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COURT	COURT OF KING'S BENCH OF ALBERTA
JUDICIAL CENTRE	CALGARY
	IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*, R.S.C. 1985, C. C-36, AS AMENDED
	AND IN THE MATTER OF THE PLAN OF COMPROMISE OR ARRANGEMENT OF WESTPHALIA DEV. CORP.
APPLICANT	WESTPHALIA DEV. CORP.
DOCUMENT	**BRIEF OF LAW** **(Re Sanction Order And CCAA Termination Order)**

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I. INTRODUCTION

1 This Brief is submitted on behalf of the Applicant, Westphalia Dev. Corp. (**WDC** or the **Applicant**) in support of Applications for:

(a) an Order sanctioning WDC's Plan of Compromise and Arrangement, dated February 24, 2025 (the **Plan**); and

(b) an Order terminating the within proceedings under the *Companies' Creditors Arrangement Act* and discharging the Monitor (the **CCAA Termination Order**).

2 Capitalized terms used but not defined take their meaning from the First and Fourth Affidavits of Bryce Tingle, sworn on January 13, 2025, and March 24, 2025, respectively.

II. FACTS

a. Overview of Applicant and CCAA Proceedings

3 WDC is an Alberta corporation established on January 4, 2012. Its purpose is to raise and deploy capital in a land development project (the **Project**) on the 310-acre "Westphalia" property (the **Property**) in Prince George's County, Maryland. WDC's wholly owned subsidiary, Walton Westphalia Development (USA), LLC (the **US Subsidiary**), holds a majority interest in the Property.[1]

4 WDC works through the US Subsidiary to entitle (zone), develop and sell parcels to residential and commercial builders and end users. WDC does not have the personnel to carry out these objectives, and, since April 2018, has been managed by Walton Global Investments Ltd. (**WGIL**). Prior to that time, WDC was managed by Walton Asset Management L.P. (**WAM**).[2] WAM is currently managed by Ernst & Young Inc. as an enhanced monitor under WAM's CCAA proceeding.

5 The current share structure of WDC is comprised of 100 Class "A" voting shares, which are held by 1389211 Alberta Ltd., and approximately 65,000 Class "B" non voting shares, which are widely held. WGIL and WGIL's Chief Executive Officer and majority shareholder, William Doherty, are the largest Class B shareholders, holding approximately 5% and 1.5%, respectively, of the outstanding Class "B" shares.[3]

6 For the past several years, WDC operated and could only continue to operate with the ongoing financial support of its stakeholders, in particular, WGIL. WDC has been unable to pay management fees owing to either WGIL or WAM since 2016, and while activities on the Project are ongoing, it has experienced delays and requires substantial further funding in order to be completed. As reported by WDC on December 1, 2024, WGIL informed the Board of WDC that it will not continue to fund operations unless a plan is put in place to pay WDC's outstanding debt, unsecured creditors, and WGIL.[4]

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[1] First Affidavit of B. Tingle, at paras 13 and 24.
[2] First Affidavit of B. Tingle, at paras 13-15.
[3] First Affidavit of B. Tingle, at paras 16-18.
[4] First Affidavit of B. Tingle, at paras 10-12 and 50.

7 As such, on January 14, 2025, WDC sought and obtained the Initial Order. Among other things, the Initial Order (i) declared the Applicant to be a company to which the CCAA applies; (ii) appointed FTI Consulting Canada Inc. as Monitor; (iii) granted a stay of proceedings to January 24, 2025; and (iv) granted the Administration and Directors' Charges.

8 On January 23, 2025, WDC obtained an Amended and Restated Initial Order, which, among other things: (i) extended the stay of proceedings to March 31, 2025; (ii) increased the Administration Charge; (iii) authorized the Applicant to obtain and borrow under an Interim Loan Facility; and (iii) granted the Interim Lender's Charge. Also at the Comeback Hearing, the Applicant sought and obtained the Claims Process Order, which approved a reverse claims process with a Claims Bar Date of February 28, 2025.

9 The Claims Process was undertaken by the Monitor in accordance with the Claims Process Order, and resulted in the Monitor confirming the claims of four creditors:

(a) BMO Nesbitt Burns Inc., an unsecured creditor in the amount of $26,753, which qualifies under the Plan as a Convenience Class Creditor;

(b) SMG Asset Canada Inc., an unsecured creditor in the amount of $510, which also qualifies as a Convenience Class Creditor;

(c) WAM, an unsecured creditor in the amount of $1,346,758, which qualifies under the Plan as an Affected Creditor; and

(d) WGIL, an unsecured creditor in the amount of $5,839,376, which is also an Affected Creditor.

10 On February 24, 2025, WDC filed applications for a Meeting Order, scheduled and heard on March 4, 2025, and for a Sanction Order, scheduled for March 28, 2025. In addition to serving WDC's creditors, WDC served both applications on all of its Class "B" shareholders, which, among other things, put the Class "B" shareholders on notice that their shares would be cancelled and extinguished without payment under the Plan.[5]

11 The Class "B" shareholders had previously and consistently been advised that they shareholdings had limited or no value due to WDC being financially troubled. This included explicit going concern notations in WDC's externally audited financial statements going back to 2016, and a market value letter to Class "B" shareholders dated December 17, 2020, which advised that there were no anticipated recoveries available.[6] No Class "B" shareholders attended the WebEx hearing for the Meeting Order Application.

12 On March 4, 2025, the Court granted the Meeting Order, which authorized the Applicant to call and hold the Meeting, which took place virtually on March 25, 2025. As reported in detail by the Monitor in its Third Report, filed on March 26, 2025, the Plan was approved with 100% of the votes, by number and value, being in favour of the Plan.

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[5] Third Affidavit of B. Tingle, at Exhibit "B".
[6] First Affidavit of B. Tingle, at paras 33 and 55, and Exhibit "D-4".

b. The Plan

13 The key elements of the Plan provide, among other things, for the following:

(a) the operations of the Applicant will continue as normal and without disruption following the Plan Implementation;

(b) all amounts outstanding under the Interim Loan Facility will remain outstanding and the Interim Lender's Charge will remain in place;

(c) all Existing Class "B" shares shall be cancelled and extinguished, and shall be deemed to be cancelled and extinguished, without payment of any consideration;

(d) the Applicant will pay the Convenience Class Creditor Claims, which are Proven Claims up to and including $30,000 in value, in full, and the Claims of the Convenience Class Creditors will be fully and finally forgiven, settled and extinguished;

(e) the claims of Affected Creditors shall be put in abeyance, to be paid from the proceeds of the completion and monetization of the Project, if any, *pro rata* in accordance with such Affected Creditors' entitlement;

(f) the Amended Articles shall become effective;

(g) the Directors of the Applicant prior to the Implementation Time shall be deemed to have resigned and the New Board shall be deemed to have been appointed;

(h) the releases referred to in Article 11 of the Plan shall become effective;

(i) the Applicant shall pay all outstanding invoiced obligations secured by the Administration Charge and the Administration Charge shall be discharged; and

(j) the Directors' Charge shall be discharged from the assets of the Applicant.

14 The Plan has an outside date of April 30, 2025, although it is anticipated that if the Sanction Order is granted on March 28, 2025, such transactions will close the same day or the following business day.

c. The CCAA Termination Application

15 With the closing of the transaction contemplated by the Plan, the Applicant will have achieved its stated purpose of these proceedings.

16 As such, in addition to seeking a Sanction Order in respect of the Plan, the Applicant is seeking a CCAA Termination Order that provides (i) upon service by the Monitor on the Service List of an executed Monitor's certificate, the CCAA proceedings will be terminated; and (ii) the Administration Charge and Directors' Charge will be terminated, released and discharged at the CCAA Termination Time (as defined in that Order), and (iii) the Monitor will be discharged from its duties, while retaining some authority to complete or address any ancillary or incidental matters as needed.

17 The CCAA Termination Order also proposes to release the Monitor, the Monitor's counsel, and the Applicant's counsel from the certain released claims, excluding claims resulting from gross negligence or wilful misconduct.

III. LAW

18 Section 6(1) of the CCAA gives this Court discretion to sanction the Plan provided it achieves the requisite "double majority" vote in each creditor class, being a majority of voting creditors in number, representing two-thirds in value. Where a sanction order is granted, it has the effect of binding the company, its creditors, and all other persons affected by the plan.[7]

19 The test for granting a sanction order is well-established:

(a) there must be strict compliance with all statutory requirements;

(b) all material filed and procedures carried out must be examined to determine if anything has been done or purported to be done which is not authorized by the CCAA and prior Court orders in the proceedings; and

(c) the plan must be fair and reasonable.[8]

20 For the reasons that follow, the Applicant submits that it has met these requirements.

a. Compliance with Statutory Requirements

21 To determine whether there has been strict compliance with all statutory requirements, the courts typically consider factors such as whether: (a) the applicant(s) come within the definition of "debtor company" under section 2(1) of the CCAA; (b) the applicant(s) or affiliated debtor companies have total claims in excess of $5 million; (c) the notice of meeting was sent in accordance with the Court's order; (d) the creditors were properly classified; (e) the creditors' meeting was properly constituted; (f) the voting was properly carried out; and (g) the plan was approved by the requisite majority.[9]

22 The Applicant submits that it has complied with all statutory and procedural requirements. In particular:

(a) At the time the Initial Order was granted, the Applicant was found to be a "debtor company" to which the CCAA applied and that its liabilities exceeded the $5 million threshold amount under the CCAA.

(b) The classification of the Applicant's creditors into a single class of Convenience Class Creditors and Affected Creditors was approved pursuant to the Meeting Order. This classification was not opposed at the hearing to approve the Meeting,

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[7] CCAA at s 6(1).
[8] *Re Target Canada Co*, 2016 ONSC 316 at para 70 and cases cited therein; *Re Lydian International Limited*, 2020 ONSC 4006 (*Lydian*) at para 22; *Canwest Global Communications Corp, Re*, 2010 ONSC 4209, at para 14.
[9] *Lydian* at para 24.

nor was the Meeting Order appealed. The Applicant and the Monitor properly effected notice in accordance with the Meeting Order prior to the Meeting.[10]

(c) Class "B" shareholders were not permitted to vote on the Plan, consistently with Sections 6(1) and 22.1 of the CCAA.[11] As such, excluding shareholders from the vote and grouping unsecured creditors with a commonality of interest was reasonable and appropriate.

(d) The Meeting was properly constituted and the voting on the Plan was carried out in accordance with the Meeting Order.[12]

(e) The Plan was approved by the Requisite Majority.[13]

b. Nothing Done that was Not Authorized

23 Nothing was done in these proceedings that were not authorized by the CCAA, and the Applicant has complied with the terms of all Orders of this Court.[14]

c. Plan is Fair and Reasonable

24 In order to be sanctioned, a plan must be fair and reasonable. The following considerations have been recognized as relevant in assessing a plan's fairness and reasonableness:

(a) whether any creditors or classes of creditors have been afforded a particular advantage not apparent from the terms of the plan itself;

(b) whether planned distributions to creditors under the plan exceed those that would otherwise be anticipated through a bankruptcy or other liquidation of the debtor;

(c) whether alternatives to the plan are available and whether other attempts to restructure the debtors have been attempted;

(d) whether any creditors' rights are being subjected to oppression, as defined in applicable corporate law legislation and considered through the lens of insolvency; and

(e) whether the plan is in the public interest, considering that preserving a viable business employing many provides important public benefits.[15]

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[10] Affidavit of Joanna Van Ham, sworn March 4, 2025 (in respect of the Applicant's notice of this Application), and Third Report of Monitor (in respect of Monitor's notice of meeting to creditors).
[11] See also *Canadian Airlines Corp., Re,* 2000 ABQB 442 [***Canadian Airlines***], at para 143, in which the Court stated: "Where a company is insolvent, only the creditors maintain a meaningful stake in its assets. Through the mechanism of liquidation or insolvency legislation, the interests of shareholders are pushed to the bottom rung of the priority ladder. The expectations of creditors and shareholders must be viewed and measured against an altered financial and legal landscape. Shareholders cannot reasonably expect to maintain a financial interest in an insolvent company where creditors' claims are not being paid in full."
[12] Third Report of Monitor.
[13] Third Report of Monitor.
[14] Sixth Report of Monitor at para 48(a)(vii).
[15] *Canadian Airlines* at paras 97, 101, 137, 140, 145 and 172.

25 In this case, the Plan is fair and reasonable and should be sanctioned. It provides the best outcome available in the circumstances: a going-concern restructuring that provides some recoveries for all creditors. Although the interests of Class "B" shareholders are being extinguished without consideration, this is appropriate in circumstances where the creditors will not be paid in full under the Plan. Class "B" shareholders have been given ample notice that their shares had no value[16] and of the intention to cancel the Class "B" shares pursuant to the Plan.[17]

26 The Monitor has advised that it supports the Plan as the best alternative available, the only other being liquidation, in which case all creditors would suffer diminished recoveries.[18] The relative benefits to creditors are clear on the face of the Plan terms, and the Applicant has not engaged in any oppressive conduct in respect of their creditors, or any stakeholder.

d. Third Party Releases

27 Courts may find that third party releases are appropriate if:

(a) the parties to be released are necessary and essential to the restructuring;

(b) the claims to be released are rationally related to and necessary for the Plan;

(c) the plan cannot succeed without the releases;

(d) the beneficiaries of the releases are contributing in a tangible and realistic way to the plan;

(e) the plan will benefit not only the debtor companies but creditors generally;

(f) creditors voting on the plan had knowledge of the nature and the effect of the releases; and

(g) the releases were fair and reasonable and not overly broad.[19]

28 Here, if the Plan is sanctioned, it will include releases in favour of:

(a) the Applicant, the Directors and Officers, and each of their respective financial advisors, legal counsel and agents (the **Company Released Parties**);

(b) WGIL and WAM and each of their respective financial advisors, legal counsel and agents (the **Creditor Released Parties**); and

(c) the Plan Sponsor its financial advisors, legal counsel and agents (the **Plan Sponsor Released Parties**).

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[16] See First Affidavit of B. Tingle, at para 33 and Exhibit "D-4", which indicates that this has been known by Class "B" shareholders since at least December 17, 2020.
[17] See Third Affidavit of B. Tingle, at Exhibit "D".
[18] Second Report of Monitor at para 57.
[19] *ATB Financial v Metcalfe & Mansfield Alternative Investments II Corp*, 2008 ONCA 587 (*Metcalfe*) at para 71; and *Re Target Canada Co,* 2016 ONSC 3651 at paras 34-38.

29 Further, if the CCAA Termination Order is granted, it would include additional releases in favour of the Monitor, the Monitor's Counsel, and counsel to the Applicant, and each of their respective affiliates, officers, directors, partners, employees and agents (**Advisor Released Parties,** and collectively with those described in the paragraph immediately above, the **Released Parties**, and **Releases**).

30 The Releases do not purport to release any of the Released Parties from any obligations under the Plan, or for criminal actions or willful misconduct. The Releases in favour of the Company Released Parties do not purport to release such parties from any regulatory investigations that are not permitted to be released by section 11.1 of the CCAA, nor any misrepresentation or oppression claims against directors that are not permitted to be released by section 5.1(2) of the CCAA. The Releases in favour of the Advisor Released Parties do not include claims resulting from gross negligence, willful misconduct or fraud.

31 As is set out in the Fourth Affidavit and prior filings of the Applicant, the Released Parties contributed in a tangible and realistic way to the success of the Plan. In particular:

(a) Company Released Parties: The Directors have overseen, directed and developed potential restructuring options and have dedicated significant time and resources to achieve a successful restructuring for the Applicant. The Officers have invested significant time and effort into advancing the restructuring and maximizing the value of the Applicant's business. The legal and financial advisors have supported the restructuring efforts since the Filing Date, and will continue to support such efforts through implementation.

(b) Creditor Released Parties: WGIL and WAM have each supported and facilitated the restructuring of the Applicant in an essential way. Both supported the Initial Order, and all subsequent Orders granted in these proceedings, and both worked diligently with the Applicant to develop the Implementation Documents and, in the case of WGIL, the interim financing arrangements.

(c) Plan Sponsor Released Parties: The Plan Sponsor played a key role in supporting the Applicant since the Filing Date and in respect of the Plan and its development, which culminated in the Restructuring Support Agreement. This party, together with its financial and legal advisors, played a key role in the Applicant's ability to reach this stage in the proceedings, and will continue to support the Applicant upon Plan implementation.

(d) Advisor Released Parties: The Advisor Released Parties have facilitated and made substantial contributions to these CCAA proceedings, including in advising the Applicant throughout these proceedings and assisting in completing the transaction contemplated by the Plan.

32 Overall, the scope of the releases is fair and reasonable, the Released Parties were necessary and essential to the Plan, the releases are standard in similar restructurings, and the releases were approved by the Applicant's creditors after having been fully disclosed to them. The Monitor is supportive of the releases being included in the Plan.[20]

[20] Third Report of Monitor

e. The CCAA Termination

33 The proposed CCAA Termination Order contains standard terms consistent with termination orders recently granted by this Court,[21] and is appropriate and efficient in the circumstances.

IV. CONCLUSION AND RELIEF SOUGHT

34 The Applicant requests that the Sanction Order and CCAA Termination Order be granted.

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 26th day of March, 2025.

NORTON ROSE FULBRIGHT CANADA LLP

Per: 

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

[21] See, e.g., *Re Bellatrix Exploration Ltd.*, (July 7, 2022), ABKB 1901-13767 ; *Re ENTREC Corporation et al*, (November 24, 2020), ABKB 2001-06423 ; *Re Canadian Overseas Petroleum Limited et al,* (September 16, 2024), ABKB 2401-03404.