

**ONTARIO
SUPERIOR COURT OF JUSTICE**

BETWEEN:

TRISURA GUARANTEE INSURANCE COMPANY

Applicant

-and-

**EBERSOLE EXCAVATING INC. AND D&S
RAILWAY CONSTRUCTION INC.**

Respondents

AFFIDAVIT OF KYLE CHOE
(affirmed March 26, 2015)

March 26, 2015

Department of Justice
Ontario Regional Office
The Exchange Tower
130 King Street West
Suite 3400, Box 36
Toronto, Ontario
M5X 1K6

Per: Edward Harrison
Tel: 416-973-7126
Fax: 416-973-0810
Our File: 7682952
Law Society No.: 64416Q

Lawyers for Her Majesty the Queen
in Right of Canada as represented
by the Minister of National
Revenue

SERVICE LIST
(Current as of March 6, 2015)

TO: EBERSOLE EXCAVATING INC.

2194 East Avenue
Stevensville, Ontario L0S 1S0

Attention: Darrell Ebersole

Email: ebersole@bellnet.ca

Email: darrell.ebersole@ebersoles.com

Email: darrell.ebersole@ebersoleexcavating.com

AND TO: D&S RAILWAY CONSTRUCTION INC.

2194 East Avenue
Stevensville, Ontario L0S 1S0

Attention: Darrell Ebersole

AND TO: DARRELL EBERSOLE

2194 East Avenue
Stevensville, Ontario L0S 1S0

AND TO: DARRELL EBERSOLE

631 Lakeshore Road
Fort Erie, Ontario L2A 1B8

AND TO: SANDRA EBERSOLE

2194 East Avenue
Stevensville, Ontario L0S 1S0

AND TO: GRANT THORNTON LIMITED
19th Floor, Royal Bank Plaza South Tower
200 Bay Street, Box 55
Toronto, Ontario M5J 2P9

Attention: Jake Wiebe
Tel.: (416) 360-3069
Fax: (416) 360-4948
Email: jake.wiebe@ca.gt.com

Attention: Daniel Sobel
Tel.: (416) 369-7033
Fax: (416) 360-4949
Email: daniel.sobel@ca.gt.com

Interim Receiver and Receiver

AND TO: AIRD & BERLIS LLP
Brookfield Place
181 Bay Street, Suite 1800
Toronto, Ontario M5J 2T9

Attention: Ian Aversa
Tel.: (416) 865-3082
Fax: (416) 863-1515
Email: iaversa@airdberlis.com

Attention: Jeremy Nemers
Tel.: (416) 865-7724
Fax: (416) 863-1515
Email: jnemers@airdberlis.com

Lawyers for Grant Thornton Limited

AND TO: BORDEN LADNER GERVAIS LLP
40 King Street West
Toronto, Ontario M5H 3Y4

Attention: Roger Jaipargas
Tel.: (416) 367-6266
Fax: (416) 361-7067
Email: rjaipargas@blg.com

Attention: Andrew Hodhod
Tel.: (416) 367-6290
Fax: (416) 361-2799
Email: ahodhod@blg.com

AND TO: Lawyers for Trisura Guarantee Insurance Company
FOGLER, RUBINOFF LLP
77 King Street West
Suite 3000, P.O. Box 95
TD Centre
Toronto, Ontario M5K 1G8

Attention: Joel D. Farber
Tel.: (416) 365-3707
Fax: (416) 941-8852
Email: jfarber@foglers.com

Attention: Joshua R. Freeman
Tel.: (416) 864-9700
Fax: (416) 941-8852
Email: jfreeman@foglers.com

Lawyers for Maynards Industrial Ltd.

AND TO: BDO CANADA LIMITED
1 City Centre Drive
Suite 1040
Mississauga, Ontario L5B 1M2

Attention: Peter Naumis
Tel.: (905) 615-6207
Fax: (905) 615-1333
Email: pnaumis@bdo.ca

Proposal Trustee of Ebersole Excavating Inc.

AND TO: JMA ACCOUNTING PROFESSIONAL CORPORATION
1300 Cornwall Road, Suite 201
Oakville, Ontario L6J 7W5

Attention: John MacDonald

Tel.: (905) 338-8343 Ext. 221
Fax: (905) 338-8042
Email: jbm@jmagroup.ca

AND TO: WEIRFOULDS LLP
4100 – 66 Wellington St. W.
P.O. Box 35, Toronto-Dominion Centre
Toronto, Ontario M5K 1B7

Attention: David Brown / Hilary Book
Tel.: (416) 947-5046 / (416) 947-5057
Fax: (416) 365-1876 / (416) 365-1876
Email: dbrown@weirfoulds.com / hbook@weirfoulds.com

Lawyers for JMA Accounting Professional Corporation and John MacDonald

AND TO: FLUXGOLD IZSAK JAEGER LLP
10-50 West Pearce Street
Richmond Hill, Ontario L4B 1C5

Attention: Bruce R. Jaeger

Tel.: (905) 763-3770
Fax.: (905) 763-3772
Email: bjaeager@fijlaw.com

Lawyers for Darrell Ebersole

AND TO: DUNNET LAW PROFESSIONAL CORPORATION
648 Shenandoah Drive
Mississauga, Ontario L5H 1V9

Attention: David Dunnet

Tel.: (905) 990-1902
Fax.: (905) 990-2072
Email: david.dunnet@dunnetlaw.com

Lawyers for Sandra Ebersole

AND TO: DH PROFESSIONAL CORPORATION

51 Village Centre Place
Mississauga, ON L4Z 1V9

Attention: Douglas H. Hancock

Tel.: (905) 273-3339
Fax.: (905) 273-5672
Email: douglas@daiglehancock.com

Lawyers for BDO Canada Limited

AND TO: CURTIS GAIL DEVELOPMENT CORPORATION

4490 Montrose Road
Niagara Falls, ON L2H 1K2

AND TO: BRODERICK & PARTNERS LLP

4625 Ontario Avenue
P.O. Box 897
Niagara Fall, ON L2E 6V6

Attention: Marc A. DiGirolamo

Tel.: (905) 356-2621
Fax: (905) 356-6904
Email: marcd@broderickpartners.com

Lawyers for Curtis Gail Development Corporation

AND TO: ALLY CREDIT CANADA LIMITED

P.O. Box 5000, Station D
Etobicoke, ON M9A 5E3

**AND TO: HER MAJESTY THE QUEEN IN RIGHT OF THE
PROVINCE OF ONTARIO AS REPRESENTED BY
THE MINISTER OF FINANCE**

(Income Tax, PST)
PO Box 620
33 King Street West, 6th Floor
Oshawa, ON L1H 8E9

Attention: Kevin J. O'Hara

Email: kevin.ohara@ontario.ca

**ONTARIO
SUPERIOR COURT OF JUSTICE**

BETWEEN:

TRISURA GUARANTEE INSURANCE COMPANY

Applicant

-and-

**EBERSOLE EXCAVATING INC. AND D&S
RAILWAY CONSTRUCTION INC.**

Respondents

AFFIDAVIT OF KYLE CHOE

I, Kyle Choe, of the City of Toronto, in the Province of Ontario, AFFIRM THAT:

1. I am a Collections Officer with the Toronto Centre Tax Services Office of the Canada Revenue Agency ("CRA") with carriage of the CRA's file for collection of the income tax debt of Ebersole Excavating Inc. ("Ebersole") and D&S Railway Construction Inc. ("D&S Railway"). As such, I have personal knowledge of the matters deposed to herein, save and except where such matters are stated to be on information and belief, and where so stated, I verily believe them to be true.

The Debts

i) D&S Railway

2. D&S Railway is currently indebted to Her Majesty the Queen as represented by the Minister of National Revenue (the "Crown") for \$175,565.07 (the "Debt"). The Debt consists of both unremitted employee source deductions and unremitted GST/HST.

3. D&S Railway has an outstanding source deduction debt of \$101,859.76, which includes a deemed trust amount of \$94,583.64. Section 227(4.1) of the *Income Tax Act* provides the Crown with a statutory super priority to deemed trust amounts. Attached as Exhibit "A" is the Canada Revenue Agency's ("CRA") proof of claim for D&S Railway's source deduction debt.

4. D&S Railway has an outstanding GST/HST debt of \$73,705.31, which consists of a principal debt of \$72,094.71 and penalty and interest amounts of \$1610.60. The principal GST/HST debt is deemed to be held in trust for the Crown subject to section 222(1.1) of the *Excise Tax Act*. Attached as Exhibit "B" is CRA's proof of claim for D&S Railway's GST/HST debt.

5. It should be noted that D&S Railway's GST/HST debt has been reduced by \$8848.51 since CRA filed its proof of claim on January 29, 2015 due to the company's filing of an outstanding return for the period of February 1, 2014 to February 28th, 2014.

ii) Ebersole

6. Ebersole is currently indebted to the Crown for unremitted GST/HST in the amount of \$101,454.84, which consists of a principal debt of \$99,794.76 and accrued interest of \$1660.08. The principal GST/HST debt is deemed to be held in trust for the Crown subject to section 222(1.1) of the *Excise Tax Act*. Attached as Exhibit "C" is CRA's proof of claim for Ebersole's GST/HST debt.

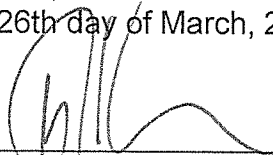
The CRA Trust Funds

7. In a letter I received from David G. Dunnet, counsel for Sandy Ebersole, director of Ebersole and D&S Railway, dated March 4, 2015, I was informed that, prior to the Interim Receivership Order, monies in the amount of \$190,669.00 were placed in trust for CRA by the principals of Ebersole and D&S Railway to satisfy the companies' outstanding tax liabilities. Attached as Exhibit "D" is the March 4, 2015 letter.

8. As indicated at paragraph 5 of the March 6, 2015 Order of Justice Wilton-Siegel, on December 12, 2014, the funds held by Dunnet Law Professional Corporation, which include the \$190,669.00 placed in trust for CRA, were transferred to the receiver, Grant Thornton Limited. Attached as Exhibit "E" is the March 6, 2015 Order.

9. I make this affidavit in support of CRA's claim for payment to be made at the Distribution Hearing, scheduled for May 13, 2015.

AFFIRMED before me at the City of
Toronto, in the Province of Ontario on
this 26th day of March, 2015.



Commissioner for Taking Affidavits

Andrew Kinoshita

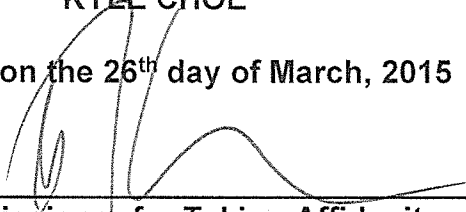
LSUC # 62243I



Kyle Choe

THIS IS EXHIBIT "A"
referred to in the affidavit of
KYLE CHOE

Affirmed on the 26th day of March, 2015



A Commissioner for Taking Affidavits



Tax Centre
Toronto ON M5J 2X6

February 20, 2015

ATTENTION: NICOLAS TO
GRANT THORNTON
200 - 15 ALLSTATE PKY
MARKHAM ON L3R 5B4

Account Number
89134 8203 RP0001

Dear Sir:

Re: D & S RAILWAY CONSTRUCTION INC
Account number: 891348203rp0001

We have been advised that you have been appointed as receiver for the above-named. At present, there is indebtedness to Canada Revenue Agency (CRA) for source deductions amounting to \$101,859.76.

Particulars of this liability are as follows:

Date of assessment	2015-02-11
Tax deductions:	\$ 58,583.64
Total:	\$ 58,583.64

Date of assessment	2015-01-08
Tax deductions:	\$ 36,000.00
Penalties and interest:	\$ 5,006.74
Total:	\$ 41,006.74

Accrued interest:	\$ 2,269.38
Grand total:	\$101,859.76

Pursuant to the provisions of subsection 227(4) of the Income Tax Act (ITA), subsection 23(3) of the Canada Pension Plan (CPP), subsection 57(2) of the Unemployment Insurance Act (UIA), subsection 86(2) of the Employment Insurance Act (EIA), the following amounts, which are included in the above totals, are trust funds and form no part of the property, business, or estate of D & S RAILWAY CONSTRUCTION INC in receivership.

.../2



Northern Ontario Regional
Collections/Compliance Centre
1 Front St. W. Suite 100
Toronto ON M5J 2X6

Local : 416-973-3998
Fax : 416-954-6411
Web site : www.cra.gc.ca

Federal income tax:	\$ 58,583.64
Total:	\$ 58,583.64
Federal income tax:	\$ 26,865.72
Provincial income tax:	\$ 9,134.28
Total:	\$ 36,000.00
Grand total:	\$ 94,583.64

Payment for the total amount of this trust, namely \$94,583.64 should be made to the Receiver General out of the realization of any property that is subject to these statutory trusts in priority to all other creditors. Please forward payment by return mail. In the event this is not possible, please indicate when payment will be forthcoming.

Please advise when payment of the remaining balance of \$7,276.12 plus interest up to the date of payment will be forthcoming. Your attention is drawn to section 159 of the ITA, subsection 23(5) of the CPP, subsection 57(4.1) of the UIA and subsection 86(4) of the EIA.

This letter also serves as notice that should payment be made for any amount described in subsection 153(1) of the ITA for periods prior or subsequent to your appointment, tax deductions must be withheld and remitted in accordance with this subsection and Income Tax Regulations 101 and 108. Your attention is also directed to section 3 of the Unemployment Insurance (Collection of Premiums) Regulations, section 5 of the EIA and section 8 of the Canada Pension Plan Regulations.

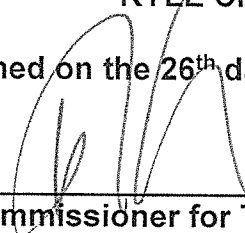
If you require further information, please contact the undersigned at 416-973-3998.

Yours truly,

K. Choe (1213)
Collection Officer

THIS IS EXHIBIT "B"
referred to in the affidavit of
KYLE CHOE

Affirmed on the 26th day of March, 2015



A Commissioner for Taking Affidavits



Canada Revenue
Agency

Agence du revenu
du Canada

Tax Centre
Toronto ON M5J 2X6

January 29, 2015

ATTENTION: NICOLAS TO
C/O GRANT THORNTON LIMITED
15 ALLSTATE PARKWAY SUITE 200
MARKHAM ON L3R 5B4

Account Number
89134 8203 RT0001

Dear Sir:

Re: D&S RAILWAY CONSTRUCTION INC
Date of Bankruptcy: 2015-01-02

To support our claim for unpaid GST/HST in the above Bankruptcy, we have enclosed a proof of claim, with Schedule "A", as an unsecured creditor for \$82,553.82.

Filing these proof of claim forms does not affect any rights Canada Revenue Agency (CRA) may have under the "Excise Tax Act." Accordingly filing them should not be construed as a waiver of those rights.

If you require further information with respect to our claim, please contact our office at one of the telephone numbers provided in this letter.

Yours truly,

K. Choe (1213)
Collection Officer

Enclosure(s)

Canada

Northern Ontario Regional
Collections/Compliance Centre
1 Front St. W. Suite 100
Toronto ON M5J 2X6

Local : 416-973-3998
Fax : 416-954-6411
Web site : www.cra.gc.ca

Proof of Claim (Form 31)
Bankruptcy and Insolvency Act (Act)

All notices or correspondence regarding this claim must be sent to the following address:

Canada Revenue Agency
Toronto Centre TSO
1 Front St West
Toronto, Ontario, M5J 2X6
Attention: Kyle Choe

In the matter of bankruptcy of D & S RAILWAY CONSTRUCTION INC of the City of Toronto in the Province of Ontario, and the claim of Her Majesty the Queen in Right of Canada as represented by the Minister of National Revenue, creditor.

I, Kyle Choe, of the city of Toronto in the Province of Ontario, do hereby certify:

1. That I am a collections officer of the Canada Revenue Agency.
2. That I have knowledge of all the circumstances connected with the claim referred to below.
3. That the debtor was, at the date of bankruptcy, namely the 2nd of January, 2015, and still is, indebted to the creditor in the sum of \$82,553.82, as specified in the statement of account attached and marked Schedule "A", after deducting any counterclaims to which the debtor is entitled.
4. (X) UNSECURED CLAIM of \$82,553.82.

That in respect of this debt, I do not hold any assets of the debtor as security and

- (X) Regarding the amount of \$82,553.82, I do not claim a right to a priority.

5. That, to the best of my knowledge, the above-named creditor is not related to the debtor within the meaning of section 4 of the Act, and has not dealt with the debtor in a non-arm's length manner.

6. That the following are the payments that I have received from,

and the credits that I have allowed to the debtor within the three months immediately before the date of the initial Receivership event within the meaning of subsection 2(1) of the Act.

Nil

I request that a copy of the report filed by the trustee regarding the bankrupt's application for discharge pursuant to subsection 170(1) of the Act be sent to the above address.

Dated at Toronto on 2015-01-28.

Witness

Creditor
(Signature of person completing
this Proof of Claim)

SCHEDULE "A"

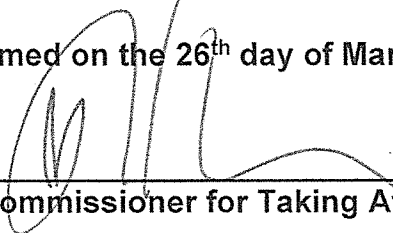
REGISTRANT: D & S RAILWAY CONSTRUCTION INC
GST/HST Account #: 891348203RT0001
Date of Bankruptcy: January 2nd, 2015

Filing Period From - To YYMMDD - YYMMDD	Net Tax	Penalty & Interest	Period Total
141001 - 141031	16,093.64	72.91	16,166.55
140901 - 140930	10,200.89	191.30	10,392.19
140801 - 140831	26,846.60	347.91	27,194.51
140701 - 140731	2,838.59	48.63	2,887.22
140601 - 140630	18,632.48	399.82	19,032.30
140301 - 140331	4,675.43	141.06	4,816.49
140201 - 140228	0.00	0.00	2,064.56*
TOTAL	\$79,287.63	\$1,201.63	82,553.82

*This return has been assessed by the Canada Revenue Agency, and it is still required to be filed by the corporation.

THIS IS EXHIBIT "C"
referred to in the affidavit of
KYLE CHOE

Affirmed on the 26th day of March, 2015



A Commissioner for Taking Affidavits



Canada Revenue
Agency

Agence du revenu
du Canada

Tax Centre
Toronto ON M5J 2X6

January 29, 2015

ATTENTION: NICOLAS TO
C/O GRANT THORNTON LIMITED
15 ALLSTATE PARKWAY SUITE 200
MARKHAM ON L3R 5B4

Dear Sir:

Re: EBERSOLE EXCAVATING INC
Date of Bankruptcy: 2015-01-02

To support our claim for unpaid GST/HST in the above Bankruptcy, we have enclosed a proof of claim, with Schedule "A", as an unsecured creditor for \$100,246.88.

Filing these proof of claim forms does not affect any rights Canada Revenue Agency (CRA) may have under the "Excise Tax Act." Accordingly filing them should not be construed as a waiver of those rights.

If you require further information with respect to our claim, please contact our office at one of the telephone numbers provided in this letter.

Yours truly,

K. Choe (1213)
Collection Officer

Enclosure(s)

Canada

Northern Ontario Regional
Collections/Compliance Centre
1 Front St. W. Suite 100
Toronto ON M5J 2X6

Local : 416-973-3998
Fax : 416-954-6411
Web site : www.cra.gc.ca

Proof of Claim (Form 31)
Bankruptcy and Insolvency Act (Act)

All notices or correspondence regarding this claim must be sent to the following address:

Canada Revenue Agency
Toronto Centre TSO
1 Front St West
Toronto, Ontario, M5J 2X6
Attention: Kyle Choe

In the matter of bankruptcy of EBERSOLE EXCAVATING INC of the City of Toronto in the Province of Ontario, and the claim of Her Majesty the Queen in Right of Canada as represented by the Minister of National Revenue, creditor.

I, Kyle Choe, of the city of Toronto in the Province of Ontario, do hereby certify:

1. That I am a collections officer of the Canada Revenue Agency.

2. That I have knowledge of all the circumstances connected with the claim referred to below.

3. That the debtor was, at the date of bankruptcy, namely the 2nd of January, 2015, and still is, indebted to the creditor in the sum of \$100,246.88, as specified in the statement of account attached and marked Schedule "A", after deducting any counterclaims to which the debtor is entitled.

4. (X) UNSECURED CLAIM of \$100,246.88.

That in respect of this debt, I do not hold any assets of the debtor as security and

(X) Regarding the amount of \$100,246.88, I do not claim a right to a priority.

5. That, to the best of my knowledge, the above-named creditor is not related to the debtor within the meaning of section 4 of the Act, and has not dealt with the debtor in a non-arm's length manner.

6. That the following are the payments that I have received from,

and the credits that I have allowed to the debtor within the three months immediately before the date of the initial Receivership event within the meaning of subsection 2(1) of the Act.

Nil

I request that a copy of the report filed by the trustee regarding the bankrupt's application for discharge pursuant to subsection 170(1) of the Act be sent to the above address.

Dated at Toronto on 2015-01-28.

Witness

Creditor
(Signature of person completing
this Proof of Claim)

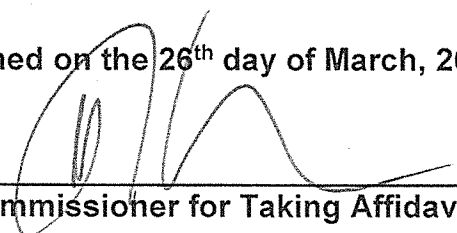
SCHEDULE "A"

REGISTRANT: EBERSOLE EXCAVATING INC
GST/HST Account #: 894161744RT0001
Date of Bankruptcy : January 2nd, 2015

Filing Period From - To YYMMDD - YYMMDD	Net Tax	Interest	Penalty	Period Total
141001 - 141031	99,794.76	452.15	0.00	100,246.88
TOTAL	\$99,794.76	\$452.15	\$0.00	\$100,246.88

THIS IS EXHIBIT "D"
referred to in the affidavit of
KYLE CHOE

Affirmed on the 26th day of March, 2015



A Commissioner for Taking Affidavits



Dunnet Law

Professional Corporation

FACSIMILE TRANSMISSION

DATE: March 04, 2015

THE FOLLOWING PAGES ARE FOR THE ATTENTION OF:

NAME: Kyle Choe

FIRM: Canada Revenue Agency

FAX NO: 416-954-8411

FROM: David G. Dunnet

TOTAL NUMBER OF PAGES INCLUDING COVER PAGE: 17

Re: D&S Railway Construction Inc. and Ebersole Excavating Inc.

The information contained in this message and any attachments are privileged, confidential and governed by the laws of solicitor-client privilege. It is intended only for the use of the individual(s) named above. If you are not the intended recipient, or the employee or agent responsible to deliver it to the intended recipient(s), you are hereby notified that any dissemination, distribution or copying of this communication is prohibited. If you have received this communication in error, please notify us immediately by telephone or email and return the original message to us at info@dunnetlaw.com, without making a copy and deleting this message forthwith.

648 Shenandoah Drive, Mississauga, Ontario L5H 1V9

Tel: (905) 890-1902 Fax: (905) 890-2072 E-Mail: david.dunnet@dunnetlaw.com



Dunnet Law

Professional Corporation

March 04, 2015

DELIVERED BY FACSIMILE

Canada Revenue Agency
Attn: Kyle Choe
Toronto Centre, TSO
1 Front Street West
Toronto, Ontario
M5J 2X6

Dear Mr. Choe:

I am the lawyer acting for Sandy Ebersole a director of D&S Railway Construction Inc. and Ebersole Excavating Inc. As you are aware and I enclose copies of your Proofs of Claim, there is outstanding tax liability.

There are trust funds held for CRA in the amount of \$190,869.00 plus accrued interest. These funds were held by the principals of the companies in trust for the tax liability outstanding and associated with the sale of equipment. The sale of the equipment and proceeds are the subject matter of a claim by Trisura Guarantee Insurance Company under an indemnity in a bonding agreement and Maynards Industries Ltd. pursuant to a purchase agreement. The equipment was seized under a Receiving Order and there are outstanding claims against the companies and principals/directors by each in excess of one million dollars.

The CRA trust funds were provided to me and held in trust and on the undertaking of the Receiver now held in trust and are subject to the draft order and timetable enclosed. It is the position of Trisura and Maynards that the funds are not subject to a trust in favour of CRA as held by the principals and are due to either Trisura or Maynards.

It is to CRA to pursue the claim to those funds as the companies are insolvent and any deemed trust claims are a matter for CRA to claim. The directors are insolvent based upon the claims made against them by both Trisura and Maynards. They have not filed

- 2 -

assignments or proposals in bankruptcy as of yet. Neither are employed and their residence is subject to pending foreclosure by Bank of Montreal. The Ebersole's are available to assist CRA in pursuing entitlement to the funds.

Yours truly,

DUNNET LAW PROFESSIONAL CORPORATION



David G. Dunnet

cc: Ian Aversa
Aird & Berlies LLP
T: 416-865-3082
F: 416-863-1515
E: iaversa@airdberlies.com
Counsel to Grant Thornton

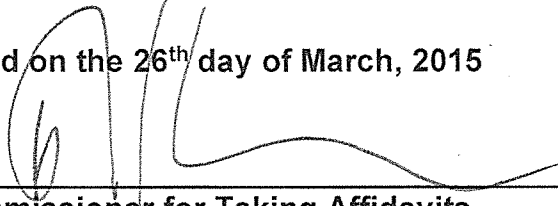
Joshua Freeman
Fogler Rubinoff LLP
T: 416-864-7621
F: 416-841-8852
E: jfreeman@foglers.com
Counsel to Maynards Industries Ltd.

Roger Jaipargas
Borden Ladner Gervais
T: 416-367-6266
F: 416-361-7067
E: rjaipargas@blg.com
Counsel to Trisura Guarantee Insurance

Bruce Jaeger
Fluxgold Izaak Jaeger LLP
T: 905-763-3770
F: 905-763-3772
E: bjaeger@fijiaw.com
Counsel to Darrell Ebersole

THIS IS EXHIBIT "E"
referred to in the affidavit of
KYLE CHOE

Affirmed on the 26th day of March, 2015



A Commissioner for Taking Affidavits

Court File No. CV-14-10766-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

THE HONOURABLE MR.)

FRIDAY, THE 6TH DAY)

JUSTICE WILTON-SIEGEL)

OF MARCH, 2015



BETWEEN:

TRISURA GUARANTEE INSURANCE COMPANY

Applicant

- and -

EBERSOLE EXCAVATING INC. AND D&S
RAILWAY CONSTRUCTION INC.

Respondents

IN THE MATTER OF AN APPLICATION PURSUANT TO SECTION 47 OF THE
BANKRUPTCY AND INSOLVENCY ACT, R.S.C. 1985, c. B-3, AS AMENDED; AND
SECTION 101 OF THE COURTS OF JUSTICE ACT, R.S.O. 1990, c. C.43, AS AMENDED

AND IN THE MATTER OF SECTION 243(1) OF THE BANKRUPTCY AND
INSOLVENCY ACT, R.S.C. 1985, c. B-3, AS AMENDED; AND SECTION 101 OF THE
COURTS OF JUSTICE ACT, R.S.O. 1990, c. C.43, AS AMENDED

ORDER

THIS MOTION, made by Grant Thornton Limited ("GTL"), in its capacities as the Court-appointed interim receiver (in such capacity, the "Interim Receiver") and receiver (in such capacity, the "Receiver"), without security, of all of the assets, undertakings and properties of Ebersole Excavating Inc. and D&S Railway Construction Inc. (collectively, the "Debtors"),

for an order, among other things: (i) approving the First Report of the Receiver dated February 24, 2015 (the "First Report") and the actions of the Receiver set out therein; (ii) approving the fees and disbursements of the Interim Receiver, the Receiver and their counsel; (iii) establishing the process through which a scheme of distribution of all funds held by the Receiver will be determined (the "Distribution Scheme"); and (iv) authorizing and directing the Receiver to distribute all funds held by the Receiver according to the Distribution Scheme, was heard this day at 330 University Avenue, Toronto, Ontario.

ON READING the First Report and the appendices thereto, the affidavits of Jake Wiebo sworn February 24, 2015, and the affidavit of Steven L. Graff sworn February 23, 2015, and on hearing the submissions of counsel for the Receiver, counsel for Trisura Guarantee Insurance Company and such other counsel as were present, no one appearing for any other person on the service list, although duly served as appears from the affidavit of Eunice Balkols sworn February 25, 2015, filed,

1. **THIS COURT ORDERS** that the time for service and filing of the notice of motion and the motion record is hereby abridged and validated so that this motion is properly returnable today and hereby dispenses with further service thereof.

2. **THIS COURT ORDERS** that the First Report be and is hereby approved and the actions of the Receiver described therein be and are hereby approved.

3. **THIS COURT ORDERS** that the fees and disbursements of the Interim Receiver and the Receiver for the period to and including January 31, 2015, in the amount of \$46,864.71, inclusive of applicable HST, be and are hereby approved.

4. **THIS COURT ORDERS** that the fees and disbursements of legal counsel for the Interim Receiver and the Receiver, Aird & Berlis LLP, for the period to and including January 31, 2015, in the amount of \$28,852.76, inclusive of applicable HST, be and are hereby approved.

5. **THIS COURT ORDERS** that the Receiver be and is authorized and directed to distribute, according to a scheme of distribution to be determined by this Court at a hearing (the "Distribution Hearing") and subject to the Receiver's Charge and the Receiver's Borrowings Charge, all funds held by the Receiver as of the date of the Distribution Hearing, including, without limitation:

- (a) the "Remaining Funds", as defined in the Order of the Honourable Justice Newbould dated November 26, 2014 (the "Interim Receivership Order"); and
- (b) the funds transferred to the Receiver on December 12, 2014 from the trust account of Dunnet Law Professional Corporation, totalling \$396,227.00 plus all interest that has since accrued thereon (collectively the "DLPC Funds").

6. **THIS COURT ORDERS** that the Court shall determine at the Distribution Hearing, amongst other things, whether all or part of the Remaining Funds and the DLPC Funds constitute "Property", as defined in both the Interim Receivership Order and in the Order of the Honourable Justice Pattillo dated December 23, 2014. For greater certainty, and subject to further Order of this Court, only the Property is subject to the Receiver's Charge and the Receiver's Borrowings Charge.

7. **THIS COURT ORDERS** that the date of the Distribution Hearing be scheduled, such that:

- (a) the First Report of the Interim Receiver dated December 15, 2014 (the "Interim Receiver's Report"), the First Report (together with the Interim Receiver's Report and any future supplements to the First Report, the "Reports") and the affidavit of Stuart Detsky sworn November 24, 2014 and the exhibits thereto shall be received into evidence at the Distribution Hearing;
- (b) any interested party wishing to file affidavit evidence for use at the Distribution Hearing (the "Affidavit Evidence") shall serve and file such Affidavit Evidence by no later than 4:00 p.m. (Toronto time) on March 27, 2015 (the "Affidavit Evidence Deadline");
- (c) any interested party wishing to file reply affidavit evidence for use at the Distribution Hearing (the "Reply Affidavit Evidence") shall serve and file such Reply Affidavit Evidence by no later than 4:00 p.m. (Toronto time) on April 7, 2015 (the "Reply Affidavit Evidence Deadline");
- (d) any interested party wishing to cross-examine on the Affidavit Evidence or the Reply Affidavit Evidence shall have completed such cross-examination by no later than 4:00 p.m. (Toronto time) on April 17, 2015 (the "Cross-Examination Deadline");
- (e) each of the Receiver and any interested party may serve and file a factum, if any, by no later than 4:00 p.m. (Toronto time) on April 24, 2015 (the "Facta Deadline");

- (f) each of the Receiver and any interested party may serve and file a responding factum, if any, by no later than 4:00 p.m. (Toronto time) on May 1, 2015 (the "Responding Facta Deadline"); and
- (g) the Distribution Hearing shall occur on May 13, 2015 or as soon after that date as the Distribution Hearing can be heard (the "Distribution Hearing Date").

8. THIS COURT ORDERS AND DECLARES that the DLPC Funds, as of the Distribution Hearing Date and without further Order of this Court, need no longer be invested in a 30-day guaranteed investment certificate.

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ON / BOOK NO:
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W. Han - L. J.

TRISURA GUARANTEE INSURANCE COMPANY

- and -

EBERSOLE EXCAVATING INC., et al

Applicant

Respondents

Court File No. CV-14-10766-00CL

**ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)**

Proceedings commenced at Toronto

ORDER

AIRD & BERLIS LLP
Barristers and Solicitors
Brookfield Place
181 Bay Street, Suite 1800
P.O. Box 754
Toronto, ON M5J 2T9

Steven L. Graff (LSUC # 31871V)
Tel: (416) 865-7726
Fax: (416) 863-1515
Email: sgraff@airdberlis.com

Jan Aversa (LSUC # 55449N)
Tel: (416) 865-3082
Fax: (416) 863-1515
Email: javersa@airdberlis.com

Jeremy Nemers (LSUC # 66410Q)
Tel: (416) 865-7724
Fax: (416) 863-1515
Email: jnemers@airdberlis.com

*Lawyers for Grant Thornton Limited, in its capacities as the Court-
appointed interim receiver and receiver of Ebersole Excavating Inc. and
D&S Railway Construction Inc.*

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TRISURA GUARANTEE INSURANCE COMPANY

AND

EBERSOLE EXCAVATING INC., et al.

Applicant

Respondent

**ONTARIO
SUPERIOR COURT OF JUSTICE**

Proceeding Commenced at Toronto

**AFFIDAVIT OF KYLE CHOE
AFFIRMED MARCH 26, 2015**

Department of Justice
Ontario Regional Office
The Exchange Tower
130 King Street West
Suite 3400, Box 36
Toronto, Ontario
M5X 1K6

Per: Edward D. Harrison
Tel: (416) 973-7126
Fax: (416) 973-0810

LSUC No.: 64416Q

Lawyers for Her Majesty the Queen in Right of
Canada as represented by the Minister of National
Revenue