

COURT NUMBER

Q.B. No. 563 of 2017

ESTATE NUMBER

23-_____

COURT OF QUEEN'S BENCH FOR SASKATCHEWAN
IN BANKRUPTCY AND INSOLVENCY

JUDICIAL CENTRE

SASKATOON

IN THE MATTER OF THE PROPOSAL OF NU-WEST CONSTRUCTION PRODUCTS INC.
pursuant to Subsection 50.4(1) of the *Bankruptcy and Insolvency Act*, RSC 1985, c B-3

AFFIDAVIT OF DARRYL SCHMIDT

I, **Darryl Schmidt**, of the City of Saskatoon, in the Province of Saskatchewan, **MAKE OATH AND SAY AS FOLLOWS THAT:**

1. I am the President, Chief Executive Officer and sole director of Nu-West Construction Products Inc. ("**Nu-West**"), such that I have personal knowledge of the facts and matters hereinafter deposed to, except where stated to be based upon information and belief, and where so stated, I believe the same to be true.

Background to Nu-West

2. I have worked in the business of selling and distributing construction products in Western Canada continuously for the past 35 years, since I began working in this industry in 1982 at the age of 19. I incorporated Nu-West as a Saskatchewan business corporation on August 27, 1992. I have been the President and Chief Executive Officer of Nu-West continuously from 1992 until the present date. In addition, I have been a director of Nu-West and, through my holding company, Crisp Team Holdings Inc., I have been a shareholder of Nu-West continuously from 1992 until the present date. Attached and marked as Exhibit "A" to this Affidavit is a true copy of a Corporate Profile report for Nu-West recently obtained from the Corporations Branch of the Government of Saskatchewan.
3. The corporate office for Nu-West is located in leased premises in Saskatoon bearing the civic address of 403 – 2750 Faithfull Avenue. In addition to its Saskatoon corporate office, Nu-West carries on business from leased premises located in:
 - a) Winnipeg, Manitoba;
 - b) Saskatoon, Saskatchewan;

- c) Regina, Saskatchewan;
 - d) Edmonton, Alberta;
 - e) Calgary, Alberta; and
 - f) Richmond, British Columbia.
4. Nu-West employs several dozen people at its six locations across Western Canada. The number of employees of Nu-West has varied with the fluctuating volume of business that Nu-West has experienced over the years. In 2016, Nu-West employed 54 persons. Today, Nu-West employs between 25 and 30 people and pays those employees a total aggregate annual payroll of approximately One Million, Six Hundred and Sixty-Five Thousand (\$1,665,000.00 Dollars (not including commissions, Employment Insurance, Canada Pension Plan or health benefits).
5. From February of 2011 until April of 2017, the principal secured creditor of Nu-West has been Canadian Western Bank ("**CWB**"). Pursuant to a commitment letter dated February 7, 2001, CWB provided an operating line of credit to Nu-West in the original principal amount of Three Million (\$3,000,000.00) Dollars (the "**Operating Line**").
6. Apart from CWB, the single largest creditor of Nu-West is my holding company, Crisp Team Holdings Inc. ("**Crisp**"). Crisp has made various unsecured advances to Nu-West over the years. The total indebtedness owing by Nu-West to Crisp is Nine Hundred and Thirty-Six Thousand (\$936,000.00) Dollars. By reason of the facts and matters more particularly described below, Crisp is unlikely to recover any portion of this amount and this \$936,000 owing to my holding company by Nu-West will likely be written off as unrecoverable.

Nu-West's Current Financial Difficulties

7. Continuously from approximately 2008 to the present, Nu-West has experienced mediocre financial results. For the past three years (2015 to the present), Nu-West has suffered a serious financial setback due to depressed market conditions for the sale and distribution of construction products in Western Canada resulting from the downturn in the energy sector and low commodity prices generally.
8. By letter dated December 14, 2016, CWB, by its counsel, demanded repayment in full from Nu-West of the Operating Line. As at that date, the balance owing on the Operating Line was \$1,634,736.86. Attached and marked collectively as Exhibit "B" to this Affidavit

- is a true copy of the demand letter from CWB counsel described in this paragraph, together with a Notice of Intention To Enforce Security pursuant to section 244 of the *Bankruptcy and Insolvency Act*, RSC 1985, c B-3 (the "**BIA**") dated December 14, 2016.
9. In an effort to restructure its business and financial affairs, Nu-West engaged the services of Deloitte Restructuring Inc. ("**Deloitte**") as its financial advisor and engaged the law firm of MacPherson Leslie & Tyerman LLP (now MLT Aikins LLP) as its insolvency counsel.
 10. With the advice and assistance of its professional advisors, Nu-West negotiated and entered into a Forbearance Agreement with CWB dated December 21, 2016 (the "**Forbearance Agreement**"). Pursuant to the Forbearance Agreement, Nu-West was provided with a forbearance period expiring on March 31, 2017 (the "**Forbearance Period**") within which to restructure its business and financial affairs, with a view to repaying the Operating Line in its entirety. Attached and marked as Exhibit "C" to this Affidavit is a true copy of the Forbearance Agreement.
 11. The initial focus of restructuring efforts by Nu-West in early 2017 was to develop and implement a plan involving a consortium financed by a third party investor and lead by a subset of existing employees and shareholders of Nu-West with a view to acquiring the business of Nu-West (the "**Initial Restructuring Plan**"). With that Initial Restructuring Plan as its primary focus, Nu-West expended considerable effort and expense during the first two months of 2017 to reviewing the operations of its six branch locations and their respective product mix, with a view to creating a more streamlined and profitable business enterprise.
 12. Despite the efforts of Nu-West described in the immediately preceding paragraph, the actual sales and profit results for Nu-West continued to weaken through the first quarter of 2017. Although Nu-West achieved progress on cost reductions, the bottom line year to date results for Nu-West during the first quarter of 2017 were very much like those mediocre results achieved in 2016. As a result, the third party investor who had considered financing the Initial Restructuring Plan lost confidence in Nu-West and withdrew entirely from further discussions. Accordingly, the Initial Restructuring Plan is no longer a viable restructuring option for Nu-West.

The Proposed Transaction With PoIR Enterprises Inc.

13. As a result of the failure of the Initial Restructuring Plan, in March of 2017, Nu-West shifted the focus of its restructuring efforts to identifying a suitable industry partner to acquire the business operations of Nu-West (the "**Secondary Restructuring Plan**").

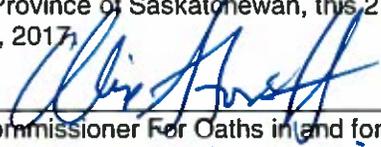
14. Particulars of the efforts of Nu-West to develop and implement the Secondary Restructuring Plan are more particularly described in the Confidential Affidavit sworn by me on April 21, 2017 (the "**Confidential Affidavit**").
15. The outcome of the Secondary Restructuring Plan was to identify Pol R Enterprises Inc. of Quebec City ("**Pol R**") as the most suitable candidate to acquire the business of Nu-West.
16. For reasons more particularly described in the Confidential Affidavit, Nu-West identified Pol R as the potential purchaser of the business of Nu-West who carried the greatest prospect for a stable, long-term commitment to maintaining the business enterprise which has been carried on by Nu-West in Western Canada for the past quarter century. Pol R is owned in part (as to a 25% interest) by Desjardins Financial Security Investments Inc. of Quebec ("**DFS Investments**"). DFS Investments is part of the Desjardins Group, the sixth largest financial institution in Canada.
17. The Chief Executive Officer of Pol R is Benoit Poupart ("**Mr. Poupart**"). Mr. Poupart is a well-respected individual with a lengthy history in the construction products distribution industry whom I have known personally for many years.
18. In March of 2017, Pol R executed a Non-Disclosure Agreement with Nu-West regarding a transaction for the potential acquisition of Nu-West by Pol R. Thereafter, Pol R arranged for its Chief Operating Officer, Christian Lafortune ("**Mr. Lafortune**"), to travel from Quebec to Saskatoon to meet with Nu-West personnel, to tour the Nu-West Saskatoon facilities and to assess the potential "fit" for a transaction between Pol R and Nu-West. On March 20 and 21, 2017, I travelled to Montreal to meet with Mr. Poupart, Mr. Lafortune and other Pol R personnel and to discuss further the prospect for a potential acquisition of Nu-West by Pol R.
19. During the last two weeks of March of 2017, Pol R and Nu-West agreed to proceed to develop and implement the proposed transaction whereby Pol R would acquire the business of Nu-West. However, the Forbearance Period was scheduled to expire on March 31, 2017. Pursuant to the Forbearance Period, CWB was in a position to enforce its security in the assets of Nu-West. Furthermore, by late March of 2017, Nu-West had severely depleted its available cash with which to operate.
20. As a result of the circumstances described above, with the permission of Nu-West, discussions took place directly between CWB and Pol R. As a result of these discussions, on April 12, 2017, Pol R acquired and took an assignment from CWB (the

"**CWB Assignment**") of the indebtedness owed by Nu-West to CWB pursuant to the Operating Line, as well as the rights of CWB pursuant to:

- a) the Overdraft Lending Agreement between CWB and Nu-West dated February 10, 2011; and
 - b) the General Security Agreement granted in favour of CWB by Nu-West and dated February 22, 2011 whereby Nu-West granted to CWB a security interest in all of its present and after-acquired personal property.
21. As a result of the CWB Assignment, Nu-West is indebted to Pol R in the amount of \$1,525,060.58 (as at April 20, 2017).
 22. Subsequent to the CWB Assignment, Pol R has provided Nu-West with working capital required to maintain the business operations of Nu-West.
 23. On April 20, 2017, Nu-West filed a Notice of Intention to Make a Proposal To Its Creditors pursuant to section 50.4(1) of the BIA (the "**Nu-West NOI**"). Attached and marked as Exhibit "D" to this Affidavit is a true copy of the Certificate of Filing of the Nu-West NOI prepared by the Office of the Superintendent of Bankruptcy and dated April 20, 2017.
 24. Attached and marked as Exhibit "E" to this Affidavit is a true copy of the "Form 33" List of Creditors of Nu-West prepared in conjunction with the Nu-West NOI. I note that my holding company, Crisp Team Holdings Inc., is listed in the attached "Form 33" List of Creditors of Nu-West for \$5,012.50. That debt pertains to arrears of rent owing by Nu-West to Crisp Team Holdings Inc. on a building in Regina, Saskatchewan which is owned by Crisp Team Holdings Inc. and leased to Nu-West. As described above in paragraph 6 of this Affidavit, in addition to that amount of rent arrears of \$5,012.50, Nu-West is also indebted to Crisp Team Holdings Inc. in the additional amount of \$936,000.00 in regard to an unsecured shareholder's loan.
 25. Attached and marked collectively as Exhibit "F" to this Affidavit are true copies of Saskatchewan, Alberta, Manitoba and British Columbia Personal Property Registry Search Results pertaining to Nu-West, each with a currency date of April 21, 2017.
 26. On April 19, 2017, Pol R delivered to Nu-West an Offer to Purchase the assets of Nu-West (the "**Pol R Offer to Purchase**"). On April 20, 2017, Nu-West accepted the Pol R Offer to Purchase. A true copy of the Pol R Offer to Purchase accepted by Nu-West is attached as Exhibit "A" to the Confidential Affidavit.

27. By reason of the facts and matters described in this Affidavit and in the Confidential Affidavit, I believe that the Pol R Offer to Purchase is the best (and the only realistic) opportunity for the business enterprise of Nu-West to be preserved, for the jobs of the 25 to 30 employees of Nu-West to be maintained and for the business enterprise of Nu-West to continue to generate economic activity, to meet its annual payroll of approximately \$1,665,000.00 and to continue to make its 25-year contribution to the tax base and economy of Western Canada.
28. I make this affidavit in support of the application by Nu-West for an Order approving the sale of its assets to Pol R pursuant to the Pol R Offer to Purchase, all as more particularly described in the Notice of Application dated April 21, 2017.

SWORN BEFORE ME at the City of Saskatoon, in)
 the Province of Saskatchewan, this 21st day of)
 April, 2017.)


 A Commissioner For Oaths in and for the Province
 of Saskatchewan *being a solicitor (A.S.)*


 DARRYL SCHMIDT

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