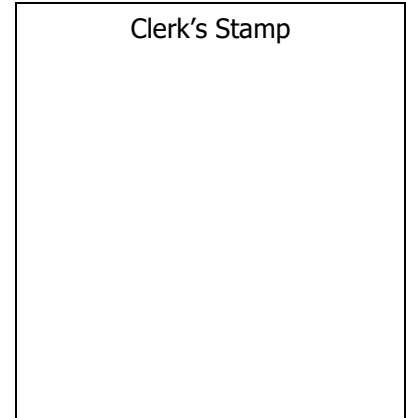


COURT FILE NO. 24-2746532

COURT COURT OF QUEEN'S BENCH OF ALBERTA  
IN BANKRUPTCY AND INSOLVENCY

JUDICIAL CENTRE EDMONTON



IN THE MATTER OF THE NOTICE OF INTENTION TO MAKE A PROPOSAL OF  
ALASKA - ALBERTA RAILWAY DEVELOPMENT CORPORATION

DOCUMENT **APPLICATION FOR INTERIM RECEIVER BY BRIDGING INCOME FUND LP**

|   |   |  |
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| ADDRESS FOR SERVICE<br>AND CONTACT<br>INFORMATION OF<br>PARTY FILING THIS<br>DOCUMENT | THORNTON GROUT FINNIGAN LLP<br>3200 – 100 Wellington Street West<br>TD West Tower<br>Toronto-Dominion Centre<br>Toronto, ON M5K 1K7 | Lawyers: John L. Finnigan /<br>Grant B. Moffat / Adam Driedger<br>Telephone: 416-304-1616<br>Fax: 416-304-1313<br>Email: jfinnigan@tgf.ca /<br>gmoffat@tgf.ca / adriedger@tgf.ca |
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**NOTICE TO RESPONDENTS:**

This application is made against you. You are a Respondent.

You have the right to state your side of this matter before the Master.

To do so, you must be in Court when the application is heard as shown below:

|                     |   |
|---------------------|---|
| <b>Date:</b>        | July 12, 2021   |
| <b>Time:</b>        | 3:00 p.m.   |
| <b>Where:</b>       | Law Courts, 1A Sir Winston Churchill Square, Edmonton, AB T5J 0R2 |
| <b>Before Whom:</b> | 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 appointing MNP Ltd. ("**MNP**") as interim receiver (in such capacity, the "**Interim Receiver**"), without security, of all of the current and future assets, undertakings, and properties of Alaska-Alberta Railway Development Corporation ("**A2A**"), substantially in the form attached hereto and marked as Schedule "A".
2. An order authorizing and empowering the Interim Receiver to seek a 45-day extension to the A2A Proposal Proceeding (as defined below) on behalf of A2A;
3. Such further and other relief as this Honourable Court may deem just.

**Grounds for making this application:**

Capitalized Terms

4. All capitalized terms not expressly defined herein are defined in the Affidavit of Graham Page sworn on July 7, 2021.

Background

5. PricewaterhouseCoopers Inc. ("**PwC**") was appointed as receiver and manager of Bridging Finance Inc. ("**BFI**"), Bridging Income Fund LP (the "**Lender**"), and certain related entities and investment funds ("**Applicant**" or the "**Bridging Receiver**") pursuant to section 129 of the *Securities Act* (Ontario) R.S.O. 1990, c. S. 5, as amended (the "**Ontario Securities Act**") as a result of an ongoing investigation being conducted by the Ontario Securities Commission (the "**Commission**") into BFI and certain related individuals and entities (the "**Investigation**").
6. As reflected in the endorsement of Justice Hailey issued in connection with the Appointment Order, the Ontario Court determined that, as required by section 129 of the Ontario Securities Act, the appointment of the Bridging Receiver was in the best interests of investors in the Bridging Funds and will further the due administration of Ontario Securities law.

Overview of Bridging

7. BFI is an investment management firm and alternative lender based in Toronto, Ontario that promotes and manages various investment vehicles (the "**Bridging Funds**") that raise capital from investors for the purposes of making loans to corporate borrowers. Each of the Bridging Funds has appointed BFI as portfolio manager and as its agent to enter into loan agreements with Borrowers, take security on behalf of each Bridging Fund with respect to loans and collect loan payments from borrowers.

Overview of A2A & A2A Loan

8. The largest outstanding loan in the Bridging loan portfolio is the non-revolving demand credit facility made available by the Lender (Bridging Income Fund LP) through BFI as agent to A2A (the "**A2A Loan**").
9. A2A is a corporation incorporated under the laws of the province of Alberta. Sean McCoshen is listed as the sole director and voting shareholder of A2A. The purpose of A2A was to construct a railway line linking northern Alberta to ports in Alaska for the purposes of transporting oil products (the "**Railway Project**").

10. According to the books and records of Bridging, as at June 8, 2021, the total amount owing by A2A to the Lender under the A2A Loan is \$212,891,590, including capitalized interest, fees, and other costs (the "**A2A Indebtedness**").

#### Security Held by Bridging

11. Pursuant to the A2A Loan Agreement, and as security for all of its obligations to the Lender, A2A granted to the Lender security over all of its present and after-acquired property pursuant to a General Security Agreement dated December 11, 2015.
12. The A2A Indebtedness has been guaranteed by Sean McCoshen and 532 Manitoba (a company controlled by McCoshen), which guarantees are secured by separate general security agreements in favour of the Lender.
13. In addition, pursuant to the Amending Agreement in connection with the A2A Loan dated February 23, 2021, each of 719 Manitoba, 127 Canada, and A2A US were added as "Obligors" and guarantors under the A2A Loan Agreement. As security for their obligations as Obligors and guarantors under the A2A Loan Agreement, each of 719 Manitoba, 127 Canada and A2A US granted security to the Lenders upon all of its assets pursuant to the terms of the Tenth Amendment.
14. Sean McCoshen is listed as the sole director and officer of each of 532 Manitoba, 719 Manitoba, 127 Canada, and A2A US.

#### Receiver's Review of A2A Loan & Advances

15. As part of the Bridging Receivership Proceeding, the Bridging Receiver and its counsel are conducting an ongoing review of the A2A Loan and the corresponding flow of funds. Based on the Bridging Receiver's review, the Bridging Receiver has identified the following significant concerns in connection with the A2A Loan, among others:
  - (a) approximately \$82.5 million was advanced under the A2A Loan to a McCoshen-controlled entity called 704 Manitoba, which is neither an obligor nor a guarantor under the A2A Loan. The Bridging Receiver has been unable to determine the commercial relationship between 704 Manitoba and A2A. According to the Commission's evidence in connection with the Investigation, 704 Manitoba transferred approximately \$19.5 million to the personal chequing account of the former CEO and UDP of BFI, David Sharpe. 704 Manitoba was subsequently dissolved within two weeks of the Commission writing to BFI inquiring about its relationship with Sean McCoshen;
  - (b) approximately \$25.5 million was advanced under the A2A Loan to a personal bank account of Sean McCoshen in September 2020;
  - (c) the Bridging Receiver has been advised that David Sharpe (the former Chief Executive Officer and UDP of BFI) ordered individuals at Bridging to remove references to 704 Manitoba from certain Amending Agreements and delete approximately 34,200 emails based on pre-defined search terms that included, among others, "Sean McCoshen" and "7047747";
  - (d) pursuant to the Tenth Amendment, Bridging advanced \$20.6 million to 719 Manitoba under the A2A Loan and the Bridging Receiver understands that this advance was not received by A2A;

- (e) the Bridging Receiver has requested certain information related to the A2A Loan from Sean McCoshen and his counsel. It was communicated to the Bridging Receiver that Mr. McCoshen is unavailable to respond to the Bridging Receiver's questions or discuss them due to medical reasons. As of today's date, the Bridging Receiver has not received any information from A2A or McCoshen in response to the Bridging Receiver's request for information.
16. Based on the foregoing, the Bridging Receiver has significant concerns surrounding the use of \$145.8 million advanced to A2A, McCoshen, and various entities controlled by McCoshen. The Bridging Receiver is particularly concerned with the value of the security held for the A2A Loan as the Railway Project is pre-construction and it is unclear whether any assets exist, other than A2A's intangible assets, which include the Presidential Permit.

#### Demands, BIA Notices & NOI Filings

17. On June 8, 2021, the Bridging Receiver demanded payment of the A2A Indebtedness from each of A2A, Sean McCoshen, 532 Manitoba, 719 Manitoba, 127 Canada, and A2A US and delivered to each of A2A, Sean McCoshen, and 532 Manitoba a separate Notice of Intention to Enforce Security (collectively, the "**BIA Notices**") pursuant to section 244 of the BIA.
18. On June 21, 2021, the Bridging Receiver learned that each of A2A, 719 Manitoba, and 127 Canada (collectively, the "**Debtors**") had commenced a proposal proceeding under Part III of the BIA by filing a Notice of Intention to Make a Proposal pursuant to section 50.4(1) of the BIA on June 18, 2021 (collectively, the "**Proposal Proceedings**"). MNP is the trustee appointed under the Proposal Proceedings (the "**Trustee**").
19. Also on June 21, 2021, the Bridging Receiver learned that Sean McCoshen had commenced a proposal proceeding under Part III of the BIA by filing a Notice of Intention to Make a Proposal pursuant to section 50.4(1) of the BIA on June 18, 2021 (the "**McCoshen Proposal Proceeding**"). A. Farber & Partners Ltd. is the trustee appointed under the McCoshen Proposal Proceeding (the "**McCoshen Trustee**").
20. Based upon the information provided to the Bridging Receiver by the Trustee and the McCoshen Trustee, the Lender is identified as the dominant creditor of the Debtors and Sean McCoshen.
21. Since the Bridging Receiver learned of the Proposal Proceedings on June 21, 2021, the Bridging Receiver has engaged in various discussions with the Trustee and the McCoshen Trustee regarding the best path forward to protect the interests of the Lender.
22. The Bridging Receiver is of the view that Sean McCoshen and any related party must not be permitted to remain in control of the property of A2A.
23. The Bridging Receiver advised the Trustee and the McCoshen Trustee that it will not support any proposal filed by the Debtors nor any proceeding in which McCoshen or any related parties remain in possession or control of the business or property of the Debtors.

#### Trustee's Material Adverse Change Report

24. As a result of the foregoing discussions, the Trustee issued a material adverse change report on July 7, 2021 in respect of each of the Debtors (collectively, the "**Material Adverse Change Reports**").

25. Based on the Material Adverse Change Report, the Bridging Receiver understands that the Trustee intends to: (i) bring an application to terminate the period in which 719 Manitoba and 127 Canada may make a proposal pursuant to section 50.4(11) of the BIA; and (ii) assuming the Bridging Receiver's application to appoint MNP as Interim Receiver in respect of A2A is successful, bring an application for an extension of the time in which A2A may make a proposal pursuant to section 50.4(9) of the BIA.

#### Need for Interim Receiver

26. Given the Bridging Receiver's concerns with respect to the improper use of advances under the A2A Loan, it is critical that the assets of the Debtors be placed under the care and control of a court officer to protect the interests of the Lender and the other stakeholders of the Debtors.
27. At this point, the Lender does not have sufficient information regarding the impact a bankruptcy of A2A may have upon the Presidential Permit and A2A's other assets, including the executory contracts to which A2A is a party. Accordingly, the Bridging Receiver seeks, as a term of the proposed order appointing the Interim Receiver, that the Interim Receiver be authorized and empowered to seek a 45-day extension of the A2A Proposal Proceeding on behalf of A2A.
28. Appointing the Interim Receiver while extending the A2A Proposal Proceeding for a period of 45 days (and thus temporarily avoiding a bankruptcy of A2A) will ensure that the value of A2A's assets are preserved while the Interim Receiver takes possession of, and obtains further information regarding, A2A's assets, all with a view to determining if there is a benefit to the A2A Proposal Proceeding continuing.
29. The Bridging Receiver does not have the same concern with respect to the impact of a bankruptcy on 719 Manitoba and 127 Canada. The Bridging Receiver is not aware of any ongoing business operations by either party and is not aware of either party holding any material assets. Accordingly, the Bridging Receiver supports the Trustee's application to terminate the period in which 719 Manitoba and 127 Canada may make a proposal pursuant to section 50.4(11) of the BIA, upon which 719 Manitoba and 127 Canada shall automatically be deemed bankrupt.
30. Such further and other grounds as counsel may advise.

#### **Material or evidence to be relied on:**

31. Affidavit of Graham Page sworn July 7, 2021.
32. Such further and other evidence as counsel may advise.

#### **Applicable legislation and rules:**

33. Sections 47 and 47.1 of the *Bankruptcy and Insolvency Act*, RSC 1985, c. B-3 as amended.
34. *Alberta Rules of Court*, Alta Reg 124/2010, Rules 1.2, 1.3, 1.4, 3.68, and 3.73.
35. Such further and other legislation and regulations and rules as counsel may advise and this Honourable Court may permit.

**Any irregularity complained of or objection relied on:**

36. None.

**How the application is proposed to be heard or considered:**

37. In person via video attendance.

**AFFIDAVIT EVIDENCE IS REQUIRED IF YOU WISH TO OBJECT.**

**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 time shown at the beginning of the form. If you intend to give evidence in response to the application, you must reply by filing an Affidavit or other evidence with the Court and serving a copy of that Affidavit or other evidence on the Applicant(s) a reasonable time before the application is to be heard or considered.