

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
(COMMERCIAL LIST)**

**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 OR  
ARRANGEMENT OF BANRO CORPORATION, BANRO GROUP  
(BARBADOS) LIMITED, BANRO CONGO (BARBADOS)  
LIMITED, NAMOYA (BARBADOS) LIMITED, LUGUSHWA  
(BARBADOS) LIMITED, TWANGIZA (BARBADOS) LIMITED  
AND KAMITUGA (BARBADOS) LIMITED**

(the "Applicants")


**AFFIDAVIT OF SOPHIE MOHER  
(sworn March 26, 2018)**

I, Sophie Moher, of the City of Toronto, in the Province of Ontario, MAKE OATH AND SAY:

1. I am an associate at the law firm of Cassels Brock & Blackwell LLP, lawyers for the Applicants in the above named proceedings. As such, I have knowledge of the matters to which I depose except where stated to be on information and belief, and where so stated, I verily believe it to be true.

2. On March 23, 2018, I received the letter attached as Exhibit "A" hereto from Kurt T. Kalberer II of Kalberer LLP, which was sent to the service list in these proceedings.

**SWORN BEFORE ME** at the City of Toronto,  
in the Province of Ontario on March 26,  
2018

  
\_\_\_\_\_  
Commissioner for Taking Affidavits  
(or as may be)  
Jane Olive Dietrich

  
\_\_\_\_\_  
SOPHIE MOHER

This is Exhibit "A" referred to in the Affidavit of Sophie Moher sworn before me at Toronto, Ontario this 26th day of March, 2018



.....  
Commissioner for taking affidavits

**Jane Olive Dietrich**

## Moher, Sophie

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**From:** kkalberer@kalbererlaw.com  
**Sent:** Friday, March 23, 2018 3:56 PM  
**To:** Moher, Sophie  
**Cc:** Wunder, Michael; Jacobs, Ryan; Dietrich, Jane; Bellissimo, Joseph; Goodis, Ben; nigel.meakin@fticonsulting.com; toni.vanderlaan@fticonsulting.com; wael.rostom@mcmillan.ca; tushara.weerasooriya@mcmillan.ca; scollins@mccarthy.ca; clangdon@mccarthy.ca; rtaplin@mccarthy.ca; wmacleod@mccarthy.ca; jsirivar@mccarthy.ca; boneill@goodmans.ca; kmackay@goodmans.ca; mdedic@goodmans.ca; rbaulke@goodmans.ca; aharmes@goodmans.ca; mcto@debevoise.com; destroy@debevoise.com; diane.winters@justice.gc.ca; kevin.ohara@fin.gov.on.ca; lizzy.pearson@fticonsulting.com; marc@whittenlublin.com; scott.balber@hsf.com; emily.abrahams@hsf.com; emily.abrahams@hsf.com; zweigs@bennettjones.com; staleyr@bennettjones.com  
**Subject:** RE: In the Matter of the CCAA Proceedings of Banro Corporation, et al (Court File No. CV-17-589016-00CL) [IWOV-LEGAL.FID2591565]  
**Attachments:** Banro Service Ltr.pdf; Notice of Action Response.pdf; Notice of Action.pdf

Ms. Moher,

Please see attached correspondence.

Thank you.

Best regards,

Kurt

### **Kurt T. Kalberer II**

*Partner*

Kalberer LLP | 7 World Trade Center  
250 Greenwich St., 46<sup>th</sup> Floor | New York, NY 10007  
P: +1 212 266 0044  
kalbererlaw.com

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*QUESTIONS: If you have any questions regarding this disclaimer, please contact Kalberer LLP at +1 212 266 0044*

**From:** Moher, Sophie <smoher@casselsbrock.com>

**Sent:** Tuesday, March 20, 2018 12:35 PM

**To:** Jacobs, Ryan <rjacobs@casselsbrock.com>; Dietrich, Jane <jdietrich@casselsbrock.com>; Bellissimo, Joseph <jbellissimo@casselsbrock.com>; Goodis, Ben <bgoodis@casselsbrock.com>; Moher, Sophie <smoher@casselsbrock.com>; nigel.meakin@fticonsulting.com; toni.vanderlaan@fticonsulting.com; wael.rostom@mcmillan.ca; tushara.weerasooriya@mcmillan.ca; scollins@mccarthy.ca; clangdon@mccarthy.ca; rtaplin@mccarthy.ca; wmacleod@mccarthy.ca; jsirivar@mccarthy.ca; boneill@goodmans.ca; kmackay@goodmans.ca; ddedic@goodmans.ca; rbaulke@goodmans.ca; aharmes@goodmans.ca; mcto@debevoise.com; destroik@debevoise.com; diane.winters@justice.gc.ca; kevin.ohara@fin.gov.on.ca; lizzy.pearson@fticonsulting.com; marc@whittenlublin.com; scott.balber@hsf.com; emily.abrahams@hsf.com; emily.abrahams@hsf.com; zweigs@bennettjones.com; staleyr@bennettjones.com; llepard@ema2.com; kkalberer@kalbererlaw.com

**Cc:** Wunder, Michael <mwunder@casselsbrock.com>

**Subject:** In the Matter of the CCAA Proceedings of Banro Corporation, et al (Court File No. CV-17-589016-00CL) [IWOV-LEGAL.FID2591565]

**Importance:** High

**To the Service List:**

We are counsel to Banro Corporation, Banro Group (Barbados) Limited, Banro Congo (Barbados) Limited, Namoya (Barbados) Limited, Lugushwa (Barbados) Limited, Twangiza (Barbados) Limited, and Kamituga (Barbados) Limited (collectively, the "**Applicants**") in connection with their CCAA Proceedings.

Please find attached the Factum and Book of Authorities of the Applicants in support of the motion returnable Tuesday, March 27, 2018 at 10:00 a.m. at the Ontario Superior Court of Justice (Commercial List) at 330 University Avenue, Toronto, Ontario, which is hereby served upon you in accordance with the E-Service Protocol of the Commercial List.

This is Email 1 of 2 for service of the Factum and Book of Authorities.

Please contact the undersigned if you have trouble opening the attachments.

Sophie



**Sophie Moher**

Direct: +1 416 860 2903 • Fax: +1 416 640 3021 • [smoher@casselsbrock.com](mailto:smoher@casselsbrock.com)

2100 Scotia Plaza, 40 King Street West, Toronto, Ontario, M5H 3C2

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# KALBERER

**Kurt T. Kalberer II**  
Phone: + 1 212 266 0044  
Email: [kkalberer@kalbererlaw.com](mailto:kkalberer@kalbererlaw.com)

Kalberer LLP  
7 World Trade Center, 46<sup>th</sup> Floor  
New York, NY 10007  
[kalbererlaw.com](http://kalbererlaw.com)

March 23, 2018

**VIA ELECTRONIC MAIL**

Sophie Moher  
Cassels Brock  
2100 Scotia Plaza  
40 King Street  
West, Toronto, Ontario  
M5H 3C2

**Re: EMA GARP Fund, L.P. v. Banro Corp., et al.; Case No.: 18-1986**

Dear Ms. Moher:

As you are aware, this firm is counsel for EMA GARP Fund, L.P. and Lawrence Lepard (the "Plaintiffs") in connection with their pending litigation against Banro Corporation and John A. Clarke, pending in the United States District Court for the Southern District of New York (the "Litigation"). We are in receipt of your correspondence and Notice of Motion dated March 13, 2018, and your related Factum and Book of Authorities of the Applicants in support thereof dated March 20, 2018 (collectively the "Motion"), filed in the Ontario Superior Court of Justice (the "Canadian CCAA Proceeding"), wherein you purport to "serve" the Motion in the Canadian CCAA Proceeding upon our firm and the Plaintiffs via electronic mail.

For the reasons set forth in our previous correspondence, copies of which are enclosed for your reference, please be advised we do not accept "service" of any process or motion papers on our clients' behalf in connection with the Canadian CCAA Proceeding. Please also be advised that your electronic mail sent directly to the Plaintiffs does not constitute legal service of the Motion on the Plaintiffs either. As clearly set forth in my correspondence dated March 6, 2018 and March 9, 2018, Plaintiffs are United States citizens pursuing claims in the Litigation which arise and exist exclusively in the United States and are properly pending before United States District Court for the Southern District of New York.

As you are also aware, the appropriate remedy for adjudication of international insolvency issues such as the one presented with the Litigation is through the filing of recognition proceedings under the United States Bankruptcy Code, which your clients have failed to do. The primary relief sought in the Canadian CCAA Proceeding is the elimination of the common stock of Banro Corporation ("Banro"). A substantial portion, *if not the majority*, of the shares to be eliminated were sold as securities registered with the United States Securities and Exchange Commission (the "SEC") through the New York Stock Exchange to US shareholders. These securities are presently located within the United States, registered with the SEC and owned by US citizens. Accordingly,

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March 23, 2018

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despite the enormous amount of relief Banro knowingly seeks against US shareholders and their securities in the Canadian CCAA Proceeding, Banro has somehow failed to file any recognition proceeding in United States whatsoever. Rather, it seeks to end-run the appropriate and internationally-accepted method for resolution of such matters, and pepper the Plaintiffs with frivolous claims for violation of a stay order Banro knows full well does not even apply to Plaintiffs as US citizens. Please be advised that Plaintiffs reject Banro's invitation to litigate their claims in Canada and will object to any attempt by your clients to domesticate the proposed sanction order in the United States.

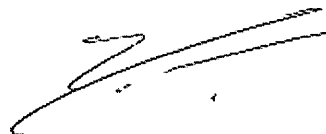
The Class Action Complaint was appropriately filed in the United States District Court, which has exclusive jurisdiction over the claims asserted therein. Moreover, the claims concern conduct which the Plaintiffs only learned of on the eve of the filing, and present time-sensitive statute of limitations issues which further mandated its immediately filing in the appropriate venue without delay.

We also note that your proposed sanction order seeks a release of claims by the Plaintiffs against Mr. Clarke, a non-debtor who is a citizen of the United Kingdom and not even a party to the Canadian CCAA Proceeding. As set forth in the Class Action Complaint, the claims against Mr. Clarke are for securities fraud in his individual capacity, and as a result of various material misrepresentations and omissions made by him to US shareholders. Accordingly, there is absolutely no legal basis for a Canadian court to release claims between foreign litigants who aren't even parties to the Canadian CCAA Proceeding and concern claims arising, existing and pending in the United States.

This correspondence shall not be construed as a waiver of any rights or claims the Plaintiffs may have at law or in equity, all of which are expressly reserved.

Very truly yours,

**KALBERER LLP**



Kurt T. Kalberer II

Cc:  
Lizzy Pearson  
FTI Consulting Canada Inc.,  
Monitor of Banro Corp., et al.  
104 Toronto, ON  
M5K1G8  
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[kalbererlaw.com](http://kalbererlaw.com)

March 9, 2018

**VIA ELECTRONIC MAIL**

Tushara Weerasooriya  
McMillan LLP  
Brookfield Place  
181 Bay Street, Suite 4400  
Toronto, Ontario, Canada  
M5J2T3

**Re: EMA GARP FUND, L.P. v. Banro Corp., et al.; Case No.: 18-1986**

Dear Ms. Weerasooriya:

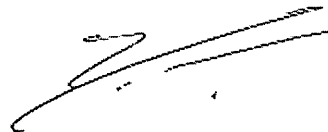
This firm represents Plaintiffs, EMA GARP Fund, L.P. and Lawrence Lepard. We are in receipt of your correspondence dated March 8, 2018 in connection with the above-referenced matter. We have reviewed the materials to which you direct our attention, namely, the order issued by the Ontario Superior Court of Justice dated December 22, 2017 (the "Order"), as well as the other materials filed in the subject CCAA proceeding available on the Monitor's website. However, please be advised that neither the Order nor the related materials contain any order or direction from a court of law which has jurisdiction over our clients or the action they have commenced in the United State District Court for the Southern District of New York (the "Action").

In addition, we are unable to locate any attempts by Banro Corporation, or those acting on its behalf, to seek recognition of the CCAA proceeding under Chapter 15 of the United States Bankruptcy Code within the United States. Accordingly, we respectfully disagree with your assertion that the Action violates the stay in the CCAA proceeding.

Should you have any questions, please contact me. This correspondence shall not be construed as a waiver of any rights or claims the Plaintiffs may have at law or in equity, all of which are expressly reserved.

Very truly yours,

**KALBERER LLP**



Kurt T. Kalberer II

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March 6, 2018

**VIA ELECTRONIC MAIL**

Lizzy Pearson  
FTI Consulting Canada Inc.,  
Monitor of Banro Corp., et al.  
104 Toronto, ON  
M5K1G8

79 Wellington Street West, Suite 2010  
P.O. Box  
104 Toronto, ON  
M5K1G8  
Email: [banro@fticonsulting.com](mailto:banro@fticonsulting.com)

**Re: Ontario Superior Court of Justice; Court File No. CV17-589016-00CL**  
**Notice of Action: EMA GARP FUND, L.P. v. Banro Corp., et al.;**  
**Case No.: 18-1986**

Dear Ms. Pearson:

This firm represents Plaintiffs, EMA GARP Fund, L.P. and Lawrence Leopard. Please direct all future correspondence regarding this matter to our attention. Enclosed herewith is a file-stamped copy of the class action Complaint filed by Plaintiffs yesterday against Banro Corporation (“Banro”) and its Chief Executive Officer, John Clarke, in the United States District Court for the Southern District of New York (the “Action”). In the Action, Plaintiffs seek recovery of their investment losses resulting from the Defendants’ recently discovered violations of the United States federal securities laws in connection with their marketing and sale of Banro securities to US investors through the New York Stock Exchange.

We understand you are presently the court-appointed monitor in connection with Banro’s restructuring proceedings under the Companies’ Creditors Arrangement Act (the “CCAA”). The purpose of this correspondence is to notify you of the Action and our clients’ intention to prosecute their claims against the Defendants in a trial by jury in the United States District Court, which is the appropriate forum for this dispute.

As you may be aware, United States federal courts have exclusive jurisdiction over claims arising under the Exchange Act of 1934 (15 U.S.C. §§ 78j(b) and 78t(a)). As set forth in the enclosed Complaint, the Action includes two (2) claims against the Defendants arising under

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March 6, 2018

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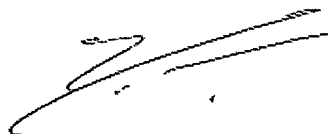
Sections 10(b) and 20(a) of the Exchange Act. These claims arise and exist exclusively under the Exchange Act and the jurisdiction of the United State District Court, concern conduct directed at US investors within the United States by and through the listing of securities on the New York Stock Exchange by Banro. Accordingly, our clients intend to exercise their constitutional right to a trial by a jury of their peers in the United States.

In addition, each claim asserted in the Action is fraud-based, non-dischargeable and non-integral to the restructuring of Banro's creditor-debtor relationships in the CCAA proceeding. Finally, we note that Defendant John Clarke is not an individual party to the CCAA proceeding and therefore Plaintiffs' claims against Mr. Clarke should be of no consequence to the CCAA proceeding.

Should you have any questions, please contact me. This correspondence shall not be construed as a waiver of any rights or claims the Plaintiffs may have at law or in equity, all of which are expressly reserved.

Very truly yours,

**KALBERER LLP**

A handwritten signature in black ink, appearing to read 'Kurt T. Kalberer II', with a long horizontal flourish extending to the right.

Kurt T. Kalberer II

Cc: Lawrence Lepard

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Court File No. CV-17-589016-00CL

**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 OR ARRANGEMENT OF BANRO CORPORATION, BANRO GROUP (BARBADOS) LIMITED, BANRO CONGO (BARBADOS) LIMITED, NAMOYA (BARBADOS) LIMITED, LUGUSHWA (BARBADOS) LIMITED, TWANGIZA (BARBADOS) LIMITED AND KAMITUGA (BARBADOS) LIMITED**

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

PROCEEDING COMMENCED AT TORONTO

AFFIDAVIT OF SOPHIE MOHER  
(Sworn March 26, 2018)

**Cassels Brock & Blackwell LLP**

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*Lawyers for the Applicants*