



This is the 1<sup>st</sup> affidavit  
of Joe Seidel in this case  
and was made on February 27, 2020

No. ~~S-202~~ 352  
Vancouver Registry

IN THE SUPREME COURT OF BRITISH COLUMBIA

BETWEEN:

THE TORONTO-DOMINION BANK

PETITIONER

AND:

DDK VENTILATION PRODUCTS LTD.

RESPONDENT

**AFFIDAVIT**

*FORM 109 (RULE 22-2(2) AND (7))*

I, Joe Seidel, Associate Vice President, Financial Restructuring Group, TD Business Banking, of 10th Floor, 421-7th Avenue SW Calgary, Alberta, MAKE OATH AND SAY AS FOLLOWS:

1. I am the Associate Vice President of the Financial Restructuring Group of the petitioner, The Toronto-Dominion Bank ("TD"), and as such I have personal knowledge of the matters and facts herein deposed to in this affidavit save where stated to be on information and belief, and as to those last mentioned matters I verily believe them to be true.
2. I am authorized to swear this affidavit on behalf of TD.

**Credit Facility Agreements and Security Agreement**

3. On or about March 14, 2018 1155729 B.C. Ltd. ("115 B.C. Ltd.") entered into a credit facility agreement from TD (the "Credit Facility Agreement"). Attached to this my affidavit and marked as **Exhibit "A"** is a true copy of the Credit Facility Agreement.

4. On or about March 20, 2018 1155729 B.C. Ltd. ("115 B.C. Ltd"), DDK Ventilation Products Ltd. ("DDK Ltd."), Narlss Holdings Ltd. ("Narlss Ltd.") and Saradawn Holdings Ltd. ("Saradawn Ltd.") each entered into general security agreements with TD whereby 115 B.C. Ltd., DDK Ltd., Narlss Ltd. and Saradawn Ltd. granted TD a security interest in all of their present and after-acquired personal property, assets and undertakings, including all proceeds thereof and therefrom.
5. On April 1, 2018, 115 B.C. Ltd., DDK Ltd., Narlss Ltd. and Saradawn Ltd. were amalgamated as one company under the name of 115 B.C. Ltd. On the same day, 115 B.C. Ltd. changed its name to DDK Ventilation Products Ltd. (the "Debtor").
6. Attached to this my affidavit and marked as **Exhibit "B"** are true copies of the Certificate of Amalgamation and the Certificate of Change of Name.
7. Attached to this my affidavit and marked as **Exhibit "C"** is a true copy of the BC Company Summary of the Debtor.
8. On April 20, 2018, the Debtor and TD entered into a general security agreement wherein the Debtor granted to TD a security interest in all of its present and after-acquired personal property, assets and undertakings, including all proceeds thereof and therefrom (the "Security Agreement"). Attached to this my affidavit and marked as **Exhibit "D"** is a true copy of the Security Agreement.
9. Notice of the Security Agreement was registered in the British Columbia Personal Property Registry on March 26, 2018 under base registration number 649558K. Attached to this my affidavit and marked as **Exhibit "E"** is a true copy of the Personal Property Registry search results of the Debtor.
10. On January 8, 2020, the Debtor and TD entered into an amending agreement which amended the terms of the Credit Facility Agreement (the "Amended Credit Facility Agreement"). Attached to this my affidavit and marked as **Exhibit "F"** is a true copy of the Amended Credit Facility Agreement.

### **Other Interested Party and Subordination and Standstill Agreement**

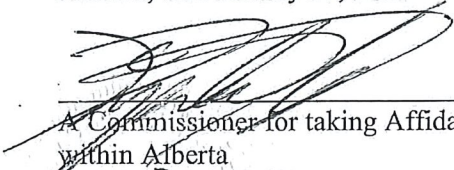
11. Roger Sjodin, as Trustee of The Roger Sjodin Family Trust, and Carmen Sjodin, as Trustee of The Carmen Sjodin Family Trust (the "Sjodin Parties"), are the holders of security interests in the Personal Property Registry, notice of which was registered on April 5, 2018 under the following base number 671429K, as set out in the Personal Property Registry search results attached as Exhibit "E".
12. By a Subordination and Standstill Agreement dated April 20, 2018, the Sjodin Parties postponed and subordinated their security to the security held by TD. Attached to this my affidavit and marked as **Exhibit "G"** is a true copy of the Subordination and Standstill Agreement.

### **Default, Demand and Appointment of Receiver**

13. In February 2020 I have been in discussions with the directors of the Debtor, Andrew Mindell and David Jagger. They confirmed to me that they wish to wind up the Debtor due to financial hardship. They requested that TD bring this application to appoint the Receiver over the Debtor.
14. The Debtor has been unable to maintain the minimum quarterly Fixed Charge Coverage ratio of 110% (the "FCC"), as defined on page 9 of the Credit Facility Agreement.
15. DDK's defaults of the Credit Facility Agreement and Amended Credit Facility Agreement include, without limitation:
  - (a) non-observance of the FCC (Schedule A to the Credit Facility Agreement and Amended Credit Facility Agreement, para. 10(d) of the Standard Events of Default); and
  - (b) in TD's determination a material adverse change in the financial condition, business operations and prospects of DDK (Schedule A to the Credit Facility Agreement and Amended Credit Facility Agreement, para. 10(l) of the Standard Events of Default).

16. As at February 25, 2020, the Debtor was indebted to TD in the amount of \$1,747,710.05 and US\$34,349.68 plus accruing interest and costs of enforcement (the "Indebtedness").
17. On February 26, 2020, TD issued a demand letter and Notice of Intention to Enforce Security to the Debtor for payment of the entire Indebtedness (the "244 Notice"). The Debtor has not made any payments to TD following the receipt of the demand letter and the 244 Notice. Attached to this my affidavit and marked as **Exhibit "H"** is a true copy of the demand letter and enclosed 244 Notice.
18. On February 26, 2020, counsel for the Debtor emailed counsel for TD and confirmed that the Debtor waived the notice period under the 244 Notice and agreed that TD could bring an application to appoint a receiver before the expiration of the notice period. Attached to this my affidavit and marked as **Exhibit "I"** is a true copy of the email from counsel for the Debtor to counsel for TD.
19. In light of the foregoing, I believe that it is necessary to appoint a receiver to try to preserve and ensure the maximum recovery of the security. I have been informed by Patty Wood of MNP Ltd. and verily believe that that MNP Ltd. has consented to act as receiver in this matter.

SWORN BEFORE ME at Calgary, in )  
Alberta, on February 27, 2020 )

  
A Commissioner for taking Affidavits )  
within Alberta )

**Pantelis Kyriakakis**  
*Barrister and Solicitor*

  
\_\_\_\_\_  
Joe Seidel )

**Joe Seidel**  
Associate Vice President  
Financial Restructuring Group