



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

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AFFIDAVIT OF KRISTAL KAYE

Sworn on May 13, 2020

I, Kristal Kaye, of Calgary, Alberta, MAKE OATH AND SAY THAT:

I. INTRODUCTION

1. I am the Chief Financial Officer (“**CFO**”) of Dominion Diamond Mines ULC (“**Dominion Diamond**”), Dominion Diamond Canada ULC (“**Dominion Canada**”), and Dominion Diamond Delaware Company, LLC (“**Dominion Delaware**”), three of the applicants in these proceedings, a director of Dominion Canada, and I also hold other director and officer positions with certain other entities affiliated with Dominion Diamond, Dominion Canada, and Dominion Delaware who are not applicants in these proceedings. 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. Dominion Diamond and Dominion Canada, together with the other applicants in these proceedings, being Washington Diamond Investments, LLC (“**Washington Diamonds**”), Dominion Diamond Holdings, LLC (“**Dominion Holdings**”), Dominion Finco Inc. (“**Dominion Finco**”), and Dominion Delaware, are collectively referred to in this affidavit as “**Dominion**” or the “**Applicants**”.

3. I make this affidavit with respect to the application by the ad hoc committee of noteholders composed of DDJ Capital Management (“**DDJ**”), Barings LLC (“**Barings**”), and Brigade Capital Management, LP (“**Brigade**”, collectively with DDJ and Barings, the “**Ad Hoc Note Group**”) for payment of their legal and financial advisory fees in this CCAA proceeding. In making this affidavit, I have reviewed the affidavit of Eric Hoff sworn May 6, 2020 (the “**Hoff Affidavit**”).

4. Capitalized terms not otherwise defined in this affidavit have the meanings ascribed to them in my first affidavit in this proceeding, sworn on April 21, 2020.

II. INTERACTIONS WITH NOTE HOLDERS PRIOR TO THE CCAA FILING

5. In my capacity as CFO of Dominion Diamond, Dominion Delaware and Dominion Canada, I interacted with representatives of parties holding the Applicants’ 7.125% senior secured second lien notes (the “**Notes**”), including representatives of the Ad Hoc Note Group, on numerous occasions in the months and years preceding the commencement of these CCAA proceedings. Generally speaking, when contacted by a representative of the members of the Ad Hoc Note Group, or any other holder of Notes, I would answer their questions and provide them with the information they sought to the best of my ability. Dominion also held quarterly investor calls, where

management provided an update on the business and members of the Ad Hoc Note Group (and others) had an opportunity to ask questions, an in person “Life of Mine” update held in New York in September 2019, and a further “Life of Mine” update in November 2019, all of which the Ad Hoc Note Group were invited to attend.

6. In addition to the above, Dominion is also required to provide certain information to any holder of Notes (upon request) pursuant to the trust indenture that governs the issuance of the Notes. The Ad Hoc Note Group, as well the Applicants’ other active bondholders and lenders, could always obtain access to an investor portal that was set up in late 2017, which contains financial and other business information regarding the Applicants, including quarterly financial statements, Management Discussions & Analysis reports, Dominion’s annual budget and financial forecasts. I note that representatives from each member of the Ad Hoc Note Group had access to this investor portal, including Mr. Hoff, who had access as of November 30, 2017.

III. INVOLVEMENT OF THE AD HOC NOTE GROUP IN THESE PROCEEDINGS

7. Before addressing any specific comments in the Hoff Affidavit, it is important to note that the Applicants’ Notes trade in the open market. The holders of the Notes are not static, and the Notes are purchased and sold by various market participants. As such, like a public company that trades on a stock market, the disclosure of confidential and non-public information with respect to the Applicants’ business must be carefully guarded and protected.

8. With respect to the events leading up to the Applicants’ filing for CCAA protection, the statement in paragraph 13 of the Hoff Affidavit that no member of the Ad Hoc Note Group was contacted in advance regarding the commencement of these CCAA proceedings is not accurate. In respect of the particular timing and communication with holders of the Notes, on April 17, 2020 (5 days before the CCAA filing), I had a conversation with certain representatives of the Ad Hoc Note Group, including Mr. Hoff of DDJ and Gregory White of Barings. During these conversations I told them both that Dominion would like to engage in strategic discussions around restructuring and asked if they would be prepared to execute a non-disclosure agreement to allow these confidential discussions to progress. Due to office closures caused by COVID-19, I could not contact Brigade until the following day, April 18, 2020, when I emailed Andrew Petijean of Brigade, also to reach out about strategic alternatives and to ask Brigade if it was prepared to execute a non-disclosure agreement.

9. As noted in my prior affidavit in these proceedings, the Applicants engaged Evercore Group L.L.C. (“**Evercore**”) to act as their financial advisor in these CCAA proceedings. It is my understanding from my discussions with representatives at Evercore that it has also had a number of communications with members of the Ad Hoc Note Group with respect to the Applicants’ need for interim financing, both prior and subsequent to the April 22, 2020 CCAA filing date.

10. It is my further understanding from the above discussions that the following events occurred with respect to the Ad Hoc Note Group in the period surrounding the Applicants’ filing for CCAA protection:

- (a) on April 18, 2020, I sent non-disclosure agreements (“**NDA**s”) to a number of holders of the Applicants’ Notes, including the members of the Ad Hoc Note Group;
- (b) on April 20, 2020, an NDA was executed with two of the largest noteholders, one of which was Brigade (a member of the Ad Hoc Note Group);
- (c) on April 21, 2020, Evercore called Brigade and provided a “forecast” as to the Applicants’ potential needs with respect to interim financing;
- (d) on April 22, 2020 (the day of the Applicants’ filing for CCAA protection) Barings and DDJ (members of the Ad Hoc Note Group) delivered a markup of the NDA. Dominion’s revisions were provided back to Barings and DDJ that same day;
- (e) on April 24, 2020, Brigade was provided with a request for proposals (“**RFP**”) for interim financing for the Applicants;
- (f) on April 25, 2020, counsel to the Applicants, Blakes, Cassels & Graydon LLP (“**Blakes**”), followed up with Barings as to the status of the NDA provided to Barings and no response from Barings was given;
- (g) on April 28, 2020, Blakes was contacted by Torys LLP (“**Torys**”) to confirm they had been retained by the Ad Hoc Note Group and to provide a mark up of the NDAs with respect to the remaining members of the Ad Hoc Note Group, Barings and DDJ;
- (h) on April 30, 2020, the form of the NDAs for Barings and DDJ was settled between Torys and Blakes; and

- (i) on May 2, 2020, the Barings and DDJ NDAs were signed, access to the interim financing dataroom was provided to Houlihan Lokey, Inc., financial advisors to the Ad Hoc Note Group, and an interim financing RFP was provided to Barings and DDJ.

11. With respect to the timeline of communications with the Ad Hoc Note Group made prior to the Applicants' CCAA filing as set out above, I am also advised by Evercore this timing was very similar to the timing of contact made with the Applicants' senior secured lenders under the Credit Agreement.

IV. INTERIM FINANCING

12. In response to paragraph 33 of the Hoff Affidavit, and the allegations made in that affidavit with respect to the process for obtaining interim financing generally, as set out above, information with respect to the Applicants' interim financing needs was provided to Brigade (a member of the Ad Hoc Note Group) as early as April 21, 2020, with an RFP provided to Brigade on April 24, 2020, whereas DDJ and Barings (the remaining members of the Ad Hoc Note Group) were provided with an RFP on May 2, 2020, being the date they executed the NDA.

13. I am advised by Evercore that proposals for interim financing were received by third parties unrelated, and with no connection to, the Applicants as early as April 30, 2020. On May 11, 2020, the Ad Hoc Note Group submitted a proposal for interim financing.

SWORN BEFORE ME at Calgary, Alberta on)
 May 13, 2020)


 _____)
 A Commissioner for Oaths in and for the)
 Province of Alberta)

Morgan Grilly
 Barrister & Solicitor


 _____)
 Kristal Kaye)