

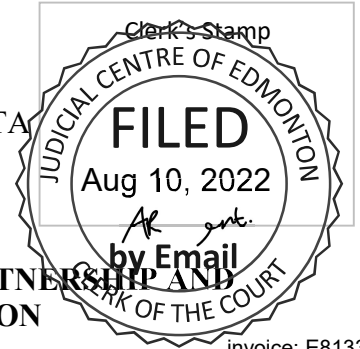
COURT FILE NUMBER 2003-06728

COURT COURT OF QUEEN'S BENCH OF ALBERTA

JUDICIAL CENTRE EDMONTON

PLAINTIFFS  
(DEFENDANTS BY  
COUNTERCLAIM)

**ROMSPEN MORTGAGE LIMITED PARTNERSHIP AND  
ROMSPEN INVESTMENT CORPORATION**



DEFENDANTS  
(PLAINTIFFS BY  
COUNTERCLAIM)

**3443 ZEN GARDEN LIMITED PARTNERSHIP, LOT 11 GP  
LTD., LOT 11 LIMITED PARTNERSHIP,  
ECO-INDUSTRIAL BUSINESS PARK INC., ABSOLUTE  
ENERGY RESOURCES INC., ABSOLUTE  
ENVIRONMENTAL WASTE MANAGEMENT INC. AND  
DANIEL ALEXANDER WHITE**

PLAINTIFFS BY  
COUNTERCLAIM

**3443 ZEN GARDEN LIMITED PARTNERSHIP, LOT 11 GP  
LTD., LOT 11 LIMITED PARTNERSHIP,  
ECO-INDUSTRIAL BUSINESS PARK INC., ABSOLUTE  
ENERGY RESOURCES INC., ABSOLUTE  
ENVIRONMENTAL WASTE MANAGEMENT INC. AND  
DANIEL ALEXANDER WHITE**

DEFENDANTS BY  
COUNTERCLAIM

**ROMSPEN MORTGAGE LIMITED PARTNERSHIP,  
ROMSPEN INVESTMENT CORPORATION, RICHARD  
WELDON and WESLEY ROITMAN**

COURT FILE NUMBER 1903-21473

COURT COURT OF QUEEN'S BENCH OF ALBERTA

JUDICIAL CENTRE EDMONTON

APPLICANTS

**LOT 11 LIMITED PARTNERSHIP by its general partner  
LOT 11 GP LTD., ECO-INDUSTRIAL BUSINESS PARK  
INC., ABSOLUTE ENERGY RESOURCES INC.,  
ABSOLUTE ENVIRONMENTAL WASTE MANAGEMENT  
INC. AND DANIEL ALEXANDER WHITE.**

RESPONDENT

**ROMSPEN INVESTMENT CORPORATION**

DOCUMENT

**APPLICATION BY THE PLAINTIFFS TO  
DECLARE DEBT OWING**

ADDRESS FOR SERVICE  
AND CONTACT  
INFORMATION OF  
PARTY FILING THIS  
DOCUMENT

**BORDEN LADNER GERVAIS LLP**

1900, 520 Third Avenue S.W.

Calgary, Alberta T2P 0R3

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File Number: 443063-000012

**NOTICE TO RESPONDENTS: MNP LTD. in its capacity as the court-appointed receiver and receiver manager of LOT 11 GP LTD., LOT 11 LIMITED PARTNERSHIP, ECO-INDUSTRIAL BUSINESS PARK INC., ABSOLUTE ENERGY RESOURCES INC., ABSOLUTE ENVIRONMENTAL WASTE MANAGEMENT INC., and not in its personal capacity; and DANIEL ALEXANDER WHITE**

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	September 21 and 22, 2022
Time	10:00 a.m. or as soon thereafter as the matter may be heard
Where	Edmonton Courts Centre 1A Sir Winston Churchill Square, Edmonton, AB T2J 0R2
Before Whom	The Honourable Justice Feth

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. Capitalized terms not defined herein shall have the same meaning as those terms expressly defined in the Affidavit of Wesley Roitman sworn on July 29, 2022 and filed August 2, 2022.

2. The Applicants, Romspen Investment Corporation (“**RIC**”) and Romspen Mortgage Limited Partnership (“**RMLP**”, and together with RIC, “**Romspen**”), seek an order in the form as appended as Schedule “A” hereto:
  - (a) declaring that Lot 11 Limited Partnership, Lot 11 GP Ltd., Eco-Industrial Business Park Inc., Absolute Energy Resources Inc., and Absolute Environmental Waste Management Inc. (together, the “**Alberta Entities**”), jointly and severally, owe Romspen the amount of USD \$91,415,581.97 as of July 21, 2022, with interest accruing at the rate of USD \$37,133.11 per diem thereafter, in the within receivership proceeding;
  - (b) approving Romspen’s ability to make a stalking horse credit bid in the court-appointed receiver’s (the “**Receiver**”) contemplated sale and investment solicitation process (“**SISP**”) for the assets of the Alberta Entities;
  - (c) costs of the within Application on a solicitor-and-own-client, full indemnity basis, to be assessed;
  - (d) in the alternative, costs on a party-party basis;.
  - (e) such further and other relief as counsel may advise and this Honourable Court deems just.

**Grounds for making this application:**

**I. The Parties**

3. RIC is engaged in the real estate finance business, providing mortgage loans to commercial borrowers in Canada and the United States. RMLP is an entity through which RIC conducts its business from time to time.
4. The Defendant 3443 Zen Garden Limited Partnership (“**Zen Garden**”) is a limited partnership created pursuant to the laws of the State of Texas.

5. The Defendant Lot 11 GP Ltd. (“**GP**”) is a corporation incorporated pursuant to the laws of Alberta.
6. The Defendant Lot 11 Limited Partnership (“**LP**”) is a limited partnership created pursuant to the laws of Alberta.
7. The Defendant Eco-Industrial Business Park Inc. (“**Eco-Industrial**”) is a corporation incorporated pursuant to the laws of Alberta.
8. The Defendant Absolute Energy Resources Inc. (“**Absolute Energy**”) is a corporation incorporated pursuant to the laws of Alberta.
9. The Defendant Absolute Environmental Waste Management Inc. (“**Absolute Environmental**”) is a corporation incorporated pursuant to the laws of Alberta.
10. The Alberta Entities are the debtors subject to the within receivership, in which MNP Ltd. has been appointed as Receiver.
11. The individual Defendant, Daniel Alexander White (“**White**” and, together with the Alberta Entities, the “**White Group**”), is an individual who is occasionally resident in Alberta.
12. Zen Garden is the subject of bankruptcy proceedings in the United States, as further detailed below, and the Receiver in this matter is not appointed over Zen Garden. Furthermore, the Receiver is not appointed over White, nor do White’s personal assets form any of the assets over which the Receiver is appointed.

## **II. The Debt and the Proposed Stalking Horse Credit Bid**

13. The Alberta Entities collectively owe Romspen the amount of USD \$91,415,581.97 as of July 21, 2022, with interest accruing at the rate of USD \$37,133.11 per diem thereafter, as a result of defaults on lending facilities they guaranteed and secured by way of mortgages and general security agreements.

14. The Receiver of the Alberta Entities has advised Romspen that it intends to conduct a SISP with respect to the Alberta Entities' assets.
15. Romspen intends to submit a stalking horse credit bid in the contemplated SISP.
16. White has repeatedly and frivolously taken the position that the debt at issue is not due and owing, and has sought to obstruct Romspen's ability to realize upon its security. As such, Romspen anticipates that White will interfere with and contest any proposed credit bid by Romspen in a SISP.
17. White's actions have, and continue to, degrade the value of the Alberta Entities' assets. Therefore, it is just and reasonable, and the most efficient and effective means of ensuring an orderly SISP, to declare the amount due and owing to Romspen and to approve its ability to make a stalking horse bid in advance of the contemplated SISP.

### **III. The Security and Mortgage**

#### **A. The Zen Garden Loan Agreement**

18. Zen Garden, as borrower, and Romspen as lender, entered into a loan agreement dated April 27, 2018 (the "**Zen Garden Loan Agreement**"), wherein Romspen agreed to advance Zen Garden a loan of up to a maximum principal sum of USD \$125,000,000.00, in connection with the acquisition and development of certain lands in Austin, Texas (the "**Austin Lands**").

#### **B. The Alberta Security**

19. The Zen Garden Loan Agreement was guaranteed by Eightfold Developments LLC ("**Eightfold**", not a party to these proceedings) and the White Group.
20. As security for the guarantees given by the White Group, Romspen was granted, among other things:
  - (a) General Security Agreements dated April 17, 2018 from each of the White Group;

- (b) a Mortgage from GP acting in its capacity as general partner for LP, and in its own capacity, dated April 17, 2018, in respect of certain lands situated in Alberta, in the sum of USD \$40,000,000.00 (the “**GP Mortgage**”);
- (c) a Mortgage from Eco-Industrial, dated April 17, 2018, in respect of certain lands situated in Alberta, in the sum of USD \$40,000,000.00 (together with the GP Mortgage, the “**Alberta Mortgages**”)

(collectively, the “**Alberta Security**”).

- 21. The lands secured by the Alberta Mortgages are legally owned by GP and Eco-Industrial, respectively (the “**Alberta Lands**”).
- 22. It is a term of the Zen Garden Loan Agreement, the Alberta Security, and the Alberta Guarantees that Romspen shall be entitled to all fees and expenses incurred as the result of default thereunder and the realization of Romspen’s security against the Alberta Lands on a solicitor-and- own-client, full indemnity basis.
- 23. From time to time, Romspen advanced sums to Zen Garden pursuant to the terms of the Zen Garden Loan Agreement, the Alberta Security, the Alberta Guarantees, and the guaranty and security granted by Eightfold.

### **C. Default and Demand**

- 24. Zen Garden defaulted under the terms of the Zen Garden Loan Agreement, which also resulted in a default under each of the Alberta Security and the Alberta Guarantees, as well as the guaranty and security granted by Eightfold in Texas.
- 25. On October 11, 2019, Romspen issued:
  - (a) a demand in Texas that Zen Garden, Eightfold, and the White Group, among others, repay all amounts due and owing under the Zen Garden Loan Agreement (the “**Texas Demand and Notice**”); and
  - (b) a demand in Alberta that Zen Garden, Eightfold, and the White Group, among others, repay all amounts due and owing under the Zen Garden Loan Agreement,

the Alberta Security and the Alberta Guarantees, and a Notice of Intention to Enforce Security pursuant to section 244 of the *Bankruptcy and Insolvency Act*, RSC 1985, c B-3, as amended (the “*BIA*”) (the “**Alberta Demand and Notice**”).

26. At the time that the Texas Demand and Notice and the Alberta Demand and Notice were issued, the amount owing under the Zen Garden Loan Agreement totalled USD \$87,865,453.79.

#### **IV. The Litigation**

27. Zen Garden is now the subject of a U.S. Bankruptcy Proceeding in Texas, and the Alberta Entities are the subjects of the within Alberta Receivership Proceeding.
28. As further detailed below, White has repeatedly sought to delay and frustrate Romspen’s efforts to realize upon its security in both Texas and Alberta. In particular, White (either individually or together with the Dan White Family Trust (the “**Family Trust**”), the Alberta Entities and/or Zen Garden, as the case may be) filed claims against Romspen and others in both Texas and Alberta making spurious allegations of misconduct prior to the execution of the Zen Garden Loan Agreement and misconduct relating to the loan advances made thereunder. In effect, White’s claims seek to challenge the validity of the Zen Garden Loan Agreement and, in turn, Romspen’s debt claim and ability to enforce upon the various security and guarantees granted by the White Group and Eightfold.
29. Further, throughout the course the Alberta Receivership Proceeding, White has consistently opposed and sought to adjourn applications made by Romspen and the Receiver to progress the administration of the receivership estates and provide recovery to Romspen. White has also disregarded court orders issued in the Alberta Receivership Proceeding.
30. All questions concerning the validity of the Zen Garden Loan Agreement have been fully and finally determined through the U.S. Bankruptcy Proceeding, or have otherwise been withdrawn by White.

**A. The United States Bankruptcy Proceeding**

31. On March 22, 2020, Zen Garden was petitioned into involuntary bankruptcy in the U.S. Bankruptcy Proceeding by certain of its creditors (other than Romspen) following a prior consent receivership.
32. The Bankruptcy Court issued a number of orders in the U.S. Bankruptcy Proceeding which finally and conclusively confirmed the validity of the Zen Garden Loan Agreement and Romspen's debt claim thereunder. In particular:
  - (a) on June 19, 2020, the Bankruptcy Court granted a Financing Order which finally and conclusively approved the debtor-in-possession financing advanced by Romspen to the bankrupt estate of Zen Garden and expressly confirmed the validity and amount of the indebtedness owing to Romspen under the Zen Garden Loan Agreement;
  - (b) on September 23, 2020, the Bankruptcy Court granted a "Stipulation" which approved the settlement between Romspen and the Texas Trustee of prior allegations raised by the Texas Trustee in respect of Romspen's ability to submit a credit bid in Zen Garden's bankruptcy (the "**Credit Bid Challenge**"), and the Texas Trustee's withdrawal of the Credit Bid Challenge;
  - (c) on October 7, 2020, the Bankruptcy Court granted a Sale Order approving Romspen's credit bid in the U.S. Bankruptcy Proceeding and granting Romspen title to the Austin Lands free and clear of all liens, claims and encumbrances; and
  - (d) on January 27, 2021, the Bankruptcy Court granted a Plan Approval Order, approving a modified and amended Chapter 11 bankruptcy Plan for Zen Garden (the "**Amended Plan**"). The Amended Plan provides Romspen a full release of liability, including a release of claims asserted on behalf of Zen Garden, its creditors, and any other parties who did not opt out. None of the White Group or the Family Trust opted out of this release.



**B. The United States Litigation Commenced by White**

33. White commenced litigation proceedings against Romspen in the United States, as follows:
  - (a) White and the Family Trust filed an Adversary Proceeding against Romspen and others in the U.S. Bankruptcy Proceeding. The substance of the Adversary Proceeding dealt with allegations of misconduct prior to the execution of the Zen Garden Loan Agreement and misconduct relating to the loan advances made thereunder; and
  - (b) White also separately commenced a District Court Action against Romspen and two of its employees, Wesley Roitman and Richard Weldon, among others, which contains substantially the same allegations and accusations asserted by the plaintiffs in the Adversary Proceeding.
34. On June 17, 2021, during the hearing of an emergency motion by White and the Family Trust (“**Emergency Motion**”), the Bankruptcy Court expressly confirmed that White had withdrawn his complaints respecting the validity of the Zen Garden Loan Agreement, stating that White was “no longer objecting to Romspen’s claim [and] no longer saying that Romspen’s [debt claim] wasn’t secured.”
35. On December 3, 2021, the Bankruptcy Court approved a Dismissal Order dismissing, with prejudice, the Adversary Proceeding, and particularly the plaintiffs’ claims allegedly occurring after Zen Garden came into legal existence, or otherwise involving, relating to, and/or arising from Zen Garden in any way.
36. On February 17, 2022, the District Court granted an Agreed Order, which prohibited White from filing any further amended complaints in the District Court Action.
37. On April 4, 2022, Romspen, Wesley Roitman and Richard Weldon filed a Motion to Dismiss in the District Court Action, which has been contested by White. The District Court has referred the Motion to Dismiss to a Magistrate Judge to issue a report and recommendation that the District Court may choose to adopt as its ruling. Romspen is

currently awaiting the Magistrate Judge's decision. If the Motion to Dismiss is granted, no further litigation by White against Romspen will be pending in the United States.

**C. The Alberta Stay Action**

38. At the time of Zen Garden's involuntary bankruptcy, each of GP and Eco-Industrial were independently in breach of their respective mortgages in that they had failed to pay outstanding property taxes totalling approximately CAD \$800,000.00.
39. Upon Romspen issuing the Demand and Notice, each of the Alberta Entities and White brought an application in the Court of Queen's Bench of Alberta File No. 1903-21473 (the "**Stay Action**") to stay Romspen from taking any enforcement steps under the *BIA*.
40. As the parties were in the process of attempting to negotiate a resolution of amounts owing under the Zen Garden Loan Agreement, they agreed to a Consent Order, which served to stay Romspen from taking enforcement steps.
41. Zen Garden continued to breach the terms of the Zen Garden Loan Agreement, and the White Group continued to breach the terms of the Alberta Security and the Alberta Guarantees.

**D. The Alberta Receivership Proceeding**

42. On March 31, 2020, Romspen filed its Statement of Claim and the First Receivership Application in respect of the White Group in the Alberta Receivership Proceeding, being the Court of Queen's Bench of Alberta File No. 2003-06728.
43. The White Group and Zen Garden filed a Counterclaim against the Romspen Defendants (in such capacity, the "**Defendants by Counterclaim**") in respect of claims that are substantively similar to those asserted in the District Court Action. The Defendants by Counterclaim filed a Statement of Defence to Counterclaim.
44. The White Group opposed the First Receivership Application. Consequently, on April 2, 2020, this Court granted the Interim Monitor Order which provided, among other things, that Romspen was entitled to appoint an Interim Monitor to monitor the business

operations of the Alberta Entities for an initial 30-day period. The White Group appealed the Interim Monitor Order. However, the appeal was struck for want of prosecution.

45. The White Group also opposed Romspen's first application to extend the Interim Monitor Order on the basis that, among other things, the issues relating to breaches of the Zen Garden Loan Agreement and the alleged misconduct of the Defendants by Counterclaim in relation to the Zen Garden Loan Agreement have "never been finally determined by a Court of competent jurisdiction".
46. On June 19, 2020, the Court granted an Extension Order extending the Interim Monitor Order.
47. The Interim Monitor Order, as extended by the Extension Order, was further extended on multiple occasions by consent.
48. On April 15, 2021, the White Group filed a Discharge Application to discharge registrations filed by Romspen with the Alberta Land Titles Registry in respect of the Alberta Mortgages.
49. On April 26, 2021, Romspen filed its Second Receivership Application.
50. Both the Discharge Application and the Second Receivership Application were scheduled to be heard on May 5, 2021. Both of these applications were adjourned *sine die*. During the hearing of the Second Receivership Application, former legal counsel for the White Group, among other things, again advised the Court that the validity of Romspen's debt claim was subject to adjudication in the various proceedings commenced in the United States.
51. In connection with the Interim Monitor Order, Romspen retained MNP Ltd. to act as the Interim Monitor. However, the White Group flagrantly disregarded the terms of the Interim Monitor Order by, among other things, neglecting, failing, or refusing to provide the Interim Monitor with basic financial information as requested. The Interim Monitor's investigation also revealed the continued erosion of the Alberta Security.

52. As a result of the Interim Monitor's discoveries and the White Group's lack of cooperation with the Interim Monitor, Romspen filed the Third Receivership Application in respect of the White Group. The White Group consented to the Third Receivership Application on the basis that certain features of the Court's template receivership order be limited or removed.
53. On November 4, 2021, the Court granted the Receivership Order, which, among other things, vacated the stay of proceedings set out in the Consent Order and appointed MNP Ltd. as Receiver of the Alberta Entities.
54. The Receiver's legal counsel has provided its opinion that the Alberta Security constitutes a valid and enforceable first-ranking security interest in the Alberta Entities' property.
55. During the course of the Receiver's administration of the estates to date, White has continued to act in flagrant disregard of the Court's orders and his obligations as management of the Alberta Entities. In particular, the Receiver was required to seek orders from the Court compelling White to comply with his disclosure obligations and provide the Receiver with requested information. The application to compel, originally scheduled on February 8, 2022, was adjourned to March 3, 2022 on White's request on the basis that he was in the process of engaging new counsel. Neither White nor his new counsel appeared on March 3, 2022 and, in White's absence, the Court ordered White to comply with his disclosure obligations set out in the Receivership Order.
56. White continues to ignore his court-ordered obligations and has failed to provide the Receiver with its requested information.
57. On March 3, 2022, the Receiver brought the Receiver's Application to increase the Receiver's borrowing charge, among other things. The Receiver's Application was necessary to provide sufficient funding to permit the Receiver to comply with AER orders and ensure the receivership properties are marketable. During the hearing of the Receivership's Application, the White Group's legal counsel unsuccessfully sought an adjournment of the application, again on the basis of the pending District Court Action.
58. No steps have been taken by White to advance the Counterclaim.

**V. Romspen Has a Valid Debt Claim under the Alberta Guarantees and the Alberta Security**

**A. Romspen Has a Valid Debt Claim under the Zen Garden Loan Agreement**

59. Romspen's debt claim under the Zen Garden Loan Agreement has been accepted as valid and enforceable by the Bankruptcy Court and there are no remaining existing or potential legal challenges to Romspen's debt claim. In particular, the claims brought by White against Romspen to challenge such debt claim are now closed with prejudice and not subject to further challenge.
60. As a result of the orders issued by the Bankruptcy Court and the District Court, all of which are final, binding, and no longer subject to appeal:
- (a) the indebtedness owed by Zen Garden to Romspen, guaranteed by the Alberta Entities, in the amount of USD \$96,495,021.72 was deemed valid and enforceable and properly owing by Zen Garden to Romspen;
  - (b) Romspen has a valid claim against Zen Garden in the U.S. Bankruptcy Proceeding and Romspen's claim is secured by a security interest and lien against Zen Garden's assets;
  - (c) Romspen participated in the sales process for the assets marketed in the U.S. Bankruptcy Proceeding and its credit bid of USD \$45,000,000.00 was approved by the Bankruptcy Court as the highest and best bid, resulting in the total indebtedness being reduced by the amount of the credit bid;
  - (d) Zen Garden (and its creditors and other parties who do not opt out) granted Romspen a full release of liability, including liability for claims relating to the validity of the Zen Garden Loan Agreement and Romspen's conduct in connection with the negotiation and execution thereof and loans thereunder; and
  - (e) the District Court Action is now restricted to issues unrelated to the validity of the Zen Garden loan and do not impact on the obligations properly owing by the Alberta Entities to Romspen, secured by the valid and enforceable Alberta Security.

61. Furthermore, the Bankruptcy Court confirmed during its hearing of the Emergency Motion on June 17, 2021 that the validity of the Zen Garden loan is no longer in issue in the U.S. Bankruptcy Proceeding or in the District Court Action.

**B. The Validity of the Alberta Guarantees and the Alberta Security is Not At Issue**

62. The Receiver does not intend to pursue the Counterclaim. Similarly, the Texas Trustee has fully released Romspen and related parties of any claims and liabilities relating to the Zen Garden Loan Agreement. The only Plaintiff by Counterclaim that purports to have any desire to proceed with the Counterclaim is White personally.

63. None of the White Group, including White himself, has ever contested the validity of the Alberta Guarantees and the Alberta Security. White's position throughout the course of the Alberta Receivership Proceeding had always been premised upon the ongoing litigation of the validity of the Zen Garden Loan Agreement in the United States.

**C. White Should Not Be Permitted to Further Delay Romspen's Recovery in Alberta**

64. Throughout the course of the Alberta Receivership Proceeding, White, through his legal counsel, has represented to the courts that the U.S. Bankruptcy Proceeding and the District Court Action are the main proceedings dealing with issues relating to the validity of the Zen Garden Loan Agreement, and the Court should await the adjudication of those proceedings before moving forward with the Alberta Receivership Proceeding. The obligations owing to Romspen under the Zen Garden Loan Agreement are no longer in issue in the U.S. Bankruptcy Proceeding or the District Court Action, and there are no further reasons to delay the Alberta Receivership Proceeding.

65. White should not be permitted to further delay Romspen's entitlement to enforce upon the Alberta Security and those Alberta Guarantees pledged by the Alberta Entities. In particular:

- (a) White is not a principal obligor under the Zen Garden Loan Agreement. His personal liability derives from the Guarantee and General Security Agreement he gave to Romspen;
  - (b) the Family Trust is not a party to the Zen Garden Loan Agreement, and has not given any guarantee or other security in favour of Romspen, whether in Texas or Alberta. Further, the Family Trust is not a party to the U.S. Bankruptcy Proceeding or the Alberta Receivership Proceeding. Its status as a litigant is now solely limited to the District Court Action;
  - (c) Neither White nor the Family Trust is a legal owner of the lands subject to the Alberta Mortgages; and
  - (d) White is not a debtor over whom the Receiver has been appointed, and his assets do not form part of the receivership estate.
66. White's refusal to comply with his disclosure obligations and to assist the Interim Monitor and the Receiver, and initial opposition to applications he eventually consented to, have resulted in a degradation of value of these assets.
67. Romspen has advanced CAD \$900,000.00 as of July 29, 2022 to the Receiver (who has the power to borrow up to CAD \$2,000,000.00 granted by the Court) to fund the receivership proceedings, comply with AER orders and ensure the proper care, custody and maintenance of the Alberta Entities' assets.
68. As earlier noted, the indebtedness owing to Romspen pursuant to the Zen Garden Loan Agreement and, in turn, the Alberta Security and the Alberta Guarantees as of July 21, 2022, is USD \$91,415,581.97, with interest continuing to accrue at the rate of USD \$37,133.11 per diem thereafter (the "**Indebtedness**").
69. The Indebtedness is a just debt validly due and owing by the Alberta Entities to Romspen, pursuant to the Zen Garden Loan Agreement, the Alberta Guarantees and the Alberta Security.

**VI. Romspen Should Be Permitted to Submit a Stalking Horse Credit Bid in the SISP**

70. Romspen seeks only this Honourable Court's approval of Romspen's ability, as a secured creditor with a valid debt claim against the Alberta Entities, to submit a stalking horse credit bid in a SISP in respect of the Alberta Entities' assets. The ultimate approval of Romspen's stalking horse credit bid, if successful, will be subject to a further order from this Honourable Court.

**Material or evidence to be relied on:**

71. the Affidavit of Wesley Roitman, sworn on March 30, 2020;
72. the Affidavit of Wesley Roitman, sworn on April 20, 2020;
73. the Affidavit of Wesley Roitman, sworn on November 16, 2020;
74. the Affidavit of Wesley Roitman, sworn on October 19, 2021;
75. the Affidavit of Wesley Roitman, sworn on July 29, 2022;
76. the Supplemental Affidavit of Wesley Roitman, to be sworn and filed;
77. the pleadings and other materials filed in the within Action; and
78. such further and other materials that counsel may advise and this Honourable Court may permit.

**Applicable rules:**

79. *Alberta Rules of Court*, AR 124/2010, r 1.2, 6.3; and
80. such further and other rules as counsel may advise and this Honourable Court may permit.

**Applicable Acts and regulations:**

81. *BIA*, and in particular section 4.2(2);
82. *Judicature Act*, RSA 2000, c J-2, and in particular sections 8 and 11; and



83. such further and other Acts and regulations as counsel may advise and this Honourable Court may permit.

**Any irregularity complained of or objection relied on:**

84. Not applicable.

**How the application is proposed to be heard or considered:**

85. In person, with all parties present, before the Honourable Justice Feth.

**WARNING**

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

**SCHEDULE "A"**

**FORM OF ORDER**

(See attached.)

Clerk's Stamp

COURT FILE NUMBER **2003-06728**

COURT COURT OF QUEEN'S BENCH OF ALBERTA

JUDICIAL CENTRE EDMONTON

PLAINTIFFS **ROMSPEN MORTGAGE LIMITED**  
(DEFENDANTS BY **PARTNERSHIP AND ROMSPEN INVESTMENT**  
COUNTERCLAIM) **CORPORATION**

DEFENDANTS **3443 ZEN GARDEN LIMITED PARTNERSHIP,**  
(PLAINTIFFS BY **LOT 11 GP LTD., LOT 11 LIMITED**  
COUNTERCLAIM) **PARTNERSHIP, ECO INDUSTRIAL BUSINESS**  
**PARK INC., ABSOLUTE ENERGY RESOURCES**  
**INC., ABSOLUTE ENVIRONMENTAL WASTE**  
**MANAGEMENT INC. AND DANIEL ALEXANDER**  
**WHITE**

PLAINTIFFS BY **3443 ZEN GARDEN LIMITED PARTNERSHIP,**  
COUNTERCLAIM **LOT 11 GP LTD., LOT 11 LIMITED**  
**PARTNERSHIP, ECO INDUSTRIAL BUSINESS**  
**PARK INC., ABSOLUTE ENERGY RESOURCES**  
**INC., ABSOLUTE ENVIRONMENTAL WASTE**  
**MANAGEMENT INC. AND DANIEL ALEXANDER**  
**WHITE**

DEFENDANTS BY **ROMSPEN MORTGAGE LIMITED**  
COUNTERCLAIM **PARTNERSHIP, ROMSPEN INVESTMENT**  
**CORPORATION, RICHARD WELDON AND**  
**WESLEY ROITMAN**

COURT FILE NUMBER **1903-21473**

COURT COURT OF QUEEN'S BENCH OF ALBERTA

JUDICIAL CENTRE EDMONTON

APPLICANTS **LOT 11 LIMITED PARTNERSHIP by its general**  
**partner LOT 11 GP LTD., ECO-INDUSTRIAL**  
**BUSINESS PARK INC., ABSOLUTE ENERGY**  
**RESOURCES INC., ABSOLUTE**  
**ENVIRONMENTAL WASTE MANAGEMENT INC.**  
**AND DANIEL ALEXANDER WHITE.**

RESPONDENT **ROMSPEN INVESTMENT CORPORATION**

DOCUMENT **ORDER TO DECLARE DEBT OWING**

ADDRESS FOR SERVICE AND CONTACT INFORMATION OF PARTY FILING THIS DOCUMENT **BORDEN LADNER GERVAIS LLP**  
1900, 520 – 3<sup>rd</sup> Avenue SW  
Calgary, AB T2P 0R3

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Facsimile: (403) 266-1395  
Email: kbarr@blg.com / rgurofsky@blg.com / tibennett@blg.com  
File No. 443063-000012

**DATE ON WHICH ORDER WAS PRONOUNCED: SEPTEMBER 22, 2022**

**LOCATION WHERE ORDER WAS PRONOUNCED: EDMONTON LAW COURTS**

**NAME OF JUSTICE WHO MADE THIS ORDER: THE HONOURABLE JUSTICE K. FETH**

**UPON THE APPLICATION** of Plaintiffs/Defendants by Counterclaim, Romspen Investment Corporation (“**RIC**”) and Romspen Mortgage Limited Partnership (“**RMLP**”, and together with RIC, “**Romspen**”), in respect of Lot 11 GP Ltd., Lot 11 Limited Partnership, Eco-Industrial Business Park Inc., Absolute Energy Resources Inc., Absolute Environmental Waste Management Inc. (collectively, the “**Alberta Entities**”); **AND UPON** having read the Affidavit of Wesley Roitman, sworn on July 29, 2022 and filed on August 2, 2022, and other pleadings and documents filed in the within Action; **AND UPON** hearing counsel for Romspen, counsel for MNP Ltd., the Court-appointed receiver and manager (the “**Receiver**”) of the Alberta Entities, counsel for the Defendant/Plaintiff by Counterclaim, Daniel Alexander White, and any other counsel or other interested parties present,

**IT IS HEREBY ORDERED AND DECLARED THAT:**

1. Romspen has a valid debt claim against each of the Alberta Entities, jointly and severally, in the amount of USD \$ \_\_\_\_\_ as of \_\_\_\_\_, 2022, with interest accruing at the rate of \_\_\_\_\_% thereafter;
2. Romspen shall be permitted to submit a stalking horse credit bid in any sale and investment solicitation process implemented by the Receiver in respect of the assets of the Alberta Entities; and
3. The costs of this Application shall be awarded to Romspen on a solicitor-and-own-client, full indemnity basis, to be assessed.

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Justice of the Court of Queen's Bench of Alberta