

COURT FILE NUMBER 24-2806171
COURT COURT OF QUEEN'S BENCH OF ALBERTA
**IN THE MATTER OF THE BANKRUPTCY OF ECO
INDUSTRIAL BUSINESS PARK INC.**



JUDICIAL CENTRE EDMONTON

APPLICANT MNP LTD., in its capacity as the TRUSTEE IN BANKRUPTCY OF
ECO-INDUSTRIAL BUSINESS PARK INC., and not in its personal
capacity.

RESPONDENT SYMMETRY ASSET MANAGEMENT INC.

DOCUMENT **APPLICATION**

ADDRESS FOR SERVICE **OSLER, HOSKIN & HARCOURT LLP**
AND CONTACT Suite 2700, Brookfield Place
INFORMATION OF 225 – 6th Avenue SW
PARTY FILING THIS Calgary, AB T2P 1N2
DOCUMENT

Attention: Emily Paplawski / Mike Albert
Telephone: 403.260.7071 / 403.260.7054
Facsimile: 403.260.7024
Email: epaplawski@osler.com / malbert@osler.com
File Number: 1231987

NOTICE TO RESPONDENTS: SYMMETRY ASSET MANAGEMENT INC.

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

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

Date: October 27, 2022
Time: 2:00 p.m.
Where: Edmonton Courts Centre (BY WEBEX)
Before Whom: Honourable Justice Lema

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., in its capacity as Trustee in Bankruptcy of Eco-Industrial Business Park Inc. (“**Eco**”), and not in its personal capacity (the “**Trustee**”), seeks an Order substantially in the form attached as **Schedule “A”** hereto:
 - (a) declaring that two Assignment and Assumption Agreements, dated December 1, 2019 (the “**Assignment Agreements**”) between Eco and a related company, Symmetry Asset Management Inc. (“**Symmetry**”), are void as against the Trustee as a transfer at undervalue pursuant to section 96(1)(b)(ii) of the *Bankruptcy and Insolvency Act*, RSC 1985, c. B-3 (the “**BIA**”);
 - (b) further, or in the alternative, declaring that the Assignment Agreements are void as against the Trustee as a fraudulent transfer pursuant to the *Fraudulent Preferences Act*, RSA 2000, c F-24 (the “**FPA**”);
 - (c) further, or in the alternative, declaring that the Assignment Agreements are void pursuant to the *Fraudulent Conveyances Statute*, 13 Eliz 1, Chapter 5 (UK) (the “**Statute of Elizabeth**”);
 - (d) costs of this Application against Symmetry on a basis deemed just by this Honourable Court; and
 - (e) such further and other relief as this Honourable Court deems appropriate.
2. Capitalized terms used but not otherwise defined herein have the meanings given to such terms in the Affidavit of Victor P. Kroeger, sworn August 4, 2022.

Grounds for making this application:

3. On or about December 1, 2019,¹ Eco and a related company, Symmetry, purported to execute two Assignment Agreements in favour of Symmetry assigning all right, title and interest of Eco in: (a) a litigation against Alberta Diluent Terminal Ltd. (“**ADT**”) filed by Eco in Alberta Court of Queen’s Bench Action No. 1303-16983 (the “**ADT Action**”)

¹ The Trustee has no information regarding the date(s) that the Assignment Agreements were executed by Eco and Symmetry, other than the date noted on the front page of each Assignment Agreement - December 1, 2019.

claiming damages of \$100 million against ADT; and (b) a potential claim in professional negligence against Dentons Canada LLP (“**Dentons**”) and certain lawyers with Dentons relating to the same transactions that form the subject of the ADT Action, but which claims have been tolled pursuant to the terms of a Standstill Agreement, dated December 23, 2014 (the “**Dentons Claim**”).

4. The Assignment Agreements:

- (a) were a disposition of property for which no consideration was received by Eco or, the consideration received by Eco was conspicuously less than the value of the ADT Action and Dentons Claim. Such claims have a face value of at least \$100 million. While the Assignment Agreements justify the transfers on the basis that Symmetry has provided management services to Eco and paid legal fees on Eco’s behalf, none of Symmetry’s (or Eco’s former) representatives have provided the Trustee with any management or other agreement between Eco or Symmetry, any record of the amounts purportedly paid by Symmetry on behalf of Eco, or any invoices relating to the calculation of Symmetry’s fees, notwithstanding the granting of three Orders by the Alberta Court of Queen’s Bench compelling the production of such documentation/information to the extent it exists. Over an approximately 1.5 year period, no supporting documentation or information has been provided;
- (b) were executed by Eco and Symmetry within the five year period prior to the date of the initial bankruptcy event;
- (c) were entered into in circumstances where:
 - (i) Eco and Symmetry were controlled by the same individual who signed the Assignment Agreements on behalf of each;
 - (ii) Eco and Symmetry were not dealing at arms’ length with each other; and
 - (iii) Eco was insolvent. On October 11, 2019, only approximately 7 weeks’ prior to the date of the Assignment Agreements, Rompsen (as secured lender) had accelerated an approximately US\$87.9 million obligation and

demanded repayment of such amount from Eco. Notices of Intention to enforce the Eco Mortgage, Eco Guarantee and Eco Security had been served by Rompsen on Eco. Independently, Eco had also ceased paying its obligations to the City of Edmonton in the normal course for property taxes which, by the end of 2019, were overdue in the amount of \$383,387 and which, by 2021, had grown to more than \$2 million; and

- (d) were concealed and never disclosed to Rompsen (as secured creditor) until Eco's (former) counsel disclosed the Assignment Agreements to the Trustee (then in its position as Court-appointed Receiver) in November 2021 in accordance with the requirements of the Receivership Order.
5. The Assignment Agreements constitute "transfers at undervalue" within the meaning of sections 2 and 96 of the BIA and are void as against the Trustee.
 6. In the alternative, the Assignment Agreements are void pursuant to the FPA and/or the Statute of Elizabeth since:
 - (a) the Assignment Agreements were conveyances of personal property for no (or nominal) consideration at a time when Eco was in insolvent circumstances;
 - (b) Eco intended to defraud, delay or hinder its creditors (for the reasons set out above) in conveying all right, title and interest to the ADT Action and the Dentons Claim;
 - (c) the Assignment Agreements did defraud, delay or hinder Eco's creditors through the wrongful dissipation of value to a related, non-arms' length party – Symmetry; and
 - (d) the Trustee has standing as the Court's officer, and as the representative of creditors, to seek relief under the FPA and the Statute of Elizabeth.
 7. Such further and other grounds as counsel may advise.

Material or evidence to be relied on:

8. The Affidavit of Victor P. Kroeger, sworn on August 4, 2022.

9. The pleadings, affidavits, reports, or other materials previously filed in ABQB Action No. 2003-06728.

Applicable rules:

10. *Rules of Court*, Alta Reg 124/2010.
11. *Bankruptcy and Insolvency General Rules*, CRC, c 368.
12. Such further and other rules as counsel for the Trustee may advise and this Honourable Court may allow.

Applicable Acts and regulations:

13. *Bankruptcy and Insolvency Act*, RSC 1985, c B-3.
14. *Fraudulent Preferences Act*, RSA 2000, c F-24.
15. *Fraudulent Conveyances Statute*, 13 Eliz 1, Chapter 5 (UK).
16. *Judicature Act*, RSA 2000, c J-2.
17. Such further and other Acts and Regulations as counsel for the Applicant may advise and this Honourable Court may allow.

Any irregularity complained of or objection relied on:

18. None.

How the application is proposed to be heard or considered:

19. By Webex before the Honourable Justice Lema, sitting on the Commercial List, on October 27, 2022 at 2:00 p.m. Webex information is as follows:

Virtual Courtroom Link:

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

WARNING

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 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(s) a reasonable time before the application is to be heard or considered.

Schedule "A"

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**IN THE MATTER OF THE BANKRUPTCY OF ECO-INDUSTRIAL
BUSINESS PARK INC.**

JUDICIAL CENTRE EDMONTON

APPLICANT MNP LTD., in its capacity as the TRUSTEE IN BANKRUPTCY OF ECO-
INDUSTRIAL BUSINESS PARK INC., and not in its personal capacity.

RESPONDENT SYMMETRY ASSET MANAGEMENT INC.

DOCUMENT: **ORDER**

ADDRESS FOR SERVICE AND CONTACT INFORMATION OF PARTY FILING THIS DOCUMENT

OSLER, HOSKIN & HARCOURT LLP
Barristers & Solicitors
Suite 2700, Brookfield Place
225 – 6th Avenue S.W.
Calgary AB, T2P 1N2

Attention: Emily Paplawski / Mike Albert
Telephone: 403.260.7071 / 403.260.7054
Facsimile: 403.260.7024
Email: epaplawski@osler.com / malbert@osler.com
File Number: 1231987

DATE ON WHICH ORDER WAS PRONOUNCED: October 27, 2022

NAME OF JUSTICE WHO MADE THIS ORDER: Justice Lema

LOCATION AT WHICH ORDER WAS MADE: Edmonton, Alberta

UPON THE APPLICATION of MNP Ltd., in its capacity as the TRUSTEE IN BANKRUPTCY OF ECO-INDUSTRIAL BUSINESS PARK INC. (the "**Bankrupt**"), and not in its personal capacity (the "**Trustee**"); **AND UPON** reviewing the Affidavit of Victor P. Kroeger, sworn August 4, 2022; **AND UPON** hearing from counsel for the Trustee and counsel for the Respondent, Symmetry Asset Management Inc. ("**Symmetry**"); **IT IS HEREBY ORDERED AND DECLARED THAT:**

1. The Assignment and Assumption Agreements, dated December 1, 2019 between the Bankrupt and Symmetry are void as against the Trustee as a transfer at undervalue pursuant to section 96(1)(b)(ii) of the *Bankruptcy and Insolvency Act*, RSC 1985, c. B-3.
2. Symmetry shall pay costs to the Trustee in the amount of \$_____.

J.C.Q.B.A.