



COURT FILE NUMBER 1201-10692
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**

AND IN THE MATTER OF 1357686 ALBERTA LTD.

APPLICANT **1357686 ALBERTA LTD.**
DOCUMENT **APPLICATION
(Sale Approval, Restricted Court Access Order and Stay
Extension)**

ADDRESS FOR SERVICE AND CONTACT
INFORMATION OF PARTY FILING THIS
DOCUMENT **NORTON ROSE FULBRIGHT CANADA LLP
400 3rd Avenue SW, Suite 3700
Calgary, Alberta T2P 4H2**

Phone: +1 403.267.8196
Fax: +1 403.264.5973

Attention: Randal S. Van de Mosselaer

File No. 01024427-0001

NOTICE TO RESPONDENT(S):

This Application is made against you. You are a Respondent.

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: Monday, April 14, 2014

Time: 2:00 p.m.

Where: Calgary Courts Centre, 601 - 5th Street SW, Calgary, Alberta

Before Whom: The Honourable Madam Justice K. M. Horner, of the 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. An Order abridging, if necessary, the time for service of this Application and supporting materials, and declaring service of same to be good and sufficient.
2. An Order extending the stay of proceedings in this matter with respect to 1357686 Alberta Ltd. (the "Applicant") to June 30, 2014.
3. An Order, substantially in the form attached hereto as Schedule "A":
 - 3.1 Authorizing and approving the purchase and sale agreement (the "PSA") between Krita Investments Ltd. (the "Purchaser") and the Applicant and approving the sale of certain lands described in the PSA (the "Calaway Lands") located in the Province of Alberta and legally described as:

MERIDIAN 5 RANGE 3 TOWNSHIP 24
SECTION 32
QUARTER SOUTH EAST
CONTAINING 64.7 HECTARES (160 ACRES) MORE OR LESS
EXCEPTING THE NO. 1 HIGHWAY ON PLAN 3850JK CONTAINING
10.64 ACRES MORE OR LESS
EXCEPTING THEREOUT ALL MINES AND MINERALS

MERIDIAN 5 RANGE 3 TOWNSHIP 24
SECTION 33
QUARTER SOUTH WEST
CONTAINING 64.7 HECTARES (160 ACRES), MORE OR LESS
EXCEPTING THOSE PORTIONS OF THE FOLLOWING PLAN:
PLAN NO. ACRES MORE OR LESS HECTARES
MORE OR LESS
#1 HIGHWAY 3850JK 10.78 4.366
EXCEPTING THEREOUT ALL MINES AND MINERALS AND THE
RIGHT TO WORK SAME

- 3.2 Directing the Registrar of Land Titles of Alberta to cancel the existing certificate of title for the Calaway Lands and to reissue same in the name of the Purchaser (or its nominee), subject only to the Permitted Encumbrances, as defined in the PSA.
- 3.3 Providing direction to the Chief Restructuring Officer with respect to the distribution of the net proceeds arising from the PSA.

4. An Order substantially in the form attached hereto as Schedule "B", sealing the Confidential Supplemental Affidavit of Gary L. Bentham sworn April 9, 2014 (the "Confidential Affidavit").
5. An Order substantially in the form attached hereto as Schedule "C", authorizing an investigation holdback (the "Holdback") in the amount of \$35,000, which shall be held in trust by Ernst & Young Inc. in its capacity as Monitor (the "Monitor") for a period of time as set out in the said Order.
6. Such further and other relief, advice and directions as counsel may advise and this Honourable Court may deem just and appropriate.

Grounds for making this Application:

7. The Applicant applied for and obtained an Initial Order under the *Companies' Creditors Arrangement Act*, RSC 1985, c C-36 ("CCAA") by Order of this Court, August 24, 2012, (the "Initial Order").
8. The Applicant has acted and continue to act in good faith and in cooperation with the Monitor in the within CCAA proceedings.
9. On December 19, 2012, this Honourable Court granted an Order approving the Marketing Process for the Calaway Lands.
10. Following the Marketing Process, the Applicant and the Purchaser have entered into the PSA for the sale and purchase of the Calaway Lands, which is subject to the approval of this Honourable Court.
11. The Confidential Affidavit ought to be sealed to avoid the tainting of any future sales process, which may be required should the sales to the proposed Purchaser fail to be completed.
12. The Holdback is necessary should any questioning be requested of the Applicant and/or the Monitor by various regulatory and governmental authorities in relation to investigations under way or likely commencing in respect of the Applicant or its principals.

13. The relief requested by the Applicant is fair, reasonable, and in the best interests of the Applicant, its stakeholders, and the within CCAA restructuring proceedings.
14. Such further and other grounds as counsel may advise and this Honourable Court may permit.

Material or evidence to be relied on:

15. The Affidavit of Gary L. Bentham sworn April 9, 2014.
16. The Confidential Affidavit of Gary L. Bentham sworn April 9, 2014.
17. The Sixth Report of the Monitor.
18. All pleadings and proceedings filed in the within action.
19. The Initial Order and any subsequent Orders in this action.
20. The proposed forms of Orders, attached hereto as Schedules "A", "B" and "C".
21. The inherent jurisdiction of this Honourable Court to control its own process.
22. Such further and other material and evidence as counsel may advise and this Honourable Court may permit.

Applicable Acts, Regulations and Rules:

23. The provisions of the CCAA including, but not limited to, sections 11, 11.02 and 20 thereof.
24. The *Alberta Rules of Court*, Alta Reg 124/2010 including, but not limited to, Part 6, Division 4, and in particular, Rule 6.28(b).

Any irregularity complained of or objection relied on:

25. None.

How the Application is proposed to be heard or considered:

26. Oral submissions by counsel at an Application in Justice Chambers as scheduled by counsel.

WARNING

If you do not come to Court either in person or by your lawyer, the Court may give the Applicant(s) 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.

SCHEDULE "A"

Clerk's Stamp

COURT FILE NUMBER 1201-10692
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**

AND IN THE MATTER OF 1357686 ALBERTA LTD.

APPLICANT **1357686 ALBERTA LTD.**
DOCUMENT **ORDER**
 (Calaway Land Sale Approval and Vesting Order)

ADDRESS FOR SERVICE **NORTON ROSE FULBRIGHT CANADA LLP**
AND CONTACT 400 3rd Avenue SW, Suite 3700
INFORMATION OF PARTY Calgary, Alberta T2P 4H2
FILING THIS DOCUMENT

Phone: +1 403.267.8196
Fax: +1 403.264.5973

Attention: Randal S. Van de Mosselaer

File No. 01024427-0001

DATE ON WHICH ORDER WAS PRONOUNCED: April __, 2014

LOCATION OF HEARING: Calgary, Alberta

NAME OF JUDGE WHO MADE THIS ORDER: Madam Justice K. M. Horner

UPON the application of 1357686 Alberta Ltd. ("135" or the "Applicant"); **AND UPON** **HAVING READ** the Affidavit Gary L. Bentham sworn April 9, 2014 and the Confidential Supplemental Affidavit of Gary L. Bentham sworn April 9, 2014 (the "Confidential Affidavit"); **AND UPON HAVING READ** the Sixth Report of Ernst & Young Inc. (the "Monitor") in its capacity as Monitor (the "Monitor's Report"); **AND UPON HEARING** the submissions of counsel for the Applicants and any other counsel in attendance; **AND UPON HAVING READ** the pleadings and proceedings herein, including the August 24, 2012 Initial Order (the "Initial Order") in the within Action;

IT IS HEREBY ORDERED AND DECLARED THAT:

SERVICE

- 1 The time for service of this notice of this Application for this Order is hereby abridged and deemed to be good and sufficient and this Application is properly returnable today.

APPROVAL OF TRANSACTION:

- 2 The Purchase and Sale Agreement (the "PSA") between Krita Investments Ltd. (the "Purchaser") and 135, which PSA is attached as Exhibit "A" to the Confidential Affidavit (as amended by the Amending Agreement which is attached as Exhibit "B" to the Confidential Affidavit), including the purchase and sale of those lands (the "Lands") defined in the PSA as the "Property", is hereby approved and ratified. Any other offers with respect to the Property are hereby rejected and all deposits received from any other offerors shall forthwith be returned.
- 3 The CRO (as that term is defined in the Initial Order) is hereby authorized to conclude the transaction contemplated by the PSA (the "Transaction") and to take all such steps and execute all such documents as may reasonably be necessary to complete the transactions contemplated therein substantially in accordance with its terms, subject to such amendments as the parties thereto and the Monitor may approve which do not materially and adversely alter the Transaction.

VESTING OF LANDS

- 4 Upon closing of the Transaction, all of 135's right, title and interest, in and to the Lands shall, without further instrument of transfer or assignment, vest in the Purchaser as contemplated by the PSA, absolutely and forever, free and clear of and from any and all claims by, through, or under 135, and any and all estate, right, title, interest, and liens, including but not limited to, claims, hypothecs, mortgages, charges, liens (whether contractual, statutory or otherwise), security interests, assignments, actions, levies, taxes, judgments, writs of execution, trusts or deemed trusts (whether contractual, statutory or otherwise), options, agreements, disputes, debts, encumbrances or other rights, limitations or restrictions of any nature whatsoever including, without limitation, any rights or interests of any creditors of 135 whether or not they have attached or been perfected, registered or filed, whether secured or unsecured or otherwise, whether liquidated, unliquidated or contingent (all of the foregoing being collectively referred to

hereinafter as "the Claims") whether such Claims came into existence prior to, subsequent to, or as a result of any previous order of this Court, by or of all persons or entities of any kind whatsoever, including, without limitation, all individuals, firms, corporations, partnerships, joint ventures, trusts, unincorporated organizations, governmental and administrative bodies, agencies, authorities or tribunals and all other natural persons or corporations, whether acting in their capacity as principals or as agents, trustees, executives, administrators or other legal representatives (collectively, the "Claimants") including for greater certainty and without limiting the generality of the foregoing: (i) the Claims held by or in favour of the individuals and entities served (either directly or through their solicitors) with this Application; and (ii) the beneficiary of any Claims created or provided for pursuant to any previous Order of this Court in these proceeding.

- 5 The Purchaser shall, by virtue of the completion of the Transaction, have no liability of any kind whatsoever to any Claimants in respect of any Claims they may have against 135.
- 6 The Transaction shall not be void or voidable at the instance of Claimants and shall not constitute nor shall be deemed to be a settlement, fraudulent preference, assignment, fraudulent conveyance or other challengeable or reviewable transaction under the *Bankruptcy and Insolvency Act*, RSC 1985, c B-3, as amended (the "BIA") or any other applicable federal or provincial legislation, and the Transaction, or any actions taken in connection therewith, shall not constitute conduct meriting an oppression remedy.
- 7 Any legislation affecting sales in bulk in all jurisdictions does not apply to the Transaction, and the Transaction may be completed without compliance with: (a) the provisions of section 60 of the *Personal Property Security Act*, RSA 2000, c P-7, as amended, and any similar provisions in personal property security legislation in force in any province in which 135 carries on business; and (b) section 244 of the BIA.
- 8 Upon closing of the Transaction, the Purchaser is entitled to obtain possession of the Lands.
- 9 Nothing in this Order shall prejudice any person's *in personam* claim against 135.
- 10 The CRO is hereby authorized and directed to:

- a) perform the covenants in the PSA substantially in accordance with its terms, subject to such amendments as the CRO, Monitor, and the Purchaser may approve which do not materially and adversely alter the Transaction;
- b) execute all deeds and documents, and to take all such steps as may be necessary or advisable in his sole discretion to consummate the Transaction;

11 Upon delivery of a certified copy of this Order to the Registrar of the Alberta Land Titles Office ("the Registrar") and a written request from 135 or 135's counsel to do so, the Registrar is hereby authorized, requested, and directed to cancel the existing Certificate of Title against the Lands located in Rocky View County in the Province of Alberta and standing under certificates of title numbers 081 085 609 and 081 085 609 +1 and legally described as:

MERIDIAN 5 RANGE 3 TOWNSHIP 24
SECTION 32
QUARTER SOUTH EAST
CONTAINING 64.7 HECTARES (160 ACRES) MORE OR LESS
EXCEPTING THE NO. 1 HIGHWAY ON PLAN 3850JK CONTAINING 10.64
ACRES MORE OR LESS
EXCEPTING THEREOUT ALL MINES AND MINERALS

("Lot 1")

MERIDIAN 5 RANGE 3 TOWNSHIP 24
SECTION 33
QUARTER SOUTH WEST
CONTAINING 64.7 HECTARES (160 ACRES), MORE OR LESS
EXCEPTING THOSE PORTIONS OF THE FOLLOWING PLAN:
PLAN NO. ACRES MORE OR LESS HECTARES MORE
OR LESS
#1 HIGHWAY 3850JK 10.78 4.366
EXCEPTING THEREOUT ALL MINES AND MINERALS AND THE RIGHT TO
WORK SAME

("Lot 2")

(Lot 1 and Lot 2 being referred to collectively in this Order at the "Lands") and to issue new Certificates of Title for the Lands in the name of the Purchaser, namely, Krita Investments Ltd. (or nominee as specifically set out in the said written request) (the "New Titles"), which New Titles shall be subject only to those encumbrances ("the Permitted Encumbrances") listed on Schedule "A" hereto.

- 12 The Registrar shall perform the steps specified in paragraph 11 of this Order notwithstanding the requirements of section 191(1) of the *Land Titles Act*, RSA 2000, c L-4.
- 13 Upon the Registrar completing the steps identified in paragraphs 11 and 12 of this Order, the Registrar shall forthwith make available to the Purchaser's counsel a certified copy of the New Titles.
- 14 This Order shall be registered by the Registrar notwithstanding that the appeal period in respect of this Order has not elapsed, which appeal period is expressly waived.

SALE PROCEEDS

- 15 Subject to paragraph 17 hereof, the CRO or 135's counsel shall hold the total proceeds paid to it arising out of the PSA, less closing costs including real estate commissions, taxes, conveyancing costs of the CRO, and other usual closing costs (the "Net Proceeds") pursuant to and in accordance with the terms of this Vesting Order.
- 16 The Net Proceeds shall stand in the place and stead of the Lands and all Claims shall attach solely to such Net Proceeds with the same validity, priority and in the same amounts and subject to the same defences that were or may have been available immediately prior to the closing of the Transaction as if the Lands had not been sold and remained in the possession or control of the person having that possession or control immediately prior to the closing of the Transaction.
- 17 The CRO is hereby authorized and directed to disburse the Net Proceeds (less the Holdback as that term is defined in the PSA) as follows:
 - (a) First, on account of those professional fees and disbursements entitled to the benefit of the Administration Charge (as that term is defined in the Initial Order); and
 - (b) Second, on account of the credit facility provided by the DIP Lender (as that term is defined in the September 24, 2012 Order in the within proceedings);as set out in the distribution schedule attached as Exhibit "D" to the Bentham Affidavit.

- 18 The balance of the Net Proceeds remaining after disbursement of the amounts set out in the preceding paragraph (the "Remaining Distributable Funds") shall be held by 135's counsel pending further Order of this Court.
- 19 For purposes of paragraph 17 hereof, the costs and expenses, sale proceeds, and any Court ordered Charges shall be allocated between Lot 1 and Lot 2 on the basis of a 40.02% allocation to Lot 1 and a 59.98% allocation to Lot 2 (the "Allocation").
- 20 The Holdback (as that term is defined in the PSA) shall be held in trust by 135's counsel and shall, upon completion of the final adjustment in accordance with 2.3(b) of the PSA, either:
- (a) be paid to the Purchaser (in whole or in part) in accordance with the terms of the PSA; or
 - (b) form part of the Remaining Distributable Funds and be held pending further Order of this Court;

in the amounts as circumstances may require.

FEES ASSOCIATED WITH THE ISSUANCE OF NEW TITLES

- 21 All costs, fees and disbursements associated with the steps outlined in paragraphs 11, 12 and 13 of this Order shall be for the account of the Purchaser.

MISCELLANEOUS

- 22 Presentment to the Registrar of the certified copy of this Order and a written request from 135 or 135's counsel as set out in paragraph 11 shall be the Registrar's sole and sufficient authority for cancellation of the said titles, issuance of the New Titles and discharge of all encumbrances except for the Permitted Encumbrances from the New Titles.
- 23 Service of this Order is dispensed with except upon those parties present at the hearing of this Application, and any parties who were provided with notice of this Application.
- 24 This Honourable Court hereby requests the aid and recognition of any court or administrative body in any province of Canada, the Federal Court of Canada, any administrative tribunal or other court constituted pursuant to the Parliament of Canada or

any of its provinces or territories and any federal or state court or administrative body in the United States of America or any other foreign courts to act in aid of and to be complimentary to this Court in carrying out the terms of this Order.

- 25 135 and the Monitor shall be at liberty to reapply for further advice, assistance and direction as may be necessary to give full force and effect to the terms of this Order.

Justice of the Court of Queen's Bench of Alberta

SCHEDULE "A" TO THE ORDER OF MADAM JUSTICE K. M. EIDSVIK

Permitted Encumbrances

- Order 6618GW.
- Utility Right of Way 5943IK.
- Zoning Regulations 761 141 577
- Caveat 881 142 254

SCHEDULE "B"

COURT FILE NUMBER 1201-10692
COURT COURT OF QUEEN'S BENCH OF ALBERTA
JUDICIAL CENTRE CALGARY

Clerk's Stamp

**IN THE MATTER OF THE *COMPANIES' CREDITORS*
ARRANGEMENT ACT, RSC 1985, c C-36**

AND IN THE MATTER OF 1357686 ALBERTA LTD.

APPLICANT **1357686 ALBERTA LTD.**
DOCUMENT **RESTRICTED COURT ACCESS ORDER**

ADDRESS FOR SERVICE **NORTON ROSE FULBRIGHT CANADA LLP**
AND CONTACT 400 3rd Avenue SW, Suite 3700
INFORMATION OF PARTY Calgary, Alberta T2P 4H2
FILING THIS DOCUMENT

Phone: +1 403.267.8196
Fax: +1 403.264.5973

Attention: Howard A. Gorman
 Randal S. Van de Mosselaer

File No. 01024427-0001

DATE ON WHICH ORDER WAS PRONOUNCED: April 14, 2014

LOCATION OF HEARING: Calgary, Alberta

NAME OF JUDGE WHO MADE THIS ORDER: Madam Justice K. M. Horner

UPON the application of 1357686 Alberta Ltd. (the "Applicant"); **AND UPON HAVING READ** the Affidavit of Gary L. Bentham sworn April 9, 2014 and the Confidential Supplemental Affidavit of Gary L. Bentham sworn April 9, 2014; **AND UPON HAVING READ** the Sixth Report of Ernst & Young Inc. in its capacity as Monitor; **AND UPON HEARING** the submissions of counsel for the Applicant and any other counsel in attendance;

IT IS HEREBY ORDERED AND DECLARED THAT:

SERVICE

1. The time for service of the materials in support of the Application for the restricted court access order in this matter (this "Order") is hereby dispensed with, and specifically, the service, notice and formal requirements of Part 6, Division 4 of the *Alberta Rules of Court*, Alta Reg 124/2010 shall not apply to this Order and are hereby dispensed with.

SEALING OF CONFIDENTIAL SUPPLEMENTAL AFFIDAVIT

2. The Confidential Supplemental Affidavit of Gary L. Bentham sworn April 9, 2014 (the "Confidential Affidavit"), shall be treated as confidential, sealed and not form part of the public record, and shall be inserted in a sealed envelope which shall be clearly marked "SEALED PURSUANT TO COURT ORDER - NOT TO BE OPENED WITHOUT PRIOR AUTHORITY FROM THE HONOURABLE MADAM JUSTICE K. M. HORNER OR ANY OTHER JUSTICE OF THE COURT OF QUEEN'S BENCH".
3. The Confidential Affidavit shall be filed with the Court ____ days following the closing of the pending sale to the proposed Purchaser (as that term is defined and described in the Confidential Affidavit).
4. The Applicant is at liberty to reapply for further advice, assistance and direction as may be necessary to give full force and effect to the terms of this Order.

Justice of the Court of Queen's Bench of Alberta

SCHEDULE "C"

COURT FILE NUMBER 1201-10692
COURT COURT OF QUEEN'S BENCH OF ALBERTA
JUDICIAL CENTRE CALGARY

Clerk's Stamp

**IN THE MATTER OF THE COMPANIES' CREDITORS
ARRANGEMENT ACT, RSC 1985, c C-36**

AND IN THE MATTER OF 1357686 ALBERTA LTD.

APPLICANT **1357686 ALBERTA LTD.**
DOCUMENT **APPROVE INVESTIGATION RESERVE**

ADDRESS FOR SERVICE AND CONTACT
INFORMATION OF PARTY
FILING THIS DOCUMENT **NORTON ROSE FULBRIGHT CANADA LLP**
400 3rd Avenue SW, Suite 3700
Calgary, Alberta T2P 4H2

Phone: +1 403.267.8196
Fax: +1 403.264.5973

Attention: Randal S. Van de Mosselaer

File No. 01024427-0001

DATE ON WHICH ORDER WAS PRONOUNCED: April 14, 2014

LOCATION OF HEARING: Calgary, Alberta

NAME OF JUDGE WHO MADE THIS ORDER: Madam Justice K. M. Horner

UPON the application of 1357686 Alberta Ltd. (the "Applicant"); **AND UPON HAVING READ** the Affidavit of Gary L. Bentham sworn April 9, 2014 and the Confidential Supplemental Affidavit of Gary L. Bentham sworn April 9, 2014; **AND UPON HAVING READ** the Sixth Report of Ernst & Young Inc. in its capacity as Monitor (the "Sixth Report"); **AND UPON HEARING** the submissions of counsel for the Applicant and any other counsel in attendance;

IT IS HEREBY ORDERED AND DECLARED THAT:

SERVICE

1. The time for service of this notice of this Application for this Order is hereby abridged and deemed good and sufficient and this Application is properly returnable today.

APPROVAL OF INVESTIGATION RESERVE

2. The capitalized terms used in this Order shall have the meaning ascribed to them in the Sixth Report.
3. An investigation holdback in the amount of \$35,000 (the "Holdback") be and is hereby approved and the Monitor is authorized to pay any fees, costs or disbursements incurred by the Monitor or its counsel related to any investigation by any Person or Governmental Authority in respect of 135 from the Holdback.
4. The Holdback shall be held in trust by the Monitor for a period of 2 years from the closing of the Proposed Sale Transaction (as defined in the Sixth Report) or such other sale transaction as may be approved by this Honourable Court after which any unused portion of the Holdback shall follow the balance of the funds paid to 135's applicable creditor.
5. The Applicant and the Monitor are at liberty to reapply for further advice, assistance and direction as may be necessary to give full force and effect to the terms of this Order.

Justice of the Court of Queen's Bench of Alberta