

Clerk's Stamp:

ESTATE NUMBER 25-2802560

COURT COURT OF QUEEN'S BENCH OF ALBERTA

JUDICIAL CENTRE CALGARY

MATTER IN THE MATTER OF THE *BANKRUPTCY AND INSOLVENCY ACT*, RSC 1985, C B-3, AS AMENDED

AND IN THE MATTER OF THE NOTICE OF INTENTION TO MAKE A PROPOSAL OF VERTEX DOWNHOLE LTD.

DOCUMENT **Bench Brief of the Applicant**

ADDRESS FOR SERVICE AND CONTACT INFORMATION OF PARTIES FILING THIS DOCUMENT

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**APPLICATION BEFORE JUSTICE M.E. BURNS
APRIL 14, 2022 AT 2:00 PM ON THE COMMERCIAL LIST**

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I. INTRODUCTION

1. This is the Bench Brief of the Applicant, Vertex Downhole Ltd. ("**Vertex**" or the "**Applicant**") in support of its application (the "**Application**") seeking Orders, among other things:

- (a) pursuant to section 50.4(9) of the *Bankruptcy and Insolvency Act*, RSC 1985, c B-3, as amended (the "**BIA**"),¹ extending the period of time within which Vertex is required to file a proposal (the "**Proposal**") to its creditors (the "**Proposal Period**") up to and including May 30, 2022 (the "**Stay Extension**").

II. BACKGROUND

2. On February 4, 2022, Vertex filed a Notice of Intention to Make a Proposal (the "**NOI**") pursuant to section 50.4(1) of the *BIA*,² with the Office of the Superintendent of Bankruptcy.

3. Vertex is a Canadian Controlled Private Corporation, incorporated pursuant to the laws of the Province of Alberta with its registered office located in Calgary, Alberta. Vertex is the parent entity of a group of vertically-held Delaware corporations (collectively, the "**Vertex Group**").

4. Vertex, as part of the Vertex Group, is an integrated oil and gas service company with a product base uniquely designed to support downhole drilling.

5. HSBC Bank of Canada ("**HSBC**") is Vertex's senior-secured creditor. As of the date of the filing of the NOI, Vertex's books and records indicated that it owes HSBC approximately \$8,519,828.³

6. On March 4, 2022, by Order granted by Justice K.M. Horner, Vertex received a stay extension that extended the stay of proceedings to April 18, 2022 (the "**First Stay Extension**").

7. Since the date of the First Stay Extension, Vertex has pursued numerous activities with a view to advancing the proceedings, restructuring its affairs, and working towards its goal of presenting a Proposal. These steps have included, but are not limited to:

¹ *Bankruptcy and Insolvency Act*, RSC 1985, c B-3, as amended ("**BIA**") at s. 50.4(9) [**Authorities, Tab 1**]

² *BIA* at s.50.4(1) [**Authorities, Tab 1**].

³ Affidavit No. 2 of Craig Flint ("**Affidavit No.2**"), at para 13.

- (a) preparing and analyzing a list of creditors and identifying issues specific to certain creditors;
- (b) providing MNP Ltd. in its capacity as the proposal trustee of Vertex (the "**Proposal Trustee**") with access to Vertex's books and records;
- (c) collaborating with the Proposal Trustee to implement the Sales and Investment Solicitation Process (the "**SISP**"), which has included assisting the Proposal Trustee with the preparation of the SISP teaser documentation, confidential information memorandum, confidentiality agreement, letter of intent, and other SISP related matters;
- (d) preparing an Asset Sale Agreement, with the assistance of Vertex's counsel, the Proposal Trustee, and the Proposal Trustee's counsel, to be posted in the SISP data room;
- (e) continuing to work with its counsel, its Proposal Trustee and the Proposal Trustee's counsel generally, and in particular with respect to:
 - (i) exploring and considering the various exit strategies available to Vertex in the context of these proceedings, including the structure and financing of any Proposal; and
 - (ii) preparing cash flow projections and identifying issues with respect to Vertex's financial conditions; and
- (f) continuing to communicate and engage with stakeholders, including HSBC, employees, contractors, and vendors;
- (g) continuing to make sales and carry on business in the normal course, in the circumstances; and

- (h) continuing to review its operating expenses, pursuing the collection of accounts receivable, and taking steps to ensure Vertex remains financial viable without recourse to interim financing during the NOI Proceedings.⁴

III. FACTS

8. The facts in support of Vertex's Application are set forth in Affidavit No. 2 of Craig Flint, sworn April 4, 2022 ("**Affidavit No. 2**"). Capitalized terms not otherwise defined herein have the meaning set forth in Affidavit No.2., Vertex's Application, or the First Report of the Proposal Trustee.

A. Stay Extension

9. The First Stay Extension is set to expire on April 18, 2022. Vertex is seeking the Stay Extension be extended for 45 days to May 30, 2022, which would provide it with the time needed to, among other things:

- (a) restructure its business and affairs, and pursue strategic alternatives;
- (b) continue the implementation of the SISP, which is anticipated to include reaching the Phase 1 bid deadline of April 21, 2022, and thereafter potentially advancing to Phase 2 of the SISP;⁵ and
- (c) continue operations and generate revenue.

10. The Stay Extension is critical to Vertex's ability to preserve and enhance the value of Vertex's business, for the benefit of all of Vertex's creditors.

IV. ISSUES

11. This Bench Brief addresses the following issue at the Application, namely whether this Honourable Court should grant the Stay Extension.

⁴ Affidavit No. 2, at para 13.

⁵ Affidavit No. 2, at para 14.

V. LAW AND ARGUMENT

A. Stay Extension

12. Pursuant to section 50.4(9) of the *BIA*, before the expiry of a stay extension, a debtor in a proposal proceeding may apply to the court for an order to further extend the time to file a proposal by a maximum of 45 days and the court may extend the time if it is satisfied that:

- (a) the insolvent person has acted, and is acting, in good faith and with due diligence;
- (b) the insolvent person would likely be able to make a viable proposal if the extension being applied for were granted; and
- (c) no creditor would be materially prejudiced if the extension being applied for were granted.

13. The insolvent debtor bears the onus to prove that it satisfies all three elements under section 50.4(9).⁶ Where the section 50.4(9) prerequisites have been met, the court have the authority to grant stay extensions.⁷

14. The first element of the section 50.4(9) test is whether the insolvent debtor has acted in good faith and with due diligence. In *Convergix*, Justice Glennie found the following actions by the insolvent debtor to demonstrate good faith and diligence:

I am satisfied that the Insolvent Corporations' actions demonstrate good faith and diligence. These actions include the following:

- (a) The Insolvent Corporations have retained the professional service of Grant Thornton Limited to assist them in their restructuring;
- (b) The Insolvent Corporations have completed a business plan;
- (c) The Insolvent Corporations are diligently working on the Restructuring;

⁶ *H&H Fisheries Ltd., Re*, 2005 NSSC 346 ("*H&H Fisheries*"), at para 12 [Authorities, Tab 2].

⁷ *Colossus Minerals Inc., Re*, 2014 ONSC 514 ("*Colossus Minerals*"), at para 38 [Authorities, Tab 3].

- (d) Since the filing of the five Notices of Intention to Make a Proposal, representatives of the Insolvent Corporations and Grant Thornton Limited have met with the representatives of ACOA, the principal outside creditor of the insolvent Corporations, to advise them of these proceedings; and
- (e) Representatives of the Insolvent Corporations have met with outside investors.⁸

15. The second element under the stay extension test is whether the insolvent debtor can show that it is likely able to make a viable proposal if the stay extension is granted. In *Cantrail Coach*, Master Groves held that a proposal that has not been formulated constituted a viable proposal on the basis of the insolvent debtor's good faith actions. Master Groves commented on the meaning of a viable proposal as follows:

I note the words in the legislation are "a viable proposal". According to the *Concise Oxford Dictionary* viable means feasible. Viable also means practicable from an economic standpoint.

I am impressed thus far with the efforts of Cantrail and with the efforts of the trustee, Patty Wood, in trying to get this matter resolved. I am satisfied that the insolvent company, in my view, would likely be able to make a viable proposal, a proposal that is at least feasible, a proposal that would be practicable from an economic standpoint, I the extension being applied for were granted.⁹

16. The third and final aspect of the test is whether there is any creditor who would suffer material prejudice as a result of the grant of a stay extension. To the extent that the *BIA* contemplates prejudice to the creditors, Justice Goodfellow in *H&H Fisheries* laid down the threshold of the material prejudice element within section 50.4(9)(c) to be of a degree that raises significant concern to a level that it would be unreasonable for a creditor or creditors to accept. Similarly, Master Groves held in *Cantrail Coach* that the creditor must be substantially or considerably prejudiced if the extension being applied for is granted.¹⁰ In *Cantrail Coach*, the Court granted a stay extension where there was no evidence of substantial prejudice or considerable prejudice and the other elements under section 50.4(9) were established.

⁸ *Convergix Inc., Re*, 2006 NBBR 288, at para 39 [**Authorities, Tab 4**].

⁹ *Cantrail Coach Lines Ltd., Re*, 2005 BCSC 351 ("*Cantrail Coach*"), at paras 19 and 20 [**Authorities, Tab 5**].

¹⁰ *Cantrail Coach*, at para 21 [**Authorities, Tab 5**].

17. Vertex respectfully submits that the Stay Extension ought to be approved for, among others, the following reasons:

- (a) Vertex has acted and is continuing to act in good faith and with due diligence and has engaged with the Proposal Trustee and its stakeholders, including HSBC;
- (b) Vertex will likely be able to make a viable proposal if the Stay Extension is granted. Since the First Stay Extension, Vertex has diligently worked on the restructuring of its affairs and the implementation of a SISP towards presenting a viable proposal;
- (c) there is no evidence that creditors will be materially prejudiced if the Stay Extension is granted. Further, both the Proposal Trustee and HSBC support the Stay Extension;
- (d) the Stay Extension is required to allow Vertex to continue the restructuring of its business and affairs and pursue strategic alternatives;
- (e) the Stay Extension is necessary for Vertex to continue to implement the SISP, which is anticipated to reach the Phase 1 bid deadline of April 21, 2022, and thereafter potentially advance to Phase 2 of the SISP; and
- (f) without the Stay Extension, Vertex will have no ability to make a viable proposal to its creditors and will become bankrupt to the detriment of its stakeholders.

18. In order to continue the restructuring of its business and affairs and work towards making a viable proposal to its creditors, Vertex respectfully submits that this Honourable Court should exercise its discretion to grant the Stay Extension.

VI. CONCLUSION

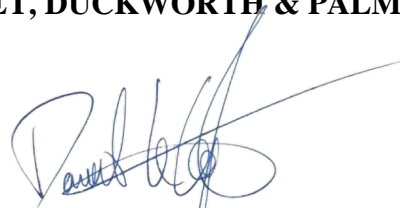
19. For the reasons above, Vertex respectfully requests this Honourable Court:

- (a) grant the Stay Extension; and

- (b) grant such other ancillary relief as may be sought by Vertex at the hearing of the Application.

ALL OF WHICH IS RESPECTFULLY SUBMITTED THIS 4TH DAY OF APRIL, 2022

BURNET, DUCKWORTH & PALMER LLP



Per:

David LeGeyt / Ryan Algar
Solicitors for Vertex Downhole Ltd.

TABLE OF AUTHORITIES

TAB	DOCUMENT
1.	<u><i>Bankruptcy and Insolvency Act, RSC 1985, c B-3</i></u>
2.	<u><i>H&H Fisheries Ltd., Re, 2005 NSSC 346</i></u>
3.	<u><i>Colossus Minerals Inc., Re, 2014 ONSC 514</i></u>
4.	<u><i>Convergix Inc., Re, 2006 NBBR 288</i></u>
5.	<u><i>Cantrail Coach Lines Ltd., Re, 2005 BCSC 351</i></u>