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OCT 17 2018

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No. of Pages Faxed 10

October 15, 2018

Via Fax 416-596-7894

MNP Ltd.
111 Richmond Street West
Suite 300
Toronto, ON M5H 2G4
ATTN: SHELDON TITLE

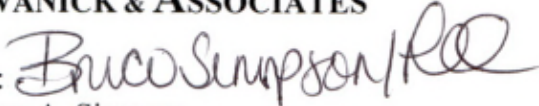
Dear Sirs:

Re: 1787930 Ontario Inc. – Transit Petroleum a division of Hogg Fuel and Supply Ltd.

Please find enclosed a Supplementary Motion Record returnable which is being served upon you.

Yours very truly,

SWANICK & ASSOCIATES

Per: 
Bruce A. Simpson
BAS:lc

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Court File Numbers: 35-2395487 and 35-2395481
Estate 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

SUPPLEMENTARY MOTION RECORD

(Returnable December 19, 2018)

SWANICK & ASSOCIATES

Barristers and Solicitors

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225 Duncan Mill Road

Don Mills, Ontario

M3B 3K9

ATTN: BRUCE SIMPSON 18977E

(416) 510-1888 - phone

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Lawyers for 1787930 Ontario Inc.

TO: **MILLER, THOMSON**

One London Place

255 Queens Avenue

Suite 2010

London, ON N6A 5R8

Attn: SHERRY KETTLE

(519) 931-3500 – phone

(519) 858-8511 – fax

Lawyers for Transit Petroleum a division of Hogg Fuel and Supply Ltd.

TO: **The Superintendent of Bankruptcy**

451 Talbot Street

Suite 303

London, ON N6A 5C9

TO: **MNP Ltd.**

111 Richmond Street West

Suite 300

Toronto, ON M5H 2G4

ATTN: SHELDON TITLE

416-323-5240 – phone

416-573-5320 – Cell Phone

Trustee of 1787930 Ontario Inc.

Court File Numbers: 35-2395487 and 35-2395481
Estate 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
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THOMAS, IN THE PROVINCE OF ONTARIO

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Court File Numbers: 35-2395487 and 35-2395481
Estate 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
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SUPPLEMENTARY AFFIDAVIT

(sworn October 15, 2018)

I, Nathan McDaniel of the Town of Aylmer, in the Province of Ontario, **MAKE OATH
AND SAY AS FOLLOWS:**

1. I am the Financial Controller for 1787930 Ontario Inc. ("**178**") and as such have personal knowledge of the matters hereinafter deposed to. Where my knowledge is stated to be on information and belief, I verily believe such information to be true. All dates referenced herein are for the calendar year 2018 unless otherwise stated.
2. I have reviewed the affidavits of Don Poort ("**Don**") ("**Don's Affidavit**"), Monique Paul ("**Monique**") ("**Monique's Affidavit**"), and Trevor Chambers ("**Trevor**") ("**Trevor's Affidavit**") all sworn October 4, (jointly the "**Responding Affidavits**") which were served in the Responding Motion Record of Transit Petroleum Inc. defined therein as "**Transit**" being one and the same as Hogg as defined in my affidavit sworn September 18. Since the same entity is defined differently in our respective affidavits I propose to describe it herein as "**Transit/Hogg**".
3. None of the affiants in the Responding Affidavits have disputed that the sum of \$83,734.05 which was submitted as a pre-authorized debit ("**PAD**") by Transit/Hogg on July 3, and received by Transit/Hogg on July 5, was for payment of any amount due and owing prior to July 2, the date of filing 178's Notice of Intention to File a Proposal ("**NOI**"). This payment is defined in the Responding Affidavits as the "**Agreed Payment**". This payment never was "agreed" to by 178 as set out below, but for ease of reference I shall continue to use that defined term.

4. The Responding Affidavits are materially inaccurate or incomplete in a number of material respects, the more critical of which are hereinafter set out.

5. The term "Agreed Payment" as referenced firstly in Paragraph 3 of Don's Affidavit and throughout the Responding Affidavits were never agreed to by or on behalf of 178 as hereinafter set out:

- (a) Monique's Affidavit sets out in Paragraph 5 through 7 certain negotiations which took place with respect to the pre-NOI debt obligations of 178 to Transit/Hogg;
- (b) Monique's email sequence dated June 26 to 28 included at her Tab "A" is relied upon in Monique's Paragraph 8 at page 97 to conclude that "... it was agreed" that the PAD payment of \$83,734.05 (subsequently defined in Paragraph 10 as the "Agreed Payment", would be made on July 5;
- (c) Relying on her email of June 28 at 8:55, page 102, Tab "A", she counter offered my previous email with the provision that "... we will need to change your terms to Net 7 ... we cannot keep your terms at Net 14 ...";
- (d) The email continues, recognizing this material change, that "We need the above approved no later than 3pm on Friday June 29, 2018, in order to pull the first payment on Thursday July 5, 2018" (emphasis added);
- (e) Monique's email of June 29 acknowledges at page 109 Tab "B" that "... we have not heard back from you regarding the information below." being the approval of her June 28 8:55 email, and concludes "Can you please advise.";
- (f) By email dated July 3 at 9:17 included at page 108 Tab "B" Monique again requests confirmation of approval or acceptance of the "Agreed Payment"; and
- (g) At no time did 178 approve or accept Transit/Hogg's amended terms for the payment of the "Agreed Payment" being 178's pre-NOI debt to Transit/Hogg.

6. Don's Affidavit is inaccurate or incomplete in the following respects:

- (a) Any direct or indirect reference in any of the Responding Affidavits that the "Agreed Payment received by Transit/Hogg for \$83,734.05 on July 5, was agreed to by 178, is not correct;

- (b) I did not contact Don as stated in his Paragraph 6 because my only contact person at Transit/Hogg was Monique. My request to stop payment was made to Monique on or about July 3 when Transit/Hogg resumed work following the holiday;
- (c) Don is mistaken in Paragraph 11 wherein he states that I advised that I had allowed the "Agreed Payment" to be processed. I did contact Monique and I did try unsuccessfully to stop the "Agreed Payment" by the Credit Union. At our meeting on July 9 the "Agreed Payment" had been completed one clear business day before. I did not retroactively authorize the payment for the pre-NOI debts. Don's three purported reasons for allowing the Agreed Payment are flawed:
 - (i) As stated above the terms of payment were never agreed to by 178;
 - (ii) Knowledge of the NOI is unnecessary for a stay to be effective; and
 - (iii) 178 did not require Transit/Hogg to "keep afloat" as we have continued in business since July without their supply of fuel;
- (d) Don's reference in Paragraph 12 to my refusal to provide a security deposit is not accurate. I am advised by Sheldon Title ("**Mr. Title**") of MNP Ltd. the proposal Trustee ("**MNP**") that he spoke to Transit/Hogg's legal counsel Sherry Kettle ("**Ms. Kettle**") on July 9 and advised her that a security deposit may be an option by which we could proceed;
- (e) Although I did not request a return of the "Agreed Payment" from Don as he stated in Paragraph 14, I did request the return of the "Agreed Payment" from my Transit/Hogg contact Monique;
- (f) In the email exchange between Don and myself as referenced in his Paragraph 15, my email at Tab "B" page 22 cites specifically that "(ie. no arrears payment applications)" (emphasis added) in reference to the fact that 178 cannot pay Transit/Hogg's pre-NOI obligations;
- (g) Don's responding email of July 10 Tab "B" at page 21 references "Amounts up to and including July 2: ...". Transit/Hogg's ongoing supply of fuel was conditional on the retirement of pre-NOI debt;
- (h) At Paragraph 18 Don confirmed at 4:10 PM on July 11 that he deactivated the 178 fuel cards. These 80 fuel cards were deactivated following my demand for the

return of the "Agreed Payment" and my refusal to pay Transit/Hogg's pre-NOI debt;

- (i) The payment plan which Don references in Paragraph 20 at all times refused or did not address the return of the "Agreed Payment", and contained conditions for the further retirement of 178's pre-NOI debt;
- (j) While Don may not have communicated with MNP as stated in Paragraph 24, I am advised by Mr. Title that he has been in contact with Ms. Kettle since July 9;
- (k) Contrary to Don's Paragraph 34, the grant of a security deposit was not available to Transit/Hogg so long as they continued to retain the "Agreed Payment" and/or required the payment of any pre-NOI debt obligations;
- (l) At all times following issuance of the NOI, 178 negotiated in good faith with Transit/Hogg (and other creditors) to secure the ongoing operation of 178. Following the delivery of Monique's email of June 28, the terms of which were never accepted, 178 was left with no commercially viable option but to proceed with an NOI. The decision to proceed was made on June 29; and
- (m) To date, Transit/Hogg has been paid \$36,000 for the supply of post-NOI fuel. Transit/Hogg has invoiced the further sum of \$48,434.30. Transit/Hogg has retained the "Agreed Payment" in the amount of \$83,734.05 which was never agreed to by 178. Transit/Hogg continues to owe the sum of \$83,734.05 being the return of the "Agreed Payment" for pre-NOI obligations, following which 178 is prepared to pay the balance of the post-NOI obligations to Transit/Hogg in the amount of \$48,434.30.

7. Monique's Affidavit is inaccurate or incomplete in the following respects:

- (a) In addition to the comments made above with respect to Monique's Affidavit, she confirmed in Paragraph 10 that she did not receive 178's approval of Transit/Hogg's terms of agreement to proceed with the PAD payments including the "Agreed Payment";
- (b) Contrary to Paragraphs 12 and 14, it remains my understanding and belief that I spoke to Monique on or about July 3 wherein I requested that the "Agreed Payment" be cancelled;

- (c) I am advised by Louise Vonk that she did not tell MNP the Proposal Trustee what to do as stated in Paragraph 20, and that she did not advise that MNP had authorized the "Agreed Payment";
 - (d) I disagree with Monique's statement in Paragraph 24 that "... [I] had allowed the PAD for the "Agreed Payment" to be processed ...". As stated previously I was unable to stop the "Agreed Payment";
 - (e) I believe that Paragraph 25 is an incomplete explanation as to why our negotiations failed. As at all times it remained a demand by Transit/Hogg that they be paid for pre-NOI debts;
 - (f) Regardless of when Monique became aware of the NOI as referenced in Paragraph 26, I did advise her that it was my understanding that pre-NOI debts could not be paid; and
 - (g) Monique's statement in Paragraph 27 that I did not request Transit/Hogg for the return of the "Agreed Payment", is disputed, as are all similar statements in the Responding Affidavits.
8. Trevor's Affidavit is inaccurate or incomplete in the following respects:
- (a) Discussions did take place as referenced in Trevor's Paragraph 4, provided that mutually acceptable terms could be concluded in a timely manner. 178 and Transit/Hogg were unable to resolve mutually agreeable terms as referenced above;
 - (b) Although the "proposed dates" for payment may have been agreed, Monique's email of June 28 at 8:55 AM is not an unqualified acceptance of my proposed terms of settlement as implied by Trevor in Paragraph 6. Transit/Hogg's amended terms of agreement required that they be "approved ..." by 178, which they were not;
 - (c) I am advised by Louise Vonk, and it is my understanding and belief that, no creditor of 178 has been paid for pre-NOI debts following the issuance of the NOI, and that 178 has not committed to pay any creditor for pre-NOI debts.

- (d) Contrary to Paragraph 15, I am advised by Louise Vonk that she did not insist that MNP allow the "Agreed Payment", notwithstanding that Transit/Hogg appeared to be an important vendor for 178 to remain in business;
- (e) Contrary to Paragraph 19, it is my recollection that the July 9 meeting ended relatively abruptly because 178 did not agree to pay Transit/Hogg's pre-NOI debts;

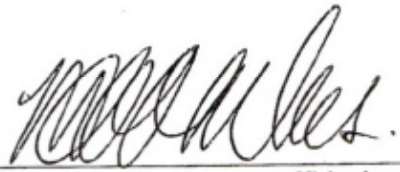
9. I make this affidavit in reply to the Responding Affidavits and in support of the motion seeking the recovery of the "Agreed Payment" for the pre NOI supply of fuel, or in the alternative, the return of the net amount of \$35,299.77 as set out above, and for no improper purpose.

SWORN before me in the City of
 St. Thomas in the Province of Ontario,
 this 15th day of October, 2018.

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 Nathan McDaniel



 Commissioner for Taking Affidavits

MARK COOMBES
my commission does not expire.

IN THE MATTER OF THE NOTICES OF INTENTION TO MAKE A PROPOSAL OF 1732427 ONTARIO INC. AND 1787930 ONTARIO INC.
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SUPPLEMENTARY MOTION RECORD
(Returnable December 19, 2018)

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