



This is Affidavit #1 of Darlene Purdy
made on August 24, 2022 in this action

No. S-205095
Vancouver Registry

IN THE SUPREME COURT OF BRITISH COLUMBIA

IN THE MATTER OF THE COMPANIES' CREDITORS ARRANGEMENT ACT,
R.S.C. 1985, c. C-36, AS AMENDED

– AND –

IN THE MATTER OF THE BUSINESS CORPORATIONS ACT,
S.B.C. 2002, C. 57, AS AMENDED

– AND –

IN THE MATTER OF A PLAN OF COMPROMISE AND ARRANGEMENT OF
PORT CAPITAL DEVELOPMENT (EV) INC.
and EVERGREEN HOUSE DEVELOPMENT LIMITED PARTNERSHIP

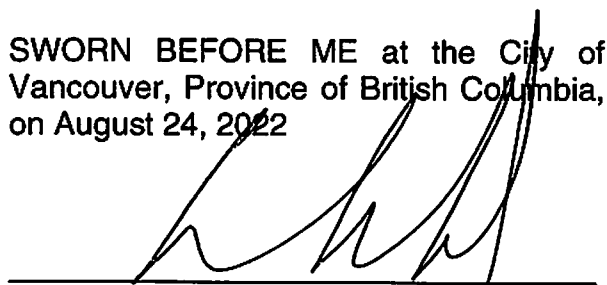
AFFIDAVIT #1 OF DARLENE PURDY

I, **DARLENE PURDY**, with an address for service at Suite 900 – 900 West Hastings Street, Vancouver, British Columbia, V6C 1E5, MAKE OATH AND SAY AS FOLLOWS:

1. I am a legal assistant with Bridgehouse Law, counsel for 1296371 B.C. Ltd. in the within action. I have personal knowledge of the facts and matters hereinafter deposed to, save and except where stated to be based on information and belief, and where so stated, I verily believe them to be true.
2. Now produced and shown to me and marked as **Exhibit "A"** to this my Affidavit is a copy of the Transcript of Proceedings before Madam Justice Fitzpatrick on July 22, 2022.
3. Now produced and shown to me and marked as **Exhibit "B"** to this my Affidavit is a copy of an email exchange between counsel for the Applicant and others present on July 22, 2022.
4. Now produced and shown to me and marked as **Exhibit "C"** to this my Affidavit is a copy of Affidavit #1 of Darlene Purdy, sworn in the Court of Appeal action on August 16, 2022 and filed on August 17, 2022.
5. Now produced and shown to me and marked as **Exhibit "D"** to this my Affidavit is a copy of an email sent to Will Roberts, Kibben Jackson, David Gruber, Scott Stephens and Peter Rubin indicating there had been problems with filing electronically.

6. Now produced and shown to me and marked as **Exhibit "E"** to this my Affidavit is a copy of two emails forwarded to the same counsel at 4:39 p.m. and 4:42 p.m. on August 12, 2022, forwarding unfiled copies of the material.
7. Now produced and shown to me and marked as **Exhibit "F"** to this my Affidavit is a copy of an email to the same counsel dated August 15, 2022, advising them that a Notice of Appeal needed to be filed as an initiating document, with the application for leave to appeal being filed later.
8. Now produced and shown to me and marked as **Exhibit "G"** to this my Affidavit is a copy of an email to the same counsel advising that the filing difficulties were sorted out and filing was effective
9. Now produced and shown to me and marked as **Exhibit "H"** to this my Affidavit is a copy of an email dated August 16, 2022 sent to the same counsel serving the filed Notice of Appeal.
10. Now produced and shown to me and marked as **Exhibit "I"** to this my Affidavit is a copy of an email from counsel for Solterra advising counsel that leave had not been sought to extend time for filing from the Supreme Court.
11. Now produced and shown to me and marked as **Exhibit "J"** to this my Affidavit is a copy of the Argument contained in our Application Book in the Court of Appeal.
12. I swear this Affidavit in support of an application for leave to appeal the Order of Madam Justice Fitzpatrick, made July 22, 2022, from August 12, 2022, to August 18, 2022.

SWORN BEFORE ME at the City of)
 Vancouver, Province of British Columbia,)
 on August 24, 2022)


 A commissioner for taking affidavits for British)
 Columbia)


 DARLENE PURDY

H.C. RITCHIE CLARK, Q.C.
Barrister & Solicitor
 Suite 900-900 West Hastings Street
 Vancouver, British Columbia
 V6C 1E5

S-205095
Vancouver Registry

IN THE SUPREME COURT OF BRITISH COLUMBIA
(BEFORE THE HONOURABLE MADAM JUSTICE S. FITZPATRICK)

Vancouver, B.C.
July 22, 2022

IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*
R.S.C. 1985, C. c-36, AS AMENDED

AND

IN THE MATTER OF THE *BUSINESS CORPORATIONS ACT*,
S.B.C. 2002, C. 57, AS AMENDED

AND

IN THE MATTER OF A PLAN OF COMPROMISE AND ARRANGEMENT OF
PORT CAPITAL DEVELOPMENT (EV) INC. and EVERGREEN HOUSE
DEVELOPMENT LIMITED PARTNERSHIP

PROCEEDINGS IN CHAMBERS

COPY

This is Exhibit "A...." referred to in the
affidavit of DARLENE PURDY
made before me on AUG. 24, 2022

.....
A Commissioner for taking Affidavits for British Columbia

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S-205095
Vancouver Registry

IN THE SUPREME COURT OF BRITISH COLUMBIA
(BEFORE THE HONOURABLE MADAM JUSTICE S. FITZPATRICK)

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PORT CAPITAL DEVELOPMENT (EV) INC. and EVERGREEN HOUSE
DEVELOPMENT LIMITED PARTNERSHIP

PROCEEDINGS IN CHAMBERS

Counsel for Evergreen House and Port Capital
appearing by videoconference:

K. Cameron

Counsel for Domain Mortgage Corp.
appearing by videoconference:

S. Stephens

Counsel for Ernst & Young:

P. Bychawski

Counsel for Jing Chen:

M. Ferreira

Counsel for Aviva Insurance:

W. Roberts

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EXHIBITS

Nil

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1
Proceedings

Vancouver, B.C.
July 22, 2022

1
2
3
4 THE CLERK: Calling the matter of *Companies Creditors*
5 *Arrangement Act* and Port Capital Development Inc.
6 and others, Madam Justice.
7 THE COURT: Mr. Stephens?
8 CNSL S. STEPHENS: Madam Justice, Stephens, first
9 initial S., counsel for Domain Mortgage Corp.
10 THE COURT: Mr. Bychawski?
11 CNSL P. BYCHAWSKI: Yes, Bychawski, B-y-c-h-a-w-s-k-i,
12 first initial P., counsel for Ernst & Young.
13 Good morning.
14 THE COURT: Okay, thank you.
15 CNSL M. FERREIRA: Ferreira, F-e-r-r-e-i-r-a, first
16 initial M., appearing for the pre-purchaser, Jing
17 Chen.
18 THE COURT: Okay.
19 CNSL W. ROBERTS: Roberts, initial W., for Aviva
20 Insurance Company Canada.
21 THE COURT: Okay. And Mr. Jackson --
22 CNSL K. JACKSON: Good afternoon.
23 THE COURT: -- you're back.
24 CNSL K. JACKSON: I'm back.
25 THE COURT: One year later.
26 CNSL K. JACKSON: Yes.
27 THE COURT: One year later.
28 CNSL K. JACKSON: Almost to the day.
29 THE COURT: Well, I know. You don't have -- you're
30 not at all in white and you don't have big floppy
31 ears but you might --
32 CNSL K. JACKSON: But -- but yet -- but yes.
33 THE COURT: -- if I'm reading the -- if I'm reading
34 the tea leaves correctly, maybe --
35 CNSL K. JACKSON: My nose is twitching.
36 THE COURT: -- you're heading in that direction.
37 CNSL K. JACKSON: That's right. Jackson, initial K.,
38 Madam Justice, for Solterra Acquisitions Corp.
39 THE COURT: Yes, and Ms. Cameron, I see you on the
40 video.
41 CNSL K. CAMERON: Good afternoon. Cameron, initial
42 K., on for the petitioners.
43 THE COURT: All right. And I also have on this list
44 William Jackson. Is there -- or was that -- was
45 that just you, Mr. Jackson?
46 CNSL K. JACKSON: I mean I --
47 THE COURT: You're the only Jackson here?

2
Submissions by Cnsl W. Roberts

1 CNSL K. JACKSON: As far as I know.
2 THE COURT: Okay.
3 UNIDENTIFIED SPEAKER: Well, there was a guest on the
4 line but I don't know who it was.
5 THE COURT: Is there a W. Jackson, who's attending,
6 also? No, okay.
7 WILLIAM JACKSON: Yes, yes, I'm --
8 THE COURT: Oh.
9 WILLIAM JACKSON: Yes, I'm -- I'm with Port Capital.
10 THE COURT: Oh, are you?
11 WILLIAM JACKSON: I won't -- I won't be addressing --
12 I won't be addressing the court. I'm just here
13 to monitor.
14 THE COURT: Oh, I see. Are a lawyer, Mr. Jackson?
15 WILLIAM JACKSON: No, I'm not.
16 THE COURT: Oh, okay. All right. You're just an
17 observer then. Okay, well, that -- that's fine.
18 WILLIAM JACKSON: Yes, thank you.
19 THE COURT: Yeah. All right. I'm just going to
20 update this list, Madam Clerk, to show Mr.
21 Stephens. If you've already inputted the names,
22 I think otherwise it's correct.
23 All right. Well, I'm not sure who's going
24 to speak first because...
25 CNSL W. ROBERTS: My Lady, I think it's to me to
26 start.
27

28 **SUBMISSIONS BY CNSL W. ROBERTS:**
29

30 CNSL W. ROBERTS: You'll recall -- first of all,
31 welcome to almost your vacation. When we left
32 off a couple of days ago, Aviva was working hard
33 with two potential rabbit bids.
34 THE COURT: Well, that was the eight -- no, that was
35 the 18th was --
36 CNSL W. ROBERTS: Was it the 18th?
37 THE COURT: No, I think it was the --
38 CNSL W. ROBERTS: Was it last week?
39 THE COURT: It was -- well, actually, to be clearer,
40 it was the 13th where there were two rabbits --
41 CNSL W. ROBERTS: Okay.
42 THE COURT: -- one of which was in the --
43 CNSL W. ROBERTS: Since then --
44 THE COURT: -- in and -- then after that one rabbit
45 had gone away and another rabbit was in play on
46 the 18th, which was not one of the -- and the one
47 in play was not represented by Mr. Jackson.

3
Submissions by Cnsl W. Roberts

1 CNSL W. ROBERTS: So the one in -- the one in play
2 today --
3 THE COURT: Yeah.
4 CNSL W. ROBERTS: -- was not one of those rabbits.
5 THE COURT: Not one of the other two.
6 CNSL W. ROBERTS: No. So we -- we today have --
7 THE COURT: Oh, today.
8 CNSL W. ROBERTS: -- an offer that Aviva is supporting
9 from Solterra Acquisitions. So again --
10 THE COURT: Oh, well, they were one of the first --
11 the two original rabbits.
12 CNSL W. ROBERTS: They were, correct, correct.
13 THE COURT: Okay.
14 CNSL W. ROBERTS: So we've spent --
15 THE COURT: I thought you said Solterra said no.
16 CNSL W. ROBERTS: And they -- and then they've come
17 back and said yes again. We have an offer to put
18 before you today from Solterra. Aviva feels that
19 they have exhausted this marketplace in the sense
20 of the known bidders. We've worked very hard
21 over the last five days, seven days, 14 days, in
22 negotiations with the petitioners, with parties
23 working with the petitioners and we are at the
24 point where -- I'll go back -- the offers in
25 front of you are consistent with what you've seen
26 before and the one in front of you now is for
27 eighteen-point-five, lower than before, but that
28 is effectively --
29 THE COURT: Substantially lower than before.
30 CNSL W. ROBERTS: -- all into the Aviva portion of the
31 security stack.
32 THE COURT: Mm-hm.
33 CNSL W. ROBERTS: I'll go through the details of the
34 offer in a second but Aviva is at the point where
35 we're supporting that offer. We think it's the
36 best you're going to get -- we are going to get.
37 You're going to hear from Ms. Cameron where
38 the petitioners have, I'm going to refer to as, a
39 faint hope of a something. They have an unsigned
40 term sheet to give them some new money to do
41 something and I'll leave it to her to explain to
42 you. It is not something that Aviva supports.
43 It is not something that we think is viable.
44 It's not something that we think will come to
45 fruition in short order.
46 The offer from Solterra has been vetted in
47 principle, not line-by-line, by the monitor. The

1 monitor supports it as well. And you'll hear
2 from Mr. Bychawski but he'll tell you he also
3 feels that it is the best we are going to do in
4 this marketplace and in this time.

5 What the problem we have is -- I'm going to
6 suggest the first problem is procedural. We
7 don't have a separate, stand-alone motion in
8 front of you to approve that sale. I think I can
9 shoehorn it into the motion I had in front of you
10 a week or two weeks ago for my simplified SISP,
11 if you recall, because part of that order sought
12 the approval of a sale. It sought the approval a
13 sale after a simplified SISP. I'm going to
14 suggest, and I think most of the people in this
15 room will agree with me, we've effectively done
16 what we were suggesting to have done, which is
17 gone back to all of the parties who have
18 expressed interest -- I shouldn't say we -- the
19 monitor did most of that work -- to go back to
20 the parties who expressed interest before to see
21 what their interest was today and what we have --

22 THE COURT: So that includes Landa and Bosa and --

23 CNSL W. ROBERTS: Correct. I'll let Mr. Bychawski
24 speak to that but yes. And we -- the two most
25 viable -- I'm going to say this and hope I'm not
26 wrong -- the two most viable were Solterra and
27 Landa and I believe Landa gave us just a straight
28 no, they'd move on to another project. I think
29 that's correct.

30 Assuming -- go back to the procedural point.
31 If you were sitting next week, I would have a
32 relatively easy procedural answer for you which
33 is we'll get a motion out today and we'll come
34 back on whatever date was convenient for you next
35 week. But I understand you're away for two
36 weeks. The reality is, is that -- our bidder,
37 Solterra, says they've been through this before
38 and they're not going to sit around and wait.

39 THE COURT: I know they've been through it before.

40 CNSL W. ROBERTS: And they have no interest in -- in
41 sitting around and waiting.

42 THE COURT: Do you have a signed APA?

43 CNSL W. ROBERTS: If you tell me that we are going to
44 substantively hear that application, I will have
45 it for you --

46 UNIDENTIFIED SPEAKER: Signed by -- yes, Madam
47 Justice, signed by my client. One of the

5

Submissions by Cnsl W. Roberts

1 questions is who will sign it for [indiscernible
2 - overlapping speakers].
3 CNSL W. ROBERTS: Who will sign it.
4 UNIDENTIFIED SPEAKER: But for my client, I can have
5 that in five minutes, just have it printed.
6 CNSL W. ROBERTS: Part of what we would seek is that
7 you enhance -- we had thought that you enhance
8 the monitor's powers to allow the monitor to
9 accept and complete that sale. Mr. Stephens may
10 have other thoughts on the receiver doing that
11 same task but effectively that you would enhance
12 somebody's powers to complete the sale 'cause one
13 of the issues with the Solterra bid is it has a
14 60-day close. It's a million-dollar deposit,
15 non-refundable, but a 60-day close. And so
16 somebody's going to have to deal with both the
17 property and the closing issues between now and
18 then. I would say this, we negotiated hard to
19 try and get that closing moved up. That's a long
20 time. But that's where we are, as I said, a 60-
21 day close.
22 And sorry, I want to go back to the
23 procedural issue 'cause I don't want to get too
24 far into the substantive.
25 THE COURT: Mm-hm.
26 CNSL W. ROBERTS: The -- the other piece you've heard
27 part of an application to deal with outstanding
28 professional fees, monitor's fees, et cetera.
29 THE COURT: Mm-hm.
30 CNSL W. ROBERTS: Obviously, with a 60-day close,
31 there's going to be more time spent and then with
32 the monitor closing it and our proposal to the
33 monitor, which I think is acceptable, is subject
34 to you, of course, granting the order is we would
35 support the admin charge being increased by one-
36 fifty behind Domain but in front of Aviva to deal
37 with the two things: one, the 60 days in closing
38 the same; and, two, it will partially compensate
39 the arrears. It won't compensate them in full
40 and the only term we put on that was we were
41 looking to have an agreement that they wouldn't
42 ask for more, that if -- if that's the order that
43 went, that that would be the charge and then one
44 of them wouldn't come back and say, oh, can we
45 have another 50 or so but I think we're there.
46 So what we've tried to do, other than the
47 procedure problem of when are you going to hear

6

Submissions by Cnsl W. Roberts

Submissions by Cnsl K. Jackson

1 this, wrap all of the issues up in a bow that
2 bring an ended to this proceeding. And maybe
3 I'll stop there and see if any of my friends want
4 to correct something I've said wrong or
5 misstated.
6 CNSL K. JACKSON: I could add just a bit more on the
7 offer, Madam Justice, which is --
8 THE COURT: Yes, could -- could you come forward, Mr.
9 Jackson --
10 CNSL K. JACKSON: Yes, of course.
11 THE COURT: -- to the microphone just so we can make
12 sure that we get -- and that would go for
13 everyone else that's speaking, please.
14 CNSL K. JACKSON: What I can do is I could hand up a
15 copy of the Offer perhaps. I have copies for my
16 friends, too. I should have handed them out
17 before, I'm sorry. But there -- maybe my friend,
18 Mr. Roberts, could hand them around. Just a
19 couple of details.
20

21 **SUBMISSIONS BY CNSL K. JACKSON:**
22

23 CNSL K. JACKSON: My friend didn't say anything
24 incorrect but he's -- there's a couple of other
25 tweaks to it that I just would point out to the
26 court.
27 THE COURT: Is this essentially the same document I
28 approved back in July --
29 CNSL K. JACKSON: Very much so.
30 THE COURT: -- or June of 2021?
31 CNSL K. JACKSON: Yeah, 98 percent of the document is
32 the same on exactly. It contemplates a reverse
33 vesting order as part of the transaction just
34 like in May of '21. Or June maybe.
35 The -- if we look at the definition on page
36 2 of closing date, it mentions the original
37 closing date or, if the second deposit is paid on
38 or before that, the extended closing date. And
39 so the concept is that it's 60 days but my client
40 can, within that 60 days, pay another -- add --
41 add 650,000 to the purchase price and -- and pay
42 that as another deposit at the same time and then
43 the closing date is extended by 30 more days.
44 And -- and the reason for the six-fifty is it's
45 -- you know, by my math, roughly it's the burn
46 rate and then some cushion for costs and such.
47 And so the purchase price would go up from

7

Submissions by Cnsl K. Jackson

1 eighteen-and-a-half --
2 THE COURT: I can write on this, can't I?
3 CNSL K. JACKSON: Certainly, yes.
4 THE COURT: Or is this -- this isn't -- I hope --
5 CNSL K. JACKSON: No, that's a copy for -- for you.
6 THE COURT: Yeah, okay.
7 CNSL K. JACKSON: It would go up from eighteen-and-a-
8 half to nineteen-point-one-five, if extended
9 beyond 60 days.
10 THE COURT: Sorry, sorry, sorry, give me those figures
11 again.
12 CNSL K. JACKSON: Right. So eighteen-and-a-half if it
13 closes within 60 days and it goes to nineteen-
14 point-one-five if it goes another 30 days beyond
15 that, so 90 days all together.
16 THE COURT: Oh, so it's the 650,000 plus the eighteen-
17 and-a-half.
18 CNSL K. JACKSON: Right, right. It just increases the
19 purchase price by that amount to get an extra
20 month which -- which is intended to ensure that
21 Domain's covered in all the costs and that --
22 that, by my math, is plenty of cushion.
23 THE COURT: And what's the second deposit amount?
24 CNSL K. JACKSON: That's the same amount. So they --
25 they'd have to pay the six-fifty as an additional
26 deposit --
27 THE COURT: Oh, I see.
28 CNSL K. JACKSON: -- and then it's -- but it's not
29 just a deposit; it's also an increase in the
30 purchase price.
31 THE COURT: I see.
32 CNSL K. JACKSON: I didn't want that to be lost.
33 THE COURT: Yeah, I see. Okay.
34 CNSL K. JACKSON: And the only other thing, and this
35 is material as well, I think, is on page 5.
36 THE COURT: Mm-hm. Hang on. Yeah.
37 CNSL K. JACKSON: Right. And you'll see purchase
38 price is at double M.
39 THE COURT: Mm-hm.
40 CNSL K. JACKSON: There's two options and, of course,
41 one is the -- the second one is with the
42 additional 650 you'll see. I haven't filled in
43 the number before we will do that.
44 THE COURT: Mm-hm.
45 CNSL K. JACKSON: But there's also, you'll see, plus
46 the revenue share portion.
47 THE COURT: Mm-hm.

8

Submissions by Cnsl K. Jackson
Submissions by Cnsl S. Stephens

1 CNSL K. JACKSON: And so if you turn to that
2 definition over the next page, it's at double R.
3 THE COURT: Yeah.

4 CNSL K. JACKSON: Right, and so what happens if -- and
5 it's not based on profits because we all know how
6 that can be manipulated; it's revenue. So if the
7 revenue from the sales, gross sales, exceeds a
8 hundred and thirty-four million dollars,
9 everything over that is split such that 40
10 percent of that also goes to the -- to the
11 estate, effectively. So this thing gets built
12 out and who knows when it's done but whatever
13 that is, when all the units are sold, if the
14 revenues exceed a hundred and thirty-four million
15 dollars, anything over that 40 percent also goes
16 to the creditors.

17 But that won't be for some time and we'll
18 have to -- one of the things we'll have to work
19 out with the monitor is exactly how you create a
20 residual sort of trust, I suppose, in some sense
21 for that money to be paid eventually, if it gets
22 to that. So there is a potential for this to be
23 more than eighteen-and-a-half or more than
24 nineteen-point-one-five, it's just a question of
25 what those units sell for when they sell.

26 I just wanted to point that out. So there
27 is some potential significant upside. We just
28 don't know.

29 THE COURT: Mm-hm.

30 CNSL K. JACKSON: And I think -- I think really that's
31 the -- that's the guts of it. I wouldn't take
32 you through the details. It's otherwise very
33 much like the agreement that was approved a year
34 ago and it contemplates a reverse vesting order
35 as well. And I have a draft of the vesting order
36 which is being brought up now which I can
37 circulate it but I won't speak to that right now,
38 of course.

39 THE COURT: All right. Okay, thank you. All right.
40 Mr. Stephens, are you going to speak to the
41 procedural issue?

42 CNSL S. STEPHENS: Yes.

43 THE COURT: Okay.

44
45 **SUBMISSIONS BY CNSL S. STEPHENS:**
46

47 CNSL S. STEPHENS: Yes, that was -- it is my client's

Submissions by Cnsl S. Stephens

1 primary concern is there is no application before
2 you that would -- that we could fit this within,
3 in my submission, and there are interested
4 parties, there have been other appellate
5 proceedings. In my submission, the most
6 straightforward way to handle what is hopefully a
7 good offer and hopefully wouldn't fall apart is
8 to -- is to appoint Bowra as receiver, if
9 considered appropriate, direct Bowra to engage
10 with Solterra to sign and finalize that agreement
11 and bring it before the court for approval so we
12 can have specific language to address any concern
13 of Solterra and Aviva in terms of getting this
14 done as fast as possible but it is the -- it is
15 primarily the procedural issue that would be my
16 concern and the potential mischief that could
17 arise.

18 THE COURT: Well, why doesn't someone prepare a quick
19 Notice of Application? You can prepare a quick
20 -- I mean it just seems to me we've been -- this
21 -- this whole abbreviated process has been in
22 play now for some days now so there's no secret
23 that this was going on.

24 CNSL W. ROBERTS: Can I -- can I take you to --
25 somewhere you have my binder because you make --

26 THE COURT: I do not -- I do not, Mr. Roberts. I did
27 not get that at all.

28 CNSL W. ROBERTS: Okay. If I --

29 THE COURT: Well, I know you're in support. Let me
30 just hear from everybody.

31 CNSL W. ROBERTS: Sure. Can I give you one --

32 THE COURT: I know Mr. Stephens -- Mr. Stephens wants
33 his client to be paid.

34 CNSL W. ROBERTS: Yes.

35 THE COURT: ASAP.

36 CNSL S. STEPHENS: Yes.

37 THE COURT: I think that's your primary objective,
38 right, Mr. Stephens?

39 CNSL S. STEPHENS: That's absolutely correct, yes.

40 THE COURT: And frankly, it doesn't strike me as being
41 an entirely efficient way to appoint a receiver
42 and have a new party involved and all of that
43 rigmarole. That seems to be a lot and a lot of
44 expenses.

45 Mr. Bychawski, what do you have to say?

46 CNSL P. BYCHAWSKI: My Lady, a couple points just on
47 the 13th report of --

10

Submissions by Cnsl P. Bychawski

Submissions by Cnsl K. Cameron

1 THE COURT: Well, we're just dealing with the
2 procedural issue now, right?
3 CNSL P. BYCHAWSKI: Yeah, the procedural issue.
4 THE COURT: Yeah.
5

6 **SUBMISSIONS BY CNSL P. BYCHAWSKI:**
7

8 CNSL P. BYCHAWSKI: So in the monitor's report, the
9 monitor expressed that it would be prudent,
10 whether by receivership or within these
11 proceedings, to approach parties that previously
12 expressed interest in the Terrace House Project
13 to see if a sale can be achieved on an expedited
14 timeline. Now, that report was filed on July
15 12th. Since -- since that time, that sort of
16 process has, in fact, unfolded. The monitor has
17 been engaged with Mr. Jackson's client, with
18 Aviva, with the other rabbits and has worked to
19 try to facilitate an outcome within the context
20 of these CCAA proceedings.

21 And there also has been, of course,
22 discussions on the issue of the administration
23 charge and thus solving other issues to get to an
24 efficient outcome of the sale and the monitor is
25 supportive of this particular transaction. And
26 again, the options before the court are whether
27 it'd be more efficient in the CCAA or in
28 receivership. And frankly, the monitor's view is
29 -- is neutral in that respect but we have been
30 working towards this CCAA outcome for quite some
31 time now.

32 THE COURT: Yes, all right, thank you. Ms. Cameron,
33 what -- what say you on the procedural issue?
34

35 **SUBMISSIONS BY CNSL K. CAMERON:**
36

37 CNSL K. CAMERON: Justice Fitzpatrick, to start, you
38 were first advised that the Solterra offer may be
39 in play shortly before today's application and I
40 was first formally advised of it by Mr. Schultz,
41 counsel for 126 and 129 about 15 minutes before
42 this application. He was advised that he had
43 been -- heard a rumour that this might be
44 happening today. He's, unfortunately, unable to
45 attend but he asked that I instruct -- asked that
46 I advise the court that they would not support a
47 transaction if it wouldn't provide for their

11

Submissions by Cnsl K. Cameron

1 repayment.

2 And specific to my clients, the petitioners
3 have, throughout this last week, been in
4 discussions with various parties to try to both
5 look at other transactions where refining it
6 saying to ensure the best outcome for their
7 stakeholders.

8 Late yesterday, they did receive a Letter of
9 Intent from Synvest Investment Management. I can
10 advise -- it's not where it needs to be to be
11 advanced but the parties believe they could get
12 there in very short form.

13 So our main request or ask would be, yes,
14 there's procedural issues with respect to
15 advancing Solterra's application. We would be
16 looking to see a procedure that provides a very
17 short timeframe so that any other interested
18 parties, specifically Synvest, could submit a bid
19 as well so that we can try to maximize the
20 purchase price without having further delays.

21 THE COURT: Sorry, who's this Synvest and how do you
22 spell that?

23 CNSL K. CAMERON: S-y-n-v-e-s-t.

24 THE COURT: Oh, Synvest.

25 CNSL K. CAMERON: Investment Management.

26 THE COURT: Investment Management. And this LOI, is
27 it for refinance or a sale or what is it?

28 CNSL K. CAMERON: It's for a sale, a reverse vesting
29 order so a similar transaction. They were
30 actually looking at the previous reverse vesting
31 order that had been approved for Solterra as the
32 format for their proposed bid.

33 THE COURT: And you got this LOI late yesterday, you
34 say?

35 CNSL K. CAMERON: Yes.

36 THE COURT: Well, Mr. Gruber has known since the 13th
37 that this return to the market was taking place
38 on the 13th, is that -- is that the best that
39 he's been able to do?

40 CNSL K. CAMERON: That's correct, Justice Fitzpatrick.
41 There's been different avenues for
42 [indiscernible] to pursue over this last week and
43 this was the best that could come through once
44 the [indiscernible] transaction fell apart
45 earlier this week.

46 THE COURT: When did that fall apart?

47 CNSL K. CAMERON: I believe on Tuesday. Mr. Roberts

12

Submissions by Cnsl K. Cameron

Submissions by Cnsl W. Roberts

1 might be able to correct me if I'm wrong but I
2 believe that was Tuesday of this week.
3 THE COURT: Mm-hm. And how much time are the
4 petitioners looking for along with 129?
5 CNSL K. CAMERON: They believe they'd be in a position
6 to have a reverse vesting order application
7 before you within the next two weeks.
8 THE COURT: Okay. Anything further, Ms. Cameron?
9 CNSL K. CAMERON: No, that's it. Thank you, My Lady.
10 THE COURT: Okay, thank you. Mr. -- before Mr.
11 Roberts gets up again, Mr. Stephens, what's your
12 client's debt at now, leaving aside the 129
13 Domain level? I think you -- you told me about
14 those updated figures and I -- I think -- I
15 thought you had some updated evidence on that.
16 CNSL S. STEPHENS: I do. Affidavit -- Affidavit
17 number 2 of Ms. Dword (phonetic), if I can find
18 it, has a payout statement.
19 THE COURT: Yeah, did you -- did you give that to me?
20 CNSL S. STEPHENS: Yeah, you should have a copy. I do
21 have an additional one, if you --
22 THE COURT: Yes, no, I have that.
23 CNSL S. STEPHENS: -- would like me to hand that --
24 THE COURT: Thank you. I thought you'd handed that up
25 the last time.
26 CNSL S. STEPHENS: Exhibit page 4.
27 THE COURT: Page 4. So you're at 16.8?
28 CNSL S. STEPHENS: Yes, exclusive of legals.
29 THE COURT: Yes, that's right. And this offer's at
30 nineteen-and-a-half, right?
31 UNIDENTIFIED SPEAKER: Eighteen-and-a-half.
32 THE COURT: Or sorry, eighteen-and-a-half. Okay. Mr.
33 Roberts?
34 CNSL W. ROBERTS: Thank you.
35
36 **SUBMISSIONS BY CNSL W. ROBERTS, continuing:**
37
38 CNSL W. ROBERTS: First, one -- one more piece --
39 THE COURT: Yes, and sorry, you were -- you were going
40 to dig out your Application because I don't have
41 that.
42 CNSL W. ROBERTS: Correct, and I might just pass you
43 up my binder. And while I do that, I wanted to
44 disclose to the court, as you heard from Mr.
45 Jackson the terms of the Purchase and Sale
46 Agreement, including what I'll call the back-end
47 revenue sharing piece, the eight we get -- we'll

13

Submissions by Cnsl W. Roberts

1 get some piece of the eighteen-five, which will
2 be shared amongst the parties. There's maybe
3 some back-end revenue. But separately, Aviva and
4 Solterra have entered into a commercial agreement
5 dealing with the back-end. The monitor's been
6 advised of all the terms of that and the monitor
7 is content with it all.
8 We just wanted to pass that on that there's
9 another -- you're -- you're seeing us here
10 supporting Solterra and part of that support of
11 Solterra is another deal where Aviva has a claim
12 against petitioners and others to recover losses
13 and Solterra is participating in that.
14 THE COURT: Oh, so that's Solterra.
15 CNSL W. ROBERTS: Part of the commercial transaction
16 between them.
17 THE COURT: The claim against the --
18 CNSL W. ROBERTS: And just out of an abundance of
19 caution --
20 THE COURT: -- against the petitioners.
21 CNSL W. ROBERTS: Against the indemnitors under
22 Aviva's facility which effectively is the
23 petitioners.
24 THE COURT: I see, okay. And so I'm just trying to
25 figure out how this would flow then as if at
26 eighteen-and-a-half --
27 CNSL W. ROBERTS: I can do you a quick math, if you'd
28 like.
29 THE COURT: Yes, if you --
30 CNSL W. ROBERTS: So -- and again, this is rough,
31 rough math.
32 THE COURT: Yeah.
33 CNSL W. ROBERTS: You've got first admin charge of a
34 hundred.
35 THE COURT: So we've got eighteen-and-a-half at the
36 top on the revenue, right?
37 CNSL W. ROBERTS: On the revenue side, correct.
38 THE COURT: Yeah, hundred thousand?
39 CNSL W. ROBERTS: Hundred thousand. Then Domain for
40 17, let's say, keep it easy. Then our
41 proposed --
42 THE COURT: I thought it was 18.6 plus legal.
43 CNSL W. ROBERTS: I thought you said --
44 CNSL S. STEPHENS: 16.8 plus legals.
45 THE COURT: Sorry, 16.8, sorry.
46 CNSL W. ROBERTS: Yeah, so I'm rounding up to 17.
47 THE COURT: Plus legals so say 17, yeah.

14

Submissions by Cnsl W. Roberts

1 CNSL W. ROBERTS: Then you've got --
2 THE COURT: So that leaves --
3 CNSL W. ROBERTS: -- the proposed increase for admin
4 for another one-fifty. Then you've got a --
5 there's some super priority GST in there for
6 about 50. I think those are the only super
7 priority claims. And assuming there's a 60-day
8 close, we've probably got another six, 700
9 [indiscernible] between interest and -- interest
10 on the Domain facility.
11 THE COURT: Sorry, sorry, hang on, just -- I've got
12 eighteen-and-a-half less 100 for the admin,
13 that's 18.4, less 17 is -- so you're at net 1.4
14 after Domain less -- less a hundred and fifty for
15 the admin increase, 50 for the GST and we're down
16 to 1.2 million, right?
17 CNSL W. ROBERTS: And then I say six or 700 to
18 maintain the property over the next 60 days,
19 which is both Domain interest and will cut it
20 down to critical site maintenance.
21 THE COURT: Yeah.
22 CNSL W. ROBERTS: That's an estimate, obviously.
23 THE COURT: All right. So that's six -- that's five
24 to six million left -- or sorry, five to --
25 CNSL W. ROBERTS: Five to six hundred thousand, yes.
26 THE COURT: -- \$600,000 left.
27 CNSL W. ROBERTS: Correct. Meaning we don't have to
28 sway a lot on any of those numbers to get very
29 close to the bubble of zero. Aviva's looking at,
30 hopefully, back-end money on this deal, that
31 Solterra builds it out, sells it for enough to
32 hit the one thirty-four gross revenue number and
33 we can start sharing in some proceeds. If --
34 I'll say this bluntly. If we thought we could
35 sell it for more, we'd sell it for more.
36 THE COURT: Well, the second -- the second -- next
37 tranche after we've gone through all these
38 numbers is you at 35 percent of that --
39 CNSL W. ROBERTS: Correct.
40 THE COURT: -- tranche, right?
41 CNSL W. ROBERTS: That's right.
42 THE COURT: So one -- one two nine has got some skin
43 in the game here.
44 CNSL W. ROBERTS: Correct. At that -- correct.
45 THE COURT: At that -- at that level, right? So what
46 -- what do you say about Ms. Cameron's
47 communication of Mr. Schultz's communication on

15

Submissions by Cnsl W. Roberts

1 behalf of one two nine?
2 CNSL W. ROBERTS: Two things, I think. One is one two
3 nine is effectively headed by Tobi Reyes.
4 THE COURT: Mm-hm.
5 CNSL W. ROBERTS: He's the one giving instructions and
6 making decisions. He is well aware and one two
7 nine has been well aware of everything that's
8 happened in these proceedings and have made a
9 decision about when to participate and not
10 participate. And if one two nine thought it was
11 important to be here today, they would be here
12 today and they have chosen not to.
13 And asking one two nine, petitioners, are
14 asking for time again and what we feel is they're
15 gambling with our time. If we had confidence
16 that the petitioners' deal would come to fruition
17 and would get us more money, that is what we
18 support. There's no axe to grind, there's no --
19 Aviva's just -- this is business. We're -- we're
20 looking for the certainty of the Solterra bid
21 versus the uncertainty of a further delay.
22 Nothing we --
23 THE COURT: Are you aware of this Synvest deal?
24 CNSL W. ROBERTS: I'm -- I'm as aware as the monitor
25 is, which I've seen a -- I forget if it was
26 called a term sheet or whatever it was called, a
27 piece of paper -- Letter of Intent, I think it
28 was called -- but not signed by Synvest. The one
29 I saw had no Synvest signature on it. It had
30 Synvest letterhead and was signed by -- it
31 appeared to be Tony Reyes' signature. I can't
32 guarantee it was. It appeared to be his
33 signature. But no signature for Synvest.
34 THE COURT: On behalf of Synvest or on behalf of --
35 CNSL W. ROBERTS: No, on behalf of the petitioners --
36 THE COURT: Oh.
37 CNSL W. ROBERTS: -- purporting to accept the LOI,
38 though there's nothing to accept in an LOI, but
39 it wasn't signed by Synvest. But that's the last
40 -- that's -- that's all I've seen and I don't
41 purport to say that that is the end all and be
42 all. There's a -- this LOI from Synvest that I
43 couldn't make head nor tails of about what it is
44 or what it's for 'cause it seemed to be talking
45 about Synvest being a purchaser. There's a
46 second term sheet from a company called Rowanwood
47 for an additional four-point-something million.

16

Submissions by Cnsl W. Roberts

1 And I don't understand what it's for either. I
2 don't -- and if Ms. Cameron can't explain it to
3 the court and to everyone in the room, I -- I
4 don't purport to be able to.

5 THE COURT: Well, if it was of particular importance
6 in terms of what's happening today then I would
7 have thought that it would be here.

8 CNSL W. ROBERTS: Agreed. And so what we would say is
9 one of two things. I can have a motion done and
10 back to you in -- back here within 45 minutes but
11 if -- if you open to the first tab of the binder
12 I passed up and look at the motion that has been
13 filed that sought or simplified SISP, you'll see
14 at paragraph -- I think it's 1(c), part of that
15 motion seeks court approval of an offer.

16 THE COURT: 2(c) actually.

17 CNSL W. ROBERTS: 2(c), thank you. And so I suggest
18 that you have in front of you a motion that, in
19 part of it, seeks the monitor to effectively
20 bring before you an offer for approval at the end
21 of a process. Obviously, that process has not
22 been followed, as set out here, but I suggest to
23 you, in substance, it has effectively been
24 followed. We have put in a tremendous amount of
25 work trying to get to where we are today.

26 And I'll let the monitor speak to that but
27 that -- I say, in substance, we've done what this
28 application contemplated and we have brought
29 before you an offer supported by the majority --
30 everyone in this room with a financial interest,
31 but the majority of parties with a financial
32 interest.

33 The only one, if you remember -- if you do
34 the -- the stack, you've got to get over about
35 \$35 million to get past one two nine when you
36 stack them all up, meaning the only person not in
37 this room with a financial interest is one two
38 nine. And one two nine has chosen not to be
39 here. And all the parties in this room support
40 this offer, feel it can be closed, feel the terms
41 are reasonable and will get the best result out
42 of this difficult file.

43 THE COURT: Okay. Tell you what I'm going to do. I'm
44 going to hear your application. I want you to
45 come back in -- at 3:20 with an application,
46 affidavit, draft order. Ms. Cameron, if you have
47 anything you want to put before the court, I

17

Submissions by Cnsl W. Roberts

1 would suggest you do it immediately. All right?
2 CNSL W. ROBERTS: Good. Thank you, My Lady.
3 THE COURT: Come back at 3:20 then, okay? Thank you.
4

5 (PROCEEDINGS ADJOURNED)
6 (PROCEEDINGS RECONVENED)
7

8 CNSL W. ROBERTS: I guess I have to pass up to you a
9 filed motion with -- with a Schedule A, which I
10 will write on it, Schedule A, which is a draft
11 order. And an affidavit -- an unfiled affidavit,
12 but it's downstairs being filed now by an
13 articulated student who works with Mr. Jackson. And
14 attached to the affidavit is a copy of the Offer.
15 So you'll see in the motion, we are seeking a)
16 dealing with the very shortened service, which is
17 effectively just service on people in this
18 room --

19 THE COURT: Mm-hm.

20 CNSL W. ROBERTS: -- b) approving the purchase and
21 sale that's in front of you; c) enhancing the
22 monitor's powers to complete that sale; d)
23 authorizing the monitor to incorporate a new
24 subsidiary, which is part of the reverse vesting
25 order process; and, then e) dealing with process
26 at the end of the transaction, the monitor files
27 a certificate to confirm the transaction has
28 completed and along that happening, the unwanted
29 assets vest over to the garbage car.

30 There will be nothing surprising for you in
31 the factual basis; you know all of the things
32 that are in here. There should be nothing
33 surprising in the legal basis either which is
34 just the motherhood issues relating to this
35 court's jurisdiction to approve a sale in a CCAA
36 proceeding and the basis on which you should do
37 so.

38 This is an unusual situation in the sense
39 that you did not have a formal process in front
40 of you but I do suggest you had, in the monitor,
41 competent and diligent professionals doing
42 effectively what would have been done in that
43 process. You have in front of you an offer that
44 Aviva, as the second-ranking creditor, says is
45 the best offer we are going to see in these
46 circumstances that has any real certainty of
47 completing, that this offer is going to do the

18

Submissions by Cnsl W. Roberts

Submissions by Cnsl K. Jackson

1 best for stakeholders that we can expect, I would
2 add especially given we're in a different world
3 today than we were two months ago or six months
4 ago.

5 This project is residential condos. The
6 residential condo market is dramatically being
7 affected by interest rates. The -- the -- I'm
8 not going to say panic but the -- Aviva -- I'll
9 only speak for Aviva, Aviva feels some urgency to
10 this in the sense that the market isn't going to
11 get better and may get drastically worse and we
12 would -- we urge upon you to approve this sale
13 and enhance the monitor's powers to allow a
14 completion of that sale and to, as corollary, to
15 increase the admin charge in the manner provided,
16 and that's a bit complicated. I'll let Mr.
17 Bychawski speak to that but to allow them the
18 funding to do so.

19 THE COURT: And that's in the draft order, too, I
20 assume?

21 CNSL W. ROBERTS: That's in the draft order as well.
22 And I might let Mr. Jackson take us through this
23 draft order because he's just run down to his
24 office to fill in the blanks and so he could do
25 that more efficiently than I.

26 THE COURT: Mm-hm. Okay, thank you. Mr. Jackson, it
27 probably makes sense for you to start and then
28 I'll hear from Mr. Stephens and -- and I'm sorry,
29 Mr. Ferreira, I haven't -- I haven't called on
30 you yet, Mr. Ferreira, but I'll ask you whether
31 you have anything to say and then I'll deal with
32 Ms. Cameron. Okay, thank you.

33 CNSL K. JACKSON: Thank you, Justice.

34
35 **SUBMISSIONS BY CNSL K. JACKSON, continuing:**

36
37 CNSL K. JACKSON: I -- I won't -- I don't think as the
38 -- as the potential purchaser, I don't have a lot
39 to say on the -- on the background or the facts
40 and the legal basis. I can simply tell you that
41 the offer is made. You've seen it's eight-and-a-
42 half, it's now signed by Mr. McKelly (phonetic)
43 on behalf of Solterra and, it's as I described
44 earlier in terms of the purchase price and the
45 timing for closing.

46 THE COURT: You've filled in those amounts then
47 that --

19

Submissions by Cnsl K. Jackson

1 CNSL K. JACKSON: I did.
2 THE COURT: -- you had shown me before?
3 CNSL K. JACKSON: I did, yes, yes?
4 THE COURT: Yes?
5 CNSL K. JACKSON: So it's all as -- as advised this --
6 or earlier this afternoon.
7 THE COURT: Mm-hm. And then -- oh, and I see -- you
8 say it's been signed?
9 CNSL K. JACKSON: It has 'cause that -- I hope -- that
10 copy doesn't have a -- it would be the second-to-
11 last --
12 THE COURT: Oh, Solterra has signed, yes, yes.
13 CNSL K. JACKSON: Solterra has -- yes, so -- right.
14 And so the order would direct the monitor to sign
15 on behalf of the petitioners for this.
16 THE COURT: I see, okay, all right.
17 CNSL K. JACKSON: Yes.
18 THE COURT: No, it is signed, thank you.
19 CNSL K. JACKSON: Okay.
20 THE COURT: Mm-hm.
21 CNSL K. JACKSON: And I'm sorry, did my friend pass up
22 to you the form of order now then?
23 THE COURT: Yes, that's what I -- I actually was
24 thinking more --
25 CNSL K. JACKSON: Of looking at it --
26 THE COURT: -- so that you would take me --
27 CNSL K. JACKSON: Yes.
28 THE COURT: -- through. I do appreciate that it's
29 -- usually not a purchaser that's lobbying for its
30 own sale.
31 CNSL K. JACKSON: Right, right.
32 THE COURT: Yes.
33 CNSL K. JACKSON: Very good.
34 THE COURT: So is it -- is this essentially the same
35 form of order that I approved back in June of
36 2021?
37 CNSL K. JACKSON: Very much so with a couple of little
38 tweaks which I think reflect the fact that it's
39 the monitor now entering into it on behalf of the
40 petitioners. But I think otherwise this is
41 exactly current from the last order. When I
42 pulled up the Word version of it and basically
43 just updated it.
44 THE COURT: Mm-hm.
45 CNSL K. JACKSON: I'll tell you one thing I did change
46 in it but otherwise it's a pretty standard
47 reverse vesting order. I realize now when I was

20

Submissions by Cnsl K. Jackson

1 doing this, and of course haste is always a
2 concern, is that I've messed up the schedule and
3 so I'll have to probably handwrite something to
4 fix it up or to go back and fix it up because
5 what I did here is, in paragraph 1, I've inserted
6 a copy of the agreement as Schedule B.
7 There is no -- I mean otherwise it's just in
8 the affidavit, which is fine, but I think in some
9 cases, it's nice to have an easy reference to it
10 in an order and we do that in some cases. It was
11 also earlier going to be attached to a
12 supplemental report but that wasn't filed so that
13 was that change. And so the problem is, of
14 course, is it moves all of the other schedules up
15 and if you look at paragraph 2 and on, I haven't
16 done that. And so all those schedules just have
17 to be bumped out from B to C and so on.

18 THE COURT: Oh, I see.

19 CNSL K. JACKSON: And so if you look at paragraph 1 --

20 THE COURT: Sorry, and then --

21 CNSL K. JACKSON: Yes, sorry.

22 THE COURT: Yeah, okay, go ahead. Yeah, I just --
23 mm-hm.

24 CNSL K. JACKSON: And sorry, if we look at the very
25 last line on the first page:
26

27 The execution of this Sale Agreement by
28 Ernst & Young, the monitor on behalf of the
29 petitioners, is hereby authorized and
30 approved and the monitor and the petitioners
31 are authorized and directed to take
32 additional steps, execute documents...
33

34 The usual language. It does have the monitor and
35 the petitioners and Mr. Bychawski did raise to me
36 whether it's necessary to have the petitioners in
37 here given that the monitor is going to be the
38 one completing it but from my perspective, I
39 don't see any harm in directing the petitioners
40 to do this. If there's something we need done
41 that the monitor is having difficulty with, we'll
42 be able to say there's an order compelling your
43 cooperation here.

44 THE COURT: Mm-hm.

45 CNSL K. JACKSON: Standard language on the
46 [indiscernible - rapid speech] of the
47 certificate, which is when the assets vest. And

21

Submissions by Cnsl K. Jackson

1 so the order of things -- this is -- again, I
2 should mention also cribbed from -- from Quest,
3 too. We have a reverse vesting order in that so
4 there is -- this is becoming the model -- model
5 of reverse vesting orders for our province, I
6 guess. So incorporating a new sub, Residual Co.,
7 vesting the excluding assets and liabilities in
8 it, issuing one new share from the GP to the
9 purchaser.
10 THE COURT: Is GP defined in the order?
11 CNSL K. JACKSON: GP is defined -- I thought so.
12 Where is that now? Well, there's another thing.
13 Did I do that? We'll have to define that.
14 THE COURT: That's --
15 CNSL K. JACKSON: It's Port Capital Development (EV)
16 Inc. is the GP.
17 THE COURT: Oh, which you -- you've --
18 CNSL K. JACKSON: No, that's -- sorry.
19 THE COURT: You called it Residual Co.
20 CNSL K. JACKSON: Oh, the new subsidiary of Port
21 Capital Development (EV) Inc. is called Residual
22 Co. But what I could do is move that definition
23 up to new subsidiary and then put GP after that,
24 if that makes sense.
25 THE COURT: Yeah, just so the definitions work.
26 CNSL K. JACKSON: Yes, right.
27 THE COURT: Yeah, mm-hm.
28 CNSL K. JACKSON: Thank you. Good catch. And so the
29 GP issue is one, voting share to the purchaser or
30 to whoever it directs, and then all the other
31 shares are cancelled, et cetera, that is, of the
32 GP.
33 Fourth, all the petitioners' right, title
34 and interest to the purchased assets, which is
35 the share and the lands and anything chattels and
36 other things that the LP has an interest in they
37 vest in the purchaser absolutely, free and clear
38 of all claims. There is a schedule -- it says C
39 right now but that will be D. And just one point
40 here, if you turn to Schedule C right now, it's
41 actually blank because I realize we have to
42 update it given recent fans, including Domain and
43 others, and so -- no, not yet. Ms. Gillenby
44 (phonetic) is -- is diligently doing that. We'll
45 be asking her to slip sheet a Schedule C with all
46 the claims --
47 THE COURT: Mm-hm.

22

Submissions by Cnsl K. Jackson

1 CNSL K. JACKSON: -- to be taken off. And there's a
2 lot of builder's lien claims which will all have
3 to come off --
4 THE COURT: Mm-hm.
5 CNSL K. JACKSON: -- among other things.
6 THE COURT: Mm-hm.
7 CNSL K. JACKSON: And then Schedule D are the -- the
8 encumbrances that will remain, the permitted
9 encumbrances, the usual reservations and
10 limitations and easements and such.
11 And then fifthly, Port Capital Development
12 (EV), which we'll now define it as the GP, will
13 seek to be a petitioner and so it's out because
14 that's, of course, the -- the entity that's now
15 owned by the purchaser. So that would be changed
16 to GP.
17 THE COURT: Mm-hm. Can I write on this copy then
18 'cause this is going to be changed? Are you
19 going to -- is this the order you've got?
20 CNSL K. JACKSON: I don't have anything vetted so
21 you're welcome to write on that one and -- and
22 make it the order, if you like. I'm --
23 THE COURT: Well, I'll let you make these changes.
24 CNSL K. JACKSON: Sure, that makes more sense. Yeah,
25 I'm happy to do that while you're here in front
26 of us --
27 THE COURT: Because you've got it swirling --
28 CNSL K. JACKSON: Yeah.
29 THE COURT: -- in your brain more than I do. Okay.
30 CNSL K. JACKSON: That's a fact right now.
31 THE COURT: All right. Let's just go through it now
32 that you've sort of identified all these.
33 CNSL K. JACKSON: Right, right.
34 THE COURT: And -- all right. So this is just the
35 standard reverse RVO type of language, isn't it?
36 CNSL K. JACKSON: Right. And so the one -- the one
37 thing I'll come to that I've made a change is
38 paragraph 9. So at the closing date, Residual
39 Co. now gets added as a petitioner in here and
40 all the orders to apply to it *mutatis mutandis*.
41 THE COURT: Mm-hm.
42 CNSL K. JACKSON: And then at 10:
43
44 Immediately after the closing date, the
45 monitor is hereby authorized and directed to
46 bankrupt Residual Co. and neither GP nor the
47 purchaser will be liable for any obligations

1 of Residual Co., whether in their capacities
2 as direct or indirect shareholders.
3
4 And so I do that because, in some cases, you can
5 find a leftover petitioner that you can
6 incorporate a sub for and put the assets in
7 there. In this case, there's no way to do that
8 and so we're going to -- just to be very careful,
9 we don't want anyone claiming that because our
10 client was a shareholder of Residual Co. through
11 the GP for some period of time before it was
12 bankrupt or there was some liability and so I
13 just want to make sure we don't have --
14 THE COURT: Mm-hm.
15 CNSL K. JACKSON: -- an oops on that one.
16 And so paragraph 11, it had occurred to me
17 the stay expires sometime in August, I'm told,
18 and so the idea is to extend it to September
19 30th, 2022, which presently is like the outside
20 date roughly for closing on this even if
21 extended. And then --
22 THE COURT: I think I've already extended it to
23 September, didn't I?
24 CNSL K. JACKSON: Oh, did you?
25 THE COURT: I think I did.
26 CNSL K. JACKSON: Oh, I getting a nod from the gallery
27 so you don't need that then.
28 THE COURT: Well, I thought it was -- this was in the
29 monitor's report.
30 CNSL K. JACKSON: Maybe we'll just double-check that
31 to make sure. If that's the case, then we can
32 take that paragraph out.
33 Excuse me, Madam Clerk, may I pass this up?
34 This is the Schedule C that would be substituted.
35 THE COURT: Thank you. I think that was done in
36 April.
37 CNSL K. JACKSON: Pardon me? It was?
38 THE COURT: I think that was done in -- no, that was
39 on May the 12th. I extended it to September the
40 30th.
41 CNSL K. JACKSON: That makes like easy. I can -- I
42 can cross that one out.
43 THE COURT: Mm-hm.
44 CNSL K. JACKSON: And paragraph 12, I was asked to
45 include this. It's the supplemental
46 administration charge and I --
47 THE COURT: Mm-hm.

Submissions by Cnsl K. Jackson

1 CNSL K. JACKSON: The language, I just took from my
2 friends, who had negotiated this but in effect
3 it's a supplemental admin charge of up to a
4 hundred and fifty thousand dollars for the fees
5 and disbursements, of course, of the monitor, its
6 counsel and petitioners' counsel. And it ranks
7 behind the existing admin charge and behind the
8 debt and security held by Domain.
9 And the claim's contemplated in 11.8(8) of
10 the CCAA and then there's a -- the second half of
11 that paragraph on page 6 is about how the
12 allocation of that supplemental admin charge has
13 been negotiated. And I gather it's first to the
14 monitor and the monitor's counsel and if there's
15 anything leftover I gather it's to the counsel
16 for the petitioner.
17 THE COURT: Mm-hm.
18 CNSL K. JACKSON: No, I'm sorry. Oh, sorry, right.
19 First, monitor and monitor's counsel and after
20 that, the petitioner shares in the -- in the
21 balance.
22 THE COURT: Mm-hm.
23 CNSL K. JACKSON: I think that really is the -- yeah,
24 that is the crux of it. And so what I would need
25 to do is clean it up a little bit with some of
26 those things we picked up on here. I have to
27 append the Agreement and I have to append the
28 Schedule C, which you now have as well.
29 THE COURT: Yeah, okay. Okay.
30 CNSL K. JACKSON: Thank you. I'm [indiscernible].
31 THE COURT: All right, thank you. Okay. Mr.
32 Stephens, anything to say about all that?
33 CNSL S. STEPHENS: Domain's supportive of -- of the
34 order. The only supplemental direction I might
35 ask for is for the -- the deposit be paid to the
36 monitor, the monitor have discretion to release
37 some or all of it to Domain for application to
38 the loan, which would be to the benefit of the
39 subordinate secured creditors.
40 THE COURT: Well, don't they have to maintain the
41 deposit until the matter closes?
42 CNSL S. STEPHENS: Not if it's unconditional.
43 THE COURT: I mean normally a deposit would be intact
44 until the closing, isn't it?
45 CNSL W. ROBERTS: That's my concern. I just haven't
46 heard this before so I hadn't even had a chance
47 to consider it and take instructions. The

25

Submissions by Cnsl K. Jackson

Submissions by Cnsl K. Cameron

1 concern is it is unconditional if we have court
2 approval, assuming there's no appeals or stays or
3 anything like that. And then, of course, there's
4 also the issue of, you know, something like a
5 force majeure. There's material loss provisions
6 in here which would -- you know, typical sort of
7 standard out clauses.

8 I understand my friend's point but -- but I
9 think my client would be a little concerned about
10 putting its deposit at risk under that proposal.
11 So I hadn't heard about that, sorry.

12 THE COURT: Yeah. Well, Mr. Stephens, I'm not
13 inclined to muddy the waters in that respect and,
14 frankly, given -- I suspect given I'm going to
15 suspect to hear Mr. Bychawski, I think the
16 monitor would be reluctant to exercise his
17 discretion to do that in any event in the
18 circumstances.

19 CNSL S. STEPHENS: I think Mr. Jackson made some
20 sense, thank you.

21 THE COURT: Yeah, okay. All right. I'm going to
22 delete all of that. Okay. Anything further
23 then, Mr. Stephens? Anything further?

24 CNSL S. STEPHENS: (No audible response).

25 THE COURT: No, okay. Okay. Mr. Ferreira?

26 CNSL M. FERREIRA: Yes, thank you, Justice. My client
27 takes no position.

28 THE COURT: Okay. That was for Mr. -- Ms. Chen, the
29 pre-sale purchaser, isn't that correct, Mr.
30 Ferreira?

31 CNSL M. FERREIRA: Yes.

32 THE COURT: Yes, okay. Sorry, my pen's just run out.
33 All right. Ms. Cameron, over to you.

34
35 **SUBMISSIONS BY CNSL K. CAMERON, continuing:**

36
37 CNSL K. CAMERON: Good afternoon, Justice Fitzpatrick.
38 My -- our office has prepared an affidavit and I
39 believe one of our assistants is just outside the
40 courtroom with a filed copy.

41 THE COURT: I don't see anyone. Oh, there she is.
42 Have the other counsel seen the affidavit, Ms.
43 Cameron?

44 CNSL K. CAMERON: It's a signed copy of the letter Mr.
45 Roberts had referenced.

46 THE COURT: Mm-hm.

47 CNSL K. CAMERON: So what I can advise is -- at this

26

Submissions by Cnsl K. Cameron

1 point, what the petitioners have been able to
2 arrange is they have an expression of intent,
3 Friends Investment Management Inc. (phonetic), to
4 purchase the property. Additionally, I
5 understand that Mr. Reyes was trying to get
6 personal counsel, Mr. Doug Hyndman, on the line.
7 Oh, and I see he's actually logged on. He might
8 have further submissions. So on behalf of the
9 petitioners, what we have is this Letter of
10 Intent and I appreciate it's less than what was
11 anticipated, less than what's been provided by
12 Solterra. But this is what they've been able to
13 organize at this time.
14 THE COURT: All right. Well, just let me read it,
15 please. If you could just give me a moment,
16 please, and then I'll hear you further on it.
17 Okay, I've read it now then, thank you, Ms.
18 Cameron. So the --
19 CNSL K. CAMERON: Thank you.
20 THE COURT: This is -- this is essentially talking
21 about a -- not an expression of intent but a
22 sincere expression of their intent for a deal of
23 \$18.75 million, is that right?
24 CNSL K. CAMERON: That's correct. Also, there have
25 been -- as Mr. Roberts had mentioned, there is
26 also another party prepared to provide \$4 million
27 that Port Capital has been trying to work out
28 further deals on how these two parties could work
29 together --
30 THE COURT: But sorry, sorry --
31 CNSL K. CAMERON: -- but in the amount of time --
32 THE COURT: -- another party for \$4 million, you said?
33 CNSL K. CAMERON: Correct.
34 THE COURT: For what? What would they be paying --
35 CNSL K. CAMERON: That would also be provided, too, as
36 part of this bid.
37 THE COURT: Oh, I see, as part of the 18.75?
38 CNSL K. CAMERON: Yes.
39 THE COURT: So this Synvest would come up with 14.75
40 and this other party --
41 CNSL K. CAMERON: No, the four million would be on top
42 of the eighteen --
43 THE COURT: Oh, I see.
44 CNSL K. CAMERON: -- point seven five.
45 THE COURT: And what's the name of this other party?
46 Are you prepared to share details?
47 CNSL K. CAMERON: Sorry, I believe it's Raven Woods.

27

Submissions by Cnsl K. Cameron

1 THE COURT: Braven, B-r-a-v --
2 CNSL K. CAMERON: Raven.
3 CNSL W. ROBERTS: It's Rowan, R-o-w-a-n-w-o-o-d.
4 Unlike -- unlike this sincere interest letter, I
5 haven't seen that one. I have seen the Rowanwood
6 commitment. It's a conditional commitment letter
7 that frankly doesn't make a lot of sense. But it
8 is conditional.
9 THE COURT: All right. Well, I can't really do
10 anything with it since there's nothing before me.
11 Okay. All right. So Ms. Cameron, what -- if you
12 want to continue with your comments, please?
13 CNSL K. CAMERON: Yes. Well, as previously mentioned,
14 the petitioners have been trying to work
15 diligently to try to find either a refinancing or
16 more recently they've been trying to focus their
17 efforts on finding other bidders. They do
18 believe that there are bidders out there who
19 would be willing to pay more than the Solterra
20 offer. And what they're looking for is the
21 ability to try to advance the discussions with
22 the parties they've currently been in discussions
23 with.
24 THE COURT: With the --
25 CNSL K. CAMERON: And as I mentioned, I believe
26 there's --
27 THE COURT: -- with the -- you mean -- do you mean --
28 sorry, sorry, do you mean Synvest and -- and
29 Rowanwood? Is that what you mean?
30 CNSL K. CAMERON: Yes, and I believe there's another
31 party which Mr. -- I think there's another
32 counsel who's just joined the call who might be
33 able to speak further to it, a Mr. Doug Hyndman.
34 THE COURT: Well, I certainly know Mr. Hyndman.
35 CNSL D. HYNDMAN: Yes, Justice -- yes.
36 THE COURT: Not on this matter, of course. All right.
37 Well, Mr. Hyndman, just hold your -- hold your --
38 keep your power drive. I'll hear from you in a
39 minute. I didn't actually register that that was
40 you. I can't read that writing at the bottom of
41 your screen. Okay. All right, thank you. Yes,
42 Ms. Cameron, anything further?
43 CNSL K. CAMERON: No, that's it, Justice Fitzpatrick.
44 Basically, what the petitioners are looking for
45 is, through the monitor, to have these other
46 opportunities explored further before a final
47 vesting order is granted, as the petitioners had

28

Submissions by Cnsl K. Cameron

Submissions by Cnsl D. Hyndman

1 known an offer was actually being advanced today,
2 unfortunately, they weren't better prepared in
3 terms of being able to push these financing -- or
4 purchaser agreements further.
5 THE COURT: All right. Okay, thank you. All right.
6 Now, I see two other people on the -- on the
7 video. I'm not sure who the other person was in
8 addition to Mr. Hyndman.
9 Oh, that's Mr. Reyes. Sorry, I don't know
10 if I've laid eyes on Mr. Reyes before, formally.
11 Okay. So it's just Mr. Hyndman that wishes
12 to speak next, is that correct?
13 CNSL D. HYNDMAN: Yes, I'm happy to speak next.

14
15 **SUBMISSIONS BY CNSL D. HYNDMAN:**
16

17 CNSL D. HYNDMAN: My client is, I guess, largely -- is
18 Hynes, H-y-n-e-s Group. And the principal of the
19 Hynes Group, Mr. Steven Hynes, has been in
20 discussions with Mr. Reyes. As recently as last
21 night, I was on a call with Mr. Hynes and we were
22 speaking of this project and we were aware that
23 there was an application to be heard today to
24 appoint a receiver but we were not aware that
25 there was any even hint at there being an offer
26 placed before the court today.

27 If we had received notice of that, we also
28 would have prepared an offer to put before the
29 court today. And from what I can glean, although
30 I haven't seen the Solterra Offer, that the price
31 that my client is looking at is in excess, I
32 believe, of what the offer is before the court
33 today. And so we're concerned that the process
34 is being, I guess, controlled by this artificial
35 attempt to have an offer approved when there
36 hasn't been notice given to the world at large
37 and not even to Mr. Reyes that there was such a
38 move afoot today.

39 THE COURT: Well, Mr. Hyndman, to be blunt --

40 CNSL D. HYNDMAN: And -- and --

41 THE COURT: -- to be blunt, that's because Mr. Reyes
42 did not appear on the earlier two applications
43 where this very matter was discussed as a
44 potential outcome.

45 CNSL D. HYNDMAN: Okay. I don't know -- I don't know
46 anything about any of that.

47 THE COURT: No, no,

29

Submissions by Cnsl D. Hyndman

1 CNSL D. HYNDMAN: And so I can't speak to whether he
2 was there or not. But I guess again, to be
3 blunt, I don't want to throw anyone under the bus
4 but my client and I had a conversation with Mr.
5 Stephens last night and no mention was made to us
6 about whether there would be an offer put before
7 the court today. Now, that's not to say that
8 that's the appropriate channel for that to happen
9 but certainly if we had been made aware somehow
10 that this was going on, we would have had a
11 written Offer before the court today and we
12 didn't and it just -- a little bit seems like the
13 process is being hijacked to have this occur. I
14 may be totally wrong. As I said, I haven't
15 appeared on anything on this matter up until now
16 but certainly, as far as I'm aware, Ms. Cameron
17 wasn't aware of anything happening either. And I
18 gather she has been acting for Mr. Reyes.

19 THE COURT: Well, I think Ms. Cameron has been
20 appearing on behalf of the petitioners actually,
21 to be clear, but -- and Ms. Cameron was obviously
22 at the -- I think the earlier -- well, Mr. Gruber
23 was there on the 13th and Ms. Cameron was there
24 on the 18th.

25 When did Mr. Reyes begin having discussions
26 with Mr. Hynes?

27 CNSL D. HYNDMAN: Well, there had been discussions on
28 a number of different levels that up until last
29 night had to do with the possibility of taking
30 out Domain and in the discussions we had last
31 night, we were talking about if that was too
32 complicated because of the structure that we
33 didn't really know any detail about but I gather
34 that mortgage is not as simple as if just a
35 mortgage to Domain.

36 We'd then been through a discussion of the
37 possibility of making an offer through the
38 receiver but believing at that time that there
39 was nothing that required the offer to be made by
40 two o'clock today because that was only -- today
41 was only the appointment of the receiver, not
42 having an offer to put before the court.

43 Now, as I say, I may be mistaken that Ms.
44 Keely (sic) was acting for Mr. Reyes but she's
45 acting for the entities, the petitioners, and as
46 far as I know, she wasn't aware this was
47 happening today either.

30

Submissions by Cnsl D. Hyndman
Submissions by Cnsl S. Stephens

1 THE COURT: Well, this very -- as I say, this very
2 outcome was discussed on the 18th when it was
3 made clear that all of the parties who are
4 present here were out beating the bushes,
5 including the monitor, to try to put together a
6 transaction.

7 Anyway, so I suppose the answer to my
8 question specifically the when is that -- and
9 because Mr. Gruber did mention that there was
10 unconditional financing that was being discussed,
11 but it was still conditional, that was during the
12 13th of July. I'm going to assume that that was
13 with your client and that it was only last night,
14 as you say, that that offer -- or discussion
15 segued into a discussion about an offer. Is that
16 right? Do I have that correct?

17 CNSL D. HYNDMAN: I can't speak to whether the 13th
18 was the beginning of discussions about taking out
19 the financing --

20 THE COURT: Mm-hm.

21 CNSL D. HYNDMAN: -- because discussions with me about
22 both of those issues happened for the first time
23 last evening.

24 THE COURT: Yes, okay. Well, I don't want you to go
25 beyond your personal knowledge, of course, Mr.
26 Hyndman. Yes. Okay, thank you.

27 All right. Mr. Stephens, you look like
28 you're about to leap out of your chair.
29

30 **SUBMISSIONS BY CNSL S. STEPHENS, continuing:**
31

32 CNSL S. STEPHENS: I was just going to address Mr.
33 Hyndman's point is true. When I spoke to him at
34 five o'clock yesterday, I had no knowledge of a
35 potential offer today. Last night, after I spoke
36 to Mr. Hyndman, I received an email from Mr.
37 Roberts indicating he hoped Solterra would be
38 here today and, frankly, I'd heard that a couple
39 of times from Mr. Roberts before and I have great
40 faith in him and I know he believed, but twice it
41 hadn't happened yet. So I was pretty agnostic as
42 to whether I would see anything and, frankly, the
43 first time I saw something was at one-fifty-
44 something today.

45 THE COURT: Okay.

46 CNSL S. STEPHENS: But you are quite correct that at
47 the last two hearings the hope was that exactly

1 this would occur.

2 THE COURT: Yes, all right. Before I hear from Mr.
3 Bychawski on behalf of the monitor, Mr. Roberts,
4 do you have any response to Ms. Cameron and Mr.
5 Hyndman?
6

7 **SUBMISSIONS BY CNSL W. ROBERTS, continuing:**
8

9 CNSL W. ROBERTS: I think two things. First, that I
10 love Mr. Hyndman. His interest -- his interest
11 is irrelevant.

12 THE COURT: Well, I don't think we have to go that
13 far.

14 CNSL W. ROBERTS: Yeah.

15 THE COURT: I mean unless there's something I don't
16 know.

17 CNSL W. ROBERTS: His interests in this are
18 irrelevant. The only question before you is, is
19 this a provident sale, not whether his client was
20 or was not denied the opportunity to -- to be
21 involved. His client is, at best, a competing
22 bidder. I would suggest more likely somebody
23 coming very late to the table. I know because
24 I've seen copies of emails that my client was
25 actively engaged with Mr. Reyes directly up until
26 -- I'm going to get the date wrong -- when the
27 Enzo deal fell apart, which would have been -- I
28 forget if it was last Thursday or --

29 THE COURT: Sorry, could you -- can you just slow down
30 and give me that again?

31 CNSL W. ROBERTS: Sure.

32 THE COURT: Aviva was engaged with -- with Mr. --

33 CNSL W. ROBERTS: Was actively engaged directly with
34 Mr. Reyes about a possible transaction involving
35 the EnzoGroup. And you'll recall that the
36 EnzoGroup was brought in as a development company
37 to help through the CCAA process and we were
38 actively involved with the EnzoGroup in a joint
39 bid where Enzo -- the EnzoGroup and Mr. Reyes and
40 the petitioners were going to acquire the
41 property and move forward. And that got -- those
42 negotiations were well advanced.

43 THE COURT: Is that the \$20 million deal that you had
44 mentioned on the 18th?

45 CNSL W. ROBERTS: That was one of the -- one of the
46 rabbits in the hat, correct. And it was well
47 advanced. And then that did not come to fruition

32

Submissions by Cnsl W. Roberts

Submissions by Cnsl P. Bychawski

1 and, as you see here today, the EnzoGroup is not
2 participating in a bid. My greatest hope would
3 have been that the EnzoGroup and Solterra would
4 compete against each other and bring the price up
5 but they're not here and I won't go into the
6 reasons why but they're not here.

7 And so I suspect, though don't know, that
8 the Hynes Group are a late addition to that
9 party. I -- I don't know them so I have no
10 comment on them at all other than anybody who's
11 been in this room over the last few hearings
12 would have heard that this is coming to closure
13 very quickly and that we were actively, we,
14 everybody was actively looking for a bid, an
15 offer, a proposal, that would see this brought to
16 an end.

17 THE COURT: Okay, thank you. Mr. Bychawski?
18

19 **SUBMISSIONS BY CNSL P. BYCHAWSKI, continuing:**
20

21 CNSL P. BYCHAWSKI: A few comments. I don't have much
22 to say other than what I said earlier, which is
23 that the monitor's view, since July 12th, as
24 stated in this report, was that a prudent
25 approach for dealing with this situation would be
26 to approach the previously engaged parties in the
27 extensive sales process that was undertaken in
28 these proceedings before the Court of Appeal's
29 decision to see if one of those parties would
30 step forward with an offer that could be
31 implemented on an expedited timeline given the
32 state of the project and -- and the history of
33 this case.

34 And that strategy had been in a winding way
35 implemented over the past 10 days and the parties
36 that were involved did engage with the monitor
37 and with counsel and myself to explore the
38 various rabbits in the various hats to see what
39 sort of transaction would materialize. So the
40 monitor was fully engaged in discussions with
41 respect to iterations of the Solterra proposal.
42 It was also involved in discussions with respect
43 to the Enzo transaction and also did some of its
44 own due diligence in terms of dealing with prior
45 market participants such as Landa, as you noted.

46 And the -- based on that experience over the
47 past 14 days and over this file, the monitor's

1 view was that a transaction with one of the
2 previous six participants would likely deal with
3 result and scenario where an offer would be put
4 forward that would be capable of paying Domain
5 and taking some -- making some money available
6 for the junior lenders. And that's what has
7 materialized.

8 So the transaction before you is consistent
9 with the monitor's views, as stated in its
10 report, and it is the outcome of a process that
11 the monitor considered to be prudent even though
12 it was not undertaken in a strict SISP-type
13 manner that was suggested in Aviva's application.

14 With respect to Ms. Cameron's and Mr.
15 Hyndman's clients, I can say personally I have
16 not seen the document that was passed up in
17 affidavit form today. Other draft transaction
18 documents from other parties were provided to me
19 by counsel for -- for Solterra and -- and I've
20 seen other documents with respect to the Enzo
21 transaction but monitor's counsel, at least, was
22 not engaged by the petitioners with respect to
23 any of these efforts that were being undertaken
24 so the monitor had no opportunity to explore with
25 them what was being done. I will say that I
26 understand that --

27 THE COURT: Sorry, you saw the Enzo deal and then you
28 saw the Solterra --

29 CNSL P. BYCHAWSKI: The Solterra.

30 THE COURT: -- the Solterra deal.

31 CNSL P. BYCHAWSKI: Yeah, and -- and I'm speaking
32 personally. Things have been moving quickly. I
33 understand that a representative of the monitor
34 last night, I believe, was provided with a copy
35 of whatever document you may have. I can't
36 confirm if it's the same one but there was
37 certainly no engagement with -- with counsel on
38 what may be being put forward before the court as
39 an alternative to what had been explored to date.

40 THE COURT: So you were saying that the monitor was
41 just sort of kept in the loop in terms of the
42 discussions with Enzo and Solterra to the extent
43 that discussions were advanced or documents were
44 created.

45 CNSL P. BYCHAWSKI: Correct.

46 THE COURT: And what about the Synvest?

47 CNSL P. BYCHAWSKI: Again, I -- I personally had not

34

Submissions by Cnsl P. Bychawski

1 heard that name. I understand that last night, a
2 representative of the monitor other than myself
3 may have been provided with a copy of that
4 document but that's all I know of that.
5 THE COURT: Mm-hm.
6 CNSL P. BYCHAWSKI: Subject to questions, I don't have
7 anything further to -- to say.
8 THE COURT: Okay, thank you. Mr. Roberts, is this my
9 -- or I see your -- your initials on it. This
10 material that is your application.
11 CNSL W. ROBERTS: It's now yours.
12 THE COURT: Okay, good. Well, that's -- I wanted to
13 -- to ask you that before I made off with it, so
14 to speak.
15 All right. Well, I suppose this is an
16 example of the classic real-time litigation that
17 is characterized as these types of proceedings.
18 What I'm going to do is this.
19 I am going to approve the Solterra
20 transaction.
21 Mr. Stephens, I'm going to adjourn the
22 relief in your petition. I'm not going to dismiss
23 it for obvious reasons but if things come to pass
24 with Solterra then that will just die on the
25 vine, I expect.
26 And with written reasons to follow.
27 So is there an order, Mr. Jackson, that
28 you've been able to put together for me to sign?
29 CNSL K. JACKSON: I gave it to my friend, Mr. Roberts.
30 It's been vetted it as well so...
31 THE COURT: Oh.
32 CNSL W. ROBERTS: Vetted and -- and hand revisions
33 that you and Mr. Jackson discussed are
34 handwritten on it and we had it taken downstairs
35 and vetted.
36 THE COURT: All right. Okay. I've signed the -- the
37 order. When that is entered, Mr. Jackson, I'd
38 like you to upload that to the FTS, if you would,
39 please.
40 CNSL K. JACKSON: Certainly, Madam Justice. And may I
41 just quickly run -- this has come together very
42 quickly, as you -- as you know, and I know that
43 you are away and hopefully able to stay out of
44 communication with everyone over the next while.
45 There is, as you're aware, often in these cases,
46 a nit or something that needs to be picked at by
47 way of the clean-up order and I just -- I think

35
Proceedings

1 it would be helpful if we had your consent to
2 have another justice hear something small like
3 that, if it wasn't substantive and it was mainly
4 a clean-up to address any issues that might arise
5 in relation to the -- the deal.
6 THE COURT: Yes, well, in fact, if -- if that happens,
7 hopefully you can do this by consent and you
8 could send it through the e-order process or
9 through Scheduling in some -- I mean I'm going to
10 be available by email.
11 CNSL K. JACKSON: Very good.
12 THE COURT: So one of those two things is fine. So
13 that's -- that's fine. I'll give that order back
14 to Madam Clerk to give back to you.
15 CNSL K. JACKSON: Thank you.
16 THE COURT: And -- and then, Mr. Bychawski, I have
17 your Application Record for the fee approval
18 application. I'm assuming that doesn't need to
19 proceed right now or does it in some fashion?
20 CNSL P. BYCHAWSKI: It does not and I anticipate that
21 when it does come before you again, it will be an
22 amended and updated application so...
23 THE COURT: Yes, all right. I'll give this binder
24 back then --
25 CNSL P. BYCHAWSKI: Thank you.
26 THE COURT: -- 'cause I don't need to carry that
27 around any further.
28 All right. Well, good luck to you all in
29 terms of hopefully closing this transaction and
30 I'll see you -- well, maybe at the tail-end of
31 it, maybe not. Okay.

32
33 (PROCEEDINGS CONCLUDED)
34
35

36 I certify that this is a true and accurate
37 transcript of these proceedings recorded on
38 sound recording apparatus, transcribed to the
39 best of my skill and ability in accordance with
40 applicable standards.

41 
42 K. Tschenscher
43 Court Transcriber
44
45
46
47

Darlene Purdy

From: Ritchie Clark
Sent: August 8, 2022 1:49 PM
To: Kibben Jackson; gruberd@bennettjones.com; Keely Cameron; peter.rubin@blakes.com; Bychawski, Peter; Scott H. Stephens; 'dhyndman@kornfeldllp.com'; mferreira@mcewanpartners.com
Subject: RE: [EXT] Port capital

Hello All

Well that seems to have been a conversations killer. If the monitor and the purchaser will make that agreement, I would propose we set it for the 7th.

Ritchie

H.C. Ritchie Clark, Q.C.*
 Lawyer | rclark@bridgehouselaw.ca | *law corporation

Bridgehouse Law LLP
 9th Floor, 900 West Hastings Street
 Vancouver, British Columbia Canada V6C 1E5
www.bhlvancouver.com
 Tel: 604.684.2550 ext 214
 Fax: 604.684.0916

This is Exhibit "B" referred to in the
 affidavit of Darlene Purdy
 made before me on AUG. 24 2022
 A Commissioner for taking Affidavits for British Columbia

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From: Ritchie Clark
Sent: August 8, 2022 9:56 AM
To: Kibben Jackson <kjackson@fasken.com>; gruberd@bennettjones.com; Keely Cameron <CameronK@bennettjones.com>; peter.rubin@blakes.com; Bychawski, Peter <peter.bychawski@blakes.com>; Scott H. Stephens <sstephens@owenbird.com>; 'dhyndman@kornfeldllp.com' <dhyndman@kornfeldllp.com>; mferreira@mcewanpartners.com
Subject: RE: [EXT] Port capital

Hello all

We have to file by the 12th. The new rules say we need to put a date we have agreed on in the leave application, and that it has to be not less than ten days after filing.

The agreement calls for closing in sixty days, as Kibben says, but also provides that that date can be moved up. If the monitor and the purchaser agree not to do so until the leave has been heard, my dates in early September are pretty good.

I am free the whole week of the 5th, except, of course, for the 5th itself.

Ritchie

Ritchie
H.C. Ritchie Clark, Q.C.*
Lawyer | rclark@bridgehouselaw.ca | *law corporation

Bridgehouse Law LLP
9th Floor, 900 West Hastings Street
Vancouver, British Columbia Canada V6C 1E5
www.bhlvancouver.com
Tel: 604.684.2550 ext 214
Fax: 604.684.0916

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From: Kibben Jackson <kjackson@fasken.com>
Sent: August 6, 2022 9:16 AM
To: Ritchie Clark <RClark@bridgehouselaw.ca>; gruberd@bennettjones.com; Keely Cameron <CameronK@bennettjones.com>; peter.rubin@blakes.com; Bychawski, Peter <peter.bychawski@blakes.com>; Scott H. Stephens <sstephens@owenbird.com>; 'dhyndman@kornfeldllp.com' <dhyndman@kornfeldllp.com>; mferreira@mcewanpartners.com
Subject: RE: [EXT] Port capital

EXTERNAL EMAIL

I am resending to include Peter and Mitch's correct addresses.

If you are going to reply all, please respond to this message not any of the previous ones.

Kibben Jackson*
PARTNER
T. +1 604 631 4786 | F. +1 604 632 4786
*Law Corporation

From: Kibben Jackson
Sent: August-06-22 9:12 AM
To: Ritchie Clark <RClark@bridgehouselaw.ca>; gruberd@bennettjones.com; Keely Cameron <CameronK@bennettjones.com>; peter.rubin@blakes.com; peter.bychawski@blakes.com; Scott H. Stephens <sstephens@owenbird.com>; 'dhyndman@kornfeldllp.com' <dhyndman@kornfeldllp.com>; mferriera@mcewenpartners.com
Subject: RE: [EXT] Port capital

Well the closing is 60 days after court approval. Court approval was granted on July 22, 2022, so closing would be September 20, 2022 by my math. There's no reason this couldn't be heard on September 6 or 7, 2022, preferably the latter. I can block those dates off.

Kibben Jackson*
PARTNER

T. +1 604 631 4786 | F. +1 604 632 4786
 *Law Corporation

From: Ritchie Clark <RClark@bridgehouselaw.ca>

Sent: August-05-22 4:21 PM

To: Kibben Jackson <kjackson@fasken.com>; gruberd@bennettjones.com; Keely Cameron <CameronK@bennettjones.com>; peter.rubin@blakes.com; peter.bychawaski@blakes.com; Scott H. Stephens <sstephens@owenbird.com>; 'dhyndman@kornfeldllp.com' <dhyndman@kornfeldllp.com>; mferriera@mcewenpartners.com

Subject: RE: [EXT] Port capital

Thanks, Kibben

Hope you're enjoying your holidays. Sorry for intruding. I think this thing has to be heard before August 31, unless the parties agree not to close. Sorry,

Ritchie

H.C. Ritchie Clark, Q.C.*

Lawyer | rclark@bridgehouselaw.ca | *law corporation

Bridgehouse Law LLP

9th Floor, 900 West Hastings Street

Vancouver, British Columbia Canada V6C 1E5

www.bhlvanancouver.com

Tel: 604.684.2550 ext 214

Fax: 604.684.0916

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From: Kibben Jackson <kjackson@fasken.com>

Sent: August 5, 2022 2:55 PM

To: Ritchie Clark <RClark@bridgehouselaw.ca>; gruberd@bennettjones.com; Keely Cameron <CameronK@bennettjones.com>; peter.rubin@blakes.com; peter.bychawaski@blakes.com; Scott H. Stephens <sstephens@owenbird.com>; 'dhyndman@kornfeldllp.com' <dhyndman@kornfeldllp.com>; mferriera@mcewenpartners.com

Subject: RE: [EXT] Port capital

EXTERNAL EMAIL

Hi Ritchie.

I am actually away and out of cell range until August 26, 2022 (the evening of), meaning any date in August is bad for me. September is better, if you are able to secure dates in there, noting that I won't be able to get materials to you for several days after my return to the office on August 29, 2022.

Kibben Jackson*
PARTNER
T. +1 604 631 4786 | F. +1 604 632 4786
*Law Corporation

From: Ritchie Clark <RClark@bridgehouselaw.ca>
Sent: August-05-22 1:06 PM
To: gruberd@bennettjones.com; Keely Cameron <CameronK@bennettjones.com>; peter.rubin@blakes.com; peter.bychawaski@blakes.com; Kibben Jackson <kjackson@fasken.com>; Scott H. Stephens <sstephens@owenbird.com>; 'dhyndman@kornfeldllp.com' <dhyndman@kornfeldllp.com>; mferriera@mcewenpartners.com
Subject: [EXT] Port capital

Hello all

I have been retained to seek leave to appeal Fitzpatrick J's order of July 22.

I am working my way through the new rules dealing with that, and one thing that is new is that I have to set the matter for a date certain, when I file, not less than ten days after I file and serve, and you guys have to file your stuff 5 days before the hearing.

I hope to file before the 12th, but may get bounced a time or two given the strangeness of the new stuff, so am calculating time from the 12th. That means the hearing can't be before the 23rd. One thing that is new is that I have to canvass you guys for dates, before filing, and put that date in my "Form 4", I guess so that the court knows it will proceed on that date.

There are a ton of dates on the website between the 23rd and the 31st. Could you get back to me to let me know if any of those dates are inconvenient, and with a preferred date. I can't promise to set it for that date, unless everyone agrees. But it would be good if we did set a date that everyone agrees on.

I am only canvassing those who were there, at least according the schedule to the order. If someone else was there, perhaps someone can let me know that.

Ritchie

H.C. Ritchie Clark, Q.C.*
Lawyer | rclark@bridgehouselaw.ca | *law corporation

Bridgehouse Law LLP
9th Floor, 900 West Hastings Street
Vancouver, British Columbia Canada V6C 1E5
www.bhlvancouver.com
Tel: 604.684.2550 ext 214
Fax: 604.684.0916

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This email contains privileged or confidential information and is intended only for the named recipients. If you have received this email in error or are not a named recipient, please notify the sender and destroy the email. A detailed statement of the terms of use can be found at the following address: <https://www.fasken.com/en/terms-of-use-email/>.

Fasken has a COVID-19 management plan in place. We prioritize maintaining a safe workplace; encourage social distancing and uphold privacy and confidentiality for those we work with. We have reduced the need to attend our offices to necessary visits, and are minimizing in-person meetings. We have enhanced digital communications with you through telephone & web conferencing, secure email, Fasken Edge, etc.

Please do not visit our offices without an appointment in advance; and please excuse us if we do not shake your hand. In the event the risk of COVID-19 increases and affects our ability to provide legal services or representation, we will make the best arrangements within our power to obtain time extensions and/or adjournments. We appreciate your understanding.

> COVID-19 Resource Centre for Businesses

Ce message contient des renseignements confidentiels ou privilégiés et est destiné seulement à la personne à qui il est adressé. Si vous avez reçu ce courriel par erreur, S.V.P. le retourner à l'expéditeur et le détruire. Une version détaillée des modalités et conditions d'utilisation se retrouve à l'adresse suivante : <https://www.fasken.com/fr/terms-of-use-email/>.

Fasken dispose d'un plan de gestion de la situation en lien avec la COVID-19. Notre priorité est de maintenir un milieu de travail sécuritaire, d'encourager la distanciation sociale et d'assurer la protection des renseignements personnels et de la confidentialité au nom des personnes pour lesquelles nous travaillons. Nous avons réduit le nombre de visites nécessaires à nos bureaux et réduit au strict minimum les réunions en personne. Nous avons amélioré les communications numériques par téléphone, par vidéoconférence, par courrier électronique sécurisé, par l'intermédiaire de Fasken Plus, etc.

Nous vous prions de ne pas vous présenter au bureau sans rendez-vous et veuillez nous excuser d'avance si nous ne vous serrons pas la main. Si le risque de propagation du virus COVID-19 augmente et atteint notre capacité à fournir des services juridiques ou de représenter nos clients, nous ferons tout en notre pouvoir pour prendre les meilleures dispositions afin d'obtenir des reports et/ou des ajournements. Nous vous remercions pour votre compréhension.

> Centre de ressources sur la COVID-19 pour les entreprises



This the 1st Affidavit of Darlene Purdy
in this case and was made on 16th August 2022

COURT OF APPEAL FILE NO. CA48485

COURT OF APPEAL

IN THE MATTER OF THE COMPANIES' CREDITORS ARRANGEMENT ACT,
R.S.C. 1985, C. c-36, AS AMENDED

AND

IN THE MATTER OF THE CANADA BUSINESS CORPORATIONS ACT,
R.S.C. 1985, C. c-44, AS AMENDED

AND

IN THE MATTER OF A PLAN OF COMPROMISE AND ARRANGEMENT OF
PORT CAPITAL DEVELOPMENT (EV) INC.
and EVERGREEN HOUSE DEVELOPMENT LIMITED PARTNERSHIP

BETWEEN:

This is Exhibit "C" referred to in the
affidavit of DARLENE PURDY
made before me on AUG 24 2022
AND:

1296371 B.C. Ltd.

APPELLANT
(Respondent)

PORT CAPITAL DEVELOPMENT (EV) INC.
A Commissioner for taking Affidavits for British Columbia

RESPONDENT
(Petitioner)

AND:

AVIVA INSURANCE COMPANY OF CANADA, ERNST & YOUNG INC.,
SOLTERRA ACQUISITIONS CORP. DOMAIN MORTGAGE CORP.,
JING CHIANG and THE HYNES GROUP

RESPONDENTS
(Respondents)

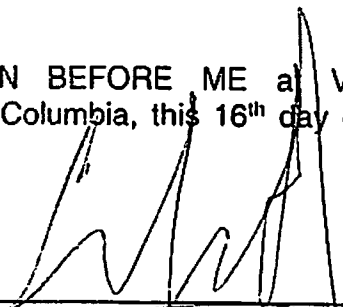
AFFIDAVIT

I, **DARLENE PURDY**, Legal Assistant of 900 – 900 West Hastings Street,
Vancouver, British Columbia, SWEAR THAT:

1. I am a legal assistant with Bridgehouse Law, counsel for the Appellant herein, and I have personal knowledge of the facts and matters hereinafter deposed to, save and except where stated to be on information and belief and where so stated I verily believe them to be true.
2. On Friday, August 12, 2022, we had a deadline to file an appeal with regard to the Order of the Honourable Madam Justice Fitzpatrick, made on July 22, 2022.
3. I had previously contacted the Court of Appeal as I had never done an appeal before and was advised that we needed to file our Application Book and a Form 4. They never mentioned having to file a Form 1.
4. All day on Friday we were preparing our Application book of the Appellant and Notice of Application for Leave to Appeal.
5. At 3:45 p.m., we started uploading our Application Book of the Appellant, but it would not upload. I got a popup saying that I could only upload 25 mb (even though the completion instructions said 100 MB). I got a popup advising that it needed to be in portrait (which the file was).
6. I then split the file into two parts advised in the completion instructions and tried uploading the documents again.
7. My coworker, Chantelle Wilson-Cole also tried uploading Volumes 1 and 2 of the Application Books. She showed me her screen where she got the popup that it needed to be in portrait mode, just like I received.
8. I called CSO Support Line to find out what the problem was and advised them that we were now passed our deadline due to the computer problems uploading to CSO. The support help line advised that trying to put the document into landscape and see if the system would upload it that way.
9. Chantelle tried uploading the Application Books again and received a popup that it needed an initiating document so she said she tried uploading the Notice of Application for Leave to Appeal and she still got the popup requiring an initiating document and I verily believe this to be true. The material would not upload.
10. I then tried uploading the Application Books and the Notice of Application for Leave to Appeal with it and I got the popup as well requiring the initiating document.
11. At 4:39 p.m. and 4:41 p.m. on August 12th I served copies of our unfilled Notice of Application for Leave to Appeal and our 2 volumes of the Appellant's Application Book on the Respondents. I had to do it in two emails due to size of the documents.
12. I talked with Mr. Ritchie Clark, Q.C., about it, advising we had missed the deadline with regard to filing because of the problems uploading. He advised me to wait until Monday morning when Court of Appeal opened and we would talk to them.

- 13. I phoned the Court of Appeal on Monday morning at 9:00 a.m. to advise them of our problems. The gentleman on the phone said we needed to file a Form 1 and I told him we were not advised of that previously. He said it was noted in the Rules.
- 14. On August 15, 2022, at 11:12 a.m., I submitted a Notice of Appeal I had drafted. At 1:03 p.m. it was rejected as I had not used the printed form in the Rules.
- 15. At 1:57 p.m. I submitted the printed form. At 2:33 p.m. it was rejected again as the box advising what type of proceeding we were appealing from, a Chambers Order, was not checked off.
- 16. At 3:14 p.m. I submitted the form again with the box for Chambers Judgment checked off.
- 17. At 3:58 p.m. it was rejected again as the document was in revision/edit mode.
- 18. At 4:06 p.m. I submitted the form to the Registry again.
- 19. As the document was courtesy rejected, the Notice of Appeal was accepted by the Registry and filed as of August 15, 2022.
- 20. I am filing this Affidavit in support of an application to extend the time to appeal herein to the 15th of August, 2022.

SWORN BEFORE ME at Vancouver,)
British Columbia, this 16th day of August,)
2022.)



A Commissioner for Taking Affidavits for the Province of
British Columbia (H.C. Ritchie Clark, Q.C.))



DARLENE PURDY

H.C. RITCHIE CLARK, Q.C.
Barrister & Solicitor
Suite 900-900 West Hastings Street
Vancouver, British Columbia
V6C 1E6

Ritchie Clark

From: Ritchie Clark
Sent: August 12, 2022 4:32 PM
To: 'wroberts@lawsonlundell.com'; 'kjackson@fasken.com'; David Gruber; Scott H. Stephens; peter.rubin@blakes.com
Subject: Appeal
Follow Up Flag: Copied to Worldox (Client Files\20116\008\01323419.MSG)

Hello All

We went to file our stuff shortly before 4:00, and have run into problems with the C of A's uploading system, whatever that is.

I will send you copies in a short while, even if those problems persist.

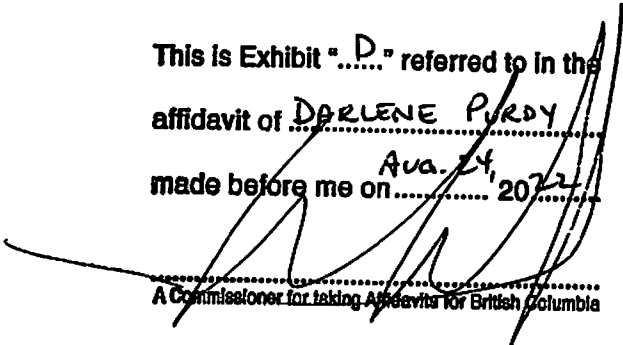
Ritchie

H.C. Ritchie Clark, Q.C.*
 Lawyer | rclark@bridgehouselaw.ca | *law corporation

Bridgehouse Law LLP
 9th Floor, 900 West Hastings Street
 Vancouver, British Columbia Canada V6C 1E5
www.bhlvancouver.com
 Tel: 604.684.2550 ext 214
 Fax: 604.684.0916

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This is Exhibit "D" referred to in the
 affidavit of DARLENE PURDY
 made before me on Aug. 24, 2022


 A Commissioner for taking Affidavits for British Columbia

Darlene Purdy

From: Darlene Purdy
Sent: August 12, 2022 4:39 PM
To: David Gruber; Keely Cameron; wroberts@lawsonlundell.com; ateasdale@lawsonlundell.com; Peter Rubin; Claire Hildebrand; Kibben Jackson; Glen Nesbitt; Scott H. Stephens; Douglas B. Hyndman
Cc: Ritchie Clark
Subject: Appellant's Application Book and Notice of Application for Leave to Appeal
Attachments: Appellant's Application Book, Volume 1 (01323417xC4EF4).PDF

Good afternoon,

Please see attached for service upon you. It will be coming in 2 emails. We are currently awaiting a filed copy back from the Court of Appeal.

Yours truly,

Darlene Purdy

Legal Administrative Assistant | dpurdy@bridgehouselaw.ca

Bridgehouse Law LLP

9th Floor, 900 West Hastings Street

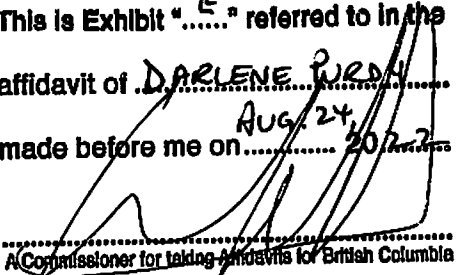
Vancouver, British Columbia Canada V6C 1E5

www.bhlvancouver.com

Tel: 604.684.2550 Ext. 212

Fax: 604.684.0916

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This is Exhibit "E" referred to in the
 affidavit of DARLENE PURDY
 made before me on AUG. 24, 2022

 A Commissioner for taking Affidavits for British Columbia

Darlene Purdy

From: Darlene Purdy
Sent: August 12, 2022 4:42 PM
To: David Gruber; Keely Cameron; wroberts@lawsonlundell.com; ateasdale@lawsonlundell.com; Peter Rubin; Claire Hildebrand; Kibben Jackson; Glen Nesbitt; Scott H. Stephens; Douglas B. Hyndman
Cc: Ritchie Clark
Subject: Appellant's Application Book and Notice of Application for Leave to Appeal
Attachments: Appellant's Application Book, volume 2 (01323325xC4EF4).PDF; Notice of Application for Leave to Appeal, Aug 12-22 (01323318xC4EF4).PDF

Good afternoon,

Please see attached the 2nd part of the email just previously sent.

Darlene Purdy

Legal Administrative Assistant | dpurdy@bridgehouselaw.ca

Bridgehouse Law LLP

9th Floor, 900 West Hastings Street

Vancouver, British Columbia Canada V6C 1E5

www.bhlvancouver.com

Tel: 604.684.2550 Ext. 212

Fax: 604.684.0916

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Ritchie Clark

From: Ritchie Clark
Sent: August 15, 2022 9:47 AM
To: 'wroberts@lawsonlundell.com'; 'kjackson@fasken.com'; Scott H. Stephens;
 'dhyndman@kornfeldllp.com'; David Gruber; peter.rubin@blakes.com
Subject: Appeal

Follow Up Flag: Copied to Worldox (Client Files\20116\008\01323476.MSG)

Hello all

So we kept getting rejected on Friday, with messages like it needs to be in portrait when it was already, and the uploading was very slow. Until finally we got a message that said you need to file the originating document separately, So we filed the notice of application for leave separately. And that didn't work. Finally at 5:30 we stopped trying. We just couldn't upload it

This morning they tell me that even if you need leave, you file a notice of appeal first, which is not how I read the rules, but there you go. They tell me now, that we must file a notice of appeal, amend our application to include an extension of time, and file an affidavit in support of that. We will be doing that later this morning. I propose to make it returnable on the 7th with the leave motion. If any one disagrees with that date for the extension, please let me know within the next hour or so.

My apologies for all this

Ritchie

H.C. Ritchie Clark, Q.C.*
 Lawyer | rclark@bridgehouselaw.ca | *law corporation

Bridgehouse Law LLP
 9th Floor, 900 West Hastings Street
 Vancouver, British Columbia Canada V6C 1E5
www.bhlvancouver.com
 Tel: 604.684.2550 ext 214
 Fax: 604.684.0916

This is Exhibit "F....." referred to in:
 affidavit of DARLENE PUDY
 made before me on Aug 24, 2022
 A Commissioner for taking Affidavits for British Columbia

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Ritchie Clark

From: Ritchie Clark
Sent: August 16, 2022 5:18 PM
To: Kibben Jackson; 'wroberts@lawsonlundell.com'; Scott H. Stephens; 'dhyndman@kornfeldllp.com'; David Gruber; peter.rubin@blakes.com
Cc: Tom Posyniak
Subject: RE: [EXT] Appeal

Follow Up Flag: Copied to Wordox (Client Files\20116\008\01323954.MSG)

Its finally been served, and a filed copy of the application will be next.

Ritchie

H.C. Ritchie Clark, Q.C.*
 Lawyer | rclark@bridgehouselaw.ca | *law corporation

Bridgehouse Law LLP
 9th Floor, 900 West Hastings Street
 Vancouver, British Columbia Canada V6C 1E5
www.bhlvancouver.com
 Tel: 604.684.2550 ext 214
 Fax: 604.684.0916

This is Exhibit "G" referred to in the
 affidavit of DARLENE FORDY
 made before me on AUG. 24, 2022

 A Commissioner for taking Affidavits for British Columbia

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From: Kibben Jackson <kjackson@fasken.com>
Sent: August 16, 2022 10:41 AM
To: Ritchie Clark <RClark@bridgehouselaw.ca>; 'wroberts@lawsonlundell.com' <wroberts@lawsonlundell.com>; Scott H. Stephens <sstephens@owenbird.com>; 'dhyndman@kornfeldllp.com' <dhyndman@kornfeldllp.com>; David Gruber <gruberd@bennettjones.com>; peter.rubin@blakes.com
Cc: Tom Posyniak <tposyniak@fasken.com>
Subject: RE: [EXT] Appeal

EXTERNAL EMAIL

Hi Ritchie.

I have yet to see a filed Notice of Appeal or any other filed materials for that matter. Do you expect that we will have it soon? As I believe I mentioned to you, I am gone and out of cell range after today until August 26, 2022...

Kibben Jackson*
 PARTNER
 T. +1 604 631 4786 | F. +1 604 632 4786
 *Law Corporation

Darlene Purdy

From: Darlene Purdy
Sent: August 16, 2022 3:26 PM
To: David Gruber; Keely Cameron; wroberts@lawsonlundell.com; ateasdale@lawsonlundell.com; Peter Rubin; Claire Hildebrand; Kibben Jackson; Glen Nesbitt; Scott H. Stephens; Douglas B. Hyndman; peter.bychawski@blakes.com
Cc: Ritchie Clark
Subject: Appeal - 1296371 BC Ltd. v. Port Capital Development (EV) Inc. et al, CA48485; Our File #20116-008
Attachments: Notice of Appeal form 1, filed Aug 15-22 (01323823xC4EF4).PDF

Good afternoon,

Please find enclosed for service upon you our filed Notice of Appeal, in regard to the above-noted matter.

Yours truly,

Darlene Purdy
 Legal Administrative Assistant | dpurdy@bridgehouselaw.ca

Bridgehouse Law LLP
 9th Floor, 900 West Hastings Street
 Vancouver, British Columbia Canada V6C 1E5
www.bhlvancouver.com
 Tel: 604.684.2550 Ext. 212
 Fax: 604.684.0916

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This is Exhibit "H." referred to in the
 affidavit of DARLENE PURDY
 made before me on AUG 21, 2022

.....
 A Commissioner for taking Affidavits for British Columbia

Ritchie Clark

From: Ritchie Clark
Sent: August 22, 2022 10:24 AM
To: Tom Posyniak; Kibben Jackson; 'wroberts@lawsonlundell.com'; Scott H. Stephens; 'dhyndman@kornfeldllp.com'; David Gruber; peter.rubin@blakes.com; Bychawski, Peter; Sarah Hannigan
Cc: Rebecca Barclay Nguinambaye; Heather Liesch
Subject: RE: [EXT] Appeal

Follow Up Flag: Copied to Worldox (Client Files\20116\008\01324840.MSG)

Hello Tom

Well that's embarrassing. Thank you go for pointing that out now rather than on the appeal itself.

I have never needed a CCAA appeal extension before. We all know its 21 days, so I didn't read the section, before filing. A lesson to me for sure.

Ritchie

H.C. Ritchie Clark, Q.C.*
 Lawyer | rclark@bridgehouselaw.ca | *law corporation

Bridgehouse Law LLP
 9th Floor, 900 West Hastings Street
 Vancouver, British Columbia Canada V6C 1E5
www.bhlvanancouver.com
 Tel: 604.684.2550 ext 214
 Fax: 604.684.0916

This is Exhibit "I" referred to in the
 affidavit of Darlene Purdy
 made before me on Aug. 21, 2022
 A Commissioner for taking Affidavits for British Columbia

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From: Tom Posyniak <tposyniak@fasken.com>
Sent: August 19, 2022 4:30 PM
To: Ritchie Clark <RClark@bridgehouselaw.ca>; Kibben Jackson <kjackson@fasken.com>; 'wroberts@lawsonlundell.com' <wroberts@lawsonlundell.com>; Scott H. Stephens <sstephens@owenbird.com>; 'dhyndman@kornfeldllp.com' <dhyndman@kornfeldllp.com>; David Gruber <gruber@bennettjones.com>; peter.rubin@blakes.com; Bychawski, Peter <peter.bychawski@blakes.com>; Sarah Hannigan <shannigan@lawsonlundell.com>
Cc: Rebecca Barclay Nguinambaye <rnguinambaye@fasken.com>; Heather Liesch <hliesch@fasken.com>
Subject: RE: [EXT] Appeal

EXTERNAL EMAIL

Ritchie,

We have reviewed your application for leave to appeal/stay and the application for an extension of time, which was served on us on August 18, 2022.

We will be opposing all three applications on their merits. However, we wish to advise that it is Solterra's first position that 129's leave application is filed out of time under s. 14(2) of the CCAA, and that therefore a justice of the Court of Appeal or the Court itself has no jurisdiction to "entertain" the applications, and should be accordingly dismissed.

Domain and Aviva also share this position.

Regards,

Tom

Tom Posyniak
ASSOCIATE
T. +1 604 631 3299 | F. +1 604 631 3232

From: Tom Posyniak <tposyniak@fasken.com>
Sent: August-18-22 12:07 PM
To: Ritchie Clark <RClark@bridgehouselaw.ca>; Kibben Jackson <kjackson@fasken.com>; 'wroberts@lawsonlundell.com' <wroberts@lawsonlundell.com>; Scott H. Stephens <sstephens@owenbird.com>; 'dhyndman@kornfeldllp.com' <dhyndman@kornfeldllp.com>; David Gruber <gruber@bennettjones.com>; peter.rubin@blakes.com; Bychawski, Peter <peter.bychawski@blakes.com>
Cc: Rebecca Barclay Nguinambaye <rnguinambaye@fasken.com>; Heather Liesch <hliesch@fasken.com>
Subject: RE: [EXT] Appeal

Good afternoon Ritchie:

I enclose our notice of appearance in connection with the notice of appeal served on August 16, 2022.

Do you have an update as to when we might expect the filed notice of application for leave to appeal and stay, the filed application books for leave and the stay, and an application for an extension of time to apply for the same?

Thanks,

Tom

Tom Posyniak
ASSOCIATE
T. +1 604 631 3299 | F. +1 604 631 3232

From: Ritchie Clark <RClark@bridgehouselaw.ca>
Sent: August-17-22 3:25 PM
To: Tom Posyniak <tposyniak@fasken.com>; Kibben Jackson <kjackson@fasken.com>; 'wroberts@lawsonlundell.com' <wroberts@lawsonlundell.com>; Scott H. Stephens <sstephens@owenbird.com>; 'dhyndman@kornfeldllp.com' <dhyndman@kornfeldllp.com>; David Gruber <gruber@bennettjones.com>; peter.rubin@blakes.com; Bychawski, Peter <peter.bychawski@blakes.com>
Cc: Rebecca Barclay Nguinambaye <rnguinambaye@fasken.com>
Subject: RE: [EXT] Appeal

This is Exhibit "A..." referred to in the
affidavit of DARLENE POKOY
made before me on AUG. 24, 2022

.....
A Commissioner for taking Affidavits for British Columbia

PART 4: ARGUMENT

Part 1: Facts

1. As are many in this era, this proceeding is a long running CCAA, in which the initial Order was made May 29, 2020. The amended and restated initial Order, made June 8, 2020, following the model Order, provided for service of materials as follows:

- (a) Anyone who wished to be served with applications, should notify the Monitor, who was charged with maintaining a service list on its website;
- (b) Anyone could serve material by serving with the use of that service list; and
- (c) Applications could be brought on two clear days notice, subject to the discretion of the Court. [Paras. 51, 52 and 60]

2. The facts leading up to the final steps complained of on this Appeal are summarized in the 13th Report of the Monitor, but, generally, the Monitor conducted what is known as a SISP process. It produced six offers, reduced ultimately to three. One was from Solterra Acquisitions Corp. ("Solterra") for \$23,666,666, one was from Landa Global Acquisition Inc. for \$22,000,000 and one was an "offer" from the Petitioners, for a refinancing.

3. Madam Justice Fitzpatrick approved the Solterra offer on January 15, 2021. This Appellant appealed, and ultimately, on September 22, 2021, this Honourable Court reversed the decision of Madam Justice Fitzpatrick and approved the refinancing. The Appellant completed that refinancing with a loan from Domain Mortgage Corp. ("Domain") in the amount of \$14,700,000. That loan was due and payable on July 1, 2022. The Petitioner arranged financing from Mandate Management Corporation ("Mandate"), in the amount of \$20,000,000 to repay Domain and provide working capital.

Exhibit K

4. On May 11, 2022, the Petitioner sought approval of the Mandate financing. In that Application, it was said to be also essential to the Petitioner's continuing in business and

to continue under the CCAA. It sought an Order abridging service to permit the Application to come on on May 13th, and to extend the stay of proceedings to September 20, 2022. The abridgement of service, approval of the financing, and the extension were all granted.

Exhibit B

5. On June 15th, the Petitioner's filed an application returnable June 17th, seeking abridgement of service, authorizing the filing of a plan and the summoning of a meeting to consider it. The Monitor in its 13th Report advised the Court that the Mandate financing had not closed, there was no evidence it was going to close, and the Petitioners may be incapable of completing the proposed plan. The Petitioners were not paying their post-filing debt, they had no working capital, and they were in default of the Domain security.

Exhibit D

6. The Petitioner's application was set for July 13, 2022.

7. On July 5, 2022, Domain:

- (a) Filed an Application to terminate the CCAA proceeding; and
- (b) Filed a Petition and a Notice of Application seeking the appointment of a Receiver with power of sale.

8. The filed material indicated the Receiver would conduct an expedited sales process.

Exhibits E to H

9. On July 7th, Aviva Insurance Company of Canada ("Aviva") filed an application, returnable July 13th, seeking expanded powers be given to the Monitor to conduct a simplified and shortened SISP process, to run for three weeks, limited to the original six offerors.

Exhibit I

10. On July 11th, the Monitor filed a Notice of Application returnable on the 13th of July, seeking to abridge service, and approving its activities and fees.

Exhibit J

11. On July 11th, the Monitor filed its 13th Report. The Monitor made it clear that the CCAA had spent its course, and that the property needed to be sold. It commented both on the receivership and the simplified SISP process.

Exhibit K, paras. 56 and 67

12. The Monitor's Report indicated that the original six offerors still seemed to be interested, based on discussions with them, that the SISP process would lead to repayment of the Domain facility, and might create some proceeds past that.

Exhibit K, para. 67

13. The Monitor concluded that it was prudent to approach the original six offerors, either in the receivership or pursuant to the truncated SISP process, in order to reduce ongoing costs.

Exhibit K, para. 72

14. As far as anyone, including the Appellant, was concerned, these were the applications being considered.

15. The hearing was ultimately continued, to July 22nd. During the course of the hearing on July 22nd, the Court moved in the direction of simply approving a new offer from Solterra. The court expressed that it wished to do so, but there was no application before the Court. The hearing was, therefore, adjourned, to permit an application to be filed and brought to the Courtroom.

16. After a short adjournment, such an application was brought by Aviva, placing before the Court an Agreement of Purchase and Sale with Solterra, dated July 22, 2022. The offer purported to be between the Petitioners and Solterra. It was executed only by

Solterra. The Solterra offer was now approximately \$5,000,000 less than its earlier offer and was in the amount of \$18,500,000.

17. The Notice of Application seeking approval of that Agreement of Purchase and Sale sought an abridgement of time to the same day and an Order dispensing with service on parties other than parties on the service list and sought an Order approving the new contract between the Petitioners and Solterra. Aviva now took a position diametrically opposed to its Notice of Application of July 7th.

Exhibit L, paras. 19 to 23; Exhibit I, paras. 21 to 22

18. The entered Order approves the sale transaction, but does not address service. The Notice of Application was not served on anyone, other than those in attendance.

19. The earlier applications of Domain and Aviva, as supported by the Monitor, all of which had been served, indicated that the applications to be considered on the 22nd were, essentially, whether the property would be sold by an expedited process undertaken by a Receiver or an expedited SISP process undertaken by the Monitor. There was no notice that any actual sale of the property might be approved.

20. A review of the transcript of the proceedings in chambers on July 22, 2022, reveals the following:

- (a) Counsel for Aviva advised the Court that it was intending to ask for approval of a specific sale, but that there was no motion before the Court to do so, a problem described as procedural; (Pg. 4, lines 5 to 9)
- (b) Counsel for Aviva advised that if the judge were sitting next week, the procedural problem could be solved by preparation of a motion returnable the next week, but that the judge would be on holidays; (Pg. 4, lines 30 to 36)
- (c) When the Chambers Judge asked if there was a signed agreement, he advised her that it would be signed if she indicated she would hear the application; (Pg. 4, lines 42 to 45)

- (d) Counsel for Domain highlighted for the Court that there was no application before it, that there were other interested parties, and that the best way to handle the matter would be to appoint a receiver as was applied for in the motion properly before her, who could bring an application to approve the order. He also referred to the problem as a procedural issue; (Pg. 8, line 47 to pg. 9, line 16)
- (e) The Court then suggested that someone prepare a quick application and indicated that, in her view, there was no secret that what was happening was in fact happening; (Pg. 9, lines 18 to 23)
- (f) Counsel for the Petitioner advised the Court that the first she had heard that an offer would be presented to the Court was 15 minutes before the application, that counsel for this Appellant had only heard of the application about 15 minutes before as well, that he was unable to attend, and had asked her to advise the Court that 129 did not support the transaction; (Pg. 10, lines 38 to 46)
- (g) Counsel for the Petitioner indicated that she had a letter of intent for a higher price, which was not sufficiently advanced to present, but requested there be a procedure that provided a very short time frame so that other interested parties could submit a bid to try and maximize the purchase price; (Pg. 11, lines 2 to 15)
- (h) Counsel for Aviva advised the Court that there was a private deal between Aviva and Solterra with which the Monitor was content. The details of that private deal were not disclosed to the Court; (Pg. 13, lines 1 to 13)
- (i) When asked about the communication from the Appellant's counsel, counsel for Aviva replied that if the Appellant thought it was important to be in Court, they would be there and they had chosen not to appear; (Pg. 15, lines 8 to 13)

- (j) Counsel for Aviva repeated that only the Appellant had any financial interest in the Application, and that they had chosen not to attend. (Perhaps that is not surprising given that counsel for this Appellant was not aware the offer would be placed before the Court until 15 minutes before the application commenced and was unavailable.) (Pg. 16, lines 35 to 41)
- (k) The court then ruled that it would hear the application, and directed counsel for Aviva to prepare and file an application, an affidavit and a draft order, bring it to Court at 3:20, and suggested to counsel for the Petitioner that if she had anything to put before the Court she should do so quickly; (Pg. 16, line 44 to pg. 17, line 1)
- (l) When Court resumed, counsel for Aviva passed up an Application Binder, and indicated that they were seeking very curtailed service, which was effectively limited to service on people actually in the Courtroom; (Pg. 17, lines 10 to 17)
- (m) The terms of the order sought were amended by the Court during discussions with counsel for Solterra; (Pgs. 21 to 23)
- (n) Counsel for the Petitioner provided a signed letter of intent, admittedly not binding, for a purchase in the amount of \$22,750,000; (Pg. 26, lines 1 to 13 and lines 38 to 43)
- (o) Counsel for the Petitioner advised the Court that it was seeking an opportunity to explore other opportunities identified before a final order was made, as she had not known an offer was actually being advanced in Court. (Pg. 27, line 43 to page 28, line 3)
- (p) Counsel for a party called the Hynes Group, who had not attended prior to the adjournment, indicated he had just learned of the application to approve the sale, that his client was interested in purchasing the property, and if they had received notice that approval of a sale was being sought, they would have prepared an offer to put before the Court, in excess of the Solterra

offer. He complained that an offer would be approved when no notice had been given to the world at large, including Mr. Tobi Reyes, principal of the Appellant and the Petitioners; (Pg. 28, lines 27 to 38 and Pg. 29, lines 1- 18)

- (q) The Court indicated that Mr. Reyes had chosen not to appear on the earlier applications where the matter was discussed as a potential outcome (of course, the earlier applications were for approval of a SISP process or appointment of a receiver to seek offers); (Pg. 28, lines 41 to 44)
- (r) Counsel for Domain, indicated that, indeed, he had not been aware of a potential offer being presented either, and had not seen it until 1:50 that day; and
- (s) Upon approval of the sale, the Court described the procedure of the day as classic real-time litigation. (Pg. 34, line 15 to pg. 35, line 1)

Part 2: Issues

21. The Learned Chambers Judge erred in law in granting an order in breach of the rules of natural justice.

22. The Learned chambers Judge erred in a principle in failing to consider potentially higher offers, failing to direct service on the Appellant who, along with Aviva had the only financial interest in a higher price and failing to require production of the agreement between Aviva and Solterra.

23. The Solterra proceeds were sufficient for Domain, including interest and professional fees and no more. The Appellant and Aviva shared the next level of security.

Part 3: Analysis: Leave and Stay of Execution

24. The test for granting leave to appeal is:

- (a) Is the point of significance to the profession?;
- (b) Is the point of significance to the action itself?;

- (c) Is the appeal *prima facie* meritorious or frivolous?; and
- (d) Will the appeal unduly hinder the progress of the action.

25. These four factors are all to be considered "under the rubric of the interests of justice".

Port Development v. 1293671 B.C. Ltd., 2021 BCCA 319
paras. 45 and 46.

26. It is also true that leave is sparingly given in CCAA proceedings. As commented on by Mr. Justice Tysoe, in *Edgewater Casino Inc. (Re)*, 2009 BCCA 40, there are, generally speaking, two reasons for that. In the first place, CCAA decisions are frequently made by a judge with conduct of the proceedings, balancing the interests of the parties, during the reorganization process. The second is that such orders are usually discretionary in nature and are to be accorded deference.

27. The Order under appeal does not have the first of these attributes. This is the end of the CCAA proceedings. All that is left is to sell the assets at the highest price achievable with the proceeds to be distributed to the creditors. Indeed, the applications properly before the Learned Chambers Judge were simply asking for approval of two different ways to accomplish that end. There is no more balancing of interests to engage the Court's ongoing supervisory function.

28. As for the second point, to the extent the decision is a discretionary one, the Appellant alleges the errors in principle set out in paragraph 22:

29. Our legal system does not operate on the principle that the end justifies the means. The Supreme Court Rules themselves outline and ensure that the process that is followed in achieving any particular result is consistent with the interests of justice.

30. In a more general and broad sense, the principles of natural justice are an overarching umbrella of safe guards to ensure fair, open and just decision making. Primary among those principles is the rule of *audi alteram partem*.

The *audi alteram partem* rule, which is a component of the principles of natural justice and of procedural fairness, requires that a person who is a party to proceedings before a tribunal be informed of the proceedings and provided with an opportunity to be heard by the tribunal.

Telecommunications Workers Union v. Canada (Radio-television and Telecommunications Commission), 1995 CanLII 102 (SCC), [1995] 2 SCR 781

31. Indeed, natural justice does not concern itself with the merits of any particular case or application. It is restricted to the form of the proceedings and to due process.

Beals v. Saldanha, 2003 SCC 72, para. 65

32. The notion that adequate notice is to be given to those parties affected by an order or an application, has been described as "a necessity".

Beals v. Saldanha, supra, para. 65

33. Any fair hearing conducted in our Courts must comply with the rules of natural justice.

Malton v. Attia, 2016 ABCA 130, para. 35

See also *Waterman v. Waterman*, 2014 NSCA 110, paras. 71 to 72

See also *A.(L.L.) v. B.(A.)*, 1998 CanLII 57, para. 27

34. The principles of natural justice are twofold – an impartial tribunal and the right to be heard.

It has often been said that these rules can be separated in two categories, namely "that an adjudicator be disinterested and unbiased (*nemo iudex in causa sua*) and that the parties be given adequate notice and opportunity to be heard (*audi alteram partem*)".

IWA v. Consolidated-Bathurst Packaging Ltd., 1990 CanLII 132 (SCC)

35. They are most often discussed in the context of administrative tribunals, but they apply with equal force to the Courts.

Malton, supra, para. 35

Waterman v. Waterman, supra, paras. 71 to 72

36. Indeed, *audi alteram partem* is one of the basic tenets of our legal system. It entitles a party to a proceeding whose interest may be affected, to notice of the hearing and an opportunity to be heard before any decision is made.

A.(L.L.) v. B.(A.), supra, para. 27

37. Neither the provisions of legislation nor implication from the circumstances can obviate that basic requirement.

Waterman v. Waterman, supra, paras. 90 to 91

38. However, like any principle, it is not to be applied blindly, without regard to the circumstances. In each case it must be determined whether the party alleging the right to be heard holds a sufficient interest to call for the application of the rule.

IWA v. Consolidated-Bathurst Packaging Ltd., 1990 CanLII 132 (SCC)
page 324(e)

Telecommunications Workers Union v. Canada (Radio-television and Telecommunications Commission), supra, paras. 529 and 531

39. A blending of the two elements of natural justice arises when the tribunal enters into the forum, even in a limited way. "A judge should not take jurisdiction to grant an order which has not been sought by either party with a properly filed application and supported by evidence ...".

Cold Lake First Nations v. Alberta (Tourism, Parks and Recreation), 2012 ABCA 36, para. 35

40. The fairness, which lies at the root of natural justice requires that a judge not bring issues into the litigation without giving the parties an opportunity to address them.

Canada Trustco Mortgage Co. v. Renard,
2008 BCCA 343 (CanLII), paras. 39 and 33

See also *Malton*, supra, para. 41

See also *Servus Credit Union Ltd. v. Crelogix Acceptance Corporation*, 2020 ABCA 220, para. 40

41. Civil litigation is an adversarial process. Even if acting with the best of intentions, a judge must leave it to the parties to determine the Court process that they wish to engage in to resolve the proceeding.

Jensen v. Ross, 2014 BCCA 173, paras. 23 and 24

42. At its heart, however, natural justice requires that an individual whose interest may be affected be given notice of the proceeding and to be afforded an opportunity to address the issue by argument or evidence before any decision is made. That principle is at the foundation of any fair just legal system and it must be obeyed.

Is the Point of Significance to the Profession?

43. If an order of this Court can be made in breach of the principles of natural justice that is significant to the profession. There has developed a notion that CCAA matters are "real time" litigation. Abridgements of service requirements are common, almost routine. But "real time" litigation does not, indeed cannot, mean that the Court is free to proceed in breach of the principles of natural justice. "Real time" litigation does not mean frontier justice. It does not mean that orders can be granted without notice, absent set aside provisions to protect those affected. The profession has an abiding interest in the rule of law, indeed is sworn to uphold it. An integral part of the rule of law are the principles of natural justice. It is of significance to the profession, if those principles do not apply to CCAA proceedings because they are "real time" litigation. If orders can be obtained without notice to those affected in CCAA proceedings, that is of enormous significance to the profession.

Is the Point of Significance to the Parties?

44. The point is, obviously, of significance to the Appellant, the only creditor adversely affected monetarily by the Order from which appeal is sought, although various others, for example, guarantors, may have an equally legitimate complaint. It is obviously of

significance to the parties present in Court on July 22, 2022, given the extraordinary steps they undertook to obtain the Order under appeal.

Is the Appeal Prima Facie Meritorious or Frivolous?

45. It is submitted that an appeal from an Order made in clear breach of the rules of natural justice cannot be said to be frivolous. The only argument that can be made to the contrary is the Appellant had chosen not to attend the proceedings. That argument was vigorously advanced by counsel for Aviva, and embraced by the Learned Chambers Judge. As a general proposition, if a party is served with an application, and chooses not to attend, its right to complain, if not non-existent, is almost so.

46. The Learned Chambers Judge commented twice that the Appellant had chosen not to attend, and also had chosen not to attend on July the 13th and subsequent dates when, she said, the very application she was considering had emerged as a possibility. The Appellant would have known the application might come on, had it earlier attended.

47. There are two answers to that. In the first place, the Appellant was served with one two applications. One was to order a simplified SISP, and one was to appoint a receiver to conduct a short sales process. One chooses to attend Court proceedings depending on whether one opposes the application of which notice has been given. The failure to attend most often indicates ambivalence.

48. In the second place, two of the counsel who had attended the entire sequence of hearings, advised the Court that they were unaware this application was going to be brought, essentially until it actually was. Whatever happened on those dates, therefore, it was not enough to provide those two experienced counsel with the knowledge the Learned Chambers Judge said the Appellant could have had had it attended. There is no obligation to attend a hearing just in case an application may be brought without any notice, entirely inconsistent with the applications of which notice has been given.

49. Further, it was an error in principle, when advised that there were two potential offers for a higher price, not to structure a process that could allow them to be advanced.

50. It was also an error in principle not to require Aviva and Solterra to disclose to the Court the particulars of the deal they had made which resulted in Aviva so significantly altering its position. If that deal affected Solterra's greatly reduced price, that alone may have redounded to the detriment of the Appellant. Although the Learned Chambers Judge was advised that the Monitor was aware of the details of that agreement, and was content with them, it was an error in principle to abrogate that responsibility, which belongs with the Court, to the Monitor.

Will the Appeal Unduly Hinder the Progress of the Action?

51. These proceedings are spent, and there is no more action to address. The only issue remaining is approval of a sale of the assets.

Stay of Execution

52. The test for a stay pending appeal is equally well known:

- (a) Is there some merit to the appeal in the sense that there is a serious question to be determined?
- (b) Would irreparable harm be occasioned to the Applicant if the stay was refused?
- (c) On balance, is the inconvenience to the Applicant, if the stay was refused, greater than the inconvenience to the Respondent, if the stay is granted?

British Columbia (Milk Marketing Board) v. Grisnich,
1996 CanLII 883 (BC CA), para. 7

53. The Appellant has nothing further to say as to the merits of the appeal, and says that the irreparable harm it will suffer if a stay is not granted is self-evident. The appeal will be moot. Any chance for a higher price will be lost.

54. The Appellant ranks behind Domain and Aviva in what is described as the creditor "stack" and an offer of \$22,500,000 provides (subject to various adjustments) \$4,000,000

more dollars to go into that "stack" to the Appellant and Aviva. The prejudice of a sale at \$18,500,000 sufficient only to pay Domain and the professionals is readily apparent.

55. The only issue about which there could be controversy is that of relative inconvenience or prejudice, if the stay is granted. It is possible that a stay, may, ultimately, permit Solterra to withdraw its offer.

56. The very fact that it has made two offers, a year and a half apart, should inform the Courts assessment of that risk. Moreover, both the Petitioners' letter of intent and the potential Hynes' offer ameliorate that risk.

57. Moreover, the risk can be addressed and minimized by directions. The outside date to close the Solterra transaction is October 20th. Directions for an expedited appeal, as to the content and filing of appeal books and factums, and shortening time periods in the Act, would make it possible to have the appeal heard prior to that date, leaving any further stay, if necessary, in the hands of the panel having heard the full appeal.

PART 4: ORDER SOUGHT

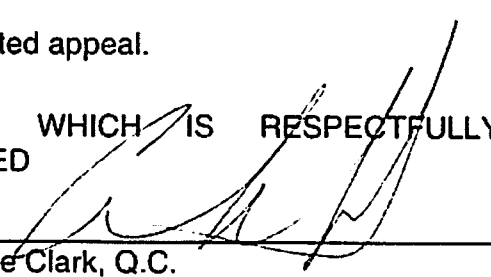
58. The Appellant seeks leave to appeal the Order of Madam Justice Fitzpatrick, made the 22nd day of July, 2022, in CCAA proceedings, approving an Agreement of Purchase and Sale in the basic amount of \$18,500,000 also dated the 22nd day of July, 2022, pursuant to a Notice of Application also dated July 22, 2022.

59. The Appellant seeks a stay of Madam Justice Fitzpatrick's Order.

60. The Appellant seeks directions for an expedited appeal.

ALL OF WHICH IS RESPECTFULLY
SUBMITTED

Dated: August 12, 2022



H.C. Ritchie Clark, Q.C.
Counsel for the Appellant, 1296371 B.C. Ltd.