

Clerk's Stamp

COURT FILE NUMBER	2003 06728
COURT	COURT OF QUEEN'S BENCH OF ALBERTA
JUDICIAL CENTRE	EDMONTON
PLAINTIFFS (DEFENDANTS BY COUNTERCLAIM)	ROMSPEN MORTGAGE LIMITED PARTNERSHIP and ROMSPEN INVESTMENT CORPORATION
DEFENDANTS (PLAINTIFFS BY COUNTERCLAIM)	3443 ZEN GARDEN LIMITED PARTNERSHIP, LOT 11 GP LTD, LOT 11 LIMITED PARTNERSHIP, ECO-INDUSTRIAL BUSINESS PARK INC, ABSOLUTE ENVIRONMENTAL WASTE MANAGEMENT INC and DANIEL ALEXANDER WHITE
PLAINTIFFS BY COUNTERCLAIM	3443 ZEN GARDEN LIMITED PARTNERSHIP, LOT 11 GP LTD, LOT 11 LIMITED PARTNERSHIP, ECO-INDUSTRIAL BUSINESS PARK INC, ABSOLUTE ENVIRONMENTAL WASTE MANAGEMENT INC and DANIEL ALEXANDER WHITE
DEFENDANTS BY COUNTERCLAIM	ROMSPEN MORTGAGE LIMITED PARTNERSHIP, ROMSPEN INVESTMENT CORPORATION, RICHARD WELDON and WESLEY ROITMAN
COURT FILE NUMBER	1903 21473
COURT	COURT OF QUEEN'S BENCH OF ALBERTA
JUDICIAL CENTRE	EDMONTON
PLAINTIFFS	LOT 11 LIMITED PARTNERSHIP by its general partner LOT 11 GP LTD, ECO-INDUSTRIAL BUSINESS PARK INC, ABSOLUTE ENERGY RESOURCES INC, ABSOLUTE ENVIRONMENTAL WASTE MANAGEMENT INC and DANIEL ALEXANDER WHITE
DEFENDANT	ROMSPEN INVESTMENT CORPORATION

DOCUMENT

ADJOURNMENT APPLICATION BY LOT 11 LIMITED PARTNERSHIP by its general partner LOT 11 GP LTD, ECO-INDUSTRIAL BUSINESS PARK INC, ABSOLUTE ENERGY RESOURCES INC, ABSOLUTE ENVIRONMENTAL WASTE MANAGEMENT INC and DANIEL ALEXANDER WHITE

ADDRESS FOR SERVICE AND CONTACT INFORMATION OF PARTY FILING THIS DOCUMENT

ROBERTS O'KELLY LAW
Attention: Sharon Roberts, Bohdan Kruk
403, 10113 104 Street NW
Edmonton, AB T5J 1A1
Phone: 780 760 6752 Fax: 780 669 6752
Email: sharon@robertsokelly.com;
bo@robertsokelly.com
File: 66-001

NOTICE TO RESPONDENTS:

**Romspen Investment Corporation
Romspen Mortgage Limited Partnership
Richard Weldon
Wesley Roitman**

AND TO:

MNP Ltd., in its capacity as Court-appointed Receiver-Manager of the corporate Applicants

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

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

Date: February 1, 2023
Time: 10:00 a.m.
Where: Edmonton (VIA WEBEX – [Virtual Courtroom 86](#))
Before Whom: The Honourable Justice Kevin Feth

Go to the end of this document to see what else you can do and when you must do it.

Remedy claimed or sought:

1. An Order:

- (a) Adjourning the Second Amended Application by the Plaintiffs to Declare Debt Owing ("**Romspen Application**");
- (b) Granting the Applicants adequate opportunity to respond to the substantive, non-declaratory relief now sought by the Respondents, Romspen Investment Corporation and Romspen Mortgage Limited Partnership (together, "**Romspen**");
- (c) Directing that further amendments, if any, to the Romspen Application require leave of the Court, including where applicable with the prior express consent of the Applicants and/or MNP Ltd., in its capacity as Receiver-

Manager / Trustee in Bankruptcy of the corporate Applicants, Lot 11 Limited Partnership, Lot 11 GP Ltd., Eco-Industrial Business Park Inc., Absolute Energy Resources Inc, Absolute Environmental Waste Management Inc;

- (d) If, and to the extent necessary, granting Daniel Alexander White (“**White**”), permission to advance this application on behalf of:
- i. The corporate Applicants, being guarantors of the alleged debt that forms the subject matter of the Romspen Application, notwithstanding their being the subject of a Receivership Order;
 - ii. Eco-Industrial Business Park Inc. (“**Eco**”) notwithstanding the appointment by MNP Ltd., in its capacity as Court-appointed Receiver-Manager of the Eco and the other corporate applicants (without actual notice to White) of MNP Ltd. as Trustee in Bankruptcy of Eco;
- (e) Directing that no costs be awarded against the Applicants in relation to the adjournment and/or in the alternative, awarding them costs of this Application;
- (f) Granting such further and other relief as may be sought and granted.

Grounds for making this application

1. The Applicant, White is an Alberta resident and businessperson.
2. White is currently the sole registered director of the corporate Applicants, Lot 11 Limited Partnership, Lot 11 GP Ltd., Eco, Absolute Energy Resources Inc., and Absolute Environmental Waste Management Inc. Of those corporate Applicants, Eco is the subject of an assignment into bankruptcy by MNP Ltd. in its capacity as Court-appointed Receiver-Manager of all of the corporate Applicants.
3. White and each of the corporate Applicants are guarantors of the loan agreement between Romspen and 3443 Zen Garden, LLC, a Texas corporation (“**Zen Loan**”).
4. Romspen seeks novel and substantive relief, and not merely declaratory relief, in the second amendment to the Romspen Application. Indeed, the relief sought is enforcement of a debt claim estimated at almost \$100 million, the precise amount of which is not presently before the Court.
5. Pending determination of outstanding Motions to Dismiss in the United States District Court for the Western District of Texas (Austin Division) (the “**Austin Court**”) brought by Romspen and two other parties, Romspen and the Applicants, through their respective counsel, had a counsel agreement to limit evidence in the cross applications then scheduled to be heard on January 31 and February 1, 2023 to a period of time preceding the execution of documents that have been characterized as the “Zen Garden Loan” or “Zen Loan”, in and around April 2018. This limitation of evidence and argument was made by consent, with a view to the

efficient and economical use of party and judicial resources; it was also made, expressly, without prejudice to either set of parties' rights to address Zen Loan-era evidence and argument, depending on evolving events and any decision of this Honourable Court.

6. Late on Tuesday, January 17, 2023, two Orders were issued by the United States District Court for the Western District of Texas (Austin Division) (the "**Pitman Orders**").
7. Early morning on January 19, 2023, the Applicants advised counsel for Romspen and MNP Ltd. respectively, of their intention to adjourn *sine die* an Application for a stay and/or variance of sale powers added on contested application to the original Receivership Order granted in the two within Actions, among other relief ("Stay Application"). With consent of Romspen and MNP Ltd., the Applicants also notified the Court of the *sine die* adjournment of the Stay Application and agreement among counsel for the parties as to a revision to their proposed order of Applications to be heard January 31 and February 1, 2023.
8. On the morning of January 19, 2023, the Applicants conducted a limited questioning on expert opinion of a U.S. bankruptcy attorney, John J. Kane. Mr. Kane's opinion was dated and had been issued on November 15, 2022 in support of a predecessor amended version of the Romspen Application for declaratory relief.
9. At Mr. Kane's questioning under the predecessor Romspen Application, Romspen purported to conduct as "redirect" a direct examination for the purpose of eliciting novel opinion evidence about the two Pitman Orders. Applicants' counsel objected, on record, and maintained that the examination was not proper "redirect".
10. On January 23, 2023, Romspen served their Third Supplemental Brief in support of what continued to be described as an application for a "declaration of indebtedness" and the second amended version of the Romspen Application also served late on January 19, 2023.
11. During the submissions of counsel for Romspen at the hearing of the second amended Romspen Application on January 31, 2023 it was acknowledged in response to questions from the Court that the relief now sought by Romspen is not merely declaratory, but an Order to the effect that the Applicants, who are each Guarantors under the Zen Loan, have no defences to enforcement of the "debt" that Romspen seeks to have declared under the Romspen Application.
12. There has never been any hearing or substantive determination on merits and evidence of the Applicants' Counterclaim or Defence to Counterclaim.
13. The relief now sought by Romspen mirrors its relief in the Statement of Claim, not mere declaratory relief, while Romspen also seeks to deprive the Applicants, as guarantors, of any defences.
14. Accordingly, the Applicants seek time and reasonable opportunity to tender

evidence excluded by counsel agreement and/or in the interests of efficiency and economy of court and party resources, pending determinations in the Austin Court. Such relief is sought, *inter alia*, to ensure a determination of any application to deny them defences and/or any procedural or substantive rights as guarantors is made on a complete record.

15. The rule of law principles of fair process and natural justice, and the legislated requirement for consideration of the effect of steps taken on all interested parties in a receivership and/or bankruptcy militate in favour of the relief sought.
16. Moreover, in all of the circumstances, it is just and equitable for the relief sought to be granted and the relief sought is within the inherent jurisdiction of this Honourable Court, as well as in general principles set out in the *Bankruptcy and Insolvency Act* to ensure commercial reasonableness and just consideration of the effects on all interested parties, including debtors and their guarantors.
17. Such further and other grounds as counsel may advise and the Court may admit.

Material or evidence to be relied upon:

1. Pleadings and other materials filed in the within Actions.
2. Such further materials as counsel may tender and the Court may admit.

Applicable rules:

1. Rules 1.2, 1.3, 1.4, particularly 1.4(2), 1.5, Part 6, 10.29-10.31 and such other rules as counsel may advise.

Applicable Acts and regulations:

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

Any irregularity complained of or objection relied on:

1. N/A

How the application is proposed to be heard or considered:

1. Via Webex, before the Honourable Justice Feth.

WARNING

If you do not come to Court either in person or by your lawyer, the Court may give the applicant(s) what they want in your absence. You will be bound by any order that the Court makes. If you want to take part in this application, you or your lawyer must attend in Court on the date and at the time shown at the beginning of the form. If you intend to give evidence in response to the application, you must reply by filing an affidavit or other evidence with the Court and serving a copy of that affidavit or other evidence on the applicant(s) a reasonable time before the application is to be heard or considered.