

CLERK'S STAMP

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,
DOMINION FINCO INC. AND DOMINION DIAMOND MARKETING
CORPORATION**

DOCUMENT **APPLICATION**
(Sandstorm and Jennings Royalties)

ADDRESS FOR
SERVICE AND
CONTACT
INFORMATION OF
PARTY FILING THIS
DOCUMENT

BLAKE, CASSELS & GRAYDON LLP

Barristers and Solicitors
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NOTICE TO RESPONDENTS:

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

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

Date: January 27, 2021

Time: 10:00 am MST

Where: Calgary Courts Centre, 601 – 5th Street S.W., Calgary (Virtual Courtroom: Via Webex)

Before: The Honourable Justice Eidsvik

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

REMEDY CLAIMED OR SOUGHT:

1. The applicants, Dominion Diamond Mines ULC, Dominion Diamond Delaware Company, LLC, Dominion Diamond Canada ULC, Washington Diamond Investments, LLC, Dominion Diamond Holdings, LLC, Dominion Finco Inc., and Dominion Diamond Marketing Corporation (together, the “**Applicants**” or “**Dominion**”) seek an order relating to the Sandstorm Gold Ltd. (“**Sandstorm**”) and Christopher Jennings (“**Jennings**”) royalty agreements as more particularly set out in the attached **Schedule “A”** hereto, and such further and other relief as the Applicants may advise and this Court may deem appropriate.

GROUND FOR MAKING THIS APPLICATION:

2. On April 22, 2020, this Court granted an initial order with respect to the Applicants pursuant to the *Companies’ Creditors Arrangement Act*, RSC 1985, c C-36, as amended (the “**CCAA**”).
3. In early December 2020, the Applicants’ first lien lenders (who have advanced to Dominion US\$150 million under a revolving facility in the form of draws totalling approximately US\$70 million in cash with a further approximate CDN\$110,000,000 having been utilized for the purpose of obtaining letters of credit) and certain members of an ad hoc group of holders of Dominion’s second lien notes entered into a Mutual Support Agreement dated December 6, 2020 regarding a sale transaction (the “**Transaction**”) to be implemented, subject to this Court’s approval, within the context of these CCAA proceedings on the terms set out in the Asset Purchase Agreement dated December 6, 2020 (the “**Purchase Agreement**”) by and among

certain of the Applicants, as the vendor parties (the “**Dominion Vendors**”), and the Contracting Purchasers (as defined in the Purchase Agreement).

4. Consistent with the Applicants’ restructuring objectives, the Purchase Agreement contemplates a going concern outcome for the Applicants’ business, providing that the purchaser will assume, subject to the terms of and as more particularly set out in the Purchase Agreement, substantially all of the go-forward operating liabilities of the Dominion Vendors related to the Ekati mine, including substantially all obligations (a) of the Dominion Vendors under Dominion’s go-forward operational contracts and joint venture agreements; (b) to employees and unions (including obligations under Dominion’s collective bargaining agreements and pension plan); (c) to Indigenous groups; and (d) to the Government of the Northwest Territories.
5. On December 11, 2020, upon the application of the Applicants, this Court granted an Approval and Vesting Order (the “**Sale Approval Order**”) which, among other things, approved the Transaction.
6. The Transaction is expected to close on or about January 29, 2021.
7. Paragraph 16 of the Sale Approval Order provided as follows:

IT IS HEREBY ORDERED AND DECLARED THAT:

16. This Order shall be without prejudice to the rights of each of Sandstorm Gold Ltd. (as successor in interest to Repadre Capital Corporation) and Christopher Jennings to seek, by notice of application to this Court to be served on all counsel of record in these proceedings no later than January 15, 2021, payment or entitlement to payment of certain royalty amounts from the Diavik Realization Assets and/or in respect of the Applicants’ share of production from the Diavik Diamond Mine pursuant to two separate agreements made the 30th day of September, 2003, all without prejudice to the rights of any other person to oppose any such requested relief.

8. On January 15, 2021 the Court granted the following Order:

IT IS HEREBY ORDERED AND DECLARED THAT:

1. Paragraph 16 of the Approval and Vesting Order of this Court dated December 11, 2020 is hereby deleted in its entirety and replaced with the following:

16. This Order shall be without prejudice to the rights of each of Sandstorm Gold Ltd. (as successor in interest to Repadre Capital Corporation) and Christopher Jennings to seek, by notice of application to this Court to be served on all counsel of record in these proceedings no later than January 29, 2021, payment or entitlement to payment of certain royalty amounts from the Diavik Realization Assets and/or in respect of the Applicants' share of production from the Diavik Diamond Mine pursuant to two separate agreements made the 30th day of September, 2003, all without prejudice to the rights of any other person to oppose any such requested relief.

9. Discussions have taken place among representatives of (a) Sandstorm (b) Jennings, (c) the Applicants' first lien lenders, Credit Suisse AG, Cayman Islands Branch, in its capacity as administrative agent, and (d) the Contracting Purchasers, as defined in the Purchase Agreement (collectively, the "**Affected Parties**"), in respect of paragraph 16 of the Sale Approval Order, as amended on January 15, 2021.
10. The Affected Parties have come to a consensual agreement with respect to payment or entitlement to payment of the above noted royalty amounts from the Diavik Realization Assets (as defined in the Purchase Agreement) as set out in the attached Order found at Schedule "A" hereto.

MATERIAL TO BE RELIED ON:

11. The Applicants intend to rely upon the following materials:
- (a) The pleadings and materials filed in the within proceedings, including:
 - (i) the Affidavit of Kristal Kaye sworn April 21, 2020;
 - (ii) the Affidavit of Brendan Bell sworn December 7, 2020;
 - (iii) the Eleventh Report of the Monitor dated December 9, 2020;
 - (iv) the Sale Approval Order of this Court dated November 11, 2020; and

(v) the Order of this Court dated January 15, 2021.

(b) Such further and other materials or evidence as counsel may advise and this Honourable Court may permit.

APPLICABLE RULES

12. The *Alberta Rules of Court*, Alta Reg 124/2010.

APPLICABLE ACTS AND REGULATIONS:

13. The *Companies' Creditors Arrangement Act*, RSC 1985, c C-36, as amended and this Honourable Court's equitable and statutory jurisdiction thereunder; and

14. Such further and other authority as counsel may advise and this Honourable Court may permit.

ANY IRREGULARITY COMPLAINED OF OR OBJECTION RELIED ON:

15. None.

How the application is proposed to be heard or considered:

16. Via WebEx before the Honourable Madam Justice K.M. Eidsvik.

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 applicants a reasonable time before the application is to be heard or considered.

SCHEDULE "A"
(Form of Order)

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DOCUMENT

ORDER
(Sandstorm and Jennings Royalties)

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Fax No.: 604.631.3309

DATE ON WHICH ORDER WAS PRONOUNCED: January 27, 2021

LOCATION OF HEARING: Calgary

NAME OF JUDGE WHO MADE THIS ORDER: The Hon. Madam Justice K.
Eidsvik

UPON THE APPLICATION of Dominion Diamond Mines ULC (“**Dominion Diamond**”), Dominion Diamond Holdings, LLC, Dominion Diamond Delaware Company LLC, Dominion Diamond Marketing Corporation, Dominion Diamond Canada ULC, Dominion Finco Inc. and Washington Diamond Investments, LLC (the “**Applicants**”) for an Order relating to the Sandstorm Gold Ltd. and Christopher Jennings royalty agreements, **AND UPON** having read the Application, the Affidavit of Kristal Kaye sworn April 21, 2020, the Affidavit of Brendan Bell sworn December 7, 2020, and the Eleventh Report of the Monitor dated December 9, 2020, and the materials filed in support; **AND UPON** hearing counsel for the Applicants, and those other counsel present;

THIS COURT ORDERS AND DECLARES:

1. Service of notice of this Application and supporting materials is hereby declared to be good and sufficient, no other Person is required to have been served with notice of this Application and time for service of this Application is abridged to that actually given.
2. All capitalized terms not otherwise defined herein shall have the meanings ascribed to them in the Approval and Vesting Order of the Honourable Madam Justice K. Eidsvik dated December 11, 2020 (the “**Sale Approval Order**”).
3. The Sale Approval Order, and the Transaction and Transaction Documents approved therein, shall not discharge either the Repadre Royalty Agreement among Dominion Diamond, Diavik Diamond Mines (2012) Inc. (“**DDMI**”) and Sandstorm Gold Ltd. (“**Sandstorm**”), each as successors in interest, dated as of September 30, 2003 (the “**Sandstorm Royalty Agreement**”) or the Jennings Royalty Agreement among Dominion Diamond, DDMI and Christopher Jennings (“**Jennings**”) dated as of September 30, 2003 (the “**Jennings Royalty Agreement**”), and each of the Sandstorm Royalty Agreement and the Jennings Royalty Agreement, including Dominion Diamond’s obligations thereunder, shall remain in full force and effect as against Dominion Diamond and DDMI.
4. The assignment of the Diavik Realization Assets (as defined in the Purchase Agreement) pursuant to the Sale Approval Order and the Transaction Documents shall be subject to and net of the royalties payable under each of the Sandstorm

Royalty Agreement and the Jennings Royalty Agreement, and the royalties payable under each of the Sandstorm Royalty Agreement and the Jennings Royalty Agreement (in each case as calculated in accordance with the terms thereof) shall be paid in full to each of Sandstorm and Jennings, respectively, by or on behalf of Dominion Diamond, including from the Diavik Realization Assets. For greater certainty, the Purchasers and the First Lien Lenders shall not be entitled to receive any Diavik Realization Assets without prior payment of the royalties in favour of each of Sandstorm and Jennings in accordance with the Sandstorm Royalty Agreement and the Jennings Royalty Agreement, respectively.

Justice of the Court of Queen's Bench of Alberta