

COURT FILE NUMBER 24-2823737
COURT COURT OF QUEEN'S BENCH OF ALBERTA
JUDICIAL CENTRE EDMONTON



IN THE MATTER OF THE BANKRUPTCY OF 3MK ENERGY SERVICES LTD., CLL CAPITAL CORP. AND LAST CHANCE TRUCKING (1995) LTD.

DOCUMENT **APPLICATION BY MNP LTD., IN ITS CAPACITY AS FORMER PROPOSAL TRUSTEE OF 3MK ENERGY SERVICES LTD., CLL CAPITAL CORP. AND LAST CHANCE TRUCKING (1995) LTD. AND SECURITY AGENT FOR CANADIAN WESTERN BANK**

ADDRESS FOR SERVICE AND CONTACT INFORMATION OF PARTY FILING THIS DOCUMENT
Field LLP
400, 444 – 7 Avenue SW
Calgary AB T2P 0X8
Lawyer: Trevor Batty
Phone Number: (403) 260-8537
Fax Number: (403) 264-7084
Email Address: tbatty@fieldlaw.com
File No. 50432-62

NOTICE TO RESPONDENTS: [listed in the service list attached as Schedule "B"]

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

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

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

Date: September 7, 2022
Time: 10:00 a.m.
Where: Edmonton Courts Centre (via Webex)
Before Whom: The Honourable Justice Gill in Commercial Chambers

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, MNP Ltd. ("**MNP**"), in its capacity as former Proposal Trustee of CLL Capital Corp., 3MK Energy Services Ltd. and Last Chance Trucking (1995) Ltd. (collectively, the "**Companies**") and current security agent appointed by Canadian Western Bank ("**CWB**"), seeks an Order, substantially in the form attached hereto as Schedule "A" (the "**Distribution Order**"):

- a. abridging the time for, and validating service of, this Application on the parties set out in the Service List attached here to as Schedule “B” and the materials filed in support of this Application, if necessary, and dispensing with service on any party not served;
- b. approving the distribution of the funds presently held in MNP’s counsel’s trust account in accordance with the recommendation of MNP in the First Report (the “**Distribution**”), free and clear of all claims, liens and encumbrances;
- c. discharging and releasing MNP from any and all liability in respect of the Distribution; and
- d. such further and other relief and directions as counsel may request and this Honourable Court may deem appropriate.

Grounds for making this application:

2. The grounds upon which MNP relies in making the within Application are as follows:
 - a. On April 21, 2022, each of the Companies filed a Notice of Intention to Make a Proposal with the Official Receiver (the “**Proposal Proceedings**”);
 - b. MNP was appointed as Proposal Trustee for the Companies in the Proposal Proceedings;
 - c. On May 26, 2022, the Court granted an Order approving an Administration Charge for the benefit of counsel to the Companies, MNP as Proposal Trustee and MNP’s counsel, on all of the present and after-acquired assets of the Companies up to an amount of \$100,000;
 - d. On May 26, 2022, the Court also granted two approval and vesting Orders approving the sale of the Companies’ assets and vesting of the assets in the purchasers free and clear of all liens and encumbrances (the “**AVOs**”);
 - e. The AVOs provide that upon completion of the sales contemplated by the AVOs, the net sale proceeds shall be held in the trust account of counsel for MNP pending further Order of the Court upon application by either MNP or CWB;
 - f. The AVOs further provide that the sale proceeds shall stand in the place and stead of the purchased assets and that any claims shall attach to the net proceeds with the same

validity, priority and in the same amounts and subject to the same defences available as when the claims were attached to the assets themselves;

- g. The two sales contemplated by the AVOs have closed and counsel for MNP is currently holding funds in its trust account in the aggregate sum of \$1,886,802.67 (the “Proceeds”);
- h. On July 11, 2022 at 12:01 a.m. the Companies, having failed to file a Proposal or obtain a further extension of the time period within which it is required to do so, were deemed to make an automatic assignment into bankruptcy. MNP is the Trustee in Bankruptcy for the Companies.
- i. On the basis that there is no equity in the Companies’ assets for the bankrupt estates, the Inspectors of the Companies’ Estates passed a resolution on August 17, 2022, approving the surrender of all of the Companies’ property to CWB;
- j. CWB has retained MNP to act as its security agent to realize on the security interests that CWB has in the Companies’ assets, including the Net Sale Proceeds.
- k. MNP has determined, after consulting its legal counsel, that the distribution of the Proceeds in the manner recommended in the Agent’s Report is just and appropriate;
- l. The reasons described in the Agent’s Report; and
- m. Such further and other grounds as counsel may advise and this Honourable Court may deem just.

Material or evidence to be relied on:

- 3. MNP intends to rely upon the following materials:
 - a. The Agent’s Report, dated August 30, 2022, filed by MNP as agent for CWB in these proceedings; and
 - b. such further and other materials as counsel may advise and this Honourable Court may permit.

Applicable Rules:

- 4. MNP will rely upon and refer to the Alberta *Rules of Court* during the making of the Application.

Applicable Acts and Regulations:

5. MNP will rely upon and refer to the provisions of the *Bankruptcy and Insolvency Act*, R.S.C. 1985 c. B-3.
6. MNP will further rely upon the *Garage Keepers' Lien Act*, R.S.A. 2000 c. G-2, section 6.

Any irregularity complained of or objection relied on:

7. None.

How the application is proposed to be heard or considered:

8. Remotely in Commercial Chambers via Webex. The Webex login information is attached to the Service list at Schedule "C" hereto.

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 give evidence in response to the application, you must reply by filing an affidavit or other evidence with the Court and serving a copy of that affidavit or other evidence on the Applicant a reasonable time before the application is to be heard or considered.

Schedule "A"
Form of Order

See attached.

Clerk's Stamp:

COURT FILE NUMBER 24-2823737
COURT COURT OF QUEEN'S BENCH OF ALBERTA
JUDICIAL CENTRE CALGARY

IN THE MATTER OF THE BANKRUPTCY OF 3MK ENERGY SERVICES LTD., CLL CAPITAL CORP. AND LAST CHANCE TRUCKING (1995) LTD.

DOCUMENT **ORDER FOR DISTRIBUTION OF ASSET SALE PROCEEDS**

ADDRESS FOR SERVICE AND CONTACT INFORMATION OF PARTY FILING THIS DOCUMENT
Field LLP
400, 444 – 7 Avenue SW
Calgary AB T2P 0X8
Lawyer: Trevor Batty
Phone Number: (403) 260-8537
Fax Number: (403) 264-7084
Email Address: tbatty@fieldlaw.com
File No. 50432-62

DATE ON WHICH ORDER WAS PRONOUNCED: September 7, 2022
NAME OF JUSTICE WHO MADE THIS ORDER: The Honourable Justice Gill
LOCATION OF HEARING: Edmonton, Alberta

ORDER

UPON THE APPLICATION of MNP Ltd. (“**MNP**” or the “**Agent**”), in its capacity as former Proposal Trustee of CLL Capital Corp., 3MK Energy Services Ltd. and Last Chance Trucking (1995) Ltd. (collectively, the “**Companies**”) and current security agent appointed by Canadian Western Bank (“**CWB**”), for an Order for the distribution of proceeds from the sale of certain assets of the Companies; AND UPON having read the two Approval and Vestin Orders approving the sale of the Companies’ assets, both dated May 26, 2022; AND UPON having read the Agent’s Report, dated August 30, 2022 (the “**Agent’s Report**”); AND UPON hearing counsel for MNP, and counsel for any other interested parties; AND UPON being satisfied that it is appropriate to do so, IT IS ORDERED THAT:

1. Service of notice of this application and supporting materials is hereby declared to be good and sufficient, and no other person is required to have been served with notice of this application, and time for service of this application is abridged to that actually given;

2. MNP, in its capacity as security agent for CWB, is authorized and directed to make the “Distribution” as defined and set out in the Agent’s Report (the “**Distribution**”).
3. The Distribution shall not be subject to the Superintendent’s levy, as provided for in s. 147 of the *Bankruptcy and Insolvency Act* (Canada), and MNP is under no obligation to retain any portion of the funds designated for the Distribution in respect of same.
4. In respect of the Distribution, MNP shall not be liable for any act or omission on its part, save and except for any liability arising out of any in fraud, gross negligence or willful misconduct on the part of MNP, or with leave of the Court.
5. This Order must be served only upon those interested parties attending or represented at the within application and service may be effected by facsimile, electronic mail, personal delivery or courier. Service is deemed to be effected the next business day following the transmission or delivery of such documents.
6. Service of this Order on any party not attending this application is hereby dispensed with.

J.C.C.Q.B.A.

Schedule "B"
Service List

See attached

*Court of Queen's Bench File No.: 24-2823737, 24-2823740 and 24-2823718
In the Matter of the Notice of Intention to Make a Proposal of 3MK Energy Services Ltd., CLL Capital Corp. and Last Chance Trucking (1995) Ltd.*

SERVICE LIST

Party	Contact Information	Role
<p>DLA Piper (Canada) LLP 1000, 250 - 2nd Street SW Calgary, AB T2P 0C1</p> <p>Attention: Carole Hunter and Brian Davison</p>	<p>carole.hunter@dlapiper.com brian.davison@dlapiper.com</p>	<p>CLL Capital Inc., 3MK Energy Services Ltd., and Last Chance Trucking (1995) Ltd.</p>
<p>MNP 1500, 640 – 5 Avenue SW Calgary, AB T2P 3G4</p> <p>Attention: Victor Kroeger / Karen Aylward</p>	<p>victor.kroeger@mnp.ca karen.aylward@mnp.ca</p>	<p>Proposal Trustee of CLL Capital Inc., 3MK Energy Services Ltd., and Last Chance Trucking (1995) Ltd.</p>
<p>Field LLP 400, 444 – 7 Avenue SW Calgary, AB T2P 0X8</p> <p>Attention: Trevor Batty</p>	<p>tbatty@fieldlaw.com</p>	<p>Proposal Trustee, MNP Ltd.</p>
<p>Miller Thomson 2700 Commerce Place 10115 - 102 Street Edmonton, AB T5J 4G8</p> <p>Attention: Rick Reeson / Mark Siry / Suzy Trace</p>	<p>rreeson@millerthomson.com msiry@millerthomson.com strace@millerthomson.com</p>	<p>Canadian Western Bank</p>
<p>WJ Kenny Law Suite 980, 10020 101A Avenue NW Edmonton, AB T5J 3G2</p> <p>Attention: Julian V. Savaryn</p>	<p>jsavaryn@wjkennylaw.com</p>	<p>Former Shareholders: Hugh Morrison, Renate Morrison, and Arian Bjerkness</p>

Party	Contact Information	Role
<p>The Bank of Nova Scotia 4715 Tahoe Boulevard Mississauga, ON L4W 0B4</p> <p>and</p> <p>10 Wright Boulevard Stratford, ON M5A 7X9</p>	<p>stratfordindirect@scotiabank.com</p>	<p>Creditor</p>
<p>Edmonton Kenworth Ltd. 17335 – 118 Avenue Edmonton, AB T5S 2P5</p>	<p>westreception@edmkw.com</p>	<p>Creditor</p>
<p>Office of the Superintendent of Bankruptcy Canada Place Building 9700 Jasper Avenue, Suite 725 Edmonton, AB T5J 4C3</p>	<p>Fax: 1-780-495-2466</p>	
<p>Canada Revenue Agency 220 - 4th Avenue S.E. Calgary, AB T2G 0L1</p>		
<p>Government of Canada Dept. of Justice Canada 510, 606 – 4 Street SW Calgary, AB T2P 1T1</p> <p>Attention: Jill Medhurst</p>	<p>jill.medhurst@justice.gc.ca</p>	
<p>Canada Revenue Agency c/o Prairie Regional Office Edmonton Department of Justice Canada 300, 10423- 101 Street N.W. Edmonton, Alberta T5H 0E7</p>		
<p>United Trust & Machine Ltd. Box 7324 Drayton Valley, AB T7A 1S5</p>	<p>ar@unitedtruckltd.com</p>	<p>Creditor</p>

Schedule "C"
WebEx Information

See attached.

Archived: August 30, 2022 3:12:10 PM

From: CommercialCoordinator QBEdmonton1

Sent: Tue, 23 Aug 2022 15:30:51

To: Trevor Batty; Elvina Hussein

Cc: CommercialCoordinator QBEdmonton1

Subject: Webex Confirmation B203 823718 + - NOTICE OF INTENTION OF: v. LAST CHANCE TRUCKING 1995 LTD NOTICE OF INTENTION OF: v. CLL CAPITAL CORP. NOTICE OF INTENTION OF: v. 3MK ENERGY SERVICES LTD.Sep 07, 2022 10:00 AM - GILL, J - Confirmed

Importance: Normal

CAUTION: This email originated from outside of the organization. Do not click links or open attachments unless you recognize the sender and know the content is safe.

Counsel: Please ensure that all relevant parties have received Webex information.

Virtual Courtroom 86 has been assigned for the above noted matter:

Virtual Courtroom Link:

<https://albertacourts.webex.com/meet/virtual.courtroom86>

Instructions for Connecting to the Meeting

1. Click on the link above or open up Chrome or Firefox and cut and paste it into your browser address bar.
2. If you do not have the Cisco Webex application already installed on your device, the site will have a button to install it. Follow installation instructions. Enter your full name and email address when prompted
3. Click on the **Open Cisco Webex Meeting**.
4. You will see a preview screen. Click on **Join Meeting**.

Key considerations for those attending:

Please connect to the courtroom **15 minutes prior** to the start of the hearing.

Please ensure that your microphone is muted and remains muted for the duration of the proceeding, unless you are speaking. Ensure that you state your name each time you speak.

If bandwidth becomes an issue, some participants may be asked to turn off their video and participate by audio only.

Note: Recording or rebroadcasting of the video is prohibited.

Note: It is highly recommended you use headphones with a microphone or a headset when using Webex. This prevents feedback.

If you are a non-lawyer attending this hearing remotely, **you must** complete the undertaking located here:

<https://www.albertacourts.ca/qb/resources/announcements/undertaking-and-agreement-for-non-lawyers>

For more information relating to Webex protocols and procedures, please visit: <https://www.albertacourts.ca/qb/court-operations-schedules/webex-remote-hearings-protocol>

You can also join the meeting via the "Cisco Webex Meetings" App on your smartphone/tablet or other smart device. You can download this via the App marketplace and join via the link provided above.

Thank you,

Brent Dufault
Commercial Duty Coordinator

E: commercialcoordinator.qbedmonton@albertacourts.ca

Court of Queen's Bench of Alberta
Calgary Court Centre
601 5 Street SW
Calgary, Alberta T2P 5P7

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