

2025 01G 0491

IN THE SUPREME COURT OF NEWFOUNDLAND AND LABRADOR
IN BANKRUPTCY AND INSOLVENCY

IN THE MATTER OF the *Companies'*
Creditors Arrangement Act, RSC 1985 c.C-
36, as amended (the **CCAA**)

AND IN THE MATTER OF an application of
Karwood Contracting Ltd., Karwood
Engineering Inc., Karwood Design Group
Ltd., and Karwood Ontario Ltd. (the
Applicants)

BANK OF MONTREAL'S
POSITION STATEMENT
(on Applicants' Notice of Motion dated 29 September 2025)

Cox & Palmer
Solicitors for the Bank of Montreal

235 Water Street, Suite 1100
St John's, NL A1C 1B6
Attention: Mark Russell
Email: mrussell@coxandpalmer.com

Brunswick Square, Suite 1500
1 Germain Street
Saint John, NB E2L 4V1
Attention: Josh J.B. McElman KC
Email: jmcelman@coxandpalmer.com

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SUMMARY OF CURRENT DOCUMENT	
Court File No:	2025 01G 0491
Date of Filing of Document:	____ October 2025
Name of Filing Party or Person:	Bank of Montreal
Application to which Document being filed relates:	Notice of Motion dated 29 September 2025 filed by the Applicants
Statement of purpose in filing:	To oppose relief sought in Notice of Motion

I. Introduction

1. The Bank of Montreal (the **Bank**) submits this brief statement to set out its position on the Notice of Motion dated 29 September 2025 filed by the Applicants seeking (a) approval of a proposed asset purchase agreement (the **APA**), (b) an increase in the Administration Charge to \$300,000, and (c) an extension of the stay of proceedings under the CCAA. The Bank reserves its right to file additional written submissions in accordance with the Procedural Order filed 9 October 2025 and will make further oral submissions at the scheduled hearing on 23-24 October 2025.

2. In short, the Bank's position is:

- 2.1. The APA should not be approved. It fails to meet the applicable legal test for approval and does not represent fair value for the assets proposed to be sold. Approval of the APA would materially and unfairly prejudice the Bank's position under its debtor-in-possession loan (the **DIP Loan**) because it would prevent the Bank from exercising its crystallized right to enforce its security for the DIP Loan.
- 2.2. The Administration Charge should not be increased. The existing Administration Charge was the result of a negotiated compromise between the Bank, the Applicants and the beneficiaries of the Administrative Charge, and the Bank advanced the DIP Loan on those terms. It would be unfairly prejudicial for the Administration Charge to be increased at the expense of the Bank at the end-stage of this proceeding by re-writing the parties' agreement without the Bank's consent. Further, the ARIO provides that no variation to it – which includes an increase to the Administration Charge – may impair the priority of the DIP Loan in these circumstances.
- 2.3. The CCAA stay should not be extended. There is no further prospect of an acceptable compromise or arrangement and the Applicants do not have access to any further operating funds. The Applicants have defaulted on the DIP Loan and the Bank is entitled to enforce its security for the DIP Loan. The Bank has lost confidence in the Applicants' management. The Bank's application for the appointment of a receiver should be granted, with the receiver taking possession and control of the remaining assets.

II. **Approval of the APA**

- 3. Section 36(3) of the CCAA requires the Court to consider, when deciding whether to approve a sale of assets outside the ordinary course of business, among other things:

- 3.1. whether the consideration to be received for the assets is reasonable and fair, taking into account their market value;
 - 3.2. the effects of the proposed sale or disposition on the creditors; and
 - 3.3. the extent to which the creditors were consulted.
4. Without prejudice to the Bank's right to advance arguments on the other relevant factors, each of the above factors points against approving the APA:
 - 4.1. The purchase price under the APA does not reflect fair value for the assets. The Bank relies on the analysis included in the Confidential Affidavit of David Boyd sworn 10 October 2025, which demonstrates that the information provided by the Applicants and relied upon by the Monitor is unreliable, and that certain assumptions and analysis made by the Monitor based on information provided by the Applicants are therefore unsafe.
 - 4.2. In particular, the valuations used by the Applicants and the Monitor to assess the APA assume that any alternative sale or realization process are not appraisals or based on an independent assessment and would be on distressed and accelerated basis. However, the alternative here is a court-appointed receivership that could deal with vacant land by holding it at minimal cost while exposing it to the market until full value is achieved, and pursue collection of receivables over time.
 - 4.3. The effect of a sale under the APA would be to remove from the field the only remaining assets that secure the DIP Loan. The Bank is of the view that it, and possibly other stakeholders, would obtain a better return by dealing with the assets through a receivership, and it is entitled to have that receiver appointed under the terms of the DIP Loan and the ARIO negotiated with and agreed to by the Applicants.

- 4.4. The Applicants put forward the APA for approval without the consent of the Bank and without having meaningfully consulted with the Bank. In any event, the Bank is opposed to the APA and its views – as the fulcrum creditor on the Monitor’s analysis – should be afforded considerable deference by this Court, particularly where it has put forward a reasonable alternative in a court-appointed receivership that will have the benefit of sufficient time to properly test the market and embark on a coordinated strategy to collect receivables.

Administration Charge Increase

5. The Administration Charge cannot be increased at the expense of the Bank’s charge for the DIP Loan. The ARIO expressly precludes that option at [38]:

... if any of the provisions of this Order in connection with the DIP Agreement, the other Definitive Documents or the DIP Lender’s Charge shall subsequently be stayed, modified, varied, amended, reversed, or vacated in whole or in [part] (collectively, a “Variation”) whether by subsequent order of this Court ... such Variation shall not in any way impair, limit or lessen the priority, protections, rights or remedies of the DIP Lender ... with respect to any advances made or obligations incurred prior to the DIP Lender being given notice of the Variation.

6. Accordingly, no variation of the ARIO may now impair the priority of the charge for the DIP Loan. If the Court agrees that the Administration Charge should be increased, any incremental amount must be subordinate to the DIP Loan charge.
7. But even in the absence of those terms, an increase to the Administration Charge in these circumstances would be unfairly prejudicial to the Bank and other stakeholders. In *Alderbridge Way GP Ltd (Re)*,¹ the court considered a request to increase the administration charge in the later stages of a CCAA proceeding. The senior secured creditor and interim lender, Romspen, opposed the request. At [100], the court said,

¹ *Alderbridge Way GP Ltd (Re)*, 2022 BCSC 1694 [TAB 1].

referring to the negotiated terms upon which Romspen had advanced interim financing:

In this context, I consider Alderbridge's attempt to "revisit" the amount of the Administration Charge to secure Dentons' pre-filing fees to be unfair to Romspen and unreasonable in the circumstances. At bottom, Alderbridge seeks to retroactively change key aspects of the earlier agreement of the parties in terms of the amount of the Administration Charge, which would unjustly prejudice Romspen.

8. So too here. The quantum of the Administration Charge was part of the negotiated terms upon which the Bank made the DIP Loan. To alter that arrangement now, in the dying days of this proceeding, at the expense of the Bank and without its consent, would be unjust, and it should be rejected. As the *Alderbridge* court noted, the Administration Charge is intended to secure professional fees, not be the primary source of payment, and professional firms in this area are highly sophisticated and the onus is on them to ensure they are paid as intended.²
9. From a broader perspective, acceding to the Applicants' request would undermine the reliability of DIP agreements generally and suggest to the market that DIP lenders could not count on the terms of the agreements they negotiate being upheld by the court. Parties to CCAA proceedings need to have confidence in the process and the Orders issued by the Court; in this case, the clear language of the ARIO. The facts here do not support the Court retrospectively stripping the protection afforded the DIP lender in the ARIO on which it relied in making its advances.

Stay Extension and Alternative to CCAA

10. If the Court agrees with the Bank that the APA should not be approved, the stay should not be extended further and the Bank's receivership application should be granted.

² *Alderbridge* at [49] [TAB 1].

There is no longer any prospect of a successful restructuring and in those circumstances it is inappropriate to continue a stay.³

11. It cannot be disputed that the Applicants are in default of their obligations to the Bank under the DIP Loan. In those circumstances, the parties have already agreed what the Bank's remedies are: the Bank may appoint a private receiver and apply to the Court for the appointment of a receiver.⁴ It has proceeded with these remedies, and the Court should acknowledge and respect the agreement that the parties negotiated as reflected in the ARIO and previously approved by this Court.
12. As explained in the affidavit evidence filed by the Bank, and referred to variously above, a court-appointed receivership is a better alternative than continuing the CCAA or approving the APA. The Applicants have been operating for some time without adequate funding to run a robust sales process for the remaining assets. Any sale, including the APA, is necessarily a quick liquidation sale without the benefit of a fulsome test of the market and without the usual valuation standards that would be obtained in these circumstances. In contrast, a court-appointed receiver can hold vacant land at minimal cost while waiting out the market, and plan and execute a receivables collection strategy with the benefit of ongoing funding and without writing off any receivables on the basis that there are short-term issues in collection.
13. All of which is respectfully submitted.

³ *Humber Valley Resort Corp (Re)*, 2008 NLTD 160 at [15] [TAB 2].

⁴ ARIO at [36(b)].

DATED at St John's, Newfoundland and Labrador, this 10th day of October, 2025.



Cox & Palmer
Solicitors for the Bank of Montreal

235 Water Street, Suite 1100
St John's, NL A1C 1B6
Attention: Mark Russell
Email: mrussell@coxandpalmer.com

Brunswick Square, Suite 1500
1 Germain Street
Saint John, NB E2L 4V1
Attention: Josh J.B. McElman KC
Email: jmcelman@coxandpalmer.com

AUTHORITIES LIST

Alderbridge Way GP Ltd (Re), 2022 BCSC 1694

TAB 1

Humber Valley Resort Corp (Re), 2008 NLTD 160

TAB 2

TAB 1

2022 BCSC 1694
British Columbia Supreme Court

Alderbridge Way GP Ltd. (Re)

2022 CarswellBC 2702, 2022 BCSC 1694, 2022 A.C.W.S. 3983, 4 C.B.R. (7th) 98

**In the Matter of the Companies' Creditors Arrangement Act, R.S.C. 1985, c. C-36,
as amended**

And In the Matter of a Plan of Compromise and Arrangement of 0989705 B.C. Ltd., Alderbridge Way GP Ltd. and
Alderbridge Way Limited Partnership

Fitzpatrick J., In Chambers

Heard: August 11, 19, 2022
Judgment: September 28, 2022
Docket: Vancouver S222758

Counsel: J.R. Sandrelli, V.L. Cross, for Petitioners, 0989704 B.C. Ltd., Alderbridge Way GP Ltd., and Alderbridge Way
Limited Partnership
P.L. Rubin, for Romspen Investment Corp.
M. Gill, for Bowra Group Inc.
S.Y. Bhura, for CIBT Education Group Inc., GEC Education City (Richmond), GEC (Richmond) GP Inc.
A. Williams, for JV Driver Investments Inc.

Related Abridgment Classifications

Bankruptcy and insolvency

[XVII](#) Practice and procedure in courts
[XVII.1](#) Stay of proceedings

Bankruptcy and insolvency

[XIX](#) Companies' Creditors Arrangement Act
[XIX.7](#) Miscellaneous

Headnote

Bankruptcy and insolvency --- Companies' Creditors Arrangement Act --- Miscellaneous

Company were petitioners, in bankruptcy matter — Company claimed that administration charge should be increased, to secure payment of company's outstanding counsel fees — Company also applied for order, allocating administration charge between company's counsel and counsel for monitor — Secured creditors opposed application — Company made application for above-noted relief — Application dismissed — There was no duplication of roles, that would have argued in favour of increasing amount of administration charge — Risk of non-payment to secured creditors had increased, as result of restructuring — There was no basis for company, to assert that previous court order or cash flow forecasts provided reasonable basis to assume subject amounts would be paid — Non-payment to counsel, did not support increase in administration charge — Company was essentially seeking guarantee of payment of pre-filing fees at expense of creditors — This relief was not warranted — Alternative relief of allocating charge to counsel, was not granted.

Bankruptcy and insolvency --- Practice and procedure in courts --- Stay of proceedings

Table of Authorities

Cases considered by *Fitzpatrick J., In Chambers*:

Alderbridge Way GP Ltd. (Re) (2022), 2022 BCSC 1436, 2022 CarswellBC 2241 (B.C. S.C.) — referred to

Boutique Euphoria inc., Re (2007), 2007 CarswellQue 14278, 2007 QCCS 7127 (C.S. Que.) — referred to

Boutique Euphoria inc., Re (2007), 2007 CarswellQue 14279, 65 C.B.R. (5th) 57, 2007 QCCS 7129 (C.S. Que.) — referred to

Canada v. Canada North Group Inc. (2021), 2021 SCC 30, 2021 CSC 30, 2021 CarswellAlta 1780, 2021 CarswellAlta 1781, 2021 D.T.C. 5080, (sub nom. *La Reine c. Canada North Group Inc.*) 2021 D.T.C. 5081, 91 C.B.R. (6th) 1, [2021] 5 C.T.C. 111, 28 Alta. L.R. (7th) 1, [2021] 10 W.W.R. 1, 460 D.L.R. (4th) 309, 19 B.L.R. (6th) 1 (S.C.C.) — referred to

Canwest Publishing Inc. / Publications Canwest Inc., Re (2010), 2010 ONSC 222, 2010 CarswellOnt 212, 63 C.B.R. (5th) 115 (Ont. S.C.J. [Commercial List]) — considered

Laurentian University of Sudbury (2021), 2021 ONSC 659, 2021 CarswellOnt 1224, 87 C.B.R. (6th) 278 (Ont. S.C.J.) — referred to

Laurentian University of Sudbury (2021), 2021 ONSC 3545, 2021 CarswellOnt 7075, 89 C.B.R. (6th) 243 (Ont. S.C.J.) — referred to

Mountain Equipment Co-Operative (Re) (2020), 2020 BCSC 2037, 2020 CarswellBC 3324, 86 C.B.R. (6th) 140 (B.C. S.C.) — referred to

Pacific Shores Resort & Spa Ltd., Re (2011), 2011 BCSC 1775, 2011 CarswellBC 3500, 75 C.B.R. (5th) 248 (B.C. S.C. [In Chambers]) — referred to

Timminco Ltd., Re (2012), 2012 ONSC 506, 2012 CarswellOnt 1263, 95 C.C.P.B. 48, 85 C.B.R. (5th) 169 (Ont. S.C.J. [Commercial List]) — referred to

Walter Energy Canada Holdings, Inc., Re (2016), 2016 BCSC 107, 2016 CarswellBC 158, 23 C.C.P.B. (2nd) 201, 33 C.B.R. (6th) 60 (B.C. S.C.) — referred to

Statutes considered:

Companies' Creditors Arrangement Act, R.S.C. 1985, c. C-36

Generally — considered

s. 11 — referred to

s. 11.7(1) [en. 1997, c. 12, s. 124] — referred to

s. 11.52(1)(a) [en. 2007, c. 36, s. 66] — referred to

s. 11.52(1)(b) [en. 2007, c. 36, s. 66] — referred to

s. 11.52(2) [en. 2007, c. 36, s. 66] — referred to

Fitzpatrick J., In Chambers:

INTRODUCTION

1 The petitioners (collectively, “Alderbridge”) apply for an order increasing the Administration Charge from \$300,000 to \$655,000, which is focussed on securing payment of Alderbridge’s outstanding counsel’s fees. In addition, Alderbridge applies for an order allocating the Administration Charge, as increased, as between Alderbridge’s counsel (\$455,000) and the Monitor and its counsel (\$100,000 each).

2 The application is opposed by two major secured creditors, Romspen Investment Corporation (“Romspen”) and CIBT Education Group Inc. and its related entities (collectively, “CIBT”). Romspen is Alderbridge’s first and largest secured creditor. CIBT is in third position, however, it raises certain potential priority issues that may increase its ranking. Romspen and CIBT essentially advance the same arguments on this application. I will therefore refer only to the arguments as being those of Romspen.

BACKGROUND FACTS

3 The underlying facts that inform this application are complex.

Historical Facts re Alderbridge

4 Alderbridge’s main asset is a very large stalled development project in Richmond, BC.

5 In 2018, construction of the development began. In November 2019, Romspen was granted a first ranking charge, ranking ahead of the second-tier lenders and CIBT’s third ranking security. Further financing to support the Romspen loan was contemplated but never materialized.

6 After March 2020, Romspen did not make any further advances to Alderbridge. From that time forward, Alderbridge made significant efforts to secure new construction financing and later, conduct a sales process, all from its own resources. In September 2020, construction halted. By January 2022, efforts to refinance or sell the development assets had failed.

7 Since mid-2020, throughout the course of Alderbridge’s restructuring efforts, it has been assisted by its legal counsel, Dentons Canada LLP (“Dentons”).

8 For its services, Dentons received \$378,627 from Alderbridge in the ordinary course prior to the filing under the *Companies’ Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended [CCAA]. However, when this proceeding began, Dentons was still owed billed and work-in-progress fees and disbursements estimated at \$525,000 (but actually \$575,000).

The Initial Hearing

9 On April 1, 2022, I granted an initial order in favour of Alderbridge pursuant to the CCAA (the “Initial Order”). My reasons for doing so are indexed at *Alderbridge Way GP Ltd. (Re)*, 2022 BCSC 1436 [Initial Reasons].

10 At the hearing on April 1, 2022, this Court addressed the usual matters, including appointing the Monitor, as proposed by Alderbridge.

11 The Initial Order provided that the Administration Charge was set at \$300,000. The form of the order in relation to the Charge and the payment of professional fees followed the usual wording found in this Court’s CCAA Initial Model Order, as follows:

31. The Monitor, counsel to the Monitor, if any, and counsel to the Petitioners shall be paid their reasonable fees and disbursements, in each case at their standard rates and charges, by the Petitioners as part of the cost of these proceedings. The Petitioners are hereby authorized and directed to pay the accounts of the Monitor, counsel to the Monitor and counsel to the Petitioners on a periodic basis and, in addition, the Petitioners are hereby authorized to pay to the Monitor, counsel to the Monitor, and counsel to the Petitioners, retainers in the amounts of \$50,000 respectively to be held by them as security for payment of their respective fees and disbursements outstanding from time to time.

...

33. The Monitor, counsel to the Monitor, if any, and counsel to the Petitioners shall be entitled to the benefit of and are hereby granted a charge (the "Administration Charge") on the Property, which charge shall not exceed an aggregate amount of \$300,000 as security for their respective fees and disbursements incurred at the standard rates and charges of the Monitor and such counsel, both before and after the making of this Order which are related to the Petitioners' restructuring. The Administration Charge shall have the priority set out in paragraphs 40, 42, and 43 of this Order.

[Emphasis added.]

12 I accepted that the amount of the Administration Charge was reasonable (*Initial Reasons* at para. 9), noting that no stakeholder, including Romspen, objected to that amount. In addition, the Proposed Monitor stated in its Report dated March 31, 2022 at para. 12.3 that this amount was appropriate and reasonable given:

... the scale and complexity of Alderbridge and the CCAA proceedings, the services to be provided by the beneficiaries of the Administration Charge and the size of the charges approved in similar CCAA proceedings.

[Emphasis added.]

13 In the usual fashion, the Initial Order (para. 8(a)) contained a general prohibition that Alderbridge was not entitled to pay any pre-filing debts, save as authorized by the Court. However, also consistent with the Model Order, the Initial Order provided that Alderbridge could pay Dentons' fees, whether pre- or post-filing, as were "related to the ... restructuring":

5. The Petitioners shall be entitled, but not required, to pay the following expenses which may have been incurred prior to the Order Date:

(a) the fees and disbursements of any Assistants [defined in para. 4 to include counsel] retained by the Petitioners which are related to the Petitioners' restructuring, at their standard rates and charges, including payment of the fees and disbursements of legal counsel retained by the Petitioners, whenever and wherever incurred, in respect of:

(i) these proceedings or any other similar proceedings in other jurisdictions in which the Petitioners or any subsidiaries or affiliated companies of the Petitioners are domiciled; ...

[Emphasis added.]

14 At the initial hearing, Alderbridge had exhausted its cash resources and Romspen was not prepared to advance any funds. Accordingly, I approved interim financing and a related charge of \$850,000 (initially estimated at \$1 million) in favour of certain corporate entities related to Alderbridge (collectively, "Gatland") (*Initial Reasons* at para. 10). The Gatland financing was intended to allow Alderbridge to continue until the comeback hearing in late April 2022. The Gatland financing and charge was ranked behind the Administration Charge, the Directors Charge and Romspen's security, but ahead of the second-tier lender and CIBT.

15 The First Report of the Proposed Monitor's cash flow forecast for the period ending April 29, 2022 was based on \$1 million of financing from Gatland, not \$850,000. Note 8 to the Monitor's cash flow forecast to late April 2022 projected payment of \$555,000 to Dentons, the Monitor and its counsel based on:

... projected costs of professional services firms relating to the CCAA Proceedings and include [Alderbridge's] counsel as well as the Monitor and its legal counsel. Payments forecast in Week 2 and Week 4 of the Cash Flow Forecast represents the payment for retainers and the payment of professional fees for services rendered during the lead up to the CCAA Proceedings.

[Emphasis added.]

16 At the initial hearing, the general contractor, Metro-Can Construction (AT) Ltd. ("Metro-Can") specifically raised objections with respect to the large receivable owing to Dentons and the Monitor's cash flow: *Initial Reasons* at para. 20.

17 Dentons acknowledged at the hearing that a projected payment of \$555,000 would be used to pay the three \$50,000 retainers (that were paid and are still held) and to pay the Monitor for its costs in advance of the hearing. Counsel advised that the remainder to be advanced would be to get Dentons "caught up", although counsel acknowledged that it would not quite "catch them up". Counsel acknowledged that Alderbridge would have to find further financing to advance the *CCAA* proceedings beyond the comeback hearing.

18 In the *Initial Reasons*, I addressed these issues and agreed that Alderbridge would be given the authority to pay both the post-filing and pre-filing amounts owing and to be owed to Dentons. I found that the amounts outstanding to Dentons represented a reasonable amount expended by Alderbridge toward seeking a solution to their restructuring difficulties, as follows:

[12] The significant portion of the interim financing (\$555,000) is budgeted in the cash flow (to April 29, 2022) for payment of professional fees. As noted in para. 9.4(b) of the Proposed Monitor's report dated March 31, 2022, that amount is intended to include:

... professional fees payable to ... counsel to [Alderbridge] ... Dentons ... and A&M, representing payments for outstanding invoices for the period leading up to the *CCAA* filing and payments for retainers to Dentons, A&M and counsel to the Monitor

...

[20] Metro-Can's counsel also addresses the amount to be spent through the proposed interim financing, in particular the large amount to be paid to Dentons. I agree that it is a large amount. Mr. Sandrelli has advised that the amount relates to the substantial work that Dentons has done for Alderbridge, not just in the immediate lead-up to the *CCAA* filing, but with respect to the undoubted substantial efforts that have been made over at least the last two years. I have already outlined what those efforts have been. They include the extensive and complex discussions between Alderbridge and other stakeholders and undertaking the SISP. They also include all of the myriad of issues that would have arisen in respect of keeping Alderbridge afloat, while they kept the *CCAA* option alive, but also explored other options, including leading to the development agreement that came to pass through the SISP, but eventually did not complete.

[21] As Mr. Sandrelli notes, it is anticipated in the Court's model *CCAA* initial order (Practice Direction-47) that reasonable amounts relating to the period before the filing may be appropriately paid after the *CCAA* filing. I am satisfied that that is the situation here with respect to the amount to be paid to Dentons.

[Emphasis added.]

19 Romspen supported the *CCAA* filing and the specific relief granted in the Initial Order. However, there are nuances to the circumstances that existed at the initial hearing, particularly from Romspen's point of view, that bear upon the current issues.

20 On April 1, 2022, Romspen's counsel advised the Court that the *CCAA* filing, as supported by Romspen, was the result of a material compromise with Alderbridge that resulted from difficult negotiations between the parties and a careful balancing of Romspen's rights as the first ranking secured creditor. The negotiated aspects of the *CCAA* filing included the Monitor having enhanced power to run the sales process (the "SISP") in order to advance the proceedings, all of which were reflected in the Initial Order.

21 Importantly, part of the negotiated agreement was that the Administration Charge would be \$300,000 and that the financing for the professional costs to be paid after the filing would come from Gatland's interim financing, which was to rank *behind* Romspen's security. Dentons expressly acknowledged this point in meeting Metro-Can's objection to these future payments to Dentons, when Dentons stated that Romspen would not be prejudiced by any such payment since it was

being financed under the Gatland charge.

The ARIO

22 On April 25, 2022, the comeback hearing took place, resulting in the granting of an amended and restated initial order (the “ARIO”). The ARIO included: an extension of the stay of proceedings to August 3, 2022; approval of the SISF; replacement of the Monitor who continued to have the enhanced powers to run the SISF; and, confirmation of the Administration Charge at \$300,000 (essentially the provisions from the Initial Order, as above).

23 Unfortunately, Alderbridge had not been successful in obtaining any further interim financing, from Gatland or otherwise. Accordingly, Romspen agreed to advance \$1.65 million under a further interim financing charge, which was to rank *pari passu* with the Gatland interim financing after Romspen’s main security. As with the Initial Order in relation to the Gatland interim financing, the ARIO specifically provided that the Romspen interim financing was to “finance the continuation of the Business and preservation of the Property”.

24 At the time of the comeback hearing, professional fees of \$402,000 had been paid against the forecast of \$555,000, although the earlier forecast was based on the Gatland interim loan being \$1 million, not \$850,000.

25 In its Second Report dated April 23, 2022, the Monitor revised the earlier cash flow forecast. Then, the Monitor projected, to August 2022, payment of professional fees of \$955,000. As with the earlier cash flow forecast, Note 8 addressed what payments were intended to be made from that amount:

Restructuring professional fees have been forecast based on projected costs of professional services firms relating to the CCAA Proceedings and include [Alderbridge’s] legal counsel as well as the Monitor and its legal counsel, including professional fees for services rendered during the lead up to the CCAA Proceedings.

[Emphasis added.]

26 Over the ensuing three months, the parties and the Monitor made substantial efforts to advance the SISF, including extending the applicable deadlines numerous times. Nevertheless, by early August 2022, no compliant bid was received.

The SARIO

27 The next hearing took place on August 11, 2022 and represented a “sea change” of sorts in respect of how this [CCAA](#) proceeding would continue.

28 On that date, Romspen applied for various relief, resulting in the granting of a second amended and restated initial order (the “SARIO”) on an uncontested basis. The SARIO included: an extension of the stay to October 2022; a further expansion of the Monitor’s powers to assume control of the development in place of Alderbridge and continue the SISF; and, approval of a second interim financing by Romspen of \$2.5 million, to rank behind the Administration Charge and the Directors Charge and ahead of Romspen’s main security.

29 In the SARIO, the Administration Charge was again confirmed at \$300,000 under the original provisions in the Initial Order, but with the added proviso that Alderbridge’s counsel would only have the benefit of the Administration Charge for its reasonable fees and disbursements incurred prior to August 11, 2022, the date that the SARIO was made.

30 In advance of the hearing to consider the SARIO, Alderbridge filed this application.

31 In the Monitor’s Fourth Report dated August 9, 2022, the Monitor reported that to the end of July 2022, forecasted professional fees of \$1.17 million were actually paid in the amount of \$1 million, leaving a shortfall of \$171,000. By this time, Romspen had not advanced all of the amounts initially projected under its first interim financing (\$1.65 million) in that \$1.377 million had been advanced.

32 The Monitor’s Fourth Report also reported that, of the \$562,000 that had been forecasted for Dentons from April —

July 2022, \$427,621 had been paid (including the \$50,000 retainer), leaving a shortfall of \$134,379.

Current Status of Dentons Accounts

33 The relevant figures with respect to Dentons' accounts, both pre- and post-filing, are as follows:

- a) \$621,906 for pre-filing fees (August 2021-March 2022); and
- b) \$227,228 for post-filing fees (April 2022-July 2022).

34 Alderbridge and Romspen analyze the amounts outstanding to Dentons in different and opposite ways, arising from the manner in which Dentons has allocated the amount paid during the *CCAA* proceedings (\$427,621):

- a) Dentons applied all post-filing payments to its earliest accounts, and now takes the position that its post-filing accounts (less the retainer) remain unpaid in the amount of \$454,348 (hence the amount of the requested increase in the Administration Charge); and
- b) Romspen states that Dentons has been paid all of its post-filing accounts (\$227,228) and approximately \$200,000 toward its pre-filing fees.

CCAA AND RELATED JURISPRUDENCE

35 The parties agree that the Court has jurisdiction to grant the relief sought.

36 The Court will typically exercise its general discretion under s. 11 of the *CCAA* in respect of the conduct of the affairs of the debtor, including authorization to make payments to certain persons. As is well-known, the broad discretion afforded to the Court is such that pre-filing amount may be authorized, as are considered appropriate in the circumstances.

37 Section 11.7(1) of the *CCAA* mandates that a monitor be appointed to provide oversight throughout the proceedings. Therefore, there is considerable focus at the initial hearing on who the monitor will be and how it and its counsel will be paid in respect of the cost of their services. In addition, the debtor will invariably have and need counsel in the course of the proceedings and questions may arise, as they did here, as to how that professional firm will be paid. The uncertainty that is inherent in *CCAA* proceedings will raise issues as to how to protect these professionals from any untoward exposure of non-payment.

38 *CCAA* courts have been attuned to these issues and addressed them on a regular basis even before the authority to do so was enshrined in the *CCAA*.

39 As of 2009, the *CCAA* provides express authority and discretion to grant a charge in favour of professionals to secure their legal fees and disbursements, as is appropriate:

11.52(1) On notice to the secured creditors who are likely to be affected by the security or charge, the court may make an order declaring that all or part of the property of a debtor company is subject to a security or charge — in an amount that the court considers appropriate — in respect of the fees and expenses of

- (a) the monitor, including the fees and expenses of any . . . legal or other experts engaged by the monitor in the performance of its duties;
- (b) any . . . legal . . . experts engaged by the company for the purpose of proceedings under this Act; and — . . .

(2) The court may order that the security or charge rank in priority over the claim of any secured creditor of the company.

40 Alderbridge refers to the policy considerations underlying the protections that are usually afforded to the professionals in *CCAA* proceedings, including the granting of a charge.

41 In *Timminco Limited (Re)* 2012 ONSC 506, Justice Morawetz, as he then was, stated:

[66] In my view, in the absence of the court granting the requested super priority and protection, the objectives of the *CCAA* would be frustrated. It is not reasonable to expect that professionals will take the risk of not being paid for their services, and that directors and officers will remain if placed in a compromised position should the Timminco Entities continue *CCAA* without the requested protection. The outcome of the failure to provide these respective groups with the requested protection would, in my view, result in the overwhelming likelihood that the *CCAA* proceedings would come to an abrupt halt, followed, in all likelihood, by bankruptcy proceedings.

42 *Timminco* was referred to recently in *Canada v. Canada North Group Inc.* 2021 SCC 30 [*Canada North Group*], where Justice Côt endorsed the protections that are granted to professionals in *CCAA* proceedings:

[30] Super-priority charges in favour of the monitor, financiers and other professionals are required to derive the most value for the stakeholders. They are beneficial to all creditors . . . The fact that they require super priority is just a part of “[t]he harsh reality . . . that lending is governed by the commercial imperatives of the lenders” (*Indalex*, at para. 59). It does not make commercial sense to act when there is a high level of risk involved. For a monitor and financiers to put themselves at risk to restructure and develop assets, only to later discover that a deemed trust supersedes all claims, smacks of unfairness. . . .

[31] It is therefore clear that, in general, courts supervising a *CCAA* reorganization have the authority to order super-priority charges to facilitate the restructuring process. . . .

43 At any initial hearing, the court has a suite of options available to it to ensure payment to the professionals for costs in the proceeding, as may be appropriate. The court can order that retainers be paid; that ongoing payments be made as invoiced; and/or that a charge be granted. All of those protections were employed here, as evidenced by the Initial Order (quoted above) and later, the ARIO and SARIO.

44 A consideration of these protections at the time of the initial hearing is typically forward-focussed, as the court must gauge the costs that might be expected in the course of the proceedings. Hence, para. 31 of the Initial Order refers to the “cost of these proceedings” and para. 33 refers to a charge for costs (both pre and post filing) that are “related to the . . . restructuring”. This latter phrase is intended to allow some flexibility in respect of the payment of costs that will invariably arise prior to the filing date but are reasonably connected to the restructuring proceedings.

45 The non-exhaustive factors that courts may consider in approving or increasing an administrative charge and setting the amount were set out in *Canwest Publishing Inc. (Re)* 2010 ONSC 222 [*Canwest Publishing*] at para. 54, as adopted by this Court in *Walter Energy Canada Holdings Inc. (Re)*, 2016 BCSC 107 at para. 42, and *Mountain Equipment Co-Operative (Re)*, 2020 BCSC 2037 at para. 58:

- (a) the size and complexity of the businesses being restructured;
- (b) the proposed role of the beneficiaries of the charge;
- (c) whether there is an unwarranted duplication of roles;
- (d) whether the quantum of the proposed charge appears to be fair and reasonable;
- (e) the position of the secured creditors likely to be affected by the charge; and
- (f) the position of the Monitor.

46 Many of the *Canwest Publishing* factors are, inherently, forward-looking. These refer to the *proposed* role of the beneficiaries; the role *to be* undertaken by the professionals; and, how secured creditors will likely *be affected*. As such, these factors are typically considered in the early days of the proceedings, when the amount of the Administration Charge is set, either at the initial hearing or the comeback hearing. Case authorities cited by Alderbridge are representative of this scenario: *Canwest Publishing* at paras. 52 — 55; *Pacific Shores Resort & Spa Ltd. (Re)*, 2011 BCSC 1775 at paras. 2 and 59; *Laurentian University of Sudbury (Re)*, 2021 ONSC 659 at paras. 48-53 (and the later ARIO that was granted in that proceeding at *Laurentian University of Sudbury*, 2021 ONSC 3545 at para. 8).

47 Stakeholders, but particularly secured creditors, who will normally rank behind the Administration Charge, will often consider the amount of the Administration Charge and some may, as Romspen did here, specifically negotiate the amount.

48 It is important to note, however, that the Administration Charge is intended, for the most part, to simply *secure* the professional fees, rather than being the primary source for payment (as is any retainer). Just as the Orders granted in this proceeding provide, professional fees are generally intended to be paid on an ongoing basis and in the ordinary course, usually from the cash on hand and any approved interim funding.

49 In addition, the amount of the Administration Charge is an estimate only. *CCAA* proceedings are inherently unpredictable and intentions/forecasts to pay professionals may not always be realized. The professional firms that work in the insolvency arena are highly sophisticated. It is incumbent upon them to ensure that they are being paid as intended. The Monitor will typically report on the status of the payment, or non-payment, of professional fees in advance of any later hearings. That said, if the risk to the professionals who are intended to be paid is increasing, particularly to the point where it may exceed the settled Administration Charge, it is incumbent on those professionals to address the matter within a reasonable period of time to avoid any difficulties. By addressing the matter, I would include alerting other stakeholders who may be affected and possibly applying to increase the charge, although I appreciate that cost considerations may come into play in respect of any court application to do so and its timing.

50 Unfortunately, in the past, there have been instances where the professional fees (including as incurred by the monitor) were not paid and the claimed fees exceeded the charge. This puts the stakeholders and the Court in a difficult situation, where prior expectations (whether reasonable or not) can be challenged in light of what may be changed circumstances for the stakeholders. It can also be the case that any dispute concerning a professional's claim to further fees and/or a charge puts the feasibility of the entire proceeding at risk, as was discussed in *Timminco*.

51 All of these factors point to the fact that the professionals in *CCAA* proceedings must be proactive in their approach to how and when they are to be paid. Such professionals must also be proactive in addressing the ongoing viability of the protections that were put in place for their benefit at the outset.

52 I accept of course that administration charges can and sometimes are increased in the midst of *CCAA* proceedings, as may be appropriate. In that event, the *Canwest Publishing* factors are a helpful guide as to whether an increase is warranted. As stated, the assessment requires an estimate of what amount is appropriate to secure the anticipated fees. Each case will depend on the specific facts and circumstances, both historically and what might be expected into the future.

53 The only case cited on this application concerning an *increase* of an administration charge which was *refused* is *Boutique Euphoria inc. (Arrangement relatif à)* 2007 QCCS 7127 (C.S. Que.) [*BE Admin Charge*]. The judgment is brief and must be read together with the concurrent decision of Justice Gascon, as he then was, in *Boutique Euphoria inc.* 2007 QCCS 7129 [*BE Stalking Horse*].

54 In *BE Stalking Horse*, Gascon J. refused to approve the stalking horse bid. There, the court described that the *CCAA* proceedings were only in its early days. The initial order had been granted only about 30 days earlier when the outcome of the proceeding was uncertain and was possibly not just a liquidation. However, when this decision was rendered, the likely outcome of the proceeding had definitely turned for the worse. Justice Gascon described that the likely outcome was “not very positive” and that a liquidation was all but assured. It appeared that the likely recovery from the assets was substantially less than even what the secured creditors were owed (paras. 8 — 16 and 38).

55 In *BE Admin Charge* at para. 3, Gascon J. renewed the initial order for a short time to allow the stakeholders to reassess the situation after his decision in *BE Stalking Horse*. The court also addressed and refused a request to increase the administration charge by \$100,000:

[5] The following reasons lead the Court to so conclude:

- a) In the Initial Order, the Court precisely reduced the Administration Charge from \$300,000 to \$200,000. There is no reason to review that decision thirty days later;
- b) The total recovery will likely not exceed 1.2 to 1.5 million dollars, at best;
- c) Because of that, any increase in the Administration Charge directly affects some secured creditors;
- d) At this moment, it remains to be seen whether there indeed still exists a reasonable prospect of a successful restructuring under the *CCAA*.

[6] In such a context, the Court considers that it is not justified to make use of the extraordinary measure of the priority charge to increase the extent of the Administration Charge.

56 I consider *BE Admin Charge* as an example where changed circumstances in a *CCAA* proceeding may be relevant as to whether the court considers an increase in the administration charge to be appropriate, particularly where different elements of prejudice to the secured creditors may have arisen or become more apparent by that time.

57 With these general comments in mind, I now turn to a consideration of the specific and unique circumstances which inform the issue before me.

DISCUSSION

58 Alderbridge's sought-after increase in the Administration Charge of \$455,000 is linked to unpaid amounts owing to Dentons of \$454,348, identified above.

59 Romspen takes the position that it would be inappropriate to elevate Dentons' outstanding and unsecured pre-filing fees over the claims of the other stakeholders, and as such, no additional fees should be paid to Dentons by securing them under the Administration Charge.

60 The Monitor, in its Fourth Report, takes no position on this application. However, the Monitor states that, if the Administration Charge is to be increased as proposed, \$200,000 should be allocated to it and its counsel jointly. The Monitor confirms the payments to Dentons in respect of Romspen's calculations that Dentons has been paid the amount of its post-filing accounts, as well as approximately \$200,000, or what the Monitor considered were the reasonable pre-filing fees. This is demonstrated in the reports of the Proposed Monitor and the Monitor, including the cash flow forecasts and the Notes to those forecasts. In March 2022, Dentons and the first Monitor were paid for pre-filing work, approximately \$185,000 and \$60,000, respectively.

61 It is helpful to frame the discussion and Alderbridge and Romspen's respective arguments around the relevant *Canwest Publishing* factors.

Size and Complexity of Alderbridge

62 At the initial hearing, I accepted that this restructuring was a complex one: *Initial Reasons* at paras. 18 — 19.

63 Development projects that are not yet complete invariably involve some complexity and this one is no different. The scope of the nascent project is very large, proposing seven towers spanning a city block; at present, secured obligations stand at approximately \$346 million, with Romspen owed \$185 million of that amount; leaving aside the substantial creditors, many other stakeholders are involved, including the City of Richmond and pre-sale purchasers; and finally, the financing

necessary to move the project forward will necessarily be large and complex.

64 There is no doubt that Alderbridge has made significant efforts to advance a restructuring, with the assistance of Dentons, in these complex circumstances. This factor weighed in favour of my conclusion at the initial hearing that Dentons should continue to be paid even after the filing with respect to its pre-filing fees, where the pre-filing fees are related to the restructuring.

65 However, I agree with Romspen that the size and complexity of the matter has not changed in respect of the anticipated involvement of the *CCAA* professionals in this proceeding going forward. That is, the assistance required of Dentons in advancing the restructuring, and the protections that are therefore appropriate in that respect, remain the same. If anything, the assistance required of Dentons has been lessened since the SARIO now provides that Dentons no longer has a claim to the Administration Charge in respect of its fees incurred after August 11, 2022.

66 In my view, this factor is neutral in terms of whether the Administration Charge should be increased.

Proposed Role of Dentons / Duplication of Roles

67 As I expressed in the *Initial Reasons*, I accept that Dentons' services throughout its retainer have been toward assisting Alderbridge to advance its restructuring efforts. Alderbridge's efforts were well documented in the evidence filed in support of the initial hearing. The evidence of Dentons' specific involvement in those efforts has been recently supplemented for this application beyond counsel's earlier submissions.

68 Alderbridge and Dentons' assertion respecting their efforts and services is undisputed on this application, including by Romspen. I also agree that Dentons' efforts have been toward benefitting all stakeholders, including Romspen. That those efforts were not successful prior to the *CCAA* filing and were not successful to August 2022 is not relevant to this issue. The prior involvement and efforts of Dentons informed my conclusion at the initial hearing that Alderbridge should be allowed to pay Dentons in the course of this *CCAA* proceeding, including with respect to its reasonable pre-filing fees.

69 There is also no dispute concerning Dentons' involvement in the *CCAA* proceeding in terms of their role and the benefits derived from their services. Following the *CCAA* filing, Dentons has received payments equal to the value of its post-filing services, together with \$200,000 toward its pre-filing amount. Dentons has performed its role in these proceedings, just as was predicted at that time. Nothing has changed in that respect. As such, no issues arise with respect to advancing the policy objectives, discussed in *Timminco* and *Canada North Group*, in terms of protecting Dentons' as a professional while it was engaged in the course of this *CCAA* proceeding.

70 However, all of these circumstances (both in the past and as projected) informed the Court's decision to set the Administration Charge at \$300,000 at the time of the initial hearing.

71 Again, I would emphasize that the proposed role of Dentons is a *forward-looking* factor that will typically inform the Court's decision on the amount of the Administration Charge. What Alderbridge and Dentons really seek to do is to retroactively increase the Administration Charge effective to the time of the initial hearing to secure all of Dentons' pre-filing fees, after now realizing that the course of the restructuring will not result in those fees being paid. I will address that matter below.

72 In conclusion, this factor does not support an increase in the Administration Charge. Dentons has no further involvement in that Charge for its post-August 11, 2022 fees and therefore, there is no duplication of roles that might be considered in terms of increasing the amount of the Administration Charge.

Quantum of the Proposed Charge

73 Again, no question arises with respect to the quantum of fees that Dentons has presented, including with respect to the pre-filing amounts.

74 Alderbridge asserts that the proposed increase in the Administration Charge will not have a material effect on Romspen or the other secured creditors. It says that CIBT is unlikely to recover any amount.

75 With respect to Romspen, Alderbridge says that the \$355,000 increase will be “immaterial” to Romspen, as representing less than 0.25% of the amount owed under its security. It further argues that, assuming that the Monitor and its counsel are paid in the ordinary course, and Dentons has full access to the increase in the Administration Charge, the practical effect is an erosion of Romspen’s security by \$200,000, or 0.10% of Romspen’s loans.

76 I have difficulty accepting that Alderbridge and Dentons are in a position to assert the materiality of the proposed increase on the part of Romspen.

77 Looked at in isolation, the \$355,000 increase is a significant sum. It may seem less significant in relation to Romspen’s overall indebtedness, but I am not convinced that is the appropriate approach.

78 Clearly, Romspen considers the amount significant. It would not have mounted opposition to this application with the attendant costs without having come to that conclusion. Indeed, in light of the course of this *CCAA* proceeding, particularly the disappointing results of the SISP, the fortunes of Romspen have considerably dimmed. It is apparent from the financial information before the Court that there is even some question now as to whether Romspen will be paid all of its debt, let alone any payment to the other secured creditors.

79 In *BE Admin Charge* at para. 5, the court explained that the downgrading of the creditor’s fortunes factored into their decision to refuse an increase to the administration charge. This is analogous to the case at bar. Just as here, that reversal of fortunes did not arise from any actions or decisions of the debtor, and I agree that the failure of the SISP cannot be laid at the feet of Alderbridge or Dentons. Nevertheless, it remains a reality of this restructuring that the risk of non-payment to the secured creditors, including Romspen, has materially increased.

80 This factor does not support an increase in the Administration Charge.

Position of Romspen

81 Alderbridge submits that it is appropriate to “revisit” the quantum of the Administration Charge.

82 Alderbridge places great emphasis on its and Dentons’ “understanding” and intentions at the time of the initial hearing that Dentons’ outstanding pre-filing accounts would be paid. They assert that Dentons has not been paid “as anticipated, despite an order of this Court requiring such payment”, said to be supported by my comments in the *Initial Reasons*. They refer to their “reasonable expectations” that Dentons would be paid, based on the cashflow, the terms of the Initial Order and the statements by the Court in the *Initial Reasons*.

83 With respect, Alderbridge has read more into the Initial Order and the *Initial Reasons* than are warranted. The Initial Order did anticipate that Dentons would be paid after the filing but it did not require that any payments be made. Paragraph 5 provides that Alderbridge was “entitled, but not required” to pay these amounts. Paragraph 31 similarly authorizes payment of Dentons’ fees only “as part of the costs of these proceedings”. Similarly, although the *Initial Reasons* are not the controlling provisions (the Initial Order is). At para. 21 of the *Initial Reasons*, I accepted that Alderbridge should be authorized to make these payments after the filing when I stated:

... reasonable amounts relating to the period before the filing may be appropriately paid after the *CCAA* filing.

[Emphasis added.]

84 The Initial Order did not elevate or secure the payment of Dentons’ pre-filing amounts in any fashion. The authorized payments to Dentons after the filing were in no different position than any other post-filing payments that might have become owing, or such pre-filing payments as were authorized by the Court to be paid, but not secured.

85 A review of the April 1, 2022 transcript and the exchanges between Alderbridge’s counsel and the Court at the time of the initial hearing supports what was eventually granted in the Initial Order. At that time, counsel advised that payment for professional fees to the comeback hearing was to come from the Gatland interim financing (then estimated at \$1 million) to

both pay ongoing amounts and to get Dentons “caught up”. Dentons also confirmed what the math revealed — that the estimated payment to professionals under the cash flow (\$555,000), after payment of the retainers (\$150,000), would not be sufficient to pay Dentons, the Monitor and its counsel for their costs to the comeback hearing (including the “lead-up costs”) and also, pay Dentons’s outstanding accounts. Significantly, Alderbridge agreed that the funds for these costs were to come from the creditors ranking behind Romspen.

86 At bottom, the Court allowed Alderbridge to pay Dentons’ pre-filing amount, but did not require such payment, let alone payment of the full amount of Dentons’ accounts. These payments were allowed, as requested by Alderbridge, and not contested by Romspen, in the expectation that a successful restructuring would materialize. However, just as with other post-filing obligations, no security was granted in the Initial Order (or the later ARIO and SARIO) with respect to the pre-filing legal fees.

87 Alderbridge and Dentons also refer to the cash flow forecasts, discussed above. In its Fourth Report, the Monitor reports that Dentons has received \$134,379 less than forecast, but Alderbridge asserts that the shortfall is actually around \$300,000 since the Monitor revised the initial forecast in its Third Report dated July 20, 2022 to reduce the amount of professional fees to be paid.

88 Alderbridge refers to their “reasonable expectations” that the pre-filing amounts would be paid. It alleges that Romspen advanced \$223,000 less than forecast under its initial interim financing. Alderbridge says that it appears that Romspen:

. . . intentionally took steps to cause [Alderbridge] to short payment to Dentons despite the reasonable expectations of the parties on April 1, 2022 and April 25, 2022.

89 Alderbridge also states that it “understood” that the Monitor was unable or unwilling to facilitate payments of the pre-filing amounts to Dentons given Romspen’s position and/or Romspen not providing the required forecasted advances under the Romspen interim financing.

90 I cannot discern any basis upon which Alderbridge can rely on the various cash flow forecasts as somehow guaranteeing payment of the pre-filing fees. Cash flow forecasts are just that — forecasts. They are not scripts written in stone as to future disbursements that the debtor must pay.

91 Cash flow forecasts are prepared based on expectations as to what will occur in the future, depending on the course of the restructuring. In fact, here the Monitor’s various reports specifically noted in the cash flow forecasts, at Note 8, that the amounts were based on what was estimated as the professional costs “relating” to the [CCAA](#) proceedings and what was termed the “lead up” costs. This is akin to how both Romspen and the Monitor view the amounts paid to Dentons after the filing — namely, that this was equal to the amount of Dentons’ post-filing fees and what was considered a reasonable amount for the preparation of the [CCAA](#) filing just before April 2022 (about \$200,000).

92 In addition, there is no evidence that Romspen undertook a specific campaign to withhold advances under its first interim financing facility in order to shortchange payments to Dentons. Advances under such facilities are made as circumstances require, given the obvious need to reduce financing costs if the cash is not needed. Even if those amounts had been advanced, there is nothing to indicate that they were guaranteed to land in the pockets of Dentons.

93 In fact, under the ARIO, Alderbridge was still fully in control of its finances, subject to the Monitor’s oversight. At no point did Alderbridge make any requests for advances from Romspen, which Romspen refused, as this would presumably constitute a breach of the funding agreement. Similarly, the Monitor does not report that this occurred. When the ARIO was granted, no one, let alone Alderbridge, sought to increase the Administration Charge, particularly when the Monitor reported that payment of professional fees was \$153,000 less than forecasted only weeks earlier. Alderbridge did not raise the matter of non-payment of its pre-filing fees (or the forecasted fees) at that time.

94 In that event, I cannot see any basis for Alderbridge to assert that the Initial Order and/or the cash flow forecasts provided any reasonable basis for it assuming that these pre-filing amounts *would* be paid.

95 I also do not consider the fact of non-payment to Dentons after the filing as representing a change in the factual matrix that would support an increase in the Administration Charge. I agree the factual matrix has changed in respect of the overall prospects for a restructuring; however, with respect to the possibility that Dentons' fees will be paid arising from this *CCAA* restructuring, nothing has changed. It always was uncertain whether Dentons would be "caught up" for its pre-filing fees.

96 At the initial hearing, Alderbridge specifically sought and obtained the Administration Charge in the amount of \$300,000. At that time, Dentons' was owed approximately \$575,000. If Dentons had sought to secure payment of this amount through the Administration Charge, then I have no doubt that the initial hearing would have been quite different. I also strongly suspect that Romspen would have strongly opposed that relief and threatened a receivership, based on Alderbridge's consent to a receivership.

97 My views are consonant with Romspen's position on this application. As Romspen's counsel submits, the terms of the *CCAA* filing were the result of a careful negotiation and compromise between Alderbridge and Romspen. The \$300,000 limit of the Administration Charge was carefully negotiated in the context of allowing Alderbridge some further time to sort out a restructuring within this *CCAA* proceeding, which would hopefully fully repay Romspen. Failing agreement, a receivership would inevitably have resulted, in which case there is no doubt that Dentons would not have been paid from the assets for its pre-filing fees. Further, as agreed, the financing of the professional fees to the comeback hearing were on the account of Gatland, not Romspen. The later Romspen interim financing was only put in place because Alderbridge could not secure the next tranche that was needed to continue the proceedings.

98 Alderbridge does not dispute that this was the backdrop to the granting of the Initial Order.

99 I agree with Romspen that it reasonably expected that its exposure under the Administration Charge would be only \$300,000, unless it otherwise agreed.

100 In this context, I consider Alderbridge's attempt to "revisit" the amount of the Administration Charge to secure Dentons' pre-filing fees to be unfair to Romspen and unreasonable in the circumstances. At bottom, Alderbridge seeks to retroactively change key aspects of the earlier agreement of the parties in terms of the amount of the Administration Charge, which would unjustly prejudice Romspen.

101 I agree with Romspen that this case presents a unique set of circumstances in which to consider an increase to the Administration Charge in that, viewed from a certain angle, that increase is sought to secure pre-filing amounts still owing to Dentons. I acknowledge that Dentons was entitled to apply the post-filing payments to its earlier invoices. However, I agree with Romspen's analysis as to how the amount paid to Dentons during the *CCAA* proceedings (\$427,621) should be considered. That is, Dentons has been paid all of its post-filing accounts, and approximately \$200,000 of its pre-filing fees. Dentons' allocation of amounts paid does not change my view of the matter, particularly in terms of assessing Dentons' involvement in this proceeding, the post-filing payments it has received in this proceeding, and in light of the *CCAA* policy objectives that I referred to above.

102 Dentons was and is entitled to the protections that were put in place under the Orders granted in this proceeding. However, in essence, Alderbridge now seeks a retroactive guarantee of the payment of the pre-filing fees at the expense of Romspen, which is neither fair nor reasonable.

CONCLUSION

103 I conclude that it is inappropriate to increase the Administration Charge, as requested.

104 In the alternative, Alderbridge seeks an order that the entire Administration Charge be allocated to Dentons. I also decline to grant that relief. There is no basis upon which to suppose that Romspen will purposefully withhold ongoing payments to the Monitor and its counsel so as to soak up the entire Administration Charge amount (assuming, for the sake of argument, that the Monitor would claim priority to the entire Administration Charge). I expect that the Monitor will report from time to time on the status of it and its counsel's fees and Alderbridge will be provided copies of those reports. Any concerns that arise may be brought to the attention of the Court.

105 I appreciate that Alderbridge and Dentons will be disappointed by this result. However, Dentons is a sophisticated law firm who is well able to assess whether to continue with a client's retainer without current payments or without adequate protections for payment. The fact that payment for Dentons did not materialize through what was hoped to be a successful [CCAA](#) restructuring is but one part of the story.

106 The application is dismissed.

Application dismissed.

TAB 2

2008 NLTD 160

Newfoundland and Labrador Supreme Court (Trial Division)

Humber Valley Resort Corp., Re

2008 CarswellNfld 262, 2008 NLTD 160, 170 A.C.W.S. (3d)

235, 280 Nfld. & P.E.I.R. 87, 48 C.B.R. (5th) 128, 859 A.P.R. 87

The Companies' Creditors Arrangement Act, R.S.C. 1985, c. C-36 as amended

A plan of compromise or arrangement of Humber Valley Resort Corporation, Newfoundland Travel and Tourism Corporation, Humber Valley Construction Limited and Humber Valley Interiors Limited (Applicants)

R.M. Hall J.

Heard: October 6, 2008

Judgment: October 10, 2008

Docket: 200801T3743

Counsel: John Stringer, Q.C., Stephen Kingston, Douglas B. Skinner for Applicants
Archibald Bonnell for Notre Dame Agencies Limited, R & T Custom Woodworking Limited
Geoffrey E.J. Brown, Q.C. for Alex Lee
Joseph F. Hutchings, Q.C. for Marine Contractors Inc., Home Construction Limited
Bruce C. Grant, Q.C. for Her Majesty the Queen in right of Newfoundland and Labrador
Shawn M. Kavanagh for Simon and Jean Burch
Geoffrey L. Spencer for Maxium Financial Services Inc.

Subject: Insolvency; Civil Practice and Procedure

Related Abridgment Classifications

Bankruptcy and insolvency

[XIX Companies' Creditors Arrangement Act](#)

[XIX.2 Initial application](#)

[XIX.2.a Grant and length of stay](#)

Bankruptcy and insolvency

[XIX Companies' Creditors Arrangement Act](#)

[XIX.5 Interim financing](#)

Headnote

Bankruptcy and insolvency — Proposal — Companies' Creditors Arrangement Act — Arrangements — Effect of arrangement — Stay of proceedings

Extension of stay — Debtor was resort developer which completed 220 chalets out of 370 that were sold, but cost to complete all chalets would result in \$7.5 million loss — Debtor obtained stay of proceedings under [s. 11 of Companies' Creditors Arrangement Act](#) and authorization to enter into arrangement to obtain debtor in possession ("DIP") credit facility for \$600,000 — Debtor brought application for order extending stay termination date — Application was granted for stay extension — Debtor closed golf course, reduced staff, and pursued sale of portion of resort with efforts which were diligent, reasonable and in good faith — Debtor also met with representatives of province to discuss provincial assistance and involvement in restructuring — If stay was not extended, creditors would commence proceedings which would be prejudicial by eliminating debtor's ability to propose and complete any successful restructuring — Without stay resort would fail and even though restructuring plan was still in initial stages of development it could not be concluded that it would be unsuccessful — Stay was lifted to extent of permitting certain corporations to commence actions under [Mechanics' Lien Act](#) and stay would be re-instated upon issuance of statements of claim.

Bankruptcy and insolvency — Proposal — Companies' Creditors Arrangement Act — Miscellaneous issues

Debtor was resort developer which completed 220 chalets out of 370 that were sold, but cost to complete all chalets would result in \$7.5 million loss — Debtor obtained stay of proceedings under s. 11 of *Companies' Creditors Arrangement Act* and authorization to enter into arrangement to obtain debtor in possession ("DIP") credit facility for \$600,000 — Debtor brought application for order for approval of additional DIP financing and securitization thereof — Application granted — Annuling previously approved termination arrangements or salary augmentations as requested by chalet owners was not appropriate since this could create negative reputation for resort compounding difficulties in restructuring and marketing itself — Cash flow statement was sufficiently detailed so that it was not necessary for court to specifically order that DIP financing be used in specified amounts for specified purposes — Additional DIP financing sought in amount of \$1,400,000 was not of sufficient magnitude as to greatly prejudice existing creditors in event restructuring plan should fail by not being accepted by them — Adverse effect on creditors of failure to restructure would be greater than any diminution of their recovery caused by allowing proposed financing — Additional DIP financing in amount of \$1,400,000 and securitization thereof was approved.

Table of Authorities

Cases considered by R.M. Hall J.:

Pacific National Lease Holding Corp., Re (1992), 72 B.C.L.R. (2d) 368, 19 B.C.A.C. 134, 34 W.A.C. 134, 15 C.B.R. (3d) 265, 1992 CarswellBC 524 (B.C. C.A. [In Chambers]) — considered

Statutes considered:

Companies' Creditors Arrangement Act, R.S.C. 1985, c. C-36

Generally — referred to

s. 11 — referred to

s. 11(4) — considered

s. 11(6) — considered

Labour Standards Act, R.S.N. 1990, c. L-2

Generally — referred to

Mechanics' Lien Act, R.S.N. 1990, c. M-3

Generally — referred to

APPLICATION by debtor for order extending stay termination date and for approval of additional debtor in possession financing and securitization thereof.

R.M. Hall J.:

Introduction

1 Humber Valley Resort Corporation, Newfoundland Travel and Tourism Corporation, Humber Valley Construction Limited and the Humber Valley Interiors Limited (collectively, the "Resort" and/or the "Applicant") applied to this Court for an order seeking a stay of proceedings under section 11 of the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36 as amended (the "CCAA"). An Initial Order (the "Initial Order") was granted and filed September 5, 2008, providing a stay of proceedings up to and including October 6, 2008, or such later date as this Court may further order stipulate (the "Stay Termination Date"). Additionally on the same date, the Court authorized the Resort to enter into an arrangement to obtain a non-revolving credit facility (the "DIP Facility") from Newfound UK Limited (the "DIP Lender") in a maximum principal amount of \$600,000. Under that order (the "First DIP Order") the DIP Lender was granted the right to obtain first priority charge, mortgage and security interest (the "DIP Charge") over real and personal property of the resort comprising a portion of its operations and land known as "Strawberry Hill", as described in a commitment letter between the Resort and the DIP Lender.

2 This present application is brought *inter partes* by the Resort seeking two further orders. The first order sought is for an extension of the Stay Termination Date from October 6, 2008, to December 5, 2008, as may be granted by this court under the

authority of [Section 11\(4\) of the CCAA](#). The second order sought is for approval of additional debtor-in-possession and the securitization thereof (the "Second DIP Order").

3 The legislative purpose behind the [CCAA](#) and the principles to be considered in applications made under it have been considered by many Canadian courts. A clear delineation of the principles to be considered in applications under the [CCAA](#) is contained in the decision of Mr. Justice Brenner in *Pacific National Lease Holding Corp. (Re)* (1992), 72 B.C.L.R. (2d) 368 (B.C. C.A. [In Chambers]) where he states those principles at page 10 as follows:

- (1) The purpose of the [C.C.A.A.](#) is to allow an insolvent company a reasonable period of time to reorganize its affairs and prepare and file a plan for its continued operation subject to the requisite approval of the creditors and the Court.
- (2) The [C.C.A.A.](#) is intended to serve not only the company's creditors but also a broad constituency which includes the shareholders and the employees.
- (3) During the stay period the Act is intended to prevent maneuvers (sic) for positioning amongst the creditors of the company.
- (4) The function of the Court during the stay period is to play a supervisory role to preserve the status quo and to move the process along to the point where a compromise or arrangement is approved or it is evident that the attempt is doomed to failure.
- (5) The status quo does not mean preservation of the relative pre-debt status of each creditor. Since the companies under [C.C.A.A.](#) orders continue to operate and having regard to the broad constituency of interests the Act is intended to serve, preservation of the status quo is not intended to create a rigid freeze of relative pre-stay positions.
- (6) The Court has a broad discretion to apply these principles to the facts of a particular case.

4 [Section 11\(4\) of the CCAA](#) specifically deals with the powers of a Court on applications other than an application for the Initial Stay Order. It provides

Other than initial application court orders

(4) A court may, on an application in respect of a company other than an initial application, make an order on such terms as it may impose,

- (a) staying, until otherwise ordered by the court, for such period as the court deems necessary, all proceedings taken or that might be taken in respect of the company under an Act referred to in subsection (1);
- (b) restraining, until otherwise ordered by the court, further proceedings in any action, suit or proceeding against the company; and
- (c) prohibiting, until otherwise ordered by the court, the commencement of or proceeding with any other action, suit or proceeding against the company.

5 In making application for either an Initial Order or subsequent orders, [section 11\(6\) of the CCAA](#) establishes that certain preconditions must be met as follows:

Burden of proof on application

(6) The court shall not make an order under subsection (3) or (4) unless

- (a) the applicant satisfies the court that circumstances exist that make such an order appropriate; and

(b) in the case of an order under subsection (4), the applicant also satisfies the court that the applicant has acted, and is acting, in good faith and with due diligence.

It is important to note that subsection 11(6) of the CCAA requires not only that the Applicant has acted in good faith and has acted with due diligence, but that the Applicant is continuing to do so.

6 My first obligation in considering this matter, therefore, is to determine whether the Applicant has and continues to act in good faith and has and continues to act with due diligence in this matter. It is necessary to provide some background in these Reasons for Judgment as to the nature and extent of the business of the Resort as this will enlighten the reader as to the difficulties facing the Resort in formulating a plan or arrangement under the CCAA. The business of the Resort has been diverse. It acquired freehold and leasehold interests in two very large parcels of land, with a view to developing a high-end resort development wherein expensive chalets would be sold to high net worth investors and buyers. These people would be attracted to purchase land in the development and have the Resort build chalets for them by the fact that a world-class golf course would be constructed together with a substantial clubhouse and separate restaurant and conference centre facilities; which facilities in combination, would make the Resort area an attractive tourist destination and recreation home area. This development necessitated immense expenditures on infrastructure including a very expensive bridge across the Humber River in order to provide access to the development lands; the installation of a full municipal level water supply and treatment system; the installation of separate septic disposal systems for each chalet; the development of a significant road network; and other related infrastructure. In addition, in order to attract purchasers it has been necessary to become engaged in an extensive marketing campaign in the United Kingdom and Europe whence the bulk of the purchasers have been solicited and obtained. In order to make purchasing in the Resort development attractive, the Resort developed a subsidized charter flight system from the U.K., which has proven to be expensive and a generator of considerable losses for the Resort.

7 Three hundred and seventy lots have been sold in the Resort development and two hundred and twenty chalets have been completed. All of these were completed at a loss to the Resort. An additional one hundred and thirty-five chalets are in various stages of construction, ranging from near completion to only the installation of foundations in some cases. Mr. Derrick White, a director of the Resort, testified that if all of the chalets are completed, this will result in a 7.5 million dollar loss to the Resort. In many cases, the cost to complete the chalet and to clear it of mechanics' liens and other encumbrances so that clear title can be delivered to the buyer exceeds the balance remaining to be paid to the Resort by that prospective purchaser.

8 Additionally, neither the clubhouse, the golf course, the beach house restaurant nor the Strawberry Hill restaurant and conference centre have generated any positive cash flow for the Resort.

9 Since the granting of the Initial Order in this matter, the Resort has closed the golf course, the clubhouse, the beach house restaurant and the Strawberry Hill restaurant and conference centre. The staffing of the Resort has been very seriously reduced with some employees remaining on staff in order to work out their notice and to provide services necessary to the Resort, in order to properly mothball it for the winter season. In addition, a much diminished staff exists in order to maintain core and key personnel for an ultimate reopening of the Resort and to deal with matters arising under the CCAA and relations with creditors and chalet owners.

10 The Resort, with the assistance of the Monitor, is actively pursuing the sale of that portion of the Resort known as "Strawberry Hill". Advertisements for its sale have been published and deadlines set for submission of tenders at October 15, 2008. I am satisfied that the efforts made by the Resort to dispose of this portion of its assets have been both diligent and reasonable and done in good faith.

11 Mr. White deposed as well that the Resort and the Monitor had met with representatives of the Province of Newfoundland and Labrador to review with the Province the CCAA process and to discuss potential provincial assistance and involvement in the restructuring. No information was provided with respect to any details of those discussions or any outcomes therefrom. The Court was advised, however, that discussions remain ongoing with the Province.

12 In addition, the Resort has met with representatives of a major international corporation which has expressed interest in the Resort and a representative of that party has toured the Resort on two occasions since the date of the Initial Order and confidential discussions with that party are ongoing.

13 In addition to staff reductions, the Resort, with the concurrence of the Monitor, has taken steps to minimize its negative cash flow including closure of offices and reduction in the scale of operations. The Resort continues to provide essential services to maintain and preserve the key assets such as the golf course, the clubhouse and the beach house, which would be key components in a business restructuring of the Resort.

14 At present no plan or arrangement nor any outline thereof has been presented the Court. It is clear, and I am satisfied that if the Stay Termination Date is not extended, the Resort's creditors will commence proceedings and that those proceedings will be prejudicial to the Resort to the extent that it would eliminate its ability to propose and complete any successful restructuring. Therefore, without the extension of the Stay of the Resort will fail.

Ruling on Extension of Stay Termination Date

15 In other types of restructurings under the CCAA, one might have expected to see at this time a clearer indication from the Applicant that a plan or arrangement with creditors had been largely formulated and was projected to be successful. That is not the case here. The ultimate restructuring plan is still very much in the initial stages of discussion and development. The complex nature of the diverse operations of the Resort and the various factors which contributed to its accumulated losses are not in my view simple to either analyze or resolve. I am satisfied that the present lack of a plan is not reflective of a situation where the Applicant has engaged the Court only to defer liquidation without any real prospect of devising a plan acceptable to creditors. If I thought that were the case or that the Applicant was not proceeding with due diligence or in good faith, I would not exercise the discretion of the Court to grant the extension of the Stay. Obviously, however, in balancing the various interests which the CCAA is designed to protect and promote, stay periods can not be justified where there is no real prospect of a successful restructuring. However, I am satisfied that we are not at the point where a conclusion can be drawn that restructuring is likely to be unsuccessful.

16 I am therefore satisfied to grant the Stay Extension sought by the Applicant to December 5, 2008. Two of the interested parties, while not opposing a Stay in principle, have asked me to shorten the Stay Extension period to 30 days from October 6, 2008. I am not prepared to accede to those requests but will deal with them later in this Judgment.

Decision on Authorization of Additional DIP Financing and Securitization

17 As part of its application for Stay Extension and the authorization of additional DIP Financing, the Resort has filed the First Report of the Monitor dated October 1, 2008 (the "Monitor's Report"). The Monitor's Report has attached as Appendix B a revised cash flow projection for the period September 5, 2008, through to December 28, 2008. In the "Out Flows" section thereof, there is a categorized list of projected expenditures. As expected, the Monitor's fees and other professional fees feature prominently therein as well as ongoing labour costs and the costs to the Resort of early termination of employment. With respect to all contractual employees, termination allowances have been made on the basis of their contracts as opposed to mere statutory notice periods under the Labour Standards Act. In addition, certain key personnel have received salary augmentations over and above their pre-Initial Order salaries in order to maintain their continued employment with the Resort during the restructuring period and to diminish the likelihood of the lost key personnel who would be important for a successful restructuring of the Resort. I have been asked by counsel representing chalet owners to reverse the provisions of the Initial Order authorizing such salary augmentations and also to order that no future payments be made on the basis of contractual termination provisions versus Labour Standards Act termination rights.

18 I am not satisfied that it is appropriate for the Court to annul the previously approved termination arrangements or salary augmentations. In the scheme of things, the amount of unpaid termination benefits is not significant, given the fact that a large portion thereof remains payable to employees who are working out their notice period, as opposed to those whose employment has been terminated absolutely. Therefore the Resort is receiving the benefit of their labours. With respect to annulling or varying

the salary augmentations for key employees, it is my view that such a decision would be counterproductive as it may result in the loss of those key personnel or some of them at a point in time when they are very busy and their historic institutional knowledge of the Resort is extremely important to formulating a successful plan or arrangement with the creditors of the Resort. Additionally, a key component in a successful restructuring will be the continuing ability of the Resort after restructuring to market its remaining lots. In my view the Resort needs to reach a certain critical mass of sold lots and constructed chalets which level is not yet met. The practice in the Resort has been that certain chalet owners make their chalets available as part of a rental pool, which the Resort then markets much as a hotel would be marketed. If key staff are cut back and relations with existing chalet owners deteriorate further as a result thereof, the dissatisfaction of existing chalet owners would create a very negative reputation for the Resort thus compounding the difficulties of the Resort in restructuring and marketing itself thus inhibiting prospects of additional chalet construction, thus the Resort will be marginalized. I am therefore not satisfied that varying these salary augmentations is wise in the long term.

19 I have reviewed the cash flow statements provided and the categories of expense to which it is intended to apply any additional DIP Financing authorized by this Court. I am satisfied that the cash flow statement is sufficiently detailed so that it is not necessary for this Court to specifically order that the DIP Financing be used in specified amounts for specified purposes.

20 In addition, the amount of additional DIP Financing sought in the amount of \$1,400,000 in my view is not of sufficient magnitude as to greatly prejudice existing creditors, in the event that the restructuring plan or arrangement should fail by not being accepted by the creditors. The real hope for creditors in this matter lies largely in a successful restructuring of the Resort. The effects of a failure of the Resort to be successfully restructured are virtually impossible to predict but I am satisfied that the adverse effect upon creditors of such a failure would be greater than any diminution of their recovery caused by allowing the proposed DIP Financing. Therefore, the additional DIP Financing in amount of \$1,400,000 and securitization thereof over the clubhouse, the golf course, the beach house and Strawberry Hill is approved.

21 Counsel for chalet owners had asked me to reduce the amount of approved DIP Financing essentially by cutting it in half. The rationale behind this suggestion is that by early November the state of the proposed sale of Strawberry Hill, while not being completed, will be reasonably predictable and whether there is a need for all of the DIP Financing will then become clear because the available net proceeds from the sale of Strawberry Hill will then be known. While this proposal has an initial attractiveness to it, I am of the view that any hearing with respect to continuation of DIP Financing and the expansion thereof, up to the original amount requested by the Resort, would simply generate into a distracting hearing about the whole Stay Period Extension without much concomitant benefit resulting therefrom. Nothing in the Order authorizing the DIP Financing requires the Resort to draw down on that financing if it is not necessary to do so. I am satisfied, therefore, that normal commercial common sense will keep the DIP borrowings to the minimum amount necessary in order to carry out the development of and implementation of the plan or arrangement under the CCAA.

Maxium Financial Services Inc. ("Maxium")

22 Maxium is a corporation which finances and leases golf course equipment to various hotels and resorts. Its counsel filed an affidavit of John Barraclough, the senior manager, credit and collections, of Maxium. Mr. Barraclough disposed that under its master lease agreement 139 pieces of equipment were leased to the Resort for use in the operation of the golf course. Under the master lease agreement, title to that equipment remains in Maxium and defaults by the Resort, under the master lease agreement, have entitled Maxium to repossess the equipment, which right of repossession is stayed by the Initial Order. Maxium has indicated that there is definite limited season for the sale of golf course equipment to be utilized by resorts in the commencement of the 2009 golf season, which would commence around April 1, 2009. Maxium says that if the equipment is not available to it soon, Maxium will lose an opportunity to sell the equipment to another golf course prior to the commencement of the 2009 season. It estimates its loss as being as much as 20% to 25% of the value with respect to the equipment. Unfortunately with respect the sale of the equipment, Maxium does not provide any estimate of market value thereof. It only indicates that there is an outstanding balance as of September 5th owed to it by the Resort in the amount of \$895,990.15. Therefore, I have no way of knowing whether Maxium will in fact suffer any loss at all if the equipment is repossessed at a later date and has to be sold at a lesser value. I am therefore not prepared to lift the Stay of Proceedings presently in place against Maxium in order to allow it

to repossess its security. Maxium, of course, is at liberty under the [CCAA](#) to make a specific application to have the Stay against it lifted upon sufficient grounds indicating to the Court that Maxium will be unduly prejudiced by a continuation of the Stay.

Marine Contractors Inc. and Home Construction Ltd.

23 These two corporations have applied for an order lifting the Stay in order to allow them to commence mechanics' liens actions in order to perfect mechanics' liens already filed. The Applicant and the Monitor as well as creditors present at the hearing had no objection to this process and it is therefore ordered that a Stay of Proceedings granted in the Initial Order of September 5, 2008, is lifted to the extent only as required to allow commencement of actions under the [Mechanics' Lien Act](#) to enforce claims for liens described on the Schedule annexed to the Applications of these two companies naming, amongst others, Humber Valley Resort Corporation as a defendant, such Stay to be re-instated forthwith upon issuance of the said Statements of Claim as regard to any claim against Humber Valley Resort Corporation, such Stay to continue thereafter in full force and effect in accordance with the terms of the Initial Order until further Order of this Court.

Notre Dame Agencies and R. & T. Custom Woodworking Limited

24 The above named corporations are in a similar position to Home Construction Limited and Marine Contractors Inc. They have filed mechanics' lien claims but have not as yet commenced any actions. They too will be seeking leave to commence their actions and have the Stay lifted against them on the same basis as ordered with respect to the previous two companies. Counsel for the Resort has no objection to this procedure and has undertaken to file a consent order in that respect. Upon the filing of an appropriate application to lift the Stay against them so as to allow the issuance of Statements of Claim under the [Mechanics' Lien Act](#), leave to file a consent judgment is hereby granted without the need for further appearance in Court.

Application granted.