



This is the 1st affidavit
of Barbara Olson in this case
and was made on July 26, 2023

No. S-222758
Vancouver Registry

IN THE SUPREME COURT OF BRITISH COLUMBIA

IN THE MATTER OF THE *COMPANIES CREDITORS ARRANGEMENT ACT*,

R.S.C. 1985, C.-36, AS AMENDED

AND

IN THE MATTER OF A PLAN OF COMPROMISE AND ARRANGEMENT

OF 0989705 B.C. LTD., ALDERBRIDGE WAY GP LTD. AND

ALDERBRIDGE WAY LIMITED PARTNERSHIP

PETITIONERS

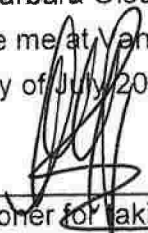
A F F I D A V I T

I, Barbara Olson, Legal Administrative Assistant, of 3200 - 650 West Georgia Street, in the City of Vancouver, Province of British Columbia, MAKE OATH AND SAY AS FOLLOWS:

1. I am a legal assistant with the law firm of Harper Grey LLP, counsel for GEC Education City (Richmond) Limited Partnership and GEC (Richmond) GP Inc., and as such I have personal knowledge of the facts and matters hereinafter deposed to, save and except where same are stated to be made upon information and belief, and where so stated I verily believe same to be true.
2. Attached to this my Affidavit as **Exhibit "A"** is a true copy of the Notice of Civil Claim in Action Number S-228019 filed by the plaintiffs, GEC (Richmond) GP Inc. and GEC Education City (Richmond) Limited against the defendant, Romspen Investment Corporation on October 6, 2022.

3. Attached to this my Affidavit as **Exhibit "B"** is a true copy of the Response to Civil Claim filed in Action Number S-228019 by the defendant, Romspen Investment Corporation on November 18, 2022.
4. Attached to this my Affidavit as **Exhibit "C"** is a true copy of the Counterclaim filed in Action Number S-228019 by the defendant, Romspen Investment Corporation on November 18, 2022.
5. Attached to this my Affidavit as **Exhibit "D"** is a true copy of the Response to Counterclaim in Action Number S-228019 filed by the plaintiffs, GEC (Richmond) GP Inc. and GEC Education City (Richmond) Limited on December 13, 2022.
6. Attached to this my Affidavit as **Exhibit "E"** is a true copy of the letter from Peter Rubin of Blake, Cassels & Graydon LLP to John P. Sullivan and Salman Y. Bhura of Harper Grey LLP dated February 28, 2023.
7. Attached to this my Affidavit as **Exhibit "F"** is a true copy of an email from John P. Sullivan of Harper Grey LLP to Peter Rubin of Blake, Cassels & Graydon LLP and others dated March 1, 2023.
8. Attached to this my Affidavit as **Exhibit "G"** is a true copy of the Notice of Trial in Action Number S-228019 filed by the defendant, Romspen Investment Corporation on March 2, 2023.
9. Attached to this my Affidavit as **Exhibit "H"** is a true copy of the letter from Peter Rubin of Blake, Cassels & Graydon LLP to John P. Sullivan and Salman Y. Bhura of Harper Grey LLP, Vicki Tickle, Jordanna Cytrynbaum, and Rajit Mittal of Cassels Brock & Blackwell LLP, and Howard Shapray, K.C. and Shane D. Coblin of Kornfeld LLP dated May 19, 2023.
10. Attached to this my Affidavit as **Exhibit "I"** is a true copy of the letter from John P. Sullivan of Harper Grey LLP to Peter Rubin of Blake, Cassels & Graydon LLP dated May 26, 2023.

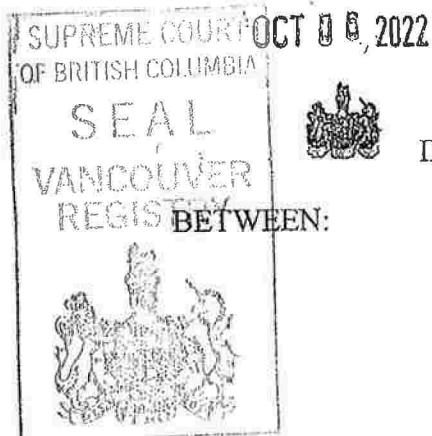
This is **Exhibit "A"** referred to in the
affidavit of Barbara Olson
sworn before me at Vancouver
this 26 day of July 2023



A Commissioner for Taking Affidavits
within British Columbia

SUPREME COURT
OF BRITISH COLUMBIA
VANCOUVER REGISTRY

S-228019



OCT 08, 2022

No.
Vancouver Registry

IN THE SUPREME COURT OF BRITISH COLUMBIA

GEC (RICHMOND) GP INC., and
GLOBAL EDUCATION CITY (RICHMOND)
LIMITED PARTNERSHIP

PLAINTIFFS

AND:

ROMSPEN INVESTMENT CORPORATION

DEFENDANT

NOTICE OF CIVIL CLAIM

FORM 1 (RULE 3-1(1))
[AM BC REG. 95/2011, SCH. A, S. 11]

This action has been started by the plaintiffs for the relief set out in Part 2 below.

If you intend to respond to this action, you or your lawyer must

- (a) file a response to civil claim in Form 2 in the above-named registry of this court within the time for response to civil claim described below, and
- (b) serve a copy of the filed response to civil claim on the plaintiff.

If you intend to make a counterclaim, you or your lawyer must

- (a) file a response to civil claim in Form 2 and a counterclaim in Form 3 in the above-named registry of this court within the time for response to civil claim described below, and
- (b) serve a copy of the filed response to civil claim and counterclaim on the plaintiff and on any new parties named in the counterclaim.

JUDGMENT MAY BE PRONOUNCED AGAINST YOU IF YOU FAIL to file the response to civil claim within the time for response to civil claim described below.

Time for response to civil claim

A response to civil claim must be filed and served on the plaintiffs,

- (a) if you were served with the notice of civil claim anywhere in Canada, within 21 days after that service,

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- (b) if you were served with the notice of civil claim anywhere in the United States of America, within 35 days after that service,
- (c) if you were served with the notice of civil claim anywhere else, within 49 days after that service, or
- (d) if the time for response to civil claim has been set by order of the court, within that time.

CLAIM OF THE PLAINTIFFS

Part 1: STATEMENT OF FACTS

1. The plaintiff, GEC (Richmond) GP Inc. ("GEC Inc.") is a company incorporated under the laws of British Columbia.
2. The plaintiff, Global Education City (Richmond) Limited Partnership ("GECLP") is a limited partnership formed under the laws of the Province of British Columbia.
3. CIBT Education Group Inc. ("CIBT") is a company incorporated under the laws of British Columbia. It is one of Canada's largest education and student housing investment companies focused on domestic and global education markets. CIBT provides educational and housing services to over 10,000 students and actively supports over 80 colleges and universities in Greater Vancouver for their housing needs through its various subsidiaries.
4. CIBT owns GEC (Richmond) GP Inc., the sole general partner of GECLP.
5. GEC Inc., and GECLP are collectively referred to herein as "GEC".
6. The defendant, Romspen Investment Corporation ("Romspen") is a company incorporated under the laws of Ontario.
7. 1185678 B.C. Ltd. is a company incorporated under the laws of British Columbia that holds mortgage security against the Property (as defined below). It is not affiliated with either GEC or Romspen.

The Development

8. At the start of 2018, Alderbridge Way Limited Partnership ("Alderbridge LP") beneficially owned 25% of the real property located at 7960 Alderbridge Way, 5333 No. 3 Road, and 5411 No. 3 Road, Richmond (the "Property"). The other 75% was owned by ARI Alderbridge Properties Limited Partnership ("ARI"), which is an affiliate of Alberta Investment Management Company. The Property was registered in the name of 0989705 B.C. Ltd. ("098") as a nominee. The shares of 098 were owned 25% by Alderbridge Way GP Ltd. ("Alderbridge GP"), the sole general partner of Alderbridge LP, and 75% by ARI.
9. Alderbridge LP, 098 and Alderbridge GP are collectively referred to herein as the "Developers".

10. The plan was for ARI and the Developers to build a mixed-use development on the Property, including five residential condominium towers, a commercial office tower, and retail space (the "Development"). The Development plans provide that the Property will be subdivided by an airspace subdivision plan and will comprise of seven mid-rise towers on top of a multi-level podium with three levels of underground parking.

GEC advances \$60,000,000 to the Development for an option to purchase and mortgage security

11. In or about early 2018, ARI delivered a shotgun-style notice to the Developers, seeking to buy out their 25% of the Development. The Developers needed substantial sums, up to \$65,000,000, to reverse the shotgun, buy-out ARI, and have operating capital to move forward.
12. Samuel Hanson, on behalf of the Developers, approached Toby Chu, CEO of GEC, requesting an investment of up to \$65,000,000 for this purpose. GEC agreed to advance the requested funds on the basis that the advances would be a deposit for the purchase of part of the Development and Property, for which GEC would receive mortgage security.
13. GEC agreed to buy three towers in the Development, along with the associated airspace (the "GEC Air Space Parcels"), by means of a Purchase and Development Agreement dated Feb. 28, 2018 (the "Original PDA") between GEC and the Developers¹. The total purchase price was \$218,287,000 of which \$60,000,000 was advanced by GEC by way of a deposit (down from \$65,000,000 by agreement of the parties) in the months following the Original PDA, which \$60,000,000 was secured by a mortgage. GEC planned to utilize the GEC Air Space Parcels as student and commercial rental units upon completion, for the purposes of earning income.
14. Over the following months, the parties amended the Original PDA several times (the Original PDA, in its final form as amended over time, is referred to herein as the "GEC PDA").
15. In or about October, 2018, the Developers asked for, and GEC agreed to, a reduction in the portion of the Property that GEC would acquire, from three towers to two, with an associated reduction in purchase price and deposit (though none of the \$60,000,000 deposit has been returned). Taking into account the amendments, the parties stipulated in the GEC PDA that: (a) GEC will pay \$109,415,226 in exchange for the acquisition of the "GEC Development", being one rental tower, one office tower, and some retail space; (b) the GEC Development will, upon subdivision, be turned into the GEC Air Space Parcels, which are to be registered in GEC's name on closing, at which time GEC will pay the balance of the purchase price, above the \$60,000,000 deposit already advanced; (c) GEC is to receive mortgage security for the advance of the \$60,000,000 of deposit monies; and (d) the Developers will arrange for and enter into a binding construction lending commitment, being the "Construction Loan".

¹ Initially, Alderbridge LP by way of its general partner, Alderbridge GP. 098 was added to the agreement later by means of a joinder agreement.

GEC files its mortgage security first in time

16. On May 30, 2018, GEC caused to be filed the following against title to the Property with the Land Title Office ("LTO"):
 - (a) Form B mortgage CA6831053 (the "GEC Mortgage");
 - (b) Form C Option to Purchase CA6831054, stipulating GEC's option to purchase the GEC Air Space Parcels under the GEC PDA (the "Option to Purchase").
17. At present, GEC, Romspen and 1185678 B.C. Ltd. are mortgagees of the Developers, and are the sole parties who have mortgage security registered against title to the Property. Of these mortgagees, GEC filed its GEC's Mortgage with the LTO first in time.
18. GEC's Option to Purchase provides, *inter alia*, as follows:
 - (a) GEC has an exclusive and irrevocable option to purchase the GEC Air Space Parcels until December 31, 2023;
 - (b) The Option to Purchase is conditional upon the filing of a plan of subdivision.

The Developers arrange for construction financing from Romspen with a minimum \$212,000,000 "Lender Commitment" on the basis that GEC will grant priority and agree to not exercise its Option to Purchase without Romspen's approval

19. The Developers arranged for financing from Romspen, by means of three sequential loan agreements. The third agreement, being the Loan Agreement to Amend and Restate Commitment, dated Nov. 6, 2019 (the "Romspen Credit Agreement"), relates to the construction financing. By its terms, the Romspen Credit Agreement expressly replaced the first two agreements.
20. The basic commercial purpose of the Romspen Credit Agreement was to provide a set amount of funding to the Development, for a set period of time, in exchange for interest, security, and priority. The set amount of funding was a minimum of \$212,000,000. The set period of time was until April 30, 2022. In exchange, Romspen was to receive interest, mortgage and other security from the Developers, and priority from GEC and 1185678 B.C. Ltd.
21. More particularly, in the Romspen Credit Agreement, Romspen committed to make available a "Construction Facility" up to a "Construction Loan Commitment Amount" of \$422,000,000, with a "Maturity Date" of April 30, 2022. Romspen's commitment was to fund a minimum of \$212,000,000 of that \$422,000,000, as the "Lender's portion of Construction Loan Commitment Amount". Romspen also committed to use commercial reasonable efforts to syndicate the balance up to \$422,000,000 (the "Romspen Syndication Commitment"). If Romspen, despite using commercial reasonable efforts, could not syndicate the balance by March 31, 2020, then Romspen was not required to make advances in excess of the amount set out on Schedule B to the Romspen Credit Agreement (\$212,000,000).

22. By means of Schedule B to the Romspen Credit Agreement, Romspen (defined as "Lender" therein) made the following commitment:

SCHEDULE B

LENDER COMMITMENT

Lender's portion of Construction Loan Commitment Amount:

\$212,000,000 inclusive of the amount advanced under the Existing Loan Facilities.

(the "Romspen Lender Commitment")

23. It was a condition of the funding by Romspen of the Construction Facility, expressly stipulated in the Romspen Credit Agreement, that GEC² enter into a priority agreement with Romspen and, further, that GEC covenant that it would not exercise its Option to Purchase, and not complete the GEC PDA purchase of the GEC Air Space Parcels, without Romspen's consent. GEC agreed to alter its priority position and its contractual rights vis-à-vis the Developers in order to secure the benefit to GEC of having Romspen provide stable funding to the Development (a minimum of \$212,000,000 until April 30, 2022), by means of the Romspen Lender Commitment.
24. The Romspen Credit Agreement stipulated that the Construction Facility funds were to be used solely for the construction of Phase 1 of the Development, and ancillary expenses. Approximately \$95,000,000 of earlier Romspen funding had been utilized to pay out earlier mortgagees, and these advances counted towards the \$212,000,000 Romspen Lender Commitment. The Romspen Lender Commitment was sufficient to advance the Development to the slab-on-grade level, or such other point at which the Development could be divided into multiple air space parcels and refinanced through multiple lenders, each with smaller loan amounts. At that point, the Development would be easier to finance, and thus less vulnerable, to the benefit of all stakeholders including GEC. At all material times, Romspen was aware of the benefit to the Development as a whole, and to GEC in particular, of the Development having sufficient funding to be able to advance to the point where such air space parcels could be created.
25. As outlined below, in November, 2019, GEC did enter into the GEC / Romspen Priority Agreement (as defined below). As a result of the Romspen Credit Agreement and the GEC / Romspen Priority Agreement: (a) Romspen committed to make available a minimum of \$212,000,000 of funding, until April 30, 2022, by means of the Romspen Lender Commitment, and to use commercial reasonable efforts to syndicate the Construction Facility above \$212,000,000 by means of the Romspen Syndication Commitment; (b) the Developers committed to use that funding to develop the Development, and give security for same; and (c) GEC agreed to relinquish its priority

² Referred to therein by reference to its parent company, CIBT. However, "CIBT" is defined in the Romspen Credit Agreement as being the two plaintiffs herein.

position and other rights in exchange for the Romspen Lender Commitment, as well as the Romspen Syndication Commitment, so that Romspen would in fact make available these funds, such that Developers could develop the Development, to the benefit of GEC and other stakeholders. All of this was known to Romspen, the Developers and GEC. The Romspen Credit Agreement and the GEC / Romspen Priority Agreement were components of a larger, global transaction (secure financing from Romspen in exchange for interest and security from the Developers, and priority from GEC) where each agreement was entered into on the faith of the other being executed.

GEC and Romspen enter into the GEC / Romspen Priority Agreement

26. Romspen took security by means of a mortgage on title to the Property filed March 5, 2019 (the "Romspen Mortgage"), which was subsequent to GEC's mortgage filing. GEC has executed three sequential priority agreements with Romspen, which were filed with the LTO on March 12, 2019, Sept. 16, 2019, and Nov. 22, 2019, and which were effective according to their terms. The first two priority agreements related to earlier advances from Romspen that were used principally for payment of existing mortgages on the Project Lands. The third priority agreement between GEC and Romspen, filed November 22, 2019 under LTO number CA7884701 (the "GEC / Romspen Priority Agreement") relates to the construction financing from Romspen and, by its terms, replaced and superseded the two earlier GEC / Romspen priority agreements.
27. The terms of the Romspen Credit Agreement, including the Romspen Lender Commitment and Romspen Syndication Commitment, were incorporated by reference into the GEC / Romspen Priority Agreement, by express reference to the Romspen Credit Agreement in the GEC / Romspen Priority Agreement. This was accomplished by means of the references in the GEC / Romspen Priority Agreement to the defined terms "Commitment", "Loan", "Prior Indebtedness" and "Prior Security", all of which are defined in such a manner as to incorporate Romspen's commitments under the Romspen Credit Agreement, including the Romspen Lender Commitment and Romspen Syndication Commitment.
28. The GEC / Romspen Priority Agreement contains the following terms, express or implied:
 - (a) Romspen shall make available a loan or credit facility to the Developers, for the sole purpose of developing the Development in the minimum amount of \$212,000,000 and a maximum amount of \$422,000,000, in accordance with the terms of the Romspen Credit Agreement, including the Romspen Lender Commitment and Romspen Syndication Commitment contained therein;
 - (b) Romspen shall comply with, and shall not breach, the Romspen Credit Agreement;
 - (c) GEC shall grant Romspen priority for its advances pursuant to and on the basis of the Romspen Credit Agreement, including the Romspen Lender Commitment and Romspen Syndication Commitment contained therein; and

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- (d) GEC will not complete its Option to Purchase under the GEC PDA without Romspen's written consent.
29. The consideration to GEC for granting priority and other rights to Romspen, as per above, was the advance of funds by Romspen to the Developers for the purpose of advancing the Development, in an amount of at least \$212,000,000 by means of the Romspen Lender Commitment.

Romspen reneges on its lending commitment at the start of the COVID-19 pandemic, choosing instead to prefer other projects

30. Romspen advanced funds for the Development under the Romspen Credit Agreement during the period from November, 2019 – March, 2020, with the last draw being made on March 17, 2020.
31. Romspen advised the Developers by letter on March 31, 2020 that Romspen had unilaterally “decided to suspend all further draws and advances” (the “March 31, 2020 Letter”). More particularly, Romspen stated as follows in its March 31, 2020 Letter:

As you know, the COVID-19 global pandemic has had dramatic and rapid effects on public health policies, the economic outlook and the functioning of the financial markets. The effects rapidly change on a daily basis, particularly in the financial markets, and are unpredictable.

The Lender [i.e., Romspen] has not been successful in obtaining commitments from other lenders to participate in the Construction Facility under the Loan Agreement, in part as a result of the dramatic and ongoing effects on the financial markets, especially in the credit markets. Therefore, the Lender cannot waive the conditions for continued funding in the Loan Agreement regarding participations in the Construction Facility. As a result, the Lender is concerned that the capital necessary to continue and complete the construction of the Project may not be available. Accordingly, the Lender has decided to suspend all further draws and advances as permitted under the terms of the Loan Agreement.

During these unprecedented events, we want to emphasize that we are prepared to discuss with you ways to manage through the current crisis, including by continuing to look for other lenders or investors to participate in the Construction Facility. While we want to continue discussions with you, we expect it will be necessary for you to raise additional equity or look for other sources of capital as a consequence of the disruptions caused by the pandemic.

32. Contrary to the March 31, 2020 Letter, Romspen's cessation of funding was not permitted under the Loan Agreement (i.e., the Romspen Credit Agreement) but, rather, constituted a breach of contract as outlined below. Further, what Romspen did not disclose in its March 31, 2020 Letter was that Romspen had decided to proceed with some projects, being its most favoured projects, and would relinquish its commitments on the others, in order to preserve its own liquidity while still advancing its most favoured

projects – and that the Development was not one of these most favoured projects. Contrary to Romspen's assertions in the March 31, 2020 Letter that it "cannot" proceed with further funding, the fact is that in or around the time of Romspen's March 31, 2020 Letter:

- (a) Romspen chose to fund, and did fund, a project known as the "Talara Apartments" in Toronto, Ontario;
 - (b) Romspen chose to bring in some of its lending partners to participate in a syndication of the funding of a project known as the "Landmark" in White Rock, BC;
 - (c) Romspen chose to fund, and did fund, a project in Lakeland, Tennessee;
 - (d) Romspen received approximately \$26.5 million in sale proceeds from the sale of the St-Laurent Apartments in Montreal, Quebec; and
 - (e) Romspen funded other projects, and arranged for investors to syndicate other loans, other than and instead of the Development, the particulars of which are known to Romspen.
33. Romspen had funds available to meet the Romspen Lender Commitment. Further, it had investors available who were willing to invest for syndication purposes. Romspen chose to use those funds, and those investors, in other projects instead of the Development, and breach the Romspen Credit Agreement, using the COVID-19 pandemic as a pretext.
34. Romspen never re-commenced funding after its March 31, 2020 Letter.³ At the time that it ceased funding on March 31, 2020, Romspen was at least \$68,383,787 short of the Romspen Lender Commitment of \$212,000,000. In terms of actual construction funding (as opposed to the pay out of previous mortgagees), less than half of the funds to which Romspen had committed had been advanced by that point.⁴ At March 31, 2020, the Development had not achieved slab-on-grade level. Instead, at that point, the Development consisted physically of a large, excavated hole.
35. As a result of Romspen's refusal to meet the Romspen Lender Commitment, construction work on the Development ceased shortly after its March 31, 2020 Letter. The Developers fell into a liquidity crisis, which is on-going. Multiple liens were filed. The Development's permits with the City of Richmond lapsed. The Developers went into *Companies' Creditors Arrangement Act* ("CCAA") proceedings. Efforts to sell the Development have, to date, been unsuccessful. The present state of the Development remains a large hole in the ground. All of these consequences were reasonably foreseeable by Romspen as a result of its decision to renege on its commitments under the Romspen Credit Agreement, including the Romspen Lender Commitment.

³ There have been some relatively minor advances by Romspen in the Developers' CCAA process, post April 1, 2022.

⁴ Over half of the funds that Romspen had advanced to that date had been used to pay out earlier mortgages, as per the agreement between the Developers and Romspen, prior to the November 2019 Romspen Credit Agreement.

36. In response to Romspen's March 31, 2020 Letter, the Developers commenced looking for alternate financing to replace Romspen, informed Romspen of same, and did not subsequently pay interest on the Romspen loan. The Developers did not succeed in securing alternate financing.
37. On Feb. 17, 2021, Romspen served a notice of default upon the Developers, alleging a number of defaults, including the failure to pay interest and the presence of liens against title to the Property. Romspen served a further notice on the Developers on Feb. 22, 2021, calling the loan and providing a 10-day notice of intention to enforce security (the "Feb. 22, 2021 Letter"). The specific and sole alleged Event of Default upon which Romspen relied in its Feb. 22, 2021 Letter was the Developers' alleged failure to pay interest. However, interest was not owing as set out in Part 3, below.
38. Romspen did not do poorly during the pandemic. Romspen's revenue in 2020 was approximately \$240,000,000, which was a slight increase from the year before, and Romspen's net income was \$133,000,000. At the end of 2021, Romspen announced a "record funding year", with \$1.4 billion in funded mortgage transactions.
39. Romspen made a decision to target this Development for a revocation of funding, notwithstanding the Romspen Lender Commitment, and other commitments in the Romspen Credit Agreement, and target other projects for funding and syndication instead, as set out in paragraphs 31 – 33, above.
40. Notwithstanding its conduct, Romspen claims interest of approximately \$1,500,000 per month for the period *after* it reneged on the Romspen Credit Agreement.

Part 2: RELIEF SOUGHT

1. A declaration that GEC (Richmond) GP Inc. has priority for amounts owing under its Form B mortgage filed under Land Title Office ("LTO") No. CA6831053, as extended by a Form C Extension of Mortgage CA7379133 and CA7379134 over any and all amounts owing from the Developers or any of them to Romspen Investment Corporation for advances made by Romspen Investment Corporation prior to April 1, 2022, including under its Form B Mortgage CA7379144, as modified by Form C Modification of Mortgage CA7749487 and Form C Modification of Mortgage CA7884333, and including all interest claimed by Romspen Investment Corporation thereon.
2. In the alternative, damages to the plaintiffs in the amount of the funds that the plaintiffs advanced to Alderbridge Way Limited Partnership, or any of the Developers, plus interest thereon;
3. Further, or in the alternative, general damages to the plaintiffs;
4. Interest to the plaintiffs in an amount equal to the contractual rate of interest as agreed between the Developers and GEC in the GEC PDA or, in the alternative, interest according to the *Court Order Interest Act*;
5. Aggravated and punitive damages to the plaintiffs; and

6. Such further and other relief as to this Honourable Court may seem just and met.

Part 3: LEGAL BASIS

1. By means of the Romspen Lender Commitment, Romspen made a legally-binding commitment to provide stable funding to the Development in a set minimum amount for a set period of time (\$212,000,000 until April 30, 2022). With knowledge of the importance of this commitment of stable funding to the Development in general, and to GEC's Option to Purchase and mortgage security in particular, Romspen unilaterally withdrew its funding for the Development on March 31, 2020, at a time and in circumstances where it had no right to do so. Romspen further did so at a time when it knew that the financial markets were highly unstable due to the crisis caused by the COVID-19 pandemic. Further, Romspen utilized funds that could and should have been used to honour the Romspen Lender Commitment to fund other projects, instead, that it had decided to prefer over the Development, notwithstanding the Romspen Lender Commitment and other legally binding commitments. Further, or in the alternative, Romspen directed investors to fund other projects rather than utilizing such investors to syndicate the Construction Facility for the Development pursuant to the Romspen Syndication Commitment. In so doing, Romspen:

- (a) Failed to provide consideration and/or failed to satisfy a condition for priority under the GEC / Romspen Priority Agreement;
- (b) Committed breach of contract;
- (c) Committed acts of such a nature that the doctrine of equitable subordination applies;

and further, or in the alternative,

- (d) Committed the tort of unlawful means.

Failure to provide consideration / satisfy condition precedent

2. GEC filed its mortgage against title to the Property before Romspen filed its mortgage. GEC thus has priority under s. 22 of the *Land Title Act*, subject to a binding priority agreement to the contrary. For subordination of a prior registration to be effective, the terms of waiver of the priority arising from the prior registration must be "clear and unequivocal". Subordination is then effective according to the terms of such agreement.

Sun Life Assurance v. Royal Bank (1995), 37 C.B.R. (3d) 89;
Bank of Montreal v. Kimberley (1999), 12 C.B.R. (4th) 10 (BCSC);
Fraser Valley Credit Union v. Siba, 2001 BCSC 744;
674921 B.C. Ltd. v. New Solutions, 2006 BCCA 49; see also 2006 BCCA 118;
Cox v. Crystal Graphite Corp., 2006 BCSC 1646

3. The fundamental commercial purpose of the GEC / Romspen Priority Agreement was that Romspen would provide, at the very least, a set minimum amount of funding to the Developers for the purposes of the Development for a set period of time. In return, GEC

would forego the priority that it otherwise enjoyed under the *Land Title Act*, granting priority instead to Romspen, along with the other contractual concessions outlined at Part 1, paragraph 28 herein, according to the terms and conditions of the GEC / Romspen Priority Agreement.

4. GEC gave up significant legal rights by means of the GEC / Romspen Priority Agreement, including its priority position under the *Land Title Act* as well as the ability to exercise its Option to Purchase without Romspen's agreement, on the basis that Romspen would meet its corresponding obligations. The consideration for this relinquishment of legal rights by GEC was the promise of stable funding for the Development by Romspen by means of, at a minimum, the Romspen Lender Commitment. In addition to advancing the Development generally, the Romspen Lender Commitment of a minimum of \$212,000,000 was sufficient to get the Development to a stage where multiple airspace parcels could be created, at which point the Development, and GEC's interest therein, would be much less vulnerable.
5. By means of the Romspen Lender Commitment, Romspen made a contractual commitment to provide a set amount of funding for the Development, for a set period of time (a minimum of \$212,000,000 until April 30, 2022). GEC agreed in the Priority Agreement to give Romspen priority for the "Prior Indebtedness", as defined therein, which incorporated by reference, and was predicated upon, the Romspen Lender Commitment. Romspen failed to honour the Romspen Lender Commitment. Instead, Romspen committed breach of contract on March 31, 2020, two years before the maturity date, when it ceased funding after having advanced less than \$145,000,000 - although it chose to fund other projects at the same time, as outlined at Part 1, paragraphs 31 - 33, above. This breach, which was a breach of both the Romspen Credit Agreement and the GEC / Romspen Priority Agreement, was a substantial and repudiatory breach of contract that put the Development into a stall, from which it has not and likely will not emerge. More specifically:
 - (a) Romspen withdrew its funding at a time when slab-on-grade had not been achieved, the Development was a large hole in the ground, and the financial markets were in crisis due to the COVID-19 pandemic. Romspen's decision to cease funding the Development at this time and in these circumstances was a substantial failure of performance by Romspen;
 - (b) Romspen's conduct related to important contractual provisions and demonstrated an intention to not be bound by those contractual provisions. Romspen's conduct thus constituted a repudiatory breach of contract; and
 - (c) The condition for the granting of priority by GEC was that Romspen would in fact advance the loan that it had committed to advance. According to the terms of the GEC / Romspen Priority Agreement, GEC gave priority to Romspen with respect to a specific loan, being the "Prior Indebtedness", which incorporates the Romspen Lender Commitment. As Romspen has never advanced the Prior Indebtedness, but instead committed a substantial and repudiatory breach with respect to same, Romspen has never complied with, or met the condition for, priority under the terms of the GEC / Romspen Priority Agreement.

Guarantee Co. v. Gordon Capital Corp., [1999] 3 S.C.R. 423;
Potter v. New Brunswick, 2015 SCC 10;
Centura v. 601 Main Partnership, 2022 BCSC 295

6. In all of the circumstances:

- (a) Romspen is not entitled to priority over GEC for its pre-CCAA advances, nor interest thereon. Rather, GEC is entitled to priority over Romspen as the party that filed first in time, under the provisions of the *Land Title Act*.
- (b) and further, or in the alternative, Romspen is liable to GEC for damages for its breach of contract.

7. Further, or in the alternative, Romspen was under a legal duty to use commercial reasonable efforts to obtain investors to syndicate that portion of the loan for the Development above \$212,000,000, to \$422,000,000, being the Romspen Syndication Commitment, which duty was incorporated by reference into the GEC / Romspen Priority Agreement. In breach of the Romspen Syndication Commitment, Romspen directed its investors or potential investors to fund other projects that it preferred, including but not limited to the Landmark, as set out in Part 1, paragraph 32, above.

8. Romspen subsequently compounded the matter with a further wrongful act by means of calling the loan in its Feb. 22, 2021 Letter. Having breached the Romspen Credit Agreement and GEC / Romspen Priority Agreement 11 months earlier by refusing to provide the funding to which it had committed by means of the Romspen Lender Commitment, Romspen called the loan and delivered a 10-day notice on February 22, 2021, in circumstances where the Development had suffered the foreseeable consequences of a \$68,383,787-plus funding shortfall. This, despite the fact that the maturity date on the loan remained more than a year in the future. Romspen had no right to call the loan. Romspen cited the failure by the Developers to pay interest as the sole "Event of Default". However, no interest was payable after March 31, 2020, due to Romspen's substantial and repudiatory breach of contract. More generally, Romspen is not entitled to take a benefit under a contract from circumstances that arise out of its own breach of same. Romspen's Feb. 22, 2021 Letter represented a further breach of contract for which Romspen is liable in damages.

New Zealand Shipping Co. v. Societe des Ateliers, [1919] A.C. 1 (UKHL);
Alghussein Estate v. Eton College, [1991] 1 All E.R. 267 (UKHL);
Barclays Bank v. Metcalfe, 2011 ONSC 5008;
F. J. Bloemen Pty Ltd. v. Gold Coast, [1973] A.C. 115 [J.C.P.C.]

9. Romspen's breaches were not only breaches of the Romspen Credit Agreement, but also breaches of the associated GEC / Romspen Priority Agreement. The Romspen Credit Agreement is incorporated by reference into the GEC / Romspen Priority as set out at Part 1, paragraph 27, above. The Romspen Lender Commitment of \$212,000,000, which is encompassed within the terms incorporated by reference into the GEC / Romspen Priority Agreement, has never been advanced, and Romspen has made clear by means of its repudiatory statements and actions (outlined above) that it will never be advanced.

Breach of contract

10. GEC repeats the allegations contained in Part 3, paragraphs 1 – 9, above.
11. In addition, the GEC / Romspen Priority Agreement was of such a nature that Romspen owed to GEC a duty of good faith performance. Further, or in the alternative, Romspen owed a duty to GEC to not undermine GEC's legitimate contractual interests in bad faith. Further, or in the alternative, Romspen owed to GEC a general duty of honesty in contractual performance.
- Bhasin v. Hrynew*, 2014 SCC 71 [*"Bhasin"*];
C.M. Callow Inc. v. Zollinger, 2020 SCC 45;
Wastech Services Ltd. v. Greater Vancouver Sewerage, 2021 SCC 7
12. Romspen breached its duty of good faith, and/or its duty to not undermine GEC's legitimate contractual interests in bad faith, and/or its duty of honesty in contractual performance, when Romspen ceased funding on March 31, 2020 in breach of the Romspen Lender Commitment, on the stated basis that it could not continue to fund due to the COVID-19 pandemic, but in fact funded other projects notwithstanding the COVID-19 pandemic, including as set out above at Part 1, paragraphs 31 – 33. Romspen targeted this Development for a cessation of funding so that it could maintain its own liquidity while still funding its preferred projects, by reallocating the funds committed to the Development to other projects instead, notwithstanding the Romspen Lender Commitment. Further, or in the alternative, Romspen committed these breaches when it directed its investors or potential investors to fund other projects that it preferred, including but not limited to the Landmark, rather than the Development, as set out in Part 1, paragraph 32, above, notwithstanding the Romspen Syndication Commitment.
13. But for Romspen's breaches of contract, outlined above, the Development would be completed by now, the Option to Purchase would have been exercised, and GEC would be earning revenue therefrom. In the alternative, but for Romspen's breaches of contract, outlined above, the Development would be much closer to completion, and would complete at a much earlier date. Either of these would enable GEC to earn revenue from the GEC Air Space Parcels at a much earlier date than GEC will now, as a result of Romspen's wrongdoing, if ever.
14. As a result of Romspen's breaches outlined in paragraphs 1 – 13, above, GEC has suffered and continues to suffer loss and damage, including:
- (a) Loss of the ability to exercise its Option to Purchase, acquire ownership of the GEC Air Space Parcels, and earn rents and other benefits therefrom, in an amount to be determined;
 - (b) Loss of the value of the GEC Air Space Parcels;
 - (c) Loss of the value of GEC's mortgage security; and
 - (d) Such other loss and damage as GEC will particularize at an appropriate time.

Equitable subordination

15. In the alternative, this court can and should grant the declaratory relief sought with respect to priority under the doctrine of equitable subordination.

Banque Financiere v. Parc, [1998] 2 W.L.R. 475 (UKHL);
CDIC v. Canadian Commercial Bank, [1992] 3 S.C.R. 558 at para. 92;
Blue Ridge Resource Corp., Re, 2000 ABQB 4 at paras. 56 – 57;
Indalex Ltd., Re, 2013 SCC 6 at para. 77;
US Steel Canada Inc., Re, 2016 ONCA 662 at para. 26

16. The circumstances of this case are appropriate for an application of the doctrine because, *inter alia*:

- (a) Romspen made a commitment of stable funding in a set minimum amount for a set period of time (i.e., \$212,000,000 until April 30, 2022);
- (b) Romspen was aware of the crucial importance of that funding commitment to the Development and its stakeholders, including GEC;
- (c) Romspen was aware that the Development would be particularly difficult if not impossible to refinance in March, 2020, as it consisted of a large hole in the ground, slab-on-grade had not been achieved, and the COVID-19 pandemic had seriously disrupted capital markets;
- (d) Romspen was aware that the circumstances outlined in (c), above, are precisely the circumstances in which a commitment of stable funding is of the greatest importance to a development;
- (e) Romspen was thus aware of the vulnerability of the Development and its stakeholders, including GEC, as at March 31, 2020;
- (f) Romspen nonetheless chose to breach its commitments, as set out above, including the Romspen Lender Commitment, and deny further funding to the Development on the stated basis of an inability to continue funding due to the COVID-19 pandemic. Notwithstanding this stated inability to continue funding, Romspen chose to and did fund other projects that it preferred in that time period, as set out in Part 1, paragraphs 31 – 33. This conduct was inequitable;
- (g) GEC has suffered injury as a result of this conduct by Romspen. The Development is stalled and may never recover. GEC is unable to move forward and complete its Option to Purchase, acquire the GEC Air Space Parcels, and earn value from them accordingly. GEC's \$60,000,000 advance and interest in the Development is at risk. GEC has lost and continues to lose rental income as well as the value of the GEC Air Space Parcels;
- (h) Romspen failed to provide the committed funding upon which GEC granted priority to Romspen;

- (i) There is no rule of law or policy that would apply to stop the application of the doctrine of equitable subordination in these circumstances.

Tort of unlawful means

17. Further, or in the further alternative, Romspen is liable to GEC in damages under the unlawful means tort.

Bram Enterprises v. A.I. Enterprises, 2014 SCC 12

18. On the basis outlined above, Romspen entered into contractual relations with the Developers by means of the Romspen Credit Agreement. Romspen breached the Romspen Credit Agreement with full knowledge of the GEC Option to Purchase, the GEC mortgage, and all of GEC rights therein, and GEC's vulnerability, and thus of the loss and damage that GEC would suffer as a result of such breach. Romspen chose to target the Development, and to target GEC specifically, with its wrongdoing as set out above.

Aggravated and punitive damages

19. The facts and circumstances as outlined above are sufficient to provide a basis for this court to order, and this court should order, aggravated and punitive damages payable from the defendant to the plaintiffs.

- (1) The plaintiffs' address for service is:

HARPER GREY LLP
Barristers and Solicitors
3200 - 650 West Georgia Street
Vancouver, BC V6B 4P7

Fax number for service: (604) 669-9385

- (2) Place of trial: Vancouver

The address of the registry is:

800 Smithe Street
Vancouver, BC V6Z 2E1

Certified a true copy according to
the records of the Supreme Court
at Vancouver, B.C.

DATED: OCT 07 2022

Authorized Signing Officer

NYARAI TAWENGWA

(3) The name and office address of the plaintiffs' solicitor is:

HARPER GREY LLP
Barristers & Solicitors
3200 - 650 West Georgia Street
Vancouver, BC V6B 4P7
Telephone: 604 687 0411
Fax: 604 669 9385
Attn: John P. Sullivan/Salman Y. Bhura/153026

Date: October 6, 2022

HARPER GREY LLP

(Per John P. Sullivan and Salman Y. Bhura)
Lawyers for the Plaintiffs

Rule 7-1(1) of the *Supreme Court Civil Rules* states:

- (1) Unless all parties of record consent or the court otherwise orders, each party of record to an action must, within 35 days after the end of the pleading period,
 - (a) prepare a list of documents in Form 22 that lists
 - (i) all documents that are or have been in the party's possession or control and that could, if available, be used by any party at trial to prove or disprove a material fact, and
 - (ii) all other documents to which the party intends to refer at trial, and
 - (b) serve the list on all parties of record.

ENDORSEMENT ON ORIGINATING PLEADING OR PETITION FOR SERVICE OUTSIDE BRITISH COLUMBIA

FORM 11 (RULE 4-5(2))

The Plaintiffs claim the right to serve this notice of civil claim on the defendant, Romspen Investment Corporation, outside British Columbia on the ground that it: relates to a security interest in property in British Columbia that is immovable property; is brought to interpret, set aside or enforce any contract or other instrument in writing in relation to property in British Columbia that is immovable; concerns contractual obligations and the contractual obligations, to a substantial extent, were to be performed in British Columbia, and by its express terms the contract is governed by the law of British Columbia; concerns a tort committed in British Columbia; concerns a business carried on in British Columbia.

APPENDIX

Part 1: CONCISE SUMMARY OF NATURE OF CLAIM:

Breach of contract, equitable subordination, and the tort of unlawful means.

Part 2: THIS CLAIM ARISES FROM THE FOLLOWING:

A personal injury arising out of:

- a motor vehicle accident
- medical malpractice
- another cause

A dispute concerning:

- contaminated sites
- construction defects
- real property (real estate)
- personal property
- the provision of goods or services or other general commercial matters
- investment losses
- the lending of money
- an employment relationship
- a will or other issues concerning the probate of an estate
- a matter not listed here

Part 3: THIS CLAIM involves:

- a class action
- maritime law
- aboriginal law
- constitutional law
- conflict of laws
- none of the above
- do not know

Part 4:

Land Title Act, s. 22.

No.
Vancouver Registry

IN THE SUPREME COURT OF BRITISH COLUMBIA

BETWEEN:

GEC (RICHMOND) GP INC., and
GLOBAL EDUCATION CITY (RICHMOND)
LIMITED PARTNERSHIP

PLAINTIFFS

AND:

ROMSPEN INVESTMENT CORPORATION

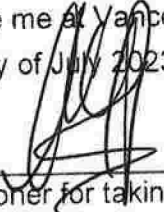
DEFENDANT

NOTICE OF CIVIL CLAIM

HARPER GREY LLP
Barristers & Solicitors
3200 - 650 West Georgia Street
Vancouver, BC V6B 4P7
Telephone: (604) 687-0411

Attention: John P. Sullivan/Salman Y. Bhura/153026

This is Exhibit "B" referred to in the
affidavit of Barbara Olson
sworn before me at Vancouver
this 26 day of July 2023



A Commissioner for taking Affidavits
within British Columbia



No. ~~S~~228019
Vancouver Registry

IN THE SUPREME COURT OF BRITISH COLUMBIA

BETWEEN

GEC (RICHMOND) GP INC., and GLOBAL EDUCATION CITY (RICHMOND) LIMITED
PARTNERSHIP

PLAINTIFFS

AND

ROMSPEN INVESTMENT CORPORATION

DEFENDANT

RESPONSE TO CIVIL CLAIM

Filed by: Romspen Investment Corporation (the "Defendant")

Part 1: RESPONSE TO NOTICE OF CIVIL CLAIM FACTS

1. The facts alleged in paragraphs 1, 2, 4, 6, 7, 13-17, 19, 22 and 30 of Part 1 of the Notice of Civil Claim are admitted.
2. The facts alleged in paragraphs 18, 20-21, 23-29 and 31-40 of Part 1 of the Notice of Civil Claim are denied.
3. The facts alleged in paragraphs 3 and 8-12 of Part 1 of the Notice of Civil Claim are outside the knowledge of the Defendant.

Division 2 – Defendant's Version of Facts

Background

4. Alderbridge Way Limited Partnership ("**Alderbridge LP**") is a partnership formed for the purposes of developing a parcel of land situate in the City of Richmond, British Columbia, and further known and described as:

Parcel Identifier 030-721-733
Lot 1 Section 5 Block 4 North Range 6 West New Westminster District Plan
EPP86098

(the "**Property**").

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5. The general partner of Alderbridge LP is Alderbridge Way GP Ltd. ("**Alderbridge GP**"). The registered owner of the Property is 0989705 B.C. Ltd. ("**098**"), as nominee for Alderbridge LP. Developing and marketing the Property (the "**Project**") is the sole business of Alderbridge LP, Alderbridge GP and 098 (collectively, the "**Debtors**").

6. The Project has encountered financial difficulties and the Debtors have been operating under the protection of the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36 (the "**CCAA**") since April 1, 2022. The plaintiffs and the defendant are secured creditors of the Debtors who have actively participated in the CCAA proceedings to date.

7. The Debtors have three principal secured creditors, each of which holds a mortgage registered against the Property:

- (a) the defendant, Romspen Investment Corporation ("**Romspen**");
- (b) 1185678 B.C. Ltd., as agent for a group of lenders (the "**2ML Lenders**" or "**2ML**"); and
- (c) the plaintiff GEC (Richmond) GP Inc. ("**GEC GP**"), on behalf of the plaintiff Global Education City (Richmond) Limited Partnership ("**GEC LP**"). GEC GP and GEC LP are referred to collectively in this Response as "**GEC**".

8. Pursuant to subordination agreements between Romspen, 2ML and GEC, described further below, Romspen's mortgage is the first mortgage against the Property, 2ML is the second mortgage and GEC is in third place.

9. GEC is an investor in the Project. Its mortgage secures a deposit on the purchase price for a future interest in the Property.

The PDA

10. The Project involves the construction of a mixed use development on the Property including residential and office towers and retail space.

11. On or about February 28, 2018, GEC entered into a Purchase and Development Agreement with Alderbridge LP (the "**PDA**"), pursuant to which GEC agreed to purchase three of the towers that the Debtors proposed to construct on the Property for a purchase price of \$218,287,000. The purchase was to be completed once substantial completion of the Project had been achieved.

12. Pursuant to the PDA, GEC agreed to pay a deposit in the amount of \$65,000,000 which was subsequently reduced to \$60,000,000 (the "**Deposit**"). The Deposit was to be secured by a mortgage against the Property (the "**GEC Mortgage**").

13. On May 30, 2018, GEC registered the GEC Mortgage and an option to purchase (the "**GEC Option**") against title to the Property.

14. The PDA was amended several times, including to reduce the interest proposed to be acquired by GEC and the corresponding purchase price. At all times, however, the terms of the PDA:

- 3 -

- (a) provided that the Debtors would enter into one or more construction loans to finance the Project; and
- (b) required GEC to subordinate the GEC Mortgage to such construction loans provided that the loans met certain criteria set out in the PDA (the "**Subordination Criteria**").

15. The PDA contemplated that, in addition to financing the ongoing development of the Project, the construction loans would be used to discharge existing indebtedness associated with the Property and the Project.

The Romspen Mortgages and Subordination Agreements

16. On or about February 15, 2019, Romspen and the Debtors entered into a letter agreement pursuant to which Romspen agreed to lend the Debtors the amount of \$90 million and the Debtors agreed to provide security including a first ranking mortgage of the Property (the "**First Construction Loan**"). The First Construction Loan was guaranteed by Gatland Development Corporation, REV Investments Inc., South Street Development Managers Ltd., South Street (Alderbridge) Limited Partnership, Samuel David Hanson and Brent Taylor Hanson (the "**Guarantors**").

17. The proceeds of the First Construction Loan were required to be used, and were used, by the Debtors to retire an existing first mortgage in the amount of approximately \$60 million and an existing second mortgage in the amount of approximately \$22 million (the "**Prior Mortgages**"), both of which were registered against title to the Property in priority to the GEC Mortgage and the GEC Option.

18. It was a condition of the First Construction Loan that the GEC Mortgage and the GEC Option must be subordinated to Romspen's mortgage. Further, GEC was contractually obliged pursuant to the PDA to subordinate the GEC Mortgage to the First Construction Loan.

19. On or about March 5, 2019, GEC entered into a Subordination and Standstill Agreement with Romspen (the "**First Subordination Agreement**") and executed a registrable postponement of the GEC Mortgage and GEC Option which was registered against title to the Property on March 12, 2019.

20. On or about July 24, 2019, Romspen and the Debtors entered into a further letter agreement pursuant to which Romspen agreed to increase the amount of its loan to \$95,850,000 on the security, *inter alia*, of a first ranking mortgage of the Property and a guarantee by the Guarantors (the "**Second Construction Loan**").

21. It was a condition of the Second Construction Loan that the GEC Mortgage and the GEC Option must be subordinated to Romspen's mortgage. Further, GEC was contractually obliged pursuant to the PDA to subordinate the GEC Mortgage to the Second Construction Loan.

22. On or about July 24, 2019, GEC entered into a Subordination and Standstill Agreement with Romspen (the "**Second Subordination Agreement**") and executed a registrable postponement of the GEC Mortgage and GEC Option which was registered against title to the Property on September 16, 2019.

23. On or about November 6, 2019, Romspen and the Debtors entered into a "Loan Agreement to Amend and Restate Commitment" (the "**Credit Agreement**") pursuant to which Romspen agreed to participate in and partially fund a non-revolving credit facility of up to \$422 million (the "**Third Construction Loan**"). Romspen's portion of the credit facility was capped at a maximum of \$212 million, inclusive of amounts previously advanced to the Debtors under the First Construction Loan and the Second Construction Loan. Romspen agreed to use commercial reasonable efforts to seek other participants in the credit facility.
24. As security for the Third Construction Loan, the Debtors agreed to provide security including a first ranking mortgage of the Property (the "**Romspen Mortgage**") and a guarantee by the Guarantors. It was a condition precedent to the Third Construction Loan that the GEC Mortgage must be subordinated to the Romspen Mortgage.
25. The Credit Agreement expressly provided that any advance of the Third Construction Loan from time to time would be in Romspen's sole and absolute unfettered discretion.
26. The Credit Agreement, further, imposed certain conditions which must be satisfied before Romspen would make advances under the Third Construction Loan, including but not limited to:
- (a) a condition that the cost to achieve substantial completion of Phase 1 of the Project, as defined in the Credit Agreement, must not exceed the undrawn portion of the Construction Loan (the "**Cost to Complete Condition**"); and
 - (b) as a condition of any advance after March 31, 2020, Romspen must be satisfied that there was sufficient participation by other persons to fund the full amount of \$422 million (the "**Participation Condition**").
27. The Third Construction Loan was a "Construction Loan" within the meaning of the PDA and met the Subordination Criteria. Accordingly, GEC was obliged by the terms of the PDA to provide Romspen with a subordination agreement.
28. On or about October 31, 2019, GEC entered into a Subordination and Standstill Agreement with Romspen (the "**Third Subordination Agreement**") and executed a registrable postponement of the GEC Mortgage and GEC Option which was registered against title to the Property on November 22, 2019.
29. Pursuant to each of the First Subordination Agreement, the Second Subordination Agreement and the Third Subordination Agreement (collectively, the "**Subordination Agreements**") GEC was required to, and did, execute a registrable form of postponement which effectively postponed GEC's rights pursuant to the *Land Title Act*, R.S.B.C. 1996, c. 250, s. 207 (a "**Postponement**").
30. The Postponement provided pursuant to each Subordination Agreement was and is unconditional and irrevocable.
31. Each of the Subordination Agreements expressly provided, and the Third Subordination Agreement expressly provides, that Romspen is entitled to modify, discharge, release or vary either the security or the terms, or both, of the relevant Construction Loan without notice to GEC and without in any way invalidating or affecting the Subordination Agreement or the subordination of GEC's security. Further, each Subordination Agreement expressly provided, and the Third

Subordination Agreement expressly provides that, so long as the Debtors remained indebted to Romspen, GEC will not challenge or question the validity or priority of Romspen's security under the relevant Construction Loan.

32. The Subordination Agreements did not contemplate or permit the revocation or cancellation of the Postponement by GEC under any circumstances.

33. Romspen denies that the Third Subordination Agreement incorporates by reference Romspen's obligations to the Debtors under the Credit Agreement, as alleged in paragraph 27 of the Notice of Civil Claim (Part 1). The Third Subordination Agreement necessarily makes reference to the Credit Agreement and the Third Construction Loan in defining the "Prior Indebtedness" to which the GEC Mortgage is subordinated; however, nothing in the Third Subordination Agreement provides, expressly or impliedly, that Romspen agrees to undertake any direct obligation to GEC to abide by the terms of the Third Construction Loan.

34. Romspen denies that the terms alleged in paragraph 28(a) and (b) of the Notice of Civil Claim (Part 1) are express or implied terms of the Third Subordination Agreement.

35. Further, Romspen denies the facts alleged in paragraphs 23 through 25 of the Notice of Civil Claim (Part 1). Even if:

- (a) GEC believed or expected that the amount of \$212 million was sufficient to advance the Project to slab-on-grade level at which point it would be easier to finance, as alleged in paragraph 24 of the Notice of Claim (Part 1); and
- (b) GEC's beliefs or expectations were reasonable,

which is denied, then:

- (a) Romspen did not share or encourage GEC in such beliefs or expectations;
- (b) GEC's beliefs or expectations were unfounded;
- (c) they are not terms of the Third Subordination Agreement (nor of the Credit Agreement);
- (d) Romspen made no promise or representation to GEC with respect to them; and
- (e) GEC would have been contractually obliged, pursuant to the PDA, to enter into the Third Subordination Agreement regardless of the perceived benefits alleged in the Notice of Civil Claim.

36. Further, or in the alternative, the advance of \$212 million would, in fact, have been inadequate to achieve the expected benefit alleged in paragraph 24 of the Notice of Civil Claim (Part 1) and therefore GEC has suffered no loss as a result of Romspen's decision not to advance that amount.

Termination of the Third Construction Loan

37. By March 31, 2020, the Participation Condition had not been met. On that date, Romspen wrote to the Debtors advising that it would not waive the Participation Condition and that it was suspending all further draws and advances under the Third Construction Loan as permitted by the Credit Agreement.

38. Romspen denies the allegations in paragraphs 32 through 40 of the Notice of Civil Claim (Part 1) in their entirety. Without limiting the foregoing:

- (a) the Participation Condition was not met despite commercially reasonable efforts on Romspen's part;
- (b) GEC's allegations of unfairly targeting the Project and of favouring other projects are unfounded, speculative and lack any basis in fact;
- (c) the decisions of potential investors, if any, to invest in other prospects in preference to funding the Project were theirs to make, based on their assessment of the risks and benefits associated with the Project, and were outside of Romspen's control;
- (d) throughout its dealings with the Debtors, Romspen made it clear that it was not prepared to assume the risk of funding the Project alone and that, if other investors did not materialize, it would not continue to advance further funds of its own;
- (e) the decision whether or not to waive the Participation Condition was in Romspen's sole discretion, could properly be exercised based on Romspen's own commercial interests and was not required to be exercised reasonably. In any event, there were ample grounds for Romspen's refusal to waive and the refusal was reasonable; and
- (f) at all material times and in all material respects, including its decision not to waive the Participation Condition and its communication of that decision to the Debtors, Romspen performed its contractual obligations to the Debtors (and to GEC, to the extent it had contractual obligations to GEC) fairly, reasonably, honestly and in good faith.

39. In any event, as at March 31, 2020 and thereafter, the Debtors were incapable of meeting the conditions for further advances under the Credit Agreement, including but not limited to the Cost to Complete Condition.

40. By February 2021, the Debtors had committed numerous defaults under the Credit Agreement including, but not limited to, failing to pay interest on the outstanding amount of the Third Construction Loan after March 2020.

41. On February 17, 2021, Romspen gave written notice to the Debtors of the following defaults pursuant to the Credit Agreement (collectively, the "**Defaults**"):

- (a) breach of the requirement to pay interest (the "**Interest Default**");
- (b) breach of the obligation to maintain all realty taxes current (the "**Taxes Default**");

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- (c) breach of the obligation to manage the construction and development of, operate and not abandon the Project for a period of 20 days or more (the "**Abandonment Default**"); and
- (d) breach of the obligation to maintain the "Borrower's Equity" (the Debtor's capital contribution to equity capital invested in the Project) (the "**Equity Default**").

Romspen also notified the Debtors that it was requiring them to clear the Property of builders liens.

42. The Debtors did not dispute and have never disputed the Defaults.

43. Pursuant to the Credit Agreement, a failure by the Debtors to:

- (a) cure the Interest Default within two business days after notice,
- (b) cure the Taxes Default, the Abandonment Default or the Equity Default within ten days after notice, or
- (c) discharge builders liens from the Property as required by Romspen,

would result in an Event of Default rendering the entire amount of the Third Construction Loan due and owing at the option of Romspen.

44. By February 22, 2021, the Debtors had not cured the Interest Default and Romspen exercised its right under the Credit Agreement to accelerate the loan. The Debtors subsequently failed to cure the Taxes Default, the Abandonment Default or the Equity Default within the ten day cure period or at all and have also failed to discharge the outstanding builders liens against the Property.

45. In further answer to paragraphs 32 through 40 of the Notice of Civil Claim (Part 1), and in answer to the Notice of Civil Claim as a whole, if Romspen had continued to advance funds to the Debtors after March 31, 2020, to a maximum of \$212 million, the losses and liquidity issues incurred by the Debtors in relation to the Project would have been even worse, the debt owed to Romspen and 2ML would have been even greater, and the prospects of GEC recovering anything pursuant to the GEC Mortgage would have been, if anything, reduced. Neither the Debtors nor GEC has suffered a loss as a result of Romspen's decision to suspend advances.

Division 3 – Additional Facts

46. Nil.

Part 2: RESPONSE TO RELIEF SOUGHT

47. The Defendant consents to the granting of none of the relief sought in Part 2 of the Notice of Civil Claim.

48. The Defendant opposes the granting of the relief sought in paragraphs 1-6 of Part 2 of the Notice of Civil Claim.

49. The Defendant takes no position on the granting of none of the relief sought in Part 2 of the Notice of Civil Claim.

Part 3: LEGAL BASIS

Overview

50. Pursuant to the Third Subordination Agreement, GEC has provided Romspen with an unconditional, irrevocable Postponement of its rights under the GEC Mortgage and GEC Option, which pursuant to the *Land Title Act*, s. 207, operates to postpone GEC's rights to the same extent as if the GEC Mortgage and GEC Option were registered immediately after the registration of the Romspen Mortgage.

51. On GEC providing the Postponement, the Third Subordination Agreement was fully performed. GEC had no further obligations which might be conditional on future events or from which it might be released by any alleged fundamental breach or repudiation. No breach of contract, fundamental or otherwise – and, in any event, no breach of the Credit Agreement to which GEC was not a party – could effectively nullify or revoke the Postponement that GEC had already granted.

52. Further, there has been no breach of the Third Subordination Agreement and GEC has no claim for damages against Romspen for breach of contract.

53. GEC's alternative claim for equitable subordination is based on a doctrine that, to date, has not been recognized under British Columbia law and ought not to be recognized in this case. If such relief is available at all under British Columbia law, the criteria for granting it are not met on the facts of this case, and to award such relief would be inconsistent, not only with the *Land Title Act* and the CCAA, but also with equitable principles. GEC would gain a windfall by fully recovering on the GEC Mortgage, in priority to Romspen's claim for moneys actually advanced to the Debtors, under circumstances where GEC quite properly agreed – in both the PDA and the Third Subordination Agreement – to subordinate its claims as an investor to such advances.

54. Finally, GEC's claim based on the unlawful means tort relies on the unfounded allegation that Romspen, in exercising its rights under the PDA, intended to "target" GEC and deliberately cause it harm, an allegation that is insupportable and entirely lacks credibility. There is no substance to this claim.

No Repudiatory Breach

The Credit Agreement

55. Romspen did not breach the Credit Agreement as alleged in the Notice of Civil Claim or at all. Pursuant to the express terms of the Credit Agreement, the decision whether or not to advance funds from time to time was in Romspen's sole and absolute discretion.

56. Further, or in the alternative, the Participation Condition for further advances after March 31, 2020 was not met, and the terms of the Credit Agreement imposed no restrictions or conditions on Romspen's discretion as to whether or not to waive the Participation Condition, which Romspen was entitled to exercise in its own subjective commercial best interests.

57. Further:

- (a) Romspen's election not to waive the Participation Condition, and the grounds for that election, were entirely consistent with the terms of the Credit Agreement, and with the rationale for including the Participation Condition in the Credit Agreement as made known to the Debtors by Romspen; and
- (b) Romspen's election not to waive the Participation Condition was reasonable in all of the circumstances.

58. Romspen did not breach its duty of honesty or any other duty of good faith which it may have owed in the performance of its duties under the Credit Agreement, which duties in any event were owed only to the Debtors and not GEC. At all material times, Romspen dealt with the Debtors (and GEC) honestly, fairly and in good faith.

59. In the further alternative, if Romspen breached the Credit Agreement by refusing to waive the Participation Condition, which is not admitted but expressly denied, the breach was of no consequence in that the Debtors did not meet, and were incapable of meeting, the conditions precedent to further advances under the agreement.

60. In the alternative, if Romspen breached the Credit Agreement in refusing to advance further loan amounts after March 31, 2020, which is not admitted but expressly denied, then such breach did not constitute a repudiation of the Credit Agreement and in any event did not relieve the Debtors of the obligation to pay interest under the Credit Agreement:

- (a) the alleged breach was not fundamental and did not deprive the Debtors of substantially the whole benefit of the Credit Agreement under which a significant sum had already been advanced prior to March 31, 2020;
- (b) there was no unequivocal refusal by Romspen to perform its future obligations under the Credit Agreement;
- (c) the effect of a fundamental breach or repudiation is to relieve the parties of their future obligations under the contract, not to nullify, rescind or revoke existing obligations that have already matured. The obligation of the Debtors to pay interest on the amount advanced prior to March 31, 2020 was an obligation that had matured at the time of the alleged repudiation and as such remained (and remains) fully enforceable despite any termination of the Credit Agreement or the Third Construction Loan.

61. Further, the principle that a wrongdoer may not rely on circumstances arising from its own breach of contract, relied on by GEC at paragraph 8 of the Notice of Civil Claim (Part 3), has no application in these circumstances of this case:

- (a) the principle is a rule of construction only and is excluded by the terms of the Credit Agreement; and
- (b) the Debtors' obligation to pay interest on any debt outstanding under the Third Construction Loan arose from the terms of the Credit Agreement and the previous advances by Romspen under that agreement, which pre-existed any alleged

breach of contract by Romspen. The necessary causal relationship between the contractual right relied on by Romspen and Romspen's alleged breach is absent.

62. It follows that Romspen did not breach the Credit Agreement by electing to accelerate the Third Construction Loan when the Debtors failed to cure the Interest Default within the time permitted by the agreement. Further, or in the alternative, there were numerous other grounds based on which Romspen was entitled to accelerate the loan in February 2021 including, but not limited to, the Taxes Default, the Abandonment Default and the Equity Default.

The Third Subordination Agreement

63. The Third Subordination Agreement did not incorporate by reference the terms of the Credit Agreement, nor did Romspen undertake any direct obligation to GEC to comply with the terms of the Credit Agreement. GEC's claim seeks to enforce contractual obligations under a contract to which it is not a party and is barred by the doctrine of privity of contract.

64. Further, or in the alternative, pursuant to the Third Subordination Agreement, GEC provided a Postponement which, according to its terms and pursuant to the *Land Title Act*, s. 207, was effective on registration to subordinate GEC's interest to that of Romspen. Even if Romspen breached the Third Subordination Agreement and even if that breach amounted to a repudiation, all of which is not admitted but expressly denied, then the effect of the breach was, at most, to relieve GEC of any future obligations under the Third Subordination Agreement. The alleged breach did not rescind, revoke, avoid or otherwise nullify the Postponement which GEC had already granted pursuant to that agreement.

No Equitable Subordination

65. The availability of equitable subordination as a remedy, under any circumstances, has not been recognized in British Columbia or in any judicial decision binding on this Court. Romspen does not acknowledge the availability of such a remedy under British Columbia law.

66. Further, or in the alternative, if equitable subordination is available as a remedy under any circumstances, which is not admitted, then the following criteria must be met:

- (a) the claimant who is to be denied priority must have committed an equitable wrong, such as fraud;
- (b) the wrong must have resulted in injury to other creditors or conferred an advantage on the claimant; and
- (c) equitable subordination must not be inconsistent with any statutory scheme of priorities or insolvency statute.

67. Equitable subordination is not available in this case because:

- (a) Romspen is not guilty of any inequitable conduct;
- (b) no harm to creditors or advantage to Romspen has resulted from Romspen's conduct, as alleged in the Notice of Civil Claim or at all; and

(c) equitable subordination would be inconsistent with the *Land Title Act* or the *CCAA*.

68. Romspen pleads and relies upon the *Land Title Act* and the *CCAA* generally and on sections 26, 28 and 207(1) of the *Land Title Act* in particular.

69. In the alternative, if equitable subordination is available in the circumstances of this case, which is not admitted but expressly denied, it can apply only to that portion of the Third Construction Loan that was advanced subsequent to the Credit Agreement and the Third Subordination Agreement. No grounds have been advanced for subordinating previous advances to the Debtors made under the First Construction Loan or the Second Construction Loan in reliance on the First Subordination Agreement and the Second Subordination Agreement.

70. In the further alternative, Romspen is equitably subrogated to the position of the Prior Mortgages and as such has priority over the GEC Mortgage, as well as 2ML's mortgage, with respect to the amount advanced to repay the Prior Mortgages (approximately \$82 million) and interest on that amount.

No Tort Liability

71. Romspen has not committed the tort of causing loss by unlawful means. In particular:

- (a) Romspen has not committed an unlawful act as against the Debtors, as alleged in the Notice of Civil Claim or at all;
- (b) in the alternative, if Romspen has committed an unlawful act, which is not admitted but expressly denied, then such act was not intentionally targeted or aimed at, or intended to inflict deliberate harm on, GEC; and
- (c) in the further alternative, if Romspen has committed an unlawful act, which is not admitted but expressly denied, then GEC has suffered no damages as a result of such act.

No Damages

72. In the alternative to paragraphs 50-71 of this Response, if Romspen has breached any contractual obligation to GEC or committed any tort, all of which is not admitted but expressly denied, then:

- (a) GEC has not suffered any damages;
- (b) if GEC has suffered any damages, which is denied, then such damages were caused or contributed to by the fault of GEC, or the fault of third parties including the Debtors, or both; or
- (c) in the alternative, GEC has failed to mitigate its damages.

73. Romspen pleads and relies upon sections 1 through 6 of the *Negligence Act*, R.S.B.C. 1996, c. 333.


- 12 -

Defendant's address for service: Blake, Cassels & Graydon LLP
Barristers and Solicitors
Suite 2600, Three Bentall Centre
595 Burrard Street, PO Box 49314
Vancouver, BC V7X 1L3
Attention: Peter L. Rubin

Fax number address for service (if any): N/A

Email address for service (if any): vancouver.service@blakes.com and
peter.rubin@blakes.com

Date: November 18, 2022

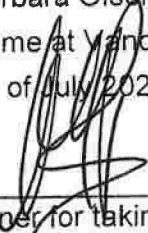


Signature of lawyer for Defendant
Peter L. Rubin

Rule 7-1 (1) of the Supreme Court Civil Rules states:

- (1) Unless all parties of record consent or the court otherwise orders, each party of record to an action must, within 35 days after the end of the pleading period,
- (a) prepare a list of documents in Form 22 that lists
 - (i) all documents that are or have been in the party's possession or control and that could, if available, be used by any party at trial to prove or disprove a material fact, and
 - (ii) all other documents to which the party intends to refer at trial, and
 - (b) serve the list on all parties of record.

This is **Exhibit "C"** referred to in the
affidavit of Barbara Olson
sworn before me at Vancouver
this 26 day of July 2023



A Commissioner for taking Affidavits
within British Columbia

SUPREME COURT
OF BRITISH COLUMBIA
VANCOUVER REGISTRY

NOV 18 2022



IN THE SUPREME COURT OF BRITISH COLUMBIA

No. 228019
Vancouver Registry

BETWEEN

GEC (RICHMOND) GP INC., and GLOBAL EDUCATION CITY (RICHMOND) LIMITED
PARTNERSHIP

PLAINTIFFS

AND

ROMSPEN INVESTMENT CORPORATION

DEFENDANT

COUNTERCLAIM

Filed by: The Defendant, Romspen Investment Corporation

**To: The Plaintiffs, GEC (Richmond) GP Inc. and Global Education City (Richmond)
Limited Partnership**

This action has been brought by the Plaintiffs against the Defendant for the relief set out in the Notice of Civil Claim filed in this action

TAKE NOTICE that the Defendant Romspen Investment Corporation ("**Romspen**") claims against you for the relief set out in Part 2 below.

IF YOU INTEND TO RESPOND to the claim made against you in this Counterclaim, or if you have a set-off or Counterclaim that you wish to have taken into account at the trial, YOU MUST FILE a Response to Counterclaim in Form 4 in the above-named registry of this Court within the time for Response to Counterclaim described below and SERVE a copy of the filed Response to Counterclaim on the address for service of the Defendant bringing this Counterclaim.

YOU OR YOUR LAWYER may file the Response to Counterclaim.

JUDGMENT MAY BE PRONOUNCED AGAINST YOU IF YOU FAIL to file the Response to Counterclaim within the time for Response to Counterclaim described below.

Time for Response to Counterclaim

A Response to Counterclaim must be filed and served on the Defendant bringing this Counterclaim,

- (a) if you were served with the Counterclaim anywhere in Canada, within 21 days after that service,
- (b) if you were served with the Counterclaim anywhere in the United States of America, within 35 days after that service,
- (c) if you were served with the Counterclaim anywhere else, within 49 days after that service, or
- (d) if the time for Response to Counterclaim has been set by order of the Court, within that time.

CLAIM OF THE DEFENDANT BRINGING THE COUNTERCLAIM

Part 1: STATEMENT OF FACTS

1. Romspen adopts the defined terms set out in Romspen's Response to Civil Claim (the "**Response**").
2. Romspen repeats paragraphs 1, 4-7 and 23-32 of the Response.¹
3. In the Third Subordination Agreement, "Subordinate Lender" is defined to mean GEC GP, "Prior Indebtedness" is defined to include the Third Construction Loan and "Prior Security" is defined to include the Romspen Mortgage.
4. The Third Subordination Agreement provides:

The Subordinate Lender hereby agrees that at any time while any Prior Indebtedness remains outstanding, it shall not challenge, contest or bring into question the validity, priority or perfection of the Prior Security.
5. In the course of the CCAA proceedings described in paragraph 6 of the Response (the "**CCAA Proceedings**"), GEC raised the possibility of challenging the priority of the Third Construction Loan.
6. On or about October 6, 2022, GEC commenced the present action (the "**Action**") in which it challenges, contests or brings into question the priority of the Third Construction Loan and the Romspen Mortgage.

Part 2: RELIEF SOUGHT

7. Romspen claims as against GEC:

- (a) damages for breach of contract, including but not limited to full indemnity for the costs to Romspen of defending the Action;
- (b) interest in an amount equal to the contractual rate of interest under the Credit Agreement or alternatively interest pursuant to the *Court Order Interest Act*, R.S.B.C. 1996, c. 79; and
- (c) in the alternative to the relief claimed in paragraph 7(a) of this Counterclaim, costs pursuant to Rule 14-1(1) of the *Supreme Court Civil Rules*.

Part 3: LEGAL BASIS

8. By bringing the Action, GEC has breached the Third Subordination Agreement.
9. As a result of GEC's breach of contract, Romspen has suffered, will suffer in future, or may suffer loss and damages, including but not limited to:
- (a) any loss of priority which may result directly or indirectly from the Action;
 - (b) delay of and interference with the CCAA proceedings, including but not limited to delayed recovery pursuant to the Romspen Mortgage and increased legal and other costs associated with the proceedings; and
 - (c) costs incurred in defending the Action.

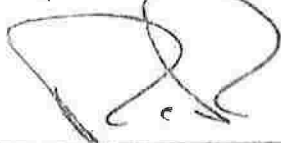
Address for service of the Defendant bringing this Counterclaim: Blake, Cassels & Graydon LLP
Barristers and Solicitors
Suite 2600, Three Bentall Centre
595 Burrard Street, PO Box 49314
Vancouver, BC V7X 1L3
Attention: Peter L. Rubin

Fax number address for service (if any): N/A

E-mail address for service (if any): Vancouver.service@blakes.com and
peter.rubin@blakes.com

The address of the registry is: 800 Smythe Street
Vancouver, B.C. V6Z 2E1

Date: November 18, 2022



Signature of Peter L. Rubin
Lawyer for filing party

Rule 7-1 (1) of the Supreme Court Civil Rules states:

(1) Unless all parties of record consent or the court otherwise orders, each party of record to an action must, within 35 days after the end of the pleading period,

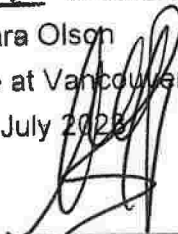
(a) prepare a List of Documents in Form 22 that lists

(i) all documents that are or have been in the party's possession or control and that could, if available, be used by any party at trial to prove or disprove a material fact, and

(ii) all other documents to which the party intends to refer at trial, and

(b) serve the list on all parties of record.

This is **Exhibit "D"** referred to in the
affidavit of Barbara Olson
sworn before me at Vancouver
this 26 day of July 2025



A Commissioner for taking Affidavits
within British Columbia



No. S-228019
Vancouver Registry

IN THE SUPREME COURT OF BRITISH COLUMBIA

BETWEEN:

GEC (RICHMOND) GP INC., and
GLOBAL EDUCATION CITY (RICHMOND)
LIMITED PARTNERSHIP

PLAINTIFFS

AND:

ROMSPEN INVESTMENT CORPORATION

DEFENDANT

RESPONSE TO COUNTERCLAIM

FORM 4 (RULE 3-4(5))

FILED BY: GEC (Richmond) GP Inc. and Global Education City (Richmond)
Limited Partnership (the "Plaintiffs")

Part 1: RESPONSE TO COUNTERCLAIM FACTS

Division 1 - Response to Facts

1. The facts alleged in none of the paragraphs of Part 1 of the counterclaim are admitted.
2. The facts alleged in paragraphs 2 - 6 of Part 1 of the counterclaim are denied.
3. The facts alleged in paragraph 1 of Part 1 of the counterclaim are outside the knowledge of the responding parties.

Division 2 - Responding Parties' Version of Facts

1. The Plaintiffs repeat and rely upon the facts as set out at paragraphs 1 - 40 of Part 1: STATEMENT OF FACTS of their notice of civil claim filed October 6, 2022 (the "Claim").
2. The Plaintiffs adopt the defined terms as set out in the Claim.

Division 3 - Additional Facts

1. None.

Part 2: RESPONSE TO RELIEF SOUGHT

1. The responding parties consent to the granting of the relief sought in NONE of the paragraphs of Part 2 of the counterclaim.
2. The responding parties oppose the granting of the relief sought in ALL of the paragraphs of Part 2 of the counterclaim.
3. The responding parties take no position on the granting of the relief sought in NONE of the paragraphs of Part 2 of the counterclaim.

Part 3: LEGAL BASIS

4. The Plaintiffs have not breached the GEC / Romspen Priority Agreement (referred to in the counterclaim as the "Third Subordination Agreement"). To the contrary:
 - (a) It is Romspen that has breached the GEC / Romspen Priority Agreement, as set out in the Claim;
 - (b) According to the terms of the GEC / Romspen Priority Agreement, GEC agreed to give priority to Romspen with respect to a specific loan, being the "Prior Indebtedness". It was a condition for the granting of priority to Romspen that Romspen would in fact advance the loan that it had committed to advance, being the Prior Indebtedness, which incorporates the Romspen Lender Commitment. As outlined in the Claim, including without limitation at paragraph 5(c) of Part 3 therein, Romspen did not advance the Prior Indebtedness.
 - (c) Further, the specific provision upon which Romspen relies in the counterclaim, being a portion of s. 7 of the GEC / Romspen Priority Agreement (the "S. 7 Provision") is predicated upon, and conditional upon, Romspen advancing the Prior Indebtedness. As Romspen never advanced the Prior Indebtedness, but instead committed a repudiatory and substantial breach of contract with respect to same, there has been no breach of the S. 7 Provision by GEC in putting these issues before the court.
 - (d) It is a term of the GEC / Romspen Priority Agreement, express or implied, that Romspen would honour its contractual commitments with respect to the Prior Indebtedness, and not breach its contractual commitments with respect to same. If and to the extent that the S. 7 Provision has any application in law at all, it is a further term of the GEC / Romspen Priority Agreement, express or implied, that


the S. 7 Provision applies if Romspen is in compliance with the GEC / Romspen Priority Agreement but does not apply if Romspen is in breach of same, or alternatively, if Romspen has committed a fundamental, substantial, or repudiatory breach with respect to same, which Romspen has in fact committed as outlined in the Claim.

- (e) In the alternative, the S. 7 Provision is unenforceable as the jurisdiction of the court cannot be ousted in this manner.
5. Further, or in the alternative, if Romspen's interpretation of the GEC / Romspen Priority Agreement is correct, which is not admitted but denied, then the GEC / Romspen Priority Agreement, including the S. 7 Provision, fails to create binding contractual relations or is otherwise unenforceable as it: (a) provides no consideration to GEC and/or lacks mutuality of obligations; and further or in the alternative, (b) is not sufficiently certain in its terms.
6. Further, or in the alternative, the GEC / Romspen Priority Agreement does not:
- (a) Bar or purport to bar the doctrine of equitable subordination;
- (b) Bar or purport to bar claims against Romspen for damages.
7. Further, or in the alternative, the counterclaim fails to disclose any viable cause of action as it is in fact a claim for costs.
8. The Plaintiffs ask that the counterclaim be dismissed with costs.

- (1) The responding parties' address for service is:

HARPER GREY LLP
Barristers & Solicitors
3200 - 650 West Georgia Street
Vancouver, BC V6B 4P7
Telephone: 604 687 0411
Attn: John P. Sullivan/Salman Y. Bhura/154890

Dated: December 13 2022



HARPER GREY LLP
(Per John P. Sullivan/Salman Y. Bhura)
Lawyers for the responding parties,
GEC (Richmond) GP Inc. and
Global Education City (Richmond)
Limited Partnership

Name and address of lawyer:

HARPER GREY LLP
Barristers & Solicitors
3200 - 650 West Georgia Street
Vancouver, BC V6B 4P7
Telephone: 604 687 0411
Fax: 604 669 9385
Attn: John P. Sullivan/Salman Y. Bhura/154890

Rule 7-1 (1) of the Supreme Court Civil Rules states:

- (1) Unless all parties of record consent or the court otherwise orders, each party of record to an action must, within 35 days after the end of the pleading period,
 - (a) prepare a list of documents in Form 22 that lists
 - (i) all documents that are or have been in the party's possession or control and that could, if available, be used by any party at trial to prove or disprove a material fact, and
 - (ii) all other documents to which the party intends to refer at trial, and
 - (b) serve the list on all parties of record

No. S-228019
Vancouver Registry

IN THE SUPREME COURT OF BRITISH COLUMBIA

BETWEEN:

GEC (RICHMOND) GP INC., and
GLOBAL EDUCATION CITY (RICHMOND)
LIMITED PARTNERSHIP

PLAINTIFFS

AND:

ROMSPEN INVESTMENT CORPORATION

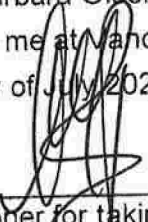
DEFENDANT

RESPONSE TO COUNTERCLAIM

HARPER GREY LLP
Barristers & Solicitors
3200 - 650 West Georgia Street
Vancouver, BC V6B 4P7
Telephone: (604) 687-0411

Attention: John P. Sullivan/Salman Y. Bhura/154890

This is Exhibit "E" referred to in the
affidavit of Barbara Olson
sworn before me at Vancouver
this 26 day of July 2023



A Commissioner for taking Affidavits
within British Columbia

Blake, Cassels & Graydon LLP
Barristers & Solicitors
Patent & Trademark Agents
595 Burrard Street, P.O. Box 49314
Suite 2600, Three Bentall Centre
Vancouver BC V7X 1L3 Canada
Tel: 604-631-3300 Fax: 604-631-3309

Peter Rubin*

Partner

Dir: 604-631-3315

peter.rubin@blakes.com

February 28, 2023

VIA E-MAIL

*Law Corporation

Harper Grey LLP
Barristers & Solicitors
3200 - 650 W. Georgia Street
Vancouver, BC V6B 4P7

Reference: 00070553/090061

Attention: John P. Sullivan and Salman Y. Bhura

**RE: GEC (Richmond) GP Inc. et al. v. Romspen Investment Corporation,
SCBC Vancouver Registry Action No. S-228019**

Dear Counsel:

We write to advise that we have secured trial dates with the registry in the above-noted matter from January 29 to February 23, 2024.

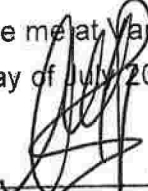
It is critical to obtain as early trial dates as is possible in order to limit the damages and prejudice that will be caused to our client if this action is delayed. Based on our prior discussions, we understand that your clients intend on taking the position that funds should not be disbursed to our client in the related CCAA proceeding until this action is resolved. Whether the CCAA judge will accede to that position cannot be resolved at this time, but any delay in the disbursement of funds to our client in accordance with the contractual priorities set out in the Subordination and Standstill Agreement executed by your clients will cause significant prejudice to our client. As your client aware, given the significant debt owed by the borrowers and guarantors to our client, the monthly interest accrual is approximately \$1.5 million per month.

Please confirm that you are available on the dates we have secured and we will proceed to file a notice of trial.

Yours truly,

for: Peter Rubin*

This is **Exhibit "E"** referred to in the
affidavit of Barbara Olson
sworn before me at Vancouver
this 26 day of July 2023



A Commissioner for taking Affidavits
within British Columbia

From: John Sullivan
Sent: Wednesday, March 1, 2023 11:01 AM
To: McInally, Leanna; Rubin, Peter
Cc: Hutchinson, Joshua; Lou, Roy; Salman Bhura; Barbara Olson; Sara Fahy
Subject: RE: GEC (Richmond) GP Inc. et al. v. Romspen Investment Corporation | BCSC S-228019

Peter, thank you for your letter. Yes, we are available on those dates and look forward to receiving the filed notice of trial from your office.

Best regards,

John P. Sullivan*

Barrister & Solicitor | **Harper Grey LLP**

T 604.895.2859 | F 604.669.9385

[Website](#) | [Unsubscribe](#) | jsullivan@harpergrey.com

*Personal Law Corporation

From: McInally, Leanna <leanna.mcinally@blakes.com>
Sent: Tuesday, February 28, 2023 1:48 PM
To: John Sullivan <jsullivan@harpergrey.com>; Salman Bhura <sbhura@harpergrey.com>
Cc: Rubin, Peter <peter.rubin@blakes.com>; Hutchinson, Joshua <joshua.hutchinson@blakes.com>; Lou, Roy <roy.lou@blakes.com>
Subject: GEC (Richmond) GP Inc. et al. v. Romspen Investment Corporation | BCSC S-228019

Dear Counsel,

Please see the attached letter of today's date in relation to the above-noted matter.

Kindest regards,

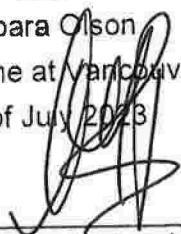
Leanna McInally
 Legal Assistant to James Sullivan, K.C.,
 Laura Cundari, Alan Yuen,
 Roy Lou, & Konrad Spurek
leanna.mcinally@blakes.com
 T. +1-604-631-3360

Blake, Cassels & Graydon LLP
 595 Burrard Street, Suite 2600, Vancouver BC V7X 1L3 (Map)
blakes.com LinkedIn

 Blakes Means Business

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This is Exhibit "6" referred to in the
affidavit of Barbara Olson
sworn before me at Vancouver
this 26 day of July 2023



A Commissioner for taking Affidavits
within British Columbia



No. S-228019
Vancouver Registry

IN THE SUPREME COURT OF BRITISH COLUMBIA

BETWEEN

GEC (RICHMOND) GP INC., and GLOBAL EDUCATION CITY (RICHMOND) LIMITED
PARTNERSHIP

PLAINTIFFS

AND

ROMSPEN INVESTMENT CORPORATION

DEFENDANT

NOTICE OF TRIAL

Filed by: The Defendant, Romspen Investment Corporation

TAKE NOTICE that the trial of this proceeding has been set down at the following place, date and time:

City	Vancouver, British Columbia
Address of Courthouse	800 Smithe Street
Date	January 29, 2024, for 19 days
Time	10:00 a.m.

Digitally signed by
Dosanjh, Navpreet

Registrar

The place of trial set out above is the place of trial set out in the notice of civil claim.

All parties of record in this action agree that not more than 19 days is a reasonable time for the hearing of all evidence and argument in this action.

Date: March 1, 2023

For: _____
Signature of Peter L. Rubin
Lawyer for filing party

Contact information for the parties and their lawyers is as follows:

PARTY	COUNSEL AND FIRM
Defendant, Romspen Investment Corporation	Blake, Cassels & Graydon LLP Barristers & Solicitors Suite 2600, Three Bentall Centre 595 Burrard Street, PO Box 49314 Vancouver, BC V7X 1L3 Attention: Peter L. Rubin Telephone: 604-631-3315 Facsimile: 604-631-3309 E-mail: peter.rubin@blakes.com
Plaintiffs, GEC (Richmond) GP Inc., and Global Education City (Richmond) Limited Partnership	Harper Grey LLP Barristers & Solicitors 3200 – 650 West Georgia Street Vancouver, BC V6B 4P7 Attention: John P. Sullivan / Salman Y. Bhura Facsimile: 604-689-9385 E-mail: jsullivan@harpergrey.com / sbhura@harpergrey.com

APPENDIX**Part 1: THIS CLAIM INVOLVES THE FOLLOWING:**

- a motor vehicle accident
- a personal injury, other than one arising from a motor vehicle accident
- a dispute about real property (real estate)
- a dispute about personal property
- the lending of money
- the provision of goods or services or other general commercial matters
- an employment relationship
- a dispute about a will or other issues concerning the probate of an estate
- a matter not listed here

This is **Exhibit "H"** referred to in the
affidavit of Barbara Olson
sworn before me at Vancouver
this 26 day of July 2023



A Commissioner for taking Affidavits
within British Columbia



Blake, Cassels & Graydon LLP
Barristers & Solicitors
Patent & Trademark Agents
595 Burrard Street, P.O. Box 49314
Suite 2600, Three Bentall Centre
Vancouver BC V7X 1L3 Canada
Tel: 604-631-3300 Fax: 604-631-3309

May 19, 2023
VIA E-MAIL

Peter Rubin*

Partner
Dir: 604-631-3315
peter.rubin@blakes.com
*Law Corporation
Reference: 70553/90061

Harper Grey LLP
Barristers & Solicitors
3200 – 650 West Georgia Street
Vancouver, BC V6B 4P7

Cassels Brock & Blackwell LLP
Suite 2200, HSBC Building
885 West Georgia Street
Vancouver, BC V6C 3E8

Attention: John P. Sullivan and Salman Y. Bhura

Attention: Vicki Tickle, Jordanna Cytrynbaum, and
Rajit Mittal

Kornfeld LLP
1100 One Bentall Centre
505 Burrard Street
Vancouver, BC V7X 1M5

Attention: Howard Shapray, K.C. and
Shane D. Coblin

RE: *In the Matter of a Plan of Compromise and Arrangement of 0989705 B.C. Ltd., SCBC Action No. S-222758 (the "CCAA Proceedings")*

***GEC (Richmond) GP Inc., et al. v. Romspen Investment Corporation,
SCBC Action No. S-228019
Romspen Investment Corporation v. 0989705 B.C. Ltd., et al.,
SCBC Action No. S-231106;
R Jay Management Ltd. et al. v. Romspen Investment Corporation,
SCBC Action No. S-24877; and
Alderbridge Way Limited Partnership, et al. v. Romspen Investment Corporation,
SCBC Action No. S-232583 (collectively, the "Actions")***

Dear Sirs/Mesdames:

We write as counsel to Romspen Investment Corporation in respect of the above-noted Actions.

Our client's position is that the claims and counterclaims asserted in each of the Actions (the "**Claims**") are necessarily related to each other and to the CCAA Proceedings such that their timely and orderly resolution in the context of the CCAA Proceedings is required. Accordingly, we have instructions to bring an application in the CCAA Proceedings for (a) an order providing that the Claims be determined by Justice Fitzpatrick in the context of the CCAA Proceedings (the "**Carriage Order**"); and (b) an order establishing a litigation process for the determination of the Claims in the context of the CCAA Proceedings (the "**Case Planning Order**").

51386053.1



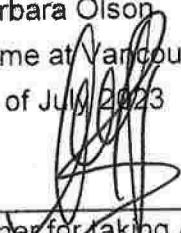
Page 2

Please advise by no later than May 26, 2023 if your respective clients will consent to a Carriage Order being granted in the CCAA Proceedings. If any of the parties to the Actions are not prepared to agree to a Carriage Order being granted, we will request at the hearing scheduled in the CCAA Proceedings before for May 31 2023 that Justice Fitzpatrick set a date for the hearing of an application for the Carriage Order and the Case Planning Order. If there is agreement on the appropriateness of a Carriage Order, we will still request on May 31, 2023 that Justice Fitzpatrick reserve a date for the hearing of an application for a Case Planning Order.

Yours truly,


Peter Rubin

This is **Exhibit "I"** referred to in the
affidavit of Barbara Olson
sworn before me at Vancouver
this 26 day of July, 2023



A Commissioner for Taking Affidavits
within British Columbia

Harper Grey LLP

BARRISTERS & SOLICITORS
3200 • 650 West Georgia Street
Vancouver BC Canada V6B 4P7
Tel. 604 687 0411 • Fax 604 669 9385

JOHN P. SULLIVAN
DIRECT LINE: 604 895 2859
jsullivan@harpergrey.com
www.harpergrey.com

File Number: 154890

May 26, 2023

BY EMAIL

Blake, Cassels & Graydon LLP
595 Burrard Street, Ste. 2600,
Vancouver, B.C. V7X 1L3

Attention: Peter Rubin

Dear Sirs/Mesdames:

Re: ***GEC (Richmond) GP Inc. et al v. Romspen Investment Corporation***
Supreme Court of British Columbia, VLC-S-S-228019 (Vancouver Registry)

We write in response to your letter of May 19, 2023.

First, our client does not consent to an order that GEC action S-228019 (the "GEC Action") be determined in the context of the CCAA proceedings brought by Alderbridge Way Limited Partnership, *et al* (S-222758). Our clients have launched an action against Romspen Investment Corporation and are entitled to the full panoply of procedural rights that an action entails, including documentary and oral discovery. Given the factual controversies in the GEC Action, discovery is essential.

That said, our client does not oppose having the four Actions (as defined in your letter) case managed together, and has no objection to Justice Fitzpatrick as the Case Management Judge, if such is the will of the Court.

On the issue of discovery, we have been working hard to finalize the GEC list of documents. We expect to be in a position to provide it to you within the next week (two at the outside). We would like to exchange lists of documents on the same day. We presume that your client has been working assiduously on its list of documents such that you will be able to provide the Romspen list of documents within the next week or two. Please confirm. We also want to set examinations for discovery in the months of July, August, or early September at the latest and will be in touch further in that respect in the near future.

Harper Grey LLP

Page 2

We look forward to hearing from you regarding the above.

Yours truly,

HARPER GREY LLP

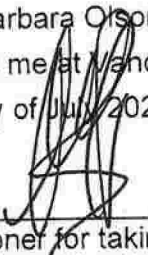


Per: John P. Sullivan
*Personal Law Corporation

JPS/bjo

Cc: Howard Shapray, KC (By Email: hshapray@kornfeldllp.com)
Shane D. Coblin (By Email: scoblin@kornfeldllp.com)
Vicki Tickle (By Email: vtickle@cassels.com)
Jordana Cytrynbaum (By Email: jcytrynbaum@cassels.com)
Rajit Mittal (By Email: rmittal@cassels.com)

This is Exhibit "↓" referred to in the
affidavit of Barbara Olson
sworn before me at Vancouver
this 26 day of July 2023



A Commissioner for taking Affidavits
within British Columbia

Harper Grey LLP

BARRISTERS & SOLICITORS
3200 • 650 West Georgia Street
Vancouver BC Canada V6B 4P7
Tel. 604 687 0411 • Fax 604 669 9385

JOHN P. SULLIVAN
DIRECT LINE: 604 895 2859
jsullivan@harpergrey.com
www.harpergrey.com

File Number: 154890

May 29, 2023

BY EMAIL

Blake, Cassels & Graydon LLP
595 Burrard Street, Ste. 2600,
Vancouver, B.C. V7X 1L3

Attention: Peter Rubin

Dear Sirs/Mesdames:

**Re: *GEC (Richmond) GP Inc. et al v. Romspen Investment Corporation*
Supreme Court of British Columbia, VLC-S-S-228019 (Vancouver Registry)**

We write further to our letter to you of May 26, 2023.

Would you please advise as to Mr. Wesley Roitman's availability in the months of July and August, and the first week of September, to be examined for discovery as a representative of the defendant.

Pursuant to Rule 7-2(5)(b), we nominate Toby Chu as the representative of the plaintiffs.

The availability on our side for discoveries in the months of July, August, and the first week of September is presently as follows:

- July 11 – 14, 28 and 31;
- August 1 – 4 and 7 – 11;
- Sept. 5 – 8.

We look forward to hearing from you with respect to the above, and setting the examinations

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for discovery.

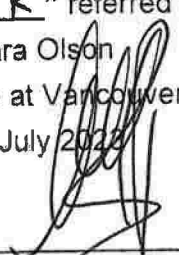
Yours truly,
HARPER GREY LLP



Per: John P. Sullivan
*Personal Law Corporation

JPS/bjo

This is **Exhibit "K"** referred to in the
affidavit of Barbara Olson
sworn before me at Vancouver
this 26 day of July 2022



A Commissioner for taking Affidavits
within British Columbia



Blake, Cassels & Graydon LLP
 Barristers & Solicitors
 Patent & Trademark Agents
 595 Burrard Street, P.O. Box 49314
 Suite 2600, Three Bentall Centre
 Vancouver BC V7X 1L3 Canada
 Tel: 604-631-3300 Fax: 604-631-3309

May 30, 2023

VIA E-MAIL

Peter Rubin

Partner

Dir: 604-631-3315

peter.rubin@blakes.com

Reference: 70553/90061

Harper Grey LLP
 Barristers & Solicitors
 3200 – 650 West Georgia Street
 Vancouver, BC V6B 4P7

Attention: John P. Sullivan

RE: *In the Matter of a Plan of Compromise and Arrangement of 0989705 B.C. Ltd., SCBC Action No. S-222758 (the "CCAA Proceedings")*

GEC (Richmond) GP Inc., et al. v. Romspen Investment Corporation, SCBC Action No. S-228019; Romspen Investment Corporation v. 0989705 B.C. Ltd., et al., SCBC Action No. S-231106; R Jay Management Ltd. et al. v. Romspen Investment Corporation, SCBC Action No. S-24877; and Alderbridge Way Limited Partnership, et al. v. Romspen Investment Corporation, SCBC Action No. S-232583 (collectively, the "Actions")

Dear Sir:

We write further to your letters dated May 26 and May 29, which were sent to us after your receipt of our letter dated May 19 in which we advised you that we had instructions to bring an application in the CCAA Proceedings for orders (a) providing that the claims and counterclaims asserted in each of the Actions be determined by Justice Fitzpatrick in the context of the CCAA Proceedings (the "**Carriage Order**") and (b) establishing a litigation process for the determination of the Claims (the "**Case Planning Order**").

Given your client's opposition to the Carriage Order, we will – as advised in our May 19 letter – request at the hearing scheduled in the CCAA Proceedings for May 31 that Justice Fitzpatrick set a date for the hearing of our client's application for both the Carriage Order and the Case Planning Order.

Yours truly,



Peter Rubin

51387590.1

TORONTO

CALGARY

VANCOUVER

MONTREAL

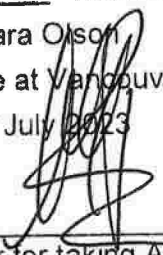
OTTAWA

NEW YORK

LONDON

Blake, Cassels & Graydon LLP | blakes.com

This is Exhibit "L" referred to in the
affidavit of Barbara Olson
sworn before me at Vancouver
this 26 day of July 2023



A Commissioner for taking Affidavits
within British Columbia

Harper Grey LLP

BARRISTERS & SOLICITORS
3200 • 650 West Georgia Street
Vancouver BC Canada V6B 4P7
Tel. 604 687 0411 • Fax 604 669 9385

JOHN P. SULLIVAN
DIRECT LINE: 604 895 2859
jsullivan@harpergrey.com
www.harpergrey.com

File Number: 154890

July 7, 2023

BY EMAIL AND MAIL

Blake, Cassels & Graydon LLP
595 Burrard Street, Ste. 2600,
Vancouver, B.C. V7X 1L3

Attention: Peter Rubin

Dear Sirs/Mesdames:

**Re: GEC (Richmond) GP Inc. et al v. Romspen Investment Corporation
Supreme Court of British Columbia, VLC-S-S-228019 (Vancouver Registry)**

We write further to our letters to you of May 26 and 29, 2023, as well as our discussion at court on May 31, 2023, and your recent motion material.

You have not provided us with any dates for the examination for discovery of Mr. Roitman, despite our request for same in our May 29, 2023 letter. Even your recent motion (which we will be opposing) acknowledges the need for an examination for discovery of your client, but "by no later than December 31, 2023". That date, of course, is entirely unworkable for the January 29, 2024 trial date that you have set in our action.

Accordingly, we enclose for service upon you an Appointment to examine for discovery Wesley Roitman as a representative of the defendant, Romspen Investment Corporation, on **September 8, 2023**, at Charest Reporting. We will provide appropriate conduct money with the copy of this letter that is sent by mail.

We will have our client's list of documents to you next week. Please provide us with your client's list or, if it is still in progress, at least a preliminary list, next week as well. Please

Harper Grey LLP

advise without delay as to what day we can expect to receive that.

Yours truly,
HARPER GREY LLP

Per:  John P. Sullivan
*Personal Law Corporation

JPS/bjo

No. S-228019
Vancouver Registry

IN THE SUPREME COURT OF BRITISH COLUMBIA

BETWEEN:

GEC (RICHMOND) GP INC. and
GLOBAL EDUCATION CITY (RICHMOND) LIMITED PARTNERSHIP

PLAINTIFFS

AND:

ROMSPEN INVESTMENT CORPORATION

DEFENDAN

APPOINTMENT TO EXAMINE FOR DISCOVERY
FORM 23 (RULE 7-2(13))

TO: Wesley Roitman, a representative of the defendant,
ROMSPEN INVESTMENT CORPORATION

TAKE NOTICE that you are required to attend for your examination for discovery at the place, date and time set out below. If you are not a named party, or a representative of a named party, to this action, you must, unless the court otherwise orders, bring with you all documents in your possession or control, not privileged, relating to the matters in question in this action. Please note the provisions of the *Supreme Court Civil Rules* reproduced below.

Place: Charest Reporting
1650 – 885 West Georgia Street,
Vancouver, B.C. V6C 3E8
Phone: 604-629-2373

Date: 8 September 2023

Time: 10:00 a.m.

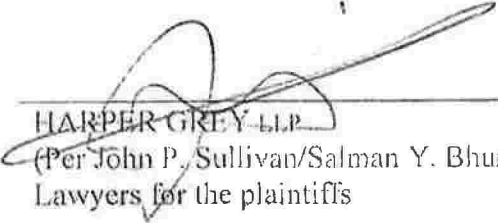
Date: 7 July 2023

Implied undertaking to the court

Documents produced are not to be used by the other party(ies) except for the purposes of this litigation unless and until the scope of the undertaking is varied by a court order or other judicial order, consent or statutory override or a situation of immediate and serious danger emerges. This implied undertaking continues despite settlement or completion of the litigation.

Name and address of lawyer:

HARPER GREY LLP
 Barristers & Solicitors
 3200 - 650 West Georgia Street
 Vancouver, BC V6B 4P7
 Telephone: 604 687 0411
 Fax : 604 669 9385
 Attn: John P. Sullivan/bjo/154890


 HARPER GREY LLP

(Per John P. Sullivan/Salman Y. Bhura)
 Lawyers for the plaintiffs

Rules 22-7(5) and 22-8(4) of the *Supreme Court Civil Rules* state in part:

22-7(5) ... if a person, contrary to these Supreme Court Civil Rules and without lawful excuse,

(a) refuses or neglects to obey a subpoena or to attend at the time and place appointed for his or her examination for discovery, ...


then

(f) if the person is the plaintiff or petitioner, a present officer of a corporate plaintiff or petitioner or a partner in or manager of a partnership plaintiff or petitioner, the court may dismiss the proceeding, and

(g) if the person is a defendant, respondent or third party, a present officer of a corporate defendant, respondent or third party or a partner in or manager of a partnership defendant, respondent or third party, the court may order the proceeding to continue as if no response to civil claim had been filed.

22-8(4) A person who is guilty of an act or omission described in Rule 12-5(25) or 22-7(5), in addition to being subject to any consequences prescribed by those rules, is guilty of contempt of court and subject to the court's power to punish contempt of court.

This is Exhibit "M" referred to in the
affidavit of Barbara Olson
sworn before me at Vancouver
this 26 day of July 2023



A Commissioner for taking Affidavits
within British Columbia



Blake, Cassels & Graydon LLP
 Barristers & Solicitors
 Patent & Trademark Agents
 595 Burrard Street, P.O. Box 49314
 Suite 2600, Three Bentall Centre
 Vancouver BC V7X 1L3 Canada
 Tel: 604-631-3300 Fax: 604-631-3309

Peter Rubin*

Partner

Dir: 604-631-3315

peter.rubin@blakes.com

*Law Corporation

July 11, 2023

VIA E-MAIL

Reference: 70553/90061

Harper Grey LLP
 Barristers & Solicitors
 3200 – 650 West Georgia Street
 Vancouver, BC V6B 4P7

Attention: John P. Sullivan

Re: *In the Matter of a Plan of Compromise and Arrangement of 0989705 B.C. Ltd., SCBC Action No. S-222758 (the "CCAA Proceedings"); GEC (Richmond) GP Inc., et al. v. Romspen Investment Corporation, SCBC Action No. S-228019 (the "Action")*

Dear Sir:

We write in response to your letter dated July 7, 2023, wherein you enclose an appointment for an examination for discovery and request document production in the Action.

As you have been aware since May 19, 2023, our client's position is that the claims and counterclaims in the Action are required to be determined in the context of the CCAA Proceedings pursuant to a litigation process and timetable set by the court. The scheduling hearing held before Justice Fitzpatrick on May 31, 2023 resulted in a date of August 3 – 4, 2023 being set aside for an application to be brought by our client for this relief.


The notice of application filed on behalf of our client on June 28, 2023, sets out our client's proposal for the conduct of the Action including the procedural steps referenced in your July 7 letter. Accordingly, our client will not be producing a list of documents in the Action or confirming arrangements for the conduct of examinations for discovery pending the outcome of its application.

Yours truly,



Peter Rubin

This is Exhibit "N" referred to in the
affidavit of Barbara Olson
sworn before me at Vancouver
this 26 day of July 2023



A Commissioner for taking Affidavits
within British Columbia

Harper Grey LLP

BARRISTERS & SOLICITORS
 3200 Vancouver Centre • 650 West Georgia Street
 Vancouver BC, Canada V6B 4P7
 Tel. 604 687 0411 • Fax 604 669 9385

JOHN P. SULLIVAN
 DIRECT LINE: 604 895 2859
 jsullivan@harpergrey.com
 www.harpergrey.com

File Number: 154890

July 14, 2023

BY COURIER

Blake Cassels & Graydon LLP
 595 Burrard Street, Ste. 2600,
 Vancouver, B.C. V7X 1L3

Attention: Peter Rubin

Dear Sirs/Mesdames:

Re: GEC (Richmond) GP Inc. et al v. Romspen Investment Corporation;
Supreme Court of British Columbia, Vancouver Registry No. VLC-S-S-228019

We write further to our letter to you of July 7, 2023, which served the appointment for the examination for discovery of Mr. Roitman as a representative of your client by email.

We are now serving it upon you in hard copy, along with the cheque payable to Mr. Roitman for the necessary conduct money under Rule 7-2(13) and Appendix C, Sch.3 of the *Supreme Court Civil Rules*. The conduct money, in the amount of \$1,420.00 has been calculated as follows:

- \$600 Round trip airfare (minimum) - Toronto/Vancouver/Toronto
- \$100 Cab fare (home/TO/YVR/Hotel/YVR/TO/home)
- \$500 Hotel accommodation – 2 nights at \$250/night
- \$45 Mileage allowance(.30/km) – est. 150km @ \$.30km
- \$175 Meal expense

We trust that you will agree that this is an appropriate amount for conduct money but, if there are any issues, please advise without delay.

We also wish to respond to your letter of July 11, 2023. We have set the examination for discovery of Mr. Roitman for September 8, 2023, several weeks after the August 3 – 4, 2023 hearing. The date is about as late as possible given the January trial date, while still more than four weeks after the hearing. As for documents, your position is, with respect, unreasonable. While we disagree with your motion and will be opposing it, your own motion recognizes the need for documentary discovery. Your suggested date for exchanging lists of documents is September 15, 2023 – a date that happens to be one week *after* the last

Harper Grey LLP

Page 2

examination for discovery dates that we suggested in our letter to you of May 29, 2023. With respect, your client's legal obligation is to be working on document disclosure now, and it needs to be providing documents as and when available. We require your list of documents by *no later* than August 25, 2023, which is two weeks before the discovery. That assumes that you will be forwarding to us documents as and when available in the interim.

Yours truly,

HARPER GREY LLP

Per:

John P. Sullivan*

Denotes Personal Law Corporation

JPS/bjo/encs* Appointment; Cheque

