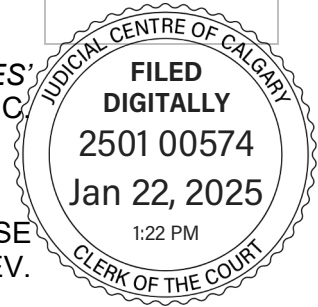


COURT FILE NUMBER 2501-00574  
COURT COURT OF KING'S BENCH OF ALBERTA  
JUDICIAL CENTRE CALGARY

Clerk's stamp

IN THE MATTER OF THE COMPANIES'  
CREDITORS ARRANGEMENT ACT, R.S.C.  
1985, C. C-36, AS AMENDED



AND IN THE MATTER OF THE COMPROMISE  
OR ARRANGEMENT OF WESTPHALIA DEV.  
CORP.

APPLICANT WESTPHALIA DEV. CORP.

DOCUMENT **BRIEF OF LAW  
(ARIO, CLAIMS PROCESS ORDER)**

ADDRESS FOR  
SERVICE AND  
CONTACT  
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File no.: 1001326363

## INTRODUCTION

1. This Brief of Law is submitted on behalf of Westphalia Dev. Corp. (**WDC**, or the **Applicant**), in support of its application for an amended and restated initial order (**Amended and Restated Initial Order** or **ARIO**) and an order approving the claims process (the **Claims Process Order**) (the **Application**).
2. The Application is scheduled to be heard on January 23, 2025 at 2:00pm before the Honourable Justice Jeffrey (the **Comeback Hearing**).

3. In support of its Application, the Applicant relies upon the *Companies' Creditors Arrangement Act*, as amended (the **CCAA**);<sup>1</sup> the affidavit of Bryce Tingle, filed January 14, 2025 (the **Tingle Affidavit**); the second affidavit of Bryce Tingle, K.C., filed (the **Second Tingle Affidavit**); the pre-filing report dated January 14, 2025 (the **Pre-Filing Report**) of FTI Consulting Canada Inc. (the **Monitor**); and the first report of the Monitor, dated January 21, 2025 (the **First Report**).
4. Capitalized terms not otherwise defined take their meaning from the initial order of the Honorable Justice Feasby, granted January 14, 2025 and filed January 18, 2025 (the **Initial Order**).
5. This Brief of Law is intended to outline the legislation and jurisprudence pertinent to the relief being sought in the Application.

## **FACTS**

### **Overview**

6. The Applicant was incorporated on January 4, 2012, under the laws of the Province of Alberta.<sup>2</sup>
7. The Applicant is an entity set up to raise and deploy capital in a specific land development project (the **Project**) located in Prince George's County, Maryland, USA. The Applicant's objective is to work through its subsidiary, Walton Westphalia Development (USA), LLC (the **US Subsidiary**), to acquire, entitle (zone) land, and then develop and sell parcels to residential and commercial builders and end users. The Applicant does not have the personnel to carry out these objectives and therefore hired a third party project manager, Walton Development & Management (USA) Inc., to carry out these objectives.<sup>3</sup>
8. The Applicant is managed by Walton Global Investments Ltd. (**WGIL** or the **Manager**) pursuant to a Management Services Agreement, dated February 27, 2012, as between the Applicant and Walton Asset Management L.P. (**WAM**), as assigned and novated to WGIL on April 1, 2018, pursuant to an Assignment and Assumption Agreement (collectively, the

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<sup>1</sup> *Companies' Creditors Arrangement Act*, [RSC 1985, c C-36](#) [**CCAA**] [Tab 1].

<sup>2</sup> Tingle Affidavit at para 16.

<sup>3</sup> Tingle Affidavit at para 13.

**Management Services Agreement**). WGIL is a Canadian company that is part of a larger group of corporations, trusts and partnerships, made up of entities in Canada, with sister operations in the United States.<sup>4</sup>

9. For the past several years, the Applicant has operated and could only continue to operate with the ongoing financial support of certain stakeholders, including the Manager. The Applicant has been unable to pay management fees owing to the Manager (and the Manager's predecessor) since 2016. While activities on the Project are ongoing, the Project has encountered significant regulatory delays and requires substantial further funding to be completed, which in turn requires the support of the Manager and other stakeholders of the Applicant.<sup>5</sup>
10. The Manager recently advised the Applicant that it cannot continue to provide services and funding on a go forward basis unless a plan is put in place to address the Applicant's liquidity and outstanding debts to the Manager and others. Absent this support, the Applicant would be unable to meet its immediate obligations as they come due, including the professional fees and other costs that will soon be incurred in order for the Applicant, as a public company, to meet upcoming audit and reporting obligations.<sup>6</sup>
11. The Applicant's circumstances became dire to the point that the company urgently needed to restructure its affairs. The indebtedness of the Applicant is in excess of \$5,000,000.<sup>7</sup>

### **Application for an Initial Order**

12. On January 14, 2025, the Initial Order was granted, which, among other things:
  - a) declared that the Applicant is a company to which the CCAA applies;
  - b) stayed all proceedings and remedies taken or that might be taken in respect of the Applicant or any of its property, except as set forth in the Initial Order or as otherwise permitted by law, for 10 days (as may be extended by the Court thereafter);
  - c) appointed the Monitor as the monitor of the Applicant under section 11.7 of the CCAA;

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<sup>4</sup> Tingle Affidavit at para 14.

<sup>5</sup> Tingle Affidavit at para 10.

<sup>6</sup> Tingle Affidavit at para 11.

<sup>7</sup> Tingle Affidavit at para 8-9.

- d) approved an Administration Charge of \$100,000;
- e) approved a D&O charge of \$25,000; and
- f) authorized payment of the reasonable fees and disbursements of the Monitor, the Monitor's legal counsel, and the Applicant's legal counsel.

### **Events subsequent to the Initial Order**

13. Since the granting of the Initial Order, the Applicant's activities have included:

- a) issuing a press release and notifying stakeholders, in consultation with the Monitor, of the CCAA proceedings;
- b) working with the Interim Lender to finalize the Interim Lending Agreement;
- c) working with the Monitor to develop and finalize an efficient claims procedure to put forward for Court approval;
- d) in consultation with the Monitor, reviewing the current forecasted operating revenues, costs and expenses of the business, and other sources of revenues and expenses, in order to evaluate opportunities to reduce expenses and conserve capital;
- e) continuing to work with the Monitor and key stakeholders to finalize the terms of the Restructuring Support Agreement; and
- f) continuing to work with the Monitor and key stakeholders to develop a plan of compromise and arrangement, together with a meeting protocol, which will be finalized and presented to the Court for approval at a later date.<sup>8</sup>

### **The Application before the Court**

14. At the Comeback Hearing, the Applicant seeks an Amended and Restated Initial Order, which, among other things, includes provisions:

- a) deeming service of the Application and supporting materials to be good and sufficient;

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<sup>8</sup> Second Tingle Affidavit at para 8;

- b) extending the Stay Period up to and including March 31, 2025, or such further and other date as deemed appropriate by this Honourable Court;
- c) approving the Applicant's entry into a certain Interim Financing Agreement (defined below) and approving an Interim Lender's Charge (defined below) of \$550,000;
- d) increasing the Administration Charge in favour of the Monitor, the Monitor's counsel, and the Applicants' counsel, in respect of their fees and disbursements, to \$250,000 and
- e) granting such other and further relief as sought in Schedule "A" to the Application.

15. The Applicant also seeks a Claims Process Order, which, among other things, includes provisions:

- a) approving the Claims Process (as defined in Schedule "D" to the Application)
- b) approving the Claims Bar Date (as defined in Schedule "D" to the Application); and
- c) granting such other and further relief as sought in Schedule "D" to the Application.

## **ISSUES**

16. The issues before this Honourable Court are:

- a) Should the ARIO be granted?
- b) Should the Claims Process Order be granted?

## **LAW AND ARGUMENT**

### **a. It is reasonable and necessary for the Court to grant the ARIO**

17. The Amended and Restated Initial Order seeks various relief to support the ongoing proceedings of the Applicant and should be granted.

## Stay of Proceedings

18. The Applicant seeks approval to extend the Stay Period to March 31, 2025.
19. A stay of proceedings granted in an initial order may not exceed a period of 10 days.<sup>9</sup> However, the CCAA provides the Court with the discretion to extend a stay of proceedings for any period that the Court considers necessary<sup>10</sup> upon: (a) the applicant satisfying the Court that circumstances exist that make the order appropriate; and (b) the applicant satisfying the Court that it has acted, and is acting, in good faith and with due diligence.<sup>11</sup>
20. The Courts have considered a number of factors in determining whether the extension of a stay of proceedings is appropriate and such a determination is discretionary. It has been held that when exercising this discretion, flexibility to the parties should be considered and an order should be made based on what the Court deems appropriate in the circumstances.<sup>12</sup> The costs of making further applications for stay extensions and the prejudice that additional stay extension applications will have on various stakeholders are valid considerations.<sup>13</sup>
21. As noted above, the Applicant has undertaken a number of key steps in the first 10 days of the within proceedings. The proposed stay extension through to March 31, 2025 would provide an adequate amount of time for the Applicant to stabilize the business, conduct continued restructuring efforts, and develop a plan of arrangement for the benefit of their creditors and stakeholders.<sup>14</sup>
22. The Monitor supports the requested stay extension, noting it is reasonable and necessary as:
- a) with the approval of the Interim Financing Agreement and the granting of the Interim Lender's Charge, the Applicant is projected to have sufficient available liquidity to fund its obligations and the cost of the CCAA Proceedings during the Stay Period;
  - b) there will be no material prejudice to the Applicant's creditors and other stakeholders;

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<sup>9</sup> CCAA, [s 11.02\(1\)](#) [Tab 1].

<sup>10</sup> *Ibid*, [s 11.02\(2\)](#) [Tab 1].

<sup>11</sup> *Ibid*, [s 11.02\(3\)](#) [Tab 1].

<sup>12</sup> *Sunrise/Saskatoon Apartments Limited Partnership, Re*, 2017 BCSC 808 at [para 21](#) [Tab 2].

<sup>13</sup> *Ibid* at [para 23](#) [Tab 2].

<sup>14</sup> Second Tingle Affidavit at para 10.

- c) the Applicant has acted in good faith and with due diligence;
- d) the overall prospects of the Applicant effecting a viable restructuring will be enhanced by the extension of the Stay of Proceedings; and
- e) the extension will allow the Applicant to run the Claims Process, and develop and seek the Court's approval of a Plan.<sup>15</sup>

23. Considering the above, the Applicant submits that an extension of the Stay Period is reasonable and necessary in the circumstances.

### **Interim Financing Agreement and Interim Lender's Charge**

24. The Applicant seeks approval of a credit facility that contemplates the Manager as Lender, with a maximum amount of \$750,000 (to be advanced in tranches) in order to finance the Applicant's working capital requirements and other general corporate purposes during the CCAA proceedings (**Interim Financing Agreement**).

25. The first tranche of funding pursuant to the Interim Financing Agreement (the **Initial Advance**) would be advanced upon the satisfaction of certain conditions, which include the approval of a charge over the assets of the Applicant that would rank ahead of all other charges except the Administration Charge (the **Interim Lender's Charge**).<sup>16</sup>

26. The Interim Lender's Charge is sought in an amount of \$750,000, equal to the amount of anticipated disbursements until April 13, 2025.<sup>17</sup>

27. Section 11.2(1) of the CCAA empowers the Court to grant an interim lender's charge in an amount the Court considers appropriate, having regard to the debtor company's cash flow statement, provided notice is given to secured creditors.

28. Further, Section 11.2(4) lists the following non-exclusive factors to consider when determining whether to grant such a charge:

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<sup>15</sup> First Report at para 24.

<sup>16</sup> First Report at para 18(a)

<sup>17</sup> Pre-Filing Report at para 27 and Appendix A.

- a) the period during which the company is expected to be subject to proceedings under this Act;
- b) how the company's business and financial affairs are to be managed during the proceedings;
- c) whether the company's management has the confidence of its major creditors;
- d) whether the loan would enhance the prospects of a viable compromise or arrangement being made in respect of the company;
- e) the nature and value of the company's property;
- f) whether any creditor would be materially prejudiced as a result of the security or charge; and
- g) the monitor's report, if any.<sup>18</sup>

29. In this case, the Applicant does not have any secured creditors. Notice has been given to the Applicant's unsecured creditors of the relief sought, and the Applicant is not aware of any opposition.

30. The additional liquidity to be provided under the Interim Financing Agreement is necessary for the Applicant to continue operating in the coming months during its restructuring efforts. The Monitor shares the view that the Interim Financing Agreement will provide the necessary funding to allow the Applicant to maintain operations and enhance its ability to present a restructuring plan to its creditors.<sup>19</sup>

31. The Monitor also shares the view that the Interim Lender's Charge does not materially prejudice any creditors.<sup>20</sup>

32. The terms of the Interim Financing Agreement and the proposed Interim Lender's Charge do not purport to secure or enhance the priority of the Applicant's pre-filing indebtedness.

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<sup>18</sup> CCAA, [s 11.2\(4\)](#) [Tab 1].

<sup>19</sup> First Report at para 19(a).

<sup>20</sup> First Report at para 19(b).



33. In the Applicant's view, the funding pursuant to the Interim Financing Agreement is modest relative to the Applicant's indebtedness and the Interim Lender's Charge is not anticipated to result in any prejudice to the Applicant's stakeholders.

34. In consideration of the above, the Interim Financing Agreement and Interim Lender's Charge are necessary, fair, and reasonable in the circumstances, and ought to be approved by the Court under section 11.2(1) of the CCAA.

### **Increase to the Administration Charge**

35. The Applicant seeks an increase of the Administration Charge to \$250,000.

36. The CCAA authorizes the Court to grant a priority charge in respect of professional fees and disbursements on notice to affected secured creditors.<sup>21</sup>

37. In *Re Canwest Publishing Inc.*, the Ontario Superior Court of Justice stated that the factors to consider in determining whether to approve an administration charge include:

- a) the size and complexity of the businesses being restructured;
- b) the proposed role of the beneficiaries of the charge;
- c) whether there is an unwarranted duplication of roles;
- d) whether the quantum of the proposed charge appears to be fair and reasonable;
- e) the position of the secured creditors likely to be affected by the charge; and
- f) the position of the Monitor.<sup>22</sup>

38. Courts have recognized that administration charges are often necessary to ensure a debtor company's successful restructuring. For example, in *Re Timminco*, Morawetz J. (now C.J.) stated that failing to provide such charges would "result in the overwhelming likelihood that the CCAA proceedings would come to an abrupt halt, followed, in all likelihood, by bankruptcy proceedings".<sup>23</sup>

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<sup>21</sup> CCAA, [s 11.52](#) [Tab 1].

<sup>22</sup> *Canwest Publishing Inc.*, 2010 ONSC 222 at [para 54](#) [Tab 3].

<sup>23</sup> *Re Timminco Ltd.*, 2012 ONSC 506 at [para 66](#) [Tab 4].

39. In the instant case, the Administration Charge, as initially sought, was modest, reflecting the short duration of the initial Stay Period. As the Applicant is now seeking the ARIO and Claims Process Order, further involvement from qualified professionals is necessary. The Applicant requires the knowledge, expertise and continuing participation of the beneficiaries of the proposed Administration Charge in order to successfully restructure its affairs.

40. The Monitor has prepared cash flow statements which anticipate professional fees of \$250,000,<sup>24</sup> and is of the view that the proposed increase to the Administration Charge is reasonable and appropriate in the circumstances.<sup>25</sup>

41. The Applicant submits that the proposed increase to the Administration Charge is fair and reasonable.

**b. It is reasonable and necessary for the Court to grant the Claims Process Order**

42. Section 11 of the CCAA grants this Court the power to make any order that it considers appropriate in the circumstances. The CCAA is remedial legislation and is to be given a liberal interpretation to facilitate its objectives.<sup>26</sup>

43. An order under section 11 of the CCAA will be appropriate where it advances the policy objectives underlying the CCAA, namely maximizing creditor recovery and providing a timely, efficient and impartial resolution of a debtor's insolvency.<sup>27</sup>

44. In exercising its discretionary authority under the CCAA, the Court should consider whether it is appropriate in the circumstances and whether the applicant has been acting in good faith and with due diligence.<sup>28</sup>

45. In this case, the Claims Process Order will permit the Applicant to determine the claims of its stakeholders and distribute available funds accordingly. The Claims Process will therefore serve to maximize creditor recovery.

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<sup>24</sup> Pre-Filing Report at para 27 and Appendix A.

<sup>25</sup> First Report at para 21.

<sup>26</sup> *Kerr Interior Systems Ltd. (Re)*, 2011 ABQB 214 at [paras 23-25](#) [Tab 5]; *Stelco Inc. (Bankruptcy), RE*, 2005 OJ No 1171 at [para 32](#) [Tab 6]; *Century Services Inc. v Canada (AG)*, 2010 SCC 60 at [para 70](#) [Tab 7].

<sup>27</sup> *9354-9186 Quebec Inc. v Callidus Capital Corp.*, 2020 SCC 10 at [paras 40-41](#) [Tab 8].

<sup>28</sup> *Ibid* at [para 49](#) [Tab 8].

46. The Monitor states that the approval and completion of the Claims Process is a necessary step in the Applicant's plans to formulate and present the Plan to its creditors, and ultimately complete its restructuring.<sup>29</sup>

47. As the Claims Process Order will advance the objectives of the CCAA, the Applicant submits the Claims Process Order ought to be granted.

## **CONCLUSION**

48. The respectfully requests that this Honourable Court grant the ARIO and Claims Process Order in the form attached to the Application.

**ALL OF WHICH IS RESPECTFULLY SUBMITTED THIS 22 DAY OF January, 2025**

Norton Rose Fulbright Canada LLP

Per: \_\_\_\_\_



Howard A. Gorman, K.C., and Meghan L. Parker  
Counsel for the Applicant, Westphalia Dev. Corp.

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<sup>29</sup> First Report at para 26.

## TABLE OF AUTHORITIES

Tab 1	<i>Companies' Creditors Arrangement Act</i> , <a href="#">RSC 1985, c C-36</a>
Tab 2	<i>Sunrise/Saskatoon Apartments Limited Partnership, Re</i> , <a href="#">2017 BCSC 808</a>
Tab 3	<i>Canwest Publishing Inc</i> , <a href="#">2010 ONSC 222</a>
Tab 4	<i>Re Timminco Ltd</i> , <a href="#">2012 ONSC 506</a>
Tab 5	<i>Kerr Interior Systems Ltd. (Re)</i> , <a href="#">2011 ABQB 214</a>
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Tab 7	<i>Century Services Inc. v Canada (AG)</i> , <a href="#">2010 SCC 60</a>
Tab 8	<i>9354-9186 Quebec Inc. v Callidus Capital Corp</i> , <a href="#">2020 SCC 10</a>