

COURT FILE NUMBER	Q.B.G. No. 733 of 2021
COURT OF QUEEN'S BENCH FOR SASKATCHEWAN IN BANKRUPTCY AND INSOLVENCY	
JUDICIAL CENTRE	SASKATOON
APPLICANT	ABBEY RESOURCES CORP.

**IN THE MATTER OF *THE COMPANIES' CREDITORS ARRANGEMENT ACT*,
RSC 1985, c C-36, AS AMENDED**

**AND IN THE MATTER OF A PROPOSED PLAN OF ARRANGEMENT FOR THE CREDITORS
OF ABBEY RESOURCES CORP.**

BRIEF OF LAW ON BEHALF OF ANDJELIC LAND INC.



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I. INTRODUCTION

1. This Brief of Law has been prepared to address several issues arising with respect to matters to be addressed at the hearing on Thursday, January 27, 2022.
2. Andjelic Land Inc. ("**Andjelic**") opposes the relief requested by Abbey Resources Corp. ("**Abbey**") in their Notice of Application dated January 21, 2022.
3. In support of Andjelic's position, Andjelic has filed the Affidavit of Eric Urzada sworn January 26, 2022 (the "**Urzada Affidavit**").
4. Andjelic's position can be summarized as follows:
 - (a) Andjelic opposes the extension of the Initial Order of the Honourable Mr. Justice G.A. Meschishnick granted on August 13, 2021 (the "**Initial Order**") given Abbey's inability to meet its legal obligations to Andjelic, and other surface rights owners; and
 - (b) alternatively, if the extension of the stay of proceedings is granted, Andjelic submits that the proposed amendment to the Initial Order that Abbey is seeking should specify that:
 - (i) Abbey must make per diem payments to all surface lessors dating back to the last anniversary for each surface lease; and
 - (ii) the Order is without prejudice to the rights of surface lessors to seek recovery of any unpaid rents owed by Abbey for periods which pre-date the CCAA proceedings.

II. BACKGROUND

Factual Background

5. As a result of various assignments by the original and subsequent lessors and lessees Andjelic and Abbey are the present parties to 27 surface leases for Andjelic-owned lands located in the Rural Municipality of Lacadena No. 228 (the "**Surface Leases**").
6. In exchange for the right to access and use identified portions of the Andjelic-owned lands, for the purposes identified in the Surface Leases, Abbey is to pay Andjelic annual rents in the amount of \$59,575.00. These rents are paid on a bi-annual basis at the start of, and in the midst of, the applicable lease years.

7. The facts related to the recent history between Andjelic and Abbey are set out in the Urzada Affidavit. In summary:
- (a) in or around October 2018, Andjelic commenced legal proceedings against Abbey due to Abbey's failure to remit the full, annual rent due under the Surface Leases for the 2018-2019 and 2019-2020 lease years (as Abbey had sought to arbitrarily reduce the rents owed on the leases to approximately 50%, and had failed to remit any rents owed unless Andjelic accepted these reduced payments);
 - (b) the Court of Queen's Bench ordered Abbey to pay the rent arrears of \$119,150.00 plus interests and costs for the 2018-2019 and 2019-2020 lease years;
 - (c) shortly after completing payments, Abbey sought to reduce its rent payable under 12 of the 27 Surface Leases on the ground that Abbey was surrendering portions of the lands and wanted a roughly proportionate reduction in its rent;
 - (d) Abbey simultaneously applied to the Surface Rights Board of Arbitration for a rent review hearing under the 12 Surface Leases;
 - (e) while Andjelic was prepared to proceed with the rent review hearing before the Surface Rights Board of Arbitration, the rent review hearing was adjourned *sine die* due to the commencement of these proceedings under the *Companies Creditors' Arrangement Act*, RSC 1985, c C-36 (the "CCAA"); and
 - (f) Abbey has not remitted any rent, under either the 12 Surface Leases with respect to which it sought a rent review, or the remaining 15 Surface Leases for the 2020-2021 or 2021-2022 lease years; the resulting rent arrears are \$119,150 plus interest.
8. In essence, Abbey has been residing rent-free on Andjelic's lands for the past two lease years. It only paid rent for the two years preceding that period when ordered to do so by the Court. It is expected that Andjelic will soon have to commence legal proceeding in relation to the rents which are owed for the last two lease years.

CCAA Proceedings

9. Since the commencement of these CCAA proceedings, Andjelic has received:

- (a) a letter from MNP Ltd., the court-appointed monitor of Abbey in the CCAA proceedings (the "**Monitor**"), which advised Andjelic of Abbey's intention to provide reduced rent payments to any "Unsigned Lessors" (such term being defined in the Monitor's letter);
 - (b) a letter from Abbey's legal counsel, which advised Andjelic of Abbey's notice of surrender and termination of the Surface Leases, Abbey's intention to stop making rent payments with respect to the Surface Leases and Abbey's intention to decommission and reclaim the leased premises; and
 - (c) an email from Abbey's legal counsel, wherein they advised that Abbey wishes to enter into new leasing arrangements, and if Andjelic is not amendable to entering into a new leasing arrangement, Abbey will seek declaratory relief from the court and/or seek to disclaim the Surface Leases under the CCAA.
10. Andjelic's position on the foregoing communications is that:
- (a) Abbey cannot cease making rental payments under the Surface Leases until the wells have been decommissioned and the lands have been restored;
 - (b) if the Court allows Abbey to pay a per diem rate under the Surface Leases, the order shall be without prejudice to Andjelic's right to seek recovery of any unpaid rents owed by Abbey for periods which pre-date the most recent anniversary date for each Surface Lease; and
 - (c) Abbey cannot disclaim the Surface Leases, as suggested in paras 25-28 of the Ninth Affidavit of James Gettis dated January 21, 2022 (the "**Gettis Affidavit**"), and if Abbey seeks disclaimer of the Surface Leases, Andjelic intends to contest the application when it is made.
11. Andjelic anticipates that a full argument on the matters noted in paragraph 10(a) and (c) will be required at the hearing of Abbey's intended application to seek to disclaim various surface leases. For the purpose of the relief that Abbey is currently seeking, Andjelic submits that the stay of proceedings should not be further extended given Abbey's inability to meet its legal obligations to Andjelic, and other surface rights owners.

12. Alternatively, if the extension of the stay of proceedings is granted, Andjelic submits that the proposed amendment to the Initial Order that Abbey is seeking should be revised as set forth in the draft Order attached hereto.

III. ISSUES

13. The issues addressed in this Brief of Law are:
 - (a) Whether the Court should allow the extension of the stay of proceedings?
 - (b) If the Court allows the extension of the stay of proceedings, should the Court should allow the proposed amendment to the Initial Order?

IV. ARGUMENT

ISSUE 1 – Whether the Court should allow the extension of the stay of proceedings?

14. Andjelic opposes Abbey's application to extend the stay of proceedings on the basis that:
 - (a) Abbey has continuously not paid rents owing under the Surface Leases;
 - (b) Abbey has not paid rents on the per diem rate that Abbey proposed in November 2021;
 - (c) any reductions to the rent under the Surface Leases are to be governed by the Surface Rights Board of Arbitration in accordance with *The Surface Rights Acquisition and Compensation Act*, RSS 1978, c S-65 (the "**Surface Rights Act**"); and
 - (d) given the recent attempted terminations of the Surface Leases, and the accompanying communication that Abbey is not obligated to pay any rents pending reclamation of the lands in question, it is unclear whether Abbey intends to pay rents to Andjelic at all.
15. Furthermore, given Abbey's assertion that the Surface Leases have been terminated, it is unclear whether the 2022 budget forecast attached as Exhibit "N" of the Ninth Gettis Affidavit (the "**Forecast**") contemplates the payment of rents owing under the Surface Leases and/or the other leases that Abbey has claimed to have terminated. If the Forecast does not, Andjelic submits that the Forecast is misleading, considering:

- (a) Abbey is relying on its termination of the Surface Leases and a concomitant assumption that it either has to pay nothing in rent until the lands are reclaimed or can arbitrarily reduce the rent owed proportionate to the acreage occupied by its infrastructure on the lands in question;¹
- (b) there is no support for Abbey's position that it is simply entitled to reduce rent based on reduced acreage;² and
- (c) until decommissioning and reclamation is complete and an Acknowledgement of Reclamation Certificate is received from the Saskatchewan Ministry of Energy and Resources, Abbey is required to pay full rent payments under the Surface Leases.³

16. Given the above, Andjelic submits that it is clear that Abbey is not in a position to meet its ongoing obligations. Accordingly, further extensions ought not to be granted.

ISSUE 2 – If the Court allows the extension of the stay of proceedings, should the Court should allow the proposed amendment to the Initial Order?

17. Andjelic submits that the amendments to the Initial Order may be allowed provided that the Order also:
- (a) expressly stipulates that Abbey must make per diem payments to all surface lessors dating back to the last anniversary date for each surface lease, in accordance with:
 - (i) the last rates agreed upon for those surface leases between Abbey and the corresponding surface lessor; or
 - (ii) in the absence of such agreement, the last rate set for the surface leases by the Surface Rights Board of Arbitration; and

¹ The Surface Leases provide that Abbey can give notice to surrender or terminate the Surface Leases, subject to Abbey promptly reclaiming and restoring the surface of lands during the term of the lease.

² Any reductions to rent are to be governed by the Surface Rights Board of Arbitration in accordance with the Surface Rights Act.

³ Further detailed arguments on the issues noted above will be presented if Abbey makes an application for disclaimer.

- (b) expressly stipulates that the Order is without prejudice to Andjelic's right to seek recovery of any unpaid rents owed by Abbey for periods which pre-date the CCAA proceedings.

V. CONCLUSION

- 18. Andjelic respectfully seeks that the stay of proceedings should not be further extended given Abbey's inability to meet its legal obligations to Andjelic, and other surface rights owners.
- 19. In the alternative, should this Court allow Abbey to extend the stay of proceedings, Andjelic submits that the amendments to the Initial Order may be allowed subject to the additions and caveats noted above, and set forth in the draft Order attached hereto.

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 26th day of January, 2022.

MILLER THOMSON LLP

Per: 
Solicitors for Andjelic Land Inc.

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File Number:	0223013.0036

VI. TABLE OF AUTHORITIES

Legislation

1. *Companies Creditors' Arrangement Act*, RSC 1985, c C-36.
2. *The Surface Rights Acquisition and Compensation Act*, RSS 1978, c S-65.

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**IN THE MATTER OF THE COMPANIES' CREDITORS ARRANGEMENT ACT, RSC
1985, c C-36, AS AMENDED (THE "CCAA")**

AND

**IN THE MATTER OF A PROPOSED PLAN OF ARRANGEMENT FOR THE
CREDITORS OF ABBEY RESOURCES CORP. (THE "APPLICANT")**

ORDER

(Fourth Extension and Amendment of Initial Order)

Before the Honourable Mr. Justice G.A. Meschishnick in Chambers the 27th day of January, 2022.

Upon application by counsel on behalf of the Applicant, and upon hearing Jerritt Pawlyk and Kevin Hoy, counsel for the Applicant, and upon hearing Ian A. Sutherland, counsel for MNP Ltd. (the "**Monitor**"), and upon hearing from counsel present on behalf of any other interested parties, and upon reading the Notice of Application, dated January 21, 2022, the Affidavits of James Gettis, (collectively, the "**Application Materials**") and the Fourth Report of the Monitor, all filed:

The Court Orders:

1. Time for service of the Application Materials upon all parties listed on the Service List established in these proceedings (a current copy of which is appended as Schedule "A" hereto) is hereby abridged and shall be and is hereby deemed to be good, timely and sufficient.
2. The Initial Order of the Honourable Mr. Justice Meschishnick granted on August 13, 2021 in these proceedings (the "**Initial Order**"), and the stay of proceedings provided for therein, shall be and are hereby further extended to Wednesday, April 27th, 2022 at 11:59 p.m., Saskatchewan time.

3. Paragraph 9 of the Initial Order shall be amended *nunc pro tunc* as follows:

9. Until a real property lease is disclaimed in accordance with the CCAA, the Applicant shall pay all amounts constituting rent or payable as rent under real property leases (including, for greater certainty, common area maintenance charges, utilities and property taxes and any other amounts payable to a landlord under a lease) calculated on a *per diem* basis commencing from the first anniversary date following the commencement of these CCAA proceedings, and, in the case of surface leases, in accordance with:

- i. the last rates agreed upon for those surface leases between the Applicant and the corresponding surface lessor; or
- ii. in the absence of such agreement, the last rate set for the surface leases by the Surface Rights Board of Arbitration,

or as otherwise may be negotiated by the Applicant from time to time ("**Rent**"), for the period commencing from and including the date of this Order, but shall not pay any Rent in arrears. On the date of the first of such payments, any arrears relating to the period commencing from and including the date of the issuance of this Order shall also be paid. For greater certainty, this Clause shall be without prejudice to the surface lessors who may later seek recover of any unpaid rents owed by the Applicant for periods which pre-date these proceedings.

ISSUED at the City of _____, in the Province of Saskatchewan, this day _____ of January, 2022.

DEPUTY LOCAL REGISTRAR