



COURT FILE NUMBER 1901-01772
 COURT COURT OF QUEEN'S BENCH OF ALBERTA
 JUDICIAL CENTRE CALGARY
 PLAINTIFFS AMX REAL ESTATE INC. and JOSEPH SATHER
 DEFENDANTS MICHAEL STREET, 0882126 B.C. LTD., BOUNDARY MACHINE LTD.,
 MARIELLE BRULE, PROPECTUS FINANCIAL INC. and SATHER RANCH LTD.
 DOCUMENT **AFFIDAVIT**

COM
 March 18, 2021
 Justice Jeffrey

ADDRESS FOR SERVICE AND CONTACT INFORMATION OF PARTY FILING THIS DOCUMENT

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AFFIDAVIT OF ROBYN LENZ

Sworn on March 12, 2021

1. I am a legal assistant with the law firm of Lawson Lundell LLP (**Lawson**), legal counsel to the Court-appointed Receiver of the Defendant, Sather Ranch Ltd. As such I have personal knowledge of the matters described herein, except where stated to be based upon information and belief, in which case I do verily believe such matters to be true.
2. Copies of the following certified transcripts of proceedings from the British Columbia Supreme Court, Action No. S1913131, are attached as follows:
 - (a) transcript dated October 30, 2020 is attached as **Exhibit A**;
 - (b) transcript dated December 4, 2020 is attached as **Exhibit B**; and
 - (c) transcript dated January 14, 2021 is attached as **Exhibit C**.

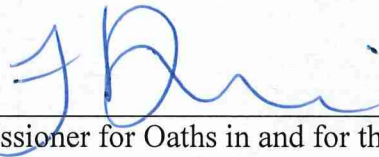
SWORN BEFORE ME at the City of Calgary, in the Province of Alberta, this 12th day of March, 2021.

 A Commissioner for Oaths in and for the Province of Alberta

ROBYN LENZ

FRANKIE DENI
 A Commissioner for Oaths
 in and for Alberta
 My Commission Expires June 28, 2023

This is **Exhibit A** to the Affidavit of **Robyn Lenz**, sworn before me at the City of Calgary, in the Province of Alberta, this 12th day of March, 2021.



A Commissioner for Oaths in and for the Province of
Alberta

FRANKIE DENI

A Commissioner for Oaths
in and for Alberta

My Commission Expires June 28, 2023

No. S1913131
Vancouver Registry

IN THE SUPREME COURT OF BRITISH COLUMBIA
(Before the Honourable Mr. Justice Walker)

Vancouver, B.C.
October 30, 2020

BETWEEN:

**MICHAEL NEIL STREET and
MARIELLE JACQUELINE ANGELLA BRULE**

Plaintiffs

AND:

**SATHER RANCH LTD., by its court appointed receiver and manager
C. CHEVELDALE & ASSOCIATES LTD.**

Defendant

PROCEEDINGS IN CHAMBERS

COPY

Margot Maye / Charest Reporting Inc.
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Defendant

PROCEEDINGS IN CHAMBERS

**Counsel for the Plaintiffs
appearing by teleconference:**

S.D. Dvorak

**Counsel for the Receiver
appearing by teleconference:**

S.R. Andersen

**Counsel for the Attendees Joseph Sather
and AMX Real Estate Inc.
appearing by teleconference:**

C. Flannigan

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PROCEEDINGS IN CHAMBERS
October 30, 2020

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No exhibits entered.

Vancouver, BC
October 30, 2020

(PROCEEDINGS COMMENCED AT 9:55 A.M.)

1
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5
6 THE CLERK: In the Supreme Court of British Columbia
7 at Vancouver, on this 30th day of October, 2020,
8 calling the matter of Street versus Sather Ranch
9 Ltd., My Lord.

10 THE COURT: Thank you. I'll take appearances for the
11 record, please.

12 CNSL S. ANDERSEN: My Lord, it's Scott Andersen
13 appearing for the court-appointed receivers
14 C. Cheveldave & Associates.

15 THE COURT: Thank you.

16 CNSL S. DVORAK: My Lord, it's Dvorak, D-v-o-r-a-k,
17 initial S., appearing for the plaintiffs.

18 THE COURT: Thank you.

19 CNSL C. FLANNIGAN: My Lord, Flannigan, initial C.,
20 appearing for Joseph Sather and AMX Realty
21 Incorporated.

22 THE COURT: Okay. Thank you. So, first of all, I'm
23 sorry about not being available yesterday. It
24 couldn't be helped. And thank you for making
25 yourselves available this morning. And again,
26 sorry about the telephone equipment issues.
27 We're doing our best in Covid.

28 So I received the materials, for which I'm
29 grateful you sent them to me, and I have a couple
30 of questions. But before I put them to you, is
31 there any opposition or is this all going by
32 agreement?

33 CNSL C. FLANNIGAN: My Lord, this is Mr. Flannigan
34 speaking.

35 THE COURT: Yes.

36 CNSL C. FLANNIGAN: The wording in the order is,
37 generally speaking, agreed to. However, there
38 was one issue that I raised with my friends and
39 that was the potential impact on another action
40 that was started in the Alberta Court of Queen's
41 Bench.

42 THE COURT: Ah.

43 CNSL C. FLANNIGAN: The concern that I've raised with
44 that one is the company is named as a defendant
45 within that action. However, we were not counsel
46 for that one and I did speak with counsel -- that
47 Alberta counsel this morning. The reason for why

1 it appears in that proceeding is why -- the
2 company was named as a defendant was for the
3 purposes under the Alberta *Business Corporations*
4 Act seeking relief under the oppression
5 provisions for the right to bring a derivative
6 action on behalf of the company against the other
7 named defendants within that proceeding.

8 THE COURT: Okay. So what impact could this have on
9 the receivership and, moreover, on the order as
10 drafted and the process that's set up?

11 CNSL C. FLANNIGAN: Well, My Lord, the other named
12 defendants are related parties within this
13 proceeding, so it's still within all the same
14 nebulous of the parties before Your Lordship. So
15 the only concern that I would have is ideally I
16 would like to see if there is a way we could
17 incorporate and deal with this within the same --
18 or claims process order dealing with everything
19 all at once.

20 THE COURT: Right.

21 CNSL C. FLANNIGAN: The only concern that I've got
22 with that is, based on my conversation with the
23 Alberta counsel, is that because relief being
24 sought under that was under the Alberta *Business*
25 *Corporations Act*. Please bear in mind, My Lord,
26 and my apologies to the court, that I'm not as
27 familiar with the Alberta case law, but I was
28 advised that the Alberta case law is quite clear
29 that in orders under the oppression remedies,
30 that the Alberta Court of Queen's Bench has the
31 exclusive jurisdiction for hearing those and
32 granting that [indiscernible - overlapping
33 speaking].

34 THE COURT: Okay.

35 CNSL C. FLANNIGAN: But the problem then, well, too is
36 that the proceeding, in my understanding, was
37 filed for the purpose of preserving the
38 limitation period but could not proceed any
39 further with the stay as part of Your Lordship's
40 order and the original receivership orders.

41 THE COURT: In other words, whatever I order today
42 wouldn't have any impact on that action.

43 CNSL C. FLANNIGAN: Well, that would be the situation.
44 However, my friends and I were -- have been
45 trying to discuss this by email this morning and
46 I think my friend Mr. Dvorak raised a concern --
47 I don't want to put words in his mouth -- about

1 you know, if we were to try to have it as an
2 excluded claim, that there might be some
3 unintended consequences --
4 THE COURT: Yes.
5 CNSL C. FLANNIGAN: -- as a result of doing that.
6 THE COURT: Yeah.
7 CNSL C. FLANNIGAN: So I respect Mr. Dvorak's concern
8 on that.
9 THE COURT: Yeah. Well, in terms of the order that
10 you presented, on the whole it satisfied the
11 concerns I raised the other day and I like it. I
12 have a couple of questions about it but -- a
13 couple of points to make, so I'll revert back to
14 those in a minute.
15 But in terms of the Alberta action, yes, not
16 even hearing Mr. Dvorak, if we try to exclude it,
17 it could raise, I imagine, certain consequences
18 and, I imagine, there will be other unintended
19 ones. And I wonder if it's possible -- I mean,
20 one possible solution, if it's available, is to
21 have the action transferred to British Columbia,
22 if that's possible, you know, in a federal
23 insolvency statute regime, if you get some sort
24 of recognition or some parallel co-ordination
25 going on. But if under the Alberta statute the
26 Court of Queen's Bench has exclusive jurisdiction
27 to try the case, there's a problem.
28 CNSL S. DVORAK: Well, My Lord -- sorry, my apologies.
29 THE COURT: Mr. Dvorak, you would like to make
30 comments on this point?
31 CNSL S. DVORAK: Yeah, simply that, My Lord, this
32 receivership does fall under the *Bankruptcy and*
33 *Insolvency Act*, so there is that possibility of
34 having jurisdiction transferred theoretically.
35 THE COURT: Yes.
36 CNSL S. DVORAK: Now, I would not be opposed to that.
37 But I don't think that this call would be the
38 time to try to sort that out, unfortunately, as
39 much as I would like to roll forward.
40 THE COURT: Yeah.
41 CNSL S. DVORAK: And the other issue I would raise,
42 and I've raised this with Mr. Flannigan in the
43 past, is that substantively no relief is sought
44 in the Alberta action as against Sather Ranch
45 Ltd. in -- specifically, it is added as a
46 necessary party.
47 THE COURT: Yeah.

1 CNSL S. DVORAK: And to that extent, there is no,
2 capital C, Claim as defined in this process order
3 that would be affected by the claims process
4 order. So no monetary relief is being sought as
5 against SLR [sic]. So it almost seems as though
6 it's unnecessary to do anything.

7 THE COURT: The difficulty is I don't -- we're sort
8 of -- I would be shooting in the dark a bit not
9 knowing what that claim is and knowing more about
10 the potential impact on -- other than what you've
11 told me.

12 CNSL S. DVORAK: I agree with you.

13 THE COURT: Yeah. I'd like to be able to help you
14 fashion your order here so you can move forward
15 without any further delay, but I'm not sure that
16 I can do that. Well, who's the plaintiff in that
17 action?

18 CNSL FLANNIGAN: Yes, My Lord, this is Mr. Flannigan
19 speaking again.

20 THE COURT: Yes.

21 CNSL FLANNIGAN: The plaintiffs in that action are AMX
22 Real Estate Incorporated and Joseph Sather
23 [indiscernible - overlapping speaking].

24 THE COURT: Okay. Yeah.

25 CNSL FLANNIGAN: The defendants are Michael Street,
26 the related numbered company, Boundary Machine
27 Limited, Marielle Brule, Profectus Financial
28 incorporated and Sather Ranch Ltd.
29 And further to Mr. Dvorak's comments as well
30 too is that on my reading of that claim there
31 does not appear to be any financial relief sought
32 as against the company. It seems to be the
33 company was named for the purposes to bring the
34 right for the derivative action. The only
35 concern that I've got with the definition of the
36 Claim, it also includes the liability or
37 obligation over a person as a result of any
38 breach of duty, including, without any
39 limitation, any legal or statutory or equitable
40 or fiduciary duty.

41 THE COURT: Yeah.

42 CNSL FLANNIGAN: That's the wording that is catching
43 me here and that is because it was brought under
44 the Alberta *Business Corporations Act* about the
45 legal duty under the oppression provisions.

46 THE COURT: Okay. Well, quite apart from -- okay.
47 That's a good point. But given that the realty

1 company and Mrs. Sather brought -- are plaintiffs
2 and they're bringing claims, are these -- these
3 aren't -- these aren't claims against other
4 related party claimants, are they? They're
5 claims against third parties at arm's length?
6 CNSL C. FLANNIGAN: No, My Lord, those are actually
7 the related parties that are within the claims
8 process order.
9 THE COURT: Okay. All right.
10 CNSL C. FLANNIGAN: Related parties.
11 THE COURT: Okay. So then why was the action brought
12 in Alberta?
13 CNSL C. FLANNIGAN: My Lord, my understanding is the
14 reason it was brought in Alberta was because of
15 the provisions under the Alberta *Business*
16 *Corporations Act*, that the relief being sought
17 was under that oppression provision.
18 THE COURT: I see. Well --
19 CNSL S. ANDERSEN: My Lord.
20 THE COURT: Go ahead.
21 CNSL S. ANDERSEN: If I might speak. Trying not to
22 interrupt my friend. It's Scott Andersen.
23 THE COURT: Yes.
24 CNSL S. ANDERSEN: With respect, first of all, I have
25 to apologize for how this issue is being brought
26 forward. We had sought input from all the
27 related parties regarding the form of order and
28 the intention was to flesh out all these issues
29 long before we were in court.
30 THE COURT: Right.
31 CNSL S. ANDERSEN: This issue has been raised very
32 late, and for that reason we don't even have a
33 copy of this claim in front of you.
34 But I really don't think, with respect,
35 there's any sort of jurisdictional issue. If an
36 Alberta -- Sather Ranch is an Alberta company
37 that's incorporated in Alberta. So the only
38 jurisdictional issue that arose was to the extent
39 that they wanted to have a receiver appointed
40 over Sather Ranch where they wanted to have it
41 liquidated, which was part of the relief
42 originally sought in this Alberta claim. But --
43 and I suppose to the extent they wanted to get
44 leave to bring an action -- a derivative action
45 on behalf of the company against these other
46 related parties.
47 But in my view this Alberta action has no

1 bearing or impact on any of this. The claims
2 process as it's set out is to bring -- set a
3 process for claims to be brought against the
4 company. So to the extent that either of the
5 plaintiffs in the Alberta action have a claim
6 against the company, they'll need to bring it in
7 this claims process. And Mr. Flannigan has
8 participated in the drafting of that and
9 otherwise agrees to the form of it. But there
10 isn't any -- in my view, there isn't anything
11 left in that Alberta action as against the
12 company that's of any sort of relevance. The
13 only --

14 THE COURT: All right.

15 CNSL S. ANDERSEN: -- thing [indiscernible -
16 inaudible] is the claim by the company, not
17 against it.

18 THE COURT: But even if that's the case, the way the
19 order that's been put before me is drafted, it
20 requires the related parties who want to contest
21 each other's claims do so in a certain manner by
22 a certain date. All of that could be for naught
23 if there's this action proceeding in Alberta
24 where the related parties are at each other and
25 my order -- my procedural order requiring certain
26 things to be done would have no impact on that.
27 And so whatever is going on here, there's still a
28 possibility of further litigation there. So I
29 can't decide that without this in front of me.

30 CNSL S. ANDERSEN: That's a fair point. I guess the
31 only comfort I can provide Your Lordship based on
32 the material you have before you is the idea of
33 the claims process is to bring out the claims
34 against the company and to finally determine
35 those.

36 THE COURT: Yeah.

37 CNSL S. ANDERSEN: But to the extent that the related
38 parties wish to litigate each other for breaches
39 that are alleged, then that doesn't actually have
40 any bearing on the claims process. Those are
41 claims as against -- by a related party against a
42 related party.

43 THE COURT: Yeah.

44 CNSL S. ANDERSEN: So to the extent that's what the
45 Alberta litigation deals with, it's not affected
46 by this process.

47 THE COURT: Okay. Well, Mr. Dvorak and Mr. Flannigan,

1 what do you say? What would you like to do?
2 CNSL S. DVORAK: It's Dvorak here. I think in
3 fairness to the court we should seek some time --
4 THE COURT: Okay.
5 CNSL S. DVORAK: -- and see if we can sort it out
6 amongst ourselves. If not, present the materials
7 to you so you're in a position to actually
8 consider it on the merits.
9 THE COURT: Right.
10 CNSL S. DVORAK: Well, and given that we've got
11 deadlines that are towards the end of December
12 included in the claims process, we have -- we
13 certainly have a couple of weeks in order to sort
14 this out.
15 THE COURT: Okay.
16 CNSL S. DVORAK: I would suggest that if we can find
17 time on your calendar in a week, and if we can't
18 sort it out amongst us before then, then we can
19 make a formal application and present our
20 respective proposals.
21 THE COURT: Okay. Just a minute. Just a minute here.
22 Bear with me. You'd have to talk to scheduling
23 about -- if it can be done at 9 o'clock one
24 morning, I could do it on the 17th or 19th of
25 November. And possibly even the -- I don't know
26 about the 13th. Let me look. But -- no, I
27 can't. I could on the 13th. But if it's going
28 to take longer than an hour, then you'll have to
29 talk to scheduling about either the 16th or 17th
30 of November. If it's a 9 o'clock -- or even
31 let's say a 3:30, if it's a half-an-hour
32 matter -- I'm supposed to be somewhere else doing
33 something but during the week of November 9th I
34 could make myself free for half an hour,
35 45 minutes, to deal with it during the week of
36 November 9th, if it's going to become fairly
37 straightforward. But if it's going to require
38 hours, that's a different matter.
39 So what if you -- I leave it with you. I
40 adjourn this generally, leave it with you to sort
41 it out amongst yourselves, consider a couple
42 other things I'm going to tell you now and then
43 get back to me through the registry, just like
44 you did the other day, and we'll see what we can
45 set up?
46 CNSL S. DVORAK: That seems sensible, My Lord.
47 THE COURT: Yes. So the two comments I had was, one,

1 in the materials the receiver sent out with the
2 package that's sent out to potential creditors, I
3 always like to see the claims bar date
4 highlighted, and that styling -- and the
5 definition. But I think it should be against
6 special notice in bold black letters saying
7 please be advised the claims bar date is
8 December 31st, 2020, and read this carefully. If
9 you don't respond within a certain time, it will
10 be forever barred. I always like to have that
11 highlighted in Marchy Line.

12 And then the other question I had is in
13 paragraph 15 it spoke of knowledge. Just a
14 minute. 15(b):

15
16 Provide particulars to the best of the
17 related parties' knowledge.

18
19 Is that personal knowledge or is it knowledge
20 generally regardless of source?

21 CNSL C. FLANNIGAN: My Lord, this is Mr. Flannigan
22 speaking. I believe I was the one that raised
23 that. I believe the intention was personal
24 knowledge but I'm happen to hear from my friends
25 on that point.

26 THE COURT: Yeah. Because I could see someone saying,
27 well, I didn't incorporate this because I didn't
28 have personal knowledge and it would be hearsay.
29 And the question is how broad do you want the net
30 to be cast? How much do you have want to flesh
31 out?

32 CNSL S. DVORAK: It's Dvorak, My Lord. The objective
33 here is to have the materials stand as pleadings
34 would.

35 THE COURT: Okay.

36 CNSL S. DVORAK: So there's [indiscernible -
37 inaudible] issues, and so broader is better in my
38 view.

39 THE COURT: Yes.

40 CNSL C. FLANNIGAN: My Lord, this is Mr. Flannigan and
41 I [indiscernible - inaudible] that point as well.
42 Mr. Dvorak makes a good point there.

43 THE COURT: Yeah. So I wonder if there's some way you
44 can tweak that a little bit so nobody has a
45 mistake -- clause, you know, within -- to the
46 best -- particulars within the means of the
47 parties' knowledge or something so it's fleshed

1 out.
2 CNSL S. ANDERSEN: Well, maybe the best solution is
3 simply to delete that language. I mean, I think
4 in general the requirement to provide
5 particulars --
6 THE COURT: Yeah.
7 CNSL S. ANDERSEN: -- you've got to provide the best
8 particulars you can so that the claim is joined
9 and understandable.
10 THE COURT: So maybe it's particulars in accordance
11 with the rules.
12 CNSL S. DVORAK: That would be acceptable.
13 THE COURT: Yeah. Well, that's a good suggestion.
14 Okay. Well, I'll leave that with you to tweak
15 up.
16 But, look, see what you can work out on the
17 Alberta issue. I don't know if it's possible
18 to -- for the parties in Alberta to enter into an
19 order that the outcome of their dispute will be
20 determined in this -- without -- if they bind
21 themselves to the determination in this court of
22 all related party claims, whether that's possible
23 or not, I don't know. But it seems to me what
24 the parties want is certainty and finality to any
25 determination of the disputes they have between
26 each other. So I'm not sure how you do that.
27 Maybe an Alberta court would agree to a clause --
28 an order there that recognizes the decision of
29 our court. Or maybe they wouldn't and they'd
30 say, well, you have to come and apply, just like
31 you would when you're trying to register a
32 foreign judgment.
33 Anyhow, I'll leave it --- I'll have to leave
34 it with you to try and sort out. And I'll do my
35 very best to make myself available as soon as I
36 can. So why don't you let me know by the end of
37 next week where things stand. You can just send
38 an email to the registry and ask them to get it
39 to me. And then if you say, look, we think we've
40 got it sorted out, it will take an hour, we're
41 available at these times or can make ourselves
42 available just about any time, then I'll get back
43 to you. I'll work with the registry and we'll
44 get you on the phone. But if you tell me it's
45 quite complex, there's a number of issues, it's
46 going to take a half day or a day, I know that
47 and then I'll get on with the registry and get

1 something scheduled.
2 CNSL S. ANDERSEN: Thank you, My Lord. We appreciate
3 you making yourself available today in this forum
4 as well. I'm sorry to come the way it has.
5 THE COURT: Better now than later. Okay. So someone
6 get back to me next Friday or sooner if you know.
7 But this gives you -- I like Mr. Dvorak's
8 suggestion: take a week, see what you can sort
9 out amongst yourselves and with your friend in
10 Alberta.
11 CNSL C. FLANNIGAN: Thank you, My Lord. This is
12 Mr. Flannigan. I just want to apologize to the
13 court for raising this issue so late in the day.
14 THE COURT: No, no.
15 CNSL C. FLANNIGAN: I apologize to my friends on that.
16 It was an issue that arose to me and I wish I
17 would have turned my mind to this sooner, but --
18 it's unfortunate but, as Your Lordship said, it's
19 perhaps better dealt with now than later.
20 THE COURT: Oh, yeah. I can just imagine. We get all
21 the way through the claims process and we're in
22 the month of January and I'm setting dates for
23 hearings and this issue comes up. Yeah. Yeah.
24 Okay. Well, thanks very much everyone.
25 Mr. Registrar, we'll adjourn it generally and
26 maybe let scheduling know that one of the counsel
27 will be in touch by next Friday with a status
28 report with a view to setting down a further
29 hearing date forthwith.
30 THE CLERK: I'll leave a note for scheduling.
31 THE COURT: Okay. Thanks, counsel. We'll adjourn.
32 Thank you.
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1 THE CLERK: Order in chambers. Chambers is adjourned.

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3 (PROCEEDINGS ADJOURNED AT 10:14 A.M.)

4
5 Reporter Certification:

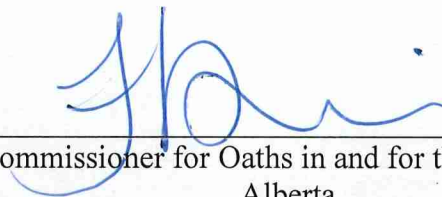
6
7 I, Margot Maye, Official Reporter in
8 the Province of British Columbia, Canada, do
9 hereby certify:

10 That the proceedings were transcribed
11 by me from an audio recording provided of
12 recorded proceedings, and the same is a true
13 and accurate and complete transcript of said
14 recording to the best of my skill and
15 ability.
16

17
18 IN WITNESS WHEREOF, I have hereunto
19 subscribed my name this 8th day of March,
20 2021.

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26 _____
27 Margot Maye
28 Official Reporter
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This is **Exhibit B** to the Affidavit of **Robyn Lenz**, sworn before me at the City of Calgary, in the Province of Alberta, this 12th day of March, 2021.



A Commissioner for Oaths in and for the Province of
Alberta

FRANKIE DENI

A Commissioner for Oaths

In and for Alberta

My Commission Expires June 28, 2023

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(Before the Honourable Mr. Justice Walker)

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**Counsel for the Plaintiffs
appearing by teleconference:**

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S.R. Andersen

**Counsel for the Attendees Joseph Sather
and AMX Real Estate Inc.
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C. Flannigan

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December 4, 2020

PROCEEDINGS

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No exhibits entered.

Vancouver, BC
December 4, 2020

(PROCEEDINGS COMMENCED AT 9:04 A.M.)

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6 THE CLERK: Order in chambers. In the Supreme Court
7 of British Columbia in Vancouver, on this 4th day
8 of December, 2020, calling the matter of Street
9 and Brule and Sather Ranch Limited, My Lord.

10 THE COURT: Thank you. I'll take appearances.

11 CNSL S. ANDERSEN: My Lord, it's Scott Andersen, last
12 named spelled A-n-d-e-r-s-e-n, appearing for the
13 applicant receiver C. Cheveldave & Associates
14 Ltd.

15 THE COURT: Thank you.

16 CNSL S. DVORAK: My Lord, Dvorak, D-v-o-r-a-k, initial
17 S., and I appear for the plaintiffs.

18 THE COURT: Okay. Thank you, Mr. Dvorak.

19 CNSL C. FLANNIGAN: My Lord, Flannigan, initial C.,
20 F-l-a-n-n-i-g-a-n, counsel for the application
21 respondents Joe Sather and AMX Realty
22 Incorporated.

23 THE COURT: Okay. Thank you. I've got the white
24 binder and I was going through it to try and
25 figure out what's new and couldn't, so I went
26 back and listened to part of the -- the tape from
27 part of the proceeding -- past proceedings just
28 to refresh my memory. My recollection is that we
29 stopped because there was -- I had a concern
30 about the position of non-related creditors and
31 how they were -- would intersect in relation to
32 the dispute between related party creditors and
33 the plaintiffs. Is that a fair summary of where
34 we were or is there something more?
35

36 **SUBMISSIONS FOR THE RECEIVER BY CNSL S. ANDERSEN:**

37 Well, the -- My Lord, it's Scott Andersen
38 speaking.

39 THE COURT: Yes.

40 CNSL S. ANDERSEN: That was why we stopped on the
41 28th.

42 THE COURT: Okay.

43 CNSL S. ANDERSEN: Our first appearance you raised
44 that issue.

45 THE COURT: Right.

46 CNSL S. ANDERSEN: And counsel went away to propose
47 language to address that. And we reappeared on

Submissions for the Receiver by Cnsl S. Andersen

1 the 30th with that language. And the concept to
2 address that was the receiver was going to file a
3 report and then reappear before Your Lordship
4 to --
5 THE COURT: Right. Okay.
6 CNSL S. ANDERSEN: -- seek directions.
7 But the issue then arose on the 30th --
8 October 30th that Mr. Flannigan raised was the
9 impact of the proposed order on the litigation in
10 Alberta.
11 THE COURT: Oh, right. Okay. All right.
12 CNSL S. ANDERSEN: And that presented difficulties
13 because --
14 THE COURT: Yeah.
15 CNSL S. ANDERSEN: -- we didn't even have the pleading
16 before you.
17 THE COURT: Right.
18 CNSL S. ANDERSEN: So we couldn't speak to it. So it
19 was further adjourned for counsel to try and sort
20 that issue out.
21 THE COURT: Right.
22 CNSL S. ANDERSEN: And here we are. But I was going
23 to take you through -- if I may, I was going to
24 take you through the changes that were made to
25 the orders since our last appearance.
26 THE COURT: Can you just remind me again of the nature
27 of the litigation in Alberta. It concerns all of
28 or some of the related parties?
29 CNSL S. ANDERSEN: It involves -- well, in fact, if
30 you turn to tab 11 of the materials.
31 THE COURT: Sorry, which tab?
32 CNSL S. ANDERSEN: Tab 11. And exhibit A is the
33 statement of claim.
34 THE COURT: Oh, yes.
35 CNSL S. ANDERSEN: So looking at that now, it seems to
36 involve, unless I'm missing one, all of the
37 related parties.
38 THE COURT: Okay.
39 CNSL S. ANDERSEN: You see the plaintiffs are AMX Real
40 Estate and Joseph Sather. The defendants are
41 Street, his numbered company, Boundary Machines,
42 Marielle Brule, her company Profectus and then
43 the Sather Ranch.
44 THE COURT: And this is an oppression action or it's
45 something different?
46 CNSL S. ANDERSEN: It's a -- well, I was going to take
47 you through that, if I may, My Lord, and the

1 proposed language of the solution. I guess I can
2 just jump right into that, if you like.

3 THE COURT: It's up to you. I just was trying to
4 bring myself back up to speed of what all of the
5 various problems were that arose. Clearly I
6 haven't brought myself up to speed in that
7 respect. So you go ahead and deal with it the
8 way you like.

9 CNSL S. ANDERSEN: Well, if I might back up, then.
10 Why don't I start with the -- if you go to tab 3.

11 THE COURT: Yes.

12 CNSL S. ANDERSEN: Tab 3 is a redline of the draft
13 order showing the changes that were made since
14 our last appearance. And I just wanted to take
15 you through those, starting with paragraph 11.

16 THE COURT: Okay.

17 CNSL S. ANDERSEN: Paragraph 11 deals with evidence
18 that the related party claims are able to bring.
19 And something that Mr. Dvorak had raised was he
20 wished to be able to rely on affidavits or
21 documents that were delivered in the earlier
22 receivership proceeding in response to that
23 paragraph of the earlier receivership order. So
24 you'll see we've added in language to permit
25 that. That's paragraph 11.

26 And then the other change that we've made
27 here --

28 THE COURT: Just looking at it right now. Just a
29 minute.

30 CNSL S. ANDERSEN: Yes. Sorry.

31 THE COURT: No, that's fine.

32 CNSL S. ANDERSEN: And then paragraph 15(b) was
33 revised. You might recall we had a discussion
34 about the particulars and what exactly those
35 particulars had to address. So the language
36 discussed at the hearing was simply to provide
37 particulars in accordance with the rules.

38 THE COURT: Okay.

39 CNSL S. ANDERSEN: So we've made that change.
40 And then paragraph 22 is really why we're --
41 the parties are still in disagreement and why
42 we're here.

43 THE COURT: Yes.

44 CNSL S. ANDERSEN: So this was what we had drafted to
45 address this Alberta litigation.

46 THE COURT: Okay.

47 CNSL S. ANDERSEN: And this is -- the receiver thinks

1 this is the correct approach, obviously, and
2 Mr. Dvorak's clients are in agreement. It's just
3 Mr. Flannigan's clients that disagree.
4 So the concept of that -- the language
5 that's used there is meant to provide certainty
6 that the -- that this claims process order
7 wouldn't affect any claims that a related party
8 wishes to advance against another related party,
9 except to the extent that there are damages,
10 compensation or indemnity or contribution is
11 sought against Sather Ranch.
12 So I'll take you to that claim.
13 THE COURT: Just let me finish reading this paragraph.
14 CNSL S. ANDERSEN: Yes.
15 THE COURT: Okay. So --
16 CNSL S. ANDERSEN: So the intention of what we're
17 trying to draft there is to try and make
18 absolutely clear that if he wants a claim against
19 the company Sather Ranch --
20 THE COURT: Yeah.
21 CNSL S. ANDERSEN: -- you have to do that in the
22 claims process.
23 THE COURT: Right.
24 CNSL S. ANDERSEN: But if you're claiming against the
25 related party and not the company, then that's
26 not affected and you can continue and do that in
27 the Alberta action. And we think that achieves
28 this.
29 So one of the difficulties that arises in
30 any Alberta -- and I'll take you to this, but
31 just to provide the background, in the Alberta
32 action there's various misdeeds that are alleged
33 against Mike Street and his companies, and part
34 of the relief that's sought is relief under the
35 Alberta *Business Corporation Act* and one of the
36 aspects sought is compensation. So the court as
37 a matter of law in an oppression action has the
38 ability to order the company to compensate the
39 aggrieved shareholder.
40 So certainly to the extent that that is the
41 prayer for relief or the manner -- the relief
42 that's going to be sought, then that claim would
43 have to be advanced and established in this
44 claims process. So we're trying to make clear
45 that to the extent that you're seeking
46 compensation against Sather Ranch, then you have
47 to prove the claim here. But otherwise,

1 obviously, if it's just as between the related
2 parties, we don't want to -- this order shouldn't
3 affect that and we're trying to make that clear
4 it doesn't.
5 So I'm going to come through -- come take
6 you through this in a bit more detail and take
7 you to the prayer for relief in that action. But
8 I just wanted to start there and I'll take you
9 through the language that Mr. Flannigan's
10 proposed and why that's not workable.
11 THE COURT: And I see what you've done in
12 paragraph 27.
13 CNSL S. ANDERSEN: Yes. So that was the other change
14 I was going to add, obviously, is that we've
15 sought the aid and assistance of the other court
16 to ensure this order is -- can be achieved.
17 And then, finally, there were --
18 Your Lordship has asked that we make the claims
19 bar date in the notice more pronounced.
20 THE COURT: Yes.
21 CNSL S. ANDERSEN: So I won't take you through that
22 but I've tried to implement that change as well
23 in the material.
24 THE COURT: Can you just show me that since you're on
25 the topic. Oh, here it is. Yeah, I see it.
26 CNSL S. ANDERSEN: Yeah. So I put a bar around it or
27 a box.
28 THE COURT: Yeah.
29 CNSL S. ANDERSEN: And then I put it in bold --
30 THE COURT: Yeah, I see. That's good.
31 CNSL S. ANDERSEN: -- caps and we can highlight that
32 as well as shown in the material. I'm not sure
33 how else to emphasize it.
34 THE COURT: No, that's good.
35 And so just remind me, then, just before we
36 move forward, in respect of non-related people
37 who claim to be creditors, is there any
38 deeming -- remember my concern was about the
39 deeming provision and suddenly they seemed to
40 have an onus on them to do something? Have you
41 dealt with this? Remind me how you dealt with
42 that.
43 CNSL S. ANDERSEN: Yes. So if you scroll back in the
44 order.
45 THE COURT: Yes.
46 CNSL S. ANDERSEN: The way that this came about, I
47 think Your Lordship's concern was that the

Submissions for the Receiver by Cnsl S. Andersen

1 receiver wasn't going to attend or participate in
2 the related party claims and that could work to
3 the prejudice of arm's-length claims.
4 THE COURT: Right. Okay.
5 CNSL S. ANDERSEN: So what we've done is at
6 paragraph 18 --
7 THE COURT: Okay. Yes.
8 CNSL S. ANDERSEN: -- we've contemplated -- we built
9 in a process where the receiver is going to do --
10 so this is after we've got the related party
11 claims in and we've also had all of the
12 arm's-length claims proved by that time.
13 THE COURT: Yes.
14 CNSL S. ANDERSEN: The receiver will prepare a report
15 to the court summarizing the claims and will
16 schedule a hearing on notice to Your Lordship for
17 direction. So we can at that time say, here's
18 what the claims look like.
19 THE COURT: Yeah. Okay.
20 CNSL S. ANDERSEN: And we can then address -- you
21 know, if Your Lordship wants the receiver to
22 participate, we can, but we had contemplated we
23 wouldn't be involved if it was really a dispute
24 between Mr. Dvorak and Mr. Flannigan --
25 THE COURT: Right.
26 CNSL S. ANDERSEN: -- at the end of the day. We don't
27 want to add costs unnecessarily. But if there is
28 a role, then we'll explore that with the court
29 and we'll take Your Lordship's directions.
30 THE COURT: And I recall either you or Mr. Dvorak
31 saying you didn't think that there would be
32 anybody coming forward. It would really boil
33 down to a fight between the plaintiffs and the
34 related party claimants. Right?
35 CNSL S. ANDERSEN: I mean, I think that's the case.
36 The ranch -- Mr. Dvorak had indicated last time
37 the ranch hasn't operated for some time.
38 THE COURT: Right.
39 CNSL S. ANDERSEN: All the assets have been
40 liquidated. So, you know, we think that there's
41 likely very few, if any, arm's-length claims, but
42 we need to flesh that out to add certainty. At
43 the end of the day, this does very much seem to
44 be a dispute between --
45 THE COURT: Yeah.
46 CNSL S. ANDERSEN: -- Mr. Dvorak's clients and
47 Mr. Flannigan's. And that's why we're

1 essentially trying to stay out of the way --
2 THE COURT: Yes.
3 CNSL S. ANDERSEN: -- of that dispute because they're
4 the ones that really have the standing.
5 THE COURT: Okay. So then take me back to the Alberta
6 action and let's just see what the claims are
7 there and how your proposed amendments to the
8 order would work. So that's tab -- tell me the
9 tab number again, please. It was 11?
10 CNSL S. ANDERSEN: It's tab 11 and exhibit A.
11 THE COURT: I'm just going to go back and
12 [indiscernible - inaudible]. Right. Okay.
13 CNSL S. ANDERSEN: And I think the easiest place to
14 start looking at this claim is the -- I mean,
15 rather than take you through the entire thing, is
16 the prayer for relief, which you'll find on
17 page 10.
18 THE COURT: Okay. Let me get it. Okay.
19 CNSL S. ANDERSEN: So paragraph 62 takes an order for
20 an accounting trace and declaration of
21 constructive trust over funds they say had been
22 misappropriated or converted from Sather Ranch.
23 THE COURT: Yeah.
24 CNSL S. ANDERSEN: Paragraph 63 seeks an interim
25 preservation order to basically facilitate that.
26 Paragraph 64 is rather important. You may
27 recall that Sather Ranch is the defendant in this
28 claim. Paragraph 64 they seek to make Sather
29 Ranch the plaintiff and to then commence and
30 prosecute a derivative action. And the essence
31 of this claim, if you go through it -- in the
32 materials Mr. Dvorak has analyzed each of the
33 claims, but the essence of this litigation, we
34 say, is really a claim that belongs to the
35 company for the company to advance. And so what
36 the related parties are really seeking here is
37 leave to prosecute that as a derivative action on
38 behalf of the company.
39 And so stepping back from this, what I'm
40 going to say, My Lord, is that Mr. Sather doesn't
41 really object -- or his objection to the claims
42 process is really misplaced. What his real
43 objection to is the receivership order granted
44 some time ago, which gives the right to prosecute
45 that action to the receiver and it's the receiver
46 who -- at the end of the day who is going to
47 either move forward with this litigation or

1 settle or abandon it. So that's -- with respect,
2 I think that their opposition to this is
3 misdirected.
4 Paragraph 65 seeks a judgment -- you'll see
5 the judgment is only against the related parties.
6 THE COURT: Oh, yes.
7 CNSL S. ANDERSEN: It's not against the Sather Ranch.
8 And then 66 is the same. It seeks relief as
9 against all the related parties.
10 And paragraph 67 --
11 THE COURT: Yes.
12 CNSL S. ANDERSEN: -- is where they seek relief under
13 the Alberta *Business Corporations Act*, and that's
14 the same -- it's a similar provision to our act
15 dealing with oppression. And again,
16 paragraph (a) is seeking injunctive relief
17 against related parties.
18 Paragraph (b) is seeking a receiver -- a
19 receiver be appointed, so obviously that's been
20 overtaken by the appointment of my client.
21 Paragraph (c), dealing with removing Street
22 as a director.
23 (d) has been addressed, the transactions
24 that they say were improper, to reverse them.
25 Paragraph (e) is to deal with a liquidation
26 and dissolution. And that's also been overtaken
27 by the receivership.
28 THE COURT: Yeah. Yeah. Yeah.
29 CNSL S. ANDERSEN: Paragraph (f) is the paragraph, in
30 my view, the only one that really is of concern
31 or affected by this order. They seek an order
32 compensating their client. And that the scope of
33 those orders or the jurisdiction of the court in
34 dealing with compensation is wide enough to make
35 an order that Sather Ranch compensate them. So
36 that's how I say the claims process does affect
37 it. To the extent they're seeking that relief in
38 the company, they'd have to prove that as part of
39 the claims process.
40 THE COURT: And so the order here, this province would
41 purport to have extraterritorial effect on the --
42 and impact on the Alberta action.
43 CNSL S. ANDERSEN: Well, you're right. Mr. Flannigan
44 has raised the jurisdictional issue. So -- and I
45 agree that you -- the BC court could not make an
46 order that Sather Ranch compensate Mr. Sather
47 under that provision of the act because it's a

1 statutory remedy that's limited to that court.
2 But I think it's incorrect to say that the BC
3 court couldn't as part of the claims process deal
4 with that as a claim, a provable claim.

5 THE COURT: Yeah. It's interesting because in these
6 cross -- if this were cross border, I've seen
7 this where the court here doesn't have the
8 authority to, let's say, bind a court in the
9 United States, but people have sought, you know,
10 anti-suit injunctions or something of that
11 nature. I just throw that out there because I've
12 come across this before in the context of
13 Canada-US litigation.

14 But it seems to me here the problem is that
15 you've got this action that's been brought in
16 Alberta and you've got the insolvency or the
17 receivership proceeding here in this province,
18 and if they were all within one province, it
19 would be fairly easy to manage this. Well, it
20 would be easier, not fairly. It would be easier
21 to manage it. There would be no jurisdictional
22 issues, would there?

23 CNSL S. ANDERSEN: I actually don't see this as a
24 jurisdictional issue because in dealing with the
25 claims process, I don't think the court is
26 ordering Sather Ranch to do -- to make that
27 compensation. And again, that's the --

28 THE COURT: Right.

29 CNSL S. ANDERSEN: -- that is the only prayer for
30 relief. You would have to accept that that's a
31 proper claim that's been proven. And of course
32 if you do that, then the receiver is then going
33 to distribute whatever proceeds are available in
34 accordance with the proven claims.

35 THE COURT: Sorry, just back that last -- back up.
36 Start over with that last point again, please.

37 CNSL S. ANDERSEN: Well, the point I'm making is that
38 in the claims process what the court is asked to
39 do is --

40 THE COURT: Yes.

41 CNSL S. ANDERSEN: -- review whether or not the claim
42 is a proper -- properly proven claim.

43 THE COURT: Right. That would be the claim in the
44 (f), paragraph (f).

45 CNSL S. ANDERSEN: Yes. So if they provide evidence
46 and seek that relief, then the court can rule on
47 whether it's been proven or not. And the court

1 doesn't have to order Sather Ranch to actually
2 compensate them because the receiver, then, deals
3 with the proven claims and paid them out by the
4 structure we've already got right.

5 THE COURT: Yeah. But then, you see, I'm going to be
6 asked to make findings in relation to a claim
7 that's also a live claim in Alberta. I'm not
8 making an order but I'm making findings.

9 Anyway, yeah, I see what you're trying to
10 do. I laud you for trying -- everything that you
11 and Mr. Dvorak are trying to do to accomplish
12 simplicity and then move forward with this
13 matter.

14 Can I go back to a question I asked at the
15 last -- one of the last hearings was why was this
16 action brought in Alberta? And maybe you don't
17 have the answer to that. But why is it
18 continuing in Alberta when we have the action
19 that's here in front of -- in this court? It
20 just creates --

21 CNSL S. ANDERSEN: Well, the --

22 THE COURT: It just creates all sorts -- it creates
23 potential problems that could come to become real
24 problems.

25 CNSL S. ANDERSEN: I think without being critical of
26 any of the counsel involved, it does actually
27 make sense.

28 THE COURT: Okay.

29 CNSL S. ANDERSEN: So, you know, the company Sather
30 Ranch is an Alberta company.

31 THE COURT: Okay.

32 CNSL S. ANDERSEN: So if you're going to seek any sort
33 of oppression relief --

34 THE COURT: Yeah.

35 CNSL S. ANDERSEN: -- You're going to be in the
36 Alberta Court of Queen's Bench.

37 THE COURT: Okay.

38 CNSL S. ANDERSEN: So that part makes sense.

39 But conversely, so does the receivership in
40 BC because the Alberta company was operating a
41 ranch from land it owned in British Columbia. So
42 all of the property to be dealt with was in BC.
43 So the insolvency proceeding had to be in BC
44 because the initial part that was obviously to
45 sell the land.

46 THE COURT: Does it have to be here? Could the
47 insolvency proceeding be transferred to Alberta?

1 I'm trying to find a way to avoid two courts
2 making findings on the same claim or two courts
3 making other decisions that could impact on the
4 other. Or let's put it this way: we could have
5 one court defer to the other. And I've seen that
6 happen before in insolvency proceedings.

7 CNSL S. ANDERSEN: I hadn't thought of that issue.
8 What I was going to take you to is, if I
9 may, I suppose, the language that Mr. Flannigan
10 had proposed and why we don't think that that's
11 feasible. But the question --

12 THE COURT: Okay. Just before -- just before you do,
13 one thing I'd like you just to think about, and
14 that is if it turns out that there are no other
15 creditors that come forward and this truly just
16 ends up being a fight between the related party
17 claimants and how it impacts upon Sather Ranch,
18 it may be a fairly straightforward matter that --
19 that whatever the claims process that's occurring
20 here could be put on hold and then -- until we
21 have the determination of the litigation in
22 Alberta or vice versa.

23 CNSL S. ANDERSEN: That's possible. I guess the only
24 disadvantage of that is one of time --

25 THE COURT: Right.

26 CNSL S. ANDERSEN: -- in that the proceeds then have
27 to be held. I mean, the point of the claims
28 process was to put a process in place that would
29 have these claims proven in a timely way so that
30 moneys could be distributed. Because we will
31 actually have a fairly significant -- you know,
32 right now we have roughly 900,000.

33 THE COURT: But, you see, if there are no other
34 creditors and this is a fight only between the
35 parties in the Alberta action --

36 CNSL S. ANDERSEN: Yes.

37 THE COURT: -- then --

38 CNSL S. ANDERSEN: That would motivate them to get on
39 with it.

40 THE COURT: Yeah. Yeah. Or, you know, it may be that
41 one court could say to the other in respect of
42 this dispute between these parties, you'll be the
43 court that determines the issue and we'll -- and
44 then you can come here for a recognition or
45 vice -- whether they come here or the parties
46 would go there for recognition. If that's what
47 it turns out to be after the claims bar date

1 comes and goes, if it's -- if this is the fight,
2 it would be a lot easier to manage.

3 CNSL S. ANDERSEN: And I don't disagree with that. I
4 mean, I think the only point of overlap --

5 THE COURT: Yeah.

6 CNSL S. ANDERSEN: -- is the one prayer for relief.

7 THE COURT: Yes.

8 CNSL S. ANDERSEN: For them to say all the misdeeds of
9 the related parties are going to be compensated
10 by the company.

11 THE COURT: Yeah.

12 CNSL S. ANDERSEN: I mean, if that -- but for that
13 prayer for relief, this is really just an action
14 between the related parties.

15 THE COURT: Right. But, you see, let's say we go
16 through the claims process here and no other
17 creditors come forward and it's the related
18 parties who are fighting, you can't -- there's no
19 point -- you can't really have a distribution in
20 any event. Somebody would step in and seek an
21 order blocking the distribution until the dispute
22 is Alberta is resolved, wouldn't they? Or am I
23 missing something?

24 CNSL S. ANDERSEN: Well, I don't think so. So in
25 terms of the Alberta litigation, what I was going
26 to say, if I could take you to --

27 THE COURT: Sure.

28 CNSL S. ANDERSEN: Let me just, as a way to answer
29 this question --

30 THE COURT: Yes.

31 CNSL S. ANDERSEN: -- somewhat slowly --

32 THE COURT: Yeah. All right.

33 CNSL S. ANDERSEN: -- if I could take you to tab 12 --

34 THE COURT: All right.

35 CNSL S. ANDERSEN: -- exhibit A. This is --

36 THE COURT: And I'm not -- by the way, I'm not trying
37 to thwart or hold up the process. I'm trying to
38 find a way to prevent problems down the line that
39 would end up thwarting the process.

40 CNSL S. ANDERSEN: No, I quite appreciate the
41 dialogue. I just think this is a more roundabout
42 way of answering it.

43 THE COURT: Yeah. Okay. So this is -- this is your
44 friend's wording?

45 CNSL S. ANDERSEN: Yeah. So exhibit A is the back and
46 forth between counsel, and if you turn to
47 page 2 --

1 THE COURT: Okay.
2 CNSL S. ANDERSEN: -- this is the proposed revision
3 that Mr. Flannigan had to paragraph 22. And, I'm
4 sorry, in the black and white it doesn't show the
5 revision.
6 THE COURT: No.
7 CNSL S. ANDERSEN: But the words that my friend
8 inserted is on the second line. So where it says
9 "for greater certainty" of the claims process
10 here and "does not affect any claim."
11 THE COURT: Sorry, I've got to turn to page what?
12 CNSL S. ANDERSEN: Yeah, sorry, page 2.
13 THE COURT: Page 2 is an email that says Scott
14 Andersen on the header.
15 CNSL S. ANDERSEN: Yes. At the bottom of that page
16 there's an email from Mr. Flannigan.
17 THE COURT: There it is. Yeah, okay. Thanks. Yes,
18 I've got it.
19 CNSL S. ANDERSEN: It says:
20
21 We would like the following minor change ...
22
23 And, unfortunately, it doesn't -- because it's
24 black, it doesn't show the words that
25 Mr. Flannigan inserted, but the words that were
26 inserted are on the second line.
27 THE COURT: M'mm-hmm.
28 CNSL S. ANDERSEN: And the only words that were
29 inserted by Mr. Flannigan are "by derivative
30 action or otherwise." So my friend wanted to
31 carve out the ability of the related parties to
32 advance this derivative action from the claims
33 process. Because what they really --
34 respectfully, what I think they seek to do is
35 they want to advance the claim on behalf of
36 Sather Ranch. And as I indicated, the
37 receivership order obviously gives the receiver
38 the standing to advance that claim.
39 So what I was going to propose to do,
40 My Lord, is if you turn over to page 3 of this
41 email exchange, there's an email from -- it
42 starts on the very bottom on November 9th that I
43 sent to Mr. Flannigan.
44 THE COURT: Right.
45 CNSL S. ANDERSEN: Where I essentially make this point
46 to my friend that, you know, the potential
47 prejudice they're raising is their desire to

1 obtain leave to assert derivative claims on
2 behalf of the company and that that issue is
3 really -- was really decided in the receivership
4 order where the receiver was given the right to
5 prosecute that claim.

6 And then I've added -- I've identified to my
7 friend that the only overlap I see is this claim
8 for compensation and how they would have to prove
9 that in the claims process.

10 THE COURT: Yeah.

11 CNSL S. ANDERSEN: So the next paragraph, what I
12 propose to do is how I think this could be
13 addressed by the receiver. So we had initially
14 done -- taken those steps in the Alberta
15 litigation to minimize costs, but in light of the
16 issues raised by Mr. Sather, we were then going
17 to apply in the Alberta litigation for an order
18 severing the claims of the company from those
19 that were advanced directly against the related
20 parties. And then the receiver could then
21 evaluate further and decide whether to advance
22 that or withdraw that claim. But we were going
23 to take steps to essentially sever the claim and
24 either deal with it, which we would need
25 Mr. Sather's assistance in terms of collecting
26 the evidence and understanding the claim, or
27 simply abandon it.

28 But rather than simply leave that litigation
29 in a state of limbo, as it were, we were going to
30 take steps to clarify what claims were actually
31 being brought by the company and deal with them
32 and have it also clarified that the remaining
33 claims that Mr. Sather was going to advance were
34 going to be just against the related parties. So
35 that -- if we took that step, I think it avoids
36 the concern you have of these two courts making
37 similar findings or dealing with similar
38 findings.

39 THE COURT: To me, if this were -- we were now in,
40 let's say, January 10th and it turned out that
41 there were no other claims, except the dispute
42 was between related parties, how would you
43 proceed? How would you propose to proceed?
44 Would you apply in Alberta to sever? What would
45 happen if you didn't get the order you seek or
46 what would happen if you got the order you seek?
47 How would you move -- how would it move forward?

1 CNSL S. ANDERSEN: Well, I think what we're advocating
2 for, recommending is that the claims process, you
3 would have applications from each of the related
4 parties for their respective claims.

5 THE COURT: Yes.

6 CNSL S. ANDERSEN: And we would want to set that down
7 to be determined by Your Lordship. And if it's
8 just them fighting, I assume that the receiver
9 wouldn't participate.

10 THE COURT: Yes.

11 CNSL S. ANDERSEN: And then in the Alberta proceeding
12 we would apply to sever those proceedings so that
13 it was clear what claims were as between the
14 related parties and what claims were the
15 company's that were being asserted and we would
16 take conduct of the claims by the company.
17 That's how I see the path moving forward.

18 THE COURT: And what if you don't get the severance
19 order?

20 CNSL S. ANDERSEN: Well, if we don't get the
21 severance -- I don't -- if we don't get the
22 severance order, then I think that the claims of
23 the company -- I mean, I think in light of the
24 receivership, the company has the right to
25 advance those claims. I think the court would
26 have to provide some mechanism to have us advance
27 those claims.

28 THE COURT: Well, wouldn't -- what about this as a
29 possible option: if we -- if we're in the
30 hypothetical January 10th and there are no other
31 claims and this is truly the fight between
32 related parties and there's impact with the --
33 somehow the company is involved in some way,
34 instead of having a claims process go forward
35 here with attending costs, simply have the claims
36 process put on hold pending the outcome of the
37 Alberta action and then the claims process could
38 follow suit, depending on the outcome of the
39 various claims there.

40 CNSL S. ANDERSEN: My only concern, and I think that
41 it may be the tail wagging the dog in that --

42 THE COURT: Yeah.

43 CNSL S. ANDERSEN: -- I think that there are
44 legitimate claims of moneys that were advanced by
45 the shareholders that are of a -- more in the
46 nature of a debt claim and fairly readily proven.
47 And I think, with respect, and I don't want --

Submissions for the Receiver by Cnsl S. Andersen

1 this claim in Alberta is of a more --
2 THE COURT: Yeah.
3 CNSL S. ANDERSEN: -- complicated or difficult nature,
4 not as straightforward. So, I mean, I think it
5 would be -- Mr. Dvorak, Mr. Flannigan will have
6 their own submissions on this point, but I think
7 it would be unfortunate to put the --
8 THE COURT: Yeah.
9 CNSL S. ANDERSEN: -- the simple debt claims on ice
10 while --
11 THE COURT: Yeah, I see.
12 CNSL S. ANDERSEN: -- a more fanciful claim plays out
13 in the fullness of time, but.
14 THE COURT: And who are the shareholders that would be
15 impacted?
16 CNSL S. ANDERSEN: The shareholders are -- the
17 beneficial owners are Mike Street and Joseph
18 Sather. But, as I understand it, their interests
19 are held through two different companies. They
20 each have a holding company.
21 THE COURT: But they're in effect either directly or
22 indirectly parties to the Alberta litigation,
23 aren't they?
24 CNSL S. ANDERSEN: Yes, I think that's correct.
25 THE COURT: Yeah. Yeah. Okay. Well, I see what
26 you're trying to do.
27 CNSL S. ANDERSEN: I think in the interests of time I
28 probably should let --
29 THE COURT: Yeah, okay.
30 CNSL S. ANDERSEN: -- input from my friend. The only
31 other thing I was going to say is that if you
32 were inclined to make this order, which we hope
33 you are, in light of the time that's passed, I
34 think the claims bar date obviously needs to be
35 pushed out and I would propose to just push that
36 a further month, so make January 31st the claims
37 bar date rather than December 31st.
38 THE COURT: Okay. All right.
39 CNSL S. ANDERSEN: I will be quiet so my friends have
40 time to --
41 THE COURT: Okay. Just remind me again the order that
42 you amended, it's at tab 2; correct? No. No.
43 Tab 3. Tab 3.
44 CNSL S. ANDERSEN: Tab 2 is the order and tab 3 is the
45 black box --
46 THE COURT: Right. That's what I wanted to look at.
47 CNSL S. ANDERSEN: -- showing the changes from our

1 last attendance.

2 THE COURT: Okay. Just a minute. Yeah. Okay. All
3 right. So who's next? Mr. Dvorak, are you next,
4 or is it going to be Mr. Flannigan?

5 CNSL S. DVORAK: Since I'm on the same side as
6 Mr. Andersen, maybe I'll just round out what his
7 thoughts are and how they strike me, if that's
8 all right.

9 THE COURT: Sure.

10

11 **SUBMISSIONS FOR THE PLAINTIFF BY CNSL S. DVORAK:**

12

13 Just to follow through with on where he left
14 off at tab 12 and page 3, the email that he
15 just --

16

17 THE COURT: Okay.

18

19 CNSL S. DVORAK: If you'll scroll down to the bottom
20 of page 4 and then following on page 5 and 6 and
21 then 7, that outlines my position on the Alberta
22 claim, in effect. I went through a process of
23 analyzing the allegations and against whom they
24 were made and on whose behalf they were made.

25

26 THE COURT: Yeah.

27

28 CNSL S. DVORAK: And I've come through to the point
29 where it's only paragraphs 50 through 53 of the
30 Alberta claim and paragraphs 25 of the Alberta
31 claim that are as between the -- Mr. Sather on
32 the one hand and Mr. Street on the other. All of
33 the other claims belong to the company and
34 therefore can only be prosecuted by the receiver.
35 And so when Mr. Andersen says that he's looking
36 to sever, I would have to expect that the Alberta
37 court would give credence to the British Columbia
38 receivership order and hand those assets to
39 Mr. Cheveldave, the receiver.

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And then we -- I have no issue carving out
what's left, the claims as between the
shareholders and related parties. And, frankly,
I would even invite the court to lift the stay.
Let's got on with them. Because that's been
hanging out there and it's used by Mr. Sather as
this omen that hangs over the proceedings and,
frankly, it was filed for nothing more than
strategic purposes. It has never been advanced
with any evidence. I have invited Mr. Flannigan
to provide some evidence to support his claims to
assist the receiver in deciding whether there's
any merit. That has never been met. And so it's

1 effective in that it's causing Your Lordship to
2 question whether there's a jurisdictional
3 issue --

4 THE COURT: Okay.

5 CNSL S. DVORAK: -- but it's meritless. And I think
6 before decisions are made to upset the process we
7 have been embarking on for two years now to get
8 an efficient determination of simple debt claims,
9 there should be some onus upon Mr. Sather to
10 provide some evidence of these allegations, and
11 they're quite bold allegations and I am satisfied
12 they have no merit.

13 THE COURT: Okay. So --

14 CNSL S. DVORAK: The other point that I don't think we
15 can lose sight of in terms of the receiver's role
16 is that the receiver also has a claim as against
17 Mr. Sather for his wrongful taking of a 160-acre
18 property while he was director of Sather Ranch.
19 And that's a claim that exists in British
20 Columbia. It involves land in British Columbia.
21 It's not simply a matter where it's between
22 shareholders and they should be left to their own
23 devices in Alberta.

24 THE COURT: Yeah.

25 CNSL S. DVORAK: There are -- there's a good reason to
26 have some rigour and structure to the process.
27 So I'll leave my comments there.

28 THE COURT: Well, let me just ask you, so what you're
29 in effect saying is if I grant the order that you
30 and Mr. Andersen are recommending, it forces the
31 matter on and you'll be back in front of me at
32 some point and -- well, depending when the
33 claims -- right after the claims bar date and at
34 that point we'll address what's going to happen.
35 But it forces out -- when I look at paragraph 22
36 in the blackline version, it forces out the
37 related parties to declare themselves through
38 affidavit material and to deliver particulars of
39 what their claims are. And it lets the receiver
40 to takes its -- to get on with its job. Because
41 you're telling me there's more involved with this
42 than just the fight between the related parties.

43 CNSL S. DVORAK: Well, absolutely. It does involve
44 the right of the company to require Mr. Sather
45 to --

46 THE COURT: Yeah.

47 CNSL S. DVORAK: -- account for a property that we say

1 is worth well more than a million dollars that he
2 took for himself. And the receiver is in a
3 better position to advance that than we are. It
4 can make the determination as to whether that is
5 a meritorious claim or not. My understanding is
6 that it's underway.

7 THE COURT: Okay. Let me just go back, while I've got
8 you here, look at the wording in paragraph 22. I
9 just want to make sure there's no jurisdictional
10 problems. The claims process doesn't affect any
11 of the related claims they wish to advance in
12 Alberta. Fair enough:

13
14 ... except to the extent that any damages,
15 compensation, indemnity ...
16

17 So that's the exception.

18 All Alberta -- okay. My trouble is with the
19 wording all Alberta money claims are "subject
20 to." You see, to the extent that -- oh, no, you
21 see, how can I make that order that all Alberta
22 money claims are subject to and governed by this
23 order?

24 CNSL S. DVORAK: Well, it's in respect of a
25 receivership that is made pursuant to the *BIA*.

26 THE COURT: Yeah. Okay. Fair enough.

27 CNSL S. DVORAK: I would think you have jurisdiction
28 to control the process --

29 THE COURT: Yeah.

30 CNSL S. DVORAK: -- across Canada.

31 THE COURT: But you have to go to Alberta to get it
32 recognized.

33 CNSL S. DVORAK: And I've invited Mr. Andersen to do
34 so because I think it's efficient.

35 THE COURT: All Alberta money claims ... You see, if
36 you took out the words "are subject to and," so
37 it said all Alberta money claims "governed by
38 this order must" -- no comma -- "must be proved
39 in the claims process." That -- what you've done
40 is you've taken out language that is essentially
41 this court telling an Alberta court, those claims
42 in your court, they're governed by my court. You
43 see? That's ...

44 CNSL S. DVORAK: My Lord, it's Scott Andersen. I
45 don't mean to interject, but it may be a
46 difficulty with the drafting. So the Alberta
47 monetary claims is a defined term but it's meant

1 to just capture the carve-out, the exception.
2 THE COURT: Yeah. Okay. Yeah, I see. I see what
3 you're trying to do. See, I have -- any party
4 before this court is subject to the jurisdiction
5 of this court and I can make orders. That's why
6 I referred to anti-suit injunctions earlier.
7 What you're basically asking me to do is to order
8 parties who have these claims in Alberta, they
9 must -- they must prove them here, these specific
10 claims.
11 CNSL S. ANDERSEN: If it's a claim against the
12 company.
13 THE COURT: Yes.
14 CNSL S. ANDERSEN: And, frankly, a claims process
15 order, if you had a claim against the company
16 from whatever jurisdiction --
17 THE COURT: Yeah.
18 CNSL S. ANDERSEN: -- that would always be the case
19 that you would be -- the intention would be that
20 you would be bound by the order and have to prove
21 the order, prove it as part of the claims
22 process, but.
23 THE COURT: Well, why don't you -- it may be drafting.
24 And instead of "against Sather Ranch in the
25 Alberta litigation," what you're really saying is
26 all claims against Sather Ranch. All claims
27 against the company have to be determined in the
28 claims process order.
29 CNSL S. ANDERSEN: Correct, yeah, whether it's in
30 that -- whether it's been pled in that litigation
31 or otherwise.
32 THE COURT: Yeah.
33 CNSL S. ANDERSEN: I can try and add clarity.
34 THE COURT: So if you took out "in the Alberta
35 litigation," so it's all claims sought against
36 Sather Ranch, period, and you had a different
37 definition of them. And all such claims are
38 subject to and governed by this order and must be
39 proved in the claims process hearing. Then if I
40 make an order under the *BIA*, then, as
41 Mr. Dvorak -- it has cross-country effect and you
42 then go to Alberta for recognition and it would
43 be up to them to decide -- a judge there to
44 decide if they're going to recognize it or not.
45 CNSL S. ANDERSEN: Yeah. So the change, then, would
46 just be to remove the "in the Alberta
47 litigation."

1 THE COURT: Yeah. And then instead of "all Alberta
2 monetary claims" it would be all claims against
3 Sather Ranch are subject to ...

4 CNSL S. ANDERSEN: Yes. I understand those changes
5 and can make --

6 THE COURT: "And must be proved" instead of comma.
7 And then you've got to take out "Alberta money
8 claims" and define that. All such claims against
9 Sather Ranch. Yeah. You've got to -- you have
10 to tidy up paragraph 22. So it's not -- this
11 order doesn't single out Alberta. The effect is
12 any claim against the company is being determined
13 in this court in this action under the BIA.

14 CNSL S. ANDERSEN: Yes. I understand the intention.
15 I think we can sort out --

16 THE COURT: Okay.

17 CNSL S. ANDERSEN: -- a revision for that language.

18 THE COURT: And then, look, once the claims bar date
19 comes and goes, you can then get back in front of
20 me and we can see where things stand. Who would
21 bring this order -- who would bring the
22 recognition application in Alberta? Would that
23 be the receiver?

24 CNSL S. ANDERSEN: I think so. What we could do, the
25 receiver could bring that application concurrent
26 with its application to sever the claim.

27 THE COURT: Yeah. Because basically the receiver is
28 standing in the shoes of Sather Ranch.

29 CNSL S. ANDERSEN: Yes.

30 THE COURT: Yeah. And then we could then see where
31 that goes. And hopefully the process would be --
32 hopefully it will settle down to this: there are
33 no other claims except disputes amongst the
34 related parties, the Alberta court accepts or
35 recognizes this order and severs, and so we can
36 get on with the claims process here and then let
37 the parties fight it out as between them in
38 Alberta.

39 Okay. Well, look, let me hear from
40 Mr. Flannigan, then.

41 CNSL C. FLANNIGAN: Yes, My Lord, this is
42 Mr. Flannigan for the record.

43 THE COURT: Yes. Thank you.

44

45 **SUBMISSIONS FOR THE ATTENDEES BY CNSL C. FLANNIGAN:**
46 There is a couple things I just want to
47 address quickly before I get into the crux of the

1 issue. The first is just some comments from my
2 friend Mr. Dvorak.

3 In regards to the Alberta litigation, the
4 first point is that I'm not counsel for that
5 proceeding.

6 THE COURT: Right.

7 CNSL C. FLANNIGAN: That is different counsel. So
8 being able to provide evidence for that, it's not
9 a litigation I have conduct of. I do not think
10 that's a fair comment.

11 The second thing is my understanding is that
12 the action was commenced for the purposes of
13 preserving the limitation period.

14 THE COURT: Yes.

15 CNSL C. FLANNIGAN: And could not be advanced because
16 of the stayed proceedings.

17 THE COURT: I see.

18 CNSL C. FLANNIGAN: So those comments out of the way,
19 the -- I don't want to be obstructionist here.
20 The issue that I've got is the conceptual problem
21 on the jurisdiction, and that has to do with the
22 fact that the relief being sought under
23 paragraph 67 of the Alberta claim is under the
24 oppression provisions of the Alberta *Business*
25 *Corporations Act*.

26 THE COURT: Right.

27 CNSL C. FLANNIGAN: Now, the original position that I
28 proposed on this was that the Alberta action just
29 be carved out as an excluded claim and that was a
30 way to avoid, you know, dealing with this issue.

31 THE COURT: Say that again, please. You propose --
32 just say that again. I want to make a -- yes, go
33 ahead.

34 CNSL C. FLANNIGAN: Propose that the Alberta action be
35 an excluded claim. And the reason is that the
36 rights claimed in that and the ability to even do
37 the derivative action is all premised on the
38 underpinning of the shareholder rights under the
39 Alberta *Business Corporations Act*, and the
40 Alberta *Business Corporations Act* is also quite
41 clear that the Alberta Court of Queen's Bench has
42 exclusive jurisdiction dealing with those issues.

43 Now, the reason why it becomes a problem
44 from a claims process order -- and I want there
45 to be a claims process order; I want this matter
46 to proceed. But I can't ignore this issue: is
47 in the definition of "Claim." And if I could

1 take Your Lordship back to tab -- either tab 2 or
2 tab 3. Tab 3 is the --
3 THE COURT: Yeah, I've got tab 3. Right.
4 CNSL C. FLANNIGAN: Okay. It's in the definition of
5 "Claim":
6

7 "Claim" shall exclude an excluded claim but
8 shall include any other right or claim of
9 any person against Sather Ranch, whether or
10 not asserted, in connection with any
11 indebtedness, liability of any kind owed by
12 Sather Ranch to such person, and any
13 interest accrued thereon or costs payable in
14 respect thereof, including any indebtedness,
15 liability or obligation owed to such person
16 as the result of any breach of duty
17 (including, without limitation, any legal,
18 statutory, equitable or fiduciary duty) ...
19

20 My point I'm raising with my friends on this is
21 that that definition seems to catch the
22 oppression claim and if we've got a claims bar
23 date that is going to potentially create a bar on
24 that proceeding while there's a stay of
25 proceedings, that is a jurisdictional issue
26 that's not being addressed. I appreciate trying
27 to approach it from a practical standpoint and I
28 applaud my friends for trying to go down that
29 road to address it. But this doesn't remove the
30 problem that this creates a serious
31 jurisdictional problem. That if a claims bar
32 date is set and then forever bars claims
33 afterwards, bringing this matter to try to hear
34 in Alberta, all of a sudden you might have two
35 conflicting orders now, one from the Alberta --
36 or from the British Columbia claims process order
37 saying, now this type of claim is barred because
38 the way the carve-out was done for the Alberta
39 action doesn't deal with the shareholders' rights
40 element. And so we're going to potentially
41 create a bar in the British Columbia order that
42 is going to impact the Alberta proceeding.

43 And, you know, trying to have this matter
44 then -- you know, I appreciate having the order
45 done in the *Bankruptcy and Insolvency Act*, but
46 then having to have the order recognized in
47 Alberta, an Alberta court, you know, are they

1 going to grant that seeing that potentially the
2 shareholders' rights, that only the Alberta Court
3 of Queen's Bench can make the ruling on, whether
4 or not to grant or deny that relief has
5 potentially already been barred.

6 So the point I've been trying to make on
7 this is it seems like the easy solution here to
8 address this issue, and it's not an issue with
9 the original receivership order as granted under
10 the *Bankruptcy and Insolvency Act*. The issue
11 isn't with the stayed proceedings. It's creating
12 this potential bar. So therefore that's why I've
13 come to the proposal in stating that the answer
14 here would be to create the Alberta action as an
15 excluded action. We can orderly proceed in
16 dealing with the British Columbia claims process
17 order and ideally at some point we need to lift
18 the stay so that Alberta action can also
19 continue, instead of creating a situation where
20 one matter needs to be dealt with first and then
21 the other. I'm failing to see why these two
22 couldn't be done at the same time to create more
23 of an efficient process.

24 THE COURT: But the problem is if you engage in the
25 carve-out you suggest and this is really a fight
26 amongst related parties only, you've basically
27 gutted the claims process. There's nothing --
28 there's really nothing else except there will
29 be -- so I just -- I don't understand the utility
30 of it. I'm really struggling with that.

31 And if the reason that the Alberta action
32 hasn't proceeded is because of this stay and
33 that's what's holding up a means to come to grips
34 with how to move forward, on a proper application
35 before me to have a lift -- lifting of a stay for
36 a select purpose, I would consider that.

37 But right now the situation, it just seems
38 to me to be untenable. Everyone's stuck. This
39 action is before -- in our court is under the
40 *BIA*, a federal statute, and we've got a potential
41 conflict with -- potential -- potential with an
42 Alberta statute.

43 So I -- I just don't see the utility of
44 carving out the claims in the Alberta action,
45 like you say, because I just don't see how
46 that -- what does it leave you in terms of a
47 claims process here?

1 CNSL C. FLANNIGAN: Well, My Lord, if I may, there is
2 a number of claims that would be put forward by
3 Mr. Dvorak's clients that are based in British
4 Columbia and including and not limited to the
5 evidence that was already made in the prior
6 receivership proceeding.

7 THE COURT: Yeah.

8 CNSL C. FLANNIGAN: And included in that also dealt
9 with the shareholders loans as well too, and that
10 was what was being dealt with in that original
11 receivership and that approach on a claims
12 process matter.

13 THE COURT: Yeah.

14 CNSL C. FLANNIGAN: The additional claims are the ones
15 that are in the Alberta action and those are
16 dealing with the monetary claims based on the
17 oppression rights.

18 THE COURT: Yes. So when I look at definition of (d)
19 "Claim" and look at the pleading in the Alberta
20 action, it's only those two paragraphs. It's the
21 monetary claim and the remedy, sorry, that's
22 being -- that's impacted by that. Right?

23 CNSL C. FLANNIGAN: I'm sorry. My apologies, My Lord.
24 You cut out a little bit there.

25 THE COURT: Yes. I'm just trying to come to grips
26 with your submission in respect of the problem
27 with the definition of "Claim," is any right or
28 claim against -- of any person against Sather
29 Ranch, and you say that's not on because it
30 impacts upon the Alberta action. And I'm just
31 looking to see more specifically how it does
32 that.

33 CNSL C. FLANNIGAN: Well, My Lord, it has to do with
34 the statutory duty.

35 THE COURT: Yeah.

36 CNSL C. FLANNIGAN: And that's what the declared
37 relief for paragraph 67 in the Alberta action is
38 based on.

39 THE COURT: Yeah.

40 CNSL C. FLANNIGAN: It's based on orders under
41 section 242 of the Alberta *Business Corporations*
42 *Act*, which is the relief the court has defined in
43 that action -- or that statute can grant under a
44 finding that a shareholder has been oppressed by
45 the actions of the company.

46 THE COURT: All right. Well, then, what do you say is
47 the answer to the question if I accept the

1 proposal you put forward, where does that leave
2 us in terms of a claims process here? You say,
3 well, there's some other claims of shareholders,
4 but aren't they going to end up being bound up in
5 the competing claims in Alberta?
6 CNSL C. FLANNIGAN: Well, My Lord, the monetary claims
7 that are in the Alberta action deal with items
8 that haven't been put forward in the prior
9 receivership. In the prior receivership the
10 claims that were put forward by my client dealt
11 with the shareholders loans. They didn't include
12 these other monetary claims.
13 And then also my friend Mr. Dvorak's
14 client's claims were also put forward in the
15 prior receivership and I would expect those would
16 be put forward in this claims process order.
17 THE COURT: I have a question to -- I can put to
18 either Mr. Andersen or Mr. Dvorak. Under the --
19 you're aware of the protocol that deals with --
20 that allows one court to invoke a cross-border
21 protocol and engage in communications with
22 another court that has -- that may have
23 jurisdiction over some or all of the matters in
24 dispute?
25 CNSL S. ANDERSEN: Yes.
26 THE COURT: Does that allow me to initiate a cross-
27 border communication with a judge in Alberta?
28 There has to be a way to come to grips with this.
29 Because I can see this thing just circling around
30 endlessly like the computer that's stuck.
31 CNSL S. ANDERSEN: My Lord, I haven't addressed that
32 before, but I'm happy to look into that and to
33 the extent that that's a possibility, in my view
34 that would make an abundance of sense,
35 particularly if we go to have it recognized and
36 it is recognized to then have the two courts be
37 able to communicate directly.
38 THE COURT: Right. I know -- I've done this before
39 with a matter in the United States and you have
40 to give notice. The court has to tell counsel
41 that's what they want to do. There's some
42 protocols in the nature of the communication.
43 But, you see, what's troubling me is that
44 the Alberta claimants have not come forward and
45 asked to lift the stay. It's just sitting there.
46 And it just seems to me that that's -- it's not
47 good enough to say, well, that's the problem and

1 the stay is there and we can't do anything.
2 Because the flip side of it is if I grant the
3 relief or the nature of the order that
4 Mr. Flannigan seeks, the claims process, yes, it
5 can go forward and some of the claims will be
6 adjudicated, but it doesn't -- it doesn't deal
7 with all of the claims and there's no finality to
8 it. So it's an income complete claims process.
9 CNSL S. DVORAK: My Lord, it's Dvorak. May I add
10 something to that.
11 THE COURT: Yes.
12 CNSL S. DVORAK: And that is the facts are all the
13 same.
14 THE COURT: Exactly.
15 CNSL S. DVORAK: So we would be running on parallel
16 tracks and getting inconsistent findings and so
17 the question is how is this best resolved.
18 THE COURT: Right. And, you see, I don't know, for
19 example, if the Alberta rules of civil procedure
20 have similar provisions like ours where a special
21 referee can be appointed or whether the court can
22 defer to findings -- other findings. You know,
23 there's got to be a way to set up a process so
24 that if we know that the dispute now focuses only
25 on related claimants, that the claims process in
26 that dispute can all be determined at the same
27 time and we can just get on with it.
28 So what I contemplate is having an order
29 that fixes the claims bar date so we can get all
30 the claims fleshed out so that we know what they
31 are, and if there are no other -- if there are no
32 arm's-length claimants, we know what we've got,
33 we can consider the best means to move forward to
34 determine the claims, and that would involve a
35 direct communication with the Alberta court to
36 sort out the process. And it may be that the
37 Alberta court would recognize a determination of
38 all of these claims in this court or we would
39 have the claims processed, determined in the
40 Alberta court.
41 CNSL S. ANDERSEN: Well, My Lord, if I might, if we
42 had -- if we're already contemplating the
43 receiver make a report after the claims are all
44 made --
45 THE COURT: Yeah.
46 CNSL S. ANDERSEN: -- and we're going to return to
47 Your Lordship for directions --

Discussion re cross-border protocol

1 THE COURT: Yes.

2 CNSL S. ANDERSEN: -- we certainly could before the
3 return of that hearing investigate the process
4 for cross-province --

5 THE COURT: Right.

6 CNSL S. ANDERSEN: -- protocols to facilitate how to
7 move forward and address -- this could be an
8 issue obviously that could be teed up for that
9 hearing.

10 THE COURT: Right. And when I did this with the US
11 proceeding, we had -- there was an initial
12 communication between the judge there and myself,
13 and then that -- the judge in Delaware convened
14 his court with counsel there and we were -- it
15 was a live broadcast via video, and I had counsel
16 in my court and neither party was said to attorn
17 to the jurisdiction of the other. That may not
18 be an issue here because of -- because we're not
19 dealing with two different countries and we're
20 dealing with the *BIA*, you know, having -- being a
21 federal statute. But we did it and we were able
22 to set out a process whereby these claims could
23 be determined in one court that could effectively
24 be binding on the parties in the litigation in
25 both countries. And it was worked out and it was
26 quite effective. And there was a lot more money
27 involved than this and I'm just worried with what
28 you tell me the amount that's involved, the costs
29 of this -- if it continues on this way, the costs
30 will really erode the moneys available for
31 distribution.

32 And I am troubled by the fact that this
33 Alberta action just sits there but there's been
34 no attempt to come to this court to seek a
35 lifting of the stay so that that action can move
36 forward or move forward in concert with the --
37 with this action.

38 So what would you like to do? Because what
39 I'd like to do is to have you think about this --
40 I can make myself available any time. But I'd
41 like to have you come back so I can sign an
42 order. But it seems to me we need to get the
43 claims bar date set, notice out and know what
44 claims we're dealing with, deal with a cross-
45 border protocol so we can -- I can communicate
46 with an Alberta judge and we can determine, then,
47 the best means to move forward.

1 somehow -- that paragraph 22 would be subject to
2 recognition and enforcement in the Court of
3 Queen's Bench.

4 THE COURT: And then what you could do -- then you
5 could bring on the recognition proceeding in
6 Alberta without delay. That would then get a
7 judge appointed and then we could initiate the
8 cross-border communication.

9 CNSL S. ANDERSEN: Yes.

10 THE COURT: That's a creative way to approach it.

11 CNSL S. ANDERSEN: I'm happy to do that. I think we
12 could do that, sort of we could bring it on as
13 quickly as practical, and then that's something
14 that the receiver can address and move the
15 process forward.

16 THE COURT: Mr. Flannigan, what do you say about that?

17 CNSL C. FLANNIGAN: I'm all in favour of trying to
18 approach this in a practical manner that deals
19 with the issues, and it seems like that's where
20 we're going with this. So it's -- you know,
21 having the "subject to" language that, you know,
22 that is directed to kind of the immediate
23 prejudice concern that I have on there, and then
24 same thing about making sure we can get a judge
25 in the Alberta Court of Queen's Bench seized of
26 the matter to create that cross-border protocol.

27 THE COURT: Well, one way to do that is to -- is to
28 come back to me with an order I could sign with
29 some sort of "subject to" language, then the
30 receiver can go directly to Alberta to the Court
31 of Queen's Bench and apply for a stay and perhaps
32 even write the Chief Justice there or the
33 Associate Chief Justice, get a judge appointed,
34 explain the problem and then explain why they're
35 there and -- for the recognition and then that
36 could initiate the cross-border communication at
37 the same time.

38 CNSL C. FLANNIGAN: I would be in support of that,
39 My Lord.

40 THE COURT: All right.

41 CNSL S. DVORAK: My Lord.

42 THE COURT: Yes, Mr. Dvorak.

43 CNSL S. DVORAK: Just a quick observation. I did have
44 a proceeding -- two proceedings involving
45 shareholder disputes, one in British Columbia,
46 one in Alberta, this past year, and I can advise
47 that they do not in Alberta have a Court

1 *Jurisdiction and Proceedings Transfer Act.*

2 But --

3 THE COURT: Yes.

4 CNSL S. DVORAK: -- the judge I was dealing with there
5 was quite amenable to having communications
6 between the jurisdictions and was interested in
7 facilitating a sensible and, as Mr. Flannigan has
8 said, practical solution to avoid multiplicity of
9 proceedings, et cetera. So I think we're on the
10 right track if we can get recognition -- or,
11 sorry, get an order here --

12 THE COURT: Yes.

13 CNSL S. DVORAK: -- and have it recognized in Alberta.
14 I do believe that might be aided if there perhaps
15 were an official communication in the nature of
16 reasons as to why perhaps the claims process
17 order is being made subject to recognition.

18 THE COURT: Yes. Yes, there would be brief reasons.
19 All right. Well, look, can I leave it with you
20 to work up an order that makes sense. Get it to
21 me electronically, then we'll get a quick hearing
22 set up for 9 o'clock one morning and I can hear
23 from you and I can issue brief oral reasons. And
24 that's what I did in another cross-border case
25 where I issued reasons explaining why we needed
26 recognition in the United States. It wasn't very
27 long. It was a few paragraphs. But it was
28 enough to explain the problem.

29 CNSL S. ANDERSEN: Thank you, My Lord. I think that's
30 very helpful. So we'll work on that and get that
31 to you as soon as practical.

32 THE COURT: Okay. So just to let you know my
33 schedule, I'm on reserve next week but can make
34 myself available. And let me just tell you the
35 following week the 9 o'clocks I'm booked on.
36 That's the week of the 14th. I could hear you on
37 Monday the 14th or 15th, the Tuesday, at 9:00,
38 and maybe Friday the 18th at 9:00, but Monday or
39 Tuesday would be better.

40 CNSL S. ANDERSEN: And the week of the 7th is --

41 THE COURT: I'm on a reserve week, yeah. We just
42 have -- that -- we'll just have to see how it
43 goes and I can work out a time. Depending on
44 registry staff availability here, it could be at
45 9:00 or it might have to be at 4:00. Just -- or
46 at 12:30 or 1 o'clock. Just it depends on
47 staffing here. But I'll be here at the

1 courthouse working.
2 CNSL S. ANDERSEN: Okay. Thank you, My Lord.
3 THE COURT: Okay. Well, thank you. So,
4 Mr. Registrar, we'll just adjourn this generally.
5 THE CLERK: Okay.
6 THE COURT: And let counsel know that other matter at
7 10:30.
8 THE CLERK: Yes, My Lord. Do you want me to indicate
9 that you're reserving judgment on this or just --
10 THE COURT: There's no reserving judgment.
11 THE CLERK: Okay.
12 THE COURT: It's just adjourned.
13 THE CLERK: Okay. Just adjourned. Yes, My Lord.
14 THE COURT: But I'll let you get back -- but send me
15 what you come up with and then we can deal with
16 it pretty quickly.
17 CNSL S. ANDERSEN: Thank you.
18 THE COURT: Okay. Well, thank you very much.
19 THE CLERK: Thank you, My Lord. Order in chambers.
20 Chambers is adjourned.

21
22 (PROCEEDINGS ADJOURNED AT 10:12 A.M.)

23
24 **Reporter Certification:**

25
26 I, Margot Maye, Official Reporter in
27 the Province of British Columbia, Canada, do
28 hereby certify:

29
30 That the proceedings were transcribed
31 by me from an audio recording provided of
32 recorded proceedings, and the same is a true
33 and accurate and complete transcript of said
34 recording to the best of my skill and
35 ability.

36
37 IN WITNESS WHEREOF, I have hereunto
38 subscribed my name this 8th day of March,
39 2021.

40
41
42
43
44
45 _____
46 Margot Maye
47 Official Reporter

This is **Exhibit C** to the Affidavit of **Robyn Lenz**, sworn before me at the City of Calgary, in the Province of Alberta, this 12th day of March, 2021.



A Commissioner for Oaths in and for the Province of

Alberta
FRANKIE DENI

A Commissioner for Oaths
in and for Alberta

My Commission Expires June 28, 2023

No. S1913131
Vancouver Registry

IN THE SUPREME COURT OF BRITISH COLUMBIA
(Before the Honourable Mr. Justice Walker)

Vancouver, B.C.
January 14, 2021

BETWEEN:

**MICHAEL NEIL STREET and
MARIELLE JACQUELINE ANGELLA BRULE**

Plaintiffs

AND:

**SATHER RANCH LTD., by its court appointed receiver and manager
C. CHEVELDALE & ASSOCIATES LTD.**

Defendant

PROCEEDINGS IN CHAMBERS

COPY

Margot Maye / Charest Reporting Inc.
16th Floor – 885 West Georgia Street, Vancouver, BC V6C 3E8
Phone: 604-669-6449 Fax: 604-629-2377

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PROCEEDINGS IN CHAMBERS

**Counsel for the Plaintiffs
appearing by teleconference:**

S.D. Dvorak

**Counsel for the Receiver
appearing by teleconference:**

S.R. Andersen

**Counsel for the Attendees Joseph Sather
and AMX Real Estate Inc.
appearing by teleconference:**

C. Flannigan

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PROCEEDINGS IN CHAMBERS
January 14, 2021

PROCEEDINGS

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	Order re claims process	5
	Reporter certification	6

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No.	Description	Page
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No exhibits entered.

Vancouver, BC
January 14, 2021

(PROCEEDINGS COMMENCED AT 3:30 P.M.)

1
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5
6 THE CLERK: Calling the next case in the matter of
7 Street and Brule versus Sather Ranch Limited,
8 My Lord.
9 THE COURT: Thank you. I'll take appearances, please.
10 CNSL S. ANDERSEN: My Lord, it's Scott Andersen,
11 A-n-d-e-r-s-e-n, counsel for the receiver, and my
12 pronouns are he or him.
13 THE COURT: Thank you, Mr. Andersen.
14 CNSL S. DVORAK: My Lord, it's Dvorak, initial S.,
15 spelled D-v-o-r-a-k. I appear for the plaintiffs
16 and pronouns are he or him.
17 THE COURT: Thank you.
18 CNSL C. FLANNIGAN: Yes, My Lord, Flannigan, initial
19 C., counsel for Joseph Sather and AMX Real Estate
20 Incorporated, and preferred pronoun is he or him.
21 THE COURT: Okay. Thank you. Well, I've received the
22 draft -- the new draft claims process order and
23 the blackline and the other -- the non-blackline
24 version, and I think I see what you've done.
25 Instead of referring the matter to Alberta to be
26 decided, you've -- am I right that you've drawn
27 into the occasion -- drawn into the mix but
28 excluded from "Claim" by the definition of
29 "Equity Claim" the dispute between -- the dispute
30 involving Sather Ranch?
31 CNSL S. ANDERSEN: My Lord, it's Scott Andersen
32 speaking.
33 THE COURT: Yes.
34 CNSL S. ANDERSEN: The concern that was -- where we
35 were last struggling was that Mr. Flannigan was
36 concerned that the claims process order would
37 somehow impair the ability of a shareholder to
38 claim for any residue or residual that's left
39 after the claims of creditors were paid.
40 THE COURT: Okay.
41 CNSL S. ANDERSEN: And so Mr. Dvorak -- I can't take
42 credit for this clever solution, but Mr. Dvorak
43 added in the definition of an equity claim.
44 THE COURT: Right.
45 CNSL S. ANDERSEN: Which is from in the *Bankruptcy and*
46 *Insolvency Act* and then excluded that from the
47 claims process order.

1 THE COURT: Right.
2 CNSL S. ANDERSEN: To address Mr. Flannigan's concern.
3 So otherwise the structure is essentially the
4 same.
5 THE COURT: All right.
6 CNSL S. ANDERSEN: Where we would run the process here
7 and we would determine what's ordered but still
8 go to Alberta to have the receivership order and
9 the claims process order recognized and enforced.
10 THE COURT: Okay. And then what -- if there is a --
11 what do the equity claimants do under this order?
12 Do they have a certain amount of time by which
13 they have to tender notice of their claim, or is
14 it just left silent?
15 CNSL S. ANDERSEN: The equity claims are left silent.
16 The intention isn't to deal with them. You know,
17 because at the end of the day these two
18 shareholders, in my view, don't need to prove
19 their claim.
20 THE COURT: Right.
21 CNSL S. ANDERSEN: They would just be entitled to
22 whatever residue remains and the real fight
23 within the claims process to deal with where a
24 claim is as creditor.
25 THE COURT: Okay. Okay. All right. Very good. Does
26 anyone have any -- I see what you did here -- the
27 point here. Is there anything else you want to
28 draw my attention to in this new draft?
29 CNSL S. ANDERSEN: The only other thing that I will
30 add, My Lord, is that because of the timing, we
31 pushed the claims bar date back an additional
32 month. But otherwise, there aren't any other
33 changes to be made. And it still contemplates us
34 coming back to you once the application materials
35 are in, the report from the receiver summarizing
36 the claims, so we still have that process built
37 in. But I don't have any further submissions to
38 make.
39 THE COURT: But it doesn't -- I was just trying to
40 look at that provision. It doesn't bind me to
41 hear the dispute between the shareholders, does
42 it? I mean, I'm seized of the -- what I'll call
43 the interlocutory proceedings to provide
44 directions and deal with those matters. But if
45 I'm not available to hear the dispute or if a
46 dispute's heard somewhere else, it doesn't bind
47 me to that, does it?

1 CNSL S. ANDERSEN: Are you referring to the -- to
2 hearing the claims themselves? The
3 [indiscernible - inaudible] claims.
4 THE COURT: Let's just see. Yeah, well, that's a good
5 point. I just want to make sure I know what I'm
6 seized of here. Let's just see where that is.
7 And I take it --
8 CNSL S. ANDERSON: That's in paragraph --
9 THE COURT: Go ahead.
10 CNSL S. ANDERSEN: Paragraph 19, My Lord. I don't
11 think you are seized of hearing the applications.
12 But in paragraph 18 and 19 --
13 THE COURT: Right.
14 CNSL S. ANDERSEN: -- we're to prepare a report and
15 come back before you and presumably at that time,
16 if we're able to schedule it then before you, we
17 will.
18 THE COURT: Okay.
19 CNSL S. ANDERSEN: If you're not available or
20 unwilling or unable to hear it, then we'll deal
21 with scheduling before another judge.
22 THE COURT: Okay. All right. I see what you put.
23 Okay. Fair enough. All right. Thank you.
24 Other submissions from other counsel?
25 CNSL S. DVORAK: Yes, My Lord. Dvorak here. That is
26 all -- has all been worked out to my satisfaction
27 so I'm content with the process now.
28 There will be an application on behalf of
29 the receiver to have this order recognized in
30 Alberta.
31 THE COURT: Right.
32 CNSL S. DVORAK: We had discussed the potential for
33 some brief reasons to request the court's
34 cooperation, and I don't know whether that is
35 still on the table or whether Mr. Andersen would
36 consider that helpful or whether Mr. Flannigan
37 would find that objectionable, but I represent
38 that and invite some comments.
39 THE COURT: Okay. All right. I'll hear from
40 Mr. Flannigan next, then.
41 CNSL C. FLANNIGAN: Yes, My Lord, this is
42 Mr. Flannigan for the record. Just as a starting
43 point, just in regards to this order, I just want
44 to thank my two friends on this matter to -- for
45 addressing the concerns that I had and coming to
46 this resolution.
47 As it relates to my friend's Mr. Dvorak's

1 recent comments here about having some form of
2 decisions to assist in the application for having
3 this order pronounced in the Alberta court, I've
4 got no concerns with that. If it's going to make
5 things expedite matters, I certainly have no
6 concerns with that.

7 THE COURT: Okay. So you're saying you don't need
8 formal reasons. Well, what you could do is you
9 could advise the court in Alberta that in my view
10 the solution that you've come up with in this
11 order is an elegant solution to move the matter
12 forward, protect the interests of the equity
13 claimants and get on with sort of moving on with
14 the receivership and dealing with the third party
15 creditor claims. So I commend counsel for that
16 and you can advise the court that I would request
17 the court in Alberta to consider my request that
18 they consider the recognition -- they consider
19 the recognition proceeding as soon as they
20 practically can.

21 CNSL C. FLANNIGAN: Yes, that is helpful. Thank you,
22 My Lord.

23 THE COURT: I mean, I don't know if you need to reduce
24 that to writing, but look, there is a protocol
25 for interprovincial -- or provincial
26 communication between judges and that could
27 always be invoked if you thought that was
28 necessary. But when I read this yesterday I
29 thought this was a very elegant approach to
30 solving the problem, so I commend you for that.
31 And I think, yes, moving the bar date out is
32 good. And you should just get on with dealing
33 with it in Alberta and get on with the
34 receivership.

35 So I can -- now, I have the draft order
36 here. I don't know if it's been vetted, so
37 there's two ways --

38 CNSL S. ANDERSON: It has not --

39 THE COURT: Go ahead, Mr. --

40 CNSL S. ANDERSEN: Sorry, My Lord. It has not been
41 vetted yet.

42 THE COURT: So there's two ways to go about it. One
43 is I've been telling lots of counsel that through
44 the e-order process is very, very good. It's
45 very fast. There's -- I'm not sure how you do it
46 from your end, but I know that you can sign
47 electronically and sometimes within an hour or

1 two of the court concluding the order is to me
2 from the e-order desk. Sometimes it takes a day
3 or a half day. But if you want to submit this
4 through the e-order process, it will be vetted
5 and to me and I can sign it electronically.
6 CNSL S. ANDERSEN: That's what I would propose to do,
7 My Lord. I think that's the easiest.
8 THE COURT: Yeah, okay. All right. Well, let's do
9 that, then. So, Madam Registrar, I'll pronounce
10 the order -- I'll grant the order in the form
11 sought. I have it here, I'm give it to you and
12 you can log it.
13 And then, counsel, the sooner you can get
14 that to me, the better. I'm here tomorrow. And
15 I'll be in and out next week. But if there's any
16 way you can get to the e-order people this
17 afternoon, tomorrow, I'll sign it tomorrow
18 electronically. And I may not be able --
19 otherwise may not be able to sign it until
20 Tuesday.
21 CNSL S. ANDERSEN: All right, My Lord. I'll do my
22 best to get that processed right away.
23 THE COURT: Okay. All right. And then from there
24 I'll just wait to hear from counsel when you need
25 to get back in front of me.
26 CNSL S. ANDERSEN: Yes. Thank you, My Lord for
27 enduring this and so many iterations and making
28 yourself available.
29 THE COURT: That's fine. Well, I think you've done an
30 excellent job of solving a difficult problem, so
31 well done.
32 If there's nothing else, then we'll adjourn
33 and I'll wait for the order to come to me and
34 I'll sign it.
35 CNSL S. ANDERSEN: Thank you, My Lord.
36 THE COURT: All right. Thank you very much.
37 CNSL S. DVORAK: Thank you, My Lord.
38 CNSL C. FLANNIGAN: Thank you, My Lord.
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THE CLERK: Order in court. Court is adjourned.

(PROCEEDINGS ADJOURNED AT 3:40 P.M.)

Reporter Certification:

I, Margot Maye, Official Reporter in the Province of British Columbia, Canada, do hereby certify:

That the proceedings were transcribed by me from an audio recording provided of recorded proceedings, and the same is a true and accurate and complete transcript of said recording to the best of my skill and ability.

IN WITNESS WHEREOF, I have hereunto subscribed my name this 8th day of March, 2021.

Margot Maye
Official Reporter