



No. B-240477
Vancouver Registry

**IN THE SUPREME COURT OF BRITISH COLUMBIA
IN BANKRUPTCY AND INSOLVENCY**

BETWEEN:

STELLEX POWER LINE OPCO LLC and 1501841 B.C. LTD.

PETITIONERS

AND:

**ROKSTAD HOLDINGS CORPORATION, ROKSTAD POWER (2018) LTD., ROKSTAD
POWER CONSTRUCTION SERVICES LTD., ROKSTAD POWER TRANSMISSION
SERVICES LTD., ROKSTAD POWER (PRAIRIES) LTD., GOLDEN EARS PAINTING &
SANDBLASTING (2018) LTD., and PLOWE POWER SYSTEMS (2018) LTD.**

RESPONDENTS

RESPONSE TO APPLICATION

Filed by: Rokstad Holdings Corporation, Rokstad Power (2018) Ltd., Rokstad Power Construction Services Ltd., Rokstad Power Transmission Services Ltd., Rokstad Power (Prairies) Ltd., Golden Ears Painting & Sandblasting (2018) Ltd., and Plowe Power Systems (2018) Ltd. (the "application respondents" or the "Respondents")

THIS IS A RESPONSE TO the application filed October 25, 2024.

The application respondent(s) estimate that the application will take 1 day.

Part 1: ORDERS CONSENTED TO

The application respondent(s) consent to the granting of the orders set out in the following paragraphs of Part 1 of the application: nil.

Part 2: ORDERS OPPOSED

The application respondent(s) oppose the granting of the orders set out in Part 1 of the application.

Part 3: ORDERS ON WHICH NO POSITION IS TAKEN

The application respondent(s) take no position on the granting of the orders set out in none of the paragraphs of Part 1 of the application.

Part 4: FACTUAL BASIS

1. The Petitioners are special purpose entities incorporated to take ownership of the Respondents' business. The Petitioners intentionally, with eyes open – after their parent company performed months of due diligence pursuant to a non-disclosure agreement and failed to come to terms with the Respondents for a consensual transaction – chose to become the Respondents' lender. They bought the Respondents' senior secured debt less

than a month ago, and immediately took steps to take control of the Respondents to facilitate a transaction whereby Stellex Power Line Opco LLC could become the operator of the Rokstad Group business. When met with resistance to their overreaching measures, they came to this Court seeking extraordinary, equitable relief *ex parte*, on inaccurate affidavit evidence, within days of choosing to become the Respondents' lender. Then on October 29, 2024, they bought the Respondents' junior secured debt, making any sale process meaningless and other bona fide realization process impossible.

2. The Petitioners now come to this Court seeking extraordinary, equitable relief to further their efforts to acquire the business. This is the Petitioner's fifth attempt to take control of the business away from current management. They have breached their contractual obligations to the Respondents and used their superior financial resources to force a transfer of the business to themselves for bottom dollar.
3. The Respondents are companies incorporated according to the laws of the Province of British Columbia with an address of delivery in this proceeding at 2500 –700 West Georgia Street, Vancouver, in the Province of British Columbia.
4. The Respondents have related companies that operate in the United States. All are Delaware corporations with an address of delivery in this proceeding at 2500 –700 West Georgia Street, Vancouver, in the Province of British Columbia (together with the Respondents, the "**Rokstad Group**").
5. The Rokstad Group is a leading distribution and transmission construction company that operates in the United States and Canada. It has operated since 2008 and employs approximately 416 people.

Loan Agreements

6. On April 26, 2019, certain of the Rokstad Group entered into a loan agreement with Crown Capital Partner Funding LP by its general partner, Crown Capital LP Partner Funding Inc. (together, "**Crown**") whereby Crown agreed to advance a principal amount of \$30,000,000 (the "**Crown Facility**"), later increased by \$20,000,000 by way of an Amended and Restated Loan Agreement made November 6, 2019.
7. On June 3, 2020, certain of the Rokstad Group entered into a loan agreement with Canadian Western Bank ("**CWB**") in which CWB agreed to advance loans in an aggregate amount not exceeding \$51,000,000 (the "**CWB Facility**"). The CWB Facility agreement was amended on various occasions (as amended, the "**CWB Agreement**"). Certain security was also granted in relation to the CWB Facility (as amended or supplemented, the "**CWB Security Agreement**").
8. On June 3, 2020, Crown, CWB, and Rokstad Holdings Corporation entered into a Subordination, Priority, Standstill And Postponement Agreement pursuant to which Crown agreed the Crown Facility was postponed and subordinated to the CWB Facility.

Financial Difficulties

9. In September 2021, the Rokstad Group faced significant negative financial repercussions due to a suspension from property and drop off of work from Pacific Gas & Electric.

10. Between March 31, 2022, and April 8, 2022, CWB sent notice of events of default under the CWB Agreement to the Rokstad Group.
11. The Rokstad Group and CWB entered into a forbearance agreement on August 26, 2022, which was extended numerous times. On March 7, 2024, Rokstad Group, CWB, and Bernard Rokstad, a director of the Rokstad Group, entered into an amended and restated forbearance agreement (the “**ARFA**”). The ARFA was extended several times while the Rokstad Group negotiated with Stellex, as described below.
12. On September 4, 2024, CWB demanded payment of the CWB Facility pursuant to the ARFA. Per the CWB Demand the amount owed under the CWB Facility was \$25,703,129.31 USD and \$7,939,189.15 CDN as of September 3, 2024. On October 2, 2024, Crown demanded repayment of the Crown Facility in the amount of \$61,129,479.00 CDN as at September 6, 2024.
13. As described in more detail below, until October 30, 2024, the Rokstad Group was negotiating a transaction that would see the CWB Facility repaid and a consensual path forward with Crown.

Marketing Process and Stellex Acquisition Efforts

14. As required pursuant to the ARFA, the Rokstad Group engaged in a marketing process to sell the Rokstad Group’s businesses outside of creditor protection.
15. Throughout its period in default, the Rokstad Group has worked closely with CWB’s financial advisor PricewaterhouseCoopers LLP (“**PwC**”).
16. Pursuant to the marketing process, the Rokstad Group engaged in confidential negotiations with Stellex Capital Management A LP through Stellex Capital Management LLC (alone or collectively with the Petitioners, as appropriate, “**Stellex**”), an affiliate of the Petitioners, to purchase the companies. As part of the negotiations, the Rokstad Group required that Stellex enter into a confidentiality agreement (the “**NDA**”) to protect proprietary and other sensitive company information.
17. One of the co-lead negotiators for Stellex was John Carter, a third-party contractor who acted as agent for Stellex.
18. As the negotiations proceeded, Stellex told the Rokstad Group that it required certain actions to be taken prior to coming to an agreement on terms. In particular Stellex required a new entity be incorporated, which would include a board of directors with two new members (i.e., not current management of the Rokstad Group), one with a casting vote. The new board was to be able to cause its subsidiaries (i.e. the Rokstad Group) to sell the Rokstad Group businesses to Stellex over the objection and disagreement of current management and ownership. This was Stellex’s first attempt to take control of the Rokstad Group away from current management.
19. Ultimately, the shareholders in the Rokstad Group determined not to continue discussions and negotiations with regards to a sale to Stellex.
20. On October 1, 2024, the Rokstad Group requested that Stellex and its representatives promptly return or destroy any confidential information or evaluation materials, in

accordance with the NDA. However, Stellex never returned or destroyed any confidential information, and soon after entered into a debt-purchase transaction with CWB (as described below).

21. While the Rokstad Group acknowledges that it has substantial liabilities, the business has been improving.
22. The former chief financial officer of the Rokstad Group, Tamara Wilson, resigned shortly after negotiations were terminated with Stellex. The Rokstad Group has since discovered that during her employment, Ms. Wilson had:
 - (a) worked with Mr. Yoni Lipski, employee of Stellex, to provide inaccurate financial information to the financial advisor to CWB; and
 - (b) been communicating with Stellex regarding a plan to freeze the current directors of the Rokstad Group out of management.
23. Much of the evidence presented by Stellex is based on information passed from Ms. Wilson to Ms. Krasik. This information is inaccurate.

Proposed Plan to Restructure Debt

24. After the expiry of the exclusivity period with Stellex, the Rokstad Group revived negotiations with another entity that had originally participated in the marketing process but was not initially chosen as the highest bid (the “**Transaction**”). The Transaction was progressed to the point of being capable of closing in the coming weeks.
25. The Rokstad Group was also working to source a \$15 million equity injection from third parties and a \$20 million facility. With these funds and the proceeds from the Transaction, the Rokstad Group expected to be able to fully repay the CWB Facility, fund working capital needs, and provide funding for a restructure of the group’s obligations to Crown.
26. The Rokstad Group’s cash flow was sufficient to carry it through the period of time required to close the Transaction and any other financing transactions.

Stellex Acquisition of CWB Facility

27. On October 7, 2024, counsel to CWB informed counsel to the Rokstad Group that CWB had sold its position to the Petitioners.
28. Any information the Petitioners had to evaluate whether to acquire CWB’s position would have been provided to Stellex pursuant to the NDA. The NDA provides that any confidential information was only to have been used to negotiate a transaction with the Rokstad Group.
29. In a letter dated October 8, 2024, Stellex informed the Rokstad Group that the Petitioners had acquired the CWB Facility. In that letter, the Petitioners claimed to have exercised powers of attorney to appoint directors to the board of directors and further claimed to have amended the governance documents of each member of the Rokstad Group, pursuant to the CWB Security Agreement. In other words, Stellex sought to use the exact same strategy they had used in their failed negotiations to transfer power away from current management – their second attempt.

30. The CWB Security Agreement does not provide a blanket power of attorney to appoint new directors and interfere with the governance structure and constating documents of the entities in the Rokstad Group. Rather, any powers within the CWB Security Agreement are designed and intended to be used *by a secured creditor in its role as secured creditor* to protect collateral from waste or diminution.
31. The two directors purported to be appointed to the board of directors of the Rokstad Group were Ms. Wilson and Mr. Carter. While Stellex has maintained that Ms. Wilson and Mr. Carter are “independent”, it is clear they are not.

Interim Receivership Order

32. On October 10, 2024, on an *ex parte* application, the Petitioners sought and were granted an interim receivership order (the “**Interim Receivership Order**”) appointing FTI Consulting Canada Inc. (the “**Interim Receiver**”) Receiver over all the bank accounts, receipts disbursements and proceeds (the “**Property**”) of the Rokstad Group. Stellex’s third attempt to take control away from current management was successful, although the Property definition is limited.
33. Stellex’s application was supported by the First Affidavit of Irina Krasik (the “**First Krasik Affidavit**”) replete with material misstatements and misrepresentations regarding the Rokstad Group’s actions and the events. Affidavit #2 of Irina Krasik filed in these proceedings (the “**Second Krasik Affidavit**” and together with the First Krasik Affidavit, the “**Krasik Affidavits**”) repeats the misstatements from the First Krasik Affidavit and contains further incorrect information.
34. In particular the Krasik Affidavits:
 - (a) allege non-existent difficulties meeting payroll;
 - (b) fail to disclose Ms. Wilson’s and Mr. Carter’s close connections to Stellex, creating a misleading impression of impartiality and independence;
 - (c) claim that the Rokstad Group failed to respond or communicate their position in respect of Stellex’s actions, which is false;
 - (d) allege some form of misappropriation by the Rokstad Group’s principles (due to the reimbursement of their expenses), without disclosing that the Rokstad Group had explained these payments, provided documents to back up the payments, and otherwise complied with Stellex’s requests for information;
 - (e) allege that the issues with the Rokstad Group’s bank accounts is due to the interference of the Rokstad Group’s principals, when Stellex had been informed that the issue was at the bank level; and
 - (f) claim representatives of Stellex were barred from attending on site when representatives were given the access due a secured creditor.
35. After the appointment of the Interim Receiver, the Rokstad Group was locked out of its Bank of America bank accounts (“**BOA**”) and BOA began to sweep certain accounts and send those funds to Stellex. The Rokstad Group later learned that Stellex had notified BOA of the assignment of CWB’s rights under a Deposit Account Control Agreement (“**DACA**”) and exercised such rights. This was Stellex’s fourth attempt to remove management control, which was also successful.

36. On October 10, 2024, the Rokstad Group's payroll payments set up with BOA were cancelled, resulting in a missed payroll for the first time in the Rokstad Group's history. The impact of the missed payroll will cause the Rokstad Group to incur significant and preventable expenses. Stellex's application materials indicate that it wants credit for its largess in not keeping the funds it caused to have swept from the group's payroll accounts.

Stellex Acquires Crown Facility

37. As of October 30, 2024, the Rokstad Group had advanced the Transaction and equity financing that would have seen the CWB Facility repaid, with some additional funds going to Crown in respect of the Crown Facility. The Rokstad Group had also made a proposal to Crown to see them repaid in full over time.
38. In the afternoon of October 30, 2024, Stellex acquired the Crown Facility.
39. As with the acquisition of the CWB Facility, any information Stellex had to evaluate whether to acquire the Crown Facility would have been provided pursuant to the NDA.
40. In the Second Krasik Affidavit, Ms. Krasik says that Stellex wants to fund an open sale process of the Rokstad Group companies to maximize value for stakeholders. However, when that affidavit was sworn, Stellex was negotiating with Crown to acquire the Crown Facility. The only outcome to a receivership once both senior and junior secured debt was in Stellex's hands is a transfer the Rokstad business to Stellex. There is no other outcome to a receivership.
41. Much of Stellex's evidence included protestations regarding the dire financial position of the Rokstad Group. And yet, it was Stellex's active choice on or about October 7, 2024, to become the Rokstad Group's lender. Then after making even more protestations to this Court as to the terrible financial shape of the Respondents, Stellex acquired even more of the group's secured debt by acquiring the Crown Facility.
42. Given Stellex's sworn evidence regarding their beliefs as to the Rokstad Group's financial situation, the only reason Stellex could have had to acquire the CWB Facility and Crown Facility (together the "**Debt Facilities**") is to force the acquisition they could not consensually negotiate. Immediately after acquiring the CWB Facility, Stellex started taking steps to that specific end, and not acting in good faith as a secured creditor. These actions make clear that Stellex's true intent is not to safeguard an investment or to promote the financial wellbeing of the Group, but is instead retaliatory and designed to wrest control away from the Rokstad Group management by any means possible. This receivership application is attempt number five to accomplish this goal.
43. The circumstances surrounding Stellex's acquisition of the Debt Facilities and the damaging and aggressive actions taken thereafter have given rise to claims that the Rokstad Group has against Stellex. Appointing a receiver may be Stellex's way of seeking to avoid liability for the damage caused, hoping that a receiver will not pursue such claims.
44. To preserve these claims as assets of the Rokstad Group, the Rokstad Group is advancing its bona fide claims against the Petitioners, Stellex Capital Management LLC, Stellex Capital Management A LP, and others. Given the location of the defendants, the Rokstad Group intends to commence an action in the State of New York.

45. Although not in evidence, presumably Stellex acquired the Debt Facilities at a discount. They violated the NDA in buying the Debt Facilities. They violated the NDA in their affidavits before this Court. They are now seeking equitable relief to enable them to engage in profiteering.

Part 5: LEGAL BASIS

46. Sections 24 and 39(1) of the *Law and Equity Act*, RSBC 1996, Ch. 253 (“**LEA**”) and sections 4.2, 47, and 243(1) of the *Bankruptcy and Insolvency Act*, RSC. 1985, B-3 (“**BIA**”), section 63(2) of the *Personal Property Security Act*, RSBC 1996, Ch. 359 (“**BC PPSA**”), and section 64 of the *Personal Property Security Act*, RSA 2000, c P-7 (“**AB PPSA**”)

The Proposed Receivership Order is Not Just and Convenient

47. Section 243(1) of the BIA and s. 39(1) of the LEA provide that, on application by a secured creditor, a court may appoint a receiver “if it considers it to be just and convenient”.
48. In *Maple Trade Finance Inc. v. CY Oriental Holdings Ltd.* 2009 BCSC 1527, at para 25 this Court identified several factors that may inform a holistic determination of whether it is “just and convenient” to appoint a receiver, including:
- (a) whether irreparable harm might be caused if no order were made, although it is not essential for a creditor to establish irreparable harm if a receiver is not appointed, particularly where the appointment of a receiver is authorized by the security documentation;
 - (b) the risk to the security holder taking into consideration the size of the debtor’s equity in the assets and the need for protection or safeguarding of the assets while litigation takes place;
 - (c) the nature of the property;
 - (d) the apprehended or actual waste of the debtor’s assets;
 - (e) the preservation and protection of the property pending judicial resolution;
 - (f) the balance of convenience to the parties;
 - (g) the fact that the creditor has the right to appoint a receiver under the documentation provided for the loan;
 - (h) the enforcement of rights under a security instrument where the security-holder encounters or expects to encounter difficulty with the debtor and others;
 - (i) the principle that the appointment of a receiver is extraordinary relief which should be granted cautiously and sparingly;
 - (k) the consideration of whether a court appointment is necessary to enable the receiver to carry out its duties more efficiently;
 - (l) the effect of the order upon the parties;
 - (m) the conduct of the parties;
 - (n) the length of time that a receiver may be in place;
 - (o) the cost to the parties;
 - (p) the likelihood of maximizing return to the parties; and
 - (q) the goal of facilitating the duties of the receiver.
49. The circumstances here do not meet the threshold of being “just and convenient” because:
- (a) Stellex is not at risk of suffering irreparable harm should the Receivership Order not be granted. Stellex very recently made a decision to purchase the Debt

Facilities (which the Rokstad Group maintains was for improper purposes as set out below) and any “harm” resulting to Stellex is a product of its own action.

- (b) The assets of the Rokstad Group are not at risk of waste. Cash flow projections show that the business is sustainable in the coming 13-week period at least.
- (c) The Rokstad Group has remained compliant and transparent with Stellex throughout this matter, despite assertions to the contrary contained in the Krasik Affidavits. In contrast, Stellex (i) breached the NDA, (ii) secretly negotiated with CWB and Crown, (iii) tried to wrest control away from current Rokstad Group management immediately upon buying the Debt Facilities, and (iv) when that did not proceed smoothly sought an interim receiver *ex parte*, citing unfounded allegations of misappropriation.
- (d) Though the security agreements governing the Debt Facilities (the “**CWB and Crown Security Agreements**”) authorize the appointment of a receiver, the balance of convenience favours the Rokstad Group who will be unfairly prejudiced should the Receivership Order be granted. The appointment of a receiver will lead to the acquisition of the business by Stellex.
- (e) Stellex has not commenced this proceeding to exercise its rights as a secured creditor, but rather as a means to purchase a business at a discount. Stellex is engaging in profiteering and seeking to use the BIA and this Court to do it.
- (f) Appointing a receiver is an equitable remedy, even if provided for in a creditor’s security documents. A receivership appointment should be to maximize recovery for stakeholders – not to enable Stellex to take by force what it could not negotiate a fair price for. The Rokstad Group should be entitled to have its bona fide claims against Stellex and others adjudicated before the business is transferred to Stellex.

Stellex has not acted in good faith or come to equity with clean hands

50. The remedy of receivership is “purely equitable in its origin” and in light of this the maxims of equity are relevant to the appointment of a receiver.

***Royal Bank of Canada v. W. Got & Associates Electric Ltd.*, 1997 ABCA 136, at paras 31, 104**

51. It is a well-established principle of equity that a person who comes to equity must do so with clean hands. This principle allows the court to deny equitable relief where a claimant has engaged in misconduct that “has an immediate and necessary relation to the equity sued for”.

***Hongkong Bank of Canada v. Wheeler Holdings Ltd.*, [1993] 1 S.C.R. 167 at 188, quoting *Moody v. Cox*, [1917] 2 Ch. 71 (C.A.) at 87 88**

52. Section 4.2(1) of the *BIA* further states that any interested person in any proceedings under the *BIA* shall act in good faith with respect to those proceedings. Section 4.2(2) of the *BIA* provides that if the court is satisfied that an interested party fails to act in good faith, on application by any interested person, the court may make any order that it considers appropriate in the circumstances.

53. Conduct of the parties in relation to the proceedings, including conduct which precipitates the proceedings should be considered by the Court.

***CWB Maxium Financial Inc v. 2026998 Alberta Ltd*, 2021 ABQB 137, 2021 at paras 49 and 56 (“*CWB Maxium*”)**

54. Any *ex parte* application requires the applicant to make full and frank disclosure.
***GJB Enterprises Inc. (Receiver) v. GJB Enterprises Inc.*, 2012 BCSC 567 at para 19;
Canadian Western Bank v John Doe, 2024 BCSC 555 paras 11–12**
55. Inherent to the *BIA* is the Court’s power to supervise “[e]ach step in the bankruptcy process” and to remedy the injustice caused by creditors using the *BIA* for an improper purpose. An improper purpose is “any purpose collateral to the purpose for which the bankruptcy and insolvency legislation was enacted by Parliament”.
***9354-9186 Québec inc. v. Callidus Capital Corp.*, 2020 SCC 10, quoting *3004876 Nova Scotia Ltd v. Laserworks Computer Services Inc.*, 1998 NSCA 42**
56. The statutory requirement of good faith in the insolvency context requires that an interested party not conduct proceedings for an oblique motive or improper purpose. The conduct of the party alleged to have breached the good faith requirement should be assessed in light of the intent and policy objectives of the *BIA*. While secured creditors can act in their own interests and not in the debtor’s, the good faith requirement requires that secured creditors act honestly.
CWB Maxium at para 59
57. Stellex has not behaved honestly in its dealings with the Rokstad Group, nor in accordance with the statutory requirements of good faith, nor come to this proceeding with clean hands, as exemplified by Stellex’s:
- (a) disingenuous use of information, provided to it in confidence and counter to the terms of NDA, to further its purchase of the Debt Facilities;
 - (b) overreaching attempts to install new directors and to interfere and make changes to the governance of the Rokstad Group, for the same reason Stellex tried to install new directors during the sale negotiations – to force a sale to Stellex;
 - (c) misrepresentations and misstatements set out in the Krasik Affidavits, on which Stellex relied to obtain the Interim Receivership Order and on which it relies to obtain the order sought in this application; and
 - (d) ultimate, oblique aim to acquire the Rokstad Group’s business.
58. Stellex is not acting as a true secured creditor looking to maximize its return under its loan and security documents. Stellex has instead improperly used insolvency processes to (i) retaliate against the Rokstad Group’s choice to cease negotiations by taking extraordinary steps to acquire the Debt Facilities, (ii) overreach the limits of its statutory and contractual rights, and (iii) seek to gain control of a business with significant upside at a bargain price.
59. Stellex’s actions in this proceeding show complete disregard for the aims and policy objectives of the *BIA* and insolvency regime in general. To allow the Receivership Order in these circumstances would bring the insolvency system into disrepute. As such, appointment of a receiver is clearly not just or convenient.

The Rokstad Group is Entitled to Relief from Forfeiture

60. Section 24 of the *LEA* provides that the Court may “relieve against all penalties and forfeitures, and in granting the relief may impose any terms as to costs, expenses, damages, compensations and all other matters that the court thinks fit.”
61. Further, both the BC (the location of the collateral) and the Alberta (the governing law of the CWB Security Agreement) *Personal Property Security Acts* provide that a court may relieve a person from compliance with Part V (Rights and Remedies on Default) of the respective Acts, and stay enforcement of rights provided under the Acts.

BC PPSA s. 63(2) and AB PPSA s. 64

62. Relief against forfeiture is a discretionary remedy. Courts have broad equitable jurisdiction “to interfere in cases where the assertion of strict legal rights may be unjust or unfair”.

Sechelt Golf & Country Club Ltd. v. District of Sechelt, 2012 BCSC 1105 at para 128 [Sechelt Golf]; See also Saskatchewan River Bungalows Ltd. v. Maritime Life Assurance Co., [1994] 2 SCR 490 at 504 [Saskatchewan River]

63. Notwithstanding that the CWB and Crown Security Agreements may provide for a receiver, the Court should not allow this mechanism to be used as a weapon by Stellex to acquire a company it could not bargain a fair price for, nor as a tool to avoid the Rokstad Group’s bona fide claims against it.
64. In British Columbia, the principles to be considered can be summarized as follows:
- (a) whether the sum forfeited is out of all proportion to the loss suffered (*Pope v. Potter, 2011 BCSC 697 at para. 23*);
 - (b) whether it would be unconscionable in the traditional equitable sense for relief not to be granted (*Pope at paras. 24-25*);
 - (c) the applicant’s conduct, the gravity of the breaches and the disparity between the value of the property forfeited and the damage caused by the breach (*Saskatchewan River Bungalows at 504*);
 - (d) whether there are any collateral equitable grounds which exist including the party coming to court with “unclean hands” (*600433 B.C. Ltd. v. XJ Motors Ltd., 2011 BCSC 1144 at para. 34*);
 - (e) whether the applicant is “prepared now to do what is right and fair, but must also show his past record in the transaction is clean” (Snell’s Equity (29th ed., 1990) at 31 and 541-542.).

Sechelt Golf at para 139, cited with approval in Peninsula (Kingsway) Seafood Restaurant Inc. v. Central Park Developments Ltd., 2021 BCCA 93

65. Given that Stellex has strategically acquired the Debt Facilities to force an acquisition of the Rokstad Group, the importance of the sum forfeited diminishes in comparison to the Rokstad Group’s ongoing control of its whole business.
66. Unconscionability in its traditional sense “invokes relief against an unfair advantage gained by an unconscientious use of power by a stronger party against a weaker”. Here it is clear that the Rokstad Group is in a position of distress and need, leaving it “in the power of the stronger” Stellex. There is substantial unfairness in what Stellex has obtained—a cheaper and almost instantaneous route to an acquisition it has been seeking for some time.

Pope v. Potter, 2011 BCSC 697 at para 24

67. Stellex acquired the Debt Facilities with a complete understanding of the existing defaults and a purportedly highly negative view of the companies and their financial state. As discussed above, Stellex does not come to Court with clean hands. The disparity between the value of the property forfeited and the damage caused by the breach weighs in favour of the Rokstad Group. Stellex's sole goal here is ownership of the Rokstad Group's business, not recovery of funds as a lender.
68. The Rokstad Group should be permitted to litigate its claims against Stellex on the merits *before* Stellex takes away its business. In all of the circumstances, the Rokstad Group should be granted relief from forfeiture.

In the Alternative, the Respondents' Claims Against Stellex and Others Should Be Exempted

69. If a receiver is appointed, the Respondents request that any and all claims of any entity in the Rokstad Group against Stellex or any other party related to Stellex's acquisition of the Debt Facilities be expressly excluded from the definition of "Property" in the appointing order, so that the Respondents can proceed with such claims against the Petitioners, Stellex Capital Management LLC, Stellex Capital Management A LP, and others. The Respondents intend to file an action soon in a forum that aligns with the location of the Stellex defendants, likely New York.
70. There is authority that claims against the secured lender should be exempted from the property secured by way of a security agreement:

I accept the submissions of the plaintiff that security agreements must be interpreted in accordance with general principles of contractual interpretation and, as commercial contracts, must be interpreted so as to avoid commercial absurdity. *Buildevco Ltd. v. Monarch Construction Ltd.* 1990 73 O.R. (2nd) 627 (H.C.); Chitty on Contract (27th ed.) at 583; McLaren "Secured Transactions in Personal Property in Canada" (2nd ed.) volume 2 at 2-12. In keeping with this principle, if a security agreement gives the lender the right, upon default, to pursue causes of action belonging to the debtor, it should be interpreted to apply to causes of action against third parties and not causes of action against the lender itself. To interpret it as including causes of action against the lender itself would be absurd and manifestly unfair as it would grant lenders an absolute shield in their dealings with debtors with whom they have entered into a general security agreement and would have the effect of precluding virtually all lender liability actions where the lender holds a general security agreement.

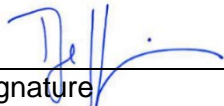
1239745 Ontario Ltd. v. BOA Canada, [1999] O.J. No. 3178, 90 A.C.W.S. (3d) 562, (Ont. S.C.J.)

71. Other claims sharing the same factual matrix should similarly be exempted so that proceedings can be streamlined. Specifically, the Respondents submit that the model order definition of "Property" should be altered to provide as follows "all of the assets, undertakings and property of the Debtors, including all proceeds thereof, and expressly excluding any and all claims of any Debtor against the Petitioners, Stellex Capital Management LLC, Stellex Capital Management A LP, and any other party against whom a Debtor has a claim arising from or related to the same circumstances".

Part 6: MATERIAL TO BE RELIED ON

1. Affidavit #1 of Bernard Aaron Rokstad, made October 31, 2024; and
2. Confidential Affidavit #2 of Bernard Aaron Rokstad, made October 31, 2024; and
3. Any other material that this Honourable Court may allow.

Dated: October 31, 2024



Signature
 Petition respondent
 Lawyer for petition respondents
Tevia Jeffries

Petition respondents' address for service:

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Barristers & Solicitors
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Name of the petition respondents' lawyer, if any: Tevia Jeffries & Catherine Ewasiuk