

Donald P. Hayes #4
Affirmed: October 27, 2008

No. S085453
Vancouver Registry

IN THE SUPREME COURT OF BRITISH COLUMBIA

IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*,
R.S.C. 1985, c. C - 36

- AND -

IN THE MATTER OF THE *BUSINESS CORPORATIONS ACT*,
S.B.C. 2002, c. 57

- AND -

IN THE MATTER OF
HAYES FOREST SERVICES LIMITED
HAYES HOLDING SERVICES LIMITED
and **HAYES HELICOPTER SERVICES LIMITED**

AFFIDAVIT

I, **DONALD P. HAYES**, Businessman, of 7233 Trans Canada Highway, Duncan, British Columbia, SOLEMNLY AFFIRM AND SAY AS FOLLOWS:

1. I am the President of Hayes Forest Services Limited, Hayes Holding Services Limited and Hayes Helicopter Services Limited ("Hayes"), the Petitioners herein, and as such have personal knowledge of the facts and matters hereinafter deposed to save and except where the same are stated to be made upon information and belief and where so stated I verily believe them to be true.

2. During the month of September 2008 conditions in the coastal forestry industry have continued to decline. US housing starts are at an all time low, and the US and world economies are in turmoil as a result of the collapse of the various financial markets. This has resulted in Hayes's major customers reducing demand. Western has suspended logging operations for the time being and there is no assurance as to when they will restart.

3. Hayes suffered substantial losses during September, 2008 and cannot continue to incur those losses. As it does not appear that the industry will see a significant turnaround in the near term it is necessary for Hayes to begin to discontinue its operations in an orderly basis and to dispose of its assets to maximize recovery for all of the stakeholders.
4. I anticipate that Hayes' operations will substantially cease by the end of October, 2008 for the season, unless Western decides to log in November.
5. In order to establish a clear set of priorities among creditors I anticipate that Hayes will file an assignment in bankruptcy but request that the bankruptcy be stayed to allow the CCAA proceedings to continue.
6. Hayes has three significant assets that would be negatively affected by a bankruptcy, unless the CCAA were to continue. These consist of:
 - (a) the Bill 13 contract between Hayes Forest Services Limited and Western Forest Products Ltd. (the "Western Contract"),
 - (b) the Bill 13 contract between Hayes Forest Services Limited and Teal Cedar Products Ltd. (the "Teal Contract"); and
 - (c) Tree Farm License 10 from the Province of British Columbia ("TFL 10").
7. Both the Western Contract and the Teal Contract contain provisions that allow for the termination of the contracts in the event of the insolvency or bankruptcy of Hayes.
8. The terms of TFL 10 provide that insolvency is a default under the license that entitles the Province to terminate the license.
9. The Western Contract, the Teal Contract and TFL 10 have substantial value for the creditors of Hayes.
10. Under the regulations that govern the Teal and Western Contracts those contracts can be assigned with the consent of Teal and Western such consent not to be unreasonably withheld.

11. TFL 10 cannot be transferred to a third party without the issuance of a notice to proceed by the Minister of Forests. Such a transfer would likely trigger a “duty to consult” between the Province and the affected first nation, in this case the Klahoose. Given the history of TFL 10 and the position of the Klahouse such a transfer would be both time consuming and contentious.

12. In early October, with the concurrence of the Monitor, Hayes began to market the Teal and Western Contracts and TFL 10 by sending letters soliciting expressions of interest to parties known to be interested in these assets.

13. Hayes has received some expressions of interest, but these are currently either for prices that are not satisfactory or subject to due diligence provisions that will not be satisfied by October 31, 2008.

14. In order to preserve the Teal and Western Contracts pending a satisfactory sale they are to be transferred to Hayes Logging Services Limited. (“HLSL”). HLSL will pay a nominal down payment and will then sell the Contracts in due course and without the complications of an insolvency process, with the sale price accruing to the benefit of the creditors of Hayes.

15. In order to preserve the value of the TFL 10 for the creditors TFL 10 is to be transferred to Hayes Timber Limited, again for a nominal down payment so that it can be sold at a later time with the benefit of the sale price going to the creditors of Hayes. Under the *Forest Act* and Regulations, TFL 10 can be transferred to Hayes Timber Limited without the requirement of a notice to proceed from the Minister of Forests provided that Hayes Timber Limited is a wholly-owned subsidiary of Hayes Holding Services limited.

16. The Petitioner, Hayes Holding Services Limited, was not an operating company. It is liable for the Canadian Imperial Bank of Commerce (“CIBC”) secured debt and the secured debt to members of the Hayes family. It is proposed to remove Hayes Holding Services Limited from the CCAA process and have it incorporate Hayes Timber Limited as a wholly-owned subsidiary to acquire TFL 10.

17. The Petitioner, Hayes Helicopter Services Limited (“Helicopter”) was not an operating company. It has guaranteed the CIBC and Hayes family secured debt. Some helicopter purchase

orders were issued by Helicopter but all such purchase orders and related invoices have always been paid by Hayes Forest Services Limited and it is my view that these invoices are properly debts of Hayes Forest Services Limited and not Helicopter. Other than an inter-corporate receivable, Helicopter has no assets of its own, but does own certain operating permits and licenses from Transport Canada that permit it to operate helicopters. These permits cannot be sold or transferred except through the sale of the company and have no independent value. I am also negotiating for a sale of several of the helicopters and related parts to one purchaser who may need to acquire the company and these licenses. Should Hayes ever recommence helicopter operations it would be convenient for Hayes Helicopter Services Limited to still have these permits and licenses. It is proposed that Helicopter be removed as a Petitioner in these proceedings and that Hayes Forest Services Limited, which currently owns all of the shares of Helicopter, sell those shares to Donald Hayes, Harold Hayes, Jeffrey Hayes and Catherine Guadagnoulo. Helicopter is owed \$1,373,000 by Hayes Forest Services Limited. Under the sale agreement any money received by Helicopter on the receivable is to be repaid to Hayes Forest Services Limited.

18. Once the transfers of the Teal and Western Contracts have occurred and TFL 10 has been transferred to Hayes Timber Limited, Hayes Forest Services Limited proposes to conduct a controlled and orderly sale of the remainder of its assets. This process will continue into the Spring of 2009. It is proposed that the process will be run by the existing management of Hayes Forest Services Limited under the supervision of both the Monitor and KPMG as agent for the CIBC.

19. The sale of Hayes' assets is complex. The logging equipment needs to be marshalled from its location at the various worksites and assembled in Duncan for a sale. There are hundreds of pieces of equipment. The equipment will have to be cleaned and, if necessary, repaired prior to sale.

20. Some of the equipment will obtain a better value if sold privately with the balance to be sold at auction.

21. There are a number of boats and barges that are difficult to sell at auction and these have been listed for sale with a marine broker who deals in this type of equipment.

22. There are thousands of parts in inventory for use with logging equipment. A lot of this inventory will sell for almost nothing if sold by auction. We are in the process of putting these parts into packages for sale to users of this kind of equipment. This is a time consuming process requiring qualified industry knowledgeable staff but will add substantial value to these assets.

23. There are thousands of parts in inventory for the helicopters. These parts will have limited or no value if the associated documentation relating to their status and source is not rigidly controlled and maintained. This is a time consuming process requiring qualified industry knowledgeable staff but will add significant value to the realization from these assets.

24. The orderly sale of the remaining assets, including the logging equipment and helicopters will produce a much better result than if the assets were sold in a distressed situation through a bankruptcy or receivership sale.

25. To date Hayes has been able to sell one of the helicopters for US\$3.2 million. The remaining six helicopters have been listed for sale with aviation brokers who deal in these specific types of helicopters.

26. In respect of TFL 10, the litigation involving the Klahoose First Nation concluded recently with additional submissions request by the Court having been filed. The Province has delayed issuing a cutting permit pending the Court's decision. If the decision is favourable, a cutting permit will be issued that will allow Hayes, through a subcontractor to generate some \$1.4 million in revenue. The resolution of the lawsuit and the potential for profitable logging on this TFL will add value and interest to the sale. Hayes has received several offers to purchase the TFL and will continue to pursue a sale.

27. Hayes was involved in a rate arbitration with Western in connection with the appropriate rate for harvesting under the Western Contract for the 2008 logging season. Hayes was successful in that arbitration in having the rate increased by approximately \$10 per M³. Western has recently filed an application for leave to appeal that decision.

