Clerk's Stamp

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.
APPLICANT:	MICHAEL G. BROADFOOT
DOCUMENT	**APPLICATION FOR DISTRIBUTION ORDER**
ADDRESS FOR SERVICE AND CONTACT INFORMATION OF PARTY FILING THIS DOCUMENT:	**Norton Rose Fulbright Canada LLP** 400 3rd Avenue SW, Suite 3700 Calgary, AB T2P 4H2 Gunnar Benediktsson | Miranda Sharpe Telephone: 403.267.8256 Facsimile: 403.264.5973 Email: gunnar.benediktsson@nortonrosefulbright.com | miranda.sharpe@nortonrosefulbright.com File Number: 1001236005

NOTICE TO THE RESPONDENTS:

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

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

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

Date:	November 20th, 2023
Time:	3:00 PM
Where:	Edmonton Law Courts, via Webex
Before:	The Honourable Mr. Justice M. E. Burns

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

Remedy claimed or sought:

1. The Applicant, Michael G. Broadfoot (**Broadfoot**), seeks an order substantially in the form attached hereto as Schedule A, granting the following relief:

   (a) declaring service of this application to be good and sufficient on all parties entitled to service thereof, and abridging the time for service in all such cases to the time given;

   (b) declaring that Broadfoot is a secured creditor of J.W. Carr Holdings Ltd. (**Carr Holdings**) and various affiliated entities as guarantors (hereafter, the **Carr Affiliates**), pursuant to security validly granted to him by Carr Holdings and the Carr Affiliates.

   (c) authorizing and directing the Monitor to pay to Broadfoot 82 % of the Net Share Sale Proceeds (as defined in the June 29, 2023 Approval and Vesting Order), as an interim distribution in partial satisfaction of amounts owing to Broadfoot by Carr Holdings and the Carr Affiliates, subject to a holdback of $300,000 to be held in trust by the Monitor pending further order of this Court (the **Holdback**);

   (d) granting leave to Broadfoot or Canadian Western Bank (**CWB**) to apply for relief in future in respect of the Holdback;

   (e) authorizing and directing the Monitor to pay to Broadfoot the net proceeds from the sale of certain assets (the **Tundra Assets**) to Garmun Realty Corp. by 272649 Alberta Ltd. (**272**), as approved by this Honourable Court on August 24th, 2023 (the **August 24th SAVO**), to the extent proceeds remain after making the distributions set out at paragraphs 9(a)-(e) of the August 24th SAVO, as a further interim distribution in partial satisfaction of amounts owing to Broadfoot by the Carr Affiliates;

   (f) authorizing and directing the Monitor to pay to Broadfoot the net proceeds from the sale of certain assets (the **Iron Nation Assets**) to 1432185 B.C. Ltd. by 272, as approved by this Honourable Court on September 14th, 2023 (the **September 14th SAVO**), to the extent proceeds remain after making the distributions set out at paragraphs 9(a)-(e) of the September 14th SAVO, to Broadfoot as a further interim distribution in partial satisfaction of amounts owing to Broadfoot by 272;

(g) authorizing and directing the Monitor to pay to Broadfoot the net proceeds from the sale by Carr Holdings of a property with a civic address of 822 96 Ave. in Fort Saskatchewan, Alberta (the **Fort Saskatchewan Condo**), in respect of which Broadfoot holds a first-ranking mortgage;

(h) sealing the Confidential Broadfoot Affidavit; and

(i) granting such further and other relief as counsel may advise and this Honourable Court may permit.

Grounds for making this application:

Initial Order

2. On April 19th, 2023, this Honourable Court granted an order (as amended, the **ARIO**), in which the applicant entities noted hereon obtained protection from creditors pursuant to the *Companies' Creditors Arrangement Act,* RSC 1985, c. C-36, as amended (the ***CCAA***) and Ernst & Young Inc. was appointed Monitor. On April 26th, the ARIO was amended to authorize and approve interim financing from MGB Investments, Ltd. (the **Interim Lender**) in order to finance the working capital requirements of Carr Holdings and the Carr Affiliates during the CCAA process.

3. Broadfoot controls and is the sole shareholder of the Interim Lender.

4. Capitalized terms not defined herein have the meaning given in the ARIO.

Broadfoot Loans and Security

5. Broadfoot first became a lender to Carr Holdings in 2017, pursuant to certain promissory notes issued by Marj Carr (**Mrs. Carr**) to Mr. Broadfoot and by Carr Holdings to Mrs. Carr, in October of 2017. At the time, Broadfoot was providing bridge financing to assist Carr Holdings with financial difficulties it was experiencing in the wake of the passing of its principal, James Carr. That initial bridge loan (the **Initial Advance**) was intended to be secured by an assignment of insurance proceeds. The proceeds were used to fund

ongoing operations and to make debt service payments that were immediately due and owing by Carr Holdings.

6. Each year from 2017 to 2021, Broadfoot verbally agreed with Carr Holdings and its principal, Mrs. Carr, that he would not demand repayment of the amounts owing, or the interest accruing on those amounts, while Carr Holdings was attempting to resolve its ongoing financial difficulties.

7. In October of 2020, the agreements between the parties reflecting the Broadfoot debt and security were restated to reflect the parties' ongoing understanding, his ongoing forbearance under the Initial Advance, and his continued support for a workout of Carr Holdings' ongoing balance sheet issues.

8. In June of 2022, Broadfoot approached Mrs. Carr, on behalf of Carr Holdings, to ask that Carr Holdings (or one of the guarantors) repay all or some of the Initial Advance. At that time, Broadfoot learned that the financial difficulties of Carr Holdings and its affiliates were ongoing, and that Carr Holdings was exploring options for a financial restructuring.

9. In October of 2022, Broadfoot agreed to continue forbearing on the Initial Advance, and to provide a commitment for an additional $2,500,000 in further financing, to fund the ongoing working capital Carr Holdings would require in the coming months. Mr. Broadfoot's further forbearance, and the commitment for further working capital financing, was conditional on the granting to him of additional security by Carr Holdings and the Carr Affiliates, including in respect of the Initial Advance.

10. At that time, Carr Holdings was of the view that its total asset value likely exceeded its collective liabilities, and believed that an orderly asset sale would maximize the value to Carr Holdings, its stakeholders, and its existing creditors (including secured creditors). Without additional financing from Broadfoot, an orderly liquidation would be impossible, as Carr Holdings would be unable to meet its immediate debt service obligations. Therefore, Broadfoot agreed to provide the additional financing, grant additional forbearance, and support a restructuring of the Carr Holdings balance sheet, all in consideration for further adequate security in respect of the debts owed to him.

11. Further to that commitment, in October of 2022, Broadfoot provided an immediate injection of $500,000 to Carr Holdings, which was used to make a debt service

paymentthat had been demanded by another creditor. Without that injection of funds, Carr Holdings would likely have been placed in receivership before the end of 2022.

12. This additional bridge financing was evidenced by a further promissory note between Broadfoot and Carr Holdings, as well as various guarantors, secured by various security including a General Security Agreement.

13. In late 2022, Carr Holdings, the Carr Affiliates, and Broadfoot, entered into amended and restated loan and security agreements effective in October of 2022, as part of the consideration for Broadfoot's ongoing forbearance, his provision of an immediate cash injection to support Carr Holdings' short-term working capital needs, his commitment to provide $2,500,000 in further bridge financing, and his support for a financial restructuring of Carr Holdings and the Carr Affiliates.

14. Further to that commitment, and his agreement to support this CCAA process and the ongoing cash flow needs of Carr Holdings and the Carr Affiliates, Broadfoot provided a further $250,000 in financing in April of 2023 to fund professional costs required by counsel for Carr Holdings and the Monitor in advance of the filing date. After the Court issued the ARIO, this $250,000 was repaid.

15. Prior to the filing date, Broadfoot took steps to register his security interests and perfect his security in various assets, as further set forth and explained herein.

16. After the filing date, Broadfoot directed the Interim Lender to fund the Interim Loan Facility, which has been used since the filing date to pay operating, professional, administrative and other costs incurred by Carr Holdings and the Carr Affiliates. His commitment to provide this funding has directly benefited Carr Holdings and the Carr Affiliates, as well as their various secured creditors.

17. As at the filing date, Carr Holdings and the Carr Affiliates were indebted to Broadfoot in the total amount of of approximately $6.3 million as at March 31, 2023 (collectively with related obligations, the **Broadfoot Debt**).

18. The Broadfoot Debt is secured by various security, including, but not limited to, a Fixed and Floating Charge Demand Debenture effective as of October 15th, 2022, and corresponding Debenture Pledge Agreement dated the same, granting security in all

present and after-acquired personal property of Carr Holdings and the Carr Affiliates (the **Broadfoot Security**).

<u>R'ohan Shares</u>

19. Prior to the filing date, Broadfoot took steps to perfect his security in 82% of the shares owned by Carr Holdings in R'ohan Well Services Ltd. (the **R'ohan Shares**). Broadfoot's security in the R'ohan shares was initially granted through the Broadfoot security, but was subsequently perfected by a Securities Pledge Agreement dated April 3rd, 2023 and by delivery to him and his possession of share certificates in respect of the R'ohan Shares. His security interest in the R'ohan shares was thus perfected by control in accordance with the *Personal Property Security Act*, RSA 2000, c. P-7 (the **PPSA**).

20. On June 29th, 2023, this Honourable Court issued an Approval and Vesting Order in relation to the purchase and sale of the R'ohan Shares pursuant to a Share Purchase Agreement dated June 16th, 2023 (the **R'ohan Sale and Vesting Order**).

21. Pursuant to the R'ohan Sale and Vesting Order, the Monitor is holding the Net Share Sale Proceeds as defined in that order in trust pending further direction of this court. The Net Share Sale Proceeds stand in the place of the R'ohan Shares for the purpose of any Claims as defined in the R'ohan Order.

22. Broadfoot has a first priority security interest in 82% of the R'ohan Shares, subject only to the Court-ordered charges granted in this proceeding. Payment to Broadfoot of 82% of the Net Share Sale Proceeds will not be sufficient to repay the Broadfoot Debt but will substantially reduce the overall obligations of the Carr Affiliates to their creditors.

23. Broadfoot is proposing that the amount of $300,000 be held back from any distribution to him, as security for any further or other claims to be made against the Share Sale Proceeds, including a claim by CWB that its security in the Share Sale Proceeds should have priority over that of Broadfoot. The order sought by Broadfoot is to be without prejudice to CWB's right to make such a claim.

24. This proposed interim distribution is fair, and is in the best interests of Carr, the Carr Affiliates, their creditors, and their stakeholders.

Tundra

25. On August 24th, 2023, this Honourable Court issued the August 24th SAVO in relation to the Tundra Assets, as contemplated by an Agreement of Purchase and Sale dated July 26th, 2023.

26. Pursuant to the Tundra Order, the Monitor is holding the net proceeds derived from the sale of the Tundra Assets in trust until further direction of this court. Those sale proceeds stand in the place of the Tundra Assets for the purpose of any Claims as defined in the August 24th SAVO.

27. The Broadfoot Debt is secured by, among other things, a security interest in the Tundra Assets, pursuant to a Fixed and Floating Charge Demand Debenture effective as of October 15th, 2022 (the **272 Debenture**) and a Debenture Pledge Agreement effective as of October 15th, 2022 (the **272 Debenture Pledge**). The Broadfoot security over the Tundra Assets has been perfected by registration in accordance with the *PPSA*, and by way of a mortgage against the Tundra Assets, which ranks behind a first-charge mortgage granted to Canadian Western Bank.

28. Once the distributions as set out at paragraphs 9(a)-(e) of the August 24th SAVO have been made, the mortgage of Canadian Western Bank will be repaid in full, and Broadfoot's mortgage and security interest in the Tundra Assets will become a first priority charge against the remaining net proceeds from the sale of the Tundra Assets.

29. Payment to Broadfoot of the remaining net sale proceeds of the Tundra Assets will not be sufficient to repay the Broadfoot Debt but will substantially reduce the overall obligations of the Carr Affiliates to their creditors.

30. This proposed interim distribution is fair and is in the best interests of Carr, the Carr Affiliates, their creditors, and their stakeholders.

Iron Nation

31. On September 14th, 2023, this Honourable Court issued the September 14th SAVO in relation to the Iron Nation Assets, as contemplated by a Purchase and Sale Agreement dated August 25th, 2023.

32. Pursuant to the September 14th SAVO, the Monitor is holding the net proceeds derived from the sale of the Iron Nation Assets in trust until further direction of this court. Those sale proceeds stand in the place of the Iron Nation Assets for the purpose of any Claims as defined in the September 14th SAVO.

33. Pursuant to both the 272 Debenture and the 272 Debenture Pledge, 272 granted Broadfoot a security interest in the Iron Nation Assets, and said security interest was perfected in accordance with the *PPSA*.

34. Pursuant to the 272 Debenture and the 272 Debenture Pledge, Broadfoot was granted and registered a mortgage against the Iron Nation Assets, ranking behind only the first-charge mortgage granted to Canadian Western Bank.

35. Once the distributions as set out at paragraphs 9(a)-(e) of the September 14th SAVO have been made, the mortgage of Canadian Western Bank will be repaid in full, and Broadfoot's mortgage and security interest in the Iron Nation Assets will become a first priority charge against the remaining net proceeds from the sale of the Iron Nation Assets.

36. Payment to Broadfoot of the remaining net sale proceeds of the Iron Nation Assets will not be sufficient to repay the Broadfoot Debt but will substantially reduce the overall obligations of the Carr Affiliates to their creditors.

37. This proposed interim distribution is fair and is in the best interests of 272, its creditors, and its stakeholders.

Fort Saskatchewan Condo

38. Pursuant to the Broadfoot Debt and related security, Broadfoot was granted, and registered, a first-charge mortgage in the Fort Saskatchewan Condo. Since the commencement of these proceedings, the Fort Saskatchewan Condo has been sold by Carr Holdings, and the proceeds of that sale are being held by the Monitor pending further direction of this Court.

39. Pursuant to the terms of the ARIO, the first-priority mortgage of Broadfoot is a first-ranking charge in the sale proceeds from the Fort Saskatchewan Condo, ranking in priority to the Court-ordered charges in this proceeding

40. Payment to Broadfoot of the net sale proceeds of the Fort Saskatchewan Condo will not be sufficient to repay the Broadfoot Debt but will substantially reduce the overall obligations of the Carr Affiliates to their creditors.

Material evidence to be relied on:

41. The affidavit of Michael G. Broadfoot, affirmed on November 14, 2023, to be filed.

42. The confidential affidavit of Michael G. Broadfoot, affirmed on November 14, 2023, to be filed.

43. The affidavit of Marjorie A. Carr, to be filed

44. The 11th report of the Monitor, to be filed.

45. Such further and other materials as counsel may advise and this Honourable Court may permit, including materials already filed in this action.

Applicable rules:

46. Part 6, Division 1 of the *Alberta Rules of Court*, Alta Reg 124/2010.

Applicable acts and regulations:

47. The *CCAA*, RSC 1985, c C-36, as well as such further and other acts or regulations as counsel may advise and this Honourable Court may permit.

48. The *PPSA*, RSA 2000, c P-7

49. The *Securities Transfer Act*, SA 2006, c. S-4.5.

Any irregularity complained of or objection relied on:

50. None

How the application is proposed to be heard or considered:

51. By hearing conducted through Webex.

AFFIDAVIT EVIDENCE IS REQUIRED IF YOU WISH TO OBJECT

WARNING

If you do not come to Court either in person or by your lawyer, the Court may give the applicant(s) what they want in your absence. You will be bound by any order that the Court makes. If you want to take part in this application, you or your lawyer must attend in Court on the date and time shown at the beginning of the form. If you intend to give evidence in response to the application, you must reply by filing an affidavit or other evidence with the Court and serving a copy of that affidavit or other evidence on the applicant(s) a reasonable time before the application is to be heard or considered.