

**ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)**

B E T W E E N:

PILLAR CAPITAL CORP.

Applicant

– and –

TURUSS (CANADA) INDUSTRY CO., LTD.

Respondent

APPLICATION UNDER SUBSECTION 243(1) OF THE *BANKRUPTCY AND INSOLVENCY ACT*, R.S.C. 1985 C. B-3, AS AMENDED, AND SECTION 101 OF THE *COURTS OF JUSTICE ACT*, R.S.O. 1990, C. C-43, AS AMENDED

FACTUM OF THE RECEIVER

January 7, 2021

DENTONS CANADA LLP
77 King Street West, Suite 400
Toronto-Dominion Centre
Toronto, ON M5K 0A1

Robert Kennedy (LSO #474070)

Tel: (416) 367-6756

Fax: (416) 863-4592

robert.kennedy@dentons.com

Daniel Loberto (LSO # 79632Q)

Tel: (416) 863-4760

daniel.loberto@dentons.com

Lawyers for the Receiver

TO: SERVICE LIST

SERVICE LIST
(as at January 4, 2021)

TO:	<p>GOWLING WLG (CANADA) LLP 1 First Canadian Place Suite 1600, 100 King Street West Toronto, ON M5X 1G5</p> <p>Thomas Gertner Tel: (416) 369-4618 thomas.gertner@gowlingwlg.com</p> <p>Angelica Wilamowicz Tel: (416) 862-3618 angelica.wilamowicz@gowlingwlg.com</p> <p><i>Lawyers for the Applicant, Pillar Capital Corp.</i></p>
AND TO:	<p>TURUSS (CANADA) INDUSTRY CO., LTD. 60 Industrial Park Road / 60 Queen Street North Chesley, ON N0G 1L0</p> <p>Yang Jiang Tel: (905) 212-9929 jiangyang818@gmail.com</p> <p><i>Respondent</i></p>
AND TO:	<p>DENTONS CANADA LLP 77 King Street West, Suite 400 Toronto, ON M5K 0A1</p> <p>Robert Kennedy Tel: (416) 863-4511 robert.kennedy@dentons.com</p> <p>Daniel Loberto Tel: (416) 863-4760 daniel.loberto@dentons.com</p> <p><i>Lawyers for MNP Ltd., in its capacity as Court-appointed Receiver of Turuss (Canada) Industry Co., Ltd.</i></p>

AND TO:	<p>MNP LTD. 111 Richmond Street West Toronto, ON M5H 2G4</p> <p>Jerry Henechowicz Tel: (416) 515-3924 Jerry.Henechowicz@mnp.ca</p> <p>Michael Litwack michael.litwack@mnp.ca</p> <p><i>Court-appointed Receiver of Turuss (Canada) Industry Co., Ltd.</i></p>
AND TO:	<p>BRUCE POWER INC. Bruce Power Law Division, B10 06E, Room 6000E 177 Tie Road, R.R. #2 P.O. Box 1540, Building B 10 Tiverton, ON N0G 2T0</p> <p>Ford Thompson Tel: 1 (519) 386-2491 ford.thompson@brucepower.com</p>
AND TO:	<p>DEPARTMENT OF JUSTICE Ontario Regional Office Tax Law Services Division The Exchange Tower 130 King St. West, Suite 3400, Box 36 Toronto, ON M5X 1K6</p> <p>Diane Winters Tel: (416) 973-3172 diane.winters@justice.gc.ca</p>
AND TO:	<p>MINISTRY OF FINANCE Legal Services Branch 33 King Street West, 6th Floor P.O. Box 327, Stn. A Oshawa, ON L1H 8H5</p> <p>Leslie Crawford (Law Clerk) Leslie.Crawford@ontario.ca</p>

AND TO:	ASKIT LAW 675 Cochrane Drive, Suite 502N Markham, ON L3R 0B8 Yao Zhang Tel: (416) 900-1091, ext. 100 yzhang@askitlaw.com <i>Lawyers for Kuo-Tong-Hsieh, the Second Mortgagee</i>
AND TO:	YANG JIANG 9 Highview Crescent Richmond Hill, ON L4B 2T6 jiangyang818@gmail.com
AND TO:	DEVRY SMITH FRANK LLP 95 Barber Greene Road, Suite 100 Toronto, ON M3C 3E9 Oren Chaimovitch Tel: (416) 446-3342 Fax: (416) 449-7071 Oren.chaimovitch@devrylaw.ca <i>Lawyers to Emix Ltd., the Landlord of Turuss (Canada) Industry Co., Ltd. o/a Total Hardwood Flooring</i>
AND TO:	CAMBRIDGE LLP 333 Adelaide Street West, 4 th Floor Toronto, ON M5V 1R5 Ruzbeh Hosseini Tel: (647) 430-5375 Fax : (289) 812-735 rhosseini@cambridgellp.com Leon Li Tel : (416) 888-2380 lli@cambridgellp.com <i>Lawyers for Dalian Natural Wood Industry Co., Ltd., Dazhuang Ma and Gang Guo</i>

Email List

robert.kennedy@dentons.com; daniel.loberto@dentons.com; thomas.gertner@gowlingwlg.com;
angelica.wilamowicz@gowlingwlg.com; jiangyang818@gmail.com;
Jerry.Henechowicz@mnp.ca; michael.litwack@mnp.ca; ford.thompson@brucepower.com;
diane.winters@justice.gc.ca; Leslie.Crawford@ontario.ca; yzhang@askitlaw.com;
Oren.chaimovitch@devrylaw.ca; rhosseini@cambridgellp.com; lli@cambridgellp.com

**ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)**

B E T W E E N:

PILLAR CAPITAL CORP.

Applicant

– and –

TURUSS (CANADA) INDUSTRY CO., LTD.

Respondent

APPLICATION UNDER SUBSECTION 243(1) OF THE *BANKRUPTCY AND INSOLVENCY ACT*, R.S.C. 1985 C. B-3, AS AMENDED, AND SECTION 101 OF THE *COURTS OF JUSTICE ACT*, R.S.O. 1990, C. C-43, AS AMENDED

TABLE OF CONTENTS

Part I – Overview	3
Part II – The Facts	4
Part III – The Issue	8
Part IV – The Law and Argument	8
Contempt Hearings Should be Bifurcated	8
The Document Production Order	8
Test for Civil Contempt	9
Part V – Order Sought	13

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

B E T W E E N:

PILLAR CAPITAL CORP.

Applicant

– and –

TURUSS (CANADA) INDUSTRY CO., LTD.

Respondent

APPLICATION UNDER SUBSECTION 243(1) OF THE *BANKRUPTCY AND INSOLVENCY ACT*, R.S.C. 1985 C. B-3, AS AMENDED, AND SECTION 101 OF THE *COURTS OF JUSTICE ACT*, R.S.O. 1990, C. C-43, AS AMENDED

FACTUM OF THE RECEIVER

PART I – OVERVIEW

1. On September 18, 2020, pursuant to an order (the “**Receivership Order**”) of this Honourable Court (the “**Court**”), MNP Ltd. was appointed receiver (the “**Receiver**”), under section 243(1) of the *Bankruptcy & Insolvency Act*, R.S.C. 1985, c. B-3 and Section 101 of the *Courts of Justice Act*, R.S.O. 1990, c. C-43, over all of the assets, undertakings and properties (the “**Property**”) of Turuss (Canada) Industry Co., Ltd. (the “**Debtor**”).

2. This Factum is filed in support of the Receiver’s motion returnable January 11, 2021, seeking an Order finding that Yang Jiang (“**Jiang**”) is in contempt of the Order of the Honourable Justice Gilmore, dated November 10, 2020 (the “**Document Production Order**”).

PART II – THE FACTS

3. The Debtor is a federally incorporated entity that manufactures, imports and distributes hardwood flooring. Jiang is the sole officer and director of the Debtor. The Property primarily consists of a 340,000 sq. ft. commercial property located at 60 Industrial Park Road, Chesley, Ontario (the “**Chesley Property**”), with a majority portion of the Chesley Property being leased to Bruce Power L.P.;

Third Report to the Court of MNP Ltd. in its capacity as Court Appointed Receiver of Turuss (Canada) Industry Co., Ltd., dated January 5, 2021, para 3, Tab 2 of Receiver’s Motion Record [Third Report].

4. The Receivership Order obliged the Debtor and Jiang, among others, to forthwith advise the Receiver of the existence of any books, documents, securities, contracts, orders, corporate and accounting records, and any other papers, records and information of any kind related to the business or affairs of the Debtor, and any computer programs, computer tapes, computer disks, or other data storage media containing any such information (collectively, the “**Books and Records**”) in that Person's (as defined in the Receivership Order) possession or control, and provide to the Receiver or permit the Receiver to make, retain and take away copies thereof and grant to the Receiver unfettered access to and use of accounting, computer, software and physical facilities relating thereto;

Order of the Honourable Justice Hainey, dated September 18, 2020, para 5.

5. On October 5th, 2020, the Receiver delivered correspondence to Jiang (the “**Letter**”). As part of this Letter, the Receiver stated to Jiang that the Receiver has not been able to locate the Books and Records, and for Jiang to immediately make the Books and Records available to the Receiver. In addition to the foregoing, the Receiver requested all information relating to all the subsidiaries or other parties that appeared to be related to the Debtor, including Total Hardwood

Flooring (“**Total Hardwood**”) (collectively, the “**Turuss Enterprise**”), and any information relating to any other operating locations for the Turuss Enterprise;

Third Report, para 12.

6. On October 30, 2020, the Receiver sent a follow-up email to Jiang asking for Jiang to make available the Books and Records of the Debtor to the Receiver as soon as possible, in addition to again requesting all information relating to the Turuss Enterprise, and any information relating to any other operating locations for the Turuss Enterprise;

Third Report, para 12.

7. On November 5, 2020, the Receiver sent a second follow-up email to Jiang, asking for Jiang to immediately provide the Receiver with the Books and Records including, but not limited to, the following:

- (a) Bank statements;
 - (b) Financial statements (internally and externally prepared);
 - (c) Copies of annual income tax returns;
 - (d) Copies of provincial sales tax returns;
 - (e) Copies of any trust examination and assessment notices by the Canada Revenue Agency;
 - (f) Payroll records;
 - (g) Employee information, such as T-4 documentation and records of employment;
- and

- (h) Access to, or a backup of, any digital accounting software used by the Debtor (collectively, the “**Urgent Records**”)

Third Report, para 12.

- 8. The Receiver had also been made aware of the Debtor operating separate locations, and requested from Jiang:

- (a) On November 5, 2020, details of all business and operations of the Debtor conducted outside of the Chesley Property; and
- (b) On November 6, 2020, an accounting of all business and operations that were conducted by Total Hardwood, as well as an explanation as to the relationship between the Debtor, Fortune Gate Timber Products Inc. and Elite International Forest Ltd.;

Third Report, para 13.

- 9. On November 9, 2020 (just prior to the return of the Receiver’s motion for the Document Production Order), Jiang provided limited books and records, including only some of the Urgent Records. The information provided generally consisted of bank statements from a limited time period, financial statements internally-prepared and in draft form, copies of T2s and T4s, Canada Revenue Agency records, and an attempted approach to explain at a very high level the business activity of the Debtor and the Flooring Entities (defined herein);

Third Report, para 15.

- 10. On November 10, 2020, this Honourable Court granted the Document Production Order. Jiang was present at the motion.

11. The Document Production Order ordered and directed Jiang to deliver to the Receiver on or before November 13, 2020, the Books and Records, the books and records of Fortune Gate Timber Products Inc., the hardwood flooring stores operating as Total Hardwood, Elite International Forest Ltd. and Vidar Design Flooring, all of which had appeared to be related to the Debtor and/or Jiang and appeared to carry on aspects of the Debtor's business (collectively, the "**Flooring Entities**"), including a complete accounting of all activities conducted by Total Hardwood. The Document Production Order also detailed certain physical and electronic books and records to be provided by Jiang to the Receiver (but did not limit the books and records to be provided). Jiang was also ordered and directed to attend for an examination under oath by the Receiver on 3 business days notice. For clarity, the Receiver has not yet exercised the ability to examine Jiang under oath, given that the Books and Records have not been delivered to the Receiver;

Order of the Honourable Justice Gilmore, dated November 10, 2020, para 2, 3
[Document Production Order].

12. Jiang attended a virtual meeting with the Receiver following the granting of the Document Production Order. Following that meeting, Jiang provided the Receiver with invoices, receipts, and sales orders pertaining to Total Hardwood and suppliers, along with a summary of this documentation. Again, the documentation and information was incomplete and not delivered.

13. The Receiver made further requests for the Books and Records on November 13, November 17, and December 2, 2020. Despite the Receiver's additional requests and the Document Production Order, Jiang has failed to produce the materials as ordered by this Honourable Court.

Third Report, para 20.

PART III – THE ISSUE

14. The issue before this Honourable Court is whether Jiang should be found in contempt of the Document Production Order.

PART IV – THE LAW AND ARGUMENT

Contempt Hearings Should be Bifurcated

15. Although there is no mandated process for contempt proceedings, they typically have two stages: first the liability hearing, and second a separate hearing to determine penalty. The Ontario Court of Appeal has clearly indicated that contempt proceedings should be bifurcated because, as in criminal proceedings, liability and penalty are discrete issues.

Boily v. Carleton Condominium Corp., [2014 ONCA 574](#), paras 121-122, Receiver's Brief of Authorities at Tab 1.

The Document Production Order

16. Pursuant to Rule 60.05 of the *Rules of Civil Procedure* (Ontario), an order requiring a person to do an act, other than the payment of money, may be enforced by a contempt order under Rule 60.11.

Rules of Civil Procedure, R.R.O. 1990, Reg 194, Rule 60.05, 60.11.

17. The Document Production Order required Jiang to deliver to the Receiver all physical and electronic books and records of the Debtor and the Flooring Entities, including a complete accounting of all activities conducted by Total Hardwood. The Document Production Order is clearly not a payment order and can therefore be enforced by a contempt motion.

Document Production Order, para 2.

Test for Civil Contempt

18. The test for civil contempt was articulated by the Supreme Court of Canada in *Carey v. Laiken*:

- (a) the order alleged to have been breached must state clearly and unequivocally what should and should not be done;
- (b) the party alleged to have breached the order must have had actual knowledge of it; and
- (c) the party allegedly in breach must have intentionally done the act that the order prohibits or intentionally failed to do the act the order compels.

Carey v. Laiken, [2015 SCC 17](#), paras 33-35, Receiver's Brief of Authorities at Tab 2 [*Carey v. Laiken*].

19. Each element of civil contempt must be proven beyond a reasonable doubt.

Carey v. Laiken, para 32.

(a) The Document Production Order is Clear and Unequivocal

20. The language of the Document Production Order is clear and states unequivocally what should be done and the deadline for doing so. It states as follows at paragraph 2:

2. **THIS COURT ORDERS AND DIRECTS** Ms. Jiang to deliver to the Receiver on or before November 13, 2020, all physical and electronic books and records of the Debtor, and Fortune Gate Timber Products Inc. ("Fortune Gate"), hardwood flooring stores operating as Total Hardwood Flooring ("Total Hardwood"), Elite International Forest Ltd. ("Elite") and Vidar Design Flooring ("Vidar"), all of which appear to be related to the Debtor and/or Ms. Jiang and appear to be carrying on aspects of the Debtor's business (collectively, the "Flooring Entities"), including a complete accounting of all activities conducted by Total Hardwood. For greater certainty, the physical and electronic books and records include, but are not limited to, the following:

- (a) all contracts, correspondence and leases with tenants and landlords;
- (b) all bank statements and correspondence, including from September 1, 2019 onwards;
- (c) all financial statements (internally and externally prepared), including a full accounting of business conducted by the Debtor since the appointment of the Receiver;
- (d) copies of all annual income tax returns;
- (e) copies of all provincial sales tax returns;
- (f) creditor listing, including names of creditors and amounts owed to all secured creditors, unsecured creditors, utilities providers, government agencies and others;

(g) employee information including T-4 documentation for each individual employee and summaries filed for 2018 and 2019, records of employment, and any correspondence with the Canada Revenue Agency and any assessments and statements thereof;

(h) copies of any trust examination and assessment notices by the Canada Revenue Agency;

(i) Harmonized Sales Tax filings including any correspondence with the Canada Revenue Agency and any assessments and statements thereof;

(j) all payroll records, including individual pay stubs and the summaries for all of 2019 and 2020;

(k) all benefit plan information;

(l) access to any digital accounting software used by the Debtor (or access to a backup thereof);

(m) access to all documentation and information with respect to all business and operations of the Debtor related to the Chesley Property, and the Flooring Entities;

(n) all related party transaction documentation;

(o) an accounting in respect of all amounts, including rent, received from Bruce Power L.P. with respect to the Chesley Property; and

(p) such other physical and electronic books and records as the Receiver consider necessary, acting reasonably.

Document Production Order, para 2.

(b) Jiang had Knowledge of the Document Production Order

21. Jiang was present and provided submissions on behalf of the Debtor at the November 10, 2020 motion at which time the Document Production Order was issued by this Honourable Court. The Court endorsement also reflects that Jiang understood the terms of the Document Production Order.

Third Report, para 16, 27.

Document Production Order, in the paragraph beginning “ON READING”.

Endorsement of the Honourable Justice Gilmore, dated November 10, 2020.

Bhatanger v. Canada (Minister of Employment and Immigration), [\[1990\] 2 SCR 217](#), at para 16, Receiver’s Brief of Authorities at Tab 3.

22. In addition, by emails, dated November 13, November 17, and December 2, 2020, the Receiver and its counsel, Dentons Canada LLP, wrote to Jiang seeking compliance with the Document Production Order. One response was received by Jiang, but no further information or documentation pertaining to the Debtor or the Flooring Entities was provided.

Third Report, para 20.

(c) Jiang has Intentionally Failed to Comply

23. Jiang is fully aware of the Document Production Order and there can be no doubt that she intentionally and wilfully refused to comply with the same. Additionally, Jiang would have

received all correspondence and “follow-up” requests from the Receiver in relation to Jiang’s Court ordered obligations pursuant to the Document Production Order;

24. The refusal of Jiang to comply with the Document Production Order can only be viewed as a deliberate, wilful attempt to impede the Receiver in carrying out its duties as a court-appointed officer and administering the receivership for the benefit of all stakeholders.

25. Accordingly, the Receiver submits that the evidence before this Honourable Court establishes contempt beyond a reasonable doubt.

PART V – ORDER SOUGHT

26. For the reasons set forth herein, and in the Receiver’s Third Report to this Honourable Court dated January 5, 2021, the Receiver respectfully requests an Order finding Jiang in contempt of the Document Production Order.

DATE: January 7, 2021



DENTONS CANADA LLP

Lawyers for MNP Ltd. in its capacity as Court-appointed Receiver of Turuss (Canada) Industry Co., Ltd.

**Schedule “A”
List of Authorities**

1. *Boily v. Carleton Condominium Corp.*, [2014 ONCA 574](#).
2. *Carey v. Laiken*, [2015 SCC 17](#).
3. *Bhatanger v. Canada (Minister of Employment and Immigration)*, [\[1990\] 2 SCR 217](#).

Schedule "B"
Relevant Statutes

Rules of Civil Procedure, R.R.O. 1990, Reg 194

ENFORCEMENT OF ORDER TO DO OR ABSTAIN FROM DOING ANY ACT

60.05 An order requiring a person to do an act, other than the payment of money, or to abstain from doing an act, may be enforced against the person refusing or neglecting to obey the order by a contempt order under rule 60.11.

CONTEMPT ORDER

Motion for Contempt Order

60.11 (1) A contempt order to enforce an order requiring a person to do an act, other than the payment of money, or to abstain from doing an act, may be obtained only on motion to a judge in the proceeding in which the order to be enforced was made.

(2) The notice of motion shall be served personally on the person against whom a contempt order is sought, and not by an alternative to personal service, unless the court orders otherwise.

(3) An affidavit in support of a motion for a contempt order may contain statements of the deponent's information and belief only with respect to facts that are not contentious, and the source of the information and the fact of the belief shall be specified in the affidavit.

Warrant for Arrest

(4) A judge may issue a warrant (Form 60K) for the arrest of the person against whom a contempt order is sought where the judge is of the opinion that the person's attendance at the hearing is necessary in the interest of justice and it appears that the person is not likely to attend voluntarily.

Content of Order

(5) In disposing of a motion under subrule (1), the judge may make such order as is just, and where a finding of contempt is made, the judge may order that the person in contempt,

- (a) be imprisoned for such period and on such terms as are just;
- (b) be imprisoned if the person fails to comply with a term of the order;
- (c) pay a fine;
- (d) do or refrain from doing an act;
- (e) pay such costs as are just; and

(f) comply with any other order that the judge considers necessary,

and may grant leave to issue a writ of sequestration under rule 60.09 against the person's property.

Where Corporation is in Contempt

(6) Where a corporation is in contempt, the judge may also make an order under subrule (5) against any officer or director of the corporation and may grant leave to issue a writ of sequestration under rule 60.09 against his or her property.

Warrant of Committal

(7) An order under subrule (5) for imprisonment may be enforced by the issue of a warrant of committal (Form 60L).

Discharging or Setting Aside Contempt Order

(8) On motion, a judge may discharge, set aside, vary or give directions in respect of an order under subrule (5) or (6) and may grant such other relief and make such other order as is just.

Order that Act be done by Another Person

(9) Where a person fails to comply with an order requiring the doing of an act, other than the payment of money, a judge on motion may, instead of or in addition to making a contempt order, order the act to be done, at the expense of the disobedient person, by the party enforcing the order or any other person appointed by the judge.

(10) The party enforcing the order and any person appointed by the judge are entitled to the costs of the motion under subrule (9) and the expenses incurred in doing the act ordered to be done, fixed by the judge or assessed by an assessment officer in accordance with Rule 58.

PILLAR CAPITAL CORP.
Applicant

- and -

TURUSS (CANADA) INDUSTRY CO., LTD.
Respondent

**ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)**

PROCEEDING COMMENCED AT TORONTO

FACTUM OF THE RECEIVER

DENTONS CANADA LLP
77 King Street West, Suite 400
Toronto-Dominion Centre
Toronto, ON M5K 0A1

Robert Kennedy (LSO #474070)
Tel: (416) 367-6756
Fax: (416) 863-4592
robert.kennedy@dentons.com

Daniel Loberto (LSO # 79632Q)
Tel: (416) 863-4760
daniel.loberto@dentons.com

Lawyers for the Receiver