

COURT FILE NUMBER 2001-05630
COURT COURT OF QUEEN'S BENCH OF ALBERTA IN
BANKRUPTCY AND INSOLVENCY COM
JUDICIAL CENTRE CALGARY May 29, 2020
Justice Eidsvik

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
(KERP ORDER)**

ADDRESS FOR SERVICE AND CONTACT INFORMATION OF PARTY FILING THIS DOCUMENT
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AFFIDAVIT OF PATRICK MERRIN

Sworn on May 11, 2020

I, Patrick Merrin, of North Vancouver, British Columbia, MAKE OATH AND SAY THAT

1. I am the Interim Chief Executive Officer of Dominion Diamond Mines ULC (“**Dominion Diamond**”), an applicant 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 Diamond Canada ULC, together with the other applicants in these proceedings, being Dominion Diamond Delaware Company, LLC, Washington Diamond Investments, LLC, Dominion Diamond Holdings, LLC, and Dominion Finco Inc., are collectively referred to in this affidavit as “**Dominion**” or the “**Applicants**”.

I. OVERVIEW

3. On April 22, 2020, the Applicants were granted protection under the *Companies’ Creditors Arrangement Act* (Canada) (“**CCAA**”) pursuant to an Initial Order of this Court (the “**Initial Order**”).

4. This Affidavit is made in support of the Applicants’ application for an Order (the “**KERP Order**”), among other things:

- (a) approving a key employee retention plan (“**KERP**”) for certain of the Applicants’ key employees (the “**Key Employees**”);
- (b) authorizing and directing the Applicants to enter into the KERP and to pay Incentive Bonuses (as defined below) to each of the Key Employees on the terms thereunder; and
- (c) granting a charge over the Applicants’ Property (as defined in the Initial Order) (the “**KERP Charge**”).

II. THE NEED FOR THE KERP

5. On April 21, 2020, and in support of the Initial Order, Kristal Kaye, CFO, swore an affidavit in these proceedings (the “**Kaye Affidavit**”). As noted in the Kaye Affidavit, the Applicants have a valuable and viable business. The stability that will be provided to the Applicants under the CCAA, along with the restructuring options available, are expected to enhance the overall recovery to the Applicants stakeholders over a forced liquidation. A restructuring is, of course,

preferable to many of the Applicants stakeholders that rely on the business of Dominion including employees, contractors, suppliers and the communities in which the Applicants operate.

6. The retention of key employees and officers is of vital importance to the Applicants during their restructuring efforts, including in connection with their ongoing business operations, the preservation of value, and the pursuit of a sale and investment solicitation process, or other process, to maximize the value of the Applicants' business and property for the benefit of stakeholders.

7. In connection with Dominion's restructuring efforts and these CCAA proceedings, the Applicants have considered and devised a KERP for a limited number of Key Employees identified by the Applicants. These Key Employees are important for a variety of reasons both in the context of the current restructuring efforts and the successful continuation of the business. The KERP is designed to facilitate and encourage the continued participation of Key Employees in the business and the restructuring.

8. The Key Employees possess knowledge, experience and skills that are vital to the Applicants' business and a successful restructuring. Specifically, they oversee compliance with environmental and regulatory requirements and maintain long-standing relations with local indigenous communities, the government of the Northwest Territories and employees. They have legacy operational knowledge, extensive diamond industry experience and key market relationships required to operate the business as a going concern.

9. In the event of the departure of the Key Employees, it will be difficult for the Applicants to find suitable replacements, particularly given the Applicants' current financial circumstances, the cost of potentially recruiting and relocating new employees, the particular skill set of the employees in this industry and the challenges posed by recruiting and relocating new employees during the ongoing COVID-19 global pandemic.

10. Pursuant to the proposed KERP, and subsequent to the approval of this Court, each Key Employee will be offered a lump sum incentive bonus (an "**Incentive Bonus**") to incentivize them to continue their employment with the Applicants as they continue to restructure their affairs in the context of these proceedings.

11. Each Incentive Bonus will be paid as follows:

- (a) the first one-third of the incentive Bonus shall be paid to each Key Employee on June 6, 2020; and
- (b) the remaining two-thirds of the Incentive Bonus shall be paid to each Key Employee on the earlier of November 6, 2020 and the closing of any restructuring, transaction.

12. Payments to Key Employees under the KERP will only be made if, at the date the relevant payment of the Incentive Bonus is due, the Key Employee has fulfilled his or her employment obligations and has not voluntarily resigned or been terminated for cause. If the employee is terminated without cause, then the Incentive Payment would be paid to that employee.

13. The amount of each Incentive Bonus was determined taking into consideration such factors as the employee's base salary, their role at Dominion, the ability of others to perform their job functions, the ability to replace such employee without loss of continuity, the risk such employee may resign, and their importance to the Applicants' overall restructuring efforts. Not every KERP participant will receive the same KERP payment.

14. The Applicants are concerned that if the KERP and the KERP Charge are not approved by this Court, the Key Employees may depart and seek employment elsewhere. The Applicants believe that the amounts payable to the Key Employees under the KERP are reasonable and appropriate in the circumstances.

15. It is my understanding that FTI Consulting Canada, Inc., the Monitor in these proceedings (the "Monitor") was consulted during the design of the KERP and supports the proposed KERP.

16. I have attached a list of the Key Employees, their salaries, their respective Incentive Bonuses and a short summary of their importance to the Applicants' business and restructuring efforts as Confidential Exhibit "A" hereto (the "Confidential Exhibit"). This Confidential Exhibit contains sensitive information that is both personal to the Key Employees and confidential to the Applicants. Disclosure of this information would potentially allow the Applicants' competitors to persuade the Key Employees to leave their current positions by offering compensation in excess of that provided by the Applicants. Further, disclosure of the identities of the Key Employees and details of the KERP could create negative morale among the Applicants' other employees and result in employment issues.

17. For these reasons, the Applicants seek an order that the Confidential Exhibit be filed under seal and kept confidential.

III. A KERP CHARGE IS NECESSARY IN THE CIRCUMSTANCES

18. The Applicants propose a KERP Charge in respect of the Applicants' obligations under the KERP to be granted in the amount of no more than Cdn \$580,000 to provide the Key Employees with a reasonable level of assurance that the Incentive Bonuses will be paid.

19. The proposed KERP Charge would rank subordinate in priority to the Administration Charge (as defined in the Initial Order) and the Directors' Charge (as defined in the Initial Order).

AFFIRMED BEFORE ME at North)
Vancouver, British Columbia this 11TH day of)
May, 2020.)

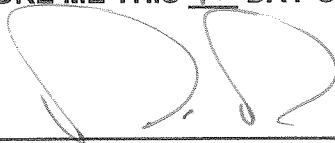
_____)
A Commissioner for Oaths in and for the)
Province of British Columbia)

PETER RUBIN)
BLAKE, CASSELLS & GRAYDON LLP)



_____)
PATRICK MERRIN

THIS IS CONFIDENTIAL EXHIBIT "A"
TO THE AFFIDAVIT OF PATRICK MERRIN
AFFIRMED BEFORE ME THIS 11th DAY OF MAY, 2020



Commissioner for Taking Affidavits

PETER RUBIN
BLAKE, CASSETT & GRAYDON LLP