

COURT FILE NUMBER 2001-05630

COURT COURT OF QUEEN'S BENCH OF ALBERTA IN
BANKRUPTCY AND INSOLVENCY

JUDICIAL CENTRE CALGARY

APPLICANTS **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 DOMINION DIAMOND MINES ULC,
DOMINION DIAMOND DELAWARE COMPANY LLC,
DOMINION DIAMOND CANADA ULC, WASHINGTON
DIAMOND INVESTMENTS, LLC, DOMINION DIAMOND
HOLDINGS, LLC, and DOMINION FINCO INC.**

DOCUMENT

AFFIDAVIT

ADDRESS FOR SERVICE AND
CONTACT INFORMATION OF
PARTY FILING THIS
DOCUMENT

BLAKE, CASSELS & GRAYDON LLP
Barristers and Solicitors
3500 Bankers Hall East
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Attention: Peter L. Rubin / Peter Bychawski /
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Fax No.: 604.631.3309

AFFIDAVIT OF BRENDAN BELL

Sworn on June 12, 2020

RB

I, Brendan Bell, of Kelowna, British Columbia, MAKE OATH AND SAY THAT:

I. INTRODUCTION

1. I am a director of Dominion Diamond Mines ULC ("**Dominion Diamond**"). As such, I have personal knowledge of the matters deposed to in this affidavit, except where stated to be based upon information provided to me, in which case I believe the same to be true.

2. This affidavit is sworn to supplement my first affidavit in these proceedings sworn on May 21, 2020 (the "**First Bell Affidavit**") and in support of Dominion's application served May 21, 2020, as amended by an application served on June 12, 2020 (the "**Amended Application**"). Capitalized terms not defined in this affidavit shall have the meaning given to them in the First Bell Affidavit.

3. As is set out below and further to my evidence as set out in the First Bell Affidavit, I remain strongly of the view that advancing the Stalking Horse Bid as part of the Restructuring Proposal is in the best interests of the Applicants and their stakeholders and provides for the best opportunity to achieve a going concern sale of Dominion. In the circumstances, including with regard to the nature of the Applicants' business and the benefits to stakeholders if the business continues as a going concern, I believe such a process is the responsible and most prudent course of action at this time.

II. RECENT DEVELOPMENTS

4. At the hearing that commenced on May 29 (the "**May 29 Hearing**"), the Applicants sought Court approval of a Restructuring Proposal, which included a Stalking Horse Term Sheet, SISP and Interim Financing Term Sheet.

5. In the Amended Application, the Applicants seek approval of a stalking horse asset purchase agreement (the "**Stalking Horse APA**") that replaces the Stalking Horse Term Sheet, as well as approval of an amended SISP and an amended Interim Financing Term Sheet (among other relief).

6. Since the swearing of the First Bell Affidavit, I have continued to oversee negotiations with respect to the Applicants' restructuring, including ongoing negotiations with the Stalking Horse Bidder and the Applicants' secured lenders. I have maintained my role as the Independent Director since swearing my last affidavit and have participated in a number of formal Independent

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Director meetings in that capacity, including meeting with one or more of representatives of Evercore, management and Dominion Diamond's legal advisors.

7. As part of the continued restructuring efforts, the Applicants and their advisors have been working diligently to negotiate the Stalking Horse APA (attached to the Amended Application) with the Stalking Horse Bidder to give effect to the terms of the Stalking Horse Term Sheet. The form of Stalking Horse APA (without schedules) has been substantially agreed to by the Applicants and the Stalking Horse Bidder. The schedules to the Stalking Horse APA have not yet been finalized, as the Applicants and the Stalking Horse Bidder have focused their attention towards negotiating and finalizing the agreement itself, and are expected to be finalized in the coming weeks.

8. The negotiations that have occurred to date with respect to a sale of the Applicants' business have been both lengthy and constructive given the complex nature of the Applicants' assets, which is described in further detail below.

9. It remains my view that a stalking horse sales process is an appropriate and prudent way to market the Applicants' assets. As noted in the First Bell Affidavit, a stalking horse process provides value to the Applicants' restructuring efforts by setting a "floor price" that will potentially be bested by any bids received under the SISF, as well as demonstrating to stakeholders that there will be a going concern outcome for the Applicants' business. In addition, the Stalking Horse APA will now act as a baseline document for other potential bidders to refer to when participating in the SISF. There is also substantial value in going through the stalking horse bid process itself, including the preparation and negotiation of the Stalking Horse APA. Both the Applicants and other bidders for their assets will benefit from Dominion having gone through this process which has assisted the Applicants to identify the various issues at play in a potential sale.

III. THE NATURE OF THE APPLICANTS' ASSETS

10. The Applicants' decision to seek Court approval of the Restructuring Proposal, including the Stalking Horse APA and SISF, ought to be considered in the context of the unique and complex nature of the Applicants' assets.

11. The Ekati Diamond Mine is an important strategic resource for the Northwest Territories. In my view, it is critical to, among others, the Northwest Territories, Northern communities, employees, retired employees, contractors, the environment and creditors that it continue to

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operate as a going concern as a significant taxpayer and the second largest non-governmental employer in the Northwest Territories, with over 40% of its employees being northern residents.

12. When considering the interests of Dominion's stakeholders, one of my primary considerations has been to identify a process that provides for the best opportunity for the Ekati Mine to reopen and continue as a going concern. The importance of this business to the northern communities cannot be overstated.

13. As noted in the First Bell Affidavit, I have now been involved in four sales processes with respect to Dominion Diamond and its assets, have worked with Dominion Diamond for more than a decade and was previously Dominion Diamond's Chief Executive Officer. Consequently, I am aware of the issues that would impact a potential acquiror's interest in Dominion's assets.

14. For a variety of reasons, the Ekati Mine is a unique and complex challenge for anyone wishing to purchase and operate it. These reasons include:

- (a) the Ekati Mine operates in a sub-arctic climate, one of the most challenging physical environments in the world;
- (b) it also operates in a remote Northern location far from supply chains, where nearly all supplies can only be brought in on an ice road that can only operate for 8-10 weeks of the year;
- (c) diamonds are a niche resource and the mining of deposits and the extraction processes are atypical for the Canadian hardrock mining environment;
- (d) the sale of diamonds is unlike most other mined resources in that diamonds are not commodities and, as such, achieving fair market value for your goods requires specific knowledge and expertise; and
- (e) the development of additional viable diamond resources where long-term value can be achieved requires sophisticated processes and is risky, complicated and expensive.

15. As a result of the unique and complex challenge of the Ekati Mine and the downward pressure on diamond markets, I believe there will be a limited number of potential purchasers who would be interested in acquiring and operating the Dominion assets. Despite these CCAA

proceedings being commenced and widely publicized over six (6) weeks ago, I am advised by Evercore that only two third-parties (excluding the Washington Group and certain noteholders) have entered into non-disclosure agreements to review confidential information regarding a purchase of Dominion's assets.

16. With respect to the forty (40) percent ownership interest in the Diavik Mine owned by the Applicants, in my view the most logical purchaser of that interest is DDMI, as DDMI is the operator of the Diavik Mine and has the most knowledge of that asset.

17. DDMI is also a logical potential purchaser of the Ekati Mine in my view for, among others, the following reasons:

- (a) DDMI is the operator of the Diavik Mine, which is only thirty (30) kilometers away from the Ekati Mine;
- (b) there would be synergies in operating the two mines in close proximity as DDMI could share assets and operations;
- (c) DDMI is already transporting supplies to the Diavik Mine on the ice road;
- (d) reclamation obligations of the two mines could be integrated;
- (e) the estimated mine life of the Ekati Mine is longer than the estimated mine life of the Diavik Mine;
- (f) DDMI has a pre-existing sales apparatus to market and sell diamonds;
- (g) DDMI has pre-existing relationships with the Government of the Northwest Territories and the local communities; and
- (h) DDMI is a subsidiary of one of the largest mining companies in the world.

18. Notwithstanding the above, DDMI has expressed to the Court that it is not a bidder for the Applicants' interest in the Diavik Mine or the Ekati Mine. This is a factor that affects my thought process with respect to finding the best opportunity for the Ekati Diamond Mine to reopen and continue as a going concern.

IV. AD HOC NOTEHOLDER GROUP

19. On Thursday June 4, 2020, after the adjournment of the last court hearing on June 3, 2020, counsel to the Ad Hoc Group of Noteholders reached out to Dominion and the Monitor to discuss the possibility of the Ad Hoc Group presenting a DIP facility to Dominion, for consideration by Dominion as an alternative to the Stalking Horse Bid and DIP facility offered by the Washington Group. A call was held early in the morning on Friday June 5, 2020 involving counsel to the Monitor, counsel to the Ad Hoc Group of Noteholders, and counsel to Dominion. Dominion has not received a DIP credit agreement or any other DIP related documents from the Ad Hoc Group of Noteholders following the above reach out and discussion.

V. INTERIM FINANCING

20. The Applicants are in urgent need of interim financing and are expected to run out of cash the week of June 22 or possibly June 29, depending on the timing of payables.

VI. CONCLUSION

21. I remain of the view that Dominion's business has value and is deserving of being saved, considering the interests of Dominion Diamond as well as various stakeholders, including Northern communities, employees, retired employees, contractors, the environment and creditors. Based on my own extensive knowledge of Dominion's business and experience in the Northwest Territories, including in the diamond mining industry, and after considering all of the professional advice I have received, I am still of the strongly held view that pursuit of the Restructuring Proposal, as amended in the Amended Application, is warranted at this time, is the appropriate course of action, and will benefit the Applicants and their stakeholders through value maximization.

VII. PROCESS FOR COMMISSIONING OF THIS AFFIDAVIT

22. I am not physically present before the Commissioner for Oaths (the "**Commissioner**") taking this affidavit, but I am linked with the Commissioner by video technology. The following steps have been or will be taken by me and the Commissioner:

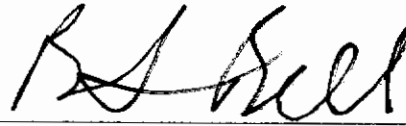
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SWORN BEFORE ME by two-way video)
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_____))
A Commissioner for Oaths in and for the)
Province of Alberta)



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CLERK'S STAMP

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Province of Alberta)
Morgan Crilly)
Barrister & Solicitor)

_____) **BRENDAN BELL**

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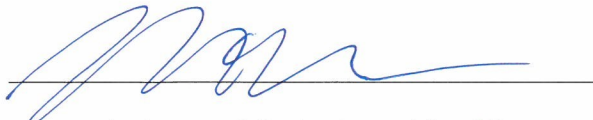
APPENDIX A

Certificate of Commissioning by Videoconference

I, ^{Morgan}Crilly Commissioner of Oaths in and for Alberta, took the affidavit of Brendan Bell via videoconference on June 12, 2020 (the "Affidavit").

The affiant and I followed the process outlined by the Alberta Court of Queen's Bench in Notice to the Profession and Public #2020-02 dated March 25, 2020. In addition to the steps described in the Affidavit, I compared each page of the copy I received from the affiant with the initialed copy that was before me while I was linked by videoconference with the affiant. Upon being satisfied that the two copies were identical, I affixed my name to the jurat.

On March 17, 2020, the Government of Alberta declared a state of public health emergency pursuant to the Alberta *Public Health Act* in response to the COVID-19 pandemic. The Government of Alberta also strongly recommends that all individuals stay home and avoid contact with others whenever possible. Therefore, I am satisfied that this process was necessary because it was unsafe for the deponent and I to be physically present together.



Commissioner of Oaths in and for Alberta
Morgan Crilly
Barrister & Solicitor