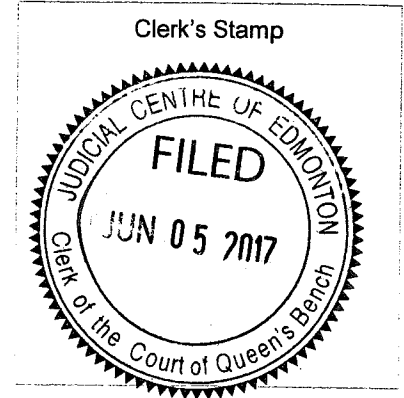


COURT FILE NUMBER 1603 04928  
COURT COURT OF QUEEN'S BENCH OF ALBERTA  
JUDICIAL CENTRE EDMONTON  
PLAINTIFFS PRESTIGIOUS PROPERTIES INC.,  
DEFENDANT



COLD LAKE ESTATES INC., NORTHERN ALBERTA ESTATES INC., THE MULLER RYAN RICHARD DEVELOPMENTGROUP INC. also known as the MRR DEVELOPMENT GROUP INC., M DOUBLE M ENGINEERING SERVICES INC., CHARLES RYAN, MATTYS MULLER, ROGER RICHARD and TRI-CITY CAPITAL CORP.

DOCUMENT **BRIEF OF THE DEFENDANTS**

**COLD LAKE ESTATES INC., NORTHERN ALBERTA ESTATES INC., THE MULLER RYAN RICHARD DEVELOPMENTGROUP INC. also known as the MRR DEVELOPMENT GROUP INC. and CHARLES RYAN**

**CASE MANAGEMENT HEARING APPLICATIONS**

**20 JUNE 2017  
2:00 p.m.**

ADDRESS FOR SERVICE AND CONTACT INFORMATION OF PARTY FILING THIS DOCUMENT

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File No. 78,736/7

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## **PART I INTRODUCTION**

1. The Defendants COLD LAKE ESTATES INC., NORTHERN ALBERTA ESTATES INC., THE MULLER RYAN RICHARD DEVELOPMENTGROUP INC. and CHARLES RYAN ("these Defendants") request the following outstanding applications be decided by the Case Management Justice
  - a) An Order vacating the Without Notice Prejudgment Attachment Order granted April 18, 2016 ("WNPJA Order"). Technically, clause 6 of the Order puts the onus of this "comeback application" on the Plaintiff, makes the application without prejudice to these Defendants and is a hearing *de novo* of the original application for the Prejudgment Attachment Order.
  - b) In the event the WNPJA Order is not set aside, an Order requiring the Plaintiff to provide security for its undertaking to pay damages arising from the granting of the WNPJA Order, such security to be in the amount of no less than \$2 million
  - c) An Order setting the Security for Costs ordered by Master Schlosser against the Plaintiff on March 8, 2017 for all matters after Item 7(1) of these Defendants' Pro Forma Bill of Costs
2. The WNPJA Order was amended by Master Breitkreuz on May 6, 2016 such that it only applied to five properties registered in the name of Barbara Ryan.
  - Tab 1            WNPJA Order filed April 18, 2016**
  - Tab 2            Order granted May 6, 2016, filed May 18, 2016**
3. Four of the five properties bound by the WNPJA Order have now been sold with permission granted by subsequent Orders of October 20, 2016 and February 14, 2017 permitting their sale. The net proceeds were paid to Servus Credit Union to pay down the mortgages against the properties.
4. Only one property remains bound by the WNPJA Order, being NE 6-55-26 W4, the property on which Charles and Barbara Ryan reside ("the home property").

**PART II RELIEF SOUGHT**

**2. ORDER VACATING THE WNPJA ORDER**

5. The Plaintiff brought its application for the WNPJA on a *without notice* basis, notwithstanding the action had been ongoing with counsel for the Defendants for 1 ½ years at the time, and the transfers complained of had occurred some 4 months before the application was made.
6. The test for granting any prejudgment attachment Order is set out in section 17 (2) of the *Civil Enforcement Act*.
- (2) On hearing an application for an attachment order, the Court may, subject to subsection (4), grant the order if the Court is satisfied that
- (a) there is a reasonable likelihood that the claimant's claim against the defendant will be established, and
  - (b) there are reasonable grounds for believing that the defendant is dealing with the defendant's exigible property, or is likely to deal with that property,
    - (i) otherwise than for the purpose of meeting the defendant's reasonable and ordinary business or living expenses, and
    - (ii) in a manner that would be likely to seriously hinder the claimant in the enforcement of a judgment against the defendant.

**Tab 3      *Civil Enforcement Act* RSA 2000 Chapter C-15, section 17**

- (a) Is there is a reasonable likelihood that the claimant's claim against the defendant will be established?**

7. In his submissions to Master Breitkeuz on this branch of the test, the Plaintiff's solicitor said little more than the following

The crux of the dispute as between the parties is as follows. What was the nature of the service requirements that were in place between the municipality of Bonnyville and the city of Cold Lake? If it was a low level water retic - reticulation service system, and Sir, I've learned a lot more about 6 water servicing --

MASTER BREITKREUZ: M-hm.

MR.DHIR: --than I ever wanted. Then the price was as it

was set to be and that was what was understood by the purchaser. If it was up to a full municipal standard the difference in servicing was in the range of about \$5.7 million.

Our client says their understanding was that the reticulation system servicing standard was the one that was going to apply. They rely on the area service plan that was developed by Cold Lake Estates, the respondent and seller of the property for that assertion and various other statements and documents that are already in evidence before the Court in various affidavits. That's the crux of the dispute. The value of the servicing is the dispute.

**Tab 4            Transcript of Proceedings before Master Breitzkreuz on  
April 18, 2016 at page 5, lines 2-19**

8. There was no serious analysis before Master Breitzkreuz of the likelihood the Plaintiff's claim would be established. Nor was there anything in the Affidavit of Trina Jackson, a Field LLP paralegal, filed April 18, 2016 ("the Jackson Affidavit") in support of the Plaintiff's application, that addressed the likelihood the Plaintiff's claim would be established.
9. The Plaintiff's main complaint alleged in its Statement of Claim is that at no time prior to closing on the Purchase Contract with Cold Lake Estates Inc. on May 11, 2011 was the Plaintiff advised as to the City of Cold Lake's requirement for water and sewer servicing the Property being sold to "full municipal standards", notwithstanding the Defendants were so advised by the City of Cold Lake before the closing of the sale.
10. The Plaintiff also alleges that the Defendants failed to disclose relevant documentation pertaining to the Property and the subdivision of the Property. Specifically,
  - a) a March 7, 2011 letter from M Double M Engineering Services Inc.; and
  - b) Minutes of a March 15, 2011 meeting with the City of Cold Lake and M Double M Engineering Services Inc.;

which documents purportedly indicate the City of Cold Lake would not accept water servicing on a trickle service standard but required "full municipal standards"

Affidavit of Thomas Beyer filed June 9, 2015, para. 20, and Exhibits M" and "N"

**TAB 5    Affidavit of Thomas Beyer filed June 9, 2015, Exhibits "M" and "N"**

11. On October 23, 2010, Thomas Beyer, the Plaintiff's President, provided Cold Lake Estates Ltd. with a letter confirming "the attached letter dated October 22, 2010 from the Municipal District of Bonnyville No. 87 with file reference No. 2015-S-39 RE" "proposed subdivision of the E ½ 34-63-2 W4 (Phase 1)" satisfies the warranty and representation of article 6.1(b) in the Prestigious Properties Inc. and/or nominee offer to purchase."

**TAB 6 Affidavit of Charles Ryan, filed March 24, 2015, Exhibit "E"**

12. The letter from the Municipal District of Bonnyville No. 87 attached to Mr. Beyer's letter was the conditional subdivision approval for the lands. Condition 2 was as follows:

"2. Pursuant to Section 655(1 )(b) that all lots shall be serviced with City of Cold Lake water and sewer with the City's approval. The developer shall be responsible for the design and construction of the water and sewer *to City of Cold Lake's standards* including upgrades to the City's system."

[Emphasis added]

13. At Questioning on his affidavit filed June 9, 2015, Mr. Beyer confirmed he had read the conditional subdivision approval letter from Municipal District of Bonnyville No. 87 in its entirety, and was aware then that the developer is responsible for design and construction of water and sewer to the City of Cold Lake standards.

Transcript of Questioning of Thomas Beyer, July 21, 2015, at p 10, l. 25 to p 11, l. 8

14. The Plaintiff's claim is based on its alleged reliance on the Area Structure Plan (ASP) prepared by Matthys Muller, which provided a number of options for water and servicing. One option was the provision of the requested water supply to a **trickling service standard** and to receiving the sewage effluent into municipal sewer by means of small-diameter low-pressure reticulation system and lift station.

Affidavit of Thomas Beyer filed June 9, 2015, para 18

15. The Plaintiff then claims this trickling service standard was rejected by the City of Cold Lake during a meeting with M Double M Engineering Services Inc. on March 15, 2011 and that it was not advised of this meeting or its outcome.

Transcript of Questioning of Thomas Beyer, July 21, 2015, at p 32, l. 14-20, l. 8; p. 35, l. 22 to p. 36, l 12; p 37, l. 7-16; p. 38, l. 6-13

16. However, it appears the Plaintiff and its agents were in constant contact with the City of Cold Lake and the Municipal District of Bonnyville at all material times.

- a. In an email dated April 14, 2011 to his partners Mike Hammerlindl and Scotty Grub, Mr. Beyer reported on his visit to Cold Lake to scope out the project, and advised that

"City will support it and is in favour and water/sewer ok if developer pays for feeder pipe for approx 1.5 km of TBD dimensions"

and

"City hasn't specced out the water/sewer requirement in detail yet.. Likely by September though"

Transcript of Questioning of Thomas Beyer, June 13, 2016, at p 165 l. 26 to p 167, l. 5

**TAB 7 Email April 14, 2011 from Thomas Beyer to Mike Hammerlindl and Scotty Grub**

- b. In an email dated May 16, 2011 to Ken Rogers, the City of Cold Lake's Manager of Planning and Development, Mr. Beyer confirms their meeting some 3 weeks prior to the email and discussions with Mr. Rogers and Bob Kitchen (the City of Cold Lake's General Manager of Infrastructure Services), and advises that

"we intend to progress engineering and infrastructure issues this spring and summer, and get agreement of *the town's and county's water/sewer requirements, which are still very much unspecified according to you and Bob Kitchener* [sic].

[emphasis added]

Mr. Beyer also noted "the current uncertainty over sewer/water issues" in his email.

Transcript of Questioning of Thomas Beyer, June 13, 2016, at p 122, l. 16 to p 132, l 10

**TAB 8 Email May 16, 2011 from Thomas Beyer to Kenneth Rogers**

- c. Ken Rogers and Bob Kitchen were both participants at the meeting with M Double M Engineering Services on March 16, 2011 when the City of Cold Lake rejected the trickling service standard.

Transcript of Questioning of Thomas Beyer, June 13, 2016, at p 126, l. 13 to p 128, l 19

**TAB 9 Affidavit of Thomas Beyer filed June 9, 2015, Exhibit "N"**

- d. During his questioning on June 13, 2016, Mr. Beyer confirmed that on May 16, 2011 he "absolutely" knew there was uncertainty over sewer and water issues on this project.

Transcript of Questioning of Thomas Beyer, June 13, 2016, at p 132, l. 8-11

- e. In an email dated May 31, 2011 to Mr. Beyer, the Plaintiff's project manager, Chad Willox, advised Mr. Beyer that "I had a good conversation with Ken Rogers, City of Cold Lake Manager of Planning & Development Officer", and that

"Mattie Muller has not returned my call. My assessment is that he is not all that respected with the City, not sure about the county as John Foy and I have not talked yet. The city has been frustrated that Mattie is not straight forward on issues, and always has some new scheme. ***They said much of the information in the area structure plan, presented by Mattie would not even be supported by the city – ie. trickle water system.***"

[emphasis added]



Transcript of Questioning of Thomas Beyer, June 13, 2016, at p 134, l. 12 to p. 137, l. 13

**TAB 10 Email May 31, 2011 from Chad Willox to Thomas Beyer**

- f. At that time, Mr. Beyer confirmed during his questioning on June 13, 2016, he knew there were uncertainties with the Area Structure Plan, that Matthys Muller had laid out a bunch of options and it appeared that some of those options were perhaps not as depicted as written in the ASP. He confirmed they had suspicions that there might be issues with the Area Structure Plan, and Chad Willox was of the opinion that the City of Cold Lake was not supporting the area structure plan

Transcript of Questioning of Thomas Beyer, June 13, 2016, at p 136, l. 5-18

- g. In an email dated June 6, 2011 to Kenneth Rogers, the Plaintiff's project manager, Chad Willox, advised Mr Rogers he would like to schedule a time with the Mayor and economic development office and referenced information Mr. Rogers had given him on servicing options,

"You mentioned there least two options for servicing."

Transcript of Questioning of Thomas Beyer, June 13, 2016, at p 167, l. 19 tp p. 169, l. 12

**TAB 11 Email June 6, 2011 from Chad Willox to Kenneth Rogers**

- h. In a letter dated July 14, 2011 to the Municipal District of Bonnyville, Mr. Beyer showed his familiarity with the servicing requirements for the Plaintiff's project. He advised that the Plaintiff intended to submit a rezoning application, "which would involve an amendment to the IDP, which currently mandates servicing from the City of Cold Lake." He further showed his familiarity with the City of Cold Lake's requirements in stating

"Another very important concern, is that the City of Cold Lake's water/sewer infrastructure, *according to their comments*, is operating above capacity and has special consent from Alberta

Environment to be under constant release of sewage lagoons as it stands now. Coupled with their aging over utilized system, *is the extremely large costs associated to service the subject lands with city water and sewer. There appears to be a lot of "unknowns" in servicing this land from the city infrastructure.*"

[emphasis added]

Transcript of Questioning of Thomas Beyer, June 13, 2016, at p 158, l. 8 to p. 160, l. 2

**TAB 12 Letter July 14, 2011 from Thomas Beyer to Municipal District of Bonnyville**

- i. The Plaintiff even organized a joint Council meeting with the Municipal District of Bonnyville and the City of Cold Lake on October 11, 2011 to press for its proposed amendments to the IDP to remove the requirement of having water and sewer service provided from the City of Cold Lake

Transcript of Questioning of Thomas Beyer, June 13, 2016, at p 143, l. 22, to p. 146, l.1

**TAB 13 Presentation by Prestigious Properties to Joint Council Meeting**

- j. Throughout 2012 -2013 Mr Beyer was in direct contact with the City of Cold Lake's Mayor, Craig Copeland. During their meetings it is clear they discussed the project's water/sewer problems, and the Mayor even directed Mr. Beyer to The City of Cold Lake's Chief Administrative Officer, Kevin Nagoya, and suggested that "he can lead you to who you need to have conversations with" and "they will guide you on the city's policy on what you need." He also suggested engaging the municipal district's Council in "helping you develop your property with the water and sewer challenges "

Transcript of Questioning of Thomas Beyer, June 13, 2016, at p 146, l. 9 to p. 153, l 25

**TAB 14 Email chain April 24, 2012-June 4, 2013 between Thomas Beyer and Craig Copeland**

- k. Mr. Beyer appears to have taken Mayor Copeland's advice and engaged the municipal District of Bonnyville in discussions. In an email dated June 6, 2013 to Ed Rondeau, the Reeve of the Municipal District of Bonnyville, he asks that the County of Bonnyville allow annexation of the plaintiff's properties by the City of Cold Lake, and advises that

*"The primary reason for this request is that an Intermunicipal Development Agreement exists that essentially necessitates water/sewer from the City of Cold Lake to city standards under the current approved Area Structure Plan (ASP).*

[emphasis added]

Transcript of Questioning of Thomas Beyer, July 21, 2015, at p 155, l. 5 to p. 157, l 12

**TAB 15      Email June 6, 2013 from Thomas Beyer to Ed Rondeau**

17. As such, the Plaintiff was well aware of the water and sewer servicing requirements and costs well before closing. The Plaintiff's president, Thomas Beyer, sent Charles Ryan, Cold Lake Estate's president, an email on April 13, 2011, attempting to renegotiate the purchase contract based on what he perceived to be uncertainty on sewer/water costs which he claimed were "possibly as high as \$3M or more if the city insists on major upgrades to city infrastructure." He proposed various options for renegotiating the contract.

Affidavit of Charles Ryan, filed March 24, 2015, para 12 and Exhibit G

**TAB 16      Email April 13, 2011 from Thomas Beyer to Charles Ryan**

18. Shortly after receiving his email, Mr. Ryan spoke with Thomas Beyer several times about his concerns over the water and sewer costs and his proposal to renegotiate, and was of the view that Mr. Beyer was well aware of the City's water and sewer requirements.

Affidavit of Charles Ryan, filed March 24, 2015, para 13 and Exhibit H

**TAB 17      Text message April 19, 2011 from Thomas Beyer to Charles Ryan**

19. Notwithstanding Mr. Beyer's concerns, the Plaintiff did not renegotiate the agreement and proceeded to close the purchase on May 11, 2011.

Affidavit of Charles Ryan, filed March 24, 2015, para 14

20. During his questioning on June 13, 2016, Mr. Beyer undertook to advise what he or any of his consultants did after May 31, 2011 to investigate what parts of the area structure plan the City of Cold Lake would be supporting, to inquire with his consultants whether they discussed if the Area Structure Plan would be supported by the City of Cold Lake at any time from May of 2011 to October 2013, and to inquire of his consultants if there was any inquiries of the City of Cold Lake and/or the Municipal District of Bonnyville as to requirements for water and sewer servicing. The answers to these undertakings show that essentially nothing was done to determine the water and sewer servicing requirements.

**TAB 18      Answers to Thomas Beyer's undertakings 13, 14 & 15**

21. Notwithstanding this transaction closed on May 11, 2011, and that it appears the Plaintiff was aware by May 2011 that the trickle service standard would not be supported by the City of Cold Lake, the Plaintiff did not file its Statement of Claim until November 10, 2014. These Defendants take the position that this Claim was filed out of time, as the Plaintiff knew or ought to have known by May 2011 that the City of Cold Lake would not support the trickle service standard.
22. None of the above was disclosed to Master Breitzkreuz during the Plaintiff's without notice application for the Prejudgment Attachment Order. As the application was without notice, there is a higher standard on the applicant to bring all relevant matters to the Court's attention.
23. The Alberta Court of Appeal dealt with the discoverability issue in *De Shazo v. Nations Energy Co.* and confirmed that Alberta's *Limitations Act* codified the common law discoverability rule and that it applies it to all actions for remedial orders.

"The common law rule was described by the Supreme Court of Canada in *Central & Eastern Trust Co. v. Rafuse*, [1986] 2 S.C.R. 147 (S.C.C.), at 224:

"[A] cause of action arises for purposes of a limitation period when the material facts on which it [the cause of action] is based have been

discovered or ought to have been discovered by the plaintiff by the exercise of reasonable diligence.

**TAB 19**      ***De Shazo v. Nations Energy Co.*** 2005 ABCA 241 Alta. C.A. ,  
at para 26

24. At para. 31 of the *De Shazo* case, the court observed that discoverability does not require perfect knowledge:

"The principal of discoverability does not require perfect knowledge. As this court noted in *Hill v. Alberta (South Alberta Land Registration District)* (1993), 100 D.L.R. (4th) 331 at 336 (Alta. C.A.) (leave to appeal to S.C.C. denied):

"Even if the discoverability rule of limitations applied to this case (which I need not decide), it does not call for perfect certainty. It does not require discovery at all: it says something else will do instead. It suffices that "the material facts on which [the cause of action] is based ... ought to have been discovered by the plaintiff by the exercise of reasonable diligence ...": *Central Trust v. Rafuse* ... . If the plaintiff is told a fact by someone who is likely to know, surely that makes the fact known or discoverable, even if someone else disputes the fact. Very few people who sue have perfect certainty.

**TAB 19**      ***De Shazo v. Nations Energy Co.*** 2005 ABCA 241 Alta. C.A. ,  
at para 31

25. The Defendant Cold Lake Estates Inc. provided the Plaintiff with its documents pertaining to said lands and its subdivision in fulfilment of the warranty in Paragraph 6.1 (h) of the Purchase Contract.
26. The documents that the Plaintiff complains were not provided were not documents of Cold Lake Estates Inc.. These documents are neither prepared by nor requested by Cold Lake Estates Inc. in the subdivision of the lands. At the time of the purchase contract was signed on October 29, 2010 the transaction was unconditional, and the warranty under 6.1 (h) was a mere warranty. The subdivision approval had been granted and documentation of that was provided to the Plaintiff.

27. In any event, the documents the Plaintiff complains were not provided did not deal with the lands or subdivision, but with development options proposed by M Double M Engineering Ltd. . The actual subdivision approval had already been obtained and clearly stated that the developer shall be responsible for the design and construction of the water and sewer "to City of Cold Lake's standards."
28. It is respectfully submitted that there is some onus on the Plaintiff to clarify what the "City of Cold Lake's standards" were if that was not clear to it.
29. It is submitted that the Plaintiff had more than enough opportunity to seek any such clarification during the numerous meetings, discussions and interactions it had with the high level decision makers from the City of Cold Lake and the Municipal District of Bonnyville from 2011 (even before the closing date of May 11, 2011) through to 2013. It is highly unlikely that these decision makers would not have, at some point, have told the Plaintiff the Area Structure Plan was not going to govern the sewer and water servicing.
30. In fact, that is exactly what Ken Rogers, City of Cold Lake Manager of Planning & Development, told Chad Willox, the Plaintiff's Project Manager in May 2011, and which Mr. Willox relayed to Mr. Beyer in his May 31, 2011 email.
31. At that point, Mr. Beyer confirmed he had suspicions. If he did not know that the Area Structure Plan was not supported by the City of Cold Lake, then he did very little to investigate the matter. Had he done so, it is submitted he probably would have discovered that the area structure plan was not supported by the City of Cold Lake. In the words of the *De Shazo* case, "***the material facts on which [the cause of action] is based ... ought to have been discovered by the plaintiff by the exercise of reasonable diligence ...***". The plaintiff did not exercise reasonable diligence in determining these facts.
32. It is respectfully submitted that the limitation date for this action should commence on May 31, 2011, when the material facts on which the action is based ought to have been discovered by the Plaintiff with the exercise of reasonable diligence. As the action was not brought until some 3½ years later on November 10, 2014, it was brought after the two-year limitation period expired.

33. Master Schlosser heard these Defendant's Summary Dismissal application on August 24, 2016 and rendered his decision on November 10, 2016. While he dismissed the application, he noted that "this result is the nearest of misses."

**TAB 20      *Prestigious Properties Inc. v. Cold Lake Estates et al*, 2016  
ABQB 632 at page7, para 29**

34. None of the above was disclosed to Master Breitzkreuz during the without notice application hearing April 18, 2016, resulting in a misleading view as to the reasonable likelihood the Plaintiff's claim will be established. It is submitted this constitutes a failure on the Plaintiff to make full and fair disclosure of the material information available at the time of the without notice application, and constitutes grounds for the termination of the Order pursuant to section 18 (c) of the Civil Enforcement Act.

**Tab 3      *Civil Enforcement Act* RSA 2000 Chapter C-15, section 18 (c)**

- (b) Are there are reasonable grounds for believing the Defendants are dealing with their exigible property otherwise than for the purpose of meeting the defendant's reasonable and ordinary business or living expenses, and in a manner likely to seriously hinder the claimant in the enforcement of a judgment against the Defendants?**

35. In his submissions to Master Breitzkreuz on April 18, 2016, the plaintiff's solicitor continually referred to paragraph 7 of Charles Ryan's affidavit filed on January 19, 2016 as being a critical part of this application. He submitted that Mr. Ryan, in his affidavit, stated that the actual appraised values for the properties valued by Field LLP's legal assistant on the basis of tax assessments more accurately reflected the values of those properties, but then failed to disclose that he had transferred the properties to his wife on December 23, 2015.
36. Firstly, there was nothing untoward, nefarious or misleading in Mr. Ryan's affidavit. He simply provided factual evidence refuting the very low values of the properties presented by Field LLP's legal assistant in her affidavit, which were based on tax assessments alone. Whether he or not he had transferred those properties was completely immaterial to their valuation. He did not at any point in his affidavit state that he owned those properties at the time his

affidavit sworn on January 18, 2016. That is certainly something that would be brought out in examination on his affidavit.

37. Secondly, Mr. Ryan provided a complete explanation for the impugned transfers in his affidavit sworn and filed April 28, 2016:
- a. In anticipation of Prestigious Properties living up to its obligations under the Purchase Agreement, in March 2013 Northern Alberta Estates Inc. took out a \$3 million loan from Servus Credit Union. The offer of financing required Cold Lake Estates Inc., Alberta Estates Inc. Muller Ryan Richard Development Group Inc., Charles Ryan, and Barbara Ryan to guarantee the loan. Barbara Ryan refused to do so, and as a result the home property had to be transferred into Charles Ryan's name alone (it was previously held by both Charles and Barbara Ryan).
  - b. The offer of financing also required the loan be secured by a mortgage to be registered against certain lands owned by Cold Lake Estates Inc. and Charles Ryan, which included the titles attached as Exhibits A, B, D, and J to the Jackson Affidavit.
  - c. Cold Lake Estates purchased the properties attached as Exhibits F and G to the Jackson Affidavit in July 2013. To facilitate that purchase, it obtained a loan from Servus Credit Union in the amount of \$1,300,000, secured by a mortgage which was registered against those lands.
  - d. In early 2015, Servus Credit Union began to inquire as to how that loan would be paid back, as it was maturing March 31, 2015. Charles Ryan advised he expected to get the money to pay them back from the \$2 million payment due from Prestigious Properties on June 1, 2015.
  - e. Prestigious Properties failed to make that payment, and as a result Mr. Ryan was unable to pay Servus Credit Union.
  - f. On June 30, 2015 Servus Credit Union issued a demand for payment and sent the matter to their solicitor.
  - g. As a result of Servus Credit Union's demands, Mr Ryan was forced to sell lands. The consent of the credit union was required because the credit union's mortgage covered several properties, and the sale price of any individual property was less than the amount owing.. The Credit Union consented to the sale of the lands whose titles are attached as Exhibits D, and J to the Jackson Affidavit.



- h. The sale of the lands whose titles are at Exhibits D & J of the Jackson affidavit were both to arm's length third parties with whom the Defendants have no relationship, and who were represented by their own lawyers.
- i. As a result of these sales, Mr. Ryan was able to pay Servus Credit Union \$1.3 million towards the outstanding loans.
- j. This brought the loans into good standing. Servus Credit Union was satisfied and ceased any enforcement activity at that time. However, they also took additional security over 4:2;62:35 SE and 4:2:62:26 NE by way of a demand mortgage in the amount of \$2,500,000 registered as instrument 152340601 on October 29, 2015.
- k. It had been Mr. Ryan's expectation that the \$1.3 million were paid to Servus Credit Union were to be paid down on the loan secured by the \$3 million mortgage 132104369, as that was the mortgage registered on the land sold and for which Servus Credit Union provided a partial discharge of mortgage for. Instead, Servus Credit Union applied the funds towards the other loan, leaving in excess of \$2 million outstanding on the mortgage 132104369 which was also registered against the home property.
- l. When Barbara Ryan found that out, she was furious, as she had wanted to have the sale funds reduce the mortgage on the home property. She had transferred the home property to Charles Ryan on the understanding that the loan on it would be paid down at the earliest opportunity. The sale of the lands in the fall of 2015 should have reduced that loan to approximately \$1 million. When the funds were instead applied to the other loan that increased the amount owing against the home property to a little over \$2 million. The loan on December 22, 2015 had a balance outstanding of \$2,122,486.
- m. This situation caused considerable discord between Charles Ryan and his spouse, Barbara Ryan. Barbara Ryan then demanded that the home property be transferred to her, as she had given up her dower rights to that property to facilitate the \$3 million loan and now needed to protect her interest. She also required that sufficient other properties be transferred her to ensure that she could control the fate of the home property. She agreed to assume all the liabilities on these properties. If Mr. Ryan didn't comply with this request, he was facing the prospect of separation or divorce.

- n. As a result, Mr. Ryan effected transferred the properties whose titles are listed at Exhibits A, B, F, G and H to the Jackson affidavit and the titles at issue in the WNPJA Order. The consideration in each case was nominal cash and assumption of all liabilities. Barbara Ryan agreed to assume responsibility for the mortgages on the properties and the balance owing for the ongoing construction of the home property
- o. Barbara Ryan's consideration for the transfers was \$3,840,000, and the liabilities she assumed were \$4,054,069, as follows:

TOTAL CONSIDERATION	1,650,000 (Exhibits A, B of Jackson affidavit)
	2,190,000 (Exhibits F G & H of Jackson affidavit)
	3,840,000
TOTAL ENCUMBRANCES ASSUMED	2,122,486 (loan on Exhibits A, B, F & G of Jackson affidavit)
	706,000 (loans on Exhibit H of Jackson affidavit)
	1,225,583 (owing on Exhibit B of Jackson affidavit)
	4,054,069

Affidavit of Charles Ryan, filed April 28, 2016, para. 14-31

- 38. In summary, these transactions did not occur as part of any attempt to deal with the lands otherwise than for the purpose of meeting the defendant's reasonable and ordinary business or living expenses, or in a manner likely to seriously hinder the claimant in the enforcement of a judgment against the Defendants. Mr. Ryan regularly buys and sells properties as part of his business affairs, and has transferred to and from his spouse in the past. The end result of the impugned transfers did not jeopardize the Plaintiff's ability to enforce any judgment it may obtain, as the encumbrances assumed exceeded the values transferred.
- 39. In any event, the only property now remaining under the WNPJA is the home property, on which Charles and Barbara reside. They are unlikely to sell the property, but the existence of the WNPJA Order against it impairs their ability to refinance the Servus Credit Union mortgage registered against it, which Servus wants paid out.
- 40. Finally, the transfers the Plaintiff complains of happened on December 23, 2015, some four months before the Plaintiff decided to proceed with a *without notice* application for the Prejudgment Attachment Order before Master

Breitkreuz, and over a year after the Plaintiff commenced its action. There is no evidence of any additional transfers by these Defendants, notwithstanding they held additional properties. In the application before Master Breitkreuz, the Plaintiff alleged no more recent transactions, and did not provide any urgent information to justify the application being brought without notice, particularly when the action had been ongoing with counsel for a year and a half, and the transactions being impugned were four months old.

**2. ORDER REQUIRING THE PLAINTIFF TO PROVIDE SECURITY FOR ITS UNDERTAKING TO PAY DAMAGES ARISING FROM THE GRANTING OF THE WNPJA ORDER**

41. The WNPJA Order was obtained, in part, on the strength of an email from Thomas Beyer, the Plaintiff's president, in which the Plaintiff undertook to pay to and indemnify the Respondents for any damages resulting from the granting of the attachment order.

Affidavit of Trina Jackson sworn April 18, 2016, Exhibit T

42. What Mr Beyer's email failed to disclose is that the Plaintiff has no income and that its liabilities exceed its assets by \$1,887,198.

Affidavit of Charles Ryan sworn May 31, 2016, at Exhibits 3, 4 and 5.

43. As such, the undertaking provided by the Plaintiff is an empty gesture, and wholly inadequate to fulfil its mandate.
44. Section 17 (4) of the Civil Enforcement Act provides that Additional security may be required
- (4) The Court shall not grant an attachment order unless the claimant undertakes to pay any damages or indemnity that the Court may subsequently decide should be paid to the defendant or a third person and where the Court grants an attachment order, the Court may require the claimant
    - (a) to give any additional undertaking that the Court considers appropriate, and
    - (b) to provide security in respect of any undertaking.

**Tab 3     *Civil Enforcement Act RSA 2000 Chapter C-15, section 17 (4)***

- 45. The Court should not allow the Plaintiff to provide such an obviously meaningless undertaking. It is submitted that a bond in the minimum amount of \$2 million should be required.

**3.     AN ORDER SETTING THE SECURITY FOR COSTS ORDERED BY MASTER SCHLOSSER**

- 46. Master Schlosser's decision of November 10, 2016 also ordered security for costs against the Defendant, to be quantified by a pro forma Bill of Costs.

**TAB 20     *Prestigious Properties Inc. v. Cold Lake Estates et al, 2016 ABQB 632 at page 7 para 30***

- 47. On March 8, 2017 Master Schlosser ordered that the security for costs be paid in stages for steps taken after November 10, 2016, and quantified the first stage, being that 33,750 be paid for all items up to 7 (1) of the pro forma Bill of Costs presented to him. A copy of the form of Order, which attaches the pro forma Bill of Costs, sent to the Plaintiff's counsel but not yet returned, is attached

**Tab 21     Unfiled Order of Master W.S. Schlosser, Q.C., March 8, 2017**

- 48. Master Schlosser directed that the remaining stages be determined by the Case Management Justice or Case Management Counsel.
- 49. There are now additions the applications and examinations set out in the pro forma Bill of Costs

Questioning: Charles Ryan on undertakings May 15, 2017

½ day @ \$1,500	\$1,500
-----------------	---------

Applications of June 20 and 22, 2017

2 @ 1,500 ea	\$3,000
--------------	---------

Questioning of Plaintiff's officer Thomas Beyer

3 full days to be scheduled @ \$3,000/day	\$9,000
1 full day on undertakings @ \$3,000/day	\$3,000
Questioning of Charles Ryan	
3 full days to be scheduled @ \$3,000/day	\$9,000
1 full day on undertakings @ \$3,000/day	\$3,000
Allowance for transcript disbursement	<u>\$3,000</u>
	\$31,500

50. It is submitted the following stages are appropriate

**Second stage**

The additional \$31,500 detailed above should be payable within 60 days of this application.

**Third stage**

The final stage, being all steps from item 10(1) on in the pro forma Bill of Costs totalling \$45,500 should be paid by December 31, 2017 when it is anticipated the matter will be ready to set for trial.

**PART IV SUMMARY OF RELIEF SOUGHT**

51. The Applicant Defendants respectfully request:

- a) An Order vacating the WNPJA Order
- b) Alternatively, Order requiring the Plaintiff to provide security for its undertaking to pay damages arising from the granting of the WNPJA Order, such security to be in the amount of no less than \$2 million
- c) An Order setting the Security for Costs ordered by Master Schlosser against the Plaintiff on March 8, 2017 for all matters after Item 7(1) of these Defendant's Pro Forma Bill of Costs
- d) Costs

**ALL OF WHICH IS RESPECTFULLY SUBMITTED** at the City of Edmonton, in the Province of Alberta this 2nd day of June, A.D. 2017.

**WHEATLEY SADOWNIK**

per: 

NESTOR MAKUCH

Solicitors for the Defendants  
COLD LAKE ESTATES INC., NORTHERN  
ALBERTA ESTATES INC., THE MULLER  
RYAN RICHARD DEVELOPMENT  
GROUP INC., and CHARLES RYAN

**LIST OF APPENDICES and AUTHORITIES**

<b>Tab</b>	<b>Description</b>
1	WNPJA Order filed April 18, 2016
2	Order granted May 6, 2016, filed May 18, 2016
3	Civil Enforcement Act RSA 2000 Chapter C-15, sections 17 & 18
4	Transcript of Proceedings before Master Breitzkreuz on April 18, 2016
5	Affidavit of Thomas Beyer filed June 9, 2015, Exhibits "M" and "N"
6	Affidavit of Charles Ryan, filed March 24, 2015, Exhibit "E"
7	Email April 14, 2011 from Thomas Beyer to Mike Hammerlindl and Scotty Grub
8	Email May 16, 2011 from Thomas Beyer to Kenneth Rogers
9	Affidavit of Thomas Beyer filed June 9, 2015, Exhibit "N"
10	Email May 31, 2011 from Chad Willox to Thomas Beyer
11	Email June 6, 2011 from Chad Willox to Kenneth Rogers
12	Letter July 14, 2011 from Thomas Beyer to Municipal District of Bonnyville
13	Presentation by Prestigious Properties to Joint Council Meeting
14	Email chain April 24, 2012-June 4, 2013 between Thomas Beyer and Craig Copeland
15	Email June 6, 2013 from Thomas Beyer to Ed Rondeau
16	Email April 13, 2011 from Thomas Beyer to Charles Ryan
17	Text message April 19, 2011 from Thomas Beyer to Charles Ryan
18	Answers to Thomas Beyer's undertakings 13, 14 & 15
19	<i>De Shazo v. Nations Energy Co.</i> 2005 ABCA 241 Alta. C.A.
20	<i>Prestigious Properties Inc. v. Cold Lake Estates et al</i> , 2016 ABQB 632
21	Unfiled Order of Master W.S. Schlosser, Q.C., March 8, 2017

Clerk's stamp:

COURT FILE NUMBER:

1603 06360

COURT OF QUEEN'S BENCH OF ALBERTA

JUDICIAL CENTRE:

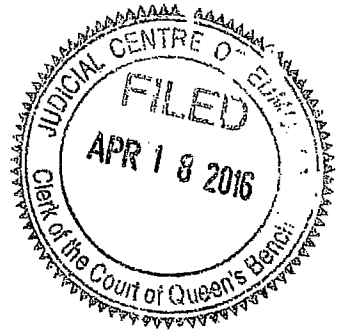
Edmonton

PLAINTIFF:

PRESTIGIOUS PROPERTIES INC.

DEFENDANTS:

COLD LAKE ESTATES INC., NORTHERN ALBERTA ESTATES INC., THE MULLER RYAN RICHARD DEVELOPMENT GROUP INC. also known as the MRR DEVELOPMENT GROUP INC., M DOUBLE M ENGINEERING SERVICES INC., CHARLES RYAN, MATTHYS MULLER, ROGER RICHARD and TRI-CITY CAPITAL CORP.



DOCUMENT:

**PREJUDGMENT ATTACHMENT ORDER**

ADDRESS FOR SERVICE AND CONTACT INFORMATION OF PERSON FILING THIS DOCUMENT:

Field LLP  
Barristers and Solicitors  
2000, 10235 - 101 Street  
Edmonton, AB T5J 3G1  
Ph: (780) 423-3003 Fax: (780) 428-9329  
File No. 59575-2  
**Attn: Sandeep K. Dhir, Q.C. /Lindsey E. Miller**

DATE ON WHICH ORDER WAS PRONOUNCED: APRIL 17, 2016

NAME OF MASTER WHO MADE THIS ORDER: W. BREITKREUZ, Q.C.

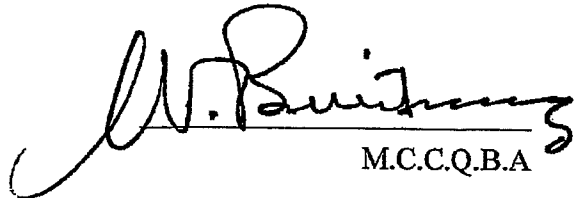
LOCATION WHERE ORDER WAS PRONOUNCED: EDMONTON

UPON the Application of the Applicant on a without notice basis; AND UPON the Court having received the Undertaking of the Applicant that it has agreed to abide by any Order which this Honourable Court may make as to damages or costs; AND UPON Reading the Affidavit of Trina Jackson, sworn December 1, 2015, the Affidavit of Charles Ryan filed January 19, 2016 (the "Ryan Affidavit") and the Affidavit of Trina Jackson, sworn April 18, 2016 (the "Affidavits"); AND UPON noting that Charles Ryan and Cold Lake Estates transferred title to five properties



to Barbara Ryan prior to the filing of the Ryan Affidavit; AND UPON hearing the submissions of Counsel for the Applicant; IT IS HERBY ORDERED THAT:

1. A Pre-Judgment Attachment Order shall issue against Cold Lake Estates Inc., Charles Ryan and Barbara Ryan (the "Respondents") in the amount of \$6,535,000.00.
2. Pursuant to s. 17(3)(b) of the *Civil Enforcement Act*, R.S.A. 2000, c. C-15 (the "Act"), Charles Ryan and Cold Lake Estates are prohibited from dealing with any of their exigible property.
3. The Registrar of the North Alberta Land Registration District is hereby directed to immediately and forthwith register this Attachment Order against title to the property currently registered in the name of Barbara Ryan, as described in Schedule "A" to this Order.
4. The Registrar of the North Alberta Land Registration District is hereby directed to immediately and forthwith register this Attachment Order against the caveat registered as Instrument No. 112 395 513 regarding a memorandum charging land for \$4,000,000 between Cold Lake Estates and the Applicant, as registered on title to lands described in Schedule "B" to this Order.
5. Section 18(3) of the Act is hereby invoked and the within Order shall remain in effect until further order of the Court, or upon application to vary or terminate the Order by the Applicant or Respondents on 5 clear days' notice to the affected party (the "Come-Back Application").
6. The Come-Back Application shall be without prejudice to the Respondents and shall be a hearing *de novo* of the within Application.

  
M.C.C.Q.B.A

SCHEDULE "A"

First Title:

**MERIDIAN 4 RANGE 4 TOWNSHIP 63  
SECTION 28  
QUARTER NORTH EAST  
CONTAINING 65.2 HECTARES (161 ACRES) MORE OR LESS.**

**EXCEPTING THEREOUT:**

**HECTARES (ACRES) MORE OR LESS**

**A) ALL THAT PORTION DESCRIBED AS FOLLOWS: COMMENCING AT THE INTERSECTION OF THE EAST BOUNDARY OF THE SAID QUARTER SECTION WITH THE SOUTH LIMIT OF ROAD PLAN 1813EU; THENCE WESTERLY ALONG THE SOUTH LIMIT 268 METRES; THENCE SOUTHERLY AND AT RIGHT ANGLES THERETO 75 METRES; THENCE EASTERLY AND PARALLEL WITH THE SOUTH LIMIT TO A POINT ON THE EAST BOUNDARY; THENCE NORTHERLY ALONG THE EAST BOUNDARY TO THE POINT OF COMMENCEMENT;**

<b>CONTAINING.....</b>	<b>2.01</b>	<b>4.97</b>
<b>A) PLAN 0928332 - ROAD</b>	<b>0.819</b>	<b>2.02</b>

**EXCEPTING THEREOUT ALL MINES AND MINERALS  
AND THE RIGHT TO WORK THE SAME**

Second Title

**MERIDIAN 4 RANGE 26 TOWNSHIP 55  
SECTION 6  
ALL THAT PORTION OF THE NORTH EAST QUARTER WHICH WAS COVERED AND NOT COVERED BY ANY OF THE WATERS OF LAKE NO. 1 AS SHOWN ON A PLAN OF SURVEY OF THE SAID TOWNSHIP DATED ON THE 13<sup>TH</sup> DAY OF MAY A.D. 1907  
CONTAINING 65.2 HECTARES (161 ACRES) MORE OR LESS  
EXCEPTING THEREOUT ALL MINES AND MINERALS**

Third Title

**THE SOUTH EAST QUARTER OF SECTION THIRTY FIVE (35)  
TOWNSHIP SIXTY TWO (62)  
RANGE TWO (2)  
WEST OF THE FOURTH MERIDIAN  
CONTAINING 64.3 HECTARES (159 ACRES) MORE OR LESS**

**EXCEPTING THEREOUT:**

**A) 1.37 HECTARES (3.4 ACRES) MORE OR LESS, TAKEN FOR RIGHT OF WAY OF THE CANADIAN NATIONAL RAILWAY, AS SHOWN ON RAILWAY PLAN 5030EO**

SCHEDULE "A"

**B) 0.008 HECTARES (0.02 ACRES) MORE OR LESS AS SHOWN ON  
ROAD PLAN 5113JY  
EXCEPTING THEREOUT ALL MINES AND MINERALS AND THE RIGHT  
TO WORK THE SAME AS SET FORTH IN NOTIFICATION NO. 23226**

Fourth Title

**MERIDIAN 4 RANGE 2 TOWNSHIP 62  
SECTION 26  
QUARTER NORTH EAST**

**EXCEPTING THEREOUT ALL MINES AND MINERALS AND THE RIGHT TO  
WORK THE SAME, AS SET FORTH IN NOTIFICATION NO. 4462  
AREA: 64.7 HECTARES (160 ACRES) MORE OR LESS**

Fifth Title

**THE NORTH WEST QUARTER OF SECTION TWENTY SIX (26)  
TOWNSHIP SIXTY TWO (62)  
RANGE TWO (2)  
WEST OF THE FOURTH MERIDIAN  
CONTAINING 64.7 HECTARES (160 ACRES) MORE OR LESS  
EXCEPTING THEREOUT:  
2.11 HECTARES (5.22 ACRES) MORE OR LESS, AS SHOWN ON ROAD PLAN  
2055LZ  
EXCEPTING THEREOUT ALL MINES AND MINERALS AND THE RIGHT  
TO WORK THE SAME AS SET FORTH IN TRANSFER 6984HX\**

SCHEDULE "B"

**Instrument No. 112 395 513 registered on title to the following lands:**

THE NORTH EAST QUARTER OF SECTION THIRTY FOUR (34)  
TOWNSHIP SIXTY THREE (63)  
RANGE TWO (2)  
WEST OF THE FOURTH MERIDIAN  
CONTAINING 65.2 HECTARES (161 ACRES) MORE OR LESS  
EXCEPTING THEREOUT:

	HECTARES	(ACRES) MORE OR LESS
A) PLAN 265RS ROAD	0.081	0.20
B) PLAN 8520379 ROAD	1.074	2.65
C) PLAN 9222600 SUBDIVISION	4.305	10.64

EXCEPTING THEREOUT ALL MINES AND MINERALS  
AND THE RIGHT TO WORK THE SAME

and

MERIDIAN 4  
RANGE 2  
TOWNSHIP 63  
SECTION 34  
QUARTER SOUTH EAST  
CONTAINING 64.7 HECTARES (160 ACRES) MORE OR LESS  
EXCEPTING THEREOUT:

	HECTARES	(ACRES) MORE OR LESS
A) PLAN 0925400 SUBDIVISION	4.465	11.03

EXCEPTING THEREOUT ALL MINES AND MINERALS



COURT FILE NUMBER 1603 06360  
COURT COURT OF QUEEN'S BENCH OF ALBERTA  
JUDICIAL CENTRE EDMONTON  
PLAINTIFF PRESTIGIOUS PROPERTIES INC.,  
DEFENDANTS COLD LAKE ESTATES INC., NORTHERN ALBERTA ESTATES INC., THE MULLER RYAN RICHARD DEVELOPMENT GROUP INC. also known as the MRR DEVELOPMENT GROUP INC., M DOUBLE M ENGINEERING SERVICES INC., CHARLES RYAN, MATTYS MULLER, ROGER RICHARD and TRI-CITY CAPITAL CORP  
DOCUMENT ORDER

ADDRESS FOR SERVICE AND CONTACT INFORMATION OF PARTY FILING THIS DOCUMENT

WHEATLEY SADOWNIK  
2000, 10123 - 99 Street  
Edmonton AB T5J 3H1

Tel (780) 423-6671  
Fax (780) 420-6327

ATTENTION: Nestor Makuch  
File No. 78,736/7

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

for Clerk of the Court

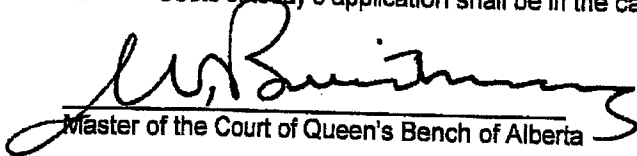
DATE ON WHICH ORDER WAS PRONOUNCED: 6 May 2016  
LOCATION WHERE ORDER WAS PRONOUNCED: Edmonton  
NAME OF MASTER WHO MADE THIS ORDER: W. Breitkreuz, Q.C.

UPON the application of the Defendants COLD LAKE ESTATES INC. and CHARLES RYAN to set aside the Without Notice Prejudgment Attachment Order granted by Master W. Breitkreuz on April 18, 2016; AND UPON hearing submissions of Counsel for the Defendants COLD LAKE ESTATES INC. and CHARLES RYAN and counsel for the Plaintiff

THE COURT therefore orders as follows:

1. The application is adjourned *sine die* pending the Plaintiff's counsel's cross-examination on the affidavit of Charles Ryan filed April 28, 2016
2. The Without Notice Prejudgment Attachment Order granted by Master W. Breitkreuz on April 18, 2016 is amended such that the Prejudgment Attachment Order applies only to the 5 properties currently registered in the name of Barbara Ryan as set out in paragraph 3 of the Order granted and filed April 18, 2016

3. The Registrar of the North Alberta Land Registration District is hereby directed to immediately and forthwith discharge the Attachment Order registered as instrument 162 105 406 against the caveat registered as instrument number 112 139 513 as registered on title to lands described in Schedule "A" to this Order
  
4. Costs of today's application shall be in the cause.

  
Master of the Court of Queen's Bench of Alberta

APPROVED AS BEING THE ORDER GRANTED  
FIELD LLP

per.

\_\_\_\_\_  
Sandeep K. Dhir, Q.C.  
Solicitors for the Plaintiff

**SCHEDULE "A"**

THE NORTH EAST QUARTER OF SECTION THIRTY FOUR (34)  
TOWNSHIP SIXTY THREE (63)  
RANGE TWO (2)  
WEST OF THE FOURTH MERIDIAN  
CONTAINING 65.2 HECTARES (161 ACRES) MORE OR LESS.

EXCEPTING THEREOUT:                    HECTARES    (ACRES) MORE OR LESS.

A) PLAN 2654RS ROAD	0.081	0.20
B) PLAN 8520379 ROAD	1.074	2.65
C) PLAN 9222600 SUBDIVISION	4.305	10.64

EXCEPTING THEREOUT ALL MINES AND MINERALS  
AND THE RIGHT TO WORK THE SAME

and

MERIDIAN 4 RANGE 2 TOWNSHIP 63  
SECTION 34 QUARTER  
SOUTH EAST

CONTAINING 64.7 HECTARES (160 ACRES) MORE OR LESS

EXCEPTING THEREOUT:                    HECTARES    (ACRES) MORE OR LESS A) PLAN  
0925400 - SUBDIVISION                    4.465            11.03

EXCEPTING THEREOUT ALL MINES AND MINERALS

### Part 3 Prejudgment Relief

#### Definitions

**16** In this Part,

- (a) “claim” means a claim that may result in a money judgment being granted if the claim is established;
- (b) “claimant” means a person asserting a claim;
- (c) “dealing”, in reference to property, includes transferring, mortgaging, charging, using, disposing of, creating an interest in or doing anything to the property;
- (d) “defendant” means a person against whom a claim is asserted;
- (e) “exigible property” means property that would be exigible if the defendant were an enforcement debtor;
- (f) “third person” means a person other than a defendant or a claimant.

1994 cC-10.5 s16;1995 c23 s6(4)

#### Attachment order

**17(1)** A claimant may apply to the Court for an attachment order where

- (a) the claimant has commenced or is about to commence proceedings in Alberta to establish the claimant’s claim, or
- (b) the claimant has commenced proceedings before a foreign tribunal to establish a claim if
  - (i) a judgment or award of the foreign tribunal could be enforced in Alberta by action or by proceedings under an enactment dealing with the reciprocal enforcement of judgments or awards, and
  - (ii) the defendant appears to have exigible property in Alberta.

**(2)** On hearing an application for an attachment order, the Court may, subject to subsection (4), grant the order if the Court is satisfied that

- (a) there is a reasonable likelihood that the claimant’s claim against the defendant will be established, and



- (b) there are reasonable grounds for believing that the defendant is dealing with the defendant's exigible property, or is likely to deal with that property,
    - (i) otherwise than for the purpose of meeting the defendant's reasonable and ordinary business or living expenses, and
    - (ii) in a manner that would be likely to seriously hinder the claimant in the enforcement of a judgment against the defendant.
- (3) In granting an attachment order, the Court may do one or more of the following:
- (a) direct that the order applies
    - (i) to all or specific exigible property of the defendant, or
    - (ii) to any exigible property to be subsequently identified in writing by a bailiff;
  - (b) prohibit any dealing with exigible property of the defendant;
  - (c) impose conditions or restrictions on any dealings with exigible property of the defendant;
  - (d) require the defendant or a person who has possession or control of exigible property of the defendant to deliver up the property to a person identified in the order;
  - (e) authorize the clerk to issue a garnishee summons;
  - (f) appoint a receiver;
  - (g) include in the order any term, condition or ancillary provision that the Court considers necessary or desirable.
- (4) The Court shall not grant an attachment order unless the claimant undertakes to pay any damages or indemnity that the Court may subsequently decide should be paid to the defendant or a third person and where the Court grants an attachment order, the Court may require the claimant
- (a) to give any additional undertaking that the Court considers appropriate, and
  - (b) to provide security in respect of any undertaking.

(5) When an attachment order is granted, it should be granted in such a manner that it causes as little inconvenience to the defendant as is consistent with achieving the purposes for which the order is granted.

(6) An attachment order shall not attach property that exceeds an amount or a value that appears to the Court to be necessary to meet the claimant's claim, including interest and costs, and any related writs, unless the Court is of the view that such a limitation would make the operation of the order unworkable or ineffective.

(7) For the purposes of an order made under subsection (3), the following applies:

- (a) if the clerk is authorized to issue a garnishee summons, Part 8, with any necessary modification, applies to that garnishment;
- (b) if a receiver is appointed, Part 9, with any necessary modification, applies in respect of that receivership;
- (c) if the order is to apply to exigible property to be subsequently identified in writing by a bailiff, the writing shall be considered to be included as a part of the order.

(8) Any interested person may apply to the Court to vary or terminate an attachment order.

1994 cC-10.5 s17

#### **Ex parte attachment order**

**18(1)** An application for an attachment order may be made ex parte.

(2) Subject to subsection (3), an attachment order granted on an ex parte application must specify a date, not more than 21 days from the day that the order is granted, on which the order will expire unless the order is extended on an application on notice to the defendant.

(3) If the Court is satisfied that it would be inappropriate for an attachment order granted on an ex parte application to expire automatically after 21 days, the order may specify a later expiry date or specify that it remains in effect until it terminates in accordance with section 19.

(4) The Court, on application on notice to the defendant, may direct that an attachment order that was granted on an ex parte application remains in effect until the order terminates in accordance with section 19 or as otherwise directed by the Court.

(5) If an application under subsection (4) cannot reasonably be heard and determined before the expiry date of the relevant attachment order, the Court may on an ex parte application extend the period of time during which the order remains in force pending the determination of the application.

(6) When an application on notice to the defendant is made under subsection (4) the following applies:

- (a) the onus is on the claimant to establish that the attachment order should be continued;
- (b) the Court shall not continue the attachment order unless the circumstances that exist at the time of hearing the application justify the continued existence of the order;
- (c) the Court may terminate the order if the Court is satisfied that the claimant failed to make full and fair disclosure of the material information that existed at the time that the claimant made the ex parte application for the attachment order.

1994 cC-10.5 s18

#### Termination of attachment order

**19(1)** Subject to section 18 and except as otherwise ordered by the Court, an attachment order terminates on whichever of the following occurs first:

- (a) on the dismissal or discontinuance of the claimant's proceedings;
- (b) on the 60th day from the day of the entry of a judgment in favour of the claimant.

(2) The Court may extend the operation of an attachment order beyond the times set out in subsection (1) if it appears just and equitable to do so.

1994 cC-10.5 s19

#### Provision of alternative security

**20** If property is under attachment pursuant to an attachment order,

- (a) the defendant,
- (b) any person claiming an interest in the attached property, or
- (c) the person in whose possession the property was at the time of the attachment,

Action No.: 1603 06360  
E-File No.: EVQ16PRESTIGIOUSPROPERTIES  
Appeal No.: \_\_\_\_\_

IN THE COURT OF QUEEN'S BENCH OF ALBERTA  
JUDICIAL CENTRE OF EDMONTON

BETWEEN:

PRESTIGIOUS PROPERTIES INC.

Plaintiff

and

COLD LAKE ESTATES INC., NORTHERN ALBERTA ESTATES INC.,  
THE MULLER RYAN RICHARD DEVELOPMENT GROUP INC. also  
known as the MRR DEVELOPMENT GROUP INC., M DOUBLE  
M ENGINEERING SERVICES INC., CHARLES RYAN, MATTHYS  
MULLER, ROGER RICHARD and TRI-CITY CAPITAL CORP.

Defendants

---

PROCEEDINGS

---

Edmonton, Alberta  
April 18, 2016

Transcript Management Services, Edmonton  
1000, 10123 99th Street  
Edmonton, Alberta T5J-3H1  
Phone: (780) 427-6181 Fax: (780) 422-2826

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Certificate of Transcript		20

1 Proceedings taken in the Court of Queen's Bench of Alberta, Law Courts, Edmonton, Alberta

2

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3 April 18, 2016

Morning Session

4

5 Master Breikreuz, QC

Court of Queen's Bench of Alberta

6

7 S. K. Dhir, QC

For the Plaintiff

8 (No Appearance)

For the Defendants

9 C. Wilde

Court Clerk

---

10

11

12 **Discussion**

13

14 MASTER BREITKREUZ:

Mr. Dhir, you are next.

15

16 MR. DHIR:

Good morning, Master. Thank you.

17

18 MASTER BREITKREUZ:

You waited a long time for an ex parte.

19

20 MR. DHIR:

Well, as I mentioned, Master previously, my

21 expectation is that the application may take several minutes. So I--

22

23 MASTER BREITKREUZ:

Yes.

24

25 MR. DHIR:

-- intended to put it at end of the list.

26

27 MASTER BREITKREUZ:

You would have been on at 10:38 if was not

28 for this last application.

29

30 MR. DHIR:

Fair enough, Sir. Madam Clerk, there's the

31 form and there's a form of order, Master. Having regard actually for the last application,

32 Master, in my friend's - my learned friend's submissions arose in play.

33

34 MASTER BREITKREUZ:

We - we will go through this very carefully.

35

36 **Submissions by Mr. Dhir**

37

38 MR. DHIR:

I was going to say, Sir, let me highlight that the

39 form of order I've place in front of you in the first line of the preamble identifies it as an

40 application without notice.

41

1 MASTER BREITKREUZ: Yes.

2

3 MR. DHIR: As it relates to the undertaking of is required  
4 from my client for a prejudgment attachment order, you will find, Sir, in the affidavit that  
5 I submit that we have the appropriate undertaking. So --

6

7 MASTER BREITKREUZ: Okay.

8

9 MR. DHIR: -- at least those two issues, are addressed. So,  
10 let me take you through the application, Sir. As you may have gathered, this is an  
11 application for a prejudgment attachment order. I can advise you, Sir, as you see the  
12 form of order in front of you that all of the parties identified in the form of order are  
13 represented by counsel currently and this is an ongoing action.

14

15 Starting with the respondent, Cold Lake Estates or the defendant Cold Lake Estate, and  
16 then the individual Charles Ryan, Northern Alberta Estates Inc., the Muller Ryan Richard  
17 Development Group. also known as MRR are all represented by Mr. Makuch my friend at  
18 the Wheatley Sadownik firm. M Double M Engineering Services Inc and Matthys Muller  
19 are represented by Mr. - well currently they're represented by, Mr. McAllister at the  
20 McAllister LLP firm. They are not a respondent to this application. The effect of the  
21 order that we're seeking would not affect - apply to them. Finally, Mr. Roger Richard is  
22 represented by Mr. Liam Kelly at the Witten law firm. And again similarly, Sir, the  
23 nature of the application and the order and the relief that I'm seeking does not apply to  
24 Mr. Richard and Mr. Kelly's clients.

25

26 So, really we're after, Cold Lake Estates Inc and Mr. Charles Ryan and so we are here  
27 without notice to Mr. Ryan or his counsel and his company is Cold Lake Estate Inc.  
28 Tri-City Capital, Sir, you will note is named as a defendant and I'll provide a background  
29 there in a moment. But they are really no longer party to the action and I'll get into sort  
30 of the issues there.

31

32 MASTER BREITKREUZ: Can - can I see your affidavit?

33

34 MR. DHIR: Yes, Sir. Sir, I'm relying on three affidavits.  
35 Affidavit filed December 1, 2015, by Ms. Jackson, a paralegal in our office, which sets  
36 out, what I call an administrative affidavit, all the procedural steps. I'll be referring you  
37 to Mr. Ryan's affidavit that was tendered on January the 19th of this year 2016. And Sir,  
38 I have an affidavit sworn this morning by Ms. Jackson which I undertake the file which  
39 provides you further update on the information that I'm putting before you.

40

41 MASTER BREITKREUZ: Okay.

1

2 MR. DHIR: Sir, so as I indicated, this is an application  
3 pursuant to sections 17 and more particularly section 18 of the *Civil Enforcement Act*. It  
4 seeks prejudgment attachment relief. The grounds of the application, Sir, come straight  
5 out of the provisions of the legislation that the plaintiff has a reasonable case and is likely  
6 to be successful at trial. That the respondents in this case are dealing with these exigible  
7 assets outside of ordinary course of business that would seriously hinder the plaintiff's  
8 ability to enforce a judgment when successful at trial.

9

10 MASTER BREITKREUZ: Are there assets besides land referred to?

11

12 MR. DHIR: In the affidavit, Sir, there is references to writs  
13 and liens but that is all - but as part of the original sort of affidavit --

14

15 MASTER BREITKREUZ: Okay.

16

17 MR. DHIR: --but no. We're only seeking to attach against  
18 land.

19

20 MASTER BREITKREUZ: Okay.

21

22 MR. DHIR: So Sir, by way of background in November of  
23 2014, a statement of claim was issued by Prestigious. Prestigious is our client, the  
24 applicant before you today. It was issued in Calgary by one of my business partners and  
25 it arises out of a contract for purchase of land, Sir. The contract for purchase of land, the  
26 lands are situate in the municipal district of Bonnyville just outside of the city of Cold  
27 Lake. The contract --

28

29 MASTER BREITKREUZ: Is Cold Lake - Cold Lake is a city?

30

31 MR. DHIR: Yes.

32

33 MASTER BREITKREUZ: Oh okay.

34

35 MR. DHIR: As I've become altogether too aware, Sir, as  
36 I've been reviewing a number of minutes from various development appeal reviews --

37

38 MASTER BREITKREUZ: I see.

39

40 MR. DHIR: -- by the City of Cold Lake as it says --

41



- 1 MASTER BREITKREUZ: I see.  
2
- 3 MR. DHIR: -- on its letterhead. Sir, the contract stipulated  
4 the purchase of these lands and they are described in schedule B of the form of order  
5 that's before you if you want to see the legal description.  
6
- 7 MASTER BREITKREUZ: Yes.  
8
- 9 MR. DHIR: The contract stipulated an \$8 million purchase  
10 price. One million on deposit, one million on execution, two many - two million to be  
11 paid on June 30th of 2015.  
12
- 13 MASTER BREITKREUZ: Is that the closing date?  
14
- 15 MR. DHIR: No Sir. The closing date was a year earlier.  
16
- 17 MASTER BREITKREUZ: Okay.  
18
- 19 MR. DHIR: So, that was when the second million became  
20 due and owing. Two million at June 30th. So there was - and there was a vendor take  
21 back mortgage registered in favour of that \$2 million charge.  
22
- 23 MASTER BREITKREUZ: M-hm.  
24
- 25 MR. DHIR: The final four million, Sir, would be paid as the  
26 land was developed into individual residential lots --  
27
- 28 MASTER BREITKREUZ: M-hm.  
29
- 30 MR. DHIR: -- and subsequently sold and there was a  
31 specific amount that was attributed to each sale that would occur.  
32
- 33 MASTER BREITKREUZ: And these would come out of mortgage draws?  
34
- 35 MR. DHIR: That's right. So, as - as our client developed  
36 the property and sold each lot to an induveg - individual purchaser, from the purchase  
37 price was agreed to a certain sum of that purchase price would be payable to the initial  
38 seller of the lands which was Cold Lake Estates --  
39
- 40 MASTER BREITKREUZ: M-hm.  
41

1 MR. DHIR: -- Inc. That is a respondent to this party. So,  
2 that is the - that was the nature of the contract, Sir. The crux of the dispute as between  
3 the parties is as follows. What was the nature of the service requirements that were in  
4 place between the municipality of Bonnyville and the city of Cold Lake? If it was a low  
5 level water retic - reticulation service system, and Sir, I've learned a lot more about  
6 water servicing --

7  
8 MASTER BREITKREUZ: M-hm.

9  
10 MR. DHIR: -- than I ever wanted. Then the price was as it  
11 was set to be and that was what was understood by the purchaser. If it was up to a full  
12 municipal standard the difference in servicing was in the range of about \$5.7 million.

13  
14 Our client says their understanding was that the reticulation system servicing standard was  
15 the one that was going to apply. They rely on the area service plan that was developed  
16 by Cold Lake Estates, the respondent and seller of the property for that assertion and  
17 various other statements and documents that are already in evidence before the Court in  
18 various affidavits. That's the crux of the dispute. The value of the servicing is the  
19 dispute. Now --

20  
21 MASTER BREITKREUZ: So, are you concerned that the - that the sale of  
22 some of the properties would compromise your position?

23  
24 MR. DHIR: No Sir. We are the owners of the property  
25 legally on title. The property that we're talking about, subject to the contract --

26  
27 MASTER BREITKREUZ: Yes.

28  
29 MR. DHIR: -- are in fact in the name of our client,  
30 Prestigious Properties Inc.

31  
32 MASTER BREITKREUZ: You - you are the purchasers under this deal?

33  
34 MR. DHIR: That's right.

35  
36 MASTER BREITKREUZ: Okay.

37  
38 MR. DHIR: And, we own the land now or we - subject to  
39 these various encumbrancers registered the VTB and the \$4 million charge.

40  
41 MASTER BREITKREUZ: Yes. You are the registered owners.

1

2 MR. DHIR: Yes, Sir.

3

4 MASTER BREITKREUZ: Okay.

5

6 MR. DHIR: So, that's the crux of the dispute. Now, the  
7 matter was transferred to Edmonton, as it was appropriate, the parties are in northern -  
8 northern central Alberta and the action while it was commenced in Calgary and  
9 Prestigious is based in Calgary, the defendants are all based either in Edmonton or  
10 Bonnyville. So, it was transferred to Edmonton and I took carriage of the matter.

11

12 Upon review of the pleadings and this is by way of procedural background, Master, it  
13 became clear to us that while allegations of fraud were being made in the initial statement  
14 of claim that was issued out of our Calgary office, it sought to pierce the corporate veil  
15 and name Mr. Ryan, who is the respondent today, but also the other two directors of his  
16 company, Mr. Muller and Mr. Richard, that while fraud had been plead in the piercing  
17 occurred or attempted to be occurred, the pleadings were deficient as relates to the case  
18 law as relates to the nature of the particularity of fraud that must be plead to - to be able  
19 to seek to pierce the veil.

20

21 Consequently, I sought to amend the statement of claim and gave notice to my friends at  
22 that time, Mr. Kelly and Mr. Makuch, of my intentions. They did not perceive our  
23 amendments as being procedural in nature and indicated they insisted it go to a  
24 special chambers. Master, you'll appreciate that in the last couple of years getting a  
25 special chambers date is quite a process and so we are in a holding pattern. And that's  
26 where - with matters would have stood except that Cold Lake Estates, Mr. Ryan's client -  
27 company, Mr. Makuch's client, choose last September to issue a new statement of claim,  
28 naming Prestigious for the failure to pay on the contract terms, the outstanding amounts,  
29 the first two million. But also named two sister corporations of Prestigious, subsidiary  
30 corporations held by Prestigious.

31

32 The implication of that, Master, as you'll appreciate from a procedural perspective was  
33 that I was able to file a defence but also file a counterclaim. The counterclaim that I filed  
34 on behalf of my client, Prestigious, was in the form of the amended pleading that I had  
35 been seeking to amend the original statement of claim with. And I served that on all of  
36 my friends. They filed defences. We've exchanged affidavit of records in both actions,  
37 the original action from Calgary, and the new action commenced by Mr. Ryan's company  
38 where we've issued a counterclaim. And so, the pleading are whole.

39

40 Just to complicate matters slightly more, Sir, you'll notice I mentioned Tri-City. That \$2  
41 million vendor take back mortgage had not been paid by my client. My client had

1 applications pending as relates to seeking set off against that amount or pending final  
2 adjudication of the merits of the action. The theory being that an equity it didn't make  
3 sense for it have to pay \$2 million further, pursuant to the terms of the contract, if in fact  
4 a court ultimately found judgment in damages in the amount of \$5.7 million.

5  
6 MASTER BREITKREUZ: Yes.

7  
8 MR. DHIR: Mr. Ryan and Cold Lake Estates assigned that  
9 mortgage without notice to our client and in fairness I say that the contract didn't require  
10 that they give notice of an assignment. So, it's not that we're suggesting it was illegal in  
11 the terms of the contract but rather it was still done without notice. To Tri-City whom we  
12 understand to be a bona fide third party lender based out of British Columbia. The full  
13 \$2 million mortgage was transferred - assigned to Tri-City but Tri-City's claim was only  
14 for \$620,000. That was the amount they had lent to Mr. Ryan slash Cold Lake Estates.

15  
16 MASTER BREITKREUZ: What - what development is on the property?

17  
18 MR. DHIR: It is undeveloped, Sir. We haven't because the  
19 issue of services has become significant from an economic perspective.

20  
21 MASTER BREITKREUZ: That has bogged everything down?.

22  
23 MR. DHIR: No - no pun intended, yes. So, Tri-City's claim  
24 was for 620. Master, this'd be - this is where these affidavits begin to come into play. In  
25 - on November the 4th, Mr. Ryan fi - swore an affidavit in support of a security for cost  
26 application. And he filed his application on the 5th. In response Sir, we filed our own  
27 cross application for security for cost and I appreciate I'm using a generic term of cross  
28 application. We filed our own application --

29  
30 MASTER BREITKREUZ: M-hm.

31  
32 MR. DHIR: -- for security for cost. And in support of that  
33 application we tendered the December affidavit of Ms. Jackson. It's in - it's the one  
34 that's bound, Sir, under clear cover and it filed December 1.

35  
36 MASTER BREITKREUZ: M-hm.

37  
38 MR. DHIR: In that app - in that affidavit Ms. Jackson gave  
39 the following evidence in general terms, Sir. That there were writs that's outstanding as  
40 against Cold Lake Estates, as against Northern Alberta - Northern Alberta Estates Inc. and  
41 so forth, arising out of a number of other property actions involving Cold Lake Estates,

1 Northern Alberta Estates, Mr. Ryan, Mr. Richard and Mr. Muller. That there were liens  
2 attached as against various properties and assets that appeared to otherwise be in the  
3 ownership of these corporate defendants/respondents. And that that there was land owned  
4 by Cold Lake Estates and or Mr. Ryan but that they had significant mortgages attached to  
5 them and that based on the tax roll there appeared to be little or no equity in the property.  
6 That affidavit, Sir, is filed and sworn on December the 1st.

7

8 MASTER BREITKREUZ: Were they - were these liens supported by some  
9 sort of improvements?

10

11 MR. DHIR: I'm sorry, Sir?

12

13 MASTER BREITKREUZ: The - were the liens supported by some kind of  
14 improvements?

15

16 MR. DHIR: Well, and in fact Mr. Ryan's affidavit which is  
17 before you and it's sworn on the 18th of January, and I believe filed on the 19th of  
18 January this year addresses those questions. He says the writs are all paid and that in -  
19 that in most instances the writs were registered at PPR in error by counsel when payment  
20 had been made. Whether that's true or not, Sir, the writs desp - dispensed with. The  
21 liens he characterizes as being in the usual course of business he gives an example of  
22 Brandt Tractor filing a lien to protect its interest as relates to the use of equipment and  
23 again I won't get into merits of it, that's his comment.

24

25 MASTER BREITKREUZ: Yes.

26

27 MR. DHIR: And as it relates to the mortgages, he  
28 specifically at paragraph 7 of his affidavit and as it relates to lands in questions, specially  
29 says, you shouldn't rely on tax rolls, they're not accurate. Here's appraisals and he  
30 attaches appraisals for all of the lands in question, gives updated figures as relates to the  
31 mortgages. Deposits that all mortgages are up to date that there is no arrears and  
32 obviously says, look as a consequence there's significant more equity then you might have  
33 - than you've set out in your affidavit of December 1 based on appraised value versus  
34 mortgage.

35

36 MASTER BREITKREUZ: Yes.

37

38 MR. DHIR: That's his affidavit. And it's sworn on January  
39 the 18th and is before you. Now, here's the critical piece as relates to this application.  
40 We've adjourned by the way the security for cost applications, the two cross applications.  
41 Since, the -just by way of pro - procedural background, I appeared before your brother,

1 Master Schlosser and obtained an order for consolidation. So, the first action out of  
2 Calgary, the counterclaim action, if I can refer to it that way, had been consolidated in.

3  
4 Similarly, the Tri-City separate distinct lawsuit for foreclosure for 620,000 has been  
5 consolidated in to this action this - and that's the file num or the court file number that's  
6 on the order before you and Tri-City by the way has been paid by us. Just to simplify  
7 matters we paid out Tri-City.

8

9 MASTER BREITKREUZ: M-hm.

10

11 MR. DHIR: Because they appeared to be bona fide, in the  
12 sense that they didn't have notice of any of the issues as it relates to the land. And so,  
13 while we think there's some jiggery pokery on behalf of Mr. Ryan in assigning the  
14 mortgage in the face of our lawsuits, at the time that it was done there was not much we  
15 could do about. We've now subsequently registered to give notice to parties that there is  
16 disputes as relates even to the caveat interests that are registered on title. So that's where  
17 that process sought - sat.

18

19 As relates to the security for cost application and sorry Master Schlosser granted that  
20 order on February the 26th of this year. As it relates to the security for cost application  
21 we appeared before your sister Master Schulz on December the 5th, the Friday of last  
22 year with the cross applications. We took the position that they should be adjourned in -  
23 into a special and especially until the issue of consolidation is dealt with. Your sister  
24 master directed that the matters would be adjourned to a special if consolidation was  
25 ultimately granted and if it wasn't then she might be willing hear the matter or a master  
26 could hear it in morning chambers on the strict abonation that it be actually under 20  
27 minutes. As it turns out --

28

29 MASTER BREITKREUZ: Good luck.

30

31 MR. DHIR: As it turns out, Master, that - that second part  
32 of her direction became mute because consolidation was granted and so the security for  
33 cost actions at this point are applications the cross applications sit extant.

34

35 MASTER BREITKREUZ: M-hm.

36

37 MR. DHIR: So, we're here today, Sir, on the following  
38 basis. Remember I said to you that Mr. Ryan swore his affidavit in opposition to our  
39 security for cost application and as relates to the representations the evidence we had  
40 placed before the Court on the value of five pieces of property. On December 23rd of  
41 2015, Mr. Ryan effected a transfer as follows. Two properties that were in Mr. Ryan's

1 name and again, Sir, if you look at schedule A, I've broken out the properties and the full  
2 legal description. But, if I can shorthand that as the Ryan properties, he transferred to  
3 Barbara Ryan whom we understand to be his wife. Three Cold Lake properties, so owned  
4 by Cold Lake, he transferred to Barbara Ryan. And, he gives val - and there - we've  
5 attached to Ms. Jacksons affidavit which I said I've undertaken to file later today, the aff -  
6 the instruments where - showing the registration and transfer and evaluations that were  
7 given and the representation that Ms. Ryan paid cash. And, we're talking significant  
8 amounts of money here.

9

10 MASTER BREITKREUZ: M-hm.

11

12 MR. DHIR: In some cases several hundred thousand for one  
13 property, 1.6 million for another and so forth. The representation is that she's paid cash  
14 in consideration for these properties to be transferred solely into her name. She is not a  
15 party to the lawsuit that's before you today the action.

16

17 MASTER BREITKREUZ: And no - and no fraudulent preference action,  
18 yet?

19

20 MR. DHIR: And certainly no fraudulent preference action  
21 yet, Sir. As you'll note from the exhibits that we've attached, we up - to provide updated  
22 land title certificates evidencing what I'm describing from la - late last week, from Friday.  
23 So, which was when I advi - advised the Court that I'd be coming on an ex parte  
24 application today.

25

26 So, the timeline to though, Sir, is incredibly critical. Mr. Ryan provides a fairly  
27 dismissive affidavit that's before you on January the 18th providing explanations for all of  
28 these different things. Paragraph 7 of his affidavit is the critical one, Sir, because it speaks  
29 to the issue of the land. And as you'll see, he'd explains why the land has got more  
30 equity that we might have addressed and he specifically says in addressing the Field  
31 paralegal's affidavit and then he goes on to explain why he believes the value of the land  
32 is significantly higher. That affidavit is sworn, as I say, January of this year, the 18th.

33

34 However, what he fails to disclose in that affidavit, Master, is that he's already transferred  
35 five of those properties to his wife on December the 23rd. Thereby putting them out of  
36 his control --

37

38 MASTER BREITKREUZ: M-hm.

39

40 MR. DHIR: -- or his company's control and therefore taking  
41 those assets regardless of what their value is, whether it's notional or greater, as he

1 suggests, outside of the ability of our client to be able to enforce against them, if and  
2 when they obtain judgment.

3  
4 MASTER BREITKREUZ: Who is Bob Ryan?

5  
6 MR. DHIR: Sorry?

7  
8 MASTER BREITKREUZ: Who is Bob Ryan?

9  
10 MR. DHIR: I don't know, Sir.

11  
12 MASTER BREITKREUZ: You - the - there is penciled in the margin, Bob  
13 Ryan says, I am the one that is 1.870 millions, it is in - in the margin and pencil it says  
14 Bob Ryan says 1.215 million.

15  
16 MR. DHIR: Sorry Sir, yes. I think that's just my poor  
17 handwriting. It's Barb, those - that's margined in.

18  
19 MASTER BREITKREUZ: Oh Barb, sorry, sorry.

20  
21 MR. DHIR: That marginali, Master, is mine.

22  
23 MASTER BREITKREUZ: Okay. Now it makes sense.

24  
25 MR. DHIR: And I'm noting and sorry that is my marginalia,  
26 that's not part of the evidence before you.

27  
28 MASTER BREITKREUZ: No. I realize that.

29  
30 MR. DHIR: But the marginalia tells you that that's what she  
31 swears in the affidavit transfers.

32  
33 MASTER BREITKREUZ: M-hm.

34  
35 MR. DHIR: So, while he says it's worth 1.8, she says it's  
36 worth 1.2 in the transfer.

37  
38 MASTER BREITKREUZ: Yes. Wow but the - but on the next number 2,  
39 she is down from 1.385 to \$435,000.

40  
41 MR. DHIR: Yes, Sir.



- 1  
2 MASTER BREITKREUZ: That is a quarter --  
3  
4 MR. DHIR: Yes, Sir.  
5  
6 MASTER BREITKREUZ: -- a third.  
7  
8 MR. DHIR: Well --  
9  
10 MASTER BREITKREUZ: Okay. Okay.  
11  
12 MR. DHIR: I mean, Sir, I can - not that they should be in  
13 anyway and again be mindful of the discussions that you had previously, argue as that the  
14 amounts put in Mr. Ryan's affidavit were inflated and we'd already advised Mr. Makuch  
15 that we intended to cross. That said, our - what we learned with regards to the title  
16 searches that we pulled recently, has sort of expedited the concerns that we have  
17 notwithstanding the status of the security cost applications which are pending the  
18 cross-examinations on the various affidavits.  
19  
20 MASTER BREITKREUZ: So, are there other Ryan properties that are in  
21 jeopardy?  
22  
23 MR. DHIR: So Sir, there's two other properties that were  
24 held by Mr. Ryan that he transferred to other parties, as Ms. Jackson's affidavit of today's  
25 date tells you. One of them was transferred to a numbered company that we do not - that  
26 we've not been able to identify as being a party in these lawsuits. It appears to be arm's  
27 length. So, we tell you that in our affidavit but we don't - we're not trying to attach  
28 against the particular transfer because we had no basis at this point to say to the Court  
29 that it's not a bona fide transaction in the usual course of business. Although, I have my  
30 doubts.  
31  
32 Similarly, a second property owned by Ryan has been transferred to a company called  
33 LMH Holdings and again the same comment, Sir, we don't from the review of corporate  
34 registry searches, we don't know who these parties are. On the face, it appears to be a  
35 bona fide transaction. I have my questions but --  
36  
37 MASTER BREITKREUZ: Well it, maybe bona fide except the timing is  
38 suspicious.  
39  
40 MR. DHIR: Exactly Sir. But - having regard for the nature  
41 of test and it's under section 17, if I was here on notice never mind that I'm here ex parte

1 I'm not seeking to attach against that - those properties that have been transferred by  
2 Mr. Ryan.

3  
4 Similarly Sir, as it relates to - there's another property owned by Cold Lake Estates that  
5 was transferred to a different numbered company. And this one's important Sir. Well  
6 sorry, and again same comment, I - it appears bona fide. We don't recognize the  
7 shareholders and directors of the company and again I'm not - I can't say to this Court  
8 and nor can I put affidavit evidence before this Court where somebody with positively  
9 assert that that is an unfair or unbona fide transaction and so we're not seeking to attach  
10 against that property.

11  
12 Now, if I can Master, the second part of the relief, I'm seeking before you today, is a  
13 form of order as relates to that what I call the Tri-City mortgage. You'll recall there's a  
14 \$2 million VTB that Mr. Ryan slash Cold Lake transferred to Tri-City, 620 was what they  
15 claimed. We paid 660 with interest and costs to pay that mortgage off in the face of a  
16 foreclosure action and at the same time consolidated the Tri-City action in to the present  
17 pleadings that are before you. So roughly 1.3 million owing on that VTB.

18  
19 On Janu - the affidavit of Ms. Jackson discloses to you that in middle of January,  
20 Mr. Ryan arranged through Tri-City to have the balance of that mortgage assigned to a  
21 new numbered company. The new numbered company has issued a statement of claim  
22 for foreclosure.

23  
24 MASTER BREITKREUZ: M-hm.

25  
26 MR. DHIR: We're still waiting on the amounts it claims.  
27 I've had conversations with counsel, it's Mr. Thorlakson at the Miller Thomson firm who  
28 acts for the numbered company. I've actually asked him for the information one would  
29 expect in the affidavit of default. What's the amount of the loan? When did the debt  
30 arise? Is there written contract and so on and so forth. As of today's date, Sir, I've not  
31 yet heard back from him. I've - we've agreed that I won't file a defence until I do hear  
32 back from him. It was well over 40 days ago that we had that conversation. So --

33  
34 MASTER BREITKREUZ: So, you have got a stay agreement?

35  
36 MR. DHIR: We have an agreement as between counsel that  
37 I - he won't take any further steps until he provides that information.

38  
39 MASTER BREITKREUZ: Okay.

40  
41 MR. DHIR: And, I've got a letter exchange with him to that

1 effect, Sir. What I - the reason I highlight that transaction though is this, the second part  
2 of the order that's before you - so the first part of the order, Sir, directs a prejudgment  
3 attachment order as against Cold Lake Estates, Charles Ryan, and Barbara Ryan, in the  
4 amount of 6.535 million and I'll get you - I'll explain the number to you in a moment.  
5 And it directs the registrar at paragraph 3 to attach the attachment order against the lands  
6 described in schedule A.

7  
8 Paragraph 2 or - directs Mr. Ryan and Cold Lake from dealing with any other asijdual  
9 (phonetic) property, insofar as there is any. But paragraph 4, Sir, directs the registrar to  
10 direct and immediately register this attachment order against the caveat registered as  
11 instrument number and it details the number, regarding a memorandum charging land for  
12 four million. Now, remember what I said to you, Master, that they're the last piece of the  
13 contract was that the \$4 million memorandum that would be paid as each individual lot  
14 was developed and sold.

15  
16 MASTER BREITKREUZ: M-hm.

17  
18 MR. DHIR: Based on Mr. Ryan's conduct to date in  
19 transferring first the \$2 million mortgage to Tri-City to get us to have to pay a debt that  
20 he otherwise owed. And now his subsequent transfer of that Tri-City mortgage, if I can  
21 call it that, to this new numbered company represented by Mr. Thorlakson. And we have  
22 considerable concern that the \$4 million memorandum charging land will be similarly  
23 used to get around what is now been the equitable stay on our client's requirement to pay  
24 on the terms of the contract. And so, we're asking for an order that would charge against  
25 that particular caveat or that registration.

26  
27 Now Sir, having regard to the ex parte nature of the application. Paragraph 5 invokes  
28 section 18.3 and waives the statutory 21 day subset sunset clause. Contrary to the  
29 replevin rules, as you'll appreciate Sir, 18.3 or (3) specifically contemplates your ability to  
30 waive. So, it's not in your discretion, it is statutorily given to you as a discretionary  
31 remedy. So, I don't think we have any concerns as you had with my learned friend and  
32 Ms. Little a few moments ago.

33  
34 MASTER BREITKREUZ: Okay.

35  
36 MR. DHIR: Finally Sir, you'll note the language of the end  
37 of paragraph 5 and paragraph 6. I define the ability of the respondents Ryans to reappear  
38 in court on 5e days' notice which is the minimum notice required by the Rules of Court.  
39 I would define that as the comeback application. I note that the comeback application  
40 shall be without prejudice to the respondents and shall be a hearing de novo. And, what I  
41 was trying to capture, Sir, was that I would bear the onus on any comeback application to

1 satisfy the Court that I met the test and the requirement under section 17 and the grounds  
2 that I've relied upon in making the application today.

3  
4 MASTER BREITKREUZ: It means substantially you have to reapply.

5  
6 MR. DHIR: That's right, Sir. So, if for some reason I've -  
7 in some error I've made some error in my submissions, if I misapprehended the evidence  
8 before you or indeed there are additional explanations that can be provided by Charles and  
9 Barbara Ryan that satisfy the Court --

10  
11 MASTER BREITKREUZ: Yes.

12  
13 MR. DHIR: -- that the transactions were bona fide and not  
14 within the test set out in section 17, they would be successful, I would be a penalty on  
15 cost, of course, for having unsuccessfully pursued this matter through that comeback  
16 process and there would be no prejudice to the defendants. Now --

17  
18 MASTER BREITKREUZ: But here is a real procedure of problems.

19  
20 MR. DHIR: Sir.

21  
22 MASTER BREITKREUZ: Five days' notice is - is useless when we are  
23 booking specials 6 months away.

24  
25 MR. DHIR: Agreed, Sir.

26  
27 MASTER BREITKREUZ: Because this, I mean, the comeback wouldn't -  
28 would not be a form in your application. The - the other possibility is this, with five  
29 masters and two always sitting in chambers and another one always available for the  
30 outlying points, McMur - McMurray, Grand Prairie, and Peace River and Wetaskiwin.  
31 There is usually one available to hear something on fairly short notice. But the other  
32 questions is this. Have you talked about getting a case management judge involved?

33  
34 MR. DHIR: Yes Master. And thank you for that. So, if I  
35 can - I'll answer your questions in rever - or in the order that you posed them in inquiry.

36  
37 MASTER BREITKREUZ: Sure.

38  
39 MR. DHIR: As it relates to the 5 day comeback clause, I  
40 take your point. If my friend on behalf of Barbara Ryan and or Charles Ryan, suggests  
41 that some type of exigency, ie: Barbara Ryan now wants to sell the property and our

1 attachment order is - is querying that potential deal.

2

3 MASTER BREITKREUZ: Yes.

4

5 MR. DHIR: I would submit, Sir, that they had the  
6 opportunity to utilize the commercial list which is much quicker to address the matter if  
7 necessary or alternatively, Sir, as you've described. I know Master Schlosser on this vey  
8 matter actually has been very generous in indicating that a matter that he anticipated  
9 would take more than 20 minutes, the consolidation application --

10

11 MASTER BREITKREUZ: Yes.

12

13 MR. DHIR: -- but less than - in complexity was less serious  
14 that it requiring a briefs and a special, agreed to hear us at the end of his list.

15

16 MASTER BREITKREUZ: Yes.

17

18 MR. DHIR: And the argument --

19

20 MASTER BREITKREUZ: Well --

21

22 MR. DHIR: -- did go for about 40. So I think we can  
23 probably address those concerns if they arise.

24

25 MASTER BREITKREUZ: But the other - the other solution might be if  
26 Mr. is it Mr. Makuch, who acts for the Ryans?

27

28 MR. DHIR: Yes.

29

30 MASTER BREITKREUZ: It might just be a question of what to do with  
31 the money in case any of the properties are sold.

32

33 MR. DHIR: And Sir, I can tell you that we have - we  
34 literally are using this to protect the client interest. So, if my friend, Mr. Makuch, says  
35 I've got a sale pending, we'll post it into court, will you remove the attachment order, the  
36 answer, would of course be yes, because that replaces the need of the detachment order as  
37 it relates to a property, so.

38

39 MASTER BREITKREUZ: Sure.

40

41 MR. DHIR: We're not going to hijack --

1

2 MASTER BREITKREUZ: Money - money is always better than an order.

3

4 MR. DHIR: That's right. And Sir, that simple application,  
5 Mr. Makuch could bring in under 20 minutes if I was being unreasonable. Which I trust  
6 the Court appreciates I wouldn't be.

7

8 Now, Sir, as relates to the case management inquiry. When we were still fighting over  
9 the amendments and I thought my friends' were being tactical in their opposition to what  
10 I perceive to be fairly innocuous amendments that - that gave clarity to the pleadings. We  
11 did write to the Associate Chief Justice and asked for the appointment of the case  
12 manager. His Lordship advised the parties that at that stage based on representations from  
13 my friends that it was not necessary. They opposed an appointment with a case manager,  
14 and because of the shortage of judicial resources.

15

16 MASTER BREITKREUZ: Yes.

17

18 MR. DHIR: He was willing to hear the one off matter as  
19 related to the amendment issue and thereafter depending on sort of the disposition of that  
20 hearing revisit the issue of a consol - of a case manager. But, as I say, Sir, before we had  
21 to pull the trigger on writing back to His Lordship, to say we will take him up on his  
22 generous offer, my friend issued a statement of claim that allowed me to file a  
23 counterclaim that dealt with the issue of amendments.

24

25 **Order**

26

27 MASTER BREITKREUZ: Yes. The problem and when you do not have a  
28 case manager is that you want - do you need five Masters involved. That - you know and  
29 every Master you have talked to after the first one is going to be ticked off because he is  
30 going to say, why isn't so and so hearing this he is already familiar with it. Okay. I will  
31 sign your - are there anything else I need to know?

32

33 MR. DHIR: I - one other comment, Sir, just because I think  
34 in my shorthand I may have made a representation to the Court that is unwholly accurate.  
35 Charles Ryan and Cold Lake Estates are represented by Mr. Mukuch. Barbara Ryan not  
36 being a party to this lawsuit is not at this stage represented by anybody.

37

38 MASTER BREITKREUZ: Okay.

39

40 MR. DHIR: The effective service, Sir, will be as follows as  
41 - is my representation to you. I will obviously serve Mr. Ku - Mukuch and Mr. Kelly and

1 others whether they're - whether it's relevant to them or not by way of regular service  
2 through counsel. As it relates to Barbara Ryan, I will invite Mr. Mukuch to confirm  
3 whether or not he can accept on her behalf or whether I need to affect personal service.  
4 In which case I will serve her personally.

5  
6 MASTER BREITKREUZ: Okay. I am giving you back, all the material  
7 you gave me.

8  
9 MR. DHIR: Thank you, Master. I'm grateful for your time.

10  
11 MASTER BREITKREUZ: Including the order which I signed. I am going  
12 to suggest that, it would probably be prudent for you to order a transcript immediately.

13  
14 MR. DHIR: Yes Sir. I had had the same thought, Master.  
15 Thank you.

16  
17 MASTER BREITKREUZ: So, I will see you back in my office later.

18  
19 MR. DHIR: Sure. Would you like - would you prefer to do  
20 it later in the day, Sir, or --

21  
22 MASTER BREITKREUZ: No, no.

23  
24 MR. DHIR: -- right now?

25  
26 MASTER BREITKREUZ: This is just fine.

27  
28 MR. DHIR: Thank you, Master.

29  
30 MASTER BREITKREUZ: Thank you.

31  
32 MR. DHIR: I am grateful for your time.

33  
34 MASTER BREITKREUZ: Thank you.

35

36

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37 PROCEEDINGS CONCLUDED

38

39

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41

1 **Certificate of Record**

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-- at this recording is the record made of the evidence in the proceedings in the Court of Queen's Bench, held in courtroom 212 at Edmonton, Alberta on the 18th day of April, 2016, and that I Christina was the official in charge of the sound-recording machine during the proceedings.



1 **Certificate of Transcript**

2

3 I, Cindy Smith, certify that

4

5 (a) I transcribed the record, which was recorded by a sound-recording machine, to the  
6 best of my skill and ability and the foregoing pages are a complete and accurate  
7 transcript of the contents of the record, and

8

9 (b) the Certificate of Record for these proceedings was included orally on the  
10 record and is transcribed in this transcript.

11

12

13

Digitally Certified: 2016-04-20 11:53:57

14

Cindy Smith,

15

Order No. 61726-16-1

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35 Pages: 22  
36 Lines: 887  
37 Characters: 31547

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39 File Locator: d0eb9dba071f11e68eb50017a4770810  
40 Digital Fingerprint: 43965e90d74b39c3501d553f9c011253da29b5a1ae1eb63db532bfa8271b0768

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**M DOUBLE M ENGINEERING SERVICES INC**  
(STRUCTURAL, CIVIL & PROJECT CO-ORDINATION)  
P.O. BOX 5380 BONNYVILLE AB T9N 2G5  
TEL (780) 812 2946 FAX (780) 812 2947 CEL (780) 812 5179  
TEL (780) 428 4101 FAX (780) 428 4601

e-mail: mathys@mmr.development.com  
This is Exhibit "M" referred to in the  
Affidavit of

**CITY OF COLD LAKE**  
5513 - 48 AVENUE,  
CITY OF COLD LAKE, AB  
T9M 1A1

Thomas Bayer  
Sworn before me this 5<sup>th</sup> day  
of June A.D., 20 11

**ATTENTION: INFRASTRUCTURE SERVICES**  
BOB KITCHEN General Manager  
KEN ROGERS Planning Manager  
AMJAD KAHN Engineering Manager  
RYAN P. KRISHNANITZKY Barrister & Solicitor

**PROPOSED SUBDIVISION ON EAST 1/2 34-63-02-W4  
(HILLS OF COLD LAKE)**

Your communication of January 14, 2011 with regard to our Memorandum of the Informal Meeting held on November 19, 2010 has reference.

- 1 We submit that the memorandum is an accurate record of the discussions held in the office of the General Manager of Infrastructure Services. The correct spelling of the names is noted.
- 2 The comments contained in the City of Cold Lake letter are accepted as post-facto comments and information regarding the proposed development of E 34-63-02-W4M.
- 3 It is noted that while the IDP indicates that the land use is changed from "Direct Control" to "Estate Residential Policy Area" as noted by yourself, the MD designation is "Country Residential - Estate District - CR3". The lot sizes for the development are to be 0.5 acres or less, with a range of permitted and discretionary uses.
- 4 The servicing of the proposed subdivision with municipal water and sewer has been the subject of discussions with both the MD of Bonnyville and the City of Cold Lake during a number of meetings since 2006. The standard of servicing has been referred to as a "trickle water supply system and a small diameter low pressure sewer reticulation system" during all the various discussions held with the authoritative officials. This is also set out in the Area Structure Plan prepared for the subdivision which has been circulated for comment. The City now requires that the subdivision is to be serviced to "full municipal standards" as set out in the Intermunicipal Development Plan

RECEIVED  
MAY 13 2011  
MAY 13 2011

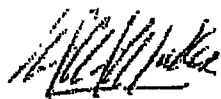
as regards the sewer and water reticulation systems, including the provision for hydrants and fire flow capacity. In this regard, reference is made to the contents of clause 1.3, page 2, which inter alia states:

"1.3 ENACTMENT ----It is intended that policies in the IDP Bylaw not be applied retroactively to subdivisions and / or development applications already in progress."

It is further noted that the subdivision application have been in progress since 2006. This matter has been referred to the Developer for his attention and further resolution, as it falls outside the scope of our engineering commission.

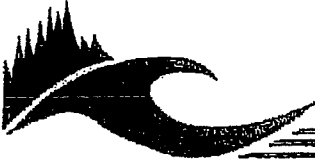
5 We trust that the finalization of the servicing standards required for the subdivision, the establishment of an intermunicipal servicing plan between the MD and the City for this subdivision development and specifically for the first phase construction of some 33 lots in particular as well as the identifying of the upgrades and financial implications of the required augmentation of the existing municipal infrastructure by the City can be put in hand and expedited so as to allow the development of the proposed subdivision to proceed.

Thanking you for your co-operation,



Matty Muller P. Eng.  
M Double M Engineering Services Inc.

CC John Foy, Director of Planning and Development, MD of Bonnyville  
C Ryan, R Richard, Northern Alberta Estates Inc, Project Manager



City of **Cold Lake**

**INFRASTRUCTURE SERVICES**

~~CONFIDENTIAL~~

M Double M Engineering Services Inc.  
P.O. Box 5380  
Bonnyville, AB  
T9N 2G5

Attn: Matthys Muller, P. Eng.

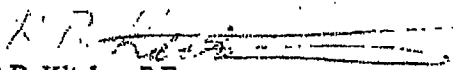
Dear Mr. Muller:

**RE: PROPOSED SUBDIVISION ON EAST ½ 34-63-02-W4  
HILLS OF COLD LAKE  
Minutes of 2011 March 15 Meeting**

Minutes of the meeting held 2011 March 15 at the City of Cold Lake City Hall Boardroom are attached.

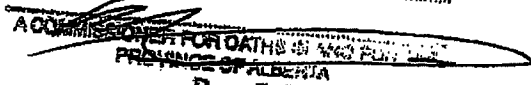
Please contact the undersigned if you have any questions.

Respectfully,



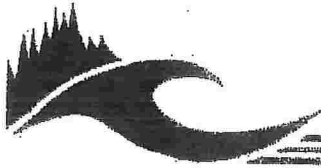
R.B. Kitchen, P.Eng.  
General Manager  
Infrastructure Services  
City of Cold Lake

This is Exhibit "N" referred to in the  
Affidavit of  
Thomas Beyer  
Sworn before me this 5<sup>th</sup> day  
of June A.D., 2015

  
A COMMISSIONER FOR OATHS IN THE PROVINCE OF ALBERTA

**Ryan P. Krushelnitzky  
Barrister & Solicitor**

cc John Foy, Director of Planning and Development, MD of Bonnyville  
Amjad Khan, Engineering Manager, City of Cold Lake  
All present



**INFRASTRUCTURE SERVICES**

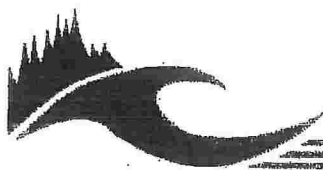
**Minutes of Meeting**

<b>Date</b>	2011 March 15	
<b>Purpose</b>	Meeting held at request of Matthys Muller to discuss servicing to the proposed Hills Subdivision.	
<b>Location</b>	Municipal Boardroom, City of Cold Lake, 5513 - 48 Avenue, Cold Lake, AB, T9M 1A1	
<b>Present</b>	Matthys Muller	M Double M Engineering Services Inc.
	Doug Parrish	General Manager Public Services, City of Cold Lake
	Bob Kitchen (Scribe)	General Manager Infrastructure Services, City of Cold Lake
	Ken Rogers	Manager Planning and Development, City of Cold Lake

Item	Description	Action By
1	Meeting held at request of Matthys Muller to discuss servicing to the proposed Hills Subdivision.	Information
2	<b>CORRESPONDENCE</b>  <ul style="list-style-type: none"> <li>Matthys presented a letter dated 2011 March 07. Today is the first time the City has received this letter</li> <li>The letter is attached</li> </ul>	C of Cold Lake
	Matthys presented copies of: <ul style="list-style-type: none"> <li>2006 November 27 letter from Northern Alberta Estates Inc. to MD of Bonnyville #87</li> <li>2008 April 29 Minutes of first meeting between MMR Development Group and City of Cold Lake</li> <li>2008 May 22 presentation letter from MRR Developments</li> <li>2008 September 30 Record of Meeting between MRR Development Group Inc. and City of Cold Lake.</li> <li>Agenda for meeting 2008 December 01</li> <li>Minutes of meeting held 2008 December 01</li> <li>Cover page from Intermunicipal Development Agreement with section 1.3 attached to cover</li> <li>These items of correspondence are attached.</li> </ul>	Information
	Reference was made to: <ul style="list-style-type: none"> <li>2011 12 14 Letter from City of Cold Lake (Bob Kitchen) to Matthys Muller Re Memorandum of Informal Meeting</li> </ul>	Information

5513 - 48 Avenue, Cold Lake, AB T9M 1A1  
 Telephone (780) 594-4494 Fax (780) 594-3480  
 www.coldlake.com





**INFRASTRUCTURE SERVICES**

3	<p><b>INTERMUNICIPAL SERVICING PLAN</b></p> <ul style="list-style-type: none"> <li>• The City of Cold Lake and the MD of Bonnyville have held an initial meeting regarding the Intermunicipal Servicing Plan.</li> <li>• Lead contact personnel for this project are Doug Parrish for City of Cold Lake and John Foy for MD of Bonnyville.</li> <li>• A Consulting firm will be hired to develop the plan. A Request for Proposals (RFP) was drafted by the City of Cold Lake. Comments on this draft have been received from the MD of Bonnyville. Consensus on the terms and details of the RFP will be required between the City and MD before a consultant can be hired.</li> </ul>	Information
4	<p><b>HILLS PROJECT</b></p> <ul style="list-style-type: none"> <li>• The fully developed Hills Project is for 300 lots.</li> <li>• Currently the Developer wishes to bring 33 lots online under Phase 1.</li> <li>• <b>Matthys stated the Developer's position is the Hills Development has been under discussion since 2006 and both the trickle water feed system and sewage system have been accepted prior to the Intermunicipal Development Plan and are "Grandfathered" under section 1.3 of the Intermunicipal Development Plan.</b></li> <li>• <b>The City of Cold Lake position is</b> <ul style="list-style-type: none"> <li>○ <b>the trickle water feed system and sewage system were not accepted prior to the Intermunicipal Development Plan;</b></li> <li>○ <b>the early discussions were based on low water demand that is not reflective of the current water requirements for the properties.</b></li> <li>○ <b>the location of the Hills Project was directly identified in the Intermunicipal Development Plan and is not covered by any form of "Grandfather" clause.</b></li> <li>○ <b>Intermunicipal Development Plan requires full municipal servicing for the Hills Project.</b></li> <li>○ <b>In addition to treated water and wastewater, storm water flows must also be addressed to the satisfaction of the City of Cold Lake. Reference was made to section 4.2 of correspondence dated 2008 April 29.</b></li> </ul> </li> </ul>	Information
5	<p><b>INTERIM DEVELOPMENT</b></p> <ul style="list-style-type: none"> <li>• <b>Matthys asked if arrangements could be made to allow servicing to the 33 lots planned under Phase 1.</b></li> <li>• <b>The City of Cold Lake's position is until there is resolution</b></li> </ul>	Information



## INFRASTRUCTURE SERVICES

	<p>that is satisfactory to both the City of Cold Lake and the MD of Bonnyville no servicing will take place. This resolution must address</p> <ul style="list-style-type: none"><li>o Engineering</li><li>o Governance</li><li>o If an interim solution is accepted, transition from the interim solution to a process that fully integrates with the Intermunicipal Servicing Plan.</li></ul> <ul style="list-style-type: none"><li>• The engineering items include<ul style="list-style-type: none"><li>o Water, storm and sanitary sewer demands and resultant pipe sizes at the fully developed state.</li><li>o Assessment of the City's ability (or lack thereof) to supply water, accept wastewater and stormwater</li><li>o Quality related issues of stormwater entering Cold Lake from the subdivision</li></ul></li><li>• Governance includes all items related to the supply, operation and maintenance of services from the City of Cold Lake to the MD of Bonnyville.</li></ul>	
6	<p><b>ACTION ITEMS</b></p> <ul style="list-style-type: none"><li>• City of Cold Lake will respond to the letter dated 2011 March 07 which was received at today's meeting.</li><li>• The water consumption data used in the Hills design need to be based on current standards. Matthys will check with the Developer, if the Developer agrees to the cost, Matthys will calculate the pipes required to meet the demand.</li></ul>	<p>City of Cold Lake Matthys</p>

The above minutes reflect, to the best ability of the undersigned scribe, the details of what was discussed at the meeting. Any errors or omissions are to be brought to the Scribe's attention in writing.

# Cold Lake Estates Inc.

10123 99 St Suite 1730

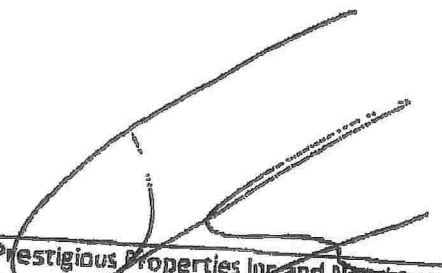
Edmonton, Alberta


T5J 3H1

Fax: 780-428-4601

The undersigned acknowledges that:

1. The attached letter dated October 22, 2010 from the Municipal District of Bonnyville No.87 with file reference No. 2010-S-39 RE: "Proposed subdivision of the E 1/2 34-63-2-W4 (Phase 1)" satisfies the warranty and representation of article 6.1(b) in the Prestigious Properties Inc. and/or nominee offer to purchase.
2. Where reference to (Prism) A is made Prestigious Investments & Management (Prism) A Inc. is inferred.

  
 Prestigious Properties Inc and Nominees  
 Prestigious Investments & Management (Prism) A Inc.  
 Thomas Bejer, President  
 Oct. 27, 2010  
 Date

This is Exhibit E referred to  
 in the Affidavit of  
Charles Ryan  
 sworn before me this 20  
 day of March A.D., 2010  
  
 Notary Public / Commissioner for Oaths  
 in and for the Province of ALBERTA

NESTOR MAKUCH  
 LAWYER  
 NOTARY PUBLIC/COMMISSIONER  
 IN AND FOR THE PROVINCE OF ALBERTA

# 712, 743 Redway Ave.  
 Camrose, AB T1W 1P2





October 22, 2010

File No. 2010-S-39

**"Refer to attached conditions of approval"**

Mattys Muller  
Box 5380  
Bonnyville, AB T9N 5H1

Dear Mr. Muller:

**RE: PROPOSED SUBDIVISION OF East ½ of 34-63-2-W4M(Phase 1)**

Your subdivision application was conditionally approved on **October 12, 2010**. ***This decision may be appealed within nineteen (19) days of the mailing of this letter.*** Appeals will be accepted from the registered owner(s)/agent or from the referral agencies listed below by submitting a written notice to the appeal body as specified within the body of the **Notes Section**. Subdivision approvals are valid for one (1) year.

**The attached conditions of approval must be provided to your surveyor of choice to ensure that the subdivision plan is prepared by an Alberta Land Surveyor in a manner satisfactory to the Land Titles Office (10365 - 97 Street, Edmonton, AB T5J 3W7, Phone 427-2742).** Documents for registration at Land Titles cannot be endorsed by this office until the appeal period has lapsed and attached conditions have been met.

The Municipal District will make contact and set up an appointment once the endorsement documents have been completed by this office. An outstanding endorsement fee of one Hundred Fifty (\$150.00) Dollars plus GST for each lot to be registered (excluding reserve and utility lots) payable to the Municipal District of Bonnyville No. 87 will be required will be required at that time.

Please contact me for any clarification.

Regards,

Caroline Palmer  
Development Officer II  
Subdivision Authority Officer

- cc:
- ▶ Northern Lights School Division
  - ▶ Cold Lake Alberta Health Services
  - ▶ ATCO Electric
  - ▶ ERCB
  - ▶ Cold Lake First Nations
  - ▶ Lakeland Catholic School Division
  - ▶ Telus Communications Inc.
  - ▶ North East Gas
  - ▶ City of Cold Lake
  - ▶ Cold Lake Est./D Robinson & Assoc.

File No. 2010-S-39

Approved subject to the following conditions:

That this application for subdivision be **APPROVED** subject to the following conditions:

1. Pursuant to Section 655(1)(b) of the Municipal Government Act, and Section 3.2(1) of the Municipal Development Plan, that the developer enter into a development agreement with and to the satisfaction of the Municipal District of Bonnyville No. 87 to include but not be limited to the provision of access to the parcel being created and the remnant parcel;
2. Pursuant to Section 655(1)(b) that all lots shall be serviced with City of Cold Lake water and sewer with the City's approval. The developer shall be responsible for the design and construction of the water and sewer to City of Cold Lake's standards including upgrades to the City's system.
3. Pursuant to Section 81 of the Land Titles Act, that the subdivision be registered by way of Plan of Survey;
4. Pursuant to Section 669 of the Municipal Government Act, that Municipal Reserves be dedicated as outlined in the Hills of Cold Lake Area Structure Plan and as shown on the tentative plan of subdivision, to the satisfaction of the Municipal District of Bonnyville No. 87. All reserves owing not dedicated in land as part of Phase I shall be deferred to the remnant parcel through the registration of a Deferred Reserve Caveat;
5. Pursuant to Section 655(1) of the Municipal Government Act, that the developer register utility easement rights-of-way as per the requirements of the Municipal District of Bonnyville No. 87 and/or Utility Companies concurrent with, or prior to, registration of the subdivision Plan of Survey;
6. Pursuant to Section 662(1) of the Municipal Government Act, that the owner/developer dedicate to the Municipal District of Bonnyville No. 87, a 5.18 meter (17 feet) wide strip of land for road widening along the entire frontage of the east side of the proposed parcels and remnant of the E1/2 34-63-2-W4M;
7. Pursuant to Section 655(1)(a) that the storm water retention & outlet shall be approved by Alberta Environment.
8. Pursuant to Section 654(1)(d) of the Municipal Government Act, that all outstanding property taxes be paid.

**NOTE:**

1. To avoid unnecessary complications, you are advised that no work should commence, on the proposal prior to endorsement of the registrable instrument and without prior consultation with the Municipal District of Bonnyville No. 87.
2. Prior to endorsement of an instrument affecting this plan, construction and/or upgrading of all external roads, internal roads, approaches, including culverts and crossings to the proposed parcels to be provided at the developer's expense and to the specifications and satisfaction of the MD of Bonnyville No. 87. The development agreement will also require an open space plan acceptable to the Municipal District of Bonnyville No. 87 outlining all landscaping details to be

*constructed by the developer on the proposed Municipal Reserve, including but not limited to the location and construction specifications of all trails and other forms of pedestrian access; as well as any other improvements envisioned.*

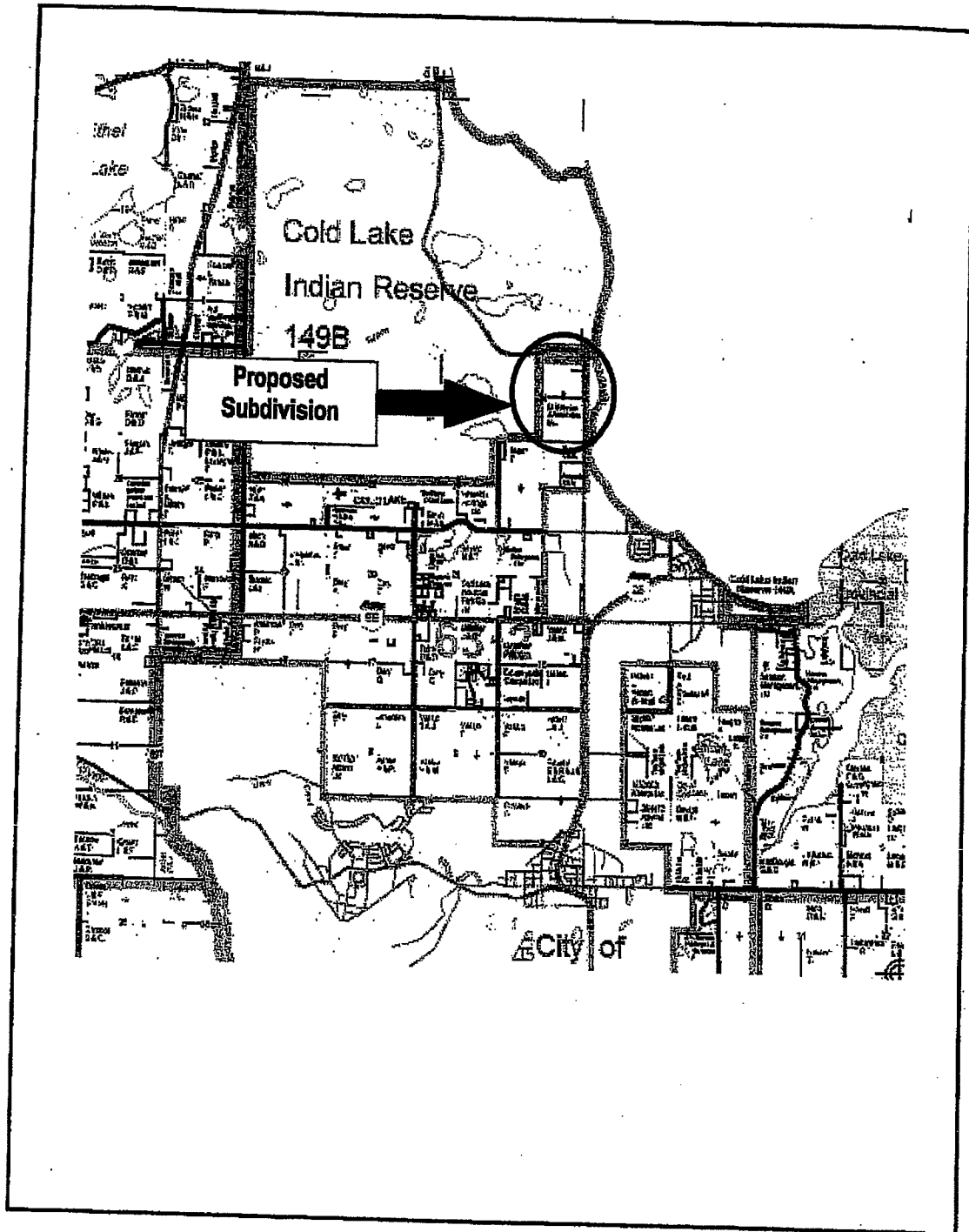
- 3. Prior to endorsement of an instrument affecting this plan of subdivision, receipt of all supporting documentation, including area structure plans, concept plans, and subdivision plans and engineering studies must be filed with the MD of Bonnyville No. 87. Word documents must be filed in word document and pdf format; compatible with and to the satisfaction of the MD of Bonnyville No. 87.*
- 4. The following information is provided as required by Section 658(2)(a) of the Municipal Government Act. An appeal of this decision lies to the Subdivision and Development Appeal Board, Bag 1010, Bonnyville, AB T9N 2J7.*

# Location Plan - Municipal District of Bonnyville

For the

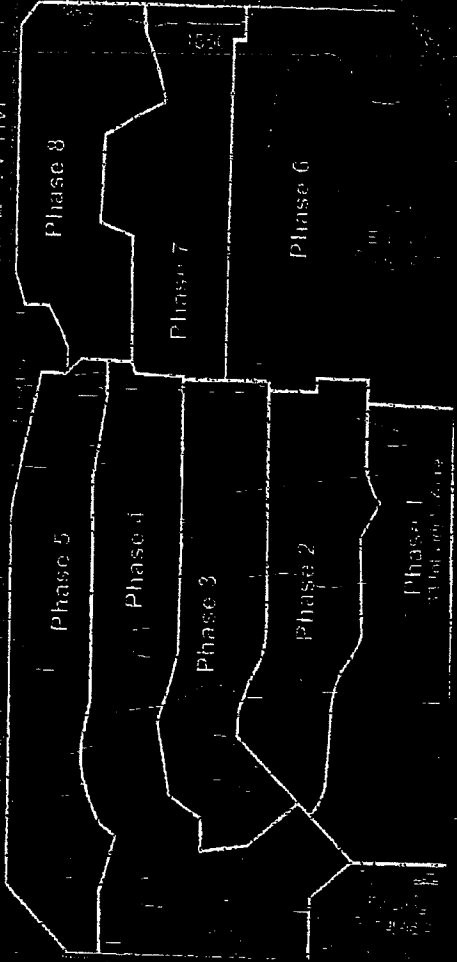
## PROPOSED SUBDIVISION

of E ½ 34-63-2-W4M



NE 1/4 34-63-2-W4M

SE 1/4 68-2-W4M





**M.D. Of Bonnyville No. 87  
Subdivision Sketch Plan**






NE & SE 1/4 34-63-2-W4M

2010-S-039

Cold Lake Estates/

D Robinson & Associates Inc.

-  Abandoned Wellhead
-  Flowing Gas wellhead

-  Gas Pipeline
-  AltaGas Line
-  Oil Pipeline
-  LVP/HVP Pipeline
-  Contour Lines

NOTED BECAUSE

Warning: This map is not a legally recorded map nor survey and is not intended to be used as such. The source data may contain errors.



## Tom Docking

---

**From:** Thomas Beyer [tbeyer@prestprop.com]  
**Sent:** April 14, 2011 9:15 PM  
**To:** Mike Hammerlind; Scotty Grubb  
**Subject:** \*\*\*\*\*SPAM\*\*\*\*\* Brief cold lake observations

\$1000 well spent .. Should have done it last fall ..

A tour of existing subdivisions to follow tomorrow

On the plus side

Great, high end location as confirmed by the top 2 builders in town and realtor

Very interested builder to the tune of about 5-10 lots each a year

Absorption of 20 or so realistic per year but not 30+

Lot price today 125,000 .. Up 5-6% easily per year

100-130 homes per Year built in CL and no slow down expected unless another severe recession

Demand from in-town folks with 2+ cars and TV and skidoo for 1/2 acre lot and folks who move here

City will support it and is in favor and water/sewer ok if developer pays for feeder pipe for approx 1.5km of TBD dimensions

Demand for houses in 400-550k range pretty decent especially in an architecturally controlled subdivision

So so

Price point above 600k hard to sell . Maybe a few per year with lake view

Builders want/expect terms for lots expected, say 10% down and balance a year later on house sale

No lot supply shortage but none exist of proposed higher end subdivision

City hasn't specced out the water/sewer requirement in detail yet .. Likely by September though

Chad estimates cost at around \$300 per meter for sewer/water line plus pump station at 150k or so .. So likely all in below \$1m

Charles Ryan known in town for screwing people

Matty known as engineer and no negatives

Charles Ryan vision sound albeit longer timelines and somewhat lower price points

Some rezoning to smaller lots in NQ a good idea

Current offer around \$4m ok but no more

Conclusion

A solid project if we don't overpay going in

Thomas Beyer, President

Prestigious Properties Group

T: 1-403 678 3330 or 1-604 564 7673

E: [tbeyer@prestprop.com](mailto:tbeyer@prestprop.com)

W: [prestprop.com](http://prestprop.com)

000147

**From:** Thomas Beyer [mailto:tbeyer@prestprop.com]  
**Sent:** May-16-11 9:14 PM  
**To:** Kenneth Rogers  
**Cc:** bkitchener@coldlake.com; 'Chad Willox'  
**Subject:** Hills of Cold Lake + Next Steps

Ken:

thanks for the meeting, if ever so briefly, 3 weeks ago.

I am happy to report that we now bought the 2 quarter sections called "Hills of Cold Lake; along English Bay Road; from the previous owner Cold Lake Estates, an affiliated company to MRR (Mattie Muller, Roger Richard, Charles Ryan).

We intend to progress engineering and infrastructure issues this spring and summer, and get agreement of the town's and county's water/sewer requirements, which are still very much unspecified according to you and Bob Kitchener. Is fall still a realistic target for specific requirements for said land ?

Our project manager Chad Willox who has deep expertise in building houses and developing small subdivisions in Alberta may contact you over the next week or 2 to meet and discuss infrastructure issues a bit further. Chad is at 403-863-2644

Given the current uncertainty over sewer/water issues 2012 may be too aggressive for road and house construction, and it may move to 2013, but we would like to see the land developed at about 25-33 lots / year .. initially on the south side .. later on the North end closer to the Indian land with possibly higher density, if the city/county is agreeable to an ASP amendment for the north quarter section. In that case, we should budget capacity for about 400-425 homes, not 300.

Yours Sincerely,

Thomas Beyer, President





City of **Cold Lake**

**INFRASTRUCTURE SERVICES**

~~2011-03-15~~

M Double M Engineering Services Inc.  
P.O. Box 5380  
Bonnyville, AB  
T9N 2G5

Attn: Matthys Muller, P. Eng.

Dear Mr. Muller:

**RE: PROPOSED SUBDIVISION ON EAST ½ 34-63-02-W4  
HILLS OF COLD LAKE  
Minutes of 2011 March 15 Meeting**

Minutes of the meeting held 2011 March 15 at the City of Cold Lake City Hall Boardroom are attached.

Please contact the undersigned if you have any questions.

Respectfully,

R.B. Kitchen, P.Eng.  
General Manager  
Infrastructure Services  
City of Cold Lake

This is Exhibit "N" referred to in the Affidavit of

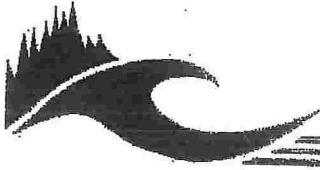
Thomas Beyer

Sworn before me this 5<sup>th</sup> day  
of June A.D., 2015

~~ACCOMMODATED FOR OATHS IN AND OUT OF  
PROVINCE OF ALBERTA~~

Ryan P. Krushelnitzky  
Barrister & Solicitor

cc John Foy, Director of Planning and Development, MD of Bonnyville  
Amjad Khan, Engineering Manager, City of Cold Lake  
All present



**INFRASTRUCTURE SERVICES**

**Minutes of Meeting**

<b>Date</b>	2011 March 15	
<b>Purpose</b>	Meeting held at request of Matthys Muller to discuss servicing to the proposed Hills Subdivision.	
<b>Location</b>	Municipal Boardroom, City of Cold Lake, 5513 - 48 Avenue, Cold Lake, AB, T9M 1A1	
<b>Present</b>	Matthys Muller	M Double-M Engineering Services Inc.
	Doug Parrish	General Manager Public Services, City of Cold Lake
	Bob Kitchen (Scribe)	General Manager Infrastructure Services, City of Cold Lake
	Ken Rogers	Manager Planning and Development, City of Cold Lake

Item	Description	Action By
1	Meeting held at request of Matthys Muller to discuss servicing to the proposed Hills Subdivision.	Information
2	<b>CORRESPONDENCE</b> <ul style="list-style-type: none"> <li>Matthys presented a letter dated 2011 March 07. Today is the first time the City has received this letter</li> <li>The letter is attached</li> </ul>	C of Cold Lake
	Matthys presented copies of: <ul style="list-style-type: none"> <li>2006 November 27 letter from Northern Alberta Estates Inc. to MD of Bonnyville #87</li> <li>2008 April 29 Minutes of first meeting between MMR Development Group and City of Cold Lake</li> <li>2008 May 22 presentation letter from MRR Developments</li> <li>2008 September 30 Record of Meeting between MRR Development Group Inc. and City of Cold Lake.</li> <li>Agenda for meeting 2008 December 01</li> <li>Minutes of meeting held 2008 December 01</li> <li>Cover page from Intermunicipal Development Agreement with section 1.3 attached to cover</li> <li>These items of correspondence are attached.</li> </ul>	Information
	Reference was made to: <ul style="list-style-type: none"> <li>2011 12 14 Letter from City of Cold Lake (Bob Kitchen) to Matthys Muller Re Memorandum of Informal Meeting</li> </ul>	Information

5513 - 48 Avenue, Cold Lake, AB T9M 1A1  
 Telephone (780) 594-4494 Fax (780) 594-3480  
[www.coldlake.com](http://www.coldlake.com)



**INFRASTRUCTURE SERVICES**

3	<p><b>INTERMUNICIPAL SERVICING PLAN</b></p> <ul style="list-style-type: none"> <li>• The City of Cold Lake and the MD of Bonnyville have held an initial meeting regarding the Intermunicipal Servicing Plan.</li> <li>• Lead contact personnel for this project are Doug Parrish for City of Cold Lake and John Foy for MD of Bonnyville.</li> <li>• A Consulting firm will be hired to develop the plan. A Request for Proposals (RFP) was drafted by the City of Cold Lake. Comments on this draft have been received from the MD of Bonnyville. Consensus on the terms and details of the RFP will be required between the City and MD before a consultant can be hired.</li> </ul>	Information
4	<p><b>HILLS PROJECT</b></p> <ul style="list-style-type: none"> <li>• The fully developed Hills Project is for 300 lots.</li> <li>• Currently the Developer wishes to bring 33 lots online under Phase 1.</li> </ul> <p>Matthys stated the Developer's position is the Hills Development has been under discussion since 2006 and both the trickle water feed system and sewage system have been accepted prior to the Intermunicipal Development Plan and are "Grandfathered" under section 1.3 of the Intermunicipal Development Plan.</p> <ul style="list-style-type: none"> <li>• The City of Cold Lake position is             <ul style="list-style-type: none"> <li>◦ the trickle water feed system and sewage system were not accepted prior to the Intermunicipal Development Plan;</li> <li>◦ the early discussions were based on low water demand that is not reflective of the current water requirements for the properties.</li> <li>◦ the location of the Hills Project was directly identified in the Intermunicipal Development Plan and is not covered by any form of "Grandfather" clause.</li> <li>◦ Intermunicipal Development Plan requires full municipal servicing for the Hills Project.</li> <li>◦ In addition to treated water and wastewater, storm water flows must also be addressed to the satisfaction of the City of Cold Lake. Reference was made to section 4.2 of correspondence dated 2008 April 29.</li> </ul> </li> </ul>	Information
5	<p><b>INTERIM DEVELOPMENT</b></p> <ul style="list-style-type: none"> <li>• Matthys asked if arrangements could be made to allow servicing to the 33 lots planned under Phase 1.</li> <li>• The City of Cold Lake's position is until there is resolution</li> </ul>	Information



**INFRASTRUCTURE SERVICES**

	<p>that is satisfactory to both the City of Cold Lake and the MD of Bonnyville no servicing will take place. This resolution must address</p> <ul style="list-style-type: none"> <li>○ Engineering</li> <li>○ Governance</li> <li>○ If an interim solution is accepted, transition from the interim solution to a process that fully integrates with the Intermunicipal Servicing Plan.</li> </ul> <ul style="list-style-type: none"> <li>● The engineering items include             <ul style="list-style-type: none"> <li>○ Water, storm and sanitary sewer demands and resultant pipe sizes at the fully developed state.</li> <li>○ Assessment of the City's ability (or lack thereof) to supply water, accept wastewater and stormwater</li> <li>○ Quality related issues of stormwater entering Cold Lake from the subdivision</li> </ul> </li> <li>● Governance includes all items related to the supply, operation and maintenance of services from the City of Cold Lake to the MD of Bonnyville.</li> </ul>	
6	<p><b>ACTION ITEMS</b></p> <ul style="list-style-type: none"> <li>● City of Cold Lake will respond to the letter dated 2011 March 07 which was received at today's meeting.</li> <li>● The water consumption rates for the water volumes used in the Hill... based on current standards. Mattys will calculate the... if the Developer proposes the project. Mattys will calculate the... required for peak demand.</li> </ul>	<p>City of Cold Lake Mattys</p>

The above minutes reflect, to the best ability of the undersigned scribe, the details of what was discussed at the meeting. Any errors or omissions are to be brought to the Scribe's attention in writing.



000138

**David Perehudoff CWI**

---

**From:** Chad Willox <chad@spurconstruction.com>  
**Sent:** August 13, 2015 6:50 PM  
**To:** Thomas Beyer; David Perehudoff  
**Subject:** Fwd: Update

Kind Regards  
 Chad

President  
 Spur Construction Inc  
 403-863-2644

----- Forwarded message -----

**From:** Chad Willox <Chad@spurconstruction.com>  
**Date:** Tue, May 31, 2011 at 11:54 AM  
**Subject:** Update  
**To:** Thomas Beyer <tbeyer@prestprop.com>, Hans McFarlane <hans\_mcfarlane@hotmail.com>

Hello Thomas and Hans,

Just to let you know where things are at. I had a good conversation with Ken Rodgers, City of Cold Lake Manager of Planning & Development Officer. They are actually waiting for information from us. I however need a couple more answers from them, after my review. Ken did not return my call late last week and is in a conference all of this week, so I do not anticipate hearing back from him until next week. Most concerning is that I have not heard back from John Foy, who is the County's planner. The buck stops with this guy. I have left several messages with no returned call. Have you talked with this guy Thomas? This guy is key to everything. I had a talk with Ron Kalinsky, Grant Benoit and Bernard Lefebvre. All seemed helpful and eager, but you never really know until you work with people. Mattie Muller has not returned my call. My assessment is that he is not all that respected with the City, not sure about the county as John Foy and I have not talked yet. The city has been frustrated that Mattie is not straight forward on issues, and always has some new scheme. They said much of the information in the area structure plan, presented by Mattie would not even be supported by the City - ie trickle water system. Although, Mattie and I have not talked, my gut reaction is that he may not be an asset to us. I will leave this out for debate and discussion, especially after he hopefully calls back. I have not contacted Roger Richard and Charles Ryan yet, as I believe it best to talk to all the other parties involved first. I had asked Ken Rodgers to set up a time where we could meet the mayor and the economic development officer of the City, I have not heard back yet. I have as well tried to contact the Reeve and Financial officer of the county, with no response as of yet. Either everyone is really busy or they don't like developers. We need to calculate how many units maximum we may consider putting in the subdivision. There are closer options then the 2km servicing aspect, but we need to work numbers through with Ken, Bob and Doug. When I hear back from them, I hope to get further on some our options soon. There is a demand for multifamily but I have not heard back from John Foy yet to see if there would be open to rezoning a portion of the development to multifamily. I will keep the heat on but if you have any further thoughts Thomas, please let me know.

000139

Regards,  
Chad

Chad Willox

Office 403-678-2622 ext. 111

Office Toll Free - 888-816-1708 ext. 111

Fax - 866-367-5806



000141



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**From:** Kenneth Rogers [mailto:KRogers@coldlake.com]  
**Sent:** June-06-11 1:32 PM

**To:** Chad Willox  
**Subject:** RE: Hills of Cold Lake + Next Steps

Good next week. Just a few short meetings, but nothing that is all day.

---

**From:** Chad Willox [mailto:chad@spurconstruction.com]  
**Sent:** June-06-11 1:18 PM  
**To:** Kenneth Rogers  
**Subject:** RE: Hills of Cold Lake + Next Steps

Hi Ken,

What's next week like? We would like to schedule a time with the mayor and economic development office as well. Another question I have is this. Part of our decision as to many lots we may have is relative to servicing cost. You mention there least two options for servicing. Could we get an outline as to the maximum lots for each location tie in? Doe what I am asking make sense?

Regards,

Chad

Chad Willox

Office 403-678-2622 ext. 111

Office Toll Free - 888-816-1708 ext. 111

Fax - 866-367-5806



000129

## PRESTIGIOUS PROPERTIES

July 14, 2011.

Municipal District of Bonnyville, AB  
c/o John Foy  
jfoy@md.bonnyville.ab.ca  
4905 - 50 Avenue  
Bag 1010  
Bonnyville, AB  
T9N 2J7

RE: Re-Zoning Intention

Dear John Foy,

As stated in a visit by Chad Willox in June 2011, we are now the owner of the lands previously referred to as "Hills of Cold Lake", namely the majority of the two quarter sections along English Bay Road, South of the Indian reservation, better described as:

- a) A 147.51 acre residential development land parcel located just outside the Cold Lake, AB city limits, South West Corner of English Bay Road and 20<sup>th</sup> Ave, MD of Bonnyville No. 87, Alberta, legally described as Part North East, Section Thirty Four (NE 34) Township Sixty Three (63) Range Two (2) West of the Fourth (4<sup>th</sup>) Meridian MD Bonnyville No. 87 (the "North Quarter" or "N Quarter" or "NQ")

and

- b) A 148.97 acre residential development land parcel located just outside the Cold Lake, AB city limits, South East Corner of English Bay Road and 10<sup>th</sup> Ave, MD of Bonnyville No. 87, Alberta, legally described as Part South East, Section Thirty Four (SE 34) Township Sixty Three (63) Range Two (2) West of the Fourth (4<sup>th</sup>) Meridian MD Bonnyville No. 87 (the "South Quarter" or "S Quarter" or "SQ")

The legal owner of these two land parcels is "Prestigious Cold Lake Parcels Inc.". It is the same firm that purchased the asset from the previous owner, Cold Lake Estates Inc., but renamed. The property title still shows as "Prestigious Properties Inc." but we have renamed this firm to better reflect its purpose.

The project manager overseeing this development is Chad Willox, whom you met. Chad is the President and sole shareholder of Spur Construction Inc. His firm has successfully developed several sub-divisions in Alberta. He is well versed in civic policy issues and land servicing requirements. He has completed the planning and construction management for many land development infrastructure projects, single and multi family homes, light industrial and commercial projects. Chad can be reached best at 403-863-2644 or [chad@spurconstruction.com](mailto:chad@spurconstruction.com).

It is our intent to submit a re-zoning application, which would involve an amendment to the IDP, which currently mandates servicing from the City of Cold Lake. Our desire is to reduce the number of total lots from the current approximate number of 300, ½ acre lots to approximately 125 to 150 larger lots. If a successful amendment to the IDP is completed, we would be requesting to rezone the land to Country Residential (Resort) CR.



000130

There are few reasons for this direction. Currently there does not appear to be a demand in the local market for the current zoning which allows for ½ acre lots. The market shows us a demand for larger lots in the area. Another very important concern, is that the City of Cold Lake's water/sewer infrastructure, accordingly to their comments, is operating above capacity and has special consent from Alberta Environment to be under constant release of sewage lagoons as it stands now. Coupled with their aging over utilized system, is the extremely large costs associated to service the subject lands with city water and sewer. There appears to be a lot of "unknowns" in servicing this land from the city infrastructure. One of the more obvious concerns with our desired direction is effluent dispersing into Cold Lake. Our proposal to address the common concern of protecting the lake from effluent is by mandating the use of Ecoflo septic systems. These systems are proven to retain 98% of the phosphorous. We have attached information regarding these systems to this letter. We trust this approach will satisfy the governing bodies and residents of both MD of Bonnyville and the City of Cold Lake. We look forward to your feedback as to how we can best prepare to proceed through this process.

Please e-mail or call Chad or myself, with any questions or comments regarding this land and its intended development. We are looking forward to an excellent cooperation with the MD of Bonnyville, the City of Cold Lake, and the various parties involved in such a complex development project.

Yours truly,

Thomas Beyer, President  
Prestigious Properties Group  
E: [tbeyer@prestprop.com](mailto:tbeyer@prestprop.com)  
T: 403-678-3330

#912, 743 Railway Ave  
Canmore, AB T1W 1P2  
T: (403) 678-3330  
F: (403) 770-8885  
E: [tbeyer@prestprop.com](mailto:tbeyer@prestprop.com)  
[www.prestprop.com](http://www.prestprop.com)

CC: City of Cold Lake, c/o Kenneth Rogers  
[KRogers@coldlake.com](mailto:KRogers@coldlake.com)  
5513 - 48<sup>th</sup> Ave  
Cold Lake, AB  
T9M 1A1

**Joint Council Meeting  
County of Bonnyville & City of Cold Lake  
Proposed IDP Amendment**

**October 11, 2011**

Thomas Beyer, Founder & President

403-678-3330

[tbeyer@prestprop.com](mailto:tbeyer@prestprop.com)

Chad Willox, President Spur Construction

403-863-2644

[chad@spurconstruction.com](mailto:chad@spurconstruction.com)

Mission Statement: We build wealth for investors by offering well selected real estate investments in W - Canadian growth markets that provide positive cash flow and/or tax deferral equity growth and professional management for the benefit of tenants, communities and investors.

1: (403) 770-8885  
[www.prestprop.com](http://www.prestprop.com)

**Proposed Amendment**

**Overview - 2 of 2**

No water & sewer services from City of Cold Lake

Proven and Established Well Systems

Ample ground water available – see Report

Widely used in the County of Bonnyville

Eco-Friendly and Proven Septic System

State of the Art

VERY LOW Effluence / Phosphorus !!

Proven Technology

Peat Moss based absorption system

Enforcement via caveat on title

Economically viable

NO demand on city water and sewer infrastructure

000283

**David Perehudoff CWI**

---

**From:** Thomas Beyer <tbeyer@prestprop.com>  
**Sent:** June 4, 2013 10:40 AM  
**To:** 'Craig Copeland'  
**Cc:** Nagoya Kevin  
**Subject:** RE: Meeting of the mind - Part II - Annexation of Cold Lake Lands

OK .. I have been in touch with the planning manager in Kevin's group but without any meaningful insight into co-funding guidelines or insights into costs.

Asking the county to assist with water / sewer if the land is in the city makes no sense to me, Craig, as the city now would derive all benefits of future property tax revenue and \$\$ for its water/sewer use !!

Yours Sincerely,

Thomas Beyer, President  
 Prestigious Properties Group  
 T: 403-678-3330 or 604-564-7673  
 F: 403-770-8885

[www.prestprop.com](http://www.prestprop.com)

---

**From:** Craig Copeland [mailto:CCopeland@coldlake.com]  
**Sent:** June-04-13 8:54 AM  
**To:** 'tbeyer@prestprop.com'  
**Cc:** Kevin Nagoya  
**Subject:** Re: Meeting of the mind - Part II - Annexation of Cold Lake Lands

Thomas

I am going to cc Kevin Nagoya (CAO City CL) on the email. He can lead you to who you need to have conversations with.

I would work with Kevin and his team as they will guide you on the city's policy on what you need:

Again I encourage you to engage the MD council on this subdivision also not only in terms of annexation but possible helping you develop your property with the water and sewer challenges.

Take care

Craig

---

**From:** Thomas Beyer [mailto:tbeyer@prestprop.com]  
**Sent:** Tuesday, June 04, 2013 08:39 AM  
**To:** Craig Copeland  
**Subject:** Re: Meeting of the mind - Part II - Annexation of Cold Lake Lands

Thanks Craig.

Will leave for Europe myself on Thursday until June 28 .. UK, Germany and N-Italy ..

000284

Who at the city can provide guidance re sewer/water connection tie-in and/or pricing? We have engaged Sheffer-Andrew (Colin Declerg) so they should be able to get us some guidance with city input. If the land is annexed, will the city pay for this 100%? 50%? re-coup via lot levy? what is common here in Cold Lake?

On Tue, Jun 4, 2013 at 6:09 AM, Craig Copeland <[CCopeland@coldlake.com](mailto:CCopeland@coldlake.com)> wrote:  
Thomas

I would suggest your group write to the Reeve and Council of the MD of Bonnyville that you request the lands to be annexed into the City of Cold Lake.

I was telling Richard that Cold Lake First Nation is trying to get a water line to the North Reserve. When that will happen is anyone's guess. That would help you would think with cost for your development.

I don't know if I would do multi family on your subdivision. That would really take away from the appeal of your land. There are lots of tire kicking in CL right now in that area (multi family). Your land is amazing for people that want the triple garages.

Have you sat down with City staff to figure out what the cost of the water and sewer lines would be? Do you have an engineer hired who can calculate the cost?

I will be going to Europe till about June 25th. I would be willing to meet up with your group.

Take care  
Craig

----- Original Message -----

From: Thomas Beyer [<mailto:tbeyer@prestprop.com>]

Sent: Monday, June 03, 2013 12:15 PM

To: Craig Copeland

Subject: RE: Meeting of the mind - Part II - Annexation of Cold Lake Lands

Craig:

You met my partner Rick last week at the Edmonton event. You talked briefly about the possibly annexation of our land, namely the 2 quarter sections along English Bay Road just before the Indian reservation starts and the road becomes a gravel road.

As you know, we intend to proceed with residential development there, either along the approved ASP of 300 1/2 country residential lots, or possibly with higher density, incl. rental housing in a subsection of the land.

However to do that we need water, sewer and likely road & intersection upgrades.

This is done best as a cost-shared approach, and as such likely requires the annexation of the land to the city.

What are the suggested next steps here, Craig? Send you a letter with a



000285

request for annexation ?

We would like to proceed with the attached 30 lot sub-division, too. What are the next steps here, Craig, either in an annexed state or an un-annexed state ?

Yours Sincerely,

Thomas Beyer, President  
 Prestigious Properties Group  
 T: 403-678-3330 or 604-564-7673  
 F: 403-770-8885

www.prestprop.com

-----Original Message-----

From: Thomas Beyer [mailto:[tbeyer@prestprop.com](mailto:tbeyer@prestprop.com)]  
 Sent: April-24-12 2:32 PM  
 To: Craig Copeland  
 Subject: Re: Meeting of the mind - Wednesday 4:30 or dinner - sizable Cold Lake Investment

Sounds great Craig !

Original Joe's 5 pm it is !

Yours Sincerely  
 Thomas Beyer  
 T: (604)564-7673 or (403)678-3330

On 2012-04-24, at 3:08 PM, Craig Copeland <[CCopeland@coldlake.com](mailto:CCopeland@coldlake.com)> wrote:

Hi

I could meet you at 430pm tomorrow if you like ...or 5pm would work better. How does eith Original Joes or Clark's sound?

Thanks

Craig

----- Original Message -----

From: Thomas Beyer [mailto:[tbeyer@prestprop.com](mailto:tbeyer@prestprop.com)]  
 Sent: Tuesday, April 24, 2012 02:50 PM  
 To: Craig Copeland  
 Subject: Meeting of the mind - Wednesday 4:30 or dinner, or 11am or lunch Thursday - re sizable Cold Lake Investment

We met briefly at the October 11, 2011 intermunicipal council meeting in Bonnyville.

I am in town tomorrow, Wednesday pm and Thursday am to meet with city planners, realtors and builders. Would love to buy you lunch on Thursday or dinner on Wednesday night, or if unavailable, meet you for 30 minutes at

000286

your office Wednesday later pm, say 4:30 pm or around 11 am on Thursday morning.

As you know we are an investment firm with \$100M in assets that bought the 290 acres along English Bay Road to develop the "Hills of Cold Lake" into 300 or more residential homes over the next decade, with lots valued at \$50-\$60M and total project value approaching \$200M.

Is any of these 4 time slots available ?

Yours Sincerely

Thomas Beyer, President  
Prestigious Properties Group  
403-678-3330 or cell: 403-607-2692  
[www.prestprop.com](http://www.prestprop.com)

---  
Yours Sincerely,  
Thomas Beyer, President  
Prestigious Properties Group  
T: 403-678-3330 or 604-564-7673  
F: 403-770-8885 E: [tbeyer@prestprop.com](mailto:tbeyer@prestprop.com)

[www.prestprop.com](http://www.prestprop.com)

000287

**David Perehudoff CWI**

**From:** Thomas Beyer <tbeyer@prestprop.com>  
**Sent:** June 6, 2013 12:11 PM  
**To:** erondeau@md.bonnyville.ab.ca  
**Cc:** rpoole@md.bonnyville.ab.ca; Nagoya Kevin; 'Craig Copeland'  
**Subject:** Annexation of 2 Quarter Sections to City of Cold Lake "Hills of Cold Lake"

Ed:

Prestigious Properties Inc. owns the two quarter sections on the West side of English Bay Road, just before the Indian Reservation.

These two quarter sections are legally described as:

## FIRSTLY

THE NORTH EAST QUARTER OF SECTION THIRTY FOUR (34)  
 TOWNSHIP SIXTY THREE (63)  
 RANGE TWO (2)

WEST OF THE FOURTH MERIDIAN

CONTAINING 65.2 HECTARES (161 ACRES) MORE OR LESS.

EXCEPTING THEREOUT:

	HECTARES	(ACRES) MORE OR LESS.
A) PLAN 2654RS ROAD	0.081	0.20
B) PLAN 8520379 ROAD	1.074	2.65
C) PLAN 9222600 SUBDIVISION	4.305	10.64

EXCEPTING THEREOUT ALL MINES AND MINERALS  
 AND THE RIGHT TO WORK THE SAME

## SECONDLY

MERIDIAN 4 RANGE 2 TOWNSHIP 63

SECTION 34

QUARTER SOUTH EAST

CONTAINING 64.7 HECTARES (160 ACRES) MORE OR LESS

EXCEPTING THEREOUT:

	HECTARES	(ACRES) MORE OR LESS
A) PLAN 0925400 - SUBDIVISION	4.465	11.03

EXCEPTING THEREOUT ALL MINES AND MINERALS

We hereby kindly ask the County of Bonnyville to allow annexation of those properties by the City of Cold Lake.

The primary reason for this request is that an Intermunicipal Development Agreement exists that essentially necessitates water/sewer from the City of Cold Lake to city standards under the current approved Area Structure Plan (ASP). As such any future cost sharing arrangement for water, sewer and road servicing can be negotiated with the City of Cold Lake, and not the County of Bonnyville as the City of Cold Lake would derive the benefits for future property taxes and sewer/water levies (and not the County of Bonnyville).

The secondary reason is to reduce the number of municipalities we have to deal with to move the development of 300 lots under the current ASP forward (or perhaps increase density with a new ASP).

Please feel free to contact me for any additional questions that you may require.

Yours Sincerely,



000288

**Thomas Beyer, President**  
**Prestigious Properties Group**  
**#912, 743 Railway Ave.**  
**Canmore, AB T1W 1P2**  
**T: 403-678-3330 or 604-564-7673**  
**F: 403-770-8885**

[www.prestprop.com](http://www.prestprop.com)

Jordan Ryan

From: Thomas Beyer [tbeyer@prestprop.com]  
Sent: Wednesday, April 13, 2011 11:52 AM  
To: charles@mrrdevelopment.com; roger@mrrdevelopment.com; matthys@mrrdevelopment.com  
Subject: Proposed Amendments - Hills of Gold Lake - WITHOUT PREJUDICE

WITHOUT PREJUDICE

Charles/Roger:

as briefly discussed, Prestigious Properties Inc. will likely not advance a further \$1M to our lawyer this week, as stipulated in the purchase agreement signed by Prestigious Properties Inc.

This is Exhibit 5 referred to  
in the Affidavit of  
Charles Ryan  
Sworn before me this  
day of March A.D., 2011  
A Notary Public / Commissioner for Oaths  
in and for the Province of ALBERTA

NESTOR MAKUCH  
LAWYER  
NOTARY PUBLIC/COMMISSIONER  
IN AND FOR THE PROVINCE OF ALBERTA

A few reasons:

- a) we need agreement on the 2 add'l contracts to be signed (irrevocable assignment of proceeds, \$4M mortgage for 100 \* \$40,000). The proposed contracts by your lawyer are just way too rigged into your favour and I will not sign those "as is" nor advance \$1M into trust to never see this money again and neither have the land nor a mutually acceptable agreements for months/possibly years.
- b) uncertainty on sewer/water costs .. possibly as high as \$3M or more if city insists on major upgrades to city infrastructure.
- c) inflated property appraisals: This sewer/water connection pricing uncertainty is not reflected at all in the appraisals (by Schneider/Cowan), both from fall 2009 not in the more recent appraisal for your court case. It assumed "water at the property line" and that assumption is just too simplistic. taking his value of \$4.1M plus maybe \$2.5M for the NQ and then deducting connection costs over \$3M I arrive at a property value of possible well below \$3M .. certainly below \$4M!
- d) murky business case, due to these costs, payment of \$4M to land owner and also absorption rates & prices for 1/2 acre lots

Having said that, and wishing to avoid moving from win/win to lose/lose I propose a number of potential options that are acceptable to us, on a WITHOUT PREJUDICE basis:

- 1) agree to cancel contract and refund our \$1M mortgage on NQ with interest, within 1.5 years, or upon sale to a unrelated 3<sup>rd</sup> party, whatever is earlier
- 2) agree to cancel contract, and convert \$1M plus accumulated interest to LP equity for an LP that you will issue and we will "endorse" as we now have over \$1M invested and you can create some marketing mileage out of it!
- 3) change of contract, as follows:
  - a. advance a further \$400,000 and proceed as planned with a 0% mortgage of \$2.2M instead of \$2.0M (over 4 years at 60% of money raised, i.e. unchanged)
  - b. add an option to buy the 100\*\$40,000 mortgage for \$400,000, at our option, at any time
  - c. This would essentially be a very similar contract to today's where we buy the land for \$4.0M which is a very high price given the issues of b) to d) stated above
  - d. We'd advance this \$400,000 once we have an agreement on the 2 add'l contracts to be signed
- 4) change of contract, as follows:
  - a. advance a further \$250,000 and sell NQ to us, for \$1.35M (\$1M plus accumulated interest plus \$250,000)
- 5) change of contract, as follows:
  - a. advance a further \$250,000 and sell NQ to us, for \$1.35M (\$1M plus accumulated interest plus \$250,000)
  - b. advance another \$250,000 as an option to buy SQ for \$2.5M, within 48 months
- 6) change of contract, as follows:

- a. advance a further \$250,000 and sell only SQ to us, for \$3.35M (\$1M plus accumulated interest plus \$250,000 plus \$2M payable in up to 48 months)
  - b. advance another \$100,000 as an option to buy NQ for \$1.5M, within 72 months
- 7) change of contract, as follows:
- a. buy the land for \$4.5M as follows:
  - b. advance a further \$250,000 in cash
  - c. advance a further \$250,000 into a new LP for development costs, via LP units (20% discount as founder's units)
  - d. convert our \$1M plus accumulated interest into LP units(20% discount as founder's units)
  - e. convert a further \$2M into LP units (20% discount as founder's units)
  - f. receive \$1M in cash as we raise it (60% of \$\$ raised)
  - g. This is also somewhat similar to the current contract, but you receive more LP equity than cash. It would substantially alter the business case as far less cash is paid out, and there is a degree of risk/profit sharing for you to the tune of \$2M on your end and \$1.6M on our end as this is not (yet) cash but LP units. far easier to raise money and build a strong business case too ! Most money raised should go towards construction and not paying the land owner first !

Let me know how you wish to proceed here. Note that we advanced \$1M last summer with an expectation of a 50/50 JV or a joint LP. This money is now at risk due to new information, primarily b) to d). Not closing and letting the deal collapse is an option to us .. not the preferred one .. but an option .. !! Consider that we have considerable influence over former LibertyGate investors and in our own investment community who is looking for place to invest their \$\$, with a strong team and a strong business case. Consider also that we still have a \$1M mortgage on your NQ and that mortgage will not disappear magically. Consider also that land with lower pressure/trickle lines and sewers that are pumped monthly is not a good option for a higher end sub-division, and while costs upfront maybe lower, it will negatively influence property values. Consider that we have the desire & capacity to raise those funds and manage a team, with your local help/expertise initially.

It would be a shame to abort it, after so much money and time has been invested already !

The quest for win/win continues !

God Bless & Yours Sincerely,

Thomas Beyer, President  
 Prestigious Properties Group  
 T: 604-564-7673 or 403-678-3330  
 F: 403-770-8885

[www.prestprop.com](http://www.prestprop.com)

Check our latest video: [The three profit centers in real estate](#)

No virus found in this incoming message.  
 Checked by AVG - [www.avg.com](http://www.avg.com)  
 Version: 9.0.894 / Virus Database: 271.1.1/3569 - Release Date: 04/12/11 12:35:00

TELUS 3G 11:29 PM 19% 19%  
 < Messages Thomas Details  
 TELUS 3G 11:29 PM 19% 19%  
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 TELUS 3G 11:29 PM 19% 19%  
 < Messages Thomas Details

Apr 19, 2011, 11:23 AM

01/02: Can  
 we continue  
 our dialogue  
 this  
 afternoon re  
 Cold Lake  
 land

Subject  
 iMessage

Cold Lake  
 land  
 purchase  
 options ?  
 Did you  
 come to a  
 conclusion  
 which option

Subject  
 iMessage

you wish to  
 pursue  
 further in  
 light of very  
 expensive  
 water/sewer  
 servicing  
 costs ?

Subject  
 iMessage

This is Exhibit H referred to  
 in the Affidavit of  
Charles Ryan  
 Sworn before me this 20  
 day of Nov A.D., 2015  
 A Notary Public/Commissioner for Oaths  
 in and for the Province of ALBERTA

NESTOR MAKUCH  
 LAWYER  
 NOTARY PUBLIC/COMMISSIONER  
 IN AND FOR THE PROVINCE OF ALBERTA



Clerk's stamp:

COURT FILE NUMBER: 1603 06360

COURT OF QUEEN'S BENCH OF ALBERTA

JUDICIAL CENTRE: Edmonton

PLAINTIFF: PRESTIGIOUS PROPERTIES INC.

DEFENDANTS: COLD LAKE ESTATES INC., NORTHERN ALBERTA ESTATES INC., THE MULLER RYAN RICHARD DEVELOPMENT GROUP INC. also known as the MRR DEVELOPMENT GROUP INC., M DOUBLE M ENGINEERING SERVICES INC., CHARLES RYAN, MATTHYS MULLER, and ROGER RICHARD

DOCUMENT: **ANSWERS TO UNDERTAKINGS OF THOMAS BEYER GIVEN AT QUESTIONING ON JUNE 13, 2016**

ADDRESS FOR SERVICE AND CONTACT INFORMATION OF PERSON FILING THIS DOCUMENT: **Field LLP**  
Barristers and Solicitors  
2000, 10235 - 101 Street  
Edmonton, AB T5J 3G1  
Ph: (780) 423-3003 Fax: (780) 428-9329  
File No. 59575-2  
**Attention: Sharon A. Roberts**

No.	Undertaking	Answer	Status
12	To inquire with Scheffer Andrew what work they did between January 1, 2011, to April 11, 2013 as referenced in the e-mail on page 2134 of Prestigious's Supplemental Affidavit of Records production.	See attached spreadsheet with all time entries by Scheffer Andrew for work completed between January 1, 2011 and April 11, 2013.	Complete
13	(Under advisement) To provide me with specific information on what you or any of your consultants – and by you I mean you, personally, or	Spur Construction (Chad Willox) advises that although broad inquiries were made, "everything was cryptic and shrouded in fuzzy details and politics" and varied depending on	Complete

<p>anybody from Prestigious Properties Inc. or any of the consultants that you had working on this job – did after May 31, 2011, to investigate what parts of the Area Structure Plan the City of Cold Lake would be supporting.</p>	<p>who was consulted.</p> <p>Scheffer Andrews (Colin Declercq) provided the enclosed timesheet, which summarizes his activities during his engagement with Prestigious Properties. Also enclosed are the meeting minutes from an August 29, 2011 meeting between Scheffer Andrew, Spur Construction and Prestigious Properties, which reference the ASP with respect to the possible 200-lot option, and the emails referenced in the time entries for August 2012 (August 20, 2012 and August 24, 2012).</p> <p>The team from Canadian Wetlands did not investigate the ASP before November 2013, as the ASP appeared to be approved and had been submitted by an engineering firm, M2M. Beginning in November 2013, the team had several meetings with the Municipal District of Bonnyville and the City of Cold Lake over a span of 5 months, and went to review documents with the City several times.</p> <p>At one meeting on November 6, 2013, Canadian Wetlands was provided with a copy of the March 6, 2011 minutes from the City of Cold Lake, which Canadian Wetlands had not seen before. Canadian Wetlands was informed that Mattys Muller had agreed to prove that the City could supply water, sewer, and storm water services before any servicing took place. The City never heard from Muller again.</p> <p>The team from Canadian Wetlands</p>	
--	--	--

		<p>met with and requested that Matthys Muller provide the agreements referenced in the ASP several times and he did not produce them.</p> <p>It was not until March 2014 that the team was comfortable that the representation that "after mutual discussion instigated by the developer and with the agreement and permission of the MD, the City of Cold Lake agreed to the provision of the requested water supply to a trickling service standard, and to the receiving of the semi-treated sewage effluent from the septic tanks on the lots into the municipal sewer by means of a small diameter low-pressure reticulation system and a lift station..." in section 5.3 of the ASP was not true.</p> <p>In subsequent meetings in 2014, the City and the MD informed the team from Canadian Wetlands that at no time was there ever an agreement with the MD or the City. The MD told Canadian Wetlands that they authorized Muller to act on behalf of the MD for servicing issues.</p>	
14	<p>(Under advisement) To inquire with Scheffer Andrew and Spur Construction as to whether they discussed if the A.S.P. prepared by Matthys Muller in 2009 would be supported by the City any time from May of 2011 to October 2013.</p>	<p>Spur Construction (Chad Willox) advises that he discussed the ASP with the City of Cold Lake and the MD of Bonnyville. To the best of Mr. Willox's recollection, the lot layout was acceptable to both governments. Beyond what is set out in Mr. Willox' reporting email to Mr. Beyer of May 31, 2011 regarding Mr. Willox' impression that portions of the information in the ASP would</p>	Complete

		<p>not be supported by the City of Cold Lake, Mr. Willox has no specific recollection of what was said or by whom about servicing. There was no communication in writing during the May 2011 to October 2013 period rejecting the servicing proposals set out in the ASP during Spur's involvement in the project.</p> <p>Enclosed is a copy of an email dated March 6, 2012 from John Foy to Chad Willox of Spur Construction detailing the MD's position regarding servicing and rezoning to Country Residential. This email was first received by Prestigious through its legal counsel in July 2016 as part of Spur Construction's response to a request for its assistance in answering this undertaking.</p> <p>For Scheffer Andrew, please see the response to Undertaking 13.</p>	
15	<p>(Under advisement) To inquire of Chad Willox or Scheffer Andrew if there was any inquiries of the City of Cold Lake and/or the Municipal District of Bonnyville as to requirements for water and sewer servicing, and, if there was any inquiry, when did it occur and produce any documentation relating to that.</p>	<p>See response from Mr. Willox to Undertakings 13 and 14. See also March 6, 2012 email from John Foy to Chad Willox enclosed in response to Undertaking 14.</p> <p>See response to Undertaking 13 with respect to all work performed by Scheffer Andrew from May 2011 through October 2013.</p>	Complete
16	<p>(Under advisement) To inquire of Chad Willox and ask him what the "at least two options" were that Ken Rogers had referred to, or what "at least two options" for servicing that Ken Rogers had mentioned to him as referred to in the e-mail of June 6, 2011.</p>	<p>Mr. Willox advises that to the best of his recollection, the two options involved servicing the land in the road allowance or attempting to negotiate land deals to service land in new easements through frontage on private land so that the road would not be disturbed. He confirms</p>	Complete



**Answer to Undertaking No. 13**

Why Reports Between 8/1/2012 And 7/31/2014 for ALL USERS

Project# 108-701-01

ALL CUSTOMERS

User Name	Customer	Project Number	Project Name	Activity Description	Common Activity	Billable Time
8/20/2012 Colin Decker	Prestigious Properties	108-701-01	Hills of Cold Lake Colin Decker Daily Total Grand Total for Day	Communication with client and team members to coordinate meeting on Aug 29th, forward project info to sanitary sewage consultant	Preliminary Engineering - General	1 1 1
8/24/2012 Colin Decker	Prestigious Properties	108-701-01	Hills of Cold Lake Colin Decker Daily Total Grand Total for Day	Meeting with John Foy at M.D. Bonnyville, following email to project team.	Management	1 1 1
9/12/2012 Colin Decker	Prestigious Properties	108-701-01	Hills of Cold Lake Colin Decker Daily Total Grand Total for Day	Travel to and attend meeting with client at Edmonton SAA offices.	Preliminary Engineering - General	12 12 12
11/03/2012 Colin Decker	Prestigious Properties	108-701-01	Hills of Cold Lake Colin Decker Daily Total Grand Total for Day	email follow up to client and M.D. of Bonnyville regarding IMSP	Administration - E-Table	1.5 1.5 1.5
11/14/2012 Colin Decker	Prestigious Properties	108-701-01	Hills of Cold Lake Colin Decker Daily Total Grand Total for Day	respond to email requesting update, current political status and next step.	Management	0.5 0.5 0.5
12/13/2012 Colin Decker	Prestigious Properties	108-701-01	Hills of Cold Lake Colin Decker Daily Total Grand Total for Day	Communications and email responses to Chad Wilcox regarding Hills of Cold Lake status.	Management	1 1 1
10/5/2013 Colin Decker	Prestigious Properties	108-701-01	Hills of Cold Lake Colin Decker Daily Total Grand Total for Day	Meeting with Canadian Wetlands preserved as requested, discussion of status and options moving forward for development.	Preliminary Engineering - General	2 2 2
1/20/2013 Colin Decker	Prestigious Properties	108-701-01	Hills of Cold Lake Colin Decker Daily Total Grand Total for Day	email with client team and SKL team regarding PSA, scope and communications protocol	Management	0.5 0.5 0.5
10/24/2013 Colin Decker	Prestigious Properties	108-701-01	Hills of Cold Lake Colin Decker Daily Total Grand Total for Day	Communications with David Panchukoff regarding current project status and strategy moving forward.	Management	0.5 0.5 0.5
1/20/2013 Colin Decker	Prestigious Properties	108-701-01	Hills of Cold Lake Colin Decker Daily Total Grand Total for Day	Meeting as requested by client to discuss current project status, risks and strategies moving forward.	Management	1.5 1.5 1.5
3/20/2013 Colin Decker	Prestigious Properties	108-701-01	Hills of Cold Lake Colin Decker Daily Total Grand Total for Day	email communications with client regarding PMS cost account statement. Transmission of background info	Management	0.5 0.5 0.5
1/1/2014 Colin Decker	Prestigious Properties	108-701-01	Hills of Cold Lake Colin Decker Daily Total Grand Total for Day	Communications with project team regarding User data and plotting of same into map for client	Management	0.5 0.5 0.5
1/21/2014 Colin Decker	Prestigious Properties	108-701-01	Hills of Cold Lake Colin Decker Daily Total Grand Total for Day	Meeting with client, City of Cold Lake and four of site with client	Preliminary Engineering - General	3.5 3.5 3.5
1/21/2014 Colin Decker	Prestigious Properties	108-701-01	Hills of Cold Lake Colin Decker Daily Total Grand Total for Day	Communications with client, completion of ASCM map sheets in prep for survey control layout.	Preliminary Engineering - General	1 1 1
1/21/2014 Colin Decker	Prestigious Properties	108-701-01	Hills of Cold Lake Colin Decker Daily Total Grand Total for Day	Survey prep, ASCM info	Preliminary Engineering - General	1 1 1
1/14/2014 Colin Decker	Prestigious Properties	108-701-01	Hills of Cold Lake Colin Decker Daily Total Grand Total for Day	Review of City of Cold Lake Groundwater Reports at client's request.	Preliminary Engineering - General	1 1 1
1/20/2014 Colin Decker	Prestigious Properties	108-701-01	Hills of Cold Lake Colin Decker Daily Total Grand Total for Day	Completion of ASCM info for site survey preparation	Preliminary Engineering - General	1 1 1
1/20/2014 Colin Decker	Prestigious Properties	108-701-01	Hills of Cold Lake Colin Decker Daily Total Grand Total for Day	Communications and reply to email from client	Preliminary Engineering - General	0.5 0.5 0.5
1/21/2014 Colin Decker	Prestigious Properties	108-701-01	Hills of Cold Lake Colin Decker Daily Total Grand Total for Day	Locate ASCMs and property pins in prep for survey	Surveying	3 3 3
1/21/2014 Colin Decker	Prestigious Properties	108-701-01	Hills of Cold Lake Colin Decker Daily Total Grand Total for Day	Meeting with client, discuss land use and sanitary options	Preliminary Engineering - General	1 1 1
1/21/2014 Colin Decker	Prestigious Properties	108-701-01	Hills of Cold Lake Colin Decker Daily Total Grand Total for Day	Attendance to site to meet with client, tour site, locate ASCM monuments	Preliminary Engineering - General	4 4 4
Grand Total for Period						38.5

Project Name Hills of Cold Lake  
User Colin Decker  
Billable Hours 38.5

## **Evie Thorne**

---

**From:** Declercq, Colin <c.declercq@schefferandrew.com>  
**Sent:** August-24-12 1:27 PM  
**To:** Esteves, Luis; Gourley, Mike; Scheffer, Marinus; Hallonquist, Patrick  
**Subject:** RE: Spur Construction meeting

I was in Bonnyville this morning and stopped in to see John Foy and ask him about the Hills of Cold Lake. He told me that the ASP is fully approved and developer had been to see him and council in the past. Apparently the ASP says that the site is to be serviced by connections to the City of Cold Lake. The IMDP apparently also states the same and to change that would mean an amendment to the IMDP as well as the ASP. To make matters more confusing the IMSP ( intermunicipal serviceing plan) still has not been approved by the M.D. John didn't know where that was at and said he will put it on the planning agenda for the Sept 12 council meeting. He mentioned that the S.T.E.P. system most likely would not be applicable in this case due to the high density that is proposed in the ASP.

Looks like it is around and around the mulberry bush again until the IMSP is ratified by the respective councils. Or come up with some sort of stand alone water and waste water treatment systems that would handle the proposed density. Draw from and discharge into the lake???

### **Colin Declercq, R.E.T. | Project Manager**

Cell: 780.573.8774 | Office: 780.594.7500 | Fax: 780.594.7502

### **Scheffer Andrew Ltd. | Planners & Engineers**

208, 4807 - 51 Street, Cold Lake, AB, T9M 1N2 | [www.schefferandrew.com](http://www.schefferandrew.com)

---

**From:** Luis Esteves [<mailto:l.esteves@schefferandrew.com>]  
**Sent:** August-24-12 12:02 PM  
**To:** 'Mike Gourley'; 'c.declercq'; m.scheffer@schefferandrew.com; p.hallonquist@schefferandrew.com  
**Subject:** RE: Spur Construction meeting

I didn't hit reply all earlier...but I'm on it.

---

### **Luis Esteves, BA | Senior Planner**

### **Scheffer Andrew Ltd.**

Planners & Engineers

---

**From:** Mike Gourley [<mailto:m.gourley@schefferandrew.com>]  
**Sent:** August-24-12 11:47 AM  
**To:** 'Luis Esteves'; 'c.declercq'; m.scheffer@schefferandrew.com; p.hallonquist@schefferandrew.com  
**Subject:** RE: Spur Construction meeting

When I spoke to Ken Rogers he (City of Cold Lake) said it was approved by the MD of Bonnyville.

Ken remembered, because when the MD approved the ASP they told the proponents to now go and talk to the City about getting services to the lands.

Luis - Caroline Palmer of the MD may be able to help you confirm this. It would be nice to get a copy of the Bylaw plate for this ASP

Thank you

---

**Michael Gourley, RPP, MCIP | Branch Manager**

Direct: 780.732.7939 | Cell: 780.920.7204  
Office: 780.732.7800 | Fax: 780.732.7878

**Scheffer Andrew Ltd. | Planners & Engineers**

12204 - 145 Street NW Edmonton, AB T5L 4V7 | [www.schefferandrew.com](http://www.schefferandrew.com)

---

**From:** Luis Esteves [<mailto:l.esteves@schefferandrew.com>]

**Sent:** August-24-12 10:01 AM

**To:** 'c.declercq'; [m.scheffer@schefferandrew.com](mailto:m.scheffer@schefferandrew.com); [m.gourley@schefferandrew.com](mailto:m.gourley@schefferandrew.com); [p.hallonquist@schefferandrew.com](mailto:p.hallonquist@schefferandrew.com)

**Subject:** RE: Spur Construction meeting

I can attend on the 29<sup>th</sup> at 10:30. I'll even read the ASP and get up to speed. Has it been confirmed if the ASP has been formally adopted by Council?

---

**Luis Esteves, BA | Senior Planner**

**Scheffer Andrew Ltd.**

Planners & Engineers

---

**From:** c.declercq [<mailto:c.declercq@schefferandrew.com>]

**Sent:** August-24-12 8:38 AM

**To:** [m.scheffer@schefferandrew.com](mailto:m.scheffer@schefferandrew.com); [m.gourley@schefferandrew.com](mailto:m.gourley@schefferandrew.com); [p.hallonquist@schefferandrew.com](mailto:p.hallonquist@schefferandrew.com); 'Luis Esteves'

**Subject:** RE: Spur Construction meeting

Both Thomas Beyer of Prestigious Properties and Chad Willox of Spur Construction have confirmed, Mike declined as he is on holidays, you are the only one from the Edmonton office that has accepted the meeting date and time.

I will be there.

---

**Colin Declercq, R.E.T. | Project Manager**

Cell: 780.573.8774 | Office: 780.594.7500 | Fax: 780.594.7502

**Scheffer Andrew Ltd. | Planners & Engineers**

208, 4807 - 51 Street, Cold Lake, AB, T9M 1N2 | [www.schefferandrew.com](http://www.schefferandrew.com)

---

**From:** m.scheffer [<mailto:m.scheffer@shaw.ca>]

**Sent:** August-24-12 6:18 AM

**To:** 'c.declercq'; [m.gourley@schefferandrew.com](mailto:m.gourley@schefferandrew.com); [p.hallonquist@schefferandrew.com](mailto:p.hallonquist@schefferandrew.com); 'Luis Esteves'

**Subject:** RE: Spur Construction meeting

Did this meeting get confirmed? I seem to recall seeing something, but can't find it anymore. 10:30 Aug 29 at our office works well for me.

---

**Marinus Scheffer, M. Sc., P. Eng. | Principal**

Direct: 780.732.7786 | Cell: 780.719.5173  
Fax: 780.732.7878 | Office: 780.732.7800

**Scheffer Andrew Ltd. | Planners & Engineers**

12204 - 145 Street NW Edmonton, AB T5L 4V7 | [www.schefferandrew.com](http://www.schefferandrew.com)

---

**From:** c.declercq [mailto:c.declercq@schefferandrew.com]

**Sent:** August 21, 2012 12:13 PM

**To:** m.scheffer@schefferandrew.com; m.courley@schefferandrew.com; p.hallonquist@schefferandrew.com

**Subject:** RE: Spur Construction meeting

Ok. What time is good for you? Since I am travelling from Cold Lake 10:30 or so would be good for me.

Sent from Samsung Mobile

"m.scheffer" <m.scheffer@shaw.ca> wrote:

Let's proceed without Mike on the 29<sup>th</sup>, then. I briefly reviewed the ASP this morning. Pretty shaky. I think a major revamp is likely required. I know our Client will not receive this as good news, but I am not anxious to proceed with anything that is not viable. I believe that getting anything into the ground next year is likely unrealistic.

**Marinus Scheffer, M. Sc., P. Eng. | Principal**

Direct: 780.732.7786 | Cell: 780.719.5173

Fax: 780.732.7878 | Office: 780.732.7800

**Scheffer Andrew Ltd. | Planners & Engineers**

12204 - 145 Street NW Edmonton, AB T5L 4V7 | www.schefferandrew.com

---

**From:** c.declercq [mailto:c.declercq@schefferandrew.com]

**Sent:** August 20, 2012 12:45 PM

**To:** Mike Gourley; Rien Scheffer; Pat Hallonquist

**Subject:** Spur Construction meeting

I spoke with Chad Willox (Spur Construction) who also spoke to Thomas Beyer (Prestigious Properties) about changing the meeting date. The best they could do was late morning on the 28<sup>th</sup> or stay with the 29th. Thomas has presentations scheduled in Calgary on the 27<sup>th</sup> and he is going overseas on Sept 5<sup>th</sup>.

Any possible way we can do this without Mike being present? Perhaps John A. or Luis could sit in for Mike and could bring him up to speed upon his return?? Unless I am reading it wrong I think most of the challenges are engineering.

Your thoughts?

**Colin Declercq, R.E.T. | Project Manager**

Cell: 780.673.8774 | Office: 780.594.7500 | Fax: 780.594.7502

**Scheffer Andrew Ltd.** | *Planners & Engineers*  
208, 4807 - 51 Street, Cold Lake, AB, T9M 1N2 | [www.schefferandrew.com](http://www.schefferandrew.com)



# meeting notes 1

## Hills of Cold Lake

File No.: 108701 – 1.9

Meeting date: August 29, 2011

Date prepared: August 30, 2012

Time: 10:30

Prepared by: Luis Esteves, Edmonton

Location: SAL Main Boardroom

	NAME	COMPANY / ORGANISATION
Attendees:	Chad Willox	Spur Construction
	Thomas Beyer	Prestigious Properties
	Antoine	Prestigious Properties
	Shane Sparks	SD Consulting Group
	Rien Scheffer	Scheffer Andrew Ltd. (SAL)
	Colin Declercq	SAL
	Luis Esteves	SAL
	Pat Hallonquist	SAL

Distribution: Same as Attendees

ITEM	DESCRIPTION / DISCUSSION	ACTION BY
1	It is understood that construction for the 2013 season is unlikely due to the outstanding approvals still necessary. A realistic target is the 2014 construction season.	Info
2	Development is to be staged with approximately 10 stages, with 20-30 lots being brought on the market per stage annually.	
3	The Intermunicipal Servicing Plan (IMSP) still requires ratification by both municipalities. There is no expected date of adoption. Regular follow-up may be required in order to show interest that the IMSP should be adopted and that without it development is being held up.	SAL
4	M.D. of Bonnyville Council may be discussing the IMSP at a Council meeting in September. John Foy (Planning Manager @ M.D.) was to place the IMSP on the Council agenda, as indicated to Colin. Confirmation as to what date the IMSP will be discussed at Council is necessary.	SAL
5	It is recognized that the most appropriate direction to proceed in at this time, based upon the current uncertainties as well as available knowledge and timing, is advancing the development based upon 1 acre lots, which could accommodate up to 200 residential units. The development would require onsite water and a communal wastewater treatment system.	Info
6	The layout of the development as proposed in the Hills of Cold Lake ASP will need to be adjusted in order to better reflect the conditions of the site. i.e. grades, wetlands, wastewater treatment disposal, MR, etc.	SAL
7	Further investigation into the Intermunicipal Development Plan (IMDP) is necessary as well as the Hills of Cold Lake ASP, in order to assess what impacts there may when changes to the layout occur.	SAL



8	Communal onsite wastewater management solutions will need to be further investigated as well as wetland disposal options. Confirmation that wetland disposal is an option can be made after the M.D. of Bonnyville Council decision regarding the Estates of Long Bay, sometime this fall. Investigation will need to commence shortly (within next 1 to 2 months) in order to ensure there is sufficient time to go through the approval process.	SAL/ Sub consultant
9	The Estates of Long Bay is expected to go before the M.D. of Bonnyville Council, sometime in the fall in order to seek approvals, based upon utilizing a communal wastewater treatment system which discharges into wetlands. Confirmation of Council date is required. <b>(Later Note: Alberta Environment approval is required. Likely not until late spring of 2013)</b>	SAL
10	Site access and off-site improvements need to be investigated further. Road upgrade costs are of concern and improvements will need to be kept to a minimum. I.e. those improvements necessary to service the development, not the broader area.	SAL
11	Stormwater management will need to be investigated further. I.e. utilization of wetlands for a stormwater management facility (SWMF)	SAL/Subconsultant
12	Costs associated with wetland disturbance will need investigation. Preliminary per acre values need to be obtained.	SAL
13	Confirmation that lands are not impacted by Department of National Defence zoning regulations for aerodromes. Nothing is registered on title, but additional confirmation is recommended.	SAL
14	A timeline for the project is to be generated. Commencing from the approvals, backwards.	SAL
15	An opinion of probable costs will need to be prepared (based upon updated layout), in order to prepare a performa. Costs will need to include potential off-site improvements, wastewater management system, on-site improvements, etc.	SAL
16	It will need to be determined if the development is to be a bareland condo or a traditional fee simple subdivision. Multiple factors will need to be taken into consideration.	Client
17	It was decided to place the project on hold until further information is confirmed regarding the approvability of potential wetland disposal option. No further action on the part of SAL is required at this time. SAL to update within the next few weeks.	All

Next meeting: TBD





**Answer to Undertaking No. 14**

**From:** Chad Willox  
**To:** Adam Murphy  
**Cc:** David Parshinoff  
**Subject:** Fwd: FW: Hills of Cold Lake Sewage  
**Date:** Tuesday, August 12, 2014 3:53:18 PM

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Adam  
I am starting to sort through some of this. See below.  
Regards  
Chad

----- Forwarded message -----  
**From:** Chad Willox <[chad@spurconstruction.com](mailto:chad@spurconstruction.com)>  
**Date:** Tue, Mar 6, 2012 at 1:20 PM  
**Subject:** FW: Hills of Cold Lake Sewage  
**To:** Thomas Beyer <[tbeyer@arestpro.com](mailto:tbeyer@arestpro.com)>

It only took him a month to respond to tell me nothing!!!!

Chad Willox  
Office [403-678-2622 ext. 111](tel:403-678-2622)  
Office Toll Free - [888-816-1708 ext. 111](tel:888-816-1708)  
Fax - [866-367-5806](tel:866-367-5806)



**From:** John Foy [<mailto:jfoy@md.bonnyville.ab.ca>]  
**Sent:** March-06-12 1:03 PM  
**To:** Chad Willox  
**Subject:** RE: Hills of Cold Lake Sewage

Chad, I got your voice message, there is where the MD is at with the Hills of Cold Lake project.

Council has reviewed this development on a couple of different occasions and seem to be firm on the two options earlier relayed to Mr. Thomas Beyer at the of last year. The following was relayed:

Council has reviewed the material you have sent in regard to using a Eco septic system on individual lots for your proposed development adjacent to the City of Cold Lake. Council is not comfortable with the use of private septic systems for this development as there is concerns with migration of effluent to the Lake. Potential for the failure of systems and the concentration of field systems on the land, being that it drains toward the lake would be too high of risk.

~~Council would consider the rezoning of the development area to a Country Residential District lowering the density from 10 to 5 units per acre if a central treatment system is used by piping the effluent to a central treatment facility on the development area connecting to the city water and sewer system.~~

On Jan 10, 2011, Council reviewed Mr. Beyer's response to this and were of the same opinion as before. So, I will leave this with you to see what you want to do.

Regards,

John Foy

From: Chad Willox [mailto:chad@spurconstruction.com]  
Sent: 08/Feb/2012 4:03 PM  
To: John Foy  
Subject: Hills of Cold Lake Sewage

Hi John,

Can you advise on where we are at with this project. We are wondering what alternatives the county would be willing to look at for sewage treatment. Please advise.

Regards

Chad

*Case Name:*

**De Shazo v. Nations Energy Co.**

**Between**

**Thomas A. De Shazo, respondent (plaintiff), and  
Nations Energy Company Ltd., Hashim Djojohadikusumo,  
Al Njoo, David G. Wilson, Ecolo Investments Limited,  
Patrick O'Mara, Karazhanbasmunai JSC, Aequitas  
Energy, Ltd., Novomundo Trading Ltd., appellants  
(defendants)**

[2005] A.J. No. 856

2005 ABCA 241

256 D.L.R. (4th) 502

48 Alta. L.R. (4th) 25

367 A.R. 267

141 A.C.W.S. (3d) 651

2005 CarswellAlta 957

Docket: 0401-0391-AC

Alberta Court of Appeal  
Calgary, Alberta

**Conrad, McFadyen and O'Leary JJ.A.**

Heard: March 17, 2005.

Judgment: July 13, 2005.

(37 paras.)

*Civil procedure -- Appeals -- Grounds for review -- Misapprehension of or failure to consider evidence -- Appeal from a decision dismissing the appellants' application for summary judgment allowed.*

*Limitation of actions -- Statutory limitation periods -- Use as a defence -- The respondent's claim was statute barred.*

Appeal by Nations Energy Company and Wilson from an order dismissing their application for summary judgment. In the within action, De Shazo claimed that each of the defendants breached a duty of care to prevent a fraudulent scheme whereby oil revenues were diverted from Nations, an Alberta company in which De Shazo held an indirect interest. De Shazo claimed that the defendants' actions led De Shazo to undervalue certain shares and transfer them to Hashim and O'Mara at well below fair market value. The statement of claim was filed on July 8, 2004. The relevant limitation period under section 3(1)(a) of the Limitations Act was two years from the time De Shazo knew or ought to have known that he had a claim. It was apparent that De Shazo had some knowledge of the alleged scheme prior to July 8, 2002. The question was whether that knowledge was sufficient. In dismissing the application for summary judgment the chambers judge found that the facts were too much in dispute to permit summary determination of the limitations issue.

HELD: Appeal allowed. It was plain and obvious that De Shazo's claim was statute barred. Information in De Shazo's possession in February 2000 was sufficient for him to bring a claim against Nations and Wilson for an oppression remedy and in fraud, and to resist a summary judgment application to dismiss such a claim. Further, there was evidence that De Shazo had obtained legal advice about the availability of an oppression remedy in June 2001.

**Statutes, Regulations and Rules Cited:**

Limitations Act, R.S.A. 2000, c. L-12, s. 3(1)(a)

**Appeal From:**

Appeal from the Order by The Honourable Mr. Justice P. Clark. Filed on the 23rd day of December, 2004. (Docket: 0401-10699)

**Counsel:**

D.J. McDonald, Q.C. and J.E. Sharpe for the Respondent

H.A. Gorman and E.K. Embury for the Appellants

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MEMORANDUM OF JUDGMENT

THE COURT:--

Introduction

1 This appeal concerns the application of the discoverability rule incorporated in section 3(1)(a) of the Limitations Act, R.S.A. 2000, c. L-12 to a claim in fraud and oppression. The central issues are when the plaintiff, Thomas De Shazo, knew or in the circumstances ought to have known that he

that all the evidence makes it clear that De Shazo was aware of his claim well before July 2002. De Shazo claims in his affidavit that the correspondence were attempts on his part to gain more information to support his suspicions. However, it is possible to dispose of this appeal without reference to the disputed correspondence, on the basis of the undisputed facts alone.

25 The relevant provision of the Limitations Act is section 3(1), which provides:

3(1) Subject to section 11 [not applicable here], if a claimant does not seek a remedial order within

- (a) 2 years after the date on which the claimant first knew, or in the circumstances ought to have known,
  - (i) that the injury for which the claimant seeks a remedial order had occurred,
  - (ii) that the injury was attributable to conduct of the defendant, and
  - (iii) that the injury, assuming liability on the part of the defendant, warrants bringing a proceeding,

... the defendant, on pleading this Act as a defence, is entitled to immunity from liability in respect of the claim.

26 This provision codifies the common law discoverability rule and applies it to all actions for remedial orders. The common law rule was described by the Supreme Court of Canada in *Central Trust Co. v. Rafuse*, [1986] 2 S.C.R. 147 at 224: "[A] cause of action arises for purposes of a limitation period when the material facts on which it [the cause of action] is based have been discovered or ought to have been discovered by the plaintiff by the exercise of reasonable diligence."

27 The Supreme Court revisited the common law discoverability rule in *Peixeiro v. Haberman*, [1997] 3 S.C.R. 549, confirming that since the decisions in *Kamloops (City of) v. Nielsen*, [1984] 2 S.C.R. 2 and *Central Trust*, discoverability is a "general rule applied to avoid the injustice of precluding an action before the person is able to raise it.": *Peixeiro* at 563. The court emphasized the concept of reasonable discoverability: "In balancing the defendant's legitimate interest in respecting limitations periods and the interest of the plaintiffs, the fundamental unfairness of requiring a plaintiff to bring a cause of action before he could reasonably have discovered that he had a cause of action is a compelling consideration": *Peixeiro* at 565.

28 The appellants submit that the same principles pertain whether the common law discoverability rule or the provisions of the new Limitations Act apply, relying on *Mahan v. Hindes*, 2001 ABQB 831, 308 A.R. 1 at para. 25. The common law statement of the discoverability principle will inform the application of section 3(1)(a), but courts must also be mindful of the three criteria listed in that section: *J.N. v. G.J.K.*, 2004 ABCA 394, 248 D.L.R. (4th) 245; *Owners: Condominium Plan 9421549 v. Main Street Developments Ltd.*, 2004 ABQB 962. The statute specifies the type of knowledge that must have been available to the claimant in order to trigger the running of the limitation period. The claimant must know or have been reasonably able to discover that: (i) the injury occurred; (ii) the injury was attributable to the conduct of the defendant; and (iii) the injury warrants bringing a proceeding.



29 De Shazo asserts that his "knowledge" of the material facts amounted only to "suspicion" or "speculation" until July 2002, and that his speculation cannot start the limitation clock running. He relies on this court's decision in *Photinopoulos v. Photinopoulos* (1988), 54 D.L.R. (4th) 372 (Alta. C.A.). In that case, it was held that suspicion is not sufficient to trigger the running of a limitation period; the plaintiff can be said to have "known" of the claim only when he has some support for his suspicion.

30 But here De Shazo had more than suspicion of his claim. He had support for his suspicions as early as February 2000. At that point he had been told of Thomas's concerns and the basis for them, and he had received documentary evidence in the form of the Thomas Report. He knew that Thomas claimed to have additional information implicating O'Mara in the suspected scheme. At the same time, he was aware that O'Mara was connected to, and probably owned or controlled, Aequitas when the loan agreement with Nations was proposed, a proposal De Shazo reviewed and commented on. He knew that Wilson was on the Nations's board at the relevant times and that he would have been a party to any decisions not to investigate O'Mara and to allow Aequitas to continue marketing KBM's oil.

31 The principle of discoverability does not require perfect knowledge. As this court noted in *Hill v. Alberta (South Alberta Land Registration District)* (1993), 100 D.L.R. (4th) 331 at 336 (Alta. C.A.) (leave to appeal to S.C.C. denied):

Even if the discoverability rule of limitations applies to this case (which I need not decide), it does not call for perfect certainty. It does not require discovery at all: it says something else will do instead. It suffices that "the material facts on which [the cause of action] is based ... ought to have been discovered by the plaintiff by the exercise of reasonable diligence...": *Central Trust v. Rafuse*... . If the plaintiff is told a fact by someone who is likely to know, surely that makes the fact known or discoverable, even if someone else disputes the fact. Very few people who sue have perfect certainty.

32 The same point is made in *Owners: Condominium Plan 9421549 v. Main Street Developments Ltd.*, supra, where Clackson J. summarily dismissed the plaintiff's claim on the basis of undisputed facts. He said at paras. 55-56:

I am satisfied that these facts establish, beyond a reasonable doubt, that the Plaintiff knew that the buildings suffered from moisture problems and knew of the potential sequella if the problems were not rectified. This knowledge existed well before May 25, 1999. **While I accept that it is possible the Plaintiff did not have perfect knowledge of the injury, that level of knowledge is not required:** *Peixeiro v. Haberman*, [1997] 3 S.C.R. 549; *Hill v. Alberta (South Alberta Land Registration District)*, (1993) 135 A.R. 266 (C.A.), leave to appeal to S.C.C. refused [1994] 1 S.C.R. viii; *Ward v. Taubner*, 2004 ABQB 565, 9 E.T.R. (3d) 275 (QB).

What was obvious was that there was a problem and that there was damage or at least the real potential for damage if the problem was not addressed. In my view, that is enough. (Emphasis added)

**33** De Shazo says he was lacking proof that O'Mara owned or controlled NovoMundo. He says that in July 2002 he received, for the first time, "credible factual information from the defendants that O'Mara owned NovoMundo" in the form of the statement from Wilson that NovoMundo was, as far as Wilson and others knew, owned by O'Mara. This, De Shazo says, was the missing piece of the puzzle that he needed to put his claim together. However, that statement did not add significantly to the picture De Shazo already had in February 2000.

**34** In our view, the information in De Shazo's hands in February 2000 was sufficient for him to bring a claim against the appellants for an oppression remedy and in fraud, and to resist a summary judgment application to dismiss such a claim. Further, in June 2001 De Shazo went so far as to obtain a legal opinion about the availability of an oppression remedy from Alberta counsel, and then changed that legal opinion and sent the doctored version to O'Mara in March 2002 to bolster his threat of litigation. As counsel for the appellants noted in argument, if this is not an appropriate case for summary judgment it is difficult to imagine what is.

**35** Further, De Shazo would have been aware that he was signing away his right to sue the appellants in September 2001, when he released Nations and its board members from claims arising from actions taken by them as members of the Nations and Ecolo boards.

**36** As this court noted in *Hill v. Alberta*, *supra*, very few people who sue have perfect certainty. The main issues of De Shazo's claims against Nations and Wilson, as set out in his statement of claim, are that they participated in and countenanced the fraudulent scheme, that they failed to investigate the alleged non-arm's length oil sales, that they failed to properly account to the shareholders of Nations and Ecolo with respect to the financial condition of Nations, and that they failed to take reasonable steps to determine if the Aequitas loan was commercially reasonable. These actions of the appellants, De Shazo claims, contributed to the devaluation of his Ecolo shares, thus causing injury when he sold those shares. De Shazo had, in February 2000, nearly all the information about his alleged injury and the participation of the appellants in causing that injury that he had when he filed his statement of claim. He had sufficient knowledge of the material facts to engage the discoverability principle codified in section 3(1)(a) of the Limitations Act.

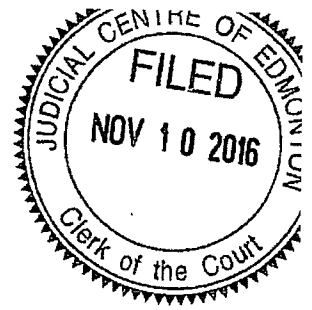
**37** It is plain and obvious, on the basis of the undisputed facts before the court, that De Shazo's claim against the appellants is statute barred. The appeal from the chambers judge's decision is allowed, as is the appellants' application for summary judgment.

CONRAD J.A.

MCFADYEN J.A.

O'LEARY J.A.





## Court of Queen's Bench of Alberta

Citation: **Prestigious Properties Inc v Cold Lake Estates Inc, 2016 ABQB 632**

Date: 20161110  
Docket: 1603 04928  
Registry: Edmonton

Between:

**Prestigious Properties Inc.**

Plaintiff

- and -

**Cold Lake Estates Inc., Northern Alberta Estates Inc., the Muller Ryan Richard Development Group Inc., also known as the MRR Development Group Inc., M Double M Engineering Services Inc., Charles Ryan, Matthys Muller, Roger Richard and Tri-City Capital Corp.**

Defendants

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### Reasons for Decision of

**W.S. Schlosser, a Master of the Court of Queen's Bench of Alberta**

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[1] This is an application by the Defendants, Cold Lake Estates Inc, Northern Alberta Estates Inc. and The Muller Ryan Richard Development Group Inc. for summary dismissal of the Plaintiff's claim.

[2] The application is based largely on the *Limitations Act*, RSA 2000, c L-12

[3] I am following the road map set out in *1214777 Alberta Ltd v 480955 Alberta Ltd*, 2014 ABQB 301, beginning at para 17. I am going to begin by assuming that the best evidence is before the Court.

[4] The Applicants have the legal burden throughout. Once the Applicants have satisfied their evidentiary burden, the evidentiary burden then passes to the Respondent.

[5] If this matter were to go to trial, Prestigious Properties Inc. would not only have the Plaintiff's burden of proving its case against the Defendants on a balance of probabilities, it also has the burden under section 3(5)(a) of the *Limitations Act* of showing that the two year limitation period in section 3(1)(a) has been met.

**List of Authorities:**

**Applicants' Authorities**

1. *Alberta Rules of Court*, Alta Reg 124/2010, at s 7.3(1);
2. *Hryniak v Mauldin*, 2014 SCC 7;
3. *Windsor v CPR*, 2014 ABCA 108;
4. *De Shazo v Nations Energy Co*, 2005 ABCA 241 Alta CA.

**Respondent's Authorities**

5. *Alberta Rules of Court*, Alta Reg 124/2010, Rule 7.3(1);
6. *Limitations Act*, RSA 2000, c L-12, s 3(1);
7. *Condominium Corporation No 0321364 v Prairie Communities Corp*, 2015 ABQB 753;
8. *DeShazo v Nations Energy Co*, 2005 ABCA 241;
9. *Condominium Plan No 0125764 v Amber Equities Inc*, 2015 ABQB 235;
10. *Luzia v Baptisa*, 2015 ABQB 736;
11. *Infante v Dzagov*, 2016 ABQB 41;
12. *Huet v Lynch*, 2000 ABCA 97;
13. *Frydman v Pelletier*, 2015 ABQB 289;
14. *Sattva Corp v Creston Molly Corp*, 2014 SCC 53;
15. *Benfield Corporate Risk Canada Limited v Beaufort International Insurance Inc*, 2013 ABCA 200;
16. *Bhasin v Hreynew*, 2014 SCC 71.

**By the Court**

17. *1214777 Alberta Ltd v 480955 Alberta Ltd*, 2014 ABQB 301;
18. *Boyd v Cook 2013* ABCA 27;
19. *Hamill v Kudryk*, 2013 ABCA 37;
20. *Amex Electrical Ltd v 726934 Alberta Ltd*, 2014 ABQB66.

**Facts**

[6] The main facts are as follows:

[7] The lawsuit concerns a failed residential subdivision development outside the City of Cold Lake.

[8] An area structure plan prepared by Matthys Muller on behalf of the MRR Development Group Inc. said:

... after mutual discussion instigated by the developer and with the agreement and permission of the MD, the City of Cold Lake agreed to the provision of the requested water supply to a trickling service standard, and to the receiving of the semi-treated sewage effluent from the septic tanks on the lots into the municipal sewer by means of a small diameter low-pressure reticulation system and a lift station. ...

[9] There were two development options: a lower density 200 unserviced lot option of 1 acre each (with wells, or cisterns and septic systems), or a higher density option of 300 serviced lots

of ½ acre each. The trickling service standard in the Area Structure Plan applied to the second option. The Plaintiff says it relied on being able to service the 300 lots to the trickling service standard when it decided to buy the land and close this deal. The 'trickling service standard' is an economical choice. It would have insured the financial viability of the proposed subdivision if the 'high density' option had been pursued.

[10] The land for subdivision was sold by Cold Lake Estates Inc. to Prestigious Properties Inc. in October 2010. The Agreement for Sale was prepared by the Plaintiff. It was unconditional with respect to the details of development. The Agreement provided:

...

6.1(b) Subdivision approval has been obtained for the property for not less than 300 country residential lots.

...

(h) [The Seller] will forward all documents pertaining to said lands and its subdivision will be turned over to the buyer on or before completion date.

...

6.2 The Seller and the Buyer each acknowledge that, except as otherwise described in this Contract, there are no other warranties, representations or collateral agreements made by or with the other party, the Seller's Brokerage and the Buyer's Brokerage about the Property, any neighbouring lands, and this transaction, including any warranty, representation or collateral agreement relating to the size/measurements of the land and buildings or the existence or non-existence of any environmental condition or problem.

6.3 Any action relating to a warranty or representation in this Contract must be started within one (1) year from the Completion Day.

[11] The sale was to be completed no later than April 30, 2011. However, Mr. Byer, the President of Prestigious Properties, purported to renegotiate the contract based on uncertainties about servicing costs. The sale did not close until May 11, 2011.

[12] The Plaintiff claims that the trickling service standard had been rejected by the City of Cold Lake on or about March 15, 2011. It is a premise of the lawsuit that this decision was not revealed to the Plaintiff and documents evidencing it were kept concealed by the Applicants. The Plaintiff claims that it was unaware that the subdivision would have to be serviced to a higher standard until sometime in June or November 2013.

[13] The initial development approval, dated October 22, 2010, required:

2. Pursuant to Section 655(1)(b) that all lots shall be serviced with City of Cold Lake water and sewer with the City's approval. The developer shall be responsible for the design and construction of the water and sewer *to City of Cold Lake's standards* including upgrades to the City's system.

(emphasis added)

The City of Cold Lake's standards were not defined in the development approval and part of this issue is whether this was a reference to rural or municipal standards.

[14] The Plaintiff's property was not a holding property.

[15] This lawsuit was commenced in November of 2014; roughly two years and *18 months* after closing in May of 2011, or roughly four years after the contract of sale.

### Analysis

[16] The limitations clock begins to run with the coincidence of the three elements set out in section 3(1)(a) of the *Act*. All three requirements depend on reasonable knowledge. Something less than actual subjective knowledge is required (eg *DeShazo v Nations Energy Co*, 2005 ABCA 241; *Boyd v Cook*, 2013 ABCA 27, at para 15 and following).

[17] Let us assume, for the sake of argument, that the City had in fact made up its mind that servicing for the 300 lot option would have to be done to a higher (more expensive) standard in March of 2011. Let us even assume that the Applicants knew this; perhaps even had documents evidencing the decision, and that these documents were not revealed to the Plaintiff until June or November 2013. How is it that a developer in the position of Prestigious Property could not (or did not) discover the City's position until three years after the contract was signed, or roughly a year and a half after the deal closed – especially when this piece of information was crucial to the viability of the project?

[18] The Plaintiff argues:

56. After the Completion Date, Prestigious spent well over a year pursuing the 200 Unserviced Lot Option outlined in the [Area Structure Plan] and awaiting the outcome of a low density development application brought on nearby property.

57. By June 2013, Prestigious became aware that insofar as the 200 Unserviced Lot Option in the ASP would not be accepted by the City, High Pressure Servicing would be required at far greater expense than originally contemplated based on the Vendor Disclosure. On this basis, Prestigious retained Canadian Wetlands Inc. ("Canadian Wetlands"), of which David Perehudoff was President and Prestigious' key contact.

58. Although Prestigious became aware through its consultants after the Completion Date that there were uncertainties with respect to servicing the Property with water and sewer, at no time prior to retaining Canadian Wetlands in 2013 was Prestigious advised by the City or the MD of the Concealed Information or that the City had previously communicated to Muller and Richard directly that there was only one servicing option, namely the True Servicing Requirement.

28. Prestigious was not aware that the City would only permit High Pressure Servicing until approximately June 2013.

[19] Mr. Beyer is the President of Prestigious Properties and the Officer who spoke on behalf of the company. There is no unequivocal statement in evidence that Mr. Beyer (or Prestigious Properties) had no actual knowledge of the servicing requirements prior to November 2012. Paragraph 21 of Mr. Beyer's affidavit refers to disclosure of two documents in November 2013. Paragraphs 25 and 26 refer to a time in March or May 2011. The absence of a denial is a puzzling omission on this crucial point.

[20] When Mr. Beyer was questioned on his affidavit, he said (at page 37, line 17 – page 38, line 5):

Q So the uncertainty came about because the options were shut down?

A Correct. But at the time, I didn't know that. We found that out only about in 2013. Even Spur and Scheffer Andrews didn't find that out. Only once we hired David Perehudoff from Canadian Wetlands did we – did sort of a record search with the City, and that's when it came out. That the City at that time, in sometime around March 2011, basically told Mattys in several meetings that the only option they would accept ever was this expensive sewer and water line, and they didn't tell us that.

Q So before, I think you said 2013 or something like that, you had no idea?

A We relied on the [Area Structure Plan]: correct.

This comes close, but later, he says (at page 53, line 21 – page 54, line 21):

Q That would be an e-mail that was used but this e-mail was sent to Roger Richard?

A That's what it appears to be, yes.

Q And at the bottom, it says: (As read)

Fundraising is difficult, water/sewer options difficult, and I need dollars to development services.

What water/sewer options that were difficult were you referring to there at that time?

A I don't remember. As I mentioned, we engaged another firm in 2011. And by October 2012, I think we would have received the no -- I need to go through my records, but the City would have shut down that option which was laid out in the [Area Structure Plan]. So by that time, we would have realized that the only option available was the expensive water/sewer option, the one which Mattys Muller and Roger choose to withhold from us that information.

Q That was by this time, by October 29<sup>th</sup>, 2012?

A Yeah, that sounds about right. And then later we engaged – that was about nine months later we engaged David Perehudoff of Canadian Wetlands. So this was sort of an in-between time where we realized now that the option shown to us in the [Area Structure Plan] (i.e., the 200 lot option) was essentially not an option any more.

And at page 135, line 19 – page 136, – line 22 he says:

Q So on May 31, 2011, you knew that Mattie's Area Structure Plan and the trickle water system would not be supported by the City. Correct?

A I'm not sure whether I would go that far. That was perhaps an indication or opinion by Chad that there is issues.

Q What steps did you take to investigate those issues on May 31, 2011, or at any time afterwards?

A Well, around that time, Scheffer Andrew came on the scene as well so they were more in-depth expert in that, and they had worked in Cold Lake for many years so Chad and Scheffer Andrew, together, would investigate these issues further.

Q So you knew there was an issue with the Area Structure Plan at that time.

A Well, we knew there was uncertainties, and we knew that Mattie Muller had laid out a bunch of options, and it appears that some of these options are perhaps not as depicted as written in the [Area Structure Plan].

Q Right. And you knew that the City was not supporting them.

A That was an opinion by Chad. We had not seen this document you showed me earlier, namely, these minute meetings. We didn't know about.

Q Well, that's --

A So we had suspicion, let's call it, that there might be issues, right. And, as you see, I mean, Chad hasn't even met Mattie yet so this is an opinion by Chad after a meeting or two. So this is a sort of a -- let's call it a yellow flag, right. Not a red flag, but a yellow flag.

Finally, at page 138, line 27 – page 139, line 8 he says:

Q Well, you are told May of 2011 that much of the information in the Area Structure Plan presented by Mattie would not even be supported by the City. Did you not concern yourself with that?

A As I said, that was a yellow flag, and that was an opinion by Chad; and, as I said, shortly thereafter we decided to go down the other route, the cheaper route then to not use City water and City sewer but go down the low density route.

### **Actual Knowledge**

[21] The Plaintiff's own evidence about actual knowledge is inconsistent. There is no direct evidence about knowledge of servicing standards from any of the three consultants retained by the Plaintiff in the 2011-2013 time-frame. There are lost emails; both by the Plaintiff and by one of their consultants. There were two computer crashes; which appear to have destroyed evidence. There is nothing in the MD's files for 2011 – 2012. There is no direct evidence from the City.

[22] The absence of this evidence is troublesome and it invites an inference. I acknowledge that the Plaintiff's explanation is that it was pursuing the 'low density' option but it is not clear what motivated this choice. (It could be equally well explained by the existence of knowledge that only the more expensive servicing option for the high-density development would be permitted by the City). It seems almost inconceivable that the Plaintiff would not have known or could not have discovered, before November 2012, what it says was an absolute and unequivocal decision by the City about servicing standards made in March 2011. Even assuming the alleged nondisclosure of documents pleaded in the Statement of Claim, high density servicing standards must have been one of the best kept secrets in Cold Lake.

[23] The evidence about what was actually known by the Plaintiff in this crucial period is not only conflicting, it is self-serving; at least in the sense that it could be coloured by something other than an assiduous desire to tell the truth. Mr. Beyer's recollection is not good. The internal inconsistency (at least) raises a red flag on the issue of credibility.

### Constructive Knowledge

[24] Whether the Plaintiff *ought to have known* (for the purposes of the limitation) is a mixed question of fact and law. The starting point is that it seems unlikely that the City's position on servicing could not have been discovered with reasonable diligence long before November 2012.

[25] The Plaintiff says in his affidavit, that he relied on clause 6.1(h) in the Contract (cited in paragraph 10 above). That clause imposes a disclosure obligation on the seller. There is no mention of clause 6.3, which seems to shift the due diligence risk to the purchaser - at least for the year following completion. This is part of the context. Not only is the development of the property actively being pursued, there is an impetus on the Plaintiff, imposed by the contract it drafted, to make sure everything was as it seemed.

[26] As noted, there is no direct evidence from the City and no evidence from the Plaintiff's consultants, Spur Construction, Scheffer Andrew or Canadian Wetlands. I acknowledge that the Plaintiff's excuse is that they were busy pursuing the unserviced lot option during much of the time following completion, but there is a looming negative inference from the absence of evidence from the consultants who were in direct contact with the City.

[27] If the City did not, in fact, make up its mind about servicing option until after May 2011, that takes away the cause of action.

### Disposition

[28] I appreciate that the Court is typically reluctant to give summary judgment on a limitations issue on less than a full factual record. This is one of those cases where the Court will have to see the witnesses because, without more, the credibility of the Plaintiff's officer is front and centre. If this were a trial, there would be live issues of credibility and a large negative inference.

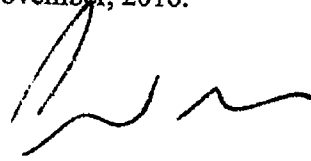
[29] I am not confident that a fair and just disposition can be made on the factual record presently before the Court; though I say this with some reluctance given the present state of the evidence. However, this result is the nearest of misses and a near miss should count for something. The Court of Appeal instructs us that in such cases, Security for Costs and a Procedural Order is a "wholesome practice". (*Hamill v Kudryk*, at paras 9, 10).

[30] The application is dismissed, with costs in the cause. As the matter is being Case-managed, a Procedural Order may not be necessary. Security for Costs is ordered in favour of the Applicants in an amount to be quantified by a *pro forma* Bill of Costs in accordance with the principles stated in *Amex Electrical Ltd v 726934 Alberta Ltd*, at paras 78 and following; unless the Plaintiff can show cause why security should not be provided.

[31] There is one final housekeeping matter. These actions were ordered to be consolidated in February 2016. A consolidation file was opened, as was another, inadvertently. These two files: action numbers 1603 04928 and 1603 06360 are consolidated with materials to be filed in action number 1603 04928 henceforth.

Heard on the 24<sup>th</sup> day of August, 2016.

**Dated** at the City of Edmonton, Alberta this 10<sup>th</sup> day of November, 2016.



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**W.S. Schlosser**  
**M.C.C.Q.B.A.**

**Appearances:**

Nestor Makuch

Wheatley Sadownik

for the Defendants, Applicants

Cold Lake Estates Inc., Northern Alberta Estates Inc. and The Muller Ryan Richard  
Development Group Inc.

Sandeep Dhir, Q.C., Lindsey Miller

Field LLP

for the Plaintiff, Respondent



COURT FILE NUMBER 1603 04928  
COURT COURT OF QUEEN'S BENCH OF ALBERTA  
JUDICIAL CENTRE EDMONTON  
PLAINTIFF PRESTIGIOUS PROPERTIES INC.,  
DEFENDANTS COLD LAKE ESTATES INC., NORTHERN ALBERTA ESTATES INC., THE MULLER RYAN RICHARD DEVELOPMENT GROUP INC. also known as the MRR DEVELOPMENT GROUP INC., M DOUBLE M ENGINEERING SERVICES INC., CHARLES RYAN, MATTYS MULLER, ROGER RICHARD and TRI-CITY CAPITAL CORP  
DOCUMENT ORDER

ADDRESS FOR SERVICE AND CONTACT INFORMATION OF PARTY FILING THIS DOCUMENT  
**WHEATLEY SADOWNIK**  
2000, 10123 - 99 Street  
Edmonton AB T5J 3H1  
Tel (780) 423-6671  
Fax (780) 420-6327  
ATTENTION: Nestor Makuch  
File No. 78,736/7

**DATE ON WHICH APPLICATION WAS HEARD: 24 August 2016**  
**DATE ON WHICH ORDER WAS PRONOUNCED: 8 March 2017**  
**LOCATION WHERE ORDER WAS PRONOUNCED: Edmonton**  
**NAME OF MASTER WHO MADE THIS ORDER: W.S. Schlosser, Q.C.**

UPON the application of the Defendants COLD LAKE ESTATES INC., NORTHERN ALBERTA ESTATES INC., THE MULLER RYAN RICHARD DEVELOPMENT GROUP INC. ("the Applicants") for summary dismissal of the Plaintiff's action; AND UPON READING the affidavits filed in support and in opposition to the application and transcripts of examinations on these affidavits; AND UPON HEARING submissions from counsel for the parties on August 24, 2016; AND UPON the Court reserving its decision; AND UPON THE COURT rendering written Reasons for Decision on November 10, 2016; AND UPON the Applicants applying to determining the quantum and terms of Security for Costs ordered against the Plaintiff in the Reasons for Decision herein issued on November 10, 2016;

THE COURT therefore orders as follows:

1. The Application for summary dismissal of the Plaintiff's action is dismissed.
2. The Plaintiff PRESTIGIOUS PROPERTIES INC., shall provide security for costs in favour of the Applicants in stages.

- a) The first stage shall include all matters up to and including Item 7(1) of the Applicant's Pro Forma Bill of Costs (attached) with the qualification that the payments shall be on a single Column 5 basis, and the amounts for Questioning shall be allowed only if conducted after November 10, 2016, The amount thus calculated is \$33,750. The Plaintiff shall pay this amount into Court no later than 120 days from the date of this Order.
  - b) Subsequent stages for payment of security for the remaining steps in the action shall be determined by the Case Management Justice or the Case Management Counsel
3. If the security is not provided in accordance with this Order, the Plaintiff's action is dismissed with costs without further order of the Court.
  5. Action numbers 1603 04928 and 1603 06360 are consolidated with materials to be filed in action number 1603 04928 henceforth
  6. Costs of this application are in the cause.

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Master of the Court of Queen's Bench of Alberta

**APPROVED AS TO FORM AND CONTENT BY**

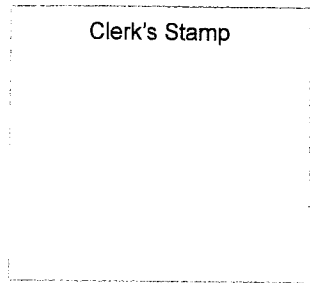
FIELD LLP

per:

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Sandeep K. Dhir, Q.C.  
Solicitors for the Plaintiff

COURT FILE NUMBER 1603 06390  
COURT COURT OF QUEEN'S BENCH OF ALBERTA  
JUDICIAL CENTRE EDMONTON  
PLAINTIFF PRESTIGIOUS PROPERTIES INC.  
DEFENDANTS COLD LAKE ESTATES INC., NORTHERN ALBERTA ESTATES INC., THE MULLER RYAN RICHARD DEVELOPMENT GROUP INC. also known as the MRR DEVELOPMENT GROUP INC., M DOUBLE M ENGINEERING SERVICES INC., CHARLES RYAN, MATTYS MULLER, and ROGER RICHARD



DOCUMENT **BILL OF COSTS**

ADDRESS FOR SERVICE AND CONTACT INFORMATION OF PARTY FILING THIS DOCUMENT **WHEATLEY SADOWNIK**  
2000, 10123 - 99 Street  
Edmonton AB T5J 3H1  
Tel (780) 423-6671  
Fax (780) 420-6327  
ATTENTION: Nestor Makuch  
File No. 78,736/3

BILL OF COSTS PREPARED BY THE DEFEBNDANTS, COLD LAKE ESTATES INC., NORTHERN ALBERTA ESTATES INC., THE MULLER RYAN RICHARD DEVELOPMENT GROUP INC., and CHARLES RYAN,

**Fees claimed:**

ITEM NO.	ITEM	COLUMN 5 AMOUNT
5 (1)	Preparation for questioning under Part 5	\$750
5 (2)	First ½ day or portion of it for attendance for questioning under Part 5 of parties or witnesses or cross examination on an affidavit • June 9, 2016	\$1,500
5 (3)	Each additional ½ day (25 @ \$1,500 ea) • June 9, 2016 (1) • June 13, 2016 (2) • July 11, 2016 (2) • July 14, 2016 (2) • January 24-26, 2017 (5)	\$37,500

	<ul style="list-style-type: none"> <li>February 21-23, 2017 (6)</li> <li>4 future additional half days to conclude questioning of Ryan</li> <li>3 additional half days to conclude Questioning of Beyer</li> </ul>	
7 (1)	Contested applications <ul style="list-style-type: none"> <li>6 applications to date, 3 pending, 2 additional potential at \$1,500 per application</li> </ul>	\$16,500
8 (1)	Applications when a brief is required or allowed by the Court	\$2,000
9 (1)	Each pre-trial application to schedule a trial date	\$1,000
10 (1)	Preparation for trial	\$10,000
11	Trial (10 days) <ul style="list-style-type: none"> <li>For first ½ day or portion of it</li> <li>Each additional ½ day (19 additional ½ days at \$1,500 per ½ day)</li> </ul>	\$2,000 \$28,500
12	Submission of written argument at the request of the trial judge or where allowed by the trial judge	\$5,000

**Disbursements:**

DESCRIPTION	AMOUNT
Couriers/postage	\$150
Trial filing Fees (\$600 first 4 days plus \$1,500 for additional 6 days)	\$2,100
Court reporting	\$9,000
Photocopies	\$1,000
Expert fees	\$15,000

**GST:**

- (a) Amount claimed on fees: \$5,237.50  
(b) Amount claimed on disbursements: \$1,257.50  
(c) Amount claimed on other charges: \$

**TOTAL GST:** \$6,495.00

**Total amount claimed:**

Fees: \$104,750  
Disbursements: \$27,250  
Other Charges: \$  
GST: \$6,495  
**TOTAL:** \$138,495

**Enhanced costs claimed where fraud alleged and not proven (double Column 5)**

Fees: \$209,500  
Disbursements: \$ 27,250  
Other Charges: \$  
GST: Fees \$ 10,475.00  
Disbs \$ 1,257.50  
**TOTAL:** \$248,482.50