Clerk's Stamp

COURT FILE NUMBER	2001-05630
COURT	COURT OF QUEEN'S BENCH OF ALBERTA
JUDICIAL CENTRE	CALGARY
	IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*, RSC 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.
APPLICANTS	AD HOC COMMITTEE OF BONDHOLDERS (DDJ CAPITAL MANAGEMENT, LLC, BARINGS LLC and BRIGADE CAPITAL MANAGEMENT, LP)
PARTY FILING THIS DOCUMENT	AD HOC COMMITTEE OF BONDHOLDERS (DDJ CAPITAL MANAGEMENT, LLC, BARINGS LLC and BRIGADE CAPITAL MANAGEMENT, LP)
DOCUMENT	**AFFIDAVIT**
ADDRESS FOR SERVICE AND CONTACT INFORMATION OF PARTY FILING THIS DOCUMENT	Torys LLP 4600 Eighth Avenue Place East 525 - Eighth Ave SW Calgary, AB T2P 1G1 Attention: Kyle Kashuba Telephone: + 1 403.776.3744 Fax: +1 403.776.3800 Email: kkashuba@torys.com Attention: Andrew Gray Telephone: + 1 416.865.7630 Fax: + 1 416.865.7380 Email: agray@torys.com File No. 2001-05630

AFFIDAVIT OF MIKE NOEL
Sworn on September 24, 2020

I, Mike Noel, of the City of Toronto, in the Province of Ontario, Associate of Torys LLP,

MAKE OATH AND SAY THAT:

1. Torys LLP are counsel to the ad hoc committee of holders of the 7.125% senior secured second lien notes owed the equivalent of approximately CAD$750,000,000 by Dominion Diamond Mines ULC.

2. I have personal knowledge of the matters and facts hereinafter deposed to.

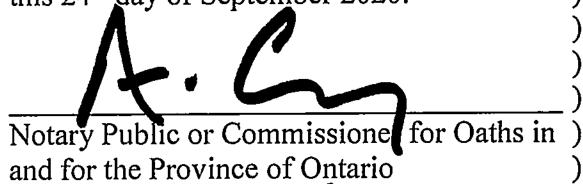
3. In connection with the Applicants' application, returnable September 25, 2020, for a stay extension and other relief under the *Companies' Creditors Arrangement Act* the following correspondence is attached to my Affidavit:

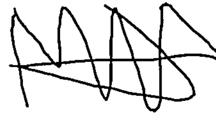
   (i) Exhibit "**A**": Letter from Tony DeMarinis to Peter Rubin, dated September 15, 2020;

   (ii) Exhibit "**B**": Letter from Peter Rubin to Tony DeMarinis, dated September 16, 2020.

4. I make this Affidavit for no improper purpose.

SWORN BEFORE ME at Toronto, Ontario,)
this 24th day of September 2020.)





Notary Public or Commissioner for Oaths in)
and for the Province of Ontario)

Mike Noel

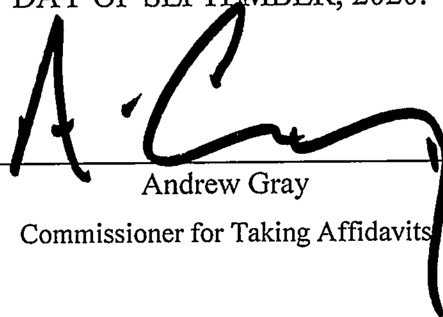
THIS IS **EXHIBIT "A"** REFERRED TO IN THE

AFFIDAVIT OF MIKE NOEL,

AFFIRMED REMOTELY BY MIKE NOEL

BEFORE ME *BY VIDEO CONFERENCE*, THIS 24th

DAY OF SEPTEMBER, 2020.



Andrew Gray

Commissioner for Taking Affidavits

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Tony DeMarinis
tdemarinis@torys.com
P. 416.865.8162

September 15, 2020

EMAIL
peter.rubin@blakes.com

Blake, Cassels & Graydon LLP
3500 Bankers Hall East
855 - 2nd Street SW
Calgary, Alberta
T2P 4J8

Attention: Peter L. Rubin

Dear Sirs/Mesdames:

Re: Companies' Creditors Arrangement Act Proceedings ("CCAA Proceedings") for Dominion Diamond Mines ULC et. al. (the "Companies") - Procedures for the Sale and Investment Solicitation Process ("SISP")

As you know, from the outset of the CCAA Proceedings our clients expressed serious concerns with the path the Companies were taking. They questioned why a sales process needed to be initiated during an unprecedented worldwide pandemic and economic shutdown. The Companies' revenue stream had disappeared amidst a complete shutdown of the international diamond market. Financial markets were collapsing, and capital flows had seized up. The Companies' Ekati mine was shut down, and the viability of all mining operations was being brought into question by the pandemic's health risks.

One can hardly imagine a more hostile environment within which to embark on a sales process. A better path, in our clients' view, would have been to place the Companies' business and assets in cash conservation and asset preservation mode, and to wait out the storm as so many other businesses were doing. To that end, our clients made a binding offer of debtor-in-possession financing to the Companies so that they would not be handcuffed by the conditions attached to their shareholder group's financing offer. They invited the Companies to consider alternatives, and to remain agile as we all moved forward in volatile times.

Our clients' overtures were unsuccessful, and they were forced into a sales process in the worst of times and over which they had little influence. In good faith, they turned their energies to doing what they could to make the best of an extremely difficult situation and to avert the egregious wholesale extinguishment of their secured second lien debt at the hands of the shareholder group bid.

Since that time, our clients have worked diligently on a proposed transaction that would preserve the Companies' business and assets as a whole. As you are aware, they have introduced to the

process multiple prospective debt and equity financing prospects who have shown their genuine interest by executing NDAs and spending substantial costs as they tried to work within the restrictions of the sales process playing out in the CCAA Proceedings. Our clients have conducted extensive due diligence of their own, engaged in multi-party negotiations with key business partners, and kept the Companies apprised of their activities and progress. They have demonstrated their commitment and credibility through the expenditure of very substantial time, costs and other resources in these efforts.

Even so, the constraints of the SISP and the hostile market environment proved formidable. Capital markets, while trending positive, remained unstable and leaned decidedly against cyclical and riskier asset classes. The diamond sales market stayed shut for most of the SISP process, until very recently. This made it impossible to obtain measures of market pricing on which any debt or equity financing necessarily turns. Meanwhile, interested financing partners faced significant impediments to their ability to conduct proper due diligence. Canadian borders remained closed and did not permit site inspections by non-Canadian parties and their affiliated representatives.

The Companies' SISP process was also not fully ready at the outset. The posting of documents and information to the Companies' VDR, by way of example, occurred on a streaming basis. A variety of important documents were not posted until the latter stages of the process. Certain information and documents were posted only after our clients' repeated requests. This hindered the conduct of due diligence by our clients and their proposed financing partners.

Although they continued to dedicate a great amount of resources to their efforts, in the early part of August our clients foresaw the need for a more accommodating timeline. They asked the Monitor to raise with the Companies a request for an extension to the SISP's deadlines. This request was not accommodated at first, and we reiterated it directly to the Companies' representatives approximately ten days before the August 31 binding offer deadline.

What ensued were partial, ad hoc accommodations granted by the Companies. On Friday, August 28, only seventy-two hours before the binding offer deadline, we were advised that our clients' extension request had been denied but that an additional 8 days were being granted to remove conditions. Our clients complied with the August 31 submission deadline, and then proceeded to work around-the-clock through the Labour Day holiday weekend to meet the Companies' September 8 deadline for removing conditions. Along the way, the Companies made new requests including that, by September 8, our clients prepare a detailed mine re-start plan and a proposal for funding the Companies' proposed autumn fuel purchases. These requirements were not previously communicated or stipulated in the SISP.

On September 8, we notified you that our clients were unable to comply with the Companies' requirement that their offer's conditions be removed. Consequently, our clients withdrew their offer. The following day, the Companies proposed a further qualified extension to today's date.

While we acknowledge your partial accommodations, they have fallen far short of what our clients requested and regarded as reasonable. The accommodations have also played out in an ad hoc and qualified manner that has made it extraordinarily difficult to bring critical negotiations to a fruitful completion. We were placed in the position of demanding intermittent urgency in our discussions with third parties, creating a sub-optimal negotiating platform. We also cannot disregard the significant obstacle posed by the end-of-summer constraints.

Accordingly, and despite our clients' best efforts, they are not able to meet the Companies'

requirements for an offer submission today.

We believe, however, that it is appropriate for all parties to take a step back to regain perspective and reassess the path forward. It should not be at all surprising that the SISP, conducted on its strict terms and in the prevailing environment, has not been fruitful. This was not only predictable but, in fact, it was predicted by our clients. Leaving aside their own frustrated efforts, it would not surprise them if the process has also frustrated all other potential arm's length bidders and left the playing field exclusively to the shareholder group bid.

Nonetheless, we find ourselves at precisely the pivot point in market conditions that our clients had expected and had wanted the Companies to await. The diamond sales market has finally re-opened and there have been highly encouraging recent sales. We understand that the Companies themselves have gone, or are about to go, to market with some of their diamond inventory. Needless to say, this could dramatically change the Companies' liquidity situation and allow for a greater range of strategic options going forward.

There are also now market confirmations that diamond pricing is proving far more resilient than the Court and others may have been led to believe at the outset of the SISP. Recent sales prices suggest little or no decline from pre-pandemic prices. At a macro level, the financing markets are clearly improving, and investors are starting to show an increased appetite for cyclical and riskier assets. In short, we are witnessing fundamental and positive changes trending to normalized conditions and reversing the extraordinarily adverse events of the last 5-6 months.

This is an appropriate time for the Companies to re-think their path. We remind you that there is no need for the Companies or the Court to accept or approve any offer in the SISP, whether it be the stalking horse bid or otherwise. This discretion is customary in processes of this kind. It is also reflected in, among other things, paragraph 41(e) of the SISP. Importantly, the discretion not to proceed with an inadequate transaction is consistent with the fiduciary duties of the Companies' directors. In the current circumstances, we respectfully state that it would be improper for the independent director overseeing this process to steer it towards the shareholder group bid at a time when we are seeing obvious signs of remedial market activity and when the inadequacies of the stalking horse bid are so patently evident.

Although they have not been able to meet the Companies' strict requirements, our clients made very substantial and verifiable progress in advancing their transaction proposal. As you know, they have worked diligently on a fair and holistic resolution. Under our clients' proposal, the Companies' assets and operations would remain intact, including interests in both the Diavik and Ekati mines. The Companies' employees would retain their jobs, pension plans and other rights. Environmental commitments would be honored, and reclamation liabilities would be secured on as good or better terms than before. Essential contracts would be brought into good standing. And all the Companies' creditors would participate equitably in the successful outcome.

All of this is in stark contrast to the shareholder group's stalking horse bid. By stranding the Companies' Diavik mine interests, that proposal would leave behind a messy legacy of risk and uncertainty for the Companies. As a single asset business, the new company would have heightened risk of future failure. Meanwhile, investors who had been lured into the secured second lien debt financing only 3 years ago would be wiped out while the shareholder group behind that financed transaction in 2017 would emerge as this process' biggest winner. At best, this would be an inequitable outcome. At worst, it would stand as a very poor precedent that could embolden other corporate shareholders looking to exploit the CCAA to jettison debt they raised

in the marketplace without giving those debt holders a voice. In the end result, an American private equity company would have taken advantage of Canadian insolvency laws to do what it almost certainly could not have done in its own country.

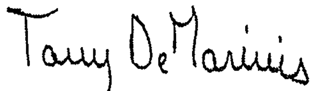
In view of the improving market conditions, the re-opening of the diamond sales market, the resulting prospect of improved liquidity for the Companies, the encouraging progress made by our clients, and the flawed stalking horse bid, our clients hereby request that the Companies reject the stalking horse bid and instead engage in discussions with them on an alternate transaction path.

To ensure that the Companies have the freedom to take this proper step, our clients are prepared to provide debtor-in-possession financing in sufficient amounts to fully repay the current interim funding facility. As you know, our clients had previously made a binding DIP financing offer to the Companies. They are prepared to extend financing on substantially similar terms at this time.

With the artificial constraints of the current interim financing removed, we do not believe that the Companies need to work within the deadlines of the SISP. They have both the discretion and, in our view, the obligation, to disregard the shareholder group's self-serving deadlines. While we do not need to now pre-determine deadlines, we can confirm that our clients are interested in providing financing that would be sufficient to enable deferral of any definitive transaction acceptance up to at least November 16, 2020 and to target a year-end closing. They will work with you to settle to each party's satisfaction a funding plan, based on an updated budget that takes into consideration anticipated revenue from sales, tax refunds, and other sources.

We ask that the Companies and their representatives please engage us promptly in discussions on the foregoing basis, and accordingly suspend or amend the provisions of the SISP.

Yours truly,



Tony DeMarinis

TD//cmp

cc: Deryck Helkaa, *FTI Consulting Canada*
Chris Simard, *Bennett Jones LLP*
John Startin, Andrew Frame, Nicholas Salzman, *Evercore*

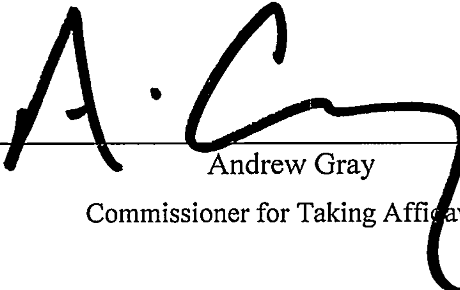
THIS IS **EXHIBIT "B"** REFERRED TO IN THE

AFFIDAVIT OF MIKE NOEL,

AFFIRMED REMOTELY BY MIKE NOEL

BEFORE ME *BY VIDEO CONFERENCE*, THIS 24th

DAY OF SEPTEMBER, 2020.



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**Law Corporation*

Reference: 00180245/000013

September 16, 2020

VIA E-MAIL

Torys LLP
79 Wellington St. W., 30th Floor
Toronto, ON M5K 1N2

Attention: Tony DeMarinis

Re: In the Matter of the Companies' Creditors Arrangement Act, RSC 1985 c. C-36 (the "CCAA") and In the Matter of a Plan of Compromise or Arrangement of Dominion Diamond Mines ULC, and others

Dear Sir:

We write in response to your letter of yesterday related to the Sale and Investment Solicitation Process. Our client does not agree with many of the comments in your letter and, in our respectful view, the letter contains a number of inaccuracies.

Our client, in consultation with the Monitor, has determined to proceed with the stalking horse bid – being the only bid available for acceptance by the twice extended Phase 2 Bid Deadline.

Yours truly,

Peter Rubin*

PLR/xja

cc. C. Simard (*Bennett Jones LLP*), counsel to the Monitor

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