COURT FILE NUMBER	2303 06543
COURT	COURT OF KING'S BENCH OF ALBERTA
JUDICIAL CENTRE	EDMONTON
	IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*, R.S.C. 1985, c. C-36, as amended
	AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF J.W. CARR HOLDINGS LTD., SPRUCE GROVE INDUSTRIAL PARK INC., 272649 ALBERTA LTD., 279896 ALBERTA LTD., GRANDE PRAIRIE PLACE ENTERPRISES (1996) INC., 1170292 ALBERTA LTD. and 627612 ALBERTA LTD.
APPLICANTS	J.W. CARR HOLDINGS LTD., SPRUCE GROVE INDUSTRIAL PARK INC., 272649 ALBERTA LTD., 279896 ALBERTA LTD., GRANDE PRAIRIE PLACE ENTERPRISES (1996) INC., 1170292 ALBERTA LTD. and 627612 ALBERTA LTD.
DOCUMENT	**BENCH BRIEF OF THE APPLICANTS (Sale Approval & Vesting Order Regarding Sale of Shares)**
ADDRESS FOR SERVICE AND CONTACT INFORMATION OF PARTY FILING THIS DOCUMENT	**MLT AIKINS LLP** Suite 2200, 10135 – 101st Street NW Edmonton, AB T5J 3G1 Solicitor: Jeffrey M. Lee, K.C. / Mandi Deren-Dubé Telephone: (306) 975-7136 / (780) 969-3518 Facsimile: (306) 975-7145 / (780) 969-3549 Email: jmlee@mltaikins.com / mderendube@mltaikins.com File Number: 159371.8

TABLE OF CONTENTS

I. INTRODUCTION

1. This Brief of Law is submitted on behalf of the Applicant, J.W. Carr Holdings Ltd. ("**Carr Holdings**") in support of an Application for an Order:

   (a) approving of the sale of the issued and outstanding shares in the capital stock of R'ohan Well Services Ltd. owned by Carr Holdings (the "**Shares**") to Gondor Investment Group ("**GIG**");

   (b) approving the engagement by Carr Holdings of Camilla Advisory Group Inc. ("**Camilla**") in accordance with the February 6, 2023 Engagement Letter (the "**Engagement Letter**") and granting to Camilla a Selling Agent's Charge in the amount of $130,000 plus GST (for a total of $136,500) on the net sale proceeds from the Shares to secure payment to Camilla of its professional fees for brokering, arranging and facilitating the sale of the Shares; and

   (c) sealing the third Confidential Affidavit of Marjorie Carr sworn June 19, 2023 (the "**3rd Confidential Carr Affidavit**").

2. Carr Holdings relies on the facts set out in the third Affidavit of Marjorie Carr, sworn June 19, 2023 (the "**3rd Carr Affidavit**"), the 3rd Confidential Carr Affidavit, and the Third Report of the Monitor, to be filed. Capitalized terms not otherwise defined herein have the meaning given to them in the 3rd Carr Affidavit.

II. ISSUES

3. The Applicants submit that this Application raises the following issues for determination by the Court:

   (a) Is it appropriate for the sale of the Shares to be approved and for title to the Shares to be vested in the Proposed Purchaser upon closing?

   (b) Is it appropriate for Camilla's engagement to be approved in accordance with the Engagement Letter and for a Selling Agent's Charge on the net sale proceeds from the Shares to be granted in favour of Camilla to secure payment of its professional fees?

   (c) Is it appropriate to seal the 3rd Confidential Carr Affidavit?

III. LAW AND ARGUMENT

A. An Order approving the proposed sale of the Shares is appropriate

4. Section 36(3) of the *Companies' Creditors Arrangement Act*[1] ("**CCAA**") sets out the following six non-exhaustive factors that must be considered in approving a sale of assets by a company under CCAA protection outside of the ordinary course of business:

> **Factors to be considered**
>
> (3) In deciding whether to grant the authorization, the court is to consider, among other things,
>
> (a) whether the process leading to the proposed sale or disposition was reasonable in the circumstances;
>
> (b) whether the monitor approved the process leading to the proposed sale or disposition;
>
> (c) whether the monitor filed with the court a report stating that in their opinion the sale or disposition would be more beneficial to the creditors than a sale or disposition under a bankruptcy;
>
> (d) the extent to which the creditors were consulted;
>
> (e) the effects of the proposed sale or disposition on the creditors and other interested parties; and
>
> (f) whether the consideration to be received for the assets is reasonable and fair, taking into account their market value.

5. These six factors for consideration set out in section 36(3) of the CCAA align with the "*Soundair* factors"[2] utilized for the approval of sales of assets outside of the ordinary course of business in receivership proceedings and in CCAA proceedings prior to the enactment of section 36(3) of the CCAA.[3]

6. The factors for consideration in section 36(3) of the CCAA and the *Soundair* factors are broadly aimed at ensuring that the sales process was conducted with integrity and that the

---

[1] RSC 1985, c C-36.

[2] See *Royal Bank v Soundair Corp*. (1991), 83 DLR (4th) 76 at para 16 (Ont CA).

[3] The *Soundair* factors and the jurisprudence decided pursuant to those factors continue to be relevant to the approval of sales pursuant to section 36 of the CCAA. See *Re Sanjel Corp.*, 2016 ABQB 257, 36 CBR (6th) 239 and *Bellatrix Exploration Ltd*., 2020 ABQB 332, 80 CBR (6th) 97 where the court considered proposed sales in light of the factors set out in section 36 of the CCAA and the *Soundair* factors.

price received is reasonable.[4] A proposed sale should not be rejected solely on the basis that there is a higher offer to purchase or that there is a possibility of a higher offer to purchase being received.[5]

7. Section 36(4) of the CCAA sets out additional factors to be considered where the purchaser is a related person to the debtor company. These additional factors are not applicable to this application, as the proposed purchaser (GIG) is not a related person to Carr Holdings or to the Carr Group (as defined in the 3rd Carr Affidavit).

8. The Applicants respectfully submit that the proposed sale of the Shares to GIG meets the criteria set out in subsection 36(3) of the CCAA, such that approval of the proposed sale of the Shares to GIG is appropriate.

9. The process leading to the proposed sale of the R'ohan Shares to GIG was reasonable. Camilla was initially retained to market the entirety of R'ohan Well Services Ltd. in February of 2022. Camilla prepared teasers and a confidential information memorandum and sent those marketing materials to over a hundred private equity firms and strategic buyers. Camilla engaged in negotiations with a number of buyers as part of its initial marketing efforts, but the negotiations ultimately proved unsuccessful.

10. Due in part to the financial difficulties facing the Carr Group, in February 2023, Carr Holdings retained Camilla to market its minority interest in R'ohan Well Services Ltd. Camilla marketed the R'ohan Shares to small private equity firms which led to the offer giving rise to the SPA with GIG.

11. The process leading to the proposed sale of the R'ohan Shares was reasonable in the circumstances. The engagement of Camilla is an appropriate method of marketing the shares in a privately held company such as R'ohan Well Services Ltd. The R'ohan Shares were broadly marketed to typical buyers of private companies, including private equity firms and industry participants. The shares were marketed over the course of a period of 14 to 17 months and a number of prior inferior offers were received and rejected prior to the SPA being negotiated and accepted.

---

[4] See *Bank of Montreal v River Rentals Group Ltd.*, 2010 ABCA 16 at paras 12-18, 18 Alta LR (5th) 201 where the Alberta Court of Appeal, while noting that the Court should consider whether the best price was obtained, held that it favoured an approach that preserves the integrity of the sales process over one focused on price.

[5] See *Ibid* and *Soundair*, *supra* note 2 at paras 22-29.

12. The Monitor was not initially consulted concerning the process for the sale of the Shares because the commencement of the marketing process pre-dated the Monitor's appointment. However, the Monitor was advised of the marketing process upon its appointment on April 19, 2023. Since the Monitor's appointment, the Monitor has been regularly consulted on the proposed sale of the Shares to GIG and on the terms of the SPA.

13. The Carr Group's creditors' were not directly consulted concerning the sale of the R'ohan Shares, in part because the sale of the R'ohan Shares will have minimal adverse impact on the Carr Group's creditors. The only secured creditors with an interest in the R'ohan Shares are those with a security interest in the personal property of Carr Holdings, and these secured creditors would have limited ability to market and sell the Shares outside the CCAA Proceedings, due to the nature of the shares being a minority share of the capital stock of a privately held company subject to a unanimous shareholders' agreement.

14. Finally, the proposed price for the sale of the Shares is fair and reasonable, taking into account the market value of the Shares. The sale price is generally aligned with the range of values of the Shares expressed in the Valuation Report. This evidence, together with evidence of the extensive exposure to the market of the Shares, demonstrates that fair market value was obtained for the Shares and that additional market exposure or alternative marketing methods are unlikely to produce superior offers.

15. The proposed sale of the Shares to GIG is the product of lengthy and broad market exposure. If approved, it will result in a sale of the Shares at a price within the range of fair market value of the Shares, as expressed in the Valuation Report.

16. Further, the sale proceeds will result in a significant cash injection which can be used to further the objectives of the CCAA proceedings, to the benefit of all stakeholders.

17. For all of the foregoing reasons, Carr Holdings respectfully submits that it is just and appropriate for the Court to approve the sale of the Shares on the terms of the SPA.

B. Approval of the Engagement Letter and the Selling Agent's Charge in favour of Camilla is appropriate

18. Section 11.52 of the CCAA permits the Court to grant a charge to experts engaged by CCAA companies for the purpose of participating in proceedings under the CCAA:[6]

> **Court may order security or charge to cover certain costs**
>
> 11.52 (1) On notice to the secured creditors who are likely to be affected by the security or charge, the court may make an order declaring that all or part of the property of a debtor company is subject to a security or charge — in an amount that the court considers appropriate — in respect of the fees and expenses of
>
> > (a) the monitor, including the fees and expenses of any financial, legal or other experts engaged by the monitor in the performance of the monitor's duties;
> >
> > (b) <u>any financial, legal or other experts engaged by the company for the purpose of proceedings under this Act; and</u>
> >
> > (c) any financial, legal or other experts engaged by any other interested person if the court is satisfied that the security or charge is necessary for their effective participation in proceedings under this Act.
>
> **Priority**
>
> > (2) The court may order that the security or charge rank in priority over the claim of any secured creditor of the company. [Emphasis added]

19. The fees of financial advisors that assist companies in CCAA proceedings in selling their assets are commonly approved by the court. Given that CCAA companies' often do not have sufficient cash to pay financial advisors out of pocket, financial advisors' compensation is commonly structured as a "success fee" arrangement, under which the financial advisors are entitled to compensation on the completion of the sale with a charge on the CCAA

---

[6] The leading case on the approval of administration charges pursuant to section 11.52 of the CCAA is *Re Canwest Publishing Inc. / Publication Canwest Inc.*, 2010 ONSC 222 at para 54, 63 CBR (5th) 115 [*Canwest*] where the court set out the following six non-exhaustive factors for consideration: (i) size and complexity of the business being restructured, (ii) the proposed role of the beneficiaries of the charge, (iii) whether there is an unwarranted duplication of roles, (iv) whether the quantum of the proposed charge appears fair and reasonable, (v) the position of the secured creditors likely to be affected by the charge, and (vi) the position of the Monitor. The analysis from *Canwest* does not appear to be rigorously or systematically applied in regard to financial advisors engaged to assist with the sale of a portion of a CCAA companies' assets.

companies' assets to secure the payment of their fees. As discussed by Justice Wilton-Siegel in *Re Colossus Minerals Inc.*:[7]

> [28] The applicant seeks approval of an engagement letter dated November 27, 2013 with Dundee Securities Limited ("Dundee") (the "Engagement Letter"). Dundee was engaged at that time by the special committee of the board of directors of the applicant as its financial advisor for the purpose of identifying financing and/or merger and acquisition opportunities available to the applicant. It is proposed that Dundee will continue to be engaged pursuant to the Engagement Letter to run the SISP together with the applicant under the supervision of the Proposal Trustee.
>
> [29] Under the Engagement Letter, Dundee will receive certain compensation including a success fee. The Engagement Letter also provides that amounts payable thereunder are claims that cannot be compromised in any proposal under the BIA or any plan of arrangement under the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36 (the "CCAA").
>
> [30] Courts have approved success fees in the context of restructurings under the CCAA. The reasoning in such cases is equally applicable in respect of restructurings conducted by means of proposal proceedings under the BIA. As the applicant notes, a success fee is both appropriate and necessary where the debtor lacks the financial resources to pay advisory fees on any other basis.
>
> [31] For the following reasons, I am satisfied that the Engagement Letter, including the success fee arrangement, should be approved by the Court and that the applicant should be authorized to continue to engage Dundee as its financial advisor in respect of the SISP.

20. The Alberta Court of King's Bench has approved of "success fee" arrangements secured by charges against CCAA companies' assets in a number of cases. In *Re Bellatrix Exploration Ltd.*,[8] the Court approved of the engagement of a "Sale Advisor" to provide investment banking and financial advisory services and to assist with developing a process to seek a potential sale or restructuring process, with the Sale Advisor's fees secured by a "Sale

---

[7] 2014 ONSC 514, 14 CBR (6th) 261. See also *Re Danier Leather Inc.*, 2016 ONSC 1044 at paras 46-54, 33 CBR (6th) 221; *Re Walter Energy Canada Holdings Inc*., 2016 BCSC 107 at paras 32 and 37, 33 CBR (6th) 60; and *Re Jaguar Mining Inc.*, 2014 ONSC 494 at paras 28-29, 12 CBR (6th) 290.

[8] *Re Bellatrix Exploration Ltd.* (2 October 2019), Court File Number 1901-13767 Judicial Centre Calgary, (unreported) (Jones J.) at paras 27 and 35. The priority of the Sale Advisor Transaction Fee Charge under the terms of the Order was considered in *BMO Nesbitt Burns Inc. v Bellatrix Exploration Ltd.*, 2020 ABCA 264, 81 CBR (6th) 161.

Advisor Transaction Fee Charge". Similarly, in *Re Sanjel Corporation*,[9] the Court approved of the engagement of three "Financial Advisors" to assist with the solicitation of purchase, investment, recapitalization and restructuring proposals, with their fees secured by a "Financial Advisors' Charge".

21. The Engagement Letter provides for payment of a success fee of $130,000.00 (plus GST) on completion of the sale of the Shares. The payment of a success fee is a common arrangement for financial advisors that assist CCAA companies with the sale of their assets and the $130,000.00 fee is generally in line with commissions charged by professionals that assist with the sale of assets. Accordingly, Carr Holdings respectfully submits that the Engagement Letter is reasonable and ought to be approved.

22. It is also appropriate to grant Camilla the Selling Agent's Charge on the proceeds from the Shares to secure its payment under the Engagement Letter. Camilla's efforts were necessary for the realization of the Shares and such costs would likely be required to be incurred by the Carr Group's secured creditors if the Shares were realized in receivership proceedings. In such circumstances, providing Camilla with a first priority charge on the proceeds from the sale of the Shares does not prejudice the Carr Group's creditors and is appropriate and reasonable in the circumstances.

23. Camilla undertook extensive marketing efforts to realize the Shares. The sale of the Shares will provide benefits to the Carr Group's stakeholders by creating liquidity that can be utilized by the Carr Group in its restructuring. Camilla should be compensated for its efforts and the benefits that it has provided Carr Group's stakeholders. Accordingly, it is appropriate that Camilla's engagement pursuant to the Engagement Letter and the Selling Agent's Charge on the proceeds from the Shares be approved.

C. It is appropriate to seal the 3rd Confidential Carr Affidavit

24. The 3rd Confidential Carr Affidavit contains a copy of the SPA and the independent valuation report obtained by Carr Holdings on the value of the Shares.

---

[9] *Re Sanjel Corporation* (4 April 2016), Court File Number 1601-03143 Judicial Centre Calgary, (unreported) (Romaine J.) at para 6. The priority of the Financial Advisors's Charge under the specific terms of the Order was considered in *Well Fargo Securities Canada Ltd. v Sanjel*, 2017 ABCA 120, 47 CBR (6th) 289.

25. In *Sherman Estate v Donovan*,[10] the Supreme Court of Canada modified the *Sierra Club* test for a sealing order, reframing the previous two-step inquiry into three steps. In order for the Court to grant a sealing order, it must be established that:[11]

a) court openness poses a serious risk to an important public interest;

b) the order sought is necessary to prevent this serious risk to the identified interest because reasonably alternative measures will not prevent this risk; and

c) as a matter of proportionality, the benefits of the order outweigh its negative effects.

26. Canadian insolvency courts have customarily permitted that the commercial terms of negotiations and proposed sales remained sealed on the Court file for a limited time following the contemplated closing date of a transaction. The primary purpose for time-limited sealing orders in such cases is to avoid jeopardizing any subsequent sales process in case the contemplated transaction is delayed or does not close for any reason.

27. The temporary sealing of pricing and related information concerning approved sales continues to be appropriate following the Supreme Court of Canada's decision in *Sherman Estate*. As identified by Justice Kimmel of the Ontario Superior Court of Justice in *Rose-Isli Corp. v Frame Tech Structures*, the protection of the sales process and the ability to maximize recovery is an important public interest that justifies the protection of a sealing order:[12]

> [137] Finally, the requested sealing order is appropriate
>
> [138] The requested partial sealing order is limited in its scope (only specifically identified confidential exhibits) and in time (until the Transaction is completed). It is necessary to protect commercially sensitive information that could negatively impact the Company and its stakeholders if this transaction is not completed and further efforts to sell the property must be undertaken.
>
> [139] The proposed partial sealing order appropriately balances the open court principle and legitimate commercial requirements for confidentiality. It is necessary to avoid any interference with subsequent attempts to market and sell the property, and to avoid any prejudice that might be

[10] 2021 SCC 25, 458 DLR (4th) 361.
[11] *Ibid* at para 38.
[12] 2023 ONSC 832, 6 CBR (7th) 129.

> caused by publicly disclosing confidential and commercially-sensitive information prior to the completion of the now approved Ora Transaction.
>
> [140] These salutary effects outweigh any deleterious effects, including the effects on the public interest in open and accessible court proceedings. I am satisfied that the limited nature and scope of the proposed sealing order is appropriate and satisfies the *Sierra Club of Canada v. Canada (Minister of Finance)*, 2002 SCC 41, [2002] 2 S.C.R. 522 requirements, as modified by the reformulation of the test in *Sherman Estate v. Donovan*, 2021 SCC 25, 458 D.L.R. (4th) 361, at para. 38.
>
> [141] Granting this order is consistent with the court's practice of granting limited partial sealing orders in conjunction with approval and vesting orders.

28. The Alberta Court of King's Bench has granted sealing orders in order to protect approved sales in insolvency proceedings in numerous cases following *Sherman Estate*.[13]

29. The Carr Group respectfully submits that the sealing of the SPA and the sealing of the Valuation Report is appropriate in the circumstances. Should the sale of the Shares not close, the pricing information could be leveraged by subsequent purchasers in their negotiations with the Carr Group and, thereby, could result in reduced recovery from the Shares and negative impacts to the Carr Group's stakeholders' interest in its financial recovery.

30. The sealing of the SPA and the Valuation Report is a minimal intrusion on the open courts principle and its proportional to the interests of all parties in the circumstances. The key terms of the SPA have been reviewed and commented on by the Monitor, ensuring that the interests of stakeholders are protected. The SPA and the Valuation Report contain commercially sensitive pricing information and, accordingly, it is necessary to seal this information to ensure the Carr Group's realization of the Shares is maximized for it and its stakeholders' benefit. The sealing order for the SPA and the Valuation Report is limited to the duration of the CCAA Proceedings, and may be lifted sooner by Order of this Court.

31. For all of the foregoing reasons, Carr Holdings respectfully submits that it is appropriate to grant the proposed sealing order for the 3rd Confidential Carr Affidavit.

---

[13] See e.g., *Re Faissal Mouhamad Professional Corporation* (4 November 2022), Court File Number 2203-12557 Judicial Centre Edmonton, (unreported) (Neilson J.) at para 12; *Re Wolf Creek Golf Resort Ltd.* (23 February 2023), Court File Number 2203-05923 Judicial Centre Edmonton, (unreported) (Dunlop J.); and *Re Alvaro Developers Inc.* (10 May 2023), 2201-13540 Judicial Centre Calgary, (unreported) (Feasby J.).

IV. REQUESTED RELIEF

32. Carr Holdings respectfully requests that this Honourable Court grant Orders in the form of the draft Sale Approval and Vesting Order and the Sealing Order provided to the Court.

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 19th day of June, 2023.

MLT AIKINS LLP

Mandi Deren-Dubé

Jeffrey M. Lee, K.C. / Mandi Deren-Dube
Counsel to the Carr Group

V. LIST OF AUTHORITIES

TAB	DESCRIPTION
A.	*Companies' Creditors Arrangement Act*, RSC 1985, c C-36.
B.	*Royal Bank v Soundair Corp.* (1991), 83 DLR (4th) 76 (Ont CA).
C.	*Re Sanjel Corp.*, 2016 ABQB 257, 36 CBR (6th) 239.
D.	*Bellatrix Exploration Ltd.*, 2020 ABQB 332, 80 CBR (6th) 97.
E.	*Bank of Montreal v River Rentals Group Ltd.*, 2010 ABCA 16, 18 Alta LR (5th) 201.
F.	*Re Canwest Publishing Inc. / Publication Canwest Inc.*, 2010 ONSC 222, 63 CBR (5th) 115.
G.	*Re Collosus Minerals Inc.*, 2014 ONSC 514, 14 CBR (6th) 261.
H.	*Re Danier Leather Inc.*, 2016 ONSC 1044, 33 CBR (6th) 221.
I.	*Re Walter Energy Canada Holdings Inc.*, 2016 BCSC 107, 33 CBR (6th) 60.
J.	*Re Jaguar Mining Inc.*, 2014 ONSC 494, 12 CBR (6th) 290.
K.	*Re Bellatrix Exploration Ltd.* (2 October 2019), Court File Number 1901-13767 Judicial Centre Calgary, (unreported) (Jones J.).
L.	*BMO Nesbitt Burns Inc. v Bellatrix Exploration Ltd.*, 2020 ABCA 264, 81 CBR (6th) 161.
M.	*Re Sanjel Corporation* (4 April 2016), Court File Number 1601-03143 Judicial Centre Calgary, (unreported) (Romaine J.).
N.	*Well Fargo Securities Canada Ltd. v Sanjel*, 2017 ABCA 120, 47 CBR (6th) 289.
O.	*Sherman Estate v Donovan*, 2021 SCC 25, 458 DLR (4th) 361.
P.	*Rose-Isli Corp. v Frame Tech Structures*, 2023 ONSC 832, 6 CBR (7th) 129.
Q.	*Re Faissal Mouhamad Professional Corporation* (4 November 2022), Court File Number 2203-12557 Judicial Centre Edmonton, (unreported) (Neilson J.).
R.	*Re Wolf Creek Golf Resort Ltd.* (23 February 2023), Court File Number 2203-05923 Judicial Centre Edmonton, (unreported) (Dunlop J.).
S.	*Re Alvaro Developers Inc.* (10 May 2023), 2201-13540 Judicial Centre Calgary, (unreported) (Feasby J.).