



No. S-222758  
Vancouver Registry

IN THE SUPREME COURT OF BRITISH COLUMBIA

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 LIMITED PARTNERSHIP, AND ALDERBRIDGE WAY GP LTD.

PETITIONERS

### NOTICE OF APPLICATION

**Name of applicant:** Romspen Investment Corporation ("**Romspen**").

To: GEC (Richmond) GP Inc. and Global Education City (Richmond) Limited Partnership.  
(collectively, the "**3MLs**")

0989705 B.C. Ltd., Alderbridge Way GP Ltd., Alderbridge Way Limited Partnership  
(together, the "**CCAA Debtors**").

Gatland Development Corporation, REV Holdings Ltd., REV Investments Inc., South Street  
Development Managers Ltd., South Street (Alderbridge) Limited Partnership, Samuel David  
Hanson, and Brent Taylor Hanson (collectively, the "**CCAA Debtors' Guarantors**").

R Jay Management Ltd., MNB Enterprises Inc., Denis Schwab, Lesley Schwab, and Inland  
Consulting Ltd. (collectively, the "**2MLs**").

TAKE NOTICE that an application will be made by Romspen to the Honourable Justice Fitzpatrick  
at the courthouse at 800 Smithe Street, Vancouver. B.C. on August 3, 2023 and August 4, 2023  
at 10:00 a.m. for the orders set out in Part 1 below.

#### Part 1: ORDERS SOUGHT

1. Romspen seeks a "**Carriage and Case Plan Order**" substantially in the form attached as  
**Schedule "A"** that (a) provides that the claims and counterclaims (the "**Claims**") asserted in  
Supreme Court of British Columbia Action Nos. S-228019, S-231106, 248773, and S-232583 (the

“**Related Actions**”) be determined in the context of these *Companies’ Creditors Arrangement Act*, RSC 1985, c C-36 (“**CCAA**”) proceedings; and (b) establishes a litigation process for the determination of the Claims.

2. Romspen further seeks such additional orders and directions as counsel may advise and this Court finds to be appropriate in the circumstances.

## **Part 2: FACTUAL BASIS**

### ***Background***

3. The CCAA Debtors are the proponents of a high-density, mixed-use construction project in Richmond, British Columbia (the “**Development**”).

4. Romspen, the 2MLs (through their agent 1185678 B.C. Ltd.), and the 3MLs are each (a) lenders to the CCAA Debtors holding secured charges against the Development lands; and, together with the CCAA Debtors and the CCAA Debtors’ Guarantors, (b) parties to the Related Actions.

5. Additionally, pursuant to an Amended and Restated Order of this Court granted on April 25, 2022 (the “**ARIO**”), Romspen and certain of the CCAA Debtors’ Guarantors are the beneficiaries of interim lenders’ charges granted by this Court with respect to interim financing provided to the CCAA Debtors.

6. The priorities of the security interests of Romspen, the 2MLs, and the 3MLs, as against each other, are as follows:

- (a) First, Romspen with respect to “**Romspen Security**” securing principal advances of approximately \$143.6 million plus interest and fees;
- (b) Second, Romspen with respect “**Romspen Interim Financing Charge #2**” (as defined in the Order of this Court granted on May 31, 2023) to a maximum principal amount of \$5.9 million;
- (c) Third, *pari passu*, (i) Romspen (with respect to the “**Romspen Interim Financing Charge**”, as defined in the ARIO) to a maximum principal amount of \$1,650,000, and (ii) Gatland Development Corporation, REV Investments Inc., and South Steet

(Alderbridge) Limited Partnership<sup>1</sup> (with respect to the "Interim Financing Charge", as defined in the ARIO) to a maximum principal amount of \$850,000;

- (d) Fourth, the 2MLs with respect to "**2ML Security**" securing principal advances of approximately \$26 million plus applicable interest and fees; and
- (e) Fifth, the 3MLs with respect to "**3ML Security**" securing deposit amounts in the amount of approximately \$60 million plus applicable interest and fees.

***Commencement of the Related Actions***

7. Each of the Related Actions was commenced after the Filing Date of April 1, 2022, as follows:

Action	Commencement Date	Plaintiff(s) (*Defendant by Counterclaim)	Defendant(s) (*Plaintiff by Counterclaim)
S-228019 (the "3ML Action")	6 October 2022	3MLs*	Romspen*
S-231106 (the "Romspen Action")	15 February 2023	Romspen	CCAA Debtors and CCAA Debtors' Guarantors
S-248773 (the "2ML Action")	24 March 2023	2MLs	Romspen
S-232583 (the "CCAA Debtors' and Guarantors' Action")	28 March 2023	CCAA Debtors and CCAA Debtors' Guarantors	Romspen

8. The Related Actions are in their early procedural stages.

9. In the 3ML Action, the pleadings period closed in December 2022. On March 2, 2023, Romspen filed a notice of trial scheduling the trial of the 3ML Action for nineteen days commencing on January 29, 2024. The parties have not exchanged lists of documents.

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<sup>1</sup> Gatland Development Corporation, REV Investments Inc., and South Steet (Alderbridge) Limited Partnership are three of the seven CCAA Debtors' Guarantors.

10. In the Romspen Action, the CCAA Debtors and CCAA Debtors' Guarantors have yet to file a response to civil claim.

11. In the 2ML Action, Romspen has yet to file a response to civil claim.

12. In the CCAA Debtors' and Gurantors' Action, Romspen has yet to file a response to civil claim.

***Commonality of the Related Actions***

13. The claims and counterclaims asserted in the Related Actions are interrelated and overlap in the following respects, among others:

- (a) each of the parties to the Related Actions has an ownership or security interest in the Development lands and a contractual nexus to the other parties to the Related Actions;
- (b) each of the Related Actions involves claims by or against Romspen and concerns the validity and/or priority of the Romspen Security;
- (c) each of the Related Actions centers on Romspen's rights and obligations under the Credit Agreement;
- (d) it is alleged in each of the 2ML Action, the 3ML Action, and the CCAA Debtors' and Guarantors' Action that Romspen breached its obligations under the Credit Agreement in suspending draws and advances under the Credit Agreement;
- (e) it is alleged in each of the 2ML Action, the 3ML Action, and the CCAA Debtors' and Guarantors' Action that Romspen elected to fund other projects in preference to the Development during the COVID-19 pandemic notwithstanding its alleged obligations to continue to make draws and advances available to the CCAA Debtors for the purpose of funding the Development;
- (f) it is alleged in each of the 2ML Action, the 3ML Action, and the CCAA Debtors' and Guarantors' Action that Romspen's alleged conduct in suspending the CCAA Debtors' access to draws and advances under the Credit Agreement resulted in the CCAA Debtors' liquidity crisis and that each of the 2MLs, the 3MLs, the CCAA

Debtors, and the CCAA Debtors' Guarantors have suffered damages as a result; and

- (g) it is alleged in each of the 2ML Action, the 3ML Action, and the CCAA Debtors' and Guarantors' Action that Romspen's alleged conduct in suspending the CCAA Debtors' access to draws and advances under the Credit Agreement warrants extraordinary relief including the awarding of "aggravated and punitive damages" and the subordination and/or invalidation of the Romspen Security.

14. The commonality of parties, claims, issues, and remedies that interconnect the Related Actions requires them to be adjudicated based on substantially identical factual, legal, and evidentiary grounds.

### **Part 3: LEGAL BASIS**

#### ***Legislation and Principles***

15. Section 20 of the CCAA provides that claims of secured creditors that are disputed by a debtor company are to be determined by the court presiding over the CCAA proceedings on summary application by the company that initiated the CCAA proceedings or the creditor with claims against such company.

#### **CCAA, s. 20.**

16. Additionally, a court presiding over CCAA proceedings has authority under section 11 of the CCAA to order that inter-creditor claims be determined in the context of CCAA proceedings if it is established that, on balance, such determination is likely to further the remedial purpose of the CCAA.

***U.S. Steel Canada Inc. (Re), 2015 ONSC 5103 [Endorsement of Wilson-Siegel J. dated August 13, 2015], paras. 71 – 84; see also U.S. Steel Canada Inc. (Re), 2016 ONCA 662; Century Services Inc. v. Canada (Attorney General), 2010 SCC 60, paras. 60 – 61 and 70.***

17. The determination of inter-creditor claims in the context of CCAA proceedings is consistent with the single proceedings model of resolving insolvency disputes. The single proceedings model favours the enforcement of stakeholder rights through a centralized judicial process. As held by the Supreme Court of Canada, "[t]he single proceeding model is intended to mitigate the

inefficiency and chaos that would result if each stakeholder in an insolvency initiated a separate claim to enforce its rights. In other words, the single proceeding model protects the clear public interest in the expeditious, efficient, and economical clean-up of the aftermath of a financial collapse.”

***Peace River Hydro Partners v. Petrowest Corp.*,  
2022 SCC 41, paras. 54 – 55.**

18. The principle that resolving multiple claims through a centralized judicial process may further the administration of justice is also reflected in the *Supreme Court Civil Rules*, BC Reg 168/2009 (the “**Rules**”). Specifically, Rule 22-5(8) provides that “[p]roceedings may be consolidated at any time by order of the court or may be ordered to be tried at the same time or on the same day.”

***Rules, R. 22-5(8).***

19. Applicants seeking an order under Rule 22-5(8) must establish that (a) the proceedings sought to be consolidated and/or tried at the same time involve common claims, disputes and relationships as determined upon review of the pleadings; and (b) the proceedings are so interwoven as to make separate trials at different times before different judges undesirable and fraught with problems and expense.

***Raymond James Investment Counsel Ltd. v  
Clyne*, 2018 BCSC 720, para. 36.**

20. Factors considered by the court in assessing whether claims are “interwoven” to the extent that an order of consolidation and/or joint determination is appropriate include whether:

- (a) consolidation would create savings in pre-trial procedures;
- (b) consolidation would result in a real reduction in trial time;
- (c) consolidation would not result in serious inconvenience to a party having a marginal interest;
- (d) consolidation would result in savings in expert time and fees;
- (e) one proceeding is at a more advanced stage than the other;

- (f) an order will result in delay of a trial and if so, whether anyone would be prejudiced;
- (g) there is risk of inconsistent findings on identical issues; and
- (h) one party will be deprived of the right to trial by jury.

***Raymond James Investment, supra, para. 36.***

21. Romspen is not seeking to formally consolidate the Related Actions. When an applicant like Romspen is only seeking to join actions, as opposed to consolidating them, it does not need to prove that the commonality in issues means that the disposition of one action will necessarily dispose of the issues in the other. This court has described the applicable test in such circumstances as asking: "will the order makes sense in the circumstances?"

***Raymond James Investment, supra, paras. 39-40.***

***The Carriage and Case Plan Order is Appropriate in the Circumstances***

22. In determining whether the Related Actions ought to be determined within the context of these CCAA proceedings, as provided for in the proposed Carriage and Case Plan Order, it is significant that:

- (a) the Romspen Action concerns claims against the CCAA Debtors that are disputed and, as such, is required by section 20 of the CCAA to be determined by this Court on summary application in these CCAA proceedings by Romspen or the CCAA Debtors;
- (b) the CCAA Debtors' and Guarantors' Action is in substance a crossclaim to the Romspen Action that disputes the quantum and secured status of the claims asserted by Romspen in the Romspen Action;
- (c) the 2MLs do not oppose this Court's granting of an order providing that the Claims asserted in the Related Actions be determined by this Court in the context of these CCAA proceedings, but do reserve their rights as to the terms of the litigation process for the determination of the Claims; and

**Affidavit #1 of Joanne Austen, sworn June 28,  
2023 at Exhibit D. [Austen Affidavit]**

- (d) the 3MLs do not oppose having the Related Actions being jointly case managed, but rather take the position that proceeding with the 3ML Action outside of the CCAA is required to ensure the “full panoply” of procedural rights associated with the conduct of an action under the Rules, including documentary and oral discovery.

**Austen Affidavit at Exhibit B.**

23. In this context, having regard the nature and procedural status of the Related Actions, the Carriage and Case Plan Order makes abundant sense for the following reasons, among others:

- (a) the Claims asserted in the Romspen Action and the CCAA Debtors’ and Guarantors’ Action must by their nature, and the operation of section 20 of the CCAA, be determined in the context of these CCAA proceedings. Attempting to try these actions separately, if possible at all, would be undesirable and fraught with procedural problems and added expense for the parties including the CCAA Debtors;
- (b) the Claims asserted in the Romspen Action and CCAA Debtors’ and Guarantors’ Action share a commonality of facts, claims, and issues with the 2ML Action and 3ML Action;
- (c) the commonality of parties, claims, issues, and remedies among the Related Actions means that they will each necessarily be required to be determined based on substantially similar factual, legal, and evidentiary grounds. In other words, the documents and witnesses in the Related Actions will overlap substantially, as will the legal, evidentiary, and any expert analysis that will be required to determine the Claims;
- (d) adjudicating the Related Actions together under the auspices of the CCAA will (i) allow for a more expeditious process based on the dynamic of the related CCAA process in which the parties to the Related Actions are the primary stakeholders; (ii) create savings in pre-trial procedures; (iii) further the objective of judicial economy; and (iv) avoid the real risk of inconsistent findings on substantially identical factual and legal matters.



- (e) the Related Actions are each in their early procedural stages and no action is materially more advanced than any other;
- (f) the granting of the Carriage and Case Plan Order will not necessarily delay the trial of any of the Related Actions, and to the extent that any procedural delay is caused, the resulting prejudice will be outweighed by the procedural benefits associated with the Carriage and Case Plan Order;
- (g) the litigation process established by the Carriage and Case Plan Order substantially reflects the normal litigation process contemplated by the Rules, including (i) an exchange of pleadings where required, (ii) document production and discovery, and (iii) the right to pre-trial applications, thereby preserving the “full panoply” of procedural rights than an action entails; and
- (h) no party to the Related Actions would either be prejudiced or gain any tactical advantage given the procedural approach provided for by the Carriage and Case Plan Order.

24. In addition to the foregoing, the Carriage and Case Plan Order will further the remedial purpose of these CCAA proceedings by, among other things, establishing a centralized judicial process for the expeditious, efficient, and economical adjudication of the Related Actions, each of which arose in the context and because of the CCAA Debtors' insolvency.

25. Among other things, the adjudication of the Related Actions in the context of these CCAA proceedings would likely assist this Court in addressing issues that may arise with respect to (a) the terms of any revitalized sales process including the appropriateness of lender consent and approval rights, (b) the appropriateness and timing of any final or interim distributions of proceeds of sale including under a potential distribution plan, and (c) other matters for which certainty as to the priority of creditors and the identity of the “fulcrum” creditor may be of significance to the conduct of these CCAA proceedings is important.

#### **Part 4: MATERIAL TO BE RELIED ON**

26. The applicant will rely upon:

- (a) the pleadings filed in SCBC Action No. S-228019 including the notice of civil claim filed October 6, 2022, the response to civil claim filed November 18, 2022,

counterclaim filed November 18, 2022, and response to counterclaim filed December 13, 2022;

- (b) the pleadings filed in SCBC Action No. S-231106 including the notice of civil claim filed February 15, 2023;
- (c) the pleadings filed in SCBC Action No. 248773 including the notice of civil claim filed March 24, 2023;
- (d) the pleadings filed in SCBC Action No. S-232583 including the notice of civil claim filed March 28, 2023; and
- (e) Affidavit #1 of Joanne Austen, sworn June 28, 2023.

27. The applicant will further rely upon such additional materials as counsel may advise and this Court allows.

The applicant estimates that the application will take two days.

This matter is not within the jurisdiction of a master. Justice Fitzpatrick is seized of this matter.

**TO THE PERSONS RECEIVING THIS NOTICE OF APPLICATION:** If you wish to respond to this notice of application, you must, within 5 business days after service of this notice of application or, if this application is brought under Rule 9-7, within 8 business days after service of this notice of application,

- (a) file an application response in Form 33,
- (b) file the original of every affidavit, and of every other document, that
  - (i) you intend to refer to at the hearing of this application, and
  - (ii) has not already been filed in the proceeding, and
- (c) serve on the applicant 2 copies of the following, and on every other party of record one copy of the following:
  - (i) a copy of the filed application response;
  - (ii) a copy of each of the filed affidavits and other documents that you intend to refer to at the hearing of this application and that has not already been served on that person;
  - (iii) if this application is brought under Rule 9-7, any notice that you are required to give under Rule 9-7(9).

Date: June 28, 2023



Signature of Peter L. Rubin / Peter Bychawski  
Lawyers for Romspen Investment Corporation

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To be completed by the court only:	
Order made	
<input type="checkbox"/>	in the terms requested in paragraphs ..... of Part 1 of this notice of application
<input type="checkbox"/>	with the following variations and additional terms:
	_____
	_____
	_____
Date: _____	Signature of <input type="checkbox"/> Judge <input type="checkbox"/> Master

## APPENDIX

### THIS APPLICATION INVOLVES THE FOLLOWING:

- discovery: comply with demand for documents
- discovery: production of additional documents
- extend oral discovery
- other matter concerning oral discovery
- amend pleadings
- add/change parties
- summary judgment
- summary trial
- service
- mediation
- adjournments
- proceedings at trial
- case plan orders: amend
- case plan orders: other
- experts



<b>Procedural Step</b>	<b>Completion Date</b>
Filing of responses to notices of civil claim and counterclaims, if any.	By no later than August 11, 2023.
Filing of replies, if any, and responses to counterclaims, if any.	By no later than August 25, 2023.
Delivery of lists of documents in accordance with Rule 7-1.	By no later than September 15, 2023.
Delivery of demands for required or additional documents under Rules 7-1(10) or 7-1(11), if any.	By no later than October 6, 2023.
Response to demands for documents under Rule 7-1(12), if any.	By no later than October 20, 2023.
Filing of applications for production of documents under Rule 7-1(13), if any.	By no later than October 31, 2023.
Hearing of Rule 7-1(13) applications, if any.	By no later than November 30, 2023.
Examinations for discovery.	By no later than December 31, 2023.
Case planning conference.	January [____], 2024.

4. Nothing in this order abrogates the right of any party to the Related Actions to file such other interlocutory applications in the CCAA proceedings in connection with the Related Actions as are permissible under the Rules or the CCAA.

5. The parties to the Related Actions may from time to time apply to this Court for directions with respect to the conduct of the Related Actions.

6. Endorsement of this Order by counsel appearing on this application is hereby dispensed with.

THE FOLLOWING PARTIES APPROVE THE FORM OF THIS ORDER AND CONSENT TO EACH OF THE ORDERS, IF ANY, THAT ARE INDICATED ABOVE AS BEING BY CONSENT:

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Signature of Peter L. Rubin / Peter Bychawski  
Lawyer for Romspen Investment Corporation

BY THE COURT.

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Registrar

**SCHEDULE "A"**

<b>Counsel</b>	<b>Party</b>



No. S-222758  
Vancouver Registry

IN THE SUPREME COURT  
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BRITISH COLUMBIA

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THE MATTER OF THE COMPANIES' CREDITORS  
ARRANGEMENT ACT,  
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IN THE MATTER OF A PLAN OF COMPROMISE AND  
ARRANGEMENT OF 0989705 B.C. LTD.,  
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ALDERBRIDGE WAY GP LTD.

PETITIONERS

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**ORDER MADE AFTER APPLICATION  
(CARRIAGE AND CASE PLAN ORDER)**

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