

COURT FILE  
NUMBER

1601-14400

COURT

COURT OF QUEEN'S BENCH OF ALBERTA

JUDICIAL CENTRE

CALGARY

APPLICANT

FACTORS WESTERN INC., formerly 1239783 Alberta Ltd.

RESPONDENTS

DCR INC. and X-TREME CUSTOM RIDES INC.

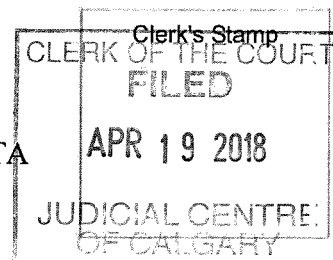
IN THE MATTER OF THE RECEIVERSHIP OF  
DCR INC. and X-TREME CUSTOM RIDES INC.

DOCUMENT

**SECOND REPORT OF THE RECEIVER,  
HARDIE & KELLY INC.  
APRIL 19, 2018**

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**SECOND REPORT OF THE RECEIVER  
HARDIE & KELLY INC.  
APRIL 19, 2018**

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## INTRODUCTION

1. On November 8, 2016, Factors Western Inc. (“FWI”) made an application to the Court of Queen’s Bench of Alberta (the “Court”) for the appointment of a receiver (the “Receiver”) of the current and future assets, undertakings and property of DCR Inc. (“DCR”) and X-Treme Custom Rides Inc. (“X-Treme”).
2. The Court granted an Order (the “Receivership Order”) on November 4, 2016 (the “Receivership Date”) appointing Hardie & Kelly Inc. (“H&K”) as the Receiver of DCR and X-Treme (collectively referred to as the “Companies”).
3. On March 16, 2017, the Receiver filed a report with Court (the “First Report”) in advance of the Receiver’s application seeking to amend the Receivership Order to permit the Receiver to assign the Companies into bankruptcy.
4. On March 30, 2017, the Court granted an Order amending the Receivership Order to provide the Receiver with the authority to assign DCR and X-Treme into bankruptcy.
5. The purpose of this report (the “Second Report”) is to provide the Court with:
  - a. An update regarding the assignments of DCR and X-Treme into bankruptcy;
  - b. An update as to the activities of H&K in its capacity as the Receiver and trustee of the Companies (the “Trustee”); and
  - c. Background information in respect of the Receiver’s application to amend the Statement of Claim filed by FWI in Alberta Court of Queen’s Bench Action No. 1601-13686 to add itself as a plaintiff pursuant to Rules 3.62 and 3.74 of the Alberta Rules of Court, Alta. Reg. 124/2010 (the “Rules”).

**ASSIGNMENTS INTO BANKRUPTCY**

6. On May 3, 2017, the Receiver assigned the Companies bankruptcy. H&K was appointed as the Trustee of the two bankrupt estates.
7. The respective First Meetings of Creditors were each held on May 24, 2017, at which time the appointments of H&K as the Trustee of the Companies' bankrupt estates was affirmed. Mr. Matt Godbolt, of FWI, was appointed as the sole inspector of each of the bankrupt corporate estates.

**DAVID BRADLEY ROWE**

8. In the First Report, we advised that Mr. David Bradley Rowe was the sole shareholder and director of each of DCR and X-Treme and that Mr. Rowe had filed an assignment into bankruptcy on July 20, 2016.
9. Barry Nykyforuk & Associates Inc. was originally appointed as the trustee of Mr. Rowe's bankrupt estate. At a meeting of creditors held on April 5, 2017, H&K was appointed as the substitute trust of Mr. Rowe's bankrupt estate.
10. At this time, Mr. Rowe remains an undischarged bankrupt.

**APPLICATION TO AMEND PLEADINGS**

11. DCR and Canadian Natural Resources Inc. ("CNRL") were parties to a Master Goods and Services Agreement, dated February 25, 2010 (the "Master Agreement"). FWI is the assignee of all accounts receivable owing to DCR by CNRL under the Master Agreement pursuant to the terms of a General Assignment Letter dated March 26, 2010, between FWI and DCR (the "Assignment Letter").

12. On October 14, 2016, FWI filed a Statement of Claim against CNRL in Alberta Court of Queen's Bench Action No. 1601-13686 for unpaid amounts owing by CNRL to DCR under the Master Agreement. The Receiver understands that CNRL has defended against the allegations in the Statement of Claim, in part, on the basis that DCR was not permitted to assign the Master Agreement nor transfer or assign any payment due to DCR under the Master Agreement without the prior written consent of CNRL. At paragraph 4 of its Statement of Defence, CNRL alleges that DCR did not obtain CNRL's consent to the assignment of these accounts receivable to FWI, and that therefore the purported assignment "is not valid and is not binding" on CNRL.
13. The Receiver further understands that on March 22, 2018, CNRL filed a summary judgment application seeking an order dismissing FWI's action on the same basis as that alleged in paragraph 4 of its Statement of Defence – namely, that the assignment of the accounts receivable to FWI was not binding on CNRL since DCR was not permitted to assign the Master Agreement nor transfer or assign any payment due to DCR under the Master Agreement without the prior written consent of CNRL.
14. While the Receiver does not at this time take any position with respect to the existence or validity of any receivable that may be due from CNRL, the Receiver is of the view that:
  - a. in the event there proves to be an outstanding account owing from CNRL, such account either belongs to FWI or to the estate of DCR;
  - b. whether or not the Assignment Letter is valid or binding on CNRL impacts only to whom the receivable is owed, not the existence or validity of the receivable;
  - c. if CNRL is correct in its allegation in paragraph 4 of its Statement of Defence that the purported assignment of the account receivable to FWI "is not valid and is not binding" on CNRL, this would mean by necessity that the account receivable is still owned by the estate of DCR.

15. In light of the above, Receiver's counsel requested that CNRL consent to an amendment to its Statement of Claim to add the Receiver as a plaintiff in the Action. The Receiver is advised by its counsel that CNRL's counsel has refused to consent to such an amendment. Accordingly, the Receiver is filing an application to amend the Statement of Claim to have it named as a plaintiff (and to make various necessary incidental amendments) in the event the Assignment Letter is found to be not valid and not binding on CNRL as alleged in paragraph 4 of the Statement of Defence.
16. To date, apart from applying to be added as a plaintiff in FWI's claim against CNRL, the Receiver has not taken any steps in respect of accounts receivable from CNRL on the understanding that such accounts had been properly assigned to FWI by DCR prior to the commencement of the receivership proceedings.
17. The Receiver has been advised by FWI's counsel that this action is still in its early stages, in that the parties have exchanged Affidavits of Records but have not yet scheduled or held any questionings.

#### **RECOMMENDATION**

18. For the reasons stated above, the Receiver recommends that the Statement of Claim be amended to include it as a plaintiff and to make various other necessary and incidental amendments.

All of which is respectfully submitted this 19<sup>th</sup> day of April, 2018.

Hardie & Kelly Inc., in its capacity as  
Receiver of DCR Inc. and X-Treme Custom Rides Inc.  
and not in its personal capacity

Per:



\_\_\_\_\_  
Marc Kelly  
Senior Vice President