

District of: Manitoba  
Division No. 01-  
Court No. BK 17-01-04509  
Estate No. 21-2281867

FORM 77

**Notice of Disallowance of Claim, Right to Priority or Security or Notice of Valuation of Claim**  
(Subsection 135(3) of the Act)

Bellhop Express Corp.  
Attention Mr. James Crespi  
3136 Burnham Street North  
Cobourg, ON K9A 1J7

**Take notice that:**

As trustee acting in the matter of the proposal of 5274398 Manitoba Ltd. operating as Cross Country Manufacturing, we have disallowed your claim (or your right to a priority or your security on the property) in whole, pursuant to subsection 135(2) of the Act, for a number of reasons, including but not limited to the following:

1. The claim is contingent and unliquidated and has therefore been considered by the trustee, in conjunction with the Inspector, pursuant to ss. 121(2) and 135 of the *BIA*.
2. The Statement of Claim in Ontario Superior Court of Justice action No. 914/17 (the "**BEC Action**"), as attached to the Affidavit of James Crespi given in support of the Proof of Claim ("**Crespi Affidavit**") seeks, *inter alia*, damages for breach of contract, but no contract is alleged between Bellhop Express Corp. ("**BEC**") and the debtor 5274398 Manitoba Ltd. o/a Cross Country ("**5274398**") and the documents submitted do not support the existence of a contract between BEC and 5274398 Manitoba Ltd. o/a Cross Country ("**5274398**") or between BEC and Cervus Contractors ("**Cervus**").
3. The BEC Action alleges a breach of written warranty on the part of 5274398, however:
  - (a) there is no evidence in the Crespi Affidavit of an assignment of the warranty from Mercado Capital to BEC;
  - (b) the Warranty document relied upon in the Crespi Affidavit:
    - (i) is unsigned by 5274398;
    - (ii) excludes implied warranties of merchantability or fitness for particular purposes;
    - (iii) states that 5274398, "shall not be liable for incidental or consequential damages resulting from any breach of warranty including, and without limiting the generality of the foregoing, loss of income...", and therefore on its face excludes the loss of profits claimed by BEC in its Proof of Claim.
4. The Statement of Claim in the BEC Action asserts that the same damage claimed against 5274398 was caused by the independent breaches by third parties.
5. The Crespi Affidavit asserts that orders were placed for two trailers on March 18, 2015; however, the documents enclosed show that only one trailer was ordered from 5274398 by Cervus on March 25, 2015.

6. Crespi Affidavit alleges that BEC's business failed "as a direct result of the loss of revenue caused by the Dufferin contracts being cancelled", among other things, which was alleged to have been caused by defects in the trailer and/or delays in delivery of the trailer; however, the documents produced show that BEC was threatened with the loss of the contract with Dufferin prior to the earliest date that the first trailer is alleged to have been promised to be delivered, and there is no documentary evidence of the actual cancellation of the Dufferin contract, the date thereof, or the reasons for the cancellation. In particular, the Dufferin letter threatening to cancel BEC's contract is dated May 5, 2015 which pre-dates the date asserted in the Crespi Affidavit for the delivery of the first trailer.

7. As to the second trailer, documentation attached to the Crespi Affidavit suggests that BEC declined to proceed, not that 5274398 and/or Cervus failed to deliver it.

8. The BEC Action contains allegations of pre-contractual misrepresentations; however, the only representations on the part of 5274398 cited in the Crespi Affidavit are written statements in an owner's manual provided at the time BEC took possession of the trailer. Further, the alleged misrepresentations appear to be in the nature of mere puffery.

9. As to the damage claimed, there is no reasonable evidence to support the loss of profits claimed. Among other things:

- (a) the Income Statement included in the Crespi Affidavit shows an increase in after-tax profits for the 12 month period ending August 2016 over the prior period and is not indicative of financial stress;
- (b) the Balance Sheet included in the Crespi Affidavit shows an increase in Retained Earnings and Equity for the 12 month period ending August 2016 over the prior period and is not indicative of financial stress;
- (c) there is no substantiation of the claim that delays in the delivery of the trailer affected BEC's operations and/or contracts;
- (d) there is no substantiation of when and for how long the 5274398 trailer was out of service, or of the financial impact of same;
- (e) there is no substantiation of how or why down-time with the 5274398 trailer impacted the ability of BEC's other trailers to generate income in 2016;
- (f) there is no evidence of why BEC did not replace the trailer manufactured by 5274398 with another trailer if the expected profits from continued operations were as large as claimed;
- (g) there is no substantiation of when or for what reason BEC ceased operations.

10. The Crespi Affidavit includes documentation which supports the assertion that certain repair costs were incurred relatively soon after BEC began to use the 5274398 trailer; however,

- (a) certain of the documentation of incurred costs does not appear to relate to the subject trailer;
- (b) certain of the documentation of incurred costs appears to relate to ordinary wear and tear;
- (c) the balance of the documentation of incurred costs suggest that the cost of the repairs were modest relative to the value of the trailer. Further, this documentation largely pertains to a period of several months following BEC's receipt of the trailer;
- (d) documentation included in the Crespi Affidavit suggests that BEC neglected or delayed in returning the trailer to 5274398 for warranty work/repairs, despite requests by Cervus and 5274398;
- (e) there is no substantiation of how such repairs caused the loss of profits claimed.


11. In the result, the BEC claim is too remote and too speculative to be accepted or valued.

And further take notice that if you are dissatisfied with our decision in disallowing your claim in whole (or a right to rank or your security or valuation of your claim), you may appeal to the court within the 30-day

period after the day on which this notice is served, or within any other period that the court may, on application made within the same 30-day period, allow.

Dated at the City of Winnipeg in the Province of Manitoba, this 27<sup>th</sup> day of September, 2018.

LAZER GRANT INC.

Per: 

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