



COURT FILE NUMBER 2001-05630

COURT COURT OF QUEEN'S BENCH OF ALBERTA IN
BANKRUPTCY AND INSOLVENCY

JUDICIAL CENTRE CALGARY

COM
May 8, 2020
Justice Edisvik

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

BLAKE, CASSELS & GRAYDON LLP

Barristers and Solicitors
3500 Bankers Hall East
855 – 2nd Street SW
Calgary, Alberta T2P 4J8

Attention: Peter L. Rubin / Peter Bychawski /
Claire Hildebrand / Morgan Crilly
Telephone No.: 604.631.3315 / 604.631.4218 /
604.631.3331 / 403.260.9657

Email: peter.rubin@blakes.com /
peter.bychawski@blakes.com /
claire.hildebrand@blakes.com /
morgan.crilly@blakes.com

Fax No.: 604.631.3309

File: 00180245/000013

AFFIDAVIT OF KRISTAL KAYE

Sworn on May 6, 2020

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

1. I am the Chief Financial Officer of Dominion Diamond Mines ULC (“**Dominion Diamond**”) and Dominion Diamond Canada ULC (“**Dominion Canada**”), two of the applicants in these proceedings, as well as a director of Dominion Canada. 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 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 the “**Applicants**”.

3. I swear this affidavit in relation to the court hearing related to the Diavik joint venture and the request by Diavik Diamond Mines (2012) Inc. (“**DDMI**”) to be permitted to make cover payments as set out in the affidavit of Thomas Croese sworn April 30, 2020 (the “**Croese Affidavit**”).

The Croese Affidavit

4. At the outset, the Applicants do not agree with much of what is contained in the Croese Affidavit and, in the Applicant’s view, the Croese Affidavit paints an incomplete picture of the facts, does not accurately portray the true state of affairs and in certain places is vague on details which creates false impressions. While I do not address all of the concerns the Applicants have with the Croese Affidavit, I do wish to address certain matters.

5. At paragraphs 6 and 7 of the Croese Affidavit, Mr. Croese references the second cash call for the last two weeks of April. Mr. Croese is incorrect in his assertion that Dominion Diamond requested that the payment schedule be altered. Rather, DDMI had incorrectly altered and moved up the payment schedule contrary to a Management Committee resolution. DDMI attempted to issue a cash call invoice on April 9, 2020 when it should have been issued on April 15, 2020. Dominion Diamond wrote to DDMI to question why DDMI had moved up the billing dates and as set out in the emails attached as Exhibit A to the Croese Affidavit, Dominion Diamond asked DDMI to comply with the Management Committee resolution which provided for a cash call invoice dated April 15 and due on April 22. Mr. Croese confirms this Management Committee resolution and the appropriate timing later in his affidavit at paragraph 17.

6. At paragraph 28 of the Croese Affidavit, Mr. Croese references but does not attach an April 27, 2020 letter from Dominion Diamond's counsel to DDMI's counsel. Mr. Croese does state in his affidavit that "DDMI refutes and disagrees with the characterization of the Manager's operation of the Joint Venture and various other accusations set out in the April 27 Correspondence." What is clear from Mr. Croese's statement is that Dominion Diamond has had for some time, and continues to have, concerns with the way in which DDMI has operated and continues to operate the joint venture and the Diavik mine and that as Manager it has breached its obligations to Dominion Diamond. While Mr. Croese may disagree with Dominion Diamond's position and concerns, Dominion Diamond has expressed concerns related, but not limited, to:

- (a) The operational and financial performance of the Diavik mine generally and DDMI's repeated failure to meet costs budgets, production (ore processed) plans and diamond recovery budgets, including a significant failure to meet these in the January to March period of this year as against the approved budget, which budget is noted at paragraph 35 of the Croese Affidavit; many of which failures preceded the COVID-19 pandemic;
- (b) The mining of the Diavik mine in a manner inconsistent with the annual planned program and appears to be a result of DDMI adopting a high-grade approach, which makes little economic sense and is destructive of value for the joint Venture and its participants;
- (c) The operation of the Diavik mine since March in light of the current COVID 19 environment;
- (d) The operation of the Diavik mine since March in light of the current status of the diamond industry, including sales channels, diamond prices and current diamond stockpiles;
- (e) The operational and financial performance of the Manager in relation to the Diavik mine including the amount of the bi-weekly cash calls;
- (f) The inability of the Manager to achieve appropriate cost reductions; and
- (g) The lack of appropriate consultation with Dominion Diamond and the failure to properly take into consideration the interests and views of Dominion Diamond.

7. In the view of the Applicant's, the frequency and amount of the cash calls in this particular environment could have a negative impact on the restructuring efforts of the Applicants. All of the above is prejudicial to Dominion Diamond.

8. As noted in my affidavit of April 21, 2020 sworn in support of the initial CCAA application, in the first three months of 2020, Dominion Diamond has made cash call payments in respect of the Diavik joint venture in the amount of \$68.9 million. In addition, a further cash call payment was made by Dominion Diamond in early April 2020, for the April 1-15 period, in the amount of \$17.2 million.

9. In total, in 2020 Dominion Diamond has made cash call payments totalling approximately \$86 million. In just over three years, Dominion Diamond has paid approximately \$760 million in cash calls in relation to the Diavik joint venture. Over the last 15 years, in excess of \$3 billion has been contributed to the Diavik joint venture by Dominion Diamond or its predecessor as 40% participant.

10. At paragraph 35 of the Croese Affidavit, Mr. Croese states that the applicable program and budget was approved by both DDMI and Dominion Diamond. What is not referenced in paragraph 35 is the fact that the applicable Management Committee Resolution notes the concerns Dominion Diamond had with suggested costs and specifically states that formal collaboration via a face-to-face meeting is required to identify further cost reduction opportunities for 2020. Of course, those cost concerns were months before the onset of COVID 19 and the corresponding global ramifications has made the concerns noted above all the more acute.

11. At paragraph 38 of the Croese Affidavit, DDMI references DDMI's experience with respect to the impact of COVID 19 on the diamond industry and implies that in certain ways it is business as usual. If that is the impression that was created by the DDMI affidavit, that impression is far from accurate. While there are certain sales that undoubtedly have taken place, such as private sales as noted by DDMI, these sales are a fraction of what ordinarily takes place as the significant majority of the regular diamond channels are effectively closed.

12. It is also worthy of note that the Croese Affidavit makes very general statement about DDMI's sales saying that an affiliate of DDMI has achieved "material sales during March and April 2020." There is no evidence or details in the Croese Affidavit of what "material" means, how the volume of such sales compares to sales in the preceding several months and years and what level of discount (or reduced sale price) these sales occurred at as compared to sales in the

preceding several months and years. It is unknown if the discounts were “material”, what discounts were offered, and which sales were offered and rejected.

13. In a recent May 3 article by Rapaport News, it was confirmed that while some diamond sales could still take place, Debeers (the world’s largest diamond producer) “suspended production at most of its mines” and “Almost all other diamond producers have halted or significantly reduced supply, with some mines unlikely to return to production.” The May 3 article also states that “On Friday, India extended its nationwide lockdown by two weeks, raising the question of when diamond manufacturing would revert to normal, especially in the city of Surat, which produces more than 90% of the world’s polished goods.” Attached as **Exhibit “A”** is the May 3, 2020 article by Rapaport News.

Diavik Joint Venture Documents

14. Attached hereto and marked as **Exhibit “B”** is a copy of an invoice from DDMI to Dominion Diamond dated March 30, 2020 in the amount of \$17,200,000. with the description “April Cash Requirement – 1st cash call.” Dominion Diamond paid this cash call.

15. As described in my affidavit sworn in these CCAA proceedings on April 21, 2020, Dominion Diamond (as successor to Aber Resources Limited) and DDMI (as successor to Kennecott Canada Inc.) are party to the Diavik Joint Venture Agreement (the “**Diavik JVA**”) dated as of March 23, 1995 between Aber Resources Limited and Kennecott Canada Inc., as amended. Attached hereto and collectively marked as **Confidential Exhibit “1”** is a copy of the Diavik JVA, together with (a) a Diavik JVA amending agreement dated December 1, 1995, (b) a Diavik JVA amending agreement (no. 2) dated January 17, 2002, and (c) a Diavik JVA amending agreement (no. 3) dated March 3, 2004.

16. Attached hereto and marked as **Confidential Exhibit “2”** is a copy of an Agreement to Establish a Protocol for Diamond Production Splitting dated January 7, 2003, between Diavik Diamond Mines Inc. (a predecessor entity to DDMI) and Aber Diamond Mines Limited (a predecessor to Dominion Diamond).

17. Attached hereto and marked as **Confidential Exhibit “3”** is a copy of Schedule A – Diamond Production Splitting Protocol (Version No. 4) entered between Dominion Diamond and DDMI.

18. Attached hereto and marked as **Confidential Exhibit “4”** is a copy of an e-mail sent to me by Thomas Croese on April 9, 2020 at 5:29 PM attaching the Diavik Joint Venture Updated 2020 Cash Call Schedule.

19. Attached hereto and marked as **Confidential Exhibit “5”** is a copy of a redacted e-mail sent by Sean Collins of McCarthy Tetrault LLP, counsel to DDMI to Peter Rubin of Blake, Cassels & Graydon LLP, counsel to the Applicants, dated April 30, 2020. The portions of Confidential Exhibit "5" that have been redacted pertain to without prejudice discussions among Mr. Rubin and Mr. Collins.

20. Confidential Exhibits “1” to “5” contain confidential and commercially sensitive information regarding the Diavik JVA and the business arrangements among Dominion Diamond and DDMI that, if disclosed, could be determinantal to Dominion Diamond’s and DDMI’s commercial interests and these CCAA proceedings. The Applicants request that Confidential Exhibits “1” to “5” be sealed on the court record. I don’t believe that any stakeholder will be prejudiced by this relief.

SWORN BEFORE ME at Calgary, Alberta)
this 6th day of May, 2020.)



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

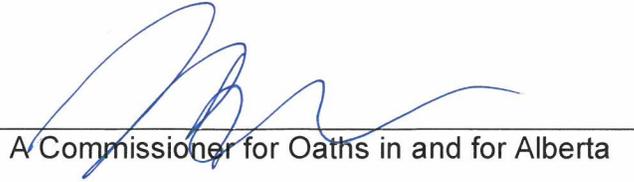
Morgan Crilly
Barrister & Solicitor



KRISTAL KAYE

TAB A

This is Exhibit "A" referred to in the Affidavit
of **KRISTAL KAYE** sworn before me this
6 day of May, 2020.



A Commissioner for Oaths in and for Alberta

Morgan Crilly
Barrister & Solicitor

Rough Markets

Don't Ban Rough Buying, De Beers Urges

Compelling trade members not to purchase is “counterproductive,” says CEO Bruce Cleaver.

May 3, 2020 9:37 AM By Rapaport News

RAPAPORT... De Beers CEO Bruce Cleaver has called on the trade to allow rough purchases, assuring manufacturers the company won't require them to buy in the weak market.

“We will only sell [rough] when the demand is such that it can create sustainable value for all of us,” the executive wrote in a blog post Friday. “However, just as we are not compelling our clients to purchase, we strongly believe it is counterproductive for any part of the industry to compel them not to purchase.”

Cleaver's plea comes after the Gem & Jewellery Export Promotion Council (GJEPC) and other Indian trade organizations called on the nation's diamond sector to pause rough-diamond imports for 30 days, beginning on May 15. The move would improve the Indian industry's liquidity situation and deplete inflated polished inventories, the trade bodies explained.

Without explicitly referencing the Indian trade groups' appeal to their members, Cleaver argued that supply had already been significantly reduced after De Beers suspended production at most of its mines. “Almost all other diamond producers have halted or significantly reduced supply, with some mines unlikely to return to production,” he added. De Beers cut its production guidance for 2020 to 25 million to 27 million carats, more than 20% below its initial projection, Cleaver noted.

The company also canceled its March sight and is offering 100% deferrals at sight 4, which begins Monday. Sightholders are likely to defer the vast majority of purchases to later in the year, as weak consumer demand and the shutdown of India's cutting industry have diminished appetite for rough.

On Friday, India extended its nationwide lockdown by two weeks, raising the question of when diamond manufacturing would revert to normal, especially in the city of Surat, which produces more than 90% of the world's polished goods.

Marketing message

Meanwhile, Cleaver urged the industry to capitalize on the diamond's symbolism, as consumers will seek to purchase “fewer, but more meaningful things” as they move out of lockdown. Signs of pent-up demand from delayed weddings, and self-purchases to reward hardships that have been overcome, are starting to show in China as the lockdown there has eased, the CEO commented. People are visiting stores and shopping malls again, he said.

In its communication with consumers over the coming months, De Beers will emphasize the role diamonds play in shaping a better world and in forging meaningful connections, he stressed.

“Just as they have had to find innovative ways to stay connected with loved ones, we will find new ways to connect with them,” he said.



“Throughout time, the diamond has served as a powerful symbol of connection and meaning,” he wrote. “It has always been attached to life’s most precious moments and relationships and represented a store of value, but increasingly we believe a diamond is becoming a store of values.”

Image: Bruce Cleaver. (Joe McGorty/De Beers)

RAPAPORT.
INFORMATION THAT MEANS BUSINESS.

TAB B

This is Exhibit "B" referred to in the Affidavit
of **KRISTAL KAYE** sworn before me this
6 day of May, 2020.



A Commissioner for Oaths in and for Alberta

Morgan Crilly
Barrister & Solicitor

RioTinto

Diavik Diamond Mines (2012) Inc.
P.O. Box 2498
Suite 300, 5201-50th Avenue
Yellowknife, NT X1A 2P8 Canada
T (867) 669 6500 F 1-866-313-2754

BILLED TO:

Dominion Diamond Mines ULC
900 – 606 4 Street SW
Calgary, AB T2P 1T1
Canada

Attention: DDC-AP

DATE: 30-MAR-20

INVOICE: DDC 04-20A

DESCRIPTION		AMOUNT
	100%	40%
April Cash Requirement – 1 st cash call	43,000,000.00	\$17,200,000.00
GST Registration # 83952 4048RT		

TOTAL CASH CALL \$17,200,000.00

(DUE ON April 06, 2020)

CONFIDENTIAL EXHIBIT "1"

REDACTED – SUBJECT TO REQUESTED SEALING ORDER

CONFIDENTIAL EXHIBIT "2"

REDACTED – SUBJECT TO REQUESTED SEALING ORDER

CONFIDENTIAL EXHIBIT "3"

REDACTED – SUBJECT TO REQUESTED SEALING ORDER

CONFIDENTIAL EXHIBIT "4"

REDACTED – SUBJECT TO REQUESTED SEALING ORDER

CONFIDENTIAL EXHIBIT "5"

REDACTED – SUBJECT TO REQUESTED SEALING ORDER