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

ONTARIO
SUPERIOR COURT OF JUSTICE

AB/fm

B E T W E E N:

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 1010 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

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This is the Cross-Examination via Skype of MICHAEL B. McINTOSH, on his affidavit sworn the 1st day of April, 2015, taken at the offices of VICTORY VERBATIM REPORTING SERVICES INC., Suite 900, Ernst & Young Tower, 222 Bay Street, Toronto, Ontario, on the 20th day of April, 2015.

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APPEARANCES:

JOHN D. MARSHALL	-- for the Applicant
D. BRENT McPHERSON JOSHUA R. FREEMAN	-- for the Maynards Industries Ltd.

INDEX OF PROCEEDINGS

MICHAEL B. McINTOSH, affirmed

CROSS-EXAMINATION BY MR. MARSHALL:

1. Q. Good morning, Mr. McIntosh.

A. Good morning.

2. Q. I understand that you're currently an executive vice president of Maynards?

A. Correct.

3. Q. How long have you held that position?

A. The executive part of the vice presidency was put in probably eight months ago, I think. I've been a vice president of the industrial division for eight years, roughly. The "executive" vice president was put on, I think, six, eight months ago.

4. Q. Okay. And what was your experience in the period prior to the last eight years you have had with Maynards?

A. Senior manager in charge of the industrial division for Maynards in Canada.

5. Q. When did you join Maynards?

A. I originally joined Maynards in 1997, left Maynards for a U.S. company briefly, 2003 to 2005. Returned in late '05, I believe. And I've been there ever since.

6. Q. What is your highest level of formal education?

A. High school graduation.

7. Q. In the affidavit you have filed, and this is just for the record, we are all very familiarly with Maynards and its business. But for the record, you have gone through in your affidavit the lengthy experience that Maynards has had in the area of, among other things, asset dispositions and acquisitions?

A. Yes.

8. Q. I would just like to know whether you, personally, have been directly involved in those kinds of transactions over the last eight years?

A. I have.

9. Q. And can you give me a ball park number of the kinds of acquisitions and dispositions you have done?

A. Oh, boy. On an average yearly basis probably 25 to 30, so, times eight, whatever that is.

10. Q. Okay, and would those be deals that were similar in nature to the D&S deal that is the subject of your affidavit?

A. Well, there is...by "similar in nature", are you asking me are they the same type of assets or the same type of deal? I'm not sure of the question. In other words, purchase? Are you getting at the structure of...you're getting to the structure of the deal or the type of assets, or both?

11. Q. Well, let me be more specific. The question was too vague.

A. Okay.

12. Q. First of all, with respect to the nature of the assets, in this case, you were not auctioning the assets on behalf of D&S, you were acquiring them from D&S and then auctioning them, correct?

A. Correct.

13. Q. All right. Now, is that a normal practice in your experience over the last eight years?

A. It is.

14. Q. In your experience in the last eight years, in the deals that you have done, have you been the most senior person on those deals?

A. Yes.

15. Q. And let me ask you, in this case,

you did not use...when I say "you", unless I refer to you specifically, I am referring to Maynards generally. In this deal, as I understand it, Maynards did not use...sorry, on the purchase from D&S, Maynards did not use a law firm?

A. Correct.

16. Q. And is that usual or unusual on your experience during the last eight years?

A. I would say it is probably...it depends on how complicated we look at the structure of the deals. I would say half of the time, we may use counsel depending on the size of the deal and the type of the deal it is. And sometimes we don't...we have boilerplate contracts that we have, and typically sometimes we rely on those. And probably when we learn lessons like this, they are hard lessons to learn, we shouldn't do that. But in this case, obviously, we didn't use counsel from the outset.

17. Q. Well, hindsight is always great, I agree.

A. Right.

18. Q. But in terms of your experience over the last eight years, or, actually, longer than that, is it a fair statement for me to make that

because of that experience you have gained, there are circumstances were you feel you don't need lawyers on these deals?

MR. McPHERSON: Counsel, let me take that question under advisement. I don't want to get into what he thinks in terms of when and when not to retain counsel. U/A

19. MR. MARSHALL: Well, that wasn't my question. My question was whether Mr. McIntosh's experience was such, with all these deals, whether that was one of the reasons he did not feel necessary to retain counsel on some of these deals.

BY MR. MARSHALL:

20. Q. Is that fair?

A. That is fair. That's a fair statement.

21. Q. And I take it...part of my earlier question about whether the D&S deal was similar to others was in the purchase by Maynards from D&S...in the purchase from D&S, I just want to make sure that we are on the same footing here. First of all, it was a sale of substantially all of D&S assets, is that fair?

A. As we understood it, yes.

22. Q. Yes, I'm talking about what you understood.

A. Yes.

23. Q. And did you also understand that D&S was going out of business?

A. I understand, yes. I verbally...I remember having conversations where this was the wind up of the business. That's how they advertised it. In the initial documents that we saw from our mergers who was running the process. So, yes, that was our understanding, they were winding up the business.

24. Q. All right. So, then, we are then all agreed that this transaction was out of the ordinary course of business of D&S?

A. Yes.

25. Q. Were you also aware of the financial situation of Ebersol Excavating at the time of your deal with D&S?

A. I was not.

26. Q. Were you aware at any time that Ebersol had made...or filed a notice of intention to make a proposal under the Bankruptcy Act?

A. I did not.

27. Q. Are you familiar with the concept of a notice of intent under the Bankruptcy Act?

A. I'm somewhat familiar, yes.

28. Q. And I gather in your experience you have, again, Maynards, and you, personally, have been involved in acquisitions and sales of assets of companies that were either going out of business or were subject to insolvency proceedings?

A. Yes.

29. Q. So, I also assume from your experience in this area that you became, at least generally aware of some provisions of the Ontario Personal Property Security Act, is that fair?

A. I have a general understanding. I wouldn't say that I have an expert understanding of the PPSA, no.

30. Q. I wouldn't expect that, but is it fair to say that you are aware security interests in the kind of assets that you're purchasing would normally be registered under the PPSA?

A. Yes.

31. Q. And you would therefore have been aware of, either personally or through your lawyers, about the process of searching the PPSA records to determine whether or not assets were subject to

security interests?

MR. McPHERSON: Let me just qualify that, John. In terms of through lawyers...let's not get into what lawyers' advice would be, but it's...

32. MR. MARSHALL: Oh, no. I don't...

MR. McPHERSON: You're not asking for legal advice, you're just asking if he understood...

BY MR. MARSHALL:

33. Q. As a result of your personal experience on deals without lawyers, and your personal experience with lawyers, you became aware of the whole concept of searching for security interests registered under the PPSA?

A. Yes.

34. Q. Right. And I presume, and you could tell me if I'm wrong, I presume that you were aware that that whole process became most important when you were purchasing assets out of the ordinary course of business?

A. Yes, I think it's fair to say.

35. Q. And is it fair to say that that was one of the reasons that your deal with D&S required

discharge of any security registered against the D&S assets?

A. Yes.

36. Q. And that, of course, is why you actually did conduct the search?

A. Correct.

37. Q. And as I understand it from the materials that the search you conducted was one done...was a name search under D&S, am I right?

A. I did D&S. Also, Ebersole Excavating, we searched.

38. Q. All right. And did you search under the personal names of the Ebersoles?

A. I don't believe we did. I believe we just used the two company names that we were aware of.

39. Q. And did you make any searches under the vehicle identification numbers for any of the assets that you considered motor vehicles?

A. I did not.

40. Q. And did you do any searches of the government records to determine the registered ownership of any of the assets you considered to be motor vehicles?

A. On a VIN number basis, or a...

41. Q. Yes, on a VIN number basis.
A. No, I did not.
42. Q. Did you do it on any other basis?
A. I did not.
43. Q. All right. Well, we understand that although you did the searches, you missed the Trisura entry. Had you been aware of the Trisura registered security, I take it you would have insisted upon the discharge of that security before closing the deal with D&S?
MR. McPHERSON: I don't want to get into hypotheticals here, Counsel. He can just tell you what he did.
44. MR. MARSHALL: I don't think there is anything unfair about that hypothetical.
MR. McPHERSON: Well, let me take that under advisement. U/A

BY MR. MARSHALL:
45. Q. Mr. McIntosh, when you closed the deal, and when I talk about the deal with D&S, I'm talking about the Maynards acquisition that is subject to the agreement that is at Exhibit H in your affidavit. Do you have that exhibit available? I don't want you to look at it, I just want to know

if you have it available to you.

A. I do.

46. Q. Okay. Sorry, at the time of that agreement, did you give any consideration to the application of the Bulk Sales Act?

A. I did not.

47. Q. Are you familiar with the Bulk Sales Act?

A. I'm more familiar now than I was at the time, I guess. No, I was not. I had heard the term, but I wasn't very...I honestly was not very familiar with the meaning.

48. Q. Did you have any discussions with the Ebersoles about any other requirements other than the discharge of the security, of course, relating to the sale of all their assets?

A. No, but it was clear that we requested them to give us the ownerships, the individual ownerships for the vehicles. And that was further evidence to us that we were getting things free and clear. They were handing over the titles and the ownerships to the various pieces of equipment that were licensable.

49. MR. MARSHALL: Let's go off the record for a minute.

--- DISCUSSION OFF THE RECORD

50. MR. MARSHALL: Mr. McIntosh, did you hear that off the record discussion between Josh and me?

THE DEPONENT: I did.

BY MR. MARSHALL:

51. Q. We referred to Exhibit Q in your affidavit, which is the document entitled "Sales Report"...

A. Okay.

52. Q. ...with respect to the D&S transaction. And there is a list of assets, and some of them have vehicle identification numbers. Are you familiar with that document?

A. I am.

53. Q. Did you prepare it?

A. I did.

54. Q. Now, you mentioned earlier that...

MR. FREEMAN: Sorry, just to clarify, because I don't think that Mike has the document in front of him.

THE DEPONENT: I do not.

MR. FREEMAN: This...

THE DEPONENT: I don't think I have Q. Is that what you're referring to?

55. MR. MARSHALL: Yes.

MR. FREEMAN: So, this document actually was a document that was originally prepared by Maynard. I actually did the extraction. So, I hid all of the non-motor vehicle line items based on information provided by Mike.

56. MR. MARSHALL: Is it accurate to say that Exhibit Q is a document that you prepared that was based on a larger document that Mr. McIntosh prepared?

MR. FREEMAN: That's correct. And Mr. McIntosh has reviewed this an ensured its accuracy. It's based on his information, but I helped in ensuring that it was well presented for our purposes.

57. MR. MARSHALL: That's fine. Yes, okay.

MR. FREEMAN: And this, also, just so the record is clear, this is Exhibit Q, which is actually just a portion of the overall sales report that relates to motor vehicles.

58. MR. MARSHALL: Right.

MR. McPHERSON: The entirety of the sales report is contained in Exhibit X. So, again, Q is just the motor vehicle portion.

59. MR. MARSHALL: That's right.

MR. FREEMAN: And X are all of the other lot items together with the motor vehicle lot items in one sales report.

60. MR. MARSHALL: Right. And then presumably Mr. McIntosh is the author of Exhibit X?

MR. FREEMAN: Correct me if I'm wrong, Mike, but this was created, I think, by someone in the accounting department under your direction?

THE DEPONENT: Are you still referring to Q, or...

61. MR. MARSHALL: We are referring...

MR. FREEMAN: Exhibit X, the sales report.

62. MR. MARSHALL: ...Exhibit X, which is a sale report that contains all of the assets, whereas Exhibit Q just contains the motor vehicle assets.

THE DEPONENT: Yes, X comes off of our

computerized accounting records.

63. MR. MARSHALL: Right. Okay.

BY MR. MARSHALL:

64. Q. Sorry, so, that's a long winded way of getting back to my original question, which was you stated earlier in the course of your dealings with D&S, they gave you ownerships, proof of ownerships,s for the motor vehicles? Did I hear that correctly?

A. They gave us the ownership that we would need to then transfer onto our customers, correct.

65. Q. And are you talking about the vehicle ownership slips themselves, the actual...

A. The green slips that have the serial number, year, descriptions on them.

66. Q. And in what stage in the transaction did they provide those to you?

A. Those were provided, I think, on the day that I signed our agreement.

67. Q. And do you still have those ownerships or copies of them?

A. We have copies. I think they are part of the record, are they not?

68. Q. Are they in your affidavit?

MR. McPHERSON: They are not.

69. MR. MARSHALL: I didn't think so.

BY MR. MARSHALL:

70. Q. Did any of those...hopefully this is not an unfair question, but you don't have the documents in front of you. But did any of those ownerships show D&S as the owner of the motor vehicles?

A. That I can't recall.

71. Q. Exhibit H is your agreement, Maynards' agreement with D&S. Was there any other purchase agreement entered into between Maynards and either Ebersole Excavating or the individual Ebersoles?

A. No.

MR. McPHERSON: Sorry, Counsel, just so I understand the question, you're talking about aside from that D&S sales contract, at Exhibit H?

72. MR. MARSHALL: Right.

MR. McPHERSON: Yes, okay.

THE DEPONENT: You're talking about a side contract, correct?

73. MR. MARSHALL: Right.

THE DEPONENT: I mean, there are versions of our proposals that went back and forth until we came to a signed agreement. That's what you're referring to, a signed agreement?

74. MR. MARSHALL: Right.

BY MR. MARSHALL:

75. Q. I'm not asking you about drafts or anything of the sort, just whether there is any other document or documents, other than Exhibit H, that Maynards signed or received that Maynards considered to be a contract?

A. No. The answer is no.

76. Q. Just going back to your experience and practice with doing searches under the PPSA, I presume whether you're using a lawyer or just acting on your own, you always do searches in transactions such as this, where you purchased all or substantially all of the assets of a company that is ceasing to carry on business, is that correct?

A. That is correct.

77. Q. And would one of your...when you do such a search, I presume, once again, that you would

be concerned to know the nature of the security interest that are registered. And let me give you an example.

A. Okay.

78. Q. You would be more concerned, I take it, if there were a general security agreement over...or interest in all of the assets, as opposed to, say, one registered lease affecting one motor vehicle?

MR. McPHERSON: I'm not sure of "more concerned". What do you mean by "more concerned"?

BY MR. MARSHALL:

79. Q. That's what you would be looking for in particular, is the broadest general security interest?

A. I don't think that is correct. I think we are looking for anybody that has a security interest, because if there is an individual asset, and that asset happens to make up a fair amount of our valuation, then it is equally important to the general security.

80. Q. Again, that would be because if you take it out of...if you purchase assets in those

circumstances, you cannot take title free and clear of that security unless you either get discharges or go through some sort of judicial process...

MR. McPHERSON: Well, that's a...

BY MR. MARSHALL:

81. Q. ...is that right?

MR. McPHERSON: ...legal conclusion, so I'm not going to let him answer that one.

82. MR. MARSHALL: No, I'm not asking...I'm asking him what...

MR. McPHERSON: You're asking him...

83. MR. MARSHALL: ...his practice?

MR. McPHERSON: Asking him what his practice in terms of what he does, that's fine. I don't have any objections to that. But I don't want him getting into the legal effect of what he does or doesn't do in any particular case.

84. MR. MARSHALL: But I think is knowledge is important.

MR. McPHERSON: Well, his knowledge as to what he does is fair, and I don't mind you asking questions on that.

85. MR. MARSHALL: Well, I'm asking his

knowledge.

BY MR. MARSHALL:

86. Q. Let me try to restate the question, Mr. McIntosh. Is it fair to say that you were aware, and have been for some time as a result of your experience that on deals like this, you Maynards, as a purchaser, cannot take the assets free and clear of a registered security unless you deal with it one way or the other: One was as a discharge, another would be some sort of judicial process. Were you aware of that? Ws that your understanding?

A. Yes.

87. Q. And was it also your understanding that if a security interest was registered under the PPSA and showed up on a search, that that secured creditor would probably have a security agreement?

A. Yes, I think that is....yes. That's fair to say.

88. Q. And I gather, in your experience, you would have run into a lot of security agreements?

A. I am not sure...I haven't read the security...I mean, what we do is we look at the searches or we have our lawyers look at the searches and we deal with them or we don't deal with them. I don't know how in depth I've ever looked at a particular security agreement. I'm not sure what you're getting at with the question, but...

89. Q. Well, let me be a little bit more specific. You're certainly aware, or were aware that it would be common for security agreements to exist if there were security interests registered?

A. Yes.

90. Q. And am I also correct that you would have understood that a sale like this, like the D&S deal where a company is selling all of its assets, or substantially all, and going out of business, if there were security agreements registered, that sale would not be permitted by those security agreements?

MR. McPHERSON: Well, he can't...

BY MR. MARSHALL:

91. Q. Is that fair?

MR. McPHERSON: He can't answer that, Counsel.

92. MR. MARSHALL: He can tell me what his understanding was.

MR. McPHERSON: Well, how can he have an

understanding when you haven't put an agreement in front of him?

93. MR. MARSHALL: It's got nothing to do with a specific agreement.

MR. McPHERSON: Well, you're asking him to conjecture as to what an agreement might provide and what his obligations are under...

94. MR. MARSHALL: No, that's not my question. Let me restate it.

BY MR. MARSHALL:

95. Q. In this case, Mr. McIntosh, your search disclosed security interest from at least three parties, right?

A. Yes.

96. Q. And so is it fair to say you would have presumed that those parties had security agreements with D&S?

A. Yes, I think that's fair to say.

97. Q. And is it also fair to say that you would have understood or believed that those security agreements would not permit the sale to go through without a discharge of their security?

MR. McPHERSON: Counsel...

MR. FREEMAN: You need to be fair and indicate what time...point in time you're talking about. Because at the time that he did the searches and prior to the closing of the transaction, he had no idea that the Trisura security existed.

98. MR. MARSHALL: No, I understand that. I didn't mean to suggest otherwise.

MR. FREEMAN: Well, you...

99. MR. MARSHALL: That's why I referred you to the others. Okay, well, let's...

MR. FREEMAN: In your previous question you asked if he was aware that all three of the parties would have had security agreements, and that is not the case until some time in November when he learned that Trisura had an interest.

100. MR. MARSHALL: Okay, if I said it that way, I misstated it.

MR. FREEMAN: No problem.

101. MR. MARSHALL: I apologize.

MR. FREEMAN: I figure we should clarify for the record.

102. MR. MARSHALL: Let's just make it very clear.

BY MR. MARSHALL:

103. Q. You had a search that showed registered security interest against the D&S assets?

A. Yes.

104. Q. Right. It included Trisura, but we know from your evidence that you missed that, so, you were not personally aware of the Trisura security being registered?

A. No.

105. Q. No you agree with my statement?

A. No, I'm not aware of there...I will tell you this, is that we have come across searches before where...and this is maybe where we made our mistake, where we have seen to us, what are our obscure names, we are hoping for banks, we are looking for like Caterpillar. That's what we are looking for. And I guess our mistake is when we saw...we did see Trisura, we thought it was maybe some obscure insurance situation. We have seen many instances in the past where although a company has been registered security, their security meant nothing at the end of the day.

Now, it's up to me that we ignored...we go ahead and ignore things, but we clearly made a mistake when we saw Trisura and we didn't pursue it.

106. Q. Okay, I misunderstood. So, you did see Trisura's name, you just didn't understand the nature of its security. Is that right?

A. That's right. That's correct.

107. Q. But you did see and did deal with the other two that you mentioned, Bank of Montreal and Caterpillar?

A. We did.

108. Q. And, in fact, you specifically sought discharges of that security?

A. We did.

109. Q. And is it fair to say that...or let me put it another way. Was it your understanding and belief at the time of the deal that without those discharges, the BMO, Bank of Montreal and Caterpillar security would not permit this kind of deal?

A. Yes.

110. Q. And...it's a hanging "and". I'm going to change words. Sorry, so, is it also fair to say, then, that you would expect any security agreement from what you consider, you know, large or important secured lenders to contain provisions that prohibit these kinds of sales without their security or their indebtedness being dealt with, is that

fair?

A. I think that's fair to say.

111. Q. I just want to ask you a brief question there too about Bidspotter.

A. Okay.

112. Q. And I think I understand the arrangements, but I would like you to clarify them for me. First of all, there is no corporate relationship between Bidspotter and Maynards, am I correct? Are they an arm's length company?

A. They are an arm's length company.

113. Q. And I presume that you have dealt with them on a relatively regular basis?

A. Yes.

114. Q. Over what period of time? Like, is it fairly recent? I see them in your ads all the time, but that is only in the last year or two.

A. No, they are probably 90 percent of our ads. We use them in 90 percent of our sales going back over ten to fifteen years, probably.

115. Q. Okay. Now, this all relates to a buyer's premium. What is a buyer's premium?

A. A buyer's premium is a fee that is charged on top of the auction selling price that the auctioneer typically retains as part of its compensation.

116. Q. And so Maynards as auctioneer would charge the buyer's premium to the ultimate purchaser of the assets or any of the assets?

A. Correct.

117. Q. Right. And is there a standard percentage?

A. No, I think that they range depending on their volume of the sale, depending on where the sales are. I mean, various...not even Maynards has the set buyer's premium. They look at what they are doing and then they determine what the buyer's premium should be.

118. Q. Okay, and what about Bitspotter? Does it...and when I say "does it", over the period of time that covers this D&S transaction, did Bidspotter have a set buyer's premium fee?

A. Yes.

119. Q. What was that?

A. Three percent.

120. Q. And in the ordinary course, when you were doing an auction...is it just auctions where you use Bidspotter?

A. Yes.

121. Q. Right. And so when you

conduct...when Maynards conducts an auction, as I understand it, the role of Bidspotter is to essentially act as the middleman for purchasers who can't actually show up physically at the auction, is that right?

A. Yes, I would say that is fair to say.

MR. McPHERSON: I'm sorry, just to clarify. "Middleman" is a pretty vague phrase...

THE DEPONENT: Yes, that is a vague term. I mean, I can expand on it. It is...they are a service that is provided for people who cannot attend the auction, cannot be physically present at the time of the auction.

BY MR. MARSHALL:

122. Q. So, their services are...how would you describe them, just technical?

A. They provide the technical and the link up, if you will, over the internet to enable people to bid from their homes or offices.

123. Q. Okay, that's a better word. They are enablers. They enable people who cannot

physically attend the auction to actually participate in the auction by doing it online. Is that fair?

A. I think that is fair to say.

124. Q. So, they have no direct dealings with or relationship with bidders, or, sorry, with the ultimate purchasers? That is all done through Maynards?

A. Correct.

125. Q. And so is that why...I've asked you to take a look at Exhibit AA, which is...I just wanted to have this confirmed. This is an invoice from Bidspotter to Maynards?

A. Yes.

126. Q. That's just for...there, that's Bidspotter's buyer's premium?

A. Right.

127. Q. Is that right?

A. Right.

128. Q. So, in this case, Maynards' buyer's premium was 15 percent?

A. Yes.

129. Q. And Bidspotters was three percent?

A. Yes.

130. Q. And you would take your 15 percent

on any sales made through Bidspotter?

A. No. That's not correct. We take our 15 percent from the people who are standing in front of us, and the Bidspotter people online.

131. Q. Sorry, that's what I meant to say.

A. Okay.

132. Q. The 15...to put it another way, the Bidspotter three percent that you talked about...

A. Is only applicable to the people that are bidding online.

133. Q. Right, but it is on top of the 15 percent?

A. Correct.

134. Q. And that is why Bidspotter invoices Maynards directly, right? Because...I just want to make sure I get this process correct. Because Maynards collects the buyers' premium when it completes the sale to the purchaser, is that fair?

A. Correct.

135. Q. And included in the amounts that you would collect from the purchaser would be Bidspotter's percentage?

A. Correct.

136. Q. And then Bidspotter would bill you, Maynards, and Maynards would pay the three percent

to Bidspotter?

A. That's correct. Plus some of the other fees that you can see at that exhibit.

137. Q. Right. So, there would be other...these are all expenses that Bidspotter is billing Maynards for on this particular sale?

A. Right.

138. Q. Right.

139. MR. MARSHALL: I think I'm done.

MR. McPHERSON: Go off the record for a minute.

--- DISCUSSION OFF THE RECORD

RE-EXAMINATION BY MR. McPHERSON:

140. Q. I just have one or maybe two questions for you. I wonder if you can turn up your affidavit and read paragraph 22 for me?

A. In my review of the PPSA search results...

141. Q. Sorry, can I...

A. ...the security had been registered by Caterpillar Financial Services...

142. Q. Okay, stop...

A. ...the Bank of Montreal and the assets of D&S Railway.

143. Q. Stop there, Mike. I didn't mean read it out loud. I just wanted you to look at it.

A. Oh, I apologize.

144. Q. Do you have it there? If you could just take a minute to read it?

A. Yes, I've got it in front of me.

145. Q. Okay. Mr. Marshall had asked you some questions about your examination of the PPSA registrations, and you had mentioned that you had seen the Trisura registration. In paragraph 22 of your affidavit, you had talked about the fact that you had missed it at the time, and we weren't being very particular of the time. Can you just clarify when you saw the Trisura registration for the first time?

A. I saw it when the documents came back. Again, you know, I physically saw it...we missed in the fact that we did not think it was...I can't remember my thinking at the time, but I believed that I would say that...I saw the name, but because it was a name that was not familiar to me, being a bank or an equipment leasing company, that we did not pursue it, as I said before. We kind of ignored it, I guess.

MR. McPHERSON: Okay, thank you.

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REPORTER'S NOTE:

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I hereby certify the foregoing to be a true and accurate transcription of the above-noted proceedings held before me on the **20th DAY OF APRIL, 2015**, and taken to the best of my skill, ability and understanding.

Certified Correct:

Andita Balilaj
Verbatim Reporter