

Clerk's Stamp:



COURT FILE NUMBER

24-116138
24-116139
24-2677331

COURT

COURT OF QUEEN'S BENCH OF ALBERTA
IN BANKRUPTCY AND INSOLVENCY
EDMONTON

JUDICIAL CENTRE

IN THE MATTER OF THE *BANKRUPTCY AND
INSOLVENCY ACT*, RSC 1985, c B-3, AS
AMENDED

AND IN THE MATTER OF THE BANKRUPTCY
OF TLICHO LANDTRAN TRANSPORT LTD.,
146982 ALBERTA LTD., and VENTURES
WEST LIMITED PARTNERSHIP

APPLICANT

MNP LTD., IN ITS CAPACITY AS TRUSTEE IN
BANKRUPTCY OF TLICHO LANDTRAN
TRANSPORT LTD., 1456982 ALBERTA LTD.,
and VENTURES WEST LIMITED
PARTNERSHIP

RESPONDENT

TLICHO LANDTRAN TRANSPORT LTD.,
1456982 ALBERTA LTD., and VENTURES
WEST LIMITED PARTNERSHIP

DOCUMENT

NOTICE OF APPLICATION

CONTACT INFORMATION OF
PARTY FILING THIS DOCUMENT:

Cassels Brock & Blackwell LLP
Suite 3810, Bankers Hall West
888 3 Street SW
Calgary, Alberta T2P 5C5

Attention: Jeffrey Oliver
Phone: 403-351-2921
Facsimile: 403-648-1151

File No.: 49076-13

NOTICE TO RESPONDENTS:

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: January 15, 2021
Time: 11:00am
Where: Edmonton Law Courts – Via Webex
Before Whom: The Honourable Justice D.R. Mah

Go to the end of this document to see what you can do and when you must do it.

Remedy claimed or sought:

1. An Order substantially in the form of Schedule “A”, attached hereto:
 - (a) if necessary, abridging the time for service of this Application and supporting materials including the First Report by MNP Ltd. (“**MNP**”) in its capacity as trustee in bankruptcy (in such capacity the “**Trustee**”) of Tlicho Landtran Transport Ltd. (“**Tlicho Landtran**”), 1456982 Alberta Ltd. (“**982 Ltd**”), and Ventures West Limited Partnership (“**Ventures West**” and collectively with Tlicho Landtran and 982 Ltd., the “**Companies**”) to the time actually given and deeming service of notice of this Application and supporting materials good and sufficient;
 - (b) substantively consolidating the bankrupt estates of the Companies, including combining the Companies’ assets and liabilities and creating a single pool of assets to distribute to the Companies’ creditors, regardless of their source of claim;
 - (c) approving the sale of a 2012 Kenworth T800 (the “**Kenworth**”) via auction by IronPlanet Canada Inc. (“**IronPlanet**”); and
 - (d) such further and other relief, advice and directions as counsel may advise and this Honourable Court may deem just and appropriate.

Grounds for making this application:

Background

2. On November 29, 2019, on application by Tlicho Investment Corporation (“**TIC**”), this Honourable Court granted an order (the “**Initial Order**”) appointing MNP as monitor (in such capacity, the “**Monitor**”), to monitor the Property, Business and financial affairs of the Companies and 1456998 Alberta Ltd. (“**998 Ltd**” and collectively, with the Companies,

the “**Debtors**”) under the *Companies’ Creditors Arrangement Act*, RSC 1985, c C-36 (the “**CCAA**”).

3. 998 Ltd is the general partner and 982 Ltd is the limited partner of Ventures West. TIC is a creditor of Tlicho Landtran, 982 Ltd, and Ventures West. TIC is the ultimate parent company of Tlicho Landtran and is the majority shareholder of each of 998 Ltd and 982 Ltd.
4. On September 9, 2020, on application by TIC, this Honourable Court granted an order (the “**Assignment Order**”) authorizing the Monitor to make a voluntary assignment of all of the Debtors’ property for the general benefit of the Debtors’ creditors pursuant to section 49 of the *Bankruptcy and Insolvency Act*, RSC 1985, c B-3 (the “**BIA**”).
5. Assignments in bankruptcy for the Companies were lodged with the Official Receiver on October 2, 2020. No assignment was lodged for 998 Ltd as that company does not have any assets or creditors.
6. On November 19, 2020, the Monitor filed a certificate terminating the CCAA proceedings.
7. The first meeting of creditors for the Companies was held on October 20, 2020. The appointment of the Trustee for 982 Ltd and Tlicho Landtran was deemed affirmed pursuant to section 106(2) of the BIA. Two inspectors were appointed for Ventures West (the “**Inspectors**”). No inspectors were appointed for 982 Ltd. and Tlicho Landtran.

Substantive Consolidation

8. Under TIC’s direction, the Companies operated largely as a single business entity. There was an extensive comingling of business functions and their finances were intertwined. In many cases, there was no distinction between each entity’s respective assets and liabilities.
9. A first meeting of the Inspectors was held on November 17, 2020 and the Inspectors approved, among other items, the Trustee seeking court approval for the substantive consolidation of the bankrupt estates of the Companies.
10. Both the Companies and the Monitor effectively treated the Companies as consolidated in certain respects by, among other things, pooling the proceeds of the asset sales.

Separating out the Companies' respective estates at this juncture would complicate matters and require further time and expense.

11. Consolidating the estates will minimize the professional fees associated with administering bankruptcies and facilitate greater distributions to creditors.
12. The potential economic prejudice to creditors will be less than if the estates were administered separately.
13. Substantive consolidation is fair and reasonable in the circumstances.

Sale Approval

14. In December 2020, the Trustee became aware that the Kenworth had been erroneously excluded from a previous auction and continued to be held by a third party.
15. The Trustee has made arrangements for IronPlanet to retrieve the Kenworth and sell it in a future auction (the "**Sale**"). The sale proceeds will form part of the bankrupt estate, subject to storage fees, a 10% commission payable to IronPlanet (assuming auction proceeds exceed \$2,500), insurance and other incidental costs.
16. The Sale via auction will allow the Kenworth to be exposed to the market and maximize recovery to the bankrupt estate.

Material or evidence to be relied on:

17. First Report of the Trustee, filed herewith;
18. Sixth Report of the Monitor, filed September 2, 2020;
19. Initial Order pronounced November 29, 2019 by the Honourable Justice Graesser;
20. Amended and Restated Initial Order pronounced by the Honourable Justice Graesser December 6, 2019;
21. Orders pronounced September 9, 2020 by the Honourable Justice Mah; and
22. Such further and other materials as counsel may advise and this Honourable Court may permit.

Applicable rules:

23. Rules 1.3, 1.4, 1.5, 6.2, 6.3, Part 6, Division 1; and
24. Such further and other rules as counsel may advise and this Honourable Court may permit.

Applicable Acts and regulations:

25. *Bankruptcy and Insolvency Act*, RSC 1985, c B-3;
26. *Bankruptcy and Insolvency General Rules*, CRC, c 368;
27. *Companies' Creditors Arrangement Act*, RSC 1985, c C-36; and
28. Such further and other acts and regulations as counsel may advise and this Honourable Court may permit.

Any irregularity complained of or objection relied on:

29. None.

How the application is proposed to be heard or considered:

30. Via Webex.

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 time shown at the beginning of this 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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Suite 3810, Bankers Hall West
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Calgary, Alberta T2P 5C5

Attention: Jeffrey Oliver
Phone: 403-351-2921
Facsimile: 403-648-1151

File No.: 49076-13

DATE ON WHICH ORDER WAS PRONOUNCED: January 15, 2021

LOCATION OF THIS HEARING: Edmonton, Alberta

NAME OF JUSTICE WHO MADE THIS ORDER: The Honourable Justice D.R. Mah

UPON the application of MNP Ltd. in its capacity as trustee in bankruptcy (in such capacity, the “**Trustee**”) of Tlich Landtran Transport Ltd., 1456982 Alberta Ltd., and Ventures West Transport Limited Partnership (collectively, the “**Companies**”); **AND UPON** having read the Notice of Application of the Trustee, the First Report of the Trustee dated January 4, 2021 (the “**Report**”) and the Sixth Report of the Monitor dated September 2, 2020; **AND UPON** having read the CCAA Order granted by the Honourable Justice Graesser in the within proceedings on November 29, 2019, the Amended and Restated Initial Order granted in the within proceedings by the Honourable Justice Graesser on December 6, 2019 and the Assignment Order granted by the Honourable Justice Mah on September 9, 2020 in the within proceedings; **AND UPON** hearing counsel for the Trustee, and any other interested parties in attendance;

IT IS HEREBY ORDERED AND DECLARED THAT:

1. The time for service of this Application and supporting materials is hereby abridged to the time actually given, and service of notice of this Application and supporting materials is good and sufficient.
2. All terms not defined herein have the meaning ascribed to them in the First Report of the Trustee, dated January 4, 2021 or the Notice of Application.

Substantive Consolidation

3. The estates of the Companies (the “**Estates**”) shall be substantively consolidated and the Trustee shall be authorized and directed to administer the Estates on a consolidated basis for all purposes in carrying out its duties and responsibilities as trustee under the *Bankruptcy and Insolvency Act*, RSC 1985, c B-3, as amended, without limitation, as follows:
 - (a) calling and conducting any meeting of the creditors or inspectors of the Estates;
 - (b) issuing consolidated reports in respect of the Estates;
 - (c) preparing, filing, advertising and distributing any and all filings and/or notices relating to the administration of the Estates on a consolidated basis;
 - (d) establishing a single bank account for the Estates;
 - (e) establishing a single consolidated pool of assets containing all assets of the Estates; and

- (f) administering all claims and making all distributions in respect of allowed claims from the consolidated pool.
4. Court File No. 24-2677331 shall be assigned to the proceedings of the Estates (the “**Consolidated Action**”).
 5. A copy of this order shall be filed by the Trustee in the court file for each of the Estates, but any other document required to be filed in this proceeding shall hereafter only be required to be filed in the Consolidated Action.
 6. The substantive consolidation of the Estates shall not:
 - (a) affect the separate legal status and corporate structures of the Companies;
 - (b) cause the Companies to be liable for any claim for which it otherwise is not liable; or
 - (c) affect the Trustee’s right to seek to disallow any claim, including on the basis that such a claim is a duplicative claim.

Sale Approval

7. The Trustee is authorized and directed to take all steps necessary to effect the sale of the Kenworth VIN 1XKDP4EX0CR951247 via auction by IronPlanet (the “**Sale**”).
8. The Trustee is hereby authorized and directed to take all such steps, perform, consummate, implement, execute and deliver all such documents, bills of sale, assignments, conveyances, transfers, deeds, representations, indicia of title, tax elections, and instruments of whatsoever nature or kind as may be reasonably necessary or desirable for the completion of the Sale.
9. Service of this Order shall be deemed good and sufficient by:
 - (a) serving the same on the persons listed on the service list created in these proceedings;
 - (b) posting a copy of this Order on the Monitor’s website at:
<https://mnpdebt.ca/en/corporate/Engagements/ventures-west-transport-limited-partnership>

and service on any other person is hereby dispensed with.

10. Service of this Order may be effected by facsimile, electronic mail, personal delivery or courier. Service is deemed to be effected the next business day following transmission or delivery of this Order.

J.C.Q.B.A.

SCHEDULE "A"

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