

COURT FILE NUMBER BK01 095190
COURT Court of Queen’s Bench of Alberta
JUDICIAL CENTRE Calgary



205259

APPLICANT **BANK OF MONTREAL**
RESPONDENT **APTUS MANAGEMENT INC.**
DOCUMENT **APPLICATION BY BANK OF MONTREAL, A CREDITOR OF APTUS MANAGEMENT INC.**
ADDRESS FOR SERVICE AND CONTACT INFORMATION OF PARTY FILING THIS DOCUMENT **Fasken Martineau DuMoulin LLP**
Barristers and Solicitors
3400 First Canadian Centre
350 – 7 Avenue SW
Calgary, Alberta T2P 3N9

Attention: Mihai Tomos
Tel: (403) 261 7386
Email: mtomos@fasken.com
File No.: 317271.00006

NOTICE TO RESPONDENT: APTUS MANAGEMENT INC.

This application is made against you. You are a Respondent. You have the right to state your side of this matter before the Registrar.

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

Date: March 1, 2021
Time: 10:00 a.m.
Where: via WebEx in virtual courtroom 56
Before Whom: Registrar in Chambers

To appear by Webex in virtual courtroom #56
<https://albertacourts.webex.com/meet/virtual.courtroom56>
or
to appear by phone: 780-851-3573
Access Code: 961 851 797

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. The Applicant, Bank of Montreal (“**BMO**”), seeks the granting of:
 - (a) a Bankruptcy Order, in substantially the form attached hereto as **Schedule “A”**, which, amongst other things:

- (i) adjudges Aptus Management Inc. (“**Aptus**”) bankrupt;
 - (ii) appoints MNP Ltd. as Trustee in Bankruptcy of Aptus; and
 - (iii) orders costs of the Applicant on a solicitor and own client full indemnity basis to be paid out of the estate of the bankrupt upon taxation of the estate; and
- (b) such further and other relief as this Honourable Court deems appropriate.

Grounds for making this application:

2. As set out below and, in more detail, in the Affidavit of Truth of Michaela Wolf, Aptus:
- (i) owes BMO an amount greater than \$1,000 and
 - (ii) has committed one or more acts of bankruptcy within the six months preceding the filing of the within application.

Aptus

- 3. Pursuant to a Letter of Agreement dated April 4, 2019 executed by Aptus, BMO agreed to make and made certain loans to Aptus (the “**Loans**”).
- 4. As security for the repayment of the Loans, Aptus executed a Security Agreement dated December 17, 2018 in favour of BMO (the “**Security Agreement**”).
- 5. Pursuant to the Security Agreement, BMO holds security over all present and after acquired personal property of Aptus (the “**Security**”).
- 6. BMO demanded the repayment of the indebtedness from Aptus pursuant to a demand letter and a Notice of Intention to Enforce Security under subsection 244(1) of the *Bankruptcy and Insolvency Act* (Canada) dated December 2, 2019.
- 7. As of January 25, 2021, BMO is still owed principal and interest in the sum of \$2,273,500.77, plus costs in respect of the recovery of the foregoing amount by Aptus.
- 8. BMO values the Security at \$0.

9. On May 21, 2020 R A West International Inc. registered at the Alberta Personal Property Registry a writ of enforcement against Aptus in the amount of \$48,113.72 (the “**RA West Writ**”).
10. Kubota Canada Ltd. (“**Kubota**”), a secured creditor of Aptus, effected a seizure of three of Aptus’ assets on or about August 19, 2020 (the “**Kubota Seizure**”).
11. As of December 10, 2020, Kubota is still owed \$17,825.48 by Aptus (the “**Kubota Debt**”).
12. On November 15, 2020, BMO received a Notice of Sale or Other Disposition from John Deere Financial Inc. pursuant to which John Deere advised that it (i) was owed \$512,714.50 by Aptus (the “**John Deere Debt**”) and (ii) would seize a certain asset of Aptus.
13. The directors of Aptus, Tyrell Sears and Danielle Sears, transferred funds from Aptus to Mesabi Ranches Inc., which are suspicious given that they (i) were made to an entity that does not appear to be at arm’s length to Aptus or its directors, (ii) do not appear to be made for value, and (iii) likely rendered Aptus insolvent.
14. The application of BMO to bankrupt Aptus should be granted based upon the following:
 - (a) BMO is owed by Aptus a debt greater than \$1,000;
 - (b) as evidenced by the RA West Writ, the Kubota Debt, and the John Deere Debt, Aptus has ceased to meet its liabilities as they become due and, as such, pursuant to section 42(j) of the *Bankruptcy and Insolvency Act*, RSC 1985, c B-3 (the “**BIA**”) has committed an act of bankruptcy within the six months next preceding the date of filing of BMO’s application to bankrupt Aptus;
 - (c) BMO is a significant creditor of Aptus;
 - (d) there are suspicious circumstances in the way Tyrell Sears and Danielle Sears have handled the assets of Aptus, which require that the processes of the BIA be set in motion; and

- (e) as evidenced by the Kubota Seizure, Aptus permitted a process issued against it under which its property was taken in execution and such execution remained unsatisfied for fifteen days after such process. As such, Aptus committed an act of bankruptcy pursuant to section 42(e) of the BIA.

Consent to Act

- 15. MNP Ltd. has consented to act as trustee of the assets, undertakings and properties of Aptus and they are qualified to act as a Trustee in Bankruptcy with respect to Aptus. MNP Ltd. is acceptable to BMO.

Material or evidence to be relied on:

- 16. The Affidavit of Truth of Michaela Wolf, sworn on January 26, 2021.
- 17. Consent to Appointment of MNP Ltd.
- 18. Such further and other materials as counsel may advise and this Honourable Court permits.

Applicable Rules:

- 19. *Bankruptcy and Insolvency General Rules*, C.R.C. 1978, c. 368, as amended.
- 20. Rule 3.2 of the *Alberta Rules of Court*.

Applicable Acts and Regulations:

- 21. *Bankruptcy and Insolvency Act*, R.S.C. 1985, c.B-3, as amended.
- 22. *Alberta Rules of Court*, Alta. Reg. 124/2010.

How the application is proposed to be heard or considered:

- 23. The Applicant proposes that this application be heard in person or over video conference and on affidavit evidence before the sitting Registrar in Chambers.

DATED at Calgary, Alberta, this 8th day of February, 2021.

Bank of Montreal

Per:



Fasken Martineau DuMoulin LLP
Mihai Tomos

Issued at the Calgary Registry, in the Province of Alberta this ____ day of February, 2021.

Registrar in Bankruptcy

NOTICE OF HEARING OF APPLICATION FOR A BANKRUPTCY ORDER

TAKE NOTICE that an application that a bankruptcy order be made in respect of your property will be heard by the presiding Judge in Bankruptcy (or if unopposed by the Registrar in Chambers) via Webex, on Monday the 1st day of March, 2021, at the hour of 10 o'clock in the morning or so soon thereafter as the application can be heard.

AND FURTHER TAKE NOTICE that if notice of cause against the application is not filed in court and a copy thereof served on the solicitor for the applicant creditor at least two days before the hearing and if you do not appear at the hearing in person or by your lawyer, the court may make a bankruptcy order on such proof of the statements in the application as the court shall think sufficient. 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.

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"
Bankruptcy Order**

COURT FILE NUMBER

COURT Court of Queen's Bench of Alberta

JUDICIAL CENTRE Calgary

APPLICANT **BANK OF MONTREAL**

RESPONDENT **APTUS MANAGEMENT INC.**

DOCUMENT **BANKRUPTCY ORDER**

ADDRESS FOR
SERVICE AND
CONTACT
INFORMATION OF
PARTY FILING THIS
DOCUMENT

Fasken Martineau DuMoulin LLP
Barristers and Solicitors
3400 First Canadian Centre
350 – 7 Avenue SW
Calgary, Alberta T2P 3N9

Attention: Mihai Tomos
Tel: (403) 261-7386
Email: mtomos@fasken.com
File No.: 317271.00006

Date on which Order was pronounced: March 1, 2021

Name of Registrar who made this Order:

Location where this Order was made:

Calgary

UPON the application of Bank of Montreal ("**BMO**"), a creditor of Aptus Management Inc. ("**Aptus**"); **AND UPON** having read the Affidavit of Michaela Wolf and the Affidavit of Service; **AND UPON** having heard submissions from counsel for BMO and any other parties appearing at the within application; **AND UPON** it appearing to the Court that Aptus has committed an act of bankruptcy, namely ceasing to meet its liabilities generally as they become due,

IT IS HEREBY ORDERED THAT:

1. Aptus is hereby adjudged bankrupt.
2. MNP Ltd. (the “Trustee”), of the City of Calgary, in the Province of Alberta, is appointed as trustee of Aptus.
3. The Trustee shall not be required to give security in cash or by bond, in accordance with subsection 16(1) of the *Bankruptcy and Insolvency Act*, RSC 1985, c B-3.
4. The taxed costs of the applicant Creditor, BMO, shall be paid out of the estate of Aptus.

Registrar in Chambers