



This is the first affidavit of
Erin Welte in this case
and was made on July 24, 2023

No. 235306
Vancouver Registry

IN THE SUPREME COURT OF BRITISH COLUMBIA

BETWEEN

NATIONAL BANK OF CANADA

PETITIONER

AND

1239583 B.C. LTD.

RESPONDENT

AFFIDAVIT

I, Erin Welte, of Calgary, in the Province of Alberta, senior manager, SWEAR THAT:

1. I am a Senior Manager, Special Loans at the National Bank of Canada (the "**Bank**"), the petitioner in this proceeding, and as such I have personal knowledge of the matters deposed to in this affidavit, except where I depose to a matter based on information from an informant I identify, in which case I believe that both the information from the informant and the resulting statement are true.

2. This affidavit is made in support of the orders sought by the Bank in its petition filed in this proceeding, including an order that FTI Consulting Canada Inc. ("**FTI**") be appointed as receiver (the "**Receiver**") of the property, assets, and undertakings of 1239583 B.C. Ltd. ("**123 Co.**"). including those of its predecessor prior to amalgamation 1134759 B.C. Ltd. ("**113 Co.**" and, together with 123 Co., the "**Respondent**") pursuant to section 243(1) of the *Bankruptcy and Insolvency Act* (Canada) (the "**BIA**") and section 39 of the *Law and Equity Act* (British Columbia).

I. INTRODUCTION

3. The Bank provided the Respondent with, among with other loans and credit facilities, a term loan in the amount of \$5,440,000 pursuant to the terms of an Offer of Financing dated February 2, 2022 (the “**Offer of Financing**”) to provide financing for 123 Co.’s acquisition of a farm property (the “**Farm**”). The Bank provided 123 Co. a second term loan in the amount of \$233,000 pursuant to an Offer of Financing dated May 25, 2022 (the “**Motorhome Offer of Financing**”) to provide financing for 123 Co.’s acquisition of a motorhome. Copies of the Offer of Financing and the Motorhome Offer of Financing are attached to Affidavit #1 of Donna Barnes made July 18, 2023 (the “**Barnes Affidavit**”) as **Exhibits “A”** and “**B**”, respectively.

4. The Respondent’s interests in the Farm, associated fixtures and other property that form part of 123 Co.’s business and operations are collectively referred to in this affidavit as the “**Farm Properties**”.

5. The Respondent is a British Columbia corporation that operates the Farm Properties following amalgamation into 123 Co. Copies of BC Registry Services company summaries for 123 Co. and 113 Co. are attached to the Barnes Affidavit as **Exhibit “AA”**.

6. 123 Co.’s obligations to the Bank under the Offer of Financing are guaranteed by 113 Co. and Jaswant Bath (together, the “**Guarantors**”). 123 Co.’s obligations under the Motorhome Financing are also guaranteed by Jaswant Bath.

7. To secure the payment of their obligations to the Bank, 123 Co. and 113 Co. granted to the Bank a comprehensive security package over their respective assets, undertakings, and property, as further described below, including a first-ranking collateral mortgage over lands on which the Farm Properties operate and general security agreements with respect to the personal property of 123 Co. and 113 Co.

8. 123 Co. has been in default of its payment obligations under the Offer of Financing and Motorhome Offer of Financing since at least January 17, 2023. As of the date of this affidavit, the amount owing to the Bank is \$5,977,355.84 (not including accruing fees, costs including legal and financial advisor fees, and interest) (the “**Indebtedness**”).

9. Notwithstanding the Respondent being in default of its payment obligations for approximately six (6) months, the Bank has to date refrained from exercising its contractual rights to enforce its security.

10. Despite the six (6) month period it has been granted by the Bank, the Respondent has not refinanced, obtained investment in, and/or sold its interest in the Farm Properties to meet its obligations to the Bank.

11. Over the past six (6) months, in addition to its payment default, the Respondent has failed to follow through on several of its commitments to the Bank, including by neglecting to comply with its obligations to provide the Bank with routine financial information required for the Bank to assess whether its security may be at risk. Indeed, no payments nor required monthly reporting has been made by 123 Co. at all during 2023. These failures amount to breaches of contractual commitments to the Bank.

12. In the circumstances, the Bank has lost confidence that the Respondent's management are prepared to work diligently, transparently, and in good faith to satisfy the Respondent's obligations to the Bank.

13. Further to its contractual entitlement, the Bank seeks the immediate appointment of a receiver over the the assets, undertakings, and property of the Respondent to protect the Bank's secured position, prevent against the potential impairment of the value of the Respondent's property, and assume conduct of the sale process for the Farm Properties in the interest of all affected stakeholders.

II. 123 Co.'s BUSINESS AND PROPERTY

A. *Business Operations*

14. There is limited information available about 123 Co.'s business and operations. Much of what the Bank has been told by 123 Co.'s and its representatives has changed over time or is not supported by documents that can be used to verify the business that has been conducted by 123 Co.

15. As per the information known to the Bank, the Farm is a 163-acre property near Port Alberni. The Farm has various structures including a large, interconnected barn as well as a number of smaller buildings, including a machine/tool shed.

16. Prior to its acquisition by 123 Co., the Farm was operated as a dairy farm. Since its acquisition, 123 Co. has reported, at different times, that it would be used to grow vegetables, grow hay, raise goats, harvest cedar trees, and extract gravel. As far as the Bank can tell, these activities have not occurred to any significant extent in either 2022 or 2023.

17. During 2022, to the knowledge of the Bank, 123 Co. had no material revenue generated from harvesting crops or any other operations at the Farm.

18. During 2023, 123 Co. has not proceeded to provide the Bank with information about its plans during the year's growing season. At the time I affirmed this affidavit, it is not clear to the Bank that any significant planting has taken place at the Farm for the 2023 growing season. No such information has been provided by 123 Co. to the Bank.

19. To the Bank's knowledge, the Respondent does not currently have any employees. Jasbir Bath, a director of 123 Co., and her husband Sikander Bath may live on the Farm for part of the year, but also reside in the Fraser Valley. Jaswant Bath appears to also be involved in some capacity. I understand that Jaswant Bath is the mother of Sikander Bath. The Bank is not aware of any other individuals who live or work on the Farm.

B. The Farm Properties

20. The Farm is operated by 123 Co. and located on a parcel of land near Port Alberni, B.C. with a Parcel Identifier of 008-620-741, a legal Description of District Lot 72, Alberni District and an address of 9250 Somers Rd, Port Alberni, B.C.

21. As stated above, the improvements on the Farms consist of two (2) houses, a large interconnected barn and some smaller buildings including a shed.

22. The Farm is ostensibly an operating agricultural property. 123 Co. has indicated an intention to plant and harvest vegetables on the Farm. A small volume of lumber was reported as sold by 123 Co. during 2022. 123 Co. also indicated an intention to harvest gravel from the property, but these plans appear to have been abandoned. During 2023, 123 Co. expressed an intention to grow field or vegetable crops, create a cedar tree nursery, and raise goats.

23. As of June 30, 2023, no material information has been provided by 123 Co. about 123 Co.'s plans and progress for the 2023 planting season or operations on the Farm.

III. THE BANK LOANS AND SECURITY

A. Credit Facilities

24. The Offer of Financing dated February 2, 2022 provided for a term loan having an authorized amount of \$5,440,000 with a term of 60 months and amortization of 264 months, a global net risk line for derivatives in the amount of up to \$825,000, an operating credit line of up to \$100,000, and MasterCard business credit cards with an authorized credit of \$50,000. The global net risk line for derivatives was never utilized by 123 Co.

25. The Motorhome Offer of Financing dated May 25, 2022, provided for a further term loan having an authorized amount of \$233,000 and an amortization of 84 months.

26. In summary, the following credit facilities (the "Credit Facilities") were made available by the Bank to 123 Co. pursuant to the Offer of Financing and Motorhome Offer of Financing:

Credit Number	Purpose of Facility	Description	Authorized Amount
Offer of Financing			
1	Finance the acquisition of all shares in 113 Co. which owned the Farm	Term loan	\$5,440,000
2	To permit interest rate hedging	Global Net Risk Line for Derivatives	Max. \$825,000
3	Finance day-to-day operations	Operating credit	\$100,000
4	Facilitate the payment of day-to-day ancillary expenses	Mastercard business credit card	\$50,000
Motorhome Offer of Financing			
5	Finance the purchase of a used Motorhome (a 2011 Newmar Mountain Aire 4314)	Term loan	\$233,000

B. Security for the Credit Facilities

27. The Guarantors have each granted unlimited guarantees with respect to 123 Co.'s obligations to the Bank under the Offer of Financing and Jaswant Bath granted an unlimited guarantee with respect to 123 Co.'s obligations to the Bank under the Motorhome Offer of Financing (the "**Guarantees**"). Copies of the Guarantees are attached as **Exhibits "G" and "I"** to the Barnes Affidavit.

28. To secure its obligations under the Offer of Financing, Motorhome Offer of Financing and Guarantees, the Respondent has also granted the Bank security (the "**Security**") over its assets, undertakings, and property.

29. The Security includes a first-ranking collateral mortgage on the Farm and the pursuant to a Mortgage dated February 22, 2022 (the "**Mortgage**"), a copy of which is attached to the Barnes Affidavit as **Exhibit "C"** along with a copy of a Land Title Office search print showing the registration of the Mortgage. Also attached as **Exhibit "D"** to the Barnes Affidavit are the Bank's standard mortgage terms (MT140002) to which the Mortgage is subject.

30. Land Titles Office search prints for the Farm is attached as **Exhibit "Y"** to the Barnes Affidavit. As of the date of this affidavit, the Bank is the only secured creditor with registrations against the Farm.

31. 123 Co. and 113 Co. have granted general security agreements to secure their obligations to the Bank under the Offer of Financing and 123 Co. granted a general security agreement to secure its obligations to the Bank under the Motorhome Offer of Financing (the "**GSAs**"). Copies of the GSAs are attached as **Exhibits "F", and "H"** to the Barnes Affidavit.

32. The Bank has registered the GSAs in the British Columbia Personal Property Registry (the "**PPR**"). PPR search results for 123 Co. and 113 Co. are attached as **Exhibit "Z"** to the Barnes Affidavit.

33. The Respondent has also granted the Bank certain other security, including designating the Bank as beneficiary under insurance policies covering the Farm, an environmental indemnity agreement, a power of attorney for 123 Co.'s banker's acceptances, each as outlined in the Offer of Financing. Copies of these documents are attached as **Exhibits "J", "K", and "L"** to the Barnes Affidavit.

V. THE RESPONDENT'S PAYMENT DEFAULT AND FAILURES TO MAKE REQUIRED DISCLOSURES

34. 123 Co. has been in default of its payment obligations under the Offer of Financing since at least January 17, 2023, when it failed to pay the amounts owing under Credit Number 1 (the "**Payment Defaults**"). No payments have been made on the operating line of credit (Credit Facility 3) since November 18, 2022. No payments have been made on the term loan (Credit Facility 1) or the motorhome term loan (Credit Facility 5) since December 1, 2022, although payment was attempted on January 3, 2023, it was reversed by the Bank because the funds had been taken from an overdrawn account with no funds available.

35. In the period from October 2022 to the present, the Bank has made efforts in an attempt to work with 123 Co. to resolve payment difficulties, remedy the payment defaults, and to obtain further information from the Respondent that would allow the Bank to assess whether its Security is in jeopardy.

36. On December 23, 2022, the Bank advised 123 Co., through the email addresses the Bank was provided for Jaswant and Jasbir Bath, that due to defaults on their accounts, they were being transferred to the Bank's special loans department. An email from Jaswant Bath's email account signed "Jaswant and Jasbir", responded that they had been out of reach due to "medical reasons plus the weather" and advised that they had funds coming before January 15 and would be "on track" in a few weeks. They also advised that they were getting a contract in place to extract gravel to generate revenue. A copy of the December 23, 2022, email chain is attached as **Exhibit "M"** to the Barnes Affidavit.

37. On December 31, 2022, Jaswant Bath's email account signed "Jaswant and Jasbir" emailed the Bank on behalf of 123 Co., advising that by January 17, they would have funds to cover the debts and a further 6 months of payments which would carry them over to the 2023 crop season which would bring cash flow. A copy of the December 31, 2022, email is attached as **Exhibit "N"** to the Barnes Affidavit.

38. On January 24, 2023, I emailed the email addresses the Bank was provided for Jaswant and Jasbir Bath, on behalf of 123 Co., asking for a time to speak because their commitment to cover the amounts owing by January 17, 2023, had not occurred. A copy of the January 24, 2023, email chain is attached as **Exhibit "O"** to the Barnes Affidavit.

39. On February 1, 2023, I received a response from the email address of Jasbir Bath, signed "Jaswant and Jasbir", on behalf of 123 Co. asking for a phone call the following week and asking for "annual payment scheduling" and stating that they were waiting on a large deposit to come in and cover the accounts. A copy of the February 1, 2023 email chain is included within **Exhibit "O"** to the Barnes Affidavit.

40. On February 16, 2023, the Bank advised 123 Co. of multiple events of default under the Offer of Financing and related credit documents and that it expected all events of default to be remedied by March 1, 2023. Specifically, 123 Co. failed to:

- (a) provide a monthly aged listing of accounts receivable and payable since at least September 2022;
- (b) make payments on each of its credit facilities, including failure to pay interest on the operating line of credit (Credit Facility #3), failure to pay blended monthly payments of principal and interest on the term loan (Credit Facility #1), failed to make blended monthly payments of principal and interest on the motorhome term loan (Credit Facility #5), and was significantly overdrawn on its bank accounts; and
- (c) provide or maintain insurance coverage on the Farm (the "**February Defaults**").

A copy of the February 16, 2023 email chain is attached as **Exhibit "P"** to the Barnes Affidavit.

41. On February 21, 2023, Jaswant Bath's email account signed "Jaswant and Jasbir" emailed the Bank on behalf of 123 Co., advising that it intended to correct certain reporting defaults by March 30, intended to correct certain payment defaults by "Mid April" and provided an incomplete copy of an insurance policy on the Farm. 123 Co., but did not ultimately correct the defaults. A copy of the February 21, 2023, email is included in an email chain attached as **Exhibit "Q"** to the Barnes Affidavit.

42. On March 15, 2023, Jaswant Bath's email account signed "Jaswant and Jasbir" emailed the Bank on behalf of 123 Co., proposing a conference call to discuss their debts. Copies of an e-mail chain containing discussion of a conference call are attached as **Exhibits "R"** and **"S"**.

43. On March 17, 2023, the Bank through counsel delivered a letter to 123 Co., 113 Co. and Jaswant Bath among other things:

- (a) notifying 123 Co. of further reporting defaults (the “**March Defaults**”, and together with the February Defaults, the “**Defaults**”);
- (b) demanding payment of the outstanding amounts under each of the Credit Facilities inclusive of accrued interest, fees, indemnities, legal fees and other amounts payable which at that time was amounted to \$5,821,765.84; and
- (c) reserving all rights and remedies including under the Mortgage.

A copy of the March 17, 2023, letter is attached as **Exhibit “T”** to the Barnes Affidavit.

44. On March 23, 2023, I attended a conference call with representatives of 123 Co. who advised they were too sick to speak. On March 24, 2023, I attempted to attend a second call with 123 Co., who did not call in. Later that day I received an email from the email address of Jasbir Bath advising that she was too sick to talk and she would advise when she would be able to speak. On March 26, 2023, Jaswant Bath’s email account signed “Jaswant and Jasbir” emailed me, proposing for a call the following day. Copies of the March 23-26, 2023 email chains are attached as **Exhibits “U”** and “**V”** to the Barnes Affidavit.

45. On March 27, 2023, I attended a Microsoft Teams call with an individual who identified herself as Jaswant Bath. I asked whether 123 Co. had accounts with another bank and was initially told no, but eventually was informed that 123 Co. had a separate account with the Bank of Montreal. This was in breach of the Offer of Financing which require all day-to-day banking and deposits from 123 Co.’s business operations to be with the Bank. We discussed the arrears and the operations at the Farm. Jaswant Bath advised that machinery had been acquired in July 2022, and they intended to harvest hay but most had been lost due to heat. Ms. Bath also advised that the municipality of Port Alberni was only offering a small return for gravel excavation so that had not been pursued. Logging had also not been pursued. Ms. Bath advised that 123 Co. would need a couple of months to respond to the Bank’s demand for payment.

46. On April 5, 2023, the Bank delivered a letter providing notices pursuant to section 244 of the *Bankruptcy and Insolvency Act* and pursuant to section 21 of the *Farm Debt Mediation Act*. A copy of the April 4, 2023, email enclosing these notices is attached as **Exhibit “W”** to the Barnes Affidavit.

47. On April 6, 2023, Rajdeep Deol contacted the Bank's lawyers indicating he had been retained as counsel for 123 Co. A copy of the April 6, 2023, letter from Rajdeep Deol is attached as **Exhibit "X"** to the Barnes Affidavit. To date, no further correspondence has been received from Mr. Deol on behalf of 123 Co.

48. The Bank's efforts to engage with the Respondent have not been successful, as confirmed by the ongoing Defaults. To date, despite repeated assurances, 123 Co. has not covered its payment defaults nor provided monthly reporting at all in 2023.

49. The Respondent's failure to be fully responsive and transparent with respect to the Bank's information requests is concerning to the Bank. The Respondent expressly committed to provide such information in the Offer of Financing. The requested information is of a routine nature, should be readily available to the Respondent, and is necessary for the Bank to assess whether its security is at risk of impairment.

50. As of the date this affidavit was made, 123 Co. has not remedied the defaults identified and defined in Exhibit P and Exhibit T of the Affidavit of Donna Barnes. Rather, 123 Co. has continued to default on its ongoing reporting and payment obligations since that time.

51. Section 8.1 of the Standard Mortgage Terms (MT140002) attached as **Exhibit "D"** to the Barnes Affidavit states that, among other things, a default occurs under the Mortgage if the mortgagor fails to perform any of the Obligations of any Agreement or the mortgage or the mortgagor breaches any promise, condition or agreement made to the Bank under the mortgage or any Agreement.

52. Obligations is defined in the Standard Mortgage Terms (MT140002) as including all obligations, indebtedness and liabilities of the mortgagor to the Bank. Agreement is defined as including any agreement or document that gives rise to any Obligations.

53. Section 9.2 of the Standard Mortgage Terms (MT140002) states that, among other things, the Bank may demand immediate payment or performance of any or all of the "Obligations", in which case such "Obligations" become immediately due and payable.

54. Section 9.2(i) of the Standard Mortgage Terms (MT140002) states that, among other things, the Bank may appoint a receiver upon default.

55. Section 5.1 of the general security agreements granted by 123 Co. and 113 Co. attached as **Exhibits "X" and "H"** to the Barnes Affidavit states that the debtor will be in default if, among other things, the debtor does not pay the Bank when payable any sum owing under the Obligations or is in default under any other agreement with the Bank.

56. Section 5.2(i) of the general security agreements granted by 123 Co. and 113 Co. state that the Bank may appoint a receiver upon default.

57. Section 1 of the unlimited guarantees of 113 Co. and Jaswant Bath attached as **Exhibit "G" and "I"** to the Barnes Affidavit state that the signatory guarantees payment to the Bank of all future debts and liabilities of 123 Co.

58. A stay of proceedings was in place from April 18, 2023, to June 6, 2023, pursuant to the *Farm Debt Mediation Act*.

59. The amounts owed by 123 Co. to the Bank as of July 17, 2023, under Credit Documents and Mortgage (in each case as defined in the Petition), are set out on the payout statement attached my affidavit as **Exhibit "A"**.

60. I can confirm that the indebtedness set out in Exhibit A does not contain any penalty for early prepayment.

61. I know of no facts which would constitute a defense to the claim or part of the claim of the Bank against 123 Co. for payment of the Indebtedness.

VII. THE NEED FOR A COURT-APPOINTED RECEIVER

62. The Respondent has failed to repay the Indebtedness to the Bank as required under the Offer of Financing and Motorhome Offer of Financing. Notwithstanding the six (6) month grace period granted by the Bank, the Respondents has not found a solution to its financial problems.

63. Over a period of approximately six (6) months, the Bank has made efforts to engage with the Respondent and provided it with ample opportunity to restructure its financial affairs in a manner that would allow them to meet their obligations to the Bank. However, during this grace period the Respondent has not managed to reduce its liability to the Bank.

64. In addition to their long-standing Payment Defaults, the Respondent has in the Bank's view also not been fully forthcoming in providing the Bank with required documentation and information about the status of its business and financial affairs.

65. Specifically, the Respondent's conduct in, among other things:

- (a) providing changing, inconsistent or non-verifiable information about farm and business operations;
- (b) not fully remedying numerous defaults despite ample opportunity;
- (c) not making any payments at all during 2023;
- (d) not complying with various reporting obligations in respect of financial statements, listing of accounts receivable and accounts payable; and
- (e) not diligently pursuing commercially reasonable sale opportunities for the Farm Properties,

have led the Bank to lose all confidence in the Respondent's willingness to work diligently, transparently, and in good faith to satisfy their obligations to the Bank.

66. The Bank has determined that it now needs to take steps to enforce its Security through the appointment of a receiver, a contractual right that the Bank negotiated when executing the Offer of Financing and Motorhome Offer of Financing and obtaining security in the form of the Mortgage and each of the GSAs granted by the Respondent. The Bank is of the view that such action is necessary to protect and preserve the value of its Security. In particular, the opaque nature of the Respondent's business, and the nature of the Farm, which includes the possible extraction of gravel and timber, requires the Receiver to be appointed over the Respondent's assets, undertakings, and properties (over which the Bank has Security) to ensure that the status quo of the Respondent's business is preserved during the enforcement process.

67. In the Bank's view, the appointment of the Receiver with the powers to require access to the Respondent's business and financial information is necessary to obtain an accurate picture of the Respondent's business, its value, and available options for realization. Additionally, it is the Bank's position that it is necessary and expedient that the Farm Properties be sold. The Bank accordingly requests that, upon appointment, the Receiver have the powers necessary to

pursue a transparent, orderly, and timely sale process for the Farm Properties under the supervision of this Court.

IX. CONCLUSION

68. The Bank has given 123 Co. many months since the January 2023 Payment Defaults to repay the amounts owing under the Offer of Financing and Motorhome Offer of Financing and to pursue options for restructuring their financial affairs. At this stage, the Bank has lost confidence in the Respondent's ability to either meet its obligations to the Bank or to diligently pursue a commercially reasonable sale of the Farm Properties. The Bank is of the view that the appointment of a Receiver is just and convenient in the circumstances.

SWORN BEFORE ME at Calgary, Alberta
on July 24, 2023


A Commissioner for taking Affidavits for
Alberta

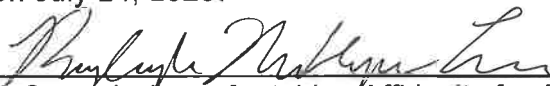
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Erin Welte

Rayleigh (Min Hyu) Lee
Student-at-Law

This is Exhibit "A" referred to in Affidavit #1 of Erin Welte made before me at Calgary, Alberta on July 24, 2023.



A Commissioner for taking Affidavits for Alberta

Rayleigh (Min Hyu) Lee
Student-at-Law

1239583 BC LTD

**Indebtedness to National Bank of Canada
Balance as at: July 19, 2023**

	<u>Amount (Cdn.\$)</u>		
Operating Loan	\$100,000.00	Interest Rate	P + 1.75 % ⁽²⁾
Accrued Interest	\$5,413.95	Per Diem	\$24.52
Sub Total in Cdn.\$:	<u>\$105,413.95</u>		
Term Loan	\$5,351,591.90	Interest Rate	4.25%
Accrued Interest	\$161,583.47	Per Diem	\$623.13
Sub Total in Cdn.\$:	<u>\$5,513,175.37</u>		
Term Loan	\$218,304.82	Interest Rate	6.10%
Accrued Interest	\$9,471.06	Per Diem	\$36.48
Sub Total in Cdn.\$:	<u>\$227,775.88</u>		
Overdraft ⁽¹⁾	\$69,948.89	Interest Rate	21.00%
Accrued Interest	\$724.40	Per Diem	\$40.24
Sub Total in Cdn.\$:	<u>\$70,673.29</u>		
Mastercard ⁽¹⁾	\$14,834.92	Interest Rate	25.99%
Sub Total in Cdn.\$:	<u>\$14,834.92</u>		
Legal Fees	\$45,482.43		
Sub Total in Cdn.\$:	<u>\$45,482.43</u>		
Total in Cdn.\$:	<u>\$5,977,355.84</u>		

⁽¹⁾ Subject to balance fluctuations daily.

⁽²⁾ Subject to Prime Rate change. As at July 19, 2023 Canadian Prime Rate is 7.20%