

Court of Appeal File No. M50303  
File Numbers: 35-2395487 and 35-2395481

ONTARIO  
SUPERIOR COURT OF JUSTICE  
IN BANKRUPTCY AND INSOLVENCY

IN THE MATTER OF THE NOTICES OF INTENTION TO MAKE A PROPOSAL OF 1732427  
ONTARIO INC. AND 1787930 ONTARIO INC. BOTH OF THE CITY OF ST. THOMAS, IN  
THE PROVINCE OF ONTARIO

**RESPONDING MOTION RECORD**

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INDEX**

<u>Tab No.</u>	<u>Document</u>	<u>Page No.</u>
1.	Affidavit of Louise Vonk sworn April 8, 2019	1

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I, Louise Vonk, of the City of St. Thomas in the Province of Ontario, **MAKE OATH AND  
SAY:**

1. I am the owner of 1787930 Ontario Inc., which operates as Messenger Freight Systems (“Messenger”) and as such have knowledge of the matters to which I depose in this Affidavit.
2. The Honourable Justice R. Raikes ruled on January 28, 2019 that Transit Petroleum was not entitled to retain the \$35,299.75 which was the difference between the amount of the pre-authorised debits (“PAD”) it had processed on July 5, 2018 and the cost of the fuel purchased after July 2, 2018 (the “Decision”). I understand that Transit Petroleum had ten days to appeal that Decision, but that it did not do so within that time period. However, 57 days after the Decision, and after delivering a Notice of Appeal from Justice Raikes’ subsequent costs order, Transit Petroleum served a Motion to extend time to appeal the Decision too.
3. As set out in the Decision, Messenger’s financial difficulties came to a head in mid-June 2018 when the Canada Revenue Agency and the Bank of Nova Scotia both sought payments of amounts due to them. At the direction of the Bank of Nova Scotia, Messenger filed a Notice of Intention to File a Proposal (“NOI”) on July 2, 2018. Subsequently, on July 5, 2018, Transit Petroleum submitted a PAD on account of certain fuel supplied before the NOI was issued.
4. Had Transit Petroleum been entitled to retain the July 5, 2018 PAD amount, Messenger Freight would have owed a further \$48,434.30 to Transit Petroleum for post-NOI fuel supply, and likely would have faced further claims from Transit Petroleum for pre-NOI fuel purchases.

However, as a result of the Decision, Messenger was assured of receiving \$35,299.75 instead of paying at least \$48,434.30, and so its financial was better by at least \$83,734.05.

5. Since filing the NOI, Messenger has taken steps to ensure its viability. One area of concern for Messenger is employee moral and retention. Messenger's payroll is in the range of \$95,000 to \$97,000 weekly, with approximately 150 employees. Prior to the events of June 2018, Messenger paid its employees by PAD, but it was unable to continue with that arrangement. In late 2018 and early 2019, Messenger paid employee wages by cheque, and remitted withholdings thereafter. This arrangement allowed for careful management of cash flow, but Messenger was not always able to honour its payroll obligations in a timely fashion. As a result, employee morale suffered, employees expressed concerns to management, and several employees resigned.

6. In an effort to appease Messenger's employees and address these concerns, in mid-March 2019 Messenger implemented a new payroll processing system with the assistance of a third-party payroll processor. As part of this system, Messenger must remit the payroll, including wages and source deductions, to the third-party processor on the Wednesday prior to the Friday distribution. Although this arrangement creates additional pressure on Messenger's cash flow, I determined it was a necessary step to prevent attrition and assure Messenger's employees of the stability of their employment. Had there remained any uncertainty regarding Messenger's exposure to Transit Petroleum, Messenger's position would have been too precarious to make the commitment to this arrangement. Since Messenger re-implemented pre-authorized deposit for payroll, no employees have resigned. For Messenger to now cancel the payroll deposit arrangement would be catastrophically destabilizing to its relationship with its employees.

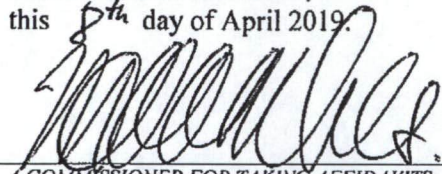
7. In order to return to economic stability, Messenger must complete the proposal which was approved by its creditors (and which Transit Petroleum did not vote to oppose). Because of the uncertainty regarding the Decision and Messenger's resulting financial situation, the trustee cannot distribute funds. Messenger's existing suppliers are not being paid their claims under the proposal, and Messenger's relationships with parts suppliers and staffing agencies are being strained as a result of the delay. This too has been prejudice to Messenger.

8. I make this affidavit for use upon Transit Petroleum's Motion to extend time to appeal from the Decision and for no other or improper purpose.

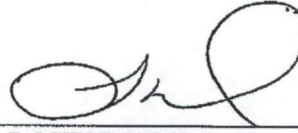
**SWORN BEFORE ME**

at the City of St. Thomas  
in the Province of Ontario,

this 5<sup>th</sup> day of April 2019.



A COMMISSIONER FOR TAKING AFFIDAVITS, ETC.



LOUISE VONK

IN THE MATTER OF THE NOTICES OF INTENTION TO MAKE A PROPOSAL OF 1732427  
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**COURT OF APPEAL FOR ONTARIO**

Proceeding commenced at London

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