This is the 1st affidavit
of O. Shaporenko in this case
and was made on 16/AUG/2022

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. 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

AFFIDAVIT

I, **OLGA SHAPORENKO**, of 250 Howe Street, 20th Floor, Vancouver, BC, Articled Student, SWEAR (OR AFFIRM) THAT:

1. I am employed by the law firm of Dentons Canada LLP, counsel for the Petitioners, and as such have personal knowledge of the matters herein deposed to.

2. On August 11th and 12th, 2022, I attended the registry at the Vancouver Law Courts at 800 Smithe Street and requested to listen to the hearing for the initial order in these proceedings from April 1, 2022 (the "**Initial Order Hearing**").

3. While listening to the Initial Order Hearing, I transcribed portions of that hearing as well as the reasons for judgment from the Initial Order Hearing.

4. Now produced and shown to me and attached hereto as **Exhibit "A"** are copies of excerpt pages of my notes of that transcription, in particular, the reasons for judgment from the Initial Order Hearing, excluding the reasons for granting a sealing order.

5. Dentons has ordered an official transcript for the Initial Order Hearing, including the reasons (the "**Reasons**") for judgment of Madam Justice Fitzpatrick. While Dentons received the transcript of the Initial Order Hearing proceedings, I understand that the official transcript of the Reasons may not be available in time for the application of the Petitioners in this matter, which is schedule to be heard on August 19, 2022.

SWORN (OR AFFIRMED) BEFORE ME at Vancouver, BC, on 16/AUG/2022.

A Commissioner for taking Affidavits within British Columbia

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OLGA SHAPORENKO

(1)

This is **Exhibit "A"** referred to in the affidavit of O. Shaporenko sworn before me at Vancouver, BC this 16 day of August, 2022.

Emma Newbery

A Commissioner for taking Affidavits
For British Columbia

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(2)

[Transcript prepared from audio recording of the Court Record by Dentons Canada LLP, Olga Shaporenko]

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REASONS FOR JUDGEMENT OF THE HONOURABLE MADAM JUSTICE FITZPATRICK, PRONOUNCED ON APRIL 1, 2022

THE COURT:

1. The matter before me today is an application by the Petitioners to obtain a relief under the *Companies' Creditors Arrangement Act*. And the Petitioners are essentially a limited partnership including the Alderbridge Way GP Ltd. and another company which holds the development property in trust with the subject matter. The major asset of the Petitioners is a development site, a substantial development site, in Richmond that has been under way for some years now.

2. By any measure, the Petitioners are insolvent. Mr. Sandrelli has taken me through the substantial debts that are owing, those include, just very broadly, the first secured creditor Romspen who is owed approximately $176,500,000. The second secured lenders are the group described as 2ML Lenders. They are owed $76,000,000. And the third secured lender is, who [has] placed [a] deposit [that] has been spent with respect to some of the development property is GEC Education City Richmond Limited Partnership, which is owed about $60,000,000. Beyond that there are various liens filed; one of the lienholders is Metro-Can Constriction AT Ltd., who I'll just call Metro-Can, who I am told is owed approximately $16,000,000.

3. The site has been under a financial strain for some years now. Romspen declined to advance any further funds past March of 2020, and there have been various financial supports since that time, which have allowed the site to be maintained. There are, apparently, some significant issues relating to the site, given the shoring [*sic.*] and dewatering efforts that need to be done to secure the site. In any event, as one would expect, this is not an inexpensive exercise simply to maintain the site in its current state.

(3)

4. There have also been some previous restructuring efforts. Mr. Sandrelli on behalf of the Petitioners outlines that there have been efforts made to find construction financing towards strengthening the balance sheet. In April 2021, the Petitioners engaged Alvarez & Marsal for the purpose of assisting in those restructuring efforts; in addition, Cushman's financing arm was also brought with assistance in those efforts. Between June and September 2021, the Petitioners undertook what I would describe as a sales and investment solicitation process that did give rise to one conditional agreement. However, unfortunately, that agreement was terminated in January 2022. Accordingly, from the restructuring point of view, the Petitioners are essentially at the crossroads in terms of finding the means by which to solve their financial difficulties.

5. The overall intentions hoped to be achieved through the CCAA, commonly referred to as the germ of a plan, is to undertake a further SISP to test the market and see whether any third party is interested in coming in as either an equity participant, or to purchase the limited partnership, or to simply purchase the assets. As all counsel in this room know, the SISP anticipates any number of options that may come to pass. But in any event, the overall idea is to undertake this process as soon as possible to obtain a solution, hopefully, as soon as possible.

6. As Romspen's counsel notes quite dramatically, time is money in this situation. And the current burn rate of the secured debt, the three major secured debts, is approximately $3,000,000 a month; not an insignificant amount, by any measure.

7. The Initial Order has, what I would term, the usual provisions, but some more unusual matters are of note. Firstly, it is anticipated that the Monitor would be given the enhanced powers not to direct the affairs of the Petitioners, but rather to undertake the SISP process itself. That makes sense from two major perspectives. First of all, A&M has already been very much involved in the previous SISP process. Secondly, it would remove any elements of conflict, given the cross-interest between various parties, as between the Petitioners and also particularly 2ML Lenders, who are the parties said to be interested in making a credit bid.

8. In addition, the Petitioners are seeking the administration charge of $300,000; there is no objection to this amount. And in my view, that amount is reasonable.

9. In addition, the Petitioners seek D&O charge for protection of $75,000. Mr. Sandrelli advised that there are no current employees, but that is really more of a safeguard to ensure that nothing has been missed in that respect.

10. Next, the Petitioners seek interim financing, and the interim financing aspect, of course, needs to be considered in accordance with the fairly recent amendments to the CCAA, which mandate that the relief granted at this hearing including and relating to the interim financing be only what is reasonably required for the debtors towards the next hearing. This is a bit of an unusual aspect in the sense what I would call the interim comeback hearing is intended to take place on April 11, 2022, given the statutory requirements. Unfortunately, I am not in the country on that date, and accordingly the intention is that the true comeback hearing will be put over 'til April 25, 2022, when I am back sitting in Court and able to hear the more substantive issues that will no doubt arise at that time.

11. The interim financing Order sought is $1,000,000 raised from the 2ML Lenders, a significant portion of that amount, $550,000 is to be directed towards professional fees that is to include the substantial amount to Dentons, the Petitioners' counsel, and also to the Monitor, and, finally, to provide for the

retainers for the three professional firms, namely, the Petitioners' counsel, the Monitor and the Monitor's counsel.

12. In addition, the other larger disbursements anticipated to the week of April 29th include the usual site security, expenses, such as equipment rentals, fence rentals, and dewatering costs, and also a small amount for the professional project management.

13. Finally, the relief sought is also not entirely unusual as it relates to the fact that a stay is sought in relation to the limited partnership itself, which is a party, but obviously is not a company which is intended to be a party directly seeking relief under the CCAA.

14. With respect to the interim financing and the other charges, the intention is that the ranking after the granting of the Order would be: the administration charge, secondly, the D&O charge of $75,000, and then Romspen's security, then behind that would be the interim financing charge for the $1,000,000.

15. The three major secured creditors support the relief, and those are the secured creditors that are collectively owed a substantial amount of money, I think almost $350,000,000. The only opposition that is presented on this application comes from Metro, the general contractor. Mr. Williams argues that the relief is not appropriate, which is, of course, one aspect of the test that is to apply. He refers to the fact that this is simply a big hole in the ground. And I suppose, from the physical point of view it might be an appropriate description. Nevertheless, I accept the submissions of Mr. Sandrelli that the CCAA has been used in the past, and I think can be appropriately used here to allow the Petitioners to fashion a solution that will not simply result in a receivership in respect to this so called hole in the ground.

16. The germ of the plan here, as I said, anticipates that there will be various options to explore in what is undoubtedly a very complex situation. And it is not, for example, a sale of a hole in the ground. That might be something that could be addressed in a more of a receivership application or proceeding.

17. Accordingly, I do not accept that the stage of the development necessarily dictates whether or not the CCAA is appropriate. It seems to me that in this very complex situation, the flexibility of the CCAA, which, of course, we all know is the hallmark, will very much benefit all of the stakeholders involved.

18. Mr. Williams then addresses the amount to be spent through the interim financing, proposed interim financing, in particular, the large amount to be paid to Dentons. And I agree that it is a large amount. Mr. Sandrelli has advised that that amount relates to the substantial work that Dentons has done for the Petitioners not just in the immediate lead up to the CCAA, but with respect to the undoubted substantial efforts that have been made over at least the last two years. And I've already outlined what those have been in terms of extensive and complex discussions between the Petitioners and all of the other stakeholders; the SISP process and all of the other issues that would have arisen in respect of keeping the Petitioners afloat, while they not only kept the CCAA option in [their] back pocket, but also explored other options. And, of course, there are other options, including the development agreement that came to pass through the SISP, but did not ultimately complete.

19. As Mr. Sandrelli also notes, it is anticipated in the Model Order that a reasonable amount relating to the filing time can be appropriately, can be seen as appropriately to be, paid through the CCAA. And I am satisfied that at least the situation here with respect to the amount to be paid to Dentons.

20. Mr. Williams then refers to the D&O charge. He says there is no basis for it, and I agree the Petitioners acknowledge that there are no employees and there do not appear to be any looming charges that would be covered or costs that would be covered under that charge. However, it is in the great scheme of this matter a very small amount. And if there is nothing that comes to pass respective [of] that $75,000 charge, then I do not see that anyone, let alone Metro, is prejudiced in that respect.

21. Mr. Williams then expresses his matter [*sic.*] in the matter of prejudice that Metro might suffer if the Initial Order is granted. He expresses concern that the overall intent of these proceeding is to provide the directors with a third-party release. I am unable to directly answer that issue any further, because I do not know what will come to pass. And I suspect that none of the other parties are directly focused on that issue at least [at] this time. Third-party releases can be a part of the CCAA proceedings in appropriate circumstances and that is judged on the merits of the circumstances.

[*Reasons relating to the Sealing Order omitted...*]

22. Accordingly, I am granting the Initial Order sought. I am satisfied that the statutory requirements have been met to allow me to grant the relief sought. In addition, I am satisfied that the relief that is based on discretion is appropriate, that there is no question that the Petitioners are acting in good faith and with due diligence. I am also particularly satisfied that the stay should be extended to the limited partnership.

23. And again I am also satisfied that the interim financing sought meets the requirement that I already mentioned, namely, that it is reasonably required to see the Petitioners through to the next substantial comeback date on April 25, 2022.