

COURT FILE NUMBER **1701-03460**

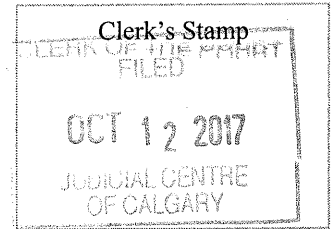
COURT **COURT OF QUEEN'S BENCH OF ALBERTA**

JUDICIAL CENTRE **Calgary**

PLAINTIFF **ALBERTA ENERGY REGULATOR**

DEFENDANTS **LEXIN RESOURCES LTD., 1051393 B.C.
LTD., 0989 RESOURCE PARTNERSHIP, LR
PROCESSING LTD. and LR PROCESSING
PARTNERSHIP**

DOCUMENT **APPLICATION BY RECEIVER:
ADVICE & DIRECTION**



ADDRESS FOR SERVICE AND CONTACT INFORMATION OF PARTY FILING THIS DOCUMENT

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File No. 547730-000021

NOTICE TO RESPONDENTS: See Service List, Schedule "A" to this Application

This application is made against you. You are a respondent.

You have the right to state your side of this matter before the master/judge.

To do so, you must be in Court when the application is heard as shown below:

Date October 25, 2017
Time 10:00 a.m.
Where Calgary Courts Centre, 601-5th Street SW, Calgary AB
Before Whom The Honourable Justice B.E. Romaine

Go to the end of this document to see what else you can do and when you must do it.

Remedy claimed or sought:

1. Grant Thornton Limited, in its capacity as the court-appointed receiver (the “**Receiver**”) of Lexin Resources Ltd. (“**Lexin**”), 1051393 B.C. Ltd. (“**105**”), 0989 Resource Partnership (“**0989**”), LR Processing Ltd. (“**LR Ltd.**”) and LR Processing Partnership (“**LR Processing**” and collectively with Lexin, 105, 0989 and LR Ltd. the “**Lexin Group**”), seeks:
 - (a) The advice and direction of this Court in respect of the Receiver’s court-approved sales process (the “**Sales Process**”), which is presently in progress, and in particular, the advice and direction of the Court as a result of certain ownership claims in a portion of the property located on Lexin owned Sites and listed for sale in the Sales Process;
 - (b) The advice and direction of this Court in respect of a series of transactions (the “**Reviewable Transactions**”) entered into by the Lexin Group and certain non-arm’s length parties, including:
 - (i) a secured loan MFC Energy Finance Inc. (“**Finance**”) asserts it advanced to 0989 in the amount of \$37,570,500 (the “**Finance Loan**”);
 - (ii) a transfer of equipment from Lexin or 0989 to 1049597 B.C. Ltd. (“**597**”), the consideration for which is stated to be a reduction to the Finance Loan;
 - (iii) a transfer of certain lease and land interests from Lexin or 0989 to 1059032 B.C. Ltd. (“**1059**”), the consideration for which is stated to be a reduction to the Finance Loan;
 - (iv) a transfer of certain seismic data from Lexin or 0989 to Finance, the consideration for which is stated to be a reduction to the Finance Loan;
 - (v) a transfer of certain oil and gas assets from Lexin or 0989 to Notine Holdings Inc. (“**Notine**”), the consideration for which is unclear; and
 - (vi) a transfer of certain additional equipment from Lexin or 0989 to Jixin Energy Inc. (“**Jixin**”) and then to Energy Leasing Partners Ltd. (“**ELP**”), the consideration for which is unclear.
 - (c) The appointment of Grant Thornton Limited as trustee in bankruptcy over Lexin and 0989 for the purposes of preserving limitations periods in the event the Receiver deems it appropriate to challenge the Reviewable Transactions;
 - (d) A declaration that the relief sought to date by the Receiver constitutes remedial relief pursuant to the *Limitations Act* (Alberta), such that the limitations periods in which the Receiver or a trustee in bankruptcy may pursue claims to challenge the Reviewable Transactions as any of a transfer at undervalue, settlement, fraudulent preference, assignment, fraudulent conveyance or other reviewable transaction pursuant to any of the *Fraudulent Preferences Act* (Alberta), the *Fraudulent Conveyances Act 1571* (13 Eliz 1, c 5), the *Bankruptcy and Insolvency Act* (Canada), or any other applicable federal or provincial legislation is preserved;

- (e) Approving the Receiver's activities and conduct to date, including the Receiver's conduct with respect to the Sales Process; and
 - (f) A sealing order with respect to the Confidential Supplement to the Fifth Report.
2. Such further and other relief as Counsel may advise and this Honourable Court permit.

Grounds for making this application:

Background

3. On March 20, 2017, this Court granted the Alberta Energy Regulator's ("AER") application to petition Lexin into receivership (the "**Lexin Receivership Order**"). Subsequently, on June 13, 2017, this Court granted the Receiver's application to petition 105, 0989, LR Ltd. and LR Processing into receivership pursuant to a consent receivership order (the "**Expanded Receivership Order**" and together with the Lexin Receivership Order the "**Receivership Orders**"). All capitalized terms used but not otherwise defined herein shall have the meaning given to them in the Expanded Receivership Order.
4. The Lexin Receivership Order and the Expanded Receivership Order appointed the Receiver over all of the Debtors' Property, but provided that, while the Receiver may take possession and exercise control over the Property, the Receiver is not required to take possession or exercise physical control over any of the Debtors' oil or gas wells, pipelines, facilities or sites regulated by the AER (the "**Sites**").
5. The Sites for which the Debtors were the sole operator and owner are now under the care and custody of the Orphan Well Association; however, Sites operated by the Debtors (or any one of them) in which there are working interest participants ("**WIPs**") have been placed under the care and custody of those WIPs.
6. While the Receiver cannot take physical possession of the Sites, the Receiver is authorized to conduct a sales and marketing process with respect to all of the Debtors' Property.

Application for Bankruptcy Order

7. The Receivership Orders allow the Receiver, with leave of the Court, to assign the Lexin Group, or any one of them, into bankruptcy, should the Receiver deem it appropriate to do so in the circumstances.

8. Each of Lexin and 0989 have debts owing to creditors in excess of \$1,000 and are therefore “insolvent persons” pursuant to the BIA.
9. Given that both Lexin and 0989 are insolvent persons pursuant to the BIA, and in light of the Reviewable Transactions outlined below, the Receiver has determined that it is appropriate to assign Lexin and 0989 into bankruptcy.
10. Should this Honourable Court grant the Receiver’s application to assign each of Lexin and 0989 into bankruptcy, the Receiver seeks an Order which provides that Lexin’s and 0989’s Property shall immediately be transferred from the trustee in bankruptcy back to the Receiver, subject to the terms of the Receivership Orders. As a result, the Receiver shall continue its efforts to sell Lexin and 0989’s Property for the benefit of their stakeholders, whilst the Property remains in the care and custody of the OWA and WIPs, respectively.

Summary of Non-Arm’s Length Parties

11. A lengthy overview of the corporate relationships between the Lexin Group and the parties involved in the Reviewable Transactions is contained in the Receiver’s Fifth Report, dated October 12, 2017 (the “**Fifth Report**”).
12. A summary of the overlapping relationships between these entities is as follows:
 - (a) Michael Smith is a past or present director and/or officer of all of Lexin (former), 105 (former), Finance, 1059 (former), MFC Bancorp Ltd. (“**Bancorp**”), M Financial Corp. (“**M Financial**”) and MFC Energy Holding Austria GmbH (“**MFC Austria**”);
 - (b) Samuel Morrow is a past or present director and/or officer of all of 105 (former), Finance, 597, 1059, Notine, Bancorp and MFC Austria;
 - (c) Ferdinand Steinbauer is a past or present director and/or officer of all of Lexin (former), Finance, 1059 and MFC Austria;
 - (d) Gerardo Cortina is a past or present director and/or officer of all of 597 (former), Notine (former), MFC Austria and Bancorp; and
 - (e) All of 0989, 105, Finance, 597, 1059, Notine and Bancorp maintain registered and/or records offices with Sangra Moller. Additionally, each of Lexin’s and Jixin’s registered officers were formerly also maintained with Sangra Moller.

Secure Loan Claimed by Finance

13. Pursuant to the Finance Loan, Finance claims to have advanced approximately \$37.5 million to 0989 and as a result of a general security agreement, is asserting a first secured loan position as against each of 0989 and Lexin to secure those obligations.
14. All of the demand loan, promissory note and general security agreement pertaining to the Finance Loan appear to have been signed or co-signed by Michael Smith on behalf of both entities, where applicable.
15. The bank account statements of 0989 show a receipt of \$37,570,500 on June 30, 2015 from M Financial, apparently on behalf of Finance, along with same-day withdrawals in the amounts of \$24,916,755.60 and \$12,653,744.40 (totalling \$37,570,500) resulting in no net change to the account.
16. The wire statements provided to the Receiver show that the beneficiaries of the \$24,916,755.60 and \$12,653,744.40 withdrawals from 0989's account were Lexin and Bancorp, respectively. Lexin's account statements show that on June 30, 2015, the same day the \$24,916,755.60 was deposited into its account, the entirety of the funds (\$24,916,755.60) were wired to MFC Austria, resulting in no net change to Lexin's account.
17. The Receiver's investigations of the 0989 accounting records do not record a cash receipt of \$37,570,500; they only record an account payable of \$37,570,500 owing to M Financial and a corresponding reduction in the share capital account. The Lexin accounting records contain no entries for 2015 as all accounting activity appears to have been recorded through 0989.

Reviewable Transactions

597 Equipment Transaction

18. Pursuant to a bill of sale between 0989 and 597 dated December 29, 2015 (the "**597 PSA**"), 0989 purportedly sold to 597 certain of its surface equipment. The consideration payable pursuant to the 597 PSA was \$14,093,000, which was tendered by 597 through the issuance of 14,093,000 Class A voting shares of 597 to 0989.
19. Finance has advised the Receiver that all of 0989's shares in 597 were sold by 0989 to Finance on December 29, 2015, being the same day as the 597 transaction. The consideration payable

respecting 0989's sale of the 597 shares to Finance was by way of set-off of a \$24,520,781 debt owing by Finance to 0989 (the "**Finance Share Debt**") as against the Finance Loan, such that the Finance Loan balance was to be reduced at that time to \$13,049,719. The Finance Share Debt arose as a result of Finance's purchase from 0989 of the 597 shares and 1059 shares pursuant to a Share Purchase Agreement between 0989 and Finance, dated December 29, 2015 (the "**Finance SPA**"). The Finance SPA provided that the consideration paid in respect of the 597 shares was \$14,093,001 (and as noted below \$4,768,374 was paid in respect of the 1059 shares).

1059 Land Transaction

20. Pursuant to a purchase and sale agreement between 0989 and 1059 dated December 29, 2015 (the "**1059 PSA**"), 0989 purportedly sold to 1059 certain of its land and mineral interests. The consideration payable pursuant to the 1059 PSA was \$4,768,374, payable by 1059 through the issuance of 4,768,374 of its shares to 0989.
21. Finance has advised the Receiver that \$4,768,374 of the Finance Loan was repaid on December 29, 2015, being the same day as the 1059 transaction, by way of a transfer of 0989's 4,768,374 shares in 1059 to Finance at an ascribed value of \$1.00 per share.

MFC Energy (Montana) Inc. Share Sale

22. Finance has advised the Receiver that \$790,000 of the Finance Loan was further reduced on January 6, 2016, through the sale of shares in MFC Energy (Montana) Inc. from 0989 to Finance.

Seismic Sale

23. Finance has advised the Receiver that \$890,000 of the Finance Loan was further reduced on February 7, 2017, through the sale of seismic data from 0989 to Finance.

Notine Transaction

24. Pursuant to a purchase and sale agreement between 0989 and Notine dated November 6, 2015 (the "**Notine PSA**"), Notine purportedly purchased from 0989 a number of 0989's producing oil and gas assets in the Niton area of Alberta. The consideration payable pursuant to the Notine PSA was \$50,000,000, payable by Notine through the issuance of 50,000,000 of its shares to 0989.
25. The Receiver has learned that 0989 sold all of its shares in Notine to MFC Austria on December 18, 2015 (the "**Notine Share Sale**").

26. The consideration from MFC Austria for the Notine Share Sale was a \$50 million non-interest bearing (until demand issued) and non-assignable promissory note payable from MFC Austria to 0989. The Receiver has been advised that this promissory note has been either cancelled or satisfied and continues to investigate this matter.

ELP Transaction

27. Pursuant to a purchase and sale agreement between Lexin, 0989 and Jixin dated March 30, 2015 (the “**Jixin PSA**”), Jixin purportedly purchased from Lexin and/or 0989 certain equipment for \$1.00. Subsequently, pursuant to a bill of sale between Jixin and ELP dated November 12, 2015, Jixin sold this same equipment to ELP for \$2,165,000. The sale as between Jixin and ELP was apparently a sale and lease back arrangement; however, the Receiver has not been provided with a copy of the leasing arrangements between Jixin and ELP.
28. There is no record contained in Lexin or 0989’s accounting system of a sale of this equipment from Lexin or 0989 to Jixin in 2015, or anytime thereafter. Additionally, this equipment was insured by Lexin in 2015 and 2016 until the cancellation of Lexin’s insurance for non-payment in September 2016.
29. ELP has not yet provided the Receiver with the information and documentation necessary for the Receiver to confirm ELP’s ownership claims to this equipment. The Receiver does understand that the equipment subject to this transaction remains on Lexin licensed Sites.

Request for Advice and Direction

30. Based upon the information the Receiver has gathered to date, it has been unable to determine whether the Finance Loan was valid. This has complicated the Receiver’s ability to determine the ownership claims made by each of 1059, 597 and Finance, as each of these transactions purportedly involved a reduction as against the Finance Loan.
31. Each of 1059, 597 and Finance have advised the Receiver that it is unable to market and sell the assets over which they claim an ownership interest in, and which assets are situated on Lexin licensed Sites.
32. With respect to the assets presently included in the Sales Process, the Receiver has confirmed that:
 - (a) The 597 equipment is included;

- (b) None of the lands and minerals claimed to be owned by 1059 are included; and
 - (c) None of the shares in MFC Energy (Montana) Inc. or seismic data has been included.
33. The Receiver requires the advice and direction of the Court in order to determine whether it may proceed with sales affecting the equipment over which 597 claims an ownership interest. Further, the Receiver requires the advice and direction of the Court in order to determine whether it may market and sell the lands and minerals claimed to be owned by 1059 and shares in MFC Energy (Montana) Inc. or seismic claimed to be owned by Finance, as sales of these assets would increase the potential realizations available to the Lexin Group's stakeholders.
34. As a result, the Receiver seeks Orders which:
- (a) Provides the Receiver with advice and direction regarding the continuation of the Sales Process, and in particular, whether the Receiver is authorized to sell the equipment which 597 claims to own;
 - (b) Provides the Receiver with advice and direction regarding Finance's status as a creditor of the Lexin Group;
 - (c) Appoints Grant Thornton Limited as trustee in bankruptcy of Lexin and 0989 for the purposes of preserving limitations periods in the event the Receiver deems it appropriate to challenge the Reviewable Transactions, with an automatic assignment of all other business, undertaking and assets from the trustee to the Receiver pursuant to the pre-existing Receivership Order and Expanded Receivership Order;
 - (d) Declare that the relief sought to date by the Receiver constitutes remedial relief pursuant to the *Limitations Act* such that the limitations periods in which the Receiver or a trustee bankruptcy may pursue claims to challenge the validity of the Notine transaction and the ELP transaction as any of a transfer at undervalue, settlement, fraudulent preference, assignment, fraudulent conveyance or other reviewable transaction pursuant to any of the *Fraudulent Preferences Act* (Alberta), the *Fraudulent Conveyances Act 1571* (13 Eliz 1, c 5), the *Bankruptcy and Insolvency Act* (Canada), or any other applicable federal or provincial legislation is preserved;
 - (e) Approve the Receiver's activities and conduct to date, including the Receiver's conduct with respect to the Sales Process; and
 - (f) Seals the Confidential Supplement, which contains both commercially sensitive information and information that if disclosed could adversely affect the Receiver's ongoing Sales Process.

Material or evidence to be relied on:

- 35. The Fifth Report of the Receiver, dated October 12, 2017.
- 36. The Confidential Supplement to the Fifth Report of the Receiver.

37. The pleadings and Receiver's Reports previously filed in these proceedings.
38. Such further and other material as counsel may advise and this Honourable Court may permit.

Applicable rules:

39. *Alberta Rules of Court*, AR 124/2010, and in particular Rules 1.3, 3.75, 6.3, 6.4, 11.27, 11.29 and 13.5.
40. *Bankruptcy and Insolvency General Rules*, and in particular Rules 3, 6 and 11.
41. Such further and other rules as Counsel may advise and this Honourable Court permit.

Applicable Acts and regulations:

42. *Bankruptcy and Insolvency Act*, RSC 1985, c B-3, as amended, and in particular Part XI thereof.
43. *Fraudulent Preferences Act*, RSA 2000, c F-24.
44. *Fraudulent Conveyances Act 1571* (13 Eliz 1, c 5).
45. *Limitations Act*, RSA 2000, c L-12.
46. Such further and other acts and regulations as Counsel may advise and this Honourable Court permit.

Any irregularity complained of or objection relied on:

47. None.

How the application is proposed to be heard or considered:

48. In person before the Honourable Justice B.E. Romaine with some or all of the parties' present.

WARNING

If you do not come to Court either in person or by your lawyer, the Court may give the applicant(s) what they want in your absence. You will be bound by any order that the Court makes. If you want to take part in this application, you or your lawyer must attend in Court on the date and at the time shown at the beginning of the form. If you intend to give evidence in response to the application, you must reply by filing an affidavit or other evidence with the Court and serving a copy of that affidavit or other evidence on the applicant(s) a reasonable time before the application is to be heard or considered.

Schedule "A" Service List

COURT FILE NUMBER	1701-03460
COURT	COURT OF QUEEN'S BENCH OF ALBERTA
JUDICIAL CENTRE	Calgary
APPLICANT	ALBERTA ENERGY REGULATOR
RESPONDENT	LEXIN RESOURCES LTD.
DOCUMENT	SERVICE LIST

ADDRESS FOR SERVICE AND
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Baker Hughes Canada Company c/o DLA Piper (Canada) LLP 1000-250 2 Street SW Calgary AB T2P 0C1	
Her Majesty the Queen in Right of Alberta c/o Service Alberta Crown Debt Collections 8 th Floor John E. Brownlee Building Edmonton AB T5J 3W7	
Municipal District of Ranchlands No. 66 PO Box 1060 Nanton AB T0L 1R0	
Enerflex Ltd. 10121 Barlow Trail NE Calgary AB T3J 3C6	
Municipal District of Willow Creek No. 26 26 Highway 520 W Claresholm AB T0L 0T0	
AltaGas Processing Partnership 1700, 355 – 4 Avenue SW Calgary AB T2P 0J1	
MFC Acquisition Inc., As Administrative Agent 1000 925 W. Georgia Street Vancouver BC V6C 3L2	
MFC Industrial Ltd. 1000, Cathedral Place 925 West Georgia Street Vancouver, BC V6C 3L2	
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Ms. Nancy Penner Interwest Petroleums Ltd. c/o Parlee McLaws LLP 3300, 421 – 7th Avenue SW Calgary Alberta T2P 4K9	
Phillips Petroleum Canada Ltd. (0945)	

1600-401 9 Avenue SW Calgary AB T2P 2H7	
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Prospex Resources Ltd. (A120) c/o Paramount Resources Ltd. (04W4) 4700-888 3 Street SW Calgary AB T2P 5C5	
Westhill Petroleum Ltd. (0EX2) 3300, 421 7 th Ave SW Calgary, AB T2P 4K9	
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Royalty Trust 400-144 4 Avenue SW Calgary AB T2P 3N4	
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Copper Creek Gold Corp. 710 750 West Pender Street Vancouver BC V6C 2T7	
Country Rock Resources Ltd. (A2BY) 79 Windmill Way Calgary AB T3Z 1H5	
Newbert Petroleum Engineering Ltd. (0Z8W) Box 528 Crossfield AB T0M 0S0	
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Signalta Resources Limited (0R89) 700-840 6 Avenue SW Calgary AB T2P 3E5	Angela.meister@signalta.com
Southern Pacific Energy Ltd. (A5A6) 1700-205 5 Avenue SW Calgary AB T2P 2V7 Rick Osuna	c/o PricewaterhouseCoopers Inc. in its capacity as Court appointed Receiver of Southern Pacific Energy Ltd. and not in its personal capacity rick.f.osuna@ca.pwc.com
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