

COURT FILE NUMBER

COURT

QUEEN'S BENCH OF ALBERTA

JUDICIAL CENTRE

EDMONTON

PLAINTIFF

CANADIAN WESTERN BANK

DEFENDANT

SHAMROCK VALLEY ENTERPRISES  
LTD.

DOCUMENT

AFFIDAVIT

ADDRESS FOR SERVICE AND CONTACT  
INFORMATION OF PARTY FILING THIS  
DOCUMENT

EMERY JAMIESON LLP  
Barristers and Solicitors  
2400, 10235 – 101 Street  
Edmonton, AB T5J 3G1  
Attn: Kyle Kawanami  
Phone (780) 426-5220  
Fax (780) 420-6277  
Solicitors for the Respondent  
File No. 33771-0001 KRK

AFFIDAVIT OF MURRY NIELSEN, SWORN JULY <sup>20th</sup> 21, 2021

I, Murry Nielsen, Businessman, of the Town of Elk Point, in the Province of Alberta, MAKE OATH AND SAY AS FOLLOWS:

1. I am an officer and director of the Defendant Shamrock Valley Enterprises Ltd. ("Shamrock"). As such, I have personal knowledge of the facts and matters hereinafter deposed to, save and except where stated to be based on information and belief, and where so stated, I verily believe same to be true.
2. I have reviewed the business records maintained by Shamrock in respect to the matters at issue in these proceedings, which I believe were made in the ordinary and usual course of business, and where I do not have direct knowledge of matters deposed to herein, my knowledge is derived from my general knowledge of the business and operations of Shamrock, as well as a review of business records, relevant copies of which are attached to this Affidavit.
3. I am authorized to swear this Affidavit on behalf of Shamrock.

### **Background**

4. Shamrock was founded in 1985. I have always been the sole director and operator of Shamrock.
5. For the first few years, Shamrock primarily worked in the petroleum industry.
6. Since that time, it has expanded to a general grading and excavating company in the civil construction industry.
7. Shamrock remains headquartered in Elk Point, but has also expanded into Grande Prairie.
8. Shamrock provides services to the oilfield, public and private sectors. Some of Shamrock's recent projects include work in the following areas:
  - a. Oilfield Construction and Maintenance
  - b. Tank Truck Services
  - c. Environmental Construction (Landfills & Well Site Reclamation)
  - d. Pipeline Construction and Upgrading
  - e. Subdivision Construction and Site Preparation
  - f. Road Building
9. Shamrock currently employs approximately 50 people on its various projects throughout the province.

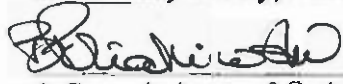
### **Recent Developments**

10. Like many businesses in the Province, Shamrock has been impacted by the Covid-19 pandemic, and the various public health orders.
11. As well, personally, I was in Edmonton for 5 weeks proceeding some of these recent developments, undergoing treatments for cancer.
12. Prior to these treatments, I also underwent several tests in Calgary, Cold Lake and Edmonton.
13. My treatments were delayed because of Covid.
14. In addition to my work with Shamrock, I also run an active farm. I've overseen the calving of 400 cows and seeded 1,000 acres while dealing with the challenges to my health and business outlined in this Affidavit.

15. I have reviewed the Affidavit of Dean Chan, sworn July 7<sup>th</sup>, 2021, and offer the following comments in response:
- a. The Plaintiff did request access to Shamrock's books. I asked for time for me to get home and review the books with my CFO and accounting team. I did not feel comfortable allowing access prior to that. I likened it to having time to clean up one's house before having guests over. My request for a week's reprieve was refused, and I was only granted one day. I was not going to be at the Shamrock business premises on the day that they proposed to attend, and I did not feel that was appropriate.
  - b. While I understand that I am ultimately responsible for them, I do not do the books for Shamrock.
  - c. I did advise the Plaintiff that without reviewing the books, I could not say whether there may be an issue with the AR. I indicated that, assuming that there was a problem, that I could inject \$2 million into the operating account to reduce their risk by over 50% if that would alleviate their concerns.
  - d. I did not, contrary to what is stated in Mr. Chan's Affidavit, "advise that the accounts receivable may be overstated by in excess of \$2 million".
  - e. I indicated to Mr. Chan that he seemed to be focused on problems, rather than attempting to work with me to find solutions to the Bank's concerns.
  - f. On June 17, 2021, I had indicated that I would review the agreement with the Bowra Group. I did not commit to the appointment. Once I reviewed the agreement and saw what it entailed, I indicated to Mr. Chan that I was not prepared to have the Bowra Group attend at the Shamrock premises.
  - g. I indicated that the money for the Bowra Group engagement could perhaps be better spent on a valuation of Shamrock's equipment.
16. Prior to demands being issued, I had been working with Noble Construction ("Noble") regarding the sale of Shamrock. We have been in discussions for approximately 7 months. Noble has agreed to purchase Shamrock, but the final stages of the process have been proceeding slowly.
17. I have also been in discussions with James Forrest of Essex Lease Financial Corporation ("Essex"). Shamrock has been a customer of Essex since 1998 and has a number of pieces of equipment financed by Essex currently.
18. I was looking to Essex for short-term financing to take out the Plaintiff until the Noble deal can be concluded.
19. After demands were issued by the Plaintiff, and received at Shamrock's registered office on June 28, 2021, I accelerated talks with Essex.

20. Attached as **Exhibit "A"** is a true copy of an e-mail sent by Plaintiff's counsel to my counsel.
21. This communication is inaccurate, and I believe that it had a detrimental impact on Shamrock's ability to pursue financing with Essex.
22. As indicated previously in this Affidavit, I did not acknowledge to the Plaintiff that the AR "are overstated by more than \$ 2 m".
23. I forwarded the July 2, 2021 e-mail from Plaintiff's counsel to James Forrest, to emphasize the importance of obtaining a commitment letter, but I am advised by Mr. Forrest, and believe to be true, that the shareholders of Essex focused on this alleged admission by me in deciding not to proceed with funding.
24. This was the case notwithstanding the fact that Essex's proposed financing was reliant on certain equipment, as well as some real property held by me personally. I am advised by Mr. Forrest, and believe, that Shamrock's AR was not considered by Essex in their discussions surrounding potential financing.
25. Attached as **Exhibit "B"** is a true copy of an excerpt of an e-mail chain from Essex. As indicated from the e-mail chain, Essex was still prepared to advance \$2.5-\$3 million, but required cooperation from CWB which I understand was not forthcoming.
26. I have continued to work with Noble. Attached as **Exhibit "C"** is a true copy of an e-mail from Haven Nobles, one of the principals of Noble. The e-mail is sent from the e-mail of Sherie Nobles, whose husband James is another one of the principals. I understand that Sherie does the books for Noble. This is what Noble is prepared to provide me at this time to substantiate the purchase. The process is continuing to move forward, albeit slowly.
27. I believe if given some more time, Shamrock will be able to conclude its transaction with Noble. This will result in the indebtedness to the Plaintiff being paid out, and in a manner which would be more beneficial to Shamrock's other stakeholders than the disruption entailed by a receivership and liquidation.
28. I make this Affidavit in opposition to the Application of Canadian Western Bank, and for a stay of this Action.

Sworn before me )  
 at the Town of Elk Point )  
 in the Province of Alberta )  
 this <sup>19th</sup> day of July, 2021 )

  
 \_\_\_\_\_ )  
 A Commissioner of Oaths in and for )  
 the Province of Alberta. *Aug 27/21* )  
*Brandy Pinkerton* )

  
 \_\_\_\_\_  
 MURRY NIELSEN

**From:** Chuck Russell <crussell@mross.com>  
**Sent:** Friday, July 2, 2021 10:06 AM  
**To:** Kyle Kawanami  
**Subject:** RE: CWB v Shamrock Valley Enterprises Ltd. et al (YFN 20212853)

**CAUTION:** This email originated from outside of the organization.

Kyle, the borrower has already acknowledged to CWB that the AR are overstated by more than \$2m, so it seems very hard to believe that any lender doing due diligence would fund a take out of the bank's position. Unless you have something concrete to show the bank we will not stand down on the demands. Please advise.

chuck

This is Exhibit "A" referred to in the  
Affidavit of

Murry Nielsen

Sworn before me this 29<sup>th</sup> day

of JULY A.D., 2021

Brandy Dziakowski

A Commissioner for Oaths and for  
the Province of Alberta July 29/21

Brandy Dziakowski



This is Exhibit "B" referred to in the Affidavit of Murry Nielsen  
Sworn before me this 29th day of July, A.D., 2021  
Brandy Wiseman  
A Commissioner for Oaths in and for the Province of Alberta



From: James Forrest [mailto:jforrest@elfc.ca]  
Sent: July-05-21 4:55 PM  
To: Murry Nielsen <MNielsen@shamrockvalley.ca>  
Subject: Fwd: Shamrock Valley/ CWB

This is what I received today. This won't work!! CWB will not participate and we have no agreement from Nobles.

My sincere apologies I thought we had a great chance to structure around the offer.

Let me know your thoughts although if similar to my own I already know.

Get Outlook for iOS

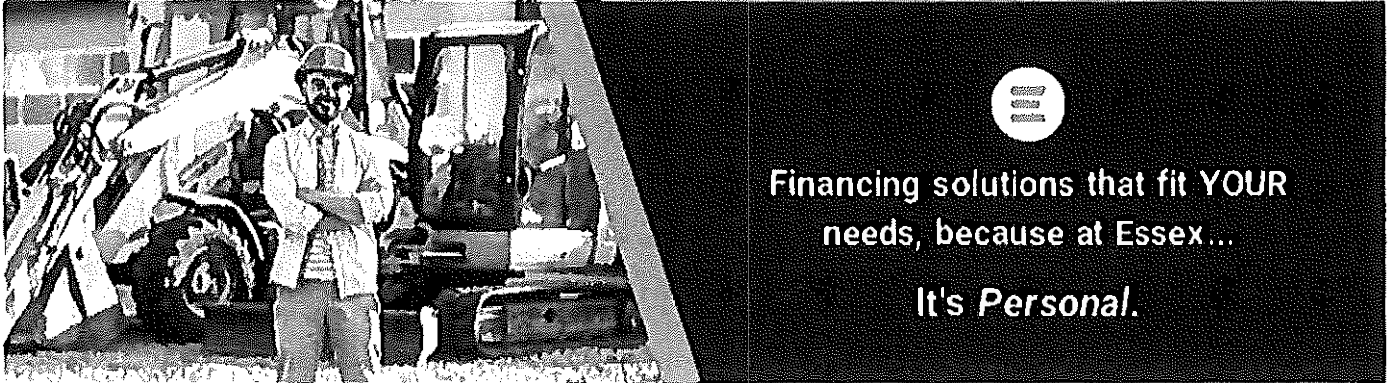
James Forrest  
President  
  
T: 587.349.8347  
C: 587.228.3831  
E: [jforrest@elfc.ca](mailto:jforrest@elfc.ca)



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**From:** Brad Heintz <[bheintz@eflc.ca](mailto:bheintz@eflc.ca)>  
**Sent:** Monday, July 5, 2021 3:43 PM  
**To:** James Forrest; Trevor Sterner, CPA, CMA, MBA; Ross Sten; Darren Ackerman  
**Cc:** Wyatt McGraw  
**Subject:** RE: Shamrock Valley/ CWB

Good afternoon James,

Essex has reviewed the proposal to refinance Shamrock indebtedness to CWB, and believe there is an opportunity for Essex to participate, in a cooperative manner, with CWB & Shamrock in finding a mutually beneficial solution to the demand.

As such we would like to set up a call with CWB ASAP in order to determine their willingness to participate.

Based on the security presented in your proposal (combination of equipment + 2<sup>nd</sup> mortgages), Essex is likely able to advance between \$2.5-\$3.0MM with shareholder participation required to satisfy CWB.

Documentation required for consideration include, but are not limited to:

- A copy of the Agreement For Sale of the business with Noble Construction Corporation to be disclosed and available, with non-disclosure agreement;
- Personal New Statement with verifiable values of liquid assets of Murry & Lisa Nielsen;
- Financial disclosure on Family Trust, 695458 Alberta Ltd;
- Land Valuations by an independent this party source;
- Land Titles searches to verify ownership and encumbrances;

Please provide your further feedback, questions or concerns as necessary to clarify any interpretations of this overview.  
Regards,

Brad Heintz  
Credit Manager

T: 587.349.8351

This is Exhibit "C" referred to in the Affidavit of

Murry Nielsen

Sworn before me this 27th day

of July A.D. 2021

*[Signature]*

A Commissioner for Oaths in and for the Province of Alberta 29/21

*[Signature]*

*[Signature]*

From: Sherie Nobles (mailto:sheriejamesnobles@gmail.com)  
Sent: July-28-21 9:12 AM  
To: Murry Nielsen <MNIelsen@shamrockvalley.ca>  
Subject: Purchase of Company

Sent from Mail for Windows 10

We at Noble Construction, Noble Enterprises are in the process of a purchase of Shamrock Valley Enterprises and 695458 Alberta Ltd. For the sum of \$ 22,057,664.00

From Murry and Lisa Nielsen. The transaction should be completed in 30 days of July 29/21.

The time needed for the arrangement of borrowing funds, transferring funds and process time.

Thank-you

Haven Nobles  
403-632-5439