

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

COURT FILE NUMBER 24-2806171

COURT COURT OF QUEEN'S BENCH OF ALBERTA

JUDICIAL CENTRE EDMONTON

IN THE MATTER OF THE BANKRUPTCY OF ECO-INDUSTRIAL BUSINESS PARK INC.

APPLICANT (RESPONDENT) MNP LTD., in its capacity as the TRUSTEE IN BANKRUPTCY OF ECO-INDUSTRIAL BUSINESS PARK INC., and not in its personal capacity

RESPONDENT (APPLICANT) SYMMETRY ASSET MANAGEMENT INC.

DOCUMENT **APPLICATION BY DANIEL ALEXANDER WHITE, DAN WHITE FAMILY TRUST and SYMMETRY ASSET MANAGEMENT INC.**

ADDRESS FOR SERVICE AND CONTACT INFORMATION OF PARTY FILING THIS DOCUMENT
ROBERTS O'KELLY LAW
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File: 66-001

NOTICE TO RESPONDENTS: MNP Ltd., in its capacity as Receiver and Trustee and Bankruptcy, Romspen Investment Corporation and Romspen Mortgage Limited Partnership

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: September 21 and 22, 2022
Time: 10:00 a.m.
Where: Edmonton (VIA WEBEX – Virtual Courtroom ____)
Before Whom: The Honourable Justice K.S. 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 granting a stay or variance of the Receivership Order as it pertains to sale powers, until a determination is issued in extant litigation in Austin, Texas styled as *White et al v Romspen Investment Corp., et al.*, Case No. 1:21-CV-00517-RP.
2. Further, or in the alternative, a stay of sale powers of the Receiver until a determination on the merits of any alleged default and quantum of debt owing, if any, is made.
3. Further, or in the alternative, if this Court determines that there is an issue of *forum conveniens* requiring determination, a stay or variance of the sale powers, until a determination on the merits on the forum issue is made by a court of competent jurisdiction.
4. For greater particularity, the Applicant Daniel Alexander White (“**White**”) in his personal capacity and as trustee of Dan White Family Trust (“**White Trust**”), seeks an Order staying all steps pertaining to a sale and investment solicitation process

for the assets of Lot 11 Limited Partnership, Lot 11 GP Ltd., Eco-Industrial Business Park Inc., Absolute Energy Resources Inc., and Absolute Environmental Waste Management Inc. (collectively, the “**White AB Entities**”).

5. Adjourning *sine die* the Application filed August 9, 2022 by Romspen Investment Corporation and Romspen Mortgage Limited Partnership (collectively, “**Romspen**”), to declare debt alleged to be owing and to direct a stalking horse, credit bid process in a sale of White AB Entities’ assets (the “**Romspen Application**”), made returnable September 21 and 22, 2022.
6. Staying any further or other steps by the Trustee in Bankruptcy, MNP Ltd., in Bankruptcy File 24-2806171 (the “**Bankruptcy Action**”) granted by Order of Justice K.S. Feth filed March 9, 2022 in Court of Queen’s Bench Actions 2003 06728 and 1903 21473 (the “**Bankruptcy Order**”) for the conversion, sale, or liquidation of assets of the estate of Eco-Industrial Business Park Inc. (“**Eco-Industrial**”) and/or for acquisition of assets of the Applicant, Symmetry Asset Management Inc. (“**Symmetry**”).
7. Costs of this Application.
8. 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. White is currently the sole trustee of the Applicant, White Trust and sole director of the White AB Entities prior to the granting of the Receivership Order.
2. White is also a personal guarantor of the alleged debt claim alleged by Romspen in the Romspen Application and relied upon by MNP Ltd. in its capacities as court-appointed Receiver and Trustee in Bankruptcy in all steps taken by it in the three above referenced Queen’s Bench proceedings.
3. White has exposure to liability if a sale of assets of the White AB Entities left a shortfall on the alleged indebtedness of Rompsen (which indebtedness is disputed), pursuant to a personal guarantee.
4. The Respondent, MNP Ltd. is currently appointed by this Court as both Receiver of the Alberta Entities and as Trustee in Bankruptcy of Eco-Industrial. MNP Ltd. was previously appointed by this Court as a Monitor with respect to the Alberta Entities.
5. White, White Trust, Romspen and other legal person(s) resident in the US and not named party in the three within Queen’s Bench proceedings, are awaiting the determination of a motion brought by Romspen in an Austin, Texas bankruptcy court, to strike litigation commenced by White and the White Trust in relation to the same alleged debt and default as are at issue in the 2019 White Action and the 2020 Romspen Action in which the Receivership Order was filed.
6. Very recently, White and White Trust retained new counsel in Texas to file pleadings with a view to amending their response to Romspen’s motion to strike,

to require discovery given the nature of the arguments advanced and issues at play in that forum. As of September 8, 2022 leave was granted by the court in that Texas litigation for White and White Trust to file its Amended Response to the Romspen motion to dismiss (strike) the Claim filed by White and White Trust.

7. The White Parties and Romspen have attorned to the jurisdiction of the bankruptcy court of Judge Pitman in Austin, Texas, to adjudicate their inter-parties issues.
8. The White Parties submit that, in addition to a *forum conveniens* issue, these facts and those alleged in the Romspen Application and first Affidavit of Mr. Roitman sworn in support of the Romspen Application raise serious issues of substantive and procedural fairness to which this Court, in being asked to determine the Romspen Application and the Assignment Application, will be asked to turn its mind.
9. The Romspen Application seeks an Order declaring an alleged debt from an alleged default, neither of which have been determined on their merits by any court of competent jurisdiction.
10. At best, the Romspen Application is premature and an attempt to circumvent the jurisdiction of the bankruptcy court in Austin, Texas involving the alleged debt and any any alleged default, with a view to depriving the debtors of all assets before any determination on the merits of the alleged debt and default can be made in that appropriate forum.
11. Symmetry is the sole named Respondent in the Assignment Application brought in the Bankruptcy Action, which bankruptcy was commenced by the Receiver, with leave of the Court, to preserve assets. Those assets are preserved and there is no measure of jeopardy in relation to them other than the Receiver's ongoing litigation steps. If there is any jeopardy, it can be remedied by a less invasive Order than the one sought by MNP Ltd., as Trustee in Bankruptcy.
12. The Applicants meet the three part test for a stay, insofar as:
 - (a) The Applicants have an arguable case in the Texas litigation which warrants a determination on the merits of, at minimum, the Romspen application to strike;
 - (b) The Applicants will suffer irreparable harm if this Court grants the relief sought by Romspen (and MNP Ltd., in its capacity as Trustee in Bankruptcy for Eco-Industrial), absent a determination on the merits as to any alleged default, and any alleged debt owing by the Applicants and/or the Alberta Entities and in the face out outstanding litigation in Texas;
 - (c) The balance of convenience favours the relief sought, including insofar as the Applicants are not, in this Application, seeking to set aside in their entirety the Receivership or Bankruptcy Orders of this Court and, accordingly, the Respondents' interests are preserved and prejudice, if any, is constrained.
13. In all of the circumstances, it is just and equitable for the relief sought to be granted.

14. The relief sought is also commercially reasonable.

15. 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. Application materials filed in relation to the Romspen Application.
3. Affidavit of Haven Eboni Edwards sworn September 12, 2022.
4. Transcripts of any Questioning on Affidavits relied on by the parties and responses to Undertakings, if any.
5. Such further affidavits and materials as counsel may tender and the Court may admit.

Applicable rules:

1. Rules 1.2, 1.3, 1.4, 1.5, 6.2, 6.3, 6.6, 6.7, 6.11, 9.12 – 9.16, 10.29-10.31 and 10. 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. *Business Corporations Act*, RSA 2000 c B-9.
5. 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. In person or via Webex, as directed by the Court.

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.