



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 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 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
PLAINTIFFS	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
DEFENDANT	ROMSPEN INVESTMENT CORPORATION

COURT FILE NUMBER 24-2806171

COURT COURT OF KING'S BENCH OF ALBERTA  
**IN THE MATTER OF THE BANKRUPTCY OF ECO-INDUSTRIAL BUSINESS PARK INC.**

JUDICIAL CENTRE EDMONTON

APPLICANT MNP LTD., in its capacity as the TRUSTEE IN BANKRUPTCY OF ECO-INDUSTRIAL BUSINESS PARK INC., and not in its personal capacity.

RESPONDENT SYMMETRY ASSET MANAGEMENT INC.

DOCUMENT **AMENDED APPLICATION BY DANIEL ALEXANDER WHITE, DAN WHITE FAMILY TRUST and SYMMETRY ASSET MANAGEMENT INC.**

ADDRESS FOR SERVICE AND CONTACT INFORMATION OF PARTY FILING THIS DOCUMENT

ROBERTS O'KELLY LAW  
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File: 66-001

**NOTICE TO RESPONDENTS:** **MNP Ltd., in its capacity as Receiver-Manager and Trustee in Bankruptcy**  
**Romspen Investment Corporation**  
**Romspen Mortgage Limited Partnership**

This application is made against you. You are a respondent. You have the right to state your side of this matter before the Justice.

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

**Date:** January 31 and February 1, 2023  
**Time:** 10:00 a.m.  
**Where:** Edmonton (VIA WEBEX – [Virtual Courtroom 86](#))  
**Before Whom:** The Honourable Justice K.S. 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. An Order directing the replacement and/or removal of MNP Ltd., as Receiver-Manager and/or as Trustee in Bankruptcy.

2. An Order granting a stay or variance of the Receivership Order as it pertains to sale powers, until a determination is issued in extant litigation in Austin, Texas styled as *White et al v Romspen Investment Corp., et al.*, Case No. 1:21-CV-00517-RP.
3. Further, or in the alternative, a stay of sale powers of the Receiver until a determination on the merits of any alleged default and quantum of debt owing, if any, is made.
4. Further, or in the alternative, if this Court determines that there is an issue of *forum conveniens* requiring determination, a stay or variance of the sale powers, until a determination on the merits on the forum issue is made by a court of competent jurisdiction.
5. For greater particularity, the Applicant Daniel Alexander White (“**White**”) in his personal capacity and as trustee of Dan White Family Trust (“**White Trust**”), seeks an Order staying all steps pertaining to a sale and investment solicitation process for the assets of Lot 11 Limited Partnership, Lot 11 GP Ltd., Eco-Industrial Business Park Inc., Absolute Energy Resources Inc., and Absolute Environmental Waste Management Inc. (collectively, the “**White AB Entities**”).
6. Adjourning *sine die* the Application filed August 9, 2022 by Romspen Investment Corporation and Romspen Mortgage Limited Partnership (collectively, “**Romspen**”), to declare debt alleged to be owing and to direct a stalking horse, credit bid process in a sale of White AB Entities’ assets (the “**Romspen Application**”), made returnable September 21 and 22, 2022.
7. In the alternative, dismissing the relief sought by Romspen to utilize a stalking horse credit bid process in a sale, if any, of the assets of the White AB Entities and directing that any court-ordered sale of assets of the White AB Entities, if at all, proceed without resort to a stalking horse or other credit bid process in favour of Romspen.
8. An Order Sstaying any further or other steps by the Trustee in Bankruptcy, MNP Ltd., in Bankruptcy Court File 24-2806171 (the “**Bankruptcy Action**”), pending its replacement, and including any steps granted by Order of Justice K.S. Feth filed March 9, 2022 in Court of King’s Queen’s Bench Actions 2003 06728 and 1903 21473 (the “**Bankruptcy Order**”) for pertaining to the conversion, sale, or liquidation of assets of the estate of Eco-Industrial Business Park Inc. (“**Eco-Industrial**”) and/or for acquisition of assets of the Applicant, Symmetry Asset Management Inc. (“**Symmetry**”), including but not limited to the litigation assigned to it by Eco-Industrial Business Park Inc. bearing Court of King’s Bench of Alberta Court File No. 1303 16983.
9. An Order adjourning any requests for additional borrowing by the Receiver-Manager pending a full hearing of the relief sought on this application and the Application by Romspen, as amended.
10. Costs of this Application.

11. Such further and other relief as may be sought and granted.

### **Grounds for making this application**

1. The Applicant, White is an Alberta resident and businessperson. White is currently the sole trustee of the Applicant, White Trust and sole director of the White AB Entities prior to the granting of the Receivership Order, as well as the sole director of Symmetry.
2. The Receivership Order as originally granted, was ostensibly represented by then counsel for the White AB Entities as having been made with their consent. However, White had repeatedly raised concerns with then counsel for the White AB Entities and expressly objected at all material times to any receivership in which a receiver-manager, appointed by the Court, would be in a position to force a sale of assets of the White AB Entities, and in particular, their land holdings.
3. White is also a personal guarantor of the ~~alleged~~ debt claim alleged by Romspen in the Romspen Application and relied upon by MNP Ltd. in its capacities as court-appointed Receiver and Trustee in Bankruptcy in all steps taken by it in the three above referenced King's ~~Queen's~~ Bench proceedings, i.e., Court of King's Bench of Alberta Court File No. 2003 06728, 1903 21473 and the Bankruptcy Action, King's Bench File No. 24-2806171 ("Assignment Application").
4. White has exposure to liability if a sale of assets of the White AB Entities left a shortfall on the alleged indebtedness of Romspen (which indebtedness is disputed), pursuant to a personal guarantee.
5. The Respondent, MNP Ltd. is currently appointed by this Court as both Receiver of the Alberta Entities and as Trustee in Bankruptcy of Eco-Industrial. MNP Ltd. was previously appointed by this Court as a Monitor with respect to the Alberta Entities.
6. White, White Trust, Romspen and other legal person(s) resident in the US and not named party in the three within King's ~~Queen's~~ Bench proceedings, are awaiting the determination of a motion brought by Romspen in an Austin, Texas bankruptcy court, to strike litigation commenced by White and the White Trust in relation to the same alleged debt and default as are at issue in the 2019 White Action and the 2020 Romspen Action in which the Receivership Order was filed.
7. Very recently, White and White Trust retained new counsel in Texas to file pleadings with a view to amending their response to Romspen's motion to strike, to require discovery given the nature of the arguments advanced and issues at play in that forum. As of September 8, 2022 leave was granted by the court in that Texas litigation for White and White Trust to file its Amended Response to the Romspen motion to dismiss (strike) the Claim filed by White and White Trust.
8. The White Parties and Romspen have attorned to the jurisdiction of the bankruptcy court of Judge Pitman in Austin, Texas, to adjudicate their inter-parties issues.

9. The White Parties submit that, in addition to a *forum conveniens* issue, these facts and those alleged in the Romspen Application and first Affidavit of Mr. Roitman sworn in support of the Romspen Application raise serious issues of substantive and procedural fairness to which this Court, in being asked to determine the Romspen Application and the Assignment Application, will be asked to turn its mind.
10. The Romspen Application seeks an Order declaring an alleged debt from an alleged default, neither of which have been determined on their merits by any court of competent jurisdiction.
11. At best, the Romspen Application is premature and an attempt to circumvent the jurisdiction of the bankruptcy court in Austin, Texas involving the alleged debt and any any-alleged default, with a view to depriving the debtors of all assets before any determination on the merits of the alleged debt and default can be made in that appropriate forum.
12. Symmetry is the sole named Respondent in the Assignment Application brought in the Bankruptcy Action, which bankruptcy was commenced by the Receiver-Manager, without reasonable, or any, prior notice to Symmetry as a creditor or to White as its sole director, including in relation to, and in advance of, the first meeting of creditors where Romspen appointed itself or a proxy as Inspector and MNP as Trustee, ~~with leave of the Court~~. The ostensible purpose of the assignment into bankruptcy was to preserve assets. Those assets are preserved and there is no measure of jeopardy in relation to them other than the Receiver's ongoing litigation steps. If there is any jeopardy, it can be remedied by a less invasive Order than the one sought by MNP Ltd., as Trustee in Bankruptcy.
13. MNP Ltd. failed to post its notice of first meeting of creditors for the Eco bankruptcy on its website or otherwise make same available until after the questioning on affidavit of Victor Krueger of MNP Ltd., in his capacity as Trustee in Bankruptcy, in the Assignment Application. Despite having at its disposal accurate information for service on White and Symmetry, MNP Ltd. served both at locations where it knew and ought to have known neither White nor Symmetry would receive notice of the first meeting of creditors, or the assignment of Eco into bankruptcy.
14. It came to the attention of the Applicants, White and Symmetry, in or around late November 2022, that MNP received, as a result of its communications with then corporate and litigation counsel for Symmetry, copies of materials, including legally privileged and confidential file materials, in the very litigation that is now the subject matter of the Assignment Application, before that application was filed or served on Symmetry.
15. MNP Ltd., in its capacity as Receiver-Manager, has failed to act in accordance with its statutory and fiduciary obligations, in the interests of all creditors, including the Applicants, and instead has acted with a view to advancing the interests of Romspen, and Romspen alone, to the detriment of the Applicants and the White AB Entities.

16. The Applicants meet the three part test for a stay, insofar as:

- (a) The Applicants have an arguable case in the Texas litigation which warrants a determination on the merits of, at minimum, the Romspen application to strike;
- (b) The Applicants will suffer irreparable harm if this Court grants the relief sought by Romspen (and MNP Ltd., in its capacity as Trustee in Bankruptcy for Eco-Industrial), absent a determination on the merits as to any alleged default, and any alleged debt owing by the Applicants and/or the Alberta Entities and in the face of outstanding litigation in Texas;
- (c) The balance of convenience favours the relief sought, including insofar as the Applicants are not, in this Application, seeking to set aside in their entirety the Receivership or Bankruptcy Orders of this Court and, accordingly, the Respondents' interests are preserved and prejudice, if any, is constrained.

17. In its dealings with the Applicants' businesses, including Zen Garden and MOS8 in the U.S., Romspen engaged in conduct that was the subject of serious scrutiny by the Chapter 11 bankruptcy Trustee in the Texas bankruptcy proceedings in relation to which Romspen now seeks an order declaring indebtedness, to which the extant Texas proceedings pertain.

18. This Court has jurisdiction to control any processes by which a finding of indebtedness, if granted, may be enforced in this jurisdiction, including in accordance with principles of equity and the rule of law.

19. In all of the circumstances, it is just and equitable for the relief sought to be granted.

20. The relief sought is also commercially reasonable.

21. Such further and other grounds as counsel may advise and the Court may admit.

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

1. Pleadings and other materials filed in the within Actions.
2. Application materials filed in relation to the Romspen Application.
3. Affidavit of Haven Eboni Edwards sworn September 12, 2022.
4. Affidavit of Haven Eboni Edwards sworn December 1, 2022, filed.
5. Affidavits of Dan White sworn November 14, 2022, filed and January 4, 2022, to be filed.
6. Transcripts of any Questioning on Affidavits relied on by the parties and responses to Undertakings, if any.

7. Such further affidavits and materials as counsel for the Applicants may tender and the Court may admit.

**Applicable rules:**

1. Rules 1.2, 1.3, 1.4, 1.5, 6.2, 6.3, 6.6, 6.7, 6.11, 9.12 – 9.16, 10.29-10.31 and 10. and such other rules as counsel may advise.

**Applicable Acts and regulations:**

1. *Alberta Rules of Court*, Alta Reg 124/2010.
2. *Judicature Act*, RSA 2000, c J-2.
3. *Bankruptcy and Insolvency Act*, RSC c B-3.
4. *Business Corporations Act*, RSA 2000 c B-9.
5. Such other acts and regulations as counsel may advise and the Court may admit.

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

1. N/A

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

1. In person or via Webex, as directed by the Court.

**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.