

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 **APPROVAL AND VESTING ORDER**

ADDRESS FOR SERVICE AND
CONTACT INFORMATION OF
PARTY FILING THIS
DOCUMENT

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DATE ON WHICH ORDER WAS PRONOUNCED: December 11, 2020

LOCATION OF HEARING: Calgary

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

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UPON THE APPLICATION by Dominion Diamond Mines ULC (“**Dominion Diamond**”), Dominion Diamond Holdings, LLC (“**Dominion Holdings**”), Dominion Diamond Delaware Company LLC (“**DDC**”), Dominion Diamond Marketing Corporation (“**Dominion Marketing**”), Dominion Diamond Canada ULC (“**DDCU**”), Dominion Finco Inc. (“**Finco**”) (Dominion Diamond, Dominion Holdings, DDC, Dominion Marketing, DDCU and Finco collectively, the “**Sellers**”) and Washington Diamond Investments, LLC (“**Parent**”) for, *inter alia*, an order (i) approving the sale transaction (the “**Transaction**”) contemplated by the Asset Purchase Agreement (as may be further amended from time to time in accordance with the terms thereof and this Order, the “**Purchase Agreement**”) dated as of December 6, 2020, by and among, *inter alia*, the Sellers, as sellers, and DDJ Capital Management, LLC and Brigade Capital Management, LP (the “**Contracting Purchasers**”), a copy of which is attached as **Schedule “A”** hereto, (ii) vesting in one or more entities duly designated by the Contracting Purchasers in accordance with the Purchase Agreement (collectively, the “**Purchasers**” and each, a “**Purchaser**”) all of the Sellers’ right, title and interest in and to the Acquired Assets, free and clear of all Encumbrances other than the Permitted Encumbrances (as defined below), and (iii) granting related relief;

AND UPON having read the Application, the Affidavits of Brendan Bell sworn May 21, 2020, June 12, 2020, October 4, 2020, October 23, 2020, and December 17, 2020; the Affidavits of John Startin sworn May 21, 2020, June 12, 2020, and October 5, 2020; **AND UPON** reading the Eleventh Report of FTI Consulting Canada Inc. (the “**Monitor**”), filed;

AND UPON hearing counsel for the Applicants, counsel for the Purchasers, counsel for the Monitor, counsel for Credit Suisse AG, Cayman Islands Branch, and those other counsel present;

IT IS HEREBY ORDERED AND DECLARED THAT:

SERVICE

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.

DEFINED TERMS

2. All capitalized terms not defined herein shall have the respective meanings ascribed to them in the Purchase Agreement or the Initial Order of the Honourable Madam Justice K. Eidsvik dated April 22, 2020 (as amended and restated on May 1, 2020, further amended on May 15, 2020, and further amended and restated on June 19, 2020, and as may be further amended, restated or supplemented from time to time, the “**Initial Order**”).

APPROVAL OF TRANSACTION

3. The Purchase Agreement is hereby approved in its entirety. The Transaction is hereby approved, and the execution of the Purchase Agreement by the Sellers is hereby authorized, ratified, confirmed, and approved, with such minor amendments as the Sellers may deem necessary with the consent of the Monitor. The Sellers are hereby authorized and directed to complete the Transaction subject to the terms of the Purchase Agreement, to perform their obligations under the Purchase Agreement and any ancillary documents related thereto (collectively, the “**Transaction Documents**”), and to take such additional steps and execute such additional documents (including any further amendments to the Purchase Agreement) as may be necessary or desirable for the completion of the Transaction or for the conveyance of the Acquired Assets to the Purchasers.

VESTING OF PROPERTY

4. Upon delivery of a Monitor’s certificate to the Purchasers substantially in the form set out in **Schedule “B”** hereto (the “**Monitor’s Certificate**”), all of the Sellers’ right, title and interest in and to the Acquired Assets described in the Purchase Agreement shall vest absolutely in the name of each applicable Purchaser free and clear of and from any and all caveats, security interests or similar interests, hypothecations, pledges, mortgages, deeds, deeds of trust, liens, encumbrances, trusts or statutory, constructive or deemed trusts, reservations of ownership, title defects or imperfections, royalties, leases, options, rights including rights of pre-emption or first refusal, privileges, interests, assignments, easements, rights of way, encroachments, restrictive covenants, actions,

demands, judgments, executions, levies, taxes, writs of enforcement, proxies, voting trusts or agreements, transfer restrictions under any shareholder agreement or similar agreements, charges, conditional sales or other title retention agreements or other impositions, restrictions on transfer or use of any nature whatsoever or other claims, whether contractual, statutory, financial, monetary or otherwise, whether or not they have attached or been perfected, registered or filed and whether secured, unsecured or otherwise (collectively, the “**Encumbrances**”), including, without limiting the generality of the foregoing:

- (a) any encumbrances or charges as created by the Initial Order or any other Orders granted in the within CCAA proceedings;
- (b) any charges, security interests or claims evidenced by registrations, filing or publication pursuant to (i) the *Personal Property Security Act*, SNWT 1994, c 8 (NWT); (ii) the *Personal Property Security Act*, RSO 1990, c P.10 (Ontario); the *Personal Property Security Act*, RSA 2000, c P-7 (Alberta); (iii) the *Personal Property Security Act*, RSBC 1996, c 359 (British Columbia); (iv) the Uniform Commercial Code (U.C.C.); (v) the *Land Titles Act*, RSNWT 1988, c 8 (the “**Land Titles Act (NWT)**”); the (vi) *Northwest Territories Mining Regulation*, SOR/2014-68; and (vii) any other personal or real property registration system;
- (c) any charges, security interests or claims evidenced by registrations at the Canadian Intellectual Property Office or similar intellectual property offices in Canada or elsewhere in the world; and
- (d) any liens or claims of lien under the (i) *Miners Lien Act*, RSNWT 1988, c M-12 (NWT); and (ii) the *Garage Keepers’ Lien Act*, RSA 2000, c G-2 (Alberta);

but in each case, excluding the permitted encumbrances listed in **Schedule “E”** hereto (collectively, the “**Permitted Encumbrances**”), as such Permitted Encumbrances may be hereafter modified pursuant to paragraph 5 of this Order, and for greater certainty, this Court orders that all Claims including Encumbrances, other than Permitted Encumbrances, affecting or relating to the Acquired Assets, are hereby expunged, discharged and terminated as against the Acquired Assets. Except as set forth in the last sentence of Section 8.1(a) of the Purchase Agreement, the Purchasers’ acquisition

of the Acquired Assets shall be free and clear of any “successor liability” Liabilities or Claims of any nature whatsoever, whether known or unknown and whether asserted or unasserted as of the Closing; *provided* that nothing in this sentence shall limit Purchasers’ agreement to assume the Assumed Liabilities in accordance with the terms of the Purchase Agreement.

5. If Schedule “E” to this Order designates any Permitted Encumbrances that prior to Closing are determined to relate to agreements which are not Assigned Contracts, such Permitted Encumbrances shall become Encumbrances and the Sellers shall give prompt written notice thereof to the beneficiaries of such Encumbrances. Upon Sellers giving such written notice, which shall be given not less than 10 days prior to Closing, title in the Acquired Assets shall vest in the Purchaser free and clear of all such Encumbrances at Closing without need for further order of this Court and notwithstanding their original inclusion on Schedule “E” to this Order as Permitted Encumbrances.
6. Without limiting paragraph 4, upon delivery of the Monitor’s Certificate, all right, title and interest in and to any assets held by any Applicant that are used or useful in connection with the Business (other than the Excluded Assets) or that would otherwise constitute Acquired Assets if held by any Seller, shall vest absolutely in the name of each applicable Purchaser, free and clear of all Encumbrances other than Permitted Encumbrances, and for greater certainty, all such assets shall constitute Acquired Assets and each Applicant shall constitute a Seller hereunder with respect to any such Acquired Assets.
7. Upon delivery of the Monitor’s Certificate, and upon filing of a certified copy of this Order, together with any applicable registration fees, all governmental authorities and any other applicable registrar or government ministries or authorities exercising jurisdiction with respect to the Acquired Assets including, without limitation, those referred to at paragraph 8 of this Order (collectively, “**Governmental Authorities**”) are hereby authorized, requested and directed to (i) accept delivery of such Monitor’s Certificate and certified copy of this Order as though they were originals and to register such transfers, interest authorizations, discharges and discharge statements of conveyance as may be required to convey to the Purchasers clear title to the Acquired Assets subject only to Permitted Encumbrances, and (ii) take such steps as are necessary to give effect to the terms of this Order and the Purchase Agreement.

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Presentment of this Order and the Monitor's Certificate shall be the sole and sufficient authority for the Governmental Authorities to make and register transfers of title or interest free and clear of any Encumbrances other than Permitted Encumbrances.

8. Without limiting the generality of foregoing paragraph 7:
 - (a) each applicable Registrar under the Government of the Northwest Territories - Department of Industry, Tourism and Investment, including the Mining Recorder's Office of the Northwest Territories and all other government ministries and authorities in the Northwest Territories exercising jurisdiction with respect to the Acquired Assets, and each applicable Registrar under the Crown-Indigenous Relations and Northern Affairs Canada (Nunavut), including the Mining Recorder's Office of Nunavut shall and is hereby authorized, requested and directed to transfer in the name of one or more of the Purchasers, the mining leases, mineral claims and surface leases listed in **Schedule "C"** hereto free and clear of all Encumbrances, including without limitation, the Encumbrances listed in **Schedule "D"** hereto, other than the Permitted Encumbrances; and
 - (b) the applicable Registrar of the Canadian Intellectual Property Office shall be and is hereby authorized and directed to (i) cancel and discharge those Encumbrances, if any, other than the Permitted Encumbrances, registered against the estate or interest of the Sellers in and to the Acquired Assets, and (ii) transfer all of the right, title and interest of the Sellers in and to the Acquired Assets free and clear of and from any and all Encumbrances, if any, other than the Permitted Encumbrances.
9. No further authorization, approval or other action by and no notice to or filing with any governmental authority or regulatory body exercising jurisdiction over the Acquired Assets shall be required for the Closing and post-Closing implementation of the Transaction contemplated in the Purchase Agreement.
10. Upon delivery of the Monitor's Certificate together with a certified copy of this Order, this Order shall be immediately registered by the NWT Land Registrar in accordance with

section 175 of the *Land Titles Act* (NWT), and notwithstanding that the appeal period in respect of this Order has not elapsed.

11. Upon completion of the Transaction, the Sellers and all Persons who claim by, through or under the Sellers in respect of the Acquired Assets, and all persons or entities having any Claims of any kind whatsoever in respect of the Acquired Assets, save and except for the Persons entitled to the benefit of the Permitted Encumbrances (but solely with respect to and to the extent of such Permitted Encumbrances), shall stand absolutely and forever barred, estopped, and foreclosed from and permanently enjoined from pursuing, asserting, or claiming any and all right, title, estate, interest, royalty, rental, equity of redemption, or other Claim or Encumbrance whatsoever in respect of or to the Acquired Assets, and to the extent that any such Persons remain in the possession or control of any of the Acquired Assets, or any artifacts, certificates, instruments or other indicia of title representing or evidencing any right, title, estate or interest in and to the Acquired Assets, they shall forthwith deliver possession thereof to the applicable Purchaser.
12. Following completion of the Transaction, the Sellers are hereby permitted to complete, execute and file any necessary application, articles of amendment, certificate of amendment or such other documents or instruments as may be required to change their respective legal names, to the extent required pursuant to any of the Transaction Documents, and such articles, documents or other instruments shall be deemed to be duly authorized, valid and effective and shall be accepted by the applicable governmental authority without the requirement (if any) of obtaining director or shareholder approval pursuant to any applicable federal, provincial or state legislation.
13. The Purchasers shall be entitled to enter into and upon, hold and enjoy the Acquired Assets for their own use and benefit without any interference of or by any Person claiming by, through or against the Sellers.
14. Immediately upon Closing of the Transaction, the holders of the Permitted Encumbrances, other than the First Lien Lenders and their agents, shall have no claim whatsoever against the Monitor or the Sellers.

15. Notwithstanding any other provision of this Order (including, without limitation, paragraphs 4, 11 and 14), any encumbrances (“DDMI Encumbrances”) which Diavik Diamond Mines (2012), Inc. (“DDMI”) may hold pursuant to the Diavik Joint Venture Agreement against the Applicants’ share of Diavik Diamond Mine production, or proceeds therefrom pursuant to the Monetization Process approved by this Court on November 4, 2020, which have never been (or which have never been required to be) released or delivered to the Applicants or any replacement or assignee (collectively, “Undelivered DDM Diamonds”) shall, subject always to DDMI’s compliance with all orders of this Court, be unaffected by this Order and shall continue to attach to the Undelivered DDM Diamonds until such time as the Undelivered DDM Diamonds are (or are required to be) released or delivered to the Applicants or any replacement or assignee. For greater certainty, all DDMI Encumbrances shall be automatically, immediately and forever released and discharged by operation of this Order from and against any Undelivered DDM Diamonds that at any time are, or are required to be, released or delivered to the Applicants or any replacement or assignee, and any such Undelivered DDM Diamonds shall constitute Diavik Realization Assets which are free and clear of DDMI Encumbrances.
16. This Order shall be without prejudice to the rights of each of Sandstorm Gold Inc. (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.
17. ~~45.~~ The Monitor is directed to file with the Court a copy of the Monitor’s Certificate forthwith after delivery thereof to the Purchasers.
18. ~~46.~~ Pursuant to clause 7(3)(c) of the *Personal Information Protection and Electronic Documents Act* (Canada), the Monitor and the Sellers are authorized and permitted to disclose and transfer to the Purchasers all human resources and payroll information in the Sellers’ records pertaining to the Sellers’ past and current employees. The

Purchasers shall maintain and protect the privacy of such information and shall be entitled to use the personal information provided to it in accordance with applicable law.

19. ~~17.~~ The Sureties Support Confirmations shall inure to the benefit of the Applicants and their respective agents, successors, and assigns, all of whom are hereby deemed to be beneficiaries of such Sureties Support Confirmations.

BREAK-UP FEE AND CHARGE

20. ~~18.~~ The Sellers' obligation to pay the Break-Up Fee pursuant to and in accordance with the Purchase Agreement is hereby approved.

21. ~~19.~~ The Bidders shall be entitled to the benefit of and are hereby granted a charge (the "**Break-Up Fee Charge**") on the Property as security for the payment of the Break-Up Fee by the Sellers pursuant to and in accordance with the Purchase Agreement.

22. ~~20.~~ The Break-Up Fee Charge shall rank in priority subsequent to the security securing both the (i) Charges; and (ii) indebtedness under the Pre-filing Credit Agreement.

MISCELLANEOUS MATTERS

23. ~~21.~~ Notwithstanding:

- (a) the pendency of these proceedings CCAA proceedings;
- (b) any applications for a bankruptcy order now or hereafter issued pursuant to the *Bankruptcy and Insolvency Act*, RSC 1985, c B-3 (the "**BIA**") in respect of the Sellers and any bankruptcy order issued pursuant to any such applications;
- (c) any application for a receivership order; or
- (d) the provisions of any federal or provincial statute,

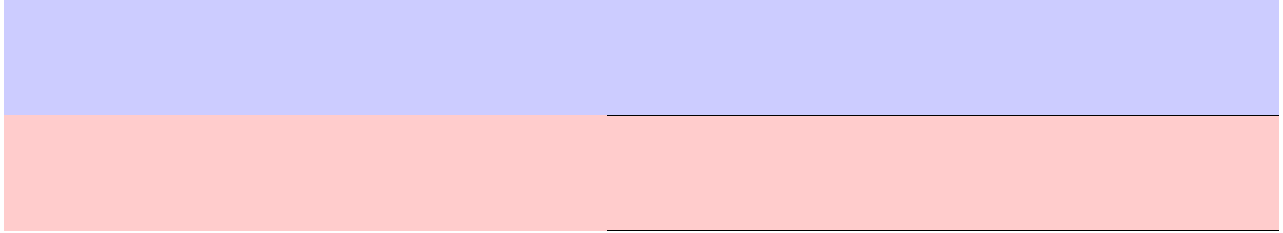
the vesting of the Acquired Assets in the Purchasers pursuant to this Order shall be binding on any trustee in bankruptcy or receiver that may be appointed in respect of the Sellers and shall not be void or voidable by creditors of the Sellers, nor shall it constitute nor be deemed to be a transfer at undervalue, settlement, fraudulent preference, assignment, fraudulent conveyance, or other reviewable transaction under the BIA or

any other applicable federal or provincial legislation, nor shall it constitute oppressive or unfairly prejudicial conduct pursuant to any applicable federal or provincial legislation.

24. ~~22.~~ The Monitor, the Sellers, the Purchasers and any other interested party shall be at liberty to apply for further advice, assistance and direction as may be necessary in order to give full force and effect to the terms of this Order and to assist and aid the parties in closing the Transaction.

25. ~~23.~~ This Honourable Court shall retain exclusive jurisdiction to, among other things, interpret, implement, and enforce the terms and provisions of this Order, the Purchase Agreement, all amendments thereto, in connection with any disputes involving the Applicants, and to adjudicate, if necessary, any and all disputes concerning the Applicants and related in any way to the Transaction; *provided, however*, that in the event that this Honourable Court abstains from exercising or declines to exercise jurisdiction or is without jurisdiction, such abstention, refusal or lack of jurisdiction shall have no effect upon and shall not control, prohibit or limit the exercise of jurisdiction of any other court having competent jurisdiction with respect to any such matter. This Honourable Court hereby requests the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or in any of its provinces or territories, in the United States or in any of its states, including Delaware, or in any foreign jurisdiction, to act in aid of and to be complimentary to this Court in carrying out the terms of this Order, to give effect to this Order and to assist the Monitor in carrying out the terms of this Order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such order and to provide such assistance to the Monitor, as an officer of the Court, as may be necessary or desirable to give effect to this Order or to assist the Monitor and its agents in carrying out the terms of this Order.

26. ~~24.~~ Service of this Order shall be deemed good and sufficient by serving the same in accordance with the procedures in the CaseLines Service Order granted May 29, 2020 in these proceedings.



Justice of the Court of Queen's Bench of Alberta