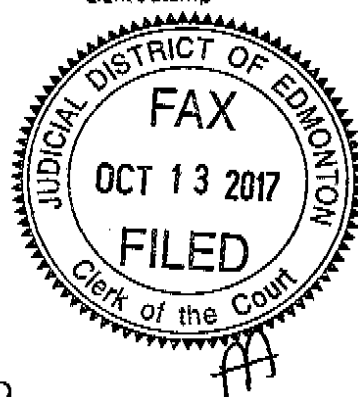
DEFENDANTS

SPRAGUE-ROSSER CONTRACTING CO. LTD.,
AND REGIONAL MUNICIPALITY OF WOOD BUFFALO

DOCUMENT

TENTH REPORT OF ALVAREZ & MARSAL CANADA
INC., IN ITS CAPACITY AS COURT APPOINTED
RECEIVER OF SPRAGUE-ROSSER CONTRACTING CO.
LTD., SPRAGUE-ROSSER DEVELOPMENTS INC.,
PACIFIC FEDERATION EQUITY GROUP INC.October 13th, 2017ADDRESS FOR SERVICE AND
CONTACT INFORMATION OF
PARTY FILING THIS
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ALVAREZ & MARSAL

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INTRODUCTION AND BACKGROUND

1. Alvarez & Marsal Canada Inc. was appointed Receiver (the “**Receiver**” or “**A&M**”) of all of the assets, undertakings and properties of Sprague-Rosser Contracting Co. Ltd. (“**Contracting**”), Sprague-Rosser Developments Inc. and Pacific Federation Equity Group Inc. (collectively, “**SR**”) pursuant to an order of Honourable Madam Justice J. B. Veit (the “**Receivership Order**”) granted on July 31, 2014.
2. On August 7, 2014 this Honourable Court amended and restated the Receivership Order (the “**Amended Receivership Order**”) in the within proceedings to provide for certain rights to Western Surety Company in respect of ongoing bonded construction contracts undertaken by Contracting in Alberta and Saskatchewan that the Receiver did not intend to complete.
3. On July 17, 2015 this Honourable Court granted an order (the “**Distribution Order**”) authorizing the Receiver to make distributions to Royal Bank of Canada (“**RBC**”).
4. On May 5, 2016 this Honourable Court granted an order (the “**RMWB Settlement Order**”) which provides for, among other things, approval of a settlement agreement between Contracting and the Regional Municipality of Wood Buffalo (“**RMWB**”) in respect of construction contracts between Contracting including the project referred to as Saline Creek Drive and Bridge Phase 1 (the “**Bridge Project**”). Pursuant to the RMWB Settlement Order, the Receiver’s legal counsel was ordered to hold approximately \$4.4 million (the “**Funds**”) as security pending determination as to the validity and enforceability of a builders’ lien (the “**E Construction Lien**”) registered by E Construction Ltd. (“**E Construction**”).
5. On February 13, 2017, this Honourable Court issued Reasons for Judgement that, *inter alia*, declared the E Construction Lien to be invalid and unenforceable (the “**February 13 Decision**”).
6. On March 9, 2017, E Construction filed a Civil Notice of Appeal of the February 13 Decision (the “**E Construction Appeal**”).
7. On April 6, 2017, this Honourable Court granted an order setting a process (the “**Trust Claims Process**”) for E Construction, all other trade creditors and any other interested persons to have an opportunity to prove a beneficial right and entitlement to the Funds (the “**Trust Claims Process Order**”).
8. On October 13, 2017, the Receiver filed a Notice of Application for an order confirming and approving a settlement agreement between SR and E Construction regarding a trust claim advanced by E Construction pursuant to the Trust Claims Process and authorizing and directing

to the Receiver with respect disbursement of the Funds (the “**E Construction Settlement Order**”).

9. Further background including a copy of the Amended Receivership Order, the previous nine reports of the Receiver and other motion materials are posted on the Receiver’s website at www.alvarezandmarsal.com/sprague (the “**Receiver’s Website**”).
10. Capitalized terms not defined in this tenth report of the Receiver (the “**Tenth Report**”) are as defined in the Amended Receivership Order or as used in previous reports of the Receiver.
11. All references to dollars are in Canadian currency unless otherwise noted.

PURPOSE

12. The Tenth Report is intended to provide this Honourable Court with information and the Receiver’s comments with respect to the following:
 - a) an update with respect to the Trust Claims Process;
 - b) the Receiver’s application for the E Construction Settlement Order; and
 - c) the Receiver’s conclusion and recommendation.

UPDATE ON THE TRUST CLAIMS PROCESS

13. Details of the Trust Claims Process are described in the Ninth Report of the Receiver dated March 27, 2017 and are not repeated herein.
14. On April 13, 2017 the Receiver mailed a trust claim package including an instruction letter, form of trust claim application and copy of the Trust Claims Process Order (a “**Trust Claim Package**”) to 39 known creditors who may have a claim provable against SR arising from, relating to or otherwise in connected with the Bridge Project. The Trust Claim Package was also posted on the Receiver’s Website.
15. The only two parties that made trust claims pursuant to the Trust Claims Process Order on or before the Trust Claim Filing Date of May 12, 2017, were as follows:
 - a) E Construction which filed a Notice of Application for a declaration that, among other things, the Funds are being held in trust for the benefit subcontractors of the Bridge Project and registered lienholders on the Bridge Project (the “**E Construction Claim**”); and

- b) Pioneer Truck Lines Ltd. (“**Pioneer**”) which filed a Notice of Application seeking a declaration that Pioneer has a beneficial right and interest in the Funds in the amount of \$80,228 plus costs and interest (the “**Pioneer Claim**”).

E CONSTRUCTION SETTLEMENT ORDER

- 16. With a view to mitigating the on-going costs of litigation (which have been significant) and bring timely closure to this matter, the Receiver and E Construction have agreed to key commercial terms of a settlement of E Construction’s claims against SR (which has been agreed to by RBC), subject to confirmation and approval by order of this Honourable Court.
- 17. The key commercial terms of the E Construction Settlement Order are summarized as follows:
 - a) the Receiver’s legal counsel is authorized, empowered and directed to immediately disburse and deal with the Funds in accordance with the E Construction Settlement Order;
 - b) the Receiver’s legal counsel is directed to hold \$80,228 of the Funds as security for the Pioneer Claim. In the event the Pioneer Claim is allowed, the Receiver’s legal counsel shall continue to hold the Funds relating to the Pioneer Claim pending a further order of this Honourable Court. If the Pioneer Claim is dismissed, the Receiver’s legal counsel shall forthwith disburse the \$80,228 to the Receiver;
 - c) the Receiver’s legal counsel shall immediately disburse \$400,000 of the Funds (the “**E Construction Settlement Funds**”) to E Construction;
 - d) upon receipt of the E Construction Settlement Funds:
 - i. Contracting shall discontinue its action commenced on July 31, 2014 against E Construction for breach of its contract with Contracting on a without costs basis;
 - ii. E Construction shall discontinue the E Construction Appeal on a without costs basis; and
 - iii. the E Construction Application is deemed to be withdrawn and E Construction shall no longer advance the E Construction Claim.
 - e) the Receiver’s legal counsel shall immediately and forthwith disburse the remaining balance of the Funds, including any interest accrued thereon (the “**Remaining Funds**”), to the Receiver and the Receiver is authorized and empowered to disburse the Remaining Funds in accordance with the Distribution Order. It is declared that, subject only to the charges

created by the Amended Receivership Order, RBC has a valid and enforceable first-lien charge on the Remaining Funds;

- f) the E Construction Settlement Funds and the Remaining Funds are unconditionally released to each of E Construction and the Receiver pursuant to the E Construction Settlement Order free and clear of any and all trust claims or other encumbrances; and
- g) each of E Construction and Contracting release and forever discharge the other party, the Receiver, and each of their respective employees and other representatives from any and all claims for or because of any manner of things done, omitted or suffered to be done by any of the released parties prior to and including the date of the E Construction Settlement Order. No person, including a party by way of subrogation or for contribution and indemnity, shall be able to advance any claims against any released party or the disbursed Funds for anything directly or indirectly arising out of the E Construction Claim and related matters.

18. A pro forma distribution of the Funds as contemplated by the E Construction Settlement Order is as follows:

Sprague-Rosser Contracting Co. Ltd. - In Receivership	
Pro Forma Distribution of the Funds pursuant to the E Construction Settlement Order	
\$000's	
Funds in Trust with McCarthy Tetrault LLP as at October 10, 2017	\$ 4,462
Payment to E Construction	(400)
Payment to the Receiver	(3,982)
Funds to be held in trust as security for the Pioneer Claim	<u>\$ 80</u>

19. The Receiver has considered the E Construction Settlement Order in consultation with its legal counsel and views it as being in the best interests of Contracting and its creditors. The Receiver's comments with respect to the E Construction Settlement Order are as follows:
- a) it is a global resolution of all issues in dispute with E Construction and will allow the Receiver to avoid what may be costly and protracted litigation with respect to claims advanced by E Construction;
 - b) it provides for the immediate release of approximately 98% of the Funds to E Construction and the Receiver for the benefit of the estate;
 - c) the Receiver's legal counsel will retain sufficient funds to secure the Pioneer Claim; and
 - d) E Construction, RBC and the Receiver are each in support of the E Construction Settlement Order.

POSITION OF PIONEER

20. The Receiver understands that Pioneer is opposed to the E Construction Settlement Order.
21. The Receiver has offered to settle the Pioneer Claim on the same *pro rata* basis that it has settled all issues in dispute with E Construction, open for acceptance until the commencement of the application for the E Construction Settlement Order. The *pro rata* settlement payment to Pioneer, calculated based on the \$80,228 amount of the Pioneer Claim, is \$7,192. To date, Pioneer has not accepted the Receiver's offer to settle the Pioneer Claim on this basis. As a result, the E Construction Settlement Order contemplates security being maintained for the full value of the Pioneer Claim and pending resolution of the various issues associated with the Pioneer Claim.

RECEIVER'S CONCLUSION AND RECOMMENDATION

22. Based on the forgoing, the Receiver respectfully recommends that this Honourable Court grant the E Construction Settlement Order.

All of which is respectfully submitted to this Honourable Court this 13th day of October, 2017.

**Alvarez & Marsal Canada Inc.,
in its capacity as Receiver and Manager of
Sprague-Rosser Contracting Co. Ltd,
Sprague-Rosser Developments Inc. and
Pacific Federation Equity Group Inc.**



Per: Todd M. Martin
Senior Vice President



Per: Tom Powell
Vice President