

COURT FILE NUMBER

COURT/ESTATE NUMBER 24-2746532
24-2746511
24-2746514

COURT COURT OF QUEEN'S BENCH OF ALBERTA

JUDICIAL CENTRE EDMONTON

IN THE MATTER OF THE NOTICE OF INTENTION TO MAKE A PROPOSAL UNDER THE *BANKRUPTCY AND INSOLVENCY ACT*, R.S.C. 1985, C. B-3, AS AMENDED, OF ALASKA-ALBERTA RAILWAY DEVELOPMENT CORPORATION

AND IN THE MATTER OF THE NOTICE OF INTENTION TO MAKE A PROPOSAL UNDER THE *BANKRUPTCY AND INSOLVENCY ACT*, R.S.C. 1985, C. B-3, AS AMENDED, OF 12703131 CANADA LTD.

AND IN THE MATTER OF THE NOTICE OF INTENTION TO MAKE A PROPOSAL UNDER THE *BANKRUPTCY AND INSOLVENCY ACT*, R.S.C. 1985, C. B-3, AS AMENDED, OF 7198362 MANITOBA LTD.

APPLICANT MNP LTD. in its capacity as trustee pursuant to the Notices of Intention to Make a Proposal of each of Alaska-Alberta Railway Development Corporation, 12703131 Canada Ltd., and 7198362 Manitoba Inc.

DOCUMENT **APPLICATION (Termination of Period for Filing a Proposal, Payment of Professional Fees)**

ADDRESS FOR SERVICE AND CONTACT INFORMATION OF PARTIES FILING THIS DOCUMENT
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File No.: 26420-158262

NOTICE TO RESPONDENT(S)

This application is made against you. You are Respondents.

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:	July 12, 2021
Time:	3:00 p.m.
Where:	Virtual WebEx Hearing on the Edmonton Commercial List
Before Whom:	The Honourable Justice D.L. Shelley

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. An Order, substantially in the form attached hereto as Schedule “A”, for the following relief:
 - (a) pursuant to section 50.4(11) of the *Bankruptcy and Insolvency Act*, RSC 1985, c. B-3, as amended (the “*BIA*”), terminating the thirty-day period granted under section 50.4(8) of the *BIA* in respect of each of 12703131 Canada Ltd. (“**127**”) and 7198362 Manitoba Ltd. (“**719**”) to file a proposal and confirming the appointment of MNP Ltd. as bankruptcy trustee of 127 and 719;
 - (b) declaring that MNP Ltd., in its capacity as Proposal Trustee of AARDC, 127 and 719 (in such capacity, the “**Proposal Trustee**”), and the Proposal Trustee’s legal counsel, shall be paid their reasonable professional fees and disbursements, including any pre-filing fees and disbursements as part of the costs of the NOI proceedings of each of the Companies; and
2. Such further and other relief as counsel may request and this Honourable Court may grant.

Grounds for Making this Application:

Terminating the Stay Period Under Section 50.4(8) of the BIA

3. Each of the Companies filed a Notice of Intention to Make a Proposal under the *BIA* on June 18, 2021 (each, an “**NOI**”). MNP Ltd. consented to act as trustee of the Companies’ respective proposals (in such capacity, the “**Proposal Trustee**”).

4. Pursuant to section 50.4(8) of the *BIA*, each of 127 and 719 has until July 18, 2021 to file a proposal or apply for an extension of time to file a proposal under section 50.4(9) of the *BIA*.
5. To the best knowledge of the Proposal Trustee, the only party with corporate authority to act on behalf of the Companies is Mr. Sean McCoshen. The Proposal Trustee has been advised that Mr. McCoshen is currently undergoing medical treatment. At the outset of the NOI proceedings and as set out in the Proposal Trustee's engagement letter, it was agreed that Mr. McCoshen would have very limited, if any participation in the Companies' restructuring. Further, PricewaterhouseCoopers Inc., LIT, in its capacity as Court-appointed receiver (in such capacity, the "**Receiver**") of Bridging Income Fund LP ("**Bridging**"), AARDC's most significant creditor, has recently advised that they are investigating certain of Mr. McCoshen's activities pre-dating the NOI proceedings.
6. Mr. McCoshen has not been involved in the day-to-day management and operation of the Companies and the Companies have been unable to arrange for another individual to obtain the necessary corporate authority to act in his place. The remaining contractors of the Companies do not appear to have the required authority to manage the Companies' operations, including completing required day to day banking transactions and communicating with Canada Revenue Agency.
7. Mr. McCoshen has not been readily available or accessible to the Proposal Trustee since the NOIs were filed, and the contractor with the best knowledge of the Companies' day-to-day operations resigned effective July 2, 2021.
8. Further, the remaining contractors charged with management of the day-to-day activities of the Companies do not appear to have comprehensive information regarding the Companies' assets.
9. The Companies' most significant creditor is Bridging, which appears to hold a first-ranking security interest over all of AARDC's present and after-acquired property.
10. On April 30, 2021, the Ontario Superior Court of Justice (the "**Ontario Court**") appointed the Receiver as receiver and manager of, *inter alia*, Bridging. An Additional Appointment

Order (Appointment of Receiver) was issued by the Ontario Court on May 3, 2021, appointing the Receiver as receiver and manager of three additional entities.

11. The Proposal Trustee has been in communication with the Receiver with respect to the NOIs, and has been advised that the Receiver, which represents the Companies' single largest creditor with an estimated claim of approximately \$208,000,000, will not support any proposal filed by 127 or 719 and that it will only support an extension of the time for AARDC to file a proposal if an interim receiver is appointed in respect of AARDC. The Proposal Trustee understands that the Receiver intends to apply under section 47.1 of the *BIA* for the appointment of MNP Ltd. as interim receiver of AARDC.
12. The Proposal Trustee further understands that, if MNP Ltd. is appointed as interim receiver, the Receiver will support an application by MNP Ltd., in its capacity as interim receiver, for an extension of time for AARDC to file a proposal under section 50.4(9) of the *BIA*.
13. For the foregoing reasons, the Proposal Trustee does not believe 127 and 719 will be able to make a proposal that will be accepted by their creditors, either before or after the expiry of the thirty-day period set out in section 50.4(8) of the *BIA*.

Payment of Professional Fees

14. The Proposal Trustee seeks a declaration that its reasonable professional fees and disbursements, and the professional fees and disbursements of its counsel, including any pre-filing fees and disbursements, be paid as part of the costs of the NOI proceedings of each of the Companies. Pursuant to section 39(3) of the *BIA*, this Honourable Court may approve the Proposal Trustee's remuneration in connection with the Proposal Trustee's supervision of the Companies' business.

Material or Evidence to be Relied On:

15. The First Report of the Proposal Trustee dated July 7, 2021.
16. The Preliminary Report of the Proposed Interim Receiver dated July 7, 2021
17. Such further and other material or evidence as counsel may advise and this Honourable Court may permit.

Applicable Rules:

18. *Alberta Rules of Court*, Alta Reg 124/2010, as amended.

Applicable Acts and Regulations

19. The *Bankruptcy and Insolvency Act*, RSC 1985, c B-3, as amended, and in particular, sections 39(3), 50.4(8), 50.4(11), and 64.2 thereof;
20. The Bankruptcy and Insolvency General Rules, CRC, c 368; and
21. Such further and other Acts and Regulations as counsel may advise and this Honourable Court may permit.

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 rely on an affidavit or other evidence when the application is heard or considered, you must reply by giving reasonable notice of the material to the applicant.

SCHEDULE "A"

COURT FILE NUMBER

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AND IN THE MATTER OF THE NOTICE OF INTENTION TO MAKE A PROPOSAL UNDER THE *BANKRUPTCY AND INSOLVENCY ACT*, R.S.C. 1985, C. B-3, AS AMENDED, OF 12703131 CANADA LTD.

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APPLICANT MNP LTD. in its capacity as trustee pursuant to the Notices of Intention to Make a Proposal of each of Alaska-Alberta Railway Development Corporation, 12703131 Canada Ltd., and 7198362 Manitoba Inc.

DOCUMENT **ORDER (Termination of Period for Filing a Proposal, Payment of Professional Fees)**

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Attention: Alexis Teasdale
Telephone: (403) 218-7564
Fax: (403) 269-9494
Email: ateasdale@lawsonlundell.com
File No.: 26420-158262

DATE ON WHICH ORDER WAS PRONOUNCED: July 12, 2021

NAME OF JUDGE WHO MADE THIS ORDER: The Honourable Justice D.L. Shelley

LOCATION OF HEARING: Edmonton, Alberta

UPON THE APPLICATION of MNP Ltd. in its capacity as trustee (in such capacity, the “**Proposal Trustee**”) under the Notices of Intention to Make a Proposal (each, an “**NOI**”) of Alaska-Alberta Railway Development Corporation (“**AARDC**”), 12703131 Canada Ltd. (“**127**”), and 7198362 Manitoba Inc. (“**719**” and together with AARDC and 127, the “**Companies**”) filed June 18, 2021; **AND UPON** having read the First Report of the Proposal Trustee, dated July 7, 2021 (the “**First Report**”); **AND UPON** noting the Affidavit of Service of Sherry Stern, affirmed on July [*], to be filed; **AND UPON** hearing the submissions of counsel for the Proposal Trustee, counsel for the Companies, and any other counsel or interested parties present;

IT IS HEREBY ORDERED THAT:

Service

1. The time for service of the notice of application for this order (the “**Order**”) is hereby abridged and deemed good and sufficient and this application is properly returnable today, and no other than those persons served is entitled to service of the notice of application.

Termination of Stay Periods

2. The thirty-day period granted under section 50.4(8) of the *Bankruptcy and Insolvency Act*, RSC 1985, c. B-3, as amended (the “**BIA**”), to each of 12703131 Canada Ltd. and 7198362 Manitoba Ltd. to file a proposal is terminated and MNP Ltd. is appointed as the trustee in bankruptcy of 12703131 Canada Ltd. and 7198362 Manitoba Ltd.

Payment of Professional Fees

3. The Proposal Trustee and the Proposal Trustee’s legal counsel shall be paid their reasonable professional fees and disbursements, including any pre-filing fees and disbursements as part of the costs of the NOI proceedings of each of the Companies.

General

4. 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.

Justice of the Court of Queen's Bench of Alberta