

COURT FILE NUMBER 2001-06194  
COURT COURT OF QUEEN'S BENCH OF ALBERTA  
JUDICIAL CENTRE CALGARY

**In the Matter of the Companies' Creditors Arrangement Act, RSC 1985, c C-36 (as amended)**

**And in the Matter of the Compromise of Arrangement of REDROCK CAMPS INC., SOCKEYE ENTERPRISES INC., SWEETWATER HOSPITALITY INC. and BALDR CONSTRUCTION MANAGEMENT INC.**

APPLICANTS **INVICO DIVERSIFIED INCOME L.P. and INVICO TRADE CAPITAL L.P.**

RESPONDENTS **REDROCK CAMPS INC., SOCKEYE ENTERPRISES INC., SWEETWATER HOSPITALITY INC. and BALDR CONSTRUCTION MANAGEMENT INC.**

APPLICANT BLACK DIAMOND LIMITED PARTNERSHIP (cob as BLACK DIAMOND GROUP)

DOCUMENT **APPLICATION (for Section 32(2) Relief)**

ADDRESS FOR SERVICE AND CONTACT INFORMATION OF PARTY FILING THIS DOCUMENT **Caron & Partners LLP**  
2120, 237 – 4<sup>th</sup> Avenue SW  
Calgary, AB T2P 4K3  
Tel: (403) 262-3000  
Fax: (403) 237-0111  
**Attn: R.J. Daniel Gilborn / Dean A. Hutchison / Lucinda A. Wong**  
Solicitors for Black Diamond Group  
Email: [dgilborn@caronpartners.com](mailto:dgilborn@caronpartners.com) / [dhutchison@caronpartners.com](mailto:dhutchison@caronpartners.com) [lwong@caronpartners.com](mailto:lwong@caronpartners.com)  
File No. 60441-000

**NOTICE TO THE RESPONDENT(S): See the Service List attached to Service Letter**

*This Application is made against you or affects you. You are the Respondent(s) or are affected persons.*

*You have the right to state your side of this matter before the Court.*

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

Date:	February 2, 2021
Time:	10:00 AM
Where:	Court of Queen's Bench of Alberta, Virtual Courtroom 60 via Webex (Commercial List Court)
Before Whom:	JUSTICE C.M. JONES (Commercial List)

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

**Remedy Claimed or Sought:**

1. The Applicant in this Application is Black Diamond Limited Partnership (cob as Black Diamond Group) ("**Black Diamond**"). Black Diamond applies for an Order substantially for the following relief:

- (a) Given the urgent nature thereof, granting leave for this Application, or portions of it, to be heard on February 2, 2021 at 10:00 AM along with other matters scheduled in the within Action;
- (b) Abridging the time for notice of this Application and for service of the Application and materials in support thereof to the time actually given and validating and deeming good and sufficient the said service;
- (c) A finding that no disclaimers of agreements pursuant to section 32(1) of the CCAA were served on Black Diamond until January 15, 2021 (the "**Disclaimer Notices**"), thus the 15 days under section 32(2) of the CCAA did not begin to run until that date;
- (d) An Order prohibiting the Disclaimer Notices, or one or more of them, pursuant to section 32(2) of the CCAA;
- (e) In the alternative, directions (and a procedural Order) facilitating the matter in paragraph (d) to be promptly heard and decided;
- (f) To the extent necessary, directions regarding how the resolution of paragraph (d) above affect or may affect the Application for Sale Approval, Vesting,

Assignment and Reverse Vesting filed by the Monitor in the within Action on January 27, 2021 (the “**Reverse Vesting Application**”); and

(g) Such further and other relief that the Court considers necessary in the circumstances.

**Grounds for Making This Application:**

2. Black Diamond and one of the debtors, Redrock Camps Inc. (“**Redrock**”), are parties to various contracts that deal with, *inter alia*, camp logistics, rentals and catering. These are pre-filing agreements. There are 6 such contracts at issue in this Application (the “**Impugned Contracts**”).

3. On or about December 17, 2020, Redrock, either of its own accord, or more likely at the request of one or more of the Applicants, Invico Diversified Income LP and Invico Trade Capital LP (collectively “**Invico**”) completed the Disclaimer Notices and provided them to the Monitor for approval as that procedure is contemplated in section 32(1) of the CCAA and the Regulations prescribed under that section.

4. On or about December 18, 2020, the Monitor signalled its approval on each of the Disclaimer Notices. The Monitor’s said approval was almost certainly premised on the implicit understanding that the Disclaimer Notices would be served on Black Diamond under the CCAA and its Regulations forthwith. Unfortunately, they were not.

5. For reasons unknown, the Disclaimer Notices were not served upon Black Diamond until January 15, 2021.

6. Notwithstanding the deadlines set out in the Disclaimer Notices, as they were not properly served on Black Diamond until January 15, 2021, those deadlines cannot be binding. Under section 32(2) of the CCAA, the 15 days to bring this Application to prohibit the Disclaimer Notices did not begin to run until that date.

7. On January 26, 2021, Invico served the Application to Plan Sanction and Stay Extension. On January 27, 2021, the Monitor served the Reverse Vesting Application. The relief sought in these Applications, in particular the Reverse Vesting Application, may be materially impacted in

the event of a disallowance of the Disclaimer Notices by this Court. Further direction on that point, or contingency action may need to be taken in that event.

8. On January 28, 2021, a representative of Black Diamond contacted counsel to the Monitor to make the Monitor aware of the issues regarding the late delivery of the Disclaimer Notices and Black Diamond's intent to dispute the Disclaimer Notices. Counsel to the Monitor replied later that day stating that the Monitor had not participated in the issuance of the Disclaimer Notices and was not aware of when they were received by Black Diamond. The Monitor's counsel also advised Black Diamond to retain its own counsel regarding any dispute of the Disclaimer Notices.

9. On January 29, 2021, with 15 days from the receipt of the Disclaimer Notices rapidly approaching, Black Diamond retained its counsel set out on the first page above to bring this Application on an urgent basis and seek to have it heard at the same time as the other matters scheduled for February 2, 2021.

10. One or more of the Disclaimer Notices should be prohibited for the following reasons:

(a) Discretionary bars (and other consequences) arising as a result of the delay in forthwith serving the Disclaimer Notices; and

(b) The Disclaimer Notices will likely cause significant financial hardship to Black Diamond.

11. In particular, if the Impugned Contracts are disclaimed, the remaining contracts in force between Black Diamond and Redrock (or whichever entity takes assignment and vesting of them) would disproportionately provide a windfall to Redrock and would unduly shed liabilities of the Impugned Contracts in a manner that unfairly upsets the negotiated positions between these two parties. Black Diamond would be forced to provide continued contract revenue to Redrock (or whichever entity takes assignment and vesting of them) and compelled to give credit under the Impugned Contracts for liabilities that Redrock has admitted is its liability. That situation cannot be equitable.

12. In the event the Court cannot decide this Application on short notice, it has the jurisdiction to give a procedural Order to facilitate the hearing of it promptly. The Court also has jurisdiction to give directions regarding what effect this Application might have on the other relief sought on February 2, 2021.

**Material or Evidence to be Relied On:**

13. Black Diamond shall rely upon the following materials and evidence:

- (a) The Reports previously filed by the Monitor;
- (b) Prior filings in this Action that its counsel may specify;
- (c) The Affidavit of Mike Ridley, to be sworn; and
- (d) Such further and other materials as its counsel may specify and this Court may allow.

**Applicable Rules:**

14. Black Diamond shall rely upon rules 6.11, 11.27 and 13.5 of the *Alberta Rules of Court*, AR 124/2010 (as amended).

**Applicable Acts and Regulations:**

15. Black Diamond shall rely upon sections 9, 10, 11 and 32 of the CCAA and section 13 of the *Companies' Creditors Arrangement Regulations*, SOR/2009-219.

**Any Irregularity Complained of or Objection Relied On:**

16. As set out above, Black Diamond submits that the Disclaimer Notices ought to have been served forthwith after approval by the Monitor and they were not.

**How the Application is Proposed to be Heard or Considered:**

17. Via Webex before the Honourable Mr. Justice C.M. Jones, in Chambers on the Commercial List in the virtual courtroom above set out.

**WARNING**

If you do not come to Court either in person or by your lawyer, the Court may give the Applicants what they want in your absence. You will be bound by any order that the Court makes. If you want to take part in this Application, you or your lawyer must attend in Court on the date and at the time shown at the beginning of the form. If you intend to rely on an Affidavit or other evidence when the Application is heard or considered, you must reply by giving reasonable notice of the material to the Applicant.