

COURT FILE NUMBER 1803 05959
COURT COURT OF QUEEN'S BENCH OF ALBERTA
JUDICIAL CENTRE EDMONTON
PLAINTIFF THE TORONTO DOMINION BANK
DEFENDANTS 1287839 ALBERTA LTD., PRICOPE
MATWYCHUK HOLDINGS LTD., FEHR
QUALITY CONTRACTING INC., 101279740
SASKATCHEWAN LTD., ALEXANDRU
PRICOPE AND CHRISTINA MATWYCHUK



DOCUMENT ORDER

ADDRESS FOR SERVICE AND
CONTACT INFORMATION OF
PARTY FILING THIS
DOCUMENT

Ogilvie LLP
1400, 10303 Jasper Avenue
Edmonton AB T5J 3N6
Attention: Kentigern A. Rowan, Q.C.
Phone: 780.429.6236
Fax: 780.429.4453
File No.: 41087.15

I hereby certify this to be a
true copy of the original.

**Service will be accepted by delivery or fax. No
other form of service will be accepted.**

DATE ON WHICH ORDER WAS PRONOUNCED: August 29, 2018
LOCATION WHERE ORDER WAS PRONOUNCED: Edmonton, Alberta
NAME OF JUSTICE WHO MADE THIS ORDER: Justice K. G. Nielsen

ORDER

UPON THE APPLICATION of MNP Ltd., in its capacity as Court-Appointed Receiver (the "Receiver") of 1287839 Alberta Ltd. ("Kopala"), Pricope Matwychuk Holdings Ltd., Fehr Quality Contracting Inc. and 101279740 Saskatchewan Ltd. (hereinafter collectively referred to as the "Corporations"); AND UPON reading the Receiver's Third Report filed with this Honourable Court; AND UPON hearing counsel for the Receiver; AND UPON hearing from counsel for Toronto Dominion Bank ("TD"), counsel for Business Development Bank of Canada ("BDC"), counsel for the Department of Justice representing Canada Revenue Agency ("CRA") and counsel for Ken Chaluk Contracting Corp. ("Chaluk"); AND UPON being advised that the proceeds from the sale of certain assets of the Corporations sold by way of public auction, and accounts receivable due and owing to the Corporations have been collected and are available for distribution to the Corporations' creditors (the "Net Proceeds"); AND UPON noting that CRA claims a priority for outstanding Good and Services Tax ("GST") in the amount of \$84,874.60 (the "CRA Claim") and the Workers' Compensation Board of Alberta ("WCB") claims a priority for outstanding assessments in the amount


of \$87,360.52 (the "WCB Claim"); AND UPON noting that a bankruptcy of the Corporations would affect the priority of the CRA Claim and the WCB Claim; AND UPON being further advised that Chaluk, a creditor of Kopala, obtained a judgment against Kopala and issued and served a Garnishee Summons in the amount of \$283,849.86 (the "Garnished Funds") garnisheeing monies owed to Kopala (the "Garnishee"); AND UPON being advised that a portion of the Garnished Funds in the amount of \$185,045.73 is currently being held in trust by the Receiver's counsel (the "Counsel Trust Funds"); AND UPON hearing from counsel for Chaluk that Chaluk is releasing any claim to the Garnished Funds and does not claim priority thereto; AND UPON being further advised that there may be third parties currently holding additional sums pursuant to Garnishee issued in respect of Kopala; AND UPON being advised of a dispute between MHK Insurance Inc. ("MHK") and TD in respect of unearned insurance premiums (the "Unearned Premiums") which have been refunded and are presently held by Duncan Craig LLP, counsel for MHK (the "Unearned Premiums"); AND UPON being further informed that an application to determine the parties' relative priority to the Unearned Premiums has been scheduled to be heard on October 2, 2018; AND UPON noting the request by the Receiver for a declaration of the relative priorities of TD and BDC to the personal property of the Corporation; AND UPON noting that TD and BDC entered into Priority Agreements with respect to their respective security held against each of the Corporations which defined their respective priorities (the "Priority Agreements"); AND UPON noting that the Receiver has received an opinion from its counsel that BDC and TD are secured against the assets of the Corporations in priority to all other creditors except as noted and that as between BDC and TD, they have defined their respective priority pursuant to the Priority Agreements and the definitions therein contained; AND UPON noting that Paccar Financial Services Ltd. ("Paccar") was the owner of two 2015 Peterbilt 367s bearing serial numbers 1XPTP4EX6FD271957 and 1XPTP4EX3FD283435 (the "Paccar Collateral"); AND UPON having read the Affidavit of Service of Trudy Deagle; IT IS HEREBY ORDERED AND ADJUDGED THAT:

1. Service of the materials for this Application on the parties and in the method outlined in the Affidavit of Service is hereby approved and the time for service is abridged as required.
2. The Receiver's Third Report and the Receiver's activities as described therein be and are hereby approved.
3. The interim statement of receipts and disbursements attached as Schedule "A" to the Receiver's Third Report be and is hereby approved.
4. The Receiver's accounts and the accounts of Receiver's counsel as summarized in Schedules "E" and "F" attached to the Receiver's Third Report be and are hereby taxed and approved and the Receiver is authorized to pay the said accounts without further taxation or review.
5. The proposed allocation of costs as outlined at Schedule "B" of the Receiver's Third Report is hereby approved on an interim basis, subject to a final adjustments as further ordered by this Honourable Court.
6. Paccar has priority over the proceeds from the sale of the Paccar Collateral over the claims of any of the Corporations' other creditors.

7. The Receiver be and is hereby at liberty to pay to Paccar from the proceeds of sale of the Paccar Collateral the amounts due to Paccar thereon.
 8. The relative priorities of TD and BDC over the Corporations' personal property is as follows:
 - a. TD has priority over the Accounts Receivable and Inventory (as those terms are defined in the Priority Agreements) of the Corporations; and
 - b. BDC has priority over the remainder of the Corporations' present and after acquired personal property.
 9. Nothing in this Order shall determine any parties' entitlement to or priority in respect of the Unearned Premiums.
 10. Nothing in this Order shall affect the relief granted in favor of Daimler Truck Financial, a business unit of Mercedes-Benz Financial Services Canada Corporation, assignee of First Truck Centre Edmonton Inc., under the Orders granted by Justice R.P. Belzil on March 29, 2018 and April 13, 2018, in the within action.
 11. The Receiver shall deduct from the amounts proposed to be paid to TD and BDC as set out in Schedule "G" to the Receiver's Third Report the following amounts:
 - a. From the amounts attributed to a distribution to BDC, the sum of \$15,000.00, to be held for direct expenses relating to BDC's portion of the Net Proceeds and as security for further adjustment of the cost allocations as set forth in Schedule "B" of the Receiver's Third Report; and
 - b. Pro rata from the amounts to be paid to BDC and TD, the following:
 - i. The sum of \$87,360.52 as a holdback for the WCB Claim (the "WCB Holdback");
 - ii. The sum of \$84,874.60 as a holdback for the CRA Claim (the "CRA Holdback");(the foregoing being collectively the "Holdbacks").
 12. The CRA Holdback and the WCB Holdback respectively stand as security for the CRA Claim and the WCB Claim and neither CRA nor WCB has any further claim to the assets of the Corporations or to the amounts to be distributed pursuant to this or future Orders.
 13. Any interested party is at liberty to apply to this Honourable Court for a determination of the priority to the WCB Holdback and the CRA Holdback and the posting of the Holdback is without prejudice to any interested party's priority to the WCB Holdback or the CRA Holdback.
 14. If either the WCB Holdback or the CRA Holdback are paid to respectively, WCB or CRA, TD or BDC is at liberty to make Application to this Honourable Court for a determination of the proper
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allocation of the CRA Claim and the WCB Claim, as applicable, as against the secured creditors of 1287839 Alberta Ltd.

15. After deduction of the Holdbacks, the Receiver be and is hereby authorized to distribute the Net Proceeds as follows:
- a. To BDC, c/o their solicitors, McLennan Ross LLP, Attention: Chuck Russell, Q.C., the sum of \$3,714,797.31; and
 - b. To TD, c/o their solicitors, Miller Thomson LLP, Attention: Patrick Harnett, the sum of \$519,672.25.
16. Counsel for the Receiver be and is hereby at liberty to pay to the Receiver the Counsel Trust Funds and the Receiver is entitled to receive the Counsel Trust Funds and distribute the Counsel Trust Funds in accordance with the provisions of this or future Orders of the Court and any trusts respecting the Counsel Trust Funds be and hereby released.
17. Any third parties holding funds on account of the Garnishee issued by Chaluk respecting amounts due to Kopala is hereby directed to forward those funds to the Receiver, and upon doing so shall be discharged from their obligations under the Garnishee.



J.C.Q.B.A.
SEPTEMBER 12, 2015

APPROVED AS TO THE ORDER GRANTED:

MILLER THOMSON LLP

McLENNAN ROSS LLP

Per: 

 PATRICK HARNETT
Counsel for Toronto Dominion Bank

Per: _____

RYAN TRAINER
Counsel for Business Development Bank
of Canada

DEPARTMENT OF JUSTICE CANADA

Per: _____

GEORGE BODY
Counsel for Canada Revenue Agency

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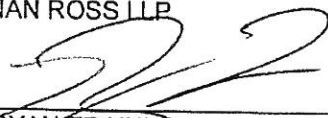
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Counsel for Toronto Dominion Bank

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