

Court File No. CV-22-00687383-00CL

**ONTARIO
SUPERIOR COURT OF JUSTICE
(IN BANKRUPTCY AND INSOLVENCY)
COMMERCIAL LIST**

**IN THE MATTER OF THE RECEIVERSHIP OF
2806401 ONTARIO INC. o/a ALLIED TRACK SERVICES INC.**

B E T W E E N

PRICEWATERHOUSECOOPERS INC.,
(solely in its capacity as Court-appointed receiver and manager of Bridging
Finance Inc. and certain related entities and investment funds)

Applicant

and

2806401 ONTARIO INC. o/a ALLIED TRACK SERVICES INC.

Respondent

**RESPONDING MOTION RECORD
VOLUME 2 OF 2
(Tabs 3A – 3D)**

October 5, 2023

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johnscottfarmer@gmail.com

Former Landlords

Index

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Respondent

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Tab 3

Court File No.: CV-22-00687383-00CL

**ONTARIO
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COMMERCIAL LIST**

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(solely in its capacity as court-appointed receiver and manager of Bridging Finance Inc. and
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Applicant

- and -

2806401 ONTARIO INC. o/a ALLIED TRACK SERVICES INC.

Respondent

**AFFIDAVIT OF DARCY NAZAR
(Sworn September 28, 2023)**

I, Darcy Nazar, of the City of Winnipeg in the Province of Manitoba, MAKE OATH AND
SAY:

1. I am the Signals and Communications Construction Manager for the Prairie Region of the Canadian National Railway Company (“CN”), a position I have held since 2019. In that capacity, I am responsible for the construction of new signal infrastructure across the Prairie Region. As such, I have personal knowledge of the matters to which I hereinafter depose. Where I have relied on information from others, I have identified the source of my information and believe it to be true.

2. This affidavit is sworn in response to a motion by KSV Restructuring Inc., receiver for the bankrupt 2806401 Ontario Inc. o/a Allied Track Services Inc. (“Allied”), seeking \$2,501,722.15 from CN “without set-off or compensation.”

3. In preparing this affidavit, I have reviewed the affidavits of Marco Levesque and Ryan Wiebe, each sworn September 28th, 2023. Any capitalized term not defined in this affidavit has the definition given to it in the Affidavit of Marco Levesque.

A. Role on the Fort Frances Project

4. On June 2, 2022, a predecessor entity to Allied entered into an agreement with CN to “install a 7200V power distribution system and conduit for future fiber optic cable along the CN right of way between mile 0.09 – 35.95 on the Fort Frances Sub” (the “**Fort Frances Project**”).

5. I was CN’s construction manager on the Fort Frances Project from start to finish.

6. I have reviewed the Affidavit of Marco Levesque and agree the Fort Frances Project is governed by a Statement of Work (“**SOW**”) between Allied and CN setting out the purpose of the Project and a numbered list of fixed price scope services (the “**Services**”) that Allied is required to complete in order to complete the Project.

7. The SOW for the Fort Frances Project lists two Services; Service #1 for installation of the 7200 volt underground power system between Mile 0 and 16.10, and Service #2 for installation of the 7200 volt system between Mile 16.10 and 35.95. Service #2 was removed from the SOW before any work began, in or about June of 2022.

8. To install the 7200v system required by Service #1, Allied was required to plow cable underground along the length of CN’s track.

9. The Fort Frances SOW states that Allied would be paid upon the completion of 50% and then 100% of the Project:

The payment of this project will be based on the completion of the project which will consists of two project milestones: 50% completion and 100% completion. Invoice shall be submitted according to those two established milestones. CN management will go on site to assess the completion of the 2 project milestones using the progress report. Progress report will have to be signed by CN management to confirm the 50% and the 100% milestone. Signed version of the progress report shall be submitted with the invoice in order to get the payment.

10. On October 11, 2022, I received an invoice from Allied for \$400,987.23 for “7200 HV Underground Service, Mileage 0.00 to 16.00.” Including GST, the total amount Allied invoiced was \$453,013.87. A copy of this invoice is attached as **Exhibit “A”**.

11. I took this to be an invoice for the 50% completion milestone, since 50% completion is the only event that triggers payment for Allied until the entire Project is done.

12. I agree with paragraph 16 of the Affidavit of Marco Levesque, which states: “In order to satisfy themselves that a project is complete, CN personnel often walk around the site and gauge whether the Services set out in the SOW have been completed in full.”

13. After receiving the invoice from Allied, I walked around the Fort Frances site to satisfy myself that Allied had actually completed 50% of the Fort Frances Project. I took pictures of the work Allied had completed.

14. The work on the Fort Frances Project was not even close to 50% complete. Service #1 was barely complete.

15. Service #1 required Allied to complete 12 sub-tasks. Of these, Allied completed 60% of two sub-tasks, 10% of one, and 0% of the remaining nine. My notes in relation to Service #1 are attached as **Exhibit “B”** and are reproduced below:

I. Mile 0 to 16.10 – 7200V High Voltage underground Service

1. Install new 7200V 1C#1 underground concentric neutral between mile 0 and 16.10 **60% Complete**
 - Scope changed to start at mile 0.75.
 - Didn't plow 1.5 miles between switches at Elizabeth.
 - ONLY PLOWED 13.85 miles.
 - 212 dig down locations within that 13.85 miles were noted upon inspection. It's taken Oakpark almost 1 month, and roughly \$150K to complete the dig downs, splices and fusion of conduit.
 - Oakpark had to install all the cable and conduit into the bridge troughing.
2. Supply and install all secondary equipment at each location as per Farifax Design plan. **0% Complete**
3. Mile 0.09 - Supply and install 20' Seacan with 600A switchgear material as per Fairfax design. Ready to connect to Hydro. (Auto Transfer Switch supplied by CN) **0% Complete**
4. Install standby generator provided by CN **0% Complete**
5. Concentric neutral cable splicing (each reel has 2500 meters of cable, splice kits supplied by CN) **0% Complete**
6. Along with 7200 Volt cable, install/plough 2" SDR 11 conduit for future fiber optic cable **60% Complete**
 - Roughly 16 conduit splices were required that Oakpark completed
 - Same amount of dig downs required as the power cable.

WOULD WE PAY FOR ALL THE CONDUIT THEY SUPPLIED? PERCENTAGE MAY CHANGE
7. Install all foundations for transformers, reactors, regulators etc.....as per Fairfax Design. **10% Complete**
 - Multiple locations had transformer bases installed wrong and were required to be dug up.
8. Coordinate with Atikokan Hydro and Ontario Hydro for service connections at source. **0% Complete**
9. Install Cable markers for buried high voltage cable. Supplied by CN **0% Complete**
10. Build all distribution panels at each required location as per diagram. **0% Complete**
11. Energize new system and perform all required safety and quality assurance tests. Documentation thereof related to safety assurance shall be submitted to CN and the design engineer. **0% Complete**

Upon completion, a system load test must be performed under maximum demand from all major circuit components. This can be completed in liaison with CN forces if required **0% Complete**

16. Three of the pictures I took of Allied's progress are also attached as **Exhibit “C”**. They demonstrate, very obviously, cable that is not plowed underground, sitting on top of the soil.

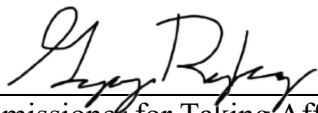
17. Given the obvious absence of 50% progress on the Fort Frances Project, I rejected Allied's invoice for \$453,013.87. I left a comment on Fieldglass on October 13, 2022, stating, “Job not complete. Project isn't at 50%. Will require approval from legal before payment.

Reason: Work Not per Specifications.” A copy of that comment is can be found as the last line of Exhibit A.

18. I also declined to sign a progress report. The SOW for Fort Frances states that a signed progress report is a condition to payment for the 50% milestone.

19. Allied went bankrupt before completing 50% of the Fort Frances Project. In the end, CN was forced to hire another contractor, Oakpark Powerline Services Ltd., to complete the Fort Frances Project, at a cost of \$478,780.30. A copy of a spreadsheet showing the invoices CN paid to Oakpark between September 5, 2022, and December 31, 2022, is attached as **Exhibit "D"**. The invoices reflected on the spreadsheet at Exhibit D relate to completing dig downs of the cable Allied plowed and did not complete to our standards, and splicing the cable and conduit Allied left above ground.

SWORN on September 28, 2023, by video conference by DARCY NAZAR, of the City of Winnipeg in the Province of Manitoba, who, at the time of the declaration, was located in the City of Winnipeg in the Province of Manitoba, before me in the City of Toronto in the Province of Ontario, in accordance with O. Reg. 431/20, Administering Oath or Declaration Remotely.



Commissioner for Taking Affidavits
Gregory Ringkamp LSO#: 83479R



Darcy Nazar

PRICEWATERHOUSECOOPERS INC.

and

2806401 ONTARIO INC. O/A ALLIED
TRACK SERVICES INC.

Court File No: CV-22-00687383-00CL

Applicant

Respondent

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

Proceeding commenced at Toronto

AFFIDAVIT OF DARCY NAZAR
(Sworn September 28, 2023)

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Lawyers for Canadian National Railway
Company

This is Exhibit "A" referred to in the Affidavit of Darcy Nazar sworn by Darcy Nazar of the City of Winnipeg, in the Province of Manitoba, before me at the City of Toronto, in the Province of Ontario, on September 28, 2023 in accordance with O. Reg. 431/20, Administering Oath or Declaration Remotely.



Commissioner for Taking Affidavits (or as may be)

GREG RINGKAMP


1/13/23, 9:53 AM

Fieldglass: Fee



JC

20220601 BNF PTC 7200V Power, Fort France SUB, ON, CANADA

Status	Next Step	Fee ID	Effective On
 Rejected	Resubmit	CNRTU00898495	2022-08-31

Buyer

Canadian National Railway

[Details](#) [Related](#)

Statement of Work ID

CNRTQ00004183

Accounting (CAD)

Requested Amount	400,897.23
Final Amount	400,897.23
Cost Allocation	%
402 01 0.00 143.65 162291 SÅ C PLE FORT FRANCES 9.0-18.95 FORT FRANCES SÅ C Supvr - Thunder Bay ON (NWK CF915200 20220110)	100.000
Total	100.000

Fee Details

Defined By	Buyer
Site	402 - FORT FRANCES - ON (ON402)
Auto Invoice	Yes
Remit-to Address:	
Vendor Invoice reference number	(No Value)
Invoicing Period Start Date	2022-06-01
Invoicing Period End Date	2022-08-31
Tax Jurisdiction	Not Applicable

Posting Information

Submitted By	Roman Malmas
Submit Date	2022-10-11 10:05 AM

Fee Payments (CAD) [Expand All](#)

#	Name	PO Number	Description	Owner	Capita lized?	Units	Rate /Unit	Amount
---	------	-----------	-------------	-------	------------------	-------	---------------	--------

1/13/23, 9:53 AM

Fieldglass: Fee

2	7200 HV Underground Service	Mileage 0.00 to 16.00	Nazar Darcy-114200-Manager S&C Construction	No	0.5	801,794 /EA	400,897.23
Total							400,897.23

Adjustments

Level	Name	Description	Type	Unit	Value
1	Event CR/DB Memo Holdback Adjustment		SOW Credit/Debit Memo	Percentage	0.000
1	Event Holdback Adjustment		SOW Invoice	Percentage	0.000
1	Fee CR/DB Memo Holdback 15%	If applicable	SOW Credit/Debit Memo	Percentage	- 15.000
1	Fee Invoice Holdback 15%	If applicable	SOW Invoice	Percentage	- 15.000
2	GST	GST applicable for SOW Invoice	SOW Invoice	Percentage	0.000
2	GST	GST applicable for SOW CR/DB Memo	SOW Credit/Debit Memo	Percentage	0.000
2	HST	HST applicable for SOW Invoice	SOW Invoice	Percentage	13.000
2	HST	HST applicable for SOW CR/DB Memo	SOW Credit/Debit Memo	Percentage	13.000
2	PST	PST applicable for SOW Invoice	SOW Invoice	Percentage	0.000
2	PST	PST applicable for SOW CR/DB Memo	SOW Credit/Debit Memo	Percentage	0.000
2	QST	QST applicable for SOW Invoice	SOW Invoice	Percentage	0.000
2	QST	QST applicable for SOW CR/DB Memo	SOW Credit/Debit Memo	Percentage	0.000

Comments

Entered	Name	Comment	Rating
2022-10-13 09:26 PM	Nazar Darcy-114200-Manager S&C Construction	Job not complete. Project isn't at 50%. Will require approval from legal before payment.	☆☆☆☆☆

https://www.fieldglass.net/pay_terms_unit_response.do?tabId=details&id=z22101114035575734088905&parzpp=aes%40GIW9We5NVjWx8OmfbP80... 2/3

1/13/23, 9:53 AM

Fieldglass: Fee

Reason: Work Not per Specifications

This is Exhibit “B” referred to in the Affidavit of Darcy Nazar sworn by Darcy Nazar of the City of Winnipeg, in the Province of Manitoba, before me at the City of Toronto, in the Province of Ontario, on September 28, 2023 in accordance with O. Reg. 431/20, Administering Oath or Declaration Remotely.



Commissioner for Taking Affidavits (or as may be)

GREG RINGKAMP

I. Mile 0 to 16.10 – 7200V High Voltage underground Service

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 - Oakpark had to install all the cable and conduit into the bridge troughing.
2. Supply and install all secondary equipment at each location as per Farifax Design plan. **0% Complete**
3. Mile 0.09 - Supply and install 20' Seacan with 600A switchgear material as per Fairfax design. Ready to connect to Hydro. (Auto Transfer Switch supplied by CN) **0% Complete**
4. Install standby generator provided by CN **0% Complete**
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Upon completion, a system load test must be performed under maximum demand from all major circuit components. This can be completed in liaison with CN forces if required **0% Complete**

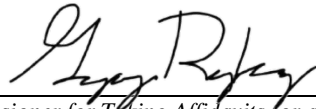
This is Exhibit “C” referred to in the Affidavit of Darcy Nazar sworn by Darcy Nazar of the City of Winnipeg, in the Province of Manitoba, before me at the City of Toronto, in the Province of Ontario, on September 28, 2023 in accordance with O. Reg. 431/20, Administering Oath or Declaration Remotely.



Commissioner for Taking Affidavits (or as may be)

GREG RINGKAMP

This is Exhibit “D” referred to in the Affidavit of Darcy Nazar sworn by Darcy Nazar of the City of Winnipeg, in the Province of Manitoba, before me at the City of Toronto, in the Province of Ontario, on September 28, 2023 in accordance with O. Reg. 431/20, Administering Oath or Declaration Remotely.



Commissioner for Taking Affidavits (or as may be)

GREG RINGKAMP

Date	Field Glass	Service	Activity Code	QTY	Amount
20221213	CNRPI00917613	S&C - Power Service	209056 214	128	\$11,940.73
	CNRPI00917609	S&C - Power Service	209056 214	117	\$10,282.13
	CNRPI00917615	S&C - Power Service	209056 214	132.5	\$11,056.89
	CNRPI00916946	S&C - Power Service	209056 214	113	\$9,941.61
	CNRPI00917611	S&C - Power Service	209056 214	142	\$11,259.00
	CNRPI00917614	S&C - Power Service	209056 214	141.5	\$13,464.02
	CNRPI00916935	S&C - Power Service	209056 214	110.5	\$9,000.19
	CNRPI00916940	S&C - Power Service	209056 214	116	\$8,928.07
	CNRPI00916941	S&C - Power Service	209056 214	112	\$8,573.29
	CNRPI00916942	S&C - Power Service	209056 214	113	\$8,631.65
	CNRPI00916944	S&C - Power Service	209056 214	111	\$8,514.93
	CNRPI00917610	S&C - Power Service	209056 214	132	\$10,597.72
	CNRPI00917607	S&C - Power Service	209056 214	3360	\$12,563.95
	CNRPI00916950	S&C - Power Service	209056 214	125	\$9,647.11
	CNRPI00916952	S&C - Power Service	209056 214	105	\$8,106.84
	CNRPI00917617	S&C - Power Service	209056 214	139	\$11,116.35
	CNRPI00916937	S&C - Power Service	209056 214	82	\$6,778.24
	CNRPI00916938	S&C - Power Service	209056 214	107	\$8,464.12
	CNRPI00916931	S&C - Power Service	209056 214	110.5	\$8,789.19
	CNRPI00916954	S&C - Power Service	209056 214	49	\$4,071.18
20221028	CNRPI00895041	S&C - Power Service	209056 214	21.5	\$1,775.25
20221031	CNRPI00898696	S&C - Power Service	209056 214	35	\$2,851.91
	CNRPI00898697	S&C - Power Service	209056 214	38	\$3,134.22
20221109	CNRPI00903859	S&C - Power Service	209056 214	811.360016	\$2,322.13
20221003	CNRPI00881855	S&C - Power Service	209056 214	87	\$6,713.71
	CNRPI00881852	S&C - Power Service	209056 214	97.5	\$7,620.83
20221221	CNRPI00925489	S&C - Power Service	209056 214	22	\$1,539.43
	CNRPI00925488	S&C - Power Service	209056 214	277.480011	\$2,040.44
20221004	CNRPI00888139	S&C - Power Service	209056 214	119	\$9,377.33
	CNRPI00888145	S&C - Power Service	209056 214	105.5	\$9,316.07
	CNRPI00888144	S&C - Power Service	209056 214	109	\$9,618.41
	CNRPI00888150	S&C - Power Service	209056 214	46	\$3,421.58
20221207	CNRPI00917125	S&C - Power Service	209056 214	118	\$8,883.51
	CNRPI00917127	S&C - Power Service	209056 214	102	\$8,572.43
	CNRPI00917110	S&C - Power Service	209056 214	98	\$8,390.25
	CNRPI00917123	S&C - Power Service	209056 214	114	\$8,553.79
	CNRPI00917107	S&C - Power Service	209056 214	99.5	\$8,863.10
	CNRPI00917126	S&C - Power Service	209056 214	98	\$8,242.71

Date	Field Glass	Service	Activity Code	QTY	Amount
	CNRPI00917128	S&C - Power Service	209056 214	98	\$8,242.71
	CNRPI00915837	S&C - Power Service	209056 214	110	\$8,224.02
	CNRPI00917121	S&C - Power Service	209056 214	110	\$8,224.02
	CNRPI00917099	S&C - Power Service	209056 214	89	\$7,052.00
	CNRPI00917101	S&C - Power Service	209056 214	92	\$7,123.03
	CNRPI00917104	S&C - Power Service	209056 214	92	\$7,123.03
	CNRPI00917129	S&C - Power Service	209056 214	102	\$7,564.53
	CNRPI00917114	S&C - Power Service	209056 214	123	\$9,271.64
	CNRPI00917115	S&C - Power Service	209056 214	97	\$7,176.45
	CNRPI00917131	S&C - Power Service	209056 214	14	\$1,114.48
	CNRPI00917117	S&C - Power Service	209056 214	34	\$2,717.86
	CNRPI00917097	S&C - Power Service	209056 214	68	\$5,269.74
	CNRPI00917130	S&C - Power Service	209056 214	104.5	\$7,919.12
20220930	CNRPI00881756	S&C - Power Service	209056 214	94	\$7,318.44
	CNRPI00881765	S&C - Power Service	209056 214	88.5	\$6,627.02
	CNRPI00881767	S&C - Power Service	209056 214	679.5	\$7,541.23
20221012	CNRPI00888049	S&C - Power Service	209056 214	112	\$8,714.55
	CNRPI00888051	S&C - Power Service	209056 214	107	\$8,332.26
	CNRPI00888047	S&C - Power Service	209056 214	1004	\$6,219.39
	CNRPI00888042	S&C - Power Service	209056 214	12	\$824.16
20221220	CNRPI00925926	Construction - Earth - Excavation	209051 214	136	\$11,398.18
	CNRPI00925503	Construction - Earth - Excavation	209051 214	69.5	\$4,801.88
	CNRPI00925505	Construction - Earth - Excavation	209051 214	104.5	\$7,975.80
	CNRPI00925504	Construction - Earth - Excavation	209051 214	65.5	\$5,147.48
	CNRPI00925501	Construction - Earth - Excavation	209051 214	124.5	\$9,611.99
	CNRPI00925502	Construction - Earth - Excavation	209051 214	58	\$4,280.98
TOTAL =					\$478,780.30

**IN THE MATTER OF THE RECEIVERSHIP OF
2806401 ONTARIO INC. o/a ALLIED TRACK SERVICES INC.**

PRICEWATERHOUSECOOPERS INC., (SOLELY IN ITS CAPACITY
AS COURT-APPOINTED RECEIVER AND MANAGER OF
BRIDGING FINANCE INC. AND CERTAIN RELATED ENTITIES
AND INVESTMENT FUNDS)
Applicant

-and- 2806401 ONTARIO INC. O/A ALLIED TRACK SERVICES INC.

Respondent

Court File No. CV-22-00687383-00CL

**ONTARIO
SUPERIOR COURT OF JUSTICE
(BANKRUPTCY AND INSOLVENCY)
COMMERICAL LIST**

PROCEEDING COMMENCED AT
TORONTO

**RESPONDING APPLICATION RECORD
VOLUME 1 OF 2
(TABS 1A – 2H)**

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Lawyers for the Respondent,
Canadian National Railway Company

**IN THE MATTER OF THE RECEIVERSHIP OF
2806401 ONTARIO INC. o/a ALLIED TRACK SERVICES INC.**

PRICEWATERHOUSECOOPERS INC., (SOLELY IN ITS CAPACITY
AS COURT-APPOINTED RECEIVER AND MANAGER OF
BRIDGING FINANCE INC. AND CERTAIN RELATED ENTITIES
AND INVESTMENT FUNDS)
Applicant

-and-

2806401 ONTARIO INC. O/A ALLIED TRACK SERVICES INC.

Respondent

Court File No. CV-22-00687383-00CL

**ONTARIO
SUPERIOR COURT OF JUSTICE
(BANKRUPTCY AND INSOLVENCY)
COMMERCIAL LIST**

PROCEEDING COMMENCED AT
TORONTO

**RESPONDING MOTION
RECORD VOLUME 2 OF 2
(TABS 3A – 3D)**

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