

BANKRUPTCY FILE
NUMBER

24-2736961

**COURT OF QUEEN'S BENCH OF
ALBERTA IN BANKRUPTCY AND
INSOLVENCY**

**IN THE MATTER OF THE BANKRUPTCY
OF MOD PANEL MANUFACTURING LTD.**

JUDICIAL CENTRE

EDMONTON

DOCUMENT

**APPLICATION TO LIFT THE
STAY OF PROCEEDINGS**

ADDRESS FOR SERVICE AND
CONTACT INFORMATION OF
PARTY FILING THIS
DOCUMENT

Jessica L. Cameron
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File No. 559347/000007

NOTICE TO RESPONDENTS: See Attached Service List at Schedule "A"

This application is made against you. You are a respondent.

You have the right to state your side of this matter before the master/judge.

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

Date	July 14, 2021
Time	2:00 p.m.
Where	Edmonton Courts Centre (via WebEx Video Conference)
Before Whom	The Honourable Justice D.L. Shelley

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

Remedy claimed or sought:

1. The Applicant, Graham Design Builders LP, by its general partner Graham Design Builders Ltd. and Carillion Construction Inc. (“**Graham**”), seeks an order in the form substantially attached hereto as **Schedule “B”**:
 - (a) Declaring service of this Application good and sufficient, and abridging the time for notice of this Application to the time actually given, if necessary; and
 - (b) An order lifting the stay of proceedings in the within bankruptcy proceedings, being Bankruptcy Action No. 24-2736961 (the “**Bankruptcy Proceedings**”) regarding the bankrupt estate of Mod Panel Manufacturing Ltd. (“**Mod Panel**”) for the sole purpose of allowing Graham to pursue its claims in two Saskatchewan Court of Queen’s Bench proceedings, being Saskatchewan Court of Queen’s Bench Action No.’s QBG 495 of 2021 (the “**Roof Action**”) and 1548 of 2020 (the “**Wall Action**” and together with the Wall Claim the “**Saskatchewan Actions**”).
2. Such further and other relief as Counsel may advise and this Honourable Court permit.

Grounds for making this application:

Application to Lift the Stay

3. Graham commenced the Wall Action against Mod Panel, amongst other defendants, on October 2, 2020. Graham commenced the Roof Action against Mod Panel, amongst other defendants, on March 1, 2021. The defendants in each of the Saskatchewan Actions are the same and, in addition to Mod Panel, consist of: Premium Spray Products Canada GP Inc., 101172087 Saskatchewan Ltd., Accella Polyurethane Systems Canada, Inc., Intertek Testing Services (ITS) Canada Ltd., Intertek Testing Services NA Ltd. Services D’Essais Intertek an Ltee., Intertek Inspection Services, Ltd., Intertek Canada Newco Limited, Mule-Hide Products Co., Inc., AODBT Architecture Interior Design Ltd., AODBT Architecture Interior Design, ABC Ltd. and DEF Ltd. (collectively the “**Defendants**”).
4. On or about May 7, 2021, Mod Panel was petitioned into bankruptcy and Ernst & Young Inc. LIT was appointed as Trustee of the estate of Mod Panel. As a result of Mod Panel’s bankruptcy, each of the Saskatchewan Actions are subject to the stay of proceedings in the Bankruptcy Proceedings.
5. There are insurance policies in place which may be used to satisfy Graham’s Saskatchewan Actions against Mod Panel. It is Graham’s intention to limit any recovery arising out of the Saskatchewan

Actions to any insurance proceeds that are available pursuant to these policies and to abandon any claim in excess of this insurance as against Mod-Panel.

6. Graham's pursuit of the Saskatchewan Actions will not reduce the pool of assets available to Mod Panel's other creditors. Any monies that Graham recovers under the proceeds of Mod Panel's insurance policies will in fact reduce Graham's unsecured claim in Mod Panel's estate, thereby increasing the realizations available to satisfy Mod Panel's other creditors.
7. Mod Panel is a proper and necessary party for the Saskatchewan Actions to continue against the other named Defendants. If the Saskatchewan Actions are delayed as a result of the stay in the Bankruptcy Proceedings, relevant and material information could be lost or misplaced, jeopardizing Graham's ability to pursue the Saskatchewan Actions.
8. Without an order lifting the stay of proceedings in the Bankruptcy Proceedings, Graham will suffer significant prejudice in the Saskatchewan Actions by its inability to pursue or continue prosecuting its claim.
9. Equitable grounds exist that warrant the granting of the order lifting the stay.
10. Graham is of the belief that its Saskatchewan Actions are justified and will be meritorious.
11. The Trustee has indicated it will not oppose Graham's Application to lift the stay.

Material or evidence to be relied on:

12. The Affidavit of Tony Clark, sworn June 25, 2021, filed.
13. Such further and other material or evidence as Counsel may advise and this Honourable Court permit.

Applicable rules:

14. *Alberta Rules of Court*, AR 124/2010, and in particular Parts 6 and 11.
15. *Bankruptcy and Insolvency General Rules*, CRC 1978, c 368, as amended.
16. Such further and other Rules as counsel may advise and this Honourable Court permit.

Applicable Acts and regulations:

17. *Bankruptcy and Insolvency Act*, RSC 1985, c B-3, and in particular section 69.4.
18. Such further and other Acts or regulations as counsel may advise and this Honourable Court permit.

Any irregularity complained of or objection relied on:

19. None.

How the application is proposed to be heard or considered:

20. Via WebEx Video Conference, on affidavit evidence, before the Honourable Justice D.L Shelley, with some or all of the parties present.

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 give evidence in response to the application, you must reply by filing an affidavit or other evidence with the Court and serving a copy of that affidavit or other evidence on the applicant(s) a reasonable time before the application is to be heard or considered.

Schedule “A”

SERVICE LIST

BORDEN LADNER GERVAIS LLP 1900, 520 3rd Avenue SW Calgary, AB T2P 0R3 Attention: Jessica Cameron Email: Jcameron@blg.com Counsel for Graham Design Builders LP, by its general partner Graham Design Builders Ltd. and Carillion Construction Inc.	ERNST AND YOUNG INC., LIT 1400, 10423 101 St NW Edmonton, AB T5H 2R8 Attention: Matt McCulloch / Daniel Pintaric Email: Matt.McCulloch@parthenon.ey.com Daniel.Pintaric@parthenon.ey.com Bankruptcy Trustee
STIEBER BERLACH LLP 3200, 130 Adelaide Street West Toronto, ON M5H 3P5 Attention: Steve Stieber Email: sstieber@sblegal.ca Counsel for Allianz Global Risks US Insurance Company, Allianz Global Corporate & Specialty Americas, Berkshire Hathaway Specialty Insurance and Temple Insurance Company	WHITELAW TWINING 675, 333 7th Ave SW Calgary, AB T2P 2Z1 Attention: Raymond Wong Email: rwong@wt.ca Counsel for Mod-Panel Manufacturing Ltd.
BROWNLEE LLP 10155 102 street Edmonton, AB T5J 4G8 Attention : Ron Nelson Email : rnelson@brownleelaw.com Counsel for Lloyd’s of London	MORGAN CONSTRUCTION & ENVIROMENTAL LTD. c/o DLA Piper LLP 2700, 10220 - 103 Avenue NW Edmonton, AB T5J0K4 Attention : Jennifer Cleall Email : jennifer.cleall@dlapiper.com
MILLER THOMSON LLP 2700, 10155 – 102 Street Edmonton, AB T5J 4G8 Attention: Terrence Warner Email: twarner@millerthomson.com Counsel for TNT MPM Holdings Inc.	ATFB Capital Ltd. 100, 10446 - 122 Street Edmonton, AB T5N 1M3 Attention : Margaret Paproski Email : admin@midnightfinancial.com

PREMIUM SPRAY PRODUCTS CANADA GP INC. 190 Hodsman Road Regina, SK S4N 5X4 Email : sheila@premiumspray.ca	ACCELLA POLYURETHANE SYSTEMS CANADA, INC. c/o Miller Thomson LLP 3000, 700 – 9th Avenue SW Calgary, Alberta T2P 3V4 Attention: Mr. Khurram Awan Email: kawan@millerthomson.com
INTERTEK TESTING SERVICES (ITS) CANADA LTD. and INTERTEK TESTING SERVICES NA LTD. SERVICES D'ESSAIS INTERTEK AN LTEE c/o Bennett Jones LLP 4500, 885 – 2nd Street SW Calgary, AB T2P 4K7 Attention: Luke Morrison Email: morrisonl@bennettjones.com	INTERTEK TESTING SERVICES (ITS) CANADA LTD. and INTERTEK INSPECTION SERVICES, LTD and INTERTEK CANADA NEWCO LIMITED and INTERTEK TESTING SERVICES NA, LTD. c/o Singleton Urquhart Reynolds Vogel LLP 925 W. Georgia St., Suite 1200 Vancouver, BC V6C 3L2 Attention: Mr. Edmundo Guevara Email: eguevara@singleton.com mconway@singleton.com
AODBT ARCHITECTURE INTERIOR DESIGN LTD 1600, 421 – 7th Avenue SW Calgary, AB T2P 4K9 Attention: Michael J. Deobald Email: jeff.olfert@aodbt.com mdeobald@shtb-law.com gwlg.calgary.corporate@gowlingwlg.com	MULE-HIDE PRODUCTS CO., INC. c/o Parlee McLaws LLP 3300, 421 7 Ave SW Calgary, AB T2P 4K9 Attention: Dale Spackman Email: dspackman@parlee.com
OFFICE OF THE SUPERINTENDENT OF BANKRUPTCY 400, 639 - 5 Avenue SW Calgary AB T2P 0M9 Fax: 403-292-5188	101172087 SASKATCHEWAN LTD. 190 HODSMAN ROAD Regina, Saskatchewan S4N 5X4 Attention: Darren Watson

Schedule “B”

Clerk’s Stamp

BANKRUPTCY COURT
FILE NUMBER 24-2736961

COURT OF QUEEN’S BENCH OF
ALBERTA IN BANKRUPTCY AND
INSOLVENCY

IN THE MATTER OF THE
BANKRUPTCY OF MOD PANEL
MANUFACTURING LTD.

JUDICIAL CENTRE EDMONTON

DOCUMENT **ORDER: LIFT THE STAY**

ADDRESS FOR SERVICE AND
CONTACT INFORMATION OF
PARTY FILING THIS
DOCUMENT
Jessica L. Cameron
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Facsimile: (403) 266-1395
Email: jcameron@blg.com
File No. 559347/000007

DATE ON WHICH ORDER WAS PRONOUNCED: July 14, 2021

LOCATION WHERE ORDER WAS PRONOUNCED: Edmonton, Alberta

NAME OF JUSTICE WHO MADE THIS ORDER: The Honourable D.L. Shelley

UPON the Application of Graham Design Builders LP, by its general partner Graham Design Builders Ltd. and Carillion Construction Inc. (“**Graham**”) for an order lifting the stay of proceedings granted in the bankruptcy proceedings respecting Mod Panel Manufacturing Ltd. (“**Mod Panel**”); **AND UPON** having read the Affidavit of Tony Clark, filed, and the Affidavit of Service of , filed (the “**Service Affidavit**”); **AND UPON** hearing from counsel for Graham, and any other interested party appearing at the Application,

IT IS HEREBY ORDERED AND DECLARED THAT:

1. The time for service of the notice of this Application is abridged to the time actually given and service of the Application and supporting materials as described in the Service Affidavit is hereby declared to be good and sufficient, and this hearing is properly returnable before this Honourable Court today and further service thereof is hereby dispensed with.
2. The stay of proceedings obtained in respect of Mod Panel pursuant to the provisions of the *Bankruptcy and Insolvency Act*, RSC 1985, c B-3, in the within Bankruptcy Action No. 24-2736961 is lifted and shall have no application in regards to either Saskatchewan Court of Queen's Bench Action No.'s QBG 495 of 2021 or 1548 of 2020 (together the "**Saskatchewan Actions**").
3. Graham is hereby granted leave to proceed with and continue the Saskatchewan Actions against each of the Defendants noted therein, including Mod Panel.
4. This Court hereby requests the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or in any foreign jurisdiction, to give effect to this Order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to Graham as may be necessary or desirable to give effect to this Order.
5. Costs of this Application shall be in the cause.